I would like to describe a terrible crime that occurred November 4, 2001 in Hendersonville, N.C. A man shot into the home of a Hispanic family. The assailant, Gene Autry Williams, 60, was heard to yell racial slurs at the family before shooting at them in their home. Williams was charged with assault for pointing and discharging a firearm, and for ethnic intimidation.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

## CORPORATE WHISTLEBLOWER PROTECTIONS IN THE SARBANES-OXLEY ACT

Mr. LEAHY. Mr. President, I rise to note an important victory in the fight to protect whistleblowers and to praise my good friend Senator CHUCK GRASSLEY for his leadership in this fight.

The Washington Post reported yesterday that the Department of Labor has reversed its view on how it will interpret an important provision of the Sarbanes-Oxley Act on corporate misconduct. The provision we enacted provides a Federal law protecting corporate whistleblowers from retaliation for the first time. The law was designed to protect people like Sherron Watkins from Enron, who was recently named one of Time magazine's ''People of the Year,'' from retaliation when they report fraud to Federal investigators, regulators, or to any Member of Congress. The law was intentionally written to sweep broadly, protecting any employee of a publicly traded company who took such reasonable action to try to protect investors and the market.

The reason that Senator GRASSLEY and I know so much about the legislative intent behind this provision is that we crafted it together last year in the Judiciary Committee and worked to make it part of the Sarbanes-Oxley Act on the Senate floor. We had both seen enough cases where corporate employees who possessed the courage to stand up and 'do the right thing' found out the hard way that there is a severe penalty for breaking the 'corporate code of silence.' Indeed, in the Enron case itself we discovered an e-mail from outside counsel that noted that the Texas Supreme Court had twice refused to find a legal protection for corporate whistleblowers and that implicitly gave Enron the go ahead to fire Ms. Watkins for reporting accounting irregularities.

Senator GRASSLEY has always been a leader in protecting the rights of whistleblowers, and I was proud to work with him in the area of corporate reform to craft such a groundbreaking law.

Unfortunately, from the very day that President Bush signed the Sarbanes-Oxley Act into law, Senator GRASSLEY and I had to fight the administration to make sure that the law would not be gutted. On the same night that the law was signed, the White House issued an interpretation that incorrectly and narrowly interpreted our provision. Specifically, the White House stated that corporate whistleblower's disclosure to Congress would not be protected unless the whistleblower made the report to a congressional committee already conducting an authorized investigation. This interpretation was at odds with the legislative intent and the clear statutory language of the Act, which protected reasonable reports of fraud to ''any Member of Congress.''

Senator GRASSLEY and I had good reason to write the law with such broad coverage. Most corporate whistleblowers do not know the ins and outs of the jurisdiction of Congress's various committees, nor should they be expected to. Simply picking up the phone and calling your local Senator or Representative to report a case of securities fraud should be protected. In addition, by definition most ''whistleblowers'' are reporting fraud that is not widely known. They are blowing the whistle. Thus, their revelations do not come as part of already commenced investigations. They may lead to such investigations as well as contribute to them. The White House interpretation would have excluded among the most important revelations of corporate fraud made to Congress.

The administration's interpretation was reinforced the next day when the White House spokesman repeated that there were limits on the types of disclosures to Congress that would be protected. Finally, in addition to these White House interpretations, former Solicitor of Labor Eugene Scalia filed a troubling brief that adopted this narrow interpretation not only in the context of the Sarbanes-Oxley Act, but regarding the environmental whistleblower provisions, as well.

That is where Senator GRASSLEY stepped in. As he has done so many times before, under both Republican and Democratic administrations, he went to bat for the rights of the lone whistleblower against the huge bureaucracy. Once again, through his perseverance, he has proven that you can fight not only city hall but the executive branch of the Federal Government.

Working together, we wrote a series of letters to the administration protesting their narrow interpretations and making the legal case that they were at odds with the legislative intent and clear language of the provision that we wrote. Each and every time that the administration responded by stonewalling or giving half answers, Senator GRASSLEY was there to protect the law we had worked so hard to write.

Finally, on January 24, 2003, almost a half year after our first letter, the administration gave in. In a letter from the new Acting Solicitor of Labor to Senator GRASSLEY and to me he stated, ''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.. .'' The letter promised that new rules and regulations effectuating this policy change would follow.

I am quite sure that when those regulations come out that Senator GRASSLEY will once again be paying close attention, as will I. Where the integrity of our financial markets and our Government are concerned, we can do no less. I look forward to working with Senator GRASSLEY to protect the rights of whistleblowers in the 108th Congress, as we did in the 107th Congress. It is an honor and a privilege to work with Senator GRASSLEY on these important matters.

