

‘DONZIGER CASE MONITORING COMMITTEE’ LAUNCHES IN WAKE OF MAJOR IRREGULARITIES IN HUMAN RIGHTS LAWYER’S CASE

Prominent group will hold U.S. courts involved in the human rights lawyer’s case to the highest standards of due process, fair trial, and judicial ethics.

New York—August 17, 2020—The Donziger Case Monitoring Committee (DCMC) announced its launch today to ensure upcoming trials of American human rights lawyer Steven Donziger in U.S. Federal Courts are conducted in a way that upholds due process, judicial ethics, and the rule of law. The DCMC was created after a number of major judicial abnormalities and irregularities were carried out in cases against Donziger, resulting in the human rights lawyer’s unprecedented year-long house arrest at the behest of oil giant, Chevron.

The Donziger Case Monitoring Committee is comprised of seven of the country’s leading lawyers, legal scholars and judicial advocates, including:

- **Michael Tigar**, Professor Emeritus, Duke Law, fmr. chair of the ABA Section of Litigation
- **Nadine Strossen**, John Marshall Harlan II Professor of Law, Emerita at New York Law School, fmr. President of the ACLU
- **Jeanne Mirer**, President of the International Association of Democratic Lawyers
- **Stephen J. Rapp**, former US Ambassador-at-Large for Office of Global Criminal Justice, U.S Department of State
- **Simon Taylor**, Director and Co-Founder of Global Witness
- **Charles Rothwell Nesson**, the William F. Weld Professor of Law at Harvard Law School, founder of the Berkman Center for Internet & Society
- **Christopher “Kip” Hale**, Attorney specializing in atrocity crimes accountability, co-editor of the *International Due Process and Fair Trial Manual*

“Steven Donziger is facing a campaign of retaliation for his courageous work for victims of human rights abuse,” said Michael Tigar. “These actions have been designed to silence him, to deprive his clients of their rights, and to deter others. This is something we cannot allow if we are to maintain a free and independent judiciary. It’s against this backdrop that we formed this committee.”

“The campaign of judicial and corporate harassment being waged against Steven Donziger is chilling in scope and intensity,” said Jeanne Mirer. “We formed this committee out of serious, well-substantiated concern that Steven Donziger’s due process rights are being continually violated in the very courts that should be upholding them. We want all parties involved to know that from this moment forward, we will be watching.”

“Human rights depend on the rule of law, which in turn depends on zealous advocacy by lawyers and the rendering of impartial justice by judges,” said Nadine Strossen. “When judges instead punish a lawyer for zealously representing clients and advocating their causes, the damage to the rule of law has cascading adverse impacts on countless other lawyers, clients, and causes, with the greatest danger to the most marginalized.”

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“As an attorney working overseas on accountability for atrocity crimes, I never thought I would be needed to join a trial monitoring committee in the United States to bear witness to what appears to be serious violations of judicial fairness and ethics being levied by our own justice system on an American lawyer; a human rights defender in the purest sense,” said Kip Hale. “I am honored to play a role in ensuring that the highest standards of due process and fair trials are upheld in Mr. Donziger’s case going forward.”

“Steven Donziger has suffered years of misconduct by judges, prosecutors, special masters, and attorneys in litigation, all designed to silence, intimidate and discredit him,” said Charles Rothwell Nesson. “This monitoring committee will ensure all developments moving forward in an already highly unusual case are observed and reported and any acts of potential misconduct are brought to the attention of the appropriate authorities and agencies.”

Trial monitoring committees are often seen in high-profile cases around the world. However, they’re most often employed in developing countries with problematic judiciaries. Trial monitoring committees are exceedingly rare in the US, where they are formed in only the most extraordinary circumstances.

The DCMC was created out of a growing concern in America’s legal community concerning the specifics of this case, but also for the implications it holds for defenders of justice around the world and the vulnerable communities they represent.

The Committee is working against a worst-case scenario, one in which Donziger loses all his remaining legal efforts, giving the corporate world a successful template for crushing human rights opposition and stamping out efforts of victimized communities seeking access to legal remedy.

The fight to secure justice for Steven Donziger and the 30,000 Ecuadorans he represented in his landmark case against Chevron has gained significant momentum over the past months, including from high-profile international advocates:

- In April 2020, **29 Nobel Laureates—including 9 Nobel Peace Prize Laureates—issued a powerful Statement of Concern** regarding the treatment of Donziger by U.S. courts.
- In May of this year, a letter circulated by the **National Lawyers Guild** echoing the same concerns was **signed by more than 475 leading human rights** organizations and advocates.
- The **Human Rights Subcommittee of the European Parliament** has held hearings and sent letters of concern, and lawyers and bar associations around the world are speaking out.

