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Folder Title:

Chron File - March 1993 #2 [4]

Staff Office-Individual:

Defense Policy-Bell, Robert

Original OA/ID Number:

43

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Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Duplicate of vz4369_001. Record ID: 9301777. (1 page)	03/24/1993	P1/b(1)
002. cable	re: Part I Significant Military Exercise Brief. (2 pages)	02/10/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 43

FOLDER TITLE:

Chron File - March 1993 #2 [4]

2016-0152-F

vz4370

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]
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b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9301326
RECEIVED: 10 MAR 93 09

TO: STEARNS, CLIFF

FROM: PRESIDENT

DOC DATE: 25 MAR 93
SOURCE REF:

KEYWORDS: MILITARY BASES
CO

NAVY
WH STAFF SECRETARY

PERSONS: FOWLER, TILLIE
STEARNS, CLIFF

BROWN, CORRINE

SUBJECT: PRES LTR TO REP STEARNS RE CLOSURE OF MILITARY BASES

ACTION: PRES SGD LTR

DUE DATE: 13 MAR 93 STATUS: C

STAFF OFFICER: BELL

LOGREF: 9301500

FILES: PA

NSCP:

CODES:

DOCUMENT DISTRIBUTION

FOR ACTION

FOR CONCURRENCE

FOR INFO

BELL
GROSS
HAHN
JONES
NSC CHRON

COMMENTS:

DISPATCHED BY

(M)

DATE

3/25

BY HAND

W/ATTCH

OPENED BY: NSJDA

CLOSED BY: NSKDB

DOC 7 OF 7

UNCLASSIFIED

THE WHITE HOUSE

WASHINGTON

March 25, 1993

Dear Representative Fowler:

Thank you for your recent letter, regarding Naval Air Station (NAS) Cecil Field and its status within the ongoing base closure process. As you know, Congress carefully designed this process to ensure fair and non-partisan base closure and realignment decisions.

After reviewing all U.S. military facilities, Secretary Aspin has included NAS Cecil Field in his base closure recommendations. This is a difficult and painful decision, and I share your concern for the people and communities that will be affected at those bases eventually closed. There will be many difficult choices to be made as we seek to update U.S. force structure and size it to reflect the new international security environment, while promoting our overall long-term economic objectives.

The DoD list of recommended base closures now goes to the independent Defense Base Closure and Realignment Commission, which will conduct a comprehensive, non-partisan and open review of each base on the list. The Commission is chartered to consider the military value, potential costs and savings, and local economic and environmental impacts of closing or realigning each facility.

When I receive the Commission's recommendations on July 1, I can assure you that I will hold it accountable to its charter before forwarding the base realignment and closing list to Congress. For those bases that are selected for closure, I have made it clear that my Administration will be aggressive in helping affected communities in their transition to other productive activities.

Sincerely,



The Honorable Tillie Fowler
House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

March 25, 1993

Dear Representative Brown:

Thank you for your recent letter, regarding Naval Air Station (NAS) Cecil Field and its status within the ongoing base closure process. As you know, Congress carefully designed this process to ensure fair and non-partisan base closure and realignment decisions.

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Sincerely,



The Honorable Corrine Brown
House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

March 25, 1993

Dear Representative Stearns:

Thank you for your recent letter, regarding Naval Air Station (NAS) Cecil Field and its status within the ongoing base closure process. As you know, Congress carefully designed this process to ensure fair and non-partisan base closure and realignment decisions.

After reviewing all U.S. military facilities, Secretary Aspin has included NAS Cecil Field in his base closure recommendations. This is a difficult and painful decision, and I share your concern for the people and communities that will be affected at those bases eventually closed. There will be many difficult choices to be made as we seek to update U.S. force structure and size it to reflect the new international security environment, while promoting our overall long-term economic objectives.

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When I receive the Commission's recommendations on July 1, I can assure you that I will hold it accountable to its charter before forwarding the base realignment and closing list to Congress. For those bases that are selected for closure, I have made it clear that my Administration will be aggressive in helping affected communities in their transition to other productive activities.

Sincerely,



The Honorable Cliff Stearns
House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

March 23, 1993

93 MAR 23 AIO: 5

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE *AL*
HOWARD PASTER *HP*

SUBJECT: Letter from Representatives RE: Closure
of Military Facility

Purpose

To respond to Representatives Stearns, Brown and Fowler, regarding Naval Air Station (NAS) Cecil Field in Florida, and its inclusion on the base closure list announced by Secretary Aspin on March 12.

Background

The reply acknowledges that NAS Cecil Field has been placed by DoD on the list of recommended base closures, and that this is a difficult but absolutely necessary process. The proposed response emphasizes that this Administration will be aggressive in helping any communities affected by closures or realignments.

RECOMMENDATION

That you sign the letters at Tab A.

Attachments

Tab A Letters to Representatives
Tab B Incoming Correspondence

3/25/93

President's note refers to finding only two signature tabs when pkg was submitted by Staff Secy. 3rd letter was resubmitted for President's signature.

Fran Wessel
John Podesta's office.
x2702

cc: Vice President
Chief of Staff

*Very busy
w/ letters
2/25/93*

NATIONAL SECURITY COUNCIL

19-Mar-1993 18:03 EDT

~~CONFIDENTIAL~~

MEMORANDUM FOR:

PROCTOR@A1

FROM:

WIEDEMANN
(WIEDEMANN@MRGATE@OEOB)

SUBJECT:

Pentagon Briefing on POW/MIA's; Vessey Coming to Tow

NATIONAL SECURITY COUNCIL

19-Mar-1993 17:43 EDT

~~CONFIDENTIAL~~

MEMORANDUM FOR:

W. Anthony K. Lake
Samuel R. Berger

(LAKE)
(BERGER)

FROM:

Kent M. Wiedemann
(WIEDEMANN)

SUBJECT:

Pentagon Briefing on POW/MIA's; Vessey Coming to Tow

Winston Lord had lunch with Chas. Freeman today, and learned from Chas. that you were briefed yesterday by Wisner and Chas. on the Pentagon's assessment of the POW/MIA issue, and discussed also the desirability of Gen. Vessey making an early trip to Vietnam to follow up on remaining U.S. concerns on POW/MIA's. Next time you receive such briefings on issues/countries for which I am responsible, I would really appreciate your considering inviting me in--it helps me both gain information needed to do my job, as well as a better understanding of your thinking.

I understand that Jack Vessey will be in town next week. If, as I have recommended, you agree that he should soon make a trip to Vietnam as the next step in our Vietnam strategy, his presence next week offers a good opportunity to sit down with him and establish his agenda and objectives.

CC: Sandra J. Kristoff
CC: Nancy Soderberg
CC: William H. Itoh

(KRISTOFF)
(SODERBERG)
(ITOH)

DECLASSIFIED
E.O. 13526

White House Guidelines, September 11, 2006
By VE NARA, Date 8/23/16

2016-0152-6

NATIONAL SECURITY COUNCIL
WASHINGTON D.C. 20506

1326
REDO

March 12, 1993

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT G. BELL *H*
FROM: STEVEN R. JONES *g*
SUBJECT: Letter from Representatives RE: Closure
of Military Facility

Representatives Stearns, Brown and Fowler have written to the President (Tab B) to point out the important contributions of Naval Air Station Cecil Field to our national defense, and that it not be closed in this round of base closures.

NAS Cecil Field was among those bases Secretary Aspin recommended for closure on March 12.

The proposed reply (Tab A) emphasizes President Clinton's commitment that this will be a fair process and that this Administration will be aggressive in helping affected communities.

Concurrences by: *IX* Keith Hahn, *In draft* Jeremy Rosner

RECOMMENDATION

That you send a joint memo with Howard Paster to the President recommending his signature at Tab A.

Attachments

Tab I Memorandum to the President
Tab A Letters to Congressional Representatives
Tab B Incoming Correspondence

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

March 11, 1993

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT G. BELL *RGB*
FROM: STEVEN R. JONES *SJ*
SUBJECT: Letter from Representatives RE: Closure
of Military Facility

Representatives Stearns, Brown and Fowler have written to the President (Tab B) to point out the important contributions of Naval Air Station Cecil Field to our national defense, and that it not be closed in this round of base closures.

The proposed reply (Tab A) emphasizes President Clinton's commitment that this will be a fair process and that this Administration will be aggressive in helping affected communities.

Concurrences by: Keith Hahn, *HH* Jeremy Rosner *R*

RECOMMENDATION

That you send a joint memo with Howard Paster to the President recommending his signature at Tab A.

Attachments

Tab I Memorandum to the President
Tab A Letters to Congressional Representatives
Tab B Incoming Correspondence

THE WHITE HOUSE
WASHINGTON

DATE: 3/9

NOTE FOR: Howard, Bob Rubin, Tom Lister

The President has reviewed the attached, and it is forwarded to you
for your:

Information ☐

Action ☒

Please coordinate a
response

JDP

Thank you.

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
(x2702)

cc:

Congress of the United States
House of Representatives
Washington, DC 20515-0903

OFFICIAL BUSINESS

PRINTED ON RECYCLED PAPER

*To: Mr. Rubin
From: Mr. Taylor
Re: Mr. B.*

THE PRESIDENT HAS SEEN

03.09.93

Corrie Brown

M.C.

Honorable William Jefferson Clinton
President of the United States



Congress of the United States
House of Representatives
Washington, DC 20515

March 8, 1993

The President
The White House
Washington, DC 20500

Dear Mr. President:

When you receive Secretary of Defense Aspin's recommendations for closure of military facilities, Naval Air Station Cecil Field may be among them. We strongly urge that you take a close look at Cecil Field and its vital role in our defense structure before making any final decision.

NAS Cecil Field's almost 23,000 acre complex is almost ideally suited to the needs of naval operations, training and maintenance. The facilities already present at the base would cost hundreds of millions of dollars to recreate at other locations. And, Cecil Field possesses the best Naval Air Station AICUZ footprint on the east coast, with no significant noise abatement or civilian construction encroachment problems.

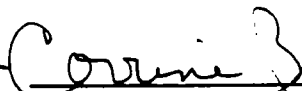
Cecil Field provides our defense forces with unique benefits. Currently, the command based at Cecil Field leases 8,379 acres in the Ocala National Forest for training, including the Navy's only live "ordnance" bombing range on the east coast -- Pinecastle Electronic Warfare Range. It enjoys the best flying weather of all eastern Jet Bases, providing more efficient aviator training with fewer cancellations. In addition, Cecil Field has the only runway in the eastern United States long enough to accommodate landings of NASA Space Shuttles should facilities at Cape Canaveral be unavailable.

Mr. President, the decision to close any military base is not an easy one. We believe that when you study the options, the case for retaining Cecil Field, on its merits, will be a persuasive one.

Thank you for your consideration of Naval Air Station Cecil Field.

Sincerely,


CLIFF STEARNS
Member of Congress


CORRINE BROWN
Member of Congress


TILLIE FOWLER
Member of Congress

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

1846

March 25, 1993

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT BELL *RJB*
FROM: KEITH HAHN *KH*
SUBJECT: Washington Post Editorial "The Army Owes Some
Answers"

At Tab A the President asked you and Bernard Nussbaum for additional information on a March 23 Washington Post editorial concerning U.S. Army surveillance of Martin Luther King and civil rights organizations. The response to the President at Tab I confirms that the Army did conduct domestic surveillance on U.S. citizens prior to the early 1970's, and that Congressional hearings made that surveillance a matter of public record twenty years ago.

The Army no longer holds the historical files on domestic surveillance. Stringent controls and oversight measures precluding the Army from these activities have been in place since 1976 and are codified in Executive Order 12333.

The Atlanta Journal article from which the Post drew its editorial is at Tab B. A contrary view published the next day in the Atlanta Constitution is highlighted at Tab C.

RECOMMENDATION

That you forward the memorandum at Tab I to the President in response to his query.

Attachments

Tab I Memorandum to the President
Tab A Washington Post Editorial "The Army Owes Some
Answers"
Tab B Atlanta Journal Article "Spying on King"
Tab C Atlanta Constitution Article "Spying Report Shocks
King Associates"

THE WHITE HOUSE
WASHINGTON

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
BERNARD NUSSBAUM

SUBJECT: Washington Post Editorial "The Army Owes Some
Answers"

At Tab A you asked for additional information on the March 23 Washington Post editorial concerning U.S. Army surveillance of Martin Luther King and civil rights organizations. The Atlanta Journal article from which this editorial was drawn is provided at Tab B and an Atlanta Constitution article which provides some additional insight is at Tab C.

The allegations contained in the Journal article were raised before in Congressional hearings in the early 1970s. During and before the Vietnam War the U.S. Army did conduct domestic surveillance on U.S. citizens and organizations. All historical files on this surveillance are now in the custody of the National Archives and Records Administration and are available to the public.

As a result of Congressional hearings in the early 1970s, stringent controls and oversight measures were implemented on and within the U.S. intelligence community and military services. These controls include Congressional oversight by both the House and the Senate Permanent Select Committees on Intelligence and by DoD and military services oversight officials. The military services are not conducting any such surveillance now.

Since 1976, the military services have been generally prohibited from collecting and maintaining information on non-DoD affiliated U.S. citizens by Presidential Executive Order. Exceptions are specified by the current Executive Order 12333, "U.S. Intelligence Activities," which is also available to the public.

Attachments

Tab A Washington Post Editorial "The Army Owes Some Answers"
Tab B Atlanta Journal Article "Spying on King"
Tab C Atlanta Constitution Article "Spying Report Shocks King
Associates"

cc: Vice President
Chief of Staff

The Army Owes Some Answers

THERE IS plenty of evidence on the record that in the 1960s and 1970s, the Federal Bureau of Investigation and local police agencies tailed, bugged and kept a meticulous collection of secret gossip on the personal and political behavior of the Rev. Martin Luther King Jr. and other prominent black leaders. Those accounts, it turns out, may have revealed only small glimpses into the government's intrusive behavior during that era. According to Sunday's edition of *The Commercial Appeal* in Memphis, government spying on blacks started more than 75 years ago and continued for years—at the hands of the United States Army. That piece of ugly history, if true, can't be allowed to remain in the shadows.

The reasons for the military's alleged domestic sleuthing were as flimsy at the turn of the century as they were when J. Edgar Hoover's FBI was running amok. As preposterous as it seems, the Army attributed justifiable anger among blacks at their mistreatment in the early 1900s to possible influence by foreign-backed subversives from, of all places, Germany. That

kind of paranoia and prejudice reportedly governed the Army's behavior through World War I, the civil rights movement and anti-Vietnam protests, when it mounted intelligence operations. They reportedly even deployed the Green Berets at one point. It is a sickening story about government spying that shadowed southern churches and ministers, monitored three generations of the Martin Luther King Jr. family and recruited black Americans to inform on each other. The story that unfolded in the *Commercial Appeal* describes an Army that feared black Americans were or could become a national security threat. The real threat to the country's interest, however, were those in the Army who masterminded the plot. *mc 3/22*

Yesterday, an Army spokesman said the Army was researching records to "determine the facts surrounding the allegations." The Army says it expects to complete the research soon, but until then, it has "no verifiable information for release." The spying may have stopped, but the need for full public disclosure of all the facts is strong.

Tom L.

B. H. H. H. H.

Artists on the Hill

what's the deal on this

DS

THE NATION'S artists and arts organizations rarely speak in anything that could be called unison, but 450 of them converged on Washington and Congress last week for their annual "arts advocacy day" bearing a surprisingly unified—and mild—message. Perhaps even more surprising, the average reception they report getting from lobbied lawmakers this time was not the suspicion and fear of the last few years—what one arts association president paraphrases as "Get off our backs, your crazy stuff will get us in trouble"—but a non-panicked willingness to listen. The lobbied representatives and senators, about 340 of them by the arts groups' count, mostly heard pitches on the federal role in the arts and education, and their questions, when they asked any, had to do with how the arts groups' specific concerns—which this year include education, tax and insurance matters—fit in with the bigger legislative landscape.

If such a return to business after the recent cultural wars should materialize, it will be all to the good. The annual advocacy day, the 15th annual such event, focused on matters in which the interests of arts groups overlap with those of

other nonprofits (for instance, the Clinton budget's projected cuts in nonprofit direct-mail subsidies, or the difficulty in securing adequate health insurance for artists) and those in which they merge with the continuing work on education reform.

Education Secretary Richard Riley gave them a boost on this front in a Wednesday speech, announcing that the arts now comprise one of the six "primary subjects" enumerated as national education goals. Barbara Jordan delivered a lecture in the Kennedy Center that declared the arts' ability to "reattach *pluribus* to *unum*" and to dissolve endless ethnic separatism, adding, "The arts have no pigmentation, thank God." Lobbyists sought to persuade representatives that community arts programs, funded either by the NEA or by local money it draws, constitute not only uplift but also programs for the disabled, the elderly, children—all those good things that draw funds rather than controversies. If this kind of pitch has an old, familiar feel, common to every interest group seeking a few extra strips of pork in tough times, it is nonetheless infinitely preferable to the last few rounds of debate on this topic.

