

RALPH NADER RADIO HOUR EP 368 TRANSCRIPT

Steve Skrovan: Welcome to the *Ralph Nader Rader Hour*. My name is Steve Skrovan along with my co-host, David Feldman. Hello there, David.

David Feldman: Hello, everybody.

Steve Skrovan: And the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: Hello. Today we're going to find out what Steve Donziger didn't learn at Harvard Law School.

Steve Skrovan: And to explain exactly what Ralph was talking about, on today's program, we're going to talk about Chevron a powerful corporation that doesn't handle defeat gracefully. A multi-billion dollar international petrochemical conglomerate, Chevron bought up their competitor Texaco in 2001, and inherited a class action lawsuit over a little mess known as the Amazon Chernobyl. That suit was filed on behalf of more than 30,000 farmers and indigenous people whose lands and bodies were poisoned by oil drilling operations in the rainforest of Ecuador.

Chevron didn't want to clean up their oopsy, took the suit to an Ecuadorian court, and in 2011, they lost the case in an \$18 billion judgment. Then Chevron appealed all the way to Ecuador Supreme Court. Then Chevron got their judgment reduced to nine and a half billion. Then Chevron moved their assets out of Ecuador so the plaintiffs could never collect. Then Chevron filed a RICO [Racketeer Influenced and Corrupt Organizations] suit against one of the plaintiff's lawyers, Steven Donziger. They sought \$60 billion in damages. They accused them of extortion and fraud, racketeering, obstruction of justice and witness tampering. And that was just the beginning. So today Steven Donziger is going to tell us his side of the story. He'll be our only guest today. And as a special treat, we've invited onto the show our resident constitutional scholar, Bruce Fein, who will be part of the conversation. Hello, Bruce.

Bruce Fein: How are you today? Good/wonderful.

Steve Skrovan: It'll be great to have you here. Ralph, you can bring him in at any point.

And as always, we will check in with our corporate crime reporter, Russell Mokhiber. But first, what happens when you sue Chevron? They say, "You sue us? No, we sue you." Steven Donziger is an environmental law attorney whose legal team won a landmark judgment against Chevron for polluting the Amazon rainforest. So why did a New York judge place him under house arrest? Let's find out. Welcome to the *Ralph Nader Rader Hour*, Steven Donziger.

Steven Donziger: Hey, thank you for having me. Appreciate it.

Ralph Nader: Welcome indeed. This is a global cause célèbre what Chevron has been doing to Steve Donziger. And it's not just an environmental suit, it's a human rights suit affecting the health and safety of thousands of indigenous peoples in the Amazonian area of Ecuador. It was

originally Texaco that spilled huge amounts of oil and total disregard of safety in so many respects before it was purchased by Chevron. And Steve has had the support of 55 Nobel Laureates. He's had the support of scores of lawyers who have criticized the case for judicial improprieties and malicious prosecution by Chevron and its law firms. Some of you may have heard about this case, but for those of you who haven't, I want Steve to summarize the case up to the [US] Second Circuit Court of Appeals decision a few weeks ago, overturning one of the charges against Steve. Steve, why don't you summarize the case and we'll take it to, I hope, a new level of exposure.

Steven Donziger: Well, thank you, Ralph, Steve and Bruce. I'll say at the outset, Ralph, one of the reasons I got into this line of work is because I was always inspired by you and hearing you speak at Harvard Law when I was a student there. It was something I still remember. Jason Adkins, a law school friend, was introducing you. So thank you for all you've done and for what all of y'all have done. It's inspirational.

Now, the case. This has been a 27-year case. So I'm going to give you the real thumbnail sketch. Basically, I first went to Ecuador as a young lawyer in 1993 with a team of lawyers and doctors to investigate what we were told was the world's worst oil-related catastrophe in the Northern part of Ecuador's Amazon, where Texaco had operated for 25 years and had designed a system to deliberately pollute the environment as a way to lower its production costs. This was not an accident. It was not like the BP spill in the Gulf of Mexico in 2010. This was a system designed to pollute. And when the indigenous peoples who were living in this region started to notice that their water sources, their beautiful, fresh water sources in this delicate pristine ecosystem started to taste funny and there was oil in them, they were told by Texaco's engineers, that there was nothing to worry about and that the oil was like milk and had vitamins. There was a complete abuse of the people of this region in the way Texaco designed this system. Ultimately, Chevron bought Texaco in 2001. So I'm going to describe this as a Chevron problem because it now is a Chevron problem.

Ralph Nader: And Steve, let me interrupt that. How large a territory of pollution was this?

Steven Donziger: It's approximately 1500 square miles. There's six separate oil fields in this enormous area. By the way, in the modern day, you'd never be able to buy a concession, an oil concession this large. You know, this was the first big oil concession Ecuador sold, and they didn't really know what they were doing. So the area is enormous. [It] has six oil fields, has hundreds of oil wells and at least a thousand toxic oil pits, most of which would be considered on their own Superfund sites under US law. So it's an enormous area with an enormous amount of pollution and an enormous kind of operational infrastructure that Texaco had built up over many years.

When we went down there in 1993, it was like looking at an apocalyptic scene. I mean, there was gigantic lakes of oil in the rainforest. There were these pits they built, Texaco built, with this toxic oil in it that they built pipes out of the side of the pits to run the overflow into streams that people were drinking their fresh water out of. There was obviously a mass poisoning going on in this entire region and all the little rural communities in this area. The roads were filled with oil, because Texaco would suck some of the oil out of the pits and dump it along the roads to keep

the dust down. But people were so impoverished they couldn't even afford shoes. And they would just had oil all over their bodies and all the little kids, the little babies had, you know, skin issues related to the oil and bathing in the oil.

