

for temporary housing so it could be used to facilitate permanent housing. That would be a more effective policy, but it is not easy. In some instances, it cannot be done.

Initial reports indicate that Alabama's losses may rival or surpass its \$1 billion loss in Hurricane Katrina. That is a factor we do not normally expect from tornadoes. We will wrestle with those costs as we go forward. But dollar losses are nothing compared to the severe loss of life. We have a record-setting loss of life.

Going through the Rosedale Court area of Tuscaloosa, AL, seeing first responders and volunteers frantically trying to help—in particular, they were searching for a missing young girl. They kept on and there were a large number of people there throughout this area where metal was twisted and roofs were gone and no walls, hardly, were standing. Materials were 3 feet deep on the floor, of plywood, roofing and the like. They found that young child, but unfortunately it was too late and her life had been lost.

That is the kind of thing that has been happening throughout the State. Our people are responding with courage and dignity and hard work. Volunteers from all over the country and all over Alabama are assisting. I was with a seafood group Friday, down from Bayou La Batre, AL, the seafood capital, in many ways, of the Gulf of Mexico, and they had been helped so many times over the decades because of various hurricanes that came through, they wanted to help so they brought large amounts of shrimp and seafood and their cookers. They were going to Tuscaloosa or some of the other areas and serving people out there who were volunteering or were emergency responders who were working to help in that neighborhood. That is the kind of thing that makes us proud and makes us all recognize the good that we have in our people.

I wished to share these thoughts and to note I have filed a resolution that deals with this disaster, expressing the condolences of the United States and noting many of the factors that are relevant to this damage and I will be asking the Senate agree to that. I note it has been cosponsored by Senator SHELBY, my colleague from Alabama, Senators ALEXANDER and CORKER from Tennessee, Senators COCHRAN and WICKER from Mississippi, Senators CHAMBLISS and ISAKSON from Georgia, and I understand others are signing on as we proceed.

I thank the administration for helping to respond properly. I thank the volunteers from all over America who have come to our State to assist those in need.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I ask unanimous consent that I be able to speak as in morning business for up to 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COLE NOMINATION

Mr. SESSIONS. Mr. President, I want to speak in opposition to the nomination of James Cole to be Deputy Attorney General of the United States, on whom we will be voting a little later this afternoon.

Despite President Obama's recess appointment of Mr. Cole, who has had significant opposition in the committee, and was not looking at smooth sailing—I do believe we should oppose his confirmation and his permanent appointment based on some concerns I have with his record, specifically his criminal justice view on the war on terror, which I believe is utterly wrong, and his questionable decisions as an outside consultant for AIG, the big insurance company that had to be bailed out to the tune of, I think, \$170 billion.

He was an independent consultant, supposed to be monitoring that company for other errors they had made previously. So that is a concern to me.

I served 15 years in the Department of Justice—as the U.S. attorney for almost 12, and as an assistant U.S. attorney. I respect the Department. I love the Department of Justice, but I am getting concerned about it. I am not happy with some of the decisions and philosophies that are emanating from the Department. I believe they do not reflect the highest standards and qualities that we expect from that great Department.

This nominee has a lot of good qualities. I believe he has a number of strengths that—has management and some experience in the Department for which I would give him credit. But at this point in history, I believe his approach, particularly to the war on terror, along with the Attorney General's approach to the war on terror are not good. I have just about had enough of them.

I am just going to say this: I am not voting for another nominee—I am not going to vote for this one—who spent their time defending terrorists before they went to the Department. It is all right to defend an unpopular person, but 13 to 16 members of the Department of Justice, political appointees by this administration, have had as their background defending terrorists, including the Solicitor General nominee who is going to be coming up in committee this week, and also working for or representing the ACLU.

So when we get this much of a tilt in the leadership of the Department, it gives me great concern that the great Department I love and respect is getting off base. So I think it is important to note that right now one of the top priorities at the Department of Justice must be the recent warnings we received that the terrorist groups "almost certainly" will try to avenge the death of Osama bin Laden, and the continuing economic crisis that faces our country.

