

Biden's chief of staff pick is an ominous harbinger of what's to come

The Klain pick promises cynical political business as usual for the United States. That is not what Americans need right now

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It is disappointing that one of U.S. president-elect Joe Biden's first moves after winning the unexpectedly close election was to choose his longtime adviser Ron Klain as his chief of staff.

Klain's many years of experience in Washington, D.C., suggest that the White House might finally find calm and stability after the past four years of brain-exploding chaos. But in terms of Klain as a harbinger of good things to come from Biden's presidency, it is pretty much downhill from there.

First, as journalist Radley Balko reminded everyone on Twitter Thursday, Klain played a large part in the Democrats' disastrous "tough on crime" initiatives in the 1990s, which contributed to the United States' current mess of mass incarceration, in part by escalating the war on drugs. It was Klain who, as a young Department of Justice (DOJ) lawyer, guided the now infamous 1994 crime bill into law — legislation that created incentives for states to build more jails and prisons.

And it was Klain who helped set the stage for the even more destructive Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), which decimated prisoners' habeas corpus rights at the very time when advances in DNA science were revealing disturbing numbers of wrongfully convicted people serving long sentences behind bars in the United States.

Klain was no longer around when AEDPA passed, having left the DOJ months before the law was penned — and before the Oklahoma City bombing that helped spur the legislation's harshness. And even when he was at the DOJ, Klain seems to have recognized the danger of cracking down on prisoners' habeas rights without at least balancing the scales by giving them access to lawyers.

However, Klain sowed the seeds that made AEDPA possible. In [a 2016 article](#) in the Intercept that is well worth revisiting — and which Balko included in his tweet — writer Liliana Segura details Klain's pivotal role in convincing his fellow Democrats to build on the 1994 crime bill with further punitive law-and-order measures.

Klain wrote a memo that included a "very, very rough outline of a new crime bill" that would "broaden the range of offences for which juveniles may be tried as adults" and "enhance penalties for lesser drug crimes." He also suggested "reforms (that) would limit death row inmates to a single habeas petition — to be filed within strict time limits — while providing such inmates with competent counsel to assist in preparing this single filing."

It may be that president Bill Clinton's administration would have ended up with some version of AEDPA even without Klain's work, given how strong feelings ran after Timothy McVeigh's devastating Oklahoma City attack. But there is no question that Klain made getting there much easier by having already persuasively established the political and tactical advantages to the Democrats of doubling down on their "tough on crime" approach, including making it harder for inmates to challenge their convictions.

Another insight about Klain was offered up on Twitter Thursday, this one by author Walter Olson (with a hat tip to author Irin Cameron), who posted a copy of a memo Klain wrote in 1993 about the challenges of preparing Ruth Bader Ginsburg for testifying in her Supreme Court confirmation hearing. The memo shows what a principled iconoclast Ginsburg was, and what a political, establishment animal Klain was (and presumably remains).

For example, Klain raised red flags because of Ginsburg's "tendency to defend the ACLU position" on issues such as legalizing prostitution and banning the death penalty. ("She has an instinct for defending some rather extreme liberal views on these questions," he wrote.) And Klain was unhappy that Ginsburg wasn't a fan of Supreme Court nominees pandering to the Senate Judiciary Committee.

"When shown videotapes of confirmation hearing answers by judges Souter and Bork to similar questions," Klain warned, "Judge Ginsburg's reaction has been that Judge Souter 'demeaned' himself in giving 'political' answers, while Judge Bork was 'unjustly crucified' for his 'candid' responses."

As Olson noted, even with no further evidence, that memo alone would be sufficient justification for an RBG cult. It shows how dedicated to the truth and how allergic to partisan indulgence she was. At the same time, it shows the exact opposite qualities in Klain, which is what makes Biden's choice such a disappointment, if not a surprise.

The Klain pick promises cynical political business as usual for the United States. That is not what Americans need right now, even if it does happen to come in a blessedly blander package than the lunacy they have endured since 2016.