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From the Desk of Robert D. Caudle
C/Litigation Division

NOTE FOR: Robert M. McNamara@DCI
FROM: Robert D. Caudle
OFFICE: DCI/OGC
DATE: 02/23/99 10:45:30 AM
SUBJECT: Telcon with DOJ/Civil Rights Division attorney Barry Kowalski re MLK investigation

Law Enforcement Sensitive.

Administrative Immunity: After our meeting with the D/EXDIR yesterday evening, I called Barry Kowalski and informed him that CIA could not "sight unseen" include administrative immunity as part of an immunity package for DOJ to offer the employee. I explained that although CIA has no expectation that any additional information will arise from another interview of the employee by DOJ, we have to preserve the ability to adjudicate suitability for continued access to classified information on the facts as they arise. Barry accepted this rationale and advised that he would not take our decision up his chain of command. He said that he hoped to meet with the employee again soon, and asked for our concurrence in two areas:

a. It would be up to the employee whether CIA/OGC would participate in the interview. I concurred in this position, as it has always been the employee's choice whether to include OGC in such matters.

b. Barry's approach to the employee will be that it is DOJ's goal to remove whatever impediment there may be to the employee being completely truthful and forthcoming with DOJ. To achieve that goal, if the employee has any concerns about criminal liability, or his job, DOJ is prepared to work with him to resolve those concerns. If the employee then raises a specific concern relating to his CIA employment, Barry would then develop that concern with the employee to the extent possible and bring any new facts back to CIA for reconsideration.

After talking with Dawn, I agreed to this approach so long as Barry made it clear that he had no authority to commit CIA to any particular position. I also made it clear that CIA would have to have a factual proffer before it could reconsider its position not to offer administrative immunity; that is, we would have to know what the facts are before we could decide.

New information about criminal immunity offer: Barry also provided additional information about the immunity DOJ would offer to the employee. DOJ will offer transactional immunity for any 18 USC 1001 violation for false statements in connection with any official investigation of the MLK matter. With regard to the underlying 1968 events, DOJ feels any statute of limitations has long run on any federal criminal offense, but would offer use immunity for a state court prosecution that may theoretically survive any statutes of limitation. He also said that the investigation is being conducted under an old DOJ opinion (authored by Scalia when he was at DOJ) that the AG's authority to investigate relates not only to the prosecution of crimes but the detection of crimes. The investigation being conducted is to "detect" criminal activity - the end game is a report, not a prosecution.

CC: Dawn R. Eilenberger@DCI

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