So I believe the President should be nominating proven prosecutors—prosecutors of terrorists, frankly—for top positions in the law enforcement agency, the U.S. Department of Justice. I do not think we need any more terrorist defense attorneys. When I was the U.S. attorney I hired a lot of assistant U.S. attorneys. I looked for proven prosecutors wherever I could find them. I did not go around to look for people who spent their spare time volunteering to defend terrorists or writing papers defending criminals. That is just the way I see it, frankly. I have to be honest about it.

So we have had this one, we have had that one, we have had another one, and another and another. Now we have 13 to 16 who have been appointed to the Department of Justice who have had this background.

Defending the unpopular is not disqualifying. We voted, and I voted, for a number of people in the Department who have been involved in these kinds of defense efforts, who filed lawsuits against President Bush. They thought they were doing something great. I guess they did not turn down the evidence if it helped in any way lead to the location of Osama bin Laden.

We do have standards about how we should gather evidence, and lines should not be crossed. But that does not mean we are not in a war. It does not mean the people who are attacking us are common criminals who need to be tried in civilian courts. They are at war with us. Bin Laden said he is at war with us. He declared war on us. You do not treat prisoners of wars, captured enemy combatants, like you treat common criminals. This is fundamental.

I served in the Army Reserve a number of years, some of that time as a JAG officer. I taught courses on prisoners of war and how to treat prisoners and the standards of the field manual. I do not claim to be a great expert at it, but I did it. I had some experience in it.

Mr. Cole consistently—and some of these nominees to the Department—takes the view that terrorists are criminals and not unlawful combatants. Let me just say briefly, if a person is caught—a murderer, a rapist, or virtually any kind of criminal—when they are taken into custody, as the Presiding Officer knows, who was a good prosecutor himself, they have to be—before you can interview them, once they are in custody you have to

give them Miranda warnings. That authorizes and tells them—basically tells them: You did not have to make any statements at all. It basically says: If you are an idiot, you will make statements. You are entitled to a lawyer. If you do not have any money, we will appoint you a lawyer. You have to go before a magistrate within a matter of hours. You are entitled to discovery of the government's case in short order, and you are entitled to a speedy trial. You are entitled to prowl around in the government's case and find all of the evidence the government has.

In war, that is not so. A classic case was *Ex parte Quirin* in World War II when German saboteurs were dropped off on our coast from a submarine. They were going to sabotage the United States of America. They were apprehended, taken to military tribunals, tried, and most of them were executed in a matter of months. The case went to the Supreme Court, *Ex parte Quirin*, and was affirmed.

There has never been any doubt that unlawful combatants can be tried for their crimes in military courts. It is done all over the world. It is an established principle.

Now, let's get one thing straight. If you are a lawful combatant, and you are captured on the battlefield—whether you are a Japanese soldier or German soldier or Italian soldier—and you comply with the laws of war and you wear your uniform and you do not attack deliberately men, women, and children, civilians, and try to kill them, and you comply with other rules of war, you cannot be tried. You can just be detained until the war is over, but you do not get lawyers. You do not get trials and discovery and all of that sort of thing. But if in conducting your military campaign you violate the internally respected laws of war, you cannot only be held as a prisoner of war, but the nation that is holding you can try you for violations of the laws of war.

So that is how these 9/11 attackers who did not wear uniforms, who attacked deliberately civilians, are perfectly fit to be tried as war criminals or unlawful combatants. They have announced their intention to destroy the United States, to attack the United States. They have said they are at war with us. But they have done it in an unlawful way, and they can be tried in military commissions. This allows the military to conduct interrogations according to the laws of war over a period of months, years even. Sometimes after months a prisoner will start to talk. You never know why they start talking.

But to deny ourselves the right to allow those kinds of things to happen, to say we have to try these individuals, such as Khalid Sheikh Mohammed, in civilian courts is clearly in error. But that is the Attorney General's position. I asked him about it last week when he testified before the Judiciary Committee. He said: It still remains

the policy of the Department of Justice that persons who are arrested as terrorists are presumed to be tried in civilian court, although Congress has passed a law prohibiting moneys to be expended for that, on the 9/11 attackers. The Attorney General is in a huff and said Khalid Sheikh Mohammed will be tried in Guantanamo under military procedures as an unlawful combatant, but he does not like it. That is not his view. It looks like everybody he wants to hire to be in the Department of Justice agrees with that erroneous view.

