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DEPARTMENT OF STATE

AIRGRAM

A-140 SECRET
NO.

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ANALYSIS BRANCH

TO : DEPARTMENT OF STATE

FROM : AmEmbassy BANGKOK DATE: March 17, 1970

SUBJECT : Thai Judiciary fights threat to its independence

REF :

SUMMARY

On February 17, the Cabinet accepted in principle and sent on to the Juridical Council for further study a bill presented by the Minister of Justice. The bill, which included provisions providing for higher payment of salaries to judges sitting in lower courts, also contained sections which would remove the final authority in the appointment and transfer of judges from the independent Judicial Commission and place it in the hands of the Minister of Justice.

Members of the Thai Judiciary, angered by this apparent attack on their independence, set out to arouse public opinion in opposition to the bill. Beginning with a press interview with the President of the Supreme Court, the Judiciary quickly won front page attention, editorial backing, and the support of both Parliamentarians and students. Public opinion pressure reached the point where the Cabinet meeting on February 24 discussed the situation at length, after which a number of government officials, including the Prime Minister, made announcements which appeared to indicate that the government was trying to gracefully back down on the issue without causing too much loss of face and that no action would be taken against the judiciary's independence.

END SUMMARY

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FORM DS-323

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Thailand has a long tradition of an independent judiciary which predates by many years the establishment of a constitutional monarchy in 1932. The judges are separate from the regular Thai Civil Service and the rules governing appointment, promotion, salary, and tenure are generally designed to keep outside pressures on judges to a minimum. One key factor in maintaining this independence is the Judicial Commission. This Commission is composed of the President of the Supreme Court, the Chief Judge of the Court of Appeals, the Undersecretary of State for Justice, four judges elected from the Supreme Court and four elected from the list of retired judges. Under the present system, the Minister of Justice recommends a judicial appointment, promotion or transfer to the Judicial Commission. The Commission may either approve the recommendation or submit their own counter-recommendations. In any dispute the final decision rests in the Judicial Commission acting independently of the Executive Branch. The Judicial Commission's power is recognized in the 1968 Constitution in Section 163 which states that the "appointment, transfer or removal of judges must be approved by the Judicial Commission in accordance with the law on judicial service..."

Given the long history of an independent judiciary and the considerable pride which members of the legal profession take in this independence, it would hardly be surprising that any action which appeared to be an attack on that independence would be vigorously opposed by members of the Thai Judiciary. This has just been forcefully demonstrated to the Minister of Justice, Luang Chamroon Nakrabart in a brouhaha resulting from an attempt to introduce legislation dealing with judicial administration.

Although full details of the bill are not available, extensive press coverage confirms the draft law included a number of different sections having to do with salary, transfers and appointments of judges. While the bill included several items which should prove popular with the judiciary such as a provision to increase the pay of lower court judges without having to promote them to a higher court, it also included some provisions which seem to remove the final authority in the transfer and promotion of judges from the Judicial Commission and transfer it to the Ministry of Justice, making the Judicial Commission only an advisory body in such actions. (For more details on bill see the copies of the Embassy's Summary of the Thai and Chinese Press dated February 20-24, Feb. 25, Feb. 26, and Feb. 27). The bill, which was submitted to the Cabinet by the Minister of Justice, attracted the immediate attack of almost the entire judicial body in Thailand. Embassy sources indicate that members of the Thai Judiciary from all levels including the President of the Supreme Court were seriously concerned about possible results of the bill.

The Judicial Bill was originally presented to the Cabinet for consideration on February 10. Members of the Cabinet on that date asked if the bill had been discussed with judiciary representatives. When informed that this had not been done, Prime Minister Thanom Kittikachorn met on February 13

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with Dr. Prakorb Hutasing, the President of the Supreme Court, along with the Chief Judge of the Court of Appeals, the Chief Judge of the Civil Court and the Chief Judge of the Criminal Court. However, Marut Bunnag, President of the Lawyers' Association of Thailand, told the reporting officer that the Prime Minister has concentrated on the issues of salary, and other items with which the Judges were in general agreement. According to Marut, neither the Prime Minister nor the Minister of Justice explained in any detail the sections of the law which later attracted so much opposition. Nevertheless, the judges did stress during the meeting the importance they placed on maintaining judicial independence. Following the meeting, the Judges were reportedly generally optimistic about the type of bill which the Cabinet might accept.

Then, on February 17 the Bill was again reviewed by the Cabinet, accepted in principle and sent to the Juridical Council for consideration. (The Juridical Council is the legal advisory body in the Prime Minister's office and should not be confused with the Judicial Commission.) When judicial representatives studied the Bill that the Cabinet was sending to the Juridical Council, they were horrified to discover it contained several sections which appeared to emasculate the Judicial Commission. This led to considerable consternation throughout legal circles in Bangkok and ranking members within the profession, convinced their appeal to the Prime Minister to protect the independence of the courts had been ignored, began to consider other ways to counteract the moves by the Ministry of Justice.

