

Washington Monthly, November 2007

Rudy Awakening

As president, Giuliani would grab even more executive power than Bush and Cheney. His mayoralty tells the story.

By Rachel Morris

If you drove through the Lincoln Tunnel into Manhattan in 1993, your first encounter with New Yorkers was likely to be with an army of men with squeegees who waded through the idling cars, wiping each windshield with a grimy cloth. (You knew to pay your attendant, because he might break your wipers otherwise.) On sidewalks, you'd be flanked by piles of garbage bags because the government was \$2.3 billion in debt and couldn't afford to pick them up. On street corners of the Lower East Side, drug dealers furtively whispered code words for the sale of the day—"Express," "C-Town," "Bodybag." The local tabloids regularly carried news of race riots and gruesome crimes; more than 2,000 people were murdered each year. Esquire called the city "the worst place on earth," and 45 percent of New Yorkers said they would get out of town the next day if they could. During the mayoral election of 1993, expectations for city officials had fallen so low that New York Times columnist Russell Baker wrote, "My long experience of mayors leaves no doubt there are only two things city dwellers can reasonably expect of a mayor: one, collect the garbage; two, keep the streets paved."

That year New York elected a mayor who was determined to do more. Rudy Giuliani, a dynamic former prosecutor, had been the youngest man to hold the number three position at the Justice Department, impressing his future employers with his talk of "vigor, vigor, vigor." Now, this spirit would be transferred to his hometown. Giuliani worked tirelessly. He immersed himself in policy briefings. He bargained hard with unions, cut spending and welfare, and laid off thousands of city workers in a town where one in five residents was on the city payroll. In concert with his police commissioner, William Bratton, he helped introduce innovative, aggressive methods of policing. He cracked down on the squeegee men and the drug dealers—as well as panhandlers, prostitutes, peep shows, turnstile jumpers, truants, three-card monte dealers, the mafia, the homeless, and people who rode their bicycles on the sidewalks.

The city began to change. It looked cleaner and felt safer, and the crime rate plunged. In his famous article "The Tipping Point," published in

the New Yorker in the summer of 1996, Malcolm Gladwell noted that New York's violent crime rate now ranked 136th among major American cities-"on a par with Boise, Idaho." That year, murders in the city fell to 984, the lowest total since 1968. The budget crisis receded, at least for the time being. In the fall of 1996, the Yankees won the World Series after an eighteen-year slump, and Giuliani triumphantly proclaimed the victory "a metaphor for a city that is undergoing a great renaissance." Liberal New Yorkers, who had shunned Giuliani in 1993, started to reconsider his appeal, and in 1997 he won reelection in a landslide.

Giuliani's second term, however, would be rocky, as the personality flaws that people had sensed in his first term came to engulf New York City politics. Somehow, crackdowns on drug dealers bled into irrational vendettas against hot dog vendors and jaywalkers. The mayor ensnared City Hall in a number of ill-advised lawsuits (such as the time he was successfully sued by the Brooklyn Museum after trying to evict it for displaying a painting of the Virgin Mary smeared with elephant dung). And when New York police officers were implicated in horrifying cases of abuse, Giuliani's reflexive, belligerent defense of the NYPD antagonized minority groups and affronted many New Yorkers. By the time Giuliani left office, New Yorkers had wearied of his abrasive, vindictive behavior. At the same time, they were grateful to him for having cleaned up their city.

Today, Giuliani is a front-runner for the presidency of the United States. Since 9/11 the office he seeks has been radically remade. Led by Dick Cheney, the Bush administration has expanded White House powers to levels unseen since the Nixon years. Claiming an inherent authority to act outside the law, it has unilaterally set aside treaties, intercepted telephone calls between citizens without court warrants, detained individuals indefinitely without judicial review, ordered "enhanced interrogations," or torture, prohibited by law, and claimed the ability to disregard more than 1,000 parts of legislation that it has deemed to improperly restrict its authority. To thwart oversight and checks on its power, all spheres of executive branch operations have been fortified by heightened secrecy.

