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Peru: President Manipulating Judiciary

President Fujimori has in recent months made several well-received reforms on the margins of the judicial system, such as ending the use of anonymous judges in terrorism trials and extending a program to pardon prisoners wrongly jailed for terrorism. *At the same time, however, Fujimori has used his majority in Congress to thwart the growth of an independent judicial system and to ensure that the judiciary poses no obstacle to his constitutionally questionable quest for a third term. He has also sought to intimidate his critics through his allies in the judiciary.*

- Congress, at the President's direction, sacked three independent members of the Constitutional Tribunal last year and has passed legislation seeking to limit the judiciary's power.
- *Independent polls since then show that the public's view of the judiciary as corrupt, politicized, and ineffective persists.*

Fujimori is likely to continue to use his considerable influence over Congress to ensure a judiciary sympathetic to his interests. His record suggests he is unlikely to allow development of the independent judicial system necessary for the consolidation of democracy in Peru.

- *He also seems reluctant to limit further the authority of the military courts, which continue to hear civilian cases involving terrorism.*

The President may, however, propose further legal and constitutional changes to the judicial system in an attempt to decrease its vulnerability to corruption. Lima has demonstrated a willingness to work with international organizations to enhance judicial professionalization, which could lay the groundwork for a stronger system in a post-Fujimori era.

- *Foreign governments might also provide legal and technical assistance to further such projects as upgrading law-school curriculum and training lower-level officials.*

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Prisoner Pardon Process Highly Praised but Still Flawed

Lima recently extended until December the term of the pardon commission charged with reviewing cases of prisoners who claim to have been wrongfully detained on terrorism charges and expanded its authority to review cases of prisoners denied promised sentence reductions in exchange for cooperation with the government:

- Many prisoners seeking pardons were convicted on the testimony of terrorists who cooperated with authorities in exchange for leniency, or by the recently abolished faceless courts.
- The pardons are popular with the public, and President Fujimori probably calculates that they are a nearly cost-free way to appeal to a populace that has grown increasingly critical of his heavyhanded governing style in the last 18 months. 

Nonetheless, human rights organizations and administration opponents continue to condemn the pardon process for not going further. The legal records of those pardoned are not expunged, making it difficult for them to obtain work, and they receive no compensation what were often years of imprisonment or for assets seized by the courts. Moreover, these same groups have criticized the process for apparent subjectivity: Fujimori—who must sign off on the pardons—has denied some pardons without explaining his reasons,  Moreover, the pardon process inadequately addresses scores of cases in which prisoners received sentences in apparent excess of their crimes. 

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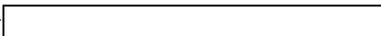
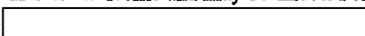
An Ongoing Program of Reform 

President Alberto Fujimori has made extensive changes to Peru's judicial system since his *autogolpe*, or self-coup, in April 1992 when he suspended the Constitution, dissolved Congress and the courts, and fired most judges. Many of the measures Fujimori implemented in his first term and the administrative changes enshrined in the 1993 Constitution were designed to strengthen the courts' ability to combat terrorism and narcotics trafficking by reducing the system's vulnerability to corruption and intimidation. Although these reforms did help the government turn the corner against the insurgencies, they sparked criticism that due process and human rights were sacrificed in the process. 

Since Fujimori began his second five-year term in July 1995, he has justified continued tinkering with the judiciary as efforts to improve administration and to address the most widely criticized aspects of the system, especially its intractable corruption, 

 some recent changes have been viewed positively as key steps toward redressing some of the human rights concerns lingering from Lima's counterterrorism efforts in the early part of this decade:

- Fujimori signed legislation in February making torture, forced disappearance—an arrest without a warrant or writ of habeas corpus—and genocide by government security services criminal offenses, and empowering civilian courts to try security officials for these offenses. The military had long resisted these measures.
- Lima allowed the faceless, or anonymous, civilian courts—long condemned by international and domestic human rights organizations for their lack of accountability—to expire in October 1997, saying that the diminished threat of domestic terrorism renders them unnecessary.  the military simultaneously ended anonymity for military judges who try civilians for treason or aggravated terrorism.
- The government has released some 360 terrorism detainees, determined to have been wrongly imprisoned, from prison since August 1996. The ad hoc commission that recommends the pardons to the President has had its authority extended until yearend 1998 because it still has about 1,200 cases to review.

