

THE STATE OF DEMOCRACY IN VENEZUELA

HEARING

BEFORE THE

SUBCOMMITTEE ON WESTERN HEMISPHERE,
PEACE CORPS, AND NARCOTICS AFFAIRS

OF THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

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THURSDAY, JUNE 24, 2004

U.S. SENATE,
SUBCOMMITTEE ON WESTERN HEMISPHERE,
PEACE CORPS, AND NARCOTICS AFFAIRS,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The subcommittee met at 2:08 p.m., in room SD-419, Dirksen Senate Office Building, Hon. Norm Coleman (chairman of the subcommittee), presiding.

Present: Senators Coleman, Dodd, and Bill Nelson.

Senator COLEMAN. This hearing of the Senate Foreign Relations Subcommittee on Western Hemisphere, Peace Corps, and Narcotics Affairs is called to order.

OPENING STATEMENT OF SENATOR NORM COLEMAN

The political situation in Venezuela continues to represent perhaps the single most important test of democracy in the Western Hemisphere today. Venezuela is a highly polarized society. Supporters and opponents of President Chávez have been at odds for years. Now we are presented with yet another deadline: on August 15 there will be a recall referendum on President Chávez.

The United States has a tremendous interest in what happens in Venezuela. Venezuela is in our neighborhood. The Western Hemisphere is, by and large, a community of democracies. We do not want to see any steps backward in what has been a very encouraging stride toward democracy in recent decades, particularly in a country like Venezuela with such a strong democratic tradition. We cannot afford to see a large exodus of Venezuelans fleeing their nation. We are interested in preventing terrorism and drug trafficking in the region. And it goes without saying that Venezuela is a major energy supplier to the United States. Another major disruption in Venezuela will hurt average Americans at the gas pump.

We in the United States may have an interest in what happens in Venezuela, but it is the Venezuelan people who must have the opportunity to determine the future of their nation for themselves. What we in the United States can do is support, even insist upon, a fair process as guaranteed under the Venezuelan Constitution and as agreed upon by the Chávez government and the opposition. We in the United States can press for respect for universal human rights, such as the right of free assembly and the right to express one's political views without fear of retribution.

I also believe America can and should take exception when President Chávez makes disparaging remarks about our President and our troops in Iraq. These are times when words matter.

Relations between the United States and Venezuela are in a difficult state, and I acknowledge that the mutual distrust is not entirely unrelated to the handling of the 2002 coup attempt. In spite of these bad feelings, I believe we must continue to work with the Venezuelans where at all possible to pursue shared goals. We must cooperate on counter-narcotics and counter-terrorism issues. We must find ways to work together on issues of importance to the region as a whole, from trade to energy to stability. And I reiterate we must get beyond the hostile rhetoric coming from Caracas.

The August 15 vote will be a decisive moment for democracy in the Americas. The Venezuelan people will have a chance to express themselves, thus finding a peaceful way out of a lengthy crisis, and the rest of the Americas will have a chance to stand up for democracy. As such, it is absolutely essential that the process be democratic and credible. It must be conducted in such a way that procedural problems do not cast any doubt on the results. To this end, I call upon the Government of Venezuela to carefully consider three key elements of this vote.

First, the presence of objective international observers is a must. To date, the work of the OAS and the Carter Center in observing the process in Venezuela has added credibility to events. I urge the Government of Venezuela to invite international observers, particularly by these respected groups, to monitor the August vote.

A second concern involves the voting machines which the Government of Venezuela has announced will be used. The fear is that the use of untested machines could cast doubt upon the results. As such, I urge the Government of Venezuela to work with the international community to conduct the voting in a manner that will not be open to criticism. The machinery used must not create more question than the voting was intended to resolve.

A third concern involves recent announcements regarding the composition of Venezuela's supreme court. We in the United States can speak from experience. We all recall an election here that was so closely contested that it became necessary for the supreme court to become involved, and in Venezuela, the courts have already been involved in making key decisions related to this process.

The concern is that by adding members to the Venezuelan supreme court, there will be questions raised about its independence as an institution. During Franklin Delano Roosevelt's Presidency, we in the U.S. considered increasing the size of the Supreme Court, but we found it to be a very bad idea. I would urge the Government of Venezuela to treat any decision regarding the supreme court with the utmost care, lest it cast a shadow on the results of the political process.

There are other concerns in Venezuela. Human rights observers have pointed to political arrests and the use of excessive force against peaceful protesters. There are indications that Venezuelans who signed the recall petitions have been subject to harassment or lost their jobs. And there are regional issues to consider as well. For example, some reports suggest that Colombian guerrillas are

using Venezuelan territory for R&R, or worse. In my discussions with the Venezuelan Ambassador, they have clearly denied that.

When it comes to promoting democracy in the hemisphere, I believe the United States should not go it alone, and we do not have to. Through the Organization of American States, the countries of this hemisphere have made a commitment to uphold democracy. The OAS is rightly involved in the current political process in Venezuela and must continue to play an observation role during the August 15 vote and beyond, as well as a political role in responding to whatever the results of that vote may be.

There is also a Group of Friends of Venezuela, working in connection with the OAS efforts, that has already taken a stand in support of Venezuelan democracy. This group, which includes Brazil, Chile, Mexico, Portugal, and Spain, may once again prove to be a useful multilateral forum for supporting Venezuelan democracy.

We are wise to begin thinking today about how to support Venezuelan democracy in the future. But one word of caution. Venezuela has a tendency to defy conventional wisdom. As the recent reparos process unfolded, Washington observers were certain that President Chávez would never accede to its result. I want to acknowledge here that President Chávez did, indeed, defy conventional wisdom. He accepted the results of the reparos and is apparently willing to subject himself to this democratic referendum. This was a good choice by President Chávez.

As the political process continues to unfold, it is my sincere desire that all parties in Venezuela will make good choices. There is much at stake here, for Venezuela and for democracy in the hemisphere.

Testifying before the subcommittee today, we have a distinguished set of witnesses. Our first panel will consist of Assistant Secretary of State for Western Hemisphere Affairs, Roger Noriega, and Ambassador John Maisto, U.S. Representative to the Organization of American States.

Assistant Secretary Noriega is no stranger to this committee, having served as a staff member for the Senate Foreign Relations Committee from 1997 to 2001 and from 1994 to 1997 for the House International Relations Committee. Immediately prior to becoming Assistant Secretary for Western Hemisphere Affairs, Ambassador Noriega served as our Representative to the OAS. We are always grateful for the Assistant Secretary's willingness to appear before this subcommittee.

Ambassador John Maisto has been our Representative to the OAS since July of last year. He served as Ambassador to Venezuela from 1997 to 2000 and as Ambassador to Nicaragua from 1993 to 1996. I look forward to hearing Ambassador Maisto's remarks about the role of the OAS and member states in supporting Venezuelan democracy to date, as well as the role the OAS will play in the upcoming months.

Our second panel will consist of five witnesses. The first will be Dr. Jennifer McCoy, director of the Americas Program at the Carter Center. Dr. McCoy has been intimately involved in the political process in Venezuela for several years. I also want to note with

some pride that Dr. McCoy received her Ph.D. from the University of Minnesota.

Second we hear from Mr. Jose Vivanco, executive director of the Americas Division at Human Rights Watch, a position he has held since September 1994. Mr. Vivanco has also worked as an attorney for the Inter-American Commission on Human Rights at the OAS, as well as in other human rights promotion organizations.

Next will be Mr. Miguel Diaz, director of the South America Project at the Center for Strategic and International Studies. Prior to this position, Mr. Diaz worked in investment banking, journalism, and as a CIA economist.

Mr. Roger Tissot is director of Markets and Countries Group for Latin America at PFC Energy where he is responsible for the Petroleum Risk Manager, a Web-based resource that evaluates political, economic, and industry-specific risks in leading oil-producing countries around the globe. Mr. Tissot will provide the subcommittee with important insight about the role of the oil sector in Venezuela and in U.S.-Venezuelan relations.

Finally, we will hear from Dr. Mark Weisbrot, co-director for the Center for Economic and Policy Research. Dr. Weisbrot is an economist and writes a regular column distributed by Knight-Ridder/Tribune Information Services and also writes for Business Week.com.

Now I would like to acknowledge Senator Nelson for any opening comments that he might have.

OPENING STATEMENT OF SENATOR BILL NELSON

Senator NELSON. Thank you, Mr. Chairman, and I want to thank you for calling this very timely hearing on a timely subject.

At the end of the day, what we would like to have is a continuing good relationship with the country of Venezuela, and there are troubling, intervening incidents and events that seem to want to prevent that good relationship. I believe that it is in the mutual interest of the United States and Venezuela to continue to have that good relationship.

I want to thank everyone who has continued to stand up for the rule of law, for standing up for democracy, and standing up for the Venezuelan people in keeping the referendum process from being derailed, so far. The Carter Center, especially President Carter and Dr. McCoy, your efforts have been tireless. You deserve tremendous credit for the reparos process ending in a legitimate and widely accepted result. I had the pleasure of running into President Carter, not in Venezuela, but in Bolivia, and having spoken a little Spanish with him, I can say that he truly speaks Spanish with a southern accent.

Now, the OAS has been a champ. Secretary General Gávría has also risen in my opinion to the occasion. I appreciate his leadership, as well as the efforts of the Ambassador who is going to testify to us today.

Secretary Noriega, you have played a key role as well with some tough and some timely statements.

Whenever given the opportunity, this Senator from Florida that has a great number of Venezuelans living in my constituency has tried to deliver a message that was nonpartisan. Bottom line is

that our country will not tolerate subversion of democracy in Venezuela because it will threaten stability in the hemisphere.

I want to commend Senator Kerry, and this is not a partisan statement. Senator Kerry issued a very strong, unequivocal statement, and it was well-timed and it was effective.

But we have got a long way to go. Under article 72 of the Venezuelan Constitution, the recall referendum is set for August 15, and there is a lot of uncertainty surrounding it. In fact, the only reason the recall is going forward is because of the intense pressure and the scrutiny brought by the international community, the glare of the international spotlight and the tireless efforts of the people that I have already mentioned. And I hope that that is going to continue.

There are many possible avenues for bumps along the road. One is the possibility of a manipulated or an inaccurate tabulation of the election results due to unproven, suspect technology. I have seen media reports about a Florida company, and I am concerned about what effect it could have on the voting machines and the software that goes along with those voting machines. I have asked the OAS and the Carter Center to consider these allegations that have been public and to look closely at this aspect of the referendum as they monitor these elections.

Now, there are other dangers. President Chávez and supporters give the appearance that they are attempting to pack the supreme court with judges sympathetic to their side and to purge the judiciary of those that they consider opponents. The supreme court could well be in a position to make critical decisions related to the recall referendum, including whether or not the President can run in an election to succeed himself.

There are also the ongoing concerns of harassment of members of the opposition and voter intimidation and the hijacking of media to espouse pro-President Chávez views. It is also going to be interesting to see the amount of money that is going to be spent in the next 60 days, although that probably will pale in comparison to the amount of money that is being spent in this Presidential election year.

When the recall referendum is held, there will need to be, in the opinion of this Senator from Florida, international attention and strong, credible monitors, such as the Carter Center and the OAS, to determine if the elections are free and fair and if the result is legitimate.

Venezuela has certainly had its problems, and on this committee we have to be concerned about democracy continuing in a robust fashion in that country. It is concerning that there is a movement apparently in the Government of Venezuela to consolidate and concentrate power and diffuse free institutions and civil society. I get concerned when I see an alliance struck with Mr. Morales in Bolivia, a person who is seeking to expand the drug trade.

And of course, I get concerned when I see the close ties to Fidel Castro. There is extensive evidence of cooperation between Cuban and Venezuelan intelligence services and a great number of Cuban nationals are employed in Venezuela, and they are not all just employed as doctors.

I have seen evidence that Venezuela has provided safe haven for the FARC as it crosses the line from Colombia into Venezuela. At a time when Colombia is making slow, but steady gains in its long struggle against the drug trade, the last thing it needs is to have a neighboring power, especially Venezuela, give assistance to this adversary.

In the defense authorization bill that we passed last night, there is an amendment that I inserted that was accepted that will have the State Department give a report by all other states that are assisting any of the drug trade elements in Colombia. And that report, of course, will cover what I have just talked about.

Now, one other thing, Mr. Chairman, that I am quite concerned about for the future of our relations is that President Chávez has made some outrageous statements such as praising Iraqi insurgents who attack American soldiers, Mr. Ambassador. He has also tried to use his oil supply relationship to leverage small nations in the Caribbean, in some cases to get them to oppose U.S. policies. And President Chávez has threatened to cutoff oil exports to the United States.

So, Mr. Chairman, if these deteriorating relations between our governments continue, it is going to be a tragedy with a longtime ally, and it would represent a reversal of a longstanding good relationship between the United States and Venezuela.

So I am very, very grateful to you for calling this hearing. If there continues to be a threat to Venezuela's democracy, if we continue to see the siding of the Government of Venezuela with adversaries to the United States, and if Venezuela does not continue to abide by its own constitution in this whole process of the elections, then I worry if we may eventually reach the point where we have to treat the Venezuelan Government as an unfriendly government that is hostile to the United States, and that would sadden me very much.

My hope is that this knowledge will cause the administration and the international community to make it clear to President Chávez that our government and the free nations of this hemisphere place a high priority on democracy, the rule of law, and the responsible conduct in international relations and that any actions to the contrary in the Government of Venezuela, it will be made clear will have consequences not only in relations but in the relations with other nations around the world.

Thank you, Mr. Chairman.

Senator COLEMAN. Thank you, Senator Nelson.

Before beginning with the testimony, I will note that Chairman Lugar has submitted a series of questions for Secretary Noriega and Ambassador Maisto. They will be made part of the official record.

With that, I will turn to Secretary Noriega.

STATEMENT OF HON. ROGER F. NORIEGA, ASSISTANT SECRETARY OF STATE, BUREAU OF WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. NORIEGA. Thank you very much, Mr. Chairman. First of all, I apologize for being tardy. I will not offer any excuses.

We thank you, Mr. Chairman and Senator Nelson, for your interest and engagement in U.S. policy toward Venezuela. That is very critical.

I will summarize my written statement, Mr. Chairman, and submit it for the record.

I want to express my appreciation, first and foremost, for your clear and thorough statements, both of which I think reflect a strong bipartisan consensus behind our policy toward Venezuela, and it reflects an agreement, a meeting of minds between the executive branch and the legislative branch, which I think is also very helpful as we pursue our interests.

My statement will seek to update you on the current conditions and current challenges that Venezuela is facing and our efforts to help the Venezuelan people strengthen their democracy and bring a peaceful end to the political unrest in that country. My colleague, Ambassador Maisto, will address the important role that the Organization of American States has played and will continue to play in Venezuela.

Mr. Chairman, the administration's policy in Venezuela has been and remains to work with our international partners, led by the OAS, the Friends of the Secretary General, coordinated by the Brazilian Government, and the Carter Center, to support the efforts of the Venezuelan people to achieve a constitutional, democratic, peaceful, and electoral solution to the current political polarization in that country, as called for by OAS Resolution 833.

Mr. Chairman, our engagement is entirely consistent with the commitments that we and the Venezuela Government have made under the Inter-American Democratic Charter, and it is a statement of solidarity with the Venezuelan people who, as all of the people of the Americas, have a right to representative democracy.

In addition, our bilateral interests are to recover a cordial, constructive and mutually-beneficial relationship that Venezuela and the United States had enjoyed for decades.

The stakes are very high for the Venezuelan people, by all means. In addition to the political turmoil that they are dealing with, continued social polarization and economic mismanagement have taken a toll on Venezuela's economy. Living standards have fallen sharply with per capita income dropping 25 percent between 1998 and 2003. As a result, the proportion of Venezuelans living in extreme poverty has increased from 21 percent in 1998 to 33 percent in 2002, exacerbating the plight of those most vulnerable in Venezuelan society.

Foreign direct investment has fallen by almost 65 percent between 1998 and 2003, reflecting in part an anxiety over the increasing corruption which is documented by Transparency International, among other groups.

The world's fifth largest oil producer, Venezuela has traditionally been considered a reliable energy partner of the United States, and we have valued that relationship very much. Nevertheless, the political turmoil has undermined Venezuela's standing as a reliable supplier of oil. These concerns underscore the urgent need to reach a peaceful, democratic resolution to the current impasse.

In a number of areas vital to the health of any democracy, we have witnessed troubling developments over the past year, some of

which have been referred to already. As noted in the State Department's Human Rights Report in 2003, the Venezuelan Government's human rights record has been and remains poor. We are troubled by what appears to be politically-motivated tensions, indictments, and arrest orders.

The on-going detention of Baruta municipality Mayor Henrique Capriles and the indictments of Alejandro Plaz and Maria Corina Machado of the NGO Súmate are two recent examples that demand international attention. The Súmate case is particularly troubling, Mr. Chairman and Senator Nelson, because these are individuals who are charged with "conspiring" against the government for receiving support for electoral observation and voter education from the National Endowment for Democracy, which seems to be the only basis for the charges being brought against them.

As we all know, of course, NED is an independent organization that enjoys bipartisan support and helps people around the world in strengthening democratic institutions. NED's transparent mandate is to fortify democracies, not to topple governments, and frankly, it is outrageous that the fact that the groups have received money from this particular organization would be used to bring criminal charges against them.

Our international partners and we are disturbed also by the reports of systematic and brazen intimidation of recall signatories, including the dismissal of public employees who signed the recall petition. These types of actions, frankly, have no place in a democratic process.

Legislation recently passed by the Venezuelan National Assembly to expand the size of the supreme court, to double the size, and allows a simple majority of the assembly to appoint or suspend judges also raises concern. If the public concerns that we now have about the impartiality of the government-dominated National Electoral Council are any indication, then we have ample reason to be concerned about the future independence of the Venezuelan judiciary.

Freedom of the press faces serious threats as well, including the rise of physical attacks against journalists and television stations.

Mr. Chairman, mindful of Venezuela's deep polarization, we have consistently urged all parties to refrain from violence and respect freedom of expression of all political views. The Venezuelan state has a singular obligation, however, to create the conditions in which all of its citizens can exercise their constitutional rights and express their views free from fear and intimidation.

The coming weeks are likely to define the long-term future of Venezuela. A peaceful, democratic resolution is not only in the interest of the Venezuelan people, but of the region as a whole. Such an outcome will allow Venezuelans to move beyond the social and economic challenges by focusing on a common commitment to national reconciliation, to economic recovery and the creation of jobs, to social inclusion, to building an effective, transparent government with strong democratic institutions, and to reintegrate Venezuela into the diplomatic and economic life of the rest of the Americas.

Bilaterally we will continue to maintain good working relationships with Venezuela, to the extent we can, on counter-narcotics, for example. However, on counter-terrorism and military coopera-

tion, among other areas, this cooperation has deteriorated, something we regret. The Venezuelan and U.S. militaries historically have had close ties based on a shared commitment to democracy, the rule of law, and respect for human rights, and we are disappointed that those close bilateral ties have been undermined.

Mr. Chairman, in closing, throughout this process, the Venezuelan people, including most Chávez supporters, as well as the opposition, have demonstrated a commendable civic spirit worthy of the Venezuelan democratic tradition. The United States and our international partners stand ready to support the democratic aspirations of the Venezuelan people, and we reject and condemn any unconstitutional effort to depose a democratically-elected government, be it in Venezuela or anywhere else in the Americas.

We also reiterate our strong support for the important work of the OAS and the Carter Center. These observer missions enjoy strong international backing, and I associate myself, Senator Nelson, with your specific praise for the work of Secretary General Gaviria and Dr. McCoy, as well as President Carter. The international community considers their continued participation and their unfettered access to all aspects of the process as essential to a credible, free, and transparent resolution of Venezuela's crisis. And we commend the role that Brazil is playing, in particular, as a coordinator of the Friends process to ensure that the international observers have that access.

Mr. Chairman, the American people and the Venezuelan people share a strong mutual commitment to democracy and we will defend those shared values in the challenging days ahead. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Noriega follows:]

PREPARED STATEMENT OF HON. ROGER F. NORIEGA

Good afternoon. Mr. Chairman, members of the committee, allow me first to express the Administration's appreciation for your on-going interest in, and support for, U.S. policy toward Venezuela.

I appear before you today at a critical moment for Venezuela. For years one of Latin America's most stable democracies, Venezuela today is at a crossroads. Deepening polarization over the past three years has placed enormous strains on the country's democratic institutions. Amid these challenges, the Venezuelan people have shown an unshakable commitment to the defense of their constitutional rights and to pursuing a "constitutional, democratic, peaceful and electoral solution" to the current impasse, as called for in Organization of American States (OAS) Permanent Council Resolution 833.

OAS Resolution 833, adopted in December 2002, serves as the anchor of multilateral efforts, in which the United States has played a prominent role, to strengthen Venezuelan democracy and bring a peaceful end to the political conflict. The Administration's policy has been and remains to work with our international partners—led by the OAS, the Friends of the OAS Secretary General's Mission for Venezuela (comprised of Brazil, Chile, Mexico, Spain, Portugal and the United States) and the Carter Center—to support Venezuelans' efforts to achieve a peaceful, democratic, constitutional and electoral solution to their political problems. Moreover, we seek a return to the cordial bilateral relationship we have always had with Venezuela.

My colleague, Ambassador John Maisto, will address in greater detail the important role the Organization of American States (OAS) has played, and will continue to play, in facilitating a resolution of the political impasse in Venezuela, as well as the vital role the OAS is playing in promoting democracy throughout the Hemisphere. I would like to offer an update on the current challenges facing Venezuela, and outline our efforts to help Venezuela and its people strengthen democracy and bring a peaceful end to the political conflict.

Mr. Chairman, after overcoming a number of formidable hurdles, which Ambassador Maisto will very shortly review with you, the Venezuelan people succeeded in

advancing an electoral solution that is consistent with Venezuela's constitution and the May 29, 2003 OAS-facilitated agreement between the Government of Venezuela and the democratic opposition. The National Electoral Council (CNE) has scheduled a recall referendum on President Chavez' continued mandate for August 15. This announcement is an important step toward realizing the goals of OAS Res. 833 and a testament to the desire on the part of a majority of Venezuelans to resolve their differences peacefully.

Throughout this process, the Venezuelan people have demonstrated a commendable civic spirit worthy of their rich democratic traditions. Encouragingly, the Venezuelan people have rejected President Chavez' attempts to cast the U.S. as his adversary. As during the recall petition drives and the recent "reparos" process, international observation, led by the OAS and Carter Center, will be indispensable to ensuring a credible, fair and transparent recall election. We are working with our international partners to support the efforts of the OAS and Carter Center to increase participation in the observer missions and to draw international attention to the referendum. Additionally, through the United States Agency for International Development (USAID), we are providing support for programs to strengthen democratic institutions, respect for civil society and to reduce polarization.

Venezuelans today face a difficult economic environment. Continued social and political unrest combined with economic mismanagement have taken a toll on the country's economy. Living standards have fallen sharply, with real per capita income dropping 25 percent between 1998 and 2003. This has occurred despite high international prices for Venezuela's principal export, oil. The plunge in real income has led to an increase in poverty. The proportion of Venezuelans living in extreme poverty surged from 21 percent in 1998 to 33 percent in 2002, exacerbating the plight of Venezuela's most vulnerable.

At the same time, high inflation has steadily eroded purchasing power, while price controls have resulted in shortages and lower quality products. The imposition of strict controls on foreign exchange, beginning in February 2003, has damaged the country's productive base. Erosion of public confidence in the Government's management of the economy has caused the *bolivar* to drop in value from 564 *bolivars* per U.S. dollar at the end of 1998 to approximately 3,000 per dollar on the parallel exchange market today. Falling investment—foreign direct investment fell by almost 65 percent between 1998 and 2003—and continued Government attempts to politicize institutions, including the Central Bank, have undermined prospects for future economic growth.

Endemic corruption is also a factor undermining Venezuela's economic performance. Venezuela today ranks among the worst offenders in the world on the problem of corruption according to Transparency International's annual rankings (On a scale of 1 to 10, with 10 being "highly clean" and 0 being "highly corrupt," Venezuela received a score of 2.4 in 2003). Corruption not only affects investor confidence. It also breeds financial mismanagement and undermines public trust in institutions. President Chavez was originally elected in 1998 on an anti-corruption platform. Yet under his administration, the problem appears to be worsening.

The world's fifth largest oil producer, oil accounts for about 80 percent of Venezuela's export earnings, 40 percent of government revenues and 25 percent or more of the country's GDP. Venezuela has traditionally been a reliable energy partner, and we value our energy relationship. Despite the strains in our relationship, we maintain a vigorous, candid dialogue on energy issues with the Government of Venezuela. Still, the political turmoil has undermined Venezuela's reputation as a reliable energy supplier. These concerns about the political conflict's impact on supplier reliability underscore the need to reach a peaceful, democratic resolution to the current impasse.

The economy is obviously only one of many aspects of life in Venezuela to be adversely affected by the political impasse. The importance of a free, open process, whose outcome all Venezuelans can deem credible, thus cannot be overstated. A peaceful, democratic resolution to the Venezuela's political crisis would have a favorable impact in a number of areas vital to the health of any democracy, including the area of human rights, which has witnessed troubling developments over the past year. As noted in our 2003 Country Report on Human Rights Practices in Venezuela, the Government's human rights record has been and remains poor. Security forces in Venezuela have been linked to the mistreatment of prisoners and forced disappearances. Also of great concern is an increased militarization of public administration, including the use of loyalist military officers in key political posts and as political candidates, and the growing and inappropriate involvement of public security forces in partisan political processes.

Public security forces used excessive force during opposition demonstration in late February and early March 2004. The opposition reported 11 deaths, 417 politically

motivated arrests and over 1700 injuries. There have been credible reports—amply documented in Human Rights Watch April 9 letter to President Chavez—of the arbitrary detention and torture of detainees during this period. There have been reported threats and reprisals against witnesses and victims of human rights violations. A failure to maintain impartiality and independence in key protective institutions contributes to the general impunity and lack of respect for the rule of law.

Of grave concern in this respect is legislation recently passed which expands the size of the supreme court from 20 to 32, allowing a simple majority of the National Assembly—controlled by the pro-Government party, the Fifth Republican Movement (MVR)—to appoint and suspend judges. The new law allows the “*Fiscal*” or attorney general and other public powers to unilaterally suspend judges. And if public concerns about the impartiality of the government-dominated electoral council in Venezuela today are any indication, then we have ample reason to be concerned about the future independence of the Venezuelan judiciary.

On June 17, Human Rights Watch issued a 24-page report denouncing what it called the Venezuelan government’s “undermining [of] the independence of the country’s judiciary ahead of a presidential recall referendum that may ultimately be decided in the courts . . .” The report notes the pro-Government legislative majority’s “intention to name 12 new justices by July and remove sitting justices whom they identify with the opposition,” concluding that the “government is rigging the justice system to favor its own interests.”

Also troubling are what appear to be politically motivated detentions, indictments and orders of arrest. The ongoing detention of Baruta municipality Mayor Henrique Capriles and the recent indictments of Alejandro Plaz and Maria Corina Machado of the electoral NGO Súmate are two recent examples that merit international attention. The Súmate case is especially troubling. The organization’s leaders are charged with “conspiring” against the Government for receiving a grant from the National Endowment for Democracy (NED) for electoral observation and voter education activities. NED is an independent, private organization that enjoys wide bipartisan support for its work to help strengthen democratic institutions around the world. NED is not in the business of toppling governments. The Venezuela Government’s efforts against Súmate are intended to intimidate and dissuade participation in the referendum process. Such actions are unacceptable in any democratic society.

While Venezuela enjoys a diverse, independent media, freedom of the press faces serious threats, including a rise in physical attacks against journalists and television stations. The Government has intimidated the media through strict defamation laws (including potential prison terms for journalists who show “lack of respect” for government officials); proposals for new legislation which, if enacted, would violate basic press freedoms; and finally by the misuse of legal authorities against the media.

Our bilateral relations in a range of areas have suffered due to unilateral decisions taken by the Venezuelan Government. For four decades, our relationship with Venezuela was anchored by a common commitment to democracy, the rule of law, respect for human rights, and freedom. We were allies in a broader effort to help democratize the hemisphere, and to spread prosperity and economic opportunity. This relationship has suffered over the past four years, largely as a result of President Chavez’s opposition to key U.S. security and economic goals, his penchant for associating himself with dictatorial regimes, and his anti-U.S. rhetoric. Our bilateral trade relationship has declined significantly. At the same, joint cooperation on security and counter-terrorism have deteriorated. Given our long-standing, positive bilateral relationship, it would be our clear preference to return to the cooperative, cordial relations that we have traditionally enjoyed with Venezuela.

Mr. Chairman, mindful of Venezuela’s deep polarization, we have consistently urged all parties to act in accordance with the principles enshrined in the Inter-American Democratic Charter, and to honor their commitments under the May 29, 2003 agreement and the February 2003 non-violence pledge to refrain from violence and respect the free expression of different political views. Accordingly, we reject any violent or unconstitutional efforts to depose a democratically elected government—be it in Venezuela or in any other country in the Americas.

The Government of Venezuela has a special responsibility to ensure Venezuelans can express their views free from fear or intimidation. Like democratic governments everywhere, the Government of Venezuela and the keepers of public order have a unique obligation to create the conditions for Venezuelans to exercise their constitutional rights. Our international partners and we are disturbed by reports of intimidation against recall signatories by supporters of the Government, as well as by the dismissal of public employees who signed the recall petition. These actions have no place in a democratic process.

Some in the Venezuelan Government have sought to portray the upcoming referendum as a U.S.-Venezuela confrontation. Nothing could be further from the truth. The referendum is an opportunity—one provided in the Venezuelan constitution—for Venezuelans to freely choose, through the ballot box, the course of their country's future. The Inter-American Democratic Charter, to which Venezuela is a signatory, clearly states that "The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it." It is crucial that all Venezuelans be allowed to exercise these rights in a free and fair election witnessed by impartial, international observers.

The coming weeks and months will bring defining moments for the future of Venezuela. The ongoing constitutional process—the degree to which the recall referendum is fair and transparent—will test the strength of the country's democratic institutions. We all have an interest in seeing Venezuelans succeed. A peaceful, democratic resolution is not just in the interest of the Venezuelan people, but that of the region as a whole. Instability and debilitated democratic governance in Venezuela poses grave dangers to security and stability in neighboring countries. Venezuela can still serve as an example of peaceful conflict resolution in a hemisphere that, in the past, all too often resorted to violence and force to address political turmoil. Conversely, the failure to achieve a free and fair referendum process would deal a severe blow to the democratic hopes of Venezuelans and their neighbors and present a setback for democracy in the hemisphere.

