

The Battle Against DuPont

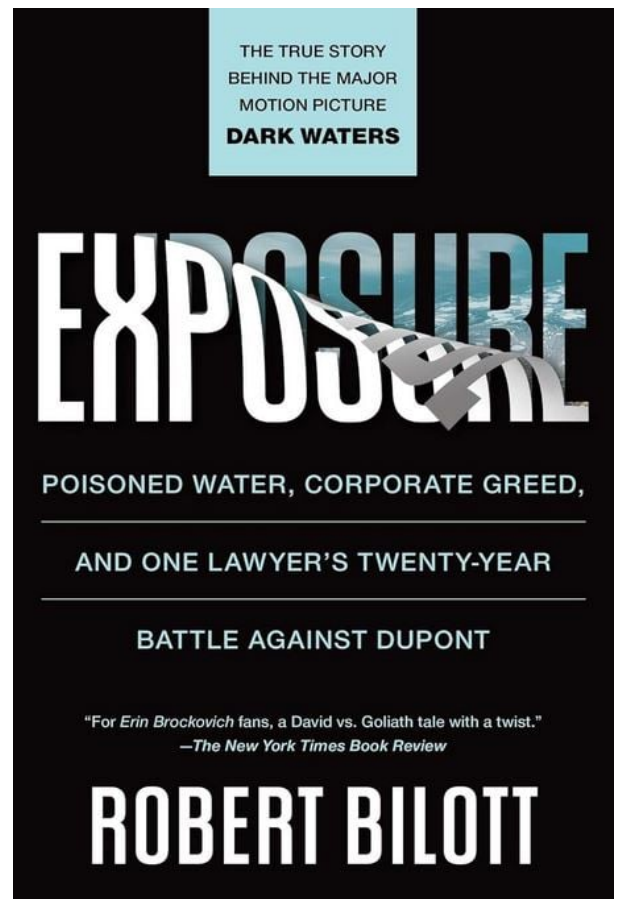
by [Carl Nelson](#) (February 2025)



Lying Cow (Vincent van Gogh, 1882)

In fictional accounts of legal confrontations, both on TV and in the movies, truth is presented as a powerful force. So much so that many of us share the opinion of an accused man who was once discussing his problems with F. Lee Bailey, a nationally acclaimed attorney: “I don’t need a lawyer because I’m innocent.”

“That’s exactly why you need a lawyer,” Bailey replied.



And if you have watched “Law and Order”, one of the longest running TV programs with 24 seasons and 5 spin-off franchises to its credit, each week you anticipate a speedy trial. In the first half hour we witness the crime and apprehension; and in the second half hour we see the speedy trial and conviction, with a delay between the two being always no longer than the commercial break. And they generally nail the bad guy (no matter the contortion of the law which must be applied), and bestow mercy upon the deserving.

The power of innocence, the truth, and the promise of a speedy trial are the revered myths of popular opinion which underscore the legitimacy of our judicial system. And they would seem to do so, at least until the TV is turned off and reality intrudes in the form of ‘legal exposure.’ Then the hard financial numbers, politics, and Kafkaesque legal travails to come reveal more powerful truths which often prevail. Currently there are around 1.33 million lawyers in the United States who demand an average fee of \$257/legal

hour.

“Lawyers are legal professionals who are trained to provide legal advice, represent clients in legal proceedings, and ensure compliance with laws and regulations. Their primary role is to help individuals, organizations, or governments navigate the complexities of the legal system.” –Google

The bold faced (above) words are probably the most meaningful. The legal system, as practiced, is quite complex. That is, it is not a freeway—it’s more like finding the exit in a parking garage maze—and it might take you some time to get from here (problem) to there (solution). That is, if you can indeed get here from there—and you don’t face a cunning and resourceful legal tag team who is equally trying to prevent this. Do the math. If you have money, you might be able to afford a lawyer, and if you don’t have money, you might not be able to find one. This is one reason that most prudent people avoid conflict with the government or large entities with enormous resources (companies). Individuals who take these entities on are often defeated before they start.

This is all a preface to the gripping David versus Goliath tale told by Robert Bilott, author of *Exposure, Poisoned Water, Corporate Greed, and One Lawyer’s Twenty-Year Battle against DuPont*, and lead lawyer for the plaintiff.

Earl Tennant was a farmer just south of Parkersburg, West Virginia who had a herd of cattle which drank water from a creek that ran through his pasture. It was called Dry Run Creek because during droughts it was reduced to a string of glittering pools. Then in the mid 1990s his cattle began dying. “In less than two years he had lost at least one hundred calves and more than fifty cows.” Earl believed it was the water. Water which had formerly flowed “gin clear,” now

looked like dirty dishwater. Bubbles formed as it tumbled. "A thicker foam gathered in eddies, trembling like egg whites being whipped into stiff peaks so high they sometimes blew off on a breeze." And it smelled.

