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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

OGC 81-06060 |

17 July 1981

General Counsel

*File: Federal Tort Claims Act*

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Frey:

This letter is in response to your request for the Central Intelligence Agency's expedited comments on the Department of Justice "Alternative Draft" proposed as an amendment in the nature of a substitute to H.R. 24, the Federal Tort Claims Act Amendments. The Agency views this Draft as a significant improvement over H.R. 24, which in turn is a vast improvement over its predecessor in the 96th Congress, H.R. 2659. We strongly support the Department's approach in its proposed amendment in the nature of a substitute to H.R. 24, with two suggested minor modifications.

Our first concern is that the Draft does not provide agency heads with authority to settle a constitutional tort claim for an amount not exceeding \$25,000 without the approval of the Attorney General. Under current law, agency heads can settle a nonconstitutional tort claim for an amount not exceeding \$25,000 (26 U.S.C. 2672) and we believe agency heads should have the same authority with respect to constitutional claims.

Our second concern is the apparent limitation placed on the types of constitutional torts for which the United States may be substituted as defendant instead of its employee. Sections 1 and 2 of the Draft appear to limit the protection afforded to federal employees by substitution of the United States as defendant to constitutional tort claims "for injury or loss of property, or personal injury or death." We believe the protection afforded by the Federal Tort Claims Act should be coextensive with the full range of constitutional torts, rather than being limited to constitutional torts which cause personal injury or property damage.

We appreciate very much the opportunity to express our views on this matter. I would ask that you keep me closely informed regarding the development of an Administration position on the Federal Tort Claims Act Amendments.

Sincerely,

[Redacted Signature]

Stanley Sporkin  
General Counsel

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