

## **Continuity or Change You Can Believe In: The Obama Administration and the Case of Omar Khadr**

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Almost immediately after Senator Barack Obama launched his campaign for the presidency with a speech in Springfield, Illinois on February 10, 2007, a stinging criticism of the legal policies underlying the Bush Administration's conduct of the "War on Terror" appeared right at the heart of his program. Obama took aim at the use of torture and highly coercive interrogation techniques, the CIA's extraordinary renditions program and the detention arrangements at Guantánamo. He argued against the heavy use of security contractors and introduced legislation designed to make it easier to prosecute those involved in criminal acts overseas. He decried the practice of warrantless domestic surveillance in probable breach of Foreign Intelligence Surveillance Act (FISA). He called the heavy use of "state secrets" claims abusive and promised to pull back from it if elected. He promised "to restore the standards of due process and the core constitutional values that have made this country great," a promise which was revealing of the rights-oriented and somewhat legalistic tenor of much of Obama's take on the Bush Administration's "War on Terror."

As we now approach the second anniversary of Obama's election, and thus the midterm elections, there is broad acceptance of the view that Obama has failed to implement the changes he promised with respect to national security policy. He firmly pledged to shut down the prison facilities at Guantánamo within one year--and this commitment went unfulfilled. His Justice Department adopted elaborate new internal review processes, supposedly to dampen excessive use of "state secrecy" claims. But to judge by the end result, the Obama Administration's invocation of "state secrecy" is if anything even more aggressive, and potentially more abusive, than his predecessor's. Obama did come through on two points--issuing a clear ban on torture, and shutting down the CIA's black sites. But even on these points, there is good reason to continue to monitor the use of techniques that at least border on torture and certainly amount to official cruelty. Obama's order to shutdown black sites was curiously narrow, limited only to black sites run by the CIA. It now seems likely that Obama learned about, and approved the continuation of, a system of black sites run not by the CIA but by JSOC, the Joint Special Operations Command.

In sum, notwithstanding the vehement but largely counterfactual criticisms of Bill Kristol and Liz Cheney, the Bush-era legal policies associated with the war on terror appear hardly to have been touched.

Today I want to focus on one particular chapter that I think offers an excellent vantage point from which we can study the process of Obama's implementa-

tion--or failure to implement--the policies outlined in his campaign. Then I will explore the overarching question: why were the policy choices that Obama previewed in the campaign left unimplemented?

### **The Omar Khadr Case**

The case of Omar Khadr sits at center stage for the Guantánamo military commissions and attracts strong attention around the world. This case involves a “child warrior” who was seized by American forces when he was 15 years old in 2002; eight years later he remains in prison and his trial is pending. Khadr comes from a family that is, to put it mildly, dysfunctional. His father was a rabid supporter of the Taliban and Al Qaeda, and he took Omar within him into the theater of war, putting him to work for his violent religious zealot associates. A review of his entire childhood leaves one wondering why, instead of charging Omar, U.S. authorities are not charging his father with reckless endangerment of a minor.

A review of the procedural history of the Khadr case is instructive. It really provides a history of the whole enterprise at Guantánamo--a rollercoaster ride, and even now it's unclear whether the train will spin crashing to the ground or arrive back at the station to discharge its passengers.

Khadr faces several charges of which the most serious is that he killed a U.S. soldier by throwing a hand grenade during combat with U.S. forces. The other charges focus on his support of anti-U.S. military operations, including laying mines and surveillance of an air installation. Khadr has denied the charges. Khadr is the only detainee still at Guantánamo Bay charged for acts committed as a juvenile. The Bush Administration had brought charges against another juvenile, Mohammed Jawad, but they were dropped and he was released home to Afghanistan in 2009.

The first issue surrounding Khadr is his status as a juvenile offender. The International Covenant on Civil and Political Rights and international juvenile justice standards require prompt determination of juvenile cases and discourage detention of juveniles at all except as a last resort. The Khadr case suggests a rather cavalier attitude on the part of the United States towards these requirements. It took two years before Khadr was assigned an attorney, and three more years before charges were brought against him in the first military commission. While in prison, Khadr has been placed in solitary confinement and held together with adult prisoners--practices which again violate the United States' obligations with respect to minors held in custody. Khadr says while held at both Bagram and Guantánamo, he was subjected to torture and other highly coercive interrogation practices, violating Common Article 3 of the Geneva Conventions and the Convention Against Torture.

