

**Statement of Senator Edward M. Kennedy
Senate Confirmation Hearing
May 6, 2003**

Today we consider the nominations of Michael Chertoff, nominee to the United States Court of Appeals for the Third Circuit, Consuelo Maria Callahan, nominee to the United States Court of Appeals for the Ninth Circuit, and Justice Scott Coogler, nominee to the United States District Court for the Northern District of Alabama.

As with all nominations to the federal courts, it is important that this Committee fulfill its constitutional duty to review the nominees records thoroughly. We must assure ourselves that the nominees have the qualifications, temperament, and commitment to enforcing the constitutional and federal statutory protections that are central to our American democracy.

Justice Coogler has served for the past four years as a judge on the State Court in Alabama.

Justice Consuelo Callahan is currently an Associate Justice on the Third Appellate District in California. She has a long history of public service in California. She has served as a judge on the

California Superior Court, and as Supervisory District Attorney and as Deputy District Attorney in the San Joaquin County District Attorney's Office in California.

Mr. Chertoff has a fine reputation as a prosecutor, special counsel, and defense attorney. In his role as Assistant Attorney General in charge of the Criminal Division, certain aspects of his performance have impressed me. For example, in November 2001 Mr. Chertoff testified before our Committee "that the history of this Government in prosecuting terrorists in domestic courts has been one of unmitigated success." His expression of confidence in the ability of our criminal justice system to deal with terrorist suspects has played an important role in the debate over the need for military tribunals.

However, other policies and decisions involving criminal justice matters during Mr. Chertoff's tenure as Assistant Attorney General have raised fundamental concerns about the Constitution and due process. In particular, I am concerned about the Justice Department's advocacy on behalf of the Feeney Amendment to S.151, the AMBER Alert child-abduction legislation. The Feeney Amendment has nothing to do with protecting children, and everything to do with handcuffing judges and eliminating fairness in

our federal sentencing system. As Chief Justice Rehnquist has said, the Feeney Amendment has the potential to “do serious harm to the basic structure of the sentencing guideline system and . . . seriously impair the ability of courts to impose just and responsible sentences.”

I look forward to hearing from the nominees about these and other important issues.