

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

**DKT/CASE NO.** 82-1127

**TITLE** HELICOPTEROS NACHIONALES DE COLOMBIA, S.A.,  
Petitioners, v. ELIZABETH HALL, ET AL.

**PLACE** Washington, D. C.

**DATE** November 8, 1983

**PAGES** 1 thru 37



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WASHINGTON, D.C. 20001

1                   IN THE SUPREME COURT OF THE UNITED STATES  
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3   HELICOPTEROS NACHIONALES DE                   :  
4    COLOMBIA, S.A.                               :  
5                               Petitioners                   :  
6                   v.                               :   No. 82-1127  
7   ELIZABETH HALL, ET AL.                       :  
8   - - - - -x  
9                               Washington, D.C.  
10                              Tuesday, November 8, 1983  
11               The above-entitled matter came on for oral  
12 argument before the Supreme Court of the United States  
13 at 1:01 p.m.  
14 APPEARANCES:  
15 THOMAS J. WHALEN, ESQ., Washington, D.C.; on behalf of  
16 the Petitioner.  
17 GEORGE E. PLETCHER, ESQ., Houston, Tex.; on behalf of  
18 the Respondent.  
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on behalf of the Petitioner

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on behalf of the Respondent

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We'll hear arguments  
next in Helicopteros Nacionales against Hall.

Mr. Whalen.

ORAL ARGUMENT OF THOMAS J. WHALEN, ESQ.,  
ON BEHALF OF PETITIONER

MR. WHALEN: Mr. Chief Justice, and may it  
please the Court:

As in the cases we heard this morning this  
case involves in personam jurisdiction over my client  
Helicol. Helicol is a foreign corporation in the true  
sense.

It is a company organized existing in the  
country of Colombia, and its sole business is the  
transportation of persons principally in South America.  
The jurisdictional issue in this case arises in the  
context of a wrongful death action which was brought in  
the State Court of Texas by the family of Dean Hall and  
several other families who were killed in an accident  
that occurred in Peru.

Helicol had entered into a contract with  
American construction companies known as  
Williams-Sedco-Horn, and this contract was executed in  
Peru and it was designed to be performed in Peru. In



1 the course of this helicopter operation it was necessary  
2 for the operation of the contract that  
3 Williams-Sedco-Horn had with the government of Peru, and  
4 they were building a pipeline from the jungles of Peru  
5 to the Pacific Ocean.

6 They needed Helicol to transport workers from  
7 construction sites to base terminals in Peru. On the  
8 course of one of these trips an accident occurred in  
9 which the Respondents' decedents were killed along with  
10 two other passengers who are not involved in this law  
11 suit or this case.

12 The case was brought in the state court of  
13 Texas. The only contacts that Helicol had with the  
14 State of Texas was established in the course of the  
15 hearing on a preliminary motion on jurisdiction was the  
16 fact that Helicol had a single contract discussion with  
17 the personnel of Williams-Sedco-Horn in Houston, Texas,  
18 and also in the course of five or six years prior to  
19 that contract they purchased equipment from an American  
20 manufacturer, Bell Helicopter Company.

21 QUESTION: Mr. Whalen, why were Bell  
22 Helicopter Company and Williams-Sedco-Horn granted  
23 instructed verdicts?

24 MR. WHALEN: The Plaintiff failed to establish  
25 any proof of negligence against either of those

1 defendants, and the court dismissed the case against  
2 both of those defendants.

3 QUESTION: Mr. Whalen, was the underlying  
4 cause of action based on pilot error?

5 MR. WHALEN: Yes, Your Honor, against my  
6 client.

7 QUESTION: Was the pilot of the helicopter  
8 involved trained in Texas?

9 MR. WHALEN: Yes, Your Honor. I believe he  
10 was. He was one of the pilots who went to Texas in the  
11 course of the agreement between Bell and Helicol for  
12 training in connection with the equipment.

13 QUESTION: Was the helicopter itself purchased  
14 in Texas?

15 MR. WHALEN: The helicopter was purchased in  
16 Texas, yes, Your Honor.

17 QUESTION: Do you not regard both of those as  
18 contacts with Texas on the part of your client?

19 MR. WHALEN: Yes, Your Honor. They certainly  
20 are contacts, but the idea of purchases being a basis  
21 for general jurisdiction, that is, this is a case in  
22 which the cause of action did not arise out of the  
23 purchase of that helicopter.

24 Even looking at it from the point of view of  
25 the purchase itself without looking at it from the point

1 of view of the verdict of the jury which found that Bell  
2 was not at all negligent in the manufacture of the  
3 helicopter, the cause of action in this case as the jury  
4 found solely was based upon the negligence of our pilot  
5 in Peru.

6           There were no contacts of the Defendant  
7 Helicol in Texas which in any way was connected or arose  
8 out or created the cause of action in Peru.

9           QUESTION: Unless we regard the training in  
10 Texas and the purchase of the helicopter there as  
11 bearing on that.

12           MR. WHALEN: Well, Your Honor, I would suggest  
13 that there was no connection and would also suggest that  
14 the Supreme Court of Texas among other things ruled that  
15 there was no connection between the cause of action and  
16 the contacts in Texas, and this is the position which I  
17 do not believe my adversary contests.