In 2002--the same year that U.S. forces captured and imprisoned Omar Khadr--the United States ratified the Optional Protocol to the Convention on the

Rights of the Child on the Involvement of Children in Armed Conflict. By doing so, the United States not only prohibited the service of children under 18 in armed conflict, it also committed itself to a program of rehabilitation of child soldiers in its custody. It was to provide “all appropriate assistance for their physical and psychological recovery and their social reintegration.” The treatment of Omar Khadr shows that the Bush Administration viewed this obligation as a dead letter from the outset.

Instead, Khadr was labeled an “enemy combatant” and was linked to al Qaeda at a Combatant Status Review Tribunal (“CSRT”) proceeding that occurred in September 2004. On April 24, 2007, Khadr was charged with murder, attempted murder, conspiracy, providing material support for terrorism, and spying on U.S. forces in Afghanistan. However, only three months later, Colonel Peter Brownback, the judge presiding in the case, dismissed the charges as improper because Khadr had not been designated an “unlawful enemy combatant” by the CSRT.

The Bush Administration then appealed the judge's decision to the Court of Military Commission Review (“CMCR”)--a special military appeals court created by Congress in 2006 to hear first-level appeals from the military commissions. In its first decision, the CMCR held that commission judges were themselves authorized to make “unlawful enemy combatant” determinations, so that a referral back to the CSRT was not necessary. The Bush Administration then sent prosecutors back to the military commission with the same charges.

In October 2007, chief prosecutor Colonel Morris Davis resigned. His resignation was tendered as the Pentagon adopted a restructuring under which prosecutors, defense counsel and staff of the military commissions were placed under the orders of Pentagon general counsel Jim Haynes. Davis subsequently disclosed that Haynes and others had directed prosecutions for partisan political reasons, trying to align the prosecution of certain cases with the general election season. He also disclosed that when he spoke with Haynes about the prosecution process, he was told that there could be “no acquittals.” Davis was one of six prosecutors at Guantánamo to resign or request reassignment. Several of them corroborated accusations that the prosecutorial process was being gamed for political purposes.

But Khadr appealed the CMCR decision to the D.C. Circuit Court of Appeals. The government moved to dismiss Khadr's appeal, contending that the D.C. Circuit has no jurisdiction to hear the case until the military commission trial is completed. At the same time, Khadr asked the D.C. Circuit to delay the military commission proceedings against him until ruling on his appeal. The court turned down Khadr's appeal on November 6, 2007.

Khadr was then re-arraigned before the military commission on November 8, 2007. In July 2008, Khadr's lawyers challenged the legality of the evidence

standards which Congress had adopted in December 2006, after the commencement of Khadr's proceedings, stating that they violated the ex post facto clause of the Military Rules of Evidence. "More than four years after the alleged conduct the government changed the rules of evidence to allow the accused's uncorroborated and involuntary statements to be admitted into evidence," they argued. "Significantly, the changes always benefit only the government and always make it easier for the government to obtain a conviction - two critical factors relied on by the Supreme Court in finding an ex post facto violation."

As the lawyers were wrangling over the admission of evidence, and Judge Brownback expressed his reluctance to admit a number of items for the prosecution, including a videotape, a copy of that videotape was turned over to CBS 60 Minutes and broadcast by them. It was subsequently disclosed that the videotape was supplied by a person on the staff of Vice President Dick Cheney. The new convening authority for Guantánamo, Susan J. Crawford, was a protégée of Vice President Cheney and specifically of his chief of staff, David Addington. Evidence of Cheney's meddling in the military commissions prosecutions began to mount. Australian papers disclosed that on the appeal of Prime Minister Howard, the facing a reckoning at the polls, Cheney intervened to bring an end to the case against Australian David Hicks. He was returned to Australia under a plea bargain agreement Cheney orchestrated through the convening authority's office, which prosecutors only learned about in court.

In January 2008, Khadr's lawyers launched a peremptory attack on the prosecution's case arguing that there was no jurisdiction to try a child soldier case and arguing that his prosecution, based on crimes created by legislative fiat after the acts charged, violated the U.S. Constitution's bill of attainder clause. The defense argued that Khadr must be tried based upon the law that was in effect in 2002, when the alleged offenses occurred, and that none of the charges fall within the category of offenses historically tried by military commission. The government opposed the motions. Colonel Brownback eventually ruled against Khadr on all these issues.

