

HOW THE ENVIRONMENTAL LAWYER WHO WON A MASSIVE JUDGMENT AGAINST CHEVRON LOST EVERYTHING

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Steven Donziger sits for a portrait at his home in Manhattan, N.Y., where he is on house arrest. Photo: Annie Tritt for The Intercept

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Last August, during the second-hottest year on record, while the fires in the Amazon rainforest were raging, the ice sheet in Greenland was melting, and Greta Thunberg was being greeted by adoring crowds across the U.S., something else happened that was of great relevance to the climate movement: An attorney who has been battling Chevron for more than a decade over environmental devastation in South America was put on house arrest.

Few news outlets covered the detention of Steven Donziger, who won a multibillion-dollar judgment in Ecuador against Chevron over the massive contamination in the Lago Agrio region and has been fighting on behalf of Indigenous people and farmers there for more than 25 years. So on August 6, Donziger left a Lower Manhattan courthouse unnoticed and boarded the 1 train home with an electronic monitoring device newly affixed to his ankle.

Save for the occasional meeting with his lawyer or other court-sanctioned appointment, he has remained there ever since.

“I’m like a corporate political prisoner,” Donziger told me as we sat in his living room recently. The attorney, who is 6-foot-3, graying, and often used to be mistaken for New York Mayor Bill de Blasio when he was able to walk the city streets, was surprisingly stoic and resigned about his predicament during my two visits to the apartment he shares with his wife and 13-year-old son. But on this particular Wednesday, as the winter sunlight in his living room was dimming and the charger for his spare ankle bracelet battery flashed on a nearby shelf, his optimism about his epic battle against one of the biggest oil companies in the world seemed to be flagging. “They are trying to totally destroy me.”

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Donziger is not exaggerating. As he was arguing the case against Chevron in Ecuador back in 2009, the company expressly said its long-term strategy was to [demonize him](#). And since then, Chevron has continued its all-out assault on Donziger in what’s become one of the most bitter and drawn-out cases in the history of environmental law. Chevron has hired private investigators to track Donziger, created a [publication](#) to smear him, and put together a legal team of hundreds of lawyers from [60 firms](#), who have successfully pursued an extraordinary campaign against him. As a result, Donziger has been disbarred and his bank accounts have been frozen. He now has a lien on his apartment, faces exorbitant fines, and has been prohibited from earning money. As of August, a court has [seized his passport](#) and put him on house arrest. Chevron, which has a market capitalization of \$228 billion, has the funds to continue targeting Donziger for as long as it chooses.

In an emailed statement, Chevron wrote that “any jurisdiction that observes the rule of law should find the fraudulent Ecuadorian judgment to be illegitimate and unenforceable.” The statement also said that “Chevron will continue to work to hold the perpetrators of this fraud accountable for their actions, including Steven Donziger, who has committed a litany of corrupt and illegal acts related to his Ecuadorian judicial fraud against Chevron.”

The developments that led to Donziger’s confinement were, like much of the [epic legal battle](#) he’s been engaged in for decades, highly unusual. The home confinement is his punishment for refusing a request to hand over his cellphone and computer, something that’s been asked of few other attorneys. To Donziger, who had already endured 19 days of depositions and given Chevron large portions of his case file, the request was beyond the pale, and he appealed it on the grounds that it would require him to violate his commitments to his clients. Still, Donziger said he’d turn over the devices if he lost the appeal. But even though the underlying case was civil, the federal court judge who has presided over the litigation between Chevron and Donziger since 2011, Lewis A. Kaplan, drafted [criminal contempt charges](#) against him.

In another legal peculiarity, in July, Kaplan appointed a private law firm to prosecute Donziger, after the Southern District of New York declined to do so – a move that is virtually **unprecedented**. And, as Donziger’s lawyer has **pointed out**, the firm Kaplan chose, Seward & Kissel, likely has ties to Chevron.

Making the case even more extraordinary, Kaplan bypassed the standard random assignment process and handpicked someone he knew well, U.S. District Judge Loretta Preska, to oversee the case being prosecuted by the firm he chose. It was Preska who sentenced Donziger to home detention and ordered the seizure of his passport, even though Donziger had appeared in court on hundreds of previous occasions.



