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ENVELOPE

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HEADER

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221707Z JUN 83
FM JCS WASHINGTON DC

INFO RUEADWD/CSA WASHINGTON DC
RUENAAA/CNO WASHINGTON DC
RUEAHQA/CSAF WASHINGTON DC
RUEADWD/PTC WASH DC
RUEAMCC/CMC CC WASHINGTON DC
RUEOFAA/JSOC FORT BRAGG NC
RUCJAAA/USCINCRD MACDILL AFB FL
RUCIFBA/MAC INTEL CEN SCOTT AFB IL//INW/INZ//
RUCJAAA/USCINCRD MACDILL AFB FL//RCJ2//
RUEBBJB/HQ AFOSI BOLLING AFB DC
RUDHAAB/CDRUSAITAC ARLINGTON HALL STATION VA
RUEOAYB/FSTC INTEL OPS CHARLOTTESVILLE VA
RUCDGDA/CDRMICOM REDSTONE ARS AL//DRSMI-YX//
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221248Z JUN 83
FM AMEMBASSY BUENOS AIRES
TO RUEHC/SECSTATE WASHDC 7661
INFO RUESNA/AMEMBASSY SANTIAGO 6418

RUEOEHA/USCINCSO QUARRY HTS PN
RUCBSAA/CINCLANT NORFOLK VA
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CONTROLS

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SECTION 01 OF 03

BUENOS AIRES 04129

~~E.O. 12356 N/A~~

/***** THIS IS A COMBINED MESSAGE *****/

BODY

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TAGS PREL, PINS, AR

SUBJ THE MASSERA SENSATION AND OTHER LEGAL DEVELOPMENTS
REFS (A) BUENOS AIRES 4061, (B) 82 BUENOS AIRES 5988

1. SUMMARY THE FEDERAL COURTS, SINCE THE 1976 COUP REGARDED LARGELY AS IMPOTENT BYSTANDERS, APPEAR TO HAVE STEPPED FORWARD IN THE LAST WEEKS TO MAKE THE VOICE OF THE LAW HEARD IN PUBLIC LIFE. AS SURPRISING AS SOME JUDGES' BOLDNESS IN ASSERTING THEIR AUTHORITY IN AREAS HERETOFORE TREATED WITH THE GREATEST SENSITIVITY IS THE WILLINGNESS OF THE MILITARY TO ALLOW IT. THESE ARE NEW ELEMENTS IN THE POLITICAL EQUATION THAT HAVE MORE TO DO WITH CRIME AND PUNISHMENT AND NOT WITH POLITICS, STRICTLY SPEAKING. YET BECAUSE OF THE NATURE OF THE LEGAL PROCEEDINGS NOW UNFOLDING, DREDGING UP AS THEY DO THE UNSAVORY PAST OF THE PRESENT REGIME, THEY COULD HAVE AN IMPACT ON THE IMMEDIATE POLITICAL FUTURE. END SUMMARY.

2. MOST ATTENTION HAS CENTERED ON THE CASE OF EMILIO MASSERA, MADE HEAD OF THE NAVY BY JUAN PERON IN 1973 AND A MEMBER OF THE JUNTA WHICH OVERTHREW PERON'S WIDOW THREE YEARS LATER. ADMIRAL MASSERA WAS ORDERED ARRESTED JUNE 14 BY FEDERAL JUDGE OSCAR SALVI WHO HAS BEEN INVESTIGATING THE UNSOLVED DISAPPEARANCE AND SUSPECTED MURDER IN 1977 OF FERNANDO BRANCA (REFTEL A). MASSERA IS CHARGED WITH A COVERUP, LITERALLY "ENCUBRIMIENTO," OR CONCEALMENT OF THE FEDERAL CRIME OF ABDUCTION. THE DISTINCTION TO BE NOTED IS THAT "ENCUBRIMIENTO" IS NOT, LIKE ABDUCTION, A FEDERAL OFFENSE BUT A COMMON CRIME. IT MAY DETERMINE WHETHER JUDGE SALVI'S COURT IS COMPETENT TO TRY MASSERA IF AND AS THE CASE PROCEEDS. THE COMPETENCE ISSUE ALREADY HAS BEEN RAISED BY MASSERA'S ATTORNEY AND MAY HAVE BEEN BEHIND THE NAVY'S ALLUSION TO THE QUESTION IN ITS JUNE 15 COMMUNIQUE, IN WHICH IT APPEARED TO AGREE TO A CIVILIAN COURT TRIAL FOR THE RETIRED CINC (REFTEL A).

