

MAYER ON RAHM

I first teased out Rahm Emanuel's role in reversing Obama's early efforts to reclaim our country from torture last July. In August, my comments at Netroots Nation focused on Rahm's role in preventing accountability for torture. I kept tracking Rahm's campaign to prevent accountability here, here, and here.

Today, Jane Mayer has an extended profile of Eric Holder that fleshes out what we've all known: Rahm's the guy who killed accountability for torture.

Emanuel viewed many of the legal problems that Craig and Holder were immersed in as distractions. "When Guantánamo walked in the door, Rahm walked out," the informed source said. Holder and Emanuel had been collegial since their Clinton Administration days. Holder's wife, Sharon Malone, an obstetrician, had delivered one of Emanuel's children. But Emanuel adamantly opposed a number of Holder's decisions, including one that widened the scope of a special counsel who had begun investigating the C.I.A.'s interrogation program. Bush had appointed the special counsel, John Durham, to assess whether the C.I.A. had obstructed justice when it destroyed videotapes documenting waterboarding sessions. Holder authorized Durham to determine whether the agency's abuse of detainees had itself violated laws. Emanuel worried that such investigations would alienate the intelligence community. But Holder, who had studied law at Columbia with Telford Taylor, the chief American prosecutor in the Nuremberg trials, was profoundly upset after seeing classified documents explicitly describing C.I.A. prisoner abuse. The United Nations Convention

Against Torture requires the U.S. to investigate credible torture allegations. Holder felt that, as the top law-enforcement officer in the U.S., he had to do something.

Emanuel couldn't complain directly to Holder without violating strictures against political interference in prosecutorial decisions. But he conveyed his unhappiness to Holder indirectly, two sources said. Emanuel demanded, "Didn't he get the memo that we're not re-litigating the past?"

That's what human rights are to Rahm Emanuel—mere distractions, speed bumps on his road to nine wins or—in the case of health care reform—epic failure.

Where Mayer breaks real news in her description of Rahm's role in preventing accountability is her description of why Rahm opposed so many of Holder's decisions: because they offended Lindsey Graham.

At the White House, Emanuel, who is not a lawyer, opposed Holder's position on the 9/11 cases. He argued that the Administration needed the support of key Republicans to help close Guantánamo, and that a fight over Khalid Sheikh Mohammed could alienate them. "There was a lot of drama," the informed source said. Emanuel was particularly concerned with placating Lindsey Graham, the Republican senator from South Carolina, who was a leading proponent of military commissions, and who had helped Obama on other issues, such as the confirmation of Supreme Court Justice Sonia Sotomayor. **"Rahm felt very, very strongly that it was a mistake to prosecute the 9/11 people in the federal courts, and that it was picking an unnecessary fight with the military-commission people,"** the informed source

said. "Rahm had a good relationship with Graham, and believed Graham when he said that if you don't prosecute these people in military commissions I won't support the closing of Guantánamo. . . . Rahm said, 'If we don't have Graham, we can't close Guantánamo, and it's on Eric!' "

At Emanuel's urging, Holder spoke with Graham several times. But they could not reach an agreement. Graham told me, "It was a nonstarter for me. There's a place for the courts, but not for the mastermind of 9/11." He said, "**On balance, I think it would be better to close Guantánamo, but it would be better to keep it open than to give these guys civilian trials.**" Graham, who served as a judge advocate general in the military reserves, vowed that he would do all he could as a legislator to stop the trials. "The President's advisers have served him poorly here," he said. "I like Eric, but at the end of the day Eric made the decision." Last week, Graham introduced a bill in the Senate to cut off funding for criminal trials related to 9/11. [my emphasis]

All along Rahm's campaign against Greg Craig and Holder he left complaint after complaint that they had ruined the relationship with Congress. This, I suppose, is what Rahm means: doing anything—even those actions dictated by international law—that offend poor Lindsey's sensibilities is a mistake, tantamount to ruining the President's relationship with Congress. And I guess Rahm is okay with that—ceding the President's authority on national security and legal issues to Lindsey Graham.

And look what you get out of that: Lindsey in a snit, pouting that the Attorney General of the United States determined to try criminals in a civilian court. And in response, refusing to close Gitmo.

In other words, we can't close Gitmo because Obama's "crack" Chief of Staff has willingly ceded the authority of the Attorney General of the United States to one Senator from the opposing party, and that single Senator is pouting because the Attorney General might choose law over Kangaroo Courts.

One more thing. Mayer makes a point I have made in the past (here and here). Civilian trials are far more likely than military commissions in successfully reaching a verdict and imposing a penalty—particularly, the death penalty.

The makeshift military-commission system set up by Bush to handle terrorism cases has never tried a murder case, let alone one as complex, or notorious, as that of Khalid Sheikh Mohammed, who will face the death penalty for the murder of nearly three thousand people.

[snip]

There is no evidence suggesting that military commissions would be tougher on suspected terrorists than criminal courts would. Of the three cases adjudicated at Guantánamo, one defendant received a life sentence after boycotting his own trial; another served only six months, in addition to the time he had already served at the detention camp; the third struck a plea bargain and received just nine months. The latter two defendants—Salim Hamdan, a Yemeni who worked as Osama bin Laden's driver, and David Hicks, an Australian who attended an Al Qaeda training camp—are now at liberty in their home countries, having been released while Bush was still in office. It's impossible to know how these same cases would have fared in the civilian system. But the case of John Walker Lindh, the so-called American Taliban, offers a comparison between the two systems, as it closely parallels the case of Yaser

Hamdi, a Saudi-American who was captured in the same place (Afghanistan) and at the same time (2001). Lindh, who pleaded guilty in a criminal court, is now serving twenty years in prison. Hamdi, who was declared an enemy combatant, was held in military detention, without charge; in 2004, after a court challenge, he was freed, and is now in Saudi Arabia.

So understand the implications of this: Rahm's cession of the authority of the Attorney General to one Senator and that Senator's personal snit are going to make it far less likely that those who attacked the country on 9/11 receive the just punishment for what they did. Because Rahm Emanuel runs the White House like a teenaged clique, it is more likely rather than less that the 9/11 defendants will see real justice.

But I guess that's what you should expect from a guy who thinks human rights and international law are mere distractions.