

EXHIBIT “2”

May 10, 2001 Memorandum

Unclassified

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May 10, 2001

To: Office of the Inspector General, Central Intelligence Agency

Info: Director of Central Intelligence
Executive Director, Central Intelligence Agency
Office of Congressional Relations
Deputy Director for Operations
Chief, Latin America Division, Directorate of Operations
Counter-Narcotics Center

From: Franz Boening, Central Intelligence Agency

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Subject: The [redacted] Affair: Possible Violations of US law, Scandal, and Counterintelligence Failure during CIA's relationship with [redacted] (action filed under Title Seven, "The Whistleblower Provision" of the 1999 Intelligence Authorization Act)

1. Introduction: This unclassified memorandum, (accompanied by one brief classified and two unclassified annexes), constitutes an *urgent concern* under Title Seven ("the Whistleblower Provisions," sections 701 and 702) of the 1999 Intelligence Authorization Act. I wish to call to your attention several very serious issues, including possible violations of US laws, related to CIA's alleged operational relationship with [redacted]

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[redacted] (1) You will recall that

I allege that:

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- CIA may have violated US laws during its 10+ year relationship with [redacted] (paragraph five);
- CIA's professional behavior was so scandalous that it seriously damaged American prestige and credibility (paragraph six);
- the relationship continued because of an egregious counterintelligence failure (paragraph eight)

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(1) On November 13, 2000 I urged CIA management to investigate our relationship with [redacted] I received no acknowledgement.

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 CL REASON: 1.4(C)
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2. I will demonstrate that my *urgent concerns* are validated by the language of the *whistleblower* provisions (sections 701 and 702 of the FY 1999 IA Act, passed October 1998) and by section 502 of the 1947 National Security Act. The relevant portions of these acts read, respectively, as follows:

- *the term "urgent concern" means any of the following: A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency related to the funding, administration, or operations of an intelligence activity involving classified information...*(bolded italics the author's)
- *...the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall—(1) keep the intelligence committees fully and currently informed of all intelligence activities...including any significant intelligence failure....* (bolded italics the author's)

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3. I contend that from 1990-2000, the period (according to news reports) of CIA's most recent relationship with [redacted] that the latter not only violated [redacted] laws—allegations whose truth is becoming axiomatic according to overt reporting—but that CIA itself may have violated US laws. CIA's possible violations were the unfortunate by-product of CIA's conscious policy not to act on clear indicators of [redacted] criminal activity. CIA pursued this passive policy in order to prolong the relationship with [redacted] which it considered useful.

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4. CIA's seeming disregard for the criminal reporting and other requirements of US law and its relentless lack of true curiosity about [redacted] activities calls into question the professionalism—and indeed ethics—of CIA officers and their management. So prevalent was CIA's policy of dismissing criminal and counterintelligence indicators that even a casual observer can legitimately wonder if CIA's officers ever attempted to seriously vet [redacted] information and activities; to question his motivation; to corroborate serious criminal charges made against him by others or; to take seriously its US crimes reporting responsibilities. CIA's conduct also calls into question how seriously it took its responsibilities vis-à-vis other elements of the USG.

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5. **The Possible Violations of US Laws:** It is likely that CIA has violated one or all of the laws in the sub-paragraphs below. (Note: CIA's unfortunate and mendacious habit of seeking "*deniability*" before the requirements of *US law* seems to have contributed to the possible violations. While seeking deniability in the face of the law—*foreign laws*—is wholly appropriate when a CIA officer operates in a foreign capital, it would seem completely inappropriate for CIA to seek *deniability before US laws*. Indeed, in the [redacted] relationship, CIA's extraordinarily poor appreciation for political risk and its tendency to "hike near the edge of the cliff" may have caused it to err legally.)