Unfair to Federal Retirees

The Post's March 15 editorial "The Republicans Find a Budget" found merit in the proposal to reduce the cost-of-

budget, federal employees may suffer more than 10 times the cost of deficit reduction compared with private-sector

To further cut COLAs to retirees would permanently diminish the base of retiree benefits. It is unfair to

SPYING ON KING

The Army viewed Martin Luther King Jr. as subversive, and tried to stop him. They feared his campaign of non-violence would spark revolution in the streets.

But he was just one target in a 75-year campaign of spying on black leaders using informants, bugging and even aerial surveillance by U2 spy planes.

By Stephen G. Tompkins

THE (MEMPHIS) COMMERCIAL APPEAL

Copyright 1993

The intelligence branch of the U.S. Army spied on the family of Dr. Martin Luther King Jr. for three generations.

Top-secret, often illegal, intrusions into the lives of black Americans began more than 75 years ago and often focused on black churches in the South and their ministers.

The spying was born of a conviction by top Army intelligence officers that black Americans were ripe for subversion — first by agents of the German Kaiser, then by Communists, later by the Japanese and eventually by those opposed to the Vietnam War.

At first, the Army used a reporting network of private citizens that included church members, black businessmen and black educators. It later employed cadres of infiltrators, wiretaps and aerial photography by U2 spy planes.

As the civil rights movement merged with anti-war protests in the late 1960s, some Army units began supplying sniper rifles and other weapons of war to civilian police departments. Army intelligence began planning for what some officers believed would soon be armed rebellion.

By March 1968, Dr. King was preparing to lead a march in Memphis in support of striking sanitation workers and another march a few weeks later that would swamp Washington with people demanding that less attention be paid to Vietnam and more resources devoted to America's poor.

By then the Army's intelligence system was keenly focused on Dr. King and desperately searching for a way to stop him.

On April 4, 1968, Dr. King was killed by a sniper's bullet at the Lorraine Motel in Memphis.

Army viewed King as national security threat

Some of the Army's spying against anti-war and civil rights groups became public knowledge in 1971 congressional hearings. But key intelligence officers avoided testifying, leaving the full story untold.

The 16-month investigation uncovered no hard evidence that Army intelligence played any role in Dr. King's assassination, although Army agents were in Memphis the day he was killed.

But the review of thousands of government documents and interviews with people involved in the spying revealed that by early 1968 Army intelligence regarded Dr. King as a major threat to national security.

Army intelligence opened its file on Dr. King in 1947 with a photograph showing him and other Morehouse College students leaving a meeting of Mrs. Dorothy Lilley's Intercollegiate Council. She was a suspected Communist, according to the file on Dr. King kept by the 111th Military Intelligence Group at Fort McPherson in Atlanta.

Reports on Dr. King's activities were added periodically through the 1950s, but comments in his intelligence file indicate Army officers at first considered him more of a phenomenon than a threat.

Army spies pegged Dr. King as a Communist tool in the fall of 1957, when he spoke at the 25th anniversary of the integrated Highlander Folk School in Monteagle, Tenn. Army intelligence had watched the school for years.

A Sept. 6, 1940, report from Maj. G.R. Carpenter, assistant chief of staff for intelligence for the Sixth Corps Area in Chicago, said the school's executive director, Miles Norton, and the Rev. Claude Williams of Memphis, a New York native known for his "Communitistic activities," were working together to teach "a course of instruction to develop Negro organizers in the

Southern cotton states."

Dr. King's visit was given extra weight because of an FBI report received the previous July of his Baltimore meeting with Stanley Levison, a New York millionaire who had been under bureau surveillance as a Communist fund-raiser since June 9, 1952. The two formed a long friendship and business relationship.

King seen as igniting violence

The suspicion with which top Army officers viewed blacks had its genesis in simple ignorance but gained credence because of real and perceived links between black civil rights activists and Communists and other subversives.

As Dr. King gained prominence as a civil rights leader, intelligence officers also came to believe he was a man who sparked violence wherever he went, his non-violent philosophy notwithstanding.

For example, an agent of the 113th Intelligence Detachment overheard Dr. King at a January 1963 dinner at the Edgewater Beach Hotel in Chicago telling "two black men and a pretty white woman that Project C was ready to go," according to the surveillance report the agent filed.

A follow-up report dated Jan. 24 describes Project C as "plans for massive disruption of public and private enterprise in Birmingham."

Three months later, Dr. King entered Birmingham. Television screens filled with pictures of marching black elementary-school children being herded into police wagons while their parents were bombarded with high-



Martin Luther King's speeches roused blacks to secure their rights, but Army intelligence feared a "full-scale revolt."

powered water guns as they left the 16th Street Baptist Church. Riots broke out, and Ku Klux Klansmen patrolled the night streets with shotguns.

On May 12, the White House ordered Gen. Earle Wheeler, chairman of the Joint Chiefs of Staff, to send 3,000 men from Fort Benning, Ga., to Birmingham. Maj. Gen. Charles Billingslea, commander of the Army's 2nd Division, had asked for help in Birmingham because "I may have a full-scale revolt on my hands down here."

Portions of the monthlong Birmingham disturbances were recorded by U2 spy planes taking off from the supersecret "Site 98" outside Nellis Air Force Base in Nevada. Over the next seven years, at least 26 other such domestic spy flights by U2s and at least two involving the more advanced SR-71 were requested by Army commanders and flown by the Air Force, according to classified documents.

Maj. Gen. William Yarborough, the Army's top spy, became convinced that either the Chinese or Soviets, through Cuba, bankrolled Dr. King and other black activists.

General Yarborough's evidence came from Lt. Gen. Marcelino Garcia Barragan, the Mexican minister of national defense.

Through a trusted aide, General Garcia gave Army intelligence a report on June 29, 1967, that said Mexican army intelligence had discovered militant black Americans receiving combat training and secret funding from the Havana-based Organization of Latin American Solidarity (OLAS), financed by Communist China's military intelligence agency.

The report said, "American Negroes [were] sighted [with] automatic weapons / unarmed combat training / drilling evident" at an urban guerrilla training camp near Chiapas in southern Mexico.

OLAS's aim was to "commence guerrilla wars throughout the hemisphere to destabilize United States-backed governments . . . and (OLAS) has pledged its support to the Negro liberation movement."

Stokely Carmichael, co-chairman of the Student Nonviolent Coordinating Committee and a leader of the black power movement, was among a number of black Americans associated with OLAS.

And Mr. Carmichael increasingly was seen in Dr. King's company.

Anti-Vietnam speech shook world

In speech after speech the year before he died, Dr. King tied the growing disillusionment of inner-city and rural Southern blacks to the country's preoccupation with Vietnam.

On April 4, 1967, he told 3,000 people at New York's Riverside Church:

"A few years ago, it seemed as if there was a

real promise of hope for the poor, both black and white, through the poverty program.

"And then came the buildup in Vietnam, and I watched this program broken and eviscerated as if it were some idle political plaything of a society gone mad on war. . . . Somehow this madness must cease. We must stop now."

The speech shook the world. Life magazine called it "a demagogic slander that sounded like a script for Radio Hanoi."

Dispatches from the 525th Military Intelligence Group (MIG) in Vietnam reported that "Negro troops are unsettled" by articles on Dr. King's speech in Pacific Stars and Stripes and their hometown newspapers.

To many, Dr. King's shift in direction served as a lens to focus the nation's compassion and sense of justice on resolving its inner conflicts.

But General Yarborough and other intelligence officers heard only the voice of an enemy who was gaining ground.

By summer, the ground was shaking.

"Tank crews blast away at entrenched snipers with .50-caliber machine guns" was not a headline from Vietnam but from Detroit, where 43 people died and \$45 million in property was destroyed. Rioters burned and plundered 100 other American cities during that long, hot summer.

Detroit was particularly significant to Army leaders, not just because of the bloodshed and damage but due to the results of a secret survey.

After the riot, 496 black males arrested for firing rifles and shotguns at soldiers were herded into a warehouse north of Detroit. They were interviewed by agents of the Army's Psychological Operations Group, dressed as civilians, in conjunction with the Behavior Research Institute of Detroit.

The arrested men were asked dozens of questions, but the responses 363 of them gave to the question "Who is your favorite Negro leader?" stunned Army intelligence.

Dr. King was the clear favorite — 178 of the men named him. Men considered more radical, such as Mr. Carmichael and Malcolm X, came in a distant second and fourth.

Army intelligence leaders repeatedly used this survey to signify the danger Dr. King represented to national security.

Dr. King really scared top Army commanders on Dec. 4, 1967, when he announced his intent to lead a Poor People's March on Washington the next spring to focus public attention on the "total, direct and immediate abolition of poverty."

Years of protest had Army brass scared

Dr. King's call for a "Poor People's Campaign" came on the heels of the nation's worst

summer of violence in three years and an October anti-war protest in which 200,000 demonstrators had besieged the Pentagon as alarmed Army brass watched from the roof.

Civilian authority's responses to these upheavals had shaken the faith of Army leaders in the government's stability. Top officers believed the years of violence and protest had weakened the nation's social and political foundations.

Memos reveal Army leaders were increasingly frustrated with top civilian Pentagon officials who ignored warnings that black unrest was Communist-inspired, damaging morale in Vietnam and leading to armed revolt at home.

By December 1967, some officers felt desperate. Among them were General Yarborough, who had been named assistant chief of staff for intelligence in 1966, and Maj. Gen. William Blakefield, chief of U.S. Army Intelligence Command, who reported to General Yarborough.

"The Army was over a barrel," General Yarborough said in an interview at his home in Southern Pines, N.C.

The suspicion with which top Army officers viewed blacks had its genesis in simple ignorance but gained credence because of real and perceived links between black civil rights activists and Communists and other subversives.

"Blacks were using the uncertainty of the Vietnam period and taking advantage of it," General Yarborough said. "They were attacking the weak point in the line, which is tactically a good idea, but you couldn't do it without arousing animosity of all kinds."

"You couldn't expect people to be rational and look at this in a cool way," he said. "We were trying to fight a war at the same time where the home base was being eroded."

Army officers "take an oath to protect the country against all enemies, foreign and domestic," General Yarborough said. "You see people breaking windows and throwing Molotov cock-

tails, snipers shooting policemen, people who are outwardly trying to shut the government down and announce that is what they are going to do, you have a feeling that this is perhaps a domestic enemy."

General Blakefield told Army historians in 1975: "There was a fear among high-ranking Army officers that the long-term judgment of historians might be that the Army, in the late 1960s, failed to protect the people of this country, as they had in other times of crisis."

To stop that "enemy," General Yarborough and General Blakefield used the resources of the largest domestic spy network ever assembled in a free country.

Though many black leaders spoke out against the Vietnam War, Army intelligence focused on Dr. King, whom General Yarborough described as "the messiah for his people, his own personal qualities notwithstanding."

3 generations of preachers spied on

Dr. King wasn't the first black leader, nor the first in his family, to be targeted for surveillance by the Army's spy agencies.

In September 1917, the War Department's Military Intelligence Division (MID) opened a file on King's maternal grandfather, the Rev. A.D. Williams.

As pastor of Ebenezer Baptist Church, the Rev. Williams played a key role in Atlanta's black community. He was the Atlanta NAACP's first president in 1910 and an officer in the National Baptist Convention, the largest black religious organization of the time.

During World War I, military intelligence targeted black ministers and others as troublemakers or friends, depending on whether they worked as MID informants. Memphis businessman Robert Church Jr. supplied MID Maj. Walter Loving with names of prominent blacks in each major Southern city, intelligence files show.

One of the first items in the Rev. Williams's intelligence file was a top-secret telegram sent to the Army's Southern Department headquarters in Atlanta. The telegram said in part:

"It behooves us to find out all we possibly can about this colored preacher."

Later, a memo in the Rev. Williams's file labeled him a "radical Negro agitator" for leading a campaign to create a black high school.

His NAACP involvement also earned him the attention of Army intelligence officers, who believed the civil rights group was "an agitative pro-Soviet organization for propagandizing the Negroes," according to a 1926 report by Lt. Col.

Walter Boswell, Army intelligence executive officer at the War Department.

Dr. King's father, the Rev. M.L. King Sr., eventually succeeded the Rev. Williams as pastor at Ebenezer — and inherited his own Army watchers, Army intelligence records show.

The Rev. King Sr.'s participation in the National Negro Congress tarred him with the Communist brush as well.

Col. Walter Buck, assistant chief of staff for intelligence, Third Army, at Fort McPherson in Atlanta said in a March 1947 report to the War Department that the NNC "serves as the staff unit of the Communist Party among Negroes."

The NNC's "program includes the ultimate founding of a Negro state in the South after the revolutionary overthrow of white landlords and capitalists," Colonel Buck said.

Of the three large black organizations active at the start of World War II — the NAACP, the National Urban League and the NNC — the National Negro Congress was considered the most activist and radical. Communist Party supporters gradually took it over, according to most histories, and a split with anti-war Stalinists at the start of WWII led to the group's decline.

Despite the years of watching the King family, top Army officers were rattled by the prospect of Dr. King leading a horde into the nation's capital again.

An intelligence analysis distributed during a Dec. 12, 1967, conference at the Pentagon described Dr. King's plans for the March on Washington as "a devastating civil disturbance whose sole purpose is to shut down the United States government."

The analysis described Dr. King as "a Negro who repeatedly has preached the message of Hanoi and Peking."

'They didn't have a clue'

Some of the Army's best officers attended that meeting to discuss "target-city priorities" in light of "King's plans to ignite violence and mayhem" throughout the United States in April, according to a report on the conference.

But the meeting broke up in frustration, one participant said.

"Looking back, I remember nobody had any answers," he said. "We had all these West Point geniuses who could lead divisions. But when it came to stopping Dr. King, they didn't have a clue."

Nevertheless, Army intelligence intensified its surveillance of Dr. King and covertly dispatched Green Beret teams to make street maps, identify landing zones for riot troops, and scout

sniper sites in 39 potential racially explosive cities, including Memphis.

The 20th Special Forces Group, headquartered in Alabama, seemed perfect for these scouting missions in the South. The 20th SFG was a National Guard unit, part-time warriors who lived and worked in many of the communities where black unrest was centered.

Green Berets from the 20th often spied on Dr. King and other black Americans during the 1960s, military records and interviews show.

Some Vietnam Special Forces veterans —



Civil rights leaders such as Stokely Carmichael (left), Martin Luther King Jr. and Floyd McKissick were feared as dangerous subversives by some in the Army.

particularly those who had worked in murky clandestine operations with the CIA, the Special Operations Group (SOG) or the top-secret Detachment B-57 — were “dumped” into the 20th “for safekeeping,” according to a former major with Army counterintelligence.

“They couldn’t let a lot of these crazy guys back into the States because they couldn’t forget their training,” he said. “Birmingham [20th SFG

headquarters] became Saigon. The rural South was ‘in-country,’ and at times things got out of hand.”

Many members of the 20th SFG during the ‘60s still live in the South, some under new identities. Some of them spoke to The Commercial Appeal only if their names were not used or locations revealed.

A former 20th Special Forces sergeant from Detachment B-6, Company B, who was stationed in Columbus, Miss., said the unit’s undercover missions “didn’t peek into windows, if that’s what you mean.”

Klan passed on information

In return for paramilitary training at a farm in Cullman, Ala., Ku Klux Klansmen soon became the 20th’s intelligence network, whose information was passed to the Pentagon.

Bill Wilkinson, chief of the Klan’s Invisible Empire branch in 1983, told United Press International that the group no longer had a training camp at Cullman.

“And they’re not paramilitary. We called them ‘Klan Special Forces,’” he said.

On Feb. 19, Dr. King went to Miami to drum up support for the Poor People’s Campaign. Armed with a new \$230,000 Ford Foundation grant, he told a group of black ministers that American capitalism must be reorganized.

The Rev. Samuel Billy Kyles of Memphis, who was in the audience, later that afternoon told Dr. King about 1,300 Memphis sanitation workers who were striking against the city for refusing to recognize their union. The Rev. Kyles, joining the Rev. James Lawson, asked Dr. King to come to Memphis to support the strikers.

A Feb. 22 report in Dr. King’s Army intelligence file states: “Indications from reliable source are MLK will be in Memphis to support union striking city.”

In February 1968, the 113th Military Intelligence Group (MIG) at Fort Sheridan, Ill., outside Chicago, began supplying the “Legion of Justice” terrorist group with tear gas, Mace, electronic surveillance equipment and money to harass anti-war groups.

Led by Chicago lawyer S. Thomas Sutton, who recruited Chicago police intelligence officers, the Legion used wiretaps supplied by 113th agents to break into and bug the offices of anti-war groups.

In Baltimore, the Inspectional Services Division of the city police received secret funding from the 109th MIG to spy on area black radicals.

