

Venezuelan press exposes judicial corruption in Peña Esclusa case

A series of articles entitled “The Truth about the Case of Venevisión versus Peña Esclusa,” appearing in *Diario de Caracas* beginning April 23, detailed the judicial atrocities committed by the 42nd Criminal Court of Caracas in its case against Venezuelan Labor Party Secretary General Alejandro Peña, indicted on April 22 on fabricated charges of incitement to commit a crime, incitement to loot, and incitement to spread hatred among Venezuelans. Relevant sections of that series follow.

Imprisoned without evidence

The Diario de Caracas front-page article on April 23, entitled “Without Evidence. . . . The Cisneros Organization Imprisons Alejandro Peña Esclusa”:

In a lengthy journalistic report, *El Diario de Caracas* publishes—starting today—the truth about the case of Venevisión versus Alejandro Peña Esclusa. The file on the case—received anonymously by RCTV—reveals that Court 42, under the charge of Judge Noel Vera Sandoval, lent itself to mounting a trial against freedom of expression.

In tomorrow’s edition, our readers will learn what led up to the issuing of the arrest warrant.

Extracts from court’s March 21 interrogation of Alejandro Peña, headlined “Say Whether You Believe in Class Struggle”:

Q: Say whether you believe in the division of society in right, center, or left.

A: No [I don’t].

Q: Say whether you believe in class struggle.

A: No, I don’t.

Q: Say whether you believe in harmony of interests.

A: Yes, I do.

Q: Say whether you think that reaction, subversion, and anarchy will help the country out of its current crisis.

A: No, they won’t.

Q: Tell us how the Venezuelan Labor Party has financed its campaigns.

A: Through contributions by members and supporters.

Q: Tell us if you knew that the Lyndon LaRouche cult conspired against democratic institutions.

A: As far as I know the economist Lyndon LaRouche doesn’t lead a cult but a political and philosophical movement in the United States, and he has run for President several times there, all of which goes against anyone’s opinion that

Mr. LaRouche would conspire against democratic institutions.

Q: Tell us whether you have conspired against democratic institutions, people, and organizations in Venezuela.

A: No [I haven’t].

Q: Tell us whether you know Marcel Granier, and if so, how and where did you meet him?

A: Yes, I’ve seen him at various social events.

Q: Tell us whether you know Mr. Eladio Lares [sic], and if so, how and where did you meet him?

A: Likewise, I do know him and we have been at social events, and I’ve also been interviewed by the TV channel Mr. Lares [sic] runs.

Q: Tell us whether you know Messrs. Eduardo Sapene, Peter Bottome, Josué Fernández, Ezequiel Jiménez and Diego Bautista Urbaneja, and if so, how and when did you meet them?

A: I have seen Peter Bottome, Eduardo Sapene and Josué Fernández, but not the other two persons, on account of interviews they have made of me both on Channel 2 and *Diario de Caracas*.

Q: Tell us whether you know Messrs. Gustavo Cisneros and Ricardo Cisneros, and if so, how and when did you meet them?

A: No, I don’t know them.

Q: What has been the reason for your campaign against the Cisneros Organization?

A: There has been no campaign against the Cisneros Organization, rather [it was] a defense of free speech, which in my opinion was denied when the book *Dope, Inc.* was banned; I have also attempted to defend the interests of the thousands of Banco Latino savings account holders who have allegedly been defrauded by the bank’s board of directors, which includes Mr. Ricardo Cisneros Rendiles, whose arrest has apparently been ordered in connection to the Banco Latino case.

Q: Tell us who finances this campaign.

A: All of our activities are financed by members and supporters of the Venezuelan Labor Party, through their financial contributions.

Q: Tell us whether anyone from Radio Caracas Radio, Radio Caracas TV, or *Diario de Caracas* has financed your campaign.

A: No.

Q: Tell us whether you know Messrs. Thor Halvorsen, Ramiro Helmeyer, and Hugo Chávez.

A: Yes, I've met Halvorsen and Hugo Chávez, and I've known Helmeyer from our youth.

Q: Do you know of any conspiracy against U.S. President Bill Clinton, with the purpose of overthrowing the government of that country?

A: I've read about the Whitewatergate case, which apparently aims to destabilize the Clinton government.