18           What we are dealing here if Your Honor please  
19 is not a case of contacts in a jurisdiction which gave  
20 rise to a cause of action. What we are dealing with  
21 here is a case of what is known as general  
22 jurisdiction. Is Helicol there in Texas? Do we have an  
23 office which we do not. Do we have employees located  
24 there which we do not.

25           We have no general contacts or base in Texas

1 which under the Perkins case I believe would give a  
2 basis for jurisdiction against Helicol with respect to  
3 any cause of action. That is the basis upon which the  
4 Supreme Court decided this case.

5 QUESTION: Mr. Whalen, I suppose if the facts  
6 were exactly the way they were except that the accident  
7 had taken place while they were flying over Texas there  
8 would be no question they had jurisdiction to sue  
9 Helicol for that particular accident.

10 MR. WHALEN: There is no question that Helicol  
11 under the ruling of this Court, International Shoe,  
12 would be subject to the jurisdiction of the court  
13 because the pilot error and negligence as well as the  
14 resulting injury occurred in Texas and that there were  
15 other minimum contacts as well, the contract discussion,  
16 for example, and perhaps in those cases in those  
17 instances the purchases of equipment could be a basis of  
18 additional minimal contacts to support --

19 QUESTION: Would there be any difference if  
20 there were an adequate showing that the training itself  
21 caused the accident? I mean, if he was poorly trained  
22 and that was proved.

23 MR. WHALEN: No, Your Honor, I would suggest  
24 not.

25 QUESTION: Would that make a difference?



1 MR. WHALEN: It would make no difference  
2 because the cause of action arose in Peru. It would not  
3 have arisen in Texas.

4 QUESTION: Suppose he was trained if he turns  
5 to the left he should boot it to the right, and that is  
6 what wrecked the plane and everybody in the world agrees  
7 that that was wrong.

8 MR. WHALEN: Well, his --

9 QUESTION: And he was taught that in Texas.

10 MR. WHALEN: Well, if he was --

11 QUESTION: It is your position that that has  
12 nothing to do with it.

13 MR. WHALEN: If he was improperly taught by  
14 Bell Helicopter then, of course, Bell helicopter stands  
15 to be liable. If he violated his teaching, what he was  
16 taught, in Texas in Peru then that negligence and the  
17 conduct or the result of that negligence would all have  
18 occurred in Peru.

19 There is no connection I think under Your  
20 Honor's example if you please that there is no  
21 connection under your example between the faulty  
22 training and the accident in Peru.

23 QUESTION: Mr. Whalen, if the suit had been  
24 brought in Peru could Bell Helicopter and  
25 Williams-Sedco-Horn have been sued in Peru --

1 MR. WHALEN: Yes, Your Honor.

2 QUESTION: It had jurisdiction in your view?

3 MR. WHALEN: Yes, Your Honor.

4 As a matter of fact we raise this question --  
5 We introduced our special appearance which procedurally  
6 is the way in Texas we raised a jurisdictional  
7 objection. We raised it approximately eight months  
8 after the accident so if there was a jurisdictional  
9 problem then, of course, a protective suit would be  
10 filed in Colombia or in Peru in the event jurisdiction  
11 as we believe should not be found in Texas on this  
12 course of action.

13 After the jury returned its verdict we had to  
14 continue after the jury returned its verdict and we  
15 appealed solely on the jurisdictional issue. The case  
16 went to the intermediate Court of Appeals where it  
17 reversed the decision of the trial court that the court  
18 had in personam jurisdiction over Helicol.

19 The other side then appealed to the Supreme  
20 Court of Texas and the Supreme Court of Texas initially  
21 affirmed the decision of its intermediate Court of  
22 Appeals, but my adversary then filed a petition for  
23 rehearing and the Supreme Court of Texas reversed. It  
24 is our position that the contacts or the issue in this  
25 case is one of solely general jurisdiction that the

1 contacts that Helicol had in Texas were insufficient to  
2 form a basis for general jurisdiction.

3 As the United States government --

4 QUESTION: Mr. Whalen, do you rely at all on  
5 the contract provision that provides for jurisdiction of  
6 disputes in Peru?

7 MR. WHALEN: No, Your Honor, I do not. I  
8 would interpret that provision as determining the rights  
9 of the parties to that contract which in that case would  
10 be Williams-Sedco-Horn and Helicol. I do not rely on  
11 that decision but it does indicate the intention of the  
12 parties particularly Helicol to remove any basis for  
13 jurisdiction by any United States court.

14 Their opertaion --

15 QUESTION: Well, if the contract provision  
16 means what it says and if you were to rely on it I  
17 suppose the contract was entered into in a sense in  
18 Texas and that might give Texas jurisdiction.

19 MR. WHALEN: If I may, Your Honor, the  
20 contract was not entered into in Texas. There were  
21 contract discussions and the cause of action, the  
22 negligence cause of action, to the Respondents who are  
23 before the Court did not arise out of that contract. It  
24 arose simply out of the negligence on the part of the  
25 pilot of Helicol.

