

# **HJC TESTIMONY: MICHAEL MUKASEY, TWO**

Back to the Mukasey hearing. As a reminder, Governor Siegelman will join us tomorrow at FDL at 12ET/9PT. I'm sure we'll talk about Mukasey's statements regarding Rove's non-appearance.

Darrel Issa: Executive privilege. Karl Rove's failure to appear. What useful purpose would it serve if he came here if the items were likely to be related to subjects he's prohibited from speaking about.

MM: Don't want to get into controversy. Immediate advisors, if they're told not to get into matters, they can't. Various ways of gathering information.

Issa: I didn't plan on asking these questions. I'd like to enter a letter from ranking member Lamar Smith asking Luskin whether he would answer specific questions related to Siegelman and then accompanying answers from Patton Boggs. Dispensed with Q&As that do not assert EP.

Issa: Media leaks and how they affect national security. In your opinion, both before and after you were AG, effect of NYT leaking the most sensitive information. You're saying, show me a bill we would sign.

MM: Without criticizing individual newspapers.

Issa: I'm not restrained from saying Eric Lichtblau and the others who leak national secrets.

MM: They eventually write your obituary.

Issa: I'm from a family of long livers.

MM: When someone is obliged to tell a reporter that he or she has been picked up on a wiretap...

[Huh??? Did that make sense to anyone??]

MM: Numerous crimes, not subject to exception, such as child abuse. There is no way to compel a reporter even when a balance has been struck, put before someone who has no other standard. No way to compel disclosure. A reporter is free to take contempt.

Bill Delahunt: 45 detainees DOD has cleared for release who are still being detained at Gitmo. Number from Judge Hogan.

MM: We are not allowed to release people unless other countries will take them. It has been thus far successful.

Delahunt: In a position as a nation, where we're detaining at least 45 individuals cleared for release. You would object to have any of these individuals released to the US.

MM: Other countries where they could create havoc. It doesn't necessarily mean that they were picked up by mistake or that they have ceased to be dangerous.

Delahunt: With all due respect, these 45, if we should release them and they are still dangerous we are doing a disservice to our allies. FBI Director, you had no particular knowledge. Yesterday we received letter regarding Maher Arar. You said no special prosecutor.

MM: Left out a phrase: at this time.

Delahunt: IG in their opinion, assurances so dubious, there could have been an intent to render to Syria rather than Canada, because there was a knowledge or likelihood of torture. If that doesn't trigger need for Special prosecutor, I can't imagine what would. Were there sufficient assurances to send Arar to Syria instead of Canada?

MM: I'm not sure I understand the question.

Delahunt: Are you prepared to say there were sufficient assurances?

MM: As far as I'm aware, classified briefing available to authors of letter, as to assurances

that were received. There can't be any change in terms of assurances. There was, I believe, a classified briefing.

Delahunt: I did not attend the classified briefing, didn't want to inadvertently discuss it in public venue. I presume they'd come from high-ranking officials in US govt. Especially for a nation that's been referred to by President that nation that practices torture.

MM: Assurances received. I feel it unlikely that anyone would think they'd get anything from Syria.

Delahunt: I'm still trying to figure out why sent to Syria.

MM: Joint national. Sending him to Canada could have posed a threat to our country.

Pence: FISA rocks! An issue on which we disagree, free flow of information act.

[Jeebus, I love this journalist shield bill, if for no other reason then I can tolerate Mike Pence while he asks him about this.]

Pence: Strident opposition of DOJ to creating the statutory newsman's privilege that SCOTUS recognized could be instituted 30 years ago.

MM: I'm going to ask the Chair's indulgence, for a minute to respond to the 6 minutes of questions. One, showing that the information was properly classified. Does that require the govt showing more classified information. Second is the danger exceeds the danger of the classified information. Govt make a bad problem worse, by articulating how threatened disclosure would cause more harm. A system that closely restricts ability to subpoena. I'm not going to endorse a system that protects leakers more than it protects journalists.

Steve Cohen: I appreciate your looking into the football statement in football. University of Michigan has 100,000 people per game, we have 20,000. We have emphasized academics more.

Conyers: Gentleman's words will be taken down.

[Yeah, I'm with Conyers. You want to argue UT has better academics than UM? Take down those words!!!]

Cohen: Paul Minor. Politics might have influenced his prosecution. Minor has appeal that OPR is looking into. At present time, seeking time bc wife is dying of cancer, may be in final month. Assurance you'll review the matter.

MM: Wait for OPR, because I may have to act. BOP has a humane release program, don't know if it relates to families of prisoners.

Cohen: You mentioned that violent crime remains near historic lows.

MM: Spikes in certain areas.

Cohen: That can't be historic lows. Crime is really pretty high now.

MM: It's low by current standards.

Cohen: My city of Memphis has a violent crime problem. Ability to participate in Project Safe Neighborhoods.

MM: We have localities compete on showing of need.

Cohen: if you can consider Memphis, we need the help. VP, in the abstract, he would not have EP extended to him. Addington told us Cheney not in Executive or Legislative, he said he was a barnacle attached to legislative branch, does he have executive privilege.

MM: VP is member of executive branch. One of closest advisors to President. That's where he sits. Aside from any abstract theory of whether there's a barnacle status.

Forbes: Proven record for stopping gangs?

Adam Schiff: Will follow-up on issues we've discussed earlier about DNA evidence in AZ. Had the opportunity to review your speech, like to

follow up. Made several efforts to get Congress and Administration working together on detainee policy. You make a point that people at Gitmo should be charged or released. The issue that that raises if you don't charge people at Gitmo, what is their status? What legal rights attach? One argument I've been making with DOD and DOJ to adapt UCMJ, couldn't we establish a baseline offense of being an unlawful enemy combatant?

MM: I guess we could. The people who are detained are people who fit classic definition of enemy combatant. We detained thousands of prisoners of war who were legitimate, not one of them were permitted to file habeas petition.

Schiff: The problem there is that those wars had an end.

MM: Not always.

Schiff: You could see the war would end. There may never be a VT day, Victory over Terrorism. Encourage Department to consider a situation where they are charged.

Schiff: You suggest the Courts should be prohibited from releasing people in US or being brought to US. Presupposes that Gitmo doesn't close. Both presidential candidates say Gitmo should be closed.

MM: They both say, I'm not purporting to be expert, their statements vary, I don't think anyone says just close it and go home.

Schiff: That doesn't ultimately say what you do with Gitmo if you have a law that says you can't bring them to the US.

MM: All of them are aliens caught abroad in combat with US troops. Or supporting those in combat with the US.