

# BANANA SPLIT

The investigation into Chiquita for supporting Colombian terrorists always stank. Chiquita's executives got some high level meetings at DOJ and—purportedly—DOJ told them they should not worry about paying protection money to terrorists, so long as they cooperated with DOJ's investigations into the Colombia death squads. Then, no charges were filed against any of the well-connected Republican executives. But now we find out that a warrant supposedly served on Chiquita back in 2004 may never have been served (h/t Rayne).

What happened to the search warrant that the government supposedly served on Chiquita Brands International three years ago? The lead prosecutor on the case – in which Chiquita was accused of funding terrorism – has always thought that the warrant was executed. But lawyers for the company and a U.S. Department of Justice official recently said that it wasn't. Their revelation has led to new questions: Was the warrant blocked, and if so, why?

[snip]

... one highly placed Justice official confirms that no warrant was executed. This official, who spoke on the condition he not be named, wouldn't elaborate.

In a postpublication interview, [the original prosecutor Roscoe] Howard says he still believes the warrant was obtained and executed, and that the Justice Department is "stonewalling" for reasons he doesn't understand. He adds, "I've got no doubt it was executed, but someone may be covering it up for some reason." Howard and Seikaly both say that their former colleagues in Justice won't discuss the warrant with them now,

which puzzles them.

[snip]

Ken Wainstein also played a key role in the Chiquita probe. At the time of the Justice deliberations over the warrant, he was chief of staff to the director of the Federal Bureau of Investigation, which would have been responsible for serving the warrant. Boyd, Wainstein's current spokesman at the national security division, declined to comment on his boss's involvement with the Chiquita warrant.

One source close to the Chiquita investigation, who asked to remain anonymous, says he suspects that the warrant was cancelled either by someone at the Justice Department's main headquarters or at the FBI. If the warrant were sabotaged, it raises questions of favoritism, and even obstruction of justice.

Law.com is too polite to say it, but there's plenty of reasons to believe the warrant—which was targeted to gather information on Chiquita executives—was never served. Here's my thinking, expanded from this post, this post, this post, and this post. And don't worry—I'll come back and do a timeline, once I've thought through some things.

#### The Official Story

The official story is that Chiquita has been paying protection money to terrorists going back many years. They paid the left-wing FARC and ELN from 1989 to 1997. In 1997, the leftist terrorist groups were declared terrorists. So Chiquita flipped sides, and started to pay the right-wing AUC. The board had discussions about the fact that they were paying protection money to right wing death squads in 2000, but that didn't seem to be a problem for them. The AUC was declared a terrorist group in 2001, but

Chiquita kept on paying them and kept on doing business in Colombia. In 2003, Chiquita's outside counsel told them, in no uncertain terms to stop: "Must stop payments. Bottom Line: CANNOT MAKE THE PAYMENT." Later that year, Roderick Hills (who's a big time Republican lawyer with a remarkable affinity for companies with fraud problems) and another Chiquita executive told the board they were funding terrorists in Colombia. Rather than stopping the payments right away, they decided to go to DOJ and tell them they were funding terrorists. Roderick Hills basically counseled, "Just let them sue us, come after us."

So on April 24, 2003, Roderick Hills, another Chiquita executive, and their outside counsel went to DOJ to have a meeting with "top Justice Department officials" to admit they were paying terrorists. There's a great deal of dispute about this meeting, so for the moment, let me say that DOJ claims they told Chiquita to stop, while Hills and the other Chiquita executive claim DOJ told Chiquita it faced "no liability for past conduct" and DOJ had "no conclusion on continuing the payments." Hills went back to the Chiquita board, told them this "no conclusion" claptrap, and Chiquita went on making their payments to their terrorist protectors in Colombia. At the end of 2003—even after having told DOJ they were making payments to terrorists—Chiquita created a second set of books to pretend they were paying a legitimate protection service, not a terrorist group. Chiquita's last payment to the AUC, according to their criminal proffer, at least, was on February 4, 2004, two and a half years after AUC was declared a terrorist organization.

By this point, DOJ is investigating. The investigation was run by Roscoe Howard, then USA for DC, the guy who believes his warrant was served. But Main DOJ was closely involved. In particular, David Nahmias, then the Deputy Assistant Attorney General in charge of Counter-Terrorism and now the USA in Atlanta, got involved; he and Howard had some disagreements

about the case, including on the warrant in question. Nahmias' boss, Assistant Attorney General of the Criminal Division Michael Chertoff, was even involved until he left in June 2003 to become a Judge and shortly thereafter Secretary of Homeland Security. In May 2004—just after the two critical events—Howard resigned and went into private practice. Ken Wainstein, then Robert Mueller's Chief of Staff at FBI, moved to take over as interim and then Senate-approved USA for DC; he is now the Assistant Attorney General for National Security. In short, it's all a mess, but the guy trying to throw the book at Chiquita moved into private practice right when rotten bananas started hitting the fan, whereas three of the guys working closely with Chiquita at DOJ have had some serious promotions since 2004.

Meanwhile, Chiquita brought in former Attorney General Dick Thornburgh to help them out. According to an LAT article now behind firewall, Ford's Assistant Attorney General Dick Thornburgh and Ford's White House Counsel Roderick Hills started working their DC network.