3. IN ANY CASE, THE PRESENT NAVY COMMANDER REUBEN FRANCO ORDERED A NAVY AIRPLANE TO BRAZIL AT MIDWEEK TO RETURN MASSERA TO BUENOS AIRES TO FACE JUDGE SALVI JUNE 16. ONE PERSON MASSERA REFUSED TO FACE DURING THAT DAY IN COURT WAS NAVY CAPTAIN EDUARDO INVIERNO, ACCORDING TO THE SATURATION PRESS COVERAGE OF MASSERA'S DETENTION. INVIERNO, THESE ACCOUNTS HAD IT, WAS HEAD OF NAVAL INTELLIGENCE AT THE TIME OF THE BRANCA DISAPPEARANCE. HE IS SAID TO HAVE CONDUCTED AN INVESTIGATION OF THE EVENT AND TURNED THE RESULTS OVER TO THEN COMMANDER MASSERA. HENCE, POSSIBLY, THE ORIGINS OF THE COVERUP. REPORTS THAT INVIERNO IS ONE OF SEVERAL PEOPLE EITHER ORDERED DETAINED OR SUBPOENAED BY SALVI HAVE NOT TO DATE BEEN DENIED BY THE JUDGE.

4. FOLLOWING 11 HOURS IN THE COURTHOUSE, MASSERA WAS

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ALLOWED TO RETURN TO NAVY HEADQUARTERS, WHERE HE HAD PASSED THE PREVIOUS NIGHT COURTESY OF ADMIRAL FRANCO. JUDGE SALVI THEN TURNED CUSTODY OVER TO FRANCO, AND MASSERA, IN THE STATUS OF "DETAINED BUT NOT INCOMMUNICADO," WAS INSTALLED ON A NAVY YACHT IN THE NORTHERN SUBURBS OF SAN FERNANDO. THERE HE WAS ABLE TO PASS THE LONG FATHER'S DAY-FLAG DAY WEEKEND WITH HIS FAMILY RELATIVELY UNMOLESTED BY THE PRESS, WHICH HAD LONG SINCE SWARMED OVER ALL THE OTHER PLACES THE ADMIRAL MIGHT APPEAR. MASSERA'S LAWYER WAS QUOTED AT THE WEEKEND AS SAYING HE EXPECTED HIS CLIENT TO BE RELEASED DIRECTLY, SOMETHING WHICH SALVI REFUSED TO AGREE TO DO ON FRIDAY WHEN PETITIONED TO QUASH THE ARREST ORDER OUT OF DEFERENCE TO MASSERA'S RANK AND PROMINENCE.

