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1 (Open court, parties present, jury not present.)

2 THE COURT: You may be seated, ladies and gentlemen.

3 (Off-the-record bench discussion.)

4 THE COURT: Go ahead and call the case.

5 THE CLERK: EP:05-CR-856, USA versus Ignacio Ramos and
6 Jose Alonso Compean.

7 MS. KANOF: Debra Kanof and Jose Luis Gonzalez for the
8 United States.

9 MS. STILLINGER: Mary Stillinger and Steve Peters for
10 Mr. Ramos, Your Honor.

11 MR. ANTCLIFF: Chris Antcliff and Maria Ramirez for
12 Mr. Compean.

13 THE COURT: Go ahead.

14 MS. KANOF: Your Honor, we have three issues to take
15 up. The first one is the issue of Osvaldo Aldrete-Davila. The
16 Government has been maintaining him at a hotel in custody.
17 He's having -- right now he's at Thompson Hospital because of
18 problems with his catheter. But defense counsel have agreed to
19 let him go, that they are not going to call him. So we just
20 wanted to make sure the Court knew that, and that the Court
21 didn't have objection, and maybe on the record take the fact
22 that defense has no objection.

23 THE COURT: All right. Yes.

24 MS. STILLINGER: Your Honor, just so the record is
25 clear, that's correct. And, just so the record is clear,

1 though, I just would like it clarified that the Court would be
2 allowing him, even if he were called by the defense to testify
3 about other matters that may have occurred, that the Court
4 would be allowing him to take the Fifth. And, therefore, I
5 guess we wouldn't be calling him to take the Fifth. But that
6 that's still the Court's position, even after I raised the
7 issues of the limitations on his immunity that I raised
8 Thursday morning --

9 THE COURT: Okay.

10 MS. STILLINGER: -- or Friday morning.

11 THE COURT: Go ahead.

12 MS. STILLINGER: And, if that's clear, then we have no
13 objection.

14 THE COURT: All right. I'll rule in just a second.
15 Go ahead.

16 MR. ANTCLIFF: Our position is the same as
17 Ms. Stillinger's, Judge.

18 THE COURT: Okay. Well, I mean, obviously, he took
19 the Fifth, and the Court has ruled that, since he has taken the
20 Fifth, then he cannot be questioned about that. And so that
21 remains the Court's ruling. And, therefore, if we have an
22 agreement that he can be released, then he will be released.
23 All right?

24 MS. KANOF: Thank you, Your Honor.

25 THE COURT: All right.

1 MS. KANOF: The second issue, Your Honor, deals with
2 something that has been requested by counsel for Mr. Ramos
3 regarding a memorandum that was authored by Russell Karhoff,
4 k-A-R-H-O-F-F, field operations supervisor in Willcox, Arizona,
5 subject matter, report of alien being shot by agent.

6 I would like to tender it to the Court. The
7 Government did not see it -- it's certainly not Giglio, because
8 we are not calling Karhoff. But the Government did not see it
9 as Brady.

10 Ms. Stillinger would like it, so I would like to
11 tender it to the Court, to make that determination, at some
12 time before the defenses' case-in-chief.

13 And if the Court will assess that it should be
14 provided, then it will. We don't see the relevance of it,
15 because he isn't testifying. And it's the Government's
16 position that, unless Russell Karhoff testifies, perhaps,
17 there's some issue of prior inconsistent statement on the part
18 of Rene Sanchez, that it would not in and of itself be
19 admissible. So that's one thing we would like to tender to the
20 Court.

21 THE COURT: All right. Has defense counsel even seen
22 it yet?

23 MS. KANOF: No.

24 MS. STILLINGER: No.

25 THE COURT: All right.

1 MS. STILLINGER: And, Your Honor, of course, just to
2 put our position on the record, of course, if the Court would
3 recall, it was Agent Sanchez that first mentioned this memo in
4 his direct testimony, his first direct testimony, I think it
5 was. He mentioned this memo as one of the things that he
6 received that initiated his investigation.

7 I think it's relevant, in part, because, obviously,
8 Agent Rene Sanchez, his credibility has been -- has come into
9 question a little bit about whether he was authorized to do
10 these computer searches and do this investigation. He said he
11 understood his supervisor authorized it. He said he's
12 disclosed his relationship with Aldrete-Davila to his
13 supervisor and to Chris Sanchez.

14 I think those are valid issues to potentially impeach
15 Rene Sanchez, because he also testified he never discussed a
16 lawsuit with Aldrete-Davila, and Aldrete-Davila has said, Yes,
17 that's who told me I could file a lawsuit.

18 So there's some important credibility issues with
19 respect to Rene Sanchez. And I think -- I don't know what the
20 memo says, so I can't address it specifically. But that's why
21 we requested it.

22 MR. ANTCLIFF: And to be clear, for the record, Judge,
23 on behalf of Mr. Compean, I also wanted to see a copy of this
24 memorandum. I think I raised it on the second morning of
25 trial, as to whether Agent Sanchez had brought it with him, as

1 had been requested earlier. And, for the reasons
2 Ms. Stillinger stated, I mean, that's exactly why I want to
3 take a look at it.

4 THE COURT: All right.

5 MS. KANOF: And we understand, Your Honor, that
6 providing it in discovery does not necessarily mean that it's
7 admissible for any purpose. And I guess that argument would
8 come later, if the Court does have us tender it.

9 THE COURT: All right.

10 MS. KANOF: The third issue is a document that was
11 provided to the Government from defense counsel. The
12 Government also was aware of this document. It is a memorandum
13 written July 7, 2005, after this incident, by a Border Patrol
14 agent at the Ysleta station by the name of Nolan Blanchette.
15 B-L-A-N-C-H-E-T-T-E.

16 It's a memo that was written regarding information
17 that was provided to him by Rene Sanchez that has absolutely
18 nothing to do with this case. It's other information Rene
19 Sanchez provided about drug trafficking in the area. And Nolan
20 Blanchette is providing that information to Benjamin Robinson,
21 who is his supervisor.

22 The defense has provided it to us, and I wanted the
23 Court be aware of it and prepare for -- because I'm sure
24 there's going to be quite a fight if they try to use this
25 information. My guess is that they're trying to say Rene

1 Sanchez is a drug dealer, and that's why he knows so much about
2 what happens on the border with drugs.

3 However, the Government was extremely rigorous in
4 their Giglio obligation with regard to Rene Sanchez and had not
5 only his local Willcox, Arizona, personnel file checked, but
6 his file at the Border Patrol headquarters in Washington, D.C.,
7 and there was absolutely no Giglio. So I would also like to
8 provide a copy of that memo to the Court, just for future
9 preparation.

10 THE COURT: All right. I will -- you know, we usually
11 take a midmorning break, and so I will look these over, and
12 then we will talk about them.

13 Yes, sir, Mr. Antcliff.

14 MR. ANTCLIFF: For the record, Judge, the defense
15 understands it's under a continuing obligation regarding
16 discovery, and that's why we provided that second document, the
17 Nolan Blanchette memo, to the Government. But, as of this
18 moment, there's no issue surrounding that, and so I don't have
19 any response.

20 THE COURT: Okay.

21 MS. STILLINGER: Right. I do anticipate that it will
22 come up, but -- unless the Court wants to hear from us right
23 now.

24 THE COURT: I haven't even read it. Let me read it,
25 and then I will tell you what I need. All right? Thanks.

1 All right. Are we about ready for the jury? Anything
2 else we need to take up outside the presence of the jury?

3 MR. GONZALEZ: No, Your Honor.

4 MS. STILLINGER: No, Your Honor.

5 THE COURT: All right. Give me just a second.

6 (Recess; open court, parties and jury present.)

7 THE COURT: You may be seated.

8 Good morning.

9 JURORS: Good morning.

10 THE COURT: Are we ready to proceed?

11 MR. GONZALEZ: Yes.

12 THE COURT: You may call your next witness.

13 MR. GONZALEZ: Thank you, Your Honor.

14 The Government calls Jose Mendoza.

15 While the witness is coming to the court, previously,
16 we had moved to enter into evidence Government's Exhibit Number
17 11.

18 THE COURT: Right.

19 MR. GONZALEZ: Subject to redaction. I have made that
20 redaction. I've shown it to defense counsel.

21 MS. STILLINGER: We have no objection to the exhibit
22 now, Your Honor.

23 Mr. Antcliff: No objection, in light that it's been
24 redacted.

25 THE COURT: All right. Then Government's Exhibit

1 Number 11 will be admitted.

2 Mr. Mendoza, have you been sworn in?

3 THE WITNESS: Yes.

4 THE COURT: All right.

5 Then you may proceed.

6 JOSE LUIS MENDOZA, GOVERNMENT'S WITNESS, SWORN

7 DIRECT EXAMINATION

8 BY MR. GONZALEZ:

9 Q. Sir, would you please state your full name for the record?

10 A. Jose Luis Mendoza.

11 Q. And, Mr. Mendoza, where are you employed?

12 A. I'm sorry?

13 Q. Where are you employed?

14 A. With the U.S. Border Patrol.

15 Q. How long have you been with the U.S. Border Patrol?

16 A. Six years.

17 Q. And, briefly, what are some of your duties and

18 responsibilities?

19 A. Basically, patrol the border and just enforce immigration

20 laws.

21 Q. And, sir, let me direct your attention to February 17,

22 2005. Were you on duty on that date?

23 A. Yes, sir.

24 Q. And, as a result of what occurred on that date, did -- were

25 you interviewed on several occasions?

1 A. Yes, sir.

2 Q. Okay. And, on one of your first interviews, was that with
3 Agent Christopher Sanchez, who's seated here today?

4 A. Yes, sir.

5 Q. And, when he asked to speak to you, did you ask for a
6 letter of immunity?

7 A. No, did I not.

8 Q. And so you're here of your own free will, correct?

9 A. Yes.

10 Q. And also -- but you're also on administrative duty. Is
11 that true?

12 A. That's correct.

13 Q. Why is that?

14 A. Well, I didn't know until you -- I went through the
15 pretrial with you, and you told me that --

16 Q. Okay. So you don't know why you were placed on
17 administrative duty?

18 A. No, until yesterday.

19 Q. Okay. Let me take you back to February 17, 2005. Where
20 were you at about 1:00 in the afternoon, sir?

21 A. I was assigned to work zone three.

22 Q. I'm sorry, where?

23 A. Zone three. It's the area basically from the Stubbs
24 compound to the end of our area, which Ysleta takes over, which
25 is Grijalva -- just west of Grijalva.

1 Q. Thank you.

2 MR. GONZALEZ: May I approach the witness, Your Honor?

3 THE COURT: You may.

4 BY MR. GONZALEZ:

5 Q. Agent Mendoza, I'm showing you what's been marked and
6 introduced into evidence as Government's Exhibit Number 84. Do
7 you recognize what this photograph shows?

8 A. Yes.

9 Q. Okay.

10 A. I was working west of where the map --

11 THE COURT: Could you speak up a little?

12 THE WITNESS: Sorry.

13 BY MR. GONZALEZ:

14 Q. Go ahead.

15 A. Over there at the end of the map it says Jess Harris Road.
16 So I was working west of that particular area.

17 Q. Let me get a different map and see if that has it.

18 Go ahead and look at the map. Don't talk while we are
19 looking at it, and familiarize yourself with it.

20 It's Government's Exhibit Number 1.

21 A. Okay. I can see the area where I was assigned to at the
22 time, or that I was patrolling at that time.

23 Q. And you said -- what zone is that?

24 A. Zone three.

25 Q. Is that up here where my finger is (indicating)?

- 1 A. Yes.
- 2 Q. Or further west?
- 3 A. Right around there, the same thing.
- 4 Q. Near La Vaca Street?
- 5 A. Yes, sir.
- 6 Q. Okay. And that's where you were that afternoon?
- 7 A. Yes, sir, in that same area.
- 8 Q. And what is it that you hear at about 1:15 -- or about 1:00
- 9 in the afternoon?
- 10 A. Okay. I heard Agent Compean calling out a vehicle, a van,
- 11 coming out of the -- I guess it would be the north -- northeast
- 12 corner of the Stubbs compound, where the van came out of. And,
- 13 basically, that's a very notorious area for drug smuggling or
- 14 alien smuggling.
- 15 Q. Okay. So what do you do in response to that, sir?
- 16 A. 10-4'd the call, then I proceeded to wait north on Chicken
- 17 Ranch and Hole In The Wall, which is maybe about a mile and a
- 18 half west of where he saw the van.
- 19 Q. And do you hear some more radio communication?
- 20 A. Well, at that time, I was just waiting for the van, to see
- 21 if it came my way.
- 22 Q. And did the van eventually come your way?
- 23 A. No, it did not.
- 24 Q. Okay. So what do you do when you don't see the van coming
- 25 your way?

1 A. I proceeded to cut through a pecan orchard, Stubbs
2 compound, just to see if it had gone a different direction.

3 While I was doing that, I heard other agents on the
4 radio saying something -- that they had the west covered. That
5 was, I believe, Agent Vasquez, that said he had the --

6 Q. Arturo Vasquez?

7 A. Arturo Vasquez.

8 Q. All right.

9 A. And, basically, I went into the orchards, and I never saw
10 the van going in that direction.

11 Q. Going towards where, sir?

12 A. Cutting through the pecan orchards.

13 Q. And in which direction is that going towards?

14 A. That would be straight north.

15 Q. Towards Fabens?

16 A. It could have gone straight north from the area where
17 Compean last saw it.

18 Q. Okay.

19 A. It did not.

20 Q. Okay.

21 A. So, by then, I heard Agent Ramos calling out the traffic,
22 saying that he had a visual on that van in town already.

23 Q. Okay. Now, when you hear Agent Ramos do that, does he make
24 that callout -- does he do this on the repeater or on the local
25 traffic, local radio?

1 A. He must have called it on the local traffic, since it
2 wasn't picked up on the tower, when we went through the radio
3 traffic.

4 Q. And, I'm sorry, what does Agent Ramos say?

5 A. I believe he said he had a visual on the van while he was
6 in town.

7 Q. Okay. And what's the next thing you know? What's the next
8 thing you hear?

9 A. He said something about the van making a sudden U-turn and
10 heading back south, in town.

11 Q. Okay. And, at some point in time, do you see this van?

12 A. No, not at that time.

13 Q. Okay. What happens next, then?

14 A. Okay. So I pretty much had an idea which way it was going
15 to come out of.

16 Q. What was your understanding?

17 A. That the van was going to hit the S curves on Jess Harris
18 and was going to come at least my direction.

19 Q. Okay.

20 A. That's what I speculated.

21 Q. Now, at that point in time, what road are you on?

22 A. I was still on the dirt road coming towards Island Road,
23 the paved road near Rawls Road.

24 Is there a map?

25 MR. GONZALEZ: May I approach the witness, Your Honor?

1 THE COURT: Yes, you may.

2 BY MR. GONZALEZ:

3 Q. Go ahead and -- do you see Rawls Road on this map? I don't
4 know if it is.

5 A. I don't see it, with all the glare.

6 THE COURT: You can go ahead and stand up.

7 A. This is Rawls Road (indicating). I was --

8 BY MR. GONZALEZ:

9 Q. Don't talk. Just orient yourself, because he needs to take
10 down everything you say, sir.

11 A. Okay.

12 Q. All right. So what road were you on? Is this it, that I'm
13 pointing to (indicating)?

14 A. That would be -- that would be Island Road.

15 Q. Is that the road you were on, or were you on a dirt road?

16 A. I was on a dirt road.

17 Q. And is that dirt road in here somewhere (indicating) on
18 this map?

19 A. Yes.

20 Q. So you -- you were on Island Guadalupe?

21 A. No, that's a dirt road. That's a ditch road right there
22 (indicating).

23 Q. This is a ditch road?

24 A. Yeah. That's a -- that's the road I took. I cut through
25 those pecan orchards. That's Stubbs compound right there

- 1 (indicating), right --
- 2 Q. Where is Stubbs -- is this Stubbs (indicating) --
- 3 A. That's Stubbs compound (indicating).
- 4 Q. Where all these little trees are showing in the upper
- 5 left-hand corner?
- 6 A. Yeah. If you see -- there's a road that runs north all the
- 7 way to Alameda. And that's the road I thought he might have
- 8 taken.
- 9 Q. Because there's other pecan orchards, as well. Is that
- 10 true?
- 11 A. Oh, yes, sir. That's the one I was referring to.
- 12 Q. Okay. And -- but earlier, when you said the S curves, are
- 13 there pecan orchards there, too?
- 14 A. No.
- 15 Q. Where is the S curve on this map? Can you find it?
- 16 A. Yes (indicating).
- 17 Q. And you've indicated Jess Harris, that turns into Fabens
- 18 Island, and then curves to the right, and then another
- 19 left-hand turn. What I'm looking at immediately adjacent to
- 20 the -- to this road (indicating), what I'm pointing to, are
- 21 those pecan orchards?
- 22 A. Yeah, those are pecan orchards.
- 23 Q. And on the left -- on either side of Jess -- of Fabens
- 24 Road, before it turns, as you're heading north on it, there are
- 25 pecan orchards, correct?

- 1 A. Yes. Correct.
- 2 Q. And so then, as you're approaching this general area, where
3 are you when you first see any of these vehicles, the van?
- 4 A. The van? I was already getting to Rawls Road and Island
5 Road.
- 6 Q. And Rawls Road is approximately --
- 7 A. That's correct.
- 8 Q. -- right here where I'm pointing (indicating)?
- 9 A. Yes.
- 10 Q. While I'm talking, you let me finish, and I'll do the same
11 thing for you, because we can't talk over each other. He needs
12 to record it. Okay?
- 13 A. Okay.
- 14 Q. I'm sorry. The Rawls Road area, then what?
- 15 A. Rawls and the Island Road. That's where I was when I first
16 had visual of the van.
- 17 Q. Okay. I see Rawls Road. I'm sorry. Would you point to
18 Island Road?
- 19 A. (Indicating.)
- 20 Q. So Island Road intersects -- Island Road intersects with
21 Rawls, and that's where you were situated?
- 22 A. Uh-huh. Yes, sir.
- 23 Q. And are you parked, are you moving, or what are you doing
24 there?
- 25 A. I'm moving at that time.

- 1 Q. Okay. And further down, further east of this is -- this is
2 Jess Harris. Is that correct?
- 3 A. Yes. That's correct.
- 4 Q. And how well can you see from Rawls and Island Road to
5 where Fabens Road is, which also becomes Jess Harris?
- 6 A. It is an open area. I believe they have cotton fields all
7 over, but I don't know. It might have been a plowed field at
8 that point, because I was able to see everything.
- 9 Q. What's the distance between Rawls-- the intersection of
10 Rawls and Island to Jess Harris and Fabens Road, approximately?
- 11 A. Approximately? I don't know. Maybe half a mile.
- 12 Q. And a pretty clear view?
- 13 A. Yes.
- 14 Q. All right. And you're expecting the van. Is that correct?
- 15 A. Yes, sir.
- 16 Q. All right. And do you, in fact, see the van?
- 17 A. Yes, I did.
- 18 Q. And how fast does this van travel when you first see it?
- 19 A. It's hard to tell. Maybe 65, 70, tops. But then, again, I
20 didn't have a radar gun --
- 21 Q. Of course.
- 22 A. -- with me.
- 23 Q. Was anyone right -- was anyone behind the van?
- 24 A. I saw three units behind the van.
- 25 Q. Okay. Let's talk about the first unit that's behind the

1 van. How close was that first unit to the van, from what you
2 can tell?

3 A. They were already at an angle, and the van was almost
4 hitting the dirt road. But I'm going to say about two to three
5 cars --

6 Q. The first car?

7 A. -- apart. Yes.

8 Q. Okay. Now -- and the Fabens Road becomes Jess Harris, and
9 that -- at which point does Jess Harris become a dirt road? Do
10 you know?

11 A. Once it hits Wingo Road.

12 Q. Wingo Reserve?

13 A. Right here at the intersection of Wingo and Jess Harris,
14 that's when it becomes a dirt road.

15 Q. And you said that there were three cars, or three units,
16 three Border Patrol units, following the van. Is that correct?

17 A. Yes. I recall seeing three.

18 Q. Now, let's talk about the second unit. How close is it to
19 the first unit, Border Patrol unit?

20 A. Maybe about the -- it was spread out. It was more or less
21 about the same, about two to three vehicles apart from the
22 other unit.

23 Q. And they were all -- the first vehicle and second vehicle,
24 are they going as fast as the van, as well?

25 A. Well, since they were trying to keep up, yes, I'm assuming

- 1 they were.
- 2 Q. Okay. Now -- and you said there's a third unit?
- 3 A. Yes. There was third unit behind the other two marked
- 4 vehicles.
- 5 Q. Now, is that unit the same distance from the second to the
- 6 first?
- 7 A. More or less. It could have been further out, I guess.
- 8 Q. So the third car may have been further out?
- 9 A. Five, six vehicles apart.
- 10 Q. Okay. And then do you join this convoy of cars?
- 11 A. Well, yeah, but I didn't actually have a chance to get into
- 12 the action.
- 13 Q. Why is that?
- 14 A. Well, because I still had to go and do several turns.
- 15 Q. Okay.
- 16 A. By the time I got there, all vehicles were already parked
- 17 behind the van.
- 18 Q. Parked where, sir?
- 19 A. At the end of the Jess Harris dirt road and the canal.
- 20 Q. So, as soon as -- then you drive to that location?
- 21 A. Yes, I did.
- 22 Q. What do you do?
- 23 A. When I got there?
- 24 Q. Yes.
- 25 A. I got off of my truck, and I left my truck running, of

- 1 course.
- 2 Q. Now, as soon as you get out of your truck, do you hear
- 3 anything?
- 4 A. No, I did not.
- 5 Q. Any shots being fired?
- 6 A. No, did I not.
- 7 Q. Okay. You get out of your truck. You do what next?
- 8 A. I saw the van with the driver's side open.
- 9 Q. Driver's side door or what?
- 10 A. The driver's side, it was open, the van.
- 11 Q. The door?
- 12 A. The door, yes.
- 13 Q. Okay.
- 14 A. And two agents, Vasquez and Juarez, around the van.
- 15 Q. What were they doing?
- 16 A. I remember Vasquez saying something about a shotgun being
- 17 on the ground on the other side of the levee.
- 18 Q. Vasquez told you that?
- 19 A. Yes.
- 20 Q. Okay. And did you look at the gun, the shotgun?
- 21 A. I didn't see it.
- 22 Q. Why not?
- 23 A. I might have taken a glimpse, but I didn't see it. It
- 24 could have been -- it was probably in some brush.
- 25 Q. You didn't see it?