And what happened was over a period of a few years, this beautiful rain forest that the indigenous folks had relied on for really their very prosperous lives, for millennia, had become poisoned. And you could no longer fish, get fish that was clean. You could no longer get clean water. When they had to move away from the rivers and streams, they'd dug wells, but the residue from the pits often seeped into the groundwater, so you couldn't get clean groundwater. You know, then they tried to get clean water by capturing rain, you know, it rains a lot in the forest, but there was all this toxic flaring going on, dioxins and cancer-causing substances in the air that the rain would come down with black soot in it. And basically, the people were being bombarded on a 24/7 basis with pollution.

Ralph Nader: And no regulation, whatsoever?

Steven Donziger: Virtually none. I mean, you know, Texaco did this openly, deliberately for many years. And the biggest fine they were ever hit with by the regulatory authorities was about \$50.

Ralph Nader: And they were getting this oil per barrel pretty cheap, I suppose.

Steven Donziger: Extremely cheap. And they were making, you know, massive sums of money. I mean, so was the Ecuadorian government to some degree, but Texaco was, you know, had a great, had negotiated a really favorable deal. And they made billions and billions of dollars while they were dumping the toxic waste onto the lands of these indigenous peoples. And, you know, ultimately, Ralph, it's a business model that is based on grifting. I mean, basically, you know, Texaco took out the oil, made the profits, privatized the profits and then socialized the costs onto some of the most vulnerable communities on the planet.

So to get to sort of the litigation, which I'll try to describe quickly, we filed in US Federal Court in New York against Texaco. And the reason we filed in New York – this is in 1993. The reason we filed in New York is because that's where Texaco's headquarters was. That's where the decision to pollute Ecuador was made. We then fought for 10 years to get in the courthouse door. Texaco was represented by King & Spalding [LLP] at the time. And they fought hard to get the case to Ecuador. They filed multiple affidavits, praising Ecuador's court system. Ultimately, they won that battle. The case went down to Ecuador in 2001. We organized a team of Ecuadorian lawyers to continue the case. Chevron had promised to accept jurisdiction in Ecuador as a condition of the case being moved out based on the doctrine of *forum non conveniens*. The first thing they did when we got there was they challenged jurisdiction, went back on their word and they became very obstructionist. And the case took eight years. It culminated in a resounding and important victory for the communities who are represented by a team of Ecuadorian lawyers.

I mean, that happened in 2011. Chevron knew it was likely to lose the case based on the evidence. So, a couple of weeks before the Ecuadorians won in the court of Chevron's choosing, Chevron came back up to New York and came to the court that they had tried to block Ecuador

from litigating in the '90s; came back to that same court to sue me under a racketeering law, claiming that the entire Ecuador case that I had spent many years working on, was a sham litigation and the product of fraud.

And, you know, in 2009, Chevron, we got an internal email from a Chevron consultant saying that their strategy, their defense strategy was to demonize Donziger. And this was really the first big step in what I've been dealing with for the last 10 or 11 years now, which is probably maybe the most well-financed corporate attack on a single individual in the history of our country. And Ralph, I know this must resonate with you given what you dealt with back in the 1960s with your work on auto safety. But I can tell you, this has not ended.

I mean, they are trying to destroy me, and their strategy includes three key components. I mean, component one is to just destroy my reputation by claiming I'm a criminal. And they did this in the RICO case before Judge Lewis A. Kaplan. They denied me a jury. They paid a witness \$2 million in cash and benefits to come up and claim he was in a meeting with me in Ecuador when I approved the bribe of a trial judge in Ecuador, which was totally false. There's zero evidence to corroborate this guy's testimony. He was prepped for 53 days before he testified by Chevron's lawyers at Gibson, Dunn & Crutcher [LLP]. And he later admitted lying repeatedly before Judge Kaplan. Judge Kaplan, nevertheless, again, without a jury, credited his testimony and issued a ruling claiming that I had obtained the judgment in Ecuador by fraud.

Ralph Nader: And before we get into that, he recanted, this witness recanted later after Chevron brought him and paid for his location here in the United States. Isn't that correct?

Steven Donziger: That's correct.

Steven Donziger: He recanted, but that didn't change Judge Kaplan's opinion. Because the point of the exercise, I believe, for Judge Kaplan was to carry out Chevron's demonization campaign and not issue what I would consider to be a fair ruling based on the facts and the laws.

Ralph Nader: Steve, after receiving evidence and huge amount of testimony, the court in Ecuador rendered a huge verdict against Chevron, which prompted Chevron's counterattack against the judge and against the judicial system in Ecuador, the very country they wanted the case to be decided in the first place. Can you tell us the size of the verdict, which was never collected, and also what they tried to do to the judge?

Steven Donziger: Sure, Ralph. The verdict was large. It was close to 20 billion initially. Half of that was actual damages; half was punitive damages. But the punitive part was reversed on appeal. So the judgment ended up being about \$9.5 billion. Just by way of comparison, BP has paid \$60-70 billion for the much smaller Deepwater Horizon spill. So while that might seem like a lot of money to a company like Chevron, it really is not a huge amount. I would say it's a modest amount.

Now, upon receiving that judgment, Chevron launched a full-scale scorched earth assault on anyone who was involved in the case--anyone of importance, including the trial judge in Ecuador, myself, the 47 named plaintiffs, that is indigenous peoples who live in the forest. They

named them as defendants. And, you know, in my view, this was the mother of all SLAPP [strategic lawsuit against public participation] lawsuits. It was designed to scare and intimidate anyone who was working on the case and really get us all to give up. Because Chevron knew it could not win on the merits, and it was trying to win, I think, through this intimidation tactic of suing everyone who was involved in helping the Ecuadorians win their judgment that's been affirmed by multiple appellate courts.