1           So again I suggest to the Court that there is  
2 no basis for finding that the cause of action in this  
3 case arose out of that contract.

4           QUESTION: So you would like to forget all  
5 about the contract provision at least for purposes of  
6 this argument in this case?

7           MR. WHALEN: Yes, Your Honor, for the purposes  
8 of the jurisdiction of these Plaintiffs against this  
9 Defendant on the Plaintiffs' cause of action.

10           If the position that the Supreme Court of  
11 Texas is to be upheld that the purchases of \$4 million  
12 worth of equipment from an American vendor which is the  
13 principle contact which the Supreme Court of Texas  
14 relied on for general jurisdiction then it would appear  
15 that any time a foreign company purchased American  
16 products from an American vendor no matter what its  
17 extent that if there is a cause of action which is  
18 unrelated to those purchases that foreign purchaser  
19 could be dragged into American litigation and all the  
20 expenses involved in it solely because of the purchaes  
21 of American products.

22           As the United States government in this case  
23 succinctly but pointedly established this would as a  
24 policy matter be against the export policy of the United  
25 States. In the decisions of this Court certain policy



1 matters have entered into the decisions as to whether  
2 there should be or should not be jurisdiction.

3           One of the policy matters in some of the cases  
4 has been the residence of the Plaintiff. I should point  
5 out in this case that none of the Respondents were  
6 residents of Texas.

7           So we have in this case Plaintiffs who are  
8 nonresidents of Texas suing a company which is not  
9 based in Texas on a cause of action which occurred in  
10 Peru, and as the Supreme Court and the Respondents  
11 acknowledge there is no connection between the contacts  
12 of Helicol in Texas and the ultimate cause of action  
13 which was brought against Helicol in the State of  
14 Texas.

15           The decisions of this Court from International  
16 Shoe through Volkswagen have emphasized that there must  
17 be a relationship between the parties, the litigation  
18 and the forum if jurisdiction is to be established over  
19 a nonresident who is not based in the forum state. In  
20 this case I suggest to Your Honors that Helicol in no  
21 way was based in Texas, and lacking that finding which  
22 the Supreme Court of Texas acknowledged there can be no  
23 basis for in personam jurisdiction over Helicol on an  
24 unrelated cause of action.

25           I think this Court respectfully is bound by

1 the findings of the Supreme Court and of the Court of  
2 Civil Appeals that the cause of action in this case did  
3 not arise out of the contacts of Helicol in Texas.

4 QUESTION: Mr. Whalen, are there any  
5 circumstances in which a purchaser or a buyer of goods in  
6 the forum state would be sufficient simply because of  
7 the quantity purchased, let's say, or the frequency of  
8 that occasion to provide general jurisdiction over that  
9 buyer?

10 MR. WHALEN: Yes, Your Honor. If the business  
11 of the company was the buying and selling of helicopter  
12 equipment and that the company went into Texas to buy  
13 equipment for the purpose of reselling it then in that  
14 case I would suggest that that company by buying that  
15 equipment would be doing some business under those  
16 circumstances. But whereas Helicol was buying capital  
17 goods for the use of its business in South America its  
18 business is not buying and selling equipment. Its  
19 business is transporting people in South America.

20 So the purchase of capital goods I suggest to  
21 the Court cannot be the basis for a finding of doing  
22 business, and I believe that this was the gist of Justice  
23 Brandeis' decision in the Rosenberg case which I've  
24 cited in my brief in which he points out that purchases  
25 are not doing business. That was a case arising in New

1 York.

2 QUESTION: I am not sure that that distinction  
3 alters the relationship of Texas with the buyer though.

4 MR. WHALEN: I am sorry, Your Honor. I do not  
5 understand the question.

6 QUESTION: Well, if the purpose of the inquiry  
7 is to determine the extent of contacts with the State of  
8 Texas in this case the forum state for the purpose of  
9 inquiring what interest the state of Texas would have  
10 and the degree to which Texas, for instance, might want  
11 to consider the interests of the buyer I would think it  
12 would not make much difference why the buyer planned to  
13 buy the goods.

14 MR. WHALEN: But the cause of action, Your  
15 Honor, was based upon that purchase, and I would agree  
16 with you that that would be a contact on which  
17 jurisdiction would be based against Helicol, that is, if  
18 Helicol failed to pay for its equipment and Bell wanted  
19 to sue Helicol for its failure then I believe that  
20 Helicol plus other contacts -- Those purchases plus  
21 other contacts would form a basis for jurisdiction  
22 because the cause of action arose out of those  
23 contacts.

24 I hope I have answered your question, Your  
25 Honor. I am not certain I have.

1 QUESTION: Well, suppose Helicol was doing  
2 business and it qualified to do business in Texas, the  
3 kind of business it does. It furnishes helicopter  
4 transportation I guess, does it not?

5 MR. WHALEN: Yes, Your Honor.

6 QUESTION: Suppose it was qualified to do  
7 business in Texas on that basis but suppose that it was  
8 also in business in Peru and on the side it was in the  
9 real estate business and it borrowed some money to buy  
10 some real estate and did not pay the note. Could it be  
11 sued in Texas on that note?

