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Series: Speech File Draft Files
Subseries: Chron File, 1989-1993

OA/ID Number: 13481
Folder ID Number: 13481-012

Folder Title:
Signing of "Whistle-Blower" Legislation, 4/10/89

Stack:	Row:	Section:	Shelf:	Position:
G	25	6	2	1

**REMARKS: SIGNING OF "WHISTLEBLOWERS"
ROOM 450
MONDAY, APRIL 10, 2 P.M.**

**TODAY I AM PLEASED TO SIGN S. 20, THE
"WHISTLEBLOWER PROTECTION ACT OF 1989." WE USED TO
THINK OF A WHISTLEBLOWER AS A GUY IN A FUNNY CAP AND A
BLACK-AND-WHITE SHIRT WHO WAS ALWAYS THROWING DOWN A
FLAG.**

- 2 -

**PERHAPS THAT'S AN APT COMPARISON FOR THE BUSINESS
AT HAND; FOR A WHISTLEBLOWER IS, AFTER ALL, THE ONE WHO
CRIES "FOUL" TO WASTE, FRAUD AND ABUSE. IN SHORT, A
TRUE WHISTLEBLOWER IS A PUBLIC SERVANT OF THE HIGHEST
ORDER. I SHARE THE DETERMINATION OF THE CONGRESS THAT
WE DO EVERYTHING POSSIBLE TO ENSURE THAT THESE
DEDICATED MEN AND WOMEN SHOULD NOT BE FIRED, REBUKED OR
SUFFER FINANCIALLY FOR THEIR HONESTY AND GOOD
JUDGEMENT.**

- 3 -

THIS BILL WILL GO A LONG WAY TOWARD THIS GOAL, BY STRENGTHENING THE PROTECTIONS AND PROCEDURAL RIGHTS AVAILABLE TO THOSE FEDERAL EMPLOYEES WHO REPORT MISDEEDS AND MISMANAGEMENT.

TOWARD THIS END, THE BILL I AM SIGNING TODAY IS A SIGNIFICANT IMPROVEMENT OVER LEGISLATION ENACTED BY CONGRESS LAST YEAR.

- 4 -

INDEED, THE FACT THAT THE LEGISLATIVE AND EXECUTIVE WORKED TOGETHER TO ELIMINATE MAJOR CONSTITUTIONAL FLAWS IN THIS BILL IS A REFLECTION OF OUR JOINT COMMITMENT TO GOOD GOVERNMENT.

THROUGH THEIR DILIGENCE AND HARD WORK, THE ATTORNEY GENERAL, ALONG WITH SENATOR LEVIN, CONGRESSMAN HORTON, AND OTHERS IN THE CONGRESS WERE SUCCESSFUL IN (1) CLARIFYING THE BURDEN OF PROOF ON EMPLOYEES;

- 5 -

(2) ELIMINATING INDEPENDENT LITIGATING AUTHORITY IN THE OFFICE OF SPECIAL COUNSEL; AND (3) RETAINING CURRENT LAW WHICH PROVIDES THAT THE SPECIAL COUNSEL MAY ONLY BE REMOVED FOR INEFFICIENCY, NEGLECT OF DUTY, OR MALFEASANCE.

THESE THREE ISSUES WERE AT THE ROOT OF LAST YEAR'S DISAGREEMENT OVER THIS LEGISLATION. I AM TREMENDOUSLY PLEASED THAT THESE VALID CONSTITUTIONAL CONCERNS WERE ADDRESSED IN THE BILL THAT I AM SIGNING TODAY.

- 6 -

AS A RESULT, THIS LEGISLATION WILL ENHANCE THE AUTHORITY OF THE OFFICE OF SPECIAL COUNSEL TO PROTECT WHISTLEBLOWERS AND OTHER EMPLOYEES VICTIMIZED BY PROHIBITED PERSONNEL PRACTICES. WHISTLEBLOWERS WILL ALSO NOW BE ALLOWED TO TAKE THEIR CASES TO THE MERIT SYSTEMS PROTECTION BOARD.

- 7 -

LET ME ALSO REAFFIRM MY CONFIDENCE IN THE COMPETENCE AND SKILLS OF OUR SENIOR EXECUTIVE AND CAREER MANAGERS AND SUPERVISORS, BOTH CIVILIAN AND MILITARY. LET US REMEMBER THAT MOST GOVERNMENT MANAGERS RESPOND PROMPTLY AND EFFECTIVELY TO PROBLEMS LIKE THOSE DISCLOSED BY WHISTLEBLOWERS EVEN WITHOUT SPECIAL PROVISIONS OF THE LAW.

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#

McChure Insert approved by Andy Caud for

Today I am pleased to sign S. 20, the "Whistleblower Protection Act of 1989." We used to think of a whistleblower as a guy in a funny cap and a black and white shirt who was always throwing down a flag.

Sumnu
through
Cicconi's
office.

Perhaps that's an apt comparison for the business at hand; for a whistleblower is, after all, the one who cries "foul" to waste, fraud and abuse. In short, a true whistleblower is a public servant of the highest order. I share the determination of the Congress that we do everything possible to ensure that these dedicated men and women should not be fired, rebuked or suffer financially for their honesty and good judgment.

This bill will go a long way toward this goal, by strengthening the protections and procedural rights available to those federal employees who report misdeeds and mismanagement.

Toward this end, the bill I am signing today ^{meant A} is a significant improvement over legislation enacted by Congress last year. Indeed, the fact that the legislative and executive worked together to eliminate major Constitutional flaws in this bill is a reflection of our joint commitment to good government.

Changes
begin

Through their diligence and hard work, the Attorney General, along with Senator Levin, Congressman Horton, and others in the Congress were successful in (1) clarifying the burden of proof on employees; (2) eliminating independent litigating authority in

the Office of Special Counsel; and (3) retaining current law which provides that the Special Counsel may only be removed for inefficiency, neglect of duty, or malfeasance.

Changes and
These three issues were at the root of last year's disagreement over this legislation. I am tremendously pleased that these valid Constitutional concerns were addressed in the bill that I am signing today. As a result, *[]* this legislation *[]* will enhance the authority of the Office of Special Counsel to protect whistleblowers and other employees victimized by prohibited personnel practices. Whistleblowers will also now be allowed to take their cases to the Merit Systems Protection Board.

