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## Documentation

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### Judge rips up the law in Peña arrest order

*The following is the complete text of an article that appeared in the daily Diario de Caracas on April 26, reprinting Judge Heredia's scandalous official decision. While the newspaper's Spanish text is littered with "sics," reflecting the crudeness and illiteracy of the original, we have cleaned it up a bit in the process of translation.*

*The document was run under the headline: "The decision of the 42nd Criminal Court, or how a judge views the 'overwhelming evidence' of a proceeding: Motivations of the Arrest Order Against Peña Esclusa."*

*Diario de Caracas provided the following laconic introduction: "The reasonings and testimony used by the temporary forty-second penal judge, Guillermo Heredia Rodríguez, to decree the arrest order against Alejandro Peña Esclusa, general secretary of the Venezuelan Labor Party, are contained in his ruling, which is reproduced textually and faithfully, as it was written by this tribunal of the Republic, including its lacunae and spelling mistakes, which are indicated with the well-known 'sic.' We leave it to the reader to judge the judicial quality of this document."*

Having seen and studied all and each of the records and other documents related to the present proceeding, this Court proceeds to rule on the contents of the same, not before making the following observations:

#### First

The present Summary Judgment was initiated on the date March 10, 1994, by virtue of the accusation which was filed by the citizen PEDRO FELIPE DURAN GALVIS, before the 36th District Attorney's Office of the Public Ministry of this Judicial District, subsequently ratified and enlarged upon before this Office, where among other things he expounded the following: ". . . In recent days as a result of an investigation which is being carried out in the Courts of the Republic, the company where I have worked for many years has suffered a number of attacks by the press, although they have no relationship with the matters under investigation; in our company Venevisión and in the CADA firms we have received numerous telephone calls where they have warned that they are going to blow us up, because there would be some 'BOMBS' planted in order to thus eliminate and disappear our workplace. . . ." Pages 2 and 3 of the present proceeding.

On pages 6 to 18 of the present proceeding, there follows

the expansion of the accusation filed by the citizen PEDRO FELIPE DURAN GALVIS before this court."

On pages 238, 239 and their reverse of the present proceeding, there follows the declaration given by citizen DIAZ ROJAS ANTONIO JOSE, before this court, where among other things he stated the following: "I wish to make it known that because of the public appearances of Mr. ALEJANDRO PENA ESCLUSA, who functions as the General Secretary of the Venezuelan Labor Party, a series of deeds and events have been caused which have come to my attention, by virtue of the fact that the Departments of Security of the Organization, as well as those of Venevisión and CADA, report to my office. Given the unusual attacks which Mr. ALEJANDRO PENA ESCLUSA has presented before the public by means of television and the written press, there have coincidentally occurred a series of telephone calls, written threats via Fax, through ads, and so forth, which have disturbed the working tranquility of those of us who operate as employees of the abovementioned company. I consider that this damages our freedom to work because, independent of professional activity, the personnel are living under psychological pressure, at risk of the latent possibility that some of these threats could turn into reality. . . . The campaign of psychological terror carried out through the threat of placing explosive devices, as well as the distribution of leaflets attacking the economic and labor activity of the company, and even the exposure to public derision of those of us who conduct dignified professional activity, coincide and seem to follow a pre-established pattern with the public statements of Alejandro Peña Esclusa."

On pages 267 and 268 of the present proceeding, there follows the statement of citizen CARLOS ANEZ, before this court, in which having been duly sworn, he stated the following, among other things: "As Security Manager of CADA, food distributor, I present myself before this office to issue a statement on the televised and written statements of Mr. ASLEJANDRO [sic] PENA ESCLUSA against the Cisneros Organization, and this has contributed negatively toward the company inasmuch as the workers at the company feel the instability because they see this negative publicity toward them, since it is their place of employment . . . at the same time, in the area of security concretely there have been bomb threats in the supermarkets, threats of looting, where the statements of Mr. PENA ESCLUSA are mentioned, I have to take preventive measures in relation to these threats. . . ."