This report was prepared by  Office of Asian Pacific and Latin American Analysis, as part of the Directorate of Intelligence's continuing effort to track democratic reforms in Latin America. Comments and queries are welcome and may be directed to the  APLA, on 



Lima's Criminal Code Short on Due Process, Long on Delays

President Fujimori continues to refuse to sign congressionally approved legislation that would replace Peru's anachronistic laws with a streamlined set of procedures modeled on the US system. Peru's legal system, like those in most Latin American countries, is based on the 19th century Napoleonic code in which most arguments are written rather than oral. Fujimori said the new code, which would shift the investigative burden from judicial officials to the police, would require too many resources. The current system, however, is shrouded in secrecy and lacks due process.

- The lower court judge assigned to a case is responsible for carrying out his own investigation under virtually no supervision and with only notional time limits.
- If the investigating judge decides there is enough evidence to hold a suspect for trial, he sends the case to the Superior Criminal Court, where a three-judge panel reviews the written arguments and issues a verdict and sentence.
- Either side can appeal the Superior Court's sentence to the Supreme Court, which can modify or overturn the verdict or sentence.

As a result of this drawn-out process, prisoners often languish for months or even years without being sentenced, although the speed with which new cases are processed appears to be increasing. out of a prison population of some 24,400 prisoners, only about 7,100 or 30 percent, have been sentenced; the remainder are waiting for trial or sentencing. In addition, administrative inefficiency and inadequate training hamper due process:

- The failure to adequately assign judges and schedule hearings often means extensive delays and postponements. Hearings for narcotics cases, for example, are held at three different prisons in the Lima area, and judges are often scheduled for consecutive sessions in different locations.
- While judicial experts identify inadequate training for attorneys and judges as a serious flaw in Peru's judicial system, the two-year-old Judicial Academy's efforts to train prosecutors and other officials are beginning to address this deficiency.

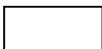


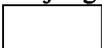
- The government's office of the human rights ombudsman has become increasingly independent and well respected since its creation in April 1996. The ombudsman, Jorge Santistevan de Noriega, is a member of the pardon commission, a vocal advocate of citizen rights, and actively investigates allegations of wrongdoing by government agencies,

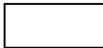


Despite these changes, polls sponsored by private and non-governmental organizations (NGOs) indicate that the public continues to regard the judicial system as corrupt, inefficient, and politicized:



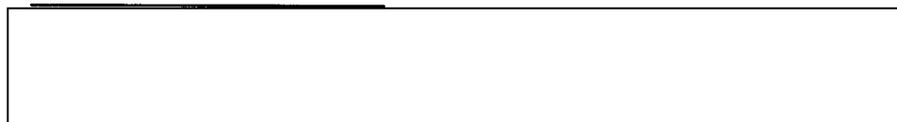
- In an NGO survey of business people, 90 percent of the respondents said they would be reluctant to use the court system to resolve their legal disputes. 

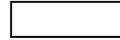
Opposition politicians and the press have criticized the fact that between one-half and two-thirds of current judges are "provisional," appointed by Fujimori in the aftermath of the *autogolpe*. 

Running Roughshod Over Judiciary in Quest for Third Term 

Recent moves by Fujimori appear aimed at ensuring that the justice system does not threaten his power. In recent months, Fujimori has used Congress—in which his Change '90/New Majority political movement holds 67 of 120 seats—to stifle judicial independence and solidify his chance for a third term:

- Congress passed legislation in March eliminating authority of the National Magistrates Council to investigate allegations of wrongdoing by judicial officials, prompting the entire Council to resign and the World Bank to suspend a \$22.5 million loan specifically targeted to bolster judicial reform and services. The Council had been probing charges of politicization—including the infiltration of intelligence agents—in the government agency that maintains voter rolls, as well as unrelated fraud charges against Supreme Court justices.