Finally, a peaceful, democratic outcome will allow Venezuelans to take on the serious social and economic challenges the country faces in ensuring that all citizens—not just a privileged minority—can benefit from the fruits of democracy, free trade and enterprise. After all, the principal responsibility of any democratic government is ensuring security, well-being and opportunities for its citizens in an environment that guarantees the protection of individual freedoms, human rights and respects the rule of law.

Overcoming the current crisis will empower Venezuelans to focus their energies on the issues that concern average citizens—national reconciliation, economic recovery and job creation, social inclusion, effective, transparent government, strong democratic institutions, and reintegration in the diplomatic and economic life of the region.

The United States and the international community stand together in support of the democratic aspirations of the Venezuelan people. As Secretary Powell said recently in Quito, "We, the democratic nations of the Americas, must give the peoples of our hemisphere good reason to count on their neighbors when their own democracies suffer setbacks." We reiterate our strong support for the important work of the OAS and Carter Center observer missions.

The American and Venezuelan people share a strong, mutual commitment to democracy, and we will continue to draw on our shared values in the challenging days ahead.

Senator COLEMAN. Thank you, Secretary Noriega.

Ambassador Maisto, before you begin your remarks, I should note the presence of Ambassador Alvarez here and thank him for his attendance.

Ambassador Maisto.

STATEMENT OF HON. JOHN F. MAISTO, UNITED STATES PERMANENT REPRESENTATIVE TO THE ORGANIZATION OF AMERICAN STATES

Ambassador MAISTO. Thank you, Chairman Coleman, and thank you, Senator Nelson. Thank you both for your warm welcome and for the opportunity this afternoon to discuss with you the vital role that the Organization of American States has played, is playing, and will continue to play in facilitating the restoration of the political impasse in Venezuela, as well as the role that the OAS carries out in promoting democracy throughout the Western Hemisphere.

Mr. Chairman, OAS Resolution 833 of December 16, 2002, which calls for a "constitutional, democratic, peaceful and electoral" solution, remains the cornerstone of the administration's multilateral approach to resolving the current situation in Venezuela. We are

actively working with our international partners, led by the Organization of American States, the Friends of the OAS Secretary General's Mission for Venezuela—and they are Brazil, Chile, Mexico, Spain, Portugal, and of course, ourselves—and the Carter Center, to support the efforts of the Venezuelan people to find a solution in accordance with that OAS Resolution 833.

During the OAS General Assembly held just 2 weeks ago in Quito, Ecuador, Secretary Powell commended the decisive role of the OAS and the Carter Center in Venezuela, most recently in the process of signature verification that has led to the referendum, which is now scheduled for August 15.

While OAS involvement began immediately after the events of April 11, 2002, it was in May 2003, after months of tenacious diplomacy in Venezuela by OAS Secretary General Cesar Gaviria, that a political accord between the Government of Venezuela and the Opposition Democratic Coordinator was reached, setting forth the framework for the recall referendum process outlined in article 72 of the 1999 Venezuelan constitution.

I must underscore, however, that the joint mission of the OAS and the Carter Center has not had an easy go of it in Venezuela. Secretary General Gaviria, his chief of staff, and the OAS mission have been the object of all sorts of unfounded allegations of bias.

In addition to bearing the brunt of attacks in Caracas, the OAS and the Carter Center have had to work with consummate diplomatic skill and political savvy to surmount the obstacles placed in the path of the recall referendum process.

Late last year, the democratic opposition set out to fulfill the constitutional requirement for convoking a Presidential recall referendum. In what international observers characterized as a generally peaceful, fair process, the opposition asserted it had collected over 3 million signatures, 600,000 more than the 2.4 million required to trigger a referendum on the mandate of the President of Venezuela.

Amid charges claiming that the tally was a result of mega-fraud, the joint OAS-Carter Center mission concluded that “the process was completed peacefully and without major obstacles that would have impeded the free exercise of constitutional rights.”

President Carter later declared that the “sovereign expression of the citizen must be privileged over excessive technicalities” in resolving issues surrounding the tabulation of signatures.

Nevertheless, Venezuela's National Electoral Council validated only 1.9 million signatures, essentially obliging a signature appeals process to reconfirm the 1.2 million signatures questioned by the council.

This follow-on appeals process, known as the reparos and conducted from May 27 to 31 of this year, allowed Venezuelans the option of reaffirming or excluding their signatures from the recall petition. Over 120 international observers participated in the joint OAS-Carter Center mission to help ensure a transparent, credible, and fair process.

On June 3, the CNE announced the confirmation of enough signatures during the reparos process to trigger a Presidential recall referendum, and that evening the President of Venezuela said he

accepted the results and the referendum would go forward, now scheduled for August 15.

The coming weeks and months will bring defining moments for the future of democracy in Venezuela. As during the recall petition drives and the reparos process, international observation, led by the OAS and the Carter Center, will be indispensable to ensuring a credible, fair, and transparent recall election. This is a view that is widely held not only in the United States, as we have seen in editorial comment in so many U.S. newspapers and by interested NGOs, but also throughout the multilateral community and many governments throughout the hemisphere and beyond.

We remain in close contact with our international partners to support the efforts of the OAS and the Carter Center to increase participation in the observer mission and to draw international attention to the referendum. Mr. Chairman, only Venezuelans can resolve political problems in their country. Our overriding objective in Venezuela is free and fair elections, conducted on a level playing field, free from fear and intimidation so that the will of the people can be determined and respected.

Venezuelan citizens groups, such as Súmate and other democratic organizations, have played an important role in contributing to the credibility and transparency of the process underway.

Respected human rights groups have documented credible reports of intimidation and harassment of those who signed the original recall petition, as well as limitations on freedom of the press, violent repression of opposition demonstrations and most recently a Human Rights Watch report that speaks for itself.

Unfortunately, the attacks on democratic civil society organizations have extended to the floor of the OAS Permanent Council, where the Venezuelan Permanent Representative, in addition to attacking the Inter-American Commission on Human Rights, its Special Rapporteur on Freedom of Expression for its report on Venezuela, the OAS mission in Venezuela, and its interim director, and U.S. Government officials, launched a barrage of accusations on March 31 against the National Endowment for Democracy and its support for Súmate and other Venezuelan groups.

As U.S. Permanent Representative, I immediately, and also on the floor of the Permanent Council, rejected these baseless charges of intervention, pointed out the good work the NED has performed in a number of Latin American countries, and noted that not everyone agrees on the value of NEDs work, unfortunately.

I cited another criticism of NED made by a Latin American leader, and I quote it. "Then there is the foreign aggressor that, for purposes of revenge or disinformation, seeks to help those who sell out their homeland by spending millions of dollars on an unacceptable intervention that our people, I am sure, will reject completely." Mr. Chairman, that was a reaction of Chilean dictator Augusto Pinochet on January 1, 1988 to an announcement that the U.S. Congress had approved funding to the National Endowment for Democracy to support a transition to democracy in Chile.

On April 20, the chairmen of the NED, IRI, and NDI, Vin Weber, John McCain, and Secretary of State Albright, sent a joint letter to all OAS Ambassadors rebutting those claims.

I shall conclude, Mr. Chairman, with a citation of the Inter-American Democratic Charter, which we always carry with us, which is used in the OAS, and a welcoming and a thanks to you for the strong statements that reflect bipartisan views and concerns about Venezuela.

Thank you.

[The prepared statement of Ambassador Maisto follows:]

PREPARED STATEMENT OF AMBASSADOR JOHN F. MAISTO

Mr. Chairman, Members of the Subcommittee:

Thank you for the opportunity this afternoon to discuss with you the vital role the Organization of American States (OAS) has played, is playing and will continue to play in facilitating resolution of the political impasse in Venezuela, as well as the OAS role in promoting democracy throughout the Western Hemisphere.

THE OAS ROLE IN VENEZUELA

OAS Resolution 833, of December 16, 2002, which calls for a “constitutional, democratic, peaceful and electoral” solution, remains the cornerstone of the Administration’s multilateral approach to resolving the current situation in Venezuela. We are actively working with our international partners—led by the OAS, the Friends of the OAS Secretary General’s Mission for Venezuela (Brazil, Chile, Mexico, Spain, Portugal and, of course, the United States), and the Carter Center—to support the efforts of the Venezuelan people to find a solution, in accordance with OAS Resolution 833.

During the OAS General Assembly held two weeks ago in Quito, Ecuador, Secretary Powell commended the “decisive role” of the OAS and the Carter Center in Venezuela, most recently in the process of signature verification that has led to the referendum, now scheduled for August 15.

While OAS involvement began immediately after the events of April 11, 2002, it was in May 2003, after months of tenacious diplomacy in Venezuela by OAS Secretary General César Gaviria, that a political accord between the Government of Venezuela and the Opposition Democratic Coordinator was reached, setting the framework for the recall referendum process outlined in Article 72 of the 1999 Venezuelan Constitution.

I must underscore, however, that the Joint Mission of the OAS and the Carter Center has not had an easy go of it in Venezuela. Secretary General Gaviria, his Chief of Staff, and the OAS Mission have been the object of all sorts of unfounded allegations of bias.

In addition to bearing the brunt of attacks from the Venezuelan Government and its supporters in Caracas, the OAS and the Carter Center have had to work with consummate diplomatic skill and political savvy to surmount the obstacles placed in the path of the recall referendum process.

Late last year, the democratic opposition set out to fulfill the constitutional requirement for convoking a presidential recall referendum. In what international observers characterized as a generally peaceful, fair process, the opposition asserted it had collected over 3 million signatures—600,000 more than the 2.4 million required to trigger a referendum on the mandate of President Chávez.

Amid charges claiming the tally was a result of “mega-fraud,” the Joint OAS-Carter Center Mission rejected that notion and concluded “that the process was completed peacefully and without major obstacles that would have impeded the free exercise of constitutional rights.”

President Carter later declared that the “sovereign expression of the citizen must be privileged over excessive technicalities” in resolving issues surrounding the tabulation of signatures.

Nevertheless, Venezuela’s National Electoral Council (CNE) validated only 1.9 million signatures, essentially obliging the democratic opposition to undergo a signature appeals process to reconfirm the 1.2 million signatures questioned by the CNE.

This follow-on appeals process, known as the *reparos* and conducted from May 27-31 of this year, allowed Venezuelans the option of reaffirming or excluding their signatures from the recall petition. Over 120 international observers participated in the Joint OAS and Carter Center Mission to help ensure a transparent, credible and fair process.

Of particular significance for the transparency of the process, was the visit paid to CNE headquarters by President Carter and Secretary General Gaviria after the process had concluded and before the results were tabulated.

On June 3, the CNE announced that the democratic opposition had confirmed enough signatures during the *reparos* to trigger a presidential recall referendum. That evening President Chávez said he accepted the results and the referendum would go forward, now scheduled, as I noted earlier, for August 15.

The coming weeks and months will bring defining moments for the future of democracy in Venezuela. As during the recall petition drives and the *reparos* process, international observation, led by the OAS and the Carter Center, will be indispensable to ensuring a credible, fair and transparent recall election. This is a view that is widely held, not only in the United States, as we have seen in editorial comment in so many U.S. newspapers and by interested NGOs, but also throughout the multilateral community and many governments throughout the hemisphere and beyond.

We remain in close contact with our international partners to support the efforts of the OAS and the Carter Center, to increase participation in the observer missions, and to draw international attention to the referendum. Our overriding objective in Venezuela is free and fair elections conducted on a level playing field, free from fear and intimidation, so that the will of the people can be determined and respected.

Venezuelan citizens' groups, such as Súmate and other democratic organizations, have played an important role in contributing to the credibility and transparency of the process underway.

Respected human rights groups have documented credible reports of intimidation and harassment of those who signed the original recall petition, as well as limitations on freedom of the press, violent repression of opposition demonstrations, and, most recently, Human Rights Watch stated that "the biggest threat to the country's rule of law comes from the government itself."

Unfortunately, the Government of Venezuela's attacks on democratic civil society organizations have extended to the floor of the OAS Permanent Council, where the Venezuelan Permanent Representative—in addition to attacking the Inter-American Commission on Human Rights, its Special Rapporteur on Freedom of Expression, the OAS Mission in Venezuela and its interim director, and U.S. Government officials—launched a barrage of accusations on March 31 against the National Endowment for Democracy and its support for Súmate and other Venezuelan groups.

I immediately, and also on the floor of the Permanent Council, rejected these baseless charges of intervention, pointed out the good work the NED has performed in a number of Latin American countries, and noted that not everyone agrees on the value of NED's work.

I cited the only other criticism of NED ever made by a Latin American leader. And I quote: "Then there is the foreign aggressor that, for purposes of revenge or disinformation, seeks to help those who sell out their homeland by spending millions of dollars on an unacceptable intervention that our people, I am sure, will reject completely."

Mr. Chairman, that was the reaction of Chilean dictator Augusto Pinochet on January 2, 1988, to an announcement that the United States Congress had approved funding to the National Endowment for Democracy to support a transition to democracy in Chile.

On April 20, the Chairmen of NED, IRI and NDI—Vin Weber, John McCain and Madeleine Albright—sent a joint letter to all OAS ambassadors rebutting the outrageous claims made by Venezuela's Permanent Representative.

The international community must remain vigilant to ensure that democratic citizens' organizations in Venezuela are allowed to continue to freely exercise their constitutional rights and participate in the electoral process, in accordance with the May 2003, political agreement.

A peaceful, democratic, constitutional resolution through the ballot box is not just in the interest of the Venezuelan people. It is in the interest of the region as a whole, if our hemispheric neighbors, through their democratic governments, are to preserve regional stability and consolidate the hard-won democratic gains of the last two decades.

THE UNITED STATES AND OAS DEMOCRACY PROGRAMS

Thus far this year, the U.S. Permanent Mission to the OAS has contributed more than \$500,000 to OAS election observation missions in the Western Hemisphere. The OAS this calendar year alone has fielded missions in the Dominican Republic, El Salvador and Panama, in addition to Venezuela.

We have contributed to these and other such OAS observer missions over the years—and will continue to do so—because "the holding of periodic, free, and fair elections" is one of the essential elements of democracy specifically mentioned in Ar-

ticle 3 of the Inter-American Democratic Charter, to which all OAS member states are bound.

We provide almost \$3 million a year to OAS Democracy programs, including election observation missions, because the United States and all OAS member states have an obligation to promote and defend the right to democracy of the peoples of the Americas, under Article 1 of the Democratic Charter.

This funding goes to OAS programs that teach democratic values and increase public awareness of the Democratic Charter; to programs that strengthen political parties and legislative institutions, promote dialogue and conflict resolution, and foster decentralization and good governance, to name a few.

THE INTER-AMERICAN DEMOCRATIC CHARTER

The Inter-American Democratic Charter was born in the Americas, and thrives in the Americas. No other region of the world has such an explicit commitment to democracy.

With the advent of the Charter, no OAS member state can remain a disinterested spectator to what occurs in our Hemisphere. As an organization and individually, we are bound by the Democratic Charter to assist our neighbors when democracy is threatened or at risk.

The Charter is a living, functioning document, referenced frequently in meetings of the Permanent Council and its committees, and the General Assembly. All OAS ambassadors treat it like that well-known credit card: "Don't leave home without it."

It is not a stale document gathering dust on a bookshelf. It is the cornerstone of the Hemisphere's efforts to consolidate democracy and its institutions, and serves as a model to be duplicated elsewhere in the world.

The Charter, signed September 11, 2001 in Lima, is a direct result of the OAS experience in Peru where a democratically elected autocrat, Alberto Fujimori, used every constitutional (as well as many extra-legal) means at his disposal to undermine democracy.

Based on the Peru experience, OAS member states understood that elections alone do not a democracy make. The Inter-American Democratic Charter recognizes a right to democracy and the obligation of governments to promote and defend it. It outlines the essential elements of democracy, and sets forth several tools by which the OAS can serve to help member states strengthen their democratic institutions and practices.

Mr. Chairman, Members of the Subcommittee: Whether it be in Venezuela, where the OAS's patient work is moving the election process along, or in any other member state that seeks OAS support, the United States stands ready to work shoulder to shoulder with our partners in the OAS to promote and safeguard democracy under the Inter-American Democratic Charter.

Thank you again for this opportunity and I'll be pleased to take any questions you may have.

Senator COLEMAN. Thank you, Ambassador Maisto.

Before I begin with the questioning, I would turn to Senator Dodd for any opening comments.

OPENING STATEMENT OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Well, thanks, Mr. Chairman. My apologies to our witnesses and my colleagues for being a few minutes late in arriving.

Let me, first of all, thank you, Mr. Chairman. This is a very, very timely hearing. With the votes coming up in August, this is just a perfect time for us to hear from people who are knowledgeable about the circumstances in Venezuela. So I am very, very grateful to you for providing the committee with this opportunity.

On June 3, as we know, the Venezuelan National Electoral Council announced the success of a petition for a recall referendum. Certainly I join—I am sure most do—the Carter Center and the Organization of American States in congratulating all of the parties involved, including the government of President Chávez and those

who organized the referendum, for respecting the constitution and for strengthening democracy in Venezuela. In President Carter's own words, the repair process was "a triumph for the democratic process in Venezuela, and all the elements of the process deserve credit."

The recall referendum constitutes an important development for a representative government in Venezuela, but it is only the first of many steps that must be taken. With that in mind, I urge all of the parties to remain committed to democracy. If they do, then Venezuela in my view will emerge as a more robust democracy where strong institutions prevail over demagoguery and oligarchy.

First and foremost, the government of President Chávez must respect the electoral rules laid out in the constitution. On August 15, when Venezuelans vote on the referendum, President Chávez must ensure that the process is free and fair. If Venezuelans vote to revoke his Presidency, he must make no effort, in my view, to impede a new Presidential election. If Venezuelans affirm his Presidency, there can be no reprisals against his opponents.

As a report recently released by the Human Rights Watch makes clear, which Mr. Vivanco will speak about when he testifies later this afternoon, there is deep concern that President Chávez could manipulate the electoral process by rigging the judicial branch oversight. I would hope he and pro-government members of the National Assembly would reject that temptation, and I would strongly urge that President Chávez and members of the National Assembly consider delaying the implementation of the new law governing the appointment of the supreme court judges until after the recall process. Once the recall petition is behind us, there will be time to reassess whether this new law is likely to achieve its stated goal of enhancing the honesty and independence of the Venezuelan judiciary.

Members of the opposition also have an obligation, in my view, to respect the constitutional process. But in the same manner that I call upon President Chávez to respect democratic institutions, I certainly call upon the opposition to respect the outcome as well, even if the referendum fails to garner the 3.7 million votes needed to recall the President.

I also urge the people of Venezuela to eschew violence. The recent attack on opposition lawmaker Rafael Marin may have been an isolated incident propagated by misguided extremists. Or it might have been a dangerous harbinger of things to come. Let us hope that it was an isolated incident and that others understand that using violence as a political tactic is always deplorable and never democratic.

The Carter Center and the Organization of American States must have unfettered access to all of the electoral mechanisms. The presence of well-respected international observers discourages electoral fraud and provides a measure of legitimacy. Without this kind of oversight, any outcome will be suspect.

I have one final concern, Mr. Chairman, for democracy in Venezuela. As we all know, the foundation of any democracy is a well-informed citizenry, for which the media are indispensable. Unfortunately, over the past few years, both private and state-run media have discarded the mantle of objectivity and plunged into the abyss of partisanship. The Carter Center is attempting to rectify this by

formulating an agreement between the government and media owners regarding news reports and political coverage during the referendum. This agreement, in conjunction with good faith efforts by both sides to uphold journalistic principles, will make open debate possible again.

Let me now turn to the role of the United States, if I can, very quickly.

The last 2 years have been a frustrating time for those of us seeking improved relations between the United States and Venezuela, and neither side is wholly without blame. Having said that, a large measure of responsibility for the erosion in the bilateral relationship rests with President Chávez. To put it mildly, he has been his own worst public relations spokesman. Having said that, the missteps by others, including the United States, have complicated an already strained relationship. In the minds of many Venezuelans, the Bush administration's tacit support for the anti-democratic coup in April of 2002 cast a very dark shadow over our ability to act as an honest broker in helping to resolve the political crisis in Venezuela.

Fortunately, the Carter Center and the OAS have stepped into the breach to play an important role. Standing up for democracy means prioritizing the wishes of the many over the whims of a few, whether it be in Washington or Caracas. President Carter and Cesar Gaviria have sought to do just that by supporting the constitutional resolution of Venezuela's problems.

In the next few weeks, the United States has an opportunity to regain credibility with the Venezuelan people by acting in accord with our democratic principles and with our hemispheric partners in unequivocally supporting the Carter Center and the OAS efforts.

We have the benefit today of having a number of witnesses with a deep knowledge of the ongoing events in Venezuela and about the specifics of the referendum process. I believe that their testimony, Mr. Chairman, will help members of this committee better understand what may occur in the coming weeks and the implications of the various scenarios that could unfold on the United States economic and foreign policy interests.

I want again to offer a special welcome to Dr. Jennifer McCoy, who is taking time out of a very hectic schedule to be here today. Her role at the Carter Center in facilitating many of the advances in the political process in Venezuela has been essential, and I commend her for them. I look forward to the insights that she can provide to this committee as to how we can be supportive of the ongoing efforts in consolidating Venezuelan democracy.

With that, Mr. Chairman, I appreciate your giving me a few minutes to make these remarks.

Senator COLEMAN. Thank you very, very much, Senator Dodd.

I think there is, amongst all of us, my colleagues here, some clear agreement of the importance of the role of the Carter Center and the OAS in ensuring that the process is played out fairly. I would ask Ambassador Maisto, what is the United States doing to ensure that the OAS and Carter Center international election observers are allowed to observe the recall referendum on August 15, 2004? What specifically can be done to make sure that those observers are allowed in?

Ambassador MAISTO. Mr. Chairman, the United States has unequivocally supported both the OAS and the Carter Center in their past observation efforts from the get-go in Venezuela, and we continue to do that. The issue, Mr. Chairman, of the OAS and Carter Center presence in Venezuela has to do with an invitation from the Government of Venezuela to observe that election process. As of just before the beginning of this session, when I checked with the OAS, such an invitation had not come forth from the Government of Venezuela.

Nevertheless, the OAS is preparing a mission and it is organizing itself internally as it does in terms of lining up people to serve on the mission, but until that invitation comes forward, the OAS is not going to be able to dispatch a mission to Venezuela.

Senator COLEMAN. Secretary Noriega, you talked about the indictment of Súmate's Alejandro Plaz and Maria Corina Machado. You used the phrase "troubling and outrageous." Is there anything that we can do to impact that situation? Is there anything we can do to lend a helping hand?

Mr. NORIEGA. Certainly. Senator, Mr. Chairman, if I could comment also on the other question.

Senator COLEMAN. Please.

Mr. NORIEGA. I wanted to note that Secretary Powell beginning at the OAS General Assembly in Quito earlier this month, has been deeply engaged with our Friends partners, Brazil, Chile, Mexico, Portugal, and Spain, and has been in touch with President Carter and the Foreign Minister of Brazil to encourage contact with the Venezuelan authorities and to encourage them to extend an invitation and welcome the international observers.

What we are hearing from them is that there will be a role for the OAS and other international observers, the Carter Center and other international organizations that want to participate as observers. So we are hopeful about that and believe that the government is moving in a positive direction in accommodating that important presence.

We believe on the issue of the NED grantees and on the whole issue of apparent harassment for political purposes of opposition figures that raising attention in the international community is extraordinarily important. These groups in various cases have taken their cases to the Inter-American Commission on Human Rights and Inter-American Court on Human Rights. So there is a mechanism where the government can be held specifically accountable.

We think it is very important that we tell the international community what NED is all about and what our democracy assistance is all about to give light to any assertion that somehow this is illegitimate. So bringing those facts to light is extraordinarily important. Of course, we have communicated with the Venezuelan Government through our Ambassador in Caracas, and in particular in contacts with senior officials in Venezuela, that this is totally legitimate assistance and that we intend that it would support the efforts of the Venezuelan people to strengthen their democracy and for no other reason.

Senator COLEMAN. Thank you, Mr. Secretary.

A great deal has been said in public and private about President's Chávez's meddling in the affairs of other countries in the re-

gion. Either of you or both can respond. Can you discuss Chávez's influence in the region and explain the level of concern these activities elicit among our neighbors in the hemisphere? I am going to be very specific. Chile, Ecuador, Peru, Bolivia, Brazil, Colombia, Uruguay, El Salvador. I would be interested in your impressions.

Mr. NORIEGA. Yes, Mr. Chairman. I am sure that you and other members of the committee are probably picking up the same sorts of things that we do in our contact with representatives of other countries in the Americas where they recognize that the Venezuelan diplomatic representation and other informal contacts are pretty robust in terms of contact with groups in these individual countries. President Chávez makes no secret of his interest in an international Bolivarian movement, and there are organizations that exist in many countries in Latin America, including a good number of the ones you mentioned, that are associated with and receive funding from friends in Venezuela.

So there are varying degree of whether people are alarmed by this or just simply concerned or think it is unusual. I have raised this with various ambassadors, and it is a concern because these countries want to carry out their democratic activities in a sovereign way, and there is a lack of transparency sometimes about what sort of support these groups may be getting from the Bolivarian allies in Caracas.

Having said that, there are groups, in many cases, that are not particularly democratic, that are not committed to democracy. We provide support in a transparent, open way to people who are committed to democracy in Venezuela, and we think that is an effective way to advance our values.

Senator COLEMAN. Thank you.

One last question. If President Chávez prevails in the election, what will U.S. policy be, and how will the Venezuelan people be able to heal the wounds of a divisive campaigning and move on? Can we have any impact on that?

Mr. NORIEGA. I think it is very important that there be international observation, as you have stated, that will be a basis upon which we can judge the fairness of any process. Let me emphasize that we will be making that sort of judgment and consideration along with our neighbors and not in a unilateral way. We will base it on the engagement of the OAS and the views of the international community as they observe the electoral process. We will respect the outcome, whatever the outcome is.

Senator COLEMAN. Thank you.

Senator Dodd.

Senator DODD. Thanks, Mr. Chairman.

Let me, if I can, begin with you, Ambassador Maisto. I am sure many people in the audience here, but others may not be aware exactly what numbers need to be reached in order for certain results to occur. This I think can be rather confusing to some. It is certainly a bit confusing to me. As I understand it—and you correct me if I am wrong—roughly there are over—what is it—I think about 12.5 million eligible voters in Venezuela. You stop me, by the way, if I misstate anything. The assumption is that about 65 percent of the Venezuelans will exercise their franchise. Is that a low

number, a high number? What is your experience in that, by the way?

Ambassador MAISTO. Senator, it is hard to say. You have cited averages. But there is such a unique situation going on in Venezuela right now. I think it is a little difficult to go anywhere other than the constitutionally-established numbers that are needed in this next phase.

Senator DODD. The number we do not know. Certainly my guess would be no lower than 65, but it could be higher given the intensity of this issue. Is that a fair statement?

Ambassador MAISTO. I would say so, but to be quite frank with you, I would defer to such people as Jennifer McCoy who really is on top of this.

Senator DODD. I will ask Jennifer about that in a minute.

Mr. NORIEGA. Senator.

Senator DODD. Yes.

Mr. NORIEGA. For the recall to be successful, they have to have a majority plus a number voting si, yes—

Senator DODD. That exceeds the votes that President Chávez received in the last election.

Mr. NORIEGA. Right. They have to get 3.8 million votes.

Senator DODD. I thought it was a little bit above 3.7 million.

Mr. NORIEGA. Well, I am relying on Ambassador Alvarez. So 3.7 or 3.8 million.

Senator DODD. Between 3.7 and 3.8 million.

Mr. NORIEGA. Yes.

Senator DODD. That is what I think most people are not aware of, and that is why I wanted to make that point that this is not just a majority, but it has to exceed the vote that President Chávez received in the last election. So that is important.

Let me ask, if I can, Ambassador Maisto, but certainly, Secretary Noriega, you can respond as well, and that is about the Venezuelan military. I wonder if you could give us a sense of the state of the Venezuelan military and how it is reacting to these events. The information we are getting here is there is some division, divided by the participation of certain elements of the Armed Forces in the April 2002 coup. So you have got some division within the ranks, to put it mildly. I am curious as to whether or not the military in Venezuela as an institution supports the referendum process, No. 1, and does it appear that the military as an institution will respect the outcome.

Ambassador MAISTO. I think the short answer would be yes, the Venezuelan military does support the constitutional process that is underway, and two, that everything I know about the Venezuelan military indicates that they will support an outcome that is free and fair and so considered in Venezuela. I would defer to the Assistant Secretary. I used to follow those things much more closely than I do right now from my multilateral perch. But the Venezuelan military is quite institutional and quite constitutional.

Senator DODD. Do you want to comment on that?

Mr. NORIEGA. Mr. Chairman, we along with, for example, the Inter-American Commission on Human Rights, have expressed some concern about the increasing involvement of military persons

in political matters in the Venezuelan Government, but they do so in a transparent way. It is just a concern.

Having said that, I think there may be divisions in the military, but by and large, I believe and we would certainly hope that the vast majority of Venezuelan military will respect the constitution, will respect the results of a constitutional process, and will respect political rights of the Venezuelan people.

Senator DODD. Mr. Secretary, let me ask you, if I can. First of all, it is my understanding that the administration was supportive of President Carter and the OAS's efforts to broker a resolution to the dispute over the validity of certain signatures. Is that an accurate statement?

Mr. NORIEGA. Yes, sir.

Senator DODD. What I am curious about—that process began on the 27th of May, and I am looking at articles in the press on the date of the 26th of May in which you are quoted as suggesting that if Venezuela does not respect the process, they could be sanctioned by the OAS. In another statement here, they are quoting you, and if it is not correct, you correct me here. This was in the Washington Times. You are quoted as saying—again, this is on May 26th, the day before the actual verification vote begins—“It's very clear to us the requisite number of people supported the petition, for a referendum, Mr. Noriega told the editors and reporters during a visit to The Washington Times yesterday. 'If through some very tortured bureaucratic process, those signatures are tossed out, it could have very dire consequences for Venezuelans and for those who support their rights under the constitution.'”

My point is this, Roger. This is a process and a way people are going to begin to verify the next day. So I am curious as to why you would be making statements, in effect, sort of determining the outcome of that process a day before it even begins.

