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8 **[The court-martial was called to order at 1627, 1 August 2013.]**

9 MJ: Court is called to order. Let the record reflect all
10 parties present when the court last recessed are again present in
11 court. The witness is on the witness stand. Major Fein, please
12 account for the closed session.

13 TC[MAJ FEIN]: Yes, ma'am. This session is classified at the
14 Secret level. In addition to the parties, the Court's paralegal,
15 bailiff, court security officer, members of the prosecution, the
16 defense team, security, and U.S. government representatives, properly
17 cleared, are in the courtroom, Your Honor.

18 Also, prior to the start of this closed session, the court
19 security officer executed a closed hearing checklist and that will be
20 added to the post-trial allied papers.

21 MJ: Proceed.

22 **[Mr. Feeley was reminded of his previous oath and examination**
23 **continued.]**

1 **Questions by the assistant trial counsel [CPT OVERGAARD]:**

2 Q. Now, in the open session, you said that you were a DCM in
3 Mexico when the Department of State learned of the unauthorized
4 disclosures?

5 A. That's correct.

6 Q. And did your Embassy in Mexico take any initial actions
7 when the Mexican-related disclosure were either imminent or began to
8 occur?

9 A. Yes, we did.

10 Q. And what did you do?

11 A. I pulled together a team of people to go through--we began
12 to get information from the department as to which of the purported
13 cables would--might be made public; we didn't know at first. And so,
14 I pulled together a team down there, locally, to begin to triage them
15 and to see what was in those cables from the universe of cables that
16 Mexico--Embassy Mexico had sent within the time frame to see what we
17 thought would cause us trouble. And so we--and then we were tasked
18 to do that and to report back to Washington what we found.

19 Q. And when was this?

20 A. This would have been--the cables didn't actually come out--
21 this would have been in the fall, I want to say like early--it might
22 have been a little more earlier [sic], actually, than Thanksgiving.
23 In--Thanksgiving is when I remember the first cables coming out in

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1 Der Spiegel, so it had to be a little bit earlier than that because
2 the department knew that. The Mexico-related cables didn't come out
3 until after the New Year. So, it would have been through the fall; I
4 can't tell you the exact date we started.

5 Q. Okay. So you started-----

6 A. It was upon instruction from the department and I'm sure
7 there's a record of it.

8 Q. And that was before the cables were released?

9 A. Yes.

10 Q. Which was, you said, about Thanksgiving of 2010?

11 A. That's what I recall.

12 Q. And then that process continued?

13 A. The process of triage?

14 Q. Yes.

15 A. Yes, it did because then we began to--we got more
16 information--or the department, I assume, got more information as to
17 precisely which cables and then we were able to go and look with more
18 precision as to what we could expect the universe of cables and which
19 ones would--which of the purported cables might be published by--in
20 Latin America, WikiLeaks used *El Pais*, which is a very widely-read
21 Spanish newspaper, but that's what they used as a vehicle for putting
22 them out.

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1 Q. And what did your review entail? What did you actually do
2 in your office?

3 A. I had several of my officers go through and take a look at
4 them and provide, sort of, quick summaries as to what was in them,
5 did we think there was any information that would embarrass the
6 Mexican government, did we think there was information that could
7 possibly put somebody in physical harm or jeopardy, were there places
8 where we had written, "Protect." Very frequently, in a cable, when
9 you are told something by either government or a foreign interlocutor
10 that, if he gets out and becomes known, could put that person either
11 in, again, physical jeopardy, could cause them to lose their job,
12 could cause them to have public embarrassment and shame. So, often
13 times, we'll identify the individual by a position, if they're in the
14 government. Sometimes, we'll do it by name if that's the only way we
15 can and then you sort of put a little parentheses right after the
16 name that says, "Protect" or "Close hold." So, we went and we looked
17 for those.

18 ADC[MAJ HURLEY]: Captain Overgaard, I'm sorry to interrupt you.
19 Ma'am, this is another place we'd object.

20 MJ: Got it.

21 [Examination of the witness continued.]

22 Q. And how long did that review last?

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1 A. We did the initial triage at--couple of--I would say we did
2 it on two, that I recall--two sessions where it was several days'
3 worth--a week's worth. The first was when we had--we didn't have a
4 list of cable numbers. The second time was as they started to come
5 out early in the New Year and we had more and I would say probably a
6 week to 10 days on either side for each of them.

7 Q. And how much time was spent reviewing these cables?

8 A. An estimate? I can't tell you exactly, but probably, each
9 time, three or four people in our political economics section looking
10 at them for a couple hours each day for, maybe, a work week each one.
11 I'm kind of afraid to do the math in public, but----

12 Q. I'm asking too much, again.

13 A. ----dozens of hours, probably.

14 Q. One moment, please. I just had a question based on what
15 happened yesterday. What would these individuals have been doing
16 otherwise?

17 A. They were my, sort of, core--actually, what I did was I
18 took my two deputies who, in each of those sections--there were two,
19 three--and I reviewed them, so there were four or five of us. What
20 they would have been doing, otherwise, is their day job which
21 consists of, for a political or economic officer, they have a
22 portfolio of issues that they track, so meetings with foreign
23 government officials, meeting with private sector, writing up more

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1 cables, analysis based on whatever the issues they were covering it
2 time it required, participating in internal Embassy functions, things
3 of that nature, attending diplomatic functions outside the Embassy
4 hosted by other countries, other embassies, sort of what we call,
5 "being on the diplomatic circuit," talking to others--I mean--their
6 day jobs, in fact, as a diplomat.

7 Q. So did this--so did reviewing these cables impact the
8 primary mission of those analyzing the WHA cables?

9 A. It took time out from when they--it took time away--I mean,
10 you've only got so many hours in a day you can work, so it detracted
11 from them doing what was in their work requirement statements.
12 Nobody had this included as a task. We always put a--in everybody's
13 work requirement statements, as a foreign service type, you put,
14 "other duties as assigned," so this became an "other duty as
15 assigned," but it did detract from the time and the energy they were
16 able to spend on their regular duties.

17 Q. And you talked about, in the open session, your experience
18 with drafting cables and reviewing cables. Did the unauthorized
19 release of all these cables change how WHA, in particular, Latin
20 America, reported in subsequent cables?

21 A. Oh, yes. The release of the purported cables had a
22 chilling effect, both on our diplomatic relations, but also on the
23 manner in which we reported home in cables. There was a--I, myself,

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1 felt a reticence to include in cable format--especially in the early
2 days--to include particularly sensitive conversations that I had.
3 Once it became really clear and we, in the field--perhaps in
4 Washington, they knew sooner--we in the field didn't know, right
5 away, whether or not this was a one-time release of purported cables
6 were whether there was a systemic on-going problem and so he changed--
7 -it also changed--the fear of future leaks led us to be--kind of pull
8 our punches a little bit more, especially in comment sections. You
9 didn't want to, sort of, put yourself out there as: the horserace or
10 making an assessment because there was the fear that, if it were to
11 come out, you could either--you could embarrass somebody, you could
12 hurt the relationship.

13 Q. And why is it important to include the personal commentary?

14 A. Because, otherwise, there is no reason for us to go
15 overseas. I mean, the way it used to be that cables really were
16 handwritten or typed and they were the only news that Washington or
17 the State Department received about events overseas.

18 With the advent of telecommunications technology and
19 instant communications and images, but we now find is that the
20 purpose of the cable has morphed, over my career, certainly. The
21 fact of something exploding or the fact a particularly important vote
22 happening is reported by CNN far faster than a diplomatic cable would
23 be sent. The purpose of that diplomatic cable is to explain what

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1 happens, what the context was around, what do we think, what's our--
2 you know, they're snapshots, they're not meant to be stone tablets of
3 absolute objective truth. They are snapshots of what's going on and
4 our best analysis, based on our expertise, of why something is
5 happening and what does it mean for American interests, and,
6 frequently, our proposals for how we should act about events around
7 the world. So, that's--the reason you send us over is so that you
8 have a penchant--human being who speaks the language, understands the
9 culture, knows the contacts, and is able to make sense of what,
10 frequently, could just be fragmentary images on a screen capture by a
11 cell phone camera.

12 Q. And, overall, how did this disclosure impact the U.S.
13 ability to pursue its objectives in Latin America?

14 A. It had a very corrosive effect on the trust and confidence--
15 the levels of trust and confidence that we have worked assiduously
16 to establish with several audiences: host government interlocutors,
17 civil society interlocutors, journalists, academics.

18 Basically, the people in a certain country have an image of
19 the United States and, in general, that image is something that we
20 have to actively cultivate--we have to actively work to shape in
21 support of American interests. It doesn't always mean that the
22 statement that defense read earlier--not all countries like us, not
23 all countries want to be our friend, but we feel very strong, in the

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1 State Department--for several administrations, now, it's not
2 partisan--that part of our work is people-to-people diplomacy. And
3 so, how the ordinary--as the world becomes more democratic--certainly
4 as Latin America--let me just confine my comments there--certainly,
5 as Latin America has become more democratic, the role of average
6 citizens, as compared to the role elites and decision-makers in
7 societies, is frequently as important as those elites. So, our job
8 has changed over time in Latin America as it has become more
9 democratic.

10 We used to focus much more just the governing elites, the
11 chattering class, the business executives. Now, we have a very, very
12 robust and aggressive soft diplomacy--"Smart diplomacy," Hillary
13 Clinton called it--outreach.

14 So, the release of the purported cables gave anybody who
15 could read a newspaper a view into the things that we didn't want to
16 say publicly, that we-- the harsher or the more critical assessments
17 that we made in those cables about their country, their government,
18 what their leaders were doing; that was all put out there. And what
19 that did was it had the effect of eroding the trust, eroding the
20 access, eroding the influence that we have tried to establish.