- 1 A. I didn't see it.
- 2 Q. Did you look hard for it?
- 3 A. Not at all.
- 4 Q. Weren't you concerned?
- 5 A. Well, I didn't see the sense of urgency of the two agents
6 there.
- 7 Q. What do you mean, you didn't see a sense of urgency?
- 8 A. I mean --
- 9 Q. Let's talk one agent at a time. You saw Agent -- who did
10 you see first, Vasquez or Juarez?
- 11 A. I saw both.
- 12 Q. Okay. Tell the jury what Vasquez was doing.
- 13 A. Well, I don't recall exactly what he was doing. I know all
14 three of us started taking -- we took a look at the van, to see
15 what was in it.
- 16 Q. Okay. Did Vasquez or Juarez look excited or anything like
17 that?
- 18 A. Well, yeah. You know, it's normal. I was excited, too.
- 19 Q. About what, sir?
- 20 A. About what was inside the van.
- 21 Q. The van and its contents?
- 22 A. And its contents, correct.
- 23 Q. Okay. Were you all excited about what was going on on the
24 other side of the ditch?
- 25 A. No. I don't even recall if they said something about Nacho

1 jumping in or anything. I was -- I assume he did, but I don't
2 remember them saying anything to me.

3 Q. That everything went pretty normal, nothing out of the
4 ordinary?

5 A. Yes, pretty much, out of --

6 Q. Other than, of course --

7 A. I mean -- yeah. I mean, this is a normal thing for us over
8 there in Fabens. So it was just another drug seizure for us.

9 Q. All right. And then -- so you're there with them. No one
10 mentions any shooting or anything like that, correct?

11 A. Not that I recall.

12 Q. What happens next?

13 A. When I went into the van? I just -- okay. Well, by
14 then --

15 Q. Just tell me what happens. In time, what's next?

16 A. Okay. By then, Agents Jacquez and Yrigoyen showed up to
17 the area, basically. Yrigoyen showed up on the levee, coming
18 from the east end, from the port of entry. And Vasquez came
19 from the north side.

20 Q. Vasquez or Jacquez?

21 A. Jacquez, I mean. Yeah. He parked right behind my unit.

22 Q. So Jacquez is on your side of the ditch and Yrigoyen is on
23 the other side of the ditch by Compean's vehicle, right?

24 A. By Compean's vehicle, correct.

25 Q. Did you see Compean's vehicle up on the levee?

- 1 A. Yes.
- 2 Q. All right. And so --
- 3 A. Compean's vehicle was already there when I got there.
- 4 Q. I understand. Then, when Jacquez arrives, what do you do?
- 5 A. I don't recall talking to Jacquez at all --
- 6 Q. Okay.
- 7 A. -- about anything. If anything, just about the van being
- 8 loaded.
- 9 Q. Okay. Who's the next Border Patrol agent to arrive at the
- 10 area where you're standing?
- 11 A. Okay. Right after Jacquez, our two supervisors, Robert
- 12 Arnold and FOS Jonathan Richards showed up.
- 13 Q. What's an FOS? What does that stand for?
- 14 A. Field operations supervisor.
- 15 Q. Field operations supervisor?
- 16 A. Correct.
- 17 Q. What's his name?
- 18 A. Jonathan Richards.
- 19 Q. Jonathan Richards?
- 20 A. Correct.
- 21 Q. And who shows up after them, if anyone? Do you recall?
- 22 A. It might have been Mr. Lance -- Agent Lance Medrano. I'm
- 23 not -- I'm not sure.
- 24 Q. And is anyone with Border Patrol Agent Yrigoyen that
- 25 morning -- I mean, that afternoon, any other agents?

1 A. Yes. His trainee, Rene.

2 Q. Apart from the people that you've already mentioned, was
3 anyone else out there at the scene?

4 A. Not that I recall.

5 Q. Okay. And, at some point in time, does Agent Ignacio Ramos
6 arrive where you're standing?

7 A. No, not at all. The whole time that we were there, Nacho
8 and Compean were on the -- on the other side on the levee.

9 Q. When you say Nacho, who are you referring to, sir?

10 A. To Ignacio Ramos.

11 Q. Do you see Ignacio Ramos in the courtroom this morning?

12 A. Yes, sir.

13 Q. Okay. And --

14 A. He's standing up.

15 MR. GONZALEZ: Your Honor, may the record reflect that
16 the witness identified the Defendant Ignacio Ramos?

17 THE COURT: It will so reflect.

18 BY MR. GONZALEZ:

19 Q. In fact, do you see Jose Alonso Compean in the courtroom,
20 as well?

21 A. Yes, sir.

22 Q. Is he's standing up?

23 A. Yes, sir.

24 MR. GONZALEZ: Your Honor, may the record reflect that
25 the witness has identified Jose Alonso Compean?

1 THE COURT: It will so reflect.

2 MR. GONZALEZ: Thank you, Your Honor.

3 BY MR. GONZALEZ:

4 Q. So then -- I'm sorry. You said that Compean and Ramos

5 never joined you guys, or -- while you're there?

6 A. Only Agent Ramos. When he came back to the other side, our

7 FOS, Jonathan Richards, was already there.

8 Q. Okay. And did you make any observations about how Agent

9 Ramos was acting that afternoon?

10 A. Yeah. He seemed very nervous.

11 Q. It's my understanding that Mr.-- -- I'm sorry -- Agent Ramos

12 has Tourette's syndrome. Did you know that?

13 A. Yes.

14 Q. Okay. And you've seen that displayed, correct?

15 A. Uh-huh.

16 Q. How was that -- and was the way his Tourette's syndrome

17 affects him different, from what you saw that afternoon?

18 A. Uh-huh. Well, I don't know. I'm not a psychologist or

19 anything, but he looked pretty shaken up. And I believe

20 Agent -- FOS Richards asked him -- he asked him if he was all

21 right.

22 And Nacho told him that he was fine. It was just the

23 adrenaline that had him all pumped up.

24 Q. Okay. Just adrenaline. Anything else?

25 A. That's all I heard.

1 Q. Okay. And was -- was -- but Compean stayed on the other
2 side, is that correct, of the ditch?

3 A. Yes, the whole time.

4 Q. Okay. And, after that, when Agent Ramos makes a statement
5 about his adrenaline, does he say anything else at that point?

6 A. If he did, not to me. By then, Agent Richards told me --
7 instructed me to unload the -- the contents from the van and
8 put them in my vehicle, so I could take them back to the
9 station and process them.

10 Q. And you took the mari- -- well, you -- and you suspected
11 the contents were marijuana, correct?

12 A. At that point, we suspected it was marijuana. But it
13 wasn't until I tested it at the station that I made sure of it.

14 Q. Okay. And then do you do anything else at the scene?

15 A. Not me. I was the very first one to leave the area, right
16 afterwards.

17 Q. Okay. And you go back where, sir?

18 A. I went back to the Fabens station.

19 Q. Okay. Let me backtrack a little bit.

20 But before you went back to your station, did you
21 learn whether -- why Agent Compean and Ramos had been on the
22 other side of the ditch, what they had been doing over there?

23 A. Well, I'm assuming the guy tried to make a flee back south.
24 He tried to run back south, the driver of the van, and they
25 tried to ap him.

1 Q. Okay. They tried to what?

2 A. To apprehend him.

3 Q. Okay. And, in fact, did anyone say that the driver had
4 gone back south?

5 A. Yes. Yeah. I've got to go back.

6 One of them said, but I don't remember who, when they
7 were on the other side, that the guy had made it back to
8 Mexico, and that he had gotten picked up in a car.

9 Q. But you don't recall --

10 A. But I don't recall who -- who said it.

11 Q. It was either Compean or Ramos?

12 A. It had to be either/or, which is one of them two.

13 Q. And the car -- I'm sorry. That the driver had been picked
14 up by who?

15 A. By a car, on the Mexican side.

16 Q. Now, did -- you mentioned that FOS Richards asked Ramos if
17 he was okay. Did FOS Richards ask Compean the same thing, do
18 you recall?

19 A. Not at that particular moment.

20 Q. Okay. And so then you go back to the station, right?

21 A. Yes.

22 Q. What do you do there?

23 A. I made the appropriate phone calls. I had to call DEA and
24 let them know about the seizure. I also --

25 Q. Why DEA? Why don't you do the seizure?

- 1 A. Well, because we are not drug enforcement agents.
- 2 Q. Okay. You called DEA. And who else do you call?
- 3 A. We called EPIC, El Paso Intelligence Center, just so they
- 4 can have a -- some intel on it.
- 5 Q. All right. And then who else arrives at the station while
- 6 you're there doing this paperwork?
- 7 A. Agent Ramos arrived with the other part of the load.
- 8 Q. Okay.
- 9 A. And I recall, also, Compean arriving, also, to the
- 10 processing area. And Agent Jacquez, if I'm not mistaken.
- 11 Q. And so when Compean and Ramos are -- are they in the same
- 12 area that you're in at the station?
- 13 A. Not -- no, not at that point.
- 14 Q. Okay. And, at some point, did -- are they in the same area
- 15 you're located?
- 16 A. Yes -- maybe not Ramos, but Mr. Compean was.
- 17 Q. How big is the Border Patrol station, anyhow, for the
- 18 record?
- 19 A. Well, it's got about -- I'm going to say about as big as
- 20 this room.
- 21 Q. As big as this courtroom?
- 22 A. As this courtroom, yes.
- 23 Q. The entire Border Patrol station?
- 24 A. No, just the processing area.
- 25 Q. Processing? Okay. And that's where you're -- that's where

1 you're located in the afternoon?

2 A. Yes, sir.

3 Q. It's about what time when you're at the Fabens Border
4 Patrol station?

5 A. It was going to be close to 3:00, and I was getting ready
6 to go home.

7 Q. Okay. And you said that you didn't have any further
8 contact with Agent Ramos. Is that true?

9 A. Not that day.

10 Q. Not that day? All right.

11 Did you have contact with him later?

12 A. If I did, I really don't remember.

13 Q. But you also mentioned that -- did you have contact with
14 Agent Compean?

15 A. Yes. Basically, I was the one that had to give him the
16 name of the DEA agent that probably declined. I don't know if
17 he declined or not.

18 Q. Okay. What does that mean, that you had to give him the
19 name?

20 A. Yeah. The name of the special agent that would -- that
21 would take the drug seizure.

22 Q. Okay. And what's Compean doing?

23 A. I think he was on the computer. He was going to start on
24 his I-44.

25 Q. What is an I-44?

- 1 A. That's the drug seizure form.
- 2 Q. Did you talk to Compean about what occurred at the scene?
- 3 A. No, I did not.
- 4 Q. Did he volunteer some information?
- 5 A. Not to me.
- 6 Q. Did he mention anything about what -- him falling?
- 7 A. Yes. I asked him what -- I think he had a bloodstain. I
- 8 don't remember if it was on his finger or his chin.
- 9 Q. You say a bloodstain?
- 10 A. A bloodstain.
- 11 Q. What does that mean?
- 12 A. Well, he had a bloodstain. I think it was on his chin.
- 13 And I --
- 14 Q. Small?
- 15 A. It was -- yeah, it was small. And I asked him what
- 16 happened to him.
- 17 And he said that he had slipped.
- 18 Q. Slipped where?
- 19 A. Slipped on the -- on the levee.
- 20 Q. And did he tell you why he slipped, or how it came that he
- 21 slipped?
- 22 A. No.
- 23 Q. He didn't tell you he slipped when he was trying to
- 24 apprehend the driver?
- 25 A. I don't remember exactly what he said. I just remember the

1 word "slipped."

2 MR. GONZALEZ: May I approach the witness, Your Honor?

3 THE COURT: You may.

4 BY MR. GONZALEZ:

5 Q. Agent Mendoza, let --

6 MR. GONZALEZ: Let me go ahead and mark this,
7 Your Honor.

8 BY MR. GONZALEZ:

9 Q. Agent Mendoza, I'm handing to you what's been marked as
10 Government's Exhibit 97 for identification purposes. And let
11 me direct your attention to the fourth page of your six-page
12 statement. And I'm going to have you read the lower part of
13 the statement, and see if that refreshes your memory as to what
14 Agent Compean told you back on February 17, 2005.

15 A. Okay. Yeah, I guess I did put he also mentioned that he
16 slipped on the levee while trying to apprehend the driver.

17 Q. Now, that's what Agent Compean told you, correct?

18 A. Correct.

19 MR. GONZALEZ: I'm sorry, Your Honor. May I approach
20 the witness again?

21 THE COURT: You may.

22 BY MR. GONZALEZ:

23 Q. What's in your report, Government's Exhibit Number --
24 Government's Exhibit 97, what is this, sir?

25 A. This a voluntary statement that I gave to OIG, the day that

1 they requested it.

2 Q. And you made this statement on March 22, 2005?

3 A. Correct.

4 Q. And you've -- you have in your statement what Agent Compean

5 told you, correct?

6 A. Correct.

7 Q. Did he ever tell you anything about the agent -- the alien,

8 the fleeing person, attempting to assault him?

9 A. Not at all.

10 Q. Did he ever say anything to the effect that, That little

11 bitch took me down, took me to the ground, anything like that?

12 A. No.

13 Q. Did he ever mention, He threw dirt in my eyes, anything

14 like that?

15 A. No. Not at all.

16 Q. Or that they had a wrestling match?

17 A. No. I would have remembered that.

18 Q. All right. Now, you said that you were calling DEA and

19 El Paso -- I'm sorry, EPIC. Is that correct?

20 A. Correct.

21 Q. Who makes you do all this?

22 A. Just basic procedures that we have to follow every time we

23 have a dope seizure.

24 Q. And you said that the field operations supervisor is

25 Jonathan Richards. Is that true?

1 A. That's correct.

2 Q. And is he a stickler for all kinds of paperwork?

3 A. Oh, yes.

4 Q. Why do you say that, Oh, yes?

5 A. Well, he goes by the -- by the books. He will go the extra
6 mile to -- to do the job.

7 Q. And, sir, on -- at any time, did either Agent Ramos or
8 Agent Compean, on March -- I'm sorry -- on February 17, 2005,
9 ever tell you that they were in fear of their lives, that they
10 had been shot at?

11 A. No, sir.

12 Q. Did they ever tell you they had shot at anyone?

13 A. No.

14 MR. GONZALEZ: May I have a moment, Your Honor?

15 THE COURT: Yes.

16 BY MR. GONZALEZ:

17 Q. And you're trained to shoot, correct?

18 A. Yes, sir.

19 Q. And what do you -- what's the policy of the Border Patrol?
20 You're trained to shoot to what?

21 A. To kill.

22 Q. Okay.

23 MR. GONZALEZ: Pass the witness, Your Honor.

24 THE COURT: Mr. Peters?

25

1 CROSS-EXAMINATION

2 BY MR. PETERS:

3 Q. Good morning, Agent Mendoza. How are you?

4 A. Good morning.

5 Q. My name is Stephen Peters. I represent Agent Ramos. I've
6 never spoken to you before, have I?

7 A. No, sir.

8 Q. Now, on February 17th, 2005, you were out in the field
9 doing your job. Is that correct?

10 A. That's correct, sir.

11 Q. And part of your job on that day was that, when you learned
12 over the radio that a van had been spotted at area 76 -- I
13 believe you testified that that area was very notorious for
14 drug and alien smuggling. Is that correct?

15 A. That is correct.

16 Q. And part of your job, as a Border Patrol agent that day,
17 was to run down and catch people trying to smuggle aliens or
18 drugs into the United States. Is that correct?

19 A. That's correct.

20 Q. And, in fact, Border Patrol agents like to get credit for
21 seizures of large quantities of drugs, such as what were seized
22 on this day. Is that right?

23 A. Not necessarily. The only person that gets credit is the
24 person that writes the I-44, I guess.

25 Q. Right. Well, okay. But it would be true to say that

1 Border Patrol agents kind of like to seize these loads, right?

2 A. Well -- well, yeah, to some people it is.

3 Q. Okay. On this day -- and I've listened to your testimony,
4 and I've read your statements. And I -- did you do anything
5 wrong on February 17th?

6 A. I don't believe I -- I did. But apparently, to the eyes of
7 the Border Patrol I did, since they put me on administrative
8 duties.

9 Q. Well, I was going to ask you about that. Why are you on
10 administrative duties?

11 A. Well, I came to find out that Agent Compean had mentioned
12 something about telling me that he had -- they had shot
13 somebody.

14 Q. I see. So they put you on -- did they -- they didn't --
15 but you gave a statement, and I think your first statement was
16 back in March, last year?

17 A. Yes, sir.

18 Q. And it was much the same as what you said today, right?

19 A. Yes, sir.

20 Q. Okay. And the Border Patrol put you on administrative
21 duties since then. Is that correct?

22 A. Yes, sir.

23 Q. All right. Now, I believe you mentioned that, while you
24 were -- while this chase was going on, while the Border Patrol
25 at Fabens station was trying to track down this person that

1 turned out to be a smuggler, that you heard some radio traffic
2 from Ignacio Ramos, correct?

3 A. That's correct.

4 Q. And this radio traffic, I believe you said, did not wind up
5 being recorded on the -- on the recorded radio traffic, right?

6 A. That's correct.

7 Q. And that's because it was on local, rather than going
8 through the rim rock, right?

9 A. Right.

10 Q. Do -- is it normal for Border Patrol agents in the Fabens
11 station to use the local channel?

12 A. Yes, it is. That way we don't have to -- if we are working
13 different traffic, and we work tower, then we would be stepping
14 on each other's radio traffic. So that's one of the reasons we
15 work local.

16 Q. Are there some other reasons?

17 A. Other than that, not that I can think of.

18 Q. Does it take longer to key up and disengage from the rim
19 rock channel than from the local channel?

20 A. No, not at all.

21 Q. Okay. Is there any policy against using the local channel?

22 A. There's no policy that I know of. Usually supervisors
23 would like for us to -- to use the tower.

24 Q. But it's not practical to use it at all times, right?

25 A. No.

1 Q. Okay. Let me ask you: You've been in the Border Patrol
2 for six years, I think you said?

3 A. Yes, sir.

4 Q. And how long have you been in the Fabens station?

5 A. All of my six years.

6 Q. And you know the area of the levee where the -- where the
7 van was found, near -- near where -- I mean, I know the van was
8 found on the levee. But the area of the levee and the river
9 and vega near where Jess Harris Road intersects the ditch, are
10 you familiar with that?

11 A. Yes.

12 Q. Is that area patrolled pretty often?

13 A. We -- we try to. But, back then, we had a lack of
14 manpower.

15 Q. Would it be fair to say it was patrolled at least once a
16 day?

17 A. Uh-huh. Yeah. That would be --

18 Q. Sometimes more?

19 A. Yeah.

20 Q. And, if anything out of the ordinary was -- was -- was down
21 there, you would like to think it would be found, right?

22 A. Yeah.

23 Q. And every agent who was in the Border Patrol station, the
24 Fabens station for any length of time, would have known that.

25 Is that correct?

1 A. That's correct.

2 Q. And would it be fair to say, you know -- just now you were
3 asked about all the things that Agents Compean and Ramos didn't
4 tell you. But it would be fair to say that Agents Compean --
5 neither Agent Compean nor Agent Ramos discussed this incident
6 with you at any length. Is that correct?

7 A. That's correct.

8 Q. So it's not like they were telling you some kind of
9 elaborate explanation of it and leaving things out. They just
10 didn't talk to you about it at all, did they, except very
11 minimally?

12 A. Yeah, very minimal.

13 Q. Okay.

14 MR. PETERS: Could I have a minute, Your Honor?

15 THE COURT: Sure.

16 MR. PETERS: Pass the witness.

17 THE COURT: Mr. Antcliff?

18 MR. ANTCLIFF: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. ANTCLIFF:

21 Q. Good morning, sir.

22 A. Good morning.

23 Q. As I understand your testimony, you didn't ask for a letter
24 of immunity in relation to anything you had to say in
25 connection with the events of February 17th. Is that right?

- 1 A. That's right. I didn't know what immunity was.
- 2 Q. Sure. You did have a lawyer who was representing you back
- 3 in March of 2005. Is that right?
- 4 A. I went to go get counsel, but I didn't retain him.
- 5 Q. He was giving you advice, though?
- 6 A. Right.
- 7 Q. Okay. And so you gave a statement back in March of 2005,
- 8 right?
- 9 A. That's correct.
- 10 Q. You signed that statement and swore that everything in it
- 11 was true, right?
- 12 A. That's correct.
- 13 Q. You believed, at that time, that you were not going to be
- 14 prosecuted criminally for anything that you said in that
- 15 statement. Isn't that true?
- 16 A. Not necessarily. OIG read me my rights. They told me
- 17 anything I say might be used against me.
- 18 Q. Okay. Did you sign what you believed was called a Garrity
- 19 letter?
- 20 A. That's what I signed.
- 21 Q. Okay. And was it your understanding that,
- 22 administratively, anything that you said could be used against
- 23 you?
- 24 A. Yes.
- 25 Q. Okay. And you were put on administrative duties soon after

1 giving that statement?

2 A. No, that was before.

3 Q. When?

4 A. I gave the statement on the 22nd, if I'm not mistaken.

5 Q. Okay. And when were you put on administrative duty?

6 A. Well, maybe that same week. But they told me ahead of time
7 that I was to report to sector headquarters the weekend before
8 this voluntary statement.

9 Q. Okay. But during that same week, effectively, you were
10 told you were going to be put on administrative duty. Is that
11 right?