In fact, the next day the Secretary of State on the 27th, Secretary Powell issued the following statement. “The Venezuelan people have reached a defining moment for their democracy beginning May 28, where more than one million citizens will have the opportunity to reconfirm their signatures on petitions calling for a referendum on the tenure of President Hugo Chávez.” He goes on and suggests that there be no violence and so forth, but a very different tone than the tone you suggest by sort of guaranteeing what the outcome was going to be before it began. Now, if that is a misstatement—

Mr. NORIEGA. No, Senator, I do not think it is a misstatement necessarily. There was a misinterpretation, an inference. When I was referring to the number of signatures having been collected, I was referring to the process earlier in the year where, as it turns out, I was right. A requisite number of signatures had been collected.

After that process earlier in the year, President Carter said, quote, “The sovereign expression of the citizens must be privileged over excessive technicalities,” in resolving issues surrounding the tabulation of the signatures. So I do not think anything that I said was inconsistent with what he said.

In terms of the timing, the statements that I made were referring to the earlier collection of the signatures not—

Senator DODD. That is not very clear in this article.

Mr. NORIEGA. I think that is right.

Senator DODD. The day before people are going to show up. There is no reference in here. You do not talk about previous.

Mr. NORIEGA. I can get you the entire text and it says quite explicitly that we were referring to the previous collection of signatures.

In my statement, the results of the reparos process had to be respected, which was the process that had not begun, but we were just simply calling—

Senator DODD. You understand the paper says—I did not quote this, but the paragraph before says, “Roger Noriega, assistant secretary of state, for Western Hemisphere affairs, said Mr. Chávez’s government faces a ‘make-or-break exercise’ as selection officials this weekend decide whether to validate hundreds of thousands of disputed signatures”

Mr. NORIEGA. I think that is right.

Senator DODD. And then it goes on to quote you. So it is clearly referring to that weekend coming up.

Mr. NORIEGA. Oh, sure. But I think we are mixing the two references. I was referring to the earlier process. When I said that the results had to be respected and when I said that they had to repair the signatures, I was referring to the process that was ensuing thereafter. But I do not think it is all that complicated, but some of the comments are taken out of context.

Senator DODD. You understand my point, though.

Mr. NORIEGA. No, not really.

Senator DODD. Thank you, Mr. Chairman.

[The two articles discussed follow:]

[From The Washington Times—May 26, 2004, Wednesday, Final Edition]

U.S. CASTS WARY EYE ON VENEZUELA VOTE; ACTION PROMISED IF VOTE IS RIGGED

(By David R. Sands)

The United States will push hard for diplomatic pressure against Venezuela if President Hugo Chávez tries to rig the upcoming referendum on his rule, the State Department’s Latin America point man said yesterday.

Roger F. Noriega, Assistant Secretary of State for Western Hemisphere Affairs, said Mr. Chávez’s government faces a “make-or-break exercise” as election officials this weekend decide whether to validate hundreds of thousands of disputed signatures in the referendum drive.

“It’s very clear to us the requisite number of people supported the petition” for a referendum, Mr. Noriega told editors and reporters during a visit to The Washington Times yesterday.

“If through some very tortured bureaucratic process, those signatures are tossed out, it could have very dire consequences for Venezuelans and for those who support their rights under the constitution,” he said.

In wide-ranging remarks about U.S. policy toward Latin America, Mr. Noriega defended recent moves to tighten travel and spending restrictions for Cuba and expressed cautious hope for Haiti’s new interim government.

He also said the war in Iraq and its troubled aftermath had “brought some difficulties” for U.S. public diplomacy in many Central and South American countries.

But he said the Bush administration had been able to establish productive relations, even with new center-left governments in Brazil and Argentina.

Mr. Noriega said U.S. officials will be watching closely as Venezuelan election officials this weekend decide whether to validate about 800,000 disputed signatures for a referendum on Mr. Chávez, a populist former military officer who has clashed repeatedly with Washington.

Anti-Chávez activists complained this week of government intimidation in the run-up to this weekend’s recount. If enough signatures are validated, Mr. Chávez

faces a recall vote in August that many think he is desperate to avoid. His six-year term is supposed to end in 2006.

Mr. Noriega said U.S. officials are not contemplating political or economic sanctions, but his comments still were among the toughest to date by a senior administration official.

"We will use what multilateral levers we have," he said. "We have told our partners we think this is a make-or-break exercise to see whether the state can respect the wishes of the Venezuelan people."

The Organization of American States [OAS], the Atlanta-based Carter Center, and a loose alliance of regional powers led by Brazil have tried to ease the political stalemate in Caracas.

Mr. Chávez, who survived a coup attempt in 2002, has blamed unnamed Colombian and U.S. forces for seeking to drive him from power, and Venezuela's political paralysis has become an economic and political distraction for the entire region, Mr. Noriega said.

Mr. Noriega, a former Capitol Hill staffer and Ambassador to the OAS, also was a prime architect of recent moves to toughen U.S. economic pressure on Cuba's Fidel Castro and spell out U.S. policy toward a democratic, post-Castro Cuba.

He helped draft the commission report endorsed by President Bush earlier this month calling for increased broadcasting to Cuba, as well as sharp new limits on the time and money U.S. visitors can spend when traveling to the island.

He acknowledged that even some U.S.-backed dissidents in Cuba had criticized the moves as counterproductive, but said the commission focused tightly on U.S. policy and avoided any direct interference in Cuban affairs.

"Clearly, we want to see representative democracy and a free-market economy come to Cuba, but I hasten to add that those will be decisions the Cuban people must make," he said.

He rejected the argument that easing the 40-year U.S. embargo on Cuba would hasten the end of Mr. Castro's one-man rule.

"If I thought for a moment that a bunch of sun-burned tourists could help wash away Castro, I might reconsider the embargo," he said, "but I just don't see it happening."

Mr. Noriega said the situation in Haiti is "stable" less than three months after U.S. officials helped ease out President Jean-Bertrand Aristide in the face of a violent uprising against his rule.

The United States, earlier this week, pledged a \$100 million economic package to help revive Haiti's devastated economy.

Mr. Noriega said other countries in the region have shown a willingness to contribute financially and militarily to the new interim government of Prime Minister Gerard Latortue. Brazil is spearheading a new international peacekeeping force for Haiti to replace the U.S.-led mission now there.

"We're frankly not out of the woods on the security situation, but I do see a willingness to invest in Haiti to jump-start the economy and plan for new elections," Mr. Noriega said.

DEMOCRACY IN VENEZUELA

BY SECRETARY COLIN L. POWELL

[Washington, DC—May 27, 2004]

The Venezuelan people have reached a defining moment for their democracy. Beginning May 28, more than one million citizens will have the opportunity to reconfirm their signatures on petitions calling for a referendum on the tenure of President Hugo Chávez.

This process will help Venezuelans resolve their differences and build a better, stronger future for their nation.

I urge the Venezuelan government to honor the wishes of its people by supporting a fair and credible process that produces prompt results in an atmosphere free of fear and intimidation. I also call on all Venezuelans to reject violence as incompatible with the exercise of democracy.

The presence of Organization of American States and Carter Center observation missions will promote greater transparency and credibility.

The United States supports a peaceful, democratic, constitutional and electoral solution to Venezuela's political impasse, as called for in Organization of American States Resolution 833 and the May 29, 2003 Agreement between the Government of Venezuela and the democratic opposition. The recent statement of the Friends of

the Secretary General of the OAS for Venezuela calls for such a democratic solution. We will continue working with the international community to help the people of Venezuela achieve their democratic aspirations.

Senator COLEMAN. Senator Nelson.

Senator NELSON. Mr. Secretary, what is the administration's view of Venezuela's cooperation on the war on terrorism, particularly with regard to efforts at securing the border with Colombia?

Mr. NORIEGA. Senator, I think you have fairly characterized what we know about the level of cooperation that we receive from Venezuelan authorities, particularly on their border with Colombia. We have raised concerns, I think as you have, with Venezuelan authorities. Without being too terribly specific in dealing with sensitive information, we have made it clear that we believe we could do better, that the Venezuelan authorities as well could do better in the level of cooperation in fighting terrorism, securing that border, securing the flow of people, arms, and other things across the border with Colombia. We have made it very clear that we want to work with Venezuela, as it meets its commitments under the U.N. and OAS anti-terrorism accords, to prevent the spread of terrorism, prevent any persons moving across borders or goods or items or arms moving across the border that might involve terrorist groups that threaten other countries.

Senator NELSON. Mr. Ambassador, there was a recent editorial by the Chavista political leader Heinz Dederich, and he allegedly stated that the referendum is a "all-or-none" proposition and must be won by any means, and that if Chávez loses the referendum, it will leave "the ELN, FARC, and MAS of Bolivia without support." Additionally he allegedly went on to say, "Cuba will be in danger." He also stated that President Chávez must defeat the enemies and went on to list the Democratic Charter of the OAS as one of the enemies of the regime.

What is the OAS's view of all this? Do you think it is true? And how will you take it into consideration?

Ambassador MAISTO. Senator, I do not know the analyst in question, but from your quotes, I would say that my colleagues over at the OAS would find the notion that the Inter-American Democratic Charter is an enemy of anyone in the hemisphere rather preposterous. The Inter-American Democratic Charter has been embraced by all the democratic countries of the hemisphere, including Venezuela, as the political document that is the basis for our political action in this hemisphere in the multilateral arena. It embraces multilateralism with every country contributing, as best it can. And it is still finding its way, and it is being applied. It is not perfect and we are struggling with it all the time, but nobody at the OAS leaves home without this charter in his or her pocket as we do business in the organization. It is referred to every day and any notion, such as the one you cited, would be met, I believe, with incredulity among the member countries. With regard to the United States, I just find that notion preposterous.

But what is in question here is what is going to happen in Venezuela after these electoral processes are completed. There is going to be a winner and there is going to be a loser. There is going to be a majority and there is going to be a minority or several minorities. And it is going to be up to the Venezuelans to work through

this in a democratic structure. Indeed, members of the community will be prepared to help in that process. And the charter provides a way to do that.

So we are hopeful in the OAS about the Democratic Charter and we are hopeful whenever we think about the process that is going on in Venezuela, thinking about what the OAS and the Carter Center have contributed already and want to contribute in the days ahead.

Senator NELSON. What do you expect the OAS to do with regard to observing for the goal of a free and fair election on August 15?

Ambassador MAISTO. Senator, the OAS is quite proficient in election observation. Just this year, the OAS has put election observation teams on the field in Panama, in the Dominican Republic, El Salvador, Guatemala. We know that there is a lot of concern about computers and machines and things like that. The OAS has an absolutely first-rate team that they field. They have experts that work for them and experts that they tap.

Senator NELSON. Do you expect to have access to all of the polling places?

Ambassador MAISTO. The rules of engagement for the OAS to observe elections certainly include access to all the polling places and all the technical part of it, looking at the machines, testing them out, et cetera. That is standard operating procedure in an OAS election observation.

Senator NELSON. Thank you.

Senator COLEMAN. Thank you.

Secretary Noriega, Ambassador Maisto, there are a lot of other questions. I know on the second panel some of the witnesses have some time constraints. I have 19 questions from Chairman Lugar, everything ranging from questions about expectations of a second meeting of a Group of Friends, the position of Secretary Powell in regard to what the Group of Friends can do to deal with some of these issues. I have questions about voting machines, and there were mutual concerns raised in Senator Nelson's opening statement about voting machines and packing the court and how we respond to that. But again, in the interest of having a full opportunity to hear from all the witnesses today, what I will do will be to make sure that we submit these in writing and would request that you respond to them as soon as can be done.

Mr. NORIEGA. Thank you very much, Mr. Chairman.

Senator COLEMAN. Thank you.

With that, we will call our second panel. I already introduced the second panel in my opening statement. We will proceed from my right to my left, starting with Dr. McCoy, Mr. Vivanco, Mr. Diaz, Mr. Tissot, and Mr. Weisbrot. Panel members understand there is a timing system. When the yellow light goes on, I would like you to conclude your testimony. We will, at your request, have your entire statement entered as part of the official record. With that, Dr. McCoy.

STATEMENT OF DR. JENNIFER McCOY, DIRECTOR, AMERICAS PROGRAM, THE CARTER CENTER, AND GEORGIA STATE UNIVERSITY

Dr. McCoy. Thank you very much, Senator Coleman, for the invitation here today. As I said to Senator Coleman earlier, I am continuing in a role as international observer, so I will limit my remarks to the recall process and not to other aspects of Venezuelan politics at this time. I was asked to give an assessment of this, and I want to say it is based on 20 years of study of Venezuela as a scholar as well as monitoring elections in Venezuela in 1998 and 2000, and intensive involvement in the last 2 years at the invitation of the Government of Venezuela and the opposition to help facilitate the political crisis there, and most recently observing the recall process that has already been begun to be discussed this afternoon.

I would like to start in this brief oral summary just listing some of the factors that I think help to explain and help us to understand what has happened so far in the recall process, to understand some of the delays, the confusions, and the controversies because this is affecting the entire recall referendum process. Some of these factors will continue, and I think it is good to understand these.

The first is that, in fact, this is an unprecedented process. The National Electoral Council board itself was new, and there was no law to regulate the process. So the newness, novelty of the entire process was one of the reasons for some of the delays and confusions.

Second, we need to keep in mind that this is all occurring in a politically polarized climate where the stakes are extremely high, and so you have a National Electoral Council that becomes the fulcrum of the political dispute within Venezuela and in fact the negotiations over the procedures themselves become very political. We have to understand that every single decision they are taking is as a result of an intense negotiation within the CNE and under very intense pressure from all the political parties.

Third, the nature of the signature collection itself was a hybrid system, neither completely privately conducted by the political parties nor completely publicly conducted by the National Electoral Council. And that led to some of the subsequent confusion and controversy during the verification period.

Fourth were the cumbersome mechanisms of control and verification procedures which arose from the distrust between the parties and the desire to prevent fraudulent signatures. So that led to the design of an extremely complex set of procedures, multiple levels of verification, and delays in the process.

Fifth, there were changes in the procedures during the verification, which I will not go into here but some of which is in my written testimony.

Sixth, there were incomplete or vague instructions in the beginning, some slowness to the decisionmaking, in part due to the political nature, that resulted in the need to come out with clarifying instructions throughout the process.

And seventh, the negotiations over the reparos process itself, which was the correction period that happened at the end of May.

These negotiations occurred at the urging of the international observers to help to get a consensus among the political parties and the National Electoral Council on procedures to conclude that signature collection and verification process.

So the overall conclusions that we drew, the Carter Center and the OAS, about the process to date include the following.

The first phase, which was the signature collection, is that the signatures were collected in an atmosphere mostly free of violence in which the citizens who wished had the opportunity to sign, though there was some confusion on the exact procedures to use, leading to some more of the confusion during the verification.

On the second stage, which was the verification process, it was very complex, multiple levels of review, unclear rules that were inconsistently applied, multiple delays, and a concern for detecting fraud at times seeming to override a concern to recognize the good faith of the signers.

The third period, the correction or reparo period—oh, my goodness, that time went fast.

Senator COLEMAN. Can you finish?

Dr. MCCOY. Let me finish quickly. Let me move to this.

For the future, moving to the recall referendum on August 15, I want to say there are three very important things to recognize in terms of the progress. It is very significant and positive that all of the Venezuelan actors are participating now in a democratic and constitutional process to resolve their differences. Second, both sides are ready to engage in the campaign and try to win. Third, if the result is decisive and the process is transparent, I am convinced both sides will accept the results.

The concern is going to be if it is a very close result, both sides will be tempted to argue that there is fraud or manipulation affecting the outcome. Therefore, it is absolutely crucial that the greatest transparency possible is provided in the process to raise the confidence among Venezuelans in the results. During the questions, I could go into what I see as the measures needed.

[The prepared statement of Dr. McCoy follows:]

PREPARED STATEMENT OF DR. JENNIFER MCCOY

THE VENEZUELA RECALL REFERENDUM PROCESS

Mr. Chairman, thank you for the invitation to testify before this subcommittee. I have studied Venezuela as a scholar for twenty years, and have been involved in Venezuela with The Carter Center since 1998, when we observed the 1998 and 2000 elections. Since June of 2002, I have been leading the Carter Center's efforts to facilitate dialogue between the government and opposition, and to monitor the recall referendum effort begun in November 2003.

OVERVIEW

After the short-lived ouster of President Hugo Chavez in April 2002, the government of Venezuela invited former President Jimmy Carter to facilitate a dialogue between the government and the opposition forces. We formed a Tripartite Working Group of the OAS, UNDP, and Carter Center which sponsored a national Table of Negotiations and Accords from November 2002-May 2003. Facilitated by Secretary General of the OAS Cesar Gaviria, and assisted by The Carter Center and UNDP, the Table produced an agreement in May 2003 which, among other things, recognized that the constitutional provision for recall referenda on elected officials could be a mechanism to help solve the bitter political divisions of the country.

In May of 2003, the country lacked a functioning electoral agency (CNE) and the National Assembly proved unable to forge a supermajority to name a new direc-

torate. The supreme court stepped in to do so, and a brand new CNE board was sworn in on August 27, 2003, acclaimed by all the parties. One of their first tasks was to rule on the signatures that had been presented a week earlier by the opposition Coordinadora Democrática for a recall of the president. The CNE disavowed those signatures and set to work to devise a set of regulations for this new procedure in Venezuela. The resulting regulations called for signatures to be collected in a 2-stage process during the last two weekends of November—the first weekend for the national legislators (deputies) sought to be recalled by the government, and the second weekend for the deputies and the president sought to be recalled by the opposition. The CNE invited the OAS and The Carter Center to observe the process, and those two organizations formed a joint mission with two chiefs of mission, and joint statements, throughout.

The signatures collected in those two weekends were presented to the CNE for verification (after being organized, photocopied, etc by the political parties) by December 19. The CNE took a break for Christmas and began signature verification January 13, 2004. The CNE announced preliminary results on March 2, with signatures in three categories: valid, “observed”, and invalid. The announcement indicated the opposition had not yet gathered sufficient valid signatures to trigger a presidential recall, but that there would be a correction period (*reparos*) in which nearly 1.2 million signers could appear again to confirm their signatures. The repara period occurred at the end of May, and on June 3, the CNE announced that there would be a recall vote on the president’s mandate (subsequently scheduled for August 15, 2004), and nine opposition deputies.

The recall vote is scheduled four days before constitutional trigger date of August 19. If the recall occurs before August 19 and if sufficient votes in favor of recall are cast, then there should be an election to choose a person to fulfill the remainder of the President’s term in office (which ends January 2007). The number of votes to recall an official must fulfill two conditions: a) be at least one more than the absolute number of votes by which the official was elected in the first place, in this case 3.7 million; and b) be more than the No votes cast in the recall. This election, if needed, is likely to occur about October 15, 2004. If the recall referendum occurs after August 19, and the president is recalled, then the Vice President fulfills the term.

ASSESSMENT OF THE RECALL PROCESS TO DATE

The process has taken much longer than expected and has had some controversies, due to a number of factors:

a) *Unprecedented nature of the process, novice CNE, lack of a law to regulate the process.* This is the first country of which I am aware in which a recall of an elected president has been attempted (Iceland has the provision, but may have never implemented it). The presidential recall referendum was introduced into the 1999 constitution and had not yet been used in Venezuela. The CNE directors were new and had to first devise a regulation to govern the process, since the National Assembly had not yet drafted and approved a law to implement the constitutional provision. All of these factors led to a steep learning curve, some ad hoc adaptation along the way, and creation of new rules as the process developed and new wrinkles were discovered.

b) *Politically-polarized nature of the process.* The stakes are extremely high for all sides. The President, of course, would prefer to stay in office. The opposition has been trying for at least two years to remove the President from office, through massive protest marches, calls for resignation, proposed constitutional amendments, a two-month national oil strike, and the April 2002 military removal from office. The deep polarization of the country meant that the normal compromise and give and take of democratic processes was not happening. Instead, the point of contact between the opposing sides was centered within the 5-person CNE as it struggled to negotiate acceptable compromises on the procedures of the process, under intense pressure from all sides.

c) *Hybrid nature of the process.* Part of the political compromise reached over the procedures was the hybrid nature of the signature collection process. It was neither a completely private affair, conducted by the political parties, nor a completely official affair, controlled by the CNE. This hybrid nature led to subsequent confusion and controversy during the verification period.

d) *Cumbersome mechanisms of control and verification procedures.* The distrust between the parties and the desire to prevent fraudulent signatures (which the government suspected from previous signature collection efforts) produced a complex set of procedures designed to protect against fraud. These pro-

cedures, both in the collection process and the subsequent verification, provided for some checks which the CNE did not have the capacity, in reality, to implement—such as verification of thumbprints and signatures (neither of them digitalized in the signature collection nor in the national identity card system).

e) *Changes in procedures during the verification.* One slowdown came after the CNE discovered that some signature sheets apparently showed the same handwriting for all of the signer data on that sheet, and in some cases even for the signatures themselves. This discovery produced a new criterion in the middle of the verification process to put into “observation” all of those signature lines which appeared to have similar handwriting as at least one other line on the same sheet. This required a second round of verification of the names that had already been reviewed, and resulted in some one million names being questioned under the “similar handwriting” criteria. This group became the bulk of the names that would go to the correction period in late May, for signers to confirm that in fact they had signed the petitions and it was not fraud.

f) *Incomplete or vague instructions; slow decision-making; insufficient training during the verification.* The CNE board at points, took a long time to make decisions and issue instructions for verification, and many of those instructions were vague or incomplete, requiring further instructions. The CNE did try to address some of the delays by enlarging the teams of verifiers, but the various levels and teams of verifiers were not always sufficiently trained on the first attempt. The end result was that the verification phase was supposed to take 30 days, and in reality took 120 days (depending on which dates one uses).

g) *Negotiations over the Reparo process.* At the urging of the international observers, the CNE entered into discussions with the political parties in an attempt to devise mutually satisfactory rules for the correction (reparos) period (which had not previously been specified). These negotiations took several weeks, but were important in gaining the acceptance of the opposition Coordinadora Democratica to participate in the reparos at all, and in generating clearer rules than had been generated for the earlier phases of the process.

Conclusions about the Signature Collection, Verification and Correction Stages: The signature collections were conducted in an atmosphere mostly free of violence, with citizens who so wished having the opportunity to sign, though with some confusion on the exact procedures. The verification process was complex, with multiple levels of review, unclear rules inconsistently applied, multiple delays, and with a concern for detecting fraud overriding a concern to recognize the good faith of the signers. The correction (reparo) period was conducted in an atmosphere mostly free of violence, with citizens who so wished having the opportunity, for the most part, to confirm their signatures or remove their names, and with mostly clear and transparent procedures.

PROGRESS AND CONCERNS ABOUT THE UPCOMING RECALL VOTE OF AUGUST 15, 2004

Progress:

First, it is very significant and positive that all of the Venezuelan actors are participating in a democratic and constitutional process to resolve their differences. After trying a number of strategies, ranging from civil disobedience to general strikes, the opposition is now focusing on the recall referendum. The referendum will help to clear the air regarding the questions raised about the president's mandate.

Second, both sides are ready to engage in the campaign and try to win. Both have named a campaign command group; both are engaging in the effort to turn out as many of their supporters as possible.

Third, if the result is decisive and the process transparent, both sides will accept the results. If the president loses, I expect he will accept his loss and go on to the presidential election (either running himself if allowed by the supreme court, or supporting another candidate.) If the opposition loses, I expect the parties will focus on the upcoming governor and mayor elections (September 26) and the National Assembly elections in 2005.

Concerns:

If the results of the recall referendum are close, both sides will be tempted to argue that fraud or manipulation affected the outcome. Therefore, the greatest transparency possible is needed in order to raise confidence among Venezuelans in the results.

The measures that could help to assure transparency and raise confidence include:

- Audit of the voter's list (REP).

- Public simulations to test the new touchscreen voting machines.
- Audit of a sample of the paper receipts from the voting machines immediately after the close of the polls.
- Professional, neutral international observers with full access to the entire process—reparation, vote, tabulation, resolution of challenges.
- Election workers chosen by lottery and trained sufficiently well and early.
- Voter education on the process and the new machines.
- Clear rules on which national identity cards will be accepted (some confusion during the reparos resulted in some citizens being turned away.)
- Clear media regulations to ensure equal access by both sides for paid advertising, and equitable and balanced news coverage of both sides.
- Climate of respect and tolerance, particularly within the public and private news media and among the two campaigns.

BEYOND THE RECALL REFERENDUM

We should not lose sight of the fact that the *referendum itself will not solve the underlying divisions within Venezuela society*. It will help to resolve the question as to the level of confidence that the Venezuelan people have in the government of Hugo Chavez at this moment, and it will provide for the citizens to express their will in this unprecedented exercise of participatory democracy. But it will not resolve the fundamental differences with regard to the future direction of the country.

Resolving those differences will take a renewed effort of dialogue and direct communication among political and social actors to understand one another's grievance. It will take a *concerted effort at social reconciliation to heal the trauma* that divides cities, neighborhoods and even families. It will take a long time to overcome the personal hurt and fear that has arisen as a result of some government supporters being driven out of their homes and not able to enter restaurants or public places without "cacerolas" and harassment, and opposition members who fear persecution or even violence from gangs of motorcyclists or "hordes" of poor people descending from the mountains to defend their revolutions.

Resolving those differences will also *require a concerted national effort to devise a consensus plan to tackle the serious poverty problem*, which has resulted in the alarming social dislocation of a society moving from a 25% rate of poverty in the 1970s to a 75% poverty rate two decades later and the discourse of the haves vs. the have-nots in the current political debate.

Finally, resolving those differences will *require restoring checks and balances in government, and guaranteeing apolitical space for whoever loses an election*, so that a losing party need not fear recrimination, vengeance, or a loss of voice and rights in a winner-take-all political system, and knows it will have a chance to run again.

Senator COLEMAN. Thank you very, very much, Dr. McCoy.

Mr. Vivanco, before you begin your testimony, Senator Nelson has another commitment. I know that he had a question for Dr. McCoy. So what I will do is, Senator Nelson, why do you not proceed with the questioning, and then we will go with Mr. Vivanco's testimony after that.

Senator NELSON. Dr. McCoy, I sent part of our staff down there to Venezuela to see how things are going and got back a report that I would like for you to comment on, that with the issuing of the national ID cards, that some members of the military and other government organizations are confiscating these cards from opposition voters to keep them from voting, and that others who are trying to get registered are being harassed so as not to be registered. Do you think this is serious and how would the Carter Center monitor this to make sure that that is not happening to see that there is a free and fair election?

Dr. MCCOY. We have not had reports about confiscation of national ID cards in this current period we are talking about, leading up to the vote. Monitoring any form of intimidation or harassment is extremely difficult. What we do is ask for reports and ask for the

compilation of as much concrete evidence as possible from those who are making the complaint. We also turn those over to proper authorities as well because we do not have the capacity to investigate. But any kind of harassment or intimidation we denounce.

Senator NELSON. You have clearly seen the newspaper reports about the question of the new voting machines. What, if anything, will the Carter organization do as you try to monitor the fairness of these elections? And mind you, I come from a State that is very sensitive about the accuracy of voting machines.

Dr. MCCOY. Well, my State of Georgia is the first State in the country to use voting machines throughout the State, and I was very happy with them in the last process that I participated in.

On these particular machines, the Smartmatic machines, I personally went with an entire team, including an engineer and a statistician, some technical people on our team, to receive a full presentation of the machine. I have been trying to check into them as much as possible. We were very impressed with the presentation we received, the security measures that were shown to us, and the functioning of the machine that we witnessed.

However, just as in the United States, the same controversies and concerns about the black box of the computer exists in Venezuela, those questions. So a very important process is having the paper trail, the paper receipts, which are provided by these machines. It is my understanding that the National Electoral Council has decided to carry out an audit on the evening of the vote, after the vote is completed, of a sample of the machines that would count the paper trails and compare those with the results, which is definitely our recommendation. That I think is very important to bring confidence and transparency to the process.

Senator NELSON. Well, if Venezuela pulls that off, the State of Florida is not even doing that with a paper trail. So maybe Venezuela will teach Florida something.

Dr. MCCOY. I hope so.

Senator NELSON. Thank you, Mr. Chairman.

Senator COLEMAN. Thank you, Senator Nelson. Thank you, Dr. McCoy.

Mr. Vivanco.

**STATEMENT OF JOSÉ M. VIVANCO, EXECUTIVE DIRECTOR,
AMERICAS DIVISION, HUMAN RIGHTS WATCH**

Mr. VIVANCO. Thank you, Mr. Chairman. I would like to submit for the record my written testimony.

Senator COLEMAN. Without objection.

Mr. VIVANCO. Venezuela is one of the most politically polarized countries in the hemisphere. It has been in the state of almost perpetual political crisis for some time now. Opponents of President Hugo Chávez have sought to remove him from office on several occasions, through an aborted coup d'état in 2002 and through a costly general strike in 2003. Fortunately, the government and the opposition have since agreed to address Venezuela's political disagreements within the framework of the constitution and the rule of law. In August, the country will hold a national referendum to determine whether or not President Chávez should remain in office.

This agreement has been an important achievement for Venezuela. And it underscores the point that I want to stress at the outset of my testimony: Venezuela today is a democracy. It might be an imperfect democracy, a fragile democracy, but it is nonetheless a democracy.

Human Rights Watch has sought to provide an objective and impartial perspective on human rights developments in Venezuela at a time when political tensions have encouraged some to exaggerate or misrepresent the country's problems.

One issue we have focused on is freedom of the press, not because it is absent in Venezuela, but because it is a central point of contention in the ongoing political crisis. Until now, the government of President Chávez has largely respected press freedom even in the face of a strident and well-resourced opposition press. Indeed, as part of the often heated and acrimonious debate between supporters of the government and its opponents, the press has been able to express strong views without restriction.

At the same time, however, many journalists working for media that support the opposition have been victims of aggression and intimidation by government supporters. And, to a lesser degree, journalists working for media sympathetic to the government have also been subject to acts of intimidation. Moreover, the government's respect for press freedom could be threatened by draft legislation introduced last year that would impose stringent and detailed controls over radio and television broadcasts, greatly limiting what could be aired during normal viewing hours. Fortunately, the National Assembly has not moved to pass the legislation which still requires a final debate and vote.

A second issue and the main subject of my remarks today entails threats to the independence of the country's judiciary. Over the past year, President Chávez and his allies have taken steps to control Venezuela's judicial branch. These steps undercut the separation of powers and the independence of judges. They violate basic principles of Venezuela's constitution and international human rights law, and they represent the most serious threat to Venezuela's fragile democracy since the 2002 coup.

The most brazen of these steps is a law passed last month that expands the Supreme court from 20 to 32 members. The new law allows Chávez's governing coalition to use its slim majority in the legislature to obtain an overwhelming majority of seats on the supreme court. The law also allows his coalition to nullify the appointments of sitting justices based on extremely subjective criteria. In short, Chávez's supporters can now both pack and purge the country's highest court.

