
REVERSAL OF FORTUNE: THE LAGO AGRIO LITIGATION

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The jungle outpost of Lago Agrio is in northeastern Ecuador, where the elevation plummets from the serrated ridge of the Andes to the swampy lowlands of the Amazon Basin. Ecuadorans call the region the Oriente. For centuries, the rain forest was inhabited only by indigenous tribes. But, in 1967, American drillers working for Texaco discovered that two miles beneath the jungle floor lay abundant reserves of crude oil. For twenty-three years, a consortium of companies, led by Texaco, drilled wells throughout the Ecuadoran Amazon. Initially, the jungle was so impenetrable that the consortium had to fly in equipment by helicopter. But laborers hacked paths with machetes, and, eventually, Texaco paved roads and built an airport.

Today, Lago Agrio feels squalid. The buildings look thrown together, as if no one had believed that the boom might last. Stray dogs prowl the dusty streets, and a slender oil pipeline snakes alongside each major road, elevated on stilts, waist high, like an endless bannister. The Colombian border is ten miles to the north, and drug traffickers and paramilitaries have infested the Oriente, as have sicarios—paid assassins—who post ads online and charge as little as twenty dollars. In 2010, in a single month, the bodies of thirty murder victims were found along a stretch of road near the border.

One day in February 2011, a judge in Lago Agrio, presiding over a spare, concrete courtroom in a shopping mall on the edge of town, issued an opinion that reverberated far beyond the Amazon. Since 1993, a group of Ecuadorans had been pursuing an apparently fruitless legal struggle to hold Texaco responsible for environmental destruction in the Oriente. During the decades when Texaco operated there, the lawsuit maintained, it dumped eighteen billion gallons of toxic waste. When the company ceased operations in Ecuador, in 1992, it allegedly left behind hundreds of open pits full of malignant black sludge. The harm done by Texaco, the plaintiffs contended, could be measured in cancer deaths, miscarriages, birth defects, dead livestock, sick fish, and the near-extinction of several tribes; Texaco’s legacy in the region amounted to a “rain-forest Chernobyl.”

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By the time the judge, Nicolás Zambrano, issued his decision, the case had been going on for eighteen years. It had outlasted jurists on two continents. Zambrano was the sixth judge to preside in Ecuador; one federal judge in New York had died before he could rule on the case. The litigation even outlasted Texaco: in 2001, the company was subsumed by Chevron, which inherited the lawsuit. The dispute is now considered one of the nastiest legal contests in memory, a spectacle almost as ugly as the pollution that prompted it.

Chevron, which operates in more than a hundred countries, is America's third-largest corporation. Its annual revenue, which often tops two hundred billion dollars, is nearly four times as much as Ecuador's economic output. The plaintiffs, who named themselves the *afectados*—the affected ones—included indigenous people and uneducated settlers in the Oriente; some of them initially signed documents in the case with a fingerprint. They were represented by a fractious coalition of American and Ecuadoran lawyers, most of whom were working for contingency fees. An environmental lawsuit against a major corporation can resemble a war of attrition, and in 1993 few observers would have predicted that the plaintiffs could endure as long as they did. But, on February 14, 2011, their persistence was rewarded. Judge Zambrano ruled that Chevron was responsible for vast contamination, and ordered it to pay eighteen billion dollars in damages—the largest judgment ever awarded in an environmental lawsuit.

It was an extraordinary triumph, particularly for one of the plaintiffs' lead lawyers, a tenacious American named Steven Donziger, who had been a key figure in the case since its inception. Donziger speaks Spanish, and for years has shuttled between Ecuador and New York. "This trial is historic," he has said. "This is the first time that a small developing country has had power over a multinational American company."

Chevron categorically denies the charges made in the lawsuit, insisting that it bears no responsibility for pollution in the Amazon and that Texaco's operations were "completely in line with the standards of the day." A Chevron spokesman told me that "there is no corroborating evidence" of adverse health effects related to oil development in the Oriente, and blamed "trial lawyers" for "perpetuating false information."

In recent years, Chevron has invested millions of dollars in remolding its public image. Elegant television commercials, narrated by the actor Campbell Scott, emphasize that the company aims to "practice and espouse conservation." A print advertisement features a photograph of two smiling African women, and the caption "Oil Companies Should Support the Communities They're a Part Of." This fall, at a breakfast discussion on "Business and Human Rights," in New York, Chevron's manager for global issues, Silvia Garrigo, said that the company makes "social investments" wherever it operates, noting, "We're in countries for the long haul."

In the courtroom, however, Chevron has been far less conciliatory. Not long ago, after the company successfully defeated a lawsuit seeking to hold it

responsible for the shooting deaths of protesters on an offshore oil platform in Nigeria, it tried to compel the impoverished Nigerian plaintiffs, some of whom were widows or children, to reimburse its attorneys' fees. (No fees were awarded, and a judge admonished Chevron for trying.) "That's how they litigate," Bert Voorhees, one of the Nigerians' lawyers, told me. "The point is to scare off the next community that might try to assert its human rights."

Chevron has been especially defiant in the face of the Lago Agrio accusations, which its lawyers have labelled "a shakedown." In addition to defending itself in Ecuador, it has fought the case in more than a dozen U.S. federal courts, hiring hundreds of lawyers and producing what its own attorneys have called "an avalanche of paper." Donziger has maintained that Chevron is motivated not merely by fear of an adverse judgment but by a desire "to destroy the very idea that indigenous people can bring an environmental lawsuit against an oil company." In 2008, a Chevron lobbyist in Washington told *Newsweek*, "We can't let little countries screw around with big companies like this." One Chevron spokesman has said, "We're going to fight this until Hell freezes over—and then we'll fight it out on the ice."

When the verdict was issued in Lago Agrio, Chevron declared the judgment to be "illegitimate and unenforceable," and said that the company, which has no assets in Ecuador, would not pay. Instead, it countered with an audacious move—suing Steven Donziger, the architect of the suit against it. At the very moment that Donziger might have been celebrating a landmark victory in Ecuador, he found himself facing charges of extortion and fraud in New York.

