

## PART 11

### “OPEN, SESAME!”

### THE TRIUMPH OF POLITICS OVER JUSTICE

The late and not-so-lamented Fidel Castro succinctly described the governing principle of Cuba under his rule. “Inside the revolution, everything; outside the revolution, nothing.”

In November 2015, shortly after the surprise election that brought Jimmy Morales to power, the new Minister of the Interior appointed retired army Captain Óscar Platero to be assistant director of Civilian Intelligence, or Digici.

Platero, a man strongly qualified for the post, later told journalists that he had worked with the CICIG “at its inception in 2007 . . . because I thought it was going to pursue organized crime.” However, he added, the CICIG had been strangely uninterested in the information he supplied.

Given his bad blood with the CICIG, Platero’s appointment was controversial. President Alejandro Maldonado told an interviewer he saw no reason for Platero not to serve. But a day after saying so, the president announced through a spokesman that he had ordered the Interior Minister to cancel Platero’s appointment.

As the spokesman explained, the Interior Ministry’s Digici “is closely related to the Justice Ministry and to the CICIG. This harmony is important, so it’s important that those personnel have excellent working relations.”<sup>23</sup>

This is now the governing principle at the Justice Ministry, which is the CICIG’s official home. In recent years the CICIG has been extending its power through its control of appointments in the judicial branch. The power to select judges enables the CICIG to determine what is law and what is not.

In late 2016 the magistrates of the Supreme Court, Guatemala’s second-highest judicial body, chose one of their number, Magistrate Silvia Patricia Valdés, to serve a one-year term as the court’s president. But then a pro-CICIG petitioner asked the country’s highest judicial body, the Constitutional Court, to void the Valdés appointment on grounds that an alternate magistrate had taken part in the voting.

This was not a case of impartial justice but of politics in command. The CICIG-controlled Constitutional Court voted to oust Valdés from the Supreme Court’s presidency, which then went to a magistrate with a record of supporting the choices of the CICIG-controlled Justice Ministry.

23.- <https://panampost.com/steve-hecht/2015/12/02/guatemalas-political-mob-strike-democracy-once-again/>

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In the Constitutional Court's decision against Valdés, not one but two alternates had voted – an irony notoriously ignored by the pro-CICIG party, but well observed by others.

At present, the boss of the Constitutional Court is Magistrate Gloria Porras. In June 2010, as a Justice Ministry official, Porras was one of the key players in the abrupt dismissal of Attorney General Conrado Reyes – a judicial fraud perpetrated by CICIG commissioner Carlos Castresana and US Ambassador Stephen McFarland. <sup>24</sup>

The following year, 2011, Porras won appointment to the Constitutional Court. In 2015, the CICIG and the US embassy waged an inappropriate campaign for her reappointment. On orders of Ambassador Todd Robinson, the US embassy bullied Guatemala's Congress to approve a second term for Porras.

On October 3, 2017 the Foundation Against Terrorism presented a criminal complaint against Porras and two government auditors, alleging embezzlement, malfeasance, and other crimes as a result of Porras's having illegally authorized bonuses for court employees. The evidence, a public document signed by Porras, was in black and white.

Five days later, instead of passing the case to Congress for the appointment of an investigating commission as the law requires, the Supreme Court rejected the complaint.

In contrast, the Supreme Court had earlier accepted a Justice Ministry case against Congressman Fernando Linares <sup>25</sup> and had immediately appointed an investigating judge.

The matter concerned four disabled people who had lobbied for legislation in Congress. In February 2017 the complainants alleged that Linares had spoken to them in a “disrespectful and arrogant manner, using discriminatory language.”

The Constitution states that members of Congress are not liable for “their opinions or initiatives . . . in the performance of their duties.” In addition to its general guarantee of free speech, the Constitution specifically protects the rights of congresspersons to speak freely in discharging their duties.

Even so, the Supreme Court ruled that the disabled persons' complaint was legitimate. Notably, Magistrate Silvia Patricia Valdés dissented from the court's ruling.

Despite the patent absurdity of the complaint, its clear violation of the Constitution, and despite a recommendation by the court's own investigating judge against such an action, the

24.- See Part 4 of this series, “The Case of the Disappearing Attorney General.”

25.- See Part 9 of this series, “The Lawlessness of Guatemala's Justice.”

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Supreme Court voted to strip Linares of his official immunity and render him subject to criminal prosecution.

In accord with Constitutional Court policy, the Supreme Court is now peremptorily deciding the merits of cases before they come to trial. The explicit basis of these decisions is the “immunity” status of the person or persons charged. The underlying criterion is the person’s standing with the CICIG.

For Gloria Porras, the Supreme Court upheld her official immunity and threw out the complaint. In the case of Fernando Linares, who is a known adversary of the CICIG and its agenda, the court went 50 country kilometers out of its way to ride roughshod over the Constitution and remove his official immunity. With many judges fearful of the CICIG, Linares is at risk of going to jail.

A curiosity of these judicial pronouncements is the constant use of the Latin phrase “in limine” to ramify the decisions and make them appear legitimate. The phrase simply means, “Now that we are getting under way . . .” By itself, it confers no authority at all.

The law specifies that no court may determine the merits of a case before it is tried. For these uses, the phrase “in limine” has no more legal validity than the magic statement “Open, sesame!” in the story of Ali Baba and the 40 Thieves.

But in a more crucial sense the Open Sesame is rewarding those who have arranged for the triumph of politics over justice.

The CICIG, the Justice Ministry, the judicial branch and the human rights ombudsman are engaged in a subversive movement whose aim is complete power over all branches of government. And they are winning. Despite the efforts of a few officials and magistrates – Valdés, Linares and now President Morales himself – many others have fallen into line.