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If Gore wants to rid Latin America of corruption he might want to begin with Argentina

WASHINGTON BEGINS TO SEE THAT CORRUPTION IS BUENOS AIRES' PREFERRED WEAPON

- President Clinton expresses his concern over the fate of a tiny Argentine group singled out by that country's venal judiciary for persecution, within an atmosphere of strident anti-Semitism, violence and venality.
- Clinton says five-year-old Argentine case has dragged on for "too long;" and he asks Buenos Aires to resolve it "as expeditiously as possible," but local judge has just accepted a new frivolous charge, with some fearing that courtroom harassment of group could continue for years to come.
- Anti-corruption week in Washington: fad or for real? Two conferences to focus on corruption topic.
- Department of Justice sedulously avoids vigorously applying the U.S. Foreign Corrupt Practices Act, thus undermining the integrity of Gore's clean-up campaign.
- Vice President must speak out about IBM's \$21 million bribe of Argentine officials or risk being seen as lacking credibility on administration's pledge to fight corruption and lack of transparency abroad, by not daring to take on major U.S. multinational.
- Democratic and Republican members of Congress repeatedly call upon Argentine President Menem to explain why the victimization of the Buenos Aires Yoga School has gone unchallenged by him.

There cannot be authentic modernization or social justice achieved in the hemisphere without corruption being banned throughout Latin America, one of the most graft-ridden regions of the world

On Feb. 24-26, Vice President Al Gore plays host to the global economy's first major anti-corruption conference. The meeting, "A Global Forum on Fighting Corruption: Safeguarding Integrity Among Justice and Security Officials," will be attended by representatives from multinational organizations, NGOs and governments leaders from around the globe. Specifically targeted at justice and security officials, such as law enforcement, court and military personnel, the conference's success will depend on the creation of a set of objective standards for government and business leaders to abide by when it comes to international efforts to outlaw corruption and bribery. Among the conference's top goals are the creation of an impartial and professional judiciary and prohibition of bribery around the world.

The three-day meeting at the State Department will include representatives from 79 governments, including Haiti, Bolivia and Argentina. Among the last-mentioned bastions of cronyism and corruption, Argentina (which along with Honduras and Paraguay has been rated among the most corrupt countries in the world) boasts an exceptionally venal political system from top to bottom. With a good deal of the

blame belonging to U.S. and E.U. – based corporate executives who provide the temptation to weak-willed local officials who are quick to succumb to the lure of illicit payments in hard currency, the corruption to be found in Latin America is serious and systemic and not epidermal, organic and not cosmetic, something to be dealt with by tough measures and not by speechwriters' rhetoric. Argentine government officials repeatedly have indulged in flouting the stated goals of the Gore meeting in a variety of ways, including in two seemingly unrelated cases which, in fact have become increasingly linked in Washington on a de facto basis. One of them is the IBM scandal, which has involved one of the biggest bribes in Latin America's entire history; the other is the much less dramatic but perhaps even more sinister legal assault on members of the Buenos Aires Yoga School (EYBA).

Not the only game in town

Gore's conference is not the only anti-corruption focus in Washington. While governments meet in Foggy Bottom, private as well as public sector interests will gather today at the Carlton Hotel for the Washington Conference on Corruption, sponsored by the Organization for Economic Cooperation and Development and the Agency for International Development. The OECD was one of the main forces behind the 1997 International Convention on Combating Bribery of Foreign Public Officials, which was signed by roughly half of the organization's member nations. Lamentably, it must be said that a number of them - the world's richest countries - are among the largest and most shocking pliers of corruption of any nation in the world.

The two-day conference, organized in conjunction with USAID and the Center for International Private Enterprise, will feature keynote addresses by a number of international figures, including Secretary of Treasury Robert Rubin and George Soros. The summit will also focus on issues such as reducing the supply side of bribes, public/private anti-bribery partnerships and the "Experience of Multinationals: Going Beyond Legal Compliance."

