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MEMORANDUM OF UNDERSTANDING

Procedures for Reporting Violations of Federal Law as Required by 28 U.S.C. § 535

1. Taking cognizance of the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure and taking note of the security problems of the CIA, I hereby establish the following procedures by which CIA shall report violations of Federal law as required by 28 U.S.C. § 535 and Executive Order 12036. This Memorandum of Understanding is issued pursuant to authority conferred by 28 U.S.C. § 535(b)(2) and E.O. 12036, §§ 1-706, 3-305, and supersedes any prior agreements or guidelines.

2. When information or allegations are received by or complaints made to the CIA that its officers or employees 1/ may have violated a Federal criminal statute, CIA shall conduct a preliminary inquiry. Such an inquiry, normally conducted by the Office of the Inspector General or Office of Security and reviewed by the Office of General Counsel, will determine if there is any basis for referral of the matter to the Department of Justice. The inquiry will not, however, seek to establish all necessary elements of the possible violation as a precondition to reporting the matter to the Department of Justice expeditiously.

3. If, as a result of this preliminary inquiry, there is a basis for referral to the Department of Justice and CIA desires to conduct a more extensive investigation for administrative or security reasons, it will so inform

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1/ For the purposes of this memorandum, the phrase "CIA officers and employees" includes all persons defined as employees by E.O. 12036, § 4-204. It also includes a former officer or employee (a) when the suspected offense was committed during his Federal employment and (b) when the suspected offense, although committed thereafter, is connected with his prior activity in the Federal service (see, e.g., 18 U.S.C. § 207).

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the Department of Justice to ensure that such investigations do not jeopardize the Government's criminal investigation or prosecution.

4. A basis for referral shall be deemed to exist and the matter shall be referred to the Department of Justice unless the preliminary inquiry establishes in a reasonable time that there is no reasonable basis for belief that a crime was committed. Referrals shall be made in the following manner:

(a) In cases where no public disclosure of classified information or intelligence sources and methods would result from further investigation or prosecution, and the security of ongoing intelligence operations would not be jeopardized thereby, the CIA will report the matter to the cognizant office of the Federal Bureau of Investigation, other appropriate Federal investigative agency, or to the appropriate United States Attorney or his designee for an investigative or prosecutive determination. 2/ CIA officers or employees who are the subjects of such referrals to any component of the Department of Justice may be identified as John Doe # _____ in any written document associated with the initial referral. The true identities of such persons, however, will be made available when the Department determines such to be essential to any subsequent investigation or prosecution of the matter so referred.

A record of such referrals and the action subsequently taken to dispose of the matter shall be maintained by the CIA, and on a quarterly basis, a summary memorandum indicating the type of crime, place and date of referral and ultimate disposition will be forwarded to the Assistant Attorney General, Criminal Division, or his designee. Referrals made by CIA covert facilities to United States Attorneys,

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2/ This reporting requirement applies to all matters except cases involving bribery or conflict of interest, which shall be directly referred to the Criminal Division.

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the FBI or other Federal investigative agencies will also be included in the quarterly report with due regard for protection of the security of said installations.

(b) In cases where preliminary investigation has failed to develop an identifiable suspect and the CIA believes that investigation or prosecution would result in public disclosure of classified information or intelligence sources or methods or would seriously jeopardize the security of ongoing intelligence operations, the Criminal Division will be so informed in writing, following which a determination will be made as to the proper course of action to be pursued.

(c) In cases where preliminary investigation has determined that there is a basis for referral of a matter involving an identifiable CIA officer or employee to the Department of Justice, the future investigation or prosecution of which would result in the public disclosure of classified information or intelligence sources or methods or would seriously jeopardize the security of ongoing intelligence operations, a letter explaining the facts of the matter in detail will be forwarded to the Criminal Division. A separate classified memorandum explaining the security or operational problems which would result if the information needed to prove the elements of the offense were made public or which could result from a defense request for discovery under Rule 16 of the Federal Rules of Criminal Procedure shall also be forwarded to the Criminal Division, if requested. Such officers and employees may be designated as John Doe # _____ under the conditions and limitations set forth in paragraph 4(a), above.

In reporting such matters, the CIA shall inform the Criminal Division of the steps it has taken to prevent a recurrence of similar offenses, if such action is feasible, as well as those administrative sanctions which may be contemplated with respect to the prospective criminal defendant.

The Criminal Division, after any necessary consultation with CIA, will make a prosecutive determination, informing the CIA in writing of such determination.

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5. The CIA may take appropriate administrative, disciplinary, or other adverse action at any time against any officer or employee whose activities are reported pursuant to this Memorandum of Understanding, but shall coordinate such actions with the appropriate investigative or prosecutive officials to avoid prejudicing the criminal investigation or prosecution.

6. While requiring reports to the Criminal Division to be in writing, the nature, scope and format of such reports may vary on a case-by-case basis depending upon an assessment by the CIA and Criminal Division of the nature of the matters which are being reported. Matters not readily resolved by reference to the foregoing guidelines will be handled on a case-by-case basis, as the need may arise, consistent with the provisions of 28 U.S.C. § 535 and E.O. 12036.

7. The Director of Central Intelligence, whenever he believes security or other circumstances warrant, may make a direct referral to the Attorney General of any matters required to be reported pursuant to this Memorandum of Understanding, in lieu of following the reporting procedures set forth herein.

Date: July 8, 1978

Griffin B. Bell
Griffin B. Bell
Attorney General

Date: 11 SEP 1978

/s/ Stansfield Turner
Stansfield Turner
Director
Central Intelligence Agency

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