Rigging the Rig: The Merits of American Jurisprudence in Enhancing Jurisdictional Arguments in Nigeria's Oil and Gas Law

Mofe Obadina
American University Washington College of Law

Follow this and additional works at: https://digitalcommons.wcl.american.edu/aublr

Part of the International Law Commons, Jurisdiction Commons, and the Oil, Gas, and Mineral Law Commons

Recommended Citation

This Note is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University Business Law Review by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.
RIGGING THE RIG: THE MERITS OF AMERICAN JURISPRUDENCE IN ENHANCING JURISDICTIONAL ARGUMENTS IN NIGERIA’S OIL AND GAS LAW

MOFE OBADINA*

I. Introduction ................................................................................................................. 328
II. The Evolution of Energy Use and the Development of Nigeria’s Environmental Law .................................................................................................................. 329
   A. The Early Beginnings of Energy Resources in Nigeria.. 329
   B. Shell and Nigeria: A Tumultuous History......................... 330
   C. The Slippery Slope of Oil Activities ................................. 332
   D. A Spud-In at Local Cases in International Places: How the TCC Decided Okpabi v. SPDC ........................................... 332
   E. Opening a Vee-Door for Success: How the U.S. Decides Jurisdictional Questions ......................................................... 334
   F. The Jurisdiction Question: Determination, Purpose, and Utility..................................................... 337
III. The Impact of Inconsistent Rulings in Addressing Jurisdiction Questions in Nigeria ................................................................. 337
   A. Using the American Specific Personal Jurisdiction Principles: How Should the Okpabi Appeal be Tailored?......................................................... 338
      i. Specific Personal Jurisdiction Answers the Question of Foreseeability........................................ 338

* Note and Comment Editor, American University Business Law Review, Volume 7; J.D. Candidate, American University Washington College of Law, 2018. I would like to thank the American University Business Law Review staff for its hard work with my piece, an extra special thanks to Hilary Rosenthal, Nate Roy, and Nana Amoo for their patience and dedicated feedback. I would also like to thank Professor Matthew Glasser for all his insight and input throughout this process, my friends and family for their continued support from the day I started writing until now, and most importantly God for bringing me this far. I am truly honored and thankful for the opportunity to shed light on an important issue that is near and dear to my identity as a Nigerian.
I. INTRODUCTION

In January 2017, the Technology and Construction Court in London ("TCC") used a duty of care analysis to dismiss Okpabi v. Royal Dutch Shell Plc\(^1\) for lack of jurisdiction; exemplifying a trend in which British courts favor a duty of care analyses over clear jurisdictional analyses to find jurisdiction.\(^2\) Small communities in the Nigeria’s Niger Delta brought an action against Royal Dutch Shell PLC ("RDS") and Shell Petroleum Development Company of Nigeria ("SPDC"), a subsidiary of RDS, based in Lagos, Nigeria.\(^3\) The communities sought compensation for the oil spills that caused extreme environmental damage, loss of livelihoods and income, and the absence of clean drinking water.\(^4\) The plaintiff represents members of the Bille and Ogale communities, who experienced a decline in their livelihoods as farmers and fishermen because major bodies of water have been contaminated by crude oil.\(^5\) The court ruled that because the parent company, RDS, did not have proper jurisdiction in the English courts, the

---

1. Okpabi v. Royal Dutch Shell Plc [2017] EWHC (TCC) 89 (Eng.).
2. See id. [122].
4. See Ellyatt, supra note 2 (reporting that the residents of the Bille and Ogale communities say they have not had clean drinking water since 1989 because of oil spills).
5. See id.; see also AMNESTY INT’L, NIGERIA: PETROLEUM, POLLUTION AND POVERTY IN THE NIGER DELTA 27 (Amnesty International Publications 2009), http://www.amnestyusa.org/sites/default/files/afr440172009en.pdf [hereinafter PETROLEUM, POLLUTION AND POVERTY] (summarizing women have reported that the shellfish in the mangroves that they rely on for sale and food, and which are easily destroyed by pollution due to their sedentary nature, are disappearing because of oil pollution).
subsidiary, SPDC, was therefore also not subject to the TCC jurisdiction. The judge asserted a duty of care analysis to find that the plaintiffs could not prove that (1) the harm was foreseeable to RDS, (2) the two defendants were not in close operational proximity to each other, and (3) it would be unreasonable, unfair, and unjust to subject RDS to jurisdiction in England.

The plaintiff’s appealed the decision and contended that the judge’s reading of the facts was too narrow.

This Comment argues that on appeal, the TCC should reverse the lower court for failing to find jurisdiction through a duty of care analysis and, instead, find jurisdiction through a specific personal jurisdiction, derived from American jurisprudence. Specific personal jurisdiction would allow the plaintiff to present facts that highlight the contacts and relationships shared between RDS, SPDC, and the English forum. Part II provides a comprehensive background on the nature and importance of oil and gas operations in Nigeria and gives a brief primer on cases similar to Okpabi. These cases highlight the problems with a duty of care analysis and illustrate the need for consistency in jurisdictional rulings. Part II further explains how the United States Supreme Court has found jurisdiction over foreign, corporate defendants. Part III argues that the TCC should consider reexamining Okpabi solely through a personal jurisdiction analysis, as opposed to a duty of care analysis, to determine TCC jurisdiction. Part IV recommends that the Nigerian legislature create long arm statutes to govern oil and gas disputes and utilize special subject-matter jurisdiction courts. Finally, this Comment concludes that U.S. personal jurisdiction jurisprudence is valuable because it (1) promotes reliance on unique facts; (2) encourages specific personal jurisdiction; and (3) enhances stability and reliability in foreign corporation disputes.

II. THE EVOLUTION OF ENERGY USE AND THE DEVELOPMENT OF NIGERIA’S ENVIRONMENTAL LAW

A. The Early Beginnings of Energy Resources in Nigeria

Nigeria has abundant primary energy resources, such as crude oil and natural gas, coal, and tar sands, as well as renewable energy resources such

---

6. See Okpabi [2017] EWHC (TCC) 89, [122] (holding that no duty of care was owed by the Shell Group and, therefore, not by RDS).
7. Id. [113]-[15],[22].
as water, fuelwood, solar, wind, and biomass.\textsuperscript{9} The Niger Delta, located in the southernmost part of Nigeria, “is among Africa’s most densely populated regions, as well as among the world’s ten most important wetlands.”\textsuperscript{10} The Niger Delta is also the location of the crude oil reserves, which are predominantly found in small fields in the coastal areas.\textsuperscript{11} Nigerian oil is classified as “light” and “sweet,” a quality that makes it particularly sought after because it is less expensive to refine and transport.\textsuperscript{12}

Since the late 1960s, the Nigerian economy has been primarily dependent on oil exploitation to meet its development, energy, and power needs.\textsuperscript{13} Nigeria began producing oil in 1958, after RDS discovered crude oil in the Niger Delta in 1956.\textsuperscript{14} Since 1937, however, when Nigeria granted Shell D’Arcy (SPDC’s predecessor) oil exploration rights, RDS has effectively grown and maintained a monopoly over the oil and gas industry in the country.\textsuperscript{15} Today, the “oil and gas sector represents 97 percent of Nigeria’s foreign exchange revenues and contributes 79.5 percent of government revenues.”\textsuperscript{16}

\textbf{B. Shell and Nigeria: A Tumultuous History}

SPDC is the Nigerian subsidiary of RDS and is the largest onshore
producer of crude oil in the Nigera. SPDC’s operations are primarily conducted in the Niger Delta, with much of the infrastructure located near local communities’ homes, farms, and water sources. The first commercially producing oil field was discovered in Oloibiri, Bayelsa State in 1956 and RDS commenced drilling. Since that time, additional high producing oil fields have been discovered in the Niger Delta area, leading to the creation of, for example, the Bonny, Forcados, and Qua Ibo wells. After discovering these new fields, SPDC’s production capacity increased dramatically, and now has “over 6,000 kilometers of pipelines, 87 flow stations, eight gas plants, and more than 1,000 producing oil wells,” making SPDC the largest private-sector oil and gas company in Nigeria.

