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Remember Dr. King—and What He Endured

Annual celebrations of the life and work of Reverend Dr. Martin Luther King, Jr. often lionize the civil rights era, rightfully focusing on its achievements.

For 40 years, FBI Director J. Edgar Hoover presided over a reign of intimidation and terror across Washington.

But celebrations often overlook the federal government's attempts to “neutralize” the movement. While we remember Dr. King's many achievements today, we also must remember the [documented and unfounded vilification](#) by U.S. intelligence agencies that he, and others in the civil rights movement, endured.

As our nation approaches a new administration, led by a president-elect whose rhetoric has shown [little respect for constitutional limits](#) on executive power and armed with an entrenched surveillance state, that experience offers [a prescient warning](#).

A movement in Memoriam

The emergence of the [civil rights movement](#) in the 1960s, its triumph over hate to establish desegregation and secure procedural voting rights, and the narrative of interracial struggle for justice—all reflect an inspiring legacy of a grassroots movement that aspired to hold America true to our founding values. As [Dr. King succinctly exhorted](#), the movement called on America to "Be true to what you said on paper."

The movement was subjected to brutal violence, both by the [assassination of its leaders](#) and by the daily [brutality of police and vigilantes](#) reacting to the desegregation of public institutions. Dozens of civil rights activists from various backgrounds were [murdered](#) during this era, alongside hundreds—if not thousands—of African-Americans as young as 14 year-old [Emmitt Till](#) and 11 year-old [Denise McNair](#), whose church in Alabama was bombed by extremists using violent terror to oppose racial integration.

The risks confronting supporters of civil rights grew so acute that the Supreme Court in 1958, in [NAACP v. Alabama](#), granted members of organizations the right to anonymity under the association clause of the First Amendment. EFF cited that decision 55 years later, when we filed [First Amendment Challenge to NSA](#) to challenge the contemporary mass surveillance regime (which we have fought in court [since 2008](#)) that turned the right to anonymity on its head.

Violent state suppression of speech

Throughout Dr. King's life, and for a decade ([if not longer](#)) beyond it, the FBI pursued what members of the U.S. Senate in 1976 described as "[a sophisticated vigilante operation](#) aimed squarely at suppressing...First Amendment rights of speech and association." Those operations, described in internal FBI files as COINTELPRO, have been forgotten by many Americans, but represent a key to understanding why the specter of mass surveillance threatens not only privacy, but [also democracy](#).

For 40 years, FBI Director J. Edgar Hoover presided over a [reign of intimidation and terror](#) across Washington. Under his tenure, the FBI [blackmailed members of Congress](#), and infiltrated organizations seeking everything from international peace to [equal rights for women](#).

The Bureau's aim was not to guard national security from any external threat, but instead to "[neutralize](#)" constitutionally protected domestic dissent and people using their rights—including Dr. King. In addition to bugging his hotel rooms, monitoring his movements, and recording his liaisons, the FBI also tried to break up Dr. King's marriage and [attempted to prompt his suicide](#).

Many Americans reacted to [seemingly politicized FBI disclosures](#) in the days before the 2016 presidential election with surprise. But the FBI has embroiled itself in partisan controversies since its very origins. From the [Palmer Raids](#) through the [McCarthy era](#), from the [Green Scare](#) to its infiltration of [labor](#)

[organizing by farm workers](#), the FBI has a long history of investigating and undermining constitutional rights in the context of political movements.

Under Hoover's direction, the FBI achieved its written goal: the "neutralization" of domestic social groups speaking out to advance their views as protected by the First Amendment. Hoover's FBI achieved its goals with a fraction of the budget, staff—and none of the computing power—of the FBI today.

Continuing abuses

The story of the FBI's [Next Generation Initiative](#) provides a compelling example of how the Bureau's access to technology has increased its ability to undermine rights in secret. Starting by collecting biometric data of arrestees from local police departments around the country, originally for the stated purpose of [identifying undocumented immigrants](#) with criminal records eligible for fast track deportation proceedings, the FBI has built a fully operational facial recognition database including [over 400 million records](#) including biometric data of [over 115 million Americans](#).

The Bureau's aspiration to build a comprehensive biometrics database was kept secret for years, and became public knowledge only after a federal court in 2013 [forced disclosure](#) of previously secret documents. Even after its plans became public, the FBI continued to [resist legal restraints](#), lobbying for exemptions to federal privacy requirements.

