

**NOMINATION OF JAMES MICHAEL COLE, NOMINEE
TO BE DEPUTY ATTORNEY GENERAL, U.S.
DEPARTMENT OF JUSTICE**

HEARING

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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JUNE 15, 2010
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**NOMINATION OF JAMES MICHAEL COLE,
NOMINEE TO BE DEPUTY ATTORNEY GEN-
ERAL, U.S. DEPARTMENT OF JUSTICE**

TUESDAY, JUNE 15, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:09 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kohl, Cardin, Whitehouse, Klobuchar, Kaufman, Franken, Sessions, Hatch, Graham, and Cornyn.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S.
SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. Good morning. Today the Committee will consider the President's nomination of Jim Cole to be Deputy Attorney General. We are proceeding promptly on the nomination to fill this important position at the Department of Justice, just as we did when President Bush nominated Mark Filip to be the Deputy in 2007. The No. 2 position is vital to our national security and our system of justice.

It has been nearly a year and a half since Eric Holder was sworn in as the 82nd Attorney General of the United States. He has made great strides toward restoring the Department of Justice and the American people's confidence in Federal law enforcement. Morale has improved throughout the Department. Key parts of the Justice Department, like the Civil Rights Division and the Antitrust Division, are now recommitted to their historic functions. The Department has been aggressive in attacking crime, particularly violence related to drug cartels, and it has demonstrated a renewed commitment to aggressively combating fraud.

The Department has effectively confronted national security challenges as part of a coordinated effort across the entire Government. Its prosecutions of those arrested for threatening our national security are yielding important intelligence, but also very importantly convictions and extended sentences. These are difficult problems, but the Attorney General and the Justice Department have played constructive roles in confronting them with integrity and a commitment to our national security.

I would like to start by thanking Jim Cole and his family for their willingness to contribute to these efforts. He is an experienced prosecutor. He has a well-deserved reputation for fairness, integ-

riety, and toughness. He certainly has a great familiarity with the criminal justice system and the Department of Justice. He understands the issues of crime and national security that are part of the Deputy's job. He served as a career prosecutor within the Department of Justice for a dozen years, prosecuting complex and high-profile corruption cases, and helping to manage the Public Integrity Section.

He served as Special Counsel for a House of Representatives' investigation into allegations of improper conduct by the then Speaker of the House, and he was fair throughout. In the private sector, he has led internal investigations into fraud and corruption. He is leaving a successful career in private practice to rejoin the Department.

I do not know if you have told your family what a big cut in pay you are going to take to do that, but I applaud you for that.

His nomination has received strong endorsements from Republican and Democratic public officials and high-ranking veterans of the Justice Department. In a few minutes, we are going to hear from Jack Danforth, who was a Republican colleague from Missouri in the Senate, somebody I had the pleasure of serving with, as many of us did; a former U.N. Ambassador and former Attorney General of Missouri, and he will introduce him to the Committee. I know that Senator Cardin worked with him in the House on ethics investigations; he will speak about it.

So I think we are very fortunate to have him here. I hope we will have a strong bipartisan vote for him so we can continue to make sure the Department is on top of its criminal justice and national security responsibilities day in and day out, especially as this is the position that, in the absence of the Attorney General, acts as the Attorney General.

Again, I apologize for the hoarseness.
Senator Sessions.

**STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM
THE STATE OF ALABAMA**

Senator SESSIONS. Thank you, Mr. Chairman.

Senator Danforth, it is great to have you, and, Mr. Cole. I enjoyed our discussion yesterday. Thank you for coming by. That was helpful to me.

There are number of critical areas that the Deputy will be involved in. Of course, you act in the absence of the Attorney General, and I am sure he will give you a great deal of the management responsibilities of the Department that has always traditionally fallen to the Deputy. He needs a strong right arm. I know he is a friend of yours, someone that you feel comfortable and he feels comfortable with.

I am not at all satisfied that the Department of Justice is restored. I am not sure it was so unrestored, actually. But I have some concerns about your appointment, and we will talk about those as we go forward.

First, I am concerned about the aggressive way you criticized the Government's response to the September 11th attacks and the creation of military commissions. Your statements show an adherence to the failed 9/11 enforcement approach to Islamic terrorism that

focused on indictments rather than intelligence and individual suspects rather than the individual terrorist networks. You were aggressive in that, and that is the position you took, and it was contrary to what the 9/11 Commission concluded and I think what this Senate has concluded fundamentally.

Your criticism of our efforts against al Qaeda were in a *Washington Post* article two months after 9/11. That article stated—“Washington criminal lawyer James Cole said the Bush administration is invoking an emergency as a pretext for actions ‘contrary to the spirit and letter of the Constitution.’”

I do not think that is an accurate or fair criticism of the administration at that time.

Just days before the 1-year anniversary of September 11th, you wrote an op-ed not honoring the victims of 9/11 or calling for justice against bin Laden, but faulting the then Attorney General John Ashcroft for his decision to support military commission trials of foreign terrorists. In your op-ed, you argued that, “[t]he Attorney General is not a member of the military fighting a war. He is a prosecutor fighting crime. For all the rhetoric about war, the September 11th attacks were criminal acts of terrorism against a civilian population.”

You compared the September 11th attacks to criminal acts like drug violations, organized crime, and murder, writing that, “[t]he acts of September 11th were horrible, but so were these other things.”

You even accused Attorney General Ashcroft of taking America down a dangerous road and abandoning core American principles by supporting military commissions.

From your prior statements, it appears that you would favor trying the September 11th plotters, whether it is Khalid Sheikh Mohammed or Osama bin Laden, in a civilian criminal court. I would also have to assume based on those statements and your writings that you would be in favor of providing Miranda warnings to foreign terrorist leaders when they are captured.

So I am concerned about what kind of signal that means. What is the President saying about his determination as to how to proceed against these enemy combatants who threaten the United States? Does your nomination suggest that it was a correct decision to advise the Christmas Day bomber that he could remain silent and be entitled to a lawyer?

The 9/11 terrorists, I think the American people believe, are war criminals, not common criminals. The attacks were orchestrated by an international terrorist organization, al Qaeda, that was harbored by a foreign government, the Taliban in Afghanistan, and against whom we have authorized the use of military force. They should be prosecuted, I think, consistent with history and propriety, via military commissions just as this Nation prosecuted the Nazi saboteurs who came to our country to bomb civilian targets during World War II.

As a matter of constitutional or international law and as a matter of history, these unlawful combatants are no different. So I also disagree with your claim in your op-ed where you characterized the civilian trial of Omar Abdel Rahman, the mastermind behind the first World Trade Center attack, as a successful model for how to

prosecute 9/11 terrorists. So that is a matter of discussion, a national discussion, which side should you take on that.

But I am not alone in my view. The lead prosecutor in Mr. Rahman's case, Andrew McCarthy, and the presiding judge, former Attorney General Michael Mukasey, disagreed with the notion that the Rahman trial was somehow a model for prosecuting terrorism cases. Former Attorney General Mukasey has written that, "[t]errorism prosecutions in this country have unintentionally provided terrorists with a rich source of intelligence." And he specifically cited the Rahman trial as having tipped off Osama bin Laden through the production of a list of unintended co-conspirators.

Mr. McCarthy has said, "[a] war is not a crime, and you do not bring your enemies to the courthouse." The top officials within the Department of Justice, I think, have got to reject this blind adherence to the pre-9/11 criminal law mind-set.

On that note, I should add that I am also concerned that many Department nominees have made statements much like the ones you have made and evidence the philosophy that you have evidenced on this matter. So this is something that we need to talk about and the Nation needs to get straight.

Briefly, let me say your role as compliance monitor at AIG in the years leading up to the 2008 financial crisis and the \$182 billion bailout of AIG is also troubling. You were entrusted to monitor that company and put effective controls in place. I think we can both agree that things were not effective, the Government's efforts were not effective.

Some well-respected whistleblower organizations have raised questions about your nomination in light of the AIG matter. They have cited internal whistleblower claims that you allowed AIG executives to revise your reports to the SEC. Maybe we can discuss that and get your side of that.

Mr. Cole, you were also repeatedly responsible for reviewing transactions structured by AIG Financial Products Group, the one that was at the center of the credit default swaps, and so we would like to ask about that.

Mr. Chairman, our nominee has a lot of experience in the Department of Justice. He has the confidence of the Attorney General. He brings a number of good qualities to this Committee and to the office if selected, but also there are a number of questions that I think do need to be raised and discussed, and thank you for giving me this opportunity.

Chairman LEAHY. Thank you. Before I yield to Senator Cardin, I will put in the record letters of support: One from Chuck Rosenberg, former U.S. Attorney, Eastern District of Virginia; Harry Rosenberg, former U.S. Attorney, Eastern District of Louisiana; Michael Toner, the former Chairman of the Federal Election Commission and former chief counsel of the Republican National Committee; Jack Sheldon, former U.S. Attorney, Northern District of Alabama; and Ronald K. Noble, the Secretary General of Interpol; and John Wood, former U.S. Attorney, Western District of Missouri; as well as other letters.

[The letters appear as a submission for the record.]

Chairman LEAHY. Senator Cardin.

**STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR
FROM THE STATE OF MARYLAND**

Senator CARDIN. Well, thank you, Mr. Chairman. I asked for this time because I have had a chance to work side by side with Mr. Cole, and I wanted to share that with the members of the Committee.

Let me just point out to Senator Sessions, we are going to have a chance to talk about the military commissions and civil trials, but I think some of Mr. Cole's concerns about the military commissions have been confirmed by the Supreme Court. But we will have a chance to get into those issues as this hearing proceeds.

I asked for this time because in 1995 the House of Representatives had an extremely difficult challenge. The Speaker of our House was under a cloud of using tax-exempt organizations—at least alleged to have used tax-exempt organizations—to promote a political objective. And the bipartisan leadership of the Ethics Committee had to search for someone who we could hire as our Special Counsel, our special adviser, to bring the House of Representatives together, to bring the American people together, on an extremely difficult investigation. And we chose Jim Cole to be our Special Counsel. I then worked with Mr. Cole as one of the four members of the Subcommittee for over a year, as we investigated the situations concerning the Speaker of the House.

And I must tell you, you get to know a person after working with a person for that long of a period of time in such an in-depth way. And Mr. Cole is what you would call a professional in the truest sense of the word.

In the Deputy Attorney General, we want someone who is going to remove politics and represent the interests of the people of this Nation. That is what we were looking for in the Ethics Committee, someone who would be nonpartisan, who would give us the confidence that at the end of the day the American public would be satisfied that we carried out our responsibility on the Ethics Committee. And we could not have done that without Mr. Cole's work.

Rather than giving you my view, let me quote from the Chairman of the investigative committee, the Chairman of the Ethics Committee at that time, Porter Goss, as I think most of you know, a Republican from Florida who went on to become the CIA Director. Mr. Goss said, and I am quoting from him, that Mr. Cole was a "brilliant prosecutor" and "extraordinarily talented." Mr. Goss then went on to state that Mr. Cole and the members of the Subcommittee worked in a "spirit of bipartisan cooperation" that grew as the investigation proceeded.

I point that out because I do not think we could have come together as a House putting the interests of our Nation first without Mr. Cole's professional guidance. And that is exactly what we need as the Deputy Attorney General. So I am very pleased to very much recommend Mr. Cole, based upon my personal experience, to be the next Deputy Attorney General.

[The prepared statement of Senator Cardin appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Senator Cardin.

Our first witness will be Senator John Danforth. He is a former U.S. Senator from the State of Missouri. He was also our Amba-

sador to the United Nations, and one of my very few claims to fame, in my tenure in the Senate, as I served as one of Ambassador Danforth's assistants, I was nominated by President George W. Bush to be a delegate to the United Nations, confirmed by the U.S. Senate, and was told to go up and do whatever Ambassador Danforth told me to do. To this day, he is the only famous person whose picture is in my office of the two of us sitting in the national security hearing of the national Security Council at the United Nations. He served with distinction there, as he did here in the Senate.

It is good to have you back home. Please go ahead.

PRESENTATION OF JAMES MICHAEL COLE, NOMINEE TO BE DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE BY HON. JOHN C. DANFORTH, FORMER U.S. SENATOR FROM THE STATE OF MISSOURI

Senator DANFORTH. Thank you, Mr. Chairman. It is very good to be back, especially since this is only a cameo appearance back in the Senate. But I appreciate your comments, and I am glad to know that my picture is on your wall. You have not told me whether there are flowers in front of the picture, but I am happy to hear that.

Mr. Chairman, I do have a prepared statement. If it is all right, I will submit it for the record. Let me say this about my friend, Jim Cole. I have known Jim for more than 15 years. We both joined the Bryan Cave law firm on exactly the same date. Immediately after leaving the Senate, I joined it in 1995, and Jim also came to Bryan Cave the same year.

We have worked together. I know him well. I have the highest regard for him as a person and as a lawyer. Jim has very extensive experience in the Department of Justice. I believe he served there some 13 years and then entered private practice.

I consider Jim to be a lawyer's lawyer. There is, at least I have seen no ideological or political bone in his body. He is a person who will call them as he sees them and will act in the most professional way.

Senator Cardin referenced the work that Jim Cole did as the Special Counsel to the House Ethics Committee. I remember that at the time that Jim was doing that work, I got a phone call from Adam Clymer, who at the time was a reporter for the New York Times, and Adam Clymer said to me, "Who is this Jim Cole? He is your law partner. I do not know anything about him." And Adam Clymer said, "He is so close-mouthed in conducting an investigation that when I"—Adam Clymer—"asked him where he was born, he would not answer the question." So I think that that, Mr. Chairman, is a mark of professionalism and an indication of the kind of person Jim Cole is.

We worked together particularly right after the Enron scandal broke, and there were allegations that Arthur Andersen had destroyed records. We were retained by Arthur Andersen and asked to examine their record retention policy and to create for them a new policy, which we did. And I can tell you again that Jim was very, very professional in doing this. No corner is cut by Jim Cole.

So it is a privilege for me to be here on his behalf and to tell the Committee that it is my hope that he is confirmed and that this Committee will move him forward with a strong bipartisan vote.

[The prepared statement of Mr. Danforth appears as a submission for the record.]

Chairman LEAHY. I appreciate you and what you had to say. I should also note that when Senator Danforth retired from the Senate, we did not let him totally retire. He was appointed by then Attorney General to lead the investigation of the FBI's standoff with the Branch Davidians in 1993. President Bush sent him in 2001 as a Special Envoy to the Sudan, and after that he was tapped to be U.S. Ambassador to the United Nations.

I have no questions of Senator Danforth other than to say I am delighted to have him back here.

Senator SESSIONS. I am, too, and you are so well respected and remembered, Senator Danforth, and we appreciate your service in the Senate and post-Senate for the good of the country. Thank you very much.

Senator DANFORTH. Thank you very much.

Chairman LEAHY. Anybody else?

[No response.]

Well, then, Senator Danforth, thank you very much. I know you have a pressing engagement in Pennsylvania. I wish you well in it.

Senator DANFORTH. Thank you, Mr. Chairman.

Chairman LEAHY. Mr. Cole, before you sit down, would you please stand and raise your right hand? Do you swear that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. COLE. I do.

Chairman LEAHY. Thank you very much. Please sit down.

Before we begin, Mr. Cole, you have members of your family here. Would you please introduce them? Because someday this will be in the Cole family archives, and they will all know they were here. Please go ahead.

Mr. COLE. Thank you, Mr. Chairman. It is my honor to introduce my family members. I have here today behind me my wife, Susan, who is, put simply, my best friend. She has also, unfortunately, had to put up with a great deal from me in my career, long times away from home trying cases, both for the Justice Department and in private practice, and putting far too much of the burden of our family on her. I will apologize to her in advance if I am confirmed because I may have to do a little bit more of that in the future. But she has been my rock and my support, and I thank her greatly for everything.

Also behind me is my daughter, Amanda, and my son, Jackson. These are two children that a parent could not be prouder of. My daughter currently finished the College of Charleston down in South Carolina and is living down there, a constituent of Senator Graham's at this point. And my son is on his way to college in Louisiana where, obviously, the huge issues about the gulf are swirling around, and he will be going to a school that has a tradition of public service and of helping in the community, and he looks forward to helping in that regard.

Also here today is my mother-in-law, Audrey Levin; my brother-in-law, Daniel Levin; and Marilyn Pearlman, my aunt. And I welcome them all. Thank you, Senator.

Chairman LEAHY. Thank you. Please go ahead, sir.

**STATEMENT OF JAMES MICHAEL COLE, TO BE DEPUTY
ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE**

Mr. COLE. Chairman Leahy, Ranking Member Sessions, thank you for the opportunity to appear before the Committee today. I am honored by President Obama's nomination of me to be the Deputy Attorney General, and I look forward to describing for you the goals I hope to accomplish if confirmed by the Senate.

If confirmed, I will be returning to the Department where I served for 13 years as a career prosecutor. In a sense, this would be for me like returning home.

My earlier service at the Department spanned the terms of three Presidents, and I had the privilege of working for five Attorneys General, both Republicans and Democrats. My 13 years in the Department were filled with some of the most rewarding experiences of my professional career, and it was a privilege to work with and learn from people who strove every day to uphold the highest traditions of excellence in protecting the American people and upholding the rule of law.

I joined the Department in 1979, through the Honors Graduate Program straight from law school, and spent my early years as a trial attorney in the Criminal Division. I developed expertise in the public corruption area and prosecuted, among others, a Federal judge, a Federal prosecutor, and a Member of Congress. Eventually I served as Deputy Chief of the Public Integrity Section. I was proud to work in this field because it was—and it and still is—important to me that the American people know that public officials are serving the public interest and not their own.

In 1992, I went into private practice where I have engaged in both civil and criminal litigation. I have also been called upon to help companies establish or improve programs that monitor compliance with laws and regulations. For example, as Senator Danforth mentioned, he and I worked closely to develop document retention policies for Arthur Andersen after the Enron investigation uncovered serious deficiencies.

In 1995, as noted by Senator Cardin, I served for 14 months as the Special Counsel to the U.S. House of Representatives Committee on Standards of Official Conduct. I led an investigation into allegations that a high-ranking member had improperly used tax-exempt money for partisan purposes and had provided misleading information to the Committee. I take pride in the fact that my investigation led to a bipartisan resolution of the matter even though it took place in a very partisan environment. Our recommendations were approved by an overwhelming majority of the full House.

In 2005, I was selected by the Justice Department and the SEC to serve as an independent monitor at the insurance company AIG. I was first tasked by court order to look at 5 years of transactions to determine if AIG assisted any of its clients to, as they say, "cook their books" through the use of complex transactions. That work led to another appointment in 2006, in which I developed financial

reporting and regulatory compliance programs for the company. While the company resisted some of my efforts, I insisted on tough measures.

Should I have the honor of becoming Deputy Attorney General, my first and foremost duty will be to help the Attorney General keep Americans safe. We must continue to do everything in our power to protect Americans from the threat of terrorism, consistent with the rule of law. We must use all available lawful means to protect our national security, including, where appropriate, military, intelligence, law enforcement, diplomatic, and economic tools and authorities. We must strongly defend this country from attacks by terrorists, consistent with our core values.

I would also work closely with the Attorney General to reinvigorate the Department's traditional law enforcement mission. The Department of Justice must redouble its efforts to combat financial fraud, mortgage fraud, and health care fraud, to enforce civil rights laws and to thoroughly investigate and prosecute environmental crime. I believe that my experiences in the public and private sectors have equipped me well to address these problems, which are so costly to all Americans.

I very much look forward to serving with an Attorney General whom I respect and with whom I have a strong working relationship. I share the Attorney General's goals of protecting the American people against both foreign and domestic threats; ensuring the fair and impartial administration of justice; assisting State and local law enforcement; and defending the interests of the United States. I look forward to doing all I can to achieve these goals.

Perhaps most of all, I look forward, with your support, to coming home and again serving with the fine men and women at the Justice Department.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Cole appears as a submission for the record.]

[The biographical information of Mr. Cole follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

James Michael Cole

2. **Position:** State the position for which you have been nominated.

Deputy Attorney General

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Bryan Cave LLP
1155 F Street, NW
Washington, D.C. 20004

4. **Birthplace:** State year and place of birth.

1952; Evanston, Illinois

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1976 – 1979, UC Hastings College of the Law; J.D., 1979
1970 & 1972 – 1975, University of Colorado; B.A., 1975
1972, Mundelein College; no degree

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1995 - Present
Bryan Cave LLP
1155 F Street, NW
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Partner

Dec. 1995 – Jan. 1997
Committee on Standards of Official Conduct
United States House of Representatives
Washington, D.C. 20515
Special Counsel

1992 – 1995
Squire, Sanders & Dempsey
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Counsel

1979 – 1992
United States Department of Justice
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Chief of Staff to the Special Counsel to the Attorney General (1992)
Deputy Chief, Public Integrity Section (1989 – 1992)
Trial Attorney, Criminal Division (1980 – 1989)
Special Assistant U.S. Attorney, District of Columbia (1980)
Criminal Division Honors Program (1979)

1978 – 1979
Federal Trade Commission
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Law Clerk

Summer 1978
Colorado Supreme Court
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Legal Intern to Justice William Erickson

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Washington, D.C. 20009
Director (uncompensated)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Best Lawyers in America (2008 – 2010)
Best Lawyers in Washington, D.C. (2009)
Lawdragon 500 Leading Lawyers in America Finalists (2007)
Washington, D.C. Super Lawyers (2008 – 2010)
Who's Who Legal, The International Who's Who of Business Lawyers (2008 & 2009)

In several years, I received special achievement awards from the Department of Justice.

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
Criminal Justice Section, First Vice Chair (2009 – Present)
Criminal Justice Standards Committee (2008 – Present)
Criminal Justice Section, Vice Chair (2004 – 2009)
Criminal Justice Council, Member (2001 – 2004)
White Collar Committee, Chair (1997 – 2000)
Bar Association of the District of Columbia
Edward Bennett Williams Inn of Court
Practitioners' Advisory Group to the U.S. Sentencing Commission (2009-2010)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

California, 1979
District of Columbia, 1985

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the D.C. Circuit, 1985
 United States Court of Appeals for the Fifth Circuit, 1987
 United States Court of Appeals for the Sixth Circuit, 1985
 United States Court of Appeals for the Ninth Circuit, 1979
 United States District Court for the District of Columbia, 1994
 United States District Court for the Eastern District of Oklahoma, 1981
 Supreme Court of California, 1979
 D.C. Court of Appeals, 1985

There has been no lapse in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Palisades Citizens' Association (1990 – Present, approximate)
 Bannockburn Swim Club (1992 – 1998, approximate)
 Trustees of Reservations (1999 – Present, approximate)
 Georgetown Day School Development Committee (2003 – 2004)

I have made financial contributions to a number of charitable organizations over the years. I have not included in the list above any organizations to which I only have given funds and where I have not participated in programmatic activities, although the organizations' development protocols may call me a "member." Although there may be others I have not found in my records, these organizations include: AARP, ACLU, U.S. Holocaust Memorial Museum, Washington Humane Society, WETA, WAMU.

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of these organizations has discriminated during the time I have been a member. I am not aware of any former discrimination by them.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

The list below consists of materials I have identified from my recollection, from my files, and from search of Internet databases. A copy is supplied for each item. Despite my searches, there may be other items I have been unable to identify, find, or remember.

Exploring Every Avenue: The Dilemma Posed by Attorney-Client Privilege Assertions in Congress, 8 APPALACHIAN J.L. 157 (2009)

"A Prosecutor Must Protect Rights of All," LEGAL TIMES, Sept. 9, 2002

Collective Knowledge, Conscious Avoidance, and Specific Intent in Criminal Export Control Cases Against Corporations (with Kevin J. Wolf), 830 PLI/COMM 779, 787 (2001)

"What a 'Full Trial' Means," N.Y. TIMES, Jan. 8, 1999

"Mail and Wire Fraud," in *Prosecution of Public Corruption Cases* (Feb. 1988)

"Conspiracy to Defraud the United States," in *Prosecution of Public Corruption Cases* (Feb. 1988)

As chair of the White Collar Crime Section of the ABA, I wrote occasional columns in the Section's newsletter for members. I have supplied copies of the columns I have been able to locate (Oct. 1998, Jan. 1999, and Sept. 1999).

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

The list below consists of materials I have identified from my recollection, from my files, and from search of Internet databases. A copy is supplied for each item. Despite my searches, there may be other items I have been unable to identify, find, or remember.

"Report to the House of Delegates Recommending Opposition to Reauthorization of the Independent Counsel Provisions of the Ethics in Government Act In Any Form," American Bar Association Criminal Justice Section (presented jointly with the Section of Litigation) (Feb. 1999)

“Report to the House of Delegates Recommending Principles for When a Congressional Committee Seeks Information from a Federal Prosecutorial Agency,” American Bar Association Criminal Justice Section (Aug. 1996)

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

The list below consists of materials I have identified from my recollection, from my files, and from search of Internet databases. Despite my searches, there may be other items I have been unable to identify, find, or remember.

In the Matter of Representative Newt Gingrich, Report of the Select Committee on Ethics, H. Rep. 105-1 (1997). Copy supplied.

On January 17, 1997, I testified regarding my report as Special Counsel to the U.S. House Committee on Standards of Official Conduct. Video of the hearing is available at <http://www.c-spanvideo.org/program/78059-1> (part 1) and <http://www.c-spanvideo.org/program/78097-1> (part 2).

Letter to the Speaker of the House regarding subpoena service from the U.S. District Court for the District of Columbia (June 3, 1997) 143 Cong. Rec. 78, H3577. Copy supplied.

On July 12, 1989, I testified before the United States Senate Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings in my capacity as Deputy Chief of the Public Integrity Section, Department of Justice (Sen. Hrg. 101-194). Transcript of my testimony is supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The list below consists of speeches or talks I have identified from my recollection, from my files, and from search of Internet databases. Despite my searches, there may be other speeches or talks I have been unable to identify, find, or remember.

Oct. 12, 2009. Remarks to the 2009 American Bankers Association / American Bar Association Money Laundering Enforcement Conference, Washington, DC. Speech text supplied.

Sept. 3, 2009. "Conflicts of Interest and Duty—A Persistent Threat," 27th Cambridge International Symposium of Economic Crime, Cambridge, UK. I have no notes, transcript, or recording.

Sept. 2, 2009. "Ethics in Business Compliance," 27th Cambridge International Symposium of Economic Crime, Cambridge, UK. Speech outline supplied.

May 8, 2009. Panelist, "Internal Investigation in the Era of Global Business," ABA National Institute on Internal Corporate Investigations and In-House Counsel, Washington, DC. Audio recording supplied.

Apr. 3, 2009. Panel Moderator, "Substantive Criminal Law and Public Corruption," ABA Criminal Justice Section Spring Meeting, Birmingham, AL. Audio recording supplied.

Mar. 6, 2008. Panelist, "Congressional Investigations: An Inside Look at a Unique Forum," ABA White Collar Institute, Miami, FL. Audio recording supplied.

Nov. 2, 2007. Panelist, "Implementing Plea Agreements," ABA Criminal Justice Section Fall Conference, Washington, DC. Audio recording supplied.

Oct. 25, 2006. Speech to AIG employees who are high-level management or involved in the company's accounting and financial reporting functions, New York, NY. Speech outline supplied.

Oct. 12, 2006. "Role of an In-House Lawyer in a Corporation," Boeing Law Conference, Palm Springs, CA. Speech outline supplied.

Oct. 5, 2006. "Nature and Structure of Audit Committees," PriceWaterhouseCoopers Audit Committee Conference, New York, NY. I discussed approaches to structuring an audit committee. I have no notes, transcript, or recording.

May 20, 2004. Panelist, "Ten Years of Unanswered Ethics Questions: Can Congress Police Itself?" American Enterprise Institute for Public Policy and the Campaign Legal Center, Washington, DC. I have no notes, transcript, or recording.

Sept. 3, 2003. "First Things First: Preventing Mistakes and Finding Out What Happened When They Occur," Forbes/Andrews Corporate Compliance &

Executive Planning Conference, Washington, DC. I have no notes, transcript, or recording.

May 8, 2003. "Joint Defense Agreements," National Advocacy Center, Columbia, SC. I presented to federal prosecutors on the joint defense privilege and its uses and abuses. I have no notes, transcript, or recording.

Oct. 9, 2002. "Securities and Business Fraud: Significant Changes in Enforcement Proceedings 2002," Greater New York Chapter of the American Corporate Counsel Association, New York City, NY. I have no notes, transcript, or recording.

Apr. 19, 2002. "Representing Lawyers Indicted for Performing Traditional Legal Services," ABA Criminal Justice Section Spring Meeting, New Orleans, LA. I discussed the recent prosecutions of lawyers related to their provision of legal services and offered practice recommendations. I have no notes, transcript, or recording.

Mar. 1, 2002. Panelist, "Grand Jury Reform," ABA White Collar Institute, Miami, FL. Audio recording supplied.

Mar. 9, 2001. "Negotiating Consent Decrees with ODTA and BXA," ABA White Collar Institute, San Francisco, CA. Audio recording supplied.

Feb. 15, 2001. "Legal Issues in the Trial of Edwin Edwards," ABA Gaming Enforcement Conference, Las Vegas, NV. Audio recording supplied.

Mar. 12, 1999. Panelist, "Future of the Independent Counsel Act," National Press Club Forums Committee. I have no notes, transcript, or recording.

Mar. 5, 1999. "Avoiding Indictment—In the Trenches," ABA White Collar Institute, San Francisco, CA. Audio recording supplied.

Jan. 12, 1999. Panelist, "Defending An Independent Counsel Investigation," American Bar Association, Washington, DC. I participated in a panel on defending a subject or target before the Department of Justice and then, after a referral by the Attorney General, before an Independent Counsel. I have no notes, transcript, or recording.

Nov. 7, 1997. "Watergate Retrospective," ABA Criminal Justice Section Fall Meeting, Washington, DC. I discussed aspects of the Watergate case and how the case had affected the legal landscape. I have no notes, transcript, or recording.

Oct. 17, 1997. Panel moderator, "The Independent Counsel Statute," *Corporate Crime Reporter* conference, Washington, DC. I have no notes, transcript, or recording.

Sept. 15, 1997. "Special Counsels Aren't Really So Special: A Contrast of the Roles of Special Counsels v. Staff Counsels," Council on Governmental Ethics Laws, Edmonton, Canada. I discussed the roles and responsibilities of government counsels. I have no notes, transcript, or recording.

Apr. 8, 1997. "Inside the Gingrich Investigation," Institute of Politics, John F. Kennedy School of Government, Harvard University, Cambridge, MA. I discussed issues faced in the House Ethics Committee investigation of then-Speaker Newt Gingrich. I have no notes, transcript, or recording.

Mar. 3, 1995. "Defending Public Corruption Cases," ABA White Collar Institute, San Francisco, CA. I spoke about recent developments at the Department of Justice including decentralization efforts, the criminalization of ethics rules, the future of the Speech or Debate Clause, and the role of the Hobbs Act. I have no notes, transcript, or recording.

Since January 1999, I have taught an annual CLE program on "Attorney-Client Privilege" under the auspices of the D.C. Bar. Some dates I have taught the program are: April 10, 2000; Sept. 12, 2000; Dec. 11, 2002; Dec. 13, 2004; Dec. 14, 2006; and Dec. 17, 2007. My program outline is supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

The list below consists of interviews I have identified from my recollection, from my files, and from search of Internet databases. A copy is supplied for each interview. Despite my searches, there may be other interviews I have been unable to identify, find, or remember.

Holder Said Coping with Tough Workload, UPI, July 14, 2009

Holder Faces Avalanche of Work, and Scrutiny; Attorney General Blasted from Left, Right, WASHINGTON POST, July 14, 2009

The U.S.'s Fly on the Wall at AIG--Monitor James Cole Has Been Privy to Inside Workings, THE WALL STREET JOURNAL, Mar. 27, 2009

Government Monitor Worked inside AIG Since 2005; Attorney Appointed in Wake of 2004 Settlement with SEC, Justice Department Provided Reports on Financial Transactions, THE GLOBE AND MAIL (CANADA), Mar. 27, 2009

American Italian's Former CEO and CFO Plead Guilty to Fraud, THE KANSAS CITY STAR, Sept. 16, 2008

Former Pasta Executives Plead Guilty to Conspiracy, THE ASSOCIATED PRESS, Sept. 15, 2008

After Gonzales, THE NATIONAL JOURNAL, Sept. 1, 2007

The Abramoff Wave, THE NATIONAL JOURNAL, Aug. 11, 2007

10 Years for Former Medical Firm Exec, CHICAGO TRIBUNE, Sept. 14, 2006

A Bright Career Unravels in Iraq, LOS ANGELES TIMES, Apr. 19, 2006

Part of Tom DeLay's Trip Expenses to Moscow Country Club May Have Been Paid by Alexander Koulakovsky of NAFTA Sib, NBC, Apr. 28, 2005

Beyond Washington; Weingarten Leads Among Lawyers Erasing D.C., N.Y. Divide, WASHINGTON POST, Apr. 4, 2005

A Folksy Lawyer with a High-Powered Client, NEW YORK TIMES, Feb. 17, 2005

Lawmakers Must Heed More Than Internal Rules, WASHINGTON POST, Jan. 10, 2005

Relaxing of Ethics Rules Could Backfire in House, WASHINGTON POST, Jan. 4, 2005

D.C. Area United Way Pays \$114,000 to Settle with Ex-Chief, WASHINGTON POST, June 17, 2004

Stewart Defense Is Backed into a Corner, THESTREET.COM, Feb. 6, 2004

Dilemmas in Attorney-Client Confidentiality, WASHINGTON LAWYER, Jan. 2004

This Is a Barn? Instead of Cows, We Now Have Offices and Party Rooms, THE BOSTON GLOBE, July 24, 2003

IRS Reversal Could Spark 'Notorious Abuse,' ROLL CALL, Apr. 28, 2003

Former Executives Accused of Conspiracy in Medical Case, CHICAGO DAILY HERALD, Feb. 6, 2003

EWE Begins the Long Wait for Judges' Ruling on Appeal, THE TIMES, June 4, 2002

Bush Plan for Terrorism Trials Defended, WASHINGTON POST, Nov. 15, 2001

Was Robert Downey Jr. Given Special Treatment?, CNN, July 16, 2001

The Search Continues for Chandra Levy, CNN, July 6, 2001

Chandra Levy's Aunt Disputes Gary Condit's Account of His Relationship With Levy, CNN, July 6, 2001

Cost of Silence Escalates for Condit, WASHINGTON POST, July 5, 2001

Where Is Gary Condit and Why Isn't He Talking More Openly About Chandra Levy, FOX NEWS NETWORK, July 5, 2001

Interview with James Cole, Partner, Bryan Cave, Washington, D.C., CORPORATE CRIME REPORTER, May 28, 2001

EWE Case Hearing Set for Today, THE TIMES, Dec. 6, 2000

Edwards Denied New Casino Trial; Superstar Lawyer to Handle Appeal, TIMES-PICAYUNE, Nov. 8, 2000

Edwards' Son, Pal Cast as Bagmen; Ex-Casino Lawyer Says He Paid Both Big Sums, TIMES-PICAYUNE, Feb. 19, 2000

No Trends Evident Yet in EWE Jury, THE ADVOCATE, Jan. 16, 2000

Edwards Ill, Hospitalized, THE ADVOCATE, Jan. 12, 2000

Defense Team Forged Skills in the Halls of Justice, TIMES-PICAYUNE, Jan. 9, 2000

Witness list could delay EWE trial, THE TIMES (Shreveport, LA), Jan. 4, 2000

Dependent Counsel, U.S. NEWS & WORLD REPORT, Apr. 5, 1999

Never Mind, Newt, THE AMERICAN SPECTATOR, Apr. 1999

Looking Inward at Justice; Reno to Back Department Role in Lieu of Independent Counsels, WASHINGTON POST, Mar. 17, 1999

Judge Extends Grand Jury in Edwards Case 6 Months, THE ADVOCATE, Mar. 11, 1999

Edwards Trial Set to Begin Jan. 10, ASSOCIATED PRESS, Mar. 10, 1999

IRS Clears Gingrich Course, WORLD NEWS DIGEST, Mar. 4, 1999

Last Stop, Scandal City, U.S. NEWS & WORLD REPORT, Mar. 1, 1999

Reformers Eye the Way Independent Counsel are Chosen, as Sentelle Speaks out, LEGAL TIMES, Feb. 22, 1999

IRS Clears Gingrich on College Course, HARTFORD COURANT, Feb. 10, 1999

Lawyers to Seek End of Independent Counsel Law, BUFFALO NEWS, Feb. 8, 1999

Around the U.S., THE DALLAS MORNING NEWS, Feb. 8, 1999

ABA Likely to Urge Repeal of Independent Counsel Act, LOS ANGELES TIMES, Feb. 8, 1999

Ethics Disagree on Access Gingrich Ruling May Create New Campaign Options, ROLL CALL, Feb. 8, 1999

Lawyers Flock to L.A. for Bar's Midyear Meeting, CHICAGO DAILY LAW BULLETIN, Feb. 5, 1999

Group Tied to Gingrich Didn't Violate Tax Laws in Ethics Case, IRS Says, HOUSTON CHRONICLE, Feb. 5, 1999

Washington Briefs, TIMES-PICAYUNE, Feb. 4, 1999

I.R.S. Clears Foundation Linked to Gingrich's Ethics Dispute, NEW YORK TIMES, Feb. 4, 1999

The President on Trial; White House Sees Quick Dismissal under Senate Plan, THE ATLANTA JOURNAL AND CONSTITUTION, Jan. 9, 1999

White House Expects Quick Senate Vote to Dismiss Case, COX NEWS SERVICE, Jan. 8, 1999

Impeachment of the President: Senate Looks to Configure Trial Blueprint, CNN, Jan. 5, 1999

