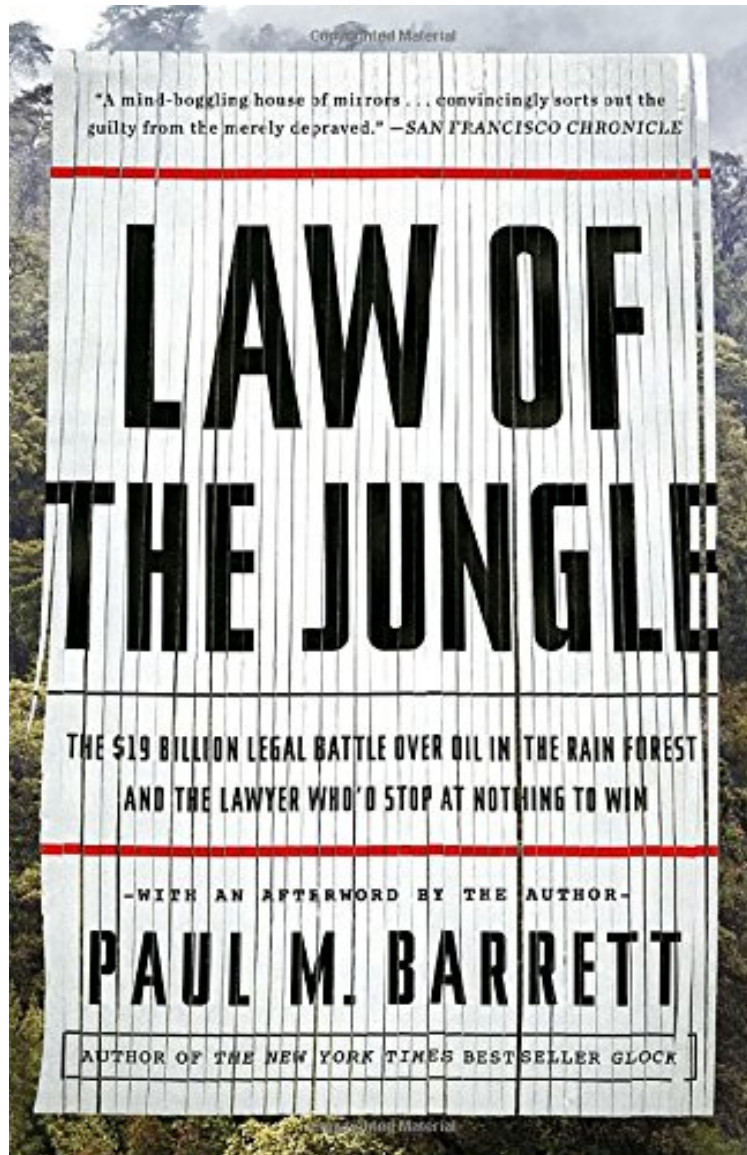


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# Law of the Jungle: The \$19 Billion Legal Battle Over Oil in the Rain Forest and the Lawyer Who'd Stop at Nothing to Win

*Paul M. Barrett*

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Nothing to Win:

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The gripping story of one American lawyer's obsessive crusade waged at any cost against Big Oil on behalf of the poor farmers and indigenous tribes of the Amazon rainforest. Steven Donziger, a self-styled social activist and Harvard educated lawyer, signed on to a budding class action lawsuit against multinational Texaco (which later merged with Chevron to become the third-largest corporation in America). The suit sought reparations for the Ecuadorian peasants and tribes people whose lives were affected by decades of oil production near their villages and fields. During twenty years of legal hostilities in federal courts in Manhattan and remote provincial tribunals in the Ecuadorian jungle, Donziger and Chevrone's lawyers followed fierce no-holds-barred rules. Donziger, a larger-than-life, loud-mouthed showman, proved himself a master orchestrator of the media, Hollywood, and public opinion. He cajoled and coerced Ecuadorian judges on the theory that his noble ends justified any means of persuasion. And in the end, he won an unlikely victory, a \$19 billion judgment against Chevron--the biggest environmental damages award in history. But the company refused to surrender or compromise. Instead, Chevron targeted Donziger personally, and its counter-attack revealed damning evidence of his politicking and manipulation of evidence. Suddenly the verdict, and decades of Donziger's single-minded pursuit of the case, began to unravel. Written with the texture and flair of the best narrative nonfiction, *Law of the Jungle* is an unputdownable story in which there are countless victims, a vast region of ruined rivers and polluted rainforest, but very few heroes.