Ralph Nader: And once it shifted to New York City, the key ally of Chevron was Judge Lewis Kaplan, who came from a corporate law firm before he was appointed to his position, where he represented the tobacco industry over a period of years. And Judge Kaplan proceeded to do such partisan maneuvers and denial of due process, the likes of which I've rarely read about in American judicial history. Can you go through the process here and how he bypassed even the prosecutors and try to summarize just the hellish nature of what you confronted in federal district court in New York?

Steven Donziger: Well, it was not anything close to what most people would consider to be a fair trial. Judge Kaplan structured the trial so I would lose and look as bad as possible in my view. And the sort of the term I use is he reverse engineered the trial to produce the outcome he wanted. And he did this by working closely with the Chevron lawyers to allow this paid witness to come in and create false testimony that I supposedly bribed a judge when I did not. He hid the fact, for the most part, that Chevron had paid this witness significant sums of money [and] had coached him for 53 days. He refused to let me testify on direct and tell my story. He denied a jury trial.

Ralph Nader: He denied you a jury trial? How could he do that under our Constitution?

Steven Donziger: He just did; let me explain. I am the first person in US history, you know, (who) sued under civil RICO who has been denied a jury and I hope I'm the last. The way he did that, and again, this was all maneuvering, what I call the reverse engineering of the case, is Chevron had initially sued me for \$60 billion under civil RICO were entitled to treble damages. So once I prepared for a jury trial and I had a really good solid legal team, Chevron got spooked. And on the eve of trial that was supposed to be a jury trial, they dropped every penny of their damages claims. And Judge Kaplan used that as a reason to deny me a jury. So at that point, we asked for the case to be thrown out. It's a civil case. They're not seeking damages. It's moot at that point. And Judge Kaplan essentially went ahead anyway and issued what we consider to be an illegal advisory opinion about what Ecuador's courts did without even looking at the evidence that Ecuador's courts used to find Chevron liable, you know. So Judge Kaplan, Lewis A. Kaplan let his courtroom be used by Chevron and his lawyers at Gibson Dunn really as a weapon to try to undermine a foreign court judgment that's been affirmed by the highest court of the sovereign nation, in this case, Ecuador.

Ralph Nader: Then he zeroed in on you to punish you. What was the judicial demeanor like before he did something, which was truly astounding? He outsourced part of the case to a private corporate law firm in New York City that represents the oil companies. What was his judicial demeanor like? And were there any reporters in the courtroom at the time?

Steven Donziger: Yeah, I mean, you know, his demeanor was not what I would consider to be judicious, you know, I mean, others can comment. I mean, I was the person really under the gun during the trial. I mean, he really, you know, I don't consider Judge Kaplan's demeanor – as regards my case and I've been before him many, many times – to be consistent with what we expect of our judges in this country or in any country that really adheres to the rule of law. I think there was a real abuse of power here by Chevron and by Judge Kaplan. I say this respectfully, because I respect judges and I respect the rule of law and I respect our court system. But, you know, there's just no denying this was not a fair trial and anyone who watched it, anyone who looks at the record, I think, agrees with me. And the fact that courts in Canada, including the Supreme Court of Canada, the Supreme Court of Ecuador have ruled contrary to Judge Kaplan really makes my point.

Ralph Nader: You had competent lawyers representing you. In fact, one of them now representing you is a professor of law at Harvard, Charles Nesson. But the judge wasn't satisfied with what was going on in the courtroom and he wasn't satisfied with the prosecutor not going along with what the judge wanted to go after you. What did he do?

Steven Donziger: So basically, you know, as we were litigating our enforcement actions around the world, Judge Kaplan charged me with criminal contempt of court for appealing an order, I believe an unlawful order, and turned out to be unlawful, that I turn over my computer, cell phone and all my confidential communications to Chevron in the middle of the litigation. And his theory was, you know, Chevron had dropped all damages claims against me to void the jury. So subsequent to Judge Kaplan's decision in a non-jury trial, he imposed without a jury millions of dollars of court costs on me, essentially ordered me to pay Chevron's legal fees for their persecution. And I'm a human rights or who lives in a two-bedroom apartment. They're a company that has 250 billion annually in revenue. And this was just another component of the attack strategy, which was to bankrupt me and to take my life savings and to take all my assets and really force me into homelessness. Because had I not had enough cushion with my wife and had we not owned our apartment in Manhattan, I don't know where I'd be right now. You know, he basically took all my money or let Chevron take all my money and freeze my bank accounts. So, you know, even though Chevron got the benefit of denying me a jury by dropping damages claims, they ended up after the case still without a jury getting millions of dollars of damages against me that they've used to essentially wipe out my life savings. And Judge Kaplan authorized this every step of the way.

Ralph Nader: Then he used hundreds of thousands of dollars of taxpayer money to hire a private law firm by the name of Seward & Kissel to do what?

