

notwithstanding the involvement of foreign organizations, such as al-Qaida, we have never treated criminal acts influenced by foreign nationals or governments as a basis for “ignoring the core constitutional protections ingrained in our criminal justice system.”

Mr. Cole concludes his opinion piece by arguing that in addition to stopping future terrorist attacks, the Attorney General is a criminal prosecutor and that he has a special duty to apply constitutional protections engrained in our criminal justice system to everyone, including terrorists captured on a foreign battlefield.

Mr. Cole wrote this opinion piece 2 days short of the first anniversary of the September 11 attacks. Given the close proximity in time to the September 11 attacks, we must understand this opinion piece to be Mr. Cole's true beliefs about the application of the civilian criminal justice system to terrorism cases, including those who masterminded the 9/11 attacks.

From the opinion piece and his responses to our inquiries, it appears that if given a choice of prosecuting high ranking terrorists in civilian courts or military commissions, Mr. Cole would likely favor civilian courts based upon his longstanding belief in the role the Attorney General plays in protecting the principles of the criminal justice system. Absent a clear statement from Mr. Cole about what factors would warrant selecting a civilian or a military forum, it is hard to look at his entire record of past opinions, his testimony, and responses to our questions and reach a different conclusion.

Military tribunals have many advantages to civilian criminal courts and are better equipped to deal with dangerous terrorists and classified evidence while preserving due process. I am troubled that Mr. Cole does not appear to share this belief. Based upon his responses and testimony, I have serious concerns about Mr. Cole's support for civilian trials for terrorists captured on a foreign battlefield given that the Deputy Attorney General oversees the national security branch at the Justice Department.

Second, I have concerns about Mr. Cole's abilities relative to oversight of government programs. First, in his responses about oversight of DOJ grant programs, Mr. Cole failed to commit to a top to bottom review of the programs.

We have had enough examples of the tremendous inefficiencies, duplications, and waste in these programs. I am disappointed that Mr. Cole has failed to recognize that there is a need for comprehensive review of the Department of Justice's grant program, not only for the sake of saving taxpayer dollars but also to ensure that grant objectives are being met in the most efficient and effective manner possible.

Third, I do not have confidence regarding Mr. Cole's abilities based on

his performance as an independent consultant tasked with overseeing AIG. By way of background, the Justice Department provided copies of the reports Mr. Cole issued when he was overseeing AIG, but they were labeled “committee confidential.” Consequently, I cannot discuss in a specific manner the context of those documents publicly.

Nevertheless, when taken into context with the public responses provided by Mr. Cole to my questions, a troubling picture develops about Mr. Cole's performance in his independent consultant responsibilities. The responses and reports do not dispel the serious questions raised about Mr. Cole's independence and completeness. Further, they reveal what appears to be a level of deference to AIG management one would not expect to see from someone tasked as an “independent” monitor.

In order to clarify a number of questions on this matter, Senator COBURN and I sent a followup letter seeking additional answers from Mr. Cole. Mr. Cole's reply clarified that DOJ, SEC, and the New York State Attorney General's office were aware of his practice of seeking input from AIG and making modifications to the reports. He indicated that the changes AIG made were often factual changes, such as AIG employee names, dates of materials, and events. He also indicated that some of the changes requested by AIG were included in a section of the report entitled “AIG Response.” However, he said that “on a few occasions” AIG would “suggest a stylistic change of phrasing in the analytical section of the report.” He stated that while he included the edits made by AIG, he “did not believe that a detailed presentation of this factual review was necessary to an understanding of each party's position.” As a result, the report did not necessarily show which edits AIG made that were incorporated. Instead, he said that those changes were available in working papers that were “available to the SEC, the DOJ, the New York Attorney General's Office.” Unfortunately, he added, “the agencies—which were aware of this practice—did not request such documents.”

While I appreciate Mr. Cole's responses to these clarifying questions, they raise concerns about how independent his monitoring was, what changes were ultimately requested by AIG, what changes were included, and how much the SEC and the DOJ really knew about edits AIG was making to the “independent” reports.

