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CONFIRMATION HEARING ON THE NOMINATIONS OF MICHAEL CHERTOFF AND VIET D. DINH TO BE ASSISTANT ATTORNEYS GENERAL

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

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CONFIRMATION HEARING ON THE NOMINATIONS OF MICHAEL CHERTOFF AND VIET D. DINH TO BE ASSISTANT ATTORNEYS GENERAL

WEDNESDAY, MAY 9, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:10 a.m, in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Specter, Sessions, Leahy, and Durbin.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman HATCH. Well, good morning, everybody, and welcome to the nomination hearing before the Senate Judiciary Committee today.

Today we will be considering the nominations of Michael Chertoff to be the Assistant Attorney General for the Criminal Division and Viet Dinh to be the Assistant Attorney General for the Office of Policy Development.

Before we begin, I would like to congratulate both of these nominees for being chosen by the President for these important positions. Both of you have distinguished yourselves by your hard work, your intellect, your fairness and decency, and I think you will do great service to the Department of Justice and the citizens of this country upon your confirmation.

The position of Assistant Attorney General for the Criminal Division is vital to the Department of Justice and to this country and to every citizen in this country. The Criminal Division develops, enforces, and supervises the application of almost all Federal criminal laws. The person who fills this job has to have unquestioned integrity and competency and must be able to exercise good judgment and provide objective legal advice to the Attorney General and other departments and branches of Government. So this is an extremely important position, and it needs to be filled now.

Mr. Chertoff meets all of these requirements. His distinguished legal career includes substantial experience not only in the private sector but also in all three branches of the Federal Government. Highlights of his career include graduating with honors from Harvard College and Harvard Law School and serving as a law clerk for Justice Brennan of the U.S. Supreme Court. He also served as

Assistant U.S. Attorney for the Southern District of New York and as U.S. Attorney for the District of New Jersey.

In 1994, Mr. Chertoff served as special counsel to the U.S. Senate Special Committee to Investigate Whitewater and Related Matters, and I think most Senators would readily concede that he was very fair in what he did.

Most recently, he has worked as a partner in the prestigious law firm of Latham and Watkins, where he serves as national chair of the firm's white-collar criminal practice. It is difficult for me—or anybody else, I think—to imagine a person more suited to be chief of the Criminal Division, which explains why his nomination has received such significant bipartisan support.

Viet Dinh is a similarly good fit for the position of Assistant Attorney General for the Office of Policy Development. This is an extremely important position within the Department of Justice. The OPD coordinates Department initiatives, briefing materials, and policy statements. It also works to review legislation and to ensure that the administration's agenda is being carried forward in the policy arena.

Moreover, the office serves as a liaison to the Office of Management and Budget and other agencies on regulatory matters. Although Mr. Dinh is still young, there is no doubt that his life experiences and professional accomplishments make him eminently qualified for this role. I hope he will tell us about coming to this country from Vietnam when he was 10 years of age. But we already know from the mountain of materials he has submitted to the Committee that he has been writing and making public appearances ever since.

Mr. Dinh has a very impressive academic background, having graduated from Harvard College and Harvard Law School with honors. After law school, he clerked for Judge Laurence Silberman on the U.S. Court of Appeals for the D.C. Circuit and then for Justice Sandra Day O'Connor on the Supreme Court. Upon completion of these esteemed clerkships, he served as associate special counsel for the Senate Special Committee to Investigate Whitewater. Then in 1996, he became a professor at the Georgetown Law Center, where he received tenure last year. All great accomplishments.

Mr. Dinh's academic interests have incredible breadth. He has written on structural constitutional issues and separation of powers as well as on international business law and development. He also has a great deal of experience with administrative law, which will assist him with the responsibilities of this position.

In addition to his academic work, Mr. Dinh has provided insightful commentary on many of the difficult social issues of our time. Mr. Dinh will be a tremendous asset to the Office of Policy Development and will lead the office with the intelligence and good judgment for which he is known.

So it is a pleasure to welcome both of you and your families here today, and we will now turn to the Democratic leader on the Committee, Senator Leahy.

Senator LEAHY. Mr. Chairman, I understand that Representative Sanchez is going to have a vote in just a few minutes in the House.

Chairman HATCH. Would you like for her to go forward?

Senator LEAHY. I would be happy to have her go forward. In fact, I think her appearance today speaks volumes about her and her willingness to go the extra mile to seek to be bipartisan, especially when you consider how outrageously you were treated by some in your election to the House. In that, you probably do not know which way the person you are going to speak about went, but I think it speaks volumes for you, Representative Sanchez, and I admire you for being here. I will withhold and speak after her.

Chairman HATCH. With that gracious concession, let me turn to Ms. Sanchez. I understand you have a vote within the next 5 minutes.

Representative SANCHEZ. Yes, actually, the vote is on the House floor right now.

Chairman HATCH. We will extend this courtesy to you.

PRESENTATION OF VIET DINH, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR LEGAL POLICY BY HON. LORETTA SANCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Representative SANCHEZ. If you do not mind, I have less than maybe a minute or two. First of all, thank you, Mr. Chairman and Ranking Member Leahy, for allowing me to come before you today to introduce to you Viet Dinh. I am here today because Viet Dinh is a very intelligent young man who, of course, has been nominated for Assistant Attorney General for Legal Policy.

First and foremost, I would like to acknowledge that his parents are here today. They have traveled here from the Los Angeles area to be with us, Nga Nguyen and Phong Dinh, who is his father. Would you please stand here?

Chairman HATCH. We certainly welcome both of you here. I was happy to meet you before this hearing. You are such nice people.

Representative SANCHEZ. As you know, Mr. Chairman, I represent the largest Vietnamese population outside of Vietnam in the world, and Viet Dinh was born in Votoi, Vietnam, on February 22, 1969. He is the youngest of seven children, and his father was a city council member in their hometown back in Vietnam. He was imprisoned in 1975, and his family needed to flee the country and was able to flee to Malaysia in 1978, where they met up with the father. They then came here to America, and I do hope that Viet will talk to you a little bit about his experience fleeing in a boat.

His family first came to Oregon when they came to the United States. They picked strawberries for a living, and then they were eventually able to come down to Southern California, to Fullerton, California, in Orange County. Dinh enrolled in Fullerton High School, and, of course, he went on to Harvard Law School and completed graduation, being a graduate of the law school there.

I am sure that you will have many questions for him today, but I am pleased to introduce him in a very bipartisan manner from Orange County, California.

Thank you.

Chairman HATCH. Thank you. We respect that, and we appreciate your taking the time to come over. I know you have that vote, so we will excuse you at this time. Thank you for taking the time.

Representative SANCHEZ. Thank you.

Chairman HATCH. I am sure Mr. Dinh and his family appreciate it very much.

We will turn to the Democratic leader on the Committee, and then I intend to turn to Senator Domenici as soon as you are through.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Mr. Chairman, I join with you in welcoming the nominees and their families and friends to what is now the fourth confirmation hearing of this Congress, two very important nominations: the Assistant Attorney General in charge of the Criminal Division, and the Assistant Attorney General for the Office of Policy Development.

While we consider these current nominations, we should note that the many dedicated employees of the Department of Justice, thousands of them, continue to work, to do their job, to serve the public, as they always have. And I would note that it is the administration, not you, Mr. Chairman, nor I, who called upon United States attorneys, who serve as the front line for our Federal law enforcement efforts, to resign, for most of them to resign in advance of a single nomination to head those important offices around the country. I commend the Chairman for his ambitious schedule, his weekly proceedings on Justice Department nominations.

Somebody has an important phone call. I will hold if they want to take it.

We have moved very, very quickly. We are proceeding today with the nomination even though the usual pile of background materials of the nominee continued to be supplemented through yesterday. We have had Professor Dinh's questionnaire for less than 2 weeks. In the meantime, it has been supplemented by a correction letter, and then by a large binder supplementing the five binders of material that accompanied his questionnaire.

Then we were informed of a number of missing amicus briefs written by the nominee, easy to overlook, perhaps, but one was in the case of *Bush* v. *Gore* that had inadvertently been overlooked, and only yesterday yet another supplement to his questionnaire arrived listing additional overlooked appearances by the nominee.

Now, I am eager to help the administration staff the Justice Department. As you recall, we moved within about 1 week of Attorney General Ashcroft's hearing and voted him on the floor within 24 hours, 48 hours, something like that, of actually receiving the papers on him. So I want to help, but I think we should not be scheduling hearings for nominees whose papers are only just being received. These papers the Senators have not had a chance to read.

I recall by way of contrast the recriminations and delay that accompanied the slightest perceived problems with the timely production of materials by the former President's nominees. Take, for example, the delays and opposition to the tentative nomination of Margaret Morrow when she failed to provide materials from a Bar magazine column. It went on for months. In fact, we even had one Senator asking if she would tell how she had voted on secret ballots on California elections before they would go forward.

But I thank the members of the Committee for their cooperation and the effort they are making to proceed with this hearing today. I would hope the Chairman would take these matters into account and accord Senators more than the normal week we have usually allowed for the submission of written questions after the conclusion of the hearing and testimony.

I know that Michael Chertoff is a well-known figure here on Capitol Hill. Many will recognize Mr. Chertoff from his time serving as chief counsel for Senator D'Amato's Whitewater investigation of President Clinton and Mrs. Clinton and others. Through this hearing, we will get the opportunity to learn of his academic record, his clerkship for Supreme Court Justice William Brennan—who was a friend of both of ours, Mr. Chairman—his service as a Federal prosecutor in New Jersey, and his private practice of law.

Professor Viet Dinh teaches at Georgetown University Law Center, as does my former chief counsel and former chief of staff John Podesta. He, too, spent time on Capitol Hill serving as an associate counsel to the Whitewater investigation and telling the Republicans how they should move forward on the impeachment of President Clinton.

One of the major responsibilities of the Office of Policy Development at the Department of Justice, which Professor Dinh has been nominated to head, is the evaluation of the qualifications and fitness of candidates for the Federal judiciary. Many of us have great interest in that, and so I would look forward to inquiring about his plans for judicial nomination and his qualification.

I have a much longer statement, but, Mr. Chairman, I know you want to get moving forward, and I will put the rest of it in the record with your permission.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

I join with the Chairman in welcoming the nominees and their families and friends to the fourth confirmation hearing of this Congress. Again, this morning we proceed on two important nominations. This morning we consider the nominees to be the Assistant Attorney General in charge of the Criminal Division and the Assistant Attorney General for the Office of Policy Development at the Department of Justice.

Early this year we proceeded with hearings on the nomination of Attorney General Ashcroft even before the nomination was received from the President. We debated and voted on that nomination in Committee within a day of its receipt by the Senate from the President in late January. Working together, Democrats and Republicans on this Committee expedited consideration of that matter so that Senate action was completed after less than two days of debate on February 2. By contrast, Attorney General Reno was not confirmed until March of the first year of the Clinton Administration.

I have spoken to Attorney General Ashcroft about the staffing needs of the Department of Justice and assured him that I will do my part. For those with short memories, let us recall that the Deputy Attorney General and the Solicitor General for the last Administration, Phillip Heymann and Drew Days, were not confirmed until May 28th that year. President Clinton's outstanding nominee to head the Antitrust Division, Anne Bingaman, was not confirmed until June 16, and his first Assistant Attorney General for the Office of Legislative Affairs, Sheila Anthony, was not confirmed until June 30.

President Clinton's Assistant Attorney General heading the Office of Policy Development was not confirmed until August 2, 95 days after her nomination, and President Clinton's Assistant Attorney General to head the Criminal Division was not confirmed until November 20, 74 days after her nomination. Chairman Biden

worked hard with Senator Hatch, who then served as the Ranking Member, to reach those dates in the late spring, summer and fall of 1993.

I also recall that the1993 nomination of the distinguished professor and scholar Walter Dellinger to serve as an Assistant Attorney General heading the Office of Legal Counsel took six months to confirm and that we had to overcome a filibuster in the Senate before we were able to get to a vote. The nomination of Lois Schiffer to serve as the Assistant Attorney General in charge of the Environment and Natural Resources Division took eight months before she was confirmed.

Ray Fischer's nomination to be the number three position at the Department, the Associate Attorney General, was not confirmed for five months. By the way, I do not believe that President Bush has yet nominated anyone to serve as the Associate Attorney General, the third highest ranking position in the Department.

More recently, under the Chairmanship of Senator Hatch, President Clinton's nomination to head the Civil Division, David Ogden, was held up for 18 months before he was finally confirmed. Randy Moss, the last Assistant Attorney General to head the Office of Legal Counsel took 13 months before he was finally confirmed. Glenn Fine, the Inspector General for the Department took seven months to confirm. Robert Raben, a House Judiciary Committee staffer who was endorsed by Chairman Hyde, took five months to confirm as the most recent Assistant Attorney General in charge of the Office of Legislative Affairs.

Nor do these names include the many fine nominees who never were accorded a vote and those who never even received a hearing. In particular, I deeply regret this Committee's and the Senate's treatment of the nomination of Bill Lann Lee. He was nominated by the President to serve as the Assistant Attorney General in charge of the Civil Rights Division in July 1997 and renominated in 1998 and 2000. He never received a Senate vote in three and one-half years, although he served admirably in an acting capacity and then as the Assistant Attorney General pursuant to a recess appointment of the President.

I note this recent history not to urge Democrats to repeat the tactics and excesses engaged in by Republicans over the course of the most recent Democratic Administration, but to add context and time frames against which to consider the progress we are making in staffing the appointed positions at the Department of Justice.

While we consider the current nominations, the many dedicated employees at the Department of Justice continue to work, to do their jobs and to serve the public. I also note that it is the Administration, and not the Senate, that has called upon United States Attorneys, who serve as the front line of our federal law enforcement efforts, to resign in advance of a single nomination to head those important offices around the country even being received.

I commend the Chairman for his ambitious schedule and his weekly proceedings on Justice Department nominations. We continue to proceed within days of our receiving materials on these nominations. Take for example today's hearing. The Committee is proceeding with a nomination today even though the usual file of background materials on the nominee continued to be supplemented through yesterday.

We have had Professor Dinh's questionnaire for less than two weeks. In the meantime it has been supplemented by a correction letter and a large binder supplementing the five binders of materials that accompanied his questionnaire. Then we were informed of a number of missing amicus briefs written by the nominee, including one in the well-known case of *Bush* v. *Gore* that had inadvertently been omitted from the materials provided the Committee.

And, only yesterday, yet another supplement to his questionnaire arrived, listing additional overlooked media appearances by the nominee. As eager as I am to help the Administration staff the Justice Department, I do not think that this Committee ought to be scheduling hearings for nominees whose papers are only just being received and whose papers Senators have not had an opportunity to review.

I also recall, by way of contrast, the recriminations and delay that accompanied the slightest perceived problem with the timely production of materials by a Clinton nominee. Take for example the delays and opposition that attended the nomination of Margaret Morrow when she failed to provide materials from a bar magazine column.

I thank all Members of the Committee for their cooperation and the effort they are making to proceed with this hearing today. I trust the Chairman will take these matters into account and accord Senators more than the normal week we have usually allowed for the submission of written questions after the conclusion of the hearing testimony.

Turning now to the nominees, I note that Michael Chertoff is a well-known figure here on Capitol Hill. Many will recognize Mr. Chertoff from his time serving as chief counsel for Senator D'Amato's Whitewater investigation. Through this hearing we will get the opportunity to learn of his academic record, his clerkship for Supreme

Court Justice William Brennan, his service as a federal prosecutor in New Jersey and his private practice of law. We welcome you, Mr. Chertoff.

Professor Viet Dinh teaches at Georgetown University Law Center. He, too, spent time on Capitol Hill, serving as an associate counsel to the Whitewater investigation and giving advice to Republicans on the impeachment of President Clinton.

One of the major responsibilities of the Office of Policy Development at the Department of Justice, which Professor Dinh has been nominated to head, is the evaluation of the qualifications and fitness of candidates for the federal judiciary. That is a subject on which many Senators and many American have great interest. I look forward to inquiring about plans for judicial nominations and your own qualifications for that position, Professor Dinh.

Chairman HATCH. Well, thank you. We are now in the fifth month here, and we have one person confirmed down at the Department of Justice, and then only after a very tough hearing, which many on our side felt was fairly conducted but, nevertheless, there were a lot of aspects about it that were seen as smear tactics by outside groups and others.

Now, Senator Domenici—

Senator LEAHY. I do recall at least one member of your side of the aisle, when I had agreed to your request on witnesses and procedures there, then on national television called me "a criminal and a lawyer"—I mean "a liar"—maybe he meant the same thing—

[Laughter.]

Senator LEAHY.—for agreeing to your suggestion, Mr. Chairman. So I seem to be in a position of being damned if I do and damned if I don't. If I agree with you, your side blasts me, and if I don't agree with you, your side blasts me. It is an uncomfortable position for you to be in, uncomfortable for me. I would point out the Deputy Attorney General and the Solicitor General for the last administration were not confirmed until May 28th of that year. Anne Bingaman took until June 16th, Sheila Anthony not until June 30th, and on and on.

Chairman HATCH. I might add that Ms. Reno was confirmed 1 day after, and we did not have outside witnesses, and we treated a whole bunch of them that way. We confirmed almost immediately. They had hearings very quickly, but we will get into that later.

Senator LEAHY. We had outside—

Chairman HATCH. Let's get into that later.

Senator Domenici, we will go to you.

PRESENTATION OF VIET DINH, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR LEGAL POLICY BY HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator DOMENICI. Thank you very much. First I want to thank you for the hearing today. I would like my remarks on Viet Dinh to be put in the record, if you would, Mr. Chairman.

Chairman HATCH. We would be happy to put it in the record, and we are honored to have both of you here today, to have U.S. Senators take time from busy schedules. Both of you are very busy. Senator Domenici, we understand you are in the middle of these budget problems and probably the busiest guy on Capitol Hill.

Senator DOMENICI. Let me say, this is beyond being busy. Senator Leahy, it is good to be with you, and to both of you and those on this Committee that will pass judgment on nominees.

Let me say it is really hard for me to see a better situation that depicts the American dream and the ability of people that start with almost nothing to achieve high things. Who would have thought that 23 years ago, the nominee was in a small fishing boat, just 23 years ago, out on the waters, having escaped from Vietnam, and he was there with a number of other Vietnamese but without his father, who had been put in jail because he had been a council person in Vietnam? And he is there with his mother and his siblings and other Vietnamese people, and the story should just briefly go to a very fortunate thing that he eventually ended up with his siblings and mother in the United States. It was a long time before the father came, but in the meantime, the family stuck together, and guess what? One of those in those boats 23 years ago, to wit Viet Dinh, has since that time graduated from Harvard with a magna cum laude undergrad, went to law school there and graduated magna cum laude, and today is a full professor of constitutional law at Georgetown University.

Now, if there was nothing else in between, it would seem that we would be here in the Senate very interested in expediting this nominee and laying claim to a great American success story. If you are looking for diversity of appointments, with qualifications second to no one, you have got one. You will have a Vietnamese, a scholar, who just 23 years ago was a young man out on a boat at sea, who could just have well have drowned and we never would have heard from him. But because of loving family around him, they eventually ended up American citizens, he, his siblings, and his mother.

Since then, people looking would be saying what a marvelous young man, what a great success story. That is not all he has done to qualify him. He has worked for people in the judicial system who are in high, high positions in our Government who had to do very, very important legal work, for a Supreme Court judge, a circuit judge, while in the meantime working here on the Hill for a few years. And today, a full-time professor at Georgetown. About past records and his history, all I know is that he is exemplary in all respects, an example to those of us who have been more fortunate to have been either born here or third generation here or, like Patrick Leahy and I, at least half of his is Italian, and he is not very far away from the immigrants that came, in my case two immigrants.

Senator LEAHY. I was waiting to see how long that was going to take for Pete to mention that.

[Laughter.]

Senator DOMENICI. I do have trouble when I tell our friends that Leahy is Italian. They say, "Does he spell it L-e-h-i?" And I say, "No, no, no."

Senator LEAHY. But what Senator Domenici does, if he really needs my vote on something, he calls my uncle in Italy and tells him to get on my case.

Senator DOMENICI. I do not know where he is because I lost track of him, but I will call him this week about this nomination.

[Laughter.]

Senator DOMENICI. If you would help by sending the phone number or if your wife would, it would help.

I want to close by saying I am hopeful that we will see him in the halls of Congress again, but I hope he will be testifying here before us as the OPD for the Justice Department. He will do every employee there justice, and his fairness and judicial temperament and knowledge of the law will serve our country very, very well.

Thank you for giving me a few moments. I appreciate it.

Chairman HATCH. Well, thank you, Senator Domenici. I have listened to a lot of recommendations on this Committee through the years. I have never heard a better one than you have just given from a person who is any more respected than you. We are very, very grateful that you took time from your schedule.

Senator DOMENICI. Thank you very much.

Chairman HATCH. We are going to release you so you can go about your busy schedule.

Senator DOMENICI. Good to be here with you.

Thank you, Senator. We really appreciate that, and it is an excellent statement on behalf of somebody from a different party, and I appreciate it very much.

[The prepared statement of Senator Domenici follows:]

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Mr Chairman and distinguished members of this Committee.

I am delighted to present Viet Dinh, the President's nominee to be Assistant Attorney General the Office of Policy Development. Professor Dinh is not a New Mexican. Despite that failing, I appear on his behalf because I have had the pleasure of knowing him both professionally and personally over the past several years.?

Professor Dinh's journey to this hearing began 23-years ago on a small fishing boat off the coast of Vietnam. For 12 days, the ten-year-old Viet and 84 others fought storms hunger and gunfire as their boat drifted throughout the South China Sea. Fortunately, Viet, his mother, and six siblings, reached a refugee camp after coming ashore in Malaysia. After being admitted the United States, Viet's family arrived in Oregon and later moved to California, where Viet became a U.S. citizen.

Those early years presented many challenges for Viet and his family. They had little money and worked long hours in the berry fields. Moreover, Viet's father had been incarcerated in Vietnam because of his role as a city councilman. It was not until 1983 that they were finally reunited after his father's successful escape from Vietnam.

Despite this tumultuous beginning, Dinh persevered. More than that-he excelled. Perhaps these early obstacles hardened Viet's resolve and fueled his rapid ascent through the legal profession.

Viet graduated *magna cum laude* from both Harvard College and Harvard Law School, where he was a Class Marshal and a Olin Research Fellow in Law and Economics. He served as a law clerk to Judge Laurence H. Silberman of the U.S. Court Appeals for the D.C. Circuit and to U.S. Supreme Court Justice Sandra Day O'Connor.

Shortly after Viet completed his Supreme Court clerkship, he came to work for the U.S. Senate, where I had the opportunity to work with him for the first time. He quickly demonstrated his outstanding legal ability, superb professional judgment, and fine character.

Professor Dinh's record of achievement continued in academia. Viet currently is a professor of law at Georgetown University, where he is the Deputy Director of the Asian Law and Policy Studies Program. In addition to his expertise in constitutional law, Professor Dinh is accomplished in corporations law and international law. He has served as counsel to the Special Master mediating lawsuits by Holocaust victims against German and Austrian banks.

Since he left the Senate, I have called on him from time to time for counsel on constitutional issues. On each occasion, Viet exhibited a comprehensive knowledge of the law and extraordinary energy.

In closing, Mr. Chairman, I believe that Professor Dinh's character, along with his distinguished academic and professional accomplishments, make him uniquely qualified to serve in the Department of Justice. Thus, it is with great pleasure that

I offer Professor. Dinh my highest recommendation for confirmation as Assistant Attorney General.

Chairman HATCH. Senator Corzine, we are honored to have you here as well, and we look forward to hearing your testimony.

PRESENTATION OF MICHAEL CHERTOFF, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR THE CRIMINAL DIVISION BY HON. JON CORZINE, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator CORZINE. Mr. Chairman, I am honored to be here. Senator Leahy and members of the Committee, this is a terrific opportunity for me to introduce someone who I believe is terrific, Michael Chertoff, nominee for Assistant Attorney General for the Criminal Division.

Mr. Chertoff has served the citizens of New Jersey in a number of capacities, as well as the Department of Justice and indeed the Nation, and we will all be fortunate to have his tremendous skills at the helm of the Criminal Division.

I also speak for Senator Torricelli, who unfortunately cannot be here today, but he also strongly supports Mr. Chertoff's nomination.

Chairman HATCH. He did indicate that to me yesterday, and I appreciate that very much.

Senator CORZINE. Mr. Chertoff has impeccable credentials, not the least of which is being a native New Jerseyan. We like to see those folks get ahead. He attended Harvard College, then Harvard Law School, where he was editor of the Law Review. He served as a Supreme Court law clerk to one of New Jersey's absolutely finest citizens ever, Justice Brennan. And in both private practice and public service since then, he has developed a reputation as a brilliant, tough, fair, and truly world-class litigator and earned the respect of his peers and adversaries.

Indeed, one of New Jersey's papers have suggested that he might be New Jersey's "lawyer laureate." He is a little young for that. While I should acknowledge that we might not agree on every issue, I consider Mr. Chertoff to be one of the finest lawyers my State has to offer, and he will do an outstanding job.

From 1990 to 1994, Mr. Chertoff served New Jersey exceptionally well as our U.S. Attorney, where he tackled organized crime, public corruption, health care fraud, and bank fraud. Unlike his predecessors, as U.S. Attorney he continued to try cases himself, and his long hours and unending commitment to the job and the citizens of New Jersey were legendary.

He tackled the highest-profile cases in a serious and thoughtful manner and, despite being one of the youngest U.S. Attorneys in the Nation, raised the profile and reputation for excellence of the U.S. Attorney's Office in Newark.

More recently, Mr. Chertoff has played a critical and important role in helping the State of New Jersey investigate a very, very difficult issue—racial profiling.

As special counsel to the State Senate Judiciary Committee, he helped handle the racial profiling concerns with our State police in an excellent manner. His work was bipartisan and thoroughly professional, and helped expose the fact that for too long, our State au-

thorities were aware that statistics showed minority motorists were being treated unfairly by law enforcement and yet had ignored the problem.

As this Committee well knows, and as President Bush himself has stated, racial profiling is a critical issue not just in New Jersey but across our Nation. And I hope that, working with Mr. Chertoff and Senator Feingold and a whole other group of folks, we can work together to address this at the Federal level.

Mr. Chairman, I know it will be clear to the Committee that Mr. Chertoff is one of the Nation's most competent and respected lawyers, with a very distinguished record of public service and private service. He is a good man. I am pleased to support his nomination.

Senator CORZINE. Thank you very much.

Chairman HATCH. All right. Well, thank you for being here. We will excuse you.

If I could have the two nominees come forward. If you will raise you right hands. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CHERTOFF. I do.

Mr. DINH. I do.

Chairman HATCH. Thank you very much.

Mr. Chertoff, I have known you a long time. I could not have a higher opinion of an attorney than I do of you, and I have known some great attorneys in my life. So we will turn to you first. And, Professor Dinh, I could not have a higher opinion than I do of you, and I have known a lot of professors. And what you have come through in your life and what you have been able to accomplish, really, these things are truly amazing.

So we will start with Mr. Chertoff, and then we will take your testimony, and then we will open the floor for questions.

STATEMENT OF MICHAEL CHERTOFF, OF NEW JERSEY, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Chairman, Senator Leahy, members of the Committee, I am pleased to appear before you today at these hearings, and I am honored that President Bush has nominated me for the position of Assistant Attorney General of the Criminal Division of the Department of Justice. Before I give the testimony I have prepared, I would like to introduce my family. My wife, Meryl, is here. My daughter, Emily, is here. My son, Philip, was given the opportunity to come, and after considering that, he said that he thought he ought to spend the time in school. And I guess that speaks very well for the school.

Chairman HATCH. I think he is going to follow after his father and mother.

[Laughter.]

Chairman HATCH. We welcome you, Mrs. Chertoff, and—is it Emily? Emily, we welcome both of you, and we are so happy to have you here.

Mr. CHERTOFF. I wish my parents could be here. They were present when I was sworn in as United States Attorney. They have

since passed away. I hope and believe that wherever they are now, they are looking down upon us here.

And, finally, I would like to thank both Senator Corzine and Senator Torricelli for their support of my nomination.

Contemplating today's proceedings, I was reminded of the day almost 18 years ago when I first entered service at the Department of Justice. On that day, in the presence of my parents, I took the oath as an Assistant United States Attorney for the Southern District of New York. And in taking that oath, I began over a decade of service in the company of a superb group of lawyers and public servants—Federal prosecutors.

At that time, it was customary to present new Assistant U.S. Attorneys with a certificate that, in part, set forth the following principle: "To be an Assistant United State Attorney...requires commitment to absolute integrity and fair play; to candor and fairness in dealing with adversaries and the courts; to careful preparation, not making any assumptions or leaving anything to chance; and never proceeding in any case unless convinced of the correctness of one's position or the guilt of the accused."

I still have that certificate, and I believe its exhortation remains the principle that should guide the work of all Federal prosecutors.

During the 10 and a half years I served as a prosecutor, including 4 years as United States Attorney for the District of New Jersey, I had the great fortune to represent the United States in many settings and many types of criminal cases. In the Southern District of New York, for example, I was privileged to lead the prosecution of the bosses and underbosses who comprised the infamous Commission of La Cosa Nostra—the so-called Board of Directors of the Mafia in the United States. That case, which resulted in the conviction of every defendant for crimes ranging from murder to extortion, was the product of the effort, ingenuity, and courage of literally dozens of lawyers, Federal agents, and police detectives. Prosecutions such as the Commission case demonstrate the capability of the Department of Justice in the face of the most implacable and entrenched criminal enterprises.

When the Senate confirmed me as United States Attorney for New Jersey in 1991, I was honored with the leadership of one of the outstanding prosecutorial offices in the country. The reputation of the U.S. Attorney's Office—inherited from my predecessors and burnished by my colleagues—was that of a vigorous, fair, and evenhanded agency of law enforcement. During my tenure, the office conducted many noteworthy and successful prosecutions, convicting top-echelon organized crime and narcotics offenders, imprisoning savings and loan bandits and securities law violators, and successfully prosecuting criminals who preyed on the most vulnerable members of our society.

As we made successful cases against local gang leaders or worked with community residents on neighborhood policing initiatives, I was often reminded of the tangible ability that we had to visibly improve the lives of citizens in all settings. At the same time, I took pride in the fact that the lawyers in my office adhered to the rule of law and principle of fair play in carrying out their work.

In the 7 years since I left Government, I have continued to participate in the criminal justice process, but from the standpoint of a private attorney. I have represented both large corporations and individuals in all manner of criminal cases, including trials. And I have remained involved in public service. Several years ago, I was privileged to serve as special counsel to the Special Committee of the Senate empaneled to investigate Whitewater and related matters. Also during the 1990's, I was appointed by a Federal judge to investigate misconduct within a labor union that was placed under court supervision. In that capacity, my colleagues and I successfully obtained the dismissal of dozens of members on charges of corruption or organized crime association and helped restore democracy to the union. More recently, I have served as special counsel to a New Jersey State Senate Committee examining the issue of racial profiling and how it was handled by State law enforcement authorities.

As I sit before you today, therefore, I have the benefit of a wide range of experiences in the criminal justice arena, covering virtually every type of Federal case, and the perspectives of a former line prosecutor, United States Attorney, and defense counsel.

If confirmed, I will be guided in office by the following principles:

First, the power to investigate and charge criminal conduct is an awesome power of Government, which must not only be exercised fairly and impartially, but also must be seen to be so exercised. Prosecution must be vigorous, but respectful of constitutional rights. As Justice Sutherland famously said, prosecutors may strike hard blows, but not foul ones.

Second, we need to keep pace with the evolving, ever more international and high tech face of crime. Criminals are quick to exploit faster global communications and finance; we must be quicker. Organized crime enterprises can take advantage of, or subvert, weak national police structures; we must foster and aid those structures. More and more of our National assets take the form of intellectual property and technology; we must increase our capacity to protect those assets.

Third, the foundation of law enforcement remains the public trust. To promote that trust, all members of law enforcement must respect the rights and needs of victims, coordinate appropriately with State and local officials and with the community, and, unquestionably, conduct themselves without a hint of bias or prejudice.

I am conscious of the great responsibility and authority reposed in the office for which I have been nominated. If confirmed, I will carry out this responsibility and exercise this authority with all the vigor, fairness, and dedication I can muster.

Thank you.

[The prepared statement and biographical information of Mr. Chertoff follow:]

STATEMENT OF MICHAEL CHERTOFF, OF NEW JERSEY, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, UNITED STATES DEPARTMENT OF JUSTICE

Mr. Chairman, Senator Leahy, and other Members of the Committee, I am pleased to appear before you today at these hearings, and I am honored that President Bush has nominated me for the position of Assistant Attorney General for the Criminal Division of the Department of Justice.

Contemplating today's proceedings, I was reminded of the day almost eighteen years ago when I first entered service at the Department. On that day, in the presence of my parents, I took the oath as an Assistant United States Attorney for the Southern District of New York. And in taking that oath, I began over a decade of service in the company of a superb group of lawyers and public servants federal prosecutors.