Steven Donziger: To prosecute me in the name of the government. I mean, he basically turned over to Big Oil, the oil industry, the power to prosecute its main critic. That's me. Judge Kaplan was obligated under the law once a judge charges a person with criminal contempt. And I assert my innocence. I think the charges really are highly questionable if not baseless. But let's assume they're legit. At that point, he's obligated to take the charges to the US attorney for prosecution, which he did. In this case, the US attorney in New York turned down the case, declined to prosecute me for obvious reasons in my view. Judge Kaplan then appointed Seward & Kissel, a private law firm that has an attorney-client relationship with Chevron, to prosecute me in the

name of the government. So essentially, I'm being prosecuted by a Chevron law firm that is billing taxpayers and has billed taxpayers approximately \$600,000 to go after me on a misdemeanor. And they've also locked me up in my home now for almost 600 days on a charge that has a maximum penalty upon conviction of 180 days. There was no purpose to this other than to harm me and to have Chevron retaliate against me for our successful human rights work in holding the company accountable in Ecuador. But what's really shocking is that this is happening in US courts. I mean, if you look at this, Ralph and Steve, I'm the only person that we can find in the entire United States who was charged in the federal system with a misdemeanor, who has been held even one day prior to trial. And now I've already been held almost 600 days. I mean, it's just unheard of.

Ralph Nader: You're in effect under house arrest for a civil misdemeanor contempt charge by Judge Lewis Kaplan?

Steven Donziger: Yeah. Well, it's a criminal misdemeanor contempt charge now because he just pressed a button and called it criminal. But regardless, I mean, you don't lock people up on misdemeanors when they have no criminal record. It's just, it never happens. There's not a single other example of this happening in our country. Why is it happening to me? You know, might it have something to do with my successful human rights work? You know, might it have something to do with the fact that I'm being prosecuted by a private Chevron law firm as opposed to prosecuted by the regular federal professional prosecutor? You know, and this private law firm, Seward & Kissel, is billing taxpayers massive sums of money to go after me.

Ralph Nader: I'm sure some of our listeners are saying, well, is there any limit to how many millions of taxpayer dollars he can spend paying a private corporate law firm to in effect prosecute you when the federal prosecutor turned it down for lack of sufficient evidence? Is there any limit? He's already at the level of some \$600,000. Any limit?

Steven Donziger: I don't know of any limit. I mean, they seem to have limitless funds and just, you know, this is an important point. In the federal system here in New York, if you're assigned counsel for a criminal defendant charged with a misdemeanor, the maximum amount of money you can be paid is \$3200 for your representation. Seward & Kissel has already billed \$600,000 to prosecute me. I mean, it's just extraordinary. It's like literally, you know, a hundred plus times more than what a defense lawyer would get in this type of case.

Ralph Nader: Well, how did they get away with that?

Steven Donziger: Judge Kaplan authorizes it, and apparently, there's a fund in the federal trial court for this purpose. I mean, I don't know where the money comes from. We tried to find out. But judge Loretta Preska, who Judge Kaplan appointed to preside over my contempt cases, refused to grant us any kind of hearing to figure out, you know, a) Seward & Kissel's relationship, the full breadth of their relationship with Chevron. We know it exists because they've admitted it, but we don't know the details of it. You know, whether they represented Chevron in the Ecuador case in some way; we think they might have. And you know, whether they're engaging, and we think they are engaging in *ex parte* communications with Judge Kaplan, which they've never denied.

Ralph Nader: Well, listeners should know. We're talking with Steve Donziger, who is the lead lawyer, human rights, environmental lawyer, to defend indigenous tribes in the Amazonian area of Ecuador against the massive poisoning and resultant illnesses and disease by Texaco drilling for oil and a company was purchased by Chevron. So Chevron becomes the main progenitor here of these legal actions. Steve, let me ask you this. I like to have people's names put on the table here. Tell me the names of the lawyers for the Gibson, Dunn & Crutcher firm. Tell me the names of the lawyers for Seward & Kissel. They hide behind their firm names. Let's put their names on the table here. And I want you to characterize, under the code of professional ethics, their behavior.

Steven Donziger: Okay. So in Seward & Kissel, that is the Chevron lawyers prosecuting me, there's three of them primarily: a woman named Rita Glavin, a gentlemen named Brian Maloney and another woman named, I think her name is Sareen Armani. In Gibson, Dunn, it's Randy Mastro, Andrea Neuman, Anne Champion, William Thomson, Ted Boutrous, and you know, a slew of others. But those are the main ones. You know, these people are profiting massive sums of money by engaging in what I believe is a human rights violation against the people of Ecuador and their counsel, meaning me. But I think it's important that they be held to account on a personal level. You know, they have also orchestrated my disbarment without a hearing. It's under appeal now before the New York Court of Appeals. I'm talking about the Gibson Dunn team led by Randy Mastro. And in my bar hearing, which I finally got, it was called a post suspension hearing, the Chevron, there were eight Chevron lawyers from Gibson Dunn in my hearing occupying scare space and clearly text messaging my two bar grievance council prosecutors.

Ralph Nader: Well, have they violated, in one way or another, the professional code of ethics?

Steven Donziger: In my opinion, yes. I think when lawyers, you know, present paid witness testimony and ultimately false evidence to try to frame a human rights lawyer, yeah, obviously that violates the code of professional ethics and much worse. But this is the game that is being played right now. It's a part of a playbook that Gibson Dunn has invented. I shouldn't say they've invented it; they've sort of perfected it. It's always existed, as you know better than most, to turn the tables on corporate accountability lawyers and campaigners who are successful.

Ralph Nader: Just like there's a group of lawyers called themselves defenders of democracy moving to disbar Rudy Giuliani. They filed the 50-page complaint with the New York lawyer regulatory commission [New York State Bar Association], whatever its actual name is. So this could be done against these lawyers as well. Now that's not anything you can get involved in, but I just want to put it before our listeners that these lawyers have to be held accountable as well. Now what about the shareholders? Has there been any shareholder action against Chevron for wasting so much of its resources and violating so many standards and protocols and perhaps verdicts in Ecuador? Any action there that you know of?