In Washington, the Metro Police received

\$120,000 in 1967 and \$150,000 in 1968 from Army intelligence. Undercover police intelligence officers met regularly with 116th MIG agents. They maintained an index card file of 21,000 suspected black and anti-war radicals.

Teams of police and Army intelligence officers followed and photographed Dr. King during a prayer march in Arlington Cemetery on Feb. 6, 1968, and his sermon the following day at Vermont Avenue Baptist Church. The officers later used the pictures for dart practice.

Meanwhile, the Army had finished its intelligence outlines on 124 cities with the potential for

zones, secret storage sites for riot gear and weapons, and files on all civic leaders and known troublemakers.

Details of those plans were kept secret from civilian law enforcement agencies for fear of leaks. Still, at least the Army felt better prepared for Dr. King.

On April 3, Dr. King returned to Memphis. Army agents from the 111th Military Intelligence Group shadowed his movements and monitored radio traffic from a sedan crammed with electronic equipment.

Eight Green Beret soldiers from an "Operation Detachment Alpha 184 Team" were also in Memphis carrying out an unknown mission. Such "A-teams" usually contained 12 members.

On April 4, at 6:01 p.m., a bullet from a 30.06 rifle equipped with a scope struck Dr. King down on the balcony of the Lorraine Motel.

The man whose fingerprints were found on that gun — James Earl Ray — pleaded guilty to Dr. King's murder and is serving a 99-year prison sentence. Ray bought the rifle from a sporting goods store in Birmingham, FBI investigators said.

On Oct. 3, Attorney General Ramsey Clark sent a report to the White House.

The predicted summer of violence that was to have begun with Dr. King's April 22 demonstrations in Washington never happened, the report said.

Rioting had broken out in several cities as news of Dr. King's assassination spread, but "there was a clear and significant decline in the number and severity of riots and disorders this summer," Mr. Clark said.

Portions of the monthlong Birmingham disturbances were recorded by U2 spy planes taking off from the supersecret "Site 98" outside Nellis Air Force Base in Nevada. Over the next seven years at least 26 other such domestic spy flights by U2s and at least two involving the more advanced SR-71 were requested by Army commanders and flown by the Air Force, according to classified documents.

violence that summer. The outlines included maps with all "sensitive areas" marked, landing

SIDEBAR

Carmichael's violent words fed Army fears of urban guerrillas

By Stephen G. Tompkins
THE (MEMPHIS) COMMERCIAL APPEAL

In early May 1967, Army intelligence microphones hidden in the Student Nonviolent Coordinating Committee offices in Atlanta recorded SNCC co-chairman Stokely Carmichael discussing an armed revolt by black Americans.

Mr. Carmichael: We'd learn a

lot from studying [Che] Guevara's tactics. But baby, we gotta have the guns and stuff to do the damage. The man don't understand till you aim at his head. [Argentine-born Guevara was Cuban strongman Fidel Castro's top lieutenant and wrote an influential book on guerrilla warfare.]

SNCC employee George Ware: Yeah, well, where you gonna get it?

Mr. Carmichael: South, south of here.

On May 5, Mr. Carmichael distributed a secret report to SNCC members. Army intelligence obtained a copy of the seven-page document, titled "Report From the Chairman." It said in part:

"Around the world and particularly in the Third World, we are looked to as the organization

inside the United States who is ready to lay the foundation for a revolution. . . . We must then be prepared to wage a fight against this country inside the country."

Army intelligence saw the report and the taped conversation as evidence of Mr. Carmichael's willingness to turn to violence and possible foreign influence.

Later evidence would hurt not only Mr. Carmichael but Dr. Martin Luther King Jr. as well. Army agents photographed and recorded Dr. King and Mr. Carmichael in meetings.

After Dr. King's speech at New York's Riverside Church on April 4, 1967, Mr. Carmichael encouraged a black audience in St. Petersburg, Fla., on April 18 to support Dr. King's stance on Vietnam.

But the most damaging piece of secret information came from Mexican army intelligence.

Mexican agents uncovered in May 1967 a plot led by Javier Fuentes Gutierrez, head of the Mexican Communist Party, to establish a "socialist regime" within Mexico.

Mr. Gutierrez and his cohorts were financed by Hsinhua (now spelled Xinhua), the Chinese Communist press agency, which Mexican intelligence discovered was a front for the Chinese Ministry of State Security, China's CIA.

Mr. Gutierrez's followers already had dynamited a Mexican army truck and were seeking rifles and mortars from arms dealers.

But more important to U.S. Army intelligence, the Mexicans revealed Mr. Gutierrez was a top organizer of the Havana-based Organization of Latin American Solidarity (OLAS) — another

group that received Chinese funding.

OLAS not only helped finance Mr. Gutierrez's activities but had set up a terrorist training camp in the jungles of Chiapas in southern Mexico.

Black Americans had been seen training at the camp.

On July 19, Mexican troops raided the Chiapas camp and snatched a large cache of automatic rifles, grenades and machine guns.

According to still classified Army intelligence files, the AK-47 rifles eventually were traced from gunrunner Kenneth G. Burnstine of Miami to gun dealer Mitchell Livingston WerBell III of Atlanta, a former OSS agent who ran his own paramilitary training camp on a 60-acre farm in Powder Springs, Ga.

Mr. WerBell supplied military weapons to anybody with the cash to pay for them. Mr. WerBell also had key contacts throughout the Caribbean.

Mr. Carmichael was photographed talking to one of those contacts — Marti Tellez — in the Havana Libre Hotel on July 27. Mr. Tellez, a former Haitian army captain, flew contraband for Mr. Burnstine's Miami-based Florida Atlantic Airlines.

A Cuban agent working for the CIA took the picture, and a report on the meeting was forwarded to Army intelligence.

"These [OLAS] are radical Communist revolutionaries who advocate militant and coordinated guerrilla warfare throughout the Americas," according to an analysis of the meeting based on CIA reports.

On Aug. 2, five days after meeting with Mr. Tellez, Mr. Carmichael said he would lead

an armed revolt against his homeland.

Mr. Carmichael then threatened President Lyndon B. Johnson, Secretary of Defense Robert McNamara and Secretary of State Dean Rusk.

"We are not waiting for them to kill us. We will kill first and we will settle the score," Mr. Carmichael said.

On Oct. 10, Army intelligence sent a report to Army Chief of Staff Harold Johnson that Mr. Carmichael and his SNCC colleagues were calling for "Negroes to arm themselves in preparation for guerrilla warfare."

In January 1968, as Dr. King was drumming up support for his planned march on Washington, Mr. Carmichael was in Hanoi, the capital of North Vietnam. In February, he met with Dr. King in Washington. Dr. King was killed two months later in Memphis.

In March 1975, Mr. Burnstine was convicted by Florida authorities of masterminding a \$50 million-a-year drug smuggling operation in South America and Mexico. A year later, his World War II-era airplane, a P-51 Mustang, blew up while he was competing in an air show.

In 1974, Mr. WerBell was subpoenaed to testify before the Senate Permanent Subcommittee on Investigations. The committee was looking into financier Robert Vesco's efforts to sell and manufacture automatic weapons in the Caribbean. Mr. WerBell invoked the Fifth Amendment to every question asked by subcommittee investigator Philip R. Manuel.

Mr. WerBell died of a heart attack in 1983. Testimony in a Los Angeles courtroom later that year said Mr. WerBell had been poisoned.

Spying report shocks King associates

By John Blake
and Dennis McCafferty
STAFF WRITERS

Allegations that the U.S. Army spied on the late Dr. Martin Luther King Jr. and three generations of his family with everything from U-2 spy planes to Green Beret commando teams shocked Dr. King's son and some of his former associates Sunday.

Martin Luther King III, a Fulton County commissioner, said people regularly tell him about elaborate plots against his father, but that this is a new one.

Mr. King said he had heard that the FBI and CIA routinely spied on his father, but he never suspected the latest allegations, which were ferreted out by The (Memphis) Commercial Appeal.

"The FBI was common knowledge, and maybe the alleged involvement of the CIA, but when it comes to an extensive military intelligence operation with Green Berets and U-2 planes, that's frightening," Mr. King said.

Former Atlanta Mayor Andrew Young, one of Dr. King's closest associates in the civil rights movement, also was surprised.

"It was kind of sad," he said. "This is the first time I've heard about the Army. . . . It just shows that the level of racial sickness was pretty deep in some circles."

The Commercial Appeal reported that the Army started spying on Dr. King in 1947, when he was a student at Morehouse Col-

lege in Atlanta, and continued until his assassination in 1968.

In fact, the spying on the King family began in 1917, when the Army opened a file on Dr. King's maternal grandfather, the Rev. A.D. Williams. The military later spied on Dr. King's father, the Rev. Martin Luther King Sr.

The newspaper reported that the Army considered Dr. King a major national security threat who could spark an armed revolt in the streets.

The Army had a Green Beret team in Memphis on an "unknown mission" when the civil rights leader was gunned down, the newspaper reported.

"We've known, of course, the FBI was doing it," said Ralph Luker, an associate editor with the Martin Luther King Papers Project, jointly based in Atlanta and at Stanford University in California. "We've known that for years. But it's disturbing to know that agencies which are funded by taxpayers were intruding on the lives of taxpayers."

Mr. Young said Dr. King and his staff knew they were constantly monitored by the FBI, the CIA and the Ku Klux Klan. But Mr. Young said they had nothing to hide and routinely told the U.S. Justice Department of their plans for non-violent civil rights campaigns.

"Our feeling was nobody could stop us so long as we remained non-violent," Mr. Young said.

The newspaper said the Army also spied on Stokely Carmichael, the militant leader of the Student Nonviolent Coordinating Committee in the 1960s. Army intelligence reportedly believed that Mr. Carmichael, now known as Kwame Ture, was trying to start a black guerrilla war in America.

Reached Sunday in New York, Mr. Ture said he knew as far back as 1967 that the Army spied on him and Dr. King. But he said allegations that he planned an armed revolution in the streets, and once threatened President Lyndon B. Johnson's life, were "taken out of context."

"They lied all the time, so they could get money from Congress and chew up the taxpayers' money," Mr. Ture said.

David Garrow, who wrote about the FBI's surveillance of Dr. King in his 1981 book "The FBI and Martin Luther King," laughed out loud when he heard the new allegations.

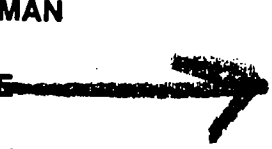
Mr. Garrow said he has seen many of the Army's intelligence files on Dr. King firsthand and that they are not as sinister as the newspaper article indicated.

"It was one step up from a clipping operation," Mr. Garrow said. "The guys in the intelligence command were 25-year-old, brand-new ROTC commanders whose jobs were to collect information from cops and local newspapers as to what would happen next."

WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/23 ACTION/CONCURRENCE/COMMENT DUE BY: 3/29 COB

SUBJECT: E.O. on Amendments to the Manual for Courts Martial

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	PASTER	☐	☐
McLARTY	☐	☐	RASCO	☐	☐
GEARAN	☐	☐	RUBIN	☐	☐
PANETTA	☐	☐	SEGAL	☐	☐
EMANUEL	☐	☐	STEPHANOPOULOS	☐	☐
GIBBONS	☐	☐	VARNEY	☐	☐
HALE	☐	☐	WATKINS	☐	☐
HERMAN	☐	☐	WILLIAMS	☐	☐
LAKE 	☒	☐	CLERK	☐	☒
LINDSEY	☐	☐		☐	☐
MONTROYA	☐	☐		☐	☐
NUSSBAUM	☐	☐		☐	☐

REMARKS: For York Review

RESPONSE:

The National Security Council staff concurs in the proposed amendments to the Manual for Courts Martial, United States, 1984.

Anthony Lake

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
Ext. 2702

24 MAR 93 21:5

NATIONAL SECURITY COUNCIL
EXECUTIVE SECRETARIAT STAFFING DOCUMENT

TIME STAMP

HAN/Defense

SYSTEM LOG NUMBER: 1797

ACTION OFFICER: RODNER

DUE: 4:00PM, 29 MARCH

- | | |
|--|--|
| ☐ Prepare Memo For Lake/Berger | ☐ Appropriate Action |
| ☐ Prepare Memo For Podesta | ☐ Prepare Memo For Itoh |
| ☒ Prepare Memo <u>LAKE</u> | to <u>PODESTA</u> |

CONCURRENCES/COMMENTS*

PHONE* to action officer at ext. _____

Concur	FYI	Concur	FYI	Concur	FYI
☐	☐ Andricos	☐	☐ Hull	☐	☐ Spalter
☐	☐ Bahr	☐	☐ Indyk	☐	☐ Tenet
☐	☐ Barth	☐	☐ Kansteiner	☐	☐ Tilley
☐	☐ Bell	☐	☐ Kelley	☐	☒ Van Eron
☐	☐ Burns	☐	☐ Leary	☐	☐ Waguespack
☐	☐ Canas	☐	☐ Linhares	☐	☐ Walker
☐	☐ Clarke	☐	☐ Lowenkron	☐	☐ Walsh
☐	☐ Claussen	☐	☒ Menan	☐	☐ Wayne
☐	☐ Davis	☐	☐ Morley	☐	_____
☐	☐ Farrell	☐	☐ O'Leary	☐	_____
☐	☐ Feinberg	☐	☐ Ordway	☐	_____
☐	☐ Fry	☐	☐ Patterson	☐	_____
☐	☐ Gatl	☐	☐ Poneman	☐	_____
☐	☐ Gottemoeller	☐	☐ Primosch	☐	_____
☐	☐ Gross	☐	☐ Riedel	☐	_____
☐	☐ Hahn	☐	☐ Schwartz	☐	_____
☐	☐ Holl	☐	☐ Sheehan	☐	_____

- | | | | |
|-------------|--|--|---|
| INFORMATION | ☒ Itoh | ☒ Barragh <u>KENNEY</u> | ☒ Exec Sec Desk |
| | ☒ Lake | ☒ Berger | ☒ Records Mgmt. |
| | | ☒ Soderberg | |

COMMENTS

Logged By *KH*

Return to Records Mgmt.
379 OEOP



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 23, 1993

93 MAR 23 P3:24

MEMORANDUM FOR DESIGNATED AGENCY HEADS
(SEE ATTACHED DISTRIBUTION LIST)

FROM: Robert G. Damus ^{RGD}
Acting General Counsel

SUBJECT: Proposed Executive Order Entitled "Amendments to
the Manual for Courts Martial, United States,
1984"

Attached is a proposed Executive order entitled "Amendments to the Manual for Courts Martial, United States, 1984."

It was prepared by the Department of Defense, in accordance with the provisions of Executive Order No. 11030, as amended.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments you may have concerning this proposal. If you have any comments or objections, they should be received no later than close of business Friday, March 26, 1993. Please be advised that agencies that do not respond by the March 26, 1993 deadline will be recorded as not objecting to the proposal.

Comments or inquiries may be submitted by telephone to Mr. Mac Reed of this office (Phone: 395-3563; Fax: 395-7294).

Thank you.

Attachments - Distribution List
Proposed Executive Order

cc: John Angell
Martha Foley
Joe Minarik
Barry Toiv
Jim Murr

DISTRIBUTION LIST

**Honorable Janet Reno
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Department of Veterans Affairs**

**Honorable Bernard W. Nussbaum
Counsel to the President**

**Honorable John Podesta
Assistant to the President
and Staff Secretary**

**Honorable Roy Neel
Chief of Staff to the Vice President**

EXECUTIVE ORDER

AMENDMENTS TO THE MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1984

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10 of the United States Code (Uniform Code of Military Justice, 10 U.S.C. Sections 801-946), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1984, prescribed by Executive Order No. 12473, as amended by Executive Order No. 12484, Executive Order No. 12550, Executive Order No. 12586, Executive Order No. 12708, and Executive Order No. 12767, it is hereby ordered as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 109 is amended to read as follows:

"(a) *In general.* Each Judge Advocate General is responsible for the professional supervision and discipline of military trial and appellate military judges, judge advocates, and other lawyers who practice in proceedings governed by the code and this Manual. To discharge this responsibility each Judge Advocate General may prescribe rules of professional conduct not inconsistent with this rule or this Manual. Rules of professional conduct promulgated pursuant to this rule, may include sanctions for violations of such rules. Sanctions may include but are not limited to indefinite suspension from practice in courts-martial and in the Courts of Military Review. Such suspensions may only be imposed by the Judge Advocate General of the armed service of such courts. Prior to imposing any discipline under this rule, the subject of the proposed action must be provided notice and an opportunity to be heard. The Judge Advocate General concerned may upon good cause shown modify or revoke suspension. Procedures to investigate complaints against military trial judges and appellate military judges are contained in subsection (c) of this rule.

(b) *Action after suspension or disbarment.* When a Judge Advocate General suspends a person from practice or the Court of Military Appeals disbars a person, any Judge Advocate General may suspend that person from practice upon written notice and opportunity to be heard in writing.