It is this court that may ultimately determine the outcome of the recall referendum scheduled for August 15. It will have to decide whether Chávez, should he lose the recall, can run again in the subsequent election, and it will have to resolve any legal challenges that arise from the recall vote itself, which is expected to be hotly contested. Pro-Chávez legislators have already announced their intention to name the new justices by next month, in time for the referendum.

Such a political takeover of the supreme court will also compound damage already being done to judicial independence by the

court itself. The supreme court has summarily fired several lower court judges after they decided politically controversial issues, and it has failed to grant 80 percent of the country's judges security of tenure, which is an essential ingredient of judicial independence.

President Chávez's supporters in the legislative and judicial branches have sought to assuage concerns about the court-packing law by insisting that those wielding authority over judges and justices will show restraint and respect for the rule of law. Such assurances are beside the point, however. A rule of law that relies on the self-restraint of those with power is not in fact the rule of law.

Chávez supporters justify the court-packing law largely as a response to pro-opposition rulings in a deeply divided court such as a highly questionable one that absolved military officers who participated in the 2002 coup. They also point to the failure of lower court judges to address allegedly illegal activities carried out as part of the general strike in 2003 that cost the country billions of dollars in oil revenue and did enormous harm to the economy. It may be true that some judges have let opposition members off the hook after they sought to undermine the rule of law. But Chávez and his supporters should now be taking steps to strengthen the judiciary. Instead they are rigging the system to favor their own interests.

Whether the current crisis is resolved peacefully and lawfully will depend in large part on the country's judiciary. It is the courts that must ultimately determine whether decisions by the country's electoral authorities are valid, as well as whether the actions of Chávez supporters and opponents in the streets are legally permissible.

It is not too late for Venezuela to reverse course. President Chávez's governing coalition in the National Assembly could still suspend implementation of the new law. And the supreme court could strike down, on constitutional grounds, the provisions of the court-packing law that subject the court to political domination by the governing coalition.

Senator DODD. Are you getting close to the end there?

Mr. VIVANCO. I am close. Just three more paragraphs.

Senator DODD. As long as it was not written like Ulysses, we will be fine.

Mr. VIVANCO. The international community should do all it can to encourage Venezuela to protect and strengthen judicial independence. Unfortunately, however, the ability of the United States to advocate for democracy in Venezuela was severely hurt in 2002 when the Bush administration chose to blame Chávez for his own ouster rather than unequivocally denouncing the coup. In addition, the Abu Ghraib prison scandal has undermined the administration's moral authority when it comes to promoting the rule of law abroad.

If the United States is to have a positive influence in Venezuela today, it will have to be through the sort of multilateral diplomacy that the Bush administration endorsed when it signed the Inter-American Democratic Charter in 2001. The Democratic Charter authorized the OAS to respond actively to threats to democracy in the region, ranging from coup d'états to government policies that un-

dermine the democratic process, and it identifies judicial independence as an essential component of a democratic system.

When the United States, Venezuela, and other countries in the hemisphere signed the Democratic Charter in 2001, the committed themselves to work together to defend democracy in the region and to respond to emerging threats before serious harm is done to a country's democratic institutions. Today Venezuela faces such a threat and the international community should engage with the Venezuelan Government to address it.

Thanks a lot.

[The prepared statement of Mr. Vivanco follows:]

PREPARED STATEMENT OF JOSÉ MIGUEL VIVANCO

Mr. Chairman, Members of the Committee:

Thank you for your invitation to address the committee regarding the human rights situation in Venezuela. I know the committee is most interested in an exchange of views, so my remarks will be brief. I would like to submit, for the record, my written testimony.

Venezuela is one of the most politically polarized countries in the hemisphere. It has been in a state of almost perpetual political crisis for some time now. Opponents of President Hugo Chavez have sought to remove him from office on several occasions—through an aborted coup d'état in 2002 and through a costly general strike in 2003. Fortunately, the government and the opposition have since agreed to address Venezuela's political disagreements within the framework of the Constitution and the rule of law. In August, the country will hold a national referendum to determine whether or not President Chavez should remain in office.

This agreement has been an important achievement for Venezuela. And it underscores the point that I want to stress at the outset of my testimony: Venezuela today is a democracy. It may be an imperfect democracy, a fragile democracy—but it is, nonetheless, a democracy.

The principle concern of the international community with regards to Venezuela should be to help the country strengthen its democratic institutions and ensure that it does not suffer another rupture of its constitutional order, as occurred during the 2002 coup.

Human Rights Watch has sought to provide an objective and impartial perspective on human rights developments in Venezuela at a time when political tensions have encouraged some to exaggerate or misrepresent the country's problems.

One issue we have focused on is freedom of the press—not because it is absent in Venezuela, but because it is a central point of contention in the ongoing political crisis. Until now, the government of President Chavez has largely respected press freedom even in the face of a strident and well-resourced opposition press. Indeed, as part of the often heated and acrimonious debate between supporters of the government and its opponents, the press has been able to express strong views without restriction.

At the same time, however, many journalists working for media that support the opposition have been victims of aggression and intimidation by government supporters. And, to a lesser degree, journalists working for media sympathetic to the government have also been subject to acts of intimidation. Moreover, the government's respect for press freedoms could be threatened by draft legislation introduced last year that would impose stringent and detailed controls over radio and television broadcasts, greatly limiting what could be aired during normal viewing hours. Fortunately the National Assembly has not moved to pass the legislation, which still requires a final debate and vote.

Another issue we have addressed is abusive practices by state security forces. In March of this year, in the midst of the most serious unrest since the 2002 coup, we received credible reports that National Guard and police officers beat and tortured people who were detained during the recent protests in Caracas and other Venezuelan cities. The abuses allegedly committed appeared to enjoy official approval at some level of command in the forces responsible for them.

A third issue—and the main subject of my remarks today—entails threats to the independence of the country's judiciary. Over the past year, President Chávez and his allies have taken steps to control Venezuela's judicial branch. These steps undercut the separation of powers and the independence of judges. They violate basic principles of Venezuela's constitution and international human rights law. And they

represent the most serious threat to Venezuela's fragile democracy since the 2002 coup.

The most brazen of these steps is a law passed last month that expands the Supreme Court from twenty to thirty-two members. The new law allows Chávez's governing coalition to use its slim majority in the legislature to obtain an overwhelming majority of seats on the Supreme Court. The law also allows his coalition to nullify the appointments of sitting justices based on extremely subjective criteria. In short, Chávez's supporters can now both pack and purge the country's highest court.

It is this court that may ultimately determine the outcome of the recall referendum scheduled for August 15. It will have to decide whether Chávez, should he lose the recall, can run again in the subsequent election. And it will have to resolve any legal challenges that arise from the recall vote itself, which is expected to be hotly contested. Pro-Chávez legislators have already announced their intention to name the new justices by next month, in time for the referendum.

Such a political takeover of the Supreme Court will also compound damage already being done to judicial independence by the Court itself. The Supreme Court has summarily fired several lower-court judges after they decided politically controversial cases. And it has failed to grant 80 percent of the country's judges security of tenure, which is an essential ingredient of judicial independence.

President Chávez's supporters in the legislative and judicial branches have sought to assuage concerns about the court-packing law by insisting that those wielding authority over judges and justices will show restraint and respect for the rule of law. Such assurances are beside the point, however. A rule of law that relies on the self-restraint of those with power is not, in fact, the rule of law.

Chávez supporters justify the court-packing law largely as a response to pro-opposition rulings in a deeply divided court, such as a highly questionable one that absolved military officers who participated in the 2002 coup. They also point to the failure of lower court judges to address allegedly illegal activities carried out as part of the general strike in 2003 that cost the country billions of dollars in oil revenue and did enormous harm to the economy. It may be true that some judges have let opposition members off the hook after they sought to undermine the rule of law. But Chávez and his supporters should now be taking steps to strengthen the judiciary. Instead they are rigging the system to favor their own interests.

We have seen similar efforts before elsewhere in the region. During the 1990s, President Carlos Menem severely undermined the rule of law by packing Argentina's Supreme Court with his allies. In Peru, President Alberto Fujimori went even further in controlling the courts, through mass firings and the denial of tenure to judges. Venezuela is currently pursuing both a court-packing scheme, similar to that of Menem, and an assault on judicial independence, similar in spirit (if not in scope) to that of Fujimori. As the experiences of Argentina and Peru demonstrate, these efforts do not bode well for Venezuela's democracy.

What makes the developments in Venezuela especially alarming is their potential impact on the country's already volatile political situation. Whether the current crisis is resolved peacefully and lawfully will depend in large part on the country's judiciary. It is the courts that must ultimately determine whether decisions by the country's electoral authorities are valid—as well as whether the actions of Chávez's supporters and opponents, in the streets and elsewhere, are legally permissible. It is, in other words, the courts that must ultimately ensure that the political conflict does not result in the trampling of people's freedom of expression and association, due process guarantees, and other basic human rights. To do so effectively, it is imperative that judges and justices be able to act with the independence and impartiality that are mandated by both the Venezuelan constitution and international human rights law.

It is not too late for Venezuela to reverse course. President Chávez's governing coalition in the National Assembly could still suspend implementation of the new law before any permanent damage is done. And the Supreme Court could strike down, on constitutional grounds, the provisions of the court-packing law that subject the court to political domination by the governing coalition.

The international community should do all it can to encourage Venezuela to protect and strengthen judicial independence. Unfortunately, however, the ability of the United States to advocate for democracy in Venezuela was severely hurt in 2002 when the Bush administration chose to blame Chávez for his own ouster rather than unequivocally denouncing the coup. In addition, the Abu Ghraib prison scandal has undermined the administration's moral authority when it comes to promoting the rule of law abroad.

If the United States is to have a positive influence in Venezuela today it will have to be through the sort of multilateral diplomacy that the Bush administration endorsed when it signed the Inter-American Democratic Charter in 2001. The Demo-

cratic Charter authorizes the OAS to respond actively to threats to democracy in the region, ranging from coup d'états to government policies that undermine the democratic process, and it identifies judicial independence as an essential component of a democratic system.

During Venezuela's 2002 coup, the Charter was crucial in mobilizing member states to join the chorus of condemnation that helped restore President Chávez to office. The OAS should now use its authority under Article 18 of the Charter to press the Venezuelan government to suspend implementation of the court-packing law. The OAS should also offer to mediate Venezuelan efforts to reach a consensus on how to strengthen the independence of the judiciary.

International lending agencies could also have a positive influence on the situation in Venezuela. The World Bank and the Inter-American Development Bank have supported projects aimed at improving the administration of justice in Venezuela—from training prosecutors and police to developing court infrastructure. The most urgent improvement needed now is the strengthening of judicial independence and autonomy. Without that, other improvements may only help a fundamentally flawed system function more efficiently. To encourage progress where it is most needed, all future international assistance aimed at improving the Venezuelan justice system should be made contingent upon Venezuela taking immediate and concrete steps to shore up the independence of its judges and the autonomy of its highest court.

When the United States, Venezuela, and other countries in the hemisphere signed the Democratic Charter in 2001, they committed themselves to work together to defend democracy in the region and to respond to emerging threats before serious harm is done to a country's democratic institutions. Today Venezuela faces such a threat, and the international community should engage with the Venezuelan government to address it.

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RIGGING THE RULE OF LAW:
JUDICIAL INDEPENDENCE UNDER SIEGE IN VENEZUELA

I. SUMMARY

When Venezuelan President Hugo Chávez Frías faced a coup d'état in April 2002, advocates of democracy in Venezuela and abroad roundly condemned the assault on the country's constitutional order. Today Venezuela faces another constitutional crisis that could severely impair its already fragile democracy. This time, though, the threat comes from the government itself.

Over the past year, President Chávez and his allies have taken steps to control the country's judicial branch, undermining the separation of powers and the independence of the judiciary in ways that violate basic principles of Venezuela's constitution and international human rights law.

The most brazen of these steps is a law passed last month that expands the Supreme Court (*Tribunal Supremo de Justicia*) from twenty to thirty-two members. The National Assembly will choose the new justices by a simple majority vote. With the new Organic Law of the Supreme Court (*Ley Orgánica del Tribunal Supremo de Justicia*, LOTSJ), the governing coalition will be able to use its slim majority in the legislature to obtain an overwhelming majority of seats on the Supreme Court. It will also have the power to nuffify existing justices' appointments to the bench. It will, in short, be able to both pack and purge the country's highest court.

A political takeover of the Supreme Court will only compound the damage already done to judicial independence by policies pursued by the Court itself. The Supreme Court, which has administrative control over the judiciary, has suspended a program that would reduce the large number of judges who do not have security of tenure. It has fired judges after they decided politically controversial cases. And it has allowed the country's second highest court to shut down by failing to resolve the legal appeals of its dismissed judges. Depriving judges of the security of tenure and allowing them to be summarily fired or prevented from exercising their due process rights violates basic principles of the Venezuelan constitution and international human rights law.

Human Rights Watch conducted research in Venezuela in May 2004, interviewing current and former judges and justices, justice officials, jurists, legislators, journalists and foreign observers about the legal and practical implications of these practices, as well as the justifications that might exist for pursuing them.

The president of the Supreme Court, the attorney general and a pro-Chávez legislator all sought to assuage our concerns about diminishing judicial independence by insisting that those wielding authority over judges and justices would show restraint and respect for the rule of law. Such assurances are beside the point, however. A rule of law that relies on the self-restraint of those with power is not in fact the rule of law.

Several officials stressed the need to understand the attitude of President Chávez's opponents, many of whom—they argued—are unwilling to engage in meaningful compromise or subject themselves to the rule of law. They insisted that judges and even Supreme Court justices decide cases based on their political convictions rather than the dictates of the law. As examples they cited the Supreme Court's failure to convict alleged participants in the 2002 coup and the failure of lower court judges to address allegedly illegal activities carried out as part of the general strike in 2003 that cost the country billions of dollars in oil revenue and did enormous harm to the economy.

It is true that some sectors of the opposition have subverted the rule of law in their efforts to bring down President Chávez. It might also be true that some opposition judges allow their political convictions to interfere with their application of the law. But rather than take steps to strengthen the rule of law, Chávez's allies and supporters have instead moved to rig the system to favor their own interests.

We have seen similar efforts before elsewhere in the region. During the 1990s, President Carlos Menem in Argentina and President Alberto Fujimori in Peru succeeded in remaking their judiciaries to serve their own interests. The changes ensured their influence over the courts and contributed to a climate of lawlessness that would facilitate the forms of corruption for which both former presidents face criminal charges today.

What makes the developments in Venezuela even more alarming is their potential impact on the country's already explosive political situation. Tensions have been mounting for months as President Chávez's opponents have sought a recall referendum to end his presidency. When the country's National Electoral Council (CNE) disqualified hundreds of thousands of signatures on a petition to authorize the referendum, thousands of people joined street protests, which culminated in violent confrontations with state security forces that left thirteen people dead, scores wounded, and hundreds more in police detention.

Whether the current crisis is resolved peacefully and lawfully will depend in large part on the country's judiciary. It is the courts that must ultimately determine whether the CNE's decisions are valid—as well as whether the actions of Chávez's supporters and opponents, in the streets and elsewhere, are legally permissible. It is, in other words, the courts that must ultimately ensure that the political conflict does not result in the trampling of people's freedom of expression and association, due process guarantees, and other basic human rights. To do so effectively, it is imperative that judges and justices be able to act with the independence and impartiality that are mandated by the Venezuelan constitution and international human rights law.

Main Recommendations

The future of Venezuela's judiciary is now largely in the hands of its highest court. To salvage the autonomy of the judicial branch, the Supreme Court should strike down, on constitutional grounds, the provisions of the court-packing law that subject the court to the political agenda of the governing coalition. To promote the independence of judges, the Supreme Court, in its administrative capacity, should reactivate the suspended program that would create judgeships with security of tenure and ensure full and prompt due process for judges facing dismissal, especially those accused of mishandling politically sensitive cases.

The international community can help. In recent years, the World Bank and the Inter-American Development Bank have supported projects aimed at improving the administration of justice in Venezuela—from training prosecutors and police to developing court infrastructure. The most urgent improvement needed now is the strengthening of judicial independence and autonomy. Without that, other improvements may only help a fundamentally flawed system function more efficiently. To encourage progress where it is most needed, all future international assistance aimed at improving the Venezuelan justice system should be made contingent upon Venezuela taking immediate and concrete steps to shore up the independence of its judges and the autonomy of its highest court.

The Organization of American States (OAS) also has a vital role to play. The Inter-American Democratic Charter, signed in 2001 by foreign ministers of Venezuela and thirty-three other democracies, authorizes the OAS to respond actively to threats to the democratic order of its member states. It was this commitment to

defending democracy that led the OAS to denounce the aborted coup against President Chávez in April 2002. Today Venezuela's democratic order is threatened in a different way, as the judiciary's increasing vulnerability to political manipulation undermines the country's rule of law. Unless concrete steps are taken immediately in Venezuela to reverse this course, the secretary general of the OAS should use his authority under Article 18 of the Charter to take actions, with the prior consent of the Venezuelan government, to assess the situation and possibly seek a collective response from the OAS.

The ultimate responsibility for the crisis in Venezuela's judiciary lies with President Chávez and his governing coalition. To prevent further erosion of the country's separation of powers, the president should instruct his supporters in the National Assembly to suspend implementation of the new court-packing law immediately and promote legislation that would modify those provisions that undermine the independence of the judiciary. The president should also be prepared to welcome and collaborate actively with the secretary general of the OAS, should the organization seek ways to help Venezuela address the crisis facing its judiciary.

II. INTERNATIONAL NORMS ON JUDICIAL INDEPENDENCE

The OAS and the Inter-American Democratic Charter

Democracy is indispensable for human rights, and an independent judiciary is indispensable for democracy. The thirty-four foreign ministers of the Organization of American States (OAS) recognized these propositions when they adopted the Inter-American Democratic Charter in 2001.¹ The Charter defines the "[e]ssential elements of representative democracy" to include "access to and the exercise of power in accordance with the rule of law" and "the separation of powers and independence of the branches of government."²

The Inter-American Commission on Human Rights emphasized this link between judicial independence and democratic rule of law in its 2003 report on Venezuela:

The observance of rights and freedoms in a democracy requires a legal and institutional order in which the laws prevail over the will of the rulers, and in which there is judicial review of the constitutionality and legality of the acts of public power, i.e., it presupposes respect for the rule of law. Judiciaries are established to ensure compliance with laws; they are dearly the fundamental organs for preventing the abuse of power and protecting human rights. To fulfill this function, they must be independent and impartial.³

It is important to note that the definition of democracy found in the Inter-American Charter and in the findings of the Inter-American Commission was informed in large part by recent history. During the 1990s, several countries in the region saw democratically-elected presidents pursue policies that undermined the separation of powers and rule of law, and thereby degraded their own democracies. In Argentina, President Carlos Menem pushed a court-backing law through congress in 1990, expanding the Supreme Court from five to nine members, and managed to get the new openings filled by his allies. The move assured him an "automatic majority"—as it came to be known in Argentina—that ruled regularly in his favor, often using highly dubious legal reasoning.

In Peru, President Alberto Fujimori undercut the independence of the country's judges through mass firings and the denial of tenure, as well as the passage of laws that circumvented constitutional provisions aimed at guaranteeing judicial autonomy and restricting executive power. Fujimori justified these policies as efforts to combat corruption and inefficiency. But what he succeeded in doing—to an even greater extent than Menem—was to ensure his own influence over the courts. The resulting climate of lawlessness in both countries facilitated the forms of corruption for which both former presidents face criminal charges today.

¹Art. 7, Inter-American Democratic Charter. "Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of states and in Inter-American and international human rights instruments."

²Art. 3, Inter-American Democratic Charter. "*Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.*" (Emphasis added.)

³Inter-American Commission on Human Rights, Report on the Situation of Human Rights In Venezuela, December 29, 2003, paras. 150-1.

Venezuela is currently pursuing both a court-packing scheme, similar to that of Menem, and an assault on judicial independence, similar in spirit (if not in scope) to that of Fujimori. As the experiences of Argentina and Peru demonstrate, these efforts do not bode well for Venezuela's democracy.

International Human Rights Treaties

In addition to its commitment to democracy under the Inter-American Charter, Venezuela is party to human rights treaties—including the International Covenant on Civil and Political Rights and the American Convention on Human Rights—that require it to safeguard the independence of its judiciary.⁴ What that obligation entails is made dear by a series of “basic principles” on the independence of the judiciary endorsed by the United Nations General Assembly.⁵ These principles include:

- Any method of judicial selection shall safeguard against judicial appointments for improper motives.⁶
- The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.⁷
- Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the conclusion of their term of office, where such exists.⁸
- A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. . . .⁹
- Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.¹⁰
- All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.¹¹

As this report shows, Venezuela is currently in contravention of *all* of these principles. In doing so, it undermines its rule of law and severely degrades its democracy.

III. BACKGROUND

The Judiciary's Disreputable Past

When President Chávez became president in 1999, he inherited a judiciary that had been plagued for years by influence-peddling, political interference, and, above all, corruption. In interviews with Human Rights Watch, lawyers from across the political spectrum described a system in which justice had often been for sale to the highest bidder. Attorney General Isaías Rodríguez recalled how the country's top administrative court in the past actually established set fees for resolving different kinds of cases.¹²

A 1996 report on the Venezuelan justice system by the Lawyer's Committee for Human Rights painted a grim portrait of the judiciary:

Rather than serving the constitutional role of defender of the rule of law and protector of the human rights of Venezuelan citizens against the government, the courts had often become highly politicized adjuncts of the parties. They were manipulated by groups of lawyers, judges, political and

⁴The American Convention on Human Rights (provides that: “Every person has the right to a hearing, with due guarantees and within a reasonable time, *by a competent, independent, and impartial tribunal*, previously established by law. In the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of (. . .) any other nature.” (Emphasis added.) The International Covenant on Civil and Political Rights (art. 14, para. 1) also indicates the importance of the independence of the judiciary by establishing that “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, *everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.* . . . (Emphasis added.)

⁵Basic Principles on the Independence of the Judiciary, endorsed by United Nations General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

⁶Ibid., art. 10.

⁷Ibid., art. 11.

⁸Ibid., art. 12.

⁹Ibid., art. 17.

¹⁰Ibid., art. 18.

¹¹Ibid., art. 19.

¹²Human Rights Watch interview with Attorney General Isaías Rodríguez, Caracas, May 14, 2004.

business actors for private economic gain. And court procedures had become so slow, cumbersome and unreliable that disputants avoided them at all costs.¹³

In terms of public credibility, the system was bankrupt. A 1998 survey by the United Nations Development Program found that only 0.8 percent of the population had confidence in the judiciary.¹⁴ That distrust translated into public outrage, and in the presidential election of that year, candidates across the political spectrum—including Hugo Chávez Frías—promised to clean up the system.

Declaring a Judicial Emergency

Once in office, President Chávez launched an ambitious effort to reform the Venezuelan state that included holding a referendum to convene a National Constituent Assembly, which then drafted a new constitution that went into effect in December 1999. Due to the overwhelming public consensus that judicial reform was needed, the Chávez administration initially found support for its efforts in this area even among its political adversaries.

One of the first acts of the National Constituent Assembly was to declare that the judiciary was in a state of emergency. It suspended the tenure of judges and created an emergency commission which it empowered to suspend judges who faced seven or more complaints or any type of criminal investigation, or who showed signs of wealth incommensurate with their salaried income. In the following months, the emergency commission removed hundreds of judges from their posts.¹⁵

Political Polarization under Chávez

The consensus around judicial reforms has largely dissolved as the country has grown increasingly polarized in response to President Chávez's policies and style of governance. Over the past three years the mounting political tensions have erupted into violence on several occasions and there have been three concerted efforts by sectors of the opposition to remove President Chávez from office: an aborted coup d'état in April 2002, a national strike that lasted from December 2002 through February 2003 (and had an enormously negative impact on the country's economy), and a petition drive held in December 2003 to authorize a referendum.

The polarization, which pervades Venezuelan society, has found its way into the Supreme Court as well. All twenty sitting justices were selected by the National Constituent Assembly in March 2000 through a 2/3 majority vote, which would suggest they had support from people across the political spectrum. Today, however, it is common wisdom within the legal community that the Court is deeply divided between opponents and allies of President Chávez. It is an even, ten-ten split, with each camp controlling some of the Court's six chambers. The opposition camp is said to have a majority of seats in the electoral chamber. The pro-Chávez camp has a majority in the constitutional chamber, as well as on the six-member Judicial Commission that handles many of the Court's administrative affairs. Supreme Court President Ivan Rincón Urdaneta, who is a member of both the constitutional chamber and the Judicial Commission, is viewed as an ally of President Chávez.

IV. DISPOSABLE JUDGES

Provisional Judgeships

Venezuela denies its judges one of the most basic safeguards of judicial independence: security of tenure. While this problem existed long before President Chávez came to office, it has become particularly acute as the country has become politically polarized over the last few years. The vast majority of the country's judges hold provisional or temporary appointments. The tenuousness of their postings makes them more vulnerable to external pressures aimed at influencing their application of the law.

¹³“Halfway to Reform: The Wodd Bank and the Venezuelan Justice System,” A Joint Report by The Lawyers Committee for Human Rights and The Venezuelan Program for Human Rights Education and Action, 1996, available at <http://www.humanrightsfirst.org/pubs/descriptions/half-way.htm>.

¹⁴United Nations Development Program, *Justicia y gobernabilidad. Venezuela: una reforma judicial en marcha*. Caracas: Editorial Nueva Sociedad, 1998, p. 143. Cited in Tribunal Supremo de Justicia, Dirección Ejecutiva de la Magistratura, Unidad Coordinadora del Proyecto de Modernización del Poder Judicial, “Proyecto para la Mejora de la Administración de Justicia en el Contexto de la Resolución de Conflictos en Venezuela,” p.8.

¹⁵Tribunal Supremo de Justicia, Dirección Ejecutiva de la Magistratura, Unidad Coordinadora del Proyecto de Modernización del Poder Judicial, “Proyecto para la Mejora de la Administración de Justicia en el Contexto de la Resolución de Conflictos en Venezuela,” p. 23.

The Venezuelan constitution safeguards judicial independence by requiring that judges be selected through public competitions and removed only through legally sanctioned procedures.¹⁶ The constitution requires that these procedures provide the judges with due process (including the right to be heard).¹⁷ The laws regulating the procedures for removal require that it be motivated by misconduct on the part of the judge.¹⁸

Yet only 20 percent of the country's 1732 judges currently hold permanent appointments and enjoy the rights established in the constitution. The remaining 80 percent hold positions as "provisional" judges (52 percent), "temporary" judges (26 percent), or other non-permanent postings (2 percent).¹⁹ The provisional judges hold their posts until a public competition is held to select the judges who will fill them on a permanent basis. Temporary judges are appointed to fill temporary openings, such as those created when a sitting judge takes a parental or sick leave.

The Judicial Commission of the Supreme Court, made up of six justices including the Supreme Court president, is in charge of appointing and removing these non-tenured judges. The commission maintains that it can summarily dismiss temporary judges, without cause and without the due process protections afforded permanent judges.²⁰ Provisional judges, by contrast, are entitled to the same security of tenure as permanent judges, at least until the public competition are held to fill their posts. Yet, as described below, the Judicial Commission has also summarily fired provisional judges.

International human rights monitors have repeatedly criticized Venezuela's reliance on provisional judges. In 2001, the United Nations Human Rights Committee expressed its concern that, under the current system, Venezuelan judges could be removed for merely fulfilling their judicial duties.²¹ In 2003, the Inter-American Commission on Human Rights echoed this concern, observing that "having a high percentage of provisional judges has a serious detrimental impact on citizens' right to proper justice and on the judges' right to stability in their positions as a guarantee of judicial independence and autonomy."²²

Venezuelan justice officials, judges and jurists of all political stripes also acknowledge the problem. In interviews with Human Rights Watch, the Supreme Court president, other Supreme Court justices, the attorney general, the ombudsman, and current and former judges all conceded that the prevalence of provisional and temporary appointments undermines judicial independence.

A major obstacle toward translating this consensus into real change has been, ironically, the constitutional requirement that judges be selected through public competitions. When the constitution came into effect in 1999 there were already a large number of provisional judges in the country. Figures from 1997 show only 40

¹⁶ Art. 255, Constitution of the Bolivarian Republic of Venezuela. "Appointment to a judicial position and the promotion of judges shall be carried out by means of public competitions, to ensure the capability and excellence of the participants and those selected by the juries of the judicial circuits, in such manner and on such terms as may be established by law. The appointment and swearing in of judges shall be the responsibility of the Supreme Court of Justice. Citizen participation in the process of selecting and designating judges shall be guaranteed by law. *Judges may only be removed or suspended from office through the procedures expressly provided for by law.*" (Emphasis added.)

¹⁷ Art. 49, Constitution of the Bolivarian Republic of Venezuela. "Due process will be provided in all judicial and administrative proceedings; consequently. . . . 2) Every person has the right to be heard in any type of proceeding, with the proper guarantees and within a reasonable time determined bylaw, by a competent, independent and impartial tribunal established previously. . . ."

¹⁸ Art. 3, Ley de Carrera Judicial (1998): "Judges will have the benefit of security of tenure in the fulfillment of their office. Consequently, they will only be subject to removal or suspension in the exercise of their function in the situations and through the process determined by this law." Art. 40: "Without prejudice to the criminal and civil penalties that might be applicable, judges will be dismissed from their posts, after receiving due process, for the following causes: . . ." (The article then lists types of conduct that provide cause for dismissal.)

¹⁹ Information provided through e-mail correspondence with Executive Director of the Magistracy, Supreme Tribunal of Justice, Ricardo Jiménez Dan, May 20, 2004.

²⁰ The Judicial Commission of the Supreme Court has asserted this authority explicitly in written responses to appeals filed by judges it has summarily fired. See note 37 below.

²¹ Concluding observations by the Human Rights Committee: Venezuela. 26/04/2001. "An extended reform process threatens the independence of the judiciary, given the possibility that judges could be removed as a result of the performance of their duties, thus infringing art. 2, paragraph 3, and art. 14 of the Covenant."

²² Inter-American Commission on Human Rights, "Report on the Situation of Human Rights in Venezuela," December 29, 2003, paras. 159-177.

percent of judges holding permanent appointments.²³ The number of provisional judges increased considerably after the judicial emergency declared in 1999 led to large numbers of dismissals. (And it has increased further since then as the judiciary has opened new courts in an effort to increase access to justice.) Turning this large—and growing—number of provisional judgeships into permanent ones requires holding public competitions for each one.

