



**United States Senate**  
WASHINGTON, DC 20510-0504  
<http://feinstein.senate.gov>

August 2, 2007

The Honorable Alberto Gonzales  
Attorney General of the United States  
United States Department of Justice  
Washington, DC 20510

Dear Attorney General Gonzales:

I have received and reviewed the letter of July 27 from Principal Deputy Assistant Attorney General Brian A. Benczkowski, regarding the questions I asked you during the Judiciary Committee hearing on July 24. I appreciate the Department's attempt to respond to the issues I raised at the hearing. The letter, however, is inadequate and fails to address the specific questions I asked. Moreover, it advances an interpretation of new Seventh Edition of the election crimes prosecution manual that ignores major changes that have been made.

At the hearing I asked why important language from the Sixth Edition had been removed or weakened in the Seventh Edition. For example, the sentence "Federal prosecutors and investigators should be extremely careful to not conduct overt investigations during the preelection period or while the election is underway," 6th Ed. at 61, was deleted in the Seventh Edition. Another sentence I quoted at the hearing was "Thus, most, if not all, investigation of an alleged election crime must await the end of the election to which the allegation relates." *Id.* (emphasis in original). This sentence was also deleted, even though it had been part of the manual since at least 1982.

In total, I enumerated five changes between the Sixth and Seventh Editions and asked why those specific changes were made. The July 27 letter does not answer my question. Instead, the letter repeats a quotation from a different part of the Seventh Edition – the introductory chapter entitled "Overview," which is simply a reiteration of language from the prior edition. By responding with boilerplate language from the introduction that remained mostly unchanged, the letter fails to address my concerns.

I do not agree that the retention of the generalities set forth in the “Overview” chapter means that the many changes to the manual have no consequence. None of the introductory language reiterates the specific prohibitions in the Sixth Edition – that DOJ “must refrain” from anything that might affect the election, and that investigations “must await” the end of the election.

Moreover, even the part of the manual that the Department quotes in the response has been weakened. The Sixth Edition stated that “[A]ny criminal investigation by the Department must be conducted in a way that *eliminates, or at least minimizes*, the possibility that the investigation itself will become a factor in the election.” 6th ed. at 10. The same sentence appears in the new edition as “[A]ny criminal investigation by the Department must be conducted in a way that minimizes the likelihood that the investigation itself will become a factor in the election.” 7th ed. at 10.

The Department chose to remove the word “eliminates” from this passage. Which again leads to my question: why were the changes made, and what is being done to ensure there is no negative impact on elections?

Finally, I am concerned that the letter asserts there has been “no substantive change” to the Department’s policies regarding noninterference with elections. Since there is no explanation of the changes that were made, I find this assertion lacks merit.

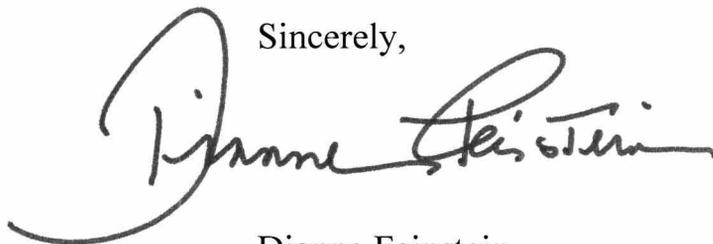
In addition to the changes I mentioned at the hearing, one other change needs to be explained. The Sixth Edition’s strict statement – that the Department must refrain from affecting elections – applied to all “election fraud matters.” 6th Ed. at 61. The new Seventh Edition, however, states only that the Department should avoid investigations that involve “alleged fraud in the manner in which votes were cast or counted.” 7th Ed. at 92.

This is a significant change. It opens the door to a wide range of prosecutions that used to be barred in the run-up to an election. Cases involving voter registration, for example, could not be brought on the eve of an election under the prior language. But since they do not relate to “the manner in which votes were cast or counted,” it appears that under the new Seventh Edition they can now be brought at any time – regardless of the effect they might have on elections.

We know that cases involving voter registration have been used for partisan political purposes during close elections. Senator Feingold pointed out one example during a hearing on June 5, involving the way the Missouri Republican Party seized on Mr. Schlozman's indictments of four former ACORN voter registration workers just a few days before the close election in November 2006. The indictments were cited by state Republicans as evidence that Democrats, and a candidate specified by name, were trying to "steal next week's elections."

In sum, the claim in the July 27 letter that "[t]here has been no substantive change" in the policy on noninterference with elections ignores the many changes that have been made to the manual. Taken together, the changes suggest that the Department has revised the manual to allow prosecutions that it knows will be used for partisan political advantage during the election process. That would be a grave departure from the Department's traditional mission of securing justice for all Americans. Please provide answers to my questions and explanations for all of the changes I have identified.

Sincerely,

A handwritten signature in black ink, appearing to read "Dianne Feinstein". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Dianne Feinstein  
United States Senator