



“Unacceptable Shenanigans”

How Gibson, Dunn & Crutcher Enables Corporate Exploitation

March 7, 2022

“There is no question that [Gibson, Dunn & Crutcher] engaged in unacceptable shenanigans...

“[GDC] failed to apprise the court of the existence of documents that contradicted their position.”

[Shaw Family Archives, Ltd. v. CMG Worldwide, Inc.](#), 589 F. Supp. 2d 331 (S.D.N.Y. 2008)

“In short, GDC’s use of the judicial system amounts to legal thuggery.”

- Montana State Supreme Court Justice James C. Nelson

[2007 MT 62, No. 05-378](#), via [Wall Street Journal](#), 2007



LAW STUDENTS for CLIMATE ACCOUNTABILITY



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Generous assistance was provided by Lauren Regan and Stephanie Tidwell of the Civil Liberties Defense Center, Paul Paz y Miño and Michael Zap of Amazon Watch, Graham Clumpner of Mosquito Fleet, Toben Dilworth of Rainforest Action Network, Greenpeace International co-founder Rex Weyler, and Jim Wheaton of the First Amendment Project.

“We are the firm that clients in distress have turned to when they are facing their worst problems, or when they have in fact faced defeat.”

- Gibson Dunn partner Randy Mastro

The American Lawyer, 2009, via [Barrett, 2015](#)

Introduction

Modern attempts to expand corporate dominion over society have faced steady resistance from humanitarians, labor advocates, environmentalists, and good governance groups. A growing realm of concern is the role that corporate law firms play in undermining human rights and international law so that profit-seeking companies are not held accountable for harm.

One law firm of particular concern is Gibson, Dunn & Crutcher (GDC), which frequently represents corporate litigants and has advanced regressive political strategies for wealthy corporations. Recent reports that critically documented GDC's litigation and lobbying practices include:

- The [2021 BigLaw Revolving Door Report](#) on GDC, by the [People's Parity Project](#) and the [Revolving Door Project](#)
- The [2021 Climate Change Scorecard](#) and [#DoneWithDunn briefing](#), by [Law Students for Climate Accountability](#)
- [This Land](#), an award-winning documentary podcast series by Rebecca Nagle
- [Season 5 of Drilled](#), an award-winning podcast series by Amy Westervelt
- The 2019 [special report on GDC's Eugene Scalia](#), by [Better Markets](#)

This report intends to complement that scrutiny, toward the end of highlighting well-heeled law firms that obstruct accountability of companies that conduct business in harmful ways.

A review of GDC litigation cases reveals a pattern of helping large companies get away with belligerent and negligent behavior that has crashed economies, poisoned ecosystems, and involved the death of many innocent people.

What follows is a selection of how Gibson, Dunn & Crutcher enables corporate exploitation.

Case Studies

Chevron and GDC Flout Justice in Ecuador

Chevron [acquired](#) Texaco in 2001, along [with](#) Texaco's legacy of [oil pollution](#) in the water and land that is home to indigenous and rural communities in the Ecuadorian Amazon.

Gibson, Dunn & Crutcher (GDC) was brought in to rescue Chevron from liability for its oil pollution after multiple losses in the courts of Ecuador, over many [years of litigation](#).

Ironically, Chevron initially [fought](#) to keep the case out of U.S. courts. Instead, Chevron [favored](#) trial in Ecuador, where a less-regulated legal system may have appeared more likely to favor the company.

This miscalculation led to repeated rulings against Chevron by multiple Ecuadorian courts and ultimately [resulted](#) in a [\\$9.5 billion judgment](#) against Chevron. The company was [ordered](#) to compensate over 30,000 people whose livelihoods were [impacted](#) by the oil [pollution](#), including [building](#) health care facilities for cancer patients who have to travel up to [12 hours by bus](#) to access care.

Chevron and GDC [interrupted](#) efforts to collect the money Chevron owes to the Ecuadorian people and focused on scandalizing the plaintiffs and their lawyers.

Chevron's Attack on Plaintiffs and Attorneys:

Even before the final judgment was issued in Ecuador, Chevron and GDC [sued](#) many Ecuadorian and indigenous people who fought to bring the oil company to justice, along with the attorneys and organizations assisting them. Anticipating an unfavorable outcome in Ecuador, Chevron used a racketeering (RICO) law designed to prosecute organized crime to hinder its critics and avoid compensating plaintiffs.

The idea to sue opponents using RICO appears to have come from a judge. During discovery hearings in 2010 related to the litigation in Ecuador, U.S. District Court Judge [Lewis A. Kaplan hinted](#) that Chevron could [use](#) racketeering laws to sue its critics. A few months after Kaplan's apparent suggestion, Chevron [filed](#) its RICO suit. Kaplan [bypassed](#) the process of random assignment and instead [assigned himself](#) to the case.

It was a [fortuitous](#) series of events for Chevron. Judge Kaplan has a [reputation](#) for [favoring](#) large companies, and Chevron was no exception. Kaplan [expressed](#) admiration and sympathy for Chevron, and trial observers witnessed Kaplan express contempt for the [plaintiffs](#) of Ecuador and their attorneys.

In the U.S., Chevron targeted one of the U.S. plaintiff lawyers, [Steven Donziger](#), who was [named as a defendant in Chevron's RICO lawsuit](#). While billing Chevron at [over \\$1,000 per hour](#), GDC attorneys executed a strategy to "[demonize](#)" Donziger and delegitimize the judgements of Ecuador's courts.

As Chevron and GDC worked to [destroy](#) Donziger's reputation and professional life, they built a foundation from which to evade the \$9.5 billion judgement. By turning the media against Donziger, Chevron and GDC shifted focus away from Chevron's pollution liability in the Ecuadorian Amazon and the [ongoing harm](#) to the local residents.

GDC Coached Chevron's Star Witness, Who Lied to a Federal Judge:

Chevron and GDC's key witness in the racketeering lawsuit against Donziger was [disgraced Ecuadorian judge Alberto Guerra](#).

Guerra told Judge Lewis A. Kaplan that he had been offered a large bribe by the plaintiffs, a claim to which he later admitted, ["I lied there."](#) Guerra was [coached](#) by GDC attorneys at least 53 times in preparation to delivery his testimony to Judge Kaplan.

