

U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

In the Matter of

File: (b) (6)

CARLOS EUGENIO VIDES CASANOVA

RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

Transcript of Hearing

Before JAMES K. GRIM, Immigration Judge

Date: April 21, 2011

Place: ORLANDO, FLORIDA

Transcribed by FREE STATE REPORTING, Inc.

Official Interpreter:

(b) (6)

Language: SPANISH

Appearances:

For the Respondent: DIEGO HANDEL

For the DHS: JAMES CRAIG AND KEVIN STANLEY

1 JUDGE FOR THE RECORD

2 Okay, we're on the record once again. It is Thursday,
3 April the 21st, 2011 in the Immigration Court in Orlando,
4 Florida, Immigration Judge James Grim continuing to preside in
5 the matter of Mr. Vides Casanova, (b) (6) He is --

6 MR. HANDEL TO JUDGE

7 Sorry, Judge. Let me turn this off.

8 JUDGE FOR THE RECORD

9 All right, he's back in Court today with counsel.

10 JUDGE TO MR. HANDEL

11 And Mr. Handel, if you could just state your appearance.

12 MR. HANDEL TO JUDGE

13 Diego Handel for respondent Carlos Vides Casanova who is
14 seated to my left.

15 JUDGE TO MR. HANDEL

16 All right.

17 JUDGE TO MR. CRAIG AND MR. STANLEY

18 And for the Government again.

19 MR. CRAIG TO JUDGE

20 James Craig, Assistant Chief Counsel on behalf of DHS.

21 MR. STANLEY TO JUDGE

22 Kevin Stanley, Assistant Chief Counsel on behalf of the
23 Department of Homeland Security.

24 JUDGE FOR THE RECORD

25 All right. And Ms (b) (6) is back again as our

(b) (6)

1 contract interpreter in the Spanish language.

2 JUDGE TO MS. (b) (6)

3 And through the interpreter.

4 JUDGE TO MR. VIDES CASANOVA

5 Q. Mr. Vides Casanova, good morning again, sir.

6 A. Good morning.

7 Q. Okay. And I assume again that Mr. Handel still speaks
8 for you as your counsel.

9 A. Yes, Your Honor.

10 Q. All right. Then, we'll continue with your case today.

11 JUDGE TO MR. HANDEL AND MR. CRAIG

12 And before we hear again from Professor Karl, let me see.
13 Where is my calendar? I'm fairly convinced that at this point
14 in time given that it's Thursday morning that it's unlikely
15 we're going to be able to complete the Government's case that
16 being the issue of removal. Mr. Handel's witnesses have yet to
17 be called. There are a couple of things I'm thinking. One, I'm
18 not sure that it would serve anyone's best interest if we work
19 until 7 o'clock tonight and tomorrow night. I think it's
20 exhausting for everyone. I'm not in the best of health myself.
21 So I'm not really looking forward to another 11 day or two of
22 them. If I thought we were going to finish, it'd push through,
23 but I'd like to hear from the parties as to whether or not you
24 think that can be accomplished and obviously Mr. Handel's case
25 is, is the one that's left to be accomplished at least in the,

(b) (6)

1 at this point in the proceedings.

2 JUDGE TO MR. HANDEL

3 So what are you thinking at this point, Mr. Handel?

4 MR. HANDEL TO JUDGE

5 Your Honor, since we haven't even finished with the
6 Government's case yet and we're still on the cross of Professor
7 Karl and we've got some way to go on that and given her
8 extensive testimony, I happen to agree with the Court. I don't
9 think we're going to be done and I would also agree with the
10 Court that these I mean, the point of going until 7 and starting
11 at 8:30 is exhausting for everyone involved. So I would agree
12 with the Court.

13 JUDGE TO MR. CRAIG

14 Mr. Craig or Mr. Stanley.

15 MR. CRAIG TO JUDGE

16 Can we get an estimate of how long [indiscernible]?

17 JUDGE TO MR. HANDEL

18 Can you give us an estimate?

19 MR. HANDEL TO JUDGE

20 Well, it's hard to say, Judge. We have, we have three
21 witnesses and my, my sense is that we're going to take at least
22 two days, probably three. That all depends on cross issues that
23 come up. So --

24 MR. CRAIG TO JUDGE

25 [Indiscernible].

(b) (6)

1 MR. HANDEL TO JUDGE

2 I think it's also going to depend on how this testimony
3 ends, Your Honor. Obviously, it's hard for us to gauge until we
4 conclude with the cross exactly what testimony we need to
5 elicit.

6 JUDGE TO MR. HANDEL

7 You think you may need as much as two days for your
8 witnesses on direct.

9 MR. HANDEL TO JUDGE

10 Yes, Your Honor.

11 JUDGE TO MR. HANDEL

12 At least that much.

13 MR. HANDEL TO JUDGE

14 Yes, Your Honor.

15 JUDGE TO MR. HANDEL

16 Okay.

17 MR. CRAIG TO JUDGE

18 So I don't anticipate cross will take very long.
19 Obviously, we won't know until they testify.

20 JUDGE TO MR. HANDEL AND MR. CRAIG

21 All right. What I'm going to ask the parties to do then is
22 begin to look at your calendars. I'm not going to set the
23 matter off for months. I'm looking at the next several weeks
24 and obviously it's going to be a huge inconvenience for all our
25 schedules to free up. What I'm going to look at is three

(b) (6)

1 possible days consecutive, but that's what we're going to try to
2 accomplish. So tomorrow morning, I'll ask everyone, the two
3 parties what three day periods are available to them. I'll work
4 with you as best I can given my Court calendar as well. I'm
5 booked through I think December, but I'm going to move whatever
6 cases I have to so that we can complete this case no later than
7 mid to late May of this year. So in the next five weeks, we
8 have to find three days on our respective schedules that we can
9 all juggle calendars. So Mr. Handel and Mr. Craig, if there are
10 Immigration cases that are scheduled during that time period
11 that cause an inconvenience or a scheduling conflict, I'll work
12 with my colleagues to make sure that those can be continued to a
13 later date. I think they'll accommodate me given the complexity
14 of this case. So just tonight as you take a breather from the
15 case, start looking at your calendars if you would so that
16 tomorrow we can discuss the rescheduling as necessary for them
17 because I'm pretty confident it's going to be necessary. Any
18 other comments on that?

19 JUDGE TO MR. HANDEL

20 Mr. Handel.

21 MR. HANDEL TO JUDGE

22 No.

23 JUDGE TO MR. HANDEL

24 All right.

25 MR. HANDEL TO JUDGE

(b) (6)

1 What's the Court's sense about the timeframe today?

2 JUDGE TO MR. HANDEL

3 I think 6 o'clock is plenty for me and for everyone
4 involved. I'm not sure how much we'll be taxing our interpreter
5 today, but I don't know that we have a second interpreter
6 available just because of some other issues. So I plan to try
7 to wrap this up around 6 p.m. today. All right.

8 MR. HANDEL TO JUDGE

9 Yes.

10 JUDGE TO MR. CRAIG

11 Mr. Craig, anything?

12 MR. CRAIG TO JUDGE

13 [Indiscernible].

14 JUDGE TO MR. CRAIG

15 I appreciate that. All right.

16 JUDGE TO DR. KARL

17 Q. Then, Professor Karl.

18 A. Good morning.

19 Q. Officially good morning.

20 A. Good morning.

21 Q. We'll continue with cross-examination from Mr. Handel
22 and of course you're still under oath, ma'am.

23 JUDGE TO MR. HANDEL

24 Mr. Handel.

25 MR. HANDEL TO JUDGE

(b) (6)

1 Thank you, Your Honor.

2 MR. HANDEL TO DR. KARL

3 Q. Professor Karl, you had testified yesterday on direct
4 exam regarding the state of the civilian courts in El Salvador
5 during the time in question and I believe your testimony was
6 that they were not really functional. Is that correct?

7 A. They were not really functional to deal with human
8 rights crimes.

9 Q. Were they function in other respects?

10 A. Some respects as long as there was not a serious
11 political issue at stake such that the kind of intimidation that
12 interfered with the courts was not at stake.

13 Q. Were they corrupt?

14 A. Some of them.

15 Q. Overall, how would you describe them?

16 A. I don't make -- I don't feel comfortable making that
17 characterization. I didn't study all of the judges in El
18 Salvador.

19 Q. You really don't have a sense about the overall state
20 of the court system.

21 A. I know that some of the courts were corrupt and were
22 able to be paid off, but I do not know about the entire court
23 system. No.

24 Q. How about the military court system, what do you know
25 about that?

(b) (6)

1 A. I know that it functioned for certain kinds of crimes
2 and misdemeanors particularly for drinking on the job, but did
3 not function for the kinds of crimes that we've been discussing
4 here.

5 Q. Was it corrupt?

6 A. I think there is evidence that there was a great deal
7 of corruption inside the officer corps of the armed forces.
8 However, whether that went into the entire court system is again
9 something, the entire military court system is again something I
10 don't believe I could say in its entirety. I know of military
11 judges who are not corrupt and I know of military judges who
12 were corrupt.

13 Q. What was the function of the military courts in El
14 Salvador during the time in question?

15 A. Mostly, they dealt with simple crimes like shooting
16 your gun off in the air when you were drunk, a lot of drinking
17 issues, a lot of misdemeanor kinds of issues, a little bit of
18 theft, et cetera, but mostly those kinds of issues, behaving in
19 a way that was not appropriate and again mostly due to drinking.

20 Q. As far as the jurisdiction of the military courts,
21 where is that? In other words, what documents do you look to,
22 to determine the jurisdiction of the military courts?

23 A. Well, I actually think some of the most important
24 documents is the military justice codes, the law of national
25 defense, the laws that set up the military codes that exist.

(b) (6)

1 There's a lay de defense nationale that sets up when it is
2 appropriate to do special investigations. There are something
3 called extraordinary periods. This was one in which some of the
4 justice systems act a little bit differently. I think there are
5 in the codes that spell out the duties of the directors of all
6 of the security forces or the codes that spell out the duties of
7 the defense minister. In those areas, there is some clear
8 discussion of what is appropriate. I think particularly if I
9 remember correctly article 11 of the code of criminal procedure
10 is very important in this as well. That's the one that
11 establishes that who is supposed to do the investigations, what
12 kind of investigations, how it is appropriate, what, at what
13 point it is appropriate to hand something over to a civilian
14 court, when it belongs in the military, military court, et
15 cetera.

16 Q. And, and your studies of the military court system in
17 El Salvador, how far back does your knowledge go?

18 A. I never conducted studies of the military court system
19 per se. There were a number of lawyers studying that and
20 there's a number of books published on that. My own work was
21 whether or not the courts could function or carry out what we
22 call a division of labor and/or and we would use different terms
23 in the United States, but whether there was some kind of balance
24 of power between say the presidency, the judicial system, the
25 legislature, et cetera. So I didn't get inside the court system

(b) (6)

1 itself. I only looked at whether the court system could provide
2 some kind of balance vis-à-vis other powers.

3 Q. So you're not an expert on the court system in El
4 Salvador.

5 A. No, not on the internal workings of the court system.

6 Q. Are you an expert on the external workings?

7 A. I'm an expert on how decisions are made and what are
8 the constraints against that, usually politically, so for
9 example, if, I look to see if the judiciary is a potential
10 functioning power that could balance state and legislature or
11 the presidency, the military, et cetera. So I am, I mean,
12 that's what people in my profession do. So what we can do is
13 say is there a functioning court system? Will it function under
14 these circumstances? And we come with yes or no whether and why
15 and how internally that functions. Mostly, we leave to lawyers
16 to look at. So there are a number of studies, all of which I've
17 read by the way, but they are conducted by lawyers and judges
18 primarily.

19 Q. Now, the military courts, were those administrative
20 courts?

21 A. The military courts, were they administrative courts?

22 Q. Yes.

23 A. In general.

24 Q. In general.

25 A. In general.

(b) (6)

1 Q. What? Sometimes, they were not.

2 A. The military, for example, the military could set up
3 special investigative units. They could set up special. There
4 was in fact eventually a special investigative unit. They could
5 set up extraordinary measures where you wouldn't really have to
6 go through the court system. For example, it was within the
7 power of a minister of defense to dismiss somebody without
8 necessarily going through the court system.

9 Q. I'm asking about the courts not the minister of dense.

10 A. Uh-huh.

11 Q. Were the courts part of the Executive Branch --

12 A. No.

13 Q. -- of the government?

14 A. No, the military courts, no. Well, they were part of
15 the military and the military was the executive at some point.
16 So that's why it's a complicated question. I mean, this was a
17 military government for 50 years. So everything was the
18 military was in that sense in that de facto sense an executive
19 if I could put way.

20 Q. Okay. And how about the civilian courts, were they a
21 separate branch?

22 A. Supposedly, supposedly under de jure law, they were a
23 separate branch. Did they function as a separate branch? No.
24 Would a civilian judge would have been able to charge a
25 Salvadoran military office without the express approval of the

(b) (6)

1 Salvadoran military officer corps? No.

2 Q. And that's true historically in El Salvador, correct?

3 A. Historically, yes.

4 Q. Is it still true today?

5 A. No.

6 Q. When did that change?

7 A. The civilian courts are functioning better in El
8 Salvador today.

9 Q. When did that change?

10 A. That changed after the peace agreement and after the
11 end of the civil war?

12 Q. What year?

13 A. Well, that change doesn't happen in a year. I would
14 say that from 1994 until today, there has been continuing, there
15 has been a continuing effort to strengthen the judicial, the
16 civilian judicial system, but that's not something that changes
17 in one year.

18 Q. How many years does it take change?

19 A. Well, it takes actually a very long time to construct
20 the rule of law and to make it function well.

21 Q. That's because El Salvador did not have a tradition of
22 rule of law, correct?

23 A. El Salvador had a rule of law. It did not have a
24 democratic rule of law and that's a very different thing.

25 Q. Right. So historically, El Salvador did not have a --

(b) (6)

1 A. A democratic rule of law.

2 Q. -- traditional history of democratic rule of law,
3 correct?

4 A. That's right. That's correct.

5 Q. And you would agree that historically the government
6 of El Salvador was corrupt.

7 A. I would agree with that. Well, it became much more
8 corrupt during the civil war.

9 Q. It was less corrupt before.

10 A. There was less opportunity I think.

11 Q. Because of.

12 A. There was less money floating around.

13 Q. Your testimony, but it was still corrupt.

14 A. I would say so. Yes.

15 Q. And how long does it take to change that?

16 A. It usually takes a couple of very good court cases.
17 In other words, if you attack corruption by holding certain key
18 corrupt people accountable, you make some real progress in
19 weeding out corruption.

20 Q. But what happens if you don't have a functioning
21 judiciary, how do you make the change?

22 A. I think it's very difficult. I think it's very
23 difficult to have --

24 Q. They do it.

25 A. -- to end corruption --

(b) (6)

1 Q. So I'm asking you.

2 A. -- without a functioning judiciary. I think it would
3 be very difficult. I don't think you -- you probably cannot end
4 corruption without a functioning judiciary. I think judiciaries
5 are essential to ending corruption.

6 Q. So during the time that General Vides was in
7 Government, you would agree that it was impossible to end the
8 corruption without a change in the court system, correct?

9 A. I think as long as judges feared for their lives and
10 witnesses feared for their lives and they feared primarily for
11 their lives because of the power of the military officer corps,
12 it would have been very difficult to end corruption.

13 Q. You testified that the courts were historically
14 corrupt not just during General Vides' time, but before him as
15 well, correct? That was nothing new. Is that correct?

16 A. That's correct.

17 Q. But isn't it unfair to expect General Vides to change
18 the court system?

19 A. It's my understanding that General Vides isn't here
20 because he didn't change the court system.

21 Q. That's what I'm asking you though. I'm asking you, is
22 it unfair to expect General Vides to change the court system?

23 A. No. It is not.

24 Q. It's not what?

25 A. It is not unfair to expect that he could have taken

(b) (6)

1 actions to actually strengthen and rebuild a court system there.

2 Q. This is one rebuild. You told me that it was never --
3 it was always corrupt.

4 A. The chief problem of the --

5 Q. Just answer the question. Isn't it true that the
6 court system was always corrupt?

7 A. I can't say that it was always corrupt. I didn't --

8 Q. To the best of your knowledge.

9 A. To the best of my knowledge, there was corruption in
10 the courts.

11 Q. As far as you studied.

12 A. I have never said the entire court system was corrupt.
13 There were honest judges.

14 MR. CRAIG TO JUDGE

15 Your Honor, I'm going to object to him interrupting her
16 answers [indiscernible] let her answer the question.

17 MR. HANDEL TO JUDGE

18 Well, Judge, we're not here for a lecture. We're here for
19 questions and answers.

20 JUDGE TO MR. HANDEL

21 Yeah and I think her, her answer early on was that there
22 were certain judges or portions of the courts that were corrupt
23 and I think she's, she's answered your question, but if you have
24 a follow up, go ahead.

25 MR. HANDEL TO JUDGE

(b) (6)

1 Thank you, Judge.

2 MR. HANDEL TO DR. KARL

3 Q. Now, you said that he could have rebuilt it, Vides
4 rebuilt the court. Rebuilt it to what?

5 A. I think that if judges had not been afraid of what
6 would happen to them if they ruled against a military officer,
7 there would have been a much greater probability of holding
8 military officers accountable for murders, torture, and
9 extrajudicial killings. There was not --

10 Q. That's not my question. One second, that's not my
11 question. My question is --

12 A. What's your question, sir?

13 Q. You stated that he could have rebuilt the court.

14 A. Could have strengthened it. Let me use the word
15 "strengthen."

16 Q. No. Let's talk about rebuild. Could he have rebuilt
17 it to what?

18 A. He could have removed the issue of intimidation in the
19 courts by his actions.

20 Q. Was there a point where there was no intimidation in
21 the courts?

22 A. The intimidation in the courts became excessively
23 strong from October 1979 on, much greater than before.

24 Q. Before that, there was no intimidation, no, no serious
25 intimidation in the courts.

(b) (6)

1 A. I'm sure there was some. I'm not an expert on the
2 courts before --

3 Q. So you don't know.

4 A. -- 1989. I don't know.

5 Q. Now, you talked yesterday in direct about
6 certification by the U.S. Government vis-à-vis El Salvador.
7 What did it mean when the U.S. Government certified El Salvador?

8 A. Because of the intense divisions in U.S. policy over
9 El Salvador, there was eventually a congressional law passed
10 that meant that the president had to certify progress, some kind
11 of progress in, in human rights. This became a tremendously
12 controversial moment in U.S. policy. It was one of the reasons
13 for Secretary Schultz's visit because he felt like he didn't
14 have the ability to certify that progress.

15 Q. Was El Salvador ever decertified?

16 A. To my knowledge not.

17 Q. And when --

18 A. That would have ended aid.

19 Q. When --

20 JUDGE TO DR. KARL

21 Q. Would have ended aid.

22 A. Yeah. That would have ended aid.

23 MR. HANDEL TO DR. KARL

24 Q. So how often did certification take place?

25 A. I'm not quite sure. I remember, but at least -- I

(b) (6)

1 don't remember. I'm sorry.

2 Q. Over how many years?

3 A. It took -- certification occurred during most of the
4 civil war period. It doesn't occur anymore obviously.

5 Q. So from what, 1980, '81?

6 A. I think the year, I think certification probably began
7 in '81. I'm not exactly sure of that date and then it continued
8 through '89. It continued through the Reagan administration.

9 Q. It started in the Carter administration and continued.

10 A. No, no, no. It didn't start in the Carter
11 administration. It was it started in the Reagan administration,
12 continued through the Reagan administration and the Bush
13 administration was the one that changed U.S. policy towards
14 Central America, I mean, towards El Salvador. So it was no
15 longer necessary.

16 JUDGE TO MR. HANDEL

17 Let me interrupt you so I understand this.

18 JUDGE TO DR. KARL

19 Q. The certification process, is it raised by Congress?

20 A. It was raised by Congress.

21 Q. The executive has to respond.

22 A. The executive, the executive had to show that some
23 kind of progress in human rights was being made. This was I
24 believe it was centrally a result of the murder of the
25 churchwomen and --

(b) (6)

1 MR. HANDEL TO DR. KARL

2 Q. So talking about the, the certification, would this
3 happen yearly?

4 A. I don't remember how often the certifications
5 happened. There are great debates about it inside the cables,
6 but I don't actually remember the congressional schedule of the
7 certification.

8 Q. So if I understand it correctly when Congress asked
9 for certification and the administration, the United States
10 Government Executive Branch certified, it means that the U.S.
11 Government is stating that there is progress in human rights,
12 correct?

13 A. I don't think it was that simple.

14 Q. What was the conclusion of the cert? I mean, what did
15 the certification itself state?

16 A. The certification said that the president guaranteed
17 to the Congress that that was, that there was progress.

18 Q. On human rights.

19 A. On human rights. The problem with that was that --

20 Q. I didn't ask you for the problem. I asked you what
21 certification stated.

22 A. That's what it stated.

23 Q. Okay. And so, so from 1980, '81 through '89 roughly.

24 A. I believe '81.

25 Q. '81 through --

(b) (6)

1 A. I believe so.

2 Q. -- say 1989 for those eight years of the civil war,
3 the U.S. Government was asserting on a regular basis that
4 progress was being made every interval in human rights, correct?

5 A. Until it couldn't, yes. That was part of the reason
6 for the [indiscernible].

7 Q. I didn't ask why it couldn't, but I'm asking you the
8 certifications --

9 A. Yes, that's correct.

10 Q. -- during the time that they existed --

11 A. That's correct.

12 Q. -- the U.S. Government was asserting that there was
13 progress on human rights.

14 A. The Executive Branch was asserting that, yes.

15 Q. The U.S. Government was asserting it.

16 JUDGE TO MR. HANDEL

17 I think we can --

18 DR. KARL TO JUDGE

19 Well, the Congress is part of the Government too and the
20 certifications became part of the congressional debate. So the
21 certifications were not accepted by many members of Congress
22 because of what they felt was false data.

23 MR. HANDEL TO DR. KARL

24 Q. Did the Congress ever override the certifications?

25 A. Congress never overrode it. This was a huge division.

(b) (6)

1 Q. Okay. So the decision of the, of, of the
2 administration stood.

3 A. And aid continued. Aid was contingent on --

4 Q. They continued with aid.

5 A. -- the certifications. Yes.

6 JUDGE TO DR. KARL

7 Q. So there would be a vote in Congress and there were
8 obviously votes --

9 A. There were no votes.

10 Q. -- with aid.

11 A. You would have had to override. They would vote on
12 aid.

13 Q. Okay.

14 A. There was a vote on aid.

15 Q. Yes.

16 A. But before the aid votes, there was a certification
17 that had to say that there was some progress. Those
18 certifications became the center of Government conflict over --

19 MR. HANDEL TO DR. KARL

20 Q. I'm not asking you about the conflict.

21 A. Uh-huh.

22 Q. Now, didn't the U.S. administration during those
23 years, the certification years, didn't the U.S. administration
24 assert that the rationale for continuing aid to El Salvador was
25 that the greatest disaster in El Salvador and for human rights

(b) (6)

1 would be if there was an FMLN victory? I'm asking if that was
2 the administration's position during those years?

3 A. No. I wouldn't say it like that.

4 Q. Isn't that what Elliot Abrams said?

5 A. I think Elliot Abrams said much later human rights. I
6 think human rights didn't really enter into the discussion at
7 the beginning. I think what they said was it would be a
8 disaster if El Salvador fell to a communist victory, but the
9 issue of human rights was not really part of that discussion
10 until much, much later in the Reagan administration.

11 Q. You're saying that the rationale was a danger from the
12 administration's perspective was that El Salvador would fall
13 into communist hands.

14 A. That's right.

15 Q. And as part and parcel of that, wasn't the fear that
16 El Salvador would turn into a repressive regime like Cuba human
17 rights violators? Isn't that right?

18 A. Again,

19 Q. I'm asking you for the administration's position.

20 A. The administration did not discuss human rights at
21 this time. So whether it feared a Cuba like arrangement, I
22 think that is correct, but the language of human rights never
23 entered in these discussions until much later.

24 Q. Why was there a fear of communism?

25 MR. CRAIG TO JUDGE

(b) (6)

1 I object, Your Honor, [indiscernible].

2 MR. HANDEL TO JUDGE

3 I don't think so, Judge. I mean, I think it's right on
4 point. She's an expert on the area. She can testify.

5 MR. CRAIG TO JUDGE

6 The issue is whether the respondent [indiscernible]
7 participated in acts of torture and extrajudicial killings
8 [indiscernible].

9 JUDGE TO MR. HANDEL

10 Yeah. Let's get back to, to the focus of the hearing here.
11 I mean, I'm going to give you some latitude, MR. Handel, but try
12 to keep us focused.

13 MR. HANDEL TO JUDGE

14 I will.

15 DR. KARL TO MR. HANDEL

16 I'm sorry. Could you repeat your question?

17 MR. HANDEL TO DR. KARL

18 Q. Why was there that fear of communism?

19 MR. CRAIG TO JUDGE

20 Your Honor, objection. You sustained the objection.

21 JUDGE TO MR. HANDEL

22 Yeah. I did sustain the objection. So ask another one.

23 MR. HANDEL TO DR. KARL

24 Q. Were the guerrillas in El Salvador during the civil
25 war human rights violators?

(b) (6)

1 A. Yes.

2 Q. How so?

3 A. I think I talked yesterday about the policy of the ERP
4 to kill mayors. I think there were times that they executed
5 somebody as being a spy for the army without -- as an
6 extrajudicial killing.

7 Q. Any other reasons?

8 A. I think that some in the, particularly in the early
9 years, some guerrilla organizations actually executed their own
10 leaders without appropriate, without any kind of appropriate
11 tribunal to see their own crimes and then I think there were
12 crimes that are not necessarily human rights abuses like
13 kidnapping.

14 Q. Didn't use the guerrillas use assassinations to
15 terrorize the opposition?

16 A. In the --

17 MR. CRAIG TO JUDGE

18 Your Honor [indiscernible].

19 MR. HANDEL TO JUDGE

20 Your Honor, the Government has introduced Country Reports
21 on Human Rights. This is in the record and I'm asking regarding
22 that.

23 JUDGE TO MR. HANDEL

24 Go ahead with the question.

25 DR. KARL TO JUDGE

(b) (6)

1 Yes.

2 MR. HANDEL TO DR. KARL

3 Q. They did.

4 A. Yes.

5 Q. You're familiar with the Country Reports that were
6 issued, the Country Reports on Human Rights Practices that were
7 issued by the Department of State of the United States, correct?

8 A. Yes.

9 Q. Those are official pronouncements of the U.S.
10 Government.

11 A. They've been relatively disavowed by now, but they
12 were at the time. Yes. There was an internal study in the
13 State Department of the way it did reporting after El Salvador
14 [indiscernible].

15 Q. I didn't ask you about that. I asked you, at the time
16 were these --

17 A. [Indiscernible].

18 Q. -- official pronouncements of the U.S. Government.

19 A. Yes, yes.

20 Q. Have you had a chance to review the Country Reports on
21 Human Rights that the Government has introduced into evidence
22 here?

23 A. Probably about 20 years ago, but not recently, no, I
24 haven't read them recently.

25 Q. I'd ask you to please take a look at the Country

(b) (6)

1 Reports on Human Rights Practices for 1982 issued by the
2 Department of State.
3 MR. CRAIG TO JUDGE
4 [Indiscernible].
5 MR. HANDEL TO JUDGE
6 Let me finish. Let me finish.
7 MR. CRAIG TO JUDGE
8 [Indiscernible].
9 MR. HANDEL TO JUDGE
10 Department of State. I'm going to give it to her, the
11 Department of State. It's dated February of 1983 and it looks
12 like it's on page 971 of the Government's submissions tab HHH.
13 May I approach the witness, Your Honor?
14 JUDGE TO MR. HANDEL
15 Yes, please.
16 DR. KARL TO MR. HANDEL
17 Which? I'm sorry. Which page?
18 MR. HANDEL TO DR. KARL
19 Q. Why don't you read through it for us familiarize since
20 you said you haven't seen it in 20 years?
21 MR. CRAIG TO JUDGE
22 He's asking her to read through an entire Country Report
23 [indiscernible] paragraph.
24 MR. HANDEL TO JUDGE
25 Your Honor, it's going to be about a minute and I'd like to

(b) (6)

1 conduct the examination in my own style without instructions
2 from the Government.
3 JUDGE TO MR. HANDEL
4 And what portion of the report are we referencing?
5 MR. HANDEL TO DR. KARL
6 Q. If you can please take a look at the section that
7 talks about violence in El Salvador.
8 MR. CRAIG TO JUDGE
9 What page?
10 MR. HANDEL TO DR. KARL
11 Q. Well, let me ask. Let me ask you a question.
12 A. Tell me what page that is, sir.
13 Q. Well, let me ask you a question and then we'll refer
14 to the document.
15 A. All right.
16 Q. The question is, was it in, in the time period covered
17 by this report, was violence in El Salvador endemic?
18 A. This is, this is 1982.
19 Q. Yes.
20 A. Yes.
21 Q. Okay. And during this time period the extremes in the
22 government both of the left and the right used assassination to
23 eliminate and terrorize suspects, correct?
24 A. If you are calling the security forces the extremes,
25 that's correct.

1 Q. I'm asking you.

2 A. Well, I wouldn't put it that way myself. I would put
3 it that the forces of the left and the armed forces and the
4 ultra right who were civilians, all used.

5 Q. Now, during this time period, did the Salvadoran
6 government preside over a unified group? In other words, was
7 the constituent assembly unified during this time period?

8 A. 1982.

9 Q. Yes.

10 A. Well, there were two parties in the constituent
11 assembly at -- more than two. Excuse me. There were several.
12 There are a number of parties in the constituent assembly. So
13 I'm not quite sure what you mean. It had political parties that
14 went from the Christian democrats to the right and there were a
15 number of parties on the right. There was a military party. So
16 it wasn't unified in the sense that all parties agreed with each
17 other. The parties of the left did not participate.

18 Q. You, you, you testified yesterday on direct that in,
19 in explaining the military structure in El Salvador based on
20 your knowledge as an expert admitted by this Court in that area,
21 you testified that commanders in the Salvadoran armed forces had
22 I think what you described as autonomy or something close to
23 [indiscernible]. Is that right?

24 A. I said there was no civilian control of the military.
25 So I'm not quite sure what you mean by autonomy.

(b) (6)

1 Q. That's, yeah, that's not the question. The question
2 is directed as to the, the forgetting the civilian. We're
3 talking about simply the military structure within the military
4 command. I believe your testimony yesterday and correct me if
5 I'm wrong was that commanders exercised considerable autonomy
6 within the Salvadoran armed forces.

7 A. I think I would probably use the word "leeway." In
8 other words, if you were head of one of the security forces, you
9 had a certain room to maneuver, a certain room, but this was a
10 very hierarchal armed forces in that the absolute power lay in
11 the ministry of defense.

12 Q. But you did testify I believe that it approached
13 autonomy.

14 A. What I --

15 Q. Am I correct?

16 A. No. What I, what I was trying to convey is that each
17 unit had its own investigative unit and by that sense I meant
18 they didn't have to go to the ministry of defense to have
19 something investigated. They could do it within their own
20 entity.

21 Q. So you're referring only --

22 A. That's what I mean by having some kind of leeway.

23 Q. Okay. Well, I'm using the word that you used
24 yesterday, the autonomy. Using that particular word, were you
25 referring in your testimony only as to investigative powers or

(b) (6)

1 to anything else?

2 A. No. I was simply referring to investigative powers.

3 Q. Now, isn't it true also that during this time period
4 in Salvadoran society, personal loyalties often competed with
5 loyalties to legal superiors within the military chain of
6 command?

7 A. Yes.

8 Q. Isn't it also true that as a result of that, it is
9 often very difficult to know whether in taking a given action a
10 member of the security force is obeying orders from the military
11 command or carrying out wishes of local patron or acted on his
12 own?

13 A. I think it depends on the profile of the action. For
14 example, a very high profile killing in my view would never
15 occur without the agreement or the subsequent if not the
16 agreement a priori if somebody had somehow made a mistake and
17 killed somebody prominent without the okay of the ministry of
18 defense.

19 Q. And when would it apply? In what situations would
20 loyalties to local patron or acting on own, when would that
21 apply? If it doesn't apply to high profile killings, when would
22 it apply?

23 A. I think there were in, in this war, there were a lot
24 of vendettas also being settled. So there as in every civil war
25 by the way that I know of, there were a lot of actions taken

(b) (6)

1 because somebody wanted somebody else's property or something
2 from them. There were actions taken because people were, had
3 the same lover. So there are a lot of mixtures happening in
4 these things, but I think that it would be virtually impossible
5 to cover up a military crime without the okay of the minister of
6 defense.

7 Q. Now, in 1982, did Defense Minister Garcia issue orders
8 regarding the punishment of human rights violators?

9 A. Orders.

10 Q. Did he issue orders --

11 A. Not that I know of.

12 Q. -- in March of 1982?

13 A. Not that I know of.

14 Q. Do you know how many members of the armed forces in
15 1982 were jailed for abuses of authority?

16 A. I don't remember the exact figure, but I know that
17 General Vides gave that list to a visiting congressional
18 delegation and I've seen it and that the congressmen then
19 investigated it and virtually everyone on that list was jailed
20 either for --

21 Q. I didn't ask you --

22 A. -- drinking --

23 Q. I'm asking you if you know.

24 A. -- or cattle.

25 Q. The question is --

(b) (6)

1 A. Cattle [indiscernible].

2 Q. Let me repeat the question. The question is, do you

3 know how many embers --

4 A. I don't know the exact number. I'm sorry. I think --

5 Q. Do you know the approximate number?

6 A. I think it if I can remember and it's a long time now,

7 but I seem to remember it was something like 400, but I may be

8 wrong about that.

9 JUDGE TO DR. KARL

10 Q. Was that part of your report because I remember

11 hearing --

12 A. I --

13 Q. -- or reading a figure.

14 A. It, it, it could have been in a footnote of my report.

15 It could have been in a footnote of my report because --

16 Q. I read those too. So --

17 A. -- there were military not officers, but there were

18 military low level troops jailed for abuse of authority, but

19 that abuse of authority could be anything from drinking to

20 shooting up something to stealing. A lot of cattle rustling was

21 going on at the time too. It could be anything, but to my

22 knowledge and to the investigation that the congressmen did

23 afterwards, there was I believe not a single person on that list

24 that had been jailed because of a human rights violation.

25 MR. HANDEL TO DR. KARL

(b) (6)

1 Q. Now, how many, how many members of the civilian
2 defense were jailed in 1982 for abuses of authority?

3 MR. CRAIG TO JUDGE

4 [Indiscernible].

5 JUDGE TO MR. HANDEL

6 I didn't ask that, Judge. I asked how many members of the
7 armed forces.

8 MR. HANDEL TO DR. KARL

9 Q. I'm asking, how many members of the civilian defense?

10 A. I don't know the exact number.

11 Q. Do you know the approximate number?

12 A. No, I don't.

13 Q. Now, turning your attention to 1983 the following
14 year, how did the human rights situation change in El Salvador?

15 A. I testified that after the Bush visit in December
16 1983, it improved dramatically.

17 Q. During that year, did the guerrillas continue to be
18 responsible for significant human rights violations?

19 A. Most of the guerrilla organizations had by that point,
20 most, but not all renounced the assassination policy of high, of
21 prominent ultra rightists and there was a clear policy of one
22 group as I said earlier to try to capture and assassinate
23 mayors. They were criticized by the other groups and by all
24 international human rights organizations that I know and then
25 subsequently renounced that policy.

(b) (6)

1 Q. Did the FPL during that year massacre military
2 prisoners?

3 A. I don't know.

4 Q. Let me go ahead and show you another document.

5 MR. HANDEL TO JUDGE

6 May I approach, Your Honor?

7 JUDGE TO MR. HANDEL

8 Yes.

9 MR. HANDEL TO JUDGE

10 This is --

11 MR. CRAIG TO JUDGE

12 Your Honor, the issue is not what the guerrillas did. The
13 issue as to whether the guerrillas [indiscernible] the issue is
14 as to whether the respondent assisted or otherwise participated
15 in [indiscernible]. What the guerrillas did is irrelevant
16 [indiscernible].

17 MR. HANDEL TO JUDGE

18 Your Honor, I appreciate the Government's note. This is in
19 the Country Report on Human Rights Practice for 1983 which is on
20 page, starting in page 982 and I'm referring to page 985 of that
21 particular report which is in evidence, Judge.

22 JUDGE TO MR. HANDEL

23 And the relevance and if you could just state the
24 relevance.

25 MR. HANDEL TO JUDGE

(b) (6)

1 Certainly, Judge. It relates directly to the testimony of
2 this witness on a number of issues, including the conditions in
3 El Salvador, the civil war. She's testified on causes for
4 actions. She's testified extensively on what in her opinion
5 Colonel Vides did, what he could have controlled, what he
6 couldn't have controlled, why he could have controlled, why he
7 couldn't control and this directs, impacts on a whole number of
8 those issues.

9 JUDGE TO MR. HANDEL

10 All right. Go ahead with the question.

11 MR. HANDEL TO JUDGE

12 Thank you, Your Honor.

13 MR. HANDEL TO DR. KARL

14 Q. As I said I'm turning your attention to and I'm going
15 to hand it to you page 985. It's going to be on the left side.
16 It's not a great copy, but a copy [indiscernible] when we
17 received it. So I apologize [indiscernible]. I'll ask you to
18 read it's the on the left side of the page that paragraph.

19 MR. CRAIG TO JUDGE

20 Your Honor, I'm going to object to her just reading a
21 document that she doesn't --

22 DR. KARL TO MR. HANDEL

23 I need to look at this for one moment because I would like
24 to know the context here.

25 MR. HANDEL TO DR. KARL

(b) (6)

1 Certainly.

2 MR. CRAIG TO JUDGE

3 It is not a document she prepared. If he has a question
4 about the conclusion of the document, that's appropriate I
5 think, but having her read it is not appropriate.

6 JUDGE TO MR. HANDEL

7 Let me give her a moment just to review that paragraph.
8 That may assist her in answering the question that's going to
9 follow.

10 MR. HANDEL TO JUDGE

11 Certainly.

12 JUDGE TO MR. HANDEL

13 I won't have her read it out loud though.

14 MR. HANDEL TO JUDGE

15 No. That's I'm not asking her to read out loud. I just
16 asked her to review it, Judge. That's what I meant not to read
17 it out loud.

18 JUDGE TO MR. HANDEL

19 Okay, okay. The question.

20 DR. KARL TO JUDGE

21 Okay.

22 MR. HANDEL TO DR. KARL

23 Q. According to that Country Report, did the guerrillas
24 massacre government soldiers?

25 MR. CRAIG TO JUDGE

(b) (6)

1 Your Honor, I'm going to object. The document speaks for
2 itself, what it says.

3 JUDGE TO MR. HANDEL

4 Yeah. It does seem to indicate exactly that.

5 MR. HANDEL TO DR. KARL

6 Q. Do you agree with that?

7 A. Actually, I never investigated myself this, this
8 incident, but I, if it says that, it's probably, it's most
9 likely true. Most of these documents don't say something that's
10 factually incorrect.

11 Q. Thank you. Now --

12 MR. CRAIG TO JUDGE

13 [Indiscernible].

14 DR. KARL TO MR. HANDEL

15 Or knowingly say something that is factually INCORRECT.

16 JUDGE TO MR. HANDEL

17 Let me follow up on that.

18 JUDGE TO DR. KARL

19 Q. The, the last sentence the FPL was responsible for the
20 massacre of two groups of military prisoners and the murder of
21 an American official and a Commander Schaufelberger. All right.
22 And we've had a lot of testimony about that. Well, let me move
23 on.