At that time, it was customary to present new Assistant U.S. Attorneys with a certificate that, in part, set forth the following principle: "To be an Assistant United States-Attorney . . . requires commitment to absolute integrity and fair play; to candor and fairness in dealing with adversaries and the courts; to careful preparation, not making any assumptions or leaving anything to chance; and never proceeding in any case unless convinced of the correctness of one's position or the guilt of the accused."

I still have that certificate. I believe that its exhortation remains the principle that should guide the work of federal prosecutors.

During the 10½ years I served as a federal prosecutor-including 4 years as United States Attorney for the District of New Jersey—I had the great fortune to represent the United States in many settings and many types of criminal cases. In the Southern District of New York, for example, I was privileged to lead the prosecution of the Bosses and Underbosses who comprised the infamous Commission of La Cosa Nostra—the "Board of directors" of the Mafia in the United States. That case, which resulted in the conviction of every defendant for crimes ranging from murder to extortion, was the product of the effort, ingenuity and courage of literally dozens of lawyers, federal agents and police detectives. Prosecutions such as the Commission case demonstrate the capability of the Department of Justice in the face of the most implacable and entrenched criminal enterprises.

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In the 7 years since I left government, I have continued to participate in the criminal justice process, but from the standpoint of a private attorney. I have represented both large corporations and individuals in all manner of criminal cases, including trials. And I have remained involved in public service. Several years ago, I was privileged to serve a special counsel the Special Committee of the Senate impaneled to investigate Whitewater and related matters. Also during the 1990's, I was appointed by a federal judge to investigate misconduct within a labor union that was placed under court supervision. In that capacity, my colleagues and I successfully obtained the dismissal of dozens of members on charges of corruption or organized crime association, and helped restore democracy to the union. More recently, I have served as special counsel to a New Jersey State Senate Committee examining the issue of racial profiling and how it was handled by state law enforcement authorities.

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I am conscious of the great responsibility and authority reposed in the office for which I have been nominated. If confirmed, I will carry out this responsibility and exercise this authority with all the vigor, fairness, and dedication I can muster.

I.BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Michael NMN Chertoff

2. Address: List current place of residence and office address(es).

   Residence: Westfield, NJ 07090
   Vacation: Milford, PA
   Office: One Newark Center, 16th Fl., Newark, NJ 0701

3. Date and place of birth.

   November 28, 1953, Elizabeth, NJ

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address)es).

   Meryl Chertoff, nee' Meryl Justin. Attorney. Currently employed as Legislative Counsel with Assemblyman Richard H. Bagger, Westfield NJ.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   - Harvard College, Cambridge, MA - 1971-1975. A.B. magna cum laude - 1975
   - London School of Economics, UK, 1972-1973 - year abroad with credit.
   - Harvard Law School, 1975-1978 - J.D. magna cum laude - 1978

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   5/94-Present Partner, Latham & Watkins, One Newark Center, 16th floor, Newark, NJ 07101-3174

   1997-2001 Trustee, Association of Criminal Defense Lawyers - New Jersey

2000-Present	Special Counsel, N.J. Senate Judiciary Committee, Trenton, New Jersey
1995-1999	Investigations Officer, N.Y. Mason Tenders District Council (Court-appointed)
1994-1996	Special Counsel, U.S. Senate Whitewater Committee (includes service as minority counsel to the Banking Committee)
1994-Present	Director, New Brunswick Development Corporation, New Brunswick, New Jersey
6/90-4/94	United States Attorney. U.S. Attorney's Office, D.N.J., Department of Justice, 970 Broad Street, Rm 702, Newark NJ 07102
7/87-6/90	First Assistant U.S. Attorney, U.S. Attorney's Office, D.N.J., Department of Justice, 970 Broad Street, Rm 702, Newark, NJ 07102
9/83-6/87	Assistant U.S. Attorney, U.S. Attorney's Ofice, S.D.N.Y., Department of Justice One St. Andrews Plaza, New York, NY 10007
8/80-8/83	Associate, Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Washington, D.C. 20004
7/79-7/80	Law Clerk, Justice William J. Brennan, Jr., United States Supreme Court One First Street, N.E., Washington, D.C.
7/78-7/79	Law Clerk, Judge Murray Gurfein U.S. Court of Appeals, 2d Circuit Foley Square, New York, NY 10007
6/78	Summer Associate, Miller, Cassidy, Larroca & Lewin, 2555 M Street, N.W., Washington, D.C. 20037
4/78-5/78	Part-time Staff, Massachusetts Legislative Oversight Commission, State Capitol, Boston, MA
9/77-4/78	Research Assistant, Harvard University School of Law - Cambridge, MA

6/77-7/77	Summer Associate, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004
6/76-7/76	Summer Associate, McCarter & English, Gateway Four, Newark, NJ 07102
6/75-7/75	Intern, Tax Analysts & Advocates, 6830 N. Fairfax, Arlington, VA

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Member and Note Editor, Harvard Law Review 1976-1978

1986 Annual Legal Award Association of Federal Investigators (for successful prosecution of corruption in Sullivan County, New York)

1987 U.S. Department of Justice John Marshall Award for Outstanding Achievement in Trial of Litigation (for successful prosecution of leaders of Mafia's national "Commission," United States v. Salerno, et al.)

1992 Anti-Defamation League Distinguished Public Service Award

1994 U.S. Dept. of Health & Human Services Inspector General Prosecutive Leadership Award

1997 Fellow, American Bar Foundation

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Editorial Board, New Jersey Law Journal 1994-present;

N.J. Supreme Court Criminal Practice Committee, 1997-2000;

Association of the Federal Bar of the State of New Jersey;

Trustee, Association of Criminal Defense Lawyers - New Jersey 1997-2001

Association of the Bar of the City of N.Y., 1984 -
- Committee on Legal Education, 1984-1987
- Committee on Criminal Advocacy, 1987 - 1990

Federal Bar Council (NY), 1989 - present

New Jersey State Bar Association, 1989 - present
- Executive Board, Federal Practice Committee, 1989 - 1990

Lawyers Advisory Committee, U.S. District Court, District of New Jersey (ex officio), 1990 - 1994

American Bar Association, 1980 - 1983, 1997 - present
- Antitrust Section, 1980 - 1983
- American Bar Foundation, 1997 - present

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None, except as set forth in 9 above.

Please list all other organizations to which you belong.

Associated Harvard Alumni; Nomahegan Swim Club, Westfield, NJ; College Men's Club, Westfield, NJ (Raises scholarship money)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

District of Columbia	12/19/80
U.S. District Court, District of Columbia	2/2/81
U.S. Court of Appeals, D.C. Circuit	3/10/81
State of New York	12/7/87
U.S. Court of Appeals, 2d Circuit	1/5/84
State of New Jersey	6/7/90
U.S. District Court, SDNY	Jan 1995
U.S. District Court, D.N.J.	6/7/90
U.S. Court of Appeals, 3d Circuit	5/26/95
U.S. Court of Appeals, 7th Circuit	5/25/00

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Author: Note, Valuation of Conrail Under the Fifth Amendment, 90 Harv.L.Rev. 596 (1977)

Case Note, U.S. Trust Co. v. New Jersey, 91 Harv.L.Rev. 83 (1977)

Book Review (with R. Hills) Shareholder Litigation, 60 Wash U.L.Q. 735 (1981)

Book Review of Confessions, Truth and the Law, 93 U.Mich.L.Rev. 1713 (1995)

Article: Changing Definitions of Willfullness in Federal Criminal Law, Washington Legal Foundation Legal Backgrounder, 10/21/94

Article: "Whitewater: Why It Matters" Newsweek

Presentation: "Corporate Self-Examination: Internal Investigation of Company Wrongdoing in the U.S." (Undated)

Editor: Note, Constitutional Problems in the Execution of Foreign Penal Sentences, 90 Harv.L.Rev. 1500 (1977)

Note, The Finality Rule for Supreme Court Review of State Court Orders, 91 Harv.L.Rev. 1004 (1978)

Substantially wrote following editorials for N.J. Law Journal:

"Tools Against Terrorism," June 1996;

"Celebrity Jurors," September 1998;

"Unsolomonic Compromise," March 2000.

Victims Attain a Voice in the Criminal Justice Process, New Jersey Lawyer February/March 1994;

Letters: "People v. Sol Wachtler," New York Times Book Review;

Hill Interview: "Michael Chertoff, Senate Whitewater counsel says it's hard to conceal the truth," The Hill, By Jamie Stiehm.

Testimony as invited commentator before the Senate Foreign Relations Committee regarding the constitutionality of proposed Penal Treaties with Mexico and Canada, 95th Cong. 1st Sess., June 16, 1977, pp. 135-171 (including Text of Note).

Testimony Before the U.S. Senate Finance Committee on U.S. Customs Oversight, 5/18/99

Testimony before the U.S. House of Representatives Committee on Ways and Means, Subcommittee on Social Security, Sept. 24, 1992, on "Illegal Disclosure of Social Security Earnings Information by Employees of the Social Security Administration and Department of Health and Human Services Office of Inspector General."

Participation in a Symposium on Securities Law Enforcement, 17 Seton Hall Legis. J. 1 (1993).

Letter in support of Frederic Woocher as nominee to U.S. District Court, Central District of California, submitted as part of the record by Senator Boxer, November 10, 1999.

Copies of above articles and testimony are attached.

Taped Interviews with Court TV - Harvard Forum on the O.J. Simpson Case, Oct. 5, 1994; C-Span, Spring 1996 (Whitewater Hearings); CNNfn, 4/22/97 and 7/14/97 (Campaign Finance Rules); Fox News 5/11/97 (Whitewater); White Collar Crime Report "Famous White Collar Cases," (undated); A&E

American Justice: Defending the Mob (undated). One copy of each tape is being supplied to the Committee.

Additionally, in November 1999, I testified before the N.J. Senate on the question of preemptory challenges in death penalty cases. There was no prepared text and I have no record of the testimony.

I have from time to time spoken to client groups, bar groups and community groups on legal issues involving corporate compliance and practical criminal law issues. I speak extemporaneously and have no recording of these remarks. These presentations included:
Remarks on Law and Humanity, Temple Beth Judah, Margate, NJ, April 28, 2001 (news article submitted).

Panelist, NY Law Journal Conference: Civil Litigation: A View from the Bench and Bar, New York, N.Y., March 22-23, 2001, March 1999, March 1998 (no notes or record except for audiotape of March 1999 session, one copy submitted to the Committee).

Remarks: "Anti-violence Initatives by the Federal Government," Symposium on Violence held by the NJ Public Health Association and various NJ state agencies, Jamesburg, N.J., Oct. 13, 1993 (rough notes enclosed).

Participant: National Research Council, Urban Violence Conference, Washington, D.C., Oct. 7-9, 1993 (no notes or record).

Speaker on topic of victims' rights, NJ Bar Association Convention, Atlantic City, N.J., May 22, 1993 (no notes or record).

Speaker, "Environmental Regulation in New Jersey," Institute of Business Law, East Brunswick, N.J., April 14-15, 1993 (rough notes enclosed).

Speaker, "Environmental Compliance and Enforcement," Shanley & Fisher Conference, Morristown, N.J., April 1, 1993 (no notes or record).

Speaker on fraud issues, Conference of National Association of Certified Fraud Examiners, Edison, N.J., March 18, 1993 (no notes or record).

Panelist on Government Policy, ABA National Institute on Health Care Fraud, Orlando, Fla., February 12, 1993 (no notes or record).

Panelist, Anatomy of a Sentence, Seton Hall Law School, Newark, N.J., March 2, 1993 (no notes or record).

Panelist, Hate and Bias Crimes Seminar, Institute for Continuing Legal Education of New Jersey, New Brunswick, N.J., January 8, 1993 (no notes or record).

Panelist, Civil and Criminal Liability of Officers, Directors and Professionals: Bank and Thrift Litigation in the 1990's. Practicing Law Institute, Washington, D.C., October 15-16, 1991 (no notes or record).

Apart from the foregoing, I have no record relating to other presentations I have given over the years.

From June 1995 to June 1996, while serving as Special Counsel to the Senate Whitewater Committee, I appeared on numerous news shows, and was interviewed by the media. These remarks are contained in various news databases.

Also, as Special Counsel to the Whitewater Committee, and as Special Counsel to the N.J. Senate Judiciary Committee from 2000 - present, I participated in numerous hearings, which were transcribed. One copy of the N.J. Senate transcripts is enclosed herewith.

Also, as U.S. Attorney I held press conferences from time to time on various cases and legal issues. I spoke extemporaneously and have no recording of these conferences. Quotes may appear in various news databases, however.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent health. Last physical examination was June 1999.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Assistant U.S. Attorney Southern District of New York (Appointment)	1983-1987
First Assistant U.S. Attorney, District of New Jersey (Appointment)	1987-1990
United States Attorney, District of New Jersey (Appointment, with Senate advice and consent)	1990-1994
Investigations Officer, N.Y. Mason Tenders District Council (Court Appointment)	1995-1999
Commissioner, N.J. Election Law Enforcement Commission (Appointment, with state Senate advice and consent	1996
Special Counsel, U.S. Senate Special Committee to Investigate Whitewater and Related Matters (including service as Minority Special Counsel to Banking Committee)(Appointment)	1994-1996
Special Counsel, N.J. Senate Judiciary Committee(Appointment)	2000-Present

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and

the dates of the period you were a clerk;

7/78-7/79:	Law clerk to the Honorable Murray I. Gurfein, U.S. Court of Appeals for the Second Circuit (now deceased).
7/79–7/80:	Law clerk to the Honorable William J. Brennan, Jr., Associate Justice of the U.S. Supreme Court (now deceased).

2. whether you practiced alone, and if so, the addresses and dates;

I have never been a sole practitioner.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

8/80-8/83:	Associate, Latham, Watkins & Hills formerly at 1333 New Hampshire Ave, N.W., Washington, DC; and 1001 Pennsylvania Ave., N.W. Washington, DC; now located at: Lincoln Square, 555 Eleventh Street, N.W., Washington, DC
9/83-6/87:	Assistant U.S. Attorney Southern District of New York One St. Andrews Plaza New York, NY 10007
6/87-5/94:	First Assistant and then U.S. Attorney, District of New Jersey, 970 Broad Street, Newark, NJ 07102
5/94-Present:	Partner, Latham & Watkins, One Newark Center, Newark, NJ 07101
1995-1999	Investigations Officer, N.Y. Mason Tenders District Council (Court Appointment) c/o Latham & Watkins, 885 Third Avenue, New York, NY 10022-4802

1996	Commissioner, N.J. Election Law Enforcement Commission, National State Bank Building, 12th Floor, 28 W. State Street, CN 185, Trenton, NJ 08625-0185 (Appointment, with state Senate advice and consent)
1994-1996	Special Counsel, U.S. Senate Special Committee to Investigate Whitewater and Related Matters, United, United States Senate, Washington, D.C. (including service as Minority Special Counsel to Banking Committee)(Appointment)
2000-Present	Special Counsel, N.J. Senate Judiciary Committee, New Jesrey Senate, N.J. Senate Majority Office, State House, P.O. Box 099, Trenton, NJ 08625-0068 (Appointment)

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

As a law firm associate (1980-83) my practice was principally large firm litigation, civil and criminal. Some portion of my work involved antitrust counseling, analysis of administrative action, and miscellaneous research.

As a federal prosecutor (1983-1994), I had extensive experience in all phases of criminal investigation and prosecution, including grand jury presentations, trial of cases, and appellate argument. I handled major organized crime, fraud, and corruption prosecutions.

As First Assistant and United States Attorney in New Jersey (1987-1994), I supervised and participated in all types of criminal and civil litigation pursued by my Office, and personally tried organized crime and fraud cases.

As a partner at Latham & Watkins, I have been national chair of the firm's white collar criminal practice. I have personally tried numerous criminal and civil cases; represented clients in criminal and SEC investigations, legislative hearings, and business disputes. I have been retained by government bodies and corporations to conduct sensitive investigations. For example, I was appointed by U.S. District Judge Robert W. Sweet of the S.D.N.Y. to serve as investigative officer for a labor union under court supervision, and by the New Jersey Senate Judiciary Committee to serve as counsel investigating both state inmate release practices and the issue of state police racial profiling.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I have specialized in practice in criminal and enforcement proceedings. My clients are varied and have included large and small public corporations, private companies, prominent political and public figures, individual business people, lawyers, police officers, and news reporters.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I have appeared in court frequently, both when I was a prosecutor and now as a private practitioner.

2. What percentage of these appearances was in:
   (a) federal courts; 80-90%
   (b) state courts of record; 10-20%
   (c) other courts. 0%

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

In private practice since 1994, about 75% criminal and 25% civil.

As a prosecutor, 95% criminal, 5% civil.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   Approximately 30-35 trials to verdict or judgment. In almost all, I was sole or chief counsel.

5. What percentage of these trials was:
   (a) jury; About 90%
   (b) non-jury. About 10%

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   (a) the date of representations;
   (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
   (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Thomas Smith, et al.
   U.S. Dist. Ct., D.N.J
   Dkt. No. 00-399 (JCL)
   Before Honorable John Lifland and a jury.
   Tried - Oct - December, 2000

   I was defense counsel for Thomas Smith, a former police officer, charged in this multi-defendant case with a violation of civil rights arising from the death of an individual in police custody. After the trial of approximately 8 weeks, my client was convicted of civil rights conspiracy and a misdemeanor substantive violation. Post-trial motions are now pending.

At trial, I argued virtually all of the motions, conducted virtually all witness examination, and addressed the jury on behalf of my client.

Co-Counsel:

For Brian Smith	Peter Willis Willis & Young 921 Bergen Avenue Jersey City, NJ 07306 (201) 659-2090
For Andrew Garth	Anthony Iaculo Iacullo Saluti & Martino 103 Park Street, Third Floor Montclair, NJ 07042 (973) 746-5858
For Tyrone Payton	William Sayers Yankowitz Goldsmith & Sayers 293 Eisenhower Parkway Livingson, NJ 07601 (973) 992-5800
For Paul Carpentieri	Robert Galantucci Galantucci & Patuto 55 State Street Hackensack, NJ 07601 (201) 646-1100

Prosecution:

Patty Schwartz, AUSA
U.S. Attorney's Office
970 Broad Street
Newark, NJ 07102
(973) 645-2700

2. State v. Michael Francis
NJ Supr. Ct., Mercer County
Ind. No. 97-07-022
Before the Honorable Andrew Smithson and a jury.
Tried January, 2000

I was defense counsel in this high profile state criminal case, in which the former Chairman of the New Jersey Sports and Exposition was charged with multiple

counts of alleged official misconduct through conflict of interest, extortion, and false statements. Before trial, most of the charges were dismissed on defense motion, on the ground that the allegations did not amount to a crime under state law or were the product of entrapment. The remaining extortion charges were tried to a jury over several days. At the close of the evidence, the trial judge granted the defense motion for acquittal.

I argued the pretrial motions, gave all jury addresses, and conducted all witness examinations.

Prosecution: John A. Matthews, III
Deputy Attorney General
State of New Jersey
Hughes Justice Complex
Trenton, NJ 08625
(609) 984-6500

3. United States v. John Kelly
U.S. Dist. Ct., D.N.J.
Dkt No. Cr. 98-194 (JBS)
Before the Honorable Jerome B. Simandle and a jury
Tried August 1998

I was defense counsel in this tax evasion case, in which a doctor and his partner were charged with three years of tax evasion. After a 2 week trial, the defendant was acquitted by the jury.

I argued all motions, gave all jury addresses and conducted all witness examinations.

Co-Counsel:

For Michael Gentile — Kevin A. Marino
One Newark Center
Newark, NJ 07102-5211
(973) 824-0300

For Philip Alampi — Walter Weir, Jr.,
Weir & Partners, LLP
215 Fries Mill Road
Turnersville, NJ 08012
(856) 740-1490

Brett Datto
Weir & Partners, LLP
215 Fries Mill Road
Turnersville, NJ 08012
(856) 740-1490

Prosecutor: Carlos Ortiz, AUSA
U.S. Attorney's Office
970 Broad Street, 7th Fl.
Newark, NJ 07102
(973) 645-2700

4. United States v. Antar
U.S.D.C., D.N.J.
Dkt No. Cr. 92-347 (NHP)
Before Honorable Nicholas Politan and a jury
Tried June and July 1993
Rev'd and remanded, 53 F.3d 568 (1995)

I was chief trial prosecutor in this five week racketeering and securities fraud trial which alleged that consumer electronics king "Crazy Eddie" Antar manipulated his stock over a period of years. Antar and his brothers were convicted of racketeering and securities fraud. The conviction was later reversed (after I had left office) because of comments made by the trial judge at sentencing.

At trial, I delivered the opening and rebuttal summations, presented many of the witnesses on direct examination, and conducted the cross-examinations.

Co-Counsel: Paul Weissman, AUSA
U.S. Attorney's Office
970 Broad Street, 7th Fl.
Newark, NJ 07102
(973) 645-2700

Defense Counsel:

For Eddie Antar: John Arseneault
Arsenault & Fassett
560 Main Street
Chatham, NJ 07928
(973) 635-3366

For Mitchell Antar: Jack Ford
American Broadcasting Company
77 West 66th Street
New York, NY 10023
(212) 456-1000

For Alan Antar

Gerald Krovatin
Krovatin & Associates, LLC
744 Broad Street
Newark, NJ 07102
(973) 424-9777

5. United States v. Gerald McCann
U.S. Dist. Ct., D.N.J.
Dkt. No. Cr. 91-347 (JEL)
Before Honorable John Lifland and jury
Tried December 1991
Aff'd by Order, U.S. Court of Appeals 3rd Cir.

I was chief trial prosecutor and successfully handled the appeal in this mail fraud, bank fraud and tax evasion trial of the Mayor of Jersey City, New Jersey. The case arose out of an investment fraud perpetrated by the defendant when he was our of office. The defendant was convicted of 14 felonies, sentenced to jail and removed from office.

I supervised the investigation, argued motions, delivered the opening and rebuttal summation, and examined many witnesses, including the defendant himself.

Co-Counsel:

Eric Tunis
20 Northfield Avenue
West Orange, NJ 07052
(973) 736-0664

Defense Counsel:

Matthew Boylan
Lowenstein, Sandler
65 Livingston Avenue
Roseland, NJ 07068
(973) 597-2324

6. United States v. Louis Manna et al.
U.S. Dist. Ct., D.N.J.
Dkt. No. 88-239 (MTB)
Before the Honorable Maryanne Trump Barry and a jury.
Tried - February 28 - June 26, 1989
Aff'd by order. U.S. Ct. App., 3d Cir. Nov. 21, 1990

I was chief trial prosecutor and successfully argued the appeal in this complex, four-month RICO murder prosecution of the consigliere (number 3 ranking member) of the Genovese LCN Family and his associates. The principal defendants were convicted, inter alia, of conspiring to murder John Gotti, boss of the Gambino LCN Family, and Irwin Schiff, an organized crime-connected businessman, and of various other offenses. Manna and his chief associates received 75-to-80-year prison terms.

I (1) supervised the investigation, (2) argued many of the pretrial motions, (3) delivered the opening and two day-long summations to the jury, (4)presented most of the direct testimony and (5) conducted cross-examination of all the numerous defense witnesses.

Co-counsel:	Maria Beardell, Esq. P.O. Box 712 Waverly, PA 1847 (717) 586-5971
Defense Counsel:	
For Louis Manna	Raymond A. Brown Brown, Brown & Kologi Gateway One Newark, NJ 07102 (973) 622-1846
For Martin Casella	William C. Cagney Windels, Marx, Lane & Mittendorf, LLP 120 Albany Street Plaza New Brunswick, NJ 08901 (732) 846-7600
For Richard DeSciscio	David Ruhnke Ruhnke & Barrett 47 Park Avenue Montclair, NJ 07042 (973) 744-1000
For Frank Daniello	Louis C. Esposito 411 Pompton Avenue Cedar Grove, NJ 07009 (973) 857-5104

For John Derrico	Jerome Ballarotto 830 Bear Tavern Road West Trenton, NJ 08628 (609) 882-2225
For Rocco Napoli	Michael J. Sluka Sluka & Minasian, LLC 638 Newark Avenue Jersey City, NJ 07306 (201) 798-6500

7. United States v. David Friedland
U.S. Dist. Ct., D.N.J.
Dkt. No. 85 Cr. 322 (JFG)
Before the Honorable John F. Gerry and a jury.
Tried - Sept. 1988
No appeal.

In December 1987, former New Jersey State Senator David Friedland was apprehended in the Maldive Islands on a fugitive warrant. Friedland had been an international fugitive from a pension fund fraud and RICO indictment.

After Friedland's apprehension, I was chief prosecutor at the pretrial and trial stages of the case. I conducted some of the direct and all of the cross-examination at a pretrial suppression hearing, prepared for trial and conducted most of the direct examination at trial, which ended after one week of testimony when Friedland abruptly pled guilty to the RICO charge.

Co-Counsel:	J. Fortier Imbert 425 Park Avenue New York, NY 10043 (212) 559-0825
Defense Counsel:	Peter Willis, Esq. Willis & Young 921 Bergen Avenue Jersey City, NJ 07306 (201) 659-2090

8. United States v Anthony Salerno, et al.
U.S. Dist. Ct., S.D.N.Y.
Dkt. No. 85 Cr. 139 (RO)
Before the Honorable Richard Owen and a Jury
Tried - Sept. 6 - Nov. 19, 1986
Aff'd, U.S. Ct App., 2d Cir.
865 F.2d 1370 (1989); 868 F.2d 524 (1989)

I was chief trial prosecutor in the Mafia "Commission case," which charged the Bosses of all five New York LaCosa Nostra Families, and other high ranking Mafia Members, with operating La Cosa Nostra's presiding national "Commission" through a pattern of racketeering acts such as extortion, loan sharking, and the murders of Mafia Boss Carmine Galante and two associates.[1] After a three-month trial, all eight defendants (including three LCN Bosses) were convicted on all counts, and seven were sentenced to 100-year prison terms

I supervised the two-year investigation and was lead attorney at trial. During the trial, I delivered the opening address and day-long rebuttal summation, conducted much direct examination - including the examination of major cooperators - and conducted all cross-examination. My co-counsel and I received the 1987 John Marshall Award of the Department of Justice for our handling of the trial.

Co-Counsel:

John F. Savarese
Wachtell, Lipton, Rosen & Katz
299 Park Avenue
New York, NY 10171
(212) 371-9220

J. Gilmore Childers
Goldman Sachs & Co
85 Broad Street
New York, NY 10004
(212) 902-1000

Defense Counsel:

For Anthony Salerno

Anthony Cardinale
One Commercial Wharf West
Boston, MA 02110
(617) 523-6163

[1] One defendant (Castellano) was murdered and two others died before trial commenced.

For Anthony Corallo	Albert Guadelli 14 Tennis Place Forest Hills, NY 11375 (718) 268-4343
For Salvatore Santoro	Samuel H. Dawson (Deceased) 305 Madison Avenue New York, NY 10165 (212) 922-1080
For Christopher Furnari	James LaRossa LaRossa, Mitchell & Ross 41 Madison Ave, 34th Fl. New York, NY 10010 (212) 696-9700
Carmine Persico,Jr.	Pro Se
Gennaro Langella	Frank Lopez Last Known Address: 20 Vesey Street New York, NY 10007 (212) 964-2121
Ralph Scopo	John Jacobs 225 Broadway New York, NY 10007 (212) 571-0805
Anthony Indelicato	Robert Blossner 225 Broadway New York, NY 10007 (212) 571-0805

9. United Sates v. Joseph Massino, et al.
U.S. Dist. Ct., S.D.N.Y.
Dkt. No. 81 Cr. 803 (RWS)
Before the Honorable Robert W. Sweet and a jury.
Tried - April-June, 1987

After defendant Joseph Massino was apprehended as a fugitive, I was asked to try him and another defendant as co-prosecutor in a racketeering case. The indictment charged the defendants with committing several murders and hijackings as part of the Bonanno La Cosa Nostra Family.

During the six-week trial, I presented the jury opening and rebuttal summation, and conducted approximately half of the direct examination. At the conclusion of the trial, the defendants were found to have committed several hijacking racketeering acts and acquitted of the murders; the case was then dismissed on the ground that none of the racketeering acts found by the jury fell within the applicable statute of limitations period.

Co-Counsel:	Helen Gredd Lankler, Siffert & Wohl 500 5th Avenue New York, NY 10110 (212) 921-8399
Defense Counsel:	
For Joseph Massino	Samuel Dawson (Deceased) 305 Madison Avenue New York, NY 10165 (212) 922-1080
For Salvatore Vitale	Bruce Cutler 41 Madison Ave., 34th Fl New York, NY 10010 (212) 233-6100

10. United States v. Ingber, et al.
U.S. Dist. Ct., S.D.N.Y.
Dkt. No. 85 Cr. 795 (CLB)
Before the Honorable Charles L. Brieant (Bench Trial)
Tried - February - April, 1986 (intermittently)
Aff'd by order, U.S. Ct. Ap., 2d Cir., Feb. 4, 1987
See also Ingber v. Enzor, 841 F.2d 450 (2d Cir. 1988)

I was sole prosecutor in this corruption and fraud case which charged Brian Ingber, the Chairman of the Board of Supervisors of Sullivan County, New York, and three others with racketeering, mail fraud and false statements to EPA in connection with a federally-funded environmental (sewer plant) project. the case was the culmination of an 18-month investigation which I supervised. At the conclusion of trial, the trial judge found a second defendant, the project manager, guilty of false statements. Two other defendants

were acquitted. Both convicted defendants were sentenced to jail terms. I was awarded the 1986 Annual Legal Award of the Association of Federal Investigators for this investigation and prosecution.

Defense Counsel:

For Brian Ingber	Elkan Abramowitz Morvillo & Abramowitz 565 5th Avenue New York, NY 10017 (212) 880-9500
For Wayne Pirnos	William I. Aronwald Aronwald & Pykett 925 Westchester Ave. White Plains, NY 10604 (914) 946-6565
For Howard Ingber	Frederick P. Hafetz Goldman & Hafetz 500 5th Avenue New York, NY 10110 (212) 997-7400
For Thomas Peck	Frank Zeccola Levinson, Zeccola, Reineke Box 244 Central Valley, NY 10917 (845) 928-9444

United States v. Brian Ingber
U.S. Dist. Ct., S.D.N.Y.
Dkt. No. 85 Cr. 795 (CLB)
Before the Honorable Charles L. Brieant and a jury.
Tried January 6-16, 1986
Aff'd by order, U.S. Ct. App., 2d Cir., Feb 4, 1987
See also Ingber v. Enzor, 841 F.2d 450 (2d Cir. 1988)

This trial proceeded on a charge severed from the overall Ingber case described above. Ingber was accused of violating the federal mail fraud statute by fraudulently tampering with absentee ballots for a local election. I was sole prosecutor and the defendant was convicted. The conviction was affirmed but subsequently overturned by collateral attack after the Supreme Court issued its McNally decision limiting the application of the mail fraud statute in corruption cases.

Defense Counsel:

For Brian Ingber	Elkan Abramowitz Morvillo & Abramowitz Suite 1500 1120 Ave. of the Americas New York, NY 10036 (212) 221-1414

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In private practice, my most significant non-trial activities have included representation of companies and individuals faced with enforcement investigations; counseling corporations on effective legal compliance programs; and advising businesses on the resolution of complex business disputes.

Additionally, I have undertaken special projects for various government bodies. For example, in 2000 and 2001, I was appointed by the N.J. Senate Judiciary Committee as Special Counsel to advise on two investigations: an examination of the effectiveness of notification under the state sex offender notice laws and an inquiry into racial profiling by state police. The former inquiry identified numerous deficiencies in the timeliness of required notifications that led to changes at the Department of Corrections. The latter is expected to yield legislative and other recommendations designed to address racial profiling. From 1995-1999, I served, at the request of the federal court, as Investigations Officer under a court-supervised monitorship of the N.Y. Mason Tenders District Council of the Laborers Union. In this capacity, I was responsible for investigating and prosecuting violations of the court's supervisory decree, including removing union officials and members who were associated with organized crime. As a result of the monitorship, the union was reorganized and real union democracy was restored.

I have counseled senior managers and government officials on crisis management issues, and have supervised numerous internal investigations.

As United States Attorney from 1990-1994, I generally supervised numerous investigations involving white collar crime, corruption, organized crime, narcotics trafficking, etc. I managed over 100 attorneys as U.S. Attorney, and a considerable staff. Additionally, I served from 1991-1994 as a member of the U.S. Attorney General's Advisory Committee of U.S. Attorneys, which provides advice from prosecutors to the Attorney General and senior members of the Department of Justice.

Over the years, I have instructed at various trial advocacy and other legal education programs, including guest teaching at Harvard Law School and Rutgers Law School.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   My capital in the law firm and any prorata share of income for the year will be paid to me within 30 days after my appointment. Otherwise, I expect to have received all compensation and benefits from any source before I assume office. I do not anticipate any other future benefits. I have no options. I may retain my interest in my law firm's various retirement plans, except that I will recover the money in my law firm cash balance retirement by December 31, 2001. I have money in a thrift savings plan from my prior government service.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   In the event of a potential conflict of interest, I will consult with the Department of Justice ethics officer.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See financial disclosure report attached.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was an alternate delegate to the 2000 Union County, N.J. Republican Convention.

