

A consensus choice for attacks on democratic rights

Bush nominates Chertoff to head Homeland Security Department

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In the wake of the spectacular collapse of Bush's nomination of Bernard Kerik as the new head of the Department of Homeland Security, the administration has selected a replacement: Michael Chertoff. Like Kerik, Chertoff is an appropriate choice for an agency dedicated to deepening the attacks on the democratic rights of the American people.

Chertoff's main qualification for the job is his record as assistant attorney general in charge of the Justice Department's criminal department from 2001 to 2003. In that position, he helped push through many of the administration's attacks on democratic rights, including the Patriot Act. In late 2001, he played a crucial role in organizing the mass roundup of Arabs in the United States, their detention and deportation.

Besides his tenure in John Ashcroft's Justice Department, Chertoff won the administration's favor because he has already been confirmed by the Senate for three separate posts. He was confirmed as US attorney in 1990, as assistant attorney general in 2001 and then as a judge on the Third Circuit Court of Appeals in 2003. After the Kerik scandal, the administration was looking for someone who would not cause problems during the confirmation period.

It is an indication of the decayed state of American democracy that such an individual as Chertoff is expected to breeze through the confirmation process in the Senate. The Democratic Party has indicated that it will offer no opposition, with Senator Jon Corzine of New Jersey declaring Chertoff to be "one of the most able people and public servants I have ever known." Senator Charles Schumer of New York said he "has the resume to be an excellent homeland security secretary, given his law enforcement background and understanding of New York and America's neglected security needs." Schumer, it should be noted, heaped almost identical praise upon Kerik.

What is included in Chertoff's resume? He played a key role in formulating and defending the idea that people could

be rounded up and held as "material witnesses" following the attacks of September 11. In October 2001, the government carried out a dragnet, detaining hundreds of mainly Middle Eastern and South Asian immigrants on minor immigration violations. Many were deported from the United States, despite the fact they had nothing to do with terrorism or the September 11 attacks.

The concept of "material witness" was important, because it provided the government with a pretext for holding those detained indefinitely without filing charges. The category had been employed in the past to hold suspected members of organized crime, but had never been used on a mass scale.

In an article published on January 12, the *New York Times* quotes a former Justice Department official as saying that Chertoff "was the one pushing to say, 'Hey, we ought to look at using this [material witness category] more aggressively against terrorists.'"

Steven Brill, in his book, *After: How American Confronted the September 12 Era*, notes, "Anyone who could be held, even on a minor violation of law or immigration rules, was held under a three-pronged strategy, fashioned by Ashcroft and a close circle of Justice Department deputies including criminal division chief Michael Chertoff, that was intended to exert maximum pressure on these detainees."

According to Brill, Chertoff argued that even if those who were detained were given hearings, "the hearings could not only be done in secret, but also could be delayed, and that even after the hearings were held and they were ordered deported, there was nothing in the law that said they absolutely had to be deported immediately. They could be held still longer."

Those detained were required by law to contact lawyers, however "the lists the INS [Immigration and Naturalization Service] provided of available lawyers invariably had phone numbers that were not in service," writes Brill. "Chertoff reasoned that while they were being held they would be discouraged from calling lawyers, and could be questioned

without lawyers present because they were not being charged with any crime.”

A report from the Justice Department’s own Inspector General released in June 2003 criticized this “indiscriminate and haphazard detention” of immigrants. The report pointed to Chertoff as a leader of an aggressive policy. Chertoff, it said, “urged immigration officials to ‘hold these people until we find out what’s going on,’ despite the fact that many had been swept up and detained on minor immigration charges.”

In his position in the Justice Department, Chertoff also played a critical role in the witch-hunt of John Walker Lindh, the American youth who was captured by US forces in Afghanistan in November 2001. Lindh eventually entered a pre-trial guilty plea on charges of aiding the Taliban and is serving a sentence of 20 years.

The conviction of Lindh was a travesty of democratic rights. The main evidence used against him was obtained by the FBI through coercion and torture. Before his interrogation, Lindh was stripped naked, bound to a table with duct tape and kept in a cold environment for two days. He was denied treatment for his wounds, and during interrogation he was denied access to a lawyer whom his family had hired.

The extraordinary breach of democratic processes represented by the Lindh interrogation provoked concern within the FBI itself. Citing previously undisclosed Justice Department documents, the *New York Times* reported January 13 that Chertoff helped squash these concerns. The article states that a lawyer in the department, John Du Pue, warned in one email that Lindh’s interrogation might be perceived as “an ethical violation.”

The *Times* writes, “Mr. De Pue told investigators from the inspector general’s office of the department that his superiors were upset that he had sought the advice of the department’s Professional Responsibility Advisory Office, or PRAO, about Mr. Lindh’s questioning.... A supervisor in the counterterrorism section of the criminal division who expressed the division’s displeasure ‘did not use Chertoff’s name, but I certainly inferred from what he said that the unhappiness was coming from Chertoff’ and his top deputy, Mr. De Pue said.”

Chertoff also played a leading role in the government’s prosecution of Zacarias Moussaoui. Chertoff represented the government before the 4th Circuit Court of Appeals in June 2003, seeking to prevent Moussaoui and his lawyers access to the prosecution’s main witness. Moussaoui is the only person who has been charged in connection with the attacks of September 11. His case has been on hold for two years.

As a leading figure in the Justice Department, Chertoff supported and helped draft the Patriot Act. He has defended many of the provisions contained in that piece of legislation,

and in particular has defended the right of the government to gather vast amounts of information on the American population.

Chertoff is one of the many lawyers in the Bush administration who are members of the Federalist Society, a right-wing legal association that has been involved in every manner of attacks on constitutional rights.

He got his big break when he was hired by Rudolph Giuliani, then US attorney in Manhattan. He reportedly has maintained ties with Giuliani since then, and contributed funds to his campaigns in the 1990s. He later became first assistant attorney at the Newark, New Jersey, prosecutor’s office and in 1990 was appointed US attorney in that district.

Like so many lawyers in the Federalist Society who later became judges or have served in the Bush administration, Chertoff played a critical role in the right-wing conspiracy to unseat the Clinton presidency. From 1994 to 1996, Chertoff was the chief Republican legal counsel to the Senate Whitewater Committee, headed by Senator Alfonse D’Amato of New York. He also played a leading role in the investigation of the suicide of Vincent Foster. In an attempt to undermine the Clinton administration, the Republican right raised bogus allegations that Foster had been murdered.

It is because of his role in Whitewater that there was one vote in the Senate—that of Hillary Clinton—cast against the confirmation of Chertoff’s nomination to the Third District Court of Appeals, which in the judicial hierarchy is just one level below the Supreme Court. The final vote was 88-to-1. Clinton has recently indicated, however, that she is amenable to Chertoff’s appointment to the Department of Homeland Security.

Chertoff is not a man of the Christian right. He is pro-choice, and on one occasion raised mild questions about some aspects of the administration’s policy on indefinitely detaining “enemy combatants.” For these reasons he is being hailed as a moderate by the Democratic Party, which agrees on all essential issues with the Bush administration’s attacks on democratic rights.



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