21 Q. And what was the most significant overall cost in Latin
22 America at the time of the unauthorized releases?

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1 A. Well, the--you know, it's kind of like a smoker who smokes
2 for 30 years. You're damaging the heart over time, but you may not
3 see that heart attack until 30 years later. The immediate heart
4 attack was the PNG, or *persona non grata* expulsion of our ambassador
5 in Quito, Ecuador. And the Ecuadorian government openly said, "We've
6 read what she wrote in WikiLeaks. We find that absolutely--we find
7 it untenable to keep her here as an Ambassador," and, under the
8 Vienna Convention on Diplomatic and Consular Relations, PNG--*persona*
9 *non grata* literally means "person not welcome"--a host government can
10 kick an ambassador out at anytime. All host governments give what's
11 called *Au Gramant*, an old French word that means they give an okay
12 before that ambassador shows up, based on the ambassador's biography,
13 what they've done, and you can withhold *Au Gramant* and never even let
14 an ambassador--a particular ambassador come into a country for
15 whatever reason. And that's done, not very frequently, but that's
16 done. *Persona non grata* is very rarely done because it, effectively,
17 is sort of signaling, "That's it, we're breaking up. It's the end of
18 the relationship," even though the Embassy stays open, the----

19 MJ: Yes? Just a moment.

20 ADC[MAJ HURLEY]: Just--I'm sorry to interrupt, Mr. Feeley, same
21 objection.

22 MJ: Okay. Go ahead.

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1 [Examination of the witness continued.]

2 A. Even though the Embassy stays open and there are people in
3 the Embassy working, the figure of the ambassador is one that, in
4 diplomacy, is absolutely primordial to how we have access.

5 Q. So, in your opinion, Ambassador Hodges was PNG'd as a
6 result of WikiLeaks.

7 A. Yes.

8 Q. And how did that--why is it important for the U.S. to
9 engage, diplomatically, with Ecuador?

10 A. It's important for the United States, in my opinion, to
11 engage, diplomatically, with any country we can for--not simply--
12 don't think of it so much in sort of rail politic terms. Ecuador is
13 an exporter of oil. Ecuador is the world's largest supplier of
14 bananas. And you could go through and find individual little things
15 that would say we would hurt the, you know, banana consumption in the
16 United States, but I, quite frankly, believe that that trivializes
17 why we should engage. We should engage because we have a national
18 interest in communicating to the people of Ecuador and its government
19 what our values are--what U.S. values are that speak to democracy,
20 human right, good governance, economic stewardship, prosperity. And
21 so, when you lose that opportunity to do that, it's as though you
22 have lost an essential communication with an entire population and
23 that, simply, is not in our interest because what happens in that

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1 vacuum--where it happens--I'm sorry, not in a vacuum, but--there is
2 no vacuum--governments that are inimical to U.S. values and our
3 objectives fill the void
4 Ecuador undeniably became more radically vocal in terms of its
5 participation in ALBA--in terms of the anti-American discourse of its
6 president and its leaders in the post-WikiLeaks era.

7 Q. And does the U.S. have any specific national security
8 interests or concerns in Ecuador?

9 A. We do. Ecuador is a country that has--it borders Columbia.
10 Columbia has the oldest guerrilla insurrection on-going in the
11 hemisphere: the FARC, the Armed Revolutionary Forces of Columbia.

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17 Ecuador is also, interestingly, a transit country that--for
18 a lot of migrants--illegal and undocumented migrants--as a result of
19 Cuba's--and this happened 2 years after the episode--the WikiLeaks
20 episode--but Cuba just recently relaxed its travel standards for its
21 citizens. Previously, you had to get an exit visa, now you don't.
22 Ecuador has visa-less entry for Cubans.

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Q. And after Ambassador Hodges' expulsion, how long did the U.S. not have an ambassador in Ecuador?

A. I don't know, exactly. We put an ambassador--because I honestly don't recall--well, it had to have been in January 2010 that we put an ambassador back in there. We currently have Ambassador Namm and he went back last summer--about 18 months.

Q. And why did it take so long for another ambassador to be selected?

A. Because there were some very difficult conversations with the Ecuadorians after the purported cables had been leaked and many of the unfavorable opinions and the critical opinions expressed about the Ecuadorian government and their hostile posture toward the United States business interests and diplomatic interests. They were not sure they wanted a U.S. ambassador and we worked with them to attempt to--and did, ultimately and successfully, convince them that we may have differences of opinion, but the dialogue is important; it's important to keep talking. We don't have to agree on everything, but we talk most effectively through diplomatic channels when we have ambassadors resident in each country.

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1 And, in diplomacy, you almost always do everything based on
2 reciprocity and so that meant, of course, that we would accept an
3 Ecuadorian ambassador here, in Washington. And that also happened
4 last summer.

5 Q. And once the new ambassador was in place, did cooperation
6 improve at all with Ecuador?

7 A.

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18 Q.

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Q. And why is it important to have an ambassador in a country
--that we don't have a great relationship
with?

A. For the same reason it was important to keep an ambassador
in the Soviet Union for over 50 years. Because the Soviet Union had,
you know, nuclear-tip missiles pointed at us, it was an existential
threat.

and the United States holds, as a value, dialogue.
Democracies, historically, tend not to invade one another. They tend
to work out their problems through dialogue. It doesn't mean you
always agree, but having that ambassador there means that you have
the internationally-recognized and Vienna Convention-codified highest
level of representation.

Q. And would the State Department be aware of initiatives or
activities of other U.S. government agencies in Ecuador at the time?

A. Oh, absolutely. The ambassador--an ambassador is also
called a "Chief of Mission" and when the ambassador gets that letter
from the president that sends him or her to a foreign country,
everything that happens under the aegis of the U.S. federal

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1 government, as long as we're not in a state of war, is the
2 responsibility of that ambassador. There is something called a
3 "country team" that ambassadors and chargés run which is every agency
4 that is resident in that country--and even those agencies that aren't
5 resident but that send temporary duty-types down to work with--
6 frequently with technical counterparts in a host government--they are
7 obligated to come fully clean and inform the ambassador and inform
8 the front office--we call it, the ambassador and DCM--as to the
9 purpose of their mission. The ambassador can decide whether or not
10 to allow that go forward. We have something called a "country
11 clearance system," so not all--not frequently, but on occasion, I,
12 myself, have thought that it was an inopportune time for a particular
13 agency to come to Mexico and do a certain activity with Mexican
14 counterparts, for whatever reason--and, generally, you don't want to
15 just sort of send, bureaucratically, back the denied country
16 clearance, but you pick up the phone and you call them. So, yeah,
17 the ambassador knows--is supposed to know everything that happens.

18 Q. So who--can you give some specific examples of who would be
19 represented on a country team?

20 A. Certainly. We call it--they're called by different names:
21 attachés, delegates, representatives, section chiefs, but, basically,
22 every State Department office--and there are usually five of them.
23 It's the Consular Chief--the person who runs the consulate, they're

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1 called a Consul General--it's the management officer. That's kind of
2 like, in the military, the S-1. Think of it--if you think of a joint
3 staff, it's like your one through your nine kind of thing.

4 MJ: Yes?

5 ADC[MAJ HURLEY]: Pardon me, Mr. Feeley. Ma'am, same objection,
6 relevance of this particular information.

7 MJ: Are you building a foundation?

8 ATC[CPT OVERGAARD]: Yes, ma'am.

9 MJ: Overruled.

10 [Examination of the witness continued.]

11 A. So you have all of them from the State Department and then
12 you usually have the senior person, the attaché or the regional
13 director for all of the other agencies who are resident. It can be
14 anything from seven to eight, in some smaller embassies. In the
15 Embassy in Mexico City, it was 37 different agencies that were--37
16 different agencies and sections that were represented. So, DEA, FBI,
17 Foreign Agriculture Service, TSA; kind of the alphabet soup of the
18 American federal government.

19 Q. And then who heads that country team?

20 A. The ambassador.

21 Q. Are you aware of any impact to initiatives that other
22 members of the Ecuador country teams were working on at the time of
23 the leaks?

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1 A. We saw a serious decrease in cooperation with the
2 Ecuadorian military in the wake. I can't say it was immediately
3 right after, but in the wake of WikiLeaks,
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10 Q. So what was the role of the DEA in Ecuador at the time?

11 A. Same role as it is everywhere; it is to work in
12 coordination with host government counter-narcotics police to build
13 cases against narcotics traffickers who seek to export narcotics,
14 illegally, to the United States. They have a role that's very
15 different than what's called "INL," the State Department's Bureau of
16 International Narcotics and Law Enforcement which is to build the
17 long-term capacity of those institutions of law and order or
18 specialized institutions of drugs or counter-terrorism. DEA,
19 basically, makes cases. They work with AUSAs throughout the United
20 States to build cases, to bring indictments against foreign drug
21 traffickers.

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1 Q. And you mentioned there was a chilling effect on the effort
2 by the DEA. Why is that important in Ecuador--or why is our DEA
3 effort important in Ecuador?

4 A.

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12 Q. And you also mentioned that there is an impact on some
13 counterterrorism funding?

14 A. Uh-huh.

15 Q. Can you explain what that is?

16 ADC[MAJ HURLEY]: Ma'am, we would object to--the basis of Mr.
17 Feeley's testimony must be hearsay. From what I understand of his
18 timeline, that this is when he was the Deputy Chief of Mission or
19 chargé in Mexico, so it's--it was reports, one assumes, that he
20 received either in that capacity or since he's become the PDAS for
21 Western Affairs, so our objection would be hearsay.

22 MJ: All right. What's your response?

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1 ATC[CPT OVERGAARD]: It's the basis for his expert opinion,
2 ma'am. We're not going to--we're not----

3 MJ: Well, I asked you--I told you before, on direct
4 examination, you can get his opinion but not the underlying hearsay
5 for it.

6 ATC[CPT OVERGAARD]: Yes, ma'am.

7 [Examination of the witness continued.]

8 Q.

9 MJ:

10 Q.

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12 A.

13 Q.

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15 A.

16 ADC[MAJ HURLEY]: Again, ma'am, it's the same objection,
17 hearsay. He must have been--that was the subject of reports.

18 MJ: No, that's his opinion. Overruled.

19 [Examination of the witness continued.]

20 Q. Now, getting back to Mexico, where you were, at the time of
21 the leaks, are you aware of any impacts in Mexico because of the
22 leaks?

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1 A. Yes. The ambassador was not PNG'd formally, but the, then,
2 President of Mexico made several very high-profile press statements
3 and gave several interviews with the explicit purpose of expressing
4 his disagreement with what the ambassador--or that the ambassador's
5 Embassy had written in a purported cable regarding the Mexican
6 military and that he had lost confidence in the ambassador. And he
7 never went so far as to say that he would formally ask him to leave,
8 which would be a PNG, but he left it hanging that he had no intention
9 of dealing with him and that--he was putting him--the way the papers
10 put it, there, he was putting him and our Embassy on ice.