When Donziger is not in Ecuador, he works out of the paper-strewn kitchen of a two-bedroom apartment that he shares with his wife and young son, on the Upper West Side. But Donziger also does a lot of business in restaurants. He will set up shop over lunch at the Ocean Grill, opposite the Museum of Natural History, and work his phone until all the other patrons have left. Wherever he goes, a MacBook Air is tucked under his arm.

If discretion is a signature imperative of the legal profession, Donziger is a rather unorthodox lawyer. He is a compulsive talker, his incessant conversational stream tracking the course of his volatile emotions. Roused by his own orations, he often crescendos, suddenly, into a shout. At six feet four, with big facial features, close-cropped charcoal-gray hair, and enormous hands, Donziger is a formidable physical presence. Friends from Harvard Law School refer to him as "Big Steve." He played basketball at Harvard with Barack Obama, another member of the Class of 1991. Since then, Donziger has devoted his career to a single case.

Shortly after Donziger graduated from law school, a Massachusetts attorney named Cristóbal Bonifaz began considering a lawsuit against Texaco. Bonifaz was a courtly émigré from a prominent Ecuadoran family. (His grandfather had served, briefly, as President.) In April, 1993, after learning about the environmental damage in the Oriente from an Oxfam report, he

assembled a team of lawyers, doctors, and specialists from the Harvard School of Public Health for a reconnaissance trip to the Amazon. Bonifaz invited Donziger, a family friend, to join the expedition.

When Texaco struck oil in Ecuador, the country was unstable and impoverished; its chief export was bananas. As Judith Kimerling, the author of the book “Amazon Crude,” has written, the “first barrel” of Ecuadoran oil was paraded through the streets of Quito. In 1972, when Texaco completed construction of a pipeline to funnel oil to the Pacific coast, Ecuador instantly became the second-largest oil exporter in Latin America, after Venezuela. Within a decade, per-capita G.D.P. had nearly doubled.

One challenge of drilling oil wells is what to do with “produced water”—a malodorous liquid, fortified with heavy metals, that comes mingled with the oil that is pumped out of the ground. In the United States, it is standard practice, once the oil has been isolated from this mixture, to “reinject” the produced water, pumping it deep underground into dedicated wells, in order to prevent damage to the local habitat. But reinjection is expensive, and in Ecuador Texaco simply dumped the liquid into swimming-pool-size pits. Produced water does not biodegrade, and when Donziger and his colleagues visited the Oriente they discovered that hundreds of oily pools pockmarked the rain forest.

The government of Ecuador had been aware of Texaco’s techniques from the start, and for many years Texaco was in a consortium that included the national oil company. Texaco’s practices did not directly violate Ecuadoran law; in fact, the country had no meaningful environmental regulations at the time. Most Ecuadorans knew little about the science of petroleum extraction—and most of what they learned came from Texaco. Lago Agrio was named for Sour Lake, the East Texas town where Texaco was established, and, as the oil camp grew into a boom town, pipeline spills became common. Texaco trucks sprayed roads with oil, to keep down dust. In Quito, I met a woman named Margarita Yépez, who spent eighteen years as a social worker for Texaco. In the early days, she said, gringo oilmen told Lago Agrio locals, in jest, that oil was good for one’s health; a coffee can full of crude could cure arthritis or male-pattern baldness—just rub some on the affected area. “They were the authority, so we trusted them,” she said. “We were dumb.”

Initially, the indigenous tribes were the only Ecuadorans affected by the drilling. And though the oil lay under their native land, they weren’t entitled to any of the profits, because the government retained all “subsurface” rights. (“The meek shall inherit the earth,” the oilman J. Paul Getty once observed. “But not its mineral rights.”) The tribes cut down trees to block Texaco’s trucks, and launched attacks on oil workers. In 1987, the bishop from a local Capuchin mission volunteered to reach out to one particularly reclusive tribe, the Tagaeri, who lived on land that another oil company wished to explore. A helicopter deposited the bishop, along with a nun, in Tagaeri territory. When the pilot returned, the next day, he discovered their corpses, pinned to the jungle floor by twenty-one heavy wooden spears.

Such gestures of rebellion proved futile. In the decade after Texaco began paving roads, a hundred thousand Ecuadoran settlers moved to the Oriente, lured by free acreage and the promise of work. They razed the forest to accommodate crop farming, and local tribes were reduced to selling trinkets at the oil camps, or to retreating further into the bush. "It was the absolute destruction of their lives," Miguel Angel Cabodevilla, a Spanish monk who has worked with the tribes for decades, told me.

In November, 1993, Cristóbal Bonifaz filed a class-action lawsuit against Texaco in a federal court in Manhattan, on behalf of thirty thousand afectados. Texaco rejected the allegations, maintaining that it had "operated under sound industry practices and complied with all Ecuadoran laws."

Donziger, initially, was involved less in the legal strategy than in a public-relations campaign against Texaco. Before law school, he had worked in Central America as a journalist, and he was unabashed about using a little stagecraft to dramatize his clients' story. At important court hearings in Manhattan, Donziger presented them to the press in their native beads and war paint. Development had exposed most of the plaintiffs to modern customs, and, after appearing in feathers at a press conference, they often changed into jeans at their hotel, then went shopping in Times Square. But journalists were smitten with the transplanted tribesmen. A Times article bore the headline "JUST TOURISTS ON BROADWAY, BUT BAREFOOT AND CRAVING ROAST MONKEY."

For eight years, Texaco fought to have the lawsuit dismissed, on the ground that it should be tried not in the U.S. but in Ecuador. Donziger and his colleagues feared such a turn: Ecuador's judicial system was notoriously corrupt, and its government relied on oil revenues for a third of its annual budget. "Texaco ran that country for twenty years," Chris Jochnick, a law-school friend of Donziger's who lived in Ecuador at the time and now works for Oxfam America, told me. "They had the U.S. Embassy in their pocket. They had the military. Politically, there was no way that Texaco was going to be held accountable in Ecuador." Texaco denied that Ecuador was incapable of offering a fair trial, insisting that the country's legal norms were "similar to those in many European nations."

