

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
IN RE: APPLICATION OF CHEVRON :
 :
Joe Berlinger; Crude Productions, LLC; Michael :
Bonfiglio; Third Eye Motion Picture Company, Inc.; :
@radical.media, : Docket Nos. 10-1918; 10-1966
 :
Respondents-Appellants, :
 :
Lago Agrio Plaintiffs, :
 :
Appellants, :
 :
v. :
 :
Chevron Corporation; Rodrigo Pérez Pallares; Ricardo :
Reis Vega, :
 :
Petitioners-Appellees. :
-----X

DECLARATION OF JOE BERLINGER

I, Joe Berlinger, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am the producer and director of the documentary film entitled *Crude*. I make this declaration based on personal knowledge and submit it in support of my motion for a stay of the order of the Hon. Lewis A. Kaplan dated May 10, 2010 Order (the “Order”) pending this Court’s determination of the appeal of the Order and for expedited appeal of this matter (the “Motion”). If called as a witness, I would testify to the same as stated herein.

2. I feel compelled to submit this declaration to counter certain false accusations by Chevron disparaging my integrity and independence as a journalist and documentary filmmaker. These accusations are clearly motivated by Chevron’s desire to obtain permission to scour through the unreleased footage from *Crude*. In pursuit of these ends, Chevron has not only

trampled over the journalists' privilege, but has brushed aside my formidable credentials as a documentary filmmaker and well-established reputation for creating balanced films addressing newsworthy and controversial topics.

***Crude* is a Balanced Account of the Lago Agrio Litigation**

3. In fact, *Crude* has received international acclaim from numerous prominent organizations and film critics for being a balanced account that presents both sides of the controversial Lago Agrio Litigation. See Declaration of Joseph A. Berlinger dated April 22, 2010 (“Berlinger I”), attached as Exhibit B to the Declaration of Maura J. Wogan submitted on May 20, 2010, at ¶ 17. Nevertheless, Chevron has described *Crude* as “little more than creative fiction” and “an unapologetic work of propaganda” that was solicited by the Lago Agrio Plaintiffs. These misrepresentations, which are blatantly designed to justify Chevron’s unwarranted romp through my privileged journalistic resource materials, are false, deeply offensive and contradicted by the record and the film itself. Although the District Court may have been swayed by these false and misleading statements, this Court should not.

4. As I explained in my initial declaration, Steve Donziger, one of the lawyers for the Lago Agrio Plaintiffs, first told me about the events taking place in Ecuador in the Summer of 2005. See Berlinger I, at ¶ 12. Mr. Donziger also contacted *Vanity Fair* and *Sixty Minutes* and suggested that they cover the Lago Agrio Litigation – which they did.

5. When I decided to create a documentary film about the Lago Agrio Litigation, I made it clear to Mr. Donziger that I was not going to create an environmental and human rights advocacy film with a single point of view. *Crude* was to be (and is) independently financed. Subject to the confidentiality agreements I entered into with the subjects of the film, I maintained complete editorial control over the film at all times. Like the journalists from *Vanity Fair* and *60*

Minutes, I was initially introduced to the events in Ecuador by Mr. Donziger. I never intended to, nor did I, produce *Crude* as a means of promoting Mr. Donziger's cause or, as Chevron puts it, "to win over audiences to the Plaintiffs' side and to facilitate the Lago Agrio Litigation."

6. Indeed, as I explained in my initial declaration, I made significant efforts to include Chevron's point of view in *Crude*. See *Berlinger I*, at ¶ 33. In February 2008, I first contacted Chevron's Media Relations Advisor Kent Robertson to invite Chevron to participate in *Crude*. See Exhibit A. I explained that "[w]hile I am confident that the film can accurately present Chevron's point of view through existing archival material, including local Ecuadorian and international media reports as well as coverage of the trial in Ecuador, I would like the opportunity to film on-camera interviews with key Chevron employees and/or legal representatives associated with the case so that I can have such additional footage to consider including in the film." *Id.* I also encouraged Chevron to allow me to film their strategy meetings and to give me a tour of the affected sites in Ecuador from their perspective.

7. After negotiating with Chevron for six months, Mr. Robertson allowed me to film interviews of two senior Chevron executives, Sara McMillen, Chevron's Chief Environmental Scientist and Ricardo Reis Veiga, one of the Individual Applicants here and the Managing Counsel for Chevron Latin America. Footage from those interviews, which occurred in August 2008, is prominently featured in *Crude*. I deliberately interspersed clips of statements made by Ms. McMillen and Mr. Veiga throughout the film in order to allow the audience to view, in a point-counterpoint fashion, the company's many responses to the Plaintiffs' allegations. *Crude* also includes arguments made by Chevron's Ecuadorian counsel at every trial proceeding documented in the film. Following the interviews, I continued to communicate with Mr. Robertson and other company representatives to give Chevron the opportunity to contribute

additional information and arguments in support of its position (which they did on numerous occasions) and to inform them of the film's progress. *See* Exhibit B.

8. Despite Chevron's claims of bias, the film actually contains *more* arguments from Chevron's perspective that the Plaintiffs, including Chevron's claims that:

- The lawsuit is a "swindle" for financial gain for the Amazon Defense Fund and attorneys.
- Chevron's ordinary oil operation practices are being demonized by the Plaintiffs. Production stations are necessary and that technology is still being used in crude oil production worldwide.
- The affected land is legally designated for the Ecuadorian oil industry; people should not be living there.
- The Ecuadorian government began drilling in the region in the 1960's, opening it up to oil exploration and exploitation.
- Chevron has hired internal and external epidemiologists and health risk assessors who have determined there is no evidence of an increase in the cancer death rate in the Oriente region or that it is linked to oil production.
- There is no method for determining when the crude oil was put in the ground or if it was Texaco's (it is not possible to date petroleum). It cannot be assumed that just because Texaco built the station that Chevron (as Texaco's successor) is eternally liable for anything that goes wrong.
- As of 2007, PetroEcuador had owned the oil operations for 15 years. Since Texaco ceased operating the facilities in 1992 when PetroEcuador demanded 100% ownership, PetroEcuador has had a poor operational record. There have been more than 11 spills at one of the stations.
- Chevron has sampled every stream at every inspection and 99% of those samples meet U.S. EPA and World Health Organization drinking water standards. Chevron has not discovered any heavy metals or hydrocarbons at any concentration that is a cause for concern for health or the environment.
- The Lago Agrio Plaintiffs are hiding the fact that there was a legal consortium between PetroEcuador and Texaco. The industrial exploitation was permitted by law. Everything the Plaintiffs allege about "Texaco" should be directed at the PetroEcuador-Texaco consortium.
- The skin rashes are due to poor sanitation from fecal bacteria in the water. It is not drinking or bathing water but "for the most part it has nothing to do with oil."

- In 1995, Texaco in fact conducted a thorough remediation certification project, pursuant to which an official from the Ecuadorian government had to approve eight remediation steps at every drilling site, which was then subject to laboratory analysis at the Central University. Texaco has a “ton” of photographs and certificates to prove it.
- People are exposed to hydrocarbons on a daily basis, but that does not mean those hydrocarbons are going to make you sick.

9. The film also includes footage of a video produced by Chevron for presentations to its shareholders which, among other arguments in support of Chevron’s position, states as follows: “For the past 17 years the state-owned oil company PetroEcuador has created an environmental mess from its oil operations. The President of Ecuador, Rafael Correa, had condemned his country’s own oil company. Texaco spent 40 million dollars in a government supervised cleanup of its share of the partnership and turned over all oil operations to PetroEcuador. Afterward, the government of Ecuador formally released Texaco from any responsibility, past present or future, arising from its prior operations.”

10. Chevron’s mischaracterizations of me and the film should call into question the other claims in Chevron’s application, including the purported relevance of my footage to Chevron’s defenses in the Lago Agrio Litigation. Chevron’s willingness to distort the factual record in order to get its hands on my privileged materials merely highlights the importance of allowing me to appeal from the District Court’s Order.

