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FOIA F05-139/01 COOK 70IGP

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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	LETTER	TO PRESIDENT REAGAN FROM JEAN EVANS RE PLEA FOR ASSISTANCE 383285	2	2/18/1986	B6	955
2	LETTER	TO PRESIDENT REAGAN FROM JEAN EVANS RE ALLEGED REPRISALS AGAINST HUSBAND	6	7/30/1985	B6	957
3	LETTER	TO PRESIDENT REAGAN FROM JEAN EVANS RE ALLEGED REPRISALS AGAINST HUSBAND	6	7/30/1985	B6	958

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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THE WHITE HOUSE

WASHINGTON

March 28, 1986

MEMORANDUM FOR K. WILLIAM O'CONNOR
SPECIAL COUNSEL
MERIT SYSTEMS PROTECTION BOARD

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Jean T. Evans Letter to the President Regarding Alleged Harassment Against her Husband for Whistleblowing

On August 13, 1985, Associate Counsel to the President H. Lawrence Garrett III referred to you correspondence from Mrs. Jean T. Evans to the President, for whatever action you considered appropriate. The correspondence contained various allegations of reprisals directed against a Federal employee. Mrs. Evans has again written the President. I am forwarding the latest correspondence, again for whatever action, if any, you consider appropriate.

As with the previous referral, no special handling is requested or expected, and this office desires no further involvement in your handling of the matter. We have not responded to this latest letter in any fashion. Thank you for your assistance.

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR HILDA SCHREIBER
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Testimony for 2/20 on H.R. 4033, the Whistleblower Protection Act of 1986

Counsel's Office has reviewed the above-referenced testimony and finds no objection to it from a legal perspective.

FFF/JGR:jmk
cc: FFFielding
JGROberts
subject
chron.

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: DOJ Testimony for 2/20 on H.R. 4033, the Whistleblower Protection Act of 1986

OMB has asked for our views on proposed Justice testimony on H.R. 4033, the "Whistleblower Protection Act of 1986." The Justice testimony strongly opposes the bill on constitutional and policy grounds. The bill would make the Special Counsel of the Merit Systems Protection Board an independent counsel not subject to Presidential control. The new independent counsel would have independent litigation authority, representing individual employees against Federal agencies in the courts.

The Justice testimony correctly articulates the constitutional infirmities of a prosecutor not subject to Presidential control, and the difficulties with any grant of independent litigation authority. The latter problems are particularly severe in this instance, since the Special Counsel will frequently be litigating against a Federal agency, or individuals whom it is appropriate for the agency to defend. Since both the Special Counsel and the agency head must be answerable to the President, this litigation would, as Justice points out, require the Federal courts to issue an unconstitutional advisory opinion.

On policy grounds, the testimony stresses the recent GAO report that found the Special Counsel was doing an acceptable job of protecting whistleblowers.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
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Date Correspondence Received (YY/MM/DD) 1 . 1

Name of Correspondent: Naomi R. Sweeney

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Dept. of Justice testimony for 2/20 on H.R. 4033, the Whistleblower Protection Act of 1986.

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	Tracking Date YY/MM/DD	DISPOSITION Type of Response	Code	Completion Date YY/MM/DD
CUHALL	ORIGINATOR	86/02/14			/ /
	Referral Note:				
CUAT18	D	86/02/14		S	86/02/18
	Referral Note:				
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ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
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DISPOSITION CODES:
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C - Completed
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Type of Response = Initials of Signer
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Comments: Questions referred to Hilda Schreiber x7362.

