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ACTION ARA-01

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P 220124Z JUN 96
FM AMEMBASSY LIMA
TO SECSTATE WASHDC PRIORITY 1932
INFO USCINCSO QUARRY HEIGHTS PM
USMISSION GENEVA
AMEMBASSY QUITO
AMEMBASSY LA PAZ
AMEMBASSY BOGOTA

Release additional
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C O N F I D E N T I A L SECTION 01 OF 03 LIMA 005394

DEPARTMENT ALSO FOR AID
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E.O. 12958: DECL: 06/30/06
TAGS: PGOV, KJUS, PHUM, PINR, EAID, PE
SUBJECT: PERU CONSOLIDATES THE ADMINISTRATION OF ITS
JUSTICE SYSTEM

1. (U) CLASSIFIED BY: ALVIN ADAMS, AMBASSADOR,
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AMEMBASSY LIMA. REASON: 1.5 (D).

INTRODUCTION AND SUMMARY

2. (C) ON JUNE 18 PRESIDENT FUJIMORI SIGNED INTO LAW A
BILL TO CREATE A NATIONAL JUSTICE SYSTEM WHICH WOULD
UNITE FOR ADMINISTRATIVE PURPOSES THE JUDICIAL BRANCH,
THE PUBLIC MINISTRY (ATTORNEY GENERAL'S OFFICE), THE

Current Class: CONFIDENTIAL

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: SAM A. MOSKOWITZ
DATE/CASE ID: 15 JUN 2001 200101053

DEPT OF STATE APPEALS REVIEW PANEL (ARP)

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NATIONAL JUDICIARY COUNCIL (WHICH SELECTS JUDGES AND PROSECUTORS), THE JUDICIAL ACADEMY, AND OTHER HERETOFORE AUTONOMOUS ENTITIES. ITS PROVISIONS ALSO EXTEND THE EMERGENCY JUDICIAL REORGANIZATION UNTIL DECEMBER 1998, KEEPING RETIRED NAVY COMMANDER JOSE DELLEPIANE IN CHARGE OF THE REFORM.

3. (C) DEFENDERS OF THE LAW ARGUE THAT IT UNITES ADMINISTRATIVE RESOURCES WITHOUT UNDERMINING THE AUTONOMY AND DISTINCT SUBSTANTIVE FUNCTIONS OF THE JUDICIAL ENTITIES. THE REFORM, FOR EXAMPLE, REPORTEDLY WILL NOT/NOT AFFECT THE TENURE OF JUDGES AND FISCALES. A NUMBER OF OUR CONTACTS HAVE EXPRESSED CONCERN THAT THE MEASURE MIGHT MEAN A LOSS OF AUTONOMY FOR THE PUBLIC MINISTRY AND THE NATIONAL JUDICIARY COUNCIL. OTHERS QUESTION THE WISDOM OF GRANTING TO ONE MAN WHAT MAY AMOUNT TO A SIGNIFICANT VOICE IN THE ADMINISTRATION OF ALL OF PERU'S JUDICIAL INSTITUTIONS.

4. (C) SOME OF THESE VOICES MAY BE EXPRESSING SOUR GRAPES, OR FEAR OF CHANGE; OTHERS MAY BE CAT'S-PAWS FOR OPPONENTS OF "NO NONSENSE" JUDICIAL REFORM (WE HEAR DE
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FACTO INTELLIGENCE CHIEF VLADIMIRO MONTESINOS IS ONE), WHILE OTHERS ARE GENUINELY CONCERNED JURISTS. THOUGH THE PROPOSED CHANGES HAVE THE POTENTIAL TO MAKE THE JUSTICE SYSTEM MORE EFFICIENT, THE LAW REMAINS CONTROVERSIAL BECAUSE OF THESE FACTORS AS WELL AS THE MANNER IN WHICH THE REFORMS WERE RAILROADED THROUGH CONGRESS. END INTRODUCTION AND SUMMARY.

SUMMARY JUDICIAL BRANCH REORGANIZATION

5. (U) ON JUNE 18 PRESIDENT ALBERTO FUJIMORI SIGNED A SWEEPING NEW LAW WHICH WOULD UNITE AND REFORM ADMINISTRATIVELY ALL THE ELEMENTS OF THE PERUVIAN JUDICIARY SYSTEM. IN THE EARLY MORNING HOURS OF JUNE 16, AS THE PERUVIAN CONGRESS WAS PREPARING TO END ITS FIRST SEMESTER SESSION, THE PLENARY APPROVED A BILL TO CREATE A SINGLE "NATIONAL SYSTEM OF ADMINISTRATION OF JUSTICE." AS A RESULT, THE EMERGENCY REORGANIZATION OF THE JUDICIAL BRANCH THAT WAS DUE TO END IN NOVEMBER 1996 WILL BE EXTENDED UNTIL DECEMBER 1998.