The Chevron Parties Have Had Access to *Crude* Since at Least January of 2009

11. On December 3, 2008, I informed Mr. Robertson that *Crude* would be premiering at the Sundance Film Festival the following month and asked whether he wanted to attend and have the opportunity to respond to any inquiries from the press. *See* Exhibit B. On January 12, 2009, I again contacted Mr. Robertson, stating that “[i]n order to treat all sides equally . . . I would be happy to screen [*Crude*] for you at the Festival a day before the premiere (or morning

of).” *See* Exhibit C. Mr. Robertson declined to attend the Festival. At Mr. Robertson’s request, I arranged for him and Chris Gidez, a Chevron Public Relations representative who has been involved in the Lago Agrio Litigation since 1993, to attend a private screening at my office in New York, which Mr. Gidez attended in March 2009. *See* Exhibit D. Throughout 2009, *Crude* was shown at over 80 national and international film festivals, almost all of which were open to Chevron’s employees. *See* Exhibit E. The film was released in public theaters on September 9, 2009.

Confidentiality Agreements

12. The Chevron Parties have argued that my confidentiality agreements with sources (limiting my right to use certain Footage) are somehow undermined by a form release that I sometimes ask my subjects to sign. The vast majority of subjects in *Crude* were either not asked to, or declined to execute, a release form. In fact, Chevron did not sign the release form.

13. The undisclosed Footage contains materials that I agreed not to use or disclose, including footage that required express authorization to use and footage recorded prior to a direction by the subject to turn off the camera.

The Appeal Presents an Issue of Great Public Interest

14. Since the District Court issued its May 6, 2010 order, hundreds of prominent journalists, writers and filmmakers have publicly expressed their deep concerns over Judge Kaplan’s decision to allow Chevron to subpoena all 600 hours of raw footage produced in connection with *Crude*. Attached as Exhibits F through M are true and correct copies of the following examples of articles, letters and statements reflecting the groundswell of opposition to Judge Kaplan’s ruling:

Exhibit F. *Michael Moore Says Judge’s Ruling Could Have ‘Chilling Effect’ on Documentaries*, New York Times Arts Beat Blog (May 7, 2010).

- Exhibit G. *Ric Burns Says Judge's Ruling on Film Could Be 'Killer Blow'*, New York Times Arts Beat Blog (May 7, 2010).
- Exhibit H. *Oscar Winners Back Filmmaker in Dispute with Chevron*, New York Times Arts Beat Blog (May 12, 2010).
- Exhibit I. *An open letter in support of Joe Berlinger and the documentary filmmaking team of "Crude,"* International Documentary Association, *et al.* (May 12, 2010).
- Exhibit J. *Bill Moyers and Michael Winship: Chevron's "Crude" Attempt to Suppress Free Speech*, Huffington Post (May 14, 2010).
- Exhibit K. *Statement by Directors Guild of America in Support of Filmmaker Joe Berlinger* (May 18, 2010).
- Exhibit L. *Writers Guild of America East Opposes Subpoena to Obtain Documentary Film Footage* (May 18, 2010)
- Exhibit M. *Chevron sues over 'Crude': A documentary's unused footage, akin to reporter's notes, should be protected*, LA Times Editorial (May 20, 2010)

15. As these exhibits demonstrate, there is a significant public concern that allowing third parties to access the entire work-product of journalists will seriously threaten the future of documentary films like *Crude*.

Additional Exhibit

16. Attached as Exhibit N is a true and correct copy of a letter I directed my counsel to send today to the attorneys for Messrs. Pallares and Veiga.

Dated: New York, New York
May 27, 2010

_____/s/ Joe Berlinger_____
Joe Berlinger

EXHIBIT A

From: "Robertson, Kent S" <KRDQ@chevron.com>
Date: February 4, 2008 9:17:07 PM EST
To: "Joe Berlinger" <berlinger@radicalmedia.com>
Cc: "Stewart, Charles R (scrs)" <scrs@chevron.com>
Subject: RE: Documentary Film/Ecuador Case

Joe, thank you for your e-mail. You are absolutely right that the Ecuador story is not a clear cut one.

Attached are several documents for your consideration. The summary lays out a fairly concise statement as to the company's position on the case.

I am heading out of town tomorrow morning. Are you based in New York? If so, perhaps a colleague could stop by to talk about your film and provide some additional background.

Thank you for contacting us and we appreciate your consideration. Best regards,

Kent

Kent Robertson
Media Relations Advisor

Policy, Government and Public Affairs
Chevron Corporation
6001 Bollinger Canyon Road
San Ramon, CA 94583-2324
ph: 925-842-1695
mobile: 925-858-4289
krdq@chevron.com

From: Joe Berlinger [<mailto:berlinger@radicalmedia.com>]
Sent: Monday, February 04, 2008 5:36 PM
To: Robertson, Kent S
Subject: Documentary Film/Ecuador Case

February 4, 2008

Mr. Kent Robertson
Chevron Corporation
6001 Bollinger Canyon Rd.
San Ramon, CA 94583

RE: Documentary Film/Ecuador Case

Dear Kent,

The purpose of this letter is to request the company's participation in a documentary I am filming that involves Chevron.

Specifically, I am making a film about the alleged environmental damage reportedly created in Ecuador through oil production linked to Texaco and its alleged impact on the local communities.

Please note that I am a respected filmmaker with outstanding credentials. I am known as an objective storyteller who does not impose an overt point of view. Rather, my films have been cited for their balance and for their *cinema-verite* quality of allowing parties on all sides of a situation to have a voice. I do not use a narrator in my films, choosing instead to allow the viewer to make up his or her own mind about a given situation by being exposed to multiple points of view.

While I have had access to the plaintiffs in the case, I have also observed that the issues seem to be more complex than the lawsuit alleges. While I am confident that the film can accurately present Chevron's point of view through existing archival material, including local Ecuadorian and international media reports as well as coverage of the trial in Ecuador, I would like the opportunity to film on-camera interviews with key Chevron employees and/or legal representatives associated with the case, so that I can have such additional footage to consider including in the film. Ideally, I would conduct some of these interviews at the various sites in the region with the local Chevron representatives involved in the case.

I would be happy to send you samples of my past work and/or to discuss my intentions further on the phone or in person prior to your decision. In the meantime, if you want to check my credentials, please go to the Internet Movie Database (IMDB) at: <http://www.imdb.com/name/nm0075666/>, or simply Google my name (Joe Berlinger.) Please note that my production window for shooting these interviews ends on June 1st, although there is some limited flexibility with that date.

Finally, please note that a similar letter is being sent to Charles Stewart. If you and/or Mr. Stewart are not the correct people to be addressing my request, I would appreciate you letting me know who I should contact.

I look forward to hearing from you.

Kind regards,

Joe Berlinger

EXHIBIT B

From: Joe Berlinger <berlinger@radicalmedia.com>
Date: December 3, 2008 6:22:34 PM EST
To: "Robertson, Kent S" <KRDQ@chevron.com>
Cc: "Mike Bonfiglio" <bonfiglio@radicalmedia.com>, "Chris Gidez" <Chris.Gidez@hillandknowlton.com>
Subject: Update

Dear Kent,

I wanted to update you on several open issues relating to the film.

1) Ricardo and Sara release: The lawyer reviewing the film for our insurance policy agrees that the videotaped acknowledgment is a sufficient personal release. So, their interviews will be included in the film. I appreciate your efforts to make those interviews take place.

2) As promised, I am informing you of the lines that we removed from the shareholder video you provided us. The lines were removed for timing reasons. We feel the removed lines represent information that is contained elsewhere in the film and the spirit of the shareholder video remains intact. Please let me know if you have any questions or comments about this. The lines that are in brackets and are italicized are the lines that we removed.

