Riley: This is the Michael Chertoff interview as a part of the George W. Bush Oral History Project. We’re at your offices in Washington, thank you very much. I’m Russell Riley. I’m the chair of the Oral History Program. Martha, say a few words so the transcriber will know your voice.

Derthick: I’m retired from the faculty of the University of Virginia. I was, for five years before that, Director of Governmental Studies at the Brookings Institution. I retired from teaching in 1999 but have retained an interest in American government.

Brown: I’m Seyom Brown. I’m now at SMU [Southern Methodist University]. I’m Director of Studies at the John G. Tower Center for Political Studies, and also I’m involved in an oral history project there.

Riley: I don’t want to wander too much into biography, but I have a couple of questions about your early career, particularly your clerkship with Justice [William] Brennan, and then your time with the Whitewater Committee. I’d be interested in your observations about what you were picking up about Washington and public service during those periods, that you bring with you later into the higher-level government position.

Chertoff: Clerking is not really Washington so much as it is experience in the judicial process. You see what goes on inside the Supreme Court and you work closely with the Justice. I don’t know that it gives you much insight into the larger political environment, except what you read in the newspapers with everybody else.

The Whitewater experience—Again, it’s specific to Congress. I guess it does teach you a little bit about what goes on in Congressional investigations, the fact that the rhythm of what occurs is very much driven by the public affairs element. Everything has to be condensed and pitched in a way to appeal to television and news, rather than some other audience. In that sense it’s an interesting lesson in the fact that much of the agenda in Washington—not all of it, but much of it—is driven by the media and trying to deal with public engagement on various issues.

Riley: So your sense about press relations is something that’s important to you later as you go into these other—

Chertoff: I just think you become aware of the fact that you’ve got to be able to explain things quickly, understandably, and with some recognition of the fact that it’s going to have to be self-contained. The press doesn’t have a lot of patience for footnotes when you give an explanation, so you’ve got to be able to give a self-contained discussion.
Riley: Were you at all involved in the campaign in 2000?

Chertoff: Only a little bit. I raised a little bit of money, not much. And there was a group of people, a large group I’m sure, who were asked to contribute policy papers or policy observations, and I did some of that. I wouldn’t say I was by any means at the core of it. I wasn’t a Vulcan or anything, but I did contribute some on the criminal justice process. I had been U.S. attorney under President [George H. W.] Bush, so I was well known to people in the criminal justice group who were around then-Governor Bush.

Riley: Who would those people be?

Chertoff: I don’t remember, to be honest with you.

Riley: Would [Alberto] Gonzalez have been somebody in that group?

Chertoff: No. But I remember submitting a paper in which I talked about what I thought were going to be the big issues in criminal justice in the next five to ten years. One of them was terrorism; one of them was money laundering; and one was high-tech crime. I guess I actually turned out to be right about that.

Riley: How did you end up then moving into the administration?

Chertoff: My secretary at work—I was a partner at a law firm—got a call one day from the White House, asking if I would be willing to go down and talk to the personnel people. This must have been right after the President was inaugurated, maybe slightly before but probably afterward, about the possibility of the job as head of the Criminal Division. I said sure, and I went down and met with someone in the personnel office and talked to him about 30 minutes. They actually had my résumé and knew who I was. Someone had told me previously that my name had come up on a list of people who might get a Justice Department job. Then they sent me over to meet with John Ashcroft, who was then either the AG [Attorney General] or designated AG. I don’t know if he was confirmed yet.

Brown: Had you known him before at all?

Chertoff: No. I met with him for about 30 minutes, and then sometime within the next week or two I got a call on my cell phone from the personnel office saying that the President would like to nominate me to be head of the Criminal Division. If I was willing to accept, I had to start the paperwork, the background check. I said yes and then I was off to the races.

Riley: Were there other positions in the administration that you thought you might like to move into?

Chertoff: I didn’t really think about getting a position.

Riley: So you were happy in private practice at the time?

Chertoff: Yes. I had no expectation of getting a position, but I was certainly—Having had the experience of being the U.S. attorney, being head of the Criminal Division seemed like an
Derthick: Did you think of the job primarily as an administrative job, or does the head of the Criminal Division often do prosecutions?

Chertoff: That’s an interesting question, and depending on who you ask that question, you’re going to get a different answer. If you ask the United States Attorneys, they think it’s an administrative job. If you ask different Assistant Attorneys General, you probably would have gotten a different answer. There’s no doubt I went into it with the idea that it was going to be a litigating job, that the Criminal Division was going to be a litigating division and would be going to court.

In that sense I was probably a little different from some other heads of the Criminal Division. It’s probably fair to say that people in the division liked that, by and large. Some didn’t. Some were comfortable being behind the scenes, but some of them liked it. Some U.S. attorneys didn’t care for it very much, partly because after 9/11 the center of gravity changed, and partly because of my background. Having tried a lot of cases and having been a U.S. attorney, I probably had a little more ability and drive than maybe someone else would have.

Riley: Did you have discussions with the Attorney General about your characterizations of the position?

Chertoff: I don’t know that I specifically did. As things evolved, and particularly after 9/11, it became clear that—I think it temperamentally suited the Attorney General, that this was going to require much more involvement by Washington, because the international security issues are much more national than the typical type of prosecution that you get in a U.S. Attorney’s office.

Riley: What were your impressions of Ashcroft when you met with him?

Chertoff: A really nice man, smart, somewhat self-effacing, very focused on doing the right thing.

Riley: That post, if I recall correctly, was one where there were a number of different candidates who had been contemplated. I have this vague sense that maybe Ashcroft had been designated late.

Chertoff: No, but I think he had a little bit of trouble getting confirmed.

Riley: OK.

Chertoff: I don’t think he was designated late, but he had a little bit more—There was a little pushback on the confirmation.

Riley: Which is a little unusual, right? Normally the Senate, if they take one of their—

Chertoff: Well, if you look at John Tower, I think the days when there was Senatorial courtesy are gone.
Riley: OK, fair enough. Did you have understandings with the Attorney General about access or about your latitude in operating?

Chertoff: Not going into it. Over a period of time the Attorney General came to trust me, and to like me. I always felt I had good access to him and very good support from him, so that was never an issue for me.

Riley: And by the time you come in—

Chertoff: I came in either May 31st or June 1st of 2001.

Riley: By that time, is there a lot of internal momentum, or is there a sort of backlog of things?

Chertoff: No. What there is is a lot of unconfirmed positions because the process was very slow. You had an AG, you had a deputy, I was in there, [Theodore] Ted Olson was in, and Viet Dinh, and that may be it. There may not have been any other confirmed positions.

Riley: Is that a problem?

Chertoff: It’s a problem when you have to do anything, because unconfirmed leadership tends not to have the ability to really drive decisions. I don’t think it’s atypical for an administration, because the first year becomes not a very dynamic year because we don’t have a lot of people in place. It became more relevant after 9/11.

Riley: What are the major things that are on your agenda?

Chertoff: Along the lines of what I said to you, I really wanted to have the division be a litigating division, not a service division. So I sat down and met with all the unit chiefs, and frankly, I replaced some and we did some reorganization because I thought there were some people who had been there for a long time, had a very settled way of doing things, and they weren’t in any rush to get things done. I always felt like you have a fixed amount of time in the job. If you’re going to accomplish things, you’ve got to get moving. So we shook things up a little bit. That was probably in the first two or three months: June, July, August. August was kind of a quiet time in Washington. So that process took place in that period of time.

Riley: Those are career people that you—?

Chertoff: Yes, right. You don’t fire them but maybe you move them to a different job.

Derthick: How important is the Criminal Division within the Justice Department? Is that seen as a main—

Chertoff: It depends. There are certain things by rule or regulation that the division has to approve, so in that sense it has authority. It does not actually supervise the U.S. attorneys—a big misconception. The Deputy Attorney General does. The Assistant Attorney General is, in a way, equal to the U.S. attorney, even a bit higher, because there are certain things where he has the authority to approve or not approve certain kinds of prosecutions. But in terms of actually running cases or investigations, it’s not clearly demarcated where he has running room or not.
Certainly, some of the big U.S. attorney offices tend to resist the Criminal Division coming in. Now as part of what happened—There were two big things that happened in my tenure that changed that: 9/11, but also Enron.

When Enron came, the U.S. attorney’s office in Houston claimed it. I’m sure the Southern District of New York would have claimed it too, but since it was in Houston, it was kind of hard for them. However, it turned out that there were so many recusals in Houston because so many people in the office knew people who had worked there or had lost money there, that at some point they began to think, you know, this is not going to work. Then what I did was I recruited an Enron task force. I hired assistant U.S. attorneys from around the country, or brought them in, because I wanted to get topflight people, but I also wanted to have a credible group, and then we announced it.

We took over all the Enron prosecutions, and that was probably a coup for the division, because in the old days it would have been the Southern District of New York or another district that would have grabbed onto them, but we just moved quickly to do it. Probably by that time my relationship with the AG was sufficiently strong that I got the backup. Had I not had that relationship, I might not have been able to carry that out.

So we wound up basically, between the terrorism stuff, which we also centralized, and the Enron stuff, probably changing the way the division operates. I think it’s still true that the division now is viewed much more as a litigating division than it was prior to my tenure.

**Riley:** Did you have a lot of personnel decisions to make when you came in?

**Chertoff:** Well, there were the changes at the top.

**Riley:** Right.

**Chertoff:** So there were those, and then you hire people, but that’s just hiring your entry-level positions.

**Riley:** Right. And other than that, the shuffling around of the career folks that you’ve already talked about.

**Chertoff:** Right.

**Riley:** The division of labor that you mentioned—You said the Deputy AG usually would have—

**Chertoff:** He actually supervises the U.S. Attorneys.

**Riley:** Right. What’s the rationale for that?

**Chertoff:** It’s always been that way, or it’s been that way since I can remember. The rationale is that the U.S. Attorneys are viewed as separate components. I can’t explain why; it’s just always been that way. That’s the table of organization.
Brown: In the earlier part of your career, both as a clerk to Brennan, and maybe even going back to law school, and then when you were prosecutor, were you developing anything that you would call a kind of philosophy of your approach?

Chertoff: Yes, it’s probably fair to say—I don’t think the clerking—I was just a young person. But from being prosecutor, from being the U.S. Attorney, my philosophy was that time is short. Figure out what you want to do. Establish your priorities, and then understand you’re working under the clock. That means you can’t let the perfect be the enemy of the good. It means you don’t have an endless amount of time to make cases, and it means you’ve got to decide, since you have only a certain amount of time during the day, what you really want to spend your time doing. And that’s the way I operated as U.S. Attorney.

I focused very much on political corruption cases, organized crime, and big fraud cases. And we set deadlines. You have to have the judgment to know when a case is ready and when it’s not ready, but I also know there are people who always hope that if they work on a case, at some point the smoking gun or the treasure trove will turn up, and that’s rarely what’s going to happen. At some point when you have enough, enough is enough and you’ve got to pull the trigger. I would say that was my philosophy: Decide what you want to do, understand the amount of time and the resources you have to do it, and then plan accordingly.

Brown: What about substantively?

Chertoff: I’m not sure what you mean.

Brown: Well, the rights of the criminal type of things that the Civil Liberties Union people were always concerned with, as opposed to the rights of the victim, and so on.

Chertoff: Generally, my opinion on that was we have a set of rules, you stay within the lines, but within the lines you’re as aggressive as you can be. But I was a defense attorney for many years, too, and I was aggressive as a defense attorney. Lawyers are basically lawyers. You give them a set of rules, and then they play within the rules.

Riley: What about the substantive areas that you confronted—let’s deal with the period before 9/11 as a separate element.

Chertoff: The truth is it really was not a lot of time, because if you consider the fact that it’s June, July, August—August is always a slow month.

Riley: Right.

Chertoff: Sometime in August, I remember saying to my wife, “You know, things are really kind of slow around here. I hope it doesn’t turn out to be boring.” My wife frequently reminds me when I say things are boring, “Don’t say that. We’ll have another disaster.”

It was mainly organizational. I thought we’d probably do big fraud cases, corruption cases, the normal things. We had one big terrorism case: We indicted the Khobar Towers bombing that summer, which goes back to ’96. Other than that, it was pretty slow, pretty much organizational. I don’t think there was any real—We hadn’t gotten traction in terms of setting up a positive
agenda like things where I would say, OK, we’re going to pursue these areas. Then of course 9/11 came, and the whole thing changed.

Riley: What can you tell us about the interior life and culture of the Department of Justice while you were there? There are a lot of different divisions. What’s the relationship like? Is there competition for resources?

Chertoff: The divisions are quite separate and the lanes in the road are quite different. There’s very little competition because they don’t really rub up against each other. I couldn’t have told you what the Antitrust Division was doing. Once 9/11 came, there was a little more interaction with the Civil Division because some of the terrorism stuff they had to handle, and some we handled. But it wasn’t competitive; it was kind of cooperative. Likewise, we had some interaction with the Office of Legal Counsel because of the 9/11 stuff, and with the SG’s [Solicitor General] office because of appeals. But by and large, the lanes on the road are pretty clearly marked out in the divisions.

Riley: Were there the equivalent of Cabinet meetings? Did you have all-staff meetings where the division heads—?

Chertoff: The deputy used to have meetings of the division heads periodically, every couple of weeks or so, and then after 9/11 they set up a little internal security council that would meet periodically. That would be the heads of the components that were focused on national security issues.

Riley: But there’s nothing else in the pre-9/11 period that really merited those meetings?

Chertoff: We didn’t really have a fully confirmed complement, so there weren’t a lot of people to meet. It was a pretty small group.

Riley: So you’re not a full year into the administration but you’re talking about losing the better part of the first year, without having people in or any people.

Chertoff: Well, but for 9/11, we probably would not have had confirmed people until late in the year, fully across the board. After 9/11 everyone said, “We can’t mess around anymore.” But certainly for the first three months—June, July, August—maybe only half a dozen people were confirmed.

Riley: You had said earlier that you had included terrorism on the list of issues that you thought would be important.

Chertoff: Yes.

Riley: Why was that the case?

Chertoff: Khobar Towers, in 1998 bombings in East Africa, the USS [United States Ship] Cole. It was obvious that it was a big issue and it was going to increase. I didn’t anticipate that it was going to be at the level it was, but I mean just from awareness of what was going on. I had also been somewhat involved in the ’93 investigation at the World Trade Center.
Riley: Is that right? How was that?

Chertoff: Because I was the U.S. attorney of New Jersey and a lot of the activity occurred in New Jersey.

Riley: Can you tell us your account of 9/11, where you were?

Chertoff: Yes, which I’ve told many times. For some reason, we had something at home and I was slightly late getting in. So I’m in the car shortly before 9:00, and I’m on the Rock Creek, coming into Washington.

Riley: Your residence was in upper northwest?

Chertoff: It was in Chevy Chase. I’m on the phone with my assistant Valerie [Smith] and she says, “Bruce Swartz,” who was one of my Deputies, “wants to talk to you.” She shifts me over and Bruce says, “A plane just went into the World Trade Center.” My first thought, like everybody else, was that some pilot had committed a grievous error, a small-plane pilot. He’s got the TV on and we’re talking about it and he says after a moment, “Another plane went into the World Trade Center.” I said, “Oh, blank. This is an attack.” We decided that I would park and we’d go across to the SIOC, the Strategic Information and Operations Center at the Bureau [Federal Bureau of Investigations] on the fifth floor, which is where, at that time before DHS [Department of Homeland Security], they ran all domestic incidents.

So I park and we go across the street. I don’t know whether I was there when the plane hit the Pentagon or whether I had just made it over to the Bureau at that point. We go in and the place is completely—It’s a beehive of activity. Remember, you have Bob Mueller, who has been there for eight days. I had known Bob for years. We were in the first Bush administration together. The AG was in Minnesota, on a plane, because he was supposed to give a speech. Larry Thompson, I think, eventually went out to a location, and so I’m the only confirmed person besides Mueller in the thing. That day we’re all trying to figure out what the heck happened and, most importantly, to try to prevent something else from happening.

We hear about United 93, conflicting reports about where it is, whether it’s crashed, whether it’s not crashed. I’m in an SVC, a secure videoconference, at one point, and I hear the order given to shoot the plane down, which is something I never thought I would hear. In fact, for about two days, I actually thought 93 had been shot down.

Brown: When you say you heard about that order—

Chertoff: I was present on the SVC and the Vice President passed down the order. I think that’s a real memory, not a false memory, that the plane was going to be shot down, authorizing the plane to be shot down.

Riley: But you characterized that as the Vice President passed on—

Chertoff: Yes.

Riley: Your sense was that it was something that he had gotten from the President himself?
Chertoff: I’m reading a book now that is debating that and deconstructing it, and I can’t weigh in on that. I can only tell you what I heard. I wasn’t trying to figure out who had spoken to whom first.

Riley: Of course.

Chertoff: At one point the fire alarm went off in the State Department and there was a belief that a bomb had gone off in the State Department. There was a rumor that we had to run down, about taxi drivers detonating bombs in front of public buildings. Then during the course of that day what we did was—People calling up from the planes enabled us to triangulate, to some degree, the locations on the planes where the hijackers had been sitting. From that, we were able to put the manifest together. My recollection is that by the end of the first day we pretty much knew most of the hijackers, what their identities were, and we began the process then of investigating, in other words, finding out: How did they get there? What was the infrastructure that allowed them to get on the planes? How did they pay for the tickets? That gives you credit cards and you can track that back to find out what hotels they stayed in.

Brown: You’re describing a process that starts. Is this something that you were ordering from your position?

Chertoff: I’m working with Mueller and Tom Pickard in ordering this. We had to generate the subpoenas and things. It was a collaborative effort. We were all sitting in a big room, and I had a little space outside that where I had some folks from the division sitting. I’d go out and we’d get paper out and we’d do some legal stuff and we’d come back in. It was all a stew of people.

Riley: I don’t want you to lose your train of thought in recounting this, but I do want to ask a question. You said that lawyers are good at, or what they do is you give them a set of rules that they use as the parameters that they work in.

Chertoff: Right.

Riley: At this time, are you conscious of where those boundaries are? Or is the need to deal with the issue at hand creating either a separate set of boundaries—

Chertoff: You have to take it in slices. The first day, you’re not really getting into bumping up against because you’re just issuing subpoenas. You want to find out what you can about who paid for the tickets. From that, where did they stay in hotels? Get search warrants. Search rooms. You’re trying to track back.

Riley: OK.

Chertoff: At some point as the days go on—It’s like one giant day. For about two months, the routine was pretty much the same: Get into the office around 6:00 and go right to the Bureau. I wasn’t even in my office at Justice for probably two months. Then stay there until probably 9:00 or 10:00 at night, go home, come back. So it was like one long day.

During the course of this, we realized we were going to hit—We’re starting to uncover people who are connected in some way to the hijackers. Now, many of them may be connected
innocently. We found a couple of people who had sold them false documentation. They were arrested because it was obviously a crime. What winds up happening is—What you’re most worried about is, are there other people out there who are going to pull the trigger on something else? The question is how do you incapacitate them? How do you prevent them from doing that while you’re determining whether they’re a risk or not a risk?

They basically fall into three categories: There are some people like the people who provided the phony documentation, who have committed a crime, so you can arrest them and then you’ve got a whole established process. It turns out there are a lot of people you run across who are in violation of the immigration laws. It’s not a crime. Well, it actually is a crime but it’s not a typical criminal code offense, but it is something that allows you to hold them. They go before an immigration judge, but if you’re in the country illegally, you don’t really have much of a claim to bail. So there is a host of people that we run across who are connected in some way: Maybe they shared a residence; maybe they had some financial interaction with a hijacker. While we’re trying to figure out if they are dangerous or not, we are able to hold them under the immigration laws.

Then there is a group of people who don’t fit within either category, who the law allows you to hold as material witnesses. Again, it’s under a judge’s supervision, and you can hold them as material witnesses as long as you are going to put them, at some point, in front of a grand jury and get evidence from them. In these cases, we pushed the law to the line; in other words, we were creative in applying the law but we always stayed within the bounds of the law. Contrary to urban legend, we didn’t detain people without a legal basis. Everybody always had a right to go before a judge, although judges are not super inclined to release people if they think there’s some uncertainty about whether they’re a risk or not.

The total number of people who were held in the course of this process was about 750, contrary to the rumor of thousands of people, which is not true. The IG [Inspector General] did an investigation in this eventually and found only one case out of 750 where there was not a legal basis to detain somebody. Were we aggressive in seeking detention when the law allowed it? Absolutely. But no one was ever detained without a legal basis.

Brown: How large a group of people did you deploy to handle that?

Chertoff: The Bureau pretty much threw everybody at it they had.

Riley: I want to go back—I interrupted your account of the first day.

Chertoff: Basically the first day is about tracking down and identifying, beginning the process of linking up the hijackers to other people, whether it is how they got the documents, where they had rooms, where they rented cars, what the phony identification was. Then that just continues over the course of subsequent days.

Riley: Sure.

Chertoff: At some point in that process, the AG came in and said that the President has asked us to look at any legislation that we might need at this point, so we began the process of putting together what became the Patriot Act. Also, there were numerous briefings for the Hill. I
remember going up to the Hill with Mueller, probably three or four times, and meeting with all the Members of Congress the first week, literally in the Chamber, and talking about what was going on, what the investigation was showing, things of that sort.

**Riley:** But in the earliest stages, you weren’t feeling greatly constrained by the legal parameters that you were working in, in terms of conducting the investigation as you wanted to conduct it.

**Chertoff:** No. You could usually find a legal tool that would allow you to do what you needed to do. Some of them were imperfectly adapted. In an ideal world, you would have a set of legal tools that were better adapted to this process. The happenstance of whether someone is in immigration violation or not—It happened that it was convenient in a way that many of them were, so that was an available tool. If they hadn’t been, it would have become more of a problem in terms of how to detain people while you’re deciding whether they’re a threat or not.

The thing that people forget is there was a real serious question, particularly given the fact that we had not had an inkling of what happened on 9/11 before, about whether we were going to have even more serious attacks. Had we conducted business as usual, and had there been another attack, it would have been devastating for the confidence of the American people in the government. The reason people didn’t lose confidence was because of the very vigorous response afterward.

**Brown:** Would it be incorrect to say that you were telling people, “If there is any suspicion at all, detain them, and we’ll find a legal basis for it”?

**Chertoff:** No. It was correct to say, “If there’s suspicion, reasonable suspicion, find a legal basis, and if there is a legal basis, detain them.” No one ever said, “Detain them and then we’ll find a legal basis.” That would not be correct.

**Riley:** Was it also the case that, because of the circumstances, the judges that you were relying on, in many instances, were vastly more amenable?

**Chertoff:** I think the judges applied common sense. We didn’t come in with bogus things, so there was always a legal basis to detain. Then the only issue is the judge exercising discretion about whether they think someone is a bail risk. And in an environment where there’s some connection to terrorism, and given the fact that, by definition, someone is out of status, so there is question about their bail—It’s not a hard stretch to get people to say we’re not going to release them.

**Riley:** The cluster of questions relates to what you were just beginning to address, which is, the Attorney General comes to you and says, “We’re thinking about legislation.”

