

Steven Donziger vs Chevron: A battle between David and Goliath against human rights violations and environmental degradation

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On some occasions, corporations irresponsibly decide to use their unlimited resources and the power that they generate to distort justice targeting individuals that try to counter their unethical or illegal conducts such as whistleblowers, leakers, human rights activists, and even lawyers. The case of the U.S. environmental human rights lawyer Steven Donziger, which has been described as the first corporate prosecution in U.S. history, is an example of an ongoing pattern of corporations using the legal systems of our democracies to intimidate advocacy organizations and activists. Within such a grim scenario, Steven Donziger's case is becoming emblematic of how unchecked corporate power may distort justice and strike at the heart of the best part of our democratic society.

When we look at the current societal discourse regarding corporate authority and influence, and in particular in relation to what is commonly defined as the [digital revolution](#), many experts and scholars affirm that we are currently living in a new Gilded Age. The [Gilded Age](#) refers to a period of several decades in U.S. history toward the end of the 19th century, which was characterized, at the same time, by great economic growth and blatant political corruption.

During the Gilded Age, the concentration of power by many corporations was so high that their leaders, such as Cornelius Vanderbilt, J.D. Rockefeller, Andrew Carnegie and J.P. Morgan, became ultra-rich businessmen and known as “[robber barons](#)”, unscrupulous tycoons who made their fortunes by exploiting the poor working class.

Fast forward one century, despite the myriad changes in the economy and business environments, it seems that the problems and challenges we faced during the Gilded Age are still here. Concentration of power in corporations is still happening, and compared to a hundred years ago, its adverse effects on society are now felt on a global scale. When corporations become powerful enough, they hold the power to sway political agendas and influence government policy, often for their own benefit and to the detriment of the public. The relevance of such a problem emerges clearly where we take into consideration that, at the present time, many multinational corporations have acquired wealth that exceeds that of many countries. Just to make an example, it is possible to mention that in 2020 the U.S. company Walmart generated some 519 billion US dollars in revenues whereas the gross domestic product (GDP) of Poland amounted to around 594 billion US dollars. Such an issue is amplified where several corporations join together to safeguard their interests creating specific advocacy groups for such a purpose. In the article “[Corporate America and Mass Shootings: A Tale of Corporate Social Irresponsibility](#)” we discussed the adverse effects that the [National Rifle Association of America](#) (NRA), which is backed by the weapon industry, has exerted on American society.

As Sheldon Withehouse, a leading member of the Senate Judiciary Committee, eloquently explains in his book [“Captured,”](#) the “big, politically active corporations love having us sit on the couch watching ads paid for by their front groups [...] the tentacles of corporate political interference may coil around and through our democracy, at the end of the day the survival of our democratic experiment depends on the active participation of people.”

The situation becomes particularly serious where corporations irresponsibly decide to use their unlimited resources to distort justice targeting individuals that try to counter their unethical or illegal conducts such as whistleblowers, leakers, human rights activists, and even lawyers.

As Prof. Gilbert brilliantly explains in the article [“Silencing Human Rights and Environmental Defenders”](#), thanks to their immense wealth, and the power it generates, corporations may use litigation as a tool to attack the credibility of human rights and environmental defenders and [de facto silence them transforming their lives in a judicial ordeal.](#)

Such unethical actions also generate a deterrent effect in that they aim at discouraging other individuals from safeguarding society and interfering with corporate activities. Corporations abuse the legal system to “punish” individuals that have become persona non grata within the corporate world. This irrespective of what it could be the final outcome of the judicial proceeding. The aim here is not to win the court cases but to use the proceedings themselves to inflict an exemplary punishment on the individuals that are forced to participate in them to defend themselves from the instrumentally conceived charges.

Within such a grim scenario, the case of the U.S. environmental human rights lawyer Steven Donziger is becoming emblematic of how unchecked corporate power may distort justice and strike at the heart of the best part of our democratic society (i.e., a society inspired by the fundamental values of justice, fairness, and equality). A few weeks ago, Stephen Danziger was sentenced to six months in prison for contempt of court, which is a misdemeanor.

Misdemeanors are petty offenses characterized largely by speed, informality, and law enforcement discretion, which are administrated in ways that depart significantly from the standard due process model of adversarial adjudication. It is not surprising that the way in which misdemeanors are enforced has been depicted as the mechanism through which the criminal system exerts its widest and, in many ways, deepest forms of [social penetration and control](#).

What makes this story disturbing is that Stephen Donziger had to report to jail despite he had already served over 800 days of house arrest for a minor offense.

In order to understand the reasons behind such a blatantly harsh response of the legal system, which is absolutely astonishing, it is necessary to investigate how these events unfolded. It all began because, in 2011, Donziger famously won a landmark environmental case in Ecuador against the oil corporation Chevron for their role in poisoning an area of Ecuadorian indigenous land the size of Rhode Island. Chevron was ordered by an Ecuadorian court to [pay \\$9.5 billion in damages to people blighted by decades of polluted air and water](#).