Clinton's Defense Team Prepares for the Worst, CNN, Jan. 5, 1999

Was This a Bad Idea?: A Verdict Clearing Espy Is the Latest Sign That the Independent-Counsel Statute Is Likely to Perish, TIME, Dec. 14, 1998

Impeachment Still Hot Topic in Washington, ABC, Nov. 22, 1998

All Things Considered, NPR, Nov. 20, 1998

Perjury: A Tough Case to Make; Though a Central Issue in Starr's Impeachment Referral, Lying Is Seldom Prosecuted, WASHINGTON POST, Sept. 24, 1998

InterNight Talk Show, Sept. 16, 1998

Did Clinton Technically Lie Under Oath?, CNN, Sept. 15, 1998

Investigating the President: Lewinsky's New Lawyers Work to Cooperate with Starr, CNN, June 19, 1998

Investigating the President: Addressing Attorney-Client Privilege, CNN, June 9, 1998

Monica Lewinsky's Photo Layout for Vanity Fair May Hurt Her Chances for an Immunity Deal; Two Courts Have Now Ruled She May Have Lied in Her Affidavit, NBC, June 9, 1998

Investigating the President: Lewinsky's Photo Spread May Not Help Her Case, CNN, June 9, 1998

Gingrich Goes on the Offensive; Monica Lewinsky's Exposure, CNN, Apr. 28, 1998

Clinton Confidant Vernon Jordan Appears in Court, CNN, March 3, 1998

Vernon Jordan Is Being Investigated by Kenneth Starr to Determine if He Is Helping President Clinton by Finding Jobs for Monica Lewinsky and Webb Hubbell, NBC, Mar. 3, 1998

Legal Battle in Clinton Probe Getting 'Much Too Personal,' WASHINGTON POST, Feb. 25, 1998

To Some in the Law, Starr's Tactics Show a Lack of Restraint, WASHINGTON POST, Feb. 13, 1998

Grand Jury in Lewinski Matter Has Day Off, ABC, Feb. 13, 1998

Starr's Tactics: Textbook or Torment? PALM BEACH POST, Feb. 13, 1998

All Things Considered, NPR, Feb. 7, 1998

Immunity Negotiations Appear to Be on Track for Lewinsky as She Escapes the Beltway, CNN, Feb. 3, 1998

The Ambiguous Politics of Denial, CNN, Jan. 26, 1998

The Clinton Crisis; Charge of Soliciting Perjury Clinton Camp's Top Concern, GLOBE AND MAIL, Jan. 24, 1998

Prosecutor's Squeeze a Much-Used Tactic, ASSOCIATED PRESS, Jan. 24, 1998

House Likely to Await Starr Findings before Considering Impeachment, ASSOCIATED PRESS, Jan. 23, 1998

Sorting Through the Allegations Facing the President, CNN, Jan. 23, 1998

Jordan Gives Beleaguered President His Presence, WASHINGTON POST, Jan. 23, 1998

Judge OKs Ex-Blue Settlement, COLUMBUS DISPATCH, Dec. 18, 1997

Insurer's Self-Dealing Suit Settled, NATIONAL LAW JOURNAL, Dec. 15, 1997

The Buddy System, LEGAL TIMES, Dec. 1, 1997

Former Ohio Blues Execs Agree to Settle Lawsuit, BESTWIRE, Nov. 18, 1997

Testimony Challenged in Gingrich Tape Case, TIMES-PICAYUNE, Nov. 16, 1997

Trustees to Repay \$6.8 Million; Medical Mutual to Use Proceeds to Settle Other Suits, CLEVELAND PLAIN DEALER, Nov. 14, 1997

In Gore's Defense, the Vice President's New Lawyers Seem to Have the Right Stuff, but They Face a Tough Job and a Tight Deadline, LEGAL TIMES, Sept. 29, 1997

'Hard' and 'Soft' Money: A Crucial, Sometimes Fine Line, WASHINGTON POST, Sept. 5, 1997

Cop on the Money Beat, THE NATIONAL JOURNAL, July 26, 1997

Janet Reno Marches on, and Not to the D.C. Beat, NEWSDAY, Apr. 17, 1997

Joe Gaylord: The Man Behind Gingrich's Fall, ROLL CALL, Feb. 10, 1997

Nancy Johnson's Sternest Test, HARTFORD COURANT, Feb. 9, 1997

President Clinton and Speaker Gingrich Looking for Scapegoats for their Ethical Problems, CBS, Jan. 30, 1997

Donors Could Pay \$300,000 Sanction, PALM BEACH POST, Jan. 18, 1997

Reprimand, \$300,000 Fine Urged, ST. PETERSBURG TIMES, Jan. 18, 1997

Panel Favors \$300,000 Fine For Gingrich, DETROIT FREE PRESS, Jan. 18, 1997

Ethics Panel Stays out of Sight as Counsel Readies Final Report, ATLANTA JOURNAL AND CONSTITUTION, Jan. 14, 1997

Statement by Special Counsel James Cole, CONGRESSIONAL PRESS RELEASES, Jan. 3, 1997

Two Down, LEGAL TIMES, Nov. 27, 1995

Scholarship Not Linked to Espy, Attorneys Say, THE COMMERCIAL APPEAL, Oct. 5, 1994

Embattled Espy Resigns as Chief of Agriculture, THE BALTIMORE SUN, Oct. 4, 1994

Espy Says Farm Bill a Priority in His Final Months at Agriculture, ASSOCIATED PRESS, Oct. 4, 1994

Attorney: Tax Charges Could Have Put Rostenkowski Trial In Chicago, ASSOCIATED PRESS, June 8, 1994

Tax Charge May Have Been Avoided to Keep Rostenkowski Trial Out of Chicago, ASSOCIATED PRESS, June 7, 1994

Lawyers Maintain Witnesses Will Help Rostenkowski's Case, THE HOUSTON CHRONICLE, June 4, 1994

Rostenkowski Is Said to Plan Strong Defense, NEW YORK TIMES, June 4, 1994

Rostenkowski Haunted by His Payroll "Ghosts"; Photographer Was Amazed to Receive \$1,000 Checks, SAN FRANCISCO EXAMINER, June 3, 1994

Tasks Varied for Alleged 'Ghost Employees', WASHINGTON POST, June 3, 1994

'Ghost' Staffers Defend Pay; They Performed Official Work, Say Lawyers for Several on List, CHICAGO SUN-TIMES, June 2, 1994

Working for Rostenkowski: Cash, Connections, Old Pals; Photographer Gives a Candid Snapshot of His Time on Job, CHICAGO TRIBUNE, June 2, 1994

\$500,000 Bill for Ghosts Indictment Alleges 14 Were Paid for Little or No Official Work, CHICAGO SUN-TIMES, June 1, 1994

Ex-Employee Testifies on Rostenkowski, CHICAGO TRIBUNE, Feb. 17, 1994

Ex-Employee of Rostenkowski Testifies Before Grand Jury, ASSOCIATED PRESS, Feb. 17, 1994

Rosty Jury Hears Gabinski's Wife; Former Employee Agrees to Testify, Her Lawyer Says, CHICAGO SUN-TIMES, Feb. 17, 1994

Rostenkowski Aide Cited for Contempt, CHICAGO TRIBUNE, Feb. 16, 1994

For Better or Worse, White-Collar Bar Questions the Wisdom of Hiring Joint Counsel for Hillary and Bill Clinton in the Whitewater Probe, CONNECTICUT LAW TRIBUNE, Feb. 14, 1994

Rosty Faces New Hurdles; Court Slaps Ex-Aide; House to Review Funds Use, CHICAGO SUN-TIMES, Feb. 12, 1994

Do Clintons Need Separate Counsel for Whitewater? Some Lawyers Say They Should Prepare for Strategy Splits, RECORDER, Feb. 7, 1994

Congressional Office, or Criminal Enterprise? Lawmaker's Rico Cases Raise Constitutional Stakes, RECORDER, Mar. 2, 1993

Ford, on Trial, Asks Leadership for Help, ROLL CALL, Feb. 15, 1993

Sessions Meeting with Justice Attorneys Postponed, ASSOCIATED PRESS, Oct. 15, 1992

News Broadcast, CNN, Dec. 2, 1991

U.S. Judge Gets Prison for Bribery, Conspiracy, DALLAS MORNING NEWS, Sept. 7, 1991

Around Texas & Southwest, DALLAS MORNING NEWS, Sept. 6, 1991

Judge Is First Federal Jurist Convicted of Taking Bribe, LOS ANGELES TIMES, June 30, 1991

Judge Pleads Not Guilty to Bribery Charge, DALLAS MORNING NEWS, Feb. 23, 1991

Federal Judge Pleads Innocent to Bribery, ASSOCIATED PRESS, Feb. 23, 1991

Judge Charged in LA, NEWSDAY, Feb. 9, 1991

Jury Acquits New Orleans District Attorney, ASSOCIATED PRESS, July 25, 1990

LaRouche Indicted on Fraud Charges, ST. PETERSBURG TIMES, Oct. 15, 1988

\$1.2-million Bought Good Life for Embezzler, ST. PETERSBURG TIMES, Aug. 12, 1988

AID Official Pleads Guilty to Embezzlement, Forfeits Nearly All Property, WASHINGTON POST, Aug. 12, 1988

AID Official Admits Embezzlement, UPI, Aug. 11, 1988

Overseas Scams Rock U.S. Agency that Dispenses Aid, MIAMI HERALD, June 12, 1988

Former Congressman's Request for New Trial is Rejected, ASSOCIATED PRESS, June 11, 1986

13. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

In 1992, I was appointed by then-President-Elect Clinton to his Transition Team to assist in transition planning for the Department of Justice.

In December 1995, I was appointed by the United States House of Representatives Committee on Standards of Official Conduct to be Special Counsel for an investigation into allegations that a member had misused tax exempt organizations for political purposes.

In 2009, I was appointed by the United States Sentencing Commission to serve as the D.C. Circuit representative to the Commission's Practitioners' Advisory Group.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I recall making a few phone calls on behalf of a congressional candidate in the Chicago area in 1972. I do not recall any other services rendered to a political

party or election committee and I have never been a member of or held office in such an organization.

14. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as clerk to a judge since graduation from law school.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1979 – 1992

United States Department of Justice

950 Pennsylvania Ave., NW

Washington, D.C. 20530

Criminal Division Honors Program (1979)

Special Assistant U.S. Attorney, District of Columbia (1980)

Trial Attorney, Criminal Division (1980 – 1989)

Deputy Chief, Public Integrity Section (1989 – 1992)

Chief of Staff to the Special Counsel to the Attorney General (1992)

1992 – 1995

Squire, Sanders & Dempsey

1201 Pennsylvania Ave., NW

Washington, D.C. 20004

Counsel

Dec. 1995 – Jan. 1997

Committee on Standards of Official Conduct

United States House of Representatives

Washington, D.C. 20515

Special Counsel

1995 - Present
 Bryan Cave LLP
 1155 F Street, NW
 Washington, D.C. 20004
 Partner

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I began my career with the United States Department of Justice, where I entered through the Attorney General's Honors Program after graduation from law school and remained for thirteen years before entering private practice. I was attached to the Department's Criminal Division for most of that period as a trial attorney, where I tried a number of high profile cases including prosecutions of a member of Congress, a federal prosecutor, and a United States District Judge. I served as Deputy Chief of the Criminal Division's Public Integrity Section from 1989 to 1992, where I had management responsibilities in overseeing the federal effort to combat corruption through the prosecution of elected and appointed public officials at all levels of government.

Since 1992, I primarily have been in private practice. As a partner at Bryan Cave, I am the leader of the firm's White Collar Defense and Investigations practice group and its Special Counsel and Investigations Team. I also have counseled corporations on compliance, securities law, regulatory matters, and criminal law issues. I have undertaken representations of corporations and individuals before grand juries, in congressional hearings, in court proceedings, and before federal agencies. My practice has been primarily in criminal law, but I have occasionally represented entities and individuals in civil proceedings.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As an attorney for the Department of Justice, the United States was my sole client for the first thirteen years of my legal career. Since entering private practice in 1992, my typical clients have been individuals and corporations subject to government investigation or in need of defense

representation. For example, I have counseled on compliance and disclosure policies for major corporations, represented individual corporate officers in connection with government investigations of their employers, and defended by trial individuals facing criminal charges.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 90% |
| 2. state courts of record: | |
| 3. other courts: | |
| 4. administrative agencies: | 10% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 5% |
| 2. criminal proceedings: | 95% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 38 cases to verdict, judgment, or final decision (seven as chief counsel, 27 as sole counsel, and four as associate counsel).

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 80% |
| 2. non-jury: | 20% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I filed a Petition for a Writ of Certiorari on behalf of my client in *Edwards v. United States*, Case No. 02-927 in 2002. A copy is supplied.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Caputo*, No. 03-CR-126 (N.D. Ill.) (Trial: Feb – Apr. 2006)

My client, the CEO of a medical device manufacturer, and his co-defendant, the company's chief compliance officer, faced mail and wire fraud charges for alleged violations of the Food Drug and Cosmetics Act. My client's company had developed a new type of sterilizer for surgical instruments and was charged with marketing it without getting full approval from the Food and Drug Administration. Following an 8-week trial, my client was found guilty and sentenced to ten years imprisonment and more than \$17 million in restitution (in joint and several liability) based on the list price of all the sterilizer product sold. On appeal, which I did not handle, the Court of Appeals for the Seventh Circuit affirmed the judgment except for the restitution amount, for which it ordered recalculation on remand. 517 F.3d 935 (7th Cir. 2008).

District Judge Rueben Castillo presided over the case. Counsel for the Government was former AUSA Gillum Ferguson, P.O. Box 151, Naperville, IL 60566-0131 Tel 631-420-7692. My co-counsel was William E. Olson, Bryan Cave LLP, 1155 F Street NW, Washington, D.C. 20004, Tel 202-508-6071. Counsel for the co-defendant was Jonathan Feld, Katten Muchin Rosenman LLP, 525 W. Monroe St., Chicago, IL 60661, Tel 312-902-5200.

2. *United States v. Edwards*, No. 98-cr-165 (M.D. La.) (Trial: Jan. – May 2000)

My client, Stephen Edwards, was charged with others (including his father, former Louisiana Governor Edwin Edwards) for taking bribes in relation to the granting of river boat gambling license in Louisiana. I represented Stephen Edwards and was lead counsel for the combined defense team. Stephen Edwards was convicted and sentenced to seven years in prison.

District Judge Frank Polozola presided over the case. Counsel for the Government was AUSA James B. Letten, Hale Boggs Federal Bldg., Rm. 210, New Orleans, LA 70130, Tel 504-680-3000. Counsel for co-defendants were: Daniel Small, Holland & Knight, 10 St. James Ave., Boston, MA 02116, Tel 617-854-1453; Patrick Fanning, Grant & Burrow, 238 Huey P. Long Ave., Gretna, LA 70053, Tel 504-368-7888; Sonny Garcia, Garcia & Bishop, 618 E. Rutland St., Covington, LA 70433, Tel 504-835-5085; Rebecca Hudsmith, Fed. Pub. Def. Off, 102 Versailles Blvd., Ste. 816, Lafayette, LA 70501, Tel 337-262-6336; Craig Smith, Smith & John, 3646 Youree Drive, Shreveport, LA 71105, Tel 318-219-1001; and Mary Olive Pierson, 8702 Jefferson Highway, Suite B, Baton Rouge, LA 70809.

3. *United States v. Urban*, No. 93-cr-00200 (E.D. Va.) (Trial: 1993)

My client, Mr. Urban, was a Special Agent for the Inspector General's Office for USAID. He was charged with falsifying some of his travel vouchers for official travel done for the agency. Following trial, Mr. Urban was acquitted on all counts.

District Judge Richard Williams presided over the case. Counsel for the Government were former AUSA David Barger, Greenberg Traurig, LLP, 1750 Tysons Boulevard, Suite 1200, McLean, VA 22102, Tel 703-749-1307; and then-AUSA (later U.S. Attorney) Chuck Rosenberg, Hogan Lovells US LLP, Columbia Square, 555 Thirteenth Street NW, Washington, DC 20004, Tel 202-637-5623.

4. *United States v. Collins*, No. 2:91-cr-00035-1 (E.D. La.) (Trial: June 1991)

I was the lead prosecutor in this case against a sitting federal judge in the Eastern District of Louisiana. Judge Collins was charged with taking bribes from a drug dealer appearing before him in exchange for imposition of a lower sentence. Judge Collins was convicted of all counts and sentenced to 82 months in prison. He resigned from the bench in 1993.

District Judge Joseph Young (sitting my designation from the District of Maryland) presided over the case. Co-counsel is now The Honorable John M. Campbell, Superior Court of the District of Columbia, 500 Indiana Avenue NW, Washington, D.C. 20001, Tel 202-879-1430. Opposing counsel was Julian R. Murray, Jr., Chehardy, Sherman, Ellis, Murray, Recile, Griffith, Stakelum & Hayes LLP, Suite 1100, One Galleria Blvd., Metairie, LA 70001, Tel 504-833-5600.

5. *United States v. Connick*, No. 2:1989-cr-00541-ML (E.D. La.) (Trial: June-July 1990)

I was the lead prosecutor in this case against the sitting District Attorney for New Orleans. Mr. Connick was charged with helping a bookmaker operate his illegal business by returning to him the records necessary to continue his operation. Indicted along with Mr. Connick were the bookmaker and his associates, an attorney that had represented the bookmaker, and two others who had interceded with Mr. Connick on behalf of the bookmaker. The bookmaker and his associates were convicted of RICO charges. The rest of the defendants were acquitted.

Judge Marcel Livaudais presided over the case. My co-counsel was now-AUSA Stuart Goldberg, 36 South Charles St., Baltimore, MD 21201, Tel 410-209-4914. Opposing counsel were William F. Wessel, Wessel and Associates, 127 Camp St., New Orleans, LA 70130, Tel 504-568-1112; Irving Dymond (now deceased); Frank G. DeSalvo, DeSalvo, DeSalvo & Blackburn, 530 Natchez St., Suite 110, New Orleans, LA 70130, Tel 504-524-4191; Louis B. Mehrige, 4008 N. Labarre Road, Metairie, LA 70002, Tel 504-717-4113; and Robert J. Rotatori, Rotatori, Bender Co., LPA, 800 Leader Building, 526 Superior Ave. E., Cleveland, OH 44114, Tel 216-928-1010.

6. *United States v. Greenfield* (S.D. Fl.) (Trial March-April 1990)

I was the lead prosecutor in this case against Mr. Greenfield, an attorney in Miami, Florida. Mr. Greenfield and another individual, Mr. Friedman, were partners in a troubled condo project. After an initial trial on RICO charges, Mr. Friedman was convicted and Mr. Greenfield was acquitted. The Chief Judge of the U.S. District Court in Miami testified as a character witness for Mr. Greenfield. After Mr. Friedman was sentenced to prison, Mr. Greenfield told Mr. Friedman that for \$100,000 the Chief Judge would let him out of prison. Mr. Friedman paid, but was not let out of prison. Mr. Friedman reported this to the Department of Justice. He then recorded conversations with Mr. Greenfield that corroborated the allegations. It turned out that the Chief Judge was not involved in the matter. I prosecuted Mr. Greenfield for obstruction of justice and he was convicted on all counts.

District Judge Lenore Nesbitt presided over the case. My co-counsel was then-DOJ Trial Attorney David Green, Vice President, Public Policy Development, NBC Universal, 1299 Pennsylvania Ave., NW, Suite 900 West, Washington, D.C., 20004, Tel 202-637-4557. Opposing counsel was Roy Black, Black, Srebnick, Kornspan & Stumpf, P.A., 201 South Biscayne Boulevard, Suite 1300, Miami, FL 33131, Tel 305-371-6421.

7. *United States v. Huls*, 1987 WL 15949 (M.D. La.) (Trial: 1987)

I was lead prosecutor in this case against the sitting Secretary of Natural Resources for the State of Louisiana. While in that position, Mr. Huls continued to accept things of financial value from his former business partners and took official actions that were beneficial to his former business partners. He was charged with several counts of mail fraud under the honest and faithful services theory. Mr. Huls was convicted of all counts; however, after the conviction the Supreme Court decided *McNally v. United States*, which invalidated the honest and faithful services theory of mail fraud charges, Mr. Huls' conviction was reversed.

District Judge Frank Polozola presided over the case. My co-counsel was AUSA Stan Lemelle, 777 Florida Street Suite 208, Baton Rouge, LA 70801, Tel 225-389-0443. Opposing counsel were Thomas B. Rutter, ADR Options, Suite 1100, Two Commerce Square, 2001 Market St., Philadelphia, PA 19103, Tel 215-564-1775; and Risley C. Triche, Law Office of Risley C. Triche, 4759 Highway 1, Napoleonville, LA 70390, Tel 985-369-6168.

8. *United States v. Derryberry*, No. CR-86-759 (N.D. Ohio) (Trial: January 1987)

I was lead prosecutor in this case against a bankruptcy trustee for a trucking company. Mr. Derryberry was charged with embezzling \$8,500 from a creditors' fund, conspiracy to embezzle, and perjury. The perjury counts accused him of lying about the disposition of the creditors' fund on two occasions: he testified once under oath that he never possessed any money from the fund; and later he testified that he had no knowledge during the relevant time period that another person had endorsed his name on the back of

checks collected for the creditors' fund. The jury found him guilty of one count of perjury and of embezzling at least \$8,500 from a \$13,880 creditors' fund. The jury was unable to reach a verdict on an additional perjury account and he was acquitted of one count of conspiracy to embezzle.

District Judge Nicolas J. Walinski presided over the case. My co-counsel is now The Honorable Stephanie Duncan-Peters, Superior Court of the District of Columbia, 500 Indiana Ave. NW, Washington, D.C. 20001, Tel 202-879-1882. Opposing counsel was Kenneth Sullivan, Kenneth M. Sullivan & Associates, LLC, 225 West Washington, St. Suite 2400, Chicago, IL 60606, Tel 312-499-3797.

9. *United States v. Gorman* (N.D. Ohio) (Trial: March 1985)

I was lead prosecutor in this case against an Assistant United States Attorney in Toledo, Ohio. Mr. Gorman was charged with taking illegal gratuities and criminal conflict of interest for taking things of value from a person who had financial interests in bankruptcy proceedings that AUSA Gorman was investigating for possible criminal violations. Mr. Gorman was convicted on all counts.

District Judge Sam Bell presided over the case. My co-counsel was then-Deputy Chief of the DOJ Public Integrity Section Lee Radek (now retired). Opposing counsel was John Czarniecki, Cooper & Walinski, LPA, 900 Adams Street, Toledo, OH 43604, Tel 419-241-1200.

10. *United States v. Hansen* (Trial: April 1984)

I was co-counsel for the prosecution in this case against a sitting U.S. Representative from Idaho. Rep. George Hansen and his wife entered into a number of investments with several investors that had built-in profit. The investors had financial interest in some legislation that Rep. Hansen had introduced and other official acts he performed. Rep. Hansen did not report the transactions with the investors on his financial disclosure forms and was prosecuted for making false statements. He was convicted and sentenced to prison. Several years after serving his sentence, the Supreme Court of the United States ruled that the statute prohibiting the making of false statements to the United States did not cover statements made to the United States Congress. On this basis, Mr. Hansen's conviction was overturned.

District Judge Joyce Hens Green presided over the case. Lead counsel was then-DOJ Trial Attorney Reid Weingarten, Steptoe & Johnson, 1330 Connecticut Avenue NW, Washington, D.C., 20036 Tel 202-429-6238. Opposing counsel was Nat Lewin, 1828 L Street NW, Suite 901, Washington, D.C. 20036, Tel 202-828-1000.

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe

the lobbying activities you performed on behalf of such client(s) or organizations(s).
(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Special Appointments

For fourteen months from December 1995 to January 1997, I served as special counsel to the United States House of Representatives Committee on Standards of Official Conduct (the "Ethics Committee"). I was charged with leading an investigation into allegations that a member had used tax-exempt money for partisan purposes. The investigation grew to include whether the member had provided the House Ethics Committee with false or misleading information about the matter in its preliminary review.

Since 2005, I have been the Independent Consultant to American International Group, Inc. (AIG). Specifically, I was appointed in two separate instances as the Independent Consultant to AIG as part of several settlements it entered into with various federal and state governmental agencies. Both appointments were pursuant to court order. The first appointment was made by the Department of Justice, subject to the approval of the SEC and of AIG. For the second appointment, the selection was made by AIG, subject to the approval of the SEC, the New York Attorney General, and the New York Department of Insurance. Under the terms of the court orders, I am required to operate independently and AIG is required to pay reasonable fees.

In the first appointment, I was tasked to review five years worth of transactions AIG had entered into with its counter-parties to determine whether any transaction was used or designed in a way to permit the counter-parties to account for the transaction in a manner that may have violated generally accepted accounting principles ("GAAP") or any rules or regulations governing financial reporting promulgated by the SEC. I was also tasked with conducting a review of the policies and procedures for AIG's Transaction Review Committee. In the second appointment, I was tasked with conducting a comprehensive examination and review of AIG's corporate compliance and financial disclosure policies.

Other Significant Matters

Given the nature of my government investigations work, many of the matters I have handled since entering private practice in 1992 have not progressed to trial or involved litigation. For example, I frequently have made presentations to various offices of the Department of Justice in the course of my representations of clients who have been under investigation by the government. Some of the most significant matters I have undertaken in addition to the cases previously listed follow.

In the early 1990s, I represented a number of individuals who were witnesses in the government's investigation and prosecution of former U.S. Representative Dan Rostenkowski.

In 2002, I was engaged with former Senator John Danforth, my law partner, by Andersen (formerly Arthur Andersen) to review its policy of managing records and to recommend improvements.

In 2002, I led an internal investigation for the Washington Teachers Union/American Federation of Teachers, into allegations that several of its officers and employees had embezzled millions of dollars from the union. Based on the results of the investigation, we prepared a referral to the United States Attorney's Office for the District of Columbia. Numerous people were prosecuted and received prison terms for their involvement.

After 2002, I represented a senior Enron officer during the government investigations of CEO Kenneth Lay and others in the company's collapse. My client did not face charges.

From 2003 to 2007, I represented Prince Nayef, the Minister of the Interior of Saudi Arabia, in multi-district litigation brought by individual victims of September 11. The Court granted my client's Rule 12 motion to dismiss.

I have performed no lobbying activities.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I served as an adjunct professor of the Georgetown University Law Center from 1989 to 2002. I taught a lecture course on Ethics from 1989 to 1991, for which I have not retained the syllabus. I taught a seminar on Public Corruption from 1992 to 2002, for which the syllabus is supplied.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not have deferred income arrangements. If confirmed, I will withdraw from the partnership of Bryan Cave LLP. Pursuant to the terms of the firm's partnership agreement, I would receive a refund of my capital account in a lump sum payment to be received within 30 days of my withdrawal from the firm. Pursuant to the partnership agreement, I would receive a payment of my draw account in a lump sum payment to be received within 30 days of my withdrawal from the firm. Pursuant to the partnership agreement, I would receive payment of my partnership distribution and holdback, calculated as of the date I withdraw from the partnership, prior to assuming the duties of the position of Deputy Attorney General. This share would be based solely on the

distribution plan applicable to all partners, according to a standard methodology for calculating the distribution for partners who withdraw from the firm.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

No.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.
- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics officials to identify potential conflicts of interest. I will resolve any potential conflicts of interest in accordance with the terms of an ethics agreement I will enter into pursuant to the guidance of the Department's Designated Agency Ethics Official.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an

attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I take seriously my obligation as an attorney to undertake pro bono work. Since entering private practice in 1992, I have sought to fulfill my own pro bono obligations while also creating opportunities for the associates of my firm to make pro bono work a core part of their practice.

In addition to substantial time spent supervising pro bono projects through my firm, I have personally undertaken several significant representations. For example, I represented a union in a lawsuit against a local bank for improperly distributing union funds (approximately 75 hours). I have handled cases for establishing custody or adoption of children through the Children's Law Center (approximately 40 hours). I have provided legal advice concerning financial rights to clients of the Whitman Walker Clinic (approximately 5 hours). I was a Founding Director of the See Forever Foundation, which supports the growth and development of the Maya Angelou Public Charter School

I have judged several mock trial competitions, including the 2003 ABA National Appellate Advocacy Competition in Washington, DC, and the 1998 Georgetown University Law Center National White Collar Crime Mock Trial Invitational.

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved: OMB No. 3209-0001

SF 278 (Rev. 07/2000) U.S. Office of Government Ethics

Type of Appointment, Candidacy, Election, or Re-election (Month, Day, Year)		Calendar Year Covered by Report		Termination Date (If Applicable) (Month, Day, Year)	
Reporting Individual's Name		Incumbent <input type="checkbox"/>		Termination Date (If Applicable) (Month, Day, Year)	
Position for Which Filing		New Entrant, Nominee, or Candidate <input checked="" type="checkbox"/>		Filing <input type="checkbox"/>	
Last Name		First Name and Middle Initial		M.	
Code		Department or Agency (If Applicable)		M.	
Title of Position		Department of Justice		M.	
Deputy Attorney General		Department of Justice		M.	
Address (Number, Street, City, State, and ZIP Code)		Telephone No. (Include Area Code)		202-608-6851	
1155 F Street, NW, Washington, DC 20004					
Title of Position(s) and Date(s) Held		Do You Intend to Create a Qualified Divorced Trust?		<input checked="" type="checkbox"/> No	
		Yes <input type="checkbox"/>			
Name of Congressional Committee Considering Nomination		Committee on Judiciary			
Committee on Judiciary					
Signature of Reporting Individual		Date (Month, Day, Year)		4/16/10	
<i>James M. Jones</i>					
Signature of Other Reviewer		Date (Month, Day, Year)		5/24/10	
<i>James M. Jones</i>					
Signature of Designated Agency Ethics Officer/Receiving Official		Date (Month, Day, Year)		5/25/2010	
<i>John J. Hoffmann</i>					
Signature		Date (Month, Day, Year)			
Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)					

Supersedes Prior Filings, Which Cannot Be Used. 795-112

NSN7540-01-070-8444 GSA/Adobe Acrobat Reader 1.1 (10/1999)

SCHEDULE A

Page Number **2 of 48**

Reporting Individual's Name
Cole, James M.

Assets and Income	BLOCK B Valuation of Assets at close of reporting period												BLOCK C Income: Type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.												
	BLOCK A												BLOCK C												
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	Over \$25,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria	
<p>Assets and Income</p> <p>For you, your spouse, and dependent children, report each asset held for investment or the value exceeding \$1,000 at the close of the reporting period, or which generated more than \$200 in income during the reporting period, together with such income.</p> <p>For yourself, also report the source and actual amount of treatable income exceeding \$200 from report the source but not the amount of earned income of more than \$1,000 (except report the actual amount of any honoraria over \$200 of your spouse).</p> <p>Note <input type="checkbox"/></p> <p>Examples Charles M. Johnson Doe Jones & Smith, Hometown, State Rembrandt Equity Fund IRA: Hermland 500 Index Fund</p>																									
1 Cattle National Bank Health Savings Account																									
2 Charles Schwab S&P 500 Index Fund																									
3 Charles Schwab Small Cap Index Fund																									
4 Charles Schwab Deposit Account Cash Account																									
5 Charles Schwab S&P 500 Index Fund (spouse)																									
6 Charles Schwab Small Cap Index Fund (spouse)																									

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cancelled. For Use.

Assets and Income	BLOCK B Valuation of Assets at close of reporting period										BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.				
	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	Over \$1,000,000*	Over \$250,000.000	Over \$500,000.000	Over \$1,000,000.000	Over \$5,000,000.000	Type	Amount	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only If Ignorant	
1 Charles Schwab Deposit Account (spouse)															
2 Bryan Cave LLP Capital Account															
3 Bryan Cave LLP Draw Account															
4 Bryan Cave LLP 2008 Partnership Share															
5 Bryan Cave LLP 2010 Draw to Date															
6 Vanguard Global Equity Fund															
7 Vanguard Windsor II Fund Investor Shares															
8 Vanguard Capital Opportunity Fund Investor Shares															
9 Vanguard International Explorer Fund															

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Other Income (Specify Type & Actual Amount):
 8000316 Partnership Share
 1451455 Partnership Distribution

SE 278 (Rev. 03/2000)
 5 C.F.R. Part 2634
 U.S. Office of Government Ethics
 Reporting Individual's Name
 Cole, James M.

SE 278 (Rev. 03/2000) 5 C.F.R. Part 2634 U.S. Office of Government Ethics		SCHEDULE A continued (Use only if needed)										Page Number 4 of 48					
Reporting Individual's Name Cole, James M.		BLOCK B Valuation of Assets at close of reporting period										BLOCK C Amount					
BLOCK A Assets and Income		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	Over \$50,000,000	Over \$100,000,000	Over \$500,000,000	Over \$1,000,000,000	Over \$5,000,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honorary	
		None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	Over \$5,000,000	Over \$10,000,000	Over \$50,000,000	Over \$100,000,000	Over \$500,000,000	Over \$1,000,000,000	
		Dividends	Rent and Royalties	Interest	Capital Gains												
		Qualified Trust	Excepted Trust	Excepted Investment Fund													
		Type															
1	Vanguard PRIMECAP Fund Investor Shares																
2	Vanguard Small-Cap Value Investor Shares																
3	DC 528 COLLEGE SAVINGS AGE 17+																
4	DC 528 COLLEGE SAVINGS AGE 17+ Spouse																
5	Fidelity Institutional Money Market Portfolio																
6	PIMCO COMMODITY REALRETURN STRATEGY FUND																
7	ALCOA INC COM																
8	AMERICAN ELECTRIC POWER INC																
9	AMERICAN EXPRESS CO																

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

OGE/Acbe Acrobat version 1.0.2 (11/01/2004)

BLOCK A Assets and Income		BLOCK B Valuation of Assets at close of reporting period											BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.											Page Number 5 of 48				
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000	Over \$50,000,000	Over \$100,000,000	Over \$250,000,000	Over \$500,000,000	Over \$1,000,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000	Over \$5,000,000	Other Income (Specify Type & Amount)	Date (Mo., Day, Yr.) Only if Honoraria		
1	AMERIPRISE FINL INC	X																										
2	ANADARKO PETROLEUM CORP																											
3	AT & T INC																											
4	BAKER HUGHES INC COM																											
5	BLOCK H & R INC																											
6	BOSTON SCIENTIFIC CORP COM																											
7	BRISTOL MYERS SQUIBB CO																											
8	CA INC																											
9	CHEVRON CORP																											

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From Edition Cannot Be Used.

CGE/A/Abbe Acrobat version 1.0.2 (11/01/2004)

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SCHEDULE A continued (Use only if needed)								
Reporting Individual's Name Cole, James M.								
BLOCK A Assets and Income	BLOCK B Valuation of Assets at close of reporting period	BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.						
		Type	Amount	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honorary	Dividends	Rent and Royalties	Interest
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000
1 COMCAST CORP CLASS A	X							
2 CVS/CAREMARK CORPORATION	X							
3 DEAN FOODS COMPANY	X							
4 DELL INC	X							
5 DEVON ENERGY CORPORATION	X							
6 ENSCO INTERNATIONAL PLC	X							
7 FLEXTRONICS INTL LTD	X							
8 GAP INC	X							
9 GENERAL ELECTRIC CO	X							

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Prior Editions Cannot Be Used.

OGE/Abbe Acrobat version 1.0.2 (1/07/2004)

SE 278 (Rev. 03/2000) 5 C.F.R. Part 2634 U.S. Office of Government Ethics		Page Number 8 of 48	
SCHEDULE A continued (Use only if needed)			
Reporting Individual's Name Cole, James M.		Assets and Income	
Valuation of Assets at close of reporting period	BLOCK B		
	None (or less than \$1,001)	\$1,001 - \$50,000 \$50,001 - \$100,000 \$100,001 - \$250,000 \$250,001 - \$500,000 \$500,001 - \$1,000,000 Over \$1,000,000*	\$1,000,001 - \$5,000,000 \$5,000,001 - \$25,000,000 \$25,000,001 - \$50,000,000 Over \$50,000,000
Assets and Income	BLOCK C		
	Type	Amount	Date (Mo., Day, Yr.) Only if Honorary
Dividends	<input checked="" type="checkbox"/>		
Rent and Royalties	<input type="checkbox"/>		
Interest	<input type="checkbox"/>		
Capital Gains	<input type="checkbox"/>		
None (or less than \$201)	<input checked="" type="checkbox"/>		
\$201 - \$1,000			
\$1,001 - \$2,500			
\$2,501 - \$5,000			
\$5,001 - \$15,000			
\$15,001 - \$50,000			
\$50,001 - \$100,000			
\$100,001 - \$1,000,000			
Over \$1,000,000			
Other Income (Specify Type & Actual Amount)			
1 LENMAR CORPORATION CLASS A COMMON	<input checked="" type="checkbox"/>		
2 MARATHON OIL CORP	<input checked="" type="checkbox"/>		
3 MBIA INC	<input checked="" type="checkbox"/>		
4 MEADWESTVACO CORP	<input checked="" type="checkbox"/>		
5 MORGAN STANLEY COM	<input checked="" type="checkbox"/>		
6 MOTOROLA INC	<input checked="" type="checkbox"/>		
7 PFIZER INC	<input checked="" type="checkbox"/>		
8 QWEST COMMUNICATIONS INTL INC COM	<input checked="" type="checkbox"/>		
9 SARA LEE CORP	<input checked="" type="checkbox"/>		

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OGE/Acobe Acrobat version 1.0.2 (1/01/2004)

SCHEDULE A continued
(Use only if needed)

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Reporting Individual's Name
Cole, James M.