It is not a close question. This is not a close question. There is no reason a terrorist who is apprehended in the United States ought to be provided lawyers and Miranda warnings. They are combatants. They are not common criminals. Thinking this way has caused dangerous confusion.

As our troops and intelligence community continue to work night and day to keep our country safe, it is imperative that we view the war on terror as a real war and not a criminal matter and regard those who wish to perpetrate terror on this country as enemy combatants, not plain criminals. Like many in the administration, Mr. Cole disagrees.

In 2002, not long after the 9/11 attacks, he wrote an op-ed and published it criticizing then-Attorney General John Ashcroft's decision to try the 9/11 terrorists in military commissions. They researched the law. Attorney General Ashcroft knew what he was doing. They decided they were going to try these individuals by military commissions. He had written an op-ed attacking the Attorney General for it.

So now that is the man we have as the nominee for the Deputy Attorney General of the United States. At his hearing last Congress, Mr. Cole repeated the prevailing and confusing Justice Department position that decisions regarding whether captured terrorists should be tried in civilian courts or before military commissions "should be made on a case-by-case basis based on all of the relevant facts and circumstances available at the time of a suspect's capture." Is this going to happen in Yemen, Afghanistan, Pakistan, wherever else they may be in the United States is not a practical policy because we have to tell the individuals who are making those captures what the rules are. As the Attorney General said, they still adhere to the view that the presumption is, the individual will be tried in civilian court. Therefore, the presumption is, within a short time of their being taken into custody, they should be given Miranda warnings, offered a lawyer, and set for a preliminary court appearance, which could reveal to all the other terrorists that their partner in war has been captured and allow them to escape.

It is a wrong view, and why they persist in this is beyond my understanding. Congress understands it and the American people do also.

This administration has established a policy that declares there is a presumption of civilian trials and has failed to articulate a clear policy for designating captured terrorists as enemy combatants or criminal defendants. So I remain very unconvinced that the next captured terror suspect will not be given the rights of a common criminal and told he has the right to remain silent to the detriment of crucial intelligence gathering. One of the most significant findings of the 9/11 Commission was that intelligence gathering, intelligence possession about what the enemy is doing is the best way to protect our country, not prosecuting them after the fact. So telling someone they have the right to remain silent and they have a lawyer who is going to insist that they not make any statements, does that help us gather intelligence? If it is required by the U.S. Constitution, we will do it. We will just plain do it, regardless, but it is not required by law, history or the Constitution. Law, history, and the Constitution allow these enemy combatants to be tried in military commissions and they don't have to be given Miranda warnings, which was a court-created rule a number of years ago that never was understood before and is not practiced, to my knowledge, in any other Nation in the whole world. Of course, all this provides poor guidance for our law enforcement, military, and intelligence officers as they go about their efforts, and it is a grievous and dangerous mistake to continue this policy.

It seems to me that Mr. Cole and Attorney General Holder are cut from the same cloth on this issue. I am uneasy about these two individuals holding the top two positions in the Department of Justice. Now the Solicitor General nominee seems to hold similar views and, if confirmed, he will be one of the highest ranking people in the Department. Their policy views appear to control the Department of Defense. In other words, if they say this is the rule, the Department of Defense has to give the Miranda warnings and so forth if they are involved in a capture, and it directly controls the FBI, which is part of the Department of Justice.

As the acting second in command at the Justice Department, Mr. Cole would play a lead role in decision-making in the terror prosecutions throughout the country. The Justice Department's continued insistence on a presumption of civilian trials for terrorists confirms my concerns that Mr. Cole has adhered to the failed pre-9/11 law enforcement approach to terrorists, an approach the 9/11 Commission and the Nation as a whole recognized was in error and should be changed. I thought we had clearly made that move. Apparently, we haven't.