In 2001, Texaco prevailed. A federal judge in New York dismissed the case, ruling that it had "everything to do with Ecuador and very little to do with the United States." By that time, Texaco's acquisition by Chevron was under way. In a print advertisement, Donziger and his colleagues warned Chevron shareholders that "Texaco comes with a lot of assets, and one huge liability." But it must have seemed that the lawsuit had run its course. Just before the acquisition, a Chevron spokesman said that the company felt no need to "particularly highlight" the Ecuadoran claims to shareholders.

In 2003, Donziger and his colleagues re-filed their case, in Lago Agrio, despite their misgivings about the Ecuadoran legal system. They recruited a team of Ecuadoran lawyers, and Donziger began making regular trips to the

region. Because he was not licensed to practice law in Ecuador, his role was ostensibly an advisory one. But he relished the rigors of litigation in the sweltering Oriente, and, by virtue of his galvanic personality and his repeated visits, he gradually supplanted Bonifaz as the driving force in the case.

Not everyone embraced Donziger's leadership. Esperanza Martínez, who runs Oilwatch Sudamérica, an environmental group in Quito, told me, "I confess, the intense personality that Steve has, it's a struggle for me." Sarah Leah Whitson, a longtime friend of his, who is now at Human Rights Watch, acknowledged that some people are put off by Donziger's stubbornness and his theatricality. But it was precisely these qualities, she said, that enabled him to take on an oil giant: "He's a leader, and the fact is that he's the one who has been with this case for over a decade and has kept it going."

As the lawsuit moved forward in Ecuador, Donziger and his team felt daunted by what seemed like grave disadvantages. In his diary, Donziger lamented that trying to hold oil companies accountable in Ecuador "goes against the flow of the entire economy." The country does not have jury trials, so enormous discretionary power is invested in judges, who, for the most part, are poorly paid civil servants; Donziger worried that they might be susceptible to bribery. In the U.S., lawyers are forbidden to meet with a judge "ex parte," or outside the presence of opposing counsel. But in Ecuador at the time no such rules applied, making it difficult to monitor whether a judge had been subjected to improper influence.

Julio Prieto, a young Ecuadoran lawyer working for the plaintiffs, told me that when he was in law school in Quito "it was always on the table that there's a way things should be, but in practice there's a lot of dirt." I asked him if it was dispiriting to work in such a system. "Have you ever bribed a cop?" he asked. I shook my head. "In Ecuador, everybody does," he said. "But that doesn't mean we don't need cops."

Chevron hired a fleet of local lawyers, who were often accompanied in Lago Agrio by bodyguards. Donziger grew obsessed by the vast power of his adversary. "No matter what I do, they can outmaneuver me with money," he complained. Anytime a new judge or technical expert entered the case, Donziger wondered whether the person was contagiado—corrupted. Members of the plaintiffs' legal team came to believe that they were under surveillance by Chevron agents. After the brother of Pablo Fajardo, the lead Ecuadoran lawyer for the plaintiffs, was murdered near the Colombian border, in 2004, some members of Donziger's team insinuated that Chevron was involved. Donziger worried about his own safety, wondering if he might also "become a victim." (Chevron strenuously denies involvement in the murder, and the plaintiffs have offered no support for this theory.)

The plaintiffs' greatest asset, in Donziger's view, was the incontrovertible evidence of environmental contamination—the disfigured forest, the toxic pits. When journalists visited the Amazon, the plaintiffs ferried them from site to site, in a routine that became known as "the toxic tour." At the same time,

Donziger feared that, in the end, the legal outcome might hinge not on the truth but on manipulations of the system.

These concerns intensified in 2006, when Donziger heard accusations that a new judge assigned to the case, Germán Yáñez, was, as Donziger put it, “a womanizer” and “a drinker.” (Around this time, Yáñez was accused of sexually harassing an intern, a charge that he dismissed as politically motivated.) Yáñez had “the perfect psychological profile for blackmail and corruption,” Donziger thought. Some nights, he glanced up from his laptop and, seeing his face in a mirror, was struck by how much older he looked than he had when the case began. He fretted about what he had come to think of as “the fool’s-errand problem.”

The law firm of Gibson, Dunn & Crutcher is more than a century old and has a thousand attorneys. One day this fall, I visited the firm’s New York offices, on the forty-sixth floor of the MetLife Building, to meet Randy Mastro, a fifty-five-year-old partner who, for the past two years, has represented Chevron in the Ecuador case. Mastro, who has peaked eyebrows and unruly white hair, is soft-spoken, but, even by the pugilistic standards of the New York bar, he has a reputation as a merciless litigator. In the courtroom, wearing a conservative suit, with his spectacles perched on the tip of his nose, Mastro springs to life. He bounces on his toes to underscore the obviousness of his logic, and dices the air with his hand, keeping time with his argument, like a rapper. His swagger is transfixing.

As a federal prosecutor, and then as a deputy mayor under Rudolph Giuliani, Mastro fought the New York Mob, cleaning up the Fulton Fish Market and the San Gennaro Festival, despite death threats. At City Hall, he occasionally wielded a baseball bat during meetings, to accentuate a point. The Daily News once observed that Mastro was the only person in the Giuliani administration who made the Mayor seem like a nice guy.

When Mastro entered the plush conference room where I was waiting, he carried a towering stack of binders containing thousands of pages of Chevron briefs and affidavits. I could barely see his face. He set them on the table with a thud. “Clients look to our firm to give them the kind of zealous advocacy that can help turn around a case,” Mastro told me, and Gibson, Dunn has been lauded for its success in rescuing major corporations from legal threats. In 2010, Walmart, after a successful defense in a major employment lawsuit, credited the “lifeboat lawyers” of Gibson, Dunn. Others have suggested that the firm can go too far. Several years ago, in an unrelated case, the Montana Supreme Court reprimanded Gibson, Dunn for engaging in “legal thuggery.”

