

The following text may be printed, copy/pasted, or downloaded and emailed.

Nominee Says U.S. Agents Abused Power After 9/11

ERIC LIPTON
New York Times
February 2, 2005

WASHINGTON - After the Sept. 11 attacks, federal authorities acted at times in a "wholly unacceptable" way, arresting immigrants on questionable tips, not always providing speedy access to lawyers and, in certain cases, abusing the detainees, the nominee for homeland security secretary acknowledged on Wednesday.

"I understand it was an emotional time," the nominee, Michael Chertoff, who led the criminal division of the Justice Department at the time, said at his Senate confirmation hearing. "But training has to be in place so people understand that you don't give in to emotions; people are being detained not to be mistreated or punished."

In the weeks after the attacks, Judge Chertoff was among the proponents of a crackdown that swept hundreds of people into detention, an approach that he vigorously defended in Congressional testimony at the time.

The admissions came on Wednesday during a three-and-a-half-hour hearing that ended with clear signs that Judge Chertoff, who now sits the United States Court of Appeals for the Third Circuit, would be confirmed, despite questions about the treatment of detainees or his role in reviewing a Bush administration memorandum related to torture.

Judge Chertoff carefully and calmly answered the questions presented to him during a nonconfrontational hearing.

He did not repudiate the Justice Department detention policies he helped establish. Instead he said the directives were not always carried out appropriately.

"Dealing in a crisis, particularly an unexpected crisis, fashioning a response with the tools that we have at hand, there are inevitably going to be imperfections," he said. "And the critical thing is to learn from things that experience teaches us."

The confirmation hearing served as an opportunity for members of the Senate Homeland Security and Governmental Affairs Committee to survey the department's shortcomings, including what they said was an irrational formula used to distribute antiterrorism grants. They also cited insufficient progress at protecting the nation's ports, transit systems, trains and food supply from possible terrorist attacks. While complimenting Tom Ridge, who has stepped down as secretary, they also called the Department of Homeland Security a dysfunctional bureaucracy with little strategic vision.

Judge Chertoff said he would push to distribute homeland security grants based on risk, instead of on population or even political formulas. He also said he wanted to make information on drivers' licenses less vulnerable to forgery or abuse and expressed a willingness to revise the department's color-coded system of terror alerts.

The hearing was dominated by questions about Judge Chertoff's actions during his tenure at the Department of Justice, where he served as assistant attorney general, from June 2001 until June 2003. Judge Chertoff said that while the arrests were made based on legitimate immigration violations, federal agents at times might have detained immigrants based on questionable tips,

held them in jail for too long or even abused them - accusations that were raised by a Department of Justice inspector general.

Senator Carl Levin, Democrat of Michigan, said after the hearing that he was impressed with Judge Chertoff's willingness to acknowledge that mistakes were made, but that he still had some questions about whether the judge knew about the abuse of terrorism suspects detained at Guantánamo Bay, Cuba.

Several civil liberties groups went further, saying that Judge Chertoff's testimony was both incomplete and misleading.

"He made no apology to the hundreds of innocent people and their families who were jailed simply because they were Arabs or Muslims," said Kate Martin, a lawyer from the Center for National Security Studies, which sued the federal government over the arrests after Sept. 11.

Judge Chertoff acknowledged that he had reviewed a 2002 memorandum detailing interrogation methods for terror suspects. Using a refrain that he relied upon frequently during his testimony, he said he could not recall if the version he read suggested that pain would need to rise to a level that might cause "injury such as death, organ failure, or serious impairment of bodily functions" before it might be defined as torture.

Judge Chertoff said that in his review of the document, he declined to offer advice on the propriety of any particular interrogation method.

"You are dealing in an area where there's potential criminal liability," he said, recalling his advice.

The hearing ended with Senator Mark Dayton, a Democrat from Minnesota who had asked some of the most pointed questions, announcing that he would support Judge Chertoff's nomination. A committee vote is expected on Monday.