Finally, I have serious concerns about Mr. Cole's decision to suspend the compliance review at AIG's Financial Products Division following the government bailout. In his testimony, Mr. Cole acknowledged that following the government bailout of AIG, he scaled back his efforts until the future of AIG as a corporation was determined. After Mr. Cole suspended his monitoring, AIG restructured its compliance office and terminated a number of staff overseeing the company's com-

pliance with the Securities and Exchange Commission regulations. Mr. Cole said that after it was determined that AIG's Financial Products Division would not be dissolved, the compliance and monitoring were “revived and are being reviewed and implemented where applicable.” Under Mr. Cole's watch, AIG not only got \$182 billion of taxpayer money, it was able to talk the independent consultant—Mr. Cole—out of monitoring what the company was doing.

Based upon these factors, I am concerned about Mr. Cole's ability to perform the duties required of Deputy Attorney General. He would be in a position to potentially influence future compliance monitors appointed under settlements between the Justice Department, the Securities and Exchange Commission, and other corporations that have violated the law. Independent monitors need to be truly independent and completely transparent. They are selected and appointed to ensure that the interests of the American people are protected.

I cannot support the nomination of Mr. Cole to be Deputy Attorney General and, therefore, will vote against cloture. I urge all of my colleagues to join me in opposing this cloture vote to send a message to the Justice Department to stop the stonewalling of legitimate oversight inquiries from Members of the Senate.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF JAMES MICHAEL COLE TO BE DEPUTY ATTORNEY GENERAL

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The bill clerk read the nomination of James Michael Cole, of the District of Columbia, to be Deputy Attorney General.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour of debate equally divided and controlled between the two leaders or their designees.

Mr. GRASSLEY. Mr. President, I yield 10 minutes to the Senator from North Carolina.

Mr. BURR. Mr. President, I thank the Senator. In less than an hour, this body will be asked to vote on cloture to proceed to the nomination of James Michael Cole to be Deputy Attorney General. I rise in opposition to that cloture vote on the nomination of James Cole, and I urge my colleagues to strongly oppose it.

As a member of the Senate Intelligence Committee, I share the views of the vice chairman, Senator CHAMBLISS, and the ranking member of the Judiciary Committee, Senator GRASSLEY, as expressed in their letter to Republican colleagues dated May 6, 2011, opposing cloture on this nomination.

I ask unanimous consent to have printed in the RECORD this letter from Republican colleagues.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, May 6, 2011.

DEAR COLLEAGUE: The Majority Leader has filed cloture on James Cole, the President's nominee to be the Deputy Attorney General. At this time, we do not support Mr. Cole's appointment and urge you to oppose cloture on his nomination.

During the last Congress, Mr. Cole's nomination was not considered by the full Senate for several reasons. First, the Department of Justice has refused to comply with repeated minority requests since August 2010 for documents and information related to the activities of the Guantanamo Bay Detainee Review Task Force. Second, Mr. Cole's comments and hearing testimony regarding the September 11th terrorist attacks raise significant concerns about his suitability to be the Deputy Attorney General of the United States. Third, we have concerns about Mr. Cole's abilities based on his performance as an Independent Consultant tasked with overseeing the insurance group, AIG. As a result, the Senate returned the nomination to the President. Unfortunately, on December 29, 2010, Mr. Cole was recess appointed to a one-year term while the Senate was adjourned and sworn in shortly thereafter. Notwithstanding Mr. Cole's recess appointment, our reasons for opposing his nomination remain.

DEPARTMENT OF JUSTICE STONEWALLING DOCUMENT AND INFORMATION REQUESTS BY RANKING MEMBERS

For several years, the Senate Select Committee on Intelligence has been reviewing the process used by the Administration's Guantanamo Bay Detainee Review Task Force to detain, transfer, or release detainees from the Guantanamo Bay facility. Given that the recidivism rate among these detainees has now risen above 25 percent, Congress must have clear insight into this process to determine whether additional legislation is needed to protect our national security.

The Attorney General has been asked repeatedly to provide Congress with: (1) any guidance or recommendations related to the Task Force process (including a September 2009 Attorney General memorandum concerning a presumption to be applied in favor of transfer or release for certain detainees); (2) the Task Force's unredacted recommendations regarding each detainee; and (3) a list of the 92 detainees who were approved for transfer as of August 28, 2009, prior to the issuance of the September 2009 memo. In spite of these specific written requests from Senators in the minority, including a request from all of the minority members of the Select Committee on Intelligence, the Justice Department has not provided the information, instead asserting a questionable "deliberative process" privilege to justify its lack of compliance.

