

# HOLDER V. RAHM: THE TORTURE FIGHT

✖ The headline news in Dennis Klaidman's long piece on Eric Holder is that Holder may appoint a Special Prosecutor to investigate torture.

Four knowledgeable sources tell NEWSWEEK that he is now leaning toward appointing a prosecutor to investigate the Bush administration's brutal interrogation practices, something the president has been reluctant to do. While no final decision has been made, an announcement could come in a matter of weeks, say these sources, who decline to be identified discussing a sensitive law-enforcement matter.

But the whole piece is worth reading for two other reasons: the drama it paints between Holder and Rahm (and the White House political agenda more generally), and the details it gives about the torture policy thus far.

## Rahm v. Holder

First, Rahm. Even to the extent to which the profile of Holder here reads like a puff piece, the entire piece is driven with two, related, narrative conflicts: Holder's regret over the Marc Rich pardon.

And though Holder has bluntly acknowledged that he "blew it," the Rich decision haunts him. Given his professional roots, he says, "the notion that you would take actions based on political considerations runs counter to everything in my DNA."

And the tension of working for a Rahm-driven White House.

Any White House tests an attorney

general's strength. But one run by Rahm Emanuel requires a particular brand of fortitude. A legendary enforcer of presidential will, Emanuel relentlessly tries to anticipate political threats that could harm his boss. He hates surprises. That makes the Justice Department, with its independent mandate, an inherently nervous-making place for Emanuel. During the first Clinton administration, he was famous for blitzing Justice officials with phone calls, obsessively trying to gather intelligence, plant policy ideas, and generally keep tabs on the department.

One of his main interlocutors back then was Holder.

[snip]

"Rahm's style is often misunderstood," says Holder. "He brings a rigor and a discipline that is a net plus to this administration." For his part, Emanuel calls Holder a "strong, independent attorney general." But Emanuel's agitated presence hangs over the building—"the wrath of Rahm," one Justice lawyer calls it—and he is clearly on the minds of Holder and his aides as they weigh whether to launch a probe into the Bush administration's interrogation policies.

In spite of the reported warmth between the two, Rahm is depicted as opposing a torture investigation. And there's a remarkable anonymous quote in the article that contextually appears to be Rahm, showing Rahm's characteristically greater concern about Republicans' perspectives than about the left flank of the Democratic party.

Emanuel and other administration officials could see that the politics of

national security was turning against them. When I interviewed a senior White House official in early April, he remarked that Republicans had figured out that they could attack Obama on these issues essentially free of cost. "The genius of the Obama presidency so far has been an ability to keep social issues off the docket," he said. "But now the Republicans have found their dream...issue and they have nothing to lose."

And the article goes on to repeat this theme—accusing DOJ of being insufficiently attentive to the White House’s political needs which (the same Rahm-like anonymous sources suggest) may be because Holder is overcompensating for the Rich pardon.

White House officials have complained that Holder and his staff are not sufficiently attuned to their political needs. Holder is well liked inside the department.

[snip]

Among some White House officials there is a not-too-subtle undertone suggesting that Holder has "overlearned the lessons of Marc Rich," as one administration official said to me.

### **The Torture Details**

It’s against that drama—and the puffy feel of this story—that three important details about the torture debate appear.

First, a detail that has been reported before, but which takes on added weight given the picture of conflict here: the story portrays Holder’s DOJ as pushing for the release of the OLC torture memos.

For weeks Holder had participated in a contentious internal debate over whether

the Obama administration should release the Bush-era legal opinions that had authorized waterboarding and other harsh interrogation methods. He had argued to administration officials that "if you don't release the memos, you'll own the policy." CIA Director Leon Panetta, a shrewd political operator, countered that full disclosure would damage the government's ability to recruit spies and harm national security; he pushed to release only heavily redacted versions.

Holder and his aides thought they'd been losing the internal battle. What they didn't know was that, at that very moment, Obama was staging a mock debate in Emanuel's office in order to come to a final decision. In his address to the cadets, Holder cited George Washington's admonition at the Battle of Trenton, Christmas 1776, that "captive British soldiers were to be treated with humanity, regardless of how Colonial soldiers captured in battle might be treated." As Holder flew back to Washington on the FBI's Cessna Citation, Obama reached his decision. The memos would be released in full.

Next, the story reveals that the invocation of State Secrets in the Jeppesen suit was done without Obama's involvement—presumably by dead-enders.

But in the Obama administration the bad blood between the camps has at times been striking. The first detonation occurred in only the third week of the administration, soon after a Justice lawyer walked into a courtroom in California and argued that a lawsuit, brought by a British detainee who was alleging torture, should have been thrown out on national-security grounds. By invoking the "state secrets" privilege, the lawyer was reaffirming a

position staked out by the Bush administration. The move provoked an uproar among liberals and human-rights groups. It also infuriated Obama, who learned about it from the front page of *The New York Times*. "This is not the way I like to make decisions," he icily told aides, according to two administration officials, who declined to be identified discussing the president's private reactions. White House officials were livid and accused the Justice Department of sandbagging the president. Justice officials countered that they'd notified the White House counsel's office about the position they had planned to take.

The story is particularly interesting, because it lumps Holder—who had not yet been approved—in with the decision. And it reveals that Greg Craig had been notified of the decision—suggesting (as I've suspected) that he's a big player in these tensions.

Finally, though, there's a detail that's told out of context. Earlier in the story, Klaidman told of Holder reading the OLC memos and experiencing revulsion at what was done. He repeats that narrative, telling of Holder reading the CIA IG Report as he ends his report.

But in late June Holder asked an aide for a copy of the CIA inspector general's thick classified report on interrogation abuses. He cleared his schedule and, over two days, holed up alone in his Justice Department office, immersed himself in what Dick Cheney once referred to as "the dark side." He read the report twice, the first time as a lawyer, looking for evidence and instances of transgressions that might call for prosecution. The second time, he started to absorb what he was reading at a more emotional level. He was "shocked and saddened," he told a friend, by what government servants were

alleged to have done in America's name. When he was done he stood at his window for a long time, staring at Constitution Avenue.

Now, it makes a nice ending to the multiple dramatic threads Klaidman is telling.

But it's also an important detail. Klaidman described Holder's aides worrying about torture being taken off the agenda. But then he ends with this, suggesting that reading the IG Report has convinced Holder to appoint a prosecutor (remember, the IG Report was a key factor in convincing Jack Goldsmith to withdraw some of the torture memos).

But note the date: late June. That's when the IG Report's release got delayed, twice.

At a time when the Administration was conducting a review of the IG Report to determine whether it could be released, Holder read the report.

Release of the report has been delayed. But now—according to four anonymous sources—Holder is considering appointing a prosecutor to investigate crimes related to torture.

Like I said—the story is pretty puffy and definitely pro-Holder. But it does reveal important details about the conflicts within the Administration over whether or not to hold anyone accountable for these crimes.

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