5. A NOT INCONSEQUENTIAL ASPECT OF MASSERA'S EXPERIENCE THE PAST WEEK HAS BEEN ITS CONTINUING POLITICAL REPERCUSSIONS. WHEN HIS ARREST WAS ORDERED, MASSERA WAS IN BRAZIL, SAID TO BE VACATIONING WITH HIS FAMILY BUT, ACCORDING TO THE RUMORS, ENGAGED IN A HIGH-STAKES POLITICAL VENTURE TO SECURE THE IMPRIMATUR OF ISABEL PERON IN HIS EFFORT TO HARNESS PERONISM TO HIS OWN AMBITIONS. HE HAD REPORTEDLY ENGINEERED WITH THE HIGH COMMAND OF THE ARMY A CHARTER AS MIDDLEMAN TO BARGAIN WITH MRS. PERON OVER A PEACEFUL COEXISTENCE PACT BETWEEN THE MILITARY AND PERONISM. IN IT FOR MASSERA WAS EITHER ISABELITA'S BLESSING AS THE JUSTICIALIST CANDIDATE OR A BEHIND-THE-THRONE POWERBROKER ROLE. THIS ALLEGED ARRANGEMENT WAS ARTFULLY LEAKED AT A MOMENT WHEN THE POLITICAL WORLD HERE WAS STIRRED BY THE REPORTED DEAL BETWEEN THE MILITARY AND PERONIST LABOR LEADERS SEEKING THE SAME GOAL. ARMY CINC CRISTINO NICOLAIDES HAS CALLED THE LABOR-MILITARY PACT REPORT "NONSENSE" AND SEEMED ALSO TO DISMISS THE SPECULATION ABOUT MASSERA'S SUPPOSED LIAISON. WHETHER THE ADMIRAL EVER ACTUALLY MET WITH MRS. PERON OR NOT SEEMED TO BE OF LITTLE IMPORTANCE

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/***** BEGINNING OF SECTION 2 *****/

SINCE THE JUDICIAL THUNDERBOLT STRUCK HIM. THE HIGH COMMAND OF PERONISM IS BREATHING SOMEWHAT EASIER IN THE PAST WEEK, DISPOSED TO IGNORE THE POOR POLITICAL JUDGMENT OF THE NOMINAL LEADER FOR ALLOWING HER NAME TO BE ASSOCIATED WITH A POLITICAL BUCCANEER. THE AFFAIR SAYS A GREAT DEAL ABOUT THE DEPTH OF RIVALRIES AND INSECURITY AMONG THE MOVEMENT'S LEADERS STOKED BY HER POWER, WHETHER OR NOT SHE ULTIMATELY CHOOSES TO EXERCISE IT TO INFLUENCE THE SELECTION OF THE PARTY'S PRESIDENTIAL CANDIDATE.

6. WHILE MASSERA HELD THE HEADLINES THIS PAST WEEK, THE SUBMISSION OF ROBERTO VIOLA TO CIVILIAN JUSTICE DID NOT GO

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UNNOTICED. THE FORMER ARMY COMMANDER AND PRESIDENT WHO WAS FORCED FROM OFFICE IN LATE 1981 APPEARED BEFORE FEDERAL JUDGE NICASIO DIBUR ON JUNE 15. HE WAS SUMMONED TO FACE THE FAMILY OF FORMER ARGENTINE AMBASSADOR TO VENEZUELA, HECTOR HIDALGO SOLA, WHO WAS KIDNAPPED FROM A BUSY BUENOS AIRES STREET IN 1977 AND PRESUMED MURDERED. VIOLA DENIED THAT HE HAD TOLD MRS. HIDALGO SOLA AT THE TIME OF HER HUSBAND'S DISAPPEARANCE THAT A "CONSPIRACY OF SILENCE" WAS BLOCKING THE INVESTIGATION (REFTEL B). MRS. HIDALGO SOLA AND HER SON CONFESSED TO FRUSTRATION AFTER THE MEETING IN COURT WITH VIOLA, SAYING THERE HAD BEEN NO PROGRESS IN DIBUR'S INVESTIGATION. BUT THEY DID CREDIT THE JUDGE WITH "TRYING TO FIND SOMETHING OUT," AND SAID "HE DOESN'T SEEM TO GET VERY MUCH COOPERATION." VIOLA FOR HIS PART HAD LITTLE TO SAY ABOUT THE COURT APPEARANCE, WHICH HE COULD HAVE WAIVED BY INVOKING THE PREROGATIVE OF SENIOR OFFICERS TO REPLY TO JUDICIAL INQUIRIES IN WRITING.