- Another recently passed law grants the 16 provisional and temporary members of the Supreme Court—who are presidential appointees—the full rights of the permanent members. This move gives Fujimori supporters added clout in choosing the chief of the Electoral Tribunal, the body that will ultimately rule on the constitutionality of Fujimori's bid for a third term. ²
- In May 1997, Congress removed three members of the Constitutional Tribunal who had issued an opinion that Fujimori should not be allowed to run for a third term. The Tribunal's president resigned in protest, and the court has since been inoperative because Congress cannot agree on new appointees.
- The legislature passed a law in August 1996 "interpreting" the Constitution to permit Fujimori to run for another term in an effort to remove the issue from the judicial system's purview. 

Using Judiciary To Stifle Opponents

The Fujimori government has manipulated the judicial system to intimidate its critics, including some judges who have ruled against the administration's interests. Many judges have experienced on-the-job harassment and other threats, according to  press reports. Several of these incidents served as a warning to independent-minded officials that the Fujimori administration would not hesitate to interfere in the justice system:

- Last year a judge appointed by Fujimori effectively silenced a television station that had broken several stories embarrassing to the military, the National Intelligence Service (SIN), and the President by stripping the owner, naturalized Peruvian Baruch Ivcher, of his citizenship and control of his television station.
- In August 1997, the Public Ministry—Peru's justice department—sacked an aggressive prosecutor who had sought to convict an Air Force pilot accused of narcotics trafficking. Although Peru has a generally good record in prosecuting narcotics-related military corruption, the President—who publicly defended the pilot—collaborated with the military,  to thwart

² The Electoral Tribunal will not take action on the matter until Fujimori officially files his candidacy in 1999. Fujimori's supporters argue that, because the 1993 Constitution permits two consecutive presidential terms, Fujimori should be allowed to run again in 2000. They claim that Fujimori's first term (1990-95), which began under the previous constitution, should not count against the two-term limit. 

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progress on this particular case because it involved a politically well-connected officer.

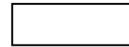
- Also in August, the Interior Ministry announced it would prosecute a criminal court judge—[redacted] an avid human rights advocate who has clashed with the military and National Police—for terrorism after she released a terrorist suspect for lack of evidence. [redacted]

Although human rights ombudsman Santistevan has won kudos for his leadership of a fledgling office, he has shown a reluctance to confront potentially explosive issues directly. [redacted]

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The Fujimori administration has sought to maintain control of the judiciary by establishing auxiliary bodies to circumvent and overrule independent institutions:

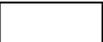
- After public and political opposition thwarted attempts by Fujimori loyalist Blanca Nelida Colan to secure a third term as attorney general—a post she held from 1992 until January 1997—Congress passed legislation creating a Public Ministry oversight committee and naming her as chair. In her new position, Colan has usurped many of her successor's powers—including control of the Ministry's budget—and has at times worked at cross-purposes with him, [redacted]
[redacted]
- The judiciary's executive commission has exercised an iron hand over the judicial system, protecting Fujimori loyalists. [redacted]
[redacted] the commission never provided a full accounting of the judge and prosecutor positions nationwide, [redacted] a deliberate effort to prevent the Council from replacing the numerous "provisional" officials. [redacted] the commission's current chair, David Pezua—who in early May replaced retired Navy Commander José Dellepiane—has close ties to the military justice system and is likely to support Fujimori's efforts to undermine judicial independence. [redacted]



Outlook: Continued Executive Interference in Weak Judiciary 

Fujimori has demonstrated a determination to use the judicial system to support his political interests. He is seeking to maintain his power and ensure that there will be no legal obstacles to another presidential bid in 2000 by retaining loyalists in key positions, and using Congress and ad hoc bodies to overrule or circumvent inconvenient judicial rulings and hobble the authority of judicial institutions:

- The reconstituted National Magistrates Council now comprises judges considered more sympathetic to the President and his supporters, and the Council is unlikely to have the inclination or the authority to carry out its constitutionally mandated mission of disciplining judges for wrongdoing.
- Congress, at Fujimori's behest, is likely to replace the impeached members of the Constitutional Tribunal with judges less likely to oppose the President's goal of running for a third term.
- Although the authority of the judiciary's executive commission expires at the end of this year, Fujimori may seek a congressional extension in order to maintain an ally in control of the system. 

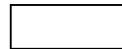
The political opposition in Congress has proved largely unable to oppose legislative maneuvering by Fujimori and his supporters, and neither the human rights ombudsman nor other judicial officials are likely to challenge Fujimori's interests directly for fear of retaliation. 

Although domestic human rights organizations, the human rights ombudsman, and the political opposition in Congress will undoubtedly continue to press for passage of a revised criminal code, Fujimori is unlikely to change his stance on it in the near term. His interest in maintaining fiscal discipline and focusing on social programs in the remainder of this term makes it doubtful he will seek significant funding increases for the judicial system. 

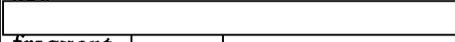
Fujimori will probably resist proposals curbing the military's authority to try civilian terrorism suspects as long as terrorist groups remain active. Although the courts are no longer anonymous, they continue to lack procedures guaranteeing due process. The use of military courts will, however, help to keep terrorism and extrajudicial action by security services against terrorist suspects under control by ensuring that the system is powerful enough to deal with such cases. 

However, in his effort to root out corruption and boost public confidence in the judiciary, Fujimori may propose further administrative and possibly even constitutional changes to the judicial system in the remaining two years of his current

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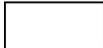


Mercurial Justice System Still Hampers Foreign Investors 

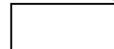
 although Peruvian laws regarding contract enforcement, intellectual property rights, fraud and other trade- and business-related issues are among the strongest in Latin America, they are applied inconsistently and are often manipulated by judges responding to political interests. Complaints 
 regarding such fickle enforcement are frequent. 

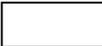
Surveys by multilateral institutions have shown that entrepreneurs in Latin America consistently cite the inconsistent enforcement of laws as a disincentive to investment. World Bank officials estimate that weak judicial systems may restrain economic growth by as much as 15 percent per year. 

In one high profile case, a US mining firm and its Peruvian partner have been battling a partially state-owned French company for several years in Peruvian courts for control of the Yanacocha gold mine.  some Fujimori administration officials have allegedly accepted bribes from the company and that Lima has been lobbied heavily by the French Government and has sought to influence the outcome of the case. A final ruling by the Supreme Court is pending.



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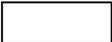


term. In addition, Peru's recent steps to remedy some of the most widely-criticized aspects of the judicial system—by making torture illegal and pardoning some terrorist convicts, for example—suggest that Lima is conscious of domestic and international pressure to provide formal legal guarantees. 

Implications and Opportunities for the United States 

Strengthening the judicial system—and public confidence in it—and increasing its independence from executive branch influence are key elements in the consolidation of democratic institutions in Peru. Peru's ability to play an active role in the war on drugs would be enhanced by a stronger judicial system, as greater autonomy and accountability may bolster the judiciary's resolve to charge individuals accused of narcotics crimes, efforts which long have been hampered by political considerations. A more reputable legal system would further bolster Peru's ability to attract foreign investment. 

Lima has demonstrated a willingness to cooperate with NGOs in efforts to enhance judicial professionalization:

- The government has said publicly that it will attempt to work with World Bank officials to reinstate the suspended loan, according to  NGO reports.
- A pending loan with the Inter-American Development Bank is slated to go for the establishment of mobile judicial offices to provide services in the interior of the country, 


These efforts may facilitate the development of a more professional and independent judicial branch over the longer term, particularly if Fujimori's successor is more supportive of an independent judiciary. 