Aside from this dubious assertion of privilege, the repeated failure of the Justice Department to comply with this oversight request is part of a disturbing pattern of refusing to recognize legitimate oversight re-

quests from ranking minority members. For example, the Justice Department is currently refusing to turn over documents requested by the Ranking Member of the Senate Judiciary Committee regarding serious allegations that the Bureau of Alcohol, Tobacco, Firearms, and Explosives knowingly allowed straw purchasers to buy firearms that were then provided to criminal drug cartels in Mexico. At least two of these weapons were later found at the scene where Border Patrol agent Brian Terry was murdered.

MR. COLE'S VIEWS ON TERRORISM

A September 2002 opinion piece by Mr. Cole raises serious questions about his judgment and his current views on terrorism. In that article, he noted that "[f]or all the rhetoric about war, the September 11th attacks were criminal acts of terrorism against a civilian population" and were no more horrible than "the scourge of the drug trade, the reign of organized crime, and countless acts of rape, child abuse, and murder." He also argued that the protections of our criminal justice system "must be applied to everyone to be effective."

While the United States must use every means at our disposal—criminal, intelligence, and military—to fight terrorism, not every terrorist deserves the valued protections of our criminal justice system. Although Mr. Cole has downplayed his comments, he has not rejected the comparison of September 11th to ordinary criminal acts or answered whether he favors trying terrorists in civilian courts. His failure to do so exhibits a lack of understanding about the real threat of terrorism.

MR. COLE'S PERFORMANCE IN OVERSEEING AIG

We have a number of concerns about Mr. Cole's abilities based on his performance as an Independent Consultant tasked with overseeing AIG. Some of these concerns cannot be shared in this letter, because the Judiciary Committee has labeled the relevant reports as "Committee Confidential." Nonetheless, these reports and Mr. Cole's responses reveal what appears to be a level of deference to AIG management that one would not expect to see from someone tasked as an "independent" monitor. Also, we have serious concerns about Mr. Cole's decision to suspend the compliance review of AIG's Financial Products division following the government bailout.

CONCLUSION

We believe that before Mr. Cole's nomination receives an up-or-down vote in the Senate, the Department of Justice must immediately comply with the long-standing requests for documents and information related to the Guantanamo Bay Detainee Review Task Force. Moreover, we are not yet convinced that Mr. Cole's recess appointment should be ratified by the Senate in light of the remaining concerns about his suitability for this very important position.

Again, we urge you to oppose cloture of Mr. Cole's nomination at this time.

Sincerely,

CHARLES E. GRASSLEY,
Ranking Member, Senate Committee on the Judiciary.

SAXBY CHAMBLISS,
Vice Chairman, Senate Select Committee on Intelligence.

Mr. BURR. Mr. Cole's nomination is troubling on several fronts. First, the Department of Justice, where he now serves as second in command since his recess appointment this past December, refuses to provide the Senate In-

telligence Committee with documents we have been requesting for months.

More than 2 years ago, the Intelligence Committee learned that the recidivism rate—the number of prisoners we release who go back into the fight—at Gitmo was 11 percent. Today it stands at over 25 percent. In this effort to close the detention facility at Gitmo, the President ordered a task force run by the Attorney General to review the status of all detainees still housed at Gitmo. Through much of 2009, the Gitmo detainee review task force examined every detainee's case and made recommendations to the administration on whether to transfer, release, or detain each one.

At a time when Congress is aware that former Gitmo detainees are returning to their old ways, we have an obligation to the American people—an obligation to the American people—to make sure no more detainees are released who could cause us harm. Even though Gitmo remains open right now, efforts to transfer or release many of these detainees continue today. The documents the Intelligence Committee is seeking all relate to the task force process and will help the committee understand why the task force made the recommendations it did, especially with respect to those detainees who may have raised red flags for the intelligence community.

We know that the Attorney General provided recommendations on how the task force should make its transfer decisions because of separate information provided to the committee. We do not have everything, however, including the September 2009 memorandum in which the Attorney General reportedly recommends that an entire category of detainees be presumed to be eligible for transfer—presumed eligible for transfer. While we have asked for this memorandum and any other recommendations repeatedly, the Department has refused to provide them. If the Attorney General of the United States recommended that certain detainees be treated favorably, possibly in spite of the intelligence, the Senate Intelligence Committee has a clear oversight interest in reviewing the September memorandum and seeing if and to whom it was applied.