Guerra also accused Donziger of secretly writing the court determination of another Ecuadorian judge, a claim that both Guerra and independent digital forensic experts were [unable](#) to support with any [evidence](#), as [VICE](#) and [Courthouse News](#) reported.

Guerra was [paid](#) vast sums of money [as a witness](#) for GDC and Chevron, he later disclosed. Guerra and his family were relocated to the U.S., [paid](#) \$12,000 per month, and compensated in other various ways by Chevron.

These payments allegedly flouted the American Bar Association's ethics rules, [according](#) to 2013 [testimony](#) of UC Irvine's Erwin Chemerinsky, a law professor with expertise in legal ethics.

Despite Guerra's admitted lies, contradictions, and payments from Chevron, Judge Kaplan chose to let Guerra's testimony stand. Kaplan dismissed concerns over Guerra's lack of credibility by claiming to rely on other corroborating evidence.

As Courthouse News [reported](#) at the time, "Both that credibility and the corroborating evidence came under withering attack this year during closed-door proceedings before an international arbitration tribunal."

See [full transcript](#) of Guerra's deposition at the international arbitration tribunal. Amy Westervelt's [Drilled podcast](#), season 5, [episode 4](#), details these tribunal proceedings.

Donziger: Demonized, Disbarred, and Imprisoned

The case against Donziger was [turned down](#) by the U.S. Prosecutor for the Southern District of New York (SDNY) before being handed to a privately-appointed prosecutor with [ties](#) to Chevron.

Judge Kaplan [charged](#) Donziger with criminal contempt, stemming from Donziger's [attempts](#) to protect private communications with his clients. Kaplan then [handpicked](#) federal Judge Loretta Preska to preside over the criminal contempt trial.

Judge Preska is [affiliated](#) with the Federalist Society, which has received [funding](#) from Chevron.

During the COVID-19 pandemic, while Donziger awaited trial over judge Kaplan's criminal contempt charges, the attorney was disbarred and spent over two years under [house arrest](#). After his trial, Judge Preska [ruled against](#) Donziger in July, 2021.

As Preska deliberated over Donziger's sentence, the United Nations Human Rights Council's Working Group on Arbitrary Detention [demanded](#) an end to Donziger's [unprecedented](#) confinement and called for him to be compensated for violations of his rights. The UN Human Rights Council's request was consistent with an

international chorus of respected [legal professionals](#) and [thought-leaders](#).

Preska [sentenced](#) Donziger to six months in prison on October 1, 2021. He [began](#) serving his sentence on October 27.

After six weeks, Donziger was [released](#) from prison to serve the remainder of his six-month sentence from home. His conviction is currently being [appealed](#).

Ecuador: Uncompensated by Chevron

Chevron has spent untold time and money going after the plaintiffs and attorneys who succeeded in convincing Ecuador's courts to make the company pay for the consequences of its pollution.

Unfortunately, GDC has shielded Chevron from compensating the Ecuadorians and indigenous communities that [still live](#) with land and water poisoned by oil pollution.

GDC's Pro Bono Attack on Native Sovereignty

On a [pro bono](#) basis, Gibson, Dunn & Crutcher (GDC) is working to undermine the Indian Child Welfare Act, or ICWA.

The ICWA was [passed in 1978](#), following a U.S. Congressional investigation into the trend of Native children being [forcibly removed](#) from their homes and relocated in foster homes or boarding schools that were often cruel, abusive, and deadly. After the closure of genocidal boarding schools designed to [alienate](#) Native children from their cultures, ICWA continued to protect Native children from predatory adoption practices. According to the [Lakota People's Law Project](#):

After the era of boarding schools, during the Sixties Scoop, it became common practice for child welfare workers — hiding behind state law — to kidnap Native children and place them with white, Christian families as adoptees. This lasted well past the 1960s, and ICWA was ultimately passed to protect Native children and keep them with their kin.

As [summarized](#) by the Native American Rights Fund, "ICWA ensures that tribes have notice and an opportunity to act before a state tries to remove children from their home and place."

The National Indian Child Welfare Association [notes](#) that ICWA became a "gold standard" model for other child welfare and adoption laws, benefitting children of all backgrounds. But ICWA has suffered from a lack of federal enforcement, data to inform enforcement, and years of legal challenges in U.S. courts.

The *Brackeen v. Haaland* Litigation

The Lakota People’s Law Project has a [summary](#) of GDC’s current litigation that threatens to dismantle the ICWA—*Brackeen v. Haaland*:

In the case of Brackeen v. Haaland, a Navajo child resided with his grandparents, who loved and cared for him over his first year of life. But, because of substance abuse issues with his parents, state Child Protective Services intervened and sent him to foster care with the Brackeens, a white, Christian couple in Texas. Within a couple months, shortly after the parents’ rights were terminated, the Navajo Nation found a Navajo family in New Mexico to adopt the child.

The Brackeens responded by hiring a family lawyer to file a non-federal suit to keep the child in their home. Their motion (in which they consistently misspelled Navajo) was denied on Aug. 22, 2017.

Following their setback in the local family court, the Brackeens received swift help from GDC to file a federal appeal, as detailed below.

A [controversial](#) Texas district judge sided with the Brackeens in 2018, [ruling](#) the ICWA unconstitutional. An [unusual](#) Fifth Circuit Court [appeals](#) process reversed the Texas court decision, but raised a number of unresolved legal questions. The fate of ICWA could ultimately be [determined](#) by the U.S. Supreme Court, which [confirmed](#) it will consider the case.

ICWA’s Opponents

A variety of ICWA opponents have waged [numerous](#) legal attacks on the law in the decades since it was established, from gambling executives to the [adoption industry](#).

Eroding legal precedent protecting Native sovereignty carries a [profit motive](#) for companies that would like to make money on tribal lands, including mineral extraction access and casino development. [According](#) to the Lakota People’s Law Project:

The plaintiffs are essentially alleging racism against white people, arguing that ICWA violates the U.S. Constitution’s Equal Protection Clause. Tribal nations — backed by a prior Supreme Court decision — say that Native status is not a racial designation, but a political one.

This case poses an extreme and imminent danger to Native Peoples across the U.S. If the high court accepts the plaintiffs’ argument that tribal political designations should not count in custody cases, “Native” and “Indian” designations could then be dissolved entirely. That decision would position ICWA as the first domino to fall, potentially leading to the erosion — or total erasure — of Native rights in the only homelands Indigenous North Americans have ever known.