24 A. This report was written, I just was looking at it, was
25 written, at least parts of it were written directly after the

(b) (6)

1 Bush visit which is important because they're also talking about
2 the conditions that led up to the Bush visit in the earlier
3 part. So they're talking about the rise of --

4 Q. Okay.

5 A. -- death squad activity again and so at the time. It
6 also looks --

7 MR. HANDEL TO DR. KARL

8 Q. Let me ask you another question.

9 A. It also looks to me it was written in pieces.

10 MR. HANDEL TO JUDGE

11 Your Honor, if I may ask.

12 JUDGE TO MR. HANDEL

13 Yeah. Go ahead. Go ahead.

14 DR. KARL TO JUDGE

15 So --

16 JUDGE TO DR. KARL

17 Hold on.

18 JUDGE TO MR. HANDEL

19 Go ahead.

20 MR. HANDEL TO DR. KARL

21 Q. During 1983 to your knowledge, did Minister of Defense
22 Vides Garcia, excuse me, Vides Casanova issue a statement
23 repudiating terrorist actions?

24 A. He did that after the Bush visit in 1980.

25 Q. I didn't ask you --

(b) (6)

1 A. Yeah. He did it after the Bush --

2 Q. I asked you, did he?

3 A. Yes. He did and he did it after the Bush visit.

4 Q. I asked you, did he?

5 A. Yes, he did.

6 Q. The answer is yes.

7 A. Yes.

8 Q. And following that, did the high command of the
9 Salvadoran armed forces endorse the position of the ministry of
10 defense?

11 A. Yes.

12 Q. And did the ministry of defense following that
13 announce that a special investigative unit would be organized to
14 investigate and combat the death squads?

15 A. Headed by a death squad leader, yes.

16 Q. I didn't ask you who it was headed by. The question
17 is please answer the question. The question was, did he
18 announce that?

19 A. Yes.

20 JUDGE TO DR. KARL

21 Q. Yeah. Please, please limit your answers to yes or no
22 if it calls for a yes or no.

23 A. Okay.

24 MR. HANDEL TO DR. KARL

25 Q. Did the minister of defense also that year that's

(b) (6)

1 Vides Casanova issue an order requiring security forces to be in
2 uniform while conducting arrests to identify themselves while
3 making arrests?

4 A. Yes.

5 Q. And during that year, was the El Salvadoran government
6 forthcoming with visiting human rights missions?

7 A. The government or the military.

8 Q. The government of El Salvador, was it forthcoming with
9 visiting human rights missions?

10 A. With some of them.

11 Q. Did it make its officials available for discussion
12 during that year, that is, the government of El Salvador?

13 A. With some of them.

14 Q. Did the government of El Salvador create an official
15 human rights commission during that year?

16 A. Yes.

17 Q. And the human rights commission that was created in
18 1983 by the government of El Salvador, did it initiate
19 investigations within 24 hours after receipt of an inquiry or a
20 complaint?

21 A. Occasionally.

22 Q. Did the commission receive cooperation from the
23 security forces? I think that is increasing cooperation in
24 responding to inquiries during that year.

25 A. My --

(b) (6)

1 Q. The question is, did they receive, did the commission
2 receive increasing cooperation from the security forces in
3 respondent to inquiries? It's a yes or no.

4 A. I'm not -- I can't answer that. I actually can't
5 answer that.

6 Q. Now, let's turn your attention to the next year 1984.
7 I'm going to turn your attention to the United States Department
8 of State Country Report on Human Rights Practices. This is
9 beginning on page 991 of the Government's submissions that's tab
10 JJJ and within that to page 992 on the right side of that page.

11 MR. HANDEL TO JUDGE

12 May I approach the witness, Your Honor?

13 JUDGE TO MR. HANDEL

14 Please, yes.

15 MR. HANDEL TO DR. KARL

16 Q. If you can go ahead and take a look at that
17 [indiscernible] re-familiarize yourself with that, please.

18 JUDGE TO MR. HANDEL

19 You said the first full paragraph. Is that the one?

20 MR. HANDEL TO JUDGE

21 It's on the right side of the page, the first few
22 paragraphs.

23 JUDGE TO MR. HANDEL

24 Okay.

25 DR. KARL TO MR. HANDEL

(b) (6)

1 This was prepared in February '85. Is that correct?

2 MR. HANDEL TO DR. KARL

3 Q. I believe so. If you look at the first page, it will
4 tell you the date. I believe it's '84 if I'm not mistaken. Is
5 that right?

6 JUDGE TO MR. HANDEL

7 It was issued February '85 for the calendar year 1984.

8 JUDGE TO MR. HANDEL

9 Government, is that right?

10 MR. HANDEL TO JUDGE

11 I believe that's right. Yes. That's right.

12 JUDGE TO MR. HANDEL

13 Okay. The question.

14 MR. HANDEL TO JUDGE

15 Yes, Your Honor.

16 MR. HANDEL TO DR. KARL

17 Q. Does that report indicate that there is progress in
18 the human rights area according to that report?

19 A. Yes, it does.

20 Q. Substantial progress, correct?

21 A. Yes.

22 Q. And who was the minister of defense during this time?

23 A. General Vides Casanova.

24 Q. And the arrest and detainee rules that were issued by
25 the Salvadoran government in 1983 by the minister of defense,

(b) (6)

1 were those being followed?

2 A. They were followed for awhile [indiscernible].

3 Q. How long were they followed? Just I'm asking you a
4 time period.

5 A. Uh-huh. This was -- hold on one second. This was
6 part of the --

7 Q. I'm just asking for a time period.

8 A. Yeah. This was part of the Bush demands and it, they
9 operated through '84 and part of '85.

10 Q. Did it stop in '85?

11 A. No. By, by the end of '86 and then particular in '87
12 and '88, we saw a lot of the same kinds of practices
13 [indiscernible].

14 Q. I'm just asking you until they went not when --

15 A. I would say --

16 Q. Yeah.

17 A. -- they started to not be followed towards the end of
18 '86 again.

19 Q. Okay. So for how long of a period of time in your
20 estimation were they being followed?

21 A. '84, '85.

22 Q. Two years.

23 A. Uh-huh.

24 Q. That's a yes.

25 A. Yes. I'm sorry.

(b) (6)

1 Q. And the U.S. Government considered that to be
2 substantial progress in human rights, correct?

3 A. There was a significant drop in human rights
4 violations after the Bush visit in '83. I've testified to that
5 several times and '84 was one of the best years of the -- I
6 mean, it was the biggest drop in human rights abuses during the
7 whole civil war.

8 Q. And during this time period, was there an effort by
9 the directors of the treasury police, the national guard to
10 educate their agents about government's policy against torture
11 and cruel and degrading treatment?

12 A. In the national guard, I think the cables show that
13 torture continues pretty steadily. In the treasury police --

14 Q. I didn't ask you about where they're continuing. I
15 asked you strictly about, was there a campaign to educate their
16 agents about the government's police against torture and cruel
17 and degrading treatment?

18 A. If there was a campaign in the national guard, I am
19 not aware of it and it was not effective. There was a campaign
20 in the treasury police after the Daniel Alvarado torture
21 incident. After the removal of Colonel Carranza, there was
22 indeed in the treasury police.

23 Q. During this year, was the Salvadoran government headed
24 by Duarte, was it forthcoming with human rights missions?

25 A. Occasionally.

(b) (6)

1 Q. Did the United Nations Human Rights Commission special
2 reporter have access to high level Salvadoran officials during
3 that year?

4 A. Yes.

5 Q. Did he have free exchanges with local human rights
6 groups?

7 A. I'm not aware of his particular access, but I would
8 suspect yes.

9 Q. Did his report to the U.N. note the improvements in
10 the general human rights situation over the past year?

11 A. Yes.

12 Q. And did it praise the Salvadoran government for its
13 increased control over death squad activity?

14 A. Yes.

15 Q. Now, let's turn your attention to the United States
16 Country Report on Human Rights Practices for 1985 which is the
17 Government's submission beginning on page 1002 tabbed with KKK
18 and I turn your attention to particularly page 1004 of that
19 document.

20 MR. HANDEL TO JUDGE

21 May I approach, Your Honor?

22 JUDGE TO MR. HANDEL

23 Yes, please.

24 DR. KARL TO MR. HANDEL

25 I'm sorry. What page?

(b) (6)

1 MR. HANDEL TO DR. KARL

2 Q. 1004. Now, according to the U.S. Department of State
3 Country Report for that year 1985, did the efforts to enforce
4 the code of procedures of the armed and security forces have a
5 positive effect?

6 A. Yes. I believe I've already testified that in '84 and
7 '85, conditions got better in El Salvador.

8 Q. Did the minister of defense General Vides Casanova
9 issue a document during that year which reemphasized the
10 illegality of inhumane treatment of prisoners?

11 A. I have not seen nor am I aware of that document. So I
12 don't know the answer to that. I'm sorry. I have --

13 Q. Was there a handbook on human rights disseminated
14 widely in June of that year?

15 A. There was a handbook prepared in June. I do know
16 that, but how widely it was disseminated, I don't know.

17 Q. And did the U.S. Government view that as another
18 positive effort to educate the military and police on human
19 rights values?

20 A. My assumption is that they would definitely see that
21 as an improvement.

22 Q. And during that year, did the Salvadoran government
23 maintain an open door policy toward human rights delegations?

24 A. To some and not others.

25 Q. Did the government continue to welcome frequent visits

(b) (6)

1 of representations of the ICRC?

2 A. And are you referring to President Duarte then or to
3 the military?

4 Q. The Salvadoran government.

5 A. President Duarte received the ICRC.

6 Q. And did the, the United Nations General Assembly
7 Special Rapporteur on Human Rights in El Salvador declare that
8 the cooperation by the government of El Salvador was full and
9 open?

10 A. Yes.

11 Q. Let me turn your attention now to the next document
12 which is the country, the United States Department of State
13 Country Report on Human Rights Practices for 1986. That's
14 Government, Homeland Security's submission beginning on page
15 1013 through page 1021 tab LLL and in particular to page 1000.
16 Let me make sure this is right, 1014.

17 MR. CRAIG TO JUDGE

18 [Indiscernible], Your Honor.

19 MR. HANDEL TO DR. KARL

20 Q. You testified --

21 JUDGE TO MR. HANDEL

22 How did that begin, the paragraph?

23 MR. HANDEL TO JUDGE

24 [Indiscernible].

25 DR. KARL TO JUDGE

(b) (6)

1 I think it's the conduct against.

2 MR. HANDEL TO JUDGE

3 Yeah. It begins with the conduct of the military.

4 JUDGE TO MR. HANDEL

5 Okay. All right. I have it.

6 MR. HANDEL TO DR. KARL

7 Q. Now, did the U.S. Government find that the conduct of
8 the military security forces improved steadily during that year?

9 A. That's correct.

10 Q. And didn't the U.S. Government find that the
11 government of El Salvador does not condone abuses and is
12 actively seeking to inculcate respect for human rights all
13 levels of the military?

14 A. That's, that's what the report says, yes.

15 Q. And did the U.S. Government find that the number of
16 politically motivated killings continued to decline and the bulk
17 of such killings appear to be committed by FMLN guerrillas?

18 A. That's what the report says. These reports were very

19 --

20 Q. I'm just asking you what the report says.

21 A. -- highly criticized afterwards.

22 Q. I'm asking what the report says.

23 A. That's what the report says.

24 MR. CRAIG TO JUDGE

25 Your Honor, if he wants to ask her [indiscernible].

(b) (6)

1 DR. KARL TO MR. HANDEL

2 Do I agree with that?

3 JUDGE TO MR. HANDEL

4 Yeah, that might be the better question. If you want to,
5 then I'll allow it. Work towards that end.

6 MR. HANDEL TO JUDGE

7 Thank you, Your Honor. I --

8 JUDGE TO MR. HANDEL

9 Otherwise, save it for perhaps your summation, your
10 closing.

11 MR. HANDEL TO JUDGE

12 Thank you, Your Honor.

13 MR. HANDEL TO DR. KARL

14 Q. During that year, did the Salvadoran government
15 [indiscernible] to reform as far as the court system?

16 A. I think that reform was done mostly by AID.

17 Q. So --

18 A. The Agency for International Development.

19 Q. The question was whether the Salvadoran government,
20 did it launch comprehensive reform to revamp court procedure
21 during that year?

22 A. I think it announced a launching like that.

23 Q. But it didn't actually launch the reform. Is what
24 you're saying?

25 A. I think the courts were reformed dramatically after

(b) (6)

1 1994. That was my previous testimony.

2 Q. The answer is yes or no to my question.

3 A. They did in fact announce a reform like that.

4 Q. They announced it, but did they actually launch
5 reform?

6 A. Very little was done in 1986.

7 Q. So you disagree with the, the Country Report, correct?

8 A. I do. I do.

9 Q. Okay. Did during that year, did the arrest of police
10 and military personnel for crimes and human rights abuses
11 increase? If you know the answer, it's a yes or no.

12 A. I don't know.

13 Q. Okay.

14 A. But can I ask you to clarify? Are you referring to
15 officers or any personnel?

16 Q. Let me repeat the question.

17 A. Yeah.

18 Q. The arrests in 1986 of police and military personnel
19 for crimes and human rights abuses, did that increase in 1986?
20 And if you know, that's a yes or a no.

21 A. I don't know.

22 Q. Did the government during that year continue to reduce
23 abuses of authority by the military and police forces?

24 A. I think I've --

25 Q. If you know, that's a yes or a no.

(b) (6)

1 A. The, the, the, the number of abuses --

2 MR. CRAIG TO JUDGE

3 Your Honor, I'm going to object. He's giving her vague
4 terms and asking her to answer yes or no. he's not letting her
5 explain what that means.

6 MR. HANDEL TO JUDGE

7 I'm not asking for an explanation, Judge. I'm entitled to
8 ask yes or no questions.

9 JUDGE TO DR. KARL

10 Q. If you can't answer yes or no, just say that I can't
11 answer that yes or no.

12 A. I can't answer that yes or no unless he's saying do
13 you mean the government --

14 MR. HANDEL TO DR. KARL

15 Q. [Indiscernible]. I asked. I asked you. Excuse me.
16 I asked for a yes or no answer.

17 A. I can't answer that yes or no.

18 Q. Thank you.

19 A. Okay.

20 Q. During that year, the so-called death squads, did they
21 make any claims of killings?

22 A. They made no killings as I recall.

23 Q. Yes or no if you know the answer.

24 A. As I recall, I believe they made no claims of killings
25 in '86.

(b) (6)

1 Q. Thank you.

2 A. I think that's correct.

3 Q. During that year, during that year, did human rights
4 form a part of police recruit training and officer's classes?

5 A. I don't know the answer to that.

6 Q. During that year, did the government's normal
7 operating procedures require humane treatment of prisoners by
8 the police and the military?

9 A. De jure, yes. De facto, no.

10 Q. Were any members of the armed and security forces
11 expelled from service and handed over to September, handed over
12 to civilian courts for violation of laws and regulations? And
13 if you know the answer, it's a yes or a no.

14 A. Kidnapping for profit ring, yes.

15 Q. So that's a yes.

16 A. Yes, some members. Excuse me.

17 Q. Was physical mistreatment of detainees systematically
18 practiced during that year?

19 A. Yes.

20 Q. Did the Salvadoran government during that year
21 continue to be receptive to visiting groups interested in human
22 rights?

23 A. To some.

24 Q. Were high ranking government officials, that's
25 Salvadoran government officials, military officers, were they

(b) (6)

1 briefed and interviewed by U.S. congressmen, church, and labor
2 groups and others during that year?

3 A. Yes.

4 JUDGE TO MR. HANDEL

5 This is a good place to take a break, Mr. Handel.

6 MR. HANDEL TO JUDGE

7 Yes, Your Honor, it would be.

8 JUDGE TO MR. HANDEL AND MR. CRAIG

9 All right. Let's do that. Let's come back at 10 o'clock
10 by the clock on the wall.

11 (OFF THE RECORD)

12 (ON THE RECORD)

13 JUDGE FOR THE RECORD

14 On the record. We'll continue cross-examination of
15 Professor Karl.

16 MR. HANDEL TO JUDGE

17 Thank you, Your Honor.

18 JUDGE TO MR. HANDEL

19 Okay.

20 MR. HANDEL TO DR. KARL

21 Q. Let me turn your attention to the Country Reports on
22 Human Rights Practices for 1987 submitted by the Department of
23 State, the date of February 1987 on the first page. That's
24 Government submission beginning in page 1022 through page 1030.
25 That's tab MMM and in particular to page 1023 on the left side

(b) (6)

1 of the page. Could you read that whole left side or review?

2 Now, during the year covered by the report that you are looking
3 at, did the conduct of the military and security forces continue
4 to show improvement?

5 A. That's what the report says. I don't agree with that.

6 Q. Did the government make clear that, the Salvadoran
7 government during the year that we're talking about make clear
8 that it did not condone human rights abuses and is actively
9 seeking to inculcate respect for human rights throughout
10 society, including at all levels of the military?

11 A. Could you tell me who you mean by the Salvadoran
12 government?

13 Q. Who was the head of the Salvadoran government?

14 A. The de facto or the de jure head.

15 Q. Let's start with the de jure.

16 A. The de jure head was President Duarte, a civilian.

17 Q. Okay. So let's go with that. Did the Salvadoran
18 government make clear that it did not condone human rights
19 abuses and is actively seeking to inculcate respect for human
20 rights throughout society?

21 A. President Duarte made several statements to that
22 effect.

23 Q. Did the Salvadoran government's human rights
24 commission play an important role in this effort?

25 A. No. Although I don't know what the report says, in my

(b) (6)

1 opinion, no.

2 Q. Okay. Were, was the Salvadoran -- excuse me. Let me
3 rephrase that. Were the Salvadoran security forces during the
4 year in question required to register detainees, to have them
5 examined by a doctor or nurse upon entering into police
6 facilities?

7 A. By law, yes. By practice, no.

8 Q. Did the registration and notification procedures
9 together with the official prohibition of mistreatment of
10 prisoners markedly reduce the incidents of torture by government
11 authorities?

12 A. I don't think anyone has any way of knowing that,
13 including this report.

14 Q. Do you disagree with that report?

15 A. As I said, there were not, there are no statistics on
16 torture in particular. So --

17 Q. I'm just asking you whether you agree or disagree with
18 the conclusion of that report.

19 A. I have no way of knowing the answer to that.

20 Q. Excuse me.

21 A. There's no, there's no way of knowing the answer to
22 that, sir, and in --

23 Q. So you disagree with the conclusion of the report.

24 A. I think there's no way. My opinion is there's no way
25 to know that.

(b) (6)

1 Q. Okay. Did the U.N. Special Rapporteur for Human
2 Rights in El Salvador conclude in that year that mistreatment
3 was not systematically practiced and do you agree with that?

4 A. I don't have the report in front of me. Is there
5 something you can show me?

6 Q. If you know since you're an expert --

7 A. No. I don't know.

8 Q. -- in the field.

9 A. No, no, no. I don't know. I have not reviewed that
10 report lately.

11 Q. Did you ever review it?

12 A. I think I must have reviewed everything that ever came
13 out in those, during the years, but I --

14 JUDGE TO MR. HANDEL

15 When was the report again, Mr. Handel?

16 DR. KARL TO MR. HANDEL

17 When was it dated?

18 MR. HANDEL TO DR. KARL

19 Q. United Nations Special Rapporteur for Human Rights in
20 El Salvador report covering the time period in question that's
21 covered by the Country Report.

22 A. I'm sure I reviewed it. I'm sure I reviewed it at the
23 time.

24 Q. Okay.

25 A. But I don't actually remember its conclusions

(b) (6)

1 Q. Did the Salvadoran ministry of defense during the year
2 in question continue to use disciplinary actions to reduce
3 abuses of authority by the military and police forces?

4 A. And by abuses of authority, you mean or what is your
5 definition of that?

6 Q. Just try to answer it the best way you can. If you
7 can't, just say I can't.

8 A. I can't.

9 Q. Was human rights instruction during that year a part
10 of police recruit training and officer's classes?

11 A. In some classes, yes.

12 Q. Did the security forces of El Salvador during the year
13 in question institute a separate intensive human rights training
14 program for all police?

15 A. I don't know the answer to that.

16 Q. Was there a commission of investigations in El
17 Salvador that was investigating sensitive cases of human rights
18 abuse?

19 A. A military commission. Could you explain what
20 commission, where, from the military?

21 Q. I believe the name was --

22 A. [Indiscernible].

23 Q. -- special investigations unit, SIU.

24 A. Yes. There was an SIU set up.

25 Q. And was it investigating a number of sensitive cases

(b) (6)

1 of human rights abuse during the year in question? If you know,
2 it's a yes or no.

3 A. Not in my definition of investigation, no.

4 Q. Okay. Was there any evidence during that year that
5 military mistreatment of noncombatants were either widespread or
6 condoned by the high command?

7 A. Yes.

8 Q. So that there were instances or there were not. The
9 question was, was there evidence that instances of military
10 mistreatment of noncombatants were widespread?

11 A. Yes.

12 Q. So you disagree with U.S. Country Report for that
13 year, correct?

14 A. Yes, I do.

15 Q. And that's the report for 1987.

16 A. That's right.

17 Q. And during that year, did the Salvadoran government
18 continue to be receptive to groups interested in human rights?

19 A. And by the government, you mean President Duarte.

20 Q. Whatever your definition of the government is.

21 A. President Duarte continued to meet some human rights
22 groups.

23 Q. Was a new human rights organization formed in that
24 year, the Salvadoran Association for Human Rights?

25 A. I actually don't recall that.

(b) (6)

1 Q. Let me go ahead and turn your attention to another
2 document. That is the Country Report on Human Rights Practices
3 for 1988 prepared by the U.S. Department of State. It's dated
4 February of 1989. That's tab NNN beginning on Department of
5 Homeland Security's submission page 1031 and ending in page
6 1040. [Indiscernible] you look particularly at page 1032.
7 JUDGE TO MR. HANDEL
8 It's under political killings. Is that what you're looking
9 at?
10 MR. HANDEL TO JUDGE
11 I believe it's --
12 JUDGE TO MR. HANDEL
13 Part A then.
14 MR. HANDEL TO JUDGE
15 It's on the left side of the page 1032 [indiscernible].
16 JUDGE TO MR. HANDEL
17 The left side.
18 MR. HANDEL TO JUDGE
19 Let's start with that.
20 MR. CRAIG TO JUDGE
21 Any particular [indiscernible], any particular paragraph?
22 MR. HANDEL TO JUDGE
23 I'd like to [indiscernible].
24 MR. HANDEL TO DR. KARL
25 Q. And I also refer to the right side of that page, the

(b) (6)

1 very bottom. Now, during the year in question, did there
2 continue to be improvements in human rights in El Salvador?

3 A. According to the report or in my opinion.

4 Q. Let's start with the report.

5 A. I think it's difficult to say since they talk about
6 inexact statistics and so --

7 Q. Statistics, don't they reflect a substantial decline?

8 A. No, not in '88.

9 Q. And what is your position regarding --

10 A. I think violence increased in 1988.

11 Q. And was that violence by the left or the right?

12 A. I think the war increased. So there was a violence
13 increasing through the engagement of two military organizations,
14 right, the official Salvadoran armed forces and the FMLN, but I
15 think that there was also a significant rise in death squad
16 activity in '88 particularly around the Salvadoran
17 [indiscernible].

18 Q. I asked you if it was the left or the right.

19 A. That would be the right.

20 Q. Thank you. Now --

21 A. And specifically not just the right, but the military,
22 let me add that.

23 Q. Now, in the following year 1989, was there intense
24 fighting in El Salvador?

25 A. Yes.

(b) (6)

1 Q. And were there human rights abuses by the FMLN? And
2 if you know, that's a yes or a no.

3 A. Yes.

4 Q. Now, during that year, did human rights instruction
5 constitute a regular part of military officer's classes?

6 A. I'm sorry. Officer's classes.

7 Q. Yes.

8 A. I don't know.

9 Q. How about police recruits?

10 A. In some, in some, in some sectors, yes. In other
11 sectors, no.

12 Q. Now, at some point, did the state of emergency that
13 had been instituted, I believe you may have testified it was
14 around 1980?

15 A. Uh-huh.

16 Q. Okay. That's a yes.

17 A. Yes. I'm sorry.

18 Q. Did that expire at some point?

19 A. It expired and was reinstituted.

20 Q. When did it expire?

21 A. I don't remember the date.

22 Q. Do you know what year?

23 A. No.

24 Q. Do you know when it was reinstituted?

25 A. I think it continued through most of the war. So it

(b) (6)

1 would have gone through, it would have gone through 1990 at
2 least.

3 Q. And for how long was it or how long did it expire? Do
4 you know approximately for how long it expired?

5 A. No, I don't.

6 Q. Now, I believe that you've testified on direct,
7 Professor Karl, that the reasons for the decline in human rights
8 abuses were because of fear in the general population and also
9 because of threats of the cutoff of aid from the United States
10 Government. Is that right?

11 A. No. I don't believe I testified about fear being a
12 reason for decline of human rights abuses.

13 Q. Fear by the general population.

14 A. No. I don't believe I made that, that statement.

15 Q. Okay. Well --

16 A. As a reason for the decline of human rights abuses.

17 Q. Right. In other words, that the population was, was
18 less of a need to, to institute repression because of fear
19 instilled in the population.

20 A. I don't recall testifying in that, in those words. I
21 think my statement was that after you kill 25,000 people in the
22 first two years who are known leaders of labor unions, et
23 cetera, you have less people to kill.

24 Q. And as a result of that --

25 A. There would be [indiscernible].

1 Q. -- human rights violations.

2 A. There would definitely be a fear of engagement in
3 political involvement after something like that.

4 Q. Okay. And, and the other reason I believe, the other
5 main reason you testified was the threat of the cutoff of U.S.
6 aid.

7 A. That, that is the main reason and --

8 Q. And if you were to weigh the two reasons, how much
9 weight would you give each one of them?

10 A. I would give 90% weight to the fear of cutoff of U.S.
11 aid in 1983 and reading the Riot Act to Salvadoran officer corps
12 and particularly to General Vides. I think that this is the
13 central reason.

14 Q. You give it 90%.

15 A. I think that is the central reason that --

16 Q. I'm just asking you a percentage. You give it a 90%.

17 MR. CRAIG TO JUDGE

18 [Indiscernible].

19 JUDGE TO MR. HANDEL

20 It is the primary. It is the primary.

21 MR. HANDEL TO JUDGE

22 The question was a percentage, Judge. I didn't ask for an
23 explanation.

24 JUDGE TO MR. CRAIG

25 Yes. She gave him 90%.

(b) (6)

1 JUDGE TO MR. HANDEL

2 Let's move on to the next question.

3 MR. HANDEL TO JUDGE

4 Thank you.

5 JUDGE TO DR. KARL

6 Q. So I assume then the other 10% would be due to the
7 fear of the people.

8 A. I'm actually uncomfortable with that answer. Let me
9 take that percentage back. I think the main reason for the
10 decline in human rights abuses and I don't believe I can assign
11 a percentage to it is the threat of the loss of U.S. aid.

12 MR. HANDEL TO DR. KARL

13 Q. Now, you've also testified that that threat of the
14 loss of U.S. aid was an empty threat and it's your belief that
15 the Salvadorans knew it was an empty threat.

16 A. I think they learned it was an empty threat overtime.

17 Q. When did they learn that? If you know the time
18 period, just answer that.

19 A. I think probably about '87 again and I think there
20 were threats to cut off aid in '80, in '80. There was a cutoff
21 of aid in '80. There was a reduction of aid after the murder of
22 the nuns.

23 Q. Are you talking about 1987 [indiscernible]?

24 A. And then, then '82, '83.

25 Q. I'm asking for a year.

(b) (6)

1 A. When they believed it?

2 MR. CRAIG TO JUDGE

3 Your Honor, she's trying to answer the question.

4 DR. KARL TO JUDGE

5 I'm trying to answer the question. It's not that simple to

6 me.

7 MR. CRAIG TO JUDGE

8 He's not allowing her to [indiscernible].

9 MR. HANDEL TO JUDGE

10 I'm asking a question as to a year. If she doesn't know,

11 she can say I don't know. I'm not asking for an explanation.

12 DR. KARL TO MR. HANDEL

13 I think they believed it in '83 and they didn't believe it

14 by '86.

15 MR. HANDEL TO DR. KARL

16 Q. Thank you. So in 1984, it's your testimony that the

17 Salvadoran government believed the threat.

18 A. The government or the armed forces.

19 Q. The government.

20 A. I never talked to President Duarte about his

21 particular fears of the cutoff of aid, but I do believe that the

22 military particularly early in 1984 believed that there was a

23 real possibility they would lose aid.

24 Q. How about late in 1984, what did the military believe

25 to your knowledge?

(b) (6)

1 A. My knowledge, I think that belief of an imminent cut
2 eroded quite substantially throughout 1984.

3 Q. And how about 1985?

4 A. It eroded even more.

5 Q. And '86.

6 A. More.

7 Q. 1987.

8 A. A lot more.

9 Q. 1988.

10 A. Even more. Excuse me. I'm, I'm, I'm -- excuse me.
11 I, I misspoke. I think, I think that there was a sort of
12 gradual erosion of that between '83, excuse me, the end of '83,
13 December '83 in particular through '86. They started being less
14 worried about that. I think by '87 and '88, they weren't really
15 worried at all.

16 Q. Okay. Now, if your testimony is that the main reason
17 why human rights violations decreased in El Salvador is due to
18 the threats of the cutoff of aid and if from 1980 forward
19 there's no such fear any longer, any or much less --

20 MR. CRAIG TO JUDGE

21 I believe he's misstating what she [indiscernible].

22 DR. KARL TO MR. HANDEL

23 You're misstating what I said. I'm sorry.

24 MR. HANDEL TO JUDGE

25 Well, let me, let me rephrase the question then.

(b) (6)

1 MR. HANDEL TO DR. KARL

2 Q. I believe your testimony has been that from 1983
3 forward, there was a continual decrease in the fear of the
4 cutoff of aid to the point where '86 and '87, there was no fear
5 any longer of the cutoff.

6 A. That's correct.

7 Q. Taking that premise, then during those years, what was
8 the main reason for the, for the decrease in human rights
9 violations?

10 A. I think I testified that human rights violations
11 decreased in '84 and '85, started to rise again in '86, rose
12 more in '87, and rose substantially in '88.

13 Q. Well --

14 A. So there's a U-shaped curve is the word we would use.

15 Q. Well, let's take '84 and '85 where they you just
16 described they decreased only those two years. Now, during
17 those years, you've testified also that there was, there was an
18 increasing -- I should say less. There was a lessening of the
19 fear of the cutoff of aid.

20 A. That's correct.

21 Q. If that's true during those two years, what was the
22 main reason for the decrease in human rights violations?

23 A. I think the main reason for the decrease in human
24 rights violations was the Bush visit and I think I've made that
25 very clear.

(b) (6)

1 Q. Wait a minute. Hold on. You've just testified --

2 A. The Bush visit and its effects gradually erode
3 overtime and I think that that is one of the reasons why we see
4 later on the reappearance of all kinds of death squad activity
5 that is open.

6 Q. Well, the question was, those two years '84 and '85
7 where you've testified that there was a decrease in the fear of
8 the cutoff of aid, a much greater decrease.

9 A. A very, a gradual decrease.

10 Q. Gradual to the point in '86 where there was no fear at
11 all in '86 and '87 of the cutoff of aid.

12 MR. CRAIG TO JUDGE

13 I believe she testified '87, '88 [indiscernible].

14 JUDGE TO MR. HANDEL

15 But even, even '86 [indiscernible].

16 MR. HANDEL TO DR. KARL

17 Q. '86, '87, '88, those three years.

18 A. [Indiscernible].

19 Q. Okay.

20 A. Once President Duarte is successful as he is in the
21 United States, I think the military understand [indiscernible].

22 Q. Are you talking about those three years, '86, '87, and
23 '88?

24 A. Yes.

25 Q. Okay. So if that's the case if we've taken away or I

(b) (6)

1 should say greatly reduced the threat of the cutoff of aid, what
2 then is the reason, the primary reason for the decrease in human
3 rights violations?

4 A. I think you're misstating my position, sir.

5 JUDGE TO DR. KARL

6 Q. Hold on a second.

7 A. I'm sorry.

8 JUDGE TO MR. CRAIG

9 What's the objection?

10 MR. CRAIG TO JUDGE

11 She answered the objection for me. He's misstating what
12 she answered. She answered that human rights abuses increased
13 in '86 and '87. The question is, what was the reason
14 [indiscernible]?

15 MR. HANDEL TO JUDGE

16 That wasn't -- I'm sorry.

17 MR. CRAIG TO JUDGE

18 Her -- she answered the question [indiscernible] that she
19 stated [indiscernible].

20 MR. HANDEL TO DR. KARL

21 Q. Let's focus on '84 and '85, those two years.

22 JUDGE TO MR. HANDEL

23 Yeah. I thought that's what we were focusing on.

24 MR. HANDEL TO JUDGE

25 Yeah.

(b) (6)

1 MR. HANDEL TO DR. KARL

2 Q. Those two years, that's what I'm focusing on. If I
3 didn't, I'll clarify that. During those two years and you've
4 testified that there was a decrease in the fear of the
5 Salvadoran military and government the cutoff of aid, okay, why
6 did human rights violations decrease in El Salvador? What was
7 the main reason in your opinion?

8 A. The main reason is the Bush visit and what I tried to
9 explain several times is there's a very gradual lessening of
10 fear that aid is going to be cut. It doesn't just like tomorrow
11 you wake up and say they're not going to do it. It doesn't work
12 that way,

13 Q. How does it work? Why don't you explain?

14 A. The way it works you know when the vice president of
15 the United States comes down with a letter from the president
16 and with very specific criteria saying you do this by January
17 10th or you will lose our aid, that is taken very seriously.
18 Okay. And what happens overtime and you see this in the cable
19 traffic very, very clearly is that there is a lot of dissembling
20 by the leadership of the armed forces about that, about trying
21 to continue their practices without the overt, the overtness of
22 the past. So what happens in human rights abuses is they drop
23 from really mass targeted abuses after the Bush visit to very
24 specific targeted abuses and to me what they show is that the
25 military always had the capacity to drop abuses if it wants to.

(b) (6)

1 It's a dramatic change. That change lasts between '84 and '85
2 and I believe that as the military got more confident that aid
3 was not going to be cut and as the guerrillas got much better in
4 their armed capacity to fight, human rights abuses went up again
5 because the military did not believe the United States would cut
6 aid and let the guerrillas win.

7 Q. In 1984, were, were Salvadoran military personnel
8 disciplined for human rights violations?

9 A. Officers or --

10 Q. Personnel.

11 A. Low level personnel, yes, in cases of --

12 JUDGE TO DR. KARL

13 Q. You said for human rights. Is that right?

14 A. Yeah, in cases involving Americans, yes.

15 Q. Okay.

16 MR. HANDEL TO DR. KARL

17 Q. How about in 1985?

18 A. I need to look at the data for certain a trial before
19 I can answer that. Okay. Is that all right?

20 Q. Go ahead. Feel free.

21 A. Let's see, one second. I'm sorry. I cannot find the
22 date that the murderers of the churchwomen were actually
23 punished, their trial

24 Q. Which date are you, are you --

25 A. I'm looking.

(b) (6)

1 Q. -- looking for?

2 A. I'm looking for the trial of the churchwomen.

3 Q. All right. Well, let's go back to the question.

4 A. And the other question is the Sheraton murders.

5 Q. Right. Let me --

6 A. [indiscernible].

7 Q. Let's go back to the question and if you know the

8 answer, yes. If you don't, you don't.

9 A. Okay.

10 Q. In 1985.

11 A. I don't remember the date. Sorry.

12 Q. Okay. Now, in, in '84 and '85, you've testified that

13 there was and correct me if I'm wrong, but there was a dramatic

14 drop in human rights violations.

15 A. That's correct.

16 Q. And, and please describe what that drop consisted of.

17 What changes took place in '84 and '85, in other words, within

18 the Salvadoran military?

19 A. I actually prepared a slide on this and I'm sorry I

20 don't have it, but what happens is that human rights abuses

21 which remain egregiously high in '84 and '85, I want to be clear

22 about that, dropped from what we call or from what Freedom House

23 calls mass killings to targeted killings. So the intelligence

24 is clearly much more directed at individuals.

25 Q. This was part of a war, right?

(b) (6)

1 A. No. This was not part of a war. I'm talking about
2 unarmed civilians. I'm not talking about combat.

3 Q. You're not talking about targeting --

4 A. No, no.

5 Q. -- FPL and FMLN insurgents.

6 A. No, I'm not at all.

7 Q. Were they targeted?

8 A. Yes, they were.

9 Q. And did the FPL and FMLN target the Salvadoran
10 military?

11 A. Yes, they did.

12 Q. Out of the civil war.

13 A. Out of the civil war, but that is different than what
14 I would call human rights crimes. That --

15 Q. Did the, let me ask you, did the FMLN --

16 MR. CRAIG TO JUDGE

17 [Indiscernible] please don't interrupt [indiscernible] the
18 original questions [indiscernible]. Her answer to that I think
19 needs to be [indiscernible].

20 MR. HANDEL TO JUDGE

21 Well, she's --

22 JUDGE TO MR. HANDEL

23 Go ahead.

24 MR. HANDEL TO JUDGE

25 That's fine.

(b) (6)

1 JUDGE TO MR. HANDEL

2 Okay.

3 MR. HANDEL TO DR. KARL

4 Q. Yeah. Go ahead and finish.

5 JUDGE TO DR. KARL

6 Q. You said that the killing became more targeted.

7 A. The killings became more targeted.

8 MR. HANDEL TO DR. KARL

9 Q. Okay. Just, just without explanation.

10 MR. CRAIG TO JUDGE

11 Your Honor, if he can stop.

12 MR. HANDEL TO JUDGE

13 Hold on. Hold on, Judge.

14 MR. CRAIG TO JUDGE

15 And let [indiscernible].

16 MR. HANDEL TO DR. KARL

17 Q. I'm asking for the -- I'm not asking for an
18 explanation just what the changes were.

19 A. The killings became more targeted. The Salvadoran,
20 the extreme hard line inside the military took greater and
21 greater control of commanding positions and I would say those
22 are the two main changes that occurred after '84.

23 Q. During this time period, did the FMLN target U.S.
24 embassy staff?

25 A. The FMLN targeted or somebody targeted military staff

(b) (6)

1 of the, the you know Schauffelberger for example. Yes.

2 Q. Other than Schauffelberger, other military staff, U.S.
3 military staff.

4 A. Yes, absolutely, military staff.

5 Q. How about nonmilitary embassy staff, weren't they also
6 targeted by the FMLN?

7 A. Not to my knowledge. They were targeted by the
8 Salvadoran right. Ambassador Pickering received the threats.

9 Q. I didn't ask you by the Salvadoran right. I'm asking
10 you by the FMLN. Was the answer to that no?

11 A. Not to my knowledge. They did target military
12 personnel associated with the embassy, but to my knowledge, they
13 didn't target civilians.

14 Q. Now, to go back to the, what we talked about before
15 the Ronald Reagan's administration's certification to Congress,
16 when, when the certification was made --

17 A. I think they're in March by the way of every year. I
18 remembered that later.

19 Q. Thank you. Wasn't the statement essentially that the
20 government of El Salvador was making a concerted and significant
21 effort to comply with internationally recognized human rights?

22 A. That was the statement in those reports.

23 Q. That was the language in the --

24 A. President Duarte was doing that. Yes.

25 Q. That was the certification by, by the United States

1 administration, correct?

2 A. Correct, by the Reagan administration.

3 JUDGE TO DR. KARL

4 Q. And that was the same annually whenever it was a
5 public --

6 A. It was the same annually. That's right.

7 Q. Okay.

8 A. So these reports were prepared prior to the
9 certifications.

10 Q. Okay. Thank you.

11 MR. HANDEL TO DR. KARL

12 Q. The, the U.S. military had advisors on the ground in
13 El Salvador during this time period, correct?

14 A. That's correct.

15 JUDGE TO MR. HANDEL

16 Which time period are we talking about?

17 MR. HANDEL TO JUDGE

18 During the civil war.

19 JUDGE TO MR. HANDEL

20 Okay.

21 DR. KARL TO MR. HANDEL

22 And that's correct.

23 MR. HANDEL TO DR. KARL

24 Q. And how many advisors did it have?

25 A. I think nobody knows the exact answer to that. There

(b) (6)

1 was, it was limited by law I believe to 33, but it was
2 significantly more than that.

