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3	S/S 10	PM 2		INFO : Amembassy RIO DE JANEIRO		OCT 14 1971	
	S/P 10	RS 7		RS/AN ANALYSIS BRANCH			
AGR	COM	FRB	INT	FROM : Amembassy BRASILIA		DATE: October 8, 1971	
LAB	TAR	TR	XMB	SUBJECT : Well Known Intellectual Released			
AIR	ARMY	NAVY	OSD	REF : Rio A-221			
USIA	NSA	CIA					
10	3	16	NSCL				
SUGGESTED DISTRIBUTION				<p>On August 20, 1971 the Federal Supreme Court (STF) overturned the conviction of the well-known writer and intellectual Caio PRADO Junior who had been found guilty by the Sao Paulo Military Tribunal in March 1970 of inciting subversion. (see Rio's A-221 - 1970). Prado had already served 1 year and 5 months of his sentence before his release. Two students who were convicted in the same incident had their sentences reduced to six months and were also released.</p> <p>O Estado do Sao Paulo reported that the unanimous decision of the Supreme Court was based on its acceptance of the contention by Prado's lawyer that speaking of revolution in an interview (in this case in a student review) did not constitute inciting warfare. Referring to the article of the National Security Law which makes it a crime to incite warfare publicly or subversion of the political-social order, Ministro Djaci Falcao in his capacity as rapporteur of the case, said that to be proved guilty the action of the accused had to consist in instigating the practice of warfare or subversion. The crime cannot derive from conjecture. Caio Prado in the offending article had affirmed that armed fighting could only be</p>			
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planned if the proper conditions existed. The STF did not consider that he had incited subversion because to do so would have required that the right conditions existed and they clearly did not in Prado's opinion.

Comment: There have been repeated national security cases during the past year in which the STF and the Supreme Military Tribunal (STM) have demonstrated a relatively more lenient attitude towards the defendants than the lower courts by reversing convictions or reducing sentences imposed by these courts which are more subject to the local pressures of the anti-terrorist effort.

ROUNTREE

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