In the most recent wave of litigation, corporate [interest groups](#), including the [Goldwater Institute](#) and other [think tanks](#) affiliated with the [State Policy Network](#), have assisted the Brackeen plaintiffs in a proxy war against indigenous sovereignty.

Journalist [Rebecca Nagle](#), a Cherokee Nation citizen, [traced](#) the financing of this effort to the Bradley Foundation, which [provided](#) initial funds to the Goldwater Institute for its work against the ICWA. The Bradley Foundation supported at least one GDC attorney, Matthew McGill, who is part of the team litigating against ICWA.

As [reported](#) by Nagle in her podcast, [This Land](#), the timing of GDC’s involvement in the case indicates that it was already positioned to seize opportunities to litigate against the ICWA. Nagle discovered that just six days after the Brackeens’ request was denied by the local family court, GDC filed its federal appeal on their behalf, for free. This was extraordinarily short turnaround for the firm to write and file an appeal (listen at [15:13](#)).

Nagle also [found](#) that GDC filed its federal suit on behalf of the Brackeens just two days before they overcame the final barriers to their adoption (listen at [19:35](#)). As Nagle summarized, “The Brackeens didn’t file a federal lawsuit when they were losing custody. They filed the lawsuit when they were winning.”

GDC clients [include](#) oil companies that could benefit from extraction opportunities if Native sovereignty laws are eroded. Historic protests from large coalitions of indigenous communities and organizations were recently led against the [Dakota Access Pipeline](#), owned by Energy Transfer, and the [Line 3 Pipeline](#), owned by Enbridge.

As Nagle detailed in [This Land \(S1 E5\)](#):

One study estimated Indigenous resistance cost the Dakota Access Pipeline \$7.5 billion. It also inspired movements against other pipelines. Industry leaders, including lobbying groups that represent Gibson Dunn clients, have talked openly about why these Indigenous-led protests need to be stopped. Seven months after the resistance camp in North Dakota was shut down, Gibson Dunn filed the Brackeens’ case in federal court.

GDC successfully recruited the state of Texas to intervene in the Brackeen litigation (listen at [18:49](#)). The Texas Attorney General’s office asked the courts to strike ICWA down as unconstitutional, as one Texas judge did before the Fifth Circuit Court reversed the decision.

The Texas attorney general recruited three other states to join in litigation against ICWA, all of which have notably miniscule Native populations and [very few](#) ICWA-related child custody cases.

In contrast, there are 26 states opposing the lawsuit, containing 94% of recognized U.S. tribes, [according](#) to the Lakota People’s Law Project.

More References on the ICWA and Brackeen v. Haaland:

For more information about the ongoing litigation, The Native American Rights Fund has an overview its involvement in the [Brackeen v. Haaland litigation](#).

The [Association on American Indian Affairs](#) hosts a [collection of ICWA resources](#), statements and court documents.

The National Congress of American Indians annual [conferences](#) include discussions on ICWA, and it circulates ICWA [court records](#), including [amicus briefs](#) filed with the U.S. Supreme Court.

The [Turtle Talk](#) blog is maintained by professors of the [Indigenous Law and Policy Center](#) at the Michigan State University College of Law. Turtle Talk hosts material on state and federal [ICWA laws](#), and ICWA [litigation](#) documents.

The [National Indian Child Welfare Association](#) hosts trainings related to ICWA and resources supporting Native children and families.

[Indianz](#) republished a detailed article by Nancy Marie Spears of the University of Oklahoma's Gaylord College of Journalism and Mass Communication, with a list of Fifth Circuit Court documents related to the Brackeen lawsuits.

More references related ICWA can be found on the U.S. government's [Child Welfare Information Gateway](#) and from the U.S. [Bureau of Indian Affairs](#).

GDC Defended Enablers of Bernie Madoff's Ponzi Scheme

Gibson, Dunn & Crutcher (GDC) attorneys defended a firm that a Washington state jury [determined](#) helped enable the multibillion dollar Ponzi scheme orchestrated by the late [Bernie Madoff](#). The firm, Ernst & Young, conducted negligent audits related to Madoff's transactions.

Madoff's prosecutors estimated that his scheme cost investors [\\$65 billion](#).

Madoff recently [died in prison](#) while serving a 150 year sentence.

GDC Defended a Wall Street Executive Implicated in the 2008 Great Recession

Gibson, Dunn & Crutcher (GDC) attorneys were involved in defending a Wall Street executive who was considered uniquely responsible for the [Great Recession](#) of 2007-2009: [Joe Cassano](#) of American International Group (AIG).

The Wall Street Journal [reported](#) in 2018 that "Few individuals played a more pivotal role in the financial crisis than Joseph Cassano."

Cassano [oversaw](#) AIG's Financial Products division, where high-risk trading [practices](#) played a [pivotal](#) role in [catalyzing](#) the collapse of the economy in 2008. Cassano's team at AIG [focused](#) heavily on financial derivatives trading, including [credit default swaps](#), which were [sold](#) to companies like Goldman Sachs.

Just two months before AIG began losing hundreds of millions of dollars from its credit default swaps, Cassano made [strident promises](#) to investors against any adverse outcomes from his division's work at AIG.

Infamously, Cassano was [wrong](#). The U.S. housing market bubble [burst](#), and AIG could not afford to pay out billions of dollars it owed to investors. AIG, Goldman Sachs, and other large financial institutions went into a freefall, dragging down the U.S. and global economies with them.

As the economy began to crash, Cassano was forced out of a management role at AIG. He was given \$34 million in retirement [bonuses](#), and continued contracting for AIG at a [rate](#) of \$1 million per month, for nine months.

Cassano excused himself from culpability in the financial crisis during testimony before the U.S. Congress, as [CBS News](#) columnist Alain Sherter described:

The trouble was vanishing liquidity, [Cassano] said, which happens to be the same culprit that Wall Street bankers like to finger for their problems. The great thing about blaming liquidity is that no one really knows what that means. It's like the captain of the Titanic blaming water for sinking his ship.

Millions of people [around the world](#) were impacted by the Great Recession. Gross domestic product in the U.S. [plunged](#), while U.S. unemployment [increased](#) from 5% in 2007 to 10% by June, 2009.