3 Q. And you know that how?

4 A. By being in El Salvador, it was, it was very evident.

5 Q. How was it evident?

6 A. I think we, we all knew that. It was reported
7 repeatedly. It was brought back to Congress. It was in the
8 U.S. newspapers that the restriction on the number wasn't being
9 kept.

10 Q. And what were the advisors doing there?

11 A. There was a very large Mill Group and there were
12 different kinds of advisors. Some were military advisors for
13 combat. Others were intelligence advisors for interrogation.
14 Others were for strategy. Later, there were advisors that
15 taught PR to the military, public relations and how to portray
16 itself differently. So those were military advisors as well.
17 There were a number of advisors whose past experience had been
18 in Vietnam in the Pacification Program and they came to advise
19 on a Salvadoran military program called Conata which was aimed
20 at winning the hearts and minds. That was the language. So I
21 think that's the general, their general purpose and then there
22 were military personnel that guarded the U.S. embassy.

23 Q. And were there U.S. military personnel that were
24 assigned to combat units of the Salvadoran military?

25 A. They were supposed to be in an advisory role. That

1 was their role was supposedly very restricted by the Congress,
2 but in fact, yes, there were.

3 Q. They actually went in on operations.

4 A. Absolutely.

5 Q. And was the U.S. military well informed as to what the
6 Salvadoran military was doing?

7 A. Yes.

8 JUDGE TO DR. KARL

9 Q. And could we have a time period on that? Would it be
10 during the entire civil war in your estimation?

11 A. The military, U.S. military presence wasn't there
12 during the entire civil war and it built along with the civil
13 war. So it's really becomes more prominent around '83, '84 and
14 ongoing and their knowledge about the Salvadoran military
15 clearly gets more and more extensive. In their own reports and
16 I think the military reports about how the Salvadoran military
17 functions are extremely good in general and have been a very
18 important basis for my own testimony.

19 Q. Okay. Thank you.

20 A. Particularly the four colonels' report and the Warner
21 report by General Fred Warner which is known as the Warner
22 report.

23 MR. HANDEL TO DR. KARL

24 Q. Now, the, the, the role of the U.S. military in El
25 Salvador, does that also include training Salvadoran military

(b) (6)

1 personnel in the United States?

2 A. Yes.

3 Q. Did it include training hundreds of officers and
4 soldiers in the U.S.?

5 A. Yes.

6 Q. And where were they trained?

7 A. Fort Bragg and the School of the Americas in general.
8 There are other places, but those were the two key ones.

9 Q. Now, you've testified previously regarding the great
10 intensification of the civil war I believe it was in 1989,
11 correct?

12 A. That's correct.

13 Q. Would you describe the fighting as especially brutal?

14 A. I think all wars are especially brutal. So I think
15 this war has been brutal from the very beginning. What was
16 different about 1989 is it was in the capital city San Salvador
17 and so it, it came to the capital.

18 Q. Was it a policy of the guerrillas, FMLN or FPL to
19 destroy the national economy of El Salvador?

20 MR. CRAIG TO JUDGE

21 I object, Your Honor. The policy of the guerrillas is not
22 relevance to this case. What's relevant is whether the
23 respondent assisted [indiscernible].

24 MR. HANDEL TO JUDGE

25 I just have a few questions on this, Judge, and I think

(b) (6)

1 it's she's been given a lot of leeway in the Government's
2 questioning and I just have a few questions [indiscernible].

3 JUDGE TO MR. HANDEL

4 Okay.

5 MR. CRAIG TO JUDGE

6 [Indiscernible] it's still irrelevant.

7 MR. HANDEL TO JUDGE

8 No. I understand also that the rules of evidence are
9 relaxed in Immigration Court as the Court has indicated.

10 MR. CRAIG TO JUDGE

11 Not as to relevance, but it still has to be relevant.

12 JUDGE TO MR. HANDEL

13 One at a time. Okay. Go ahead with the question, but
14 please wrap it up.

15 MR. HANDEL TO JUDGE

16 Yes, Your Honor.

17 MR. HANDEL TO DR. KARL

18 Q. Was there a policy of destruction of the national
19 economy by the FMLN guerrillas?

20 A. I can't give a simple yes or no to that. If you want
21 the explanation, I'll be happy to give it.

22 Q. Why don't you give a brief explanation?

23 A. Yeah. There was a factional division in the FMLN and
24 one group was, thought it was extremely important to target
25 infrastructure and some of the lands of the largest landowners

(b) (6)

1 in El Salvador. Others did not agree with that.

2 Q. Did the guerrillas attack hospitals?

3 A. Not to my knowledge.

4 Q. In your research, are you aware of an attack in 1982
5 on a hospital in Santa Clarissa, El Salvador by the guerrillas?

6 A. No, I'm not.

7 Q. How about buses, were they burned by the guerrillas?

8 A. Yes.

9 Q. Railroads, were they, were they destroyed by the
10 guerrillas?

11 A. I'm not aware of railroads.

12 Q. Electrical --

13 A. I wouldn't be surprised.

14 Q. How about utilities like --

15 A. Yes.

16 Q. Now, you've testified regarding the players in the
17 civil war in El Salvador. You testified you had, you went in
18 depth into the structure of the government, military.
19 Guerrillas were on the other side. Now, the, the guerrillas had
20 fighting units, correct?

21 A. That's correct.

22 Q. Did they also have front organization?

23 A. I wouldn't characterize it that way.

24 Q. How would you characterize it?

25 A. They, there were organizations that were sympathetic

(b) (6)

1 to the same demands as the guerrillas, but that were civilian
2 unarmed organizations.

3 Q. And what was the relationship between the civilian
4 unarmed organizations and the armed organizations?

5 MR. CRAIG TO JUDGE

6 [Indiscernible] the guerrillas, their structure, and how
7 they operated is not relevant [indiscernible].

8 JUDGE TO MR. HANDEL

9 Where are you going with this?

10 MR. HANDEL TO JUDGE

11 The question is necessary.

12 JUDGE TO MR. HANDEL

13 And where are you going with it?

14 MR. HANDEL TO JUDGE

15 As I said, she in order to give the Court a complete
16 background I think the Court has gotten a very skewed background
17 of El Salvador from the Government and the purpose or one of the
18 purposes I understood from Professor Karl being here was to give
19 the Court background on what was going on in El Salvador and she
20 went on at great length into the government and for her to
21 testify only on one side of the conflict where I have very few
22 questions regarding construction of the guerrillas would give
23 this Court and any reviewing Courts a very skewed picture of the
24 situation in El Salvador.

25 MR. CRAIG TO JUDGE

(b) (6)

1 The reason is, Your Honor, because we're dealing with the
2 head of the Salvadoran minister of defense. We're not dealing
3 with the head of the guerrilla organization [indiscernible].
4 We're not dealing with this. We're dealing with [indiscernible]
5 the head of minister of defense, the minister of defense and
6 that's why [indiscernible].

7 MR. HANDEL TO JUDGE

8 The Government has been given great latitude, Your Honor,
9 in presenting thousands of pages of documents regarding the
10 history in El Salvador, the background in El Salvador, all sorts
11 of cables that are substantiated, some unsubstantiated. I
12 believe we ought to be given the same type of leeway to briefly
13 explore this area.

14 JUDGE TO MR. HANDEL

15 I have to note that the background information provided by
16 the Government does contain a good deal of information about the
17 FMLN. I don't need much background on them. If you can tie it
18 very closely to what we're discussing here, I'll allow the
19 questioning, but we've got quite a bit of history as to what was
20 going on regarding the FMLN of El Salvador. So I don't think as
21 far as I'm concerned they're not getting shortened in any
22 fashion, but I'm just going to allow you a couple more questions
23 and we have to move on.

24 MR. HANDEL TO JUDGE

25 Yes, Your Honor. That's all I have [indiscernible].

(b) (6)

1 MR. HANDEL TO DR. KARL

2 Q. So once again, what was the relationship between the
3 FMLN and the supporting groups?

4 A. I think as I testified earlier, there was a huge mass
5 movement to, civilian movement, unarmed civilian movement to
6 democratize El Salvador, have a land reform, have minimum wage
7 and there were other demands as well. Those goals were shared
8 in the platform of the October '79 progressive officers of what
9 are called the popular organizations. That's the language that
10 Salvadorans use and of the FMLN. That was the platform of all
11 of that. So they shared the same objectives, but the civilian
12 organizations were in fact civilian organizations. The military
13 believed they were linked and that they were appropriate
14 military targets. They were civilian unarmed organizations.

15 MR. HANDEL TO JUDGE

16 One moment, Your Honor.

17 JUDGE TO MR. HANDEL

18 Okay.

19 MR. HANDEL TO DR. KARL

20 Q. Now, the reforms in human rights, improvements in
21 human rights that we've talked about during this cross-
22 examination as reflected in the U.S. Department of State Country
23 Reports and U.N. documents and certifications from the United
24 States administration at the time during those all years, taking
25 all that into account, would you agree that the Salvadoran

(b) (6)

1 military made improvements in human rights during the years in
2 question?

3 MR. CRAIG TO JUDGE

4 Your Honor, I'd just ask that he define the years in the
5 question so it's not --

6 JUDGE TO MR. HANDEL

7 It might be helpful.

8 MR. HANDEL TO JUDGE

9 Sure.

10 MR. HANDEL TO DR. KARL

11 Q. Let's talk about from 1983, 1984, 1985, 1986, and
12 1987. Let's start with that.

13 A. No.

14 Q. Okay.

15 A. You're starting --

16 Q. Your position, your position is contrary then to the
17 position of --

18 A. Oh, I'm sorry. You said '84 and '87.

19 Q. No. I said '83, '84, '85, '86, and '87.

20 A. Okay. I previously testified and I will repeat that
21 there is a significant drop in human rights abuses in 1984 and
22 1985 and they start to rise in 1986, get much higher in '87, and
23 get higher still in '88 which is when massacres come back as
24 well.

25 Q. Now, the -- oh, so in '84 and '85 in those two years

(b) (6)

1 and I think you said part of '83.

2 A. No, well, not really.

3 Q. But --

4 A. It changes from, the change is after the Bush visit.

5 So it is he comes in December 2nd and 3rd I believe 1983. The

6 change starts in '84, the beginning and there and as I've

7 testified, there are what we call stages of human rights abuse.

8 Right. There are and the way Freedom House defines it, they

9 have to have a scale, what's called a scale of terror and the

10 scale of terror means --

11 DR. KARL TO MR. CRAIG

12 Do we have it? Can I show it?

13 MR. HANDEL TO DR. KARL

14 Q. Hold on. Let me --

15 A. It will show you what it means. So what it means is

16 at the top of the scale is mass violence --

17 Q. Well, I didn't ask you the specifics.

18 A. -- against civilians.

19 Q. Hold on. I asked you the question. Let me repeat the

20 question. The question was, during the years of 1984 and '85 --

21 A. There was an improvement.

22 Q. There was an improvement.

23 A. Absolutely.

24 Q. And, and that was during the time that Carlos Vides

25 Casanova was minister of defense of El Salvador.

(b) (6)

1 A. That's correct.

2 Q. And did he have any part in that improvement?

3 A. Absolutely, I mean, what --

4 Q. It's a yes or no question. He did have a part in it.

5 A. Yes. He was the, the key person for lower those

6 abuses.

7 Q. Thank you.

8 A. His authority in the armed forces was crucial.

9 JUDGE TO DR. KARL

10 Q. You want to add to that.

11 A. Okay.

12 Q. Please don't. Okay.

13 A. Okay.

14 MR. HANDEL TO DR. KARL

15 Q. Now, the, the, the reports, the Country Reports that

16 we reviewed discuss and I believe each one of them discussed the

17 discipline of military personnel for human rights violations

18 during the years in question and, and do you agree with the

19 conclusion in those reports that that component of human rights

20 improved during 1984 and 1985?

21 A. No.

22 Q. And how about the conclusion of the Country Reports

23 for those two years 1984 and 1985 that there was --

24 A. I'm sorry. On your last question, did you say

25 officers or everyone? I --

1 Q. Everyone.

2 A. You said everyone. I can't answer that in a simple
3 yes or no. I'm not able to. Sorry. I'm a teacher and we just
4 can't do those kind of things too often. No, no. I can't
5 answer that in a simple yes or no.

6 Q. Thank you.

7 A. Let me retract that.

8 Q. Okay. And during those two years 1984 and 1985, do
9 you agree with the conclusion of the Country Reports that there
10 were improvements in the Salvadoran military's investigations of
11 human rights abuses?

12 A. No. I do not agree with that.

13 Q. So when you say that that you, you do agree that there
14 were significant human rights improvements during those two
15 years '84, 1984 and 1985, what part of the Country Reports
16 regarding to that do you agree with?

17 A. I think that I have testified that I believe that
18 there's a clear pattern in human rights abuses and that they
19 dropped after '83. Actually, you to permit me, I think that it
20 was mass killings through '80 and '81. It moved into what we
21 call egregious targeted killings or even mass targeted killings
22 through '83 and it dropped to targeted killings which are still
23 egregious human rights violations in '84 and '85.

24 JUDGE TO DR. KARL

25 Q. So is it just the number that you don't agree with?

(b) (6)

1 A. Number those down, that's exactly right.

2 Q. Is that what you agree with?

3 A. I agree that the number of human rights abuses goes
4 down in, in '84 and decreases quite substantially.

5 Q. Okay.

6 JUDGE TO MR. HANDEL AND MR. CRAIG

7 So we'll take one more break ten minutes and then we'll
8 come back and finish up.

9 MR. HANDEL TO JUDGE

10 I'll be finishing up with her before lunch, Judge.

11 JUDGE TO MR. HANDEL

12 Okay. Very good.

13 (OFF THE RECORD)

14 (ON THE RECORD)

15 JUDGE FOR THE RECORD

16 Back on the record.

17 JUDGE TO MR. HANDEL

18 We'll continue with cross-examination, Mr. Handel.

19 MR. HANDEL TO JUDGE

20 Thank you, Your Honor.

21 MR. HANDEL TO DR. KARL

22 Q. You had testified that the United States military
23 advisors were providing various types of assistance to the El
24 Salvadoran forces. Did that also include surveillance of
25 individuals who were later assassinated?

(b) (6)

1 A. Did U.S. military personnel conduct surveillance?
2 Q. Did either U.S. military or civilian officials?
3 A. The Central Intelligence Agency advised in the
4 conduction of surveillance.
5 Q. Was surveillance actually conducted by the U.S.?
6 MR. CRAIG TO JUDGE
7 What's relevant [indiscernible]?
8 MR. HANDEL TO JUDGE
9 I'll move on, Judge. That's fine.
10 JUDGE TO MR. HANDEL
11 Okay. Thank you.
12 MR. HANDEL TO DR. KARL
13 Q. Now, there's been testimony during the course of this
14 hearing regarding the suspension of classes at the universities
15 in El Salvador during the civil war. Was this a common
16 occurrence?
17 A. I don't remember testifying to that.
18 Q. No, no. I didn't say you testified. There was
19 testimony --
20 A. Oh.
21 Q. -- during the course of this trial.
22 A. Oh, oh, well the National University was closed for a
23 time and it was completely ransacked by the national guard.
24 Q. The only question was, was whether they were closed.
25 A. They were closed. Yes.

(b) (6)

1 JUDGE TO DR. KARL

2 Q. And that was on more than one occasion.

3 A. Well, it didn't reopen. The director was killed.

4 Q. So on one occasion, it was closed.

5 A. It was closed. I remained closed for quite a long
6 time. I think it -- I'm not sure when it actually reopened, but
7 I believe it was after the beginning of peace talks.

8 Q. Okay.

9 A. I'm not sure about that though. I don't remember the
10 date of reopening.

11 Q. Okay. Thank you.

12 MR. HANDEL TO DR. KARL

13 Q. How about other universities?

14 A. The Jesuit Catholic university, the University of
15 Central America operated almost entirely through the war if I
16 recall, although its rector fled the country after death threats
17 as did its director of studies and its director of human rights.

18 Q. The question was whether any other universities were
19 closed.

20 A. Oh, okay. I'm sorry. I don't think -- I think they
21 remained open the whole time.

22 Q. Now, you've testified regarding the Salvadoran
23 military extensively. Do you have knowledge as to the various
24 uniforms that the Salvadoran military used during the civil war?

25 A. You know I didn't review for this hearing the colors

(b) (6)

1 of the uniforms, but I do remember some of them since some of
2 them stand out to me quite a bit, black helmets.

3 Q. Which ones are those?

4 A. Black helmets of the national guard for example, the
5 uniforms and boots of the guard I remember.

6 Q. And describe them.

7 MR. CRAIG TO JUDGE

8 If counsel [indiscernible].

9 JUDGE TO MR. HANDEL

10 That may be beyond the scope of direct.

11 MR. HANDEL TO JUDGE

12 That's fine, Judge. We'll just move on.

13 JUDGE TO MR. HANDEL

14 I don't remember a reference to the uniforms by the
15 professor.

16 DR. KARL TO JUDGE

17 No.

18 MR. HANDEL TO DR. KARL

19 Q. Now, during the time that the guerrillas were active
20 in El Salvador in the civil war, did they use civilians as
21 shields?

22 MR. CRAIG TO JUDGE

23 I do note my objection to what the guerrillas did or did
24 not do [indiscernible].

25 MR. HANDEL TO JUDGE

(b) (6)

1 Your Honor, the testimony has been as to human rights
2 abuses about unarmed civilians and I'm asking specifically about
3 that.
4 JUDGE TO MR. HANDEL
5 A couple of questions I assume.
6 MR. HANDEL TO JUDGE
7 Yes, Your Honor.
8 JUDGE TO MR. HANDEL
9 All right.
10 JUDGE TO DR. KARL
11 Q. Go ahead.
12 A. Not to my knowledge. I don't remember that particular
13 accusation of human rights abuses against the guerrillas.
14 MR. HANDEL TO DR. KARL
15 Q. Did they hide among civilian populations?
16 A. Yes. They did and for that reason, I doubt they would
17 use civilians as shields because they depended on hiding.
18 JUDGE TO DR. KARL
19 Q. Hold on.
20 A. Sorry.
21 Q. You're beyond. You're beyond the answer to the
22 question.
23 A. Sorry. Yeah. That's --
24 Q. Do the best you can.
25 A. I am trying.

(b) (6)

1 MR. HANDEL TO DR. KARL

2 Q. Now, I believe you testified also during direct that
3 there was quite a bit of street crime during the civil war years
4 as well.

5 A. No. I didn't testify to that.

6 Q. You didn't testify that there was an increase in
7 street crime during those years.

8 A. I don't believe I did, no.

9 Q. Was there an increase?

10 A. I wasn't following criminal you know sort of normal
11 daily crimes in, in El Salvador. I didn't do that kind of
12 study. So I don't know.

13 MR. HANDEL TO JUDGE

14 One moment, Your Honor.

15 JUDGE TO MR. HANDEL

16 Any other questions?

17 MR. HANDEL TO DR. KARL

18 Q. During the time --

19 MR. HANDEL TO JUDGE

20 Yes, Your Honor.

21 MR. HANDEL TO DR. KARL

22 Q. During the time that Duarte was president of El
23 Salvador, who was the commander in chief of the Salvadoran armed
24 forces?

25 A. By law, it was the president. De facto --

(b) (6)

1 Q. I'm asking you by law, who was it?
2 A. By law, by law, it was the president.
3 Q. Was there a report prepared by Secretary of State
4 Henry Kissinger in El Salvador during the time period of the
5 civil war?
6 A. Yes.
7 Q. And what was the conclusion of that report?
8 A. I don't recall. I haven't seen it since probably
9 1984.
10 Q. Do you remember if you agreed with the conclusions of
11 that report?
12 A. The Congress people that I traveled with I believe
13 filed a dissent.
14 Q. I'm asking you.
15 A. Yeah. I, I don't remember the conclusions. I'd have
16 to look at them again. I'm sorry.
17 Q. Now, you've never spoken to the respondent Mr. Vides,
18 correct?
19 A. I've never interviewed him. No.
20 Q. Have you ever spoken with him?
21 A. I think we've exchanged hellos.
22 Q. I mean, other than that, you've never spoken to him.
23 A. No, I have not.
24 Q. You were never present when any military orders were
25 issued by General Vides, correct?

(b) (6)

1 A. No, I was not.

2 Q. Now, regarding --

3 MR. HANDEL TO JUDGE

4 Actually, Your Honor, I don't have any other questions at

5 this time.

6 JUDGE TO MR. HANDEL

7 Okay.

8 JUDGE TO MR. CRAIG

9 Mr. Craig, do you have redirect?

10 MR. CRAIG TO JUDGE

11 Yes.

12 JUDGE TO MR. CRAIG

13 I don't remember if it was Mr. Craig or Mr. Stanley. I'm

14 sorry.

15 MR. CRAIG TO JUDGE

16 Yes, Your Honor. I have redirect.

17 JUDGE TO MR. CRAIG

18 Go ahead, sir.

19 MR. CRAIG TO JUDGE

20 Thank you.

21 MR. CRAIG TO DR. KARL

22 Q. Professor Karl, do you mentioned several times you did

23 not agree with the conclusions of the State Department Country

24 Reports. Why is that? I should say some of the conclusions not

25 all of them, but why is that?

(b) (6)

1 A. Vice -- President George Bush after he became
2 president changed U.S. policy towards El Salvador and in that
3 change, one of the key issues was the nature of reporting. This
4 is because he from his own experience believed that the
5 reporting had seriously underreported what he called "the
6 terrorism of the right" and what the Assistant Secretary of
7 Defense called "the fascist character of some officers in the
8 armed forces" and that's a quote and in trying to understand how
9 this reporting had occurred, there was an investigation done by
10 the State Department of reporting in El Salvador in particular.
11 This investigation I believe started under Bush and continued
12 under Clinton and actually came up with a report. The report
13 stated, gave several conclusions and one of them is not in the
14 report, but it is clear from the, everyone I've talked to about
15 it. One is that the certification process itself put an
16 enormous responsibility on the people doing the reports to show
17 progress because if they couldn't show progress, it had to be
18 cut by law. So that led to a distortion and imbalance on
19 reporting to more reporting on, to an insistence that El
20 Salvador was transitioning to democracy and that there was a
21 democracy and a democratic military being reported. As a result
22 of the belief that there was a systematic bias in the reports, I
23 think there was accommodation of the reports of Pickering and
24 White if I recall, but I'm not quite sure about that. I know
25 they were commended.

(b) (6)

1 Q. Pickering and White were two U.S. ambassadors.

2 A. Were two U.S. Ambassadors. Correct. This was not the
3 case in their reporting, but as a result of this, this report,
4 the way the United States State Department started doing Country
5 Reports changed quite substantially so that I think by any
6 accounts for human rights experts, they have become much more
7 balanced and reliable documents than they were in the past. So
8 they have, they have adopted a new methodology about how they
9 count. They spend a lot of time with many people trying to
10 figure out how to measure in terms of numbers human rights
11 abuses and how to capture the subtleties that they missed and
12 the and the egregious things that they also missed. So the
13 reports are more reliable now than they were at the time.

14 Q. All right. So what you're saying is the reports
15 issued when Pickering was ambassador to El Salvador and when
16 White was ambassador to El Salvador were fairly accurate.

17 A. Well, they were commended in the report.

18 Q. Okay.

19 A. I think there was not a criticism of the facts that
20 were presented, but there was a criticism of both the
21 interpretation of the facts and the intense, the balance between
22 reporting of left and right crimes or human rights abuses and
23 the left and the armed forces and the really necessity of the
24 report to say that there was progress in the Salvadoran
25 military.

(b) (6)

1 Q. So the criticisms of the reports you said would have
2 been when Corr was ambassador. Is that correct?

3 A. Yes, not just Corr.

4 JUDGE TO MR. CRAIG

5 Let's not lead her.

6 JUDGE TO DR. KARL

7 Q. What, what time period are we talking about as far as
8 criticism?

9 A. The criticism of the reports is right through. So
10 there is as I said --

11 Q. Beginning, beginning about when?

12 A. I would say beginning 1980.

13 Q. Okay.

14 A. And, and then as the certification process came and,
15 and the reports were being prepared for the certification, if
16 you couldn't certify progress in human rights, you couldn't get
17 aid. So I mean, that was the reason for why Secretary Schultz
18 went down and he says -- you can see it in the memorandum of
19 conversations. He says I'm not going to certify this anymore.
20 I'm not putting my name on this and, and that was the reason for
21 the Bush visit. They were not going to be able to do it anymore
22 because the evidence didn't -- it was too obvious that the
23 reports were wrong and subsequently and I want to be clear about
24 this, the State Department did its own investigation and its
25 methodology has significantly improved, but that is post war in

(b) (6)

1 El Salvador. That doesn't affect anything that we're talking
2 about here.

3 MR. CRAIG TO DR. KARL

4 Q. You were asked on cross-examination about the justice
5 system civilian courts and all that. Did Vides Casanova when he
6 was either director general of the national guard or minister of
7 defense, did he cooperate with the civilian judicial system?

8 A. No.

9 Q. And what makes you say that he did not cooperate?

10 A. I think that if you look at the consistent reporting
11 in the cables, including a number that I cited in my report,
12 every ambassador who comes hopes that they can work with General
13 Vides and comes in with a statement about what a good soldier he
14 is, et cetera, what a good leader he is and by the end, every
15 single one ends up saying he is not cooperating on these issues
16 and in particular, I think the, one of the most thorough memos
17 is, is presented by Ambassador Corr and that memo tracks a
18 killing which I cite in my report at great length actually. It,
19 it attracts. It, it -- what he says is that they go to General
20 Vides and they say we know who did this killing and his name is
21 I believe Tony and if I can look up the exact number, I think
22 this is in, I know it's in my report. It is on page 37 of my
23 report. He says this is set of killings in the 1st, that the
24 1st brigade does and the civilian judge orders General Vides to
25 provide the names of the 1st brigade's soldiers who were

(b) (6)

1 patrolling on the night that these killings occurred. These are
2 called the Melendez murders or they're also called the Puerta
3 Del Diablo murders. That's, P U E R T A, del, D E L, Diablo, D
4 I A B L O. The judge actually orders General Vides to give him
5 the names and Vides gives him a list of 450 names which was
6 clearly obfuscating and obstructing what the judge had asked
7 for, including 50 names that were Antonio, named Antonio and
8 that left the judge with the only remedy to go to the commander
9 of the 5th brigade who was Colonel Campos Amaya and try to get
10 them from him. There was no way Colonel Campos Amaya was going
11 to give these names if General Vides didn't give them, none. I
12 mean, there are many other examples in my report if you want me
13 to continue, but there are many other examples I give of
14 noncooperation, obfuscating, et cetera.

15 Q. All right.

16 A. Dissembling.

17 Q. And is that one of the reasons that the civilian
18 courts were not effective is the lack of cooperation by Vides
19 Casanova?

20 A. I think it was more than the lack of cooperation. It
21 was that people were really scared, really scared and they were
22 scared of the military and they were scared. I think I've said
23 this several times. When you can, when the head of the supreme
24 court of El Salvador is engaged in death squad activity with the
25 military, when there is a death squad operating out of the

(b) (6)

1 legislature, when legislators are getting death squad threats
2 while they're giving a speech, the phone rang on the, on the
3 podium, this country is laden with fear and it is laden with
4 fear of military officers. So if General Vides obstructs or if
5 General Vides intimidates Archbishop Rosa Chavez who replaces
6 eventually Bishop Rosa, excuse me, Bishop Rosa Chavez who is the
7 highest figure in the church, nobody feels safe. Nobody feels
8 safe. That's why the actions of the mother of Manuel Tolejo of
9 refusing --

10 MR. HANDEL TO JUDGE

11 Your Honor, this is well beyond --

12 DR. KARL TO MR. CRAIG

13 -- to hand over --

14 MR. HANDEL TO JUDGE

15 The question is well beyond, the answer is well beyond the
16 question.

17 DR. KARL TO JUDGE

18 I'll stop. That's fine.

19 JUDGE TO MR. CRAIG

20 Okay. Let's have a follow up question if you want to, Mr.
21 Craig.

22 MR. CRAIG TO JUDGE

23 I think she answered my follow up question as well.

24 JUDGE TO MR. CRAIG

25 Okay.

(b) (6)

1 MR. CRAIG TO JUDGE

2 All right. I will move on.

3 MR. CRAIG TO DR. KARL

4 Q. You were asked about some investigations that, you
5 were asked on cross-examination about some investigations that
6 Vides Casanova set up to investigate death squads. Do you think
7 those were effective investigations?

8 A. I testified no. I explained in my original testimony
9 that he put known human rights abusers as heads of these
10 commissions. Eventually as a result of U.S. pressure, the
11 special investigative unit which I was asked about in cross,
12 it's probably SIU, was set up with U.S. pressure. That unit is
13 significantly criticized throughout the cables afterwards for
14 not investigating thoroughly, for not going after evidence, for
15 delays, for refusing to take steps, and it is headed in
16 different time periods by a known human rights abuser and later
17 by a known and convicted drug dealer. Excuse me. I'm not sure
18 he was convicted yet, but a known drug trader.

19 Q. You were asked about the discipline and punishment of
20 military personnel for certain human rights abuses and I believe
21 you made a statement that the Sheraton and the churchwomen
22 murders were the only cases in which any military personnel were
23 punished or disciplined for human rights abuses. Is that
24 accurate?

25 A. That's correct to my knowledge. Yes.

(b) (6)

1 Q. And were those officers that were punished or
2 disciplined or were they --

3 A. No.

4 Q. Who were they?

5 A. There were no officers punished for human rights
6 abuses at all during General Vides' period as minister of
7 defense.

8 Q. So those were --

9 A. Only the lower level people and generally those were
10 in to my knowledge, those were only in the cases of the murders
11 of U.S. citizens where there was significant pressure from the
12 Congress.

13 Q. You were also asked about the certification process
14 and that that became a source of conflict within the U.S.
15 Government. What was that source of conflict?

16 A. The U.S. Government was deeply divided over what
17 policy ought to be in El Salvador and those divisions grew worse
18 and worse. Well, actually, I shouldn't put that way. They were
19 intense from '80 to '83. They lessened with Duarte's taking
20 over the presidency and then they started to grow intensely
21 again in '86, '87, and '88 and then particularly in '89 when aid
22 was finally cut. So those divisions were essentially whether
23 you believed this was a Marxist insurgency or a genuine civil
24 war with genuine grievances on both, on, on different sides and,
25 and genuine differences about how El Salvador should be governed

(b) (6)

1 and how its peasants should be treated. So if you believed it
2 was a genuine civil war and not an issue primarily of Marxist
3 insurgency, then those congressmen and that was a very, and
4 senators, that was a very large group were not happy about aid
5 to a military that murdered U.S. citizens and in particular
6 religious personnel, people. So that debate just went on and on
7 and on and on and the certification was set up originally to
8 ensure that if there were no progress, aid would be cut. The
9 problem became is if the president of the United States uses
10 these reports to say that there is no, that there is progress,
11 then in fact you can't cut aid entirely. Now, there's a number
12 of times when aid is diminished particularly around the Sheraton
13 murders. So if you track when there's no progress in the
14 Sheraton murders, there is a cut of, I don't remember, of a
15 certain amount of aid, but aid stays really until after General
16 Vides leaves and six Jesuit priests are murdered and that's when
17 aid is cut finally.

18 Q. Okay. You were also asked when Duarte was president
19 of El Salvador who was commander in chief and you answered the
20 de jure commander in chief would have been President Duarte and
21 maybe just if you can take a moment to explain the difference
22 between de jure and de facto power just as brief as you can make
23 that.

24 A. Yeah. I think President Duarte's autobiography makes
25 it very clear and I think my interviews with him and with

(b) (6)

1 President Amaya before him is that they had no civilian control
2 over the military which meant that they could not command the
3 military. Orders might go out in their name, but President
4 Duarte never told General Vides what to do.

5 Q. So who was the de facto head of the military?

6 A. General Vides.

7 Q. And when you say de facto head, what do you mean by
8 that?

9 A. The minister of defense is the single most important
10 position in El Salvador during this period of time.

11 Q. You were asked the drops of the human rights abuses in
12 '84 and '85. Did human rights abuses committed -- let me
13 rephrase that. Did the security forces or the military ever
14 stop committing human rights abuses?

15 A. Never and they were always at the level of what we
16 call gross and systematic violations. These are terms that
17 human rights investigators use and what I mean by that when I
18 talk about a drop is that it -- and now I'm using the terms of
19 Freedom House which is a Government, a U.S. Government funded
20 organization. Freedom House distinguishes between mass state
21 terror, which it calls El Salvador in the early '80s, targeted
22 state terror, and then highly targeted state terror. So El
23 Salvador never moves out of the highly targeted state terror
24 category. This, what this means is that the most important
25 thing to study in terms of patterns in my, this is now my

(b) (6)

1 opinion, is not exactly the numbers, but the change in who gets
2 killed. So in the civilians, what happens from 1984 after the
3 Bush visit is that the people who get targeted are no longer the
4 top of a labor union. They're no longer the top of a peasant
5 organization. They're no longer the head of a political party,
6 but they're like number three. All of a sudden, now, the
7 treasurers start to die of whatever, the labor union, people
8 that nobody knows, people that nobody, that the U.S. personnel
9 go back and forth and haven't met and that's the notion of
10 highly targeted. It's less visible. It's harder to prove
11 particularly in rural areas, harder to. I shouldn't say prove.
12 It's not hard to prove, but it's harder to get information
13 flowing about it because the people aren't as prominent and
14 aren't as well known.

15 Q. The, the security forces continuing to committing
16 human rights abuses, did this lead to any problems for the
17 security forces during the U.N. peace negotiations at all?

18 A. Yes.

19 MR. HANDEL TO JUDGE

20 Objection. Beyond the scope of direct.

21 JUDGE TO MR. HANDEL

22 Yes.

23 MR. HANDEL TO JUDGE

24 Well, of the, of the cross. Excuse me.

25 JUDGE TO MR. CRAIG

(b) (6)

1 I'm trying to keep it all straight, Mr. Craig, but I think
2 that may be beyond.

3 MR. CRAIG TO JUDGE

4 That's fine, Your Honor. I'll move on.

5 MR. CRAIG TO DR. KARL

6 Q. You were -- regarding the drop in the human rights
7 abuses, you stated that the respondent Vides Casanova was the
8 key person in the lowering of those abuses. Is that correct?

9 A. That's correct.

10 Q. And does that mean that he had the power to lower the
11 human rights abuses during the entire time that you had said?

12 A. That's correct.

13 Q. But he could have lowered them even before Vice
14 President Bush's visit.

15 A. That's correct.

16 Q. Does that mean he also had a role in the increase of
17 the human rights abuses in '86, '87, '88?

18 A. That's correct.

19 Q. And what would his role have been in the increase?

20 A. What happens in '87 and '88 is that there is
21 tremendous pressure from the Salvadoran population for a peace
22 settlement. People do not want the war to go on. The country
23 is being totally destroyed and the military high command is not
24 in favor of a settlement or a negotiation in practice. There
25 had been talks that have broken down several times and there

1 becomes a fight inside both the civilian government of Duarte
2 and the military about whether or not to have peace talks. As
3 that fight grows, highly targeted terror turns to target people
4 who are for the peace agreement, in other words, who are for a
5 settlement and because of that, we see the reappearance of a
6 very terrorist death squad, the reappearance of death threats,
7 the reappearances of, of men in civilian clothes who get their
8 victims from army officers or from national guard, et cetera.
9 We see all that come back which had not been present in the '84,
10 '85. Clearly, the violations were present, but the public
11 nature of it came back in '87 and '88 and it was for that reason
12 that Vice President Quayle was sent once again to say you have
13 to remove these people and he gave General Vides a list of
14 people and a particular investigation that he somehow became
15 very personally involved in. I'm not sure of the details of
16 that, but he was very interested in the San Sebastian massacre,
17 the one that is also called La Cevadilla, C E V A D I L L A. so
18 he --

19 MR. HANDEL TO JUDGE

20 Your Honor, I'd object to this being beyond the scope of
21 the question.

22 JUDGE TO MR. CRAIG

23 Well, just a follow up question if you will, sir.

24 MR. CRAIG TO JUDGE

25 Yes, Your Honor.

(b) (6)

1 MR. CRAIG TO DR. KARL

2 Q. So your conclusion is that Vides Casanova being head
3 of the minister of defense played a large role in the increase
4 of human rights abuses towards the end of the civil war. Is
5 that correct?

6 A. That's correct.

7 Q. Thank you.

8 MR. CRAIG TO JUDGE

9 I don't have any other questions.

10 JUDGE TO MR. CRAIG

11 All right.

12 JUDGE TO MR. HANDEL

13 Mr. Handel, anything?

14 MR. HANDEL TO JUDGE

15 Just a few questions.

16 MR. HANDEL TO DR. KARL

17 Q. You just testified now in response to questions by Mr.
18 Craig regarding differences in the U.S. Government between those
19 who believed that there was a Marxist insurgency and those who
20 believed and I didn't get. What was the second group?

21 A. The second group believed there was a genuine civil
22 war going on in El Salvador that involved two very different
23 visions about how the country should be governed whether it
24 should continue to be governed by the military or whether it
25 should transition to a democracy in which all groups inside the

(b) (6)

1 country could participate in the election.

2 Q. And the group that believed that there was a Marxist
3 insurgency, what did they believe?

4 A. I'm not sure I understand your question.

5 Q. Well, you just explained what the group that believed
6 that there was a transition and the group that adhered to the
7 [indiscernible] that there was a Marxist insurgency. What was
8 their fear?

9 A. Their fear was that if there were, if there was a
10 democracy and a, an end to military aid that the guerrillas
11 would win the war. That was their fear and that El Salvador
12 would be taken over by the FMLN.

13 Q. Right.

14 A. Which they believed was a Marxist inspired insurgency.

15 Q. And that was the belief of the Reagan administration,
16 correct?

17 A. That was the belief of the Reagan administration.

18 Q. Okay.

19 A. No. I'm not -- no. Let me back up. That was the
20 belief of some of the people in the Reagan administration. By,
21 by the late 1980s, there was a significant fight inside the
22 Reagan administration over that interpretation and it changed
23 after George Bush was elected.

24 Q. Okay. Now, you also just testified in response to
25 questions by Homeland Security about the cooperation of, of the

(b) (6)

1 minister of defense Vides Casanova with the civilian courts and,
2 and I believe your testimony was that a reason that the courts
3 were not effective was because of that lack of cooperation.
4 Now, isn't it true that those courts prior to Vides Casanova
5 were never effective?

6 A. On human rights crimes or on anything.

7 Q. In general.

8 A. Well, let me say it's not a civilian judicial system
9 that I would admire, but I think it had a certain type of
10 effectiveness before the war on common crime, a certain type.

11 Q. It had some effectiveness on common crime.

12 A. On common crimes.

13 Q. And on other things.

14 A. Not many other things came up in front of it.

15 Q. Well, other than common crimes, they didn't, the
16 civilian court didn't deal with anything else.

17 A. I'm sorry. I'm trying to remember before the war what
18 the civilian courts actually dealt with. I don't think that's
19 where important political issues were resolved and in that and
20 for that reason, I'm not a specialist on the civilian courts.
21 I'm only a specialist in the sense that they affect or do not
22 affect the major decisions that are made in the country.

23 Q. Did the civilian courts prior to Vides Casanova have a
24 reputation for independence?

25 A. No.

(b) (6)

1 Q. And what difference does it make what Vides Casanova
2 did or did not do with them whether he cooperated or not? What
3 difference does it make? If they were not independent to begin
4 with, then it would make no difference whether he cooperated or
5 not.

6 A. Is that your question?

7 Q. Yes.

8 A. I think it will make a significant difference. For
9 example, if a judge knew that it was all right with the minister
10 of defense or the commander of the national guard to look into
11 an issue, a judge would do that. If they did not have that
12 assurance from the leading military officers in the country,
13 they were likely to find either that they might be killed and we
14 have many incidences of that, that their houses might be bombed.
15 We have many incidences of that. So it made a huge difference
16 what the minister of defense did in terms of the civilian
17 courts. In other words, if he had given a green light to the
18 courts to actually investigate human rights crimes as far as
19 they could go, it would have made a difference. If he had said
20 to the investigative units which were the national guard
21 particularly S-2, G-2 when he was minister of defense, the
22 treasury police, and the national police that he wanted full
23 cooperation from military abuses of human rights no matter how
24 high it went, I think we would have seen a different story.

