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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

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House Committee on Foreign Affairs
Subcommittee on the Western Hemisphere
Rep. Matt Salmon (R-AZ), Chairman

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2:00 p.m.
"Building Prosperity in Latin America: Investor Confidence in the Rule of Law"

Mr. Chairman, Ranking Member, and Members of the Committee:

Thank you for the invitation to testify today. I am grateful for the Committee's interest in my forthcoming book, **LAW OF THE JUNGLE**, which describes the epic legal war over oil pollution in the rain forest in Ecuador. The events I've reported on for the past three-and-a-half years raise troubling questions about the rule of law in Ecuador. These events deserve your attention not only because of the threat they suggest to investor confidence in that country, but also the dangers they pose to the health and welfare of Ecuador's citizens.

I'm here today in a personal capacity as an author and journalist. The best way I can be of use, I believe, is to summarize the story recounted in my book and answer your questions.

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Portrayals of the environmental controversy in northeastern Ecuador typically resemble a morality play or fable: Indigenous tribe members fighting an evil, all-powerful American oil company. A passive Latin American nation exploited by a mighty industrial menace. David versus Goliath.

In fact, the story is more complicated, as suggested by two clashing judgments from the Ecuadorian and American court systems. In February 2011, an Ecuadorian trial judge in the small city of Lago Agrio ruled that Chevron Corporation bears responsibility for severe environmental damage dating to the 1970s. The judge imposed an historic $19 billion verdict against the company. Three years later, in response to a civil racketeering suit filed by Chevron, a federal judge in New York ruled that the Ecuadorian judgment was a complete fraud: the culmination of an elaborate extortion scheme orchestrated by an American plaintiffs' attorney and aided and abetted by corrupt Ecuadorian lawyers and judicial officials.

These irreconcilable judgments are now being contested in the courts of the United States, Canada, Argentina, and Brazil. Chevron, meanwhile, is pursuing an arbitration action against the

Quito government under the U.S.-Ecuadorian Bilateral Investment Treaty. The arbitration raises the question of whether it's possible for an American corporation to achieve due process in Ecuador's courts.

To understand the Chevron case, it's best to begin at the beginning. In the 1960s, Ecuador sought outside investment to take advantage of oil reserves in the Amazon region east of the Andes. Texaco (later acquired by Chevron) signed a series of agreements with the Ecuadorian government resulting in drilling, production, and export of oil via a pipeline built over the Andes to a port on the Pacific. The oil industry became the backbone of the Ecuadorian economy, raising the aggregate standard of living and contributing to improved social conditions as measured by such markers as decreased infant mortality and increased life expectancy.

Unfortunately, while Ecuador became wealthier overall, economic inequality worsened. And people living near oil operations in the expanding industrial zone in the rain forest suffered from the side effects of unregulated industrial activity.

Texaco could have done a much better job of protecting the environment. It dug hundreds of unlined, open-air waste oil pits. It discharged into rain forest streams and rivers billions of gallons of tainted water generated by oil operations. Texaco considered but rejected spending modest sums to reduce ecological harm.

The human toll from Texaco's pollution was exacerbated by Ecuadorian government policies. While some of the rain forest residents affected by the contamination were members of tribes indigenous to the region, far more were farmers encouraged by the government to move to the oil region under an official policy known as "colonization."

Both Texaco and the country of Ecuador profited from oil production. In fact, the vast majority of the proceeds from Texaco's oil activities remained in Ecuador. Many people assume that multinational petroleum companies make off with the lion's share of revenue generated in places such as Ecuador. Whatever the pros and cons of hosting foreign oil companies, however, resource-rich countries typically retain most of the revenue. In Ecuador, some 90 percent of the roughly $25 billion produced by oil activities in the 1970s and 1980s remained in Ecuador.

In the early 1990s, the Ecuadorian government nationalized its oil industry and sent Texaco packing. Back in the United States, Texaco faced an unfriendly "welcome home." A group of American plaintiffs' attorneys filed a class-action suit in federal court in New York in 1993, accusing the company of environmental negligence and seeking $1 billion on behalf of Ecuadorian farmers and tribe members. The courtroom war had begun.

Texaco responded in two ways. In New York, it sought to get the class action dismissed by arguing that the only appropriate place for such a suit was Ecuador, the location of the alleged wrongful conduct. In Ecuador, the company negotiated a cleanup plan with the government in Quito under which Texaco assumed responsibility for "remediating" one-third of an agreed-upon list of contaminated sites; Ecuador took responsibility for the rest. In 1998, the Ecuadorian government certified Texaco's cleanup as adequate and gave the company a formal release from further liability. Three years later, right around the time Chevron was acquiring Texaco, the

federal courts in New York sided with the combining oil companies and told the plaintiffs, in essence: Take your complaints to Ecuador.

