

# TERROR TRIALS, RAY KELLY AND THE FBI DIRECTOR JOB

A couple of weeks ago quite a stir was created when the rumor was let leak that President Obama was considering three different high level Bush/Cheney Administration officials to replace FBI Director Robert Mueller, whose ten year term will expire on September 4, 2011. The two names most prominently featured were former Bush Deputy AG James Comey and former Bush National Security AAG Ken Wainstein but also mentioned was former Bush Homeland Security Advisor Fran Townsend. The story creating the hubbub, almost as an afterthought, also mentioned that Sen. Chuck Schumer had been lobbying for current NYPD Commissioner Ray Kelly for the job.

Today, however, comes a news report from local New York investigative reporter Murray Weiss that the FBI Director chair is Ray Kelly's "for the taking":

And when sources with solid connections in the White House tell you Kelly has been told by Attorney General Eric Holder that the FBI director's job is his for the taking, it is impossible to ignore them. All the signals, including the aside from Kelly, are in sync.

Here is the news, according to my sources.

Kelly, who served in two federal posts during the Clinton administration, is this close to heading out of Manhattan and back to Washington to cap his long career of public service by running the FBI.

There are several things interesting about the report. One is Kelly's age – he is 69 years old.

The article addresses that issue:

The FBI Director's term is 10 years. My sources say the White House has told the 69-year-old Kelly to view the position as a five year commitment, which would coincide nicely with the end of a second Obama term.

If so, and Kelly is indeed nominated, this is a contemptible plan. The intent behind having a ten year service period for the FBI top spot is to give it some space from hard partisan politics. In this case, seeing as how rare it is that a party who has had the presidency for two terms gets it for a third, setting up the FBI job to be open in the face of what would historically be and expected GOP president in 2016 seems short-sighted and extremely ill considered. I guess that presupposes Obama is reelected, but you have to assume the White House believes that will be the case and is acting under said assumption.

What is more interesting, however, is what a Ray Kelly nomination would say about the Obama 9/11 Terror Trials fiasco that culminated three days ago in the Administration announcing, through the water carrying mule known as Attorney General Eric Holder, that the 9/11 suspects/detainees, including Khalid Sheikh Mohammed, would receive second tier justice in the untested and almost certainly unconstitutional Guantanamo military commission system. This was a decision noted Constitutional authority Dahlia Lithwick termed "Cowardly, Stupid, and Tragically Wrong" and further noted:

Say what you want about how Congress forced Obama's hand today by making it all but impossible to try the 9/11 conspirators in regular Article III courts.\* The only lesson learned is that Obama's hand can be forced. That there is no principle he can't be bullied into abandoning. In the future, when seeking to pass laws that treat different people

differently for purely political reasons, Congress need only fear-monger and fabricate to get the president to cave. Nobody claims that this was a legal decision. It was a political triumph or loss, depending on your viewpoint. The rule of law is an afterthought, either way.

What Dahlia noted is quite correct (and her article is spot on; if you have not seen it, read the whole thing), but the potential specter of a Ray Kelly nomination to FBI director makes you wonder whether Obama's hand was forced so much as he used the caterwauling of Congress as an excuse for something he just felt politically expedient. And that is where we get back to Ray Kelly, because it was Kelly, just as much as Congress, that blew up the ability of New York to hold civilian trials for KSM and the other 9/11 suspects, not to mention future terrorism cases. As Marcy Wheeler noted, the indictment had been returned, and was really quite solid in how it was constructed.

Yes, the right wing howlers were grumbling in Congress, but it was Ray Kelly's fearmongering over security which fueled the Community One Association of lower Manhattan into a negative frenzy over the specter of the trials actually being held where the crimes were committed. The breaking of the will of New York to hold the trials that broke the back of effort as a whole.

Notably, however, these were not principled fears Kelly whipped up, it was a just another political theater play over a struggle for money and power. As Jane Mayer noted at the time:

For months, companies with downtown real-estate interests had been lobbying to stop the trial. Raymond Kelly, the commissioner of the New York Police Department, had fortified their arguments by providing upwardly spiralling estimates of the costs, which the federal government had promised to

cover. In a matter of weeks, in what an Obama Administration official called a “classic City Hall jam job,” the police department’s projection of the trial costs went from a few hundred million dollars to a billion dollars.

Kelly friend and compatriot Michael Bloomberg had been in favor of the trials And Kelly and his friend Bloomberg were resolutely in favor of the trials, until they learned there would be not be a financial funding windfall sufficient for their desire from the Feds. Kelly then whipped the public frenzy, Bloomberg and Chuck Schumer fell in line, and it was game over as to public will in New York.

Ray Kelly, attempting to build his and his department’s budget and power, ran a shakedown play on the Obama Administration. Or so it seemed at the time. But what if Ray Kelly had his eye on succeeding Mueller at FBI longer than Weiss relates in today’s article (which discusses Kelly auguring for the job as early as last summer). What if the real shakedown Ray Kelly was running on the White House, Eric Holder and the Administration early in the terror trials issue was for the FBI job, it started much earlier than last summer, and the blowing up of the ability to conduct civilian trials in New York was simply his end of the bargain?

This is conjecture at this point, but it certainly fits the facts, and would also explain why Obama would be considering a man far older than logic and recent precedent would consider appropriate for the job. What a panel of potential nominees the White House has ginned up – three Bush/Cheney hands and Ray Kelly, the shakedown specialist. Either way, if it does ever turn out Ray Kelly is Obama’s nominee for FBI Director, it would be another profound comment on the Administration’s “cowardly, stupid, and tragically wrong” handling of the civilian trials in Article III courts issue.