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## REPUBLICAN OBSTRUCTION OF PRESIDENT OBAMA'S DEPUTY ATTORNEY GENERAL NOMINATION PUTS U.S NATIONAL SECURITY AT RISK

### **CENTRAL POINTS:**

- The position of Deputy Attorney General of the United States is a critical national security and law enforcement position. The Senate confirmed all four of Pres. Bush's nominees for this position by voice vote an average of 21 days after they were reported by the Judiciary committee. President Obama's nominee, James Cole, was pending last year for 5 months while Republicans objected time and time again to calling it up for a vote, and has been pending for nearly 2 more months this year.
- The treatment of President Obama's two nominations to be Deputy Attorney General represents a sharp break from the Senate's long-standing practice of deference to the Administration and timely consideration of critical national security and law enforcement nominations.
- The nomination of James Cole enjoys broad bipartisan support from former federal prosecutors, high-ranking public officials of both parties, district attorney and criminal defense organizations, and leaders of the legal profession.

### **ABOUT THE OFFICE OF DEP. ATTORNEY GENERAL**

The Deputy Attorney General (DAG) advises and assists the Attorney General in formulating and implementing Departmental policies and programs and in providing overall supervision and direction to all organizational units of the Department. The Deputy Attorney General is authorized to exercise all the power and authority of the Attorney General, except where such power or authority is prohibited by law from delegation or has been delegated to another official. In the absence of the Attorney General, the Deputy Attorney General acts as the Attorney General.

In addition to the above responsibilities, the DAG oversees the DOJ's National Security Division, which plays a crucial role in U.S. counterterrorism efforts. The National Security Division processes Foreign Intelligence Surveillance Act (FISA) wiretap applications, and other than the Attorney General, only a deputy Attorney General can sign a FISA application to wiretap suspected [international terrorists](#).

### **JAMES COLE BIOGRAPHY**

James Cole was sworn in as the Deputy Attorney General Monday, January 3, 2011. Mr. Cole first joined the department in 1979 as part of Attorney General's Honors Program and served there for 13 years – first as a trial attorney in the Criminal Division, and later as the Deputy Chief of the Division's Public Integrity Section, the office that handles investigation and prosecution of corruption cases against both Democratic and Republican elected and appointed officials at all levels of government.

He entered private practice in 1992 and has been a partner with Bryan Cave LLP since 1995, specializing in white collar defense. He served as a court-appointed independent monitor to businesses to establish and oversee corporate compliance programs and ensure they adhere to laws and regulations. He also counseled businesses on securities, regulatory, and criminal law issues.

While in private practice in 1995, Mr. Cole was tapped to serve as Special Counsel to the U.S. House of Representatives Committee on Standards of Official Conduct. In that role, he led an investigation into allegations that former House Speaker Newt Gingrich had improperly used tax-exempt money for partisan purposes and misled the Committee in its inquiry. His investigation led to a bipartisan resolution that was approved by an overwhelming majority of the full House, and required Speaker Gingrich to pay penalties.

Mr. Cole has been a member of the adjunct faculty at Georgetown University Law Center, teaching courses on public corruption law and legal ethics, and has lectured at Harvard University's Kennedy School of Government. He is a former chair of the American Bar Association (ABA) White Collar Crime Committee and serves as the First Vice-Chair of the ABA Criminal Justice Section. He received his B.A. from the University of Colorado and his J.D. from the University of California-Hastings.

## **KEY FACTS**

**The Deputy Attorney General Oversees the DOJ's National Security Division Which Plays A Crucial Role In U.S. Counterterrorism Efforts.** The DAG oversees the division "and is called upon to make crucial time-sensitive decisions to protect the American people" in counterterrorism investigations, as eight former DAGs who served in Republican and Democratic Administrations wrote Senate Majority Leader Harry Reid (D-Nev.) and Minority Leader Mitch McConnell (R-Ky.) on Dec. 1, urging a vote for Cole. [Washington Post, [12/24/10](#)]

- In the absence of a deputy, the group noted, "There is at least one critical statutory responsibility that an Acting Deputy cannot perform - signing applications to the Foreign Intelligence Surveillance Court." [Washington Post, [12/24/10](#)]
- The DAG serves as the No. 2 official in the Department, supervising its day-to-day operations. The eight former deputies, writing to urge a Senate vote on the Cole nomination, emphasized that "the Deputy plays a central role in ensuring effective enforcement of federal laws, including laws against mortgage fraud, health care fraud, organized crime and child exploitation . . . [and] 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." [Cole Letter, [12/1/10](#)]

**James Cole's recess DAG appointment was necessary in light of the obstruction of his confirmation in the last Congress and it is no bar to his confirmation now.** James Cole's nomination was pending for 155 days before it was returned to President Obama.

