



Office of the Attorney General
Washington, D. C. 20530

October 18, 1979

MEMORANDUM TO: Heads of Offices, Boards, Bureaus
and Divisions

FROM: Benjamin R. Civiletti *BRC*

SUBJECT: Communication from the White House
and Congress

One year ago, former Attorney General Griffin Bell issued a statement concerning communications with the Department of Justice and the White House Staff and Congress. The principles announced in that statement have worked well, and I intend to continue them.

Since I am a new Attorney General, I believe it important to formally confirm these principles and to reissue Judge Bell's original statement. As Judge Bell observed, it is important to establish not only principles but Department procedures which will ensure to the extent possible that improper considerations will not enter into our legal judgment and that the public know of and have confidence in these procedures. For these purposes further direction and procedural details on the subject are discussed below.

CASES

The Assistant Attorneys General, the United States Attorneys and the heads of the investigative agencies in the Department have the primary responsibility to initiate and supervise investigations and cases. These officials must be insulated from influences that should not affect decisions in particular criminal or civil cases. To ensure that this occurs, to continue the independence of the Department of Justice, to prevent even the appearance of conflicts of interest and to provide for the most efficient and effective system of proper communications with outside parties, we must provide for specific procedures to regulate communication concerning pending cases. Consequently, the following numbered paragraphs restate and clarify the procedures announced last year.

(1) All inquiries and information concerning pending investigations, matters or cases from either the White House Staff or the Congress should be directed to the

Offices of the Attorney General, the Deputy Attorney General or the Associate Attorney General. Additionally, each Assistant Attorney General should report to the Deputy or Associate Attorney General all communications about specific cases by persons other than those involved in the litigation.

(2) All requests for formal legal advice or legal opinions from the White House Staff or the Congress should be directed to the Office of the Attorney General or to the Office of Legal Counsel. The Assistant Attorney General for the Office of Legal Counsel should report directly to the Attorney General any communications that, in his view, constitute improper attempts to influence his office's legal judgment.

(3) Routine written inquiries regarding the status of cases or matters may be processed by correspondence units in the regular manner.

(4) These procedures are not intended to interfere with the normal communications between the Department of Justice and its client departments and agencies and any meetings or communications necessary to the proper conduct of the litigation.

When he announced these procedures last year, Judge Bell explained that singling out certain persons or groups whose communications should be screened did not suggest that those persons or groups were especially prone to attempts to exercise improper influence. Nor does excluding other persons or groups imply that they never try to exercise improper influence. The policy is simply based on the fact that persons in certain positions of power unintentionally can exert pressure by the very nature of their positions.

POLICY AND LEGISLATION

White House or Congressional inquiries concerning policy decisions or legislation are different from those directed at specific investigations and cases. The positions of the Administration on those kinds of matters often must be coordinated. Additionally, there is less chance for improper influences in this area. Consequently, different considerations for communication result.

(5) Each head of an office, board, bureau or division, or the appropriate person or office within an office,

board, bureau or division, may communicate directly with the White House Staff or with Congress on legislative proposals, general policy decisions and the like, as is the current practice. However, to ensure coordination in the Department, the Office of Legislative Affairs should be kept apprised of all communications about legislation and the Deputy and Associate Attorneys General should be informed about important or significant policy communications in their respective areas of responsibility.

To facilitate these procedures, I have spoken with officials at the White House regarding these policies and to request that the White House centralize its own practices with regard to communication with the Department of Justice. I have asked that all requests, questions or similar communications, other than the purely routine, come from either the head of the Domestic Policy Staff or from the Counsel to the President. In the case of intelligence and national security matters, the Assistant to the President for National Security Affairs is the appropriate person to initiate communication.

FUNDING PROGRAMS

The Department of Justice's Funding Program is a third area in which outside communication frequently occurs. In this area, however, it is a proper and an essential part of the solicitation, bid and deliberative process for third parties to communicate directly with the Law Enforcement Assistance Administration.

(6) While LEAA must retain its discretion and flexibility, it is essential that it has independence as well. Consequently, the Administrator should report to me any attempts to improperly influence LEAA's decision-making process.

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These procedures may seem unduly restrictive to some, but, as Judge Bell said last year, these restrictions are a small price, and a necessary one, for maintaining public confidence in the Department of Justice.

These procedures do not seek to wall off the Department from legitimate communication. We welcome criticism and advice. What these procedures seek to do is to route communications

to the proper place so they can be adequately reviewed and considered, free from the appearance of undue influence or other impropriety.

This principle is essential to our proper function because litigation decisions are frequently discretionary. The ultimate criterion is that they be fair. We at Justice are not infallible, but the responsibility for wielding our power fairly is ours alone. Criticism after the fact is perfectly proper. Criticism before the fact must be channeled so that fairness is not defeated, and justice is served. Our notions of fairness must not change from case to case. They must not be influenced by partisanship or the privileged social, political or interest group position of either the individuals involved in particular cases or those who may seek to intervene against them or on their behalf.