NGOs and foreign governments could provide legal and technical assistance for other expertise-enhancing projects:

- Development of constitutional reform proposals that would clearly delineate civilian and military courts' jurisdictions.
- Further development of the office of the human rights ombudsman.
- Upgrading of law curriculum by local bar associations and law schools, and provision of postgraduate training and technical manuals to improve the overall level of professional competence. Training

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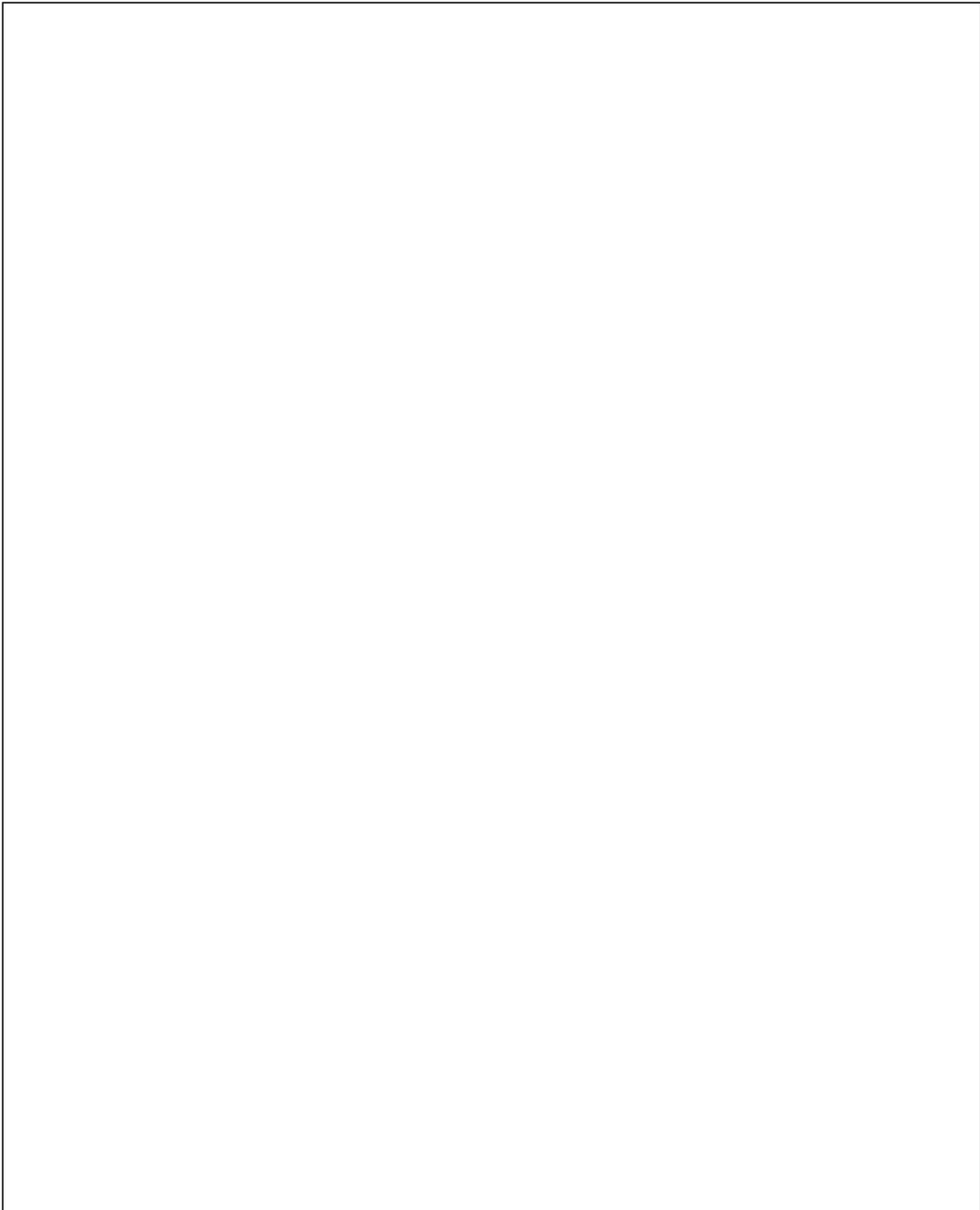
would focus on public defenders and justices of the peace, who play key roles in resolving disputes on a local level. 