Discovery hearings were held in Khadr's case on March 13 and April 7, 2008. The defense had filed more than 50 discovery motions, including requests for the names of all eyewitnesses to the alleged crime, any physical evidence seized from the scene of the crime, all of Khadr's statements made during interrogation, the names of interrogators and notes they took, audio and video recordings of the interrogations, and other documents relating to interrogation methods used on Khadr and the abuse and mistreatment of national security detainees.

In another discovery hearing on May 8, 2008, Judge Brownback ordered the government to produce DIMS (Detainee Information Management System) records, which document Khadr's day-to-day treatment at Guantánamo. Follow-

ing a series of rulings hostile to the Bush Administration, on May 29, 2008, Colonel Brownback was suddenly and mysteriously dismissed and replaced with Colonel Patrick Parrish, who, as we will see, has consistently adopted a view far friendlier to the prosecution.

In June 2008, Khadr's lawyers produced another bombshell: they had secured through discovery a "standard operating procedure" document, under which interrogators were to destroy handwritten notes made of interrogation sessions. The defense argued that the document suggests that the Department of Defense destroyed evidence, as a matter of policy, to thwart its use in pending or anticipated legal proceedings. These accusations were never effectively rebutted or denied by the government, which accordingly effectively acknowledged a policy of destroying potentially exculpatory evidence.

In July 2008, Khadr's lawyers released a ten-minute video showing an interrogation of Khadr by Canadian intelligence officials in Guantánamo in 2003. The video shows a distraught teen crying and pleading for his release. Litigation was brought on Khadr's behalf in Canadian federal courts, arguing that Khadr's rights had been violated by the Canadian government through this process and that the Canadian government was obligated to, and had failed, to secure Khadr's release by U.S. authorities and return to Canada. To the amazement of most Canadian legal observers, these arguments were sustained all the way to the Canadian Supreme Court, which concluded that Khadr's rights had in fact been violated by the Canadian Government's collaboration with the United States, but declined to grant the specific remedy that was sought on Khadr's behalf. The rulings of the Canadian courts expressed, sometimes in very stark terms, serious concerns about Khadr's treatment in Guantánamo, entertaining, and plainly finding credible, assertions that he was tortured and mistreated in American custody.

On September 4, 2008, Judge Parrish banned Air Force Brig. Gen. Thomas Hartmann from acting as legal advisor in Khadr's case, based on strong evidence of his unethical conduct pressuring and manipulating the prosecution, apparently on political direction. This was the third ruling by a military judge barring Hartmann from the court based on his serious misconduct.

At a pretrial hearing on September 10, 2008, Khadr's attorneys asked Judge Parrish to grant defense attorneys access to eyewitness descriptions of the fire-fight during which Khadr allegedly threw a grenade that killed a U.S. soldier. They also requested that Khadr be given a mental health examination. In the fall of 2008, the case was brought to a standstill over discovery issues. The Bush Administration stonewalled discovery requests, and the Office of Military Commissions refused funding so that defense counsel could bring in a psychologist to examine Khadr and express a formal opinion about his mental situation.

After the election of Barack Obama, the new administration sought and obtained a 120-day continuance, ostensibly to reassess the case. Khadr complained during this period about continual squabbling and disagreements between his counsel which he said made it difficult for him to understand and follow what was happening. In the end, he elected to proceed only with Lt. Cmdr. Kuebler. But in July, he said he no longer had confidence in military lawyers, and he asked that Lt. Cmdr. Kuebler be dismissed from the case. That motion was granted on October 7, 2009. Civilian attorneys Barry Coburn and Kobie Flowers of Coburn & Coffman PLLC were assigned to his case.

On November 13, 2009, Attorney General Holder and Defense Secretary Robert M. Gates announced that the Obama Administration's internal review was complete and that Khadr would be tried by a military commission.

Army Major Jon S. Jackson was then detailed as defense counsel for Khadr, joining his civilian defense team. Most of the hearing was dedicated to a defense motion to suppress Khadr's statements, which the defense claims were elicited by abuse and torture. So far, the government has presented witnesses who interrogated Khadr during his time in U.S. custody. These interrogators each insisted that they treated Khadr very well. Several interrogators did acknowledge, however, that Khadr was shot, threatened and treated abusively shortly after he survived the firefight. Abuses acknowledged by prosecution witnesses included being chained to his cell door weeping, and being threatened with rape during interrogation. Interrogators also offered testimony about severe wounds the fifteen year-old Khadr received from U.S. forces in Afghanistan, including the shrapnel that has left him blind in one eye and a hole he received "the size of a Copenhagen chewing tobacco tin."