Steven Donziger: So the Ecuadorian communities have worked with a lot of Chevron shareholders over the years to sponsor resolutions questioning management's obvious mishandling of the litigation and waste of money on legal fees. And some of these resolutions, you know, have won the support of the advisory bodies and have gotten very significant support

in the 30-40% range, which as you know is a lot. And then a bunch of people, well-known people like Alec Baldwin and other indigenous leaders from Ecuador, like Berto [Elias Roberto] Payahuaje have gone to shareholder meetings and confronted the CEO about these abuses. The CEO by the way of Chevron is Michael Wirth. And they just, you know, they have not done anything. Okay. And what I mean by that is the management of Chevron, the management team is, I think, up to its neck in this awful strategy that they've authorized so many expenditures for legal fees, and I think they're so deep in it they don't know how to get out of it. And they just keep going and going and going down the same path of scorched earth, spend money on lawyers, disrespect the people of Ecuador, disrespect the rule of law, don't pay the judgment. So, I think Chevron's management is behaving in really an unethical way. I think they don't know how to shift gears. And I also think that Gibson Dunn lawyers and Chevron's general counsel and CEO are really in bed together in terms of their common interest in destroying me and evading this judgment, because they've already spent so much money, invested so much money in the strategy. Now there was an email in 2009, an internal Chevron email, that said "our long-term strategy is to demonize Donziger." Okay. This has always been their strategy, because they know they have no argument on the merits. And that is wrong, you know. So I don't know a way for shareholders to step up the pressure, but I will say this. The public pension fund world has been pretty supportive of the Ecuadorians in terms of challenging Chevron management on this issue; the private fund world less so. And you know, you've seen kind of a shift with the BlackRock letter by Larry Fink about the importance of placing environmental concerns front and center when making investment decisions. I think we're living in an extraordinary moment on this issue. And I would like to see some of the private funds sort of look at this and also challenge company management. I think that would make a big difference.

Ralph Nader: Now, one more frolic and detour by Judge Lewis Kaplan. He found the judge to do part of the work in his singular mission to destroy your legal career. Tell us about the judge.

Steven Donziger: The judge who is overseeing my contempt case, Loretta Preska?

Ralph Nader: Yes. What's her name?

Ralph Nader: Loretta Preska. She was appointed by the older President [George H.W.] Bush in the early '90s. She's a very active, I'd say, activist judge in terms of her involvement in the Federalist Society. Chevron is a major donor to the Federalist Society. The Chevron law firm Gibson Dunn is a major donor to the Federalist Society. And you know, there's a local rule here in New York that all criminal cases should be randomly assigned. Judge Kaplan didn't want to let that happen. He appointed Judge Preska, who again has financial ties to Chevron via her Federalist Society membership, to preside over my criminal contempt case. And she's the one who locked me up in an unprecedented way way back in August 6, 2019. I've been in my home ever since. I mean, no one's ever heard of this.

So, you know, she's not a neutral judge. She's biased in favor of Chevron and in favor of, I think, Judge Kaplan's agenda. I have a right under US law and international law to neutral fact finding, an unbiased judge and a disinterested prosecutor. And I have none of that. Judge Kaplan has investments in Chevron. Judge Preska has financial ties to Chevron via the Federalist Society. And Rita Glavin, my main prosecutor, works for a Chevron law firm. She's a partner there and

makes profits from Chevron's payments to her law firm on whatever the law firm was representing them on. Beyond that, one of Seward & Kissel's main clients is a company called Oaktree Capital [Management]. Look at Oaktree Capital. They have two executives on Chevron's board of directors. And I just discovered, this is another astounding thing, you know, *the New York Times* has completely ignored the story for two or three years. You know, I've pitched multiple reporters I know over there. And for some reason, while they appropriately cover human rights problems around the world, they can't, you know, get in a taxi and go one mile up the street to my house and interview me. When I'm realizing that there's a billionaire investor named Robert Denham, who serves simultaneously on Chevron's board of directors; he serves on the board of directors of *the New York Times*, and he's a major figure in Oaktree Capital, which is the main client of the prosecuting Chevron law firm, Seward & Kissel. I mean, go figure. It's just unbelievable the interconnectedness of these various interests in a situation that where the law requires utter neutrality.

Ralph Nader: Has there been a formal petition by your lawyers demanding Judge Lewis Kaplan recuse himself for overwhelming conflicts of interest and injudicious behavior?

Steven Donziger: Yes, there's been multiple recusal motions. He denies them all. We've taken two of them to the appellate court; they ruled in his favor. You know, there's an institutional thing going on here in New York where the appellate court, and I say this respectfully, because I have matters pending before them, but it seems to be very hard for the appellate court to hold Judge Kaplan to account, which is why he seems to be increasingly emboldened to do these, what I would call, radical moves that are obviously abusive and illegal.

Ralph Nader: Well, before we get to some of the indigenous leaders that you worked with in the Amazon, because they deserve to be described by you for their efforts, let's bring in Bruce Fein. Bruce, what are your views on all this? And how do you make the judiciary, especially Judge Lewis Kaplan accountable here? Or are they law unto their own making, the whole federal judicial establishment in New York City?