On pages 298 to 309 of the present proceeding, there follows the affidavit made by citizen GOMEZ GODOY LUIS EMILIO, before this court, where having been duly sworn he states the following among other things: "At the end of the month of January of this year, at the beginning of the month of February, the citizen ALEJANDRO PENA ESCLUSA, availing himself of the position of General Secretary of the Venezuelan Labor Party, of doubtful democratic participation, has dedicated himself to unleashing a systematic campaign against the principal companies which make up the Cisneros Group, among

which I can single out S.A. Distribuidora de Alimentos CADA, MAXIS, and Venevisión itself. In effect this citizen has been calling on the public via certain communications media to make demonstrations against the aforementioned firms, which have contributed to events which occurred in the cities of Maracaibo, San Cristobal [sic] and Puerto La Cruz, specifically in front of the CADA stores in those cities. . . . In addition, because of the public statements of said citizen, countless telephone calls have been received at the offices of Venevisión announcing the placement of bombs in the Vene-

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*“The exposure to public derision of those of us who conduct dignified professional activity, coincide and seem to follow a pre-established pattern with the public statements of Alejandro Peña Esclusa,” claimed a Cisneros employee.*

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visión Building, with the logical consequences of alarms and destabilization among the Venevisión employees. . . .”

On page 304 and its reverse side of the present proceeding, there follows the declaration made by citizen BARDASANO PEREDA CARLOS RAUL, before this court, where having been duly sworn he states the following among other things: “As of the second half of the month of January of this year, on various occasions I saw the citizen ALEJANDRO PENA ESCLUSA on Radio Caracas Television, I heard him on Radio Caracas Radio and I read him in the *Diario de Caracas*, where this Mr. PENA ESCLUSA, was openly inciting persons to take over the CADA supermarkets and in general the companies of the Cisneros Group. This brought about the result that in the first place: there were acts in this sense, concretely in the city of San Cristobal and in other cities of the country such as Maracaibo and Puerto La Cruz, which led as a result to the destabilization of the companies. . . . Further all our personnel is living through moments of anxiety, of fright in the face of the insistent calls via the cited communications media for the people to take over the public workplaces of some of our companies. . . .”

On page 305 and its reverse of the present proceeding, there follows the declaration given by citizen ENNIO VELAZQUEZ LEONETT, before this court, where having been duly sworn he declared among other things the following: “In regard to the CADA company, which is where I work, on the basis of a series of written and televised press reports, a series of situations have been created which have brought confusion, unrest, and disquiet among the personnel of the company, persons related to the company and their families.

I don’t know what persons or person is promoting this series of situations, but I can perceive the unease which the same are causing. . . .”

On page 308 and its reverse of the present proceeding, there follows the affidavit given by citizen REGALADO MOLINA LUIS ANTONIO, before this court, where having been duly sworn he declared among other things the following: “Of the events of which I really have to relate, it is that we have received telephone calls with bomb threats in some markets through our Security Department, specifically via Comissar CARLOS ANEZ, who is the CADA security manager. We have picked up in the streets leaflets with negative messages against the company, where they advised people not to buy in our company, on certain occasions also persons have tried to loot our supermarkets, as is the case in San Rafael, in Maracaibo, in Puerto La Cruz, in San Cristobal, and an attempt which occurred in Caracas, at the Tamanaco Commercial Center.”

On pages 311 and its reverse of the present proceeding, there follows the affidavit of citizen CARLOS MIGUEL CHACIN RODRIGUEZ, before this court, where being duly sworn he declared among other things the following: “I am appearing before this Tribunal in view of the Subpoena which was served on me at five o’clock in the afternoon yesterday, with regard to the judicial proceedings concerning the citizen ALEJANDRO PENA ESCLUSA. In my condition as legal representative of the C.A. Distribuidora de Alimentos [CADA], I have had news on situations which have occurred in some markets as the result of a possible boycott against the company. In this sense situations of uncertainty and insecurity have affected the personnel of the company and the clients of the supermarkets in the face of anonymous threats on the placement of explosive devices on the premises of the markets. Moreover there have been situations of looting in markets of San Cristobal and Maracaibo. . . .”

## Second

### *Juridical assessment*

From the study of the records and other materials making up the present proceeding, this Court is fully convinced that in the facts which occupy us there is evidence of the perpetration of punishable acts, prosecutable by law and meriting imprisonment, as constituted by the crimes of INSTIGATION TO CRIME AND INCITING TO DEVASTATION AND LOOTING, as defined and punished in Articles 284, 286 and 294 respectively of the Criminal Code.