(c) *Investigation of judges.*

(1) *In general.* These rules and procedures promulgated pursuant to Article 6a are established to investigate and dispose of charges, allegations, or information pertaining to the fitness of a military trial judge or appellate military judge to perform the duties of the judge's office.

(2) *Policy.* Allegations of judicial misconduct or unfitness shall be investigated pursuant to

the procedures of this rule and appropriate action shall be taken. Judicial misconduct includes any act or omission that may serve to demonstrate unfitness for further duty as a judge, including but not limited to violations of applicable ethical standards.

(3) *Complaints.* Complaints concerning a military trial judge or appellate military judge will be forwarded to the Judge Advocate General of the service concerned or to a person designated by the Judge Advocate General concerned to receive such complaints.

(4) *Initial action upon receipt of a complaint.* Upon receipt, a complaint will be screened by the Judge Advocate General concerned or by the individual designated in subsection (c)(3) of this rule to receive complaints. An initial inquiry is necessary if the complaint, taken as true, would constitute judicial misconduct or unfitness for further service as a judge. Prior to the commencement of an initial inquiry, the Judge Advocate General concerned shall be notified that a complaint has been filed and that an initial inquiry will be conducted. The Judge Advocate General concerned may temporarily suspend the subject of a complaint from performing judicial duties pending the outcome of any inquiry or investigation conducted pursuant to this rule.

(5) *Initial inquiry.*

(a) *In general.* An initial inquiry is necessary to determine if the complaint is substantiated. A complaint is substantiated upon finding that it is more likely than not that the subject judge has engaged in judicial misconduct or is otherwise unfit for further service as a judge.

(b) *Responsibility to conduct initial inquiry.* The Judge Advocate General concerned, or the person designated to receive complaints under subsection (c)(3) of this rule, will conduct or order an initial inquiry. The individual designated to conduct the inquiry should, if practicable, be senior to the subject of the complaint. If the subject of the complaint is a military trial judge, the individual designated to conduct the initial inquiry should, if practicable, be a military trial judge or an individual with experience as a military trial judge. If the subject of the complaint is an appellate military judge, the individual designated to conduct the inquiry should, if practicable, have experience as an appellate military judge.

(c) *Due process.* During the initial inquiry, the subject of the complaint will, at a minimum, be given notice and an opportunity to be heard.

(d) *Action following the initial inquiry.* If the complaint is not substantiated pursuant to subsection (c)(5)(a) of this rule, the complaint shall be dismissed as unfounded. If the complaint is substantiated, minor professional disciplinary action may be taken or the complaint may be forwarded, with findings and recommendations, to the Judge Advocate General concerned. Minor professional disciplinary action is defined as counselling, or the issuance of an oral or written admonition or reprimand. The Judge Advocate General concerned will be notified prior to taking minor professional disciplinary action or dismissing a complaint as unfounded.

(6) *Action by The Judge Advocate General.*

(a) *In general.* The Judge Advocates General are responsible for the professional supervision and discipline of military trial and appellate military judges under their jurisdiction. Upon receipt of findings and recommendations required by subsection (c)(5)(d) of this rule the Judge Advocate General concerned will take appropriate action.

(b) *Appropriate Actions.* The Judge Advocate General concerned may dismiss the complaint, order an additional inquiry, appoint an ethics commission to consider the complaint, refer the matter to another appropriate investigative agency or take appropriate professional disciplinary action. Any decision of a Judge Advocate General, under this rule, is final and is not subject to appeal.

(c) *Standard of Proof.* Prior to taking professional disciplinary action, other than minor disciplinary action as defined in subsection (c)(5)(d) of this rule, the Judge Advocate General concerned shall find, in writing, that the subject of the complaint engaged in judicial misconduct or is otherwise unfit for continued service as a military judge, and that such misconduct or unfitness is established by clear and convincing evidence.

(d) *Due process.* Prior to taking final action on the complaint, the Judge Advocate General concerned will ensure that the subject of the complaint is, at a minimum, given notice and an opportunity to be heard.

(7) *The Ethics Commission.*

(a) *Membership.* If appointed pursuant to subsection (c)(6)(b) of this rule, an ethics commission shall consist of at least three members. If the subject of the complaint is a military trial judge, the commission should include one or more military trial judges or individuals with experience as a military trial judge. If the subject of the complaint is an appellate military judge, the commission should include one or more individuals with experience as an appellate military judge. Members of the commission should, if practicable, be senior to the subject of the complaint.

(b) *Duties.* The commission will perform those duties assigned by the Judge Advocate General concerned. Normally, the commission will provide an opinion as to whether the subject's acts or omissions constitute judicial misconduct or unfitness. If the commission determines that the affected judge engaged in judicial misconduct or is unfit for continued judicial service, the commission may be required to recommend an appropriate disposition.

(8) *Rules of procedure.* The Secretary of Defense or the Secretary of the service concerned may establish additional procedures consistent with this rule and Article 6a."

b. R.C.M. 305(f) is amended to read as follows:

"*Military Counsel.* If requested by the prisoner and such request is made known to military authorities, military counsel shall be provided to the prisoner before the initial review under subsection (i) of this rule or within 72 hours of such a request being first communicated to military authorities, whichever occurs first. Counsel

may be assigned for the limited purpose of representing the accused only during the pretrial confinement proceedings before charges are referred. If assignment is made for this limited purpose, the prisoner shall be so informed. Unless otherwise provided by regulations of the Secretary concerned, a prisoner does not have a right under this rule to have military counsel of the prisoner's own selection."

c. R.C.M. 305(h)(2)(A) is amended to read as follows:

"(A) *Decision.* Not later than 72 hours after the commander's ordering of a prisoner into pretrial confinement, or after receipt of a report that a member of the commander's unit or organization has been confined, whichever situation is applicable, the commander shall decide whether pretrial confinement will continue."

d. R.C.M. 305(i)(1) is amended to read as follows:

"(1) *In general.* A review of the adequacy of probable cause to believe the prisoner has committed an offense and of the necessity for continued pretrial confinement shall be made within 7 days of the imposition of confinement under military control. If the prisoner was apprehended by civilian authorities and remains in civilian custody at the request of military authorities, reasonable efforts will be made to bring the prisoner under military control in a timely fashion. In calculating the number of days of confinement for purposes of this rule, the initial date of confinement shall count as one day and the date of the review shall also count as one day."

e. R.C.M. 405(i) is amended to read as follows:

"(i) *Military Rules of Evidence.* The Military Rules of Evidence - other than Mil. R. Evid. 301, 302, 303, 305, 412, and Section V - shall not apply in pretrial investigations under this rule."

f. R.C.M. 701(g)(3)(C) is amended to read as follows:

"(C) Prohibit the party from introducing evidence, calling a witness, or raising a defense not disclosed; and"

g. R.C.M. 704(e) is amended to read as follows:

"(e) *Decision to grant immunity.* Unless limited by superior competent authority, the decision to grant immunity is a matter within the sole discretion of the appropriate general court-martial convening authority. However, if a defense request to immunize a witness has been denied, the military judge may, upon motion of the defense, grant appropriate relief directing that either an appropriate general court-martial convening authority grant testimonial immunity to a defense witness or, as to the affected charges and specifications, the proceedings against the accused be abated, upon findings that:

(1) The witness intends to invoke the right against self-incrimination to the extent permitted by law if called to testify; and

(2) The Government has engaged in discriminatory use of immunity to obtain a tactical advantage, or the Government, through its own overreaching, has forced the witness to invoke the privilege against self-incrimination; and

(3) The witness' testimony is material, clearly exculpatory, not cumulative, not obtainable from any other source and does more than merely affect the credibility of other witnesses."

h. R.C.M. 910(a)(1) is amended to read as follows:

"(1) In general. An accused may plead as follows: guilty; not guilty to an offense as charged, but guilty of a named lesser included offense; guilty with exceptions, with or without substitutions, not guilty of the exceptions but guilty of the substitutions, if any; or, not guilty. A plea of guilty may not be received as to an offense for which the death penalty may be adjudged by the court-martial."

i. R.C.M. 918(a)(1) is amended to read as follows:

"(1) As to a specification. General findings as to a specification may be: guilty; not guilty to an offense as charged, but guilty of a named lesser included offense; guilty with exceptions, with or without substitutions, not guilty of the exceptions but guilty of the substitutions, if any; not guilty only by reason of lack of mental responsibility; or, not guilty. Exceptions and substitutions may not be used to substantially change the nature of the offense or to increase the seriousness of the offense or the maximum punishment for it."

j. R.C.M. 920(b) is amended to read as follows:

"(b) When given. Instructions on findings shall be given before or after arguments by counsel, or at both times, and before the members close to deliberate on findings, but the military judge may, upon request of the members, any party, or sua sponte, give additional instructions at a later time."

k. R.C.M. 1103(g)(1)(A) is amended to read as follows:

"In general. In general and special courts-martial which require a verbatim transcript under subsections (b) or (c) of this rule and are subject to review by a Court of Military Review under Article 66, the trial counsel shall cause to be prepared an original and four copies of the record of trial. In all other general and special courts-martial the trial counsel shall cause to be prepared an original and one copy of the record of trial."

Section 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 311(e)(2) is amended to read as follows:

"(2) Derivative Evidence. Evidence that is challenged under this rule as derivative evidence may be admitted against the accused if the military judge finds by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence would have been obtained even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize or apprehend or a search warrant or an arrest warrant. Notwithstanding other provisions of this Rule, an apprehension made in a dwelling in a manner that violates R.C.M. 302(d)(2)&(e) does not preclude the admission into evidence of a statement of an individual apprehended provided (1) that the apprehension was based on probable

cause, (2) that the statement was made subsequent to the apprehension at a location outside the dwelling, and (3) that the statement was otherwise in compliance with these rules."

b. Mil. R. Evid. 505(a) is amended to read as follows:

"(a) *General rule of privilege.* Classified information is privileged from disclosure if disclosure would be detrimental to the national security. As with other rules of privilege this rule applies to all stages of the proceedings."

c. Mil. R. Evid. 505(g)(1) is amended by adding the following at the end:

"All persons requiring security clearances shall cooperate with investigatory personnel in any investigations which are necessary to obtain a security clearance."

d. Mil. R. Evid. 505(h)(3) is amended to read as follows:

"(3) *Content of notice.* The notice required by this subdivision shall include a brief description of the classified information. The description, to be sufficient, must be more than a mere general statement of the areas about which evidence may be introduced. The accused must state, with particularity, which items of classified information he reasonably expects will be revealed by his defense."

e. Mil. R. Evid. 505(i)(3) is amended to read as follows:

"(3) *Demonstration of national security nature of the information.* In order to obtain an in camera proceeding under this rule, the Government shall submit the classified information and an affidavit ex parte for examination by the military judge only. The affidavit shall demonstrate that disclosure of the information reasonably could be expected to cause damage to the national security in the degree required to warrant classification under the applicable executive order, statute, or regulation."

f. Mil. R. Evid. 505(i)(4)(B) is amended to read as follows:

"*Standard.* Classified information is not subject to disclosure under this subdivision unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence. In presentencing proceedings, relevant and material classified information pertaining to the appropriateness of, or the appropriate degree of, punishment shall be admitted only if no unclassified version of such information is available."

g. Mil. R. Evid. 505(j)(5) is amended to read as follows:

"(5) *Closed session.* The military judge may exclude the public during that portion of the presentation of evidence that discloses classified information."

h. Mil. R. Evid. 609(a) is amended to read as follows:

"(a) *General rule.* For the purpose of attacking the credibility of a witness, (1) evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to Mil. R. Evid. 403, if the crime was punishable by death, dishonorable discharge, or imprisonment

in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the military judge determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment. In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment in excess of one year, the maximum punishment prescribed by the President under Article 56 at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial. ".

1. Mil. R. Evid. 1101(d) is amended to read as follows:

"(d) *Rules inapplicable.* These rules (other than with respect to privileges and Mil. R. Evid. 412) do not apply in investigative hearings pursuant to Article 32; proceedings for vacation of suspension of sentence pursuant to Article 72; proceedings for search authorizations; proceedings involving pretrial restraint; and in other proceedings authorized under the code or this Manual and not listed in subdivision (a).".

Section 3. Part IV of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Paragraph 37(c) is amended by inserting the following new subparagraphs (10) and (11) at the end thereof:

"(10) *Use.* 'Use' means to inject, ingest, inhale, or otherwise introduce into the human body, any controlled substance. Knowledge of the presence of the controlled substance is a required component of use. Knowledge of the presence of the controlled substance may be inferred from the presence of the controlled substance in the accused's body or from other circumstantial evidence. This permissive inference may be legally sufficient to satisfy the government's burden of proof as to knowledge.

(11) *Deliberate ignorance.* An accused who consciously avoids knowledge of the presence of a controlled substance or the contraband nature of the substance is subject to the same criminal liability as one who has actual knowledge.".

b. The last paragraph of paragraph 37(e) is amended to read as follows:

"When any offense under paragraph 37 is committed: while the accused is on duty as a sentinel or lookout; on board a vessel or aircraft used by or under the control of the armed forces; in or at a missile launch facility used by or under the control of the armed forces; while receiving special pay under 37 U.S.C. Section 310; in time of war; or in a confinement facility used by or under the control of the armed forces, the maximum period of confinement authorized for such an offense shall be increased by 5 years.".

c. Paragraph 43(d) is amended to read as follows:

"d. Lesser included offenses.

(1) Premeditated murder and murder during certain offenses. Article 118(2) and (3) - murder

(2) All murders under Article 118.

(a) Article 119 - involuntary manslaughter

(b) Article 128 - assault; assault consummated by a battery; aggravated assault

(c) Article 134 - negligent homicide

(3) Murder as defined in Article 118(1), (2), and

(4).

(a) Article 80 - attempts

(b) Article 119 - voluntary manslaughter

(c) Article 134 - assault with intent to commit murder

(d) Article 134 - assault with intent to commit voluntary manslaughter".

d. Para 45d(1) is amended by adding the following at the end thereof:

"(e) Article 120(b) - carnal knowledge".

e. Para 45f(1) is amended to read as follows:

"(1) Rape.

In that _____ (personal jurisdiction data), did, (at/on board--location) (subject-matter jurisdiction data, if required), on or about _____ 19____, rape _____ (a person who had not attained the age of 16 years)".

f. The following new paragraph is inserted after paragraph 96:

"96a. Article 134 (Wrongful interference with an adverse administrative proceeding)

a. Text. See paragraph 60.

b. Elements.

(1) That the accused wrongfully did a certain act;

(2) That the accused did so in the case of a certain person against whom the accused had reason to believe there were or would be adverse administrative proceedings pending;

(3) That the act was done with the intent to influence, impede, or obstruct the conduct of such adverse administrative proceeding, or otherwise obstruct the due administration of justice;

(4) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* For purposes of this paragraph "adverse administrative proceeding" includes any administrative proceeding or action, initiated against a servicemember, that could lead to discharge, loss of special or incentive pay, administrative reduction in grade, loss of a security clearance, bar to reenlistment, or reclassification. Examples of wrongful interference include wrongfully influencing, intimidating, impeding, or injuring a witness, an investigator, or other person acting on an adverse administrative action; by means of bribery, intimidation, misrepresentation, or force or threat of force delaying or preventing communication of information relating to such administrative proceeding; and, the wrongful destruction or concealment of information relevant to such adverse administrative proceeding.

d. *Lesser included offenses.* None.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.* In that _____ (personal jurisdiction data), did, (at/on board--location) (subject-matter jurisdiction data, if required), on or about _____ 19____, wrongfully (endeavor to) [impede (an adverse administrative proceeding) (an investigation) (____)] [influence the actions of _____, (an officer responsible for making a recommendation concerning the adverse administrative proceeding) (an individual responsible for making a decision concerning an adverse administrative proceeding) (an individual responsible for processing an adverse administrative proceeding) (____)] [(influence) (alter) the testimony of _____ a witness before (a board established to consider an adverse administrative proceeding or elimination) (an investigating officer) (____)] in the case of _____, by [(promising) (offering) (giving) to the said _____, (the sum of \$____) (____, of a value of about \$____)] [communicating to the said _____ a threat to _____] [____], (if) (unless) the said _____, would [recommend dismissal of the action against said _____] [(wrongfully refuse to testify) (testify falsely concerning _____) (____)] [(at such administrative proceeding) (before such investigating officer) (before such administrative board)] [____].".