25 Q. But that's your opinion because --

(b) (6)

1 A. That is my opinion.

2 Q. -- historically, historically that has, that was never

3 the case --

4 MR. CRAIG TO JUDGE

5 Objection, Your Honor.

6 MR. CRAIG TO DR. KARL

7 Q. -- in El Salvador.

8 A. But that wasn't your question.

9 MR. CRAIG TO JUDGE

10 Argumentative. This is not a --

11 JUDGE TO MR. CRAIG

12 Hold on.

13 MR. CRAIG TO JUDGE

14 -- argument between counsel and the witness. He's getting

15 into argument.

16 JUDGE TO MR. CRAIG

17 Let me interject a question.

18 JUDGE TO DR. KARL

19 Q. If you said that the civilian courts were, were never

20 fully independent, is that what you said?

21 A. There were no, there's no, there was never a judicial

22 independence. Actually in most courts in Latin America don't

23 have the notion of an independent judiciary that exists in this

24 country.

25 Q. But following up on his, Mr. Handel's question, how

(b) (6)

1 were they different before General Vides Casanova if they
2 weren't independent during his tenure?

3 A. Well, it wasn't different during the rise of
4 repression at al. I mean, it, that what I said would have also
5 gone for the minister of defense Garcia before him.

6 Q. Okay. And that's, that's what I was wondering.

7 A. That's right.

8 Q. Okay.

9 A. No. That absolutely would be the case.

10 JUDGE TO MR. HANDEL

11 Mr. Handel. Okay.

12 MR. HANDEL TO DR. KARL

13 Q. Now, you also just testified in response to questions
14 on redirect that your information regarding human rights levels
15 and so on came from Freedom House.

16 A. I'm sorry. My information on what?

17 Q. Regarding levels of human rights violations came from
18 Freedom House.

19 A. That's right.

20 MR. CRAIG TO JUDGE

21 Objection. I believe he's misstating.

22 DR. KARL TO MR. CRAIG

23 No. Yeah. Actually, that's not right.

24 MR. CRAIG TO JUDGE

25 I believe she, she said that the levels of terror came from

(b) (6)

1 Freedom House not the levels --

2 MR. HANDEL TO JUDGE

3 This is [indiscernible].

4 DR. KARL TO MR. HANDEL

5 The scale, the scale of terror.

6 MR. HANDEL TO DR. KARL

7 Q. The scale of terror.

8 A. This is not speaking of El Salvador. Right.

9 Q. Okay. The scale of terror came from Freedom House.

10 A. Yeah.

11 Q. Okay. Now, now the U.S. Government Country Reports
12 for the years that we talked about '84, '85 let's say do not
13 agree with, with that. Isn't that right?

14 A. Well, I would have to read all the reports. I only
15 read certain sections, but there is significant information in
16 the reports that you handed me of violations from the military.
17 So I, I don't know to put that together if I can put it that
18 way. Those reports are full of violations by the military. At
19 the same time, the bottom line statement of those reports is
20 that human rights abuses have dropped and I think I can't speak
21 for Freedom House, but according to its scale, they did drop.
22 According to what Freedom House categorizes and the way I should
23 say many academics categorize terror or what we call are state
24 terror, those categories are used very frequently. So the mass,
25 mass state terror, targeted state terror, highly targeted state

(b) (6)

1 terror are categories that a lot of us use. Now, how they put
2 those two together, I couldn't tell you.

3 JUDGE TO DR. KARL

4 Q. Those two being the Freedom House findings.

5 A. Freedom House scale and the State Department.

6 Q. Okay.

7 A. And I doubt they ever tried.

8 Q. Okay.

9 JUDGE TO MR. HANDEL

10 Go ahead, Mr. Handel.

11 MR. HANDEL TO JUDGE

12 I don't have any other questions.

13 JUDGE TO MR. CRAIG

14 Okay. Mr. --

15 MR. CRAIG TO JUDGE

16 Nothing further.

17 JUDGE TO MR. CRAIG

18 All right.

19 JUDGE TO DR. KARL

20 If no one has any further questions, Professor Karl, thank
21 you very much for your time and information and I think, well,
22 you'll be excused obviously.

23 JUDGE TO MR. HANDEL AND MR. CRAIG

24 And at this point, we'll take a break for lunch. Is an
25 hour sufficient for everyone?

(b) (6)

1 MR. CRAIG TO JUDGE

2 Yes, Your Honor.

3 MR. HANDEL TO JUDGE

4 Yes, Your Honor.

5 JUDGE TO MR. HANDEL AND MR. CRAIG

6 Okay. Very good. Be back in a --

7 (OFF THE RECORD)

8 (ON THE RECORD)

9 JUDGE FOR THE RECORD

10 We're back on the record after a lunch break and we're
11 ready to take the next witness Mr. or Ambassador Passage.

12 JUDGE TO MR. HANDEL

13 But you had a motion to make first, Mr. Handel.

14 MR. HANDEL TO JUDGE

15 Yes, Your Honor. At this time on behalf of the respondent
16 Carlos Eugenio Vides Casanova renew the motion to terminate
17 proceedings that was filed in this cause previously and the, I'm
18 not going to repeat the, what's in the motion essentially
19 because I think it, it spells out our, our position essentially
20 regarding that. The only, the only additions that I would make
21 at this time the motions will be based on testimony that's been
22 heard thus far in the case in connection with the testimony of
23 Mr. Romagoza. We had also filed a motion directed at the
24 identification Romagoza of respondent Carlos Vides Casanova and
25 would submit to the Court that based on the testimony there is

(b) (6)

1 no, there is no basis for that testimony to stand. The, the
2 case law we would submit in connection with eyewitness testimony
3 when it's of the type that occurred in this case where there was
4 even according to the new testimony of Romagoza that he saw the
5 face up to the nose which as the Court knows was dramatically
6 different than prior testimony is highly suspect. That combined
7 with the major discrepancies on key points in particular
8 regarding respondent and Romagoza show that that there is, there
9 is no credibility whatsoever in that testimony. Likewise, the
10 testimony of Daniel Alvarado shows the same major problems as
11 the Court heard in his testimony regarding, regarding the role
12 that respondent played in his questioning. It appeared not to
13 be credible. The testimony was only regarding a delegate of the
14 minister of defense. There was no support for that position.
15 It, it, it doesn't stand. The law as set forth in the motion is
16 clear that in order to sustain a charge that the Government has
17 brought in this case. It's not enough for there to be
18 allegations. There has to be, there has to be evidence. There
19 has to be proof not allegations, but actual evidence and we'd
20 submit that there has been no evidence, certainly no evidence
21 which is, which is credible. In addition to that, I would like
22 to direct the Court's attention to I just had it with me and now
23 I can't find it. There is a decision. Oh, here it is. I've
24 got it right here. There's a decision. If I may approach, Your
25 Honor.

(b) (6)

1 JUDGE TO MR. HANDEL

2 Yes, please.

3 MR. HANDEL TO JUDGE

4 I got a copy for the Government as well. The case is
5 Schneider v. Kissinger. It's the United States Court of Appeals
6 for the District of Columbia citation 412 F.3d 190. It's a 2005
7 decision and that decision I think is quite instructive for our
8 purposes here, Judge. You had proceedings that were brought
9 over not an Immigration Court. You had proceedings, a lawsuit
10 that was initiated in a federal court by families of torture
11 victims in Chile the same time period as we're talking about the
12 Salvadoran civil war. The claim was that the United States
13 Government was complicit, that it participated, that it was
14 involved, and the court dismissed the case. The Court of
15 Appeals that is dismissed the case and the decision was that
16 courts lack jurisdiction over political decisions by their
17 nature committed to the political branches to the exclusion of
18 the judiciary, citing decisions going way back. The court
19 declined to exercise jurisdiction in the case and I think the,
20 the analysis in the case particularly on page 6 of the decision
21 is quite instructive here. There is discussion about how in
22 1970 at the height of the cold war, officials of the Executive
23 Branch performing their delegated functions concerning national
24 security in former relations determined that it was in the best
25 interests of the United States to take such steps as they deemed

(b) (6)

1 necessary to prevent the establishment of a government in a
2 western hemisphere nation that in the view of those officials
3 could lead to the establishment or spread of communism as a
4 governing force in the Americas. The decision may have been
5 unwise or may have been wise. The political branches may have
6 since rejected the approach or not. In any event, that decision
7 was classically within the province of the political branches
8 and not the courts. The Supreme Court has repeatedly reminded
9 us political question doctrine excludes from the judicial review
10 those controversies which revolve around policy choices and
11 value determinations constitutionally committed, a resolution to
12 the halls of Congress or the confines of the Executive Branch
13 and this is so because the judiciary is particularly ill suited
14 to make such decisions as courts are fundamentally under
15 equipped to formulate national policies or develop standards for
16 matters not legal in nature. I think there was, there was
17 argument here that the court should look at it. There was
18 crimes committed. There was torture. There was all sorts of
19 matters that happened in Chile and that's actually the
20 discussions in the next page on page 7 of that decision where
21 the court said it is within the role of the executive to acquire
22 and exercise the expertise of protecting national security.
23 It's not within the role of the court to second guess executive
24 judgments made in furtherance of that branch's proper role and
25 the court said that the claimants were arguing that the court

(b) (6)

1 should get involved where basic rights were involved. The
2 decision of this court was that recasting foreign policy and
3 national security questions in tort terms does not provide
4 standards for making reviewing foreign policy judgments. The
5 conclusion was in order to determine whether the covert
6 operations which allegedly led to the tragic death of General
7 Chavaronco (phonetic sp.), the court would have to define the
8 standards that the government's use of covert operations in
9 conjunction with political turmoil in another country. There
10 are no [indiscernible] discoverable and manageable standards for
11 the resolution of such a claim and I think it applies
12 particularly in this case. As I said, it's not in the
13 Immigration context for sure. However, since this is a case in
14 many ways a first impression, I think that the same reasoning
15 would apply here, Your Honor, and we would submit that that not
16 only for the reasons as set forth in the motion to terminate
17 proceedings, but as a matter of a political question set forth
18 in that decision and after hearing the testimony in this case
19 and particular the testimony of Professor Terry Karl where she
20 acknowledged that there were deep differences and divisions
21 between those who saw Marxist-Leninist insurgency which
22 threatened the Americas, including the United States, security
23 of the United States and those who saw civil war, the policies
24 of the Reagan administration, the U.S. Government at the time
25 and the Congress which certified the efforts of the Salvadoran

(b) (6)

1 government under General Vides, the respondent in this case
2 notwithstanding what Professor Terry Karl said, the official
3 position of the United States Government not of a professor at
4 Stanford during the time in question has been set forth quite
5 clearly in the testimony. In light of that, we would ask the
6 Court to terminate proceedings.

7 JUDGE TO MR. HANDEL

8 All right. Thank you.

9 JUDGE TO MR. CRAIG

10 Response from either one of you, Mr. Craig.

11 MR. CRAIG TO JUDGE

12 Your Honor, as much as the respondent wants to turn this
13 trial into a debate about the policy of U.S. involvement in El
14 Salvador, that's not what this Court has to decide. The Court
15 does not have jurisdiction to decide that and that's quite
16 frankly not what we're here to decide. There is one issue and
17 one issue alone for the Court to decide and that's whether the
18 respondent Vides Casanova participated, assisted, or otherwise
19 participated in acts of torture and extrajudicial killing.
20 We're not her to debate U.S. policy during the cold war or the
21 fight against communism or anything like that. We're here to
22 decide whether the respondent assisted or otherwise participated
23 in acts of torture and extrajudicial killing. It's kind of
24 interesting that he raised a case where the United States
25 Government raises the political question doctrine to try and

1 avoid a suit or as a defense to a suit and the courts as this
2 Court is well aware, you're part of the Department of Justice
3 which is obviously part of the Executive Branch and the
4 political question doctrine is a defense to suits in the
5 judicial branch and so a defense raised by the Executive Branch
6 in the suit. It's not a political question doctrine can't be
7 used by private parties as a defense. The Government is
8 obviously the one bringing this case against the respondent.
9 The political question is, the doctrine is quite frankly
10 irrelevant. Yeah. It's simply irrelevant and is not something
11 for the Court to try and decide and again, the issues in this
12 case are not a debate over the policy of the U.S. involvement in
13 El Salvador. The issue is simply whether the respondent
14 assisted or otherwise participated in acts of torture and
15 extrajudicial killing. As for his other arguments, I think the
16 Court has previously rejected the motion to eliminate and can
17 decide on what weight to give the evidence in its decision after
18 closing arguments have been heard. As for the motion to
19 terminate, again, evidence is not closed yet and we still need
20 to make closing arguments based on the evidence. If the
21 respondent wants to waive his right to present any evidence and
22 to simply let the Court decide on the evidence presented, then
23 that's fine and we'll make our closing arguments based on the
24 evidence presented, but obviously we need an opportunity to make
25 our closing arguments and we'll make those closing arguments

1 once evidence is closed.

2 JUDGE TO MR. HANDEL

3 And that was not your intention.

4 MR. HANDEL TO JUDGE

5 No. It certainly was not my intention. If the Court is so
6 inclined, the Government is free to make its closing argument
7 now.

8 JUDGE TO MR. HANDEL

9 At this -- did you have anything else to add to --

10 MR. HANDEL TO JUDGE

11 No, Your Honor.

12 JUDGE TO MR. HANDEL AND MR. CRAIG

13 Okay. Basically, I'll just reiterate what I issued in my
14 order on April the 11th. At the conclusion of this hearing, I
15 will determine after a review of all the evidence and arguments
16 by the parties whether or not the Government has met its burden
17 of proof in the case and established the respondent's
18 removability or if in fact proceedings should be terminated.
19 It's premature for me to rule on the issues that are before the
20 Court. I will of course review Schneider v. Kissinger, see what
21 relevance it has to these proceedings at such time as I'm ready
22 to make my decision, but at this point in time, the motion will
23 be denied and we'll continue to go forward with any evidence
24 that the respondent wishes to present. Anything else before we
25 start that testimony?

(b) (6)

1 MR. HANDEL TO JUDGE

2 No, Your Honor.

3 JUDGE TO MR. HANDEL

4 Okay.

5 JUDGE TO MR. CRAIG

6 Mr. Craig.

7 MR. CRAIG TO JUDGE

8 Nothing further. Well, actually, I'm sorry. Before we
9 call Ambassador Passage, the respondent has listed both
10 Ambassador Passage and Ambassador Corr as expert witnesses.
11 However, I'd note he did not provide curriculum vitae, did not
12 provide an expert witness report for Ambassador Passage. We
13 finally got an expert witness report for Ambassador Corr that my
14 understanding is several years old and was not prepared for this
15 case, but we don't have a CV from Ambassador Corr either. So I
16 would object to either one of those witnesses testifying as
17 experts. I certainly have no objection to them testifying as
18 fact witnesses, but I do object to them testifying as experts.

19 JUDGE TO MR. HANDEL

20 Mr. Handel.

21 MR. HANDEL TO JUDGE

22 Your Honor, Ambassador Corr testified extensively,
23 extensively I say in the Romagoza case which the Government has,
24 is well aware of. Not only that, but the Government referred to
25 proceedings in the Romagoza decision in response to the motion

(b) (6)

1 to remedy. So certainly it would, it, it doesn't appear to be,
2 the Government's objection if any does not appear to be well
3 founded. Ambassador Corr has been the subject of testimony by
4 Professor Terry Karl and he's written extensively and certainly
5 yeah. There is a, there was a short report that was prepared
6 which the reason it was submitted because it's the same. I
7 mean, there's nothing is, nothing is changed. It's identical to
8 you know. he can re-sign it or re-date it if, if as needed, but
9 otherwise it's identical. So other than reinvent the wheel, we,
10 we've submitted that particular report and given once again the
11 Court's relaxed standards of evidence, we'd submit that we'd be
12 allowed to question the witnesses.

13 JUDGE TO MR. HANDEL

14 And we do not have a CV for Ambassador Passage. Is that
15 right?

16 MR. HANDEL TO JUDGE

17 That's correct.

18 MR. CRAIG TO JUDGE

19 Or Corr.

20 JUDGE TO MR. CRAIG

21 Yeah. Okay. All right.

22 JUDGE TO MR. HANDEL

23 Why don't we have Ambassador Passage testify? If you want
24 or want to try to now both as experts. Is that what you're
25 getting at?

1 MR. HANDEL TO JUDGE

2 Yes.

3 JUDGE TO MR. HANDEL

4 Okay. Why don't you do what you would to qualify him?

5 I'll take the objections from the Government. We'll hear at
6 least factual testimony from him at the outset. That's why I'm
7 not going to disallow his testimony and then we'll see there the
8 testimony takes us.

9 MR. HANDEL TO JUDGE

10 That's fine, Judge. Let me go and call him.

11 JUDGE TO MR. HANDEL

12 Yeah.

13 JUDGE FOR THE RECORD

14 I'll go off the record momentarily.

15 (OFF THE RECORD)

16 (ON THE RECORD)

17 JUDGE to MR. PASSAGE

18 Q. Please be seated, sir.

19 A. Thank you.

20 Q. Welcome to the Orlando Immigration Court.

21 A. Thank you.

22 Q. Could you tell me your true and complete name, please?

23 A. I use my complete name which is David Duell, D U E L
24 L, Passage just the way it sounds, P A S S A G E.

25 Q. All right. Thank you and do you have a business

(b) (6)

1 address that you could give us?

2 A. It is the same as my home address. It is (b) (6)

3 (b) (6)

4 (b) (6) [indiscernible].

5 Q. Okay. And you were born in what city and state, sir.

6 A. Born in Charlotte, North Carolina and the date was
7 June 16, 1942.

8 Q. All right. It make show old today?

9 A. Thirty-nine.

10 Q. Okay. If you try one more time.

11 A. Sixty-eight.

12 Q. Sixty-eight years old. All right.

13 A. I try to avoid thinking about it.

14 Q. Okay. If you could raise your right hand for me. Do
15 you swear or affirm that the testimony you have given and you
16 are going to give will be true and correct?

17 A. I do.

18 Q. Okay. You may put your hand down and you've testified
19 in different tribunals I assume.

20 A. I have usually on behalf of the Government.

21 Q. Okay. Well, then I won't give you the instructions I
22 usually give to folks who aren't as familiar with the
23 proceedings. So we're going to begin with Mr. Handel asking you
24 questions. The Government attorneys Mr. Craig and Mr. Stanley
25 may have some questions. As usual if you do hear objections to

(b) (6)

1 Mr. Handel's questions, please hold your answer so I can rule on
2 the objection.

3 A. Yes.

4 Q. All right. Thank you, sir.

5 JUDGE TO MR. HANDEL

6 Mr. Handel, you may begin.

7 MR. HANDEL TO JUDGE

8 Thank you, Your Honor.

9 MR. HANDEL TO MR. PASSAGE

10 Q. Good afternoon, Ambassador Passage.

11 A. Uh-huh.

12 Q. Are you currently employed?

13 A. No unless one defines self employed. I am a
14 consultant. I lecture and into exercises within the U.S.
15 military.

16 Q. And were you previously employed by the United States
17 Government?

18 A. I spent a 33 year career as a foreign service officer
19 with the Department of State.

20 Q. When did that start?

21 A. It began June of 1966 and I retired formally from the
22 U.S. Government in the State Department on September 26 I
23 believe 1998.

24 JUDGE TO MR. PASSAGE

25 Q. And if you would push the microphone away from you

(b) (6)

1 just a little bit and we won't get that feedback. Thank you.

2 A. Uh-huh.

3 MR. HANDEL TO MR. PASSAGE

4 Q. And you began in 1960.

5 A. '6.

6 Q. '6. Okay. And briefly describe your postings in your
7 career.

8 A. Unlike probably 85% of foreign service officers, I was
9 not a geographic specialist. So overseas, I served twice in
10 Europe at the American embassy in London and at U.S. NATO
11 headquarters in the U.S. delegation to NATO twice. These are
12 not sequential, twice in Asia, in Vietnam during the war as a
13 foreign service officer detailed to the U.S. military command, a
14 program similar to the one that we have in Afghanistan and Iraq
15 today where State Department civilians work on local government
16 issues, but in Vietnam it was under the, under the control of
17 the U.S. military. In Australia as a political counselor, I
18 served twice in Latin America as a political officer at the
19 American embassy in Quito, Ecuador in the middle 1970s and as
20 deputy chief of mission at the American embassy in San Salvador
21 from 1984 until 1986 and as U.S. ambassador to Botswana because
22 I had been working on the U.S. Government's effort to break
23 apart apartheid in, in South Africa and I had come from the
24 White House staff for President George H.W. Bush and my
25 immediate boss was Brent Scowcroft, the National Security

(b) (6)

1 advisor and Robert Gates who was his deputy, now the secretary
2 of defense and President Bush when, when I was able to tell him
3 that I had just been given word that the date of release of
4 Nelson Mandela from Robin Island Prison, President Bush said
5 okay, David, it's time for you to get out to the region,
6 [indiscernible] the embassies that are open, and Botswana was
7 the logical when he said I'll send your name to the Senate for
8 confirmation.

9 Q. And how long did you serve in Botswana?

10 A. I was in Botswana for three years. At the end of
11 that, I returned to the United States and was political advisor
12 at the U.S. Special Operations Command at McGill Air Force Base.
13 The State Department of the United States makes a practice of
14 sending a senior diplomat as a political advisor to the
15 commanders of each of our major military commands and then at
16 the end of that I was asked to return to Washington to take
17 responsibility for a change in U.S. policy towards Colombia. I
18 was given the Andean Ridge portfolio which encompassed
19 Venezuela, Cuba, Ecuador, Peru, and Bolivia.

20 Q. Now, in the country of El Salvador you testified you
21 were there from '84 through '86.

22 A. That's correct.

23 Q. Do you remember about which months roughly?

24 A. I arrived in San Salvador. I arrived in San Salvador
25 on the assignment in I believe it was June. It was before the

(b) (6)

1 4th of July in 1984 and I departed just before the 4th of July
2 in June or right at the June, July break 1986. Now, that was my
3 formal assignment there. Four months before I arrived on
4 assignment, then Ambassador Pickering asked me to be his deputy.
5 I asked for an opportunity to visit El Salvador. So I visited
6 El Salvador right about the time of the elections that chose
7 President Duarte and it was, it was a one week visit just to get
8 acquainted with the, with the country.

9 Q. So when you arrived in 1984, who was the United States
10 ambassador?

11 A. It was Thomas Pickering.

12 Q. And did that change at some point during your service
13 in El Salvador?

14 A. Yes. I had agreed partly because it was Ambassador
15 Pickering who asked me. I had agreed to be his deputy. Four
16 months after I arrived in El Salvador, President Reagan named
17 Pickering for reasons of national security policy, named him
18 U.S. ambassador to Israel. So I upon his departure, I became
19 chargé d'affaires. That's a diplomatic term meaning in charge
20 of an American embassy absent an ambassador and I served as
21 chargé until Ambassador Corr, Edwin Corr was not named until
22 after Pickering had departed, but until he could be confirmed by
23 the Senate and arrive.

24 Q. How long were you actually --

25 A. Chargé.

(b) (6)

1 Q. -- chargé?

2 A. It would have been because of the urgency because of
3 the situation in El Salvador, it would have been relatively
4 short. It was about six weeks. It could have been seven. It
5 could have been five, but I'm going to say six or seven weeks.

6 Q. And during the times in El Salvador when you were not
7 the chargé, you were the deputy.

8 A. Deputy.

9 Q. Chief of mission.

10 A. That's correct and that's, that's simply the title
11 that is given to the chief, chief of staff, chief operating
12 officer of an embassy. It's the ambassador's deputy and the,
13 the role of the DCM is to run the embassy for the, for the
14 ambassador.

15 Q. And what does that mean to run the embassy? What does
16 that entail?

17 A. Well, the embassy, any American embassy has multiple
18 sections. There's a political section which reports on internal
19 political events in a, in that country, an economic section
20 which handles trade and commercial matters, the military. The
21 military typically will have two sections attachés, defense
22 attachés who represent the U.S. military to the host country
23 military. In the case of El Salvador, there was a military
24 assistance group, the security assistance group which provided
25 the training mechanism for U.S. training assistance to El

(b) (6)

1 Salvador's armed forces. In addition, we had representatives
2 from the Justice Department. I had two attorney advisors from
3 the Justice Department and six FBI specialist agents doing
4 various investigations. We had Commerce Department
5 representatives, Agriculture Department representatives,
6 Treasury Department representatives. All of those every member
7 of the U.S. Government not under a military commander is under
8 the authority of the chief of mission. That's the ambassador.
9 So all of those sections of the embassy and all of their
10 personnel no matter what agency they come from in the U.S.
11 Government, they're under the ambassador's authority while they
12 are in the country that they're assigned to.

13 Q. Have you ever served as a spokesman for the State
14 Department?

15 A. I have. I was picked. I had had no prior experience
16 in dealing with the press, but when Jimmy Carter came into
17 office, Silas Vance was his secretary of state, he picked the
18 relation Hodding Carter, III who came from out of a southern
19 publishing family to be his, his spokesman. There were
20 legendary fights between Secretary Vance and Zbigniew
21 Brzezinski, Jimmy Carter's national Security advisor and over
22 the issue of the attempted rescue of the hostages in Iran from
23 the American embassy in Iran. Silas Vance felt very strongly
24 about it. Hodding Carter had selected me to be the director of
25 the press office and his deputy. So I came back from Australia

(b) (6)

1 to take that job. Secretary Vance made clear to President
2 Carter that if President Carter pursued the military rescue
3 option of the hostages, he Secretary Vance would resign and
4 would explain why. The attempt took place. It failed.
5 Secretary Vance the next day announced that he was resigning.
6 Hodding Carter resigned with him and I became acting spokesman
7 for the Department for the balance of Jimmy Carter's presidency
8 and for the first six months of Al Haig's, Secretary Haig's
9 secretaryship.

10 Q. What is your, describe your education?

11 A. Bachelor's degree. I lived overseas for most of my
12 life growing up. I came back to the United States to college.
13 Bachelor's degree, honors program Sentinel scholar's program at
14 the University of Denver, Condoleezza Rice's and Madeleine
15 Albright's also alma maters, bachelor's degree '64, Master's
16 degree in international economics from Georgetown and the year
17 at the U.S. National War College at Fort McNair in Washington,
18 D.C.

19 Q. So when you arrived for your service in El Salvador in
20 1984, you had had one previous brief visit to the area to El
21 Salvador I should say.

22 A. That's correct in connection with my pending
23 assignment there as deputy chief of mission. Ten years earlier
24 when I was assigned to the American embassy in Quito, Ecuador, a
25 friend and I drove down from Washington, D.C. and we drove

1 through Mexico through Guatemala through El Salvador from one
2 end to the other. This was in 1974. So I had an opportunity to
3 see that as well as all the other countries in Central America.

4 Q. When you arrived in 1984, how would you describe the
5 situation in El Salvador?

6 A. It was very clear by 1984 that the situation which
7 everybody reading the newspapers and that includes every
8 diplomat, every American diplomat no matter where assigned was
9 thoroughly aware of the tragedy that El Salvador had gone
10 through. The human rights abuses that occurred, the prevalence
11 of the death squads, the [indiscernible] disappearances that had
12 taken place, but it was clear by 1983 going into 1984 that the
13 situation was changing significantly. So the short one word
14 answer to your question would be improving. The human rights
15 situation was significantly discernibly better than it had been
16 in the earlier in the earlier years, although it was by no
17 means, by no means perfect.

18 Q. Was there a civil war going on?

19 A. Oh, yes. Oh, yes. The civil war was clearly going
20 full swing, but by then the United States training program had
21 been underway for three years, almost four and the improvement
22 in performance by the Salvadoran armed forces and I say armed
23 forces, I would include, oh, I would include all of the security
24 forces, although our training program was primarily for the, for
25 the Salvadoran army, the air force, and to a very limited extent

(b) (6)

1 the navy. That clearly had had an impact on their performance
2 in combat as well as clearly and discernibly with respect to
3 human rights. To give a single example I have been a member of
4 Amnesty International since it was founded in 1961. My campus
5 chapter in at the University of Denver was one of the first
6 campuses and I joined. So I've always. Amnesty International
7 does as well as it can with respect to numbers, but I remember
8 their annual human rights report on El Salvador for the year
9 that I arrived that was in 1984 and it covered the year through
10 the end of 1983 listed if I remember correctly it was something
11 like 13,000 and a little bit of human rights disappearances,
12 murders, other abuses recorded. The year that I left 1986,
13 Amnesty International's own figures were something like 650
14 disappearances and murders and other human rights cases which
15 Amnesty International divided about half between the FMLN and
16 the Salvadoran security forces.

17 Q. And when did you first meet the respondent Carlos
18 Vides Casanova?

19 A. I would have met General Vides certainly within the
20 first month. I don't remember an occasion, but Ambassador
21 Pickering, we had a process because of the nature of the U.S.
22 security assistance program not on a regular basis, but
23 approximately once a month on average the general, the commander
24 of the U.S. Southern Command at that time based in Panama would
25 come up to San Salvador to review with the Salvadoran general's

(b) (6)

1 staff the progress of the war, problems that existed, areas
2 where the United States needed to devote attention. We would
3 spend half a day with the Salvadoran general staff. We would
4 spend half a day at the American embassy. Not infrequently
5 meeting with the Salvadorans would include at least something
6 with President Duarte and I'm going to guess that the first time
7 we met was probably in one of those meetings. Now later on,
8 there were regular sessions at the, at the embassy. Both
9 Ambassador Pickering and Ambassador Corr and I as chargé
10 d'affaires hosted small meetings typically breakfasts on
11 Saturday to which --

12 MR. CRAIG TO JUDGE

13 I'm going to object at this point. It's not responsive to
14 the question of when did he meet General Vides.

15 JUDGE TO MR. PASSAGE

16 Q. Can you estimate a date, a month perhaps that you
17 might have first met the respondent?

18 A. Well, almost certainly by the end of July.

19 MR. HANDEL TO MR. PASSAGE

20 Q. Following your initial meeting, how often would you
21 meet with him?

22 A. Well, that would then be what I was, what I was
23 answering which would be I would have met with General Vides
24 probably once every couple of weeks on one occasion or another,
25 but certainly in a formal session to review the progress of the

1 war on average once a month plus the small meetings that I was
2 alluding to. We had small breakfasts where General Vides, Fidel
3 Chavez Maina who was the minister of finance, Father Ignacio
4 Elia Correa (phonetic sp.) who was the rector of the University
5 of Central America, the ambassador, and I would sit down and
6 talk informally about where is the war going, what are the
7 prospects for a peace process and so on.

8 Q. And this continued throughout your stay in El
9 Salvador.

10 A. That's correct.

11 JUDGE TO MR. PASSAGE

12 Q. Including once a month more formal meetings.

13 A. Yes. That's right and that those were arranged on the
14 basis President Duarte's calendar, General Galvin's and then
15 General Gorman's calendar and General Vides' calendar.

16 Q. Okay. Thank you.

17 MR. HANDEL TO MR. PASSAGE

18 Q. And, and --

19 A. But they, but they were formal sessions designed to
20 review in every sector not only the security assistance program
21 and its effectiveness, but also progress in human rights.

22 JUDGE TO MR. HANDEL

23 Okay. Go ahead, sir.

24 MR. HANDEL TO MR. PASSAGE

25 Q. During the focusing on the formal sessions where you

(b) (6)

1 would meet to discuss various issues, you met to discuss you
2 said human rights.

3 A. For example.

4 Q. What would you discuss?

5 A. Well, in the reports that we had current within the
6 preceding whatever the period was since the last meeting of
7 abuses that had taken place, reports which were generated from
8 within the embassy, Ambassador Pickering established a full-time
9 human rights coordinator position within the political section
10 of the embassy. Kathleen Burman was our human rights officer.
11 She met with different organizations in the human rights field,
12 but we also followed agrarian reform, restoring electricity,
13 opening roads, training for the national police and there the
14 conduct of their activities. It was basically every, every
15 factor where the United States either had an interest in what
16 was going on in El Salvador, the performance of its government
17 and its security forces or where we had a formal program for
18 assistance.

19 Q. Was El Salvador important to U.S. interests at that
20 time?

21 A. El Salvador, I realize that all analogies are
22 imperfect, but El Salvador at that time was probably the most
23 important single interest the United States had. It occupied
24 the role --

25 Q. Let me follow up with a question. Why was that?

(b) (6)

1 A. There had been immediately preceding the United States
2 election, there had been the Sandinista upheaval in Nicaragua in
3 which the Sandinista guerrillas had seized power there from a
4 military dictatorship. I'll characterize the Somoza
5 dictatorship that way and there was a perception that there were
6 multiple revolutions possible in Central America that President
7 Reagan described as directly threatening United States national
8 interests and his famous phrase for those who remember the time
9 was if the United States does not help the Central American
10 countries stop the halt of communist insurgency, the next that
11 we hear they will be knocking on the doors and grounds in
12 Brownsville, Texas. I've never established in my own mind
13 precisely where Brownsville is and I've got to get a map some
14 day to do that, but that was his, his point. So El Salvador was
15 the single most important focal point of U.S. activism in that
16 sense certainly during the first four years of the Reagan
17 administration.

18 JUDGE TO MR. PASSAGE

19 Q. And you're talking about worldwide.

20 A. Yeah, globally. I mean, as an example, only two
21 American ambassadors were protected by special security details
22 provided by elements of the United States military and that was
23 the U.S. ambassador in Beirut and the U.S. ambassador in San
24 Salvador. That was because of the security situation. The
25 budget that I as chargé d'affaires administered in San Salvador,

(b) (6)

1 the first year that I arrived was just under \$2 billion. The
2 second year was just over \$2 billion and the only two programs
3 that we had worldwide that were larger were the programs for
4 Israel and for Egypt and everybody is familiar with the reasons.

5 MR. HANDEL TO MR. PASSAGE

6 Q. \$2 million.

7 A. \$2 billion and I had the third largest embassy in
8 terms of the number of people.

9 Q. How many people were in the embassy?

10 A. If one counted all of the agencies plus the local
11 employees it was over 1,600. That was the largest embassy after
12 the American embassy in Cairo and the American embassy in New
13 Delhi.

14 Q. And how about the, the level of U.S. aid that was
15 coming into El Salvador, how would you describe it?

16 A. Well, I gave you. I gave you the figures just under
17 \$2 billion, just over \$2 billion and those were the third
18 largest U.S. aid disbursements. That included both economic
19 assistance and military assistance for purposes of trying to
20 help the Salvadoran government in two areas, first, security
21 assistance, training, and military equipment for the military in
22 fighting the civil war and the economic assistance program for
23 land reform, for reimbursement for land that had been, that had
24 been seized. The United States agreed to, to use some funds for
25 that, economic support activities for rebuilding roads, for

(b) (6)

1 restoring the electric supply where we could assist the
2 Salvadorans.

3 Q. Just that about restoring the electric supply, was
4 there a problem with it?

5 A. The problem with the electric supply was the
6 guerrillas identified clearly and when I say guerrillas, I hope
7 everyone is aware this, this was an unusual guerrilla
8 organization. The FMLN, Farabundo Marti Liberation Front was an
9 umbrella organization. There were five factions which were
10 effectively independent armies. They coordinated under the
11 mantle of the FMLN, but the more violent of the actions such as
12 the PRTC, that's the Central. I'll give you the English is
13 Central American Workers Party identified the electric system as
14 a critical vulnerability in El Salvador and virtually every
15 morning during the summer of 1985, we would wake up to discover
16 that a third of the country's power pile lines carrying the
17 electric supply from Sovran Grande the, the dam on the Lempa
18 River had been blown up. I had four helicopters and crews.
19 They were contractors assigned to the aid, U.S. aid mission
20 which every morning would then go back up and try to get the
21 electricity supply back up and back to analogies being imperfect
22 electricity supply was a critical weakness in Iraq as we've all
23 seen and restoring the electric supply was critical both for the
24 citizens of El Salvador as well as for their confidence in their
25 own government.

(b) (6)

1 Q. Now, you, you testified that the security for the U.S.
2 military mission in the U.S. embassy was quite extensive and why
3 was that?

4 A. Well, only a couple of weeks before I arrived as
5 deputy chief of mission, communist guerrillas and I don't
6 remember which faction it was had shot a rocket propelled
7 grenade at the façade of the American embassy right where the
8 ambassador's conference room was and where 15 minutes earlier
9 the entire country team had been assembled for a country team
10 meeting. We had had the senior U.S. military security
11 assistance officer, the commander of the military group the U.S.
12 Navy Seal Commander Schaufelberger had been murdered outside the
13 National University of El Salvador. Two American civilian AID
14 workers actually connected with the AFL-CIO working with
15 Salvadoran trade unions Mike Hammer and Mark Pearlman were
16 assassinated in the, one of the rooms at the El Camino Real
17 Hotel, the Sheraton Hotel in San Salvador. There had been other
18 murders. So we were, we were in, in a sufficiently precarious
19 security situation that about I'm now going to guess 18 months
20 before I was assigned there, all civilian dependents and
21 nonessential personnel had been removed from the embassy for
22 security reasons. Four months before I arrived, the security
23 situation had improved sufficiently that the State Department
24 was willing to permit them to, to return. So wives and spouses
25 and children had begun returning to El Salvador. Then when

(b) (6)

1 during the summer of 1985 one of the factions of the FMLN
2 murdered four of my Marine security guards. I speak
3 possessively about that because I was chargé d'affaires at the
4 time. I was under enormous pressure from the State Department
5 to re-evacuate to move dependents out. I resisted that. I
6 fought it on the grounds that the security situation had
7 improved and that we in El Salvador did not believe that our
8 dependents were a target of the guerrillas. Had I not been able
9 to conclude that on the basis of the improved security
10 situation, I would have had to exceed to the Department's
11 demands to re-evacuate nonessential personnel.

12 Q. Now, during your regular meetings with General Vides
13 Casanova in El Salvador and in particular regarding human rights
14 and security issues, how would you describe those discussions?

15 A. Well, I, as I indicated earlier, we had a full-time
16 human rights officer position at the, at the American embassy.
17 I followed those reports and followed human rights reporting
18 back to the Department of State and to other agencies of the
19 U.S. Government that were concerned. We raised issues involving
20 not only human rights abuses reported, we actually raised
21 specific up to and including individual names. Those were
22 raised at a variety of levels within the Salvadoran government
23 with President Duarte and with General Vides, sometimes by me,
24 sometimes by the ambassadors, but infrequently simply on the
25 basis of day to day conversations by the commander of the U.S.

(b) (6)

1 military group while I was there. It was a U.S. Army colonel,
2 full Colonel James Steel, Jim Steel and he was the point of
3 contact within the embassy for day to day relations and if not
4 with the minister of defense, then with the commander of the
5 army General Blandon or with others. We worked within, within a
6 chain of command. I did not and nobody else in the embassy did
7 every time we received a report pick up the telephone and dial
8 the minister or the president. We worked through a chain of
9 command.

10 Q. Now, during these meetings particularly you say the
11 formal, excuse me, the formal meetings that you would regularly
12 hold with General Vides and President Duarte in discussing the
13 human rights and security issues --

14 A. Uh-huh.

15 Q. -- how would you describe the general's position or
16 response to those issues?

17 A. General Vides and I would say the same was true.
18 Frankly, I would say the same was true of all of the Salvadoran
19 military officers with whom I discussed civil rights and when I
20 went in and talked every time I or the ambassadors who were
21 there while I was there Ambassador Pickering or Ambassador Corr,
22 every meeting that they had with the brigade commander or a
23 battalion commander, human rights was always a key element of
24 the, of the conversations, but what I would say was that one of
25 the objectives of U.S. policy you asked where did El Salvador

(b) (6)

1 fit into the U.S. national security strategy.

2 MR. CRAIG TO JUDGE

3 I object as nonresponsive. The question was, what was
4 Vides' response, not U.S. policy and all that.

5 JUDGE TO MR. CRAIG

6 Yeah.

7 JUDGE TO MR. PASSAGE

8 Let's get focused on the answer. I think I know where
9 you're going, but go ahead and focus more on this gentleman's
10 response.

