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22 FEB 1980

cc: Hammond
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MEMORANDUM FOR SANA F. SUTASEL
Civil Liberties Coordinator

Re: Civil Liberties

I recently reviewed the Attorney General's memorandum appointing you the Department's Civil Liberties Coordinator. This designation places upon you one of the heaviest responsibilities that any Department employee could shoulder. I wish you good fortune in this undertaking, and assure you that OLC will be pleased to cooperate in your mission.

As you may know, this Office worked closely with Judge Bell, Drew Days, Frederick Baron, and others in the early consideration of the proposal to establish some mechanism for the coordination of civil liberties policies. In the course of that undertaking, Peter M. Shane of this Office (633-3865) carefully reviewed the positions taken by a wide variety of people in the Department on the issues involved. He and I drafted a set of memoranda that address some underlying questions with respect to the Department's civil liberties responsibilities, and suggest how particular proposals might be implemented. A set of copies of these memoranda is attached for your reference.

One issue that arose frequently in this Office's consideration of the Department's role is the propriety of a civil liberties bias in the Department's roles as litigator and legal counselor. Although sensitivity to civil liberties concerns is always to be encouraged, there are, in my judgment, many instances in counseling and in trying cases when our law enforcement duty is inconsistent with a policy bias in any direction. Underlying this perception is a constitutionally-based proposition, namely, that, in enacting legislation, Congress makes most of the major civil liberties policy judgments that affect law enforcement. The ordinary and proper role of the Executive branch is only to execute the policy judgments of Congress. In attempting, either in litigation or when providing advice or opinions, to construe statutes that may have a civil liberties aspect, it is arguably inappropriate to approach that task with any independent policy predisposition.

There are, of course, many Department activities that may be suitably sifted through a sensitive civil liberties-oriented review. Civil liberties concerns should always rank high on our list during

the formulation of legislative proposals. They should also play a significant role wherever the Department has discretion under the law to manage its resources in light of its own policies, e.g., in the management of prisons, in the use of our immigration and naturalization law resources, and in meting our basic law enforcement. My concern is only that a justifiable bias in these areas not bleed into areas of the Department's responsibility in which a policy predilection—in any direction—ought to be excluded.

Again, I wish you luck and emphasize our enthusiasm for cooperating with you.

Larry A. Hammond
Deputy Assistant Attorney General
Office of Legal Counsel

Attachment