Let me also reaffirm my confidence in the competence and skills of our senior executive and career managers and supervisors, both civilian and military. Let us remember that most government managers respond promptly and effectively to problems like those disclosed by whistleblowers even without special provisions of law.

Finally, This bill is an example of how the Administration and Congress can work together to sharpen and improve legislation. For this and many other reasons, I am delighted to now sign S. 20 into law.

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1st
Draft

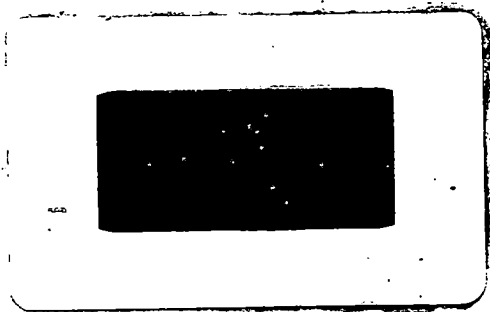
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ORIGINAL

Document No.

022539

WHITE HOUSE STAFFING MEMORANDUM

DATE: 4/5/89 ACTION/CONCURRENCE/COMMENT DUE BY: COB 4/6/89

SUBJECT: S. 20 - WHISTLEBLOWER PROTECTION ACT FOR 1989
*Signing statement Attached

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input type="checkbox"/>	<input type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	STUDDERT	<input type="checkbox"/>	<input type="checkbox"/>
BATES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	UNTERMAYER	<input type="checkbox"/>	<input type="checkbox"/>
BREEDEN	<input type="checkbox"/>	<input type="checkbox"/>	<u>Clerk</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please provide your comments/recommendations directly to my office by close of business Thursday, April 6. Thank you.

RESPONSE:

James W. Cicconi
Assistant to the President
and Deputy to the Chief of Staff
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

APR 5 1989

1989 APR -5 AM 9:1

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill - S. 20 - Whistleblower Protection
Act of 1989
Sponsors - Levin (D) MI and 29 others

Last Day for Action

April 14, 1989 - Friday

Purpose

Extends enhanced protections to Federal employee whistleblowers who disclose fraud, waste, or abuse in Government activities.

Agency Recommendations

Office of Management and Budget	Approval (Signing Statement attached)
Department of Justice	Approval (Signing Statement attached)
Office of Special Counsel	Approval (Signing Statement attached)
Office of Personnel Management	Approval

Discussion

S. 20, as introduced, was identical to S. 508 of the 100th Congress, which was pocket vetoed by President Reagan on October 26, 1988. S. 508 was vetoed on the recommendation of the Department of Justice and the Office of Personnel Management (OPM). As enrolled, however, S. 20 has been modified, pursuant to a floor amendment by Senator Levin, and it is now acceptable to Justice and OPM. The modifications to S. 20 were the result of negotiations, primarily by Justice and OMB, with Senator Levin, a principal sponsor of S. 20.

The Justice Department indicated its support for S. 20 as modified by Senator Levin's floor amendment in a letter of March 3, 1989, from Attorney General Thornburgh to Senator Levin. Support for the amended version of S. 20 was also expressed in Statements of Administration Policy sent to the Senate and House before each House's vote on the bill. S. 20 passed the Senate by a vote of 97-0, and the House by voice vote.

S. 20, like S. 508 in the 100th Congress, grants significant new protections to whistleblowing Federal employees. The enrolled bill is the result of several years of congressional attempts to expand whistleblower defenses. It reflects a strong bipartisan consensus among proponents that the prohibition against reprisal for whistleblowing in existing law is ineffective. The proponents believe that whistleblowers have been penalized for their disclosures, and that increased protection is essential to encourage disclosures of fraud, waste, or abuse.

Background

The Civil Service Reform Act of 1978 included statutory protection for whistleblowing as part of its reforms. The 1978 Act established reprisal by an agency against an employee for the disclosure of fraud, waste, or abuse as one of its "prohibited personnel practices." As noted, there is a widespread perception in Congress that the existing law provides insufficient protection for whistleblowers. Members of Congress have been generally critical of the Office of Special Counsel (OSC) for what they believe to be its insufficient dedication to the "cause" of whistleblower protection.

The General Accounting Office (GAO), on the other hand, in a 1985 study, "Whistleblower Complainants Rarely Qualify for Office of the Special Counsel Protection," indicated that most allegations by whistleblowers are not well-founded. The GAO study also concluded that the OSC appropriately did not pursue many whistleblower complaints because they were insubstantial.

Nevertheless, congressional proponents remain convinced that whistleblowers need more statutory protection. S. 20 reflects the best achievable compromise between the Government's requirements for adequate authority to manage its workforce and the goal of protecting and encouraging legitimate whistleblowing employees. During the 100th Congress, OMB, joined by Justice, OPM, the OSC, and the President's Council on Integrity and Efficiency, sought to modify the legislation to achieve a better balance with management needs, but was largely unsuccessful in obtaining major changes to the bill.

Current Whistleblower Provisions

Under current law, employees who believe that a personnel action taken by their agencies (e.g., reassignment or geographic relocation) is a reprisal for whistleblowing may seek the assistance of the OSC to block the agency's action.

The OSC functions as the investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB). The OSC may investigate the allegations itself, or refer the case to the employing agency for investigation and report. The OSC may also seek a stay of the agency personnel action to allow time to resolve the matter administratively. If after investigation, the OSC concludes that the employee's allegations are not substantial, or that they are without merit, the employee has no further recourse. If, on the other hand, the OSC believes there is merit to the allegation, and has been unable to resolve it administratively, it may prosecute the agency before the MSPB.

If the MSPB sustains the OSC findings, the agency may not appeal. If the MSPB sustains the agency against the OSC, the whistleblowing employee may appeal to the courts, but only if the employee has joined in the OSC's prosecution before the MSPB.

According to congressional proponents, even if the OSC brings the case to the MSPB, the employee usually cannot sustain the reprisal allegation because of the excessively heavy burden of proof imposed on the employee by current case law. The case law applied by the MSPB is the so-called "Mt. Healthy test," which was the result of a Supreme Court decision in 1977 (Mt. Healthy City School District Board of Education v. Doyle (429 U.S. 274)).

Under the "Mt. Healthy test," in order to block the agency's action, complaining employees must show by a preponderance of the evidence that their whistleblowing was a "substantial" or "motivating" factor in the agency's action. In the face of such a showing by the employee, the agency, to prevail, must rebut by showing by a preponderance of the evidence that it would have taken the same action even if the employee had not made a disclosure about fraud, waste, or abuse.

