

United States Senate

WASHINGTON, DC 20510

March 24, 2004

The Honorable John Ashcroft
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Ashcroft:

We are writing to alert you to possible criminal violations involving the concealment, and obstruction by threat, by Administration officials, of information requested pursuant to a congressional inquiry. We believe that at least two Federal criminal statutes were possibly violated by officials at the Department of Health and Human Services (HHS), the Office of Management and Budget (OMB) and the White House:

1. Obstruction of Proceedings Before Departments, Agencies, and Committees, 18 U.S.C. § 1505,¹ and
2. Fraud and False Statements, 18 U.S.C. § 1001.²

¹ 18 U.S.C. §1505 reads, in pertinent part: "Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress -
Shall be fined under this title or imprisoned not more than five years, or both."

² 18 U.S.C. § 1001 reads:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
- shall be fined under this title or imprisoned not more than 5 years, or both.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to-

- (1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or
- (2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

The chief actuary of the Medicare system, Richard S. Foster, an employee of the Department of Health and Human Services (HHS), was threatened with termination of employment by Thomas A. Scully, the former head of the Center for Medicare and Medicaid Services (CMS), if Mr. Foster disclosed to Congress cost estimates for the then-pending Medicare prescription drug bill. Mr. Scully has admitted to the media that he blocked Mr. Foster from providing at least one cost estimate to Congress in June 2003. Moreover, Mr. Foster has indicated that he provided estimates to others in the Administration who may have participated in the effort to suppress the information.

Mr. Foster claims that he was obstructed, by way of threats from his superiors and other means, from responding to a congressional inquiry from House Ways and Means Committee staff. Mr. Foster was prevented from informing Congress that it was poised to take action that would result in a cost to the Treasury of almost \$140 billion more than Congress understood.

These potential violations of 18 U.S.C. § 1505 and 18 U.S.C. § 1001 by HHS, OMB and the White House are a serious matter that must be investigated.

Sincerely,


FRANK R. LAUTENBERG


DEBBIE STABENOW


EDWARD M. KENNEDY


HILLARY RODHAM CLINTON