Q: Do you know of any person or group of persons who are conspiring against U.S. President Bill Clinton?

A: No.

Fabricating a trial

The editorial of Diario de Caracas, entitled "How to Fabricate a Trial Against Freedom of Expression":

Radio Caracas Television yesterday formally notified the Attorney General's office and government of the voluminous envelope that was anonymously left on the doorstep of that television network, containing File 2321-94, currently assigned to the 42nd Criminal Court, under the charge of Dr. Noel Vera Sandoval, and whose alternate judge is Guillermo Heredia.

It would have been difficult to believe the contents had it not been read from a journalistic standpoint. If one should ever need instruction on how to fabricate a legal proceeding and manipulate a judge, to open up a political trial and involve the communications media in it, this specimen could serve as the model.

The file begins with the complaint presented to that court by an executive of Venevisión, who accuses Venezuelan Labor Party Secretary General Alejandro Peña Esclusa—against whom an arrest warrant was sworn out yesterday—of instigating a popular uprising against companies of the Diego Cisneros Organization and of instigating a civil war, thanks to the transmission of his statements on the case of Banco Latino, by *Diario de Caracas*, Radio Caracas Radio, Radio Caracas Television, and other communications media.

To prove this wild accusation, the Venevisión executive and a group of DISIP [Venezuelan political police] officials submitted in court a series of documents which seem to show that various crimes were committed under the Organic Law to Safeguard the Public Patrimony, the Law to Protect the Privacy of Communications, and the Criminal Code, with the further aggravating factor that they seek to violate the constitutional guarantee of freedom of expression. Among other documents, there is a confidential report by the DISIP. However, the 42nd Court did nothing to investigate the evidence crime of illegal use of information nor the crime of trafficking in influence.

There also appear in the file several long telephone conversations (some very personal and all of them irrelevant) presumably taped by state agencies or by some private securi-

ty agency, which appear to enjoy the complicity of public officials, since the tape recordings could not have been made otherwise.

And nonetheless, the court again did nothing with respect to this evidence of a crime as defined by the Law of Protection of Privacy of Communications, and accepted the documents as evidence.

There appear many other things which prove nothing, the majority of them internal memoranda of Venevisión, apocryphal political documents and pamphlets of the Labor Party, which have nothing to do with the case.

The documents—both legal and illegal—serve as such poor evidence that the judge, in order to issue the arrest warrant, was obliged to rely exclusively on the statements of six Venevisión executives, the majority of whom are DISIP agents hired by the Diego Cisneros Organization.

A file was fabricated. A case was—illegally—fabricated, manipulating the law and making use of agencies and officials of the Executive and of the Judiciary, for the very specific purpose—and this is what we denounce in this editorial—of harassing *Diario de Caracas*, Radio Caracas Television, and Radio Caracas Radio.

We will not be silenced.

An attack on freedom of expression

From an interview with Diario de Caracas President Marcel Granier which was headlined "It Is the Most Serious Attack Against Freedom of Expression," and had the kicker "Marcel Granier states that Judge Heredia lied to the public":

Manuel Granier, president of *El Diario de Caracas*, stated that the ruling of alternate judge Guillermo Heredia Rodríguez, of Criminal Court 42, to open up the Peña Esclusa case in which other communications media are also mentioned, is "the most serious attack against freedom of expression there has been in Venezuela."

"It is a monstrous ruling; I think it is the most serious attack against freedom of expression in Venezuela for many years. Every day, people demand proof of corruption, the people are choked up, they are overwhelmed by the corruption that has been unleashed upon Venezuela in recent years, and the people demand proof. Well, today we have concrete proof of what could be a perversion of justice, the manipulation of justice, trying to intimidate the communications media so that they don't denounce what is going on in this country." Granier stated that "Judge Heredia has made an outrageous ruling in which—by the testimony of six executives of the Cisneros Organization, the majority of them DISIP agents paid by Cisneros, and without considering any proof, has issued an arrest warrant and, what is worse, which allows him to jail any executive officer or journalist of *Diario de Caracas* or Radio Caracas Television.

"The judge lied to the public. In statements made on television, he said that he had subpoenaed Radio Caracas Television. This is untrue; at no time did the judge subpoena

anyone from Radio Caracas Television, such that at no time was he able to verify if the charges of the DISIP agents and the other Cisneros executives, are true. This is monstrous, this has no precedent in the history of Venezuela and we are not only going to defend our journalists and all of our executives, but we are going to denounce this before the relevant bodies, both national and international.