This expansion has warped policy decisions, undermined the country's authority abroad, and damaged the framework of laws, institutions, and processes that secure citizens against abuse by the state. It also prompts two of the most crucial, if as yet unasked, questions of the 2008 presidential race: Which contenders are most likely to relinquish some of these powers, or, at the very least, decline to fully use them? And, alternatively, which candidate is most likely to not only embrace the powers that Bush has claimed, but to seize more? The reply to the first question is complicated, but to the second it's simple: Rudy Giuliani.

Many Giuliani watchers already understand that Rudy is a hothead and a grandstander, even a bit of a dictator at times. These qualities have dominated the story of his mayoralty that most people know. As that drama was unfolding, however, so was a quieter story, driven by Giuliani's instinct and capacity for manipulating the levers of government. His methods, like those of the current White House, included appointments of yes-men, aggressive tests of legal limits, strategic lawbreaking, resistance to oversight, and obsessive secrecy. As was also the case with the White House, the events of 9/11 solidified the mindset underlying his worst tendencies. Embedded in his operating style is a belief that rules don't apply to him, and a ruthless gift for exploiting the intrinsic weaknesses in the system of checks and balances. That's why, of all the presidential candidates, Giuliani is most likely to take the expansions of the executive branch made by the Bush administration and push them further still. The blueprint can be found in the often-overlooked corners of his mayoralty.

Laying the Groundwork: Bringing On the Yes-Men

Rudolph W. Giuliani was inaugurated on the steps of City Hall on January 2, 1994. As he pledged to end the fear that had infected the city, his seven-year-old son scampered around the dais, mouthing passages in unison with his father. The public advocate, Mark Green, was sworn in next, and delivered a typically florid address. "We need to hear more from the symphony of New York," Green intoned, "a glorious city in which each of us may rehearse and practice our parts alone, but the music is sweetest only when we come and play together into a more harmonic whole." Soon afterward, Green got a call from Giuliani's childhood friend Peter Powers, who had just started work as a deputy mayor. "The mayor didn't like your speech," Powers informed Green. "He thought it was too mayoral." That was Green's introduction to the Yesrudys.

In his prosecutor days, Giuliani had insulated himself within a circle of close male associates. They were smart and dedicated and accompanied him with a certain swagger, and they could always be depended on not to outshine their boss. Others in the office derisively referred to them as the "Yesrudys" (according to the journalist James Stewart, the term was correctly pronounced with a southern slave accent). When Giuliani arrived at City Hall, he brought some of the original Yesrudys with him, including Randy Mastro (his chief of staff), Denny Young (his counsel), and Randy Levine (his labor commissioner). These men were competent, but they also owed their careers in public life to Giuliani and enforced his will unstintingly.

From the first days of his term, Giuliani demanded a centralized operation that had no room for dissenters. He entrusted Tony Carbonetti, a former manager of a Boston bar in his twenties, with the task of installing

loyalists not just in top positions but throughout the layers of the municipal government. The new recruits were quickly reminded that fidelity to Giuliani was their most important qualification; everyone knew the price of displeasing the mayor. "When Rudy read *The Godfather*," a former deputy mayor remarked approvingly to one of Giuliani's biographers, "he studied it from the point of view of how to communicate effectively down to the lowest ranks of an organization, so that every foot soldier understood his marching orders."

Giuliani's determination to whip the municipal government into shape wasn't all bad. For years, New York City's prosperity had been held hostage to its feckless bureaucracy, and one of the reasons Giuliani was able to turn the city around was that he brought the government under his control. As with so much else, however, Giuliani didn't know when to stop. Most commissioners had to submit their speeches for vetting by Giuliani's aides. Giuliani boasted that he personally approved precinct-level detective promotions. A senior aide told James Traub of the Times that when Giuliani's communications director interviewed applicants, even for low-level jobs, she inquired whether they would "take a bullet for the mayor."

Before long, his tough management style deteriorated into futile callousness. "People in his administration were terrified of him," said former Mayor Ed Koch. Giuliani drove out even his best officials for being insufficiently deferential. Police Commissioner Bratton, the architect of New York's crime-fighting successes, was ousted in 1996. Rudy Crew, a well-regarded education chancellor, surrendered in 1999, stalling much-needed reform of New York's schools. Ultimately, the entire city government became an extension of Giuliani's outsize personality. This allowed him to wield his authority to maximum effect, but the lack of independent voices also made him particularly susceptible to overreach.