Chiquita's "lawyers went all over D.C. to have meetings" with top officials at the Justice Department, the Treasury Department and elsewhere, often without the front-line prosecutors knowing about it, one of the senior Justice Department officials said. "They were trying to cause political pressure."

That pressure seems to have worked. Because Howard prepared to serve the warrant in question, but Nahmias tried to stop him. The warrant was dated March 24, 2004 and—as we see here—it's not really clear whether it was served or whether it disappeared into a big Republican black hole. On April 26, 2004, Thornburgh wrote a letter to Nahmias, Christopher Wray (AAG for Criminal Division at DOJ, who replaced Chertoff) and Attorney General John Ashcroft. Thornburgh asked for a meeting before DOJ charged anyone—though it's unclear whether that meeting

ever happened. And then, almost three years later in March of this year, Chiquita settled for a big fine. But none of its executives were ever charged.

So the official story is, Chiquita pays terrorists, admit that they did so, and after some high level Republican intervention, they get off pretty easy. But there are two unofficial parts of the story.

If It's a Republican Scandal Involving Latin America, There Have to Be Drugs

Yup, drugs. According to this story (which you should read if you need a refresher course on either Chiquita's history with the CIA and neocolonialism in Latin America or a primer on the AUC, the group Chiquita had been paying), Chiquita was doing far more than paying terrorists for protection.

... from the moment of her birth in the Norwegian yards in 1992 until 2003, the ship was a Chiquita freighter, designed to keep the fruit in perfect condition on its long voyage over the oceans. The captain said, "Sometimes they put the drugs on the banana boats." I was stunned. I had been under the impression that drug traffickers only used small fast boats to move cocaine from place to place, but this isn't true. The freighters are difficult to search and blend into normal shipping traffic—because that is exactly what they are. They can also haul a ton at a time if the kilo bricks are well hidden.

[snip]

I asked him about the drugs-for-weapons exchange and the Chiquita freighters. "Look, for every kilo of drugs they put in, they had to pay 500,000 pesos. If you're a drug trafficker, and I'm in control, you'd have to pay me. You have 20 kilos of coca, or you have some other cargo, and I own that region—you

understand me? You pay me 500,000 pesos for me to ship those drugs as if they were mine, in the boats. You understand? Chiquita's boats. That's what the Bananero Block had going on here." Lorenzo watched the AUC load drugs onto Chiquita boats; he knew about it because he was there when it happened. "Look, there were drugs, and there were times that they sent drugs for weapons. They sent the kilos of drugs, and from out there, those *duros* said we are going to send this many kilos of drugs and I need this many rifles," Lorenzo said.

What Lorenzo described was a successful scheme that allowed the AUC to act as a contraband-freight consolidator. The AUC could ship their own cocaine on the company freighters or they could ship product belonging to someone else for a tax of roughly \$250 per kilo, which works out to a quarter of the Colombian value of the brick. And the smuggling scheme was a direct side effect of gaining access to the port. Lorenzo insisted more than once that Chiquita employees knew about the cocaine: everyone in the chain was paid a percentage to keep quiet, including the freighter captains. [my emphasis]

According to this story, until Chiquita sold its entire Colombian banana fleet in 2003 (when they had told DOJ they were funding terrorists, but before they stopped), they were shipping AUC cocaine back to the United States along with their bananas. They were doing more than pay off AUC—they were allowing AUC to make huge profits selling access to Chiquita's boats to ship cocaine into the US.

Can you see why powerful Republicans might not want that warrant to be served?

Did Michael Chertoff Tell Chiquita He'd Get Back to Them on Funding Terrorists?

But then there's the dispute about the first high level meeting Chiquita arranged with DOJ. As I said, DOJ says they told Chiquita to stop funding terrorists. Chiquita says DOJ sent a mixed message.

But surrogates of Roderick Hill said something else entirely in this article trying to pressure DOJ not to bring charges against him.

The crux of the inquiry involves an April 24, 2003, meeting between Mr. Hills, in his capacity as a director of Chiquita, and Michael Chertoff, who was then in charge of the criminal division of the Department of Justice and is now the secretary of the Department of Homeland Security.

[snip]

In the version offered by Chiquita officials, Mr. Chertoff was more equivocal at the meeting, a view contained in letters from defense lawyers to the Justice Department, according to the sources familiar with the court filings. Mr. Chertoff said he understood the sensitivity of the situation and would get back to the Chiquita officials, which he apparently did not do before going on to become a federal judge.

Mr. Chertoff, who has declined to comment, will almost certainly be called to testify if the matter goes to trial.

Defense lawyers said the company engaged in regular discussions with Justice Department officials about using the payments as an opportunity to provide intelligence to the government about the A.U.C. Those discussions, the lawyers contend, were crucial in convincing the company that the American government was prepared to tolerate the continuation of the payments. [my emphasis]

In other words, Chiquita has a meeting with the current head of DHS. He equivocates on whether it's a problem that Chiquita was paying right wing death squads (though I have no idea whether he equivocated—or even knew—about using Chiquita ships to smuggle the AUC's drugs). And then Chiquita keeps paying terrorists, under the guise of "providing intelligence" about the AUC, for almost a year.

And somehow, no one knows whether that warrant ever got served on Chiquita.