

AGENDA DOCUMENT NO. 13-21-J



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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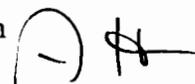
June 26, 2013

AGENDA ITEM

MEMORANDUM

For Meeting of 6-27-13

TO: The Commission Secretary

FROM: Anthony Herman
General Counsel 

SUBMITTED LATE

SUBJECT: Proposed MOU Between the Commission and DOJ

Attached is the March 3, 2006 memo from Lawrence H. Norton to the Commissioners regarding the proposed MOU between the Commission and DOJ. The Commission has requested the document be placed on the agenda for June 27, 2013.

Attachment



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 3, 2006

MEMORANDUM

TO: The Commissioners

FROM: Lawrence H. Norton *LHN*
General Counsel

James A. Kahl *JK*
Deputy General Counsel

Rhonda J. Vosdigh *RJV (by me)*
Associate General Counsel for Enforcement

SUBJECT: Proposed MOU Between the Commission and DOJ

This memorandum sets forth the comments of the Office of General Counsel regarding a proposed Memorandum of Understanding (MOU) between the Commission and the Department of Justice (DOJ) that we received in January 2006. As addressed more fully below, we believe that several parts of this proposal would have to be modified or clarified before we would recommend its adoption by the Commission.

Background

Before addressing the proposal, a brief summary of the history of our negotiations with DOJ might be helpful. The existing MOU relating to enforcement matters dates back to 1977. (Attachment A) This brief agreement acknowledges the Commission's exclusive jurisdiction in the civil enforcement of FECA, establishes a framework for the two agencies with respect to the discharge of their respective responsibilities, and outlines circumstances warranting the referral of matters between the two agencies. The MOU does not, however, dictate the nature of the working relationship between the agencies in each matter that has civil and criminal implications.

The most recent efforts by DOJ and the Commission to negotiate a new MOU date back to the latter part of 2003. A dialogue between the two agencies began at that time, and the Commission and DOJ exchanged drafts of proposed revisions to the MOU in May of 2004. (Attachments B & C) Representatives of the two agencies subsequently met in June and September 2004 to discuss their respective drafts. While both agencies

have acknowledged the benefits of cooperation in carrying out enforcement responsibilities, the respective drafts reflected different approaches.

In our first discussion in June 2004, DOJ stated its view that the Commission should hold a matter in abeyance whenever so requested by DOJ. This, DOJ argued, would reflect the choice that Congress purportedly made in BCRA to give priority to the criminal prosecution of knowing and willful conduct above certain dollar thresholds. In our view, as explained more fully below, the Act, as amended by BCRA, contemplates no abeyance policy of this sort. BCRA did not alter the statutory grant of exclusive jurisdiction with respect to civil enforcement of the FECA, the Commission's discretionary reporting power, the deference due conciliation agreements in criminal proceedings, or the Commission's responsibility for interpreting the Act and formulating policy with respect to it.

Although the lack of a more current MOU has not, from our perspective, been an impediment to improved cooperation with DOJ, we have viewed these discussions as an opportunity to develop an MOU that defines the agencies' roles and establishes a framework for collaboration, while leaving appropriate flexibility for judgment and discretion in the exercise of our respective duties. To this end, our draft attempted to describe more clearly the emphases of our respective enforcement programs and highlight approaches for cooperation, particularly noting that our statutory authorities contemplate that enforcement may proceed simultaneously. If we accomplish that, we told DOJ we would be willing to recommend that the Commission look anew at its long-standing interpretation that Sections 437g and 437d(a)(9) do not allow referral of FECA violations prior to a finding of probable cause to believe. As we understood it, this reinterpretation would remedy a substantial frustration. The agencies agreed to further analyze the drafts and meet again.

At the meeting in September 2004, it was agreed that the Commission's draft would become the working document and DOJ would propose revisions to that document. Those revisions were received in January of this year, when the latest DOJ draft was delivered to us. (Attachment D)

Summary of the DOJ Proposal

DOJ's January proposal incorporates parts of the initial drafts that the two parties exchanged in May 2004. The first twelve paragraphs are drawn from the Commission's document – mostly hortatory language addressing the opportunities for, and mutual benefits of, cooperation and joint investigations. The following nine paragraphs, which are largely taken from the DOJ's draft, mandate the referral of certain matters to DOJ and, to varying degrees, vest DOJ with the authority to direct the course and timing of the Commission's enforcement efforts. These latter paragraphs are of greatest concern to us, and they raise issues that fall into two broad categories: 1) the obligations of the agencies in regard to the referral of matters, and DOJ's ability, if any, to control the Commission's civil processing of matters it refers to DOJ; and 2) the obligations of the agencies in regard to the settlement of cases.

A. Referral and Processing

The DOJ proposal greatly limits its obligation to refer matters to the Commission. DOJ will only refer to the Commission matters DOJ does not want to pursue or over which it does not have jurisdiction. (Paragraph 13) In contrast, the Commission is required to report to DOJ any potential knowing and willful violations of FECA (and potential violations of other statutes), regardless of where in the Commission's investigative process the potential violations become apparent.¹ The result of these two provisions is that the potential universe of cases as to which DOJ might consider for joint or parallel investigations is limited to cases we refer to them.

While the DOJ draft is not clear, it might even be DOJ's position that it will determine which agency takes action and when with regard to cases we refer or report to DOJ. Paragraph 16 says that as to referral cases, DOJ will "make a determination" as to whether it should pursue a criminal investigation or whether it should be referred back to FEC. Whatever this means, it does not seem to contemplate joint action, and it could be interpreted to mean that DOJ reserves the right to direct the Commission to delay its action on a matter while DOJ pursues a criminal case.

In addition, the DOJ proposal requires that whenever the Commission develops or receives evidence of a false statement of material fact, the particulars of that false statement will be reported promptly to DOJ. Moreover, as to these offenses, the DOJ proposal clearly requires the Commission to hold its administrative matters in abeyance when so directed by DOJ. Paragraph 21 states that the Commission agrees to follow such guidance as DOJ may provide with respect to the "course and timing" of the Commission's administrative proceeding during the period when the criminal matter is pending with DOJ.