Toward that end, the judiciary launched a program of public competitions for judgeships in November 2000. It was the most ambitious program of its sort that Venezuela had seen, and produced over 200 permanent judges over the next two years.²⁴ This addressed only a fraction of the provisional judgeships, however, and in order to make a real difference, the program should have been expanded and accelerated.

Instead, in March 2003, the program was suspended. Human Rights Watch received contradictory explanations for what prompted the suspension. Supreme Court President Ivan Rincón Urdaneta said it was because the evaluation system had broken down due to a variety of factors, including efforts by powerful law firms to control some evaluation committees and the decision of numerous evaluators to abandon the program.²⁵ Others involved in the program dispute this account. René Molina, a former Inspector General of the Judiciary who helped design the competition program, insists that the “double-blind” procedure for selecting evaluators and administering the competitions made it virtually impossible for special interests to take over the committees.²⁶ (Molina further recalled receiving pressure from government officials to rig the competitions in favor of specific candidates.) The Network of Watchers (*Red de Veedores*), a nongovernmental organization that monitored the program, did report instances of possible collusion between participants and jurors and various administrative irregularities, but nothing that would justify suspending the program.²⁷

Critics of the government have suggested that the real motive for suspending the program was the desire of Judicial Commission members to continue naming and removing judges at their own discretion. Whatever the true motive might be, the outcome has been precisely that the Judicial Commission continues to exercise virtually unchecked authority to appoint and remove judges.

Judges Summarily Fired

The danger of denying judges secure tenure was apparent earlier this year when three judges were summarily fired after releasing people detained during anti-government protests. The firings occurred on March 2, when Venezuela was in the midst of the most serious unrest it had seen since the attempted coup against the government in April 2002. An opposition demonstration on February 27 had turned violent as civilians clashed with units of the National Guard in central Caracas. Street protests and confrontations continued through the next week, leaving thirteen people dead and over 100 wounded. Government forces detained hundreds of people and, after violently abusing some of them, sought court orders for their prolonged detention pending prosecution.

Three Caracas judges who received such cases were Miguel Luna, Petra Jiménez and Maria Trastoy. Luna received the case of two detained opposition legislators on Saturday, February 28; Jiménez received the case of a detained man on Monday, March 1; and Trastoy received the case of six other detainees at the end of that same day.

All three judges ruled that the public prosecutors had not presented sufficient evidence to warrant ongoing detention of the suspects and ordered their immediate and unconditional release.²⁸ Their rulings would all be upheld subsequently by appellate courts.²⁹

²³ Tribunal Supremo de Justicia, Dirección Ejecutiva de la Magistratura, Unidad Coordinadora del Proyecto de Modernización del Poder Judicial, “Proyecto para la Mejora de la Administración de Justicia en el Contexto de la Resolución de Conflictos en Venezuela,” p. 22.

²⁴ *Ibid.*, p. 23.

²⁵ Human Rights Watch Interview with Supreme Court President Ivan Rincón Urdaneta, Caracas, May 13, 2004.

²⁶ Human Rights Watch interview with René Molina, Caracas, May 14, 2004.

²⁷ Red de Veedores, “Poder Judicial y Sistema de Justicia en Venezuela 2002-3.” Available at <http://veedores.org/nodos/veejudicial/informes/observacionpoderjudicial.htm>.

²⁸ Human Rights Watch telephone interviews with Maria Trastoy and Miguel Luna, May 18, 2004.

²⁹ *Ibid.* Corte de Apelaciones del Circuito Judicial Penal de la Circunscripción Judicial del Área Metropolitana de Caracas Sala Quinta, Actuación No. SA-5-04-1442, Caracas, April 12, 2004 (upholding ruling by Petra Jiménez). Corte de Apelaciones del Circuito Judicial Penal de la Circunscripción Judicial del Área Metropolitana de Caracas Sala Quinta Accidental, Actuación No. SA-5-04-1436, Caracas, April 14, 2004 (upholding ruling by Maria Trastoy).

All three were dismissed from their posts on Tuesday, March 2. They received notices from the Supreme Court President Ivan Rincón Urdaneta informing them that the Supreme Court's Judicial Commission had decided that morning to nullify their appointments "due to observations that were presented before this office."³⁰ The notices did not reveal what the "observations" had been, nor why they might have warranted their dismissal.

When asked about the three judges, Rincón told Human Rights Watch that they had been temporary judges, who had been in their posts for a short period, and were not entitled to the administrative procedures afforded permanent and provisional judges. He insisted, however, that this did not mean that they had been denied their due process rights, as they were entitled to challenge the decision through an "appeal for reconsideration" (*recurso de reconsideración*) to the Commission. Only one of the judges had chosen to do so, he said, and that one had been reinstated. The other two had chosen instead to take their claims to the press. He said they were working with an opposition political party and were "just doing politics."³¹

Rincón's account was inaccurate on several levels. None of the judges had temporary appointments. Two were provisional judges and therefore, by his own admission, entitled to the normal disciplinary procedure.³² The third judge, Petra Jiménez, who had an appointment as a "special substitute" (*suplente especial*), had been serving as a judge continuously for almost three years.

All three judges did in fact challenge their dismissals through "appeals for reconsideration" to the Judicial Commission. One of them, Luna, was indeed reinstated, (though he has since been summarily fired once again.) The other two, Trastoy and Jiménez, report receiving no response to their appeals.³³

The recourse provided by the appeal process does not change the fact that these judges were fired without a hearing. They may be able to present a defense, *ex post facto*, through the appeals process. However, this right to appeal is largely meaningless so long as they are not informed of the reasons for their dismissals (since it requires them to guess the charges they must defend themselves against)—and so long as the commission maintains that its decision is entirely discretionary.

Human Rights Watch obtained a copy of a ruling issued by the Judicial Commission in response to an "appeal for reconsideration" submitted by another judge who had been summarily fired under questionable circumstances. Mercedes Chocrón was removed from her post as a temporary judge in January 2003 after she attempted to carry a judicial inspection of a military base where a general was being held on charges of alleged crimes committed in the context of anti-government activity. (The purpose of the inspection was to ensure that the government was complying with precautionary measures ordered by the Inter-American Commission on Human Rights.) The Judicial Commission's ruling did not address the reasons for Chocrón's dismissal but merely provided a legal basis for its claim to complete discretion in removing temporary judges, arguing that this faculty has "no substantive limit whatsoever" and that its reasons "cannot be questioned or subject to review."³⁴

Second Highest Court Shut Down

The problem of due process for dismissed judges is not limited to those who are summarily fired by the Judicial Commission. In one case from 2003, a court was effectively shut down after its judges were dismissed and the Supreme Court neglected to review their appeals.

³⁰("... en razón de las observaciones que fueron formuladas por ante este Despacho.") Tribunal Supremo de Justicia, Sala Plena, Documents No. TPE-04-0231, Caracas, March 2, 2004 (notification to Maria del Carmen Trastoy Hombre); Tribunal Supremo de Justicia, Sala Plena, Oficio No. TPE-04-0231, Caracas, March 2, 2004 (notification to Petra Margarita Jiménez Ortega).

³¹Rights Watch interview with Supreme Court President Ivan Rincón Urdaneta, Caracas, May 13, 2004.

³²Tribunal Supremo de Justicia, Dirección Ejecutiva de la Magistratura, "Designación del Martes, 02 de Marzo de 2004." Available at http://www.tsj.gov.ve/designaciones/designacion.asp?fecha_id=93.

³³Human Rights Watch telephone interview with Maria Trastoy, May 18, 2004.

³⁴Comisión Judicial, El Tribunal Supremo de Justicia, Magistrado Ponente: Luis Martínez Hernández, Exp. No. CJ-2003-0015, 16 de junio de 2003: "Given that the petitioner does not enjoy security of tenure [*estabilidad*] in her post, it is evident that the [Judicial Commission] . . . can freely revoke [her] appointment, which entails the exercise of a broad and discretionary faculty for which there is no substantive limit whatsoever, since she is not protected by the limits of security of tenure of a judicial officer. From this perspective the revocation of the appointment of the petitioner established by the Judicial Commission cannot be considered a disciplinary act, that is, it does not consist of the application of a penalty based on an offense, but rather it consists of an action based on discretionary concerns; concerns which, consequently, *cannot be questioned or subjected to review.*" (Emphasis added.)

Under existing procedures, permanent and provisional judges may be dismissed by an administrative body within the judicial branch, known as the Commission of Functioning and Restructuring of the Justice System, based on charges brought by the Inspector General of the Judiciary. The judges have an opportunity to defend their record before the commission. They are allowed five days to prepare their written defense, and the commission ten days to make its determination.³⁵ (The commission sometimes grants the judges more than their allotted time, and itself often takes more than its allotted time.) The judges may appeal the commission's decision to the Supreme Court, but in contrast with the hasty dismissal proceedings, the appeal process can drag out indefinitely, leaving the dismissed judges in limbo and the validity of their dismissals in doubt.³⁶ The resulting uncertainty is especially problematic when it involves judges who have handled controversial cases.

The most notorious case of this sort is that of three judges who were dismissed from the First Administrative Court (*Corte Primera de lo Contencioso Administrativo*, CPCA) in October 2003. The CPCA is the second highest court in Venezuela and has national jurisdiction over cases involving challenges to administrative actions by the government (with the exception of those taken by cabinet-level officials, which are reviewed directly by the Supreme Court). In the year prior to their dismissal, the CPCA judges had granted numerous appeals challenging policies and programs of the Chávez government. In several cases the court ruled on behalf of municipal governments (run by opposition mayors) who challenged military interference with their own police forces. In another notable case, in August 2003, it ruled that hundreds of Cuban doctors sent by the Cuban government to work as volunteers in poor communities could not practice medicine in Venezuela without being certified by the Venezuelan medical association.³⁷

President Chávez publicly denounced the court and its judges on several occasions. After the August 2003 decision on the Cuban doctors, for instance, he referred to them as "judges who shouldn't be judges," and said:

I'm not telling them what I'd like to because we're in front of the country. But the people are saying it. Go take your decision where you want, you can carry it out in your home if you want . . . Do you think the Venezuelan people are going to pay attention to an unconstitutional decision, well they're not going to pay attention to it.³⁸

In September, in a highly unusual move, members of the Directorate of Services of Intelligence and Prevention (DISIP) arrested the driver of one of the judges as he was delivering a court document to someone outside the courthouse. The driver's action violated regulations on the handling of court documents, though the Supreme Court would rule (after the driver had spent 35 days in jail) that he had not committed a crime and order his release.³⁹ Two days after the arrest, President Chávez spoke out against the court, reportedly calling its chief judge a "criminal."⁴⁰ Three days later, a public prosecutor accompanied by police, reportedly armed with high-power weapons, conducted a surprise search of the CPCA courthouse.

Two weeks later, the Inspector General of the Judiciary submitted a recommendation to the Commission of Functioning and Restructuring of the Judicial System that the five CPCA judges be dismissed on the basis of an entirely unrelated issue: a determination by the Supreme Court the previous May that that the CPCA had committed an "inexcusable error" in a decision rendered in 2002. After reviewing the charge and the judges' defense, the commission ordered the dismissal of four of the judges (the fifth had already retired and therefore was not subject to sanction).⁴¹

Three of the judges appealed the decision to the Supreme Court, filing two appeals the following month. Venezuelan law obligated the Supreme Court to respond to each type of appeal within specified periods of time. A "hierarchical appeal"

³⁵ Human Rights Watch interview with member of Commission of Functioning and Restructuring of the Justice System, Laurence Quijada, Caracas, May 13, 2004.

³⁶ One provisional judge, Luis Enrique Ortega Ruiz, filed an appeal in September 2002 and has yet to receive a response over a year and a half later. Another provisional judge, Maria Cristina Reveron, who filed an appeal in April 2002, has yet to receive a response over two years later.

³⁷ "Corte Venezuela ordena dejar de ejercer médicos Cuba en Caracas," Reuters, August 21, 2003.

³⁸ Unofficial transcript of radio and television program, "Aló Presidente," No. 161, Aug. 24, 2003, pp. 22-24.

³⁹ Human Rights Watch interview with Supreme Court Justice Blanca Rosa Mármol de Leon, Caracas, May 13, 2004.

⁴⁰ Unofficial transcript of address by President Chávez, September 20, 2003.

⁴¹ *Gaceta Oficial de la República Bolivariana de Venezuela*, Caracas, November 4, 2003, p. 330, 848.

(*recurso jerárquico*), which they filed on November 13, warranted a ruling within 90 days.⁴² And the “nullification appeal” (*recurso de nulidad*) filed on November 27 warranted a ruling within three days.⁴³

Over half a year later, the Supreme Court has failed to rule on either of the appeals. When asked why not, Supreme Court President Ivan Rincón Urdaneta told Human Rights Watch that it was because these cases were “not a high priority.”⁴⁴

There are several reasons, however, why the Supreme Court should consider these appeals to be of highest priority. First is the simple matter of the due process rights of the dismissed judges. A second is the fact that, lacking a quorum of judges, the country’s second highest court has ceased to function, leaving a huge backlog of unresolved cases (by one estimate as many as 2000 cases, all involving challenges to administrative actions by the government). While Supreme Court President Rincón said the Court intends to fill the vacancies with new judges, they have yet to do so after over half a year. Moreover, it is unclear what would happen to the new appointees if the dismissed judges were to win their appeals.

A final reason the appeals should be treated as high priority is the extremely controversial nature of the case—and specifically the perception created by President Chávez’s public comments, as well as the unusually aggressive police actions against the CPCA, that the dismissal reflected the will of the executive rather than the application of the law. This perception, which was shared by many of the people Human Rights Watch interviewed, has only been reinforced by the Supreme Court’s failure to review the legality of the dismissals.

V. SEPARATION OF POWERS UNDER ASSAULT

The National Assembly passed a law in May 2004 that severely undermines the independence of the country’s judicial branch. The new Organic Law of the Supreme Court (*Ley Orgánica del Tribunal Supremo de Justicia*) changes the composition of the country’s highest court, as well as its relationship to the other branches of government.

The manner in which the law was passed was highly questionable. The Venezuelan constitution seeks to safeguard the autonomy of state institutions—including the judiciary—by requiring a 2/3 majority vote to approve any modification of the legislation (known as “organic laws”) that govern their structure and operation.⁴⁵ The National Assembly appears to have violated this provision with the passage of the new law. The governing coalition disregarded the requirement that such laws must be passed with a super-majority of 2/3, passing instead with a simple majority. Moreover, that majority engaged in irregular parliamentary maneuvers, which appear to violate the spirit and perhaps even the letter of the constitution, such as making substantive changes to the law’s text after it had been voted on, and fusing multiple articles to avoid a full discussion of each one.

Power to pack the court

The new court-packing law increases the Supreme Court from twenty to thirty-two justices, adding two justices to each of the court’s six chambers.⁴⁶ The new justices can be designated with a simple majority vote of the National Assembly: a nominee who fails to receive a 2/3 majority in the first three votes can be designated by a simple majority on the fourth vote.⁴⁷ In contrast, the twenty current members of the Supreme Court also received at least a 2/3 majority confirmation vote.⁴⁸

Proponents of the law have justified this increase as a measure for alleviating the justices’ current workload.⁴⁹ This justification is dubious, at best. The four justices (as well as one ex-justice) who spoke to Human Rights Watch all agreed that only two or three of the chambers have any difficulty keeping up with their caseloads

⁴² Art. 91, *Ley Orgánica de Procedimientos Administrativos*.

⁴³ Art. 10, *Código de Procedimiento Civil*.

⁴⁴ Human Rights Watch interview with Supreme Court President Ivan Rincón Urdaneta, Caracas, May 13, 2004.

⁴⁵ Art. 203, Constitution of the Bolivarian Republic of Venezuela.

⁴⁶ Art. 2, *Ley Orgánica del Tribunal Supremo de Justicia*.

⁴⁷ Art. 8, *Ley Orgánica del Tribunal Supremo de Justicia*.

⁴⁸ While there is disagreement among Venezuelan jurists as to whether this 2/3 majority was or is actually required by the former or current Constitution, most agreed that Supreme Court nominees generally did receive such a vote.

⁴⁹ Human Rights Watch telephone interview with National Assembly member Calixto Ortega, May 6, 2004. Human Rights Watch interview with Supreme Court President Ivan Rincón Urdaneta, Caracas, May 13, 2004.

(the constitutional chamber and the “political administrative” chamber).⁵⁰ According to Supreme Court President Ivan Rincón Urdaneta, the only justification for increasing the number of justices in the other chambers is to help them handle administrative tasks. However, it is not difficult to imagine other means to alleviate the administrative responsibilities of the justices by delegating the work to their staff. Nor, for that matter, is it difficult to imagine ways to alleviate the caseload of those chambers with more cases, such as assigning them more clerks or creating adjunct tribunals to handle cases in which the jurisprudence is already clearly established.

Whatever the justification, however, the impact of the increase on the judiciary’s independence is unmistakable. It will allow the majority coalition in the National Assembly to radically alter the balance of power within the country’s highest court, ensuring that each of its chambers is controlled by justices sympathetic to its own political agenda.

Power to purge the court

The Venezuelan Constitution seeks to guarantee the independence of justices by granting them a single twelve-year term and establishing an impeachment process that requires a 2/3 majority vote by the National Assembly, after the “citizen branch” (which consists of the attorney general, the ombudsman, and the comptroller) has determined that the justice has committed a “serious offense” (*falta grave*).⁵¹

The new law eliminates this guarantee. While the impeachment of justices still requires a 2/3 majority vote, the law creates two new mechanisms for removing justices that do not share this requirement. One entails suspending justices pending an impeachment vote, the other entails nullifying their appointments.

The first mechanism is found in a new provision which establishes that, when the “citizen branch” determines that a justice has committed a serious offense, and unanimously recommends the justice’s dismissal, then the justice will be automatically suspended pending an impeachment vote by the National Assembly.⁵² The law requires that the president of the assembly call for a hearing and an impeachment vote within ten days. However, such deadlines are habitually disregarded by the assembly, and there is no effective mechanism for enforcing them. Consequently, if the president of the assembly chooses not to bring the issue to a vote, the justice could remain suspended indefinitely.

The definition of “serious offense” for justices is broad and includes highly subjective categories such as “threaten or damage public ethics or administrative morale” and “made decisions that threaten or damage the interests of the Nation.”⁵³

The National Assembly has also bestowed upon itself the power to nullify justices’ appointments by a simple majority vote in one of three circumstances: the justice provided false information at the time of his or her selection to the court; the justice’s “public attitude . . . undermines the majesty or prestige of the Supreme Court” or of any of its members; or the justice “undermines the functioning” of the judiciary.⁵⁴

⁵⁰ Human Rights Watch interviews with Supreme Court President Ivan Rincón Urdaneta, Caracas, May 13, 2004, Juan Rafael Perdomo, Caracas, May 13, 2004, Supreme Court Justice Blanca Rosa Marmol, Caracas, May 13, 2004, Supreme Court Justice Carlos Martini, Caracas, May 14, 2004. Human Rights Watch telephone interview with former Supreme Court Justice Carlos Escarrá, May 16, 2004.

⁵¹ Articles 264-5, Constitution of the Bolivarian Republic of Venezuela. Article 265 states: “Supreme Court Justices will be subject to removal by the National Assembly by a super-majority of two-thirds of its members, after a hearing is granted the affected party, in cases of serious offenses found by the Citizen Branch, in accordance with the law.”

⁵² Art. 23, Number 3, Ley Orgánica del Tribunal Supremo de Justicia. “Supreme Court Justices will be subject to suspension or removal from their responsibilities, in cases of serious offenses, by the National Assembly, following the petition and determination of offenses by the Citizen Branch. In case of removal, the [decision] must be approved by a super majority of two thirds (2/3) of the members of the National Assembly, following a hearing for the Justice. At the moment that the Citizen Branch determines that an offense is serious and unanimously seeks removal, the Justice will be suspended from his or her post, until the definitive decision of the National Assembly. Likewise, [the Justice] will be suspended If the Supreme Court declares that there are grounds to prosecute him or her; in which case, this measure is different from the suspension sanction established by the Organic Law of the Citizen Branch.”

⁵³ Art. 11, Ley Orgánica del Poder Ciudadano. “The following are considered a serious offense on the part of Supreme Court Justices: 1. When they attempt to harm [atenten], threaten, or damage the public ethics and the administrative morale established in the present law. . . . 4. When they adopt decisions that attempt to harm [atenten] or damage the interests of the Nation.”

⁵⁴ Art. 23, Number 4, Ley Orgánica del Tribunal Supremo de Justicia: The National Assembly, by a simple majority, will be able to annul the administrative act by which a Justice is appointed, principal or substitute, when this person has supplied false information at the time and

This provision is a clear ploy to circumvent the constitutional requirement that justices can be removed with a 2/3 majority vote of the National Assembly. Calling this action the “nullification of appointment” cannot disguise the fact that it entails firing the justice.

What makes the provision particularly dangerous is the fact that two of the three criteria for “nullification” are entirely subjective and will, therefore, allow the assembly’s majority to persecute justices identified with the political opposition. In fact, one member of the governing party of President Chávez, Iris Valera, has explicitly acknowledged this as the law’s intent, saying “the 10 coup-backing justices (*magistrados golpistas*) who supported the de facto government of Pedro Carmona Estanda, should be off the Supreme Court and the new law passed in the National Assembly will achieve this goal.”⁵⁵

Implications for the referendum

The packing and purging provisions of the new law—which would be objectionable under any circumstances—are particularly troubling given the current political context.

The prime target of any packing and purging efforts is likely to be the electoral chamber of the Supreme Court that, under the Venezuelan constitution, has jurisdiction over all legal disputes surrounding electoral activity. The chamber currently contains two members (out of three) who are identified with the opposition and voted to order the CNE to count the disqualified signatures on the referendum petition. By appointing two new justices to the chamber, the governing coalition will be able to tip the balance its own way. (The electoral chamber handles the fewest cases and, by all accounts has the least need for additional justices—which may explain the insistence on expanding the number of justices in all the court’s chambers.)

Simultaneously, justices who fall into disfavor with the governing coalition could be subject to removal. The attorney general has already opened investigations into the electoral chamber’s handling of the referendum case. It is unclear whether or not the suspension provision of the new law would be applicable should the “citizen branch” determine that the justices had committed a “serious offense.” The attorney general told Human Rights Watch that he believed that the new sanction could not be applied retroactively.⁵⁶ In any case, the fact that the justices are under investigation for their rulings on the referendum issues sends a clear message that they will face similar scrutiny—and possible sanction—for any future decisions on this controversial topic.

VI. RECOMMENDATIONS

To President Hugo Chávez Frías:

It is critically important that the issues here not be reduced to partisan wrangling and that the criticisms offered here not be mischaracterized as partisan attack. Human Rights Watch does not take a stand on the political conflict currently underway in Venezuela. When sectors of the opposition launched a coup d’état in April 2002, we denounced their actions forcefully—just as we denounce any actions that jeopardize respect for fundamental human rights anywhere in the world, regardless of the political persuasion of their perpetrators.

Today the gravest threat to human rights in Venezuela is the potential political takeover of the Supreme Court made possible by the new court-packing law. It is not too late, however, for Venezuela to reverse course and salvage the independence and autonomy of its judiciary. Toward that end, the president should:

- instruct his supporters within the National Assembly to suspend implementation of the new court-packing law immediately;
- promote legislation that would modify those provisions of the new law that undermine the independence of the judiciary;

for the purposes of his or her nomination, which prevented or distorted the fulfillment of the requirements established in this law and in the Constitution of the Bolivarian Republic of Venezuela; or when the public attitude of these, which [*sic.*] aims to harm [*atente contra*] the majesty or prestige of the Supreme Court, of any one of its Chambers, of the Justices of Judicial Branch [*sic.*]; or when it aims to harm [*atente contra*] the functioning of the Supreme Court, one of its Chambers, or the Judicial Branch.” (Emphasis added.)

⁵⁵ National Assembly member Iris Varela, quoted by government news agency, Venpres, May 3, 2004. (“[L]os 10 magistrados golpistas que apoyaron al gobierno de facto de Pedro Carmona Estanga, deben quedar fuera del Tribunal Supremo de Justicia y la nueva Ley aprobada en la Asamblea Nacional, servirá para lograr ese propósito.”)

⁵⁶ Human Rights Watch Interview with Attorney General Isaías Rodríguez, Caracas, May 14, 2004.

- collaborate actively with the secretary general of the OAS, should the organization seek ways to help Venezuela address the crisis facing its judiciary (as described below).

To the Supreme Court:

The Venezuelan Supreme Court still has an opportunity to fix the aspects of the court-packing law that threaten its autonomy. Since the law was passed last month, the court has received several appeals that challenge the constitutionality of its most harmful provisions. The Supreme Court should:

- act quickly to review these appeals, paying particularly close attention to the provisions of the court-packing law that allow for justices to be removed or suspended without the 2/3 majority vote required by article 265 of the Constitution.

The Supreme Court should take steps to strengthen the independence of judges. Specifically, it should:

- reactivate the program of public competitions for selecting permanent judges;
- cease from dismissing judges without cause and without due process, regardless of the nature of their appointment;
- make it a priority to provide a prompt and impartial review of the appeals from judges who have been dismissed after handling controversial cases.

To international lending agencies:

The World Bank and the Inter-American Development Bank can play a significant role in strengthening Venezuela's justice system, as is clear from their involvement in the country to date. The Inter-American Development Bank provided a loan for \$75 million in 2001 for projects in the Attorney General's Office and Ministry of the Interior and Justice aimed at improving the efficiency, professionalism and equity of the criminal justice system.

The World Bank has supported the Venezuelan judiciary in recent years with a \$30 million loan for a project (authorized in 1993 and completed after multiple delays in 2003) that aimed to modernize the infrastructure of the judiciary, as well as a \$4.7 million loan for a project (authorized in 1997 and completed in 2000) that aimed to improve the functioning of the Supreme Court. The Venezuelan judiciary has since developed a proposal for a third loan from the Bank.

The most pressing issue facing the Venezuelan justice system now is the threats to its independence and autonomy. Until these threats are addressed, improvements in other areas may only help a fundamentally flawed system function more efficiently.

Therefore, international lending agencies interested in supporting the Venezuelan judiciary should:

- direct aid toward efforts to strengthen the independence of its judges and autonomy of its courts.
- suspend all future assistance for justice sector projects until Venezuela takes concrete steps to address the threats to judicial independence documented in this report.

To the Organization of American States:

The Inter-American Democratic Charter, adopted by the thirty-four foreign ministers of the OAS in 2001, recognizes that "one of the purposes of the OAS is to promote and consolidate representative democracy," and reasserts the proposition (originally articulated in the Declaration of Managua for the Promotion of Democracy and Development) that the organization's mission is not limited to the defense of democracy wherever its fundamental values and principles have collapsed, but also calls for ongoing and creative work to consolidate democracy as well as a continuing effort to prevent and anticipate the very causes of the problems that affect the democratic system of government.⁵⁷

Toward that end, article 18 of the Charter establishes that "[W]hen situations arise in a member state that may affect the development of its democratic political institutional process or the legitimate exercise of power," the secretary general and the Permanent Council of the OAS may take steps to investigate and respond to the situation, "with prior consent of the government concerned."⁵⁸

The current crisis facing the Venezuelan judiciary threatens to have a profoundly negative affect on the country's democracy. Unless Venezuelan government takes concrete steps immediately to reverse this course, the secretary general of the OAS:

⁵⁷ Preamble, Inter-American Democratic Charter.

- should use his authority under Article 18 of the Charter to engage with the Venezuelan government to address the threats to its judicial independence that affect the country's democratic system of government.

⁵⁸ Art. 18, Inter-American Democratic Charter. "When situations arise in a member state that may affect the development of its democratic political institutional process or the legitimate exercise of power, the secretary general or the Permanent Council may, with prior consent of the government concerned, arrange for visits or other actions in order to analyze the situation. The secretary general will submit a report to the Permanent Council, which will undertake a collective assessment of the situation and, where necessary, may adopt decisions for the preservation of the democratic system and its strengthening?"

The Inter-American Charter also authorizes the OAS to act without obtaining prior consent of the member state [i]n the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order" of that state (art. 20). Under such circumstances the secretary general or any other member state "may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate."

Senator DODD [presiding]. Thank you very, very much. The chairman will be back briefly here. This is not a coup that has occurred here.

Mr. Diaz, thank you.

STATEMENT OF MIGUEL DIAZ, DIRECTOR, AMERICAS PROGRAM (MERCOSUR/SOUTH AMERICA), CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES

Mr. DIAZ. I would also like to submit for the record my written testimony.

Senator DODD. Certainly.

Mr. DIAZ. Chairman Coleman and Ranking Member Dodd, I commend you for calling this timely hearing on a subject of such importance, namely, the state of democracy in Venezuela and the threat posed by the government of Hugo Chávez to Venezuela, to its neighbors, and to the United States.

In my view, Venezuela's democracy, never in great shape to begin with, finds itself now in intensive care. That is because over the past 5-plus year that Hugo Chávez has been in power, the government has weakened the foundations of Venezuela's democracy by systematically hacking away at the institutional checks on Chávez's authority. The nongovernmental institutional checks on government authority have also come under fire, in many cases literally.

It is also a government that has never seriously pursued a democratic discourse with the opposition, irresponsibly painting with one brush stroke most of those who oppose it as traitors and worse. In recent months, the Chávez government has crossed over the line by selectively arresting opposition leaders, torturing some members of the opposition, according to human rights organizations, and encouraging, if not directing, its squads of Bolivarian Circles to beat up Members of Congress and intimidate voters, all with impunity.

In sum, Chávez is an anachronism, a return to a dark past that many thought Latin America had overcome. It is a government that lies shamelessly, with the lies getting more and more preposterous by the day, including lies about the United States and our role in Venezuela. Misery and unprecedented strife is what Chávez has brought to Venezuela.

However, I do recognize that Chávez is the byproduct of Venezuela's dysfunctional democratic history and that he has succeeded in giving hope to many who have been marginalized politi-

cally and economically in the past. Nonetheless, in practice, he has done little to improve their lives. In fact, the rate of poverty growth has accelerated over the 5 years he has been in power. Chavez may even be sincere about addressing the many injustices present within the country, but to me what makes Hugo Chávez a tragic figure is that he had the unique opportunity, upon his election, of building a consensus to enable Venezuela to start fresh. But he squandered this opportunity, instead choosing the politics of resentment and deceit that goes by the name of the Bolivarian Revolution.

We have seen this story before. History has taught us that not all who come to power through elections are democrats. How to deal with the wolves that hide in the sheep's clothing of democracy, I am afraid, is a question that as a matter of policy we as a country have not been able to adequately answer.

