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Lawfare: Threats to Judicial Impartiality & the Rule of Law

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Water Protector Legal Collective (WPLC)

- ▶ WPLC is an Indigenous-led 501(c)(3) nonprofit law firm and advocacy organization that provides legal support and advocacy for Indigenous Peoples and Original Nations, the Earth, and climate justice movements.
- ▶ Formerly based and headquartered in North Dakota, WPLC was formed in 2016 in response to the threats DAPL posed to the Water and the mass criminalization of Water Protectors.
- ▶ WPLC organized representation for hundreds of Water Protectors arrested during protests to protect the Water, cultural and sacred sites, and treaty lands impacted by the pipeline construction between August 2016 and February 2017.
- ▶ Of the over 800 criminal cases, nearly all but a handful of these cases resulted in dismissal.



What is Lawfare?

Lawfare is a blend of "law" and "warfare," and it refers to the **weaponization of the law** as a tool to achieve a strategic or political goal, and implies an action is not brought in good faith.

A few contexts where this is commonly used:

Political Lawfare: Using legal proceedings (lawsuits, investigations, criminal charges) to damage or discredit political opponents.

International Lawfare: When states or organizations use international law as a means to challenge the actions of other nations, often to constrain military actions or affect public opinion.


Strategic Lawfare: When primarily non-state or corporate actors use litigation against less-resourced opponents to silence or intimidate targets.





Lawfare In Historical Context

Lawfare is not new — but its scale, visibility, and implications are growing.


Historical Foundations:

 **COINTELPRO (1956–1971)**
FBI program targeting civil rights leaders and activists through surveillance, infiltration, and legal harassment.


 **Colonial Legal Systems**
Laws used to legitimize occupation, dispossession, and suppression of resistance in colonized territories.

 **Apartheid South Africa**
Legal codification of racial segregation and repression; dissent criminalized.

Modern Implications:

 **Erosion of Civil Liberties**
Expansive laws and emergency powers used beyond their intended scope.

 **Chilling Effect on Activism**
Fear of legal retaliation can suppress protest, speech, and organizing.

 **Selective Enforcement**
Legal tools often applied unequally—targeting marginalized or politically inconvenient groups.

 **Globalization of Lawfare**
Increasing use of international law and transnational legal action in conflicts.

Examples of Lawfare

Targeting of
Frontline
Defenders

Criminalization
of Dissent

Strategic
Lawsuits
Against Public
Participation

Eco Terrorism
Language and
Enhanced
Sentencing

Surveillance
(COINTELPRO
legacy)

Private Military
and Security
Companies

Lawfare Targets Frontline Defenders

- ▶ Frontline human rights defenders are targeted for their activism and work in the areas of Indigenous rights and environmental justice
- ▶ Worldwide, Indigenous Peoples make up 5% of world population and protect 80% of the world's remaining biodiversity. Indigenous Peoples are on frontline struggles for existence and the Earth.
- ▶ Frontline Defenders' Global Analysis 2022 reported 401 human rights defenders killed in 26 countries
- ▶ United States is not covered those statistics.
- ▶ Indigenous defenders suffered nearly 20% of attacks between 2015 and 2022 (IPRI/UN Report on Criminalization)



Criminalization of Dissent

- ▶ Protestors and human rights defenders charged under broad or vague laws
- ▶ Rise in criminalization of protest
 - ▶ Standing Rock – 854 arrests
 - ▶ Line 3 – over 900 arrests
 - ▶ Mauna Kea – over 30 kupuna
 - ▶ BLM – 14,000 arrests in 49 cities



Standing Rock

- ▶ Over 800 arrests of Water Protectors (Indigenous and non-Indigenous) – majority dismissed
- ▶ Why We Stand: Protection of Treaty Rights and Water for Future Generations
- ▶ Excessive use of force
- ▶ Results:
 - ▶ Critical infrastructure laws passed since Standing Rock
 - ▶ Shared information between law enforcement and PMSCs
 - ▶ SLAPP suits
 - ▶ Enhanced sentencing