The lawsuit in the Amazon is meritless, Mastro assured me—Donziger was merely “out to make a buck.” But the fact that Chevron solicited Mastro’s aid suggested that the company was anxious about its prospects in the case. Donziger’s court-the-press strategy had proved exceptionally effective. In 2005, he approached Joe Berlinger, a well-regarded New York filmmaker, and suggested that he make a documentary about the case. The film, “Crude,” was

released in 2009. That same year, “60 Minutes” ran a segment that was highly critical of Chevron. In it, Silvia Garrigo came across as a caricature of heartlessness as she downplayed the health hazards of petroleum. “I have makeup on, and there’s naturally occurring oil on my face,” she said. “Doesn’t mean I’m going to get sick from it.”

Donziger, in addition to his roles as a lawyer and a P.R. strategist, had become, by necessity, an expert fund-raiser. He was relentless and creative in cultivating celebrities for the cause, including Sting and Daryl Hannah, and in eliciting support from wealthy patrons such as Russ DeLeon, a law-school contemporary who had made a fortune through an online-gambling venture. “You’ve got to figure out ways that you can sustain efforts like this,” Donziger explained in a recent speech, because when you sue a multinational corporation its “main strategy is to exhaust you.” For years, the case was underwritten largely by a Philadelphia law firm, Kohn, Swift & Graf, which gave financial and legal support in exchange for contingency fees. But, as the case dragged on, the wire transfers from Philadelphia did not arrive regularly enough to cover expenses.

Looking elsewhere for financial support, Donziger found it in the emerging field of “litigation finance.” In recent years, certain hedge funds have started investing in class-action lawsuits, providing up-front capital to cover the expenses of a case in exchange for an equity share in a successful outcome. These arrangements are unregulated and controversial. But for Donziger they presented a crucial opportunity to keep the litigation alive. He offered investors a high-risk, high-reward proposition. The judgment could run to billions of dollars, he said, with attorneys’ fees making up roughly a third of that figure. In confidence, he noted that his personal fee alone could amount to two hundred million dollars. Eventually, a fund called Burford Capital, which is based in the Channel Islands, made a multimillion-dollar investment in the case. A powerful law firm in Washington, D.C., Patton Boggs, also joined the plaintiffs’ team.

As Randy Mastro sees it, the wealthy, for-profit players who are bankrolling Donziger’s efforts betray an underlying cynicism behind the plaintiffs’ case. This suit is driven not by poor Ecuadorans, he told me, but by “lawyers and consultants and financiers.” Donziger’s ambition was certainly grandiose, but it seemed motivated as much by a combative idealism as by a desire for riches. He wanted to recalibrate the power dynamic that had traditionally made it difficult for marginalized foreigners to sue American companies. He felt that he was creating a viable “business model for a human-rights case.”

In 2006, Ecuador elected a new President, the left-leaning economist Rafael Correa. Donziger was elated. On the day of Correa’s inauguration, he told Berlinger’s camera crew, “There is no way under an administration led by this man that Chevron could ever get away with what it usually does here, which is bribes, backdoor meetings, and manipulation of government power.” The next year, after lobbying by the plaintiffs, Correa visited the Oriente, and

surveyed the waste pits. "Let's not deceive ourselves," he said, at a press conference in Lago Agrio. "There was a crime against humanity here."

The surest sign that the momentum in Ecuador had shifted against Chevron came on November 26, 2008, when a geological engineer named Richard Cabrera, who had been appointed to serve as an independent environmental-damages expert, delivered a report recommending that the court find Chevron responsible for twenty-seven billion dollars in damages. Chevron denounced the report, saying that it contained "fabricated and erroneous evidence" and suggesting that Cabrera was biased toward the plaintiffs. But Donziger's team commissioned a peer review of the findings from Stratus, an environmental consulting firm in Boulder, Colorado, that has done extensive work for the U.S. government. Stratus endorsed Cabrera's report as "sound, reasonable, and consistent with approaches used in other environmental-damage cases."

By this time, the leadership at Chevron may have come to regret Texaco's strenuous efforts, in the nineties, to move the lawsuit out of the U.S. Chevron representatives now expressed alarm at the dire state of the Ecuadoran judiciary, likening due process in the country to what one might find in North Korea. The danger, as Mastro later explained, was that the Correa regime might put a "thumb on the scale" of justice in favor of the plaintiffs.

In August, 2009, Chevron offered startling evidence to support its claim that Ecuador was hopelessly corrupt: it released video footage that allegedly implicated the judge then presiding over the Lago Agrio case, Juan Nuñez, in a bribery scheme. An Ecuadoran businessman named Diego Borja had been hoping to secure a cleanup contract in the event of a judgment against Chevron. But when Borja met with the judge and a Correa administration official, the company explained, he was informed that he first needed to pay a million dollars each to Nuñez, to the administration, and to the Lago Agrio plaintiffs. Borja and an associate secretly recorded the discussions, using cameras embedded in a watch and a pen. Charles James, a Chevron executive, declared, "This information absolutely disqualifies the judge and nullifies anything that he has ever done in this case."

Judge Nuñez stepped aside. But he insisted that he was innocent. The videos, which Chevron posted online, showed Borja and the official elliptically discussing the possibility of a bribe with Nuñez, but offered no proof that the judge had solicited or accepted one. Nuñez told me that the scandal was a setup, and Donziger has called the incident "a Chevron sting." It has subsequently emerged that the purported Correa administration official was in fact a Quito car salesman and part-time caterer, whose name does not appear in a party database of registered members. The businessman, Borja, was a former Chevron contractor.

Chevron insists that it did not prompt Borja to raise discussions about paying bribes, and says that he was not compensated for his efforts. But, according to court documents, Borja and his wife were relocated, at Chevron's expense, to the U.S., and supplied with a house, a car, a generous monthly

stipend, and the services of a top criminal-defense attorney. The attorney would not make Borja available to speak with me, but a friend of Borja's, Santiago Escobar, told me that Judge Nuñez was innocent, and that Borja concocted the scheme to entrap him. "He's not a good Samaritan," Escobar said. "He was looking for money."