However, the prospect of either of these initiatives to coming up with formulas guaranteeing to reduce the level of corruption is about equal to the record and the success rate of the participants in the war against drugs. Corruption exists because it represents easy money for the taker and dispenses preferred access for the giver. Companies like Chiquita Brand in Honduras and IBM in Argentina don't like to leave matters up to chance, be it court decisions or contracts for computer technology going to the lowest bidder. Buying influence is as American as apple pie.

President Clinton speaks out to Buenos Aires concerning one specific act of corruption, but Argentina is not listening

On Feb. 1, President Clinton responded to the latest missive in a salvo of bipartisan letters from U.S. legislators concerning the Yoga school case, this time authored by highly regarded Representative Tom Campbell (R-CA) and signed on to by Gary Ackerman (D-NY), Amo Houghton (R-NY) and Jim McGovern (D-MA). Clinton began his response by observing: "I share your commitment to the protection and enforcement of human rights in Argentina and around the world." The U.S. president then went on to note that: "Our embassy in Buenos Aires has been closely monitoring this matter [the EYBA case] for the past several years, and has raised it on several occasions with appropriate officials in the Argentine Ministry of Justice. Like other cases in the Argentine judicial system, this case has taken too long to resolve. While I agree that we cannot intervene in the Argentine judicial process, we

will continue to follow the case and urge the Argentine government to resolve it as expeditiously as possible."

Clinton's letter about EYBA's plight pointedly referred to this highly controversial, if scantily known case in the U.S., one which was initiated over five years before when faculty and students of the Yoga school became a chosen target for Argentina's notoriously flawed judiciary vindictiveness of several relatives from EYBA members. The philosophical and culturally-centered educational institution and social club was accused of "sexual corruption of adults" and has attracted almost unprecedented prosecutorial and judicial misconduct from Argentine authorities since then. Almost all outside observers who have examined the case considered it unfathomable why so much negative energy has been dissipated against such a small and innocuous group which, in fact, has won considerable renown abroad for its artistic accomplishments and social programs. One compelling explanation is that the case has triggered a bundle of latent and overt ultramontaine, neo-Nazi and deep-seated anti-Semitic strains lying just below the surface of Argentina's historic memory, which may be fundamental to why this largely Jewish organization of under 300 members has been subjected to its extraordinarily protracted ordeal. In the playing out of the case, it was also shown that the indignation of the Argentine media -- to much of which venality is no stranger -- is highly selective and that the press, in this case, has been revealed as a lapdog of the political establishment. It has not shown itself as a forensic lion when it comes to confronting the slavishly purchased performance of the country's court system in general, and its outrageous behavior regarding the EYBA saga, where under-the-table subventions must have become the rule in forcing the prolongation of this case.

U.S. Congress alert to Yoga School case

The EYBA case has been high on the agenda of many U. S. legislators from both parties for much of the past year. Among the most prominent, House Judiciary Committee Chairman Henry Hyde (R-IL) and the ranking minority member of that committee, Rep. John Conyers (D-MI), have expressed their unease over the treatment of the Argentine group, Hyde by writing a strong letter to President Menem on the case, and Conyers by placing a widely discussed entry, which was highly critical of the treatment of EYBA defendants by Argentine authorities, into the Congressional Record.

Thanks to the laudable efforts of more than a score of House Republican and Democratic members who, in order to seek justice for the EYBA, have sent letters to President Menem calling for his intervention, the case has achieved significant leverage among second-tier U.S. policy makers, as an important component in their hemispheric policy formulations. Thus, it came as no surprise to White House aides that Campbell, a thoughtful Republican moderate, along with several of his colleagues, sent their letter on Jan. 8, 1999 urging the U.S. president to "raise the issue of the Buenos Aires Yoga School's litigation with President Menem during his official visit and ask him to investigate these allegations and take appropriate actions as deemed necessary...."