SPDC is also party to the largest joint oil venture in Nigeria, covering over 31,000 square kilometers of land and producing an estimated forty percent of Nigeria’s crude oil output. SPDC currently produces over 200,000 barrels of oil a day through its joint venture agreement with the Nigerian National Petroleum Corporation (“NNPC”), National Agip Oil Company Limited (“NAOC”), and Total Petroleum Nigeria Limited (“TPNL”). Through this collaboration, SPDC discovered more oil fields and natural gas

17. Id.; see also HUMAN RIGHTS WATCH, supra note 9, at 27-28 (noting that SPDC, originally Shell D’Arcy, was the first company to obtain rights to Nigerian oil).
18. Id. at 62-64 (describing the effects of the infrastructure on the land and livelihood of the local communities).
19. See Kairn A. Klieman, U.S. Oil Companies, the Nigerian Civil War, and the Origins of Opacity in the Nigerian Oil Industry, 99 J. AM. HIST. 155, 157 (2012); see also HUMAN RIGHTS WATCH, supra note 9, at 25; see also William Wallis & Anjli Raval, Shell Proves Test Case for Oil Majors’ Environmental Records, FIN. TIMES (Mar. 1, 2016), http://www.ft.com/content/90b2a612-dc4-11e4-b072-006d876362b3.
23. See HUMAN RIGHTS WATCH, supra note 9, at 28 (stating that SPDC is the operator of a joint venture between NNPC and two other corporations, and that SPDC accounts for 30% of that venture and NNPC accounts for 55%).
24. See id. at 29 (explaining that NAOC a small joint venture run by Agip, NNPC, and Phillips Petroleum and stating that NAOC produces oil mainly from small, onshore fields).
25. See generally WHO WE ARE, supra note 21 (emphasizing that Total E&P has a 10% stake in the joint venture).
reserves. As of September 2017, Nigeria is among the top ten largest crude oil producers in the world.

C. The Slippery Slope of Oil Activities

The integrated system of oil and gas production has not translated into economic prosperity and social growth for many in the Niger Delta region because the oil operations caused severe environmental degradation to the fragile biodiverse region. The Niger Delta suffers from a series of problems: the area has poor infrastructure, some members of its communities live on less than one dollar per day, SPDC’s local employees face rampant discrimination, access to clean drinking water is poor as a result of oil spills, and many citizens suffer from health issues as a result of the pollution and gas flaring. Furthermore, the environmental damage has led to the degradation of the health and livelihood of the Ogoni people, whose homeland is in the Niger Delta. These social, environmental, and health issues are evidence of the oil and gas industry’s devastating impact on the Niger Delta.

D. A Spud-In at Local Cases in International Places: How the TCC Decided Okpabi v. SPDC

Alleging negligence and seeking redress for the lack of clean water sources in Ogoniland, plaintiffs from the Bille and Ogale communities sued
both RDS and SPDC in the TCC. Typically, when suing a corporation, plaintiffs must sue where the corporation is incorporated. Therefore, the plaintiffs chose forum in England, where RDS is incorporated. In January 2017, the Okpabi court found for the defendants in the preliminary jurisdiction hearing. It held that the parent company, RDS, was not subject to jurisdiction in England because there was no duty of care imposed on RDS through its associations with its subsidiary, SPDC. The court applied the three-pronged duty of care analysis: (1) foreseeability, (2) proximity, and (3) reasonability. It concluded that all three prongs were absent and, thus, RDS owed no duty of care to the plaintiffs or to SPDC. To discuss the foreseeability and proximity requirements, the court cited Caparo v. Dickman which originally put forth the three-part foreseeability test used to determine whether there is sufficient proximity between a parent and its subsidiary for a duty of care to attach. In Chandler v. Cape Plc, the court reinforced and elaborated on the foreseeability test, asking whether (1) the parent and subsidiaries operate the same businesses; (2) the parent has, or should have, relevant superior or special knowledge compared to the subsidiary; (3) the parent had, or should have had, knowledge of the subsidiary’s systems of work; and (4) the parent knew, or should have foreseen, that the subsidiary or its employees would rely on the parent using its superior knowledge to protect the claimants. Donoghue v. Stevenson demonstrated that companies “must take reasonable care to avoid acts or omissions” that are reasonably foreseeable to cause injury to those so closely and directly affected by the corporation’s actions. Where a duty of care is found to have been present for the parent company, it may also extend to

34. Id. [13], [122] (stating the case was heard from November 22 to November 24, 2016, and the decision was announced on January 26, 2017).
35. Id. [122].
36. Id. [108].
37. Id.
38. Id. [72] (promulgating that courts must apply the three-part test of foreseeability, proximity, and reasonableness to find a duty of care).
40. Chandler v. Cape, [2012] EWCA (Civ) 525 (Eng.).
41. Id. [80]; see also Okpabi [2017] EWHC (TCC) 89, [77].
42. Donoghue v. Stevenson [1932] AC 562 (HL) 580 (appeal taken from Scot.).
43. Id. at 580.
employees of the subsidiary.\textsuperscript{44} For the reasonability requirement, a duty is assessed by weighing the relationship of the parties, the nature of the risk, and the public interest in the proposed solution.\textsuperscript{45} In applying Donoghue and Caparo, the TCC decided that (1) the harm was not foreseeable to RDS, (2) RDS, as the parent corporation, did not have superior knowledge over SPDC, and (3) it was unreasonable to subject RDS to English jurisdiction because it would not be just, fair, or reasonable.\textsuperscript{46}

E. Opening a Vee-Door for Success: How the U.S. Decides Jurisdictional Questions

Jurisdictional cases are more successful in U.S. courts which offer a suitable template for approaching and rectifying the jurisdictional problems in cases like Okpabi.\textsuperscript{47} International Shoe v. Washington,\textsuperscript{48} Daimler AG v. Bauman,\textsuperscript{49} and Asahi Metal Industry Co. v. Superior Court of California\textsuperscript{50} illustrate the two main theories in U.S. jurisdictional jurisprudence: the minimum contacts test and the stream of commerce tests.\textsuperscript{51} A foundational case in U.S. jurisdictional jurisprudence is International Shoe, in which the petitioner was a Delaware corporation with its principal place of business in Missouri, and the respondent was the state of Washington who wished to collect on allegedly delinquent state unemployment fees.\textsuperscript{52} The petitioner argued that it was improperly served due to a lack of jurisdictional authority over the petitioner because it (1) had no registered agents in the state, (2) was not an employer in the state, and (3) was not a corporation doing business in

\textsuperscript{44} Thompson v. Renwick Grp. plc [2014] EWCA (Civ) 635, [37] (Eng.); see also Chandler [2012] EWCA (Civ) 525 [80].

\textsuperscript{45} Chandler [2012] EWCA (Civ) 525 [80].

\textsuperscript{46} Okpabi v. Royal Dutch Shell Plc [2017] EWHC (TCC) 89, [113], [118]-[19] (Eng.).

\textsuperscript{47} See, e.g., Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985) (holding that “[j]urisdiction is proper... where the contacts proximately result from actions by the defendant himself that create a ‘substantial connection’ with the forum State.”); Hanson v. Denckla, 357 U.S. 235, 253 (1958) (summarizing that minimum contacts must have a basis in “some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”); McGee v. Int’l Life Ins. Co., 355 U.S. 220, 223 (1957) (stating that “[i]t is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State.”).