The U.S. Congress approved massive taxpayer bailouts for Wall Street firms worth [hundreds of billions of dollars](#) to keep the economy from spiraling further.

Despite Cassano's allegedly unique culpability in the Great Recession and its toll on millions of people around the world, GDC [convinced](#) the U.S. Justice Department to [close](#) its investigation of Cassano [without filing any criminal charges](#) in May, 2010.

A month later, the U.S. Securities and Exchange Commission (SEC) [ended](#) its own investigation into Cassano, without filing any civil charges.

GDC Attacked Rules Designed to Prevent Wall Street Crimes

Following the Great Recession, Wall Street firms hired Gibson, Dunn & Crutcher (GDC) and sued the U.S. Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) to unravel government protections intended to prevent future economic catastrophes.

As summarized in a 2019 [report](#) published by the financial watchdog organization [Better Markets](#), GDC attorney Eugene Scalia led much of this work. Better Markets concluded that Scalia's work against SEC rules came "at the expense of investors, consumers, the entire financial system, and all hardworking Americans and taxpayers, who had to bailout Wall Street during the 2008 crash."

Eugene Scalia is the son of the late U.S. Supreme Court justice Antonin Scalia. As reported by the [New Yorker](#), Scalia has used "forum shopping" to line up cases before judges he considered likely to sympathize with his particularly wealthy clients. This practice is widely [seen](#) as [unethical](#).

Before and after the financial crisis of 2008, Scalia helped clients undermine laws and regulations designed to prevent financial activity that risks widespread economic harm.

Examples summarized by [Better Markets](#) include the following:

Unraveling rules against insider trading ([pp. 4-5](#)).

In 2005, the U.S. Chamber of Commerce hired Scalia to sue the SEC to undermine regulations designed to prevent insider trading.

The Chamber succeeded. The specific regulation was nullified by the D.C. Circuit Court, and the precedent established by the ruling was used to initiate lawsuits striking down more financial regulations

Dismantling protections against inflating costs through speculation ([pp. 14-15](#)).

In 2012, Scalia helped a Wall Street lobbying firm dismantle a rule that allowed the U.S. Commodity Futures Trading Commission (CFTC) to limit excessive speculation. Such speculation can allow financial institutions to enrich themselves by artificially inflating the costs of consumer goods.

Excluding large companies from scrutiny of high-risk trading practices ([pp. 10-14](#)).

In 2015, Scalia led MetLife's challenge against its designation as a systemically important financial institution ([SIFI](#)) under the 2010 Dodd-Frank Act, due to the adverse economic impacts that could occur if the company were to fail, as happened with many non-bank financial institutions in 2008.

A court ruled in MetLife's favor in 2016, but the ruling was appealed. In 2018, U.S. Treasury Secretary Steven Mnuchin [derailed the appeal](#) by [settling](#) the Metlife case outside of court.

The same year, the U.S. Congress [increased](#) the threshold for SIFI's, making it [harder](#) for government to monitor non-bank companies that risk harming the economy .

The legal trade press, from the [American Lawyer](#) to [Law360](#), praised and awarded GDC for these favorable outcomes for the Wall Street executives whose [recklessness](#) contributed to the collapse of the economy.

GDC Helped Mercedes-Benz Evade Accountability After the Argentine Military Dictatorship's "Dirty War"

From 1976 to 1983, Argentina was [controlled](#) by a brutal military dictatorship that murdered, tortured, and disappeared thousands of people it considered political dissidents.

During this "Dirty War" era, survivors and relatives of slain Argentines accused the car company Mercedes-Benz Argentina of intentionally reporting people to the dictatorship, "knowing that respondents would be kidnapped, detained, tortured, or murdered as a result," according to a [legal brief](#) from related litigation.

Survivors of the Dirty War [accused](#) Mercedes, Ford and other manufacturers of intentionally exposing labor union leaders to the dictatorship, while manufacturing military vehicles.

[Public Radio International](#) (PRI) and [Courthouse News](#) reported that surviving families and former employees of a Mercedes-Benz manufacturing plant filed a lawsuit in California against the U.S. arm of the company, due to the company's Palo Alto headquarters, and concerns that Argentine courts were less likely to deliver justice.

Daimler, a German company, owned Chrysler and Mercedes-Benz when the plaintiffs filed suit. [PRI](#) reported that Daimler appeared to acknowledge its complicity with the Argentine military junta:

Daimler, which owned Chrysler until 2007, doesn't dispute the disappearances, or even that Mercedes-Benz management cooperated to some degree with the Argentine authorities at the time.

But it does deny both requesting the torture and murders and colluding with the police and military death squads that carried them out.

Gibson, Dunn & Crutcher (GDC) [defended](#) Daimler, and helped it [appeal](#) to the U.S. Supreme Court, which eventually tossed out the case. The [precedent](#) established by this case has [made it more difficult](#) to hold multinational corporations accountable for crimes committed in other nations that lack strong judicial systems.

In 2018, former executives of Ford Argentina were [sentenced](#) to a decade in prison for their complicity in the Dirty Wars.

GDC Helped Multiple Companies Fend Off Discrimination and Organized Labor Lawsuits

Walmart was sued for gender discrimination by one of its employees, [Betty Dukes](#), in 2001. The case grew into a massive class action lawsuit involving over a million Walmart employees.

After [losing](#) a federal court case that certified the class action in 2004, and then losing two appeal attempts, Walmart hired Gibson, Dunn & Crutcher (GDC)'s Ted Boutrous to argue against the plaintiffs before the Supreme Court. Boutrous' procedural tactics allowed Walmart to [fragment](#) millions of discrimination claims into separate, standalone cases.

The precedent established by the Supreme Court decision has allowed many other companies to [defeat](#) class action suits, settlements, and jury verdicts brought by employees facing workplace discrimination based on sex or race. Boutrous [called](#) this dismissal of employee discrimination suits "A win for Wal-Mart, and all workers."

After the Supreme Court sided with Walmart in 2011, GDC attorneys [continued](#) to shield the company from multiple regional class-action employee discrimination lawsuits, and other cases involving the company's allegedly [oppressive](#) workplace conditions.

Reuters reported in 2014 that [GDC received over \\$50 million](#) from Walmart for its work on a variety of legal consulting and representation.