I supplied occasional advice on criminal justice issues to the Bush for President Campaign in 2000, and was a vice chair of the N.J. finance committee in 2000.

From 1997-2000, from time to time I served on finance committees in the campaigns of N.J. State Senators Donald DiFrancesco, John Bennett and Joseph Kyrillos.

In the fall of 1996, I did some fundraising for U.S. Senate Candidate Dick Zimmer of New Jersey, and I introduced Bob Dole at a campaign event.

During 1998 and 1999, I served as occasional outside counsel to the campaign organization of Essex County, N.J., Executive James Treffinger.

Over the years, I have contributed to various political campaigns.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   Since emerging from government service in 1994, I have engaged in substantial pro bono activities through my firm. From 1999-2000, I represented Elizabeth Felton, in United Stats v. Felton, a tax and bankruptcy prosecution, pro bono, at the request of the presiding judge. This case occupied approximately 27 hours and resulted in a favorable disposition. In 2000-2001, I served as Special Counsel to the N.J. Senate Judiciary Committee in investigations of inmate release procedures and state police racial profiling. These representations were pro bono, except for reimbursement of expenses. My work on these matters consumed in excess of 200 hours.

   While in private practice from 1980-83, I participated in my law firm's organized "pro bono" program, representing indigent criminal defendants in appellate or post-conviction proceedings. Specifically, I represented a defendant on direct appeal before the District of Columbia Court of Appeals, a defendant before the Supreme Court of Arkansas, and two defendants in habeas proceedings in U.S. District Court, Eastern District of Arkansas. On average, over 5% of my time was devoted to these activities.

   Over the years, I have spoken to various community groups on matters relating to law and ethics. As a federal prosecutor, my legal work was entirely devoted to representing the public interest.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

   Never.

U.S. Department of Justice

MAY 1 2001

Washington, D.C. 20530

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Michael Chertoff, who has been nominated by the President to serve as Assistant Attorney General for the Criminal Division, Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. 208, requires that Mr. Chertoff recuse himself from participating personally and substantially in a particular matter in which he, his spouse, minor children or anyone whose interests are imputed to him under the statute, has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests.

Mr. Chertoff will resign from Latham & Watkins upon confirmation as Assistant Attorney General. Within 60 days of his resignation, he will receive a lump sum return of his capital account and 2001 earnings calculated in accordance with the partnership agreement. Mr. Chertoff will also receive a lump sum payment for his interest in Latham & Watkins' defined benefit pension plan, calculated in accordance with the partnership agreement as of the date of his resignation, payable at the end of calendar year 2001. Mr. Chertoff will leave his Latham & Watkins 401K retirement funds in the diversified mutual funds reported on Schedule A with no further contributions from himself or the firm. He agrees to divest of his interest in the Mutual Partners LP within 60 days of resignation. Until he receives the agreed-upon payments of his capital account, 2001 compensation, and pension plans, Mr. Chertoff has agreed to obtain advice about disqualification or to seek a waiver before participating in matters involving the firm.

We have advised him that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter with parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. He will have covered relationships with his former clients. If confirmed, Mr. Chertoff has agreed to resign from his positions listed on Schedule D Part I. He understands that for 1 year he should seek advice before participating in matters involving any of these organizations.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Janis A. Sposato
Acting Assistant Attorney
General for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☑	Termination Filer ☐ / Termination Date *(If Applicable)(Month, Day, Year)*
Reporting Individual's Name	Last Name: CHERTOFF			First Name and Middle Initial: MICHAEL	
Position for Which Filing	Title of Position: ASST. ATTORNEY GENERAL FOR THE CRIMINAL DIVISION			Department or Agency *(If Applicable)*: DEPT. OF JUSTICE	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: ONE NEWARK CENTER, NEWARK, NJ 07101			Telephone No. *(Include Area Code)*: 973-639-1234	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: NONE				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: JUDICIARY			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: [signature]			Date *(Month, Day, Year)*: 4/25/01	
Other Review (If desired by agency)	Signature of Other Reviewer: [signature]			Date *(Month, Day, Year)*: 4/27/01	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: [signature]			Date *(Month, Day, Year)*: 4/27/01	
Office of Government Ethics Use Only	Signature:			Date *(Month, Day, Year)*:	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

Reviewed & notations by Janice M. Rodgers, DOJ, upon consultation with filer.

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

SF 278
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State																															Law Partnership Income $120,000	
	Kempstone Equity Fund																																
	IRA: Heartland 500 Index Fund																								x								
1	FIRST UNION BANK ACCT.							X											X						X								
2	SANFORD BERNSTEIN CASH						X												X						[redacted] X								
3	AETNA INC STOCK		X														X				X												
4	ALCAN ALUMINUM STOCK		X														X				X												
5	AMERADA HESS STOCK		X														X				X												
6	AMERICAN ELEC POWER STOCK			X													X					X											

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Prior Editions Cannot Be Used.

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Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

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Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income; type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gain	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	GPU INC STOCK				X				X											
2	GENUINE PARTS CO. STOCK				X				X											
3	GEORGIA PACIFIC STOCK				X				X											
4	BF GOODRICH STOCK				X				X											
5	GOODYEAR TIRE STOCK				X				X											
6	INGRAM MICRO STOCK				X				X											
7	INTERN. PAPER STOCK				X					X										
8	LEGGETT + PLATT STOCK				X				X											
9	LUBRIZOL STOCK				X				X											

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5 C.F.R. Part ...34
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Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gain	Amount: None (or less than $201)	Amount: $201 - $1,000	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	CROWN CORK + SEAL STOCK				X				X		X												
2	[illegible]																						
3	DANA CORP STOCK				X					X	X												
4	DOW CHEMICAL STOCK				X				X		X												
5	EASTMAN CHEM STOCK				X				X		X												
6	FIRSTENERGY CORP STOCK				X					X	X												
7	FMC CORP STOCK				X				X		X												
8	FEDERATED DEPT STORES STOCK				X				X		X												
9	FIRST UNION CORP STOCK				X				X		X												

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Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

Page Number 29 4 of

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,000)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	CON ED STOCK		X														X					X											
2	CSX STOCK		X														X				X												
3	CONOCO STOCK		X														X				X												
4	CABOT CORP STOCK		X														X				X												
5	CINERGY CORP STOCK		X														X					X											
6	CHUBB CORP STOCK		X														X				X												
7	CONAGRA STOCK		X														X				X												
8	COOPER IND. STOCK		X														X				X												
9	COOPER TIRE STOCK		X														X				X												

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5 C.F.R. Pa. ..d4
U.S. Office of Government Ethics

Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	ARROW ELECTRONICS STOCK		X														X				X												
2	AMERICAN STANDARD STOCK		X														X				X												
3	AVNET INC STOCK		X														X				X												
4	BURLINGTON NORTHERN STOCK		X														X				X												
5	BANK ONE STOCK		X														X					X											
6	BANK OF AMERICA STOCK		X														X					X											
7	BERGEN BRUNSWIG STOCK		X														X				X												
8	CANADIAN PACIFIC STOCK		X														X				X												
9	CIGNA STOCK		X														X				X												

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Prior Editions Cannot Be Used.

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U.S. Office of Government Ethics

Reporting Individual's Name: Michael Chertoff

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Gift, Reimbursement, Compensation, Honoraria	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	MBIA INC STOCK		X														X				X												
2	MILLENIUM CHEM STOCK		X														X				X												
3	MAY DEPT. STORES STOCK		X														X					X											
4	MEAD CORP. STOCK		X														X				X												
5	NEWELL RUBBERMAID STOCK		X														X				X												
6	NATIONAL CITY CORP. STOCK		X														X				X												
7	NORFOLK SOUTHERN STOCK		X														X					X											
8	PG+E STOCK		X														X				X												
9																																	

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SF 278 (1 [illegible] 00)
5 C.F.R. Pt. [illegible] 54
U.S. Office of Government Ethics

Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent/Royalty/Lease	Type: Interest	Type: Capital Gain/Loss	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	OCCIDENTAL PET. STOCK		X														X						X										
2	QUANTUM CORP. STOCK		X														X				X												
3	PHILIP MORRIS STOCK		X														X						X										
4	PHILLIPS PET. STOCK			X													X				X												
5	SUMMIT BANCORP STOCK		X														X				X												
6	SMURFIT-STONE CORP. STOCK		X														X				X												
7	ST PAUL CO.S STOCK		X														X				X												
8	SEARS STOCK		X														X				X												
9	SHERWIN WILLIAMS STOCK		X														X				X												

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Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gain	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	SONOCO STOCK		X														X				X												
2	SUPERVALU INC STOCK		X														X				X												
3	TJX CO. STOCK		X														X				X												
4	TECH DATA CORP. STOCK		X														X				X												
5	THOMAS + BETTS CORP. STOCK		X														X				X												
6	TYSON FOODS STOCK		X														X				X												
7	UNION CARBIDE STOCK		X														X				X												
8	UNION PACIFIC STOCK		X														X				X												
9	VF CORP STOCK		X														X				X												

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Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalty	Type: Interest	Type: Capital Gain	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only If Honoraria
1	WESTVACO CORP STOCK		X														X				X												
2	WHIRLPOOL CORP STOCK		X														X				X												
3	WISCONSIN ENERGY STOCK		X														X				X												
4	XCEL ENERGY INC STOCK		X														X					X											
5	BERNSTEIN DIVERSIFIED MUNIC. PORTFOLIO						X	[redacted]						X						[redacted]				X									
6	BERNSTEIN TAX MANAGED INT'L VALUE					X								X								[redacted]		X									
7	BERNSTEIN EMERGING MARKETS VALUE			X										X			X				[redacted]	X											
8	SMITH BARNEY MUNICIPAL MUNI MARKET						X							X			X								X								
9	ENDO PHARM. HLDGS. STOCK		X																		X												

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Reporting Individual's Name: Michael Chertoff

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Nuveen N.J. PREM. Income Municipal ~~Bond~~ Fund			X										X									X										
2	AIM Constellation Fund (Partly 401K)			X										X											X								
3	Fidelity Adviser Growth Fund (partly 401 K)			X										X											X								
4	* Mainstay Convertible Fund			X										X							X												
	* Mainstay High Yield Fund			X										X							X												
5	* Templeton Foreign Fund			X										X								X											
	* Templeton Developing Mkts Fd		X											X							X												
6	Smith Barney Premium Total Return Fund			X										X								X											
7	Wanaque Bond, N.J. Sewer Bonds		X																X			X											
8	Bergen-City, NJ, Util. Auth Bonds		X																X			X											
9	Mercer City, NJ, Improv Auth Bonds			X															X				X										

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* Partly 401 K.

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Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent	Type: Interest	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	NJ EDA BONDS		■	X															X			X										
2	HAMILTON TWP BD OF ED (NJ) BONDS			X															X		X											
3	CAMDEN CTY NJ UTIL. AUTH BONDS		X																X		X											
4	MARLBORO TWP NJ UTIL AUTH BONDS		X																X	X												
5	WEST NY NJ UTIL AUTH BONDS		X																X		X											
6	RHODE ISLAND EDC BONDS			X															X			X										
7	JEFFERSON PARISH LA HOSP. BONDS		X																X		X											
8	MINNEAPOLIS & ST PAUL REV BONDS		X																X		X											
9	TENNESSEE COR REV BONDS (TN)		X																X		X											

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Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent	Type: Interest	Type: Gross Proceeds	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	PLANO TEX BONDS						X				X										
2	WISC HEALTH ATH BONDS						X				X										
3	AOL TIME WARNER STOCK								X												
4	ALLSTATE CORP STOCK				X				X												
5	~~AVIRA CORP STOCK~~																				
6	AMERICAN HOME PROD STOCK				X				X												
7	AMGEN STOCK								X												
8	ANALOG DEVICES STOCK								X												
9	~~ANHEUSER BUSCH STOCK~~																				

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SF 278 (G[illegible]00)
5 C.F.R. Pa[illegible]54
U.S. Office of Government Ethics

Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Anheuser Busch Common		X														X				X												
2	Bank of America Common		X														X				X												
3	Calpine Corp Common		X																		X												
4	Cisco Common		X																		X												
5	Citigroup Common		X														X				X												
6	Duke Energy Common		X														X				X												
7	Exxon Mobil Common		X														X				X												
8	Fleet Boston Common		X														X				X												
9	General Electric Common		X														X				X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (6 00)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Michael Chertoff

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Hartford Financial Common		X														X				X												
2	Intel Corp Common		X																		X												
3	JP Morgan Chase Common		X														X				X												
4	Lowes Companies Common		X														X				X												
5	MBNA Common		X														X				X												
6	Medtronic Common		X														X				X												
7	Microsoft Common		X																		X												
8	Pepsico Inc. Common		X														X				X												
9	Pfizer Common		X														X				X												

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only If Honoraria
1	QUAKER OATS common		X														X				X												
2	QWEST COMM. common		X																		X												
3	ROYAL DUTCH Common		X														X				X												
4	SBC COMMUNIC. Common		X														X				X												
5	SAFEWAY common		X																		X												
6	TARGET common		X														X				X												
7	TYCO INT'L common		X														X				X												
8																																	
9																																	

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	United Technologies Common		X														X				X												
2	Verizon Common		X																		X												
3	Walmart Common		X																		X												
4	Franklin Mutual Beacon Fund		X											X							X												
5	Janus Fund		X											X									X										
6	UMB Bank Money Mkt (401K)			X										X										X									
7	Latham Watkins Capital Account				X		X														X												
8	Vanguard Total Mkt Index		X											X							X												
	Developing Mkt		X											X							X												
9	NJ Pub. Emp. Ret. Sys. defined benefit plan		X											X							X												

401K

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (... 00)
5 C.F.R. Part ...54
U.S. Office of Government Ethics

Reporting Individual's Name

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Gain	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	FIDELITY GROWTH + INC FUND			X										X									X										
2	FIDELITY MAGELLAN FUND			X										X									X										
3	FIDELITY PURITAN FUND			X										X								X											
4	FIDELITY CASH RESERVES				X									X									X										
5	STEIN ROE YOUNG INVESTOR FUND		X											X						X		X											
6																																	
7	TIAA/CREF. MUTUAL FUNDS		X											X								X											
8	OPPENHEIMER (401K) MAIN STREET FUND				X									X									X										
9																																	

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SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Michael Cherkasky

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	State of New Jersey																															salary	
2	Summit Bancorp Stock		X											X								X											
3	PNC Bank Acct			X																	X												
4	Williamette Fndus. Stock	X																			X												
5	Smith Barney Money Mkt		X											X								X											
6	Ohio Air Quality Bonds		X																X			X											
7	Latham & Watkins Mutual Partners Ltd P-ship (K&R Fund)					X																		X								not ascertainable; will supply + amend if report is obtained	JMR
8	Latham & Watkins Retired Benefit Retirement Plan					X															X												
9	Latham & Watkins partner draws – actual 2000 – estim 2001																															A $340,000 B $400,000	JMR

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (... ...00)
5 C.F.R. Pa... ...34
U.S. Office of Government Ethics

Do not complete Schedule B if you are a new ... ant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE B

Page Number 29 of 30

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common				2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/13/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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SF 278 (...001)
5 C.F.R. Pa... ...54
U.S. Office of Government Ethics

Do not complete Schedule B if you are a new em... ..., nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: MICHAEL CHERTOFF

SCHEDULE B continued
(Use only if needed)

Part I: Transactions

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of Divestiture
1																	
2																	
3																	
4																	
5																	
6																	
7																	
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9																	
10																	
11																	
12																	
13																	
14																	
15																	
16																	

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Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Michael Chertoff

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☑ MC

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			X								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					X						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to partnership agreement will receive lump sum payment of capital account and 2001 earnings partnership share based on service performed until termination. Payable within 60 days of termination.	Latham & Watkins, Newark, NJ	5/94
2	Pursuant to partnership agreement will leave accrued 401(k) retirement funds in diversified mutual funds reported on Schedule A, with no further contributions from firm or filer. I agree to divest of Mutual Partners L.P. within 60 days of termination.	Latham & Watkins, Newark NJ	5/94
3	Defined benefit retirement plan; will receive lump sum payment calculated in accordance with plan agreement, fixed as of date of termination, payable at end of calendar 2001.	Latham & Watkins, Newark NJ	1/99

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Michael Chertoff

SCHEDULE D

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	LATHAM + WATKINS, NEWARK, NJ *	LAW FIRM	PARTNER	5/94	Present
2	Ass'n of Criminal Def. Lawyers - NJ, ** West Allenhurst NJ	nonprofit professional	Trustee	4/97	Present
3	New Brunswick Dev. Corp. ** New Brunswick, NJ	nonprofit	Director	7/94	Present
4	Compost America *, South Plainfield, NJ	business corp.	consultant (company)	1/99	4/99
5	New Jersey Law Journal *, Newark NJ	professional newspaper	editorial bd. member	6/94	Present
6	* will resign upon confirmation				

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	LATHAM + WATKINS	PARTNER - LEGAL SERVICES
2	CLIENTS OF LATHAM + WATKINS	LEGAL ADVICE + REPRESENTATION TO CLIENTS OF
3	SEE ATTACHED PAGES	THE FIRM
4		
5		
6		

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MICHAEL CHERDAK

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DR. MARIO ALVAREZ
SAN JUAN, PUERTO RICO 00906-6584

AMERICAN RE CORPORATION
PRINCETON, NJ

JORGE BALLESTEROS
MEXICO CITY, MEXICO

BELL ATLANTIC CORPORATION
NEW YORK, NY 10036

BEVERLY ENTERPRISE
FORT SMITH, AR

HORIZON BLUE CROSS BLUE SHIELD
NEWARK, NJ 07105-2200

EDWARD P. BOND
CONVENT STATION, NJ 07961

JOANN CAPRIO
WARREN, NJ 07059

THOMAS E. CETNAR
HOLMDEL, NJ 07753

CEU CIRNE-NEVES
NEWARK, NJ 07105

JOSEPH COLLINI
PATERSON, NJ 07501

COMPUTER ASSOCIATES
ISLANDER, NY

COMPUTER HORIZONS
MOUNTAIN LAKES, NJ 07046-1495

COOPER HEALTH SYSTEMS
CAMDEN, NJ 08103-1489

DR. MAGDY ELAMIR
JERSEY CITY, NJ 07306

ESSEX COUNTY EXECUTIVE
NEWARK, NJ 07102

Michael Chertoff

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ESSEX COUNTY IMPROVEMENT
FAIRFIELD, NJ 07004

FOODTOWN
WOODBRIDGE, NJ 07095

MICHAEL FRANCIS
FAIRFIELD, NJ 07004

FUTURE ELECTRONICS
POINTE CLAIRE, QUEBEC CANADA

SCOTT K. GINSBURG
DALLAS, TX

GOOD COUNSEL
HOBOKEN, NJ 07030

THE GRAND UNION COMPANY
WAYNE, NJ 07030

HCA-THE HEALTHCARE COMPANY
NASHVILLE, TN 37203

HILTON HOTELS CORPORATION
BEVERLY HILLS, CA

INTEGRATED HEALTH SYSTEMS
SPARKS, MARYLAND 21152

INTERNATIONAL PAPER
NEW YORK, NY

PAUL C. JAIN
SAN FRANCISCO, CA

WILLIAM LANE
SHORT HILLS, NJ 07078

VALERIE LAU
CORVALLIS, OREGON 97330.1028 (SILVER SPRING, MARYLAND)

LEAP WIRELESS INTERN
SAN DIEGO, CA

LENOX HILL HOSPITAL
NEW YORK, NY 10021

MICHAEL CHERTOFF

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DIETER LERCH
FAIR LAWN, NJ 07410

KIERAN MAHONEY
NEW YORK, NY 10017

MASON TENDERS DISTRICT COUNCIL
NEW YORK, NY 10011

MOBILEMEDIA
NEW YORK, NY 10270-0110

JACK MORTELL
PLEASANTVILLE, NY 10570

BRUCE NAGEL
LIVINGSTON, NJ 07039

NEW YORK DESIGN COMPANY
NEW YORK NY 10017

PACIFIC COIN
VAN NUYS, CA

PARK PLACE ENTERTAINMENT
CHATHAM, NJ 07928

RICHARD AND ROBERT PERGLER
CRYSTAL LAKE, IL 60012

PRINCETON LEARNING
PRINCETON, NJ 08540-1438

CARL RESNICK
FLEMINGTON, NJ 08822

ROBERT VAN DYK
RIDGEWOOD, NJ 07450

SAINT BARNABAS
NEWARK, NJ 07112

SALL/MYERS MEDICAL
PATERSON, NJ 07509-2947

SALT LAKE ORGANIZATION
SALT LAKE CITY, UT

MICHAEL CHERTOFF

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SEARS, ROEBUCK AND COMPANY
HOFFMAN ESTATES, ILL

SEMPRA ENERGY
SAN DIEGO, CA

SHERIDAN INVESTMENT
CHICAGO, IL

SIEMENS MICROELECTRONICS
NEW YORK, NY 10019

SITHE ENERGIES
NEW YORK, NY

THOMAS SMITH
CALDWELL, NJ 07006

DEFOREST SOARIES
SOMERSET, NJ 08873

STEEL DYNAMICS INC.
BUTLER, IN

TECHNICOLOR, INC.
NORTH HOLLYWOOD, CA

TOSCO CORPORATION
LINDEN, NJ 07036

SEAMUS TUOHEY
MONTCLAIR, NJ 07042

U.S. DISTRICT COURT – SPECIAL MASTER
NEWARK, NJ 07101

VIVENDI, NA
NEW YORK, NY

WALSH SECURITIES
PARSIPPANY, NJ 07054

ZAGO MANUFACTURING
NEWARK, NJ 07114

MICHAEL CHERTOFF

28 1 29

ARGENT VENTURES
NEW YORK, NY 10176

BAKER & TAYLOR
BRIDGEWATER, NJ

BIOMET COMPANY
PARSIPPANY, NJ

MICHAEL CRITCHLEY
WEST ORANGE, NJ 07052-5796

DRUCKMAN & HERNANDEZ
ELIZABETH, NJ 07208

FOSTER ASSET MANAGEMENT
NEW YORK, NY 10004

GRAND COURT LIFESTYLES
FT. LEE, NJ 07024

HUDSON COUNTY DISTRICT COUNCIL
CRANBURY, NJ 08512

LOWENSTEIN SANDLER
ROSELAND, NJ 07068-1791

MEDICAL WORLD COMMUNICATIONS
JAMESBURG, NJ 08831

MERCK MEDCO
FRANKLIN LAKES, NJ 07417

MIVILA CORP.
PATERSON, NJ 07503

PUBLIC SERVICE ENTERPRISE GROUP
NEWARK, NJ 07101

NORMAN AND MARIE SEVELL
SCOTCH PLAINS, NJ 07076

SILLS CUMMIS
NEWARK, NJ 07101

MICHAEL CHERTOFF

29 of 29

RAY CATENA MOTOR CARS
EDISON, NJ

CATHEDRAL HEALTH
NEWARK, NJ 07105

DAVE M. GOLDENBERG
MENDHAM, NJ 07945

STEPHEN B. FIVERSON
SOUTH KEARNEY, NJ 07032

ELIZABETH FELTON
NEWARK, NJ

NJ SENATE JUDICIARY COMMITTEE
TRENTON, NJ 08625-0068

MILLS CORP.
ARLINGTON, VA

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bar accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	$500,000	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	
Listed securities—add schedule	$2.4 mill.	Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	370,000
Real estate owned—add schedule	$850,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property	$50,000	revolving credit @	2,000
Cash value—life insurance		auto lease @	23,000
Other assets—itemize:			
Partnership Capital	$350,000		
Mutual Farmers Inv. Fund	~~[illegible]~~		
	400,000	Total liabilities	$395,000
Latham + Watkins Defined Benefit Plan	120,000	Net worth	$3.9 million
Total assets	4.3. mill	Total liabilities and net worth	$4.3 million

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule.)	
On leases or contracts		Are you defendant in any suits or legal actions?	
Legal Claims		Have you ever taken bankruptcy?	
Provision for Federal Income Tax			
Other special debt			

SCHEDULE 1

Approximate Asset Value: Listed Securities

Aetna Inc Stock	3823
Alcan Aluminum Stock	8134
Amerada Hess Stock	5205
American Elec Power Stock	17,000
Arrow Electronics Stock	4724
American Standard Stock	2581
Avnet Inc Stock	2749
Burlington Northern Stock	1531
Bank One Stock	10,780
Bank of America Stock	14,531
Bergen Brunswig Stock	4095
Canadian Pacific Stock	9291
Cigna Stock	10,000
Con Ed Stock	4368
CSX Stock	5338
Conoco Stock	4100
Cabot Corp Stock	1613
Cinergy Corp Stock	4553
Chubb Corp Stock	3600
Conagra Stock	8775
Cooper Ind. Stock	5611

Cooper Tire Stock	2626
Crown Cork & Seal Stock	1183
Dillards Stock	762
Dana Corp Stock	3269
Dow Chemical Stock	10,290
Eastman Chem Stock	2336
Firstenergy Corp Stock	6963
FMC Corp Stock	3377
Federated Dept Stores Stock	5793
First Union Corp Stock	3393
GPU Inc Stock	3203
Genuine Parts Co. Stock	4438
Georgia Pacific Stock	3586
BF Goodrich Stock	2160
Goodyear Tire Stock	4601
Ingram Micro Stock	1235
Intern. Paper Stock	15,885
Leggett & Platt Stock	2625
Lubrizo Stock	1320
MBIA Inc Stock	3584
Millenium Chem Stock	1687
May Dept Stores Stock	13,633
Mead Corp. Stock	1821

Newell Rubbermaid Stock	8160
National City Corp. Stock	1413
Norfold Southern Stock	11000
PG&E Stock	2850
Pacificare Health Sys. Stock	608
Occidential Pet. Stock	13658
Quantum Corp. Stock	1425
Philip Morris Stock	11820
Phillips Pet. Stock	16123
Summit Bancorp Stock	5249
Smurfit-Stone Corp. Stock	2175
St. Paul Cos., Stock	6963
Sears Stock	3875
Sherwin Williams Stock	4699
Sonoco Stock	3361
Supervalu Inc Stock	2000
TJX Co. Stock	12,400
Teeh Data Corp. Stock	1443
Thomas & Betts Corp. Stock	944
Tyson Foods Stock	1360
Union Carbide Stock	11,949
Union Pacific Stock	14,570
VF Corp Stock	2963

Westvaco Corp Stock	2286
Whirlpool Corp. Stock	2625
Wisconsin Energy Stock	2312
Xcel Energy Inc Stock	6418
Bernstein Diversified Munic. Portfolio	424,000
Bernstein Tax Managed Int'l Value	114,326
Bernstein Emerging Markets Value	25,882
Smith Barney Municipal Money Market	724,000
Nuveen NJ Prem. Income Mun Fund	50,000
Aim Constellation Fund	32,000
Fidelity Advisor Growth Fund	46,000
Mainstay Convertible & High Yield Funds	47,000
Smith Barney Premium Total Return Fund	20,000
Templeton Foreign & Dev Funds	35,000
Wanaque Boro Sewer Bond	11,000
Bergen County Utility Authority Bonds	11,000
Mercer Cty Impt Authority Bonds	20,000
NJ EDA Bonds	27,000
Hamilton Twp Board of Ed Bonds	20,000
Camden Cty Util. Auth. Bonds	6,000
Marlboro Twp Util Auth Bonds	3,000
West NY Util Auth Bonds	8300
Rhode Island EDC Bonds	26,000

Jefferson Parish Hosp. Bonds	10,670
Minneapolis & St. Paul Rev. Serv Bonds	10,630
Tennergy Corp. Rev Bonds	4740
Plano Tex Bonds	26,800
Wisc Health Auth Bonds	24,000
AOL Time Stock	1449
Allstate Corp. Stock	1510
Altera Corp Stock	372
American Hom Prod Stock	1525
Amgen Stock	1197
Analog Devices Stock	458
Anheuer Busch Common	1393
Automatic Data Proc Common	980
Bank of America Common	1566
Baxter Common	834
Best Buy Common	635
Cigna Common	1172
Caldine Corp Common	1080
Charter Communications Com	594
Cienu Corp Common	169
Cisco Common	1205
Citigroup Common	2193
Clear Channel Common	806

Converse Tech Common	275
Corning Common	378
Costco Wholesale Common	687
Walt Disney Common	755
Duke Energy Common	1297
EMC Corp Common	615
El Paso Common	898
Elan Corp ADR	875
Exxon Mobil Company	2467
Fleet Boston Common	1137
General Electric	3678
Goldman Sachs Common	589
Halliburton Holdings Common	684
Hartford Financial Common	1018
Intel Corp Common	1625
IBM Common	1703
International Paper Common	802
JP Morgan Chase Common	1338
Lehman Bros Holdings Com	436
Lockheed Martin Common	754
Lowes Companies Common	1148
MBNA Common	1378
Medtronic Common	1015

Microsoft Common	2344
Nokia ADR	275
Omnicom Group Common	831
Oracle Common	919
Pepsico Inc. Common	1409
Pfizer Common	2843
Pharmacia Common	935
Quaker Oats Common	1260
Quest Communications Common	1249
Radioshack Corp Common	475
Ralston Purina Common	837
Royal Dutch Common	1370
SBC Communications Common	1531
Safeway Common	1222
Schering Plough Commony	992
Siebel Systems Common	286
Solectron Corp Common	372
Sun Microsystems Common	546
Target Common	1125
Tellabs Inc. Common	431
Texaco Common	910
Tyco International Common	1597
United Parcl Service Common	444

United Technologies Common	1027
Verizon Common	1264
Viacom CLB Common	960
WalMart Common	1721
Washington Mutual	923
Franklin Mutual Beacon Fund	2300
Janus Fund	5000
UMB Bank Money Market	53 000
Fidelity Investment Funds	109,000
Dodge & Cox Fund	15,000
Stein Roe Mutual Funds	2,000
TIAA/CREF Mut. Funds	2,000
Oppenheimer Funds	18,400
Summit Bancorp Stock	2,000
PNC Bank Account	20,000
Ohio Air Qual. Bonds	5391
Vanguard Total Market & Developing Market Funds	18,500
Willamette Industries Stock – Less than $1000	

SCHEDULE 2

Real Estate Owned

Primary Residence, Westfield, New Jersey	550,000
Vacation Home, Milford, Pennsylvania	300,000

SCHEDULE 3

Real Estate Mortgage Payable

Home Mortgage, Roselle Savings Bank, Roselle, New Jersey

THE SENATE

STATE HOUSE, TRENTON, N. J.

SENATE RESOLUTION

By Senators GORMLEY, LYNCH, CAFIERO, ZANE, MATHEUSSEN, MARTIN, O'CONNOR, GIRGENTI, KOSCO, ROBERTSON and FURNARI

WHEREAS, The Senate of the State of New Jersey is pleased to honor and salute Michael Chertoff, Scott Louis Weber, and the law firm of Latham & Watkins for their outstanding service to the Senate Judiciary Committee during the investigation into the issue of racing profiling from November 2000 through April 2001; and,

WHEREAS, Michael Chertoff, who served with distinction as Special Counsel to the Senate Judiciary Committee, conducted the investigation in a scrupulously fair and bipartisan manner while demonstrating his personal integrity and single-minded devotion to uncovering the facts in a truthful and balanced way, and his preparedness, professionalism, and quality of questioning have drawn praise from Democrats and Republicans alike; and,

WHEREAS, Scott Louis Weber, who served with distinction as Deputy Special Counsel to the Senate Judiciary Committee, was indispensable during the investigation as evidenced by his tireless work ethic, command of the issues, and skillful questioning and analysis; and,

WHEREAS, In addition, the members of the law firm of Latham & Watkins, including attorneys Eric Jaso, Mark Goldberg, Elisa Lee, Kalama Lui-Kwan, and senior paralegal Suzanne Slavin, worked with unflagging purpose to review 100,000 pages of documents, conduct 160 hours of depositions and interviews, and participate in 60 hours of public hearings; and,

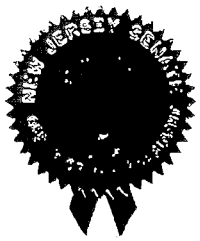
WHEREAS, The law firm of Latham & Watkins, which is one of the most accomplished and respected in this State and nation, provided its services to the Committee without compensation; and,

WHEREAS, The efforts of Michael Chertoff, Scott Louis Weber, and the law firm of Latham & Watkins have uncovered information and produced insights into the problem of racial profiling that have encouraged and will enable meaningful reforms, which are crucial to the continued vitality of this State and will improve the lives of its citizenry; now, therefore,

Be It Resolved by the Senate of the State of New Jersey:

That this House hereby honors Michael Chertoff, Scott Louis Weber, and the law firm of Latham & Watkins, and pays tribute to their meritorious service to the Senate Judiciary Committee in its investigation into racial profiling; and,

Be It Further Resolved, That a duly authenticated copy of this resolution, signed by the President and attested by the Secretary, be transmitted to Michael Chertoff, Scott Louis Weber, and the law firm of Latham & Watkins.



