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# **Judicial Suspensions and Due Process Under Venezuela's New Democratic Model**

**by: Brenda Brown Perez\***

Due process as we know it in the United States, does not exist in the Republica Bolivariana de Venezuela, at least not in the way that Administrative Law Judges in the United States would hope that it would exist in a democratic state. There is also a serious question as to whether due process, or “debido proceso” as it is known in Spanish, is even understood in Latin America as a whole, considering the recent coup in Ecuador and in the context of an understanding of the practical application as well as philosophical meaning of the concept. It is therefore extremely valuable to examine the evolution of due process as it struggles to achieve its rightful place amongst the newest democratic model in South America, in particular Venezuela, as that is where the struggle for democracy is most passionate in the western hemisphere at this moment. Without question, our world is becoming more interconnected, interdependent, and globalized. Thus new issues involving innovative, and challenging aspects of the existing concepts of due process will be employed in judicial reform in emerging democratic governments. Moreover, ethical issues are also involved, and we must consider their relevance and importance.

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## PROLOGUE

As prologue, the millennium dawned on Venezuela, the world's third largest supplier of oil, and caught the country reeling from the birth pangs of the ratification of their 26th Constitution on December 15th, 1999. On that same fateful day, Venezuela also experienced its worst ever natural disaster. Floods and mud slides suddenly swept down the Avila mountains north of Caracas demolishing everything in its way, killing an estimated 50,000 men, women, and children caught unawares, as walls of mud and debris four stories high carried them out to sea. Even now, more than a month since, cadavers continue to be washed up on the Venezuelan coastline. Fishing and swimming have been banned for a 200 mile stretch of coastline indefinitely, due to severe contamination of the usually pristine Caribbean water and beaches. Over 200,000 people are homeless, with another 60,000 families currently being relocated by the government to small agricultural areas to begin new lives. Three Venezuelan states were affected as well as the Catia section of Caracas, causing a temporary shutdown of the Biblioteca Nacional across the street from the Pantheon where Venezuela's liberator, Simon Bolivar, is laid to rest.

Amidst this chaos, over 150 judges from all manner of courts had been suspended without pay since October of 1999, with an estimated 800 more judges, many of them Administrative judicials, slated for suspension within the first few months of the year 2000. All of them had been or would be suspended without a hearing of any kind, with only the promise by the National Constitutional Assembly (ANC), of future hearing and resolution of their cases.

### EXTRA DEMOCRATIC MEASURES TO ACHIEVE DEMOCRACY

Judicial surgery to excise 150 judges who were thought to be corrupt, dishonest or had more than seven open complaints filed against them, resulted in suspensions without pay. On October 7, 1999, the ANC, who was in the midst of drafting Venezuela's 26th constitution, took 15 minutes to approve the creation of the "Judicial Emergency

Commission (JEC)," granting the commission power to correct and rectify the "corrupt" status of the Venezuelan judiciary as a preventative measure to further restrict dishonest and unjust adjudication during the pendency of the ratification of the new constitution. Luis Milquilena, President of the ANC, confirmed to the Venezuelan people at the time of the creation of the JEC, that suspension of the judges did not signify a conviction and that furthermore, the commission would not abuse its power in so doing. However, the list of judges at the time totaled 110, with the number actually suspended eventually reaching 150 within a few days. Luis Milquilena further elaborated that the Venezuelan people had been anticipating this event for a long time since before the election of President Hugo Chavez Frias, and that in fact, the Venezuelan public had been demanding it for years. The task assigned to the JEC continues and as earlier mentioned, 800 additional judges will face suspension without pay and without a hearing in the near future.

Opposition to the plans to proceed with suspension of the judges came quickly. ANC constituent, Jorge Olavarria, stated that this action represented an egregious act for constituents as well as the public. He advocated that it was an injustice to proceed with suspension of the judges without knowing what they were being accused of in the open complaints or without being allowed to review any documentation filed against them prior to suspension. How did this situation arise in the first place, one would naturally ask. To consider that this circumstance is just another example of Latin American politics at work and of no consequence to our American system of justice, carries with it the semblance of negating our United States' efforts towards globalization.