The abeyance provisions of the proposal present the Commission with both legal and practical problems. As a preliminary matter, they give no weight to Congress's mandate that "the Commission shall have *exclusive* civil jurisdiction with respect to the civil enforcement of" the Act, and chapters 95 and 96 of Title 26, U.S. Code. 2 U.S.C. 437c(b)(1) (emphasis added). In contrast to this provision, the Act contains no language making the Commission's exercise of that jurisdiction dependent in any way on the potential for, or pendency of, parallel criminal proceedings. Treating the Commission's jurisdiction in that manner would necessarily undermine the Congressional grant of exclusivity. More practically, Section 437g(d)(2) permits criminal defendants to use a conciliation agreement entered into with the Commission to evidence a lack of knowledge or intent. Furthermore, Section 437g(d)(3) *requires* courts in criminal cases

¹ Under FECA, the Commission's reporting obligations are discretionary. Pursuant to 437g(a)(5)(C), when the Commission determines that there is probable cause to believe that a knowing and willful violation of FECA has occurred, it "may refer" such an apparent violation to the Attorney General. Pursuant to 437d(a)(9), the Commission "has the power" to "report apparent violations" to the appropriate law enforcement officials. The Commission has historically interpreted this latter provision to apply only to non-FECA violations.

"to take into account, in weighing the seriousness of the violation and in considering the appropriateness of the penalty to be imposed if the defendant is found guilty," whether the same act or failure to act is the subject of a conciliation agreement with which the defendant is in compliance. These situations can only arise if the Commission completes its civil enforcement proceeding before DOJ completes its criminal prosecution. A mandate for the Commission to send all potential knowing and willful cases to DOJ, and hold matters in abeyance whenever so directed, would undercut this statutory requirement.

While we have agreed in many cases to delay the civil enforcement process pending action by DOJ, we are not able to do so in all cases. The investigatory demands of a case may dictate that we act without delay for many reasons. For example, the need to preserve evidence requires that we gather documents without undue delay. This is a particularly acute concern in the context of campaigns that by their nature have a limited life span. Similarly, it is important to reach out to witnesses while we know where they can be found and before memories fade. More generally, it is essential that the Commission have adequate time to investigate a matter, to engage in mandatory briefing and conciliation and, of course, to insure that the Commission can file suit, if necessary, before the statute of limitations expires. Deferring a civil investigation for an indefinite period while DOJ decides whether it wants to pursue it and, if it does, undertakes its own investigation, could lead to a situation where nothing is done about the matter. DOJ could decide, for any number of reasons, not to pursue the matter, to pursue only a small part of it, or to pursue different respondents, and the Commission could be left without adequate time to act on its own.²

Another issue raised by the proposal is whether holding a case in abeyance at the behest of DOJ would pose problems in an action under 437g(a)(8). That provision allows a complainant to file a petition in the U.S. District Court for the District of Columbia if the Commission fails to act on a complaint within 120 days of its having been filed. If the Commission were subject to a delay suit, it is highly unlikely that it could successfully defend the suit based on a "stand-down" provision in an MOU that we entered into voluntarily.

² It is worth noting that DOJ could take no action against a respondent whose conduct might be of great interest to the Commission. For example, in cases involving embezzlement from a committee, DOJ does not hold the committee accountable in any way for false or inaccurate disclosure reports that have been filed with the Commission. On the other hand, the Commission has found such committees to have violated the Act's disclosure requirements, and may consider seeking some penalty from the committees if a lack of internal controls contributed to the embezzlement. Further, where DOJ and the Commission are looking at matters involving the same respondents, there may not be a perfect overlap in the conduct at issue. In other words, waiting for DOJ to act will not necessarily ensure that everything the Commission would view as a significant violation will be addressed. DOJ would not, for instance, be able to seek relief for any non-knowing and willful conduct that may be part of the same course of conduct. Also, DOJ's focus may simply be different. For example, in one case in which a First General Counsel's Report is currently in progress involving MZM, Inc. and MZM PAC, DOJ recently announced one defendant's agreement to plead guilty to criminal violations of 2 U.S.C. 441f. However, the enforcement matter before the Commission contains allegations not merely of reimbursed contributions, but allegations of coerced and facilitated contributions, as well.

As a practical matter, DOJ's need for this abeyance authority is not evident. We are not aware of any case where prosecutors have complained to us that the Commission's simultaneous investigation has compromised a criminal investigation. To the contrary, there have been instances where parallel investigations have been mutually beneficial to the criminal and civil investigations. Indeed, we have forged cooperative relationships with a number of U.S. Attorney's Offices in which we have been able to lend our expertise in campaign finance law and exchange information that provides each of us with a fuller factual record. In a couple of recent instances, U.S. Attorney's Offices have taken the unusual step of obtaining from the court an order permitting the disclosure of Rule 6(e) information (bank records, in one case), that saved us substantial time.

Moreover, there have been times when knowing and willful conduct would never have been prosecuted by DOJ if not for the Commission's investigation. Recently, for example, the Commission received a complaint that was simultaneously filed with DOJ. (MUR 5384 -Never Stop Dreaming) The complaint alleged that two individuals, known as Bill Baulding and Jade Newhart of Never Stop Dreaming, Inc., had misrepresented themselves as acting on behalf of Gephardt for President, Inc. in connection with planning a fundraiser for that committee. The Commission found reason to believe that these respondents violated 2 USC 441h and authorized an investigation. Our investigation uncovered the real identities of the respondents – Blanche Dugatkin and William Dugatkin, individuals who had used several aliases and evaded service of the Commission's factual and legal analyses. [REDACTED]

[REDACTED]. While we were investigating the matter, it lay dormant at DOJ after the retirement of the FBI case agent. The new information we uncovered rekindled DOJ's interest in the matter. Thereafter, we worked closely with DOJ, and the Dugatkins were criminally prosecuted for fraudulent solicitation.

In reviewing the referral and abeyance aspects of the proposal, we are also struck by how much they differ from the MOUs executed by other enforcement agencies, including DOJ. Those agreements, like the Commission's original proposal, focus on cooperation in joint or parallel investigations. To our knowledge, however, other civil law enforcement agencies that have overlapping jurisdiction with DOJ are not required to, and do not in practice, notify DOJ in every case where there may be criminality and agree to hold such cases in abeyance at the request of DOJ. The scope of the referral obligation in the proposal is particularly striking in regard to false statements. We encounter witnesses who are not truthful on a regular basis, and it is our practice to recommend that the Commission send the most serious of such matters to DOJ. A blanket requirement to refer every matter where there may be a material false statement would quickly result in a large number of reports to the Commission and referrals to DOJ, affecting the discharge of our statutory obligations and the effective management of our cases.

Finally, the referral requirements of DOJ's proposal may well have an impact on self-referrals by respondents (i.e., "sua spontes"). Many of these matters come to us from

companies that discover violations and want to come clean with the Commission, rather than risk being found out at some later time. In exchange for full cooperation and effective remedial relief, including payment of an appropriate penalty, we are typically willing to recommend that the Commission forego knowing and willful findings or an admission to that effect. An MOU that requires the Commission not only to refer all knowing and willful matters to DOJ, but also to stand down until DOJ decides whether to "refer" the matter back, may discourage the reporting of these matters in the first place.