In 2011 I took the toxic tour. For half the day, my guide was a spokesperson for Donziger and the plaintiffs; for the other half, I was accompanied by a Chevron representative. Both sides now employ full-time public-relations specialists. In fact, they have spent so many years contesting one another that the controversy can resemble a vituperative political campaign—a constant volley of talking points and rebuttals. No scientific or historical assertion goes undisputed by the other side. (Miguel Angel Cabodevilla, the monk, told me, "In the jungle, there is more literature than history.")

Chevron has hired dozens of ecological consultants, who challenge nearly all the plaintiffs' empirical claims. The company denies that the contamination and the health dangers posed by it are anything close to what Donziger has alleged. When the plaintiffs produced a study showing unusually high rates of cancer in the Oriente, Chevron countered with a study of its own, maintaining that cancer rates in the area are actually lower than elsewhere in Ecuador. Silvia Garrigo, the global-issues executive, has complained that the afectados blame Texaco for their every affliction: "If their cow dies, it's Texaco. If their wife has diabetes, it's Texaco."

During the plaintiffs' portion of the tour, a local man named Donald Moncayo showed me around. Wearing white surgical gloves, he dug up a fistful of black mud and held it so that the sunlight caught the telltale blue-orange tint of petroleum. At one fetid pit in a jungle glade, he stepped gingerly onto the surface of the pool, where the solid matter in the produced water had congealed into a tarlike crust that was sturdy enough to support him. Smiling a little, Moncayo shifted his weight from one foot to the other, until the whole surface began to undulate beneath him. He looked like a kid on a waterbed. According to the plaintiffs, there are nearly a thousand of these pits in the Oriente, scattered across an area the size of Rhode Island.

Watching Moncayo, I had a sense of *déjà vu*. He is the regular master of ceremonies on the toxic tour; I had read accounts of his routine, and had seen it enacted, in nearly identical fashion, in "Crude," the Berlinger documentary. But, if Moncayo's cadences were rote, there was nothing feigned about his indignation. He led me down a steep ravine to a creek. In the gauzy light filtering through the canopy, the water, which was only a foot deep, looked crystalline. Moncayo drove a stick into the creek bed and churned the mud until the water grew clouded by sediment. At his encouragement, I skimmed my hand across the surface of the creek. My palm was coated in an acrid film.

Moncayo watched me with grim satisfaction. "We tell Chevron, 'If you think this is O.K. for human consumption, then why don't you drink from it?' "

he said.

Jim Craig, a Chevron spokesman, took me around Lago Agrio. He told me that the company has taken its own water samples in the Oriente, and has never identified a positive reading for hydrocarbon contamination. He speculated that, in some cases, the plaintiffs may have “spiked” local water sources after Chevron did its tests.

Craig told me that the skin infections and gastrointestinal problems attributed by the plaintiffs to oil pollution were more likely caused by sewer lines that run into local streams and rivers. “You can imagine all kinds of stomach problems arising from the ingestion of that crap,” he said.

A few miles outside Lago Agrio, we stood on the lip of a waste pit, and Craig told me that the vile-looking residue on its surface was only a few inches thick. To illustrate this point, he picked up a rock and lobbed it into the pit. It landed, with a sickly thud, on the surface. “If we had a bigger rock . . .” he said, and threw a much larger one. It, too, failed to sink.

In Chevron’s reckoning, however, these environmental claims and counterclaims are all somewhat beside the point, because the company’s defense ultimately rests not on science but on law. In 1995, Texaco acknowledged that it had made a mess in the Amazon, and committed itself to doing some remediation. But the company also emphasized that it had been part of a consortium in Ecuador—one that included the national oil company—and that its stake in the partnership had been thirty-seven per cent. Texaco therefore agreed to clean up only thirty-seven per cent of the pits, even though, as the consortium’s sole “operator,” it had been responsible for both drilling the wells and digging the pits.

Texaco spent forty million dollars on the cleanup, and in 1998 the Ecuadoran government granted the company a release from any future claims against it. Chevron freely admits that large sludge pits still dot the Amazon, but denies that it has a legal obligation to clean up more of them. Instead, it suggests, that responsibility should fall to the national oil company, Petroecuador, which has managed extraction in Lago Agrio since Texaco’s departure and has been accused of polluting extensively in the region. “This is not about dirt in Ecuador,” a Chevron lawyer once remarked. “It is about a contract and how to interpret it.”

In January, 2009, Donziger travelled to Park City, Utah, to attend the première of “Crude,” at the Sundance Film Festival. The film depicts him as a domineering presence; at one point, when he believes that Chevron’s lawyers may have manipulated an elderly judge in Quito, he storms into the judge’s chambers, towering over the man. “Be very careful with the Texaco lawyers,” Donziger warns. “They play dirty.” To the camera, he concedes that he would never do such a thing in America, but explains that in Ecuador “this is how the game is played.”

In another scene, Donziger coaches one of his indigenous clients, Emergildo Criollo, preparing him to crash Chevron’s annual shareholders’

meeting, in Houston. He tells Criollo not to be cowed and suggests some rhetoric: “ ‘You spent twenty-eight years in my territory. I can spend three minutes in your territory.’ ” Pleased with the line, he says, “That’s a good one, right?” In the next scene, Criollo delivers the sound bite to the shareholders.

When Randy Mastro and his colleagues scrutinized the film, they noticed a tiny discrepancy between the version that aired at Sundance and the one that was subsequently released on DVD. A scene in the film captures a consultation between the plaintiffs’ lawyers and a tribe that they represent. At Sundance, a Spanish physician named Carlos Beristain was visible in the scene. In the DVD version, he was edited out. This struck Mastro as potentially significant, because after the meeting in question Beristain had gone to work for the independent environmental-damages expert. Had the director edited out the physician at the plaintiffs’ request?

“That had our antennae way up,” Mastro told me.

He wondered what other “outtakes” might exist from the three years that Berlinger spent filming Donziger, and in April, 2010, he asked a federal judge in New York to compel Berlinger to turn over all his raw footage. Mastro cited a little-used statute that entitles an American litigant facing a lawsuit abroad to pursue extensive “discovery” inside the United States. Chevron needed the outtakes, Mastro argued, “to prove it was denied due process” in Ecuador.

