

Interview with Paul Hoffman, lawyer for the plaintiffs

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23 April 2013

Paul Hoffman, a partner in the Venice, California law firm of Schonbrun, DeSimone, Seplow, Harris, Hoffman & Harrison, has been representing plaintiffs in cases under the Alien Tort Statute for the last 30 years.

A member of the Amnesty International Executive Committee and Human Rights Watch, Hoffman argued Kiobel to the Supreme Court. He shared his views on the ruling in an exclusive interview with the WSW.

WSWS: What was your reaction to the Supreme Court's ruling?

Hoffman: I was of course disappointed that our clients' claims against Shell Oil were dismissed. I was really surprised by the reasoning, which was geared to reaching a specific conclusion rather than objectively analyzing the law. The Supreme Court used the presumption against extraterritoriality, which the justices themselves conceded doesn't really apply here because the Alien Tort Statute was enacted specifically to reach wrongful conduct outside the United States, such as piracy on the high seas or based in foreign countries.

WSWS: Why should US courts be open to non-citizens who want to sue foreign corporations for human rights violations committed in other countries?

Hoffman: That is, of course, the key question. When you look at our case, all of our plaintiffs were driven out of Nigeria because of human rights violations allegedly at the hands of Shell Oil and the Nigerian dictatorship. They received political asylum in the US and noticed there were Shell gas stations everywhere; Shell is making a lot of money in the United States.

The traditional rule is that if someone has a claim against a defendant and can find that defendant somewhere, there is jurisdiction over the defendant for a lawsuit. This legal rule, known as the "transitory tort

doctrine," means simply that liability for wrongful conduct follows the defendant. Chief Justice Roberts' majority opinion distorts this well-established doctrine to support the result the majority wanted in this case, which is to close US courts to what are called "foreign cubed" cases, where the plaintiffs and defendants are non-citizens, and the key events happened outside the United States.

The human rights community has long advocated that the courts of all countries and international tribunals should be open to redress serious human rights violations like extra-judicial killings, torture, and genocide. There should be universal jurisdiction so that victims can go after the perpetrators wherever they can be found. While the human rights community has pushed for as many forums as possible, among the few which have been available for human rights claims are the US district courts, which were able to exercise jurisdiction under the ATS until this recent decision.

WSWS: Is there an international court where the plaintiffs could have filed suit?

Hoffman: The international tribunals have focused on the criminal prosecution of individuals, but there's no international civil court for asserting claims against corporations. Civilly, a person has to sue in a national court someplace. The only choices here were the Netherlands, Nigeria, or the United States.

I'd be the first one to say if someone could get justice where he or she comes from against a company like Shell, that would be better. Our clients are in the United States, however, because they were granted political asylum because of human rights violations in Nigeria. They obviously could not return to their native country and sue Shell. That leaves The Netherlands. Why should our clients have to cross the Atlantic Ocean to a country where they don't speak the language to sue

when Shell is here in the United States?

WSWS: *What are the consequences of this decision on other cases?*

Hoffman: Fortunately, the decision is, at present, limited to “foreign cubed” cases. The Supreme Court has left open whether human-rights cases can be brought in US courts against US corporations who commit human-rights abuses abroad, for example, or other situations where the US connection is much closer than it was in this case.

I’ve got a case pending in the District of Columbia Circuit Court of Appeals called *Doe v. Exxon*, where human rights violations were backed by a US corporation in Indonesia. There are a number of other cases like that around the country. We are being asked to file briefs. We’ll soon learn what impact the *Kiobel* decision will have.

There are very strong arguments that where the defendant is a US corporation or a US individual the reasoning in *Kiobel* should not apply. Roberts’ and Kennedy’s opinions don’t say how far the majority of the Court will go, so it’s going to have to be litigated for the next few years until the Supreme Court takes another case.

I’m especially concerned that ATS claims can still be pursued against foreign individuals who commit acts of torture or genocide abroad and then are given residency in the US. There have been several successful cases of that sort over the years, including one against the former dictator of the Philippines, Ferdinand Marcos, who fled to Hawaii in 1986 and was successfully sued by his victims and their survivors.



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