

Testimony of  
**The Honorable Viet D. Dinh**

December 4, 2001

Good afternoon, Mr. Chairman and Members of the Committee. Thank you for the opportunity to testify today on the Department of Justice's response to the terrorist attacks of September 11 and our continuing efforts to prevent and disrupt future terrorist activity.

September 11 was a wake-up call to America and, indeed, to freedom-loving people around the world. To ensure the safety of our citizens and the security of our nation against the threat of terrorism, the Department has undertaken a fundamental redefinition of our mission. The enemy we confront is a multinational network of evil that is fanatically committed to the slaughter of innocents. Unlike enemies that we have faced in past wars, this enemy operates cravenly, in disguise. It may operate through so-called "sleeper" cells, sending terrorist agents into potential target areas, where they may assume outwardly normal identities, waiting months, sometimes years, before springing into action to carry out or assist terrorist attacks. And unlike ordinary criminals the Department has investigated and prosecuted in the past, terrorists are willing to give up their own lives to take the lives of thousands of innocent citizens. We cannot wait for them to execute their plans; the death toll is too high; the consequences are too great.

To respond to this threat of terrorism, the Department has pursued an aggressive and systematic campaign that utilizes all information available, all authorized investigative techniques, and all the legal authorities at our disposal. The overriding goal of this campaign is to prevent and disrupt terrorist activity by questioning, investigating, and arresting those who threaten our national security. In doing so, we take care to discharge fully our responsibility to uphold the laws and Constitution of the United States. All investigative techniques we employ are legally permissible under applicable constitutional, statutory and regulatory standards. As the President and the Attorney General have repeatedly stated, we will not permit, and we have not permitted, our values to fall victim to the terrorist attacks of September 11.

Before responding to your questions, I will speak briefly to three areas that are of interest to this committee. First, the Department's detention of individuals since September 11; second, the directive that our Anti-Terrorism Task Forces conduct voluntary interviews of individuals who may have information relating to our investigation; and finally, the Bureau of Prison's regulation to permit the monitoring of communications between a limited class of detainees and their lawyers, after providing notice to the detainees.

With respect to detentions, as of Monday, December 3, there are 608 persons in federal custody on criminal or immigration charges growing out of our investigation into the September 11 attacks. Of that total, 55 currently are being held on federal criminal charges; the remaining 553 are being detained on immigration-related charges. The Department has charged a total of 105 persons for violations of federal criminal law. Some of those indictments or complaints have been filed under seal by order of court. The names and charges against all others have been publicly released. Every one of these detentions is fully consistent with established constitutional and statutory authority. Each of the 608 persons detained has been charged with a violation of either immigration law or criminal law, or is the subject of a material witness warrant issued by a court.

Every one of these individuals has a right to access to counsel. In the criminal cases and in the case of material witnesses, the person has the right to a lawyer at government expense if the he or she cannot afford one. Persons detained on immigration violations have a right to access to counsel, and the Immigration and Naturalization Service provides each person with information about available pro bono representation. Every person detained, whether on criminal or immigration charges or as a material witness, has the right to make phone calls to family members and attorneys. No one is being denied their right to talk to their attorneys.

Under the Immigration and Naturalization Service's generally applicable procedures, detainees enjoy a variety of rights, both procedural and substantive. Once taken into custody, aliens are given a copy of the "Detainee Handbook," which details their rights and responsibilities, including their living conditions, clothing, visitation, and access to legal materials. In addition, every alien is given a comprehensive medical assessment, including dental and mental-health screenings. Aliens are informed of their right to communicate with their nation's consular or diplomatic officers, and the INS will notify those officials that one of their nationals has been arrested or detained. Aliens are permitted access to telephones--which they may use to contact their family members or attorneys--during normal waking hours. Finally, Immigration Judges preside over legal proceedings involving aliens, and aliens have the right to appeal any adverse decision, first to the Board of Immigration Appeals, and then to the federal courts.

Second, let me address the Justice Department's plan to conduct voluntary interviews of individuals who may have information relating to terrorist activity. On November 9, the Attorney General directed all United States Attorneys and members of the joint federal and state Anti-Terrorism Task Forces, or "ATTFs", to meet with certain noncitizens in their jurisdictions, and the Deputy Attorney General issued a memorandum outlining the procedures and questions to be asked during those interviews.

The names of approximately 5000 individuals that were sent to the ATTFs as part of this effort are those who we believe may have information that is helpful to the investigation or to disrupting ongoing terrorist activity. The names were compiled using common-sense criteria that take into account the manner, according to our intelligence sources, in which Al Qaida has traditionally operated. Thus, for example, the list includes individuals who entered the United States with a passport from a foreign country in which Al Qaida has operated or recruited; who entered the United States after January 1, 2000; and who are males between the ages of 18 and 33.

The President and Attorney General continually have emphasized that our war on terrorism will be fought not just by our soldiers abroad, but also by civilians here at home. Last week, the Attorney General announced a new plan to enable our nation's guests to play a part in this campaign. Noncitizens are being asked, on a purely voluntary basis, to come forward with useful and reliable information about persons who have committed, or who are about to commit, terrorist attacks. Those who do so will qualify for the Responsible Cooperators Program. They may receive S visas (or deferred action status) that will allow them to remain in the United States for a period of time. Aliens who are granted S visas may later apply to become permanent residents and, ultimately, American citizens. The Responsible Cooperators Program enables us to extend America's promise of freedom to those who help us protect that promise.

Third, the Bureau of Prisons on October 31 promulgated a regulation permitting the monitoring of attorney-client communications in very limited circumstances. Since 1996, BOP regulations have subjected a very small group of the most dangerous federal detainees to "special administrative measures," if the Attorney General determines that unrestricted communication

with these detainees could result in death or serious bodily harm to others. Those measures include placing a detainee in administrative detention, limiting or monitoring his correspondence and telephone calls, restricting his opportunity to receive visitors, and limiting his access to members of the news media. The pre-existing regulations cut off all channels of communication through which detainees could plan or foment acts of terrorism, except one: communications through their attorneys. The new regulation closes this loophole.

This regulation permits the monitoring of attorney-client communications for these detainees only if the Attorney General, after having invoked the existing special administrative measures authority, makes the additional finding that reasonable suspicion exists that a particular detainee may use communications with attorneys to further or facilitate acts of terrorism. Only 12 of the approximately 158,000 inmates in federal custody would be eligible for monitoring.

In taking this action, the Department has included important procedural safeguards to protect the attorney-client privilege. First and foremost, the attorney and client will be notified in writing that their communication will be monitored pursuant to the regulation. Second, the regulation erects a "firewall" between the team monitoring the communications and the outside world, including persons involved with any ongoing prosecution of the client. Third, absent imminent violence or terrorism, the government will have to obtain court approval before any information from monitored communications is used for any purpose, including for investigative purposes. And fourth, no privileged information will be retained by the monitoring team; only information that is not privileged may be retained.

The Justice Department has two objectives in the war on terrorism: to protect innocent American lives, and to safeguard the liberties for which America stands. We have enhanced our national security by immobilizing suspected terrorists before they are able to strike. And we have respected civil liberties by detaining, on an individualized basis, only those persons for whom we have legal authority to do so. Those whom we suspect of terrorist activities and who are in violation of the law will be prosecuted to the fullest extent with every resource at the Justice Department's disposal.

Since the atrocities of September 11, the Department of Justice has worked hand-in-hand with members of this Committee in our common effort to protect innocent Americans from additional terrorist attacks. I thank you for this unprecedented cooperation, and we look forward to continuing our partnership. I would be happy to answer any questions that you may have.