I ask unanimous consent that the letters I have referenced above and the Washington Post story, be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC, July 31, 2002.*

HON. GEORGE W. BUSH,
*President of the United States, The White House, Washington, DC.*

DEAR MR. PRESIDENT: As coauthors of the recent corporate whistleblower provision in the Corporate and Criminal Fraud Accountability Act, section 806 of the Sarbanes-Oxley Act, we are writing to express our shared concern about interpretive statements made by the White House staff only hours after you signed the Act into law.

According to media reports, the White House views this bipartisan provision, which was approved unanimously both by the Judiciary Committee and the full Senate, as protecting employees only if they report fraud to Congress ''in the course of an investigation.'' This narrow interpretation is at odds with the plain language of the statute and risks chilling corporate whistleblowers who wish to report securities fraud to Members of Congress.

The provision in question, codified at 18 U.S.C. §1514A, states that it applies to disclosures of fraud whenever ''*the information or assistance is provided to* or the investigation is conducted by . . . any Member of Congress or any committee of Congress.'' (emphasis added). By its plain terms, there is no limitation either to ongoing investigations of Congress or to matters within the jurisdiction of any Congressional Committee.

The reason for this is obvious. Few whistleblowers know, nor should they be expected to know, the jurisdiction of the various Committees of Congress or the matters currently under investigation. The most common situation, and one that the recent Administration's statement excludes from protection, is a citizen reporting misconduct to his or her own Representative or Senator, regardless of their committee assignments. Such disclosures are clearly covered by the terms of the statute.

We request that you review and reconsider the Administration's interpretation of section 806 of the Sarbanes-Oxley Act. It embodies a flawed interpretation of the clearly

worded statute and threatens to create unnecessary confusion and to discourage whistleblowers such as Sherron Watkins and Coleen Rowley from reporting corporate fraud to Congress.

Sincerely,

PATRICK LEAHY,
*Chairman.*
CHARLES E. GRASSLEY,
*U.S. Senator.*

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U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC, August 1, 2002.*

Hon. ALBERTO R. GONZALES,
*Counsel to the President, The White House, Washington, DC.*

DEAR MR. GONZALES: We appreciate your letter received today seeking to clarify the President's statement regarding the corporate whistleblower provisions in the Corporate and Criminal Fraud Accountability Act, section 806 of the Sarbanes—Oxley Act.

While the President's earlier statement was: ''Given that the legislative purpose of Section 1514A of title 18 of the U.S. Code, enacted by section 806 of the Act, is to protect against company retaliation for lawful cooperation with investigations and not to define the scope of investigative authority or to grant new investigative authority, the executive branch shall construe section 1514(a)(1)(B) as referring to investigations authorized by the rules of the Senate or the House of Representatives and conducted for a proper legislative purpose.''

Your letter now clarifies that contrary to the sweeping language above, ''the President's statement provides guidance to the executive branch in construing the provision only on a single, very narrow point. . . .'' (Emphasis added). That narrow point being what is defined as an ''investigation'' for purpose of the Act, and not all of section 1514(a)(1)(B), which you agree applies to more than merely investigations.

To ensure there is no confusion on this matter, and in light of seemingly broader interpretations provided by Whitehouse spokespersons, please respond to the following scenario.

An employee who works at a publicly traded company provides information to a Member of Congress (and assume for this question the Member is not a chairman or ranking member of a Committee and is not a member of a Committee with jurisdiction) regarding a violation as enumerated under Section 1514A(a)(1) of the Act. Finally, assume that there is no investigation being conducted by the Member at the time the information is provided. Do you believe that employee is or is not afforded the protections of Section 1514A?

There is no question in our minds that the Congressional intent (and the clear language of the statute) is that the answer to the above scenario is yes—the employee is protected, whether there is an investigation pending or not. Our desire is to protect the well-intentioned employee who contacts his elected representatives (or any representative for that matter) and not require that employee to consult the Congressional Directory and Congressional Record prior to making his call to determine whether he/she will be afforded the whistleblower protections of the Act.

The statute reflects this intent, protecting the actions of an employee of a publicly traded company: ''(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—. . . (B) any Member of Congress or any committee of Congress; . . .''

Section 1514A(a)(1). Emphasis added.

Thank you for your time and assistance. We look forward to your response.

Cordially yours,

PATRICK J. LEAHY,
*Chairman.*
CHARLES E. GRASSLEY,
*Ranking Member, Subcommittee on Crime and Drugs.*

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U.S. SENATE,
*Washington, DC, January 15, 2003.*

Hon. GEORGE W. BUSH,
*President of the United States of America, The White House, Washington, DC.*

DEAR PRESIDENT BUSH: I am writing in response to a letter of December 20, 2002, that the White House sent in response to Senator Grassley's and my joint letters of August 1 and October 31 expressing concerns regarding the Administration's enforcement of the corporate whistleblower provisions that we included in the Sarbanes-Oxley Act. I am dismayed at the Administration's overly narrow interpretation of these important whistleblower protection provisions in the corporate accountability legislation.