\textsuperscript{48} Int’l Shoe Co. v. Washington, 326 U.S. 310 (1945).


\textsuperscript{50} Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102 (1987).

\textsuperscript{51} See Daimler AG, 134 S. Ct. at 750-51; Asahi Metal Indus., 480 U.S. at 105-06; Int’l Shoe Co., 326 U.S. at 313.

\textsuperscript{52} Int’l Shoe, 326 U.S. at 313.
Washington and, therefore, the Supreme Court should set aside the respondent’s notice. However, the Court ruled that the corporation was properly served and subject to personal jurisdiction because it maintained sufficient “minimum contacts” with the forum state, therefore making it reasonable for the corporation to defend a lawsuit in Washington. This standard, known as the “minimum contacts test,” instructs that “contacts or ties with the state of the forum to make it reasonable and just, according to our traditional conception of fair play and substantial justice, to permit the state to enforce the obligations which appellant has incurred there.”

Similarly, in Perkins v. Benguet, a nonresident of Ohio state sued a company based in the Philippines. Here, the Court decided that because Benguet had maintained a “continuous and systematic, but limited, part of its general business [in the forum state, Ohio]” by paying salaries, maintaining bank accounts and business correspondence, and conducting directors’ meetings in Ohio, it was fair to subject the foreign company to the Ohio courts.

Furthermore, in Daimler, Argentinian respondents sued a California company, alleging that the company’s subsidiary committed human rights violations in Argentina. The petitioner was a German company, but the respondents based their claim on the petitioner’s subsidiary, Mercedes-Benz USA, LLC (“MBUSA”), which was incorporated in Delaware and had its principal place of business in New Jersey. The respondents based jurisdiction on the fact that MBUSA distributed the petitioner’s cars to California and had various facilities and offices in California. However, the petitioner argued that the alleged acts took place outside of California.

53. Id. at 312-13.
54. Id. at 316, 321; see also Hanson v. Denckla, 357 U.S. 235, 251 (1958) (“However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the ‘minimal contacts’ with that State are a prerequisite to its exercise of power over him.”).
55. Int’l Shoe, 326 U.S. at 320; Edmond R. Anderson Jr., Personal Jurisdiction Over Outsiders, 28 Mo. L. Rev. 336, 345 (1963) (“[The minimum contacts test is] a flexible standard governing state courts’ exercise of personal jurisdiction over foreign corporations, i.e., contacts or ties with the state making it reasonable and just according to traditional notions of fair play and substantial justice.”).
57. See id. at 439 (reporting that the primary reason for suit was to compel the corporation to issue stock certificated and dividends).
58. Id. at 445; Anderson, supra note 56, at 346.
60. Id.
61. Id. at 752.
and the U.S. so there was no basis for personal jurisdiction. The Court held that the petitioner corporation’s contacts with California were minimal and not continuous or systematic, thereby not subjecting it to personal jurisdiction because the corporation’s conduct did not occur in or impact the state.

Lastly, in Asahi, a California resident brought a products liability claim against a Japanese corporation. The respondent relied on a stream of commerce argument to justify jurisdiction in California because the petitioner allegedly knew that some of its products would end up in California. Rejecting this argument, the Court reasoned that although the petitioner may have known that its product might end up in California, the petitioner took no further action to “purposely avail itself of the California market” evidenced by its lack of agents, property, employees, or offices in the forum state. In deciding Asahi, the Court, attempting to clarify the stream of commerce standard for determining whether “minimum contacts” has been established, announced two competing tests:

Justice O’Connor’s stream of commerce plus test [which] require[s] ‘additional purposeful actions directed at the forum besides simply putting a product in the stream of commerce with knowledge that the product would be sold in the forum state[,]’ . . . [and] Justice Brennan[‘s] . . . pure stream of commerce test, which require[s] no showing of additional conduct . . . ‘to sustain jurisdiction in the forum where that product causes injury.’

Overall, the specific personal jurisdiction cases in the U.S. creates a consistent narrative. The tests identify a level of contact between the parties which, in turn, determines whether a case may be heard in a given forum, prior to any determination of a duty. Likewise, each test must be applied

62. Id. at 751.
63. Id. at 761-62.
65. Id. at 112.
66. Id. at 103, 112; see also Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 929 (2011) (reasoning that the three subsidiaries’ connections with North Carolina were not continuous and systematic and, thus, the stream of commerce argument was unsuccessful because the respondents were unable to show that the petitioner purposely availed itself of the state).
67. Kaitlyn Findley, Comment, Paddling Past Nicastro in the Stream Of Commerce Doctrine: Interpreting Justice Breyer’s Concurrence as Implicitly Inviting Lower Courts to Develop Alternative Jurisdictional Standards, 63 EMORY L.J. 695, 710-712 (2014) (explaining that the two tests were each supported by four justices).
68. See Asahi Metal Indus., 480 U.S. at 108-09 (stating the rule for establishing whether or not a court has jurisdiction to hear a case).
to the specific facts of each case.\textsuperscript{69}

\subsection*{F. The Jurisdiction Question: Determination, Purpose, and Utility}

Proper adjudication requires that all issues pertinent to the merits of a suit be raised and answered at the beginning stages of litigation.\textsuperscript{70} The goal of addressing jurisdiction is to ensure that the case is brought in the appropriate forum and to guarantee that the court has the proper authority to hear the case.\textsuperscript{71} Another goal is efficiency; it would be counterproductive to the judicial process to fully try a case on the merits and then move for objections to venue or demurrers.\textsuperscript{72} Frequently, duty of care frameworks, rather than specific personal jurisdiction analyses, are used to ascertain adjudicatory authority in oil and gas lawsuits against foreign companies.\textsuperscript{73} However, this method of deriving adjudicatory authority in foreign courts over Nigerian oil and gas disputes has resulted in inconsistent rulings and the unavailability of effective precedent.\textsuperscript{74}

\section*{III. The Impact of Inconsistent Rulings in Addressing Jurisdiction Questions in Nigeria}

Due to inconsistent applications of the duty of care analysis, preliminary jurisdiction hearings for Nigerian oil and gas cases fail to balance business interests and human rights.\textsuperscript{75}

\textsuperscript{69} Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 445 (1952) (discussing that the amount and type of activities necessary to exercise specific personal jurisdiction are determined by the facts of each case).


\textsuperscript{71} Dobbs, supra note 70, at 491.

\textsuperscript{72} See, e.g., Okolo v. Union Bank Ltd. [2004] 3 NWLR 87, 110 (Nigeria) (ruling that when the court finds that it does not have jurisdiction to hear and determine the matter before it, the proper order is to strike out the action so that the court would not carry out an exercise in futility and end up having its proceedings and outcomes amounting to nothing); see, e.g., Pre-Trial Motions, DOJ, https://www.justice.gov/usa/justice-101/pretrial-motions (last visited Mar. 31, 2018) (suggesting that other lines of defense are motions to suppress and motions to dismiss).


\textsuperscript{74} Id.

\textsuperscript{75} Id. at 39-40 (noting that prior cases relied on the parent company-subsidiary company liability theory under corporate governance).
A. Using the American Specific Personal Jurisdiction Principles: How Should the Okpabi Appeal be Tailored?

To secure the consistency of jurisdiction jurisprudence, the court should reverse the Okpabi decision because the TCC improperly relied on a duty of care analysis as a form of ascertaining jurisdiction. The current approach leads to “an inquiry into what part the defendant played in controlling the operations of the group, what its directors and employees knew or ought to have known, and what action was taken and not taken.” Instead, the analysis should be limited to the substantial connections and relations that create links between the parties and the forum. If U.S. standards are applied, Okpabi should be permitted access to the English court.

i. Specific Personal Jurisdiction Answers the Question of Foreseeability

The Okpabi court discussed whether it was foreseeable that, from the parent company’s point of view, the parent could be held liable for the acts of the subsidiary. In doing so, the TCC focused on the defendant’s knowledge, actions, and role in business operations.” Thus, the TCC concluded that (1) there was no evidence that RDS was involved in any oil operations in Nigeria, so it was not better placed than the subsidiary to prevent harm from occurring, and (2) the degree of knowledge that RDS had over SPDC was not comprehensive or high enough for a duty of care to attach.