"We have already gone to the Attorney General's office, asking them to name a special investigator and to designate prosecutors to review this file."

Diario de Caracas President Marcel Granier asserted: "I am sure that both the attorney general of the republic and the interior minister will order investigations that have been asked for, and I am sure that the Council on Judicial Conduct, when it looks at the ruling and the file, will realize how justice has been perverted in our country. We Venezuelans have the right to express our free opinion, and there is no Cisneros who will silence the opinion of the people."

Q: Do you believe that the judge's measures responds to some maneuvers on the part of other agencies?

A: I don't know, because one must always presume that there is good faith. The results that we see are monstrous; that they deprive a person of his freedom and of his right to have an opinion, by the mere fact that six officers of a business organization, the majority of them DISIP agents paid by Cisneros, say so, is outrageous. I don't believe the country can allow this to happen and we are certainly going to fight against this, not only here but abroad. It is a violation of elementary and fundamental rights, such as the right to freedom of thought, freedom of expression, freedom to travel in the country, freedom to have access to the media, freedom to hold an opinion. These are rights which cannot be violated.

Q: The judge insists that these rights have not been violated, that subpoenas are being issued solely for testimony from Venezuelan citizens who happen to be owners of media, and that as a judge he is merely investigating a case that has come before his court.

A: In the ruling that he himself issued, the only evidence he has taken into account are the statements of the six officials of the Cisneros Organization and, I repeat, the majority of them are DISIP agents paid by Cisneros. We have seen in the

past few years how the police were perverted, how they were used for the political and business interests of the [ousted President Carlos Andrés] Pérez coterie. I believe that a stop must be put to this; the country cannot continue to tolerate the use of state police agencies to accuse someone who thinks differently from those who want to take control of the country.

Q: Is it anticipated that some executives of IBC companies will go before the court, or do they await a subpoena?

A: The court has not subpoenaed anyone and when persons are subpoenaed, they will go and give testimony.

Q: One of the rulings made by the judge was to issue arrest warrants. What do you think of that?

A: It is evident that they seek to harass the communications media, terrorize the journalists, so that nobody will dare to say what is happening in this country. The administration of justice, the police, have been corrupted during the past few years. Now they want to silence that, silence the scandal of the Banco Latino, where billions of bolivars were stolen from all Venezuelans. They don't want justice to be done in that case. . . . They didn't expect that one day a decent government would be elected in this country and that the authorities would confront this kind of problem. I am sure that both the attorney general of the republic and the interior minister will order investigations that have been asked for, and I am sure that the Council on Judicial Conduct, when it looks at the ruling and the file, will realize how justice has been perverted in our country. We Venezuelans have the right to express our free opinion, and there is no Cisneros who will silence the opinion of the people.

Crimes have been committed

Interview with Diario de Caracas executive, headlined "Eduardo Sapene Handed Documents over to Attorney General's Office":

Yesterday Eduardo Sapene Granier gave Attorney General Rubén Darío Badell a letter in which he states: "We have anonymously received a bulky envelope at the News Desk of Radio Caracas Television, which was left at the doors of the station: Everything leads us to suppose it contains the court transcript of case 2321-94 currently being heard in the 42nd Criminal Court, whose permanent judge is Noel Vera Sandoval and whose acting judge is Guillermo Heredia.

". . . Among the transcripts allegedly belonging to this case before the 42nd Criminal Court, there appear documents marked as confidential which ostensibly belong to files from the Intelligence and Enforcement Services Division (DISIP), a branch of the Interior Ministry. On the other hand, according to these same documents, such officials and private parties as purportedly gave testimony in this case were not required by the court to swear under oath as to the content of their statements, nor was proper authority obtained to take the depositions.

"In view of these circumstances the court above should have acted without delay, according to Article 74 of the

Criminal Procedural Code, to bring charges of *illegal use of information*, as mandated by Article 63 of the Organic Law of Public Property, as well as the crime of *influence peddling*, also described in that law. The first crime, to be punished by a sentence of two to six years prison, and the second, by five to ten.