Bruce Fein: Well, it is rather shocking. I mean, the law is quite clear that you have a due process right before bias seeps in, you know, to avoid a trial before a clearly biased judge. And that standard was reiterated on numerous occasions in connection most recently with Michael Flynn mandamus petitions up and down before he got pardoned by President [Donald] Trump. So the argument that while you have to suffer through a trial-biased judge and then a year and a half or two years later, you know, make your claim on appeal, is clear legal error. And with regard to how can we get the judiciary to police itself because it's very clubbish; it is very difficult. And all I could think is at least now it might be possible to seek some kind of congressional oversight hearing before the House Judiciary Subcommittee, because you need sunshine. Jamie Raskin is the chair of the subcommittee at present. This kind of misconduct is shrouded in secrecy. And you point out *the New York Times* is not covering it. And the only way to embarrass a court and to move it forward is to cast the sunshine and information on it and certainly that's something that could happen with a congressional oversight hearing. You're correct [that] it's possible. I don't know who is the circuit judge for the Second Circuit who sits on the Supreme Court. Is that [Sonia] Sotomayor?

Steven Donziger: I believe that's correct. Sotomayor

Bruce Fein: Yeah. Because that's the only other place they could go. You could seek an immediate stay of the proceedings until the Supreme Court could have a chance to review, you know, a *certiorari* petition, because the facts are so egregious. Now, the other thing is, because it seems, Steve, that you've uncovered additional facts showing bias, at least the appearance of bias, with these interconnecting board memberships and financing that would justify returning and making a renewing motion to recuse because we have, you know, newly discovered evidence that was acquired by further due diligence, if you will. But it's unfortunate that the independence of the judicial branch does enable this clubbiness to work in this rather insidious fashion, if you will, almost incestuous to protect each other.

Ralph Nader: Listening to all this, Steve, reminds me of all the hundreds of thousands of minority defendants falsely accused without competent counsel railroaded to jails by biased or crooked judges at the state and federal level all over the country in our country's history. But this is an amazingly high-profile brazen attempt to mimic the criminal injustice system that has been inflicting its rapacious powers over powerless people in our country; not just minorities, powerless people in our country. So this has additional significance in terms of putting a ray of light. *The New York Times* has written all kinds of articles about biased southern judges against Black defendants and it won't cover this story?

Steven Donziger: It's amazing. It's amazing. I mean, Marty [Martin] Garbus, who is one of my lawyers, legendary civil rights lawyer [who] represented Nelson Mandela, Daniel Ellsberg and so many important people in our history, says this is the worst judicial corruption he's ever seen. He says he's never seen anything like this. And you know, I think, getting back to a point, I think, Bruce made, I think we have to get Congress to speak out and look at this. You know, this is not how the judiciary is supposed to work. We have some various groups like Amazon Watch and the Sunrise Movement [that have] reached out to Representative Raskin [and were met with] total silence. You know, we're in the process of trying to reach out to some other senators and congresspersons, but there just seems to be very little interest. And I think Chevron is very active lobbying against me up on the hill. But Congress must do something here. I mean, that's like the last voice that hasn't been heard from.

And the second thing is, several human rights groups led by Amnesty International, have written a letter to Merrick Garland demanding an immediate review of this obvious human rights violation. You know, think back to when the federal prosecutor refused to prosecute me. Okay. And Judge Kaplan appointed not just any private firm, but a Chevron firm. That's wrong; that's an embarrassment on the [US] Department of Justice [DOJ], it's an embarrassment for our country. And this letter asked Merrick Garland and asked the DOJ to take back the case from Seward & Kissel such that I can be prosecuted by a professional prosecutor, not a for-profit, private prosecutor. I mean, these people are making money off extending this case and keeping me detained. I believe a professional prosecutor never would have had me detained and probably would have dismissed the charges immediately. I mean, that's why they didn't take the case. So they need to take the case back. So those two things are really important. We need Congress persons like Jamie Raskin to speak out, and we need the Department of Justice to take the case back from the private Chevron law firm, so it can be prosecuted consistent with the rule of law.

Ralph Nader: Well, it's not like we're asking members of Congress like Jamie Raskin to demonstrate a profile in courage. On September 1, for example, 2020, "Dozens of legal organizations around the world representing more than 500,000 lawyers along with over 200 individual lawyers submitted a judicial complaint documenting a series of shocking violations of the judicial code of conduct [Code of Conduct for United States Judges]," the judicial code of conduct, I repeat, "by United States Judge Lewis A. Kaplan targeting human rights lawyer Steven Donziger after he helped Indigenous peoples win a historic judgment against Chevron in Ecuador to clean up the pollution caused by decades of oil drilling with no environmental controls." I'm quoting from a press release on this demand, September 1, 2020. What if you get a couple of hundred lawyers petitioning the editors of *the New York Times* and other New York City media, television, radio, other newspapers to cover the story? I think that would start moving the needle a bit.

Steven Donziger: I think it would. I think that would be great. I think, you know, look, it's just shocking to me *the New York Times* hasn't written about it. I mean, take my emotion and my views out of it. It's just an interesting story to have a Harvard law grad; I went to school with Barack Obama; I've worked for years as a human rights lawyer--to have a person like that, you know, locked up in his home for almost two years without trial on a misdemeanor. I mean, that's a story, right? That's an interesting story in the United States of America. So, I just find it shocking they haven't covered it. And again, I think that kind of pressure is really important, because the only thing that's going to correct this problem and save me and my family is public scrutiny, public outcry, and transparency.

Ralph Nader: Yeah. Single handedly, *the New York Times* can turn this situation around. They know how to do it.

Steven Donziger: I don't know. I don't know, Ralph, if you and your colleagues know how to do that, but it would be helpful if that were to happen, obviously.

Ralph Nader: And also citizen groups, people organize to clean up court corruption, can also join and demand greater coverage of this. The stench from this whole situation you've been describing and others who are not even involved in your case have been describing, like lawyers around the world, Nobel Laureates, is rising above the Hudson River in Manhattan Island. The new Attorney General Merrick Garland, is not without responsibility in looking into this matter. After all, the US district attorneys operate under his jurisdiction.