Provisions of the Enrolled Bill

A summary of the key provisions that were the basis for last year's veto of S. 508, together with their disposition in this enrolled bill, is provided in Attachment A to this memorandum.

The following discusses in more detail the concerns that were the basis for the veto of S. 508 and their treatment in S. 20, as well as other changes in S. 20 from the vetoed bill.

-- "Mt. Healthy Test"

S. 20 as introduced, like the vetoed S. 508, proposed to codify a modified version of the Mt. Healthy test. The modified test would have made it easier for whistleblowers to contest and block disciplinary actions against them, and harder for agencies to defend and sustain such actions.

Under S. 20 as introduced, employees would have had to establish only that their whistleblowing was "a factor" (instead of a "substantial" or "motivating" factor) in the agency's decision in order to bar the personnel action. Agencies, to sustain their actions, would have had to show by "clear and convincing evidence" (a much higher level of proof than "preponderance") that they would have taken the same action against the employee even if there had been no whistleblowing.

The reduction in the burden of proof on employees, combined with the substantial increase in the burden on agencies, was cited last October in the Memorandum of Disapproval on S. 508 as a major objection. The Memorandum expressed concern that the Mt. Healthy language in S. 508 would have interfered substantially with personnel management in Federal departments and agencies.

Proponents of change in the Mt. Healthy rule are adamant that easing the burden on employees and increasing it on agencies is necessary to protect whistleblowers. The enrolled bill amends the original language codifying the revised Mt. Healthy test to clarify that the employee must show that the whistleblowing was a "contributing" factor in the agency's action. No change is made in the "clear and convincing evidence" standard the agencies must meet.

Justice, in a proposed signing statement attached to its views letter on S. 20, states that the change in the treatment of the Mt. Healthy rule is a major improvement. OPM, on the other hand, advises in its views letter that the change is minor and insufficient to alleviate its serious concerns about the difficulties the bill is likely to create for the Federal employee disciplinary system.

-- OSC Independence and Authorities

S. 20, like S. 508, would establish the OSC as an independent agency, apart from the MSPB. As introduced, S. 20 had proposed to replicate for the OSC certain authorities that the MSPB now has. These were authority for the OSC (1) to conduct its own litigation in court against agencies or employees and (2) to submit testimony and reports to Congress without complying with the Executive branch legislative clearance process. In addition, S. 20 originally authorized the OSC to seek judicial review of certain MSPB decisions, and continued the OSC's existing authority to enforce its own subpoenas. The bill also originally

reenacted provisions of existing law which allow the President to remove the Special Counsel only for inefficiency, neglect of duty, or malfeasance in office.

These provisions were strongly opposed in the Memorandum of Disapproval on S. 508. The Memorandum stated, in part, that they were objectionable on constitutional grounds, impinging upon the President's constitutional authority and duty to faithfully execute the laws, supervise and resolve disputes between his subordinates, and recommend such measures to Congress as he judges necessary and expedient.

As a result of the Justice Department's and OMB's negotiations with Senator Levin, the final version of S. 20 eliminates language giving the OSC independent litigating authority and the right to seek judicial review of certain decisions. It also eliminates the OSC's current authority to enforce its subpoenas. To compensate for the deletion of authority for the OSC to seek judicial review, S. 20 includes a new provision requiring payment of attorneys' fees of any employee who prevails in an appeal to the courts from an MSPB decision. Congressional supporters stated that this provision would make it easier for individuals to appeal their own cases. Further, in place of OSC subpoena enforcement authority, S. 20 provides that the OSC may request the MSPB to enforce the OSC subpoenas.

The Levin floor amendment also modified the exemption for the OSC from the legislative clearance process by deleting language expressly prohibiting "review, clearance, or approval" of the OSC material by "any other administrative authority." Instead, S. 20 requires that the OSC submit its testimony and reports concurrently to Congress and the President and any Executive branch agency. Senator Levin and Rep. Schroeder (D-CO) indicated their belief that the amendment leaves the substance of the exception unchanged. As explained further below, Justice believes this provision could raise constitutional problems unless it is construed carefully.

Senator Levin's amendment also deleted the provisions of S. 20 that would have reenacted existing restrictions on the President's power to remove the Special Counsel. This change has no practical effect, as it leaves intact the restrictions in current law.

-- Other Changes in S. 20 from S. 508

Senator Levin's floor amendment deleted two provisions that were included in S. 508 last year at the behest of the Reagan Administration. First, a provision was deleted that would have allowed the OSC to intervene against a whistleblower before the MSPB without the employee's consent under certain circumstances. Accordingly, the bill as enrolled completely bans OSC intervention without consent by the employee.

The second deletion concerned a new prohibition involving disclosure by the OSC of the identity of a whistleblower without the employee's consent. In S. 508, exceptions to the prohibition would have been allowed if necessary (1) to carry out the OSC's functions, or (2) because of imminent danger to public health or safety, or imminent violation of a criminal law. The first exception has been deleted under the enrolled bill.

Congressional proponents stated that these deletions will help assure whistleblowers that the OSC will be on their side and will not act against their interests.

S. 20 as enrolled also modifies a provision of S. 508 which repeated a provision of existing law. Currently the OSC is required to transmit information disclosed by an employee that involves foreign intelligence or counter-intelligence information, if the disclosure is specifically prohibited by law or executive order, to the House and Senate Select Committees on Intelligence. Under the enrolled bill, the OSC would also be required to transmit such information to the President's National Security Advisor. As discussed below, Justice advises that this provision could cause constitutional problems, unless carefully construed.

Finally, S. 20 would authorize appropriations of "such sums as necessary" for the OSC for four years, FYs 1989-1992, and such sums as necessary for the MSPB for six years, FYs 1989-1994. These time-limited authorizations replace existing permanent authorizations for appropriations of such sums for both agencies. S. 508 would have provided specific annual dollar authorizations for a shorter time period.

The provisions of the enrolled bill would become effective 90 days after the date of enactment of the bill.

Other major provisions in S. 20 that are unchanged from S. 508 are summarized in Attachment B to this memorandum.