President of the Senate

Attest:

Secretary of the Senate

Chairman HATCH. You are welcome. Thank you so much for your testimony.

Professor Dinh, we will take you.

STATEMENT OF VIET D. DINH, OF THE DISTRICT OF COLUMBIA, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR LEGAL POLICY, DEPARTMENT OF JUSTICE

Mr. DINH. Thank you very much, Mr. Chairman, Senator Leahy. Thank you very much for having me here today, and I really do sincerely apologize to you and to your staff for any inconvenience that my submission of my voluminous paper trail may have caused you. The oversights were truly inadvertent.

I also want to thank Congresswoman Sanchez for introducing me and Senator Domenici for those moving words of support. I know that Congresswoman Sanchez had recognized my parents, but I would like to take the opportunity to introduce them again, because they really are the heroes of that story that Senator Domenici said. My parents are here: my father, Dinh Hong Phong, and my mother, Nguyen Thi Nga. Thank you so much.

Chairman HATCH. We are so happy to have you here, and we are honored to have you in our presence.

Mr. DINH. With your permission, I would like to start by telling you a little bit about the reason why I consider them the heroes, not only in my life but in the story that Senator Domenici has told.

My father was a government official in the Government of South Vietnam. When the war ended in 1975, he was imprisoned, but in a re-education camp for 3 years. He escaped from that camp in the morning of June 1978, and he lived as a fugitive in that country for several years before he was finally able to escape that country. After 25 unsuccessful attempts, he was finally able to find freedom here in America in 1983.

At the same time that my father escaped from the camp, my mother took us, her children, simultaneously onto a small boat to find freedom from Vietnam. After 12 days drifting at sea, you could imagine our joy and absolute elation when we finally saw land in a harbor in Malaysia. But instead of encountering a warm welcome to freedom, what we encountered was a hail of bullets fired at us in warning, forcing us back out to international waters.

Our boat was not seaworthy for another sea voyage over to Singapore, probably our nearest port, so in the middle of the night, my mother decided that we should turn back into the beach, into the deserted beach in the middle of the night. And so as the boat beached onto the shore and we all swam to the shore, I turned back and there alone on the boat was my mother wielding an axe that was almost as tall as she was. She was using that axe in order to put a hole in the side of the boat to sink it so that the authorities would not be able to force us back on in the morning. That image of my mother destroying our last link to Vietnam really stands in my mind to this day as to the incredible courage she possesses, but also the incredible lengths to which my parents, like so many other people, have gone to in order to find that promise of freedom and opportunity, a promise that so many people have lost their lives in order to attain and so many Americans have given up their lives to protect.

It is that belief in that promise of opportunity and freedom that has led me to devote my life to one living in the law, which has been so aptly described as "a system of wise restraints that set men free."

My academic interest, while, as Senator Hatch noted, has been varying and broad, has all centered on a common theme; that is, I have been interested in studying the institutions and mechanisms of governance, those wise restraints that set us free.

I am very grateful to the President and the Attorney General for this opportunity for me to repay the debt of opportunity that my family owes this great country of ours and for me to have a small hand in helping to think about and work on those wise restraints that set us free.

As I contemplate the position to which I am nominated, I was thinking about how I would approach the job if I am confirmed by this Committee and by the Senate. And to me, it seems to me that if I am confirmed as the Assistant Attorney General for Legal Policy, I will be guided by two abiding principles that to me serve as the foundation of this promise of opportunity and freedom in our country.

First, America makes that promise to all her citizens and that all of her citizens, all Americans, should enjoy the equal protection of the law. I will work to ensure that the privileges and burdens of law are accorded equally. Invidious discrimination affects me personally as a Vietnamese American and offends me morally as an American. And all Americans—regardless of race, class, sex, religion, socioeconomic status, or any other status—should enjoy the security that comes with the faithful and vigorous execution of the law. Such personal security is essential for individual freedom to flourish.

Second, governmental power should be exercised only according to legitimate authority. The Department has the tremendous responsibility to enforce the laws of the United States. It must discharge that responsibility faithfully and vigorously. But at the same time, the Department must make sure that it acts only when it may and not simply because it can, that government actions are based not on raw power but on legitimate constitutional and legislative authority. Such respect for law fosters individual liberty and freedom from arbitrary governmental coercion.

Senators, I have personally experienced government that does not work, where law is non-existent and power exercised by arbitrary whim, by caprice, by personal will. That experience teaches me not to take our system of laws for granted, but to work constantly toward its improvement. I hope I will have the opportunity to work with you in that common endeavor, to listen to your concerns and those of others, and to find common ground among diverse viewpoints.

This Committee has a proud history of working to improve our legal system to meet new and constant challenge, and if confirmed, I promise to help you in any way I can to build on that tradition.

Thank you very much.

[The prepared statement and biographical information of Mr. Dinh follow:]

STATMENT OF VIET D. DINH, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR LEGAL POLICY

Mr. Chairman, Senator Leahy, and Members of the Committee,

Thank you very much for having me here today, and for taking time to meet with me personally over the past week. It is an honor to appear before you.

With your permission, I would like to share the honor by introducing my father, Phong Dinh, and my mother, Nga Nguyen. Without their many sacrifices, I would not be before you today, so I would like to tell you a little about my parents.

My father was an official in the government of the Republic of Vietnam (South Vietnam). After the communist takeover in 1975, he was imprisoned in a reeducation camp. In 1978, he escaped from the camp and lived as a fugitive for several years in Vietnam. Finally, in 1983, after 25 attempts, he successfully escaped to find freedom here in America.

Simultaneous with my father's escape from the reeducation camp, my mother took her children onto a small boat with 85 other persons. After twelve days at sea, many of them drifting without food or water, we entered a harbor in Malaysia. Instead of a welcome to freedom, however, we encountered what Senator Kennedy has aptly described as "compassion fatigue." A patrol boat fired warning shots at us, forcing the boat back out to international waters. Because our boat could not have survived another sea voyage, we turned back to a deserted beach after nightfall. After swimming to shore, I looked back and saw my mother. She alone was still on the boat, trying to put a hole in it, to sink it so that we could not be forced back on. That image remains vivid in my mind, speaking to the lengths to which my parents, like so many other Americans, have gone to seek the American promise of opportunity and freedom.

As a ten-year-old child in the refugee camp and even after our family landed in Oregon on Thanksgiving Day, 1978, in my wildest dreams I could not have foreseen the opportunities that this country has given our family. Even then, however, I knew the value of America's promise of freedom-a promise that so many people have risked their lives to attain and so many Americans have lost their lives to protect.

Belief in this promise is why I have chosen a life in the law, "the system of wise restraints that set men free." My interests in the different doctrinal areas of constitutional, international, and corporations law stem from the same source, my desire to study the institutions and mechanisms of governance, the wise restraints that make us free.

I am grateful to President Bush and Attorney General Ashcroft for the chance to repay the debt of opportunity I owe to this country and her people. I am humbled to have been nominated to be Assistant Attorney General for Legal Policy.

If confirmed, I will formulate and implement legal policy for the Department of Justice and the Administration. In doing so, I will be guided by two principles that, to me, serve as the foundation for America's promise of freedom.

First, America makes that promise to all, and every American is entitled to the equal protection of the law. I am committed to working to ensure that the privileges and burdens of the law are accorded equally. Invidious discrimination affects me personally as a Vietnamese American and offends me morally as an American. All Americans-regardless of race, religion, sex, socioeconomic status, or any other status-should enjoy the security that comes with the faithful and vigorous execution of the laws. Such personal security is essential for individual freedom to flourish.

Second, governmental power should be exercised only according to legitimate authority. The Department of Justice has the tremendous responsibility to enforce the laws of the United States. It must discharge that responsibility faithfully and vigorously so that all citizens receive full protection of the law. But, at the same time, the Department must ensure that it acts not because it can, but only when it may-that governmental actions are based not on unfettered power, but on legitimate constitutional and legislative authority. Such respect for law fosters individual liberty, freedom from the specter of arbitrary governmental coercion.

I have personally experienced government that does not work—where law is nonexistent and power exercised by arbitrary whim. That experience teaches me not to take our system of laws for granted, but to work constantly toward its improvement. I hope I will have the opportunity to work with you in that common endeavor, to listen to your concerns and those of others, and to find common ground among diverse viewpoints. If confirmed, I will be your partner in shaping our country's legal policy to meet new and constant challenges.

Thank you.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Viet Phung Dong DINH

2. Address: List current place of residence and office address(es).

Residence: Washington, District of Columbia

Office: 600 New Jersey Avenue NW
Washington, DC 20001

3. Date of birth.

February 22, 1968

Place of Birth.

Saigon, Vietnam

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Single; never married.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Harvard Law School, 1990-1993; J.D., *magna cum laude*, 1993.

Harvard College, 1986-1990; A.B., *magna cum laude*, 1990.

London School of Economics, Fall 1988; no degree received.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

07/96-present: Georgetown University Law Center
600 New Jersey Avenue NW
Washington, DC 20001
Professor of Law (2000-present)
Deputy Director, Asian Law and Policy Studies Program (1997-present)
Faculty Co-Director, Joint Program in Law and Business Administration (1998-1999)
Associate Professor of Law (1996-2000)

07/97-04/01: Viet D. Dinh, LLC
120 South Fairfax Street
Suite 300
Alexandria, VA 22314
Member (part-time commitment)

02/00-04/01: ThePit.com, Inc.
245 Main Street, 6th Floor
White Plains, NY 10601
Advisor (part-time commitment)
Member, Market Maker Oversight Committee (part-time commitment)

01/99-03/01 Hon. Shirley Wohl Kram
U.S. District Court
Southern District of New York
United States Courthouse
Foley Square
New York, NY 10007-1581
Counsel to the Special Master in 98 Civ. 2938 (SWK) (part-time commitment)

03/99-04/99 Universite Toulouse 1, Sciences Sociales
Place Anatole France
31042 Toulouse
France
Visiting Lecturer (special limited-time appointment)

01/99-02/99: Honorable Pete V. Domenici
U.S. Senate
Senate Hart Office Building 328
Washington, DC 20510
Special Counsel (part-time commitment)

07/95-06/96: Special Committee to Investigate Whitewater Development Corporation and Related Matters
U.S. Senate
Senate Hart Office Building 812
Washington, DC 20510
Associate Special Counsel

07/94-07/95: Honorable Sandra Day O'Connor
U.S. Supreme Court
1 First Street, N.E.
Washington, DC 20543
Law Clerk

07/93-07/94: Honorable Laurence H. Silberman
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, N.W.
Washington, DC 20001
Law Clerk

05/93-07/93: O'Melveny & Myers
555 13th Street, N.W.
Washington, DC 20004
Summer Associate

09/91-05/93: Harvard University
Cambridge, MA 02138
Teaching Fellow, Ethics in Public Policy (1993)
Research Assistant, Prof. Charles Fried (1992)
Instructor, Legal Methods (1991-1993)

07/92-09/92: Munger, Tolles & Olson
355 South Grand Avenue
Suite 3500
Los Angeles, CA 90071
Summer Associate

05/92-07/92: O'Melveny & Myers
400 South Hope Street
Los Angeles, CA 90071
Summer Associate

06/91-09/91: Nossaman, Guthner, Knox & Elliott, LLP
18101 Von Karman Avenue
Suite 1800
Irvine, CA 92612
Summer Associate

06/90-09/90: Thomas Brothers Development Corporation
16842 Von Karman Avenue, Suite 350
Irvine, CA 92714
Summer Associate

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

25 Vietnamese-Americans in 25 Years, *New Horizon*, April 2000.
New Catholic Voices, *Crisis Magazine*, September 1997.
J.D., magna cum laude, Harvard Law School, June 1993.
Arnold & Porter Scholarship, Harvard Law School, 1992-93.
Olin Research Fellow in Law & Economics, Harvard Law School, 1992-93.
A.B., magna cum laude, Harvard College, June 1990.
John Harvard Scholarship, Harvard College.
Harvard College Scholarship, Harvard College.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association.
District of Columbia Bar Association.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None.

Please list all other organizations to which you belong.

The Federalist Society.
Association of American Law Schools
Section on Scholarship, Treasurer, 09/00-present
Section on Scholarship, Executive Board Member, 09/99-09/00.
Council on Foreign Relations.
Harvard Law School Association.
Editorial Board, Law and Policy in International Business.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

District of Columbia Court of Appeals, December 1, 1997 to present.
U.S. Supreme Court, February 20, 2001 to present.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

A. Attached hereto as Appendix A is a listing of my publications. Also included are copies of each publication.

B. Attached hereto as Appendix B is a listing of my speeches and panel presentations. Also included are copies of the prepared text, notes, reports, or other memoranda of the speech or presentation. Appendix B constitutes my best efforts to compile, based on records and recollection, my speeches and panel presentations; however, it may not be an exhaustive compendium of such speeches and presentations.

C. Attached hereto as Appendix C is a listing of my quotations, interviews, or other appearances in print, broadcast, or other public media. Also included are copies of the transcript or report of the quotation, interview, or appearance. Appendix C constitutes my best efforts to compile, based on records and recollection, my quotations, interviews, or other media appearances; however, it is not an exhaustive compendium because it does not include appearances not reported in printed or printable formats.

D. Attached hereto as Appendix D is a listing of my formal opinions on legislative or administrative proposals or actions. Appendix D constitutes my best efforts to compile, based on records and recollection, my formal opinions on legislative or administrative proposals or actions; however, it is not an exhaustive compendium because it does not include advice or opinions given informally or those the disclosure of which would transgress applicable privileges.

13. Health: What is the present state of your health?

Excellent.

List the date of your last physical examination.

May 2000.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Special Counsel, Honorable Pete V. Domenici, U.S. Senate; appointed; 01/99-02/99.

Associate Special Counsel, Special Committee to Investigate Whitewater Development Corporation and Related Matters, U.S. Senate; appointed; 07/95-06/95.

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

07/94-07/95: Honorable Sandra Day O'Connor
U.S. Supreme Court
1 First Street, N.E.
Washington, DC 20543

07/93-07/94: Honorable Laurence H. Silberman
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, N.W.
Washington, DC 20001

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

07/96-present: Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20001
Professor of Law (2000-present)
Deputy Director, Asian Law and Policy Studies Program (1997-present)
Faculty Co-Director, Joint Program in Law and Business Administration (1998-1999)
Associate Professor of Law (1996-2000)

07/97-04/01: Viet D. Dinh, LLC
120 South Fairfax Street
Suite 300
Alexandria, VA 22314
Member (part-time commitment)

01/99-02/99: Honorable Pete V. Domenici
U.S. Senate
Senate Hart Office Building 328
Washington, DC 20510
Special Counsel (part-time commitment)

07/95-06/96: Special Committee to Investigate Whitewater Development Corporation and Related Matters
U.S. Senate
Senate Hart Office Building 812
Washington, DC 20510
Associate Special Counsel

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1993-95: Clerkships.
1995-96: U.S. Senate staff.
1996-present: Law professor and expert consultant.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Outside of my academic activities, I was generally retained by counsel who represent corporations or organizations seeking expertise in constitutional or administrative law issues.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Not at all.

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

Not applicable.

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

I have not made any court appearances; however, all litigation matters in which I have been involved have been civil in nature.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

None.

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

Not applicable.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representations;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

On November 30, 2000, I filed a brief on behalf of the Liberty Legal Institute as *amicus curiae* in support of Petitioners in *Good News Club v. Milford Central School*, No. 99-2036, before the United States Supreme Court. The Petitioners challenged their denial of equal access to school facilities based upon their religious message. The case is currently pending.

Co-Counsels:

John L. Carter
Viet D. Dinh, LLC
120 South Fairfax Street
Suite 300
Alexandria, VA 22314
703-549-0049

Kelly Shackelford
Liberty Legal Institute
903 East 18th Street
Suite 230
Plano, TX 75074
972-423-8889

Counsel for Good News Club:

Thomas J. Marcelle
71 Devonshire Drive
Slingerlands, NY 12159
518-475-0806

Counsel for Milford Central School:

Frank W. Miller
Ferrara, Fiorenza, Larrison, Barrett & Reitz
5010 Campuswood Drive
East Syracus, NY 13057
315-437-7600

On December 29, 1999, I filed a brief on behalf of certain Texas public school students, their parents, and the Liberty Legal Institute as *amicus curiae* in support of the Petitioner in *Santa Fe Independent School District v. Jane Doe*, No. 99-62, before the United States Supreme Court. The case posed the question whether Petitioner's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause. The Court answered the question in the affirmative in an opinion reported at 530 U.S. 290 (2000).

Co-Counsels: John L. Carter
Viet D. Dinh, LLC
120 South Fairfax Street
Suite 300
Alexandria, VA 22314
703-549-0049

Counsel for Santa Fe Independent School District:
Jay Alan Sekulow
American Center for Law & Justice
Suite 609
1000 Thomas Jefferson St., N.W.
Washington, DC 20007
202-337-2273

Counsel for Jane Doe:
Anthony P. Griffin
Anthony P. Griffin, Inc., Lawyers
1115 Moody Avenue
Galveston, TX 77550
409-763-0386

Except as described in Item 17 below, I have not personally handled any other litigated matters.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My most significant legal pursuit has been to seek and impart knowledge about the law and our structures of governance through teaching, scholarship, and other activities. I have published widely in publications ranging from the *New York Times* to the *Harvard Law Review* on a variety of topics, including equal protection, immigration, executive privilege, federalism, statutory preemption, corporate governance, and international trade. I wrote about prospects for my homeland in *Financial Reform and Economic Development in Vietnam*, 28 L. & POL. INT'L BUS. 857 (1997), and served as a consultant to the U.S. Agency for International Development to assist in the redrafting of Vietnam's Company Law.

Among the classes I have taught are Constitutional Law I: The Federal System; International Law I: Public International Law; and Corporations. Among the advanced research seminars I have taught are the Olin Seminar on Law and Economics; the Asian Law and Policy Studies Seminar; the seminar on Transnational Investments in Developing Countries; and the

Advanced Constitutional Law Seminar on Separation of Powers. In addition to my normal classes at the Georgetown University Law Center, I have taught international negotiations and corporate governance at INCAE, a business and management school in Managua, Nicaragua, and international trade negotiations at the Public Finance Training Institute in Taipei. I was a visiting lecturer at Universite Toulouse I, Sciences Sociales, in Toulouse, France, and have delivered papers and lectures at, among other institutions, U.C. Berkeley Law School-Boalt Hall and Northwestern Law School.

Since January 1999, I have been counsel to Special Master Alfonse M. D'Amato, whom Judge Shirley Wohl Kram appointed to conduct and supervise settlement discussions in *In re Austrian and German Banks Holocaust Litigation*, 98 Civ. 3938 (SWK). The Special Master's efforts achieved, among other successes, an agreement settling claims against the Austrian banks, which was approved by the Court, see 80 F. Supp. 2d 164 (S.D.N.Y. 2000), *aff'd sub nom. D'Amato v. Deutsche Bank*, 236 F.3d 78(2d Cir. 2001). Between January 1999 and January 2000, my services were rendered at a significantly reduced rate, and since January 2000, I have served on a *pro bono* basis.

I have provided expert testimony on questions relating to constitutional and administrative law. In a series of related actions, I submitted affidavits on congressional investigative authority and procedures. I testified before the Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, on congressional authority to enact H.R. 906, the Civic Participation and Rehabilitation Act of 1999, and on private property rights and telecommunications policy. I also submitted written testimony and met with staff and members of the Federal Communications Commission on the Commission's authority to promulgate a proposed nondiscriminatory access rule.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

As compensation for service as an advisor to the company and pursuant to an agreement dated August 30, 2000, a Long Term Incentive Compensation Plan granted me vested options to purchase 25,000 shares of ThePit.com, a Delaware corporation, at $1.50 per share, exercisable before 2010. Shares of the company are not publicly traded. On April 24, 2001, the Company agreed to pay me four thousand dollars ($4000) on or before December 31, 2001, in consideration for surrendering the above-described option and as payment for the provision of the above-described services.

For the duration of my government service, I will be on leave from a tenured professorship at Georgetown University, with certain rights of reinstatement. My participation in the University 403(b) retirement plan will be suspended. Neither I nor the University will make any contributions during the leave period; however, past contributions will remain invested in the plan. Under the terms of my Faculty Contract, payments for my services performed from September 2000 through May 2001 are paid in twelve monthly installments from July 2000 through June 2001. I therefore will receive my final payment from Georgetown University on June 30, 2001, as compensation for services already rendered during the 2000-2001 academic year.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will consult with the appropriate ethics official for the Department of Justice regarding any matter constituting a potential conflict.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see Standard Form 278, attached hereto as Exhibit E.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see financial net worth statement, attached hereto as Exhibit F.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was hired as Deputy Issues Director, Legal Policy, for Pete Wilson for President in 1995 but did not commence formal service. I served on the Litigation Task Force of the Dole-Kemp Economic Advisory Committee in 1996. I served on the steering committee of Law Professors for Bush-Cheney in 2000.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I served as counsel, since January 1999, to Special Master Alfonse M. D'Amato, whom Judge Shirley Wohl Kram appointed to conduct and supervise settlement discussions in *In re Austrian and German Bank Holocaust Litigation*, 98 Civ. 3938 (SWK). The Special Master's efforts achieved, among other successes, an agreement settling Holocaust victims' claims against the Austrian banks, which agreement was approved by the Court, see 80 F. Supp. 2d 164 (S.D.N.Y. 2000), *aff'd sub nom. D'Amato v. Deutsche Bank*, 236 F.3d 78(2d Cir. 2001). Between January 1999 and January 2000, my services were rendered at a significantly reduced rate, and since January 2000, I have served on a *pro bono* basis. The reduction in my fees exceeded $50,000, and, in addition, I have provided an estimated 300 hours of service since January 2000 without charge.

I also served as a consultant to the United States Agency for International Development on the first U.S. government direct assistant program to the government of Vietnam since the end of the war in 1975. With other colleagues, I helped a Vietnamese team to redraft the country's Company Law, subsequently enacted by the National Assembly. I provided an estimated 200 hours of service and accepted only nominal compensation and expenses for the project.

Every year since 1996, I have donated to, solicited prizes for, and helped conduct the annual public interest auction to benefit the Equal Justice Foundation. Funds raised in the auction provide stipends to students who engage in public interest work. I have also contributed to and participated in various (non-player) capacities in Home Court, an annual basketball game between members of the Georgetown University Law Center faculty and Members of Congress to raise money for the Washington Legal Clinic for the Homeless.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

From December 1987 to June 1990, I was a member of the Phoenix S.K. Club, a college fraternal organization that restricted membership on the basis of sex. Upon information and belief, the Bee Club, Kappa Alpha Theta, and Delta Gamma are comparable organizations for female students.

APPENDIX A: PUBLICATIONS

1. *Ashcroft Heeded Our Cry for Help*, WASHINGTON POST, Jan. 20, 2001, Op-Ed Page; reprinted sub nom. *Critics wrong, Ashcroft Cares About Justice for All*, HOUSTON CHRONICLE, Jan. 24, 2001, p. A21.

2. *How We Won in Vietnam*, POLICY REVIEW, Dec. 2000- Jan. 2001.

3. *Dead Men Can't Win*, WALL STREET JOURNAL, Nov. 9, 2000, Op-Ed Page.

4. *When Uncle Sam Steps In*, LEGAL TIMES, JUNE 19, 2000, p. 66 (with Paul Clement); reprinted sub nom. *Geier Not About Federalism*, FULTON COUNTY DAILY REPORT, June 20, 2000.

5. *Reassessing the Law of Preemption*, 88 GEO. L.J. 2085 (2000).

6. *Coming to Grips with Vietnam*, WALL ST. J., Mar. 16, 2000, Op-Ed Page; reprinted in ASIAN WALL ST. J., Mar. 22, 2000.

7. *Whose Call Is It? Supreme Court Should Rethink Preemption Law*, LEGAL TIMES, DEC. 6, 1999, p. 50.

8. *Constitution Provides No Support for Opponents of Preemption*, LEGAL BACKGROUNDER, Vol. 14, No. 42 (1999).

9. *What Is the Law in Law and Development?*, 3 GREEN BAG 2D 19 (1999).

10. *State Trading in the Twenty-First Century* (book review), 93 AMER. J. INT'L L. 626 (1999).

11. *Codetermination and Corporate Governance in a Multinational Business Enterprise*, 24 J. CORP. L. 975 (1999).

12. *Blame Congress, Blame the Supreme Court* (Letter to the Editor), WASH. POST, Aug. 14, 1998, Op-Ed Page.

13. *Races, Crime, and the Law* (book review), 111 HARV. L. REV. 1289 (1998).

14. *Financial Reform and Economic Development in Vietnam*, 28 L. & POL. INT'L BUS. 857 (1997).

15. *Forming and Reforming Wants*, 85 GEO. L.J. 2121 (1997).

16. *First Impressions* (tribute), 21 SETON HALL L.J. 3 (1997).

17. *Appoint a Counsel Now, If Ever*, at http://www.allpolitics.com/1997/03/27/counterpoint/dinh.html., Mar. 27, 1997.

18. *Executive Privilege* (book review), 13 CONST. COMM. 346 (1996).

19. *Asylum and the Law*, in ARGUING IMMIGRATION 215 (N. Mills ed., 1994).

20. *Multiracial Affirmative Action*, in DEBATING AFFIRMATIVE ACTION 280 (N. Mills ed., 1994).

21. *Single White Female*, RECONSTRUCTION, Vol. 2 No. 3 (Winter 1994), reprinted in N.Y. NEWSDAY, May 24, 1994, Op-Ed Page, and in AMERICA NOW (R. Atwan ed., 1997).

22. *Tie Vietnam Status to Rights Reform* (Letter to the Editor), N.Y. TIMES, Jan. 15, 1994, Op-Ed Page.

23. *Hanoi Should Answer to Rights Abuses, Too*, THE OREGONIAN, Apr. 28,1993, Op-Ed Page.

24. *Drifting to Freedom: One Refugee's Story*, N.Y. TIMES, Jan. 8, 1992, Op-ed page; reprinted in BOSTON HERALD, Jan. 11, 1992, Op-ed page; reprinted sub nom. *Viet Boat People Still Plying the Seas*, THE OREGONIAN, Jan. 9, 1992.

25. *Case Comment: Morgan v. Illinois*, 106 HARV. L. REV. 183 (1992).

26. *Case Comment: In Re Insurance Antitrust Litigation*, 105 HARV. L. REV. 1414 (1992).

APPENDIX B: SPEECHES AND PRESENTATIONS

1. *Accession to the World Trade Organization*, a presentation to the Shanghai WTO Training Delegation, Georgetown University Law Center, January 15, 2001. (Extemporaneous remarks based on a computer slide show, a copy of which is enclosed.)

2. *Panel: Should the European Union Follow a United States/Great Britain Model or a Continental Model of Market and Social Regulation?* Diplomatischen Akademie, Vienna, Austria. Sponsored by International Institute for Peace, Austrian Association for Public and Social Economy, and Austrian Society for Economic and Finance Policy, December 11, 2000. (Extemporaneous remarks, a transcript of which is enclosed.)

3. *Panel: Doing Business in Vietnam: Policy Issues,* 18th Annual International Law Symposium, Whittier Law School International Law Society and Center for Intellectual Property Law, Whittier Law School, Irvine, CA, November 18, 2000. (Extemporaneous remarks based loosely on *How We Won in Vietnam,* a copy of which is enclosed.)

4. *Panel: The Supremacy of Federal Transportation Regulation Under the Implied Preemption Doctrine: Current Cases and Trends*, 33rd Transportation Law Institute, ABA Section on Administrative Law and Regulatory Practice, Arlington, Virginia, October 23, 2000. (Extemporaneous remarks based on computer slide presentation, a copy of which is enclosed.)

5. *FCC Authority to Promulgate Proposed Nondiscriminatory Access Rule*, Meeting with the Commissioners and staff of the Federal Communications Commission, September 6, 2000. (Extemporaneous remarks based on prepared memorandum of law, a copy of which is enclosed.)

6. *Panel: Human Rights–The Challenge of the 21st Century*, Luso-American Development Foundation, Lisbon, Portugal, May 23, 2000. (Extemporaneous remarks.)

7. *Private Property Rights and Telecommunications Policy*, Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, Mar. 21, 2000. (Prepared statement and transcript of testimony enclosed.)

8. *Reassessing the Law of Preemption*, Institute for Humane Studies Law Scholars Conference, Chicago, Illinois, Feb. 12, 2000. (Extemporaneous remarks based on a draft version of *Reassessing the Law of Preemption,* 88 GEO. L.J. 2085 (2000), a copy of which is enclosed.)

9. *Reassessing the Law of Preemption*, Georgetown University Law Center Faculty Workshop, Feb. 3, 2000. (Extemporaneous remarks based outlined notes, a copy of which is enclosed, and on a draft version of *Reassessing the Law of Preemption*, 88 GEO. L.J. 2085 (2000), a copy of which is also enclosed.)

10. *Team Production Theory* (Panelist with Margaret Blair), Georgetown University Blue and Gray Society, Bermuda, Nov. 12, 1999. (Extemporaneous remarks based on a summary of *Codetermination and Corporate Governance in a Multinational Business Enterprise*, 24 J. CORP. L. 975 (1999), a copy of which is enclosed.)

11. *Constitutional Interpretation: A Strict Constructionist Perspective*. The Constitution: Toward Creating a More Perfect Union, Smithsonian Associates All-Day Seminar, Nov. 13, 1999. (Extemporaneous remarks.)

12. *The American Judicial System*, a presentation to French journalists sponsored by the French-American Foundation, Washington, D.C., Nov. 7, 1999. (Extemporaneous remarks based on a slide presentation, a copy of which is enclosed.)

13. *Panel: Preview of the 1999-2000 Supreme Court Term*, Georgetown University Law Center Alumni Weekend, October 23, 1999. (Extemporaneous remarks.)

14. *Congressional Authority to Enact H.R. 906, The Civic Participation and Rehabilitation Act of 1999*, Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, Oct. 21, 1999. (Prepared statement and transcript of testimony enclosed.)

15. *Panel: Independent of Whom? Congressional and Administration Influence over the Independent Agency--Reviewing the FCC Experience*. 1999 Administrative Law Conference, American Bar Association, Oct. 14, 1999. (Extemporaneous remarks based on outlined notes, a copy of which is enclosed.)

16. *Reassessing the Presumption against Preemption*, Symposium, Regulatory Compliance: Should It Ever Be a Bar to Tort Liability? Food and Drug Law Institute, Washington, D.C., Oct. 8, 1999. (Extemporaneous remarks based on a draft version of *Reassessing the Law of Preemption*, 88 GEO. L.J. 2085 (2000), a copy of which is enclosed.)

17. *The Preemption Cases*, Supreme Court Briefing, Washington Legal Foundation, Washington, D.C., Sept. 21, 1999. (Extemporaneous remarks formalized in *Whose Call Is It? Supreme Court Should Rethink Preemption Law*, LEGAL TIMES, DEC. 6, 1999, p. 50.)

18. *The U.S. Supreme Court in Constitutional Structure*, Foundations of American Law and Legal Education Program, Georgetown University Law

Center, August 6, 1999. (Extemporaneous remarks based on a computer slide presentation, a copy of which is enclosed.)

19. *Sustainable Economics for the Next Millenium,* a presentation to visitors from Australia, Hong Kong, Indonesia, Laos, Malaysia, Philippines, and Thailand, USIA International Visitors Program, Washington, D.C., July 9, 1999. (Extemporaneous remarks.)

20. *Codetermination and Corporate Governance in a Multinational Business Enterprise*, Universite Toulouse 1, Sciences Sociales, April 1999. (Extemporaneous remarks based on a draft version of *Codetermination and Corporate Governance in a Multinational Business Enterprise,* 24 J. CORP. L. 975 (1999), a copy of which is enclosed.)

21. *Popularity and the President: The Impeachment of President Clinton,* Universite Toulouse 1, Sciences Sociales, April 1999. (Extemporaneous remarks based on a slide presentation, a copy of which is enclosed.)

22. *Codetermination and Corporate Governance in a Multinational Business Enterprise*, Sloan Conference on Team Production in Business Organizations, Georgetown University Law Center, March 1999. (Extemporaneous remarks based on a draft version of *Codetermination and Corporate Governance in a Multinational Business Enterprise,* 24 J. CORP. L. 975 (1999), a copy of which is enclosed.)

23. *Legal Reform for Economic Development*, a presentation to international visitors for the USIA International Visitor Program, Washington, D.C., March 1999. (Extemporaneous remarks based on a draft version of *What Is the Law in Law and Development?*, 3 THE GREEN BAG 2D 19 (1999), a copy of which is enclosed.)

24. *Codetermination and Corporate Governance in a Multinational Business Enterprise*, Faculty Research Workshop, Northwestern University Law School, Chicago, IL, January 1999. (Extemporaneous remarks based on a draft version of *Codetermination and Corporate Governance in a Multinational Business Enterprise,* 24 J. CORP. L. 975 (1999), a copy of which is enclosed.)

