



Department of Justice

STATEMENT OF

**JAMES M. COLE
DEPUTY ATTORNEY GENERAL**

BEFORE THE

**SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION AND
REGULATORY AFFAIRS
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

FOR A HEARING EXAMINING

**THE DEPARTMENT OF JUSTICE RESPONSE TO THE IRS
TARGETING SCANDAL**

PRESENTED

JULY 17, 2014

Statement of Deputy Attorney General James M. Cole
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs
Committee on Oversight and Government Reform
U.S. House of Representatives
July 17, 2014

Good morning, Chairman Jordan, Ranking Member Cartwright, and Members of the Committee. I am here today to testify in response to the Committee's oversight interest in allegations that the Internal Revenue Service targeted conservative groups seeking tax-exempt status.

When the allegations of IRS targeting surfaced in May of 2013, the Attorney General immediately ordered a thorough investigation of them. That criminal investigation is being conducted by career attorneys and agents of the Department's Criminal and Civil Rights Divisions, the Federal Bureau of Investigation, and the Treasury Inspector General for Tax Administration (TIGTA). I have the utmost confidence in the career professionals in the Department and the TIGTA, and I know that they will follow the facts wherever they lead and apply the law to those facts. While I understand that you are interested in learning about the results of the investigation, in order to protect the integrity and independence of this investigation, we cannot disclose non-public information about the investigation while it remains pending. This is consistent with the longstanding Department policy, across both Democratic and Republican Administrations, which is intended to protect the effectiveness and independence of the criminal justice process, as well as privacy interests of third parties. I can, however, tell you that the investigation includes investigating the circumstances of the lost emails from Ms. Lerner's computer.

In response to your requests, we have undertaken substantial efforts to cooperate with the Committee in a manner that is also consistent with our law enforcement obligations. We have produced documents relating to limited communications regarding 501(c) organizations by Criminal Division attorneys with Lois Lerner, who was the head of the Exempt Organizations Division at the IRS. We have also taken the extraordinary step of making available as fact witnesses two career prosecutors from the Department's Public Integrity Section, who explained these contacts with Ms. Lerner.

In 2010, for the purpose of understanding what potential criminal violations, related to campaign finance activity, might evolve following the Supreme Court's decision in *Citizens United v. FEC*, a Public Integrity Section attorney reached out to the IRS for a meeting, and was directed to Ms. Lerner. In the course of that meeting, it became clear that it would be difficult to bring criminal prosecutions in this area and, in fact, no criminal investigations were referred to

the Department of Justice by IRS, and no investigations were opened by the Public Integrity Section as a result of the meeting.

A separate contact between the Public Integrity Section and Ms. Lerner occurred in May 2013, when the Department had been asked both in a Senate hearing and in a subsequent letter from Senator Sheldon Whitehouse whether the Department and the Treasury Department had an effective mechanism for communicating about potential false statements submitted to the IRS by organizations seeking tax-exempt status. An attorney in the Public Integrity Section reached out to Ms. Lerner to discuss the issue. Ms. Lerner indicated that someone else from the IRS would follow up with the Section, but that follow-up did not occur.

In sum, these two instances show that attorneys in the Public Integrity Section were merely fulfilling their responsibilities as law enforcement officials: they were educating themselves on the ramifications of changes in the area of campaign finance laws and ensuring that the Department remained vigilant in its enforcement of those laws.

As we have explained to the Committee previously, in 2010, in conjunction with the meeting I previously described, the IRS provided the FBI with disks that we understood at the time to contain only the public portions of filed returns of tax-exempt organizations. As we have indicated in letters to the Committee, the FBI has advised us that upon their receipt of those disks, an FBI analyst reviewed only the index of the disks and did nothing further with them and, to the best of our knowledge, they were never used for any investigative purpose. Pursuant to the Committee's subpoena, we provided you with copies of the disks on June 2, 2014, when it remained our understanding that the disks contained only publicly available information. Shortly thereafter, the IRS notified the Department that the disks appeared to inadvertently include a small amount of information protected by Internal Revenue Code Section 6103, and we promptly notified the Committee of this fact by letter of June 4, 2014. We promptly provided our copies of the disks to the IRS, and suggested that the Committee do the same. In order to provide you with our best information regarding the disks—including the fact that they were not used by the FBI for any investigative purpose—we have now written the Committee several letters regarding the disks, and the Director of the FBI answered questions about them from Chairman Jordan in a House Judiciary Committee hearing on June 11, 2014.

We recognize the Committee's interest in this matter. We share that interest and are conducting a thorough and complete investigation and analysis of the allegations of targeting by the IRS. While I know you are frustrated by the fact that I cannot at this time disclose any specifics about the investigation, I do pledge to you that when our investigation is completed, we will provide Congress with detailed information about the facts we uncovered and the conclusions we reached in this matter.

I will now be happy to respond to your questions.

Official Biography of Deputy Attorney General James M. Cole

James Cole was sworn in as the Deputy Attorney General on Monday, January 3, 2011. Mr. Cole first joined the Department in 1979 as part of Attorney General's Honors Program and served 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 officials, and employees at all levels of government. At Public Integrity Mr. Cole tried a number of notable cases, including prosecution of a U.S. District Judge, a member of Congress, and a federal prosecutor.

He entered private practice in 1992 and was a partner at Bryan Cave LLP from 1995 to 2010, specializing in white collar defense. He served as a court-appointed independent monitor to a large insurance company to establish and oversee corporate compliance programs and ensure it adhered 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 House Ethics Committee. 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 resulted in a formal reprimand of Speaker Gingrich and a requirement that he 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 served as the Chair Elect 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.