

Fireside Chat: Eastern District of Texas Bar Conference

Panel:

Chief Judge Rodney Gilstrap, USDC, EDTX

Judge Amos Mazzant, USDC, EDTX

Introduction/Session Chair: Kevin Collins, Covington & Burling, LLP

Guest Speaker Eric Holder. Eric is the 82nd Attorney General of the United States and Senior Counsel at Covington & Burling. He is the third longest serving AG in U.S. history, and the first African-American to hold that office. He's an internationally recognized leader across a broad range of regulatory enforcement, criminal justice, national security and social justice issues. Eric has served in government for more than 30 years, having been appointed to various positions requiring U.S. Senate confirmation by Presidents Obama, Clinton and Reagan. Prior to his time as Attorney General, Eric was a judge for five years on the DC Superior Court, which is a trial court of general jurisdiction, and was US Attorney for the District of Columbia for four years. He has been in private practice with Covington & Burling for more than 15 years.

Perspectives on Issues of the Day

Reaching Your Potential in the Practice of Law

- You have experienced the practice of law from a variety of perspectives – as a judge, leading the Department of Justice and in private practice, among others. What core values or behaviors contributed most to your success?
- Is there anything you wish you knew sooner?

Working in a Complex Organization

- You have extensive experience working inside of complex organizations (there is no bigger employer than the U.S. government). Can you talk about what it's like to bring many types of people — each with different experiences and perspectives — together to solve complex problems, especially in a legal context? What are some of the positives, and what are the challenges?
 - How did you go about learning how to manage people?
 - What did you learn about leadership by leading an organization that large and diverse?

- What are the most important management rules you live by? What guideposts do you think sustain ethical leaders and what are the pitfalls of those who fall short?
- How did you get law enforcement and lawyers to listen and learn from each other? What was the biggest hurdle in getting all sides to work together?
- What kinds of things did you do as Attorney General to connect with employees at DOJ and to help them understand how their work tied to the broader mission at DOJ?
- As part of your practice at Covington, you conduct sensitive and high stakes investigations, often involving senior executives and allegations of widespread patterns of misconduct (Uber). Can you share any advice or learnings based on that experience?
- Lawyers are key players and often are asked to lead during a crisis. What was one of the biggest challenges you faced during your time in government, and how did you work as a team to overcome it?

Maintaining Optimism through Challenges or Crisis Situations

- Crisis management played a big role in your work in the Obama Administration. When things got tough, how did you keep everyone aligned, positive, and forward-facing?
- In some ways, you have devoted yourself to work in which the ultimate outcomes may not be known for years or even decades. In a world and in workplaces that frequently prioritize immediate gratification, or at least that prioritize tangible demonstration of progress, how do you stay motivated and how, as leaders, do you encourage others who are involved in the work to stay motivated for the long run? How do you instill in others the importance of being patient and having faith that hard work will pay off? Does this highlight the importance of metrics in being able to demonstrate progress and build support for the investment of resources in long-term projects, or are metrics more of a distraction? Is the answer that “it depends”?
- What is one of the biggest challenges you have faced in your careers to date, and how did you work (as a leader of a team, as an individual, or both) to overcome it?
- Can you describe a moment or event in your career that you initially thought was a setback, but with the perspective of time turned out to be either a victory or at least a step in the right direction?
- What have your prior experiences taught you about the core values to maintain during moments of crisis?
- What resources do you call on when you need to restore your sense of optimism or focus as a leader?

Recent U.S. Supreme Court Decisions

- The Court's SFFA ruling (Students for Fair Admissions) has influenced, and in certain cases emboldened, how politicians, employers, employees and activist groups view the legality of DEI initiatives. As a leader in high-profile workplace culture reviews and civil rights or racial equity audits for market leading companies (Citi, Blackrock, Verizon, Uber Starbucks, etc.), what are you seeing and how are you recommending companies like Gilead respond?
- Judge Ketanji Brown Jackson's appointment to the US Supreme Court was a historic first, and you yourself were also a "first" as the first African American to serve as the U.S. Attorney General. What are your thoughts on her appointment and what does it mean to you personally?
- As someone who is a Democrat and was appointed to the DC Superior Court by Republican President Ronald Reagan, I'd love to hear your view on what has happened to the judicial nominating process. Is there any hope of the Senate returning to the more limited "advice and consent" role that was anticipated by the framers of the Constitution?

Notable IP Cases During AG Holder's Time at DOJ

- When we were preparing for this chat, you mentioned that the *Myriad Genetics* case stands out to you from your time at DOJ. Why is that?
- The case involved the patentability of BRCA genes, and DOJ took the position that synthesized genetic material, such as cDNA should be patent eligible because it is the product of human creativity, but isolated DNA should not be patent eligible because any changes made to the DNA during the process of isolating it are incidental and do not significantly alter the structure or function of the DNA.
 - When DOJ decides to weigh in on a case like this, how much is that decision motivated by a desire to see current caselaw accurately applied, and how much is it motivated by ensuring that the law going forward advances the interests of the United States?
 - The Supreme Court agreed with DOJ's position and held that cDNA was patent eligible, but that isolated DNA is not patent eligible. On a personal level, is it still a thrill to see the Supreme Court adopt a position you've advanced even when you're the Attorney General of the United States?
 - Some legal scholars have noted that the scientists who discovered the genomic RNA sequence for the viral agent responsible for COVID-19 did not seek to patent it, but instead immediately publicly released it, likely due to the result of the *Myriad* case.
 - See Contreras, "COVID-19 as an Example of Why Genomic Sequence Data Should Remain Patent Ineligible" (available at <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1289&context=scholarship>).

- Do you see this as a real-world vindication of the balance between public disclosure and incentivizing innovation that DOJ advanced in the *Myriad* case?
- What did you learn from that case?

Voting Rights

In your time at DOJ, your Civil Rights Division focused on protecting the right to vote. Now, in addition to your private law practice, your post-administration career has been highlighted by your founding of the National Democratic Redistricting Committee, which seeks to target voting rights issues, and has taken on President Obama's Organizing for America arm.

- What have been your chief targets in that area?
- What is the desired outcome?
- What are the prospects for progress / what needs to be done (Supreme Court/Alabama redistricting court ruling)?

DOJ Trends and Priorities

- What are some trends you are observing in both the U.S. and Global corporate enforcement environment in 2023 and beyond? How should attorneys be preparing to manage those challenges?
- The advent of generative AI has begun to transform everything from the political landscape, to news, social media and culture, to the practice of professions such as the law, to the ways businesses operate. Are you optimistic or pessimistic as to the overall impact of AI on the business world? Why?
- What events or conditions do you see as the most significant challenges for the U.S. in the coming decade? What are the most significant opportunities?

Quick-fire Questions (if time allows)

- What are you reading/watching/listening to right now?
- If you could invite a famous face to dinner (dead or alive), who would it be, and why?
- Who (or what) has been the most significant influence in your career?
- What do you wish you'd learned sooner?