25. *The U.S. Supreme Court in Constitutional Structure*, presentation to the John Carroll Society, Georgetown University Law Center, November 20, 1998. (Extemporaneous remarks based on a computer slide presentation, a copy of which is enclosed.)

26. *Remarks on Judicial Independence and Legal Reform*, Symposium: The Role of Legal Institutions in the Economic Development of the Americas, sponsored by the Organization of American States and Law Casa, Georgetown University Law Center, Washington, D.C., October 15, 1998. (Extemporaneous remarks

transcribed at 30 L. & POL. INT'L BUS. 19 (1999 Supplement), a copy of which is enclosed.)

27. *The U.S. Supreme Court in Constitutional Structure*, Foundations of American Law and Legal Education Program, Georgetown University Law Center, August 1998. (Extemporaneous remarks based on a computer slide presentation, a copy of which is enclosed; portions of the presentation were reported in Laura Lang, *From the Shadow of War to the Ivory Tower: The Incredible Journey of Georgetown's Viet Dinh*, Legal Times, Sep. 7, 1998, p. S42, a copy of which is enclosed.)

28. *Panel: Building an Agenda for Inclusion and Empowerment in Politics, Business and American Culture*, Asian Pacific American Institute for Congressional Studies, Washington, D.C., May 9, 1998. (Extemporaneous remarks based on outlined notes, a copy of which is enclosed.)

29. *Panel: The Application of the Rule of Law from the Practitioner's Perspective*, Training for Judicial Officers of the Superior Court of the District of Columbia, Federal Judicial Center, Washington, D.C., April 30, 1998. (Extemporaneous remarks based on handwritten outlined notes, a copy of which is enclosed.)

30. *The Immigrant Experience: Telling Our Stories*, sponsored by the Cultural Diversity Committee, Montgomery College, Rockville, MD, April 29, 1998. (Extemporaneous remarks.)

31. *Panel: Amistad--Slavery, Justice and Memory*, sponsored by the Committee on Legal History, The Association of the Bar of the City of New York and the Gilder Lehrman Institute of American History, New York, NY, April 25, 1998. (Extemporaneous remarks.)

32. *Joining the Club: The Process of Accession to the World Trade Organization*, International Economic Institutions Research Workshop, Boalt Hall, U.C. Berkeley, 1998. (Extemporaneous remarks based upon draft paper, a copy of which is enclosed.)

33. *Corporations as Artificial Personalities: Notions and Consequences* (Panelist), Faculty Retreat, Georgetown University Law Center, Jan. 7, 1998. (Extemporaneous remarks.)

34. *Financial Sector Reform in Vietnam*, International Law Symposium--Trade with Asia: Legal Challenges for the Next Century, Boalt Hall, U.C. Berkeley, Sept. 20, 1997. (Extemporaneous remarks based on a summary of *Financial Reform and Economic Development in Vietnam*, 28 L. & POL. INT'L BUS. 857 (1997), a copy of which is enclosed.)

35. *The U.S. Supreme Court in Practice*, Foundations of American Law and Legal Education Program, Georgetown University Law Center, August 1997. (Extemporaneous remarks based on outlined notes, a copy of which is enclosed.)

36. *Affirmative Action in a Multiracial Society*, Congressional Asian Pacific American Caucus Institute Legislative Conference, May 8, 1997. (Extemporaneous remarks based on outlined notes, a copy of which is enclosed.)

37. *Forming and Reforming Wants*, Symposium--Democracy's Discontent: America in Search of a Public Philosophy, Georgetown University Law Center, April 1997. (Extemporaneous remarks based on a draft version of *Forming and Reforming Wants*, 85 GEO. L.J. 2121 (1997), a copy of which is enclosed.)

38. *Panel: Affirmative Action*, Harvard Asian American Intercollegiate Conference, Harvard University, February 15, 1997. (Extemporaneous remarks based on a summary of *Multiracial Affirmative Action*, in DEBATING AFFIRMATIVE ACTION 280 (N. Mills ed., 1994), a copy of which is enclosed. Also enclosed is an article discussing the panel presentation, Beth Roemer, *Law Panel Discusses Affirmative Action*, HARVARD CRIMSON, Feb. 18, 1997, at 1.)

39. *Financial Reform and Economic Development*, a presentation to an international delegation, sponsored by the American Bar Association and the United Nations Development Programme, Washington, D.C., Dec. 16, 1996. (Extemporaneous remarks based on a summary of *Financial Reform and Economic Development in Vietnam*, 28 L. & POL. INT'L BUS. 857 (1997), a copy of which is enclosed.)

40. *Financial Reform and Economic Development in Vietnam*, Regulation of Capital Markets and Financial Services in the Pacific Rim, Asian Law and Policy Studies Program, Georgetown University Law Center, Nov. 11-13, 1996. (Extemporaneous remarks based on a draft version of *Financial Reform and Economic Development in Vietnam*, 28 L. & POL. INT'L BUS. 857 (1997), a copy of which is enclosed.)

APPENDIX C: MEDIA INTERVIEWS AND APPEARANCES

1. The Bulletin's Frontrunner, February 5, 2001, 176 words, O'Connor Rumored To Be Retiring.

2. The Hotline, February 5, 2001, NATIONAL BRIEFING, FLORIDA FALLOUT: ELEVEN-STEPS TO VOTING REHAB?

3. The Washington Post, February 05, 2001, Monday, Final Edition, A SECTION; Pg. A17; FULL COURT PRESS CHARLES LANE, Watch Is On for Signs O'Connor Will Retire, Charles Lane.

4. NBC News Transcripts, TODAY (7:00 AM ET), January 8, 2001, Monday, 257 words, SUPREME COURT BACK IN SESSION FOR NORMAL BUSINESS; CLERKS COMMENT ON ANY POSSIBLE PARTISAN POLITICS AMONG MEMBERS, ANN CURRY, PETE WILLIAMS.

5. Daily News (NY), December 13, 2000, Wednesday, COMMENTARY, Made in Vietnam: Refugee/TV law analyst living the American Dream, By Mike Barnicle; *reprinted in* The Des Moines Register, December 25, 2000, Monday, Main News, Pg.17, 860 words, For Vietnam refugee, American Dream comes true.

6. The Orange County Register, December 14, 2000, Thursday, FUHS ALUM VIET DINH INTERPRETS THE RHETORIC, By Barbara Giasone.

7. USA TODAY, December 11, 2000, Monday, FINAL EDITION, NEWS; Pg. 1A, Election dispute evolves into the 'perfect' political storm Weekend duel between two courts feeds growing tempest, Susan Page, WASHINGTON.

8. The Boston Globe, December 10, 2000, Sunday, THIRD EDITION, Pg. A39, ELECTION 2000 / LEGALITIES; SCALIA HINTS AT COURT'S VIEWS, By John Aloysius Farrell, Globe Staff.

9. Chattanooga Times / Chattanooga Free Press, December 10, 2000, Sunday, NEWS; Pg. A1, Final verdict may be set, JOHN ALOYSIUS FARRELL 2000 The Boston Globe.

10. The Boston Globe, December 9, 2000, THIRD EDITION, Pg. A12, ELECTION 2000 / THE NEXT MOVE; PATH PACKED WITH CONSTITUTIONAL PITFALLS, By Mary Leonard, and John Aloysius Farrell.

11. C-SPAN, 7:00pm, December 9, 2000. America and the Courts: Profile of Associate Justice Sandra Day O'Connor.

12. CNN, CNN LARRY KING LIVE 21:00, December 8, 2000; Transcript # 00120800V22, News; Florida Supreme Court Grants Gore Campaign a Reprieve, Sen. Orrin Hatch, Sen.

Robert Graham, Mario Cuomo, Sen. Tim Hutchinson, Lois Frankel, Ginny Brown-Waite, Doug Hattaway, Gov. Marc Racicot, Judge Charles Burton, Viet Dinh, Bob Woodward, Hal Bruno, Roger Cossack.

13. GEORGETOWN LAW PROFESSOR VIET DINH ON FLORIDA'S ELECTION CHALLENGES, at http://www.cnn.com/chat/transcripts/2000/12/8/dinh, Dec. 8, 2000.

14. The Orange County Register, FULLERTON GRAD A TV COMMENTATOR: VIET D. DINH OFFERS HIS LEGAL PERSPECTIVE OF THE STALEMATE ON CNN TONIGHT, December 8, 2000, By Barbara Giasone.

15. CNN, CNN LARRY KING LIVE 21:00, December 7, 2000; Transcript # 00120700V22; Will Florida's Courts Add Another Chapter to the Presidential Epic?, Ron Klain, Harry Jacobs, Gerald Richman, Joe Klock, Floyd Abrams, Viet Dinh, Asa Hutchinson, Robert Wexler, Johnnie Byrd, Lois Frankel, Daniel Schorr, Norm Ornstein, Tim Padgett, Larry King, Roger Cossack.

16. National Post, December 7, p. A10; BUSH TAKES CARE OF CABINET BUSINESS: GORE'S HAIL MARY PASS: DEMOCRATS PREPARE FOR FLORIDA SUPREME COURT APPEARANCE.

17. The Christian Science Monitor, December 6, 2000, Pg. 2; Squeeze play: Gore team has less legal room to maneuver, Warren Richey Staff writer of The Christian Science Monitor, WASHINGTON.

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APPENDIX D
FORMAL OPINIONS ON LEGISLATIVE PROPOSALS

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2. Prepared Testimony on Private Property Rights and Telecommunications Policy, submitted to the Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, Mar. 21, 2000.

3. Letter Opinion on Congressional Authority to Promulgate the proposed High School and College Gambling Act, prepared for the National Collegiate Athletic Association, January 25, 2000.

4. Commentary on the Federalism Accountability Act, in *Constitution Provides No Support for Opponents of Preemption*, Washington Legal Foundation Legal Backgrounder, Vol. 14, No. 42 (Nov. 12, 1999).

5. Prepared Testimony on Congressional Authority to Enact H.R.. 906, The Civic Participation and Rehabilitation Act of 1999, submitted to the Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives, Oct. 21, 1999.

6. Letter on Proposed Constitutional Amendment, submitted to Jamie Brown, Esq., Counsel to Sen. Connie Mack, Mar. 19, 1997.

APPENDIX E
STANDARD FORM 278: PUBLIC FINANCIAL DISCLOSURE REPORT

U.S. Department of Justice

Washington, D.C. 20530

APR 24 2001

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

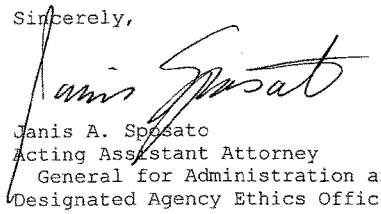
In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Viet D. Dinh, who has been nominated by the President to serve as Assistant Attorney General for the Office of Legal Policy, Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. 208, requires that Mr. Dinh recuse himself from participating personally and substantially in a particular matter in which he, his spouse, children or anyone whose interests are imputed to him under the statute, has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests. Mr. Dinh will take a leave of absence from his tenured position at Georgetown University Law Center, Washington, D.C., upon appointment as Assistant Attorney General. Mr. Dinh will seek advice before participating in any matter that can affect the financial interest of the University. Mr. Dinh's consulting firm, Viet D. Dinh, L.L.C., has ceased providing professional services, and the company is in the process of terminating its operations. There are no outstanding receivables, and the company has made a final distribution to Mr. Dinh and the other member of the company. The only business activities remaining are those associated with termination of the company. Mr. Dinh will seek advice before participating in matters that may affect the financial interest of ThePit.com, a company he recently served as an advisor and with which he has an agreement to receive a fixed payment at a future date, for past services.

We have advised Mr. Dinh that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter with specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. He will have covered relationships with his former clients; with ThePit.com, both before and after the agreed-upon payment to him has been made; and with the other member of his consulting firm. He understands that for one year he should seek advice before participating in matters involving any of these persons.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,



Janis A. Sposato
Acting Assistant Attorney
General for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☑	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: Dinh			First Name and Middle Initial: Viet D	
Position for Which Filing	Title of Position: Assistant Attorney General for Legal Policy			Department or Agency *(If Applicable)*: Department of Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 3308 Upland Terrace NW Washington, DC 20015			Telephone No. *(Include Area Code)*: 202-244-5851	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: None				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Committee on the Judiciary, U.S. Senate			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: Viet Dinh			Date *(Month, Day, Year)*: 04/05/01	
Other Review (If desired by agency)	Signature of Other Reviewer: Mary Bradley			Date *(Month, Day, Year)*: 4/23/01	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/ Reviewing Official: Janis Mosbat			Date *(Month, Day, Year)*: 4/23/01	
Office of Government Ethics Use Only	Signature:			Date *(Month, Day, Year)*:	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

Report reviewed and annotated by Janice M. Rodgers, DCO, DOJ, upon consultation with filer.

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting peroid is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A -- The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of date of filing.

Schedule B -- Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D -- The reporting period is the preceding **two** calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

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U.S. Office of Government Ethics

Reporting Individual's Name: Dinh, Viet D.

SCHEDULE A

Page Number: 2 / 6

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				X												X						X										
	Doe Jones & Smith, Hometown, State																															Law Partnership Income $130,000	
	Kempstone Equity Fund					X								X										X									
	IRA: Heartland 500 Index Fund							X						X											X								
1	Fidelity Blue Chip Mutual Fund			✓										✓								✓											
2	Fidelity Contrafund Mutual Fund			✓										✓									✓										
3	Fidelity Dividend Growth Mutual Fund			✓										✓								✓											
4	Fidelity New Millenium Mutual Fund			✓										✓											✓								
5	Georgetown University Law Center																															Regular Salary $143,000	
6	Viet D. Dinh, LLC	✓																														Law consulting firm $169,250	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Dinh, Viet D.

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
7	The Washington Post																															Article fee $200	02/05/01
8	International Institute for Peace, Vienna, Austria																															Honorarium $1500	12/11/00
9	Policy Review																															Article fee $1900	12/08/00
10	The Wall Street Journal																															Article fee $350	11/10/00
11	Law Preview LLC Mt. Kisco, NY.																															Teaching Fee $1100	06/27/00
12	The Wall Street Journal																															Article fee $200	04/05/00
13	Public Finance Training Institute, Taiwan																															Teaching Fee $1352	03/12/00
14	Institute for Humane Studies, George Mason U. 3401 N. Fairfax Drive, Arlington, VA 22201																															Honorarium $500	02/11/00
15	ThePit.com (options to purchase 25,000 shares at $1.50 per share, expiration 8/30/10)		✓																		✓												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: Dinh, Viet D.

SCHEDULE B

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	☒		☒	2/1/99	☒		☒		☒				☒		☒	
1		☐	☐	☐		☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
2		☐	☐	☐		☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
3		☐	☐	☐		☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
4		☐	☐	☐		☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
5		☐	☐	☐		☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Reporting Individual's Name: Dinh, Viet D.

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			X								
	John Jones, 123 JSt., Washington, DC	Promissory note	1999	10%	on demand					X						
1	Harvard University	Student Loans	1986	various up to 9.63	20 yrs		☑									
2																
3																
4																
5																

Category of Amount or Value (x)

* This category applies only if the underlying liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will recieve lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	For the duration of my government service, I will be on leave from a tenured professorship, with rights of reinstatement.	Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001	07/00
2	For the duration of my government service, my participation in the University's 403(b) retirement plan will be suspended. No contributions will be made to the plan, but past contributions will remain invested in the plan, as detailed in items 1-4 in Schedule A.	Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001	07/96
3	Agreement with ThePit.com to receive fixed payment for services	ThePit.com, Inc., 245 Main Street, 8th Floor, White Plains, NY 10601	08/00
4	performed and in consideration of surrender of vested stock options,		
5	& long term incentive compensation.		
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Dinh, Viet D.		6 / 6

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Georgetown University Law Center 600 New Jersey Avenue NW, Washington, DC 20001	Non-profit educational institution	Professor of Law and Deputy Director, Asian Law & Policy Studies Program	07/96	present
2	Viet D. Dinh, LLC 120 South Fairfax Street, Suite 300, Alexandria, VA 22314	Legal consulting firm	Member	07/97	present
3	ThePit.com, Inc. 245 Main Street, 6th Floor, White Plains, NY 10601	Internet commerce in sports memorabilia	Advisor	08/00	~~03/31/00~~ 04/02/01 JMK
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (Client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Georgetown University Law Center 600 New Jersey Avenue NW, Washington, DC 20001	Salary for services as law professor.
2	Viet D. Dinh, LLC 120 South Fairfax Street, Alexandria, VA 22314	Payments from legal consulting firm (distributions to members from limited liability company).
3	U.S. District Court for the Southern District of New York (Client of Viet D. Dinh, LLC) 40 Foley Square, New York, NY 10007	Legal services provided to the Special Master appointed by the court.
4	Liberty Legal Institute (Client of Viet D. Dinh, LLC) 903 East 18th Street, Suite 230, Plano TX 75074	Legal services in connection with briefs amicus curiae before the U.S. Supreme Court.
5	Smart Building Policy Project (Client of Viet D. Dinh, LLC) c/o Ass'n for Local Telecommunications Services, 888 17th St. NW, Washington DC 20006	Expert testimony on constitutional and administrative law issues.
6	Philip Morris, Inc. (Client of Viet D. Dinh, LLC, through Hunton & Williams) c/o Hunton & Williams, 951 East Byrd Street, Richmond, VA 23219-4074	Expert testimony relating to congressional investigative procedures.

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APPENDIX F
FINANCIAL NET WORTH STATEMENT

ASSETS		LIABILITIES	
Cash on hand and in banks	$1,500	Notes payable to banks--secured	$0
U.S. Government securities	$0	Notes payable to banks--unsecured	$0
Listed securities		Notes payable to relatives	$27,000
Fidelity Blue Chip Fund	$17,038	Notes payable to others	$0
Fidelity Contra Fund	$17,709	Accounts and bills due	$0
Fidelity Dividend Growth Fund	$25,933	Unpaid income tax	$0
Fidelity New Millenium Fund	$39,717	Other unpaid tax and interest	$0
Accounts and notes receivable		Real estate mortgages payable	
Due from relatives and friends	$0	Primary residence	$293,470
Due from others	$4,000	Chattel mortgages and other liens	$0
Doubtful	$0	Other debts	
Real estate owned		MBNA Mastercard	$19,036
Primary residence	$426,386	American Express Card	$2,483
Real estate mortgages receivable	$0	Student Loans:	
Autos and other personal property		Harvard University loan	$5,332
Automobile	$49,015	Perkins loan	$5,918
Home Furnishings	$15,000	SLS/PLUS loan	$1,522
Cash value--life insurance	$0	SLS/PLUS loan	$3,142
Other assets	$0	Stafford loan	$8,946
		MEFA Loan	$2,862
Total assets	$596,299	**Total liabilities**	$369,710
		Net worth	$226,588
		Total liabilities and net worth	$596,299

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	$0	Are any assets pledged?	No
On leases or contracts	$0	Are you defendant in any suits or legal actions?	No
Legal claims	$0	Have you ever taken bankruptcy?	No
Provision for federal income tax	$5,700		
Other special debt	$0		

Chairman HATCH. Thank you, Professor. I am so impressed with both of you, and I know both of you well, and I really commend this administration for picking each of you for your respective positions. I am very grateful to President Bush and others. I think you are going to bring a dimension to the Justice Department that I think it sorely needs at this time, so I am very grateful to have both of you here.

I think I will turn to Senator Leahy and let him begin the questions.

Senator LEAHY. You go ahead, Mr. Chairman.

Chairman HATCH. No, you go ahead. I am happy to do that.

Senator LEAHY. Mr. Chertoff, I just want to make sure I have got the times of the time you were U.S. Attorney. You were appointed by the 41st President, President Bush, in 1990. Is that correct?

Mr. CHERTOFF. Actually, Senator, I was a court-appointed U.S. Attorney in 1990. I was actually nominated—I was actually confirmed in 1991.

Senator LEAHY. In?

Mr. CHERTOFF. I was confirmed in 1991.

Senator LEAHY. And then President Clinton, after his election, kept you there until April 1994?

Mr. CHERTOFF. That's correct.

Senator LEAHY. Now, I think probably—I know you are well known in New Jersey for your work there, but I think you are best known to the country as the special counsel to the U.S. Senate Whitewater Committee, one of the first and best known of what some would say the anti-Clinton investigations that was chaired by former Senator Alfonse D'Amato. It was on the news most nights, good shots of you there. And I, of course, was pleased to see the news media would carry somebody with what I considered an appropriate hairline.

But, on the other hand, of course, there were those who felt both you, Senator D'Amato, and the investigation were of a very partisan and political nature. I am not saying anything differently than I have said to my friend Al D'Amato, who is a friend of mine. And because of that, some will see you as a partisan political choice, named as a reward to your party.

And as you have heard, even some Members of Congress have made that claim, so I want to give you a chance to refer to that so you can speak about it, being someone who would uphold the law and make fair decisions about prosecutions brought by the Federal Government. As you know, I, like most other former prosecutors in the Senate, feel prosecution should be brought irrespective of one's political party, but based on the facts.

So, Mr. Chertoff, here is your chance. You have heard some of these complaints, and I thought I would give you a chance to give your side.

Mr. CHERTOFF. Thank you, Senator, and I appreciate the opportunity to address this.

As you know, Senator, I was retained by the majority of the Committee—actually, I think I began as minority counsel when the Banking Committee did the investigation, and then was asked to come back as majority counsel when the Committee was constituted. And I have to say it was a privilege to serve the Senate

as a lawyer and to work with both the members on both sides and the staff on both sides in what was a very challenging and interesting matter. I understand people have different views of it. I have very fond recollections of my time working here.

That being said, the job for which I have been nominated is one which is entirely different in character. If confirmed, the position that I would assume would be that of a Federal prosecutor seeking to enforce the law. I am absolutely committed, if confirmed, to having nothing whatsoever to do with anything political other than voting. And I would say, Senator, that those who are familiar with my service as a Federal prosecutor in the past, as both an Assistant U.S. Attorney and as United States Attorney, will see that that was my policy and my practice and my commitment back then.

During the years I was a prosecutor, I had nothing whatsoever to do with politics. My office, the office I had working with and the office I led, was evenhanded and fair. I took no account of partisanship or politics in any of the decisions that were made. And I made it an article of faith, which I communicated to the people on my staff and which I would communicate to the people in the Division if I were confirmed, that politics has no place in enforcement of the law. There is no more awesome power, there is no more sacred trust than enforcing the criminal laws. And that has to be something that is above and beyond any partisan or political considerations.

So you absolutely have my pledge that, if confirmed, I will continue with that principle as I, in fact, conducted myself when I was United States Attorney in New Jersey.

Senator LEAHY. Let me ask your opinion on one thing because you have been involved in Senate investigations. In the past number of years, we seem to have spent more time investigating than legislating. One of the things that bothered me is that a number of lower-level staffers get called up here, sometimes spend days preparing for something, and then basically are dismissed or asked nominal questions. They are working on lower-level Government salaries, but they could spend darn near a year's salary just on legal fees, sometimes in what seems to be almost capricious ways, other times serious ones.

But there are a number of us on both sides of the aisle who have expressed concern about line attorneys like the Department of Justice being called. Now, I suspect you did in your office as U.S. Attorney the same thing that most prosecutors do on a close case. You will have some very key attorneys come in and have one say, look, I want you to give me the best case for the defendant, the other one says I want you to give the best case for the Government.

Now, obviously later on—I mean, you have to come for confirmation, you are before the Senate and all that. But later on, somebody could call in those who gave the case for the defendant and say, But didn't you argue that—whatever, that they might be—or vice versa, depending—in other words, take the team that took the position different than what you ultimately decided on, which happened a great deal up here. Somebody would come up when there had been this A team and B team, and a lot was made of the testimony of those who were on whatever team on a close call, it came

out differently than the person making—they had to make the final call.

How do you feel about having line attorneys being called or those who are not in a Senate-confirmed position to testify before Congressional Committees?

Mr. CHERTOFF. Well, Senator, I am familiar with this issue from a variety of standpoints, having been both a United States Attorney, obviously, and also having very recently, in fact, been involved in serving as counsel to a State senate Committee that looked, among other things, at law enforcement.

I am a firm believer in Congressional oversight. I think it's important. I don't think wisdom is exclusively lodged in the executive branch, and I think there's an important responsibility that the Senate has and the House has to conduct oversight of the operations of the departments.

At the same time, I think, Senator, obviously, as a former U.S. Attorney, you have a keen appreciation for the need for people to have candid discussion, particularly about matters relating to criminal law, where we deal with issues of confidentiality and sensitive issues that could compromise investigations.

I certainly would want to work with Congress in instances where there is oversight to make sure that as the person responsible, ultimately as the Presidential appointee, if confirmed, that I would be able to answer and account for any questions and lay before Congress whatever is necessary. And I think that it is possible in any instance that I can envision to find a way to serve the Congress' needs for oversight while accommodating, I think, the legitimate concerns of confidentiality and deliberation, which I know you understand.

Senator LEAHY. And understand what I am saying, I mean, Mr. Chertoff, I am worried—I don't care whether it is a Democratic administration, Republican administration, or anything else, I am worried that you are going to have line attorneys who are going to be very concerned about sending you in your case or Attorney General Ashcroft in his case, or others, a memo saying I want you to know my very strong feelings that so-and-so should be prosecuted, or should not be prosecuted, when they know ultimately the final decision is going to be made by you or by the Attorney General. But I am afraid that some may feel very worried about being that candid if they think they are someday going to be up here to answer all kinds of questions and spending on legal fees maybe the next 3 years' tuition for one of their kids. I realize this is as much a problem for the Senate, but I would hope that we would get off that.

Now, in 1993, you published an article in the Michigan Law Review entitled "Chopping *Miranda* Down to Size," which argued for a narrow interpretation of the *Miranda* rule. Given the Supreme Court's recent reaffirmance of *Miranda*, and they also found the statute that Congress had passed overruled *Miranda* to be unconstitutional, do you have any problem in now relying on the Supreme Court's decision even if it varied with your earlier opinion?

Mr. CHERTOFF. The Supreme Court has settled the matter. I never have difficulty following Supreme Court decisions.

Senator LEAHY. I had that feeling. I just wanted—now, the McDade law sort of slipped into the omnibus—or some would call it ominous—appropriations law at the end of the 105th Congress to rein in overzealous prosecutors, but what it also has done, it has impeded important criminal prosecutions. It has chilled the use of federally authorized investigative techniques. I introduced a bill that would establish a clear choice of law room under which Federal prosecutors would be subject to the ethics rules of the Federal courts in which they practice.

I found, in fact, in one very notable case that investigations were so hampered because of the McDade law that some could argue that people lost their lives as a result of it. You may know the case I mean. I can discuss it with you privately after if you would like. But do you feel that we should do something with the legislation? In fact, a number of members on both sides of the aisle here support under which Federal prosecutors would be subject to the ethics rules of the Federal courts in which they practice?

Mr. CHERTOFF. Well, Senator, first let me say I haven't seen the precise legislation, but I am very familiar with the issue.

Senator LEAHY. Then maybe I should say it this way: Do you feel that there has got to be changes in the McDade law first?

Mr. CHERTOFF. Well, let me say that, of course, I begin with the principle that we want to have attorneys for the Government following the highest standards of ethics as lawyers, and we don't want to have, certainly, any suggestion that there should be a lower standard.

At the same time, from my own experience, I am well aware of the fact that issues have arisen in particular States concerning whether undercover operations can be conducted or wiretapping can be conducted, and there has been a concern about a chilling effect upon prosecutions of what could potentially be very serious crimes, including matters that affect life and death. And, clearly, that is something which we have to address.

What I would like to do, if confirmed, is work with the Attorney General, with the Congress, on fashioning a resolution that accommodates the concern that people have to make sure that attorneys are being ethical, but making sure we can also do the kinds of investigative activities and use the investigative tools which Congress has given us and which we need to be able to employ to protect this country.

Senator LEAHY. Thank you. I will wait until my next round.

Chairman HATCH. Well, thank you, Senator Leahy.

We will turn to Senator Specter, who is chairing a hearing, so I am going to accommodate him right now.

Senator SPECTER. Thank you very much, Mr. Chairman. I regret that I can only stay a short time because I am chairing the hearing on breast cancer on the Subcommittee of Labor, Health, Human Services for Appropriations. I thank both of you gentlemen for coming by to see me yesterday. We only had a brief meeting, but I appreciated the opportunity to talk to both of you.

I note you both bring extraordinary records to these positions: Mr. Chertoff, magna cum laude from Harvard College in 1975 and magna cum laude from Harvard Law School in 1978; and, Mr.

Dinh, magna cum laude from Harvard College in 1990 and magna cum laude from Harvard Law School in 1993.

I have two observations. I wonder why neither of you went to Yale.

Chairman HATCH. It is a little scary, you know.

Senator SPECTER. And I wonder why we are having so much brain power from one institution. I wonder if that isn't really risking an undue market share.

Chairman HATCH. I hadn't thought about that. It is a little scary to have all these Harvardians down here.

Senator SPECTER. It may be an antitrust issue. I don't know.

Chairman HATCH. Count on Senator Specter to come up with very unique twists in the law.

[Laughter.]

Senator SPECTER. Well, I think academic records are very important. I have hired more than a few lawyers in my time, and I think that is a very solid indication as to your performance.

Mr. Chertoff, a question was raised about having line attorneys before the Committee, which is something which is done very, very rarely, and only on a showing of extraordinary cause. And when the Committee did it last year, it was after rejecting a personal appeal from the Attorney General. And you may want to take a look at that matter. That is up to you. But this Committee, through the Subcommittee which I chair, took a close look at campaign finance investigations and the issue of independent counsel, and the head of the Public Integrity Section testified in this room that he had given a critical recommendation opposing independent counsel because he thought it was—I don't know quite what word to use—"stupid," "bad," "inadvertent"—inappropriate law.

And I would like you to take a look at that, and I would like your view as to the appropriate range of discretion for a key member of the Justice Department to not enforce the law because he/she doesn't agree with it. And I expressed myself as being very offended by that position. The individual said that Congress didn't understand the law when they passed it. He made an exception for me because I was a former prosecutor and had a pretty good academic record like you men do.

But I think that is a very serious matter, and when Congress passes a law, we expect it to be observed, just as your observance, Mr. Chertoff, of the *Miranda* rule, which is another very complex subject.

I had a chance to talk to you briefly yesterday, Mr. Chertoff, about the issue of criminal prosecutions for commercial conduct where there is conscious disregard of the safety of others resulting in death, came into sharp focus last year in the Ford/Firestone tire issue, and reckless disregard for the safety of others is the equivalent of malice, and where death results, can support a conviction for murder in the second degree at common law and under State statutory provisions.

I would like you to take a look at that in your work. Part of the legislation which I introduced on Ford/Firestone was incorporated into the final bill. And we have seen many manufacturers, regrettably, put products into commerce where they know that death may result. And we talk a lot about punitive damages, and puni-

tive damages are under a lot of criticism for being excessive. And I have had a concern about the ineffectiveness. But if there was a criminal sanction, that really could be effective and might lead to a re-evaluation as to punitive damages in a civil context.

The one question I want to ask you, Mr. Chertoff, relates to programs such as Project Exile in Richmond and Ceasefire in Philadelphia. We brought a special task force to the Eastern District back in 1988, and I would like your observations as to how the Criminal Division can be more effective. Gun control is a matter of enormous controversy, but nobody disagrees that there ought to be very tough measures cracking down on criminals who violate the laws with guns, as, for example, the armed career criminal bill. I would be interested in your views on that.

Mr. CHERTOFF. I would be happy to talk about it, Senator. Obviously, the Attorney General has expressed to this Committee and elsewhere his strong commitment and intent to make enforcement of existing gun laws a priority. I have experience actually as U.S. Attorney with a similar program. We had Project Triggerlock in my district. And I found it to be a very effective way of dealing with the issue of criminals who either possess guns when they should not or who use guns in the commission of felonies.

We worked very constructively with State authorities in selecting cases where we really could take some of the worst actors off the street and take their guns away and achieve real deterrence. I think both as chief of the Criminal Division, if confirmed, and also as one who would work with U.S. Attorneys, it is critical that we devote as much as we can in terms of resources and energy to these kinds of programs to get guns and the threat of gun violence off the streets and out of the hands of criminals.

Senator SPECTER. Professor Dinh, you have confirmation for the Office of Policy Development. If you could pick out just one policy that you would like to develop, what would it be?

Mr. DINH. Thank you very much, Senator. I think it is the opportunity, if confirmed, to work on the improvement of the administration of justice, to ensure that the protection of the law is available to all equally. The promise of that security—

Senator SPECTER. On achieving that, do you think it is important to confirm Federal judges?

Mr. DINH. I think that is also very important to confirm Federal judges.

Senator SPECTER. I am sorry the panel is so limited to Republicans, but that word may be transmitted. Go ahead, sir.

Mr. DINH. I think it is very important for the administration and also the country to not only have judges nominated but also confirmed and appointed in order to meet the workload of the Federal judiciary, yes.

Senator SPECTER. Thank you very much, Professor Dinh. Thank you, Mr. Chertoff.

Thank you.

Chairman HATCH. Thank you, Senator Specter.