76. See Lungowe v. Vedanta Res. Plc [2016] EWHC (TCC) 975, [62] (Eng.) (warning that the “court should not embark on a mini-trial” in deciding on a preliminary jurisdiction hearing); Roorda, supra note 8 (explaining that the problem with a duty of care analysis for jurisdiction disputes is that it often requires the trier of fact to evaluate the merits of the case).


79. See Perkins, 342 U.S. at 447-48; Int’l Shoe Co., 326 U.S. at 321; Texas Trading & Milling Corp. v. Nigeria, 647 F.2d 300, 314 (2d. Cir. 1980) (listing the inquiries necessary to determine whether the party meets the minimum contacts necessary to fall under the court’s jurisdiction).

80. Okpabi v. Royal Dutch Shell Plc [2017] EWHC (TCC) 89, [70]-[80] (Eng.).

81. Id. [74].

82. See id. [86], [116]-[17]; see also Roorda, supra note 8 (emphasizing that while the plaintiffs focused on the interaction of RDS’ policies that influence SPDC operations, the TCC focused on the “particular working relationship between RDS and its subsidiary, SPDC” and ruled that RDS’ involvement with SPDC is minimal at best and, thus, RDS could not have prevented the harms from occurring).
However, the foreseeability requirement can instead be articulated through a specific personal jurisdiction argument by using the minimum contacts test derived from *International Shoe.* The main inquiry in the minimum contacts test is whether the interaction between the corporation or its agents and the forum state is systematic and regular. While business operations are not necessarily the focus for the minimum contacts inquiry, the focus should be the “presence of activities that occur within the state that are sufficient to satisfy due process.” In this context, RDS is liable for SPDC if: (1) it intervenes in trading operations as it relates to production and funding issues, (2) RDS deals with financial matters, such as holding shares directly in SPDC, disseminating financial statements and updating investors with SPDC’s information, all of which are “normal incidents” of a parent and subsidiary relationship, and (3) RDS has some degree of knowledge about how SPDC functions over the continuous years since 2005 that it has served as the parent company.

Under a U.S. personal jurisdiction regime, RDS would be subject to suit in England as it is incorporated there and the choice of location poses no measure of inconvenience for RDS. Incidentally, this could be beneficial to SPDC because the TCC and the parties’ lawyers have already “accumulated a body of experience and knowledge in this jurisdiction” from prior cases such as *Bodo v. Shell Petroleum Development Co. of Nigeria*.
and Lungowe v. Resources Plc. Therefore, by applying the minimum contacts principle, SPDC and RDS have maintained minimum contacts, thereby making SPDC amenable to suit in England. Finally, doing so will not “offend ‘traditional notions of fair play and substantial justice.’”

ii. Specific Personal Jurisdiction Rectifies the Question of Proximity

As RDS is already domiciled in England, there was no issue of proximity to the forum for RDS. However, for SPDC, the court’s jurisdictional inquiry focused on SPDC’s relationship with its parent company, RDS. To determine whether the proximity requirement was met, the court examined: (1) whether the party that committed the act and the person bound to take care of that person are closely related, and (2) who is better placed because of superior knowledge or expertise that they could have prevented the risk of injury. Taking these into account, the court found that RDS is ultimately a holding company because it has no employees, does not participate in any operations or provide any services, and does not involve itself or intervene in its subsidiaries’ operations. The court’s decision was based on a variety of legal technicalities to further distance the relationship between RDS and SPDC; thereby weakening the chain of liability between the claimants and the forum.

Nevertheless, using a specific personal jurisdiction argument, the principle

91. Lungowe v. Vedanta Res. Plc [2016] EWHC (TCC) 975 (Eng.); see Int’l Shoe, 326 U.S. at 317; Okpabi [2017] EWHC (TCC) 89, [42] (defining this idea as the Cambridgeshire factor); Shanker, supra note 89.

92. Int’l Shoe, 326 U.S. at 321 (ruling that because International Shoe Co. made “itself amenable to suit upon obligations arising out of the activities of its salesmen in Washington, the state may maintain the present suit in personam to collect the tax laid upon the exercise of the privilege of employing appellant’s salesmen within the state.”); Texas Trading & Milling Corp. v. Nigeria, 647 F.2d 300, 314 (2d Cir. 1980) (affirming that necessary contacts must exist before courts can exercise specific personal jurisdiction and the exercise must embody the Constitutional requirements of due process); Okpabi [2017] EWHC (TCC) 89, [42].

93. See Int’l Shoe, 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

94. See Shanker, supra note 89 (noting that the Court focused so narrowly on the operational relationship between RDS and SPDC and that many factors played a role in the court’s ruling that RDS had no duty of care over its subsidiary’s actions).


96. Okpabi [2017] EWHC (TCC) 89, [85].

97. Roorda, supra note 8 (asserting that it is now clear that “bringing claims against parent companies for misconduct of their subsidiaries is fraught with difficulties, even though it may be hypothetically possible,” especially now that the court in Okpabi court is conservatively approaching the emerging trend of transnational private liability of corporations for human rights violations).
of continuous and systematic affiliations derived from Perkins and Daimler counters the proximity issue.\textsuperscript{98} Similarly, the stream of commerce concepts from Asahi serve to illuminate the other contacts and responsibilities that could be made an ingredient of the TCC’s jurisdictional analysis, as opposed to the TCC’s analysis of RDS’ control (or lack thereof) of SPDC’s potentially exist outside of the business and operational affairs in Okpabi.\textsuperscript{99}

The stream of commerce principle derived from Asahi can be used to extend jurisdiction to SPDC.\textsuperscript{100} RDS, as the ultimate holding company of the Shell Group companies, is (1) responsible for setting the overall strategy and business principles for SPDC, (2) responsible for performance reports from SPDC, and (3) in charge of making the necessary market and investor disclosures.\textsuperscript{101} These limited, but continuous and systematic relationships bind SPDC to RDS, and, thereby, jurisdiction should be extended to the TCC.\textsuperscript{102} Most importantly, RDS is responsible for changing and amending the corporate structure of its relationship with SPDC and, therefore, even on paper, RDS is automatically better positioned to understand and foresee any risk of injury because of its superior knowledge of and relationship with SPDC.\textsuperscript{103} Thus, due to the nature of this relationship, it is fair to infer that the subsidiary will “rely upon the parent deploying its superior knowledge


\textsuperscript{99} See Okpabi [2017] EWHC (TCC) 89, [72]-[74] (quoting Lubbe v Cape Plc [2000] UKHL 41, [6]) (discussing whether the parent company “exercised de facto control over the [business] operations of a (foreign) subsidiary and knew, through its directors, that those operations involved risks to the health of workers and persons in the vicinity of the factory”); id. [4] (describing SPDC as an “exploration and [oil] production company”); Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 112 (1987) (ruling that, to place a product in the stream of commerce without any further action, does not show that the defendant purposefully directed itself towards the forum).

\textsuperscript{100} See Asahi Metal Indus., 480 U.S. at 112; see also Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2857 (2011) (deciding that North Carolina was not a sufficient forum to subject the petitioners to because they were in no way declared at home in the state and their connection fell very short of “‘the continuous and systematic general business contacts’ [that are] necessary to empower North Carolina to entertain suit against them on claims that unrelated to anything that connects them to the State.”).