In early July 2010, Khadr gave notice that he wished to fire his entire American legal team. Judge Parrish summoned Khadr to appear on July 12, 2010 to deal with representation issues. Khadr said he had decided to boycott the proceedings and he read from a handwritten statement, in which he referred to the military commissions as a "sham," "unfair," and "unjust." The court would not allow Khadr to proceed without representation, however; it insisted that Lt. Col. Jon Jackson continue as detailed counsel.

When the trial resumed in August, Judge Parrish handed down a decision denying the defense's in limine motion seeking to preclude certain evidence on the grounds that Khadr had been tortured. He said that the defense had failed to submit competent evidence supporting its motion, and put heavy weight on Khadr's failure to testify in support of the allegations contained in affidavits supporting the motion. In a dramatic courtroom development, Colonel Jackson collapsed and had to be taken from the courtroom for hospitalization. The case was continued for a further month.

### **The Train Wreck**

So far this looks like the sort of melodramatic material that could fuel a late-morning television soap opera. But it would be more appropriate to view it as a train wreck in excruciatingly slow motion. The Khadr case is doing immeasurable damage to the reputation of the nation's military justice system.

I have no idea whether Khadr is guilty or innocent of the charges that have been brought against him--although the evidence that has been presented for the homicide count so far is confusing and contradictory. It's also curious that the evidence submitted would make out solid war crimes charges, but in no event does it support such charges against Khadr. But Khadr's ultimate guilt or innocence is essentially irrelevant to my critique.

### **The Prosecution, Properly Conceived**

We should step back and look at the process as a whole. It is a matter of great importance to the United States to bring criminal charges against those involved in the atrocities perpetrated on 9/11, prove them with clear and convincing evidence, and secure convictions. This is a fundamental matter of justice for the victims of those attacks. But it is also a matter of the United States sustaining its position on the world stage and building sympathy and support for its cause. The trials that were convened in Nuremberg at the close of the Second World War offer an extremely important lesson in this regard. Those trials were pursued because of a need to bring heinous criminals to justice. But they were also pursued because of a need to show that the Second World War was different from most conflicts that preceded it in the degree and nature of the violations of the law of nations that the Axis powers undertook. The United States and her allies wanted to demonstrate this to the world; but most particularly they wanted to use the opportunity to educate the peoples of Germany, Italy and Japan about the nature of their rulers.

It was not necessary to that end to bring charges against every criminal from the war. It was necessary to select key cases: those involving the most serious offenders, certainly, but also the cases as to which the clearest and most persuasive evidence could be mustered. The smaller cases could be handled in domestic courts after the high-profile prosecutions were completed. Only a handful of cases were ultimately brought in the U.S. and international tribunals at Nuremberg, but those cases made the point that needed to be made, powerfully and effectively.

It's possible to quibble with some of what was done at Nuremberg, certainly. But those proceedings fulfilled their world-historical mission in an exemplary fashion.

By comparison, what has transpired at Guantánamo has been a colossal embarrassment--one that continues to this day.

Let's start with the requirements of Common Article 3, which the Supreme Court told us in Hamdin controls the operation of the Guantánamo military commissions. It contains a handful of specific requirements, but a few of them are overarching. The most important, to my mind, is that the tribunal hearing the charges be "regularly constituted." I think there is no prospect that an independent observer looking over the history of the Khadr case would ever conclude that the commission was "regularly constituted." Just look at the three major actors in the process: the judge, the prosecutors and the defense counsel. In this case, the judge was mysteriously removed right on the heels of an important ruling that sent the Bush Administration into apoplexy--right in the middle of the case. It's been argued that this was a routine administrative change, but there was nothing remotely "routine" about it. Moreover, the judge who followed in his wake, who seems a perfectly competent and solid judge, also happens to have taken a position far friendlier to the prosecution than his predecessor did. Hence there is an appearance of meddling to skew the result in favor of a conviction. Then we have the fact of the resignation of the chief prosecutor mid-case, together with the astonishing accusations he leveled at the Pentagon's general counsel--the man at the apex of the military commissions process--which Jim Haynes never denied, coupled with the resignation or request for reassignment of a significant number of further prosecutors. And finally we have the game of musical chairs surrounding defense counsel. Any one of these would be enough to cause an observer to say the tribunal was not "regularly constituted," but all three? Moreover, what emerges from an examination of these developments is not some serious fault in the conduct of uniformed military lawyers who prosecute, defend and judge--rather it suggests that a concerted effort was underway by powerful political figures to undermine the military lawyers, trying to turn them into so many marionettes.

