

THE TERRORIST SYMPATHIZERS GRASSLEY DOESN'T MENTION: CHIQUITA

Predictably, Politico piles onto the latest installment of the McCarthyist attacks on DOJ, largely repeating the attack as made by Dana Perino and Bill Burck. The one thing it does add is some discussion of what Eric Holder should have disclosed at his confirmation hearings last year.

Holder didn't mention the brief during his confirmation hearings to be Attorney General, even though the Senate Judiciary Committee questionnaire required him to list all Supreme Court amicus briefs he was party to. His questionnaire lists briefs in only three cases: Miller-El v. Cockrell, Johnson v. Bush and D.C. and Fenty v. Heller.

A Justice Department spokesman, Matthew Miller, said "the brief should have been disclosed," but had been "unfortunately and inadvertently" left out in the documents submitted to the committee.

"In any event," he said, "the Attorney General has publicly discussed his positions on detention policy on many occasions, including at his confirmation hearings.

Justice Department officials also didn't mention the briefs in the letter they sent to Sen. Chuck Grassley (R-Iowa) informing Congress that nine of the department's political appointees either "represented detainees [or] ... either contributed to amicus briefs in detainee-related cases or were otherwise involved in advocacy on behalf of detainees."

Now, I agree that Holder should have disclosed all this.

But I'm also interested in the tizzy surrounding whether Holder should have disclosed himself in response the questions Chuck Grassley posed on terrorist sympathizers at DOJ. Granted, originally asked were definitely targeted toward creating this witchhunt—that is, to detainees at Gitmo, rather than to the representation of terrorists and their affiliates generally.

But if we're going to discuss Holder's "biases," shouldn't we start with Holder's representation of Chiquita, and particularly his success at getting several white Republican men off of charges that they knowing supported right wing Colombian terrorists? Particularly given the way Bush's DOJ facilitated that process?

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.

All this talk about disclosure and yet we're still not talking about the inherent racism and

double standard that people like Chuck Grassley seem okay with.

Ah well. I have a great idea how to fix the problem of Eric Holder's non-disclosure of this brief.

Let's have a dual re-hearing, Eric Holder and Jay Bybee, for their respective positions. Republicans can grill Holder about how, faced with a bunch of detainees collected under the auspices of unlimited presidential power because the evidence relating to those detainees was tainted by torture, he proposes to deal with those detainees. But at the same time, Democrats will be able to ask the questions they should have been able to ask years ago, about why it is that Jay Bybee was too busy protecting Cheney's Energy Task Force from oversight to notice that his subordinates were claiming to give the President that unlimited power.

Let's have the guy stuck with the mess Jay Bybee created explain to him the problems that he caused.

Update: Thanks to MinnesotaChuck for the corrections for clarity.