11 Q. And did he--did the president meet with the ambassador
12 after that?

13 A. No.

14 Q. And what are--I guess--what are some of our key national
15 interests and objectives in Mexico?

16 A. You name them. My personal opinion is that it's the country
17 of most strategic significance to the people of the United States.
18 Maybe not the foreign policy cognoscenti, but Mexico is our number
19 three trade partner. Mexican jobs--or, I'm sorry, Mexican commerce
20 amounts to over a billion dollars a day that comes across our border.
21 Mexico is a supplier of energy to the United States; one of the main
22 ones in terms of petroleum.

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1 We share a 2,000-mile border that is a source for
2 significant undocumented migration. Much of that migration is
3 performed by Mexican drug cartels that are taking a lot of the
4 cocaine and methamphetamine, the heroine that is made in Mexico--the
5 cocaine, obviously, comes up from the Andes--and bringing it into the
6 United States.

7 Mexico is also a country of enormous opportunity. If you
8 eat a salad between November and March, you're eating something made
9 in Mexico. There is a growing aerospace industry in Queretaro.
10 There is--many times, call centers in the United States are in
11 Mexico. It's just a plethora of sister-city relationship. I would
12 argue that, if you look at the United States and the manner in which
13 our very demography is changing with the growth of the Hispanic
14 community which is primarily of Mexican descent--first, second, or
15 third generation--we are, de facto, becoming more Hispanicized [sic].
16 All of that leads to an enormously complex, multifaceted, deep, and
17 sort of inextricably bound up relationship and you put on top of that
18 Mexico's historical suspicion of the United States, its enmity for
19 what it perceived, in 1848, as an unwarranted, unfair U.S. land-grab
20 for about a third of its northern territory, the 1938 nationalization
21 of standard oil, and you have an ingrained, almost taught, sense of
22 reflexive anti-Americanism among Mexicans. It sounds like cognitive
23 dissonance, because it co-exists along with one of the most

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1 productive and vitally--economically vital relationships that we
2 have, but that's the nature of it.

3 Q. And, despite these--and despite this complex relationship
4 and these suspicions, what was our relationship with Mexico like
5 before WikiLeaks?

6 A. It was on an upward trajectory. The--Felipe Calderon came
7 into office in 2006. He was the--only the second president from an
8 opposition party. The other party--the other main party had held
9 power for over 70 years.

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10 In 2006, President Calderon came in. He won a very, very
11 narrow election, didn't have a tremendously strong mandate, and he
12 made a very principled decision that he was going to take the weight
13 of the Mexican state and he was going to focus it on minimizing the
14 public and national security threat that these gangs--that these
15 cartels represented. And, in a very unprecedented move that I think
16 really--and the future will be seen as a watershed--he not only
17 invited the United States to participate, he sort of instructed us
18 that it was our consumption in the United States that was partially
19 the cause of the death and the ripping apart of the social fabric and
20 the corruption in Mexico. So, not only were we invited, but we had
21 an obligation. We heard this, it made very good sense to us, and we
22 took full advantage of it. And, between 2006 and--or really the
23 Merida Initiative was born of that newfound partnership.

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1 Q. So, with that partnership, before WikiLeaks, how frequently
2 was the ambassador in contact with President Calderon?

3 A. He didn't spend a lot--he had gotten there only a little
4 bit before, so he'd had a couple of meetings with him, but it's not
5 fair to say he was talking to him, you know, on a regular basis. He
6 had taken--he met him when he first checked, he had done--he'd been
7 invited on his plane, once, where they discussed the--they went up to
8 Juarez, which, at the time was the most violent city in the Western
9 Hemisphere--they discussed partnering with Merida and implementing
10 it, and then it sort of began and--WikiLeaks began and he never saw
11 him again.

12 We continued below that level; we continued to work with
13 our Mexican partners, but it was incredibly difficult and it was--it
14 slowed an awful lot of our activities down.

15 Q. And who filled in for Ambassador Pascual when he was, I
16 guess--what term did you use? Kind of frozen out of the----

17 A. He----

18 Q. ----the ambassador?

19 A. Well, he stayed. I mean, it took a while. He was--
20 because, again, the nature of diplomacy is that you're patient. It's
21 not kinetic like military activities, so we were waiting and watching
22 to see if circumstances would change. He--in the beginning of '11--
23 yeah the beginning--yes, it was--the beginning of '11 was when it

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1 really got bad and we had the daily news reports and his face in the
2 newspaper everyday and it took several months before he and Secretary
3 Clinton--former Secretary of State Clinton came to the conclusion
4 that we were not going to be able to weather this and Carlos Pascual
5 made the--I think--the very principled and painful decision to resign
6 as ambassador and that's what he did.

7 Q. And, to your knowledge, was that because of WikiLeaks?

8 A. It was absolutely because of WikiLeaks.

9 Q. What was your position at the time?

10 A. I was his number two; his Deputy Chief of Mission.

11 Q. So did you become chargé----

12 A. Yes.

13 Q. ----and fill in for----

14 A. Uh-huh.

15 Q. So did you--after the ambassador left, what was your
16 relationship like with the president?

17 A. I never saw the president. I, immediately--well, not
18 immediately--I mean, then during the period--we all kind of knew--or,
19 I think I should say--the ambassador and I suspected that this is how
20 it would turn out. During that time, I had a range of government
21 contacts, both from the presidency and the foreign ministry, across
22 all of the police and military agencies and I had--in my private,
23 informal conversations with them, I had sort of ascertained that I

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1 was not considered radioactive; that the president just really wanted
2 the ambassador to leave, but that if I stayed--obviously, I wasn't
3 ambassadorial rank, so he would have the public relations victory, in
4 his mind, of driving out a U.S. ambassador and then not having to
5 really deal with us; to allow the relationship to be dealt with with
6 the United States, which is, by far, Mexico's most important
7 relationship, to be dealt with at a lower level.

8 ADC[MAJ HURLEY]: Ma'am, we'd object as to hearsay as to the
9 reports of the conversations that he had with his Mexican
10 counterparts.

11 MJ: Overruled. That part of the basis of his opinion under
12 M.R.E. 703, the Court finds that the probative value in helping the
13 fact-finder evaluate the opinion substantially outweighs the
14 prejudicial effect.

15 Go ahead.

16 [Examination of the witness continued.]

17 Q. And did the president meet with you?

18 A. The president met with me only when I would bring high
19 level visitors. I met with him with--and I--meaning, I was in the
20 room and I escorted visiting congressmen, visiting governors,
21 visiting mayors, one or two cabinet secretaries, but I did not have
22 a--certainly didn't have a one-on-one relationship with him and I

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1 didn't do anything other than exchange pleasantries or participate in
2 a roundtable conversation when these high level visitors came.

3 Q. And was that the same with the foreign minister?

4 A. No, no, the foreign minister would meet--she would meet
5 with me not very frequently. Again, the Mexicans are very protocol-
6 conscious and I was not the ambassador, but there were two or three
7 occasions where I needed to communicate something to her from either
8 Secretary Clinton--for example, the announcement that a new
9 ambassador would be sent--I did meet with her very briefly and know
10 that. But my day-to-day was with her undersecretary for North
11 America.

12 Q. So that--that would have been over a year later?

13 A. No, it was--Pascual left in May and Wayne, the new
14 ambassador----

15 MJ: May of what year?

16 WIT: May of--make sure I get it right--May of '11 and Wayne came
17 in September of '11.

18 [Examination of the witness continued.]

19 Q. Were your relationship----

20 MJ: So, that's another ambassador?

21 WIT: Yes, ma'am.

22 Q. Or your relationships with the Mexican government officials
23 equally effective after WikiLeaks?

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1 A. It was a very interesting time. I, personally--I'd served
2 in Mexico before, I knew many of them, I had built up a great
3 personal reserve of trust, confidence, even friendship with many of
4 them, and so, again it sounds like cognitive dissonance, but this is
5 how it happened. On a personal level, the professional diplomats
6 didn't bear any animus towards me on a personal level. I would still
7 be able to sort of--they asked me not to be seen in public as much
8 with me, so lunches or things like that, but they'd still see me.

9 On a professional level, it was decidedly more formal than
10 it had been in the past. They'd still see me and we still got a lot
11 of work done. Much of the work that I testified to in the open
12 session about the good relationship with Mexico, we did get a lot
13 done, but the opportunity cost of how much more we could have gotten
14 done is where I would assess that some of the greatest damage
15 happened.

16 Q. And when you talk about opportunity costs, were there any
17 specific programs or initiatives that were affected as a result?

18 A. There was one----

19 MJ: Yes?

20 ADC[MAJ HURLEY]: I'm sorry, we would object as to the
21 relevance. Specifically, we would cite *Payne versus Tennessee*, which
22 is the case we've cited before about the specific nature of the harm
23 and how the opportunity cost is too vague to satisfy that mandate.

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1 MJ: What's your question, again?

2 ATC[CPT OVERGAARD]: Which specific programs or initiatives were
3 affected as a result of the, basically, chilled relationships with
4 Mexico?

5 MJ: All right. I'm going to overrule that. Go ahead.

6 [Examination of the witness continued.]

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10 Q.

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7 The cooperation with the new government--now, Calderon left
8 office--President Calderon left office in December of 2012; a new
9 government came in. What I said in public testimony and the Congress
10 is absolutely true, on a rhetorical level, they have pledged
11 continuing cooperation. They don't want to do as much of that kind
12 of intelligence-driven, kinetic, frontal assault on armed cartels.
13 They would rather focus their strategy on prevention and education
14 and strengthening their judicial system; sort of addressing the root
15 causes and the long-term solutions.

16 We support that in the sense that you can't just do what's
17 called, "Kingpin Strategy," or "HVT Strategy." On its own, that, by
18 itself, is never going to eliminate a terrorist or a criminal threat;
19 you have to do both at the same time.

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Q. So, in your opinion, the chilled relationship that was a result of WikiLeaks impacted, at least, the trust between the Mexican government and the United States?