"Deer, birds, fish and other wildlife were turning up dead in and around Dry Run. He had stopped feeding his family venison from the deer he shot on his land. Their innards smelled funny and were sometimes riddled with what looked to him like tumors. The carcasses lay where they fell. Not even buzzards and scavengers would eat them.

"Earl had sought help, but no one would step up. After contacting the West Virginia Division of Natural Resources and the West Virginia Department of Environmental Protection, he felt stonewalled."

The headwaters of his creek flowed from out of an industrial pipe which extended out of a collection pond at the low end of a landfill designed for the disposal of "nonhazardous waste." The landfill was owned by DuPont, which had a huge chemical plant nearby, and was a prime employer in the county. Earl believed that DuPont was secretly dumping hazardous waste into the landfill, but he could not get a hearing. No one in the area wanted to poke the benevolent Santa which had brought so much prosperity to the area. Most of their jobs depended upon DuPont's largess either actually or ultimately.

As it turned out, Earl stumbled upon a sympathetic ear. "Blood is (often) thicker than water" –at least in Appalachia. Through the efforts of a neighbor who had just finished a conversation with a grandmother who "had been bragging about my working as an environmental lawyer for a fancy-pants firm in Cincinnati ... She had promised that surely her grandson would help."

The lawyer, our author and narrator, Robert Bilott, had fond memories of his grandmother and of his years spent in the area as a child. He had actually played at Earl's farm as a child. Gradually, these heartstrings of community and increasing conviction of the legal worth and moral weight of Earl's complaints brought him onboard what would become a twenty year commitment to Earl and the citizens of Wood County who had been unknowingly drinking the toxic effluent of DuPont's and suffering delayed onset of puberty and birth defects among other maladies. Black gums were a common sign of poisoning in both animals and humans.

What entails during the following seven eighths of the book are the legal maneuverings, dissimulations, non-disclosures, and downright lies which constitute a "speedy trial" in this day and age of enormous wealth burdened by enormous legal exposure in enormously complex trials involving a myriad of players—and of the personal costs that ensued as detailed in the lives of the characters involved.

At the time, of this story's beginning, Robert Bilott was an environmental lawyer two months from making partner at the Cincinnati legal firm of Taft Stettinius & Hollister LLP. The firm represented corporate clients, who paid well. Representing plaintiffs was risky, both financially, because plaintiffs hadn't the resources to pay for the needed defense, and especially to Bilott's firm because arguing for the other side, as it were, could alienate their corporate clients and discourage their signing of more business. Bilott moreover, though a hard-working, and scrupulously detail oriented lawyer, did not especially sell himself well, didn't bring in new business, and needed more billable hours if he were to make partner.

However, in what must have amounted to a pretty good sales job, Bilott managed to get his boss to allow him to take Earl's case while continuing to perform his regular work load. So, in effect, for near twenty years, Bilott worked two

shifts. His regular day shift and then the evening shift stretching after dinner till eleven at night. Near the end of this brutal commitment, the stress on Bilott led to what appeared to be the symptoms of a stroke. (While apparently being psychogenic in origin, their true origin is never discovered and/or stated). In the final years of his legal ordeal, Bilott lives under the constant fear that his symptoms will appear suddenly in public or when arguing important matters before the court.

Most of us, if we are fortunate, will pass our lives without experiencing the court system—which is something like having escaped the draft. What we will experience however is the fallout from titanic legal battles being waged over the environment we live in—from class action suits to Supreme Court Decisions, over air, water and food quality, product liability, education ... that is, just about everything which occurs that we have no agency over which will be decided by such battles, rather like we all would suffer a share in the outcome of WW2 whether or not we fought. In judicial travails, (as in war and the other things in life, no matter what they say), size matters.

Generally the first tactic used by a formidable defendant against a smaller plaintiff is to stonewall. In our case, our farmer spent several years trying to get some acknowledgement of his problem from either the government or DuPont. It took his acquisition of an out of state attorney (Bilott) to compel a response, which again was a stonewall—put into legal jargon. When Bilott requested a court to compel some disclosure, the next stage in the battle began.