Language as Weapon

- ▶ **Excerpt – Congressional testimony on “Eco-Terrorism”**
- ▶ **Acts of Ecoterrorism by Radical Environmental Organizations, Hearing Before the Subcomm. On Crime of the H. Comm. On the Judiciary, 105th Cong. 62 (June 9, 1998).**
- ▶ **Eco-Terrorism and Lawlessness on the National Forests, Hearing Before the Subcomm. On Forests and Forest Health of the H. Comm. On Resources, 107th Cong. 83 (February 12, 2002).**



In 1988, during a congressional hearing addressing the Anti-Drug Abuse Act, Senator James McClure, unprompted and with virtually no corroborating evidence, analogized Earth First! activists with “eco-terrorists” who were “just as dangerous and deadly as the drug producers.” (Cong. Rec. 30811). Senator McClure asserted that Earth First! activists were part of a “‘terrorist encampment,’ training each other to monkeywrench (i.e. place spikes in trees, disable machinery, and other acts of vandalism against property).”¹⁵ Following the hearing, Congress enacted [18 U.S.C. § 1864\(a\)\(2\)](#), criminalizing use of hazardous or injurious devices on federal land with the intent to obstruct harvesting of timber.¹⁶

A decade later, on June 9, 1998, the House Judiciary Committee’s Subcommittee on Crime held a hearing addressing “Eco-terrorism by Radical Environmental Organizations.” During the hearing, Ron Arnold defined eco-terrorism for the Committee as “a crime committed to save nature” including every crime from trespass to murder.¹⁷

On February 12, 2002, the House Resources Committee held a hearing on “Eco-Terrorism and Lawlessness on the National Forests.” James F. Jarboe, Domestic Terrorism Section Chief of the FBI Counterterrorism Division, testified

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on the rise of “extremist groups” by “disaffected environmentalists” since 1977. While Mr. Jarboe acknowledged that most environmental and animal rights activists engaged in activities “protected by constitutional guarantees of free speech and assembly” and discouraged “acts that harm any animal, human, and nonhuman,” the “volatile talk” sometimes transgressed “into unlawful action” resulting in property damage.¹⁸ The FBI further defined “eco-terrorism” as “the use or threatened use of violence... against innocent victims or property by an environmentally-oriented, subnational group for environmental-political reasons.”¹⁹

During the same hearing, Craig Rosebraugh, Former Press Officer of Earth Liberation Front (ELF), addressed the impact of branding environmental activism as “eco-terrorism”:

By attaching a label such as ‘terrorism’ to the activities of [environmental groups to protect the Earth], the public is left with little choice but to give into their preconceived notions [about the legitimacy of the tactics that are] negatively associated with that term.... Terrorism usually is connected with violence, with politically motivated physical harm to humans.”²⁰

Eco-Terrorism Language and Sentencing

- ▶ Eco-Terrorism language
 - ▶ Industry-coined, on rise since 1970s = "Green Scare" and dangerous judicial precedents
- ▶ Enhanced Sentencing
- ▶ Jessica Reznicek
- ▶ June 2021, sentenced to 8 years (96 months) in federal prison after pleading guilty to acts of property damage she caused the Dakota Access Pipeline, which was not operational at the time and did not pose a threat to human life.
- ▶ Federal district court applied a "terrorism" sentencing enhancement that increased her sentencing range from 37–46 months to 210–240 months.
- ▶ Applied in response to a 2017 letter in which 84 members of Congress wrote to former Attorney General Jeff Sessions requesting that Reznicek and other protestors who tamper with private property, like pipelines be prosecuted as domestic terrorists. The authors of this letter received a combined \$36 million in campaign contributions from the oil and gas industry



Surveillance (COINTELPRO)

- ▶ COINTELPRO legacy
- ▶ Use of COINTELPRO in 1960s against liberation movements (Panthers, Brown Berets, AIM) seen as “dissidents”
- ▶ Present-day counterinsurgency tactics continue including heightened surveillance and violations of the rights of privacy and association
- ▶ Senate subcommittee (Church Committee 1976) found COINTELPRO engaged in massive human rights violations, targeting U.S. citizens based on race, political ideas, and political affiliations.