**Chertoff:** Right.

**Riley:** The fundamental notion behind the legislation is there must be things that we can improve on or correct. What I’m trying to figure out is how are you becoming aware of the limitations that are in existence through prevailing law?

**Chertoff:** I don’t think it was specific to the experience we had in the first days after 9/11. There
were two main things. There are some little cats and dogs that wound up in the bill that I wasn’t really involved with, but the two main things were: one, preventing the division or the split between intelligence information and criminal information, which had been the prevailing rule of the Justice Department. It prevented us from combining to get a full picture, connecting the dots. That was the main thing we tried to do in the Patriot Act.

As it turns out, we probably didn’t need to do the Patriot Act for that, because eventually the FISA [Foreign Intelligence Surveillance Act] Court of Review said the original Justice Department interpretation was too conservative, and actually the old rule would have allowed us to combine things. But at the time, it wasn’t clear and we wanted to make it clear. Then there were some technological upgrades that took account of the fact that the Internet as a form of communications resulted in a discontinuity between the things you could do with analog telephones, in terms of wiretapping, and the things you could do with Internet. We wanted to have it be a level technological playing field.

On the issue of the silos, two or three days after 9/11, I finally got permission as head of the Criminal Division—the judge gave us permission to go and look at the intelligence files. I may have been the first person to see the [Zacarias] Moussaoui file. This is a guy who had been arrested taking flying lessons. He was in violation of his immigration status. He was in custody as an immigration detainee prior to 9/11, in August, in Minnesota. They thought there was something funny about the guy. They wanted to search his laptop but they couldn’t get permission because they didn’t have enough probable cause from an intelligence standpoint and they couldn’t treat it as a criminal case because of the division.

Finally, when that was lifted after 9/11, the judge let us look at that stuff. We saw what was on his laptop, which was stuff that suggested involvement in 9/11. I remember saying—Pat [Patrick] Fitzgerald was there—I think I said, “Oh, shit, when they see this they’re going to realize that there was evidence that this was going to happen beforehand.” I remember telling the AG and Mueller, “You guys better take a look at this because you’re going to be hearing about this.” Of course, ultimately we did the case against Moussaoui, but also that became one of the issues in the 9/11 Commission: What had been known beforehand? That was something I personally witnessed, how that barrier had prevented us from seeing that. When it lifted and I saw what we had missed, it motivated me on the Patriot Act piece.

Riley: That’s “the wall.”

Chertoff: That’s right, the wall.

Riley: Had your take on the wall been earlier that it had been too conservative?

Chertoff: Earlier I thought it was kind of foolish, mainly because when I first came on board, again because there were so few people, there were times when I was Acting Attorney General if the AG was out of the District. As Acting Attorney General I would have to sign the FISA warrants before they went to the judge. So in theory, when I was Acting Attorney General, I was seeing things on one side of the wall that I would have to forget when I went back to being head of the Criminal Division, which strikes me as kind of a fundamentally silly arrangement.

Riley: Sure.
Chertoff: That was obviously much more profound as a problem when 9/11 revealed the fact that there were actually things that could have been connected that were not because of the wall.

Riley: And your experience tells you that the wall was in reality being—

Chertoff: Well, it’s not my experience; it was the FISA Court of Review. Eventually a case made its way up and they said, by the way, even prior to the Patriot Act, that the requirement of a barrier was overstated and the Department of Justice was overly cautious in reading what the law was.

Riley: And the roots of that would have been in the [William J.] Clinton administration?

Chertoff: I think it went back a ways. I’m not criticizing the Clinton administration for this. In general, when it comes to lawyering in the government, lawyers are by and large prone to be very cautious about even approaching the line. Over time, a crust develops, where you wind up being pushed further and further back, because no one wants to get even close to the line, but you also leave space that could be occupied by the government. And in the case of 9/11, it probably was a significant contributor.

Riley: You had indicated that you went up to the Hill several times very early on. Could you tell us about the meetings on the Hill? Who went up? Who you were meeting with?

Chertoff: I usually went with Mueller and we met either with Senators or Members of the House, and lots of them would come and we would brief them on what was going on: where we were, what we had learned.

Riley: What were you hearing from them?

Chertoff: Questions, a lot of support, no criticism, a lot of, “Do whatever you have to do.”

Riley: So they were amenable to—

Chertoff: The Patriot Act—I had asked the Senate—I think Russ Feingold was the only guy who voted against it.

Derthick: Had you known Mueller before?

Chertoff: I know Bob going back to ’87, ’88, when he was assistant to Dick Thornburgh and I was first assistant and then U.S. attorney in New Jersey. So I had known him since the late ’80s.

Derthick: So you were working closely with him.

Chertoff: Oh, yes, I was a good friend of Bob’s.

Riley: What about your own involvement in the development of the Patriot Act?

Chertoff: Viet Dinh and I had the task of assembling the various suggestions. The general rule that the AG had was: Let’s not put really controversial things in. Keep it to stuff that’s pretty plain vanilla, because there were a lot of proposals at any given point in time that were floating
around the Department of Justice, and everybody has their pet project. So if it was something that we thought was going to be a controversial issue, we’d put it to one side. Everything we put in was by and large pretty straightforward. It was either getting rid of the wall, or it was creating a technological level playing field between the new technologies and the old technologies.

**Riley:** Do you remember any ideas in particular that you jettisoned?

**Chertoff:** I don’t remember any. I’m sure there were some, but nothing that comes to mind.

**Riley:** Right. And this happened all very quickly?

**Chertoff:** Pretty quickly, yes, in a matter of days.

**Riley:** In retrospect, were there things that you should have put in it, or were there mistakes made in what did go in?

**Chertoff:** I’ve heard people go ballistic about it in the years since, and I’ve said to people, “What is it that you find objectionable?” I’ve heard things like, “Well, it allowed illegal wiretapping,” which I have to say it didn’t. And by the way, by definition that can’t be right, since it’s the law. It can’t be an illegal law. Or people would say, “Well, it authorized the war in Iraq.” I’d say that’s delusional.

If you look at it, it’s quite plain vanilla. They actually added a few things afterward, like the “lone wolf” provision, which we didn’t have in the first go-around. Notwithstanding the fact that the name, which Members of Congress came up with, probably was the most controversial element of the bill, I think it’s actually pretty plain vanilla.

**Brown:** What about the issue of warrants?

**Chertoff:** In terms of what?

**Riley:** The Patriot Act. That it somehow allowed for an end run around.

**Chertoff:** I don’t think it allows an end run around. What it did is it leveled the playing field for Internet communication so that it was congruent to what you had with telephony. And there were roving wiretaps, which allowed you to basically get a warrant for a phone, rather than for a person. In many cases this had been approved by judges years before, in narcotics cases. Our general rule was if it’s legal to do something in a drug case, for marijuana, it should be legal to do it in a terrorism case. It doesn’t make sense to say, “Oh, yes, for a load of marijuana you can do X-Y-Z, but if it’s blowing up a city, you can’t do that.” But there was no end run, because by definition, as long as you’re inside the Constitution, the law is the law, and I don’t think it changed the warrant requirement.

**Derthick:** Were there individual Members of Congress, maybe Senator [Patrick] Leahy, who really wanted to get a hand in it, or was the attitude kind of subordinate?

**Chertoff:** No, I mean, at some point there were Members of Congress who pushed back on certain things. Senator Leahy was one of them but I don’t remember what the particular issue
was. There were some things we agreed to, we compromised on. I forget what the issue was but I remember getting a call from someone at the White House and they said, “If we go along with this suggestion by Senator Leahy, is that OK as far as you’re concerned?” And I said, “That’s fine.” They would probably tell you they felt that they didn’t have a lot of political ability to stand in the way of the Patriot Act. That might be true, but that’s what you get paid for as a Member of Congress. If you think something is wrong, you should say it, notwithstanding the political costs.

Riley: The question I was going to pose and I wasn’t sure about my time sequences, was the AUMF, the Authorization for Use of Military Force the President signs several weeks before the Patriot Act comes up. Did you have any piece of the action on that?

Chertoff: No. I had nothing to do with that.

Riley: And there were, beginning fairly early on, a series of memoranda coming out of the Office of Legal Counsel, related to all manner of issues concerning Presidential power. Are you in any way involved at this very early stage in those?

Chertoff: No.

Riley: Are you aware that that traffic is going back and forth?

Chertoff: I might have been dimly aware but I was very operationally focused on trying to figure out: Are there more people in the country that are going to be blowing up buildings?

Riley: OK. So the sort of legal and constitutional superstructures, the argument on those things is taking place someplace else.

Chertoff: Right, correct.

Riley: Rather than in your office, which is a very low-to-the-ground enterprise.

Chertoff: Well, I wouldn’t say “low-to-the-ground.” It’s very operational and not very theoretical.

Riley: Did the anthrax attacks—Does that get on your report too?

Chertoff: Yes. That becomes part of our responsibility as well. Of course initially the thought was that this was perhaps the next wave of terrorism. I don’t remember that much about it, but for some period of time we were investigating it from the standpoint of seeing whether it might be kind of round two. I don’t know at what point the feeling was that it probably wasn’t terrorism from al-Qaeda, that it was something different. It was probably the quality of the weapons, the quality of the anthrax. But there was evidence they picked up in Afghanistan that al-Qaeda had been experimenting to try to develop anthrax and other kinds of biological weapons. So it was by no means fanciful to think that might be the case.

Riley: There emerges over time an argument about characterizing what the United States is going through as either a war or a criminal justice matter. Is that an argument that—
Chertoff: I don’t remember hearing that argument. I think we knew we were at war. There had been a declaration of war against us. The one thing probably not often understood is that in the administration we took an all-of-the-above approach. There was not a view that you should only do things in the military or you should only do things with criminal justice. The view was you should use all the tools. Some tools are more appropriate in some cases and some were appropriate in others.

I’ll tell you my general approach, which I think is pretty much what the AG’s approach was. If someone was a U.S. citizen and they go into the regular criminal justice system—If you apprehend them in the U.S., the presumption is that they’re going to go into the criminal justice system, but it’s a rebuttable presumption. You might hold somebody for a period of time to question them, or if you don’t have a criminal case you might detain them under the laws of war. Eventually, though, probably they’re going to wind up going into the criminal justice system. If someone is caught in the battlefield and they’re not a U.S. citizen, they’re probably not going to go into the criminal justice system. I think it reflected a sense that, from a civil liberties standpoint, you’re uncomfortable if a President can actually arrest people in the U.S. and not have them see a courtroom.

Riley: Right.

Chertoff: That could take you down a bad road. If someone is in a battlefield in Afghanistan, it’s like World War II. They don’t get a trial; they just get detained. Then you get some close cases in the middle where, if circumstances suggest there’s a good reason, you might shift the presumption. Basically, with the people who were apprehended in the U.S., like the “shoe bomber,” the Lackawanna, the cases up in Portland and in Washington State—we brought those into the criminal justice system. Moussaoui we brought into the criminal justice system, and that was not without controversy. There were some people who wanted all that stuff in the military, but the AG and I felt that from a civil liberties standpoint you don’t want to take domestic people, people who are caught in a domestic area, and put them in the military, unless there’s some really compelling reason to do it. There was, to be honest, a certain amount of internal stress in the administration over that for the couple years I was there at the Criminal Division.

Riley: The pushback coming from…?

Chertoff: The Defense Department and the Vice President’s Office generally had the view that pretty much everything ought to go into the military system. We’re at war and everything is a military matter. The AG thought no, not so much in the case of people caught domestically.

Riley: How much interaction are you having with the White House during this period of time?

Chertoff: Some, once we get rolling with the cases. For example, when the final decision was going to be made in December of 2001, about whether Moussaoui was going to go into a military path or going to be tried in Virginia, the AG and deputy used to go over every day to the White House, at that point. They had a morning meeting every day on terrorism threats. The AG and deputy asked me to come to the Oval Office to stand by in case the President wanted to talk to me about it.

At some point the President called me in and he asked me, “If we do this case, are you going to
be able to keep classified information classified?” I said yes. “And do you think the judge is going to keep him in, or is he or she going to let them out on bail?” I said, “They’re not going to let him out on bail.” The President then agreed to have it go into the criminal justice path. There was a debate about whether that would be efficacious or not, so part of what happened when there was a development in the case was we’d go to the White House and say, “Well, this is going on in the case,” and we’d explain what the significance was.

We also did it with respect to [John Walker] Lindh, because there were issues that were always with Lindh and what he wanted to get in discovery. Again, the White House wanted to know if this is going to be a problem in terms of security, of what’s going on in Guantanamo in terms of our ability to—Is our intelligence going to be revealed? We would generally meet with the White House Counsel and fill him in on what was going on.

Riley: Was that meeting the first time that you had met President Bush?

Chertoff: No. I had met him previously.

Riley: Under what circumstances?

Chertoff: I’m reluctant to talk about it. He talked to me about a possible job, moving me to another position, in the summer of 2001 after I became head of the Criminal Division. So I had actually spent some time talking about it.

Riley: Can you tell us what the position was?

Chertoff: When they were looking for an FBI director. I was asked to come in and talk about it, and I actually said to him, “I think Mueller is the right choice for that.” So I had met him previously.

Riley: Did you regret telling him that?

Chertoff: No, I didn’t. I think it worked out well for me.

Riley: I bet. OK.

Brown: Did the Attorney General, the Justice Department and so on, get involved in the controversy over the applicability of the Geneva Accords?

Chertoff: I can’t talk for the Attorney General, but I wasn’t involved in that.

Brown: Not at all?

Chertoff: No. I mean, I was told. At some point someone said, “Geneva doesn’t apply,” or whatever it was, but that didn’t mean anything to me because it wasn’t my domain.

Brown: So you didn’t see any of that stuff?

Chertoff: I think at some point I was shown an opinion or informed of an opinion on Geneva, but I wasn’t involved in it.
Riley: What are the pieces that were missing in this early era? What are the other things that are occupying your time, particularly on the War on Terror?

Chertoff: A lot of our focus was in helping investigate whether there were other threats out there. And then you had the various homegrown things that came up. There was the Portland case, and the case up in the state of Washington, and the Lackawanna case. There was John Walker Lindh. There was Moussaoui. There was a file review later on of Guantanamo detainees to determine whether people could be sent back or not, and the Criminal Division, not me personally, used to participate in that and assess the evidence. So we got involved in the prevention piece of this.

Riley: Right, right. Were there vulnerabilities in having your organization involved in the prevention piece? Vulnerability may not be the right word. It’s not clear to me at what level you would have a piece of the action.

Chertoff: In the sense that we’d either know whether there was a criminal case that we could bring somebody, but also just how we developed over a period of time a certain expertise, because we had spent so much time investigating these things, that there was a fund of domestic knowledge on this. We were part owners of that fund, along with the Bureau.

Riley: Does Enron start as early as the fall?

Chertoff: Yes.

Riley: OK. And you had a big piece of that.

Chertoff: Correct. Right.

Riley: So that gets layered on top of everything else that you’re dealing with.

Chertoff: Yes.

Riley: Tell us how that comes to you.

Chertoff: Well, as I have said earlier, what happened was, obviously, when they went bankrupt and it became evident there was a criminal problem there, we wanted to be very aggressive in getting ahead of it. First there was a little bit of arm wrestling about whether the U.S. attorney’s office in Houston would do it. It turned out they had too many recusal problems, so I collected a group, kind of an A-team of prosecutors, and said to the AG, “We’re going to set up a task force,” and jumped the Southern district of New York or whoever else might otherwise have tried to grab that. I thought it was important for the division and I thought it was a national case. And it’s ridiculous that you can’t do a national case out of the Criminal Division.

So we set up this team and we began the process of investigating, and I was pretty personally involved. I used to get a weekly report and I’d sit down with the prosecutors and talk about what their strategy was. Then I got very much involved, of course, in the Arthur Andersen piece.

Riley: Were there political sensitivities that you had to deal with at the time because this is in
Texas?

Chertoff: No. I was told at some point that someone in the economic area of the White House was complaining that we were being too aggressive, but I think the President said something publicly that made it clear that he was 100 percent supportive, and that shut that down. The AG, nobody else—the politics never got into it.

Riley: And there weren’t sensitivities that you were encountering?

Chertoff: Well, there was a huge sensitivity in Arthur Andersen with regard to that, but on the rest of the Enron stuff, not. I once ran into Ken Lay. I was giving a speech and he was in the audience and he came up and it was a little uncomfortable, but that was about the extent.

Riley: That wasn’t what I was thinking about.

Chertoff: The Arthur Andersen thing got—There was a huge lobbying and letter-writing and emailing campaign that Arthur Andersen tried to generate, including having their foreign subs go to the U.S. Ambassadors and trying to get the U.S. Ambassadors to weigh in, but nobody in the Justice Department and nobody at the White House ever said boo about it.

Riley: And I take it, it didn’t do them any good.

Chertoff: Well, what happened with Arthur Andersen was this: They had a really good lawyer, Bob Fiske. This arose out of the fact that—First of all, they had had previous problems with securities violations and essentially had been warned by the SEC [Securities & Exchange Commission] and had signed consent decrees and stuff. In this case what happened is there was evidence that when the investigation of Enron got launched, they decided they were going to dispose of either one or two tractor-trailer loads of relevant documents, which is an obstruction of justice. And it was fairly high level. This was not like one guy shredding some stuff. This was certainly at the high level of Houston, pretty senior folks, and a very visible matter. So we said, “This is a criminal offense and the accounting firm is liable for this.”

They had a lawyer, Bob Fiske, come in, and we were discussing a possible negotiated resolution of it, which would have involved either deferred prosecution where they admit guilt but we agree that we won’t—they’ll pay a fine, but we’ll agree that if they have a monitor, or whatever it is, we’ll ultimately dismiss the charges.

Then they switched lawyers, and they came in and they took a much harder position. I’ll never forget this. At one point the guy—it’s a Sunday, and the CEO comes in. Of course they’re being sued and they’ve got all kinds of problems that are even beyond ours, and they say, “We don’t want to have any settlement with the Department of Justice, but we’re willing to settle with the SEC, where we’ll settle over four years of having false books and records, an SEC type of settlement, and we won’t admit or deny. We’ll pay a fine and we’ll do X-Y-Z.” I said, “I don’t understand this. You’re willing to essentially settle something that would say that four years of your accounting work was bad, but when we ask you to even enter into a deferred prosecution where you’ll admit that you destroyed the documents, an obstruction which is beyond a doubt and that’s not part of your core business, you absolutely refuse to do it. I don’t understand why you’re willing to do the SEC and you’re not willing to do the Department of Justice.”
And somebody said, “Well, for accounting firms, an SEC resolution where you don’t admit or deny—that’s like a cost of doing business. Everybody understands that it’s not going to damage the business in the long run. But if we admit to doing something that’s a criminal offense for the Department of Justice, that’s going to have a real impact.” Let me tell you, that was probably the worst negotiating statement I’ve ever experienced.

We left the room and I looked at the prosecutors and said, “What the guy says is if you slap us on the wrist, we’ll be OK with it.” So we said we’re not going to do it. Then they started a huge letter-writing campaign and they’re trying to push back on our indicting them. It doesn’t work, so we indicted them.

Riley: And the White House keeps their fingers off.

Chertoff: Yes. In fact, at some point the President—because that may be where somebody in the White House was beginning to grumble a little bit. But then the President said something publicly, essentially making it clear that he approved, and that shut that all down. Now, we didn’t ask his permission.

Riley: Sure, of course.

Chertoff: He was never—When it came to doing the right thing, or being tough, that never got any negative thing from the President.

Riley: How often were you brought back into the White House to consult?

Chertoff: I can’t say I was a regular denizen but I was probably—a couple of times a month or something like that.

Riley: Were these usually meetings with the President?

Chertoff: No. Usually meetings with people in the White House Counsel’s Office.

Riley: With the Counsel’s Office.

Chertoff: Yes. Meetings with the President? I don’t know, maybe half a dozen.

Riley: And the Counsel at the time was?

Chertoff: Gonzales.

Riley: These were primarily “War on Terror” talks?

Chertoff: Exclusively. We never discussed Enron or anything like that.

Riley: Who were the other members of the core team involved in these discussions?

Chertoff: Usually people from OLC [Office of Legal Counsel], DoD [Department of Defense], CIA [Central Intelligence Agency] lawyers.
Riley: John Yoo.

Chertoff: John Yoo, Pat [John Patrick] Philbin. I’d usually go in with my deputy, Alice Fisher, We usually had Scott Muller from the CIA, Jim [William James, II] Haynes from DoD.

Riley: And this was a global discussion?

Chertoff: No. There may have been other discussion, but I was involved—Normally it had to do with reporting on some development involving one of our cases.

Riley: What were the principal cases you were dealing with at this time?

Chertoff: Mostly Moussaoui, some on Lindh, and then there might have been something on [Richard] Reid when there were milestones.

Riley: Could you sort of track us through the Moussaoui case? Start at the beginning.

Chertoff: Shortly after 9/11, the U.S. attorney’s office in Boston, taking a bunch of documents and records, had put together a very compelling indictment that showed how there was a common funder named [Mustafa] al-Hawsawi who funded most of the 9/11 hijackers, but also funded Moussaoui’s trip. There was a commonality of either telephone numbers or money, that when you put it all together and created a timeline, you had a very strong circumstantial case against Moussaoui. That’s apart from anything he might have said or anything of that sort. Just if you looked at what he did, when he did it, who he connected with, you would have been able to convict him. We were pretty confident that no matter what happened, we had a good case against Moussaoui.

So once the President signed off on our taking it to the criminal as opposed to the military, we indicted him. We didn’t pull the best judge in the world, from our standpoint. Leonie Brinkema was a little too nervous as a judge, and too hesitant, but for us it was a road test: Can we successfully bring a case like this through the criminal justice system?

Riley: Do you remember when the indictment occurs?


Riley: OK, that early.

Chertoff: Yes. I know we were approved in December, but whether it actually issued in December or early the next year, I don’t remember. You can look it up.

Riley: The timeline on this would have followed a sort of normal timeline?

Chertoff: He was in custody for immigration, so he wasn’t going anywhere, so there was no rush.

Riley: All right.

Chertoff: But along with my philosophy of not taking a lot of time, you want to get moving
pretty briskly.

Riley: You had just said that you saw this as sort of a test case, and that might have suggested that you wanted to expedite things.

Chertoff: Yes, but I think in general we would have expedited it.

Riley: OK, go ahead.

Chertoff: I don’t remember the ins and outs of a case all the time, but you wind up with all kinds of litigation about discovery. What discovery is he entitled to get? What is he not entitled to get? That goes on for an extended period of time, and I leave before that gets fully resolved. Ultimately he pleads guilty and winds up going for sentencing.

Brown: Who was representing him?

Chertoff: He had public defenders. Edward MacMahon was one and there was another guy, too, whom he abused. He was a disruptive guy. He would abuse his own lawyers, he would abuse us, abuse the judge. He ultimately pled guilty and then went through the death penalty phase and I guess didn’t get the death penalty.

Riley: The case spun out as you had hoped it would?