A. Yes, it would--I would not say it was the only factor, but it was a significant factor.

Q. You talked about the Merida Initiative as well.

A. Uh-huh.

Q. Was that initiative, at all, impacted by WikiLeaks?

A. Yes. The way that was impacted--under Merida, there were-- there are, still, four pillars; four main lines of action.

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Q. So what was the impact to the initiative?

A. The impact--that it was much more difficult to execute the various--149, if I recall correct--149 lines of action under Merida very concretely.

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ADC[MAJ HURLEY]: Mr. Feeley----

MJ: Yes?

ADC[MAJ HURLEY]: If I may, just--if this is the underlying basis for his opinion, he rendered his opinion and we would just go with the Court's direction as to limiting this sort of factual data that underlies this basis.

ATC[CPT OVERGAARD]: He's testifying about his first-hand knowledge which underlines his----

MJ: Well, there's not--it's--the hearsay piece--there's not a hearsay piece; he's talking about his own observations, so he can testify about non-hearsay factual data.

ADC[MAJ HURLEY]: Yes, ma'am.

MJ: Go ahead.

[Examination of the witness continued.]

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1 So it affected it in that way which is--you could
2 argue is symbolically, but symbolism translates in politics into
3 willingness to engage and implement.

4 It affected it in another way. We had something that I
5 ran--there were three levels of implementation for Merida: the
6 bilateral implementation working group which was the day-to-day
7 management and I ran that with my counterpart in the foreign
8 ministry, the undersecretary that I talked to. Then there was a
9 level at sort of the--at the deputy's, here in the United States, and
10 that was run by former White House Deputy of National Security
11 Adviser John Brennan. We called that the "Policy Coordinating
12 Group."

13 And then there was something called, "The High Level
14 Group," and that was run by the two foreign secretaries.

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13 Q. Sir, are you familiar with the Leahy Vetting Process?

14 A. I am.

15 Q. And were some of the--were cables drafted that included the
16 information?

17 A. Yeah.

18 Q. Well---

19 A. And the----

20 Q. ----can you explain to us what the Leahy Vetting Process
21 is?

22 A. Sure. Leahy Vetting is a--is U.S. law that requires that
23 no appropriated funding goes to train or benefit--it's actually been

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1 modified in the last round of our appropriations--or benefit, which
2 is a pretty wide term, any foreign law enforcement or military
3 individual or unit that has--that is known to have--or is suspected--
4 I'm sorry, not known--suspected of having committed human rights
5 violations. So, basically, the shorthand we call it, "Human rights
6 vetting."

7 Everybody that we bring to the United States to train or
8 that we train in their own country, has to have a name check that's
9 performed at the Embassy and then a secondary level name check is
10 performed up at the Department of State, run through various
11 databases that looks to see if this individual has--or this unit has
12 a history of allegations or convictions, in some cases, of human
13 rights violations. We, in Mexico, added to that--although it wasn't
14 required by law, but just out of, sort of, prudence--corruption.

15 Q. So this process was applied to Mexican officials?

16 A. Strictly.

17 Q. And what was the embassy's role?

18 A. The Embassy identified the defense--let's--it's probably
19 easiest to do it through an example. The Defense Attaché's Office--
20 I'm sorry, the Military Liaison Office that runs all of the training,
21 identifies that we want to do light, army infantry tactics for X unit
22 of the Mexican Army. The Mexican Army sends us a list of all of the
23 individuals they intend to have take this training. We take that

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1 list--the "Mil Group," as we call it, the Military Office--or
2 Training Office in an Embassy--takes that and then they run it

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4 they run it through a--what's called a "Consular
5 Database," visas to make sure they don't have negative information
6 there, and they run it through the Political Section's database where
7 they keep--we are required to keep information from open sources on
8 human rights abuses to produce the annual human rights report. And
9 they run them through those three, then the names get sent from the
10 Embassy via cable--now, they've actually moved to email, but they
11 used to be done via cable--up to Washington. And, in Washington, an
12 office that works for me--that reports to me--we have a full-time
13 vetter who runs them through intelligence databases that are up here,
14 in Washington, to also make sure that they have a clean record
15 regarding human rights. And only once that vetting has been
16 accomplished, is that individual cleared to go for training.

17 ATC[CPT OVERGAARD]: One moment, please.

18 TC[MAJ FEIN]: Your Honor, the United States--may we have a 15-
19 minute recess to get clarification on an issue?

20 MJ: All right. This is actually a very good time to take a
21 recess. How much longer is this expected?

22 ATC[CPT OVERGAARD]: Not very much longer, ma'am; very few
23 questions left?

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1 MJ: All right. Any issues on the recess?

2 ADC[MAJ HURLEY]: No, ma'am.

3 MJ: All right. Court is in recess, then, why don't we say
4 until 1730--5:30.

5 **[The court-martial recessed at 1717, 1 August 2013.]**

6 **[The court-martial was called to order at 1733, 1 August 2013.]**

7 MJ: Court is called to order. Let the record reflect all
8 parties present when the court last recessed are again present in
9 court. The witness is on the witness stand. Captain Overgaard?

10 ATC[CPT OVERGAARD]: Yes, ma'am.

11 **[Mr. Feeley was reminded of his previous oath and examination
12 continued.]**

13 Q. And what impact, if any, ultimately, did WikiLeaks have on
14 foreign diplomacy in Mexico?

15 A. It had the effect of corroding our relationship to the
16 point where we lost an ambassador and where we--think the effect was
17 very well-put by President Calderon, himself, who said, very
18 publicly, "It takes an awful lot of time and energy to generate
19 confidence, but you can lose it very quickly." And, at the heart of
20 diplomacy is trust with whom you're talking and we lost a lot of it.

21 Q. And does the disclosure of the cables on WikiLeaks, does
22 that still impact the department's ability to operate in Latin
23 America today?

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1 A. It affects how we operate; I don't think it would be fair
2 to say that it has prohibited us from operating, but we always have
3 to be prepared to have that same conversation. You always have to be
4 ready to have somebody that you are trying to develop as a contact,
5 somebody who you are trying to use as--keep in mind, we call the
6 people we talk to "contacts." We don't call them sources; they're
7 not paid. We don't do intel work. We do diplomatic contact
8 reporting. So, when you get assigned to a new country and you are
9 meeting, for the first time, a counterpart in the foreign ministry or
10 a counterpart in another agency of that government, you always have
11 to, now, be prepared to have kind of the awkward WikiLeaks moment.
12 They may ask you about it, they may know about it, they may know
13 where you came from in your previous posting, and have tracked you.
14 And so, you know, I've had many folks--from jokingly to in a barbed-
15 way, say, "Oh, I see, you're a published author, right? You wrote
16 those cables in Mexico." And that's awkward and it's uncomfortable
17 and, ultimately, we can get over being--you know, we get paid to be
18 in awkward and uncomfortable situation, but, ultimately, I can't
19 quantify trust. I can't tell you if I have gotten somebody fully on
20 board with cooperating with us or if they are holding back because
21 they fear what they tell me might be inappropriately disclosed. And
22 I have had many Latin American Diplomats and others, non-diplomats,
23 tell me that.

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1 ATC[CPT OVERGAARD]: Thank you. No further questions.

2 MJ: Defense?

3 ADC[MAJ HURLEY]: Ma'am, thank you.

4 **RE CROSS EXAMINATION**

5 **Questions by the assistant defense counsel [MAJ HURLEY]:**

6 Q. Good afternoon, Mr. Feeley.

7 A. Good afternoon, Major.

8 Q. Well, in fairness, let's start here. I was going over your
9 testimony in front of Congress on May 23rd of----

10 A. Yeah.

11 Q. ----of this year and we got to a portion of it that you
12 felt would compel a response that had classified information. So,
13 I'll ask you the question again: do you remember saying, "The United
14 States fully supports this further refinement of our joint strategic
15 partnership"?

16 A. It do.

17 Q. And that was your--and that was the substance of your
18 testimony in Congress?

19 A. That was what I testified in Congress.

20 Q. And that was true?

21 A. That is true, but it is not full disclosure and that's what
22 I wanted to be able to clarify.

23 Q. Okay. Well, fully disclose.

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17 Q. So, I guess just to go over again, when--the language that
18 you used in front of Congress which--and that language was, "The
19 United States fully supports," I guess that's--you would qualify that
20 in a classified setting like this?

21 A. It would be--I don't think it will come to us as a shock--
22 this isn't classified information, but hearings on Capitol Hill are a
23 good part of political theater and I was fully truthful when I said,

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1 "We fully support."

2 That would have been
3 inappropriate for that setting, but it was a truthful statement; it
4 remains a truthful statement.

5 Q. And so--sir, let me pull back on this idea for just one
6 second.

7 A. Uh-huh.

8 Q. The United States government pursues, in its own political
9 borders--and this just relies on your common sense and knowledge of
10 the ways of the world, and less your expertise--we pursue that
11 kinetic strategy that you're talking about when it comes to law and
12 enforcement, correct?

13 A. We have--in places where we've been able to do it--
14 actually, the term is "Kingpin."

15 Q. Right.

16 A. Kingpin strategy in law enforcement relates to--it's a very
17 specific strategy. It relates to what are called "CPOTs,"
18 Consolidated Priority Organizations Targets, that are designated by
19 DEA and the law enforcement community.

20 The thought is you sort of whack off the head of the snake;
21 that's Kingpin Strategy. We've been doing that in Latin America for
22 at least 20, 25 years.

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12 Q. All right, sir, but my question was much more narrowly
13 tailored and it was this: the United States government uses Kingpin
14 Strategy--I'll use that term--inside the United States, correct?
15 They go----

16 A. Oh, I can't speak to that; I don't know.

17 Q. All right. Thank you. But the United States uses Kingpin
18 Strategy--and I think in your answer that you just gave me--we use it
19 in the Bureau of Western Hemisphere Affairs to target specific
20 people, right?

21 A. That's correct.

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1 Q. That's a process that's internal to the United States
2 government that we would--that we--and when I say it's internal, it's
3 executing an internal priority of the United States government?

4 A. Let me see if I got it straight. I can't speak to U.S.
5 domestic law enforcement with any expertise, but my sense is you are
6 correct. We identify--we have an FBI top-10 list.