12 MR. WHALEN: On your facts, Your Honor, yes it  
13 could because I think the first point that --

14 QUESTION: That would not have arisen out of  
15 any of the business they did in Texas.

16 MR. WHALEN: Excuse me, Your Honor. I thought  
17 you said that Helicol was authorized to do business in  
18 Texas --

19 QUESTION: It was, but not a real estate --  
20 The only business it ever did in Texas was the  
21 transportation business.

22 MR. WHALEN: I would interpret --

23 QUESTION: You think that is general  
24 jurisdiction. That is the presence. It is present.

25 MR. WHALEN: I think if it consents if it



1 files with the state and says I want to do business in  
2 this state I in effect consent to the general  
3 jurisdiction and I recognize that the case that the  
4 amicus brief, not the United States, the other brief,  
5 has contested this point, but my view is that if a  
6 company files with a state asking for authority to do  
7 business I believe under one of the older Supreme Court  
8 decisions that he has consented to jurisdiction, and I  
9 would consider that a consent to be sued on any cause of  
10 action.

11 QUESTION: But just a purchaser of a  
12 helicopter who does business in Peru -- He buys a  
13 helicopter in Texas. He does helicopter business in  
14 Peru. He could not be sued on the note that he signed  
15 to buy some real estate in Peru.

16 MR. WHALEN: That is right. He could not,  
17 Your Honor, under no circumstances.

18 QUESTION: Which you say is like this case.

19 MR. WHALEN: Yes, Your Honor.

20 If there are no questions, I would like to  
21 save some time for rebuttal.

22

23 ORAL ARGUMENT OF GEORGE E. PLETCHER, ESQ.,

24 ON BEHALF OF RESPONDENT

25 CHIEF JUSTICE BURGER: Mr. Pletcher.

1           MR. PLETCHER: Mr. Chief Justice, and may it  
2 please the Court:

3           My clients it is true were not residents of  
4 the State of Texas. Their relationship with the State  
5 of Texas was purely with Williams-Sedco-Horn which was  
6 domiciled in the State of Texas in Houston.

7           These four men were employed in Texas by  
8 Williams-Sedco-Horn to work over in Peru. My clients  
9 had absolutely nothing to do with any of the Helicol  
10 contacts with the State of Texas.

11           They came into the State of Texas based upon  
12 the record in this case, and the discovery was limited  
13 to that area of time from 1970 when the helicopter which  
14 crashed in Peru was purchased in Texas up until the time  
15 of the special appearance motion being heard. Helicol  
16 came into the State of Texas for far greater reasons  
17 than simply to buy some helicopters and some helicopter  
18 parts.

19           In addition to purchasing the helicopter which  
20 crashed this company purchased approximately 80 percent  
21 of its fleet, and it purchased virtually all of the  
22 parts that were necessary to keep that fleet going.  
23 They also had pilots who were trained in the State of  
24 Texas, and they also had their maintenance personnel who  
25 were trained in Texas.

1           They did not stay in Colombia and order  
2 helicopters and parts from the State of Texas and then  
3 wait for them to be delivered. They sent their people  
4 to Texas and they sent their people from the head man in  
5 that company, Mr. Restrepo, the executive vice  
6 president, the head of the maintenance department of  
7 that company as well as their pilots and their  
8 maintenance personnel.

9           The records in this case will indicate that  
10 there were some 33 different business trips taken to the  
11 State of Texas by various officials and employees of  
12 this company. Now when this incident occurred in Peru  
13 the Plaintiffs were immediately faced with one  
14 fundamental problem and that was where could their  
15 rights be determined.

16           Knowing that this Court has for the last 38  
17 years affirmed and reaffirmed the standard of minimum  
18 contacts established in International Shoe, the  
19 cornerstone of a jurisdiction in personam case must be  
20 that there be certain minimum contacts.

21           QUESTION: Mr. Pletcher, were any of the  
22 Plaintiffs domiciled in Texas?

23           MR. PLETCHER: No, Your Honor, not one of  
24 them, none of the decedents nor any of their families.  
25 The families were from Illinois, two families from

1 Oklahoma and one family from Arizona.

2 Helicol had absolutely nothing to do with  
3 Illinois. They had nothing to do with Arizona and had  
4 nothing to do with the State of Oklahoma except for one  
5 brief overnight stay there on the way to Texas to  
6 discuss the contract which has already been mentioned in  
7 the opening argument by my adversary.

8 The states of whom my poeple were resident  
9 could not hear their case because under this Court's  
10 ruling of no contacts, no jurisdiction then those three  
11 states could not possibly have passed upon my clients'  
12 rights.

13 QUESTION: Even though one of their  
14 domiciliaries had been killed as a result of the claimed  
15 negligence?

16 MR. PLETCHER: I think that this Court's  
17 decisions have repeatedly reaffirmed, Your Honor, that  
18 unless there be minimum contacts then nothing else  
19 matters, that it simply --

20 QUESTION: I suppose in Volkswagen the  
21 Plaintiff was clearly resident of Oklahoma, but that was  
22 really all that was going --

23 MR. PLETCHER: Yes, sir, that is all there was  
24 in Volkswagen.

25 But without those minimum contacts this Court



1 has held repeatedly there can be no jurisdiction.