Section 4. These amendments shall take effect on [insert date of last day of the 30-day period beginning on the date of signature by the President], subject to the following:

a. The amendments made to paragraphs 37(c), 37(e), 43(d)(2), 45(d)(1), and 96a of Part IV shall apply to any offense committed on or after [insert date of last day of the 30-day period beginning on the date of signature by the President].

b. The amendments made to Section III shall apply only in cases in which arraignment has been completed on or after [insert date of last day of the 30-day period beginning on the date of signature by the President].

c. The amendment made to Rules for Courts-Martial 405(i), 701(g)(3)(C), and 704(e) shall apply only in cases

in which charges are preferred on or after [insert date of last day of the 30-day period beginning on the date of signature by the President].

d. The amendments made to Rules for Courts-Martial 910, 918, and 920 shall apply only to cases in which arraignment occurs on or after [insert date of last day of the 30-day period beginning on the date of signature by the President].

e. The amendments made to Rule for Courts-Martial 305 shall apply only to cases in which pretrial confinement is imposed on or after [insert date of last day of the 30-day period beginning on the date of signature by the President].

f. The amendment to Rule for Courts-Martial 1103(g)(1)(A) shall apply only in cases in which the sentence is adjudged on or after [insert date of last day of the 30-day period beginning on the date of signature by the President].

g. Nothing contained in these amendments shall be construed to make punishable any act done or omitted prior to [insert date of last day of the 30-day period beginning on the date of signature by the President], which was not punishable when done or omitted.

h. The maximum punishment for an offense committed prior to [insert date of last day of the 30-day period beginning on the date of signature by the President] shall not exceed the applicable maximum in effect at the time of the commission of such offense.

i. Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to [insert date of last day of the 30-day period beginning on the date of signature by the President], and any such restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Section 5. The Secretary of Defense, on behalf of the President, shall transmit a copy of this Order to the Congress of the United States in accord with section 836 of title 10 of the United States Code.

THE WHITE HOUSE,

**Changes to the Analysis Accompanying the Manual for
Courts-Martial, United States, 1984**

1. Changes to Appendix 21, the Analysis accompanying the Rules for Courts-Martial (Part II, MCM, 1984).

a. R.C.M. 109. The Analysis is amended by inserting the following at the end thereof:

"1992 Amendment: Subsection (a) was amended to conform with subsection (c). The amendment to subsection (a) clarifies that the Judge Advocates General are responsible for the supervision and discipline of judges and attorneys. The amendment to subsection (a) is not intended to limit the authority of a Judge Advocate General in anyway.

New subsection (c) is based on Article 6a, Uniform Code of Military Justice. Article 6a was enacted by the Defense Authorization Act for Fiscal Year 1990. "Military Appellate Procedures," title XIII, § 1303, National Defense Authorization Act for Fiscal Year 1990, Pub. L. No. 101-189, 103 Stat. 1352, 1576 (1989). The legislative history reveals Congressional intent that, to the extent consistent with the Uniform Code of Military Justice, the procedures to investigate and dispose of allegations concerning judges in the military should emulate those procedures found in the civilian sector. See H.R. Conf. Rep. No. 331, 101st Cong., 1st Sess. 656 (1989) [hereinafter Conf. Rep. No. 331]. The procedures established by subsection (c) are largely patterned after the pertinent sections of the ABA Model Standards Relating to Judicial Discipline and Disability Retirement (1978) [hereinafter ABA Model Standard] and the procedures dealing with the investigation of complaints against federal judges in 28 U.S.C. § 372 (1988). The rule recognizes, however, the overall responsibility of the Judge Advocates General for the certification, assignment, professional supervision and discipline of military trial and appellate military judges. See Articles 6, 26 & 66, Uniform Code of Military Justice.

Subsection (c)(2) is based on the committee report accompanying the FY 90 Defense Authorization Act. See Conf. Rep. No. 331 at 658. This subsection is designed to increase public confidence in the military justice system while contributing to the integrity of the system. See *Landmark Communications v. Virginia*, 435 U.S. 829 (1978).

The first sentence of the Discussion to subsection (c)(2) is based on the committee report accompanying the Defense Authorization Act. Conf. Rep. No. 331 at 358. The second and third sentences of the discussion are based on the commentary to ABA Model Standard 3.4. See also *Chandler v. Judicial Council*, 398 U.S. 74 (1970).

Subsection (c)(3), (c)(5), and (c)(7) reflect, and adapt to the conditions of military practice, the general principle that judges should investigate judges.

The first paragraph of the Discussion to subsection (c)(3) is based on the commentary to ABA Model Standard 4.1.

The discussion to subsection (c)(4) is based on the commentary to ABA Model Standard 4.6.

The clear and convincing standard found in subsection (c)(6)(c) is based on ABA Model Standard 7.10.

Under subsection (c)(7), the principal purpose of the commission is to advise the Judge Advocate General concerned as to whether the allegations contained in a complaint constitute a violation of applicable ethical standards. This subsection is not intended to preclude use of the commission for other functions such as rendering advisory opinions on ethical questions. See ABA Model Standard 9 on the establishment and role of an advisory commission.

Subsection (c)(7)(a) is based on ABA Model Standard 2.3, which provides that one-third of the members of a commission should be active or retired judges."

b. R.C.M. 305(f). The Analysis accompanying R.C.M. 305(f) is amended by inserting the following at the end thereof:

"1992 Amendment: The amendment to subsection (f) provides a specific time period by which to measure compliance. Because it is possible to obtain credit for violations of this section under subsection (k), a standard of compliance was thought necessary. See, e.g., *United States v. Chapman*, 26 M.J. 515 (A.C.M.R. 1988), *pet. denied* 27 M.J. 404 (C.M.A. 1989). This amendment, while protecting the rights of the prisoner, also gives reasonable protection to the Government in those cases where the prisoner is confined in a civilian facility and the request is never, or is belatedly, communicated to military authorities. While it is expected that military authorities will have procedures whereby civilian confinement authorities communicate such requests in a timely fashion, the failure to communicate such a request, or the failure to notify military authorities in a timely manner should be tested for prejudice under Article 59, and should not be considered as invoking the credit provisions of subsection (k) of this rule."

c. R.C.M. 305(h)(2)(A). The Analysis accompanying R.C.M. 305(h)(2)(A) is amended by inserting the following at the end thereof:

"1992 Amendment: The amendment to subsection (h)(2)(A)

clarifies that the 72 hour period operates in two distinct situations: (a) if the commander orders the prisoner into pretrial confinement, the commander has 72 hours to decide whether pretrial confinement will continue, and (b) if someone other than the prisoner's commander orders the prisoner into pretrial confinement, the prisoner's commander has 72 hours from receipt of a report that the prisoner has been confined to decide whether pretrial confinement will continue."

d. R.C.M. 305(i)(1). The Analysis accompanying R.C.M. 305(i)(1) is amended by inserting the following at the end thereof:

"1992 Amendment: The amendment to subsection (i)(1) provides that the required review only becomes applicable whenever the accused is confined under military control. For example, if the prisoner was apprehended and is being held by civilian authorities as a military deserter in another state from where the prisoner's unit is located and it takes three days to transfer the prisoner to an appropriate confinement facility, the seven day period under this rule would not begin to run until the date of the prisoner's transfer to military authorities. Any unreasonable period of time that it may take to bring a prisoner under military control should be tested for prejudice under Article 59, and should not be considered as invoking the credit provisions of subsection (k) of this rule absent evidence of bad faith by military authorities in utilizing civilian custody. But see *United States v. Ballesteros*, 29 M.J. 14 (C.M.A. 1989). However, any time spent in civilian custody at the request of military authorities would be subject to pretrial confinement credit mandated by *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984).

The amendment further clarifies the method of calculation to determine if the rule has been violated. See *United States v. DeLoatch*, 25 M.J. 718 (A.C.M.R. 1987); *Contra, United States v. New*, 23 M.J. 889 (A.C.M.R. 1987)."

e. R.C.M. 405(i). The Analysis accompanying R.C.M. 405(i) is amended by inserting the following at the end thereof:

"1992 Amendment: The amendment to R.C.M. 405(i) makes the provisions of Mil. R. Evid. 412 applicable at pretrial investigations."

f. R.C.M. 701(g)(3)(C). The Analysis accompanying R.C.M. 701(g)(3)(C) is amended by inserting the following at the end thereof:

"1992 Amendment. The amendment to R.C.M. 701(g)(3)(C), based on the decision of *Taylor v. Illinois*, 484 U.S. 400 (1988), recognizes that the Sixth Amendment compulsory process right does not preclude a discovery sanction that excludes the testimony of a

material defense witness. This sanction, however, should be reserved to cases where the accused has willfully and blatantly violated applicable discovery rules, and alternative sanctions could not have minimized the prejudice to the Government. See *Chappee v. Commonwealth of Massachusetts*, 659 F.Supp. 1220 (D.Ct. Mass. 1988). The Discussion to R.C.M. 701(g)(3)(C) adopts the test, along with factors the judge must consider, established by the Taylor decision."

g. R.C.M. 704(e). The Analysis accompanying R.C.M. 704(e) is amended by inserting the following at the end thereof:

"1992 Amendment. Subsection (e) to R.C.M. 704 was amended to make the military practice for granting immunity for defense witnesses consistent with the majority rule within the Federal Courts. *United States v. Burns*, 684 F.2d 1066 (2d Cir. 1982), cert. denied, 459 U.S. 1174 (1983); *United States v. Shandell*, 800 F.2d 322 (2d Cir. 1986); *United States v. Turkish*, 623 F.2d 769 (2d Cir. 1980), cert. denied, 449 U.S. 1077 (1981); *United States v. Thevis*, 665 F.2d 616 (5th Cir. 1982), cert. denied, 459 U.S. 825 (1982); *United States v. Pennell*, 737 F.2d 521 (6th Cir. 1984); *United States v. Taylor*, 728 F.2d 930 (7th Cir. 1984); *United States v. Brutzman*, 731 F.2d 1449 (9th Cir. 1984); *McGee v. Crist*, 739 F.2d 505 (10th Cir. 1984); *United States v. Sawyer*, 799 F.2d 1494 (11th Cir. 1986). The amended rule conforms R.C.M. 704(e) with case law requiring the military judge to consider the Government's interest in not granting immunity to the defense witness. See *United States v. Smith*, 17 M.J. 994, 996 (A.C.M.R. 1984), pet. denied, 19 M.J. 71 (C.M.A. 1984); *United States v. O'Bryan*, 16 M.J. 775 (A.F.C.M.R. 1983), pet. denied, 18 M.J. 16 (C.M.A. 1984)."

The majority rule recognizes that an accused has no Sixth Amendment right to immunized testimony of defense witnesses and, absent prosecutorial misconduct which is intended to disrupt the judicial fact-finding process, an accused is not denied Fifth Amendment due process by the Government's failure to immunize a witness. If the military judge finds that the witness is a target for prosecution, there can be no claim of Government overreaching or discrimination if a grant of immunity is denied. *United States v. Shandell*, *supra*.

The prior military rule was based on *United States v. Villines*, *supra*, which had adopted the minority view espoused in *Government of Virgin Islands v. Smith*, 615 F.2d 964 (3d Cir. 1980). This view permitted the court to also immunize a defense witness when the witness' testimony was clearly exculpatory, essential to the defense case and there was no strong Government interest in withholding testimonial immunity. This rule has been sharply criticized. See, e.g., *United States v. Turkish*, *supra*; *United States v. Taylor*, *supra*; *United States v. Pennell*, *supra*; *United*

States v. Zayas, 24 M.J. 132, 137 (C.M.A. 1987) (dissenting opinion by Judge Cox).

The current rule continues to recognize that a military judge is not empowered to immunize a witness. Upon a finding that all three prerequisites exist, a military judge may only abate the proceedings for the affected charges and specifications unless the convening authority grants immunity to the witness."

h. R.C.M. 910(a)(1). The Analysis accompanying R.C.M. 910(a)(1) is amended by inserting the following at the end thereof:

"1992 Amendment: The amendment to R.C.M. 910(a)(1) removed the necessity of pleading guilty to a lesser included offense by exceptions and substitutions. This parallels the amendment to R.C.M. 918(a)(1), allowing a finding of guilty to a named lesser included offense without mandating the use of exceptions and substitutions, made to more closely correspond to verdict practice in federal district courts. See Analysis comments for R.C.M. 918(a)(1)."

i. R.C.M. 918(a)(1). The Analysis accompanying R.C.M. 918(a)(1) is amended by inserting the following at the end thereof:

"1992 Amendment: The amendment to R.C.M. 918(a)(1) allows for a finding of guilty of a named lesser included offense of the charged offense, and eliminates the necessity of making findings by exceptions and substitutions. This serves to conform military practice to that used in criminal trials before federal district courts. See Fed. R. Crim. P. 31(c); E. Devitt and C. Blackman, Federal Jury Practice and Instructions, 18.07 (1977). The practice of using exceptions and substitutions is retained for those cases in which the military judge or court members must conform the findings to the evidence actually presented, e.g., a larceny case in which the finding is that the accused stole several of the items alleged in the specification but not others."

j. R.C.M. 920(b). The Analysis accompanying R.C.M. 920(b) is amended by inserting the following at the end thereof:

"1992 Amendment: The amendment to R.C.M. 920(b) is based on the 1987 amendments to Federal Rule of Criminal Procedure 30. Federal Rule of Criminal Procedure 30 was amended to permit instructions either before or after arguments by counsel. The previous version of R.C.M. 920 was based on the now superseded version of the federal rule.

The purpose of this amendment is to give the court discretion to instruct the members before or after closing arguments or at both times. The amendment will permit courts to continue instructing the members after arguments as Rule 30 and R.C.M. 920(b) had previously required. It will also permit courts to

instruct before arguments in order to give the parties an opportunity to argue to the jury in light of the exact language used by the court. See *United States v. Slubowski*, 7 M.J. 461 (C.M.A 1979); *United States v. Pendry*, 29 M.J. 694 (A.C.M.R. 1989).".

k. The Analysis accompanying R.C.M. 1103(g)(1)(A) is amended by inserting the following at the end thereof:

"1992 Amendment: Subsection (g)(1)(A) was amended by adding the phrase "and are subject to review by a Court of Military Review under Article 66" to eliminate the need to make four copies of verbatim records of trial for courts-martial which are not subject to review by a Court of Military Review. These cases are reviewed in the Office of the Judge Advocate General under Article 69 and four copies are not ordinarily necessary.".

2. Changes to Appendix 22, the Analysis accompanying the Military Rules of Evidence (Part III, MCM, 1984).

a. The Analysis accompanying M.R.E. 303 is amended by inserting the following at the end thereof:

"1992 Amendment: R.C.M. 405(i) and Mil. R. Evid 1101(d) were amended to make the provisions of Mil. R. Evid. 412 applicable at pretrial investigations. These changes ensure that the same protections afforded victims of nonconsensual sex offenses at trial are available at pretrial hearings. See Criminal Justice Subcommittee of House Judiciary Committee Report, 94th Cong., 2d Session, July 29, 1976. Pursuant to these amendments, Mil. R. Evid. 412 should be applied in conjunction with Mil. R. Evid. 303. As such, no witness may be compelled to answer a question calling for a personally degrading response prohibited by Rule 303. Mil. R. Evid. 412, however, protects the victim even if the victim does not testify. Accordingly, Rule 412 will prevent questioning of the victim or other witness if the questions call for responses prohibited by Rule 412.".

b. The Analysis accompanying M.R.E. 311(e)(2) is amended by inserting the following at the end thereof:

"1992 Amendment: The amendment to Mil. R. Evid. 311(e)(2) was made to conform Rule 311 to the rule of *New York v. Harris*, 495 U.S. 14 (1990). The purpose behind the exclusion of derivative evidence found during the course of an unlawful apprehension in a dwelling is to protect the physical integrity of the dwelling not to protect suspects from subsequent lawful police interrogation. See *id.* A suspect's subsequent statement made at another location that is the product of lawful police interrogation is not the fruit of the unlawful apprehension.".

c. The Analysis accompanying Mil. R. Evid. 412 is amended by inserting the following at the end thereof:

"1992 Amendment. R.C.M. 405(i) and Mil. R. Evid. 1101(d) were amended to make the provisions of Rule 412 applicable at pretrial investigations. Congress intended to protect the victims of nonconsensual sex crimes at preliminary hearings as well as at trial when it passed Fed. R. Evid. 412. See Criminal Justice Subcommittee of the House Judiciary Committee Report, 94th Cong., 2d Session, July 1976."

d. The Analysis accompanying M.R.E. 505(a) is amended by inserting the following at the end thereof:

"1992 Amendment: The second sentence was added to clarify that this rule, like other rules of privilege, applies at all stages of all actions and is not relaxed during the sentencing hearing under M.R.E. 1101(c)."

e. The Analysis accompanying M.R.E. 505(g) is amended by inserting the following at the end thereof:

"1992 Amendment: Subsection (g)(1)(D) was amended to make clear that the military judge's authority to require security clearances extends to persons involved in the conduct of the trial as well as pretrial preparation for it. The amendment requires persons needing security clearances to submit to investigations necessary to obtain the clearance."

f. The Analysis accompanying M.R.E. 505(h) is amended by inserting the following at the end thereof:

"1992 Amendment: Subsection (h)(3) was amended to require specificity in detailing the items of classified information expected to be introduced. The amendment is based on *United States v. Collins*, 720 F.2d. 1195 (11th Cir. 1983)."

g. The Analysis accompanying M.R.E. 505(i) is amended by inserting the following at the end thereof:

"1992 Amendment: Subsection (i)(3) was amended to clarify that the classified material and the government's affidavit are submitted only to the military judge. The word "only" was placed at the end of the sentence to make it clear that it refers to "military judge" rather than to "examination." The military judge is to examine the affidavit and the classified information without disclosing it before determining to hold an in camera proceeding as defined in subsection(i)(1). The second sentence of subsection (i)(4)(B) was added to provide a standard for admission of classified information in sentencing proceedings."

h. The Analysis accompanying M.R.E. 505(j) is amended by inserting the following at the end thereof:

"1992 Amendment: Subsection (j)(5) was amended to provide that the military judge's authority to exclude the public extends to the presentation of any evidence that discloses classified information, and not merely to the testimony of witnesses. *United States v. Hershey*, 20 M.J. 433 (C.M.A. 1985), cert. denied, 474 U.S. 1062, specifies factors to be considered in the trial judge's determination to close the proceedings."

i. The Analysis accompanying Mil. R. Evid. 609(a) is amended by adding the following at the end thereof:

"1992 Amendment. The amendment to Mil. R. Evid. 609(a) is based on the 1990 amendment to Fed. R. Evid. 609(a). The previous version of Mil. R. Evid. 609(a) was based on the now superseded version of the Federal Rule. This amendment removes from the rule the limitation that the conviction may only be elicited during cross-examination. Additionally, the amendment clarifies the relationship between Rules 403 and 609. The amendment clarifies that the special balancing test found in Mil. R. Evid. 609(a)(1) applies to the accused's convictions. The convictions of all other witnesses are only subject to the Mil. R. Evid. 403 balancing test. See *Green v. Bock Laundry Machine Co.*, 490 U.S. 504 (1989)."

j. The Analysis accompanying Mil. R. Evid. 1101(d) is amended by inserting the following at the end thereof:

"1992 Amendment. Mil. R. Evid. 1101(d) was amended to make the provisions of Mil. R. Evid. 412 applicable at pretrial investigations."