- The Cole nomination had been awaiting a vote by the full Senate for five months when the recess appointment was made. Previous nominees for Deputy AG have routinely been confirmed in a matter of days, not months. The average time between committee and floor action on the 11 nominees for this position over the last 20 years was 12 days, and none took longer than 32 days. President George W. Bush's four nominees waited 22, 28, 32 and 0 days.

**The treatment of President Obama's two nominations to be Deputy Attorney General stands in stark contrast to the deference given to President Bush.** Republican obstruction represents a sharp break from the

Senate's long-standing practice of deference to the Administration and timely consideration of these critical national security and law enforcement nominations

- All four of the DAGs who served under President Bush were confirmed by the Senate by voice vote no later than 32 days after they were reported by the Judiciary Committee.
- In contrast, President Obama's first nomination to be DAG, David Ogden, was confirmed by a 65-28 roll call vote rather than by voice vote, like President Bush's four nominees, and only after Republicans demanded extensive floor debate.
- "For the second time, the Committee considers the nomination of Jim Cole to be Deputy Attorney General, the number two position at the Department of Justice. I cannot think of a time when the Senate was prevented from acting on a President's nomination of the Deputy Attorney General and this Committee was required to reconsider such a nomination." – Judiciary Committee Chairman, Sen. Leahy

**GOP Charges Against James Cole Are False and Misleading.** Some critics have blamed Cole for his prior work involving AIG. Cole was never an AIG executive, and it is wrong to blame him for the actions of AIG. Cole was assigned by court order to serve as an outside independent consultant to monitor AIG. As the Wall Street Journal noted, Cole "wasn't wasn't assigned to examine many of the issues at the heart of AIG's near collapse, such as credit-default swaps or retention bonuses." [Wall Street Journal, [3/27/09](#)]

**James Cole Enjoys Broad Bipartisan Support among Public Officials And The Legal Community.** This nomination has received strong endorsements from Republican and Democratic public officials and from high-ranking veterans of the Justice Department, including the letter from the eight former DAGs who served in the administrations of President Reagan, President George H.W. Bush, and President George W. Bush.

#### **Current and Former Public Officials:**

- Chuck P. Rosenberg, former United States Attorney, Eastern District of Virginia
- Harry Rosenberg, former United States Attorney, Eastern District of Louisiana
- Michael E. Toner, former Chairman of Federal Election Commission; former Chief Counsel of Republican National Committee
- Jack W. Selden, former United States Attorney, Northern District of Alabama
- Jamie S. Gorelick, former Deputy Attorney General
- Joe D. Whitley, former Acting United States Associate Attorney General
- John C. Danforth, former United States Senator from Missouri [R]
- John F. Wood, former United States Attorney, Western District of Missouri
- Ronald K. Noble, Secretary General, Interpol
- Roscoe C. Howard, Jr., former United States Attorney, District of Columbia
- Joint Letter from Former Deputy Attorneys General from Democratic and Republican Administrations [Donald B. Ayer, Carol E. Dinkins, Mark R. Filip, Jamie S. Gorelick, Philip B. Heymann, Paul J. McNulty, David W. Ogden, Larry D. Thompson]
- Michael Berlin, former Deputy Attorney General for Economic Justice at the New York Attorney General's Office
- Joshua Hochberg, former Chief of the Fraud Section in the Criminal Division of the Department of Justice.

#### **Bar Associations:**

- Joint Letter from Members of Criminal Justice Standards Committee of the American Bar Association [Martin Marcus, Chair; Mark Dwyer; Nancy King; Robert McWhirter; Cheryl Jacobs; Albert Kreiger; Peter Pope; John Wesley Hall; Matthew Redle; Margaret Colgate Love]
- Joint Letter from Current and Former Chairs of the American Bar Association Criminal Justice Section [Bruce A. Green, Charles Joseph Hynes, Anthony Joseph, Stephen A. Saltzburg, Robert Johnson, Michael S. Pasano, Catherine Anderson, Albert Krieger, Ronald C. Smith, Ralph C. Martin II, Bruce Lyons, Myrna S. Raeder, Ronald Goldstock, William W. Taylor III]

**Other Supporters:**

- National Association of Criminal Defense Lawyers, Cynthia Eva Hujar Orr
- Jack L. Oliver, Bryan Cave LLP
- Joint Letter from Law Professors [Rory K. Little, U.C. Hastings College of the Law; Bruce A. Green, Fordham University School of Law; Ronald Goldstock, Cornell, Columbia, and NYIU Law Schools; Charles I. Ogletree, Harvard Law School; Myrna S. Raeder, Southwestern Law School; Andrew Taslitz, Howard University School of Law; Ellen Yaroshefsky, Cardozo University]
- Michael J. Madigan, Orrick
- W. Stephen Cannon, Constantine Cannon
- William H. Jeffress, Jr., Baker Botts
- Steve Ross, Akin Gump Strauss Hauer & Feld LLP, former General Counsel of the House of Representatives