Prior to October, 1999, the Venezuelan Supreme Court, (the Corte Suprema de Justicia,) or CSJ, relinquished any powers of authority to override decisions made by the ANC. This in itself was a remarkable action by the Venezuelan high court, unprecedented in its history. The CSJ also acknowledged the power of the ANC over the affairs of the country, including the suspension of judges, apparently without respecting any prior considerations already part of the Venezuelan body of law concerning "due process." In acknowledging the power of the ANC, the CSJ unofficially confirmed the supra-constitutional right of the ANC. This declaration by the CSJ essentially amounted to an abnegation of their own existence in any functional capacity. One would consider that there would be substantial outcry at the very least, from the

legal community or community of professors of law and political scientists. Surprisingly, the voiced opposition was small, mainly led by Henrique Capules Radonsky, President of the Chamber of Diputados (the Congress), stating that: "...this action by the CSJ was an action to preserve their existence within the republic...that there was great incertitude in these actions by the CSJ because in essence the ANC could for example, at any moment in time, institute the Death Penalty, and there existed no judicial organism by which an action by the ANC could be declared illegal or unconstitutional."<sup>2</sup>

One could assume from this statement that the CSJ itself feared its own dissolution, or possibly removal or suspension of the judges sitting on that high court at the mere whim of the ANC's judicial commission. It appears that as of October 7, 1999, Venezuela lost any semblance of "balance of powers," at least in the context in which it was previously known in a judicial sense. Venezuela's current struggle for a more "democratic" state has apparently required extra-democratic measures during the course of its redrafting of Venezuela's 26th constitution.

### **PRESIDENT HUGO CHAVEZ FRIAS AND HIS DEMOCRATIC IDEAL**

A brief review of the democratic idealism of President Hugo Chavez Frias is necessary to an understanding of the peaceful relinquishment of Venezuela's Supreme Court to the "jurisdiction" of a supra-constitutional body, the ANC. In essence, President Chavez has publicly stated time and again that he wants a Venezuela free of the past, democratic, without corruption or injustice.

President Chavez came to power in Venezuela in December of 1998 by a landslide vote, seven years after trying to overthrow the government in two bloody military coup attempts. He served prison time for the attempts, but the unsuccessful coups did culminate in the removal of President Perez, who later served prison time also for various public trust crimes. But, Hugo Chavez Frias had captured the attention

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<sup>2</sup>El Diario de Caracas, Viernes 8 de octubre de 1999. "Cirugia Judicial" Niquilena: "No se abusara del poder."

of the Venezuelan masses, particularly the laboring classes and those families who had lived generations in a state of perpetual poverty. His popularity and political strength grew. The political parties ruling Venezuela for the previous 40 years could best be described as pseudo-democratic, the Accion Democratica and COPEI which exist today but in a process of transformation as this peaceful revolution has unfolded. The Venezuelan Congress, not willing to risk a confrontation with President Chavez, declared itself in recess in July of 1999 and vacated the capitol building for the drafting of the constitution by the ANC, made up of elected constituents from throughout Venezuela, 92 percent of whom were Chavez supporters. President Chavez initially shocked Venezuelans when he called the constitution "moribund" during his presidential oath last February, 1999. In July of 1999, as President Chavez took the oath before the ANC, he stated that he wouldn't rest until Venezuela has "buried" the past. Although Chavez declined to dissolve the opposition controlled Congress and the Supreme Court at the time he took the presidential oath before the ANC, he did ask that they both put themselves at the mercy of the ANC as he had done.

President Chavez has been successful in his quest thus far for a new Venezuela, particularly since ratification of the new constitution was a victory for him, and in the eyes of many, for the people of Venezuela and other Latin American countries striving to attain a more democratic state. His public opinion polls continually record his popularity at a 80% rate or higher. However, unemployment rages at 39% or higher since the devastating mud slides. President Chavez has been compared in the Venezuelan press to other South American leaders of a militaristic ideology and demeanor such as Panama's Omar Torrijos (1968-1978), Peru's Juan Velasco Alvarado (1968-1975) and Egypt's Gamal Nasser (1954-1967). However, President Chavez, a former paratrooper, (who took command of a paratroop unit during the tragic rescue of victims and survivors during the mud slides in December of 1999), appears to waiver from having a personal style reminiscent of military nationalism and a strong friendship with Castro, yet vowing devotion to democracy and its traditional ideals with significant political efforts, democratic in their essence.