In addition to refusing to provide the September 2009 memorandum, the Justice Department has also denied the Intelligence Committee the recommendations of the task force. The committee cannot determine why the task force made its recommendations without seeing the description of how the task force came to the positions it did. The Department claims that both the September 2009 memorandum and the unredacted recommendations are protected from disclosure to Congress because of deliberative process. This is an assertion ordinarily used in a FOIA case or in the context of Executive privilege, not to inhibit congressional oversight of a Federal agency. An interesting inconsistency in this assertion is that the administration has

willingly provided the Intelligence Committee with the recommendations of the past administration.

I understand that in the last few days, the Attorney General has reached out to the vice chairman of the Intelligence Committee in an effort to resolve these issues before today's vote. Given the Department's months of delays and obstruction in complying with this request, I believe cloture on this nomination is not appropriate until the documents requested have been provided in full.

In addition to the document issue, Mr. Cole has not explained some highly charged comments he made about 9/11. An op-ed he authored back in September 2002 called the 9/11 attacks "criminal acts of terrorism against a civilian population." He went on to dismiss the severity of 9/11, calling it no more horrible than "the scourge of the drug trade, the reign of organized crime, and countless acts of rape, child abuse, and murder."

Mr. Cole has not rejected or fully explained those comments. Until he does so and until the Department ends its refusal to comply with reasonable congressional requests for information, I cannot support the move to consider his nomination. I urge my colleagues to reject cloture today.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I assume we are on the nomination of Jim Cole.

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. Mr. President, to make a parliamentary inquiry: Am I correct that time runs to 5:30?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. Time has been consumed by this quorum call, and so I ask unanimous consent that any time consumed in further quorum calls be equally divided on both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, the majority leader has been required to file cloture in this extraordinary case in an attempt to overcome a Republican filibuster on the nomination of Jim Cole to be Deputy Attorney General. This is a key national security position and the No. 2 position at the Department of Justice. Certainly, with what has happened in the past week or so, it is important for this President or any President to have a full national security team.

I thought back, and I could not remember a time in my 37 years here where the Senate has filibustered a President's nomination to be Deputy Attorney General. I asked Senate Judi-

ciary Committee staff to check that and they found that the Senate has never filibustered a President's nomination to be Deputy Attorney General. In fact, during the time I was chairman of the committee, we quickly moved on President Bush's Deputy Attorneys General, even on those who would not have been my choice. We knew it was a national security position and it is important at a time when we face the threats we do here and abroad that we have that position filled. In fact, I thought it would be unconscionable, whether it was President Bush, President Reagan or any other President, to stall a Deputy Attorney General.

Mr. Cole's nomination to fill this critical national security position was blocked last year, when it was pending on the Senate's Executive Calendar for 155 days after it was reported favorably by the Judiciary Committee. The nomination was reported favorably by the Judiciary Committee again in March, and incredibly, it is again being filibustered. People have asked me how this could be happening. It is hard to believe that one week after the successful operation that killed Osama bin Laden, the world's number one terrorist, we cannot take this step to ensure that President Obama has his full national security team in place. It is similar to "Alice in Wonderland."

Now that a measure of justice has been secured for the victims of September 11, I have expressed hope that we could come together, as we did in the weeks and months following September 11. We should be ensuring that we are extra vigilant these days. There are widespread reports that experts are concerned about this being a time in which al-Qaida will seek reprisals. Most Americans believe we should be concerned about them trying to strike back. This is not a time for further delay or obstruction. Let us join together and confirm this qualified nominee. We also ought to show the rest of the world that no matter what our political labels might be, we believe in the President of the United States having his national security team in place.

This weekend, the Washington Post editorial board called this delay "ridiculous," referring to the Deputy Attorney General as "essentially the chief operating officer of the Justice Department, including its national security operations." This delay is ridiculous and dangerous to every single American. I hope other Senators will see it as such and help end it.

We have the opportunity to set aside partisanship and join with our President to keep America safe. I recall in the aftermath of 9/11 we took immediate steps—Republicans and Democrats together—to do what we could to make sure the President's entire law enforcement team was in place.

We expedited the nominations of 14 U.S. attorneys that had been received in the Senate only 1 week before, reporting them from the Judiciary Committee on September 13 and confirming

them by voice vote the very next day. Those nominations included the nomination of Paul McNulty to the Eastern District of Virginia, one of the key districts where terrorism defendants like Zacarias Moussaoui, one of the conspirators in the 9/11 attacks, are tried. We continued to expedite nominations in the weeks and months that followed, confirming an additional 58 officials to posts at the Justice Department in those weeks and before the end of 2001.