7 Q. Right.

8 A. We identify bad people that we form taskforces to go after
9 and to arrest, try, and bring before justice.

10 Q. Right.

11 A. We do this in the Western Hemisphere in complete
12 cooperation and coordination with another sovereign government.
13 There are times when the sovereign government doesn't agree with us
14 on who should be the targets. So, it's--it would be a mistake to
15 think that this is a cookie-cutter kind of thing you pull off the
16 shelf, you slap on an Embassy, and you say, "Here, go ahead and just,
17 you know, add water." So, I don't see the--is it a priority for the
18 United States to go after major cartel figures? Absolutely.

19 Q. Using kinetic operations?

20 A. Where we can.

21 Q. Right. But that's a priority that we have----

22 A. And kinetic operations that are wholly----

23 Q. In concert with----

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1 A. ----implemented--no, implemented by foreign partners.

2 Q. Right. Thank you. But sometimes our foreign partners, as
3 you described in your answers just now, they have different levels of
4 permission?

5 A. That's accurate.

6 Q. And that's a choice of--
7 of the policy-makers that have been democratically elected
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9 A. And history; the context in which they've been elected.

10 Q. Right. So let's go back to the initial part of your closed
11 session testimony when you talked about your--what you did in the
12 immediate aftermath while you were the DCM in Mexico City.

13 A. Uh-huh.

14 Q. And if you would, Mr. Feeley, just a yes or no if it's, you
15 know----

16 A. Sure.

17 Q. ----if it's going to be limited to that or if you have a
18 longer answer, answer it, but the answers all have to be verbal for
19 the court reporter.

20 A. Okay.

21 Q. Thank you. So you got a group of people together when you
22 were triaging the cables?

23 A. Yes.

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1 Q. You gave them instructions to skim through the cables--or
2 not skim, but look through the cables?

3 A. I relayed the instructions that I had received from
4 Washington.

5 Q. And do you recall having two sessions?

6 A. Yes, I recall two sessions. There might have been others
7 where they got together on their own to finish the work. I did not
8 sit and go through all of the cables myself; that was something that
9 I delegated to them to do.

10 Q. And those sessions lasted several days?

11 A. Yes.

12 Q. Maybe a work week?

13 A. At the outside, yeah, about a work week. But I have to be
14 honest, I don't remember that detail all that explicitly.

15 Q. Thank you, sir. And you said an impact was, at least in
16 the Mexico City Embassy--is it best to call it a Mexico--the Mexico
17 Embassy or the Mexico City Embassy?

18 A. It's the American Embassy in Mexico City.

19 Q. All right.

20 A. So, the easiest thing to do is just say, "The Embassy."

21 Q. The Embassy? I'll do that from now on. So the--there was
22 an effect at the Embassy where cables weren't as complete as they
23 were before these disclosures?

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1 A. Not as complete? That--I wouldn't say that. There was an
2 effect where, in cables that we generated and wrote afterwards----

3 Q. Uh-huh.

4 A. ----we were less willing to be as explicit in our
5 assessments for fear that they might leak, but we reported completely
6 what had happened. It was in that assessment in comment phase that I
7 noticed--myself, I felt, do I really--it was just sort of an extra
8 layer of a filter, if you will. You know, we always joke about the
9 *Washington Post* Test. You know, don't ever write anything you don't
10 want to see in the front page of the *Washington Post*. Well, this is
11 exactly what happened; we saw them on the front page of the
12 *Washington Post*.

13 Q. And that *Washington Post* Test, you've heard of that test
14 long before you took up as the Deputy Chief of Mission in the
15 Embassy?

16 A. Yes.

17 Q. So you included all of the facts in these cables--these
18 subsequent cables, but the punches that were pulled were pulled in
19 the comments? Is that accurate?

20 A. I would say that's the general sense.

21 Q. And that reticence was temporary?

22 A. I think that's fair to say, yes.

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1 Q. Over time, you reverted back to your years of training in
2 the Department of State and landed the punches in those comments
3 sections?

4 A. Yeah. Keep in mind, when you send a cable--and I do--I
5 don't know if he needs this, but I think it's important context--when
6 you send a cable that is classified, there is an implicit internal
7 trust that the people who are reading it are cleared to read it. So,
8 it doesn't matter how many people might read it; they're cleared.
9 So, if I send a cable about Mexico and the desk officer for Pakistan
10 wants to read it because he might be interested in someday bidding to
11 go to Mexico and work there, I don't have any concerns about him
12 reading that even though he may not know anything about Mexico
13 because he has sworn an oath, he has signed a piece of paper that he
14 will not disclose it. So it was--the reason that we held back was
15 because that trust had been broken and we were not sure, initially,
16 whether it was a--something that would continue to be on-going or
17 whether it was just a one-time leak that was staunched or what the
18 scenario was. So, it took time, as you can imagine--as Calderon
19 said, it takes time to build trust. But, over time, I think it is a
20 fair assessment to say that, yes, the integrity of the cable system
21 was re-established, but it took a while.

22 Q. But that was established--the integrity was re-established?

23 A. Until Mr. Snowden came along.

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1 Q. Okay. It was re-established after WikiLeaks?

2 A. Yes, it was. It was, to my assessment, as an--as a non-
3 technical expert, but a user of it, yes, it was.

4 Q. All right. So, let's first turn our attention--I think the
5 order that we're going to go in is Ecuador and then Mexico.

6 A. Okay.

7 Q. So Ecuador was part of ALBA before the release of these
8 cables, right?

9 A. It was.

10 Q. And what happened was--or, as I understood it--there was
11 concern about the content of a cable that was released on the part of
12 the Ecuadorian government?

13 A. There was anger at characterizations that the Embassy had
14 made about President Correa and other members of the government in
15 cables.

16 Q. And Ambassador----

17 A. Heather Hodges.

18 Q. ----Hodges--thank you so much. Ambassador Hodges was
19 labeled a *persona non grata*?

20 A. Correct.

21 Q. And had to return to the United States?

22 A. Correct.

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1 Q. And that's not--we did something in response to that
2 labeling, correct? The United States did?

3 A. Oh, yeah. As I said earlier--I think it was in the open
4 session--we do--a part of diplomacy--the development of it is--there
5 is no rule that says you have to, but almost always, when you are
6 dealing with the diplomatic presence of another country in--or in a
7 context of bilateral relationship--you do things in terms of
8 reciprocity.

9 We expelled some of their
10 folks. So, those things happen and, yes, their ambassador, who's
11 name I'm blanking on right now--*Lucho*, I think was his nickname--but
12 I was still in Mexico, so I didn't know that case real well, but,
13 yes, he was also asked to return to Ecuador.

14 Q. So, we reciprocated?

15 A. We reciprocated.

16 Q.

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18 A.

19 Q.

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5 A. Uh-huh.

6 Q. Do you recall that? And, again--and, sir, when I say you
7 have to provide a verbal response, it can be yes, it can be no, it
8 can be something longer, but it has to be something verbally. The--
9 answer----

10 A. Oh, I'm sorry. Yes.

11 Q. ----question verbally.

12 A. Yes.

13 Q. And what I'm asking you to do----

14 A. "Uh-huh" doesn't cut it?

15 Q. Does not. What I'm only asking you to do----

16 A. I'm sorry about that.

17 Q. ----sir----

18 A. Yes.

19 Q. ----is answer the question, one way or another, verbally.

20 Thank you.

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23 A.

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1 Q.

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6 Q. Now, you were in Mexico at this time?

7 A. That's correct.

8 Q. So, you weren't in the business of looking at the
9 information that was being sent from the Ecuadorian Embassy back to
10 DC, were you?

11 A. No, our Embassy in Ecuador, no.

12 Q. Right.

13 A. I was not.

14 Q. The American Embassy----

15 A. Right.

16 Q. ----the American Embassy is what I'm talking about. This
17 effect that you noted, you noted through reporting at the time or
18 reporting once you assumed your current position?

19 A. No, it was through--well, some reporting at the time. We
20 talk among ourselves. I knew people who were in the Embassy in
21 Ecuador at that time--I had some, but I was not--I simply didn't have
22 time to read Ecuador's cable traffic back to the United States--back
23 to the State Department at the time.

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1 But when I assumed--so, I had a general sense. I read
2 press clips, I saw a few people and talked to them, but when I
3 assumed my current position, I had in-depth briefings on every
4 country relationship and it was in--so my comments are informed by
5 those in-depth briefings by people either on what we call, "The
6 desk," or the Office of--you know, "The desk," is sort of like our
7 term for "The Office of----

8 Q. Right.

9 A. ----Ecuadorian Issues and Affairs." And the--a colleague
10 of mine--a Deputy Assistant Secretary colleague of mine has been
11 doing that portfolio for at least 3 1/2, 4 years; so, from discussion
12 with him. That's where my knowledge of Ecuador comes from.

13 Q. Now--so, with respect to this interagency cooperation that
14 was and then wasn't happening in Ecuador, do you recall whether it's
15 from the reporting that you observed at the time, or as a result of
16 these briefings that you received, whether or not the American
17 officials in Ecuador heard their Ecuadorian counterparts attributed
18 to WikiLeaks? Was it like, "Man, we'd love to keep doing this, but
19 WikiLeaks"?

20 A. Certainly the highest levels of dialogue were attributed by
21 the Ecuadorian government to WikiLeaks. So, the order to PNG
22 Ambassador Hodges was in a statement from the Ecuadorian government.
23 So, to the extent that, down the chain, they tend to have, the same

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1 way we do, hierarchical organizations and the people at the top sort
2 of set the policy and set the vector and the people below follow
3 those orders, I don't know, first-hand or second-hand if individual,
4 mid-level ranking Ecuadorians told our Embassy, "Boy, we'd love to
5 continue with, you know, doing this DEA investigation or this USAID
6 program, but, because of WikiLeaks, we can't." I think it's probably
7 more the case that it was a tacit pall that was cast over any
8 cooperation. People stopped showing up at your meetings, people
9 don't show up at your receptions. A lot of diplomacy is form, as
10 well as substance. So you send signals by not reciprocating letters
11 or not returning phone calls. Those are demonstrable activities and
12 I'm pretty sure that all those things happened in Ecuador, similar to
13 the way I know they happened in Mexico.