In addition to Walmart, GDC has defended other large companies from similar employee-initiated lawsuits, including:

Amazon:

Lawsuits involving Amazon’s treatment of warehouse employees in New York are ongoing. Plaintiffs say that Amazon’s workplace conditions led to death and illness from exposure to COVID-19.

As detailed in a recent [report](#) by the Revolving Door Project and the People’s Parity Project, Amazon accused its employees of trying “to exploit the pandemic” to win favors for themselves.

Amazon also [retained](#) GDC to [sue](#) the New York Attorney General Letitia James to [block](#) her from investigating workplace safety issues at Amazon warehouses. A federal judge [dismissed](#) the lawsuit in August 2021.

UPS:

A 2007 class action [suit](#) brought against UPS by employees alleged discrimination that violated the Americans with Disabilities Act. As [reported](#) by the Pittsburgh Business Journal,

The original plaintiffs were Mark Hohider, a former driver who was hurt when his truck was struck from behind by another vehicle; Robert DiPaolo, who suffered an injury to his right arm from a package; and Preston Branum, a mechanic who suffered a neck injury after a supervisor allegedly punched him in the arm.

[...]

The lawsuit claims that UPS had an unwritten policy that allowed employees to return to work, only if they had no medical restrictions. The plaintiffs also claim that UPS disseminated an “ADA compliance policy,” which was implemented nationwide to delay and avoid providing accommodations for disabled workers, which is illegal.

GDC succeeded in convincing the Third Circuit Court of Appeals to [decertify](#) the class in 2009.

A subsequent lawsuit—not involving GDC—was initiated by the U.S. Equal Employment Opportunity Commission in 2009, and [settled](#) in 2017. The settlement resulted in UPS paying out \$2 million to 88 UPS employees, among other corrective [measures](#).

Michaels Stores:

[GDC defended Michaels Stores](#) from a class action lawsuit filed by over 200 employees in 2014. The plaintiffs alleged that Michaels Stores blocked managers from receiving overtime pay.

After multiple failed [attempts](#) to move the case out of a California state court, Michaels and GDC eventually succeeded in moving the case to a federal court, where a judge [decertified](#) the class of litigants formed by employees.

Stone & Webster:

GDC [defended](#) construction company Stone & Webster during a decade of litigation initiated by a foreman named James Speegle.

Speegle blew the whistle on negligent safety practices by Stone & Webster during a construction contract at the Tennessee Valley Authority’s Brown’s Ferry nuclear power plant. The incident [prompted](#) enforcement [actions](#)

from the U.S. Department of Labor and the U.S. Nuclear Regulatory Commission.

As [summarized](#) by the Institute for Southern Studies,

Speegle had tried to call attention to substandard protective paint coatings being applied to critical parts of the plant's cooling systems. Faulty coatings can cause paint debris to clog emergency cooling pumps and compromise the reactor's ability to shut down safely in the event of an accident. [...]

Stone & Webster fired Speegle two days after he reported the paint problem to the NRC. At the time, the company was scrambling to finish an \$800 million contract with the TVA to restart the plant's Unit 1 reactor, which had been closed since a major fire broke out there in 1975.

The case involved many twists and turns, with courts and the Department of Labor [repeatedly overturning](#) each other.

GDC's website [claims](#) it “won a several-day trial before an administrative law judge, but the Department of Labor's Administrative Review Board reversed.” On appeal, the Eleventh Circuit court remanded the case to the U.S. Labor Department.

The GDC website does not indicate that the Department of Labor ultimately [ruled](#) in Speegle's favor, overruling the Eleventh Circuit court, using evidence that Speegle's termination was prompted by his outspoken concerns.

GDC Helped Residents of Manhattan's “Billionaire's Row” Fight a Housing Shelter

On behalf of residents of one of Manhattan's most wealthy neighborhoods, known as “Billionaire's Row,” Gibson, Dunn & Crutcher (GDC)'s Randy Mastro [fought](#) a proposed shelter for New Yorkers without homes from 2017 to 2021.

In addition to retaining Mastro, who is known to charge [over \\$1,000 per hour](#) for [some](#) clients, reporting by [The City](#) confirmed other large expenses:

The West 58th Street Coalition, the group that waged the long legal fight against the shelter, spent at least \$287,000 to hire lobbyists to help their cause, city lobbying records show.

Opponents also spent at least \$100,000 on billboards in Iowa protesting Mayor Bill de Blasio as he traveled in the state during his short-lived 2019 presidential campaign.

A public [petition](#) launched by residents, well [short](#) of its 5,000-signature goal, indicated they were primarily concerned about crime and mental illness. In court, Mastro's clients focused on alleged building safety concerns.

These concerns were dismissed by Manhattan Supreme Court Judge Alexander Tisch. The coalition of wealthy residents represented by Mastro [lost in court](#) in May, 2021.

The shelter [opened](#) in late November, 2021.

GDC Defended Real Estate Billionaire from Discrimination Suit

From 2013 to 2014, Gibson, Dunn & Crutcher (GDC) [attorneys](#) Randy Mastro, Gabriel Herrman and Jennifer Rearden [defended](#) billionaire real estate mogul [Richard LeFrak](#) in a discrimination lawsuit [initiated](#) by a woman whose housing application was obstructed by LeFrak employees over housing subsidies for HIV-positive tenants.

In a 2015 [report](#), the National Fair Housing Alliance noted,

An investigation revealed that the defendants operated a dual and discriminatory rental system in which prospective renters with government subsidies were subjected to different and more onerous procedures for obtaining apartments; and applicants who used rental subsidies from the HIV/AIDS Services Administration were unable to rent apartments operated by LeFrak. [p.35-36]

The lawsuit was settled for \$262,500 in August, 2014, [according](#) to the Fair Housing Justice Center, which [assisted](#) the plaintiff in bringing the lawsuit.

As part of the settlement, the LeFrak Organization [agreed](#) to adopt an equal housing opportunity policy, train its employees to comply, and discontinue subjecting tenant applicants to different treatment if their application involved public assistance subsidies.

GDC Helped Landlords Sue NYC Over 2019 Rent Control Law

In the name of “fair housing,” several New York City-area landlords sued city government and officials for a 2019 housing law that prohibits landlords from raising rents for certain repairs.