12 A. That's right.

13 Q. And you've been on that administrative duty ever since?

14 A. Correct.

15 Q. And you did not know why you were on administrative duty
16 until yesterday?

17 A. No. No, no. I had an idea that -- because OIG told me
18 that Compean had mentioned my name on his statement.

19 Q. Okay.

20 A. But, apparently, there's other witnesses that were right --
21 that were on the processing area --

22 Q. Sure.

23 A. -- that -- that were talking to Compean. And they can
24 testify to --

25 Q. So you had an idea of why you were put on administrative

- 1 leave?
- 2 A. Oh, yes.
- 3 Q. Okay.
- 4 A. But I didn't know exactly what he had said.
- 5 Q. I understand. When you got out to Jess Harris Road, I
- 6 believe your testimony is you saw the van and then three marked
- 7 units go by. Is that right?
- 8 A. Yes.
- 9 Q. They were all moving pretty quick?
- 10 A. Yes, sir.
- 11 Q. You saw their emergency lights on, correct?
- 12 A. I'm going to say I saw one of them, but I cannot specify
- 13 which truck had the lights on.
- 14 Q. So, of the three marked units following the van, at least
- 15 one had emergency lights on, but you don't know who?
- 16 A. I don't know which one.
- 17 Q. Do you know even the order that they were traveling, who
- 18 those units belonged to?
- 19 A. Not really.
- 20 Q. Okay. How long would you estimate you arrived at the ditch
- 21 behind those vehicles, from -- they're already there when you
- 22 get there. How long did it take you to arrive there?
- 23 A. About a minute, minute and a half. I don't know.
- 24 Q. Okay. A minute and a half would be the outside, a minute
- 25 is the close side?

- 1 A. Right.
- 2 Q. Could have been sooner or later; you're not really sure?
- 3 A. I'm not really sure.
- 4 Q. When you get there, there's nobody in their vehicles.
- 5 Everybody is outside their vehicles, correct?
- 6 A. That's correct.
- 7 Q. The driver's side door of the van that everybody had been
- 8 following is open, correct?
- 9 A. That's correct.
- 10 Q. And standing near that van are Agents Juarez and Vasquez,
- 11 right?
- 12 A. Right.
- 13 Q. Are they nearer the driver's side or the passenger side?
- 14 A. They're nearest to the driver's side.
- 15 Q. And they are -- you can see them both?
- 16 A. Yes.
- 17 Q. They're not down in the drainage ditch, the Sierra Delta,
- 18 or whatever it's called?
- 19 A. Yeah. No. No, they were on the --
- 20 Q. So they were up on the bank?
- 21 A. On the bank, yes.
- 22 Q. Parked, I guess partly in the ditch, is the van, right?
- 23 A. Uh-huh.
- 24 Q. Is that a yes?
- 25 A. Yes.

1 Q. Okay. Behind the van, do you know whose vehicle is parked
2 immediately behind it?

3 A. I would have to see a map or a picture.

4 But there were two vehicles to the side of the van,
5 and then -- actually, two on each side of the van, one behind
6 the van, and then me.

7 Q. So you have the van, and there's a vehicle on the right
8 side of it, one on the left side of it, and one behind it, kind
9 of surrounding it?

10 A. Right.

11 Q. And then you parked directly behind the vehicle behind the
12 van?

13 A. Uh-huh.

14 Q. Is there a vehicle parked on the west side of Jess Harris
15 Road, along the edge there?

16 A. Could be. I don't remember.

17 Q. Okay. The only people you see when you arrive are Agents
18 Vasquez and Juarez, right?

19 A. Right.

20 Q. You approach the van. Is that correct?

21 A. Uh-huh.

22 Q. Do all three of you look in that van at the same time?

23 A. I think so. I really -- I don't recall that. I know I
24 did. And I was looking for maybe a radio or something that the
25 driver might have left behind.

- 1 Q. Sure. And so when you look in the van, you look around,
2 and you see marijuana in the back, right?
- 3 A. Yes.
- 4 Q. You don't have any doubts that's what it was, do you?
- 5 A. Not at all.
- 6 Q. You could smell it?
- 7 A. Yes, sir.
- 8 Q. Okay. You don't see Agents Juarez and Vasquez doing
9 anything except staying there, right?
- 10 A. Right.
- 11 Q. They're both junior agents, I guess, for lack of a better
12 term, right?
- 13 A. Yeah. They got less time than I do.
- 14 Q. Certainly. And, on the day of this seizure, February 17,
15 2005, you had about five years in the Border Patrol. Is that
16 right?
- 17 A. Approximately.
- 18 Q. You were then, and I guess still are, classified as a
19 senior Border Patrol agent?
- 20 A. Yes.
- 21 Q. Okay. Neither of them were at that time?
- 22 A. I believe -- no.
- 23 Q. Okay. At some point, while you're standing near the van, I
24 think your testimony was Agent Vasquez tells you, There's a
25 shotgun on the levee. Is that right?

- 1 A. That's correct.
- 2 Q. And you took a look over there. And you don't see
- 3 anything, right?
- 4 A. I didn't see anything.
- 5 Q. Okay. When he said that, you were looking over there to
- 6 see if you could see a shotgun, right?
- 7 A. Right. I took a glimpse.
- 8 Q. Right. And nothing?
- 9 A. No.
- 10 Q. Not important to you at that moment?
- 11 A. At that moment, not at all.
- 12 Q. Okay. Everybody was a little bit wired up that you got the
- 13 dope, right?
- 14 A. I was.
- 15 Q. Okay. You -- when you're looking towards the shotgun and
- 16 the levee and across the road, you see a Border Patrol vehicle
- 17 over there, right?
- 18 A. Yes, sir.
- 19 Q. You believe that to be Agent Compean's vehicle?
- 20 A. Uh-huh. Yes.
- 21 Q. Based on what you knew of his position, right?
- 22 A. Right. Correct.
- 23 Q. Okay. You don't see Agent Compean or even Agent Ramos or
- 24 even the driver of the van, for that matter, do you?
- 25 A. Not at all.

1 Q. Okay. And that's because the levee, from your position, is
2 raised up, right?

3 A. It is. It's not level.

4 Q. And then there's a vehicle there, and then the levee comes
5 down the other side, and then there's the vega and the river,
6 right?

7 A. Correct.

8 Q. It's difficult to see anything on the other side of the
9 levee, from that position, lower than the levee, right?

10 A. It's impossible.

11 Q. Okay. And if you're down in the Sierra -- the ditch, it's
12 even harder to see over the levee. Is that right?

13 A. Right. Of course.

14 Q. Okay.

15 MR. ANTCLIFF: May I have a moment, Your Honor?

16 THE COURT: Sure.

17 MR. ANTCLIFF: I'll pass the witness, Your Honor.

18 THE COURT: All right. Mr. Gonzalez?

19 MR. GONZALEZ: Yes, Your Honor.

20 May I approach the witness, Your Honor?

21 THE COURT: You may.

22 REDIRECT EXAMINATION

23 BY MR. GONZALEZ:

24 Q. Agent Mendoza, I'm handing you two exhibits. First of all,
25 Government's Exhibit 30. Do you recognize what's shown on top

1 of that exhibit?

2 A. Yes. That would be T.J. Crossing.

3 Q. What's T.J. Crossing?

4 A. Well, that's the name we have for this particular area.

5 It's just south of Jess Harris --

6 Q. Okay.

7 A. -- and the road.

8 Q. We also have a similar photograph, Government's Exhibit
9 Number 31. Does that show, also, that Jess Harris Road area
10 where this incident took place?

11 A. Yes, sir.

12 Q. And, at the bottom of these two photographs, is there a
13 scale of what the topography looks like at those locations?

14 A. It looks about right.

15 Q. You didn't take these measurements, did you?

16 A. No, sir.

17 Q. Because you're not with the evidence response team, are
18 you?

19 A. No, sir.

20 MR. GONZALEZ: Your Honor, at this time we would offer
21 Government's Exhibit Numbers 30 and 31, and tender them to
22 defense counsel for any objections.

23 THE COURT: Any objection?

24 MR. ANTCLIFF: No objection, Your Honor.

25 MR. PETERS: No objection.

1 THE COURT: 30 and 31 will be admitted.

2 BY MR. GONZALEZ:

3 Q. Do you see that dotted yellow line at the top, sir?

4 A. Yes, sir, I do.

5 Q. I believe that dotted yellow line up here is a
6 representation of what's shown down here. Do you see that, at
7 the bottom of the photograph?

8 A. Yes, sir.

9 Q. This line is approximately the line -- the dotted yellow
10 line, correct?

11 A. Yes, sir.

12 Q. Now, I think Mr. Antcliff asked you where you were standing
13 when you looked across the levee. Is this the approximate area
14 where I'm pointing (indicating) where it says, Canal Road? I
15 think that's Canal Road. Is that approximately where you were
16 standing?

17 A. Yes, sir, more or less. That's where the van was.

18 Q. All right. And when you look across, this is where the
19 levee road is, where I'm pointing (indicating) now, where it
20 says Levee Road?

21 A. Yes, sir.

22 Q. This is the ditch, and it goes down approximately 11 feet.
23 From here to there (indicating) it's 11 feet, right? From the
24 top of the ditch to the bottom is 11 feet, from there to there
25 (indicating). Do you see that?

1 A. Yes, I see it.

2 Q. Let me show you another photograph. Maybe that will help
3 you.

4 I'm going to hand you Government's Exhibit 31. It's a
5 little different. It's from a different angle, but maybe that
6 will help you orient yourself to what I'm talking about.

7 So, Agent Mendoza, as you're standing here
8 (indicating) and you look across the levee, there's a slope
9 there, correct?

10 A. Yes, sir.

11 Q. And it goes up, and goes up approximately ten feet. Is
12 that true?

13 A. That's about right.

14 Q. Okay. So you can't see past the levee road. Is that true?

15 A. No.

16 Q. Okay. Because the levee road goes -- slope goes up to the
17 road, across, and then back down the slope and across to the --
18 on the vega, correct?

19 A. That's correct.

20 Q. So anything past this area on the levee road you could not
21 see from where you were standing?

22 A. That's correct.

23 Q. Now, at any point in time, do you see Agents Ramos and
24 Compean approach the -- this area, the north slope of the
25 levee -- of the levee road?

- 1 A. Yes, I did.
- 2 Q. And when you see them, are they coming across the vega, or
3 are they already over the levee road?
- 4 A. No, they're walking towards the vega, coming from the --
5 they're walking towards the levee, coming from the vega.
- 6 Q. Why don't you point out where -- the direction of travel
7 that you saw them take?
- 8 A. When I saw them, they were coming from the vega, and I saw
9 them walking up this slope (indicating). This is when I first
10 had visual of them.
- 11 Q. Speak up.
- 12 A. Okay. That's when I had the first visual, when they walked
13 up the slope, and I saw them right next to Compean's vehicle.
- 14 Q. Okay. And so the slope is about ten foot tall. So neither
15 Agent Ramos or Compean are ten foot tall, correct?
- 16 A. No, correct.
- 17 Q. And so you see them as they're going up the slope. Is that
18 when you first see them?
- 19 A. Yes, sir.
- 20 Q. And what did you see? Do you see their heads? What do you
21 see first?
- 22 A. Well, I see Nacho drenched from the waist down --
- 23 Q. But first you saw his head, before you see the bottom part
24 of his body?
- 25 A. Yes.

1 Q. Okay. And as he's coming, he's coming together with
2 Compean?

3 A. Yes, sir.

4 Q. And are they walking with one another, going towards the
5 levee road?

6 A. Yes, they were pretty -- fairly close to each other.

7 Q. Within talking distance. Is that true?

8 A. Yes.

9 Q. Okay. And they go over the levee. Is that correct?

10 A. That's correct.

11 Q. That's when you noticed that -- what's wrong with Agent
12 Ramos's clothing?

13 A. That's when I noticed. And then Mr. Compean was dusting
14 himself off.

15 Q. Okay. Thank you.

16 And, earlier, you testified you don't know what
17 immunity means. Is that correct?

18 A. That's correct.

19 Q. And now you understand that you were placed on
20 administrative duty because of an allegation that Agent Compean
21 made against you. Is that true?

22 A. That's correct.

23 Q. One last thing. Who gets the credit for the load seizure?

24 A. Well, it would have been Agent Compean. Well, technically,
25 nobody gets credit, because we hand over the seizure to DEA

1 or --

2 Q. But amongst the agents, who takes the credit?

3 A. It would have been Agent Compean.

4 Q. Because he wrote the I-44?

5 A. I believe he did.

6 Q. And that gives people bragging rights at the station,
7 right?

8 A. To some extent.

9 Q. Thank you.

10 MR. GONZALEZ: May I approach the witness, Your Honor?

11 THE COURT: Yes, you may.

12 MR. GONZALEZ: We'll pass the witness, Your Honor.

13 THE COURT: All right.

14 Mr. Peters?

15 RECROSS-EXAMINATION

16 BY MR. PETERS:

17 Q. Agent Mendoza, you're aware that the Border Patrol keeps
18 statistics on seizures of drugs?

19 A. I'm assuming they do, yes.

20 Q. And they keep these statistics, at least the ones that were
21 provided to us, contained indications of who the officers were
22 who made the seizures, right?

23 A. Correct.

24 Q. And if they're keeping these, I think it would be fair to
25 assume that the Border Patrol itself is keeping track of which

1 agents are involved in which seizures, right?

2 A. Yes.

3 Q. And that goes into your permanent record, doesn't it?

4 A. Yes.

5 Q. And, in your opinion, does that count as a plus or a minus
6 in your career, to have been involved in a large marijuana
7 seizure?

8 A. I don't think it really matters. I don't think it really
9 matters, to tell you the truth.

10 Q. But you don't know why --

11 A. It wouldn't help you to advance within the Border Patrol.

12 Q. For example, the seizure on February 17, 2005, according to
13 some documents the Government gave us, Mr. Compean, Agent --

14 MR. GONZALEZ: Objection, Your Honor. Unless this
15 witness authored these reports, I don't think he has any
16 knowledge, and I would object to them being read into evidence
17 or being asked about.

18 MR. PETERS: They -- they are the ones who asked him
19 about the effects of these seizures, and I want to know why he
20 thinks that the Government provided us with information naming
21 him and three other agents as being responsible for this
22 seizure.

23 THE COURT: Could the attorneys approach?

24 (Bench conference:)

25 THE COURT: Okay. This is a new one on me. You're

1 saying you have documents relating to this seizure?

2 MR. PETERS: I have a list of all seizures,
3 supposedly, from January '04 to March 9th, '05. And the one
4 that was on February 17th -- this is a copy -- but it shows
5 Ramos, Mendoza, and Juarez as being responsible for the
6 seizure, for this particular seizure.

7 THE COURT: Okay. Well, then, his name is on it.

8 MR. GONZALEZ: Yes, Your Honor, but he did not prepare
9 this report. He's never seen this report. He knows nothing.

10 MR. PETERS: I'm not asking what's on here. I'm
11 asking him -- I'm asking him what his opinion is and why they
12 would keep such a record if, as the Government is trying to
13 imply, there's no benefit to the agents in -- to their careers.

14 MR. GONZALEZ: I'm not implying. The witness
15 testified there is no benefit. However, they're asking him to
16 speculate as to why this is kept. If they want to ask, they
17 can ask Richards or Arnold.

18 MR. PETERS: We will. But I want to ask him right
19 now.

20 THE COURT: Well, okay. Here is my -- concern is, I
21 want to know if he's ever seen this report. If he's never seen
22 this report, you need to stop asking questions about it. If he
23 has, that's a different story.

24 MR. PETERS: I surmise this issue is made up for this
25 trial.

1 MR. GONZALEZ: This was prepared by Christopher
2 Sanchez.

3 THE COURT: Again, if he has never seen this report,
4 this is a trial report, then I don't know what relevance it has
5 unless he knows something about it.

6 MR. PETERS: What I want to ask is if he's aware that
7 the Government keeps statistics, which he -- which relates
8 seizures to particular agents. That's really --

9 MS. KANOF: You mean Border Patrol?

10 THE COURT: He's answered that, that, yes, they do.
11 But I don't have a problem with that question. I have a
12 problem with this particular chart, if he doesn't have a clue
13 what this is. Because if --

14 MR. PETERS: I also would like to ask him if he's
15 aware that credit for the seizure was given to four agents,
16 including him and the two agents --

17 MS. KANOF: What does credit mean? Chris Sanchez, who
18 is not a Border Patrol employee, created that document.

19 THE COURT: I don't know where the document came from.
20 But if his -- if Mendoza's name is on it, if he's aware of
21 it -- and if you're going to talk, you need to talk into this
22 microphone. Okay?

23 MR. PETERS: Can I just ask one question?

24 THE COURT: As I said, you know where I want you to
25 go. Thank you.

1 (End of bench conference; open court.)

2 BY MR. PETERS:

3 Q. Agent Mendoza, have you ever seen a document giving you,
4 Agent Compean, Agent Ramos, and Agent Juarez joint credit for
5 the seizure on February 17th?

6 A. A document giving me credit?

7 Q. Yes, sir.

8 A. No, sir.

9 Q. Okay.

10 MR. PETERS: Pass the witness.

11 THE COURT: Go ahead, Mr. Antcliff.

12 MR. ANTCLIFF: Thanks, Judge.

13 RECCROSS-EXAMINATION

14 BY MR. ANTCLIFF:

15 Q. Sir, I'm going to show you again on the big screen here
16 what's been marked as Government's Exhibit 31.

17 Can you see that?

18 A. Yes, sir.

19 Q. Is it your testimony that the first time you saw Agents
20 Compean and Ramos coming back toward the levee, they were on
21 the slope of the levee or on the top?

22 A. Well, they had to come up, you know, walking the slope.

23 Q. Well, certainly they did. They couldn't magically appear
24 on top. I get that.

25 You see them the first time, isn't it true, when

1 they're already on top of the levee?

2 A. Yes.

3 Q. And that's when you noticed Agent Ramos had water and mud
4 or whatever on his pants, correct?

5 A. No, because Ramos came back and went across. That's when
6 I --

7 Q. Sure. So the first time you noticed that he had mud and
8 whatever he had on his pant legs, he was already back across
9 the ditch. Is that right?

10 A. Uh-huh. Yes, sir.

11 Q. And, in order to get from where his vehicle was parked to
12 the levee, he had to cross the ditch, right?

13 A. Right.

14 Q. Okay. Agent Compean never crossed back over the ditch
15 while you were out at that scene on February 17th, right?

16 A. Right, he didn't.

17 Q. Was anybody else on the top of the levee when you first see
18 Ramos and Compean?

19 A. At that particular time, when they were coming up on the
20 levee?

21 Q. Well, I thought we had just established the first time you
22 saw them they were on the levee. Did you see them coming up
23 the levee?

24 A. I saw them come up the levee, yes.

25 Q. That's what I'm asking you.

1 So this area right here (indicating) on the left side
2 of the -- or the right side of the photograph is the vega. Is
3 that right?

4 A. That's correct.

5 Q. Back over here farther south somewhere is the river,
6 correct?

7 A. Yeah. You can see the river right there (indicating).

8 Q. Okay. And it runs off of this little diagram, right?

9 A. Correct.

10 Q. You don't see Agents Ramos and Compean when they're on the
11 vega, correct?

12 A. Correct.

13 Q. Okay. So you see them first when they're walking up the
14 vega -- I mean the levee, correct?

15 A. Correct.

16 Q. And you said that they were within speaking distance of one
17 another. Is that unusual?

18 A. It's not unusual at all.

19 Q. You did not see them talking, you just saw them walking?

20 A. Right. I did not see them talking.

21 Q. Then they separated and crossed back -- Agent Ramos crossed
22 back to the north side of the ditch, correct?

23 A. Correct.

24 Q. Okay.

25 MR. ANTCLIFF: Thanks, Ken.

1 Pass the witness.

2 THE COURT: Mr. Gonzalez, anything further?

3 REDIRECT EXAMINATION

4 BY MR. GONZALEZ:

5 Q. When you see Agent Compean coming up the levee -- up the
6 slope of the levee and over the levee, do you see him reaching
7 over picking up anything?

8 A. No, sir.

9 Q. Thank you.

10 MR. GONZALEZ: Pass the witness, Your Honor.

11 MR. PETERS: Nothing further, Your Honor.

12 MR. ANTCLIFF: I don't have anymore questions, Judge.

13 THE COURT: All right. May this witness step down?

14 MR. GONZALEZ: Yes, Your Honor.

15 THE COURT: Is he free to go? Is he excused?

16 MR. GONZALEZ: Yes, Your Honor.

17 MR. PETERS: It's okay with us, Judge.

18 MR. ANTCLIFF: Yes, Your Honor.

19 THE COURT: All right. Thank you. You're free to go.

20 It's about -- rather than start another witness, it's
21 real close to 10:30, so let's go ahead and take a 15-minute
22 break.

23 The Court stands in recess for 15 minutes.

24 (Open court, parties present, jury not present.)

25 THE COURT: You may be seated.

1 Anything we need to take up before we stand on break?

2 MS. RAMIREZ: No, Your Honor.

3 MS. STILLINGER: No, Your Honor.

4 MR. GONZALEZ: No, Your Honor.

5 MR. ANTCLIFF: No Your Honor.

6 THE COURT: All right. We stand in recess for 15
7 minutes.

8 (Recess; open court, parties present, jury not
9 present.)

10 THE COURT: You may be seated.

11 Ready to call the next witness?

12 MR. GONZALEZ: Yes, Your Honor.

13 THE COURT: All right.

14 MR. GONZALEZ: The Government calls David Jacquez.

15 THE BAILIFF: Do you want him in before the jury?

16 You might as well. He can at least start coming in.

17 You can get Mr. Jacquez, so he can start coming in, and then
18 bring the jury.

19 (Open court, parties and jury present.)