The selection of the case against Omar Khadr as the showcase prosecution for the resumption of the military commissions under President Obama was an unforgivable error. In no way does this case meet the reasonable criteria for case selection.

### **The Child Warrior Issue**

**First**, putting it forward exposes the United States to criticism for its failure to perform its international commitments with respect to child warriors. Whatever views one may ultimately have on the question of prosecution of war crimes charges against minors, the fact remains that the United States ratified the agreement. The way the Khadr case has been managed from the outset reveals an attitude of contempt or indifference to the treatment commitments the United States gave.

### **Ambiguous Case on the Evidence**

**Second**, the evidence against Khadr is at best confused. The government's own record undermines its contentions that Khadr is responsible for lobbing the

grenade that took an American soldier's life, and I understand that further evidence to be received will establish that Khadr could not have been conscious at the time the event occurred. Sound prosecutorial practice would have been to put the clearest and most convincing cases first, deferring prosecution of borderline or difficult cases in the proceedings that draw the most international attention.

### **The Torture Issue**

**Third**, given the legacy of Abu Ghraib, Camp Nama and Bagram, it is essential for American prosecutors to showcase claims in which they do not rely on evidence that was induced by torture or coercive techniques. In this case, the military judge dismissed the in limine motion, but his ruling is already raising critical eyebrows around the world--particularly because clear evidence of impermissible torture or coercion has already been offered in the proceedings, and more is to come. Moreover, the United States has itself repeatedly decried the use of military commissions to try civilians on the grounds that military judges, being uniformed officers, are insufficiently independent and disinclined to challenge any technique which is authorized by higher command as unlawful. By the same reasoning, courts in Europe have now routinely invalidated rulings by the Turkish state security courts, for instance. The back-of-the-hand treatment given by Judge Parrish to the torture issue therefore has the effect of heightening questions about his independence--questions which are already strong given the highly irregular circumstances that led to Judge Parrish's appearance in the case, midway, immediately after his predecessor had made a series of rulings against the prosecution.

### **The Khadr Boomerang**

**Fourth**, the entire case against Khadr is premised on the idea that a civilian who shoots a soldier in wartime is committing a war crime. This is an eccentric position among law of armed conflict experts. But more significantly, it is a position sharply contrary to the interests of the United States. America today has developed and deployed a large paramilitary army mustered and directed by the CIA; it also uses more contractors than civilians--by a substantial margin--in both Iraq and Afghanistan. In both theaters it is placing heavily reliance on private security contractors to perform functions once handled by uniformed military. Under Barack Obama, America has also greatly expanded its drone warfare against terrorists--often using drones controlled by the CIA, using civilian contractors at every stage. In each of these cases, the United States is using civilians out of uniform--just like Omar Khadr, persons who are not privileged combatants--to wage war. Is it in the interest of the United States to advance a novel rule under which these civilian combatants are designated unlawful combatants and their every act is labeled a war crime? Obviously not. In sum, the decision to bring these charges against Khadr are utterly harebrained. (This is not to say that Khadr could not be charged for lobbing a grenade at an American soldier. The charge would be homicide, under regular criminal law--not a war crime).

I am not saying that Omar Khadr would be released to go home, or that he should escape charges. I am saying that it was irresponsible to pick this as the showcase for the renewed military commissions. This was a case which cries out for treatment in a different fashion--a plea bargain, for instance, a transfer back to Canada, or a trial in a civilian court in the United States, Canada or Afghanistan. Moreover, the ham-handed way it has been framed and presented is likely to do more damage than good to the United States. In managing these cases, the prosecutors have a broader duty to the country. Surely they are bound to do their best as prosecutors and to observe certain ethical standards--I have no quibble with them on this point. But they also had a duty to manage the order and presentation of their cases with some concern for the nation's broader interests.