Chevron had based its winning argument for dismissal of the American class action on the contention that Ecuador's courts were strong, independent, and competent. The company would soon learn the wisdom of the old adage, "be careful what you wish for."

Chevron believed that the Ecuadorian judicial system wouldn't pose a threat because the Ecuadorian courts had no mechanism for hosting class action suits. In 1999, however, the same American plaintiffs' lawyers who were pressing the case in New York consulted with Ecuadorian legislators on the enactment of a statute that provided for the first time for mass lawsuits in Ecuador. This statute was applied retroactively to Chevron.

Sure enough, the lawsuit against Chevron restarted in the provincial courthouse in Lago Agrio in 2003. Both sides employed tactics that would not pass muster in the United States. Chevron, for example, allied itself with the still-influential Ecuadorian military, going so far as to house its legal team on a military base in a residence the company built and promised to bequeath to the military upon the conclusion of the litigation.

The plaintiffs' legal team, now headed by a brash New York-based attorney named Steven Donziger, thoroughly outflanked Chevron when it came to unconventional legal tactics. Donziger cajoled and bullied Ecuadorian judges in private meetings and communications. He manipulated a supposedly neutral court-appointed expert, going so far as to arrange for the secret ghostwriting of the expert's submissions to the court. And he choreographed the illicit payment of a former judge in Lago Agrio to write pro-plaintiff rulings issued under the name of the presiding judge.

Ultimately, according to the March 4, 2014 opinion of U.S. District Judge Lewis Kaplan in Chevron's successful racketeering suit against Donziger, "the plaintiffs' team wrote the Lago Agrio court's judgment themselves and promised $500,000 to the Ecuadorian judge to rule in their favor and sign their judgment."

Donziger received ample cooperation from Ecuadorian judges eager to sell their influence to the highest bidder. Four out of the six judges who at one time or another presided over the Lago Agrio case were removed from office for misconduct. When questioned under oath in a U.S. courtroom, the judge who signed the 2011 opinion justifying the $19 billion verdict against Chevron seemed entirely unfamiliar with his own purported work. This same judge, who speaks and reads only Spanish, peppered his ruling with references to American, English, and French law. Asked about this during sworn testimony, he explained implausibly that his only assistant, an 18-year-old high school-educated typist, found the citations on the Internet.

"This case," Judge Kaplan wrote. "include[s] things that normally come only out of Hollywood….If ever there were a case warranting equitable relief with respect to a judgment procured by fraud, this is it." The equitable relief Judge Kaplan granted took the form of an injunction forbidding Donziger and his clients from profiting from the fraud perpetrated in the Ecuadorian courts.

Donziger has not surrendered. He has appealed Kaplan's ruling to the U.S. Court of Appeals for the Second Circuit, emphasizing that two levels of appellate courts in Ecuador reviewed the Lago Agrio verdict and waved off Chevron's allegations of fraud and extortion. In a saga whose actors seem immune from any sense of irony, Donziger now heralds the Ecuadorian courts as a bulwark of justice. These are the same Ecuadorian courts that years earlier he claimed could never give his clients a fair trial.

Donziger and his clients can't enforce the Ecuadorian verdict in that country because Chevron has no assets to speak of in Ecuador. So the plaintiffs have taken the Ecuadorian verdict to third countries where the company does have assets--Canada, Argentina, and Brazil--and are seeking enforcement there. Chevron, in response, will argue to judges in those third countries that the U.S. ruling that Donziger is a racketeer ought to preclude enforcement anywhere.

After more than two decades of legal wrangling, this litigation has not resulted in the elimination of any waste oil, the purification of a single Amazon stream, or the construction of a medical clinic for the poor. To the contrary, the endless *Bleak House*-style lawyering has provided the Ecuadorian government with an excuse not to take steps that could help its people. The Quito government hasn't fulfilled its long-standing contractual promise to clean up the two-thirds of the former Texaco contamination sites. Since assuming a lead role in the Amazon oil zone, the national oil company, Petroecuador, has proved itself to be, if anything, an even worse polluter than Texaco. More than two decades after Petroecuador took over, it's increasingly difficult to say which oil company contaminated which site. Campaigning against Chevron--and for enforcement of the dubious Lago Agrio verdict--has become a central theme of the administration of President Rafael Correa.

The story I tell in **LAW OF THE JUNGLE** has many victims but no heroes. It is a story in which legal procedures and judicial remedies have not dealt effectively with the harsh side effects of industrialization of an area such as the Oriente in Ecuador. Rather than serve as a means for holding corporate power accountable, the rule of law has been undermined.

I'd be pleased to answer your questions. Thank you.