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6. (U) THE REFORM'S REACH WILL ALSO BE EXPANDED TO INCLUDE NOT ONLY THE JUDICIAL BRANCH, BUT ALSO THE CURRENTLY AUTONOMOUS PUBLIC MINISTRY (ATTORNEY GENERAL'S OFFICE), NATIONAL JUDICIARY COUNCIL, JUDICIAL ACADEMY, JUDICIAL POLICE (THE LATTER CURRENTLY UNDER THE JUSTICE MINISTRY), AND OTHER RELATED ENTITIES. JOSE DELLEPIANE, THE RETIRED NAVY COMMANDER CURRENTLY IN CHARGE OF THE REFORM, WILL CONTINUE IN HIS POSITION, WHICH WILL BE KNOWN AS "SECRETARY GENERAL OF THE NATIONAL SYSTEM OF CONFIDENTIAL

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ADMINISTRATION OF JUSTICE."

7. (C) DELLEPIANE RECENTLY TOLD THE AMBASSADOR THAT HE HAD SENT THE PROPOSAL TO THE JUSTICE COMMITTEE OF THE CONGRESS IN EARLY JUNE. HIS GOAL, HE CONFIDED, WAS TO SEE ALL JUSTICE RELATED FUNCTIONS UNIFIED UNDER ONE "SUPER" JUDICIAL BRANCH. HE NOTED THAT NUMEROUS AGENCIES AND ENTITIES ARE RESPONSIBLE FOR THE ADMINISTRATION OF JUSTICE. PROSECUTORS WORK OUT OF THE AUTONOMOUS PUBLIC MINISTRY; THE EXECUTIVE BRANCH'S JUSTICE MINISTRY IS THE UMBRELLA FOR THE NATIONAL PRISONS INSTITUTE AND THE JUDICIAL POLICE; AUTONOMOUS AGENCIES SUCH AS THE NATIONAL JUDICIARY COUNCIL AND THE JUDICIAL ACADEMY SELECT AND TRAIN BOTH JUDGES AND PROSECUTORS. DELLEPIANE SAID HE BELIEVES THAT ALL THESE ENTITIES SHOULD BE MANAGED UNDER ONE INTEGRATED ADMINISTRATIVE ORGANIZATION. HE ALSO BELIEVES THE OFFICE OF INTERNAL CONTROL, CURRENTLY WITHIN THE SUPREME COURT, SHOULD BE A SEPARATE INSPECTOR GENERAL'S OFFICE RUN BY PROFESSIONAL INVESTIGATORS. (IN THIS APPROACH, DELLEPIANE ENJOYS THE STRONG SUPPORT OF THE UNDP RESIDENT REPRESENTATIVE HERE.)

LOUD VOICES OF DISSENT

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TO SECSTATE WASHDC PRIORITY 1933
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8. (C) RESPONSE TO THE LAW'S PASSAGE HAS BEEN MIXED. SEVERAL INDEPENDENT JURISTS HAVE CRITICIZED ITS PROVISIONS, ARGUING, INTER ALIA, THAT THE NATIONAL JUDICIARY COUNCIL, THE PUBLIC MINISTRY AND THE ACADEMY WOULD LOSE THEIR AUTONOMY IF THEIR REFORM WERE SUBSUMED INTO ONE SUPER STRUCTURE. IN ADDITION, DELLEPIANE'S REFORMS MAKE PERMANENT THE POSITION OF EXECUTIVE SECRETARY (WHICH HE NOW OCCUPIES). THEY ALSO CREATE A CONSULTATIVE COMMISSION THAT WOULD INCLUDE REPRESENTATIVES OF TWO EXECUTIVE BRANCH MINISTRIES (JUSTICE AND INTERIOR), WHICH MANY SEE AS A VIOLATION OF THE SEPARATION OF POWERS. THE PRESS HAS REPORTED THAT THE DEAN OF THE LIMA BAR ASSOCIATION, VLADIMIR PAZ DE LA BARRA, AND A SUPREME COURT PROSECUTOR, NELLY CALDERON, OPPOSE THE REORGANIZATION.

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9. (U) THE AUTHOR OF THE ORIGINAL BILL, OPPOSITION CONGRESSMAN ANTERO FLORES-ARAOZ, HAS COMPLAINED BITTERLY TO THE PRESS THAT THE CONGRESSIONAL MAJORITY HAD "DEFORMED" HIS IDEAS IN THE FINAL VERSION OF THE BILL. HIS INTENTION WAS TO PROMOTE COORDINATION AMONG THE ELEMENTS OF THE JUDICIAL SECTOR WITHOUT BEING INTRUSIVE, E.G., BY IMPOSING CONTROL FROM THE OUTSIDE.