## Third

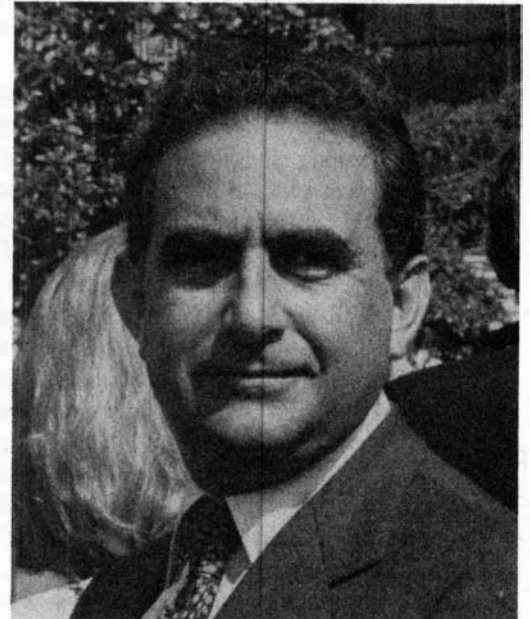
### *Corpus delicti*

A basis for trial and conviction have been established by the following elements:

1. With the Accusation filed by the citizen: PEDRO FELIPE DURAN GALVIS, before the 36th District Attorney’s Office of the Public Ministry of this Judicial District, subsequently



*Dr. Rafael Caldera (left): targeted for a coup. On the right is Gustavo Cisneros, whose corrupt financial and media empire is behind the fraudulent indictment of Alejandro Peña.*



ratified and amplified before the seat of this Bureau, included on pages 2 and 3 of the present ruling, which is given as reproduced, having been transcribed in the First Chapter.

2. With the declaration given by citizen DIAZ ROJAS ANTONIO JOSE before this court, duly sworn, to be found on pages 238 and 239 of the present proceeding, which is given as reproduced, having been transcribed in the first Chapter.

3. With the declaration made by citizen CARLOS ANEZ before this court, duly sworn, to be found on pages 267 and 268 of the present proceeding, which is given as reproduced, having been transcribed in the First Chapter of the present decision.

4. With the declaration made by citizen GOMEZ GODOY LUIS EMILIO before this court, duly sworn, to be found on pages 299 and 300 of the present proceeding, the same being given as reproduced, having been transcribed in the First Chapter of the present decision.

5. With the declaration made by citizen BARDASANO PEREDA CARLOS RAUL before this court, duly sworn, to be found on pages 304 and its reverse, of the present proceeding, the same being given as reproduced, having been transcribed in the First Chapter of the present decision.

6. With the declaration made by citizen ENNIO VELAZQUEZ LEONETT before this court, duly sworn, to be found on page 305 of the present ruling, the same being given as reproduced, having been transcribed in the First Chapter of the present decision.

7. With the declaration made by citizen REGALADO MOLINA LUIS ANTONIO before this court, duly sworn, to be found on page 308 and its reverse of the present proceeding, which is given as reproduced, having been transcribed in the First

Chapter of the present decision.

8. With the declaration made by citizen CARLOS CHACIN RODRIGUEZ before this court, to be found on page 311 and its reverse of the present proceeding, which is given as reproduced, having been transcribed in the First Chapter of the present Decision.

In this manner the limits required by Article 115 of the Code of Criminal Indictment are fulfilled, as well as the proof of the Corpus Delicti.

#### **Fourth**

##### *Evidence of guilt*

The basis for trial and conviction is demonstration by the following:

1. With the declaration made by citizen DIAZ ROJAS ANTONIO JOSE before this court, duly sworn, where among other things he declares the following: "I wish to have it noted that because of the public appearances of Mr. ALEJANDRO PENA ESCLUSA, who functions as the General Secretary of the Venezuelan Labor Party, a series of deeds and events have been caused. . . . Given the unusual attacks which Mr. ALEJANDRO PENA ESCLUSA has presented before the public by means of television and the written press. . . . (Pages 238, 239 and its reverse).

2. With the statement given by citizen CARLOS ANEZ before this Court, where duly sworn, he states the following among other things: "As Security Manager of CADA, Food distributor, I present myself before this office to issue a statement on the televised and written statements of Mr. ASLEJANDRO [sic] PENA ESCLUSA against the Cisneros Organization. . . . At the same time, in the area of security concretely

there have been bomb threats in the supermarkets, threats of looting, where the statements of Mr. PENA ESCLUSA are mentioned. . . . (Pages 267 and 268 of the present proceeding).

3. With the statement given by citizen GOMEZ GODOY LUIS EMILIO before this Court, where duly sworn, he states the following among other things: "At the end of the month of January of this year, at the beginning of the month of February, the citizen ALEJANDRO PENA ESCLUSA, availing himself of the position of General Secretary of the Venezuelan Labor Party . . . has dedicated himself to unleashing a systematic campaign against the principal companies which make up the Cisneros Group. . . . In effect this citizen has been calling on the public via certain communications media to make demonstrations against the aforementioned firms. . . ."