Agency Views

Justice, in its views letter on S. 20, states that the chief objectionable provisions that prompted the disapproval of S. 508 last year have been deleted or amended. Accordingly, Justice recommends that you approve S. 20 with an appropriate signing statement. Justice advises, however, that although S. 20 does not contain all of the many unconstitutional features of S. 508, two provisions must be construed carefully in order to avoid constitutional questions. This problem is addressed in the Justice signing statement.

The first of the troublesome provisions is the one exempting the OSC from the legislative clearance process by directing the agency to transmit its views in reports and testimony to Congress

and the President concurrently. Justice states that if this provision were construed to preclude Executive branch review of the OSC's transmittals, it would be unconstitutional as violative of the President's authority to "take care that the Laws be faithfully executed" and to coordinate and supervise his subordinates. Accordingly, Justice advises that it would construe the provision as permitting Executive branch coordination and prior review of the OSC's transmittals to Congress.

The second problematic provision cited by Justice concerns the requirement that the OSC transmit foreign intelligence or counter-intelligence information to the congressional intelligence committees and the President's National Security Advisor. Justice states that, to avoid constitutional difficulties, the Department would also construe this provision as not detracting from the President's authority to review such information prior to its transmission to Congress and as subject to the President's constitutional claims of executive privilege.

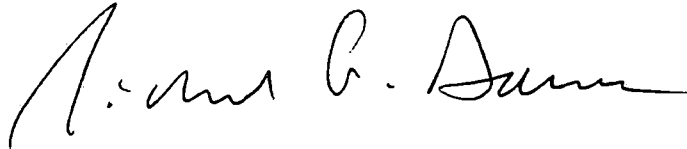
OPM, in its letter on the enrolled bill, recommends approval of S. 20 in view of the complex and difficult process by which it was developed. OPM points out that S. 20 includes modifications resulting from extensive negotiations between the Administration and Congress, but that only a minor change was obtainable in the "Mt. Healthy" burden-of-proof provision. As noted above, that change does not allay OPM's strong concerns about the difficulties this bill will likely create for the disciplinary system for Federal personnel.

OSC recommends that you approve S. 20 since the bill is designed to encourage conscientious Federal employees to disclose evidence of waste, fraud, and other wrongdoing. The OSC argues in its views letter, however, that the reasons for passage advanced by the bill's proponents are, in many cases, not valid. In particular, the OSC challenges the criticisms of its own past and present activities on behalf of whistleblowers. The agency has attached a proposed signing statement to its letter that largely defends its record.

Conclusion and Recommendations

S. 20 reflects the result of negotiations by the Justice Department with key members of Congress, and the Department believes the legislation contains significant improvements over the legislation vetoed last year. The overwhelming bipartisan support for this legislation testifies to the strength of congressional feeling about the need to encourage and protect whistleblowers. Proponents of S. 20 believe it essential to the Government's efforts to eliminate fraud, waste, or abuse from its programs. The Administration has also publicly indicated its support for S. 20 as passed by Congress. Accordingly, I join with Justice, the OSC, and OPM in recommending that you approve the enrolled bill.

A draft signing statement is attached to this memorandum for your consideration. The statement contains edits to the Justice draft and the addition of descriptive language and positive statements about the bill's purposes. Justice has reviewed and approved the revised statement.

A handwritten signature in cursive script, appearing to read "Richard G. Darman".

Richard G. Darman
Director

Enclosures

STATEMENT BY THE PRESIDENT

← Honesty in gov.
DON'T SLAY THE MESS.

Today I am pleased to sign S. 20, the "Whistleblower Protection Act of 1989." This bill will strengthen the protections and procedural rights available to those Federal employees, often called "whistleblowers," who report waste, fraud, or abuse in Federal programs. It will ensure that those employees will not suffer adverse personnel actions because of their whistleblowing activities.) (copy)

Federal employee whistleblowers can make a valuable contribution to the Administration's commitment to ensure effective and efficient use of tax dollars by the Government. My Administration shares the view in Congress that whistleblowers should be protected from punitive action against them in reprisal for their disclosures.

The bill I am signing today will enhance the authorities and responsibilities of the Office of Special Counsel to protect whistleblowers and other employees victimized by prohibited personnel practices. It also provides whistleblowers with a new independent right to take their cases to the Merit Systems Protection Board.

S. 20 addresses the chief constitutional concerns raised by earlier versions of this legislation. The most substantial improvement in the bill is the deletion of provisions that would have enabled the Special Counsel, an Executive branch official, to oppose other Executive branch agencies in court. Under our constitutional system, the Executive branch cannot sue itself.

Article II and Article III of the Constitution require that disputes between Executive branch officials or agencies be resolved within the Executive branch.

The second major improvement in the bill is its clarification of the burden of proof that an employee must meet in establishing a claim that an adverse personnel action was taken because of whistleblowing. The bill clarifies that an employee must show that whistleblowing activity was a "contributing factor" in the decision to take the personnel action. The employee must demonstrate that his or her whistleblowing actually contributed to the agency's decision to take the adverse personnel action.

The agency may rebut proof that whistleblowing was a "contributing" factor in the decision by showing that it would have taken the action in the absence of any whistleblowing.

Several provisions of the bill must be construed carefully, in order to avoid constitutional problems. Among these is new section 1217 of title 5, United States Code, which provides that information transmitted by the Special Counsel to Congress "shall be transmitted concurrently to the President and any other appropriate agency in the executive branch." New section 1213(j) similarly provides that certain information that comes into the hands of the Special Counsel shall be transmitted to the President's National Security Advisor as well as specified committees in Congress. We will work to ensure that such transmittals do not undermine the Executive branch's ability to speak with one voice to Congress.

In signing S. 20, I wish to reaffirm my confidence in the competence and skills of our senior executive and career managers and supervisors, both civilian and military. These individuals' day-to-day devotion to duty is what makes the Government work. Although whistleblowers clearly can and do contribute to better government, these managers respond regularly to a variety of problems, including those disclosed by whistleblowers, without special statutory provisions and procedures.

I also have confidence that agency heads and the Special Counsel will help address the problems of fraud, waste, or abuse by ensuring that reprisals for whistleblowing will not be tolerated.

S. 20 will contribute to this effort and I believe it is a constructive measure that will serve the public interest. I am pleased that the Administration was able to work in a spirit of cooperation and bipartisanship with both Houses of Congress to resolve our differences and enact this important legislation.