10. (C) ON JUNE 20, SUPREME COURT PRESIDENT MOISES PANTOJA PUBLICLY REJECTED THE PROVISIONS OF THE REORGANIZATION. ON BEHALF OF HIS FELLOW SUPREME COURT JUSTICES, PANTOJA ANNOUNCED THE CREATION OF AN AD HOC
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COMMISSION TO SUGGEST MODIFICATIONS TO THE NEW LAW. THE COMMISSION IS TO RELEASE ITS REPORT IN ONE WEEK. IN HIS JUNE 20 REMARKS PANTOJA ECHOED WHAT HE TOLD POLOFF AT A JUNE 18 RECEPTION: THAT HE CONSIDERED THE PROPOSALS TO BE "DISASTROUS." HE INSISTED THAT THE PUBLIC MINISTRY AND THE NATIONAL JUDICIAL COUNCIL SHOULD REMAIN AUTONOMOUS AND BE EXCLUDED FROM THE JUDICIAL BRANCH REORGANIZATION.

COMMENT: IRONICALLY, PANTOJA, WHO HAD ORIGINALLY PROPOSED THE JUDICIAL BRANCH REORGANIZATION, NOW BELIEVES IT HAS GONE WAY TOO FAR. PANTOJA IS ANOTHER JURIST WHO IS BELIEVED TO REFLECT MONTESINOS' THINKING, WHICH REPORTEDLY DOES NOT FAVOR WIDERANGING REFORM CONDUCTED BY DELLEPIANE--WHO IS EVIDENTLY BEYOND THE INTELLIGENCE ADVISOR'S REACH. END COMMENT.)

B1, 1.5(D)

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11. (C) JUNE 17 TO EXPRESS HIS DISAPPOINTMENT IN THE NEW LAW. FOR ONE THING, HE NOTED, IT PROBABLY MEANS THAT ATTORNEY GENERAL COLAN--NOTED FOR HER LOYALTY TO PRESIDENT FUJIMORI--WOULD BE EXTENDED IN HER POSITION UNDER THE EMERGENCY REORGANIZATION. MOST PROSECUTORS, CONTINUED, RESENTED HAVING AN OUTSIDER IMPOSE REFORM ON THEIR ORGANIZATION. NONETHELESS, ADMITTED THAT THE PUBLIC MINISTRY HAD BROUGHT THAT PROBLEM ON ITSELF BY REFUSING TO CHANGE.

B1, 1.5(B), 1.5(D)

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12. (C) CARLOS MONTOYA, PRESIDENT OF THE NATIONAL JUDICIARY COUNCIL, TOLD POLOFF JUNE 17 THAT HE WAS VERY CONCERNED BY THE NEW REFORMS. HIS MAIN WORRY, HE SAID, WAS THAT THE COUNCIL'S AUTONOMY WOULD BE THREATENED. HE
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DID NOT KNOW WHAT DELLEPIANE HAD IN MIND FOR THE
COUNCIL. PUBLIC MINISTRY PROSECUTOR ANA CECILIA
MAGALLANES CHARACTERIZED THE DELLEPIANE REFORMS AS AN
"OUTRAGE," ARGUING THAT AN "OUTSIDER" SHOULD NOT BE
PERMITTED TO HAVE SO MUCH POWER OVER THE WHOLE JUDICIAL
BRANCH.

13. (C) POLOFF ALSO SPOKE WITH THE DIRECTOR OF THE
JUDICIAL ACADEMY, FRANCISCO EGUIGUREN. EGUIGUREN NOTED
ON JUNE 18 THAT ONE MEMBER OF THE ACADEMY'S BOARD,
PROMINENT JURIST JAVIER DE BELAUNDE, HAD RESIGNED OVER
THE PASSAGE OF THE BILL. FOR HIS PART, EGUIGUREN HAD
DECIDED TO TAKE A WAIT-AND-SEE ATTITUDE. HE DID NOT
APPRECIATE THE IDEA OF HAVING TO TAKE ORDERS FROM
DELLEPIANE, BUT AGREED THAT SOME OF DELLEPIANE'S IDEAS
FOR THE JUDICIAL BRANCH HAD TURNED OUT TO BE GOOD ONES.
HOWEVER, EGUIGUREN ASSERTED, IF THERE WERE ANY ATTEMPTS
BY DELLEPIANE OR THE EXECUTIVE BRANCH TO MEDDLE IN THE
ACADEMY'S SUBSTANTIVE (AS OPPOSED TO ADMINISTRATIVE)
WORK, EGUIGUREN WOULD RESIGN AS WELL.

