

**Nomination for Gus Coldebella
to be DHS General Counsel
Senator Joe Lieberman
July 15, 2008**

Thank you all for being here today for the nomination hearing of Gus Coldebella to be General Counsel of the Department of Homeland Security. Welcome to you, Mr. Coldebella, to your new bride, and to the rest of your family here today.

The position of General Counsel is obviously a critical one at the Department, which has made good progress in five years to strengthen our defenses here at home against terrorist attacks and natural disasters but of course, we've all got a long way to go and it's a persistent challenge to make sure we defend the security of our nation and our people.

First and foremost, the General Counsel must advise the Secretary and manage the legal functions of the Department. But his or her role at the Department is not solely inward looking. The General Counsel, for example, must ensure that Americans' fundamental rights are protected as the Department's mission is carried out. The General Counsel also occupies a unique position with respect to the interaction between the Department and Congress: the General

Counsel is responsible for counseling the Secretary on how the laws Congress passes are to be interpreted and properly implemented. And the General Counsel also plays a central role in the relationship between the Department and Congress.

Mr. Coldebella came to the Department of Homeland Security in 2005 from the law firm Goodwin Proctor of Boston, where he was a partner. In his almost three years at the DHS, Mr. Coldebella has served in the Office of General Counsel as Deputy General Counsel, Principal Deputy General Counsel, and since February 2007, as Acting General Counsel. He is well acquainted with the responsibilities of the job and has a full record upon which the Senate will judge him.

I have never met Mr. Coldebella before this morning, but my staff has had many interactions with him over the last three years and has significant concerns based on those interactions. I want to deal with them directly in these opening comments and in my questions.

Mr. Coldebella joined the Department shortly after this Committee had begun its investigation into the government's response to Hurricane Katrina, and he immediately took on a leadership role in the Department's response to our

inquiry. I was critical at the time of DHS's response, finding it often slow and ultimately incomplete. In fact, six members of this Committee, including myself, concluded in our "additional views" in the Committee's report on Hurricane Katrina, "there is no doubt that the way in which the Department responded to the Committee's document, information, and witness requests significantly hampered the Committee's ability to conduct its investigation."

As Deputy General Counsel during this investigation, Mr. Coldebella arguably bears some responsibility for this inadequate response both by virtue of his position and through his direct personal involvement. During interviews he instructed Department witnesses not to answer certain questions simply because they sought information about the role of the Secretary or of the White House. During our review of his nomination he admitted that his office had likely failed to turn over some boxes of documents turned over by DHS agencies, simply because his office didn't have the time to review them.

The Government Accountability Office has also periodically raised concerns about its ability to gain access to relevant information and materials at the Department, and has complained of the Office of the General Counsel inserting

itself unhelpfully into the process.

I am also concerned that the Department, with advice from the Office of General Counsel, has sometimes adopted legal interpretations at odds with Congressional intent – and with the seemingly plain language of a statute. This has occurred, for example, with respect to various provisions of last year’s 9/11 Commission Recommendations Act that originated in this Committee -- including requirements for the Visa Waiver Program, and at least one aspect of the homeland security grant provisions.

So your nomination comes to us with a great personal capability and experience, , without accusations of unethical behavior or anything like that, but with serious questions that go to the extent to which you have, and if confirmed, would cooperate with Congress in the dispatch of our oversight responsibilities under the law for the Department. I wanted to mention these directly so we have an opportunity to discuss them openly and honestly and in that sense reach a reasoned conclusion about these concerns and proceed with consideration of your nomination. Senator Collins?

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