Chertoff: He was resistant at every stage. He’d file crazy motions. He’d want to fire his lawyers. He was committing guerrilla warfare against the court. That’s not an unknown thing; that happens in other cases too. Occasionally you get criminal defendants who decide they’re going to go to war with the system and they fight every step of the way. A good judge can manage that well. I would say Judge Brinkema was a middling judge and managed it imperfectly. Even so, in the end it navigated to a reasonably successful conclusion: He was convicted and he’s going to spend life in jail. And there were no significant problems from the standpoint of revealing classified material or having the guy being able to run around and interview Khalid Sheikh Mohammed and stuff like that. The judge shut that down. So I wouldn’t say it’s a model case, but with a difficult defendant and difficult set of circumstances and a first-time case, I think it worked out reasonably well.

Riley: What about the Lindh case?

Chertoff: Same thing. Lindh was a little easier in the sense it was pretty straightforward. He was litigating various kinds of motions, but I don’t think any of them had a lot of merit. I forget who the judge in the case was.

Riley: We can add it. [Thomas Selby Ellis, III]

Chertoff: Anyway, he was good. In the end, they decided to plead guilty. Again, there were just a lot of discovery motions. He wanted to interview everybody in Guantanamo. So we decided, given the nature of the plea, and the fact that it was a headache, it was a good resolution to take the plea we took. Now there’s an urban legend that we took the plea to prevent him from revealing that he was tortured by the troops in Afghanistan. That, however, is false, because he
actually filed a motion alleging that before we settled the case, so there was no gag order or restraint on him publicizing his allegations, which I don’t think were accurate. In any case, that’s just a myth. It’s not borne out by the timeline.

**Riley:** Were there any other cases that are historically important?

**Chertoff:** Reid was very quickly disposed of. He wasn’t going anywhere. He had a bomb in his shoe. There was no defense, so he pled guilty. And then we did the Lackawanna case, and there were a couple of cases up in the Northwest.

**Riley:** No details of those have any…?

**Chertoff:** Nothing sticks out in my mind.

**Riley:** OK. You had mentioned Guantanamo earlier. Were you a part of the consultations about what to do with what they were collecting on the battlefield and what the legal status of Guantanamo was?

**Chertoff:** Somewhat, in the sense that people in the Criminal Division participated in reviewing files of detainees, to offer an opinion about whether we thought they were safe to send back home or whether we thought they were too dangerous. So that process went on. It went on after I left, obviously, but it started when I was there.

**Riley:** But the predicate about the legal status of Guantanamo—

**Chertoff:** No. That was decided by OLC. We were not part of that. We accepted that that’s where people were going to be kept, and it made sense and that was fine.

**Brown:** How many people were detained originally? You said 700 something.

**Chertoff:** In the U.S. as part of our post-9/11—That initial wave was something like 750.

**Brown:** What proportion of those were you able to determine might have a plausible case to actually prosecute them?

**Chertoff:** With the exception of one person, everyone was either prosecuted for a criminal offense, or deported, or had an immigration thing. In terms of whether they were terrorists, there were probably a couple for whom we had some reasonable basis to believe they might have been involved in some stuff. I remember we looked at [Anwar] Awlaki for a while, but we didn’t really feel we had enough to pursue him. Obviously now, according to the newspapers, he’s come to justice in a different way. There was another guy named [Lotfi] Raissi, who we looked at. He left the country, though, before we could get him. Again, it was ambiguous issues, things to raise questions. In the end it didn’t generate terrorism prosecutions, but our general philosophy was that if there was another case to be made based on another crime, we’ll do that.

**Brown:** If you could prosecute them on some other basis, you’d do that?

**Chertoff:** Right. Everybody wound up either getting prosecuted—I guess the people held on
material witness warrants probably got released when they had given their testimony, unless something came up and they were prosecuted. The people arrested on criminal cases were prosecuted, and the immigration violations were probably deported.

Brown: When somebody is detained—Can you go through what happens to them?

Chertoff: I can’t generalize. First of all, they’re in the domain of the Marshals and the prison service and I’m not really visible into that. Generally what happens is at some point they get presented to a judge. If it’s immigration, it’s an immigration judge. If it’s a criminal case, it’s a federal judge. If it’s a criminal case they get a lawyer. Immigration, I’m not sure. They’re entitled to a lawyer but I don’t think they get a free one. Then they ask for bail and the judge says yea or nay. In these cases the judges pretty much always said nay, and then you go through the process. If it’s a criminal case, you get indicted and you either get tried or you plead guilty. If it’s an immigration case you get deported, or you appeal and fight it out in the Appellate Courts.

Brown: In locating these 700 and some people, what kind of guidance did you give to your people as to—

Chertoff: It was mainly the FBI and it was done by basically tracking links. You go back and see where the 19 hijackers were. If they stayed someplace, you want to talk to the people in that place. If there’s something about their interaction with the hijackers that raises a question, and if you’ve got a legal basis to detain them, you’ll do it. The guys who sold the phony documents. There was a mosque in San Diego that some of them spent some time in. People involved in that, who might have had a lot of interaction with them or might have, for example, vouched for them or paid rent for them, would be people you would take a look at. Anybody who looked like they were part of the support network that enabled these guys to operate in the country for a period of months was somebody that you would take a hard look at.

There were a couple of folks who got on a train with box cutters, and they had a weird travel pattern. I think they went down to Texas. They wound up getting arrested. Anomalies like that, where people whose behavior in an aviation setting, for example, raised suspicion, would be arrested. It was always based on some articulable suspicion, whether it was a connection to the hijackers or some behavior that suggested a potential terrorist motivation.

Brown: Was some connection with al-Qaeda?

Chertoff: I mean connection with a hijacker, like if you had someone who rented a room to two hijackers. I don’t know that I could say that was an al-Qaeda person, but you would certainly say, “Why would two hijackers—Why would someone pay for their rent?” There might be an innocent explanation but you’d be nuts if you didn’t ask the question of whether they knew there was something up, and they were supporting them in the United States. That would be an example of somebody about whom you would say, “If there is a basis to detain that person, we’d better do a better investigation.”

Brown: How much of this came back to you?

Chertoff: Some came to my level. We had other prosecutors working it, and there were a lot of FBI agents. Most of the actual fieldwork was done by the FBI. Some of it came to me. Most of it
didn’t come to me, personally, but I was aware of the general program.

**Riley:** The relationship with the FBI was good through this entire time?

**Chertoff:** Great.

**Riley:** Were there any tensions that you can recall? Are there usually tensions between the FBI and the Division?

**Chertoff:** No. Occasionally, but not that I experienced.

**Riley:** The Criminal Division and the FBI are hand-in-glove?

**Chertoff:** Yes, and we worked very closely on this.

**Derthick:** What was the quality and quantity of press coverage in this phase of activity?

**Chertoff:** I wasn’t reading the newspaper a lot, particularly in the first couple of months, because I would be in at six in the morning and leave around nine or ten at night, so I don’t know that I had a clear sense of the press coverage. I’m quite sure there was a lot of press coverage but I don’t have a real clear sense of it.

**Riley:** Did your wife manage OK?

**Chertoff:** Yes. Of course, we had the sniper. That was also something we had to deal with, and we tracked that too. I had middle school kids and one of them, in the first sniping thing, was with a bunch of other kids put in the coat closet because they thought there might be a risk at the school he was in.

**Riley:** Right.

**Chertoff:** I remember taking my kids to their school bus, and you’d have to look around to see if there is a line of fire. People forget—You know, if you look at all that stuff together—9/11, anthrax and the sniper—It really began to look as if we were in a dangerous state of affairs unlike people have had in the United States maybe since the Civil War, where in the United States there were a lot of threats. So we were involved in that too.

**Riley:** How many false alarms are you getting?

**Chertoff:** You get a lot of false alarms.

**Riley:** How do you learn to read those out?

**Chertoff:** After a period of time you get a feeling for what is likely to be a real threat and what’s likely not to be a real threat. The sniper was—That was a very high-profile serious thing that we spent a lot of time on.

**Riley:** In Charlottesville—One of the incidents was in Fredericksburg so there was a concern that it might swing there.
Brown: The Department of Justice gets involved in the issue of interrogation, and there are some key memos that are written. [Jay] Bybee’s memo, and John Yoo gets involved, at least in drafting it. Can you tell us a little bit about that?

Chertoff: At some point in the summer of 2002, the deputy asked me to go to a meeting—I think John Bellinger was there; some folks from the CIA, lawyers, John Yoo; DoD lawyers may have been there—to talk about this issue about interrogation. This not at Guantanamo; this is high-level targets. The question arose, would the Criminal Division somehow immunize in advance? I said, “No, can’t do that.” Subsequently, I was asked again about that and we actually did a little bit of research and I said, “No, can’t do that.”

Then subsequently—and I don’t know when the memo was begun, and this is all public. It’s been discussed ad nauseum—John showed me a memo he was doing generally on the torture statute. The idea was for me to look, not at the statute itself, which requires a lot of research that was out of my domain, but to look at the issue of intent, under the general criminal law, and ask him from a practical standpoint as a prosecutor, “When you say something has to be willful, what does that really mean?” I said to him, “John, in law school, ‘willful’ means that even if you’re acting in bad faith or you didn’t know—if I hit you in the face and I say I don’t know that you’re going to bleed, I’m not willfully causing you to bleed.” I said, “In real life, I would not want to defend that case. When you look at willfulness, what you really have to say as a practical matter is that you have a good faith belief that what you’re doing doesn’t violate the law. And it’s got to be based on some reasonable set of facts. It can’t be based on just imaginary facts or wishful thinking. The more you can demonstrate that you’ve got a reasonable fact-based judgment that what you’re doing falls short of a violation of the law, the better off you are.” That was essentially my interaction with him on it.

Brown: The so-called “torture memos,” Bybee and others, went through a whole detailed analysis of the various kinds of techniques that were being used.

Chertoff: There was one memo that I didn’t see, that got into specific things. That’s not what I was shown. The one I was shown was the general analysis of the statute. It was a long memo and it talked about cases in Northern Ireland and a lot of international law stuff, because there’s actually very little domestic case law on this. But that was not specific to particular techniques; that was general as to what the statute meant.

Brown: But that famous memo in which they are indicating to the CIA people that things like waterboarding and so on—What would be the CIA interrogators’ future susceptibility to prosecution? I think that’s what the Attorney General’s Office was asked to comment on, was it not?

Chertoff: I don’t know.

Brown: You didn’t get involved in that?

Chertoff: I didn’t get involved in that memo. I became aware of the fact that they were given permission to do certain techniques, or told that certain techniques would not violate the law. They were not given immunity or protection from prosecution. That was my decision and I didn’t do that. They were given a legal opinion about what would fall inside and what would fall
outside.

**Riley:** What is the relationship with the OLC memo to the legal vulnerabilities on these things?

**Chertoff:** You know, it never came up with me, because we didn’t get to the point where we were faced with a prosecution, but essentially it should be something—Again, it’s a matter of good faith: If you in good faith rely upon it, it probably means you haven’t violated the law. If you’re acting in bad faith, that’s a different story. It’s not going to help you.

**Riley:** I guess what I’m partly interested in is the fact that you refused to issue—I don’t know the legal term of it.

**Chertoff:** An advance immunity.

**Riley:** Declination to prosecute, or something like that, in advance.

**Chertoff:** Right, in advance.

**Riley:** Does that create a situation for greater legal vulnerabilities down the road?

**Chertoff:** It probably does in the sense that if you could do an advance declination, which you can’t do, so it’s a kind of a hypothetical discussion, then I guess that would eliminate the possibility of prosecution. The problem for them is there’s no such thing. Otherwise, I could just grab myself the immunity to violate the law, so you can’t do that.

What you then have to do is look at the law and say, “Here’s what the line is”—and it’s normally an ambiguous line—and then you have to say, “In good faith, on a certain state of facts, am I inside the line or outside the line?” If you believe in good faith that you’re inside the line, you should be OK. Now does that mean someone won’t try to prosecute you? Evidently it doesn’t mean that. That’s one of the reasons why, over time, people in the government tend to get very conservative. As they get nervous about getting close to the line, they go further and further back from the line. The problem with that is that you sometimes have real operational sacrifices by doing that.

**Riley:** Anything else on that?

**Brown:** No. There begins to be a public debate about these kinds of things going on.

**Chertoff:** I’m gone by then.

**Brown:** You’re gone by the time the public—

**Chertoff:** Yes. It was really Abu Ghraib, and that’s 2004.

**Brown:** It opened it up, yes.

**Chertoff:** I’m out of there by June of 2003.

**Brown:** But within the Department of Justice, there was no real debate on these things?
Chertoff: I don’t remember there being—I mean, I wouldn’t have been privy to it and it wasn’t really an issue. At one point I was made aware of the fact that someone had died in custody and I designated a prosecutor to work with the Inspector General to investigate that. So I was aware that there was an investigation going on, and we put a prosecutor on it, but I was gone before that came to fruition.

Riley: In that particular case, is there anything more you can tell us about that?

Chertoff: I don’t know whether it wound up being one of the cases they’re still looking at. It was a case where someone died in custody someplace.

Riley: Right.

Chertoff: The IG had opened a case and was looking at this and I assigned a prosecutor to it because they told me about it, which they had to do, the Agency. I said, “If you’re going to do stuff that is getting close to the line on interrogation, you had better be sure you are very disciplined about how to do it, because you do not want to have cowboys out there doing this kind of thing.”

Riley: Are you being approached by counsels in the Defense Department, or from the CIA, on these things?

Chertoff: Mostly the CIA. We had some interaction with the Defense Department, but mostly the CIA, and OLC. At some point we talked to DoD about the procedures for the military commissions. We gave them some advice. They were very slow in getting these cases moving, and the AG used to kind of needle [Donald H.] Rumsfeld. Colin Powell did too: “When are you going to start bringing these cases? No one’s getting any younger and it’s hurting you to have people sitting in there and there’s no process, and a year and a half has gone by.” There were a couple of people who were willing to plead guilty and we actually said, “We’re happy to show you guys how to set up a system where you can take the guilty plea, or at least be able to get some people through the process.” Rumsfeld was always pushing it off, to the AG’s frustration, because he felt, rightly, that the more time you took before processing people, the worse your legal position was going to be.

Part of what the AG was about was defending these cases in court. And they started to lose some cases—again, more or less after I left—because the amount of time it was taking to process the cases meant the judge was starting to wonder, What’s going on here? Are you guys ever going to give any kind of process at all? So we were somewhat involved with DoD on that.

Riley: And they wanted to keep these cases.

Chertoff: Yes. The AG’s position was: Do something with them. Don’t just keep them if you cannot do anything with them.

Riley: Did you have a position? Would you have preferred to have taken these cases from them?

Chertoff: Yes, to get something moving. The basic idea was, you don’t have to give them a criminal trial, but you need to give them some kind of a process. You can’t just have them sit
there for two years, and not move on anything.

Riley: Could the criminal justice system have handled these cases?

Chertoff: Probably some of them would have been difficult to do, but some of these guys were willing to admit what they had done.

Riley: Right. But they would have been difficult on…?

Brown: Process grounds?

Chertoff: No. Because they were in the battlefield, and the collection of evidence isn’t necessarily what you would have for admissible evidence in a courtroom. It’s mechanically difficult.

Riley: What about the security issue in courtrooms?

Chertoff: I think if you got to that—if you were to bring people from Guantanamo into the U.S., you’d have a real security issue in the courtroom and in the neighborhood. Even when we did Moussaoui, there was a lot of security in the courtroom and there was security in the area. If you started to do a bunch of cases like that, it would probably be a real imposition on the people in the region.

Brown: In the public discourse, editorials and so on—maybe it was already after you went over to Homeland Security—there was a lot of talk about the reasons why very few cases were brought into the criminal system, that why they needed to have the military was that some of the people who were suspected of being the most dangerous were subjected to kinds of interrogation that would not have allowed them to get into the criminal system.

Chertoff: Well, for many of those cases, you wouldn’t need the fruit of the interrogation. You could just use other evidence, like with Moussaoui. With Moussaoui, we didn’t need anything he said, because we had a lot of circumstantial evidence. If you’re paid by the same guy who paid the hijackers; if you go through the same training; if you go through flight training and you’re not going to be hired by the airlines; if you have stuff on your computer about [Osama] bin Laden—it’s not going to be hard to convict you.

I think a larger obstacle is people caught in the battlefield. It’s not like CSI: Miami, where you can collect all the trace evidence and that sometimes creates issues. Also, with some of these people, it’s not a question of trying them for crimes as much as it is just incapacitating them so they don’t go back to the battlefield. It’s like in World War II, when we had captured soldiers, we didn’t try them necessarily, but you don’t release them so they can go pick up a gun and start fighting again. In those cases, having a military process for detention makes sense if you’re going to get people in the battlefield. You don’t really want to bring them into a criminal court unless they’re U.S. citizens. However, you still have to do something. You’ve got to have some kind of a process. They didn’t process them very quickly and that created a legal disadvantage when the cases were litigated in court.

Riley: You said you also had discussion with CIA counsel.
Chertoff: Well, that was when they came in with someone who had died in custody, so we would have interaction with them.

Riley: Right, OK. What about rendition?

Chertoff: Not involved in that. I mean, I was aware of it.

Riley: But there was no corollary approach to you about legal vulnerabilities on the question of rendition?

Chertoff: No. Legal analysis was generally OLC. The only reason I got involved in this little issue on the one memo was, I was friendly with John because you wanted to get a sense from a prosecutor’s experience on the issue of intent, which is general. It’s not unique to the statute; it’s a general legal concept. How do prosecutors look at that? Academically, you might look at it and say, “Even if I’m unreasonable, as long as I don’t have a bad intent, I’m not guilty.” That’s technically true. In real life I would not want to argue that position in front of a jury, because the jury is going to look at you like you’re crazy. You’ve got to be able to say, “Look, it’s a reasonable position, and here’s why it’s reasonable.”

Riley: Did you find that the memo that proceeded from those discussions reflected your concerns?

Chertoff: I think the passage on that to a degree reflected that advice.

Riley: OK. Why don’t we take a break for a couple of minutes?

[BREAK]

Chertoff: That’s where maybe personality comes in. I’d say that, without the experience, you’d be reckless if you just went ahead, but without the personality, no amount of experience is going to give you the confidence to make decisions. I would say this: Probably a combination of personality and the experience taught me how to make decisions based on less than perfect information and in a reasonable time frame, because you never get perfect information. Not to decide is to decide as well. It’s decision by default.

Riley: You’d leave. Why did you leave?

Chertoff: For a few months, the White House Counsel’s Office had said, “There’s a judgeship open on the Third Circuit.” Would I be interested in doing it? I said, “Well, I figure I’m too valuable here.” At some point they said to me, “Look, we’ve kind of been holding this, but honestly if you’re not going to accept it, we’re going to give it to somebody else.” I went home and said to my wife, “You know, I’ve done this for two years. Maybe instead of thinking about the next year, we ought to think about the rest of our lives.” We decided it was the right thing to do and so I did it.
Riley: Had you wanted to be a judge before?

Chertoff: It’s one of the things I always thought I wanted to do, and I enjoyed it.

Riley: But you didn’t do it very long.

Chertoff: Correct.

Riley: That’s a puzzle to some of us.

Chertoff: It’s a life tenure job; it’s not a life sentence. When the request came to consider becoming a Cabinet Secretary in an area that I cared about, which is security, because of 9/11, it’s kind of hard to say no to that.

Riley: Tell us about the circumstances of being approached, and the decision making.

Chertoff: [Bernard] Kerik had been nominated, or maybe not nominated but he’d been selected. Then he fell out of it and I remember saying to my wife—we went on vacation that year to the Virgin Islands—“I wonder who they’re going to pick for Kerik’s replacement?” We get back right after the New Year, I’m sitting in my office chambers, and I get a call from the White House Personnel Office. They had called me once previously the year before, about whether I would be willing to be considered to be Deputy AG when that fell vacant, and I said no.

So I get a call: Would I be willing to be considered to be Secretary of Homeland Security? I said, “Well, it’s hard to say no to that. Let me talk to my wife and I’ll get back to you.” I called her up and said, “It’s kind of hard to say no to this. Why don’t I at least raise the issue? It probably won’t happen.” Meryl [Chertoff] said, “Oh, it’s probably going to happen, so you’d better be sure you want to do it.”

I call back the next day, which I think was a Thursday, and I said, “OK, I’d be willing to be considered and if Andy Card”—who was the Chief—“wants to talk to me, I’ve got a judicial sitting next week, but I’ll be happy to come down after that’s over.” They said, “No, we’d like you to come today.” I said, “Fine, but I do think I need to tell my kids first, to make sure they don’t go ballistic, before I actually say yes, so let me go back.”

I’m on the train going back home on Friday and I get a call just as we were leaving Philly to go up to Newark and they said, “Could you come and meet the President now? He’s just come back and he wants to see you.” I said, “First of all, I don’t think I could physically get back there today. Second, I’d like to talk to my kids.” They said, “Hang on,” and they went and talked to the President, and came back and said, “OK, how about tomorrow morning?” I said fine. I go home and talk to the kids. We decide I’m going to go do this. I’m going to say, “Yes, I’m willing to do it.”
I flew in the next morning really early and met with the President for about a half an hour, 40 minutes. He knew me from being head of Criminal, so it wasn’t my first rodeo, so to speak. Then I went back and they basically said, “He’s going to make his mind up very quickly.” The next day, which was Sunday, I’m at home, the phone rings and it’s the President. He says, “I’d like to offer you the position.” I said, “I’d be honored to accept.” I went down Tuesday and we announced it. That was it.

Riley: You said it would be hard to turn down. Why is that?

Chertoff: Because it’s something I cared deeply about, which was security, and it is the President asking you to do something. And, you know, being a Cabinet Officer is a pretty unique privilege.

Brown: But in the prior conversation with the President, you said it took about a half hour or so.

Chertoff: About 40 minutes.

Brown: What went on in that conversation?

Chertoff: Discussion about the job and my views on various things.

Derthick: How old were your kids? Is this a matter of protocol, or they’re going to exercise some sort of judgment?

Chertoff: No. I wasn’t going to let the kids decide, but you kind of feel like—

Derthick: You should.

Chertoff: Yes. You ought to hear them out before you say yes or no.

Riley: It’s possible they could have said something that caused you to change your mind?

Chertoff: It’s hard to imagine what that would have been, but yes, it is possible.

Riley: Probably a direct no wouldn’t have done it.

Chertoff: If they became unhinged, maybe you’d have to think twice about it. The good news is it worked out really great for them. They were happy. They got into a good school and everything worked out terrific.

Riley: But leaving the bench for you was not a traumatic experience?

Chertoff: It wasn’t traumatic. I liked it, but when an opportunity presents itself that’s unique—Again, this is an area I cared a lot about, because I lived through the whole 9/11 business.

Riley: In your discussions with the President, was there a kind of agenda-setting, or were there priorities discussed?

Chertoff: I think he was concerned about making sure—It was a new Department. It was less
than two years old.

Riley: Right.

Chertoff: He was very concerned about making sure that it was integrated properly and efficiently, and matured.

Brown: Was there a sense in your discussion with the President that this would be a very difficult Department to manage?

Chertoff: Yes.

Brown: So many things were thrown in, and some things were left out.

Chertoff: I think there was recognition that it was going to be a real challenge.

Riley: Did that concern you, the size of the job?

Chertoff: No, not really. I knew what I was getting into.

Derthick: You probably don’t want to talk about what the President said about it, but did the subject of whether you would have freedom in picking your own subordinates come up?