"We would also add that both the permanent and substitute judges, as well as the clerk, bailiff, and administrative staff are all civil servants under obligation by Article 93, paragraph 2 of the Criminal Procedural Code to report 'whenever in the performance of their role they become aware of any act which is subject to public punishment.'

"Among the documents in the purported transcript are documents which seem to be a transcription of telephone conversations among various persons, which were apparently made by state agencies or by a 'para-police' organization which must have enjoyed the complicity of government officials, for we assume that it would have been technically impossible for private parties to do so. All of this defines the commission of crimes under the Privacy in Communications Act, which in Article 2 punishes with three to five years in prison anyone who arbitrarily, clandestinely, or fraudulently records or obtains recordings of communications among other persons."

Also subject to investigations is the possible commission of the crimes of *libel*, *perjury*, and *obstruction of justice* under articles 240, 241, 243, and 245 of the Criminal Code.

Ridiculous evidence

An article in the April 24 Diario de Caracas headlined "Evidence Accepted by 42nd Court Judge May Have Been Forged." The kicker read, "The 42nd Criminal Court which issued the arrest warrant against the secretary general of the Venezuelan Labor Party, allowed as evidence Venevisión memoranda, some of them from November 1994, which speak of bombs which were never found":

One of the first signs of guilt found by the 42nd Criminal Court against Alejandro Peña Esclusa which justified issuing an arrest warrant against him for "incitement to commit a crime and inducement to looting and destruction of property" was a statement by Commissioner Antonio José Díaz Rojas, who runs security for [Cisneros assets] Venevisión and CADA [supermarkets].

Díaz Rojas was suggested as a witness by Ricardo Koesling, who supposedly was counsel to plaintiff Pedro Durán, but since then has become a part of the trial.

Koesling uses not the name Díaz Rojas, but that of Efrén Díaz, a nonexistent witness, "to testify as to the threats received after Mr. Alejandro Peña Esclusa's public statements, when bombs were placed, facilities were overrun, and people were threatened in the Diego Cisneros Association."

The person showing up in court was Antonio José Díaz Rojas, who states that "given the unusual attacks made publicly, on TV screens and the printed press, by Mr. Alejandro Peña Esclusa, a number of phone calls, written threats sent

by fax, communications, etc. have occurred which upset the working environment for the employees of said company, I see this as a curtailment of the freedom to work.

"In my view there is a coincidence, a preestablished pattern, both in Alejandro Peña Esclusa's public attacks and in the psychological terror campaign which materialized through the threat of placing explosive devices as well as distributing pamphlets which attack the economic and working conditions of the company, and furthermore expose to public mockery those of us who carry out honorable, professional careers."

Also submitted was a series of memoranda, faxes, letters, all of which, as he stated, "threaten to set off bombs, withhold business from our companies, not buy the products advertised on TV, and take direct action against CADA throughout the country."

However, a cursory perusal of the materials submitted, which were also received anonymously by RCTV as part of the records currently before the 42nd Court, does not establish whether those threats indeed happened, and even less so whether bombs or other devices were placed at the headquarters of any Diego Cisneros Organization company.

Among the alleged proof of evidence, Díaz Rojas submits seven internal memoranda received by him from Braulio Gudino, chief of operations for Venevisión, all from November 1993, except for two dated November 1994 (sic!), where the alleged threats are reported. But every one of them concludes by stating that the "object in question"—bombs or explosive devices—was not found.

More alleged evidence is a hand-written, unsigned pamphlet, in black and white, against the "capitalist CAP-Cisneros-Tinoco, who starve the workers," distributed by a so-called "People's Struggle Committee," as well as other pamphlets in the same manner, with no signature or date, supposedly issued by the Red Flag Movement and one Committee to Recover National Dignity.

Also, the court attempts to establish a link between these alleged threats, which it calls "acts of terrorism," and Alejandro Peña Esclusa and Radio Caracas Television staff. A sampling of this kind of (inadmissible) evidence is published on this page.

There must be some flaw in the system

The Diario de Caracas April 24 editorial:

There are legal decisions which call attention because of their peculiarities, and which merit careful study. This is the case of the decision to issue an arrest warrant against citizen Alejandro Peña Esclusa, made by the temporary judge of the 42th criminal court, citizen Guillermo Heredia Rodríguez.