DISPOSITION IN S. 20 OF MAJOR OBJECTIONABLE PROVISIONS OF S. 508Major Objections to S. 508
Noted in 10/26/88 Memorandum
of DisapprovalDisposition in S. 20

- | | |
|--|--|
| <p>1. Changes in the "Mt. Healthy" burden of proof test making it easier for employees to sustain, and harder for agencies to rebut, an allegation that the agency's personnel action was an illegal reprisal for whistleblowing. Employee would have had to show that whistleblowing was a "factor" in the agency's action; and agency would have had to establish by "clear and convincing evidence" that it would have taken the same action even if there had been no disclosure.</p> <p>2. Grant of independent litigating authority to the Office of Special Counsel (OSC). Also, authority for that Office to obtain judicial review of most decisions of the Merit Systems Protection Board (MSPB) in proceedings to which the Special Counsel is a party.</p> <p>3. Reenactment of existing limits on the President's power to remove the Special Counsel. (Current law provides that the Counsel may be removed only for inefficiency, neglect of duty, or malfeasance in office.)</p> <p>4. Exemption of the OSC from the Executive branch legislative clearance process, including specific language barring "review, clearance, or approval" by any Executive branch agency of the OSC's reports, testimony or other information transmitted to Congress.</p> | <p>1. Clarifies burden of proof on employees; i.e., employee must show that whistleblowing was a "contributing" factor in the agency's action. No change is made in the standard that agencies must meet to sustain their actions.</p> <p>2. Eliminated in S. 20, along with the OSC's current authority to seek enforcement of its own subpoenas. S. 20 provides, instead, that the OSC may request the MSPB to seek enforcement of OSC subpoenas.</p> <p>3. S. 20 is silent on Presidential removal of the Special Counsel, so the limitations in existing law continue.</p> <p>4. Revised provision omits the explicit prohibition on review, clearance, or approval by any Executive branch agency. Instead, it substitutes a requirement for the OSC to transmit reports, testimony, or other information concurrently to the President and Congress.</p> |
|--|--|

OTHER MAJOR PROVISIONS IN S. 20 THAT
WERE ALSO INCLUDED IN S. 508

S. 20 would add several new substantive and procedural changes affecting whistleblowers and, in many cases, all employees adversely affected by a prohibited personnel practice. These include changes which would:

- give whistleblowers the right to take their cases directly to the Merit Systems Protection Board (MSPB) if the Office of Special Counsel (OSC) does not pursue their case or does not act on their allegations within 120 days;
- allow whistleblowers to request the MSPB to issue a "stay" to prevent their agencies from carrying out a proposed personnel action against them;
- grant whistleblowers the right to seek judicial review of an adverse MSPB decision;
- give the function of the OSC a new emphasis by specifying in the bill's preamble that the OSC's "primary purpose" is to protect employees, "especially whistleblowers," from prohibited personnel practices;
- redefine the prohibited personnel practice of reprisal for whistleblowing to make clear that agencies are prohibited from taking action against an employee because of a whistleblowing disclosure, regardless of the agencies' motive;
- make it a prohibited personnel practice for employing agencies to take action or threaten reprisals against employees, including whistleblowers, who (1) cooperate with agency Inspectors General or the OSC, (2) testify in any Government proceeding, or (3) refuse to obey an order that requires them to violate a law;
- give all employees, including whistleblowers, who prevail in the first stage of an appeal at the regional level of the MSPB the right to be retained in their jobs, and thus in pay status, while their agencies appeal the case;
- make mandatory the payment of attorneys' fees and other reasonable costs to all employees, including whistleblowers, who prevail before the MSPB in an allegation of prohibited personnel practice;

- bar the OSC from responding to a loyalty and security check on any employee, including whistleblowers, who makes an allegation of a prohibited personnel practice unless the security clearance involves a "Top Secret" classification. (The Reagan Administration attempted without success to change this provision to include access at the "Secret" level. The OSC, however, receives such requests infrequently.);
- give whistleblowers who are the victims of agency reprisal employment preference in reassignment to a position in another agency; and
- allow the MSPB to be substituted for the employing agency as a party to an appeal where the issues involved relate only to the MSPB's jurisdiction or procedures, not to the merits of the personnel action that give rise the case. (The Reagan Administration opposed substitution of the MSPB for the agency as improper for a quasi-judicial body. As a result, the substitution was limited, as described, to matters of jurisdiction and procedures.).

2462
2426



WHITE HOUSE STAFFING MEMORANDUM

DATE: 4/7/89 ACTION/CONCURRENCE/COMMENT DUE BY: 4/7/89 5:00 PM

SUBJECT: PRESIDENTIAL REMARKS: SIGNING OF "WHISTLEBLOWER" LEGISLATION

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STUDDERT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BATES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	UNTERMAYER	<input type="checkbox"/>	<input type="checkbox"/>
BREEDEN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WINSTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PINKERTON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please forward any comments directly to Chriss Winston, Rm. 122, x2930, no later than 5:00 TODAY, Friday, April 7, 1989, with an info copy to my office. Sorry for the short turnaround. Thank you.

RESPONSE: TO: Chriss Winston April 10, 1989

The NSC staff concurs in the attached statement.

RG: SP
Brent Scowcroft

cc: James Cicconi

James W. Cicconi
Assistant to the President
and Deputy to the Chief of Staff
Ext. 2702

1989 APR -7 PM 2:0

(Davis)
4/7/89/noon
Draft: One
Title: whistle

PRESIDENTIAL REMARKS: SIGNING OF "WHISTLEBLOWERS"
Room 450
MONDAY, APRIL 10, 2 p.m.

Today I am pleased to sign S. 20, the "Whistleblower Protection Act of 1989." You know, when I was growing up, a whistleblower was a guy in a funny hat and a black-and-white shirt who was always throwing down a flag.

Perhaps that's an apt comparison. A whistleblower is, after all, the one who cries "foul" to waste, fraud and abuse. In short, a true whistleblower is a public servant of the highest order. I share the determination of the Congress that these dedicated men and women should not be fired, rebuked or suffer financially for their honesty and good judgment.

This bill will go a long way in guaranteeing this, by strengthening the protections and procedural rights available to those federal employees who report misdeeds and mismanagement.

Toward this end, the bill I am signing today will enhance the authority of the Office of Special Counsel, to protect whistleblowers and other employees victimized by prohibited

personnel practices. Whistleblowers will also now be allowed to take their cases to the Merit Systems Protection Board.

