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LITIGATION DEPARTMENT *of the* YEAR

THE WINNER

O'MELVENY & MYERS LLP

O'MELVENY & MYERS

THIS HAS BEEN THE YEAR OF LITIGATION. For the firms of The Am Law 200, the only litigation crisis they have faced has been the fear that they may not have enough associates to handle the torrent of new matters. All of which made our effort to pick a Litigation Department of the Year, now a biannual contest, especially difficult.

This time we conducted four competitions. We invited every firm on the 2002 Am Law 200 to vie for Litigation Department of the Year. In addition, each could choose to compete in one litigation specialty—Intellectual Property, Labor and Employment, or Product Liability. In all, we received about 120 submissions. To make a baseball analogy, we weren't selecting members for the Hall of Fame, we were choosing the season's most valuable players. (We plan a similar contest for smaller firms in December.)

We asked the firms to report on their litigation records between January 1, 2002, and June 30, 2003. (Lawyer numbers listed throughout are as of August 1, 2003.) Specifically, we asked for no more than five examples of "significant achievements" in six categories: pretrial, at trial, on appeal, before the U.S. Supreme Court, pro bono, and a catchall that included arbitrations and settlements. In addition, we asked firms for client references, names of opposing counsel, and a list of firm partners who tried cases to verdict during those months—which for some firms proved to be a very short list, indeed.

Teams of our reporters and editors read each application. On the basis of those filings we winnowed the candidates and then supplemented the submissions with reporting. We developed a shortlist of finalists and then visited each of them, offering these master advocates the chance to explain why they should win.

Each contest was very close. Over the next 40 pages we present the four winners, the 11 runners-up, and, in the case of the Department of the Year contest, nine more who merited special attention. Congratulations! And let the appeals begin.

Perfect Casting

AT O'MELVENY & MYERS, DIVERSE TALENTS COME TOGETHER TO PRODUCE EXCEPTIONAL RESULTS IN GROUNDBREAKING CASES.

By Susan Beck

IT'S A PERRY MASON MOment for Daniel Petrocelli. The O'Melveny & Myers partner is defending Unocal Corporation in Los Angeles superior court against a litany of alleged human rights abuses—starting with murder, slavery, and rape. The claimed atrocities were allegedly committed by Myanmar's military against rural villagers during the construction of a gas pipeline through that country, formerly known as Burma, in the mid-nineties. Through a subsidiary, Unocal had a 28 percent investment in the project.

The 15 plaintiff villagers want to hold Unocal vicariously liable for the militia's acts under the Alien Tort Claims Act. The original intent of this 1789 law is murky, but it may have been to compensate foreigners attacked by pirates. In recent years human rights activists have used it with some success to sue foreign dictators in U.S. courts on behalf of human rights victims. But never before has a U.S. corporation been tried under that law for the misdeeds of a foreign government.

During this November hearing, less than three weeks before the first phase of a trial was scheduled to begin, Petrocelli repeats the plaintiffs' centerpiece story about the death of a two-month-old boy. The infant's father worked on the pipeline as a forced laborer. When the father tried to flee in late 1994, the activists say, the militia pursued him and his wife. During the chase, the baby fell into a fire and later died, they say.

"They accuse Unocal of complicity in this murder—that Unocal turned a blind eye to murder," Petrocelli tells Judge Victoria Gerrard Chaney. He points to an enlarged picture from the plaintiffs' own exhibit that shows the infant in its mother's arms after the incident. Then the O'Melveny partner points to another exhibit.

"Look what we found in the files this week," he says. It's an enlarged article from a Bangkok newspaper, *The Nation*. Dated March 1994, ten months before the child's death, it tells the story of a baby in rural Burma whose head was dunked into scalding water by local troops when his father showed up late to work on a railroad

PHOTOGRAPH BY JOHN ABBOTT

FROM LEFT: PETROCELLI, WOOD, DELLINGER, BEISNER, WANG

project. The baby survived, according to the paper. The photograph of the baby and its mother looks strikingly similar to the picture in the plaintiffs' exhibit. Among other things, the mother is wearing what appears to be an identical white shirt with black piping.

"It's the same person, the same shirt, the same piping—the same baby!" Petrocelli exclaims, suggesting that the plaintiffs lifted this story from the railroad project, embellished the facts, and used it for their case. "This is a complete fabrication, laying it at the feet of Unocal."

The judge leans forward and stares at the exhibit, as does the row of Unocal executives sitting in the back of the courtroom. (After the hearing, plaintiffs lawyer Dan Stormer said he had never seen the article before and could not say whether it was the same baby.)