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	BLOCK A		BLOCK B											BLOCK C																			
	Assets and Income		Valuation of Assets at close of reporting period											Income: type and amount. If "None (or less than \$20)" is checked, no other entry is needed in Block C for that item.																			
	BLOCK A		BLOCK B											BLOCK C																			
	Type	Amount	Valuation of Assets at close of reporting period											Income: type and amount. If "None (or less than \$20)" is checked, no other entry is needed in Block C for that item.																			
			None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Amount)	Date (Mo., Day, Yr.) Only if Honoraria		
1	TENET HEALTHCARE CORP		X															X															
2	TEXTRON INC		X															X															
3	TIME WARNER INC		X															X															
4	TRAVELERS COMPANIES, INC		X															X															
5	TYCO ELECTRONICS LTD F		X															X															
6	TYGO INTERNATIONAL LTD NEW		X															X															
7	UNITED STS STL CORP NEW DOM		X															X															
8	VALERO ENERGY CORP		X															X															
9	WASTE MANAGEMENT INC		X															X															

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SCHEDULE A continued
(Use only if needed)

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Reporting Individual's Name
Cole, James M.

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U.S. Office of Government Ethics

	BLOCK A											BLOCK B											BLOCK C											
	Assets and Income											Valuation of Assets at close of reporting period											Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.											
	Type	Amount	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria			
1			X														X																	
2			X														X																	
3			X														X																	
4			X														X																	
5			X														X																	
6			X														X																	
7			X														X																	
8			X														X																	
9			X														X																	

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Prior Editions Cannot Be Used.

OGE/Adobe Acrobat version 1.0.2 (1/01/2004)

SF 278 (Rev. 03/2000) S.C.F.R. Part 2634 U.S. Office of Government Ethics		Page Number 11 of 48					
SCHEDULE A continued (Use only if needed)							
Reporting Individual's Name Cole, James M.							
Assets and Income BLOCK A	Valuation of Assets at close of reporting period BLOCK B			Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item. BLOCK C			
	None (or less than \$1,001) \$1,001 - \$15,000 \$15,001 - \$50,000 \$50,001 - \$100,000 \$100,001 - \$250,000 \$250,001 - \$500,000 \$500,001 - \$1,000,000 Over \$1,000,000*	None (or less than \$201) \$201 - \$50,000 \$50,001 - \$100,000 \$100,001 - \$500,000 \$500,001 - \$1,000,000 Over \$1,000,000*	None (or less than \$201) \$201 - \$50,000 \$50,001 - \$100,000 \$100,001 - \$500,000 \$500,001 - \$1,000,000 Over \$1,000,000*	None (or less than \$201) \$201 - \$1,000 \$1,001 - \$2,500 \$2,501 - \$5,000 \$5,001 - \$15,000 \$15,001 - \$50,000 \$50,001 - \$100,000 Over \$100,000	Dividends Rent and Royalties Interest Capital Gains	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Material
1 BANK NEW YORK MELLON CORP COM	X			X			
2 BARRICK GOLD CORP COM	X			X			
3 BAXTER INTL INC	X			X			
4 CALPINE CORP/NEW	X			X			
5 CAMECO CORP COM	X			X			
6 CME GROUP INCE	X			X			
7 CONSOL ENERGY INC COM	X			X			
8 CREDIT SUISSE GROUP - ADR SPONSORED ADR	X			X			
9 CUMMINS INC.	X			X			

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Prior Editions Cannot Be Used

CGE/Adobe Acrobat version: 1.02 (1/10/2004)

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SCHEDULE A continued (Use only if needed)												
Reporting Individual's Name Cole, James M.		Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.										
Assets and Income	BLOCK B Valuation of Assets at close of reporting period	BLOCK C Amount										
		Type	Amount	Date (Mo., Day, Yr.) Only if Honorary								
	None (or less than \$1,001)	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000	Other Income (Specify Type & Amount)	
1 DANAMER CORP	X	X										
2 DEERE & CO	X											
3 DENBURY RESOURCES INC NEW	X											
4 EQUINIX INC COM NEW	X											
5 EXELON CORPORATION	X											
6 FLUOR CORP NEW	X											
7 FORD MOTOR COMPANY	X											
8 FREDRICK-MCMORAN COPPER & GOLD INC COMMON STOCK	X											
9 GILLEAD SCIENCES INC	X											

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Reporting Individual's Name		Page Number																							
Cole, James M.		13 of 48																							
SCHEDULE A continued (Use only if needed)																									
Assets and Income	BLOCK B Valuation of Assets at close of reporting period										BLOCK C Amount														
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	Over \$50,000,000	Over \$50,000,000	Type	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria	
1 GOLDMAN SACHS GROUP INC	X										X														
2 ILLUMINA INC		X										X													
3 INTUIT COM			X																						
4 JOHNSON CONTROLS INC			X																						
5 JUNIPER NETWORKS INC COM			X																						
6 LOCKHEED MARTIN CORP			X																						
7 MANPOWER INC WIS			X																						
8 MCDERMOTT INTL INC			X																						
9 MEDCO HEALTH SOLUTIONS INC			X																						

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SF 278 (Rev. 03/2000) 5 C.F.R. Part 2634 U.S. Office of Government Ethics		SCHEDULE A continued (Use only if needed)		Page Number																						
Reporting Individual's Name				14 of 48																						
Cole, James M.																										
Assets and Income	BLOCK A	BLOCK E										BLOCK C										Date (Mo., Day, Yr.) Only if Honorary				
		Valuation of Assets at close of reporting period										Amount														
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	
1	MONSANTO CO NEW	X																								
2	NABORS INDUSTRIES LTD SHS		X																							
3	NATIONAL OILWELL VARCO INC COM		X																							
4	NETAPP INC		X																							
5	OCCIDENTAL PETE CORP		X																							
6	PROCTER & GAMBLE CO		X																							
7	QIAGEN N.Y.		X																							
8	QUALCOMM INC		X																							
9	RED HAT INC		X																							

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Prior Editions Cannot Be Used.

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Reporting Individual's Name				15 of 48																								
Cole, James M.																												
Assets and Income	BLOCK A	BLOCK B										BLOCK C																
		Valuation of Assets at close of reporting period										Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.																
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Amount)	Date (Mo., Day, Yr.) Only if Honoraria		
1	SALEFORCE.COM INC COM	X																										
2	SCHLUMBERGER LTD		X																									
3	SEMPRA ENERGY COM		X																									
4	SHAW GROUP INC COM		X																									
5	TD AMERITRADE HLDG CORP COM		X																									
6	THERMO FISHER SCIENTIFIC INC		X																									
7	VANWARE INC		X																									
8	WAL MARY STORES INC		X																									
9	WALT DISNEY CO		X																									

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SCHEDULE A continued (Use only if needed)			
Reporting Individual's Name Cole, James M.		Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.	
BLOCK A	BLOCK B	BLOCK C	
		Type	Amount
Assets and Income	Valuation of Assets at close of reporting period	Dividends	Other Income (Specify Type & Amount)
	None (or less than \$1,001)	None (or less than \$201)	Date (Mo., Day, Yr.) Only if Honoraria
	\$1,001 - \$15,000	Capital Gains	
	\$15,001 - \$50,000	Interest	
	\$50,001 - \$100,000	Rent and Royalties	
	\$100,001 - \$250,000	Qualified Trust	
	\$250,001 - \$500,000	Excepted Trust	
	\$500,001 - \$1,000,000	Excepted Investment Fund	
	Over \$1,000,000*		
	\$1,000,001 - \$5,000,000		
	\$5,000,001 - \$25,000,000		
	\$25,000,001 - \$50,000,000		
	Over \$50,000,000		
1 CITY NATL CORP COM		X	
2 CLARCOR INC		X	
3 COLUMBIA SPORTSWEAR CO COM		X	
4 DAKTRONICS INC COM		X	
5 DIAMOND FOODS INC COM		X	
6 DRILL-QUIP INC COM		X	
7 EXPONENT INC COM		X	
8 FACTSET RESH SYS INC COM		X	
9 FAIR ISSAC, INC		X	

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SCHEDULE A continued (Use only if needed)			
Reporting Individual's Name Cole, James M.			
Assets and Income	BLOCK B Valuation of Assets at close of reporting period	BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.	
		Type	Amount
BLOCK A	None (or less than \$1,001)	Dividends	None (or less than \$201)
	\$1,001 - \$15,000	Rent and Royalties	\$201 - \$1,000
	\$15,001 - \$50,000	Interest	\$1,001 - \$2,500
	\$50,001 - \$100,000	Capital Gains	\$2,501 - \$5,000
	\$100,001 - \$250,000	Other Income (Specify Type & Actual Amount)	\$5,001 - \$15,000
	\$250,001 - \$500,000		\$15,001 - \$50,000
	\$500,001 - \$1,000,000		\$50,001 - \$100,000
	Over \$1,000,000*		\$100,001 - \$1,000,000
	Over \$50,000,000		Over \$1,000,000*
	Over \$25,000,001 - \$50,000,000		\$1,000,001 - \$5,000,000
	Over \$5,000,001 - \$25,000,000		Over \$5,000,000
	Over \$1,000,001 - \$5,000,000		Over \$5,000,001 - \$10,000,000
	Over \$500,000,001 - \$50,000,000		Over \$10,000,001 - \$50,000,000
	Over \$50,000,000		Over \$50,000,000
	Excepted Investment Fund		Other Income (Specify Type & Actual Amount)
	Excepted Trust		Date (Mo., Day, Yr.) Only if honoraria
	Qualified Trust		
1	FOREST CITY ENTERPRISES INC CL A		
2	FORWARD AIR CORP COM		
3	GRACO INC		
4	HCC INS HLDGS INC COM		
5	HENRY JACK & ASSOC INC COM		
6	HIBBETT SPORTS INC COM		
7	ICU MED INC COM		
8	INTERNATIONAL SPEEDWAY CORP COM		
9	JONES LANG LASALLE INC COM		

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 5 CFR Part 2634
 Reporting Individual's Name
 Cole, James M.

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SCHEDULE A continued (Use only if needed)

Assets and Income	BLOCK B Valuation of Assets at close of reporting period												BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.												
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) (Only if Honoraria)	
1 KIRBY CORP	X																								
2 KNIGHT TRANSN INC COM	X																								
3 LANDAUER INC.	X																								
4 LKG CORP COM	X																								
5 MANHATTAN ASSOCIATES, INC COM	X																								
6 MATTHEWS INTL CORP	X																								
7 MCGRATH RENTCORP	X																								
8 MERIDIAN BIOSCIENCE INC	X																								
9 MORNINGSTAR INC COM	X																								

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Reporting Individual's Name Cole, James M.		SCHEDULE A continued (Use only if needed)		
Assets and Income	BLOCK B Valuation of Assets at close of reporting period		BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.	
	None (or less than \$1,001)	\$1,001 - \$15,000	Type	Amount
			Dividends	\$201 - \$1,000
			Rent and Royalties	\$1,001 - \$2,500
			Interest	\$2,501 - \$5,000
			Capital Gains	\$5,001 - \$15,000
			None (or less than \$201)	\$15,001 - \$50,000
				\$50,001 - \$100,000
				\$100,001 - \$1,000,000*
				Over \$1,000,000
				Over \$5,000,000
				Over \$50,000,000
				Other Income (Specify Type & Amount)
				Date (Mo., Day, Yr.) Only if Honoraria
1	NATIONAL INSTRS CORP COM		X	
2	OWENS & MINOR INC COM		X	
3	PEETS COFFEE & TEA INC		X	
4	PINNACLE FINL PARTNERS INC		X	
5	POLARIS INDS INC COM		X	
6	POOL CORPORATION COM		X	
7	POWER INTERGRATIONS INC COM		X	
8	PSS WORLD MEDICAL INC COM		X	
9	RAVEN INDS INC		X	

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Reporting Individual's Name Cole, James M.				22 of 49																							
Assets and Income	BLOCK A	BLOCK B										BLOCK C															
		Valuation of Assets at close of reporting period										Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.															
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria	
														Dividends	Rent and Royalties	Interest	Capital Gains										
1	RLI CORP COM	X												X													
2	ROFIN SINAR TECHNOLOGIES INC COM	X												X													
3	RUDDICK CORP	X												X													
4	SALLY BEAUTY CO INC	X												X													
5	SCANSOURCE INC COM	X												X													
6	SIMPSON MFG INC COM	X												X													
7	SONIC CORP	X												X													
8	TECHNE CORP	X												X													
9	WESTAMERICA BANCORPORATION	X												X													

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SCHEDULE A continued (Use only if needed)			
Reporting individual's Name Cole, James M.		Valuation of Assets at close of reporting period	
BLOCK A	BLOCK B	BLOCK C	
		Type	Amount
Assets and Income	Valuation of Assets at close of reporting period	Type	Amount
	None (or less than \$1,001)	Dividends	\$201 - \$1,000
	\$1,001 - \$15,000	Rent and Royalties	\$1,001 - \$2,500
	\$15,001 - \$50,000	Interest	\$2,501 - \$5,000
	\$50,001 - \$100,000	Capital Gains	\$5,001 - \$15,000
	\$100,001 - \$250,000	None (or less than \$201)	\$15,001 - \$50,000
	\$250,001 - \$500,000	Dividends	\$50,001 - \$100,000
	\$500,001 - \$1,000,000	Rent and Royalties	\$100,001 - \$1,000,000
	\$1,000,001 - \$5,000,000	Interest	\$1,000,001 - \$5,000,000
	\$5,000,001 - \$25,000,000	Capital Gains	Over \$5,000,000
	\$25,000,001 - \$50,000,000	None (or less than \$201)	Over \$5,000,000
	Over \$50,000,000	Dividends	Over \$5,000,000
	Excepted Investment Fund	Rent and Royalties	Over \$1,000,000*
	Qualified Trust	Interest	\$500,001 - \$1,000,000
	Other	Capital Gains	\$1,000,001 - \$5,000,000
		None (or less than \$201)	\$5,001 - \$15,000
		Dividends	\$15,001 - \$50,000
		Rent and Royalties	\$50,001 - \$100,000
		Interest	\$100,001 - \$1,000,000
		Capital Gains	\$1,000,001 - \$5,000,000
		None (or less than \$201)	Over \$5,000,000
		Other Income (Specify Type & Actual Amount)	Other Income (Specify Type & Actual Amount)
		Date (Mo., Day, Yr.)	Date (Mo., Day, Yr.)
		Only if Honorary	Only if Honorary
1	WOLVERINE WORLD WIDE INC COM	X	
2	YOUNG INNOVATIONS INCORPORATED	X	
3	UNIVERSAL HEALTH RLTY INCOME TR SH BEN INT	X	
4	AGL RES INC COM	X	
5	ALTRIA GROUP INC COM	X	
6	AT & T INC	X	
7	BCE INC COM NPV	X	
8	BP PLC - ADR SPONSORED ADR	X	
9	BRISTOL MYERS SQUIBB CO	X	

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SF 278 (Rev. 03/2000) 5 C.F.R. Part 2634 U.S. Office of Government Ethics		SCHEDULE A continued (Use only if needed)												Page Number 24 of 48											
Reporting Individual's Name Cole, James W.																									
Assets and Income	BLOCK B Valuation of Assets at close of reporting period												BLOCK C Income: type and amount. If "None (or less than \$20)" is checked, no other entry is needed in Block C for that item.												
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	Over \$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	Over \$100,000	Over \$1,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honorary	
													Dividends	Rent and Royalties	Interest	Capital Gains									
1 CENTURYTEL INC COM	X												X			X									
2 CHEVRON CORP	X												X			X									
3 CINCINNATI FINANCIAL CORP	X												X			X									
4 COCA COLA CO	X												X			X									
5 CONOCOPHILLIPS	X												X			X									
6 DEUTSCHE TELEKOM AG - ADR SPONSORED ADR	X												X			X									
7 DOMINION RES INC VA	X												X			X									
8 DUKE ENERGY HOLDING CORP COM	X												X			X									
9 ELI LILLY & CO COM	X												X			X									

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SCHEDULE A continued (Use only if needed)								
Reporting Individual's Name Cole, James M.								
Assets and Income BLOCK A	Valuation of Assets at close of reporting period BLOCK B			Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item. BLOCK C				
	None (or less than \$1,001) \$1,001 - \$15,000 \$15,001 - \$50,000 \$50,001 - \$100,000 \$100,001 - \$250,000 \$250,001 - \$500,000 \$500,001 - \$1,000,000 Over \$1,000,000*	None (or less than \$201) \$201 - \$1,000 \$1,001 - \$2,500 \$2,501 - \$5,000 \$5,001 - \$15,000 \$15,001 - \$50,000 \$50,001 - \$100,000 \$100,001 - \$1,000,000 Over \$1,000,000*	None (or less than \$201) \$201 - \$1,000 \$1,001 - \$2,500 \$2,501 - \$5,000 \$5,001 - \$15,000 \$15,001 - \$50,000 \$50,001 - \$100,000 \$100,001 - \$1,000,000 Over \$1,000,000*	Dividends Rent and Royalties Interest Capital Gains	Type	Amount	Date (Mo., Day, Yr.) Only if Honoraria	
1 FRANCE TELECOM - ADR SPONSORED ADR	X							
2 GLAXOSMITHKLINE PLC - ADR SPONSORED ADR	X							
3 HEINZ H J CO	X							
4 JOHNSON & JOHNSON	X							
5 KIMBERLY CLARK CORP COM	X							
6 LORILLARD INC	X							
7 MCDONALDS CORP	X							
8 MERCK & CO INC NEW	X							
9 PHILIP MORRIS INTERNATIONAL IN	X							

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Reporting Individual's Name Cole, James M.		SCHEDULE A continued (Use only if needed)																			
Assets and Income BLOCK A	BLOCK B Valuation of Assets at close of reporting period	BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.																			
		Type	Amount	Other Income (Type & Actual Amount)	Date (Mo., Day, Yr.) Only If Honoraria	None (or less than \$201)	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)										
1 PROCTER & GAMBLE CO	None (or less than \$1,001)	X																			
2 PROGRESS ENERGY INC	\$1,001 - \$15,000	X																			
3 REYNOLDS AMERICAN INC	\$15,001 - \$50,000	X																			
4 ROYAL DUTCH SHELL PLC SPONSORED ADR REPSTG B SHS	\$50,001 - \$100,000	X																			
5 SCANA CORP-WI	\$100,001 - \$250,000	X																			
6 SOUTHERN CO	\$250,001 - \$500,000	X																			
7 TELEFONICA SA - ADR SPONSORED ADR	\$500,001 - \$1,000,000	X																			
8 TOTAL S.A. - ADR SPONSORED ADR	\$1,000,001 - \$5,000,000	X																			
9 UNILEVER PLC - ADR SPONSORED ADR	Over \$5,000,000	X																			

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Reporting Individual's Name Cole, James M.		Page Number 27 of 49											
SCHEDULE A continued (Use only if needed)													
Assets and Income	BLOCK B Valuation of Assets at close of reporting period				BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.								
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000	Type	Amount	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if honoraria	
1 VERIZON COMMUNICATIONS	X								Dividends				
2 VODAFONE GROUP PLC NEW	X								Dividends				
3 WINDSTREAM CORP	X								Dividends				
4 HCP INC	X								Dividends				
5 HEALTH CARE REIT INC HCN	X								Dividends				
6 NATIONWIDE HEALTH PPTYS INC	X								Dividends				
7 WELLS FARGO ADVANTAGE TAX-FREE MONEY MARKET SERVICE (MM00X)									Capital Gains				
8 BLOUNT CNTY TENN PUB BLDG AUTH LOC GOVT IMPT-SER-B-16-A DTD 06/15/08 4,000 0									Capital Gains				
9 CLARK CNTY NEW IMPT DIST DTD 06/13/08 4,000 08/01/2014									Capital Gains				

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 Cole, James M.

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SCHEDULE A continued
 (Use only if needed)

Assets and Income	BLOCK B Valuation of Assets at close of reporting period											BLOCK C Amount							Date (Mo., Day, Yr.) Only if Honorary
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	Over \$5,000,000	
									Dividends	Rent and Royalties	Interest	Capital Gains	Other Income (Specify Type & Actual Amount)						
1 JOHNSON CITY TENN ELEC REV IMPT DTD 06/30/08 4.000 05/01/2014																			
2 KING CNTY WASH SCH DIST NO 408 REF DTD 05/13/08 4.000 12/01/2012																			
3 LANCASTER CNTY NEB SCH DIST NO LINCOLN PUB SCHS DTD 02/11/09 4.000 01/1																			
4 MIAMI DADE CNTY FLA BLDG BETTER CHANTY'S PROG-SER A DTD 04/30/08 4.000 07																			
5 MICHIGAN MUN BD AUTH REV CLEAN WTR REVOLVING-POOLED DTD 03/18/10 4.000 10/																			
6 OKLAHOMA CNTY OKLA INDPST SCH DTD 06/01/07 4.250 07/01/2014																			
7 PIMA CNTY ARIZ UNI SCH DIST SCH IMPT-PROJ 2007-SER A DTD 05/01/08 4.000 0																			
8 SOUTH DAKOTA ST BLDG AUTH REV BLDG AUTH DTD 07/29/08 4.000 06/01/2013																			
9 UPPER DUBLIN PA SCH DIST DTD 02/15/08 4.000 11/15/2020																			

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Reporting Individual's Name Cole, James M.																									
SCHEDULE A continued (Use only if needed)																									
Assets and Income	BLOCK B Valuation of Assets at close of reporting period										BLOCK C Amount														
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000*	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000		
Type													Dividends	Rent and Royalties	Interest	Capital Gains	Other Income (Specify Type & Amount)	Date (Mo., Day, Yr.) Only if Honorary							
1 NESTLE S.A. REGISTERED SHARES - ADR SPONSORED ADR	X																								
2 NIDEC - ADR SPONSORED ADR	X																								
3 NINTENDO CO., LTD. - ADR SPONSORED ADR	X																								
4 NOMURA HOLDINGS, INC. - ADR SPONSORED ADR	X																								
5 NOVARTIS AG - ADR SPONSORED ADR	X																								
6 PETROBRAS BRASILEIRO S.A. - COMM. ADR SPONSORED ADR	X																								
7 PRUDENTIAL PLC - ADR SPONSORED ADR	X																								
8 REED ELSEVIER NV ADR	X																								
9 RIO TINTO PLC - ADR SPONSORED ADR	X																								

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Reporting Individual's Name
Cole, James M.

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Assets and Income	BLOCK B Valuation of Assets at close of reporting period										BLOCK C Amount					Date (Mo., Day, Yr.) Only if honoraria									
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	Over \$25,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000		\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000		
	Type	Dividends	Rent and Royalties	Interest	Capital Gains	Other Income (Specify Type & Actual Amount)																			
1 TELEFONICA SA - ADR SPONSORED ADR	X																								
2 TESCO PLC - ADR SPONSORED ADR	X																								
3 TEVA PHARMACEUTICAL INDUSTRIES - ADR SPONSORED ADR	X																								
4 TOTAL S.A. - ADR SPONSORED ADR	X																								
5 TOYOTA MOTOR CORPORATION - ADR SPONSORED ADR	X																								
6 VALE SA	X																								
7 VODAFONE GROUP PLC NEW	X																								
8 WOLTERS KLUWER NV - ADR SPONSORED ADR	X																								
9 WPP GROUP PLC AMERICAN DEPOSITARY SH	X																								

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SCHEDULE A continued (Use only if needed)					
Reporting Individual's Name Cole, James M.		Income: type and amount. If "None (or less than \$20)" is checked, no other entry is needed in Block C for that item.			
Assets and Income BLOCK A	Valuation of Assets at close of reporting period BLOCK B		BLOCK C		
	None (or less than \$1,001) \$1,001 - \$15,000 \$15,001 - \$50,000 \$50,001 - \$100,000 \$100,001 - \$250,000 \$250,001 - \$500,000 \$500,001 - \$1,000,000 Over \$1,000,000*	None (or less than \$201) \$201 - \$1,000 \$1,001 - \$2,500 \$2,501 - \$5,000 \$5,001 - \$15,000 \$15,001 - \$50,000 \$50,001 - \$100,000 \$100,001 - \$1,000,000 Over \$1,000,000	Type	Amount	
			Dividends Capital Gains Interest Rent and Royalties Other Income (Specify Type if Amount) Date (Mo., Day, Yr.) Only if Honorary		
1 XSTRATA PLC	X				
2 ZURICH FINANCIAL SERVICES - ADR SPONSORED ADR	X				
3 ADVENT SOFTWARE INC COM	X				
4 ALBEMARLE CORP COM	X				
5 ALEXANDER & BALDWIN INC	X				
6 ALLEGHANY CORP DEL NEW	X				
7 ATWOOD OCEANICS INC COM	X				
8 BRINKS HOME SECURITY HLDS	X				
9 BRINKS CO	X				

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Reporting Individual's Name Code, James M.		SCHEDULE A continued (Use only if needed)											Page Number 38 of 48													
Assets and Income BLOCK A		Valuation of Assets at close of reporting period BLOCK B										Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item. BLOCK C														
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Amount)	Date (Mo., Day, Yr.) Only if Honorary		
												Dividends	Rent and Royalties	Interest	Capital Gains											
1	CABELAS INC COM	X																								
2	CARMAX INC COM		X																							
3	CORRECTIONS CORP OF AMER		X																							
4	EATON VANCE CORP COM NON VTG		X																							
5	ENERGIZER HOLDINGS INC		X																							
6	FORCE PROTECTION INC		X																							
7	HASBRO INC		X																							
8	INVESTORS TITLE CO		X																							
9	KINDER MORGAN MGMT LLC		X																							

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SCHEDULE A continued (Use only if needed)																												
Reporting Individual's Name Cole, James M.																												
Assets and income	BLOCK A	BLOCK B										BLOCK C																
		Valuation of Assets at close of reporting period										Type	Amount									Date (Mo., Day, Yr.) Only if Honoraria						
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	None (or less than \$201)	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)		
1	KNOLL INC COM NEW	X																										
2	KORN FERRY INTERNATIONAL	X																										
3	LANCE INC									X																		
4	MARKEL HOLDINGS																											
5	MONTPELIER RE HOLDINGS LTD																											
6	NEWMARKET CORP COM																											
7	OWENS & MINOR INC COM																											
8	PRICESMART INC COMMON STOCK																											
9	SERVICE CORP INTL																											

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BLOCK A		BLOCK B													BLOCK C																						
Assets and Income		Valuation of Assets at close of reporting period													Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.																						
1	2	BLOCK B													BLOCK C																						
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Excepted Investment Fund	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honorary						
1	STURM RUGER & CO INC	X																		X																	
2	SYNAPTICS INC COM	X																																			
3	TEJON RANCH CO COM	X																																			
4	TENET HEALTHCARE CORP	X																																			
5	TREDEGAR CORPORATION	X																																			
6	UNIVERSAL CORP	X																																			
7	VULCAN MATLS CO	X																																			
8	WESCO FINL CORP	X																																			
9	WHITE MOUNTAINS INSURANCE GROUP INC COM	X																																			

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name
Cole, James M.

SCHEDULE A continued
(Use only if needed)

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SCHEDULE A continued
 (Use only if needed)

Reporting Individual's Name: Cole, James M. Page Number: 41 of 48

	BLOCK A Assets and Income	BLOCK B Valuation of Assets at close of reporting period										BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.																	
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	Over \$500,000,000	Over \$25,000,000	Over \$5,000,000	Over \$1,000,000	Over \$500,000	Over \$100,000	Over \$50,000	Over \$25,000	Over \$15,000	Over \$5,000	Over \$1,000	None (or less than \$201)	Dividends	Rent and Royalties	Interest	Capital Gains	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria		
1	HATTERAS FINANCIAL CORP																												
2	UDR INC																												
3	Citibank Checking Account																												
4	Citibank Money Market Account																												
5	Citibank Money Market Account																												
6	Citibank Money Market Account																												
7	Bryan Cave LLP - Outstanding Distribution																												
8	Sole Design (spouse art business) Washington, D.C.																												
9	See Attachment 1 to SF-278																												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

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Cole, James M.

SCHEDULE B

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Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded \$1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

Table with columns for Identification of Assets, Transaction Type (Purchase, Sale, Exchange), Date Rec'd, Amount of Transaction, and Certificate of Divestiture.

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher category or value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than \$260, and (2) travel-related cash reimbursements received from one source totaling more than \$260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. Exclude anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth \$104 or less. See instructions for other exclusions.

Table with columns for Source (Name and Address), Brief Description, and Value.

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SCHEDULE C

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Reporting Individual's Name
Cole, James M.

Part I: Liabilities
 Report liabilities over \$10,000 owed to any one creditor at any time or approximately the same time to your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude accounts.

None None

a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; the amount owed to your spouse, or dependent children. See instructions for revolving charge accounts.

Examples	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X)
1	First District Bank, Washington, DC John Jones, 123 1st St., Washington, DC	Mortgage on rental property, Delaware	1991	8%	23 yrs. on demand	\$10,001 - \$15,000
2		Promissory note	1999	10%		\$15,001 - \$50,000
3						\$50,001 - \$100,000
4						\$100,001 - \$500,000
5						\$500,001 - \$1,000,000
6						\$1,000,001 - \$5,000,000
						\$5,000,001 - \$10,000,000
						\$10,000,001 - \$25,000,000
						\$25,000,001 - \$50,000,000
						\$50,000,001 - \$99,999,999
						\$100,000,000 or more

*This category applies only if the liability is with respect to the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher category, as appropriate.

Part II: Agreements or Arrangements
 Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits. None

Example	Status and Terms of any Agreement or Arrangement	Parties	Date
1	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/30/01.	Dee Jones & Smith, Hometown, State	7/85
2	Pursuant to the firm's partnership agreement, I will receive a refund of my capital account and payment of my draw account within 30 days of my withdrawal from the firm.	Bryan Cave LLP	01/85
3	Pursuant to the firm's partnership agreement, I will receive my share of the firm's partner distribution and hold back, calculated to the date I withdrew from the partnership, prior to assuming the duties of Deputy Attorney General.	Bryan Cave LLP	1/85
4	My 401k has only been funded by me and the firm will not be contributing to it. It will continue to be managed with the firm's partners' 401ks.	Bryan Cave LLP and Vanguard	1/85
5			
6			

Prior Editions Cannot Be Used.

OMB/Audit Number version 1.02 (10/17/2004)

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SCHEDULE D

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to, officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

Examples	Name (Last, First, Middle Initial, Suffix)	Address	Type of Organization	Position Held	From (Mo, Yr) To (Mo, Yr)		None
					From (Mo, Yr)	To (Mo, Yr)	
	Doe Jones & Smith, Hometown, State		Non-profit education	President	7/83	7/90	Present
	Dojones & Smith, Hometown, State		Law firm	Partner	01/1995		Present
1	Bryan Cave LLP, Washington, DC		Law Firm	First Vice Chair	08/2009		Present
2	American Bar Association, Criminal Justice Section, Washington, DC		Non-Profit Law Organization	Vice Chair	07/2008		08/2009
3	American Bar Association, Criminal Justice Section, Washington, DC		Non-Profit Law Organization	Independent Consultant	01/2005		Present
4	American International Group, Inc. (compensation received through Bryan Cave LLP and included in Bryan Cave LLP income reported on Schedule A)		Insurance and Financial Services Company	Trustee	10/1997		Present
5	Marilyn S. Cole GST Exempt Trust		Family Trust	Trustee	07/1995		Present
6	Asher Cole Trust B		Family Trust	Trustee			Present

Part II: Compensation in Excess of \$5,000 Paid by One Source
Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

Examples	Source (Name and Address)	Brief Description of Duties
	Dojones & Smith, Hometown, State	Legal Services
	Nice University (Client of Dojones & Smith), Hometown, State	Legal Services in connection with university construction
1	American International Group, Inc., New York, NY	Serve as Independent Consultant pursuant to settlement agreement
2	Avaya, Inc., Basking Ridge, NJ	Legal Services
3	Clayton Lewis, Seattle, WA	Legal Services
4	Sandford Rosebaum, Albany, NY	Legal Services
5	Tobii Technology, Stockholm, Sweden	Legal Services
6	Timothy Webber, Mission Hills, KS	Legal Services

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Part I: Positions Held Outside U.S. Government
Report any positions held during the applicable reporting period, whether compensated or not, in any capacity, including as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

Examples	Organization (Name and Address)	Type of Organization	Position Held	From (Mo./Yr.)		To (Mo./Yr.)	
				6/92	7/85	1/00	1/00
1	INGAHO Washington, DC	Investment partnership	General partner	12/2007		present	
2							
3							
4							
5							
6							

None

Part II: Compensation in Excess of \$5,000 Paid by One Source
Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

Examples	Source (Name and Address)	Brief Description of Duties	From (Mo./Yr.)		To (Mo./Yr.)	
			6/92	7/85	1/00	1/00
1	Charles Brimmer, Arlington, VA	Legal Services				
2	Carlos Cano, Washington, DC	Legal Services				
3	John Collier, Raleigh, NC	Legal Services				
4	International Medical Corps, Santa Monica, CA	Legal Services				
5	Podiatrist Healthcare LLC, Norcross, GA	Legal Services				
6	Tony F. Sanchez III, Las Vegas, NV	Legal Services				

None

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

006/Addr.Amendment.1.01 (11/07/2004)

SCHEDULE D

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Part I: Positions Held Outside U.S. Government
Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to, officer, director, trustee, general partner, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

Examples	Name of Source (Name and Address)	Type of Organization		Position Held	From (Mo., Yr.) To (Mo., Yr.)	
		Non-profit educational	Law firm		7/83	1/00
1	Doc Jones & Smith, Rosewood, State			President		
2				Partner		
3						
4						
5						
6						

Part II: Compensation In Excess of \$5,000 Paid by One Source
Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source. None

Examples	Source (Name and Address)	Brief Description of Duties
1	Doc Jones & Smith, Rosewood, State Micro University (client of Doc Jones & Smith), Rosewood, State	Legal services Legal services in connection with university construction
2	Michael Segal, Highland Park, IL	Legal Services
3	Richard Seigel, (Deceased)	Legal Services
4	Thomas Spiborn, Great Falls, VA	Legal Services
5	World Wide Technology, Inc., Maryland Heights, MO	Legal Services
6	Anchin, Block & Anchin, New York, NY	Legal Services
	Allison, Inc., Ada, MI	Legal Services

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SCHEDULE D			
<p>Part I: Positions Held Outside U.S. Government Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, officer, general partner, partner, proprietor, shareholder, member, trustee, officer, any corporation, firm, partnership, or other business enterprise, or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.</p>			
None <input type="checkbox"/>	From (Mo., Yr.)	To (Mo., Yr.)	Position Held
None <input type="checkbox"/>	6/93	7/85	President
None <input type="checkbox"/>	7/85	7/00	Partner
1			
2			
3			
4			
5			
6			
<p>Part II: Compensation in Excess of \$5,000 Paid by One Source Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate. Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.</p>			
None <input type="checkbox"/>	Source (Name and Address)	Amount	Period Description of Duties
None <input type="checkbox"/>	Legal Services		
None <input type="checkbox"/>	Legal services in connection with university construction		
1	John McLaughlin, Washington, DC		
2	Bryan Cave LLP		
3			
4			
5			
6			

Prior Editions Cannot Be Used. OGE/Adviser Aushla, version 1.02(1/06/2004)

Attachment 1 to SF-278 (see p. 41, line 9), Public Financial Disclosure Report
for James M. Cole

Mr. Cole is the Trustee of two family trusts, the Marilyn S. Cole GST Exempt Trust and the Asher Cole Trust B. Mr. Cole is the general partner of an investment partnership, INGAHO Partnership. The limited partners in the INGAHO Partnership are Mr. Cole's spouse, the Marilyn S. Cole GST Exempt Trust and the Asher Cole Trust B. The partnership's assets are reported on Schedule A of the SF-278 on p. 4, beginning on line 5, through p. 41, line 2.