Over much of the past five years, members of the EYBA have experienced unrelenting harassment at the hands of Argentine judicial authorities, including totally unjustified and violent illegal searches of their homes and offices, imprisonment of innocent members, the hectoring of their children, and the seizure of their personal property which to this day has not been returned. Unfortunately, given the sullied nature of Argentine public life, this case has not found an Emile Zola to champion its Dreyfusand cause. All this has transpired even though no compelling incriminating evidence has been presented by the prosecution against the Yoga School, the statute of limitations has since expired, and the Argentine Supreme Court has nullified the original charges. Some of the prosecutors and judges engaged in hounding the EYBA systematically have engaged in unprofessional behavior, which at times has

included resorting to the use of scurrilous anti-Semitic remarks made in public settings - enough to result in the first judge being impeached by the national legislature. In this case, reputedly, justice has been for sale.

The EYBA affair provides a telling example of the corrosive role that corruption may have played in the form of payoffs to court personnel overseeing cases such as EYBA's, from several wealthy and alienated relatives of EYBA members. Even one of the more controversial judges involved in the case is ready to acknowledge that the alienated relatives have a psychological, if not neurotic need to establish that it was the organization rather than themselves who had generated their family's personal travails. In fact, a close examination of each of these plaintiffs conduct reveals that in a number of these cases, much of the social anomie brought on by intra-family strife existed even before the founding of the organization. The harassment of the EYBA also provides an insight into the role played by an extremist ideology in Argentina's tainted judicial system, and how little has changed since the era of military rule beginning in the 1970's, when government authorities murdered, with impunity, upwards of 20,000 innocent civilians in the country. Many of the judges now on the bench were appointed to their relatively lucrative positions at that time, with their modus operandi still reflecting the low standing that people of their political persuasion traditionally have accorded to democratic practices, judicial guarantees and the notion of civil rectitude in public office.

Corruption in the Argentine judiciary goes far beyond the EYBA's mournful fate. One of the few constructive accomplishments of Menem's decade in office was the creation of the *Consejo de la Magistratura* -- an entity that was charged with watching over the professional conduct of the judiciary, to evaluate the credentials and appoint new judges and decide upon impeachment procedures. This new hope for improving the ill-reputed Argentine judiciary has representatives from all political parties, as well as members of the bar and legislators sitting on its panel. Even though the creation of the *Magistratura* originally had Menem's backing, he, in a move that was arrogant even by his caudillo-esque standards, has now decided to bypass the Consejo's role in order to fill Justice Ministry positions by himself, and in an entirely arbitrary and self-serving fashion. By again resorting to patronage and political payoffs, it should come as no surprise that most of his new appointees are turning out to be his ultra-Menemist cronies.

Gore must show some concern about IBM's use of graft to win contracts

Given the Argentine judiciary's pitiable handling of the ongoing EYBA case, the U.S. Justice Department's inaction concerning the question of extraditing U.S. nationals to face the uncertain mercies of Argentine justice is almost understandable. Stressing plausible deniability in the immediate aftermath of the scandal's disclosure, IBM dismissed some of its top Argentine executives due to their alleged "poor business judgment," but insisted that its U.S. headquarters staff knew nothing about the bribes. Even in such dubious circumstances, the 1977 Foreign Corrupt Practices Act (an amendment to the 1934 Securities Exchange Act) makes clear that parent companies may still be prosecuted for violations committed by their foreign subsidiaries.

If Vice President Gore intends for Washington to demonstrate that it is serious about fighting corruption in Latin America, he may well want to begin with Argentina and with the IBM case. Profoundly covered in Argentina, if lamely all-but ignored by the U.S. press, IBM's flagrant violation of Argentine law could well provide a definite test for the earnestness of the Clinton administration's anti-corruption initiative, and will also exhibit how effective Gore will be in implementing his rhetoric, thereby allowing results to be measured on an issue on which he often has spoken out. The intended purpose of the gathering being sponsored under Gore's imprimatur is to track the role and come up with solutions

aimed at eliminating the corruption factor as a step towards strengthening democratic processes, expanding trade and encouraging sound development.

That it falls on the Clinton administration to be the world's foremost advocate for U.S. business to be guided by strict-ethical standards and not look to bribes to obtain an unfair competitive advantage, is indeed ironic. The White House, while talking a good anti-corruption game, has performed poorly on the home front. One only needs to recall how Chiquita Brand's CEO Carl Lindner was able to buy for himself a U.S. foreign policy plank several years ago for a \$500,000 contribution to a series of Democratic Party state committees. The morning after U.S. Special Trade Representative Mickey Kantor introduced a complaint before the World Trade Organization against the EU for extending a special banana quota to the English-speaking islands of the Caribbean, in order to have their dependent economies survive, the Democrats received their donation from Lindner.