Since O'Melveny took charge of Unocal's defense in the summer of 2002—six years into the litigation—it has worked overtime to catch up with mountains of discovery. First-year associate Meredith McKee spotted the *Nation* article as she was combing through one of more than 300 boxes of materials. Unocal was initially represented by Munger, Tolles & Olson, and then by Howrey Simon Arnold & White. When the company lost a summary judgment motion and the case was headed

DEPARTMENT SIZE	Partners: 116 Associates: 239 Other: 113
DEPARTMENT AS PERCENT OF FIRM	Partners: 47% Associates: 55%
ESTIMATED PERCENT OF FIRM REVENUE 2001	56%

to trial, Unocal brought in O'Melveny.

At the end of the daylong hearing, Judge Chaney grants Unocal's request to limit sharply the testimony about alleged human rights abuses in the first phase of the trial, which started December 9. That phase focused on whether the plaintiffs sued the right corporate entities, and whether Unocal can be held liable as the "alter ego" of subsidiaries that are not named defendants. Before adjourning, Chaney praises O'Melveny's painstaking efforts: "Mr. Petrocelli, your law firm has done a dynamite job."

The Unocal case is one of many that led *The American Lawyer* to select O'Melveny & Myers as its litigation department of the year. Continuing a tradition of excellence, O'Melveny litigators have produced exceptional results in a string of cases of national and international importance: a groundbreaking ruling for Ford Motor Company in Explorer tire litigation; a landmark U.S. Supreme Court victory, in a matter handled pro bono, that preserves an essential funding mechanism for legal programs for the poor; a strategy that thwarted efforts by plaintiffs lawyers to sue cell phone makers over users' radiofrequency exposure; shielding Mitsubishi Materials Corporation against reparations claims brought by former prisoners of war in Japan; and rulings that turned back a suit against entertainment companies for their marketing of R-rated movies.

It's not just results like these that make O'Melveny stand out. It's also a culture centered on teamwork and collegiality. Unlike some firms, O'Melveny does not revolve around a few stars. Department chairman W. Mark Wood dispatches weekly voicemail messages to his department—116 partners, 105 counsel, and 239 associates, as of August 1—highlighting accomplishments of partners and associates alike. Even the firm's compensation system downplays the solo turn. There are no origination credits that reward partners who bring in and control clients. In evaluations, the firm scrutinizes partners' willingness to help others. (In 2002 the firm posted average profits per partner of $1.1 million.)

Los Angeles partner M. Randall Oppenheimer, who is co-counsel with Petrocelli on the Unocal case, says these values are more than feel-good bromides. "We were raised with the notion that collegiality is more than a quality-of-life issue. It's a competitive advantage," he says.

And clients notice. "They're not broken down into fiefdoms. They operate very collegially," says Verizon Communications Inc. executive vice president and general counsel William Barr, who appreciates partners' willingness to recommend others with the right expertise. Ford counsel John Thomas, who works closely with Washington, D.C., partner John Beisner, applauds the firm's teamwork and depth of talent. "John is a brilliant lawyer in his own right, but where John and O'Melveny shine is their ability to develop other talented lawyers. Everything I get is of the same high quality. I can have absolute confidence the work will be done right. I think O'Melveny is the most talented firm overall I've dealt with in 25 years as a lawyer for Ford."

Although most of its partners may be united by common values, O'Melveny is still a firm of individual and diverse talents. For instance, Petrocelli, a 50-year-old lateral who joined the firm in 2000, dreamed of being a professional trumpet player, but realized in college that he didn't have the gift. He squeezed in night classes at Southwestern University School of Law in Los Angeles while holding down a day job as a bank auditor. (Before joining O'Melveny, Petrocelli was best known for winning a $33.5 million judgment for the family of the late Ronald Goldman in a wrongful death suit against O.J. Simpson.) Oppenheimer, 51, is a Harvard University summa cum laude who laces his discussion of the Unocal case with quotes from the Austrian philosopher Ludwig Wittgenstein about words being "the skin of a living thought." Litigation head Wood, 61, who is defending Boston's Logan Airport in suits arising from the September 11 attacks, is an ex-Marine who cut his teeth as a military lawyer during the Vietnam War trying soldiers for murder, desertion, and sleeping at their posts.

