

Jury finds Drummond Coal not liable in murder of Colombian unionists

D. Lencho
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On July 26, after less than four hours of deliberation, jurors found Alabama-based energy giant Drummond Coal not liable for the 2001 murder of three Colombian union officials by paramilitary death squads.

Two of the three officials, Sintamienergetica coal miners union local president Valmore Locarno and vice president Victor Orcasita were pulled off a bus in April 2001 and murdered by right-wing paramilitary forces near the firm's La Loma operation. Later that year, Locarno's replacement, Gustavo Soler, was murdered as well.

The plaintiffs in the Federal civil suit, the United Steel Workers (USW) and the International Labor Rights Fund (ILRF)—representing the families of the slain unionists—claimed that Drummond had paid members of the paramilitary group Autodefensas Unidas de Colombia (AUC) for the murders. The plaintiffs filed the suit in 2002 under the Alien Tort Claims Act (ATCA), a 1789 law that allows for tort claims actions by non-US citizens against wrongs committed by US citizens while in the plaintiff's country.

The case took five years to reach the courtroom. Federal Judge Karon Bowdre, a 2001 Bush appointee, dismissed all charges—most importantly those of wrongful death—except the single charge of “war crimes.” According to the statute, the plaintiffs were therefore obliged to prove that Drummond had not only ordered the murders, but had done so as a partisan in the ongoing civil war between the government—which has connections with the AUC—and the Revolutionary Armed Forces of Columbia (FARC).

Especially damaging to the plaintiffs' case was Judge Bowdre's initial refusal to admit an affidavit of Rafael Garcia, a former official in Colombia's state security agency. Currently in prison for erasing drug-related

data from the agency's computer, Garcia claimed that he was present when Augusto Jimenez, president of Drummond's Colombian operations, gave money to members of the AUC with instructions “to assassinate specific union leaders.”

Bowdre later allowed for the presentation of Garcia's testimony in the form of a videoconference or sworn statement. However, in an unusual step, the Colombian government blocked attempts to obtain a deposition from Garcia. An Associated Press article from July 24, noted that Colombian President Alvaro Uribe “has been a solid backer of the coal company.”

A group of US Congress members that have been following the case sent a letter to Colombia's vice president urging him to give permission to the plaintiffs' lawyers to interview Garcia for a deposition. That did not happen.

Drummond's attorneys took full advantage of the hand that the judge dealt them. They attacked the credibility of some witnesses by portraying their interest in the case to be mercenary rather than motivated by a desire for justice. For example, they emphasized the fact that Francisco Ruiz, the union treasurer, had received monthly payments of \$1,500 from the AFL-CIO's Solidarity Center.

All three widows of the slain unionists gave highly emotional testimony—characterized by uncontrollable sobbing and expressions of terror—by videoconference. However, Drummond attorney Sara Kropf got one of the widows, called Jane Doe 2 for fear of reprisals, to admit that Drummond had helped her financially after her husband's murder. She also admitted that she did not know the exact identities of the people that killed her husband.

Drummond's attorneys also caught several witnesses in conflicting testimony on secondary matters. One

witness, Juan Aguas Romero, claimed at first that Locarno was murdered solely for criticizing the paramilitary groups, but later stated that the paramilitaries only kill for money.

In another instance, Drummond attorney Bill Jeffress pointed out that former Colombian soldier Isnardo Ropero Gonzalez—who in videotaped testimony claimed that paramilitaries operate on Drummond property and at times even drive company vehicles—had denied that he was once suspended from his employment as a security guard due to drunkenness on the job, when in fact he was.

When Drummond's Colombian operations president Augusto Jimenez took the stand, he declared that in general the company's relations with the union were good. He denied any malicious intent in his remarks about union leaders, including his statement—alleged by two witnesses—that “a fish that swims with its mouth open soon dies”. Jimenez, who claimed no recollection of having made the statement in the context of dealings with the union, compared it to “silence is golden” an English parlance, and stated under questioning, “It isn't a warning.”

They also expressed their regret over the deaths, but noted that the victims were three out of thousands in a country wracked by violence. This is true, though it says nothing as to the guilt or innocence of Drummond. Tens of thousands of Colombians have died during the decades-long guerrilla war, and trade unionists have been a particular target for right-wing death squads, accounting for over 800 deaths.

After the jury's finding, Jeffress called the result “gratifying” and declared it a vindication of the company. The company called the verdict “a long time in coming” and claimed that it will continue to cooperate with investigations into the killings.

ILRF attorney Terry Collingsworth said that the plaintiffs would swiftly appeal the verdict, and was quick to add that it would probably not have a negative effect on similar ATCA-based tort actions—including ones already filed against Chiquita, Exxon Mobil and Occidental Petroleum.

Since the verdict did not challenge the validity of the use of ATCA, the appropriateness of the law was not an issue in the trial. However, Drummond, and any of the other corporate defendants, can be expected to challenge the use of ATCA in the appellate courts.

During the trial, most of the plaintiffs' witnesses expressed their fears of reprisals. Locarno's widow said that she and her family were threatened numerous times, and she sought asylum in El Salvador, eventually moving to Canada. Another witness, in his videotaped testimony, expressed the hope that he would get asylum in Panama, saying, “if I go to Colombia they'd eat me up alive.”

Whatever attempts plaintiffs' attorneys may take to downplay it, the jury's decision does not bode well for the Colombian working class, or for organizations attempting to use ATCA to challenge corporate malfeasance overseas.

Paramilitaries hired by companies are sure to act with even greater impunity than they do already, and other defendant companies, with a higher public profile than Drummond's, may take a more confrontational stand against similar lawsuits.



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