

Counsel to the President explained that “the President’s statement took no position on whether there is whistleblower protection for employees who lawfully report wrongdoing to individual Members of Congress, nor did it address whether whistleblower protection would be limited to those instances where there was an ongoing investigation or the disclosure related to a matter within the jurisdiction of a particular Congressional committee.” The letter also indicated that representatives of the Department would be discussing the issues with your staff.

It is the Department’s view that under Sarbanes-Oxley, complaints to individual Members of Congress are protected, even if such Member is not conducting an ongoing Committee investigation within the jurisdiction of a particular Congressional committee, provided that the complaint relates to conduct that the employee reasonably believes to be a violation of one of the enumerated laws or regulations. The Department currently is finalizing the draft of an Interim Final Rule and accompanying Preamble implementing the whistleblower provisions of the Sarbanes-Oxley Act. Although it would be inappropriate for me to provide you our draft text at this time, the Department’s current intention is to clarify in the published document our view that complaints to “any Member of Congress or any committee of Congress” are covered by the whistleblower provisions of the Sarbanes-Oxley Act.

Thank you for your interest in this important matter.

Sincerely,

HOWARD M. RADZELY,
Acting Solicitor.

[From the Washington Post, Jan. 28, 2003]
LABOR DEPT. SHIFTS WHISTLE-BLOWER VIEW
UNDER ACT, WORKERS PROTECTED WHEN
EXPOSING WRONGDOING TO LAWMAKERS
(By Christopher Lee)

The Labor Department has changed its interpretation of a new corporate whistleblower law, a move that will afford workers who report wrongdoing to Congress greater protection against retaliation, two senators said yesterday.

In a letter Friday to Sens. Charles E. Grassley (R-Iowa) and Patrick J. Leahy (D-Vt.), Acting Solicitor Howard M. Radzely reversed the department’s contention that only whistle-blower contacts with a “duly authorized” investigative committee of Congress were protected, not those with just any lawmaker. That initial department reading of the Sarbanes-Oxley Act, a corporate accountability law enacted last summer, conflicted with what the two senators said they intended when they wrote the whistle-blower protections into the bill.

“It is the department’s view that . . . complaints to individual members of Congress are protected, even if such member is not conducting an ongoing committee investigation,” Radzely wrote.

Grassley said the reversal would “make it easier for corporate whistle-blowers to be protected when they speak out on wrongdoing in the boardroom.”

“It’s a big victory,” said Blythe McCormack, a spokeswoman for Leahy.

Grassley and Leahy have sent several letters to White House officials seeking assurances that the Bush administration understood the intent of the law. In September, then-Labor Department solicitor Eugene Scalia filed a friend-of-the-court brief with an administrative review board seeking to overturn a \$200,000 punitive damages award won by Assistant U.S. Attorney Gregory C. Sasse of Ohio in a whistle-blower case against the Justice Department.

Scalia, who resigned his post this month to return to private practice, had argued that

Sasse did not enjoy whistle-blower protection in his contacts with Rep. Dennis J. Kucinich (D-Ohio), who was looking into reports of toxic materials on federally owned land near the Cleveland airport. Only contacts with investigative panel members are protected, Scalia wrote.

Scalia also urged that a federal prosecutor could not sue the Justice Department over workplace disagreements involving priorities in government litigation.

Sasse, who still has his job, said his supervisors downgraded his performance reviews, did not grant him training opportunities and removed him from some cases in retaliation for his contacts with Kucinich. An administrative law judge ruled that the Justice Department had retaliated against Sasse and found that his contacts with Kucinich were protected.

The Justice Department appealed to the administrative review board, which has not yet ruled on the case.

Whistle-blower advocates said Scalia was attempting to use the case, which concerns whistle-blower provisions in environmental protection laws, to establish a precedent that would undermine whistle-blowers in cases against corporations.

