

Committee Formed to Monitor Steven Donziger's Contempt Trial for Due Process Violations

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By Jason Grant | August 19, 2020



Steven Donziger appears at a press conference last March in Quito, Ecuador. Photo: Getty Images

As controversial lawyer Steven Donziger faces a Sept. 9 bench trial on contempt-of-court charges that could land him in prison, a new—and rarely seen inside the United States—trial monitoring committee has been created to, in its words, “ensure” that upcoming federal trials of Donziger “are conducted in a way that upholds due process, judicial ethics, and the rule of law.”

“The campaign of judicial and corporate harassment being waged against Steven Donziger is chilling in scope and intensity,” said Jeanne Mirer, a member of the newly formed committee and president of the International Association of Democratic Lawyers.

“We want all parties involved to know that from this moment forward, we will be watching,” Mirer added in a statement.

“We formed this committee out of serious, well-substantiated concern that Steven Donziger’s due process rights are being continually violated in the very [U.S.] courts that should be upholding them,” she also said.

The committee, a collection of seven well-regarded lawyers and advocates, includes Michael Tigar, chair of the American Bar Association’s Section of Litigation and a Duke University law professor; Nadine Strossen, a former president of the American Civil Liberties Union and a New York Law School professor; and Stephen Rapp, a former U.S. Department of State ambassador-at-large for the Office of Global Criminal Justice.

In a news release this week announcing its formation, the committee said that “trial monitoring committees are often seen in high-profile cases around the world, but they’re most often employed in developing countries with problematic judiciaries.”

“Trial monitoring committees are exceedingly rare in the United States, only formed in the most extraordinary circumstances,” said the committee.

Donziger, a Harvard-educated environmental and human rights lawyer, is known widely for his longstanding, bitter legal battles with Chevron, the multinational energy corporation. After nearly a decade of environmental-damage litigation launched against Chevron on behalf of 30,000 Indigenous Ecuadorians living in the Amazon jungle, Donziger won an \$8.6 billion judgment in Ecuador’s high court in 2011. But no part of the judgment has been paid to date by Chevron. And in 2013 the energy company leveled a Racketeer Influenced and Corrupt Organizations Act lawsuit against Donziger that resulted in rulings by U.S. District Judge Lewis Kaplan of the Southern District of New York both that Donziger had committed fraud in Ecuador to secure the judgment and that he was in criminal contempt for not turning over certain evidence during a RICO-focused bench trial, such as cellphone and computer information.

Donziger has been held under house arrest in Manhattan by Kaplan on the contempt charges since August 2019. And next month he faces a misdemeanor criminal bench trial in Manhattan before Southern District federal Judge Loretta Preska that could bring up to six months in prison. Donziger was [disbarred last week](#) by the state’s Appellate Division, First Department court based on Kaplan’s findings that in Ecuador Donziger had corrupted a court expert and ghostwritten his case report, as well as coerced and [bribed](#) Ecuadorian judges, among other wrongs.

But Donziger and others advocating for him, including several attorneys working pro bono, argue that he appears to be the victim of Chevron going to great lengths to “demonize” him and use the U.S. judicial system to destroy his career and life. They say the corporation’s actions against Donziger also serve as a stark warning to other environmental and human rights lawyers about the perils of suing companies like Chevron for abuses.

Those speaking out on behalf of Donziger—including himself, an attorney known to mount vigorous campaigns against Chevron in the media—point to what they say are due-process “irregularities,” if not worse, in the RICO and now criminal contempt cases against him. For example, they question why, in the RICO case, there was a bench trial of Donziger and not a jury trial. And they say that keeping a human rights lawyer under house arrest for more than a year, when he claimed his cellphone and other evidence was attorney-client privileged, seems unwarranted.

Moreover, they point out that the Manhattan U.S. Attorney’s Office declined to prosecute Donziger for contempt of court, but that Kaplan went ahead anyway, appointing an outside law firm, Seward & Kissel, to serve as prosecutors. In addition, they say Seward & Kissel has previously represented Chevron and thus is conflicted. They also question why Preska is holding a separate bench trial, rather than a jury trial, when Donziger now faces up to six months in prison.

Scott Badenoch, an advocacy board member at the ABA’s Center for Human Rights, and the organizer of the case monitoring committee, said in a phone interview Wednesday of the Manhattan federal court’s treatment of Donziger, “It seems like Steven Donziger has never had a fair trial in this RICO and contempt case. He certainly has never seen a jury.”

“We believe in this country that criminality should be determined by a jury, not a bench trial,” he added. “And you couple that,” he said, “with the fact that it seems the U.S. court system is being co-opted by Chevron’s interest here in ensuring that international corporate liability for environmental destruction is no longer a thing.”

Chevron could not be reached for comment Wednesday.

Rita Glavin, a Seward & Kissel litigation partner at the forefront of the Kaplan-appointed prosecution of Donziger in the contempt case, could not be immediately reached.

Christopher “Kip” Hale, a committee member and an international criminal lawyer who focuses on accountability for genocide, war crimes and human rights violations, said in an interview Wednesday that he decided to join the committee after seeing Manhattan federal court treatment of Donziger that rivals or surpasses what he has encountered in overseas cases.

“The pretrial confinement of a human rights lawyer [Donziger], for contempt, that jumps off the page to me,” he said. “I can think of similar charges at an international criminal court that were levied against Kenyan individuals for essentially interfering with the administration of those cases, and these were individuals that were later found to have committed crimes against humanity, and they were not held pretrial.”

He said of what he considers to be irregular treatment of Donziger, “It goes to the erosion of the U.S. judicial system and rule of law that is in many respects the gold standard in the world, being manipulated.”

Efforts last week to obtain comment from Kaplan, in regard to his findings of fraud committed by Donziger in the Ecuadorian environmental case and regarding his disbarment, were not successful.

Representatives of the U.S. District Court for the Southern District of New York said in an email Aug. 15, "Unfortunately we must deny your request pursuant to the court's policy that the court does not comment; the court record speaks for itself."

Reached late Wednesday on his cellphone, Donziger said he gave time and interviews to Badenoch as the trial monitoring committee was created, but that otherwise he had "little do with it."

"I am extremely heartened and honored by the fact that such a distinguished group of people has decided to take an interest in what I believe are unwarranted attacks on me by Chevron and two federal judges in New York," he said of the committee's formation.

"I think it is critically important that the legal profession as a whole join the world's human rights community in following developments [in my case] that I believe not only put me and my family in great jeopardy but also represent attacks on the very idea of corporate accountability in a democratic society," he said.

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