As reported by [The Real Deal](#), a real estate news outlet:

The new suit’s argument about disproportionate benefits is a criticism of the city’s rent regulation that has been made for years: That units with the most discounted rent — compared to what they would fetch on the open market — are in prime Manhattan neighborhoods and largely occupied by white tenants with healthy incomes. Supporters of the system say its benefits to low-income tenants outweigh its imperfections.

The lawsuit was one of five that landlords brought against the city after the 2019 housing law passed. In two of those lawsuits, landlord attorneys [attempted](#) to prevent attorneys from the Legal Aid Society from intervening in the case on behalf of tenants, including Gibson, Dunn & Crutcher (GDC) partner Randy Mastro, on behalf of G-Max Management.

Contradictorily, Mastro [served](#) as a vice chair of the Legal Aid Society (LAS) in September, 2020, while he attempted to block [LAS’ motion to intervene](#) in the G-Max lawsuit.

Archived pages from the LAS website indicate Mastro [vacated](#) his LAS board [position](#) by late January, 2021, well before his [tenure](#) was set to expire in 2022. Neither Mastro nor LAS appear to have commented on his early departure.

Most of these [lawsuits](#) were dismissed in 2021.

Appeals are likely, as part of a broader legal strategy [described](#) by the Real Deal when the G-Max lawsuit was dismissed in September, 2021:

Their strategy from the outset was to get rent control before the conservative-dominated Supreme Court, which they believe will take a dim view of not just the 2019 law but the very concept of rent regulation.

GDC Helped Wealthy Manhattanites Eject People from COVID Housing Shelters

As COVID-19 spread rapidly in New York City (NYC) in the spring and summer of 2020, tens of thousands of people in the city [perished](#) from the virus.

In an attempt to slow the spread of the virus, the city [converted](#) underutilized hotels into temporary COVID-19 safety shelters for thousands of people without homes, who otherwise would sleep in over-crowded congregated shelters, or on the streets. One of those hotels, the Lucerne, is in the [disproportionately white and wealthy](#) Upper West Side (UWS) of Manhattan.

In July 2020, [283 men](#) without homes [moved into the Lucerne](#) on a temporary basis. Some of the men were known to struggle with substance abuse or mental illness. The shelter's operator, [Project Renewal](#), hosted on-site treatment programs to help accommodate the needs of residents.

A group of UWS residents formed a Facebook group opposing the shelter, espousing concerns about community safety. [The New Republic](#) and [Gothamist](#) reported a variety of racist and inflammatory comments from the Facebook page, including some advocating physical intimidation, violence, and lethal force against shelter residents.

Other UWS neighbors [supported](#) the shelter, offering various [acts](#) of solidarity with the Lucerne's inhabitants. A coalition called the [UWS Open Hearts Initiative](#) formed to assist and advocate for shelter residents.

As [reported](#) by Gothamist, the Lucerne's opponents raised over \$100,000 and hired Gibson, Dunn & Crutcher (GDC) partner Randy Mastro:

Mastro told Gothamist that part of the group's objection to the use of hotels on the Upper West Side is that they don't have the same social services provided in traditional shelters. However, at a community board meeting Monday, Project Renewal and Help USA, the nonprofits that run the shelters...said they did have robust staffing, security and programming.

In response to critics of the shelter, the NYC Department of Homeless Services [told](#) the Lucerne shelter's opponents in [late August, 2020](#) that moving people out of temporary shelters would depend on COVID-19 infection trends, as the city anticipated a surge of winter infections. This prediction was accurate. Before vaccines were widely [available](#), NYC's reported [infections peaked](#) that winter.

Pressure from the UWS residents appeared to [prompt](#) an [announcement](#) by NYC Mayor Bill de Blasio that Lucerne shelter residents would be moved back into congregate housing shelters. As reported by [Politico](#), "Before the barrage of complaints, de Blasio had suggested individuals experiencing homelessness could remain in hotel rooms until there is a Covid-19 vaccine."

On August 26, 2020, a week after Mayor de Blasio indicated the city might empty the Lucerne, Mastro [threatened](#) to sue the city in an attempt to hasten the relocation of residents. Mastro represented Bill de Blasio in the past, according to the [New York Times](#).

As with his litigation for G-Max Management (detailed above), Mastro and the Legal Aid Society (LAS) represented [opposing](#) interests while Mastro [served](#) on the LAS board of directors. The day after Mastro threatened to sue the city on behalf of the shelter's opponents, the LAS [promised](#) to [respond](#) if the city "caves to the racist NIMBYism from some residents of the Upper West Side."

NYC officials proceeded with plans to move the Lucerne residents to a Radisson hotel in the Financial District, which [prompted a lawsuit](#) from yet another group that opposed the newer shelter. Both Mastro and the LAS became involved in the litigation.

Three of the Lucerne's residents retained attorney Michael Hiller to block the city's plans to relocate the men. The lawsuit was [filed](#) in October, 2020, and in January, 2021, an appellate court [ruled](#) that the Lucerne's inhabitants could remain for several months.

GDC's Mastro continued efforts hasten the inevitable removal of the Lucerne's inhabitants. He [hired two ex-NYPD private investigators](#) to pose as plumbers and photograph the most [outspoken](#) plaintiff, Shams DaBaron, at his new apartment home in March, 2021.

In a court [filing](#) that included some [disparaging](#) commentary, Mastro sought to prove DaBaron did not have standing in the lawsuit because he no longer lived in the Lucerne.

The approach appears to have worked. As the New York Times [reported](#) in June, 2021:

*[A] terse ruling from the Appellate Division of the [New York State] Supreme Court held that the attempt to stop the relocation was moot because the three Lucerne residents on whose behalf the suit was filed had all moved out and secured permanent housing. A lower court had treated the suit as a class action covering all of the Lucerne residents, but the appellate court did not see it that way. [...]
A lawyer for the Lucerne residents, Michael Hiller, said that the ruling would cause about 50 present and former Lucerne residents to lose their jobs.*

Despite the ultimate relocation of the men sheltered in the Lucerne, Hiller told the [New York Law Journal](#) that the delayed relocations from his clients' lawsuit bought enough time for 150 men find permanent housing.