The good news is that Venezuelans have before them the opportunity to resolve the question of Chávez in a constitutional, democratic, and peaceful manner. I believe the majority of Venezuelans, on both sides of the political divide, want such a resolution. By the millions, Chávez's foes have doggedly latched onto the electoral option in pursuit of a referendum on the President's tenure, and despite the many legal, quasi-legal and outright reprehensible obstacles put in their way by the government and its supporters, they have finally reached this goal. Based on the polls that I have seen, it looks like Chávez's mandate will be revoked on August 15, assuming the votes are faithfully tallied.

It is also a relief to see that Chávez's message of resentment, class warfare, and crass populism has not resonated with the vast majority of Latin Americans who still put their trust in the democratic process. Chávez's Bolivarian model is not seen as a worthy imitation by Latin America's mainstream political right or political left. Chávez himself is generally held in low esteem, regarded as boorish, and at best incompetent. However, I would not be so dismissive of him. I believe that he poses a grave threat, now more than ever, and the community of democracies should take him more seriously than it has up to now.

There are a number of reasons why I believe this to be the case. Although Chávez's message of resentment does not appeal to Latin America's democratic majority, his message does resonate with many of the Latin Americans who are losing faith in democracy's ability to deliver a better quality of life. According to polls, the percentage of those who are often called anti-systemic has been rising with the contraction of opportunities for economic advancement and the deterioration of democratic governance.

What makes Chávez frightfully dangerous is that, thanks to oil, he has a financial wherewithal to support many of the anti-systemic forces that are festering throughout the region. Chávez has been reportedly sponsoring forces of questionable democratic credentials in Bolivia and Ecuador, two countries that are faltering in their commitment to democracy, where the balance could be tipped by this kind of intervention. Chávez is the primary financial support for Castro's government to the tune of about 78,000 barrels of oil a day, undercutting the Bush administration's attempt to isolate and ultimately dislodge that evil regime.

With regards to the United States, Chávez has thus far been more of a nuisance and less of a real and imminent threat. Now, this could all change if Chávez decides to disrupt the legitimacy of the referendum. Disturbingly, there are indications that that is exactly what he has up his sleeve. If Chávez does not allow for an on-time, fair, and transparent execution of the referendum, the consequences for the U.S. could be serious. For starters, there is the risk that it could trigger an outburst of violence—some even fear a civil war—that could potentially drag the U.S. in. The humanitarian and economic repercussions that such an eventuality could occasion in terms of refugees flocking to our shores and disruptions of U.S. business interests are substantial. Moreover, if Chávez is able to get away with cheating his way into staying in power, it may encourage others in the region to follow in his footsteps.

Do I have 2 minutes?

Senator DODD. You do.

Mr. DIAZ. Thank you.

In closing, let me offer some thoughts on what the U.S. Government and the U.S. Congress, in particular, could do to avert such an eventuality. As I see it, the basic question that the U.S. Congress has to answer is whether it is prepared to make an investment now to ensure that the upcoming referendum process is transparent and credible to both sides. If the U.S. Government is not prepared to make this investment, it risks having to contend with the previously described consequences of what could result without such engagement.

Although ultimately, the well-being of Venezuela's democracy rests with Venezuelans themselves, the international community can make an important contribution in assuring that the referendum is conducted in a proper fashion. In preparation for this defining exercise, I would argue that the level of international engagement in Venezuela must be ratcheted up substantially and this must begin now, as the National Electoral Council is already taking steps that put in doubt its capacity and commitment to do a fair accounting of the votes.

It is also important to put the electoral authorities on notice that the eyes of the world are upon them and that they will be accountable to the international community for any attempt to alter the vote, no matter for which side. The right to vote is a human right and those who violate that sacrosanct privilege are human right violators. The moral burden to live up to the high calling of assuring a free and fair vote should be even greater considering the likelihood that any perception of wrongdoing will result in bloodshed. What is important is not that elections take place, but assuring that the environment in which they take place is unfettered. After all, Cuba has elections too, but we know they do not make Cuba a democracy.

In engaging itself in the issue, the modus operandi of the United States at all times should be to work in tandem with the international community. It can do so through the Group of Friends, through the OAS, and other multilateral mechanisms available.

Last and most importantly, the United States has to do more, much more, to assure that the circumstances that led to the rise to power of someone like Hugo Chávez are addressed, not just in

Venezuela, but throughout the region. Throughout Latin America, not enough jobs are being created to put food on the table for too many families. Personal insecurity is rampant, and the political machinery in many countries is dysfunctional and rife with corruption. I cannot blame the many who see Chávez as a savior. They are desperate and deserve better than the snake oil than Chávez has provided them. Washington must be more a part of the solution to the troubles that afflict the region. Democratic institutions need to be fortified, and in some cases rebuilt entirely. New options for economic growth need to be explored, and more attention has to be given to the staggering income inequality that plagues the entire region. It will not be cheap and it may entail crossing some interests within our own borders, but in the long term it will be in the interest of both the United States and Latin America.

Thank you for your attention.

[The prepared statement of Mr. Diaz follows:]

PREPARED STATEMENT OF MIGUEL DIAZ

THE THREAT TO DEMOCRACY IN VENEZUELA AND ITS IMPLICATIONS FOR THE REGION
AND THE UNITED STATES

Chairman Coleman and ranking member Senator Dodd, I commend you for calling this timely hearing on a subject of such importance, namely, the state of democracy in Venezuela and the threat posed by the government of Hugo Chávez to Venezuela, to its neighbors, and to the United States. I am grateful for the opportunity to contribute to these deliberations. Let me underscore that my comments represent my views only and not those of the Center for Strategic International Studies, the organization I work for as Director of the South America Project.

In my view, Venezuela's democracy—never in great shape to begin with—finds itself now in intensive care. That is because over the past five-plus years that Hugo Chávez has been in power, the government has weakened the foundations of Venezuela's democracy by systematically hacking away at the institutional checks on Chávez's authority. Next on the block is the judiciary, which he is about to hijack by stacking the Supreme Court with 12 additional pro-Chávez judges. The non-governmental institutional checks on governmental authority have also come under fire, in many cases literally. The latter include the labor unions, the press, and even the church.

It is also a government that has never seriously pursued a democratic discourse with the opposition, irresponsibly painting with one brush stroke most of those who oppose it as traitors and even worse. In recent months, the Chávez government has crossed over the line by selectively arresting opposition leaders, torturing some members of the opposition (according to human rights organizations) and encouraging, if not directing, its squads of Bolivarian Circles to beat up members of Congress and intimidate voters—all with impunity. This is a president who comes from the same mould as the likes of Zimbabwe's Robert Mugabe, whom Chávez described as a "warrior for freedom" at a recent conference of developing world leaders in Caracas.

In sum, Chávez is an anachronism, a return to a dark past that many thought Latin America had overcome. Let us not forget that Chávez initially entered the political scene as the leader of a military coup against a democratically elected government. It is a government that lies shamelessly, with the lies getting more and more preposterous by the day, including lies about the United States and our role in Venezuela. Misery and unprecedented strife is what he has brought to Venezuela.

However, I do recognize that Chávez is the byproduct of Venezuela's dysfunctional democratic history and that he has succeeded in giving hope to many who have been marginalized politically and economically in the past. Nonetheless, in practice he has done little to improve their lots. In fact, the rate of poverty growth has accelerated over the five years he has been in power. According to the U.S. Treasury Department, extreme poverty has risen from 21% in 1998 to 33% in 2002. In the same period, per capita income has dropped from US\$3,800 in 1998 to US\$2,800 in 2003. Chávez may even be sincere about addressing the many injustices present within the country, but to me, what makes Hugo Chávez a tragic figure is that he had the unique opportunity, upon his election, of building a consensus to enable Venezuela

to start fresh. But he squandered this opportunity, instead, choosing the politics of resentment and deceit that goes by the name of the Bolivarian Revolution. We have seen this story before. History has taught us that not all who come to power through elections are democrats. How to deal with the wolves that hide in the sheep's clothing of democracy, I am afraid, is a question that as a matter of policy we, as a country, have not been able to adequately answer.

The good news is that Venezuelans have before them the opportunity to resolve the question of Chávez in a constitutional, democratic, and peaceful manner. I believe the majority of Venezuelans, on both sides of the political divide, want such a resolution. By the millions, Chávez's foes have doggedly latched onto the electoral option in pursuit of a referendum on the president's tenure, and despite the many legal, quasi-legal, and outright reprehensible obstacles put in their way by the government and its supporters, they have finally reached this goal. The referendum has been scheduled for August 15. Based on the polls I have seen, it seems they have a good chance to revoke his mandate, assuming they are faithfully tallied.

Moreover, it is a real credit to the opposition that, by-and-large, it has purged from its ranks those few who would have preferred to resolve this crisis using unconstitutional means. In getting to this point, credit also should be given to the OAS and the Carter Center for their hard work and persistence in sticking to their commitment to monitor the referendum petition process. Without their contribution, I am afraid the Chávez government would have truncated the process or stolen it outright.

It is also a relief to see that Chávez's message of resentment, class warfare, and crass populism has not resonated with the vast majority of Latin Americans who still put their trust in the democratic process. Chávez's Bolivarian model is not seen as worthy of imitation by Latin America's mainstream political right or political left. Chávez himself is generally held in low esteem, regarded as boorish, and at best incompetent. However, I would not be so dismissive of him. I believe that he poses a grave threat—now more than ever—and the community of democracies should take him more seriously than it has up to now.

There are a number of reasons why I believe this to be the case. Although Chávez's message of resentment does not appeal to Latin America's democratic majority, his message does resonate with many of the Latin Americans who are losing faith in democracy's ability to deliver a better quality of life. According to the poll, the percentage of those who are often called "anti-systemic" has been rising in step with the contraction of opportunities for economic advancement and the deterioration of democratic governance. The percentage of the disaffected varies from country to country, with their numbers in the Andean countries being dangerously high. That explains why, for example, Chávez has a substantial following in Bolivia and has practically none in Chile, the latter a country that has been successful at building consensus and delivering progress and a real reduction in poverty.

What makes Chávez frightfully dangerous is that thanks to oil he has the financial wherewithal to support many of the anti-systemic forces that are festering throughout the region. Currently, the government has approximately US\$24 billion in foreign exchange reserves available. Chávez has been sponsoring forces of questionable democratic credentials in Bolivia and Ecuador—all countries that are faltering in their commitment to democracy, where the balance could be tipped by this kind of intervention. Chávez is the primary financial support for Castro's government to the tune of about 78,000 barrels of oil a day, undercutting the Bush administration's attempt to isolate, and ultimately, dislodge that evil regime. Chávez, in turn, is getting an army of teachers, doctors, and sports trainers, many of whom are feared to be collaborating with the state's increasing repression. It should be noted that the U.S. has inadvertently bankrolled much of these activities by buying 54% of Venezuela's oil exports.

There is also a significant amount of anecdotal evidence that suggests that the Venezuelan government has been, at least, tolerant of the FARC and the ELN by allowing the country to be used by these groups as a safe haven. I think it is fair to say that Venezuela has not been as cooperative as Colombia's other neighbors in helping to corral these terrorist groups.

With regards to the United States, Chávez has thus far been more of a nuisance, and less of a real and imminent threat. For a while now, Chávez has been looking to provoke Washington by engaging in name-calling and blaming us for his troubles, and the Bush Administration's Latin American team deserves kudos for not taking his bait. By and large, his charges have fallen on deaf ears, as he is internationally discredited.

On the more serious charge that he is hosting Middle East-linked terrorist organizations, I have yet to see any solid evidence to that effect. The U.S. intelligence services hopefully have a better idea than I do of whether these allegations are cor-

rect. Just because there is a substantial Arab population in Venezuela—much like in other South American countries—does not validate our worst fears. On a broader diplomatic level, Chávez may be dismissive of some of the regional initiatives that we have championed, like FTAA, but he is not alone. However, the alternatives he has put on the table have no gotten any traction whatsoever in the region either. His uncooperative stance in the international arena, like the visit to Saddam Hussein that broke the international isolation of that brutal regime, was unhelpful, and may have been meant to prick at the U.S., but was in keeping with the sovereign right of the country to manage its foreign relations as it sees fit.

Now this could all change if Chávez decides to disrupt the legitimacy of the referendum. Disturbingly, there are indications that this is exactly what he has up his sleeve. If Chávez does not allow for an on time, fair and transparent execution of the referendum, the consequences for the U.S. could be serious. For starters, there is the risk that it could trigger an outburst of violence (some even fear a civil war) that could potentially drag the U.S. in. The humanitarian and economic repercussions that such an eventuality could occasion in terms of refugees flocking to our shores and disruptions of U.S. business interests are substantial. Moreover, if Chávez is able to get away with cheating his way into staying in power, it may encourage others in the region to follow in his footsteps, negating the hard won efforts to keep the region's democracies (albeit with small d) afloat.

Moving forward, let me close by offering some thoughts on what the U.S. government, and the U.S. Congress in particular, could do to avert such an eventuality. As I see it, the basic question that the U.S. Congress has to answer is whether it is prepared to make an investment now to ensure that the upcoming referendum process is transparent and credible to both sides. If the U.S. government is not prepared to make this investment, it risks having to contend with the previously described consequences of what could result without such engagement. Venezuelans have shown themselves perseverant in safeguarding their democratic rights at the cost of many lives over the past few years. I hope the international community is equally committed to the defense of those hard-won democratic rights that many in this country take for granted.

Although ultimately, the wellbeing of Venezuela's democracy rests with Venezuelans themselves, the international community can make an important contribution. I would argue that the level of international engagement in Venezuela must be ratcheted up substantially, and this must begin now, as the National Electoral Council is already taking steps that put in doubt its capacity and commitment to do a fair accounting of the votes. Its decision, for example, to use an untested electronic voting system of a Boca Raton-based company (Smartmatic) partly owned by the Venezuelan government is of concern. I am also troubled by the government's efforts to circumscribe the role of the OAS and the Carter Center, reports of government raids on independent media outlets, and the accelerated naturalization of non-nationals on the basis of suspect criteria in order to give them voting rights.

It is also important to put the electoral authorities on notice that the eyes of the world are upon them and that they will be accountable to the international community for any attempt to alter the vote, no matter for which side. The right to vote is a human right, and those who violate that sacrosanct privilege are human rights violators. The moral burden to live up to the high calling of assuring a free and fair vote should be even greater, considering the likelihood that any perception of wrongdoing will result in bloodshed. What is important is not that elections take place, but assuring that the environment in which they take place is unfettered. After all, Cuba has elections too, but we know they don't make Cuba a democracy.

In engaging itself in this issue, the modus operandi of the U.S. at all times should be to work in tandem with the international community. It can do so through the Group of Friends, through the OAS, and other multilateral mechanisms available. For starters, I believe Congress should support the administration in a bipartisan fashion in its efforts to assure adequate international monitoring of the referendum. It is also important that Washington speaks with one voice on the matter, otherwise the Venezuelan government will be apt to exploit perceived divisions. If the U.S. Congress chooses to directly engage itself as an observer, it should do so in concert with other countries. I also believe it is important to try to continue to take the high road and not succumb to Chávez's bait to try bilateralize the problem.

Lastly and most importantly, the U.S. has to do more, much more, to assure that the circumstances that led to the rise to power of someone like Hugo Chávez are addressed, not just in Venezuela, but throughout the region. The problem is bigger than Hugo Chávez. Throughout Latin America, not enough jobs are being created to put food on the table for too many families, personal insecurity is rampant, and the political machinery in many countries is dysfunctional and rife with corruption. I cannot blame the many who see Chávez as a savior; they are desperate and de-

serve better than the snake oil that Chávez has provided them. Washington must be more a part of the solution to the troubles that afflict the region. Democratic institutions needed to be fortified, and in some case rebuilt entirely, new options for economic growth need to be explored, and more attention has to be given to the staggering income inequality that plagues the entire region. It won't be cheap and it may entail crossing some interests within our own borders, but in the long term it will be in the best interest of both the U.S. and Latin America. Thank you for your attention and I look forward to answering any questions you may have.

Senator COLEMAN [presiding]. Thank you, Mr. Diaz.
Mr. Tissot.

STATEMENT OF ROGER TISSOT, DIRECTOR OF MARKETS AND COUNTRIES GROUP, LATIN AMERICA, PFC ENERGY

Mr. TISSOT. Mr. Chairman, thank you for your invitation to testify before the subcommittee. I am going to put Venezuela into the oil context.

Simply put, Venezuela matters because of its substantial oil reserves, its strategic location and its regional economic importance.

First, in terms of reserves, Venezuela is the Saudi Arabia of Latin America. Its reserves are approximately 78 billion barrels, just below those of Saudi Arabia, Iran, Iraq, Kuwait, and the United Arab Emirates. But Venezuela has more oil than Russia which positioned itself as a potential replacement for the Middle East.

Before the oil workers' strike of December 2003, Venezuela produced around 3 million barrels per day. The state oil company, PDVSA, plans to increase production to reach up to 5 million barrels per day by 2009. Most of Venezuelan output is exported to the United States. Venezuela captures approximately 12 percent of the U.S. market.

Venezuela's geographic location is of strategic importance. It takes around 4 to 5 days travel by oil tanker from Venezuela to the Gulf of Mexico, while oil from the Middle East takes around 45 days to arrive to the U.S.

Most of Venezuela's oil is exported to the Gulf of Mexico refineries where PDVSA, through its subsidiary Citgo, has ownership in various large refineries. These refineries are specifically built to treat heavy crude oil from Venezuela. Alternative sources of supply are Mexican Maya crude, which suffers from capacity limitations, and the Middle East which takes longer to bring.

So is Venezuela a reliable supplier to the U.S.? There are three reasons why we believe it is the case.

First, economy. Venezuela's economy is critically dependent on oil export revenues. While the oil sector accounts for only 22 percent of the economy, over 70 percent of the budget revenues come from oil earnings. Given that budget expenditures account for 3 percent of GDP, the indirect dependence on oil is even greater. The impact of the oil revenues are marked by the impact of the strike which basically resulted in a decline of the economy of Venezuela by 10 percent.

Second, the government of President Hugo Chávez is banking on high oil prices and sufficient oil revenues to fund hugely expanded social programs. His government sees oil income as the means toward achieving political objectives. This is also evident in its co-

operation with OPEC. As a result, without oil exports, the Chávez government will not be able to achieve its socioeconomic goals.

Third, the Government of Venezuela for strategic reasons would like to be the energy supplier of choice for the Western Hemisphere. Through Citgo, it has substantial assets in the United States, which are directly dependent on Venezuelan crude oil exports. PDVSA also has substantial agreements with specific refiners to process Venezuelan crudes exclusively. A stoppage in exports will severely damage these assets.

So now what about the sustainability of Venezuelan oil and gas production and exports? The Venezuelan Government has taken a keen interest in expanding its oil and gas sector. President Chávez has increasingly called upon foreign direct investment in the energy sector. Due to the maturity of Venezuela's main basins and their declining productivity, PDVSA reportedly plans to spend \$38 billion in the 2004–2009 period to increase production from 3.4 million barrels to 4.9 million barrels per day.

I should point out that the data provided by PDVSA is not credible according to many international sources, and it is believed that the production of Venezuela is currently around 2.4 million barrels per day.

Since we expect OPEC to successfully keep oil prices around \$35 a barrel this year, and certainly over \$25 a barrel in the next several years, the Government of Venezuela and PDVSA will have sufficient funds to finance most of these projects. Currently the PDVSA budget is designed to operate at a \$20 a barrel oil, thus providing the development plans a sufficient cushion. Certainly there are serious concerns that the fiscal stance of the government is excessively expansionary and that a sharp fall in oil prices could result in cutbacks in spending, possibly even by PDVSA.

The government also recognizes that PDVSA, particularly since the strike in 2003 after which 18,000 workers were fired, has critical skill deficiencies, which foreign companies can help to overcome. Since the strike, PDVSA has struggled to regain productivity levels and there are serious concerns in the industry whether it will be able to carry out future development plans even if there are sufficient funds available.

Financial diversions to social programs and the critical lack of skills could open up substantial opportunities for foreign oil companies. These opportunities are in what is called marginal field development, the heavy crude oil, and the natural gas or LNG projects.

Oil and gas expansions are complex exercises. The uncertainties in geology, markets, and commodity prices can inevitably create delays. This is complicated by negotiations between governments and international oil companies. Despite this, two issues are clear. First, the Government of Venezuela is committed to securing foreign direct investment fairly rapidly.

Senator COLEMAN. Go ahead and sum up.

Mr. TISSOT. Basically the last comment I would like to provide is the following. We believe that Venezuela would like to continue being the hemisphere's most important hydrocarbon supplier and they will, despite signaling problems and political misperceptions, help us overcome the uncertainties emanating from the Middle East.

Thank you.

[The prepared statement of Mr. Tissot follows:]

PREPARED STATEMENT OF ROGER TISSOT

Comments on the status of the oil industry in Venezuela and its impact on the country's international and domestic politics

PUTTING VENEZUELA INTO CONTEXT

Simply put, Venezuela matters because of its substantial oil reserves, its strategic location and its regional economic importance.

- First in terms of reserves, Venezuela is the “Saudi Arabia” of Latin America. Its reserves are approximately 78 billion barrels, just below those of Saudi Arabia, Iran, Iraq, Kuwait and the United Arab Emirates. But Venezuela has more oil than Russia which positioned itself as a potential replacement for Middle East oil.

Before the oil workers’ strike of December 2003, Venezuela produced around 3 million barrels per day (mmbd). The state oil company, PDVSA, plans to increase production to reach up to 5 mmbd by 2009. Most of Venezuelan output is exported to the United States. Venezuela captures approximately 12% of the U.S. market.

- Venezuela’s geographic location is of strategic importance. It takes only 4 to 5 days travel by oil tanker from Venezuela to the Gulf of Mexico, while oil from the Middle East takes around 45 days to arrive in the U.S..
- Most of Venezuela’s oil is exported to the Gulf of Mexico’s refineries where PDVSA, through its subsidiary Citgo, has ownership in various large refineries.¹ These refineries are specifically built for Venezuelan heavy crudes, alternative sources of supply are the Mexican Maya crude, which suffers from capacity limitations, and Middle Eastern crudes which take longer to import. Venezuela also has a 50% equity interest in Hovensa refinery located in St. Croix, U.S. Virgin Islands.²

IS VENEZUELA A RELIABLE SUPPLIER TO THE U.S.?

There are three reasons that Venezuela is a reliable supplier to the U.S. and the Atlantic Basin markets. First, Venezuela’s economy is critically dependent on oil export revenues. While the oil sector accounts for only 22% of Venezuela’s economy, over 70% of budget revenues come from oil earnings. Given that budget expenditures account for 30% of GOP, the indirect dependence on oil is even greater. This was clearly evident during the January 2003 oil strike—the decline in real GOP during 2003 due to an eight-week oil production stoppage was nearly 10%.

Second, the government of President Hugo Chávez is banking on high oil prices and sufficient oil revenues to fund hugely expanded social programs. His government sees oil income as the means towards achieving political objectives. This is also evident in its cooperation with OPEC. As a result, without oil exports the Chávez government will not be able to achieve its socio-economic goals.

Third, the government of Venezuela, for strategic reasons would like to be the energy supplier of choice to the Western Hemisphere. Through Citgo it has substantial assets in the United States, which are directly dependent on Venezuela’s crude oil exports. PDVSA also has substantial agreements with specific refiners to process Venezuelan crudes, exclusively. A stoppage in exports will severely damage these assets.

THE SUSTAINABILITY OF VENEZUELAN OIL AND GAS PRODUCTION AND EXPORTS

The Venezuelan government has taken a keen interest in expanding its oil and gas sector. President Chávez has increasingly called upon foreign direct investment in the energy sector. Due to the maturity of Venezuela’s principle basins and their declining productivity, PDVSA reportedly plans to spend \$38 billion in the 2004-

¹Lake Charles (Louisiana) and Corpus Christi (Texas), as well as the joint Lyondell-Citgo (Houston, Texas).

²Amerada Hess owns the other 50%

2009 timeframe in order to increase production from 3.4 mmb/d³ to 4.9 mmb/d.⁴ Other key objectives of PDVSA's business plans include:

- Aligning PDVSA's goals to the national development plan;
- Strengthening exploration and production activities;
- Strengthening OPEC's position in the world oil markets;
- Improving oil recovery rates;
- Improving the value of Venezuelan crude;
- Re-defining the internationalization strategy of PDVSA; and,
- Using oil investments for local and national development.

Since we expect OPEC to successfully keep oil prices above \$35 a barrel this year, and certainly over \$25 a barrel in the next several years, the government of Venezuela and PDVSA will have sufficient funds to finance most of these projects. Currently, the PDVSA budget is designed to operate at US\$20 a barrel oil, thus providing the development plans a sufficient cushion. Certainly there are serious concerns that the fiscal stance of the government is excessively expansionary and that a sharp fall in oil prices could result in cut backs in spending, possibly even by PDVSA. But the government has maintained relatively good relations with the international oil companies and is planning to engage them in part of the oil and gas sector expansion plans.

The government has also recognizes that PDVSA, particularly since the strike in 2003 after which 18,000 workers were fired, has critical skill deficiencies, which foreign companies can help overcome. Since the strike PDVSA has struggled to regain productivity levels and there are serious concerns in the industry whether it will be able to carry out future development plans even if there are sufficient funds available.

Financial diversions to social programs and the critical lack of skills could open up substantial opportunities for the foreign oil companies. These opportunities for the private sector will focus on the development of the marginal fields, expected to reach 530,000 b/d of production in 2005.⁵ Other investment opportunities include the development of the extra heavy crude oil from the Orinoco belt, expected to produce around 579,000 b/d from four projects currently in operation. These projects tend to offer better terms than the more conventional oil producing projects and have received investment from the largest of the U.S. energy companies.⁶ Production sharing agreements are another option for private companies, although four of the ten blocks secured under these arrangements have been returned to PDVSA because of lack of commercial discoveries.

The government is also pushing for the development of the country's vast natural gas resources, estimated to be around 148 trillion cubic feet (tcf). The government passed a gas law which is considered fairly attractive and interesting for foreign companies. The push for gas development is based on an energy substitution strategy aimed at reducing domestic crude oil consumption in order to increase oil exports. Additional gas production will also be used for Liquefied Natural Gas (LNG) production so as to diversify exports and increase external earnings. Venezuela plans to become a major exporter of LNG to the United States and hopes this will be another means of supplementing its already large oil exports to its North American customer.

The two main LNG projects are the "Mariscal Sucre" and "Plataforma Deltana." Mariscal Sucre is a US\$2.5-3 billion project with PDVSA having a 60% equity share. It involves the development of 10 tcf of proven gas from offshore Venezuela and the construction of a liquefaction facility with a capacity of 4.7 mm tons/year.

The "Plataforma Deltana" project includes the exploration and development of four offshore blocks awarded to BP, ChevronTexaco (2 blocks, one in partnership with ConocoPhillips) and Statoil. PDVSA carried the initial phase of the project, which included seismic studies and the drilling of four exploratory wells. The gas resources of Plataforma Deltana would be commercialized through expansions at Mariscal Sucre, a Greenfield LNG project dedicated to those reserves, or a potential joint development agreement with Trinidad allowing the gas to move to the Atlantic LNG facility.

³Note that as mentioned earlier, PDVSA reported production is not credible and numerous oil information sources report oil production in Venezuela as being around 2.4 MMBOD.

⁴PDVSA 2004-2009 Business Plan.

⁵PFC internal estimates.

⁶ExxonMobil, ChevronTexaco, and ConocoPhillips.

Oil and gas expansion plans are complex exercises. The uncertainties in geology, markets and commodity prices inevitably create delays. This is complicated by negotiations between governments and international oil companies. Despite this, two issues are quite clear. First, the government of Venezuela is committed to securing foreign direct investment fairly rapidly. It feels the competition, especially in the gas markets, from far flung producers and would like to take advantage of the country's comparative advantages. It also is motivated by economic interests, which could be easily served by an expanding oil and gas sector.

Second, Venezuela an attractive target for foreign company investment because of the limited number of countries which have its vast resources and the even fewer number which are open to foreign investment. International oil and gas companies will invest in Venezuela and help raise its supplies of crude oil and gas. Negotiations will be protracted but in the end there is likely to be substantial investment by private companies, many of whom are U.S. based, in Venezuela. As a result, Venezuela will remain a critical supplier to the Western Hemisphere.

The role of PDVSA and the government of Venezuela will be very important. This role will be enhanced if two requirements are met:

- The message coming out of Venezuela regarding sanctity of supply is totally unambiguous. We strongly believe that Venezuela is committed to being a responsible supplier to the full extent of its capabilities. But doubts persist in the international market and these are reinforced with inflammatory remarks from public officials. This should stop.
- The market requires total transparency regarding Venezuela's production output levels. This would also go a long way in allaying uncertainties in the oil markets. Unrealistic estimates are easy to detect because of "mirror statistics" and reduce the credibility of the oil producer.

Venezuela's key role as the hemisphere's critical oil producer is not just an issue for the immediate future, it has an important role to play over the medium to long term as well. Here again two requirements are necessary:

- Venezuela needs to provide more clarity on its fiscal policies. Venezuela's fiscal policies over the last several years have raised some concern in the International financial and investment world. Beyond concerns for macroeconomic stability, the oil and gas industry is concerned that not only will there not be enough money to maintain current capacity, but there will be a problem with expanding capacity to meet the regional demand requirements of the future. Clearly the government has shown a willingness to engage foreign companies to invest in expanding capacity as we noted above. We at PFC Energy have always dismissed talk that the government had a phobia about foreign investment.
- Venezuela needs to provide more flexibility in terms of the investment regime—specifically, the legal framework surrounding the oil sector. We think showing greater flexibility up front will enhance the long-term position of the government and its contribution to the region's energy security.

Let me reiterate that we believe the Venezuelans want very much to play the role of being the hemisphere's most important hydrocarbon supplier. And, they will—despite signaling problems and misperceptions—help us overcome the uncertainties emanating from the Middle East.

Senator COLEMAN. Thank you very much, Mr. Tissot.
Dr. Weisbrot.

**STATEMENT OF DR. MARK WEISBROT, CO-DIRECTOR, CENTER
FOR ECONOMIC AND POLICY RESEARCH**

Dr. WEISBROT. Thank you, Mr. Chairman, Senator Dodd. Thanks for the invitation. I would like to enter my written remarks into the record.

Senator COLEMAN. Without objection.

Dr. WEISBROT. Thank you.

First, I want to say there have been a lot of allegations raised here, and I am happy to answer a lot of them. I think most of them are without substance and can be refuted very quickly.