BEFORE JOHN BEISNER became one of the preeminent class action defense lawyers in the United States, he worked as a teenage disc jockey at KAFM, a now defunct middle-of-the-road rock radio station in his hometown of Salina, Kansas. The son of a traveling salesman and a Social Security administration worker, Beisner loved broadcasting. The job also gave him time to study for his high school classes while records were playing. At night he doubled as the elevator operator for the building, which housed doctors' offices. When a patient needed to be ferried up, Beisner would set spinning a long-playing song, and take the controls of the elevator cab.

Thirty years later, Beisner juggles much more, with an ease and mastery that awes clients and colleagues. The 50-year-old lawyer is national class action counsel for Ford. On Capitol Hill and in corporate boardrooms he is known as the behind-the-scenes architect of a bill pushed by business groups called the Class Action Fairness Bill, which would transfer many class actions to federal court. On top of this, he heads O'Melveny's 125-lawyer Washington, D.C., office, runs the 110-lawyer class action practice group, cochairs the firm's diversity task force, and sits on the policy committee.

Beisner began his career as a summer associate at O'Melveny in 1977, toiling for weeks on an assignment for CBS in which he had to summarize class action law. Sound dreadful? Not to Beisner. "It was actually a lot of fun," he insists.

In the Ford Explorer litigation, Beisner tried something that wasn't even in the books. In the summer of 2000 Bridgestone/Firestone, Inc., announced a tire recall in the wake of an unusually high failure rate on Ford's Explorer sport utility vehicle. More than 100 class action suits piled up in a month against Bridgestone, which was represented by Jones Day, and Ford. "Everything ballooned beyond

anything I'd seen," says Ford in-house counsel Thomas.

To protect the company from hundreds of different discovery requests, Beisner convinced the federal panel on multidistrict litigation to hold an unprecedented emergency hearing. The panel consolidated all the federal cases in one court in Indianapolis for pretrial activity. In a setback, that court certified a class covering owners of 3 million vehicles, and the defendants appealed to the U.S. Court of Appeals for the Seventh Circuit. Beisner and Jones Day's Hugh Whiting—arguing against David Boies for the plaintiffs—swayed the court to reverse and decertify in May 2002.

Next, class actions sprouted in more than a half-dozen state courts. "For a long time I've wondered why [a federal ruling like this] is not a final determination," says Beisner. "This was an opportunity to test the issue." He asked the Seventh Circuit to enjoin any state court class actions from going forward, citing the All Writs Act, a federal statute from 1789 that vaguely permits federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions." No appellate court had done this in a case that hadn't settled. (O'Melveny filed the initial motion, which Jones Day later joined.)

This past June the court granted most of Ford's request, although it left a small opening for the plaintiffs. Writing for the court, Judge Frank Easterbrook enjoined any state class actions attempting to represent plaintiffs nationwide, but ruled that the court could not stop class actions limited to a single state.

"It was certainly a good strategic move in the short run [for Ford] to get to the Seventh Circuit," says partner Stephen Neuwirth of Boies Schiller & Flexner. "But whether in the long run Ford is better off with multiple class actions in different states, only time will tell." Beisner predicts that the six statewide cases won't get much traction. In October an Arkansas state court dismissed an attempted class action there. That motion was argued by Katharine Wang, a sixth-year associate in the D.C. office. The Yale Law School graduate says she learned from Beisner the importance of preparation, including reading "every single case" that might be relevant, and creating a "thorough outline on every possible scenario."

Seamus Duffy, a partner at Drinker Biddle & Reath who worked with Beisner on cell phone litigation, calls the O'Melveny partner a great strategic thinker. In that matter, a plaintiffs group led by Baltimore's Peter Angelos sued more than 25 cell phone makers for allegedly failing to warn users of dangerous levels of radiofrequency emissions. "[Beisner] knows how to look at a national problem of uncoordinated cases all over the place and play master chess," says Duffy.

BEISNER PLAYS "MASTER CHESS" IN CLASS ACTION LITIGATION, SAYS ONE COCOUNSEL.

Facing cases filed in five state courts, Beisner, representing Verizon, drew up a plan to coordinate them in federal court as multidistrict litigation. Some defense cocounsel balked, says Duffy, who represents Cingular Wireless LLC and played a lead role along with Kirkland & Ellis (for Motorola, Inc.). "They said, 'If you make it an MDL, it will draw cases like flies. You will make this into asbestos,' " Duffy recalls. After some "spirited debate," says Duffy, Beisner prevailed. So far, it's been a good move. Last March a Baltimore federal court dismissed the suits as preempted by federal regulations governing cell phone emissions.

Duffy praises Beisner's knack for getting a large group of people to work well together. "He's so unassuming but so credible. . . . He oozes credibility."