Republican Senators helped a Republican President to get his security team in place to protect the Nation, but now are not going to help a Democratic President to get his security team in place. It is the same Nation and the security threats are the same against Republican Presidents and Democratic Presidents. We ought to come together as Americans first on this important issue.

Last week at the Judiciary Committee's oversight hearing on the Department of Justice, the Attorney General of the United States reiterated the need for final Senate action on the nomination of the Deputy Attorney General. He urged the Senate to confirm Jim Cole to help the Department fulfill all of its critical tasks, including protecting national security, in a time of heightened concern about retaliatory attacks stemming from Osama bin Laden's death. Yet, rather than take action to end the unnecessary and unexplained delays and finally confirm the nomination of Jim Cole, the unprecedented Republican filibuster continues. This is wrong. It should end.

I hope that Senators on the other side of the aisle will listen to former Deputy Attorneys General of the United States who served in both Republican and Democratic administrations. Last December, they wrote to the leaders of the Senate and urged the Senate to consider Mr. Cole's nomination without delay. These former officials who served with distinction in that post wrote that the Deputy is "the chief operating officer of the Department of Justice, supervising its day-to-day operations" and that "the Deputy is also a key member of the president's national security team, a function that has grown in importance and complexity in the years since the terror attacks of September 11." They were right and their advice rings true today.

As the former Deputies, 3 of whom served under President George W. Bush, noted in their letter, "Because of the responsibilities of the position of Deputy Attorney General, votes on nomination for this position usually proceed quickly." I wish the Senate had heeded their advice and voted to confirm Mr. Cole last year. Now another 5 months have passed.

When we first reported Jim Cole's nomination last July, I said that I hoped the Senate would treat his nomination to this critical national security and law enforcement position with the same urgency and seriousness with which we treated all four of the Deputy

Attorneys General who served under President Bush. All four were confirmed by the Senate by voice vote an average of 21 days after they were reported by the Judiciary Committee. In fact, we confirmed President Bush's first nomination to be Deputy Attorney General the day it was reported by the committee. That is not the treatment that Deputy Attorney General Cole has received.

The Senate's treatment of the Cole nomination represents a sharp break from the Senate's longstanding practice of deference to the administration and timely consideration of critical national and law enforcement nominations. In their letter last December, the 8 former Deputy Attorneys General noted that, of the 11 nominations to fill this position over the last 20 years from Democratic and Republican Presidents, "none remained pending for longer than 32 days." I remember some of President Bush's nominations to this position remained pending even less than that.

Jim Cole's nomination has been pending on the floor for 222 days combined, nearly seven times longer than any nominee in the last 20 years. In fact, dating back to 1981, 15 of the 16 Deputy Attorney General nominations pending on the Executive Calendar were confirmed unanimously, the only exception being President Obama's first Deputy Attorney General nomination, of David Ogden, which was confirmed 65-28 after cloture was filed and a time agreement was reached. All of the nominees of Presidents Reagan, George H.W. Bush, Clinton and George Bush were confirmed unanimously by the Senate, in an average of less than 2 weeks.

Last December, after the nomination had already been delayed for over 4 months without explanation, I came to the floor and asked unanimous consent that at a time to be determined by the majority and minority leaders, the Senate consent to a time agreement for a debate and a vote on the Cole nomination. I asked that Senators have the courage to step forward, not hide behind the filibuster, and to either vote yes or no on this critical national security position. Republicans objected to that request in December and have still, 5 months later, refused to agree to a time to debate and vote on the nomination. It is time finally for the Senate to vote. The American people expect us to vote. The security of this country is threatened.

Jim Cole's nomination was pending last year for 5 months while Republican Senators objected time and time again to calling it up for a vote. I believe that Mr. Cole would have been confirmed by the Senate had his nomination been given an up-or-down vote. I believe he should be confirmed. As it was, after the Senate did not take final action on the nomination, President Obama exercised his authority after the Senate had recessed for the year to appoint him in order to make sure this

critical national security and law enforcement post was filled. The President promptly renominated him when Congress returned this year. Recess appointments have not prevented Republican Senators from voting to confirm nominations by Republican Presidents. Given the history of obstruction of this nomination, it is time for the Senate to vote.

This is not a nomination that should have been controversial. It is a nomination supported by former Republican Senator Jack Danforth, who worked with Jim Cole for more than 15 years. When he introduced Mr. Cole at his confirmation hearing, Senator Danforth described Mr. Cole as someone without an ideological or political agenda. He also wrote to the committee that "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 [] as a skillful litigator. As his resume demonstrates, he has a long and deep experience in the Department of Justice." I agree.