Chertoff: It actually didn’t, and that’s probably my mistake. But as it turned out, I think that maybe Andy Card had recommended Michael Jackson as a deputy, but it was always made very clear to me that no one was going to force anybody on me. Michael came on board. I interviewed him, I was happy with him, we had a good relationship, and that worked out really well. Then for some of the other positions over time, we would actually recommend people to the White House, and they generally took the attitude that, unless the person had been vociferously anti-Bush in 2004, they gave us a pretty free hand. In fact, I might have appointed a couple of Democrats. The White House was very hands-off on personnel. They did not mess with our personnel very much.

That whole thing about having people pick—that never was a problem with us. I’m saying it because I’ve heard it often enough from people complaining historically, and just from books, that they didn’t control their own subordinates. That never happened. The President was very respectful of the Cabinet Officers.

Brown: Did anybody at that time—friends, colleagues, and so on—say, “You don’t want that position. This is an impossible job”?

Chertoff: My wife might have said something like that.

Riley: Not your kids though.

Chertoff: There weren’t a lot of people I talked to. It was just very closely held, so I don’t know that there was very much conversation with other people about it.

Riley: How much of your job at the Justice Department involved management?
Chertoff: Not a lot of people, but it did involve making decisions, learning about things, setting agendas, and driving things to conclusion. I wind up thinking at the end of the day that it’s pretty good preparation for running a large enterprise.

Riley: That’s the fundamental question, looking through your CV [curriculum vitae].

Chertoff: It turns out that if you’re able to assimilate facts quickly, listen to people, and decide things, you could pretty much manage anything. The actual nuts and bolts of knowing every detail—First of all, no one could know every detail of the Department because there are too many different dimensions to it, but the qualities that I’ve outlined are pretty much what you need.

Riley: How did you go about educating yourself for the job?

Chertoff: Some of what the Department did I knew about because I knew the law enforcement side and the intelligence side. The stuff that I had to learn was the immigration piece, although I had a little bit of experience with that as a judge. The Coast Guard’s mission and roles—you just pick that up over a period of time. When I came onboard we did a review, a second-stage review, which was designed to look at where the Department was and where we wanted to make changes.

The one thing I saw early on was—We did an exercise in the summer of 2005 called TOPOFF [Top Officials Exercise], which was an exercise with a scenario involving biological weapons, in Northern New Jersey and Connecticut and New York, and it became evident to me that the planning for scenarios was not well developed and that people hadn’t really thought through a lot of what they would do in those circumstances. As a consequence, we began the process of trying to build and mature the planning capability in DHS, which was really a four-year project. Then, again proving the history I have of starting a job and within a few months a catastrophe happens, we had Katrina, and that illustrated the lack of a planning capability and accelerated that process.

Riley: What else in terms of personnel? You mentioned the White House—you hadn’t insisted on any independence there.

Chertoff: Right, but they pretty much gave it.

Riley: Right. But you ended up with the people that you wanted.

Chertoff: Over time. First of all, we eliminated some positions when people left, to condense the Department, to kind of flatten it. Then, when people left of their own accord, except in one case, we had a pretty free hand in picking people. When Rob Bonner left as head of Customs and Border Protection, we had the head of Secret Service, Ralph Basham, moved over to that. He was a professional law enforcement guy. We were able to fill the positions with people that we liked.

Riley: And they all worked out well?

Chertoff: Yes, actually they did.
Riley: You said, “with one exception.”

Chertoff: Michael Brown. He didn’t leave of his own accord. He was fired, basically.

Derthick: About Brown, and this is maybe getting a little ahead, but the President’s book quoted you as saying that after, I forget how many days, you had lost confidence in Brown. I wondered if you ever had confidence in him.

Chertoff: No, I didn’t. Here’s the story: We knew he was a problem when we did the second-stage review, which finished up in July or August. We knew he was going to be a problem. The difficulty was, we were going into hurricane season and his deputy was really inexperienced. He had been like an advance man. So we said to ourselves, if we fire the guy now, the guy who is underneath him is really going to be incompetent. Brown had apparently done a good job in 2004, with the hurricanes he had then, so we figured—I think he saw the handwriting on the wall and basically signaled he was going to leave at the end of the year. So we figure we’ll run the course of hurricane season, hopefully he’ll do a competent job like he did last year, and then we’ll transition out. It was like playing musical chairs but the music stopped. Yes, we knew he was not somebody we wanted to keep on, but we ran out of time.

Riley: I know Martha has got a lot of questions about Katrina, but a couple of preliminaries: The second-stage review was something that you instituted?

Chertoff: Yes, we instituted it.

Riley: Was that done at the recommendation of the White House?

Chertoff: No. Michael Jackson suggested it and I thought it was a good idea, as we were taking stock and also giving us an opportunity to retool.

Riley: And the collapsing of the organization, that was something that was consistent with the second stage?

Chertoff: Yes, but also I felt there were a couple of layers that we didn’t need. Generally, when I managed either at DOJ [Department of Justice] or as the U.S. attorney or in DHS, I didn’t like to have a gatekeeper. I like to deal directly with the operational component heads and not have layers between them, so we eliminated a layer at DHS.

Riley: And there was no pushback from—

Chertoff: No, because it was vacant. The person had left. There was no incumbent so it was not a problem.

Riley: All right. And the second-stage review is completed before Katrina?

Chertoff: Yes.

Riley: Six weeks, or something like that. Did it produce what you thought it would produce?
Chertoff: It produced a good roadmap. The problem is, we didn’t get very far down the road. Ultimately it wound up getting implemented largely, including the planning piece and all that. Katrina also resulted in a bit of a reorganization by Congress, so it got kind of swept up in all of that.

Riley: Were there things that were excluded from the review that you had anticipated you might want to include?

Chertoff: No.

Riley: From your own sense of order and logic, was DHS a logical institutional when you came in?

Chertoff: I think it was logical. You could argue about whether FBI and DEA [Drug Enforcement Agency] ought to have been in it too, on the fear that you get all the police agencies together. Politically, that would never have happened. But I thought it was pretty logical.

Riley: This is a sort of global question: From your perspective, is it a manageable organization?

Chertoff: Yes. In fact, in many ways it’s more manageable than a lot of agencies. Once we got it matured to a certain point, we created more jointness in planning and in operations and even in personnel. It was pretty efficient. In some ways, some of the problems you put up with in more mature departments where people are very entrenched and fight back against change—One of the benefits of having disrupted everybody is no one was entrenched, so we had a certain amount of flexibility. You could argue that in some ways what you get now is made over in the image of the people who were involved in it during my tenure, and our particular styles of management may be part of the DNA of the Department, but from our standpoint it worked out pretty well.

Riley: Were there important modifications in organization? I’m just looking at my timeline here.

Chertoff: We eliminated a layer, basically Border and Transportation Security, and so you had direct reports from CBP [Customs and Boarder Protection], TSA [Transportation Security Administration], right up to the Secretary and the deputy. That was the major organizational change.

Then we created a directorate—maybe directorate is the wrong word—of planning and operations, which was a growth out of the integration staff that Tom [Ridge] had set up, that was meant to integrate all the planning among all the components, and be able to help manage operationally across the Department and with other agencies. Roger Rufe was the guy we put in charge of that.

Riley: Again, let’s deal with the pre-Katrina period and we’ll get into that in just a second. How were your relations with the White House staff after you moved into the Cabinet?

Chertoff: I’ll give you a timeline over the entire period. When I came in, Tom said to me, “You know, the White House staff is really all over the Department because they feel it’s not mature.” I think that was true. Over a period of time, that lessened and there was less of what Mike Jackson used to call pushups and reporting, and it diminished over time. Probably by 2007–2008,
there was not a lot of heavy supervision. But the first year there was quite a bit of supervision.

**Riley:** In your original conversation with the President, did he provide to you a kind of assessment about how well the department was working before you came on board?

**Chertoff:** He said that it was a work in progress and needed to continue to progress.

**Riley:** OK. How are you different from Tom Ridge?

**Chertoff:** Tom, because he has a political background, probably was more attuned initially to the public face of the job. I was more attuned to law enforcement and intelligence—I mean the intelligence agency dimension to the job—and maybe more operational and a little more inclined to get into the detail.

**Brown:** Back to the logic again, and maybe this is too abstract and academic a question, but Homeland Security is of course one of the primary objectives of the Department of Defense and the Central Intelligence Agency. You have some anomalies here: the Coast Guard is under your jurisdiction.

**Chertoff:** Well, it actually makes a lot of sense if you think about this way: DoD is largely, but not exclusively, away. We don’t really have DoD operating in the U.S. unless you’re literally fighting a war in the U.S. Exceptions are air cover and things of that sort. If you want to bind the non-DoD security agencies, you’re talking about border, infrastructure, and transportation. It makes sense. That’s really what the core of the Department is. The other element is the response, FEMA [Federal Emergency Management Agency], which is also part of the spectrum from prevention through response. So actually there’s a pretty good logic to it.

**Derthick:** FEMA seems to have been integrated from the start.

**Chertoff:** It was resistant. There was a fantasy that when FEMA was independent, it got whatever it wanted, that the director would just roll into the White House, into the Oval Office, and say, “Mr. President, write me a blank check.” I don’t think that was ever true, but it was a fantasy that grew. One reason for that is because a lot of the funding for FEMA comes through supplementals, so they’re off-budget. When there’s an emergency, the spigot turns on. Under President Clinton, he saw the benefit politically of being very generous with FEMA, and so they got spoiled by that. But there’s no question, from an integration standpoint, and some of it is Brown, FEMA was the most resistant. They felt they had lost something. Every other agency that came in had been part of another agency, so they were trading one parent for another parent.

The Coast Guard actually was happy, because they felt they were more suited to their mission. The others—Customs initially didn’t like being tied to Immigration, which they viewed as kind of a down market, but eventually they outgrew that. FEMA was the one agency that resisted, and had a client group on Capitol Hill that, for jurisdictional reasons, did not want to have it merged into DHS, because the Transportation and Infrastructure Committee wanted to continue to hold onto to FEMA because there’s a lot of money, because that’s what the supplementals do; it give you off-budget money. So they were the hardest to integrate and there was a lot of resistance. One of the things we perceived about Brown was he was not happy about that.
Derthick: I think there probably was a very close relation between Clinton and [James Lee] Witt.

Chertoff: Right. I think Brown thought he had a close relationship with President Bush, but I’m not sure that that’s accurate. He did have some relations in the White House that were close.

Derthick: It must have been significant that [Joseph] Allbaugh left.

Chertoff: Allbaugh did not want to be in FEMA if it was going to be subordinated to DHS.

Riley: You had mentioned that there had been some changes in relationship with the White House. To what did you attribute that? I think you used the word fewer “pushups.”

Chertoff: I think it was a combination of them getting more confidence in the Department over time. There was one personality change. The Deputy Homeland Security Advisor left. He tended to be more nudgy than the guy who replaced him, who was a little bit more calm, so there was a personality change. Ken Rapuano left. He tended to be very nudgy. Then Joel Bagnal came and he was just much more—personally-wise, he was more laid back. But I also think that over time they just got more accustomed to the fact that we were maturing and we did a better job.

Riley: I’m trying to remember where Fran Townsend was.

Chertoff: Fran was there the whole time and Fran was a great person to deal with.

Riley: She was with you for a while? No? OK.

Chertoff: She was at DOJ when I was there but in a different position.

Riley: Should we go to Katrina?

Chertoff: Sure.

Riley: Can you give us the same sort of narrative account of where you were?

Chertoff: Remember, it comes up originally the week before. It comes up the east coast of Florida, crosses over Florida and it looks to be a not particularly powerful hurricane. It gets into the Gulf and then on Friday they start to predict that the zone, the cone, may take it into New Orleans. On Saturday, the President called [Kathleen] Blanco and suggested she start to evacuate. I think he also called [Clarence Ray] Nagin Saturday or Sunday, and they were reluctant to begin an evacuation. On Sunday, we have a VTC [video teleconference]. The President is on from Crawford; I’m on, Brown’s at the FEMA location downtown. The state reps are on from Mississippi and Louisiana, and probably Texas, too. We’re going through the typical menu of things that they do.

I had been through one hurricane previously that was pretty much a nonevent, earlier that summer. I specifically remember saying to Brown, “Do you have everything you need? Has DoD given you everything you need?” He said, “Yes, we’re all set.” I called Blanco up afterward that day when I went back to the office, and made sure she was set, and by then they were doing an
evacuation. Monday morning comes, and I remember we’re all wondering about the levees overtopping. We were concerned about the Ninth Ward, which is below sea level.

The President spoke to me on Monday morning and he said, “What’s going on with the levees. What have you heard?” I called Brown up, and Brown, who was at that point in Baton Rouge, says, “Nothing significant. We’re not hearing anything significant.” It goes on like that through Monday. We’re following it but nobody is reporting anything catastrophic. Tuesday morning, I’m supposed to go down to Atlanta to do something at the CDC [Centers for Disease Control]. Tuesday morning early, I get a call that the 19th Street levee has broken and water is rushing into downtown New Orleans like a bathtub. Now we know we’re in a much more serious situation.

If you read the report, apparently information about this came in later on Monday, but it was conflicting and the folks who were monitoring it in our Op Center didn’t pass it up because they weren’t sure that it was true. That whole issue about getting granular truth was a big lesson out of Katrina. How do you make sure you know what’s going on?

Riley: Can I ask you, without interrupting your train of thought, to what extent are you relying on the information coming up through channels and following things on television?

Chertoff: Entirely through channel, although I remember the media reports at the time, because I remember them saying they dodged a bullet. Actually, the brunt of the storm hit Mississippi, Pass Christian. It didn’t hit directly into New Orleans. So largely on channels. The media reporting turns out to be unreliable in many respects.

Tuesday we decide what I’m going to do is go to the Operations Center in Atlanta, the Operations Center for Region IV, which covers Mississippi–East, Region VI being Louisiana and Texas. During the course of the day the issue is: Can they plug this hole? Now you have flooding all over, not just the Ninth Ward, which got some overtop. You actually have a breach in the wall that’s putting water into the downtown.

I get back Tuesday and I call up to get Brown, to find out what’s going on in terms of evacuations—We knew people were in the Superdome. I can’t get him because he’s doing Rita Cosby on TV. I hit the roof. I called his chief of staff and I said, “You tell him to get out of that ‘blank’ Rita Cosby. I want to know what’s going on with evacuations.” I finally get him later that day. We have dialogue on Wednesday morning. Again, it’s, “Get people evacuated. Get the buses in there.” The Coast Guard is pulling people off roofs, but you’ve got a lot of people in the Superdome. There was food there and there was National Guard, but it’s not a sustainable situation for a long period.

They were very slow in getting buses because they hadn’t arranged for buses—because, in fairness, evacuation used to be the responsibility of the state and locals. Because they were slow in the evacuation initially, a lot of the buses they would have used were underwater, so they couldn’t use them. So you had to get buses. Now you had to arrange for bus companies to send buses, you had to get the maps, and that was taking time.

Wednesday, we have a Cabinet meeting—the President flies back—and the question becomes: What is the authority to bring Title 10 troops in to assist with what is going on? The President asked the Attorney General to come up with a legal opinion, and Rumsfeld is going to come up
with a legal opinion. We’re still working on buses and getting all the mechanics and everything done.

Thursday morning I get a call from Brown—I’m over at FEMA—saying that there’s widespread disorder. This turns out to be an exaggeration because he’s getting it from TV. “Dozens of people are being killed in the Superdome.” Again, not true. He’s thinking they may have to pull FEMA out.

I call Rumsfeld up and I said, “Don, I know you’re looking at this issue about Title 10 troops.” Oh, on Wednesday night I called Blanco up and I said, “Governor, I’d really mobilize the National Guard. I’d get more National Guard in there than you think you need. I would overwhelm them with force.” Based on that, she makes a call to DoD, apparently to get Title 10 troops, because I guess under the [Emergency Management Assistance] Compact she’s not getting the National Guard quickly enough, or she’s not able to manage them properly.

Thursday I say to Don, “I think we need to get troops, and I don’t think we have time to wait on this anymore.” He says, “Well, I don’t think we can do this, and I’m about to go tell the President that we can’t.” I hang up and call Claude Allen, who was then the head of Domestic Policy. I say, “Claude, I understand that Don is going down to the White House to do his ordinary Defense briefing, and in the course of that, he is going to say that they can’t send troops to New Orleans, and I just think that’s a big mistake. I think we’re really facing a situation and you’ve got to overwhelm this.” He says, “Why don’t you do this? Why don’t you come down yourself? They should be finishing up around 10:00, and I’ll get you in to see the President and participate in that last part of the meeting.”

I go down, and once they finish the other part of the meeting, I go in. We have a discussion and Don says we can’t, and I say we need to get thousands of troops in there, because I think we’re in a situation where we’ve got to stabilize what’s going on. Rumsfeld is there, and Dick Myers is there, and a few other people. Rumsfeld says, “Well, where are we going to get the troops? What are you talking about?” I say, “What about the 82nd Airborne at Fort Hood? You can’t bring them in there?” He says, “No, we can’t do that.” I’m looking at Dick Myers and he’s looking at me like maybe he doesn’t completely agree, but he’s not going to say anything.

So that’s that. What Rumsfeld proposes is that we just add more National Guard. We’re going to move more National Guard in there. At the same time, General Russel Honoré, who is down there with kind of an advanced planning element of the Joint Task Force, but doesn’t have a lot of arms and legs—He’s in there and the idea is maybe he can help coordinate with the National Guard. Tim Keating, who is very much trying to help, is at NORTHCOM [U.S. Northern Command], waiting for the go-ahead from Rumsfeld. So we leave it with the National Guard coming in.

Meanwhile, on Thursday, the deputy, Michael Jackson, realizes this bus thing is going so slowly, that the problem is that Brown has not properly designed the evacuation, that what you need to do is once Moisant [original name for Louis Armstrong New Orleans International Airport] gets opened, you don’t want to drive people to Houston from New Orleans. What you want to do is drive them to the airport, put them on planes and have them flown to Houston, and that way you can turn the buses around quickly. This is a logistics issue, which Michael was very good at. So
at that point we just override Brown and the deputy arranges that.

At about this point, after we’re done doing all this, I say to Michael, “I think we both agree that maybe Brown is not the right guy to run this.” The next day, I’m going to go down with the President. He flies down to New Orleans. We start off in the Situation Room. Again, Rumsfeld has Honoré on the screen and says, “General Honoré, I just want to make sure—Do you have enough troops to carry out your plan?” Russ says yes. Then I say, “Mr. President, could I ask a question?” The President says, “Yes, go ahead.” I say, “Suppose things don’t go according to plan? Do you have enough troops to cover all those contingencies?” And he says, “Well, maybe not. We might need some more help.”

We fly down. The President tours, sees all the stuff, and meets with Brown. As you probably know, the infamous “Brown, you’re doing a heck of a job,” comes from Governor [Robert R.] Riley, who tells the President as he’s walking in, “You know, Brown is doing a really great job.” The occupational hazard when you’re President, I’m told, is if someone whispers something to you when you’re about to go out, the risk is if you’re going to say it, it’s not vetted properly.

Friday, [H. Steven] Steve Blum says to the President, “I think the Governor is willing to agree to have the Guard brought under federal command, with Russ Honoré being the commander. That would allow us to combine our planning with their arms and legs and it’s going to really help matters.” So the President gets Blanco, and they go off and he talks to her about it, and she seems to be amenable and interested in doing that.

We fly back and we go into the Counsel’s office—Harriet Miers is there—because Andy Card wants us now to work on the mechanics of how we would organize this transition of control over to General Honoré. As we’re doing it, the phone line is going back and forth between Andy and the chief of staff to the Governor, who is now having second thoughts about this because she feels it’s going to make her look weak. At the end of the evening, we’re faced with the situation where—First of all, DoD is not excited about the idea of doing this, because they claim there are all kinds of legal obstacles because you really can’t federalize them under the statute because there’s not an insurrection. And the Governor has lost interest in voluntarily inviting the federal government to take control, so we’re back to where we were.

Finally, Saturday morning I go in and Andy must have said to me, “You’re going to have to really push this. If you want to have the federal presence, it’s really on you to push this.” I went and we sat around the Situation Room and I said, “Mr. President, we’re going to fail at this if we can’t get the federal government to take over this operation, or can’t put troops in there. We’re just not going to be able to get this thing done.” I think Andy had done a lot of work behind the scenes on this, and the President said, “Yes, Don, you’re going to have to do this.” So he went out and announced that we’re going to bring federal troops in, and that of course happened very quickly and helped stabilize the situation.

In that period of time, probably between Thursday and Friday, I determined that I was going to move Brown out of Operational Control. I had met Thad Allen through the Coast Guard. He was chief of staff at the time. I called Tom Collins up, who was the Commandant, and I said, “I’m thinking of maybe having Admiral Allen be the Deputy Principal Federal Official under [what was then called] the National Response Plan. What do you think of that?” He said, “He’s a great
guy, a great leader. He’ll be terrific.”

So I spoke to him and I said, “What I’d like to do, Admiral, is send you down to be the Deputy PFO [Principal Federal Official] for New Orleans.” My thought was that he’d initially report to Brown, but he would be operationally in charge of New Orleans. Mississippi was badly hit but the Governor was very competent, and so things were working pretty well. New Orleans was where you needed to have the help. But I also thought that this way he could get his feet wet, no pun intended, get up to speed, and then I could position him to replace Brown once he’s up to speed.

He goes down Sunday or Monday. I go back down on Sunday. I remember having a meeting with Blanco in the FEMA trailer in Baton Rouge, when again I broached this idea of a unity of command under Russ Honoré. I won’t tell you exactly what she said, but she made a comment that I considered to be out of bounds, about her willingness to have him be in charge, and it became evident that she was not going to cooperate with that. Eventually, the National Guard and General Honoré reached an accommodation themselves, as to how to functionally create a unity of effort, and they kind of solved that problem.

The next week I must have seen the President every day, reporting on what’s going on, with charts and everything. He’s very detail-oriented, as you probably know. We’re tracking everything, debris removal, every element of this, to try to get things back up again. During the course of the week, the President says to me, “What are you thinking of doing about Brown?” I say, “Well, to be honest, I’m thinking about replacing him, because I don’t think he’s doing a good job.” The President says, “This is totally your decision. I’m not telling you what to do and I’ll back you up 100 percent, whatever you want to do.”

We went down with the Vice President, and I decided I wasn’t going to do it before the Vice President went, because I didn’t want to have a big kerfuffle. When the Vice President goes back, I stay. I tell Thad he’s going to take over and then I go in to see Brown—I think it was a Friday if I’m not mistaken—and I say to him, “It’s time for you to go back to your agency and run it from Washington. I’m going to have Admiral Allen be the PFO. He’s going to run it down here. We’re going to go and have a press conference in a minute and we’re going to announce this.”

To say he was unhappy is not doing it justice. But we did it, and he subsequently tried to get it reversed. Since I knew the President wasn’t going to reverse it, I wasn’t concerned about it. Not surprisingly, he left shortly afterward. I called [R. David] Dave Paulison up and I said, “Dave, would you be willing to be FEMA director on an interim basis?” He was willing, and then he ultimately became the permanent director and he was good. That was the story of how Brown left.