A sensible lead case would have been against Osama bin Laden or Ayman Al-Zawahiri, the two masterminds of Al Qaeda, or Mullah Omar, who gave them shelter and support in Afghanistan. A sensible lead case would have been involved a person who exercised clear command-and-control authority for the enemy forces and as to whom clear, competent and convincing evidence exists to establish the crimes charged. Based on what I have learned from prosecutors working on these cases, such cases clearly exist. But perplexingly, they have not been put on the front burner.

Why was the Khadr case moved to the front? That decision was taken in the Bush era. We should recall that the Bush Administration's position was long ambivalent about the need to bring charges in the first place. A push for charges and trials only emerged in September 2006, and then it was put in the immediate context of American election campaigns. As uniformed prosecutors have subsequently stated, cases were selected and pushed forward based on a variety of political factions, including whether they would help Republican prospects at the polls in the fall of 2006. In the case of Khadr, the agenda was clear enough: Khadr would be accused of murdering an American soldier. He would demonstrate a new principle that the Bush Administration sought to establish, namely that it is a war crime for civilians to take up arms against a military force that invades their country. The fact that this new principle is opposed by most of the world and undermines the very foundations of the laws of war was probably only an added benefit, in their perverse reasoning. And similarly, they seem to have taken a certain perverse pleasure in violating the protections that international law gives to child warriors. They were trying to prove a favorite neoconservative meme: international law is meaningless.

But why didn't the Obama Administration reverse course? Recall that when the continuance was announced, a number of Guantánamo apologists began exercising preemptive criticism. They argued that with respect to cases then filed and underway, and it would be unethical for the Obama Administration to take any steps to cut them off. Of course, in the Bush years we saw a long

streak of clearly documented cases in which prosecutions were politically engineered. That was indeed unethical. However, it is not unethical for prosecutors to revisit decisions to prosecute because of a change in policy concerning prosecutions in general--and that is what should have happened in this case, but did not.

Instead, the Obama Administration adopted a "light touch" position in the continuance period. Cases were reexamined, but prosecutors handling them were invited to reconsider their own decisions and continue to adhere to them if they liked. Sociologists refer to a phenomenon called "lock-in." Once a position has been taken and advanced publicly, a bureaucrat is loath ever to back off that position. To do so would be to acknowledge a mistake. This explains why the review process generally led to a strong recommendation to continue whatever was being done before, just as occurred with Omar Khadr.

It also appears that at some point only a few months into the Obama presidency, the White House shifted course on this issue. White House counsel Greg Craig suddenly came under intense criticism for "compromising the president" by putting his campaign commitment to close Guantánamo in the form of an executive order. This criticism was generally traced back to presidential chief-of-staff Rahm Emanuel and political advisor David Axelrod. Emanuel, it soon became known, favored a compromise with Republicans on the Guantánamo issue. He was said to be conducting private negotiations with South Carolina Senator Lindsay Graham about a formulation that would put more cases through the military commissions and would satisfy Republican critics of the Administration. In particular, it is reported that Emanuel offered to switch the prosecution of Khalid Sheikh Mohammed and a handful of additional specifically identified defendants from a federal court in New York to the military commissions at Guantánamo.

Figures inside the White House also say that Emanuel and Axelrod argued that the whole national security issue was "Republican turf" and that it was best to disarm the issue, simply by continuing the Bush policies on autopilot--with only a very few exceptions. They also argued strenuously that with the decision to continue Robert Gates as secretary of defense, the president should defer to him on the resolution of questions under his aegis.

It's not clear how all of this played out with Obama himself. Reports continued to surface that he was "not completely sold" on the Emanuel approach. A tug of war was said to continue behind the scenes between Attorney General Eric Holder and Rahm Emanuel. But both Greg Craig and Phil Carter--the two senior-most figures in the Obama team responsible for the Guantánamo issue--resigned, giving extremely unconvincing explanations for their early departure. It seems very clear at this point that Craig and Carter, who openly advocated direct fulfillment of Obama's Guantánamo campaign commitments, were outmaneuvered and cutoff in internal infighting.

At this point there is nothing that suggests that Obama has changed his views on detentions issues. Rather it appears that, at Rahm Emanuel's suggestion, these issues were turned into a political bargaining chip in negotiations which have gone nowhere. Indeed, today in an interview with the Politico's Josh Gerstein, Senator Graham states that sometime in May “it went completely dead. Like it got hit by a Predator drone.”

All this explains why the change you can believe in has been, for Omar Khadr, no change whatsoever.