"Exhaustively reported and deftly written reads like a John Grisham novel." *Forbes* Impressively even-handed. . . [Barrett] calls Texaco to account of dirty drilling, and holds Petroecuador, which maintained such practices for years, to the same standard. He. . . thinks Mr. Donziger made a deal with the Devil, noting that the attorney even opposed the Ecuadorean government's own environmental clean-up plan in order to preserve his lawsuit. *The Economist* "A well-crafted account." *Wall Street Journal* "Those interested in the rule of law and the role of the courts and lawyers will find *Law of the Jungle* instructive, entertaining, and frightening." *The American Spectator* A mind-boggling house of mirrors [Barrett] unravels and imposes order on a confusing, multiyear circus and convincingly sorts out the guilty from the merely depraved." *San Francisco Chronicle* "Bloomberg Businessweek writer Paul M. Barrett offers a thorough account of the episode The story is one of hardball corporate lawyers vs. hardball human rights lawyers, a rough kind of moral equivalency in a battle in which Donziger and his allies were finally tempted into acts that a U.S. judge would in the end rule to be racketeering." *National A* richly detailed and well-documented narrative of one of the most important environmental litigations in decades Worthy of a Hollywood movie but one that proves the point that truth is stranger than fiction. -*New York Law Journal* "Details hardball tactics by both sides...Crisply told." *Dallas Morning News* An enthralling true-life courtroom drama Almost Shakespearean in scope, featuring a flawed protagonist with good intentions but tragically overreaching ambitions. *Booklist* "An accessible, fast-paced read." *Fortune* "Irresistable true-life, courtroom version of *Heart of Darkness*." *Kirkus* sAn enthralling, deeply researched volume about the intersection of law and individual rights Barrett skillfully takes readers inside the players' minds and exposes the underside of high-stakes litigation. *Library Journal* In a story possessing no shortage of knaves and villains, Barrett skillfully weighs the ethics of both Donziger and Chevron and finds them wanting. *Publishers Weekly* This chilling account of the bruising, bare-knuckled conflict between a deeply flawed do-gooder and a well-oiled legal steamrolling machine should give pause to anyone who believes that justice always prevails. Barrett brilliantly shows that in the real world, the law of the jungle an oxymoron if there ever was one trumps the rule of law. Alan Der showitz, professor, Harvard Law School, and author, *Taking the Stand: My Life in the Law* *Law of the Jungle* is a riveting piece of storytelling. The environmental insults make you furious and your heart breaks for the people whose ways of life are violated but what happens after that challenges your beliefs about fairness and justice.... This isn't a simple David and Goliath story; it's an engaging passion play that unfolds from the Ecuadorian jungles to the courtrooms of New York. David Yarnold, President CEO, National Audubon Society "Paul Barrett's *Law of the Jungle* is a cautionary tale -- a deeply reported, well-written reminder that to be credible and effective, the fight against environmental misconduct must be waged within the rule of law. Our legal system can be a powerful force for environmental progress, but its rules have to be respected." Fred Krupp, President, Environmental Defense Fund This smart and gripping book by a first-class investigative journalist teaches a vital lesson that everyone who cares about business and the American economy needs to understand: When confronted with fraudulent courtroom shakedowns, corporations must fight back as Chevron did. Jack Welch, former Chairman and CEO of General Electric and bestselling author of *Winning* Paul Barrett's *Law of the Jungle* is the inside story of the international trial of the decade's high stakes fight over oil, blood and money and a protagonist who is as fascinating as he is perplexing. Jeffrey

Toobin, author of *The Oath* and the *Nine* An engrossing, captivating account of litigation run amok. Barretts comprehensive, detailed book demonstrates all that is wrong with the American litigation system. Required reading for anyone who not only wants to learn more about protracted lawsuits in America but yearns for a page-turning legal thriller. I cant wait for the movie.

Kenneth R. Feinberg, court-appointed special master for compensating victims of the 9/11 attacks, BP oil spill, Virginia Tech massacre, asbestos insulation, Dalkon Shield IUD, and Vietnam defoliant Agent Orange

Paul Barretts *Law of the Jungle* creates an unforgettable rainbow of lawyers who do indeed live by the Law of the Jungle. You will be intrigued until the last page as to who will survive and your emotions will be struck to ask, who should?

Victor Schwartz, general counsel, American Tort Reform Association; partner, Shook, Hardy Bacon, Washington D.C.