11 MR. HANDEL TO JUDGE

12 Yeah.

13 MR. HANDEL TO MR. PASSAGE

14 Q. What was, what was his response essentially?

15 A. Yeah.

16 Q. And, and --

17 A. He was very responsive. He took our concerns onboard.
18 He invariably promised that he would, he would look into it, he
19 would see what could be done, and my recollection is he
20 virtually always said you know I will get back to you on that or
21 our conversations will, will continue. General Vides was
22 invariably, invariably responsive.

23 Q. Did you discuss these same issue with President
24 Duarte?

25 A. Yes.

(b) (6)

1 Q. And how was his response? How would you characterize
2 his response?

3 A. Equally, equally concerned. General Vides of course
4 was responsible for the day to day conduct of the, of the
5 combat. President Duarte was responsible for, for the, the
6 entirety of national, national affairs. So General Vides had
7 to, had to blend as we had to blend. We were concerned about a
8 number of things about which human rights was only element. We
9 were also concerned about the conduct of the war. The single
10 area that we were most concerned about though was the dramatic
11 change within the Salvadoran military and it was the, it was the
12 critical focal point of U.S. policy ending the human rights
13 abuses, ending the death squads and the murders, ending the
14 disappearances, ending the torture, but focusing at the same
15 time on the change of attitude within the Salvadoran military
16 from an institution which I'm confident Professor Karl, Terry
17 Karl has probably reviewed at length with you. El Salvador had
18 a history of involvement by the military in the affairs of
19 government. We wanted to end that. We thought it was important
20 that be ended. General Vides was instrumental absolutely key to
21 unifying the Salvadoran officer corps around the concept of
22 support for the constitution, the new constitution of 1982, the
23 elections of 1984 which produced President Duarte, President
24 Duarte who only ten years earlier had won the national election
25 and been driven into exile. Critically important for what we

(b) (6)

1 were doing in El Salvador was that the Salvadoran military
2 change its comportment, change in behavior, the support for the
3 constitution, support for the elected president, support for the
4 democracy.

5 Q. Ambassador Passage, let me turn your attention to a
6 document that has been introduced into evidence in this case
7 which is the Country Report on Human Rights Practices for 1984
8 by the U.S. Department of State and I'm referring to
9 Government's -- 1984. I'm referring to Government's submission
10 found on pages 991 through -- let's see. The numbering has
11 changed here. So I believe it's through page 1001 and labeled
12 as tab JJJ.

13 MR. HANDEL TO JUDGE

14 May I approach the witness, Your Honor?

15 JUDGE TO MR. HANDEL

16 Yes, please. That's Exhibit 4.

17 MR. HANDEL TO MR. PASSAGE

18 Q. And, and if I can turn your attention [indiscernible]
19 that document to the second page, page 992 if you could take a
20 look at that. Actually, yeah, page 992, let's take a look first
21 at the left side the second, third paragraph.

22 A. Uh-huh.

23 Q. I would also like to --

24 A. The first of those two paragraphs, I would certainly
25 agree with.

(b) (6)

1 MR. CRAIG TO JUDGE

2 Objection. A question has not been asked of the
3 respondent.

4 MR. PASSAGE TO JUDGE

5 Uh-huh.

6 MR. HANDEL TO MR. PASSAGE

7 Q. Let me ask the question.

8 A. All right. May I read the second paragraph?

9 Q. Yes.

10 A. Yes.

11 Q. And I just want to turn your attention to the right
12 side of that page the second, third, and fourth paragraphs, the
13 paragraph starting with the armed forces [indiscernible] that
14 paragraph and the next two.

15 A. Uh-huh.

16 Q. In, in, in the, the page that you're looking at
17 regarding the conclusions that are in that report regarding
18 substantial progress in the past year, do you agree with that?

19 MR. CRAIG TO JUDGE

20 I'm going to object, Your Honor. Again, he's being offered
21 -- our objection is him giving any opinions. He's not an expert
22 witness in that he was not properly disclosed as an expert
23 witness. We were not provided with a copy of his CV or a résumé
24 or an expert witness report. At this point, he's only been
25 disclosed as a fact witness. So I object to him giving any

(b) (6)

1 conclusions or opinions.

2 JUDGE TO MR. HANDEL

3 And this is the 1985 or '84 report.

4 MR. HANDEL TO JUDGE

5 This is, yes, Your Honor. It's dated it's February I
6 believe of 1985.

7 JUDGE TO MR. HANDEL

8 Okay. And --

9 MR. CRAIG TO JUDGE

10 Your Honor, I note that the Practice Manual requires that
11 if the witness is disclosed as an expert witness, they need to
12 have a CV or a résumé disclosed. That was not done in this
13 case. This witness is not, cannot properly testify as an expert
14 witness because of the respondent's failure to provide a CV or a
15 résumé or an expert witness report.

16 JUDGE TO MR. HANDEL

17 Yeah. I'd have to hold you to that, Mr. Handel. If he can
18 testify about, I mean, he was there in 1984, if he can testify
19 about what he knows about the situation there as he has been
20 doing, but since he doesn't have the requisite filings provided
21 or expert witness testimony, I'm going to have to avoid the same
22 kind of testimony that we heard a little earlier this morning
23 from the professor. At such as you want to since we're not
24 going to appear to be finished up here, at sometime if you want
25 to provide that necessary information, recall him. We can take

(b) (6)

1 objections from the Government on that, but today it's not going
2 to be a possibility.

3 MR. HANDEL TO JUDGE

4 That's fine, Judge.

5 MR. HANDEL TO MR. PASSAGE

6 Q. During the time that that you were there in El
7 Salvador and, and restrict yourself to that time period, would
8 you agree with the conclusion in that report that there was
9 substantial progress vis-à-vis human rights abuses?

10 A. Yes.

11 MR. CRAIG TO JUDGE

12 Objection.

13 MR. PASSAGE TO MR. HANDEL

14 Unquestionably.

15 MR. CRAIG TO JUDGE

16 Your Honor.

17 JUDGE TO MR. PASSAGE

18 Hold on.

19 MR. CRAIG TO JUDGE

20 The same objection, move to strike the response, same
21 objection. Again, you, the Court sustained the objection and
22 Mr. Handel asked the exact same question and that's highly
23 improper. He needs to limit the questions to fact questions,
24 not do you agree or opinions or conclusions.

25 JUDGE TO MR. HANDEL

(b) (6)

1 Yeah. Let's get him away from the DOS reports and I think
2 you're going to be able to get the information out that you're
3 seeking, but we have to avoid him testifying as an expert. He
4 hasn't been qualified.

5 MR. HANDEL TO JUDGE

6 Now, I would just briefly argue today and as I said I'll be
7 glad to provide that. I believe the, the Government probably
8 waived since they didn't object when they've had this
9 information for some time and prior to the beginning of this
10 hearing --

11 MR. CRAIG TO JUDGE

12 Your Honor, it wasn't proper for us.

13 MR. HANDEL TO JUDGE

14 There's been no -- let me finish.

15 JUDGE TO MR. CRAIG

16 Just a minute.

17 MR. HANDEL TO JUDGE

18 There's been no objection lodged by the Government. So I
19 would argue first that it's been waived. Number two once again,
20 the Court has indicated repeatedly during the direct exam, cross
21 that the relaxed standards involving evidentiary proceedings
22 unlike in the federal courts and the state courts and in light
23 of that in light of his extensive service in, in El Salvador, we
24 would argue that he can certainly testify regarding his opinion.

25 MR. CRAIG TO JUDGE

(b) (6)

1 The question at this point isn't whether he could possibly
2 be qualified as an expert if the respondent properly disclosed
3 him as an expert, properly provided an expert witness report or
4 properly provided a CV or a résumé. We respondent at the first
5 available opportunity prior to him testifying. It's a
6 contemporaneous objection. Any argument that we've waived it
7 because we didn't object what, way back when, when he filed his
8 expert witness report? That's not our job. It's the
9 respondent's job to make sure he complies with the Practice
10 Manual, that he complies with the rules of procedure. The
11 relaxed evidentiary standards, yeah, the rules of evidence don't
12 apply, but the Practice Manual specifically requires that the
13 respondent file a CV or a résumé from a witness who's supposed
14 to be an expert witness. Now, he may very well qualify as an
15 expert witness, but the respondent has failed to go through the
16 procedures to have him qualify as an expert witness and because
17 of that, he cannot testify as an expert. The respondent's
18 attempt to blame the Government for his failure to comply with
19 the Practice Manual simply does not excuse his failure.

20 MR. HANDEL TO JUDGE

21 Your Honor, I and I would just respond to that that
22 Ambassador David Passage has testified regarding his lengthy
23 service to the United States Government foreign service. If the
24 Government would like to question him regarding that, they're
25 certainly free to do so.

(b) (6)

1 JUDGE TO MR. HANDEL
2 Yeah. I think we --
3 MR. HANDEL TO JUDGE
4 Yeah, but I can, I can ask the questions so that we avoid
5 this issue at this time.
6 JUDGE TO MR. HANDEL
7 Okay. Very good.
8 MR. HANDEL TO JUDGE
9 Yeah.
10 JUDGE TO MR. HANDEL
11 I'll stand on my prior finding and go ahead.
12 MR. HANDEL TO JUDGE
13 Yeah.
14 MR. HANDEL TO MR. PASSAGE
15 Q. Directing you to the year 1984, would you agree that
16 substantial progress was made as far as human rights abuses by
17 the government of El Salvador?
18 MR. CRAIG TO JUDGE
19 Objection, Your Honor. This is the same question that
20 we've objected to twice and the Court has sustained the
21 objection two different times. He's just asking the exact same
22 question.
23 MR. HANDEL TO JUDGE
24 Your Honor, I'm not referring him to a Country Report. The
25 Court said I could ask him the question without referring to the

1 reports and that's what I'm doing.

2 MR. CRAIG TO JUDGE

3 It is again another opinion question, do you agree that
4 human rights abuses improved? That's an opinion question. This
5 witness is not qualified as an expert witness at this time and
6 he is not allowed to give an opinion during his testimony.

7 JUDGE TO MR. HANDEL AND MR. CRAIG

8 All right. Why don't we take ten minutes at this time?
9 We've been at it about an hour and ten minutes.

10 JUDGE FOR THE RECORD

11 Let's go off the record.

12 (OFF THE RECORD)

13 (ON THE RECORD)

14 JUDGE FOR THE RECORD

15 We are back on the record after a brief break.

16 JUDGE TO MR. HANDEL

17 Mr. Handel, did you have something?

18 MR. HANDEL TO JUDGE

19 Yes, Your Honor, I've got Ambassador David Passage's CV,
20 résumé and a copy for the Government and a copy for the Court
21 [indiscernible].

22 MR. CRAIG TO JUDGE

23 Your Honor, I'd note that this is neither a CV nor a
24 résumé. It's a one paragraph, it's three paragraphs, but really
25 only one paragraph statement of his background and nomination of

(b) (6)

1 him to be ambassador to Botswana. That's certainly not what's
2 contemplated by the Immigration Court Practice Manual is a
3 curriculum vitae or a résumé, further providing it after his
4 testimony starts especially when the Court provided deadlines
5 for filing the documents is quite frankly late.

6 MR. HANDEL TO JUDGE

7 Your Honor, regarding lateness, the Government was late in
8 its last submission. The Court allowed it in. The Court had
9 set very clear deadlines regarding that. So we need to apply
10 that equally if the Court is going to exclude late filings, then
11 the Government's submission should be excluded as well.

12 MR. CRAIG TO JUDGE

13 No.

14 JUDGE TO MR. HANDEL

15 Remind me.

16 MR. CRAIG TO JUDGE

17 Our last submission was on the deadline. It was on April
18 [indiscernible].

19 JUDGE TO MR. HANDEL

20 Remind me which one are you speaking of?

21 MR. HANDEL TO JUDGE

22 Excuse me.

23 JUDGE TO MR. HANDEL

24 Which one are you speaking of, the last filing?

25 MR. HANDEL TO JUDGE

(b) (6)

1 The last filing was well beyond the deadline.

2 MR. CRAIG TO JUDGE

3 The filing, the filing deadline was April 1st, 2011 and we
4 filed it on April [indiscernible] the Court's MPM precisely.

5 JUDGE TO MR. CRAIG

6 All right.

7 JUDGE TO MR. HANDEL

8 Well, I don't want to get into a discussion about who filed
9 what when. I think everything up to now has been either just on
10 time or submitted I think we had some impeachment evidence. As
11 far as this goes, I am, we do have the Practice Manual that
12 we're guided by. I believe that I cannot consider expert
13 witness testimony from Mr. Passage, although given his testimony
14 thus far, I think he has relevant testimony to provide given
15 that he was in fact in El Salvador for approximately a two year
16 time period. That follows a lot of evidence I've been
17 considering and have to consider. So if you can, if you're able
18 to focus on your questions on his time there, his familiarity
19 with the respondent and any information gleaned from that time
20 there, then we can go forward, but I will have to sustain the
21 Government's objection absent I believe even an affidavit should
22 have been provided by him, but at least a curriculum vitae and
23 although I have no doubt that Mr. Passage has given his
24 distinguished career may at one point certainly qualify, we
25 haven't reached that point today. So I can't allow that type of

(b) (6)

1 testimony.

2 MR. HANDEL TO JUDGE

3 I would just point to the record, Judge. My understanding
4 is Ambassador White who has not provided any affidavits, I
5 believe there was a very probably a résumé. I don't believe
6 there was any affidavit by Ambassador White and he served at the
7 same time as or I should say to the same civil war timeframe as
8 Ambassador Passage and I would also point that the document that
9 I provided is from the presidency.ucsb web site which is the
10 nomination by the President of the United States which has a
11 description of his extensive service which is the issue here in
12 this case.

13 JUDGE TO MR. HANDEL

14 Uh-huh.

15 MR. HANDEL TO JUDGE

16 Precisely the issue here and his education. I'm not sure
17 what else is, is required to be and the CV. I don't understand
18 what else is missing from this document, Judge.

19 JUDGE TO MR. HANDEL

20 I'm assuming he has a CV, a curriculum vitae.

21 MR. HANDEL TO JUDGE

22 He, he probably does, Your Honor, however, my, my I guess
23 my question is what I, I'm not really sure about is what is
24 missing from this document at this time that given his, his
25 extensive service in the State Department that would fail to

(b) (6)

1 qualify him.

2 JUDGE TO MR. CRAIG

3 Anything else from the Government?

4 MR. CRAIG TO JUDGE

5 Your Honor, I note that the respondent continues to try to
6 blame his issues on the Government. Ambassador White was not
7 called as an expert witness. Ambassador White was called as a
8 factual witness. If the respondent had any objections to
9 Ambassador White's testimony, he should have raised it at that
10 time and not at this time. As for the document he provided
11 today, it's 21 years old. It does not have any publications.
12 It does not contain most of what a résumé or a CV would.

13 MR. HANDEL TO JUDGE

14 I'm not, not sure. Publications are not an issue here,
15 Judge. We're not submitting here as an author, as a writer,
16 based on his foreign service in the United States foreign
17 service for many, many years. That's the basis, Judge.

18 JUDGE TO MR. HANDEL

19 Okay. We can hear from him today as a fact witness. If
20 you want to recall him at some later date given that due to
21 discussions this morning, we won't probably be concluding this
22 week. That's fine, but that will be my ruling today. Do you
23 want this submitted in or offered into evidence?

24 MR. HANDEL TO JUDGE

25 Yes, Your Honor.

(b) (6)

1 JUDGE TO MR. HANDEL

2 And I think we're at number 11. Does that sound right?

3 MR. CRAIG TO JUDGE

4 That sounds right, Your Honor.

5 JUDGE TO MR. CRAIG

6 Objections.

7 MR. CRAIG TO JUDGE

8 No objection.

9 JUDGE TO MR. HANDEL AND MR. CRAIG

10 That will be number 11.

11 MR. CRAIG TO JUDGE

12 Let me rephrase. Objection on timeliness. Other than
13 that, no objection.

14 JUDGE TO MR. CRAIG

15 All right. Very good. I'll receive it into the record.

16 JUDGE TO MR. HANDEL

17 Go ahead, Mr. Handel.

18 MR. HANDEL TO MR. PASSAGE

19 Q. During the time that you served in El Salvador in 1984
20 through 1986, did you witness substantial progress in human
21 rights abuses?

22 A. In the elimination of human rights abuses.

23 Q. The eliminations of human rights, substantial progress
24 in the eliminations of human rights abuse.

25 A. Yes.

(b) (6)

1 Q. Please describe what you witnessed?

2 A. Well, our primary method for [indiscernible]
3 witnessing was to keep track of human rights abuses as reported
4 to the embassy as collected independently by the embassy from
5 all sources, things that we read in the newspaper, quite
6 literally conversations that we had with people out on the
7 street, reports that we received from police or about police
8 activities. We kept a kind of running track of human rights
9 abuses, of disappearances. This was mostly statistical and
10 there was a very clear discernible decline in the number of
11 abuses and quite frankly I found one of the most useful. I've
12 already referred to the Amnesty International. Those were
13 annual reports, but the testimony that Professor Karl gave was
14 as far as I'm concerned I in other circumstances would quite be
15 willing to, to refer to it myself as documenting the fall in
16 human rights abuses.

17 MR. CRAIG TO JUDGE

18 Your Honor, I'm going to object to him --

19 MR. HANDEL TO MR. PASSAGE

20 You're talking about --

21 MR. CRAIG TO JUDGE

22 -- to him testifying about Professor Karl's testimony. The
23 Court gave very clear instructions that nobody was supposed to
24 talk to any witness about any of the testimony that was going
25 on.

(b) (6)

1 MR. HANDEL TO JUDGE

2 Yes.

3 MR. CRAIG TO JUDGE

4 Someone has been informing him as to what Professor Karl
5 testified about.

6 MR. HANDEL TO JUDGE

7 No, Your Honor.

8 JUDGE TO MR. CRAIG

9 Hold on, sir.

10 JUDGE TO MR. HANDEL

11 Mr. Handel.

12 MR. HANDEL TO JUDGE

13 No, Your Honor. He was given a copy of the transcript that
14 the Court was given of the testimony of Professor Karl in the
15 Romagoza case. It's about 400 pages that's been filed. Excuse
16 me. Not was a, the, the testimony of Professor Karl in the
17 Romagoza case is about 400 pages not in this case, in the
18 Romagoza case. I FedEx'd it to his office, to his residence and
19 he's, that's what he's -- that's the information that he has.

20 MR. CRAIG TO JUDGE

21 I certainly have no objection to that if that's what he's
22 been --

23 JUDGE TO MR. CRAIG

24 And let me ask.

25 MR. CRAIG TO JUDGE

(b) (6)

1 He's shaking his head.

2 JUDGE TO MR. PASSAGE

3 Q. Sir, is that what you're referring to?

4 A. I was referring to that among many other things.
5 Professor Karl is well known within the academic community,
6 within the human rights community. I've obtained a number of
7 her speeches. I have not participated in any of the conferences
8 that she's given. I've read lectures that she has given. I've
9 called her syllabus at Stanford University for her human rights
10 courses. Professor Karl is a respected authority in this, in
11 this area. I don't mean to spend it on testimony. I have heard
12 no testimony from this, this particular case.

13 Q. And my concern is no one has talked to you in the last
14 day or two about her testimony --

15 A. That is correct.

16 Q. -- in this one.

17 A. That is correct.

18 Q. Very good.

19 JUDGE TO MR. HANDEL

20 Go ahead, Mr. Handel.

21 MR. HANDEL TO MR. PASSAGE

22 Q. Now, during, during the time that you were there and
23 particular focusing to the year of 1984, did the Salvadoran
24 security forces provide human rights instructions to their
25 trainees?

(b) (6)

1 A. They did.

2 Q. And how do you know that?

3 A. Well, we assisted them in the preparation of the
4 courses that would be offering. The United States military
5 group, group [indiscernible] was the name that was, that was
6 used provided both instruction materials, written instruction
7 materials as well as from time to time had American instructors
8 come down and speak to Salvadoran military officers on human
9 rights issues.

10 Q. And, and what did that training consist of?

11 A. Well, I should say at the outset I'm not one who
12 participated in that, that particular aspect of the training,
13 but my understanding was that it availed itself among other
14 things the U.S. Army training manuals respecting the treatment
15 of prisoners, interrogation of prisoners, acceptable handling of
16 prisoners, methods of conducting military operations in order to
17 avoid civilian casualties. One of the issues that we, that we
18 were concerned about because the United States provided air
19 power to, to El Salvador. That is to say we supplied
20 helicopters. We supplied air to combat ground support aircraft
21 and we were very much concerned that those not be used in
22 environments that might cause civilian casualties. We went to
23 great lengths. I had an officer. I'm speaking now as though I
24 were the ambassador during the time, certainly while I was
25 chargé, but both of the ambassadors that were there as well as

(b) (6)

1 the ambassadors afterwards. We had a U.S. Air Force officers
2 stationed out at Ilopango Air Base. That was the Salvadoran air
3 force's main air base who kept track of the use of the aircraft
4 of the helicopters, of the armaments and weapons and munitions
5 and we reviewed after action battle reports every time there was
6 a report of civilian casualties. We used to go over the reports
7 from whatever the incident was or whatever the attack was that
8 might have caused that up to and including on occasion sending a
9 U.S. officer out to talk to the people in the village to see
10 what had actually occurred because one of the problems that
11 beset our human rights reporting were regular frequent and I
12 would say increasing use of human rights accusations by the
13 guerrillas and by a number of the sympathizing organizations
14 accusing the Salvadoran armed forces of perpetrating human
15 rights abuses in circumstances where they simply did not occur.

16 Q. Now, focusing once again on the year 1984, did you
17 observe whether the Duarte government in 1984 was forthcoming
18 with human rights missions?

19 A. You're talking about missions coming to El Salvador
20 for purposes of discussing human rights.

21 Q. Yes.

22 A. Yes. I, I can think of no instance in which the
23 United States embassy facilitated or played a role in a visit to
24 El Salvador of human rights missions from whatever source. I, I
25 remember once while I was chargé, the cardinal archbishop of San

(b) (6)

1 Francisco led a mission and a fairly large mission to San
2 Salvador. Among other things, they picketed the United States
3 embassy because of our support for the military in, in El
4 Salvador. The mayor of Minneapolis Donald Frazer came down with
5 a large mission. There was an AFL-CIO mission. In every case
6 where we were asked to, we tried to establish, tried to. We, we
7 were able to, to achieve appointments either with President
8 Duarte or with other senior government officials, Salvadoran
9 government officials, including the military. My recollection
10 is General Vides received a number of delegations. General
11 Vides was willing to speak to, to missions coming down. He
12 understood their concerns. He heard their concerns.

13 Q. Would you say that based on your observations during
14 your time there 1984 that the Duarte government in general was,
15 was forthcoming to visiting human rights missions?

16 A. Absolutely.

17 Q. And would that goes well to United Nations
18 commissions?

19 A. Yes. To the degree that I would hesitate, there were,
20 there were missions which came in from a number of areas, some
21 of them European which very clearly were so antagonistic to the
22 government of El Salvador not because it was President Duarte,
23 but because of the prior record and a record once again with
24 respect, Your Honor, I would simply fall back on things that
25 that Professor Karl has written about well established

(b) (6)

1 incontestable.

2 JUDGE TO MR. PASSAGE

3 Q. Prior to your time there.

4 A. Prior to my time there and after my time there, I
5 would accept those. There were on occasion people coming in
6 saying that they really wanted to sit down and talk to the
7 Salvadoran government where Salvadoran officials would say you
8 know why are we doing this? That was not the case. I recall no
9 instance where we in the American embassy ever refused to
10 receive a delegation or to discuss matters with them.

11 MR. HANDEL TO MR. PASSAGE

12 Q. Turning your attention to the following year 1985, did
13 you observe that human rights, the issues with human rights
14 violations was improving in El Salvador?

15 A. Yes. There was a very clear linear progression of
16 betterment of improvement in the human rights situation during
17 each of the years that I was there '84, '85, '86.

18 Q. And why is that?

19 MR. CRAIG TO JUDGE

20 And I object, Your Honor. It calls for an opinion. We've
21 already clarified that he's not an expert for purposes of
22 today's hearing.

23 MR. HANDEL TO JUDGE

24 I'm not asking his opinion.

25 MR. CRAIG TO JUDGE

(b) (6)

1 He's not allowed to give an opinion.

2 MR. HANDEL TO JUDGE

3 I'm asking based --

4 MR. CRAIG TO JUDGE

5 He did. He just asked why. That's asking for an opinion.

6 JUDGE TO MR. HANDEL

7 Well, why don't you -- that question I guess prompted one
8 in my mind.

9 JUDGE TO MR. PASSAGE

10 Q. How did they improved?

11 A. They improved.

12 Q. Specifically if you would.

13 A. As, they improved as the result of the training. They
14 improved as the result of -- I'm going to use with permission,
15 Your Honor, the word "hectoring" which Ambassador Pickering and
16 I and Ambassador Corr and we speak to those three of us on the
17 basis of my present. Every conversation that we had with
18 brigade commanders, with battalion commanders, human rights was
19 brought up and I believe very clearly and I assigned a major
20 responsibility for this to General Vides, the conclusion on the
21 part of the Salvadoran military that they needed to clean up
22 their human rights act. They needed to change their way of
23 doing business. They needed to win the support of the
24 campesino, of the farmers rather than their past practices which
25 had been widely and correctly criticized and that that in effect

(b) (6)

1 began to take, to take hold. It began to take hold. General
2 Vides became minister of defense in 1983. I can trace a linear
3 improvement from the date that he took the job as minister of
4 defense.

5 Q. Okay.

6 A. And that was though my time, that was a linear
7 improvement in the human rights situation.

8 Q. All right.

9 JUDGE TO MR. HANDEL

10 Mr. Handel.

11 MR. HANDEL TO MR. PASSAGE

12 Q. During the time that you were there before '85 or '86,
13 did General Vides Casanova issue any documents emphasizing the
14 importance of human rights?

15 A. We're talking with respect and with regret, we're
16 talking about an event or events that occurred almost 30 years
17 ago. I recall seeing at the time instructions from General
18 Vides. I cannot name them. I can't give a date to them, but
19 I'm confident that on several occasions I saw instructions from
20 the minister of defense to his field commanders involving human
21 rights, the importance of human rights, the importance of
22 improving performance, the importance of avoiding abuses, ending
23 abuses as, as took place. I'm unable to go beyond that. I'm
24 absolutely confident in my own memory that I remember seeing
25 several and I'm also confident that General Vides had oral

(b) (6)

1 conversations with ministers, with officers of the Salvadoran
2 armed forces establishing those same points and reinforcing.

3 Q. During the year 1986 when you were there, your final
4 year there, did the Salvadoran government continue to reduce
5 abuses of authority by the military?

6 A. Yes.

7 Q. And how would you describe that from what you observed
8 in 1986?

9 A. Well, again our primary method of calibrating this, of
10 keeping track of it was the number of reports of abuses that we,
11 that we received and then mind that the embassy also had
12 extensive contact with the human rights organizations. We
13 talked about the officer assigned to the embassy who was my
14 human rights officer talked to the principal Salvadoran human
15 rights organizations which were by and large opposed to the
16 Salvadoran military tutela legal committee de madras (phonetic
17 sp.) of the Salvadoran [indiscernible] which is the Red Cross.
18 So we were talking to Salvadorans as well as foreign human
19 rights organizations as well as American human rights
20 organizations that were operating in the country. So I think
21 I'm willing to say I realize I'm under oath. I think we had as
22 broad a set of contacts clear across the human rights community
23 as we could possibly plausibly have then hoped to have.

24 Q. Now, during the time that you served in El Salvador,
25 were you familiar with the certifications that were made by the

(b) (6)

1 United States administration to Congress regarding human rights
2 in El Salvador?

3 A. Yes.

4 Q. And what was the role of the U.S. embassy in El
5 Salvador in connection with the certification during the time
6 that you were there?

7 A. Well, as well as an established practice within the
8 State Department, every year every American embassy in every
9 country is required to submit an annual human rights evaluation.
10 We do spot reporting. We that is, every American embassy
11 worldwide does spot reporting on human rights. That is an
12 established regular reporting requirement for American embassies
13 in El Salvador during the time that I was there. You have
14 referred, you referred to me in your questions to the annual
15 Human Rights Report. Those Human Rights Reports are prepared by
16 desk officers at the State Department on the basis of the
17 information supplied by the embassies. They have access to
18 additional information from Washington sources, but the
19 embassies prepare the initial report as well as reporting during
20 the year. Once a year, the annual, that's for the annual Human
21 Rights Report. For the certification process that you referred
22 to, again the embassy provides the feedstock for that. Those
23 reports originate with the political sections. That happens in
24 the American embassy in San Salvador and that's the custom in
25 which I've served in served in seven embassies overseas. That's

(b) (6)

1 universally the case.

2 Q. So during 1984, 1985, and 1986 when you were in El
3 Salvador serving at the U.S. embassy, you participated in the
4 process of certifications by the administration.

5 A. That's not only correct, I was the final approving
6 authority for the report that left the American embassy in San
7 Salvador signed by the ambassador to go back to the Department.
8 I reviewed that. I reviewed it with my human rights officer,
9 with other officers in the political section, with officers in
10 the I'm going to use the phrase "the station," our intelligence
11 unit, with officers from the military group, U.S. military
12 assistance group, the defense attaché group, and other elements
13 with the aid mission. All of them participated. All of them
14 had a chance for review, but I was the final officer who
15 reviewed that before it went to the ambassador for signature.
16 Now, that report was then not significantly changed or redrafted
17 in the State Department. We provided the basic documentation
18 for that, but the State Department, I've been at both ends. I
19 mean, when I was country director or office director of the
20 State Department, I received reports from embassies and on
21 occasion I was the one who had to then go over them and take
22 into account whatever additional information is available, but
23 that's the process.

24 Q. Now, you've testified regarding from your
25 [indiscernible] functions at the embassy in El Salvador during

(b) (6)

1 the civil war. You testified experiencing very directly
2 problems with the electricity, the utilities. What other major
3 issues did you observe directly while serving in the embassy?

4 A. Well, I'm not altogether sure what you're, what you're
5 looking for.

6 Q. Let me, let me clarify that somewhat then. You've
7 testified regarding problems with the electrical grid or the
8 electrical [indiscernible] that you observed directly while you
9 were there.

10 A. Uh-huh.

11 Q. Were there other similar problems with let's say
12 transportation, railroads, buses, anything of that nature that
13 was problematic as a result of the civil war?

14 MR. CRAIG TO JUDGE

15 I object, Your Honor. I'm not sure how this is relevant to
16 whether the respondent participated or assisted in torture acts
17 and extrajudicial killings.

18 JUDGE TO MR. HANDEL

19 Where are you going with this, Mr. Handel?

20 MR. HANDEL TO JUDGE

21 Well, we've, we've had testimony extensively here regarding
22 the situation in El Salvador from Professor Karl, from the other
23 witnesses, from Ambassador White, from two other witnesses
24 regarding the general conditions, the situation and how they
25 each contributed to what was going on and this is simply as

(b) (6)

1 additional background in connection with his observations. I've
2 got only a few questions in that area.

3 JUDGE TO MR. HANDEL

4 Okay.

5 JUDGE TO MR. PASSAGE

6 Q. Go ahead then.

7 A. Well, in addition to the issue of land reform which
8 I've already alluded to, it was the Salvadoran government, it
9 was the Salvadoran government which enacted the land reform
10 proposals for that, for that country, break up land, give land
11 to the, to the campesino. It was actually as it happens the
12 Salvadoran armed forces who implemented the land reform program.
13 It was the Salvadoran armed forces who went out and took
14 possession of the land so that it could be distributed. I
15 would, I would cite back as an additional example of how, of how
16 the Salvadoran military as opposed to an earlier period defended
17 the landowners, defended the large land holdings. The
18 Salvadoran armed forces during the, during the period after the
19 enactment of the new constitution after the elections under
20 President Duarte, under President Duarte actually reinforced.
21 They backed up. They enforced the reforms that were taking
22 place, breaking up the monopolies over cotton cultivation, over
23 coffee cultivation, over sugar cultivation, over shrimp and rice
24 cultivation, breaking them up again to give a greater measure
25 of, of, of equality and economic opportunity to the campesino,

(b) (6)

1 to the farmer.

2 Q. And again this occurred during your tenure.

3 A. Yes. Persuading the Salvadoran military to use some
4 of its, some of its equipment, some of its facilities to go out
5 and build, build clinics, rebuild schools, to drill clean safe,
6 to drill wells for clean safe pure drinking water, all of these
7 were part of the civic action program. Those were all things
8 that the United States military encouraged the Salvadoran
9 military to do and which under General Vides they did do to the
10 extent that they had resources available again at a time when
11 they were fighting for national survival. The country was
12 engaged in a civil war for its national survival and at the same
13 time the Salvadoran armed forces were expanding in size because
14 of the nature of the guerrilla. So General Vides had his hands
15 full expanding the armed forces, trying to train all of these
16 new people, take over with some degree of national control a
17 training program for the Salvadoran armed forces that up until
18 that time was vested largely in the Italian commanders.

19 MR. CRAIG TO JUDGE

20 I'm going to object. This is getting unresponsive, way
21 beyond what the original question was.

22 JUDGE TO MR. CRAIG

23 Okay.

24 MR. HANDEL TO JUDGE

25 I'll follow up with a question.

(b) (6)

1 JUDGE TO MR. HANDEL

2 Please.

3 MR. HANDEL TO JUDGE

4 That's fine.

5 MR. HANDEL TO MR. PASSAGE

6 Q. What were General Vides' functions during the time
7 that you were there?

8 A. He was minister of defense appointed by the civilian
9 president not named by the armed forces.

10 Q. And in carrying out that function during the civil war
11 and based on your numerous meetings with him, what did he have
12 to deal with at that time?

13 A. Well, in the first instance, there was a civil war
14 going on. So he had to give primary strategic and tactical
15 direction to the conduct of the war. Secondly, we turned to him
16 as well as President Duarte turned to him to radically change
17 the behavior and comportment of the Salvadoran military forces
18 and I simply refer to if the Court has heard from Professor
19 Karl, she has published and spoken amply on the abuses before.
20 I don't need to go over those for the, for the Court. He had to
21 preside over an expansion and the training of new recruits and a
22 radical change in the way funds were distributed from the center
23 to make sure that the funds were properly used to try to bring
24 into some sort of accountability a system which was sufficiently
25 loose that it permitted corruption to take place. It permitted

(b) (6)

1 battalion or company officers if they chose to do so to name for
2 example on payrolls what were referred to widely as ghost
3 soldiers. So clear across the field, General Vides had to
4 correct many abuses that had taken place, had to reorient the,
5 the, the direction of the armed forces, but at the same time for
6 the success of democracy in El Salvador had to ensure that the
7 armed forces stayed together, that they stayed loyal, that they
8 continued their loyalty to the elected government. During the
9 time that I was there, I am confident that I met at least 90% of
10 the senior officers of the Salvadoran armed forces. I don't
11 think any of them voted for President Duarte. I don't think any
12 of them were supporters of President Duarte's party. That
13 wasn't the point. They were expected, General Vides expected
14 them, we expected them partly as the price for U.S. assistance,
15 we expected them to support the new democratic experience and El
16 Salvador now has, next year will have 30 years of unbroken
17 democratic constitutional rule. As a personal anecdote, Your
18 Honor, if I may.

19 MR. CRAIG TO JUDGE

20 Nonresponsive.

21 MR. HANDEL TO JUDGE

22 We'll go, let me go to the next question. That's fine.

23 MR. HANDEL TO MR. PASSAGE

24 Q. The, when we, when we talk about here the, the civil
25 war that was going on the, when you arrived in El Salvador in

(b) (6)

1 1984, how would you describe the fighting that was going on in
2 El Salvador?

3 A. Before leaving to take up my official position in El
4 Salvador, I did extensive reading in of the documents available
5 in the Salvadoran desk at the State Department in the Latin
6 American Bureau and I probably read at least in abbreviated
7 fashion two or three years worth of reporting from out of the
8 American embassy in San Salvador. By the time I arrived in June
9 of 1984, it was very clear that although the level fighting
10 remained high, might even have been increasing, it was taking
11 place in a different part of El Salvador from where it had been
12 before. It was increasingly taking part out in the fields. The
13 Salvadoran armed forces were, were fighting further away from
14 the, the cities, the towns where the population lived. The
15 human rights abuses had decreased and the Salvadoran military
16 partly as the result of a reorientation of their perceived
17 mission, partly as the result of the training that we provided,
18 partly as the result of internal reforms were no longer going
19 after so much perceived collaborators with the FMLN as for FMLN
20 [indiscernible] is the Spanish word which would be what do you
21 want to say? The peasant fighters in the FMLN. That's a long
22 winded way of saying it was no longer confined the Salvadoran
23 military operations in the urban areas, the populated areas
24 which themselves lent themselves to substantial abuses. The
25 Salvadoran armed forces were now going after the guerrillas in

(b) (6)

1 the guerrillas' layers.

2 Q. Now, in 1984 when you arrived, was there a state of
3 emergency in El Salvador?

4 A. I believe there was. I would have to factually say
5 I'm not sure. I don't know. I've always regarded the
6 declarations of state of emergency in every country where I've
7 served as not something that a government may or may not do, but
8 the impact on daily life is not the result of a state of
9 emergency. In El Salvador, in downtown El Salvador, life was
10 very much very normal. If there was a state of emergency, I'm
11 not sure how you would have detected it.

12 Q. What about outside of San Salvador?

13 A. Well, outside of San Salvador when you got to the, to
14 the places where the security situation was degraded, there it
15 became important. The important thing is that by the time I
16 arrived in '84, that increasingly was not in the town itself.
17 That increasingly had been pushed out of the urban populated
18 areas.

19 Q. Were there when you arrived in 1984, were there parts
20 of El Salvador that were controlled by the guerrillas?

21 A. In San Salvador, I would say --

22 Q. The country of El Salvador.

23 A. Oh, in the country of El Salvador, yeah, sure. In, in
24 guerrilla insurgency, control is a very amorphous thing. There
25 were areas where the guerrillas have a larger presence than the

(b) (6)

1 government forces. There were areas where the government forces
2 have a larger presence than the, than the guerrilla forces.
3 That changed from daylight to nightfall. It changed in
4 different parts of the country. There were areas in
5 metropolitan San Salvador that I as chargé d'affaires and my two
6 ambassadors declared as off limits to Americans. That was for
7 personal security reasons. San Salvadorans lived and worked in
8 those areas. They transited through them freely and largely
9 without hindrance.

10 Q. And, and --

11 A. There were no front lines.

12 Q. When you, when you arrived in 1984, was a combat
13 essentially an armed force against an armed force or was it an
14 armed force against a guerrilla force that was in hiding?

15 A. Well, it was the latter because the guerrilla force
16 didn't wear uniforms. One of the problems with respect to human
17 rights was when you have a guerrilla, guerrilla force that does
18 not customarily wear uniforms with insignia, how can you
19 determine? I'm speaking about El Salvador. We could just
20 easily be speaking about Afghanistan or Iraq. How do you
21 determine for human rights purposes whose an enemy unless he's
22 actually shooting at you? That's easy. If he's shooting at
23 you, you know. If he's not shooting at you, you have no idea.

24 Q. During the time that you were there particularly when
25 you arrived, did the guerrillas, the FMLN let's say, did they

(b) (6)

1 have support in El Salvador?

2 A. One of the most interesting things about this one as
3 well as some other insurgencies that I've been involved in is
4 how little popular support the FMLN had in El Salvador. One of
5 the interesting telling signs is that to the degree that there
6 were refugee flows, the refugee flows were not in the direction
7 of the areas that the guerillas controlled. They were in the
8 direction of the towns that were controlled by the government.
9 That tells you something about where the loyalties or sympathies
10 of the, of the people lay. Our estimates, our inform estimates
11 within the embassy were that at no time, at no time during the
12 Salvadoran civil war did the FMLN have the support of more than
13 15 to 18% in the 12 to 18% range of the Salvadoran people.

14 Q. Now, when we talk about the information that the
15 embassy was getting, providing to you and so on regarding these
16 issues, how was the embassy getting this information?