Testing the Limits of the Law

Mayors of New York City have long enjoyed an unusual degree of power for an American government executive. They're able, for instance, to appoint judges and commissioners without any kind of legislative approval. In 1989, a revision of the city's charter (effectively the local constitution) granted even more power to the mayor, including greater influence over land use and contracts. Today, New York's mayor arguably has more power over the city than the governor does over New York State-or, for that matter, than the president does over the nation. Mitchell Moss, an esteemed historian of New York municipal politics, has said that the mayor "really is the king of New York."

But for Giuliani, the kingship wasn't enough. The city council was a persistent annoyance to him, and he began skirmishing with it almost

immediately. He also resented the intrusion of the two other major checks on his power: the Independent Budget Office, an independent financial watchdog created in 1989 as a counterweight to the mayor's enhanced authority; and the Office of the Public Advocate, which acts as an ombudsman for the city's residents. Giuliani tried to reduce the public advocate's budget, and refused to fund the IBO until 1996.

Not long after his second term began, Giuliani sought to make more lasting changes. This time, he went straight for the city charter. Over the past forty years, only two commissions had been held to revise New York's governing document. During his time in office, Giuliani convened three. What's more, although the previous panels had been blue-chip affairs, Giuliani's commissions weren't very prestigious. The first, launched in 1998, was chaired by Giuliani's longtime friend Peter Powers. It was dominated by members who were undoubtedly experienced in government, but who happened to have acquired that experience by working for Rudy Giuliani. It was advised by attorneys from Giuliani's Law Department and usually met in secret. One of the first things it considered was a proposal dear to the mayor: abolishing the Independent Budget Office and the Office of the Public Advocate.

Veterans of city politics were alarmed. One was longtime New York lawyer Frederick Schwarz, who had chaired the most recent commission in 1989. (He had also served as the chief counsel on the 1975 Church Committee, established after Watergate to investigate abuses of intelligence.) Schwarz sent a public letter to Powers, characterizing the commission's lack of independence as an "exercise of untempered raw power." He implored the commission not to enhance the power of the mayoralty. "[A] principal criticism of our work was that we had left a City with a mayoralty that was too strong. I did not think that was correct," he wrote. "What is crystal clear to me is that you and your Commission should not, under any circumstances, recommend an increase in the powers of the mayoralty. Nor should you recommend the elimination of independent offices ... that, among other things, serve as a check on and balance to the enormous powers of the mayoralty and its huge bureaucracy."

In the face of public dismay, the commission dropped its plans to eliminate the IBO and the public advocate's office. Nevertheless, as Giuliani knew, the panel still served a very useful purpose. A quirk in New York state law says that if the mayor holds a commission, neither the city council nor the public can put a referendum on the ballot. That year, the commission allowed Giuliani to prevent a proposed council referendum about the location of Yankee Stadium (Giuliani wanted to move it to Manhattan, but a referendum would have allowed voters to prevent the use of city money for the proposal). "Giuliani's commissions were painted with the brush of respectability, but it was a subtle device to block anybody else from

getting a referendum on the ballot," a former city council staffer explained.

Still, Giuliani wasn't deterred. The following year, he launched another commission. This time, the chairman was Randy Mastro, a former prosecutor pal, and eleven of the fifteen commissioners had once worked in Giuliani's administration or been appointed by him to a city board. Again, its mission was anything but high-minded. The first thing it considered was a revision that would ensure that if Giuliani were elected to the U.S. Senate in 2000, his habitual foil, Mark Green—who as public advocate would automatically replace him—would be eliminated from the mayoral succession. When public opinion again caused the commission to retreat (even the New York Post ridiculed the proposal as a "bill of attainder"), the commission instead proposed a list of fourteen changes that would tilt the balance of power in city government further in the mayor's favor. In the end, voters rejected the changes resoundingly. Unabashed, Giuliani launched his third commission in 2001. Ultimately, his attempts to change the charter failed, but by blocking ballot measures for three years, Giuliani had managed to make his quixotic commissions work to his advantage.

