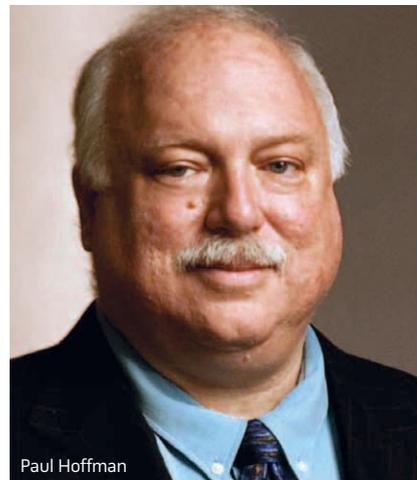




In Pursuit of Torturers

More than any other lawyer in the country, Paul Hoffman is responsible for turning an obscure 1789 law called the Alien Tort Statute into a potent weapon. Under the ATS, Hoffman has, on behalf of human rights victims, successfully sued foreign nationals as well as corporations in U.S. federal courts for acts committed abroad. But just last fall Hoffman's strategy was put to a critical test when he argued an ATS case before the U.S. Supreme Court (*Kiobel v. Royal Dutch Petroleum Co.*, 2013 WL 1628935 (U.S.)). In March, while the Court's decision was still pending, UC Hastings law professor Naomi Roht-Arriaza interviewed Hoffman in San Francisco. Here are edited excerpts from that videotaped discussion. (Update on page 59.)



Paul Hoffman



Earn MCLE credit by viewing the full videotaped interview at callawyer.com.

Legally Speaking is a series of in-depth interviews with prominent lawyers, judges, and academics, coproduced by *California Lawyer* and UC Hastings College of the Law.

Q: How does a boy from the Bronx end up doing this kind of work?

I grew up with relatives who talked about the people in my family who did not survive the Holocaust. So that left a fairly strong impression on me. Then, as a student at the London School of Economics, I had a tutor who had just escaped from Idi Amin's Uganda. So we spent most of that year working on human rights issues relating to Uganda, and that's when I started my work with Amnesty International.

How is it that under the Alien Tort Statute our federal courts get to consider cases that involve non-U.S. citizens for human rights abuses that happened outside the United States?

Well, the enforcement of international law sometimes creates problems. The founders understood that in 1789 when they passed the law. But the litigation of those cases might also solve problems. ... The founders actually had respect for the law of nations. They didn't know about human rights and it was a different law of nations back then, but the enforcement of the law of nations through the Alien Tort Statute

that we see today is very faithful to the original purpose of that statute, that purpose in part being a commitment by the United States to enforce its international obligations.

Talk a little bit about the experiences that have most moved you while doing this work.

There are a lot of them. But the one that I think had the most impact on me involved three Ethiopian women who found their torturer entirely by accident in an Atlanta hotel where he was working as a bellhop. One of the women, Elizabeth Demissie, lived in Los Angeles, and before I started interviewing her she had never talked to anybody in an in-depth way about what happened to her. Her father had been executed, and both she and her sister were tortured in this dungeon of a place in Addis Ababa. She was 17 at the time, and her sister was 16. They were stripped and hit with wires and hung upside down with vomit-filled socks in their mouths. Her sister disappeared the next day.

So we had to have this conversation to get her ready for trial knowing that [her alleged torturer] was going to be

the one to cross-examine her, since he was representing himself. So it was an intense experience. But Elizabeth had this incredible strength and dignity. And I remember at one point in the cross-examination [the defendant] said something to her like, "You're lying. Why would I do this to you?" And she looked him in the eye and said, "I've been waiting 17 years for you to tell me that." And then she testified about how she would never have children because she would never bring kids into a world like this. And to me it was like the walls of the court were crying. I mean, everybody was crying.

When you talk to ATS plaintiffs, you know they're not going to get a lot of money. Either the defendant doesn't have assets, or the defendant has hidden the assets away and you won't be able to get at them. So what is it that people are looking for when they come to you?

I think they're looking for a lot of different things. They're looking to be heard. They're looking for some form of justice. They're looking for some form of accountability. They want

Continued on page 59

either a judge or a jury to find that the person who killed their father or tortured their sister or tortured them is found to have done it.

I also think they hope to be part of building a structure that eventually deters human rights abuses so that it won't happen to others.

Watch the full interview at www.callawyer.com.

UPDATE: On April 17, nearly six weeks after Paul Hoffman's Legally Speaking interview, the U.S. Supreme Court ruled in *Kiobel v. Royal Dutch Petroleum* that the human rights abuses alleged to have occurred in Nigeria were too remote from the U.S. to provide for federal court jurisdiction under the Alien Tort Statute. We asked Hoffman what this would mean for the future of ATS litigation.

The Supreme Court's decision in *Kiobel* is extremely narrow on its face. A slender majority of the Court found that the principles underlying the presumption against extraterritoriality apply to ATS actions occurring on foreign soil. But the majority found the principles underlying the presumption applicable to the *Kiobel* plaintiffs' claims because all parties were non-U.S. citizens and all of the relevant conduct took place outside the United States. That means that most, if not all, cases involving foreign plaintiffs and foreign defendants where the conduct took place on foreign territory will likely be wiped out.

But Justice Kennedy, who supplied the crucial fifth vote for the majority, wrote separately to underscore the fact that the Court was careful "to leave open a number of significant questions regarding the reach and interpretation of the Alien Tort Statute." The most important category of cases raising such issues will be cases in which U.S. corporations have been involved in human rights violations abroad. There can be no question about the legitimacy of U.S. courts hearing such cases, and such cases would trigger potential U.S. responsibility under international law and thus fit the rationale for the ATS as understood by the majority.

Similarly, the Court did not eliminate the line of cases, starting with *Filartiga v. Pena-Irala*, against individual perpetrators found within the United States. Providing safe haven for such individuals here is also likely to satisfy the Court's requirement for a stronger U.S. connection. [CL](#)