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a. **The 1952 Immigration and Naturalization Act.** It is now clear, based on numerous overt accounts and considerable physical evidence, that [] was ineligible for the US visa. (A glance at the tough questions on the NIV application, OF-156, demonstrates this.) Moreover, CIA had good reason to believe that [] was ineligible. So...how did he obtain the visas? If contemporaneous allegations of [] involvement in narcotics trafficking had been taken seriously, they would almost certainly have made him ineligible to receive a visa. (2)

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b. **US Customs Service financial declaration requirements, the Bank Secrecy Act, and CIA's duty to report possible crimes to the Financial Crimes Enforcement Network of the US Treasury Department.** Was [] guilty of money-laundering in the United States? Did CIA assist [] to launder money here or abroad, whether intentionally or unintentionally? (See classified annex and April 13, 2001 entry in chronology.)

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c. **The Foreign Assistance Act of 1961.** According to news accounts, CIA provided years of support to [] CIA did this at a time when [] was a regular violator of human rights. (See classified annex.) []

[] Given the overall requirements of the Foreign Assistance Act, it would seem that CIA's support to [] organization may have violated the law. (3)

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(2) I do not believe that a visa to [] was even possible without a waiver from the State Department. The second bullet of question 29 of the OF-156 reads, "Have you ever been arrested or convicted of any offence or crime, even though subject of a pardon, amnesty, or other similar legal action? Have you ever distributed or sold a controlled substance?" CIA knew, for example, that [] Did he obtain a visa without a waiver? [] US visa was revoked []

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[] See classified annex.

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(3) Few knowledgeable observers would consider [] during the [] years to have been an oasis of liberal human rights practices. It is well worth noting that the State Department itself was critical of [] human rights record during the [] Moreover, the [] Congress, completely controlled by [] after its initial dissolution in []

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[] Can CIA, or anyone else, possibly assert that [] did not have a human rights problem during the [] Did CIA take the Foreign Assistance Act seriously?

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d. Executive Order 13107 (December 10, 1998) on the Implementation of Human Rights Treaties; specifically, USG obligations under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. According to overt accounts [redacted]

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[redacted] it would appear that Article nine of the Convention Against Torture obligates the USG (and CIA) to "afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings."

e. The Torture Victim Protection Act of 1991. Based on overt information, it would appear that [redacted] was detainable under this act during any possible travel to the US after 1991. (Note: See classified annex. The author acknowledges that [redacted] was not taken to task under this law during the [redacted] Nevertheless, the simple fact that he was probably prosecutable under it is both significant and embarrassing.)

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f. The CIA's own 1995 human rights guidelines for agent and liaison relationships. (Note: The guidelines, which appear to be ignored as often as observed, do not have the force of law. The guidelines are a response to the Harbury, Bamaca, Alpirez, Constant et.al. scandals of 1993-94.)

6. The (quiet) Foreign Policy Scandal and its Cost: Notwithstanding the seriousness of the above allegations, I must also emphasize that CIA's relationship with [redacted] was extraordinarily scandalous, at the political level. In effect, during the 1990s, CIA pursued a type of separate foreign policy vis-à-vis [redacted]

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[redacted] Yet, during the same period, the stated policy of the USG was to promote human rights, democracy, and to fight narco-trafficking. As a result of CIA's irresponsible behavior, USG credibility was seriously compromised. It is doubtful that [redacted] policymakers will take seriously the USG's stated policies when [redacted] conduct—obvious to astute [redacted] but not to CIA—had so effectively undermined them. Had CIA been the equivalent of the "lawyer for Tony Soprano" during

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[redacted] What was the political cost?

(4) Although primary authorship of the scandal belongs to the CIA, other elements of the USG—that tolerated the relationship for too long—must share blame.