17 A. Again, to the degree that we could and we were
18 concerned as we are today. Everybody is familiar with the
19 security concerns that we have in a country Nicaragua and
20 Afghanistan or in Pakistan or Yemen or any number of other
21 places. We were very much concerned about the security of our
22 people, the Americans in San Salvador, but to the degree that we
23 could as frequently as we could, I would send both civilian
24 officers of the embassy, the foreign service officers, Americans
25 to every one of the provinces of El Salvador. We tried to visit

1 them as frequently as we could. I know that we covered every
2 province at least once during the course of each year, but some
3 of the areas up in the mountains were so sparsely populated that
4 why would I send an American embassy officer or a political
5 officer up there? However, at the same time, the U.S. military
6 assistance group, we had trainers at the level of I believe in
7 every case they were at least major. There were some lieutenant
8 colonels with every one of the battalions in, in San Salvador.
9 I can be corrected that about that if somebody knows to the
10 contrary, but during the time that I was there, we had full-time
11 an American military officer with each of the battalions and
12 brigades out in the field living and working with them. Those
13 were also sources of information about how the Salvadoran
14 military was, was comporting itself.

15 Q. And let me just stop you for one second. The, the,
16 the U.S. military presence that you just described with the
17 battalions, you testified that was throughout the country.

18 A. Every one of the battalion, brigade, headquarters
19 throughout the country, yes.

20 Q. And, and how many provinces are there in El Salvador?

21 A. Fourteen.

22 Q. Fourteen.

23 A. If I remember correctly.

24 Q. Okay. And how large was the Salvadoran military at
25 the time that you arrived?

(b) (6)

1 A. Well, the numbers quite frankly on the day or the week
2 or the month that I arrived, I don't know what the numbers were,
3 but the Salvadoran military grew from somewhere around 15 to
4 20,000 to if my memory serves correctly, it was building towards
5 a force of around 55,000.

6 Q. And --

7 A. I had 55 American trainers and of the 55 trainers,
8 there, this, there was the numerical limitation. I will
9 volunteer that on any given day we had more than 55, but if I
10 had two or three or four or ten people come down from the United
11 States to give two weeks worth of medical training or well
12 digging training or helicopter repairs, I didn't have to count
13 those against my 55. We'll use 55 as a base number, but that
14 allowed me to have military presence in each one of the 14
15 provinces.

16 Q. Now, when you talk about the U.S. majors and I forgot
17 what the other --

18 A. The lieutenant colonels.

19 Q. The lieutenant colonels.

20 A. They were Army. There was an Air Force major out at
21 the air base. I think we had a Navy officer serve with the
22 naval command down at La Union which was the naval headquarters.
23 I believe all of the remainder of the trainers were assigned to
24 the province. I think they were all Army.

25 Q. So --

(b) (6)

1 A. I think they were all Army. There may have been one
2 Marine.

3 Q. Okay. And, and how many battalions were there in the
4 Salvadoran armed forces approximately?

5 A. I, here I'm reluctant to guess. I think the number, I
6 think the number was probably around eight or nine or ten. I
7 could be vastly mistaken.

8 Q. Approximately. It's been a long time I'm aware.

9 A. And it may have been many more than that, unlikely to
10 have been fewer.

11 Q. But you testified that that each one of those fighting
12 units --

13 A. Had at least one American trainer.

14 Q. One American trainer, that's to be the major and the,
15 or the lieutenant colonel.

16 A. Correct.

17 Q. And, and what were these majors or lieutenant colonels
18 doing with the battalions?

19 A. It was literally training all across the board. It
20 was in tactics. We're dealing with insurgency. One of the
21 things that I started to say a little earlier, when Ambassador
22 Pickering assembled his country team, every key member of the
23 country team that he picked had served in Vietnam, had served in
24 Vietnam. The political counselor had served in Vietnam, the
25 economic counselor --

(b) (6)

1 MR. CRAIG TO JUDGE
2 I object.
3 MR. PASSAGE TO MR. HANDEL
4 -- the military advisor.
5 MR. CRAIG TO JUDGE
6 Nonresponsive, Your Honor.
7 MR. PASSAGE TO MR. HANDEL
8 Because this was an insurgency.
9 MR. HANDEL TO MR. PASSAGE
10 Hold on for a second.
11 MR. CRAIG TO JUDGE
12 I'm going to object.
13 JUDGE TO MR. PASSAGE
14 Hold on.
15 MR. CRAIG TO JUDGE
16 It's nonresponsive. He's not answering the question.
17 JUDGE TO MR. CRAIG
18 Okay.
19 JUDGE TO MR. HANDEL
20 Go back to the question again, Mr. Handel.
21 JUDGE TO MR. PASSAGE
22 Q. What were the majors and the lieutenant colonels --
23 A. What were they doing?
24 MR. HANDEL TO MR. PASSAGE
25 Q. Yeah. What, what were they doing?

(b) (6)

1 A. Imparting the knowledge that they had gained in
2 Vietnam on how you win a counter insurgency, on how you have to
3 enlist the support of the people, that the government forces
4 have to be able to win the support of the people and they have
5 to provide services to the people, they have to protect the
6 people, and then training in tactics, military tactics in the
7 field, night combat tactics, small unit tactics, military
8 medical evacuations, the provision of logistics, keeping track
9 of the logistics making sure that you can account for munitions
10 or weapons or uniforms or food stuff and things like that.

11 Q. During the time that you were there, was the actual
12 delivery of military weapons, did that increase significantly?

13 MR. CRAIG TO JUDGE

14 Your Honor, I'm going to object. I think we're again
15 getting way beyond the relevant issues being whether the
16 respondent assisted or otherwise participated in acts of
17 extrajudicial killing or torture. The issue is not what aid the
18 U.S. provided to the El Salvadoran government or what the U.S.'s
19 role in the civil war may have been. The, the issue is again on
20 the respondent's actions, not on U.S. actions.

21 JUDGE TO MR. CRAIG

22 Yeah.

23 JUDGE TO MR. HANDEL

24 And I have to say, Mr. Handel, some of this information I
25 think is very relevant, but we're starting to get past that very

(b) (6)

1 relevant stage. So let me direct your attention back to the
2 issues at hand.

3 MR. HANDEL TO JUDGE

4 Yes, Your Honor.

5 MR. HANDEL TO MR. PASSAGE

6 Q. Now, during the time that you were three 1984 through
7 1986 in your observation of General Vides and the Salvadoran
8 military, did the Salvadoran military and in particular General
9 Vides remove or discipline personnel?

10 A. General Vides on a number of occasions moved personnel
11 and in some instances those personnel were personnel we had
12 identified, including discussed with General Vides, his people
13 that we were concerned about. General Vides as one might expect
14 listened attentively to our concerns, took into account
15 information that we provided. General Vides as minister of
16 defense was accountable to President Duarte and as is more or
17 less universally the case, no American diplomat ever gets
18 everything that he asks for.

19 Q. And --

20 JUDGE TO MR. HANDEL

21 Let me clarify then.

22 JUDGE TO MR. PASSAGE

23 Q. The answer is that as to discipline or move, you're
24 aware that he moved some personnel.

25 A. People were moved. Their assignments were changed.

(b) (6)

1 Q. Okay.

2 JUDGE TO MR. HANDEL

3 Go ahead.

4 MR. HANDEL TO MR. PASSAGE

5 Q. And in, and in your observations, how was that

6 accomplished?

7 A. Internal Salvadoran military personnel procedures and

8 that would have to be my answer reassigned them, redirected,

9 transfer.

10 Q. Did General Vides have the ability to discipline

11 personnel?

12 A. I don't believe --

13 MR. CRAIG TO JUDGE

14 I think we need some foundation that he has knowledge as to

15 what Vides --

16 JUDGE TO MR. HANDEL

17 Ask a few questions and I think we'll get there.

18 MR. HANDEL TO JUDGE

19 Sure.

20 MR. PASSAGE TO MR. HANDEL

21 General --

22 MR. HANDEL TO MR. PASSAGE

23 Q. Well, let me -- hold on. Let me just ask you some

24 questions and we can do that. Did you have knowledge as

25 service, as a chargé and the deputy chief of mission at the

1 Salvadoran embassy regarding the removal or disciplining of
2 members of the military, of the Salvadoran military?

3 A. I'm sorry. Could you repeat the question?

4 Q. Sure. In your service as the chargé and the deputy
5 chief of mission in El Salvador, did you have knowledge,
6 information regarding the removal or disciplining of personnel
7 of the Salvadoran military?

8 A. Well, on those occasions where either we had asked
9 that something be done, I was never one of those who made the
10 request. I don't recall ever personally having been involved in
11 the, in a request involving a specific individual, but embassy
12 officers reported to me on you know we've had a conversation
13 with General Vides about this or General Blandon or you know
14 whoever the, the person was and subsequently people would come
15 and tell me we have been told that so and so has been moved or
16 he's been transferred. I could not at this point give you a
17 single name. That's 25 years beyond. I did not keep at the
18 time records. They would have been reported that that would
19 have been an embassy reporting.

20 Q. And in your observations in serving there as the
21 deputy chief of mission and the chargé, was the security
22 situation the paramount function of General Vides?

23 A. As minister of defense, General Vides, I never saw a
24 position description for him, but I'm confident that if a
25 position description existed, it would have been prepared by

(b) (6)

1 President Duarte and it would have been as president -- what I
2 started to say was one of President Duarte's proudest
3 accomplishments was his signature block at the bottom of his
4 letterhead was constitutional president of the Republic of El
5 Salvador. As the constitutional president, that's rare in El
6 Salvador's history. As constitutional president, he would have
7 charged his minister of defense with protecting the national
8 security. I never saw a position description which outlined
9 them, but that's the expectation on the part of President Duarte
10 who named him and kept him for his entire period as president
11 through his elected term of office until he handed over rare in
12 El Salvador's history to his elected successor who was the
13 minister of defense who was responsible for national security.

14 Q. Did you observe during the time that you served 1984
15 to 1986 that the efforts that were being made by the United
16 States Government in human rights training, discussions, and so
17 on, did you observe that whether that had a significant effect
18 on the human rights conditions in El Salvador?

19 A. We were satisfied that it did and for which purpose we
20 continued our assistance which on occasion, the United States
21 Secretary Schultz paid a visit to El Salvador to reinforce our
22 human rights concerns. Dick Walters, Ambassador Richard,
23 Vernon, Vernon Walters came to El Salvador. This was before I
24 arrived to deliver a message about human rights. Vice President
25 George H.W. Bush paid a visit to El Salvador to reinforce that

(b) (6)

1 message. During the time that I was there, we were questioned.
2 We were satisfied that that not only adequate, but a fully
3 acceptable level of progress was being made. Progress was being
4 made towards the stated goals, but I should say our principal
5 preoccupation was that the Salvadoran military remained unified
6 and that it remained supportive of the democratic process. We
7 went repeatedly to Salvadoran officials, including General Vides
8 with names and facts about specific human rights cases, but
9 prosecutions was not our cardinal objective. Our cardinal
10 objective given El Salvador's role, El Salvador, the role of El
11 Salvador's military was that the Salvadoran armed forces
12 remained united and remained supportive of the democratic
13 experiment and at that point it was an experiment. We now have
14 30 years worth of the results of that experiment and General
15 Vides is the one who was directly and uniquely responsible for
16 that. I do not know any other Salvadoran military official who
17 could have held together the Salvadoran armed forces and
18 produced that change.

19 Q. Was there a -- did you observe a serious concern on
20 the part of the U.S. embassy the time that you were there
21 regarding the Salvadoran military losing the war?

22 JUDGE TO MR. HANDEL

23 Losing what?

24 MR. HANDEL TO MR. PASSAGE

25 Q. Losing the war.

1 A. By the time I arrived and reading, and reading and
2 before I departed officially for San Salvador and reading the
3 three years worth of reporting and I just I'm using three years
4 as shorthand, whatever the period was reading those reports, it
5 was very clear to me that there was a time in 1980, I will say
6 1982 give or take months on the edges of 1982 when there was a
7 very real concern that the FMLN might be able to move into seize
8 and at least for a period of time hold the capital. By the time
9 I arrived in the summer of 1984, those fears had significantly
10 diminished. The guerrilla, guerillas by their nature,
11 guerrillas have the opportunity to mass their forces and attack
12 at times and places of their choosing. Government forces have
13 to defend all of the places all of the time. That puts
14 government forces at a significant disadvantage. There's no
15 question about that. So while we remained concerned that if the
16 guerrillas and we relied extensively on intelligence to help key
17 where, where they might be massing, where they might attack,
18 where they might and we shared that information with the
19 Salvadoran government, the civil government, and with the
20 Salvadoran military to help them protect. By the time I was
21 there, the '84 to '86 period, we knew that had the guerrillas
22 chosen to mass, they might have been able to swoop in under
23 cover of darkness and seize one of the provincial capitals and
24 possibly hold it possibly for up to several days before they
25 could be chased out, but we no longer were fearful that the

(b) (6)

1 Salvadoran armed forces would not be able to recover the town.
2 Now, I would point out that after I departed in 1989, those
3 familiar with the history of El Salvador --

4 MR. CRAIG TO JUDGE

5 Objection, Your Honor. This goes beyond the scope of his
6 personal knowledge.

7 MR. HANDEL TO JUDGE

8 Yeah. We'll go ahead and follow up with a, with the next
9 question.

10 JUDGE TO MR. HANDEL

11 Okay.

12 MR. HANDEL TO MR. PASSAGE

13 Q. Now, during the time that you were there in 1984
14 through 1986, were there threats by the U.S. Government to cut
15 off aid to the ESAF, the El Salvador armed forces?

16 A. I, I frankly don't recall any. We had passed, we had
17 passed the point where that was necessary. The Salvadoran
18 government knew what our position was. The Salvadoran armed
19 forces knew what our position was. We were confident of General
20 Vides' cooperation and the cooperation however half hearted it
21 might have been of other senior members of the Salvadoran armed
22 forces. I, I don't recall during the time that I was there. I
23 think the last, the last threat to cut off U.S. assistance
24 occurred before I, before I arrived. I don't recall. I
25 certainly never did. I know of none that Ambassador Pickering

(b) (6)

1 made while I was there as his deputy. I'm excluding the period
2 before I arrived.

3 Q. Certainly, we're talking --

4 A. As ambassador. We're talking about during the time
5 that I was there. That watershed had been, had been passed.

6 Q. Right. So in other words, during the time the '84
7 through '86 that you were there.

8 A. Uh-huh. I recall no threat to cut off assistance.
9 The Salvadoran government and its armed forces were well aware
10 of our concerns. They were doing everything that we thought we
11 could reasonably ask them to do. That didn't prevent us from
12 asking for more, but we understood the, the circumstances that
13 they were fighting in.

14 Q. And in the information that you provided in support of
15 the administration's certifications to Congress regarding --

16 A. Uh-huh.

17 Q. -- human rights, the, the information that you
18 provided regarding human rights conditions, human rights
19 improvement, was that information true and correct?

20 A. Yes. The phrase that we used within the State
21 Department is quote, "an acceptable level of progress" close
22 quote. By definition, that's subjective taking into account all
23 of the information available to us at the embassy. It was the
24 progress that was to be made to human rights [indiscernible] was
25 acceptable. Yes. We might have appreciated more. We might

(b) (6)

1 have wanted more. We pressed for more, but we had to take into
2 account the whole environment in which General Vides operated,
3 President Duarte operated, the Salvadoran armed forces operated,
4 and our determination was that it was an acceptable level of
5 progress. So our certification, none of us had our fingers
6 crossed behind our backs or otherwise.

7 JUDGE TO MR. PASSAGE

8 Q. And that would be for the entire time you were there,
9 sir.

10 A. That's correct for the entire two year period that I
11 was there.

12 MR. HANDEL TO MR. PASSAGE

13 Q. And, and what sort of effort went into providing
14 information to the administration in Washington regarding the,
15 regarding the certification?

16 A. Well, first, there were required periodic reports,
17 regular reports, the annual Human Rights Reports and every time
18 my, my recollection was that the certifications were done on a
19 six month basis. I'm not certain about that, but I think it was
20 every six months the administration was required to certify to
21 Congress that an acceptable level of progress is being made. So
22 in addition to all slot reports, all of the political reporting
23 that came out of the embassy, we submitted on a regular basis
24 with a predetermined schedule reports which went into the
25 certifications and which went into the annual Human Rights

(b) (6)

1 Reports.

2 Q. Aside from the annual report, there were other regular
3 reports that were being submitted.

4 A. That's correct.

5 Q. And that include --

6 A. For example, there were, there was a regular monthly
7 report that was, that was submitted to Washington as well as the
8 U.S. Southern Command on progress in training the Salvadoran
9 military, human rights lectures given, ammunitions supply and
10 expended. Everything from boots to helicopters and aircraft,
11 that's on. We, we had a very good reporting requirement levied
12 on us. Part of it was for military accountability and budgetary
13 purposes. Not all of it was by any means security related.
14 Some of it was economic. So we reported regularly on everything
15 that we were doing there.

16 Q. And, and the input for that information in order to
17 prepare those monthly reports and the annual reports during the
18 time that you were there, did that come from U.S. military
19 officers?

20 A. Some of it.

21 Q. Did it come from U.S. intelligence officers?

22 A. Some of it.

23 Q. Where else did it come from?

24 A. U.S. economic assistance officers, the AID mission,
25 the Agency for International Development, some of it in, in some

(b) (6)

1 of the fields came from our public affairs officers. We had an
2 economic section that did the regular economic reporting over
3 the Salvadoran government's economic expenditures, how, how much
4 were they spending on, on land reform, how much were they
5 spending on education, how much were they spending on rebuilding
6 the roads, other projects of the infrastructure. Some of the
7 information was solicited from Salvadoran ministries factually
8 you know. If X amount was being provided to a Salvadoran
9 ministry, I will say a ministry of education, then we would go
10 badger the Salvadoran ministry of education, where did you spend
11 this money? How many teachers did you train? How many
12 classrooms did you repair? How many new schools did you build?
13 There was a full level of reporting that that we did from out of
14 the embassy.

15 Q. Now, during the time that you were there 1980, in
16 1986, did you in your observation, was there an effort made by
17 the Salvadoran government to improve the court system?

18 A. There was an administration of justice program. The
19 short answer to your question is yes. Quite frankly, that's not
20 one of the fields that I personally followed because we had
21 officers within the embassy in the political section as well as
22 I mentioned I had two attorney advisors from the Department of
23 Justice who were following events within the court, within the
24 court system up to and including prosecution of human rights
25 cases. Because that reporting was being done by them, I was

(b) (6)

1 aware of the reports. I probably signed off on many of the
2 reports. I quite frankly couldn't provide you with any details.
3 Yes. It was being done. No. I don't remember details.

4 Q. During the time that you were there 1984, '85, '86,
5 did the International Committee for the Red Cross have any role
6 as far as monitoring human rights in El Salvador?

7 A. My recollection and, and quite frankly I'm reluctant,
8 most reluctant because my memory. I know that they had
9 personnel there. I think they had personnel who were assigned
10 there permanently. I know officers at the embassy were in
11 contact with them. I personally was not.

12 Q. Okay. And other human rights groups, such as
13 America's Watch and so on.

14 A. Yes, yes. America's Watch, Lawyers, the Lawyers
15 Committee, the Washington Office on Latin America, there were a
16 variety of church related organizations who were down there and
17 we had people in the embassy who talked to all of them. Now, I
18 should say as is universally true with private voluntary
19 organizations, some are willing to --

20 MR. CRAIG TO JUDGE

21 And I object, Your Honor. Nonresponsive.

22 JUDGE TO MR. CRAIG

23 I'm going to allow it.

24 JUDGE TO MR. PASSAGE

25 Q. Go ahead, sir.

(b) (6)

1 A. Some, some are more willing to speak to embassy
2 representatives. That was a source of information. Others were
3 more careful. The International Committee of the Red Cross and
4 Doctors Without Borders are two organizations which legendarily
5 are not prepared to deal with government representatives and I
6 appreciate the reason for that. I'm, as I say, I, I personally
7 have supported both organizations. They need to keep their
8 distance from embassies and governments in order to protect and
9 preserve their freedom of action. With respect to the
10 International Committee of the Red Cross, that's a primary
11 mechanism for use in contacting people who may be held prisoner
12 by guerrilla organizations. They cannot be perceived to be not
13 just tools of say the American Government or an American
14 embassy. They really have to be very careful about association
15 with them and we respect that. We respect it.

16 JUDGE TO MR. HANDEL

17 Mr. Handel, I think it may be time for a break.

18 MR. HANDEL TO JUDGE

19 Yes, Your Honor.

20 JUDGE TO MR. HANDEL

21 To give our witness a break.

22 JUDGE TO MR. PASSAGE

23 Why don't you stretch your legs, sir?

24 JUDGE TO MR. HANDEL AND MR. CRAIG

25 We'll take ten minutes if you would.

(b) (6)

1 (OFF THE RECORD)

2 (ON THE RECORD)

3 JUDGE FOR THE RECORD

4 Okay. We are back on the record and we'll continue with
5 direct.

6 JUDGE TO MR. HANDEL

7 Go ahead, sir.

8 MR. HANDEL TO JUDGE

9 Thank you, Your Honor.

10 MR. HANDEL TO MR. PASSAGE

11 Q. Ambassador Passage, taking you back to the beginning
12 of your service in El Salvador, at that time there was Duarte
13 had just come in. Is that right?

14 A. Correct.

15 Q. And when, when Duarte came in, in the beginning I
16 believe it was right about the time that you came.

17 A. President Duarte took office in February of 1984 and I
18 arrived in June of '84.

19 Q. Okay. And when, when, when the administration of, of
20 Duarte the beginning when you were present in the beginning
21 months over there, how was the, the, the economy of El Salvador?

22 MR. CRAIG TO JUDGE

23 I object. Relevance.

24 JUDGE TO MR. HANDEL

25 Is there now relevance?

(b) (6)

1 MR. HANDEL TO JUDGE

2 Just briefly, I'm, I'm going over a couple of the, the
3 issues that were facing the government of El Salvador. There's
4 been extensive testimony regarding Vides Casanova, the
5 government of El Salvador and this is one of the, the main
6 issues and --

7 JUDGE TO MR. HANDEL

8 Briefly if you would.

9 MR. HANDEL TO JUDGE

10 Yeah, very briefly.

11 MR. CRAIG TO JUDGE

12 Your Honor, just because it's brief doesn't make it
13 relevant.

14 JUDGE TO MR. CRAIG

15 Okay. I'll allow it.

16 JUDGE TO MR. HANDEL

17 Go ahead.

18 MR. HANDEL TO MR. PASSAGE

19 Q. How was the, the --

20 A. It was in terrible shape.

21 JUDGE TO MR. HANDEL

22 That's brief. Okay.

23 MR. HANDEL TO JUDGE

24 Okay.

25 MR. HANDEL TO MR. PASSAGE

(b) (6)

1 Q. How would you describe the institutions for public
2 administration?

3 MR. CRAIG TO JUDGE

4 An objection. Relevance.

5 JUDGE TO MR. HANDEL

6 Go ahead if you --

7 MR. HANDEL TO JUDGE

8 Very brief.

9 JUDGE TO MR. HANDEL

10 -- be brief.

11 MR. PASSAGE TO MR. HANDEL

12 Weak.

13 MR. HANDEL TO MR. PASSAGE

14 Q. The administration of justice.

15 A. Weak.

16 Q. And during the time period, did, did the government of
17 El Salvador announce an initiative or dialogue with the
18 guerrillas?

19 A. El Salvador had been engaged for the preceding ten
20 years in an increasingly violent civil conflict. All of its
21 internal institutions were weak and had become increasingly so
22 up through the establishment of the new constitution and then
23 the holding of elections which produced for the first time
24 democratic civilian government. President Duarte made clear and
25 I, I'm confident he made clear publicly. He certainly made

(b) (6)

1 clear probably in the very first meeting that I had with him
2 which would have been with others. It would have been with
3 Ambassador Pickering and with others from the American embassy.
4 It was probably during one of the monthly sessions, review
5 sessions with the southern command commander. My, my vague
6 recollection is that he pulled aside in one of the brief
7 recesses. He pulled aside president, pulled aside Ambassador
8 Pickering and me and said he wanted to explore a possibility,
9 the possibility of beginning a dialogue with the guerrillas.
10 Now, that's shorthand for in diplo speak, that's shorthand for
11 beginning a negotiation. He understood. We understood. We
12 certainly didn't misunderstood. He was not going to begin at
13 that point a negotiation with the guerrillas. There were no
14 Salvadoran government was nowhere near that point. President
15 Duarte in my view in my judgment was nowhere near strong enough
16 at that point. He had only been president for four months. He
17 couldn't possibly have carried anything off in the near term. I
18 will say that I was mildly astonished a year later, well, not
19 even a year later. It would have been in the spring of '85
20 going into the period, I, I think I may have been chargé. If I
21 wasn't chargé, I was certainly the deputy chief of mission when
22 President Duarte told us that he had, he had planned and had
23 arranged for the first meeting between the government of El
24 Salvador and the FMLN up at Las Palmas, a town on the
25 Salvadoran-Honduran frontier. That took place I don't remember

(b) (6)

1 which month during the, during the summer of 1985. As a
2 diplomat who's been involved for my entire professional career
3 in international negotiations, I would not describe that as a
4 negotiation. It was quite literally --

5 MR. CRAIG TO JUDGE

6 Objection, Your Honor.

7 MR. PASSAGE TO MR. CRAIG

8 -- meeting under a tree.

9 MR. CRAIG TO JUDGE

10 Beyond the scope of the question.

11 MR. HANDEL TO JUDGE

12 Okay. We'll continue.

13 JUDGE TO MR. HANDEL

14 The next question.

15 MR. HANDEL TO MR. PASSAGE

16 Q. The, the, the, the, the new government, the Duarte
17 government in your observations, was it working to end violence?

18 A. Well, it was working to end violence first through the
19 actions of the security forces, that is to say the deal with the
20 guerrilla insurgency. It was working to end violence defined as
21 human rights violations by the emphasis on ending human rights
22 violations, ending the death squads, ending the captures, ending
23 the human rights, the tortures, and things that have occurred
24 before. So the front answer is yes, it was working to end
25 violence clear across the board whether perpetrated by

(b) (6)

1 Salvadoran forces or by the guerrillas.

2 Q. The left or the right, the left and the right.

3 A. The left and the right.

4 Q. And --

5 A. Reduce the level of violence in the country.

6 Q. And in your observations in 1984, was the government
7 of El Salvador working to strengthen the rule of law?

8 A. I have to give you a monosyllable. Yes, but it's kind
9 of hard to pursue it much beyond that. As I said, the
10 institutions of the state were so weak, the court system, the
11 judges, the training of the judges, in many cases, in many cases
12 judges, I'm looking at apparatus all around this Court here,
13 around this courtroom which was unthinkable then. Your average
14 courtroom in El Salvador was lucky if it had a shoe box with
15 three by five cards.

16 Q. How would you describe the courtroom in El Salvador in
17 that time?

18 A. Barebones room with a judge who was respected as a
19 judge, but nonetheless was operating without any of the
20 instruments for an investigation, for compilation, without any
21 of the, the systematic compilation of information up to and
22 including even the law books, the legal code of El Salvador.
23 The overwhelming majority of courtrooms in El Salvador didn't
24 even have a Salvadoran legal code in it. So you were starting
25 from scratch building from the ground up with no resources, no

(b) (6)

1 training, very poor training for the personnel. We tried to
2 assist with that. We had a program. I, I described it earlier
3 administration of justice, but we were handicapped that the
4 United States, our legal system is based on Anglo-Saxon common
5 law. The Salvadoran legal code is based on code law. So the
6 ability of the United States to provide assistance under those
7 circumstances and it included other elements of the Salvadoran
8 government, we had non-compatible systems. That was a handicap
9 that we faced, that I faced.

10 Q. Now, now given what you've just described regarding
11 the court system administration of justice which you've
12 described as --

13 A. Rudimentary.

14 Q. -- rudimentary, severely hampered, were the, the
15 positive changes, were they rapid or did it take some time?

16 A. Well, the single word that I would use would be
17 uneven. There were, there were judges in the Salvadoran -- I
18 assume you, the question involves the legal system. There were
19 judges in the Salvadoran system who were almost indescribably
20 courageous in pursuing against insuperable odds, including death
21 threats to them who were willing to try to do their best to
22 impartially apply rule of law. There were other judges at the
23 other end of the spectrum who were hopelessly corrupt and every
24 place in between. That's not unusual. It's not unusual in El
25 Salvador. It's not unusual in any developing country and I'm

(b) (6)

1 not going to describe our own. So it was uneven in El Salvador,
2 but the new democratic government, the new democratic processes
3 put in place by the constitution of 1982 administered by
4 President Duarte were literally starting from scratch. The best
5 --

6 JUDGE TO MR. PASSAGE

7 Hold on. Hold on. Wait for a question.

8 MR. HANDEL TO MR. PASSAGE

9 Q. Yeah. Let me go ahead and do a follow up question.
10 During the, the first few months that you were there in your
11 observations, did the civilian government, excuse me, did the
12 military in El Salvador defer to civilian authority?

13 A. The answer that I would, I would have to give, well,
14 frankly it would depend on, on the case, on the issue. If we're
15 talking about public security and public safety, I would say the
16 Salvadoran security forces weighed in very strongly on the basis
17 of their expertise. What I started to say a minute ago was that
18 the best functioning institution in El Salvador at the time, the
19 only one which I could with a straight face describe as
20 functioning strongly and well with a sense of discipline, a
21 sense of institutional control was in fact the military. All of
22 the others were weak. That's I would, I would begin with weak.
23 Now, your question was did the security services, did the armed
24 forces defer to civilian control?

25 Q. Right. In other words and let me, let me clarify the

(b) (6)

1 question.

2 A. Uh-huh.

3 Q. Following the, the election of Duarte in the first few
4 months that you were there in the, in the relations with the new
5 civilian government, did the, the, did the military defer to
6 civilian authority?

7 A. In my experience and to my knowledge, my experience
8 referring to personal observation, knowledge referring to all
9 the reporting that I had available to me, the minister of
10 defense General Vides was invariably, I know of no instance when
11 this was not the case, attentive to concerns expressed by the
12 president, President Duarte. He took them into account. I
13 know. I'm speaking as I'm thinking which is always a mistake.
14 I know of no instance when General Vides failed to carry out any
15 instruction and the instruction didn't have to be formally given
16 as a written instruction. He was very attentive to what
17 President Duarte expected of him, asked of him, told him to do,
18 and in my knowledge and in my experience to the best of his
19 ability to do so I'm back to as much as one could plausibly have
20 expected, he carried them out. I know of no instance unlike
21 prior periods in El Salvador's history which has been amply
22 documented, under General Vides, Salvadoran armed forces were
23 attentive to and attempted to carry out to the best of their
24 ability the instructions given by civil authority.

25 Q. Now, during that same time that we're talking about,

(b) (6)

1 did, was, was General Vides in fact the superior of President
2 Duarte? I'm talking, I'm not talking about by titles. I'm
3 talking in actual carrying out of power in El Salvador.

4 A. Well, in any country, in any country at war, the
5 senior military or security officer obviously has forces at his
6 disposal which an elected president assumes part of the elected
7 president's disposal. That depends on the loyalty and
8 dependability, the reliability of the senior military officer.
9 I answered that question a minute ago when I said I know of no
10 instance when General Vides failed to carry out as
11 conscientiously as possible the expressed desires of the, of the
12 president [indiscernible].

13 JUDGE TO MR. PASSAGE

14 Q. But the de facto head of government would have been
15 who?

16 A. I beg your pardon.

17 Q. Who would have been the de facto head of government?
18 Who?

19 A. Oh, it was President Duarte. General Vides was a
20 cabinet minister. In prior governments prior to the election of
21 1984, the head of government was a military officer and that
22 went back for almost 50 years. Between 1931 and the elections
23 of 1984, I, I believe those were all military governments.
24 President Magana who preceded Duarte was, was named by the
25 junta. That was after the constitution was drafted and he was

(b) (6)

1 retired [indiscernible]. So you had an unbroken, you had almost
2 50 years unbroken military rule. President Duarte was the
3 first. I, I made that point because it was so important
4 [indiscernible] President Duarte, the constitutional president
5 of the Republic of El Salvador. Okay.

6 MR. HANDEL TO MR. PASSAGE

7 Q. Did the, the government of, of President Duarte, did,
8 did they issue guidelines to your recollection regarding the use
9 of aerial bombardment?

10 A. Yes. Actually, there were a couple of instances I now
11 [indiscernible] while I was there and some of them may have
12 occurred while I was, while I was chargé d'affaires. I would be
13 you know I would, I'll, I'll say 1985. There may have been some
14 in '84. There may have been some in '86 where there was the use
15 of air power where there was an allegation of civilian
16 casualties. We met both with the minister of defense and the
17 commander of the air force General Bustillo and went over rules
18 of engagement. That's the U.S. nomenclature rules of engagement
19 where, when, and under what circumstances an air power be used.
20 We reached an agreement with the Salvadoran military on those
21 circumstances and they were circumstances that were intended to
22 be verifiable that then when there were accusations afterwards,
23 we could go back and trace where were aircraft at the time,
24 where were they being used, how were they armed, who was flying
25 them, where did they fly? So the answer to your question is

(b) (6)

1 yes. We made a deliberate attempt and the Salvadoran government
2 and the Salvadoran armed forces cooperated fully completely.
3 They had the same interests that we did which was to prevent
4 civilian casualties.

5 Q. And now, during your first year there in 1984, did you
6 observe a drop in killings attributed to death squad activity?

7 A. Yes. That's the numerical, the statistical numbers
8 base that I referred to earlier.

9 Q. Was that a dramatic drop?

10 A. Oh, it was significant. There's no question.

11 Q. Now, the, do you recall whether the security forces
12 provided human rights instruction to trainees and chaplain
13 corps?

14 A. I do not recall. That simply reflects that I knew
15 nothing about a chaplain corps. There may have been one. I do
16 not know that to have been the case.

17 Q. How about trainees?

18 A. The trainees, yes, sure. That was, that was part of
19 the trainee program that we administered and that we expected
20 them to take. What we were doing was training trainers by and
21 large. It wasn't just training Salvadoran, Salvadoran soldiers.
22 It was training Salvadorans so that they could do training and
23 that included human rights.

24 Q. Do you, do you recall whether the Minister of Defense
25 Vides issued any arrest and detention rules during the time that

(b) (6)

1 you were there?

2 A. I quite frankly simply don't know. I know of, I know
3 of none. That was not a level of detail that I would have, I
4 would have engaged in.

5 Q. Now, was there a problem during the time that you were
6 there to distinguish between killings that were politically
7 motivated and those in order to evade criminal detection,
8 criminal?

9 A. We --

10 JUDGE TO MR. HANDEL

11 Try that question again. When you said was there a
12 problem, I'm not sure I'm following you in that.

13 MR. HANDEL TO MR. PASSAGE

14 Q. Was, was there difficult, was there -- excuse me. Was
15 there a difficulty in distinguishing between those killings that
16 were politically motivated and those could be attributed to
17 criminal killings?

18 JUDGE TO MR. HANDEL

19 Thank you.

20 MR. PASSAGE TO MR. HANDEL

21 Because of the previous history of Salvadoran armed forces
22 violations of human rights again well documented, we proceeded
23 on an assumption that unless there was *prima facie* evidence that
24 a given event had occurred as a result of criminal activity, a
25 robbery, a break-in with the intent of committing that sort of

(b) (6)

1 crime, we proceeded on the assumption that there may well have
2 been a political basis for a murder, an assassination or
3 something like that. We, we started from an assumption that
4 somebody had to prove to us that it was not that. We looked for
5 evidence that it was not a run of the mill street crime.
6 Otherwise, we treated virtually all of the disappearances
7 [indiscernible] of the, of the killings, the murders, the, the
8 other forms, we, we started with the basis of suspicion. That
9 was founded on the previous history of what had taken place.

10 MR. HANDEL TO MR. PASSAGE

11 Q. Now, was it a government policy during the time that
12 you were there to deliberately target violence against
13 civilians?

14 A. No. By the time I arrived, by the time I arrived,
15 again you know I would say some commanders were better than
16 other commanders, in some departments that the human rights
17 situation was better than other departments. I would be hard
18 pressed at this point 25 years after the events [indiscernible]
19 in El Salvador and name which ones were better or which ones
20 were worse, but by and large the situation had improved so
21 starkly, so dramatically that as a generalized rule, we were no
22 longer concerned that the military were targeting civilian
23 members, your question. That, that didn't really occur. The
24 human rights violations continued and we continued to raise
25 specific incidences, but as a matter of deliberate practice

(b) (6)

1 targeting civilians by the time I arrived, that defined large
2 had ended.

3 Q. In your observation in 1984, were most of the deaths
4 on the, not on the government's, but on the other side were,
5 were most of the deaths from guerrilla combatants?

6 A. Well, I, I turned to the Amnesty International reports
7 which, which divided roughly down the middle. Certainly by the
8 time that I left, half, they ascribed to government forces.
9 Half, they ascribe to, to, to the guerrilla forces. The
10 distinction between the two of them was the guerrillas were
11 deliberately targeting for terrorist purposes. That's what
12 guerillas do. They --

13 Q. Repeat that. I didn't, I didn't hear that.

14 A. The guerrillas were deliberately targeting civilian
15 targets. That's what guerillas do. That's what terrorism is.
16 You kill a school teacher in a village. You, you kill the, the,
17 the mayor of the village. You kill the police chief in the
18 village. That's for purposes of terror. That was the activity
19 of the, the guerrillas. Of the, of the casualties that were
20 caused by Salvador's, El Salvador's forces, by the armed forces
21 as I said a couple of minutes ago, I recall no instance where I
22 could say Salvadoran armed forces deliberately targeted
23 civilians. I don't believe that occurred. There may have been
24 some instances. I recall none as opposed to the guerrillas and
25 that's a standard operating procedure in, in guerrilla warfare.

(b) (6)

1 My, my primary diplomatic experience was in areas where there
2 has been guerrilla conflict whether in southeast Asia, in
3 Africa, in Latin America, in El Salvador specifically. That's a
4 standard tactic.

5 Q. During the time that you were there, were any
6 legislative assembly deputies killed?

7 A. Oh, I'm sure there were. I don't, I don't recall
8 specific instances or names, but assemblies, assembly deputies
9 were targets of the guerrillas. I'm, I'm confident there were
10 some who were killed. I don't recall that even as were village
11 mayors, as were city, city officials in all of the cities.

12 JUDGE TO MR. PASSAGE

13 Okay. Be sure and wait for the question.

14 MR. HANDEL TO MR. PASSAGE

15 Q. Were there any -- was there such a thing as a left
16 wing death squad?

17 A. Well, I don't recall using the phrase or hearing the
18 phrase used. That's what guerrilla hit squads were. A death
19 squad, the, the guerrilla, how about the guerrilla bands that
20 came down out of the mountains and killed my four Marines in the
21 Zona Rosa ambush? What about the guerrilla squad that came down
22 and kidnapped President Duarte's daughter on a street corner in
23 San Salvador and took her up into the mountains and held her
24 hostage for 44 days?

25 JUDGE TO MR. PASSAGE

(b) (6)

1 Q. But you're not familiar with the term that he used,
2 the left wing death squad.

3 A. I don't recall that term "left wing death squad." I
4 mean, that's simply the activities of the guerrillas.

5 JUDGE TO MR. HANDEL

6 Mr. Handel.

7 MR. HANDEL TO JUDGE

8 Yes.

9 MR. HANDEL TO MR. PASSAGE

10 Q. Were there a lot of kidnappings that were taking place
11 during that time?

12 A. The question a lot is a numerical question and there
13 were kidnappings. There were kidnappings for ransom and one of
14 the issues that we raised increase, actually increasingly during
15 the time that I was there was kidnappings for ransom. There's
16 kidnappings. Some of the kidnappings were perpetrated by the
17 guerrillas. That was well established. Some of the kidnappings
18 regrettably were perpetrated by some members of the armed
19 forces. As the Salvadoran armed forces were able to identify
20 members as we were able to help them identify members, they took
21 action against the kidnappers. The short answer to your
22 question is yes, there were kidnappings, kidnappings for ransom
23 and that's not unique to El Salvador, but yes, it was a problem
24 and General Vides fully accepted that that was a problem.
25 General Vides was very receptive to every bit of information

(b) (6)

1 that we could give him on it and to the degree that we could
2 have expected him to, he took action.