Ecuadorian local Manuel Silva shows evidence of an oil spill in Lago Agrio on Dec. 14, 1998. Indigenous Ecuadoreans sued Texaco, accusing the company of turning the region’s rainforests into a “toxic waste dump” by drilling for oil. Photo: Dolores Ochoa/AP

A Tainted Witness

Despite Donziger’s current predicament, the case against Chevron in Ecuador was a spectacular victory. The **twisted legal saga** began in 1993, when Donziger and other attorneys filed a class-action suit in New York against Texaco on behalf of more than 30,000 farmers and Indigenous people in the Amazon over **massive contamination** from the company’s oil drilling there. Chevron, which bought Texaco in 2001, has insisted that Texaco cleaned up the area where it operated and that its former partner, the national oil company of Ecuador, was responsible for any remaining pollution.

At Chevron's request, the legal proceedings over the "[Amazon Chernobyl](#)" were moved to Ecuador, where the courts were "impartial and fair," as the oil company's attorneys wrote in a [filing](#) at the time. The move to Ecuador, where the legal system does not involve juries, may have also appealed because it spared Chevron a jury trial. In any case, an Ecuadorian court ruled against Chevron in 2011 and ordered the company to pay \$18 billion in compensation, an amount that was later reduced to \$9.5 billion. After years of struggling with the health and environmental consequences of oil extraction, the impoverished Amazonian plaintiffs had won a historic judgment from one of the biggest corporations in the world.

But Donziger and his clients never had a moment to savor their David-over-Goliath victory. Even though the ruling was subsequently upheld by the Ecuadorian Supreme Court, Chevron immediately made clear that it would not be paying the judgment. Instead, Chevron moved its assets out of the country, making it impossible for the Ecuadorians to collect.

That year, Chevron filed a Racketeer Influenced and Corrupt Organizations, or RICO, suit against Donziger in New York City. Although the suit originally sought roughly \$60 billion in damages, and civil trials involving monetary claims of more than \$20 entitle a defendant to a jury, Chevron dropped the monetary claims two weeks before the trial.

In its statement, Chevron wrote that the company "focused the RICO case on obtaining injunctive relief against the furtherance of Donziger's extortionate scheme against the company."

Instead, that case was decided solely by Kaplan, who ruled in 2014 that the Ecuadorian judgment against Chevron was invalid because it was obtained through "[egregious fraud](#)" and that Donziger was guilty of racketeering, extortion, wire fraud, money laundering, obstruction of justice, and witness tampering. The decision hinged on the testimony of an Ecuadorian judge named Alberto Guerra, who claimed that Donziger had bribed him during the original trial and that the decision against Chevron had been ghostwritten.

Guerra was a controversial witness. Chevron had prepped him on more than 50 occasions before his testimony, paid him [hundreds of thousands](#) of dollars, and arranged for the judge and his family members to move to the United States with a generous monthly stipend that was 20 times the salary he received in Ecuador. In 2015, when Guerra testified in an international arbitration proceeding, he [admitted that he had lied](#) and [changed his story](#) multiple times. According to Chevron, Guerra's inaccuracies didn't change the thrust of his testimony. For his part, Judge Kaplan wrote that his court "would have reached precisely the same result in this case even without the testimony of Alberto Guerra." In its statement, Chevron said that Guerra was relocated to the U.S. for his safety and noted that the court found that the company's contacts with the Ecuadorian judge were "proper and transparent."

Lawyers for Donziger said the changes in Guerra's testimony completely undermined his original bribery allegations, which Donziger has consistently denied. In any case, that

evidence emerged after the trial, and an appeals court declined to consider the new information and ruled against Donziger in 2016.

Had Donziger been criminally charged with bribery, a jury would have assessed Guerra's credibility. Instead, in the RICO case, which was civil, the decision about a key witness came down to one person – Kaplan – who chose to believe him. That choice has set the stage for the legal losses Donziger has suffered since, according to some close watchers of the Chevron case.