2           QUESTION: Well, your position I take it is  
3 that it does not make any difference what kind of a  
4 cause of action that is being pressed against the  
5 helicopter company as long as it has these minimum  
6 contacts in Texas.

7           MR. PLETCHER: No, Your Honor. My position is  
8 that having once established minimum contacts which has  
9 been done, and I think there is no dispute that there is  
10 at least minimum contacts in this case, that then the  
11 focus of attention shifts from merely what did the  
12 defendant do in the forum state to examining the case  
13 from its four corners and particularly in this Court's  
14 opinion written by Your Honor in the Volkswagen case and  
15 that is where else can the Plaintiffs go to have their  
16 cause of action heard.

17           QUESTION: Well, would you say that -- Suppose  
18 some United States company sold the helicopter company  
19 some gasoline to be delivered in Peru and the helicopter  
20 company did not pay its bills. Could it be sued in  
21 Texas on that bill just because it has these minimum  
22 contacts? I would think you would say yes.

23           MR. PLETCHER: Yes, sir. I think that is the  
24 single act contact cases that are in both federal and  
25 state courts in quite a state of disarray.

1 QUESTION: Yes, but the United States company  
2 selling the gasoline had absolutely nothing to do with  
3 Texas.

4 MR. PLETCHER: I am sorry. I misunderstood  
5 the Court's --

6 QUESTION: It shipped the -- It is from  
7 California. It ships it out of California, but it sues  
8 in Texas just because that is where it wants to sue.

9 MR. PLETCHER: No, sir. No, sir. I do not  
10 believe then that jurisdiction would be permitted, and I  
11 think that it would not be permitted --

12 QUESTION: So you think the focal point is  
13 whether they can sue any place else?

14 MR. PLETCHER: Well, if they could sue any  
15 place else, that is, the situation in my case here is  
16 that there is no place else in the United States --

17 QUESTION: Except Peru.

18 MR. PLETCHER: Except Peru or Colombia.

19 QUESTION: Mr. Pletcher, you said that there  
20 is no issue here of minimum contacts that they  
21 conceded?

22 MR. PLETCHER: I think, Your Honor, that they  
23 conceded except insofar as the quality and the quantity  
24 and the importance of those contacts, but that the  
25 contacts exist I think is --

1 QUESTION: Would you summarize them, Mr.

2 Pletcher?

3 MR. PLETCHER: Yes, sir.

4 There was in addition to those that I have  
5 already mentioned, Justice Brennan, there was the  
6 purchase of the helicopters. There was the repeated  
7 purchases to the tune of about \$50,000 per month of  
8 parts. There was the training of the pilots. There was  
9 the training of the maintenance personnel --

10 QUESTION: Including the pilot of this  
11 plane?

12 MR. PLETCHER: Yes, sir.

13 There was the plant familiarization. The  
14 record will indicate and my adversary points out in a  
15 reply brief that although it never came to fruition  
16 Helicol was trying to get to become a designated repair  
17 facility for Bell Helicopter over in Colombia. They had  
18 on three occasions their head man and their maintenance  
19 department come to Fort Worth three different years for  
20 plant familiarization.

21 In addition to that if it please the Court the  
22 general manager of this Colombian corporation came to  
23 Houston, Texas. He came there to discuss and negotiate  
24 the very contract that counsel spoke of.

25 Now it is true. We have never claimed that

1 that contract was executed in Texas because it was not.  
2 It was executed in Peru because it had to be executed in  
3 Peru.

4 But it was negotiated right in Houston,  
5 Texas. Williams-Sedco-Horn was a group of three  
6 companies that was formed purely and simply to do this  
7 work over in Peru.

8 QUESTION: Mr. Pletcher, is that negotiation  
9 of the contract which was the source of the business  
10 they did in Peru really any different from the purchase  
11 of the helicopters themselves? They got the raw material  
12 and the contractual rights and all with which to carry  
13 on their business in Peru. They got those in Texas.

14 But aren't those all just a more dramatic  
15 example of the case that your opponent says is  
16 controlling here, the case that holds the purchases are  
17 not enough?

18 MR. PLETCHER: Well, Your Honor --

19 QUESTION: Are you asking us to overrule that  
20 case I guess is the bottom line of my question?

21 MR. PLETCHER: Am I asking you to --

22 QUESTION: Overrule the Rosenberg case.

23 MR. PLETCHER: No, sir. I am not asking you  
24 to overrule that case at all. What I am suggesting  
25 though is that that case since it was decided 23 years



1 before the minimum contact standard was ever established  
2 and dealt purely with the question of whether or not  
3 purchases alone equated with corporate presence which  
4 was the fiction which was then being used and which was  
5 later abandoned by this Court. That is no longer  
6 controlling in a case involving commercial contacts  
7 which is now the minimum contact standard.

8 I do not think that the Rosenberg decision  
9 needs to be overruled. I just think that it is --

10 QUESTION: Well, would you think you had  
11 enough if there was nothing in the case except the  
12 purchase of the helicopters?

13 MR. PLETCHER: I certainly would not have  
14 enough in the case if counsel persuades this Court to  
15 ignore purchases as he requests.