Jim Cole served as a career prosecutor at the Justice Department for a dozen years and has a well-deserved reputation for fairness, integrity and toughness. He has demonstrated that he understands the issues of crime and national security that are at the center of the Deputy Attorney General's job. Nothing suggests that he will be anything other than a steadfast defender of America's safety.

We have received numerous letters of support for the nomination of Jim Cole to be Deputy Attorney General, including letters from many former Republican public officials. I ask unanimous consent that these three letters be printed in the RECORD at the conclusion of my remarks.

THE PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

MR. LEAHY. Among these is a letter from Michael Toner, former Chief Counsel of the Republican National Committee and former General Counsel to the Bush-Cheney 2000 Campaign, who wrote "[i]n light of his extensive experience, legal acumen, professionalism and integrity, I can think of no better person than Mr. Cole to serve as Deputy Attorney General."

Chuck Rosenberg, former Chief of Staff for Deputy Attorney General James Comey, who served under President George W. Bush, wrote, "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."

In his letter recommending Mr. Cole, Michael J. Madigan, a Republican counsel on many high-level Senate investigations, described Mr. Cole as "one of those somewhat rare individ-

uals in this city about whom you will never hear even the mildest of criticism." He concluded that Mr. Cole "is a good man and perfectly suited for the challenging position for which the President has wisely nominated him."

Mr. Cole's critics have been wrong to try to blame him for the actions of AIG. His limited role was as an outside monitor of other corporate functions and there is no evidence showing he did not perform his assignment well. Let us hold those responsible at AIG accountable. Not a single person at AIG has been. There is no basis for making Mr. Cole the scapegoat for the action of AIG. Blame the AIG agents and employees, blame its officers, blame its board, or even criticize the lack of oversight by state and Federal regulators and law enforcement officials if you like. But scapegoating this good man is wrong. As *The Washington Post* observed in an editorial last year when Mr. Cole's nomination was being blocked on the Senate floor, "There is no suggestion that Mr. Cole suffers from the kind of ethical or legal problems that would disqualify a nominee."

There is no justification for the failure to act on this critical national security nomination, and for failing to make sure that the administration has its full national security team in place. During the time when I was chairman we moved very quickly on President Bush's nominees for Deputy Attorney General because of the importance of the security of the United States. It is important for every President to succeed, no matter their party.

I hope that the Senate will reject this destructive and unprecedented filibuster so that we can finally consider and confirm Jim Cole after many months of unnecessary delays. As I said, I could not remember a time in my 37 years here where we had filibustered a nominee to be Deputy Attorney General and that proved to be true.

EXHIBIT 1

BRYAN CAVE,

Washington, DC, June 7, 2010.

Hon. PATRICK J. LEAHY,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

Hon. JEFF SESSIONS,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

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 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.

—
PHELPS DUNBAR,

New Orleans, LA, June 10, 2010.

Re Nomination of Jim Cole to be next Deputy Attorney General of the United States of America.

Hon. PATRICK J. LEAHY,
*Chairman, Senate Judicial Committee,
U.S. Senate, Russell Office Building, Wash-
ington, DC.*

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.

Thanking you again for your courtesies and with best regards, I remain,

Sincerely,

HARRY ROSENBERG.

—
ORRICK,

Washington, DC, June 8, 2010.

Re James M. Cole, Nominee for Deputy Attorney General.

Hon. PATRICK J. LEAHY,
*U.S. Senate, Russell Senate Office Building,
Washington, DC.*

Hon. JEFF SESSIONS,
*U.S. Senate, Russell Senate Office Building,
Washington, DC.*

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.

Mr. LEAHY. I see the distinguished Senator from Texas is here, so I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, the distinguished chairman of the Judiciary Committee has pointed out the Deputy Attorney General is a member of the national security team of the President, and the President has already used the authority under the Constitution to make a recess appointment of this nominee. But the question before the Senate today is whether the Senate should confirm the nomination of James Cole to serve as Deputy Attorney General.

There are three reasons why I oppose this nomination. The first is Mr. Cole is one of the earliest and most vociferous advocates of bringing foreign al-Qaida terrorists to American cities for civilian trials—a position since repudiated by the Attorney General himself in the case of Khalid Shaikh Mohammed, and I am grateful for that. But Mr. Cole has never recanted his position that, in effect, these are criminal cases to be prosecuted as ordinary crimes rather than terrorist acts during a time of war.