As of this date there had been no news reports of the Cabinet action on the bill, and indeed details of the bill were being held as confidential (although Judiciary leaders had copies available). Members of the Judiciary then decided that their best tactic would be to break the story to the press and attempt to build up sufficient pressure to convince the government that the Bill should be reconsidered, or shelved. Marut Bunnag confirmed to EmbOff that he had been personally involved in arranging a press interview with Dr. Prakorb on February 21. In the interview, Prakorb outlined the features of the Bill, concentrating on those the Judicial Commission found objectionable.

The story immediately won front page coverage in almost all Bangkok papers. The extent of the coverage and the unanimity of editorial support for the position of the Judiciary has been rather surprising and has created a solid impression that public opinion supports an independent judiciary. The judges have been joined by members of the legal profession, and by all segments of Parliament. Seni Promote, Head of the Democrat Party; Supan Poophat, Deputy Speaker of the House and a member of the Liberal Party; and Dr. Phaitoon Kruekaew, Head of the Democratic Party Front; were all quoted as opposing the provisions of the judicial bill transferring the final authority to the Ministry of Justice. More important, Prasit Choopanit, the spokesman for the Government Party joined those opposed

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to these features of the Bill. Prasit went on to "guarantee" that such a bill would never be accepted by the SPT Party. Newspaper accounts and comments of several MPs to EmbOffs support Prasit's claim that sufficient SPT MPs are in support of the judiciary to give the government real problems in its party should it insist on pushing the bill.

On February 23 the President of the Supreme Court, accompanied by the Chief Judges of the Court of Appeals, the Civil Court and the Criminal Court called on the Minister of Justice in an attempt to convince him he should have reconsidered the Bill. Reports on the meeting indicate it went badly, and the judges were unable to influence the Minister. However, during the meeting an estimated 1,000 students from Thammasat University paraded in front of the Ministry of Justice, carrying signs in support of the judiciary. Thammasat University lies across the parade grounds from the Supreme Court and the Dean of the Faculty of Law, Sanya Dharmasakti is an ex-President of the Supreme Court. Although the demonstration was apparently organized by the Faculty of Law, other students participated in considerable numbers. The demonstration was orderly but won extensive front page coverage in the large circulation newspapers, and undoubtedly significantly contributed to a general impression of widespread public opposition to the draft law.

This opposition to the bill continued to grow until by February 24, it appeared quite likely that the RTG would seek some way to quietly withdraw. (This would be in line with its past tendencies to respond to heavy public pressure.) In fact, the question seems to have become one of how the Government could best get itself out of the predicament. There were several possibilities. The RTG could have perhaps simply allowed the bill to be shelved in the Juridical Council. However, press play appears to have reached a point where some more positive action had to be taken, especially as the Bill did have some favorable features which would argue against its being shelved. The Cabinet meeting on February 24 is reported to have taken up considerable time discussing the situation. While government pronouncements on the decision taken in the meeting have been somewhat confused, possibly because of attempts to save face, it is obvious a decision was made to back down. February 25 newspapers carried a variety of stories all indicating that the Bill would be reconsidered. The spokesman for the Prime Minister's office announced that the Ministry of Justice was only attempting to improve provisional courts by giving judges bigger salaries regardless of where they work and that the Executive Branch would not interfere with the Judicial Branch and would consider any proposal very carefully. Furthermore, the spokesman said the Justice Minister will not have the power to appoint, transfer or dismiss judicial officials. He went on to point out that the Government had only accepted the Bill "in principle" and asked for legal advice from the Juridical Council. On February 25 Thanom added: "There is no intention whatsoever to reduce the power of the judiciary. No move has been made to that extent but there has been too much talk. The Cabinet has not reached any decision over this law. It was sent for study to the Juridical Council, which gives me advice on

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laws. A statement was issued yesterday because I am afraid misunderstanding will be caused. We do not want to interfere in any way with the power of the judiciary." In summation the Cabinet appears to be saying that the issue was never as serious as some people claimed, there has been considerable misunderstanding on the whole matter, the bill was not in its final form, and the government is not out to destroy the separation of power between the Executive and the Judiciary.

The somewhat confusing statements of different government officials have not completely satisfied Judge Prakorb and other members of the judiciary. Prakorb is reported to have complained that he was deliberately deceived by General Sawaeng, who told him the Cabinet had decided to "cancel the law." Certainly the judiciary will be watching closely further developments and may even try to keep up some of the press play opposing the bill.

However, Thanom's statements seem to make it quite clear that no attempt will be made to retain the provisions which have proved so unpopular.

The Government undoubtedly hopes that with these announcements the heat will die down, tempers will cool and the newspapers go on to another issue. The bill can be revised to assure its acceptance by the judiciary, then sent on to Parliament. Also, by claiming much of the upset has been due to a misunderstanding, the prestige of the Minister of Justice may not be so badly hurt that it would be necessary for him to resign. In fact, Prakorb's reported pique over the government's rather weak announcement may well in part be based on the fact that he recognized it has been done in such a way that the Minister of Justice would not have to resign. Relations between the Judiciary and the Minister of Justice have never been particularly good, and this recent effort on the part of the Minister has, of course, caused a further deterioration.