B. Settlements

Paragraphs 22 through 24 of the proposal concern the settlement of civil and criminal matters, and underscore the benefits of global settlements that simultaneously resolve related criminal and civil violations of FECA. (Paragraph 22) If a defendant requests a global settlement, DOJ commits to work with the Commission to determine if such a settlement is possible. (Paragraph 24) In all other instances, DOJ undertakes to ensure that a plea agreement reserves the Commission's ability to seek a civil penalty or other administrative remedy. (Paragraph 23) While these paragraphs are drawn from the Commission's first draft, DOJ deleted one critical provision: DOJ's obligation to refer a matter to the Commission prior to entering a plea agreement.

Given the limits that DOJ seeks to put on its obligations, we will need to clarify how it intends to give effect to paragraph 22's admonition to pursue global settlements. Our experience to date is that the Public Integrity Section at DOJ has not favored such agreements, and may even believe that raising the possibility of such an agreement with defense counsel is improper. Most typically, when we are notified about a settlement by DOJ, it is on or near the day that the plea is filed. That is certainly not what we contemplated in drafting paragraph 22.

In this vein, a couple of recent matters shed light on the nature of our interactions with DOJ. In the Dugatkins/Never Stop Dreaming matter, both the criminal and civil aspects of that case were ultimately disposed of in DOJ's plea agreement. However, despite our having provided DOJ with key evidence that allowed it to obtain a plea from the defendants, DOJ gave the Commission only 24-hour's notice to review and either accept or reject the settlement of the MUR through the plea agreement. [REDACTED]

[REDACTED]

Approach to Discussions with DOJ

At this stage in our discussions, it would appear to be most productive to explore ways to expand our cooperative endeavors while recognizing the enforcement responsibilities of both agencies. To be sure, there are matters as to which it is appropriate for the Commission to delay our investigations or limit their focus for some

period of time to avoid interfering with a criminal investigation. But there are also times when the Commission cannot hold a matter in abeyance and fulfill its enforcement obligation. A working relationship that recognizes both of these facts, and recognizes the benefits of cooperative joint investigations would well serve the interests of both agencies.³ Such a relationship can be established with the aid of a new MOU, but such an agreement is not essential to achieving this goal.

³ In July 1997, the Attorney General issued a memorandum on *Coordination of Parallel Criminal, Civil and Administrative Proceedings*. This document underscores the mutual advantages of parallel investigations, and states that investigative coordination expands the arsenal of remedies, increases program integrity, and represents the full range of the Government's interests.

Attachment A

MEMORANDUM OF UNDERSTANDING WITH DEPARTMENT OF JUSTICE

[¶ 2042]

The following is intended to serve as a guide for the DEPARTMENT OF JUSTICE (hereinafter referred to as the "Department") and the Federal Election Commission (hereinafter referred to as the "Commission") in the discharge of their respective statutory responsibilities under the Federal Election Campaign Act and Chapters 95 and 96 of the Internal Revenue Code:

(1) The Department recognizes the Federal Election Commission's exclusive jurisdiction in civil matters brought to the Commission's attention involving violations of the Federal Election Campaign Act and Chapters 95 and 96 of the Internal Revenue Code. It is agreed that Congress intended to centralize civil enforcement of the Federal Election Campaign Act in the Federal Election Commission by conferring on the Commission a broad range of powers and dispositional alternatives for handling nonwilful or unaggravated violations of these provisions.

(2) The Commission and the Department mutually recognize that all violations of the Federal Election Campaign Act and the anti-fraud provisions of Chapters 95 and 96 of the Internal Revenue Code, even those committed knowingly and wilfully, may not be proper subjects for prosecution as crimes under 2 U.S.C. 441j, 26 U.S.C. 9012 or 26 U.S.C. 9042. For the most beneficial and effective enforcement of the Federal Election Campaign Act and the antifraud provisions of Chapters 95 and 96 of the Internal Revenue Code, those knowing and wilful violations which are significant and substantial and which may be described as aggravated in the intent in which they were committed, or in the monetary amount involved should be referred by the Commission to the Department for criminal prosecution review. With this framework, numerous factors will frequently affect the determination of referrals, including the repetitive nature of the acts, the existence of a practice or pattern, prior notice, and the extent of the conduct in terms of geographic area, persons, and monetary amounts among many other proper considerations.

(3) Where the Commission discovers or learns of a probable significant and substantial violation, it will endeavor to expeditiously investigate and find whether clear and compelling evidence exists to determine probable cause to believe the violation was knowing and

wilful. If the determination of probable cause is made, the Commission shall refer the case to the Department promptly.

(4) Where information comes to the attention of the Department indicating a probable violation of Title 2, the Department will apprise the Commission of such information at the earliest opportunity.

Where the Department determines that evidence of a probable violation of Title 2 amounts to a significant and substantial knowing and wilful violation, the Department will continue its investigation to prosecution when appropriate and necessary to its prosecutorial duties and functions, and will endeavor to make available to the Commission evidence developed during the course of its investigation subject to restricting law. Where the alleged violation warrants the impaneling of a grand jury, information obtained during the course of the grand jury proceedings will not be disclosed to the Commission, pursuant to rule 6 of the Federal rules of criminal procedure.

Where the Department determines that evidence of a probable violation of title 2 does not amount to a significant and substantial knowing and wilful violation (as described in paragraph 2 hereof), the Department will refer the matter to the Commission as promptly as possible for its consideration of the wide range of appropriate remedies available to the Commission.

(5) This memorandum of understanding controls only the relationship between the Commission and the Department. It is not intended to confer any procedural or substantive rights on any person in any matter before the Department, the Commission or any court or agency of Government.

Dated: December 5, 1977.

For the United States Department of Justice.

BENJAMIN R. CIVILETTI,

Assistant Attorney General, Criminal Division.

Dated: December 8, 1977.

For the Federal Election Commission.

WILLIAM C. OLDAKER,

General Counsel.

[Source: 43 F.R. 5441, February 8, 1978.]

Attachment B



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA HAND DELIVERY

Christopher A. Wray
Assistant Attorney General
Department of Justice
Criminal Division
950 Pennsylvania Ave.
Washington, D.C. 20530-0001

Dear Mr. Wray:

Enclosed is a draft version of the revised Memorandum of Understanding. I hope you agree that it will help to establish a new foundation for a mutually beneficial and cooperative relationship. In furtherance of this spirit of cooperation, much of the language contained in this draft was taken from Department of Justice sources. In particular, I would like to acknowledge our reliance on the Criminal Division's publication *Federal Prosecution of Election Offenses*, by Craig C. Donsanto; Mr. Donsanto's public pronouncements; The Attorney General's July 28, 1997 Memorandum *Coordination of Parallel Criminal, Civil and Administrative Proceedings*; as well as the Department of Justice's Memoranda of Understanding with other Federal agencies. Moreover, I would draw your attention particularly to paragraph 17 in which we seek to enhance our cooperation by establishing a framework for the Commission's expedited reporting of knowing and willful violations, which should allow the Department of Justice to consider the prosecutive merits of some matters in a more timely fashion.