Masterfully written and carefully documented, *Law of the Jungle* tells the real story behind the historic Chevron oil pollution case, which I saw from the inside as technical consultant and court expert for the rain forest plaintiffs.

David L. Russell, P.E., chief executive, Global Environmental Operations Inc.

From the Hardcover edition.

About the Author Paul M. Barrett is an assistant managing editor and senior writer at Bloomberg Businessweek. He is the author of the New York Times bestseller *Glock: The Rise of Americas Gun*, *American Islam: The Struggle for the Soul of a Religion*, and *The Good Black: A True Story of Race in America*. He lives and works in New York City.

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Chapter One

**SURVEILLANCE**

The lawyer Steven Donziger stepped out onto 104th Street. He looked west toward Riverside Park and east toward Broadway. The dark sedans had been tailing him for at least a month now. They followed him for blocks at a time, slowing when he slowed, stopping when he stopped, their passengers watching his every move.

Donziger lived on a quiet block on the Upper West Side of Manhattan. He worked from home, a two-bedroom apartment he shared with his wife, their five-year-old son, and a cocker spaniel. Photographs and artwork from Latin America adorned the apartment. Documents in cardboard boxes surrounded the dining table. In the narrow foyer, stacks of stapled legal filings competed for space with a mud-spattered mountain bike.

On this morning in the spring of 2012, Donziger had wheeled the bicycle down the hall to the elevator and across the marble-floored lobby. Fifty years old, he dressed like a graduate student, in jeans, unironed button-down shirt, and tattered jacket.

Como estas? he asked the doorman as they bumped fists. Bien, muy bien, senior.

Then Donziger had emerged from the building and, as was his habit, searched for the dark sedans. Six-foot-four and powerfully built, he would not have been difficult to track. Sometimes, in addition to the cars, he thought he saw men on foot, pretending to peer into store windows if he looked their way.

Donziger began pedaling toward Ocean Grill, a seafood restaurant where he did business over lunch. As he approached the corner, he glanced over his shoulder in time to see the large car pull out of its parking space and fall in behind him. He didnt fear actual physical harm. The company was too smart, he thought, to turn him into a martyr. It wanted to distract him, intimidate him. He despised his corporate foes: their money, their influence, their cynical disrespect for his clients in the ian rain forest of northeastern Ecuador. The company would never willingly pay what it owed. Its lawyers and lobbyists had said as much. Now they were coming after him, making it personal. Hed written down license plate numbers, but the police werent interested. Every day people killed each other in New York. What did he expect the police to do about cars that might or might not have been following him?

The surveillance wasnt his main worry. A year earlier, in February 2011, the company had sued him. The 193-page suit, filed under the federal antiracketeering statute, alleged that he had ginned up fraudulent evidence as part of a conspiracy to extort the company. A federal judge had taken the accusations seriously. The judge forced him to turn over his hard drives, email, and boxes of documents. Donziger had said some truly dumb things--he admitted that much--and now they were public. His bravado sounded incriminating, he also acknowledged, especially if it was taken out of context. Hed cut a few corners, used tactics they didnt teach back at Harvard Law School. He could lose his law license. Conceivably, the U.S. Attorneys Office could bring criminal charges.

The company, as Donziger saw it, fought dirty; he fought back in kind. Slugging it out, hed pulled off something amazing. His ragtag team had gone to a provincial Ecuadorian courtroom and won a judgment that mighty Texaco had ruined the lives of thousands of farmers and tribesmen. Because of him, a tiny third-world nation had spoken truth to power. Donziger had pressed the case for nearly twenty years now, beginning as the most junior member of the plaintiffs legal team and ultimately rising to field commander. Before going after Texaco (which was acquired in 2001 by Chevron), hed never brought even a slip-and-fall suit. That hed survived this long must have shocked the oil company and its lawyers. No wonder they were branding him a racketeer and prying into his personal life.

He was not alone, though. Impressed by the potential for gargantuan legal fees, Patton Boggs, a tough corporate law firm, had joined Donziger. Together, they were seeking liens against refineries, terminals, and tankers worldwide. Hed retained a famous white-collar defense attorney to represent him in the racketeering suit. The pollution case had been featured on 60 Minutes and in the New York Times, Vanity Fair, The New Yorker, and Bloomberg Businessweek. In 2009, it was the subject of an acclaimed documentary that played at the Sundance Film Festival. A rock star in green-activism circles, Donziger had received support from Bianca Jagger, Sting, and Stings wife, the actress Trudie Styler. He had given Brad Pitt and Angelina Jolie a private tour of the oil zone in Ecuador.