**STANDING ROCK DOCUMENTS EXPOSE
INNER WORKINGS OF “SURVEILLANCE-
INDUSTRIAL COMPLEX”**

Private Military and Security Companies

- ▶ PMSCs private contractors engaging in conduct amounting to cruel, inhuman, or degrading treatment (non-state actors)
- ▶ NO ACCOUNTABILITY or oversight for human rights abuses they commit
- ▶ From Sept. 2016 – Feb. 2017, ETP hired at least 76 city, county, state law enforcement, mobilized National Guard, and private security firms including TigerSwan
- ▶ TigerSwan
 - ▶ U.S. DOD contractor with offices in Afghanistan, India, Iraq, Japan, Jordan, Latin Merica, Saudi Arabia and the U.S. (trained in counterterrorism operations)
- ▶ Euphemism for “mercenaries”
- ▶ Shared information

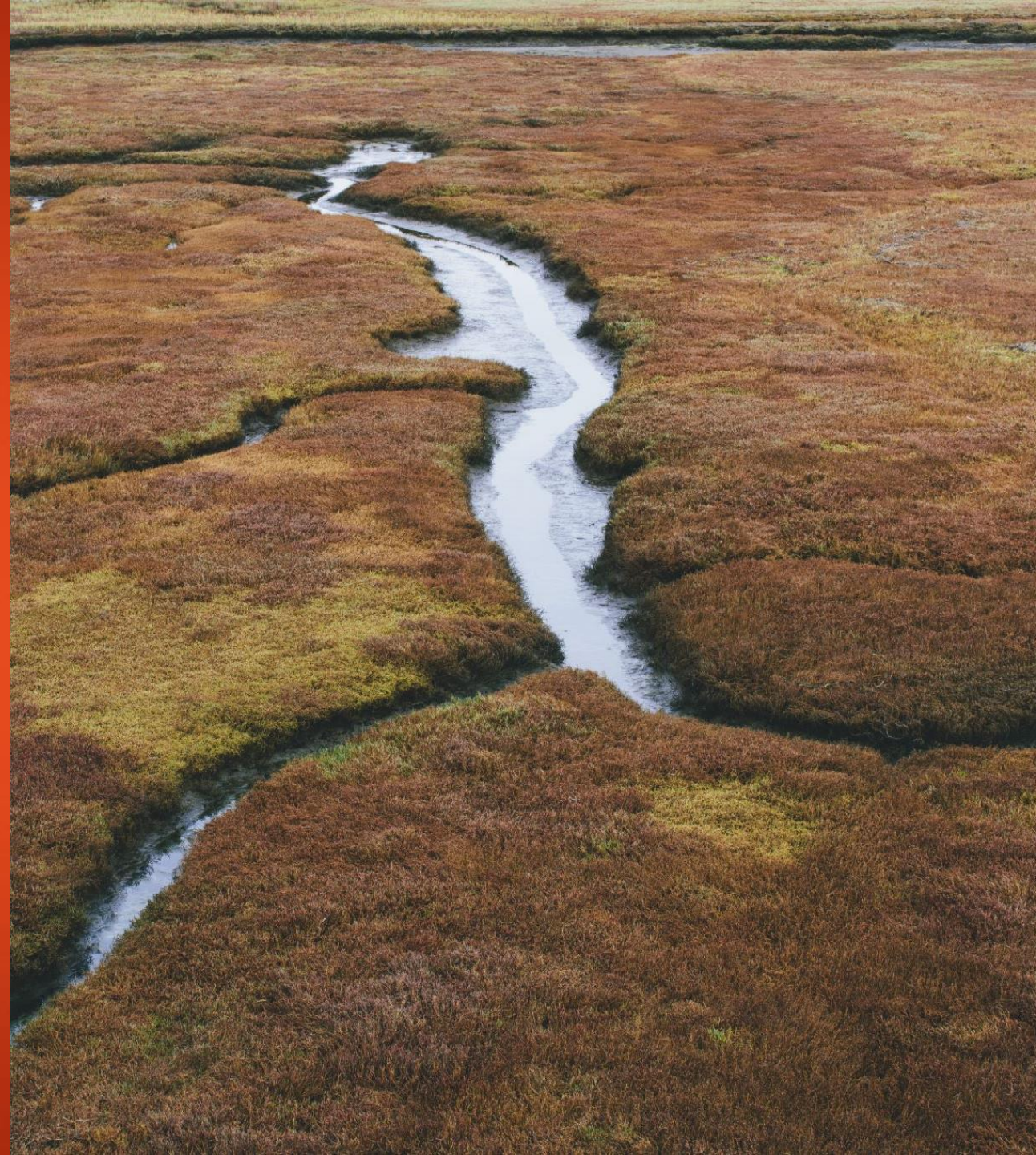


Strategic Lawsuits Against Public Participation

- ▶ SLAPPs are filed not to litigate meritorious legal claims, but to use the legal process itself and the burdens it imposes to try to silence and intimidate an adversary – in this case, those who supported the #noDAPL protests.
- ▶ SLAPPs generally are filed by a corporation or governmental body against civil society organizations, groups, individuals, or directly impacted communities in retaliation for speaking out on issues of public importance.
- ▶ Other considerations in determining whether a lawsuit is a SLAPP include:
 - ▶ the nature of the activity targeted
 - ▶ the power imbalance between the parties in terms of resources
 - ▶ disproportionate claims of damages
 - ▶ the abuse of procedural aspects of litigation to try to punish the defendant
 - ▶ attempts to use the legal action to create a broader chilling effect on free speech.

Threat to the Missouri Watershed

- ▶ 12 million people live in Missouri Watershed
- ▶ Municipal water supply for 3 million
- ▶ 891 intakes for federal, private, and tribal irrigation
- ▶ Lake Oahe – primary source of water for Standing Rock and Cheyenne River