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7. As is now known [] secretly undermined important USG policy objectives—on an industrial scale—over a 10-year period. *Indeed, CIA's dubious support for [] suggests a political scandal of the first order—comparable in magnitude, and exceeding in duration and titillating variety, the Iran-Contra Scandal.* Did CIA share with other elements of the USG all aspects of its confidential relationship? Was CIA even aware of the overall foreign policy of the USG? (5) This question can be largely addressed by examining what I hold to be the main cause of the scandal. (6)

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8. **The Decade-long Counterintelligence Failure:** Numerous domestic and foreign news accounts (in Asia, Europe, North and South America), including those sourced to the USG, allege that CIA both supported and apologized for []

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[] In virtually all cases, CIA's special friend [] played the central role in personally suborning individuals. Although corruption schemes were undoubtedly complicated, endorsed by [] and involved more than one seducer, it remains nevertheless true that [] held center stage. This fact is clearly and conclusively demonstrated in the hundreds of videotapes [] currently in the possession of the [] judicial authorities.]

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9. According to various newspaper accounts, []

(5) Generally speaking, US foreign policy, summarized in annual reports to Congress, stresses national security issues and the promotion of free trade, free markets, *democracy and human rights* (italics the author's).

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(6) According to domestic news reporting, all other elements of the USG gradually grew to oppose CIA's relationship with [] in fact, DEA appears to have viewed [] as an outright narcotics trafficker for years.

(7) For those who may be irritated by the rhetorical question, please consider the reverse: Is accidentally working with and supporting the narco-corrupter of an entire society some sort of CIA success?

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[] are either strongly suspected, under investigation, have been arrested, have fled the county, or have admitted to corruption charges, since [] In literally all cases, []'s viewed as the ringleader of civil corruption—by the []

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10. So...large swaths of the political and military classes of an entire nation were suborned and corrupted.... Is an objective observer to believe that CIA, (after all, *an intelligence agency*) was completely unaware of [] efforts to suborn, bribe or blackmail? How can this be?

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11. Those whom [] could not suborn, he harassed or intimidated. Journalists, newspapers, individuals, and opposition politicians were subjected to all forms of pressure [] Among other things, []

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12. On the human rights front []

(8) These names have been reported in the []

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Indeed, the only way that CIA could have not known about these serious human rights violations, especially torture, was if its officers never read the newspaper, listened to the radio, or watched television. Since I consider this unlikely, it is safe to say that CIA simply ignored the problem, perhaps *in keeping with CIA's unfortunate history of ignoring rights problems.* (9) In sharp contrast

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For this reason, I contend that CIA actually pursued (*the functional equivalent of*) its own foreign policy during the [redacted] years. For only CIA could have warned the USG about the true nature of [redacted] was reportedly CIA's special friend—not State's, not DEA's, not FBI's, not DIA's, not USIS', not Commerce's, not the US Ambassador's, not anyone else's. CIA singularly failed to take its counterintelligence duties seriously. (See classified annex.)

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13. **But...why?:** The failure outlined above occurred because CIA chose to ignore or downplay obvious criminal indicators. Quite simply, if CIA incorrectly assesses the core motivations of its liaison partner or its secret agent, as the case may be [redacted] (arguable *agent of influence* status represents elements of both), CIA will operate at its peril...and its conduct may jeopardize US foreign policy and erode USG credibility. This is roughly what happened in the [redacted] case. In its effort to combat drug traffickers, CIA deluded itself into believing—despite a mountain of freely available, contrary evidence—that [redacted] was sincerely helping to further USG policy goals. What it didn't take into account is that men like [redacted] if fundamentally misunderstood, can subvert whole aspects of US foreign policy. The counterintelligence failure was exacerbated and prolonged by CIA's hubris and apparent tendency towards secrecy, even with USG colleagues. *CIA's hubris, secretiveness, disinclination to accept contrary assessments and evidence, its lax management, and its desire to avoid embarrassment, all proved to be a smoldering recipe for disaster.*

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14. The counterintelligence process demands vigilance and a constant reexamination of one's operational assumptions. Perhaps the best known (albeit least common), type of counterintelligence failure occurs when a USG official is secretly recruited by a foreign power and operates undetected for years. Professional CIA officers know, however, that there are other types and levels of counterintelligence failure—some of which can inflict the same magnitude of damage to America. (In truth, aspects of the *Iran-Contra Scandal* were exacerbated by counterintelligence failures.) *In the foreign field, an important type of CI failure occurs when it is discovered that a foreign agent or liaison service has an entirely different—and malicious—agenda from that which he/she/it describes to CIA.* [redacted] lengthy (and not so) concealed anti-human rights, anti-democracy, and narco-trafficking activities fall into this category.

