



## JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

LEONIDAS RALPH MECHAM  
*Secretary*

June 28, 2006

Honorable Howard Coble  
Chairman  
Subcommittee on Crime, Terrorism,  
and Homeland Security  
Committee on the Judiciary  
207 Cannon House Office Building  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

I write to express the views of the Judicial Conference on HR. 5219, the Judicial Transparency and Ethics Enhancement Act of 2006, a bill that would impose an Inspector General (IG) upon the judicial branch of government. A hearing on this bill has been scheduled for June 29, 2006. The Judicial Conference was not invited to testify on this legislation. We nonetheless ask that you consider our views and include this letter in the hearing record.

The proposal to create an IG is an entirely unnecessary and inappropriate imposition of control over the judiciary that creates precedents for further erosion of the fundamental constitutional principle of separation of powers. The Judicial Conference strongly opposes this bill and any other legislation creating an IG in the judicial branch because: (1) it threatens the independence of judicial decision-making, and has serious implications for the separation of powers; and (2) rigorous and effective systems and mechanisms for audit, review, and investigation currently exist in the judiciary, making the legislation duplicative, intrusive, and unnecessary.

For more than 200 years, the integrity of the American system of justice has relied on the foundation of judicial independence, that is, judicial decision-making based upon

the law and the Constitution, fairness of process, and freedom from political intrusion. The idea of an independent judiciary as defined by the framers of the Constitution has proven its enduring virtue through many challenges over time. The judiciary maintains high ethical standards, and we take seriously our responsibility to ensure the appropriate and efficient use of public funds in a manner that would not undermine the historically high degree of confidence that the American people have in the federal court system. To this end, the judiciary has put in place increasingly rigorous and effective systems and mechanisms for review that do not undermine the independence of federal judges to render impartial decisions. Indeed, the judicial branch is currently reviewing its extensive, overlapping network of ethics protections to make them even more effective.

#### Fundamental Principles of Democracy

The proposed IG would have very broad authority to “investigate matters pertaining to the judicial branch.” We are very concerned that the legislation bestows on an IG the power to become involved in judicial functions such as case assignment and case management practices, case disposition, and sentencing practices. Even more alarming, the IG could, perhaps with Congressional prompting, target particular judges based upon their rulings, and would have the power to subpoena records or testimony.

The IG’s extraordinary powers could easily be used to influence, intimidate, or punish particular judges - especially for unpopular decisions. The judicial branch is particularly vulnerable to this kind of intimidation because the judiciary has no direct role in the legislative process – unlike the executive branch which has the ability to fight or influence legislation that it opposes through legislative tools like the veto. The judiciary has no such leverage. Investigations of judges could become a highly politicized process.

In these ways, this IG proposal would be detrimental to the separation of powers, to the judiciary’s ability to sustain the public’s trust in its essential non-partisan nature and its independent purpose to sustain the rule of law. These fundamental principles of democracy should not be undermined when other means are available in the name of combating waste, fraud and abuse within the judicial branch.

We note that Congress apparently views its unique constitutional role similarly. Indeed, many have alleged that Congress’ existing ethics procedures have been undermined by partisanship. For example, George Mason University Public Policy Professor Susan Tolchin, in her book, *Glass Houses: Congressional Ethics and the*

*Politics of Venom*, analyzed the politicalization of the ethics process and argues that the Congressional ethics process has been transformed into a partisan political tool feared by Members on both sides of the aisle. Perhaps because of these considerations, there is no IG in the Senate. And while the House of Representatives does have such an office, the jurisdiction of the IG is limited solely to administrative matters and is precluded from involvement in ethical or legislative matters, a narrow range of oversight maintained in deference to the constitutional functions of the legislative branch.

#### A Duplicative, Wasteful Intrusion

An IG would be an unnecessary, intrusive and wasteful duplication of the extensive management and oversight efforts already conducted by the Judicial Conference of the United States and its committees, the Administrative Office of the U.S. Courts (AO), the judicial councils of the circuits, the United States Sentencing Commission, the Federal Judicial Center, and the federal courts themselves. The judiciary has in place a system of oversight to promote stewardship of resources, effective program management, and integrity of operations. This system includes the AO Office of Audit, circuit judicial councils, the AO Office of Management Planning and Assessment, and independent audits by outside CPA firms. Through these established mechanisms, the judiciary:

- Addresses allegations of judicial misconduct or disability and identifies, investigates and resolves allegations of fraud, waste, loss, or abuse;
  - Performs extensive cyclical audits of the courts and audits of judiciary funds, programs and systems in conformity with government auditing standards;
  - Oversees the judiciary's programs and operations; surveys the condition of business in the courts; and reports to the public on the courts' caseloads and judicial activities;
  - Promotes uniformity of management procedures and the expeditious conduct of court business; studies the operation and effect of the general rules of practice and procedure; and promulgates guidelines and carries out efforts to achieve fiscal responsibility, accountability, and efficiency; and
  - Calls upon independent outside experts to review specific areas of concern to obtain objective analyses and recommendations for actions.
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As for allegations of judicial misconduct, just as the House and Senate handle ethical issues with self-regulating policies and through Congressional committees, the judicial branch addresses judicial ethics issues with policies and through committees of federal judges.

The Judicial Conduct and Disability Act Study Committee, impaneled by the late Chief Justice Rehnquist and chaired by Justice Breyer, was created to make a comprehensive study of the act governing judicial conduct and its administration, with a final report to Chief Justice Roberts expected in September.

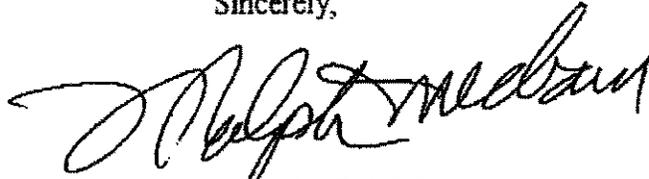
In addition to creating the Judicial Conduct and Disability Act Study Committee, the judicial branch has taken other steps to address its handling of judicial conduct and ethics issues. These actions include:

- The Chair of the Executive Committee issued a memorandum dated April 27, 2006, to all United States judges, strongly urging strict adherence to ethical obligations.
  - The Judicial Conference Committee on the Judicial Branch has a task force studying the issue of judges' private seminar attendance, in consultation with two other Conference committees. This study is expected to lead to policy recommendations to the Judicial Conference.
  - The Chair of the Judicial Conference Committee on Financial Disclosure issued a recent memorandum to all judges reiterating the requirement to disclose seminar attendance on financial disclosure reports and urging judges who have not been in compliance with this reporting requirement to file amended reports now for past years.
  - The Judicial Conference Executive Committee has asked the Committee on Codes of Conduct to undertake further ethics training for judges in addition to the substantial training programs on this subject already being conducted.
  - The judiciary is improving its automated case management system's conflict identification capabilities and is promoting the utilization of this computer program by all federal courts.
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In closing, let me emphasize once again that the independence of the three branches of government is vital to our democracy. Imposing an IG on the judiciary – especially one whose selection must be made in consultation with the Congress and who would report directly to the Congress – would violate this basic principle.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leonidas Ralph Mecham".

**Leonidas Ralph Mecham**  
**Secretary**

cc: **Honorable Robert C. Scott**  
**Ranking Member**