



Left Holds Holder Concerns

Progressives Fear Holder Will Not Be Tough Enough on Corporations

By Daphne Eviatar 1/14/09 3:00 PM



When his confirmation hearing begins on Thursday, President-elect Barack Obama's pick for the next attorney general is expected to face some tough questions. Republicans in particular have criticized Eric Holder for his role in the controversial pardons of fugitive financier

Marc Rich, and the commutation of the sentences of 16 members of a Puerto Rican terrorist group convicted of bombings, bank robbery and conspiracy.

But critics on the left have their own set of concerns. Although they've generally been less willing to voice them, Holder's eight years in private practice, during which he represented some of the world's wealthiest corporations accused of fraud, discrimination and funding terrorism, among other things, leads some civil and human rights advocates to worry that as attorney general, Holder may not be as tough on corporate wrongdoing as they would like him to be.



Illustration by: Matt Mahurin

As a partner who last year earned more than \$2 million at the Washington law firm Covington & Burling, Holder represented Merck & Co in a settlement charging massive Medicaid fraud, the National Football League in Michael Vick's dogfighting case, and defended MBNA Corp. (now part of Bank of America), Purdue Pharma and GlaxoSmithCline against claims of race, gender and national origin discrimination.

Perhaps most controversial is Holder's representation of the banana giant Chiquita Brands International against charges that the company paid millions of dollars to a right-wing Colombian paramilitary group that has killed thousands of civilians, including prominent Colombian labor leaders.

"You're influenced by the people you're working with and on behalf of," said Terry Collingsworth, a lawyer who represents families of victims of the paramilitary group known as the AUC, or Autodefensas Unidas de Colombia, in one of several lawsuits pending against Chiquita for monetary damages.

Represented by Holder, Chiquita pleaded guilty to criminal charges in 2007 to paying about \$2 million dollars as protection money to AUC guerillas, whom the company claims had threatened to harm Chiquita employees. Although the United States had deemed the AUC a terrorist organization in 2001, making it a crime for a US company to

pay them anything, Chiquita continued making the payments for several more years, until 2004, when it sold its Colombian division.

“You develop relationships with your clients and you can start to adopt an ideology of that class and it could cause you to view the corporate world as different, more important than others,” said Collingsworth.

Collingsworth is particularly bothered that Holder apparently used his influence as a former assistant attorney general to win for Chiquita what many lawyers call a “sweetheart deal.”

In the criminal plea agreement, Chiquita admitted to having paid more than \$1.7 million to terrorists between 1997 and 2004. Those payments were designed to protect Chiquita’s Colombian operations, which earned \$49.4 million between just 2001 and 2004, according to the government’s sentencing memorandum.

When the Justice Department finally indicted the company in 2007, the government concluded that Chiquita senior executives knew these were illegal payments made to a designated terrorist organization. Chiquita had alerted the DOJ to the payments in 2003, but although the department told the company that the payments were illegal, neither the Justice Department nor Chiquita did anything to stop them. The company and its executives continued to make the payments until February 2004, despite the warnings of their own outside lawyer. (That lawyer was not Holder or his law firm.) Yet the plea agreement, although requiring Chiquita to pay \$25 million fine, did not even name, let alone prosecute, any of the company’s officers.

“They paid \$25 million for paying a terrorist organization that killed more than three thousand people,” says Collingsworth. “No interest, payable over five years. There is clear evidence that Chiquita board members directly participated in these decisions and yet they were allowed to remain anonymous and they weren’t individually charged. That is a sweetheart deal. It’s unheard of to participate in a felony of that scale and then remain anonymous in the plea agreement.”

Holder, representing the company, “clearly did have access,” says Collingsworth. “He used to be the Associate Attorney General. Is that his method of doing business? Or is he going to have a clean transparent process with new rules of how people do business with the justice department?”