3 JUDGE TO MR. PASSAGE

4 Q. Such as what?

5 A. Well, where there were military units that have been
6 expected for example to prevent them, if he was dissatisfied
7 with the leadership of those military units, he would move
8 either the military units or change the commanders.

9 JUDGE TO MR. HANDEL

10 Go ahead, sir.

11 MR. HANDEL TO MR. PASSAGE

12 Q. During the time that you were there and, and General
13 Vides was in office, how would you describe the situation
14 regarding freedom, such as freedom of assembly and association
15 and things like that?

16 MR. CRAIG TO JUDGE

17 Objection. Relevance.

18 JUDGE TO MR. HANDEL

19 You're talking about general civil rights.

20 MR. HANDEL TO JUDGE

21 Yes.

22 JUDGE TO MR. HANDEL

23 Okay. And the relevance.

24 MR. HANDEL TO JUDGE

25 Well, I think there's been extensive testimony by Professor

(b) (6)

1 Karl and by Daniel Alvarado and by Romagoza that the government
2 run by General Vides was repressive, was a didn't respect basic
3 rights and so on and so forth and I'm directing precisely to
4 that issue.

5 JUDGE TO MR. HANDEL

6 Okay.

7 JUDGE TO MR. PASSAGE

8 Q. In your lay opinion, give us your answer.

9 A. Objection, Your Honor, I object to describing the
10 government as having been run by General Vides. All right, but
11 setting that aside, no.

12 MR. CRAIG TO JUDGE

13 Your Honor, I'm going to move to strike that last comment
14 as nonresponsive, no question before him.

15 JUDGE TO MR. CRAIG

16 That's fine. It'll be stricken.

17 JUDGE TO MR. PASSAGE

18 Q. Go ahead, sir.

19 A. No. General Vides and the, and the armed forces,
20 protected as far as we could possibly have expected them to
21 freedom of assembly. Now, I believe there may have been
22 restrictions. If you were, if you were identified as members of
23 a guerrilla group, of course the you know, the armed forces or
24 the police would, would attempt to arrest you. So freedom of
25 assembly as, as we would know it in the United States, I, I

(b) (6)

1 don't think that and under virtually every country that I know
2 that has a code of law, there are restrictions in freedom of
3 assembly. You simply can't do that. You can't do it in
4 Britain. You can't do it in France. You can't do it elsewhere,
5 but in terms of what we were looking for the democratic process,
6 the establishment of the institutions of democracy in El
7 Salvador, General Vides and the armed forces were as fully
8 protected, as protective as I could possibly have expected them
9 to be.

10 MR. HANDEL TO MR. PASSAGE

11 Q. Going forward, was it President Duarte's policy for
12 the armed forces to conduct their operations in more humane
13 ways?

14 A. Yes. President Duarte expected a full institution of
15 respect for human rights and that required a dramatic change in
16 the comportment of the Salvadoran armed forces. That was
17 General Vides' task. It was what we expected. It was what we
18 pressed the Salvadoran government, President Duarte, and the
19 armed forces in return for United States assistance. We
20 certainly were under, under pressure from American, the American
21 people and the American Congress to make that a part and parcel
22 of the, of the American program in El Salvador. President
23 Carter was the one who, who lifted the restriction on the supply
24 of, of weapons and military assistance for El Salvador
25 approximately four weeks --

(b) (6)

1 MR. CRAIG TO JUDGE

2 Objection, Your Honor. Nonresponsive.

3 JUDGE TO MR. CRAIG

4 Okay.

5 JUDGE TO MR. HANDEL

6 The next question.

7 MR. HANDEL TO JUDGE

8 Yeah. I'll continue with the questions.

9 MR. HANDEL TO MR. PASSAGE

10 Q. During that year that we're talking about and now
11 we're on to 1985, do you recall whether there were any killings
12 of military judges?

13 A. I quite frankly don't recall. I think I have to stop
14 at that point. You say military judges. I guess, yes, I do
15 remember there were military judges. I simply didn't focus on.

16 Q. Sure. Now, you, you've testified previously regarding
17 the killing of U.S. embassy Marine security guards.

18 A. Uh-huh.

19 Q. That's a yes.

20 A. Yes.

21 Q. And were they armed or unarmed?

22 A. They were not armed and they were known not to be
23 armed.

24 Q. Did, did you have occasion to engage with tutela, T U
25 T E L A, legal?

(b) (6)

1 A. Tutela legal, I personally did not. My human rights
2 officer did and other members of the political section did.

3 Q. And what was the tutela legal?

4 A. Well, tutela legal was the legal, legal, legal
5 assistance branch, legal aid branch, human rights branch of the
6 Catholic church, the archdiocese of San Salvador concerned with
7 humans rights, concerned with a whole range of issues, some of
8 it legal assistance, but basically human, human rights and human
9 rights concerns.

10 Q. And, and did the embassy meet with tutela legal?

11 A. Oh, yeah, regularly.

12 Q. Now, during, during 1985, were there improvements made
13 by the air force, Salvadoran air force regarding indiscriminate
14 bombing?

15 A. Yes, yes. As I described earlier after a couple of
16 incidents which we were increasingly satisfied were -- well, no.
17 I shouldn't say that. Some of the incidents that were, that
18 were legitimate mistakes, we're not talking about a large
19 number. We're not talking about a large number of civilian
20 casualties, but there were clear mistakes that were made and for
21 that reason, we engaged the Salvadoran and the Salvadoran
22 minister of defense and the armed forces generally in trying to
23 tighten up procedures and the Salvadoran air force instituted
24 rules of engagement. That's the formal name that's given to
25 circumstances under which soldiers can shoot or air force can

(b) (6)

1 engage in combat. Those procedures were instituted and we were
2 satisfied that they afforded the protections necessary. It's
3 not to say that they would prevent every incidence, but they,
4 they did what we, what we expected.

5 Q. Was there a, a reform, a change also in 1985 relating
6 to notification of arrests?

7 MR. CRAIG TO JUDGE

8 Objection. I think he's already testified he doesn't know
9 anything about that, he didn't pay attention to that.

10 JUDGE TO MR. HANDEL

11 Arrests and detention rules, he said he didn't have any
12 knowledge if that's what you're --

13 MR. HANDEL TO JUDGE

14 I'm not talking about rules. I'm talking about actual
15 notification. I'm not talking about rules, actual notification
16 of arrests.

17 MR. PASSAGE TO MR. HANDEL

18 I'm sorry. Though I, I don't have any knowledge.

19 MR. HANDEL TO MR. PASSAGE

20 Q. That's fine. Were, were civilians kidnapped by the
21 guerrillas?

22 MR. CRAIG TO JUDGE

23 Objection. Relevance. We, we've established over and over
24 that the guerrillas did bad things. That's not the issue in
25 this case. The issue is what did Vides do or didn't do, what

(b) (6)

1 did he to do assist or participate in torture. It's not what
2 the guerrillas did. I think we're starting to beat a dead horse
3 over this issue now. That's not even relevant.

4 JUDGE TO MR. HANDEL

5 We're going to get cumulative here, Mr. Handel.

6 MR. HANDEL TO JUDGE

7 I'll move on. It's, it's talking about a different
8 timeframe, but we'll go ahead and move on.

9 MR. HANDEL TO MR. PASSAGE

10 Q. Now, now, did you have knowledge during the time that
11 you were there regarding the military courts?

12 A. I knew that they existed, but that was the limit of my
13 awareness.

14 Q. During the time that you were there in, in your
15 observations, did General Vides ever order any human rights
16 violations?

17 A. General Vides ever order any --

18 Q. Yeah. Did he direct any actions constituting human
19 rights violations during the time that you were there?

20 A. No.

21 Q. Did he, did he ever in, in your experience the time
22 you were there, did he cover up any instances of human rights
23 violations?

24 A. Not in my experience not during the time that I was
25 there.

(b) (6)

1 Q. Did he ever fail to investigate during the time that
2 you were there human rights violations?

3 A. Not during the time that I was there not to my
4 knowledge.

5 Q. Now, when, when you left in 1986 El Salvador, did you
6 have any role to play in the, in the U.S. Government regarding
7 El Salvador?

8 A. No.

9 Q. Your next posting --

10 A. Let me, let me think. I'm speaking as I'm thinking.
11 I left my job in El Salvador to become director of Regional
12 African Affairs in the African Bureau of the State Department.
13 I didn't [indiscernible] I left Latin America.

14 Q. Okay. You, you said you went to the White House.
15 What, what was that? I didn't hear.

16 A. The National Security Council staff, I was senior
17 director for Africa under Brent Scowcroft and Robert Gates,
18 senior director on the [indiscernible]. It's equivalent to
19 Assistant Secretary of State. I had the [indiscernible].

20 Q. During the time that you were there, did General Vides
21 engage in any torture?

22 A. No.

23 Q. Did he engage in any extrajudicial killings?

24 A. No.

25 Q. Did he assist in any extrajudicial killings?

(b) (6)

1 A. No.

2 Q. Did he assist in any torture?

3 A. No.

4 Q. Did he assist or participate in any cover-up of any

5 torture or extrajudicial killings?

6 A. I'm going to go back to the beginning of your question

7 during the time that I was there. I'm aware that there is a

8 controversy over a cover-up involving the churchwomen. The

9 answer to your question during the time that I was there is I

10 was not aware of any during the time that I was there of any

11 cover-up and I --

12 Q. Yeah. I'm asking you about the --

13 A. I don't think I should speak to it. I don't think the

14 Court would --

15 Q. I'm asking you about the time that you were there.

16 Yeah.

17 A. The answer is no.

18 Q. To your knowledge.

19 A. To my knowledge.

20 Q. And in your many discussions with General Vides in

21 1984 to 1986 in your observations, was he favor of repression?

22 A. No.

23 Q. How would you describe his views towards the

24 Salvadoran society?

25 A. I'm not sure I know what, what do you intend by that,

1 by that question or what, what the meaning of that question was.

2 He was a member of Salvadoran society.

3 MR. CRAIG TO JUDGE

4 Objection, Your Honor. He just said he doesn't know what
5 the question is.

6 MR. PASSAGE TO MR. HANDEL

7 He appeals to Salvadoran society.

8 MR. CRAIG TO MR. PASSAGE

9 Sir, sir.

10 MR. HANDEL TO JUDGE

11 That's all right. I'll clarify the question.

12 MR. CRAIG TO MR. PASSAGE

13 When we're objecting, you stop.

14 MR. HANDEL TO JUDGE

15 That's fine.

16 MR. PASSAGE TO MR. CRAIG

17 Uh-huh.

18 MR. HANDEL TO MR. PASSAGE

19 Q. If you don't understand, just tell me and I'll go
20 ahead and clarify.

21 A. Uh-huh.

22 Q. I think you've already testified that he was in favor
23 of land reform. Is that correct.

24 A. Yes. He supported land reform.

25 Q. Did he support in your observation and dealings with,

(b) (6)

1 with him the betterment in general of human rights in El
2 Salvador?

3 A. Yes.

4 Q. Was he -- you've already testified that he carried out
5 the instructions of the civilian President Duarte.

6 A. Yes.

7 Q. Was he supportive of the civilian government?

8 A. I think that's the key word.

9 MR. CRAIG TO JUDGE

10 Your Honor, asked and answered. We're starting to repeat,
11 going back to the beginning of his testimony. I, I, I mean, if
12 he wants to get into a new area, that's fine, but we're --

13 JUDGE TO MR. CRAIG

14 That's sustained.

15 JUDGE TO MR. HANDEL

16 He clearly indicated as much, Mr. Handel.

17 MR. HANDEL TO MR. PASSAGE

18 Q. Now, during the, the time that you were there, did you
19 have, did you have any disagreements with the human rights
20 groups that were in El Salvador?

21 MR. CRAIG TO JUDGE

22 Objection. Relevance.

23 JUDGE TO MR. HANDEL

24 If this gentleman had disagreements.

25 MR. HANDEL TO JUDGE

(b) (6)

1 Yes.

2 JUDGE TO MR. HANDEL

3 And how is that relevant?

4 MR. HANDEL TO JUDGE

5 We're talking about human rights reporting and we're
6 talking about -- well, let me, let me connect that to human
7 rights reporting as, as it pertains to General Vides.

8 JUDGE TO MR. HANDEL

9 Let's do that.

10 MR. HANDEL TO MR. PASSAGE

11 Q. Why don't we limit it to that? Did you have
12 disagreements with any of the human rights groups relating to
13 reports of human rights violations vis-à-vis General Vides?

14 A. Well, with respect to specific, specific identifiable
15 concrete human rights violations, I quite frankly don't recall
16 any, although there probably would have been. However, having
17 said that depending on the human rights organizations,
18 depending, there were some human rights organizations which were
19 very strongly opposed to the Salvadoran military, very strongly
20 opposed to the U.S. Government's military assistance program to
21 El Salvador who fought the U.S. military assistance program
22 hard. So the short answer is of course there were disagreements
23 between the U.S. Government policy was having heard all of the
24 objections understanding the reasons for those objections,
25 Article 2, Section 2 of the constitution gives the

(b) (6)

1 responsibility for the conduct of foreign affairs to the
2 president. The president sets the policy. The president
3 established the policy. I was an executor of the policy. So
4 the U.S. program, I was participating in the execution of that
5 policy was in favor of establishing a military training program
6 for the Salvadoran military, trying to get them away from the
7 human rights abuses of the past, establish the democratic system
8 and process in El Salvador, persuade the Salvadoran military to
9 support that democratic process.

10 MR. CRAIG TO JUDGE

11 Your Honor, it's nonresponsive. I think the question was
12 regarding human rights groups on reporting. I'm not sure how we
13 got into what he's answering now.

14 MR. PASSAGE TO MR. CRAIG

15 The human rights groups --

16 JUDGE TO MR. PASSAGE

17 Hold on. Hold on.

18 JUDGE TO MR. HANDEL

19 Why don't you ask a follow up question?

20 MR. HANDEL TO JUDGE

21 Yeah.

22 MR. HANDEL TO MR. PASSAGE

23 Q. If you have any information in connection with this
24 area, did you have any disagreements with human rights groups as
25 it affects their position on human rights violations vis-à-vis

1 General Vides?

2 A. The answer would have to be yes.

3 Q. Describe those.

4 A. Several of the human rights organizations as I
5 described felt very strongly that the Salvadoran military had
6 not itself converted, hadn't changed its views, would undermine
7 the democratic process, was not fully supportive of human
8 rights. We heard their views to varying degrees. I respected
9 their views, but nonetheless U.S. policy was to move forward in
10 support of the democratic process. General Vides was
11 instrumental to that. Human rights organizations, some of them
12 disagreed with, with General Vides, with the Salvadoran military
13 at all.

14 Q. Now, now, there has certainly been quite a bit written
15 regarding differences in opinion in the United States --

16 A. Uh-huh.

17 Q. -- during this time period regarding the role of the
18 U.S. taking into account human rights, the Salvadoran military
19 and have you had discussions with Ambassador White regarding
20 these issues?

21 A. Yes, I have. Ambassador White is a, is a friend.
22 He's a colleague. We've talked about El Salvador on a number of
23 occasions. Ambassador White, what I would say about Ambassador
24 White is he was the U.S. --

25 MR. CRAIG TO JUDGE

(b) (6)

1 Nonresponsive. It was a yes or no question.
2 JUDGE TO MR. PASSAGE
3 Wait for the next one.
4 MR. HANDEL TO JUDGE
5 Okay.
6 MR. HANDEL TO MR. PASSAGE
7 Q. What have you told Ambassador White regarding your
8 position on El Salvador?
9 A. Ambassador White and I --
10 MR. CRAIG TO JUDGE
11 Relevance.
12 MR. HANDEL TO JUDGE
13 We've had testimony here from Ambassador White. I think
14 it's really relevant.
15 MR. CRAIG TO JUDGE
16 The question was what has this person told Ambassador White
17 regarding their -- I mean, that's not relevant to the respondent
18 here.
19 MR. HANDEL TO JUDGE
20 I think the Court has heard extensive testimony from
21 Ambassador White. I think it would be instructive for the Court
22 to hear how former senior members of the U.S. Government in El
23 Salvador, how they dealt with this issue.
24 MR. CRAIG TO JUDGE
25 Your Honor, that's not relevant to this issue. Ambassador

(b) (6)

1 White testified regarding what happened while he was there.
2 Ambassador Passage is testifying to what happened while he was
3 there. I don't think any conversations they had after the fact
4 are relevant.

5 MR. HANDEL TO JUDGE

6 Well, that's the Government's position. We would submit
7 that it's that we're talking about the time period of the civil
8 war which covered a number of years and I think it's certainly
9 relevant.

10 JUDGE TO MR. PASSAGE

11 Q. Can you keep it brief, sir, and I'll let you go?

12 A. Yes, Your Honor. Ambassador White was the U.S.
13 ambassador in El Salvador during what I would describe as the
14 darkest days of that country's history. By the time I arrived,
15 the situation was clearly, clearly improving. Ambassador White
16 was fired because he spoke out strongly on behalf of human
17 rights and these are in Ambassador White's. I haven't talked to
18 him about this particular case. I haven't talked to him about
19 this testimony, but he and I [indiscernible] for more than 30
20 years. I know where he's coming from. He knows where I'm
21 coming from. He did what was necessary for an American
22 ambassador at the time that he was there. By the time I
23 arrived, the situation had significantly changed. Now, Bob
24 White feels very strongly about the United States not
25 participating in any way, shape, or form with military

(b) (6)

1 assistance, security assistance and Bob White spent virtually
2 his entire career in Latin America in countries under military
3 dictatorships. I appreciate where he's coming from. I did not
4 have that same service.

5 MR. CRAIG TO JUDGE

6 Your Honor, I'm going to object to the point that he's
7 trying to comment on Ambassador White's credibility or his
8 opinion or his comments, that's improper for one witness to
9 comment on the credibility of another witness. That's entirely
10 improper. If he wants to try to impeach Ambassador White by
11 saying that Ambassador White told this witness something
12 inconsistent with what Ambassador White testified to, that's
13 okay, but to have him testify and give an opinion as to
14 Ambassador White's credibility and his opinion is entirely
15 improper. I again object and move to strike his comments thus
16 far.

17 MR. HANDEL TO JUDGE

18 And again the, the, the question here was certainly not
19 directed and neither was the answer towards the credibility of
20 Ambassador White. I think that's pretty clear from his
21 response.

22 JUDGE TO MR. HANDEL

23 And where are we going with it?

24 MR. HANDEL TO JUDGE

25 We were discussing and as I said, I can probably wrap it

(b) (6)

1 up. You know what let's move on, Judge. We'll just move on.

2 MR. CRAIG TO JUDGE

3 And I would again move to strike, Your Honor, and ask the
4 Court to rule on my motion to strike?

5 JUDGE TO MR. CRAIG

6 Well, I didn't find that he was in any way attacking or, or
7 even addressing the credibility of Ambassador White. So I'll
8 allow the testimony and not the objection.

9 MR. HANDEL TO MR. PASSAGE

10 Q. Now, during the time that you were there, what control
11 over the Salvadoran government did General Vides have?

12 A. None. He was minister for defense.

13 Q. Sorry. Again.

14 A. None. Your question was what control did he have over
15 the Salvadoran government? President Duarte was the president.
16 General Vides was minister for defense responsible for state
17 security. Control over the government, my reply would be none.
18 Any minister of defense will have a, will have an influence.
19 Your question was control and none.

20 Q. Now, in, in your dealings with, in your dealings with
21 General Vides, did you ever hear him state that he was willing
22 to kill thousands of Salvadorans in order to defeat the
23 guerrillas?

24 A. No.

25 MR. HANDEL TO JUDGE

(b) (6)

1 Just one moment, Your Honor. I have no other questions at
2 this time.
3 JUDGE TO MR. HANDEL
4 All right.
5 JUDGE TO MR. CRAIG
6 Mr. Craig, do you want to take ten minutes and start up?
7 MR. CRAIG TO JUDGE
8 Yes, Your Honor. Thank you.
9 JUDGE FOR THE RECORD
10 Okay. so we'll take a ten minute break and then we'll come
11 back with cross-examination.
12 (OFF THE RECORD)
13 (ON THE RECORD)
14 JUDGE FOR THE RECORD
15 Okay. We are back on the record.
16 (OFF THE RECORD)
17 (ON THE RECORD)
18 JUDGE FOR THE RECORD
19 On the record.
20 JUDGE TO MR. CRAIG
21 I believe we are ready for cross-examination by the
22 Government, Mr., is it Craig or --
23 MR. CRAIG TO JUDGE
24 Yes, Your Honor.
25 JUDGE TO MR. CRAIG

(b) (6)

1 Go ahead, sir.

2 MR. CRAIG TO JUDGE

3 Thank you.

4 MR. CRAIG TO MR. PASSAGE

5 Q. Ambassador Passage, we appreciate you taking your time
6 out of your busy schedule to come down here and testify. We
7 appreciate your knowledge in this case. You've talked pretty
8 highly about General Vides here today. Is that correct?

9 A. Yes.

10 Q. So it sounds like you have a lot of respect for him.

11 A. I do.

12 Q. And in fact, you testified that he was singularly
13 responsible for decrease in human rights abuses during the time
14 period you were there. Is that correct?

15 A. I would say that, but I believe I remember saying was
16 that he was singular responsible for the support for the
17 democratic process.

18 Q. Okay.

19 A. He uniformed the armed services behind the new
20 constitution and the new democratic government.

21 Q. So you would also say he was singularly responsible
22 for the decrease in human rights abuses.

23 MR. HANDEL TO JUDGE

24 Objection. Mischaracterizing the testimony.

25 MR. PASSAGE TO MR. CRAIG

(b) (6)

1 No.

2 MR. CRAIG TO JUDGE

3 He just, he just testified that I would say that.

4 MR. PASSAGE TO MR. CRAIG

5 I would what I would say in response to your question is I
6 don't believe that the decrease which was notable and we could
7 use whatever adjective we want there, was singularly the result
8 of the fact that he cared enough to pay attention to it, to
9 pursue it and to inculcate it into the armed forces to the
10 maximum degree that he was capable.

11 MR. CRAIG TO MR. PASSAGE

12 Q. But he had the authority to reduce the human rights
13 abuses.

14 A. I don't think that's correct. That's important point.

15 Q. So you also testified that he, you just told me he had
16 the ability to bring the officer corps in agreement in support
17 of the constitution. Is that correct?

18 A. I'm picking my words carefully as you're picking your
19 words carefully. As minister of defense, he was responsible for
20 holding the officer corps together, bolstering their support for
21 the democratic process and that included for human rights. Did
22 he have the ability to order it, to command it, to make it
23 happen? The answer is clearly no and the greatest peril --

24 Q. But he brought the officer corps in agreement with his
25 view in supporting the democratic process. Is that correct?

(b) (6)

1 A. I think that's correct. I think that's correct.

2 JUDGE TO MR. PASSAGE

3 Q. Did you say he didn't have the power to order it?

4 A. I do not think that in the circumstances in which he
5 served any single individual and he's the one that we're talking
6 about --

7 Q. Uh-huh.

8 A. -- had the ability to order that it be done. This was
9 a matter of persuading and bringing people along with him,
10 persuading them that they needed to do it. I do not believe
11 that he or anybody else, including President Duarte had the
12 ability. I'm picking my words carefully.

13 Q. Ability.

14 A. Ability that it be done with any certainty that it
15 would be followed.

16 Q. All right.

17 JUDGE TO MR. CRAIG

18 Go ahead, Mr. Craig.

19 MR. CRAIG TO JUDGE

20 Thank you.

21 MR. CRAIG TO MR. PASSAGE

22 Q. You testified that Vides Casanova always obeyed the
23 orders and suggestions of Duarte. Is that correct?

24 A. I know of no instance which he did not.

25 Q. But Duarte was able to communicate with Vides and

(b) (6)

1 Vides would obey and do what Duarte told him. Is that correct?

2 A. Certainly with respect to the first part of your
3 question, the communication between them I knew of no barriers.
4 They, they talked frequently. Any time the president needed to
5 talk to the minister of defense, the minister of defense was
6 available to him.

7 Q. Please answer my question.

8 A. But your question, the second part of the question,
9 repeat that for me, please?

10 Q. When I ask a question and it calls for yes or no,
11 please answer only yes or no.

12 A. All right. Uh-huh.

13 Q. Okay. You testified that Duarte communicated with
14 Vides Casanova.

15 A. Yes.

16 Q. And Vides Casanova always obeyed those commands and
17 instructions from Duarte. Isn't that correct

18 A. To the best of my knowledge.

19 Q. Now, you testified that human rights abuses improved
20 during the time period that you were there. Is that correct?

21 A. Correct.

22 Q. But you also said that they were not perfect. Is that
23 correct?

24 A. Correct.

25 Q. That means there were still human rights abuses being

(b) (6)

1 committed by the security forces and the military. Isn't that
2 correct?

3 A. Correct.

4 Q. And of those human rights abuses, that included
5 torture. Isn't that correct?

6 A. Some instances.

7 Q. And of those human rights abuses, it also included
8 extrajudicial killing. Isn't that correct?

9 A. We believe so.

10 Q. So the security forces and the military committed acts
11 of torture and extrajudicial killing during the period that you
12 were there. Isn't that correct?

13 A. At a vastly decreasing scale, but yes, we believe
14 there were some.

15 Q. Okay. So you think --

16 A. And so reported.

17 Q. But your testimony is that acts of torture decreased
18 during the time period that you were there. Is that correct?

19 A. Correct.

20 Q. Are you familiar with the United Nations Truth
21 Commission report?

22 A. I was at the time. I couldn't recall any of it now,
23 but yes.

24 Q. And you're familiar that they did an extensive study
25 on human rights abuses that occurred during the civil war.

(b) (6)

1 A. I know there was one, yes.

2 Q. Okay. And are you aware that they actually, that
3 their statistics actually show that reports of torture increased
4 starting in 1984?

5 A. I'm not aware of that.

6 Q. Okay.

7 MR. CRAIG TO JUDGE

8 Your Honor, at this point, I'll direct your attention to
9 page 1099-A.

10 JUDGE TO MR. CRAIG

11 Give me the exhibit number if you would.

12 MR. CRAIG TO JUDGE

13 This would be Exhibit 5.

14 JUDGE TO MR. CRAIG

15 Thank you.

16 MR. CRAIG TO JUDGE

17 Page, this is one we have both the Spanish original and
18 then the English translation. So --

19 JUDGE TO MR. CRAIG

20 Okay.

21 MR. CRAIG TO MR. PASSAGE

22 Q. On page 1099-A and it states that, let me see one,
23 two, three, fourth paragraph up from the bottom, let me read you
24 Ambassador Passage, a, a paragraph from the, this is actually an
25 annex to the Truth Commission reports. So it's not actually

(b) (6)

1 part of the main Truth Commission report, but part of the annex
2 that talks about [indiscernible].

3 JUDGE TO MR. CRAIG

4 Give us just a minute.

5 JUDGE TO MR. HANDEL

6 Have you found it, Mr. Handel?

7 MR. HANDEL TO JUDGE

8 I got it over here. That's fine, Judge.

9 JUDGE TO MR. HANDEL

10 You got it.

11 MR. HANDEL TO JUDGE

12 Yeah.

13 JUDGE TO MR. CRAIG

14 Okay. Go ahead, Mr. Craig.

15 MR. CRAIG TO JUDGE

16 Thank you.

17 MR. CRAIG TO MR. PASSAGE

18 Q. It says, "Torture is [indiscernible] to maintain a
19 very wavy trajectory throughout the 12 years of the period under
20 consideration. They being with a rather high rate at around 400
21 annual cases during the first two years to then decrease to an
22 irregular manner until the minimum of the year 1984. From here,
23 an increase begins which continues despite the decrease in 1987
24 until the year 1989 which constitutes a very pronounced mass
25 killing. As of here, the number of registered cases again

(b) (6)

1 [indiscernible]." So based on your testimony, you would
2 disagree with the conclusion of the Truth Commission or the
3 findings of the Truth Commission. Is that correct?

4 A. Well, I can't speak for the period I wasn't there. I
5 had nothing to do with El Salvador in the period. So with, with
6 respect to the further thing that I would add with respect to
7 the period that I was there, our reporting at the embassy did
8 not parallel or even necessarily concur with other human rights
9 reports.

10 Q. Ambassador, the question is simply, would you disagree
11 or agree with the findings of the Truth Commission report on the
12 numbers of torture committed in '84 and following years?

13 MR. HANDEL TO JUDGE

14 I think he's answered part of that question already.

15 MR. PASSAGE TO MR. CRAIG

16 I, I would disagree with any numbers which are not
17 [indiscernible].

18 MR. CRAIG TO MR. PASSAGE

19 Q. You do not, you do not agree with the findings of the
20 Truth Commission report.

21 A. You want that in a monosyllable. The answer would be
22 no. We produced our own reports.

23 Q. Now, you testified again that human rights abuses,
24 including torture and extrajudicial killing were being committed
25 by the military and security forces while you were there. Is

(b) (6)

1 that correct?

2 MR. HANDEL TO JUDGE

3 Asked and answered.

4 JUDGE TO MR. CRAIG

5 Sustained.

6 MR. CRAIG TO JUDGE

7 All right.

8 MR. CRAIG TO MR. PASSAGE

9 Q. And in fact, you also did some investigation and wrote
10 some cables on human rights abuses committed during the period
11 prior to your arriving. Isn't that correct?

12 A. I beg your pardon. Ask, ask it again.

13 Q. You also wrote some cables detailing some specific
14 examples of human rights abuses prior to you arriving. Isn't
15 that correct?

16 A. I don't believe so.

17 Q. Didn't you write some cables talking about the
18 Sheraton murders and the investigations into the Sheraton
19 murders?

20 A. I don't recall writing any cables about El Salvador
21 before I arrived.

22 Q. They were issued. After you arrived, you wrote those
23 cables about detailing the human rights abuses from before you
24 arrived.

25 A. I don't recall writing any cables myself. I may have

(b) (6)

1 reviewed cables that went out on the, on the Sheraton murders.
2 That, that investigation was underway while I arrived. There
3 would have been reporting, yes.

4 Q. Now, cables that come out of the U.S. embassy that
5 would have your name on them, you would be responsible for what
6 is in those cables. Isn't that correct?

7 A. Yes, as a general rule.

8 Q. And so you would be -- if they have your name on them,
9 you would vouch for the accuracy of those cables. Is that
10 correct?

11 A. I am presumed to do so. The process in the State
12 Department is that every State Department cable, bears the,
13 bears the name at the bottom of the person in charge. If it
14 comes from the Department of State, it bears the name of the
15 secretary of state. The secretary of state doesn't review 10%
16 of the cables that bear his name at the bottom. Every cable
17 that goes out from every American embassy has a name at the
18 bottom. That name is the officer in charge. The officer in
19 charge is responsible. I accept responsibility for that cable,
20 but whether the ambassador -- I will guess that fewer than 50%
21 of the cables that went out over my name were actually seen by
22 me.

23 MR. CRAIG TO JUDGE

24 May I approach, Your Honor?

25 MR. HANDEL TO JUDGE

(b) (6)

1 He's still speaking, Your Honor.

2 JUDGE TO MR. PASSAGE

3 Q. Were taken, were what by you?

4 A. Were even seen by me.

5 Q. So you may have, your signature may have been on it

6 and you may not have read it.

7 A. Oh, yes. Oh, yes. There were other officers at the

8 embassy that were authorized to sign passage at the bottom line

9 on my behalf.

10 Q. All right.

11 MR. CRAIG TO JUDGE

12 May I approach the witness, Your Honor?

13 JUDGE TO MR. CRAIG

14 Yes. can you give me a reference or is this --

15 MR. CRAIG TO JUDGE

16 This is [indiscernible].

17 JUDGE TO MR. CRAIG

18 Oh, okay. Uh-huh.

19 MR. HANDEL TO JUDGE

20 This is what? I didn't hear what --

21 MR. CRAIG TO JUDGE

22 This is not something that has been filed.

23 MR. CRAIG TO MR. PASSAGE

24 Q. Which officers did have authority to sign your name to

25 cables?

(b) (6)



1 A. The consul general on any matters that had to do with
2 visas or passports, the administrative officer on virtually any
3 cable that had to do with embassy operations and maintenance,
4 that is to say the financing of operations with the, the
5 embassy, the senior security officer with responsibility for
6 embassy security. Many of the cables, very, very few of the
7 cables came out of the political section would have gone out
8 without review by me. Most substantive cables from the economic
9 section that went out over my name would have been seen by me,
10 but that was by no means invariable. A name at the bottom is an
11 automatic State Department process. It's the standard process.

12 Q. And so there would be you, you would not give
13 authority to somebody to put, to put your name on a cable if you
14 did not trust that person. Would that be accurate?

15 A. That would be correct.

16 JUDGE TO MR. PASSAGE

17 Q. Okay. Hold on. Hold on.

18 A. With permission, may I read this and see whether I
19 recognize it?

20 JUDGE TO MR. CRAIG

21 Are you going to ask him about it?

22 MR. CRAIG TO JUDGE

23 I am. I'm just, I first wanted to clarify the name thing.

24 JUDGE TO MR. CRAIG

25 Okay.

(b) (6)

1 JUDGE TO MR. PASSAGE

2 Let's wait, wait until the questions and then we'll give
3 you a moment to read it, sir.

4 MR. CRAIG TO JUDGE

5 All right.

6 MR. CRAIG TO MR. PASSAGE

7 Q. So the only people who would have authority to put
8 your name on a cable are people that you would trust within the
9 embassy. Is that correct?

10 A. That's correct.

11 Q. Okay. If you could please review this cable.

12 A. Uh-huh.

13 Q. It's going about two pages.

14 MR. HANDEL TO JUDGE

15 We see a copy of the document that's being shown to the
16 witness.

17 JUDGE TO MR. CRAIG

18 You want to provide a copy at least to Mr. Handel so he can
19 review it.

20 MR. CRAIG TO MR. PASSAGE

21 Q. And if you can let me know when you're done reviewing
22 the cable.

23 A. Uh-huh. Number one I have if I can just wait for --

24 Q. I'm not asking. I'm not asking you any questions
25 about it yet.

(b) (6)

1 A. Oh, I'm sorry. Yes. I [indiscernible].

2 Q. Are you done with it? Okay. Now, earlier, you
3 testified that security for the embassy was especially high
4 while you were there and one of the examples you gave was
5 because of the murder of Ham, two U.S. citizens by the name of
6 Hammer and Pearlman. Is that correct?

7 A. Correct.

8 Q. Now, that's what commonly known as the Sheraton case.
9 Isn't that correct?

10 A. Correct.

11 Q. And the Sheraton case, the people responsible for
12 murdering Hammer and Pearlman were people operating out of the
13 national guard. Isn't that correct?

14 A. That was our operating assumption.

15 Q. And this cable that I handed you which is dated March
16 25th, 1985 has your name at the bottom. Isn't that correct?

17 A. That's correct and that would have been a period when
18 I was chargé d'affaires.

19 JUDGE TO MR. CRAIG

20 You said March 25th.

21 MR. CRAIG TO JUDGE

22 March 25th, 1985.

23 JUDGE TO MR. CRAIG

24 Thank you.

25 MR. PASSAGE TO MR. CRAIG

(b) (6)

1 Yeah. To clarify that point, I was sure any time the
2 ambassador was absent from the country, I became chargé
3 d'affaires. That's as opposed to in between ambassadors.
4 There's a different diplomatic term for it, but it's still
5 chargé. So what this, what this tells me is Ambassador
6 Pickering March '85. Well, it would have been Ambassador Corr,
7 ambassador. No. It would have been Ambassador Pickering.
8 Ambassador Pickering was temporary absent, temporarily absent
9 from the country.

10 JUDGE TO MR. PASSAGE

11 Q. Okay.

12 A. I was acting as chargé.

13 Q. Thank you for that.

14 MR. CRAIG TO MR. PASSAGE

15 Q. And this cable discusses some of the investigation
16 into the Sheraton murders. Isn't that correct?

17 A. Correct.

18 Q. And in fact, according to this cable, there were death
19 squads that were operating out of the G-2 section of the
20 national guard. Isn't that correct?

21 A. That's what the reporting officer believed.

22 Q. And the G-2 is another name for the intelligence
23 section in the national guard. Isn't that correct?

24 A. That is correct.

25 Q. And according to this cable, it provides quite, quite

(b) (6)

1 a few details about meetings among the national guard members in
2 the headquarters of the G-2 intelligence section. Isn't that
3 correct?

4 A. That's correct.

5 Q. And these meetings were in fact to plan the Sheraton
6 murders. Isn't that -- or what have been come to known as the
7 Sheraton murders.

8 A. That's correct. According to the information provided
9 to the reporting officer who was one of the attorney advisors
10 that was assigned to the embassy that I referred to earlier from
11 the Department of Justice.

12 JUDGE TO MR. PASSAGE

13 Q. And you get that from a name on here or you're
14 remembering it.

15 A. Well, both from the subject matter.

16 Q. Okay.

17 A. I mean, this would have come from him.

18 Q. Okay.

19 MR. CRAIG TO MR. PASSAGE

20 Q. And in fact, this, this cable states that these
21 members of the death squad frequently visited G-2 headquarters
22 bearing briefcases full of money, guns, and other recompense.
23 Isn't that correct?

24 A. That's according to the source who provided the
25 information in the cable. Uh-huh.

(b) (6)

1 Q. And also this cable indicates that there were many
2 others, including Argentines and civilians who also frequented
3 in the G-2 headquarters with to plan the death squads or
4 participate in death squads. Isn't that correct?

5 A. Again I repeat according to the, to the source who
6 provided the information in this cable.

7 Q. And in fact, this cable details some of the people
8 involved in the murder, in the Sheraton murders, including a
9 Lopez Sibrian. Isn't that correct?

10 A. According to the source who provided the information
11 in the cable.

12 Q. Now, while you were in El Salvador, you testified that
13 Vides Casanova never participated in any cover-up of any human
14 rights abuses. Is that correct?

15 A. Not during the time that I was there to my knowledge.

16 Q. Now, are you familiar with what is known as the Las
17 Hojas massacre?

18 A. Yes. I'm not sure that I could recite details now,
19 but I'm certainly with the name that I'm familiar with the fact
20 that was a reported massacre that we accepted as having
21 occurred.

22 Q. And do you know who was responsible for the Las Hojas
23 massacre?

24 A. I do not remember, but my recollection is that it was
25 ascribed to members of the armed forces.

(b) (6)

1 Q. And do you know the date of the Las Hojas massacre?

2 A. No.

3 Q. Okay. We've earlier heard testimony there's evidence
4 to show that the Las Hojas massacre occurred on February 22nd,
5 1983 which would have been before you were there. Is that
6 correct?

7 A. That conforms to my recollection, it occurred before I
8 arrived.

9 Q. Okay. But there was investigations and information
10 going on regarding the Las Hojas massacre after you were there.
11 Isn't that correct?

12 A. Correct.

13 Q. And in fact, I believe Ambassador Pickering had some
14 contact with individuals regarding the Las Hojas massacre. Is
15 that correct?

16 A. Almost certainly.

17 Q. Okay. I want to ask you some questions about a cable
18 that's in evidence.

19 MR. CRAIG TO JUDGE

20 And Your Honor, this is contained at Exhibit 3, tab JJ,
21 page 630.

22 JUDGE TO MR. CRAIG

23 Thank you.

24 MR. CRAIG TO JUDGE

25 If I may approach the witness, I'll just let him review the

(b) (6)

1 cable.

2 JUDGE TO MR. CRAIG

3 Okay.

4 MR. PASSAGE TO MR. CRAIG

5 Uh-huh. Uh-huh.

6 MR. CRAIG TO MR. PASSAGE

7 Q. Did you review that cable?

8 A. Yes.

9 Q. All right. Now, this cable was issued in July of
10 1984. Isn't that correct?

11 A. Correct.

12 Q. Actually July 28th, 1984, so that would have been a
13 time while you were there at the embassy. Isn't that correct?