{In the South American country of Ecuador, small rivers of oil, like this one in 2003, have stained the once pristine jungle of the Amazon.} For the past 17 years the state oil company PetroEcuador has created an environmental mess from its oil operations. More than a thousand spills, involving millions of gallons of oil, much of it from poorly maintained equipment. *{Almost everyone who sees this damage sees an environmental tragedy}* The President of Ecuador, Rafael Correa had condemned his country's own oil company. *{In a news conference in April of 2007, he said, "PetroEcuador with those obsolete technologies has an appalling environmental record."}* But a group of American trial lawyers are trying to pin the blame on Chevron. They are seeking the potential for millions of dollars in contingency fees. They have launched a multibillion-dollar class action lawsuit against Chevron, claiming the US company is somehow responsible for this damage. Chevron denies the claim. It points to PetroEcuador, which has operated with a poor environmental record since 1990. More than 40 years ago, Texaco, subsequently acquired by Chevron, did help the Ecuadorian government discover oil. And it was a partner with Ecuador in oil production. *{But by 1977, PetroEcuador was already the majority partner.}* As it prepared to leave Ecuador in the 1990's, Texaco spent 40 million dollars in a government supervised cleanup of its share of the partnership, and turned over all oil operations to PetroEcuador. Afterward, the government of Ecuador formally released Texaco from any responsibility, past present or future arising from its prior operations. So why would the trial lawyers go after Chevron?

One Wall Street Journal columnist said the answer is simple: "Because Chevron is where the money is." He called the lawsuit an "Amazonian Swindle." He's right, and Chevron will defend itself. The company hopes that someday the government of Ecuador will force PetroEcuador to clean up its mess. For the good of its people and for the good of the environment.

3) I also wanted to inform you that the film will be premiering at the Sundance Film Festival in January. Please let me know if you are willing to make yourself available to the press should the inquiry arise. I certainly want to make that opportunity available to you.

Best wishes,

Joe Berlinger

On Aug 29, 2008, at 2:04 AM, Robertson, Kent S wrote:

Joe, a pleasure seeing you again and finally getting to meet Mike. I'm glad you all were able to make the trip. Apologies for not getting back to you more promptly -- I was on a plane when you e-mailed yesterday and have been digging out for most of today.

Specific to yesterday's e-mail, please consider the following:

- A 1983 report to the Governor of Texas and state legislature states that 4,276 permits for unlined pits were active as of August 31, 1982 [Texas Sunset Advisory Commission Report on Energy Regulatory Agencies to the Governor of Texas and 68th Legislature, 135 (January 1983)].
- In the State of Louisiana, 81,933 open-air, earthen, unlined pits were constructed between 1970 and 1985 (State of Louisiana's geographic information system).
- According to the USEPA, in 1984 there were 125,000 open pits in the United States, of which 97.6% did not have synthetic liners. Only 2.4% were lined with synthetic material; 27% had natural liners (clay, much like in Ecuador), and all the others were not lined (USEPA, 1987. Report to Congress: Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy – Volume 1 of 3, Oil and Gas, EPA/530-SW-88-033A, December).
- There were 50 billion gallons of produced water discharged in the U.S. in 1985 [U.S. Congress, Office of Technology Assessment, Managing Industrial Solid Wastes from Manufacturing, Mining, Oil and Gas Production, and Utility Coal Combustion-Background Paper, OTA-BP-O-82 (Washington, DC: U.S. Government Printing Office, February 1992)].

As you can see, all of the data is sourced. Given that you are looking into the origins of our statements, I hope you are doing the same of the plaintiffs' allegations.

You wrote that, "part of the plaintiff's argument is that the release of formation water and creating of pits in the US vs. Ecuador is that in Ecuador this was done where people live." I've not heard it put that way, specifically when the argument is made about pits and produced water. The allegation is usually made in general terms and is never sourced (<http://www.texacotoxico.org/eng/node/36>). For the sake of argument, if one were to concede that our rebuttal amounts to an apples to oranges comparison, then would that not be true of the plaintiffs' allegation as well? Texaco Petroleum was operating in conditions much different than those found in the US, therefore requiring a perspective specific to the environment in Ecuador as well as a tropical climate. If that is the basis for evaluating Texaco Petroleum's performance, then the allegations fail inasmuch as Texaco Petroleum was in compliance with Ecuadorian standards. If, again for the sake of argument, Ecuadorian standards are to be discounted, then all we are left with is the science from the trial in order to resolve the questions around toxicity.

In considering the science, Chevron has analyzed 306 soil samples for hexavalent chromium (also known as chromium VI) and 96% of them did not contain any chromium VI. The highest concentration found in any soils sample was 0.13 mg/kg which is more than a thousand times lower than typical cleanup levels in the U.S.

Then there's produced water. First, produced water is not considered "toxic waste" in the United States or any other part of the world [as the Wall Street Journal points out, "According to a definitive 2004 study by the Argonne National Laboratory, 'produced water ranks first on the list of wastes that are generally exempt and warrant no regulation under Subtitle C of the RCRA (Resource Conservation and Recovery Act)'."]. Equally important is the fact that Petroecuador has discharged more produced water in the Oriente in the last 18 years than Texaco Petroleum prior to 1990, including almost 14 billion gallons since 1992, the year that the government of Ecuador banned produced water discharge without a permit. No mention is ever made of this by Donziger et al. And the surface discharge of produced water continues today; recall your visit to

the Guanta production station and the swamp by the pit with the flares that Daryl Hannah made famous.

They also state that “produced water discharged contains some of the most toxic and dangerous chemicals known to man” and that “produced water contains a variety of toxic and carcinogenic petroleum hydrocarbons including benzene, toluene, ethylbenzene, and xylene (BTEX) and polynuclear aromatics (PAHs).” What the plaintiffs’ lawyers don’t say is that they have never once analyzed any produced water for BTEX as part of the judicial inspection process to try to substantiate their allegation. As Sara mentioned, they did analyze two Petroecuador produced water samples for PAHs and, even using their flawed analytical techniques, their results show that most PAHs were not detected in produced water. Notably, no PAH in the plaintiffs’ produced water exceeds any USEPA or WHO drinking water limit for PAHs.

As part of the Judicial Inspections, Chevron has analyzed the produced water from 11 Petroecuador production stations and found that the waters are brackish (contain salts), contain trace amounts of metals that meet Ecuadorian discharge limits, and contain only low levels of hydrocarbons (BTEX and PAHs) that rapidly biodegrade and dissipate once the water is brought to the surface [Chevron has presented all of this information to the court in scientific reports authored by Dr. Jerry Neff (author of the book Produced Water) and Dr. Gregory Douglas of Newfields Analytical]. This is an important point inasmuch as it undermines the allegation that cancers in the region can be linked to produced water. It is also worth pointing out that Cabrera did not detect either benzene or chromium VI in any of his sampling (Richard Cabrera, “Expert Opinion,” March 24, 2008).

So, even if we're stuck when it comes to the relevance of the dueling sound bytes, the science remains. And ours is better than theirs; in a legitimate proceeding, the HAVOC data would have been tossed a long time ago.

Regarding the camera, my apologies for the surprise. I truly thought we had discussed that in our prior conversations. It was not my intent to spring it on you and Mike. I would be happy to arrange for a copy of the DVD that's headed my way to be sent to you too. Would that work?

On the matter of the release, it would probably be best for your attorney to speak with one of Ricardo's colleagues, Peter Kast. Peter has probably given Ricardo the most counsel on the matter of the release -- he'll be the most efficient means to move forward. I've sent an e-mail to Peter asking how he would like to proceed in speaking with your attorney. All things being equal, does the videotaped acknowledgement from Ricardo and Sara not suffice for your needs? I simply put it out there for consideration. It's more a matter for the attorneys than anyone.

I have an e-mail into Ricardo and Sara regarding their contact information. I do not mean to be a gatekeeper, but I do owe it to colleagues that I respect their privacy.

Likewise, I passed along your request to Sara regarding a compromise exclusive of the conversation with Ricardo. I will follow up.