14 Q. And you are pretty sure, in that there is a supposition in
15 there, right, that because you did not know--you never heard the
16 reporting that--from not only Embassy officials, but these other
17 members of the interagency--the American interagency, you never heard
18 reporting from them that their counterparts said, "No, cannot help
19 you; WikiLeaks"?

20 A. Not that I recall, not that explicitly.

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Q. So let us turn to Mexico now. So, Ambassador Pascual resigned?

A. He did.

Q. And that was a choice that he made?

A. It was.

Q. And, it was a choice that he made in consultation with the Secretary of State, then Secretary Clinton?

A. It was.

Q. And he did that at the end of a period of time where he attempted to re-ingratiated himself with his Mexican counterparts?

A. Re-ingratiated, I would not use that term. It was at the end of the period where he attempted to continue business as usual and he found that it was impossible; that he was not being received by people; that he was not having his phone calls returned; that he was not being invited to do the kinds of public speeches or events that he would normally do; and it was at the end of several months of experiencing this and seeing that it was not going to change and then deciding what the Secretary of State that it would be better if he left.

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1 Q. Now, Ambassador Pascual was married at the time?

2 A. No, he was not.

3 Q. Not married at the time. Did he subsequently get married?

4 A. He married over this past holiday period.

5 Q. And, who did he marry?

6 A. He married the woman that he was in a relationship with at
7 the time.

8 Q. And, where is she from?

9 A. Her name is Gabriela Rojas, she is the daughter of a pretty
10 well-known politician. At a time, he was in the opposition to the
11 president. She was the ex-wife of the President's Chief of Staff.
12 And, they met socially and began a relationship.

13 Q. They met socially in Mexico City?

14 A. Yes.

15 Q. And, they began a relationship during Ambassador Pascual's
16 tenure?

17 A. Yes.

18 Q. And, as you indicated, this woman that he ended up
19 marrying, she was the daughter of a politician not in the same party
20 as Calderon?

21 A. That is correct.

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1 Q. And, it was after--and, Calderon knew this information as
2 it was happening? Or, do you have any idea if he knew it was
3 happening--knew that Pascual and this woman were in a relationship?

4 A. He knew after--he certainly knew after several months
5 because it was published in the papers. I am not privy to when their
6 relationship, you know, began in earnest. But, some time probably in
7 the spring of--well no, actually I do recall something. I want to
8 say springtime, probably April. There was an annual----

9 MJ: Of what year?

10 A. I am sorry, ma'am, of 2010. Pascual arrived in August of
11 2009. In April 2000--and springtime of 2010 there was a Red Cross
12 Ball which is a big society, kind of White House press conference--
13 or, press correspondents dinner. It is sort of one of the events on
14 the regular circuit in Mexico. And, he and she went to that together
15 and that got picked up in the gossip columns and put out. So,
16 Calderon had known about it by then. My guess is, given his Chief of
17 Staff, he knew about it beforehand.

18 Q. It was his Chief of Staff that this woman, Gabriela was his
19 Chief of Staff's ex-wife?

20 A. Correct.

21 Q. I just want to--I think I bungled the relationship there.
22 Thanks for helping me clear that up. Now, is this type of

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1 relationship typical for Department of State personnel, especially
2 ambassadors?

3 A. It had occurred before. The previous Ambassador, President
4 Bush's ambassador for six-and-a-half years to Mexico married a very
5 high-profile Mexican businesswoman, the owner of Modelo beer which
6 produces Corona. She is the--allegedly, the wealthiest woman in
7 Latin America.

8 Q. Getting back to this relationship, did Ambassador Pascual
9 consider any risk associated with dating the ex-wife of the Mexican
10 president's Chief of Staff that you are aware of?

11 A. None that he ever expressed to me.

12 Q. And, how long did you personally work together at the
13 Department of State--at the Mexican Embassy?

14 A. We--I had met him before and I knew him from previous
15 incarnations in the Department of State but we'd never worked
16 directly as colleagues. We started in August of 2009 and worked on a
17 daily basis together through his departure in May of 2011.

18 Q. And, you developed a personal relationship over the course
19 of that time?

20 A. Yes.

21 Q. Would you consider him a friend?

22 A. I do.

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1 Q. And you believe that the WikiLeaks disclosures compelled
2 the resignation of your friend from his post as Mexican ambassador?

3 A. I do.

4 Q. It takes a good bit of work to become an ambassador, does
5 it not?

6 A. It does.

7 Q. And that is the culmination of a lifetime spent working in
8 the foreign service, often?

9 A. Often, it is.

10 Q. And, such was the case with Ambassador Pascual?

11 A. He had been ambassador before. He had been an ambassador
12 in the Ukraine, so this was his second Ambassadorial assignment. As
13 a matter fact, he had retired from the department--he was a USAID
14 officer but he has spent many years working in the Department of
15 State and he retired from active duty during Secretary Powell's time
16 or right at the end, probably 2005 or so and he was the head of the
17 Brookings Institution's foreign-policy office. And then, he was
18 asked to come back into service by Secretary Clinton.

19 Q. And, after these disclosures, you observed--after these
20 disclosures, but while Ambassador Pascual was still working as
21 Ambassador to Mexico, you observed him being treated roughly by the
22 Mexican press?

23 A. Yes, that is true.

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1 Q. And you observed him being, for want of a better
2 expression, disrespected by his Mexican counterparts?

3 A. Yes. Disrespected in a sense, never--not disrespected, I
4 observed them disengage from him, his counterparts. I observed the
5 press write all manner of scurrilous things about him.

6 Q. And they were disengaged to the point that he ended up
7 having to leave the post?

8 A. That is correct.

9 Q. Let us go to--you have talked couple of times--and it is
10 hard to make sure I get this timeline right before we go any further.
11 The cables were released in January of 2011, does that sound about--
12 the Mexican cables were released in January 2011?

13 A. Yes, I think that is--I think *El Pais* began, if I recall
14 correctly, they began November with *Der Spiegel*, and those were the
15 European ones. And then, *El Pais* began to release them either over
16 the holidays or in January, '10 to '11.

17 Q. Now and, Ambassador Pascual's resignation was in May of
18 2011?

19 A. His resignation was in March and he actually left the
20 country in the beginning of May, I believe.

21 Q. So, let's talk generally--and, we are going to talk
22 generally about an attitude in Latin America and then we are going to

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1 narrow it down specifically to Mexico. Generally in Latin America
2 there can be a negative attitude towards the United States?

3 A. Generally in Latin America there is a tremendous amount of
4 bifurcated opinion. People will hold and express very negative
5 opinions about U.S. policy but express great admiration for American
6 society, as in Barack Obama. In previous times, in Latin America,
7 people will express very negative opinions about President Bush but
8 held a relatively high opinion of American society, our openness, our
9 freedom of expression, things like that. So, the truth is that most
10 Latin Americans, regardless of their social economic standing, all
11 live with a certain amount of cognitive dissonance regarding the
12 United States. And, most Latins are somewhat conflicted.

13 Q. The conflict comes from liking the American Society and its
14 society generally, right? Most like the idea of the American
15 Society, is that correct?

16 A. A big part of it is American society, a big part of it is
17 American assistance, a big part of it is the way in which the U.S.
18 economy provides them with their number one--really number one
19 trading partner for most of Latin America with the exception of the
20 ALBA countries. So really it comes from a mix of things, but among
21 that without a doubt is the nature of American society.

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1 Q. But, in this bifurcated opinion, there are some in Latin
2 America whose opinion towards U.S. policy towards Latin America is
3 negative, like they have----

4 A. Yes.

5 Q. And, that negative opinion comes from this idea that there
6 is American overreach in Latin America and they should treat us as--
7 the Americans should treat [the] U.S. as equal partners and not in
8 the way that we perceive that we are being treated by America?

9 A. Stored in Mexican Spanish is *achichinle*, which means a
10 peon, and that is very true. In a certain segment there is still
11 that perception and it stems from--it does not stem from anything
12 recent. It starts with the Monroe Doctrine and continues up through
13 two centuries of history.

14 Q. Right. And, that process has been going on, as you said,
15 for centuries?

16 A. M-hmm [indicating an affirmative response].

17 Q. And, that same idea--I am not going to use the Mexican
18 expression, but that same concept is true in Mexico as it is true
19 elsewhere in Latin America, right?

20 A. In Mexico it is heightened compared to other places.

21 Q. And some of that heightened sense of it has to do with the
22 fact that we are neighbors?

23 A. Absolutely.

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1 Q. And that Mexico feels, you know, not only are they treated
2 like peons sometimes, but this goes way back, but they also feel like
3 their sovereignty is routinely tread upon by United States?

4 A. There are Mexicans who do believe that, yes.

5 Q. And, that was true long before WikiLeaks?

6 A. Yes.

7 Q. And, there is a degree of it that is still true today?

8 A. Yes.

9 Q. So, let's talk about the effects. Now, I am just going to
10 go back to your testimony in front of Congress and you will just tell
11 me whether or not this was political theater or something else. You
12 said, "When we," that is the American government, "and our Mexican
13 partners--and most recently from 2009 to 2012 when we and our Mexican
14 partners truly transformed our security and commercial
15 relationships." Do you remember saying that?

16 A. Yes, I do.

17 Q. And, that was the truth?

18 A. That was the truth.

19 Q. It is truth?

20 A. Correct.

21 Q. Our relationship has been truly transformed over the last
22 three years, I guess from 2009 to 2012?

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1 A. It has been transformed, but it has not been transformed to
2 the point where it could have been and it has taken a very serious
3 hit, if you will, as a result of the disclosure of the purported
4 cables. But, if you look at where we were in 2006, the net--we
5 cannot metric these things, but my assessment is we are still much
6 better than we were in, certainly, the 1970s and 80s. We are better
7 than we were in 2006, but we are not where we would have liked to
8 have been had it not been for WikiLeaks.