Another major improvement of this law is its clarification of the burden of proof. Employees must prove that whistleblowing was a "contributing factor" to an adverse personnel action. The agency will also have the right of rebuttal, the chance to prove that the personnel decision was objective and fair. By establishing a full and impartial debate, I am confident that truth will prevail.

Let me also reaffirm my confidence in the competence and skills of our senior executive and career managers and supervisors, both civilian and military. Let us remember that most government managers respond promptly and effectively to problems disclosed by whistleblowers long before the provisions of the law come into effect.

Finally, this bill is a sterling example of how the Administration and Congress can work together to sharpen and improve legislation. I am particularly pleased that this well-crafted bill so neatly resolves Constitutional concerns raised by earlier versions of this legislation. For this and many other reasons, I am delighted to now sign S-20 into law.



April 7, 1989

MEMORANDUM FOR JIM CICCONI

FROM; DENISE SCHWARZ
OFFICE OF CABINET AFFAIRS

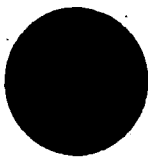
SUBJECT; PRESIDENTIAL REMARKS; SIGNING OF "WHISTLEBLOWER"
LEGISLATION

We have reviewed the remarks and have incorporated our
comments.

Attachment

cc: Chriss Winston

WHITE HOUSE STAFFING MEMORANDUM



DATE: 4/7/89 ACTION/CONCURRENCE/COMMENT DUE BY: 4/7/89 5:00 PM

SUBJECT: PRESIDENTIAL REMARKS: SIGNING OF "WHISTLEBLOWER" LEGISLATION

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STUDDERT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BATES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	UNTERMAYER	<input type="checkbox"/>	<input type="checkbox"/>
BREEDEN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WINSTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PINKERTON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please forward any comments directly to Chriss Winston, Rm. 122, x2930, no later than 5:00 TODAY, Friday, April 7, 1989, with an info copy to my office. Sorry for the short turnaround. Thank you.

RESPONSE:

James W. Cicconi
 Assistant to the President
 and Deputy to the Chief of Staff
 Ext. 2702

(Davis)
4/7/89/noon
Draft: One
Title: whistle

PRESIDENTIAL REMARKS: SIGNING OF "WHISTLEBLOWERS'
Room 450
MONDAY, APRIL 10, 2 p.m.

Today I am pleased to sign S. 20, the "Whistleblower Protection Act of 1989." You know, when I was growing up, a whistleblower was a guy in ~~a funny hat and~~ a black-and-white shirt who was always throwing down a flag.

Perhaps that's an apt comparison. A whistleblower is, after all, the one who cries "foul" to waste, fraud and abuse. In short, a true whistleblower is a public servant of the highest order. I share the determination of the Congress that ^{we do everything} these ^{possible} ^{ensure} dedicated men and women should not be fired, rebuked or suffer financially for their honesty and good judgment.

This bill will go a long way ^{toward this goal,} ~~in guaranteeing this,~~ by strengthening the protections and procedural rights available to those federal employees who report misdeeds and mismanagement.

Toward this end, the bill I am signing today will enhance the authority of the Office of Special Counsel, to protect whistleblowers and other employees victimized by prohibited

Counsel
Should
hear.

personnel practices. Whistleblowers will also now be allowed to take their cases to the Merit Systems Protection Board.

Another major ^{Provision} ~~improvement~~ of this law ^{relates to} ~~is its clarification~~ of the burden of proof. Employees must prove that whistleblowing was a "contributing factor" to an adverse personnel action. The agency will also have the right of rebuttal, the chance to prove that the personnel decision was objective and fair. ~~By establishing a full and impartial debate, I am confident that truth will prevail.~~

Let me also reaffirm my confidence in the competence and skills of our senior executive and career managers and supervisors, both civilian and military. Let us remember that most government managers respond promptly and effectively to problems disclosed by whistleblowers long before the provisions of the law come into effect.


Finally, this bill is a ^{good} ~~sterling~~ example of how the Administration and Congress can work together to sharpen and improve legislation. I am particularly pleased that this ~~well-crafted~~ bill ~~so neatly~~ ^{the} resolves ~~the~~ Constitutional concerns raised by earlier versions of this legislation. For this and many other reasons, I am delighted to now sign S-20 into law.

THE WHITE HOUSE

WASHINGTON

April 6, 1989

MEMORANDUM FOR THE PRESIDENT

FROM:  NICHOLAS F. BRADY
Chairman Pro Tempore
Economic Policy Council

SUBJECT: EPC Policy Reviews

I wanted to provide you a status report on the policy reviews you directed the Economic Policy Council to conduct and on a new Working Group on Rural Development.

Trade

You directed that the EPC develop an overall trade strategy and that Ambassador Hills lead the development of this report. USTR is developing a paper that will outline recommended principles to guide US trade policy and develop strategies for addressing major trade issues like EC 1992, US-Japan trade, and steel.

Ambassador Hills should be ready to present the paper to the EPC by early May.

Science and Technology

You directed that the EPC develop an overall strategy on science and technology policy and that Secretary Mosbacher work closely with the science advisor and other EPC members to draft a paper.

The paper will review all major research, development, technology, and innovation issues. In particular, the paper will develop policy options for improving our ability to convert new technologies into products for the marketplace.

Secretary Mosbacher plans to present the paper to the EPC by the end of June.

Rural Development

Secretary Yeutter asked the EPC to establish a Working Group on Rural Development to improve the coordination and implementation of the major federal rural development programs (e.g., rural housing, health, education). Currently, these programs are scattered in various Cabinet Departments. This Working Group will develop policy options for improving coordination and increasing state, local, and private sector involvement in rural development.

Secretary Yeutter plans to present a paper to the EPC by early June.



WHITE HOUSE STAFFING MEMORANDUM

DATE: 4/7/89 ACTION/CONCURRENCE/COMMENT DUE BY: 4/7/89 5:00 PM

SUBJECT: PRESIDENTIAL REMARKS: SIGNING OF "WHISTLEBLOWER" LEGISLATION

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
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BATES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	UNTERMAYER	<input type="checkbox"/>	<input type="checkbox"/>
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CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WINSTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PINKERTON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please forward any comments directly to Chriss Winston, Rm. 122, x2930, no later than 5:00 TODAY, Friday, April 7, 1989, with an info copy to my office. Sorry for the short turnaround. Thank you.

no comments

RESPONSE:

James W. Cicconi
 Assistant to the President
 and Deputy to the Chief of Staff
 Ext. 2702

1989 APR -7 PM 2:31

(Davis)
4/7/89/noon
Draft: One
Title: whistle

PRESIDENTIAL REMARKS: SIGNING OF "WHISTLEBLOWERS"
Room 450
MONDAY, APRIL 10, 2 p.m.

