



global witness

**1 Mark Square
London EC2A 4EG**

Ernest J Collazo, Esq.
Charlotte Moses Fischman, Esq.
New York Courts - Appellate Division
Attorney Grievance Committee
61 Broadway
New York, NY 10006

30th July 2018

Dear Mr Collazo and Ms Fischman,

Re: Serious Concern about abuse of process with respect to NY Attorney and human rights defender, Steven Donziger, who had his licence to practice law suspended without a hearing or even an interview based on highly disputed civil court findings that have been contradicted by the findings of multiple courts in another jurisdiction:

- **Respectfully urge the Grievance Committee to provide a public explanation, with evidence, for this decision to provide Mr Donziger with a hearing. And further, to immediately cancel this decision and provide Mr Donziger with the opportunity to present evidence to defend his reputation which has been severely damaged by an abusive legal attack by Chevron and its attorneys at the law firm Gibson Dunn & Crutcher.**
- **Urge Grievance Committee, instead of targeting the victim of this abuse of process, without fear or favour, to investigate potential abuse of practice with respect to the conduct of the staff attorneys who made this decision as well as the court's abuse of process in the RICO case, Chevron v Donziger.**

Global Witness is a UK and US based non-governmental organisation that campaigns to end environmental and human rights abuses driven by the exploitation of natural resources and corruption in the global political and economic system. I am a director and co-founder of Global Witness and I have spent much of the past two decades investigating the corrupt activities of the oil, gas and mining sectors, and seeking to build an international movement for transparency and accountability for the extractives sector - an industrial sector that the OECD has described as the most corrupt on the planet.¹

¹ See OECD: *"Scale of international bribery laid bare by new OECD report,"* 2nd December 2014, here: <http://www.oecd.org/newsroom/scale-of-international-bribery-laid-bare-by-new-oecd-report.htm>

The OECD analysed 400 cases of international bribery, finding that in the majority of the cases, bribery took place with the knowledge of senior management. From this study, with 19% of the cases, the extractives Sector was determined to be the worst offender. [On a personal note, following more than two decades investigating corruption across the extractives sector, I would strongly agree with this finding - not only that, I would put the

As you will note from the bold text above, we are concerned about the treatment by your Committee of NY lawyer Steven Donziger. Such are our concerns that we are intending to publish a report about this issue and how it appears to be a travesty of justice. We will take into account your responses to this letter.

It has come to our attention that your committee has determined, in a process apparently led by Staff Attorneys Jorge Dopico and Naomi Goldstein, that Mr Donziger should have his law licence suspended after a determination that he is an “immediate threat to the public order” for his work on winning a judgment in Ecuador against Chevron. This has apparently occurred without the provision of any opportunity for Mr Donziger to be heard at a hearing. If this decision is allowed to stand, it will surely be a gross miscarriage of justice, leaving Mr Donziger tainted by accusations that do not stack up to analysis. As an external observer, and based on what we have seen in the public domain, and in the absence of a better explanation, we would suggest it could also look like your committee has bowed to the corporate bullying of Chevron which, as I reflect further down, would appear to have no intention of cleaning up the environmental mess left by Texaco in Ecuador’s Amazon - their culpability for which, having now been determined by three separate appellate courts in Ecuador constituting 17 judges in total, most recently by the Ecuador’s Constitutional Court.

I should also emphasise, that such an outcome would represent a serious international “wound” to the excellent and world-wide reputation of New York as the jurisdiction of credibility in the global fight against corruption. We thus urge you, as a matter of priority, to reconsider this decision and to immediately provide Mr Donziger with a hearing - which, we believe, if it is to have any credibility, should be held in public.

We have noted the conduct of the RICO case, that was mounted by Chevron, through its lawyers at Gibson Dunn & Crutcher, against Mr Donziger and his Ecuadorian clients, and the conduct of this case gives us serious reasons for the utmost concern. Such is our concern, that from the evidence we are aware of, this case would appear to be a travesty of justice. Here are some of our concerns:

- Judge Kaplan, whilst conducting the civil RICO case, denied the defendants the opportunity to enter any evidence of pollution caused by the operations of Texaco (Chevron) in Ecuador. This was the basis for their claim against Chevron, and their subsequent legal victory at trial in Ecuador. As such, this evidence - which appears to have included 105 technical evidentiary reports and more than 64,000 chemical sampling results -- is central to support their position.
- Judge Kaplan’s conduct in the case, was such that it raised serious concerns about whether he may have been biased, and as such, whether the case should have been transferred to another judge. See paragraph 12, pages 5 & 6 from the Declaration of lawyer, Deepak Gupta, here: <http://stevendonziger.com/wp-content/uploads/2018/02/20180216->

oil industry, from amongst the extractives as the worst offender].

[Opposition-to-Motion-Decls-All.pdf](#) We understand that it is not only Attorney Gupta who has expressed these concerns – and yet officially, in response to these concerns, there is only deafening silence.