7. A CURIOSITY IN VIOLA'S DECISION TO GO TO COURT ON SUMMONS WAS ITS CONTRAST WITH NICOLAIDES' RECENT FORECLOSURE OF CIVILIAN LEGAL PROCEEDINGS AGAINST ARMY PERSONNEL WHO MAY BE INVOLVED IN A GASOLINE-WATERING SCANDAL. MORE THAN A SCORE OF OFFICERS AND ENLISTED MEN WERE NAMED IN PUBLISHED ACCOUNTS AS IMPLICATED IN A CRIMINAL COURT INVESTIGATION OF THE AFFAIR. BUT THE ARMY HIGH COMMAND RULED THAT MILITARY TRIBUNALS WOULD TRY AND JUDGE THOSE FOUND GUILTY ON GROUNDS THEY WERE ON ACTIVE DUTY WHEN THE OFFENSES ALLEGEDLY OCCURRED. VIOLA'S MOTIVES IN APPEARING IN COURT IN THE HIDALGO SOLA CASE COULD HAVE BEEN PURELY PERSONAL SINCE HE WAS A WITNESS AND NOT THE TARGET OF THE INVESTIGATION. NICOLAIDES' MOTIVES PROBABLY WERE MORE INSTITUTIONAL SINCE HE HAS REPEATEDLY STATED THAT THE "MILITARY FAMILY" WOULD BE PROTECTED FROM WHAT IT DECIDES IS UNJUSTIFIED PROSECUTION. COMING ON TOP OF THE JUNTA'S "FINAL REPORT" EXCULPATING EXCESSES IN THE WAR AGAINST TERRORISM AS "ACTS OF SERVICE," THE ARMY'S POSITION IN THE ADULTERATED GAS CASE ONLY UNDERScoreD THE NOTION THAT WHERE JUSTICE IS CONCERNED THE MILITARY IS A CLASS APART WHOSE CONDUCT IS SUBJECT ONLY TO THE EXCLUSIVE RULES OF ITS OWN MAKING.

8. BESIDES THE PRECEDENT OF A PERSONAL APPEARANCE IN COURT OF A FORMER PRESIDENT, UNRAVELING OF THE BRANCA/HIDALGO SOLA CASES PRESENTED SEVERAL IRONIES. WHILE VIOLA WAS THE WITNESS IN THE LATTER INVESTIGATION, IT WAS MASSERA WHO FIGURATIVELY WAS IN THE DOCK, AS HE IS IN THE APPARENTLY UNRELATED KIDNAP-KILLING OF ANOTHER ARGENTINE DIPLOMAT, ELENA HOLMBERG. HE IS NOT FORMALLY ACCUSED IN EITHER CASE, BUT THE CIRCUMSTANTIAL EVIDENCE AGAINST MASSERA ADDUCED BY THIRD PARTY--A FOREIGN SERVICE CLASSMATE OF HOLMBERG,

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GREGORIO DUPONT, WHOSE BROTHER MARCELO WAS KIDNAPPED AND MURDERED BY UNDISCOVERED ASSAILANTS LAST OCTOBER--IS TIGHT FOR ALL ITS LOOSE ENDS. THE FACTS IN THE HIDALGO SOLA DISAPPEARANCE HAVE LONG BEEN SOUGHT BY THE FAMILY, BUT IT WAS ONLY WHEN DUPONT WENT PUBLIC WITH HOLMBERG'S EVIDENCE, MADE JUST BEFORE HER DEATH, THAT MASSERA'S POSSIBLE INVOLVEMENT IN THE HIDALGO SOLA KIDNAPPING CAME TO PUBLIC NOTICE. ALSO IRONICAL IS THAT THE JUDGES IN BOTH THE BRANCA AND HIDALGO SOLA CASES, SALVI AND DIBUR, INHERITED THEM FROM THE DOCKET OF FEDERAL JUDGE PEDRO NARVAIZ, WHO FLED TO BRAZIL EARLIER THIS YEAR AFTER ALLEGED THREATS ON HIS LIFE. THE TWO JUDGES REPORTEDLY HAVE RECEIVED SIMILAR THREATS THROUGH ANONYMOUS PHONE CALLS BUT SALVI HAS TOLD NEWSMEN HE TENDS TO DISMISS THEM.