Finally, regarding the Chevron release, I posed that very question to Ricardo last week. He was resolute in his position. So you know, Peter Kast has a copy of it too.

I hope aspects of this e-mail will prove helpful. As I mentioned, I do believe there is upside to Chevron in participating in the film. However, as I also mentioned, we cannot ask employees to assume personal risk or liability that they perceive to be beyond their roles. I will be on a plane from 10:30-4:00 Pacific on Friday. I'll be keeping an eye on the blackberry when I can and back in the office Tuesday.

I hope you have a pleasant weekend and let's plan to touch base next week.

Kent Robertson
Media Relations Advisor

Policy, Government and Public Affairs
Chevron Corporation
6001 Bollinger Canyon Road
San Ramon, CA 94583-2324
ph: 925-842-1695
mobile: 925-858-4289
krdq@chevron.com

From: Joe Berlinger [<mailto:berlinger@radicalmedia.com>]
Sent: Thursday, August 28, 2008 1:36 PM
To: Robertson, Kent S
Cc: Mike Bonfiglio; Chris Gidez
Subject: Fwd: Quick question

Kent,

Thanks again for arranging the interviews with Ricardo and Sara yesterday and taking care of the interview room.

A few issues that I want to follow up on:

- 1) It would be great to get an answer to my email from yesterday. Am re-sending (attached below) in case it slipped through the electronic cracks.
- 2) I was surprised that you had your own cameraman there and I was not expecting to be put on camera during our discussion. For the same reason that you guys recorded my interview of Ricardo, I would appreciate it if you could send me a copy of what your cameraman shot of me, because our cameras were not in a position to cover me. I would be happy to send you guys copies of the footage that my cameras covered in return.
- 3) Releases: My lawyer is attempting to re-draft the release language based on what you told me yesterday regarding Ricardo's concerns. If that does not satisfy his concerns, I would like my lawyer to get on the phone with his representative (or, better yet, with Ricardo) to try to come up with language that works for both parties.
- 4) Email addresses: I would like to thank Sara and Ricardo for participating...can you send me their email addresses?
- 5) Talking with Sara. I would like the opportunity to talk with Sara about the release issue. Since she does not have the same concerns as Ricardo and has a different relationship to the case and to the government of Ecuador, it would be a shame if she also does not sign a release. I would like the opportunity to present my case to her and to come up with language that she is comfortable with if Ricardo continues to balk at signing a release.

6) Finally, it occurred to me that perhaps we can use the language in the Chevron standard release to satisfy Ricardo's concerns. Yesterday, you told me you fully understand the dilemma we are in because even Chevron uses releases for their media projects. If Ricardo knew this and we used Chevron language, would that satisfy his concerns?

Perhaps we can set up a call soon to discuss these matters. As I have previously indicated, time is of the essence if I am to consider using the interviews in the film.

Kind regards,

Joe Berlinger

Begin forwarded message:

From: "Joe Berlinger" <berlinger@radicalmedia.com>
Date: August 28, 2008 4:13:45 PM EDT
To: "berlinger@radicalmedia.com" <berlinger@radicalmedia.com>
Subject: Fw: Quick question
Reply-To: berlinger@radicalmedia.com

Sent via BlackBerry from T-Mobile

-----Original Message-----

From: "Joe Berlinger" <berlinger@radicalmedia.com>

Date: Wed, 27 Aug 2008 18:51:24

To: Kent Robertson<KRDQ@chevron.com>

Cc: berlinger@radicalmedia.com<berlinger@radicalmedia.com>

Subject: Quick question

Since you are possibly still with Sara...the vast numbers of pits that were still open in the 1980's in the US and the 50 billion gallons of formation water that were released into the environment: was that release in areas where people live? I believe part of the plaintiff's argument is that the release of formation water and creating of pits in the US vs. Ecuador is that in Ecuador this was done where people live. Is there data on where this water was released in the US and where the pits were located vis-a-vis where people live.

Also, can Sara direct me to where I can find documentation regarding the US statistics she referenced. Thanks.

I hope we can work out the release issues.

Joe

Sent via BlackBerry from T-Mobile

EXHIBIT C

From: "Robertson, Kent S" <KRDQ@chevron.com>
Date: January 13, 2009 2:42:46 PM EST
To: <berlinger@radicalmedia.com>
Cc: "bonfiglio" <bonfiglio@radicalmedia.com>, "Chris Gidez" <Chris.Gidez@hillandknowlton.com>
Subject: RE: Screening in New York

Joe, thank you for the e-mail. I won't be able to make it to Utah this weekend. Is there an alternative means to view the film? Perhaps you have it posted to a site that I could access...?

Kent Robertson
Media Relations Advisor

Policy, Government and Public Affairs
Chevron Corporation
6001 Bollinger Canyon Road
San Ramon, CA 94583-2324
ph: 925-842-1695
mobile: 925-858-4289
krdq@chevron.com

-----Original Message-----

From: Joe Berlinger [<mailto:berlinger@radicalmedia.com>]
Sent: Monday, January 12, 2009 6:20 AM
To: Robertson, Kent S
Cc: bonfiglio; berlinger@radicalmedia.com; Chris Gidez
Subject: Screening in New York

Hi Kent,

In order to treat all sides equally, I am being advised to tell you that unless you plan to participate in press at Sundance, we'll have to wait until after the film's release to have you screen it in New York.

Again, I would be happy to screen it for you at the Festival a day before the premiere (or morning of), but otherwise, we'll have to wait.

Thanks.

Joe

EXHIBIT D

From: "Robertson, Kent S" <KRDQ@chevron.com>
Date: March 9, 2009 7:44:45 PM EDT
To: "Joe Berlinger" <berlinger@radicalmedia.com>
Cc: "Chris Gidez" <Chris.Gidez@hillandknowlton.com>
Subject: Next week

Joe, I've had a conflict arise for next week that prohibits my trip to New York. So, I won't be able to make the screening. Chris intends to keep the meeting.

I'm sorry I can't make it.

Regards,

Kent

Kent Robertson
Media Relations Advisor

Policy, Government and Public Affairs
Chevron Corporation
6001 Bollinger Canyon Road
San Ramon, CA 94583-2324
ph: 925-842-1695
mobile: 925-858-4289
krdq@chevron.com

EXHIBIT E



Email
Name

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Awards & Festivals

AWARDS

Winner: *Best Documentaries of the Year* – [National Board of Review](#)

Winner: International Green Film Award – [Cinema for Peace](#)

Winner: *Best International Documentary* – [One World Media Awards](#)

Winner: *Grand Jury Prize* – Independent Film Festival of Boston

Winner: *Grand Jury Prize* – Yale Environmental Film Festival

Winner: *Grand Prize* – [27e Festival International du Film d'Environnement](#)

Winner: *World Wildlife Fund Documentary Award* – Thessaloniki Documentary Festival

Winner: *Current Energy Filmmaker Award* – AFI Dallas International Film Festival

Winner: *Best Editing* – Big Sky Documentary Film Festival

Winner: *Human Spirit Award* – Nashville Film Festival

Winner: *EarthVision Environmental Film Award* – Santa Cruz Film Festival

Winner: *Reel Earth Award, International Features* – Reel Earth Film Festival New Zealand

Winner: *Best Documentary Film* – [Mexico International Film Festival](#)

Winner: *OFF Docúpolis Award* – [Docúpolis International Documentary Film](#)

[Festival](#)

Winner: *Special Jury Prize for Environmental Documentary* – [Traverse City Film Festival](#)

Winner: *Elizabeth Taylor Humanitarian Award* – [Puerto Vallarta Film Festival](#)

Winner: *Lifetime Achievement Award in Documentary* – [Whitaker St. Louis International Film Festival](#)

Winner: *Brando Award* – [Red Nation Film Festival](#)

Winner: *Shining Light Award* – [Jacksonville Film Festival](#)