We look forward to working closely on this project and any future matters over which we have concurrent jurisdiction. If you have any questions or need further information feel free to contact Associate General Counsel Rhonda Vosdinh at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence H. Norton".

Lawrence H. Norton
General Counsel

Enclosure
Memorandum of Understanding

cc: Noel L. Hillman

**Memorandum of Understanding
Between the Federal Election Commission and the Department of Justice**

Purpose

1. The following is intended to serve as a guide for the Federal Election Commission ("Commission") and the Department of Justice ("Department") in the discharge of their respective statutory responsibilities under the Federal Election Campaign Act, as recently amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), and Chapters 95 and 96 of the Internal Revenue Code (referred to collectively hereinafter as "FECA").

2. The purpose of this Memorandum is to promote the most efficient and effective use of law enforcement resources and to establish guidelines for the Commission and the Department to conduct joint investigations and share information and evidence, subject to legal and ethical restraints.

Authority

3. The Commission has exclusive jurisdiction over civil enforcement of the FECA. The Commission's civil enforcement authority extends to knowing and willful violations as well as unintentional violations.

4. It is understood that Congress determined that compliance with the FECA and deterrence of FECA violations should generally be achieved through conciliation in the Commission's civil enforcement process. Through conciliation the Commission can seek a range of remedies to deter violations and ensure compliance, including civil penalties, refunds, disgorgement, cease and desist provisions, requirements to amend disclosure reports filed with the FEC, required training, and other corrective steps.

5. The Commission has the exclusive authority, conferred by the FECA itself, for administering and interpreting the FECA. 2 U.S.C. §§ 437c(b)(1), 437d(e). The Commission's views concerning the meaning of the FECA and the implementing regulations are to be given great deference.

6. The Department has criminal prosecutorial authority over knowing and willful violations of the FECA. The Commission and the Department mutually recognize that a knowing and willful violation of the FECA may not be proper subjects for prosecution crimes under 2 U.S.C. § 437g(d), 26 U.S.C. § 9012, 26 U.S.C. § 9042, or other appropriate statutes.

7. The role of the Department in matters arising under FECA is to prosecute matters that falls in the FECA's "heartland," i.e., where there is no dispute as to the application of law to the facts involved. The Department shall defer to the Commission in those matters in which application of the law to the facts is not clear, when the necessary scienter is problematic, when there is an unresolved question of law, or when the violation turns on the content of one's speech. The legal precedents formulated by

Commission and the courts provide the basis for determining whether there is a clear application of the law to the facts prior to criminal prosecution of FECA violations.

Investigations

8. Both the Department and the Commission will assist each other in fulfilling their respective statutory responsibilities and will coordinate their efforts, consistent with all legal restrictions, to assist and not impede each other's investigations. Because consultation will be most effective at the earliest stages of a matter, the Department and the Commission will designate specific officials to serve as primary points of contact who will meet no less than once every three calendar months to confer on ongoing matters and other topics of mutual interest.

Cooperation in Parallel Investigations

9. In order to maximize the efficient use of resources to enforce the FECA, the Commission and the Department will consider whether there are investigative steps common to civil and criminal enforcement actions. Where appropriate, the Commission and the Department should coordinate an investigative strategy that includes prompt decisions on the merits of criminal and civil matters, sensitivity to grand jury secrecy, proper use of discovery and the potential value of global settlements. By coordinating investigative strategy, the parties bring additional expertise to their respective efforts, expand the range of available remedies, increase both the integrity of the electoral process and deterrence of future violations, promote compliance, and better represent the full range of the Government's interests.

10. The Department and the Commission jointly investigating a matter may together undertake fact-finding activities such as interviewing witnesses and getting documents. Concurrent efforts should be used to prevent impediments to effective enforcement, such as stale documents, missing witnesses, and the passage of applicable statutes of limitation. Whenever appropriate, and with proper safeguards, the Department shall obtain evidence prior to initiation of a grand jury. Such evidence can then be shared with the Commission. This information-sharing can provide a mechanism through which the Government can achieve a comprehensive settlement of all of the Government's various interests.

11. Both the Department and the Commission recognize that they are subject to confidentiality provisions which restrict the public dissemination of nonpublic information shared during the course of parallel investigations, and will not release such information without obtaining the prior consent of the originating agency. Unless prohibited by law, the Department and the Commission will each promptly notify the other in writing of any legally enforceable demand or request for such information (including, but not limited to, a subpoena, court order, or request pursuant to the FOIA), providing the other agency a reasonable opportunity to respond to the demand prior to complying with the demand or request, and asserting all legal exemptions or privileges on the other agency's behalf as requested.

12. Upon a matter becoming public, both the Department and the Commission will promptly make available to each other public documents relating to their proceedings (e.g., criminal indictments, unsealed search warrant affidavits, criminal plea agreements, civil conciliation agreements, and civil complaints filed by the Commission in U.S. District Court).

13. The Department will provide assurances to witnesses in Commission proceedings by issuing no prosecution letters and providing informal letter immunity where appropriate. Similarly, the Commission will provide the Department with expert analysis and testimony on FECA-related issues where appropriate.

Department Referrals to the Commission

14. When information comes to the attention of the Department indicating that there has been an apparent FECA violation that is not knowing and willful, the Department will, without awaiting the conclusion of its own investigation, routinely and promptly refer the matter to the Commission. The Department will also report to the Commission apparent knowing and willful violations of the FECA that, based on the criteria discussed below, may not be suitable for criminal prosecution and those for which simultaneous civil prosecution would aid in achieving deterrence and compliance with the law. Such referrals shall include appropriate access to investigative materials gathered by the Department for which dissemination is not otherwise restricted.

Commission Referrals to the Department

15. The Commission may refer apparent knowing and willful violations of the FECA to the Department. In determining whether to refer a violation to the Department, the Commission may consider the following factors, among others: the presence of fraudulent or deceptive conduct; the existence of prior notice as to illegality; provable perjury, obstruction or false statements in the course of the Commission's investigation; monetary amount in violation; scope of activity; the existence of a practice or pattern that included repetitive acts and multiple persons; impact on election; strength of evidence, particularly the evidence of scienter; strength of legal theory; prompt voluntary self-disclosure to the Commission upon discovery of the violation; cooperating fully in the course of the Commission's investigation, including waiving any privileges applicable to internal investigations; waiving statute of limitations; promptly taking meaningful corrective measures, including appropriate disciplinary action against responsible individuals; conciliating the matter with the payment of a substantial civil penalty and any additional remedial measures requested by the Commission; taking full responsibility in the conciliation agreement; and compliance with the conciliation agreement.