Bruce Fein: But I'm also thinking that there has not been, I do believe, a new US attorney for the southern district of New York. And it would be compelling if we could get Chuck Schumer when it comes for the hearing for that confirmation or [Kirsten] Gillibrand to insist and extract the promise from the new US attorney there that they will make public the fact that their decision not to prosecute is being overridden and to make a public statement to that effect; that we're dumbfounded that the judge would not rely upon the judgment of the prosecutor. But that opportunity would be right. He's got to get Senate clearance. So he's got to respond to those kinds of questions.

Ralph Nader: That's a good point. Steve, is *the New York Times* going to say that years ago they covered your story?

Steven Donziger: Well, you know, I've talked to a bunch of reporters there. I mean, one actually had a story assigned, started working on it, and then it got killed two weeks later.

Ralph Nader: But when was the last time they covered it and actually printed it?

Steven Donziger: Years ago.

Ralph Nader: Like what? 5, 10?

Steven Donziger: No, like it was at the end of the RICO case. It was like 2013 or '14.

Ralph Nader: Okay. And the other thing is you were on *60 Minutes* on 2009, right?

Ralph Nader: That story won an Emmy [Award] and ended up getting knocked off the CBS website under pressure from Chevron. They never – CBS has always stood by that incredible report, that embarrassed the hell out of Chevron, told the truth. But you know, under, I think, ad pressure and other pressure, they decided not to engage with Chevron, and they took it down. I will say that the pressure on big media from Chevron is constant and intense. I mean, they have killed so many stories. I have incredible stories about how they kill stories about this case. On the other hand, the performance of the independent media--*The Nation*, *The Intercept*, and other outlets like that, you guys, the *ScheerPost*, Bob Scheer, Chris Hedges, James North, and Sharon Lerner; so many have reported truthfully and comprehensively about this case and what's happening to me, and I salute them. But it's very obvious that some of the bigger media outlets in our country are staying away from the story under pressure for Chevron.

Ralph Nader: Tell us about some of the indigenous leaders who so valiantly stood ground against Texaco and later Chevron, especially an indigenous leader, Emergildo Criollo of the Cofan Tribe.

Steven Donziger: Yeah. Well, thank you, Ralph, for the question. I mean, you know, I've had the honor and privilege of really being able to develop close relationships with a lot of the indigenous leaders in this area. I've been down there many times over the years. And Emergildo is a special leader, man of great dignity, lost two children to the oil contamination to cancer. He's one of the people who tells the story about how the Texaco engineers told the indigenous people that the oil was like milk and had vitamins. And, you know, people need to understand that people like him, Emergildo, Berto Payahuaje, you know, Luis Yanza. So many. Mariana Jiménez, you know, Rosa Moreno, the nurse who recently died of cancer, my good friend.

This is a citizens' campaign. It's not Steven Donziger. It's the people of Ecuador who have organized themselves. I'm talking about indigenous leaders in non-indigenous rural community leaders who live in the same area and have united, who hold this company accountable for the world's worst oil-related contamination. These people suffer immeasurable harm just trying to survive day to day in an environment where you cannot get clean water and people do not have

money to buy bottled water. So you're basically forced. It'd be like when you go to your tap in your home here in the United States, every time you turn it on, you have no choice but to drink something that you know is at least a little bit contaminated with cancer-causing substances, but you have no choice, because you can't die of thirst. The physical impact of that and the psychological stress of knowing that is enough to really undermine cultures and undermine life and destroy a lot of the economic activity and hope for the future. And, you know, it's an awful situation. So many people have died of cancer, because Chevron has refused to abide by this court judgment that it clean up its toxic toxins that it dumped. But, you know, I will say, and I salute the people of Ecuador and the people I know for sticking together, for their tenacity, their determination, and the fact that they continue fighting for justice and for their own survival. I mean, it's pretty impressive and pretty extraordinary, and it needs to be saluted and really studied as an example of what citizens can do to create major change in this world.

Ralph Nader: Chevron has essentially fled the jurisdiction. They are a fugitive from justice.

Steven Donziger: That's true.

Ralph Nader: From Ecuador. Are law enforcement officials in Ecuador pursuing Chevron on any possible count?

Steven Donziger: Well, Chevron's influence at the higher levels of Ecuador's government is significant. So my answer to your question is not that I know of. Although obviously if Ecuador had a government that was really responsive to its own citizens, they would be looking at those options.

Ralph Nader: Well, before we conclude, we're running out of time. How about input from Steve and David?

Steve Skrovan: Yes. Steve, I'm curious. Are you still under house arrest? I wasn't clear of that. Are you still under house arrest?

Steven Donziger: Yes, I am under house arrest. It's been 589 days today. Oh, I had an argument last week before the Second Circuit to get off house arrest and that the panel still has not ruled. So it's possible I'll get a decision soon that might give me some good news, but we'll see.

Steve Skrovan: I want to know what has that been like? Is this like an ankle bracelet kind of thing? What can you do? Where can you go? What has the psychological cost been for you personally?