Jeff Ruch, executive director of Public Employees for Environmental Responsibility, a group that defends federal workers on environmental issues, said a central question of the Sasse case—whether federal prosecutors can be whistle-blowers—remains unresolved.

A Labor Department spokeswoman declined to comment on the case because it is in litigation.

Steven Bell, Sasse’s attorney, said the department’s reversal helps his client. “The Labor Department is acknowledging that the substance of the brief it filed is legally inaccurate,” he said.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS RULES OF PROCEDURE

Mr. INHOFE. Mr. President, in accordance with the rule XXVI (2) of the Senate, I ask unanimous consent that the rules of the Committee on Environment and Public Works, adopted by the committee today, January 29, 2003, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS RULES OF PROCEDURE

Rule 1. Committee meetings in general

(a) Regular Meeting Days: For purposes of complying with paragraph 3 of Senate Rule XXVI, the regular meeting day of the committee is the first and third Thursday of each month at 10:00 A.M. If there is no business before the committee, the regular meeting shall be omitted.

(b) Additional Meetings: The chair may call additional meetings, after consulting with the ranking minority member. Subcommittee chairs may call meetings, with the concurrence of the chair, after consulting with the ranking minority members of the subcommittee and the committee.

(c) Presiding Officer:

(1) The chair shall preside at all meetings of the committee. If the chair is not present, the ranking majority member shall preside.

(2) Subcommittee chairs shall preside at all meetings of their subcommittees. If the subcommittee chair is not present, the ranking majority member of the subcommittee shall preside.

(3) Notwithstanding the rule prescribed by paragraphs (1) and (2), any member of the committee may preside at a hearing.

(d) Open Meetings: Meetings of the committee and subcommittees, including hearings and business meetings, are open to the public. A portion of a meeting may be closed to the public if the committee determines by roll call vote of a majority of the members present that the matters to be discussed or the testimony to be taken

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(2) relate solely to matters of committee staff personnel or internal staff management or procedure; or

(3) constitute any other grounds for closure under paragraph 5(b) of Senate Rule XXVI.

(e) Broadcasting:

(1) Public meetings of the committee or a subcommittee may be televised, broadcast, or recorded by a member of the Senate press gallery or an employee of the Senate.

(2) Any member of the Senate Press Gallery or employee of the Senate wishing to televise, broadcast, or record a committee meeting must notify the staff director or the staff director’s designee by 5:00 p.m. the day before the meeting.

(3) During public meetings, any person using a camera, microphone, or other electronic equipment may not position or use the equipment in a way that interferes with the seating, vision, or hearing of committee members or staff on the dais, or with the orderly process of the meeting.

Rule 2. Quorums

(a) Business Meetings: At committee business meetings, and for the purpose of approving the issuance of a subpoena or approving a committee resolution, six members, at least two of whom are members of the minority party, constitute a quorum, except as provided in subsection (d).

(b) Subcommittee Meetings: At subcommittee business meetings, a majority of the subcommittee members, at least one of whom is a member of the minority party, constitutes a quorum for conducting business.

(c) Continuing Quorum: Once a quorum as prescribed in subsections (a) and (b) has been established, the committee or subcommittee may continue to conduct business.

(d) Reporting: No measure or matter may be reported to the Senate by the committee unless a majority of committee members cast votes in person.

(e) Hearings: One member constitutes a quorum for conducting a hearing.

Rule 3. Hearings

(a) Announcements: Before the committee or a subcommittee holds a hearing, the chair of the committee or subcommittee shall make a public announcement and provide notice to members of the date, place, time, and subject matter of the hearing. The announcement and notice shall be issued at least one week in advance of the hearing, unless the chair of the committee or subcommittee, with the concurrence of the ranking minority member of the committee or subcommittee, determines that there is good cause to provide a shorter period, in which event the announcement and notice shall be issued at least twenty-four hours in advance of the hearing.