FINANCIAL STATEMENT
NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		426	224	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities—see schedule	1	211	781	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others—Law Firm Holdback		75	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable-summer home		203	257
Real estate owned—see schedule	4	439	190	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property							
Cash value-life insurance		29	145				
Other assets itemize:							
Law Firm Capital Account		263	400				
DC 529 College Savings Plans		22	742				
Retirement Accounts—see schedule		756	499	Total liabilities		203	257
Health Savings Account		31	897	Net Worth	7	052	621
Total Assets	7	255	878	Total liabilities and net worth	7	255	878
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (see schedule)	YES—Summer Home		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

Blount Cnty Tenn Pub Bldg Auth	\$ 16,089
Clark Cnty Nev Impt Dist	15,974
Comal Tex Indpt Sch Dist Sch Bldg	16,441
Cook Cnty Ill Cns High Sch Di Ltd Tax	21,920
Davis Cnty Utah Sch Dist	15,809
De Soto Cnty Miss Sch Dist	15,471
Du Page Cnty Ill Cmnty Cons Sc Sch Bldg	21,416
Elgin Ill Corp Purp – Ser A	16,010
Fond Du Lac Wis Ref	25,396
Grand Rapids Mich Wtr Supply	15,532
Jennings Cnty Ind Sch Bldg Cor	15,937
Johnon City Tenn Elec Rev Impt	16,344
King Cnty Wash Sch Dist No 409 Ref	16,120
Lancaster Cnty Neb Sch Dist No Lincoln Pub Schs	21,562
Miami-Dade Cnty Fla Bldg Better Cmnty Prog – Ser A	16,031
Michigan Mun Bd Auth Rev Clean Wtr Revolving	26,967
Oklahoma Cnty Okla Indpt Sch	27,672
Pima Cnty Ariz Uni Sch Dist Sch Impt – Proj 2007 – Ser A	16,258
South Dakota St Bldg Auth Rev Bldg Auth	16,184
Upper Dublin Pa Sch Dist	15,701
Aaron Rents Inc (AAN)	3,386
Advisory Brd Co Com (ABCO)	1,811
Amazon Com Inc Com (AMZN)	4,113
Ambassadors Group Inc Com (EPAX)	728
Best Buy Inc (BBY)	774
Block H&R Inc (HRB)	458
Cabelas Inc Com (CAB)	3,723
Carmax Inc Com (KMX)	2,113
Choice Hotels Intl Inc Com (CHH)	1,452
Columbia Sportswear Co Com (COLM)	1,389
Comcast Corp Class A (CMSCA)	3,282
Exponent Inc Com (EXPO)	1,491
Force Protection Inc (FRPT)	2,536
Ford Motor Company (F)	2,630
Gap Inc (GPS)	3,363
Hasbro Inc (HAS)	2,532
Hibbett Sports Inc Com (HIBB)	1,238
Home Depot Inc (HD)	3,805
International Speedway Corp Com (ISCA)	1,528
Johnson Controls Inc (JCI)	2,620
Lennar Corporation Class A Common (LEN)	2,450
LKQ Corp Class A Com (LKQX)	2,844
Matthews Intl Corp (MATW)	1,750
McDonalds Corp (MCD)	5,788
Morningstar Inc (MORN)	3,526
Netflix.com Inc (NFLX)	890
Peets Coffee & Tea Inc (PEET)	1,189
Polaris Inds Inc Com (PII)	1,183

Pool Corporation Com (POOL)	613
Sally Beauty Co Inc (SBH)	1,003
Service Corp Intl (SCI)	3,565
Sonic Corp (SONC)	1,348
Sturm Ruger & Co Inc (RGR)	3,271
Time Warner Inc (TWX)	3,010
Walt Disney Co (DIS)	2,947
Wolverine World Wide Inc Com (WWW)	1,224
Alberto-Culver Co (ACV)	2,448
Altria Group Inc Com (MO)	3,136
Caseys Gen Stores Inc (CASY)	579
Coca Cola Co (KO)	3,688
CVS/Caremark Corporation (CVS)	1,809
Dean Foods Company (DF)	1,633
Diamond Foods Inc Com (DMND)	1,281
Energizer Holdings Inc (ENR)	2,566
Heinz H J Co (HNZ)	6,327
Kimberly Clark Corp Com - A (KMB)	3,247
Kimberly Clark Corp Com - B (KMB)	5,636
Kraft Foods Inc (KFT)	3,818
Lance Inc (LNCE)	2,921
Lorillard Inc (LO)	1,254
Philip Morris International (PM)	4,025
Pricesmart Inc (PSMT)	3,483
Proctor & Gamble Co - A (PG)	1,927
Proctor & Gamble Co - B (PG)	2,611
Reynolds American Inc (RAI)	3,312
Ruddick Corp (RDK)	884
Sara Lee Corp (SLE)	1,578
Universal Corp (UVV)	2,848
Andarko Petroleum Corp (APC)	808
Atwood Oceanics Inc Com (ATW)	3,932
Baker Hughes Inc Com (BHI)	2,438
Calpine Corp/New (CPN)	2,303
Chevron Corp - A (CVX)	4,642
Chevron Corp - B (CVX)	5,049
Conoco Phillips (COP)	3,966
Consol Energy Inc (CNX)	2,145
Denbury Resources Inc (DNR)	3,983
Devon Energy Corporation (DVN)	2,626
Dril-Quip Inc Com (DRQ)	2,897
Kinder Morgan Mgmt LLC (KMR)	3,058
National Oilwell Varco Inc Com (NOV)	3,390
Occidental Pete Corp (OXY)	3,990
Valero Energy Corp (VLO)	1,684
Affiliated Managers Group Inc Com (AMG)	3,788
Alleghany Corp Del New (Y)	2,377
American Express Co (AXP)	2,629
Ameriprise Financial Inc (AMP)	1,901
Bank New York Mellon Corp Com (BK)	3,362
Cincinnati Financial Corp (CINF)	1,394
City Natl Corp Com (CYN)	2,180
CME Group Inc (CME)	2,963
Eaton Vance Corp Com Non Vtg (EV)	2,185
Forest City Enterprises Inc Cl A (FCE.A)	3,399

Goldman Sachs Group Inc (GS)	3,485
HCC Ins Hldgs Inc Com (HCC)	1,088
Investors Title Co (ITIC)	954
Jones Lang LaSalle Inc Com (JLL)	3,155
JPMorgan Chase & Co (JPM)	4,599
Markel Holdings (MKL)	1,149
MBIA Inc - A (MBI)	1,868
MBIA Inc - B (MBI)	2,500
Morgan Stanley Com (MS)	2,448
Pinnacle Finl Partners Inc (PNFP)	840
RLI Corp Com (RLI)	1,450
State Street Corp (STT)	653
TD Ameritrade Hldg Corp Com (AMTD)	2,200
Tejon Ranch Co Com (TRC)	1,898
Travelers Companies Inc (TRV)	4,617
UMPQUA Holdings Corp (UMPQ)	598
Wesco Finl Corp (WSC)	2,274
Westamerica Bancorporation (WABC)	1,469
Bio Rad Labs Inc Cl A (BIO)	3,351
Bristol Myers Squibb Co - A (BMY)	2,354
Bristol Myers Squibb Co - B (BMY)	5,897
Eli Lilly & Co Com (LLY)	4,826
Gilead Sciences Inc (GILD)	2,144
Hologic Inc Com (HOLX)	2,521
ICU Med Inc Com (ICUI)	356
Illumina Inc (ILMN)	3,514
Johnson & Johnson (JNJ)	4,565
Landauer Inc (LDR)	1,022
Medco Health Solutions Inc (MHS)	2,887
Meridian Bioscience Inc (VIVO)	800
Owens & Minor Inc Com - A (OMI)	1,415
Owens & Minor Inc Com - B (OMI)	2,076
Pfizer Inc (PFE)	3,344
PSS World Medical Inc Com (PSSI)	1,172
Techne Corp (TECH)	663
Tenet Healthcare Corp - A (THC)	2,188
Tenet Healthcare Corp - B (THC)	2,913
Thermo Fisher Scientific Inc (TMO)	2,432
Watson Pharmaceuticals Inc COM (WPI)	3,426
Young Innovators Incorporated (YDNT)	755
Acuity Brands (Holding Company) Inc (AYI)	904
Alexander & Baldwin Inc (ALEX)	4,127
Brady Corporation (BRC)	1,890
Brinks Co (BCO)	4,021
Carlisle Cos Inc (CSL)	1,132
Clarcor Inc (CLC)	1,135
Corrections Corp of Amer (CXW)	3,730
Cummins Inc (CMI)	2,673
Danaher Corp (DHR)	2,276
Deere & Co (DE)	1,376
Flour Corp New (FLR)	2,061
Forward Air Corp Com (FWRD)	1,541
General Electric Co (GE)	2,980
Graco Inc (GGG)	1,561
Honeywell International Inc (HON)	3,513

Kirby Corp (KEX)	3,787
Knight Transn Inc Com (KNX)	1,703
Knoll Inc (KNL)	1,244
Korn Ferry International (KFY)	1,783
Manpower Inc Wis (MAN)	1,851
McGrath Rentcorp (MGRC)	1,295
Old Dominion Freight Lines Inc (ODFL)	1,973
Raven Inds Inc (RAVN)	1,366
Shaw Group Inc Com (SHAW)	2,794
Simpson Mfg Inc Com (SSD)	850
Textron Inc (TXT)	1,553
Tredegar Corporation (TG)	3,224
Waste Management Inc (WM)	1,734
Activision Blizzard Inc (ATVI)	1,618
Advent Software Inc Com (ADVS)	2,033
Agilent Technologies Inc (A)	1,632
Ansys Inc (ANSS)	2,248
Apple Inc (AAPL)	4,439
Blackbaud Inc Com (BLKB)	3,342
CA Inc (CA)	1,552
Daktronics Inc Com (DAKT)	1,172
Dell Inc (DELL)	2,754
Equinix Inc (EQIX)	1,912
Factset Resh Sys Inc Com (FDS)	2,257
Fair Issac Inc (FICO)	1,727
Henry Jack & Assoc Inc Com (JKHY)	2,807
Hewlett Packard Co (HPQ)	1,091
Intel Corp (INTC)	3,220
International Business Machs Corp Com (IBM)	4,386
Intuit Com (INTU)	1,629
Juniper Networks Inc Com (JNPR)	3,011
Manhattan Associates Inc Com (MANH)	2,006
Motorola Inc (MOT)	2,107
National Instrs Corp Com (NATI)	1,556
Netapp Inc (NTAP)	2,670
Power Integrations Inc Com (POWI)	1,347
Qualcomm Inc (QCOM)	4,526
Red Hat Inc (RHT)	4,182
Rofin Sinar Technologies Inc Com (RSTI)	1,062
Salesforce Com Inc Com (CRM)	3,338
Scansource Inc Com (SCSC)	1,114
Symantec Corp (SYMC)	839
Synaptics Inc Com (SYNA)	2,327
Vmware Inc (VMW)	2,096
Yahoo Inc Com (YHOO)	2,116
Air Prods & Chems Inc Com (APD)	2,534
Albemarle Corp Com (ALB)	3,196
Alcoa Inc (AA)	2,229
Allegheny Technologies Inc (ATI)	2,192
Aptargroup Inc Com (ATR)	2,798
Balchem Corp Class B (BCPC)	1,167
Freeport-McMoran Copper & Gold Inc (FCX)	3,097
Martin Marietta Matls Inc Com (MLM)	2,301
Meadwestvaco Corp (MWV)	2,744
Monsanto Co New (MON)	2,207

Newmarket Corp Com (NEU)	3,080
United Sts Stl Corp New Com (X)	2,022
Vulcan Matls Co (VMC)	1,260
Weyerhaeuser Co (WY)	2,575
AT&T Inc - A (T)	3,310
AT&T Inc - B (T)	5,238
Centurytel Inc Com (CTL)	2,626
Quest Communications Intl Inc Com (Q)	3,300
Verizon Communications (VZ)	4,826
Windstream Corp (WIN)	1,501
American Electric Power Inc (AEP)	2,916
Dominion Res Inc VA (D)	4,974
Duke Energy Holding Corp Com (DUK)	4,262
Exelon Corporation (EXC)	1,613
Progress Energy Inc (PGN)	3,034
Scana Corp W/I (SCG)	1,460
Sempra Energy Com (SRE)	2,410
Southern Co (SO)	5,391
ABB Ltd - ADR - A	2,318
ABB Ltd - ADR - B	3,353
Allianz SE	1,814
American Movil S.A.B. DE C.V Ser L AD ADR	1,544
Anheuser-Busch Inbev SPN	1,986
Atlas Copco AB	1,934
AXA - ADR	2,108
Banco Bilbao Vizcaya Argent - ADR	2,324
Barclays PLC - ADR	2,961
Barrick Gold Corp Com	4,007
Bayer AG - ADR	1,866
BCE Inc Com NPV	3,522
BG Group PLC - ADR	3,472
BHP Billiton Limited - ADR	4,367
BNP Paribas - ADR	3,430
BP PLC - ADR - A	4,850
BP PLC - ADR - B	3,129
British American Tobacco P.L.C. - ADR	2,221
Cameco Corp Com	2,141
Canon Inc - ADR	3,426
China Life Insurance Company L - ADR	2,028
CNOOC - China National Offshor - ADR	1,583
Credit Suisse Group - ADR - A	2,468
Credit Suisse Group - ADR - B	2,514
DBS Group Holdings Limited - ADR	3,133
Deutsche Telekom AG - ADR	3,105
Eon AG - ADR	3,694
EnSCO International PLC	2,642
Espirit Holdings Limited	1,751
Flextronics Intl Ltd	2,717
Fomento Economico Mexicano - Sponsored ADR	947
France Telecom - ADR	2,718
GDF Suez Sponsored ADR	989
Glaxosmithkline PLC - ADR - A	5,370
Glaxosmithkline PLC - ADR - B	1,865
Honda Motor Co Ltd - ADR	2,365
HSBC - ADR	4,784

Imperial Tobacco Group PLC - ADR	1,710
ING Groep N.V. - ADR	2,927
Komatsu Limited - ADR	2,036
Kubota Limited - ADR	1,312
Lafarge - ADR	3,545
LVMH Moet Hennessy UNSP ADR	1,955
Marks & Spencer Group PLC - Sponsored ADR	1,730
McDermott Intl Inc	1,508
Mitsubishi Corporation - ADR	4,690
Mitsubishi Estate Company Ltd - ADR	1,780
Mitsubishi UFJ Finl Group Inc	2,120
Montpelier Re Holdings Ltd	3,287
Nabors Industries Ltd	2,890
Nestle S.A. Registered Shares - ADR	5,868
Nidec - ADR	1,809
Nintendo Co Ltd - ADR	2,305
Nomura Holdings Inc - ADR	1,137
Novartis AG - ADR	3,305
Petroleo Brasileiro S.A. - Comm - ADR	1,696
Qiagen N.V.	1,782
Reed Elsevier N V ADR	1,882
Rio Tinto PLC - ADR	2,848
Roche Holdings Ltd - ADR	3,152
Royal Dutch Shell Plc - Sponsored ADR - A	5,643
Royal Dutch Shell Plc - Sponsored ADR - B	3,451
RWE AG - ADR	738
Sanofi-Aventis - ADR	2,729
SAP AG - ADR	2,847
Schlumberger Ltd	3,928
Siemens AG - ADR	3,417
Societe Generale - ADR	2,220
Sony Corporation - ADR	2,053
Taiwan Semiconductor Manuf - ADR	1,864
Telefonica SA - ADR - A	1,627
Telefonica SA - ADR - B	3,389
Tesco PLC - ADR	4,067
Teva Pharmaceutical Industries - ADR	2,056
Total S.A. - ADR - A	3,643
Total S.A. - ADR - B	4,894
Toyota Motor Corporation - ADR	2,698
Tyco Electronics Ltd F	4,143
Tyco International Ltd New	3,181
Unilever Plc - ADR	2,528
Vale SA	2,450
Vodafone Group Plc New - A	3,863
Vodafone Group Plc New - B	4,440
White Mountains Insurance Group Inc Com	2,405
Wolters Kluwer NV - ADR	2,035
WPP Group Plc American Depositary Sh	1,849
Xstrata Plc	868
Zurich Financial Services - ADR	2,758
First Intl Rlty Tr Inc Com (FR)	1,883
Hatteras Financial Corp (HTS)	2,480
HCP Inc (HCP)	2,345
Health Care Reit Inc (HCN)	1,303

Nationwide Health Pptys Inc (NHP)	1,366
Prologis Shs of Beneficial Interest (PLD)	2,463
UDR Inc (UDR)	2,945
Universal Health Rjty Income Tr Sh Ben Int (UHT)	997
Pimco Commodity Realreturn Strategy Fund (PCRPX)	49,632
Total Listed Securities	<u>1,282,596</u>

Real Estate Owned

Personal residence	\$ 1,133,390
Summer home	<u>3,305,800</u>
Total Real Estate Owned	4,439,190

Retirement Accounts

Vanguard Global Equity Fund -A	\$ 95,895
Vanguard Global Equity Fund -B	32,910
Vanguard Windsor II Fund Investors Shares	38,229
Vanguard Capital Opportunity Fund Investor Shares	138,868
Vanguard International Explorer Fund	123,812
Vanguard Primecap Fund Investor Shares	134,340
Vanguard Small-Cap Value Investor Shares	78,784
Charles Schwab S&P 500 Index Fund (1)	36,215
Charles Schwab Small Cap Index Fund (1)	41,601
Charles Schwab Deposit Account (1)	147
Charles Schwab S&P 500 Index Fund (2)	16,553
Charles Schwab Small Cap Index Fund (2)	19,015
Charles Schwab Deposit Account (2)	130
Total Retirement Accounts	<u>756,499</u>

Pledged Assets - Summer Home

Lot A with house	\$ 1,705,900
Lot B	519,000
Lot C	526,100
Lot D	<u>554,800</u>
Total Pledged Assets	3,305,800

AFFIDAVIT

I, **JAMES MICHAEL COLE**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5/28/10
(DATE)

[Handwritten Signature]
(NAME)

Melanie L. Dix
(NOTARY)

Melanie L. Dix
Notary Public, District of Columbia
My Commission Expires 01-01-2013



Chairman LEAHY. Well, thank you. Thank you very much.

We have had some notes back and forth here that General Petraeus, while testifying in another Committee, appeared to be in a condition of fainting but has, we are told, left under his own power, walked out. General Petraeus, of course, is one of those people who works around the clock and may have simply been exhausted and dehydrated. But I think it is safe to say that every single member of this Committee hopes that the general will recover and be well.

Attorney General Holder told this Committee that the United States is at war with a vicious enemy who targets our soldiers on the battlefield in Afghanistan and our civilians on the streets here at home. He emphasized that, in taking on this threat, we can and should use every instrument at our disposal to defeat terrorism, including military commissions and our Federal criminal courts. He has said repeatedly—and I agree with him—that prosecuting these enemies in Federal criminal courts is in many instances our strongest tool to gain not only intelligence but also convictions.

Now, it has been mentioned about your 2002 column advocating the use of Federal criminal courts in prosecuting terrorism suspects. You said the Attorney General is not a member of the military fighting in war; he is a prosecutor fighting crime.

Now, it is 8 years later. How do you view the efforts to combat the threat of terrorism and the role of the Justice Department?

Mr. COLE. Mr. Chairman, perhaps one of the most important duties of the Justice Department is to fight terrorism. We have an unprecedented threat against our country in this area, and as I stated in my article in 2002, it is an unprecedented threat that we had never seen before, and we must use every resource we have and the Attorney General must use every resource he has to fight this scourge and this enemy.

The point of the article that I wrote in 2002 was to state that we must do so consistent with the rule of law. That was the point of the article, and that was the core of the article. It was not really meant to address whether or not we are at war. It was meant to address how we deal with one of the most devastating problems presented to our country perhaps in its history.

The view that I have come to and have developed and is consistent with that article is we must use every tool we have to fight terrorism. That includes both military commissions and Article III courts. At the time I wrote that article, the military commissions had grave questions about whether they were constitutional and whether they were consistent with the rule of law. And subsequent to writing that article, the Supreme Court, I believe on more than one occasion, stated that those military commissions, as they were constituted at the time and subsequent efforts, were not making and meeting constitutional muster.

Chairman LEAHY. In fact, under both Republican administrations and Democratic administrations, we have used our Federal courts on terrorism matters. I am told over 400 individuals have been convicted on terrorism-related charges. We certainly—these were in our courts—obtained valuable intelligence, much of which I could not go into in an open hearing, but those of us who have been briefed know of the very valuable intelligence we have received

from these people. There are hundreds of terrorists locked up in our prisons, so that is 400.

Now, I will note that three people have been convicted in military commissions. Four hundred to three gives some kind of view here.

Do you agree that we should have all our tools available to us? Even though there have only been three convictions in military commissions, we should have those tools, but we should also have the Federal prosecutors and courts where we have proven that we were able to get 400 individuals convicted.

Mr. COLE. Yes, Mr. Chairman, I agree with you completely. We need all of the tools. The courts have been very effectively used. As you know, there have been hundreds of prosecutions, including of 9/11 attackers, successfully done in court. We have obtained, as I understand, an enormous amount of intelligence through that, and we have been quite successful.

The military commissions have now been improved to where they do meet constitutional muster, and we need both of those tools. Each one has its advantages and its limitations, and we need to be able to use whatever tools will best and most effectively do the job in each individual instance.

Chairman LEAHY. Every day we look in the news, and we see what has happened after the collapse of British Petroleum's Deep-water Horizon oil rig. Oil continues to go into the Gulf of Mexico. It is heartbreaking to see the contaminants wash up on shore, 11 people killed, precious resources being destroyed, families that have created businesses that they have spent generations building up their businesses, they played by the rules, they have done everything they are supposed to, and now because of BP's actions, something totally out of their control, they are losing that.

I agree with both the President and the Attorney General when they say that American taxpayers should not have to pay for the economy and recovery, but BP should. I introduced, along with Senator Whitehouse and others, the Environmental Crimes Enforcement Act, a bill to deter criminal wrongdoing by big oil and other corporations. It increases sentences for environmental crimes. Clean Water Act offenses can have an enormous effect on people, on their livelihoods, actually on their whole way of life. And if there is criminal conduct, then the sentences should reflect it. But also it makes restitution mandatory for criminal Clean Water Act violations.

If confirmed, will you support efforts to hold BP and other companies responsible for environmental disasters and accountable for their actions?

Mr. COLE. Mr. Chairman, as the Attorney General and the President have both said, not a penny of taxpayers' money is going to be used for reparations or anything like that. It will all come from BP. And I believe that is the right way that this should go.

We have seen through what has happened in the gulf the full nightmare of what can happen when environmental catastrophes occur. The economic toll, the environmental toll, all the loss of life—these are very, very serious matters, and they need to be dealt with seriously.

As I understand it, the Department has already begun to do that and has launched investigations in every avenue that it has to try and deal with this and to make sure that reparations are made and that people whose livelihoods have been destroyed are compensated.

Chairman LEAHY. Well, my time is up, but I also have a question about what you learned having been appointed to investigate AIG and the economic disaster they caused by their conduct.

Senator SESSIONS.

Senator SESSIONS. Thank you.

I have said repeatedly that BP is liable and should be held liable for their responsibilities to the extent of their existence. In other words, they are not too big to fail. They have to meet the requirements as the responsible party, which they signed. But I guess as a lawyer I was a little worried about your so confidently stating that they were going to pay for everything that they are—that occurred in this circumstance, rather broad language, having looked at the law and offered legislation myself to try to expand the responsibilities. Do you believe that BP should be required to pay things they are not lawfully required to pay?

Mr. COLE. Well, I think the law obviously, Senator SESSIONS, governs in this, but I know that there are considerations and efforts underway that if there are any limitations imposed by the law, people are starting to look at whether or not there are mechanisms to remove those limitations so that there can be, to the greatest extent possible, an assurance that BP will bear the costs for what happened.

Senator SESSIONS. Well, I think that is fundamentally correct, but as the second-in-command law enforcement officer in America, I think everybody wants to know that they are going to be treated fairly under your leadership, and I hope that you do not mean you would undertake any action to collect that.

I noticed, just an aside, you did a speech entitled “Role of an In-House Lawyer in a Corporation” in October of 2006, and you stated this: “The experience with Arthur Andersen taught the Government something. The consequences were too drastic and hurt too many innocent employees. The Government now tries to work settlements with companies that find themselves in that kind of predicament, and the company does not get indicted and, therefore, can continue to exist.”

Well, we know that Arthur Andersen failed immediately upon being charged, as I recall that, and so I am not suggesting this is a totally improper statement, but it seems to go beyond strict enforcement of the law and try to preserve corporations who perhaps should be charged and suffer whatever consequences might result from their criminal acts.

Do you have any second thoughts about that quote that I just read?

Mr. COLE. Senator SESSIONS, I do not. The point of that was to say that there are reasons why you charge corporations and reasons why you do not charge corporations. And certainly the Justice Department, starting back when the Attorney General Eric Holder was Deputy Attorney General, has issued a series of memoranda

that guide prosecutors in determining when a corporation should be charged.

The issue is so sensitive because when you charge a corporation and you cause its demise through that charge, thousands and thousands of employees who had no role in the misconduct are hurt. Thousands and thousands of shareholders who had no role in the misconduct and whose savings were invested in that corporation are hurt. And it is those people who had no role who are hurt who are the ones you need to think about as well when you decide whether to charge a corporation.

Senator SESSIONS. Well, I think that is, I guess, a reality, but it has got to be carefully thought through, or else you are just picking and choosing winners. You are saying BP is too big to fail. They have got employees, too. This is a dangerous philosophy. Normally, I was taught, if they violated the law, you charge them. If they did not violate the law, you do not charge them.

Mr. COLE. Well, one of the issues, Senator, that is very much, as I understand it, in the forefront of the prosecution decisions in the Department is to prosecute the individual executives in these companies who are responsible for these criminal acts, because that is how you are going to get the most deterrence.

Senator SESSIONS. But are you now saying that you are backing off corporate indictments?

Mr. COLE. No, I am not at all. I am just saying there are many ways to be quite effective, and I think you have to balance the interests of how much damage you are doing to people who had nothing to do with the wrongdoing versus how much deterrence you are going to be placing on future conduct like this. And I think you have to make sure that you are effective in the prosecution, both of corporations and of the individual officers.

Senator SESSIONS. So how much empathy you have for the employees. Well, anyway, it is a tough decision. I guess we could go around and around, but I think you need to be careful. That philosophy has some danger to it. I think you fully recognize that as the experienced prosecutor that you are.

I also salute you for saying you want to reinvigorate traditional prosecutions in the Department. I hope that you will look at the numbers, you will look at the prosecutions, and make sure that they are working effectively and that they are high enough based on the number of prosecutors and investigators in the country. I am not sure that we are. We have added a lot of prosecutors and Assistant United States Attorneys around the country. They are paid big salaries. They need to be producing day after day.

My problem with your op-ed the year after 9/11 was that you did not suggest improving the military commissions; you basically flatly stated that these were crimes and they should be prosecuted as crimes. And at one point you talked about, I did not see that in that op-ed, but it was a position directly critical of the concept of military commissions.

Now, are you saying that you left something out you would have liked to have put in that op-ed and that if you draw up a good military commission, you do not think it undermines the Constitution of the United States?

Mr. COLE. Senator, my view is if you have a good military commission that conforms with the rule of law, it is a very useful tool. I commend to the Committee the speech recently by David Kris, the Assistant Attorney General for the National Security Division, that very, very excellently described the advantages of both military commissions and Article III courts and use in the fight against terror. Sometimes it is right to go with an Article III court. Sometimes it is right to go with a military commission. Now that we have military—

Senator SESSIONS. Could I ask you—and my time is up. If an individual is arrested with a bomb attempting to attack the United States, a non-citizen, that individual, as we had on Christmas Day, why wouldn't the best procedure be to presumptively charge them through the military commission process since we have authority that shows they can be brought back into the civilian process and tried as a normal criminal? And you would not then have to appoint lawyers. They would be treated as the enemy that they are. And you would not have to have speedy trial acts, certain discovery rules, and things that really put burdens on the Government in a time of war that would not normally be in our best interests.

Mr. COLE. Senator Sessions, there are instances here where if you would arrest someone like that, they may, particularly in the military commission realm now, get many of the rights that they get in an Article III court. And it is really not about what rights we are giving them. It is about the effective tool we have.

Senator SESSIONS. But if you hold them in a military commission, they do not have to be given a lawyer, they do not have to be warned of rights, and they do not have to be even set for trial. They can be held as a prisoner of war, can they not?

Mr. COLE. If they are detained and they are associated with al Qaeda or the Taliban, yes, they can be held as a prisoner of war. But you have to be able to establish that they are associated with the al Qaeda or Taliban to be able to do that.

Senator WHITEHOUSE. [presiding.] Senator Kohl.

Senator KOHL. Thank you very much, Senator Whitehouse.

Mr. Cole, many people, of course, have advocated for a long time that Guantanamo Bay needs to be closed. But there is another consideration that is particularly vital during these difficult economic times.

On June 7th, the Washington Post posted an article revealing that the United States has spent more than \$500 million on the Guantanamo Bay prison and support facilities. The Department of Defense spends \$150 million a year to operate Guantanamo. But knowledgeable people say it would cost half that amount to operate a comparable facility within the United States.

Of course, our Nation's safety is our first priority, but would you agree that the cost should be a factor as the administration decides how to proceed with closing the prison? And what role do you think cost should play in Congress' deliberation about what to do with respect to Guantanamo?

Mr. COLE. Senator, I think cost does play a role. I do not think it can be the determinative role because the primary issue in trying to decide how to close Guantanamo is the safety of the American

people. That is what is going to override, as I understand it, almost every decision that will be made in that regard.

But that is not the only thing. Cost is important. We have dire economic situations in our country, we have large deficits, and we need to be smart about where we use our dollars. So cost certainly plays into the decision on how to close Guantanamo and almost every other decision we face here in the United States.

Senator KOHL. Mr. Cole, as you know, the Inspector General recently issued a troubling report providing that the Justice Department does not have plans or policies in place to respond to a biological, chemical, or nuclear attack. It was concluded that in the event of such an attack, the Department is "not prepared to fulfill its role to ensure public safety." Clearly, this is not something that any of us want to hear.

What are your thoughts on this issue? And what immediate steps will you take to address this should you be confirmed?

Mr. COLE. Senator, I have not closely studied the report. I have certainly read about it. I was at least encouraged to see that it came to the conclusion that the FBI, one of the largest components in the Justice Department, did have a good WMD program for its employees. But it still leaves the concern about what other components in the Department need to do.

Certainly if I am confirmed, one of the first things I am going to do is look into this, look into the recommendations that the IG has made, and do whatever I can to make sure that we put in place appropriate protections for all of the employees at the Justice Department to make sure they are safe.

Senator KOHL. Mr. Cole, it seems that the antitrust enforcement loses out to other interests in internal administration deliberations. One example is that we have sought a letter from the Justice Department in support of our legislation to repeal the freight railroad industry's undeserved antitrust exemption. Despite the fact that Assistant Attorney General Varney has expressed her support for our legislation, no such letter has been forthcoming, apparently because of objections from the Department of Transportation.

Do I have your commitment to work inside the administration to secure such a letter? And, more generally, how will you ensure that antitrust enforcement and competition policy is seen as a priority in the deliberations between one agency and another?

Mr. COLE. Senator, certainly the antitrust issues are very important, and Assistant Attorney General Varney, as I understand it, has done quite an excellent job in her role in this area.

You state that there are a number of different agencies involved. I obviously am not privy to all the information that is going on within the Department, all of the considerations that may be involved in delaying this letter. Certainly, if confirmed, I would, once I get there, be happy to work with you and to work with the Department and work with all the relevant agencies on making sure that we have vigorous antitrust enforcement in all the areas, including the one you note.

Senator KOHL. As we discussed in my office when we met, that is a high priority that I have, and I would like to feel that you will also feel that it is a high priority to get that letter of support. I

know you cannot assure me of it this morning, but I am listening carefully to what you say.

Mr. COLE. I appreciate that, Senator. This is a very important issue and one which I will look into, if confirmed, when I get there.

Senator KOHL. Thank you.

For several years, I and others have worked to restore COPS funding following years of cuts by the prior administration. Will you work to ensure that the COPS program continues to be adequately funded? And will you support the bill that we have to create a permanent COPS office within the Justice Department?

Mr. COLE. Senator, the COPS program is a very important part of a holistic law enforcement approach to crime throughout the country and to helping State and local law enforcement achieve some real gains and goals in the fight against crime. It is something I know the Department supports in many, many different ways, and I cannot imagine that there would be any lack of support in this area within the Department. It is an important program and receives the highest priority there.

Senator KOHL. Thank you, Mr. Cole.

Thank you, Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Senator Kohl.

Senator Hatch is not here. He is next in order. So we will go on to Senator Cornyn and then Senator Cardin.

Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman.

Good morning, Mr. Cole. Congratulations to you and your family for your nomination.

I have questions pertaining to some of your writings and opinions relative to the war on terror, and I appreciate the fact that when you wrote this article back in 2002, the state of the military commissions was in flux, both here in Congress and in the Supreme Court. But you recognize now, I think you have said, that military commissions can be an appropriate venue for trying foreign terrorists who have committed acts of terrorism against the United States. Is that correct?

Mr. COLE. That is correct, Senator.

Senator CORNYN. Let me ask you a little bit, there seems to be some confusion about Miranda, about Miranda rights. As I recall, when you detain someone and you read them their Miranda rights, the first thing you tell them is their right to remain silent. Is that correct?

Mr. COLE. That is probably the first part of the Miranda rights, yes.

Senator CORNYN. And why in the world would you read a suspected terrorist Miranda rights if, in fact, the first thing you want from someone who has committed a terrorist act is to find out more information about their travels, their associations, their planning, and their knowledge of terror networks? Why would you tell them the first thing out of the starting gate is that they have a right to remain silent? Or do you not support reading Miranda rights to suspected terrorists?

Mr. COLE. Senator, Miranda is a constitutional requirement that comes, as the Supreme Court has said, not from statute but from the Constitution. There is an exception that the Court has carved

out in the Quarles case, which is the public safety exception. When you capture a terrorist and there is the ticking time bomb or another plot evident, you can ask all the questions you want to secure the public safety without Miranda warnings.

Senator CORNYN. I understand. I understand that point, and I agree with you. I guess the question I would have for you is: What is the consequence of a law enforcement officer not providing Miranda rights to a detainee? They may constitutionally do so, correct? And the only result if they fail to do it and a court decides they should have done it would be to exclude evidence produced by that—any statement they might make or any fruit of the poisonous tree. Is that correct?

Mr. COLE. That is correct. The reason to give Miranda warnings is to make sure you can use whatever statements you get. Now, my experience, frankly, in criminal law for 30 years is that frequently, after being given Miranda warnings and after being given a lawyer, defendants and people who are detained talk. And they talk a lot.

Senator CORNYN. Well, that is when—but you cannot compel them, correct?

Mr. COLE. You cannot compel them, no.

Senator CORNYN. Consistent with Miranda. But I guess the problem I have had during the public discussion about whether Miranda rights should be given to people suspected of terrorist actions, both here and on the battlefield, is a confusion in the approach. And I worry, as others have stated, that we are lapsing back into what the 9/11 Commission called sort of a criminal law mind-set as opposed to one that, to use your words, I think, uses all the tools available in the national security interests of the United States.

So just to summarize, you would agree with me that if on Christmas Day the Miranda rights had not been given to the man who attempted to blow up that airliner, that you still could have tried him either in a military commission or in a civilian court and gotten a conviction if you were able to use other evidence other than his own statement or any information that might have been learned from that statement. In other words, if you do not give someone—if a judge says you should have given Miranda rights and you do not, that does not mean you are unable to get a conviction in every case, does it?

Mr. COLE. It does not mean you are not able to get a conviction. It certainly creates a number of issues and a number of obstacles to getting a conviction that I know most prosecutors try to avoid. There are enough surprises at any trial that we try to avoid as many as we can in bringing any case.

Senator CORNYN. Do you agree with the Attorney General that the trial of Khalid Sheikh Mohammed is still—that trial in a civilian court in Manhattan is still an option?

Mr. COLE. At this point, Senator, I know that matter is currently under review in the administration based on what I read in the paper. These are decisions that have to be made based on all of the facts and circumstances that relate to the case. Not being a part of the Department of Justice right now, I do not know all the facts and circumstances that related to Khalid Sheikh Mohammed's prosecution.

Senator CORNYN. I appreciate that, and I understand completely your statement. But would you agree with me that we ought to take into concern that one of the considerations that ought to be taken into account is the security and safety of citizens at the courthouse and in proximity to the courthouse should that be the focus of another terrorist attack? Would that be a concern?

Mr. COLE. We definitely should take into account the safety of our citizens in almost every decision we make. That probably should be the first thing we take into account.

Senator CORNYN. And if instead of pleading guilty, as he indicated he would do, before a military commission, if he pled not guilty and used this as a propaganda tool to incite like-minded jihadists around the world, would that be a concern?

Mr. COLE. Senator, as I have read throughout the time since 9/11, we have tried and convicted in our Article III courts hundreds of terrorists, including Zacharias Moussaoui, who made the same kinds of threats—

Senator CORNYN. I understand. But I guess my question has to do with the mastermind of 9/11, Khalid Sheikh Mohammed. Do you think that providing him a platform for propagandizing like-minded jihadists around the world, should that be a matter of concern?

Mr. COLE. Well, I think it is—the issue of whether or not a forum is open is really one we are going to face whether or not it is an Article III or a military commission. Both of them have requirements of openness to the public to view. So those are issues that are going to come up, regardless of which forum would be chosen at the end of the day.

Senator CORNYN. And if I can ask just one last question, this has to do with if there was an attempt to try Khalid Sheikh Mohammed in civilian court in the continental United States and for some reason he was acquitted, don't you think it would make good sense and be good lawyering to determine what his immigration status would be, for example, whether he would be eligible to seek asylum in the United States should he be acquitted?

Mr. COLE. There is no question we should deal with that, and, again, I do not know, but I would imagine the Justice Department has already looked at that issue, as I think they have with any number of the detainees, as to what their status would be at any given moment, as to whether they could ever be transferred, released, or in any way let go. Separate issues between a prosecution and the ability to actually let somebody go.

Senator CORNYN. I hope—

Senator WHITEHOUSE. Senator Klobuchar.

Senator CORNYN. Thank you.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Welcome, Mr. Cole. I enjoyed our meeting that we had in the office, and I enjoyed the focus that we had on some of the bread-and-butter issues of the Justice Department. It was my impression, being a prosecutor on the local level for 8 years, that it makes a big difference whether or not the Justice Department and the U.S. Attorney's Offices are functioning on a day-to-day basis and doing their jobs. I was very concerned when Attorney General Gonzales was head of that Department, some of the repercussions that it had on our own local U.S. Attorney's Office, and I just wanted your

thoughts on the morale issues. There were some serious concerns when Attorney General Holder took over, thoughts on that, as well as the focus on some of the bread-and-butter issues—white-collar crime, health care fraud, the drug crime, some of the bread-and-butter issues that I feel that the Justice Department, whether intentionally or not, had fallen away from during that period. Thank you.

What are your thoughts on it?

Mr. COLE. Oh. The Justice Department—and I think rightly so from an outsider's view—after 9/11 had to devote an enormous number of resources to national security. It was a new area and a new focus and certainly very important. And resources being limited no matter what had to be diverted. So a lot of the bread-and-butter issues were not given the attention that they needed to be given in the course of that run-up.

Now we again have limited resources, and I think it is one of the important issues for the Justice Department to make sure that we reinvigorate the traditional bread-and-butter functions of the Department to fight fraud, to fight health care fraud, to fight financial fraud, to fight public corruption, to fight every form of crime that it has fought, and just as importantly, to partner with State and local law enforcement to make sure that there is a coordinated fight against crime. This is not something that is done by one or the other. It is done together.

Senator KLOBUCHAR. When I was a prosecutor, I saw firsthand the effectiveness of some of these task forces on a multijurisdictional basis with local and State and Federal, and I will tell you that we have recently had big decreases the last 8, 10 years in crime, and the city of Minneapolis, which is our major metropolitan area, although just in the last few months we have seen some increases. So I hope when, as you get in there you will focus on some of those multijurisdictional task forces. I do think it is a smart way and it is also a way to coordinate resources.

