

UNCLASSIFIED

E10Z

UNCLASSIFIED
n/a
Case Number: 200102877

Page 1
RELEASED IN PART
B6

UNCLASSIFIED PTQ9939

PAGE 01 LIMA 05683 230142Z
ACTION WHA-00

INFO	LOG-00	AID-00	CIAE-00	DODE-00	SRPP-00	EB-00	UTED-00
	VC-00	H-01	TEDE-00	INR-00	IO-00	L-00	AC-01
	NSAE-00	NSCE-00	OIC-02	OMB-01	PA-00	PM-00	PRS-00
	ACE-00	P-00	SP-00	SS-00	STR-00	TRSE-00	T-00
	USIE-00	PMB-00	PRM-01	DRL-02	G-00	SAS-00	/008W

-----88E68E 230143Z /15

P 230002Z SEP 00
 FM AMEMBASSY LIMA
 TO SECSTATE WASHDC PRIORITY 6512
 INFO AMEMBASSY CARACAS
 AMEMBASSY MONTEVIDEO
 AMEMBASSY OTTAWA
 AMEMBASSY MEXICO
 AMEMBASSY QUITO
 AMEMBASSY SANTIAGO
 AMEMBASSY ASUNCION
 AMEMBASSY BUENOS AIRES
 AMEMBASSY BRASILIA
 AMEMBASSY BOGOTA
 AMEMBASSY LA PAZ
 AMEMBASSY MADRID
 USCINCSO MIAMI FL

UNCLAS LIMA 005683

E.O. 12958: DECL N/A
TAGS: PGOV, PREL, PHUM, PE

UNCLASSIFIED

PAGE 02 LIMA 05683 230142Z
SUBJECT: IS PAYING SOMEONE TO CHANGE THEIR POLITICAL ALLEGIANCE
A CRIME?

1. (U) IN THE WAKE OF THE SENSATIONAL VIDEO FOOTAGE WHICH SHOWED FORMER INTELLIGENCE CHIEF VLADIMIRO MONTESINOS PAYING \$15,000 TO OPPOSITION LEGISLATOR-ELECT ALBERTO KOURI TO JOIN THE GOP'S RULING COALITION, QUESTIONS AROSE WHETHER THE VIDEO DOCUMENTED A CRIME. ATTORNEYS CLOSE TO THE GOP SUGGEST THAT WHILE MONTESINOS' ACTIONS MAY HAVE BEEN REPREHENSIBLE, THEY DO NOT NECESSARILY CONSTITUTE CRIMINAL BEHAVIOR. THEY ARGUE:

--THAT THE LEGISLATOR-ELECT HAD YET TO ASSUME OFFICE AND WAS,

n/a
UNCLASSIFIED

Page: 1

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: MELVIN E. SINN
DATE/CASE ID: 14 JUN 2002 200102877

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

Page: 2

n/a

Case Number: 200102877

THEREFORE, NOT A PUBLIC OFFICIAL;
--THAT THE FOOTAGE DOES NOT SHED LIGHT ON THE SOURCE OF THE FUNDS PAID AND COULD HAVE BEEN MONTESINOS' PERSONAL FUNDS;
--THAT NO ILLICIT ACTIVITIES OR SERVICES WERE CONTRACTED SINCE SWITCHING PARTY ALLIANCES IS NOT A CRIME; AND,
--THAT THE VIDEO WAS PROCURED THROUGH EXTRA-LEGAL MEANS AND WOULD THEREFORE BE INADMISSIBLE AS EVIDENCE IN A COURT OF LAW.

2. (U) WE HAVE CONTACTED SEVERAL CRIMINAL ATTORNEYS AND A PROMINENT JUDGE TO TRY TO GET A DEFINITIVE ANSWER TO THIS QUESTION. ANSWERS WERE COLORED BY THE POLITICS OF THE RESPONDENTS, BUT THE CONSENSUS IS THAT THERE IS "PROBABLY" ENOUGH EVIDENCE WITHIN THE VIDEO TO JUSTIFY CRIMINAL CHARGES AND TO TAKE THE CASE TO TRIAL. WHETHER OR NOT THE CASE COULD BE WON IS ANOTHER ISSUE.