Breaking the Law

In 1996, Doug Criscitello, a former federal budget analyst, started work as the first director of the Independent Budget Office. Criscitello expected to put his auditors to work immediately, but then he received a surprising communication from the mayor's office. It was a memorandum informing him that all the IBO's requests for data had to be referred to City Hall—despite plain language in the city charter stating that the IBO could get information directly from municipal agencies. Puzzled, Criscitello contacted Giuliani's lawyers, who reaffirmed the message. "They weren't nasty about it. They were very matter-of-fact," said Criscitello. "'Here's how we've decided to interpret the charter, and if you disagree there's a legal process you can go through and we can get a judge to rule on this.'" Eventually, the IBO sued the mayor's office for the data, and in 1998 a state judge ruled that City Hall had violated the city charter and ordered it to start cooperating. Meanwhile, Giuliani had bought two years of time.

Criscitello had run into what was becoming a signature feature of Giuliani's governing style. Chafing against the limits of his authority, Giuliani was taking an increasingly instrumentalist view of the law: it was only as good as how well it was enforced, and should be overstepped when doing so served his ends. His administration tussled in court not only with the IBO but also with numerous interest groups, the state comptroller, the public advocate, and the city council. "All of those were effectively cases that said, he's gone beyond the restraints on executive power," said Eric Lane, director of the 1989 charter commission and a law professor at Hofstra

University. By 1999, the city council was forced to allocate money specifically for the purpose of suing City Hall, which had 685 lawyers on its payroll and had increased its legal budget by 41 percent since Giuliani took office.

When Giuliani wanted to do something and was advised by his staff that it was illegal, it was "hard for him," one of his former commissioners explained to me. "As a lawyer, it offends him. He thinks, 'Isn't there a way around this?'" Giuliani often preferred to barrel ahead and force his opponents to go to court to restrain him. "I think he believes in a very strong executive branch, but he has a litigator's mentality," said Criscitello. "Some executive leaders do not want to rule with the constant utilization of the judicial branch, but given his background as a litigator, he's very comfortable with this."

New York State's comptroller, H. Carl McCall, had a similar experience to Criscitello's when he tried to undertake routine audits of how well the city had provided services in areas ranging from restaurant inspections to policing. First, City Hall refused to provide the information. Then, in 1997, Giuliani booted McCall's auditors out of city agencies. McCall issued seventeen subpoenas in one month alone, all of which the mayor's office ignored. After two years, the state's highest court ordered his administration to turn over the information. By that time, however, Giuliani had already succeeded in the effort that mattered most to him: significantly delaying the comptroller's efforts. Not until 2000, for instance, would McCall be able to produce an audit of crime statistics, and when it finally appeared, the auditors noted that they were still unsure whether they had received all of the relevant material. As a "matter of policy," they wrote, City Hall had decided not to provide the customary document confirming that the data was accurate and complete.

Giuliani also unashamedly flouted the First Amendment to crush dissent both inside and outside his government. He lost thirty-five First Amendment cases in court. His administration was found to have shut down or delayed legal protests, illegally prevented its own employees from making protected public statements, and illegally prevented New Yorkers from gathering on the steps of City Hall. The Second Circuit Court of Appeals took the unusual step of reprimanding the administration, noting, "[W]e would be ostriches if we failed to take judicial notice of the heavy stream of First Amendment litigation generated by New York City in recent years."

In all of these cases, Giuliani was ultimately checked by the courts, even if his strategy had gained him valuable time. Sometimes, though, he got away with skirting the law because no one was able or inclined to restrain him. In 2000, when an off-duty security guard named Patrick Dorismond was shot and killed by undercover police officers, Giuliani released details

from Dorismond's sealed juvenile record at a press conference-in plain defiance of state law. "The media would not want a picture presented of an altar boy," he said, "when in fact, maybe it isn't an altar boy, it's some other situation that may justify, more closely, what the police officer did." (Dorismond had, in fact, once been an altar boy.) In its defense, City Hall claimed-erroneously-that victims had no right to privacy after they were dead. Then it emerged that the administration had revealed details from sealed files to the media before, including the records of at least two police victims who were still alive. Although Mark Green wanted to sue the mayor's office for the leaks, the public advocate lacked the power to do so. The state attorney general didn't choose to pursue the case. Giuliani and his officials were never penalized.