The problem, of course, with the paradigm of treating terrorism as a criminal case is that we don't punish the terrorists until they have actually been successful in committing a terrorist attack. In war, half the battle—maybe more than half the battle—is trying to stop the terrorist from actually accomplishing his or her goal of killing innocent people. We do that by interrogating detainees and finding out what they know about the organization and plans of terrorist attacks. Mr. Cole, unfortunately, stands by the outdated, outmoded characterization of these terrorist attacks being ordinary crimes. Of course, they are something much worse indeed.

Quite frankly, as Mr. Holder's Deputy, Mr. Cole will only exacerbate the worst tendencies of the Department of Justice when it comes to distinguishing between criminal prosecutions and fighting a war against terror-

ists. This was, of course, the primary reason why Mr. Cole's nomination was unanimously rejected by Republicans in the Judiciary Committee. The American people want a Department of Justice that is committed to enforcing the law and protecting the innocent, not creating new civil rights for terrorists or treating them as ordinary criminals when they are something else indeed.

In fact, the recent death of Osama bin Laden was a product of a lot of intelligence gathering that occurred over the years. That would never have occurred under Mr. Cole's proposed model of Mirandizing these people when they are arrested; telling them they do not have to provide any information because they are being treated as ordinary criminals rather than as terrorists who are eligible for rough interrogation, if necessary, in order to find out what they know in order to save innocent lives.

Rather than listening to the concerns of Republicans on the Judiciary Committee about Mr. Cole's narrow view of the war on terror and of the views of the American people and perhaps reconsidering this flawed nomination, the President decided to plow ahead and bypass the advise and consent process with a recess appointment. As I said, he, of course, has the right to do so.

There are actually a couple other reasons why I oppose the nomination, and I wish to first express my appreciation to Senator CHAMBLISS and Senator GRASSLEY. Senator CHAMBLISS, of course, is the ranking member of the Senate's Select Committee on Intelligence, and Senator GRASSLEY is the ranking member of the Senate Judiciary Committee. They have continued to demand information from the Department of Justice and have been stonewalled at every turn. Senator CHAMBLISS and his colleagues on the Intelligence Committee have made perfectly reasonable requests consistent with the committee's oversight responsibilities related to the Obama administration's Guantanamo Detainee Review Task Force. Senator GRASSLEY, on the other hand, from his position as the ranking Republican on the Judiciary Committee, on which I serve, has requested documents concerning serious allegations that the Bureau of Alcohol, Tobacco, Firearms and Explosives knowingly allowed straw purchasers to buy firearms which were then provided to criminal drug cartels in Mexico. It has later been reported that at least two of these weapons were found at the scene where a Border Patrol agent named Brian Terry was murdered.

I fully support Senators GRASSLEY and CHAMBLISS and regret that repeated requests for information that were well within the purview of the oversight responsibilities of Congress have been unreasonably rejected. When a minority in the Senate is denied the usual and customary information necessary for us to do our job, we are left

with very few options. One of those options is to force a resolution by exercising our rights as a minority to block cloture. That is not necessarily a permanent move. It means debate continues on the nomination and we cannot come to a vote. But I submit, if rational minds would come together—if Senator GRASSLEY and Senator CHAMBLISS could get the information they and their committees are entitled to and discharge their oversight responsibilities—we could come much closer to resolving the differences on this particular nominee.

Mr. CHAMBLISS. Mr. President, I rise in opposition to cloture on the nomination of James Cole to be the Deputy Attorney General of the United States.

Last December, I objected to further consideration of Mr. Cole's nomination because of the refusal of the Department of Justice, DOJ, to comply with reasonable document requests from the Senate Select Committee on Intelligence. Unfortunately, the President decided to circumvent the Senate and recess-appointed Mr. Cole on December 29, 2010.

Here we are 5 months later: the Justice Department is still thwarting the Intelligence committee's oversight.

The documents we have requested all relate to the Guantanamo Detainee Review Task Force that made recommendations to the Administration on whether to transfer, release, or detain Gitmo detainees. Over 2 years ago, the committee became aware of rising recidivism rates among former Gitmo detainees. At that time, the rate was around 11 percent—it is now above 25 percent. Congress has a unique obligation to the American people to ensure that no more dangerous detainees are released from Gitmo, and that those who have been released do not resume their terrorist ways. Each one of the documents we are seeking is essential to understanding why the task force made certain recommendations about certain detainees, especially those detainees our intelligence professionals judged were too dangerous to transfer.

