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# TELEGRAM

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E.O. 11652:  
TAGS:  
SUBJECT:  
  
ACTION:

GDS  
PGOV, SHUM, AR  
Calls on MinJustice and Supreme Court

SECSTATE WASHDC

~~SECRET~~ BUENOS AIRES 9360

AMB  
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ARGENTINA PROJECT (S200000044)  
U.S. DEPT. OF STATE, A/RPS/IPS  
Margaret P. Grafeld, Director  
 Release ( ) Excise ( ) Deny  
Exemption(s):  
Classify: ( ) In Part ( ) In Full  
( ) Classify as ( ) Extend as ( ) Downgrade to  
Date            Declassify on            Reason           

1. During calls on Minister of Justice Gomez December 6 and Supreme Court President Heredia December 7, Ambassador spoke at some length of Argentina's negative international reputation and sought to draw out Gomez and Heredia on ways this situation can be corrected. He described how highly visible cases--like those of Timerman and Vogler--have captured public and congressional attention in the US, and how necessary it is to begin a pattern of improvement by resolving these problem cases.

2. At the Supreme Court Heredia described two specific issues of interest to us for their human rights implications:

a. Act of Institutional Responsibility.

It is this act, designed originally by the Junta

DRAFTED BY: POL:WHHallman:gcr DRAFTING DATE: 12/9/77 TEL. EXT.: 278 CONTENTS AND CLASSIFICATION APPROVED BY: Ambassador Castro

CLEARANCES:

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OPTIONAL FORM 15:  
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to squeeze back out of peronist officials what allegedly had been obtained through corruption, which is the latest stumbling block to Jacobo Timerman's being released. Heredia described the act as one actually administered by the executive branch of government, specifically by a commission just named to look into the fortunes of former officials. Only when that body has spoken can the matter involve the court system, since it is within the rights of someone who stands to lose under the law to bring his case before an appeals court. Heredia affirmed that no one could be jailed just because his goods were under the processes of this Act. Incarceration is incidental, itself the product of "poder ejecutivo nacional" (PEN) action from altogether different motives.

b. The Zamorano and Perez Smith Cases. Heredia described these as of "Marbury vs. Madison significance" for Argentina. The Supreme Court admits that it has limited cognizance of actions performed by the executive power during "state ~~ifxsmg~~ of siege" periods of government. In the Zamorano case the Court did however affirm its power to demand the executive to <sup>demonstrate</sup> ~~show reasonable cause~~ <sub>reasonable and</sub> that its actions were/proper. Zamorano had been held for more than two years under the PEN, uncharged and untried. Lower courts ~~from~~ demands that the Executive demonstrate that this detention was reasonable had been ignored by

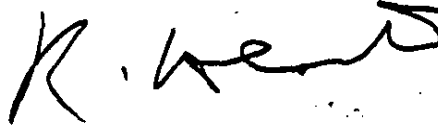
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the executive. However, in response to the Supreme Court's demand the executive replied with a lengthy dossier alleging Zamorano's association with subversion. This satisfied the court's "show cause" insistence. Zamorano remains jailed, but the Court did comment to the executive branch that a lower court had equal right to demand proof of "reasonableness," and that the executive had erred in not presenting the dossier earlier on. In the Perez Smith case the Court demanded stringent efforts on the part of executive authorities to satisfy habeas corpus decrees issued by courts.

3. COMMENT: These calls affirmed the Embassy's assessment of the very limited role the traditional, civilian judicial system <sup>can claim</sup> ~~is~~ in correcting human rights abuses under the existing state of siege dispensation.



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