Beisner certainly hasn't lost the midwestern aversion to putting on airs. "For a guy as smart as he is to be so tactful and humble is rare," says Frederick Stueber, senior vice president and general counsel of Lincoln Electric Holdings, Inc., in Cleveland. Stueber recently hired Beisner and O'Melveny in a beauty contest (over Kirkland and Latham & Watkins) to defend the welding industry in an attempted class action led by plaintiffs lawyer Richard Scruggs on behalf of welders exposed to manganese. (The prior counsel, Jones Day, withdrew with a conflict.) "You get a lot of litigators who are skilled or smart," Stueber says, "but they don't know how to get off their high horse."

This fall Beisner spent a good part of his time toiling on the Class Action Fairness Bill, which failed by one vote, 59 to 39, to advance to a Senate debate. He is also handling litigation for credit reporting giant Trans Union LLC. Before the company hired O'Melveny, the Federal Trade Commission had sanctioned it for improperly selling credit information. That

DELLINGER'S 17 SUPREME COURT APPEARANCES HAVE RAISED THE FIRM'S APPELLATE PROFILE.

triggered an avalanche of suits seeking up to $1,000 per person in statutory damages under the Fair Credit Reporting Act on behalf of nearly every credit card holder in the U.S. With his client facing an exposure of $190 billion, Beisner took the offensive. Before the plaintiffs sought class certification, the company asked the court to rule that these statutory damages could not be recovered in a class action. In September 2002 a Chicago federal court agreed, in part because the FTC protected consumers.

While Beisner has brought relief to clients facing unwieldy class actions, his partners have produced similarly satisfying results in an array of matters. Called by Exxon Mobil Corporation when an Alabama jury slapped it with $3.4 billion in punitives in a royalty dispute with the state, Washington, D.C., partner Walter Dellinger and Los Angeles partner Charles Lifland helped convince Alabama's high court to reverse in December 2002. Selected to take the lead for more than 20 computer industry companies, including Apple Computer, Inc., and Dell Inc., when they were sued for patent infringement over widely used interface devices, San Francisco partner George Riley won a summary judgment in February 2003. Defending Rite Aid Corporation former chief financial officer Frank Bergonzi against 27 counts of accounting fraud last June, D.C. partner Ira Raphaelson negotiated a plea to a single conspiracy count. Retained by Alaska Airlines when it faced possible federal manslaughter counts in connection with a 2000 crash that killed 88 people, San Francisco partner Daniel Bookin's efforts led the authorities to close the case last year without criminal charges.

HE INSISTS THAT HE'S RIDden his bike down the halls of the U.S. Department of Justice only once. It was a weekend, after all, and Walter Dellinger had to drop off a draft at the other side of the building. The head of O'Melveny's appellate practice explains that he generally limits his bike riding to the outdoors. When he was acting solicitor general during the Supreme Court's 1996–97 term, he would occasionally ride his bike to the White House, using the brief time alone to clear his head. Since joining O'Melveny in 1998, the 62-year-old Dellinger still pedals to work, even though his excursions through D.C. traffic make his wife nervous.

Department head Wood calls Dellinger the firm's "resident leprechaun." He certainly has brought good fortune to O'Melveny's appellate group. After nearly two decades in academia and government service, Dellinger has thrived in private practice. The former clerk to the late justice Hugo Black has lured nine Supreme Court clerks to O'Melveny and built a loyal team. Before the firm hired Dellinger—or, as chairman Arthur "A.B." Culvahouse, Jr., says, "We convinced him on bended knee to join us"—other firms often poached appellate cases from O'Melveny. Today, Culvahouse says, that rarely happens.

Since the start of 2002, O'Melveny has represented ten parties on the merits before the Supreme Court and made six oral arguments, coming away with a record of five wins, two losses, one mixed result, and two nondecisions when the Court dismissed certiorari after arguments.

In *US Airways, Inc.* v. *Barnett*, Dellinger convinced the Court that the Americans with Disabilities Act of 1990 did not require the airline to deviate from a bona fide seniority system. Arguing for his home state of North Carolina in *Utah* v. *Evans*, he successfully defended a disputed U.S. Department of Commerce Census Bureau counting method that transferred a congressional seat from Utah to North Carolina. Dellinger also argued the closely watched case of *Nike, Inc.* v. *Kasky*, which addressed the free speech rights of corporations. But the Court later decided that it should not have granted certiorari, and did not issue a decision. (Dellinger represented the shoe company.) Counting amicus filings, O'Melveny participated in more than one-fifth of the Court's cases in the 2002–03 term.