## THE CONCEPT OF JUDICIAL CORRUPTION IN VENEZUELA

The concept of judicial corruption in Venezuela stretches back for more than 40 years, perhaps longer. In fact, judicial corruption has been a mainstay of daily citizen conversation for decades, as well as a forum in which justice can be bought for a price. President Chavez and his supporters are seeking to reverse that reality. Many Venezuelan scholars, attorneys and professors of law have sought to enunciate the compromised judicial situation in Venezuela for years. Thus, the poorer classes have been at the mercy of tribunals and their judges, administrative or otherwise, to the point of a preference in Venezuelan citizens of avoiding litigation in the courts of any type. The question has been asked and answered repeatedly. Who commits judicial corruption? The answers: the tribunals, the judges, the secretaries assigned to the judges, the bailiffs, the scribes, the ancillary judicial assistants and the lawyers themselves. Dr. Jose Guillermo Andueza, Ex-minister of Justice, and Venezuelan University professor, stated succinctly in 1983 those attributes necessary to a good judge addressing judicial fairness in pertinent part:

The authority of a judge does not depend simply upon a piece of paper or appointment by an authorized and competent "entity." The authority of a judge is derived from his wisdom, his prudence, his decorum, his respectability and in reality, when one is in the presence of a judge whom has these characteristics, you can lose your case terribly in his tribunal and yet be conscious that there is a difference in the criteria used by such a judge... you acknowledge that the result is one reached by an equitable person, with knowledge appropriate to the matter being heard and that there have been no other extra judicial processes occurring without your

knowledge.<sup>3</sup>

It is clear that Venezuelans have understood for many years what those qualities are that are inherent in a judge worthy of being called such, if also for the reason that they know what a good judge is not.

## CONCLUSION

As Venezuela continues to institute those new principles and ideals enunciated in their new constitution, it will be vitally important to all of Latin America that the standard is appropriately set, particularly standards of due process. As judges, the lesson learned from Venezuela's judicial struggle is that we must all be vigilant to the characteristics due process assumes in various parts of the world in order to protect our own integrity, our own judicial conscience, as we strive to promote the democratic ideal in our daily adjudications, demeanor, ethical considerations and decisions which affect the lives of countless Americans and foreigners alike. Julio Cesar Fernandez Toro, Attorney and First Vice-President of the Venezuelan Association of Constitutional Law stated the good faith effort of Venezuelan political scientists and professors in his recent publication, *Judicial Participation and Democratic Governability from Formal Justice to Popular Justice*:

We seek to raise the level of governability of our system by raising the quality of justice which it produces. I am solely interested in governability of and in a democracy. It is not important to speak to the ingovernability of dictatorships, as we are partial in the type of political system addressed, that being, a democratic system.”

In the interim, the world continues to wait as the birth of democracy

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<sup>3</sup>Andueza, Dr. Jose Guillermo, “La Corrupcion Judicial” Articulo incluido en La Corruption en Venezuela, 220-221 Association Venezuela de Derecho Tributario, Vadell, HNOS. Editores Foro: La Corruption en Venezuela Parque Central 17 y 18. Novembre de 1983.

continues to unfold in Venezuela, one day at a time. Globalization, in my opinion, in the judicial sense of the word as well as in a political, and economical context or even by virtue of the parameters of achieving democracy by ethical means, cannot be realized until a truer, universe albeit broader understanding is acknowledged and utilized of basic legal concepts in democratic societies such as due process and its practical applications. That will apparently require strong emphasis on judicial education, of which the United States leads the world in an exemplary manner. Let us all hope that Venezuela is earnest as well as successful in their continuing efforts to bring a more viable, more global and democratic interpretation of due process to their country as they further their quest for judicial honesty and integrity in their court systems. Venezuela's strategic geographic location in the Western hemisphere requires it, the perpetuation of democracy demands it.

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