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“On the basis of Kaplan saying, ‘I believe this witness; I find Donziger guilty of the crime of bribery of the judge’ – on the basis of that, he's been destroyed. That is the pinnacle element of all of the other claims against him. And if you take that one out, the rest of them – they're just not there,” said Charles Nesson, an attorney and Harvard Law School professor. “He has effectively been convicted of bribery by the finding of a single judge in a case in which bribery wasn't even the charge,” Nesson said of Donziger. “I teach [evidence](#), that you have to prove what you assert. But the proof in this case is the thinnest.”

Nesson, who represented Daniel Ellsberg in the Pentagon Papers case and the plaintiffs in the suit of W. R. Grace featured in the book and film “[A Civil Action](#),” teaches Donziger's case in his “[Fair Trial](#)” course, using it as an example of a decidedly unfair trial. “Donziger epitomizes a person in asymmetric civil litigation who can now be denied a fair trial,” he explains to his students.

Nesson is one of [several](#) legal scholars who have opined that Kaplan has a soft spot for Chevron, which the judge once described as “a company of considerable importance to our economy that employs thousands all over the world, that supplies a group of commodities, gasoline, heating oil, other fuels, and lubricants on which every one of us depends every single day.”

In contrast, the judge has exhibited antipathy for Donziger, according to his former lawyer, John Keker, who saw the case as a “Dickensian farce,” in which “Chevron is using its limitless resources to crush defendants and win this case through might rather than merit.” Keker [withdrew](#) from the case in 2013 after [noting](#) that “Chevron will file any motion, however meritless, in the hope that the court will use it to hurt Donziger.”



Donziger displays the ankle monitor he is required to wear. Photo: Annie Tritt for The Intercept

Donziger's current prohibition from working, traveling, earning money, and leaving his home shows how successful Chevron's strategy has been. But even as his fate hangs in the balance, Donziger's case matters far beyond the life of this one lawyer.

"It should be nothing short of terrifying for any activist challenging corporate power and the oil industry in the U.S.," said Paul Paz y Miño, associate director of Amazon Watch, an organization devoted to the protection of the rainforest and Indigenous people in the Amazon basin. "They've made it clear there's no amount of money that's too much to spend on this case," he said of Chevron. "They will stop at nothing."



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The Chevron case may be most devastating for the plaintiffs in the Amazon, who never received their judgment despite being left with hundreds of unlined waste pits and contaminated water and soil from millions of gallons of spilled crude oil and billions of gallons of dumped toxic waste. Everything that's happened to Donziger "is small potatoes compared to the fact that Kaplan has rendered the damage the company actually did as totally irrelevant," said Nesson.

But the latest twists and turns in the Chevron case may also be particularly bad news for climate activists. A mere [20 companies](#) are responsible for a third of the greenhouse gases emitted in the modern era; Chevron ranks second only to [Saudi Aramco](#) among them. And it's increasingly clear that addressing the climate crisis will require confronting these mega-emitters, whose resources for litigation dwarf that of any individual.

Making Chevron and other companies clean up the messes created by their oil production will speed the transition away from fossil fuels, according to Rex Weyler, an environmental advocate who co-founded Greenpeace International and directed the original Greenpeace Foundation. "If hydrocarbon companies are forced to pay for the true costs of their product, which include these environmental costs, it will make the alternative energy systems more competitive," said Weyler.

Accordingly, Weyler feels that the climate movement should focus on Chevron's case – and Donziger's legal battle. "One of the most effective things climate activists can do right now to change the system would be to not let Chevron get away with polluting in these countries, whether Ecuador, [Nigeria](#), or anywhere" said Weyler. While some human rights and environmental advocates have tried to [call attention](#) to Donziger's case and Chevron's [bullying](#) of him, Weyler felt that the outcry should be louder.

After seeing what's happened to Donziger, and some of his former allies, whom Chevron has gone after as "[nonparty co-conspirators](#)," people may be afraid to stand up to the company. Donziger himself is living in fear. There is no set punishment when a judge files for criminal contempt of court, so he spends his days worrying over what will happen to him next. "It's scary," he told me. "I don't know what they're thinking."

But Weyler pointed out that Chevron, which could still be forced to pay the multibillion-dollar judgment by courts in another country, is also afraid. "They are afraid of the precedent. Not only is Chevron afraid, the entire extraction industry is afraid of the precedent," said Weyler. "They do not want to be held responsible for the pollution of their industry."