\textsuperscript{101} Okpabi [2017] EWHC (TCC) 89, [85], [101] (attesting that from an organizational structure, “RDS does exercise significant control over the financial, business and operation affairs of the subsidiaries through the RDS Executive Committee,” but dismissing this as an irrelevant consideration to proximity and focusing, instead, solely on the business and operational affairs of the relationship).

\textsuperscript{102} See, e.g., Perkins, 342 U.S. at 438, 447-48 (describing a company that devoted personal attention to policy making and dispatching funds for the company during wartime as sufficiently limited activities which were continuous for a period of time).

\textsuperscript{103} See Okpabi [2017] EWHC (TCC) 89, [77],[106] (quoting Thompson v. Renwick Grp. Plc [2014] EWCA (Civ) 635, [37] (Eng.,)).
in order to protect its employees from risk of injury.”

If the entire concept of a holding company is a company that oversees the policies and management of a company it holds shares in, it then follows that the holding company must understand how the subsidiary operates to reap its benefits. Therefore, although RDS does not interfere with SPDC’s operations, SPDC’s business and financial interactions with RDS can tie SPDC to the TCC.

Unlike the defendants in Asahi who did not purposefully avail themselves of the forum state, here, the stream of commerce test is satisfied because SPDC purposely availed itself of the English forum through its relationship with RDS. Additionally, by failing to adequately operate the Nigerian subsidiary’s assets, RDS can also be held liable for the claims brought by the plaintiffs. Thus, because SPDC availed itself of the English forum vis-à-vis its connections with RDS, it is reasonable that the court should find that the defendants can be heard before the TCC and, therefore, provide an avenue for the plaintiffs to seek redress. Furthermore, the proximity requirement is better addressed using the personal jurisdiction stream of commerce principle because the totality of the interactions between both defendants are not limited solely to operational activities, but also include the financial and business relationships.

Furthermore, using the continuous and systematic rationale derived from Daimler and Perkins, the existence of the relationship between RDS and SPDC for almost twelve years gives rise to continuous and systematic

104. Id.; see generally Parent Company, INVESTOPEDIA, http://www.investopedia.com/terms/p/parentcompany.asp (last visited Mar. 31, 2018) (noting that the nature of holding companies is such that they are generally in the same industry or a complimentary industry).


106. See Okpabi [2017] EWHC (TCC) 89, [85] (detailing the operational extent of the relationship between RDS and SPDC).


108. See Okpabi [2017] EWHC (TCC) 89, [72] (emphasizing that by looking at the range of factual matters, the court can conclude that there is a claim against the parent company).

109. But see Roorda, supra note 8 (speculating that if Okpabi is decided on appeal similarly, then the “courts of parent companies’ home states [may] become inaccessible for victims of extraterritorial human rights violations.”).

110. See Okpabi [2017] EWHC (TCC) 89, [85]; Roorda, supra note 8 (noting that the TCC based a better part of the judgement on the particular working and operational relationship between RDS and SPDC).
affiliations. To the extent that RDS benefits or gains interests from its investments in SPDC’s operations, it is enough to link SPDC to RDS, which then subjects SPDC to the TCC’s jurisdiction. Accordingly, on appeal, both defendants can be hauled into court in England because SPDC’s fiscal activities, business practices, and expertise derive authority from RDS, who is incorporated in the contested forum (England).

The continuous and systematic analysis derived from Daimler and Perkins also invalidates the argument that RDS is not in an authoritative position over SPDC. It is good public policy for courts to encourage and subsequently permit extraterritorial jurisdiction over corporations that may not otherwise take responsibility for the operations and actions of their subsidiaries. Thus, the plaintiffs were correct in arguing that RDS had superior knowledge of its subsidiary’s environmental policies and because of its role as the parent company, “RDS was better placed to prevent harms to others better than SPDC itself, and should have taken certain actions to [both] avoid…” and rectify the harms.

Overall, the court did not appropriately consider RDS’ and SPDC’s financial and business ties. Therefore, by basing its decision on various legal technicalities, the court separated the relationship between RDS and


112. See Okpabi [2017] EWHC (TCC) 89, [85] (providing that RDS was not the holding company until 2005 and it was just a shell company prior to that time); see, e.g., Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011) (reiterating that the inquiry into exercising specific personal jurisdiction with single or occasional acts is whether there was some activity that the corporation purposefully availed itself of within the forum state that invoked the benefits and protections of its laws).

113. See Daimler, 134 S. Ct. at 758 (upholding that general jurisdiction now occupies a less dominant place in jurisdictional inquiries because specific personal jurisdiction increasingly focuses the inquiry on the relationship between the defendant, the forum, and the litigation claim).

114. See id.; see also Perkins, 342 U.S. at 445; Okpabi [2017] EWHC (TCC) 89, [106].

115. See generally Shanker, supra note 89 (explaining that the Okpabi decision can be read as highly fact-specific inquiry that presents hurdles for potential future suits in English courts, particularly with respect to holding parent companies liable for the actions of the foreign subsidiary).

116. See also Okpabi [2017] EWHC (TCC) 89, [87]; Roorda, supra note 8; June Rudderham, Canada: Understanding Holding Companies, MONDAQ (July 28, 2011), www.mondaq.com/unitedstates/x/134060/Directors+Officers+Executives+Shareholders/Understanding+Holding+Companies (describing that harm does not necessarily have to be material or tangible but can also be reflected as the loss of a company’s good will).

117. See Okpabi [2017] EWHC (TCC) 89, [88] (finding that “what the defendants said in their evidence should not necessarily be taken at face value” because RDS may not operate its business in the way it demonstrated on paper).
iii. Specific Personal Jurisdiction Balances the Question of Reasonableness

The Okpabi court used the “three-fold test” to determine whether the imposition of a duty upon the defendants would be “fair, just and reasonable,” and, thus, whether it is appropriate to haul the defendants into court in England. In Goldberg, the court noted that a duty exists when you weigh “the relationship of the parties, the nature of the risk, and the public interest in the proposed solution.” Similarly, the court in McLoughlin listed “[s]pace, time, distance, the nature of the injuries sustained, and the relationship of the plaintiff to the immediate victim of the accident” when applying the reasonably foreseeable test. However, the Okpabi court failed to adequately balance these general fairness interests. The Okpabi ruling created a toxic precedent which provides parents companies an incentive to remain detached from the operations of their subsidiaries to lower their chances of being held liable alongside the subsidiary.

Within the U.S. framework, reasonableness is demonstrated in terms of due process rights. Applying similar principles on appeal, the court should acknowledge that (1) the knowledge and expertise of the TCC is beneficial to both parties, (2) the joint nature of the claims against RDS and SPDC can provide the plaintiffs a positive, fair, and reasonable outcome because SPDC’s jurisdiction hinges on RDS’ claim, and (3) finding jurisdiction in this claim is reasonable, not oppressive to the defendant, and it promotes some socially desirable objective.

118. See id. [75] (concluding that whether SPDC and RDS are separate entities does not preclude the Okpabi claimants).
119. See id. [113]-[15]; see also Caparo Indus. Plc v. Dickman [1990] 2 AC 605 (HL) 633 (appeal taken from Eng.).
122. See Okpabi [2017] EWHC (TCC) 89, [113]-[15].
123. See id.; Roorda, supra note 8 (deducing that the less involved the parent companies are with health, safety, and environmental policies with their subsidiaries, the further they are from liability).
125. See Okpabi [2017] EWHC (TCC) 89, [89] (lamenting that the judge himself referred to the financial standing and positions of the claimants and the defendants; noting that the former was poor and the latter were rich but failed to adequately weigh these in considering fairness and justice); Roorda, supra note 8 (stating that the suit can only proceed against SPDC, because it is anchored if there is a claim for RDS).
126. See also McLoughlin [1983] 1 AC 410 (HL) 431.
Furthermore, access to justice should play a role in accessing jurisdiction, as it pertains to traditional notions of fair play and substantial justice. On appeal, the court should consider whether legal aid, such as financial assistance, would be available to the plaintiffs in their home forum, i.e., Nigeria. The availability of legal aid and an access to justice is dependent on a number of factors, such as whether costs are high, whether the time between commencement of the claim and a ruling is reasonable, and whether there are extenuating, unusual, or other relevant circumstances to account for.