The Committee admonishes those officers of the court involved in the Donziger case to uphold their sworn ethical and constitutional oaths. In that same regard, the Committee encourages postponement or cancelation of any in-person activities given the inherently unsafe situation presented by the current pandemic for all parties and officers of the court involved.

Moving forward, the Donziger Case will be closely scrutinized by the DCMC and its support team. Publications, reports, and announcements will follow.

****Background on the Steven Donziger Case****

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For two decades, Steven Donziger represented indigenous and local Ecuadorian communities damaged by oil pollution created by Texaco, later acquired by Chevron. In 2011, Donziger won a historic environmental judgment of over \$9.5 billion in Ecuadorian courts. After the victory, the ruling was affirmed in venue after venue, including the high courts of both Canada and Ecuador.

Since the trial court ruling, Chevron has systematically worked to (in their words) “demonize Donziger” and defame his credibility as they challenge the ruling. The company orchestrated numerous personal attacks on Donziger through company-funded websites, conservative media, and other outlets in an effort to drive Donziger off the case and to try to taint the judgment with allegations of fraud.

As part of its demonization campaign, Chevron filed a civil RICO case targeting Donziger with a potential \$60 billion personal liability. Chevron steered the case to Judge Kaplan, a former tobacco industry lawyer, who denied Donziger a jury trial and otherwise restricted his ability to mount a meaningful defense.

Central to Chevron’s RICO case was its claim that Donziger bribed an Ecuadorian judge to let his team “ghostwrite” the judgment. Chevron’s star witness was Alberto Guerra, an admittedly corrupt former judge who has been paid millions of dollars by the company and is still on their payroll. Guerra subsequently admitted to lying on the stand during the RICO trial about the allegations which the district court relied upon.

After the Canadian Supreme Court ruled in favor of Donziger’s clients, in 2015 Judge Kaplan filed unprecedented criminal contempt charges against the lawyer after he appealed post-judgment discovery orders to turn over his attorney-client privileged work contained on his personal devices to Chevron.

The U.S. Attorney’s Office refused to pursue Judge Kaplan’s charges. As a result, Judge Kaplan invoked Fed. R. Crim. P. 42(a)(2) to appoint a private law firm, Seward & Kissel LLP—a law firm is known for its ties to the oil and gas industry—to prosecute the charges instead. The firm immediately pushed for Donziger’s pre-trial detention.

“In other words, without the exercise of due care, one judge could be playing the role of prosecutor, judge and jury in the same case — something that would put due process of law at grave risk,” said retired Federal Judges Mark Bennett and Nancy Gertner.

Seven months into the criminal case, and after months of denial, the law firm disclosed that Chevron was one of the firm’s clients. In the meantime, Donziger is now in his 13th month of home detention on charges treated as a misdemeanor where the maximum sentence ever imposed in New York is three months of home confinement.

The lawyers of Seward & Kissel have not recused themselves and the judge has not taken action to appoint a neutral prosecutor.

Donziger is insisting the federal appellate court in New York dismiss the case because of Glavin’s prosecutorial misconduct.

“The fact Donziger is being prosecuted by a Chevron-connected law firm in the name of the government is a brazen violation of the law and evidence of Seward & Kissel’s own misconduct,” said Ron Kuby, who represents Donziger in that petition.

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Judge Kaplan has refused to vacate his decision and instead has doubled down by trying to criminalize the advocacy of a respected human rights lawyer. The most recent evidence being the move to disbar Donziger in New York, without a hearing, overturning a decision made by a neutral adjudicator who has already vindicated Donziger after an exhaustive investigation including testimony from 15 prominent lawyers, academics and other witnesses.

In response to this shocking and unprecedented disbarment, Donzigers attorney Marty Garbus said, "This is a horrendous decision that represents an attack on the rule of law given that Judge Kaplan's findings have been rejected by 29 appellate judges, including the highest courts in Ecuador and the Canada Supreme Court. You don't disbar a courageous human rights lawyer based on a judge's opinion in a trial held without a jury where the main witness admitted he lied and where the findings have been rejected by courts around the world."

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