

WHOSE NON-DISCLOSURE WAS WORSE: BYBEE'S OR HOLDER'S?

John Kyl has officially announced he intends to waste an oversight hearing on March 23 beating up Eric Holder because he did not disclose an amicus brief opposing unlimited Presidential power.

Kyl told members of the committee that panel Republicans will question the Attorney General about his 2004 amicus brief that recommended the Supreme Court stop the Bush administration's efforts to try **Jose Padilla** as an enemy combatant.

[snip]

Kyl called the non-disclosure of the brief "rather distressing."

"Are we expected to believe that then-nominee Holder...forgot about his role in one of this country's most politicized terrorism cases?" Kyl asked.

And the other Republicans on the Senate Judiciary Committee are practicing their pout-rage, as well.

Senator Jeff Sessions of Alabama, the ranking Republican on the committee, said he was "deeply concerned" by Mr. Holder's failure to disclose the brief during his confirmation.

"Not only was the Attorney General required to provide the brief as part of his confirmation, but the opinions expressed in it go to the heart of his responsibilities in matters of national

security," Mr. Sessions said in a statement. "This is an extremely serious matter and the Attorney general will have to address it."

Now, as I said earlier, Holder clearly should have disclosed this brief—though his views were already well known.

But he's not the first nominee to go before SJC who failed to disclose key legal writings. After all, Jay Bybee secured a lifetime appointment as an Appeals Court Judge without disclosing the fact that he rubber stamped legal sanction for torture. And unlike Holder, Bybee's actions were totally unknown at the time. At the time, just one Democrat, Jane Harman, had even been briefed that CIA was doing the torture (though Pelosi had been briefed that they were considering torture), the memos specifically had not even been revealed to her, and even if she knew about it, she would not have been permitted to share it with SJC.

And yet, barring Bybee's resignation or prosecution in some international court, Bybee will be serving on the 9th Circuit long after Holder has moved on as Attorney General.

So whose non-disclosure is more of a problem? Jay Bybee, who failed to hint that he had authorized torture? Or Eric Holder, whose views were well-known and tested during his confirmation hearing?