Others have argued that Holder actually assisted in the obstruction of justice by encouraging the Justice Department to conceal the executives’ names on his client’s behalf. When the Colombian attorney general later indicated that he wanted to extradite Chiquita officials to stand trial in Colombia, he didn’t know which officials had been involved.

Human Rights Watch has specifically asked the Justice Department to encourage more transparency about the funders of such violent paramilitary organizations in Colombia. In a letter sent last May to Attorney General Michael Mukasey, Human Rights Watch executive director Kenneth Roth wrote that “the Department of Justice should seek to create meaningful legal incentives for these mafia bosses to fully disclose information about their network of accomplices, including not only those involved directly in drug trafficking but also politicians, members of the military, financial backers and others who, over the course of decades, may have helped them to commit atrocities and to conduct drug trafficking operations with impunity.”

“You do make choices,” said a labor lawyer who’s followed the Chiquita case but did not want to be named. “Here’s the guy you’re going to put as head of the Justice Department, and in the end he worked to obstruct justice.”

Meanwhile, the former Colombian paramilitary leader Salvatore Mancuso, now in US custody, told CBS’ 60 Minutes that other American companies, such as Dole and Del Monte, also made payments to the AUC. Both companies deny making such payments; neither has been indicted. But Rep. William Delahunt (D-Mass), who met with jailed former paramilitary leaders in Colombia last year as part of a Congressional investigation, has also said there’s evidence that American companies besides Chiquita made illicit payments to Colombian terrorists.

As Dan Kovalik, a lawyer for the United Steelworkers Union, wrote in the Huffington Post in November: “Query whether, as Human Rights Watch recommends, a Justice Department under Holder would be interested in pursuing this and other similar leads. This is a serious matter given the fact that the Justice Department has already come under great scrutiny for turning a blind eye to what appears to be rampant corporate support for terrorist groups in Colombia.”

Not everyone criticizes Holder for his role defending Chiquita, though. Marco Simons, Legal Director for EarthRights International, which is also representing Colombian victims suing Chiquita, says that although the civil case is in its early stages, based on his limited interaction with Holder, “he seemed like a very agreeable guy. Obviously we disagree with some of the positions he took on behalf of Chiquita. But we don’t have any reason to believe that those are his personal positions. Lawyers take positions on behalf of clients all the time that they may not necessarily agree with themselves.”

Indeed, civil rights organizations have generally been very supportive of Holder’s nomination, at least publicly. Earlier this month, the Leadership Conference on Civil Rights (LCCR), the NAACP, the National Council of La Raza (NCLR), and the National Women’s Law Center (NWLC) joined U.S. Senators Sheldon Whitehouse, (D-R.I.),

and Benjamin Cardin, (D-Md.) to urge Holder's swift confirmation. Many other groups have signed letters supporting Holder and expressing confidence in his ability to restore the effectiveness and integrity of the Department of Justice after an unprecedented injection of conservative political ideology undermined enforcement and morale under President Bush and his successive Attorneys General.

Still, from a civil rights perspective, Holder's background is far from ideal, particularly because much of his work in private practice involved defending major corporations against discrimination claims.

That may be why several civil rights organizations declined to comment on Holder's nomination; some lawyers say they feel pressure from the liberal legal community not to openly criticize Obama's picks.

That hasn't silenced some independent lawyers, however, such as Lynne Bernabei, a leading employment attorney in Washington who represents plaintiffs.

"Defense counsel tend to say there are no meritorious discrimination complaints, or at least very few," said Bernabei, referring to Holder's discrimination defense work for banks and pharmaceutical companies. "If you have that attitude it will make you less enthusiastic about enforcing the civil rights law. That's simply a fact of life that what you do in your career as a lawyer will inform your attitude on things."

Bernabei is not surprised by the appointment, however. "A lot of these appointments are corporate lawyers. They're the ones who give to the campaigns. So those are the people that are going to end up getting appointments."

In the end, it may be Holder's corporate experience that helps him win the support he now needs from Senators on both sides of the aisle.