O'Melveny takes particular pride in its pro bono victory in *Brown* v. *Legal Foundation of Washington*, where it represented the defendant justices of Washington's state supreme court. That case examined the constitutionality of programs that every state and the District of Columbia use to provide more than $200 million a year for legal services for

the poor. In a 1998 case from Texas, the Supreme Court had already expressed skepticism about these programs, called Interest On Lawyers' Trust Accounts, which divert interest from certain small, short-term client accounts. Facing off against Harvard Law School professor and former solicitor general Charles Fried for the plaintiffs, Dellinger helped convince the court, 5 to 4, that Washington's program did not violate the Fifth Amendment's takings clause. (Perkins Coie appeared for the foundation.) The firm says it devoted approximately $500,000 in time to the case.

Dellinger's team arguably faced even longer odds in the appeal of two former employees of hospital giant HCA Inc. The midlevel managers, then represented by other firms, were convicted of making false statements in Medicare reimbursement reports and sentenced to 36 months and 24 months, respectively. "At the time, the estimates were that we had a one-in-50 chance of overturning the conviction," says HCA general counsel Robert Waterman.

The case, *U.S.* v. *Whiteside*, involved an intractable tangle of obscure Medicare rules on booking capital and interest. "I didn't understand accounting," Dellinger admits. But Dellinger and O'Melveny counsel Jonathan Hacker pored through the records, and Hacker devised an argument that the defendants' statements weren't false after all. In March 2002 the U.S. Court of Appeals for the Eleventh Circuit unanimously reversed. "The entire management team and board were thrilled," says Waterman. "One of the things that sold me on O'Melveny was that other appeals lawyers were individually very good, but [Dellinger] has put together a huge team with a bunch of brainy Supreme Court clerks. That team approach generates great results. . . . I'd use him [again] in a heartbeat."

For all his accomplishments—including 17 high court arguments—Dellinger points to one that stands out in his mind: getting then–attorney general Janet Reno to boogie to "Mustang Sally" during a Justice Department Christmas party. Dellinger infuses his work with a playfulness and irreverence that's rare in big firms. He exclaims that one of the things he likes about private practice is that each month O'Melveny brings to his office "a big wheelbarrow of money." Dellinger's family struggled financially after his father died when Dellinger was 12. His mother, a high school graduate, had trouble finding work and eventually settled for a job selling men's socks and underwear at a local store. In college Dellinger was so strapped for cash that he had to hitchhike for two days from Chapel Hill, North Carolina, to New Haven for a Yale Law School interview and arrived 20 minutes late. (The school accepted him nonetheless.)

"His style is very disarming. He doesn't take himself too seriously," says former solicitor general Seth Waxman, one of the nation's top Supreme Court advocates and a partner at Wilmer, Cutler & Pickering. "That's a real virtue in appellate work."

Thomas Lee, who represented Utah in *Utah* v. *Evans*, fondly recalls Dellinger's friendliness before Lee prepared to make his first high court oral argument. "He made me feel like I belonged, even though I probably didn't," says Lee, a law professor at Brigham Young University and the son of the late solicitor general Rex Lee. Lee recalls how Dellinger showed him the crank on the lectern that moved it up and down. "It's easy to think you can get an advantage by making your opponent squirm," says Lee. "It was quite the opposite of that."

Looking forward, Dellinger is working on an appeal to the Alabama Supreme Court of an $11.9 billion jury verdict, nearly all of it punitives, that a jury delivered in November against Exxon. (This was the retrial, handled by a local firm, of the royalty dispute with the state that originally produced the reversed $3.4 billion award.)

Dellinger's partners have been entrusted with an array of high-profile matters as well: defending former Enron Corp. CEO Jeffrey Skilling in civil suits and government inquiries (at press time he had not been charged with criminal wrongdoing), led by D.C. partner Bruce Hiler; representing The Walt Disney Company in a long-running battle over royalties from its use of the Winnie-the-Pooh character, headed by Petrocelli; and defending PricewaterhouseCoopers in a $2.6 billion accounting malpractice suit filed by former client U-Haul International, Inc., led by Linda Smith and Alejandro Mayorkas in Los Angeles.

Despite O'Melveny's contribution to the IOLTA case and other pro bono matters, chairman Culvahouse says the firm should do more. "The firm historically has been known for high-profile pro bono, but it became clear we were resting on our laurels," he says. "We were not doing enough of of it, and not doing our fair share." In 2003 O'Melveny hired David Lash, the former executive director of Los Angeles's Bet Tzedek Legal Services Inc., to energize its efforts. It has also has started handling selected felony cases for the Montgomery County, Maryland, public defender's office.