The reasons behind the Ministry of Justice making what appears to many to have been a heavy-handed grab for power have yet to be adequately explained. This is especially true as Section 183 of the Thai Constitution could be interpreted in such a way as to make the Ministry of Justice's whole proposal unconstitutional. Marut Bunnag attempted to explain the move on the basis that Luang Chamroon is one who likes to run a tightly controlled organization. It would only be natural for him to try and extend his power over the appointment of judges. In this regard, Privy Councilor Judge Sanya Dharmasakti is reported to believe that the attempt stems from the fact that the Judicial Commission has vetoed Ministry of Justice recommendations three times within the last year, and that the Minister was out to get back at the Commission. The members of the Judiciary believe that the rest of the Cabinet went along with the Justice Minister because of the natural tendency of most Cabinet members to concentrate on their own responsibilities and go along with proposals from other ministries with little question. In addition, Marut claimed that Luang Chamroon had been somewhat less than honest in explaining to the Cabinet the features of the Bill, concentrating on points such as the

salary increase and limiting portions of the Bill dealing with prerogatives of the Judicial Commission.

One member of Parliament, Prasartsook Thirawat (Ind, Surasani), whose uncle is the Chief Judge of the Civil Court, claimed a more devious reason behind the move. According to Prasartsook, the idea behind the bill did not originate with the Minister of Justice, but with military members of the Thai Government, who wanted to insure some control of courts in which cases of concern to the Thai Government were being tried. Under the proposed bill, the Minister of Justice would be authorized to temporarily transfer judges to different districts without the approval of the Judicial Commission. This would allow the government to insure that Judges who had demonstrated a friendly attitude towards the government position would be sitting on any court scheduled to try a case involving government interests in some way. (This reasoning brings to mind the case a few years ago in which an ex-minister of agriculture was found guilty of arranging a bribe and sent to prison.) Although this last explanation is probably not based in fact, it has been given considerable circulation and is apparently believed by a number of people. This tendency to believe the worst possible motives on the part of the government may explain in part the ease with which public interest was aroused against the draft bill.

Whatever the real motives of the Ministry of Justice, it would not appear that the issue is an important to the government leadership that they would likely carry on against the considerable public opinion that has built up in opposition.

Still, even though the RTG does seem to be carefully withdrawing on this issue, its tactical errors may continue to haunt the Executive Branch for some time. Prasit Chonpanit told Embassy officers that he and other parliamentarians were most upset that the bill had not been first presented to the Government Party for study. He assured the Americans that had this been done the entire blow-up would never have occurred as the lawyers within the party would surely have pointed out the dangers inherent in the Bill and insisted on redrafting it. Prasit pointed out as a comparison of how things should be done, that the Ministry of Interior had sent its proposed controversial press bill to the party to be studied in detail. While Prasit strongly supports the government in Parliament, he is one of many MPs anxious to increase Parliamentary authority in the administration of the Thai Government. The unfavorable publicity caused by the handling of this particular bill will be used by Prasit and other MPs in the government party as an example in arguing for greater inclusion of MPs in the drafting of legislation in the future.

One source interestingly reported that members of the judiciary, in discussing what action they should use to halt the Bill, had at first given little attention to the possibility of its defeat in Parliament, having concluded that body is under firm control of the Executive. While it is true that the Government continues to exercise sufficient control

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that it can assure support of Parliament on vital issues, such as national defense, etc., the MPs are increasingly demanding more say in administrative legislation. This particular type of bill, i.e., one concerned with a civilian ministry and not involving a vital issue, is an example of the area in which Parliament is most likely to be able to have a real influence over legislation.

Siri Siriyothin, the Speaker of the House, confirmed this fact in a conversation with an Embassy officer. Siri, while agreeing with the arguments of the judiciary, was critical of what he considered to be an overreaction on their part in stirring up an excessive amount of publicity. Siri pointed out that the Bill under consideration would have had to be introduced to Parliament and that the judiciary would have been better advised to have worked with Parliament rather than creating the public outcry. Siri emphasized that Parliamentarians are as anxious, if not more so, as the judiciary to establish the principle of balance of power and independence of each branch of the government. (In actual practice of course, Parliament has a long way to go to catch up with the Judiciary on the question of independence.) Latest reports indicate that while Prakorb and other members of the Judiciary probably have no regrets about turning the press on, they are also now working behind the scenes with Parliamentarians as a further step to insure the death of any law lessening their independence.

The belief noted above that this bill obtained Cabinet clearance because of the tendency of the Ministers to go along with a colleague's proposals for his own Ministry is probably correct. Each Minister has considerable independence in his own organization as long as his suggestions for changes or new laws do not infringe on the interests of other Ministries or threaten to divert budgetary funds. Critics of the proposed judicial law have pointed out this tendency of the Cabinet to act without critical examination as being a flaw in the Thai governmental system. However, as indicated above, the recent introduction of a Parliamentary system does provide some means for greater critical examination of a Minister's proposals in both the government party's meetings and Parliament itself.

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