I am going to turn back to Senator Leahy who has some additional questions. He is on the phone for right now.

Do you have any questions, Senator Sessions?

Senator SESSIONS. Yes.

Chairman HATCH. Senator Leahy is here, though. We will turn back to Senator Leahy for his questions.

Senator LEAHY. Thank you, Mr. Chairman. I am trying to juggle an Appropriations Committee at the same time, and I know you would much rather I stay here.

Chairman HATCH. No, no. I think Appropriations—

[Laughter.]

Senator LEAHY. I was waiting.

Chairman HATCH. No, I would rather have you stay here. I want to get these people confirmed, and we need you, Senator, and we are hoping that you will be willing to do that tomorrow.

Senator LEAHY. As I said in my opening, we usually give a week for the submission of any questions and obviously when some of the—

Chairman HATCH. You will have plenty of time before they call it up on the floor, and, frankly, these two people are so well known that I just cannot imagine delaying any further.

Senator LEAHY. Mr. Chairman, you and I have discussed the need for an executive session tomorrow, which we will not—

Chairman HATCH. We are not going to have an executive session tomorrow. I am willing to maybe have one tonight, if you want to, because we recess until the call of the Chair. So I am willing to meet at 6 o'clock tonight. But if not, then we are going to mark up tomorrow. Everybody understands all this? If you don't want to vote for the people, you can vote against them.

Senator LEAHY. Mr. Chairman, I think one of the things we will do is follow the Senate Rules.

Chairman HATCH. That is what I am doing.

Senator LEAHY. Of course, you can call a meeting any time you want, and once you have a quorum, then anybody can move to—

Chairman HATCH. And you can keep us from having a quorum, like you did last week. And if you do that, you are going to have to face the problems to that.

Senator LEAHY. Mr. Chairman, I told you last week that two of the nominees required an executive session to discuss matters in the—

Chairman HATCH. Then we will meet at 6 tonight. I am willing to accommodate you.

Senator LEAHY. And you did not want to go forward with that last week, but let's be very serious about this. I was trying to also protect the names of those we want to go in executive session about, and I have been trying to work out a time with you to do that that is realistic.

Chairman HATCH. I am not putting off the markup for one more day. I will accommodate you. We had two private meetings on nominees. Every issue has been raised. I don't see any reason for an executive session, but if you want one, I will hold one tonight, which is the only way I can do it. And I will accommodate you. You tell me what time after 6 o'clock you want to have it, I will have it, or even before 6. But it is difficult for all of us until 6 o'clock.

Senator LEAHY. Mr. Chairman, I don't—

Chairman HATCH. But I will accommodate you.

Senator LEAHY. I don't think it is fair—

Chairman HATCH. It is not fair to ask for an executive session after two closed sessions.

Senator LEAHY. Mr. Chairman, it is not fair to talk about the reason for the executive session because we do—

Chairman HATCH. It is not fair to even raise executive sessions at this point, in my view, after we had two private sessions where every issue was raised.

Senator LEAHY. Mr. Chairman, we have not had an executive session about the FBI reports on some of the nominees. We have a right to have that.

Chairman HATCH. We have had executive—we have had private sessions, and every Senator is informed and aware who was there, and every Senator was asked to come.

Senator LEAHY. Have we had an executive session on the background reports on any of the nominees so far this year?

Chairman HATCH. I am willing to have one this evening, if you want one.

Senator LEAHY. Have we had any yet?

Chairman HATCH. We hardly have ever had one in my 25 years in the Senate.

Senator LEAHY. I have been here for—

Chairman HATCH. So I am willing to accommodate you. If you want one, tell me what time after 6 o'clock, and I will be here, and we will have an executive session to meet this technical requirement of yours.

Senator LEAHY. Mr. Chairman, you—

Chairman HATCH. But I am not going to fail to go ahead with the markup tomorrow. If you don't want to show up, that is your business.

Senator LEAHY. Mr. Chairman, you and I jointly requested, as I recall, on one nominee an executive session, and—

Chairman HATCH. We are not jointly requesting it this time. I am willing to grant it for you.

Senator LEAHY. Maybe that was because it was a nominee of a Democrat that we—

Chairman HATCH. It had nothing to do with it. I have been fair to Democrats. You may criticize some people on our side, but you can't criticize me on that.

Senator LEAHY. Mr. Chertoff, the drafts of the report of the Whitewater Special Committee were given to the press several days before the report was officially released by the Committee. Was that improper, especially as it did not include the report of the Democrats on that Committee?

Mr. CHERTOFF. Senator, I don't know the circumstances under which things were provided to the press in that instance. I can tell you, though, in terms of the work of the Criminal Division and the work of prosecutors in general—

Senator LEAHY. But you recall that thing happening?

Mr. CHERTOFF. I remember there being press reports anticipating things that were going to be said in the report.

Senator LEAHY. Would it have been proper for members to release part of the report, the part just of the then-majority members, the Republican members, and not those of the Democratic members?

Mr. CHERTOFF. Senator, again, as I recall the rules at that time—and I have to say it's been several years—there were certain matters that were confidential which had been agreed upon by both sides, which has to be maintained confidentially. As to how conclusions or parts of reports were released, I don't know how the press got what they got. I don't remember what they got.

Senator LEAHY. There was never any investigation in the Committee of that?

Mr. CHERTOFF. I think the Committee's work concluded within a matter of days thereafter.

Senator LEAHY. One of the ground rules for the Whitewater Committee's investigation was that all fact finding was to be conducted jointly by majority and minority Committee representatives. During the Whitewater Committee investigation, did you ever have any communications with the Office of Independent Counsel, Kenneth Starr, to which a member of the minority staff was not a party?

Mr. CHERTOFF. Senator, as I recall, the resolution that set up the Committee mandated that the Committee coordinate with Mr. Starr's office in terms of the issue of witnesses. And I recollect there being conversations from time to time either that were had by the Chairman or by lawyers on the staff concerning whether particular witnesses would be called or not. I don't know that minority Senators or counsel were present for all those conversations, but I think the substance of the conversations was always relayed.

And, likewise, my recollection—

Senator LEAHY. But if they weren't there, would that have been violative of the Whitewater Committee's rules?

Mr. CHERTOFF. I don't think so, Senator, because my recollection is also that the minority also from time to time had contact with potential witnesses—

Senator LEAHY. Did you ever get any evidence from the Office of the Independent Counsel without the knowledge of a member of the minority staff?

Mr. CHERTOFF. Not that I'm aware of.

Senator LEAHY. Did you ever have any conversations with anyone from the Office of the Independent Counsel concerning witnesses who were to testify before the Whitewater Committee?

Mr. CHERTOFF. Well, as I said, Senator, my recollection of the original resolution required the Committee to consult with the special counsel regarding the issue of witnesses, witness availability, and the issue of immunity, obviously. So I know there were conversations that were had by the Chairman and by attorneys with attorneys from Mr. Starr's staff concerning the issue of whether witnesses would be made available. And, again, as I recall, I think that the substance of those communications were made available to the minority.

And as I have to say, my recollection is the minority also from time to time had conversations with witnesses and then would tell us about it after the fact. But there was no evidence that was conveyed that wasn't made available to both sides.

Senator LEAHY. You realize what I am doing on some of these questions, like my first question, giving you a chance to answer some of the things that have been floating out that that might not get asked otherwise.

Now, Senator Hatch and I had the honor, really, of representing the Senate and this Committee at the funeral of Justice Brennan. In fact, I recall that we sat with the Attorney General and the President and First Lady. I had the rare pleasure of—it was St. Matthew's Cathedral—of translating the Latin for everybody, which should make my Jesuit professors happy, I suppose. And I am sure you found that experience to be a great one, clerking for Justice Brennan, especially as we learn more about how he many times was the one that could mold—be a bridge of the conservatives and liberals on the Court. And I only raise that because we have had a couple nominees here who clerked for Justice Brennan, and some on the other side have said that is a reason to deny moving forward quickly on their nominations. I am sure you don't share that.

Mr. CHERTOFF. I think it was a privilege to clerk for Justice Brennan, and I think anybody who had that experience greatly benefited from it.

Senator LEAHY. Now, Professor Dinh, you have distinguished yourself so much academically. Your story is, of course, a compelling one. Your parents, I am so happy that they can be here with you. We are actually honored by the presence of your father and mother in this Committee room. As you know, so many people of your generation who fled never saw their parents again, never saw their siblings again. And so you are twice blessed by having been able to escape and by having your parents, who strike me as being very distinguished in their own right to be here with you. And I am sure you realize that truly is a blessing. It goes beyond anything else that might happen in your life.

Mr. DINH. Yes, sir, very, very much so.

Senator LEAHY. Now, you have not represented clients in a trial or in a courtroom. You have been involved in a number of investigations into President Clinton, former President Clinton, but not been in a courtroom. But you are going to have to screen and evaluate candidates for the Federal bench. Seventy percent of them are going to be candidates to serve as judges in the trial bench.

How do you do that? I mean, I know there is a merit-based evaluation system set up by Assistant Attorney General Eleanor Acheson during the Clinton administration. But, I mean, how do you do this? Because you don't have experience in the courts. Nobody is questioning your brilliance or your abilities, but everybody has been a trial lawyer, Senator Sessions has, Senator Hatch has, I have, others. That is sort of a unique experience. How do you go about evaluating especially those who are going to be on the trial bench?

Mr. DINH. Senator, let me begin by saying that I understand that the traditional role of the component has been, with some exceptions, to be helpful in the judicial selection and nomination process. I have not had any specific conversations regarding the role of the component if I should be confirmed, but to the extent that I am involved in the judicial nomination process, it seems to me that the fitness for judicial office can be characterized generally as men and women of deep personal character, of professional and intellectual competence, and those who possess a commitment to the rule of

law and an appreciation for the proper role of a judge in a democratic society.

I recognize from your question my lack of experience in an actual courtroom. I fully plan, if confirmed, to augment that lack of experience by relying upon the advice of staff who are experienced in that process in order to make these types of evaluations, especially on the trial bench, in order to fit these—find men and women that fit these criteria.

Senator LEAHY. Does that mean talking to these people, talking with those who have appeared against them in court, or with them in court?

Mr. DINH. At minimum, it will be a personal interview, but it goes beyond that process. If I am confirmed, and to the extent that I am involved in this process, I anticipate to be talking to counsel who have worked with a particular prospect, a particular candidate, both for and against that person in a counsel capacity, perhaps even talking with judges who have seen firsthand the demeanor and professional character of these particular attorneys who may be candidates and from that sense get a good impression of his or her character and also professional competence.

Senator LEAHY. There is that one part that it is impossible to define, sort of to paraphrase Justice Potter Stewart in another case, you know it when you see it, and that is judicial temperament. There is so much power in the Federal court, especially at trial level. They can become autocratic. They can become abusive to attorneys. And they basically can get away with it.

Now, in the past, there has always been a lot of use of the professional attorneys and others in the Department of Justice, those who continue on no matter who is President, to help with that evaluation. Would you see any reason to discontinue that practice?

Mr. DINH. No, Senator. I do believe that our system of justice is the front door and really the most prominent feature of the expression of the rule of law in our Government. And a commitment to that rule of law includes very much the ability to treat defendants, plaintiffs, and counsel with respect because such treatment is a reflection not of the judge but really of the treatment of the system of justice on its participants. And I very much believe that having that type of professional competence and more than that, just the ability to display oneself as the arbiter of justice fairly is quite important in the process.

Senator LEAHY. Mr. Chairman, I have one more question. I can put the rest in the record.

Chairman HATCH. Why don't you go ahead? I am sure Senator Sessions will not mind.

Senator LEAHY. You said in December 1999 on CNN's television program "Burden of Proof" about judicial nominees, "It seems to me that the only litmus test that is worth discussing is the litmus test of competency. Qualifications regarding judicial philosophy, regarding judicial temperament and the like, litmus tests don't work."

So my question is really in parts. One, do you still believe that? And will you continue the practice as followed in the last 8 years of not asking a candidate's personal position or how they would rule on subjects such as affirmative action, abortion, gun control,

or the death penalty? And, last, what is the litmus test on judicial philosophy that you made reference to?

Mr. DINH. Senator, I do still believe that, and, no, I would not—yes, I will continue that practice of not asking questions on litmus test because it goes beyond whether or not they work. I think they are actually quite improper because there is—Article III independence exists for a reason, in order to free up the judges to truly be judges rather than to be policymakers. And that answer really also answers your second question, that is, the commitment to the rule of law and an appreciation for the proper role of the judge in our democratic society so that legislative authority rests with the elected representatives of the people, and judges are there to interpret the law, not to make law.

Senator LEAHY. That is what you meant by judicial philosophy?

Mr. DINH. That is what I meant by commitment to the rule of law and appreciation for the proper role of a judge in a democratic society, yes.

Senator LEAHY. That is judicial philosophy?

Mr. DINH. Yes.

Senator LEAHY. Thank you.

Thank you, Mr. Chairman.

Chairman HATCH. Thank you, Senator.

Senator Sessions, we will turn to you.

Senator SESSIONS. Thank you, Mr. Chairman.

I would just say, Mr. Chertoff, I agree with Senator Specter when he discussed the situation with Public Integrity and independent counsel. I was not comfortable with that. In fact, the Public Integrity chief, as I recall, did not remember even having a meeting with the FBI officials that two or three of them recall. I think it was an unhealthy circumstance. I think it is important that top officials be as forthcoming and respectful of Congress as possible.

In McDade, I agree with Senator Leahy that it is a dangerous situation. It is not healthy that a local bar association, oftentimes dominated by criminal defense bar, can declare unethical a prosecutorial or investigative technique that the Supreme Court has upheld as constitutional. Would you look at that, would you be willing to look at—

Mr. CHERTOFF. I will definitely look at that, Senator.

Senator SESSIONS. It is just an unhealthy thing that I think has great danger. The U.S. Government cannot allow its powers to be eroded by an unelected bar association in some county or State. That is basically what I think *McDade* did.

I am very interested in the bill that I worked on and we were able to pass after the death of Senator Paul Coverdell, the forensic laboratories bill. I am finding, Mr. Chertoff, all over America that one of the biggest problems in criminal justice is the inability to get laboratory analysis done in a prompt timeframe. You understand this as a former United States Attorney, and we served together, and I have tremendous respect for your competence and skill. I think being a former United States Attorney is a tremendous background for chief of Criminal, because you have had to do in a district what you are in a way doing for the United States.

But I think that we need work on this problem. It may be the single greatest problem in law enforcement. In Alabama, they are telling me that a routine drug analysis sent to the lab, there is such a backlog that it may be 2 years before they get it back. That means a case cannot proceed until that laboratory—you know, you can't indict unless the powder has been found scientifically to be cocaine.

Are you familiar with this? And all the demands that are pressing on the Department of Justice for spending, would you give serious review to the possibility of making this a priority? Because if we could reduce this, we may do more in a healthy way without micromanaging State government but just assisting them to improve justice in America.

Mr. CHERTOFF. I certainly would, Senator. I am aware, as you are, because, as you point out, we did serve together, that what we can do in the lab and with technology is really a critical element of law enforcement. We have seen, you know, the wonder of what was accomplished, let's say, in the Oklahoma City bombing case forensically, and those tools ought to be available to State and local law enforcement. It is important for them. It is important for us to have them be able to carry their load. So I would be very interested in making this issue a priority issue.

Senator SESSIONS. Thank you. I just believe that it is turning out to be that this little bottleneck may be a bigger problem of delayed justice in America than any other single event. Maybe Policy could look at that, too, Professor Dinh.

Mr. DINH. I will.

Senator SESSIONS. On guns, Senator Specter asked you about that. I, like you, was a firm believer in Project Triggerlock, reincarnated as Project Exile in Richmond. I had no doubt that it worked. I was shocked when I became a member of this body to see that the previous administration had allowed gun prosecutions to drop by as much as 40 percent and that they eviscerated these prosecutions. And we tried at the juvenile crime bill, Chairman Hatch and others, to add prosecutors to prosecute more gun cases under existing laws.

I would just say this to you: Based on my experience in the Department, you don't even need a lot of new money. All you need to do is send out the word clearly that this administration expects prosecutions of gun violations to be a high priority, and I think you will get it. Do you agree with that, and will you do so?

Mr. CHERTOFF. I do, Senator. I think the Attorney General has made that clear. If confirmed, I am going to make that clear, and I think we're going to want to make sure that that's communicated to the United States Attorneys in the district so that they understand that is a very clear mandate.

Senator SESSIONS. During the course of the Committee that Senator Specter worked on oversight of the Department of Justice, there were some espionage cases. I have observed—we found something that perhaps has always been a problem at the Department, and that is, the people reviewing the cases at the highest level for approval or disapproval often have not been in the courtroom in 20 years, if ever. And they are second-guessing prosecutors on the front lines.

For example, in one of the most sensitive espionage-type cases, the local prosecutors, a Rhodes scholar, who had been 8 years in prosecuting, had just recently convicted a Republican Congressman, wanted to go forward as an espionage case which could carry up to the death penalty. He was overruled by a line attorney that I don't think has the instinct for that case that he did.

Will you look at that and make sure that the people who are reviewing the cases on the front lines are competent to do that and have recent experience in litigation?

Mr. CHERTOFF. Yes, Senator, I will, and I want to say that I am—again, from my prior experience, I'm acutely aware of the importance of making sure that on very sensitive matters like this you have the personal involvement of senior people in the Department. I mean, I can't think of many things that are more important to have high-level, experienced appointees looking at than matters involving espionage and things related to national security. And so not only will I, if confirmed, work to make sure that the people who review in an intermediate position are experienced and take account of the experience of the line prosecutors, but I will personally get involved appropriately to make sure that we are making good judgments on those cases.

Senator SESSIONS. I would appreciate that, and I know your judgment as an experienced litigator would be valuable in that circumstance. I would also note, as I think you probably know, that you can't rely on the departments and agencies to give you good advice. Oftentimes they just want these cases to go away. They would rather not have to testify in court as to how they were breached, their security was breached. It is up to the Department of Justice to say, no, we are going to proceed, and we are not going to allow this kind of espionage to continue.

I am glad that you questioned *Miranda*. I think it is worthy of being questioned. Your questioning and doubts probably don't go as far as mine do. But I do think that it is healthy that you are active and engaged in criminal justice issues.

Mr. Chairman, I won't take any more time.

Chairman HATCH. Thank you so much, Senator.

We will turn to Senator Durbin.

Senator DURBIN. Thank you, Mr. Chairman.

Mr. Chertoff, I am sorry we didn't have a chance to get together yesterday, and I know you made a special effort. I am just sorry my schedule did not allow it, but I would like to ask you a couple questions. Thank you both for being before the Committee today.

Mr. Chertoff, you have said—and, in fact, you have been recognized in the media as being outspoken on the issue of racial profiling. And you are, of course, seeking your position here as Assistant Attorney General for the Criminal Division, and I would like to just focus for a moment on an aspect of racial profiling which I think should be taken serious by all of us.

African Americans represent 12 percent of the U.S. population and, according to our Drug Enforcement Agency, 13 percent of drug users in America. African-Americans comprise 35 percent of all those arrested for drug possession and 55 percent of those convicted for drug possession. Five times as many whites use drugs as African-Americans, but African-Americans comprise the greatest

majority of drug offenders sent to prison. Race appears to be a clear factor, which we cannot ignore except at our own peril when it comes to the credibility of our system of justice.

How do you believe that we should go about addressing the drug problem in America in a way that is not at least open to the suggestion that it has at least some racial characteristics involved?

Mr. CHERTOFF. Well, Senator, let me say at the outset that, unequivocally, it is my view that racial profiling is not only wrong but unconstitutional and has no place in law enforcement. My personal familiarity with this actually comes, as I think you observed, from my work as counsel to a State senate Committee in New Jersey which was looking at the issue of drug interdiction n the turnpike, where there are issues involving disparities in numbers. It is a complex issue, but it is a very high priority issue, because it affects not only the civil rights of the people who are the victims of racial profiling, but it affects the credibility of all of law enforcement.

I think we need to—when we see disparities in figures, we need to take a careful look at that and try to understand what the cause of those disparities are. We need to make sure that we have no conscious or unconscious biases in the way we are conducting our investigations.

Unquestionably, everybody benefits when we vigorously prosecute the war on drugs, and I can tell you from my own experience, I saw minority communities often suffer greatly from the drug trade and the impact of that. So I certainly think it is in all of our common interest to have vigorous enforcement, but I think when we see disparities that are significant, we need to look at the underlying cases and try to understand what accounts for those. And if there are conscious or unconscious biases, we have to get rid of those. And I am very committed, obviously, from the standpoint of the Criminal Division, if confirmed, in working toward that end of making sure we have an evenhanded and fair application of these laws.

Senator DURBIN. And do you believe we should continue to collect information and statistics concerning the racial characteristics of those who are arrested, investigated, charged, convicted, and incarcerated in this country so that we can assess whether or not there are disparities based on race or ethnic background?

Mr. CHERTOFF. I believe, Senator, the President himself has indicated his strong support for a collection and analysis of data, and I think the Attorney General has as well, and, of course, I am very supportive of that.

Senator DURBIN. I thank you.

Professor Dinh, I am glad that we had a chance to get together, and I want to follow up on one aspect of our conversation concerning the important job which you are seeking relative to judicial appointments. And as I mentioned to you in our meeting—and I am sure it comes as no surprise—this is an item of great interest. As I said to you, many of us feel that the outcome of the Presidential election in November at least raised some question as to whether the President has a mandate to make significant changes in the judiciary that would have an impact on values and decisions and precedents which have been in place for many decades.

You are a member of the Federalist Society. We find it curious on our side of the aisle that President Bush has said that he no longer wants to rely on the American Bar Association to do a background check on prospective judges. This was a tradition that started in a radical era of American politics known as the Eisenhower Presidency, when President Eisenhower thought it was reasonable—and I do, too, incidentally—that the largest bar association in America at least comment on the worthiness of nominees for the Federal bench.

Could you describe for us your involvement with the Federalist Society and what you believe this group stands for?

Mr. DINH. Senator, first of all, thank you very much for taking the time out of your very busy schedule to meet with me the other day. It was a very fruitful discussion, and I very much appreciate the courtesy.

I am a member of the Federalist Society, and I do not know, quite frankly, what it all stands for. As you asked me during our meeting whether I have read their statement of principles, no, I have not. What I know, what it stands for for me, why I joined the Society, when I first joined the faculty of Georgetown Law Center, it is a forum for discussion of law and public policy from both sides, and a number of very prominent debates and very fruitful debates have been carried out under the auspices of the Federalist Society throughout the law schools and the bars of this Nation. That is why I believe that it serves a very useful function, not only in the discussion of law and public policy in the public debate, but also in the pedagogical mission of our law schools, as a number of other organizations do.

I do hope that given my rather voluminous paper trail of publications and public speeches that my candidacy and what I think will be judged upon those statements and publications and rather not on any one particular membership.

Senator DURBIN. I recall your answer, and you have repeated it here for the sake of the Committee, and I find it interesting that if you were looking for a forum for debate, the Federalist Society is a comfortable forum, but apparently the ACLU is not for a discussion. You have never joined an organization like the ACLU, have you?

Mr. DINH. No, I have not, Senator, because I do not join organizations, with the exception of the American Bar Association, through my group membership as a faculty member of the Georgetown Law faculty, that take public positions and adopt policy statements. And to my knowledge, the Federalist Society does not take public positions, adopt policy statements, file amicus briefs, or the like. It is simply a forum for discussion, as I am also a member of the Council on Foreign Relations, which is a forum for public discussion on foreign policy issues in which I am also interested.

Senator DURBIN. So is your belief that the Federalist Society does not have a philosophy, a stated philosophy, when it comes to, for example, the future course of the Supreme Court?

Mr. DINH. No, I do not think it does have a stated philosophy, to my knowledge. It may very well have. I just simply do not know. I know that the Society has a very diverse membership of people who think very critically about these issues, and I know that I've

gotten into many, many disagreements with members of the Federalist Society on these kinds of issues. So I do not think that an official policy would be possible, even if desirable.

Senator DURBIN. Where would you put the Federalist Society on the political spectrum?

Mr. DINH. You know, I simply do not know. I know that there are press reports that have attempted to put it in a political spectrum with respect to other organizations. I myself in my personal and professional life have been very hesitant to characterize anybody or any group according to labels simply because I eschew such labels for myself. So it would not be appropriate for me to do so for others.

Senator DURBIN. And you are not familiar—or are you familiar, rather, with the term "Court in exile," "the Constitution in exile"?

Mr. DINH. No, sir, I am not.

Senator DURBIN. OK. Well, let me say that from what I have read—and I am not an expert, nor am I a member of the Federalist Society—they do have a very conservative philosophy. I don't think they are a debating society. I think they have an agenda. And it troubles some of us to believe that the American Bar Association, which has been characterized as liberal by the conservatives and conservative by the liberals over the course of its history, is being cast aside by the White House now when it comes to the judicial process. And, instead, we find that many people who are associated with the Federalist Society are now seeking prominent positions in the administration of justice. I don't think it is a coincidence. I think it is a conscious decision to move us toward a path that, frankly, many of us think needs to be questioned, and at least publicized.

I sincerely hope that if you are indeed confirmed that you do not become an agent of any political agenda. You have an extraordinary personal family history. It is just exceptional, and I think all of us are in awe of what you and your family has achieved overcoming great odds. I think that you can make a great contribution to public service, and I hope that you will. But I hope that it doesn't become an effort for a political clearinghouse for only those who happen to hew to that line to be considered as possible nominees to the Federal bench. I think we do need diversity and moderation and the kind of excellence and integrity which both parties should seek to make part of their nomination process.

Thank you, Mr. Chairman. Thank you.

Chairman HATCH. Well, I am pleased that we have had you all here. I want everybody to know that I am on the board of advisors of the Federalist Society, and I am darn proud of it. And I will tell you why: because these aren't just conservatives, these are top-notch lawyers all over this country, top-notch law students, who are just sick and tired of the leftward leanings of our Government and, frankly, wanted to bring some into balance. The Federalist Society doesn't lobby, unlike a lot of the groups that we get from the left all the time. They don't take positions politically. They basically hold the best forums in America. And in every one of those conferences, they have had both sides presented, and I know because I have been one of the lecturers from time to time.

So I get a little tired of—I am not accusing the senior Senator from Illinois of this, but I get a little tired of some in the media treating the Federalist Society as a group of radicals like some that are out there. Frankly, one of the original advisors to the Federalist Society was Justice Scalia, who by anybody's measurement is a brilliant lawyer, law professor, and a brilliant member of the Court, albeit you may disagree with his philosophy from time to time.

But to make a long story short, I do think we ought to get rid of character assassination of any organization. But I get a little tired of some of these attitudes that anything on the left is just fine, no matter how irresponsible, no matter how degrading, no matter how mean-spirited they are. And yet you have a society made up of top-notch lawyers, many of them law review graduates at their respective schools, who are practicing law, trying cases all over this country, defending people, prosecuting people, but who believe that there are limits to Government.

And they may individually express conservative viewpoints or moderate to conservative viewpoints or even libertarian viewpoints from time to time. But the fact of the matter is the Society itself does not engage in lobbying or the pursuits that some in the media have seemed to smear them with.

Senator DURBIN. Would the Chairman yield?

Chairman HATCH. Sure.

Senator DURBIN. First, I would like to commend the Chairman because I think he has been very forthright in his beliefs and in what the Federalist Society is all about. That was the purpose of my question to Professor Dinh, who is a member of—

Chairman HATCH. I don't think there was anything wrong with your question. I am just saying I want to make it clear, because I have seen these articles, and, my gosh—

Senator DURBIN. If I could finish?

Chairman HATCH. Sure.

Senator DURBIN. If I might finish.

Chairman HATCH. Go ahead.

Senator DURBIN. Senator Hatch and I come to this business with different philosophies. That is part of the American political process. I am not going to disparage those of a conservative bent, and I hope that he will not disparage those of a liberal bent or progressive bent. We just happen to see things differently. But the point I am trying to make here is that if the Federalist Society is now going to be the filter for nominations to the Department of Justice as well as judicial nominations, if that is going to be a standard, then, for goodness' sakes, I hope that you will come forward, as you have this morning, and clearly state what your goal is. What is it that you are seeking to achieve? And if you do so and do it openly, publicly, that is your right.

Chairman HATCH. And I can tell you categorically that they are not going to be a filter. I know who the filters are, and they are in the White House and the Justice Department, as they were in the Clinton administration. Now, the Clinton administration wasn't tarred by accusations that People for the American Way vetted ever judgeship nominations, even though we know they weighed in rather heavily.

Now, individual members of all societies weigh in heavily on these judges, not just the Federalist Society. And, heavens knows, we have got people here who think that the American Bar Association should be the last word on everything. I happen to pay attention to their recommendations. I am not going to ignore anybody's recommendations. I am going to give some credibility to them and look at them. But they should not have a formal authoritative role in this process. They aren't elected to anything. We are the vettors. I heard some people saying in the media that they should have a right to vet because they are the most prestigious bar association in the country. Well, they are the largest, but there are dozens of bar associations in this country, all of whom have an equal right to say who should be in this process. And we can't allow that.

Now, I am not going to allow the Federalist Society to dictate to this Committee. That isn't the purpose of it. That isn't what they do. It is a lot of attorneys who basically have been leading law students, leading attorneys, leading professors, leading judges in this country, who basically feel like there are limitations to Government that ought to be abided by and that they haven't been in some ways.

I find nothing wrong with my colleague from Illinois asking these questions, because he is, I think, one of the brightest people in the Senate, and I think very effective. And we are friends. But I just kind of got upset, not at what you asked or your questions, but the fact that I have seen these articles trying to say that, you know, there is some sort of cabal controlling the judgeship nominations or even Justice Department nominations down there at the White House.

This is a different White House. President Clinton was not known for conservative politics. I think anybody who is fair would admit that. The judges he recommended, I do not think very many of them would have been recommended by or will be recommended by President Bush.

There are differences in philosophy. We have to acknowledge that. But to demean intelligent members of the bar because they have a different point of view from the far left is, I think, uncalled for. And I think the media—talk about trying to have mind control. I think we can use honest, strong ideas from a wide variety of organizations, from the left to the right. And I get a little tired of hearing some of our colleagues say we do not want any right-wingers on the Court. Well, I am sure there were Republicans that did not want any left-wingers on the Court. But that is stupid.

The people they are sending up today—I have looked at every one of them—are highly intelligent, people of great temperament, people of accomplishment in the law. Many of them are judges who have already been confirmed by this Committee. And yet people are saying we do not want any right-wingers, like everybody that the Clinton administration sent up was a moderate. Give me a break. We put through 377 Clinton judges here, five less than the all-time champion, Ronald Reagan. And he would have had eight more had it not been for Democrat holds in the Senate. In other words, he would have had three more than Reagan. And Reagan had a Republican Senate for much of his tenure, and yet all we have heard is this bad-mouthing of what went on.

Now, look, my position is that the President, whoever that President may be, has a great power in the nomination process, and we must recognize that power as members of this Committee. And we must confirm these people if they are competent, people of good temperament, good integrity, well experienced at the bar, and who are people that should be confirmed. And that was my position, and I have to say that, yes, we have people on my side and people on the other side who do not completely agree with my position. But we have been able to do that for President Clinton, and I would hope the same courtesies would be extended to President Bush.

Now, we are not talking about judges here with the two of you. We are talking about getting the people's Department of Justice staffed so it can operate efficiently. We are talking about putting the head of the Criminal Division in there who is an extremely competent, straight-down-the-middle fair lawyer, one of the best I have ever seen. And both sides know it. They may not share the philosophy, myself or people on the left or people on the far right do. But he is competent and very capable of doing this.

With regard to Professor Dinh, I would want to help you just because of your background. But, my gosh, that is not good enough. You have a tremendous capacity and ability, and we all know it. And just listening to you here today is enough, I think, to convince anybody of your qualifications, young though you may be. And the administration has a right to have these positions filled.

So I intend to go ahead with the markup tomorrow, and I will put both of you on that markup. Now, I will warn you, anybody on this Committee has a right to put you over for a week, but that is one reason I am putting you on so that if they want to put you over for a week, they can. And I find no fault with that if somebody wants to do that.

Now, it has been requested we have an executive session, just Senators, and I have tried to accommodate the Democrat side by announcing we will have one at 6 o'clock tonight. I have been told they cannot come. So let me accommodate again, but this is the last accommodation I am going to make because I think if I do not have some cooperation here, then we just have to go ahead with the markup. I will accommodate my colleagues on the other side by scheduling an executive session starting at 9 in the morning.

Now, I have to give up going to the White House to do that. I am willing to do that in the interest of getting the Justice Department staffed. But the executive session is going to be over by 10 o'clock so that we can go into our markup. And I hope that this will accommodate my friends on the other side. I think it is bending over backwards to do so. The President has asked me to be in the White House tomorrow. I am going to tell the President I cannot be there, because it is more important to have his nominees to the Department of Justice confirmed.

I believe we have discussed all the problems, but I am willing to meet and accommodate here. I can remember times when my side wanted executive sessions after lots of meetings and so forth, and I talked them out of it. I hope the other side will talk their people out of it so we can go forward with this markup. I am getting tired

of some of the petty arguments that we have been going through. But I am willing to accommodate.