20 THE COURT: You may be seated, ladies and gentlemen.

21 Mr. Gonzalez, you may call your next witness.

22 MR. GONZALEZ: Yes, Your Honor. The Government calls
23 David Jacquez to the stand.

24 THE COURT: You've been sworn in?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: You may proceed, Mr. Gonzalez.

2 DAVID JACQUEZ, GOVERNMENT'S WITNESS, SWORN

3 DIRECT EXAMINATION

4 BY MR. GONZALEZ:

5 Q. Sir, would you please state your full name for the record?

6 A. David Jacquez.

7 Q. Who are you employed by and what do you do for them?

8 A. U.S. Border Patrol. And I work as an agent out in Fabens,
9 Texas.

10 Q. How long have you been with the USBP?

11 A. About three years now.

12 Q. And, currently, what are your duties and responsibilities?

13 A. Right now I'm in parts in the garage at Sector.

14 Q. You're on administrative duties?

15 A. Yes, sir, admin.

16 Q. Why is that, sir?

17 A. Pending the investigation.

18 Q. All right. And, in fact, back sometime last year in March,
19 were you approached by an agent of the Government and did you
20 ask for a letter of immunity before you would talk to the
21 Government?

22 A. My lawyer did.

23 Q. Okay. And did you get a letter of immunity?

24 A. Yes, sir, I got a proffer letter.

25 Q. And you are immunized as a result of that request, correct?

1 A. Yes.

2 Q. And when did you first give Agent Chris Sanchez a statement
3 as to what occurred on February 17, 2005?

4 A. What date, sir?

5 Q. Yes. If you know?

6 A. I don't remember.

7 Q. And how many statements have you given to Agent Sanchez?

8 A. Two, sir.

9 Q. And were these two statements different?

10 A. Yes, sir.

11 Q. How were they different?

12 A. On the first one I omitted the fact that Compean had told
13 me about the shooting.

14 Q. And when you say "Compean", who are you referring to, sir?

15 A. Jose Compean.

16 Q. Do you see Jose Compean in the courtroom, this morning?

17 A. Yes, sir.

18 Q. Could you please describe what he's wearing for the Court
19 and the record?

20 A. Tan suit with a blue shirt.

21 Q. Thank you.

22 MR. GONZALEZ: May the record reflect that the witness
23 identified the defendant, Jose Compean.

24 THE COURT: It will so reflect.

25

1 BY MR. GONZALEZ:

2 Q. And, by the way, is Ignacio Ramos in the courtroom this
3 morning as well.

4 A. Yes, sir.

5 Q. Could you describe what he's wearing?

6 A. He's wearing a darker brown suit with a yellowish shirt.

7 MR. GONZALEZ: Your Honor, may the record reflect that
8 the witness identified the defendant, Ignacio Ramos?

9 THE COURT: It will so reflect.

10 BY MR. GONZALEZ:

11 Q. So you left what out between the first statement and the
12 second statement?

13 A. The fact that Compean had told me about the shooting
14 itself.

15 Q. Why did you do that?

16 A. I -- don't know. It was just something that I did on my
17 own.

18 Q. I realize that, sir. Why?

19 A. I didn't want to be associated to the shooting.

20 Q. Was Agent Compean a friend of yours?

21 A. He was my FTO.

22 Q. What's an FTO?

23 A. He was my Field Training Officer when I first got there.

24 Q. What did he teach you?

25 A. How to process, catch aliens.

1 Q. Process, catch aliens, and what else?

2 A. How to arrest them. Pretty much the basic work of a Border
3 Patrol agent.

4 Q. And, as a result of that, did you form some kind of
5 allegiance to him?

6 A. Not allegiance.

7 Q. Why don't you tell us about what you did?

8 A. I don't know, sir. It was me.

9 Q. Okay. Then let's go back to February 17, 2005. At about
10 1:11 in the afternoon, where are you?

11 A. I'm on the east end of the Fabens Port of Entry.

12 Q. And when you say the east end, is that near -- I'm sorry.
13 Fabens Port of Entry?

14 A. Yes.

15 MR. GONZALEZ: Approach the witness, Your Honor?

16 THE COURT: You may.

17 BY MR. GONZALEZ:

18 Q. I'm showing you what's been marked as Government's Exhibit
19 Number 27, which is in evidence. Do you recognize what it
20 shows, sir?

21 A. Is this the port of entry, here?

22 Q. You may tell me. Tell us if you recognize it or not.

23 A. Not off the bat, sir. I believe that's the Fabens Port of
24 Entry here.

25 Q. So if it had been the Fabens Port of Entry, where were you

- 1 in relation to that?
- 2 A. Further east, out this way.
- 3 Q. Okay. And why don't you go ahead and tell the jury where
- 4 you were when you received the call.
- 5 A. I was further east, on that area.
- 6 Q. Okay. And where is the Fabens Port of Entry, do you
- 7 believe?
- 8 A. Right here.
- 9 Q. And that road that's across from the building that you just
- 10 pointed to, what road is that, sir?
- 11 A. 1109, if I'm not mistaken.
- 12 Q. 1109, what's that?
- 13 A. Farm road.
- 14 Q. And the one that comes this way over here, I guess, would
- 15 be Lower Island Road? Is Mexico on this map? On what part of
- 16 the exhibit, the left or right?
- 17 A. On the right, behind the port.
- 18 Q. Behind the port?
- 19 A. Uh-huh.
- 20 Q. And so where you're pointing to, that's the Rio Grande?
- 21 A. Right.
- 22 Q. All right. Thank you. So you were patrolling east of that
- 23 location. Is that true?
- 24 A. Yes, sir.
- 25 Q. And when you received the call what did you do?

- 1 A. Oh, I heard Agent Compean call over the radio that he had a
2 van leaving the 76 area, and that he had lost sight of it.
- 3 Q. What did you do in response to that?
- 4 A. At that point I didn't do anything.
- 5 Q. What do you mean?
- 6 A. I had just stayed in my zone.
- 7 Q. Why didn't you move or respond?
- 8 A. Because at that time it wasn't -- I wasn't called for
9 backup. There were already other agents over there.
- 10 Q. What do you mean, you weren't call for backup? What does
11 that mean?
- 12 A. It was a place where I felt I responded to. I was the
13 furthest man east.
- 14 Q. Okay.
- 15 A. And there was, I guess, three to four agents between that
16 location.
- 17 Q. And you knew these other agents were already responding?
- 18 A. No, sir, I didn't.
- 19 Q. Why didn't you respond?
- 20 A. I didn't. I didn't feel I had a duty to respond.
- 21 Q. What?
- 22 A. I didn't feel I needed to respond at this point.
- 23 Q. Okay. And did that opinion change at some point in time?
- 24 A. Yes, sir.
- 25 Q. How much time has lapsed when you finally decided to

1 respond?

2 A. Approximately, five minutes or so.

3 Q. And so how do you respond? When you do, what roads do you

4 take?

5 A. I take the levee west, I get off at the Fabens Port of

6 Entry, I take Lower Island to Wingo Reserve, to Jess Harris.

7 Q. And so how long does it take you to travel from where you

8 were to the Jess Harris intersection?

9 A. Couple minutes. I don't know.

10 Q. Is that all?

11 A. Yeah.

12 Q. Okay. And when you arrive at that location, what do you

13 see? What's going on?

14 A. When I arrived, I saw all the vehicles parked, and I see

15 Joe Mendoza, Oscar Juarez and Vasquez outside the van.

16 Q. What are they doing?

17 A. Nothing, just sitting -- well, standing around next to it.

18 Q. Were they sitting there?

19 A. No, they were standing.

20 Q. And is there anything unusual about their behavior?

21 A. No.

22 Q. Are they acting excited, anything like that?

23 A. No, sir.

24 Q. And when you arrived, does anyone say, "Hey, there's a

25 gun," "There's a shooter," anything like that?

1 A. No, sir.

2 Q. So what do you do?

3 A. I parked my vehicle and I walked up next to them, started
4 talking about the dope seizure.

5 Q. Okay. And talking about the dope seizure, does anyone talk
6 about what's going on on the other side of the ditch?

7 A. No, sir.

8 Q. Is anyone concerned about Agent Ramos or Agent Compean?

9 A. No, sir.

10 Q. At some point in time, do you see Agent Compean and Ramos
11 return over the levee road?

12 A. Yes.

13 Q. Do you see them?

14 A. I see them after Lorenzo and Rene Mendez show up.

15 Q. But do you actually see --

16 A. They were walking up.

17 Q. All right.

18 MR. GONZALEZ: Approach the witness, Your Honor?

19 THE COURT: You may.

20 BY MR. GONZALEZ:

21 Q. Do you recognize what's shown in Government's Exhibit 31,
22 which has been introduced into evidence?

23 A. Yes, it is the ditch. Yes, this is the ditch where the
24 vehicles were at.

25 Q. Okay. And do you see the area in this photograph where you

1 say Agents Compean and Ramos were approaching the levee road?

2 A. Yes, right here.

3 Q. I'm going to put this on the overhead and have you indicate
4 to the jury where you saw them.

5 A. Coming from right here going on top of the levee. So you
6 see their heads as they come over the horizon on the levee
7 road.

8 MR. ANTCLIFF: Objection, leading.

9 THE COURT: I'll sustain.

10 BY MR. GONZALEZ:

11 Q. Tell us how you see them.

12 A. I saw them walking up on top of the levee. Where Compean's
13 vehicle was.

14 Q. Are they close? Describe their distance to each other.

15 A. Pretty close. One after the other. Not side by side.

16 Q. How close to one another, would you say?

17 A. A couple of -- say three people behind. If you were just
18 about three people -- lengths, I guess.

19 Q. The width of three people?

20 A. Yes, yes.

21 Q. Four, five feet?

22 A. Yeah, something like that.

23 Q. Okay. They come over the levee road. What do they do
24 next?

25 A. They start talking to Lorenzo.

- 1 Q. Okay. I'm sorry, before they get to the levee road, do you
2 see Agent Compean reach over for anything?
- 3 A. No, sir.
- 4 Q. I'm sorry. They go across and do what?
- 5 A. They start speaking with Agent Lorenzo Yrigoyen.
- 6 Q. Where is he at that point?
- 7 A. He's parked right next to Agent Compean's vehicle.
- 8 Q. Okay. How long did they talk, approximately?
- 9 A. Couple minutes as well.
- 10 Q. Okay. And what are you doing in the meantime?
- 11 A. I'm still talking to the other three agents that were
12 there. And then FOS Richards shows up.
- 13 Q. And once Richards showed up, what, do Compean and Ramos
14 stay where they were?
- 15 A. At that point, yes.
- 16 Q. Then what?
- 17 A. FOS Richards gets us all together and starts discussing the
18 seizure. And at that point, Agent Ramos came across through
19 the irrigation ditch.
- 20 Q. And did you notice anything unusual about him, the way he
21 looked that afternoon?
- 22 A. He was just breathing hard. We started teasing him about
23 him being out of shape.
- 24 Q. Okay. And did FOS Richards ask anything?
- 25 A. No, he was just starting telling us about the seizure. And

1 then Agent Ramos is the one that told him that he went after
2 the driver of the van, and that the driver and Agent Compean
3 had --

4 Q. Wait. Sorry. Ramos told who?

5 A. Richards.

6 Q. Told him what?

7 A. That he went after the driver of the van.

8 Q. Okay. That Ramos went after the driver of the van?

9 A. Yes.

10 Q. And that the driver of the van got into some kind of
11 physical altercation with Agent Compean?

12 A. And that Compean's cut and was bleeding.

13 Q. You're saying he told Richards that Compean had a physical
14 altercation?

15 A. Yes.

16 Q. And that he was bleeding, correct?

17 A. Yes.

18 Q. Did you see Agent Compean? Was he bleeding?

19 A. I couldn't see him at that time, no.

20 Q. Well, you saw him later in the afternoon?

21 A. Yes.

22 Q. How bad were his injuries, if any?

23 A. He had a cut between his thumb and index finger.

24 Q. Any other injuries?

25 A. Not that I saw, no.

- 1 Q. Okay. So what did -- what did Richards say after Ramos had
2 told him about the assault?
- 3 A. He just asked if Compean was okay. Ramos responded by
4 saying he was, and asked him if he needed to fill out a CA-1.
- 5 Q. What?
- 6 A. CA-1.
- 7 Q. Is that CA-1, Notice of Traumatic --
- 8 A. Notice of Traumatic Injury and Compensation of Pay.
- 9 Q. He asked who, Ramos?
- 10 A. He asked Ramos.
- 11 Q. And what did Ramos say?
- 12 A. That, I don't remember.
- 13 Q. Okay. What else is discussed there at the scene?
- 14 A. Not much. Agent Robert Arnold showed up, and Lance
15 Medrano, and we were told to put up the dope into the vehicles
16 and take it back to the station.
- 17 Q. Do you do anything else there?
- 18 A. No.
- 19 Q. Okay. And there at the scene, do you know, does anyone
20 talk about a shooting?
- 21 A. No, sir, no.
- 22 Q. When is the first time you hear about the shooting?
- 23 A. When I get back to the station.
- 24 Q. Tell us about that. What happens?
- 25 A. I start fueling up at the station and Art Vasquez comes.

- 1 Q. Start fueling what up?
- 2 A. Fueling up?
- 3 Q. Yes.
- 4 A. At that time, at the gas pump.
- 5 Q. Who comes up to you?
- 6 A. Vasquez.
- 7 Q. What does he say?
- 8 A. Tells me there were shots at the scene, and that Compean
- 9 had shot him.
- 10 Q. And does Vasquez tell you he picked up the casings?
- 11 A. No.
- 12 Q. Who had shot him?
- 13 A. Compean.
- 14 Q. Okay. What else do you-all discuss?
- 15 A. That's it. After that, I parked my vehicle and I went
- 16 inside.
- 17 Q. And who is inside when you go in there?
- 18 A. I went into the processing area and I spoke with Agent
- 19 Compean and I asked him what had happened.
- 20 Q. Why?
- 21 A. Just.
- 22 Q. Why did you go ask him?
- 23 A. Just to ask from what Vasquez had told me.
- 24 Q. Did you feel he was going to tell you what happened?
- 25 A. I didn't know. I just asked him.

- 1 Q. Is he a friend of yours, again?
- 2 A. He's an acquaintance from work, yes.
- 3 Q. You felt comfortable in asking him, correct?
- 4 A. Yes.
- 5 Q. Did he tell you?
- 6 A. Yes.
- 7 Q. What did he say?
- 8 A. He told me that he lost the van. He saw a van leaving the
9 76 area, lost sight of it. And then, when it started going
10 southbound, he stayed on the levee to stop the driver from
11 making it back to Mexico.
- 12 Q. And then what happened?
- 13 A. He said when the driver got down into the drainage ditch,
14 that he told the driver to stop and the driver never stopped.
15 And that he tried to hit him with the shotgun.
- 16 Q. And what happened after he tried to hit him with the
17 shotgun?
- 18 A. I guess he missed. And he had slipped. And the driver
19 went around him.
- 20 Q. Compean is telling you this?
- 21 A. Yes.
- 22 Q. That he missed and he slipped?
- 23 A. Yes.
- 24 Q. Slipped where? Do you remember?
- 25 A. No. I believe in the drainage ditch.

1 Q. Where?

2 A. In the drainage ditch.

3 Q. And, now, what did Compean say he did next?

4 A. He said that he shot at the driver of the van.

5 Q. And after Compean shot the driver, what did he do? I only
6 want to know what Compean did.

7 A. That's all he told me. He shot at him.

8 Q. Did he go after him? Did he chase him? Did he tell you
9 that?

10 A. No.

11 MR. GONZALEZ: Approach the witness, Your Honor?

12 THE COURT: You may.

13 BY MR. GONZALEZ:

14 Q. I'm showing what I'm marking as Government's Exhibit 98 for
15 identification purposes. Do you recognize this document?

16 A. Yes.

17 Q. What is it?

18 A. It's my first statement.

19 Q. Okay. And that's the statement you gave to who?

20 A. To Chris Sanchez.

21 Q. Let me direct your attention to the third page towards the
22 bottom of this statement. Did agent -- read it first of all.

23 See if that will refresh your memory if that's what Compean did
24 after he shot the driver. I only want to know about what

25 Compean said he did. Okay?

1 MR. ANTCLIFF: Objection to the characterization,
2 Judge. He said "shot the driver," and I think the testimony
3 was "shot at."

4 THE COURT: All right. And do you want to restate?

5 BY MR. GONZALEZ:

6 Q. Yes. He told you he had shot at the driver, correct?

7 A. Yes, that's correct.

8 Q. What's correct?

9 A. That --

10 Q. What did Compean say he did?

11 A. That he chased after the driver.

12 Q. Speak up.

13 A. That he chased after the driver.

14 Q. Look at your statement again and go four paragraphs higher,
15 the paragraph beginning with, Jacquez said that Ramos. That
16 paragraph -- read that paragraph and tell me where that
17 conversation took place.

18 A. That happened --

19 MR. PETERS: Your Honor, I'm going to object. He can
20 have him refresh his memory. He's basically having him read
21 his statement, which I don't think is permissible.

22 THE COURT: I'll sustain the objection.

23 BY MR. GONZALEZ:

24 Q. The conversation that I was referring to, where did it
25 occur?

- 1 A. At the scene.
- 2 Q. Okay. Did you ever ask Agent Compean why he attempted to
3 strike the fleeing driver with a shotgun, as opposed to
4 something else?
- 5 A. Not that I can remember, no -- oh, I asked him if -- if why
6 he didn't use the baton instead of his shotgun.
- 7 Q. Why did you ask him that?
- 8 A. I don't know. Just something that came in my head of how
9 we were trained at the academy.
- 10 Q. How are you trained at the academy?
- 11 A. Just, if somebody -- if you're not in fear of your life,
12 then, if somebody is coming at you, to stop the threat, I would
13 think, since he swung at him with the shotgun instead of
14 shooting it, I just thought the baton would be more convenient
15 to use.
- 16 Q. Okay. During your conversation with Agent Compean, did he
17 ever tell you that he was in fear of his life when he was going
18 to apprehend the fleeing driver?
- 19 A. No, sir.
- 20 Q. Did he ever tell you that he had an altercation or assault
21 with the fleeing driver?
- 22 A. No, sir.
- 23 Q. Did he ever tell you that the fleeing driver jumped on his
24 back?
- 25 A. No, sir.

1 MR. GONZALEZ: May I have a moment, Your Honor?

2 THE COURT: Sure.

3 BY MR. GONZALEZ:

4 Q. Did Agent Compean ever tell you that the fleeing driver had
5 a gun?

6 A. No, sir.

7 Q. Did he ever tell you that he saw a shiny object in the
8 fleeing driver's hand?

9 A. No, sir.

10 MR. GONZALEZ: Pass the witness.

11 THE COURT: All right. Mr. Peters?

12 MR. PETERS: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. PETERS:

15 Q. Agent Jacquez, you and I have never met before, have we?

16 A. No, sir.

17 Q. My name is Stephen Peters, and as the jury probably is
18 getting tired of hearing, I represent Ignacio Ramos.

19 First, went to talk to -- you first went to talk to
20 Agent Sanchez before the date when you gave your statement. Is
21 that correct?

22 A. I went in, and that's when I said I wanted a lawyer.

23 Q. Right, because the first time you went with a union
24 representative, right?

25 A. Yes.

1 Q. Tell me something, what was the -- what was the attitude of
2 the individuals who were interviewing you at that meeting?

3 A. Pretty strong. Just saying that I was at the shooting and
4 things of that nature.

5 Q. Were -- did they threaten you?

6 A. Not then, no.

7 Q. Was there -- was there -- were they rude to you?

8 A. Somewhat.

9 Q. They weren't real friendly?

10 A. No.

11 Q. Okay. And then, after that meeting, after you -- after you
12 had that meeting you went and talked to your attorney, correct?

13 A. Correct.

14 Q. And your attorney arranged for you to receive what you've
15 discussed here today is a proffer letter, right?

16 A. Yes, sir.

17 Q. And what that is, is a letter that says, basically, what
18 you're testifying to here today cannot be used against you in
19 any criminal prosecution, correct?

20 A. Yes, sir.

21 Q. And that was important to you, wasn't it, before you would
22 talk to the Government and come in here and testify, correct?

23 A. Correct.

24 Q. Because did -- did you become aware of any potential
25 charges against yourself?

- 1 A. Later on, yes, sir.
- 2 Q. What were those charges?
- 3 A. False statement, because I omitted the part of Compean
4 telling me about the shooting.
- 5 Q. Anything else?
- 6 A. Just failure to report.
- 7 Q. Did they talk about obstruction of justice.
- 8 A. Who's this?
- 9 Q. Did anyone discuss with you the possibility of ob- --
- 10 A. My lawyer.
- 11 Q. Did he tell you what kind of a punishment you could get for
12 that?
- 13 A. Not that I recall.
- 14 Q. Okay. Now, I also wanted to ask you whether or not you
15 know who Freddie Bonilla is.
- 16 A. He's the investigator for Mr. Ramos, I believe.
- 17 Q. Did he attempt to contact you?
- 18 A. Yes.
- 19 Q. Did you return his calls?
- 20 A. He called me, and I answered the phone call.
- 21 Q. Okay. And did you agree to talk to him?
- 22 A. No.
- 23 Q. Why?
- 24 A. I just -- didn't want to. My personal preference.
- 25 Q. Did anybody ask you not to talk to him?

- 1 A. No, sir.
- 2 Q. This was your choice you made?
- 3 A. Yes, sir.
- 4 Q. And, sir, can you enlighten us as to why this was your
5 personal preference?
- 6 A. Just wanted to keep my statement, I guess, since I already
7 had given it to the prosecutor, just like that.
- 8 Q. Okay. Now, on February 17, 2005, you were out on the river
9 doing your job. Is that correct?
- 10 A. Yes, sir.
- 11 Q. You didn't set out that day to do anything you weren't
12 supposed to do, did you?
- 13 A. No.
- 14 Q. And, in fact, during the course of that day, you didn't
15 intend to do anything that would be violative of either Border
16 Patrol policy or of the law, correct?
- 17 A. Correct.
- 18 Q. Okay. Now, the first radio transmission that you heard was
19 that Agent Compean called out, I believe you said in your
20 statement, a minivan leaving the 76 area, correct?
- 21 A. Correct.
- 22 Q. And the 76 area is known as a crossing point for drugs,
23 right?
- 24 A. Yes.
- 25 Q. And, therefore, you assumed that minivan was probably

1 hauling dope, right?

