

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

October 18, 1982

Mr. Donald M. Kendall  
Chairman  
Chief Executive Officer  
PEPSICO, Inc.  
Purchase, N.Y. 10577

Dear Don:

Thank you for your letter of October 4, in which you reviewed certain facts surrounding the grand jury investigation of your company. I know you will understand that I must refrain from commenting on the specific investigation which was the subject of your letter. As you note in your letter, the investigation was already underway before I assumed office. I do appreciate the spirit in which the letter was written, and I thank you for taking the time to convey your concerns about the functioning of our justice system in this particular instance.

I can comment on a more general level on some of your observations. You note that some questionable journalism compounded the difficulties presented by the investigation. During the course of an investigation it is our policy not to discuss cases with the press. We believe investigations should be conducted and cases should be tried only in the appropriate forums, not in the press. This sometimes results in distorted reporting as creative journalists attempt to supply missing facts. As far as unauthorized "leaks" are concerned, there are few practices I find more repugnant to my sense of propriety and professionalism than the clandestine leaking of material to the press. I have taken every conceivable step to see that the practice does not occur in the Department of Justice.

I agree with you that the interest of justice is best served when corporations and their employees cooperate with law enforcement, and I am encouraged that you plan to continue this policy. The conduct of an investigation is always a sensitive matter and my experience thus far has been that the Department is

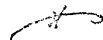
generally able to discharge its investigative and prosecutorial responsibilities in a fair and professional manner. We constantly review our internal guidelines and procedures to ensure that this is the case. Rest assured that your views will be taken into account in the course of this ongoing review.

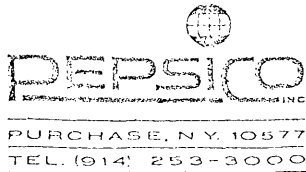
Once again, thank you for your constructive comments.

Sincerely,



William French Smith  
Attorney General





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DONALD M. KENDALL  
CHAIRMAN,  
CHIEF EXECUTIVE OFFICER

October 4, 1982

The Honorable William F. Smith  
Attorney General of the United States  
Washington, D. C. 20036

Dear Bill:

You may recall on Inauguration Day I shook hands with you and congratulated you in the receiving stand and said there was a case I couldn't talk about because it was before the Grand Jury but when the case was over I was going to tell you the horror story. Here it is.

Several years of Federal grand jury investigation of our company have recently been completed. The experience was extraordinarily frustrating because justice was not served by the investigation. On the contrary, good citizens were persecuted and wrongdoers were set free.

None of the people who bungled this matter are still with you, and I am not asking that you look into their handling of it. Rather, I hope you can learn from our experience and strengthen your system and controls for better administration of justice.

The story is long and complicated, but I'll condense it. In 1978, our subsidiary, Frito-Lay, Inc., discovered after diligent investigation that its long-time commodities buyer had been enriching himself at the expense of the company. The devices employed were many, ranging from kick-back arrangements to secret ownership of supplier companies, and the amounts involved over a period of years were enormous.

We fired the buyer, sued him and his associates in state court, quickly developed facts through discovery procedures and, by the end of 1978,

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The Honorable William F. Smith

recovered what was rightfully ours anyway through settlement. Our financial reports reflected that recovery at \$13,300,000.

We turned reams of evidence over to Federal investigators, and we cooperated fully with them pursuant to our usual policy in support of law enforcement. But beginning in late '79, after a year of our cooperation, it began to appear that we, the victims, were being investigated. Grand jury subpoenas flew. A year later, in October, 1980, we were told that we were "targets" of the grand jury investigation at the same time that our former buyer pleaded guilty to charges of having acted unlawfully on behalf of the company in connection with the purchase of peanut oil from the government.

Despite his other acts, we have no reason to believe that he was guilty of the things stated in his guilty plea. Apparently the government agrees because he was never sentenced and, incredibly, his guilty plea was dismissed by the court in October of 1981. The investigation of our company remained open, however, until we were told this month that there would be no prosecution.

We understand fully the duty of the government to investigate allegations of criminal activity. In this case, though, the overzealous pursuit of an attractive but innocent corporate target has resulted in a genuine travesty.

Our company was subjected to great expense and disruption while our officers and employees directly involved were subjected to uncommon stress. Unwarranted "leaks" as well as very questionable journalism resulted in a great deal of unfortunate publicity. In fact, a private civil suit was brought in another part of the country which appears to be based solely on the lurid and inaccurate newspaper reports.

Employees not directly involved were disturbed about their company and, to the extent that they were aware of the truth, demoralized and disappointed at the performance of our justice system. Obvious guilt, a case at hand on a silver platter, was ignored. Instead, a prosecutor pursued groundless allegations of a wrongdoer despite the obviousness of his interest in accusing others in order to plea bargain successfully (in this case with almost unbelievable success).

It seems to me that the interest of justice are best served by encouraging corporate citizens and their employees to report wrongdoing and to cooperate

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with governmental authorities in investigations. We shall continue to follow our past policy in this regard. But we would do so with much greater enthusiasm if we did not have to anticipate our own defense against groundless charges made by wrongdoers whom we report. There should be a working assumption - rebuttable, to be sure - that a plea bargainer is lying and that a cooperating company which submits evidence to support its claims is telling the truth. The working assumption used here seems to have been the opposite.

Realistically, I suppose the effective application of such an approach should not be expected of ambitious, young prosecuting attorneys. Mechanisms probably are necessary, therefore, to insure that decisions to pursue investigations of the type involved in our case are undertaken only after careful consideration by mature and responsible government officials.

I know that you will take my remarks here in the constructive spirit in which they are made. We support volunteerism. We support vigorous law enforcement and will continue to cooperate with law enforcement authorities. But the continued support of such principles by companies such as ours could be enhanced if we had more confidence in the rational application of the investigatory powers of government agencies.

Bill, I want to congratulate you on making great strides in your administration of the Justice Department to prevent this type of thing from occurring, and I hope this letter gives you encouragement to keep up this effort.

Kindest personal regards.

Sincerely yours,

  
Donald M. Kendall