Also of concern, from 2003 to 2007, Mr. Cole represented a Saudi Prince against insurance carriers and September 11 victims who alleged that the Saudi Prince helped finance terrorists. Reportedly, Mr. Cole's client was

linked through Treasury Department documents to the financial support of extremist groups through the Al-Haramain Foundation, a Saudi charity that had diverted funds to al-Qaida before and after 9/11. While attorneys are free to, and should be free to, represent unpopular clients, Mr. Cole is one of a long line of political appointees at the Department of Justice who seem to me to be questionable choices for key posts at the agency that is charged with defending national security, given their choices to represent the very individuals and groups whose goal it is to attack this country or kill Americans.

According to press reports, at least 13 to 16 current Obama administration political appointees, including the current Solicitor General nominee who represented Jose Padilla, previously provided legal counsel to suspected or convicted terrorists and enemy combatants being held in detention or to leftwing organizations that actively sought to reverse Bush administration antiterrorist and detainee policies—policies, I might add, that were a contributing factor to the elimination of bin Laden and many other terrorists throughout this past decade. I am curious to know if they have appointed anyone to key positions in the Department of Justice who has ever prosecuted a terrorist. I would like to know that. Maybe they have. Surely, somebody has, but it looks odd to me that so many of those who have been on the other side have been given top appointments.

On another subject, I am very disappointed with this administration's abdication of its duty to defend congressionally enacted laws, specifically the Defense of Marriage Act. Attorney General Holder has stated President Obama had decided he would no longer defend this law, after reviewing the Attorney General's recommendation and that the law falls under the exception in which "the Department of Justice cannot offer a reasonable argument in defense of the statute's constitutionality."

Well, it has been defended and upheld by a number of courts. How do we waltz in there and decide we are not going to defend a congressionally enacted statute signed into law by President Clinton because they don't like it? That is how it appears to me. The administration apparently came to this conclusion after unilaterally deciding that "classifications based on sexual orientation warrant heightened scrutiny"—in the face of precedent from 11 circuit courts of appeal holding that such classifications should be reviewed under the much lower rational basis standard.

There is a very big difference between refusing to defend a law the administration regards as unconstitutional and refusing to defend a law that the administration opposes on the policy grounds.

The ACTING PRESIDENT pro tempore. The Senator has used 15 minutes.

Mr. SESSIONS. I ask unanimous consent to speak for 1 additional minute.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, the Department of Justice is a great department, and they have some very fine people there. I know Mr. Cole has some good qualities. I supported Mr. Holder for Attorney General, but I am very uneasy about the direction the Department is taking on a large number of issues, and I believe one of the reasons this is happening is because they have surrounded themselves with a group of leftist lawyers, activist lawyers who don't operate according to the more traditional views of law and justice in America. That is my view. Other Senators may disagree. That is my view. I am not able to support Mr. Cole for that and the reasons I have stated. I hope in the future the administration will appoint more nominees that have proven records of independence, effective prosecution, and commitment to law.

I thank the Chair and yield the floor. The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Mr. CARDIN. Mr. President, I greatly respect my friend from Alabama, Senator SESSIONS, although I come to a different conclusion in regard to Jim Cole.

I have worked with Jim Cole. I was part of a legislative committee in the House of Representatives that had to do some very difficult work on an ethics issue involving a former Speaker of the House of Representatives. It was a tough decision to bring together six Members of the House—three Democrats, three Republicans—and do it in a way that would maintain the nonpartisan requirements of an ethics investigation. The atmosphere was very partisanly charged around the work we were doing. I know this sounds familiar. People in Maryland and Connecticut and around the Nation understand we are working in a very partisan environment, and they expect the people who are charged at the Department of Justice to work in a nonpartisan manner.

This is not a partisan position, the Deputy Attorney General. This is a person who is working with the Attorney General, the Nation's lawyer. We want somebody who has the experience, someone who has the character and commitment to carry out this very important position.

As I said, I have known Jim Cole. He has 13 years' experience within the Department of Justice. He is a public interest attorney. That has been the largest part of his professional career, the service of public interests. He has always followed policy, not politics. He has a very distinguished career in law, and he is the type of person we like to see within the Department of Justice.