While I appreciate your response, it does little to clear the ambiguity created by the prior statements by the Administration, as set forth in our letters. It leaves potential whistleblowers like Sherron Watkins of Enron (who recently shared the honor of being selected Time Magazine's ''Person of the Year'' with two other whistleblowers) to guess at whether or not they can be fired for reporting an allegation of corporate fraud to their Representatives or Senators in Congress.

The unwillingness to clarify this matter is puzzling to me. After having confused the matter with a series of misleading and contradictory statements, the White House cannot simply state the scope of 18 U.S.C. §1514A ''will ultimately be addressed by the courts.'' The ambiguity caused by the Administrations's own statements has now been allowed to persist for almost half a year, and it threatens effective enforcement of these important corporate reforms. In fact, White House spokesperson Ari Fleisher further fueled this ambiguity on July 31, 2002 by stating:

''What the action taken last night [the interpretive statement] does is say that it's up to Congress to determine, through its own rules and procedures, whether to grant individual members of Congress investigative powers that would trigger the statute.

''Nothing in the statute or the signing statement prevents Congress from granting that authority to whoever it chooses. This is a congressional issue, and a congressional decision.

''If Congress wants to allow individual members of the Congress, individual senators, individual House members, whether in the majority or the minority, no matter who they are, to conduct investigations, then that individual, if somebody was a whistleblower to that individual, the whistleblower would have all protections. If Congress decides that the only way to have an investigation is through the committee-authorized process, then the whistleblower will go through that committee. So this is a congressional matter and a congressional determination.''

Thus, Mr. Fleisher's public statements on behalf of the White House leave the impression that the White House would require some type of additional Congressional rule-making before affording the statute its full affect. Aside from being legally incorrect (an act of Congress passed nearly unanimously and signed into law by the President of the United States requires no further action to be fully enforced), such statements create a real risk. Corporate whistleblowers will be chilled form making reports of fraud unless they are assured that the law protects them from retaliation. It is incumbent upon the Administration to clear up the ambiguity which it has helped to create from an unambiguous statute.

Nor am I persuaded that, as you write, it would not be ''appropriate'' for the White House to provide a legal interpretation to a Member of Congress regarding a statute that the Administration is entrusted to enforce. The Executive Branch, unlike the courts, provides such interpretive guidance on a frequent basis both to Congress and to its own employees. In fact, when questions are not posed as policy-based hypotheticals, as Senator Grassley and I took pains to do in our letters, the Adminsitration often refuses to answer because the questions do relate to a real, pending case. If the Executive Branch will not discuss policy on a theoretical basis, and refuses to discuss its actions on specific cases, then what remains?

Indeed, it would be nearly impossible to conduct effective oversight or to craft legislation designed to cure problems in the current law without a constructive dialogue between the Executive Branch and the Congress on precisely such issues. Understanding the Executive Branch's current interpretation of the law is particularly important in matters involving corporate reform. Our financial markets depend upon the confidence of the American people that our markets will be effectively policed, and creating uncertainty about the scope of important corporate reforms can destabilize such markets.

For these reasons, I urge you to answer all the questions posed in Senator Grassley's and my previous letters. Specifically, I request that you state definitively whether or not you believe that 18 U.S.C. §1514A protects a report of fraud or securities law violations by an employee of a publicly traded company to ''any'' member of Congress and whether the Department of Labor and the Department of Justice have been instructed not to take any contrary position in future litigation.

Thank you for your prompt response in this matter.

Sincerely,

PATRICK LEAHY,
*U.S. Senator.*

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U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SOLICITOR,
*Washington, DC, January 24, 2003.*

Hon. CHARLES E. GRASSLEY,
*U.S. Senate,*
*Washington, DC.*

Hon. PATRICK J. LEAHY,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATORS GRASSLEY AND LEAHY: It was a pleasure meeting with your staff on January 7, 2003, to discuss issues relating to the implementation of the whistleblower provisions of the Sarbanes-Oxley Act of 2002. The President and Secretary Chao, who has responsibility to investigate and adjudicate allegations of retaliation under this law, share your view that these provisions are crucial to the federal government's efforts to combat corporate corruption.

In connection with the Department of Labor's implementation of the whistleblower protections of the Sarbanes-Oxley Act, I have reviewed a series of letters you exchanged with the Counsel to the President concerning the President's signing statement. In his December 20, 2002 letter, the

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.*

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[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, than-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.

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## 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.