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5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

2/14/86

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

SPECIAL

TO: Legislative Liaison Officer

Office of Personnel Management
Merit Systems Protection Board
Office of Special Counsel

SUBJECT: Dept of Justice testimony for 2/20 on H.R. 4033, the Whistleblower Protection Act of 1986

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than c.o.b. 2/18/86

Questions should be referred to Hilda Schreiber **(** 395-7362 **) or to** ------- **(** ---- **), the legislative analyst in this office.**

(Signed) Naomi R. Sweeney

Naomi R. Sweeney for
Assistant Director for Legislative Reference

Enclosures

cc: Frank Seidl
John Cooney, OGC
White House Counsel (Spec. Messenger)
Naomi Sweeney

TESTIMONY OF STUART E. SCHIFFER
DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION
BEFORE THE CIVIL SERVICE SUBCOMMITTEE
OF THE HOUSE COMMITTEE ON POST OFFICE
AND CIVIL SERVICE

February 20, 1986

I am pleased to appear before you today to discuss the Department's position with regard to H.R. 4133, the Whistleblower Protection Act of 1986 ("the Bill"). The Bill would make sweeping changes to the system for protecting the rights of federal employees enacted by the Civil Service Reform Act of 1978 ("CSRA"). It would authorize the creation of an independent Special Counsel who would not be subject to the control of the President, an authorization of highly questionable constitutional validity. It also would expand greatly the role of the Special Counsel by requiring him to represent individual federal employees, by authorizing him to appeal decisions of the Merit Systems Protection Board to United States district courts, and by granting him authority to represent himself in all federal courts other than the Supreme Court. It also is questionable whether the vesting of this authority in the Special Counsel is constitutional.

The Bill also would expand the jurisdiction of the Merit Systems Protection Board ("MSPB") by increasing the duration of stays of personnel actions that the board may issue; by granting the board jurisdiction to entertain appeals brought by employees and applicants for employment involving all types of personnel

actions that, it is alleged, are or are not taken as a result of prohibited personnel practices; and by granting to the MSPB the unprecedented authority to order disciplinary actions to be taken against members of the military services. The proposed legislation also would provide that the existence of the prohibited personnel practice of taking reprisal against a whistleblower could be established by "substantial evidence," and, would grant employees who are not successful before the MSPB with their claims that they were subject to prohibited personnel practices the right to seek review of the board's decisions in the United States district courts.

Thus, contrary to the Bill's title, it is does much more than address the issue of whistleblower protection; in fact, it proposes a wholesale revision of the relationship between the MSPB and the Special Counsel and departs dramatically from the scheme enacted by the CSRA for the enforcement of the merit system principles established by the CSRA. It is the Department's view that enactment of the Bill would cause wholesale disruption of federal personnel management, would result in the clogging of the calendar of the MSPB to the extent that the board would not be able to function in the manner contemplated when it was created by the CSRA, and would result in the district courts becoming the ultimate personnel office for the Federal Government. Accordingly, the Department of Justice strongly opposes the enactment of the Bill.

I

The role of the Special Counsel envisioned by the Bill clearly is that of an officer of the Executive Branch. The Special Counsel would function as both a prosecutor of those who violate the principles of the merit system and a representative of those who believe that they have been harmed by the commission of prohibited personnel practices. In both of those functions, the Special Counsel would be acting to insure that the laws are faithfully executed--clearly a function of the Executive Branch. U.S. Const. Art. II, § 3, cl. 4. However, neither the present Special Counsel nor the Special Counsel as conceived by the Bill is or would be subject to the control of the President.

The Special Counsel now is appointed by the President, by and with the advice and consent of the Senate, for a term of five years, but may be removed from office by the President "only for inefficiency, neglect of duty, or malfeasance in office." 5 U.S.C. § 1204 (1982). The Bill similarly provides that the Special Counsel would be appointed by the President with the advice and consent of the Senate and that he would serve for a five-year term subject to removal by the President for the same reasons now provided in section 1204. Proposed 5 U.S.C. § 1211(b). This Department consistently has taken the position that the limitation upon the President's authority to remove the Special Counsel for reasons of his own choosing raises serious constitutional questions. In a letter to Chairman Ribicoff of the Senate Committee on Governmental

Affairs dated June 14, 1978, Assistant Attorney General Harmon stated at page 6:

> [T]he primary duties of the Special Counsel [would be] (1) to receive and investigate allegations of prohibited personnel practices, and (2) to initiate and prosecute cases involving prohibited personnel practices before the Board.
>
> The functions of the Special Counsel would be predominantly executive in character. Even though the Special Counsel will present his cases only to the Board, his role in investigating and prosecuting prohibited practices is much the same as that of a United States Attorney or other federal prosecutor. These duties, no less than a prosecutor's, are directed at the enforcement of the laws, and this is a function that the Constitution entrusts to the Executive branch. See Buckley v. Valeo, 424 U.S. 1, 138 (1976); Springer v. Phillipine Islands, 277 U.S. 189, 202 (1928).
>
> If the Special Counsel is appointed by the President, since he will be performing largely executive functions, we believe that Congress may impose no restrictions on the President's power to remove him.