I cannot believe what we have accomplished, Donziger had written in private notes several years earlier, during a flight to Ecuador. I cannot wait to get off the plane and see my fellow soldiers--often the only people I feel who get me. I want to look in their eyes and see if they understand the enormity of what this team has accomplished. He had gone toe-to-

toe with one of the most powerful multinationals in the world and won the largest pollution verdict in history: \$19 billion. That was billion with a b, real money by anyones standard. If he could survive the vengeful countersuit and collect the judgment, the Ecuador case would, in Donzigers expansive estimation, create a precedent benefitting millions of persons victimized by human rights abuses committed by multinational corporations pursuing economic gain. And it would make him a very wealthy man. Arriving at the Ocean Grill, he slowed his bicycle. The surveillance sedan--Wait, were there two of them?--kept cruising south. Donziger chained his bike to a NO PARKING sign and shrugged off his backpack. The spy cars disappeared in traffic. He knew they would circle back. They always did.

### Chapter Two PRESSURE

Six years before he played cat-and-mouse in Manhattan with oil company private eyes, Donziger was headed one cool morning to the Palacio de Justicia in Quito, Ecuador. We are going down to have a little chat with the judge, he told the documentary film crew he had invited to follow him. He emphasized the word chat in a way that sounded menacing. This is something you would never do in the United States, he continued. But in Ecuador, this is how the game is played. Its dirty. We have to--occasionally--use pressure tactics to neutralize their corruption, and today is one of those examples. Donziger was not an ordinary lawyer. Just out of Harvard Law School, he had worked briefly in a conventional job as a public defender, representing teenagers accused of street crime. But that was a long time ago. The Ecuador oil pollution case had allowed him to grow into what he wanted to be--a human rights advocate, a rabble-rouser, a performance artist with a law degree. Clarence Darrow meets Martin Luther King Jr. meets Abbie Hoffman. On this day, he aimed to convince an Ecuadorian judge to block Chevrons attempt to inspect a laboratory Donzigers team was using to analyze pollution evidence. The company alleged that the lab was incompetent and crooked. Donziger countered that the lab was fine; it was the oil company, he said, that was dishonestly harassing the plaintiffs. As he told the American film crew scrambling to keep up with him, justice in Ecuador often resembled a back-alley brawl. Donziger and his entourage entered the courthouse and walked down a narrow hallway toward the judges office. He had arranged for Ecuadorian television news stations to cover the confrontation. Donziger ushered several cameramen into the judges chamber, a cubbyhole space that got so crowded there was no room to turn around. The judge, an elderly bald man, cowered at his desk, blinking behind large eyeglasses. I sat down in the chair directly in front of the judge, Donziger later recalled, where he could smell my breath. I am part of the plaintiffs legal team, Donziger told the judge. The American lawyer wore a charcoal suit with a blue shirt and muted red tie. As a non-Ecuadorian, he did not have the right to speak in court as a lawyer, but technicalities did not deter Donziger. He rose to his feet, drew himself to his full height, and with piercing brown eyes peered down at the judge. You have to be very careful with the Texaco lawyers, he began in American-accented Spanish. They play dirty. They are trying to corrupt a legal process that thirty thousand Ecuadorians are carrying out. They are fighting for their lives. He repeated: For their lives. The judge was breathing heavily, as if he might have a heart attack. Donziger cited no Ecuadorian statute or precedent. He invoked only his own ferocious indignation. They are trying to use you, Your Honor, to do an inspection that is not legal, he lectured. Please be careful. Please be very careful. The trembling judge announced on the spot that he would suspend the laboratory inspection in order to study the issue further. He placed a feeble hand on the sheaf of legal papers on his desk and added: Thats what I have to offer you. At that moment, Diego Larrea, one of the oil companys lawyers, entered the judges office. Larrea had learned belatedly of Donzigers preemptive strike. Youve suspended the order? Larrea asked the judge, incredulous. Your Honor, it must be clear, this is another maneuver. Donziger, towering over Larrea, who stood a good six inches shorter, assumed an expression of unrestrained wrath. This is a corrupt Texaco lawyer! he bellowed, pointing a long finger at Larrea. In fact, Chevron had subsumed Texaco five years earlier. Chevron paid Larreas fees and was the defendant in the litigation. But Texaco had been the oil company active in Ecuador years earlier, and it was Texaco (pronounced locally Tek-ZAH-ko) that would resonate with Ecuadorian television viewers. Sir, Larrea said, turning to Donziger and pointing back at him, you are going to be held responsible for what you say. I take responsibility, sir. You are a corrupt lawyer. His voice rising theatrically, Donziger repeated the epithet with relish, abogado Tek-ZAH-ko corrupto: You are a corrupt Texaco lawyer! You are a corrupt lawyer! The TV cameras swiveled from combatant to combatant. The judge, unwilling or unable to restore order, reared back from his desk, but there was no place to escape. Finally, a flustered secretary took it upon herself to announce: This is becoming personal! Step out, please! The verbal rumble moved to the hallway, TV news and documentary cameras rolling. Later, Donziger coolly assessed his performance. Very effective, he wrote in his notes. Talk about corruption, talk about how they try to use innocent and good people as vehicles for their own corruption. He had accomplished his purpose, both in the judges office and with Ecuadorian television viewers.