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This bill will go a long way in guaranteeing this, by strengthening the protections and procedural rights available to those federal employees who report misdeeds and mismanagement.

Toward this end, the bill I am signing today will enhance the authority of the Office of Special Counsel, to protect whistleblowers and other employees victimized by prohibited

personnel practices. Whistleblowers will also now be allowed to take their cases to the Merit Systems Protection Board.

Another major improvement of this law is its clarification of the burden of proof. Employees must prove that whistleblowing was a "contributing factor" to an adverse personnel action. The agency will also have the right of rebuttal, the chance to prove that the personnel decision was objective and fair. By establishing a full and impartial debate, I am confident that truth will prevail.

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Finally, this bill is a sterling example of how the Administration and Congress can work together to sharpen and improve legislation. I am particularly pleased that this well-crafted bill so neatly resolves Constitutional concerns raised by earlier versions of this legislation. For this and many other reasons, I am delighted to now sign S-20 into law.


THE WHITE HOUSE

WASHINGTON

April 7, 1989

Memorandum to Chriss Winston

From:

Jim Pinkerton 

Re:

Comments on Speech Drafts: "Volunteer Awards,"
"Exceptional Parent Magazine," and "Whistleblower"

VOLUNTEER AWARDS

Overall good speech. One important comment:

p.4, para.5 Saying that the government spends more than what the private sector spends, an amount almost equal to the Italian budget, sends the message that the public sector is doing more than the initiatives of private individuals.

5,2,1 Shouldn't this be "which has the responsibility" instead of "has," so that the verb agrees with "the private sector?"

"EXCEPTIONAL PARENT" MAGAZINE

This speech needs more emphasis on the fact that the skills of the disabled are needed for practical economic reasons, including competitiveness. We also think it is important to avoid the phrase "quality of life," for the reasons given below.

1,1,3 We need to personalize the President's language more. Thus instead of "reiterate the commitment of my Administration..." let's say: "repeat my dedication to those with disabilities."

2,3,2 A very serious defect of the phrase "quality of life" is its connotations associated with abortion. Abortion is sometimes argued as justified because the infant would suffer from a poor "quality of life."

(more)

2-2-2

Thus we'd change the sentence to: "They want to be a part of the economic mainstream because work enhances self-esteem, because they want to contribute to their country's productivity and global competitiveness, and because they recognize that their talents are needed."

WHISTLEBLOWER

This speech is fine.

#

WHITE HOUSE STAFFING MEMORANDUM



DATE: 4/7/89 ACTION/CONCURRENCE/COMMENT DUE BY: 4/7/89 5:00 PM

SUBJECT: PRESIDENTIAL REMARKS: SIGNING OF "WHISTLEBLOWER" LEGISLATION

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
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DARMAN →	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STUDDERT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WINSTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PINKERTON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please forward any comments directly to Chriss Winston, Rm. 122, x2930, no later than 5:00 TODAY, Friday, April 7, 1989, with an info copy to my office. Sorry for the short turnaround. Thank you.

RESPONSE: *See changes*

James W. Cicconi
Assistant to the President
and Deputy to the Chief of Staff
Ext. 2702

(Davis)
4/7/89/noon
Draft: One
Title: whistle

PRESIDENTIAL REMARKS: SIGNING OF "WHISTLEBLOWERS"
Room 450
MONDAY, APRIL 10, 2 p.m.

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Toward this end, the bill I am signing today will enhance the authority of the Office of Special Counsel^x to protect whistleblowers and other employees victimized by prohibited

personnel practices. Whistleblowers will also now be allowed to take their cases to the Merit Systems Protection Board.

Another major improvement of this ~~law~~ ^{bill over earlier versions} is its clarification of the burden of proof. Employees must prove that whistleblowing was a "contributing factor" to an adverse personnel action. The agency will also have the right of rebuttal, the chance to prove that the personnel decision was objective and fair, ^{and not based on whistleblowers} By establishing a full and impartial debate, I am confident that truth will prevail.

Let me also reaffirm my confidence in the competence and skills of our senior executive and career managers and supervisors, both civilian and military. Let us remember that most government managers respond promptly and effectively to problems ^{like those} disclosed by whistleblowers ^{even without special} ~~long before the provisions~~ ^{protections} of the law come into effect.

Finally, this bill is a ^{fine} ~~staring~~ example of how the Administration and Congress can work together to sharpen and improve legislation. ~~I am particularly pleased that this well-crafted bill so neatly resolves constitutional concerns raised by earlier versions of this legislation.~~ For this and many other reasons, I am delighted to now sign S-20 into law.

This is too much!
the bill is the best we could do, it's not great.

THE WHITE HOUSE

WASHINGTON

April 7, 1989

MEMORANDUM FOR CHRISS WINSTON
DEPUTY ASSISTANT TO THE PRESIDENT FOR
COMMUNICATIONS

FROM: NELSON LUND 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks: Signing of
'Whistleblower' Legislation

At the request of James W. Cicconi, Counsel's Office has reviewed the captioned draft remarks.

The fifth paragraph, which deals with the burden of proof, misstates the Administration's position. The draft signing statement that was circulated yesterday correctly noted that the burden-of-proof provision in the enrolled bill is an improvement over previous versions of the bill. This provision, however, is not regarded by the Administration as an improvement over existing law. Accordingly, we recommend that the entire paragraph be deleted from the remarks. Alternatively, you may wish to consider drafting a new section that accurately tracks the discussions of burden of proof and of independent litigating authority in the signing statement that was circulated yesterday.