The same rationale applies to the Bill now under consideration; its purported limitation upon the President's authority to remove the Special Counsel is not valid. Myers v. United States, 272 U.S. 52, 164-70 (1926).

Moreover, even if the Bill were altered to provide for presidential control over the Special Counsel, we would not be in favor of extending his authority in the manner proposed by the Bill. Under existing law, the Special Counsel's litigating authority is confined to cases before the MSPB. The Bill would expand this authority by authorizing the Special Counsel to

designate attorneys to appear upon behalf of the Special Counsel in all courts except the Supreme Court and to seek review in the United States district courts of decisions of the MSPB in any case to which he was a party. Proposed 5 U.S.C. § 1212(c), (d)(3).

This Administration, as a policy matter, generally has opposed any legislative proposal which would erode further the Attorney General's litigating authority under 28 U.S.C. §§ 516, 519. This opposition, shared by previous Administrations, is grounded upon the need for centralized control of all Government litigation. Such control furthers a number of policy goals, including the presentation of uniform positions upon important legal issues, the objective litigation of cases by attorneys unaffected by the concerns of a single agency that may be inimical to the concerns of the Government as a whole, and the facilitation of presidential supervision over Executive Branch policies implicated in Government litigation. This policy benefits not only the Government but also the courts and opposing litigants who, in the absence of the policy, might be subjected to uncoordinated positions on the part of the Government.

There is an additional reason why the Special Counsel should not be granted general litigating authority. An agency's authority to litigate independently of the Attorney General in a particular circumstance generally depends upon whether such authority is vested by statute in the agency. However, when the

agency asserting that authority is an Executive Branch agency, constitutional issues arise if Congress also has vested litigating authority over the same case either in the Attorney General or in another Executive Branch officer. At stake are issues involving the President's authority to exercise supervisory control over his subordinates so that he may discharge properly his constitutional obligation to "take care that the laws be faithfully executed," U.S. Const. art. II, § 3, cl. 4, and Congress's potential violation of the constitutional principle of the separation of powers by its interference with the President's exercise of that authority. See Humphrey's Executor v. United States, 295 U.S. 602 (1935); Myers v. United States, supra.

In view of the broad grant of litigating authority proposed by the Bill, it is clear that the Special Counsel would be authorized to initiate, or otherwise to participate in, litigation in which Executive Branch agencies would be defending themselves against allegations that they committed prohibited personnel practices. Of course, the Department of Justice would be representing the Executive Branch agencies in those cases in which they were involved. In such circumstances, the litigating authority granted to the Special Counsel would place the President in the untenable position of speaking with two conflicting voices by both prosecuting and defending the same action. That is not a constitutionally permissible result, as it would require the President to abdicate his constitutional

obligation to execute the laws faithfully and would fall short of "that unitary and uniform execution of the laws which article 2 of the Constitution evidently contemplated in vesting general executive power in the President alone." Myers v. United States, 272 U.S. at 125.

Permitting the Special Counsel to litigate against Executive Branch agencies also would offend Article III of the Constitution because it would require the federal courts to render advisory opinions. It has long been settled that our courts may not give such opinions. See Hayburn's Case, 2 U.S. (2 Dall.) 409, 410 n. (a) (1792). For the federal courts to resolve disputes between two agencies, both of which are headed by officers removable at will by the President, would provide the Executive Branch with the type of advisory opinion long recognized as being impermissible.