But I wanted to ask you about something that you raised, which was the health care fraud. I am sitting right next to Senator Kaufman, who worked very hard on this issue. But could you talk about what is going on with the HEAT task forces and some of the work? I am interested in this not only because I think it is just horrific that billions of dollars are wasted on health care fraud, but also one of the things I noticed when we had the Justice Department here was that some of our most disorganized health care systems in the most disorganized parts of the country, like Miami, where the delivery systems are messed up, also breed fraud. Because there is not just Government that is not watching over them, but the private sector is not watching over each other.

Could you tell me your views on health care fraud, what is happening there, and give us an update.

Mr. COLE. Well, certainly I at this point am not privy to everything that is going on inside the Department other than what I learn through reading accounts of what is happening in the press. I have certainly been quite impressed with the Department's effort through HEAT to have a very broad-based approach to health care.

First of all, it is not just the criminal enforcement. It is also False Claims Act enforcement. It is the full civil and criminal pack-

age put together. And it is also not just scattershot. It is evidence-based. They are going to various jurisdictions and looking at where there is just off-the-chart billing that is going on in certain areas and focusing the resources in those areas initially. And it has created additional task forces as they have identified additional areas.

This seems to be a very intelligent, smart use of resources, and at least from what I have seen in the papers, a very effective way to go about policing this area that is costing billions of dollars to our citizens.

Senator KLOBUCHAR. Another area that you raised, Internet fraud. The 2009 Internet Crime Report by the Internet Crime Complaint Center was released in March. It revealed that complaints of Internet fraud were up 25 percent from over a year ago and that the total loss had doubled from 2008 to 2009.

I certainly found those cases difficult on a local basis to do. Sometimes it would be people in Nigeria committing these crimes. Sometimes it would be a multi-State fraud. And how is the Justice Department going to be able to assist with these and make this a major focus? Because I really believe that it is the crime of the future. We are already seeing it now. So it is the crime of the present as well. But crooks are using a computer, when they used to use a crowbar.

Mr. COLE. You have raised a very important issue, and it is certainly an issue that Senator Whitehouse had raised when we talked. This is—I think you are right. It is the crime wave of the future, and it is adaptable and changeable as technology adapts and changes. You buy a computer, in 6 months it is obsolete. All of our efforts to try and fight and all of the Justice Department's efforts to try and fight cyber crime and Internet fraud are obsolete so quickly because things change so quickly.

So it is an area that I think needs a great deal of attention to try and make sure we stay as far up on the curve as the Justice Department can in trying to fight this in really an ever-changing and adaptable foe in this area of crime.

Senator KLOBUCHAR. Thank you very much.

Senator WHITEHOUSE. Senator Graham.

Senator GRAHAM. Thank you, sir. Congratulations, Mr. Cole. Is your daughter here?

Mr. COLE. She is, Senator. Right here.

Senator GRAHAM. Do you like the College of Charleston? I will put a good word in for you. It will not help you at all.

[Laughter.]

If she made it, you will make it. I hope you have enjoyed Charleston. And thanks for the money you are spending in South Carolina.

Mr. COLE. It is my pleasure, sir.

[Laughter.]

Senator GRAHAM. We had a good discussion in our office about military commissions. I feel very comfortable that you understand military commissions have a role in the war, as do Article III courts. But I am going to express through our interchange here some frustrations, really not directed at you, but I have had some very extensive discussions with the administration about how Congress can help define some of the rules and how we can bring about

some legislative changes that will lead us to all be safe within our values.

Judges Lamberth and Hogan are two judges who hear habeas petitions from Guantanamo Bay detainees regularly, and here is what Judge Hogan had to say: "It is unfortunate, in my view, that the legislative branch of the Government and the executive branch have not moved more strongly to poverty uniform, clear rules and laws for handling these cases."

There are a bunch of quotes from judges basically asking Congress and the executive branch to give them some assistance. The Attorney General has mentioned it on more than one occasion that there are several areas where Congress could collaborate with the administration to provide some guidance.

Would you be willing to help us find that common ground?

Mr. COLE. I would be very willing to work with the Committee and to work with the Congress to help find that kind of clarity. My view has always been the more clarity, the better.

Senator GRAHAM. Well, the judges are asking this, and I very much believe in checks and balances, but our judges basically are sort of making this up as they go. And I think a uniform statute dealing with habeas right of Guantanamo Bay detainees not only would be helpful to the courts, it would make us a more secure Nation. It would allow us to potentially close Guantanamo Bay. The biggest problem we have with closure now is we have sort of lost the issue can we do it safely.

Could you comment very quickly? What rights would a detainee have if they were transferred from Guantanamo Bay to Thompson, Illinois, let us say, if that became the prison? Would they have more rights in Illinois than they would in Guantanamo Bay?

Mr. COLE. Senator, at least my understanding of the legal status here is I do not think that would change dramatically.

Senator GRAHAM. Could you get back with me? Because there is a real difference of view. I do not know the answer. I would love to get your thoughts after you get the job here, and I assume you will be confirmed.

Now, on Miranda warnings, the goal to me when you capture someone who just tried to blow up an airliner or blow up a van in Times Square, and we believe it is a terrorist activity, is to find out what they know about the ongoing war. You share that goal. Is that correct?

Mr. COLE. I do, Senator, yes.

Senator GRAHAM. And I have been working with the administration, Senator Durbin, and others to find some pretty common-sense exceptions to the Miranda rule by statute, built around the public safety idea, to give our intelligence officials and law enforcement officers a chance to find out more about the detainee before they start assigning lawyers to this person.

Would you support that endeavor?

Mr. COLE. I would very much, if confirmed, be anxious to work with the Committee and work with Congress to find a way to give more clarity and flexibility around the Miranda rule. It is a constitutional dictate, so we will have to have it, no matter—

Senator GRAHAM. Absolutely, and we could build off the public safety exception, have a statute that allows a couple of days for the

intelligence community to assess who this person is, then go to a judge and ask permission to continue to hold for intelligence-gathering purposes, but only if a judge said yes, sort of like a FISA hearing.

We have fleshed this out, but I am very frustrated. We are 2 months after the initial discussion almost, and nothing has happened, and the war is moving on a lot faster than some of the solutions to deal with the war. So I would appreciate any efforts you could lend to this cause of getting Congress and the administration moving quickly to deal with real issues about presentment.

You know, Mr. Kris that you mentioned before gave a speech yesterday that was a bit troubling to me. We have been working on two problems that Miranda presents—two problems with terrorist detention here in the United States: One, the Miranda warning to give some flexibility, and you are right, the Miranda warning itself may not be an impediment in every case, but I just want to give the option to the law enforcement and intel community. And second is presenting the detainee to a judge for charging within 72 hours. To me that seems to be a very small period of time to make an intelligent decision about how to handle this person.

So we are working on some statutory relief mechanisms that would live within our value system, have checks and balances, but provide more tools to the intelligence and law enforcement community fighting this war. And I look forward to working with you on that.

Finally, about habeas review, one case now before the Court, a habeas petition was granted because the Government could not prove at the time of capture the person was a member of al Qaeda. But they did have proof that the person was a member of al Qaeda shortly before the time of capture. One of the things that we are looking at is a presumption that once you are a member of al Qaeda, you are always a member of al Qaeda. But it would be a rebuttable presumption.

Do you think tools like that would be helpful to the judges and to your prosecutors trying to deal with these cases?

Mr. COLE. Senator, anything that can provide more clarity I think is always helpful, because the less that is known and the less certain you are, the more difficult it is to administer some of these laws that we have. All of the facts and circumstances are going to be new and fresh in each case, and I think anything we can do to provide clarity and provide certainty is always helpful.

Senator GRAHAM. And this is what the judge or judges are asking for. I trust their judgment, but we just need some uniform rules dealing with these cases that are unique and novel and a hybrid system of using the best of the civilian and military justice systems.

So I look forward to working with you on these issues, but time is of the essence. The war is ongoing. They are out there coming after us right now, and I do not want to confuse the two systems to the point that the enemy gets an advantage. There is a role, in my view, for an Article III system in the war on terror. There is an equally important role for the military justice commission. But when you capture these guys, the first thing I want to know is: Where did you train? Is something else coming? And our legal sys-

tem now does not give us the flexibility to make those good decisions, and quite frankly, we have just been lucky that these bombs did not go off. And we are going to run out of luck, and I stand ready as a Republican to work with the President to change our laws in a way to make us safer, live within our value system, and try to find a way to close Guantanamo Bay, if we can. And I look forward to working with you in those endeavors.

Mr. COLE. Thank you, Senator. I do as well.

Senator WHITEHOUSE. Before I call on Senator Kaufman, who is next, let me just add my own emphatic underline to Senator Graham's offer to work with this administration. In the 3 years that I have worked with him, I have come to the strong belief that he wants to work on these issues in completely good faith, and I know that he is very knowledgeable and expert in this area. So add that emphatic underline, and if you would be good enough to work with our side of the aisle, too, that would also be nice.

Mr. COLE. I would look forward to working with everybody.

Senator WHITEHOUSE. Senator Kaufman.

Senator KAUFMAN. Thank you, Mr. Chairman. And I also want to say before I start, Senator Graham has been so—he has not just worked hard, but so articulate and so thoughtful in what he is doing. And I just think it is a wonderful thing to see when bipartisanship really works, and on this issue, Senator Graham has been great.

And I want to thank you for agreeing to do what you have agreed to do. And I want to thank your family because, really, the biggest sacrifice here is going to be made by your family, because this is not a job where you get to come home every day at 5 o'clock. And so I really appreciate what you are doing. But I tell you, when you look back on it, it is a great thing to look back on. So I want to thank you for what you are doing, not just because you are making the sacrifice but because you bring so much to the job.

As you know, as Senator Klobuchar, get the bread-and-butter issues. These other issues are important, but clearly most Americans are concerned about what we are doing, what Justice is doing to make sure that they feel like they are safe and secure, not just from international terror but also from domestic crime and domestic fraud and those kinds of things.

So I want to spend some time, as you know, talking about my favorite subject, which is what are we going to do to make sure the people that were involved in this financial crisis pay the price? And as you said, with the reduced resources in many areas, the bread-and-butter issues get harder and harder, but this is an area where we have funded pretty well. We have got \$175 million coming just to go after financial fraud, and I would like you to spend just a few minutes talking about what kind of priority you think that is and kind of your thoughts moving forward when you are confirmed for Deputy Attorney General.

Mr. COLE. Thank you, Senator Kaufman. The area of financial fraud is something that has impacted every single American. The loss of money, the loss of savings, the loss of retirement accounts, the loss of faith in our capital markets has been devastating. And it is something that we need to make sure that people are held accountable for. This is so important, because only by making sure

that people know that there are consequences to having perpetrated this kind of fraud will we have a hope of deterring anybody from ever doing it again.

I harken back to some of the discussion I have had with Senator Sessions. One of the main ways to do this is to go after the individual executives who are responsible to make sure that they have skin in the game, that they are not just going to walk away because their corporation takes a plea. It is they who would go to jail. It is they who will suffer the consequences. And it is they who made millions and millions of dollars who will be forced to give that back. That to me is one of the keys that could come in in a successful program to deal with this.

Now, from what I see, there has been an increase of resources, and it is actually hitting the ground. I have talked to old friends in the Fraud Section in the Criminal Division, and they have told me they are hiring now, and that has been something that has been promised for years and is finally being done. And I find that a very, very important first step, getting boots on the ground to actually start dealing with this issue. There has been a lot of talk about it, but it is finally getting done, and I find that very, very encouraging.

Senator KAUFMAN. And talk a little bit about coordination. You mentioned coordination, that it is so important. Let us start with the U.S. Attorneys. Basically we all know there is a long history of U.S. Attorneys being protective of their turf. This goes back to Republican and Democratic administrations and Main Justice. And so you have cases actually being carried on in Main Justice, and they could be carried on in the U.S. Attorney's Office without true coordination. How do we get the U.S. Attorneys and Main Justice—because you are uniquely positioned, you and the Attorney General are the only people in the Justice Department that all the different sections of the Department of Justice report to. So having someone who can make sure—can you just talk a little bit—I know your experience with these things. Talk a little bit about how we make sure that the U.S. Attorneys—for instance, mainly U.S. Attorneys in the Criminal Division operate together. They share everything they are doing.

Mr. COLE. When I was in the Justice Department years ago, the most successful cases that I saw were those that were brought where the Criminal Division and U.S. Attorneys' Offices worked together. There is a great deal of expertise that can be mined out of the Criminal Division, and there is an enormous amount of talent in all the U.S. Attorneys' Offices.

This is much like everything else we do. We need to use all of the tools we have, and we need to make sure that we avoid turf battles. We need to avoid any sort of petty infighting. Sometimes there are important issues that come up, and they do need to be dealt with, and there are valid complaints and valid issues about who should have a case. But we are a very large organization, and the more that that organization—the more the Justice Department can work together, the greater the success.

Senator KAUFMAN. And how do you—I mean, kind of mechanically, how does it work? I mean, really, the only two people that can really enforce that and make sure it works are you and the At-

torney General. Moving forward, how do you see that actually happening?

Mr. COLE. Well, certainly, looking forward, it would involve the Assistant Attorney General for the Criminal Division, Mr. Breuer, who is an excellent prosecutor and lawyer. He would be interfacing with a lot of the U.S. Attorneys on these cases. The individual attorneys in the sections who have the expertise, as the U.S. Attorneys' Offices get more familiar with them and get to know them and get to see what the value-added can be and the resources that are added can be, then they start to be comfortable. They start to actually work together.

A few successes is usually the key to make everybody start to break through the dam and realize that there is gold to be mined from the cooperation.

Senator KAUFMAN. And, you know, there are a number of reports. The joint savings and loans, one of the key places to obtain information to bring cases was the bank regulators. Can you talk a little bit about how we get the bank regulators into this thing?

Mr. COLE. There have been a large number of Federal agencies that have touched this financial meltdown, and we need to really mine what we can from them, because they all have a perspective and they all saw a part of it that could be very helpful in trying to bring these cases.

We should make sure that we use whatever sources of information that can be found, and the Justice Department—if I were confirmed, I would push this—needs to use whatever sources of information can be found to get insights into how the financial problems occurred, who was responsible for them, all leading to an effort to try and bring those people to justice.

Senator KAUFMAN. And, finally, I just want to really thank you for what you are doing. I think it sends a clear message. This is not about retribution. This is about making sure that everyone gets treated fairly. But there are people on Wall Street—I spent time up there talking to folks and talking to reporters that cover Wall Street—who basically think they got through the financial fraud thing absolutely scot free. And they believe that they have—because these cases are so complex and because they have very, very good attorneys on their side, they genuinely believe that they can get away with this. And I think it is really important not just for retribution but important to where we go down the future that we are working together.

There was a good article in the Washington Post today about the people that are bringing the Securities and Exchange Commission. I think having you come on and do this job is an incredible sign. I think Lanny Breuer, I think the people that we are getting are really key so that we do not have another meltdown with, as you said, all the damage that was caused by that, by people that just think they can do it and without any fear of retribution. That is an important part of how our system works.

So, again, thank you very much for what you are doing. It is very, very important.

Mr. COLE. Thank you, Senator.

Senator WHITEHOUSE. Senator Cardin.

Senator KAUFMAN. Thank you, Mr. Chairman.

Senator CARDIN. Thank you, Mr. Chairman.

Mr. Cole, once again, thank you for your public service. Thank you to your family for the sacrifices that they put up. I know the sacrifices they put up when you were doing the investigation for the House, and we know this is a family effort, so we thank you all for your willingness to serve in the public.

Senator Danforth made an observation that I fully agree with, and that is, his observation is that you will call it the way it is, that you will do what you think is right, and you have an ability to avoid the pressures, outside pressures, and do what you think your job requires you to do.

I saw that in the investigation in the House with Speaker Gingrich. There were many times that some of us disagreed where you were heading, including yours truly, and you were persuasive in the way that you handled it to get us back on the path to resolve the case as it should have been resolved.

Do we have your commitment, as Deputy Attorney General, that you will continue to call it the way you believe is right and that you will not be influenced by partisan politics or popular sentiment, and that you will continue carrying out your responsibilities the way that you believe is right?

Mr. COLE. Senator, if I am confirmed, you have that as a firm commitment from me.

Senator CARDIN. Thank you. So let me test you on one area, which Senator Graham was talking about, which is the closing of Guantanamo Bay. It is a tough issue. It is a very tough issue. And I am not trying to make it easy to accomplish the goal of closing it. But one of the challenges—and I was recently down in Guantanamo Bay. It was not my first visit. I have been there several times—I have been there twice.

What do we do about those detainees that we cannot bring to trial, there is no place really to send them, and we are going to have to detain them for a longer period of time? President Obama and Attorney General Holder made a commitment—and Senator Graham was part of that—that there would be a process in place to review their status so that we could present to the international community that we are using due process of law to make sure that people who are being detained, there is justification for their detention, even though they are not being brought to a criminal proceeding and not being released.

I questioned Attorney General Holder as to when we might expect to receive that guidance, and the narrowest I could pin him down to would be more than a few days and less than a year. I would hope that you would tackle this issue and help us resolve it because in the eyes of the international community, Guantanamo Bay is an icon of abuse. And part of it is that people who may very well be terrorists are still entitled to the rule of law. And we need to make sure that is complied with in the way that we manage this, not just internally, but to the international community.

So I sort of charge you with your reputation to try to bring this to conclusion sooner rather than later.

Mr. COLE. Certainly it is a matter, if confirmed, that I would look into. It is, I think, a very important and high-priority matter, Senator.

Senator CARDIN. I want to bring up one other issue, and that is, this past Friday I was down in the Gulf of Mexico, saw firsthand the horrific damage that has been caused by the BP oil spill. It is hard to imagine just how vast this problem is. We saw oil everywhere. We saw it on Grand Isle, which is a beach community, not too different than Ocean City, Maryland, where there was nobody there other than people cleaning up the beaches. Normally, there would be vacationers. And I cannot imagine what would happen if we had to close Ocean City for a season. And you take a look at the sensitive islands where birds are nesting and see oil all over.

I guess the point I want to stress is that BP oil needs to be held fully accountable for the damages that they have caused. In their application for their permit, they said that they had proven technology to deal with any type of a spill. They did not have proven technology. They are trying to deal with this issue on the fly, and it should have been done in advance. There should have been ways to contain this oil in the event of a spill. That technology should have been onsite. And the best technology they have today may contain upwards to 28,000 barrels if they get fully successful before the relief wells are drilled. And yet we know it is now closer to 40,000 barrels of oil pouring into the gulf.

I guess my point to you is, if you are confirmed and you become Deputy Attorney General, we need to make sure that the people of this Nation are protected. There should be no Government bailout for the damages caused by BP oil. But we have to have aggressive law enforcement. The Department of Justice needs to be there and devote a significant amount of resources to help those small business owners, to help those property owners, to help the taxpayers, and to protect our environment for future generations, assessing accurately the amount of damage caused to our environment and holding BP responsible.

Will this be the highest priority within the Department of Justice under your portfolio if you are confirmed?

Mr. COLE. Senator, my understanding is it already is a very, very high priority in the Department of Justice. The devastation that has been visited upon the gulf is important to the President. It is important to the Attorney General. It is very important to the people who live down there, and that every effort, as I understand it, is being made to address all the issues that you have just outlined as very, very important prerogatives of this Government.

Senator CARDIN. Well, once again, Mr. Cole, let me thank you for being willing to serve the public. You have a very, very distinguished career, and your experience is what we need, and I wish you well.

Thank you, Mr. Chairman.

Mr. COLE. Thank you, Senator.

Senator WHITEHOUSE. Mr. Cole, like many of the graduates of the Department of Justice, I watched with real horror and dismay as the events in the Department of Justice under the Gonzales Attorney Generalship unfolded. One of the most horrifying was what happened at the Office of Legal Counsel. It is almost unimaginable to somebody of my vintage in the Department of Justice that the Office of Legal Counsel would be the subject of an Office of Profes-

sional Responsibility investigation. But that happened, and we have to deal with that.

The Office of Professional Responsibility investigation went forward, and it, too, ran into its own problems, and David Margolis reviewed the OPR investigation and had a variety of critical comments about that.

I have my own concerns about Assistant Deputy Attorney General Margolis' review, and I would like to have the Department clear this up once and for all and put this episode behind it.

The concern that I have about David Margolis' review is that I think he sets the standard for OLC attorneys far too low in his opinion, and I think his opinion under Department protocol becomes precedent. So I would like to ask you when you are confirmed, assuming you are confirmed—I expect you will be confirmed—to review that determination and make a departmental determination as to what the standard should be for lawyers at the Office of Legal Counsel.

Where it stands right now is that a regular day-to-day lawyer with the files under his arm and the ruffled suit, going to the court to bang out his cases every day, is held, when he makes representations about what the law is to the court, to a higher standard than the Office of Legal Counsel is held to when they give advice to the President of the United States. And I think that is wrong. I think that when a lawyer is before a court, the standard that they are held to has a couple of safeguards. One is the judge is going to do their own independent research, and so there is a good likelihood that any error or effort to mislead by the lawyer will be found. And, second, he has his distinguished opposing counsel, if you do not mind if I put you in the role of opposing counsel here for a moment, to explain to the court why that lawyer's argument is wrong and why he has overlooked certain cases.

OLC does not have those checks and balances. OLC's opinions are often secret. The President may not even be a lawyer. For all those reasons, I think that the standard for the Office of Legal Counsel, which, as you and I recall, was the gold standard—these were people who went on to be Supreme Court judges. These were people who were the top of the profession in the United States. The idea that they are held to a lower standard than the regular work-a-day lawyer who is slugging it out with 12 cases under his arm and paper files in the superior court every day to me just seems dead wrong.

So, please, if you would review that when you get there. I think there should be a formal departmental determination made as to what the standard is rather than just the Margolis opinion lasting as precedent. Will you do that?

Mr. COLE. Certainly it is a matter that I would be, if confirmed, happy to look into, Senator.

Senator WHITEHOUSE. The second issue that I want to ask you about is cyber. We talked a little bit about it, as you indicated, when we met. I have a very persistent and serious concern that the American public knows far too little about the damage that the United States of America is sustaining now, yesterday, tomorrow, through cyber attacks, both from infiltration into our computers in ways that allow later harmful actions to be triggered; from tradi-

tional crime, banks being robbed in ways that would make, you know, Bonnie and Clyde look like pikers; and probably the most significant industrial espionage piracy in the history of the world, the biggest transfer of wealth I think ever is happening right now, and we are on the losing end of it. And it is all more or less invisible to the public because if you are in dot.mil and dot.gov, it is classified so deeply that nobody hears about it; and if you are in dot.com, dot.org, or dot.net and you are a corporation, you have a proprietary interest in not letting that information get out. The banks do not disclose that they got hit for tens of millions of dollars because they do not want their competitors to know, they do not want their customers to know. The net result of all of that is that the public does not know.

So I would ask you to review with the Attorney General where our classification policy is on this so that we can make a decision about how much to disclose to the American people about what is actually happening to our country so that they can be engaged in a proper way in the legislative and public acts that need to follow. I think that we are way to the side of secrecy to the point where the secrecy is actually damaging our national security now rather than protecting it. Will you look at that?

Mr. COLE. Certainly, Senator. I think those are important issues and important balancings that need to be done, and certainly the right balance and the right position needs to be found between both the secrecy that is required and the import of getting out those messages to the public.

Senator WHITEHOUSE. You do not necessarily have to give up the name of the bank for the public to know that X gazillion dollars were stolen from an American bank by cyber criminals in this period. And that is the kind of information I think people need to know.

You mentioned earlier that lawyers, prosecutors, like as few surprises as possible, and as somebody who has had the privilege of preparing Federal cases and walking through that analysis, we do try to analyze very carefully how the case is going to go down its path and eliminate as many surprises as possible.

In that context, do you have views on the military tribunals—and I mean the new ones that have been cleaned up of their previous unconstitutional problems, but still do not have as much settled jurisprudence about the conduct of the tribunal and the rules that govern it as an Article III court has from tens of thousands, hundreds of thousands of criminal trials and the precedent that has developed in those over the years.

As a trial lawyer preparing a case and making the decision whether you are going to a military tribunal or to an Article III traditional criminal court, would that factor of the unsettledness of the law in one area versus the settledness of the law in the other weigh as a factor in that calculation? And should it?

Mr. COLE. Senator, I think it should weigh as a factor, and it is, in fact, one of the factors that Assistant Attorney General Kris had mentioned in his speech. But it is not the only factor, and there are any number of factors that will go into on any individual case the decision of where to bring it, either in Article III or a military commission.

But certainly the issues that will be coming up and the issues that will be presented, some of them may be more settled. Some of them may not. But certainly the state of the law and the state of the law in any given forum is certainly one of the factors that should be looked at in making that determination.

Senator WHITEHOUSE. My time has concluded. I think we are going to go into a second round. I would like to follow up on some of the discussions that we have had, and I know Senator Sessions has further questions. So, without further ado, Senator Sessions.

Senator SESSIONS. Thank you. Mr. Chairman, with regard to Dave Margolis, he was in the Department of Justice when I came as an assistant—when I was a young assistant. He had been there a long time, it seemed then, and he loves the Department—

Senator WHITEHOUSE. By the time I got there, he was there a really long time.

Senator SESSIONS [continuing]. Is a leader in this Department. He was always known as an independent guy. He had long hair and he wore jeans around, but everybody knew of and over the years came to respect so greatly his integrity.

I would submit for the record, in light of your comments, a list of a host of former Department of Justice high officials who wrote a letter defending him and his decisionmaking process and his integrity just for the record.

Senator WHITEHOUSE. Without objection.

[The information referred to appears as a submission for the record.]

Senator SESSIONS. I do not think you were attacking his integrity in any way, but—

Senator WHITEHOUSE. No. Just disagreeing with the conclusions he came to.

Senator SESSIONS. Well, I do not disagree with it, and it was a decision that the Office of Legal Counsel made after a great deal of research and effort, and it sought to give what the President said he wanted, which was maximum—what is the limits of my executive power. People have disagreed with how far that memo went, but I think it had a basis.

I would say that Mr. Cole's op-ed, when he basically said that military commissions are inconsistent with our spirit and our Constitution, was in error. If he had done that as OLC, he might have been subject to the same kind of second-guessing.

I want to get this straight. I know we are in a political world and everybody has got different views about how we ought to handle matters as a matter of policy, but there is a choice between taking someone and treating them as a criminal who has been arrested and an enemy who has been captured. You capture enemies. You arrest criminals.

We have authorized a military force against al Qaeda, and it is clear to me that anyone associated with al Qaeda that is captured can be treated as a prisoner of war. And we did not provide prisoners of war lawyers or speedy trials. They are just held until the war is over. Every nation in the world does that. That is consistent with our understanding of war.

So when you apprehend somebody who came right out of Yemen with a bomb on his person, coming from an al Qaeda group, deter-

mined to murder American citizens, that is not a normal criminal. That is an enemy that has been captured. It seems to me that it just makes common sense that the presumption would be that that individual would be held as a combatant, an enemy combatant. If they acted unlawfully, which he did in that case, he could be tried by a military commission. But if you wanted to talk to the individual about intelligence or other things, he could be held as a prisoner of war and not provided a trial by a military commission for as long as the war exists. Once the war is over, they would be released, if not tried.

It also seems to me to be clear that once a person is in military custody, they can be transferred to civilian custody and tried in Federal court. But if you treat them as a civilian from the time of the arrest, they have to be told they have a right to remain silent, even though there might be some public safety exception, which is very vague, maybe 50 minutes of questioning of what I have seen so far, that he has a right to a lawyer who will immediately tell him not to cooperate and not to talk. He would be entitled to a speedy trial, at least except for the exceptions that occur, and discovery of the Government's case. Then you have to have a trial in a public courtroom somewhere with jurors and security and guards on buildings, which led, I believe, the mayor of Alexandria to say, "[n]o more. I do not want another one of those." You cited the Moussaoui case, the 19th hijacker. That took 4½ years and was pretty much a circus. He had to be removed from the courtroom three or four times.

In a military commission they can be held as a prisoner of war. They can be given a lawyer and set for trial. They will not be tried without a lawyer. They can be sent to civilian court if that is the choice and that happens.

So the problem is that the Attorney General's commission has said that all the prisoners at Guantanamo—I think there are 170 or so now left. The presumption is that they will all be tried in civilian courts, and that presumption seems to be carrying over as to when people are arrested, as the Christmas Day bomber. And that is putting us in the Miranda situation that has to be done, in my view.

So I guess my question is: Will you evaluate that? Is it still the Department of Justice policy that everybody at Guantanamo is presumed to be tried in the civilian courts even though they may have been captured on the battlefield in the Middle East?

Mr. COLE. Senator, at least as I understand the protocols that were developed for the review of the Guantanamo detainees—and that review has largely been completed—had that presumption, but it was not determinative, as I think has been stressed time and time again, at least from the readings I have done. It is a decision that is made based on a myriad of factors, perhaps hundreds of factors. Each different fact involved in the case, each different legal issue is going to be evaluated and a determination of what is the most effective place to try any of these people who are determined to be tried.

Senator SESSIONS. Well, the Attorney General has said that, and I can accept that to a degree, except that the people being held in Guantanamo are held as military combatants, as prisoners of war,

initially at least, and still are, and they can be, as you said, transferred to civilian court.

Why wouldn't we treat everybody we capture, at least initially, as a prisoner of war, as a combatant that meets the evidence of that? Why wouldn't we treat them like that and then make our decision later as to whether to move them in Federal court, thereby eliminating a lot of the immediate problems that will arise instantly if you treat them as a civilian criminal?

Mr. COLE. Senator, you pose an important question. I think there is, I would imagine, a great deal of thinking and background that has been gone through within the Department of Justice that I am not privy to that certainly has led to some of these conclusions. I think the nature of what kinds of law enforcement forces we have within the United States that could operate and arrest the various people who are captured is part of it. I think the determination in the first instance upon arrest of whether or not somebody is part of al Qaeda or the Taliban or associated with them may not be a very clear determination that can be made right away, and there are issues that will come into play there as to whether they are, in fact, qualified to be treated as enemy combatants.

I think it is, from my own imagination, an incredibly difficult and important issue that you raise, and I would have to imagine that there has been a lot of background and thinking already done in the Department on it.

Senator SESSIONS. Thank you. I do not know that. Maybe there is. To me that would be maybe something we could all reach an agreement on how to treat a person initially arrested, and if they meet the standards of an enemy, I think we would be better off without any doubt—I do not think it is a close question. Without any doubt, we would be better treating them under the military commissions until we decide otherwise.

Senator WHITEHOUSE. A vote went off 6 or 7 minutes ago, so we will have to bring this hearing to a conclusion. The record will remain open for an additional week, I believe, and I will follow up on the questions that I had in the form of written questions for the record.

One thing I would like to mention in closing, though, is that there has been a certain amount of discussion about what took place down in the gulf, out at the Deepwater Horizon and this geyser of oil that is spouting into the gulf right now. And one thing that strikes me is that—are you familiar with the doctrine of regulatory capture?

Mr. COLE. I have heard it. I am not intimately familiar with it, Senator Whitehouse.

Senator WHITEHOUSE. The MMS was the subject of what would be described as “regulatory capture.” There was quite a good reference to that in the Wall Street Journal the other day on the op-ed page by a senior fellow of the Cato Institute. We do not often agree, but we do agree on this.

I think there is a role for the Department of Justice in protecting the Government of the United States against regulatory capture, against protecting components of the Government of the United States from becoming the tools or the servants or the puppets of the industry that they are supposed to be regulating. So I would

ask you to think—you have spent time in the private sector; you have spent time at the Department—in your role as Deputy Attorney General about how the Attorney General might best perform a role of assuring the American people that the Department of Justice can and will protect the public—and, frankly, the integrity of Government—when in some far off precinct of the Government, this phenomenon of regulatory capture has been allowed to occur. And I would appreciate it if you would give that some thought, and we can talk about it later. But I know we have to rush to the vote, so thank you very much, and thanks to your family—

Senator SESSIONS. Could I add one thing? Senator Grassley had some questions about your actions as monitor of AIG during the time that led up and including the time that they collapsed, and I did, too. I noticed that Whistle Blogger, Corporate Counsel, Wall Street Journal has been somewhat critical or questioning of how you conducted that, being the Federal Government person sitting in the middle of that company, supposedly monitoring it, when all these things occurred. So I guess the time is such we cannot ask that today. I appreciated the opportunity to talk with you about it yesterday a little bit. But we will submit written questions, Mr. Chairman. Thank you.

[The questions appear as a submission for the record.]

Senator SESSIONS. Thank you.

Senator WHITEHOUSE. I thank the Ranking Member, and the hearing is adjourned.

[Whereupon, at 11:58 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

**QUESTIONS AND ANSWERS
Responses to Questions for the Record
of the June 15, 2010 Confirmation Hearing of**

**JAMES M. COLE
Nominee to be Deputy Attorney General**

**Senate Judiciary Committee
July 2, 2010**

QUESTIONS POSED BY CHAIRMAN LEAHY

Fraud and Public Corruption

1. The recent financial meltdown and the failures of government regulation that contributed to it have made it abundantly clear that there is a pressing need for stronger criminal enforcement of fraud and corruption. As a long-time public corruption prosecutor, you understand the need to hold accountable those people who purposefully defraud investors, destabilize the economy, and take advantage of hard working taxpayers, as well as those public officials who violate the public trust.

I have worked hard with Senator Grassley, Senator Kaufman, and others to pass key anti-fraud legislation in this Congress, and we hope to strengthen fraud laws still further. Senator Cornyn and I have introduced a bi-partisan anti-corruption bill, the Public Corruption Improvements Act, which gives prosecutors important new legal tools to fight corruption, and provides resources to key federal agencies for the investigation and prosecution of public corruption offenses.

If confirmed, will you support Congressional efforts to strengthen fraud enforcement and to give federal investigators and prosecutors the tools and resources they need to effectively combat public corruption?

Response:

Yes. If confirmed as Deputy Attorney General, I will certainly support Congressional efforts to strengthen fraud enforcement and provide investigators and prosecutors with the tools and resources they need to perform effectively.

I am aware of the Department's current initiatives to combat health care fraud, mortgage fraud, procurement fraud, and securities fraud. If confirmed, I expect to continue these initiatives and to expand upon them as needed. I am also aware of the enactment of the Fraud Enforcement and Recovery Act of 2009 under this Committee's leadership. It is my understanding that this legislation has

provided the Department with significant new statutory authority to combat fraud, such as improvements to the False Claims Act.

Your question refers to the “Public Corruption Prosecution Improvements Act” (S. 49) sponsored by you and Senator Cornyn. I understand that the Department supports this legislation. If confirmed, I would work with you and other members of the Committee to strengthen the Department’s tools against corruption.

Intellectual Property Enforcement

2. I was pleased that the Attorney General recently formed a Task Force on Intellectual Property as part of an ongoing effort to combat intellectual property crime, which threatens consumer safety and costs American jobs. The Deputy Attorney General chairs this Task force. Will you work with me and other Members of the Committee on possible legislative approaches to prevent intellectual property theft?

Response:

Yes, I will. I believe that the theft of intellectual property in the United States and overseas presents serious threats to American economic security. If intellectual property is not protected, innovation and business development are stifled. I am aware of the new Department of Justice Task Force on Intellectual Property and would look forward to playing a key role in this area as chair of that Task Force.

In my view, it is important to strengthen efforts to combat intellectual property crimes through close coordination with state and local law enforcement partners as well as international counterparts. And we need to be cognizant of the links between intellectual property crime and international organized crime. If confirmed, I look forward to working with Members of the Committee to consider whether there are legislative efforts that could help to address this serious problem.

Congressional Investigations

3. Congress has a constitution obligation to perform oversight and hold the executive branch accountable for its actions. The Senate Judiciary Committee plays an important role in the oversight of the Department of Justice. I have conducted vigorous oversight, working to ensure the Department’s independence and integrity. When you were appointed to serve as special counsel to the House of Representatives Committee on Standards of Official Conduct, you worked to hold elected officials accountable by spearheading a congressional investigation into allegations that a member of Congress used tax-exempt money for political

purposes. As you noted in your testimony, the investigation led to a bipartisan resolution of the matter. If confirmed, will you continue to support vigorous Congressional oversight and cooperate with Congressional investigations?

Response:

Yes. I recognize the importance of congressional oversight and, if confirmed, I will work with others in the Executive Branch to accommodate the information needs of this and other congressional committees, consistent with the Department's responsibilities.

QUESTIONS POSED BY SENATOR WHITEHOUSE

4. As I stated at your confirmation hearing, I disagree with portions of the analysis performed by David Margolis in his review of the Office of Professional Responsibility's investigation into the work performed by the Office of Legal Counsel during the Bush Administration.

One, I found it curious that Mr. Margolis sought to excuse the Office of Legal Counsel's failure to cite *U.S. v. Lee*, 744 F.2d 1124 (5th Cir. 1984), on the basis that the *Lee* opinion does not spell out the precise method of the waterboarding at issue in that case. The absence of such a description from the opinion only has meaning if (a) the court did not know what type of waterboarding was at issue, making its opinion of little precedential value; or (b) the technique could not be discerned from the record, so no one could tell whether it was pertinent to the technique evaluated by the Office of Legal Counsel. A quick study of the briefs in that case makes clear that the court and the parties (including, specifically, the Department of Justice) knew very well the details of the waterboarding in that case. Indeed, it was almost identical to the waterboarding evaluated by the Office of Legal Counsel. Mr. Margolis' excuse was thus logically meaningless.

Two, I have pointed out that the standard for candor of Office of Legal Counsel attorneys, who often opine in secret to non-lawyers, surely must be higher than that applicable to a workaday local lawyer appearing in court before a judge and against an adversary who can point out omissions in his argument. I believe that the Department would be well served by making clear that Rule of Professional Conduct 3.3, which governs candor to a tribunal, represents a minimum standard expected of attorneys in the Office of Legal Counsel.