2 A. Yes.

3 Q. Now you say that he said a minivan. Have you reviewed the
4 transcript of the recorded radio traffic, which was -- which
5 was produced, I believe, by Agent Sanchez?

6 A. Yes.

7 Q. It doesn't say a minivan on that transcript, does it?

8 A. No, sir.

9 Q. Are you sure he said a minivan?

10 A. After the -- I think that's what I heard, sir.

11 Q. Okay. Do you know whether you were on the rim rock
12 channel, whether Compean was on the rim rock channel when he
13 made that statement?

14 A. I believe so.

15 Q. Well, if he was on a rim rock, then it would have been --
16 what he said would have been on that transcript, correct?

17 A. Correct.

18 Q. And if he said minivan and it's not on that transcript,
19 then either he didn't say minivan or he was on another channel,
20 right?

21 A. Right.

22 Q. Because you-all use other channels besides the rim rock
23 channel, correct?

24 A. Correct.

25 Q. And that's authorized, correct?

- 1 A. Correct.
- 2 Q. That's normal, right?
- 3 A. Right.
- 4 Q. Okay. So, a little while later, you heard over the radio
5 that Agent Ramos was on the intersection of Highway 20, which
6 is Alameda Street and Fabens Island Road, correct?
- 7 A. Correct.
- 8 Q. And that's not on the transcript either, right?
- 9 A. Right.
- 10 Q. And Agent Ramos reported that he had the eyeball on the van
11 that Agent Juarez had previously been in front of, correct?
- 12 A. Correct.
- 13 Q. That's not on the transcript?
- 14 A. Correct.
- 15 Q. And then you recalled hearing Agent Ramos state Agent Ramos
16 got behind the van and the van started heading south on Fabens
17 Road, right?
- 18 A. Right.
- 19 Q. And that's not on the transcript?
- 20 A. No, sir.
- 21 Q. All those statements were being made by Agent Ramos,
22 wouldn't you say, on the nonrecorded channel?
- 23 A. Yes.
- 24 Q. Okay. And -- okay. Okay. Now, when you pull up to the
25 ditch where Jess Harris Road "Ts" into, you saw Agent Juarez,

- 1 correct?
- 2 A. Yes.
- 3 Q. And he was just standing around chatting?
- 4 A. Yes, with the other two agents.
- 5 Q. And I believe you said it was like nothing special had
- 6 happened, right?
- 7 A. Right.
- 8 Q. Now, you didn't hear any gunfire yourself, correct?
- 9 A. Correct.
- 10 Q. Would a -- would a -- would you expect a Border Patrol
- 11 agent who had just heard gunfire in connection with an attempt
- 12 to apprehend a fleeing doper, do you think that -- that he
- 13 would react to that in some way?
- 14 A. That, I don't know, sir.
- 15 Q. Would you?
- 16 A. Something like that, probably.
- 17 Q. Okay. And, in fact, if you had been standing there and
- 18 seeing and heard the gunfire as the doper ran away, you would
- 19 have mentioned it to the other agents as they came up?
- 20 A. Yeah, personally, if I would have heard that, I would have
- 21 went into the ditch.
- 22 Q. You would have gone into the ditch?
- 23 A. Right.
- 24 Q. Because, actually -- was -- was Agent Yrigoyen there by the
- 25 time you got there?

- 1 A. He got there shortly after I did.
- 2 Q. Okay. So, at the time when this all happened, the only one
3 on the south side of the ditch was Compean, right?
- 4 A. Correct.
- 5 Q. There was nobody there to back him up?
- 6 A. No.
- 7 Q. Okay. Unless an agent from the north side would run over
8 like Agent Ramos did, to try to help him out, right?
- 9 A. Right.
- 10 Q. And the reason you didn't go down there to where Agent
11 Compean was when you first heard the radio reports was because
12 you thought you were too far away?
- 13 A. Right.
- 14 Q. If you would have been able, you would have gone to there?
- 15 A. Yes.
- 16 Q. And that would be so you could back him up?
- 17 A. Yes.
- 18 Q. And if Agent Juarez saw him over there and saw -- saw him
19 attempting to stop the dooper and he was there by himself, would
20 it have been Border Patrol policy for Agent Juarez to go try to
21 help him?
- 22 A. It would have been logical for him to go back up an agent.
- 23 Q. Because that's what you guys do, you back each other up,
24 right?
- 25 A. Right.

- 1 Q. Okay. But, in any event, when you got down to the ditch
2 that day, nobody mentioned anything about gunfire, right?
- 3 A. Correct.
- 4 Q. What they were talking about that they were excited about
5 was the large dope seizure, right?
- 6 A. Right.
- 7 Q. And did you look in the van?
- 8 A. Yes, sir.
- 9 Q. Did you -- did you stick your head in the van?
- 10 A. Yes, sir.
- 11 Q. Could you smell the marijuana?
- 12 A. Yes, sir.
- 13 Q. It was pretty powerful?
- 14 A. Pretty much.
- 15 Q. Would it have been possible for somebody with a normal
16 sense of smell to be in that van and not smell the marijuana?
- 17 A. You would smell it.
- 18 Q. Okay. Now you said that Agent Ramos and Agent -- you said
19 you saw Agent Ramos walk up to the top of the levee, right?
- 20 A. Right.
- 21 Q. And begin talking to Agent Yrigoyen, right?
- 22 A. Correct.
- 23 Q. And Agent Compean came up a minute later?
- 24 A. No, pretty much at the same time, just a couple steps
25 behind him.

1 Q. They were walking one behind the other, not side by side,
2 right?

3 A. Yeah, like at an angle, like that.

4 Q. All right. Okay.

5 A. Yeah.

6 Q. Okay. And then you said that Agent -- that Field
7 Operations Supervisor Richards then showed up, right?

8 A. Yes, sir.

9 Q. And then Ramos came and started talking to Agent Richards,
10 right?

11 A. Yes, sir.

12 Q. And Ramos told Richards that the dooper had thrown dirt in
13 Compean's face, correct?

14 A. Yes.

15 Q. And you heard him say that, right?

16 A. Yes.

17 Q. And he told Richards that Compean and the dooper got in a
18 physical confrontation, right?

19 A. Yes.

20 Q. And he kept telling -- you mentioned in your statement, as
21 I recall, that he kept referring to this individual who had
22 been driving as the dooper. Is that the term?

23 A. Yes.

24 Q. And he told him that Agent Compean was cut and bleeding,
25 and -- is that right?

- 1 A. Yes, sir.
- 2 Q. All right. And then you said that Richards asked Agent
3 Ramos if Agent Compean needed to fill out a CA-1, right?
- 4 A. Yes, he asked if he needed to fill it out.
- 5 Q. And a CA-1 is something that agents fill out when they have
6 a traumatic injury, right?
- 7 A. Yes.
- 8 Q. They wouldn't fill it out if they just had a scratch,
9 right?
- 10 A. Not typically.
- 11 Q. You mentioned, for example, that -- was it on his right
12 hand?
- 13 A. I believe so.
- 14 Q. Between his thumb and index finger, there was a cut?
- 15 A. Yes.
- 16 Q. That wouldn't be a traumatic injury, would it?
- 17 A. No.
- 18 Q. You are not going to -- normally, you wouldn't expect an
19 agent to request time off or special duty because of an injury
20 of that nature, right?
- 21 A. Unless it had gotten infected or something like that, no.
- 22 Q. Right, no. Right. And you also noticed, I believe you
23 said, that Agent Compean had dirt on his uniform?
- 24 A. Yes.
- 25 Q. And then you talked about Agent Ramos and said he was

1 breathing hard and seemed to be very excited, right?

2 A. Yeah, he was breathing hard, yes.

3 Q. Okay. Now, you had a conversation later on with Agent
4 Ramos, too, didn't you?

5 A. At the scene?

6 Q. No, after you left the scene. After you went back to the
7 station.

8 A. No, sir, not that I can recall.

9 Q. Well, hold on a second.

10 A. I had one with Agent Compean.

11 Q. Well, I knew you had one with Agent Compean. Hold on just
12 a second. Make sure I got the right statement. You did give
13 two different statements, and then a clarification, right?

14 A. Yes, sir.

15 MR. PETERS: May I approach the witness, Your Honor?

16 THE COURT: Yes.

17 BY MR. PETERS:

18 Q. I'm going to hand you what is, I believe, the third page of
19 the original statement you made back in April, right?

20 A. Okay.

21 Q. I'm going to point you to the fourth paragraph from the
22 bottom and ask you to review that.

23 A. That was at the scene.

24 Q. That was at the scene?

25 A. Yes, so that was my mistake.

1 Q. Okay. So Ramos did tell you some -- what happened at the
2 scene -- what had happened between Compean and the dooper,
3 right?

4 A. That, sir.

5 Q. And what is that?

6 A. That he followed the driver back south.

7 Q. Well, he told you that Ramos told you that the driver threw
8 dirt at Compean's face?

9 A. Yes.

10 Q. And if a fleeing alien throws dirt in the face of a Border
11 Patrol agent, in your opinion as a Border Patrol agent, is that
12 an assault on a federal officer?

13 A. Yes.

14 Q. That's a criminal offense, isn't it?

15 A. Yes.

16 Q. A felony?

17 A. Yes.

18 Q. Okay. You didn't feel you were obliged or obligated or
19 legally required to report the shooting once you heard about
20 it, right?

21 A. No, sir.

22 Q. And that was because you didn't actually hear it or see it,
23 right?

24 A. Correct.

25 Q. And that you were kind of the junior man out there, except

- 1 for Juarez, right? He also was more senior to you?
- 2 A. Correct.
- 3 Q. And nobody said anything to you out at the scene?
- 4 A. No.
- 5 Q. And you assumed, in any event, that Agent Richards would
- 6 have been told about it, right?
- 7 A. Yes, sir.
- 8 Q. Because, actually, every officer who was there who heard
- 9 the shooting should have reported it to Richards?
- 10 A. Yes.
- 11 Q. And, in fact, Richards should have heard -- well, okay. It
- 12 wasn't just the person that fires the weapon. It wasn't only
- 13 that person that had the duty to report it, correct?
- 14 A. Correct. People that were there.
- 15 Q. Right. And you also -- later on, you spoke to Agent
- 16 Compean back at the station about this incident, right?
- 17 A. Yes.
- 18 Q. And you were just asked a few minutes ago about the things
- 19 he didn't tell you, like he didn't tell you he was in fear of
- 20 his life or anything like that, right?
- 21 A. Correct.
- 22 Q. You weren't cross-examining him, were you?
- 23 A. No.
- 24 Q. You weren't taking a formal statement from him?
- 25 A. No.

1 Q. You had just had a casual conversation?

2 A. Yes.

3 Q. He told you some of it, right?

4 A. Correct.

5 Q. He didn't tell you every detail?

6 A. Not that I'm aware of.

7 Q. Okay. And you assumed that the shooting had been reported,
8 correct?

9 A. Yes.

10 Q. All right.

11 MR. PETERS: May I have a minute?

12 THE COURT: Sure.

13 MR. PETERS: Or a second?

14 THE COURT: Sure.

15 BY MR. PETERS:

16 Q. The reason you didn't record the shooting officially was
17 not because you were trying to cover anything up, was it?

18 A. No.

19 MR. PETERS: Pass the witness.

20 THE COURT: Go ahead, Mr. Antcliff.

21 MR. ANTCLIFF: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. ANTCLIFF:

24 Q. Good morning, sir.

25 A. Good morning.

1 Q. On February 17, 2005, at that time, you didn't do anything
2 wrong in your opinion. Is that right?

3 A. Correct, sir.

4 Q. Whatever you may have done wrong that you needed immunity
5 for came after that date. Is that right?

6 A. Correct.

7 Q. And, as I understand it, what you did wrong is, you gave a
8 statement in which you did not say that Mr. Compean -- or Agent
9 Compean had told you he shot at somebody. Is that right?

10 A. Correct.

11 Q. Then you corrected that later by giving a statement in
12 which you did say that, correct?

13 A. Correct.

14 Q. Okay. The first statement that you gave after you got your
15 immunity agreement was in April of 2005. Is that right?

16 A. I believe so.

17 Q. Okay. Your lawyer was present when you gave that
18 statement?

19 A. Yes.

20 Q. And, in that statement, you did say that Agent Vasquez had
21 told you about the shooting didn't you?

22 A. Yes.

23 Q. And -- you reported everything that Agent Vasquez had told
24 about the shooting on February 17th, correct?

25 A. Correct.

1 Q. Okay. The second statement that you gave was on September
2 27, 2005. Would that be right?

3 A. I believe so.

4 Q. And present when you gave that statement were Assistant
5 United States Attorneys Debra Kanof and Jose Luis Gonzalez and
6 Agent Sanchez. Is that right?

7 A. Yes.

8 Q. And they told you that your story did not make sense and
9 you had better come clean in order to keep your immunity,
10 right?

11 A. For in -- yes, for me to tell the truth.

12 Q. That worried you, didn't it?

13 A. Yes.

14 Q. Okay. You were aware that you were exposing yourself to
15 jail time if you did not honor the terms of the immunity
16 agreement that you had made, right?

17 A. Yes.

18 Q. And it required you to tell the truth?

19 A. Yes.

20 Q. Would you agree with me that September 27th, if that's
21 date, is about six months after February 17th when this
22 incident occurred?

23 A. Yes.

24 Q. And some of the things that you remembered in that second
25 statement you had not put in the first one, correct?

1 A. Correct.

2 Q. Okay. Border Patrol policy on the discharge of a firearm
3 requires not only the person discharging the firearm to tell,
4 orally report it to a superior, but anybody else who knows
5 about it to report it to a superior. Is that right?

6 A. I believe so, yes, sir.

7 Q. Failure to report that is a violation of Border Patrol
8 policy, right?

9 A. Yes, sir.

10 Q. It carries a potential penalty of maybe a reprimand or a
11 suspension, right?

12 A. Yes.

13 Q. Okay. Later, I guess in September, did you have a
14 conversation with Agent Compean about the shooting, right?

15 A. Yes.

16 Q. And, during the course of that conversation, he never asked
17 you to lie about anything?

18 A. No, sir, he didn't.

19 Q. He just told you what it was you remembered all of a sudden
20 in September, right?

21 A. Yes.

22 Q. Let's talk about what he told you. You know what -- let's
23 back up. I have another question.

24 A. Okay.

25 Q. At the scene, or I guess it's back at the Border Patrol

1 station, you asked Agent Compean about why he didn't use a
2 baton. Is that right?

3 A. That's correct, sir.

4 Q. If you -- an agent exits their Border Patrol vehicle and
5 they have a shotgun in their hands and someone is coming at
6 them do you have time in that moment to get your baton?

7 A. No, sir.

8 Q. You're not going to lay down a shotgun in full view of a
9 suspect, get your baton out, and get ready?

10 A. Correct.

11 Q. You are going to deal with whatever you have at hand to
12 deal with the subject, right?

13 A. Right.

14 Q. Okay. When you get the call that there's a van or a
15 minivan or whatever you remember, leaving the 76 area going
16 pretty quick on February 17th, you are miles from that
17 location. Is that right?

18 A. Correct.

19 Q. You could have gone all the way down the levee to get to
20 the location, right?

21 A. Yes.

22 Q. But the levee is kind of narrow, and you can't go really
23 fast on it in a Border Patrol vehicle, or any vehicle, right?

24 A. Correct.

25 Q. It was faster, in your estimation, to exit the levee to get

1 to where you needed to be rather than travel down the levee,
2 correct?

3 A. No, sir. The reason I chose to get off at the port of
4 entry is because there was already another unit going on the
5 levee.

6 Q. Okay. Given that reasoning, you would assume that that
7 Border Patrol vehicle traveling on the levee would arrive at
8 the scene sooner than you?

9 A. About the same.

10 Q. About the same?

11 A. Yeah.

12 Q. Regardless of the route you took?

13 A. Right.

14 Q. Okay. And the agents traveling on the levee were Agent
15 Yrigoyen and who?

16 A. Mendez.

17 Q. Mendez. That was a trainee, right?

18 A. Yes.

19 Q. You're -- you had a conversation with them to know that
20 they were going to go on the levee that direction, correct?

21 A. Correct.

22 Q. Okay. At the time that you received the call, do you know
23 that Agent Compean is the only one on the south side of the
24 levee in the area that ultimately wound up where the van was?

25 A. No, sir, I didn't.

- 1 Q. Okay. Would that have been something important for you to
2 know at the time?
- 3 A. Yes, sir, because he would be the only one.
- 4 Q. He was all alone. Okay. When you get there, you see
5 Agents Mendoza, Jacquez, and -- Juarez and Vasquez standing
6 around talking about the van, right?
- 7 A. Yes, sir.
- 8 Q. You get out of your vehicle. Where are you parked?
- 9 A. I believe I was, like, the third vehicle in back, the last
10 vehicle, pretty much.
- 11 Q. Last one, pretty much, before Supervisor Richards arrives?
- 12 A. Correct.
- 13 Q. And are you parked on Jess Harris Road or on one of the
14 turns by the ditch?
- 15 A. On Jess Harris.
- 16 Q. Behind other vehicles?
- 17 A. Right.
- 18 Q. Okay. When you drive up, they're milling around having a
19 conversation, right?
- 20 A. Right.
- 21 Q. You go to the van and take a look inside, too?
- 22 A. Right.
- 23 Q. And it's a big load, right?
- 24 A. Yes.
- 25 Q. And when you're looking in the van, what are you looking

- 1 for?
- 2 A. We were looking at all the bundles that were there.
- 3 Q. Did anybody -- did you open any doors?
- 4 A. That, I don't recall. I don't believe so, sir.
- 5 Q. When you walked up to the driver's side door, it was
- 6 already open, wasn't it?
- 7 A. I believe so.
- 8 Q. Did any agents, Juarez, Mendez or Vasquez, look inside with
- 9 you?
- 10 A. I don't remember that. I remember all of us had already
- 11 looked.
- 12 Q. Looked in where?
- 13 A. They already saw the bundles before I got there. And then
- 14 I looked at all the bundles that were in the back of the van
- 15 through the windows.
- 16 Q. So you took a look. You look in, but you didn't search the
- 17 van for anything else, did you?
- 18 A. No.
- 19 Q. Do you know whether or not anybody else had done that?
- 20 A. That, I don't know.
- 21 Q. When you drive up, you hadn't yet seen Agent Ramos?
- 22 A. No.
- 23 Q. You hadn't seen Agent Compean?
- 24 A. No.
- 25 Q. You hadn't seen the driver of the vehicle?

- 1 A. No.
- 2 Q. You saw Agent Compean's vehicle on the levee, on the other
3 side of the ditch, right?
- 4 A. Correct.
- 5 Q. But there wasn't -- was there any other vehicle there?
- 6 A. No.
- 7 Q. So you were there before Agent Yrigoyen drove up. Is that
8 right?
- 9 A. Maybe a couple minutes before, but yes.
- 10 Q. But you saw him drive up on the levee?
- 11 A. Yes.
- 12 Q. Okay. When he gets there, that's about the time when you
13 see Agents Ramos and Compean walking up the slope of the levee.
14 Is that right?
- 15 A. Yes.
- 16 Q. One behind the other?
- 17 A. Right.
- 18 Q. And Agent Ramos is in the lead. He says something to Agent
19 Yrigoyen. Is that right?
- 20 A. Well, I think they were having a casual conversation.
21 That's what I assumed it was.
- 22 Q. But you don't know?
- 23 A. No, no, I don't know.
- 24 Q. And then he leaves to come back across the ditch. Is that
25 right?

- 1 A. Yes, after --
- 2 Q. Agent Ramos I'm talking about.
- 3 A. Yes, sir, after FOS Richards shows up.
- 4 Q. So. When Agent Ramos comes across the ditch, Supervisor
5 Richards is already there. Is that right?
- 6 A. Correct.
- 7 Q. Okay. Does Agent Ramos go up and talk to Supervisor
8 Richards?
- 9 A. Yes. Well, we're all in a pack. And he's talking to
10 Richards.
- 11 Q. And Supervisor Richards was congratulating you-all on the
12 good job in catching the seizure, and he was concerned that we
13 need to catch more of these people. Is that right?
- 14 A. I don't remember exactly what was said, but, yeah, he was
15 talking about the dope seizure, and he was congratulating.
- 16 Q. You heard him say, "Good job, guys"?
- 17 A. Yes.
- 18 Q. Okay. There's been a lot of questions about how long
19 things took. And I'm as guilty of asking those questions. You
20 weren't checking out your watch during this time, were you?
- 21 A. No, sir.
- 22 Q. You don't actually know whether something took 30 seconds
23 or a minute or five minutes, because you weren't paying
24 attention to that, right?
- 25 A. Correct.

1 Q. Your focus was on assisting your brother agents out there
2 and in stopping the dope load, right?

3 A. Correct.

4 Q. Okay. You heard Agent Ramos tell Supervisor Richards that
5 he went after the driver of the vehicle, right?

6 A. Yes.

7 Q. He crossed the ditch to get to the other side and went over
8 the levee to chase this guy, right?

9 A. Yes.

10 Q. He's the only agent that you know of that went over there
11 to help Agent Compean on the south side of the ditch, right?

12 A. Correct.

13 Q. Okay. You didn't go over there?

14 A. No, sir.

15 Q. Right. You heard Agent Ramos tell Supervisor Richards that
16 the driver and Agent Compean had had some kind of a
17 confrontation, and that Agent Compean was cut and bleeding,
18 didn't you?

19 A. Yes.

20 Q. That was right there at the scene?

21 A. Yes.

22 Q. Okay. Later you spoke with Agent Compean at the station, I
23 think. Inside or out?

24 A. Inside.

25 Q. Okay. And he told you that he had told the driver to stop

1 several times out there at the scene, right?