So that is where we are. I know a lot of people do not want to start at 9, but that is the only way I can do it. So we will recess until tomorrow at 9. We will have a private executive session prior to the 10 o'clock markup, but the executive session is going to be over by 10, and then we are going to mark up these nominees. If people do not want to vote for these nominees for the Justice Department, they can walk out of the Committee room and not vote and not exercise their obligation. If they want to vote no, let them vote no. If they want to vote aye, they can vote aye. But tomorrow is the day when we vote on some of these Justice Department nominees, because I cannot—it is unconscionable to me to be in the fifth month and to not have anybody but the Attorney General confirmed when we have no reason not to confirm.

Yes, Senator?

Senator DURBIN. Mr. Chairman, I am sorry that Senator Leahy is not here to comment about your suggestion, but his staff has indicated to me that Professor Dinh had provided some supplementary responses to questions as of yesterday, and Senator Leahy and the staff are reviewing those.

Chairman HATCH. That is fine, and you have until the markup—until they come up on the floor to raise any issues you want to. And if you want to put them over a week because of that, you can do that. I have no problem with that.

Senator DURBIN. I hope that you and Senator Leahy can discuss that. I do not know the particulars, but I was asked to raise it.

Chairman HATCH. Well, I am trying to meet his needs. I am trying to accommodate him. I have tried in a variety of ways. The only way I can do it is this way. And so I am announcing that that is what I am going to do, and it is totally in trying to accommodate Senator Leahy when I do not think there is any reason for having an executive session that delays in any way the markup tomorrow.

Senator SESSIONS. Mr. Chairman, we are getting close to 10 percent of the administration's time in office is past. It is not quite there yet, but it soon will be. We have got the Attorney General over there, the Deputy Attorney General, who is uniformly respected by everyone. It is amazing that we cannot get these officials confirmed. Tying it to an unrelated matter about judges to, in fact, hamper, actually undermine the ability of the Department of Justice to function is really irresponsible, in my view.

I thank you for being determined to move this forward as best you can.

Chairman HATCH. Well, as Chairman I have to make that decision, and I am accommodating my colleagues on the other side, especially Senator Leahy, who has requested it, and that is what we are going to do. I hope everybody who wants to come in and talk will be here at 9. The record will remain open for additional questions.

Now, look, with regard to questions, I think we ought to get an understanding. Many times during the Clinton administration the questions, some on our side asked questions at the last minute and did not have a lot of time to study them before the markup, but you have that time before the markup, you have the time before

it comes up on the floor. Matters can be raised. Hearings can be held. There are a lot of things that can be done.

But my goal here is not to roll over anybody, but to get our job done and to get the Justice Department up and running and to let the people's representatives get in there and make sure the Justice Department is running. I cannot think of more critical positions than the Deputy who runs the day-to-day Justice Department. And we are now in the fifth month. I cannot think of a more critical position than the Solicitor General who argues for the American people in court. I cannot think of a more critical position than yours, Mr. Chertoff, the head of the Criminal Division, with all of the problems that come there daily. We cannot let this drag anymore.

Now, if there was a real legitimate reason for delaying like this, requesting repeated delays, I could live with that. But I cannot live with the delays that we have had requested when we have had meeting after meeting, and I have tried accommodation after accommodation.

I just believe this is the best thing I can do, and, Professor Dinh, they need your brain power down there. They need you writing, they need you researching, they need you doing the things that—the Justice Department is a complex place. And we cannot keep putting these things off. Like the distinguished Senator from Alabama said, about an eighth of the Presidency is over, if you count it for 4 years.

So, with that, I hope my colleagues will be pleased that I am willing to do this, because I do not have to do this. I can just go ahead with the markup. And I remember the days when Democrats controlled this Committee and that is what they did. They did not put up with this type of stuff. But I am willing to bend over backwards. We are 50–50 in the Senate, 50–50 on this Committee. I would do it if we were not. But I have reached a point where I cannot do any better than that, and so I hope my colleagues will cooperate. I hope they will help me in this job. I do not have any axes to grind. I just want to have our country run well and, above all, I want to have the Justice Department run well because I do not know of an agency in Government that has more to do with protecting the people than the Justice Department. And if we do not have leaders there, we are going to be in real trouble here. And we are in trouble now, because I understand an awful lot of what is not being done down there is because they do not have anybody making decisions other than the Attorney General, who cannot make them all himself.

So, with that, we will recess until 9 in the morning when we will have an executive session to hopefully cover these matters, and then at 10 I am going ahead with the markup. Senators can vote any way they want to, but we are going to vote.

With that, we will recess until further notice.

[Whereupon, at 12 p.m., the Committee was adjourned.]

[Questions and answers follow:]

QUESTIONS AND ANSWERS

Responses of Michael Chertoff to questions submitted by Senator Thurmond

Question 1: Mr. Chertoff, as you know, the Congress created the Sentencing Guidelines in the Sentencing Reform Act of 1984, us a way to provide similar punishment for similarly situated defendants. Do you believe that the Guidelines system is basically sound and that fundamental changes in the Guidelines are not warranted?

Answer 1: I believe that the Guidelines achieve fairness and deterrence in sentencing. The Sentencing Reform Act provides for the Commission to modify or amend the Guidelines in light of reason and experience. I do not support a fundamental change in the Guidelines.

Question 2: Mr. Chertoff, I am concerned that the purpose of the Guidelines is being threatened by the increasing trend of sentencing criminals below the range established in the Guidelines. Just in the past eight years, the number of downward departures has increased steadily from 20% to about 35% of cases. I held a hearing last fall in the Criminal Justice Oversight Subcommittee regarding this growing problem. Are you concerned about this trend, and if confirmed will review this issue with the Sentencing Commission?

Answer 2: The purpose of the Guidelines is to channel sentencing discretion so as to assure similar penalties for similar criminal behavior and history. An essential element of this approach is to limit departures so that they do not undercut the careful calibration of the Guidelines. Thus, while departures are appropriate to account for unusual or unforeseen circumstances, they should not be used to avoid the basic structure of the Guidelines. A significant increase in the percentage of downward departures may suggest that, in some instances, the departure mechanism has been abused. If confirmed, I intend to work with the Sentencing Commission to determine the causes for the increase, and to consider what action is appropriate.

Responses of Michael Chertoff to questions submitted by Senator Grassley

Question 1: I am deeply concerned with the rampant production and distribution of methamphetamines. Will you commit to increasing the Department's resources for the investigation and prosecution of those who violate federal drug laws?

Answer 1: I personally investigated and prosecuted many narcotics cases as a federal prosecutor. Based on my experience as a prosecutor, I agree that the methamphetamine threat is serious. Indeed, the scope of that threat has increased dramatically, especially in rural areas. More generally, This is an area where vigorous prosecution can have significant impact. Accordingly, if confirmed, I will review our initiatives in this area to insure that we are doing all we can to stem trafficking in methamphetamine and other illegal drugs.

Question 2: The American people deserve a government characterized by integrity. The vigorous investigation and prosecution of those elected and appointed officials who violate the law is essential to assuring that government operates with integrity. With this in mind, will you commit to turning the Public Integrity Section into a legitimate arm of the government that will aggressively investigate and prosecute criminal misconduct?

Answer 2: As U.S. Attorney for New Jersey for 1990-1994, I treated prosecution of public corruption as top priority for my office. If confirmed as head of the Criminal Division, I intend to review all aspects of the Criminal Division's operations, and to insure that the Public Integrity Section conducts speedy, aggressive and fair investigations of criminal conduct by public officials.

Question 3: During the last eight years there has been explosive growth in the distribution of illegal pornography. This is due in part to the previous administration's lax enforcement of the Nation's obscenity and child pornography laws.

Answer 3: I agree that obscenity and child pornography are an increasing national problem, especially with the unfortunate availability of this material over the internet.

Question a: Will you make the prosecution of obscenity and child pornography among the top priorities of the Criminal Division?

Answer a: If confirmed, I will treat prosecution of obscenity and child pornography as a top priority for the Division.

Question b: Additionally, will you give special consideration to the appointment of the head of the Child Exploitation and Obscenity Section of the Criminal Division?

Answer b: As mentioned above, if confirmed 1 intend to review all aspects of the Criminal Division's operations, including the Child Exploitation and Obscenity Section. I will pay special attention to insuring energetic and capable leadership of the Child Exploitation and Obscenity Section.

Responses of Michael Chertoff to questions submitted by Senator Leahy

Question 1: You report on your questionnaire response that you have worked for the New Jersey Senate Judiciary Committee. (a) What exactly did your work advising the N.J. Senate Judiciary Committee as Special Counsel on investigations into the effectiveness of notification under the state sex offender notice laws consist of? (b) What exactly did your work advising the N.J. Senate Judiciary Committee as Special Counsel on investigation into racial profiling by state police consist of?

Answer 1(a): In the Spring of 2000, an inmate sex offender was released by the Department of Corrections into the community without a designated residence and without adequate prior notice to local law enforcement authorities as required under state sex offender notification laws and regulations (including the so-called "Megan's Law"). I was asked to serve as special counsel to the state Senate Judiciary Committee to examine whether this was an Isolated mistake or evidence of a more widespread problem. Working with others at my law firm, over a period of weeks we investigated the manner in which the Department of Corrections complied with the state law governing notification relating to sex offenders who face release upon the expiration of their sentences. Our findings revealed that there was a substantial failure by the Department of Corrections to make timely and accurate notifications as required by law, and that this problem had been the subject of complaints well before the issue became publicized. In part as a result of this investigation, there were changes in the personnel and procedures at the Department of Corrections.

Answer 1(b): In April 1999, the state Senate Judiciary Committee conducted hearings on the issue of racial profiling by the state police. During the fall of 2000, the state Attorney General released approximately 100,000 documents—many not previously made public—that addressed this issue. The Committee retained me, and my firm, to re-investigate this issue based on the released material. From approximately September 2000 until the present, my staff and I reviewed the documents, conducted dozens of interviews and depositions, and participated in approximately nine days of public hearing. Among those who were interviewed or testified, were all state Attorneys General from 1989 to the present; senior law enforcement personnel, including two former superintendents, and the current superintendent, of the state police; line troopers; victims of profling; and experts. Based upon these hearings, the Committee is currently working on legislation and recommendations to address the issue of profiling.

I should point out that both of these engagements were pro bono. Neither the firm nor I received any compensation, except for reimbursement of expenses. (See Senate Resolution attached hereto.)

Question 2: In a case litigated by your office when you were United States Attorney, *United States* v. *Sarbello*, 985 F.2d 716 (3d Cir. 1993), your attorneys argued that it was appropriate to seek the forfeiture of 100% of a business in a case where the jury found that criminal activity tainted only a small percentage of the defendants' interest in the business and that the offenses charged were non-violent and without irreversible or serious collateral consequences. (a) Do you still think that was a proper argument, especially in light of the Supreme Court's decision in *United States* v. *Bajakajian*, 524 U.S. 321 (1998), which held that forfeitures are subject to the 8_{th} Amendment's "excessive fines" limitation? (b) Also, as a matter of prosecutorial discretion, should the government seek every dollar in forfeitures that it can get, or should it temper its decisions with considerations of fairness?

Answer 2(a): As the decision in *United States* v. *Sarbello* makes clear, the racketeering statute "mandates forfeiture of the defendant's entire interest in the RICO enterprise itself, and does not contemplate mitigation. . . ." 985 F.2d 716, at 722. The original decision to seek forfeiture was guided by this statutory mandate. At the time of trial, the applicability and scope of excessive fines analysis in the context of forfeiture was unclear. *Id.*, at 722. On appeal, of course, the Sarbello court established in the Third Circuit that a gross disproportionality test should be applied to forfeitures.

In light of *United States* v. *Bajakajian*, decided several years later, it is now clear that the gross disproportionality test governs imposition of forfeitures. Accordingly, were *Sarbello* tried today, the government should argue for forfeiture only to the extent that it comports with the prevailing proportionality standard.

Answer (b): Apart from the constitutional issue, my experiences as a prosecutor and defense attorney convince me that in the area of forfeiture the government should exercise prosecutorial discretion based on fairness and proportionality.

Question 3: In a case litigated by your office when you were United States Attorney, *United States* v. *Gonzalez*, 927 F.2d 139 (3d Cir. 1989), the government engaged in a "reverse sting" operation in which government agents posed as marijuana sellers, entering into an agreement with an informant that he would receive 25% of the value of any of the defendants' property that was forfeited as a result of the case. While in this case. the court affirmed the defendant's conviction, arrangements with informants such as this raise serious questions, because it gives informants (who are often criminals themselves) a strong financial incentive to "get" the defendant in any way possible, including manufacturing false evidence and testimony. (a) Do you believes that arrangements like the one in this case was appropriate? (b) What do you believe the limits are on offering financial inducements to informants to "make" cases for the government?

Answer 3: United States v. *Gonzalez* was litigated when I was First Assistant U.S. Attorney in the District of New Jersey. I was not personally involved in the case. Nevertheless, both as a prosecutor and defense attorney I have bad extensive experience in dealing with informants and cooperators. Indeed, as a defense attorney I have had occasion to cross examine an informant whose entitlement to a bounty was based at least indirectly on the outcome of the criminal trial. (My client was acquitted).

(a) While, as the Gonzalez court indicated, financial and non-financial inducements to informants do not in themselves violate due process, they raise issues of credibility and reliability. Informants and cooperators who have financial or non-financial inducements to assist investigators or prosecutors should be scrutinized with care and caution. Generally, prosecutors should rely on such individuals only with adequate corroboration or other indicia of reliability.

(b) In general, even apart from due process considerations, prosecutors should take care to assure that Financial inducements are not so substantial as to create undue pressure or enticement for informants. Also, investigations built around informants should be designed to develop adequate corroboration and independent evidence, so as to insure that the informant has not "manufactured" a phony case.

Question 4: When you were an Assistant United States Attorney, you handled a case called *United States* v. *Figueroa*, 750 F.2d 232 (2d Cir. 1984). At trial, you introduced hearsay testimony about the contents of a telephone call, without calling a participant in the call as a witness, by representing to the district court that the testimony was not offered to prove the truth of the matters asserted and was therefore not hearsay. On appeal, the Second Circuit rejected that argument as "disingenuous" and reversed the defendant's conviction. The court found that you had relied upon the disputed evidence to supply "critical" information to its case and had also relied upon the truth of the hearsay evidence in its summation. The court found that the government had violated the ruling of one its prior cases, stating that "[t]he whole point of our decision in [the prior case] was to stop prosecutors from circumventing the hearsay rule by the kind of atomization here sought to be defended." A concurring judge even went so far as to describe your summation as "wholly inappropriate." Would you care to comment?

Answer 4: I tried *United States* v. *Figueroa* several months after I "as sworn in as an Assistant U.S. Attorney; it was my second trial as a prosecutor. My inexperience led me to mishandle the introduction of hearsay testimony, and the subsequent argument relating to that testimony in summation. Needless to say, the reversal was an educational, and chastening, experience. With the benefit of time, my handling of evidentiary and other elements of trial practice became more surefooted.

I personally retried the defendant, who was again convicted. The conviction was affirmed on appeal.

Responses of Michael Chertoff to questions submitted by Senator Durbin

Question 1: President Bush's budget proposal for fiscal year 2002 appropriations to the Department of Justice includes resources allocated for federal, state and local law enforcement agencies to prosecute juveniles who violate firearms laws. As you

may know, President Clinton had made this item a priority to his Justice Department budget for fiscal year 2001. If confirmed to your nominated position, would you work with the Administration, and the Attorney General to make this funding item a priority, and ensure that such resources will be properly allocated in order to fully carry out prosecutions of juvenile firearms violations?

Answer 1: I support the President's proposal to allocate resources to federal, state and local agencies to prosecute juveniles who violate firearm laws. I also agree with the President and the Attorney General that enforcement of the firearms law should be one of the top priorities of the Department. If confirmed, I will work with the Attorney General to promote vigorous prosecution of firearms violations, and to insure that the Department's resources are effectively deployed in this effort.

Question 2: A growing number of states are enacting child firearms access prevention legislation, commonly known as "CAP" laws. A study published in the October 1997 issue of the Journal of the American Medical Association found that in states that had CAP laws, there was a 23 percent decrease in unintentional firearm-related deaths among children under 15 years of age. This study also estimated that if all 50 states had CAP laws in place during the study period of 1990–1994, as many as 215 children might have been saved from such deaths. During this Congress, I am planning to introduce a federal CAP law that will be substantially similar to the CAP law enacted in Texas in 1995 under Governor Bush. One of the benefits of my bill will be to reduce the burden on the Department of Justice to allocate resources for prosecution of firearms violations, as the CAP law should reduce the likelihood of children gaining access to firearms. What is your opinion on CAP laws generally, and will you support my CAP law to serve as a deterrent at the federal level?

Answer 2: I wholeheartedly support the effort to reduce firearm-related deaths among children. Although I am not yet conversant with the statistics relating to "CAP" laws or with various legislative approaches to the issue, if confirmed, I look forward to working with the Attorney General and Congress to reduce firearm-related deaths among children.

Question 3: 1 too feel strongly about the issue of racial profiling. And I agree with the statement you made this past March, racial profiling does effect the way communities of color view law enforcement and the law. President Bush and Attorney General Ashcroft have given priority to the issue of racial profiling. I commend them for giving this issue high priority and look forward to working with them on my ongoing efforts to address this issue in the U.S. Customs Service.

The insidious practice of racial profiling undermines public confidence in law enforcement and damages the credibility of police forces around the country, even though the vast majority of police are carrying out their duties responsibly and professionally. Most importantly, racial profiling creates an atmosphere of distrust and alienation that isolates broad segments of the American population.

As you know this issue affects federal, as well as state and local law enforcement activities. In fact, a GAO study of profiling practices of airline passengers concluded that the U.S. Customs Service was intrusively searching African-American women and other minorities for contraband at much higher rates than they searched other segments of the population. Ironically, the women being targeted were statistically less likely than other passengers to be found carrying contraband.

Specifically GAO found that African-American women were nearly three times as likely as African-American men to be strip-searched, even though they were only half as likely to be found carrying contraband. Furthermore, African-American men and women were nearly nine times as likely, and Hispanic-American men and women were nearly four times as likely, as White-American men and women to be x-rayed, even though they were not more likely to be carrying contraband.

I have introduced legislation to specifically address the concerns raised in the GAO study and help the Customs Service make more effective use of its resources, and avoid unwarranted searches.

a. Do you agree that the racial profiling practices of the Customs Service should be eliminated?

b. Will you support my legislation and urge a favorable statement of the Administration's position on this proposal?

Answer 3. (1.a): Racial profiling is wrong and should be eliminated in all law enforcement agencies.

Answer 3. (1.b): As the question notes, President Bush and Attorney General Ashcroft have identified elimination of racial profiling as one of their top objectives. Of course, the U.S. Customs Service falls within the Treasury Department. I look forward to reviewing your proposed legislation, and to working with Treasury and other Administration officials, and Congress to eliminate racial profiling.

Question 3 (2): Do you believe that invidious discrimination, in the form of racial profiling occurring at any and all stages of the criminal justice process (i.e., stops, investigations, arrests charging offenses, prosecutions, and sentencing including penalties and incarceration terms) should be given zero tolerance? What suggestions/solutions would you recommend to eradicate this pervasive problem?

Answer 3(2): All invidious discrimination, including racial profiling, is absolutely intolerable in the criminal justice system. Although I am not in a position at this time to articulate a comprehensive solution to this issue, I wholeheartedly endorse the approach taken by the President in his recent directive to the Attorney General on this subject:

> "I hereby direct you to review the use by federal law enforcement authorities of race as a factor in conducting stops, searches and other investigative procedures. In particular, I ask that you work with Congress to develop methods or mechanisms to collect any relevant data from federal law enforcement agencies, and work in cooperation with state and local law enforcement in order to assess the extent and nature of any such practices. I further direct that you report back to me with your findings and recommendations for the improvement of the just and equal administration of our nation's laws."

If confirmed, I am eager to play an active role on this issue within the Administration.

Question 3.3: What are your views regarding repealing mandatory minimum sentences for drug offenders?

Answer 3.3: I support mandatory minimum sentences for drug offenders. At the same time, I am open to considering adjustments that would remedy genuine inequities. In this regard, if confirmed, I would certainly be willing to address this issue in light of the current experiences of DEA, federal prosecutors and the Sentencing Commission.

Question 4: In the aftermath of the recent Presidential election, the Justice Department is conducting a probe of allegations of minority disenfranchisement in Florida. The Department of Justice will determine whether a Federal investigation is warranted. In addition, the US Civil Rights Commission recently released preliminary findings about irregularities in Florida. These findings include: Haitian, Puerto Rico and other Hispanic voters were not provided with language assistance; old and defective election equipment was found in poor precincts; many blacks did not vote because their polling places could not confirm their eligibility; and some polling places closed early or were moved without notice.

1. What are your views on these types of investigations and the preliminary findings?

2. Will you prosecute violations of the Voting Rights Act to the fullest extent of the law? Response by Michael Chertoff.

Answer 4: Other than general news accounts, I have no basis to draw conclusions about the preliminary findings of the Civil Rights Commission. Additionally, it is my understanding that Voting Rights Act implementation is committed to the jurisdiction of the Civil Rights Division, rather than the Criminal Division. The Criminal Division does have jurisdiction over criminal violations of the federal election laws. I have personal experience as a prosecutor investigating and prosecuting election law violations in general, including tampering with absentee ballots. 1 strongly support enforcement of all laws designed to protect our fundamental right to vote, and will work to vigorously investigate possible violations of our election laws.

Question 5: If confirmed to head the Justice Department's criminal division, you will have a powerful post that would place you in charge of federal prosecutions—including any prosecutions that might arise from the Clinton Administration (i.e., Clinton's pardons/commutations). Given your involvement as counsel to the Senate's Whitewater inquiry, what standard will you use to recuse yourself from any involvement or participation, directly or indirectly, in any investigations or other legal actions concerning those individuals involved in Whitewater and/or other members of the Clinton Administration?

Answer 5: With the advice of the appropriate agency ethics officials, I intend to comply strictly with the rules governing recusal from matters in which I participated while in private practice, and matters in which I have an actual conflict of interest, or in which my participation would give rise to the appearance of impropriety under the governing standard.

Responses of Viet D. Dinh to questions submitted by Senator Leahy

Question 1: You have been a frequent guest on talk shows. You have also been widely quoted in ewspaper and magazine articles on a variety of legal topics.

Question (a): If confirmed, will you continue to make public appearances and express your personal views on legal and political issues?

Answer: I understand that, if I am confirmed as Assistant Attorney General, the rules and considerations governing my public appearances would differ from those governing me as a law professor. If confirmed, I would only make public appearances and express views appropriate to my role as Assistant Attorney General.

Question (b): Do you foresee any conflicts between positions you have taken on talk shows, in law review articles or other public forums and your duties as Assistant Attorney General?

Answer: No.

Question (c): Would you have any problem as an attorney for the government taking a position that was inconsistent with one that you had previously taken in your writings or talk show appearances?

Answer: No.

Question 2: In some of your writings and speeches, you have referred the need to insure that judges do not act arbitrarily by deciding cases based upon their own personal preferences instead of properly interpreting the law. Can you give us some examples of cases where you believe that courts have violated that principle?

Answer: My view of the proper role of judges in a democratic society stems from a structural examination of the Constitution and the institutions of government established therein, and not from any particular case or controversy. Nevertheless, an example of the danger posed when judges go beyond interpreting laws and instead make up rules according to their personal bias or caprice is *People* v. *Hall*, 4 Cal. 399 (1854), as I discussed in Races, Crime, and the Law, 111 *Harvard Law Review* 1289, 1292 (1998). In that case, the court interpreted a statute providing that "[n]o black or mulatto person, or Indian, shall be permitted to give evidence in favor of, or against, any white person" to exclude the testimony of Chinese witnesses. The court based its decision on the conclusion that the meaning of the term black "must, by every sound rule of construction, exclude every one who [was] not of white blood" and that Asians were simply "the more degraded tribes of the same species" of colored people. *Hall*, 4 Cal. at 403.

Question 3: In a 1999 article in a journal called *The Green Bag*, you wrote that a "restraint on those exercising judicial power may be needed to ensure some level of accountability." You further state that it may be necessary to, "acknowledge the fallibility of judges and to devise responsive processes." However, you do not identify what specific "restraints" or "responsive processes." Can you explain what type of "restraints" on the judicial branch of government you believe are warranted, in addition to those already provided in the United States Constitution (*i.e.*, appointment by the President with the advice and consent of the Senate and impeachment and removal by Congress)?

Answer: The article concerned law and development in countries other than the United States where, by definition, the United States Constitution does not govern. The full sentence from which the above quotation is selected reads in its entirety: "In looking at alternative institutional arrangements, however, perhaps a more fruitful response is to acknowledge the fallibility of judges and to devise responsive processes to prevent what Justice Stanley Reed decried as a *krytocracy*, the rule by judges." 3 The Green Bag 2d 19, 26–27 (1999). I cannot specify in the abstract the alternative institutional arrangements that would be appropriate or warranted for any particular place or polity.

Question 4: At your hearing, you testified that you have not had any, "specific conversations regarding the role of the component," in the selection, vetting and confirmation of federal judges.

Question (a): What role would you like to see OPD have in judicial selection?

Answer: If confirmed, I would like to support the Attorney General and the President, in whatever capacity they may deem appropriate, in ensuring that men and women who are nominated for judicial office possess high personal character, intellectual and professional competence, and a commitment to the rule of law.

Question (b): Have you had any conversations, even general conversations, about the role of OPD in judicial selection?

Answer: I have had a few general conversations, to the best of my recollection, to the effect that judicial selection should be a shared responsibility among various components of the Administration, including the Office of Policy Development.

Question (c): Other than judicial selection, have you had any conversations about the role and responsibilities of OPD under Attorney General Ashcroft?

Answer: Yes.

Question (d): If so, what have you learned are the plans for OPD?

Answer: As I recall, the Attorney General said to me that the essence of leadership is to redefine the possible and that he expected me, if confirmed, to lead the Office of Policy Development as a "think tank" to generate ideas and implement policies to improve the administration of justice.

Question: If the news reports are correct, much of the work of vetting judicial nominees so far has been done by the Office of the White House Counsel. Could you tell us what you understand your role and the role of the Department of Justice will be with respect to the screening and evaluation of candidates for nomination to the federal bench?

Answer: I understand that the screening and evaluation of judicial candidates would be a shared responsibility among various components of the Administration, including the Office of Policy Development.

Question 5: If OPD retains a role in judicial selection, will you continue the practice followed over the last eight years of involving career attorneys from all over the Department of Justice in the process of evaluating candidates for the bench?

Answer: Although I am not familiar with the practice followed over the past eight years, if I am confirmed and to the extent that the Office of Policy Development has a role in judicial selection, I intend to seek help as needed and when appropriate from attorneys in other components of the Department of Justice.

Question 6: If OPD retains a role in judicial selection, and if the results of your office's evaluation of a candidate for the federal bench shows that he or she does not have the qualifications or the temperament to be a United States District Court or Appellate judge, what action will you take?

Answer: If I am confirmed and to the extent that the Office of Policy Development has a role in evaluating candidates for judicial office, the results of the Office's evaluation of any particular candidate will be conveyed using the proper channels within the Department of Justice and the Administration.

Question 7: On the CNN talk show "Burden of Proof" which aired on February 12,1999, right after President Clinton's acquittal by the Senate, you said that you thought that the impeachment process had "worked great." What lessons do you think we learned from the Clinton impeachment and, if we had it to do over again, what do you think we should do differently?

Answer: As I explained, "What the message is, is that the process worked, that the two-thirds safeguard [in] the Constitution is there for a reason, as Abbe noted, and that it takes a much larger consensus across party lines in order to do something of this magnitude, that is to remove a president." Because impeachments are necessarily and thankfully rare and unique, I do not think it proper for me at this time to make generalizations about the experience or to draw conclusions as to what should be done differently in the future. Any generalizations or conclusions should be made by a future Congress contemplating such action.

Question 8: You also opined various times on talk shows that the constitutional phrase "high crimes and misdemeanors" had no fixed meaning and that it was essentially up to the Congress to define what was an impeachable offense. Do you believe that there are any constitutional limitations on the conduct for which a President may be impeached? Could a President constitutionally be impeached, for example, for littering, if the majority of the House of Representatives were so inclined?

Answer: I have stated that "the standards for high crimes and misdemeanors is undefined and illdefined for a purpose: to let each generation, let each Congress make the determination, as necessary as befits the particular circumstances, as to what constitutes an impeachable offense." I explained that, in making that determination, Congress is guided by "the history of tradition and practice of Congress in past proceedings." Furthermore, I stated that the power of Congress to define "high crimes and misdemeanors" is substantially circumscribed by the need to achieve consensus in the House of Representatives and by the requirement that conviction be approved by a two-thirds vote of the Senate. In my view, these structural constraints would preclude impeachment for trivial offenses.

Question 9: On several occasions, you praised the work of former Special Prosecutor Kenneth Starr, although you opined that the special prosecutor law, which has now expired, was unconstitutional. Putting aside the question of the statute's

constitutionality, are there any aspects of Kenneth Starr's investigation that you believe were handled inappropriately?

Answer: On February 25, 1998, in an interview with CNBC news, I stated that I did not think that it was appropriate for Judge Starr to conduct a grand jury investigation into whether President Clinton's supporters were disseminating rumors to the media about employees of the Office of Independent Counsel. The full transcript of that interview was submitted to the Committee as item 144 in the attachments to Appendix C (Media Appearances) in response to Part I, Question 12 (Publications).

Question 10: In October of 1999, you testified before the Subcommittee on the Constitution in the

House of Representatives concerning The Civic Participation and Rehabilitation Act of 1999, which would have restored the rights of persons convicted of felonies to vote in federal elections. You opined that the bill would have unconstitutionally infringed the powers of states to prescribe voter qualifications. However, you suggested that it would be constitutional to enact such a law if Congress found that state disenfranchisement laws were motivated by racial animus.

Question (a): Can you give us some specific examples of the kind of evidence you believe would be sufficient to make the required showing of racial animus?

Answer: The Supreme Court in Hunterv. Underwood, 471 U.S. 222 (1985), unanimously invalidated a provision of the Alabama Constitution of 1901 which disenfranchised persons convicted of a misdemeanor "involving moral turpitude." That decision was based on historical evidence in the record showing that the purpose of the 1901 convention was to "establish white supremacy" in the state. See *Id.* at 229–32.

Question (b): Assume that the bill had been enacted in a form that you believed was unconstitutional. Would you nevertheless, as a representative of the Department of Justice, argue in support of the law's constitutionality when it was challenged in the courts?

Answer: To the best of my recollection, I did not opine that the bill, as then drafted, was unconstitutional. Rather, I testified that, based on the Court's precedents, it would not "likely withstand judicial scrutiny." Although other components within the Department of Justice are responsible for representing the United States in court, if called upon I would accord laws enacted by Congress the requisite presumption of constitutionality and present reasonable, good faith arguments in their defense.

Question 11: In a law review article on the pre-emption doctrine published last year, you argued for "respecting" the limits of congressional power under the Commerce Clause as a means of insuring that the rights of states are preserved. As an attorney for the Department of Justice, you or those working under your supervision, may be called upon to defend the constitutionality of statutes that some would argue exceed Congress' power under the Commerce Clause. Would you be prepared to zealously represent the interests of the United States and defend the constitutionality of statutes even if you personally believed that they exceeded the congressional Commerce Clause power?

Answer: Although other components within the Department of Justice are responsible for representing the United States in court, if called upon I would accord laws enacted by Congress the requisite presumption of constitutionality and present reasonable, good faith arguments in their defense.

Question 12: You were reported as saying in a 1998 article in the *Legal Times* that government attorneys do not have any attorney-client privilege because their client is the United States. What rules of confidentiality do you believe are applicable the work product of government

attorneys?

Answer: The article, From the Shadow of War to the Ivory Tower: The Incredible Journey of Georgetown's Viet Dinh, *Legal Times*, Sept. 7, 1998, at S42, reported comments I made discussing In re Lindsey, 148 F.3d 1100 (D.C. Cir.1998), and In re Grand Jury Subpoena Duces Tecum, 112 F.3d 910 (8th Cir. 1997). As you know, the courts held that the governmental attorney-client privilege did not protect information about possible criminal conduct in those cases. Those decisions were based on the strong governmental interest in exposing wrongdoing by government officials and the requirement that federal employees, including government lawyers, report evidence of federal criminal offenses whenever such evidence comes to them. See 28 U.S.C. § 535(b).

Outside of these specific contexts where the government's interest in criminal investigations outweigh the need for governmental confidentiality, I believe that the work product of government attorneys may be protected by, among other things and

depending on the context, the attorney-client privilege, see *Coastal States Gas Corp.* v. *Department of Energy*, 617 F.2d 854, 863 (D.C. Cir. 1980); exemption five of the Freedom of Information Act, see 5 U.S.C. §552(b)(5); and the deliberative process component of executive privilege, see *United States* v. *Nixon*, 418 U.S. 683 (1974).