4. With the statement given by citizen BARDASANO PEREDA CARLOS RAUL before this court, who finding himself duly sworn, stated the following among other things: "As of the second half of the month of January of this year, on various occasions I saw the citizen ALEJANDRO PENA ESCLUSA on Radio Caracas Television, I heard him on Radio Caracas Radio and [illegible] where this Mr. PENA ESCLUSA, was openly inciting persons to take over the CADA supermarkets and in general the companies of the Cisneros Group. . . ." (Pages 304 and its reverse of the current proceeding).

5. With the statement given by citizen ENNIO VELAZQUEZ LIONETT before this Court, where finding himself duly sworn, stated the following among other things: "In regard to the CADA company, which is where I work, on the basis of a series of written and televised press reports, a series of situations have been created which have brought confusion, unrest, and disquiet among the personnel of the company. . . ." (Pages 305 and its reverse of the present proceeding).

6. With the statement given by citizen REGALADO MOLINA LUIS ANTONIO before this Court, where finding himself duly sworn, stated the following among other things: "Of the events of which I really have to relate, it is that we have received telephone calls with bomb threats in some markets. . . . We have also picked up in the streets leaflets with negative messages against the company, where they advised people not to buy in our company, on certain occasions also persons have tried to loot our supermarkets. . . ." (Pages 308 and its reverse. . . .)

Now, after having closely analyzed each and every one of the records and other evidence which make up the present proceeding, this Court is fully convinced that the events before us give evidence of the perpetration of punishable acts, prosecutable by law and meriting imprisonment, and that action leading to trial is not evidently proscribed, being the crimes of INSTIGATION TO CRIME AND INCITEMENT TO DEVASTATION AND LOOTING, pointing to citizen ALEJANDRO PENA ESCLUSA as the material author of said crimes, as is evident from the record, availing himself [sic] of the position of

secretary general of the Venezuelan Labor Party, as is publicly known, by recent events which brought mourning to thousands of Venezuelan households as the result of the events that occurred in 1989, and the sequels of violence, looting and public disturbance, the product of social pressures, the susceptibility of the population to rumor, the incitement to disorder and instigation by sectors which have operated in the shadow of anonymity and the protection of impunity. Even now, there are relatives and friends of those who died in the violent events that shook the country, trying to locate their disappeared relatives, and many businessmen, be they merchants, industrialists or small producers, (who) haven't recovered from the material damages caused by the riots and street disturbances that made Venezuela a high-risk nation for investment and even today the crisis of social and political instability is latent, and daily, individuals of different sectors of the country's political and economic life show concern over possible social outbreaks which will force us back to the painful but recent events of violence and agitation. This judge finds that the conduct displayed by the citizen ALEJANDRO PENA ESCLUSA, and which is seen in the overwhelming evidence at hand in the proceeding which is the object of the present Summary Finding, is of the sort described in the Criminal Code, which punishes with jail acts of instigation, acts of incitement to devastation and looting and public peace [sic], by which reason it is necessary to rule and decree the judicial detention of said individual, in conformity with the guidelines laid out in the Code of Criminal Trial, Article 182, for fulfilling the extremes demanded by said code, as is evidenced by the testimony rendered before this court and which is part of the records, where the behavior and conduct displayed by the individual in the consummation of the acts that concern us and that are denounced in the opening of this investigation is made clear. Finally, this Court is obliged to warn of the gravity of situations such as that under investigation and which threatens public peace, political stability, and social tranquility. For each and every one of the reasons previously expressed, it falls to the person who here decides to observe that the most lawful procedure is TO DECREE THE JUDICIAL ARREST OF CITIZEN ALEJANDRO PENA ESCLUSA, in conformity with Article 182 of the Code of Criminal Trial, finding him liable for the crimes of INSTIGATION TO CRIME AND INCITEMENT TO DEVASTATION AND LOOTING, as defined and punished in Articles 284, 286, and 294, respectively, all from the Penal Code.

Regarding the participation of other possible citizens in the perpetration of the deeds that concern us, this Court AGREES TO CONTINUE ITS SUMMARY INVESTIGATION.

Issue the corresponding warrant for incarceration, which is annexed to this proceeding, to the citizen chief of the division of arrest of the technical squad of the judicial police, for the purpose of locating and remanding citizen ALEJANDRO PENA ESCLUSA to the Junquito detention center, where he shall be detained at the disposal of this Court.