GDC Helped Establish Unlimited Money in Politics

The 2010 *Citizens United v. Federal Election Commission (FEC)* Supreme Court ruling [removed](#) a longstanding limit on corporate spending in politics. The ruling allowed wealthy donors and companies to provide unlimited funds to nonprofit organizations that sponsor political advertisements to influence elections.

Gibson, Dunn & Crutcher (GDC)'s Theodore Olson [argued](#) on [behalf](#) of Citizens United before the U.S. Supreme Court.

Celebrating the outcome in a Washington Post [op-ed](#) that he co-authored with the president of Citizens United, Olson described the “oppressive thicket of statutes” that previously limited how much money wealthy interests groups can dump into political election efforts. Olson referred to Citizens United as a “grass-roots membership organization,” in spite of its consistent [multimillion dollar budget](#) and the fact that it was created by and for exceptionally wealthy partisan operatives.

A 2021 [report on Gibson Dunn](#) by the Revolving Door Project and People's Parity Project found that Olson had a history of helping advance partisan election outcomes: “Olson, who later served as a solicitor general in the George W. Bush administration, represented Bush in the infamous Bush v. Gore Supreme Court case that prevented valid votes from being counted in the 2000 presidential election.”

In the decade that followed the *Citizens United* ruling, the Center for Responsive Politics [found](#) that “dark money” political spending totaled almost a billion dollars, \$610 million of which was spent by just ten groups.

The Brennan Center for Justice [reported](#) that the ruling's impact exacerbated trends of racial bias, wealth inequality, and foreign influence in politics.

As the Brennan Center's Daniel Weiner summarized: “the decision has helped reinforce the growing sense that our democracy primarily serves the interests of the wealthy few, and that democratic participation for the vast majority of citizens is of relatively little value.”

GDC Defended a Brazilian Mining Company that Misled Shareholders about Risks that Led to Hundreds of Deaths

A team of Gibson, Dunn & Crutcher (GDC) lawyers defended Vale S.A., a private mining company with operations in Brazil, in class action lawsuits brought by U.S. shareholders.

The shareholder lawsuits against Vale were prompted by two separate and deadly disasters at Vale mines: the Mariana dam disaster of 2015, and the Brumadinho dam disaster of 2019.

On November 5, 2015, a mine tailings dam collapsed at a Vale mine near the Brazilian city of Mariana. [Nineteen people died](#) in a large-scale [toxic mudslide](#). The pollution caused massive ecological [impacts](#) from the region's land and [waterways](#) all the way out to the [Atlantic Ocean](#).

Vale eventually [settled](#) this shareholder litigation for \$25 million in February, 2020. GDC partner Mark Kirsch claimed victory in dismissing one of the securities lawsuits and decertifying the class of litigants in another, both related to the Mariana dam collapse.

Less than four years after the Mariana dam disaster, [270 people perished](#) when another Vale dam [collapsed](#) in Brumadinho, Brazil, on January 25, 2019. Entire homes, farms, vehicles, and other parts of the community were [buried](#). Rescue workers spent [months](#) recovering the bodies of missing people. As with the previous Mariana mining dam collapse, mining tailings [contaminated](#) water and soil in vast regions.

In Brazil, Vale agreed to [pay](#) over \$7 billion USD in a [settlement](#) with the government that was announced in early February, 2021, including compensation for people affected by the disaster.

Due to drop in Vale's stock price in the United States following the Brumadinho disaster, several investors [sued](#) Vale for misleading and defrauding its stockholders regarding safety at its mines, artificially inflating the company's value. Subsequent [filings](#) alleged that Vale knew of the risks regarding its tailings dams. Similar discoveries that Vale understood its dams were particularly dangerous were reported by [Reuters](#) and [The Guardian](#).

GDC attorney of counsel Fernando Almeida [worked](#) for Vale on an "internal investigation into the 2019 Brumadinho dam rupture" as part of the ongoing litigation in the U.S.

Securities litigation in the U.S. related to the Brumadinho disaster is [ongoing](#), as of January, 2022 (*Rauch v. Vale S.A. et al, case No. 1:2019-cv-00526*).

GDC is Defending Oil Companies that Spread Climate Change Misinformation

Gibson, Dunn & Crutcher (GDC) attorneys Anne Champion, Andrea Neuman, [Ted Boutros](#), and others are involved in defending Chevron, BP, and many other large oil companies from [lawsuits](#) related to climate change damages, denial of risks to shareholders, and disinformation in the public realm, according to court filings compiled by [Illumis](#).

This includes lawsuits initiated by the state of [Rhode Island](#), cities such as [Baltimore](#), MD, [New York](#), NY, and the California cities of [Oakland](#) and [San Francisco](#), [Richmond](#), [Santa Cruz](#), and [Imperial Beach](#). GDC is defending the same oil companies from similar [lawsuits](#) brought forth by the California [counties](#) of San Mateo, Marin, and Santa Cruz.

The four most prominent “oil majors” in the U.S. are named as defendants in each of these suits. Evidence exists that the [ExxonMobil](#), [Chevron](#), [Shell](#) and [BP](#) each understood that fossil fuels pose a global threat by creating unnatural climate change.

Instead of being honest with shareholders, policymakers and the public, [ExxonMobil](#), [Chevron](#), [Shell](#) and [BP](#) all participated in financing [opposition](#) to climate policy solutions or attacks on the science itself.

The CEOs of these companies were [summoned](#) to a U.S. Congressional [hearing](#) in late October, 2021, to account for the [disconnect](#) between their understanding of climate risks and their deceptive public relations campaigns. The major oil company CEOs continued to make what Harvard University researchers called “[demonstrably false](#)” claims, even while under oath. Members of Congress issued [subpoenas](#) to the companies after the hearing to obtain information that the CEOs [refused](#) to disclose.

These are among the reasons that a recent [report by Law Students for Climate Accountability](#) gave [Gibson Dunn](#) [a failing grade](#), in its climate-focused ranking of U.S. law firms:

Gibson, Dunn & Crutcher has represented fossil fuel companies in 18 cases from 2015 to 2019. Their clients include Chevron, Sunoco, and BP. [...] The firm has devoted ample resources to have these cases dismissed from courts, seeking to limit the scope and impact of climate litigation suits to hold corporate actors accountable.

Conclusion

While everybody deserves a lawyer, much of Gibson, Dunn & Crutcher (GDC) business is in defending the wealthy at the expense of disempowered people and communities.