16 QUESTION: My problem is you have got  
17 purchases plus training plus the negotiation of the  
18 contract that enable you to do business.

19 MR. PLETCHER: Yes.

20 QUESTION: I am not sure any one of those is  
21 different from the other two analytically. That is my  
22 problem.

23 MR. PLETCHER: Well, they are different only  
24 to the extent that one is frank purchase of goods and  
25 the other is a negotiation of a contract to perform

1 services.

2 QUESTION: Do you put great weight on the fact  
3 that they purchased 80 percent of their flying equipment  
4 in Houston?

5 MR. PLETCHER: Yes, sir.

6 QUESTION: How many planes was that?

7 MR. PLETCHER: I believe they bought five  
8 helicopters in Fort Worth.

9 QUESTION: You said 80 percent you think it is  
10 a number don't you? Why didn't you say five instead of  
11 80 percent?

12 MR. PLETCHER: Well, because the percentage  
13 was the word that was given by Helicol. That is where  
14 we got our information about what percentage of their  
15 fleet was purchased in Texas.

16 QUESTION: Do you think your opponent concedes  
17 that -- I should have asked him. Maybe I still will --  
18 concedes that if they had not paid for the helicopters  
19 they could be sued in Texas for the purchase price?

20 MR. PLETCHER: I do not know if he would  
21 concede it, but he should concede it, Your Honor. Are  
22 you talking about if Bell --

23 QUESTION: Well, I know you think he should  
24 concede your case.

25 MR. PLETCHER: Bell certainly would be

1 entitled to sue for the failure of Helicol to pay for  
2 their helicopters.

3 QUESTION: Based on minimum contacts.

4 MR. PLETCHER: Yes, sir, based on minimum  
5 contacts and arising out of the transaction.

6 QUESTION: You think it is a prevailing law  
7 that if you purchased goods in a state if that is the  
8 only thing you do in a state purchasing from abroad you  
9 can be sued in that state for the purchase price. Is  
10 that a general rule you think?

11 MR. PLETCHER: No, sir. I think that --

12 QUESTION: The cases are split.

13 MR. PLETCHER: Yes. I think that is where the  
14 division of authority is. I think that is where that  
15 disarray is that --

16 QUESTION: A fortiorari there would be a big  
17 split on this one?

18 MR. PLETCHER: Yes, sir.

19 QUESTION: Do you have some cases that support  
20 you?

21 MR. PLETCHER: Well, Your Honor, I have  
22 basically the Perkins case. The Perkins case is not  
23 unlike this case except in one way and that is that  
24 there the Philippine company president because the  
25 Japanese had taken over the Philippine Islands flew back

1 to his home state of Ohio and was actually physically  
2 present there.

3 But the basic factual situation in that case  
4 is the same as it is here.

5 QUESTION: Is Perkins relied on below?

6 MR. PLETCHER: Oh, yes, sir. Because there in  
7 the Perkins case a nonresident plaintiff sued a  
8 nonresident defendant on a cause of action which was  
9 entirely unrelated to contacts within the state, and  
10 there this Court held that Ohio did not have to open its  
11 courts but it was not constitutionally prohibited from  
12 doing so.

13 That is basically our argument and has been  
14 from the outset in this case is that the contacts with  
15 this nonresident defendant were so pervasive and over  
16 such a long period of time and of such substance that it  
17 is then what we ask the Court to do and what this Court  
18 has said is a proper thing to do is to look at the other  
19 factors in this case as to whether or not it is  
20 reasonable and fair to ask a nonresident defendant to  
21 appear in the forum state to defend a cause of action.  
22 It is our belief and we urge upon this Court that once  
23 you look at this case on those other relevant matters  
24 they all come down favoring the Plaintiffs.

25 QUESTION: So you -- Just any cause of action



1 that might exist against the helicopter company could be  
2 brought in Texas?

3 MR. PLETCHER: Only if it is fair and  
4 reasonable to do so, Your Honor. That is the second  
5 protection that a nonresident --

6 QUESTION: Well, a resident of Ohio buys some  
7 stock in the helicopter company and the company is not  
8 doing very well and they think the directors are guilty  
9 of fraud or something so they want to bring a derivative  
10 suit. Can they bring a derivative suit or can they sue  
11 the directors of the helicopter company in Texas, sue  
12 the helicopter company itself?

13 MR. PLETCHER: Yes, sir. I believe they could  
14 if it is shown that the helicopter company is doing  
15 business on a consistent basis in Texas.

16 QUESTION: You mean on these very facts of  
17 yours you think that suit would lie?

18 MR. PLETCHER: Yes, sir. They have a general  
19 presence in the State of Texas under those  
20 circumstances.

21 It is for that reason that it is fair and  
22 reasonable to expect them to come in and defend that  
23 case. But, Your Honor, the fairness doctrine which is  
24 the second peg of the minimum contacts standard set  
25 forth in International Shoe protects defendants against

1 those kind of cases that in a given case may render it  
2 unfair and unjust and not in keeping with the  
3 traditional notions of fair play.