- a. If confirmed as Deputy Attorney General, will you take appropriate steps to ensure that the Department, in evaluating the legality of conduct undertaken by the executive branch, will pay all proper attention to prosecutions the Department itself has brought against third parties who have undertaken the same conduct?

Response:

I recognize the importance of ensuring that the conduct of executive branch employees complies with applicable law, which may include standards articulated in relevant case law. If confirmed, I expect to become familiar with the internal standards that apply to Department employees and I will work to ensure that their conduct is above reproach.

- b. Will you reconsider what the standard should be for candor in Office of Legal Counsel opinions, and whether Rule of Professional Conduct 3.3 should provide a minimum standard?

Response:

If confirmed, I will work with other Department officials to consider that question.

5. The United States faces serious and growing cyber security threats. Many of my colleagues in the Senate realize, as I do, that Congress must act. Indeed, there are over thirty five cyber bills currently under consideration in this body. Clearly an important national debate must take place on the proper approach to addressing the cyber security threats we face.

Senators engaging in such a debate must be informed about the true nature of the threats our nation faces. Moreover, for our democratic process to work effectively, it is vitally important that the public also understand the threats we face so that Americans can weigh in on the proper response to those threats. Unfortunately, however, much of the information necessary to inform the public is either proprietary information owned by corporations or classified information withheld by the government.

As a Senator, existing law does not allow me to release important classified information to the public. The Justice Department, on the other hand, does have the authority to declassify information that would greatly inform the upcoming public debate on cyber security. If confirmed as Deputy Attorney General, will you conduct a review to ensure that information relating to cyber security is not needlessly classified, but rather that it is publicly released as often as is appropriate so that Congress and the American people can have an informed debate on American cyber security policy?

Response:

I share your concerns about cybersecurity threats to the nation. If confirmed, I will explore ways in which the Department of Justice can release important information about cybersecurity to the public, consistent with national security considerations.

QUESTIONS POSED BY SENATOR SESSIONS**War on Terror:**

6. At your hearing, you and I discussed the Department of Justice's decision to impose a presumption that all the prisoners at Guantanamo Bay will be tried in civilian courts. This presumption is embodied in the administration's July 2009 protocol entitled, "Determination of Guantanamo Cases Referred for Prosecution," which states that "[t]here is a presumption that, where feasible, referred cases will be prosecuted in an Article III court, in keeping with traditional principles of federal prosecution." Your 2002 op-ed also argued in favor of prosecuting the 9/11 terrorists based on traditional principles of federal prosecution, correct?

Response:

My understanding is that the Departments of Defense and Justice agreed on a protocol for deciding whether Guantanamo Bay detainees referred for possible prosecution should be prosecuted in federal court or in a reformed military commission. According to that protocol, which has been publicly released, "[t]here is a presumption that, where feasible, referred cases will be prosecuted in an Article III court, in keeping with traditional principles of federal prosecution. Nonetheless, where other compelling factors make it more appropriate to prosecute a case in a reformed military commission, it may be prosecuted there." The document explains that this determination turns on a number of factors, which are "based on forum-selection factors traditionally used by federal prosecutors," including among others the nature of the offenses, the location in which the offenses occurred, the manner in which the case was investigated and evidence gathered, protections for intelligence sources and methods, foreign policy concerns, efficiency, and available sentences upon conviction. My 2002 op-ed, which was published before the military commission system was reformed, argued in favor of prosecuting the 9/11 terrorists in federal court consistent with traditional principles of federal prosecution.

7. Is it correct to assume, based on your op-ed, that you personally agree with the Attorney General's decision, as head of the Task Force that established the protocols, to impose this presumption? Please explain.

Response:

I share the Attorney General's commitment to use all elements of national power and authority, including both federal courts and reformed military commissions, to defeat our enemy and advance the interests of justice. Federal courts have longstanding experience trying complex terrorism cases, and have a proven and recent track record of convicting terrorists. Military commissions can also be an effective and lawful forum for such trials, and depending on the facts,

there may be advantages to trying a case in a military commission rather than in federal court. As I understand it, the protocol affords the flexibility needed to make these decisions on a case by case basis, based on all relevant facts and considerations. I agree with this approach.

8. Under the July 2009 protocol, the presumption in favor of a traditional Article III prosecution is not fully determinative, but there must be “other compelling factors” that make it appropriate to overcome the presumption in favor of a military commission trial. Given that Khalid Sheikh Mohammed and the other 9/11 plotters were held at Guantanamo Bay and were, at least as of November 2009, assigned a civilian criminal trial, it appears that insufficient “compelling factors” existed to prosecute the case before a military commission. Do you believe there were insufficient “compelling factors” in this case given the circumstances of the 9/11 attacks, including the targeting of civilian structures, the involvement of a foreign terrorist organization harbored by a foreign government, and roughly 3,000 civilian deaths?

Response:

I understand that no final decision has been made about the forum in which the 9/11 defendants will be tried. The Attorney General has said that it is “a very close call” with many national security, legal, and practical considerations. He has also said that the decision involves information about the case that is not publicly available. I have not had access to the information on which the forum decision in this case will be made. Therefore, I am not in a position to comment on the merits of the decision or the factors underlying it.

9. Did you personally agree with Attorney General Holder’s announcement in November 2009 to transfer Khalid Sheikh Mohammed and the other 9/11 plotters to Manhattan for trial? Please explain.

Response:

See answer to previous question.

10. If Osama bin Laden were captured tomorrow, would you personally favor trying him in a civilian criminal court? Please explain any hesitancy you would have regarding such a trial and why or why not such hesitancy would not also apply to the trial of Khalid Sheikh Mohammed.

Response:

I believe that such decisions should be made on a case-by-case basis, based on all the relevant facts and circumstances available at the time of a suspect's capture.

11. How do you reconcile the administration's July 2009 protocol involving two venues and procedures for terror trials – as well as your hearing testimony regarding the use of both civilian trials and military commissions – with the claim in your 2002 op-ed that the protections of the criminal justice system “must be applied to everyone to be effective[?]”

Response:

The point of my 2002 op-ed was that we should vigorously prosecute terrorists, but that it should be done consistent with the rule of law. Since that time, Congress has strengthened the military commission system and brought it into conformity with the rule of law. I believe that the United States should use all available tools at its disposal to dismantle terrorist networks and incapacitate terrorist operatives, including both federal courts and military commissions, based on the particular facts of the case.

12. You suggest in your September 2002 op-ed that the government was somehow “ignoring the core constitutional protections ingrained in our criminal system” in its approach to terrorism prosecutions.
- a. Do you believe military commission trials violate either the Fifth or Sixth Amendments of the Bill of Rights, which articulate the Constitution's core procedural rights in criminal cases?

Response:

I do not believe that military commission trials, conducted under the procedures established by the Military Commissions Act of 2009, violate either the Fifth or Sixth Amendments of the Bill of Rights.

- b. Which “core constitutional protections ingrained in our criminal system” did you believe our government was “ignoring” in September 2002?

Response:

I wrote that article before passage of the Military Commissions Act of 2006, and before Congress subsequently improved commission procedures in the Military Commissions Act of 2009. My concerns regarding the legality of the detention and

trial regime for Guantanamo Bay detainees were addressed by this legislation, and by the Supreme Court's decisions in a series of cases, including *Boumediene v. Bush*, *Hamdi v. Rumsfeld*, and *Hamdan v. Rumsfeld*.

13. According to a November 2001 article in the *Washington Post*, you criticized the use of military commissions, saying, "the Bush Administration is invoking an emergency as a pretext for actions 'contrary to the spirit and letter of the Constitution.'"
 - a. Do you stand by this statement?

Response:

I stand by my view that the military commissions as initially established in 2001 were unlawful. The Supreme Court found them to be unlawful in *Hamdan v. Rumsfeld* and Congress subsequently took steps to reform them.

- b. Do you believe, as your 2001 statement suggests, that President Bush intentionally invoked the emergency of 9/11 to violate specific parts of the Constitution?

Response:

I do not believe and did not mean to say that President Bush intentionally violated the Constitution. I do believe, however, that the military commissions initially established in 2001 were unlawful, as the Supreme Court later concluded.

- i. If so, which specific provision of the Constitution do/did you believe President Bush was trying to avoid by "pretext?"

Response:

See answer to previous question.

14. Your 2002 op-ed makes no reference to the long history of military commissions in American wars, including the commissions approved by the Supreme Court in *Ex Parte Quirin*. It also fails to note that the November 13, 2001 military commissions order signed by President Bush was modeled on the President Roosevelt's order in World War II. Jack Goldsmith writes in his book *The Terror Presidency*:

"Military commissions were used extensively in World War II, the Spanish-American War, the Civil War, the War of 1812, and the

Revolutionary War. Relying on legal advice provided by Patrick Philbin in OLC, Bush's military commission order was modeled on Roosevelt's order creating the commission that tried eight Nazi saboteurs. The Supreme Court had unanimously approved the commission trial of the out-of-uniform Nazis, which included one American. This was a powerful precedent for trying out-of-uniform alien enemy fighters in a military commission on Guantanamo. 'We relied on the same language in FDR's order, the same congressional statute that FDR did, and we had a unanimous Supreme Court decision on point,' Brad Berenson, a White House lawyer who worked on the commission in the fall of 2002, later told me."

- a. Do you disagree with Professor Goldsmith's description of the precedent for the November 13, 2001 military commission order?

Response:

I do not disagree with Professor Goldsmith's description of the historical use of military commissions.

- b. Was it improper for Bush Administration legal advisors to rely upon previous executive and Supreme Court precedent to craft the November 13, 2001 military commission order?

Response:

I believe that the military commissions as initially established in 2001 were unlawful, as the Supreme Court later concluded.

- c. How are the September 11th attacks any different than the actions of the 8 Nazi saboteurs who came to the U.S. to destroy American factories and were not part of the uniformed German military?

Response:

Decisions as to the appropriate forum for the prosecution of terrorism cases must be made on a case-by-case basis considering all of the relevant factors. It is my understanding that there are a number of factual differences between the circumstances of the Nazi saboteur case and the 9/11 case, as well as other national security, legal and practical concerns that bear on the forum decision in the 9/11 case.

- d. Do you believe that any provision of the Military Commissions Act of 2009 is unconstitutional or otherwise contrary to law?

Response:

I believe that the reformed military commission system is lawful.

AIG Compliance Monitor

15. Regarding your responsibilities as independent consultant to AIG, were you asked or assigned any responsibility to review or make recommendations regarding any aspect of the derivatives transactions structured by AIG-Financial Products group (AIG-FP)?

Response:

Yes. See answer to Question # 16 below.

16. Did you make a recommendation while serving as independent consultant at AIG that the independent review of derivatives transactions or programs within AIG-FP should be conducted by AIG-FP itself?

Response:

As of December 2004, AIG's independent accountants, PricewaterhouseCoopers, identified a material weakness in AIG's controls over financial reporting concerning whether certain derivative transactions qualified for hedge accounting under generally accepted accounting principles (GAAP). This issue mostly involved transactions at AIG-FP. In order to qualify for hedge accounting, a company needs to prospectively match derivative transactions that will be used to offset each other at the end of the reporting period. The company also needs to perform a prospective test at inception to justify that the hedging relationship is highly effective and must continue to conduct these tests on an ongoing basis.

AIG-FP engaged in thousands of derivative transactions and in order to remediate this material weakness it had to develop a robust automated system to match and evaluate the thousands of transactions it entered into each year in order to qualify for hedge accounting. This could not be done manually. It would have taken years for a Derivatives Committee to review AIG-FP's derivative transactions for hedge accounting purposes.

The rest of AIG designated significantly fewer derivative hedging relationships which were, by and large, considerably less complex than many of the transactions entered into at AIG-FP. Because of this, the non-FP transactions could

be reviewed on a transaction-by-transaction basis by a Derivatives Committee made up of accounting personnel and did not need the application of the more robust automated system designed for AIG-FP.

This dual system was developed in conjunction with AIG's independent accountants and, once implemented, was found to comply with GAAP. As a result, at the end of 2006, the independent accountants opined that AIG had remediated its material weakness in this area.

The court order under which I operated tasked me with reviewing the adequacy of the remediation plan AIG entered into, with the approval of its independent accountants, to remediate the materials weaknesses found in 2004. This included the material weakness in derivative hedge accounting. After reviewing the process and information that led AIG's independent accountants to conclude that the dual system for handling derivative hedge accounting resulted in accurate accounting under GAAP, I included it in my 2007 recommendations as a means of recording my review and acceptance of the remediation effort and to ensure that AIG continued to employ this method into the future.

17. In retrospect, what do you think you could have done to have prevented – or at least lessened – the impact of AIG's collapse in 2008?

Response:

AIG's collapse in 2008 was due in large measure to collateral calls it had to satisfy related to a type of derivative commonly referred to as "credit default swaps," which AIG sold to bondholders. Neither of the two consent agreements under which I worked gave me any legal authority to review the effect of credit default swaps on AIG's financial health. The 2004 consent agreement tasked me with preparing a retroactive review of transactions that allowed clients and other third parties – not AIG – to obtain an improper accounting or financial reporting result. Credit default swaps were not used by AIG clients for that purpose. Under the 2006 consent agreement, I was responsible for reviewing all policies and procedures of AIG's regulatory, compliance and legal functions. Credit default swaps were unregulated and, therefore, fell outside my court-ordered legal authority. Whatever information I had access to regarding the credit default swap collateral calls had been made public in AIG's quarterly and annual financial reports and was available to all of its regulators and shareholders.

18. Several articles have cited to your role in AIG as an argument against compliance monitoring. Sue Reisinger, stated:

"It's as though Cole were spackling cracks in the compliance walls and never noticed that AIG's financial foundation was crumbling beneath his feet."

How do you respond to Ms. Resinger's characterization? If you believe it is inaccurate, please explain.

Response:

The characterization is inaccurate because it fails to recognize that I had no legal authority to review the economic soundness of AIG's business decisions. Rather, I was responsible for reviewing the soundness of AIG's compliance structure on a forward-looking basis and to retroactively review transactions that could have adverse effects on parties other than AIG.

19. Beatrice Edwards of the Government Accountability Projected wrote of your role at AIG:

“Cole came into AIG as the independent monitor . . . But gradually . . . he seemed to weaken and adapt. For one thing, we hear, Cole allowed AIG management to revise his quarterly reports to the SEC, and unexpectedly collaborative practice for an independent monitor.”

Did you allow AIG management to revise your quarterly reports to the SEC? If so, please explain how this practice was consistent with your role and independence as an outside monitor.

Response:

It is standard practice in the private sector for a corporation's internal audit and compliance committees to review annual reports by external auditors prior to the reports' release. In the public sector, the General Accounting Office and Inspectors General at federal agencies typically engage in a similar process. Such review provides the external auditor with useful input on a range of issues, including the facts underlying a particular finding. The external auditor, however, is under no obligation to make the changes requested and is free to reject all of the input from the audited entity. While I followed this standard practice, I was under no obligation to accept any input from AIG, and I routinely rejected revisions suggested by AIG.

QUESTIONS POSED BY SENATOR GRASSLEY**American International Group (AIG)**

20. American International Group (AIG), entered into a Deferred Prosecution Agreement (DPA) with the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) in 2004. As part of that settlement, AIG agreed to have the AIG Financial Products Corp.—the same AIG subsidiary responsible for derivative transactions that led to the \$182 billion bailout by taxpayers—pay \$80 million in penalties and submit to monitoring by an independent consultant. You were selected by DOJ, SEC and AIG as the independent consultant to monitor operations at AIG and among other duties, were tasked with reviewing the policies and procedures at AIG to ensure the integrity of transactions—including those at AIG Financial Products Corp.

In the Fall of 2008, AIG collapsed as mortgage backed securities failed and derivative contracts that AIG wrote effectively insuring those transactions were due. Ultimately, AIG required a \$128 billion bailout from the American taxpayers. The American taxpayers could lose billions of dollars as a result of this bailout. I have concerns about your role as the independent consultant and the failure to foresee the problems with AIG's Financial Products Corp. Accordingly, I ask that you respond to the following questions and requests for information:

- a. Provide a detailed explanation of your work as independent consultant to AIG based upon the 2004 Deferred Prosecution Agreement. This explanation should include a breakdown of all work you personally performed; all work you tasked to subordinates; all official documents produced—including reports, analyses, summary documents, findings, or recommendations—that were submitted to DOJ, SEC, or AIG; and a discussion of the scope of your work under the 2004 DPA.

Response:

The scope of my work under the “Consent of Defendant American International Group, Inc.” signed in November 2004 is described in paragraph 3(a) of that document. Pursuant to that agreement, I was to “examine certain transactions entered into by [AIG] (including its foreign and domestic subsidiaries and affiliates, any entities directly or indirectly controlled by [AIG], or any special purpose entity (“SPE”) or variable interest entity (“VIE”) established by the Defendant) to determine whether the transactions were used or were designed in a way to permit a counter-party to account for a transaction in a manner that may have violated generally accepted accounting principles (GAAP) or any rules or regulations governing financial reporting promulgated by the [SEC].” Additionally, I was “to conduct a review related to the policies and procedures of the Transaction Review Committee” that was “to review and determine the appropriateness of

certain transactions proposed to be undertaken by [AIG] after the date of the Final Judgment.” I supervised a team of attorneys, accountants, and other consultants, as well as support staff on all aspects of the engagement. I produced numerous reports and written recommendations that were provided to the SEC, the Department of Justice and AIG.

- b. Provide a detailed explanation of your work as independent consultant to AIG based upon the 2006 Deferred Prosecution Agreement. This explanation should include a breakdown of all work you personally performed; all work you tasked to subordinates; all official documents produced—including reports, analyses, summary documents, findings, compliance reports, financial reports, or recommendations—that were submitted to DOJ, SEC, or AIG; and a discussion of the scope of your work under the 2006 DPA.

Response:

The scope of my work under the “Consent and Undertaking of Defendant America International Group, Inc.” executed in February 2006 is described in paragraph 4(a) of that document. Pursuant to that agreement, I was to examine eight areas: (i) “AIG’s internal controls over financial reporting”; (ii) the “organization and reporting structure of AIG’s internal audit department and AIG’s disclosure committee”; (iii) the “policies, procedures and effectiveness of AIG’s regulatory, compliance and legal functions, including the operations of any committees established to review and approve transactions or for the purpose of preventing the recording of transactions or financial reporting results in a manner inconsistent with generally accepted accounting principles (GAAP)”; (iv) “AIG’s records management and retention policies and procedures”; (v) the “adequacy of whistleblower procedures designed to allow employees or others to report confidentially matters that may have bearing on AIG’s financial reporting obligations”; (vi) “AIG’s training and education program” for employees with oversight and accounting responsibilities; (vii) “the reforms that AIG has implemented as a result of reviews” performed by the Audit, Regulatory, Compliance and Legal committees; and (viii) the “adequacy and effectiveness of the remediation plan” meant to address the material weaknesses in internal controls over financial reporting. I supervised a team of attorneys, accountants and other consultants, as well as support staff on all aspects of the engagement. I produced numerous reports and written recommendations that were provided to the SEC, the New York Attorney General, the Superintendent of the New York Department of Insurance, and AIG.

- c. It has been reported that during your time as the independent consultant, you allowed AIG Management to revise quarterly reports to the SEC. Did you ever allow AIG Management to revise or review any of your reports

as independent consultant prior to submission to the SEC or DOJ? If so, please describe each instance and whether any findings or recommendations were modified in any manner.

Response:

It is standard practice in the private sector for a corporation's internal audit and compliance committees to review annual reports by external auditors prior to the reports' release. In the public sector, the General Accounting Office and Inspectors General at federal agencies typically engage in a similar process. Such review provides the external auditor with useful input on a range of issues, including the facts underlying a particular finding. The external auditor, however, is under no obligation to make the changes requested and is free to reject all of the input from the audited entity. While I followed this standard practice, I was under no obligation to accept any input from AIG, and I routinely rejected revisions suggested by AIG.

- d. Your written testimony states that under the 2004 DPA, you were tasked, "by court order to look at five years of transactions to determine if AIG assisted any of its clients to 'cook the books' through the use of complex transactions." The DPA specifically outlines the prosecution of AIG-FP was deferred relating to aiding and abetting securities fraud via complex transactions using special purpose entities (SPEs) that violated GAAP requirements. In order to review these transactions, you would have had access to AIG-FP's financial information for the past five years. Provide a detailed explanation of the transactions that you reviewed in this timeframe. Did you have concerns with these transactions? If so, what were they? If not, why not?

Response:

In order to fulfill my obligation under the 2004 consent agreement, which required me to determine whether any transactions were used or were designed in a way to permit a client or third party to account for a transaction in a manner that may have violated generally accepted accounting principles (GAAP) or any rules or regulations governing financial reporting promulgated by the SEC, I reviewed all of AIG-FP's transactions, or categories of transactions, for the period at issue. If I determined that a client or third party may have accounted for a transaction in a manner that violated GAAP or any other reporting standard, I was required to promptly notify the audit committee of AIG's Board of Directors, AIG's Chief Executive Officer and Chief Financial Officer, as well as the SEC's Office of the Chief Accountant, in writing. Those written notifications, and information contained within, are subject to a confidentiality order entered by the U.S. District Court for the District of Columbia that restricted dissemination of my reports to the parties to the 2004 Consent. It is my understanding that reports I provided to

federal agencies in the course of my monitorship are being made available to the Committee.

- e. In the course of your review did you ever become concerned that AIG-FP may be using similar practices that led to the DPA in other transactions? If so, did you look into the possibility that SPEs were abused in other transactions? If not, why not?

Response:

Because I was required to review all of AIG's transactions from 2000 through 2004, part of my assignment was to determine if there was a possibility that SPEs were being abused in any of the transactions that any component of AIG, including AIG-FP, undertook. All such instances that I found were described in written notifications and disseminated as described in response to subsection (d).

- f. The 2004 DPA requires AIG-FP to "truthfully disclose to the Department and the SEC all information with respect to the subject matters about which the Department or the SEC shall inquire, and shall continue to fully cooperate with the Department and the SEC." In your opinion, did AIG-FP act truthfully on all matters? If not, what action did you take?

Response:

I was not privy to requests for information made by the SEC and the Department of Justice to AIG, nor was I privy to AIG's response to such requests. Therefore, I do not have sufficient information to assess AIG-FP's actions in relation to requests from the SEC and the Department.

- g. In your role as independent consultant, were you ever denied access to documents, information, or witnesses? If so, did you report this to DOJ and SEC? Was any corrective action taken? If so, what action?

Response:

I was not denied access to documents, information, or witnesses.

- h. It has been reported that one of your duties as independent consultant under the DPAs was to establish and develop "Best Practice" recommendations for compliance with regulatory requirements. It has been reported that you provided some best practices in August and September 2007. However, one recommendation, "EC2" relating to the Derivatives Committee expressly states that a Derivatives Committee

should be responsible for providing an independent review of proposed derivative transactions or programs entered into by AIG entities. However, this same recommendation expressly exempts AIG Financial Products Corp. from oversight by the Derivatives Committee. Given that AIG Financial Products Corp. was the unit responsible for many of the derivatives contracts that went sour and led to the \$128 billion taxpayer bailout, why did you exempt AIG Financial Products Corp. from the review of the Derivatives Committee?

Response:

As of December 2004, AIG's independent accountants, PricewaterhouseCoopers, identified a material weakness in AIG's controls over financial reporting concerning whether certain derivative transactions qualified for hedge accounting under GAAP. This issue mostly involved transactions at AIG-FP. In order to qualify for hedge accounting, a company needs to prospectively match derivative transactions that will be used to offset each other at the end of the reporting period. The company also needs to perform a prospective test at inception to justify that the hedging relationship is highly effective and must continue to conduct these tests on an ongoing basis.

AIG-FP engaged in thousands of derivative transactions and in order to remediate this material weakness it had to develop a robust automated system to match and evaluate the thousands of transactions it entered into each year in order to qualify for hedge accounting. This could not be done manually. It would have taken years for a Derivatives Committee to review AIG-FP's derivative transactions for hedge accounting purposes.

The rest of AIG designated significantly fewer derivative hedging relationships which were, by and large, considerably less complex than many of the transactions entered into at AIG-FP. Because of this, the non-FP transactions could be reviewed on a transaction-by-transaction basis by a Derivatives Committee made up of accounting personnel and did not need the application of the more robust automated system designed for AIG-FP.

This dual system was developed in conjunction with AIG's independent accountants and, once implemented, was found to comply with GAAP. As a result, at the end of 2006, the independent accountants opined that AIG had remediated its material weakness in this area.

The court order under which I operated tasked me with reviewing the adequacy of the remediation plan AIG entered into, with the approval of its independent accountants, to remediate the materials weaknesses found in 2004. This included the material weakness in derivative hedge accounting. After reviewing the process and information that led AIG's independent accountants to conclude that the dual system for handling derivative hedge accounting resulted in accurate accounting under GAAP, I included it in my 2007 recommendations as a

means of recording my review and acceptance of the remediation effort and to ensure that AIG continued to employ this method into the future.

- i. Specifically, Recommendation EC2 states that “For derivatives transactions or programs entered into by AIG-FP, the appropriate independent review of the proposed derivative transactions or programs should be conducted by AIG-FP.”

- i. Why did you make this recommendation?

Response:

See response to subsection (h).

- ii. Who was involved in assisting you with making this recommendation?

Response:

I was assisted by attorneys and accountants whom I supervised as part of my assignment.

- iii. Was this recommendation discussed with representatives at the SEC and DOJ? If so, who was it discussed with?

Response:

This recommendation was provided to the SEC, the New York Attorney General’s Office and the New York Department of Insurance. The Department of Justice was not a party to the settlement that called for these recommendations.

- j. Why even bother creating a Derivatives Committee to oversee derivatives contracts if you would exempt the subsidiary that wrote most of these contracts?

Response:

See answer to Question h above.

- k. In hindsight, was this exemption a bad idea? Why or why not?

Response:

In my view this was a sound approach. The Derivatives Committee would

not have been able to effectively review the voluminous number of AIG-FP transactions.

1. In your written testimony, you stated that you “developed financial reporting and regulatory compliance programs” and that “[t]he company resisted some of [your] efforts, but [you] insisted on tough measures.” However, a March 2009 report to the SEC and DOJ describes a scenario where the independent consultant had discussions with the Audit Committee of the AIG Board of Directors and AIG’s General Counsel and determined that, “in light of the heightened demands being placed on key employees in the management, regulatory/compliance, and financial reporting areas, it was appropriate for us to review and scale back our recommendations until the Company determine what its future course would be.”

i. Did you participate in drafting the March 2009 report to the SEC and DOJ?

Response:

Yes.

ii. If so, how do you reconcile your statement in the written testimony that you “insisted on tough measures” despite having agreed to “scale back” recommendations at AIG?

Response:

When I prepared the March 2009 report, AIG had been under the control of the federal government for over six months. At that time, AIG indicated to me that it intended to dispose of almost all of its operations. Because of the impending dissolution of the AIG, I scaled back my recommendations to provide basic, interim controls while AIG went through its sell-off. It did not make sense to have the company spend money and resources developing extensive compliance structures and controls for a company that was not intended to continue in existence. Nevertheless, AIG did need to maintain a basic level of legal and financial reporting compliance through this period. When AIG changed course and determined that it would continue in existence for some time and retain a number of its operations, the extensive compliance and financial reporting measures I initially recommended were revived and are being reviewed and implemented where applicable.

iii. How many recommendations were scaled back during your time as independent consultant at AIG?

Response:

See answer above.

Obscenity Prosecutions

21. In 2005, DOJ established the Obscenity Prosecution Task Force (OPTF) to “exclusively protect America’s children and families through the enforcement of our Nation’s obscenity laws.” This task force was designed to coordinate prosecutions of obscenity related crimes among the 93 United States Attorney’s offices and DOJ. The FBI also created an obscenity task force following the confirmation of then Attorney General Ashcroft in 2001. These task forces were designed to step up prosecutions for those who violated Federal obscenity laws.

The DOJ’s own website states, The Task Force is strongly committed to protecting free speech, as well as prosecuting obscenity crimes. The right of ordinary citizens - and of the press - to speak out and express their views is one of the greatest strengths of our Country, but the Supreme Court has ruled that the First Amendment does not protect obscene materials and federal law makes it a felony to use the streams of commerce for trafficking in obscenity. The U.S. Supreme Court has stated, “This much has been categorically decided by the Court, that obscene material is unprotected by the First Amendment. (*Miller v. California*, 413 U.S. 15, 23 (1973)). Enforcement is necessary in order to protect citizens from unlawful exposure to obscene materials. The welfare of America’s children and families demands the vigorous enforcement of obscenity statutes, as traffickers in illegal adult obscenity employ advancements in technology and marketing to extend their unlawful and harmful influence.”

I asked AG Holder similar questions about obscenity during his confirmation. I was somewhat disappointed with his non-specific answers regarding the prosecution of these serious cases.

- a. If confirmed as Deputy AG will you promote vigorous enforcement of federal obscenity laws? If not, why not?

Response:

I share your commitment to the enforcement of federal obscenity laws. It is my understanding that the Department’s Obscenity Prosecution Task Force initiates and coordinates investigations and prosecutions in this area. If confirmed, I expect to support the important work of this Task Force.

- b. Protecting children and families from obscenity is a worthwhile objective.

Do you concur that the DOJ must continue to aggressively pursue criminal and civil litigation against those who violate federal obscenity laws? If not, why not?

Response:

I certainly agree that protecting children and families from obscenity is a worthwhile objective and that the Department should undertake aggressive efforts in support of that objective. Like all other crimes over which the Department has jurisdiction, the decision of whether to charge an obscenity case must be based on the law and the facts, and should be guided by the Principles of Federal Prosecution. I also note that certain agencies other than the Department of Justice, such as the Federal Trade Commission, the Federal Communications Commission, and the Postal Inspection Service play important roles in the civil and criminal enforcement of the obscenity statutes.

- c. Will obscenity prosecutions remain a top priority at the Department of Justice should you be confirmed as Deputy Attorney General?

Response:

Yes.

- d. Do you support the work of special taskforces such as the Obscenity Prosecution Task Force? If not, why not?

Response:

I believe that special enforcement task forces such as the Obscenity Prosecution Task Force can be useful because they consolidate the unique talents and experiences of personnel at different agencies. I understand, for example, that special enforcement task forces have been very successful in combating financial fraud, procurement fraud and other forms of criminal conduct requiring special attention.

- e. If confirmed, do you plan to recommend disbanding this task force?

Response:

I have no such plans.

Supreme Court Decision in *Heller*

22. In 2008, the Supreme Court held in the *Heller* case that the Second Amendment protects an individual's right to possess a firearm, regardless of their participation in a "well regulated militia." President Obama stated that he supported an individual's right to possess a firearm and signaled his support for the *Heller* decision.
- a. What is your personal opinion on the rights afforded by the Second Amendment?

Response:

In *Heller*, the Supreme Court held that the Second Amendment protects the right of "law-abiding, responsible citizens to use arms in defense of hearth and home." The Court made clear that the individual right protected by the Second Amendment may permit some government regulation in this area, such as laws prohibiting felons from possessing firearms, but it did not have occasion to define the precise contours of the Second Amendment right. I fully accept the Court's holding and its articulation of the right protected by the Second Amendment.

- b. What is your personal opinion on the *Heller* case?

Response:

I fully accept the Court's decision in the *Heller* case. If confirmed, I would work to ensure that the Department's enforcement, regulatory and policy efforts comport with that decision.

- c. What is your personal opinion on how the Supreme Court should rule on *McDonald v. Chicago*, a decision which could come down from the court any day?

Response:

In *McDonald v. Chicago*, the Court held that the Second Amendment is incorporated against the states through the due process clause of the Fourteenth Amendment. I fully accept the Court's decision in *McDonald*.

- d. If confirmed as Deputy AG, will you promise to protect an individual's right to possess a firearm? If so, how?

Response:

If confirmed, I would work to ensure that the Department's enforcement, regulatory and policy efforts comport with the holdings of the Supreme Court in *Heller* and *McDonald*.

- e. Will you respect the Supreme Court's holding in *Heller* and *McDonald* even if you disagree with the outcome?

Response:

I fully accept these Supreme Court decisions. If confirmed I would work to ensure that the Department's enforcement, regulatory and policy efforts comport with these holdings.

Congressional Oversight

23. I ask every nominee that appears before a Committee I'm on about their willingness to cooperate with and respect the role of Congress in conducting Congressional oversight. I have made Congressional oversight a top priority. I have requested documents, information, and access to DOJ personnel for interviews and have learned that oversight works best when the agency provides full cooperation to Congress. Unfortunately, agencies are all too often untimely in responding to Congress and in the worst cases, unresponsive at all. This is completely unacceptable and I've worked with my colleagues on both sides of the aisle in spite of any change in Administration to get the answers the American taxpayers deserve.

- a. If confirmed, will you pledge to be responsive to all Congressional requests for information in a timely manner? Including requests for documents and witnesses for interviews?

Response:

If confirmed, I will work with others in the Department to accommodate the Committee's oversight information needs in as timely a manner as possible, consistent with the Department's responsibilities.

- b. Will you work to ensure that responses are not held up do to lengthy "clearance" processes at subordinate agencies such as the FBI?

Response:

Yes. If confirmed, I will work to avoid any undue delays in responding to the Committee's oversight requests.

Whistleblowers:

24. Will you provide Congress with accurate and timely information regarding any action taken, administrative or criminal, against individuals who retaliate against whistleblowers?

Response:

If I am confirmed, I will work with the Judiciary Committee and the independent Office of Special Counsel, which investigates and prosecutes violation of law, including reprisals against whistleblowers, to provide timely and accurate information to the Congress.

25. I have closely monitored the treatment of whistleblowers by the FBI over the years. Could you please address what safeguards you will put in place to ensure that all FBI whistleblowers are not subject to retaliation, be it from the Office of Professional Responsibility or elsewhere within the FBI or DOJ?

Response:

If I am confirmed, I will not tolerate unlawful retaliation against any Department of Justice employee, including FBI employees.

26. What actions will you personally take to abate any fears of retaliation against individuals who are critical of procedures, practices or policies that do not guarantee or execute the primary mission and goals of both the FBI and DOJ?

Response:

If I am confirmed, I will work to ensure that there are adequate safeguards so that whistleblowers receive all of the protections to which they are entitled by law.

DOJ Grant Management

27. For the past nine years, DOJ's Inspector General has identified the grant award process and oversight of grant funding as major challenges to preventing fraud, waste, and abuse. It seems that year after year, the Inspector General's audits of

grantees point to unallowable and unsupported costs, awards to grantees and sub-grantees based upon connections and not merit, failure of grantees to comply with grant requirements, and little or no oversight by the Office of Justice Programs (OJP)—the entity overseeing grants. With DOJ awarding billions of dollars a year in grants, any failure in adequately managing and monitoring grants could lead to millions of taxpayer dollars lost to fraud, waste, or abuse.

- a. Given the serious financial difficulties facing the Government, what is your plan for revamping grant management at DOJ to consolidate overlapping grant programs to ensure that federal funds expended by DOJ are free from duplication and waste?

Response:

If confirmed, I will work with the grant making components of the Department to enhance collaboration and coordination in the development and implementation of grant programs. This would include not only identifying and eliminating overlap and waste, but identifying and promoting the best practices of successful grant programs.

- b. How do you plan to ensure accountability and transparency in the grant making process?

Response:

If confirmed, I will be guided by principles of transparency, accountability, and fairness in the management of the Department's grant programs. It is my understanding that the Department has already implemented many of the recommendations from the DOJ Office of the Inspector General's (OIG) February 2009 report entitled "Improving the Grant Management Process" and has a plan in place to make additional improvements to grant monitoring and program performance.

- c. Do you have any specific recommendations for reforms?

Response:

If confirmed, I will work with each of the grant making components within the Department to review current practices and determine what additional actions are necessary to ensure that the grant making process is fair and transparent, that proper internal controls are in place to detect and prevent fraud, and that adequate oversight of grantee activities and funding is being carried out. I look forward to working with the Judiciary Committee in this regard.

- d. If you are confirmed, will you undertake a top to bottom review of all grant programs at DOJ to determine what works, what doesn't work, and where savings can be achieved? If not, why not?

Response:

The Department administers thousands of grants at a time and it is not feasible for any one person to review each grant. However I commit that, if confirmed, I will review the Department's policies and practices in this area to improve performance and reduce waste. It is my understanding that the Department is using evidence-based approaches in the administration of many its grants programs. If confirmed, I will work with each of the grant making components to better integrate evidence-based practices into their grant programs.

- e. The Congressional authorization for the Department of Justice needs to be reauthorized. What reforms to grant management at the Office of Justice Programs would you recommend for Congress to consider for inclusion in any reauthorization? Provide a detailed list of all recommendations and the basis for inclusion of such a reform.

Response:

If confirmed, I will review grant making practices to ensure that grants are awarded in a fair and transparent manner and that proper oversight of grantee activities and funding is being carried out. It is my understanding that the Department's grant making components have implemented many of the recommendations from the Office of the Inspector General's (OIG) February 2009 report entitled "Improving the Grant Management Process" and is planning further improvements.

Office of Legal Counsel Opinion on Ranking Member Access to Documents and Information

28. On December 5, 2001, the Office of Legal Counsel (OLC) issued a Letter Opinion to the General Counsel at the Department of the Treasury. The Letter Opinion was titled "Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members." The Opinion concludes that the Privacy Act "prohibits the disclosure of Privacy Act-protected information to the ranking minority member" of a congressional committee of jurisdiction that requests information from a Federal agency. The Opinion reached this conclusion despite the fact that the Privacy Act allows disclosures, "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or

subcommittee of any such joint committee.” Nowhere in the statute does it define “committee” to mean only the Chairman and not the Ranking Member.