The Center for Economic and Policy Research is an independent, nonpartisan institute. We do not receive any funding from governments, political parties, or corporations. We are funded primarily by foundations, large and small, as well as some individual contributions from U.S. citizens.

On the subject of this hearing, the state of democracy in Venezuela, there is much public confusion, and I am glad that Mr. Vivanco has helped set the record straight by stating very clearly that Venezuela is a democracy, which you do not hear much here. As Jimmy Carter said on a visit there: "I believe that freedom of speech is as alive in Venezuela as it is in any other country I've visited."

And the same can be said for freedom of the press, assembly, association, and other civil liberties. Anyone who calls the Venezuelan Government authoritarian is in need of a dictionary, or perhaps needs to see the place. I was there during the oil strike in December 2002 and witnessed the government's response to the destruction of its economy by less than 1 percent of the labor force, the management and some of the workers in the oil industry. They were striking not for better wages or benefits, but to overthrow the government. Even in the United States, which has perhaps the strongest tradition of protecting civil liberties in the world, a strike of this nature would be illegal. In this country, the leaders would be subject to court injunctions ordering them back to work and jailed if they refused. This did not happen in Venezuela. The strike lasted for 64 days and sent the economy into a deep recession.

It is true that there are human rights abuses in Venezuela. But these are not different from those in the rest of Latin America and I have not heard any reputable human rights organization argue that they have worsened under the 5 years of Chávez's government. Nor have they argued that the government has engaged in any systematic repression of political dissent.

What then are the major threats to democracy in Venezuela? The attention here has focused on the Venezuelan Government. But some of these threats are from other places, including Washington. Our government has funded and continues to fund organizations headed by people who are leaders of the military coup of April 2002. These leaders have received and some continue to receive funds from the U.S. Congress through the National Endowment for Democracy. These are people who signed the actual coup decree of April 12, 2002 and this decree overthrew the elected President and Vice President, abolished the General Assembly, the supreme court, and the constitution, and established a dictatorship. And I have the documents right here. They were obtained from the Freedom of Information Act, including the contract between the NED and these individuals.

Should these people and their organizations be funded by U.S. taxpayers' dollars? Is this the proper function of the National Endowment for Democracy? These are questions that I think the U.S. Congress should ask. I think that most Americans would be against such funding if they were aware of it.

The NED is also funding a group mentioned here today called Súmate that led the signature drive to recall the President of Venezuela. We do not allow foreign financing of electoral campaigns in

the United States. Clearly we should not insist on violating the laws of other countries and their sovereignty and democracy in ways that we would not permit here.

Our government also undermines democracy in Venezuela by disregarding the rule of law in that country and encouraging the opposition to do the same. It must be recalled that the Bush administration alone in this hemisphere initially endorsed the military coup in April of 2002. There was strong circumstantial evidence that our government gave prior approval or possibly even more support than this, in addition to the documented stepped-up NED funding to opposition groups in the months prior to the coup. Senator Dodd asked for an investigation, and the State Department's Office of the Inspector General found that "U.S. warnings to the opposition of non-recognition of a coup-installed government, economic actions, and other concrete punitive actions were few and far between."

But the administration made no attempt to repair relations with the elected government after it was restored. Rather it went on to tacitly endorse the oil strike, in spite of the fact that it was preparing for a war in the Middle East, likely to reduce oil supplies at the time. In December 2002, the White House supported the opposition's unconstitutional demand for early elections.

I will not go through the statements that Roger Noriega has made recently because that has already been addressed earlier, but this is another example of taking sides in disrespect for the rule of law and the constitutional process in Venezuela.

These are very powerful signals to an opposition that clearly has some very strong anti-democratic leadership. Although the focus here is on the Government of Venezuela as a threat to democracy, it is worth recalling that the opposition only agreed in May of 2003 to pursue an electoral strategy after all extra-legal means of overthrowing the government, including a military coup and several oil strikes, had been exhausted.

The most powerful opposition leaders have not expressed any regret for these strategies, but on the contrary have continued to state openly they will respect the results of the referendum process only if they win. By contrast, the government has consistently maintained that it will abide by the results and, as you know, has done so.

Other arguments have been put forth to portray the Chávez government as anti-democratic, but they are not very convincing. Clearly Venezuela is nothing like Cuba, although Mr. Chávez does have friendly relations with Fidel Castro. It is not clear why this should be a reason for such bad relations with the United States. The President of Brazil, Lula da Silva, and his party have deeper and longer-standing relations with Castro and Cuba than Venezuela. The Bush administration and Brazil have agreed to disagree on this issue, and that seems to be the end of this dispute.

Most recently, Venezuela's General Assembly passed a law that Mr. Vivanco mentioned allowing the government to add 12 new judges to the supreme court. This would certainly alter the balance of the court, which now has 20 judges, in favor of the government. But this is also a supreme court that decided that the people who carried out the military coup of 2002 could not be prosecuted. In

the United States, I am pretty sure that our Congress would use its power to impeach a supreme court that made such a ruling. And of course, the judiciary has never been independent in Venezuela, less so under previous governments than the present one. It will not make much progress in that direction so long as the country remains deeply polarized.

This polarization is a very serious problem and——

Senator COLEMAN. Dr. Weisbrot, would you summarize your testimony, please?

Dr. WEISBROT. OK. I have only three sentences left.

Senator COLEMAN. Thank you.

Dr. WEISBROT. Chávez is a polarizing figure who has contributed to the problem. But Congress should not make it worse by allowing our government to take sides. We should normalize our relations with Venezuela, which is a democracy and has never posed any threat to U.S. security. It has reached out several times to our government since the coup, only to be rebuffed. The first step would be to stop funding the recall effort and people who have participated in a military coup against Venezuela's elected government.

Thank you.

[The prepared statement of Dr. Weisbrot follows:]

PREPARED STATEMENT OF DR. MARK WEISBROT

Thank you, Mr. Chairman, and members of the Committee for inviting me to present these facts and views. The Center for Economic and Policy Research is an independent, non-partisan policy institute. We are funded primarily by foundations, large and small, as well as some individual contributions from U.S. citizens. We do not receive any funding from governments, political parties, or corporations.

On the subject of this hearing "The State of Democracy in Venezuela," there is much public confusion. To set the record straight: Venezuela is a democracy, as much as any country in Latin America today. As Jimmy Carter said on a visit there: "I believe that freedom of speech is as alive in Venezuela as it is in any other country I've visited."

The same is true for freedom of the press, assembly, association, and other civil liberties. Anyone who calls the Venezuelan government "authoritarian" is in need of a dictionary, or perhaps needs to see the place. I was there during the oil strike in December 2002 and witnessed the government's response to the destruction of its economy by less than one percent of the labor force—the management and some of the workers in the oil industry. They were not striking for better wages or benefits, but to overthrow the government. Even in the United States, which has perhaps the strongest tradition of protecting civil liberties in the world, a strike of this nature would be illegal. Here the leaders would have been subject to court injunctions ordering them back to work, and jailed if they refused. This did not happen in Venezuela. The strike lasted for 64 days and sent the economy into a deep recession.

It is true that there are human rights abuses in Venezuela. But these are not different from those in the rest of Latin America, and I have not heard any reputable human rights organization argue that they have worsened under the five years of Chávez' government. Nor have they argued that the government has engaged in any systematic repression of political dissent.

What, then, are the major threats to democracy in Venezuela? The attention here has focused on the Venezuelan government. It is of course true, as Americans have long recognized, that any government can become repressive if its citizens are not vigilant. But Venezuelan democracy faces other challenges.

Some are from Washington. Our government has funded, and continues to fund, organizations headed by people who were leaders of the military coup of April 2002. These leaders have received, and some continue to receive, funds from the United States Congress through the National Endowment for Democracy. These are people who signed the actual coup decree of April 12, 2002, that overthrew the elected President and Vice President, and abolished the General Assembly, the Supreme Court and the constitution, and established a dictatorship.

Should these people, and their organizations, be funded by U.S. taxpayers' dollars? Is this the proper function of the National Endowment for Democracy? These

are questions that Congress should ask. I think that most Americans would be against such funding if they were aware of it.

The NED is also funding a group—called Sumate—that led the signature drive to recall the President of Venezuela. We do not allow foreign financing of electoral campaigns in the United States. Clearly we should not insist on violating the laws of other countries, and their sovereignty and democracy, in ways that we would not permit here.

Our government also undermines democracy in Venezuela by disregarding the rule of law in that country, and encouraging the opposition to do the same. It must be recalled that the Bush Administration, alone in this hemisphere, initially endorsed the military coup in April 2002. There was strong circumstantial evidence that our government gave prior approval or possibly even more support than this, in addition to the stepped-up NED funding to opposition groups in the months prior to the coup. Senator Dodd asked for an investigation, and the State Department's Office of the Inspector General found that "U.S. warnings [to the opposition] . . . of non-recognition of a coup-installed government, economic actions, and other concrete punitive actions were few and far between."

But the Administration made no attempt to repair relations with the elected government after it was restored. Rather it went on to tacitly endorse the oil strike—in spite of the fact that it was preparing for a war in the Middle East, likely to reduce oil supplies, at the time. In December 2002 the White House supported the opposition's unconstitutional demand for early elections.

More recently, the Administration has made a number of statements that have encouraged the opposition not to respect constitutional processes. Before the results of the signature gathering process were decided last month, Roger F. Noriega, Assistant Secretary of State for Western Hemisphere Affairs, declared that the "the requisite number of people supported the petition" and warned of "dire consequences" if Venezuela's National Electoral Council did not arrive at the same conclusion.

These are very powerful signals to an opposition that clearly has some very strong anti-democratic leadership. Although the focus here is on the government of Venezuela as a threat to democracy, it is worth recalling that the opposition only agreed in May of 2003 to pursue an electoral strategy after all extra-legal means of overthrowing the government—including a military coup and several oil strikes—had been exhausted.

The most powerful opposition leaders have not expressed any regret for these strategies, but on the contrary, have continued to state openly that they will only respect the results of the referendum process if they win. By contrast, the government has consistently maintained that it will abide by the results, and has done so.

A Los Angeles Times reporter interviewed one of the country's most respected pollsters, from the firm DataAnalysis, Jose Antonio Gil. The firm's polls are often cited in the U.S. press. According to the L.A. Times, he could "see only one way out of the political crisis surrounding President Hugo Chávez. 'He has to be killed,' he said, using his finger to stab the table in his office . . . 'He has to be killed.'"

It is hard to imagine an opposition of this type in the United States—they would probably be labeled "terrorist" here—but these are the people with whom our government has aligned itself. It is also difficult to conceive of a media like Venezuela's, if you have never seen it. Imagine ABC, NBC, CBS, CNN, Fox News and the cable channels, USA Today and most major newspapers, as well as most radio—all controlled, in terms of their daily content, by the most fiercely partisan opponents of the government. They have also abandoned the norms of modern journalism, becoming organs of a movement to de-legitimize the government. Two months ago one of Venezuela's most influential newspapers actually used a doctored version of a New York Times article to allege that the Chávez government was implicated in the Madrid terrorist bombing. (See Appendix 1). But the media has never been censored by the Chávez government.

Other arguments have been put forth to portray the Chávez government as anti-democratic, but they are not very convincing. Clearly Venezuela is nothing like Cuba, although Mr. Chávez does have friendly relations with Fidel Castro. It is not clear why this should be a reason for such bad relations with the United States. The President of Brazil, Lula da Silva, and his party have deeper and longer-standing relations with Castro and Cuba. The Bush Administration and Brazil have agreed to disagree on this issue, and that seems to be the end of this dispute.

Most recently, Venezuela's General Assembly passed a law allowing the government to add 12 new judges to the Supreme Court, which currently has 20 judges. This would certainly alter the balance of the court in favor of the government. But this is also a Supreme Court that decided that the people who carried out the mili-

tary coup of 2002 could not be prosecuted. In the United States, I am pretty sure that our Congress would use its power to impeach a Supreme Court that made such a ruling. And of course, the judiciary has never been independent in Venezuela—less so under previous governments than presently. It will not make much progress in that direction so long as the country remains deeply polarized.

This polarization is a very serious problem, and of course Chávez is a polarizing figure who has contributed to the problem. But Congress should not make it worse by allowing our government to take sides. We should normalize our relations with Venezuela, which is a democracy and has never posed any threat to U.S. security; it has reached out several times to our government since the coup—only to be rebuffed. The first step would be to stop funding the recall effort and people who have participated in a military coup against Venezuela's elected government.

* * *

APPENDIX 1

MEDIA FALLS SHORT ON IRAQ, VENEZUELA

(By Mark Weisbrot)

Distributed to newspapers by Knight-Ridder/Tribune Information Services—June 6, 2004
<http://www.cepr.net/columns/weisbrot/media%20venezuela.htm>

Last week the New York Times published an 1100-word note “From the Editors” criticizing its own reporting on the build-up to the Iraq war and the early stages of the occupation. On Sunday the newspaper’s Public Editor went further, citing “flawed journalism” and stories that “pushed Pentagon assertions so aggressively you could almost sense epaulets sprouting on the shoulders of editors.”

This kind of self-criticism is important, because the media played an important role in convincing the American public—and probably the Congress as well—that the war was justified. Unfortunately, these kinds of mistakes are not limited to the New York Times—or to reporting on Iraq.

Venezuela is a case in point. The Bush administration has been pushing for “regime change” in Venezuela for years now, painting a false and exaggerated picture of the reality there. As in the case of Iraq’s alleged weapons of mass destruction and links to Al-Qaeda, the Administration has gotten a lot of help from the media.

Reporting on Venezuela relies overwhelmingly on opposition sources, many of them about as reliable as Ahmed Chalabi. Although there are any number of scholars and academics—both Venezuelan and international—who could offer coherent arguments on the other side, their arguments almost never appear. For balance, we usually get at most a poor person on the street describing why he likes Venezuelan President Hugo Chávez, or a sound bite from Chávez himself denouncing “imperialist intervention.”

Opposition allegations are repeated constantly, often without rebuttal, and sometimes reported as facts. At the same time, some of the most vital information is hardly reported or not reported at all. For example, the opposition’s efforts to recall President Chávez hit a snag in March when more than 800,000 signatures for the recall were invalidated. These signatures were not thrown out but were sent to a “repair process,” currently being tallied, in which signers would get a second chance to claim invalidated signatures.

The opposition accused President Chávez of trying to illegitimately deny the people’s right to a referendum, and the press here has overwhelmingly echoed this theme. But some vital facts were omitted from the story: the disputed signatures were in violation of the electoral rules, and could legitimately have been thrown out altogether. Furthermore, these rules—requiring signers to fill out their own name, address and other information—were well-known to organizers on both sides and publicized in advance of the signature gathering process.¹ These rules are also common in the United States, including California.

But readers of the U.S. and international press would not know this. And few would know that the members of Venezuela’s National Electoral Commission—which is supervising the election—was appointed by the Supreme Court, with opposition leaders applauding the appointments.²

Even worse than most news stories on Venezuela are the editorials of major newspapers, where factual errors have become commonplace. The Washington Post has accused Chávez of holding political prisoners and having “muzzled the press.”^{1A1A³} and referred to the Electoral Commission as “Mr. Chávez’ appointees.”^{1A⁴} All of these allegations are incontestably false.

According to the U.S. State Department, “There [are] no reports of political prisoners in Venezuela.”^{1A}⁵ And far from being “muzzled,” the press in Venezuela is one of the most furiously partisan anti-government medias in the entire world. Two months ago one of Venezuela’s most influential newspapers actually used a doctored version of a New York Times’ article to allege that the Chávez government was implicated in the Madrid terrorist bombing!^{1A}⁶ But the media has never been censored by the Chávez government.⁷

To be sure, President Chávez has made himself an easy target by slinging a lot of fiery rhetoric and accusations at President Bush and Washington. But even these diplomatic blunders could use some context: the Bush Administration did, after all, endorse a military coup against Chávez two years ago.⁸ And the U.S. continues to fund his political opponents, including leaders of the failed coup and organizers of the recall effort.⁹ Imagine what Mr. Bush might say about the French President and government if they did those things to him.

Of course Venezuela has rarely been front page news, unlike Iraq. But our government’s involvement there has already caused considerable damage and could well push the country to civil war—especially if our media continues to go along for the ride.

NOTES

¹ CNE Circular Number 16, dated 25 November 2003: “In the case that the signer is illiterate, blind, or of very advanced age, the signature collection agent should write the first and last names of the signer, their identification number and date of birth in the corresponding spaces of each of them, and have the signer stamp their fingerprint in the space provided, and note proof of the condition in the space provided.”

The fact that the signer was otherwise required to fill out his/her own information was well known to the parties and publicized in advance, with TV commercials, and that forms filled out by people other than the signers were invalid was also confirmed by Fernando Jaramillo, Chief of Staff of the Organization of American States and Head of OAS Mission to Venezuela, in an interview on April 21, 2004.

² “The five new members of the council represent a cross-section of Venezuela’s political landscape, allaying concerns on both sides that the deck would be stacked as the country readies for a recall vote . . . Henry Romas Allup, a prominent opposition voice from the Democratic Action party, said the Supreme Court’s decision represents a “final blow to the government.” (Pals, Dow Jones Newswire, 27/9/03)

After the Council made decisions unfavorable to the opposition, some U.S. newspapers began referring to it as “government-controlled.” (See, e.g., Miami Herald, “Chávez’s rivals need one thing: a viable leader,” February 17, 2004)

³ “Eyes on Mr. Chávez,” editorial, Washington Post, December 13, 2003.

⁴ “Mr. Chávez’s Claim,” Editorial, Washington Post, May 26, 2004.

⁵ U.S. Department of State, “Country Reports on Human Rights Practices—2003: Venezuela,” Released by the Bureau of Democracy, Human Rights, and Labor, February 25, 2004, <http://weisbrot-columns.c.topica.com/maaci1Vaa7hQ1beQvrSbafpNFx/>

⁶ For the original article, see Tim Golden and Don Van Natta Jr., “Bombings in Madrid: The Suspects; Carnage Yields Conflicting Clues As Officials Search for Culprits,” The New York Times, March 12, 2004. For the altered version, see Marianella Salazar, “Política: Artillería de Oficio,” El Nacional (Venezuela) March 24, 2004.

⁷ “There are few obvious limits on free expression in Venezuela. The country’s print and audio-visual media operate without restrictions. Most are strongly opposed to President Chávez and express their criticism in unequivocal and often strident terms.” Human Rights Watch, “Venezuela: Caught in the Crossfire: Freedom of Expression in Venezuela,” May 2003.

⁸ Peter Slevin, “Chávez Provoked His Removal, U.S. Officials Say; Administration Expresses Guarded Optimism About Interim Regime, Calls for Quick Elections,” Washington Post, April 13, 2002.

⁹ See Bart Jones, “Tension in Venezuela; Activist eyes groups’ funding; Brooklyn lawyer says U.S. government funds are aiding those trying to overthrow president,” Newsday, April 4, 2004.

The FOIA documents are posted at <http://weisbrot-columns.c.topica.com/maaci1Vaa7hQ2beQvrSbafpNFx/>

Several leaders of organizations that received funds from the U.S. Congressionally-financed National Endowment for Democracy (NED) actually signed the decree that established the coup government in April 2002, and abolished Venezuela’s Gen-

eral Assembly, Supreme Court, Constitution, and other democratic institutions. Some are still receiving funds from NED.

A SPLIT SCREEN IN STRIKE-TORN VENEZUELA

(By Mark Weisbrot)

Published in the Washington Post—January 12, 2003

<http://www.washingtonpost.com/wp-dyn/articles/A41444-2003Jan11.html>

Walking around Caracas late last month during Venezuela's ongoing protests, I was surprised by what I saw. My expectations had been shaped by persistent U.S. media coverage of the nationwide strike called by the opposition, which seeks President Hugo Chávez's ouster. Yet in most of the city, where poor and working-class people live, there were few signs of the strike. Streets were crowded with holiday shoppers, metro trains and buses were running normally, and shops were open for business. Only in the eastern, wealthier neighborhoods of the capital were businesses mostly closed.

This is clearly an oil strike, not a "general strike," as it is often described. At the state-owned oil company, PDVSA, which controls the industry, management is leading the strike because it is at odds with the Chávez government. And while Venezuela depends on oil for 80 percent of its export earnings and half its national budget, the industry's workers represent a tiny fraction of the labor force. Outside the oil industry, it is hard to find workers who are actually on strike. Some have been locked out from their jobs, as business owners—including big foreign corporations such as McDonald's and FedEx—have closed their doors in support of the opposition.

Most Americans seem to believe that the Chávez government is a dictatorship, and one of the most repressive governments in Latin America. But these impressions are false.

Not only was Chávez democratically elected, his government is probably one of the least repressive in Latin America. This, too, is easy to see in Caracas. While army troops are deployed to protect Miraflores (the presidential compound), there is little military or police presence in most of the capital, which is particularly striking in such a tense and volatile political situation. No one seems the least bit afraid of the national government, and despite the seriousness of this latest effort to topple it, no one has been arrested for political activities.

Chávez has been reluctant to use state power to break the strike, despite the enormous damage to the economy. In the United States, a strike of this sort—one that caused massive damage to the economy, or one where public or private workers were making political demands—would be declared illegal. Its participants could be fired, and its leaders—if they persisted in the strike—imprisoned under a court injunction. In Venezuela, the issue has yet to be decided. The supreme court last month ordered PDVSA employees back to work until it rules on the strike's legality.

To anyone who has been in Venezuela lately, opposition charges that Chávez is "turning the country into a Castro-communist dictatorship"—repeated so often that millions of Americans apparently now believe them—are absurd on their face.

If any leaders have a penchant for dictatorship in Venezuela, it is the opposition's. On April 12 they carried out a military coup against the elected government. They installed the head of the business federation as president and dissolved the legislature and the supreme court, until mass protests and military officers reversed the coup two days later.

Military officers stand in Altamira Plaza and openly call for another coup. It is hard to think of another country where this could happen. The government's efforts to prosecute leaders of the coup were canceled when the court dismissed the charges in August. Despite the anger of his supporters, some of whom lost friends and relatives last year during the two days of the coup government, Chávez respected the decision of the court.

The opposition controls the private media, and to watch TV in Caracas is truly an Orwellian experience. The five private TV stations (there is one state-owned channel) that reach most Venezuelans play continuous anti-Chávez propaganda. But it is worse than that: They are also shamelessly dishonest. For example, on Dec. 6 an apparently deranged gunman fired on a crowd of opposition demonstrators, killing three and injuring dozens. Although there was no evidence linking the government to the crime, the television news creators—armed with footage of bloody bodies and grieving relatives—went to work immediately to convince the public that

Chávez was responsible. Soon after the shooting, they were broadcasting grainy video clips allegedly showing the assailant attending a pro-Chávez rally.

Now consider how people in Caracas's barrios see the opposition, a view rarely heard in the United States: Led by representatives of the corrupt old order, the opposition is trying to overthrow a government that has won three elections and two referendums since 1998. Its coup failed partly because hundreds of thousands of people risked their lives by taking to the streets to defend democracy. So now it is crippling the economy with an oil strike. The upper classes are simply attempting to gain through economic sabotage what they could not and—given the intense rivalry and hatred among opposition groups and leaders—still cannot win at the ballot box.

From the other side of the class divide, the conflict is also seen as a struggle over who will control and benefit from the nation's oil riches. Over the last quarter-century PDVSA has swelled to a \$50 billion a year enterprise, while the income of the average Venezuelan has declined and poverty has increased more than anywhere in Latin America. Billions of dollars of the oil company's revenue could instead be used to finance health care and education for millions of Venezuelans.

Now add Washington to the mix: The United States, alone in the Americas, supported the coup, and before then it increased its financial support of the opposition. Washington shares PDVSA executives' goals of increasing oil production, busting OPEC quotas and even selling off the company to private foreign investors. So it is not surprising that the whole conflict is seen in much of Latin America as just another case of Washington trying to overthrow an independent, democratically elected government.

This view from the barrios seems plausible. The polarization of Venezuelan society along class and racial lines is apparent in the demonstrations themselves. The pro-government marches are filled with poor and working-class people who are noticeably darker—descendants of the country's indigenous people and African slaves—than the more expensively dressed upper classes of the opposition. Supporters of the opposition that I spoke with dismissed these differences, insisting that Chávez's followers were simply "ignorant," and were being manipulated by a "demagogue."

But for many, Chávez is the best, and possibly last, hope not only for social and economic betterment, but for democracy itself. At the pro-government demonstrations, people carry pocket-size copies of the country's 1999 constitution, and vendors hawk them to the crowds. Leaders of the various non-governmental organizations that I met with, who helped draft the constitution, have different reasons for revering it: women's groups, for example, because of its anti-discrimination articles; and indigenous leaders because it is the first to recognize their people's rights. But all see themselves as defending constitutional democracy and civil liberties against what they describe as "the threat of fascism" from the opposition.

This threat is very real. Opposition leaders have made no apologies for the April coup, nor for the arrest and killing of scores of civilians during the two days of illegal government. They continue to stand up on television and appeal for another coup—which, given the depth of Chávez's support, would have to be bloody in order to hold power.

Where does the U.S. government now stand on the question of democracy in Venezuela? The Bush administration joined the opposition in taking advantage of the Dec. 6 shootings to call for early elections, which would violate the Venezuelan constitution. The administration reversed itself the next week, but despite paying lip service to the negotiations mediated by the OAS, it has done nothing to encourage its allies in the opposition to seek a constitutional or even a peaceful solution.

Sixteen members of Congress sent a letter to Bush last month, asking him to state clearly that the United States would not have normal diplomatic relations with a coup-installed government in Venezuela. But despite its apprehension about disruption of Venezuelan oil supplies on the eve of a probable war against Iraq, the Bush administration is not yet ready to give up any of its options for "regime change" in Caracas. And—not surprisingly—neither is the Venezuelan opposition.

Senator COLEMAN. Thank you.

We certainly have had a wide variety of opinion on this panel.

Let me just start with Dr. Weisbrot. Are you not at all troubled by the indictment of Súmate's Alejandro Plaz and Maria Corina Machado?

Dr. WEISBROT. You know, I am troubled that it is a treason charge. I do not know. It is very hard to get accurate information.

I am not troubled that the government would, as our government, declare that funding from foreign sources in an electoral campaign is illegal. That is true of most countries in the world.

Senator COLEMAN. Are you inferring that somehow here we would infer that was treason?

Dr. WEISBROT. No. Again, if in fact she is ever arrested or prosecuted for treason, that would be a terrible thing because that is indeed an extremely harsh and unjustified charge for someone who receives foreign financing. I would encourage the government, of course, to make sure—the government, by the way, is not a dictatorship. The government does not control all the judges and prosecutors and everybody who might do something like this.

So I would encourage the government to use all of its political pressures to stop anything like that from happening, and I am willing to bet anybody here that nothing like that will happen. There are all levels of incompetence in any government, and in this case there is a lot of anger and there is a lot of polarization. So somebody has decided to investigate this person for treason. But the real charge is simply—and the one that we in the United States should be concerned about because it is our tax dollars—is that she has received funding for an electoral campaign from a foreign government.

Senator COLEMAN. I would think some of us would have some disagreement regarding concerns about the National Endowment for Democracy and their efforts to promote small “d” democracy.

But let me ask Mr. Vivanco. Dr. Weisbrot is not troubled by the efforts to stack the court. I think, in reflecting on Dr. McCoy’s comment, the key here is to have two things in order to heal the division. One is full transparency in the electoral process, and should, as Dr. McCoy indicated, the process be close that any review process also have the perception of being fair. Can you address the impact on that if there were to be a close election, if in fact the court were to be expanded from 20 to 32 judges with the sense that it is being stacked?

Mr. VIVANCO. Your question addressed essentially two points. One is that if the Venezuelan political establishment—in other words, if the assembly decided by broad consensus to change the structure of one of the powers of a state, in this case, the supreme court, which is supposed to represent an independent power of the state, according to President Chávez’s constitution, they need to get at least a two-thirds majority vote. If they want to remove judges, according to the same constitution, article 265, I guess, requires the same number of votes, a two-thirds majority. Otherwise you cannot do it.

That was not a problem 2, 3 years or maybe 4 years ago when President Chávez was incredibly popular and he had those votes in the assembly. But today in the assembly he has a very slim majority of only five votes, and with those five votes he has managed to pass a law that will allow him and his coalition in Congress essentially, as I said before, to purge and to appoint new members of the supreme court. It will be a completely different supreme court with 32 members. Today it is 20 members and that may have also implications for the referendum. This in itself is a violation of the principle of the rule of law, which is that we are governed and the per-

manent rules that you cannot just change when you happen to be at that period a little bit more popular than the opposition.

So in terms of the rule of law, it is a tremendous setback for Venezuelan democracy. I hope that the government will think this through and it still is possible to delay the implementation of this law.

On the other hand, what concerns is what the members of the government coalition told us when we were researching this issue in the assembly that they are planning to pack the court in July before the referendum. So if this referendum becomes a very close one, close to call today—nobody knows who is going to win the referendum on August 15—it is perfectly likely that the result is going to be essentially discussed—I am not sure decided, but discussed—the whole issue of the electoral process, by the court, exactly what has happened in the United States during the last Presidential elections.

Senator COLEMAN. Dr. McCoy, do you want to add anything to that?

Dr. MCCOY. Well, just a couple of things. First, there is a rather lengthy procedure to name new supreme court justices. So it will take some time. I would be surprised if it happens perhaps as fast as predicted.

Second, under the current court there is somewhat of a debate between two of the chambers, the electoral chamber and the constitutional chamber, over who controls the questions and the appeals and the challenges on the recall process. So that has not yet been resolved and that will be ongoing if the current chamber stays as it is.

Just a third comment I would make. My understanding, though I am not a legal expert on the laws of Venezuela, is that historically it has been a 51 percent majority required to name supreme court justices and that that continues under the current situation, that the constitution specifies a two-thirds vote to remove them, but not to name them, although in my opinion it is always more stable for a democracy to have the broadest consensus possible in naming such important positions.

Dr. WEISBROT. I can address this too, if you would like.

Senator COLEMAN. I think I have got your perspective. Let me just move on. My time is up. So I want to go to one other issue.

Clearly there is a concern about packing of the court. So I think we have to understand that. Again, the general principle here for all—and this is not a debate—is that, one, we have got a democracy, accept that. We have a process that has to be accepted, and then we have got to make sure that if this process is close, that there is transparency in the election process, and then in any review of the election process there is credibility. So I do not think we need to discuss it anymore, but I think that is the general concept.

Senator Dodd.