14 A. That's correct.

15 Q. And this was also at a time when Vides Casanova was
16 minister of defense. Isn't that correct?

17 A. Correct.

18 Q. So at a time when he was in charge of the entire
19 military. Isn't that correct?

20 A. He was minister of defense.

21 Q. The minister of defense was head of the entire
22 military. Isn't that correct?

23 A. He was minister of defense. He was not the chief of
24 staff of the army. He was not the chief of the air force. He
25 was the minister of defense.

1 Q. So you're saying he was not in charge of the entire
2 military when he was minister of defense.

3 A. The secretary of defense of the United States is in
4 charge of the Defense Department. He's not in charge of the
5 entire military.

6 Q. But as minister of defense, he was in charge of the
7 army, the navy, the air force, the national guard.

8 A. He was responsible for.

9 Q. He was responsible for them.

10 A. Yes.

11 Q. Okay. now, according to this cable, President Duarte
12 had asked for a report and an investigation from the military
13 into the Las Hojas massacre. Isn't that correct?

14 A. Correct.

15 Q. And in fact, he asked for a full report from the
16 military particularly regarding the role of two senior military
17 figures. Isn't that correct?

18 A. Correct.

19 Q. And isn't it correct that the investigation report
20 received by President Duarte blames the whole situation that has
21 been called agitated by enemies of the armed forces to make
22 problems for them? Isn't that correct?

23 A. That's what the cable says.

24 Q. And, well, that's what President Duarte told
25 Ambassador Pickering. Isn't that correct?

(b) (6)

1 A. That's correct.

2 JUDGE TO MR. CRAIG

3 And what page are you on?

4 MR. CRAIG TO JUDGE

5 I'm on page 630. This would be paragraph three.

6 JUDGE TO MR. CRAIG

7 Thank you.

8 MR. CRAIG TO MR. PASSAGE

9 Q. And isn't it correct that this report and I want to
10 call it, it goes on in a backhanded way also to threaten Askino
11 Jalisco, president of the Salvadoran Indian organization as an
12 agitator and indicates that the military will not be responsible
13 for what befalls him?

14 A. That is what President Duarte told Ambassador
15 Pickering.

16 Q. Okay. And do you have any reason to think that
17 President Duarte would lie to Ambassador Pickering?

18 A. No, I don't.

19 Q. Okay. And then, in response to that according to this
20 report, President Duarte issued a letter that he was going to
21 deliver to General Vides Casanova. Isn't that correct?

22 A. That's what President Duarte told Ambassador
23 Pickering.

24 Q. In fact, he was concerned that he did not think this
25 letter was going to be well received by General Vides Casanova.

(b) (6)

1 Isn't that correct?

2 A. That's correct and that reinforces the point that I
3 made in my earlier testimony about the concern for the success
4 of the democratic practice keeping the armed forces united
5 behind that and President Duarte bearing in mind that the
6 earlier history of his having been thrown out of the country.
7 He at the point this cable was written at the time that the
8 conversation took place had only been in office for four months.

9 Q. Sir, let me ask you a question. Now, isn't it true
10 that President Duarte asked Ambassador Pickering to, and let me
11 quote --

12 MR. CRAIG TO JUDGE

13 And this is paragraph five, Your Honor.

14 JUDGE TO MR. CRAIG

15 Okay.

16 MR. CRAIG TO MR. PASSAGE

17 Q. President, he referring to President Duarte asked me,
18 referring to Ambassador Pickering, "He asked me at the same time
19 if I would make certain that Vides Casanova understands how he
20 Duarte is pushing for additional military assistance so that the
21 military come to understand that there's a two way street
22 between him and the armed forces." Isn't that correct?

23 A. That's correct.

24 Q. Now, earlier, you testified that Vides Casanova always
25 obeyed what Duarte told him. Isn't that correct?

(b) (6)

1 A. I know of no incidents when he disobeyed the
2 president.

3 Q. And in fact, earlier, you said that Duarte didn't even
4 have to order Vides Casanova to do anything, that he would just
5 take the suggestions of President Duarte. Isn't that correct?

6 A. The two were in communication all the time and I think
7 General Vides fully understood. He didn't have to have written
8 instructions in every event. He sought to do what the president
9 wanted.

10 Q. So if General Vides obeyed everything that President
11 Duarte told him to do in fact even to the point that Duarte
12 didn't have to instruct him to do it, why would President Duarte
13 need to resort to asking a U.S. ambassador to talk to General
14 Vides Casanova to encourage Vides Casanova to obey what Duarte
15 wants him to do?

16 A. At the time that this conversation took place and that
17 the cable was written, the report was written, El Salvador was
18 five months into a process that had a 50 year background. I'm
19 confident that President Duarte certainly at the beginning of
20 the experiment with democracy was very much concerned about what
21 the armed services would do, what the armed forces would do.
22 General Vides was his minister of defense. I have no doubt
23 whatsoever that President Duarte was very much concerned about
24 keeping them and the use of the American ambassador as an
25 intermediary was unexceptional. There's nothing unusual about

(b) (6)

1 that.

2 JUDGE TO MR. PASSAGE

3 Q. Unexceptional or --

4 A. Unexceptional. There's nothing unusual about that.

5 MR. CRAIG TO MR. PASSAGE

6 Q. Well, that would that be unusual if Duarte -- if Vides
7 Casanova obeyed everything that Duarte told him to do, wouldn't
8 it?

9 A. Well, we're establishing a practice here. That's why
10 we were five months into the practice. I can appreciate that
11 President Duarte would have been very concerned. I think his,
12 his confidence clearly grew.

13 Q. Now, you told me that in every single meeting you had
14 with Vides Casanova, human rights abuses were discussed. Isn't
15 that correct?

16 A. I recall no instance of any conversation certainly not
17 in any of the monthly reviews in which human rights did not
18 figure.

19 Q. And in fact, you testified that you often gave him
20 names of people who were involved in human rights. Is that
21 correct?

22 A. The embassy provided names for example Lopez Sibrian
23 who you've also cited. That was one of the, one of the prime
24 figures and there were, there were others, but was on those,
25 those cases occurred before, before I arrived, but as we've

(b) (6)

1 established I had my own internal investigation.

2 Q. Ambassador, please just listen to the question and
3 answer the question.

4 A. Uh-huh.

5 Q. You've answered the question. So now, it's time to
6 move on to the next question.

7 A. Uh-huh.

8 Q. You testified you've included, providing names
9 included Lopez Sibrian. Did you provide names of other high
10 ranking officers to Vides Casanova, those involved in human
11 rights abuses?

12 A. I'm confident that we did.

13 Q. How many of those high ranking officers were
14 prosecuted for their human rights abuses or punished or
15 disciplined?

16 A. I do not know any prosecutions that took place during
17 the time that I was there.

18 JUDGE TO MR. PASSAGE

19 Q. No prosecutions. Do you know of any disciplinary
20 actions brought?

21 JUDGE TO MR. CRAIG

22 Was that part of your question, Mr. Craig?

23 MR. CRAIG TO JUDGE

24 I'm happy with the answer of no prosecutions.

25 JUDGE TO MR. CRAIG

(b) (6)

1 Okay. All right.

2 MR. PASSAGE TO MR. CRAIG

3 I testified earlier that he moved people around,
4 reassigned.

5 MR. CRAIG TO MR. PASSAGE

6 Q. There's no question before you.

7 JUDGE TO MR. CRAIG

8 I had asked him. So I'll allow it, but go ahead, Mr.
9 Craig.

10 MR. CRAIG TO JUDGE

11 Right.

12 MR. CRAIG TO MR. PASSAGE

13 Q. And you testified that prior to your arriving that I
14 think your quotes was, maybe it's not exact quotes, but my
15 summary in my notes that the human rights record of the security
16 and national and military was horrible prior to your arriving.
17 Is that correct?

18 A. That'll do.

19 Q. Okay. And that after you left, it also was pretty
20 bad, it was horrible. Is that correct?

21 A. No. I don't recall saying that. I said there had
22 been dramatic, dramatic improvement in the human rights
23 situation.

24 Q. Well, your --

25 A. During the time that I was there.

(b) (6)

1 Q. During the time you were there, but then after you
2 left, human rights abuses again increased according to your
3 testimony. Isn't that correct?

4 A. I was responsible for African affairs. I have no idea
5 what took place after I left.

6 Q. Well, I'm not asking you what took place afterwards.
7 I'm asking you what your testimony was before. Your testimony
8 here today --

9 A. Yes.

10 Q. -- on direct examination was that after you left,
11 human rights abuses committed by the security and military
12 forces again increased.

13 MR. HANDEL TO JUDGE

14 Objection.

15 MR. CRAIG TO MR. PASSAGE

16 Q. Isn't that what you testified before?

17 MR. HANDEL TO JUDGE

18 Objection.

19 MR. PASSAGE TO MR. CRAIG

20 I don't recall.

21 MR. HANDEL TO JUDGE

22 Mischaracterizes.

23 MR. PASSAGE TO MR. CRAIG

24 I don't recall saying that.

25 JUDGE TO MR. PASSAGE

(b) (6)

1 Okay. Hold on.

2 JUDGE TO MR. CRAIG

3 Do you have a specific part of the testimony that you're
4 referencing?

5 MR. CRAIG TO JUDGE

6 Well, I certainly have my notes. I'm not sure how to refer
7 to the Court.

8 JUDGE TO MR. CRAIG

9 How far along in the testimony was it? Well, you can
10 follow up with another question?

11 MR. CRAIG TO JUDGE

12 I'm sorry. What's that?

13 JUDGE TO MR. CRAIG

14 You can follow up with another question if you want.

15 MR. CRAIG TO MR. PASSAGE

16 Q. Prior to your arriving, who was head of minister or
17 who was minister of defense?

18 A. Prior to my arriving.

19 Q. Right.

20 A. Well, General Vides was minister when I arrived. I
21 don't recall. I have no idea who preceded him.

22 Q. Well, he was minister of defense for at least a year
23 prior to your arrival. Isn't that correct?

24 A. That's correct. My recollection is he was named in
25 March of '83.

(b) (6)

1 Q. Was it March or April of 1983?

2 A. I stand corrected if I'm wrong.

3 Q. Okay. And in fact, he remained minister of defense
4 after you left. Isn't that correct?

5 A. That's correct.

6 Q. And you earlier testified that as far as you're aware,
7 there were no prosecutions of any officers for human rights
8 abuses while you were there. Isn't that correct?

9 A. That's correct. There may have been. I do not recall
10 any.

11 Q. Now, while you were there, there were cables with your
12 name on it that talk about the prosecution, the possibility of
13 prosecuting human rights abuses. Isn't that correct?

14 A. There may have been. In terms of talking about
15 prosecutions, we were trying to obtain prosecutions. So almost
16 certainly I sent out, I signed some cables and myself reviewed
17 some cables talking about prosecutions.

18 Q. And you were trying to obtain prosecutions of officers
19 involving human rights abuses. Is that correct?

20 A. That would be correct.

21 Q. And yet and why did you want prosecutions of human
22 rights abuses, abusers?

23 A. Well, as a generic practice where we were able to
24 identify individuals who believe could be prosecuted, we passed
25 that information to various elements of the Salvadoran

(b) (6)

1 government, including particularly the minister of defense or
2 the ministry of defense.

3 Q. So despite the U.S. embassy pushing for the
4 prosecution of known, of known human rights abusers and
5 officers, Vides Casanova never prosecuted any high ranking
6 officer for human rights abuses. Isn't that correct?

7 MR. HANDEL TO JUDGE

8 Objection. Asked and answered.

9 MR. PASSAGE TO MR. CRAIG

10 I don't know that to be the case.

11 MR. CRAIG TO MR. PASSAGE

12 Q. Well, are you backing off your earlier testimony then?

13 A. What I said was I am not familiar with any that
14 occurred. Your question was did any occur? I don't know that
15 to be the case.

16 JUDGE TO MR. CRAIG

17 He said he knew of none.

18 MR. CRAIG TO MR. PASSAGE

19 Q. And you testified that there were members of the
20 military who were involved kidnappings. Is that correct?

21 A. We believed that to be the case.

22 Q. Okay. And you testified that when you brought those
23 names to Vides Casanova's attention that he would take action
24 against them. Is that correct?

25 A. We believed that where he was able to do so, he took

(b) (6)

1 action, but his responsibility was not to accept information
2 that we provided to him and act on that information. He was the
3 minister of defense of El Salvador. We were the American
4 embassy.

5 Q. And what types of actions did he take against these
6 known kidnappers within the military?

7 A. I've testified I know of no actions that he took in,
8 in follow up.

9 Q. Isn't it true that he actually promoted people who
10 were involved kidnapping?

11 A. I don't know that to be the case.

12 Q. Professor Terry Karl testified on direct examination
13 that several known human rights abusers that he promoted were
14 involved in kidnapping for profit. Would you have any reason to
15 disagree with Professor Karl's testimony on that issue?

16 A. I would have --

17 MR. HANDEL TO JUDGE

18 Objection, Your Honor. He's asking for opinion evidence.
19 I believe it's been established that he's not an expert.

20 JUDGE TO MR. PASSAGE

21 Q. In your time there as a lay person, are you aware of
22 any that were --

23 JUDGE TO MR. CRAIG

24 Did you say promoted?

25 MR. CRAIG TO JUDGE

(b) (6)

1 Well, I'm not asking him for his opinion. I'm asking him
2 if he has any reason to disagree with her testimony.

3 JUDGE TO MR. CRAIG

4 Yeah. I'll sustain the objection. Next question.

5 MR. CRAIG TO JUDGE

6 If I could just have one moment, Your Honor.

7 JUDGE TO MR. CRAIG

8 Yes.

9 MR. CRAIG TO JUDGE

10 I don't have any other questions, Your Honor. Thank you.

11 JUDGE TO MR. CRAIG

12 All right.

13 JUDGE TO MR. HANDEL

14 And Mr. Handel, go ahead.

15 MR. HANDEL TO JUDGE

16 Thank you, Your Honor.

17 MR. HANDEL TO MR. PASSAGE

18 Q. Ambassador Passage, you were asked now on, on cross
19 exam regarding a cable that referred to President Duarte's
20 request for the U.S. Ambassador [indiscernible] and, and I
21 believe your testimony was that this was several months into the
22 Duarte presidency and, and that you also testified that
23 President Duarte's level of confidence increased.

24 A. Yes, yes.

25 Q. Describe that.

(b) (6)

1 A. His level of confidence increased literally in a
2 linear fashion as he gained with experience dealing with us,
3 dealing with his minister of defense, dealing with his armed
4 forces, but in effect he had to be persuaded that the armed
5 forces would back him. That was a matter of confidence building
6 exercise. I think he was satisfied throughout. His concern was
7 made clear in the cable that was, that was presented to me. I
8 think that's actually that's factually absolutely correct, but
9 he did gain with time. One of the proof of which was that he
10 retained General Vides for his entire presidency five years at
11 any point in which he could have removed General Vides had he
12 lacked confidence.

13 Q. And the, the President Duarte had the authority to
14 remove General Vides.

15 A. That's his selection as a cabinet minister.

16 Q. Was President Duarte the commanding officer of the
17 armed forces of El Salvador?

18 A. I quite frankly don't remember what part of the
19 Salvadoran the new constitution enacted in 1982, I don't
20 remember what it said about that. Ours puts the president as
21 commander in chief of the armed forces and chief executive. I
22 do not remember what the Salvadoran constitution says.

23 Q. Now, in, in reference to the, the cable and, and, and
24 Duarte, you were asked now about your meetings [indiscernible]
25 meetings with Vides. Did you also meet regularly with President

1 Duarte?

2 A. Of course, I met during the monthly reviews, I met
3 with President Duarte on those occasions when Ambassador
4 Pickering and Ambassador Corr chose to take me which was fairly
5 frequently and as chargé d'affaires, I met with President Duarte
6 on occasion one on one occasions as the acting chief of mission
7 as the chargé of the American mission when I had other members
8 of the country be with me.

9 Q. But during the two years that were there.

10 A. I probably had a half a dozen one on one meetings with
11 President Duarte. The remainder of the time I'll say at least
12 monthly, probably a little bit more frequently than that.

13 Q. And you had, did you have an opportunity to discuss
14 the issues, such as human rights, security [indiscernible]
15 President Duarte?

16 MR. HANDEL TO JUDGE

17 I object. Beyond the scope of cross-examination.

18 JUDGE TO MR. CRAIG

19 I guess that's kind of going to this level confidence
20 issue.

21 MR. HANDEL TO JUDGE

22 Yeah.

23 JUDGE TO MR. HANDEL

24 I'll allow it, but please limit it if you want.

25 MR. HANDEL TO JUDGE

(b) (6)

1 Yeah.

2 MR. HANDEL TO MR. PASSAGE

3 Q. [Indiscernible].

4 A. Yes. Human rights were not invariably. If I had a
5 specific issue that I needed to raise with President Duarte, I
6 didn't raise the panoply of concerns with him. So I had a
7 number of meetings with him which were discrete in subject.
8 There was a specific subject that I needed to talk to him about.
9 Sometimes, we'd do it on the telephone. Sometimes, I would ask
10 for them to meet with him. On a couple of occasions, I had
11 official visitors from Washington who I needed to take to meet
12 with him for purposes of making points. Where there was a
13 discrete issue, specific issue that was before the House, we
14 didn't necessarily try to expand that to the full range of U.S.
15 interests in El Salvador.

16 Q. Now, the, the going back to that cable that you were
17 just asked about, about President Duarte, is, is that cable or,
18 or is that or was that cable consistent with what you observed
19 happening in El Salvador?

20 A. Yes and with respect to that particular cable I
21 remember having been shown that cable by Ambassador Pickering
22 before he sent it and we had a discussion in his office and part
23 of the thrust of that was I was newly arrived at that point. I
24 had only been in El Salvador for a matter of weeks and I think
25 Ambassador Pickering wanted to raise a very quickly to the level

(b) (6)

1 of understanding what the different forces were at lay in El
2 Salvador, including President Duarte's concerns, including about
3 the military.

4 MR. HANDEL TO JUDGE

5 No other questions at this time, Judge.

6 JUDGE TO MR. HANDEL

7 All right.

8 JUDGE TO MR. CRAIG

9 Mr. Craig, anything else?

10 MR. CRAIG TO JUDGE

11 No, Your Honor. Thank you.

12 JUDGE TO MR. PASSAGE

13 Q. All right. Then, sir, thank you for your testimony
14 and making the time and effort to come in Orlando and you're
15 excused.

16 A. You're welcome. Thank you.

17 JUDGE TO MR. HANDEL AND MR. CRAIG

18 All right. Gentlemen, it's 5:30. I guess would no one
19 would oppose us breaking here. I think we can all use the rest
20 and we have about a half an hour. If we were to go forward,
21 what would accomplish?

22 JUDGE TO MR. HANDEL

23 Mr. Handel, what would be --

24 MR. HANDEL TO JUDGE

25 I --

(b) (6)

1 JUDGE TO MR. HANDEL

2 -- your next move?

3 MR. HANDEL TO JUDGE

4 We're going to call next Ambassador Corr. I would submit
5 since last we went until 7. It wouldn't be a bad time to break
6 at this time.

7 MR. CRAIG TO JUDGE

8 Your Honor, even if we can get through some of the
9 preliminaries with Ambassador Corr, I think we need to make sure
10 of every minute that we have even if we can get through his
11 background and experience today, that would help us get started
12 early tomorrow.

13 JUDGE TO MR. HANDEL

14 Is he available?

15 MR. HANDEL TO JUDGE

16 I believe he is.

17 JUDGE TO MR. HANDEL

18 Mr. Corr. All right. Well, if you want to push on for
19 half an hour, let's do that.

20 JUDGE FOR THE RECORD

21 Let's go off the record until we can bring him in.

22 (OFF THE RECORD)

23 (ON THE RECORD)

24 JUDGE FOR THE RECORD

25 Back on the record.

(b) (6)

1 JUDGE TO MR. CORR

2 Q. Good afternoon, sir.

3 A. Good afternoon.

4 Q. Please have a seat. Welcome to Orlando. Would you
5 tell me your true and complete name, please?

6 A. Edwin Gharst Corr.

7 Q. Okay. C O R R, and the last name.

8 A. Yes, sir.

9 Q. Okay. And a business address.

10 A. I don't have a business address.

11 Q. Okay.

12 A. My home (b) (6)

13 Q. Okay.

14 A. (b) (6)

15 Q. Okay. And you date of birth, please.

16 A. 6 August 1934.

17 Q. All right. So how old are you today, sir?

18 A. Seventy-six going for 77.

19 Q. Seventy-six. All right. Very good. If you could
20 raise your right hand for me.

21 A. Yes, sir.

22 Q. Do you swear or affirm the testimony you give today
23 will be true and correct?

24 A. Certainly, I do.

25 Q. Okay. You may put your hand down and you've testified

(b) (6)

1 in different tribunals.

2 A. Twice.

3 Q. Okay. Do you need any instructions or you know how
4 we're --

5 A. I don't think so and if I mess up, put me back on the
6 right track.

7 Q. Okay. And if you would the main one that we're having
8 a little mix up on is if one of the attorneys is asking a
9 question and you hear an objection from the other one, please
10 hold your answer until I can rule on the objection.

11 A. Okay.

12 Q. All right. Very good.

13 MR. CRAIG TO JUDGE

14 Your Honor, before we start testimony, the same objection
15 we had with Ambassador Passage as far as expert. We don't
16 believe that counsel at this time has provided enough
17 documentation for Ambassador Corr to be considered an expert.

18 JUDGE TO MR. CRAIG

19 Okay. I'm looking at Exhibit 6-C, the amended report of
20 the expert witness.

21 JUDGE TO MR. HANDEL

22 And why don't you do this? Well, Mr. Handel, I suppose you
23 would take an alternative view.

24 MR. HANDEL TO JUDGE

25 Yes, Your Honor.

(b) (6)

1 JUDGE TO MR. HANDEL

2 Since you've presented him as such, why don't you see if
3 you can get him qualified and I'll hear from the Government
4 after you attempt to qualify him. We'll go from there.

5 JUDGE TO MR. CRAIG

6 Is that sufficient?

7 MR. CRAIG TO JUDGE

8 Your Honor, I could tell you regardless of the questions,
9 he hasn't given us a CV. He mentions in his report that he has
10 a CV, but he hasn't provided it to the Court or to the counsel
11 or the Court and in accordance with the Practice Manual.

12 JUDGE TO MR. HANDEL

13 Is there a CV not available?

14 MR. HANDEL TO JUDGE

15 We could probably obtain a, a CV, Judge. I think the Court
16 indicated earlier when the objection was raised earlier an
17 expert report or a CV. We've got an expert report.

18 MR. CRAIG TO JUDGE

19 It doesn't lay out his qualifications which is the point
20 for the CV or an expert report.

21 JUDGE TO MR. CRAIG

22 All right.

23 JUDGE TO MR. HANDEL

24 Let's begin then with his testimony. We'll consider him at
25 this point in time as a lay witness with, well, we'll see where

(b) (6)

1 his, his testimony takes us as far as where he's been and what
2 he's been doing and since we're not going to finish up tonight,
3 if you can get a CV to me and the Government and have, give us
4 time to review it, perhaps they'll withdraw their objection, but
5 we'll deal with that morning.

6 MR. HANDEL TO JUDGE

7 Certainly, Judge. Yeah. I'll do that and, and, and
8 Ambassador Corr testified extensively in the Romagoza case and
9 the Government is well aware of that. They've had an
10 opportunity to review. I know they reviewed material from the
11 Romagoza case because they've referred to it.

12 MR. CRAIG TO JUDGE

13 Just because we've materials from another case does not
14 excused the respondent from complying with the Immigration Court
15 requirement.

16 JUDGE TO MR. CRAIG

17 Okay. Noted. All right.

18 JUDGE TO MR. HANDEL

19 Let's -- he's been sworn. Go ahead, sir.

20 MR. HANDEL TO MR. CORR

21 Q. Ambassador Corr, what, what, what has been your last
22 employment?

23 A. I retired from the University of Oklahoma three years
24 ago and since that time, I, I have had several contracts with
25 the U.S. Government. Do you want me to elaborate on that?

(b) (6)

1 Q. Sure. Yeah. Why don't you do that?

2 A. I in December, I did a month long study on the
3 watershed of the Panama Canal as with two other experts to try
4 to determine whether or not there would be the quality and
5 quantity of water needed for the canal to continue to function.
6 They just put \$5.3 billion into expand the canal and to look at
7 the measures that need to be taken and how to implement those
8 measures to make certain that that happens and that was a report
9 for the U.S. Government.

10 Q. And you've had other contracts since you retired with
11 the U.S. Government.

12 A. Yes. I've had several. I, I, I had at least three
13 contracts with the United States Marine Corps at the, the
14 General Staff College. They do a program there for a master's
15 degree and of course the focus lately has been on irregular war
16 counter insurgency and I have helped run an exercise at the end
17 of that course for about 16 days along with some Marine Corps
18 general trying to prepare our lieutenant colonels and so forth
19 mentally how better to deal with insurgencies. I've had, I've
20 evaluated an aid program in the Dominican Republic, things like
21 that.

22 Q. Okay. And you said you retired three years ago.

23 A. I retired from the University of Oklahoma three years
24 ago. I had retired from the foreign service in 1990.

25 Q. Okay. And what were you doing at the University of

(b) (6)

1 Oklahoma?

2 A. For eight years, I was a full professor in political
3 science and the rest of the time I was an administrator. We had
4 a program for international studies, international programs and
5 I also ran an energy center for six years simultaneously as I
6 was in the international program center for part of that time.

7 Q. And you retired from the U.S., United States
8 Government in 1990 you said.

9 A. Yes, sir, 1990.

10 Q. And what was your last employment with the U.S.
11 Government?

12 A. The last two years, I was a diplomat in residence and
13 that actually covered two of the eight years that I was a full
14 professor at the university and then I held a chair for six more
15 years there to make it eight and I, I the two years prior to
16 that, I had finished my duty in El Salvador.

17 Q. And, and how long did you serve in El Salvador?

18 A. For three years from August 1985 to August 1988.

19 Q. And where were you posted before that?

20 A. All of them, before that four years and before that I
21 was the ambassador in Bolivia. Before that, I was the
22 ambassador in Peru. Before that, I was the Deputy Assistant
23 Secretary of State in the Bureau of International Narcotics
24 Matters. Before that, I was chargé d'affaires and deputy chief
25 of mission in Ecuador. Before that, I was three years in

(b) (6)

1 Thailand as what you call the mission coordinator and that was
2 out there during the time of the war. I was a Peace Corps
3 director in Colombia.

4 Q. When was that?

5 A. 1966 to 1968. I was in Mexico as a diplomat from 1962
6 to 1966. That was my first overseas assignment. Prior to that,
7 I was a United States Marine Corp infantry officer and --

8 Q. How long were you, did you serve as a Marine Corps
9 officer?

10 A. I was three and a half years on active duty. I've
11 obtained the rank of captain.

12 Q. And describe your education.

13 A. I got a degree in the School of Education in social
14 studies, planning on being a coach and I finished that degree in
15 19 January 1957. I went into the Marine Corps. I came back
16 from the Marine Corps. I got a master's degree in history from
17 the University of Oklahoma. I entered the foreign service and
18 then after I was in the foreign service, the Department of State
19 sent me to the University of Texas for the, at the Institute of
20 Latin American Studies to do a year of specialization on Latin
21 America. I got another master's degree there and that's it. I
22 had a lot of in, in-service training probably 14 months of in-
23 service schooling with the Department of State.

24 Q. What is in-service schooling? What is that?

25 A. You know I studied French. I studied Spanish four

(b) (6)

1 months each of those. I did an economics course on
2 macroeconomics and trade for five months. I did a counselor
3 course, things like that.

4 Q. Are you fluent in any language other than English?

5 A. I speak Spanish. I, I did have a certain fluency in
6 Thai, but I haven't used it in 25 years. I don't claim to speak
7 Thai now. I studied, I studied a couple of them. I wouldn't --
8 others. I wouldn't say I speak them. I studied French. I
9 studied Quechua, Quechua, Quechua language of the Incas.

10 Q. And have you published any materials?

11 A. I've published a lot of material, quite a few
12 materials, yes.

13 Q. Have you written any books?

14 A. I've, I've written a book. I've co-authored a book.
15 I've, I've co-edited, the editor of, of two or three books.
16 I've, I've published a lot of articles in journals.

17 Q. Which book did you write?

18 A. I wrote a book on the, the political process in
19 Colombia. That was the first book I published in 1972. I, I, I
20 did a book on counter insurgency and edited the book.

21 Q. When, when did that come out?

22 A. The book on, the book on Colombia was in '72. The
23 book on counter insurgency came out in like '90, '91, maybe '92,
24 '92. I'm not sure.

25 Q. Have you published on Central America?

1 A. No, I have not, not, not. I have published articles,
2 but not a book.

3 Q. Articles.

4 A. Yes, sir. I've --

5 Q. And have you published any articles on El Salvador?

6 A. Yes, I have.

7 Q. And describe them, please.

8 A. A number of those articles, two or three of those
9 articles were related to, done with, or, or used the what's
10 called the Manwaring paradigm. The Max Manwaring is a, was a
11 professor at the Army War College and he was also a professor to
12 a number of, of universities and he developed a paradigm. He
13 began in the, the 1980s and he did a book that was a bestseller
14 on the war in El Salvador and that's where I first met him and
15 then we got to know each other and his, his paradigm sets out is
16 a paradigm that lays out six areas where one needs to
17 concentrate and their strategy and, and programs and so forth in
18 order to try to deal with the counter insurgency or low
19 intensity conflict or whatever the terminology is that is being
20 applied.

21 Q. Did you, did you publish several articles on El
22 Salvador?

23 A. Yes.

24 Q. And what were those?

25 A. I published a part of a book that was written very

(b) (6)

1 right after I came out of El Salvador and I tried. I can't come
2 up right now, a very distinguished group of people. Several,
3 several articles in different journals, most of them having to
4 do with, with the war in El Salvador with the efforts that were
5 being made in El Salvador to try to help that country's leaders
6 move to a constitutional democracy and take care of human rights
7 abuses and so forth.

8 Q. So your, prior to your posting in El Salvador as
9 ambassador, you mentioned that you were at different postings.
10 Had you served ambassador before?

11 A. Yes. I was ambassador in Bolivia for four years. I
12 was ambassador in Peru and I was also a charge d'affaires in, in
13 Ecuador. So I was a chief of mission in four embassies.

14 Q. And --

15 A. I'd mentioned one other job I left out. I do this --
16 JUDGE TO MR. ORR

17 Q. Go ahead, sir. What's the other job?

18 MR. CRAIG TO JUDGE

19 Objection.

20 JUDGE TO MR. CRAIG

21 No.

22 JUDGE TO MR. ORR

23 Q. Go ahead. What, what's the other job?

24 A. I also worked for the Inter-American Development
25 Foundation where I was the second person hired at the Inter-

(b) (6)

1 American Development Foundation. It first was the Institute of
2 Social Development. It was established by the Congress to look
3 for more innovative ways to try to do assistance to countries
4 particularly with the focus on the poorest of the poor. I, I
5 did the guidelines for the projects and, and functioning that
6 organization as the second employee hired and I got the first
7 few projects that they financed.

8 MR. HANDEL TO MR. ORR

9 Q. Now, you had mentioned that you were the Peace Corps I
10 believe. Was that '66?

11 A. '66 to '68, I was, I was not the country Peace Corps.
12 I was what was called a regional director. I had 150 Peace
13 Corps volunteers working in a dozen different projects in the
14 western part of Colombia.

15 Q. And when you, when you, when you served as ambassador
16 in El Salvador, what were your job duties?

17 A. Well, the president told me when I went there that I
18 was supposed to go down and clean up the situation and establish
19 democracy. That's about what. The, the, the Secretary of State
20 gave me a lengthy letter that outlined a number of things and
21 then when I arrived there after I had had a lot of briefings in
22 the Department of State and I had been reading the traffic, the
23 messages and so forth for about eight months, I began to receive
24 that information. I listened to everybody I could in the
25 country for about six weeks and then we, we established that

(b) (6)

1 what we were trying to do. We were working in five areas and,
2 and the first was trying to improve the situation and reduce the
3 human rights violations. The second was to try to help the
4 Salvadorans in their efforts to establish a constitutional
5 democracy. The third was to try to focus in on the economic
6 situation because the GDP had fallen by 23 to 25% and the first
7 from '79 to '81 and in those efforts to try to emphasize that
8 there would be employment creation would be the most important
9 of that, of that effort and also then to try to work with the
10 Salvadoran government to encourage them with the other
11 governments of Central America to come to a peace in the region
12 and to get the, to get them.

13 Q. And you mentioned you, you met with the president.
14 Was that President Reagan?

15 A. Yes, sir.

16 Q. And who was the Secretary of State that you mentioned
17 that you met with?

18 A. That was Secretary Schultz at that time. My first
19 ambassadorial assignment, I was appointed by President Carter to
20 my first ambassadorial assignment.

21 Q. President Carter appointed you to which?

22 A. To be ambassador in Peru.

23 Q. Peru. And during the time that that you served in
24 Peru, did you deal with counter insurgency issues?

25 A. We had the Shining Path guerrillas were, were very --

(b) (6)

1 they, they came down into the city. As the first time they came
2 down in the city, they blew, they bombed my embassy and my
3 residence. So I dealt with them there.

4 Q. What year was that?

5 A. That was 1980, '81.

6 Q. And you just mentioned that prior to going to El
7 Salvador, you had a number of briefings regarding El Salvador.

8 A. Yes. That's standard practice I mean, if you're going
9 to a country. In my case, very unusual. I knew fairly early.
10 I was told eight months before I went there that I was likely to
11 be assigned and so then they began to send me the messages, the
12 major messages that were going back and forth between the
13 embassy in San Salvador and in Washington. So I could read
14 those. Of course, I was very busy with the job that I had and
15 then I went to Washington and actually I was sent by the embassy
16 in San Salvador big briefing books and then I went to Washington
17 and I met with all the different agencies and, and departments
18 and people who were over on the Hill and so forth, the people
19 who were involved with El Salvador, with the president and
20 secretary and got briefings there on the problems and then I
21 went down to El Salvador and got briefed. I kept my mouth shut
22 and tried to get each different groups' opinion so I could
23 compare them and listen to those and then as I say, I came up
24 and after about five, six weeks, I sat, tried to keep quiet, and
25 listen which is hard for me to do and, and then I put together

1 what we're going to do which I outlined earlier, what, what we
2 were trying to do and, and, and that was in line with the United
3 States Government had been doing because we'd had the Kissinger
4 Commission. We had had the other ambassadors had done things
5 very similar.

6 Q. What was the Kissinger Commission?

7 A. Actually, I think the proper name of it is the Jackson
8 Commission. Anyway, it was, it was a study that asked to be
9 done and I'm not certain whether it was the initiation came in
10 the Congress or where, but it was a study that tried to put
11 together a group of people to go down and look at the situation
12 in El Salvador because it was of great concern at that time and
13 try to understand the situation and make some recommendations as
14 to what, what needed to be done there. I haven't looked at it
15 in a long time, but I think it was very important in terms of --

16 Q. Were, were you told that this area El Salvador, was it
17 an area of great concern?

18 A. Yes, I was.

19 Q. What were you told regarding that?

20 A. I don't know that I can remember just explicitly what
21 I was told, but that that time in, in U.S. history along about
22 1979, there was a kind of a panic atmosphere in the United
23 States Government in the sense that the Russians had gone into
24 Afghanistan. We had hostages in Iran. I'm talking about the
25 year 1979. The Sandinistas came to power in Central America.

(b) (6)

1 There were problems in Angola and Mozambique. Any, every place
2 that people looked and everybody was talking in kind of simple
3 language about who lost which country and so forth, but anyway,
4 it was, it was a kind of a concern that maybe in 1979 that, that
5 the Soviets even though a decade later, they were, they were
6 fading away, they were seen as gaining ground in a lot of places
7 by some people and so I think that there was quite a bit of
8 concern about Central America and what was happening there and
9 had been happening since 1979. There was a kind of a I mean,
10 elections were involved in that issue and so forth. So, so it
11 was given a fairly, to be a country of the size it was or the
12 population it was, it was given a fairly high priority within
13 the U.S. Government.

14 Q. Was there a concern about a Marxist insurgency in El
15 Salvador?

16 A. Yes.

17 Q. And, and how significant was that?

18 A. How significant was the insurgency?

19 Q. Level of concern, yeah, [indiscernible].

20 A. The level of concern was very, very high and, and it
21 varied with whom with which what elements or what people in the
22 Government you talked with. I mean, so it was, it was, it was
23 very and -- and would vary from, from place to place so to
24 speak.

25 Q. Now, you said that when you, you began your service

1 there, it was with Secretary of State George Schultz.

2 A. Yes.

3 Q. Did that change at some point?

4 A. Not while I was in El Salvador.

5 Q. So you arrived in El Salvador in you said 1980.

6 A. '5.

7 Q. '5. Do you remember about what month it was?

8 A. August, August.

9 Q. And how long after you arrived did you first meet with
10 Vides Casanova?

11 A. I don't remember, but it was within the first six
12 weeks to two months probably. When an ambassador arrives, he
13 has to present his credentials. The protocol is that you don't
14 call on people necessarily or you're not supposed to call on
15 people until you've presented your credentials and had your
16 first meeting the chief of state. Being the representative of
17 the president. Actually what happened is I, I got a call from
18 Monsignor Vera Ramos and asked me if I would come to lunch I had
19 presented my credentials. So I decided to do it and I went to
20 lunch and the lunch lasted four and a half hours and President
21 Duarte was there and the, the second man, his name searched my
22 mind right now, to the bishop was there, the four of us and we
23 had a four and a half hour conversation about what was going on
24 which I was able to listen to the monsignor and listen to Duarte
25 and kind of get their views before I actually met with the

(b) (6)

1 foreign minister.

2 MR. CRAIG TO JUDGE

3 Objection. This one is unresponsive. The question was

4 about Vides.

5 JUDGE TO MR. HANDEL

6 And I guess I missed it.

7 JUDGE TO MR. ORR

8 Q. Was the, did the lunch include Mr. Vides Casanova?

9 A. No. I'm sorry.

10 Q. It didn't include him. Okay.

11 JUDGE TO MR. HANDEL

12 Go ahead.

13 MR. ORR TO JUDGE

14 Yeah.

15 MR. ORR TO JUDGE

16 Excuse me.

17 JUDGE TO MR. ORR

18 No. That's fine.

19 JUDGE TO MR. HANDEL

20 Go ahead.

21 MR. HANDEL TO MR. ORR

22 Q. That was with Duarte and, and --

23 A. Well, then you meet, THEN, then following you,

24 following the meeting with the president, the normal protocol is

25 is that you call on the different ministers of, OF the

(b) (6)

1 government of the cabinet and I'm sure that after the foreign
2 minister that probably I called on Minister Vides very high on
3 the list there in terms of making my, my first calls in the
4 government. So I don't know what the date was, counsel.

5 MR. HANDEL TO JUDGE

6 Judge, this might be a good time for us to break at this
7 point before I turn into different areas since I know it's 6
8 o'clock.

9 JUDGE TO MR. HANDEL AND MR. CRAIG

10 Yeah. It's 6 o'clock. Anything anyone needed to take up
11 before we do that?

12 MR. CRAIG TO JUDGE

13 Not from the Government.

14 MR. HANDEL TO JUDGE

15 No.

16 JUDGE TO MR. HANDEL

17 I imagine you'll be getting that CV to us.

18 MR. HANDEL TO JUDGE

19 Yes, Your Honor.

20 JUDGE TO MR. HANDEL

21 Say in the morning.

22 MR. HANDEL TO JUDGE

23 Yes, Your Honor.

24 JUDGE TO MR. CORR

25 Sir, we'll see you back here in the morning. It may be

(b) (6)

1 difficult, but please don't discuss your testimony with anyone
2 between now and then. Okay. Very good.

3 JUDGE FOR THE RECORD

4 Then, we'll be adjourned until tomorrow at 8:30.

5 MR. HANDEL TO JUDGE

6 Yes, Your Honor.

7 JUDGE TO MR. HANDEL

8 All right.

9 HEARING ADJOURNED

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(b) (6)