16. Mitigating factors in considering whether criminal enforcement is appropriate when a person is alleged to have committed a FECA violation include: entry into a conciliation agreement with the Commission which specifically deals with the act or failure to act constituting the alleged violation and which is still in effect; making a prompt disclosure to the Commission upon discovery of the violation; being fully forthcoming in describing the violation; cooperating fully in the course of the Commission's investigation, including waiving any privileges that may be applicable to the internal investigations; and agreeing through conciliation to pay a substantial civil penalty and implement meaningful corrective measures.

17. When the Commission determines that there may have been an apparent knowing and willful violation of the FECA, the Commission may report it to the Department, without awaiting the conclusion of its own ongoing civil investigation and prior to a finding of probable cause. 2 U.S.C. § 437d(a)(9). The Commission also will report apparent violations of other

statutes over which the Department may have jurisdiction. 2 U.S.C. § 437d(a)(9). Such reports will not constitute a recommendation as to the merits.

18. Where the Commission, at the conclusion of an investigation, determines that there is probable cause of a knowing and willful violation of the FECA, the Commission may refer the case to the Department. 2 U.S.C. § 437g(a)(5)(C).

19. Whenever the Commission refers an apparent violation to the Department, the Department shall report to the Commission any action taken by the Department regarding the apparent violations. Each report shall be transmitted within 60 days after the date the Commission refers an apparent violation, and every 30 days thereafter until the final disposition of the apparent violation.

Settlements

20. The Department and the Commission recognize the benefits of global settlements that simultaneously resolve related criminal and civil violations of the law.

21. If the Department has not already referred a matter to the Commission, it will make such a referral prior to entering into any criminal plea agreement as to violations of the FECA. The Department will ensure that all draft or final plea agreements presented to a defendant contain a specific disclaimer that nothing in the agreement waives or limits in any way the authority of the Commission to seek civil penalties or other administrative remedies for violations of the FECA pursuant to 2 U.S.C. § 437g(a). If the defendant requests a global settlement, the Department and the Commission will work together to determine if it is possible to resolve simultaneously that person's criminal and civil liability arising from the same or related transactions in a global settlement.

Limitation

22. This Memorandum of Understanding controls only the relationship between the Commission and the Department. It is not intended to confer any procedural or substantive rights on any person in any matter before the Department, the Commission, or any court or agency of Government. The parties will jointly review this MOU every five years from the date of its execution to make any suggestions for modification or amendment.

Attachment C



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

MAY 19 2004

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
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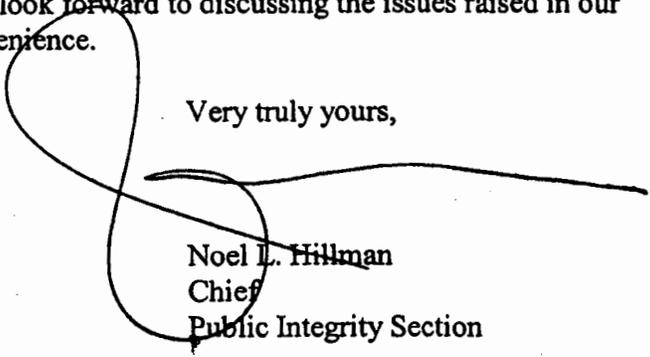
Mr. Larry Norton
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Mr. Norton:

We have received the Federal Election Commission's draft revision to the 1977 Memorandum of Understanding (MOU) between the Commission and the Department of Justice concerning the implementation of the law enforcement responsibilities of our respective agencies with respect to violations of the Federal Election Campaign Act, as amended. Thank you for this constructive first effort at this important task.

Attached is an alternative draft of the revised MOU we have prepared which we commend to your consideration. We look forward to discussing the issues raised in our respective drafts at your earliest convenience.

Very truly yours,


Noel L. Hillman
Chief
Public Integrity Section

Attachment

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE AND
THE FEDERAL ELECTION COMMISSION REGARDING ENFORCEMENT OF THE
FEDERAL CAMPAIGN FINANCING LAWS AND RELATED OFFENSES**

This Memorandum of Understanding is intended to serve as a guide for the United States Department of Justice (the Department) and the Federal Election Commission (the Commission or the FEC) in the discharge of their respective statutory responsibilities regarding the federal campaign financing laws and related offenses.

(1) **Definitions.** For Purposes of this Memorandum of Understanding:

(a) the term "federal campaign financing laws" means the Federal Election Campaign Act of 1971, as amended (FECA), 2 U.S.C. § 431-§ 455, and the anti-fraud provisions of the presidential campaign funding laws contained in Chapters 95 and 96 of the Internal Revenue Code (IRC), 26 U.S.C. §§ 9012, 9042;

(b) the term "criminal violation of the federal campaign financing laws" means a violation of law that was committed knowingly and willfully, and, in the case of an FECA violation, involves a sum which in the aggregate equals or exceeds the applicable jurisdictional monetary threshold provided in 2 U.S.C. § 437g(d);

(c) the term "knowing and willful violation" means a violation of the federal campaign financing laws by a person or entity of a prohibition, limitation, requirement, or duty that is clearly established under the federal campaign financing laws, of which the person or entity was aware, and which the person or entity violated notwithstanding that knowledge; and

(d) the term "related offenses" includes but is not limited to false statements within the jurisdiction of a federal agency, in violation of 18 U.S.C. § 1001; willfully causing, and aiding and abetting, false statements within the jurisdiction of a federal agency, in violation of 18 U.S.C. § 1001 and § 2; conspiracy, in violation of 18 U.S.C. § 371; obstruction of agency proceedings, in violation of 18 U.S.C. § 1505; and perjury, in violation of 18 U.S.C. § 1621.

(2) **Purpose of Memorandum.** In executing this Memorandum of Understanding, the Commission and the Department seek to increase the effectiveness of their respective law enforcement responsibilities over violations of the federal campaign financing laws and related offenses by harmonizing their discrete statutory responsibilities in a manner that follows the dictates of FECA and at the same time provides appropriate avenues for necessary communication and flexibility between law enforcement agencies.

(3) **Jurisdiction of the Commission.** The Department recognizes that the Commission has exclusive jurisdiction over all civil violations of the federal campaign financing laws. It is agreed that Congress intended to centralize civil enforcement of the federal campaign financing laws in the Commission by conferring on the Commission a broad range of powers, including sole jurisdiction

to enforce noncriminal dispositional alternatives for handling nonwillful and financially unaggravated violations of these laws.