- The “evidence” against Mr Donziger and his fellow defendants in the RICO case does not stand up to any credible analysis - we have, amongst others, the following major concerns:
 - Evidence that the defendants in the RICO case bribed the judge at the Ecuadorian court of first instance depended on the testimony of a disgraced corrupt former Ecuadorian judge.
 - This judge was on the Chevron pay roll, and has been paid substantially more than a million dollars. He has also received additional benefits, including housing, assistance with the movement of his entire family seamlessly through the US immigration system, etc. I cannot think of a better example of a major conflict of interest – a situation where one might presume that any credible assessment by a neutral judge, would surely have resulted in the conclusion that the credibility of this witness would be so tainted as to require dismissal. Our understanding is that Chevron continues to pay this witness even though the trial ended in 2013. Why?
 - How was such a “witness” ever allowed to testify about a matter of such importance in the first place?
 - What does this say about the conduct of the court, and we would suggest, the conduct of the Chevron legal team and Chevron themselves, who we presume must understand and be versed in the basic principles of conflict of interest? What does it also say about the grievance committee attorneys, that they deny Mr. Donziger a hearing where he would have the opportunity to present evidence along these lines?
 - We understand that the Gibson Dunn & Crutcher lawyers coached this Chevron “witness” for 53 days. Why was that necessary? Did the witness have to learn his “facts”, so he could get his story straight?
 - It has since transpired that this same “witness” – upon whose testimony the civil RICO case pretty much hangs, in related proceedings, prior to the appeal (evidence, which by the way, the appeal court did not hear) stated that he had lied on the stand during the RICO hearing. The Kaplan verdict, must thus, by any credible analysis, surely be highly questionable, if not dead in the water.

I am sure you will agree, that when these factors into account, the only credible way forward is to provide Mr Donziger with a public hearing. To deny this, under these circumstances, and instead to impose automatic discipline, would seriously damage the international standing and reputation of the New York State judicial system – and further, given the context of a worldwide escalation of attacks against human rights defenders, and suppression of freedom of speech, this runs the risk that New York State will have stooped to the kind of behaviour we have spent the last 2+ decades documenting in a myriad “banana republics” around the world.

For the avoidance of doubt, we have serious concerns about many other elements of the conduct of the RICO case. But in the interest of brevity, I only

dwelling now on the above points. I would add that the above concerns alone should be more than sufficient to require a credible independent analysis of the conduct of this case. The analysis is not for us to conduct, but it is clear that it is needed. In the meantime, in the absence of such an analysis, in which the evidence and findings are held in public, it is impossible to see the Kaplan judgement as anything other than flawed and as completely baseless as the reason to impose attorney discipline. As such it should fool nobody – and especially it should not serve to “legitimise” what looks like a vindictive effort by Chevron and Judge Kaplan to shut down Mr Donziger’s courageous work to secure justice for the victims of massive pollution caused by the activities Texaco (Chevron) in extracting oil in Ecuador.

Given the above:

- Please explain how the decision to remove Mr Donziger’s licence came about? Did the attorney grievance committee have contact with any person or agent of Chevron, its law firm Gibson Dunn & Crutcher, or Judge Kaplan or any of his clerks or associates?
- Please also explain what you now intend to do about this situation, given that we now assume you are fully aware that there are credible questions as to the integrity of the RICO case – which, in the absence of a better explanation, given the evidence in the public domain, can only be considered to have falsely maligned the integrity of Mr Donziger as an attorney and human rights defender, and the legitimacy of the claims of his clients.
- Why was Mr Donziger designated an “immediate threat to the public order”? What does that mean? Are we now to assume he should be considered the equivalent of a terrorist? What is the basis for this? If I did not think this was so serious, I would consider this to be some kind of bad joke in poor taste.

In conclusion, I am sure if you spend some time considering the evidence and the points I have raised here, you will appreciate that this decision to deny Mr Donziger a hearing, is not only a global embarrassment for the New York State judiciary, but that it is also frankly untenable. Speaking personally, I am shocked to see that your Grievance Committee has apparently chosen to persecute a lawyer going about his work, representing his clients who have been subjected to a terrible wrong, not to mention their ignoring of the asymmetry of power and wealth exercised by a global corporation that is unwilling to compensate them for the wrongs perpetrated by Texaco (which Chevron acquired and which has been determined to be liable by three courts in Ecuador – a jurisdiction where Chevron chose to be heard), and which has declared it will “fight you [the victims] until hell freezes over, and then we will fight you [the victims] on the ice...”.

Meanwhile, in stark contrast, I am shocked by the deafening silence that has emanated from your same Committee with respect to a number of NY-based lawyers, who we exposed in a 2016 investigation, the purpose of which was to demonstrate the methodology by which US based lawyers launder corrupt PEP’s ill-gotten gains: Please see these links:

- <https://www.globalwitness.org/shadyinc/>
- <https://www.globalwitness.org/en-gb/reports/undercover-new-york-full-length-videos/>

I look forward to your response at your earliest convenience – we will take into account your responses to the points we raise in this letter in any publication we produce.

Please acknowledge receipt of this letter – please respond to:
staylor@globalwitness.org
(Tel: +44 7957 142121)

Many thanks for your consideration,

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Simon Taylor', written in a cursive style.

Simon Taylor
Director
Global Witness

www.globalwitness.org

Please note, such is the extent of our concern with these matters, that I am forwarding a copy of this letter to the Office of New York State Attorney General, with a request that that office conducts an investigation.