Foreign Corrupt Practices Act subject of benign neglect

During Janet Reno's tenure as Attorney General, the federal government has been slow to prosecute suspected violations of the 1977 FCPA. In the period 1994-96 (the most recent years for which such statistics are available), the Justice Department investigated only 11 cases, and did not prosecute a single one. It is estimated that during this period there may have been hundreds, if not thousands, of instances of U.S. business executives corrupting Latin American officials.

Perhaps the most painfully obvious violation of the FCPA is the case of IBM's elaborate kickback scheme in Argentina. In September 1995, IBM Argentina, a subsidiary of the U. S. multinational, was accused by the Argentine government of offering \$37 million to Banco Nacion president Aldo Dadone and three others of its senior officials to obtain a \$250 million contract for a back-up computer system. Actually, only \$21 million of the promised bribe was paid into New York and Swiss numbered back accounts. Furthermore, the country's national auditing office later established that IBM had overcharged the government by a staggering 90 percent in its tainted bid. In response to this astonishing revelation, IBM invested in full-page ads in a number of Buenos Aires dailies, dismissively insisting that the Argentine government lacked the "expertise to evaluate a complex situation."

But at the center of that "complex situation" was a local federal judge's accusation that this huge foreign corporation had paid a massive bribe to illicitly win a government contract by making a bloated bid. In fact, that bid was massively higher than what the cost should have been, in effect robbing funds from the Argentine population. Such a transgression clearly flouted U.S. and Argentine law, and on Sept. 23, Buenos Aires Federal Judge Adolfo Bagnasco called for the extradition of Peter Rowley and Steve Lew, two former employees of IBM. Formal extradition papers were filed by Argentine Embassy with the U.S. Justice Department in mid-December. Even though several high-minded Argentine legislators, including a frustrated Horacio Viqueira, who were concerned about the case, came to Washington along with the investigating judge, seeking assistance from U.S. authorities, the Department of Justice was very low key in its response. Several weeks afterward, Marcelo Cattaneo, a small businessman who worked for a crooked phantom company involved in the IBM fraud was found hanged in a University of Buenos Aires facility. He had been viewed as a potentially key witness in the government's case. Although first ruled a suicide, the notoriously inept and cravenly corrupt Buenos Aires police are re-investigating with a more critical eye. To date, the Argentine Justice Ministry has made no movement on this obvious murder case.

While President Clinton, anxious to distract Washington from his impeachment woes, welcomed

President Menem on his recent trip to Washington with almost a desperate degree of cordiality and bravura, transforming the White House into a pleasure dome, to the beat of the Tango, the Argentine president was insulting the U.S. Congress by not even acknowledging the receipt of some thirty letters sent by Republican and Democratic legislators in the latter part of 1998 protesting the treatment of EYBA. Menem and his shady justice minister, Raul Granillo Ocampo, have been unwilling to grant the case any attention up to now, even though it has the potential to freeze meaningful cooperation between the two countries on the burgeoning IBM scandal. This is because of the high stations of Hyde and his legislative colleagues, who in expressing their distress over EYBA's treatment, implicitly could be seen as saying, "how can we expect justice for IBM executives who the Argentines are asking us to extradite to their country when its court system cannot provide even elemental justice to its own citizens?" The minority leader of the House Judiciary Committee, John Conyers (D-MI) put into the Congressional Record a stinging report on the treatment of the EYBA and on the issue of Latin America's corrupt court system, observing that "Argentina is a good example [of judicial corruption] despite Buenos Aires' continued claim that it is reforming its admittedly gangster-like judiciary into one that is less at the mercy of politics, cronyism, influence peddling and payoffs, and more into one that can fearlessly uphold and conform to the country's constitution." Conyers went on to say that "there are good reasons to believe that [Argentina's] court system is apparently taking serious steps backwards."

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