Question 13: Another issue with respect to government privileges is whether the President has a privilege to prevent Secret Service agents from testifying about conversations they overhear while protecting him. On CNN's "Burden of Proof" talk show on July 15, 1998, you stated that the District of Columbia Court of Appeals had correctly refused to recognize such a privilege when Secret Service agents were subpoenaed by Independent Counsel Kenneth Starr. The Supreme Court later denied certiorari in that case. Would you as an attorney for the government be willing to argue for the existence of a Secret Service privilege even though you personally disagree with that argument?

Answer: I stated that "the appellate court is foursquare with the teachings of the Supreme Court up to this point." Although other components within the Department of Justice are responsible for representing the United States in court, if called upon I would present reasonable, good faith arguments to support positions of the United States.

Question: Assuming that the Supreme Court would decide not to recognize a Secret Service privilege, there has been some discussion of creating a presidential protection privilege by legislation in the interests of insuring the President's personal safety. Would you support the enactment of such a law?

Answer: I believe that the President's personal safety is of paramount importance to the United States. Although it would be improper for me to state a policy position on such a measure in the abstract, without the benefit of careful study, and without soliciting the views of affected components of the Department and other agencies within the Administration, if confirmed I would work with you and the Congress on this important matter.

Question 14: In a chapter entitled "Multiracial Affirmative Action" published in the book Debating Affirmative Action, you argued that affirmative action was appropriate as a remedy for past injustice but not as a means of achieving racial diversity. You argued that the latter basis for affirmative action was inappropriately supplanting the former in our society. However, the February 18, 1997 edition of The Harvard Crimson which reported on a panel discussion in which you participated at Harvard, stated that you had expressed satisfaction with the status quo as to how affirmative action is currently practiced in this country.

Question (a): Can you explain your current views on affirmative action?

Answer: Affirmative action means many different things to different people. To some, affirmative action may mean outreach or recruitment programs, and to others, it may mean numerical quotas. I have not endeavored to adopt or articulate a personal definition of affirmative action. My views on governmental racial classifications were articulated in Races, Crimes, and the Law, 111 *Harvard Law Review* 1289, 1294 (1998). As I wrote, "The Equal Protection Clause of the Fourteenth Amendment, as interpreted by the Supreme Court, guarantees an individual the right to be free from governmental discrimination on the basis of race, except when racial classifications are narrowly tailored to further a compelling governmental interest. See, e.g., *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200, 228-30, 237 (1995)."

Question (b): Would you give some concrete examples of circumstances where you believe affirmative action would be justified?

*Answer:*In discussing governmental interests sufficiently compelling to justify governmental classifications on the basis of race, I wrote: "The classic example of such a justification is one that seeks to remedy past violations of other individuals' right of equal protection." Races, Crimes, and the Law, 111 *Harvard Law Review* 1289, 1295 (1998). As the Supreme Court has stated, whether particular racial classifications are constitutional depends on a host of contextual factors-including, but not limited to, the nature and strength of the government's interest, the history of the applicable jurisdiction or agency, the scope of the relevant policy, and the availability of race-neutral alternatives. Given the context-specific nature of the inquiry, I am unable to provide examples in the abstract.

Question 15: In your 1999 remarks at a symposium on the "Role of Legal Institutions in the Economic Development of the Americas," you wrote about what you termed, "the danger of runaway judges." You wrote that, "[a]n independent judiciary . . . carries the danger that the independence will be misused." You go on to say, "[t]o prevent such abuse of independence, there need to be mechanisms that restrain the judiciary from exercising arbitrary power." However, you leave it there, with no

specific recommendations. What mechanisms do you propose to prevent "runaway judges?"

Answer: My remarks and the symposium at which they were delivered concerned legal institutions in countries other than the United States. I stated that "[a]s we build new or modify existing judicial and legal systems, the challenge then is for us to consider the tension between independence and restraint and to find the proper balance between the two." I cannot specify in the abstract the institutional arrangements or modifications that would strike the proper balance and otherwise be appropriate for any particular place or polity.

Question 16: In your 1997 article, "Forming and Reforming Wants," you write about what you believe are the problems of associated with a public desire for status, or luxury, goods. You write that these desires have a "damaging potential," and you propose a solution of "restrictions on advertisements that only stimulate human impulses for," such luxury items.

Question (a): Could you explain how you reconcile a call for this sort of content based regulation of commercial speech with the First Amendment?

Answer: As I stated in the article, "True information about the market serves a lubricating function that is an essential market mechanism for maximizing intrinsic preferences-dissemination of such information should be encouraged. *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 765 (1976)." The balancing of important policy objectives and vital commercial speech interests is a critical prerequisite to any specific proposal. As you know, since Virginia State Board, the Supreme Court has continued to refine its commercial speech jurisprudence, and any specific proposal would need to hew to the doctrinal lines drawn by the Court.

Question (b): In the article, you also say that, "[t]ranscendent ideals," such as trying to curtail our desires for status goods, "find their best expression in religious beliefs, " and that, "religious teachings—for example, the designation of pride and envy as prohibited sins—[could] serve to foster the market's true potential." Would you propose to insert religion into public life in a way that would make us better citizens and more likely to act in a more civically positive way?

Answer: I proposed to promote civic virtue in the public culture, not through governmental coercion, but through a gentle process of cultivation—what Alexis de Tocqueville called "the slow and quiet action of society upon itself." I recognized that there are often parallel virtues fostered by different institutions toward the goal of a genuine community. The church and the state are important institutions, among others, in this endeavor. The interaction between them is governed by Exercise and Establishment Clauses of the First Amendment and by the Supreme Court's complex and voluminous jurisprudence interpreting those clauses.

Question 17: In your 1999 article, "What is the Law in Law and Development," you wrote that, "it seems hypocritical or at least complacent for Western scholars and institution builders to implore developing countries to promote and enforce the rule of law." (a) Exactly what did you mean by that? (b) Is there some better alternative to the rule of law that we ought to be promoting among developing nations?

The point of the article was precisely to defend the rule of law as a tool for economic development. The need for such a defense stems from the fact that influential theorists have launched a powerful intellectual offensive against "the neutrality of law and legal processes that serve as the foundation of the rule of law." The passage quoted in your question reflects my view that, in light of the theoretical challenges, it would be "hypocritical or at least complacent" for us to encourage the adoption of the rule of law paradigm without also justifying and defending that paradigm.

Question 18: A little further on in the same article, you write that, "it seems perfectly reasonable for critics to question whether the rule of law has any vitality in shaping the institutions of governance." Are you saying that the rule of law has no life left in it? What do you mean?

Answer: My article emphatically rejected any impulse either to avoid challenges to the rule of law or to abandon the rule of law. Instead, I provided a theoretical defense of law as a tool for economic development and sketched "a more comprehensive approach to promoting, maintaining, and enforcing the rule of law through institutions that perform the three basic functions of legislation, execution, and adjudication." The article concluded with a call to "make law work for development" by merging techniques with ideals in order to promote the rule of law.

Question 19(a): Have you done any consulting work, formal or informal, for the Department of Justice and/or the Office of Policy Development since the beginning of the Bush Administration?

I have not done any work for the Department of Justice and/or the Office of Policy Development since the beginning of the Bush Administration. I have discussed with

the Office of Presidential Personnel and the Office of the Attorney General the qualifications of candidates to be deputies in the Office of Policy Development.

Question 20: Do you know anything about the wholesale transfer of career OPD employees working on Violence against Women issues?

Answer: I did not play any role in nor was I consulted about any personnel transfer from the Office of Policy Development. I was informed after the fact of an administrative change in personnel, but I do not know specifically who was transferred or on what issues they were working.

Question (a): Do you plan on making any further personnel changes?

Answer: Out of respect for the Senate's role in providing advice and consent on my nomination, I have not been involved in the operation of the Office of Policy Development and have not formulated any plans with respect to personnel.

Question 21: What should we make of the transfer of career people working on VAWA issues for the future of a coordinated policy on the crucial issue of Violence of Women?

Answer: The Attorney General has stated publicly his strong commitment to combating violence against women and to enforce faithfully and vigorously the Violence Against Women Act. If confirmed, I would work toward a coordinated and effective policy to advance this important mission, whatever the administrative personnel structure may be.

Question 22: You are familiar with the Supreme Court's December 9 stay and its December 12 per curiam decision in the recent case of *Bush* v. *Gore*—you followed the case closely as a member of Law Professors for Bush-Cheney, and as a legal commentator for CNN. The Supreme Court acknowledged that, "the problem of equal protection in election processes generally presents many complexities." Where does the "logic" of the Court's equal protection holding go in your view? If it was a violation of equal protection to evaluate ballots within Florida as ordered by the Florida Supreme Court in accordance with the standards set by the Florida legislature and under the supervision of a Florida Circuit Court Judge, does that suggest that the constitutional right to equal protection might require national standards for voting and the counting of votes?

Answer: Seven Justices of the Supreme Court agreed that "[t]he recount process, in its features here described, is inconsistent with the minimum procedures necessary to protect the fundamental right of each voter in the special instance of a statewide recount under the authority of a single state judicial officer." *Bush* v. *Gore*, 531 U.S. 98, 121 S.Ct. at 532 (2000) (per cunam); see also *Id.*, 121 S.Ct. at 545 (Souter, J., dissenting). However, the Court made clear that its "consideration is limited to the present circumstances, for the problem of equal protection in election processes generally presents many complexities." *Id.*, 121 S.Ct. at 532 (per curiam). Given the contextual complexities of the problem of equal protection in election processes, I am unable to generalize about the logical or practical reach of the Court's decision in the abstract.

Question 23: Do you consider that decision of the United States Supreme Court to be an example of thoughtful and prudent judicial decision making, judicial activism, or what you have called the exercise of arbitrary power by the judiciary?

Answer: I think all the Justices, including the seven who agreed with Petitioners' equal protection claim and those who disagreed with all or part of the Court's reasoning, exercised their judgment in a thoughtful and prudent manner given the nature of the case, the rulings below and the constraints of time.

Question 24: In 1999, on behalf of a group called the "Liberty Legal Institute," you submitted a friend of the court brief in a case called *Santa Fe Independent School District* v. *Doe*, a case about the constitutionality of school sponsored prayer. In its 6–3 opinion, the Supreme Court held that the delivery of an invocation before high school football games which was on school property, at school-sponsored events, delivered over the school's public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encouraged public prayer, violated the Establishment Clause of the Constitution. You argued that it was constitutional. Do you still believe so?

Answer: As counsel for certain Texas public school students, their parents, and the Liberty Legal Institute as amici curiae in support of the Sante Fe Independent School District, I presented a good faith and reasonable argument advancing what I believed to be the correct reading of contemporary Supreme Court precedents applied to the facts of that case. The Supreme Court disagreed with that argument, and I accept the Court's decision.

Question 25: You also wrote an amicus brief for the Liberty Legal Institute in the *Good News* case, which the Court is now considering. That cases involves an adult-led religious group for students that wants to meet right after school, and involves students as young as 6 years old, and up to 12. You contend that because other, non-religious groups can meet at the school, that the Good News group should be able to meet as well; you also argue that "the impressionability" of the young schoolchildren is "irrelevant" to the establishment clause/endorsement analysis. In the *Sante Fe* case, in which you were on the losing side, the Court said the relevant reasonable observer was "an objective Santa Fe high school student," even though community members could attend the football games or graduations involved. Your view would radically change the Establishment Clause's interpretation and make it much easier to improperly promote or push particular religious practices and beliefs on young, impressionable schoolchildren in our public schools. Is that the view of the Establishment Clause you will be taking to the Department of Justice?

Answer: As counsel for the Liberty Legal Institute as amicus curiae in support of the Petitioners, I presented a good faith and reasonable argument advancing what I believed to be the correct reading of extant Supreme Court precedents applied to the facts of the case. The matter is currently pending before the United States Supreme Court, and I will abide by the Court's disposition of the case.

Question 26: At your hearing you mentioned that you have gotten into, "many, many disagreements," with other members of the Federalist Society. Could you give me some examples of the sorts of disagreements you have been in with other members of the Federalist Society?

Answer: It is the norm and the expectation for me, as a legal academic, to engage in ongoing discussions about law and public policy. Such candid and good-faith discussions involves constant disagreements among people who think critically about issues of mutual interest. As I testified, the Federalist Society counts among its members many who thinks critically about issues of law and public policy and who holds different views on the issues. Some examples of recent disagreements I have had with people whom I believe to be Federalist Society members include: whether the Supreme Court's recent preemption cases are at odds with its cases interpreting Article 1, section 8 or the Eleventh Amendment of the U.S. Constitution, see When Uncle Sam Steps In, *Legal Times*, June 19, 2000, at 66; whether the Constitution admits of a presumption against federal preemption of state laws, see Whose Call Is It? Supreme Court Should Rethink Preemption Law, *Legal Times*, Dec. 6, 1999, at 50; and whether adopting a presumption against federal preemption of state laws is a proper way to respect the constitutional division of power between the federal and state governments, see Reassessing the Law of Preemption, 88 *Georgetown Law Journal* 2085 (2000).

Question 27: At your hearing, you said that "all Americans—regardless of race, class, sex, religion, socioeconomic status, or any other status—should enjoy the security that comes with the faithful and vigorous execution of the law." You did not list sexual orientation. Do you believe that people and governments should be able to discriminate on the basis of sexual orientation?

Answer: I fully intended for sexual orientation (and ethnicity, for that matter) to be included in the phrase "any other status" in the above-quoted sentence. All Americans should enjoy the security that comes with the faithful and vigorous execution of the law.

Question 28: Senator Kennedy, along with 51 co-sponsors, introduced a hate crimes bill in the Senate earlier this year (S. 625). The bill covers the he incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of the victim. Please read the bill and tell me whether you (a) support the passage of this bill? (b) believe it is constitutional, as written? (c) believe this bill represents good public policy?

Answer: If confirmed, I would work to fulfill the Attorney General's pledge to take all reasonable and appropriate steps to combat hate crimes at the federal level. I welcome the opportunity to work with Senator Kennedy and other Senators, in support of the Attorney General and the President, to study the important issue of hate crimes. Although it would be improper for me to state a policy position on the legislation without the benefit of careful study and the views of others in the Department and the Administration, if confirmed I would work to provide expeditiously a view on the constitutional and policy implications of this and other legislation.

Question 29: What about the Employment Non-Discrimination Act that Senator Kennedy has sponsored in past Congresses, which outlaws discrimination in employment on the basis of sexual orientation. Could you read the bill and tell me whether you (a) support the passage of this bill? (b) believe it is constitutional, as written? (c) believe this bill represents good public policy?

Answer: As I testified, I believe that all Americans should enjoy the equal protection of the laws. I have not had the opportunity to study carefully the proposed legislation and to solicit the views of others in the Department and the Administration. Without such review and consultation, it would be improper for me to comment on the constitutional, legal and policy implications of the measure. I welcome the opportunity, if confirmed, to study this issue further and to work with Senator Kennedy and others on specific legislative initiatives in this area.

Question 30: You talked at your hearing about your background as an immigrant to the United States. I would like to ask you a few questions about pressing legal issues related to immigration and immigrants:

Question (a): The Supreme Court has recently heard arguments in two cases challenging aspects of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act and its implementation by the Department of Justice. In the IIRIRA, Congress broadened the definition of crimes that prompt deportation, and applied that definition retroactively. As a result, many legal residents of the United States have been removed or face removal based on relatively minor crimes they committed prior to the passage of this law. Some face removal for crimes for which they did not even serve time and to which they plead guilty with the understanding (correct at the time) that such a plea would have no effect on their immigration status. Do you believe such a retroactive application of the law accords with constitutional principles? Would you support efforts to reduce or eliminate the retroactive effect of this legislation?

Answer: I agree with the Attorney General that it is appropriate to study the HRIRA carefully and to work with the President and the Congress toward any reforms necessary to make the immigration laws more equitable, effective and humane. Like the Attorney General, I am troubled by some of the stories that have emerged as a result of the IIRIRA. I know that there have been legislative and administrative attempts to address these concerns, and if confirmed I would work with the Attorney General, the President and the Congress to find ways to address them, while allowing for the swift removal of serious or violent criminals.

Although I do not think it appropriate for me to comment on matters that are the subject of pending litigation, if confirmed I would examine carefully the constitutional issues raised by retroactive application of the IIRIRA in light of guidance given by the Supreme Court in the *INS* v. *Enrico St. Cyr*.

Question (b): The other issue the Supreme Court is considering relates directly to the Justice Department's interpretation of the IIRIRA. The Justice Department has interpreted IIRIRA as precluding all habeas review and most all direct review of removal orders based on past criminal activity. It seems to me that this position flies in the face of our shared commitment to due process and our history of more than a century of providing habeas review before expelling a legal United States resident from the country. Does the position that the Justice Department has taken since passage of this act concern you? Do you believe that legal permanent residents should receive the opportunity of judicial review before being removed from the country?

Answer: I have a strong commitment to ensuring that the laws relating to immigrants to this country are fairly and properly enforced. I do not think it appropriate, however, for me to comment on matters that are the subject of pending litigation. If confirmed, I would study carefully the issues relating to direct and habeas review of removal orders based on past criminal acts under the BRIRA, as well as the Department's position on these issues, in light of the guidance provided by the Supreme Court in Calcano-Martinez v. INS and INS v. Enrico St. Cyr cases.

Question (c): I have been concerned about the government's use of expedited removal since it first passed in 1996. As you may know, under expedited removal an alien can be removed from a U.S. port of entry on the say-so of an INS inspections officer. Aliens who have to flee their countries without obtaining a passport, or even those who have valid papers that the INS officer simply suspects are invalid, face an immediate return to the country from which they came without opportunity for administrative or judicial review. The immigration subcommittee is having a hearing dealing with this issue this week, and I plan to introduce a new version of legislation I introduced with Senator Brownback in the past Congress that would restrict the use of expedited removal to times of immigration emergencies. As an American who came here as a refugee, does the use of expedited removal trouble you? Would you be willing to support legislation that would restore procedural protections to those seeking entry into the U.S.?

Answer: I care deeply about the laws which affect the manner in which aliens are admitted to the United States; my family and I were welcomed to this country as immigrants and refugees. Although it would be improper for me to comment on spe-

cific legislation without the benefit of careful study and the views of others in the Department and the Administration, I agree with the Attorney General that we should treat those fleeing persecution with compassion and fairness. The Attorney General's statement that America was founded as a beacon of hope to the world rings especially true to me, and I share his commitment to continue this proud heritage of hope, opportunity, and freedom. I thank you and Senator Brownback for your leadership on these matters, and I look forward, if confirmed, to working with you and others to ensure that our immigration laws are administered fairly and humanely.

Responses of Viet D. Dinh to questions submitted by Senator Biden

Question 1: I introduced the Violence Against Women Act, which the Congress first passed in 1994 and reauthorized last year. The Act has been very successful in aiding states, local governments, tribes, and nongovernmental organizations combat domestic violence, rape, sexual assault, and child abuse.

What are your priorities regarding the Violence Against Women Act? What do you see as the strengths and weaknesses of the implementation of the Act thus far? What policies do you plan to develop for the Department's implementation of the Act in the future?

Answer: I share the Attorney General's stated commitment to fighting domestic violence and all forms of violence against women, and to enforcing vigorously the Violence Against Women Act. Like the Attorney General, I am committed to working to ensure that the laws in this area are enforced fully and fairly.

If confirmed, I will take direction from the Attorney General in setting priorities regarding the Violence Against Women Act. Although I cannot comment on specific implementation issues and policy proposals without further review of the Act, its history, and the Department's current work in this area, if confirmed I will closely study these issues and will work with the President, the Attorney General, and the Congress to develop policies regarding its future implementation.

Question 2: The funding provided by the Violence Against Women Act is vital to its success. Appropriations for the Act fund such grants and programs as STOP grants, rural domestic violence and child abuse enforcement, the national domestic violence hotline, and battered women shelters. While more than half of the funding under the Act goes to the Justice Department, most of the remainder goes to fund the Act's programs and grants administered by the Department of Heath and Human Services.

Given the authorization levels set by the Congress to fund the grants and programs of the Act, what are your views regarding the need for appropriations? Would you support a five-year reauthorization of the Violent Crime Reduction Trust Fund to support funding of the Act?

Answer: The Attorney General has stated that under the President's budget for Fiscal Year 2002, key Department of Justice programs to fight violence against women will receive full funding, a $102.52 million increase over 2001. The Attorney General has also announced that the Justice Department is awarding $55 million to states as the first round of this year's formula grants to prevent and respond to violence against women. I agree with his statement that "[w]e must continue to provide our communities with the resources to hold offenders accountable and to meet the needs of victims," and I share the Attorney General's commitment to enforcing the Violence Against Women Act. If confirmed I will work to assist him in vigorously enforcing any federal legislation enacted toward that end. My position on the reauthorization of the Violent Crime Reduction Trust Fund would require closer study of the matter and consultation with others in the Administration and the Department of Justice, and it would be inappropriate for me to comment without the benefit of such review and additional views.

Question: What do you see as the relationship between the Act's law enforcement programs funded by the Justice Department and the Act's social service programs funded by the Department of Health and Human Services? Given your view of this relationship, what policies should be developed regarding the implementation of the Act as a whole?

Answer: I share the Attorney General's strong public commitment to faithful and vigorous enforcement of the Violence Against Women Act. Although I cannot comment on the specific relationship between the law enforcement programs and the social service programs of the Act without further review of the issues, if confirmed I will study these issues closely and work with Congress, the Attorney General and

the staff of the Department of Justice and the Department of Health and Human Services to develop appropriate policies to coordinate effective implementation of the Act as a whole.

Question 3: It has recently been reported that four staff attorneys who worked on violence against women concerns have been reassigned from the Office of Policy Development to the Office of Justice Programs. I understand that these attorneys also acted as contacts on these issues for other components of the Department as well as for those making inquiries from the outside.

How do you plan to staff violence against women issues at the Office of Policy Development? How many attorneys should be working on the Violence Against Women Act, either full or part time? If the Administration has indeed made violence against women a priority, then will the Office of Policy Development have a number of staff members developing policies on this issue? What suggestions do you have for staffing the issue of violence against women among the front leadership offices outside the Office of Policy Development such as, for example, the Offices of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or Legislative Affairs, and how do you think these various front offices should coordinate with each other on this issue?

Answer: If confirmed, I will work with the Attorney General, the Deputy Attorney General, the Office of Justice Programs and the other offices within the Department to ensure that adequate staff resources are dedicated to carry out the Attorney General's stated commitment to faithful and vigorous enforcement of the Violence Against Women Act. Because I have not assumed any duties of office out of respect for the Senate's role in providing advice and consent on my nomination, I am not in a position to comment on the staffing of particular offices or coordination among them. I welcome the opportunity to address this important issue if confirmed.

Question 4: I introduced a bill to make the Violence Against Women Office a permanent, separate component within the Department.

What are your views of my bill?

Answer: I share the Attorney General's strong public support for the Violence Against Women Act and for full funding in order to achieve its objectives. Like the Attorney General, however, I am reluctant to express a view on the creation of new statutory entities within the Department until I have had the chance to study the performance of the entities which exist now and to consult with others within the Department and the Administration. I look forward to working with you to make this program as fully effective as possible.

Responses of Viet D. Dinh to questions submitted by Senator Feinstein

Question 1: I authored legislation that was signed into law in 1999 that mandates up to 20 years in prison for anyone who distributes bombmaking information knowing or intending that the information will be used for a violent federal crime [18 U.S.C. 842(p)]. However, while this law has been on the books for over 20 months, it has apparently not been enforced. As far as I know, federal prosecutors have not charged a single person under the statute. In the meantime, there have been at least 15 incidents reported in the press in which individuals have obtained bombmaking information from the Internet or elsewhere and used that information to commit serious crimes. I wrote Attorney General Ashcroft on February 2 and on March 13 asking about Justice Department enforcement of this law but I have not received a response to either letter.

If confirmed, will you see that I get the courtesy of a response to my inquiries on this matter?

Answer: Yes.

Question 2: As you may know, in the last Congress, Senator Kyl and I introduced a proposed constitutional amendment to provide rights for crime victims. President Bush endorsed the amendment, and thenSenator John Ashcroft, a member of the Judiciary Committee, voted for the proposed amendment in Committee. With the assistance of Professor Larry Tribe and other constitutional scholars, we have recently redrafted the amendment to meet concerns expressed by some Senators. A copy of this new and improved amendment has been provided to the Justice Department.

If confirmed, would you argue that the Justice Department, and the Administration, should support a constitutional amendment to protect the rights of crime victims?

Will you make the consideration of this amendment a top priority?

Answer: I share the Attorney General's public commitment to protecting the rights of crime victims and the President's view that a constitutional amendment may be a promising means to advance this goal. I welcome the opportunity to work with you on this important issue and, if confirmed, I would carefully study the proposed constitutional amendment as re-drafted by you, Senator Kyl and others. My position on the amendment would be informed by such close study and by the views of the President, Attorney General, and the staff of the Department of Justice who are currently reviewing the proposal.

Question 3: Identity theft has emerged as one of our nation's fastest growing crimes. The Federal Bureau of Investigation has estimated that 350,000 identity theft crimes occur annually. And the number is growing.

If confirmed, how would you envision the Department of Justice's role in combating this growing criminal enterprise?

Answer: As the statistic you cite suggests, identity theft is an important issue affecting many Americans. This problem warrants further study and consideration by the Administration and the Department of Justice. If confirmed, I would welcome the opportunity to work closely with you to ensure that the necessary research and consultation is done to develop strategies for combating this crime.

Question 4: In some particularly distressing cases of identity theft, victims not only have their identities stolen, but then have crimes committed in their names by identity thieves. Victims then have to deal with having to clear their records of mistaken arrest warrants and convictions. I have asked the Department of Justice for assistance in developing a mechanism for clearing the records of identity theft victims from false charges.

Will you ensure that the Department of Justice actively works with Senator Kyl and myself to assist these victims?

Answer: Yes, I most certainly will.

Question 5: For a host of reasons, the nexus between the activities of foreign terrorist organizations and U.S. criminal law has become closer. In many cases, information of investigative or evidentiary value in a U.S. criminal investigation is also of intelligence value.

How do you foresee ensuring that the Department of Justice works closely with the Intelligence Community to address this issue?

Answer: The Attorney General has stated that combating terrorism is a high priority for the Department of Justice. I understand that the Office of Policy Development has traditionally performed a coordinating function among various components of the Department and among federal agencies on important issues of criminal justice. If confirmed, I would take direction from the President and the Attorney General to ensure that this important role is fulfilled in a manner that best advances efforts to prevent, investigate, and prosecute cowardly crimes perpetrated by domestic and international terrorists.

Question 6: In some instances, the ability to share information with the Intelligence community is limited only by the ability—or inability—of law enforcement to recognize intelligence information and know to whom it should be given.

Will you work to see that prosecutors and investigative agents have the training and resources to allow them to do this?

Answer: Yes, if I am confirmed.

Question 7: In other instances, statutory limitations restrict or condition the ability of law enforcement officials to share intelligence information even if they recognize it as such (for instance, Grand Jury information and information gathered under Title III wiretap authority). There are reasons for these limitations, but some have argued that changes need to be considered.

Do you have plans to review current statutes to determine whether they should be revised?

Answer: Although I have not considered this issue carefully, I welcome the opportunity, if confirmed, to work with you and others to undertake necessary and appropriate review of relevant statutes, regulations, and practices.

Question 8: In 1999, the Senate passed my amendment to ban the importation of large capacity ammunition feeding devices. Domestic manufacture of these devices is already prohibited, but millions have been approved for importation over the last few years.

Would you support this legislation?

Answer: I have not had the opportunity to study carefully the proposed legislation and to solicit the views of others in the Department and the Administration. Without such review and consultation, it would be improper for me to adopt a policy posi-

tion on the measure. I welcome the opportunity, if confirmed, to study this issue further and to work with you and others on this matter.

Question 9: Although .50 caliber sniper rifles can kill a person more than a mile and a half away, can penetrate light armor and even take down a helicopter, and these weapons are not generally suited for sporting purposes, private possession of these weapons is becoming common and is no more regulated than the possession of a .22 hunting rifle.

I have introduced legislation that would classify these guns under the National Firearms Act, which currently regulates the possession of machine guns and sawed-off shotguns, and it is my understanding that the Treasury and Justice Departments have endorsed this idea in the past. Will you continue this support?

Answer: Although I have not had the opportunity to study this issue or the specific legislation, I welcome the opportunity, if confirmed, to work with you on the matter.

Question 10: As you are undoubtedly aware, in United States v. Emerson, a lone federal judge in Texas held that a provision of the Gun Control Act prohibiting certain domestic violence offenders from possessing a firearm violates the Second Amendment. The Department of Justice has appealed this decision on the grounds that the Second Amendment does not confer an individual right to keep and bear arms. This appeal relied on well-settled law going back many decades. In fact, since the Emerson decision itself, several federal courts of appeal, including the conservative Fourth Circuit, have declined to strike down provisions of the Gun Control Act on Second Amendment grounds.

My understanding is that OPD supported the Solicitor General's decision to appeal the lower court decision in Emerson and was heavily involved in the development of the Gun Control Act provision in question. If you are confirmed, will you commit to support the Department's longstanding view that the Second Amendment does not create an individual right to bear arms and that existing federal regulation of firearms is constitutional?

Answer: Although my academic and professional career has not involved substantial consideration of Second Amendment issues, I agree with the Attorney General that the Second Amendment does not prohibit all common-sense gun control measures. I do not think it appropriate, however, for me to comment on matters that are the subject of pending litigation. If confirmed, I would study the issue and assist the Attorney General in vigorously defending gun control measures enacted by Congress whenever there is a good-faith and reasonable basis for doing so.

Responses of Viet D. Dinh to questions submitted by Senator Durbin

Question 1: What are your views on affirmative action, and how do you define affirmative action?

Answer: Affirmative action has many different meanings to different people. To some, affirmative action may mean outreach or recruitment programs, and to others, it may mean numerical quotas. I have not endeavored to adopt or articulate a personal definition of affirmative action. My views on governmental racial classifications were articulated in Races, Crimes, and the Law, 111 *Harvard Law Review* 1289, 1294 (1998). There, I wrote: "The Equal Protection Clause of the Fourteenth Amendment, as interpreted by the Supreme Court, guarantees an individual the right to be free from governmental discrimination on the basis of race, except when racial classifications are narrowly tailored to further a compelling governmental interest. See, e.g., Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 228-30, 237 (1995)."

Question (b): Would you give some concrete examples of circumstances where you believe affirmative action would be justified?

Answer: In discussing governmental interests sufficiently compelling to justify governmental classifications on the basis of race, I wrote: "The classic example of such a justification is one that seeks to remedy past violations of other individuals' right of equal protection." Races, Crimes, and the Law, 111 *Harvard Law Review* 1289, 1295 (1998). As the Supreme Court has stated, whether particular racial classifications are constitutional depends on a host of contextual factors-including, but not limited to, the nature and strength of the government's interest, the history of the applicable jurisdiction or agency, the scope of the relevant policy, and the availability of race-neutral alternatives. Given the context-specific nature of the inquiry, I am unable to provide examples in the abstract.

Question 2: Can you identify any current affirmative action programs by any state or the federal government that you believe are constitutional?

Answer: I have not undertaken a review of current affirmative action programs by state governments and federal agencies. Nevertheless, the Supreme Court has stated that whether particular racial classifications are constitutional depends on a host of contextual factors-including, but not limited to, the nature and strength of the government's interest, the history of the applicable jurisdiction or agency, the scope of the relevant policy, and the availability of race-neutral alternatives. Given the context-specific nature of the inquiry, I am unable to identify any programs that are constitutional or unconstitutional in the abstract, without benefit of further study and review of factual circumstances that may arise in any particular case.

Question 3: As part of identifying and seeking judicial nominees, do you think it's appropriate for the President or the Attorney General to consider the race, ethnicity, gender, or sexual orientation of the nominee in order to promote diversity on the bench?

Answer: The Attorney General has stated that he will continue to work to enhance diversity on the federal bench, and that judicial positions should be equally open to people of all races, religions, genders, sexual orientations, and marital statuses. If confirmed, I would endeavor to help him in this mission in any way I can.

Question 4: As a constitutional scholar, do you understand what President Bush means when he refers to "affirmative access"? If yes, please explain.

Answer: I understand the concept to refer to affirmative and proactive efforts to break down official and subtle racial barriers to ensure effective access, "a fair shot for everyone." As an example, after the courts struck down as unconstitutional the University of Texas' racedependent admissions program, then-Governor Bush signed legislation requiring that the top 10% of graduates from Texas high schools be automatically accepted in any public university in Texas. As a result of this policy, minority enrollment in Texas universities has increased. The President has also promised to eliminate bureaucratic regulations, such as high permitting and licensing fees, that disproportionately hurt minority-owned businesses; to break up federal procurement contracts to allow minority-owned businesses to compete for such contracts or partner as subcontractors with more experiences firms; and to reward companies that make aggressive efforts to involve minority-owned businesses through subcontracting and mentoring programs.

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