Berlinger’s lawyers objected that Chevron was on a “fishing expedition,” and invoked the journalist’s privilege. Mastro responded that “Crude” was not journalism at all but “an unapologetic work of propaganda.” Because Donziger had pitched Berlinger to make the film, Mastro argued, and because Berlinger had cut the shot of the Spanish doctor at the plaintiffs’ request, he was not a truly independent filmmaker.

Despite the interventions of news organizations, including the Times, which argued that obliging Berlinger to turn over the footage would set a dangerous precedent, both the judge, Lewis Kaplan, and an appeals court sided with Chevron. Mastro’s team was soon in possession of six hundred hours of footage.

It was not long before Mastro requested another hearing before Kaplan, an acerbic but respected senior federal judge, who worked as a corporate lawyer before his appointment to the bench, by Bill Clinton, in 1994. “If we were on a fishing expedition, we caught a whopper,” Mastro announced in court. Donziger appeared to have grown so comfortable with Berlinger’s crew that he disregarded the fact that they were recording everything he said. As Mastro played a series of outtakes for Judge Kaplan, Donziger’s outspokenness was on full display. He rified, indignantly, about the inadequacies of the Ecuadoran legal system. “They’re all corrupt,” he says of Ecuadoran judges in one clip. “It’s their birthright to be corrupt.”

Judging from the outtakes, Donziger’s fear that the case would not be decided on its merits had led him to doubt the importance of the evidence itself. In one scene, a scientific expert for the plaintiffs tells him that one

measurement of groundwater contamination was not as strong as he had thought. “This is Ecuador, O.K.?” Donziger says. “At the end of the day, if there’s a thousand people around the courthouse you’re going to get what you want.” As for the scientific data, he adds, it’s “just a bunch of smoke and mirrors and bullshit.”

It was a devastating presentation. Just as Chevron was asserting that Ecuador was too corrupt to ever guarantee a fair trial, here was its adversary, effectively saying the same thing. The documentary was the plaintiffs’ “undoing,” Mastro told me.

In another scene that Mastro showed to the court, Donziger chats with associates over dinner at a restaurant. Someone at the table, referring to the popular antipathy toward Chevron in Ecuador, suggests that if the judge in Lago Agrio ruled against the plaintiffs he might be killed.

“He might not be,” Donziger replies, cradling a glass of red wine. “But he thinks he will. Which is just as good.”

In the course of several hearings, Judge Kaplan exhibited a palpable dislike for Donziger. He described him as “the field general of a political and media offensive,” and seemed to take umbrage at what he called the “flat-out admissions by Donziger that what’s going on in Ecuador is mud wrestling, not bona-fide litigation.”

Donziger’s lawyers tried to play down his loose talk. But Mastro argued that the outtakes exposed a criminal conspiracy, in which Donziger was exploiting the corruption of the Ecuadoran system to pressure Chevron into a huge settlement. Suddenly, the very qualities that had enabled Donziger to remain steadfast in the face of staggering odds—his runaway rhetoric, his knack for P.R.—had placed him, and the entire case, in peril. “Knives are effective for cutting through things,” his friend Sarah Leah Whitson told me. “But sometimes you can slice your own finger.”

Mastro, emboldened by his success with the outtakes, decided to go one step further. The video footage revealed such outlandish impropriety, he argued to Judge Kaplan, that Chevron should be entitled to Donziger’s own documents. Because much of what Donziger did was fund-raising and publicity, rather than lawyering, Mastro suggested, he should not be afforded attorney-client privilege; and, even if he was entitled to the privilege, he had waived it by inviting Berlinger’s cameras to film him. “He has one privilege left,” Mastro told Judge Kaplan. “He can assert the Fifth Amendment.”

Normally, a lawyer who is subpoenaed creates a log of any confidential documents to be withheld. But Chevron was requesting Donziger’s entire case file—documents spanning nearly two decades—and Donziger did not have a staff of associates to help him go through it. When he failed to deliver a privilege log that met Kaplan’s approval, the judge agreed with Mastro that “the genie is out of the bottle”—and granted Chevron access to Donziger’s confidential documents. Donziger was forced to turn over two hundred thousand pages of material.

Twenty Gibson, Dunn associates set to work reviewing stacks of memos and e-mails marked “Confidential” and “Attorney Work Product.” They averaged five thousand pages a day. Gibson, Dunn also requested, and received, Donziger’s tax returns, his bank-account information, and his personal computers. Technicians forensically scanned his hard drives, and Gibson, Dunn copied everything they found. An attorney for Donziger protested that this meant that Chevron’s lawyers could interrogate his communications with his wife, as well as other unrelated matters.

“He doesn’t have any other matters,” Kaplan said. “This is his life.”

Kaplan’s decision was extreme; rarely had such a wealth of sensitive material been handed to a legal adversary. As Gibson, Dunn attorneys fanned across the country, appearing before seventeen federal courts to request further information, one appellate judge noted that the sheer extent of this kind of discovery was “unique in the annals of American judicial history.” Kaplan even granted Chevron permission to depose Donziger—a highly unusual move.

“No lawyer wants to be deposed,” Stephen Gillers, a legal ethicist at New York University School of Law, told me. “It unnerves us, as a profession. We like to believe that we operate in this zone of privacy that no one can pierce, unless we permit it. Indeed, that enables us to do our jobs.”

For fourteen days, in a conference room in a midtown skyscraper, Mastro and other Chevron attorneys questioned Donziger, under oath, about the financing of the case, and about various legal strategies that he had used. Donziger soon grew brittle and exhausted. One task of the inquisitor in a deposition is to confine the person being questioned to simple yes or no answers. But Donziger insisted on defending his conduct loquaciously, to the point where Judge Kaplan reprimanded him, remarking, “The man could have a career as a filibustering senator.”