Proposed 5 U.S.C. § 1218 also is constitutionally infirm. That section would allow the Special Counsel or his designate to communicate with the Congress independent of "other administrative authority," presumably the President and the Office of Management and Budget. Such a provision, if enacted, would permit the Legislative Branch to intrude unconstitutionally upon the President's authority over subordinate officials in the performance of their Executive functions. It would severely impair the President's ability to perform his constitutional obligation to "recommend to [Congress

the] consideration of such Measures as he shall judge necessary and expedient." U.S. Const. art. II, § 3.

As the President's subordinate, the Special Counsel is obligated to make his recommendations to the President so that the President may judge which are "necessary and expedient." For Congress to require the Special Counsel to report directly to it without such review would constitute a grave interference with the President's performance of his constitutional obligation as well as irreparably damage, if not destroy, the normal exchange of views between agency heads and the President. The provision, if enacted, also would create in the Special Counsel divided, and possibly inconsistent, loyalties between the Executive and Legistative Branches, in violation of the doctrine of the separation of powers.

II

The Department has several objections to the portion of the Bill that reestablishes the authority of the MSPB. Under existing law, the Special Counsel may obtain one 15-day stay and a subsequent 30-day stay of a personnel action the MSPB is persuaded that the Special Counsel has "reasonable grounds" to believe that the personnel action was, or is to be taken as the result of a prohibited personnel practice. 5 U.S.C. § 1208(a), (b). However, before the board may extend a stay beyond 45 days, it must provide the agency involved an opportunity to submit oral and written objections to the extension of the stay. The Bill not only would extend the length of initial stays sought by the Special Counsel to 60 days, but also would

grant individuals the right to seek stays of personnel actions for 120 days. Proposed 5 U.S.C. § 1205(b). Moreover, the Bill provides that, if a stay is in effect at the time the Special Counsel files a petition for a corrective action or when an individual files an appeal with the board pursuant to proposed section 1221 of title 5, United States Code, or current section 7701 of title 5, United States Code, the stay shall remain in effect automatically until the Special Counsel's action or the individual's appeal is finally adjudicated by the board. Proposed 5 U.S.C. § 1205(a)(4)(A), (B).

The Department is aware of no reason for altering the current provisions of law providing for 15- and 30-day stays and the possibility of indefinite stays, in the discretion of the board. The existing time limitations upon "automatic" stays encourage the Special Counsel to conduct his investigations quickly and do not impose too significant a burden upon federal agencies. The same cannot be said for the proposed stay provisions.

Further, there is no good reason not to provide the MSPB with authority to dissolve stays once they are entered. Simply because there was good cause for the issuance of a stay when the board initially became aware of a situation does not mean that circumstances necessarily will not change or that the board never will be provided evidence during the course of proceedings before it that indicates that a stay no longer is warranted. The board, like other adjudicatory and quasi-adjudicatory bodies

with authority to issue stays or injunctive relief, should be granted the authority to consider such things as the public interest not only in determining whether to impose a stay but also in deciding whether a stay, once granted, should be dissolved.

The Department of Justice strongly objects to the failure of the Bill to grant federal agencies the right to present their views as to the appropriateness of a stay to the MSPB. Without the opportunity for consideration of the views of federal agencies, it is much more likely that board members will err in assessing the reasonableness of stay requests than if they are advised of the positions of the agencies with regard to the need for stays. Of course, denying agencies the right to present their views to the MSPB concerning the appropriateness of the issuance of stays is fundamentally unfair.

The expansion of the board's jurisdiction over corrective actions to include members of the military services that would be accomplished by the enactment of proposed 5 U.S.C. § 1215(b)would be a totally unprecedented intrusion of the civilian portion of the Government into the operation and functioning of the military. We are unaware of any circumstances under which a civilian authority outside of the military departments is authorized to take any action impacting upon the tenure of uniformed military personnel. Furthermore, "[i]t is settled that responsibility for determining who is fit or unfit to serve in the armed services is not a judicial

province . . . ." Heisig v. United States, 719 F.2d 1153, 1156 (Fed. Cir. 1984); accord Orloff v. Willoughby, 345 U.S. 83 (1955). If Article III courts may not interfere in such matters, it makes little or no sense to allow the MSPB to do so. The military always has been allowed to discipline its members for their transgressions. We are aware of no circumstances which would call for the abandonment of this historical separation of the military and civilian sectors of the Government.

