

POLITICIZING SHOW TRIALS AT THE SAME TIME AS POLITICIZING DOJ

Marty Lederman links to the important opinion disqualifying General Thomas Hartmann from any involvement in Salim Ahmed Hamdan's–Osama bin Laden's driver–military tribunal. (Kudos to Marty Lederman for thwacking the traditional media for touting an opinion's limited availability–and then not providing a link to that opinion.)

As Marty notes, the opinion does much more than the traditional press coverage of the opinion lets on–though as always, Carol Rosenberg's coverage of the show trials is quite good. The opinion basically affirms that the Gitmo show trials under Hartmann have been just that–trials driven by political motivations rather than legal evidence. Go read the opinion, written by Judge Keith Allred, for the timeline it offers of Hartmann's (and others') attempts to tailor the show trials to political considerations.

I'm particularly interested in the coincidence of timing the opinion reveals. The Bush Administration started crafting its show trials at precisely the same time–fall 2006–when it was engineering the firing of 8 US Attorneys for political reasons.

5. About 28 September of 2006, [Colonel Morris Davis] attended a meeting of the Senior Oversight Group, held in the office of Deputy Secretary of Defense Gordon England. During one of these meetings, Mr. England said "there could be strategic political value in getting some of these cases going before the [November 2006–editorial comment original] elections. We need to think about who could be tried" or words to

that effect. The commission takes judicial notice that the Supreme Court issued Hamdan v. Rumsfeld in June 2006 and that the Military Commissions Act was not signed until late October 2006. Consequently, there was no possible way in which any military commission case could be referred, much less brought to trial, before the November 2006 elections.

[snip]

Colonel Davis viewed [England's] remark as an opinion, rather than a command. Colonel Davis affirmatively denies that this statement had any effect on any decision he made with respect to Mr. Hamdan's case.

7. During the same meeting, then-Under Secretary of Defense for Intelligence Mr. Steve Cambone opined that Department of Defense (DoD) attorneys were not sufficiently experienced to handle these cases, and that they needed to get some Department of Justice (DOJ) attorneys involved. Although no DOJ attorney had made an appearance in a military commission hearing before that date, they have since been assigned to military commission trial teams.

Now, this fall 2006 meeting was not the first moment the show trials were conceived as such. After all, Jim Haynes' famous statement that "We can't have acquittals. We've got to have convictions" occurred in September 2005, when Haynes first interviewed Davis for the job of Chief Prosecutor. And Hartmann didn't get involved until much later—he started as the Legal Advisor to the trials on July 2, 2007, after which he started calling for "sexy" trials and the use of evidence gained through torture. The bulk of Allred's opinion focuses on how, by inserting Hartmann into Morris' chain of command and then reinforcing that chain of command in

October 2007, the Administration required Davis to meet Hartmann's political and legally suspect demands. (Note, much of Allred's opinion pertaining to Hamdan will have much broader effect over other Gitmo detainees. Allred points out that Hamdan was already charged before Hartmann started mucking things up. For those who weren't yet—but have since been—charged, this opinion will have much greater consequences because it'll mean Hartmann's influence may be more central to the decision to charge. Rosenberg, for example, reminds that Hartmann just signed off on the plan to prosecute Khalid Sheikh Mohammed.)

But I find it instructive that at this meeting in fall 2006, top Administration officials were concerned not about complying with SCOTUS' ruling in Hamdan, but with a way to gain political advantage from the show trials. Further, I find it mighty interesting that—at precisely the same time as Bush was trying to purge DOJ of the US Attorneys who wouldn't bring politically sensitive cases on demand—Stephen Cambone was getting DOJ more involved in the Gitmo show trials.

There's one more very fascinating detail in the opinion. In the explanation why Judge Susan Crawford—the Convening Authority—didn't need to be removed from the Hamdan case, Allred argues that Crawford had not been given detailed instructions about individual cases. The opinion also notes that Crawford had little interaction with Jim Haynes about the cases. But then it goes on to note that Crawford has had no interactions with two people outside the chain of command that led to problems for Morris Davis.

She has never met Stephen Cambone or had any communications with him. She has never spoken to the Vice President or anyone in his office about military commissions.

Mind you, the sole reference to Cambone in this

opinion is the one I noted above—discussing the September 2006 meeting. There are no references to Dick Cheney at all.

Yet for some reason, Allred goes out of his way to note that Crawford (who started more than a month after Cambone resigned) had not been tainted by Cambone, Cheney, or anyone else in Cheney's office. I find that particularly interesting given the allegation that OVP did some selective leaking (just like they did with Judy Miller) to make sure evidence about a different Gitmo show trial defendant would be released to the public.