4           There is another matter that I would like to  
5 discuss particularly with reference to a question by  
6 Justice O'Connor, and that is whether or not in the  
7 country of Peru the Plaintiffs could have sued Bell  
8 Helicopter Company. Your Honor, from this record I  
9 think that it is not possible even if we assume that the  
10 country of Peru has the same jurisdictional standards  
11 that we have in this Court.

12           I think that there is absolutely no showing  
13 that Bell helicopter had any contacts with the country  
14 of Peru topside or bottom. That is one of our problems  
15 and was from the beginning of this case.

16           In Colombia the record would reflect Bell  
17 helicopter has a representative but Williams-Sedco-Horn  
18 has nothing to do with that country. The only place in  
19 the United States that my clients could have their  
20 rights established was in Texas, and the only place on  
21 earth that the Plaintiffs and the three Defendants could  
22 all be joined together in one cause of action to  
23 efficiently dispose of this case was in the State of  
24 Texas.

25           A question was also asked about why was an

1 instructed verdict granted as to Williams-Sedco-Horn and  
2 Bell Helicopter, and it is true that the Plaintiffs, my  
3 clients, failed to raise a fact issue as to negligence  
4 or product defect as to either of those Defendants. It  
5 is also true that the helicopter company's claim of  
6 defective helicopter was also not such as to raise a  
7 fact issue.

8           A case such as this is almost a certainty.  
9 When a helicopter flies into a tree in a fog and all  
10 hands are killed either there was pilot error, there was  
11 a problem with the contractor pressuring the flying  
12 company to fly in that weather, or there was something  
13 wrong with the helicopter. Those were all issues in  
14 this case from the outset by one party against the other  
15 parties.

16           When this case was finally tried and when all  
17 of the evidence was in those claims and those cross  
18 claims were all thrown out of court as far as  
19 Williams-Sedco-Horn and Bell helicopter leaving only  
20 Helicol and the Plaintiffs in the case submitted to the  
21 jury and the jury found as counsel has indicated.

22           QUESTION: May I ask -- I take it the pilot  
23 was not a defendant.

24           MR. PLETCHER: I beg your pardon?

25           QUESTION: The pilot was not a defendant?

1 MR. PLETCHER: The pilot was not. The pilot  
2 was killed as well and his estate was --

3 QUESTION: His estate was not named?

4 MR. PLETCHER: No. Only the company was named  
5 as a defendant.

6 Unless there are further questions, that is  
7 all the time I need to take.

8 Thank you very much, Mr. Chief Justice.

9 CHIEF JUSTICE BURGER: Very well.

10 Do you have anything further, Mr. Whalen?

11 ORAL ARGUMENT OF THOMAS J. WHALEN, ESQ.,

12 ON BEHALF OF PETITIONER -- REBUTTAL

13 MR. WHALEN: Yes, Your Honor.

14 My adversary in this case apparently is  
15 prepared to have the case decided on the Perkins case.  
16 He says that this case is identical to the Perkins  
17 case.

18 The facts in the Perkins case are that it was  
19 a company that was principally doing business in the  
20 Philippines and because of the war in effect had to  
21 leave the Philippines and set up operations in Ohio.  
22 The president was there. They actually operated  
23 business, all kinds of business, from Ohio.

24 They had employees, payroll, bank account,  
25 offices, employees located there. They had set up shop,



1 and the position I think of this Court in the Perkins  
2 case was as a commentator says it is never a violation  
3 of due process for a defendant to be sued in his own  
4 backyard.

5 In that case the defendant had in effect set  
6 up an office. He was equivalent to a domiciliary and  
7 under those circumstances a defendant should be subject  
8 to suit on any cause of action, and that is essentially  
9 what this Court held in that case.

10 Perkins came after International Shoe and  
11 Perkins was in a sense signaled by International Shoe  
12 because the language in International Shoe suggested  
13 that there would be circumstances in which the contacts  
14 were so great they were substantial, continuous,  
15 systematic doing business that the cause of action would  
16 not necessarily have to arise out of those facts in  
17 order as a matter of due process jurisdiction could be  
18 had.

19 I would like to point out to the Court this  
20 Court in International Shoe cited the Rosenberg case,  
21 cited it indicating that it still had strength even  
22 after International Shoe. I would point out in  
23 Rosenberg and to this extent Rosenberg may very well  
24 have been changed to some extent by International Shoe.  
25 In that case the cause of action arose out of the

1 conduct in New York although it is not clear from the  
2 facts as to whether it arose out of the purchases.

3           Notwithstanding the fact in Rosenberg that the  
4 cause of action arose out of conduct in the State of New  
5 York, the Court in that case said that purchases -- the  
6 purchase of a significant amount of capital as well as  
7 inventory is not sufficient to form basis for  
8 jurisdiction over that defendant.

9           I think my adversary's position in this case  
10 is simply that he represents United States citizens and  
11 that his court, the Texas court, should provide a forum  
12 somewhere in this country --

13           QUESTION: Mr. Whalen, if there were kind of a  
14 world-wide due process clause administered perhaps by  
15 the World Court of the Hague and that court had decided  
16 a world International Shoe case talking about minimum  
17 contacts for a country certainly somewhere in the United  
18 States should qualify as minimum contacts to adjudicate  
19 this dispute don't you think?