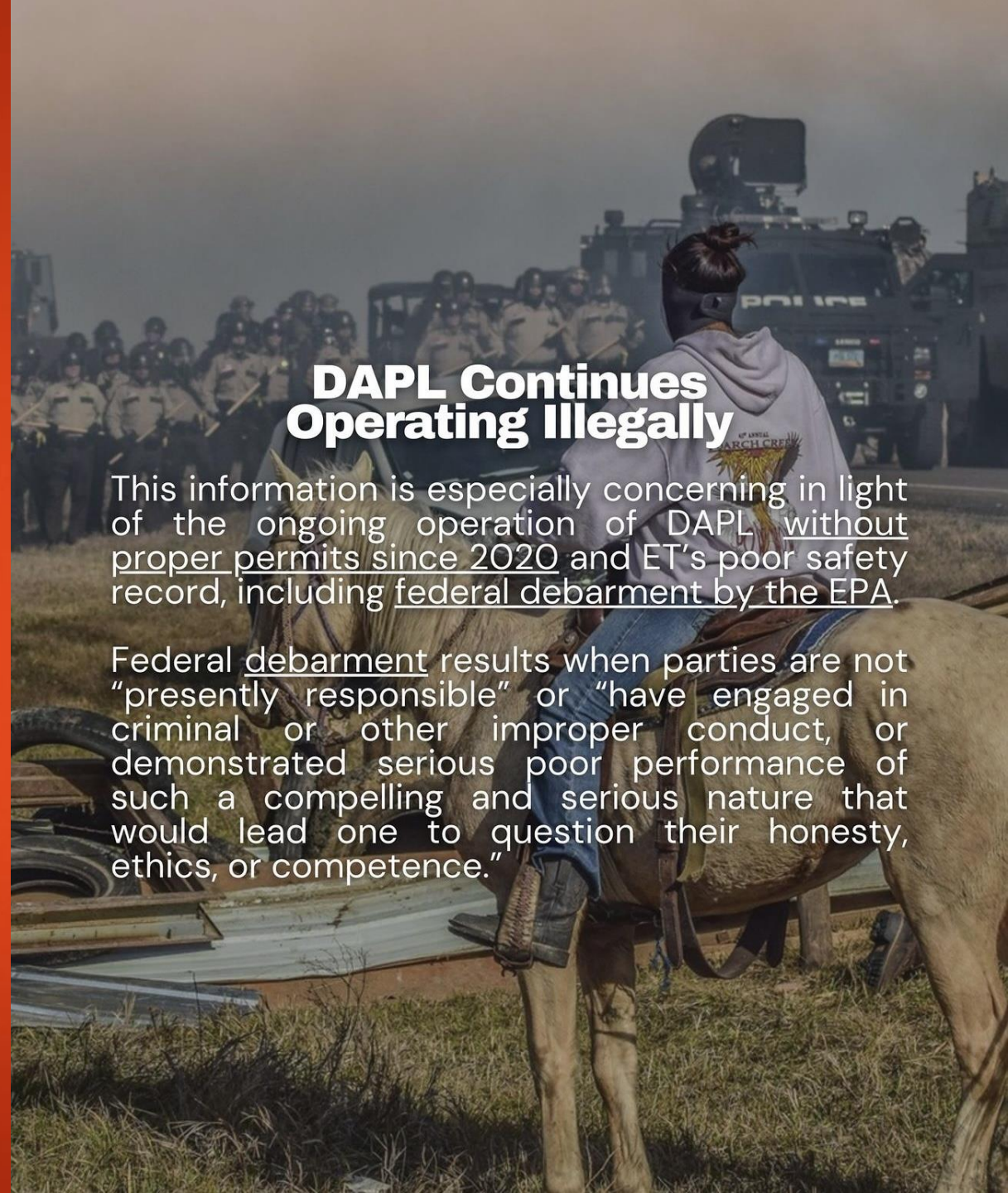
Threat to the Water: ET Safety Record & Illegal Operation

- ▶ No proper permit since 2020
- ▶ ET poor safety record has led to debarment by the EPA
- ▶ Cannot enter into federal contracts
- ▶ Debarment occurs as a result of CRIMINAL or other improper conduct, showing “serious poor performance” and questioning “honesty, ethics, or competence”

DAPL Continues Operating Illegally

This information is especially concerning in light of the ongoing operation of DAPL without proper permits since 2020 and ET's poor safety record, including federal debarment by the EPA.

Federal debarment results when parties are not “presently responsible” or “have engaged in criminal or other improper conduct, or demonstrated serious poor performance of such a compelling and serious nature that would lead one to question their honesty, ethics, or competence.”



Federal Debarment & ET Criminal Convictions

- ▶ 48 criminal convictions
- ▶ Concealed drilling fluid leaks
- ▶ Failed to report use of unapproved additives, including diesel
- ▶ Resulted in water contamination at 21 sites in Pennsylvania in 2017
- ▶ 2 million gallons of drilling fluid released in Ohio in 2017
- ▶ Debarment until 2025

Energy Transfer's Federal Debarment and Criminal Convictions in Pennsylvania

ET was federally debarred by the EPA due to 48 criminal convictions in Pennsylvania stemming from concealment and failure to report drilling fluid leaks and use of unapproved additives such as diesel fuel resulting in water contamination at 21 sites during its construction of the Mariner East II, Rover, and Revolution pipelines in 2017. The Federal Energy Regulatory Commission also initiated proceedings against ET for releasing 2 million gallons of drilling fluid containing diesel fuel under the Tuscarawas River in Ohio in 2017.