COMMENT

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AMEMBASSY LA PAZ
AMEMBASSY BOGOTA

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TAGS: PGOV, KJUS, PHUM, PINR, EAID, PE
SUBJECT: PERU CONSOLIDATES THE ADMINISTRATION OF ITS
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14. (C) WE ARE UNCOMFORTABLE ABOUT THE WAY THE
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CONGRESSIONAL MAJORITY ONCE AGAIN PASSED A PIECE OF
MAJOR LEGISLATION IN THE WEE HOURS OF ITS FINAL SESSION
WITH ALMOST NO DEBATE. RESPECTED, MODERATE
CONGRESSWOMAN BEATRIZ MERINO TOLD THE AMBASSADOR JUNE 20
THAT, ODDLY, THIS PRACTICE MAY REFLECT FUJIMORI'S
CONCERN THAT WITH MORE TIME TO DEBATE, HIS MAJORITY
MIGHT LOSE COHESION IN RESPONSE TO OPPOSITION ARGUMENTS.

15. (C) THERE IS BROAD AGREEMENT ON THE NEED FOR
JUDICIAL REFORM, BUT THE UNCONCILIATORY WAY IT WAS
HANDLED, ECHOING EARLIER PALACE-DIRECTED RAMRODDING OF
CONTROVERSIAL LEGISLATION THROUGH THE CONGRESS, RAISED
HACKLES--AND SUSPICIONS ABOUT THE BILL'S PROVISIONS.
THOUGH FUJIMORI INSISTS THE REFORMS ARE NOT NEGOTIABLE,
HE AND HIS CONGRESSIONAL MAJORITY MAY EVENTUALLY ACCEPT
MODIFICATIONS ON CERTAIN ASPECTS OF THE RAPIDLY
ASSEMBLED AND PACKAGED REFORMS.

16. (C) FUJIMORI'S PROMULGATION OF THE LEGISLATION
SIGNIFICANTLY ENHANCES DELLEPIANE'S POWER. THOUGH THERE
IS AN INHERENT DANGER IN GRANTING SO MUCH POWER TO ONE
INDIVIDUAL, DELLEPIANE'S POINT THAT IT IS DIFFICULT TO
MANAGE PERU'S ADMINISTRATION OF JUSTICE WHEN SO MANY
DIFFERENT ELEMENTS ARE INVOLVED IS WELL TAKEN. UNITING
THESE ENTITIES UNDER ONE ADMINISTRATIVE UMBRELLA HAS THE
POTENTIAL TO MAKE THE JUSTICE SYSTEM MORE EFFICIENT.

17. (C) ALSO ON THE POSITIVE SIDE, THE NEW LAW
REPRESENTS AN UNPRECEDENTED ATTEMPT TO ACHIEVE REFORM IN
PLACE. JUSTICE SECTOR PERSONNEL WERE NOT DISMISSED AS

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BEFORE. THEREFORE, THESE CHANGES MAY PROVIDE THE BASIS
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FOR GREATER JUDICIAL STRENGTH AND AUTONOMY IN THE
FUTURE.

18. (C) AT THIS POINT, WE CANNOT SAY HOW DELLEPIANE
WILL TACKLE THE DEEP-ROOTED PROBLEMS OF ADMINISTRATION
OF JUSTICE IN PERU. HE HAS TAKEN SOME POSITIVE STEPS TO
CRACK DOWN ON CORRUPTION AND INEFFICIENCY IN THE
JUDICIAL BRANCH, BUT AT THE SAME TIME HE HAS DONE SO IN
AN AUTOCRATIC FASHION. BECAUSE DELLEPIANE WAS CHOSEN
FOR THE JOB BY PRESIDENT FUJIMORI'S BROTHER AND FORMER
ADVISER SANTIAGO, SOME MAGISTRATES FEAR THAT HE IS THE
PRESIDENT'S HATCHET MAN, SENT TO INTIMIDATE OR DISMISS
PEOPLE FUJIMORI PERCEIVES AS ENEMIES. MANY OF OUR
CONTACTS BELIEVE DELLEPIANE IS, AT THE LEAST, FUJIMORI'S
TOOL FOR MANIPULATING THE JUDICIAL BRANCH AS HE SEES
FIT.

B1, 1.5(D)

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19. (C) LIKE EGUIGUREN, WE CAN ONLY WATCH FOR NOW TO
SEE IF THE EXPANDED REORGANIZATION LEADS TO AN
IMPROVEMENT IN THE ADMINISTRATION OF JUSTICE OR IF IT
TURNS OUT TO BE JUST ANOTHER ATTEMPT TO UNDERMINE THE
PRINCIPLE OF SEPARATION OF POWERS. ADAMS

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