The FBI's biometrics bait & switch is hardly unique. The Bureau played fast and loose with the facts again when claiming in 2016 that national security required it to [force Apple to create a hack](#) for a device platform that would place the security of [millions of users](#) at risk. Then, as now, [encryption keeps us safe](#)—whether from despotic regimes abroad (or at home), thieves, foreign state intelligence agencies, or the prying eyes of a neighbor. EFF was glad to see Apple choose user privacy over the ill-considered demands of intelligence agencies, and filed [an amicus brief](#) in support of Apple's position, noting how the [FBI's demands violated the First Amendment](#) in multiple ways.

Beyond hiding its biometric tracking scheme and trying to co-opt device manufacturers, the FBI has also helped extend secret surveillance across and throughout the U.S. For a decade, police departments around the U.S. deployed [cell-site simulators](#) (also known as IMSI-catchers or Stingrays) to spy on local cell phone networks [without public oversight](#).

Only after [a jailhouse lawyer discovered](#) how the device had enabled authorities to identify him did the public learn about these devices, the [latest versions](#) of which are so powerful that they can hack phones, deny service, or plant malware on a device. While [half a dozen states](#) and the [federal Department of Justice](#) now require police to secure a judicial warrant before using a cell site simulator, only [one state prohibits their offensive use](#).

Throughout the decade that local police kept Stingrays secret from policymakers, they did so at the behest of [FBI agreements](#) that required them to do so. The FBI imposed secrecy not only from the public, but even from judges. In multiple jurisdictions, [FBI demands forced prosecutors](#) to abandon cases rather than disclose to courts the origins of their evidence as required by Due Process principles.

The FBI also conducts its own surveillance activities, using powers including [National Security Letters](#) (NSLs) that have long been [predictably abused](#) behind walls of secrecy. We are proud to have [challenged](#) NSLs on behalf of organizational [clients](#) who recently [revealed](#) themselves after years of complying with illegitimate government gag orders that prevented them from [informing Congress and the public](#) about their experience.

Will past prove prologue?

Many have voiced concerns that the FBI's entrenched intelligence apparatus could [expand under president-elect Trump](#). Even more dangerous is the specter of its potential politicization, given Trump's campaign statements reflecting his seeming [eagerness](#) to use state intelligence to advance his own political ends.

If politicized, surveillance can insulate a system from accountability from critics and dissidents. That's why the values offended by surveillance extend beyond privacy to also include [dissent](#) and [democracy](#).

Communities organized around any number of pursuits—from advocacy to social services, recreation to religious practice—could find their opportunities dramatically diminished in an era when supporters must risk the ire of the state should they raise their voice.

Put another way: as long as the mass surveillance regime is available for the next (or any) administration to abuse, [democracy hangs in the balance](#). The system has

already been abused by individual agents and contractors to, for instance, spy on their ex-wives and lovers. They may be the canaries in the coal mine. The continuing potential for recurring abuse poses a threat to our entire political system.

A crucial opportunity

Against this backdrop, Congress enters 2017 with a critical deadline looming before it. A statutory pillar of the NSA and FBI's mass surveillance powers, Section 702 of the Foreign Intelligence Surveillance Act, is scheduled to expire at the end of the year. If Congress does nothing, the legal basis for the NSA's PRISM and Upstream collection programs (from which raw, unfiltered data became available to the FBI in the waning days of the Obama administration) will expire on December 31.

In years past, Congress has responded to reauthorization deadlines facing surveillance powers in a predictable pattern. After ignoring its oversight responsibilities for years, as the eleventh hour approaches before intelligence powers near their expiration, members cite national security concerns as a basis to ignore not only the need to conduct any oversight but also constitutional limits on executive power.

Congress has repeatedly extended executive surveillance powers without either determining whether they have actually helped security or how much they have undermined democracy by inhibiting participation in the political process. That pattern is poised to recur under the next administration.

Americans who share a stake in democracy can intervene to prevent these horrors by raising our voices in concert. United resistance has derailed congressional consensus in the recent past, and also driven crucial (if incomplete) policy reform in 2015 when Congress enacted the USA Freedom Act.

To fully honor Dr. King's legacy, we must bear witness not only to his courage, but also his vision, as well as his sacrifice. Rather than represent a comforting historical figure to assuage America of the burden to realize our founding values in practice, his example should sound a clarion call to resistance, a renewed commitment to hold America "true to what We said on paper."

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