

PATRICK J. LEAHY, VERMONT, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS  
JOSEPH R. BIDEN, Jr., DELAWARE  
HERB KOHL, WISCONSIN  
DIANNE FEINSTEIN, CALIFORNIA  
RUSSELL D. FEINGOLD, WISCONSIN  
CHARLES E. SCHUMER, NEW YORK  
RICHARD J. DURBIN, ILLINOIS  
BENJAMIN L. CARDIN, MARYLAND  
SHELDON WHITEHOUSE, RHODE ISLAND

ARLEN SPECTER, PENNSYLVANIA  
ORRIN G. HATCH, UTAH  
CHARLES E. GRASSLEY, IOWA  
JON KYL, ARIZONA  
JEFF SESSIONS, ALABAMA  
LINDSEY O. GRAHAM, SOUTH CAROLINA  
JOHN CORNYN, TEXAS  
SAM BROWNBACK, KANSAS  
TOM COBURN, OKLAHOMA

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
MICHAEL O'NEILL, *Republican Chief Counsel and Staff Director*

# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

April 12, 2007

Fred Fielding, Esq.  
Counsel to the President  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. Fielding:

We are troubled to learn through the press that the White House cannot account for the e-mails of almost two dozen people at the White House, including some the Senate Judiciary has asked to question in connection with our ongoing investigation. Apparently these officials utilized e-mail accounts, addresses and equipment provided by the Republican National Committee and political campaigns to communicate about the plan to replace a number of United States Attorneys. As you know, by letter dated March 28, 2007, the Chairmen of both the House and Senate Judiciary Committees wrote to you asking that you collect and produce e-mails and documents sent from all e-mail accounts, addresses and domains relevant to these investigations, and made specific reference to the use of such political e-mail addresses.

The comments of two White House officials, which were cited in today's edition of the *Washington Post*, raise questions about whether the White House will be able to comply with the March 28 letter. White House spokesman Scott Stanzel reportedly stated, "[t]he White House has not at this point done a good enough job at overseeing the practices of staff with political e-mail accounts," and confirmed that "[s]ome officials' e-mails have potentially been lost and that is a mistake that the White House is aggressively working to fix." The second official who was cited, a White House lawyer who spoke on condition of anonymity, told the press at a briefing that White House staff is now being advised that if they question whether an e-mail is political or official, the staff should use their private accounts, but also preserve a copy to be sent to White House lawyers for a determination of whether the e-mail needs to be saved under the Presidential Records Act.

Mr. Fred Fielding

April 12, 2007

Page 2 of 2

In light of these comments by White House officials, we would like to know what is being done to investigate and remedy this situation. For example, we would like to know if the process described above by the anonymous White House lawyer is intended to apply prospectively only or if staff is also being advised that they should forward past e-mails from their private accounts to White House lawyers for review. Additionally, in reference to the statement that the White House "has not . . . done a good enough job at overseeing practices" regarding e-mail accounts, we would like to know what was done in the past and whether any private e-mail retention policies were in place. We would also like to know how and when the White House first learned of the problem with private e-mail account usage and when it first came to light that e-mails may have been lost.

We recognize that the White House must and should investigate this matter in a timely fashion. We also recognize that the congressional committees of jurisdiction have a separate obligation to investigate. To accommodate our separate obligations without slowing down or otherwise complicating the others' efforts, we suggest that the White House consult with us and the other congressional committees engaged in affected investigations and that we jointly agree upon a fair and objective process for investigating this matter, including the use of a mutually trusted computer forensic expert. Such a process would help to restore public confidence in the White House's desire to comply with the Presidential Records Act. Moreover, it would ensure your office and the Congress that this matter is being taken seriously and that an objective process is employed to investigate, retrieve and reconstruct the information that is reportedly missing due to deleted or otherwise unretained e-mails.

Sincerely,



PATRICK LEAHY  
Chairman



ARLEN SPECTER  
Ranking Member