2 A. Yes.

3 Q. But you didn't hear that yourself?

4 A. No, sir.

5 Q. You don't know where he was positioned when that happened?

6 A. No, sir.

7 Q. And, at the scene, you didn't see the driver do anything?

8 A. No, sir.

9 Q. Did you ever get a look at him anywhere on February 17,
10 2005?

11 A. No, sir.

12 Q. Okay. Mr. Gonzalez asked you some questions, basically,
13 and they were leading, although I didn't object.

14 MR. GONZALEZ: Objection, sidebar.

15 THE COURT: Sustained.

16 BY MR. ANTCLIFF:

17 Q. He said Agent Compean never said he was in fear of his
18 life, right?

19 A. Correct.

20 Q. And he didn't?

21 A. No.

22 Q. Okay. He said that Agent Compean never said to you that he
23 had been assaulted, right?

24 A. Right.

25 Q. But you were aware of what had happened there that day,

1 because you heard Agent Ramos reporting it directly to the
2 supervisor, correct?

3 A. Yes.

4 Q. Okay. Did you find it unusual that Agent Compean didn't
5 say, "I was shot," that day, given what you already knew?

6 A. I didn't think twice about it, sir.

7 Q. Right. And on that day you were convinced that he shot in
8 self-defense, correct?

9 A. Yes.

10 Q. Did you recall telling anyone that Agent Juarez told you
11 that he saw Agent Ramos cross the drainage ditch and run over
12 the levee after the driver of the vehicle?

13 A. Just to Chris Sanchez. I told him that.

14 Q. You told Agent Sanchez that Agent Juarez reported that to
15 you?

16 A. Yes.

17 Q. Okay.

18 MR. ANTCLIFF: A moment, Your Honor?

19 THE COURT: Sure.

20 MR. ANTCLIFF: I'll pass the witness.

21 THE COURT: All right. Mr. Gonzalez?

22 MR. GONZALEZ: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. GONZALEZ:

25 Q. Did you just say that Compean was acting in self-defense?

1 A. I would believe if -- if, knowing him, he might have. I
2 didn't -- I didn't actually know, because I wasn't there.

3 Q. So you don't know?

4 A. No.

5 Q. You don't know anything about what happened out there, do
6 you?

7 A. No.

8 Q. It was all over by the time you arrived. And no one told
9 you what had occurred, had they?

10 A. No.

11 Q. No one told anyone for over a month, correct?

12 MR. ANTCLIFF: Leading.

13 THE COURT: Sustained.

14 BY MR. GONZALEZ:

15 Q. How long did it take before you guys were interviewed by
16 anyone?

17 A. Couple weeks, I believe.

18 Q. When was it you asked for immunity?

19 A. In April, I believe.

20 Q. April. This occurred in February. What's the time
21 difference?

22 A. Three months.

23 Q. How long?

24 A. A couple months.

25 Q. Couple months before you told anyone what had occurred,

1 part of the story. Is that correct?

2 A. Yes.

3 Q. Because when did you tell the rest of the story, the full
4 story?

5 A. September.

6 Q. And what made you finally tell the truth?

7 A. When I was told that I needed to tell the truth.

8 Q. Who told you that?

9 A. My lawyer, and the same with Chris Sanchez and Ms. Kanof.

10 Q. And, in fact, your attorney is here today, isn't he?

11 A. Yes.

12 Q. You're saying that Ramos told you someone threw dirt in
13 Compean's face, right?

14 A. Right.

15 Q. Between someone throwing dirt in someone's face and being
16 shot at, what do you think is worse?

17 A. Getting shot at.

18 Q. Did he mention anything about a shooting?

19 A. No.

20 MR. GONZALEZ: May I approach the witness?

21 THE COURT: You may.

22 BY MR. GONZALEZ:

23 Q. You also testified that that felony had been committed
24 through the throwing of dirt. Is that correct?

25 A. I believe so.

1 Q. Well, why don't you look at 18 USC 112, 113(a)(5). Look at
2 that. So do you want to take that back, that throwing dirt at
3 someone's face is a misdemeanor, not a felony?

4 A. Correct. I was under that impression.

5 Q. Who gave you that impression?

6 A. Myself.

7 Q. And you were wrong, right?

8 A. Yes.

9 Q. The fact is, Richards did ask Compean if he was okay, did
10 he not?

11 A. I don't know. I wasn't there when he said that. He asked
12 Ramos, "Is Compean all right?" That, I heard.

13 Q. What did Ramos say to that?

14 A. That Compean was okay.

15 Q. But what about Ramos, was he okay?

16 A. Looked fine.

17 Q. And in addition to the radios that you have in your car,
18 walkie-talkies?

19 A. Yes.

20 Q. If an officer is in distress or in trouble, do you not
21 expect that officer to use whatever means he has, including
22 using a walkie-talkie or radio, for someone to come help him?

23 A. Yes.

24 MR. PETERS: Objection, leading.

25 THE COURT: Don't lead.

- 1 BY MR. GONZALEZ:
- 2 Q. Do agents carry walkie-talkies?
- 3 A. Yes.
- 4 Q. What's the purpose of a walkie-talkie?
- 5 A. To say your location and what's going on.
- 6 Q. And if someone is in trouble, can you use your
- 7 walkie-talkie for that purpose?
- 8 A. Yes.
- 9 Q. Was the walkie-talkie ever used for that on February 17,
- 10 2005?
- 11 A. Not that I can recall.
- 12 Q. Let's go back to the shotguns. And where do you-all carry
- 13 those?
- 14 A. We check them out at the station.
- 15 Q. So you have to check them out every day?
- 16 A. Whenever you want to take it out.
- 17 Q. What about batons? What about those?
- 18 A. They're given to you to carry on your duty belt.
- 19 Q. And you carry those where?
- 20 A. Duty belt.
- 21 Q. So, and when you get in your vehicle, do you remove your
- 22 baton?
- 23 A. No.
- 24 Q. So, if Compean had his baton on him February 17, 2005, if
- 25 he had it with him, it would be on his belt, correct?

- 1 A. Yes.
- 2 Q. Where is the shotgun in the truck?
- 3 A. Probably locked into the holder for the shotgun. There's a
4 place where you lock it up.
- 5 Q. So you have to secure the shotgun, right?
- 6 A. Yes.
- 7 Q. How do you get it?
- 8 A. You hit the unlock button and it pops up.
- 9 Q. So is it fair to say it's easier to get out of the truck
10 with your baton than it is to unlock and pull out a shotgun?
- 11 A. Yes.
- 12 Q. And these things are pretty heavy, aren't they?
- 13 A. Somewhat.
- 14 Q. So, apparently, he made the choice to use the shotgun, did
15 he not?
- 16 A. Yes.
- 17 Q. And I think you testified earlier that you had forgotten
18 what Compean told you. That's -- correct me if I'm wrong. Why
19 hadn't you told us until September what you actually knew about
20 Compean, what he had told you?
- 21 A. That was my -- my personal -- I didn't want to be
22 associated to that shooting.
- 23 Q. You didn't forget; you made a choice, right?
- 24 A. Yes.
- 25 Q. And the choice was, you weren't going to tell anyone until

1 you had no other choice, right?

2 MR. ANTCLIFF: Object, leading.

3 THE COURT: I'll sustain.

4 BY MR. GONZALEZ:

5 Q. Why did you finally tell us everything on September -- in
6 September?

7 A. Because -- I had to tell the truth because of what -- I
8 didn't want something to happen to me.

9 Q. You were asked about what you would have done in
10 situations, sir. Had you shot at someone, would you have
11 reported that?

12 A. Yes.

13 Q. Would you have told other agents who might be in similar
14 trouble?

15 A. Yes.

16 Q. That never occurred to you back on February 17, 2005, did
17 it?

18 A. No.

19 Q. Did you have any clue, any indication that anyone had ever
20 shot at Compean or Ramos?

21 A. No.

22 MR. GONZALEZ: May I have a moment, Your Honor?

23 THE COURT: Sure.

24 MR. GONZALEZ: Pass the witness, Your Honor.

25 THE COURT: All right. Mr. Peters?

1 RECCROSS-EXAMINATION

2 BY MR. PETERS:

3 Q. You met with two prosecutors and the case agent sitting at
4 the Government's table in September, correct?

5 A. Correct.

6 Q. And at that point in time you were threatened with
7 indictment, correct?

8 A. Yes.

9 Q. Did --

10 A. Correct.

11 Q. Did they speak to you in the tone of voice that you were
12 addressed on redirect at that time?

13 A. Somewhat, yes.

14 Q. Okay. And the reason you were going to be indicted was
15 because, prior to that time, you didn't remember it the way
16 they thought it had happened, right?

17 A. I believe so.

18 Q. Back in February of 2005, when you learned that Agent
19 Compean had shot at an individual and you didn't report it, if
20 you had believed at that time that this was an attempted
21 murder, you would have reported it?

22 A. If it was attempted murder, yes.

23 Q. But you didn't think that, did you?

24 A. No.

25 Q. And let me ask you something about walkie-talkies. If a --

1 if you have to go chasing a fleeing alien, are you going to be
2 running along talking on your walkie-talkie while you're trying
3 to catch him?

4 A. Not initially, but you would call and ask for backup, yes.

5 Q. Right, and if there's an agent right across the ditch from
6 you and you're standing there trying to stop an alien, are you
7 going to tell the alien, "Hey, wait, wait. Time out. I'm
8 going to call for extra back up. I've got to get on my
9 walkie-talkie"? Are you going to do that?

10 A. No.

11 Q. Obviously, you're going to stop the alien.

12 A. Yes.

13 Q. And if it's going to make you out of breath, as we know it
14 made Agent Ramos, talking on your walkie-talkie is probably not
15 going to be very practical, is it?

16 A. No.

17 Q. And if you are in a situation where you see one of your
18 fellow Border Patrol agents about to be in an altercation, or
19 in an altercation, with a suspect and you're close enough that
20 you might be able to help him, would it be proper to stop and
21 get on your radio to go help them?

22 A. Go help them.

23 Q. And if Agent Juarez was watching all this and for whatever
24 reason didn't intend to go and come to Agent Ramos or Compean's
25 aid -- he had a walkie-talkie, too, right?

1 A. Yes.

2 Q. So if anybody out there was going to use the walkie-talkie,
3 the proper person would have Agent Juarez, correct?

4 A. Yes.

5 MR. PETERS: Pass the witness.

6 THE COURT: Mr. Antcliff?

7 MR. ANTCLIFF: Briefly, Your Honor.

8 RECCROSS-EXAMINATION

9 BY MR. ANTCLIFF:

10 Q. Sir, you are not a lawyer, are you?

11 A. No, sir.

12 Q. You don't know what the penalties are for various criminal
13 offenses. You don't know whether they're misdemeanors or
14 felonies, do you?

15 A. Correct.

16 Q. You only know that you were threatened with jail time if
17 you didn't tell the truth. Isn't that right?

18 A. Correct.

19 Q. Okay. I think you said that you would have made a report
20 if you had discharged your firearm on February 17th. Is that
21 right?

22 A. Correct.

23 Q. You had an obligation to report the discharge of a firearm
24 under Border Patrol policy, even though you weren't the
25 shooter, didn't you?

1 A. Yes.

2 Q. And you didn't, correct?

3 A. Okay.

4 Q. And you've been on administrative leave, basically, since
5 that time frame, right?

6 A. Correct.

7 Q. You knew -- when you gave your first statement back in
8 April you had a lawyer, right?

9 A. The first statement, yes.

10 Q. Sure. And you knew that you had to tell the truth under
11 the terms of your agreement back then, right?

12 A. Yes.

13 Q. It certainly was not in your best interest to lie to the
14 Government, given the terms of your proffer letter, right?

15 A. Correct.

16 Q. Okay.

17 MR. ANTCLIFF: Pass the witness.

18 THE COURT: Anything further?

19 MR. GONZALEZ: Yes.

20 REDIRECT EXAMINATION

21 BY MR. GONZALEZ:

22 Q. You lied? Who are you protecting?

23 A. Nobody. That was on my own.

24 Q. That was on your own?

25 A. Yes.

1 Q. And you spoke to your attorney in September, and he told
2 you to come clean.

3 A. Yes.

4 Q. When you met with Agent Sanchez, Ms. Kanof and myself, did
5 we ever tell you what to come testify to?

6 A. No.

7 Q. What did we tell you?

8 A. To tell the truth.

9 Q. Have you done that, at least today?

10 A. Yes.

11 MR. GONZALEZ: Nothing else. Pass the witness.

12 MR. PETERS: Nothing further.

13 MR. ANTCLIFF: I don't have any other questions.

14 THE COURT: You may step down.

15 Is he free to leave?

16 MR. GONZALEZ: Yes.

17 MR. ANTCLIFF: Yes.

18 MR. PETERS: Yes, Your Honor.

19 THE COURT: Thank you, sir. You're free to go.

20 May the -- could the attorneys approach a minute?

21 (Bench conference:)

22 THE COURT: Any problems with lunch?

23 MR. ANTCLIFF: I'm ready.

24 MR. PETERS: I would have problems with no lunch.

25 THE COURT: Do you want an hour or have --

1 MR. ANTCLIFF: An hour is great.

2 THE COURT: Okay. Let's get as much done as we can
3 today.

4 MR. PETERS: I think we're going to have the slow part
5 now.

6 (End of bench conference; open court.)

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, we are going to go ahead and recess for lunch. Remember
9 you remain under all the rules of this Court throughout the
10 lunch period. It's about 12:00. Let's be back about 1:00.
11 All right?

12 So we stand in recess until 1:00.

13 (Open court, parties present, jury not present.)

14 THE COURT: You may be seated. Any matters we need to
15 take up before we break for lunch?

16 MR. GONZALEZ: Not from the Government.

17 MS. STILLINGER: No.

18 MR. ANTCLIFF: No.

19 (Recess; open court, parties present, jury not
20 present.)

21 THE COURT: You may be seated.

22 Are we ready?

23 MR. GONZALEZ: Yes.

24 MR. ANTCLIFF: Yes, Your Honor.

25 THE COURT: You can -- do you know who is your next

1 witness?

2 MR. GONZALEZ: Yes. It's Lorenzo Yrigoyen.

3 (Open court, parties and jury present.)

4 THE COURT: You may be seated.

5 MR. GONZALEZ: The Government calls Lorenzo Yrigoyen.

6 THE COURT: You've been sworn in?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: You may proceed.

9 MR. GONZALEZ: Thank you.

10 LORENZO YRIGOYEN, GOVERNMENT'S WITNESS, SWORN

11 DIRECT EXAMINATION

12 BY MR. GONZALEZ:

13 Q. Sir, would you state your full name for the record?

14 A. Lorenzo Lucero Yrigoyen.

15 Q. And how are you employed?

16 A. United States Border Patrol.

17 Q. And how long have you been with the United States Border
18 Patrol?

19 A. It will be 16 years in April.

20 Q. Sir, what are some of your responsibilities with the U.S.
21 Border Patrol?

22 A. Patrolling the international border between the
23 United States and Mexico, south of the Fabens, Texas, area.

24 Q. How long have you been assigned to the Fabens area?

25 A. Fabens, I've been assigned there since July of 2001.

- 1 Q. And you say you patrol the border. Is that correct?
- 2 A. Yes, sir.
- 3 Q. And how did you do it back in 2001 to the present? Did it
- 4 change?
- 5 A. Yes, sir. For the first year that I was at Fabens station
- 6 I was on the -- on a regular unit, assigned the regular --
- 7 typical duties that are assigned every day. And after a year
- 8 there I was put onto the horse patrol unit there in Fabens.
- 9 Q. I'm sorry, the what?
- 10 A. The horse patrol.
- 11 Q. So, before that, you were -- when you said a regular unit,
- 12 you mean like a car or a truck or --
- 13 A. Yes, sir. Truck or --
- 14 Q. And then you were on a horse patrol unit?
- 15 A. Yes, sir.
- 16 Q. And how -- and is that also on the border? I mean --
- 17 A. It's a -- it's not actually on the river itself. It's --
- 18 we patrol a little farther north.
- 19 Q. On the levee road or further north than --
- 20 A. No, farther north. Farther north of I-10, into the desert.
- 21 Q. Okay. And how long did that last for, the horse patrol
- 22 duty?
- 23 A. Initially, it was about two and a half years, sir.
- 24 Q. And then after that, sir?
- 25 A. I went back onto line, line watch duties, for about eight

1 months.

2 Q. And that would have been when, approximately?

3 A. I believe it would have been February of last year through
4 September of last year.

5 Q. In February of 2005 you had just been reassigned to line
6 watch?

7 A. Yes, sir. I came off the horse patrol in January -- I
8 believe my last -- it was towards the end of January, early
9 February, that I completed my first stint on horse patrol.

10 Q. How many horse patrols are there in the Fabens area?

11 A. It's just two of us.

12 Q. Okay. So do you have much interaction with the agents
13 that -- agents that are on the units, the marked -- the Border
14 Patrol units?

15 A. Not -- not as a horse -- well, not on the horse patrol,
16 because we patrol, like I said, farther north. So our
17 interaction on a daily basis with the units that are actually
18 patrolling the river area are pretty slim.

19 Q. Okay.

20 A. Except there at the station level, maybe.

21 Q. All right. You-all meet? How often do you-all meet at the
22 station?

23 A. Every morning for muster, and then if there's processing or
24 something like that to do.

25 Q. And when you say "muster," what does that mean?

1 A. Muster is the morning briefing, where we're given any new
2 information that's come out as officer safety or policy changes
3 or anything like that, in the morning.

4 Q. So when you're with -- when you were with Border Patrol,
5 did you know Ignacio Ramos?

6 A. Yes, sir.

7 Q. Did you know him well, or how could you characterize your
8 familiarity with him?

9 A. He's a fellow agent that I worked with there at Fabens.

10 Q. Okay. And what about Ignacio Compean -- I'm sorry -- Jose
11 Alonso Compean?

12 A. Also.

13 Q. Same thing?

14 A. Yes, sir.

15 Q. And do you see them in the courtroom this afternoon?

16 A. Yes, sir.

17 Q. Could you, first of all, identify Agent Compean?

18 A. Agent Compean just stood up.

19 Q. Thank you.

20 MR. GONZALEZ: May the record reflect that the witness
21 has identified Jose Alonso Compean?

22 THE COURT: It will so reflect.

23 BY MR. GONZALEZ:

24 Q. And do you see Ignacio Ramos in the courtroom today?

25 A. Yes, sir. He just stood up behind you.

1 MR. GONZALEZ: Your Honor, may the record reflect that
2 the witness has identified Agent Ramos?

3 THE COURT: It will so reflect.

4 BY MR. GONZALEZ:

5 Q. So is it fair to say that you didn't know either one of
6 these very well, either one of these individuals, Ramos or
7 Compean?

8 A. I'm not clear on your question. I knew them very well,
9 as -- pretty well, as far as work companions. We -- we weren't
10 socially -- we did not gather socially, or we never went -- got
11 together outside of work, no.

12 Q. And you do that with other agents, but not with these two?

13 A. Not particularly.

14 Q. With any agents?

15 A. Not really.

16 Q. Okay. Well, have you ever received any training from Agent
17 Ramos?

18 A. I'm sure I have.

19 Q. Like firearms instruction or anything like that?

20 A. Probably firearms and side handle baton.

21 Q. I'm sorry. What?

22 A. The baton, the asp.

23 Q. Okay. Is that taught together with the firearms, or is
24 that --

25 A. That's separate, a separate training.

1 Q. And what is that called, the baton training?

2 A. It's baton training, or -- they refer to it as the asp.

3 Q. Asp, A-S-P?

4 A. Yes, sir.

5 Q. Okay. And what do they teach you with the asp?

6 A. Defensive techniques, and just to try to keep our
7 proficiency up.

8 Q. All right. Let me direct your attention specifically to
9 February 17, 2005. Were you on duty that afternoon at
10 approximately 1:11 in the afternoon?

11 A. Yes, sir.

12 Q. And what occurred? Did you hear a radio call?

13 A. Yes, sir.

14 Q. And who was it from?

15 A. It was from Mr. Compean.

16 Q. Okay. And what was the nature of that communication?

17 A. As I recall, it was -- Mr. Compean had put out information
18 that he had seen a van, I believe it was, that left the river
19 area headed northbound.

20 Q. And, on that date, where were you when heard that
21 transmission?

22 A. I was assigned duties east of the Fabens port of entry.

23 MR. GONZALEZ: May I approach the witness, Your Honor?

24 THE COURT: You may.

25

- 1 BY MR. GONZALEZ:
- 2 Q. Agent Yrigoyen, I'm handing you what's been marked as
- 3 Government's Exhibit Number 27, which is in evidence. Are
- 4 you -- can you orient yourself on that exhibit?
- 5 A. Yes, sir.
- 6 Q. What does that exhibit contain?
- 7 A. It looks to be the bridge that leads to the port of entry
- 8 on the United States side --
- 9 Q. Okay. And where were --
- 10 A. -- south of Fabens.
- 11 Q. I'm sorry.
- 12 A. That's all right.
- 13 Q. And where were you, in relation to the port of entry, when
- 14 you heard that call?
- 15 A. I was farther east.
- 16 Q. Okay. About how many miles would you guess?
- 17 A. Between one and two.
- 18 Q. Who was riding with you that afternoon, anybody?
- 19 A. Yes, sir. I had a trainee, or a probationary agent with
- 20 me, Mr. Rene Mendez.
- 21 Q. What's a probationary employee?
- 22 A. He was -- he's an agent that had just recently graduated
- 23 the Border Patrol academy, and had been assigned to the Fabens
- 24 Border Patrol station.
- 25 Q. Was he your responsibility?

1 A. Yes, sir. On that day he was assigned to me, as I was his
2 field training officer for that day.

3 Q. Okay. And when you're the field training officer, what are
4 your responsibilities to the junior agent?

5 A. Mainly just area orientation, so he becomes familiar with
6 the area, that he's not working alone in an area unfamiliar to
7 him. And service policy, station policy, procedures, all that
8 nature.

9 Q. Policies, procedures, and --

10 A. Anything associated with the work that we do.

11 Q. Thank you. So you and Agent Mendez are riding in what type
12 of vehicle?

13 A. I believe it was a pickup -- it's what we call a dropin
14 unit. It's a pickup truck with a -- with a holding area in the
15 back. It's not -- it's not necessarily a Tahoe or something.
16 It's a pickup truck that's made to transport people.