3. Changes to Appendix 21, the Analysis accompanying the punitive articles (Part IV, MCM, 1984).

a. The Analysis accompanying paragraph 37(c), Part IV, is amended by inserting the following at the end thereof:

"1992 Amendment. Paragraph c was amended by adding new paragraphs (10) and (11). Subparagraph (10) defines the term "use" and delineates knowledge of the presence of the controlled substance as a required component of the offense. See *United States v. Mance*, 26 M.J. 244 (C.M.A. 1988). The validity of a permissive inference of knowledge is recognized. See *United States v. Ford*, 23 M.J. 331 (C.M.A. 1987); *United States v. Harper*, 22 M.J. 157 (C.M.A. 1986). Subparagraph (11) precludes an accused from relying upon lack of actual knowledge when such accused has purposefully avoided knowledge of the presence or identity of controlled substances. See *United States v. Mance*, *supra*, (Cox,

J., concurring). When an accused deliberately avoids knowing the truth concerning a crucial fact (i.e. presence or identity) and there is a high probability that the crucial fact does exist, the accused is held accountable to the same extent as one who has actual knowledge. See *United States v. Newman*, 14 M.J. 474 (C.M.A. 1983). Subsection (11) follows federal authority which equates actual knowledge with deliberate ignorance. See *United States v. Ramsey*, 785 F.2d 184 (7th Cir. 1986), cert. denied, 476 U.S. 1186 (1986).".

b. The Analysis accompanying paragraph 43d(2), Part IV, is amended by inserting the following at the end thereof:

"1992 Amendment. The listed lesser included offenses of murder under Article 118(3) were changed to conform to the rationale of *United States v. Roa*, 12 M.J. 210 (C.M.A. 1982). Inasmuch as Article 118(3) does not require specific intent, attempted murder, voluntary manslaughter, assault with intent to murder and assault with intent to commit voluntary manslaughter are not lesser included offenses of murder under Article 118(3).".

c. The Analysis accompanying paragraph 45(d), Part IV, is amended by inserting the following at the end thereof:

"1992 Amendment. The amendment to para 45d(1) represents an administrative change to conform the Manual with case authority. Carnal knowledge is a lesser included offense of rape where the pleading alleges that the victim has not attained the age of 16 years. See *United States v. Baker*, 28 M.J. 900 (A.C.M.R. 1989); *United States v. Stratton*, 12 M.J. 998 (A.F.C.M.R. 1982), pet. denied, 15 M.J. 107 (C.M.A. 1983); *United States v. Smith*, 7 M.J. 842 (A.C.M.R. 1979).".

d. The Analysis accompanying paragraph 96a, Part IV, is amended by inserting the following after the analysis to paragraph 96:

"1992 Amendment. Paragraph 96a is new and proscribes conduct that obstructs administrative proceedings. See generally 18 U.S.C. § 1505, *Obstruction of proceedings before departments, agencies, and committees*. This paragraph, patterned after paragraph 96, covers obstruction of certain administrative proceedings not currently covered by the definition of criminal proceeding found in paragraph 96c. This paragraph is necessary given the increased number of administrative actions initiated in each service.".

**Changes to the Discussion Accompanying the Manual for
Courts-Martial, United States, 1984**

A. The following Discussion is inserted after R.C.M. 109(c)(2):

"The term 'unfitness' should be construed broadly, including, for example, matters relating to the incompetence, impartiality, and misconduct of the judge. Erroneous decisions of a judge are not subject to investigation under this rule. Challenges to these decisions are more appropriately left to the appellate process."

B. The following Discussion is inserted after R.C.M. 109(c)(3):

"Complaints need not be made in any specific form, but if possible complaints should be made under oath. Complaints may be made by judges, lawyers, a party, court personnel, members of the general public or members of the military community. Reports in the news media relating to the conduct of a judge may also form the basis of a complaint.

An individual designated to receive complaints under this subsection should have judicial experience. The chief trial judge of a service may be designated to receive complaints against military trial judges."

C. The following Discussion is inserted after R.C.M. 109(c)(4):

"Complaints under this subsection will be treated with confidentiality. Confidentiality protects the subject judge and the judiciary when a complaint is not substantiated. Confidentiality also encourages the reporting of allegations of judicial misconduct or unfitness and permits complaints to be screened with the full cooperation of others.

Complaints containing allegations of criminality should be referred to the appropriate criminal investigative agency in accordance with Appendix 3 of this Manual."

D. The following Discussion is inserted after R.C.M. 109(c)(5)(b):

"To avoid the type of conflict prohibited in Article 66(g), the Judge Advocate General's designee should ordinarily not be a member of the same Court of Military Review as the subject of the complaint. If practicable, a former appellate military judge should be designated."

E. The following Discussion is inserted after R.C.M. 109(c)(6)(b):

"The discretionary reassignment of military trial judges or appellate military judges to meet the needs of the service is not professional disciplinary action."

F. The following Discussion is inserted after R.C.M. 109(c)(7):

"The Judge Advocate General concerned may appoint an ad hoc or a standing commission."

G. The Discussion to R.C.M. 701(g)(3) is amended by adding the following after the first paragraph:

"The sanction of excluding the testimony of a defense witness should be used only upon finding that the defense counsel's failure to comply with this rule was willful and motivated by a desire to obtain a tactical advantage or to conceal a plan to present fabricated testimony. Moreover, the sanction of excluding the testimony of a defense witness should only be used if alternative sanctions could not have minimized the prejudice to the Government. Before imposing this sanction, the military judge must weigh the defendant's right to compulsory process against the countervailing public interests, including (1) the integrity of the adversary process; (2) the interest in the fair and efficient administration of military justice; and (3) the potential prejudice to the truth-determining function of the trial process."

H. The Discussion following R.C.M. 910(a)(1) is amended to read as follows:

"See paragraph 2, Part IV, concerning lesser included offenses. When the plea is to a named lesser included offense without the use of exceptions and substitutions, the defense counsel should provide a written revised specification accurately reflecting the plea and request that the revised specification be included in the record as an appellate exhibit. A plea of guilty to a lesser included offense does not bar the prosecution from proceeding on the offense as charged. See also subsection (g) of this rule.

A plea of guilty does not prevent the introduction of evidence, either in support of the factual basis for the plea, or, after findings are entered, in aggravation. See R.C.M. 1001(b)(4)."

I. The last two paragraphs of the Discussion accompanying R.C.M. 918(a)(1) are amended to read as follows:

"*Lesser included offenses.* If the evidence fails to prove the offense charged but does prove an offense necessarily included in the offense charged, the factfinder may find the accused not guilty of the offense charged but guilty of a named lesser offense, which is included in the offense charged, without the use of exceptions and substitutions. Ordinarily, an attempt is a lesser included offense even if the evidence establishes that the offense charged was consummated. See Part IV concerning lesser included offenses.

Offenses arising from the same act or transaction. The accused may be found guilty of two or more offenses arising from the same act

or transaction, whether or not the offenses are separately punishable. But see R.C.M. 906(b)(12); 907(b)(3)(B); 1003(c)(1)(C).".

J. The Discussion accompanying R.C.M. 920(b) is amended to read as follows:

"After members have reached a finding on a specification, instructions may not be given on an offense included therein which was not described in an earlier instruction unless the finding is illegal. This is true even if the finding has not been announced.

When instructions are to be given is a matter within the sole discretion of the military trial judge.".

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Duplicate of vz4369_001. Record ID: 9301777. (1 page)	03/24/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 43

FOLDER TITLE:

Chron File - March 1993 #2 [4]

2016-0152-F
vz4370

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9320273
RECEIVED: 23 MAR 93 15

TO: ITOH

FROM: BELL
DARRAGH

DOC DATE: 24 MAR 93
SOURCE REF:

KEYWORDS: ADMINISTRATIVE

PERSONS: HAHN

SUBJECT: NSC STAFF FORN TRAVEL REQUEST - HAHN TO NEWPORT RHODE ISLAND 10 MAY

ACTION: KENNEY APPROVED & SGD

DUE DATE: 26 MAR 93 STATUS: C

STAFF OFFICER: BELL

LOGREF:

FILES: ADMIN

NSCP:

CODES:

DOCUMENT DISTRIBUTION

FOR ACTION

FOR CONCURRENCE

FOR INFO

BELL
DARRAGH
HAHN
NSC CHRON

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSWEA

CLOSED BY: NSKDB

DOC 1 OF 1

UNCLASSIFIED

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

March 24, 1993

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: SEAN J. DARRAGH *SD*
FROM: ROBERT G. BELL *RB*
SUBJECT: Travel Request for Keith Hahn to Newport,
Rhode Island, May 10, 1993

Request travel to Newport, Rhode Island for one day to address Naval War College Symposium on National Security Strategy, meet with the Strategic Studies Group, and coordinate scenario for Global War Game '93.

The cost will incur no cost to the NSC.

RECOMMENDATION

That you sign the travel authorization form at Tab I.

Attachment

Tab I Travel Authorization Form

NSC STAFF TRAVEL AUTHORIZATION

1. TRAVELER'S NAME: Keith Hahn
2. PURPOSE/EVENT (Include Dates): Travel to Newport, Rhode Island to address Naval War College, May 10, 1993
3. ITINERARY (Please Attach Copy of Proposed Itinerary): _____
4. DEPARTURE DATE _____ RETURN DATE _____
DEPARTURE TIME _____ RETURN TIME _____
5. MODE OF TRANSPORTATION:
GOVT. AIR _____ COMMERCIAL AIR x POV _____ RAIL _____
OTHER _____
6. ESTIMATED EXPENSES:
TRANSPORTATION _____ PER DIEM _____ OTHER _____
TOTAL _____
7. WHO PAYS EXPENSES: NSC _____ OTHER x _____
IF NOT NSC, DESCRIBE SOURCE AND ARRANGEMENTS: DoD Blanket Travel Orders
8. WILL FAMILY MEMBER ACCOMPANY YOU: YES _____ NO x _____
IF SO, WHO PAYS FOR FAMILY MEMBER (If Travel Not Paid By Traveler, Describe Source & Arrangements): _____
9. TRAVEL ADVANCE REQUESTED: \$ 0
10. REMARKS (Use This Space to Indicate Any Additional Items You Would Like to Appear on Your Travel Orders): _____
11. TRAVELER'S SIGNATURE: Keith D. Hahn
12. APPROVALS: Senior Director Robert G. Bell
Director of Administration Sec. J. H.
Executive Secretary Miriam W. Kennedy

NATIONAL SECURITY COUNCIL
WASHINGTON, D C 20506

1913

March 27, 1993

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT BELL *RAB*
FROM: KEITH HAHN *KH*
SUBJECT: Chief of Naval Operations Hospitalization

The Chief of Naval Operations and acting Secretary of the Navy, Admiral Frank Kelso, was recently hospitalized for three days for medical treatment to correct an arterial fibrillation problem. He returned to work Friday.

The condition, which is manifested as an irregular rhythm of the heart is corrected by electro-shock treatment and long-term medication. This is different from the condition that Secretary Aspin was treated for.

RECOMMENDATION

That you forward the letter at Tab A to the President for signature.

Attachments

Tab I Memorandum to the President
Tab A Letter to Admiral Frank Kelso, Chief of Naval Operations

THE WHITE HOUSE

WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE

SUBJECT: Chief of Naval Operations Hospitalization

Purpose

To wish the Chief of Naval Operations and acting Secretary of the Navy, Admiral Frank Kelso, a full and speedy recovery after his recent hospitalization.

Background

Admiral Frank Kelso was recently hospitalized for three days for medical treatment to correct an arterial fibrillation problem. He returned to work last Friday. The condition, which is manifested as an irregular rhythm of the heart is corrected by electro-shock treatment and long-term medication.

RECOMMENDATION

That you sign the letter to Admiral Kelso at Tab A.

Attachment

Tab A Letter to Admiral Frank Kelso, Chief of Naval Operations

cc: Vice President
Chief of Staff

THE WHITE HOUSE

WASHINGTON

Dear Admiral Kelso:

It is good to have you back to work after your recent medical treatment. I trust that you are fully operational and can continue to do your outstanding work as the "dual-hatted" Chief of Naval Operations and Acting Secretary of the Navy.

I sincerely appreciate your dedication to duty during this transition and hope that your medical problems are behind you.

Sincerely,

Admiral Frank B. Kelso, II
Chief of Naval Operations
Washington, DC 20350

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

March 25, 1993

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT BELL *Feb*FROM: KEITH HAHN *IX*SUBJECT: Washington Post Editorial "The Army Owes Some Answers"

At Tab A the President asked you and Bernard Nussbaum for additional information on a March 23 Washington Post editorial concerning U.S. Army surveillance of Martin Luther King and civil rights organizations. The response to the President at Tab I confirms that the Army did conduct domestic surveillance on U.S. citizens prior to the early 1970's, and that Congressional hearings made that surveillance a matter of public record twenty years ago. Stringent controls and oversight measures precluding the Army from these activities have been in place since 1976 and are codified in Executive Order 12333.

Members of Congressman Dellums staff have called the Army to advise them that the Congressional Black Caucus will be writing a letter to the President concerning this story. The Army has directed its researchers to recheck the Investigation Records Repository at Ft. Meade, the Center for Military History, the Special Forces archives and the Alabama National Guard records for additional references on this topic. Army headquarters no longer holds the historical files on domestic surveillance. A report on the results of this search is due out by the first of next week.

The Atlanta Journal article from which the Post drew its editorial is at Tab B. A contrary view published the next day in the Atlanta Constitution is highlighted at Tab C.

RECOMMENDATION

That you forward the memorandum at Tab I to the President in response to his query.

Attachments

Tab I Memorandum to the President

Tab A Washington Post Editorial "The Army Owes Some Answers"Tab B Atlanta Journal Article "Spying on King"Tab C Atlanta Constitution Article "Spying Report Shocks King Associates"

THE WHITE HOUSE

WASHINGTON

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
BERNARD NUSSBAUM

SUBJECT: Washington Post Editorial "The Army Owes Some
Answers"

At Tab A you asked for additional information on the March 23 Washington Post editorial concerning U.S. Army surveillance of Martin Luther King and civil rights organizations. The Atlanta Journal article from which this editorial was drawn is provided at Tab B and an Atlanta Constitution article which provides some additional insight is at Tab C.

The allegations contained in the Journal article were raised before in Congressional hearings in the early 1970s. During and before the Vietnam War the U.S. Army did conduct domestic surveillance on U.S. citizens and organizations. All Army historical files on this surveillance are now in the custody of the National Archives and Records Administration and are available to the public.

As a result of Congressional hearings in the early 1970s, stringent controls and oversight measures were implemented on and within the U.S. intelligence community and military services. These controls include Congressional oversight by both the House and the Senate Permanent Select Committees on Intelligence and by DoD and military services oversight officials. The military services are not conducting any such surveillance now. Since 1976, the military services have been generally prohibited from collecting and maintaining information on non-DoD affiliated U.S. citizens by Presidential Executive Order. Exceptions are specified by the current Executive Order 12333, "U.S. Intelligence Activities," which is also available to the public.