Senator DODD. Well, thanks, Mr. Chairman. We are short on time here, which makes it difficult. But thank you all very much for your presence here today and your participation.

Let me, if I can, very quickly with you, Dr. McCoy. I would like to go back. I had a short exchange with Secretary Noriega, and to

an audience here in the United States, it may have seemed like a relatively innocuous thing, the press accounts here. But I gather this was a fairly big story in Venezuela, the statements that were made by Secretary Noriega. Is that correct?

Dr. McCOY. Yes.

Senator DODD. Was it a fairly big story?

Dr. McCOY. The statement you are referring to of May 26?

Senator DODD. Yes.

Dr. McCOY. Yes, it was.

Senator DODD. To what extent did those remarks cause President Carter and Secretary General Gaviria any concern?

Dr. McCOY. Well, I was in the country at the time; they were not. What it did was raise questions to me. The press and the government raised questions to me about what would be our response and would I condemn such a statement. I stated that our normal experience is that other governments will wait for results of an election before making a pronouncement, but in this case and in most cases we do not comment on particular statements of individual government representatives and our position is—what I have always tried to make clear is that the Carter Center is an independent organization.

Senator DODD. I understand that. Did President Carter and Secretary Gaviria approach U.S. administration officials about the remarks?

Dr. McCOY. Not publicly. They may have privately.

Senator DODD. And the statement issued by Secretary Powell on the 27th. Did that reduce the tensions caused by the public statements by Mr. Noriega?

Dr. McCOY. In my perception it did, yes.

Senator DODD. Let me ask you this. What is your opinion about whether or not the opposition and the Chávez government will respect the outcome of the referendum?

Dr. McCOY. I think that the important thing is that it be a transparent process. If the results are clear and decisive, I have no doubt that both sides will accept the outcome. But I think the chances are it will be a very close result, and there I think there will be a great temptation among some of the followers on both sides to fear or to suspect manipulation of the results. That is why in my testimony I said the transparency is extremely important and steps to raise confidence like the audit of the paper trail of the voting machines, like an audit of the voters' list, like having international observers, and including having, for example, regulations for media to have equal access for both sides to advertising and monitoring of the media. That is one thing, I think as you mentioned, Senator Dodd, that we are currently working on. There are ongoing discussions on that issue.

Senator DODD. I gather President Carter facilitated a meeting between Gustavo Cisneros and President Chávez. Let me say for the record here I know Gustavo Cisneros. I have a lot of respect for him. He is an interesting man. He has a very healthy and wonderful perspective on Latin America that I have always found interesting.

My point I want to get at here is he also may have some strong feelings. And the question I have for you is to what extent does the

Carter Center believe that there is an independent press in Venezuela. We have heard others comment on it here, but to the extent that the people of Venezuela have an opportunity to hear different voices through the media outlets in that country.

Dr. McCOY. I think one of our concerns is that the media on both sides have taken a political role so that there is a clear political stance or bias from both the public stations and the private stations so that the people may, in fact, be missing some more neutral or impartial sources. But clearly there is freedom that we see coming out of both sets of media, the public and the private, to express views.

Senator DODD. Would you describe the private media as independent?

Dr. McCOY. Independent, yes.

Senator DODD. You addressed the issue of the voting machines. By the way, thank you for your comments about Georgia. We are getting a lot of complaints about electronic voting, and I think Georgia proved how successful electronic voting can actually be. So I appreciate your bringing that up.

I want to just underscore the points that Mr. Vivanco made about the courts, and the chairman made reference to it. I think our own Constitution is instructive. The Constitution of the United States left up to the Congress to determine the size of the court, who would sit on it, and the meetings and so forth. This is not unprecedented. In fact, it has worked rather well for us. But I do think it is a strong and worthwhile suggestion that any efforts to fill that court prior to the referendum I think would be a huge mistake, and my hope is that they will hear those concerns being raised.

Last, just on the Venezuelan oil issue, let me ask any of you very quickly here. How would you describe or characterize Venezuelan cooperation in the oil sector? Has it been a reliable supplier to the United States? And how would a disruption in Venezuelan oil supplies impact U.S. oil and gas prices?

Mr. TISSOT. Venezuela, as I presented in my statement, continues to be a reliable supplier. Despite the political rhetoric that we hear, Venezuela cannot survive without oil exports, and its natural market is the United States. There are substantial U.S. foreign companies investing in Venezuela and expanding their investment in that country.

Senator DODD. Can I interrupt you for 1 second, by the way, and tell you a rumor I have heard? And that is, that the collection of revenues from the oil sales, a large percentage of it, is not being reinvested in order to maintain the infrastructure of the oil industry and that the money is not being stolen, but it is just being set aside for other purposes, and that there is a deterioration going on in the infrastructure of the oil production and gas production. Is there any truth to that?

Mr. TISSOT. The 2004–2009 PDVSA budget includes a \$5 million investment which \$1.2 million to \$2 million are going to be allocated for social spending, which has nothing to do with oil investment. So I would agree with you.

The comment to that is PDVSA is the company who would be impacted. Foreign companies are expected to make the difference.

Senator DODD. Does anybody else want to comment on the oil issue?

Dr. WEISBROT. Sure. I think it has been a reliable supplier. The only cutoff in recent memory has been during the oil strike in December 2002 through February 2003. At that time it did not have as much impact on oil or gasoline prices here, but it would have a much larger impact now as world supplies are a lot tighter than they were then.

Senator DODD. I was unclear earlier when the question was raised about whether or not the OAS and the Carter Center are going to be invited to participate as observers in all of this. Have you been invited?

Dr. MCCOY. The National Electoral Council just approved yesterday the regulations for the international observers, and I believe it will be approved perhaps formally tomorrow, which says that the invitations now will come from the foreign ministry. So we have not received a specific invitation from the foreign ministry, but we certainly received indications that we should be expecting one.

Senator DODD. And also OAS?

Dr. MCCOY. OAS as well and some other organizations as well.

Senator DODD. Well, I hope that would be the case. If out of this hearing in a public setting—obviously, the chairman can speak for himself, but I would urge that those responsible in Venezuela extend that invitation. I think it would be very, very important for everyone's concerns in the end that there are people like yourselves and the OAS to be there to observe the process. That will say a lot to many of us about the intentions of those who want to have an outcome here that will be credible.

I am sorry about the time. But your testimony was all very helpful, and I appreciate it.

Senator COLEMAN. We have to go vote.

I want to do just one followup, if I can.

And I agree wholeheartedly with Senator Dodd's remarks. I hope out of this public discussion, that the message is clear that the more we can do to raise the level of confidence in the transparency of this process, the better it is for all concerned.

I guess, Mr. Diaz, one question to you. Do you foresee the Group of Friends playing any role in this process, in the electoral process?

Mr. DIAZ. The Group of Friends is being driven in many ways by Brazil, and I understand that Lula is very concerned about the recent developments in Venezuela. I do think that they could play a more significant role than they have played up to now, but I think their moment has yet to arrive basically. They have to make themselves heard on August 15. I think that is the critical day for them to assert themselves.

Senator COLEMAN. Hopefully that message will be heard too.

I want to thank you all for your testimony. The hearing record will be held open for 10 days.

This hearing is now adjourned.

[Whereupon, at 4:17 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD

RESPONSES OF HON. ROGER F. NORIEGA AND HON. JOHN F. MAISTO TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR RICHARD G. LUGAR

Question 1. The Organization of American States (OAS) observation team prepared a report of what they observed during the signature verification and “reparo” stages of the recall referendum process. Why has that report not been made public? Is it true that the OAS has dismantled the technical team that spent months in Venezuela observing the process? If so, why?

Answer. OAS Secretary General Gaviria has decided that the OAS will release a complete report on its observation effort in Venezuela only after the recall process is finished. He believes that issuing an interim report would achieve little and could complicate the OAS’s capacity to carry out its role in Venezuela through the August 15 recall referendum and beyond.

The OAS observation team in Venezuela for the signature verification and “reparo” process was designed to be agile, flexible and cost-efficient, with the ability to anticipate and respond to requirements as they arose. The “reparo” process was not an election with voting machines, electronic tabulation processes and other technical observation requirements, but rather a verification of signatures of a smaller universe of constituents than a general referendum or election. The OAS had approximately 120 observers for the May 27-31 “reparo” process.

Question 2. Has the Venezuelan Government asked the OAS and the Carter Center to provide election observers for the recall referendum on August 15, 2004?

Answer. The OAS Secretary General and Carter Center have received oral invitations from Venezuela’s National Electoral Council to observe the August 15, 2004, recall referendum. The OAS and Carter Center are now discussing the terms under which they will observe with the National Electoral Council. The OAS Secretary General and Carter Center are preparing to field an election observation mission for the August 15 recall referendum.

Question 3. If not, what is the U.S. OAS and Department of State doing to ensure that OAS and Carter Center international election observers are allowed to observe the recall referendum on August 15, 2004?

Answer. We have repeatedly underscored the importance of international observation to the credibility of the recall process in our public statements. In addition, the Department of State has maintained fluid, senior-level diplomatic contact with the Group of Friends of the OAS Secretary General’s Mission in Venezuela, and other interested international partners in support of the OAS and Carter Center observation missions. Our diplomatic efforts have been accompanied by public statements from international bodies, including the Friends Group and the European Union, in support of OAS and Carter Center observation.

Question 4. Is the U.S. Embassy in Venezuela adequately staffed to deal with a potential crisis leading up to or as a result of the August 15, 2004 recall referendum?

Answer. Embassy Caracas reports that it is sufficiently well-staffed to respond to any problems resulting from the referendum. Embassy Caracas recently lost its press attaché and faces a several month gap in filling the position. Additionally, the Department is considering a request to add permanently a mid-level officer position in the political section, given the increase in workload generated by Venezuela’s governance issues.

Question 5. Does the Bureau of Western Hemisphere Affairs at the Department of State have enough staff to cover Venezuela? How many staff covers Venezuela issues at the Department?

Answer. Venezuela is a priority concern for the Bureau of Western Hemisphere Affairs. Western Hemisphere Affairs Assistant Secretary Roger F. Noriega and Deputy Assistant Secretary Peter DeShazo are actively engaged in Venezuela issues. Similarly, the Director and Deputy Director of the Bureau’s Office of Andean Affairs devote a significant amount of time coordinating policy within the Executive Branch. Day-to-day developments are covered by one mid-level Foreign Service Officer who serves as Venezuela Desk Officer. That officer is supported by a Regional Affairs Officer, who works almost exclusively on Venezuela. The United States Delegation to the Organization of American States (USOAS), headed by Ambassador John F. Maisto, former U.S. Ambassador to Venezuela, works very closely with the Desk and the OAS in support of our policy objectives.

All of these Western Hemisphere Affairs officers are supported by the issue specific expertise of a wide-range of Department of State offices assigned to functional bureaus within the Department, who work on energy, human rights, trade, political-military, and other portfolios dealing with Venezuela. Western Hemisphere Affairs believes this staffing pattern is sufficient to manage Venezuela policy.

Question 6. Individuals and organizations that have received funding from the National Endowment for Democracy (NED) for totally legitimate and transparent activities in support of both democracy and the May 2002 Agreement have been prosecuted; what has been the State Department's position in this regard and how has it been communicated to the Government of Venezuela?

Answer. We are concerned by the politically-motivated investigations into individuals and civil society organizations whose only "crime" appears to be receiving support from the National Endowment for Democracy (NED) for legitimate activities. NED is an independent, private organization that enjoys wide bipartisan support for its work to help strengthen democratic institutions around the world. We have expressed our concern to the Government, underscoring that such actions are unacceptable in a democratic society.

We have consistently urged the Friends of the Organization of American States (OAS) Secretary General's Mission for Venezuela to make public statements decrying the unwarranted persecution of democratic organizations by the Government of Venezuela. In his April 22 briefing to the Human Rights Caucus, the Director of the Office for the Promotion of Human Rights and Democracy in the Department's Bureau of Democracy, Human Rights and Labor, Robert P. Jackson, noted our "grave concern [about] a rising number of threats and intimidation directed at non-governmental human rights defenders by government representatives and supporters' as well as the Government's harsh rhetoric against "labor groups, the Catholic Church, and pro-democracy institutions such as the National Endowment for Democracy." The United States will continue to speak out against the targeting of peaceful, civil society organizations for political purposes in Venezuela.

Question 7. What is the State Department's position on the indictment of Súmate's Alejandro Plaz and María Corina Machado? What is the Department doing to bring attention to this issue?

Answer. We are concerned by what appear to be politically-motivated investigations against the leaders of the civic, electoral non-governmental organization (NGO) Súmate, Alejandro Plaz and María Corina Machado. While it is our understanding that formal charges have not been presented in their case, Plaz and Machado are being investigated for allegedly "conspiring" against the Government by receiving a grant from the National Endowment for Democracy (NED) for electoral observation and voter education activities.

As is well known, NED is an independent, private organization that enjoys wide bipartisan support for its work to help strengthen democratic institutions around the world. The Venezuelan government's efforts against Súmate are intended to intimidate and dissuade citizen participation in the referendum process. Such actions are unacceptable, in a democratic society.

Assistant Secretary for Western Hemisphere Affairs Roger F. Noriega met with Machado on July 9 to commend her and her colleagues' courage in the face of continued Government harassment and to reiterate our support for their commitment to a peaceful, democratic solution to the ongoing conflict. The Department will continue to support Súmate's democratic activities in Venezuela and to signal to authorities in Caracas the Administration's intent to monitor Súmate's fate carefully. We have expressed our concern to the Venezuelan Government as well as publicly. We have also raised our concerns about the Venezuelan Government's actions against Súmate with international human rights organizations and the media.

Question 8. While a great deal of emphasis has been placed on an electoral solution to the Venezuelan crisis it would seem that little or no time has been spent analyzing the issue of current and future governability. Could you please outline your top areas of concern with regards to Venezuela in a post or no referendum scenario?

Answer. We are deeply engaged with the OAS, Carter Center and our hemispheric partners in supporting national reconciliation in Venezuela. Achieving a constitutional, democratic, peaceful and electoral solution to the current impasse will be a key first step toward allowing Venezuelans to take on the serious economic and social challenges the country faces. Venezuelans must ensure that all citizens—not just a privileged few—benefit from the fruits of democracy, free trade and enterprise. This will involve addressing economic issues—stimulating economic growth,

job creation and increased opportunity; social issues—fostering national reconciliation, greater social inclusion and personal security; and core governance issues—promoting effective, transparent government, strong democratic institutions and respect for human rights and the rule of law.

Overcoming the current crisis will empower Venezuelans to focus on these very important issues. The United States, along with our international partners, stands ready to assist their efforts.

Question 9. Could you explain what your posture would be in response to a possible President Chávez victory in the recall referendum of August 15, 2004?

Answer. Unfettered and effective international observation, led by the Organization of American States and the Carter Center, will be key to ensuring the fairness and credibility of the August 15 recall referendum. As Secretary Powell has stated, the United States, along with our international partners, will accept the results of a fair, open, internationally-certified election, which respects the sovereign expression of Venezuelan citizens, whatever the outcome.

If President Chávez prevails in a fair recall referendum, where international observers are granted full access, we will seek to work together on those areas where cooperation has been good—counternarcotics and energy—and to improve cooperation in that area where the record is mixed: counterterrorism. Much will depend on the posture adopted by the Venezuelan Government. Our bilateral relations in a range of areas have suffered due to unilateral actions taken by the Chávez Government. Regardless of the winner of the referendum, if the process is free and fair, strengthening democratic institutions, respect for the rule of law and human rights, and cooperation on counternarcotics and regional security issues will remain the anchors of U.S. policy in Venezuela.

Question 10. The new Organic Law of the Supreme Court, which expands the number of Supreme Court justices from 20 to 32, allows President Chávez's governing coalition to use its slim majority in the legislature to obtain an overwhelming majority of seats on the Supreme Court. The law also allows his coalition to nullify the appointments of sitting justices. In short, Chávez's supporters now can purge and pack the country's highest court. What is the Department's opinion of this law?

Answer. A strong, independent judiciary is an essential element of democratic governance. Any steps to diminish judicial autonomy or the separation of powers undermine democracy. Accordingly, the United States is seriously concerned about the implications of the new Organic Law of the Supreme Court. We share the concerns expressed by Human Rights Watch and other non-governmental organizations, which have documented the deleterious effects the legislation could have on judicial independence and democracy in general in Venezuela.

As noted, among the law's major provisions are the expansion of the Supreme Court from 20 to 32 justices and the empowerment of the National Assembly to appoint and suspend judges by a simple majority vote. Already, the pro-Government coalition in the legislature, which spearheaded passage of the law, has suspended the Supreme Court Vice-President. As Human Rights Watch has noted, the pro-Government legislative majority is quickly moving to name new justices and to remove those not viewed as sympathetic to the Government. We are bringing this issue to the attention of our international partners and will continue to follow it closely.

Question 11. Does the new Organic Law of the Supreme Court violate the basic principles of Venezuela's constitution and international human rights law? If so, what can the Department of State and OAS do to highlight the fact that this law is an attempt to control Venezuela's judicial branch, undermine the separation of powers and the independence of the judiciary?

Answer. The United States is seriously concerned about the new Organic Law of the Supreme Court, recently passed by the pro-Government coalition in the National Assembly. A number of human rights organizations have voiced their own concerns. In a 24-page report issued on June 17, Human Rights Watch noted that the "Venezuelan government is undermining the independence of the country's judiciary ahead of a presidential recall referendum that may ultimately be decided in the courts."

The Report underscores Venezuela's commitments under the Inter-American Democratic Charter, the International Covenant on Civil and Political Rights and the American Convention on Human Rights to "safeguard the independence of the judiciary," adding that the Venezuelan government is presently in "contravention" of internationally-recognized "basic principles" regarding judicial independence. In its own report in December 2003, the Inter-American Commission on Human Rights underlined problems with judicial independence and impartiality, noting that the

“failure to respect the constitution fully creates legal insecurity that impedes the consolidation of the rule of law.”

We have raised the issue with our hemispheric and European partners, encouraging them to make statements in support of Venezuelan democracy and to encourage engagement by their own non-governmental organizations (NGOs). The United States will continue to speak out forcefully in defense of Venezuela’s democratic institutions, including a strong, independent judiciary, respect for the separation of powers and the rule of law.

Question 12. Numerous reports point to a massive crisis within the Venezuelan military. In private, analysts are beginning to confirm that support for Mr. Chávez is less than previously expected by that internal infighting, even among pro-government elements, and operational decay is probably greater than anticipated. Could you please give us your assessment of the current state of the Venezuelan Armed Forces and the risk a crisis at its core presents for a constitutional solution to the current crisis and for the durability of any democratic solution the Venezuelan people might seek?

Answer. The Venezuelan military, along with civilian law enforcement, plays a key role in ensuring domestic security and stability. The Venezuelan Armed Forces’ tradition of professionalism, commitment to democracy and civilian leadership, respect for human rights, and loyalty to the constitution must be maintained if a durable, peaceful, and democratic solution to the country’s political crisis is to be achieved.

The Inter-American Commission on Human Rights and other human rights organizations have noted the growing involvement of Venezuelan public security forces in internal security matters and partisan political processes. This presents a disturbing trend. Similarly upsetting are credible reports of human rights abuses by members of the National Guard during the February-March 2004 opposition demonstrations. Any attempts by the Venezuelan military or security forces to limit free speech, assembly, or association would threaten the Venezuelan people’s efforts to achieve a constitutional solution to the current impasse. We will continue to monitor the role and status of the Venezuelan Armed Forces closely.

Question 13. Is Venezuela’s military divided along political lines?

Answer. While the Venezuelan Armed Forces have a strong tradition of professionalism and respect for democracy and human rights, under President Chávez, it has grown increasingly politicized. We are troubled by the Government of Venezuela’s use of promotions and assignments to reward officers for their political allegiance and its efforts to involve the military in partisan political processes.

In his April 22 briefing to the Human Rights Caucus, the Director of the Office for the Promotion of Human Rights and Democracy in the Department’s Bureau of Democracy, Human Rights and Labor, Robert P. Jackson, noted United States concern about the “increased militarization of public administration, including the use of loyalist military officers in key political posts and as political candidates . . .”

We, along with the OAS Inter-American Commission on Human Rights, have expressed our concerns regarding the use of the Armed Forces in political and civil affairs and will continue to monitor the issue closely.

Question 14. Would the military uphold the constitution if challenged?

Answer. The United States has consistently urged the Venezuelan Armed Forces to respect a constitutional, democratic, peaceful, and electoral solution to the current impasse. We expect and urge the Venezuelan military to honor its tradition of respect for democracy, human rights and constitutional rule.

We oppose the use of force and intimidation to thwart the recall process as well as any attempts to achieve political objectives through violence or other unconstitutional means.

Question 15. How would you describe U.S./Venezuelan military-to-military interaction over the years? How would you describe it today?

Answer. The United States and Venezuela traditionally enjoyed a strong military-to-military relationship anchored in a mutual commitment to democracy, respect for the rule of law and human rights. Our once close relationship has suffered over the past four years, largely as a result of unilateral actions by the Venezuelan government—including opposition to key U.S. and regional security goals, association with dictatorial regimes, and anti-U.S. rhetoric.

In May 2004 President Chávez expelled U.S. Military Group personnel from Venezuelan military headquarters at Fort Tiuna after an almost fifty-year presence. In response, the U.S. Government has undertaken a review of the Venezuelan govern-

ment's military presence in the United States. That review remains ongoing. The decline of our bilateral military relationship may have implications for other areas of bilateral cooperation, including on security and counterterrorism.

Given our historic close ties to Venezuela, especially in terms of military-to-military contact, it is our clear preference to return to the cooperative, cordial relations we have traditionally shared.

Question 16. A great deal has been said in public and in private about President Chávez's meddling in the affairs of other countries in the region. Can you discuss Chávez's influence in the region and explain the level of concern these activities elicit among our neighbors in the Hemisphere. Please especially discuss alleged meddling in Chile, Ecuador, Peru, Bolivia, Brazil, Colombia, Uruguay and El Salvador.

Answer. We have seen reports indicating Venezuelan support for a range of political groups in the region, including some engaged in subversive or violent activities. To address the question with the specificity you have outlined, it would be necessary for the Administration to brief you or members of your staff in a classified setting.

We, along with our regional neighbors, are concerned about any efforts to undermine democratic governments in the hemisphere. For four decades, the United States and Venezuela were allies in a broader effort to help democratize the hemisphere, and to spread prosperity and economic opportunity. The U.S. has made it clear that we expect the Government of Venezuela to comply with and meet all of the obligations set forth in the UN anti-terrorism conventions and protocols, the Organization of American States' treaties, and other international legal instruments which prohibit support for or providing a safe-haven to terrorists.

Question 17. With regard to the Venezuelan political crisis, under what circumstances would the U.S. seek to invoke the OAS's Democratic Charter?

Answer. The United States fully supports a constitutional, democratic, peaceful, and electoral solution to the current crisis in Venezuela in accordance with Organization of American States (OAS) Permanent Council Resolution 833. Along with our hemispheric partners, we support the recall referendum as the best mechanism to achieve these goals consistent with Venezuela's constitution and the Inter-American Democratic Charter. We expect this process to be fully carried out in good faith by all sides—including the Government of Venezuela, its political institutions, and all elements of the democratic opposition.

If any of the parties compromises this democratic process, undermining the constitutional rights of Venezuelan citizens, we will consult with our hemispheric partners on the best response. This could involve invoking the OAS Inter-American Democratic Charter. Adopted by the democratic countries of the hemisphere, including Venezuela, on September 11, 2001, the Inter-American Democratic Charter states "The peoples of the Americas have a right to democracy and their governments an obligation to promote and defend it." Accordingly, any efforts that impair the democratic order in a member state must be carefully evaluated.

Question 18. When should we expect a second meeting of Group of Friends Foreign Ministers?

Answer. The Friends of the Organization of American States (OAS) Secretary General's Mission for Venezuela have played a key role in supporting a constitutional, democratic, peaceful and electoral solution to the current political impasse in Venezuela. First launched in January 2003, Brazil, Chile, Mexico, Spain, Portugal and the United States comprise the Group of Friends. Brazil has carried out an important function as the Group's chair and coordinator.

The Friends' Foreign Ministers gathered at an initial meeting in January 2003. While there is no Friends' Foreign Ministers meeting planned at this time, we are in regular contact with our Friends' counterparts. During the recent reparos process, the Friends issued statements in support of the process.

Question 19. What is the current position of Secretary Powell with regards to the manner in which this important group of countries should participate in the search for a solution to this grave crisis?

Answer. Secretary Powell strongly supports the efforts of the Group of Friends of the Organization of American States (OAS) Secretary General's Mission for Venezuela to ensure a constitutional, democratic, peaceful and electoral solution to the current political situation. At the OAS General Assembly meeting in Quito this past June, Secretary Powell met with his Brazilian counterpart and with OAS Secretary General Gaviria. In his public remarks, the Secretary underscored the important role to be played by the democratic nations of the Americas when fellow democracies suffer setbacks.

We are in regular contact with Brazil, the Group's chair, and with the other Friends' countries, as well as OAS Secretary General Gaviria. As evidenced by Brazilian Foreign Minister Celso Amorim's June 17 comments in Sao Paulo, Brazil shares our support for the important work of the OAS and Carter Center missions in advancing the goals of OAS Permanent Council Resolution 833.

Since the inception of the Friends Group in January 2003, we have worked closely with members to issue statements and to coordinate Friends' meetings in Washington and Caracas. In the weeks and months ahead, we will continue to work together to support a credible and transparent recall process..

Question 20. What is the Group of Friends role regarding the recall referendum? How many times has the Group met since it was organized? Does it intend to meet before the recall referendum?

Answer. The Group of Friends was established in January 2003 to support the efforts of the Organization of America States (OAS) Secretary General to advance a constitutional, democratic, peaceful and electoral solution to the political impasse in Venezuela, in accordance with OAS Permanent Council Resolution 833. As noted in our statements, the Friends support the constitutionally-provided recall referendum as the best mechanism to achieve the goals of Resolution 833. The Friends have advocated a fair, open, transparent recall process, which allows international observers the access necessary to carry out their functions. The Friends fully support the ongoing efforts of the OAS and Carter Center missions in ensuring a fair, credible recall referendum.

The Group of Friends Foreign Ministers met in January 2003 when the Group was first launched. Since then, the Senior Representatives of the Group of Friends or the Friends Permanent Representatives to the OAS have formally met four times: March 2003, May 2003, March 2004, and July 7, 2004. The member countries remain in regular contact.

Question 21. Could you discuss the level of involvement of the Cuban Government in the internal affairs of Venezuela?

Answer. We are aware of the presence in Venezuela of large numbers of Cuban teachers, doctors and sports trainers participating in various Venezuelan Government programs. While we obviously support efforts to help needy people everywhere learn to read and write and receive healthcare, we are concerned about the increasingly close ties between the Venezuelan and Cuban Governments. We hope these ties are limited to such programs.

We are seriously concerned about reports indicating the presence of Cuban intelligence personnel in Venezuela. To address this last issue with greater specificity, it would be necessary for the administration to brief you or members of your staff in a classified¹ setting.

The Castro regime has a long, disturbing and often bloody history of subverting democratically-elected governments throughout the hemisphere, including through support for terrorist groups. We have expressed our concern about such close ties to the sole non-democratic government in the hemisphere at the highest level of the Venezuelan Government. We will continue to monitor this situation closely.

Question 22. Could you describe Venezuela's current role within the Organization for Petroleum Exporting Countries (OPEC)?

Answer. Venezuela is one of ten members of OPEC. Due to its limited ability to produce at or above its own production quota, Venezuela has not been publicly supportive of overall increased oil production by the group. Venezuela was once considered a price moderate but is now viewed as a price hawk.

Question 23. Venezuela is reportedly producing close to 2.5 million barrels per day of oil: could you please comment what the likely impact would have been on gas prices at the pump if Petroleos de Venezuela had maintained its goal of reaching 6 million barrels of capacity by 2006?

Answer. Venezuela's goal of reaching 6 million barrels per day by 2006 would require substantial foreign investment. Venezuela was not receiving that level of investment even before President Chávez assumed office. Since Venezuela is an OPEC member, other OPEC states would likely have sought to adjust their own production so as to minimize the impact of larger Venezuelan production on world oil markets. Still, world oil market stability would have been greatly advanced had Venezuela

¹An additional response of classified information was subsequently provided.

pursued, during the current Chávez Administration, a more aggressive effort to win foreign investment.

Question 24. Could you describe the importance of gasoline imports from Venezuela and its offshore refineries in the supply chain of the U.S. market?

Answer. Venezuela is the third largest oil supplier to the U.S. market. The U.S. imports between 12 to 14 percent of its daily petroleum and petroleum products needs from Venezuela. Slightly more than half of Venezuela's oil exports to the U.S. enter its own U.S.-or Caribbean-based refinery chain, led by its flagship, wholly-owned subsidiary, Citgo. Venezuela's role in the gasoline market is probably most important in that regard. Gasoline exports from Venezuela or the its Caribbean-based refinery chain help to balance markets predominately on the east coast of the United States. While Venezuela is a leading foreign supplier of gasoline, about 90 percent of U.S. gasoline consumption is domestically refined.

Question 25. Are the conditions placed for investment in Venezuela oil and gas sector likely to attract foreign capital and technology? If they are not attractive what is a worse case scenario for Venezuelan supply?

Answer. Regrettably, Venezuela's hydrocarbons law is not viewed by the private sector as globally competitive, and until improvements are made, Venezuela is unlikely to attract substantial new oil investment. Venezuela's natural gas law is far more competitive, and U.S. and foreign firms remain engaged with the Venezuela government to develop opportunities in that area.

Most Venezuelan oil fields are mature and have a steep natural decline rate, requiring additional investment just to keep output steady. Major foreign investment underway in the heavy oil sector will help maintain Venezuelan oil production capability for the short-to medium-term, but the country will face a serious erosion of productive capacity if the state oil company, or foreign investors, do not greatly increase the rate of investment. The worst case scenario would be year-to-year production declines of upwards of 15 percent should that investment not take place.

Question 26. How beneficial to Cuba is the crude and products supply deal they have with Venezuela? Is it similar in terms to other deals entered by other producers in the world?

Answer. Cuba maintains a beneficial energy arrangement with the Venezuelan government under President Chávez, which allows the Castro regime to receive up to 82,000 barrels of oil per day on preferential terms. This arrangement nets more than \$800 million in annual savings to Cuba. We are concerned about the concessionary terms of an agreement, which serves only to help prop up an undemocratic regime.

It is our understanding that this kind of arrangement is uncommon. Few oil producers grant preferential treatment to consumers, particularly in tight oil markets.

