



Federal Bar Association

September 3, 2008

The Honorable Henry Waxman
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Tom Davis
Ranking Minority Member
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

Re: Improving Government Accountability Act (H.R. 928, S. 2324)
and the Investigation of Allegations of Wrongdoing by DOJ Attorneys

Dear Chairman Waxman and Congressman Davis:

I write to express our concerns about the Conyers Amendment, as included in the House-passed version of the Improving Government Accountability Act (H.R. 928, S. 2324). As you know, the Conyers Amendment (section 10 of the House-passed bill) eliminates the current statutory bar against the Department of Justice Inspector General's investigation of allegations of professional wrongdoing by Department of Justice attorneys. We urge you to accept the Senate version, which excluded the Conyers Amendment from its provisions.

Our interest in this issue stems from the Federal Bar Association's historical interest in the preservation of the highest standards of professionalism in the attorney ranks of the federal government. A primary focus of the Federal Bar Association is the development of federal jurisprudence and the welfare of those who practice in our federal courts. A considerable number of our 16,000 members are career-level federal attorneys, including many employed by the Department of Justice. They believe that current federal law and the underlying processes for the investigation of alleged wrongdoing by Department of Justice attorneys, through the involvement of the Department's Office of Professional Responsibility, works well and should not be altered. Current investigatory procedures by the Office of Professional Responsibility assure the vigorous pursuit of wrongdoing and guarantee adequate due process for DOJ attorneys under investigation.

As you know, the Office of Professional Responsibility was established in 1975 to ensure that DOJ attorneys perform their duties in accordance with the highest professional standards expected of the nation's principal law enforcement agency. OPR is akin to an internal Bar for DOJ. Whereas attorneys in private practice are subject to Bar investigations and proceedings for allegations of professional misconduct (conducted by trained Bar counsel), DOJ attorneys first face OPR. To that end, OPR has acquired considerable expertise in the state ethical and

professional rules of conduct that govern the practice of law by each DOJ attorney, as well as the conduct of its reviews themselves. The Inspector General lacks that expertise, nor is it consistent with its authority that focuses on the investigation of systemic abuse and mismanagement within the Department.

While the Conyers Amendment may not intend the elimination of the current statutory prohibition to draw the IG into the investigation of routine attorney misconduct cases involving line attorneys, which are at the core of OPR's work, the Conyers Amendment does not safeguard against future encroachment of the IG into this area. In fact, the Conyers Amendment would suggest exactly the opposite: that the IG may investigate any allegations of wrongdoing against DOJ employees or only at its discretion decline to proceed and instead refer the allegations to OPR for further handling. Thus the jurisdiction conferred by the Conyers Amendment may ultimately permit the Inspector General to preempt the valid and necessary role satisfied by OPR.

The Inspector General serves a valid purpose at DOJ, a department with a large contingency of employees involved in law enforcement. But the role of an attorney is distinguishable, as is seen by the fact that all 10,000 attorneys employed by the Department of Justice must be licensed by a state Bar, and therefore must abide by a set of ethical and professional rules. This has given rise to a system that is considered to work well, both by those who administer the system as well as by those who are subject to it. The adage, "If it's not broken, why fix it?" aptly applies here.

Therefore, we urge you to refrain from including the Conyers Amendment in any compromise version of the Improving Government Accountability Act that may result in the closing days of the legislative session. Thank you for your consideration of our views and your leadership in this area.

Sincerely,

A handwritten signature in black ink, appearing to read "James S. Richardson, Sr.", with a long horizontal flourish extending to the right.

James S. Richardson, Sr.
National President



Federal Bar Association

September 3, 2008

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Susan Collins
Ranking Minority Member
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

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