(4) Jurisdiction of the Department.

(a) The Commission recognizes that the Department has exclusive jurisdiction over all criminal violations of the federal campaign financing laws and related offenses.

(b) The Commission and the Department recognize that in 2002 Congress increased the Department's ability to prosecute and thereby deter criminal violations of the federal campaign financing laws by enacting enhanced criminal penalties for such violations, by extending the statute of limitations, and by mandating that the United States Sentencing Commission promulgate a sentencing guideline for those offenses that would reflect "the serious nature of [FECA] violations and the need for aggressive and appropriate law enforcement action to prevent such violations." Bipartisan Campaign Reform Act of 2002, § 314(b)(1), Pub. L. 107-155 (Mar. 27, 2002). Both the Commission and the Department further recognize that the sentencing guideline promulgated by the Sentencing Commission in response to this congressional mandate provides for the possibility, and in many cases the likelihood, of imprisonment for campaign financing crimes that are accompanied by various aggravating factors. U.S.S.G. §2C1.8.

(5) Department Referral to the Commission.

(a) The Department agrees to refer to the Commission any matter brought to its attention reflecting a substantive violation of the federal campaign financing laws if: (a) the facts do not suggest a knowing and willful violation; (b) the facts fall below the jurisdictional monetary threshold for a criminal FECA violation; or (c) the Department determines that the matter does not otherwise warrant criminal prosecution.

(b) In fulfilling its obligation under subparagraph (a), the Department agrees to refer all available information relating to such matter, consistent with applicable prohibitions, privileges, and restrictions (e.g., Federal Rule of Criminal Procedure 6(e), the Privacy Act, and restrictions imposed by laws and regulations addressing national security information) as promptly as possible for its consideration of the wide range of noncriminal remedies available to the Commission.

(6) Criminal Violations of Federal Campaign Financing Laws. The Commission and the Department mutually recognize that all knowing and willful violations of the federal campaign financing laws that aggregate or exceed the applicable criminal jurisdictional amount represent criminal offenses in violation of the laws of the United States; that Congress intended that all such violations would be subject to possible criminal prosecution; and that whether such a violation should be prosecuted is a decision that can only be made by a criminal prosecutor employed by the Department.

(7) Commission Referral to the Department.

(a) If the Commission or its staff develops or receives evidence that a knowing and willful violation of the federal campaign financing laws above the criminal jurisdictional amount may have occurred, or that a related offense may have occurred, the Commission's Office of General Counsel shall refer the matter to the attention of the Public Integrity Section of the Department's Criminal Division, which is the component of the Department responsible for overseeing the Department's prosecution of campaign financing offenses. This provision is intended to supplement, and not supplant, Commission referrals to the Department pursuant to 2 U.S.C. § 437g(a)(5)(C).

(b) If, during its review of a violation of the federal campaign financing laws, the Commission or its staff is uncertain whether sufficient evidence suggesting a knowing and willful violation of these laws has been developed or received, the Commission's Office of General Counsel shall consult informally with the Department's Public Integrity Section on this issue.

(8) Department Review of Referral.

(a) Upon being advised of the facts of a matter in accordance with Paragraph 7, the Department shall review the matter and make a determination as to whether the matter:

- (1) should be handled as a criminal investigation by the Department; or
- (2) should be referred back to the Commission for civil enforcement action.

(b) The Department shall then advise the Commission of its determination under this Paragraph as promptly as possible.

(c) In the event that the matter is referred back to the Commission, the Commission agrees that if in the course of further proceedings it develops additional or different evidence suggesting a knowing and willful violation it will provide such information to the Department's Public Integrity Section for reevaluation as a possible criminal matter.

(9) Coordination of Parallel Proceedings. In the event that the Department determines that a campaign financing matter should be handled criminally, the Commission agrees to coordinate any parallel civil or administrative action regarding the matter with the Department.

(10) Department Investigative Materials Provided to the Commission. At the conclusion of a criminal prosecution of a campaign financing offense, or when prosecution of such a matter has been declined after an investigation by the Department, the Department shall make available to the Commission investigative materials developed by the Department during the course of its investigation, subject to restricting law and regulations. In those cases where the matter warranted the impaneling of a grand jury, information obtained through the grand jury proceedings, which is

protected from disclosure by Rule 6 of the Federal Rules of Criminal Procedure, shall not be disclosed to the Commission.

(11) **Global Settlement.** In the event a person or entity should wish to dispose of his/her/its civil or administrative liability under the campaign financing laws simultaneously or in connection with his/her/its plea of guilty to a criminal violation of such laws, the Department agrees to ascertain the monetary amount the target or defendant is willing to pay by way of an administrative fine and to advise the Commission's General Counsel of that amount. The Commission shall then determine whether the amount tendered is an appropriate administrative disposition of the matter or whether a different amount would be an appropriate administrative disposition, and shall advise the Department of its determination. If the defendant and the Department agree with the Commission's determination, both the Department and the Commission shall take all reasonable steps to reach a global settlement acceptable to the defendant and all parties.

(12) **Related Offenses in the Course of Commission Proceedings.**

(a) Both the Department and the Commission acknowledge that information, records, and statements that are materially false, which were intentionally made or submitted to the Commission represent potential federal felonies under 18 U.S.C. § 1001 and § 1505. The Commission and the Department agree that whenever the Commission develops or receives evidence that a witness in a Commission administrative proceeding, or a person or entity who has been required to present testimonial or documentary evidence to the Commission in the furtherance of an FEC investigation, may have falsely represented a material fact, the particulars of that false statement will be reported promptly to the Department for prosecutive evaluation.

(b) The Department agrees to evaluate the matter reported by the Commission as quickly as is reasonably feasible, and to advise the Commission of its determination as to whether a criminal investigation or criminal proceedings are warranted.

(c) The Commission agrees to cooperate with the Department in the evaluation and, if warranted, the prosecution of such false statements, and agrees to follow such guidance as the Department may provide with respect to the course and timing of the Commission's administrative proceeding during the period when the criminal matter thus reported is pending with the Department.

(13) **Other Crimes.** In addition to the undertakings agreed to in Paragraphs 7 and 12, in the event that the Commission in the course of an administrative enforcement or audit proceeding develops or receives evidence that a violation of another federal criminal law (e.g., embezzlement, fraud, bribery, extortion) may have occurred, the Commission agrees to bring that evidence promptly to the attention of the Department, and agrees to follow such guidance as the Department may provide with respect to the course and timing of the Commission's administrative proceeding during the period when the criminal matter thus reported is pending with the Department.

(14) Immunity.