9. THE THIRD AREA OF JUDICIAL INQUIRY TO COME ALIVE IN RECENT DAYS IS THE INVESTIGATION INTO THE ALLEGED SHOOTOUT DEATHS OF ROSARIO PERONIST OSVALDO CAMBIASO AND MONTONERO EDUARDO PEREIRA ROSSI ON MAY 14. THE TARGETS IN THE PUBLIC MIND IN THIS CASE ARE THE ARMY AND THE PROVINCIAL POLICE OF BUENOS AIRES. KEEPING INTEREST ALIVE HAS BEEN A TEAM OF HUMAN RIGHTS LAWYERS WHICH HAS PURSUED CONTRADICTIONS IN THE OFFICIAL VERSION OF THE DEATHS AS THE CASE BECAME ENSNARLED IN A JURISDICTIONAL CONFLICT BETWEEN FEDERAL AND CRIMINAL COURTS IN TWO PROVINCES. THE LAWYERS' ON JUNE 17 RELEASED THE RESULTS OF A SECOND AUTOPSY SHOWING THE MEN
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/***** BEGINNING OF SECTION 3 *****/

WERE SHOT AT POINTBLANK AFTER WITNESSES SAW THEM KIDNAPPED FROM A COFFEEHOUSE IN ROSARIO. ON JUNE 18, THE JUDGE IN THE CASE, JUAN CARLOS MARCHETTI OF BUENOS AIRES PROVINCE ORDERED THE PREVENTIVE ARREST OF THE THREE PROVINCIAL POLICEMEN WHO WERE INVOLVED IN THE ALLEGED SHOOTOUT. MARCHETTI ALSO CALLED FOR A SEPARATE INVESTIGATION OF THE POLICE CORONER WHO PERFORMED THE FIRST AUTOPSY AND THE POLICE INSPECTOR WHO INVESTIGATED THE CASE. ACCORDING TO THE PRESS, MARCHETTI SUSPECTS "PERJURY AND FORGERY OF PUBLIC DOCUMENTS" ON THEIR PART.

10. FINALLY ON THE JUDICIAL FRONT HAS BEEN THE EXTENSIVE PUBLICITY GIVEN TO THE TRIAL OF A WOMAN JUDGE BY A PANEL OF HER PEERS HEADED BY A SUPREME COURT JUSTICE. THE ACCUSED JURIST FACES A LIST OF CHARGES ENCOMPASSING MALFEASANCE IN OFFICE AND UNFITNESS TO CONTINUE ON THE BENCH. ORIGINALLY INVOLVING A NARCOTICS INVESTIGATION IN WHICH THE JUDGE PERMITTED OR DID NOT STOP MISTREATMENT OF SUSPECTS, THE CASE HAS BEEN TREATED BY SOME PAPERS AS AN ISSUE OF THE QUALITY OF JUSTICE AVAILABLE TO THE CITIZENRY.

