

# RAHM'S METHOD OF POLITICIZING DOJ

The NYT has an account of how Rahm and Jim Messina tried to give Eric Holder a minder a year ago.

Last winter, when Attorney General Eric H. Holder Jr. called the United States a “nation of cowards” for avoiding frank conversations on race, President Obama mildly rebuked him in public.

Out of view, Mr. Obama’s aides did far more. Rahm Emanuel and Jim Messina, the White House chief and deputy chief of staff, proposed installing a minder alongside Mr. Holder to prevent further gaffes – someone with better “political antennae,” as one administration official put it.

When he heard of the proposal at a White House meeting, Mr. Holder fumed; soon after, he confronted his deputy, David W. Ogden, who knew of the plan but had not alerted his boss, according to several officials. Mr. Holder fought off the proposal, signaling that his job was about the law, not political messaging.

Now, the NYT portrays this as the White House—or rather, Rahm—deciding Eric Holder lacks the political chops to defend the policies he espouses.

But something else is going on, as well. It’s an example of the way in which Rahm has attempted—and, at times, succeeded—in forcing policy positions onto DOJ by gaming the press.

Consider the clip above, in which Rahm stated “those who devised the policy, [Obama] believes they should not be prosecuted either.” At the time, it was taken as a definitive statement from the Administration that there would be no

torture prosecutions. Yet Rahm's statement went far further than the Obama statement that Rahm references.

In releasing these memos, it is our intention to assure **those who carried out their duties relying in good faith upon legal advice from the Department of Justice that they will not be subject to prosecution.** The men and women of our intelligence community serve courageously on the front lines of a dangerous world. Their accomplishments are unsung and their names unknown, but because of their sacrifices, every single American is safer. We must protect their identities as vigilantly as they protect our security, and we must provide them with the confidence that they can do their jobs.

Going forward, it is my strong belief that the United States has a solemn duty to vigorously maintain the classified nature of certain activities and information related to national security. This is an extraordinarily important responsibility of the presidency, and it is one that I will carry out assertively irrespective of any political concern. Consequently, the exceptional circumstances surrounding these memos should not be viewed as an erosion of the strong legal basis for maintaining the classified nature of secret activities. I will always do whatever is necessary to protect the national security of the United States.

**This is a time for reflection, not retribution.** I respect the strong views and emotions that these issues evoke. We have been through a dark and painful chapter in our history. **But at a time of great challenges and disturbing disunity, nothing will be gained by spending our time and energy laying**

**blame for the past.** Our national greatness is embedded in America's ability to right its course in concert with our core values, and to move forward with confidence. That is why we must resist the forces that divide us, and instead come together on behalf of our common future. [my emphasis]

While Obama does deride "laying blame for the past," his very own statement addresses the prosecution solely of those who relied on the torture memos, not those who ordered them up. Yet, by going on a Sunday show, Rahm seeded an assumption that went beyond the President's own decision. And, just as importantly, assumed decision making powers that belong to the Attorney General.

As it happened, there was a lot of pushback against Rahm when he did this last year. And Holder was able, over the course of the following four months, to actually make a decision on prosecutions on his own (though the actual investigation appears to have fallen down the memory hole). But it is an example where Rahm publicly mis-stated White House policy and created the appearance that Obama had already decided to support Rahm's position in a policy fight that was ongoing.

Usually when doing this, Rahm works less transparently. Consider the rumors coming at document dump time on January 29—late on a Friday evening—that the Administration had already decided to move the KSM trial from NYC. We know that decision still has not yet been made (I would presume that it will be moved from NYC, though I think there's still a chance it'll be a civilian trial). Yet the leaks saying the decision had already been made dramatically altered conventional wisdom about what will happen, making it much more likely that the trial will be moved. Whoever started that leak—and I would bet it came from someone close to Rahm—undercut the authority of Eric Holder even before Obama decided to reconsider Holder's

decision.

So it's not necessarily that Holder is a political naïf (as the NYT article suggests). Holder can brawl with the best of them, when given a chance. But not only have the guys who are in charge of advocating for Obama's positions made no effort to sell Holder's policy decisions, they have systematically undercut those decisions at a number of key moments.

Rahm has made it such that it matters little what Holder's decisions as Attorney General are. By creating the **appearance** of what the decisions are, Rahm has been successful, at key moments, in usurping the authority of the Attorney General.

Yes, Obama has let this happen. But that's as much a structural issue (letting policy partisans like Rahm and Axelrod pick and choose which battles to fight publicly) as it is a policy one. Ultimately, though, given the possibility Rahm will force Holder into accepting military commissions that are much less likely to result in a clean, quick conviction of KSM, this will come back to hurt Obama, badly.