Resisting Every Prying Eye

As his term progressed, Giuliani became increasingly unscrupulous in his manipulations of the bureaucracy to avoid oversight and transparency. He was especially sensitive about any agency charged with scrutinizing the NYPD. From the start of Giuliani's mayoralty, the need for monitoring of the police was evident. Between 1993 and 1996, complaints of excessive use of force by police rose by 56 percent. While some of the accusations may have been spurious, it was hard to know which ones, because the police department often "reinvestigated" the complaints internally and tended to find that they lacked merit. An outside body responsible for investigating police misconduct did exist-the Civilian Complaints Review Board, or CCRB. After he was elected, however, Giuliani had cut its budget by almost half. Although critics warned that the NYPD was getting out of control, Giuliani maintained that a "much better way to improve the police department is to get it to investigate itself." One month later, in August 1997, a Haitian immigrant named Abner Louima was arrested by police officers, taken to a Brooklyn precinct house, beaten, and then sodomized with the handle of a toilet plunger.

In response to the public reaction over the Louima scandal, Giuliani allocated more money to the CCRB. Still, he managed to influence the outcome of its inquiries by staffing it mainly with ex-prosecutors sympathetic to the police. (One prospective investigator said that his offer of employment was rescinded after the administration discovered that he had worked for Democrats as a teenager.) Eventually, the police department was investigated by the Department of Justice, the Civil Rights Commission, and the state attorney general. Nearly half of the felony gun cases brought by the NYPD's Street Crimes Unit were found to be unconstitutional in 1999.

Giuliani understood that the currency of oversight is information, and he exercised more control over information than any mayor in recent memory. His administration denied information to the public, borough presidents, the

city council, and the public advocate. It improperly concealed policy decisions, contract announcements, and routine business. It forced good government organizations to file Freedom of Information requests for data they had once been given as a matter of practice, including such information as the number of working drinking fountains in public parks. Once, the city even denied a Freedom of Information request inquiring how many Freedom of Information requests had been denied.

Reporters had an equally difficult time of it. The Yesrudys could be counted on not to leak to the press, and they enforced a policy of silence among subordinates. Press secretaries at city agencies weren't allowed to answer the most innocuous of questions without checking with City Hall first, including details about the water levels in the city's reservoirs that the municipal Department of Environmental Protection had once provided to the New York Times weather page. The NYPD made it harder for journalists to get basic details about daily crime. Although news organizations repeatedly sued for information and often won, it was expensive to do so, and the information often went out of date. One state judge admonished City Hall that the state's Freedom of Information law "provides for maximum access, not maximum withholding."

The Final Days

By 2000, Giuliani had exhausted New Yorkers with his habit of behaving as if he didn't need to observe the same rules as other politicians. Perhaps the epitome of this attitude came on May 10, when he announced at a press conference that he was separating from his second wife, without having informed her first. Two days later (on Mother's Day weekend), he allowed tabloid photographers to snap him and his mistress, Judith, taking a leisurely stroll. That year, his approval ratings fell to 37 percent (although they climbed back up to over 50 percent the following year). Still, his leadership would not have been remembered fondly were it not for the events of September 11, 2001. In the days following the attacks on the World Trade Center, Giuliani provided calm and comfort to a wounded city, and the gratitude felt by many New Yorkers erased much of what had gone sour in his mayoralty. It also kicked Giuliani's already abundant sense of exceptionalism into overdrive.

One day in October, near the end of Giuliani's term, Mark Green got a call from a Giuliani aide asking him to meet the mayor at a makeshift command center on the Chelsea piers. Green, who was running for mayor, had no idea why Giuliani wanted to see him. As it turned out, Giuliani wanted to extend his term by three months so that he could finish the recovery work he had started. Would Green endorse the proposal? Green was startled. "I said, 'Well, I'm a lawyer and a historian of sorts, and even Lincoln during the Civil War went ahead with a normally scheduled election in 1864. This does

not strike me as a good idea."

Shortly after the meeting, Green said he received a call on his cell phone from Denny Young, Giuliani's soft-spoken counsel. "He made it clear to me that the mayor would be very unhappy if I didn't go along," Green recalled. "I've been in public life long enough to know what was being communicated." Green feared that if he declined, Giuliani would use his refusal to damage his mayoral campaign. Reluctantly, he agreed to Giuliani's request. Giuliani eventually dropped the proposal after a public backlash convinced the state legislature to quash it.