Members of Congressman Dellums staff have advised the Army that the Congressional Black Caucus will be writing to you concerning this story. The Army has directed its researchers to recheck the Investigation Records Repository at Ft. Meade, the Center for Military History, the Special Forces archives and the Alabama National Guard records for additional references on this topic.

Attachments

Tab A Washington Post Editorial "The Army Owes Some Answers"
Tab B Atlanta Journal Article "Spying on King"
Tab C Atlanta Constitution Article "Spying Report Shocks King
Associates"

cc: Vice President
Chief of Staff

The Army Owes Some Answers

THERE IS plenty of evidence on the record that in the 1960s and 1970s, the Federal Bureau of Investigation and local police agencies tailed, bugged and kept a meticulous collection of secret gossip on the personal and political behavior of the Rev. Martin Luther King Jr. and other prominent black leaders. Those accounts, it turns out, may have revealed only small glimpses into the government's intrusive behavior during that era. According to Sunday's edition of *The Commercial Appeal* in Memphis, government spying on blacks started more than 75 years ago and continued for years—at the hands of the United States Army. That piece of ugly history, if true, can't be allowed to remain in the shadows.

The reasons for the military's alleged domestic sleuthing were as flimsy at the turn of the century as they were when J. Edgar Hoover's FBI was running amok. As preposterous as it seems, the Army attributed justifiable anger among blacks at their mistreatment in the early 1900s to possible influence by foreign-backed subversives from, of all places, Germany. That

kind of paranoia and prejudice reportedly governed the Army's behavior through World War I, the civil rights movement and anti-Vietnam protests, when it mounted intelligence operations. They reportedly even deployed the Green Berets at one point. It is a sickening story about government spying that shadowed southern churches and ministers, monitored three generations of the Martin Luther King Jr. family and recruited black Americans to inform on each other. The story that unfolded in the *Commercial Appeal* describes an Army that feared black Americans were or could become a national security threat. The real threat to the country's interest, however, were those in the Army who masterminded the plot.

Yesterday, an Army spokesman said the Army was researching records to "determine the facts surrounding the allegations." The Army says it expects to complete the research soon, but until then, it has "no verifiable information for release." The spying may have stopped, but the need for full public disclosure of all the facts is strong.

Tom L. Blumstein

Artists on the Hill

what's the deal on this?

THE NATION'S artists and arts organizations rarely speak in anything that could be called unison, but 450 of them converged on Washington and Congress last week for their annual "arts advocacy day" bearing a surprisingly unified—and mild—message. Perhaps even more surprising, the average reception they report getting from lobbied lawmakers this time was not the suspicion and fear of the last few years—what one arts association president paraphrases as "Get off our backs, your crazy stuff will get us in trouble"—but a non-panicked willingness to listen. The lobbied representatives and senators, about 340 of them by the arts groups' count, mostly heard pitches on the federal role in the arts and education, and their questions, when they asked any, had to do with how the arts groups' specific concerns—which this year include education, tax and insurance matters—fit in with the bigger legislative landscape.

If such a return to business after the recent cultural wars should materialize, it will be all to the good. The annual advocacy day, the 15th annual such event, focused on matters in which the interests of arts groups overlap with those of

other nonprofits (for instance, the Clinton budget's projected cuts in nonprofit direct-mail subsidies, or the difficulty in securing adequate health insurance for artists) and those in which they merge with the continuing work on education reform.

Education Secretary Richard Riley gave them a boost on this front in a Wednesday speech, announcing that the arts now comprise one of the six "primary subjects" enumerated as national education goals. Barbara Jordan delivered a lecture in the Kennedy Center that declared the arts' ability to "reattach *pluribus* to *unum*" and to dissolve endless ethnic separatism, adding, "The arts have no pigmentation, thank God." Lobbyists sought to persuade representatives that community arts programs, funded either by the NEA or by local money it draws, constitute not only uplift but also programs for the disabled, the elderly, children—all those good things that draw funds rather than controversies. If this kind of pitch has an old, familiar feel, common to every interest group seeking a few extra strips of pork in tough times, it is nonetheless infinitely preferable to the last few rounds of debate on this topic.

Unfair to Federal Retirees

The Post's March 15 editorial "The Republicans Find a Budget" found merit in the proposal to reduce the cost-of-living adjustments given to federal and

budget, federal employees may suffer more than 10 times the cost of deficit reduction compared with private-sector employees at equivalent wages. It

To further cut COLAs to retirees would permanently diminish the base of retiree benefits. It is unfair to single out federal retirees by impos-

SPYING ON KING

The Army viewed Martin Luther King Jr. as subversive, and tried to stop him. They feared his campaign of non-violence would spark revolution in the streets.

But he was just one target in a 75-year campaign of spying on black leaders using informants, bugging and even aerial surveillance by U2 spy planes.

By Stephen G. Tompkins
THE (MEMPHIS) COMMERCIAL APPEAL
Copyright 1993

The intelligence branch of the U.S. Army spied on the family of Dr. Martin Luther King Jr. for three generations.

Top-secret, often illegal, intrusions into the lives of black Americans began more than 75 years ago and often focused on black churches in the South and their ministers.

The spying was born of a conviction by top Army intelligence officers that black Americans were ripe for subversion — first by agents of the German Kaiser, then by Communists, later by the Japanese and eventually by those opposed to the Vietnam War.

At first, the Army used a reporting network of private citizens that included church members, black businessmen and black educators. It later employed cadres of infiltrators, wiretaps and aerial photography by U2 spy planes.

As the civil rights movement merged with anti-war protests in the late 1960s, some Army units began supplying sniper rifles and other weapons of war to civilian police departments. Army intelligence began planning for what some officers believed would soon be armed rebellion.

By March 1968, Dr. King was preparing to lead a march in Memphis in support of striking sanitation workers and another march a few weeks later that would swamp Washington with people demanding that less attention be paid to Vietnam and more resources devoted to America's poor.

By then the Army's intelligence system was keenly focused on Dr. King and desperately searching for a way to stop him.

On April 4, 1968, Dr. King was killed by a sniper's bullet at the Lorraine Motel in Memphis.

Army viewed King as national security threat

Some of the Army's spying against anti-war and civil rights groups became public knowledge in 1971 congressional hearings. But key intelligence officers avoided testifying, leaving the full story untold.

The 16-month investigation uncovered no hard evidence that Army intelligence played any role in Dr. King's assassination, although Army agents were in Memphis the day he was killed.

But the review of thousands of government documents and interviews with people involved in the spying revealed that by early 1968 Army intelligence regarded Dr. King as a major threat to national security.

Army intelligence opened its file on Dr. King in 1947 with a photograph showing him and other Morehouse College students leaving a meeting of Mrs. Dorothy Lilley's Intercollegiate Council. She was a suspected Communist, according to the file on Dr. King kept by the 111th Military Intelligence Group at Fort McPherson in Atlanta.

Reports on Dr. King's activities were added periodically through the 1950s, but comments in his intelligence file indicate Army officers at first considered him more of a phenomenon than a threat.

Army spies pegged Dr. King as a Communist tool in the fall of 1957, when he spoke at the 25th anniversary of the integrated Highlander Folk School in Monteagle, Tenn. Army intelligence had watched the school for years.

A Sept. 6, 1940, report from Maj. G.R. Carpenter, assistant chief of staff for intelligence for the Sixth Corps Area in Chicago, said the school's executive director, Miles Norton, and the Rev. Claude Williams of Memphis, a New York native known for his "Communist activities," were working together to teach "a course of instruction to develop Negro organizers in the

Southern cotton states."

Dr. King's visit was given extra weight because of an FBI report received the previous July of his Baltimore meeting with Stanley Levison, a New York millionaire who had been under bureau surveillance as a Communist fund-raiser since June 9, 1952. The two formed a long friendship and business relationship.

King seen as igniting violence

The suspicion with which top Army officers viewed blacks had its genesis in simple ignorance but gained credence because of real and perceived links between black civil rights activists and Communists and other subversives.

As Dr. King gained prominence as a civil rights leader, intelligence officers also came to believe he was a man who sparked violence wherever he went, his non-violent philosophy notwithstanding.

For example, an agent of the 113th Intelligence Detachment overheard Dr. King at a January 1963 dinner at the Edgewater Beach Hotel in Chicago telling "two black men and a pretty white woman that Project C was ready to go," according to the surveillance report the agent filed.

A follow-up report dated Jan. 24 describes Project C as "plans for massive disruption of public and private enterprise in Birmingham."

Three months later, Dr. King entered Birmingham. Television screens filled with pictures of marching black elementary-school children being herded into police wagons while their parents were bombarded with high-



Martin Luther King's speeches roused blacks to secure their rights, but Army intelligence feared a "full-scale revolt."

powered water guns as they left the 16th Street Baptist Church. Riots broke out, and Ku Klux Klansmen patrolled the night streets with shotguns.

On May 12, the White House ordered Gen. Earle Wheeler, chairman of the Joint Chiefs of Staff, to send 3,000 men from Fort Benning, Ga., to Birmingham. Maj. Gen. Charles Billingslea, commander of the Army's 2nd Division, had asked for help in Birmingham because "I may have a full-scale revolt on my hands down here."

Portions of the monthlong Birmingham disturbances were recorded by U2 spy planes taking off from the supersecret "Site 98" outside Nellis Air Force Base in Nevada. Over the next seven years, at least 26 other such domestic spy flights by U2s and at least two involving the more advanced SR-71 were requested by Army commanders and flown by the Air Force, according to classified documents.

Maj. Gen. William Yarborough, the Army's top spy, became convinced that either the Chinese or Soviets, through Cuba, bankrolled Dr. King and other black activists.

General Yarborough's evidence came from Lt. Gen. Marcelino Garcia Barragan, the Mexican minister of national defense.

Through a trusted aide, General Garcia gave Army intelligence a report on June 29, 1967, that said Mexican army intelligence had discovered militant black Americans receiving combat training and secret funding from the Havana-based Organization of Latin American Solidarity (OLAS), financed by Communist China's military intelligence agency.

The report said, "American Negroes [were] sighted [with] automatic weapons / unarmed combat training / drilling evident" at an urban guerrilla training camp near Chiapas in southern Mexico.

OLAS's aim was to "commence guerrilla wars throughout the hemisphere to destabilize United States-backed governments . . . and (OLAS) has pledged its support to the Negro liberation movement."

Stokely Carmichael, co-chairman of the Student Nonviolent Coordinating Committee and a leader of the black power movement, was among a number of black Americans associated with OLAS.

And Mr. Carmichael increasingly was seen in Dr. King's company.

Anti-Vietnam speech shook world

In speech after speech the year before he died, Dr. King tied the growing disillusionment of inner-city and rural Southern blacks to the country's preoccupation with Vietnam.

On April 4, 1967, he told 3,000 people at New York's Riverside Church:

"A few years ago, it seemed as if there was a

real promise of hope for the poor, both black and white, through the poverty program.

"And then came the buildup in Vietnam, and I watched this program broken and eviscerated as if it were some idle political plaything of a society gone mad on war. . . . Somehow this madness must cease. We must stop now."

The speech shook the world. Life magazine called it "a demagogic slander that sounded like a script for Radio Hanoi."

Dispatches from the 525th Military Intelligence Group (MIG) in Vietnam reported that "Negro troops are unsettled" by articles on Dr. King's speech in Pacific Stars and Stripes and their hometown newspapers.

To many, Dr. King's shift in direction served as a lens to focus the nation's compassion and sense of justice on resolving its inner conflicts.

But General Yarborough and other intelligence officers heard only the voice of an enemy who was gaining ground.

By summer, the ground was shaking.

"Tank crews blast away at entrenched snipers with .50-caliber machine guns" was not a headline from Vietnam but from Detroit, where 43 people died and \$45 million in property was destroyed. Rioters burned and plundered 100 other American cities during that long, hot summer.

Detroit was particularly significant to Army leaders, not just because of the bloodshed and damage but due to the results of a secret survey.

After the riot, 496 black males arrested for firing rifles and shotguns at soldiers were herded into a warehouse north of Detroit. They were interviewed by agents of the Army's Psychological Operations Group, dressed as civilians, in conjunction with the Behavior Research Institute of Detroit.

The arrested men were asked dozens of questions, but the responses 363 of them gave to the question "Who is your favorite Negro leader?" stunned Army intelligence.

Dr. King was the clear favorite — 178 of the men named him. Men considered more radical, such as Mr. Carmichael and Malcolm X, came in a distant second and fourth.

Army intelligence leaders repeatedly used this survey to signify the danger Dr. King represented to national security.

Dr. King really scared top Army commanders on Dec. 4, 1967, when he announced his intent to lead a Poor People's March on Washington the next spring to focus public attention on the "total, direct and immediate abolition of poverty."

Years of protest had Army brass scared

Dr. King's call for a "Poor People's Campaign" came on the heels of the nation's worst

summer of violence in three years and an October anti-war protest in which 200,000 demonstrators had besieged the Pentagon as alarmed Army brass watched from the roof.

Civilian authority's responses to these upheavals had shaken the faith of Army leaders in the government's stability. Top officers believed the years of violence and protest had weakened the nation's social and political foundations.

Memos reveal Army leaders were increasingly frustrated with top civilian Pentagon officials who ignored warnings that black unrest was Communist-inspired, damaging morale in Vietnam and leading to armed revolt at home.

By December 1967, some officers felt desperate. Among them were General Yarborough, who had been named assistant chief of staff for intelligence in 1966, and Maj. Gen. William Blakefield, chief of U.S. Army Intelligence Command, who reported to General Yarborough.

"The Army was over a barrel," General Yarborough said in an interview at his home in Southern Pines, N.C.

The suspicion with which top Army officers viewed blacks had its genesis in simple ignorance but gained credence because of real and perceived links between black civil rights activists and Communists and other subversives.

"Blacks were using the uncertainty of the Vietnam period and taking advantage of it," General Yarborough said. "They were attacking the weak point in the line, which is tactically a good idea, but you couldn't do it without arousing animosity of all kinds."

"You couldn't expect people to be rational and look at this in a cool way," he said. "We were trying to fight a war at the same time where the home base was being eroded."

Army officers "take an oath to protect the country against all enemies, foreign and domestic," General Yarborough said. "You see people breaking windows and throwing Molotov cock-

tails, snipers shooting policemen, people who are outwardly trying to shut the government down and announce that is what they are going to do, you have a feeling that this is perhaps a domestic enemy."

General Blakefield told Army historians in 1975: "There was a fear among high-ranking Army officers that the long-term judgment of historians might be that the Army, in the late 1960s, failed to protect the people of this country, as they had in other times of crisis."

To stop that "enemy," General Yarborough and General Blakefield used the resources of the largest domestic spy network ever assembled in a free country.

Though many black leaders spoke out against the Vietnam War, Army intelligence focused on Dr. King, whom General Yarborough described as "the messiah for his people, his own personal qualities notwithstanding."

3 generations of preachers spied on

Dr. King wasn't the first black leader, nor the first in his family, to be targeted for surveillance by the Army's spy agencies.

In September 1917, the War Department's Military Intelligence Division (MID) opened a file on King's maternal grandfather, the Rev. A.D. Williams.

As pastor of Ebenezer Baptist Church, the Rev. Williams played a key role in Atlanta's black community. He was the Atlanta NAACP's first president in 1910 and an officer in the National Baptist Convention, the largest black religious organization of the time.

During World War I, military intelligence targeted black ministers and others as troublemakers or friends, depending on whether they worked as MID informants. Memphis businessman Robert Church Jr. supplied MID Maj. Walter Loving with names of prominent blacks in each major Southern city, intelligence files show.

One of the first items in the Rev. Williams's intelligence file was a top-secret telegram sent to the Army's Southern Department headquarters in Atlanta. The telegram said in part:

"It behooves us to find out all we possibly can about this colored preacher."

Later, a memo in the Rev. Williams's file labeled him a "radical Negro agitator" for leading a campaign to create a black high school.

His NAACP involvement also earned him the attention of Army intelligence officers, who believed the civil rights group was "an agitative pro-Soviet organization for propagandizing the Negroes," according to a 1926 report by Lt. Col.

Walter Boswell, Army intelligence executive officer at the War Department.

Dr. King's father, the Rev. M.L. King Sr., eventually succeeded the Rev. Williams as pastor at Ebenezer — and inherited his own Army watchers, Army intelligence records show.

The Rev. King Sr.'s participation in the National Negro Congress tarred him with the Communist brush as well.

Col. Walter Buck, assistant chief of staff for intelligence, Third Army, at Fort McPherson in Atlanta said in a March 1947 report to the War Department that the NNC "serves as the staff unit of the Communist Party among Negroes."

The NNC's "program includes the ultimate founding of a Negro state in the South after the revolutionary overthrow of white landlords and capitalists," Colonel Buck said.