### Chapter Three ARRIVAL

The righteous fury Donziger could summon seemingly at will on behalf of his rain forest clients flowed in equal parts from deeply felt empathy with their plight and his acute thespian instincts. One can genuinely care for the powerless while relishing the role of their protector. In the personal notes he kept on a laptop computer, Donziger recalled his first visit to a tribe called the Cofan along the Aguarico River: When I arrived in the village, I could see the desperation and hope that was being projected onto my presence. He wondered whether he could deliver any tangible benefit to the Indians, either then or ever. He hated what he saw as the desperation in the eyes of the children, and the hollow resignation in the eyes of their parents. To honor him, the Cofan children sang traditional story songs for Donziger. Performing without musical accompaniment, the shabbily

dressed choir described a time long before their birth when the forest was unspoiled, a common theme of the tribal repertoire. The children performed a dance in Donzigers honor, dipping their hands in symbolic oil to illustrate what had befallen their culture and the rain forest they lived in and depended on. An elderly woman who sang with the children wore a colorful toucan feather through her nose, the sharpened tip penetrating one nostril, passing through the cartilage, and exiting the other nostril. Emergildo Criollo, the leader of the Cofan community, initially had mixed feelings about Donziger. He appreciated that the American lawyer had trekked to the remote enclave but found the outsider overwhelming. Donziger spoke too loudly and waved his arms in a manner that made the Indians uneasy. The intricacies of the court proceedings he described eluded the Cofan. But Criollo came to trust him. He spent time with us, the tribal leader said. We saw this gringo lawyer had great passion. The chain of events that had brought Donziger to Criollos village began more than four decades before the lawyers first visit. One day, when Criollo was a boy of six, a helicopter appeared above the treetops. We were all amazed at the noise it made, he told me, remembering the remarkable 1964 encounter. Which type of animal is this that comes flying from so high in the sky? Criollo saw the bulbous metal bird disgorge a number of white men in trousers and wide-brimmed hats. At the time, his father was teaching him to use a blow pipe and poison-tipped darts to hunt howler monkeys. The Cofan spoke a local language called Aingae. A few knew Spanish because of earlier interaction with missionaries and rubber traders, but none of them knew the language spoken by the men from the sky. We were scared, Criollo said, so we hid. The helicopters continued to arrive, delivering other strange machines. Day and night, they cut the trees. There were explosions and fires. The white men were digging holes. Criollo and other members of the tribe wondered what they were looking for. He and his father crept to the edge of a clearing the outsiders had carved. They were eating lunch. They gave us rice. It was the first time we tasted rice, and it was delicious. The yellow cheese the Indians were given smelled terrible to them, so they threw it into the jungle. The Cofan lived a relatively isolated existence. They hunted, fished, and grew vegetables, mostly without interference from Hispanic Ecuador. In the late nineteenth century, rubber harvesters and traders had invaded the area and subjected several generations of Indians to brutal debt servitude. The intruders receded and then disappeared during the global depression of the 1930s, giving the Cofan and other tribes several decades of respite before the arrival of the new outsiders seeking oil and sowing fresh disruption. During all this time, the Indians also encountered American Protestant missionaries and Spanish Catholics. The foreign Christians provided machetes, mirrors, and clothing, in addition to Bible lessons. Some Indians went to live at missionary settlements, abandoning villages and straining clan ties. Criollo told me the oilmen were the first Americans he ever encountered. In fact, an American missionary family named Borman had had extensive contact with the Cofan as early as 1955, nine years before Texaco arrived. Given Criollos young age at the time of these events, it is not surprising that his chronology is slightly inaccurate.