One of Giuliani's final acts as mayor was to transfer 2,118 boxes filled with all his mayoral papers to a warehouse in Queens known as the Fortress, under the supervision of a private nonprofit that he controlled. This was an unprecedented move in city history; the law states that mayoral records are public property. (After Michael Bloomberg was elected, the city council passed a law that retroactively legalized Giuliani's action.) Seven years later, however, it's still unclear how many papers have been made available to the public. The Bloomberg administration, which is supposed to oversee the collection, doesn't know what it originally contained, and thus has no way of discerning whether any documents have been withheld.

President Giuliani

During his time as the mayor of New York, Giuliani's operating style became so ingrained, so pervasive, that we can imagine with some confidence what he might do with the power he would inherit as president. Already, he has surrounded himself with a group of accomplished legal advisors with especially muscular views of executive power and close ties to the Bush administration. Chief among them is Ted Olson, the solicitor general in Bush's first term. As head of the Office of Legal Counsel in the Reagan Justice Department, Olson helped develop the "unitary executive theory," which envisions a constrained role for Congress in regulating the executive branch.

By Giuliani's own admission, he would, as president, perpetuate many of Bush's boldest assertions of presidential authority. In 2006, Giuliani told the Wall Street Journal that he would probably keep the detention center at Guantanamo Bay open, saying that its conditions had been "grossly exaggerated." This year, at a New Hampshire town hall meeting, he refused to say whether the Bush administration had gone too far in denying the protection of the Geneva Conventions to terrorist suspects. Giuliani has also indicated that presidents have the power to indefinitely detain American citizens without trial. At a debate, he declared himself opposed to torture but refused to say whether he would outlaw waterboarding, instead offering that interrogators should perform "any method they can think of."

What is most disturbing is the likelihood that a Giuliani administration would venture beyond the expansive claims of executive authority staked out by the Bush White House. For instance, though Bush has demanded that Congress fund the war in Iraq, he has never openly questioned Congress's power of the purse. Giuliani, however, told a reporter that the president has the right to provide money for the troops to stay in Iraq even if Congress withdraws funding. Similarly, Bush has implied that critics of his Iraq policy are unpatriotic, but he has not declared that the government can silence their voices. This September, echoing the sentiments that he repeatedly attempted to enforce as mayor, Giuliani said that the "General Betray Us" ad paid for by the left-wing group MoveOn "passed a line that we should not allow American political organizations to pass."

One might minimize the significance of these kinds of statements as the loose talk of a candidate trying to impress conservative primary voters—indeed, that is how the press has generally treated them. To believe that Giuliani is merely grandstanding, however, is to ignore his history. If he reaches the White House, he will almost certainly do what he did at City Hall: punish dissent, circumvent the law, conceal the workings of the government in secrecy, and use his litigator's gifts to obstruct mechanisms of oversight and accountability.

Arthur Schlesinger Jr. once observed that the central conundrum of the American system of democracy is "to devise means of reconciling a strong and purposeful Presidency with equally strong and purposeful forms of democratic control." One of the weaknesses in the American form of government is that a leader, if determined enough, can thwart the constitutional checks on his power. The Founders weren't omniscient, and the governing apparatus they devised contains weak points that require a degree of good faith from its participants if the system is to work. In the past, with the possible exception of Richard Nixon, even the most forceful presidents didn't subvert the system of checks and balances as a matter of ideology or routine. Bush, Cheney, and Giuliani are different from each other in many ways, but they are alike in their scorn for the separation of powers.

Defenders of the Bush administration's unreserved exercise of executive authority are fond of quoting Woodrow Wilson's observation that the president of the United States "is at liberty, both in law and conscience, to be as big a man as he can. His capacity will set the limit." Less often quoted is Wilson's unequivocal rejection of the "illegitimate means"—such as overriding or ignoring acts of Congress—by which the president can subvert the rule of law to exert his will. "Such things are not only deeply immoral," Wilson wrote, "they are destructive of the fundamental understandings of constitutional government and, therefore, of constitutional government itself." The Bush administration has walked a

considerable length down such a road. Giuliani, were he to be elected president, would set off running.