Proposed 5 U.S.C. §§ 1214(b)(3)(B)(i), 1221(d)(1) would provide that both the Special Counsel and individuals seeking to establish before the board that reprisal for whistleblowing had occurred would be able to establish that fact by proof amounting only to substantial evidence. We strongly oppose the enactment of that standard of proof. If it were enacted, individuals accused of taking reprisal against whistleblowers could well be subjected to carrying the stigma of having done so when the preponderance of the evidence before the board indicated that they were innocent of the charges against them.

While the Department fully supports the protections made available to whistleblowers by the CSRA, we believe it would be wholly inappropriate to stack the deck in favor of purported whistleblowers to the complete detriment of agency managers. If the Special Counsel or an individual whistleblower is unable to establish reprisal against a whistleblower by a preponderance of the evidence before the MSPB, a standard that does not exclude

the possibility of finding that reprisal occurred even where the trier of fact has some doubt about the matter, notions of fair play ought to preclude labelling the agency manager a repriser with a badge of infamy that could end a career.

Proposed section 1222 of title 5, United States Code, would give the MSPB the unparralleled authority to award punitive damages against federal agencies if they failed to comply with an order of the board. The Bill contains no limit upon the amount of punitive damages that the board could award and provides no guidance to the board as to what criteria should be employed in determining either whether to award such damages or what the amount of an award of those damages should be. We note that the Bill does not provide an appropriation for the payment of awards of punitive damages and we are unaware of any agency which now has an appropriation that would allow it to pay such an award. Moreover, it is not in the public interest to require the expenditure of public funds for the payment of punitive damages in such circumstances. That use of Government funds would not further the mission of any federal agency or achieve any proper legislative goal.

To the extent the Congress believes that it is necessary for the MSPB to have authority to impose sanctions for the rare failure of agencies to comply with its orders, the withholding of the salaries of recalcitrant federal officials now authorized by 5 U.S.C. § 1205(d)(2) is clearly sufficient.

The Bill would repeal 5 U.S.C. § 1205(e)(3) through (k) by

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replacing the present sections of law concerning the powers of the MSPB, 5 U.S.C. § 1205, with a new section 1204 that does not include those subsections. While the ommission of these obviously is inadvertent, we believe that the repeal of one of them--subsection (h), which allows MSPB attorneys to represent the board in litigation outside of the Supreme Court--would be absolutely appropriate. As a result of the grant of independent litigating authority to the MSPB, the board often is placed in the unseemly position of defending its own decisions in the courts. See Hopkins v. MSPB, 725 F.2d 1368 (Fed. Cir. 1984). Moreover, the board often actively seeks to participate before the courts in cases in which its decisions are being reviewed. It is completely inappropriate for the board, which is a quasi-judicial body, to be involved in the defense of its own decisions. For the board to be so involved gives rise to the appearance that the board has some institutional interest in the decisions it issues, rather than merely being an independent and neutral adjudicator of cases within its jurisdiction. For these reasons, among others, we would support the repeal of the grant of independent litigating authority to tne MSPB.

III

Proposed section 1221(a)(1) of title 5 would allow any individual "adversely affected by a prohibited personnel practice" to initiate an action before the MSPB. In addition, proposed section 1221(f) of title 5 would allow an individual who initiated an action before the MSPB or an individual who was

alleged to have been the victim of a prohibited personnel practice in an action brought before the MSPB by the Special Counsel to seek review of MSPB decisions in a district court. Granting such rights of action would result in both the MSPB and the district courts being overwhelmed.

