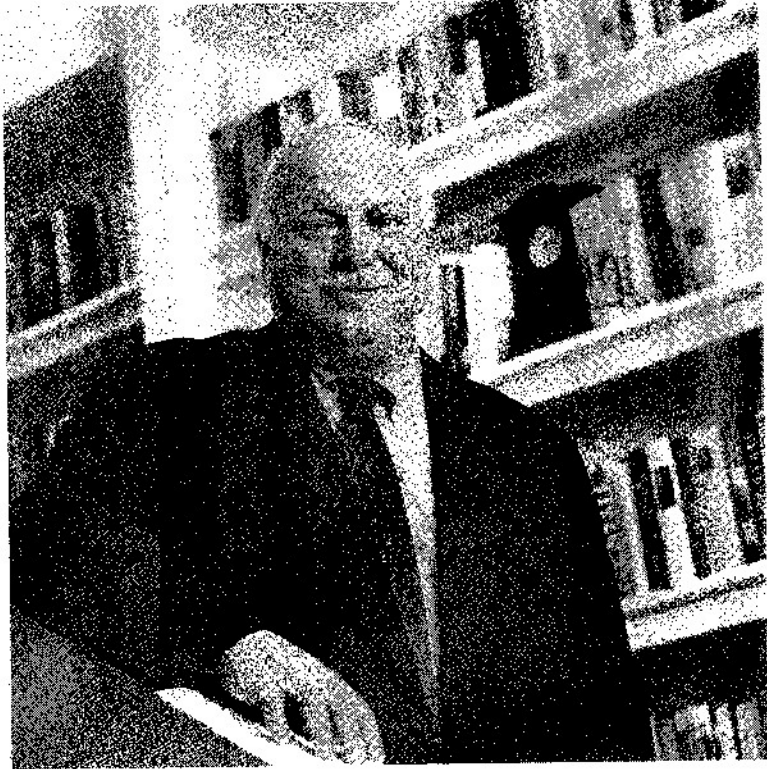


Former ACLU legal director Paul Hoffman holds U.S. corporations accountable for their human rights abuses overseas



The Burmese generals ask: what's wrong with a little forced labor? BY MARK THOMPSON

The villages of the Tenasserim region of Myanmar, as Burma is now known, seem worlds away from Paul Hoffman's law office on Ocean Front Walk, a stone's toss from the zany cacophony of the Venice Beach scene. But Hoffman has spent a good deal of his summer immersed in events that unfolded a decade ago in these villages across the ocean.

Hoffman has devoted much of his legal career to cases that have taken him far afield from Los Angeles, where he has practiced since graduating from New York University Law School in 1976. "He's clearly the most important litigator in the country regarding the Alien Tort Claims Act [ATCA]," says Reed Brody, special counsel with New York-based Human Rights Watch, referring to the law on which Hoffman bases many of his lawsuits.

Enacted in 1789 by the first U.S. Congress, the ATCA remained dormant until the late 1970s when some enterprising lawyers in New York dusted it off to sue a former Paraguayan police official then living in Brooklyn. The suit was brought on behalf of the family of a man the official had tortured to death. Since then Hoffman, a New York native of Lithuanian Jewish descent who lost an untold number of family members in the Holocaust, has been in the thick of litigation that has revived the 216-year-old statute. The law states — without much elaboration — that the federal courts can have jurisdiction over civil actions seeking

compensation for offenses "committed in violation of the law of nations or a treaty of the United States."

In the 1980s, when Hoffman was legal director of the ACLU of Southern California, he helped victims of human rights abuses in the Philippines win a judgment against deposed Filipino strongman Ferdinand Marcos, after Marcos fled to Hawaii. In 2004, Hoffman argued a case before the U.S. Supreme Court on

"Over the objections of the Bush administration and corporate interests ... the [Supreme Court] affirmed the ability to bring the kinds of ATCA cases that we have been bringing," says Hoffman.

behalf of Humberto Alvarez-Machain, a Mexican doctor who was accused of complicity in the murder of a U.S. drug agent in 1985. Alvarez-Machain was kidnapped in Mexico at the behest of U.S. authorities and delivered to the United States for a trial in which he was ultimately acquitted. In the ruling handed down in June, Hoffman's client lost when the court determined that a relatively brief, arbitrary detention is not the sort of violation of international law that was meant to be covered by the ATCA. But on the larger principle at stake — whether the Act itself created any cause of action in U.S. courts — the ruling was a “huge victory for human rights in general,” Hoffman says. “Over the objections of the Bush administration and corporate interests in the country and countries that are a target of these claims, the court affirmed the ability to bring the kinds of ATCA cases that we have been bringing — cases involving torture and extrajudicial killings and war crimes, that kind of thing.”

Critics of foreign tort claims litigation begrudgingly concede that Hoffman won at least a partial victory. The Supreme Court “left the door slightly ajar” for foreign tort cases, according to Richard Samp, chief counsel for the Washington Legal Foundation, a conservative public-interest group. “One can be sure that people such as Mr. Hoffman are going to try to squeeze everything they can through that slightly ajar door.”

Hoffman agrees that the nuances in the ruling will have to be fleshed out in subsequent cases. By all accounts, the most important case on the heels of Alvarez-Machain is Hoffman's suit on behalf of villagers in Myanmar. Four battalions of that nation's military were allegedly deployed to guard a gas pipeline, and they extracted forced labor from the villagers and tortured and killed some who resisted. According to Hoffman, the case was properly brought in U.S. courts under the ATCA because the pipeline was built by a consortium of companies including Los Angeles-based Unocal Corp.

A victory for Hoffman would result in a dramatic expansion of the statute to encompass cases in which U.S. corporations could be held liable for aiding and abetting human rights abuses abroad. A three-judge panel of the U.S. Court of Appeals for the

Ninth Circuit has already issued a ruling in Hoffman's favor, but now the full court is reconsidering the case in light of the recent Supreme Court ruling.

Unocal's lawyers have disavowed any responsibility in the matter, saying that the company and its partners had no control over soldiers who may or may not have committed abuses. Foreign investment in any country with a less than pristine human rights record would be risky if Hoffman prevails, the company's lawyers warn.

“That's a silly argument,” Hoffman retorts. Unocal and its partners hired soldiers and continued to cooperate with them even though they knew the soldiers were responsible for forced labor and other abuses, Hoffman insists. “That's completely different from investing in a country where human rights violations happen to occur.” For Hoffman, a victory would be a small but important step toward a more humane world, he says. ❖

How many Super Lawyers can you spot in this ad?



That's right, Rutan & Tucker LLP, Orange County's oldest and largest law firm is proud to have no fewer than 33 of its partners on the Super Lawyers list. Several attorneys are included from each of the firm's practice areas: Corporate/Tax, Real Estate, Litigation, Municipal and Government Agency Law and Labor and Employment. That's because Rutan & Tucker is committed to delivering the best possible legal representation and service to all its clients. Call us at (714) 641-5100 or visit us at www.rutan.com