3. (SBU) RESPECTED CRIMINAL ATTORNEY [REDACTED] TOLD POLOFF THAT IF HE WERE PROSECUTING THE CASE, HE WOULD MAKE THE FOLLOWING ARGUMENTS:

B6

UNCLASSIFIED

PAGE 03 LIMA 05683 230142Z

PREMISE: THE VIDEO IS ADMISSIBLE AS EVIDENCE. FIRST THE VIDEO WAS MADE IN THE OFFICE OF A PUBLIC OFFICIAL WITH STATE-OWNED EQUIPMENT. SECOND, NO ONE'S RIGHT TO PRIVACY WAS VIOLATED SINCE THE TAPE, INCLUDING THE FILMING OF THE EXCHANGE OF MONEY, WAS INTENDED BY ONE OF THE PARTIES. FOR THE ABOVE TWO REASONS, THERE ARE NO GROUNDS TO BAR ADMISSION OF THE TAPE AS EVIDENCE.

PREMISE: KOURI WAS PAID MONEY TO INFLUENCE HIS ACTIONS AS A LEGISLATOR. CITING THE DOCTRINE OF "PRIOR ACCORD," UGAZ ARGUED THAT THE LAW CLEARLY CONSIDERS AS "PUBLIC OFFICIALS" THOSE WHO ENGAGE IN A CORRUPT ACT ENGENDERED BY FACT THAT THEY WILL SHORTLY ASSUME PUBLIC OFFICE. THE UNDERSTOOD PURPOSE OF THIS DOCTRINE, [REDACTED] IS TO ENSURE THAT THOSE WHO ARE TO ASSUME A PUBLIC POSITION DO NOT DISHONESTLY BENEFIT FROM AN AUTHORITY THAT WILL BE EXERCISED IN THE FUTURE. THE VIDEO SHOWS MONTESINOS AND KOURI APPEARING TO AGREE ON FUTURE ACTIVITIES OF KOURI ONCE HE ASSUMES OFFICE.

B6

PREMISE: KOURI VIOLATED HIS "DUTIES" AS A PUBLIC OFFICIAL. ARTICLE 393 OF THE PENAL CODE PROHIBITS PUBLIC OFFICIALS FROM SOLICITING OR ACCEPTING DONATIONS, PROMISES OR ANY OTHER TYPE OF BENEFIT, WHICH ADVOCATE AN ACT OR AN OMISSION THAT WOULD NOT BE CONSISTENT WITH THEIR OBLIGATIONS. BY ACCEPTING MONEY TO SWITCH POLITICAL ALLEGIANCE AND, MOREOVER, TO SUBSUME HIS VOTE AND

n/a

UNCLASSIFIED

Page: 2

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

Page: 3

n/a

Case Number: 200102877

POWERS AS A LEGISLATOR TO MONTESINOS, KOURI VIOLATED HIS DUTY TO THE CONSTITUENTS WHO ELECTED HIM.

PREMISE: MONTESINOS ATTEMPTED TO "CORRUPT" A PUBLIC OFFICIAL. ARTICLE 399 PLAINLY STATES THAT ATTEMPTING TO CORRUPT (DEFINED AS BRIBERY OR SUBORNATION) A PUBLIC OFFICIAL IS A CRIME. HENCE, UNCLASSIFIED

PAGE 04 LIMA 05683 230142Z
MONTESINOS' CRIME WAS COMMITTED BY OFFERING MONEY TO KOURI WITH THE AIM OF INFLUENCING HIS BEHAVIOR AS A LEGISLATOR. IN THIS VEIN, THE SOURCE OF THE MONEY IS IMMATERIAL.

HAMILTON

UNCLASSIFIED

<< END OF DOCUMENT >>

n/a

UNCLASSIFIED

Page: 3

UNCLASSIFIED