9 Q. So, you first go to Mexico in 2002?

10 A. My first time in Mexico was--no, 2001.

11 Q. 2001, in the immediate aftermath of 9/11?

12 A. No, it was right before.

13 Q. Okay, so it was around the time of 9/11?

14 A. Yes.

15 Q. And at that point, the Mexican-American relationship was
16 not going well?

17 A. No. Actually, right before, in 2000, July of 2000, Vicente
18 Fox is elected. He is the opposition. He is the PAN party, same
19 party as President Calderon. He represents the first time in seven
20 decades that Mexico has held a really genuine democratic election.
21 There was enormous euphoria. President Bush and he established an
22 immediate, very personal, very Texas-centric, very border-centric
23 kind of personal relationship. There is talk of an immigration

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1 reform that President Bush was pushing against the wishes of much of
2 his own party. And, on 9/11, what happened was the United States,
3 and I think this is a fair assessment, it is certainly what the
4 Mexicans say, is United States did not pay attention to Mexico except
5 to put it through a counterterrorism lens. And so, all of the other
6 priorities that we had, the U.S. government shifted away from that
7 and shifted onto a very heavy emphasis on protecting our southern
8 border.

9 Q. And then, there is a deterioration in the Mexican-American
10 relationship around the Iraq war?

11 A. Yes.

12 Q. The relationship to its nadir, essentially, in 2005/2006
13 timeframe?

14 A. I think that is probably--yeah, I think that is probably
15 fair to say and probably '04 to '06, was bad. In '06 Calderon is
16 elected and he beats a guy who was much more inimical to U.S.
17 interests in Mexico and in the region. And so, I think it is fair to
18 say that it begins to pick up a little bit. But yeah, the last two
19 years of Fox's government, relations were--they were okay.
20 Paradoxically, our ambassador at that time had terrific access and
21 was able to go in frequently and discuss very openly with President
22 Fox various issues.

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1 Q. And then from 2006 until WikiLeaks, there was a dramatic
2 improvement in the Mexican relationship?

3 A. Nothing ever happens dramatically.

4 Q. There was an improvement in the----

5 A. There was a trend-line of closer relations and a trend-line
6 of the Mexican government realizing that because of Calderon's
7 principled decision to fight the cartels, it could not completely do
8 it on its own and because of the nature of the--the cross-border
9 nature of the crime, we had to be involved with them.

10 Q. And, from the disclosures of WikiLeaks until 2012, that
11 trend-line still going up, right?

12 A. Yeah, it is going up but it has flattened. The angle of
13 your trajectory takes a big dip and then slowly starts to come back
14 up but it planes. And, I would argue that it never reaches the same
15 level that we had prior to the release.

16 Q. Did you include that in your testimony to Congress?

17 A. No, I did not.

18 Q. Because what you talked about with Congress was this true
19 transformation, right?

20 A. It was a transformation, but as I said, again, this is a
21 little bit misleading to try and graph it like the stock market, but
22 it seems that is what you are looking for.

23 Q. I am just trying to get a sense, sir, of the process?

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1 A. Okay, then let me take it away from graphing it.

2 Q. All right.

3 A. He was a true transformation. If you take a look at where
4 we were in 2006, in terms of our law enforcement and our commercial
5 cooperation, we did not have anywhere near the level of operational
6 engagement by five-to-six individual agencies of the federal
7 government working cheek by jowl with their counterparts to
8 investigate and bring to justice bad guys and take down bad networks
9 that traffic in everything; from drugs, guns, cash, women, migrants,
10 etc. That is a transformation. That was not a completely steady
11 upward trajectory. That required a tremendous amount of daily
12 interaction to build trust over time and allowed the Mexicans to feel
13 comfortable sort of coming out of the shadows of their own history
14 that dictated to them in a very atavistic way, always be careful of
15 the Americans. Do not ever let them fully into the henhouse, kind of
16 thing. But the relationship was transformed. So, there was
17 significant damage done to that, however, as a result. So, the
18 question in my mind is, it seems like what you are asking for, is,
19 "Was that damage just a momentary blip on the radar or was that
20 damage lasting?" And, my assessment is, that damage is lasting. It
21 does not mean that we are going to break relations off but it does
22 mean that the Mexicans now, like 1848, Treaty of Guadalupe Hidalgo,
23 that is a Jeopardy question for most Americans. For most Mexicans

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1 that is as drilled into their brains as is the Declaration, you know,
2 1776 for Americans. That is when Mexico lost almost a third of its
3 territory to the United States. In 1938, another seminal moment,
4 they kick out standard oil, they nationalize it, and they make
5 America, again, if you go down on the walls of Mexican--the Mexican
6 National Palace, there are caricatures of Americans with long fangs
7 and these sort of robber baron hats. We were actively and
8 aggressively promoted as bad actors who sought to just exploit
9 Mexico. We sort of continue on the scope of history and what you get
10 in WikiLeaks is another one of those seminal reinforcements to the
11 Mexican psyche that says you can't trust the gringos. So, we have
12 transformed the relationship and we are working with them better than
13 we were 10, 15, 20 years ago, but we, as a result of WikiLeaks, the
14 damage is that we have unwittingly--the episode has reinforced for
15 another generation of Mexican decision-makers, you can't really trust
16 them in their offer of partnership.

17 Q. Do you recall--there was another place in your testimony
18 where you talked about--here it is. "It has sustained us in moments
19 of adversity, such as when, on occasion, our cooperation encroached
20 upon the tired shibboleths of outdated sovereignty red lines and we
21 saw Calderon administration officials justify our bilateral role in
22 front of their own Congress." Do you recall saying that?

23 A. I do.

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1 Q. And, was it true?

2 A. It was.

3 Q. Is it true?

4 A.

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17 Q.

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1 Q.

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13 Q. Which gets us to a broader question with respect to Mexico.
14 Because of our neighbor status, there are direct partnerships across
15 what we would call the interagency, right?

16 A. Yes, there are. But, it is--well, there are direct
17 partnerships in most embassies around the world. That does not have
18 anything to do with our physical proximity. Around the world in
19 embassies or throughout, let us just say throughout Latin America,
20 cops talk to cops, soldiers talk to soldiers, diplomats talk to
21 diplomats, you know, development experts talk to development experts.
22 So, that is not unique to Mexico. That is just the way bilateral
23 relations work because--and we, State Department officers and the

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1 ambassador and the DCM especially, we are by design, generalists and
2 we are meant to have enough knowledge of all of the facets of the
3 relationship that we can engage in a substantive manner and usually
4 with the support of our science and technology counselor or our FBI
5 attaché. All of those people you are asking me earlier are on the
6 country team, we are supported by them. But in general, those
7 interagency relationships with Mexicans are structurally the same as
8 in any Embassy.

9 Q. Structurally the same but the physical proximity allows for
10 liaison opportunities that are not even necessarily through the
11 American Embassy in Mexico City?

12 A. That is very true up along the border.

13 Q. Up along the border, but they----

14 A. Very much so.

15 Q. So in a sense then, the Department of State and the
16 American Embassy in Mexico is not the only show, or is the only way
17 that there can be cooperation and coordination?

18 A. At the federal level, everything that happens in Mexico has
19 to be run through the Embassy. So for example----

20 Q. But, does everything happen at the federal level?

21 A. Pretty much. I mean, in the government? Yes. For
22 example, Texas has a long border. El Paso and Juarez share a border.
23 If the governor of Texas wants to begin a program whereby, I don't

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1 know, people who are seeking to do charity work from a church in El
2 Paso go into Juarez to set up a soup kitchen, that would be an
3 activity that the U.S. ambassador would have to approve. And
4 certainly if--and it should approve. If they can do--now that is if
5 it is a government sponsor. Now a church, which does not respond to
6 the government, churches do that all the time without the Embassy
7 knowing but that is not government relations. Those are people
8 relations between ordinary citizens. So, there is an important
9 distinction there because the damage we are talking about is damage
10 that was done to the government to government relations.

11 Q. Sir, you also indicated in your Congressional testimony
12 that we have transformed our commercial relationships. Have those
13 commercial relationships been damaged as a result of WikiLeaks?

14 A. They were made a lot more complicated in one particular
15 area. In 1994 the United States signed, with Mexico and Canada, the
16 first free trade agreement called NAFTA. It truly revolutionized how
17 we do business among the three countries of North America and it has
18 tripled, actually now quadrupled our trade with Mexico. That is
19 obviously a very good thing. It creates jobs in the states, it
20 creates jobs in Mexico, it brings down cost, the whole holistic good
21 cycle of things--the virtuous cycle of things that happen. As part
22 of that agreement there was an aspect of the treaty that the United
23 States did not implement and it had to do with cross-border trucking.

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1 Given our 2000 mile border, you can drive a truck across it. The
2 United States had the ability to send its trucks, let's say a Wal-
3 Mart truck, from Oklahoma or Bentonville, Arkansas down into the
4 heartland of Mexico, drive across just like any other car, one of the
5 40-odd ports of entry. Because of the Teamsters political pressure
6 in the United States they brought to bear such pressure that we did
7 not allow, the United States government, did not allow Mexican long-
8 haul truckers to come into the United States. And so, there had been
9 a very long-standing drayage or cabotage system whereby Mexican
10 trucks loaded with produce would come to a place near the border and
11 there were these trucks that just went back and forth and they
12 swapped the trailers off the back. It is an enormously sensitive
13 political issue on both sides.

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8 A.

9 Q.

10 A. If asked by the Congress, in--I mean, that is a statement.
11 That is a statement that is meant to, by design, promote our policy.
12 If I am asked by the Congress about problems in the relationship, as
13 I was during that testimony if you recall.

14 Q. I do.

15 A. About Manuel Placer, an American citizen who had been held
16 in a prison in Guadalajara for over a year in pretrial detention.
17 Representative Smith let me have it with both barrels. I had to, and
18 I did, truthfully answer the status of that problem which was honest
19 and critical about the Mexican government and the Mexican judiciary's
20 handling. But, in my opening statement, remember the purpose of an
21 opening statement is, in effect, to sell to Congress, to our
22 oversight committee, what we are doing. And so, it should be--it is

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1 not that it is untruthful but it is purposely putting our policy in
2 the most favorable light that we possibly can.

3 Q. There has been some testimony that has been--yeah, some
4 testimony, Mr. Feeley, that this idea of WikiLeaks has been put up on
5 a shelf in most places and that people are not really taking about it
6 anymore. Would you agree with that or disagree with that?