Counsel's Office has no other legal objections to these draft remarks. We appreciate having had the opportunity to review this matter.

cc: James W. Cicconi

THE WHITE HOUSE

WASHINGTON

April 7, 1989

MEMORANDUM FOR CHRISS WINSTON

FROM: ROGER B. PORTER *RBP*

SUBJECT: Presidential Remarks: Signing of
"Whistleblower" Legislation

We approve of the draft remarks in their current form and have no suggested recommendations from a policy standpoint.

cc: James W. Cicconi



WHITE HOUSE STAFFING MEMORANDUM

DATE: 4/7/89 ACTION/CONCURRENCE/COMMENT DUE BY: 4/7/89 5:00 PM

SUBJECT: PRESIDENTIAL REMARKS: SIGNING OF "WHISTLEBLOWER" LEGISLATION

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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BATES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	UNTERMAYER	<input type="checkbox"/>	<input type="checkbox"/>
BREEDEN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WINSTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PINKERTON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please forward any comments directly to Chriss Winston, Rm. 122, x2930, no later than 5:00 TODAY, Friday, April 7, 1989, with an info copy to my office. Sorry for the short turnaround. Thank you.

RESPONSE:

James W. Cicconi
 Assistant to the President
 and Deputy to the Chief of Staff
 Ext. 2702

1989 APR -7 PM 2:0

(Davis)
4/7/89/noon
Draft: One
Title: whistle

PRESIDENTIAL REMARKS: SIGNING OF "WHISTLEBLOWERS"
Room 450
MONDAY, APRIL 10, 2 p.m.

Today I am pleased to sign S. 20, the "Whistleblower Protection Act of 1989." You know, when I was growing up, a whistleblower was a guy in a funny hat and a black-and-white shirt who was always throwing down a flag.

Perhaps that's an apt comparison. A whistleblower is, after all, the one who cries "foul" to waste, fraud and abuse. In short, a true whistleblower is a public servant of the highest order. I share the determination of the Congress that these dedicated men and women should not be fired, rebuked or suffer financially for their honesty and good judgment.

This bill will go a long way in guaranteeing this, by strengthening the protections and procedural rights available to those federal employees who report misdeeds and mismanagement.

Toward this end, the bill I am signing today will enhance the authority of the Office of Special Counsel, to protect whistleblowers and other employees victimized by prohibited

personnel practices. Whistleblowers will also now be allowed to take their cases to the Merit Systems Protection Board.

Another major improvement of this law is its clarification of the burden of proof. Employees must prove that whistleblowing was a "contributing factor" to an adverse personnel action. The agency will also have the right of rebuttal, the chance to prove that the personnel decision was objective and fair. By establishing a full and impartial debate, I am confident that truth will prevail.

Let me also reaffirm my confidence in the competence and skills of our senior executive and career managers and supervisors, both civilian and military. Let us remember that most government managers respond promptly and effectively to problems disclosed by whistleblowers long before the provisions of the law come into effect.

Finally, this bill is a sterling example of how the Administration and Congress can work together to sharpen and improve legislation. I am particularly pleased that this well-crafted bill so neatly resolves Constitutional concerns raised by earlier versions of this legislation. For this and many other reasons, I am delighted to now sign S-20 into law.

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MASTER I



WHITE HOUSE STAFFING MEMORANDUM

DATE: 4/7/89

ACTION/CONCURRENCE/COMMENT DUE BY:

4/7/89 5:00 PM

SUBJECT: PRESIDENTIAL REMARKS: SIGNING OF "WHISTLEBLOWER" LEGISLATION

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MCCLURE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUNUNU	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NEWMAN	<input type="checkbox"/>	<input type="checkbox"/>
SCOWCROFT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STUDDERT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BATES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	UNTERMAYER	<input type="checkbox"/>	<input type="checkbox"/>
BREEDEN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WINSTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CICCONI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	PINKERTON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEMAREST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GRAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

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and Deputy to the Chief of Staff
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1000 APR -7 PM 2-

(Davis)
4/7/89/noon
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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

April 10, 1989

REMARKS BY THE PRESIDENT
DURING SIGNING OF
WHISTLE-BLOWER LEGISLATION

Room 450
Old Executive Office Building

2:05 P.M. EDT

THE PRESIDENT: Thank you very much. Well, today I am pleased to sign S. 20, the Whistle-blower Protection Act of 1989.

We used to think of a whistle-blower as some guy in a funny hat running around on a field with a black and white shirt on, always throwing down the flag. But that might well be an apt comparison for the business at hand because whistle-blowing is, after all, the one who cries foul to waste, to fraud, and to abuse. And in short, a true whistle-blower is a public servant of the highest order. And I share the determination of the Congress that we do everything possible to ensure that these dedicated men and women should not be fired or rebuked or suffer financially for their honesty and good judgment.

This bill will go a long way toward this goal, by strengthening the protections and procedural rights available to those federal employees who report misdeeds and mismanagement. Toward this end, the bill I am signing today is a significant improvement over legislation enacted by the Congress last year. Indeed, the fact that the legislative and executive worked together to eliminate major constitutional flaws in this bill is, indeed, a reflection of our joint commitment to good government.

Through their diligence and hard work, the Attorney General, along with Senator Levin and Congressman Frank Horton and others in the Congress were successful in clarifying the burden of proof on employees; eliminating independent litigating authority in the Office of Special Counsel; and then, thirdly, retaining current law which provides that the Special Counsel may only be removed for inefficiency, neglective duty, or malfeasance.

These three issues were at the root of last year's disagreement over this legislation. And I am tremendously pleased that these valid constitutional concerns were addressed in the bill that I am signing here today.

As a result, this legislation will enhance the authority of the Office of Special Counsel to protect whistle-blowers and other employees victimized by prohibited personnel practices. Whistle-blowers will also now be allowed to take their cases to the Merit System Protection Board.

For this and many other reasons, I am delighted to now sign S. 20, and I would invite the members of the Congress that are with us today to come forward as I do so. And I appreciate very much you all being here.

(The bill is signed.) (Applause.)

END

2:09 P.M. EDT

DAVIS

THE WHITE HOUSE

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April 10, 1989

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END

2:09 P.M. EDT



STATEMENT OF ADMINISTRATION POLICY

March 7, 1989
(Senate)

S. 20 - Whistleblower Protection Act of 1989
(Levin (D) MI and 23 others)

The Administration supports enactment of S. 20 as it would be amended by Senator Levin's floor amendment. This amendment to S. 20 addresses the Article II and Article III constitutional concerns (including granting the Office of Special Counsel independent litigating authority and authority to seek judicial review of certain cases), as well as the "Mt. Healthy" burden of proof test involved in whistleblowing as a defense against agency personnel action, that resulted in a veto of S. 508 during the 100th Congress. These changes address the major outstanding issues on this important legislation.

* * * * *