As I pointed out, I worked with Jim Cole when I was in the House of Representatives. We worked on a very dif-

ficult investigation involving the former Speaker of the House of Representatives who at the time was Speaker. The chairman of the committee was Porter Goss, a Republican from Florida. Porter Goss's observations of Jim Cole were that he was a brilliant prosecutor, extraordinarily talented. Then Mr. Goss goes on to say that over time, he brought our committee to a bipartisan cooperation which was desperately needed in order to successfully complete that matter. At the end of the day, the six of us came together in a unanimous recommendation. That is the type of person Jim Cole is. He was professional and put policy ahead of politics.

Former Senator John Danforth testified at Jim Cole's confirmation hearing. John Danforth is a former Republican Member of the Senate. He called Jim Cole "a lawyer's lawyer."

Jim Cole has support from Democrats and Republicans. Former high officials within the Department of Justice have all recommended him, including former Deputy Attorneys General appointed by both Republicans and Democrats.

Let me quote one other person I had hoped would be greatly respected on both sides of the aisle; that is, Fred Fielding, the White House counsel for former President George W. Bush. He said Mr. Cole "combines all the qualities you want in a 'citizen public servant'—he understands both sides of the street and is smart and tenacious, and is a person of unquestioned honor and integrity."

That is what Fred Fielding, the former White House counsel to President Bush said, about Jim Cole.

Jim Cole is supported by former RNC officials and DNC officials because he is nonpartisan. He is a nonpartisan person who has put public interest law as his top priority.

I was listening to Senator SESSIONS talk about terrorism. We have had a spirited political debate taking place in this country over the best way to bring terrorists to justice. Mr. Cole, however, will always put principle over politics, and he is committed to evaluating each case and matter that comes before him based on the facts and the law. That is what you want from the Department of Justice. They are the values and the character we want in our Nation's Department of Justice, and Jim Cole will bring that to the Department of Justice—already brought it to the Department of Justice.

The bottom line about Mr. Cole's approach on fighting terrorists is one I believe we all believe in. We are a nation at war with al-Qaida, the Taliban, and their associated forces. We need tough, aggressive, and flexible policies that recognize the paramount importance of providing the President with the ability to use all of the lawful tools—all of the lawful tools—of our national power to protect the American people and bring terrorists to justice.

Jim Cole believes in that. He is committed to working with the Congress so we use all available tools. We make the judgment in each individual case as to what is the most effective way to bring a terrorist or criminal to justice.

He not only has expertise in handling terrorists and bringing them to justice, he has had very important positions in the Department of Justice supervising the criminal prosecution of white-collar crimes. He understands the full breadth of the Department of Justice and is a very valuable player in making sure the Department of Justice follows in the fine tradition of that agency.

I urge my colleagues to vote to move forward. At least vote to allow this nomination to get an up-or-down vote. This is a very important position: the Deputy Attorney General. We talk about we were sent here to Washington to make tough votes. OK. I do not think this is a tough vote. I think Jim Cole is the best person for this critically important job, and I do not think he is at all a partisan person. I know him well. I know him to be a career type individual who is interested in doing what is right. But this is not a nominee where you should be using a filibuster to prevent an up-or-down vote.

This is a very important position for our country. For the dignity of the Senate and the Department of Justice and the decency of Jim Cole, I urge my colleagues to allow us to go forward with an up-or-down vote on his confirmation, and I urge my colleagues to support his confirmation to be Deputy Attorney General of the United States.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COONS). The clerk will call the roll.

The assistant legislative 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 know we are in morning business. I ask unanimous consent to speak on the nomination of James Cole to be Deputy Attorney General.

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

Mr. GRASSLEY. Mr. President, I rise in opposition to the motion to invoke cloture on the nomination of James Cole to be the Deputy Attorney General at the Department of Justice. I oppose proceeding to a vote on the nominee for a number of reasons.

I have concerns regarding Mr. Cole's qualifications and am troubled by President Obama's recess appointment of Mr. Cole to this position. I have been consistent in my opposition to recess appointments over the years. Whenever the President bypasses the Senate by making recess appointments, such nominees will not receive my support. We have a process in place for nominations and if the President is not willing

to work with Senators to clear nominations, the nominee should not get a second bite at the apple.