Winner: *Audience Award, Documentary* – [Amazonas Film Festival](#)

Winner: *Gold Kahuna Award* – [Honolulu Film Festival](#)

Winner: *Best Filmmaker Award* – [One World Kyrgyzstan Film Festival](#)

Nominee: *Outstanding Documentary* - [41st NAACP Image Awards](#)

Nominee: *Best Feature Documentary* – [Imagen Awards](#)

Nominee: *Best Documentary Feature Film* – Milan International Film Festival

Nominee: *Reel Current Award*, presented by Al Gore – Nashville Film Festival

Nominee: *Golden Gate Award* – San Francisco International Film Festival

Nominee: *WITNESS Award* – [Silverdocs Documentary Film Festival](#)

FESTIVALS

[2009 Sundance Film Festival](#) U.S. Documentary Competition: January 15 – 24, 2009

[European Film Market](#): February 5 – 15, 2009

[Big Sky Documentary Festival](#): February 13 – 22, 2009

Public Interest Environmental Law Conference, University of Oregon: February 26, 2009

[True/False Film Festival](#): February 26 – March 1, 2009

[One World International Human Rights Documentary Film Festival Prague](#): March 11 – 19, 2009

[Thessaloniki Documentary Festival, Greece](#): March 13 – 22, 2009

[Human Rights Watch International Film Festival London](#): March 18 – 27, 2009

[Rome Independent Film Festival](#): March 19 – 27, 2009

[Cleveland International Film Festival](#): March 19 – 29, 2009

[Guadalajara Film Festival, Mexico](#): March 22 – 30, 2009

[Sarasota Film Festival](#): March 27 – April 5, 2009

Special screening for members of U.S. Congress, hosted by Congressman James P. McGovern (D-MA): March 31

Special screening hosted by Dan & Rhoda Glickman and the Motion Picture Association of America: March 31

[AFI Dallas International Film Festival](#): March 26 – April 5, 2009

[Yale Environmental Film Festival](#): April 16 – 19, 2009

[Nashville Film Festival](#): April 16 – 23, 2009

[Cine Las America, Austin TX](#): April 22 – 30, 2009

[Independent Film Festival of Boston](#): April 22 – 28, 2009

[San Francisco International Film Festival](#): April 23 – May 7, 2009

[Newport Beach Film Festival](#): April 23 – 30, 2009

[Dok.Fest Munich](#): May 7 – 10, 2009

[Santa Cruz Film Festival](#): May 14, 2009

[EDOC Film Festival, Ecuador](#): May 7 – 24, 2009

[Jacksonville Film Festival](#): May 16, 2009

[Little Rock Film Festival](#): May 15 – 16, 2009

[EcoCinema Israeli Environmental Film Festival](#): May 21, 2009

[Reel Earth Environmental Film Festival, New Zealand](#): May 22 – 30, 2009

[Sydney Film Festival](#): June 4 – 6, 2009

[Lake Placid Film Forum](#): June 11 – 13, 2009

[Human Rights Watch International New York](#): June 11 – 25, 2009

[Silverdocs Documentary Film Festival](#): June 16, 2009

[Flyover Film Festival, Louisville Kentucky](#): June 12 – 14, 2009

[New York International Latino Film Festival](#): August 1, 2009

[Mexico International Film Festival](#): July, 2009

[Traverse City Film Festival](#): July 29 & August 2, 2009

[Milano Film Festival](#): September 11 – 20, 2009

[Tri Continental Film Festival, South Africa](#): September 11 – October 12, 2009

[Reykjavik International Film Festival](#): September 17 – 27, 2009

[Take One Action Film Festival, Scotland](#): September 17 – 26, 2009

[Milwaukee Film Festival, Milwaukee](#): September 24- October 4, 2009

[Sidewalk Film Festival, Birmingham](#): September 25 – 27, 2009

[Alexandria Film Festival, Alexandria](#): September 27, 2009

[Festival do Rio, Rio de Janeiro](#): September 28 – October 4, 2009

[Docupolis 09, Barcelona](#): September 29 – October 4, 2009

[Vancouver International Film Festival, Vancouver](#): October 2 & 13, 2009

[Providence Latin American Film Festival](#), Providence: October 3, 2009

[Camden International Film Festival](#), Camden: October 4, 2009

[Atlantis Nature and Environmental Film Festival, Wiesbaden](#): October 9 – 17, 2009

[Black Bear Film Festival](#), Milford: October 17, 2009

[12th United Nations Association Film Festival, Palo Alto](#): October 17 – 25, 2009Hot

[Hot Springs Documentary Film Festival](#), Hot Springs: October 20, 2009

[Bergen International Film Festival](#), Norway: October 21 – 28, 2009

[Corona Cork Film Festival](#), Ireland: November 1 – 8, 2009

[Verzio International Human Rights Documentary Film Festival](#), Budapest: November 3 – 8, 2009

[Global Visions Film Festival](#), Edmonton: November 5 – 8, 2009

[Ecozine International Environmental Film Festival](#), Spain: November 6 – 15, 2009

[Amazonas Film Festival](#), Brazil: November 6 – 12, 2009

[Red Nation Film Festival](#), Los Angeles: November 12 – 18, 2009

[Reel Awareness Human Rights Film Festival](#), Toronto: November 14, 2009

[St. Louis Film Festival](#), St. Louis: November 15, 2009

[27e Festival International du Film d'Environnement](#), Paris: November 18 – 24, 2009

[International Documentary Film Festival](#), Amsterdam: November 19 – 29, 2009

[Puerto Vallarta Film Festival](#), Puerto Vallarta: December 2 – 6, 2009

[GoodPlanet Environmental Film Festival](#), Copenhagen: December 7 – 18, 2009

[International Human Rights Film Festival of Santa Coloma de Gramenet](#), Barcelona: December 9 – 12, 2009

[Kathmandu International Mountain Film Festival](#): December 10 – 14, 2009

12th Istanbul International Meeting of Cinema & History Film Festival: December 11 – 17, 2009

[Princeton Environmental Film Festival](#), Princeton: January 2 – 17, 2010

[Wild & Scenic Film Festival](#), Nevada City: January 15 – 17, 2010

[MountainTop Film Festival](#), Waitsfield, VT: January 15 – 21, 2010

[Reframe Peterborough International Film Festival](#), Ontario: January 29 – 31, 2010

[ZagrebDox](#), Zagreb, Croatia: February 28 – March 7, 2010

[Cinema Planeta](#), Cuernavaca: March 5 – 14, 2010

[One World Romania](#), Bucharest: March 17 – 22, 2010

[To Water The Earth](#), Strasbourg: March 21, 2010

[Ljubljana Documentary Film Festival](#), Slovenia: March 24 – 31, 2010

[Amnesty International's Movies that Matter Festival](#), The Hague: March 25 – 31, 2010

[World Cinema Showcase](#), New Zealand: April 3 – May 1, 2010

[Voces Contra el Silencio](#), Mexico: April 17 – 24, 2010

[San Sebastian Human Rights Film Festival](#), Spain: April 23 – 30, 2010

[Open Doek Film Festival](#), Belgium: April 23 – May 2, 2010

[12th International Film Festival on Human Rights DerHumALC](#), Buenos Aires: April 29 – May 5, 2010

[Haida Gwaii Film Festival](#), Haida Gwaii, BC: April 30 – May 2, 2010

[1.618 Sustainable Luxury Fair](#), Paris: May 6 – 10, 2010

A RED ENVELOPE ENTERTAINMENT PRESENTATION OF AN ENTENDRE FILMS PRODUCTION IN ASSOCIATION WITH RADICAL MEDIA AND THIRD EYE MOTION PICTURE COMPANY
A JOE BERLINGER FILM CRUDE EXECUTIVE PRODUCERS JOE BERLINGER LIESL COPLAND ROBERT FRIEDMAN JON KAMEN TED SARANDOS FRANK SCHERMA JUSTIN WILKES
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CINEMA GROUP: POGHO AYZORES JOE BERLINGER MICHAEL BONFIGLIO PRODUCED BY J.L. DELEON RICHARD STRATTON
EDITED BY AWSE ARDELL SPIEGEL PRODUCED & SHOWN BY DIRECTOR MICHAEL BONFIGLIO DIRECTED & PRESENTED BY JOE BERLINGER



EXHIBIT F

MAY 7, 2010, 9:06 AM

Michael Moore Says Judge's Ruling Could Have 'Chilling Effect' on Documentaries

By *DAVE ITZKOFF*

The director [Michael Moore](#) says that a federal judge's ruling to allow [Chevron](#) to subpoena footage from the documentary "Crude" could have dire consequences on the documentary filmmaking process, and urged that film's director to resist the subpoena if he can.