Case Study: *Energy Transfer Partners v. Greenpeace, et al.* (SLAPP)

- ▶ Parties: ETP v. Greenpeace, Earth First!, Cody Hall, Krystal Two Bulls, Ruby Montoya, Jessica Reznicek, Charles Brown, John & Jane Does 1-20
- ▶ Alleges defamation and conspiracy using RICO (racketeering laws) – their argument: DAPL didn't threaten water, no unjustified violence, no desecration of cultural or sacred sites
- ▶ Filed in federal district court, dismissed; refiled in state of North Dakota – currently ongoing and set for trial this summer

2. The scheme was perpetrated by a network of putative not-for-profits and rogue eco-terrorists who have organized around common interests, goals, objectives and stated purposes, chief among them, the commitment to further an anti-development, no fossil fuel agenda through anarchist political philosophy and criminal sabotage.

3. Between August 2016 and May 2017, thousands of protestors descended upon North Dakota, in an effort to prevent the construction of the final segment of DAPL. During that time period hundreds of people were arrested, when protests turned into violent clashes that placed the lives of construction workers, security personnel, and the local authorities in danger.

4. The myth is that these protests were organic, spontaneous and peaceful. The reality is that the opposition to DAPL was a highly organized and orchestrated scheme perpetrated by out-of-state protestors who have political interests in the pipeline protest and hidden agendas vastly different and far removed from the SRST.

5. The Enterprise, or perpetrators of the scheme, followed a well-honed playbook developed by Greenpeace International consisting of four central components: (1) ubiquitous and aggressive dissemination of false and alarmist claims regarding phony but emotionally charged hot-button issues to manufacture a sense of crisis; (2) use of the manufactured claims to attract on-the-ground protestors to rally for the cause, who the Enterprise then trained in property destruction and criminal sabotage; (3) planting of radical, violent eco-terrorists on the ground amongst the protestors to incite violent action; and (4) use of the manufactured claims and ensuing violent and destructive protests to fraudulently induce donations to fund further racketeering activity.

#NoDAPL Update: ET v. GP SLAPP Timeline

- ▶ 2017: SLAPP suit filed by ET against GP first in federal court; case dismissed in 2019
- ▶ 2019: ET refiles case in State of ND
- ▶ Alleges defamation and conspiracy using RICO (racketeering laws) – their argument: DAPL didn't threaten water, no unjustified violence, no desecration of cultural or sacred sites
- ▶ Trial in February 2025 resulted in \$669 Million dollar jury verdict



Claims against Greenpeace

- ▶ In 2019, when ET filed suit in state court in this case, the complaint included claims for trespass, conversion, nuisance, aiding and abetting, defamation, tortious interference, and conspiracy. See Dkt. 2, Complaint at ¶¶ 43-51, 101-45.
- ▶ ET resisted production of pipeline safety documents for over a year, choosing instead to amend its complaint by withdrawing defamation claims.
- ▶ Three categories of alleged defamation remain:
 - ▶ (1) DAPL traverses Standing Rock Sioux Tribe lands;
 - ▶ (2) ET used excessive force against peaceful protestors; and
 - ▶ (3) ET deliberately desecrated Native American cultural resources.
- ▶ The Special Master ordered ET to produce documents related to pipeline safety, ET “open[ed] the door to evidence” on its “safety record.”
- ▶ Possible settlement discussions with GP.