17 MR. GONZALEZ: May I approach the witness, Your Honor?

18 THE COURT: You may.

19 BY MR. GONZALEZ:

20 Q. I'm getting a little ahead of myself. But I'm showing you
21 Government's Exhibit Numbers 9 and 15. Do you see the unit
22 that you operated on February 17, 2005, in either of those
23 photographs?

24 A. Yes, sir. I see it in both.

25 Q. Okay. And which is your vehicle?

1 A. It looks to be the one that has the door open, that's more
2 visible in the picture.

3 Q. Okay. And the vehicle adjacent -- immediately adjacent to
4 yours, whose vehicle was that?

5 A. I would have to say that's Mr. Compean's vehicle.

6 Q. So you and Mendez get the call. What do you-all do?

7 A. Actually, we didn't get the call. It was --

8 Q. You heard the call?

9 A. We heard -- we heard Mr. Compean put out the initial call.
10 And, as I recall, there were several other agents that
11 answered, or also transmitted on the radio that they were
12 either in the area or headed that way, in order to try to
13 locate the van.

14 Q. So when you heard that, what did you decide to do?

15 A. I held my position where I was at.

16 Q. And did you maintain that position?

17 A. For a while, yes, sir.

18 Q. And then what made you decide to move?

19 A. I believe it was -- I heard Mr. Ramos transmitting on the
20 radio that the van -- that he had located the van, and that it
21 was now headed southbound towards Mexico.

22 Q. When you heard that, what did you decide?

23 A. I decided to go ahead and start making my way over to
24 the -- closer to the area.

25 Q. Okay. And does your -- and how long did it take you to get

- 1 to that actual area where your vehicle ended up, approximately?
- 2 A. I couldn't say. It was a few minutes.
- 3 Q. Did something delay you or --
- 4 A. Yes, sir.
- 5 Q. What was that?
- 6 A. The vehicle that I was riding in has a -- is a pretty
- 7 high-profile vehicle.
- 8 Q. When you say "high profile," what does that mean?
- 9 A. It's a four-wheel drive pickup truck. And with all the
- 10 emergency equipment that's on it, with the lights, the
- 11 emergency lights and everything, the antenna and everything,
- 12 it's a pretty hard fit to get under the bridge at the port of
- 13 entry.
- 14 Q. And so you literally go under the bridge to stay on the
- 15 levee road?
- 16 A. Yes, sir -- well, you actually drop off the levee road into
- 17 the vega of the river, which is the area between the river and
- 18 the levee, go under the bridge, and then come back -- you can
- 19 come back onto the levee on the -- on the other side.
- 20 Q. And that's what you and Agent Mendez did on February 17th,
- 21 correct?
- 22 A. Yes, sir.
- 23 Q. Then tell us, when you arrived to the location of where you
- 24 see Agent Compean's vehicle, what do you do?
- 25 A. I pretty much just exited my vehicle.

1 Q. Let me back up. I'm sorry. As you're arriving to that
2 location, who do you see, if anyone?

3 A. Mr. Compean and Mr. Ramos are --

4 Q. Now, they're -- that's when you're driving up, correct?

5 A. Yes, sir.

6 Q. What are they doing?

7 A. I'm not sure.

8 Q. I mean, are they walking, standing?

9 A. No, they're standing.

10 Q. And where are they standing?

11 A. I -- if I recall correctly, I believe they were standing
12 towards the front of Mr. Compean's vehicle.

13 MR. GONZALEZ: May I approach the witness, Your Honor?

14 THE COURT: You may.

15 BY MR. GONZALEZ:

16 Q. I'm showing you what's been marked and introduced into
17 evidence as Government's Exhibit Number 9 -- I mean, 11.

18 Do you recognize what that photograph shows?

19 A. Yes, sir.

20 Q. And you see the little green box that says, Jose Compean's
21 vehicle. Is that your recollection of where his vehicle was?

22 A. Yes, sir.

23 Q. But your vehicle was further to the south of his vehicle,
24 is that correct, closer to the ditch?

25 A. I believe -- I believe it was on north, farther north.

- 1 Q. I'm sorry, you're right. North of his vehicle, closer to
2 the ditch?
- 3 A. Yes, sir.
- 4 Q. And where do you see Agents Compean and Ramos standing?
- 5 A. I believe it was to the western side of what's shown here
6 as Mr. Compean's vehicle.
- 7 Q. Let me go ahead and put this on the screen. And then you
8 go ahead and point with that laser, and tell us where you saw
9 him standing.
- 10 A. I believe they were standing right about that corner area,
11 off to the front of his vehicle (indicating).
- 12 Q. The upper right-hand corner of that green box?
- 13 A. Yes.
- 14 Q. Designated as Jose Compean's vehicle?
- 15 A. Yes, sir.
- 16 Q. And where was your vehicle, sir?
- 17 A. I believe mine was sitting on this side of Mr. Compean's
18 vehicle.
- 19 Q. So they're by Compean's vehicle. And what are they doing,
20 you said?
- 21 A. I'm -- like I said, I'm not sure specifically. They were
22 standing in close proximity to each other. I'm not sure
23 exactly what they were doing.
- 24 Q. Close enough to be talking to one another?
- 25 A. Yes, sir.

- 1 Q. Were they talking to one another, if you know?
- 2 A. I -- that, I couldn't be sure.
- 3 Q. Okay. So you arrive. You see them next to each other.
- 4 What do you do next?
- 5 A. I ride up to the area. I -- basically, I mean, I'm just
- 6 kind of making sure that it's a safe area to be in.
- 7 Q. Okay.
- 8 A. Officer safety.
- 9 Q. Thank you. When you say "officer safety," what kind of
- 10 things are you trying to do?
- 11 A. I'm just making sure that there's nothing in the immediate
- 12 area that would pose a danger to myself or my trainee, who I'm
- 13 responsible for, or any other agents that are in the area.
- 14 Q. And how do you do that?
- 15 A. Just a quick -- initially, I'm just looking to see if
- 16 there's anything I should be aware of there in the area, in the
- 17 immediate area.
- 18 Q. And where are you looking?
- 19 A. Mainly south.
- 20 Q. Okay. Because that's where you expect you may have a
- 21 problem, if you had a problem?
- 22 A. Yes, sir.
- 23 Q. And you sit in a high-profile vehicle, correct?
- 24 A. Yes, sir.
- 25 Q. So if your vehicle is on the levee road, do you know how

- 1 well it can be seen from Mexico, or from the Rio Grande?
- 2 A. Yes, sir, I have an idea.
- 3 Q. All right. And what is that idea?
- 4 A. We stand out pretty well.
- 5 Q. Sitting duck, if someone is over there?
- 6 A. You could use that term, yes, sir.
- 7 Q. Do you agree with me?
- 8 A. Yes, sir, I do agree.
- 9 Q. Now, you get out there and you, what, canvass the scene, or
- 10 what do you do?
- 11 A. Yes, sir. I was -- basically, to make sure, like I said,
- 12 make sure Mr. Compean was okay, that the area was secure, there
- 13 was no immediate threats to any of -- any of the people that
- 14 were in the vicinity, especially myself, Mr. Compean, and my
- 15 trainee, since we were the ones sitting on the top of the
- 16 levee.
- 17 Q. Why were you concerned for Compean's safety, sir?
- 18 A. He's a fellow agent.
- 19 Q. Okay. And that's why you look around?
- 20 A. Yes, sir. Plus, I want to go home at the end of the day.
- 21 Q. Absolutely. And do you see any danger?
- 22 A. No, sir.
- 23 Q. What do you see?
- 24 A. It was pretty much -- I -- as far as just all around?
- 25 Q. Yes, sir.

1 A. It was a pretty clear area. I didn't see any -- anything
2 that might have posed a threat south of us.

3 And north of us, north of the irrigation canal, there
4 was several of our units on that side.

5 MR. GONZALEZ: May I approach the witness, Your Honor?

6 THE COURT: You may.

7 BY MR. GONZALEZ:

8 Q. And, Agent Yrigoyen, I'm showing you Government's Exhibits
9 9, 10, 12, and 15, which are in evidence. And is that what you
10 recall the day to look like, gray and overcast?

11 What's --

12 A. Yes, I -- I don't recall specifically what it looked like
13 that day, but sure.

14 Q. As you look at these photographs, I mean --

15 A. It does appear in the photographs it was somewhat overcast
16 that day.

17 Q. Do you have a specific recollection?

18 A. Not -- no. No specific recollection, sir.

19 Q. And that's pretty unusual, for this part of the country, to
20 have a gray day like this. Is that correct?

21 A. I would say so. Yes, sir.

22 Q. Because we don't get much rain around here, do we?

23 A. No, sir.

24 Q. All right. You're looking around. You look at the agents.
25 Do you look at Agent Ramos, first of all?

- 1 A. I see Agent Ramos, yes, sir.
- 2 Q. Anything out of the ordinary with Agent Ramos?
- 3 A. No, sir.
- 4 Q. You look at Agent Compean. Is that correct?
- 5 A. Yes, sir.
- 6 Q. What do you notice?
- 7 A. Well, I see them as I approach the area, yes, sir.
- 8 Q. Anything out of the ordinary?
- 9 A. No, sir.
- 10 Q. And when you look to the south, what do you see,
- 11 eventually?
- 12 A. Eventually? My partner, Mr. Mendez, points out to me that
- 13 there's an individual quite a bit -- a couple fields -- in the
- 14 agricultural fields south of us, moving southbound.
- 15 Q. Okay. And do you look in that direction?
- 16 A. Yes, sir.
- 17 MR. GONZALEZ: Approach the witness, Your Honor?
- 18 THE COURT: You may.
- 19 BY MR. GONZALEZ:
- 20 Q. I'm showing you what's been marked and introduced into
- 21 evidence as Government's Exhibit Number 28. Did you recognize
- 22 this area that's shown in this photograph?
- 23 A. Yes, sir.
- 24 Q. And does this photograph have the area where that
- 25 individual was seen?

- 1 A. I believe so, yes, sir.
- 2 Q. Okay. I'm going to go ahead and put it on the screen. Why
3 don't you go ahead and point out to the jury -- did you see
4 this person?
- 5 A. Yes, sir.
- 6 Q. Okay. Why don't you point out to the jury, Agent Yrigoyen,
7 where you saw this person traveling.
- 8 A. I believe it was -- I don't recall if we first spotted him
9 in this field here. It may have --
- 10 Q. When you say "this field," you're pointing to the -- for
11 the record, you're pointing to the center section of the -- the
12 upper section, right above the Rio Grande River, the word
13 Rio Grande River. Is that correct?
- 14 A. Yes, sir. I believe this is the levee road on the south
15 side, if I'm not mistaken.
- 16 Q. Do you want to look at the picture more closely, or are you
17 pretty comfortable with that?
- 18 A. It's hard to tell from here.
- 19 Q. Let me take you the photograph. Excuse me.
- 20 A. Okay.
- 21 Yes, sir. I believe this is the levee road on the
22 south side of the river.
- 23 Q. Mexican levee road?
- 24 A. Yes, sir, in Mexico. And I believe we spotted him in this
25 field here. He was moving southbound.

- 1 Q. Okay.
- 2 A. Or Mr. Mendez spotted him and pointed him out to me.
- 3 Q. Mr. Mendez pointed him out to you?
- 4 A. He was the one that first noticed him. And he brought it
5 to my attention.
- 6 Q. So did you look at that person?
- 7 A. Yes, sir, I did.
- 8 Q. And would you describe to the jury how he was moving?
- 9 A. He was moving -- I wouldn't say he was walking, and I
10 wouldn't say he was running. He was just -- it looked like to
11 be a cultivated field. And I know if any of the fields ever
12 get plowed, or -- it's difficult to move through. So he was
13 just moving through the field at a decent pace going south.
- 14 Q. Okay. Did you notice if he was limping or not?
- 15 A. I -- I couldn't -- I wouldn't be able to tell that. I just
16 assumed that it was because of the field being cultivated that
17 he was having -- he wasn't at a steady walk, like we would be
18 walking on a flat surface.
- 19 Q. And you thought it was because of the cultivated fields,
20 correct?
- 21 A. Initially, yes, sir.
- 22 Q. And then, once you found out that that person had been
23 shot, then you -- you eventually learned that through this
24 investigation, correct?
- 25 A. Yes, sir.

1 Q. What you saw that day, the way he was walking across that
2 field, was that consistent with someone who had been shot in
3 the lower part of the body, from what you saw?

4 A. Yes, sir.

5 MR. PETERS: Objection, Your Honor. I think that's
6 calling for speculation.

7 THE COURT: All right. Well --

8 MR. PETERS: He hasn't laid any predicate for showing
9 this witness' expertise in this area.

10 THE COURT: Well, that, I'll overrule.

11 MR. PETERS: At the time, he didn't -- he said at the
12 time he didn't think he was wounded. He's asking him to go
13 back and resummarize it, after he was told that he was wounded.

14 MR. GONZALEZ: I'll rephrase the question, Your Honor.

15 THE COURT: All right. Go ahead.

16 BY MR. GONZALEZ:

17 Q. When you saw him walking across this field, his walk seemed
18 unusual you to. Is that correct?

19 MR. PETERS: Objection, leading.

20 THE COURT: I'll sustain.

21 MR. GONZALEZ: Okay.

22 BY MR. GONZALEZ:

23 Q. What do you think was going on?

24 MR. ANTCLIFF: I'll object, asked and answered, Judge.
25 He testified he thought it was because of the cultivated field.

1 THE COURT: All right. I'll sustain.

2 MR. GONZALEZ: We'll move on.

3 BY MR. GONZALEZ:

4 Q. You see this person moving away. Do you tell anyone?

5 A. There was just myself, Mr. Compean, and Mr. Mendez on the
6 levee.

7 Q. And there was --

8 A. Nobody I told, other than -- we all saw him.

9 Q. Where was -- Agent Compean saw him, as well?

10 A. I believe so.

11 Q. Why --

12 A. I'm not sure. I can't be 100 percent sure.

13 Q. Okay. And why do you believe that?

14 A. Because we were all standing in the same general vicinity.

15 Q. Okay. And when Mendez told you to look, what, did he
16 whisper in your ear or did he say it out loud?

17 A. No, he said it out loud.

18 Q. All right. When he said that to you, was Agent Compean in
19 the area?

20 A. He was -- as a I recall, we were all in the same general
21 vicinity, yes, sir.

22 Q. And where is Agent Ramos?

23 A. He was on the north side of the irrigation canal.

24 Q. He had already made it back to where his unit was?

25 A. Yes, sir.

1 Q. Okay. And does Agent Compean mention anything about that
2 driver, at that point in time?

3 A. No, sir.

4 Q. Nothing?

5 A. No, sir.

6 Q. What happens next?

7 A. As far as I remember it, there was a white vehicle --
8 there's a roadway south of those cultivated fields in Mexico,
9 and there was a white car pulled up. One individual got out
10 and started northbound towards the first individual that was
11 moving south, and crossed the field, came up to him, and
12 appeared that he was assisting him walking south.

13 Q. Why do you say he appeared to be assisting him?

14 A. Because it was -- we were at a pretty good distance. But,
15 from where I was at, it looked as though he either grabbed him,
16 or was assisting him in some manner, to get across the field.
17 And he began going southbound with the first individual.

18 Q. And was Agent Compean still present when you saw all of
19 this?

20 A. Yes, sir. He was -- we were all on the levee at the same
21 time.

22 Q. Okay. That person that's being helped off, what happens to
23 him?

24 A. Eventually, a blue van pulled up on the roadway. And the
25 two individuals got into the van on the Mexican roadway, and

- 1 the van went westbound out of our view.
- 2 Q. Once they -- you're watching all this, correct?
- 3 A. Yes, sir.
- 4 Q. What else are you -- what else is going on at that point in
5 time?
- 6 A. Just the -- whatever the agents are taking care of on the
7 north side of the irrigation canal.
- 8 Q. Okay. Now, at some point in time, do you have a
9 conversation with Agent Compean on the levee, or that area?
- 10 A. With Comp- -- yes. Uh-huh.
- 11 Q. When did that happen?
- 12 A. That was, I believe, after Field Operation Supervisor
13 Richards had -- I'm not sure if he -- if the question was
14 directed at me or Mr. Compean. But he yelled across the
15 irrigation canal if there had been an assault.
- 16 Q. I'm sorry, that what, now?
- 17 A. If there had been an assault.
- 18 Q. Richards is asking it, Has there been an assault?
- 19 A. Right.
- 20 Q. And what's the response?
- 21 A. I -- as far as I told him, my response was, I wasn't sure,
22 that that was something he would have to discuss with
23 Mr. Compean.
- 24 Q. And, what, did you think there might be -- maybe an assault
25 had occurred?

- 1 A. I thought that maybe there might have been, yes, sir.
- 2 Q. Based on what, sir?
- 3 A. Because I had spok- -- once Mr. Richards asked me that, I
- 4 turned and asked Mr. Compean if something had taken -- if there
- 5 was something that had taken place.
- 6 Q. Okay.
- 7 A. And --
- 8 Q. That's not a conversation that's between you, Richards, and
- 9 Compean. It's just you and Compean, right?
- 10 A. Yes, sir, because Mr. Richards is on the north side of the
- 11 irrigation canal.
- 12 Q. So you ask him what?
- 13 A. Well, I was -- I was kind of taken -- I was not really
- 14 expecting somebody to ask about an assault. Because, as far as
- 15 my experience, I -- I always had seen assaults, I guess, noted
- 16 as if you have an assailant in custody, as well.
- 17 Q. What do you mean assaults --
- 18 A. When I --
- 19 Q. I'm sorry.
- 20 A. I'm sorry, go ahead.
- 21 Q. What do you mean, in your experience, an assault is noted?
- 22 A. Documented.
- 23 Q. Okay.
- 24 A. Or reported.
- 25 Q. Reported to who, to the people who are at the scene?

1 A. Well, not necessarily at the scene, but at least to
2 management and through proper channels.

3 Q. Okay. And so what happened?

4 A. I remember I turned around, and I asked Mr. Compean -- I
5 kind of was -- like I said, I wasn't really sure. And he
6 asked -- I asked Mr. Compean, An assault? I didn't think you
7 could have an assault without an assailant in custody.

8 Q. What did he say?

9 A. That's when he told me that I -- when the individual was
10 running southbound across the levee, and he attempted to
11 apprehend the individual, and with their momentum, they both
12 tumbled down the south side of the levee into the vega area.

13 Q. Okay. Let me direct your attention to Government's Exhibit
14 Number 28. What was your understanding of where they allegedly
15 struggled and...

16 A. It would have been just on the south bank of the levee
17 river road.

18 Q. And what did Agent Compean tell you happened on the south
19 bank of the levee road?

20 A. That in -- well, in an attempt to apprehend the individual,
21 as he ran -- was running south past Mr. Compean, he made an
22 attempt to grab onto him.

23 Q. Who made an attempt to grab onto him?

24 A. Mr. Compean. And, with the momentum, with -- I guess he
25 did grab him. With the momentum, they both tumbled down the

1 side of the levee road, down into the vega area, where the
2 individual threw dirt in his face, and was able to break free,
3 and ran back into Mexico.

4 Q. When you heard that, did that alarm you?

5 A. Yes, it did.

6 Q. So what did you do?

7 A. I made sure -- I asked Mr. Compean, and made sure he was
8 okay.

9 Q. Okay. And did Agent Compean, at any time on February 17th,
10 2005, indicate to you that the driver of that van had a gun on
11 him?

12 A. No, sir.

13 Q. Or that he had seen something in his hand, a shiny object,
14 that looked like a gun?

15 A. No, sir.

16 Q. Never?

17 A. No, sir.

18 Q. After you had this conversation with Compean, what did you
19 do next?

20 A. I turned back around towards the north where Mr. Richards
21 was at, and I advised him that Mr. Compean had dirt thrown in
22 his face.

23 Q. Okay. What else?

24 A. And that was basically it. I didn't -- I didn't tell -- I
25 figured it was something -- it was -- whatever needed to be

1 reported, or documented, as far as an assault was concerned,
2 was between Mr. Compean and Mr. Richards.

3 MR. GONZALEZ: May I have a moment, Your Honor?

4 THE COURT: Sure.

5 MR. GONZALEZ: We'll pass the witness.

6 THE COURT: Go ahead, Mr. Peters.

7 CROSS-EXAMINATION

8 BY MR. PETERS:

9 Q. Good afternoon, Agent Yrigoyen. My name the Stephen
10 Peters, and I represent Agent Ramos.

11 How are you doing this afternoon?

12 A. So far, so good.

13 Q. So far, so good. Hold on a minute.

14 Let me ask you, how long -- you were listening to the
15 radio transmissions while you were on the levee, right?

16 A. Yes, sir.

17 Q. Do you happen to know how long it was after this individual
18 jumped out of his van and started running south that you

19 arrived on the scene?

20 A. No, sir. I don't have a time frame.

21 Q. Would it be just a few minutes?

22 A. I would assume so, yes, sir.

23 Q. Okay. Would you agree with me that the levee on the

24 Mexican side -- I'm going to -- I've just put on here, which

25 has not been admitted into evidence, but it has been marked as

1 Government's Exhibit 32.

2 Would you agree with me that the levee road on the
3 Mexican side of the river is approximately the same distance
4 from the river as the levee road on the American side of the
5 river?

6 A. Yes, sir.

7 Q. Okay. Now, this is a diagram prepared by the Government.
8 And it shows the approximate distances between essentially the
9 ditch and the river on the American side. Okay?

10 And, according to this, from the levee road to the
11 river on the American side is 230 feet. Does that seem about
12 right to you?

13 A. The levee road on the American side?

14 Q. Yes, sir.

15 A. To what part, now?

16 Q. To the river.

17 A. Yes, sir.

18 Q. How wide is the river right there?

19 A. 25, 30 yards, I guess. I don't -- I'm not sure.

20 Q. So another 75 to 90 feet?

21 A. Sure.

22 Q. And then it would be approximately another 230 feet from
23 the Mexican bank of the river to the levee road on the Mexican
24 side, right?