(9) CIA's tendency to ignore or downplay rights concerns has been criticized even in reports from CIA's own Office of the Inspector General.

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15 As is now becoming apparent [] almost certainly acted as only one in a small galaxy of Latin American narco-traffickers—but one who enjoyed the unique political protection inside the USG of CIA. I contend this was an important aspect of the [] almost certainly used CIA tools and bureaucratic support to facilitate his crimes. (See classified annex.)

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16 In addition to almost single-handedly undermining []

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17. As we now know from the newspapers, CIA's relationship with [] At that time, even CIA became convinced that [] had participated in a scheme []

[] Even CIA was finally persuaded that [] could no longer be trusted. []

[] How substandard had been CIA's counterintelligence performance? How much would need to be spent in order to counter the strengthened [] reinforced with arms supplied by []

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18. In order to understand the foreign policy scandal, the counterintelligence fiasco, and CIA's performance, it is helpful to review a chronology of the contemporaneously available information and developments (i.e. the criminal and counterintelligence indicators) that should have alerted CIA to [] character and agenda. Did CIA overlook or ignore compelling evidence of a problem? Or, is the author unfair to suggest that CIA presided over a counterintelligence disaster and precipitated a scandal? I invite readers to judge for themselves. (My comments are enclosed in brackets. Most entries can be traced to multiple media sources.) (10)

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(10) Of course, according to the newspapers, other USG departments—probably employing nothing more sophisticated than common sense—did not ignore the criminal and counterintelligence indicators. At various times, they warned CIA that the relationship with [] as counter-productive. Their warnings went unheeded.

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10. **Analysis:** Since newspaper accounts report that CIA remained in professional contact with [] until the late summer of [] it is not unfair to say that until that time none of the developments described above were considered serious enough to justify severing the relationship. (See classified annex.) Readers are asked to use their common sense to decide whether CIA exercised appropriate political judgment or counterintelligence sensitivity. (Personally, I do not believe that a degree in criminology is necessary to assess this case.) Was CIA simply not paying attention or had it chosen to willfully disregard indications of criminality? Or...was something more sinister at play? What could explain such relentlessly unprofessional behavior?

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20. It is worth noting that the relationship with [] ostensibly endured through [] Fair questions might be:

- Is CIA on autopilot?
- Do case officers occasionally read newspapers and apply independent judgment or do they rely exclusively on information from *special friends*?
- Does a re-examination of aggregate counterintelligence evidence ever occur?
- Will CIA do absolutely anything to maintain a prestigious covert relationship? including working at cross purposes to America's stated foreign policy?
- At the US public policy level, is it wise to allow CIA to handle contacts at the policy level of a foreign country?
- And, the two most frightening questions: *Did CIA maintain a relationship with []*
- *Did CIA help to establish a unit [] which engaged in human rights violations?*

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21. Whatever the stated reasons were for CIA's failure [] seems to be an extraordinary example of how not to conduct operations. Frankly, I must agree with late Senator Cranston; it is all embarrassingly reminiscent of [] (See classified annex.)

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22. **Conclusion:** As a 20-year employee of CIA with considerable agent-handling experience, I find [] personally distasteful, professionally inexplicable, and quite possibly legally indefensible. Consequently, I have initiated this whistleblower action. The need for accountability, especially before the elected officials of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, other congressional committees, and the incoming US Drug Coordinator strongly suggests that a detailed explanation be given for the counterintelligence failure, the foreign policy scandal, and that possible violations of law be thoroughly investigated. Let us hope that CIA chooses not to invoke the overworked excuse of *sources and methods* to avoid embarrassment and accountability. (Or, to protect whom—the most

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wanted man in [] 11) Secrecy—in this instance—is the enemy of accountability.

