

Professor Lance Cole of Penn State University's Dickinson School of Law also has reviewed the Rosenberg/Brand memorandum and agrees with its analysis and conclusions.

Mr. Cole is Professor of Law and Director of the Center for Government Law and Public Policy Studies at Penn State Dickinson School of Law. In 1995 and 1996 he served as Deputy Special Counsel (Minority) to the United States Senate Special Committee on Whitewater. In 2003 and 2004 Professor Cole served as a legal consultant to the National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission"). In both of those roles he provided legal advice on a wide variety of disputes involving Legislative Branch efforts to obtain testimony and documentary evidence. Professor Cole is the author of numerous scholarly articles and works on government investigations law and procedure.

Professor Cole provided the following statement: "I agree with the analysis and conclusions of Mr. Rosenberg, and the additional comments by Mr. Brand. I also have a broader concern about seeking criminal contempt sanctions against Ms. Lerner. I do not believe criminal contempt proceedings should be utilized in a situation in which a witness is asserting a fundamental constitutional privilege and there is a legitimate, unresolved legal issue concerning whether or not the constitutional privilege has been waived. In that situation initiating a civil subpoena enforcement proceeding to obtain a definitive judicial resolution of the disputed waiver issue, prior to initiating criminal contempt proceedings, would be preferable to seeking criminal contempt sanctions when there is a legitimate issue as to whether the privilege has been waived and that legal issue inevitably will require resolution by the judiciary. Pursuing a criminal contempt prosecution in this situation, when the Committee has available to it the alternatives of either initiating a civil judicial proceeding to resolve the legal dispute on waiver or granting the witness statutory immunity, is unnecessary and could have a chilling effect on the constitutional rights of witnesses in congressional proceedings."