Of the three large black organizations active at the start of World War II — the NAACP, the National Urban League and the NNC — the National Negro Congress was considered the most activist and radical. Communist Party supporters gradually took it over, according to most histories, and a split with anti-war Stalinists at the start of WWII led to the group's decline.

Despite the years of watching the King family, top Army officers were rattled by the prospect of Dr. King leading a horde into the nation's capital again.

An intelligence analysis distributed during a Dec. 12, 1967, conference at the Pentagon described Dr. King's plans for the March on Washington as "a devastating civil disturbance whose sole purpose is to shut down the United States government."

The analysis described Dr. King as "a Negro who repeatedly has preached the message of Hanoi and Peking."

'They didn't have a clue'

Some of the Army's best officers attended that meeting to discuss "target-city priorities" in light of "King's plans to ignite violence and mayhem" throughout the United States in April, according to a report on the conference.

But the meeting broke up in frustration, one participant said.

"Looking back, I remember nobody had any answers," he said. "We had all these West Point geniuses who could lead divisions. But when it came to stopping Dr. King, they didn't have a clue."

Nevertheless, Army intelligence intensified its surveillance of Dr. King and covertly dispatched Green Beret teams to make street maps, identify landing zones for riot troops, and scout

sniper sites in 39 potential racially explosive cities, including Memphis.

The 20th Special Forces Group, headquartered in Alabama, seemed perfect for these scouting missions in the South. The 20th SFG was a National Guard unit, part-time warriors who lived and worked in many of the communities where black unrest was centered.

Green Berets from the 20th often spied on Dr. King and other black Americans during the 1960s, military records and interviews show.

Some Vietnam Special Forces veterans —



Civil rights leaders such as Stokely Carmichael (left), Martin Luther King Jr. and Floyd McKissick were feared as dangerous subversives by some in the Army.

particularly those who had worked in murky clandestine operations with the CIA, the Special Operations Group (SOG) or the top-secret Detachment B-57 — were “dumped” into the 20th “for safekeeping,” according to a former major with Army counterintelligence.

“They couldn’t let a lot of these crazy guys back into the States because they couldn’t forget their training,” he said. “Birmingham [20th SFG

headquarters] became Saigon. The rural South was ‘in-country,’ and at times things got out of hand.”

Many members of the 20th SFG during the ‘60s still live in the South, some under new identities. Some of them spoke to The Commercial Appeal only if their names were not used or locations revealed.

A former 20th Special Forces sergeant from Detachment B-6, Company B, who was stationed in Columbus, Miss., said the unit’s undercover missions “didn’t peek into windows, if that’s what you mean.”

Klan passed on information

In return for paramilitary training at a farm in Cullman, Ala., Ku Klux Klansmen soon became the 20th’s intelligence network, whose information was passed to the Pentagon.

Bill Wilkinson, chief of the Klan’s Invisible Empire branch in 1983, told United Press International that the group no longer had a training camp at Cullman.

“And they’re not paramilitary. We called them ‘Klan Special Forces,’” he said.

On Feb. 19, Dr. King went to Miami to drum up support for the Poor People’s Campaign. Armed with a new \$230,000 Ford Foundation grant, he told a group of black ministers that American capitalism must be reorganized.

The Rev. Samuel Billy Kyles of Memphis, who was in the audience, later that afternoon told Dr. King about 1,300 Memphis sanitation workers who were striking against the city for refusing to recognize their union. The Rev. Kyles, joining the Rev. James Lawson, asked Dr. King to come to Memphis to support the strikers.

A Feb. 22 report in Dr. King’s Army intelligence file states: “Indications from reliable source are MLK will be in Memphis to support union striking city.”

In February 1968, the 113th Military Intelligence Group (MIG) at Fort Sheridan, Ill., outside Chicago, began supplying the “Legion of Justice” terrorist group with tear gas, Mace, electronic surveillance equipment and money to harass anti-war groups.

Led by Chicago lawyer S. Thomas Sutton, who recruited Chicago police intelligence officers, the Legion used wiretaps supplied by 113th agents to break into and bug the offices of anti-war groups.

In Baltimore, the Inspectional Services Division of the city police received secret funding from the 109th MIG to spy on area black radicals.

In Washington, the Metro Police received

\$120,000 in 1967 and \$150,000 in 1968 from Army intelligence. Undercover police intelligence officers met regularly with 116th MIG agents. They maintained an index card file of 21,000 suspected black and anti-war radicals.

Teams of police and Army intelligence officers followed and photographed Dr. King during a prayer march in Arlington Cemetery on Feb. 6, 1968, and his sermon the following day at Vermont Avenue Baptist Church. The officers later used the pictures for dart practice.

Meanwhile, the Army had finished its intelligence outlines on 124 cities with the potential for

zones, secret storage sites for riot gear and weapons, and files on all civic leaders and known troublemakers.

Details of those plans were kept secret from civilian law enforcement agencies for fear of leaks. Still, at least the Army felt better prepared for Dr. King.

On April 3, Dr. King returned to Memphis. Army agents from the 111th Military Intelligence Group shadowed his movements and monitored radio traffic from a sedan crammed with electronic equipment.

Eight Green Beret soldiers from an "Operation Detachment Alpha 184 Team" were also in Memphis carrying out an unknown mission. Such "A-teams" usually contained 12 members.

On April 4, at 6:01 p.m., a bullet from a 30.06 rifle equipped with a scope struck Dr. King down on the balcony of the Lorraine Motel.

The man whose fingerprints were found on that gun — James Earl Ray — pleaded guilty to Dr. King's murder and is serving a 99-year prison sentence. Ray bought the rifle from a sporting goods store in Birmingham, FBI investigators said.

On Oct. 3, Attorney General Ramsey Clark sent a report to the White House.

The predicted summer of violence that was to have begun with Dr. King's April 22 demonstrations in Washington never happened, the report said.

Rioting had broken out in several cities as news of Dr. King's assassination spread, but "there was a clear and significant decline in the number and severity of riots and disorders this summer," Mr. Clark said.

Portions of the monthlong Birmingham disturbances were recorded by U2 spy planes taking off from the supersecret "Site 98" outside Nellis Air Force Base in Nevada. Over the next seven years at least 26 other such domestic spy flights by U2s and at least two involving the more advanced SR-71 were requested by Army commanders and flown by the Air Force, according to classified documents.

violence that summer. The outlines included maps with all "sensitive areas" marked, landing

SIDEBAR

Carmichael's violent words fed Army fears of urban guerrillas

By Stephen G. Tompkins
THE (MEMPHIS) COMMERCIAL APPEAL

In early May 1967, Army intelligence microphones hidden in the Student Nonviolent Coordinating Committee offices in Atlanta recorded SNCC co-chairman Stokely Carmichael discussing an armed revolt by black Americans.

Mr. Carmichael: We'd learn a

lot from studying [Che] Guevara's tactics. But baby, we gotta have the guns and stuff to do the damage. The man don't understand till you aim at his head. [Argentine-born Guevara was Cuban strongman Fidel Castro's top lieutenant and wrote an influential book on guerrilla warfare.]

SNCC employee George Ware: Yeah, well, where you gonna get it?

Mr. Carmichael: South, south of here.

On May 5, Mr. Carmichael distributed a secret report to SNCC members. Army intelligence obtained a copy of the seven-page document, titled "Report From the Chairman." It said in part:

"Around the world and particularly in the Third World, we are looked to as the organization

inside the United States who is ready to lay the foundation for a revolution. . . . We must then be prepared to wage a fight against this country inside the country."

Army intelligence saw the report and the taped conversation as evidence of Mr. Carmichael's willingness to turn to violence and possible foreign influence.

Later evidence would hurt not only Mr. Carmichael but Dr. Martin Luther King Jr. as well. Army agents photographed and recorded Dr. King and Mr. Carmichael in meetings.

After Dr. King's speech at New York's Riverside Church on April 4, 1967, Mr. Carmichael encouraged a black audience in St. Petersburg, Fla., on April 18 to support Dr. King's stance on Vietnam.

But the most damaging piece of secret information came from Mexican army intelligence.

Mexican agents uncovered in May 1967 a plot led by Javier Fuentes Gutierrez, head of the Mexican Communist Party, to establish a "socialist regime" within Mexico.

Mr. Gutierrez and his cohorts were financed by Hsinhua (now spelled Xinhua), the Chinese Communist press agency, which Mexican intelligence discovered was a front for the Chinese Ministry of State Security, China's CIA.

Mr. Gutierrez's followers already had dynamited a Mexican army truck and were seeking rifles and mortars from arms dealers.

But more important to U.S. Army intelligence, the Mexicans revealed Mr. Gutierrez was a top organizer of the Havana-based Organization of Latin American Solidarity (OLAS) — another

group that received Chinese funding.

OLAS not only helped finance Mr. Gutierrez's activities but had set up a terrorist training camp in the jungles of Chiapas in southern Mexico.

Black Americans had been seen training at the camp.

On July 19, Mexican troops raided the Chiapas camp and snatched a large cache of automatic rifles, grenades and machine guns.

According to still classified Army intelligence files, the AK-47 rifles eventually were traced from gunrunner Kenneth G. Burnstine of Miami to gun dealer Mitchell Livingston WerBell III of Atlanta, a former OSS agent who ran his own paramilitary training camp on a 60-acre farm in Powder Springs, Ga.

Mr. WerBell supplied military weapons to anybody with the cash to pay for them. Mr. WerBell also had key contacts throughout the Caribbean.

Mr. Carmichael was photographed talking to one of those contacts — Marti Tellez — in the Havana Libre Hotel on July 27. Mr. Tellez, a former Haitian army captain, flew contraband for Mr. Burnstine's Miami-based Florida Atlantic Airlines.

A Cuban agent working for the CIA took the picture, and a report on the meeting was forwarded to Army intelligence.

"These [OLAS] are radical Communist revolutionaries who advocate militant and coordinated guerrilla warfare throughout the Americas," according to an analysis of the meeting based on CIA reports.

On Aug. 2, five days after meeting with Mr. Tellez, Mr. Carmichael said he would lead

an armed revolt against his homeland.

Mr. Carmichael then threatened President Lyndon B. Johnson, Secretary of Defense Robert McNamara and Secretary of State Dean Rusk.

"We are not waiting for them to kill us. We will kill first and we will settle the score," Mr. Carmichael said.

On Oct. 10, Army intelligence sent a report to Army Chief of Staff Harold Johnson that Mr. Carmichael and his SNCC colleagues were calling for "Negroes to arm themselves in preparation for guerrilla warfare."

In January 1968, as Dr. King was drumming up support for his planned march on Washington, Mr. Carmichael was in Hanoi, the capital of North Vietnam. In February, he met with Dr. King in Washington. Dr. King was killed two months later in Memphis.

In March 1975, Mr. Burnstine was convicted by Florida authorities of masterminding a \$50 million-a-year drug smuggling operation in South America and Mexico. A year later, his World War II-era airplane, a P-51 Mustang, blew up while he was competing in an air show.

In 1974, Mr. WerBell was subpoenaed to testify before the Senate Permanent Subcommittee on Investigations. The committee was looking into financier Robert Vesco's efforts to sell and manufacture automatic weapons in the Caribbean. Mr. WerBell invoked the Fifth Amendment to every question asked by subcommittee investigator Philip R. Manuel.

Mr. WerBell died of a heart attack in 1983. Testimony in a Los Angeles courtroom later that year said Mr. WerBell had been poisoned.

Spying report shocks King associates

By John Blake
and Dennis McCafferty
STAFF WRITERS

Allegations that the U.S. Army spied on the late Dr. Martin Luther King Jr. and three generations of his family with everything from U-2 spy planes to Green Beret commando teams shocked Dr. King's son and some of his former associates Sunday.

Martin Luther King III, a Fulton County commissioner, said people regularly tell him about elaborate plots against his father, but that this is a new one.

Mr. King said he had heard that the FBI and CIA routinely spied on his father, but he never suspected the latest allegations, which were ferreted out by The (Memphis) Commercial Appeal.

"The FBI was common knowledge, and maybe the alleged involvement of the CIA, but when it comes to an extensive military intelligence operation with Green Berets and U-2 planes, that's frightening," Mr. King said.

Former Atlanta Mayor Andrew Young, one of Dr. King's closest associates in the civil rights movement, also was surprised.

"It was kind of sad," he said. "This is the first time I've heard about the Army. . . . It just shows that the level of racial sickness was pretty deep in some circles."

The Commercial Appeal reported that the Army started spying on Dr. King in 1947, when he was a student at Morehouse Col-

lege in Atlanta, and continued until his assassination in 1968.

In fact, the spying on the King family began in 1917, when the Army opened a file on Dr. King's maternal grandfather, the Rev. A.D. Williams. The military later spied on Dr. King's father, the Rev. Martin Luther King Sr.

The newspaper reported that the Army considered Dr. King a major national security threat who could spark an armed revolt in the streets.

The Army had a Green Beret team in Memphis on an "unknown mission" when the civil rights leader was gunned down, the newspaper reported.

"We've known, of course, the FBI was doing it," said Ralph Luker, an associate editor with the Martin Luther King Papers Project, jointly based in Atlanta and at Stanford University in California. "We've known that for years. But it's disturbing to know that agencies which are funded by taxpayers were intruding on the lives of taxpayers."

Mr. Young said Dr. King and his staff knew they were constantly monitored by the FBI, the CIA and the Ku Klux Klan. But Mr. Young said they had nothing to hide and routinely told the U.S. Justice Department of their plans for non-violent civil rights campaigns.

"Our feeling was nobody could stop us so long as we remained non-violent," Mr. Young said.

The newspaper said the Army also spied on Stokely Carmichael, the militant leader of the Student Nonviolent Coordinating Committee in the 1960s. Army intelligence reportedly believed that Mr. Carmichael, now known as Kwame Ture, was trying to start a black guerrilla war in America.

Reached Sunday in New York, Mr. Ture said he knew as far back as 1967 that the Army spied on him and Dr. King. But he said allegations that he planned an armed revolution in the streets, and once threatened President Lyndon B. Johnson's life, were "taken out of context."

"They lied all the time, so they could get money from Congress and chew up the taxpayers' money," Mr. Ture said.

David Garrow, who wrote about the FBI's surveillance of Dr. King in his 1981 book "The FBI and Martin Luther King," laughed out loud when he heard the new allegations.

Mr. Garrow said he has seen many of the Army's intelligence files on Dr. King firsthand and that they are not as sinister as the newspaper article indicated.

"It was one step up from a clipping operation," Mr. Garrow said. "The guys in the intelligence command were 25-year-old, brand-new ROTC commanders whose jobs were to collect information from cops and local newspapers as to what would happen next."

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

1783

March 25, 1993

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT BELL *RB*

FROM: KEITH HAHN *KH*

SUBJECT: Significant Military Exercise VIGILANT OVERVIEW
93-2

Attached at Tab I is a proposed memorandum to the Executive Secretary, Department of Defense, approving military exercise VIGILANT OVERVIEW 93-2. At Tab II Defense recommends approval and State concurs.

VIGILANT OVERVIEW 93-2 is a CINCNORAD sponsored command post exercise designed to exercise NORAD response capabilities in a number of hypothetical scenarios. It is scheduled to take place April 12-21 and will involve approximately 1400 U.S. and 700 Canadian personnel.

The critical cancellation date is April 1, 1993.

Concurrence by: Barry Lowenkron *BL*

RECOMMENDATION

That you sign the memorandum at Tab I approving the exercise.

Attachments

Tab I Memorandum for Signature

Tab II OSD Executive Secretary Memorandum, March 22, 1993

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By *VL* NARA, Date *8/23/2016*
276-0152-7

~~SECRET~~

Declassify on: OADR

~~SECRET~~

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

MEMORANDUM FOR COL. MICHAEL B. SHERFIELD
Executive Secretary
Department of Defense

SUBJECT: Significant Military Exercise VIGILANT OVERVIEW
93-2

Military exercise VIGILANT OVERVIEW 93-2 is approved.

William H. Itoh
Executive Secretary

~~SECRET~~

1783



OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, DC 20301-1000

20 MAR 1993

MEMORANDUM FOR EXECUTIVE SECRETARY, NATIONAL SECURITY COUNCIL

SUBJECT: Significant Military Exercise - VIGILANT OVERVIEW 93-2

The Department of Defense recommends NSC approval of the attached Significant Military Exercise Brief, Exercise VIGILANT OVERVIEW 93-2. The Department of State concurs with this recommendation.

Please note the critical cancellation date is 1 April 1993.

A handwritten signature in cursive script, reading "Michael B. Sherfield", is positioned above the printed name.

Michael B. Sherfield
Executive Secretary

Attachment:
As stated

This memorandum is UNCLASSIFIED without its attachment.

Sec Def Com Nr. X61108

~~SECRET~~

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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002. cable	re: Part I Significant Military Exercise Brief. (2 pages)	02/10/1993	P1/b(1)
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COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 43

FOLDER TITLE:

Chron File - March 1993 #2 [4]

2016-0152-F
vz4370

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]