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J. DeLoach

C. Casper

OGC Has Reviewed

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Responsibilities of the Director with Respect
to Investigating Possible Federal Crimes of
Agency Employees

1. This memorandum is for information only and is in response to your request for information on this subject.
2. The authority of a department or agency head to investigate any charge or suspicion of wrongdoing on the part of any of its employees is inherent in his authority and responsibility to operate his agency and to perform his mission. Basically this would be an administrative investigation to determine if there is any reason to believe there has been a violation of Federal law which would then be referred to Justice for further action. Further, by these means, an agency head determines upon appropriate disciplinary action if warranted. The Director of Central Intelligence, in addition, has the statutory responsibility for protecting intelligence sources and methods from unauthorized disclosure, which includes responsibility to determine and investigate situations involving possible disclosure.
3. Under Section 311a of Title 5 of the U. S. Code, the Attorney General and the Federal Bureau of Investigation have authority to investigate any violation of the U. S. Criminal Code involving Government officers and employees. The statute confers this authority, notwithstanding "any other provision of law, and without limiting the authority to investigate any matter which may have been" conferred upon any other department or agency. The statute further provides that any information received in a Government agency relating to violation of Federal law by Government employees shall be expeditiously reported to the Attorney General. Generally, administrative investigations by agencies of their employees which turn up indications of possible violation of Federal law is the first step and it is then reported to the Department of Justice.

4. The inherent authority and responsibility of an agency head and the specific statutory responsibility of the Department of Justice and the FBI are overlapping and, theoretically, could be in conflict. In practice, however, with the specific statutory responsibility running to Justice and the FBI, if they are conducting active investigations, the employing agency would be requested to desist from actions or investigations which possibly would alert the employee to the fact of an investigation. Certainly, there is no statute requiring the Director of Central Intelligence to proceed with an investigation of an Agency employee simultaneously with an FBI investigation. On the other hand, we do not believe that the Director would be negligent in the discharge of his responsibilities by complying with the Bureau request to desist from an Agency investigation pending completion of an FBI investigation. The one exception in this regard would be the case where protection of intelligence sources and methods were indicated, but as we understand the situation this is not present in the current case. Were such factors present, this is a matter that would have to be examined in the light of the facts as they existed to work out appropriate actions with Justice and the FBI.

5. This situation has been discussed with a representative of the Criminal Division of the Department of Justice, whose views are in accord with the above. He stated that their concern is that actions by an employing agency potentially could lead the employee to take steps which might seriously hamper the FBI investigation and the possibility of successful prosecution. The Justice Department representative also advised that where possible without alerting the employee, arrangements are made to assign the employee to other duties while the FBI investigation is in process. Further, the Department of Justice attempts to work closely with the departments, so as to put the employing department in a position to issue a press release or to terminate or suspend or take other appropriate action at the time of indictment or other public action by the Department of Justice.

6. In summary, Justice and FBI have primary responsibility by statute for investigation of violation of Federal law by government employees. Where the FBI is investigating such matters and

requests the employing agency to desist from investigation, there is no statutory requirement for the agency head to investigate administratively nor would such agency head be in dereliction of his legal responsibilities by complying with the FBI request.

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Acting General Counsel

cc: Inspector General