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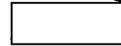


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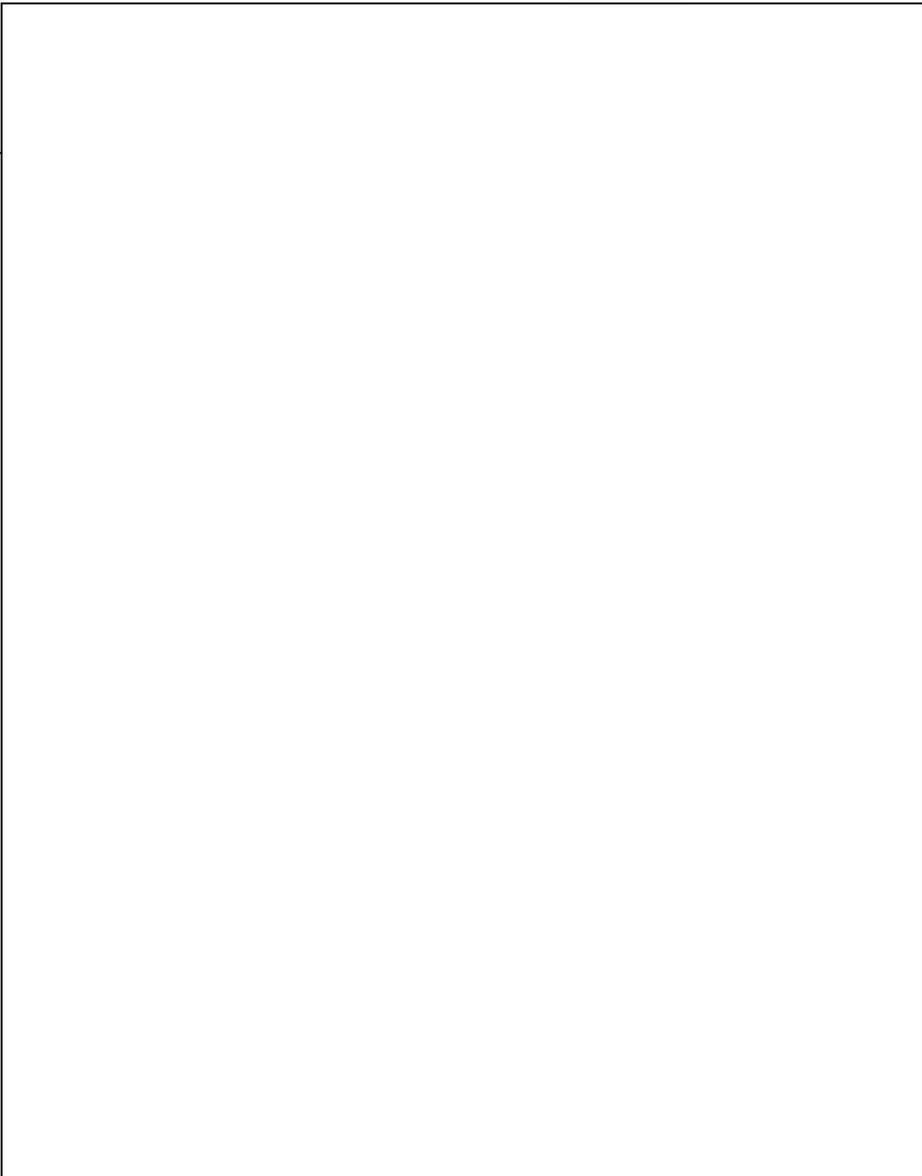
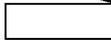


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