11. COMMENT THE "RESURRECTION" OF THE JUDICIARY, AS ONE

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COMMENTATOR CALLED ITS NEW ACTIVISM, HAS GENERATED FREE-SWINGING SPECULATION ABOUT WHAT IT ALL MEANS FOR THE POLITICAL PROCESS. THIS IS NOT SURPRISING GIVEN THE OVERALL RECORD OF JUDICIAL DOCILITY DURING THE PAST SEVEN YEARS, THE APPROACH OF ELECTIONS AND THE NATIONAL BENT FOR FAR-FETCHED THEORIES. A RECURRING RUMOR THAT HAS GAINED SOME CURRENCY AGAIN HAS TO DO WITH POSTPONEMENT OF "INSTITUTIONALIZATION," PROMPTING NICOLAIDES TO REPEAT TO NEWSMEN JUNE 20 THE ARMY'S SOLEMN COMMITMENT TO GUARANTEE DEMOCRATIC ELECTIONS OCTOBER 30 AND A CIVILIAN ACCESSION 90 DAYS LATER. PROBABLY WITH MORE SUBSTANCE ARE RUMORS OF A RESURGENCE OF NEW DISQUIET IN MILITARY RANKS AS FORMERLY POWERFUL OFFICERS ARE BROUGHT BEFORE THE BAR AND THE COURTS, WHIPPED ON BY THE HUMAN RIGHTS LOBBY, PROBE SERIOUSLY INTO SUSPECTED POLITICAL CRIMES. CONSIDERATION OF A MILITARY SELF-AMNESTY MAY BE QUICKENED AS SOME OFFICERS MAY FEEL A NOOSE TIGHTENING.

12. BEYOND THAT IT IS NOT EASY TO PROJECT THE EFFECT OF THE COURTS ON THE OVERALL POLITICAL SITUATION. FOR SOME, THEIR SEEMING REVIVAL IS EITHER A FLUKE THAT WILL NOT BECOME A PATTERN, OR A STAGED SHOW THAT WILL PASS ON. OTHERS SEE IT AS CRASS ATTEMPT BY JUDGES APPOINTED BY THE MILITARY GOVERNMENT TO CURRY FAVOR WITH THE CIVILIANS, THEREBY PROTECTING THEIR JOBS. THE IMPARTIALITY OF JUDGE DIBUR, FOR EXAMPLE, IS BEING CHALLENGED BY "HUMOR" MAGAZINE IN ITS DEFENSE AGAINST A SLANDER SUIT BROUGHT BY THE ARMY. VISITS BY DIBUR AND OTHER JUDGES MADE TO NICOLAIDES AND OTHER TOP BRASS EARLIER THIS YEAR ARE NOT ONLY SUSPICIOUS, ACCORDING TO THE DEFENDANTS, BUT AN "INSULT TO THE INDEPENDENCE OF THE JUDICIARY."

13. WEEKEND STATEMENTS BY PRESIDENT BIGNONE AND HIS JUSTICE MINISTER MAY CONTRIBUTE TO MAKING IT AWKWARD TO BRAKE OR DEFLECT THE MOMENTUM OF THE INVESTIGATIONS, HOWEVER. BIGNONE, REFERRING TO THE "INDEPENDENT POWER" OF THE JUDICIARY, ASKED THE NATION TO "GROW ACCUSTOMED TO HAVING CONFIDENCE IN JUSTICE SINCE IT IS A BASIC ELEMENT OF DEMOCRACY AND THE INSTITUTIONALIZATION OF THE COUNTRY," WHILE MINISTER LUCAS LENNON CITED THE IMPORTANCE OF THE ARMED FORCES ACCEPTING THE RULING OF A CIVIL MAGISTRATE.

14. IN ALL THIS CONFUSION THERE ARE TWO POINTS THAT SEEM TO US TO STAND OUT CLEARLY

- MASSERA'S POLITICAL FUTURE, IF HE EVER HAD ONE, HAS BEEN SEVERELY DAMAGED AT BEST; AND,
- THE BRANCA, HOLMBERG AND HIDALGO SOLA CASES ARE, AS A MILITARY OFFICER REMARKED TO AN EMBOFF, "ONLY THE BEGINNING".

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HUMAN RIGHTS GROUPS AND OTHER OPPONENTS OF THE MILITARY ARE PREPARING TO BRING MANY CASES TO COURT. IN MOST OF THEM IT WILL PROBABLY BE VERY DIFFICULT TO PRESENT SUFFICIENT PROOF FOR CONVICTION. BUT IF THE INVESTIGATING MAGISTRATES ARE NOT SCARED OFF, MORE THAN A FEW MILITARY AND POLICE OFFICERS ARE IN FOR SOME ROUGH PUBLICITY.
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