Courts have also held views contrary to that of the Opinion. For instance, the D.C. Circuit Courts of Appeal held that members of Congress have “constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information.” *Murphy v. Dep’t of the Army*, 613 F.2d 1151, 1157 (D.C. Cir. 1979). Further, the 2nd Circuit held that information sent to a congressman in his official capacity as a *member* of a subcommittee fell “squarely within the ambit of § 552a (b) (9)”. See *Devine v. United States*, 202 F.3d 547, 551 (2nd Cir. 2000).

Despite the plain language and the court interpretations, this opinion is used as a shield to prevent disclosure of information to Ranking Members. It erroneously relies upon the “longstanding executive branch practice on this question,” and, perhaps more surprisingly, the dicta from Congressional Research Service memorandum, to reach this conclusion. I believe this opinion is a detriment to the American people who have a right to know what goes on in the Government.

- a. Do you support the position taken by DOJ in this OLC Letter Opinion?

Response:

I am not an expert in the Privacy Act and am not familiar with the OLC opinion you have referenced. If confirmed, I will work with others in the Department to respond to all Congressional requests for information—including requests from Ranking Members—in a timely and respectful manner.

- b. Do you believe that, as a general matter, Ranking Minority members of a Committee should be prohibited from obtaining information from an agency absent the approval of the Chairman? If so, why?

Response:

I have no personal view of the issue you have raised. If confirmed, I will work with others in the Department to respond to all Congressional requests for information—including requests from Ranking Members—in a timely and respectful manner.

- c. In your opinion, couldn’t the wording of the Privacy Act that allows disclosure “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof” be construed to

allow disclosure to Ranking Members if the Administration was willing to do so? Please explain why or why not.

Response:

I am not an expert on the Privacy Act and have no personal view of the issue you have raised. If confirmed, I will work with others in the Department to respond to all Congressional requests for information—including requests from Ranking Members—in a timely and respectful manner.

- d. Will you pledge to work with Ranking Minority Members of Committees on any oversight request, regardless of the OLC Letter Opinion?

Response:

If confirmed, I will work with others in the Department to respond to all Congressional requests for information—including requests from Ranking Members—in a timely and respectful manner.

False Claims Act

29. During my years in the Senate, I've been committed to combating fraud, waste, and abuse in the government and government programs. I believe that the False Claims Act has proved to be the most effective tool in the effort to prevent fraud and abuse against the government and has enabled the government to recover over \$22 billion since 1986. The *qui tam* provisions of the False Claims Act encourage citizens, who have knowledge and evidence of false claims of fraud, to report the illegal activity. These patriotic whistleblowers are the federal government's greatest allies in the fight against fraud.

As the Senate author of the 1986 Amendments to the False Claims Act, I'm one of the Act's biggest supporters and defenders. Mr. Ogden [**sic**], it is my hope that as the Deputy Attorney General, you'll also vigorously support the False Claims Act and its *qui tam* provisions.

- a. As Deputy Attorney General, will you vigorously enforce the False Claims Act?

Response:

The False Claims Act is a vital tool for combating fraud against the Government. If confirmed I will maintain the Department's strong support of the Act and its *qui tam* provisions.

- b. Do you have any question as to the constitutionality of the FCA and the *qui tam* provisions?

Response:

No.

- c. Can you inform the Judiciary Committee of your experience with the False Claims Act?

Response:

In my private law practice I have been involved in several matters involving the False Claims Act.

- d. Will you oppose efforts by industry groups, including the health care industry and the defense industry, to weaken the False Claims Act and the *qui tam* provisions of the FCA?

Response:

I consider the False Claims Act and its *qui tam* provisions to be a key part of the Department's efforts to prevent the misuse of taxpayer funds. The recent amendments made by the Fraud Enforcement and Recovery Act of 2009 and the Patient Protection and Affordable Care Act of 2010 have helped strengthen the False Claims Act, and if confirmed, I will work with Congress to oppose any efforts to weaken the Act.

- e. Do you anticipate any decrease in the budget for the Commercial Litigation branch which is responsible for false claims prosecutions? In previous years, the Department has specifically requested litigation support funds, including funding for accounting experts, for the false claims cases pending. Are you committed to securing the funding necessary to successfully litigate FCA cases?

Response:

If confirmed, I will work to ensure that the Department's attorneys have the resources necessary to continue the Department's successful pursuit of False Claims Act cases and recoveries.

- f. Will you ensure that Civil Division attorneys aggressively enforce the False Claims Act, and will you work with the U.S. Attorneys to ensure

their vigorous support and enforcement of the False Claims Act and the *qui tam* provisions of the FCA?

Response:

If confirmed, I will support the Department's vigorous use of the False Claims Act and its *qui tam* provisions.

- g. Will you agree to promote a close working relationship between *qui tam* relators' counsel and the Justice Department for the purpose of establishing the public/private relationship envisioned when the FCA was signed into law by President Reagan?

Response:

I believe that *qui tam* relators have an important role to play in helping to enforce the False Claims Act and in uncovering fraud against the Government. If confirmed, I will work to maintain the Department's close working relationship with relators and their counsel.

QUESTIONS POSED BY SENATOR COBURN**Constitutional Interpretation and Federalism**

30. Mr. Cole, as Deputy Attorney General, you will have extensive power within the Department of Justice. As DAG, you will have “all the power and authority of the Attorney General, unless any such power or authority is required by law to be exercised by the Attorney General personally.”¹ You will also “assist the Attorney General in formulating and implementing Department policies and programs.”²

What role will international law and the decisions of foreign courts have on your policy development at the Justice Department?

Response:

In general, policy development at the Justice Department is of course based on U.S. statutory and constitutional law. However international law and the decisions of foreign courts may affect policy development in two general ways. First, when federal statutes incorporate or make international law and/or foreign court decisions binding legal authority for the United States, the Department of Justice will observe these laws as it does all binding domestic legal authority. Second, even where such foreign laws are not binding, context may suggest that it is relevant to take account of such laws and decisions when formulating policy. For example, law enforcement sometimes involves international cooperation. Where such cooperation is effective in addressing transnational issues, it will frequently be important to take account of the laws of the foreign nations with which we seek to cooperate.

31. Given the divergent legal systems in countries around the world, as well as societal and cultural differences, in what situations (if any) do you believe the United States should adopt the laws and values of another country?

Response:

I do not believe the United States should adopt the values of any other country. We have our own values, enshrined in the Constitution and laws of the United States, and we should seek to promote those values. Where a foreign nation has sought to promote similar values, it may be useful to examine by what mechanisms and with what results a foreign nation has done so. Indeed, learning lessons – whether positive or negative – is a longstanding method of formulating our legal policy.

¹ Code of Federal Regulations, Title 28, Section 0.15 (2007).

² *Id.*

32. Does social science play a role in the interpretation of the Constitution, or any other statute? If so, why? How significant is that role?

Response:

I am not an expert in the role of social science in interpreting statutes or provisions in the Constitution. If confirmed, I would be pleased to review this issue.

33. What theory of Constitutional interpretation do you believe is appropriate? In your role as Deputy Attorney General, will you use that theory to evaluate cases and determine whether they are appropriate for prosecution?

Response:

As a practicing lawyer, my approach to constitutional issues has not been determined by any particular theory of interpretation. If confirmed as Deputy Attorney General, I will evaluate each matter before me based on the facts and the law.

34. You note in your testimony that one of your goals for the Justice Department, if confirmed, is to assist state and local law enforcement. In your hearing, when asked about the COPS program by Senator Kohl, you stated it is a “very important part of a holistic law enforcement approach to crime throughout the country and to helping state and local law enforcement achieve some real gains and goals in the fight against crime.”

a. Do you believe the COPS program has been successful? Why or why not?

Response:

It is my understanding that the COPS Office programs have been successful in helping to reduce crime, according to studies and evaluations. Police chiefs, sheriffs and other law enforcement executives use these grants to advance community policing in their jurisdictions.

b. Do you believe there is a direct correlation between the COPS program, particularly the hiring grant, and any decrease in crime that may occur across the nation? Why or why not?

Response:

It is my understanding that a recent study by the General Accounting Office concludes that COPS Office program funding (including hiring grants) have contributed to declining crime rates. The GAO found that COPS funding resulted in significant increases in the number of sworn officers and produced significant declines in the rates of total index crimes, violent crimes and property crimes.

- c. In Madison's Federalist No. 45, he states, "the powers delegated...to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." In light of this statement and the 10th Amendment, what is your view on the extent to which the Justice Department should support state and local law enforcement activities?

Response:

The Justice Department supports state and local law enforcement activities in a variety of ways. The Department is uniquely positioned to identify promising local practices and to share information about those practices nationally. It can provide training and technical assistance to support state and local officers' efforts to attain the skills they need to be successful. The Department is also well suited to assist state and local law enforcement by focusing its efforts on the most significant crimes and cases, taking those cases to federal court. The Department currently works in partnership with state and local law enforcement in these ways, and if confirmed, I would support such efforts.

Terrorism

35. According to the Code of Federal Regulations (CFR), the DAG also "coordinates[s] and control[s] the Department's reaction to civil disturbances and terrorism."³

Will international law and the decisions of foreign courts play a different or more authoritative role in your decisions affecting counterterrorism policy or sentencing of prisoners held at Guantanamo Bay? If so, how?

Response:

The United States' counterterrorism policy and sentencing determinations are, and should be, based on domestic law. I believe that our domestic laws in this regard fully comply with any applicable requirements of international law.

³ 28 C.F.R. §0.15 (2007).

36. Mr. Cole, it is clear that, in your role as DAG, you will have considerable influence over the policy of the Justice Department, particularly as it relates to terrorism. I am concerned by statements you have made in the past that seem to indicate you do not believe we are engaged in a war against terrorism. In an article for the *Legal Times*, you noted several actions then-Attorney General Ashcroft had taken in the aftermath of 9/11. Specifically, you noted that he “facilitated the implementation of military tribunals to try noncitizens for terrorist crimes, instituted the use of the classification ‘enemy combatant’...All these things are being done in the name of fighting the war against terrorism.”

You went on to say that “for all the rhetoric about war, the Sept 11 attacks were criminal acts of terrorism against a civilian population...our country has faced many forms of devastating crime, including the scourge of the drug trade, the reign of organized crime, and countless acts of rape, child abuse, and murder. The acts of Sept. 11 were horrible, but so are these other things.”

a. Do you believe the United States is currently at war? Why or why not?

Response:

Yes, I believe the United States is at war with al Qaeda and its terrorist affiliates. The 2001 Authorization for the Use of Military Force provides the president with authorities to wage this war.

b. As noted in the Code of Federal Regulations (CFR), one of the responsibilities of the Deputy Attorney General is to “coordinate and control the Department’s reaction to civil disturbances and terrorism.”⁴ The CFR specifically lists civil disturbances and terrorism separately. Do you believe the United States should have different standards for addressing crimes of civil disturbance and those of terrorism? Why or why not?

Response:

See answer below.

i. More specifically, should the United States process differently those arrested for domestic crime, such as rape or murder, and those who are prisoners of war or terrorists? Why or why not?

Response:

⁴ *Id.*

Individuals arrested for domestic crimes are tried under different procedures than prisoners of war. Alleged terrorists may be tried in federal court or in military commissions, depending upon the circumstances. I believe we should use all available tools to fight terrorism including both reformed military commissions and Article III courts.

- ii. Should those who are enemy combatants get the same protection as U.S. citizens who have committed domestic crimes? Why or why not?

Response:

Some enemy combatants may be tried in military commissions, which employ different procedures than federal courts.

- iii. Do you believe terrorism suspects, particularly those with overseas ties, should be Mirandized, or should they be treated as enemy combatants? Why or why not?

Response:

I share the Attorney General's view that we must utilize all tools to combat terrorism, including federal courts and reformed military commissions. The choice of an appropriate forum depends upon the circumstances of each case. Subject to the public safety exception, Miranda warnings may be constitutionally required if statements are to be admitted in a civilian trial. While Miranda does not apply in military commissions, statements must still be voluntary to be admissible in that forum.

- 37. I am also a member of the Intelligence Committee, so I am concerned about the consistency, accuracy and timeliness of the Justice Department's provision of documents related to terrorist activities, particularly the recent incidents on Christmas Day and in Times Square. In fact, often intelligence community agencies and some foreign partners have access to intelligence reports before Congress receives them.

What are your views regarding how and when information on national security investigations should be provided to Congress?

Response:

It is my understanding that the National Security Act requires the Executive Branch to keep the Senate and House Intelligence Committees fully and currently informed of the intelligence activities of the United States. I also understand that this can be accomplished in a manner that does not compromise or undermine ongoing national security investigations.

38. What, in your opinion, is the proper role of the FISA Court?

Response:

The FISA Court receives applications for and, if it determines the appropriate legal standards have been met, grants orders approving electronic surveillance, physical searches, the implementation of pen register trap and trace devices, the production of business records, the surveillance of U.S. persons located overseas, and the surveillance of non-U.S. persons overseas via U.S. service providers for the purpose of collecting foreign intelligence.

- a. With the FISA Amendments Act, Congress gave the Court, for the first time, a role in approving procedures for targeting foreign terrorists overseas. Do you believe this is appropriate? Where, if any, would you draw the line?

Response:

As I understand it, the FISA Amendments Act gives the FISA Court jurisdiction to authorize surveillance of foreign terrorists located overseas. I believe that establishing a legal framework governing surveillance conducted via U.S. service providers is appropriate.

- b. How much should the FISA Court be delving into national security matters, particularly in a time of war?

Response:

The FISA Court's involvement in national security matters should be determined by the scope of its jurisdiction, as set forth in federal law.

Role as Deputy Attorney General

39. Mr. Cole, do you recognize that your position as Deputy Attorney General, if confirmed, is not to advocate for or against a particular issue, but rather to enforce the law as it is written? Can you effectively do this?

Response:

The Deputy Attorney General has a role in enforcing federal law and in contributing to the development of Administration policies. With respect to the former role, I am confident I can enforce the law as it is written. With respect to the latter role, I believe it would be appropriate for me to advocate internally for policies that I believe will further the interests of the Justice Department and the American people.

40. The Deputy Attorney General is also tasked with assisting the Attorney General "in formulating and implementing Department policies and programs and in providing overall supervision and direction to all organizational units of the Department."⁵ What management experience in your background has prepared you to lead the Justice Department in this manner?

Response:

I have held managerial positions on a number of occasions in my career.

Deputy Chief of the Public Integrity Section at the Department of Justice: This position required handling the administrative and budgetary aspects of the Section as well as dealing with the supervision of attorneys and specific cases.

Chief of Staff to the Special Counsel to the Attorney General for the investigation of activities related to the bank at the House of Representatives: This involved supervising a substantial number of prosecutors and FBI agents to coordinate a broad scale review of the relevant bank transactions in an effective and efficient manner.

Leader of my law firm's White Collar Crime Practice Group: This involved coordinating the assignments of cases and staffing of all white collar cases in the firm, overseeing the group's budget for marketing and education, maintaining updates on the law for internal and external publication, and taking an active role in hiring attorneys for the firm.

Chair of the American Bar Association's White Collar Crime Committee: For two years I was the chair of the largest committee in the ABA's Criminal Justice Section. The committee, which has several thousand members, is responsible for putting on one of the largest legal conferences in the country as well as making recommendations on white collar crime issues. While I served as chair, I re-

⁵ 28 C.F.R. §0.15 (2007).

organized the committee to enhance these functions and established a regional structure to better serve its members.

Independent Consultant for AIG: In this position I was responsible for supervising and coordinating the work of as many as 150 people on various aspects of the monitorship.

Role as Independent Consultant at AIG

41. The Deputy Attorney General has numerous oversight responsibilities pertaining to his supervisory role over all of the organizational units within the Justice Department. I realize that you have had significant experience performing oversight, particularly in your role as Independent Consultant at AIG. In fact, you were twice appointed to this position, is that correct?

Response:

Yes.

42. In my role as a United States Senator, I take particular interest in oversight of federal government agencies, including the Justice Department. I also believe vigorous oversight should be performed internally by Justice Department officials, and your role as DAG, if confirmed, would put you at the helm of such supervision. As a result, I am concerned about your performance as Independent Consultant at AIG, particularly your level of concern, or lack thereof, for AIG's vast compliance problems, and whether that indicates you will assign a lower priority to internal oversight and compliance at the Justice Department.
- a. Recently, in her findings as Chairwoman of the Congressional Oversight Panel on TARP, Elizabeth Warren stated, "The company [AIG] was a corporate Frankenstein, a conglomeration of banking and insurance and investment interests that defied regulatory oversight." Yet, your reports did not elicit such a response to AIG's woes. In fact, they seem to have no concern for structural problems with regulatory oversight or legal compliance at AIG. Were you ever, at any point, concerned with the internal operations of AIG, particularly the way the AIG Financial Products Division (AIG-FP) was performing?

Response:

It was not within the scope of the legal authority granted to me under court-approved consent agreements to assess the financial performance of AIG-FP. I did review the compliance and financial reporting operations at AIG, including AIG-FP, and made a number of recommendations to address a number of issues that I found.

- i. In your 5 years inside AIG, did you ever see any indications of the financial collapse it would ultimately experience in 2008? Why or why not?

Response:

AIG's collapse in 2008 was due in large measure to collateral calls it had to satisfy related to a type of derivative commonly referred to as "credit default swaps," which AIG sold to bondholders. Neither of the two consent agreements under which I worked gave me any legal authority to review the effect of credit default swaps on AIG's financial health. The 2004 consent agreement tasked me with preparing a retroactive review of transactions that allowed clients and other third parties – not AIG – to obtain an improper accounting or financial reporting result. Credit default swaps were not used by AIG clients for that purpose. Under the 2006 consent agreement, I was responsible for reviewing all policies and procedures of AIG's regulatory, compliance and legal functions. Credit default swaps were unregulated and, therefore, fell outside my court-ordered legal authority. Whatever information I had access to regarding the credit default swap collateral calls had been made public in AIG's quarterly and annual financial reports and was available to all of its regulators and shareholders.

- b. It appears that your reports did address the use of derivatives products at AIG. A Congressional Research Service (CRS) evaluation of your reports notes, "AIG's crisis in 2008 was triggered in substantial part by failure to measure risk in credit derivatives...however...[your reports] *did not address the inability to measure the value of a derivative, but merely the correct application of the standard that governs the accounting treatment of changes in derivatives' value.*"

For approximately 5 years, you were basically a "fly on the wall" inside AIG. I find it hard to believe that, while you may not have been able to unravel all the details of what was going on inside AIG-FP, you only found problems with the accounting treatment of these products, and not their overall risk—a risk that brought down the entire company on the backs of American taxpayers to the tune of a \$182 billion bailout.

- i. According to Ms. Warren, it appears AIG-FP "enjoyed an unusual degree of autonomy within AIG's overall corporate structure."⁶ Was AIG-FP, the division that primarily generated and traded the credit default swaps, exempted from compliance obligations and oversight during your tenure? Why or why not?

⁶ Beatrice Edwards, *James Cole Overlooked Monster Debt at AIG*, The Whistleblower Blog, June 7, 2010.

Response:

AIG-FP was not exempt from compliance obligations and oversight. Transactions undertaken by AIG-FP that were regulated fell within my purview with respect to compliance issues. Credit derivatives, however, were unregulated and, therefore, fell outside my court-ordered purview.

- ii. Was AIG-FP subject to a different type of oversight than other AIG divisions? Why or why not?

Response:

While I am prohibited by the Court Order under which I was appointed from disclosing information I learned at AIG, I did make extensive recommendations for AIG, including AIG-FP, in the compliance and financial reporting areas to address the situation I found to exist at the company.

- iii. If AIG-FP was subject to some form of oversight, did you notice anything unusual regarding AIG-FP's use of derivatives beyond its accounting treatment of those products?

Response:

Credit derivatives were unregulated and, therefore, fell outside my court-ordered purview. Whatever information I had access to regarding credit default swap collateral calls had been made public in AIG's quarterly and annual financial reports and was available to all of its regulators and shareholders.

- iv. If you did notice questionable behavior, why did you not do anything about it given your role as an Independent Consultant who was there to get the company back on track and in compliance with the SEC and DOJ?

Response:

Consistent with the tasks assigned to me under the consent agreements, I made recommendations to improve the company's compliance with regulatory and legal requirements. Whatever information I had access to regarding credit default swap collateral calls had been made public in AIG's quarterly and annual financial reports and was available to all of its regulators and shareholders.

- v. At any time during your time at AIG, did you believe AIG had a lax or indifferent attitude toward regulation and oversight? Why or why not?

Response:

While I am prohibited by the Court Order under which I was appointed from disclosing information I learned at AIG, I did make extensive recommendations for AIG, including AIG-FP, in the compliance and financial reporting areas to address the situation I found to exist at the company.

43. During your tenure as Independent Consultant, it appears you issued several reports. In particular, your September 30, 2007 Report specifically mentions AIG-FP. Considering the proximity to the 2008 collapse of AIG, I find it concerning that your report specifically exempts AIG-FP from independent review. In fact, the CRS Report notes, “one recommendation raises interesting issues about the relationship between AIG and AIG-FP...The Independent Consultant recommends that the Derivatives Committee provide an independent review of derivatives transactions entered into by all AIG entities, *except AIG-FP*. *The report then calls for an ‘appropriate independent review’ of proposed AIG-FP contracts, to be conducted by AIG-FP itself.*”
- a. CRS notes your report “suggest[s] that AIG-FP enjoyed an unusual degree of autonomy within AIG’s overall corporate structure.”⁷ Why would AIG-FP be accorded special treatment different from the other divisions within AIG?

Response:

As of December 2004, AIG’s independent accountants, PricewaterhouseCoopers, identified a material weakness in AIG’s controls over financial reporting concerning whether certain derivative transactions qualified for hedge accounting under GAAP. This issue mostly involved transactions at AIG-FP. In order to qualify for hedge accounting, a company needs to prospectively match derivative transactions that will be used to offset each other at the end of the reporting period. The company also needs to perform a prospective test at inception to justify that the hedging relationship is highly effective and must continue to conduct these tests on an ongoing basis.

AIG-FP engaged in thousands of derivative transactions and in order to remediate this material weakness it had to develop a robust automated system to match and evaluate the thousands of transactions it entered into each year in order to qualify for hedge accounting. This could not be done manually. It would have

⁷ Congressional Research Service, *Independent Consultant Reports on AIG Accounting Reforms*, prepared for the House Committee on Oversight and Government Reform, May 5, 2009, at 8.

taken years for a Derivatives Committee to review AIG-FP's derivative transactions for hedge accounting purposes.

The rest of AIG designated significantly fewer derivative hedging relationships which were, by and large, considerably less complex than many of the transactions entered into at AIG-FP. Because of this, the non-FP transactions could be reviewed on a transaction-by-transaction basis by a Derivatives Committee made up of accounting personnel and did not need the application of the more robust automated system designed for AIG-FP.

This dual system was developed in conjunction with AIG's independent accountants and, once implemented, was found to comply with GAAP. As a result, at the end of 2006, the independent accountants opined that AIG had remediated its material weakness in this area.

The court order under which I operated tasked me with reviewing the adequacy of the remediation plan AIG entered into, with the approval of its independent accountants, to remediate the materials weaknesses found in 2004. This included the material weakness in derivative hedge accounting. After reviewing the process and information that led AIG's independent accountants to conclude that the dual system for handling derivative hedge accounting resulted in accurate accounting under GAAP, I included it in my 2007 recommendations as a means of recording my review and acceptance of the remediation effort and to ensure that AIG continued to employ this method into the future.

- b. Why did your report fail to include any explanation for this separate treatment of AIG-FP?

Response:

See answer to Question # 43(a) above.

- c. Do you believe that AIG-FP could perform a truly independent review of its own activities? Would it not have been more effective for you, as the Independent Consultant, to conduct appropriate oversight?

Response:

See answer to Question # 43(a) above.

44. What role, if any, did AIG management play in the publication or content of the reports you prepared for the SEC? Do you believe it is appropriate for management to play any role in these reports, given they were supposed to be your own, independent evaluation?

Response:

It is standard practice in the private sector for a corporation's internal audit and compliance committees to review annual reports by external auditors prior to the reports' release. In the public sector, the General Accounting Office and Inspectors General at federal agencies typically engage in a similar process. Such review provides the external auditor with useful input on a range of issues, including the facts underlying a particular finding. The external auditor, however, is under no obligation to make the changes requested and is free to reject all of the input from the audited entity. While I followed this standard practice, I was under no obligation to accept any input from AIG, and I routinely rejected revisions suggested by AIG.

45. Why did your reports focus only on accounting for the risk of these products, rather than the risk of the products themselves? Isn't it true that in derivatives trading, the two cannot be separated?

Response:

The duties assigned to me under the consent agreements between AIG and the government only authorized me to review the accounting and financial reporting controls for these derivatives. Because they were not regulated instruments they were otherwise outside of my legal authority and I was, therefore, not authorized to review the business risk posed by derivatives.

SUBMISSIONS FOR THE RECORD
CONSTANTINE | CANNON

W. Stephen Cannon
Attorney at Law

NEW YORK | WASHINGTON

June 7, 2010

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
United States Senate
304 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

I appreciate the opportunity to submit this letter of recommendation of James Cole for the position of Deputy Attorney General of the United States. By way of background, I served this Committee as Chief Antitrust Counsel from 1981-1984, and also served both as a trial attorney and later as Deputy Assistant Attorney General in the Antitrust Division of the Justice Department.

I enthusiastically endorse Jim's nomination and firmly believe the President has made an excellent choice. Jim's distinguished record of government service at the Justice Department, as well as his extensive experience in private practice makes him well-qualified to handle this difficult job. If confirmed, I'm confident Jim will serve with great skill and distinction.

I have known Jim both personally and professionally for almost 20 years. We first met when our children became fast friends in kindergarten and have continued that close friendship to the present day. Thus, I have had many opportunities to observe Jim not just as a lawyer, but equally importantly, as a husband, father and friend. From that perspective, I can personally attest to his exceptional character. I also know that despite a consistently heavy work load, both in government and private practice, he has always balanced the competing demands of his professional and personal life. In short, Jim is a solid, all-around lawyer and I believe he will make an outstanding Deputy Attorney General.

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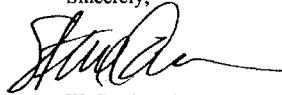
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The Honorable Patrick J. Leahy
The Honorable Jeff Sessions
June 7, 2010
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NEW YORK | WASHINGTON

I would respectfully urge the Committee to give him every favorable consideration and report his nomination to the full Senate for confirmation as soon as possible. I would be pleased to answer any questions the Committee may have or otherwise be of assistance.

Sincerely,



W. Stephen Cannon

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**WRITTEN STATEMENT FOR THE RECORD
SENATOR BENJAMIN L. CARDIN
CHAIRMAN, TERRORISM AND HOMELAND
SECURITY SUBCOMMITTEE
OF THE SENATE JUDICIARY COMMITTEE
NOMINATION HEARING OF
JAMES M. COLE FOR DEPUTY ATTORNEY GENERAL
TUESDAY, JUNE 15, 2010**

Mr. Chairman, Ranking Member Sessions, and Members of the Judiciary Committee, I would also like to make a brief statement in support of Mr. Cole, who is a veteran of the Department of Justice, having spent the first 13 years of a stellar legal career at the Department handling high-profile corruption investigations, managing attorneys in the Criminal Division, and serving as Chief of Staff to the Special Counsel to the Attorney General.

I first met Mr. Cole in connection with his 1995 appointment by the House of Representatives to be Special Counsel for its investigation into allegations that then-House Speaker Newt Gingrich had misused tax exempt organizations for political purposes. I was a member of the Subcommittee that conducted the investigation, and I can tell you from personal experience, that despite the intense partisan atmosphere that surrounded the investigation, Mr. Cole earned bipartisan praise for the thoroughness and fairness of his work on the investigation.

But you don't have to only take my word for Mr. Cole's extraordinary service. When Mr. Cole completed his work, and the House was considering Mr. Cole's Report, the Republican Chairman of the Investigative Subcommittee, Porter Goss, said that Mr. Cole was a "brilliant prosecutor" and "extraordinarily talented." Mr. Goss then went on to state that Mr. Cole and the members of the Subcommittee worked in a "spirit of bipartisan cooperation" that grew as the investigation proceeded.

Mr. Cole not only has the proven ability to step into difficult partisan situations and to handle them with great professionalism and judgment, he also has the ability to provide wise counsel on the management challenges faced by the Department of Justice (DOJ) and other large organizations, as demonstrated by time he spent in the Department in the Office of the Attorney General, his 1992 appointment by then President-elect Clinton to the President-elect's DOJ transition team, his work as an Independent Consultant in connection with the Securities and Exchange Commission's (SEC) lawsuit against the American International Group, and his advice and guidance to the Arthur Anderson accounting firm and the Washington Teacher's Union, on the important management and fiscal-related issues that these large organizations faced.

Mr. Chairman, as part of my preparation for this hearing, I met with Mr. Cole and had the opportunity to discuss a number of issues with him. We are at a critical time in our nation's history, and our country faces numerous challenges, including some of the most vexing national security and budgetary challenges of our time. Some of these issues ignite passionate debate, and it would be easy for any potential nominee, particularly someone in Mr. Cole's position at this point in his life, to say "thanks, but no thanks."

But not Mr. Cole. He is here, and is ready, willing, and more than capable, of returning to the Department of Justice where he began his career, to assist the Attorney General and the President, in managing the day-to-day operations of the Department. I look forward to this nomination hearing, and the Committee's and the Senate's swift confirmation of Mr. Cole.

Thank you.

STATEMENT OF JAMES M. COLE
NOMINEE TO BE DEPUTY ATTORNEY GENERAL

UNITED STATES SENATE JUDICIARY COMMITTEE

JUNE 15, 2010

Chairman Leahy, Ranking Member Sessions -- thank you for the opportunity to appear before the Committee today. I am honored by President Obama's nomination of me to be the Deputy Attorney General, and I look forward to describing for you the goals I hope to accomplish if confirmed by the Senate.

At the outset, permit me to thank my family members for their support, today and throughout my career.

If confirmed, I will be returning to the Department where I served for thirteen years as a career prosecutor. In a sense, this would be for me like returning home.

My earlier service at the Department spanned the terms of three Presidents. I had the privilege of working for five Attorneys General, both

Republicans and Democrats. My thirteen years in the Department were filled with some of the most rewarding experiences of my professional career. It was a privilege to work with and learn from people who strove every day to uphold the highest traditions of excellence in protecting the American people and upholding the rule of law.

I joined the Department in 1979, through the Honors Graduate Program straight from law school, and spent my early years as a trial attorney in the Criminal Division. I developed expertise in public corruption law, and prosecuted, among others, a federal judge, a federal prosecutor, and a Member of Congress. Eventually I served as Deputy Chief of the Public Integrity Section. I was proud to work in this field because it was – and still is – important to me that the American people know that public officials are serving the public interest and not their own.

In 1992, I went into private practice where I have engaged in both civil and criminal litigation. I have also been called upon to help companies establish or improve programs that monitor compliance with laws and regulations. For example, I worked closely with Senator Danforth to

develop document retention policies for Arthur Andersen after the Enron investigation uncovered serious deficiencies.

In 1995 I served for fourteen months as Special Counsel to the United States House of Representatives Committee on Standards of Official Conduct. I led an investigation into allegations that a high-ranking member had improperly used tax-exempt money for partisan purposes and had provided misleading information to the Committee. I take pride in the fact that my investigation led to a bipartisan resolution of the matter even though it took place in a very partisan environment. Our recommendations were approved by an overwhelming majority of the full House.

In 2005, I was selected by the Justice Department and the SEC to serve as an independent monitor at the insurance company AIG. I was first tasked by court order to look at five years of transactions to determine if AIG assisted any of its clients to “cook the books” through the use of complex transactions. That work led to another appointment in 2006, in which I developed financial reporting and regulatory compliance programs. The company resisted some of my efforts, but I insisted on tough measures.

Should I have the honor of becoming Deputy Attorney General, my first and foremost duty will be to help the Attorney General keep Americans safe. We must continue to do everything in our power to protect Americans from the threat of terrorism, consistent with the rule of law. We must use all available lawful means to protect our national security, including, where appropriate, military, intelligence, law enforcement, diplomatic, and economic tools and authorities. And we must strongly defend this country from attacks by terrorists, consistent with our core values.

I would also work closely with the Attorney General to reinvigorate the Department's traditional law enforcement mission. The Department of Justice must redouble its efforts to combat financial fraud, mortgage fraud and health care fraud, to enforce civil rights laws and to thoroughly investigate and prosecute environmental crime. I believe that my experiences in the public and private sectors have equipped me well to address these problems, which are so costly to all Americans.

I very much look forward to serving with an Attorney General whom I respect and with whom I have a strong working relationship. I share the Attorney General's goals of protecting the American people against both

foreign and domestic threats; ensuring the fair and impartial administration of justice; assisting state and local law enforcement; and defending the interests of the United States. I look forward to doing all that I can to achieve these goals.

Perhaps most of all, I look forward, with your support, to coming home and again serving with the fine men and women at the Justice Department.

STATEMENT OF FORMER SENATOR JOHN C. DANFORTH REGARDING THE
NOMINATION OF JAMES COLE
TO BE DEPUTY ATTORNEY GENERAL

JUNE 15, 2010

Chairman Leahy, Ranking Member Sessions –

It is my privilege to be here today to support the nomination of Jim Cole to be Deputy Attorney General.

I know Jim well. Both of us joined the Bryan Cave law firm on the very same day back in 1995. Over the course of the past 15 years, we've spent time together, working shoulder-to-shoulder on various firm matters.

Jim and I share a background of public service. Right out of law school in 1979, Jim joined the Justice Department as a prosecutor. He stayed at the Department for 13 years, focusing his considerable talents on pursuing those who had violated the public's trust — corrupt elected officials, prosecutors, and judges. In recognition of Jim's work ethic, dedication, and skills as a manager, Jim was promoted to a position supervising other lawyers in the Justice Department's Public Integrity Section and, later, to Chief of Staff to the Special Counsel to the Attorney General.

Jim left the Department for private practice in 1992, but again accepted the call to return to public service just three years later, agreeing to serve as Special Counsel to the House Ethics Committee. In that role, Jim led the investigation into allegations that the then-Speaker of the House had used tax-exempt money for partisan purposes.

To say the least, that was a difficult and sensitive job. Jim excelled in that role, following the guiding principles of his career: when it comes to a search for the truth,

follow the facts wherever they lead, stay out of the limelight, and make sure there is no place for politics and partisan influence. I was so impressed with the job Jim did in that role, that when Attorney General Reno later asked me to investigate the federal raid on the Branch Davidian compound in Waco, Texas, I modeled my approach after what Jim had done with the House Ethics Committee.

As I mentioned, Jim and I also worked together as law partners. When allegations came to light that Arthur Andersen had destroyed documents as part of the Enron scandal, Bryan Cave was hired to review the company's document management system. Jim's work on that case and others showed why he has such a stellar reputation at our firm: he is tough, independent, judicious and a first-rate manager.

I have no doubt that these qualities would also serve Jim well as Deputy Attorney General. I trust Jim to protect the national security. I trust Jim to combat financial fraud and corporate wrongdoing. And I trust Jim to uphold the finest traditions of the Justice Department.

I couldn't be more pleased that Jim has once again accepted the call to return to public service. I endorse his nomination wholeheartedly and hope that the Committee, Democrats and my fellow Republicans alike, will advance the nominee and allow the full Senate to confirm him expeditiously.



John C. Danforth



June 1, 2010

The Honorable Patrick J. Leahy
 The Honorable Jeff Sessions
 U.S. Senate Committee on the Judiciary
 United States Senate
 Washington, D.C. 20510

Re: James M. Cole

Dear Senators:

This is to give my strong support to the nomination of James M. Cole to be Deputy Attorney General.

I have known Jim Cole since 1995 when we became partners at Bryan Cave LLP, Jim, after a short time in another firm, having been Deputy Chief of Department of Justice's Public Integrity Section, I after service in the Senate. I worked with Jim one on one over an extended period of time, when we advised Arthur Andersen on document management and compliance matters in the wake of Enron related events. In short, I feel qualified by personal experience to comment on Jim's abilities and personal qualities.

Jim is "a lawyer's lawyer." He is exceedingly knowledgeable, especially on matters relating to legal and business ethics, public integrity and compliance with government regulations. He is highly regarded at Bryan Cave as a skillful litigator. As his resume demonstrates, he has long and deep experience in the Department of Justice.

Jim Cole is both serious and careful. As I observed when working with him, he is intent on advising clients to do the right thing and avoid even the slightest hint of impropriety. His standard is to know and respect the rules and to conduct oneself in a manner that is beyond reproach.

When in 1999-2000 I served as Special Counsel to investigate the Branch Davidian disaster at Waco, Texas, Jim was the model for how to conduct the investigation:

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The Honorable Patrick Leahy
The Honorable Jeff Sessions
June 1, 2010
Page 2

Bryan Cave LLP

thoroughness, objectivity and no leaks. As he has been the model for our Firm, I am certain he will be the same for the Department of Justice. He has my enthusiastic endorsement for Deputy Attorney General.

Sincerely,



John C. Danforth

March 4, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

We have in common that we have all served as senior leaders of the Department of Justice, although we have served in the administrations of different parties. What we also have in common, and what is particularly relevant at the moment, is that we all benefited during our tenures from the wise counsel and good judgment of David Margolis. His advice is informed by his long experience and delivered with utter lack of partisan bias or any other distorting prejudice. We greatly admire and appreciate the unique role he has played in the Department over many years.

While we do not comment here on the merits of the decision regarding the discipline of John Yoo and Jay Bybee, we are certain that it was reached conscientiously and wholly without partisan purposes. Obviously, Congress has the right to explore this decision with the Department, as this Committee did in hearing from the Acting Deputy Attorney General last Friday, but we write to emphasize that we have no doubts at all about the honesty and integrity of David Margolis's decision in this matter.

As those who have benefited from David Margolis's counsel, we know he remains a great asset to the Department and the country for the present and future.