[BREAK]

[Interviewer’s Note: During a brief interval of perhaps three to five minutes after returning from
the lunch break, the interview proceeded while the audio-recording equipment was still switched off. Three topics were discussed during this unrecorded period.

Professor Brown noted that he believed Judge Chertoff has something of a reputation as a “bulldog,” for being tenacious, both as a prosecutor and as an advocate for the causes he promotes. He asked Chertoff how he responds to that assessment. Chertoff replied, with amusement, that he was not really aware that he has such a reputation and accordingly doesn’t have a response to that characterization. Riley asked him if he had been interviewed by the 9/11 Commission. Chertoff said that he did not recall being interviewed, and thinks, on reflection, that he probably was not.

Finally, Riley asked him whether his portfolio included international relations, and Chertoff said that he did indeed have some overseas responsibilities. He noted that this was especially true in the Moussaoui case. He indicated that the Europeans, especially the Germans, have been reluctant to aid U.S. prosecutors on capital cases where the death penalty might be meted out. The Germans had ultimately been convinced to help provide evidence against Moussaoui—but at a critical juncture the French began to back out. Chertoff said that on that occasion he made a very vigorous appeal to the French, asking them if they really wanted to tell the American people that in this, the most important antiterrorism case in recent history, they were uninterested in helping. The intended effect was achieved. RLR, 2/1/2012]

Riley: We’re back on. Martha, do you want to start on Katrina?

Derthick: I have a question or two on Katrina. It seems clear that officials in Washington didn’t grasp the extent of the flooding until maybe a day later.

Chertoff: Tuesday.

Derthick: The city flooded on Monday morning.

Chertoff: I don’t know if it was in the morning.

Derthick: I think it was. I mean, it got worse. The first breaches occurred early Monday and then it got worse and worse.

Chertoff: Was that the Ninth Ward, or was it 17th Street?

Riley: Seventeenth Street Canal, the levee gives way.

Chertoff: What time?

Riley: Late morning.

Chertoff: Late morning, yes, that makes sense.

Derthick: At 8:00 A.M., local officials immediately report flooding. The storm surge reached
approximately 18 to 25 feet, massively overtopping. I just wondered if there was any time in the first several days at which you felt, you and other top federal officials, even the President, had adequate knowledge of what was going on?

Chertoff: No. It was always difficult to get ground truth, because either the reporting was understated or overstated. It was hard to know what was accurate, and therefore it was really hard to make decisions. One of the lessons we took out of that was to build a capability to send our own people into an area with cameras and video, so we could actually see for ourselves what was going on, because we didn’t have that the first week.

Derthick: I kept thinking at the time, *The United States government knows more about what’s going on in Iraq right now than it knows about New Orleans*. To some extent you could see it on TV, which was often inaccurate. I remember one particularly obnoxious CNN [Cable News Network] reporter, who’s still around, at the Convention Center, saying, “The Convention Center is full of people. Where’s the federal government?” I think it was true. The federal government didn’t—as far as I could see—realize that there were a lot of people in the Convention Center and maybe something should be done about it.

Chertoff: I was asked about that. On Wednesday or Thursday, General Honoré had gone by and seen people out in front—by then it was sunny—barbecuing, eating. He reports back, “No problem. People are fine.” I say that on TV and I get hell over it. I send people in. I say, “Go into the Center and take a look at what’s going on in there.” They come back and they say, “Everything is fine. People are out barbecuing.” Finally I had one of our own people, an ICE [Immigration and Customs Enforcement] agent, go in. They went in and they said, “The problem is there are people inside the Center, and those are the people who are in distress.”

By the way, there was National Guard in the Center, too, and apparently they weren’t interacting with the people. So that was an example of what led us to believe that you need to have your own organic capability to put eyes onto a situation, because you cannot trust other people to give you ground truth reporting.

Derthick: Yes, that seems to me to be a major takeaway. The press reporting was not only inaccurate, local as well as—This was an overwhelming problem.

On Title 10, there really was a legal obstacle. Didn’t the President need the acquiescence of the Governors, or even a request from the Governors, before he federalized the Guard? That was not an imaginary obstacle.

Chertoff: Yes, but I think there are things you could have done. You could have sent Title 10 forces in. While they can’t enforce the law, there’s a whole lot of stuff they could have done, including just their presence creating a sense of order and security. Sometimes the military doesn’t like that because they feel they’re being used as window dressing, or because the lawyers are overly cautious about straying into the line of enforcing the law. But that’s also an excuse for inaction. You know: *I don’t want to do it because if something happens and a soldier kills somebody, there’s going to be a big scandal.* They want to avoid the problem.

If you ask me, it’s along the lines of what we said about 9/11. In 9/11, we went right up to the line. We didn’t go over the line; we went right up to the line to protect the country. In Katrina,
we heeded for a while the counsel of those who said, “Stay well back from the line,” and that was a mistake. In that circumstance, we would have been much better off going right up to the line again. And if people said, “Oh, you’re taking a risk,” I think it would have been worth it.

Riley: Why the difference in the two circumstances?

Chertoff: Sensitivity by the administration about the Governor—not wanting to be politically seen as having muscled her out of the way. The DoD was not enthusiastic about the mission initially. Not the uniform services, but the civilian leadership was not that excited about it. Secretary Rumsfeld was not that excited about it.

Derthick: I think it was true that Governor Barbour also declined a request to—

Chertoff: But he had the situation well in hand, and I think he was just worried that people were at some point overreacting. We never had a problem with Mississippi. They were very easy to deal with.

Derthick: I see. Afterward, Congress did change the law, the Military Authorization Act, Defense Department Authorization Act, spending authorization, giving the President a much broader power.

Chertoff: But then they reversed it.

Derthick: And then they reversed it. I just wondered whether you were involved in those discussions.

Chertoff: Somewhat. We thought it was a good idea and we were unhappy that it was reversed, but we understood the political reality that the governors didn’t like it.

Derthick: The work of Senators Leahy and [Christopher S.] Bond, who were, I think, particular partisans of the Guard. Did the administration really try to prevent the reversal?

Chertoff: I wasn’t involved in the legislative tactics but I do know that we thought it was a good idea.

Derthick: You thought it was a good idea.

Chertoff: And that it was a bad idea to reverse it.

Derthick: Well, those are my main questions about Katrina. I want to come back later to FEMA, but I don’t know when we’ll reach that.

Riley: We’ll get to it when we get to it. I have a couple of questions about Katrina: One is, if you could elaborate a little bit more on the relationship with the Governors and an assessment of why, in some instances, the response seemed to work reasonably well and in others it didn’t. I understand you’ve got to take into account the fact that there wasn’t any place like New Orleans, I mean a major urban area that’s hit, that you don’t have in Mississippi or Alabama. I get the impression from what I’ve read, and from listening to you, that if somebody like Haley Barbour
or Governor Riley had been in Louisiana, their presence and expertise would have made a difference.

**Chertoff:** I think that’s right. There were opportunities to use the Guard initially that were missed, that would have mitigated some of the problems. The mayor admittedly was cut off, from a communications standpoint, but he essentially just froze. Really, the loss was early on when they didn’t start the evacuations earlier, and part of it was the lack of planning. They didn’t even have a plan for—if you go to Florida, there are routes you get told about if there’s a hurricane. There’s going to be a bus route. You know where to go. They’re going to pick you up. They didn’t have that in New Orleans in those days. They have it now. After Katrina, we worked very hard with all the states to make sure they have those plans in advance. But it was a combination of poor planning and uncertain leadership that compounded the problem.

**Derthick:** Then there’s the whole question—it’s not just that the politics or the leadership is different. New Orleans is below sea level and the federal government hasn’t pursued policies to discourage the damage.

**Chertoff:** Correct.

**Derthick:** On the contrary, it built Mister Go [Mississippi River Gulf Outlet]. Preventing hurricane damage has not been the top priority of members of the Louisiana delegation. There’s a deeper problem, which of course you can’t deal with on the spur of the moment.

**Chertoff:** And when you come out with flood maps that are designed to show where the risk is, so you have proper actuarial data for flood insurance, which also would drive people away, you hear, “You can’t do that, because you’re chasing people out of the Ninth Ward.” Well, I’m sorry it’s below sea level. It is what it is. Some people argue that the government ought to pay whatever it takes to make sure it’s absolutely insulated. Is that sensible? What you’re doing is you’re taxing the whole country so a few people can live where they want to live. The politics of disaster mitigation relief is itself worth a whole study.

**Derthick:** That was one of the few things that you didn’t get deeply into—you didn’t have any reason to get into it deeply, as Director of Homeland Security—flood protection policy.

**Chertoff:** Well, we did. The problem is: the politics are that once they really went after the President on the initial response, it became a tool, politically, to beat the administration every time it didn’t give people what they wanted. People used to kid around about the fact, in a sardonic way, that this could be used over and over again. Whenever they want more relief, more assistance, they’re going to say “Katrina.” And because you’ve been beaten about the head and face with this, there’s a tendency to give in to it. There’s no question that we probably conceded on things sometimes, simply because this was being used over and over again as a political club.

**Riley:** There is also a very large question about the role of worst-case scenarios in planning. How do you plan for the worst-case scenario without bankrupting yourself and completely preoccupying the federal government? I can think of half a dozen things. I went out to interview [Condoleezza] Condi Rice in Palo Alto, and I’m looking at all of these hills in San Francisco, thinking, One good earthquake here will make Katrina look like a picnic.
Chertoff: You’re exactly right. Now, the year after Katrina, we literally wrote contracts for buses to come, for the federal government to evacuate people if the state wasn’t able to evacuate. It cost a lot of money, because we had never done that before. That’s why it gave us trouble getting evacuations with Katrina.

Riley: Right.

Chertoff: I was sitting in the Roosevelt Room and we’re talking about this, because the President was being briefed on everything, and he says, “Why are we paying”—whatever the amount of money is—“for these buses? Isn’t this a state responsibility?” I said, “Yes, it is, Mr. President, but the plans that they’re putting together now are not fully done. We don’t know how they’re going to work if something happens. If we don’t do this, we’re going to have another Katrina, potentially, where they don’t do what they have to do, and we don’t have the resources to do what we need to do to step in.” He kind of shrugged and said, “Yes, I guess so, but it’s a lot of money.”

We built essentially a redundancy, over time, to allow the federal government to do things in case a state failed. Now, that’s a rare occurrence, but the lesson of Katrina is if you don’t do it, you’re going to pay hugely during your term in office. In many ways, that’s a fundamental problem of government. It’s easy to look at it from a cost–benefit analysis, but when you’re dealing with catastrophic outcomes, you need to understand that the consequences of a catastrophic failure will redound far beyond even the actual impact, and you’ll have all kinds of collateral consequences. At some point it’s a balance between being overly cautious, but also recognizing that you’re taking a risk with your Presidency.

Derthick: Of course the short-term reaction of the President was the speech at Jackson Square, which was positively [Lyndon B.] Johnson-esque; he promised everything. Was there discussion within the administration about what kind of near-term response to make?

Chertoff: Probably. I don’t think I was involved very much in the speech, although I was there. I think there was recognition that essentially the administration was paying a premium to redeem itself from the criticism. I don’t think I’m being unduly cynical in saying that some of the criticism was calculated, a recognition that the President was on the defensive over this. Therefore, it was an opportunity, every time he said no to something, to kind of blackjack him. To some extent we gave way to that.

Derthick: How much general involvement in the Executive took place in the Townsend Report? The Executive’s version of what went wrong—Who put that together?

Chertoff: I think Fran largely did, with her staff.

Derthick: She did it herself. There were certainly, not surprisingly, complaints from the Congressional staffs, the Congressmen who put together reports, that there was a lack of cooperation from the Executive, that it didn’t produce enough information. I guess that’s the nature of life in Washington. I don’t know how much validity there was in that.

Chertoff: I think there was a fair amount of cooperation.
Riley: This was true during the week or ten days or so as Katrina was unfolding, you felt that the Congressional delegations were being supportive and cooperative?

Chertoff: The first week, I don’t think anybody was criticizing. By the second week, we were starting to get attacked.

Riley: Was it strictly on partisan grounds?

Chertoff: Regional first and foremost. Everybody from the region attacked every Member of Congress, Republican or Democrat, because they had to be seen as fighting for their constituents. And then it became partisan as well.

Riley: You made how many trips into New Orleans in this period?

Chertoff: I couldn’t begin to remember—dozens, probably.

Riley: Who were you meeting with when you went down there?

Chertoff: Governors, parish presidents, local community people, Coast Guard, FEMA people, businesspeople, all kinds of people.

Riley: And most of the time what you’re hearing from them is just abject aggravation and frustration?

Chertoff: No. You got a wide variety of different perspectives. I was also in Mississippi, too. What are their needs? People complaining about inefficiencies with FEMA, issues about public assistance and what the government is going to pay for, what it’s not going to pay for—a whole variety of things. Operational issues as well as recovery issues.

Riley: Are there some unsung heroes among the local groups that you were meeting with, the local officials?

Chertoff: I’m sure there were some people who were relatively self-sufficient. They wanted to get up and moving again and they were willing to do a lot themselves. They wanted help but they weren’t looking to have the federal government pay everything. And there were some people who wanted to have the federal government pay everything, and there were positions in between. Some public officials were very candid and forthright and energetic, and some were very whiny and complaining. That’s what you’d expect, a kind of cross-section of people.

Riley: Looking back on this, I’m assuming you must have done your own internal kind of thinking and after-action reports about things. In retrospect, what should have been done? Not what could have been done, but, given what you knew when you knew it, where were there places that you at least marginally could have improved things? I’m not asking you to say we should have evacuated New Orleans a week before, because nobody could have known that, but knowing what we knew once things broke, where were the things that could have been done better?

Chertoff: The problem is most of what could have been done better would have required
advanced planning, and preparing for a scenario where the federal government does an evacuation.

Riley: Right.

Chertoff: We put that into effect afterward, and when we had Hurricane Gustav, there was much better coordination between the military, DHS, and the state and local authorities, because we had done a lot of planning and capability building. Without that, you’re very limited in what you can do.

Probably our public messaging was not as good as it could have been, and our lack of information was a problem. So putting more eyes on would have been helpful, but the problem is that you have to have the capability. If you haven’t planned it and prepared in advance, there’s nothing you’re going to do during the emergency that’s going to be all that good, because you can’t conjure it up out of thin air. What you need is the tools and the plans, and then you can deploy them effectively. We spent a huge amount of 2006, including a lot of my personal time, focused on doing exactly that, trying to build a capability, and planning for these kinds of disasters.

Riley: And that was a part of the second stage?

Chertoff: No. The second stage was done before Katrina. This was—

Riley: Something that occurred afterward. How did you account for the politics of risk management in what you’re doing? We’ve just asserted that planning for worst-case scenarios is an odd business, because so rarely are you going to have worst-case scenarios by definition, and yet in this instance you practically had a worst-case scenario.

Chertoff: This is a fundamental issue with the American government. We have this going on now in two areas: cybersecurity and biological weapons. I’ve talked about this for several years now. We are not investing enough in this. On biological weapons, what I hear all the time is, “That’s not going to happen, it’s remote.” It’s not remote. We had a biological attack in 2001, with anthrax. It wouldn’t take all that much to get better prepared. There are some regulatory changes, and there’s some money you would have to spend, and it always gets cut in the budget because it didn’t happen yet. This is a broader conversation, but for a lot of people, unless it happened, it’s not a real threat, and it’s a fundamental problem with how we allocate our risk in American government.

And it’s not unique to the government. If you look at banks, we had a whole episode in 2008 and 2009 because the banks didn’t prepare themselves for the fact that house prices might go down. Now we laugh at that, but that mentality remains. Howard Kunreuther talks about the fact that, for a lot of public officials, as long as it doesn’t happen in their term of office, they’re covered. A deeply systemic problem, not just in the U.S. government, maybe worldwide, is the way people think about risk.

Riley: Is that susceptible to political leadership? In other words, in the system that we have now, is it possible for a President to take the lead in something like this and have people follow it?
Chertoff: It is, but the President would have to decide that, in that list of things you want to accomplish during the course of your term—and you can’t do everything—that it was high enough to make it a priority. The problem is, if the bad thing doesn’t happen, the President might never get bragging rights. That’s the challenge. The challenge is there’s no reward for averting a problem. It doesn’t get noticed. So there’s a tendency to want to pay for things that will be—the benefit of which will be immediately apparent.

Now there are people who have been through Katrina or other kinds of things, 9/11, who do get very passionate and they fight to get this done. There are people on the biological front, for example, who are spending a huge amount of time advocating for this. But candidly, it’s a fundamental problem with the governance.

Derthick: There was planning. There was the National Response Plan, which I guess came from the RAND Corporation.

Chertoff: But that was at a very high level of process planning. What I mean by planning is—Let’s just take evacuation: How are people without cars getting out? You have buses. Well, do the bus drivers have maps? Got to get them maps. Do people know where they’re supposed to go to pick the buses up? You’ve got to put signage up. Do we have a sense as to where people who are infirm are, in terms of nursing homes or apartments? If we don’t, we’ve got to conduct the census. That’s not done in the National Response Plan. That’s a business process plan.

You’ve got to get tactically into the weeds. We spent huge amounts of time—Maybe it’s a mistake for the Secretary to have done that—to make sure they were counting every single nursing home, so that when Hurricane Gustav came in 2008 and all of a sudden there were some hospitals that decided they wouldn’t shelter in place, we immediately knew where they were, and we could immediately order, from the National Guard, your requirement in terms of numbers of seats in aircraft, and we got people out before the hurricane.

Derthick: The fascinating question here is who the “we” is. That seems to be an abstraction. The RAND Corporation product is probably more typical of American government than is a Department Secretary who is willing to get in the weeds.

Chertoff: Right.

Derthick: I think you probably were an unusual department head to be insisting on this much specificity. I don’t know how you achieved it.

Chertoff: When I look back on my four years, I sometimes say to people—I did a fair amount of traveling in my last year, overseas, because we had a lot of overseas things to do. I did almost none in 2006 because I spent a huge amount of time working on this issue, having been burned in Katrina. Should his Cabinet Secretary do that? The answer to that is probably no. A lot of it should have been done at the state level, but because of the unevenness, and because we had been caught in Katrina when the state didn’t do what it was supposed to do and the feds had to step in, and then we didn’t have the experience, we just decided we were going to own this and we were going to make it happen. Just as 9/11 was a transformative event for me, this was a transformative event for me, on what it means to plan for contingencies and what you have to do, and how easy it is for people to say, “Oh, we’ve got that covered,” and how few of them really
do have it covered.

One thing I did learn from watching the military, which I grew to respect quite a bit, was their planning process. They plan to the level of: *How do we tell 18-year-olds what to do with guns when something happens?* They get down to the very tactical level. But the civilian departments have never really built that in a broad way, and that was really what we started to try to do in DHS, and I think we got a fair bit down. You saw that with the H1N1, because we did build a pretty robust plan for flu epidemics. It requires really getting into the details.

**Derthick:** FEMA had tried that. There was the exercise “Pam.”

**Chertoff:** But exercise Pam was like a theoretical exercise. It’s like, *Oh, this is what’s going to happen.* They predicted like 60,000 deaths, and they way overpredicted. Now the question is: So what? You still need to—Someone’s got to actually go out and do the census for the nursing homes. You can write a plan in Washington, but you’ve got to manually count, or you’ve got to have a process in place where the nursing homes are required every year to certify the number of people they have, et cetera. The problem with writing a plan is you can’t assume that the capabilities are going to be there. You’ve got to test to make sure they are there, at least at the high-level plans, what had not been done at the federal level for this kind of a thing.

Now, there are areas where it is done, like the oil spill act [Oil Pollution Act] and stuff like that, where the federal government owns the full spectrum of responsibility. But where it had failed was when the federal government was supposed to be supporting state, and the state didn’t act. In fairness, in 49 states out of 50, or 48 out of 50, you don’t have this problem. I don’t think you have it now in Louisiana, because we did it in Gustav. And when we did Wilma, which was a more powerful storm in Florida, the state had its act together and they did their piece. They evacuated, everything happened the way it was supposed to happen, and we supported. The problem is what do you do about that one time when, for whatever reason, the state is overwhelmed? We didn’t have a plan for that, I mean, not a really robust plan.

**Riley:** I think you’ve just answered the question, but is there something inherently malfunctioning about a system of federalism to deal with these kinds of problems?

**Chertoff:** You could say that this is the responsibility of the federal government, and this is not. If the state fails, and locals fail, it’s on them; it’s not on us. I will tell you that although everybody in theory understands what the President’s role and responsibility and authority is—and it’s very limited domestically—in our system of government, everybody believes the President in the end has the supreme power. So you’re in the worst circumstance, where you’re powerless to help, and you have all of the responsibility and accountability. When we had this discussion with the President on the money we were spending on buses—that’s essentially what the discussion was. Whether it’s right or wrong, you’re going to own this, so you might as well prepare yourself for it.

**Riley:** What are the four or five big worst-case scenarios that you had to plan out?

**Chertoff:** We looked at obviously hurricanes in the Gulf, major earthquakes in California, which generally is a very good state. Also, the New Madrid Fault, which runs down the center of the country and covers a number of states and runs under the Mississippi—a huge catastrophe. We
started the planning process when I was there. Candidly, I don’t know whether it has continued or not. I can’t answer that. Avian Flu—we spent a lot of time planning for that. Obviously, a biological attack, or a cyberattack. Those would be the really catastrophic things.

After Katrina, we went through a series. We had bad hurricanes in 2008. We had tornadoes, but by the time we got to 2007/2008, the emergency response was quite good. And while there’s always bellyaching, if you look back on the stories during that period, by and large there was not really anything extraordinarily unhappy about it. But it was all an outgrowth of Katrina.

Riley: Did global warming at all affect your portfolio? Because one might make the argument that a catastrophic drought—

Chertoff: Yes, but that’s a different kind of—

Brown: It wouldn’t happen suddenly, though.

Chertoff: Yes. It has to be sudden events, a sudden catastrophic, not a slow—

Brown: What have you done about the cyberattack—big brownouts and that type of thing?

Chertoff: Some of that would be similar to what we would deal with in other kinds of problems, but some of it would be different. We started the process of talking about this in 2008, but a lot of the planning for that has not been done and really ought to be done. The lesson I learned was—and it was the unique job of a DHS Secretary because you’re the incident manager for the whole federal government. What you learn is that each Department thinks—like HHS [Health and Human Services]—We don’t need DHS. We’re going to handle everything ourselves if there’s an Avian Flu. Well, not so fast. You’re going to handle the medical piece. What are you going to do about the fact that people stop going to work and therefore no one is running the power plant, so there’s no power? Are you going to own that? Are you going to own the border, checking people at the border? Are you going to own what happens when the supply chain fails and people don’t deliver food? They don’t want to handle that.

The job of the DHS Secretary is to look across the spectrum and build a set of plans, and then manage or coordinate among the departments, to deal with all the collateral effects of an emergency or disaster, which always involve more than a single department. We saw that when we had—It wasn’t H1N1, but we had some kind of a contamination issue at one point and we had to bring everybody together and respond to that. It turned out not to be a big deal. We had a few of those, and over time, that matured the process to the point that we actually got by it. By the way, DoD was the best. They were very quick to understand the value of having DHS coordinate.

