

**JOINT OPPOSITION LETTER BY THE
GOVERNMENT ACCOUNTABILITY PROJECT (“GAP”)**

—and—

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY (“PEER”)

July 25, 2003

VIA HAND DELIVERY & FACSIMILE

Re: Opposition Letter; Nomination of Howard Radzely to Serve as Solicitor, U.S. Department of Labor

Dear Senator:

The Government Accountability Project (“GAP”) and Public Employees for Environmental Responsibility (“PEER”) oppose the nomination of Howard Radzely for the position of Solicitor, U.S. Department of Labor (“DOL”).

At the outset, it should be noted that Mr. Radzely does not bring a long, distinguished record of accomplishment in the area of labor law to serve in the position of the nation’s top labor lawyer. Although Mr. Radzely comes before the Senate with a terse professional record, much of that slight record is entwined with that of his former supervisor, former Solicitor Eugene Scalia.

Apart from his scant qualification for the position, PEER and GAP have three concerns that are rooted in Mr. Radzely’s short tenure with DOL:

1. Hostility to Whistleblowers

During Mr. Radzely’s tenure in the Solicitor’s office, the Solicitor has used its scarce resources to intervene in cases against whistleblowers filing claims of retaliation under statutes enforced by DOL. The thrust of the Solicitor efforts has been to seek to deny relief to employee whistleblowers who have won recommended judgments following evidentiary hearings before administrative law judges.

In one case, Mr. Radzely’s office propounded a technically narrowed interpretation of the scope of the Clean Air Act to deny relief to a whistleblower. In another case, the Solicitor filed an extraordinary brief seeking to overturn a \$200,000 punitive damages award won by an Assistant U.S. Attorney in a whistleblower case against the Department of Justice. In that case, the federal prosecutor from Northern Ohio—Greg Sasse—cited retaliation for reporting irregularities in pollution prosecutions to a member of Congress.

In its brief, Mr. Radzely's office argued that:

Government whistleblowers are not protected in disclosing to Congress. The Solicitor sought to revive President Bush's ill-fated attempt to limit protections in the recently signed Corporate Accountability Act (Sarbanes/Oxley) by arguing that only reports to duly authorized congressional committee investigations, not reports to individual members of Congress, are protected under DOL administered whistleblower statutes. In so doing, the Solicitor adopted a position that had even been abandoned by the White House.

Following coverage of this story in the Washington Post, Senators Charles Grassley and Patrick Leahy wrote the White House demanding an explanation of the Solicitor's position. In response Mr. Radzely issued a letter retracting the arguments concerning Sarbanes/Oxley but did not otherwise withdraw the brief.

DOJ is constitutionally "immune" from whistleblower claims by federal prosecutors. The second issue raised by Mr. Radzely's office involved the assertion of immunity from Congress' whistleblower laws. According to the Solicitor, prosecutors can never be whistleblowers on matters within the umbrella of prosecutorial discretion. Further, the Solicitor argues that "separation of powers" considerations place federal prosecutors beyond the reach of any judicial power, leaving prosecutors with no remedy for retaliation incurred by seeking environmental prosecution of politically-connected industries, disclosing information about attempts to obstruct investigations or prosecutions, or reporting environmental violations to EPA or other investigative agencies.

2. Abdication of Responsibility for Labor Law Violations Against State Employees

State employees deserve the same rights as all other employees, including job security from retaliation, accommodation under the disability laws, and equal opportunity in the workplace. Due to a series of U.S. Supreme Court decisions, state employees have lost the ability to directly pursue relief for violations of federal labor law but the court decisions have made clear that DOL can take direct action against noncompliant state agencies.

While Mr. Radzely has served in the Solicitor's Office, the DOL has failed to intervene in any such cases. As a result, state employees who allege violations of Americans with Disabilities Act, the Family Medical Leave Act, federal race, age and sex discrimination laws as well—as whistleblowers under environmental, occupational health and safety statutes—are left unprotected by Mr. Radzely's policy of inaction.

Today, there are reportedly scores of cases, many pending for months before the DOL, where state employees suffering from practices in the workplace that violate federal statute are left in limbo, unsure if federal law will be enforced at all.

3. An Anti-Employee orientation to Reduce the Scope of Federal Labor Law

The consistent pattern that runs through Mr. Radzely's brief career, and the labor practitioners he has chosen to practice with, is an advocacy for reduced legal protections. Mr. Radzely is an avatar; a throw back to employee/employer relations more suitable for historical study than for advancement through current, U.S. Department of Labor policies.

The Senate needs to lead in the area of labor and employee relations. Mr. Radzely's nomination is a clear signal to all Americans—and all American workers—that employment issues are no longer a concern of the federal government. For this reason, the signatories of this letter urge you to vote “No” to Howard Radzely.

Very respectfully,

Daniel Meyer, General Counsel
PEER

Tom Devine, Litigation Director
GAP