Fortunately, since DCI Tenet spoke of the need for accountability during his 1997 confirmation hearing, it is hard to believe that he will allow CIA to hide behind the mantra of *sources and methods*. Therefore, I have no doubt that he will support a thorough investigation of this matter.

23. Should you have any questions concerning this memorandum, please do not hesitate to contact me. In the meantime, I remain,

Yours Sincerely,

Franz Boening

Postscript: Given my previous whistle-blowing experience with CIA in 1998-99, I plan to track CIA's response to the best of my limited ability. Naturally, I shall be most disappointed if I incur any bureaucratic retaliation as a result of this memorandum. Should any such retaliation occur, it shall be swiftly reported to the appropriate congressional committees.

17 My hope is that an investigation of this matter will help the USG to restore some of its badly damaged credibility in the [] *Drug Wars*. This is an important issue to me and other Americans. *A fresh wind blowing over the landscape can help us to achieve this...*

21 On a separate issue—and in order to be helpful—I will make my personal, unclassified file on [] available to CIA and/or law enforcement investigators.

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(11) [] Details are available at the Website of the []

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About the author:

Franz Boening is a 45 year-old CIA employee who entered on duty in 1980. After learning Arabic in the early 1980s, he spent 10-12 years in agent operations, primarily in the Middle East. However, shortly after protesting privately to the DDO in 1994 of CIA's paid relationship with [redacted] Boening was asked to return permanently from abroad. Upon return from abroad in 1995, Boening was asked to work in declassification, where he worked from summer 1995-spring 1999. (Note:

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In fall 1998, Boening filed CIA's first Title Seven action over testimony and comments made by the CIA's information release officer, Lee Strickland, to Congressman Dennis Kucinich, (D, Ohio). Boening protested what he interpreted to be highly misleading remarks made by Strickland with regard to whether or not the CIA protects human rights violators. Strickland's comments were made to "clarify" CIA's position on the Human Rights Information Act, which CIA opposed. The Human Rights Information Act did not become law.

As a result of Boening's action, DCI Tenet "regretted" Strickland's comments to the US Congressman. Boening, in turn, was allowed to consult directly with the congressman regarding the legislation.

Since spring 1999, Boening has worked at the Foreign Broadcast Information Service, where he does Internet exploitation and training.

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Unclassified Annex:

Myths Surrounding CIA's Relationship with []

It is useful to address, at least cursorily, what the USG/CIA got from [] in return for CIA's relationship with him. Was the seeming counterintelligence failure and the political scandal worth it? Let's take a very brief look at a few myths surrounding this unusual character. Newspaper accounts usually assert that CIA worked with [] in some fashion or other, against terrorism and the drug trade. So....how much did actually [] help us?

1. Myth: []
Post reporting or that of [] was the []
Fact: Not according to Washington Rather, it

2. Myth: []
Fact: Not entirely true. [] played an equal, if not greater role, in the planning of the operation. He was fired, []

3. Myth: There was no good evidence that [] were involved in criminal activities. Fact: The author considers this claim to be complete and utter nonsense (see chrono). Those who make this claim probably mean to say that they personally are unaware of a smoking gun. In fact, if one takes the long view and examines the anti-democracy activities and the anti-human rights activities of [] the evidence of criminality becomes overwhelming. Why the focus only on [] the seeming drug activities (where the criminal indicators were still extremely strong)? Why did CIA not also focus its intelligence efforts on anti-human rights activities or the intimidation of journalists, for example? These sorts of activities are themselves criminal and counterintelligence indicators. Does CIA not realize this obvious fact? For any system that is willing to engage in the gross violations of democratic practices and the massacre of innocents is also quite willing to engage in narco-trafficking.

[] Did CIA ignore literally everything?