Steven Donziger: Oh, it's been significant. You know, I'm strong and resilient and optimistic, but it's been significant. I mean, first of all, I have a 14-year old son who has to watch his father wear an ankle bracelet 24/7. I sleep with it. I eat with it. I bathe with it. It allows the state to monitor my whereabouts 24/7 even as I move about my own apartment. I can't even go out in the hallway to, you know, to get the newspaper without permission of a pretrial services officer. I need 48 hours advanced permission to leave my apartment. And I can only do it for very narrow purposes like school-related activities and, you know, legal meetings and medical meetings. I do

get out a little bit, but it's always extremely restricted. I can't, you know, be a normal father and I can't be a normal citizen of this country. My freedom has been taken away from me. You know, I get that there's other people around the world who have it a lot worse off than me. There's many environmental defenders who were murdered in other places. But in the United States of America, this is unprecedented, you know, to lock up a lawyer for almost two years without trial on a misdemeanor after he won a successful human rights lawsuit against an oil company. And he's being prosecuted by an oil company law firm, not by the government. And you know, everyone needs to pay attention to this because this is a playbook that if we let it happen, the Big Oil companies as they face declining profits and structural changes as we transition to clean energy, are going to be using this more and more against its critics. So they can, you know, really extract every last dollar of profit, you know, out of a business model that unfortunately is destroying our planet. So there's a lot of anger in the oil industry, and I think it's reflected in how I'm being treated. But man, this is a playbook that can be used in a lot of contexts, not just those who deal with oil companies, but people who deal with powerful corporations all over. And we have to protect me--both because I need protection; I need to survive this. But also because there's a much larger principle involved here that affects everybody.

Ralph Nader: Tell us if people want more information, Steve, what is your website?

Ralph Nader: Please go to freedonziger.org. freedonziger, FREEDONZIGER, all one word, (dot) org. And also if people want to help, I have a defense fund. This is enormously expensive to deal with. It's called donzigerdefense.com, DONZIGERDEFENSE, one word (dot) com. And on my defense site, you can make a small donation or a large donation or no donation, but just sign up anyway and you'll get a regular newsletter giving you updates about the case. And finally, I can be followed on Twitter @SDonziger where I do regular daily updates about the comings and goings of the case and my situation. I need all the support I can get. Again, please go to freedonziger.org to get involved.

Ralph Nader: And we're going to put on our website, the judicial code of conduct for federal judges, so listeners can further compare what the standards are for judicial behavior with what's been going on in this legal trial. Well, we really have run out of time. And for your 25 years and continuing work in this area, the story is not over. It could boomerang against Chevron. It could boomerang against the judiciary and the corporate law firms. It could become a case study in law firms and law schools. It could become a documentary. We could get some long overdue intervention from Congress as Bruce has pointed out. So we thank you for continuing this battle, because you've got to believe, the best is yet to come, Steve Donziger. Thank you.

Steven Donziger: Thank you so much, Ralph and team. Really appreciate the opportunity. Thank you again.

Steve Skrovan: We've been speaking with Steven Donziger. We will link his work at ralphnaderradiohour.com as well as his legal fund. Now let's take a break and check in with our corporate crime reporter, Russell Mokhiber.

Russell Mokhiber: From the National Press Building in Washington D.C., this is your *Corporate Crime Reporter*, “Morning Minute” for Friday, March 26, 2021, I'm Russell Mokhiber.

The banning of menthol cigarettes, the mint-flavored products that have been aggressively marketed to Black Americans, has long been an elusive goal for public health regulators. But now there is a growing momentum in Congress to enact the ban. That's according to a report in *the New York Times*. Black smokers smoke less, but die of heart attacks, strokes and other causes linked to tobacco use at higher rates than White smokers do, according to the [US] Centers for Disease Control and Prevention. And 85% of Black smokers use Newport [cigarettes], Kool [cigarettes] and other menthol brands that are easier to become addicted to and harder to quit than plain tobacco. The African American Tobacco Control Leadership Council has been pushing for menthol bans in communities across the country. [New Jersey, New York, and Rhode Island have enacted bans on flavored e-cigarettes; Massachusetts was the first state, followed by California, to ban both menthol and flavored cigarettes] The Council says that “menthol cigarettes and cigarillos are main vectors of disease and death among Black Americans.” For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

Steve Skrovan: Thank you, Russel. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan along with David Feldman and Ralph. And that's our show. I want to thank our guests again, Steven Donziger and also Bruce Fein for sitting in. For those of you listening on the radio, that's our show. For you, podcasts listeners, stay tuned for some bonus material we call “The Wrap Up”. A transcript of this show will appear on the *Ralph Nader Rader Hour* website soon after the episode is posted.

David Feldman: Subscribe to us on our *Ralph Nader Rader Hour* YouTube channel. And for Ralph's weekly column, it's free; go to nader.org. For more from Russell Mokhiber, go to corporatecrimereporter.com.

Steve Skrovan: And Ralph has provided two separate form letters to send to your representatives demanding they take action on corporate crime and taxing the rich. Just click on the clearly marked boxes on the right-hand corner of the *Ralph Nader Rader Hour* landing page and it's all laid out there for you to fill in and personalize any way you want. Go to ralphnaderradiohour.com and take action.

David Feldman: To support The American Museum of Tort Law, check out their online shop at store.tortmuseum.org. They have autographed books, “Flaming Pinto” coffee mugs, and other unique gifts for all you, lawyers, law students, paralegals and tort fans out there.

Steve Skrovan: And for an independent news source that believes people are more important than corporations, go to populous.com to read or subscribe to *the Progressive Populist*.

David Feldman: The producers of the *Ralph Nader Rader Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky.

Steve Skrovan: Our theme music *Stand Up, Rise Up* was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Our associate producer is Hannah Feldman.

David Feldman: Join us next week on the *Ralph Nader Rader Hour*. Thank you, Ralph.

Ralph Nader: Thank you, everybody. And listeners who want to help make *the New York Times* a better newspaper, urge them to cover the Donziger-Chevron case; just call the switchboard at *the New York Times* (212) 556-1234 and ask for the news desk. That's (212) 556-1234 and ask for the news desk.