The detainees remaining at Gitmo are among the worst of the worst, yet many are still designated for transfer. Given the upward trend in recidivism rates, the Intelligence Committee is reasonably concerned that some of the detainees who have been or may be transferred to third countries will reengage in terrorist activities. Lingering questions about the monitoring capabilities of countries that have accepted detainees add to these concerns.

In making its recommendations, the task force operated under guidance and recommendations from the Attorney General. The Department of Justice, however, refuses to provide a September 2009 Attorney General memorandum that reportedly recommends that an entire category of detainees be presumed to be eligible for transfer. If classes of detainees are to be presumed to be eligible for transfer by DOJ, then

I think the Intelligence Committee should know about it and why such guidance was considered appropriate.

The Department has also refused to provide the Intelligence committee with the task force's recommendations for the disposition of the detainees. The task force documents we have been given have entire portions of their recommendations blacked out. This is no way to conduct oversight and it certainly puts the committee at a disadvantage in trying to understand why transfer decisions were made. Interestingly, the Department has provided the recommendations made by review boards during the previous administration.

As with the September 2009 memorandum, the Department argues against giving this information to Congress because of "deliberative process." That assertion may work in a FOIA case or in the context of executive privilege, but there is no legal basis for using it to deny congressional oversight, especially where the documents pertain to national security matters. It is time for the Justice Department to abandon this baseless argument and give us the documents.

The Intelligence committee is also waiting for a list of the 92 detainees who were approved for transfer as of August 28, 2009, prior to the application of the September 2009 memorandum. The Department indicated in November 2010 that the list would be provided, but the committee has yet to receive it.

Last Friday, we heard from the Department for the first time in months, wanting to work something out on the documents in advance of the cloture vote on the Cole nomination. This is a bit ironic, considering that letters and e-mails from last year have gone unanswered. The best thing they can do now is to honor our request and give us the documents that we have requested.

The Department's obstruction of a congressional review is not the only reason I am opposing cloture. Mr. Cole still has not explained comments he made about the 9/11 attacks. In September 2002, he wrote an op-ed in which he called these attacks "criminal acts of terrorism against a civilian population." Following this logic, he diminished 9/11 to being no more than "the scourge of the drug trade, the reign of organized crime, and countless acts of rape, child abuse, and murder." He also argued that the protections of our criminal justice system "must be applied to everyone to be effective." I could not disagree more with this statement—no terrorist deserves the benefits of our criminal justice system.

Mr. Cole has neither rejected these comments, nor really explained why he made them. Until he does so, I have to question his judgment and his suitability to be the second-in-command at the Justice Department.

It is for these reasons, I cannot support cloture on the nomination of Mr. Cole at this time.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask for the regular order.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of James Michael Cole, of the District of Columbia, to be Deputy Attorney General.

Harry Reid, Patrick J. Leahy, Herb Kohl, Dianne Feinstein, Al Franken, Christopher A. Coons, Richard Blumenthal, Amy Klobuchar, Sheldon Whitehouse, Sherrod Brown, Mark Udall, Richard J. Durbin, Thomas R. Carper, Bernard Sanders, John D. Rockefeller IV, Jeanne Shaheen, Charles E. Schumer.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of James Michael Cole, of the District of Columbia, to be Deputy Attorney General shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from Louisiana (Ms. LANDRIEU), and the Senator from Vermont (Mr. SANDERS) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Wyoming (Mr. BARRASSO), the Senator from South Carolina (Mr. GRAHAM), the Senator from Utah (Mr. HATCH), the Senator from Arizona (Mr. MCCAIN), the Senator from Kansas (Mr. MORAN), the Senator from Pennsylvania (Mr. TOOMEY), and the Senator from Louisiana (Mr. VITTER).

Further, if present and voting, the Senator from Utah (Mr. HATCH) would have voted "nay."

The yeas and nays resulted—yeas 50, nays 40, as follows:

[Rollcall Vote No. 67 Ex.]

YEAS—50

Akaka	Cantwell	Feinstein
Baucus	Cardin	Franken
Begich	Carper	Gillibrand
Bennet	Casey	Hagan
Bingaman	Conrad	Harkin
Blumenthal	Coons	Inouye
Brown (OH)	Durbin	Johnson (SD)