On Thursday, Judge Lewis A. Kaplan of United States District Court in Manhattan said that Joe Berlinger, the director of "Crude," [would have to turn over](#) more than 600 hours of footage from that documentary. The film chronicles the Ecuadorians who sued Texaco (now owned by Chevron) saying an oil field contaminated their water. Chevron said that Mr. Berlinger's footage could be helpful as it seeks to have the litigation dismissed and pursues an international treaty arbitration related to the lawsuit.

In a telephone interview on Thursday night, Mr. Moore, whose films include "Bowling for Columbine" and "Capitalism: A Love Story," said that he had never heard of such a ruling.

"If this isn't overturned, it would make a lot of documentary filmmakers afraid," Mr. Moore said. "People are going to have to start getting rid of all their extra footage now, right?"

Should the decision of Judge Kaplan be upheld and a subpoena be served for Mr. Berlinger's footage, Mr. Moore said, "The chilling effect of this is, someone like me, if something like this is upheld, the next whistleblower at the next corporation is going to think twice about showing me some documents if that information has to be turned over to the corporation that they're working for."

Mr. Moore said that in making his documentary films like "Roger & Me," he has spoken in confidence to corporate employees who have revealed sensitive information or shared internal documents.

"I've never had to deal with any corporation suing me to find out how I gather this information," he said. "Obviously the ramifications of this go far beyond documentary films, if corporations are allowed to pry into a reporter's notebook or into a television station's newsroom."

Mr. Moore said he hoped the judge's ruling would be overturned on appeal, and said that if it is not Mr. Berlinger should resist the subpoena "if he can."

"I think that he'll find that he'll have the support of hundreds of filmmakers who will back him in this," Mr. Moore said.

"Documentaries are a form of journalism," he added.

The lawyers for Mr. Berlinger said they would ask Judge Kaplan to stay the subpoena while they appeal the decision.

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EXHIBIT G

The New York Times

Arts Beat

The Culture at Large

MAY 7, 2010, 2:44 PM

Ric Burns Says Judge's Ruling on Film Could Be 'Killer Blow'

By *DAVE ITZKOFF*

The director [Ric Burns](#) said that a judge's decision to permit [Chevron](#) to subpoena the footage from the movie "[Crude](#)" could deliver a "killer blow" to how documentary filmmakers cultivate their sources and tell their stories.

"It makes me feel insulted for my profession," Mr. Burns, the director of documentaries like "[Andy Warhol](#)" and the PBS series "New York," said Friday in a telephone interview.

Judge Lewis A. Kaplan of United States District Court ruled Thursday that [Joe Berlinger](#), the director of "Crude," must turn over to Chevron the footage of his film, which chronicles Ecuadorians who are suing the oil company. Chevron said that Mr. Berlinger's footage could be helpful as it seeks to have the lawsuit dismissed.

Mr. Burns said he could imagine "a reasoned argument" that "particular archives in the possession of a reporter or documentary filmmaker were of identifiable value in shedding lights on the facts of the case."

For example, he said, "You can go to Zapruder and say, 'Please show us all the footage you have of the shooting of President Kennedy.'"

But that, Mr. Burns said, was not the effect of Judge Kaplan's ruling, which would give Chevron access to the entirety of Mr. Berlinger's footage for "Crude."

"That's really saying, 'O.K., pal, drop your drawers, and with it, 600 hours of film,'" Mr. Burns said. "That's insane. That's a weapon so blunt that it's impossible not to feel that Judge Kaplan doesn't care about the impression that is conveyed."

Mr. Burns said the ruling "contributes to a general culture of contempt for investigative journalism."

If it is upheld, he said, "It makes me shudder to think that all that stuff would be turned over," adding, "not because of any secrets that are revealed, but because of the killer blow to the trust a filmmaker cultivated, deeply, over a very long period of time."

The result, he said, would be that "next time, there won't be a 'Crude.' There won't be a film. That'll be good for Chevron, I guess. Because the next time you go, you're going to have a much leerier group of informants."

Lawyers for Mr. Berlinger plan to seek a stay of the subpoena, pending an appeal of Judge Kaplan's decision to the United States Court of Appeals for the Second Circuit.

EXHIBIT H

MAY 12, 2010, 4:48 PM

Oscar Winners Back Filmmaker in Dispute With Chevron

By *DAVE ITZKOFF*

The [International Documentary Association](#) and a group of filmmakers that includes 20 Academy Award winners and many more nominees have issued an open letter in support of [Joe Berlinger](#), the director of “[Crude](#),” and objecting to a judge’s ruling that [Chevron](#) could subpoena Mr. Berlinger’s footage from that film.

Juan Diego Pérez/Entendre Films A scene from the documentary “Crude” directed by Joe Berlinger.

Last Thursday Judge [Lewis A. Kaplan](#) of United States District Court in New York [granted a petition](#) by Chevron seeking a subpoena for more than 600 hours of footage shot by Mr. Berlinger for “[Crude](#).” The film chronicles the Ecuadorians who sued Texaco (now owned by Chevron) saying that the operations at its oil field at Lago Agrio contaminated their water. Chevron has said that Mr. Berlinger’s footage could be helpful to the company as it seeks to have the litigation dismissed and pursues arbitration related to the lawsuit.

The letter, sent Wednesday by the International Documentary Association, was signed by filmmakers including [Alex Gibney](#) (“[Taxi to the Dark Side](#)”), [Michael Moore](#) (“[Bowling for Columbine](#)”), D.A. Pennebaker (“[Don’t Look Back](#)”), [Barbara Kopple](#) (“[American Dream](#)”), Davis Guggenheim (“[An Inconvenient Truth](#)”), Louie Psihoyos (“[The Cove](#)”) and [Morgan Spurlock](#) (“[Super Size Me](#)”).

The filmmakers wrote that they were “dismayed both by Chevron’s attempts to go on a ‘fishing expedition’ into the edit rooms and production offices of a fellow documentary filmmaker without any particular cause or agenda, and the judge’s allowance of said intentions,” adding, “What’s next, phone records and e-mails?”

They said that their interview subjects and journalistic sources would “sense that their entire interviews will be scrutinized by attorneys and examined in courtrooms they will undoubtedly speak less freely.” They also asserted, “This ruling surely will have a crippling effect on the work of investigative journalists everywhere, should it stand.”

Mr. Berlinger’s case, they wrote, “offers a clear and compelling argument for more vigorous federal shield laws to protect journalists and their work, better federal laws to protect confidential sources, and stronger standards to prevent entities from piercing the journalists’ privilege.” The filmmakers concluded by urging “the higher courts to overturn this ruling to help ensure the safety and protection of journalists and their subjects, and to promote a free and vital press in our nation and around the world.”

The open letter from the International Documentary Association [can be found here](#). [[.pdf file](#)]

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EXHIBIT I

May 12, 2010

**An open letter in support of Joe Berlinger
and the documentary filmmaking team of
"Crude"**

As members of the documentary film community, we the undersigned strongly object to the Honorable Judge Lewis A. Kaplan's ruling last week in the case involving our colleague Joe Berlinger, the Chevron Corporation, and Berlinger's 600 hours of raw footage shot during production of his documentary film "Crude".