RANDY OPPENHEIMER GREW up surrounded by storytellers. His father, Peer Oppenheimer, is a Jewish refugee from Hitler's Germany who produced the 1960s television celebrity interview show *Here's Hollywood* and a string of movies. (He is responsible for Burt Reynolds's first starring-role film, *Operation CIA*.) As a young woman, his mother painted animation cells for Disney. "Our family life was characterized by people sitting around the table telling stories," says Oppenheimer.

Oppenheimer had to play to a tough audience during the most recent trial stemming from the 1989 *Exxon Valdez* spill. O'Melveny lawyers suffered a huge trial loss in 1994, when client Exxon was clobbered with a $5 billion verdict in a federal case brought by fishermen.

Even though the firm later got that verdict reversed, the threat of juror hostility lingered.

In 2002 the firm went to trial again in state court in Anchorage to defend the oil giant against claims brought by municipalities that wanted $30 million in compensation for local services diverted during the cleanup. The plaintiffs had already recovered from Exxon $4 million for their cleanup expenses. Exxon decided that it would insist that it didn't owe anything more, instead of offering the jurors a lower compromise amount. "We sweated bullets over this," says Oppenheimer. "It goes against the conventional wisdom." The team also lost sleep over the youth of the jurors—half were under 21. "We were very nervous, incredibly nervous about the age of jurors," says Oppenheimer.

At trial, the O'Melveny team argued that the plaintiffs used a flawed economic model that inflated the value of the diverted services. After a three-week trial, the jurors took two days to conclude that Exxon owed nothing more. Says Oppenheimer: "I think the company felt this was a watershed event in terms of telling its story."

Exxon chief attorney Michael Smith says the company needed to send a message that claimants could not get two bites of the apple: "If [the municipalities] can come in 14 years later and reopen [this matter], others might do it." Smith credits O'Melveny's success in part to its "cast of characters." Oppenheimer was the soft-spoken, gentlemanly type who seemed nice, "but was deadly on cross-examination," he says. O'Melveny's Charles Diamond was more aggressive. John Daum, who did a lot of brief writing, Smith says, was "brilliant," adding, "I'd work with them anytime I have the chance to."

In the Unocal case, O'Melveny faces an even more emotionally charged topic. Accusations of complicity in murder and slave labor in Myanmar make for dramatic headlines that can overshadow the facts. "The allegations use such charged language," notes Oppenheimer. "It's extremely tricky at this point to try to slow that train down." He says the defense team needs to focus patiently and persistently on the facts of the case, and break the connection with the rhetoric. "One of the lawyers' jobs is to separate the language of the dispute from the facts of the dispute," he says. "None of these allegations had anything to do with the men and women of Unocal."

ON DECEMBER 9 PETROcelli and Oppenheimer are back in court to try the Unocal case, the first phase of which will be heard without a jury. The courtroom is packed with media, including a reporter from Radio Free Asia and an Italian documentarian who is videotaping the proceedings. The courtroom audience includes a Burmese monk in a saffron robe and others wearing T-shirts emblazoned with the image of Nobel Prize–winning dissident Aung San Suu Kyi, whom the Burmese government has kept under house arrest since 1989.

In his opening statement, plaintiffs lawyer Terry Collingsworth of the International Labor Rights Fund paints this as a test case for corporate ethics. "If they get away with this—set up a system where you can have profit without responsibility [and] tort violations with immunity and impunity—this is paradise for the morally challenged," he says.

Petrocelli counters that the plaintiffs have made a fundamental mistake: They have sued the wrong entities. Even if a U.S. company can be held vicariously liable for the Myanmar military's acts, he maintains, the plaintiffs have failed to sue those Unocal subsidiaries actively involved in the pipeline project. (The plaintiffs claim that these subsidiaries are shells.) The plaintiffs "chose not to bring into court the right parties," he says. "Now they [argue that] because they are . . . representing human rights plaintiffs, the rules should be bent."

The O'Melveny partner won't stand for that. "There's this insidious sense of entitlement from the other side here, " he charges. "It's as though they have some God-given, inalienable right to sue Unocal."

At press time this first phase of the trial was scheduled to continue into January. If the case extends into the second phase, where a jury would likely hear testimony of alleged human rights abuses, more dramatics can be expected. The stage has been set.

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