Why Judicial Impartiality & Due Process Matter

Foundations of a Just Legal System

- **Judicial Impartiality** ensures judges are neutral and independent
 - Protects against political influence
 - Builds public trust in the rule of law
- **Due Process** guarantees fair treatment under the law
 - Right to a fair trial, legal counsel, and to be heard
 - Shields individuals from arbitrary detention and abuse
 - Due Process is enshrined in the U.S. Constitution (5th and 14th Amendments)

Why It Matters

-  Without these safeguards, law becomes a tool of repression
-  Justice becomes selective, not equal
-  Lawfare thrives when fairness is replaced with control

Sources of International Law on Judicial Impartiality & Due Process

Judicial Impartiality & Due Process

Universal Legal Commitments

- **Universal Declaration of Human Rights (UDHR) (1948)**
- “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal...”
— *UDHR, Article 10*
- **International Covenant on Civil and Political Rights (ICCPR) (1967)**
- “Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”
— *ICCPR, Article 14*
- ▶  Both instruments are binding on the United States
- ▶  Affirm judicial independence as a **universal right**, not a privilege

Global Standards for Judicial Integrity

Guidance from International Bodies

- **Human Rights Committee (CCPR)** (monitors signatories' compliance with ICCPR)
 - “The right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception.”
 - Judicial independence is both institutional **and** personal
 - Judges must **not decide cases based on personal preferences**
- **UN Basic Principles on the Independence of the Judiciary (1985)**
 - “The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly...”
- **Bangalore Principles of Judicial Conduct (2001)**
 - Uphold 6 values: Independence, Impartiality, Integrity, Propriety, Equality, Competence & Diligence
 - Reinforce ethical duties that protect the rule of law
- ▶ Together, these instruments affirm that fairness, impartiality, and due process are non-negotiable in a just legal system.

Global Standards for Judicial Integrity

The rule of law is fragile—undermined when power is exercised without accountability or respect for legal institutions.

⚠ Strategic Legal Attacks

- **ET v. Greenpeace (2024)**
A \$669 million jury award in a SLAPP lawsuit threatens the survival of Greenpeace.
 - **Chilling effect** on advocacy, especially for environmental and Indigenous rights
 - Signals broader **legal weaponization** against nonprofits

⚠ Erosion of Judicial Authority

- **Trump 2.0 Administration Actions**
 - Publicly **attacked judges** who ruled against executive orders (DC Circuit Judge Boasberg)
 - **Called for impeachment** of judges perceived as obstructive (prompting response from SCOTUS)
 - **Defied court rulings**, including deporting over **200 Venezuelans** in **direct violation** of a federal court order
 - Undermines judicial **independence** and **public faith** in legal accountability

⚠ Threats to the Nonprofit Sector

- Legal and regulatory targeting of advocacy organizations (HR 9495 pending in Senate)
- Intimidation through surveillance, audits, and civil suits and potential EOs
 - Weakens **civil society** and **public dissent**

Threats to Rule of Law

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Lawfare: Key Takeaways

1. Lawfare Is Real—and Rising

The use and weaponization of legal systems to silence, suppress, or delegitimize dissent is a growing global and domestic trend.

2. Judicial Impartiality and Due Process Are Essential

Without independent courts and fair trials, justice becomes political.

These principles are guaranteed under both **domestic and international law**.

3. Global Norms Set Clear Standards

Instruments like the **UDHR**, **ICCPR**, and **UN Basic Principles** affirm that impartiality and independence are **non-negotiable rights**.

4. The Rule of Law Is Under Threat

- SLAPP suits (e.g., *ET v. Greenpeace*) threaten free expression
- Executive defiance of court rulings undermines democracy
- Nonprofits and vulnerable communities face increased legal targeting

5. Defending Legal Integrity Is a Collective Responsibility

- Protecting judicial independence, civil society, and legal norms is essential to **upholding democracy, equality, and human rights**.

A serene landscape photograph capturing a sunset. The sun is a bright, glowing orb positioned just above the horizon, which is marked by a dark silhouette of rolling mountains. The sky is a gradient of warm colors, from a pale yellow at the top to a deep orange near the horizon. The sun's light reflects on the calm surface of the water, creating a shimmering path of light. In the foreground, the dark silhouettes of trees and bushes are visible, framing the bottom and right sides of the image. The overall mood is peaceful and contemplative.

Water is Life