Judge Kaplan sided with Chevron and ruled that Berlinger must turn over all of his raw footage to Chevron for their use in the lawsuit discussed in the film. Berlinger and his legal team plan to appeal the ruling.

In cases such as these involving access to a journalist's work material, whether they involve a newspaper or online reporter, a radio interviewer, a television news producer, or a documentary filmmaker, it is understood that First Amendment protection of the journalist's privilege is never absolute. Typically, if such privilege is successfully rebutted in court, a turn-over order demanding *a document or other thing* is issued and the journalist must comply or face the consequences. Therefore, it is astounding to us that Judge Kaplan demanded that *all of the footage* shot during the production of the film be handed over to the attorneys of Chevron, given that the privilege exists primarily to protect against the wholesale exposure of press files to litigant scrutiny.

While we commend Judge Kaplan for stating "that the qualified journalists' privilege applies to Berlinger's raw footage", we are nonetheless dismayed both by Chevron's attempts to go on a "fishing expedition" into the edit rooms and production offices of a fellow documentary filmmaker without any particular cause or agenda, and the judge's allowance of said intentions. What's next, phone records and e-mails?

At the heart of journalism lies the trust between the interviewer and his or her subject. Individuals who agree to be interviewed by the news media are often putting themselves at great risk, especially in the case of television news and documentary film where the subject's identity and voice are presented in the final report. If witnesses sense that their entire interviews will be scrutinized by attorneys and examined in courtrooms they will undoubtedly speak less freely. This ruling surely will have a crippling effect on the work of investigative journalists everywhere, should it stand.

Though many of us work independently of large news organizations, we nevertheless hold ourselves to the highest of journalistic standards in the writing, producing, and editing of our films. In fact, as traditional news media finds itself taking fewer chances due to advertiser fears and corporate ownership, the urgency of bold, groundbreaking journalism through the documentary medium is perhaps greater than ever.

This case offers a clear and compelling argument for more vigorous federal shield laws to protect journalists and their work, better federal laws to protect confidential sources, and stronger standards to prevent entities from piercing the journalists' privilege. We urge the higher courts to overturn this ruling to help ensure the safety and protection of journalists and their subjects, and to promote a free and vital press in our nation and around the world.

Patrick Creadon
Los Angeles, CA

Doug Blush
Los Angeles, CA

Eddie Schmidt
President, International Documentary Association (IDA)

With the support of IDA's Board of Directors:

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(cont'd)

Liz Garbus, Cara Mertes, Simon Kilmurry, Cynthia Wade, Stefan Forbes,
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Doug Block, Ken Schneider, Gary Cohen, Peter Gerard, Nathan Truesdell,
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Judith Helfand, Andrew Garrison, Rebecca Chaiklin, Doug Pray,
Katy Chevigny, Sarah Gibson, Daniel Junge, Ted Hope

EXHIBIT J

May 26, 2010

This is the print preview: [Back to normal view »](#)

Bill Moyers and Michael Winship

Posted: May 14, 2010 01:26 PM

Chevron's "Crude" Attempt to Suppress Free Speech

Even as headlines and broadcast news are dominated by BP's fire-ravaged, sunken offshore rig and the ruptured well gushing a reported 210,000 gallons of oil per day into the Gulf of Mexico, there's another important story involving Big Oil and pollution -- one that shatters not only the environment but the essential First Amendment right of journalists to tell truth and shame the devil.

(Have you read, by the way, that after the surviving, dazed and frightened workers were evacuated from that burning platform, they were met by lawyers from the drilling giant Transocean with forms to sign stating they had not been injured and had no first-hand knowledge of what had happened?! So much for the corporate soul.)

But our story is about another petrochemical giant -- Chevron -- and a major threat to independent journalism. In New York last Thursday, Federal Judge Lewis A. Kaplan ordered documentary producer and director Joe Berlinger to turn over to Chevron more than 600 hours of raw footage used to create a film titled *Crude: The Real Price of Oil*.

Released last year, it's the story of how 30,000 Ecuadorians rose up to challenge the pollution of their bodies, livestock, rivers and wells from Texaco's drilling for oil there, a rainforest disaster that has been described as the Amazon's Chernobyl. When Chevron acquired Texaco in 2001 and attempted to dismiss claims that it was now responsible, the indigenous people and their lawyers fought back in court.

Some of the issues and nuances of Berlinger's case are admittedly complex, but they all boil down to this: Chevron is trying to avoid responsibility and hopes to find in the unused footage -- material the filmmaker did not utilize in the final version of his documentary -- evidence helpful to the company in fending off potential damages of \$27.3 billion.

This is a serious matter for reporters, filmmakers and frankly, everyone else. Tough, investigative reporting without fear or favor -- already under siege by severe cutbacks and the shutdown of newspapers and other media outlets -- is vital to the public awareness and

understanding essential to a democracy. As Michael Moore put it, "The chilling effect of this is, [to] someone like me, if something like this is upheld, the next whistleblower at the next corporation is going to think twice about showing me some documents if that information has to be turned over to the corporation that they're working for."

In an open letter on Joe Berlinger's behalf, signed by many in the non-fiction film business (including the two of us), the Independent Documentary Association described Chevron's case as a "fishing expedition" and wrote that, "At the heart of journalism lies the trust between the interviewer and his or her subject. Individuals who agree to be interviewed by the news media are often putting themselves at great risk, especially in the case of television news and documentary film where the subject's identity and voice are presented in the final report.

"If witnesses sense that their entire interviews will be scrutinized by attorneys and examined in courtrooms they will undoubtedly speak less freely. This ruling surely will have a crippling effect on the work of investigative journalists everywhere, should it stand."

Just so. With certain exceptions, the courts have considered outtakes of a film to be the equivalent of a reporter's notebook, to be shielded from the scrutiny of others. If we -- reporters, journalists, filmmakers -- are required to turn research, transcripts and outtakes over to a government or a corporation -- or to one party in a lawsuit -- the whole integrity of the process of journalism is in jeopardy; no one will talk to us.

In his decision, Judge Kaplan wrote that, "Review of Berlinger's outtakes will contribute to the goal of seeing not only that justice is done, but that it appears to be done." He also quoted former Supreme Court Justice Louis D. Brandeis' famous maxim that "sunlight is said to be the best of disinfectants."

There is an irony to this, noted by Frank Smyth of the Committee to Protect Journalists. Brandeis "made his famous sunlight statement about the need to expose bankers and investors who controlled 'money trusts' to stifle competition, and he later railed against not only powerful corporations but the lawyers and other members of the bar who worked to perpetuate their power"

In a 1905 speech before the Harvard Ethical Society, Brandeis said, "Instead of holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either, able lawyers have, to a large extent, allowed themselves to become adjuncts of great corporations and have neglected the obligation to use their powers for the protection of the people."

Now, more than a century later, Chevron, the third largest corporation in America, according to *Forbes Magazine*, has hauled out their lawyers in a case that would undermine the right of journalists to protect the people by telling them the truth. Joe Berlinger and his legal team have asked Judge Kaplan to suspend his order pending an appeal to the United States Court of Appeals for the Second Circuit.

As the Independent Documentary Association asserts, "This case offers a clear and compelling argument for more vigorous federal shield laws to protect journalists and their work, better federal laws to protect confidential sources, and stronger standards to prevent entities from piercing the journalists' privilege. We urge the higher courts to overturn this ruling to help ensure the safety and protection of journalists and their subjects, and to promote a free and vital press in our nation and around the world."

Bill Moyers is president of the Schumann Center for Media and Democracy. Michael Winship is president of the Writers Guild of America, East. Rebecca Wharton conducted original research for this article.

EXHIBIT K

CURRENT**Statement by DGA President Taylor Hackford In Support of Filmmaker Joe Berlinger (May 18, 2010)**

"The Directors Guild of America, in support of filmmaker Joe Berlinger and the First Amendment, objects to a judge's decision that Berlinger must turn over 600 hours of raw footage from his documentary *Crude: The Real Price of Oil* to Chevron, for their use as defendants in the lawsuit depicted in his documentary.