20           MR. WHALEN: No, Your Honor. There are no  
21 minimum contacts as I understand the doctrine of minimum  
22 contacts from International Shoe that the cause of  
23 action simply did not arise out of those contacts.

24           QUESTION: Well, it did not arise but all the  
25 plaintiffs reside in the United States. Certainly the

1 defendant had some contacts with the United States. I  
2 grant you so far as Texas when you try to pick one out  
3 of several of the United States no one of them seems  
4 very strong, but I have a rather strong conviction that  
5 somewhere in the United States there ought to be  
6 jurisdiction to try this.

7 MR. WHALEN: Your Honor, --

8 QUESTION: One does not decide on those  
9 feelings. I realize that.

10 MR. WHALEN: The constitutional due process  
11 which is the argument I am proposing to this Court is  
12 the due process which should be accorded to this  
13 Defendant. I would suggest to Your Honor that if this  
14 Defendant constitutionally cannot be subject to suit  
15 this Court should not find jurisdiction where he can be  
16 sued simply because the Plaintiffs are United States  
17 citizens.

18 I do not believe as a matter of the United  
19 States Constitution that a U.S. citizen is guaranteed a  
20 forum for any causes of action on any basis in this  
21 country. I believe that that is the fundamental basis  
22 of the argument of my adversary.

23 This Court because they are the United States  
24 says it must find a forum. I think that in this case  
25 under the present rulings of this Court there is no

1 basis because of the contacts of Helicol with the  
2 jurisdiction in Texas -- There is no basis for holding  
3 Helicol subject to the jurisdiction of Texas on this  
4 cause of action.

5           My adversary has not disputed the fact that --  
6 What he is relying on are solely the purchases of capital  
7 equipment in Texas and a single contract discussion  
8 which lasted only about two hours in the City of  
9 Houston, and that is the basis upon which he is claiming  
10 that my client is subject to suit on a cause of action  
11 which happened in South America.

12           I suggest to the Court --

13           QUESTION: Mr. Whalen, let me ask the question  
14 I think you have not answered. Supposing the suit was  
15 not arising out of an airplane action in Peru but rather  
16 supposing your client had not paid for the helicopters  
17 and the manufacturer wanted to sue them. Could they sue  
18 your client in Texas?

19           MR. WHALEN: Your Honor, on those facts alone  
20 I would state they could not sue.

21           QUESTION: Even though the cause of action  
22 arose out of the activity in Texas which would be unlike  
23 this?

24           MR. WHALEN: I understand Mr. Justice White's  
25 dissent to a denial of certiorari in the Lakeside case.



1 There was a discussion of whether those facts alone were  
2 sufficient to form a basis of jurisdiction over a  
3 defendant simply on a telephone call or --

4 QUESTION: Let me change it. Say they did not  
5 pay for the training school for their pilots. They  
6 bought the helicopters and they had them trained in  
7 Texas and then they did not pay for the instruction on  
8 how to fly the helicopters. I suppose that is pretty  
9 close to the same.

10 MR. WHALEN: That is pretty close to the  
11 same. I would say that there would be -- I do not think  
12 I would be prepared to say that that satisfies even the  
13 minimum contacts doctrine of International Shoe. It has  
14 got to be more than that. That would be my position,  
15 Your Honor, although admittedly it is a close case.

16 In Volkswagen, of course, the cause of action  
17 did arise in Oklahoma and this Court nevertheless with  
18 respect to two regional distributors found that there  
19 was not jurisdiction over those defendants. Following  
20 the rationale I believe of the Court's opinion in that  
21 case I do not think that simply the fact that a cause of  
22 action arose would be sufficient --

23 QUESTION: No, but it arose out of a  
24 commercial relationship in my hypothetical which is an  
25 unsatisfied debt and so forth. Well, anyway I

1 understand your position.

2 MR. WHALEN: I think it is a close question,  
3 Your Honor. I would not -- It is a close --

4 QUESTION: Anyway that is a different case.

5 MR. WHALEN: It is a different case, Your  
6 Honor. In this case the contacts of Helicol in Texas  
7 did not in any way give rise to the cause of action on  
8 which the Plaintiff has brought his claim, and I submit  
9 that that is the critical distinction and this Court  
10 should follow Perkins and dismiss the case.

11 If there are no further questions I will  
12 submit.

13 CHIEF JUSTICE BURGER: Thank you, gentlemen.  
14 The case is submitted.

15 (Whereupon, at 1:47 p.m., the case in the  
16 above-entitled matter was submitted.)  
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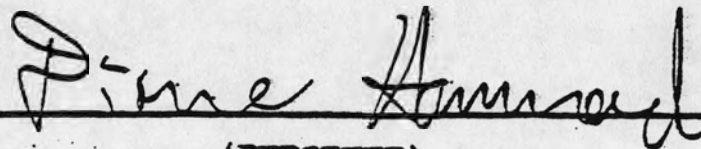
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HELICOPTEROS NACHIONALES DE COLOMBIA, S.A., Petitioners v.  
ELIZABRTH HALL, ET AL. #82-1127

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