In addition to my general opposition to recess appointments, I have consistently warned this administration that I would not cooperate in moving nominees for the Department of Justice, until they cooperated with my request for oversight materials. Last month, I went to the floor to describe what I have learned in the course of my investigation into whistleblower allegations at the Bureau of Alcohol, Tobacco, Firearms, and Explosives, ATF. According to whistleblowers, guns found at the scene of the murder of Border Patrol Agent Brian Terry had been purchased illegally by a known straw buyer a year earlier, with the blessing of the ATF as part of an operation known as Fast and Furious.

I first asked about this issue on January 27. On February 16, I requested specific documents from the Justice Department. I reiterated that request on March 3.

When the Justice Department failed to produce any responsive documents, I partnered with House Oversight and Government Reform Chairman DARRREL ISSA, who first requested documents and then issued a subpoena to the ATF after his voluntary request was ignored. On April 13, my staff learned that the Justice Department was making certain documents available for Chairman ISSA's staff to review at the Department. Not only did the Department fail to notify me of this document review, when I sent two of my staff members to participate, they were turned away at the door of the Justice Department.

To this day, the Justice Department has still not produced a single page of documents in response to my inquiries and has provided only previously released public documents in response to Chairman ISSA. I received a letter on May 2, 2011, declining to provide my staff with access to the documents on the grounds that "the Executive Branch . . . has taken the position that only a chairman can speak for a committee in conducting oversight work." According to the DC Circuit Court of Appeals, however:

It would be an inappropriate intrusion into the legislative sphere for the courts to decide without congressional direction that, for example, only the chairman of a committee shall be regarded as the official voice of the Congress for purposes of receiving such information, as distinguished from its ranking minority member, other committee members, or other members of the Congress. Each of them participates in the law-making process; each has a voice and a vote in that process; and each is entitled to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator.

That is from *Murphy v. Department of the Army*, 1979.

I said on the floor on April 14 that if the Justice Department did not cooperate and provide the information we need, I would consider exercising my

right to object to unanimous consent requests on a nomination. Since that time, I have received nothing but stonewalling from the Department. As the chief operating officer of the Department, Mr. Cole is in a position to ensure the Justice Department meaningfully cooperates with my inquiries and complies with my document requests. He has failed to do so.

I also am troubled by the Department's continued resistance to oversight requests from Senator CHAMBLISS, the vice chairman of the Select Committee on Intelligence. Senator CHAMBLISS has requested that the Department of Justice share important documents with Congress regarding the Guantanamo Bay Detainee Review Task Force. This task force reviewed the case files of many detainees that were released or transferred from U.S. custody. Unfortunately, we now know that over 25 percent of those detainees later returned to fight against us or our allies.

These documents are part of a legitimate exercise of our constitutional duty to conduct oversight. The Department's repeated stonewalling of Senator CHAMBLISS's request should not be rewarded with a cloture vote on a controversial nominee.

The Deputy Attorney General is the second in command at the Justice Department and responsible for overseeing the day-to-day operations of the Department. Managing this vast bureaucracy is a difficult task that requires a serious commitment to protecting our national security, enforcing our criminal laws, and safeguarding taxpayer dollars. We need a qualified individual to fill this slot, an individual who possesses the ability to not only provide leadership for the Department but also an individual who has the smarts, capability and willingness to manage Department programs and root out inefficiencies and abuses in those programs. After reviewing all his responses and his hearing testimony, I concluded that I could not support Mr. Cole's nomination to be the Deputy Attorney General.

In particular, I am seriously concerned about Mr. Cole's views on national security and terrorism. Back in 2002, Mr. Cole was the author of an opinion piece in the *Legal Times*. In that piece, he stated:

For all the rhetoric about war, the Sept. 11 attacks were criminal acts of terrorism against a civilian population, much like the terrorist acts of Timothy McVeigh in blowing up the Federal building in Oklahoma City, or of Omar Abdel-Rahman in the first effort to blow up the World Trade Center. The criminals responsible for these horrible acts were successfully tried and convicted under our criminal justice system, without the need for special procedures that altered traditional due process rights.

He added that, "The acts of Sept. 11 were horrible, but so are . . . other things." The other things he referred to were the drug trade, organized crime, rape, child abuse and murder. Mr. Cole's opinion piece argued that

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.