At one point, Donziger was asked whether he kept a diary. Initially, he said no. But his diary, which he had maintained for several years, was saved on one of his laptops, and Gibson, Dunn found it on his hard drive. When Chevron filed the text, unexpurgated, with the court, it became part of the public record—another humiliation for Donziger. In the diary, he details his doubts and aspirations, and returns, obsessively, to the subject of his adversary, who in his shorthand is simply “Tex.” He recounts arguments with his wife and makes unsparing observations about his colleagues.

Donziger also describes meetings with Judge Yáñez—the judge he had feared would be vulnerable, because of his alleged womanizing and drinking, to blackmail. In one entry, Donziger wrote, “I called the judge and he asked that we bring over some whiskey or some wine. We didn’t.” On another occasion, he described Yáñez asking him for help in obtaining a visa, so that his girlfriend might visit America. Donziger did not help him, but noted in his diary that the plaintiffs had drawn up a complaint about Yáñez’s conduct, and had informed him that “we might file it if he does not adhere to the law and what we need.”

Donziger had worried that Yánez could be manipulated into making a corrupt ruling. But, in urging him to remain upright, the plaintiffs were exploiting Yánez's vulnerabilities as leverage. "So instead of a strong judge who sees the viability of our case," Donziger wrote, "we now might have a weak judge who wants to rule correctly for all the wrong, personal reasons."

Esperanza Martínez, the Quito environmentalist, told me that, in the complex moral landscape of Ecuador, there are different types of "pressure" that can be exerted on a public official. If you pressure an official to abrogate the rights of someone, that is unquestionably corrupt. But if you pressure the official to uphold someone's rights, Martínez maintained, that "is the farthest thing from corruption."

As Mastro and his associates made their way through the trove of material on Donziger, the information that most interested them had to do with the independent environmental-damages expert, Richard Cabrera. Originally, when the decision was made to appoint a single damages expert, Donziger had worried that in Ecuador anyone with that much influence over the outcome of a multibillion-dollar case could be bought. But he was pleased about the appointment of Cabrera—indeed, the Gibson lawyers discovered, Donziger knew in advance that Cabrera would be the court's choice. "We have an expert," he says in one outtake. "The judge is going to appoint a guy in Ecuador to be the expert. But really, you know, we'll be supporting him with our work."

The appointment decision fell to Judge Yánez. The plaintiffs had never filed their complaint against him, and Donziger felt that Yánez owed him a favor. "We saved him," Donziger wrote of the judge, in January, 2007. "And now we are reaping the benefits." (A spokesperson for Donziger told me that "reaping the benefits" simply meant that Judge Yánez was acting independently of Chevron.)

Another outtake captures a plaintiffs' meeting on March 3, 2007, two weeks before Cabrera's official appointment. Donziger attended, along with the lead Ecuadoran lawyer, Pablo Fajardo, and Cabrera himself. On video, Fajardo explains to the team that Cabrera will soon be asked to produce an independent evaluation of Chevron's liability. He will "give his opinion, sign the report, and review it," Fajardo says. "But all of us have to contribute."

"But not Chevron," somebody says—a joke, met with laughter.

Before the meeting concludes, the camera captures Donziger turning to Cabrera. "Richard, of course, you really have to be comfortable with all that," he says. As the meeting wraps up, Donziger exclaims, "We could jack this thing up to thirty billion dollars in one day!"

Mastro and his colleagues were stunned. "It's the kind of shocking revelation that would ordinarily have blown up a plaintiff's case," he told me. "That's the amazing thing about this case—it's smoking gun after smoking gun."

Gibson, Dunn subpoenaed Stratus, the Colorado consulting firm that had

endorsed Cabrera's report recommending a twenty-seven-billion-dollar penalty for Chevron. When Julio Prieto, the young lawyer for the plaintiffs, learned that Chevron was seeking information from Stratus, he sent a frantic e-mail to his colleagues. Disclosure of Stratus's documents could be "potentially devastating," he wrote, adding that he and his Ecuadoran associates "might go to jail."

What Mastro's team recovered from Stratus was a document, in English, that the company had sent to Ecuador a few days before the publication of Cabrera's report. The first line of the Stratus document said, "This report was written by Richard Cabrera." It was a draft of the "independent" damages assessment. As Mastro put it to me, "The plaintiffs' team had ghostwritten his report."

The plaintiffs have since insisted that there was nothing improper about Stratus submitting materials to Cabrera for his consideration, and that Chevron could have done the same. But Donziger, in his deposition, acknowledged that Cabrera's final report was drawn "pretty much verbatim" from the Stratus document.

One oddity of Gibson, Dunn's ongoing discovery was that, in something close to real time, Chevron's lawyers were able to obtain internal e-mails in which Donziger and his colleagues discussed how best to deal with these very revelations. "I wonder whether we do better by explaining that we authored the report," one of Donziger's American associates wrote, "rather than letting Chevron tell that story like Nancy Drew." The e-mail was subsequently turned over to Gibson, Dunn.

During the deposition, Donziger was asked, "Was it agreed that Stratus would draft the report in a form that could be submitted to the Ecuadoran court by Mr. Cabrera?"

"That was the general idea," he said.

It may be that the logic of systemic corruption is akin to that of doping in athletics. If you have good reason to believe that everyone else is gaining a competitive advantage through surreptitious transgressions, then you may conclude that to do otherwise, on principle, would fatally undermine your case. "I think it is a miracle how much we have accomplished with so little," Donziger wrote in his diary. "But in the end of the day that means nothing if we don't win."

Donziger's deposition concluded on January 31, 2011. The next day, Chevron sued him in federal court, along with other members of the plaintiffs' team, alleging that they were part of a racketeering conspiracy, and had colluded with corrupt elements in Ecuador to extort billions of dollars.

After questions arose about the independence of the Cabrera report, Nicolás Zambrano, the judge in Lago Agrio, said that he would not rely on it to reach his verdict. But Chevron was not placated. Zambrano's judgment would be fraudulent, Mastro argued, and he asked Judge Kaplan to issue an injunction that would prevent the plaintiffs from attempting to collect damages from

Chevron. “We are facing the ultimate sword of Damocles,” he said.