Expanding adjudicatory authority beyond duty of care to include personal jurisdiction highlights the flexibility of the U.S. specific personal jurisdiction principles, which can be applied in the TCC. Just as these principles protect the U.S. constitutional right to due process, when these principles are applied within the context of Nigerian oil and gas cases, it can likewise further important principles enshrined in the Nigerian Constitution; dignity for the human person and the right to a fair hearing. Thus, using a specific jurisdiction analysis allows the court to weigh factors such as the defendant’s due process interests and the plaintiff’s interest in swift adjudication; the public policy implications of extending judicial authority over foreign corporations; and the state’s interest in providing a forum for citizens to seek redress for their injuries. In doing so, these factors and considerations

127. See, e.g., Lungowe v. Vedanta Res. Plc [2016] EWHC (TCC) 975, [94] (stating that access to justice in Zambia was almost impossible).

128. See Connelly v. R.T.Z. Corp. Plc [1997] UKHL 30, [30] (appeal taken from Eng.) (noting that the availability of financial assistance in the United Kingdom, coupled with the non-availability in the appropriate forum (which was Namibia) was “exceptionally... a relevant factor.”).

129. See Lungowe [2016] EWHC (TCC) 975, [169]-[198] (analyzing whether the claimants had access to justice in their home forum of Zambia); see also Hakeem Ijaiya & O.T. Joseph, Rethinking Environmental Law Enforcement in Nigeria, 5 BEIJING L. REV. 306, 315 (2014) (describing that corruption, bad governance, and poor enforcement mechanisms can also be considered during inquiries about access to justice).


131. U.S. CONST. AMEND. XIV, § 1; CONSTITUTION OF NIGERIA (1999), §§ 34, 36.

132. See Daimler AG v. Bauman, 134 S. Ct. 746, 750 (2014); Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011); Hertz Corp. v. Friend, 559 U.S. 77, 80-81 (2010); see also Anderson, supra note 56, at 337; Jayne S. Ressler, Plausibly Pleading Personal Jurisdiction, 82 TEMP. L. REV. 627, 635 (2009) (noting that a court should look at the following three things: (1) whether the cause of action “arises out of . . . the defendant’s contact with the forum,” (2) whether the “defendant purposefully availed itself of the benefits of the forum,” and (3) whether “granting jurisdiction comports with ‘fair play and substantial justice.’”); William H. Richman, Understanding Personal Jurisdiction, 25 Ariz. St. L. J. 599, 610-611 (1992) (critiquing the Supreme Court’s inconsistent use of additional interests in justifying its exercise of specific
allow for a rich and robust inquiry into each individual case, thus providing legal stability and reliability in Nigerian oil and gas disputes.

IV. PERFORMING WORK-OVERS: FEASIBLE MECHANISMS FOR CHANGE

A. Create Long Arm Statutes and Federal Legislation to Govern Oil and Gas Cases

Moving forward, to resolve oil and gas disputes at home, Nigeria should create a consistent framework for approaching jurisdiction issues in oil and gas cases through passing long arm statutes. Long arm statutes allow local courts to exercise jurisdiction over foreign corporations whose actions have caused injury to the plaintiff. In the U.S. these statutes grant authority to a state court to make a defendant corporation amenable to suit in that forum, so long as the basic principles of minimum contacts and fairness are balanced and satisfied.

Similarly, Nigeria could create long arm statutes that would guarantee the courts the power to establish jurisdiction over foreign corporations. These statutes could potentially be effective in the Niger Delta states where many of the lawsuits originate because foreign oil companies could be hauled into court in the local courts. Furthermore, they can grant those states personal jurisdiction over RDS and other oil companies based on the subsidiary’s exploration, drilling, and other related activities within the state.

Additionally, due to the Nigerian economy’s inherent dependence on oil and gas, a federal mandate should be established along the lines of international law. Such a mandate could be constructed like the Federal Tort Claims Act (“FTCA”). The FTCA allows private citizens and parties to sue the U.S. in U.S. federal court for torts committed by an agent of the U.S. Since the FTCA grants federal courts jurisdiction over all claims

personal jurisdiction, such as territorial sovereignty, defendant's inconvenience, jurisdictional surprise, state interest, and necessity).

133. Int'l Shoe, 326 U.S. at 317.
134. Id. at 316-17, 323 (noting that a balancing test is necessary when subjecting a corporate defendant to another forum; the factors to consider are the undue burden to the defendant to litigate in an inconvenient forum and the interest of the state in protecting its citizens).
135. See Hess v. Pawloski, 274 U.S. 352, 356 (1927) (holding that Massachusetts, via a long arm statute, may exercise jurisdiction over a Pennsylvania resident from an accident that occurred on a Massachusetts highway because the defendant consented to jurisdiction by merely driving on a Massachusetts state highway); see, e.g., MASS. GEN. LAWS ch. 223A, § 3 (2018); LA. STAT. ANN. § 13:3201 (2017); N.Y. C.P.L.R. § 302 (McKinney 2018).
137. See id. §§ 1346(b), 2674.
brought under that statute, a Nigerian version of such an act would automatically grant the federal courts jurisdiction over claims against oil and gas companies, but apply the local law of the jurisdiction where the act occurred. Such a statute could be beneficial for Nigeria because it would create more uniform application of the law and forge partnerships among the two levels of government who would resolve these disputes.

V. CONCLUSION

The Court in Okpabi court took a very limiting and conservative view of the meaning of operations to prevent the case from being heard by the TCC. Such an approach has potentially harmful business implications because parent corporations are now be incentivized to be less involved with the “direct operations” or actions of their subsidiaries, absolving them of answering to future liability claims. Going forward, this could deny injured plaintiffs the chance to receive adequate and just compensation for their injuries. Creating a legal framework for determining personal jurisdiction in Nigeria would provide a richer and more robust exploration of the merits of these oil and gas cases, thus moving away from the current duty of care framework. If the TCC decided Okpabi through a personal jurisdiction analysis, the TCC would likely have jurisdiction to hear the case and, potentially, provide the Bille and Ogale communities some relief.

138. See id. § 1346(b).
WASHINGTON COLLEGE OF LAW FACULTY

Administration
Carnelle A. Nelson, B.A., LL.B., LL.M., Dean of the Washington College of Law
Susan D. Carle, A.B., J.D., Vice Dean of the Washington College of Law
Brenda V. Smith, B.A., J.D., Senior Associate Dean for Faculty and Academic Affairs
Jayesh Rathod, A.B., J.D., Associate Dean for Experiential Education
*Billie Jo Kaufman, B.S., M.S., J.D., Associate Dean for Library and Information Resources
David B. Jaffe, A.B., J.D., Associate Dean for Student Affairs
Jonas Anderson, B.S., J.D., Associate Dean for Scholarship
William J. Snape III, B.A., J.D., Assistant Dean for Adjunct Faculty Affairs
Robert Campe, B.A., M.B.A., Assistant Dean for Finance, Administration and Strategic Planning
Hillary Lappin, B.A., M.A., Registrar
Angela Shirron, B.A., Assistant Dean for Admissions and Financial Aid
Randall T. Sawyer, B.A., M.A., Assistant Dean for External Relations
Elizabeth Bolds, B.S., J.D., Assistant Dean for Part-Time and Online Education