(b) Statements of Witnesses:

(1) A witness who is scheduled to testify at a hearing of the committee or a subcommittee shall file 100 copies of the written testimony at least 48 hours before the hearing. If a witness fails to comply with this requirement, the presiding officer may preclude the witness’ testimony. This rule may be waived for field hearings, except for witnesses from the Federal Government.

(2) Any witness planning to use at a hearing any exhibit such as a chart, graph, diagram, photo, map, slide, or model must submit one identical copy of the exhibit (or representation of the exhibit in the case of a model) and 100 copies reduced to letter or legal paper size at least 48 hours before the hearing. Any exhibit described above that is not provided to the committee at least 48 hours prior to the hearing cannot be used for purpose of presenting testimony to the committee and will not be included in the hearing record.

(3) The presiding officer at a hearing may have a witness confine the oral presentation to a summary of the written testimony.

(4) Notwithstanding a request that a document be embargoed, any document that is to be discussed at a hearing, including, but not limited to, those produced by the General Accounting Office, Congressional Budget Office, Congressional Research Service, a Federal agency, an Inspector General, or a non-governmental entity, shall be provided to all members of the committee at least 72 hours before the hearing.

Rule 4. Business meetings: Notice and filing requirements

(a) Notice: The chair of the committee or the subcommittee shall provide notice, the agenda of business to be discussed, and the text of agenda items to members of the committee or subcommittee at least 72 hours before a business meeting. If the 72 hours falls over a weekend, all materials will be provided by close of business on Friday.

(b) Amendments: First-degree amendments must be filed with the chair of the committee or the subcommittee at least 24 hours before a business meeting. After the filing deadline, the chair shall promptly distribute all filed amendments to the members of the committee or subcommittee.

(c) Modifications: The chair of the committee or the subcommittee may modify the notice and filing requirements to meet special circumstances, with the concurrence of the ranking member of the committee or subcommittee.

Rule 5. Business meetings: Voting

(a) Proxy Voting:

(1) Proxy voting is allowed on all measures, amendments, resolutions, or other matters before the committee or a subcommittee.

(2) A member who is unable to attend a business meeting may submit a proxy vote on any matter, in writing, orally, or through personal instructions.

(3) A proxy given in writing is valid until revoked. A proxy given orally or by personal instructions is valid only on the day given.

(b) Subsequent Voting: Members who were not present at a business meeting and were unable to cast their votes by proxy may record their votes later, so long as they do so that same business day and their vote does not change the outcome.

(c) Public Announcement:

(1) Whenever the committee conducts a rollcall vote, the chair shall announce the results of the vote, including a tabulation of the votes cast in favor and the votes cast against the proposition by each member of the committee.

(2) Whenever the committee reports any measure or matter by rollcall vote, the report shall include a tabulation of the votes cast in favor of and the votes cast in opposition to the measure or matter by each member of the committee.

Rule 6. Subcommittees

(a) Regularly Established Subcommittees: The committee has four subcommittees: Transportation and Infrastructure; Clean Air, Climate Change, and Nuclear Safety;

Fisheries, Wildlife, and Water; and Superfund and Waste Management.

(b) Membership: The committee chair, after consulting with the ranking minority member, shall select members of the subcommittees.

Rule 7. Statutory responsibilities and other matters

(a) Environmental Impact Statements: No project or legislation proposed by any executive branch agency may be approved or otherwise acted upon unless the committee has received a final environmental impact statement relative to it, in accordance with section 102(2)(C) of the National Environmental Policy Act, and the written comments of the Administrator of the Environmental Protection Agency, in accordance with section 309 of the Clean Air Act. This rule is not intended to broaden, narrow, or otherwise modify the class of projects or legislative proposals for which environmental impact statements are required under section 102(2)(C).

(b) Project Approvals:

(1) Whenever the committee authorizes a project under Public Law 89-298, the Rivers and Harbors Act of 1965; Public Law 83-566, the Watershed Protection and Flood Prevention Act; or Public Law 86-249, the Public Buildings Act of 1959, as amended; the chairman shall submit for printing in the Congressional Record, and the committee shall publish periodically as a committee print, a report that describes the project and the reasons for its approval, together with any dissenting or individual views.