The President, after Katrina, had all the Cabinet Secretaries, maybe two or three times a year, gather on a Saturday and do an exercise just to work on this stuff, and DoD always said, “We need a coordinator because I’m going to get a request from Agriculture for aircraft, from HHS, from the state. What do I do? I need to have a place to go where we can adjudicate those things.” That was really what the job of DHS was.
Riley: Let me ask you about the President’s own temperament during Katrina and thereafter. One might very well assume that a President could grow immensely frustrated and take his frustrations out on his staff and Cabinet. Was that the way this President operated?

Chertoff: No. I will tell you, the President, in times of pressure, was always the most inclined to bolster everybody. If you tried to soft-soap him or BS [bullshit] him, he had no tolerance for that. If you didn’t know an answer and you said, “I don’t have the answer but I’ll get back to you,” that’s fine. But when people came and tried to BS him, he sniffed that out and that was not a happy experience. By and large, if you were doing the best you could, acting in good faith and were reasonably competent in what you were doing, he was supportive. Obviously if you were not competent, he was not supportive.

For example, on the Brown thing he basically said, “It’s on you. You do what you want to do and I’ll support you.” On the other hand, he was very supportive of me. It would have been easy to throw me under the bus as well, because once you threw Brown over, the sharks want the next morsel, and I was the next morsel in line. I remember he went out of his way when we had Cabinet meetings during this period, when Katrina would come up—You know how they come in and they do the spray? It’s all done by seniority. The President sits here, and my seat was always over here, but they had me sit next to the President for those, just to visually show that the President was not putting distance. I really appreciated that and it’s one of the reasons that we were very motivated to really work hard on repairing and building the capability that we needed.

Riley: Did that same kind of attitude range throughout the White House staff, or did you get the sense that there were people who wanted to hold you responsible?

Chertoff: No. Everybody took their cue from the President. I don’t think I ever got any sense from anybody who wanted to pitch me out.

Derthick: I want to learn more about how you built—I don’t want to say rebuilt FEMA, because there never was—

Chertoff: In fairness to FEMA, and even in fairness to Brown, there was a misapprehension.

Derthick: Of what it could do?

Chertoff: Right, and also with the name.

Riley: A misapprehension?

Chertoff: About what FEMA is. It was not designed to be an emergency management agency. It was basically an insurance company. It paid claims. It would go out and adjudicate individual claims and would also adjudicate public building claims, and it would fund, through the Stafford Act, the states getting commodities and doing what they needed to do in order to deal with disasters. The idea that FEMA would operationally manage something—They didn’t have the manpower or the capability to do it. So there was a little bit of an unfairness, but FEMA tended to be the people who would arrange and contract for housing, for example.

I’ll give you an example: We had an issue about the trailers in Louisiana and formaldehyde. The
problem was, FEMA doesn’t of course own trailers. They go in the marketplace and they buy them like anybody else does. They buy trailers, they deliver them, and it turns out the trailers have formaldehyde. Now, these are trailers that are available in the market, and whatever agency of government does health regulation had evidently not established standards or enforced them, or whatever it is, so it becomes FEMA’s problem. But actually, that’s no different than if FEMA goes to buy food from Wal-Mart and it turns out there’s something bad with their food. It’s not FEMA’s food; it’s Wal-Mart’s food. The challenge for FEMA was it was the face of all this. At one point I said to Congress, “You know what? We’re getting out of the trailer business. We’re just not going to do trailers anymore. We’ll give money to the states and if they want to buy trailers, they can buy trailers and they can check it out.” But then there was kind of pushback and we wound up stepping back from that a little bit.

One of the huge problems in this area is again about aligning responsibility, capability, and authority. If you’re going to make FEMA responsible for the quality of the goods, then you’re going to have to give them the power to enforce that up front. You could, in advance, have FEMA contract for trailers and require it as part of the contract that you meet certain standards, but FEMA would then have to conduct the scientific experiments or have somebody do that, and they’d have to buy that, and you would have to pay a premium, and that would all be part of the budget. Or what you could do is you could say, “You know what? FEMA is really just the money machine. We’ll let the states do what they want to do. We’ll fund it, but we’re not going to get into the quality selection.” But the states didn’t want to own that responsibility.

I’m going to sound a little cynical, but a lot of what happens in government in this area is about shifting responsibility and accountability. People only want to deal with certain kinds of issues and not other kinds of issues. You have to have clarity when you go into organizing a situation, about who really is going to own this. It might very well be the right answer to say the states ought to own the process of buying commodities and shelter. If the federal government is going to pay for it, so be it, but each state is the best judge of its climate, its requirements, and its people, and they ought to take the responsibility to do it. But they don’t want to do that. Some of them don’t want to do it.

How does it default to the federal government? When you get to discussions about federalism, it’s the problem that arises when one level of government wants the benefit of something but they don’t want the burden of it, and so it gets shifted. Probably had there not been Katrina, the federal government would have been tougher on these issues, but what Katrina did was it politically doomed the White House to be in the situation of always being defensive vis-à-vis the states on these issues, and therefore always giving way on those things, in a way that had a negative impact on the federal budget. But more than that, it put the federal government in a business that it’s not really equipped to do.

Brown: Did you ever wake up in the middle of the night and realize that if there was a major catastrophic attack on this country, let’s say a cyberattack, you would be the most powerful person, next to the President, in the country?

Chertoff: No, I can’t say I ever thought about that. I did think about the fact that I was going to be taking a lot of incoming if something like that happened, but I can’t say I ever thought about it as being the most powerful person.
Brown: You would be expected to.

Chertoff: I figured I was going to be in for a lot of stress. We went through this with the August 2006 bombing plot, but then that worked out very well. Obviously it was bad to have a plot, but it was disrupted and we were able to turn the air system around within 12 hours. We couldn’t tell anybody about the plot until the arrests were made. Within 12 hours, we turned it around and were able to put a set of rules in place on liquids, which were eventually modified to what we have now. The point is, without unduly disrupting the system. Because that wasn’t a problem, it was kind of an accomplishment we were all happy about and it reflected a maturation of the Department. A noisy failure gets a lot more attention than a quiet success.

Riley: Did you have morale problems at the Department after Katrina? If so, how did you deal with it?

Chertoff: Yes. People at FEMA really felt they got blamed for everything, and that was unfair. There were a lot of things they were blamed for that were not their fault, not their responsibility. There was a morale problem, and there were a lot of people—I think people probably left at some point. A lot of them were away from their families for months at a time, in difficult living conditions, being abused, and not being thanked for what they did but being treated as if they were a problem.

For example, there was a big issue about fraud with benefits. People would come up and say, “I lost my wallet, I fled, I barely got out alive.” They would have some half-baked proof of residence, and under pressure to deliver services and also feeling sympathy, FEMA would give them a check or something like that, and a lot of those turned out to be fraudulent. Not to do that, however, led to a series of heart-wrenching stories about people who were homeless and had no money for food. How are you going to balance that? The general inclination was to lean forward and give the benefit of the doubt to the claimant. We probably lost money doing that. That’s the moral lesson: It’s damned if you do, and damned if you don’t. That’s the nature of what Homeland Security faces, because more than any other agency except maybe IRS [Internal Revenue Service], you’re interfacing with a lot of people, and they’re going to be unhappy some part of the time and that’s going to create a lot of stress.

To give you a small example of how this works, during my years in office I kept hearing complaints about the No-Fly List: There are too many people on the No-Fly List, too many people on secondary. It turns out the number is not that large and I once made it public. The whole of both lists was like 20,000 unique identified people, and most of them are not Americans. But the day after the December 2009 attempted bombing on the Detroit airliner, when it turned out that [Umar Farouk] Abdulmutallab was not on the No-Fly List, because he didn’t fit the criteria, those very same people turned around and said, “Why isn’t the No-Fly List much bigger? Why are you keeping it so small?” Now, I wasn’t there at the time, but if I’m at TSA or the entities, I’m thinking, Wait a second—Yesterday there were too many people on it; today there are too few people on it. Now, that comes with the territory, but if you’re asking me about the morale of FEMA, I had a lot of sympathy for people who had to live with that day-in, day-out, and got tired of it.

Riley: How did you, as Secretary—What were you doing?
**Chertoff:** You try to defend them publicly and speak out as I’m speaking out here, and I used to be pretty blunt about it. You try to visit with them and things like that, but the truth is it annoyed me too, people poking at FEMA, because I understood what they were going through. There’s only so much defending you can do, because these are day-in, day-out interactions. It would be understandable if people lost their tempers sometimes about it. And that’s not to minimize the travails of people who were genuinely hurt, but to recognize that on the issue of fraud, for example, you’ve got a choice: Either you’re going to relax the rules in a humanitarian way, which was generally what we said we would do, and get more fraud, or you’re going to be really tight on fraud and you’re going to turn people in need away. That’s a balance.

**Riley:** One more question on this: To what extent were the politics of this complicated by race?

**Chertoff:** Not at all. I’ve never spoken to the President about this but I’ve heard that he said that the thing that bothered him the most in his Presidency was an accusation that this was—I think that is the most outrageous accusation. I never heard anybody say anything that would in the remotest way suggest that there was a racial element to this. This was purely an issue of a community whose leadership was not able to successfully manage the early stages of this, and a catastrophe the federal government had not planned to backstop. Race had zero to do with it.

[BREAK]

**Derthick:** Are there any Presidents who look worse after they leave office? Do any of them have declining reputations?

**Riley:** Lyndon Johnson is the only one that I’ve discovered. We haven’t been doing these sorts of historical evaluations for a really long interval of history, to get a reading of—There was the Arthur Schlesinger in 1946, and then a follow-up to the Schlesinger was done in ’62. And then beginning in the ’70s or ’80s, there were more frequent intervals by people—C-SPAN [Cable-Satellite Public Affairs Network], *TIME Magazine* or whatever.

[Chertoff returns]

**Riley:** Are you ready? Martha’s got some FEMA questions for you, so we’re back on tape.

**Derthick:** I wanted to ask a little more about FEMA. In several of your speeches that were included in our briefing book, you list improvements in FEMA as among your major accomplishments. Did it get bigger?

**Chertoff:** It got a little bigger, but mainly what we did was we really built out a planning process where we did very detailed plans for a lot of different scenarios, and also built in advance, as I said, certain capabilities like standby bus contracts and things of that sort, census of the nursing homes and medical facilities, integrated Department of Defense planners and DHS planners, so we could build joint plans in terms of DoD support.
**Derthick:** How did you actually do that, the coordination with DoD? Did Secretary Rumsfeld say, “Tell Northern Command…”?

**Chertoff:** To be honest, what happened was Secretary Rumsfeld left, and then Secretary [Robert] Gates arrived, and that unleashed Northern Command to work with us in a way that previously the Secretary of Defense had—Under Secretary Rumsfeld, if you wanted to give us a pencil, you had to get his personal approval. Tim Keating, who is a partner of mine now, was great in helping, but he was always constrained. Once Rumsfeld left and Gates came in, they basically said, “Just go at it,” and then it was much easier and it became a very good relationship.

**Derthick:** Well, that’s probably much of the answer. When you were working with FEMA or trying to improve FEMA, were you hampered by Congress? I remember reading a sentence, maybe in one of the press reports, that if there had been a vote in Congress on whether to make FEMA independent, there would have been 400 votes for it.

**Chertoff:** I’m not really sure that’s true. Again, this goes back to that fantasy world where FEMA was independent. Congress did get involved by having this restructuring of FEMA, essentially to build out a preparedness and planning element in FEMA. The truth is, in the second stage of review I wanted to separate the planning and preparedness piece from the reactive piece, because my feeling was that the people on the reactive side are always going to be dealing with fighting fires, literally or figuratively, and what you need with preparedness is capacity-building over a long period of time. That’s the reason, for example, that combatant commanders in the military are different from the people who domestically have the training command, because you want to train and equip and plan, and you don’t want to have the people who are actually fighting and busy tactically, getting distracted. Congress decided they wanted to pull them all together. So, as with any other organizational edict, you just work with what you have.

**Derthick:** Did you work with Congress yourself? Did you have a Legislative Liaison? You must have.

**Chertoff:** We had Legislative Liaisons. I did some work with Congress. Frankly, we acquiesced in what they wanted to do, because we thought if we didn’t, they might pull FEMA out, so it was kind of a compromise.

**Riley:** Who was your Assistant Secretary for Legislation?

**Chertoff:** It changed over time. It was Don Kent during the relevant time period.

**Derthick:** That’s very helpful. FEMA got better, I take it?

**Chertoff:** It did get better and part of it was Dave Paulison, also, who was much more cooperative and worked well with everybody else, and we kind of integrated them more into the Department, and so then they were able to get the benefit of some of the capabilities, the air assets, and other assets of the other elements of the Department, and that helped.

**Derthick:** That was the other thing I was going to ask you about: In your book, in the chapter on FEMA, you mentioned that FEMA really needed to be in DHS because it could be supported by
TSA. I have the ordinary person’s view that what TSA does is screen my lip protectant.

Chertoff: It gives you all kinds of capabilities—just additional bodies you can surge, whether it’s TSA or ICE or CBP, to give them some additional manpower, and also some of the assets, the air assets of CBP and Coast Guard. It was easier to move those and support FEMA as part of the Department.

Derthick: TSA does more than screen. It has some transportation capacity.

Chertoff: Right, those capabilities as well.

Derthick: That’s very helpful. It always seemed to me, from the little I know of FEMA, that the historic FEMA was being asked to do the impossible.

Chertoff: Yes, it just wasn’t built—In a way the problem was that they called it FEMA. If it had been described accurately, it would have been described originally as a disaster financial assistance entity that funnels financial aid to localities or individuals, but not an operational agency. For better or for worse, partly because they ran around with FEMA jackets, it became perceived as an operational agency but it was never given the capability to be an operational agency, and so we built that capability.

Derthick: Thank you, that sheds a little light.

Riley: You haven’t talked much about the Vice President. His name has come up once or twice. Did you have much interaction with him?

Chertoff: We had a once-a-week Oval Office meeting on Tuesdays, on terrorism issues, and the Vice President was almost always a participant in that, either personally or by video teleconference. So I dealt with him in that capacity. He was at principals meetings, with or without the President. In terms of separate from—in a small group, occasionally, but not that much.

Riley: So from your perception, it wasn’t one of the issues or cluster of issues that he—

Chertoff: Well, terrorism was obviously an issue he was interested in, but the President was also—You tended to deal more with the President.

Riley: Cabinet meetings very often?

Chertoff: I want to separate two things out: Cabinet meetings are the full Cabinet, which were maybe every other month. They basically involve various sectors reporting on various things to the Cabinet, and the President giving some general perspective and guidance. Principals’ meetings, which are smaller groups of Cabinet Secretaries, with the President or without the President, but sometimes with the President, are more frequent but the subject matter was different. The principals’ meetings that I went to were almost always with the Secretary of State, Secretary of Defense, AG, me, head of the FBI, head of the CIA, DNI [Director of National Intelligence], maybe Secretary of the Treasury, maybe Secretary of Energy. It wouldn’t be the Secretary of Education; that wouldn’t be part of it.
Riley: And the principals’ meetings were where?

Chertoff: Usually in the Situation Room.

Riley: OK, but that was more of—

Chertoff: That’s more decision making related to topics, whereas actual discussion about what’s going on with an operational matter—

Riley: But the general Cabinet meetings were…?

Chertoff: More formal.

Riley: Can you tell us about what the President was like in these principals’ meetings? What’s his mode of operation? Does he like advice in writing or verbally? Does he like disagreement?

Chertoff: It was pretty verbal, pretty much oral. I can’t tell you what he read beforehand, but there was a lot of oral interchange. The President asked a lot of questions, expressed his views pretty much out in the open. The most fluid interaction with the President tended to be in the Tuesday morning meetings, with terrorism Tuesday. That was even a smaller group. That was basically the National Security Advisor, Chief of Staff, AG, FBI Director, CIA Director and/or DNI, me, and the head of the NCTC [National Counterterrorism Center] in the latter part of the time, and the Vice President. Usually it was about 45 minutes set aside, depending on the issue. We could be discussing a very specific terrorism thing, but sometimes if there wasn’t anything burning on that particular day, you’d get on to other topics. In terms of open back-and-forth with the President, that’s probably the most relaxed setting, a very small group in the Oval Office.

Principals’ meetings are a little more structured. You have more people, or people on the back bench. The more people in the room, the more structured the meeting gets. The smaller the group, the more open.

Riley: Was the President being more loquacious in a smaller meeting or a larger meeting? Loquacious may not be the right word. Would he be more likely to talk openly in front of a larger group?

Chertoff: Probably in a smaller group he would be slightly more likely to talk openly.

Riley: Did you find generally that he knew his brief very well?

Chertoff: The President was very detail oriented and also had a really good memory. Oh, remember two months ago I asked you about X-Y-Z? What happened with that? Also, not so much in a principals’ meeting but in the Tuesday meetings it was quite often the case, particularly if there was a little time that was not used by a particular topic, that he could raise anything in your portfolio. So I had a portfolio, and I learned early on to be totally prepared on anything going on. It could be disasters, it could be border, it could be some regulatory issue or a terrorism issue or a TSA issue. I pretty much had to be able to talk about anything, because you were totally open to being questioned about something off-topic.
Riley: Did you eat a big breakfast before that meeting?

Chertoff: No. On the flipside, it gives you a rare opportunity to really engage with the President and have interaction with him, which you have to be careful not to abuse, because you do have the opportunity sometimes to—if you were not careful, you could end-run around someone not in the room, because you’re there. It’s a version of the phenomena I’d see with Governor Riley. The staff always worries that if the President is alone with someone, that person might tell him something and the President reacts to it or acts on it, and it hasn’t been staffed out. Partly that’s the staff always feeling they have to protect the principal, but you do have to be a little careful not to go behind someone’s back. That’s not really fair. By and large, you actually got a good sense of what the President was thinking about stuff.

Brown: What was the style? Would the President ask you and then ask somebody else, or was it more free-for-all?

Chertoff: We generally would go through the book, the PDB [President’s Daily Brief], and the President would ask some questions, and in the course of that, he’d ask me a question or he’d ask Bob Mueller a question or Mike Hayden a question. If we wound up with the book not having a lot of stuff, he might say, “Mike, what’s going on with the border? Tell me what’s going on with this?” And we’d get into a discussion about that, and other people might chime in. That was more or less the way the process worked.

Brown: Was the Vice President very assertive in these meetings, or did he kind of let other people—

Chertoff: No, he let people talk. He would interject sometimes. He’s always got that kind of low rumble in his voice and he would say… But that’s just his voice. He didn’t dominate the conversation but he didn’t avoid talking. He would ask questions too, sometimes, but there was no question that the President ran the meetings; there’s no doubt about that.

Riley: What about the dynamic among the people in these Tuesday terrorism meetings? Can you talk a little bit about how people interrelated?

Chertoff: Well, we all knew each other really well.

Riley: Did everybody get along?

Chertoff: Yes, actually quite well. All that stuff you read about in history books about tension—Team of Rivals—I’ve got to tell you, I did not see that. Don, when he was Secretary, had his own view of things and he could be a little at odds with other Cabinet Secretaries, but I would say, other than that, it generally was a very cordial, friendly relationship, and all of us would work together outside of being with the President. We had a lot of interaction with each other and many of us are still friends.

Riley: Did the President like to stir the pot?

Chertoff: He would tease people sometimes. He’s got a good sense of humor. He may make jokes. He didn’t play his cards close to his vest. You knew what he was thinking about stuff and
he was pretty open about his views on stuff. And on the issue of whether he invited
disagreement—You could disagree with him. He might let you know he disagreed, but if you
knew what you were talking about he would accept it, and he was perfectly capable of changing
his mind.

On the one hand, if you’re bullshitting, that was not good. I saw people come in who were not
used to being there, and try to talk their way past something they didn’t know, or maybe it was
clear they didn’t know what they were talking about, and then he’d drill into you, and it was an
unhappy thing for that person. But the rest of us who were in there a lot knew what to expect.
There were times, like on border stuff he’d say, “Why do we need to do that?” And I’d say, “We
need to do it because of the following reason: X-Y-Z.” He’d probe a little bit on it and I’d say,
“Well, you can’t do that because of X-Y-Z.” And then he’d say, “All right, if you have to do it,
you have to do it.” I don’t think he discouraged disagreement as long as he felt you had the facts
and you knew what you were talking about.

Riley: In the terrorism meetings, as opposed to the full Cabinet meetings, was it completely open
so that any participant could feel free to engage on any other issue?

Chertoff: Sometimes I would bring up an issue, and this is true of others too. Assuming we were
past the main part of the discussion and there was time, I might say, “Mr. President, I want to
give you a heads up that this is going to happen this week,” or that’s going to happen, or there’s
something going on. Again, you want to be careful with that because it’s easy to end-run around
the staff and that would not be helpful to the process. But if it was something that was coming up
in short order and it was not really so easy to be staffed up, you might raise an issue, and others
would do that too.

Riley: I guess my question is more directly related—whether your portfolio was open game for
anybody else at the table if you put something out there.

Chertoff: Yes, if it was a topic that they were involved in. If it was on emergency management,
no one else was really involved with that portfolio, so that probably wouldn’t get much reaction.
If it was a border issue, the FBI might chime in on something because they might have some
perspective on it, like a gang issue or something like that. And vice versa. If Bob Mueller raised
something, the AG would maybe chime in on something. And sometimes, if I had experience
from having been a judge or having been a prosecutor, I might say, “I had something like that
when I was a prosecutor,” and we would talk about that. It was not unrestrained. It’s not a bull
session where you say, “I was talking to my wife last night, and we saw a good movie.” But if
you added something on-topic, it was fair to bring it up.

Riley: Right. But it sounds like it was also the case that if you knew something and it was on-
topic, that there wasn’t a turf issue with anybody in that audience addressing something, other
than perhaps maybe Rumsfeld feeling a little—

Chertoff: Rumsfeld didn’t go to those meetings. Rumsfeld had his own meetings with the
President. He did not do that. The Defense Secretary was not in it. This was DOJ, DHS, National
Security Advisor, Homeland Security Advisor, Chief of Staff, NCTC, and CIA or DNI. It was
not DoD. DoD was separate meetings.
Riley: What was the Chief of Staff doing in these meetings? The same thing?

Chertoff: Sometimes Josh [Bolten] would crack jokes, or the President would crack a joke at Josh’s expense. He would participate, or ask questions.

Riley: Were these commonly set up to tee up the President for a particular decision?

Chertoff: No. A decisional meeting is what they call “policy time,” when you’re coming in, there’s structure, papers have been prepared and people come in to talk about it. You’re in the Roosevelt Room. Or if it’s classified, I think you’re in the Situation Room. It actually isn’t teed up for a decision, although there are times that a decision is made. That’s why I say you have to be careful, because you could abuse the process by raising things that would then get decided and they wouldn’t have been staffed out. But there are times when, just from the nature of the conversation, you would wind up with a decision.

Riley: We were talking before you came in, about how one of the things that historians constantly puzzle over is the decision-making style of a President and their turn of mind. We don’t have a lot of direct evidence about that when they’re working behind closed doors of the White House. There are these ongoing historical arguments about [Dwight] Eisenhower, for example. Was he hands-on or was he not hands-on?