One of the prime tactics used by the big players to shed themselves of legal irritants is to drown the small plaintiffs' attorney in truckloads of disclosure. The corporate response to this plaintiff's initial informational request was 60,000 documents delivered in nineteen small refrigerator sized boxes "in disparate fragments" which

“needed piecing together.” Think of it as assembling a picture puzzle in which there exist only hints of what the completed picture might describe (that is, where and what is the crime and where is the evidence) –in which the most damning evidence has been either withheld or snuck past inspection. Evaluating these is a task that can easily exhaust the resources of a small legal firm. Bilott had to sift through all of this material himself.

An outgrowth of this task—equal to the cleaning of the Aegean Stables—would be to cement Bilott as the lead attorney for this case, as it would be near impossible to bring anyone else up to the needed level of expertise. Then in order to eventually identify the offending toxic substance, (DuPont wasn't telling), Bilott would also have to develop extensive chemical engineering expertise. And then to prove culpability, Bilott would also have to gain expertise in conducting formal epidemiological studies.

Along with a continuing stonewall, the most prominent tactic (especially of the guilty party) is delay. Evidence deteriorates with time, so foot dragging is a common tactic. Trying to get the defendant to release the documents the court has already ordered them to release can take two or three missed deadlines before the threat of judicial punishment makes it happen.

Right versus wrong is not primarily what a client needs legal help for. Attorneys must strategize how best to approach the defendant: which motions to file first, which courts and judges to appeal to, and how to craft language to best secure the wanted ends. Bilott had to approach attorneys with either the license to practice in outside jurisdictions (West Virginia), or players versed in the politics of various jurisdictions in order to acquire the most sympathetic courts and juries. Moreover, Bilott had to convince his own firm to continue bleeding money in a case possibly years from conclusion, while also recruiting larger outside legal firms

both for the expertise, legal aid, and monetary assistance.

Much of this was accomplished two years later after a settlement in Earl's case was made. Bilott then felt he had both the basis and the moral need to pursue a class-action case against DuPont for the people affected by the toxic chemical which had been released into their water supply. (These citizens would include those in Belpre, Ohio, where I currently live.) This class action suit was a huge undertaking as Bilott had to both prove in a vast scientifically conducted epidemiological study that the C8 in the community waters had indeed harmed the affected populace and that the release had occurred with malice. This first would require much expensive expertise and community outreach, while proving malice would require quite clever methods of seeking discovery.

Much of legal expertise involves crafting disclosure requests which pass the judicial tests and result in securing the evidence which supports a plaintiff's case. The defendant, of course, resists this. The parsing of phrases and words is a battlefield of split hairs. It's sometimes about defining just what the "meaning of 'is,' is." Silly as this sounds, it causes delay and can even derail a case. This back and forth before the court on successive court appointed dates can also burn up months of time (and money). The defendant will try to interpret the request in ways which will avoid releasing damning evidence.

In the author's experience, one of the ways in which he was serendipitously able to wheedle incriminating details from the corporate defendant was to use key words which the corporate algorithms granted evidential overlap, so that incriminating evidence was inadvertently released. Once this was done, the judge ruled it could not be taken back. In this particular case, this method was important as the plaintiff didn't know initially what exactly was causing the death of the cattle, so that a specific disclosure request could not be crafted. Our author had to search between the tea leaves for the specifics

to request for a sought answer. In the class action portion of the case, Bilott also had to continue sifting between the tea leaves for evidence of malice. Fortunately, the evidence of malice occurred in emails sent at a time before the recognition of emails as giving legal exposure and their contents was more carefully censored by corporations.

I didn't need to be a lawyer to find this strategic back and forth engrossing, as told in this author's account of events. Does it take a common layman very long to determine that it was wrong for a large corporation to poison the environment in order to continue a very profitable product line, and to conceal this for decades? Not really.

Does it take long for the plaintiffs to prove this in court?

Yes. About twenty years. (Even though public sentiment, as I've discussed, and the Constitution's Bill of Rights Article 6 demands a "speedy trial" (from which one would assume, "speed justice".) So much for *Law & Order*.

Fairly early into the adjudication the fight became personal, as you will see. And the story's armature rests very firmly on the feelings and actions of the various players (mostly plaintiffs) –so that this is not only a tale of lawyerly strategies to either escape justice or to reap a windfall. Rather this book is a gripping story of how these gigantic legal imbroglios entangle and keep justice from serving the lives of people, who you will come to know, who are just like ourselves, who used DuPont products and have a chemical called "C8" in their blood—just as we all do.

This is why they made a movie of it (*Dark Waters*), and why you probably threw out your Teflon frying pan.

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Carl Nelson's latest book of poetry titled, *Strays, Misfits, Renegades, and Maverick Poems (with additional Verses on Monetizations)*, has just been published. To have a look at this and more of his work please visit [Magic Bean Books](#).

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