"Documentary filmmakers work under the presumption that their research, sources and draft materials are protected under the First Amendment. Their work often explores sensitive subjects that might not ever reach the public eye if not for the tenacity of the filmmakers and the bravery of their sources.

"The chilling effect of this court decision will be felt throughout the documentary community, as future filmmakers will be constantly aware that their materials may be seized as evidence, and those who once might have been willing to share their point of view become wary that a documentarian cannot protect them, even if their participation is anonymous. Safeguarding the right of documentary filmmakers to protect their sources is ultimately about protecting the public's right to know and preserving the role of investigative filmmaking in exposing the issues, educating the viewers and informing the public."



DGA President
Taylor Hackford

Media Representatives:

For more information or press inquires please contact:
[Sahar Moridani](#) at Directors Guild of America **310-289-5333**

[top of page](#)

EXHIBIT L



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WGAE Opposes Subpoena To Obtain Documentary Film Footage

05/18/2010

WGAE issued this statement to its members regarding the Chevron Corporation's lawsuit to obtain 600 hours of raw footage from filmmaker Joe Berlinger.

The Writers Guild of America, East, AFL-CIO (WGAE), issued this statement to its members regarding the Chevron Corporation's lawsuit to obtain 600 hours of raw footage from filmmaker Joe Berlinger:

“In defense of free speech and the First Amendment, the Writers Guild of America, East joins with the Independent Documentary Association (IDA) in support of documentary filmmaker Joe Berlinger and in objection to Federal Judge Lewis A. Kaplan's recent ruling that Berlinger must turn over to the Chevron Corporation 600 hours of footage shot during the production of his documentary ‘*Crude: The Real Price of Oil.*’

To accede to such a demand is tantamount to a reporter being told to turn over all of his or her notes and to violate confidentiality agreements with sources. As with the members of the IDA, our WGAE members working in the documentary field ‘hold ourselves to the highest of journalistic standards in the writing, producing, and editing of our films.’ Those standards include the protection of our outtakes, script drafts, research and sources.

Berlinger and his attorneys are asking Judge Kaplan to delay Chevron's subpoena pending their appeal. As events proceed, we will let you know how you can help. In the meantime, for more information on the case, read the article by Bill Moyers and Guild East President Michael Winship on Huffington Post at www.huffingtonpost.com/bill-moyers/chevrans-crude-attempt-to_b_576595.html. For more material, go to www.documentary.org.”

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EXHIBIT M

latimes.com/news/opinion/editorials/la-ed-chevron-20100521,0,3553969.story

latimes.com

Editorial:

Chevron sues over 'Crude'

A documentary's unused footage, akin to reporters' notes, should be protected.

3:55 PM PDT, May 20, 2010

Journalism that serves society does not always spring from objectivity, nor is it always written from a distance. When Upton Sinclair exposed the conditions of Chicago's meat industry, he did so on assignment from a socialist newspaper. He went to work in grim stockyards and returned with "The Jungle." The result was a revolution in food safety and the founding of the Food and Drug Administration.



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For the record: An earlier version of this editorial incorrectly said that the federal judge's order had come down this week.

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Sinclair's closeness to his story gave his journalism urgency and moral power. It was precisely the sort of work that deserves the greatest protection from corporate intrusion. That lesson, however, has been turned upside down by a New York federal judge who earlier this month ordered a documentary filmmaker to turn over outtakes of his work to Chevron.

The man at the center of this important 1st Amendment battle is Joe Berlinger, a respected documentary filmmaker who launched a project in 2005 to chronicle a landmark lawsuit filed by Ecuadoran indigenous people seeking compensation for environmental damage. Berlinger's acclaimed documentary, "Crude," followed the case, focusing on the lawyers for the plaintiffs. Chevron, however, says several scenes reinforce the company's charge that those lawyers cooked up the case: In one, a lawyer for the plaintiffs meets with an expert witness hired by the government to estimate damages from oil in the Ecuadoran jungle; in another, a lawyer is shown meeting with the judge and remarking that such a meeting would be inconceivable in the United States but not in Ecuador, because there "this is how the game is played. It's dirty." Because just a fraction of Berlinger's footage made it into the final film, Chevron believes there was potentially more damaging material left on the cutting-room floor, so it sought to force Berlinger to hand over his outtakes.

Were the material in question notes gathered by a journalist in pursuit of a story, the journalist's privilege, which recognizes the societal benefit of allowing journalists to shield their unpublished notes, would almost certainly have protected it. So the issues were: Was Berlinger a journalist, and do the protections for notes extend to film outtakes? U.S. District Judge Lewis Kaplan sided with Berlinger on both points, concluding that

the filmmaker covered a newsworthy event and disseminated his findings to the public — a fairly sound description of journalism in any form.

Nevertheless, noting that the journalist's privilege is a limited one, Kaplan ordered Berlinger to turn over the footage precisely because, paradoxically, Berlinger's close ties to the plaintiffs meant that he has material that Chevron is unable to get anyplace else. (Kaplan seems to have overlooked the presence of other witnesses in the filmed scenes.) Kaplan may be right that Berlinger has exclusive material, but forcing him to relinquish it turns the point of journalistic access on its head: If journalists must reveal what they learn but do not publish from those sources they cultivate most carefully, then sources will keep them at arms' length. This nation is better off because Sinclair was able to insinuate himself into Chicago's meatpacking plants; it will be better again if Berlinger prevails on appeal. And it will be better still when Congress passes a federal shield law that protects journalists and their sources.

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EXHIBIT N

May 27, 2010

VIA EMAIL

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Re: *In re: Application of Chevron*, Docket Nos. 10-1918; 10-1966

Dear Jorge and Christopher:

We are writing in connection to our clients' motion for a stay pending appeal of Judge Kaplan's May 10, 2010 order (the "Order") in the above-referenced matter.

Your clients have opposed our motion on the ground that certain outtakes from *Crude* may contain information that they believe could be useful for their defenses to the criminal proceedings against them in Ecuador. As we have explained in our papers, none of the outtakes relate to the criminal charges filed against your clients. Nevertheless, our client, Joe Berlinger, is sensitive to your clients' position. Therefore, in order to assuage their concerns during the pendency of this appeal, Mr. Berlinger is willing to arrange screenings for your clients and their legal representatives of all the footage showing interactions between Plaintiffs' counsel and President Correa or any prosecutor or official in the executive branch of the Ecuadorian government.

Mr. Berlinger also is willing to provide your clients with a copy of any portions of that screened footage that would assist them in the criminal proceedings. Although Mr. Berlinger has stated that the footage does not contain any exculpatory evidence, this arrangement will prevent his assertion of First Amendment rights from jeopardizing your clients' opportunity to confirm that fact for themselves.

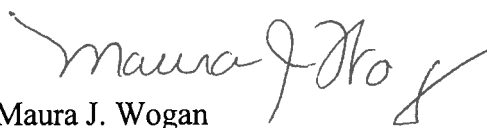
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Jorge A. Mestre, Esq.
Christopher Manning, Esq.
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In exchange, your clients must agree that: (1) any disclosure of footage pursuant to this offer will not be construed as a waiver of our clients' journalist privilege or any arguments on their motion to stay the Order or on their appeal; (2) your clients will consent to our clients' motion to stay Judge Kaplan's order pending appeal; and (3) your clients and their legal representatives will agree that they will not make any copies of the footage and not disclose the footage or any information about the footage except in connection with the criminal proceedings against them.

To be clear, this proposal is not a settlement offer but an attempt to give your clients immediate access to materials they believe will assist in their criminal defense while preserving Mr. Berlinger's right to appeal from the order. Please let me whether your clients agree to this proposal.

Very truly yours,


Maura J. Wogan

cc: Mr. Joe Berlinger