Gibson, Dunn, in its discovery, had obtained an internal memo describing the plaintiffs’ plan to enforce the Ecuadoran judgment by going after Chevron assets in foreign countries. Mastro called this strategy “vexatious,” and asked Judge Kaplan to bar Donziger and his colleagues from trying to collect on the judgment not just in New York but anywhere in the world. Mastro assured Kaplan, “You have the right to enjoin litigation here and overseas.”

Kaplan was sympathetic to this position. As he put it, “I don’t think there is anybody in this courtroom who wants to pull his car into a gas station to fill up and find that there isn’t any gas because these folks have attached it in Singapore or wherever else.” He granted the injunction. When, that same month, Judge Zambrano issued his eighteen-billion-dollar decision against Chevron, it was unclear if the plaintiffs would ever receive a penny.

One evening in September, in New York, I met a man named Humberto Piaguaje, who is a member of the Secoya tribe. He was born in the Ecuadoran Amazon in 1964, and he has been involved in the case for nearly half his life. We met in the Mandarin Oriental Hotel, on the thirty-fifth floor of the Time Warner Center. One of the lawyers in the case was staying there, and Donziger and his colleagues had colonized the lobby bar and turned it into a meeting space. Piaguaje wore a polo shirt and jeans. He has been speaking to American journalists for years, and smoothly recited the indignities that his people have suffered. “We’re poor,” he said. “There are no animals to eat. We don’t have our traditional medicines from plants. We don’t have clean water. Chevron left us in poverty.” In recent years, he said, seven of his relatives had died of cancer. He expressed outrage that his people, after being denied the opportunity to bring their case to America, were now being told that they could not find justice in Ecuador, either. Perhaps, he said, Chevron would like to hold the trial in Heaven. “I’m sure they would decide that wasn’t good enough, and ask to move it somewhere else,” he added.

Outside the hotel, dusk began to settle over Central Park, and lights flickered on in the buildings across Columbus Circle. If Piaguaje was struck by the incongruity of his surroundings, he did not let on. I asked him if it ever seemed that the case had taken on a life of its own, disconnected from what really happened in the Oriente. He shrugged. “It’s a search for justice,” he said. “How can we do that without lawyers?”

Piaguaje had flown to New York to attend an oral argument before the Second Circuit Court of Appeals, centering on whether Judge Kaplan had the authority to stop the plaintiffs from collecting on the Ecuadoran judgment anywhere in the world. If Kaplan’s injunction was upheld, it would create a major precedent, effectively allowing American courts to pass judgment on the transparency or corruption of their foreign counterparts, and set aside verdicts against American companies when the legal systems issuing them were deemed problematic. The prospect was breathtaking: Chevron looked poised not only to avoid liability but also to acquire greater immunity in its actions abroad. Shell,

Dole, and Dow Chemical submitted a brief to the court, urging it to side with Chevron.

On September 16th, three appellate judges took their seats in a courtroom in downtown Manhattan. A contingent of Chevron lawyers was in attendance, as were Donziger, his legal team, and Piaguaje. Randy Mastro argued that the plaintiffs' wrongdoing was so severe that the only solution was to invalidate the Ecuadoran court's judgment. "In thirty years of practice and as a former prosecutor, I've never seen a record so shocking of illegal and improper conduct," he said. "We don't tolerate judgments procured by fraud."

"Anywhere in the world?" one judge asked incredulously. "We will not tolerate a South African judgment being procured by fraud and enforced in Russia?"

The oral arguments took place on a Friday. Normally, appeals courts take several months after hearing arguments to rule on a case, but the judges were ready the following Monday. In a terse, unanimous decision, they reversed Judge Kaplan, and dissolved the injunction.

This fall, I had half a dozen long conversations with Steven Donziger about his time in Ecuador and his battle with Gibson, Dunn. Ultimately, he chose, on the advice of his lawyers, not to answer any questions on the record. ("He knows now that anything he says can be used against him," a Chevron representative told me.) In a statement, Donziger argued, "The story of this case is not about the lawyers. It is about the people of Ecuador and how they have suffered at the hands of an American oil company that flouts the law and will stop at nothing to protect its ill-gotten profits."

Chevron's racketeering lawsuit against Donziger has been stayed, for the moment, but if it proceeds Kaplan will likely remain the judge in the case. In an act of desperation, Donziger formally requested that Kaplan be removed, arguing that he had shown a consistent bias toward Chevron. But the request was denied.

Civil racketeering suits seldom go to trial, and some observers suggest that Gibson, Dunn employed the countersuit as a harassment tactic to smear and intimidate the plaintiffs. "Deflect and defame—that's a strategy," one of Donziger's law-school friends told me.

When I aired this theory to Randy Mastro, he gave a thin smile and murmured, "I look forward to the trial."

A person close to the case told me, "What's so unfortunate here is that we're going up against a giant corporation that has acted in such a callous way. They don't get exposed for the way they've acted, because instead the spotlight shifts to this rogue lawyer. Steve should have known. If you want to engage in this kind of David-and-Goliath fight, you've got to focus on your own conduct. Because, if you don't, you give them exactly the ammunition they're looking for."

Chevron has appealed the eighteen-billion-dollar judgment in Ecuador. It has also tried to block the lawsuit by appealing to an arbitration tribunal in The

Hague. But the case could still end in a settlement. This might seem hard to imagine, given the rancor on both sides, but it has nearly happened before. Cristóbal Bonifaz told me that in 2001 the plaintiffs indicated, in writing, that they would drop their claims in exchange for a hundred and forty million dollars. But, on the eve of the Chevron merger, Texaco walked away from the offer. Chevron will not comment, but the plaintiffs estimate that the company now spends roughly that amount each year to fight the case.

One day in February, 2007, Donziger sat down with a Chevron lawyer in New York. The meeting was secret. The lawyer indicated that Chevron was ready to find a way to conclude the matter. “We don’t want our children or grandchildren to be litigating it,” he said.

In his diary, Donziger expressed ambivalence about a settlement, wondering how he could end something that had “so defined” his life. Ultimately, the two sides did not come to terms. “We all have become prisoners of our own creation,” Donziger wrote, in another entry. “We all have too much invested to stop.”