Chevron refused to pay or clean up the land, instead, it claimed “shocking levels of misconduct” and fraud by Donziger and the Ecuadorian judiciary, and [launched a legal attack targeting Donziger](#) in the United States. During the relating proceedings, Donziger refused to turn over his computer and cell phone because it included personal data of activists, witnesses and victims that might have been retaliated against. For such a refusal, he was charged with six counts of criminal contempt of court. Although the federal prosecution office declined to bring those charges, the judge appointed a private law firm with ties to Chevron - Seward & Kissel LLP - to prosecute Donziger. Eventually, the U.S. district judge Loretta Preska ruled that Donziger was guilty of the above charges for refusing to hand over evidence in a complex legal wrangle that has pitted the lawyer directly against Chevron, and in a 241-page [judgment](#), the judge affirmed that Donziger had “repeatedly and willfully” defied court orders and that “at stake here is the fundamental principle that a party to a legal action must abide by court orders or risk criminal sanctions, no matter how fervently he believes in the righteousness of his cause.”

On the 17th of September 2021, the UN Working Group on Arbitrary Detention adopted [opinion no. 24/2021](#) in which the Working Group affirmed to be “appalled by uncontested allegations in this case. The charges against and detention of Mr. Donziger appears to be retaliation for his work as a legal representative of indigenous communities.” In the document is also stated that the deprivation of liberty of Steven Donziger is in contravention of several articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and as such it has to be considered as arbitrary.

Also on the 25th of October 2021, Amnesty International issued a [statement for “urgent action”](#) asking for the immediate and unconditional release of the lawyer.

Donziger has also received support from several politicians and lawyers. Congresswoman Rashida Tlaib, who has [investigated the illegal polluting activities of Chevron](#), affirmed that “the fight against corporate power and greed is one of the key environmental and economic justice challenges facing our planet.” She also asked “for Attorney General Garland to [investigate the unprecedented and unjust legal assault on \[...\] Steven Donziger](#) and to fight back against unchecked corporate power rigging our justice system.”

Also, 205 lawyers have filed a [formal complaint pursuant to the Judicial Conduct and Disability Act](#) for potential judicial misconduct in the cases of *In re Chevron*.

Notwithstanding such a growing and widespread support, Steven Donziger is still enduring such a prolonged legal ordeal inflicted through a court case that cannot even be defined as Kafkaesque in that, although it is characterized by nightmarish settings, differently from the Kafka's scenarios, here it makes perfect sense. It is the unethical response of a corporate giant, that aims at silencing the lawyer. As he has affirmed in the interview conducted by [Dr. Dawn Carpenter on her podcast](#) (at 13:03): “... it kills them when I do interviews, it kills them when I testify in court, it kills them when I speak to law students, or make speeches to the European Parliament as I did recently.” Also, the corporation’s objective is to punish the individual who dared oppose it and in such a way deter future lawyers from doing the same.

This case, which has been described as the [first corporate prosecution](#) in U.S. history, is another example of an ongoing pattern of [corporations using the legal systems of our democracies to intimidate advocacy organizations and activists](#).

The similarities of this case with *McDonald's Corporation v. Steel & Morris* [1997] where the U.S. fast-food giant [McDonald's tried to silence and punish two activists](#) - Helen Steel and David Morris – during what was labeled as the longest trial in British legal history teach us that the exploitation of our legal system by powerful corporations is clearly an unsolved issue, which is becoming even worse over time.

Our legal systems are still unprepared to face such a threat and to respond effectively to occurrences of conflict of interest and potential institutional corruption. As it has been clarified by the [UNODC Special Rapporteur on the Independence of Judges and Lawyers](#), Diego García-Sayán, corruption has direct damaging consequences in general on the functioning of state institutions, and in particular on the administration of justice. It decreases public trust in justice and weakens the capacity of judicial systems to guarantee the protection of human rights, affecting the tasks and duties of judges, prosecutors, lawyers, and other legal professionals. In particular, corruption undermines the core of the administration of justice, generating a substantial obstacle to the right to an impartial trial, and severely undermining the public trust in the judiciary.

We have not only to intervene immediately to protect Steven Donziger and what he represents but also to develop systems to prevent such abuses, punish the mastermind behind them, and discipline legal practitioners who unethically offer their advice acting as facilitators or enablers.

In cases like this prevention is pivotal. We do not have to forget that corporate main aim may not be to win the cases but to subject individuals to a legal ordeal, which has to serve as a deterrent for others. So, it becomes crucial to intervene before damage is done. As explained in [a letter written by six House Democrats](#) “the results of this case will have a lasting impact in the legal practice, suggesting that representation and advocacy can then impede one’s ability to exercise fundamental protections”

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