There are several elements which should be highlighted in this decision, and which make them worthy of appearing in an anthology of Venezuelan jurisprudence in a chapter entitled "The Worst Decisions Ever Made."

The arrest warrant is the result of the charges brought by citizen Pedro Durán Galvis, an employee of Venevisión,

PLV warns: Venezuela's future is at stake

The Venezuelan Labor Party issued the following statement on April 26, under the headline, "The Case Against Peña Esclusa Involves a Serious National Security Problem":

There are two levels to the legal suit which the Cisneros Group has filed against our secretary general, Alejandro Peña Esclusa.

On the first, and simplest level, this suit intends to destroy anyone who, like Peña Esclusa, attempts to question the Cisneros Group; particularly those who try to place some of the blame for the collapse of the Banco Latino on the Cisneros Group.

The second, and more important level, is clear for those who have read the open letter which Peña Esclusa addressed to President Rafael Caldera on Feb. 21 of this year.

In that letter, Peña warned that a pincers-type operation was under way against the Venezuelan government. Bankers, he indicated, "will do everything possible to collect the foreign debt by trying to prevent the government from altering payment conditions or from leaving the International Monetary Fund's framework. Hence the 'veiled threats' from the Americas Society; and the pressures from Standard and Poors rating agency on downgrading Venezuela's debt paper; and from this stem the fears expressed in the London *Independent's* editorial on Dec. 6, 1993, that your electoral victory could produce an 'ebb in the high tide of free trade.' The real fear is that you will decide to break with the false dilemma between

'neo-liberalism' and 'populism,' both dangerous options, and decide to implement a third 'Hamiltonian' or 'nationalist' alternative, coherent with the Social Doctrine of the Church."

"International bankers know very well," Peña added, "that you have the international prestige and the ability to launch a 'nationalist wave' on the model of Hamilton throughout Ibero-America. They know that you have the ability to rally all Ibero-American peoples in order to jointly change the onerous conditions for debt payment.

"Sooner or later, your government will be forced to take emergency measures and, in some way, leave the IMF's framework, not out of rebellion against the banks or for ideological reasons, but rather as an act of defense and security."

In the letter, Peña referenced the nationalist economic program which the Venezuelan Labor Party (PLV) has been proposing for several years as an alternative to populism and neo-liberalism.

It is the case that the financial and banking crisis created by Carlos Andrés Pérez and Pedro Tinoco with their evil "zero coupon" policy, and IMF ministers such as Miguelito Rodríguez, has exploded. It is also true that foreign bankers, friends of Gustavo Cisneros Rendiles, want the government only to have access to their neo-liberal recipes.

Thus the second objective of this case against Peña Esclusa—the second level—is to keep him out of politics and to discredit the PLV so that the government won't even have access to the PLV's proposals.

In our view, this legal suit has to be nullified immediately. Even more important, in fact indispensable, Peña Esclusa must be given access to a platform where he can explain in detail the PLV's economic program. Venezuela's future is at stake.

against Peña Esclusa for the presumed crime of inciting criminality and instigating looting and devastation. Citizen Durán Galvis is within his rights to make these charges; but it is the judge who knows the case who has to ensure that the body of evidence included in the charges and indications of guilt by the person committing the crime are based on fact.

Now, both the body of evidence and indications of guilt on which Judge Heredia based his decision stem from testimony of seven employees of companies owned by the Cisneros Organization, which is directly interested in establishing [Peña's] guilt. They say that a crime was committed and that Peña Esclusa is guilty without having provided a single piece of evidence worthy of the name. (Everything we say here will be proven as the details of the case are made public.)

Nonetheless, the judge found such biased testimony to

be perfectly acceptable. It's as if a judge had said to a citizen: "Some gentlemen stated here that statements that you made were the cause of the looting of their business. I won't deny that this is sufficient proof. You're under arrest."

If all judges followed Judge Heredia's example, the truth is that we could just do without them all and simply permit the same interested party to name the guilty one. The judge could stay around to transcribe what that party dictates to him.

It is worrisome that permanent judges can be so easily substituted by temporary ones who then make decisions of this kind. There must be some flaw in the norms which regulate the naming of temporary judges, if someone with the legal criteria used by Dr. Guillermo Heredia could be named to this position.