The Comptroller General noted in his report to the Congress dated May 10, 1985, No. B-217796, and reproduced in Whistleblower Protection: Hearings Before the Subcomm. on Civil Service of the House Comm. on Post Office and Civil Service, 99th Cong., 1st Sess. (1985) (Serial No. 99-19) (hereinafter GAO Report) at 69, when commenting upon a proposal to allow employees to sue on their own behalf when they believe they have been subject to a prohibited personnel practice: "The Special Counsel now acts as an effective screening mechanism to limit the volume of complaints that reach the stage of adjudication." Absent the Special Counsel's screening of complaints, we would anticipate that the MSPB and the district courts would be required to adjudicate thousands of claims by disgruntled employees. Their dockets would become overburdened and they would have less time to devote to more meritorious claims. While it is in the realm of possibility that some small number of victims of prohibited personnel practices might be vindicated by the opening of the floodgates now protecting the dockets of the MSPB and the district courts, it is inconceivable to us that that fact would justify granting private rights of actions to individuals to seek redress for personnel actions

taken by their agencies that they may not now appeal to the MSPB.

Employees and applicants for employment now can appeal the major types of personnel actions to the MSPB and seek review of the board's decisions in the United States Court of Appeals for the Federal Circuit or, if their claims involve allegations of discrimination, in the district courts. 5 U.S.C. § 7703(b). They may seek assistance from the Special Counsel if they believe that more minor personnel actions to which they have been subjected (or which they have not been granted, such as a promotion) were taken for a reason that is a prohibited personnel practice. The Special Counsel has acted in a professional and appropriate manner in protecting the rights of whistleblowers, according to the Comptroller General:

> Comparing the facts with the legal requirements for a successful prosecution, GAO did not find that the Office of the Special Counsel closed any of the cases GAO reviewed without reasonable grounds to do so. GAO also did not find evidence that the whistleblowers in this sample fell victim to any lack of investigative effort on the part of the office.

The CSRA balanced the rights of employees and the burdens that would be placed upon the administrative appellate system and the judicial system if it had allowed review of every type of personnel action through direct access to the MSPB and the courts by employees. That balancing is at least as important today as it was in 1978. Granting employees direct access to the MSPB and to the courts would require a huge increase in the number of federal attorneys to defend those actions. In

addition, it would require the district courts to spend enormous amounts of time on cases that, for the most part, probably would not merit the time spent upon them.

IV

Granting the district courts jurisdiction to entertain appeals by the Special Counsel and individuals seeking review of MSPB decisions would be a giant step backward. One of the purposes of the Civil Service Reform Act was to eliminate so-called dual review in personnel cases. That is, Congress recognized the concerns expressed by the judiciary in such cases as Polcover v. Secretary of the Treasury, 477 F.2d 1223 (D.C. Cir.), cert. denied, 414 U.S. 1001 (1973), that district court review of a record of an administrative adjudicatory body made little sense and, in fact, was a waste of time when the district court's decision was subject to appeal and the court of appeals had no reason to accord the district court's review of the record any weight.

Moreover, when Congress enacted the Federal Courts Improvement Act (FCIA) in 1982, it created the Court of Appeals for the Federal Circuit and granted that court exclusive jurisdiction over appeals from decisions of the MSPB in cases not involving discrimination. The reason for granting that court exclusive jurisdiction over most MSPB appeals was to foster uniformity in the federal personnel law area and to provide one judicial forum to guide the MSPB in its adjudication of cases. S. Rep. No. 275, 97th Cong. 1st Sess. 2-4, 7.

Granting district courts jurisdiction over appeals from the MSPB in areas of federal personnel law over which the Federal Circuit now has jurisdiction would undo Congress's sensible centralization of those appeals.

V

Section 4 of the Bill would amend 5 U.S.C. § 2302(b)(9), which establishes the terms of the prohibited personnel practice of reprisal, to include a prohibition against agencies taking action against employees for "failing to follow orders to disobey or not enforce a law." This amendment, if enacted, could cause wholesale insubordination throughout the Government to go unredressed. There are a multitude of federal statutes that are subject to interpretation as to their meaning, and there are numerous federal agencies that are required to enforce so many statutes that they have been required to establish priorities as to the manner in which they will carry out their enforcement responsibilities. Thus, there are instances every day in which federal supervisors direct their subordinates to take action (or not to act) based upon the supervisors' (or agency managers') interpretations of statutes. Moreover, based upon their agencies' priorities, there are many instances every day involving decisions as to which statutes federal officials desire their subordinates to enforce.