Chertoff: You would have to say the President was extremely hands-on. In all the stuff that I dealt with, the President was very deeply into the details and wanted to know about them.

Riley: And in terms of interior conflict, did he like to have people sort of go at things in front of him, or did it make him uncomfortable?

Chertoff: I don’t think it made him uncomfortable, but I don’t think it was something he needed. If there was a disagreement and someone said, “I’m not sure I agree with that,” he’d listen and it might persuade him, depending on the merits of the argument. If no one raised it, he would go around saying, “What’s your view? What’s your view?” Sometimes he might say, “What do you think about that?” He was very much tailored to the nature of the issue. I can’t speak for how other Presidents worked.

Being in there once a week, and in the prior term it was once a day, and then I was there for other reasons too—I mean, there were periods of time that I was probably in there every day, for one thing or another. I remember once I came in for something toward the end and the President said, “What are you doing here?” I said, “This is part of my portfolio, too.” Over a period of time, there’s a fair degree of—you’re never at ease, because it’s the President, but things become a little bit more flexible or fluid.

Riley: What about his turn of mind, his intellect, from your experience?

Chertoff: I’d say he had a really good sense for what’s really at the heart of an issue, a good sense of going to the heart of the issue. A good memory, particularly for things he had spent a lot of time on over the years, he knew a lot about, good knowledge basis. Again, I can’t speak about the economy, because I wasn’t really involved in that stuff, but certainly in the things that we did: foreign policy, security, border, emergency. He had experience as Governor as well as
President. He could ruminate. I don’t think he was someone who openly and often second-guessed himself, but I saw times that he had second thoughts about stuff. Not a lot of hanky twisting but there are times, if you got to know him well enough, when he would signal that maybe in retrospect he would have done things differently.

Riley: Do you remember any specific circumstances?

Chertoff: I think on the issue of troops—it’s in his book. On the issue of bringing troops in earlier to Katrina, he said something about a year or so later in a meeting. He said, “If I had to do over, I would do it differently.” I think his book says pretty much the same thing.

Riley: You just commented that you had a fairly long span of time where you were witnessing him in the office.

Chertoff: Yes, I was there for four years.

Riley: Did you see any changes in him physically?

Chertoff: Well, if you see somebody a lot, it’s hard to tell physical changes. When I look at pictures of the President in 2001 and 2008, I see more gray hair. I don’t think he put on any weight or anything.

Riley: Did you work out with him?

Chertoff: No. He was biking. I’m a runner, so I didn’t bike with him. There are people who did bike with him but I was not one because I’m not a biker.

Riley: Well, he did run. He ran early, but his knees gave out.

Chertoff: Yes, but by the time I got there his knees were gone.

Riley: Are you a sports fan? Did you talk sports with him?

Chertoff: Not really. We didn’t talk sports—occasionally but rarely.

Riley: Was there small talk with him? Did he ask about your family?

Chertoff: Yes. My kids—we were invited over a few times to the White House, and he was really nice to the kids and my wife.

Brown: Did he have a nickname for you?

Chertoff: Not really, and I don’t think the nickname stuff in the second term was quite as prevalent.

Riley: Were you disappointed?

Chertoff: Not really.
Derthick: I was going to ask that same question. He seemed to use the nicknames for Members of Congress or his staff, like [Karl] Rove, but not so much for serious executives.

Chertoff: I don’t know if that’s right. Just maybe at a different stage in the Presidency. These things become almost myth. I’ll give you an example: Ashcroft. I must have read somewhere that at some point somebody made a big deal out of the fact that he was religious. They tried to make the whole thing seem as if it was an extension of his religious evangelical background. In the two years I was there I spent a lot of time with the AG, and I never saw it impact in the slightest on anything. It didn’t affect his relationship with me. I had a very good relationship with him, a very close relationship. He was very considerate of other people’s views, and tolerant. If we were at an event and people had a glass of wine, that was not a problem for him.

Brown: Are you talking about Ashcroft?

Chertoff: Ashcroft. He was just not a stuffy guy. And then I’d read stuff about him and think, This is nonsense. Or with President Bush, people would suggest that his intellect was not what it needed to be. That’s unmitigated crap. That’s just not true. I’ve sat with a lot of people and there are very few people who are as precise and focused questioners as George W. Bush was. Now it is true that in speaking before a large audience he seemed less comfortable than in a small audience. In a small group, I saw him totally captivate people without a single note, talking about this, that, and the other thing. In large speeches, I think he was always a little more uncomfortable. I’ve seen politicians who were like that and I’ve seen politicians who were the reverse: great in a big speech, but you get them in a small group and they’re not particularly effective. So a lot of the images of things strike me as just overdrawn.

Riley: Did he have any hot buttons in terms of topics you knew to avoid?

Chertoff: No. The President was a genuinely tolerant person and didn’t tolerate any negative stereotyping based on ethnicity or stuff like that. Specifically what I’m talking about is we were very much involved on immigration reform, and I spent a lot of time with him on that. He was genuinely troubled by latent racism and by people who were hostile to immigration. He understood the importance of securing the border, but anything that smacked of—you know, because there were people out there in the Republican Party who were saying some pretty harsh things, and he had no tolerance for that. That really got him angry.

Riley: Did you ever have occasion to talk religion with him?

Chertoff: I’m sure he asked me what I was doing for Passover, or something like that. Or if we had a high Jewish holiday like Yom Kippur and I told him, that was fine, but we didn’t discuss religious doctrine or anything like that.

Brown: The role of the Vice President with the President. Popular view is that over the course of the eight years, the Vice President’s influence on him declined, in national security and foreign policy matters. Do you think that that has any accuracy?

Chertoff: In the first four years, I wasn’t really—I mean, I interacted with the President and the Vice President, as I told you, on some occasions, but not on a basis in which I could form a judgment on that. In the second term, the Vice President was a respected voice, but I never saw
any suggestion that there was a doubt that the President was the President, and everybody else was at a different level. People’s views were respected, but I can’t say that at that point the Vice President’s role was unusual compared to that of other principals.

**Brown:** They diverged from one another on the interrogation issue and that type of thing, didn’t they?

**Chertoff:** I don’t know how to answer that. I can tell you what I’ve read, but you don’t need me to spit back at you what anybody else says.

**Riley:** You obviously have read some of these things. Let me ask you this question: Of what you’ve read, what resonates as being relatively authentic?

**Chertoff:** I think the President’s book is a pretty good portrayal of how he approached problems. I’m leery of—I’ve read the Vice President’s book, but a lot of the stuff there I was privy to, so I can’t really comment on it. The thing I would tell you is the President was always an on-the-merits guy. It is absolutely true that he never—it’s not true to say he didn’t read the newspapers or wasn’t aware of what was going on. That’s not true, because I’ve heard him comment on the newspapers often.

What is true is that he didn’t let that guide his decision-making process. If people were getting pounded, or the administration was getting pounded in the press, and we had a Cabinet meeting, he was always the one who said, “Look, guys, it is a privilege to serve. It’s a privilege to serve in hard times.” He was very much about boosting everybody’s morale. As a consequence—I saw very little backbiting in the administration, much less than I’ve read was the case in past administrations.

**Riley:** Right.

**Chertoff:** Also, in terms of the White House staff, and this very much came from the President, they were quite respectful, in my experience, of the Cabinet Secretaries. There was no question, and I’m sure it’s a credit to Andy Card and Josh Bolten. They didn’t tolerate staff being dismissive of the Cabinet Secretaries. The Cabinet Secretaries were involved substantively in policy making. We weren’t just rubber stamps.

**Brown:** What about tension between Condoleezza Rice and Don Rumsfeld? Did that show up in any way?

**Chertoff:** Well, again—I’m trying to think. Part of the problem is almost everybody had tension with Don Rumsfeld. I have a lot of respect for Don. He’s a smart guy. He had a very particular view of his role and his view was: *This is my domain. I don’t play with others. I report to the President, period, and that’s the person I cater to.* You would not describe him as a team player. I had tension with him sometimes, and I probably had many fewer points of friction than Condi would have had. It certainly would not surprise me that there was tension. I saw a couple of times that Colin Powell had tension with Don, and I know Ashcroft had tension with him, particularly on these issues like, Are they going to process these detainees? If you’re going do it, do it. Don’t say, “I’m going to do it,” but don’t do anything with it. There was tension around that, so I would say that that’s consistent with what you’re saying, but I can’t think of a particular
Riley: Were you ever in a position where you would reflect back with the President that four or five or six years have passed since 9/11, and you haven't had another attack?

Chertoff: There were times when we talked about the fact that we had been successful, but it was always a little bit of a touch wood quality to it—*Let’s not pat ourselves on the back.* And there was a fair amount of discussion at various points about making sure we don’t have another August PDB, where there’s something out there. The President always wanted to be sure that if there’s something out there, we have resolved it. Either we’ve frustrated it, if it’s a plot, or we’ve decided that there’s really no threat, or we don’t know and we gather more information. There was a lot of drive to get to the bottom of everything that was out there, and not leave things unresolved. In that sense there was a constant reflection back to 9/11, and not having situations where we would look back and have to say, “Why didn’t we pursue this further?”

Riley: Let me ask you, because this is one of the things that I’m always puzzled by in talking with people from the administration: If any kind of threat could materialize out of something, how do you know how to sift the stuff that’s not important to deal with?

Chertoff: It depends on two things: how specific and how credible, and they’re kind of a sliding scale. If you get a piece of information that’s very specific, you generally act on it because it’s relatively easy to act on to correct for it, and the specificity lends a certain inherent credibility. If you get very credible evidence, like an intercept or something of that sort, and it’s clear, you would act on that.

You learn after a while that if So-and-So heard something in some undisclosed location about something big happening, unless it matches other things, you tend not to overweight that. It’s hard to describe a set of concrete circumstances, but if there was a threat of some specificity, there was an obligation to run it down one way or another and resolve it. And we took operational steps every day, in fact. If there was a threat, we would change operations at the border—We might elevate here; we might shift over there. We might change a protocol. We were constantly tooling and retooling what we were doing operationally, based on threats. But after a couple of years of reading these things, you get a feeling for which things seem to have the ring of being a real threat, versus stuff that looks like it’s just either so general, or it’s improbable, or something of that sort.

Riley: So the President would get a threat matrix every day?

Chertoff: Yes.

Riley: And those things were big?

Chertoff: Over time, there was a cut made, of stuff that everybody acknowledged was not really, you know—someone overheard in a bar, saying they’re going to blow the White House up—Maybe that’s a bad example—in a bar, saying, “We’re going to destroy California.” This is probably not going to get up to the President. But if it came from a location where you might expect that, or it came from a good source, that would make it into the book and it would be followed, and we could have weeks of following these things until they got resolved one way or
Riley: So there’s no magic formula for how you weed out.

Chertoff: Right. It’s based on facts and circumstances.

Riley: And it’s just shoe-leather, I guess.

Chertoff: Well, there’s investigative intelligence.

Riley: Immigration.

Chertoff: In 2006, [John] McCain and [Edward] Kennedy did their bill. It didn’t pass, but during the course of the year, we were asked about it. First of all, let me step back. We knew there was a big border issue, and so even in 2005 we started to think about how to enhance what we’re doing at the border, and that eventually led to the Secure Border Initiative, which was designed to bring fencing, additional border patrol, and technology to the border, to try to get operational control of the southern border.

Riley: You said, “We knew we had a problem.” Because of the quantity of what was coming over?

Chertoff: The quantity of illegal immigrants and the fact that it was not well controlled.

Riley: But it wasn’t a security threat along the lines of al-Qaeda?

Chertoff: No. In a general sense it’s a security threat, but it wasn’t specific about al-Qaeda.

Riley: But not a 9/11 kind of thing.

Chertoff: No. It was just illegal immigration and drugs, stuff like that. At the same time that we’re building that, I look at this bill and I go, “Geez, if something like this passes, it’s going to be on us to implement it, so we’d better make sure that whatever they pass can be implemented.” Because one thing you don’t want, which is not infrequent, is that Congress passes a bill, their work is done, and what they want you to do is not possible to be done or it’s outrageously expensive. You need to get in early and make sure that whatever they’re going to do can be implemented.

I sat down and wrote a two-page memo. I remember because it’s one of the few things I actually wrote, myself, from scratch. I sat down at the word processor and wrote it to Karl Zinsmeister, who was then the Assistant to the President for Domestic Policy. I said, “Karl, if this is going to happen again, a bill has got to have the following things. If it doesn’t have this it’s not going to work operationally.” That included: How are you going to know who comes in? How are you going to keep track of them? How are you going to have secure identification? How are employers going to know about who’s legal and who’s not legal? I sent it up to him and he called me up and he said, “I’m going to take this in to the President.”

Whereas, previously the position had been that the administration should let Congress do what
it’s doing and then come in to help at the end, we reversed it, and word came back from the President, “OK, why don’t you and Secretary [Carlos] Gutierrez get together, put together what you think a comprehensive immigration reform should be, go to the Republicans, get them onboard, and then go to the Democrats and try to actually drive a bill, as opposed to waiting for Congress to act.” So we did that.

Josh Bolten would convene, on a weekly basis, a principals’ meeting around this, with Carlos, me—I’m trying to think if the head of OMB [Office of Management and Budget] was there, maybe yes, maybe no—the senior assistants to the President in that area, a pretty small group, with the legislative people. We would meet every week and talk about how we’re going to deal with this in terms of what was going on and how things were moving. This was the only area in which Karl was involved. Karl never got involved in national security issues, but on immigration he did because part of the issue was what can pass.

Riley: Karl Rove?

Chertoff: Karl Rove, yes. We started out talking to Jon Kyl and a few other people, John Cornyn, and we had a skeleton, and they talked about what was important to them. Then Lindsey Graham got very involved, and John McCain, although he was less involved because he was running for President, and Lindsey was more his eyes and ears in this.

It eventually got to the point that we would go to the Vice President’s office in Dirksen [Senate Office Building] two to three times a week, usually around 4:00 to 5:00, and spend a couple of hours with Senators, talking through the various parts of the bill. We started with Republicans and then we got Democrats in—Ken Salazar, Ted Kennedy—and we actually started to negotiate and write the bill. The staff could come in, but the deal was that staff had to shut up and sit in the back. The Senators and Carlos and I were talking, and we literally sketched out the bill and worked out compromises.

We finally got to the point where we got a compromise, a comprehensive immigration bill, which everybody from Ted Kennedy to Jon Kyl supported. It had, you probably remember, increased resources for the border—By then we had already made a lot of progress—increased immigration enforcement, a temporary worker program with secure identification, and a path to citizenship, but one that would require payment of a fine, and anybody who was here illegally would have to wait until everybody who was in line was through. Plus, we changed some of the rules for admissibility to make them a little bit more fair and a little bit more to the benefit of the U.S. rather than to the benefit of the immigrant.

We put this together. It’s a compromise. Not everybody liked every element in it, but it got a very broad range of support. The President spent a lot of time on this. He spent a lot of time with us talking about it. He spent time with Members of Congress, building support. Now we’re in 2007, so by then his political capital is getting a little bit weaker. That was the downside.

Riley: And the House has changed.

Chertoff: Right. Well, that actually may have helped. Both Houses had changed; they were both Democrats. That actually helped a little bit, in the sense that there was a more interest in doing something. Ultimately, we got the bill. The President was very happy. We ran out and we
announced it. I have the picture up there, from when we went out to announce that, with Carlos, the President and me.

Then, for a variety of reasons, the support eroded between the time it was presented on the floor and the time it came to a vote, and that was largely because the leaders on both sides allowed a delay in the process, and instead of moving it to the floor quickly with a finite number of amendments, it wound up taking four to six weeks. There was a recess. And in this kind of circumstance, time is your enemy. There was a lot of minority opposition. I don’t mean racial minority, I mean minority, small number. It was very vociferous. Even though our polling showed that a majority of people supported this, the sheer amount of anger on both sides, left and right—the left because they didn’t get enough for the immigrants, and the right because they thought it was too much—started to peel Members of the Senate off, and once some of them started to jump ship, others started to jump ship.

As a process point, I have to say the people who worked on it really were proud of the work that they did. It was really what you learned about in civics. You have women and guys sitting around for three hours a day, really talking substance, including their own experience, and in a very respectful way, and it was really positive. It was unfortunate that the dynamic on the outside started to scare people. I remember talking to some Members of Congress and saying, “In your district, 70 percent of the people support this.” And they’d say, “I know, but the people who come to my town hall are angry and they’re in my face, and it’s just hard for me to say no to them.” I realized it wasn’t a calculated decision. It was almost a visceral decision, that the fact that people were angry—they just couldn’t resist it. It really shook their confidence. There were some people who just accepted it and said, “I’m going to do the right thing and I don’t care.” But you started to lose enough people, and once it looked like people were jumping ship and it wouldn’t pass, the word goes out to everybody, “Save yourself. Don’t go down with the ship,” and it didn’t go anywhere.

Riley: The President himself, then, doesn’t have enough political capital.

Chertoff: He did not. In mid-2007, he probably did not have enough political clout to force it through, which was a big disappointment. I think if you asked him—this is a guess—he would say, “If I had started out doing this in 2005, I might have been able to get it done.” That may be right.

Brown: So you were active with the Congress then?

Chertoff: Oh, yes. I’d say for three months I spent most of my time on that.

Riley: Who were the two or three go-to people on the Hill for you at this time?

Chertoff: We dealt mostly with Senators. We dealt a little bit with the House people, but mostly with Senators. It was Lindsey Graham, John McCain to some extent, on the Republican side, John Cornyn, Kay Bailey Hutchison to a pretty large extent. On the Democratic side: Ken Salazar, Ted Kennedy, Dianne Feinstein. I’m probably missing some people, but they were pretty consistently at the core of a lot of discussion.

Riley: And the visceral opposition—At least originally, you say that you sort of reach a tipping
point where people—

**Chertoff:** It’s both sides. It’s the people who don’t want any immigration reform, and it’s the people who want basically amnesty.

**Riley:** OK.

**Chertoff:** We spent a lot of time with advocacy groups, trying to get them onboard. Carlos Gutierrez and I did innumerable radio shows and TV shows, I mean, beyond belief—five, six, seven a day—out there talking about this stuff. We were really out there pounding on this.

**Riley:** Presumably the President is happy to see you spending this much time on it.

**Chertoff:** He was very engaged and very pleased about it. He wanted it. He was very focused on this.

**Riley:** My earlier question was whether there was a geographical component at the outset, a southern border-state kind of—

**Chertoff:** You would think so, but actually not. It doesn’t necessarily break down that way. There are Members of Congress from the border states who are strongly antiimmigrant, and there are some who were quite in favor of it. It’s not as easy to predict as you might think.

**Brown:** It must have been a major disappointment. You invested so much time in it.

**Chertoff:** Yes, it was a disappointment. What am I going to do? That’s the system.

**Riley:** And Karl Rove’s engagement with this?

**Chertoff:** Karl was very good at predicting, from a standpoint of vote counting, who’s likely to be with us, who’s likely to be against us, and which arguments are likely to appeal to people. How do you allay concerns? Things of that sort.

**Riley:** But there were never discussions between you and him about Republican realignment?

**Chertoff:** No.

**Riley:** It was all transactional?

**Chertoff:** It was all transactional and tactical to the bill, which the President wanted to do, not because he thought it was going to have a political impact, but because he thought it was the right thing to do and he was very much interested in doing it.

**Riley:** You said this was pretty much the only time that you’d had dealings directly with Rove?

**Chertoff:** Yes, that was probably the most. I’d seen Karl occasionally, but he never was in the national security discussions, and he was not in the room for that. This was the one time he was involved, because it was really more of a policy thing than a national security thing. Karl Zinsmeister was obviously involved because he was Domestic Policy.
Riley: Was the Republican National Committee in any way involved in trying to help you solve this?

Chertoff: Not that I’m aware of. I’m not even sure where they were on the issue.

Riley: Anything else on immigration?

Chertoff: Well, afterward we said, “All right, but you guys understand we’re still doing the enforcement piece. That’s not dropping.” And we actually built over 600 miles of fence, and we put a lot of tactical infrastructure—We doubled the border patrol and we were tough, and there were people who didn’t like that. I said, “Here’s the deal: Even if we don’t get immigration reform, we still have an obligation to enforce the law and we’re going to enforce the law.” Sometimes the President said to me, “Do we really need to do this?” I said, “It’s the law, Mr. President. We’ve got to do it. People are going to say to us, ‘How can we trust the government if the government is not going to enforce the law as it is?’” He personally was not always delighted about how tough we were, but I think he realized it was important to do and he let me do it.

Riley: Did you have any engagement on the sort of push side of the equation, on particularly the Mexican—

Chertoff: Yes, because we participated in—I forget what it was called—I still have a bag from one of the meetings, the trilateral summit, where you get the Presidents of Mexico and the U.S., and the Canadian Prime Minister together. They had it once a year, and part of what you’re dealing with is trying to promote trade and security, so I participated in those too. We tried to balance security and trade. Of course the Canadians were always complaining that we were thickening the border.

We went to one summit up in Montreal, and they’re complaining about how we’re making everybody wait at the border, and the President says, “Why are we doing that?” I said, “Well, Mr. President, it’s a physical constraint, but we have these cards that will get you right through.” I had one in my wallet and I gave it to him, and he passed it around to the other presidents. So I was involved in that stuff too.

He was a big free trader and believed in NAFTA [North American Free Trade Agreement], and also he thought that eventually that would—Part of the issue with illegal migration is the push piece. The President was really committed to free trade. He really believed in that.

Riley: Did the drug component play a role in this? Did that come into play?

Chertoff: It was part of the border security but I don’t know that it was discussed separately. My Department had drug interdiction responsibilities with the Coast Guard and Customs and Border Protection, but I don’t know that that was—that’s kind of a continuation of policies that have existed for a long period of time.

Riley: Did you have to spend very much of your time on the question of interdiction?

Chertoff: Some time, but it pretty much operationally runs itself. That’s pretty well-baked.
Riley: And there were no major changes in interdiction at the time?

Chertoff: No. They had more submersibles. As we made it harder to get across the border, we wound up with more violence, and they were coming up with these submersibles. They tried to smuggle the drugs through submarines. We saw that as a change, but it was not unpredictable.

Riley: Empirically, was there any real change in traffic?

Chertoff: Yes. During the time that we were there, as we put this into effect, there was a definite slowdown in cross-border traffic, not necessarily attributable to the economy, because we saw it earlier than the economy turning down in 2008. The drug seizures went up, which meant we were seizing more, and they began to come up with alternative routes. So we had some metrics to show that a consequence of tightening the border enforcement was that it made smuggling of drugs harder, as well as smuggling of people.

Derthick: I have a mundane question: What is a pedestrian fence and what is a vehicular fence?

Chertoff: A vehicular fence is a barrier that prevents a vehicle from going through, but you could theoretically walk through it. A pedestrian fence is like a metal fence, for example, that you couldn’t go through. It depends on how close you are to what we call the vanishing point. The key for border security is this: If the border is here and there’s a town over here or a highway over here and it’s a hundred yards away, all you have to do is run across the border, get into town and you can’t be found. So in places like Yuma, before we put the fencing up, literally thousands of people a week would run across the border, go into Yuma, and disappear. There you need a pedestrian fence because slowing them up, even for ten minutes, gives you the opportunity to interdict them.