7 A. You mean other witnesses, there has been testimony?

8 Q. There has.

9 A. Okay. I think----

10 Q. There has been testimony--let me be clear. There has been--
11 ---

12 MJ: Well, let us not talk about what other witnesses said. Why
13 don't you just rephrase the question?

14 ADC[MAJ HURLEY]: Absolutely, ma'am..

15 Q. In most places in the Western Hemisphere, WikiLeaks has
16 been put up on a shelf.

17 A. Put up on a shelf as in discarded, forgotten about?

18 Q. Right.

19 A. Yeah, I think it is fair to say that in all diplomatic
20 relations, like any relationship, time does tend to mitigate the raw
21 aspect of the emotions but if you will, and I don't want to sound
22 hyperbolic, but if you will, think of a bilateral relationship as a
23 relationship--as a marriage. And, people work on a marriage on a

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1 daily basis. If the husband cheats and the wife finds out, over time
2 they may not divorce and the raw aspect of the emotion that the wife
3 feels may lessen but it is still there. And, I think that is how I
4 would describe the relationship with Mexico. It is not a topic,
5 WikiLeaks --well, I should say it was not a topic until just recently
6 with Mr. Snowden. I don't conflate the two, but the truth of the
7 Mexican context and the Latin American context is that the two have
8 been tremendously conflated. So, it is fair to say that WikiLeaks,
9 if it had, and I think it is fair to say that it had been somewhat
10 minimized as a daily topic of conversation with your interlocutors.
11 The ember is there and in light of the latest revelations, there is a
12 huge conflation between the two.

13 Q. But prior to the latest revelations, that ember had gotten-
14 ---

15 A. It had not been extinguished but it had diminished. But
16 again, when you are talking about trust as the core of what you seek
17 to build, it was there.

18 Q. Just a second.

19 A. Certainly.

20 ADC[MAJ HURLEY]: Just a second, ma'am.

21 MJ: That is fine.

22 ADC[MAJ HURLEY]: Ma'am, no further questions.

23 MJ: All right, redirect?

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1 ATC[CPT OVERGAARD]: One second please, ma'am?

2 **REDIRECT EXAMINATION**

3 **Questions by the assistant trial counsel [CPT Overgaard]:**

4 Q. Just a couple of questions. In your opinion, just to
5 clarify, why did Ambassador Pascual resign?

6 A. Because the President stated that he had lost confidence in
7 him as a result of reading his assessment that the Mexican Army was
8 risk-averse. And so, Ambassador Pascual felt he could not be an
9 effective emissary for U.S. interests.

10 Q. So, it was not a result of the relationship the Major
11 Hurley brought up?

12 A. I did not believe it was.

13 ATC[CPT OVERGAARD]: Thank you.

14 **EXAMINATION BY THE COURT-MARTIAL**

15 **Questions by the military judge:**

16 Q. Okay, I have a couple of questions. That was one of them
17 actually, the relationship, I believe you testified that the Mexican
18 President would have known somewhere around the spring of 2010, and I
19 also believe you testified that Mr. Pascual--or, Ambassador Pascual
20 did not resign until spring of '11. Is there any change in
21 relationship between President Calderon or his chief of staff and
22 Ambassador Pascual once this dating relationship was public knowledge?

23 A. Not that was--not that I was aware of.

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1 Q. And, would you have been aware of it?

2 A. I believe I would have, Your Honor.

3 Q. The other question I had was, the *New York Times* drone
4 release, you testified it was in the spring of 2011, which was--was
5 that before or after Ambassador Pascual had resigned.

6 A. You know, I would have to say--I am trying to think of when
7 that exactly when they came out. Your Honor, are you allowed to
8 google it here?

9 Q. No, unfortunately we cannot. Where I am going with this
10 is----

11 A.

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1 Q. Because, you testified earlier there was a two-month lapse.
2 I think you said that Ambassador Pascual made the decision to resign
3 in March of 2011 and actually did resign in May of 2011?

4 A. Right. He tendered his resignation to the Secretary in
5 March and in that resignation, or in the statement he came out from
6 the Department of State, the Secretary issued one saying that it was
7 her great disappointment but she had accepted his resignation but had
8 asked him to stay on to effect an orderly transition process. And,
9 there was about two months.

10 Q.

11

12

13 A. No.

14 Q. No, did I miss----

15 A. I am sorry, I am thinking about when it was written. No,
16 it was written----

17 Q. You said you think they started on Thanksgiving of 2010 but
18 that cable was not released until after the New Year, I believe was
19 your testimony?

20 A. That is--I am pretty sure that it is right. Yes, ma'am.

21 Q. Because that really doesn't leave much time between the
22 release and the resignation. I mean, was that enough time to figure
23 that out?

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11 Q.

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23 Q.

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1 A.

2 MJ: I think that is all I have.

3 Does either side have anything based on that?

4 ATC[CPT OVERGAARD]: No, ma'am.

5 ADC[MAJ HURLEY]: Yes, ma'am.

6 MJ: Thank you.

7 **REXCROSS-EXAMINATION**

8 **Questions by the assistant defense counsel [MAJ Hurley]:**

9 Q.

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12 A.

13 Q.

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15 A.

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19 Q.

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22 A.

23 Q.

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11 Q.

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17 A.

18 Q.

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Q.

MJ: All right Major Hurley, where are we going with this?

ADC[MAJ HURLEY]: I will stop, ma'am.

MJ: Please.

ADC[MAJ HURLEY]: Thanks.

MJ: Anything else?

ATC[CPT OVERGAARD]: No, ma'am.

MJ: Temporary or permanent excusal?

ATC[CPT OVERGAARD]: Temporary, ma'am.

[The witness was temporarily excused, duly warned, and withdrew from the courtroom.]

MJ: All right, is there anything--the witness has departed.

Is there anything else we need to address? I believe both sides told me you wanted to start at 0930 tomorrow?

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1 TC[MAJ FEIN]: Yes, ma'am. Before that, ma'am, the United
2 States requests that the Court, as trier of fact, disregard Mr.
3 Feeley's testimony prior to last recess in reference to the Leahy
4 vetting cables.

5 MJ: Yes, I intended to do that. Thank you for reminding me to
6 put that on the record. The parties came in at an RCM 802 conference
7 and the government advised me that that portion of the testimony
8 about the Leahy vetting was part of the information that the
9 government in their 505(g)(2) filings had asked the Court to redact.

10 Now,--Major Hurley, are you?

11 ADC[MAJ HURLEY]: Oh, no ma'am, I am just getting up as a matter
12 of course.

13 MJ: What does concern me about this is, what I want the
14 government to do is--I mean, there was a lot of records court went
15 through in the 505(g)(2) processes with the various different
16 agencies. I want the government to go back through all of those,
17 look at what the government redacted on the promise that if they do
18 not give it to the defense, the Court's order was they're not using
19 it. So, I want the Government to go through all that and have one of
20 the three of you certify to me, as officers of the court, that you
21 are not using any of it.

22 TC: Yes ma'am, we will. And to clarify, ma'am, the reason the
23 United States brought this to the Court's attention is because this

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1 information was provided as part of the Department of State
2 discovery; other agencies that it was redacted from and that is why
3 we brought to the Court's attention.

4 MJ: Okay, and I am not suggesting the Government is going to do
5 anything they should not do.

6 TC[MAJ FEIN]: Yes, ma'am.

7 MJ: All I am saying is that I want a double-check mechanism in
8 place because if it has happened once I just want to make sure it has
9 not happened before or, it is not going to happen for the rest of the
10 case.

11 TC[MAJ FEIN]: Absolutely, ma'am. Yes, ma'am.

12 MJ: Okay, is the Defense happy with that?

13 CDC[MR. COOMBS]: Yes, Your Honor. And, just on the last part
14 of the cross for PDAS Feeley, where we were going with that was just
15 the fact, intervening events----

16 MJ: I know where you are going with that.

17 CDC[MR. COOMBS]: So, that was the answer to that question,
18 ma'am.

19 MJ: Okay. All right, is there anything else we need to address
20 before we recess until 0930 tomorrow?

21 CDC[MR. COOMBS]: No, ma'am.

22 TC[MAJ FEIN]: No, ma'am.

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1 MJ: Okay, so Defense, are you going to have enough opportunity
2 to interview the witnesses coming tomorrow if we start at 0930?

3 CDC[MR. COOMBS]: Yes, ma'am.

4 ADC[MAJ HURLEY]: Ma'am, just to clarify for the Court, we had--
5 the witness is coming at 7:30 so that gives us that two-hour window
6 that we are talking about.

7 MJ: All right.

8 Court is in recess until 0930 tomorrow.

9 **[The court-martial recessed at 1911, one August 2013.]**

10 **[The court-martial was called to order at 1911, 1 August 2013.]**

11 MJ: Court is called to order.

12 There is one thing I also wanted to address and I think
13 this will be, when the transcript is redacted, I do have some
14 concerns about the idea of Mr. Snowden. I want to advise both sides
15 that the Court is not considering anything of the appearance of Mr.
16 Snowden with respect to PFC Manning and anything happening here. As
17 far as I am concerned, it is irrelevant.

18 Does either side have anything further, or think about it?
19 I intend to completely disregard anything about Mr. Snowden.

20 CDC[MR. COOMBS]: Yeah, the defense would agree, it is
21 irrelevant.

22 MJ: Government?

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1 TC[MAJ FEIN]: Ma'am, if we could get back to the Court, only
2 because defense continues to ask questions about continuing damage
3 and whether information was shelved or not. It would be appropriate
4 if the answer was, "No, it is not shelved." Now, it does not need to
5 be asked, "Why?" But, that is how that came out this last witness.

6 MJ: No, I understand. I mean, the defense brought the
7 information about Mr. Snowden but I think he testified a little bit
8 on direct too. But, all I am saying is, I intend to disregard
9 everything with respect to Mr. Snowden.

10 TC[MAJ FEIN]: Yes, ma'am.

11 CDC[MR. COOMBS]: Yet, and I guess on Major Fein's point there,
12 if in fact Mr. Snowden caused any sort of continued harm or re-harm
13 after it has been shelved, that obviously would not be 1001(b)(4)
14 evidence in the defense's position.

15 MJ: And that is the Court's position as well.

16 TC[MAJ FEIN]: Yes, ma'am.

17 MJ: Okay, Court is in recess.

18 **[The court-martial recessed at 1913, 1 August 2013.]**

19 **[END OF PAGE]**