(a) The Department and the Commission recognize that a witness in an administrative proceeding before the Commission may assert his or her right under the Fifth Amendment of the United States Constitution to remain silent in order to avoid incriminating himself or herself, and acknowledge that there is a procedure in federal criminal law set forth in 18 U.S.C. § 6004 whereby agencies of the United States, such as the Commission, can receive judicial orders of formal immunity that will result in requiring said witness to give evidence. The Commission recognizes that a judicial order under 18 U.S.C. § 6004 requires preclearance from the Department.

(b) The Department and the Commission agree that whenever a witness in an FEC proceeding claims his or her Fifth Amendment right to remain silent, the Commission shall promptly bring that claim and the facts surrounding it to the attention of the Department. The Department agrees to evaluate the facts thus provided to determine whether the Fifth Amendment claim should result in a request for formal immunity under 18 U.S.C. § 6004, or whether, on the other hand, the matter should be pursued criminally without such a grant of immunity. In the event that the Department determines that seeking a grant of formal immunity is appropriate, the Department agrees to process the requisite clearance for that immunity order expeditiously.

(15) Point-of-Contact. The Public Integrity Section of the Department's Criminal Division shall be the Commission's point-of-contact for all of the Department's obligations under this Memorandum of Understanding, and said Section will be responsible for performing or supervising all of the Department's undertakings and agreements under this Memorandum.

(16) Scope of Memorandum. This Memorandum controls only the relationship between the Commission and the Department. It is not intended to confer, and does not confer, any procedural or substantive rights on any person or entity in connection with any matter that is before, or that may be brought before, the Department, the Commission, or any court or agency of the Federal Government.

(17) Repeal of 1977 Memorandum. This Memorandum repeals the 1977 Memorandum of Understanding between the Commission and the Department regarding the handling of campaign financing violations.

(18) Effective date. The effective date of this Memorandum of Understanding shall be the date the executed Memorandum is published in the Federal Register.

FEDERAL ELECTION COMMISSION

U. S. DEPARTMENT OF JUSTICE

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Attachment D



Criminal Division

Washington, D.C. 20530

DEC 29 2005

James A. Kahl, Esquire
Deputy General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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COMMISSION
OFFICE OF GENERAL
COUNSEL
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Dear Mr. Kahl:

After reviewing the Commission's proposed revision to the 1977 Memorandum of Understanding (MOU) between the Commission and the Department and meeting with staff of its General Counsel's office to discuss our respective revisions to the current MOU, we have prepared another proposed MOU for the Commission's consideration. This draft incorporates significant provisions from both of our prior proposals.

A copy of the draft MOU is enclosed. Each provision is annotated to reflect its source agency. As you will see, this version is based primarily on the Commission's proposed MOU. In combining the two proposals, we attempted to address the issues that are critical to our respective law enforcement responsibilities with respect to violations of the Federal Election Campaign Act. Please let us know after you and your staff have had an opportunity to review this proposal.

We look forward to meeting with you to discuss this matter, and we thank you for your efforts in this important endeavor.

Very truly yours,

Noel L. Hillman
Chief
Public Integrity Section

Enclosure

DRAFT

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL ELECTION COMMISSION AND THE UNITED STATES DEPARTMENT OF JUSTICE REGARDING ENFORCEMENT OF THE FEDERAL CAMPAIGN FINANCING LAWS¹

Purpose

[FEC] 1. The following is intended to serve as a guide for the Federal Election Commission ("Commission") and the United States Department of Justice ("Department") in the discharge of their respective statutory responsibilities under the Federal Election Campaign Act, as amended by the Bipartisan Campaign Reform Act of 2002, and Chapters 95 and 96 of the Internal Revenue Code (referred to collectively hereinafter as the "federal campaign financing laws").

[FEC] 2. The purpose of this Memorandum is to promote the most efficient and effective use of law enforcement resources concerning violations of the federal campaign financing laws and to establish guidelines for the Commission and the Department to conduct joint investigations and share information and evidence, subject to legal and ethical restraints.

Definitions

[DCJ] 3. For purposes of this Memorandum of Understanding:

(a) the term "federal campaign financing laws" means the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. § 431-§ 455, and the presidential campaign funding laws contained in Chapters 95 and 96 of the Internal Revenue Code, 26 U.S.C. §§ 9012, 9042;

(b) the term "criminal violation of the federal campaign financing laws" means a violation of law that was committed knowingly and willfully, and, in the case of an FECA violation, involves a sum which in the aggregate equals or exceeds the applicable jurisdictional monetary threshold for FECA crimes provided in 2 U.S.C. § 437g(d);

(c) the term "knowing and willful violation" means a violation of the federal campaign financing laws by a person or entity of a prohibition, limitation, requirement, or duty that is clearly established under the federal campaign financing laws, of which the person or entity was aware, and which the person or entity violated notwithstanding that knowledge; and

(d) the term "related offenses" includes but is not limited to false statements within the jurisdiction of a federal agency, in violation of 18 U.S.C. §1001; willfully causing, and

¹The source of each paragraph of this composite DOJ/FEC MOU is indicated.

aiding and abetting, false statements within the jurisdiction of a federal agency, in violation of 18 U.S.C. § 1001 and § 2; conspiracy, in violation of 18 U.S.C. § 371; obstruction of agency proceedings, in violation of 18 U.S.C. § 1505; and perjury, in violation of 18 U.S.C. § 1621.

Authority

[FEC] 4. The Commission has exclusive jurisdiction over civil enforcement of the federal campaign financing laws. The Commission's civil enforcement authority extends to knowing and willful violations as well as unintentional violations.

[FEC] 5. The Commission has the exclusive authority, conferred by the FECA, for administering and interpreting the FECA. 2 U.S.C. §§ 437c(b)(1), 437d(e). The Commission's views concerning the meaning of the FECA and the implementing regulations are to be given deference. Federal Election Commission v. Democratic Senatorial Campaign Committee, 454 U.S. 27 (1981).

[FEC] 6. The Department has exclusive jurisdiction over all criminal violations of the campaign financing laws and related offenses.

Investigations

[FEC] 7. Both the Department and the Commission will assist each other in fulfilling their respective statutory responsibilities and will coordinate their efforts, consistent with all legal restrictions, to assist and not impede each other's investigations. Because consultation will be most effective at the earliest stages of a matter, the Department and the Commission will designate specific officials to serve as primary points of contact who will meet no less than once every three calendar months to confer on ongoing matters and other topics of mutual interest.