Full-Time Faculty
David E. Aaronson, B.A., M.A., Ph.D., The George Washington University; LL.B, Harvard University; LL.M, Georgetown University, B.J. Teneney Professor of Law and Director of the Stephen S. Weinsten Trial Advocacy Program
Padideh Azi, B.A., University of Oregon; J.D., Harvard University, Professor of Law, Faculty Director of the International Legal Studies Program, and Director of the Hubert Humphrey Fellowship Program
Hilary Allen, B.A., University of Sydney, Australia; BL. (LLB) University of Sydney, Australia; LL.M Georgetown University Law Center, Associate Professor of Law
Jonas Anderson, B.S., University of Utah; J.D., Harvard University, Professor of Law and Associate Dean of Scholarship
*Kenneth Anderson, B.A., University of California-Los Angeles; J.D., Harvard University, Professor of Law
Jonathan B. Baker, A.B., J.D., Harvard University; M.A., Ph.D., Stanford University, Research Professor of Law
Susan D. Bennett, B.A., M.A., Yale University; J.D., Columbia University, Professor of Law
Barlow Barke Jr., A.B., Harvard University; LL.B, MCP, University of Pennsylvania; LL.M, SJD, Yale University, Professor of Law and Johns S. Myres and Alina Beckman Myers Scholar
Susan D. Carle, A.B., Bryn Mawr College; J.D., Yale University, Professor of Law and Vice-Dean
Michael W. Carroll, A.B., University of Chicago; J.D., Georgetown University, Professor of Law and Director of the Program on Information, Justice and Intellectual Property
Janie Chuang, B.A., Yale University; J.D., Harvard University, Professor of Law
Mary Clark, A.B., Bryn Mawr College; J.D., Harvard University, LL.M, Georgetown University, Professor of Law and Interim Provost
Lizie Green Coleman, A.B., Dartmouth College; J.D., Columbia University, Associate Professor of Law
John B. Corr, B.A., M.A., John Carroll University; Ph.D., Kent State University; J.D., Georgetown University, Professor of Law
Jennifer Daskal, B.A., Brown University; B.A., M.A., Cambridge University; J.D., Harvard University, Associate Professor of Law
Angela Delay, B.S., J.D., Howard University; J.D., Harvard University, Professor of Law
Robert D. Dinnebier, A.B., Cornell University; J.D., Yale University, Professor of Law and Director of Clinical Programs
N. Jeremi Dunu, B.A., Brown University; MPP, J.D., Harvard University, Professor of Law
*Walter A. Ellerson, A.B., Princeton University; J.D., Harvard University, Professor of Law
Liz Epperson, B.A., Harvard University; J.D., Stanford University, Professor of Law
*Christine Haight Farley, B.A., State University of New York, Binghamton; J.D., State University of New York, Buffalo; LL.M, JSD, Columbia University, Professor of Law
Susan D. Franck, B.A., Macalaster College; J.D., University of Minnesota; LL.M, University of London, Professor of Law
Amanda Frost, B.A., J.D., Harvard University, Professor of Law
Robert K. Goldriner, B.A., University of Pennsylvania; J.D., University of Virginia, Professor of Law and Louis C. James Scholar
Claudio M. Grossman, Licenciado en Ciencias Sociales, Universidad de Chile, Santiago, Doctor of Science of Law, University of Amsterdam, Professor of Law, Dean Emeritus, Raymond L. Gershon Scholar for International and Humanitarian Law
Lewis A. Grossman, B.A., J.D., Ph.D., Yale University; J.D., Harvard University, Professor of Law
Rebecca Hamilton, B.Econ, University of Sydney, Australia; M.A., J.D., Harvard University, Assistant Professor of Law
Heather L. Hughes, B.A., University of Chicago; J.D., Harvard University, Professor of Law and Director of the S.J.D. Program
David Hunter, B.A., University of Michigan; J.D., Harvard University, Professor of Law and Director of the Program on International and Comparative Environmental Law
Cynthia E. Jones, B.A., University of Virginia; J.D., American University Washington College of Law, Professor of Law
*Billie Jo Kaufman, B.S., MS, Indiana University, J.D., Nova Southeastern University, Professor of Law and Associate Dean of Library and Information Resources
Benjamin Leff, B.A., Oberlin College; AM, University of Chicago; J.D., Harvard University, Professor of Law
Amanda Cohen Leiter, B.S, MS, Stanford University; MS, University of Washington; J.D, Professor of Law
James P. May, B.A., Carleton College; J.D., Harvard University, Professor of Law
Bunny Miller, B.A., Carleton College; J.D., University of Chicago, Professor of Law
Camille Nelson, B.A., University of Toronto; LL.B, University of Ottawa; LL.M, Columbia University School of Law, Dean and Professor of Law
Fernanda Nicola, B.A., University of Turin; Ph.D., Trento University; LL.M, Harvard University, Professor of Law
Mark C. Niles, B.A., Wesleyan University; J.D., Stanford University, Professor of Law
Diane F. Orentlicher, B.A., Yale University; J.D., Columbia University, Professor of Law
Teresa Godwin Phelps, B.A., M.A., Ph.D., University of Notre Dame; MSL, Yale University, Professor of Law and Director of the Legal Rhetoric Program
*Andrew D. Pike, B.A., Swarthmore College; J.D., University of Pennsylvania, Professor of Law
Nancy D. Polkoff, B.A., University of Pennsylvania; M.A., The George Washington University; J.D., Georgetown University, Professor of Law
Andrew F. Popper, B.A., Baldwin Wallace College; J.D., DePaul University; LL.M, The George Washington University. Professor of Law and Broidman Professor Law and Government
Jamin B. Raskin, B.A., J.D., Harvard University. Professor of Law
Jayesh Rathod, A.B., Harvard University; J.D., Columbia University. Professor of Law, Director of the Immigrant Justice Clinic and Associate Dean of Experiential Education
Ira P. Robbin, A.B., University of Pennsylvania; J.D., Harvard University. Professor of Law and Justice, Director of the J.D./M.S. Dual Degree Program in Law and Justice, and Barnard T. Welsh Scholar
Jenny Roberts, B.A., Yale University; J.D., New York University. Professor of Law
Ezra Rosser, B.A., Yale University; J.D., Harvard University. Professor of Law
Herman Schwartz, A.B., J.D., Harvard University. Professor of Law
Ann Shalit, A.B., Bryn Mawr College; J.D., Harvard University. Professor of Law, Director of the Women and the Law Program, and Carrington Shields Scholar
Anita Sinha, B.A., Barnard College; Columbia University; J.D., New York University. Assistant Professor of Law, Director of the International Human Rights Law Clinic
Brenda V. Smith, B.A., Spelman College; J.D., Georgetown University. Professor of Law and Senior Associate Dean for Faculty and Academic Affairs
*David Snyder, B.A., Yale University; J.D., Tulane University. Professor of Law and Director of the Law and Business Program
Robert L. Tschirhart, A.B., University of California at Los Angeles; J.D., Yale University. Professor of Law
Anthony E. Varona, A.B., J.D., Boston College; LL.M., Georgetown University. Professor of Law
Lindsey F. Wiley, A.B., J.D., Harvard University; J.P.M., Johns Hopkins University. Professor of Law
Paul R. Williams, A.B., University of California-Davis; J.D., Stanford University. Rebecca I. Graicer Professor of Law and International Relations and Director of the J.D./M.B.A Dual Degree Program