If you’re out in the middle of the desert and there’s no road and there’s no city, you’ve got to walk a long time before you find a place to hide. So there, a vehicular fence is what you need. You want to prevent people from driving across, but you’re not really worried they’re going to try to walk across, or if they do, you’re going to have quite a bit of time to interdict them. That’s the difference, and it’s all based upon time and distance to a point at which it will no longer be practical to stop and interdict somebody.

Riley: Let me give you the—I’m sure you have this committed to memory, but I was just going to give you one of the organizational charts. Along the bottom you’ve got each of the operational components. Have a quick look at that and see what comes to mind in terms of your own initiatives.

Chertoff: We created NPPD, National Protection and Programs [Directorate], which was meant to be an operational—we took the infrastructure protection and the cyber pieces and put them under one Under Secretary. Originally, we were supposed to have some preparedness, but Congress moved that into FEMA.

Riley: That’s the last document in Tab 7.

Chertoff: And we got rid of the border transportation security, which had been between ICE and Customs and Border Protection and TSA and the Secretary, because we didn’t feel that was a
necessary layer. Ops Coordination was the pivot of our effort to unifying, integrating, planning and operational activity among the operational components.

**Brown:** If you were starting, *de novo*, to create the Department, is there anything that is here that you think is superfluous, or are there things that should be here that are not here?

**Chertoff:** You could argue that the FBI and DEA should be in there, but that’s not going to happen so it’s not worth talking about. Most of these offices are little offices, so they’re not really—It looks like there are a lot of direct reports, but there are not a lot. I’d make Policy Under Secretary, and we never got that done. But this is pretty much what we configured and it worked OK.

**Derthick:** Where do you find the people? What kind of people do you look for? Lawyers?

**Chertoff:** Well, the little ones up here—Some of these are very small, but the ones that are major—Coast Guard was a career person, Thad Allen.

**Derthick:** Down below, it’s easy.

**Chertoff:** Right. FEMA, we made Dave Paulison, who was career—

**Derthick:** I’m thinking of the ones up above.

**Chertoff:** Intelligence analysis—Charlie Allen had been at the Agency for a long period of time. He had been Assistant Director for Collection. He’s a legend, so we brought him in. For Ops Coordination, we got Roger Rufe, who is a retired Vice Admiral of the Coast Guard, because the Coast Guard is very good at that. NPPD was George Foresman, who had a lot of experience dealing with the homeland security in Virginia. Science and technology was Jay Cohen, who was head of Naval Research, who was recommended to me by Richard Danzig. These may not all be Republicans; I don’t know. The others, like Legislative Affairs, Public Affairs, were smaller shops.

**Riley:** There’s also a shop there for Civil Rights and Civil Liberties.

**Chertoff:** Yes, and that was Dan Sutherland.

**Riley:** What’s the portfolio there? Is it a very important office?

**Chertoff:** It became very important, because it became the principal instrument for outreach to the Muslim community.

**Riley:** Oh, no kidding?

**Chertoff:** Through Dan, I spent a lot of time meeting with Muslim community leaders, both in the U.S. and overseas, did Iftars, engaged with students, religious leaders. It became quite a robust program and actually remains—I continue to do that stuff as a consequence of that. Dan moved over to the NCTC and he does this for the NCTC now. It developed into a very substantial outreach program.
Riley: Did it have any kind of internal ombudsman type role?

Chertoff: If there were civil rights issues, they would be investigated, but I don’t remember that we had any big dust-ups during my time there.

Brown: The Container Security Initiative—was that under your jurisdiction?

Chertoff: It started under Tom.

Brown: And it stayed under—

Chertoff: Yes.

Brown: What about the Proliferation Security Initiative? Is that somewhere else?

Chertoff: That’s somewhere else. That may have been DoD, because that’s overseas.

Brown: Right.

Chertoff: But it integrated with DNDO [Domestic Nuclear Detection Office], which is really domestic U.S., and there was a little bit of overlap.

Brown: Is the Container Security Initiative also foreign ports?

Chertoff: Yes, it’s putting people overseas.

Riley: Tell us your story on the Dubai issue.

Chertoff: Dubai Ports is a terminal company, run by a sovereign wealth fund, I guess. They buy a terminal company in the U.S. Now what is a terminal company? A terminal company owns the warehouse on the dock and the cranes that lift the containers and put them in the dock. They don’t own the workers. The workers are longshoremen, and the way the longshoremen get hired is based on union rules of the waterfront. So they pick who’s going to be working. You don’t bring people from the UAE [United Arab Emirates] to the U.S. to do the work. They’re Americans and they’re done by the union.

Riley: They’ve got to get past the longshoremen to do that.

Chertoff: Right. At CFIUS [Committee on Foreign Investment in the United States], we were like skunks at a picnic. We were saying, “You’ve got to put mitigation in.” We had worked out quite a robust mitigation plan for Dubai Ports, where we were not only going to have a lot of visibility on what they were doing in the U.S., but they were going to give us visibility on what they’re doing in Dubai. So net-net, it was a real plus for us in terms of security.

There was a three-day weekend and on the Sunday, I was on “This Week with George Stephanopoulos.” I had been briefed on what we were doing with Dubai Ports, by happenstance, earlier in the week. They were talking about whatever we were talking about, and at the very end, George says, “Oh, I understand there’s a company called Dubai Ports from the UAE that’s going to buy port terminals here in the U.S. What do you have to say about that? People are
expressing, and Members of Congress are expressing concern about this.” I said, “Let me be clear, we have a very tough mitigation strategy. It’s not going to bring people over to do the work. We’ve got a lot of visibility into what’s going on,” et cetera.

I leave. It’s a Sunday, and I call the White House Public Affairs. I said, “Guys, here’s a warning. Something is bubbling out there on this Dubai Ports and you’d better get in gear to deal with this.” Being a three-day weekend, I don’t think they got in gear that quickly, so by Tuesday, the whole thing has exploded and it’s really a tempest in a teapot. I think it had been a competitor who had actually ginned it up. It was like, *The Arabs are taking over our ports.* The President was really aggravated by the criticism, because he realized it was nonsense. At some point—I may be getting this wrong—Congress was talking about doing something about this, and the President got angry and said something from Air Force One, that if they tried to do something he was going to veto it. Is that right?

Riley: That piece I don’t know.

Chertoff: I think that was it, because it was in the press. Members of Congress got their backs up, and at the end of the day, the company finally decided to spin off the U.S. terminal operations and kept the rest of the other stuff globally. Unfortunately, the lesson from that was that logic does not necessarily prevail in this circumstance. As a consequence after that, I looked at every single CFIUS application that came into the Department. Usually I could tell pretty quickly if it was not going to be an issue, but I also got attuned to the fact that sometimes I would see something and think, *This is going to be an issue*—not necessarily on the merits but in terms of what the politics of it is—*so we’d better be very careful about it.* We didn’t have another dustup like that, but it left a bad taste in the mouths of the foreign trade people.

Riley: No issues with the Coast Guard?

Chertoff: No, they were great. I love the Coast Guard.

Riley: Anything with the Secret Service?

Chertoff: Love the Secret Service. The only issue I had was they would give me running gear, and the Coast Guard would give me running gear. If I was wearing Coast Guard running gear when I was running and they’d see me, the Secret Service would say, “You should wear our stuff.”

Riley: That’s not a bad problem to have, all things considered.

Chertoff: All kidding aside, we had national special security events, so the Secret Service would take us through the security on that. And of course when the election began, early on we made the decision to get then-Senator [Barack] Obama protection, because of the circumstances.

Riley: What about the President’s own personal security during the time that you were there?

Chertoff: Secret Service did that. If the President was leaving to go an overseas theater of operation, the director would usually call me up and tell me. That was very closely held, but he would say to me, “The boss is going overseas,” and so I’d monitor that.
Riley: Right. This would be true even if he was going into war zones?

Chertoff: Right, yes.

Riley: Were there elevated threat levels to him personally during the period that we’re talking about?

Chertoff: During the entire time, it was a pretty high level of concern because he was obviously very aggressive in pursuing the war on terrorism.

Riley: Sure.

Chertoff: I don’t know that we got into particular threats.

Riley: You don’t recall any incidents where he may have been in—where the travel plans had to be canceled?

Chertoff: No, I don’t remember anything like that.

Riley: What about his own personal—receptivity is not the right word, and it’s not interaction—I guess what I’m trying to get at is, did he chafe at the constraints that he had to operate under because of these things?

Chertoff: I can’t answer that. By the time I was there, I’m sure he was used to it. He was a good sport about it. Most Presidents are very appreciative of what the Service does and they don’t really complain about it.

Brown: Why do you think that there haven’t been any acts that don’t take a lot organization, like suicide bombers in a mall?

Chertoff: It’s not that easy to get people to blow themselves up—Americans. In other countries, apparently it’s quite easy. I don’t think they’ve had a critical mass of people who are willing to go that far. We’ve had some close calls, you know, the Detroit bomber in 2009. Now, [Najibullah] Zazi, I don’t think was going to blow himself up, and the Times Square bomber obviously wasn’t going to blow himself up. He left. I don’t think there’s been a critical mass of people who are hardcore enough to blow themselves up, but we could get there.

Brown: And that’s very difficult to control.

Chertoff: It’s almost impossible to control. If a person working by himself puts a bomb on and walks into a mall, you’re not going to stop that. He’s not going to kill a thousand people, but he’s going to kill some people.

Brown: Yes, and it’s psychologically disruptive.

Chertoff: Yes. Remember, we’ve had shootings in the past and we continue to have them. We had Virginia Tech, we had Littleton, we had Fort Hood. Interestingly, I have a theory that shooting terrorism incidents like Fort Hood are horrible tragedies but the country can bounce
back from that, because in a way we’ve had it. A bomb, because we haven’t had that in this
country in the way that you’ve had it in, let’s say, the UK [United Kingdom], would have more
of a psychological effect.

Riley: You talked about bio-terrorism, and your sense is that it’s more practically possible than
other people believe.

Chertoff: Right. If you look at WMD [weapons of mass destruction] threats, there are really
two: nuclear and bio. You could have a bad chemical incident, but it’s not going to be a weapon
of mass effect. Even a radiological bomb, while it will render a significant area uninhabitable,
will not initially kill a lot of people beyond the actual force of the explosion. But a nuclear bomb
or a serious biological attack would have profound effects on the country. I personally think a
nuclear bomb is not a very near-term threat. That could change if the Iranians get a bomb.

A biological threat is a realistic threat in the near-term. The material exists in nature. You don’t
have to get centrifuges; you just have to be able to weaponize it in a lab. The guy who did
anthrax—if he had taken that anthrax and dumped it in the New York subway system, he would
have killed a lot more people and he would have rendered the New York subway system
probably unusable, period. You can easily see it’s not that hard, and that’s at the top of my list of
weapons of mass effect.

Riley: You’re more optimistic about loose nukes.

Chertoff: I wouldn’t say more optimistic. It’s just harder to get and operationalize that.

Riley: Is the detection technology on bacteria pretty good?

Chertoff: It’s good, but it’s slow. You need to get to the next generation, and Congress and
OMB have just not wanted to fund that work as effectively as possible. I think we should very
much get to generation three, where you could have quick analysis. The current generation that’s
out there is very accurate. We’ve never had a false alarm. We’ve had alarms, usually because it’s
something that occurs in nature, like tularemia or something like that, but the problem is you
have to pull the assay and test it at the lab, and that eats some valuable time. The other problem
is you’ve got to stockpile the countermeasures, which we’ve done to some extent, but you’ve got
to distribute them.

One day in 2006, we were having a principals’ meeting, and the issue came up, because the
President was interested in this. We talked about how to deal with the issue of distribution.
Someone had proposed—HHS, or maybe it was the Vice President’s office—that if we could
pre-distribute medical kits with the main countermeasures, Cipro and things of that sort, we
could really cut down on the distribution time. The question was raised: How do we know people
are not going to misuse them or lose them? They ran an experiment and they distributed them in
certain populations in parts of the country, and then they went back about a year later to find out
how many people still had their kit and how many people had misused it. Some extraordinary
number of people still had them, and had not misused them, and were following instructions.

We reconvene, HHS reports, and we say, “Great, let’s do this.” “Can’t do it.” Why? FDA [Food
and Drug Administration] has an objection, because these are prescription medications and FDA
believes you can’t give prescription medications out unless a doctor sees you first, and they didn’t want to grant a waiver. This is one of those moments when you look at the President and you say to yourself, *I bet he’s wondering why he’s President, when he can’t actually make this happen.* The consequence was we were not able to do it.

Eventually, we kind of arm-wrestled FDA into allowing postal workers to get this, because the theory was that postal workers would then deliver countermeasures on their routes. If they got it for their families, they would then be willing to go out and distribute it. But in truth, that’s not really a correct solution. At a minimum what you want to do is put them in schools and firehouses around the country, because you don’t want to wait to distribute them from a big stockpile. You’re only going to have six to twelve hours before you lose your window of opportunity. That, to me, was a classic example of having bureaucracy overwhelm common sense. I have frequently talked about this—it’s probably in my book—and criticized the FDA for this. I don’t think anything has been done.

**Riley:** In terms of medical care, you’re working with the medical community for advances in treatment of these things?

**Chertoff:** Yes, but if you get past a certain point, you’re not treating it. I forget what the limit is, but there’s some point beyond—if you get anthrax and your treatment time has passed, you’re dead.

**Riley:** One more question on the airport screenings: Did that work? Do you have demonstrable evidence of people stopped coming in? Did you catch people with those screens?

**Chertoff:** Well, you don’t catch people with bombs, and that’s because you’re deterring them from trying to get on with a bomb. The exception was, of course, when you had the Detroit guy get on, and because he doesn’t have metal, the metal detectors don’t detect it. And they didn’t have body scanners, so he gets on the plane. He’s incapable of detonating it, but that’s his own clumsiness, not a security thing.

I spent a lot of time on this and designing this with TSA. People would say, “How does this work if you’ve never caught anybody?” I’d say, “How many bank robbers have we caught at Fort Knox?” It’s because it’s good enough that people don’t try, and that’s really the theory here. What they do find are people taking, for example, a block of cheese and putting wires in it, testing to see if they can get things by the system.

We knew there was vulnerability on nonmetallic explosives back in 2005 and 2006, and that’s why we started this body scanner pilot, because we wanted to see if we could at least use this. We went through all kinds of discussions about the tradeoff between how precise you want the scanning equipment to be, versus the privacy issue, to try to come away with what was a fair balance. I think they subsequently got software that renders you into a stick figure, so it’s less lifelike but still achieves the result. There’s always a tradeoff. The more you rely on the machine, you lose a certain granularity and then you’ve got to decide how much risk you want to take.

I would say that TSA is—other than FEMA—the hardest element of what the Department does, because you come into contact with the most people. If you’re in DoD, a lot of your activity is overseas. If people don’t like it, they’re foreigners; they’re not Americans. So there’s a huge
element of public reaction that’s not present. TSA, all you’re about is interacting with the public, and they’re already not happy being at the airport because it’s not exactly a great experience, and all you’re doing is slowing them up. Observing now, I find that most people are appreciative, but that challenge of trying to balance security and make it efficient was always an issue for TSA.

On the other hand, I’ll go back to the story I told earlier about the No-Fly List. I will guarantee that if you said we’re going to stop using body scanners, and then two weeks later someone gets on a plane with liquids and blows it up, you’re going to hear, “Why did you pull the body scanners out? You knew all about this threat.” And then there would be another 9/11 Commission. That, in many ways, is the challenge of that Department. Success is undercut by success, and failure is not how you want to drive policy.

Riley: You’ve been very cooperative. Looking back, where do you find pieces of unfinished business? Where do you wish you had been able to do more?

Chertoff: The bio piece, I wish we had gotten further along. We started the cyber initiative in 2007–08. I think if we had another year we might have driven it a little bit further.

Riley: That’s something we haven’t talked much about. Could you elaborate a little more on that subject?

Chertoff: Well, through DNI and NSA [National Security Agency], I became tutored in some of the challenges we face in cyber, and we put together this comprehensive National Cyber Initiative, which is now declassified, which has been the first step in a series of steps to be taken on cybersecurity, which remains a very big issue. I’ve been more involved in it personally since I left than I was at the time, but for a year we were pretty intensively involved in it. That’s unfinished work. And bio. Those are the two major areas.

Derthick: Where are the Agency’s friends? Are there some in the scientific community? You don’t have a natural constituency—the Agency doesn’t. The whole public is your constituency.

Chertoff: Right.

Derthick: It isn’t organized to be active on your behalf. You gave talks to university groups. You talked to GW [George Washington University], and Georgetown, and these places create institutes and journals and so on. Is there help and support?

Chertoff: We found that over a period of time the journalists who covered us regularly were good, and generally were able to explain what we did and inform the public in a helpful way. I generally felt we got a positive response from the public for what we did. There’s grumbling about TSA, from people at the fringes who don’t like what we do, either the fringe left or fringe right, libertarians. But by and large, if I were to tell you the number of times I’ve been stopped on the street by people saying, “Thank you for what you do. We really appreciate it,” versus criticism, it would be like ten thousand to one. So my general impression is that most people appreciate what you’re doing and appreciate the Department.

There’s a little bit of a tendency, maybe because of the name—“Homeland Security” seems like a strange name. Initially there was kind of an alien quality to the Department. There was a
certain negativity. But ironically, or maybe not ironically—maybe this is the way things work—over a period of time, Homeland Security did become branded as a unique concept, and as something different from Defense—in some ways broader—that involves law enforcement and defense and intelligence, but also a lot of private sector activity, and response as well as prevention. Even that, over a period of time, developed a certain—Once you get by the initial strangeness, as you’re coming into the ten-year anniversary, people more or less have accommodated you. They’ve grown up with it.

Derthick: Do you ever hear from your successor?

Chertoff: Yes, I have a good relationship with her. We interact in a variety of ways, socially and professionally. I am co-chair of the Aspen Institute Strategy Group with Jane Harman, and my successor comes to the group meetings. It’s a good bipartisan group. There’s a lot of bipartisan support. When we did the transition, we spent a lot of time making it a smooth transition, and the President was very focused on that. He wanted to have a flawless transition. He didn’t want to have any of this nonsense where you’re trying to sabotage your successors. As a consequence, we brought them in early, and we did an exercise with them in January of 2009 to get them acclimated to what they would be facing.

Riley: Can you say a little bit more about that exercise?

Chertoff: It was just an exercise of a couple of hours, but we ran people through the kinds of things they would have to deal with. I forget what the scenario was. I also said to my successor that I was willing to stay—I didn’t ask for this but I said, “I’d be willing, if you thought it would be helpful, to stay in position through Inauguration Day, so that if something happened, you’re not caught in the middle.” You know, you’re standing on the reviewing stand and you’re called away at two o’clock and you’re dumped into something. They ultimately decided they wanted to do that, so I actually stayed until midnight on January 20th. It turned out that was helpful, because there was an alarm—it turned out to be a false alarm—about a group of terrorists who might be planning to do something on Inauguration Day. Being able to have continuity for the days before and through that day was quite helpful.

Riley: What about the policy trajectory of the administration?

Chertoff: In Homeland Security, with maybe the exception of immigration enforcement domestically, there’s almost no difference. I’m not sure that they would be happy to have me say that but I mean it as a compliment. It stayed remarkably the same.

Riley: But other than domestic or immigration?

Chertoff: Well, this year they’ve had this idea of not deporting people unless they were serious criminals, which was not our policy. If we ran across people who were here illegally, we deported them. But other than that, it’s really pretty much the same.

Riley: The Super Bowl is coming up this Sunday—a big event, a lot of people in one place. What are the kinds of things that are going on in the Department right now?

Chertoff: This is one of the stories and I’m sure it’s true here—It’s a National Special Security
Event. Months before, they’ve got probably a Secret Service Agent designated as the Principal Federal Official, and the Secret Service is coordinating with the FBI, Intelligence, locals, responders and police, and the NFL [National Football League], and the stadium, about what the security is going to be. Air—CAP [Civil Air Patrol], the securities people entering the stadium—Is there intelligence about anything going on? What’s the security in the vicinity? What are they going to do with hotels? All that is mapped and worked out three or four months in advance at least.

Riley: And then as the date comes closer these things are unfolding?

Chertoff: Yes, and it continues and then it’s coordinated out of a command center, again probably led by the Secret Service on the day.

Riley: So the people who are showing up at the stadium should have a great level of confidence that this is—

Chertoff: They’ll go through screening, like a magnetometer. If it’s being done properly, they should.

Riley: I took my son to the BCS [Bowl Championship Series] game in Arizona last year. It was a long time getting in, but I think everybody understood.

Chertoff: There will be air CAPs. We can take a plane in, stuff like that.

Riley: OK. Do you have any other questions?

Brown: If you were called upon again to join an administration, what office would you like to be asked to be—

Chertoff: I wouldn’t do the same job again.

Brown: Attorney General?

Chertoff: To be honest, I haven’t given it any thought. The only thing I would say is I would not do the same job again, because you can only do a job once. Thomas Wolfe is right: “You can’t go home again.” If you try to do it a second time, all you’re going to do is—you ought to do something different, is my general rule.

Riley: Would you like to go back?

Chertoff: I’m not looking to go back in. I’m perfectly happy with what I’m doing.

Riley: Are you in consultation with any of the Republican candidates?

Chertoff: I am on the foreign defense and security advisory team for Governor [Willard Mitt] Romney, but I’m not looking for anything.

Derthick: You never regretted leaving the bench to go?
Chertoff: No. It turned out to be a unique experience. It had its frustrations. It had a lot of joys. I learned a lot about areas of what government does that I had not previously experienced. Most of my experience in government was in the Department of Justice—all of it had been. Here I had military service, I dealt a lot with the Department of Defense, and I developed an enormous amount of respect for their capabilities. People who are at the top of DoD in the uniform services are unbelievably talented, and I have just enormous admiration for them. That was a great experience I wouldn’t have had, had I not done this. I got to do all kinds of international stuff and made friends overseas, and I’m still friendly with a lot of my counterparts. If life is new horizons, it was a great opportunity for me.

Riley: Would the bench appeal again, or not?

Chertoff: It was good for what I did, but as I said earlier, I don’t think you can go back and do something again.

Riley: Yes, OK.

Chertoff: Everything I did, I liked doing when I did it. None of them would I want to repeat.

Riley: In conversing with others in these interviews, sometimes the argument is made that the bench is not a good fit for somebody at the stage of the career that you were at, that it’s something that might be better done at a more senior stage of one’s career.

Chertoff: Yes, although generally they tend to want to have people who are 60 or younger, because they want you to serve for a long period of time.

Riley: Of course.

Chertoff: I went on when I was 50, or 49, and if this hadn’t come, I’m sure I would have been happy but it would have been a different life, and I would have missed some remarkable opportunities.

Riley: Of course. You have been very generous with your time.

Brown: Thank you.

Chertoff: Great, thanks a lot. Thanks for putting up with the interruptions.

Derthick: Thank you.

Riley: We’ll get you a transcript at some point. We’re going to be working for another few years, so—Thank you very much.