(2) Proponents of a committee resolution shall submit appropriate evidence in favor of the resolution.

(c) Building Prospectuses:

(1) When the General Services Administration submits a prospectus, pursuant to section 7(a) of the Public Buildings Act of 1959, as amended, for construction (including construction of buildings for lease by the government), alteration and repair, or acquisition, the committee shall act with respect to the prospectus during the same session in which the prospectus is submitted.

A prospectus rejected by majority vote of the committee or not reported to the Senate during the session in which it was submitted shall be returned to the GSA and must then be resubmitted in order to be considered by the committee during the next session of the Congress.

(2) A report of a building project survey submitted by the General Services Administration to the committee under section 11(b) of the Public Buildings Act of 1959, as amended, may not be considered by the committee as being a prospectus subject to approval by committee resolution in accordance with section 7(a) of that Act. A project described in the report may be considered for committee action only if it is submitted as a prospectus in accordance with section 7(a) and is subject to the provisions of paragraph (1) of this rule.

(d) Naming Public Facilities: The committee may not name a building, structure or facility for any living person, except former Presidents or former Vice Presidents of the United States, former Members of Congress over 70 years of age, or former Justices of the United States Supreme Court over 70 years of age.

Rule 8. Amending the Rules

The rules may be added to, modified, amended, or suspended by vote of a majority of committee members at a business meeting if a quorum is present.

SOUTH KOREA AND THE DEMILITARIZED ZONE

Mrs. FEINSTEIN. Mr. President, last December I traveled to South Korea in my capacity as chairman of the Appropriations Subcommittee on Military Construction, as well as a member of the Senate Select Committee on Intelligence. I was able to visit and talk with U.S. troops and inspect facilities. I also toured the DMZ, a chilling legacy of a war many Americans have already forgotten.

My visit could not have been more timely. The combination of saber-rattling in the North and anti-American protests in the South has made Korea front page news once again, as it faces its most complicated, and potentially explosive, crisis since the Korean war, 1950-53.

The Korean peninsula is a land of stunning beauty and startling contrasts. Divided at the end of World War II, following a long occupation by Japan, Korea continues to be one of the few reminders of what the world was like during the cold war.

North Korea is a quasi-Stalinist state which, since its formal creation in 1948, has been run by two men, Kim Il Sung, who died in 1994, and his son, Kim Jong Il. Still almost entirely closed to the Western World, North Korea is a stark and isolated country marked by repression and poverty.

Then, on the other side of the demilitarized zone, DMZ, perhaps the most tense border on Earth, is South Korea, a prosperous, Westernized democratic state. South Korea has been a staunch U.S. ally, and 37,000 U.S. troops have been stationed there for the past 40 years.

Waged from 1950 to 1953, the Korean war ended in a virtual stalemate, with the peninsula still divided. Mr. President, 54,246 American men and women died during that war, and although there are no precise figures for Korean casualties, conservative estimates put the figure at approximately 4 million, the majority of these being civilians.

On my trip to South Korea on the eve of the Presidential elections, I was surprised at the widespread anti-Americanism. Indeed, it was this issue, a growing sense that the United States was an imperial power indifferent to the needs and desires of the Korean people, that led Roh Moo Hyun to victory.

It is difficult to appreciate the situation on the Korean peninsula without a visit to the demilitarized zone. I was taken there in a helicopter by Gen. Leon LaPorte, our four-star general in command, who pointed out North Korean troop concentrations. It is an alarming sight, and in many ways a step back in time.

I then paid a visit to Panmunjom, a small village frozen in time, unchanged for half a century, which straddles the line separating North and South Korea. It was here that the Armistice ending the war was signed.

Seventy percent of the 1.2 million man North Korean army is deployed