Law Library Administration
Khelani Clay, B.A., Howard University; J.D., American University Washington College of Law; M.L.S., The Catholic University of America. Assistant Law Librarian
John Q. Heywood, B.S., Northern Arizona University; J.D., American University Washington College of Law. Associate Law Librarian
Billie Jo Kaufman, B.S., M.S., University of Indiana at Bloomington; J.D., Nova Southeastern University, Shepard Broad Law Center. Professor of Law and Associate Dean for Library and Information Resources
Shannon M. Reddy, B.A., University of North Carolina at Chapel Hill; J.D., American University Washington College of Law. Assistant Law Librarian
William T. Ryan, B.A., Boston University; J.D., American University Washington College of Law; M.L.S., University of Maryland. Law Librarian
Ripple L. Westling, B.A., Brandeis University; M.A., King’s College (London); J.D., Georgetown University, Law Center, M.L.S., The Catholic University of America. Assistant Law Librarian
Wanhhong Linda Wen, B.A., Haman Normal University; M.S., University of South Carolina, Associate Law Librarian

Emeriti
Evelyn Abrahame, A.B., Case Western Reserve; J.D., Case Western Reserve. Professor of Law Emerita
Isaiah Baker, A.B., Yale University; M.A., DePaul University; M.B.A., Columbia University Graduate School of Business; J.D., Columbia Law School; LL.M., Harvard Law School. Associate Professor of Law Emeritus
Daniel Bradlow, B.A., University of Witwatersrand, South Africa; J.D., Northeastern University Law School; LL.M., Georgetown University Law Center; LL.D., University of Pretoria. Professor of Law Emeritus
David F. Chlumsky, B.S., Michigan State University; J.D., University of California at Berkeley School of Law. Professor of Law Emeritus
Elliott S. Milstein, B.A., University of Hartford; J.D., University of Connecticut; LL.M., Yale University. Professor of Law Emeritus
Egon Gottman, LL.B., LL.M., University of London. Professor of Law and Levit Memorial Trust Scholar Emeritus
Peter A. Jazzy, A.B., J.D., Harvard University. Professor of Law Emeritus
Patrick E. Keoh, B.C.S., Finance, Seattle University; M.L.S., Washington University. J.D., Washington University. Law Librarian Emeritus
Nicholas N. Kittie, A.B., M.A., LL.B., University of Kansas; LL.M., J.D., Georgetown University Law Center. University Professor
Candace Kovace-Frischer, A.B., Wellesley College; J.D., Northeastern University College of Law. Professor of Law Emeritus
Susan J. Lewis, B.A., University of California at Los Angeles; J.D., Southwestern Law School; M.Libr., University of Washington. Law Librarian Emeritus
Robert Lubin, A.B., J.D., University of Pittsburgh; M.P.L., Georgetown University. Professor of Law Emeritus
Anthony Morella, A.B., Boston University; J.D., American University Washington College of Law. Professor of Law Emeritus
Mary Siegel, A.B., Yasar College; J.D., Yale University. Professor of Law Emerita
Michael E. Tigges, B.A., J.D., University of California at Berkeley. Professor of Law Emeritus
Robert G. Vaughn, B.A., J.D., University of Oklahoma; LL.M., Harvard Law School. Professor of Law Emeritus and A. Allen King Scholar
Richard J. Wilson, B.A., DePaul University; J.D., University of Illinois College of Law. Professor of Law Emeritus
Special Faculty Appointments

Nancy S. Abramowiz, A.B., Cornell University; J.D., Georgetown University Law Center.  Professor of Practice of Law

Ana-Corina Alonso-Yoder, B.A., Georgetown University; J.D., American University Washington College of Law.  Professor of Practice of Law

Adrian Alvarez, B.A., University of Texas at Austin; M.A., Princeton University; J.D., American University Washington College of Law.  Professor of Practice of Law

Elizabeth Beske, A.B., Princeton University; J.D., Columbia Law School.  Legal Rhetoric Instructor

Elizabeth Bools, B.S., Virginia Polytechnic Institute and State University; J.D., George Mason University School of Law.  Assistant Dean, Part-Time and Online Education, Practitioner in Residence, and Director of Criminal Justice Practice and Policy Institute.


Sherley Cruz, B.A., Boston University; J.D., Boston University.  Practitioner-in-Residence

Paul Figley, B.A., Franklin & Marshall College; J.D., Southern Methodist University School of Law.  Associate Director of the Legal Rhetoric Program and Legal Rhetoric Instructor

Sean Flynn, B.A., Pitzer College (Claremont); J.D., Harvard Law School.  Professorial Lecturer in Residence, Associate Director of the Program on Information, Justice and Intellectual Property

Jon Gould, A.B., University of Michigan; M.P.P., Harvard University; J.D., Harvard Law School; Ph.D., University of Chicago.  Affiliate Professor and Director of Washington Institute for Public and International Affairs Research.

Jean C. Han, A.B., Yale Law School; LL.M., Georgetown University Law Center.  Practitioner-in-Residence, Women & the Law Clinic.

Elizabeth A. Keith, B.A., University of North Carolina at Chapel Hill; J.D., George Mason University School of Law.  Legal Rhetoric Instructor.

Daniela Kraiem, B.A., University of California at Santa Barbara; J.D., University of California at Davis School of Law.  Associate Director of the Women and the Law Program and Practitioner-in-Residence

Kathryn Ladevogt, B.A., Stanford University; J.D., University of Michigan.  Practitioner-in-Residence

Fernando Lagaarda, A.B., Harvard University; J.D., Georgetown University Law Center.  Professorial Lecturer and Director of the Program on Law and Government.

Jeffry S. Lubbers, A.B., Cornell University; J.D., University of Chicago Law School.  Professor of Practice in Administrative Law

Claudia Martin, Law Degree, Universidad de Buenos Aires; LL.M., American University Washington College of Law.  Professorial Lecturer in Residence

Juan Mendoza, Law Degree, Stella Maris Catholic University; Certificate, American University Washington College of Law.  Professor of Human Rights Law in Residence

Horacio Grijalva Naive, J.D., LL.D., School of Law of the University of Buenos Aires; LL.M., J.S.D., Harvard Law School.  Distinguished Practitioner in Residence and Director of the Center on International Commercial Arbitration

Victoria Phillips, B.A., Smith College; J.D., American University Washington College of Law.  Professor of Practice of Law and Director of the Gushko-Samuelsen Intellectual Property Law Clinic


Heather L. Ridenour, B.B.A., Texas Women's University; J.D., Texas Wesleyan School of Law.  Director of Legal Analysis Program, Legal Writing Instructor

Diego Rodriguez-Pinzon, J.D., Universidad de los Andes; LL.M., American University Washington College of Law; S.J.D., George Washington University Law School.  Professorial Lecturer in Residence, Co-Director, Academy on Human Rights & Humanitarian Law


Macarena Saez, J.D., University of Chile School of Law; LL.M., Yale Law School.  Fellow in ILSP and Director of the Center for Human Rights and Humanitarian Law

Anne Schaufele, B.A., DePauw University; J.D., American University Washington College of Law.  Practitioner-in-Residence

*Steven G. Shapiro, B.A., Georgetown University; J.D., Georgetown University Law Center.  Director of the Hospitality and Tourism Law Program

William Snape III, B.A., University of California at Los Angeles; J.D., George Washington University Law School.  Director of Adjunct Faculty Development and Fellow in Environmental Law

David H. Spratt, B.A., The College of William and Mary; J.D., American University Washington College of Law.  Legal Rhetoric Instructor

Richard Urgell, B.A., Hobart College; J.D., American University Washington College of Law; LL.M., Georgetown University Law Center.  Practitioner-in-Residence

Ranegley Wallace, B.A., Emory University; J.D., American University Washington College of Law; LL.M., Georgetown University.  Practitioner-in-Residence

Diane Weirich, B.A., University of California at Berkeley; J.D., Columbia University Law School.  Supervising Attorney

Stephen Wermiel, A.B., Tufts University; J.D., American University Washington College of Law.  Professor of Practice of Law

*American University Business Law Review Faculty Advisory Committee