Cooperation in Parallel Investigations

[FEC] 8. In order to maximize the efficient use of resources to enforce the FECA and the presidential campaign funding provisions in the Internal Revenue Code, the Commission and the Department will consider whether there are investigative steps common to civil and criminal enforcement actions. Where appropriate, the Commission and the Department should coordinate an investigative strategy that includes prompt decisions on the merits of criminal and civil matters, adherence to grand jury secrecy, proper use of discovery and the potential value of global settlements. By coordinating investigative strategy, the parties bring additional expertise to their respective efforts, expand the range of available remedies, increase both the integrity of the electoral process and deterrence of future violations, promote compliance, and better represent the full range of the Government's interests.

[FEC] 9. The Department and the Commission jointly investigating a matter may together undertake fact-finding activities such as interviewing witnesses and getting documents.

Concurrent efforts should be used to prevent impediments to effective enforcement, such as stale documents, missing witnesses, and the passage of applicable statutes of limitation. Whenever appropriate, and within the sole discretion of the Department, the Department will endeavor to obtain evidence prior to initiation of a grand jury investigation in order to facilitate the sharing of information with the Commission.

[FEC] 10. Unless prohibited by law, the Department and the Commission will each promptly notify the other in writing of any legally enforceable demand or request for nonpublic information received (including, but not limited to, a subpoena, court order, or request pursuant to the Freedom of Information Act), providing the other agency a reasonable opportunity to respond to the demand prior to complying with the demand or request, and asserting all legal exemptions or privileges on the other agency's behalf as requested.

[FEC] 11. Upon a matter becoming public, both the Department and the Commission will promptly make available to each other public documents relating to their respective proceedings (e.g., criminal indictments, unsealed search warrant affidavits, criminal plea agreements, civil conciliation agreements, and civil complaints filed by the Commission in U.S. District Court).

[FEC] 12. The Department will provide assurances to witnesses in Commission proceedings by issuing no prosecution letters or providing informal letter immunity where appropriate. Similarly, the Commission will provide the Department with expert analysis and testimony on FECA-related issues where appropriate.

Department Referrals to the Commission

[DOJ] 13. The Department shall refer to the Commission any matter brought to its attention reflecting a substantive violation of the FECA if: (a) the facts do not suggest a knowing and willful violation; (b) the facts fall below the jurisdictional monetary threshold for a criminal FECA violation; or (c) the Department determines that the matter does not otherwise warrant criminal prosecution.

[DOJ] 14. In fulfilling its obligation under Paragraph 13, the Department agrees to refer to the Commission all available information relating to such matter, consistent with applicable prohibitions, privileges, and restrictions (e.g., Federal Rule of Criminal Procedure 6(e), the Privacy Act, and restrictions imposed by laws and regulations addressing national security information), as promptly as possible for its consideration of the wide range of noncriminal remedies available to the Commission.

Commission Referrals to the Department

[BOTH] 15. If the Commission determines that there may have been an apparent knowing and willful violation of the FECA, the Commission shall report the matter to the Department, without awaiting the conclusion of its own ongoing civil investigation and prior to a finding of

probable cause. 2 U.S.C. § 437d(a)(9). The Commission shall also report to the Department apparent violations of other statutes over which the Department may have jurisdiction. 2 U.S.C. § 437d(a)(9). Such reports will not constitute a recommendation as to the merits. This provision is intended to supplement, and not supplant, Commission referrals to the Department pursuant to 2 U.S.C. § 437g(a)(5)(C).

[DOJ] 16. Upon being advised of the facts of a matter in accordance with Paragraph 15, the Department shall review the matter and make a determination as to whether the matter: (a) should be handled as a criminal investigation by the Department; or (b) should be referred back to the Commission for civil enforcement action. The Department shall advise the Commission of its determination under this Paragraph as promptly as possible.

[DOJ] 17. In the event that a matter referred under Paragraph 15 is investigated by the Department, the Department will advise the Commission at the conclusion of its investigation whether the Department either has declined to bring criminal charges or has sought criminal charges.

[DOJ] 18. In the event that a matter referred under Paragraph 15 is referred back to the Commission by the Department, the Commission agrees that if in the course of further proceedings it develops additional or different evidence suggesting a knowing and willful violation it will provide such information to the Department's Public Integrity Section for reevaluation as a possible criminal matter.

Related Offenses in the Course of Commission Proceedings

[DOJ] 19. Both the Department and the Commission acknowledge that information, records, and statements that are materially false, which were intentionally made or submitted to the Commission, represent potential federal felonies under 18 U.S.C. § 1001 and § 1505. The Commission and the Department agree that whenever the Commission develops or receives evidence that a witness in a Commission administrative proceeding, or a person or entity who has been required to present testimonial or documentary evidence to the Commission in the furtherance of an FEC investigation, may have falsely represented a material fact, the particulars of that false statement will be reported promptly to the Department for prosecutive evaluation.

[DOJ] 20. The Department agrees to evaluate a matter reported by the Commission under Paragraph 19 as quickly as is reasonably feasible, and to advise the Commission of its determination as to whether a criminal investigation is warranted.

[DOJ] 21. The Commission agrees to cooperate with the Department in the evaluation and, if warranted, the prosecution of such false statements reported under Paragraph 19, and agrees to follow such guidance as the Department may provide with respect to the course and timing of the Commission's administrative proceeding during the period when the criminal matter thus reported is pending with the Department.

Settlements and Dispositions

[FEC] 22. The Department and the Commission recognize the benefits of global settlements that simultaneously resolve related criminal and civil violations of the FECA.

[FEC] 23. The Department will ensure that all plea agreements involving an FECA crime that are presented to a defendant contain a specific disclaimer that nothing in the agreement waives or limits in any way the authority of the Commission to seek civil penalties or other administrative remedies for violations of the FECA pursuant to 2 U.S.C. § 437g(a).

[FEC] 24. If a defendant requests a global settlement, the Department and the Commission will work together to determine if it is possible to resolve simultaneously in a global settlement that person's criminal and civil liability arising from the same or related transactions.

Limitation

[FEC] 25. This Memorandum of Understanding controls only the relationship between the Commission and the Department. It is not intended to confer, and does not confer, any procedural or substantive rights on any person in any matter before the Department, the Commission, or any court or agency of Government.

Point-of-Contact

[DOJ] 26. The Public Integrity Section of the Department's Criminal Division shall be the Commission's point-of-contact for all of the Department's obligations under this Memorandum of Understanding, and said Section will be responsible for performing or supervising all of the Department's undertakings and agreements under this Memorandum.

Repeal of 1977 Memorandum

[DOJ] 27. This Memorandum repeals the 1977 Memorandum of Understanding between the Commission and the Department regarding the handling of violations of the federal campaign financing laws.

Effective date

[DOJ] 28. The effective date of this Memorandum of Understanding shall be the date the executed Memorandum is published in the Federal Register.

FEDERAL ELECTION COMMISSION

U. S. DEPARTMENT OF JUSTICE