The bill, if enacted, would appear to allow subordinate employees to determine, based upon <u>their</u> interpretations of statutes, whether to follow the instructions they are given by

their supervisors based upon the supervisors' interpretations of the statutes. It also would allow subordinates to determine, with impunity, whether to follow their supervisors' instructions not to take action under particular statutes but, rather, to take some other action. The chaos that would be engendered can easily be imagined.

ID # 383285 CU

12001

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
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☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Jesse Evans

☐ MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: alleges reprisals against husband Victor K., by DOD for being whistle-blower about Government waste

ROUTE TO:	ACTION		DISPOSITION	
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response / Code	Completion Date YY/MM/DD
CUTHOLL	ORIGINATOR	86,02,21		1 1
Cent 18	Referral Note: R	86,02,24	CJ	86,03,05
	Referral Note:	1 1		1 1
	Referral Note:	1 1		1 1
	Referral Note:	1 1		1 1
	Referral Note:			

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FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: see ID 335754

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
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5/81

WITHDRAWAL SHEET

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JGR/WHISTLEBLOWER PROTECTION ACT (3 OF 3)

FOIA
F05-139/01
COOK

Box Number
57

70IGP

DOC NO	Document Type / Document Description	No of pages	Doc Date	Restrictions	
1	LETTER TO PRESIDENT REAGAN FROM JEAN EVANS RE PLEA FOR ASSISTANCE 383285	2	2/18/1986	B6	955

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE

WASHINGTON

August 13, 1985

Dear Mrs. Evans:

Your letter of July 30, 1985, to the President, was referred to this office for reply.

We have forwarded your correspondence to the Office of Special Counsel so that it will receive appropriate consideration by those Government officials responsible for review of such matters. As a matter of policy, the White House Staff will not become involved in particular matters that come under the jurisdiction of the Special Counsel.

Though I know you will be disappointed by this response, I hope you will understand the need for this policy as a means of maintaining public confidence in the effective and impartial administration of our laws.

Sincerely,

H. Lawrence Garrett, III
Associate Counsel to the
President

Mrs. Jean T. Evans
1302 Aquia Drive
Stafford, Virginia 22554

WITHDRAWAL SHEET

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DOC NO	Document Type / Document Description	No of pages	Doc Date	Restrictions	
2	LETTER TO PRESIDENT REAGAN FROM JEAN EVANS RE ALLEGED REPRISALS AGAINST HUSBAND	6	7/30/1985	B6	957

Freedom of Information Act - [5 U.S.C. 552(b)]

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ID # 335754

PE001

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

LAG - dup

☐ O - OUTGOING
☐ H - INTERNAL
☒ I - INCOMING
Date Correspondence Received (YY/MM/DD) 85/08/06

Name of Correspondent: ☐ Mr. ☑ Mrs. ☐ Miss Jean T. Evans

☐ MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Alleges reprisals against husband Victor K. by DOD for whistleblower about government waste being

ROUTE TO: **ACTION** **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CoHyde	ORIGINATOR	85/08/07 TR		C	85/08/19 AB
✓CU Fiel	Referral Note: R	85/08/08 TR		C	85/08/13 AB
✓DOD	Referral Note: I	85/08/09 TR			
WAT'G	Referral Note:	/ / TR			/ / TR
	Referral Note:	/ /			/ /
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

COPY from ORM

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H. Lawrence Garrett, III
Associate Counsel to the
President

Mrs. Jean T. Evans
1302 Aquia Drive
Stafford, Virginia 22554

THE WHITE HOUSE

WASHINGTON

August 13, 1985

MEMORANDUM FOR K. WILLIAM O'CONNOR
SPECIAL COUNSEL
MERIT SYSTEMS PROTECTION BOARD

FROM: H. LAWRENCE GARRETT, III
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Jean T. Evans Letter to the President concerning alleged Harassment and Reprisals Against Her Husband

The attached correspondence is referred to you for direct reply and whatever action may be appropriate. No special handling is requested or expected, and you need not provide this office with a copy of your response.

Attachment

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DOC NO	Document Type / Document Description	No of pages	Doc Date	Restrictions	
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