Finally, why would any thoughtful person assume that the standard for severing an intelligence relationship must be legal evidence of wrongdoing? Why did CIA

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apparently bend over backwards to defend [] Did CIA consider itself [] lawyer? Practically speaking, did CIA work on behalf of the citizens of Idaho and Iowa or for [] In foreign policy, the intelligence standard for severing a relationship should simply be whether a heavy preponderance of the evidence indicates that a partner is unsuitable or undermines the broad mix of US foreign policy objectives.

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4 Myth: [] helped America in the [] Drug Wars. After all, [] acreage declined markedly after [] and many drug seizures took place. Fact: True and true. Unfortunately, the real measure of success is not coca plantings but whether cocaine production or shipments to North America actually declined. This is far more difficult to determine. After all, human beings don't consume coca plants, they consume cocaine. What is known, moreover, is that yields in the remaining acres under cultivation appear to have increased somewhat even as total acreage under cultivation declined (according to the *Observatoire Geopolitique des Drogues* in Paris and DEA analysis). Likewise, some overt reporting indicates that while acreage was declining in [] Let's face it- []

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Secondly, it seems possible that at least some of the cocaine seized by the

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[] if current DEA theories are valid. A recent news service report suggests that [] alleged front man in [] was the man to whom [] allegedly shipped seized drugs for resale. (This would seem to explain the occasional stories in the [] press [] of missing drugs from government warehouses.) While it may be true that [] is innocent of the charge, it is undeniably true that he could not be found as of early []

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Thirdly, if [] this sure didn't help America. The author would note in this regard that the [] apparently became military contractors for the []

Finally, this author understands that the street price of cocaine in the US market has been on a downward glide path from the mid-1990's to 2000. Unfortunately, since price is a generally a function of supply and demand (even for cocaine)—and demand remains reasonably strong in this country—this would seem to indicate that cocaine remains quite plentiful.

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Unclassified Annex: Was [] an Agent?

This question deserves closer examination. I suggest that as you read my personal analysis below, you ask yourself the following questions:

Does anyone seriously expect CIA to do anything other than minimize the extent of this embarrassing relationship?

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The corrupter of [] a human rights violator, a narcotics and weapons trafficker, a blackmailer, a briber, a money-launderer, and arguably the most wanted man in [] [] who, in his right mind, would admit that they had been [] friend?

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As we are now aware, the man in question []

Of course, the contention by the USG that [] was not "an agent" is somewhat strained and, unfortunately, typical of CIA's hair-splitting mendacity. [] What CIA actually means to assert—now that its judgment has been so discredited—is that []

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Viewed from another optic, every professional case officer knows that it is not necessary for a person to take a formal salary in order for CIA to view him/her as "special." And, rest assured, CIA viewed [] as unique, useful, and often responsive. CIA may indeed have fretted about its limited ability to influence this prickly

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personality but the strange sense of bonhomie, emotional obligation, shared history, and support still provided considerable forward momentum on various issues. Besides, [redacted] did not brag openly about his relationship with CIA. This is one of the behavioral characteristics that every case officer seeks to establish in any "special" person.

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CIA will argue, probably out of embarrassment, that [redacted] was not paid a cash salary and not always responsive so, ipso facto, he could not have been an agent. I would respond that no one, paid or unpaid, is ever fully responsive. Yet the fact remains that neither CIA nor [redacted] broke off the relationship—no matter what the provocation—until [redacted]. In other words, it was generally friendly, supportive, and exceedingly durable. CIA was able to overlook virtually any "malicious rumor" about [redacted] and the latter, in turn, tried not to get too annoyed when CIA asked him the occasional tough question. The relationship endured. (Note: The apparent, albeit largely ephemeral, decrease in [redacted] production after [redacted] also helped to reinforce CIA's belief in [redacted] utility.)

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Both sides got what they wanted: CIA, the psychic rewards of a warm welcome by the [redacted] the very useful political insurance policy that only CIA could provide.

CIA, the lawyer for Tony Soprano? Judge for yourself.