Sincerely,

John D. Ashcroft
Attorney General
2001-2005

Philip B. Heymann
Deputy Attorney General
1993-1994

William P. Barr
Attorney General
1991-1993

Paul J. McNulty
Deputy Attorney General
2005-2007

Benjamin R. Civiletti
Attorney General
1979-1981

Craig S. Morford
Acting Deputy Attorney General
2007-2008

James B. Comey
Deputy Attorney General
2003-2005

Michael B. Mukasey
Attorney General
2007-2009

Mark R. Filip
Deputy Attorney General
2008-2009

David W. Ogden
Deputy Attorney General
2009-2010

Alberto R. Gonzales
Attorney General
2005-2007

Janet W. Reno
Attorney General
1993-2001

Jamie S. Gorelick
Deputy Attorney General
1994-1997

James K. Robinson
Assistant Attorney General,
Criminal Division
1998-2001

Jo Ann Harris
Assistant Attorney General,
Criminal Division
1993-1995

George J. Terwilliger III
Deputy Attorney General
1992-1993

Larry D. Thompson
Deputy Attorney General
2001-2003

WILMERHALE

June 7, 2010

Jamie S. Gorelick

The Honorable Patrick J. Leahy, Chairman
The Honorable Jeff Sessions, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510



Dear Chairman Leahy and Senator Sessions:

I am writing to endorse the nomination of Jim Cole to be Deputy Attorney General. I have known Jim for many years, as an important member of the District of Columbia Bar and as a highly regarded lawyer in both private practice and public service. He has superb training for the post. Having spent many years at Justice, and in a leadership position in one of the most sensitive areas in which the Department operates -- Public Integrity -- Jim Cole knows both the criminal justice process and, importantly, the critical values that must guide departmental decisions. He would also bring to the Deputy's job a stellar tenure in private practice, so he understands both the private bar and, as importantly, how the law affects private citizens and enterprises.

Jim Cole is also a lovely and straight-forward person who would bring to the Department excellent interpersonal skills, and a long-standing relationship with the Attorney General, which would allow him to smoothly handle the all-important operating and management functions that the Department needs a Deputy to perform. He is a man of unquestioned integrity and honesty, in whose word you can have complete confidence. As a former Deputy Attorney General, I commend Jim Cole to you without reservation.

Sincerely,

A handwritten signature in cursive script that reads "Jamie S. Gorelick".

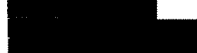
Jamie S. Gorelick

Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue NW, Washington, DC 20006
Beijing Berlin Boston Brussels Frankfurt London Los Angeles New York Oxford Palo Alto Waltham Washington

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ATTORNEYS **KURTH** LLP

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Suite 1100
Washington, DC 20005
202.662.2700 Phone
202.662.2739 Fax
andrewskurth.com

Roscoe C. Howard, Jr.



June 4, 2010

VIA U.S. MAIL

Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Jeff Sessions
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510 -0104

Re: *James M. Cole, Esquire*
Nominee for Deputy Attorney General of United States

Dear Chairman Leahy and Ranking Member Sessions:

It is an honor to write to you on behalf of *James M. Cole, Esquire* a nominee for the position of Deputy Attorney General of the United States. I have known Mr. Cole for almost two decades as a dedicated prosecutor and a brilliant defense attorney. I have sat across from him during my tenure with two Independent Counsels and also during my time as the United States Attorney for the District of Columbia. You will not find a better person to serve this country as the Deputy Attorney General.

Mr. Cole is a seasoned attorney who knows the Justice Department and how it should work. His previous experience at the Department as a prosecutor will give him the opportunity to immediately impact and assist the Attorney General. Not only is he fondly remembered in the halls of the Department from his days as a prosecutor, but he is well known to the current Justice Department occupants through his representation of clients who have come under Justice Department scrutiny.

Mr. Cole is respected and admired in the Department and by those who know him for his intellect, maturity and reasonableness. His breadth of knowledge of the Justice Department's mission will make him instantly credible with those whom he will be tasked to guide and lead. His work in the criminal and civil arenas make him uniquely qualified to take on the complexity of the Justice Department case load on the day he walks in the door.

WAS:160755.1
Austin Beijing Dallas Houston London New York The Woodlands Washington, DC

Honorable Patrick Leahy
Honorable Jeff Sessions
June 4, 2010
Page 2

Over the years, Mr. Cole has proven to be fair and principled. He will ensure that prosecutions and litigation on behalf of the United States are just, fair and necessary. As you get to know Mr. Cole through your hearing, you will find he is one of the few lawyers in this country who will garner praise from prosecutors and defense attorneys alike.

Mr. Cole's advocacy skills and analytical acumen are well documented and exceptional and are the reasons that praise for him comes from so many quarters. He is exactly the attorney the Senate should want and the President needs to be at the side of the Attorney General. He is a man of impeccable qualifications and exceptional judgment who is held in high regard by all who know him. As the Deputy Attorney General, Mr. Cole will ensure the Justice Department maintains its mission of "doing the right thing."

My endorsement of Mr. Cole for the position of Deputy Attorney General comes without qualification. I congratulate you on having him as a candidate for such an important position. I urge you to provide your advice and consent to confirm Mr. Cole as the next Deputy Attorney General of the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "Roscoe C. Howard, Jr.", with a long horizontal flourish extending to the right.

Roscoe C. Howard, Jr.

WAS:160755.1

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 RIYADH
 WASHINGTON

June 8, 2010

William H. Jeffress, Jr.
 [Redacted]

The Honorable Patrick J. Leahy
 United States Senate
 433 Russell Senate Office Building
 Washington, DC 20510

The Honorable Jeff Sessions
 United States Senate
 304 Russell Senate Office Building
 Washington, DC 20510

Re: James M. Cole, Nominee for Deputy Attorney General

Dear Senators Leahy and Sessions:

I write to offer my views about Jim Cole, who has recently been nominated to become Deputy Attorney General of the United States. My views are based on long experience with Mr. Cole both when he was a prosecutor and when he was in private practice. In my judgment, Jim would be a superb Deputy Attorney General and I highly recommend him to you.

I first met Mr. Cole more than twenty years ago when, as a deputy chief of the Public Integrity Section of the Justice Department, he was lead prosecutor of my client, a Louisiana public official. Jim was a highly skilled and tenacious advocate for the government, but completely courteous and professional in all his dealings with opposing counsel and the court. When the court of appeals ruled that double jeopardy principles barred the government from making a certain claim that was central to its case, he made the fair and wise decision voluntarily to dismiss the indictment rather than pursue the charges with little chance of success on the merits.

My experience with Jim as a prosecutor led me to recommend him highly for several engagements after he entered private practice. I have had the pleasure of dealing with him both as counsel for parties on the same side of cases, and in the AIG matter where he served as Independent Consultant and I was among the counsel for AIG. In each and every instance where I observed his conduct, I have been highly impressed with his ability, his judgment, and his integrity. I cannot recall a single lawyer who dealt with Jim who came away with anything but the highest respect for him.

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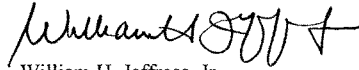
The Honorable Patrick J. Leahy

- 2 -

June 8, 2010

It has been my good fortune to count as good friends a number of people who have served as Deputy Attorney General during administrations of both political parties, including Jamie Gorelick and Larry Thompson. It is, of course, a demanding job that requires the respect of the law enforcement community, the confidence of the President and the Congress, the good judgment and strength of character to make difficult and wise decisions, and the ability to manage a large and diverse organization. Jim Cole has all those qualities. He will be an outstanding Deputy Attorney General and I am delighted at his selection for this job.

Respectfully Yours,



William H. Jeffress, Jr.

DC01:552740.1

Statement of

The Honorable Patrick LeahyUnited States Senator
Vermont
June 15, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee
Hearing On The Nomination Of James Cole To Be Deputy Attorney General
June 15, 2010

Today the Judiciary Committee considers the President's nomination of Jim Cole to be Deputy Attorney General. We are proceeding promptly with a hearing on the nomination to fill this important position at the Department of Justice, just as we did when President Bush nominated Mark Filip to be the Deputy in 2007. The number two position at the Justice Department is vital to our national security and to our system of justice.

It has been nearly a year and a half since Eric Holder was sworn in as the 82nd Attorney General of the United States. In that brief time, Attorney General Holder has made great strides toward restoring the Department of Justice and the American people's confidence in Federal law enforcement. Morale has improved throughout the Department. Key parts of the Justice Department, like the Civil Rights Division and the Antitrust Division, are now recommitted to their essential missions, and are showing results. The Department has been aggressive in attacking crime, particularly violence related to drug cartels, and has also demonstrated a renewed commitment to aggressively combating fraud.

The Department has effectively confronted national security challenges as part of a coordinated effort across the entire Government. Its prosecutions of those arrested for threatening our national security are yielding important intelligence, as well as convictions and extended sentences. These are difficult problems, but Attorney General Holder and the Justice Department have played constructive roles in confronting them with integrity and a commitment both to our national security and to our core rights and values.

I start by thanking Jim Cole and his family for their willingness to contribute to these efforts. He is an experienced prosecutor and has a well-deserved reputation for fairness, integrity and toughness. He has a great familiarity with the criminal justice system and the Department of Justice. He understands the issues of crime and national security that are at the center of the Deputy Attorney General's job. He served as a career prosecutor within the Department of Justice for a dozen years, prosecuting complex and high-profile corruption cases, and helping to manage the Public Integrity Section within the Justice Department.

He also served as special counsel for a House of Representatives' investigation into allegations of improper conduct by the then-Speaker of the House and was fair throughout. In the private sector, he has led internal investigations into fraud and corruption. He is leaving a successful career in private practice to rejoin the Department.

His nomination has received strong endorsements from Republican and Democratic public officials and high-ranking veterans of the Justice Department. In a few moments, for example, Jack Danforth, a Republican colleague from Missouri in the Senate, a former U.N. Ambassador and former State Attorney General, will formally introduce him to the Committee. I know that Senator Cardin also has some thoughts to share from his experience with him during that House ethics investigation.

I hope that members of this Committee will be fair to the nominee. This should not be an occasion for partisanship. The responsibilities of the Deputy Attorney General are too important to the safety and security of all Americans for that.

The Deputy Attorney General is pivotal to the continued restoration of the Justice Department. The Deputy Attorney General is responsible for the day-to-day management of the United States Attorneys' Offices throughout the country and key components within the Justice Department. In the absence of the Attorney General, he serves as Attorney General. He makes sure that the Department is on top of its criminal justice and national security responsibilities day in and day out. This is a crucial position that we should work to fill without unnecessary delay.

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HASTINGS COLLEGE OF THE LAW

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 [REDACTED]

RORY K. LITTLE
Professor of Law

June 14, 2010

The Honorable Patrick J. Leahy, Chairman The Honorable Jeff Sessions, Ranking Member
 Senate Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington DC 20510

Re: Nomination of James M. Cole as Deputy Attorney General

Dear Senators Leahy and Sessions:

The undersigned law professors, from a variety of schools and backgrounds across the nation, write in support of the nomination of James M. Cole as the next Deputy Attorney General of the United States. As professors teaching and writing in the areas of criminal justice and ethics, we care deeply about the important role that the Department of Justice plays on such issues. Although we each have different takes on what the "right" answer may be for any particular question, we are agreed that a person of balanced experience, high achievement, and deep integrity, should be the Deputy. We strongly believe Jim Cole is preeminently such a person.

Having served over a decade as a federal prosecutor in the important Public Integrity Section, Mr. Cole has gone on to be an influential member of the white collar criminal defense community with a national practice. He has also served the legal community in important ways, including teaching criminal law courses at Georgetown and Harvard Universities, and serving in leadership roles on criminal justice issues within the American Bar Association. Significantly, he has also served as a member of the transition team for a previous administration, reviewing various aspects of the Department of Justice. Thus he brings a balanced and varied set of experiences to the job.

Because we know that your Committee will examine Mr. Cole's record in depth, we will not go on to rehearse it here. But we do want to stress that Jim Cole's breadth and depth of experience with federal criminal law issues, and his particular experience (both teaching

and practice) with complex ethical issues that confront prosecutors and criminal defense counsel, makes him, in our view, a perfect nominee for the Deputy's position. We enthusiastically support him and we hope your Committee will vote to confirm him speedily and without dissent.

Our group has been assembled with some haste, and undoubtedly there are many others that would have joined us had we been able to reach them. Not all of us know Jim personally, but those of us that do can vouch without reservation for his integrity, good judgment, intense work ethic, patience and good humor. All of us believe he brings the perfect mix of talents and experience to the job. And each of us would be happy to provide any further information the Committee may desire. Our contact information is below. With respect and admiration, we are,

Sincerely,

Rory K. Little
Professor of Law
U.C. Hastings College of the Law
[Redacted]

Bruce A. Green
Louis Stein Professor of Law
Fordham University School of Law
New York City, NY
[Redacted]

Ronald Goldstock
Adjunct Professor of Law
Cornell, Columbia and NYIU Law Schools
Larchmont NY
[Redacted]

Charles J. Ogletree
Jesse Climenko Professor of Law
Harvard Law School
Cambridge MA
[Redacted]

Myrna S. Raeder
Professor of Law
Southwestern Law School
Los Angeles CA
[Redacted]

Andrew Taslitz
Professor of Law
Howard University School of Law
Washington DC
[Redacted]

Ellen Yaroshefsky
Clinical Professor of Law
Cardozo University
New York NY
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RKL/hs
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WWW.ORRICK.COM

June 8, 2010

Michael J. Madigan

VIA REGULAR MAIL AND ELECTRONIC MAIL

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
United States Senate
304 Russell Senate Office Building
Washington, DC 20510

Re: James M. Cole, Nominee for Deputy Attorney General

Dear Senators Leahy and Sessions:

It is my great privilege and honor to add my voice, wholeheartedly, to those supporting the nomination of Jim Cole for the critically important position of Deputy Attorney General of the United States.

I have known Jim for years and he is and has been a truly outstanding lawyer and, most importantly, an even better person. For the last two years I have had the honor of serving with Jim on the ABA-DOJ Dialogue Group where he has been an always thoughtful and important member.

Jim, as you already know, has had an outstanding career both as a federal prosecutor and as a criminal and civil trial lawyer. Indeed, Jim, I dare say, is one of those somewhat rare individuals in this city about whom you will never hear even the mildest of criticism. He is a good man and is perfectly suited for the challenging position for which the President has wisely nominated him.

I am honored to offer unqualified support for Jim's nomination.

Respectfully yours,

Michael J. Madigan

MARTIN MARCUS


June 7, 2010

Hon. Senator Patrick Leahy
Chairman
U.S. Senate Judiciary Committee
433 Russell Senate Bldg
United States Senate
Washington, DC 20510

Dear Senator Leahy:

I write on behalf of myself and the other members and liaisons of the Criminal Justice Standards Committee of the American Bar Association, who are listed below. In our individual capacities, we take this opportunity to provide you with information we believe relevant concerning the confirmation of James Cole as Deputy Attorney General of the United States. Until he was nominated for this position by President Obama, Jim served as a member of the Standards Committee, and we offer you our personal observations of him based on his participation in the Standards process.

The Criminal Justice Standards, now in their third edition, have served bench and bar for more than forty years. Chief Justice Burger described the first edition of the Standards as "a balanced, practical work designed to walk the fine line between the protection of society and the protection of the constitutional rights of accused individuals." In 1984, the United States Supreme Court described the Standards as reflecting "prevailing norms of practice" and "guides to determining what is reasonable." The Standards and/or their accompanying commentary have been cited to and/or quoted from in more than 120 decisions of the Supreme Court (including two decisions in 2009 and two in 2010), more than 700 decisions of the federal circuit courts and more than 2400 state supreme court decisions. The Standards have achieved their influence because they are designed to reflect a consensus of the views of representatives of all segments of the criminal justice system. For that reason, the Committee and its related bodies have always included an even balance of prosecutors, defense attorneys, academics and judges.

Jim was an active member not only on the Criminal Justice Standards Committee, but of one of the Task Forces that prepared initial drafts for review and revision by the Committee, as well as an officer of the Criminal Justice Council, the governing body of the ABA Criminal Justice Section, to whom the Standards Committee presents its work for further review. His voice has consistently been one of the most important and respected ones in the Standards

process, at each of its levels and by all of its members. It is evident from his contributions to our discussions that he brings to our work an extraordinary breadth of experience as both a federal prosecutor and as a defense attorney involved in complex criminal litigation. He balances a passionate recognition of the obligations of the adversaries in the criminal justice system with a fine sense of the ethical rules that constrain them both. We find him to be extraordinarily knowledgeable, unusually persuasive, and often the first to recognize when to take a firm stand and when to seek a reasonable compromise. In our meetings, he has proved himself to be intelligent, articulate, patient and fair-minded. He has been remarkably generous in contributing substantial time and effort in his service on a Task Force, the Standards Committee and the Criminal Justice Council, which we know competes with his already full-time responsibilities as an attorney in a very successful private practice.

Assuming Jim is confirmed by the Senate, we will mourn his loss to the Standards process.

Sincerely,

Martin Marcus, Chair
Criminal Justice Standards Committee
American Bar Association

Members:	Mark Dwyer New York, NY	Nancy King Nashville, TN	Robert McWhirter Phoenix, AZ
	Cheryl Jacobs Baltimore, MD	Albert Krieger Miami, FL	Peter Pope New York, NY
Liaisons:	John Wesley Hall Little Rock, AK	Matthew Redle Sheridan, WY	Margaret Colgate Love Washington, DC

cc: Hon. Jeff Sessions
Ranking Member
U.S. Senate Judiciary Committee
326 Russell Senate Office Building
Washington, DC 20510-0104

International Criminal Police Organization
Organización Internacional de Policía Criminal

Organisation internationale de police criminelle
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Telephone : +33 4 72 44 70 05

INTERPOL

The Secretary General
Le Secrétaire Général
El Secretario General
الأمين العام

Ronald K. Noble

14 June 2010

Our Ref.:

SG/2010/C256/USA-GOV/RKN/mfb

Subject:

Letter of recommendation for
Jim Cole

Dear Senator Leahy and Senator Sessions:

I write this letter to express my support for Jim Cole's appointment as Deputy Attorney General. I have known Mr Cole since we worked together at the Department of Justice, and I believe that he has the quality of character, the analytical legal skills and the professional calm and perseverance to serve as an excellent Deputy Attorney General.

Jim Cole was a supervisor in the Public Integrity Section in the Criminal Division when I served as the Deputy Assistant Attorney General, also in the Criminal Division. Before, during, and after my tenure there, Jim was consistently assigned to the most sensitive cases in the Section. He was an enthusiastic proponent of the neutral application of the law. His judgment was consistently sound, and his work product was always first-rate. Adding to his substantial professional skills, his demeanor and objectivity were valued in the often controversial matters under his purview. I note that he has continued in private practice to handle matters that require professional calm in the midst of controversy.

In my experience, the position to which Mr Cole has been nominated, Deputy Attorney General, is in many ways the day-to-day manager of the business of the Department of Justice. It is a taxing position, but I am sure that Mr Cole has the capacity for work that will make him a fine Deputy. As a former official in the Department of Justice and as the former Undersecretary of the Treasury for Enforcement, I can vouch for the fact that Mr Cole's long-term rapport with the Attorney General will be an asset in the position. In addition, Mr Cole has the respect of his peers, the willingness to lead and the patience to learn.

.../...

As Secretary General of INTERPOL, I particularly value cooperative relationships in law enforcement, and the United States Department of Justice is one of our leading partners in international law enforcement initiatives. I believe that Jim Cole will honorably uphold the traditions of the Department in extending cooperation to other countries in our joint efforts to stem transnational crime, while fully exercising the authority of U.S. law enforcement. I hope that you will give positive consideration to his nomination, which I enthusiastically endorse.

Very truly yours,



Ronald K. Noble
Secretary General

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510
USA

The Honorable Jeff Sessions
United States Senate
304 Russell Senate Office Building
Washington, D.C. 20510
USA



June 7, 2010

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
United States Senate
304 Russell Senate Office Building
Washington, DC 20510

Chairman Leahy and Ranking Member Sessions:

I write in strong support of Jim Cole's nomination to serve as Deputy Attorney General of the United States.

By way of background, I am a Senior Policy Advisor at Bryan Cave LLP in St. Louis, MO. Prior to joining Bryan Cave, I was Finance Vice Chairman of Bush-Cheney '04, Deputy Chairman of the Republican National Committee, and Finance Director of Bush for President 2000.

I have had the privilege of being a colleague of Mr. Cole's at Bryan Cave for the past five years. I have always been tremendously impressed with the thoroughness and professionalism by which Mr. Cole has conducted himself. Therefore, Mr. Cole has my highest recommendation to serve as Deputy Attorney General of the United States and it is an honor to have the opportunity to write on Mr. Cole's behalf. If confirmed, I believe that Mr. Cole would serve the Department of Justice and the country with great distinction in the years ahead.

Sincerely,

Jack L. Oliver

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 TELEPHONE 226-1463

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 FACSIMILE 226-8367

June 7, 2010

Senator Patrick J. Leahy
 Chairman, Senate Judiciary Committee
 433 Russell Senate Bldg.
 Washington, DC 20510

Senator Jeff Sessions
 Ranking Member, Senate Judiciary Committee
 326 Russell Senate Office Bldg.
 Washington, DC 20510-0104

RE: Support for the Confirmation of James M. Cole as Deputy Attorney General

Dear Chairman Leahy and Ranking Member Sessions:

Christopher D. Chiles and I are writing to express our support for the confirmation of James M. Cole as Deputy Attorney General for the United States.

I have known James since 2001 through various positions in the American Bar Association ("ABA"). I am currently the Vice Chair-Elect of the ABA Criminal Justice Council and President of the National Association of Criminal Defense Lawyers ("NACDL"). Chris is the current President of the National District Attorneys Association ("NDAA"), is its' representative to the ABA Commission on Effective Criminal Sanctions and, is on the Criminal Justice Council.

While the NACDL and NDAA do not always agree, the organizations do agree with their endorsement of James M. Cole. James has shown leadership, intellect and integrity in his work with the ABA Criminal Justice Section, achieving consensus among those from both sides of the bar and academia on best practices or the best policy concerning criminal justice matters. We may disagree with James, but we respect his ability to dissect issues and show flawless judgment while working with the Council.

James enjoys the reputation as an earnest, loyal and effective advocate for the interest or client which he represents. He thinks issues through to take into account the far reaching effect of any policy we examine guiding us to a position that meets our objective while remaining congruent with our long standing principles.

The work of the ABA Criminal Justice Council impacts the work of all three branches of the federal government and affects the national criminal justice community. James M. Cole is well equipped to lead and decide criminal justice issues of national importance. He conducts himself in the most ethical and professional manner as he has in private practice and while on the Council. His experience over a decade with the Department of Justice and private practice provides him with a depth of experience required for the important position he will fill. The manner in which he has conducted the prosecution of public officials and the special investigation of a Congressman exemplify his fair and vigorous approach to criminal enforcement.

Therefore, NACDL and NDAA jointly recommend James. M. Cole to Congress for confirmation as Deputy Attorney General.

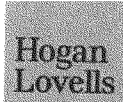
Sincerely,

Cynthia Eva Hujar Orr
President, National Association of Criminal Defense Lawyers

and

Christopher D. Chiles
President, National District Attorneys Association

Sent via U.S. Mail, first class and
e-mail: to Senator Leahy - "Jeremy Paris" Jeremy_Paris@judiciary-dem.senate.gov and
to Senator Sessions - "Danielle Cutrona" Danielle_Cutrona@judiciary-rep.senate.gov



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June 7, 2010

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, D.C. 20510-4502

The Honorable Jeff Sessions
Ranking Minority Member, Senate Judiciary Committee
335 Russell Senate Office Building
Washington, D.C. 20510-0104

Dear Sirs:

I write in strong support of Jim Cole, President Obama's nominee to be the Deputy Attorney General of the United States.

I served in the Department of Justice for many years, including as the Chief of Staff to Deputy Attorney General Jim Comey and, later, as the United States Attorney for the Southern District of Texas and the Eastern District of Virginia. In these positions - and others that I held at the Justice Department - I know how important it is for this crucial position to be filled by the right person. Jim is the right person. He is smart, experienced, thoughtful and has the proper skills and temperament to help Attorney General Eric Holder lead the Justice Department.

On a personal note, I first met Jim when I was a relatively new Special Assistant United States Attorney in the Eastern District of Virginia (before my AUSA and USA days). Jim was defending a case that I was prosecuting. I found him to be an extraordinary opponent - thoroughly prepared, ethical, and a superb trial lawyer. He has a profound respect for the rule of law, knows the Department well, and will serve with distinction.

I am pleased to support his nomination.

Sincerely,

Chuck Rosenberg

Partner

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HARRY ROSENBERG
Partner
(504) 584-9219
harry.rosenberg@phelps.com

June 10, 2010

99999-9999

VIA EMAIL (Jeremy.Paris@judiciary-dem.senate.gov)

Attention: Jeremy Paris

The Honorable Patrick J. Leahy
Chairman, Senate Judicial Committee
United States Senate
433 Russell Office Building
Washington, D.C. 20510

Re: Nomination of Jim Cole to be next Deputy Attorney General
of the United States of America

Dear Senator Leahy,

I am writing this letter to recommend, without hesitation, Jim Cole to be confirmed as the next Deputy Attorney General in the United States Department of Justice.

As a former United States Attorney in Louisiana, I worked with Jim Cole when he prosecuted a corrupt federal judge. I also have worked with Mr. Cole for more than a decade while he worked in the private sector.

I know Jim Cole to be bright, hard-working, dedicated and beyond reproach. If confirmed by the United States Senate, I believe Jim Cole will be an asset to both the Justice Department and the citizens of the United States. I respectfully ask you to consider my wholehearted support of Jim Cole as the next Deputy Attorney General.

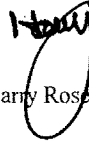
I know that you, and the other members of the Judiciary Committee as well as the Senate, strive for bipartisan cooperation. As a Republican Presidential appointee, I believe it is critical for members of the Justice Department to have bipartisan support and the confidence of the American people regardless of party affiliation. I appreciate your consideration of my views as to the soundness of the nomination of Jim Cole for Deputy Attorney General and would welcome an opportunity to provide you with additional information if you so choose.

PD 4026646.1

The Honorable Patrick J. Leahy
June 10, 2010
Page 2

Thanking you again for your courtesies and with best regards, I remain

Sincerely,

A handwritten signature in black ink, appearing to read "Harry", written over a large, stylized circular flourish.

Harry Rosenberg

HR/jsj
Cc: Honorable Jeffrey Sessions

AKIN GUMP
STRAUSS HAUER & FELD LLP
Attorneys at Law

STEVE ROSS
[REDACTED]

June 13, 2010

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Jeff Sessions
Ranking Minority Member
Committee on the Judiciary
United States Senate
SD-152 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy and Senator Sessions:

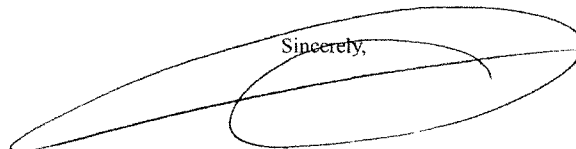
I write in support of Jim Cole's nomination to serve as Deputy Attorney General of the United States. I have known Jim for many years, dating back to his tenure at the department's Public Integrity Section. At that time, as the Deputy and then General Counsel of the House of Representatives, I had numerous professional interactions with Mr. Cole. Later, while we were both in private practice, I continue to have the opportunity to work with Jim. Finally, when our children were students at the same school, I came to know Jim as a fellow school parent.

Whether I found myself on same or opposing side of a legal matter, I have always viewed Jim as the rare lawyer who combines both a superior intellect and common sense. During my time with the House of Representatives, Jim and I were required to address issues with significant constitutional sensitivity. While a vigorous advocate for the Executive Branch, Jim displayed a healthy understanding of, and regard for, the constitutional role of the legislative branch. Both in government and out, Jim has expertly handled complex and sensitive legal matters with great skill.

AKIN GUMP
STRAUSS HAUER & FELD LLP
Attorneys at Law

The Honorable Patrick Leahy
The Honorable Jeff Sessions
June 13, 2010
Page 2

Having known Jim Cole for over twenty-five years, I have come to regard him as one of the best lawyers of our generation and believe, with any doubt in my mind, that he would make a superb Deputy Attorney General.

Sincerely,

Steve Ross



Stephen A. Saltzburg
 Wallace and Beverley Woodbury
 University Professor of Law
 Tel: (202) 994-7089 Fax: (202) 994-7143
 [REDACTED]

June 14, 2010

The Honorable Patrick J. Leahy, Chairman
 The Honorable Jeff Sessions, Ranking Member
 Senate Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, D.C. 20510

Re: Nomination of James Cole as Deputy Attorney General

Dear Senators Leahy and Sessions:

On behalf of the Current Chair, the Chair Elect and the preceding dozen living Chairs of the American Bar Association Criminal Justice Section, each of whom has authorized me to include his or her name on this letter, I write to offer our unqualified, enthusiastic support for James Cole as Deputy Attorney General.

The current and former Chairs of the Criminal Justice Section take pride in the fact that the Chair rotates over a three-year period so that one year a prosecutor is Chair, the next year a judge or academic is Chair, and the third year a defense lawyer is Chair. We also are proud that our governing body, the Council, contains a careful balance of prosecutors, defense lawyers and other participants in the criminal justice system to assure that all voices in criminal justice are heard. Our Council has members from both political parties who reside all over the United States. To be elected as Chair or as a Council member an individual must be regarded as an outstanding lawyer who is dedicated to a criminal justice system that protects American communities while assuring due process and equal justice to those investigated and accused of crime.

James Cole has been an important contributor to the Criminal Justice Section for more than a decade. He is universally admired as a great lawyer, a reasoned decision-maker, and a man committed to protecting public safety with fidelity to the Constitution. Before he was nominated as Deputy Attorney General, the Criminal Justice Section voted to make Jim the Vice-Chair who would assume the Chair position in August 2011. If he is confirmed by the Senate, he will be unable to serve as a Section officer. Our loss would be a great gain for the Department of Justice. Each of us is ready and willing to provide any other information in support of James Cole that you might seek. Please do not hesitate to contact us.

Sincerely yours,

Stephen A. Saltzburg

2000 H STREET, NW • WASHINGTON, DC 20052

Current and Former Chairs Who Join This Letter*

2010-2011	Bruce A. Green (Professor, N.Y.) (Chair Elect)
2009-2010	Charles Joseph Hynes (Prosecutor, NY) (Chair)
2008-2009	Anthony Joseph (Defense Counsel, AL)
2007-2008	Stephen A. Saltzburg (Professor, D.C.)
2006-2007	Robert Johnson (Prosecutor, MN)
2005-2006	Michael S. Pasano (Defense Counsel, FL)
2004-2005	Catherine Anderson (Judge, Ret. MN)
2002-2003	Albert Krieger (Defense Counsel FL)
2001-2002	Ronald C. Smith (Professor IL)
2000-2001	Ralph C. Martin II (Prosecutor MA)
1999-2000	Bruce Lyons (Defense Counsel FL)
1998-1999	Myrna S. Raeder (Professor CA)
1997-1998	Ronald Goldstock (Prosecutor NY)
1996-1997	William W. Taylor III (Defense Counsel D.C.)

* The break in the list is due to the fact that the 2003-2004 Chair, Norm Maleng (Prosecutor, WA), is deceased.



Jack W. Selden



June 11, 2010

The Honorable Patrick J. Leahy, Chairman
The Honorable Jeff Sessions, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Sessions:

I am writing in support of the nomination and confirmation of Jim Cole for the position of Deputy Attorney General of the United States. I have gotten to know Jim through service together on the DOJ Dialogue Group of the American Bar Association, and I am extremely impressed with him both personally and professionally. My interaction and work with him convince me he is well-suited for this important position.

I had the privilege of serving both as the United States Attorney and as an Assistant United States Attorney for the Northern District of Alabama. Through that service, I came to understand and respect the critical role of the Department of Justice and of the position Jim has been nominated to fill.

Jim served with distinction for many years as a federal prosecutor in the Public Integrity Section of the Department of Justice. He has a great respect for, and understanding of, the mission and functions of the Department. I respect his honesty, integrity, intelligence and sound judgment, as well as his legal experience in areas important to the position for which he has been nominated. In my judgment, he would bring the balanced perspective of a seasoned trial lawyer who has worked on significant cases both within the Department and in the private sector. He has earned over the years the respect of both prosecutors and defense attorneys, and I believe he would be a strong and principled leader within the Department. Finally, and of no less importance, Jim has accomplished all of this while remaining a cordial, decent and respectful person.

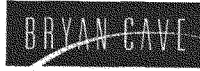
I commend Jim Cole to this Committee for the position of Deputy Attorney General.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jack W. Selden'.

Jack W. Selden

JWS/jlc



June 7, 2010

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
United States Senate
304 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy and Senator Sessions:

I write in strong support of Jim Cole's nomination to serve as Deputy Attorney General of the United States.

By way of background, I am a Partner at Bryan Cave LLP in Washington, DC. Prior to joining Bryan Cave, I was Chairman of the Federal Election Commission (FEC) and was a Commissioner on the FEC from 2002-2007. Prior to being appointed to the FEC, I served as Chief Counsel of the Republican National Committee, General Counsel of the Bush-Cheney 2000 Campaign, and General Counsel of the 2000 Bush-Cheney Transition Team.

I have known Jim Cole for approximately 15 years and have had the privilege of being a colleague of Mr. Cole's at Bryan Cave for the last three years. I first met Mr. Cole when he served as Special Counsel for the House Ethics Committee's inquiry concerning Speaker Gingrich and I was an attorney representing Speaker Gingrich in the matter. Although Mr. Cole and I obviously had conflicting interests in the Gingrich matter, I was tremendously impressed with the thoroughness and professionalism by which Mr. Cole conducted himself in the Gingrich matter, and that has been a hallmark of all of my experiences with Mr. Cole over the last 15 years.

Mr. Cole is superbly qualified to serve as Deputy Attorney General of the United States. Mr. Cole is one of the smartest and most able criminal lawyers in the country, and Mr. Cole's prior service at the Justice Department will be invaluable experience in working with Attorney General Holder in managing and leading the Justice Department. In light of his extensive experience, legal acumen, professionalism and

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The Honorable Patrick J. Leahy
The Honorable Jeff Sessions
June 7, 2010
Page 2

integrity, I can think of no better person than Mr. Cole to serve as Deputy Attorney General.

Jim Cole has my highest recommendation to serve as Deputy Attorney General of the United States and it is an honor to have the opportunity to write on Mr. Cole's behalf. If confirmed, I believe that Mr. Cole would serve the Department of Justice and the country with great distinction in the years ahead.

Sincerely,



Michael E. Toner

Greenberg Traurig

Joe D. Whitley
1
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n

June 4, 2010

VIA FACSIMILE (202-224-3479)

Senator Patrick J. Leahy
U.S. Senate
Russell Senate Office Building SR-433
1st & C Street, NE
Washington, DC 20510

Dear Senator Leahy,

I had the pleasure of meeting you some years ago when I was at the Department of Homeland Security as General Counsel to Governor Tom Ridge. We have a mutual friend in Pam Turner. You should know, too, that I am a Republican and I would not write to you unless I thought it was a matter of great urgency affecting our Nation's security. Our job as the minority party these days is to follow the leadership given by Ranking Member Jeff Sessions, together with you, on Senate Confirmations.

So I write to you today on behalf of James Cole who has been nominated to be Deputy Attorney General. I know Jim to be an outstanding and deserving candidate for this position. In the several positions that I had the pleasure to serve in at the Department of Justice (DOJ), it is my observation that the day to day the functioning of DOJ suffers without a Senate confirmed Deputy Attorney General in place. In these times, any delay in the confirmation process that goes beyond the necessary due diligence required for Senate confirmation of this key position may have an impact on the safety and security of the American people.

Again, I know the quality, intellect and courage that Jim Cole has evinced throughout his splendid and accomplished career and the genuine need every Attorney General has to have a COO. Taken together these factors cause me to respectfully urge the Senate's prompt confirmation of Jim Cole to the Deputy Attorney General position.

With best and highest regards,

Joe D. Whitley

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Tel 202.331.3100 | Fax 202.331.3101

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June 11, 2010

VIA REGULAR MAIL AND ELECTRONIC MAIL

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510-4502

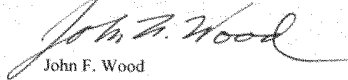
The Honorable Jeff Sessions
Ranking Minority Member, Senate Judiciary Committee
335 Russell Senate Office Building
Washington, DC 20510-0104

Dear Chairman Leahy and Senator Sessions:

I am writing to express my support for the nomination of Jim Cole to serve as Deputy Attorney General of the United States. I had the honor of getting to know Jim when I served as U.S. Attorney for the Western District of Missouri under President George W. Bush, and Jim represented a former CEO in the largest corporate fraud investigation in the history of the district. Jim demonstrated tremendous legal abilities, judgment, and professionalism. These are all attributes that he has demonstrated consistently throughout his career in public service and the private sector. Although Jim and I were on opposite sides of the case, he earned my utmost respect. Perhaps more importantly, he earned the highest respect from career attorneys and staff who will have the honor to serve under him if he is confirmed by the Senate.

As you know, Jim spent many years as a career prosecutor. He would enter the position of Deputy Attorney General with a depth of knowledge of the Department of Justice and the respect and admiration of career prosecutors and staff throughout the Department. I had the great honor to serve three times in the Department of Justice, and I am grateful to Jim for his willingness to make the personal and financial sacrifices to serve our country again in this important position. I hope that the Senate will act promptly to confirm Jim as Deputy Attorney General.

Sincerely,



John F. Wood

cc: Sen. Christopher S. Bond
Sen. Claire McCaskill

New York * Washington, D.C. * Los Angeles * Miami * Jersey City * Paris * Tokyo