While promoting a reputation for occasional pro bono work and various social accolades, GDC appears to invest most of its time into efforts that have exacerbated the erosion of rights and justice for those without monetary fortunes.

The typical GDC client profits from widespread exploitation and abuse of both people and planet, as the wealth gap between rich and destitute becomes wider than ever.

For its relentless defense of the rich and powerful, and the prioritization of high society bullies over the occasional token pro bono client, GDC has faced more praise than criticism.

The American Lawyer rains accolades on GDC for its work to keep alleged corporate lawbreakers out of prison, handing GDC its “Litigation Firm of the Year” for four of the last six biannual award cycles since 2010.

Even progressive [organizations](#), [foundations](#) and investigative reporting [groups](#) have awarded GDC attorney [Ted Bontros](#) for promoting “free speech” and a “free press,” even while GDC continued to push a retaliatory strategic lawsuit against public participation (SLAPP) against Chevron’s most prominent critic in the U.S.

Is protecting the legal supremacy of large corporations, at the expense of the employees and communities exploited by those corporations, something worthy of prestige?

The time has come to examine GDC for what it is, not for what its press releases emphasize.

Gibson, Dunn & Crutcher is just one example. Many other regressive law firms deserve scrutiny.

Appendix:

Gibson Dunn's Ethical Lapses

False testimony, fabricated evidence, and court censures

Gibson, Dunn & Crutcher (GDC) has demonstrated a pattern of unethical activity and failure to comply with the law during judicial proceedings.

GDC's conduct in and out of court has led to condemnation and sanctions from judges.

GDC was fined \$9.9 million by the Montana Supreme Court for engaging in “actual malice” and “legal thuggery”

As reported by the [Wall Street Journal](#) in 2007, GDC was [fined \\$9.9 million](#) in punitive damages in 2007:

The Montana Supreme Court earlier today upheld a \$9.9 million punitive damage award against the firm, finding that Gibson Dunn acted with “actual malice” in suing an art expert [...].

The court found that the firm, which employs about 800 lawyers, acted with a “high level of misconduct” and is using the courts as a “tool” in an attempt to intimidate Steve Seltzer, a Montana painter [...].

Gibson Dunn’s “use of the judicial system amounts to legal thuggery,” the state Supreme Court said.

GDC was fined by the High Court of England for hiding evidence:

The High Court of England [fined](#) a GDC lawyer over \$56,000 USD and [struck](#) him from the United Kingdom's attorney role in 2021 for fabricating evidence and [misleading judges](#).

GDC attorney Peter Gray falsified the dates of phone call transcripts to convince the court to arrest a businessman who was [falsely accused](#) of supporting a terrorist act in the Republic of Djibouti. As reported by [The Independent](#),

The [GDC] lawyer, solicitor Peter Gray, was found to have deliberately withheld vital evidence that Abdourahman Boreh could not have been involved in the terror attack in a bid to convince the judge to freeze £65m of the multi-millionaire's assets. [...]

Rather than admit the unreliability of the evidence, a minuted meeting recorded Mr Gray saying he would “fudge the error of the date”.

Gray was [suspended](#) by GDC, and responded with a [lawsuit](#) against his former employer.

GDC was fined by a New York Court for hiding evidence

In 2008, New York District Judge Colleen McMahon [sanctioned](#) Gibson, Dunn & Crutcher (GDC) in the amount of \$10,000 for concealing a key document that validated its adversary's case. The litigation was related to a dispute over publishing photographs of Marilyn Monroe.

The judge [wrote](#) that the firm “engaged in unacceptable shenanigans when it came to producing documents” and that GDC and its client were “deceptive in that they failed to apprise the court of the existence of documents that contradicted their position.”

GDC was sanctioned by a California Court for improperly influencing a witness

In 2005, a California judge [upheld](#) \$102,000 in [sanctions](#) imposed on Gibson, Dunn & Crutcher (GDC) after it “improperly and in bad faith influenced a third-party witness not to appear at his scheduled deposition.”

The sanctions stemmed from a case in which GDC defended Encana, a Canadian petroleum gas company, from anti-trust litigation brought by Gallo Winery. Gallo accused Encana of artificially inflating gas prices, [according](#) to the Calgary Herald.

GDC was sanctioned for witness intimidation related to Chevron's Ecuador pollution litigation

Gibson, Dunn & Crutcher (GDC) attorney Andrea Neuman was [sanctioned](#) by a Colorado court for [intimidating witnesses](#) during questioning in 2010.

The presiding judge ordered Neuman to discontinue her line of questioning, as Amazon Watch [reported](#) from court filings:

[A] federal magistrate judge in Colorado on Nov. 23 issued a clarifying order directing Chevron's lawyers at Gibson Dunn & Crutcher to cease questioning during depositions that was described by the plaintiffs as “abusive and harassing”. [...]

The “abusive and harassing” questioning was conducted by Andrea Neuman, one of Chevron's lead lawyers on the Ecuador matter and a partner at Gibson Dunn's office in Irvine, CA. In their court papers, the Amazon communities had accused Neuman of using “blatant intimidation tactics” that “fall below the standards of professional conduct” required by Colorado and Federal rules.

The following year, 2011, Oregon Magistrate Judge Thomas M. Coffin ordered Chevron to pay a \$33,000 [sanction](#) after GDC attorney Kristen Hendricks [engaged](#) in witness deposition that was, in part, “[meant to harass](#).”

Many of the examples above were previously published in a court briefing by Ecuadorian lawyer Pablo Fajardo Mendoza filed as part of litigation against Chevron.

Fajardo's [Exhibit 24](#)" was filed as part of Aguinda v. Chevron Corp., No. 2011-0106 (Provincial Just. Ct. of Sucumbíos, Jan. 3, 2012) (Ecuador), as cited in a [2013 review](#) by Florida International University law professor Manuel Gómez, and as referenced in a [2012 article](#) by then-J.D. candidate Kendal [Payne] Kowal.

An October, 2019 [article](#) by Greenpeace International co-founder Rex Weyler provided more examples, along with those included in Fajardo's legal briefing.

"Unacceptable Shenanigans"

How Gibson, Dunn & Crutcher Enables Corporate Exploitation

March 7, 2022