25 A. Okay. Yes, sir.

1 Q. So when you saw this individual on the -- on the south side
2 of the Mexican levee road, it's fair to say he had traveled at
3 least 600 feet?

4 A. I would say, sir. Yes, sir.

5 Q. Okay. And this was in a pretty short time, right? You're
6 not sure about --

7 A. As far as timewise, I have no idea how long I was up there.

8 Q. But, in any event --

9 A. He had to -- he had to break -- for me to see him, he had
10 to break north of where my vision would have been impaired by
11 the south levee.

12 Q. All right, sir.

13 A. Yes, sir.

14 Q. And, in any event, at the time you drove up, Agents Ramos
15 and Compean had not yet come back to this north side of the
16 ditch, right? They were still on the levee road?

17 A. Mr. Compean never went to the north side as long as I was
18 there.

19 Q. Right. And Agent Ramos hadn't gone to the north side --

20 A. Yes, sir. He was -- he crossed, as I exited my vehicle,
21 when I arrived. I had never -- I never spoke with Mr. Ramos
22 upon arrival, because he was already crossing back to the north
23 side.

24 Q. Yes, sir. Okay.

25 Now, when you first got there, I believe you testified

1 that your first -- your first thought was to look around the
2 area for reasons of officer safety?

3 A. Yes, sir.

4 Q. And that's pretty much your first practice to do, isn't it,
5 when you come across a scene where there's been some kind of
6 altercation, right?

7 A. Yes, sir.

8 Q. Now, in looking around the area, if you had seen anything
9 unusual lying on the banks of the river, you would have noticed
10 it, wouldn't you?

11 A. I'm not sure if I would -- I would like to think that I
12 would have. But, as far as laying on the banks of the river,
13 as long as it was maybe the size of a person, that maybe I
14 would have -- yes, I would have noticed it.

15 Q. You would have noticed a person lying on the side -- on the
16 bank of the river, right?

17 A. Yes, sir.

18 Q. So if -- because you were looking around to see if you
19 could notice anything unusual, right?

20 A. Unusual, or as far as officer safety is concerned, yes,
21 sir.

22 Q. Right. And that would have certainly gotten your
23 attention, as far as your thoughts of officer safety, if you
24 saw a body lying on the river, right?

25 A. Yes, sir.

1 Q. Okay. You told Agent Richards, or Supervising Agent
2 Richards, that Agent Compean had been assaulted, correct?

3 A. No, sir.

4 Q. You told him that the driver threw dirt in his eyes?

5 A. Yes, sir.

6 Q. Okay. And you believe -- you said -- your statement, that
7 this, to you, would be an assault on an agent, correct?

8 A. I was asked in my statement if I had been -- had dirt
9 thrown in my eyes, would it have been -- would I have felt it
10 would have been an assault, and I said yes.

11 Q. And when there was an assault, there is some paperwork
12 that's supposed to be filled out by the supervising agent,
13 right?

14 A. Yes, sir.

15 Q. What's that form called, sir, an SIR, or something like
16 that?

17 A. Oh, yes, sir. Significant incident report. That would be
18 at least one of the forms filled out, yes, sir.

19 Q. Right. Well, that form would be filled out whether or not
20 it was the type of an assault that was -- that produced such an
21 injury that the agent who was assaulted would have to take some
22 time off or go on limited duty, right? That would be an
23 entirely different thing, right?

24 A. Yes, sir.

25 Q. So even if the agent didn't need to fill out a CA 1, the

1 supervisor should still fill out a significant injury report if
2 an agent is assaulted, correct?

3 A. If there's an injury that the agent reports, yes, sir.

4 Q. Right. Well, there was --

5 A. And -- to my understanding.

6 Q. Okay. In your understanding, does it require injury or
7 just an assault? I mean, if I go up and, you know, punch you
8 in the jaw and it doesn't really hurt much, is that an assault?

9 A. Yes, sir.

10 Q. So that would require an SIR, right, in your understanding?

11 A. If the agent warrants it, yes, sir.

12 Q. If the agent asks for the SIR?

13 A. If the agent reports being assaulted.

14 Q. Right. Okay. Now --

15 A. I'm not a supervisor, so --

16 Q. I understand.

17 A. -- I'm not sure exactly what their responsibility would be.

18 Q. Right.

19 A. But as far as what my understanding is, that's -- that's
20 what --

21 Q. And that's fine, sir. I'm just asking you about your
22 understanding.

23 When you saw the individual crossing the field, you
24 did not, at that time, have any reason to believe or to know
25 that he was injured, correct?

- 1 A. No, sir.
- 2 Q. It did not occur to you?
- 3 A. No, sir.
- 4 Q. And could you characterize how fast he was going?
- 5 A. Like I said, it wasn't really a walk and it wasn't really a
6 run. I was -- I assumed that it was just him traversing a
7 cultivated agricultural field. I'm not sure what was planted
8 in that field at the time.
- 9 Q. Uh-huh.
- 10 A. But it's not easy walking across a plowed field.
- 11 Q. Right. Okay. Now, you believe that a Border Patrol agent
12 has a legal right to defend himself if he's attacked?
- 13 A. Yes, sir.
- 14 Q. And would that -- and you've been an agent for 16 years,
15 right?
- 16 A. Yes, sir.
- 17 Q. Have you ever been assaulted?
- 18 A. Yes, sir.
- 19 Q. Have you ever been assaulted with a firearm?
- 20 A. No, sir.
- 21 Q. Have you ever been -- do officers sometimes get assaulted
22 with firearms?
- 23 A. Yes, sir.
- 24 Q. What is your understanding when an officer is permitted to
25 defend himself with his firearm?

1 A. With his firearm, it's deadly force. That's -- that's your
2 last resort, in fear of your life or the life of an innocent
3 third party.

4 Q. Right. And does the officer -- does the -- whether or not
5 the officer was justified in using that force, is that
6 determined after the fact, in hindsight, or is that determined
7 by what the officer reasonably perceives at the time he makes
8 that decision?

9 A. It is supposed to be what the officer perceives at the
10 time.

11 Q. That's right. And is there -- and if -- is it -- is the
12 case, in your understanding and the practice that existed in
13 Border Patrol during your 16 years as an officer there, that if
14 it later turns out that the officer can't prove that the
15 individual was a threat to his life or someone else's, that
16 automatically makes his decision to use deadly force wrong?

17 MR. GONZALEZ: Objection, Your Honor. That calls for
18 speculation. It calls -- it also assumes facts not in
19 evidence.

20 THE COURT: Did you understand the question?

21 THE WITNESS: Somewhat, yes, ma'am.

22 THE COURT: I'm going to ask you to repeat the
23 question.

24 BY MR. PETERS:

25 Q. Is the standard to which an officer is held, in your 16

1 years as a Border Patrol agent, after making a decision to use
2 some level of force, that an investigation has to find that
3 the -- that level of force was objectively justified by what
4 actually existed, or is it sufficient that it is justified by
5 the officer's reasonable belief in what the situation is?

6 MR. GONZALEZ: Objection, Your Honor. That's a
7 compound question. Also, I think it's within the jury's
8 province to make that determination.

9 THE COURT: I'll sustain.

10 MR. PETERS: Let me come at it in a different way.

11 THE COURT: All right. I'll sustain the objection.

12 BY MR. PETERS:

13 Q. You're familiar with the use of deadly force guidelines
14 that Border Patrol agents are required to follow, right?

15 A. Yes, sir.

16 Q. Because you're trained in that, right?

17 A. Yes, sir.

18 Q. Ask me -- or tell me whether you agree that this statement
19 is a correct statement of the rules that apply to Border Patrol
20 agents in that situation.

21 The use of deadly force may be used -- is justified
22 when the officer reasonably believes that the person at whom
23 the firearm is to be discharged possesses the means, the
24 intent, and the opportunity of causing death or grievous bodily
25 harm upon the officer or another person.

1 A. Yes, sir.

2 Q. Okay. Let me ask you if you believe that this is a correct
3 statement of the rules that apply to Border Patrol agents.

4 An officer can use deadly force when he has probable
5 cause to believe that the person against whom the force is
6 directed has the means, the intent, and the opportunity to
7 cause death or grievous bodily harm upon the agent or third
8 person.

9 A. I would say, yes, sir, that's true.

10 Q. And probable cause, reasonable believe -- or reasonable
11 belief -- tell me if this is a correct statement of the rules
12 that apply to Border Patrol agents, for the purposes of this
13 policy, means: Facts and circumstances, including the
14 reasonable inferences drawn therefrom known to the officer at
15 the time of the use of deadly force that would cause a
16 reasonable officer to conclude that the point at issue is
17 probably true. The reasonableness of a belief or a decision
18 must be viewed from the perspective of the officer on the scene
19 who may often be forced to make split second decisions in
20 circumstances that are tense, unpredictable, and rapidly
21 evolving. Reasonableness is not to be viewed from the calm
22 vantage point of hindsight.

23 A. Correct. True.

24 Q. You agree that that's the policy that --

25 A. I don't know if it's the policy. I agree with what you're

1 saying, yes. And I don't know specifically if that's what the
2 policy states, if that's what you're reading from.

3 Q. Your conduct would be governed by those constraints that
4 I've just identified?

5 A. Yes, sir, as I understand them.

6 Q. And that's because you want to go home at the end of the
7 day, right?

8 A. Exactly.

9 Q. And officers sometimes do get shot, right?

10 A. Yes, sir.

11 Q. And do they always have a chance to dodge the first bullet,
12 or does sometimes the first bullet hit them?

13 MR. GONZALEZ: Objection, Your Honor, relevance.

14 THE COURT: All right. I'll sustain.

15 BY MR. PETERS:

16 Q. What have you been doing since September? You said you
17 were no longer a line officer?

18 A. Well, I'm back on the horse patrol unit.

19 Q. Oh, you are?

20 A. Yes, sir.

21 Q. Back up in the foothills by Cattleman's?

22 A. Yes, sir.

23 Q. Okay.

24 A. For the most part.

25 Q. Okay. And, let me ask you this: Were you ever notified

1 after this incident, just --

2 MR. PETERS: May I have one second, Your Honor?

3 THE COURT: Sure.

4 BY MR. PETERS:

5 Q. Do you recall being notified, after this incident, of
6 threats against Border Patrol agents in retaliation for this
7 incident?

8 A. Since February of last year to now?

9 Q. Yes.

10 A. Yes, sir.

11 Q. Okay. You --

12 A. I don't -- I don't if it was in retaliation for this. But
13 I know we have had reports of possible assaults on Border
14 Patrol agents, yes, sir.

15 Q. Okay. And you were briefed on that, as part of your job,
16 right?

17 A. Yes, sir.

18 Q. Had you ever been briefed on threats to Border Patrol
19 officers prior to February 17th?

20 A. Yes, sir.

21 Q. It's not that uncommon, is it?

22 A. No, sir. Not at all.

23 Q. You guys are -- you guys are just standing on the line
24 between the United States and the whole rest of the world down
25 there, aren't you?

1 A. Yes, sir.

2 Q. There's nothing between us and the rest of the world but a
3 few Border Patrol agents, right?

4 A. Yes, sir.

5 MR. PETERS: I'll pass the witness.

6 Oh, Your Honor, I guess we would move Government's
7 Exhibit 32 into evidence.

8 THE COURT: Any objection to Government's Exhibit 32?

9 MR. GONZALEZ: No, Your Honor.

10 MR. ANTCLIFF: I don't either.

11 THE COURT: All right. Government's Exhibit 32 will
12 be admitted.

13 MR. ANTCLIFF: May I proceed, Your Honor?

14 THE COURT: You may.

15 CROSS-EXAMINATION

16 BY MR. ANTCLIFF:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. I'm going to show you what has been marked as Government's
20 Exhibit 28. And I'm going to put it up on the big screen, and
21 I would ask you to take a look at it. I think you talked about
22 this document while on your direct testimony.

23 Do you recognize that?

24 A. Yes, sir.

25 Q. Okay. Would you show me again, with the laser pointer

1 that's already up there, where you saw the individual not
2 walking, not running, across the field?

3 A. To my recollection, it must -- I believe it was in this
4 area (indicating) past this first field, into this second.

5 Q. Okay. In relation to your position, when you got out there
6 that afternoon, you're parked somewhere in this area
7 (indicating), in about the center of the picture?

8 A. Yes, sir, I believe so.

9 Q. Okay. And then, when you see the two individuals get into
10 a blue van, where are you looking, approximately, then?

11 A. Approximately -- it seems to me it was off to our south and
12 east a little bit, out in this area (indicating).

13 Q. Okay. Is there some kind of a road up there?

14 A. Yes, sir.

15 Q. And what road is that, if you know?

16 A. I have no idea.

17 Q. Okay. You can see vehicles traveling down that road?

18 A. Yes, sir. Uh-huh.

19 MR. ANTCLIFF: Thanks, Ken. You can turn the lights
20 on.

21 BY MR. ANTCLIFF:

22 Q. You gave a statement, sir, on March 29, 2005, related to
23 the events that -- of which you were aware on February 17,
24 2005. Is that right?

25 A. Yes, sir.

- 1 Q. Okay. March 29th was about, I don't know, five or six
2 weeks after February 17th, right?
- 3 A. Yes, sir.
- 4 Q. Did you have a lawyer at that time?
- 5 A. At the time of my interview?
- 6 Q. Yes, sir.
- 7 A. I had spoken to a lawyer, yes, sir.
- 8 Q. You had. You had not gotten a proffer letter or an
9 immunity letter of any kind from the Government when you
10 spoke --
- 11 A. No, sir.
- 12 Q. -- when you gave your interview?
- 13 A. No, sir.
- 14 Q. Okay. You've never been placed on administrative duty
15 related to this incident, have you?
- 16 A. No, sir.
- 17 Q. You don't believe you did anything wrong whatsoever on
18 February 17th, do you?
- 19 A. No, sir.
- 20 Q. Okay. You mentioned that you had some training from Agent
21 Ramos. Is that right?
- 22 A. Yes, sir. He was a training officer for the Fabens
23 station. So I've had training from him.
- 24 Q. Sure. And everybody gets training from him?
- 25 A. Everybody gets --

- 1 Q. It's not unusual?
- 2 A. No, sir.
- 3 Q. You haven't been trained, have you, by Agent Compean, in
4 any way?
- 5 A. Not that I recall, no, sir.
- 6 Q. Is he a training officer at the Fabens station?
- 7 A. I believe he is designated as one, yes, sir.
- 8 Q. Okay. But --
- 9 A. But a training officer for trainees, not necessarily a
10 training officer for regular Border Patrol training duties that
11 we're --
- 12 Q. Sure. I understand. And -- and that comes -- I guess the
13 level at which you train trainees or other Border Patrol
14 officers -- as your seniority in the Border Patrol increases?
- 15 A. Not necessarily. Just -- a field training officer is a
16 term used differently than a training officer, say, for -- like
17 Mr. Ramos would be considered.
- 18 Q. Okay. He's had specialized training, is that what you're
19 saying? And so he has the ability to train other agents?
- 20 A. Yes, sir. Mr. Ramos has had training for -- as to be an
21 instructor for specialized training.
- 22 Q. Sure.
- 23 A. Yes, sir.
- 24 Q. Have you had specialized training to be an instructor?
- 25 A. Yes, sir.

1 Q. Okay. And what are you authorized, I guess, to instruct
2 other Border Patrol agents?

3 A. Over the years, I can't imagine what -- I can't come with a
4 whole list. The latest was expedited removal training.

5 Q. Pretty much everything. Is that right?

6 A. No, sir.

7 Q. No?

8 A. No.

9 Q. Okay. Let's try to come up with a list, then.

10 A. I've never -- I've never been to the academy or any type of
11 formal training to become an instructor of any firearms or PT
12 or anything like that. No, sir.

13 Q. Okay. You were training Agent Rene Mendez on the day --

14 A. I was his field -- that's why I was trying to make a
15 distinction. A field training officer is something different
16 than an instructor.

17 Q. Okay. And the difference is the level of expertise?

18 A. No, sir. A field training officer is just a -- it could be
19 any agent in the field that has the training to fill out the
20 necessary -- the proper documents that the sector needs, when
21 you have a probationary agent with you as far as trainee.

22 Q. Okay.

23 A. As far as instructor, you're trained to instruct and
24 teach -- or keep agents' certifications for -- up to par and
25 such as that. There's two dif- -- they're two different

1 things.

2 Q. Sure. Part of your responsibilities as a Border Patrol
3 agent, and part of what you had to show Agent Mendez on that
4 day, is apprehending illegal aliens entering the United States.
5 Is that right?

6 A. Yes, sir.

7 Q. And the Border Patrol is the primary agency charged with
8 interdicting drugs coming across into the United States, right?

9 A. I believe so.

10 Q. And I understand you don't do a whole lot of investigation,
11 you turn those seizures over to the DEA. Is that right?

12 A. Right. It's not our primary responsibility, but we end up
13 coming across it, yes, sir.

14 Q. Sure. I mean, you're right there when people cross, right?

15 A. Right.

16 Q. Okay. Things out there -- have you been -- let's try this.
17 Have you been involved in seizures of drugs before in the
18 Fabens station area?

19 A. Yes, sir.

20 Q. Okay. You've also apprehended illegal aliens out there?

21 A. Yes, sir.

22 Q. You've -- I think the term is pushed back illegals coming
23 across. Is that right?

24 A. Deterred.

25 Q. Okay.

1 A. Yes, sir.

2 Q. And deter is sitting up on the levee, I mean, for example,
3 where people can see you, so they don't come across. Is that
4 right?

5 A. Right. Yes, sir.

6 Q. Okay. Have you heard the term "push back"?

7 A. Yes, sir.

8 Q. When a call comes out that a suspected load vehicle is
9 moving around down by the border, people -- Border Patrol
10 agents get interested pretty quick, right?

11 A. Yes, sir.

12 Q. And part of the responsibility is, the ones in the area,
13 get there to do what they can to stop that. Is that right?

14 A. Yes, sir.

15 Q. Okay. In your experience, those kind of things tend to
16 happen pretty quickly. Is that right?

17 A. Yes, sir.

18 I just want to point out, I've only been at Fabens
19 since 2001. I was not in that specific -- put in that specific
20 situation prior to that.

21 Q. I understand. But you've in the Border Patrol for 16
22 years, and you've been at other stations, as well. Is that
23 right?

24 A. Yes, sir. Uh-huh.

25 Q. On February 17, 2005, when you hear the first call,

1 initially because of the distance, and I guess just because of
2 the distance that you are away, you don't respond immediately.
3 Is that right?

4 A. The distance, and I also knew that there were other agents
5 in the area that were -- had made it clear on the radio that
6 they were in the area.

7 Q. So, as an agent, you have a responsibility to monitor the
8 traffic after that call to learn if you're going to be needed
9 or not, and to see what's going on, right?

10 A. Yes, sir.

11 Q. Okay. Eventually, based on the calls that -- the radio
12 traffic that you hear, you decide that you are going to respond
13 to the area, right?

14 A. Eventually, yes, sir.

15 Q. Sure. And you travel to -- down the levee, I guess, for
16 lack of a better word, until you reach Agent Compean's vehicle,
17 right?

18 A. Yes, sir, westbound.

19 Q. And when you arrive, there are a number of agents and their
20 vehicles on the north side of the ditch. Is that right?

21 A. Yes, sir.

22 Q. And you see a van kind of in the ditch almost, that the
23 front wheels have moved almost into the ditch. Is that right?

24 A. Yes, sir.

25 Q. Okay. You didn't see anybody with their weapons drawn when

- 1 you arrived, did you?
- 2 A. No, sir.
- 3 Q. On either the north or the south side of the ditch?
- 4 A. No, sir.
- 5 Q. Let's make a list of who was there. On the south side,
6 where you were, was yourself and your trainee, Mendez, correct?
- 7 A. Yes, sir. South side of the irrigation canal.
- 8 Q. Of the ditch?
- 9 A. Yes, sir.
- 10 Q. Also, Agents Ramos and Compean?
- 11 A. They were there. Mr. Ramos was only there when I arrived.
12 He was -- I had no -- never had any contact with him. But,
13 yes, he was on -- he was there as I drove up.
- 14 Q. So, as you drove up, you see him walking. And then you get
15 there, and he crosses back to the other side of the ditch?
- 16 A. Yes, sir.
- 17 Q. Okay. You didn't speak to him?
- 18 A. No, sir.
- 19 Q. Okay. So we will leave him out.
20 On the north side, for now, tell me who you saw.
- 21 A. On the north side, I don't specifically recall. I remember
22 seeing Mr. Vasquez. Eventually, like I said, I spoke with
23 Mr. Richards and Mr. Arnold. I don't have a specific
24 recollection of who -- I know now who all was there.
- 25 Q. I understand.

- 1 A. I don't have a specific recollection of who I saw. I
2 didn't take a headcount.
- 3 Q. Sure. That's not something that was all that important to
4 you that day, was it?
- 5 A. Not at that point, no.
- 6 Q. Sure. You knew they were agents, and they're on your side,
7 right?
- 8 A. Right. Uh-huh.
- 9 Q. There's no safety issue to the north of you that day?
- 10 A. Not that I perceived.
- 11 Q. Okay. The whole time you were out there you didn't
12 perceive anything as a direct threat to you or your trainee,
13 correct?
- 14 A. No, sir.
- 15 Q. Did you hear any shots when you got out of your vehicle?
- 16 A. No, sir.
- 17 Q. If you had, that would have been important to you, I
18 assume?
- 19 A. Yes, it would have been.
- 20 Q. Okay. Have you heard shots out there before in the Fabens
21 station?
- 22 A. Yes, sir.
- 23 Q. Okay.
- 24 A. Well, in the Fabens station? No.
- 25 Q. I don't mean the station -- the Fabens area of

1 responsibility.

2 A. Yes, sir.

3 Q. Okay. And, I'm sorry, I may have messed that up.

4 A. I just want to be --

5 Q. Nobody is shooting in the station.

6 On that day you never drew your weapon at all?

7 A. No, sir.

8 Q. Your trainee did not draw his weapon, that you know of?

9 A. Not that I know of, no, sir.

10 Q. Okay. You testified, I think, that it was a gray, overcast
11 day. Is that right?

12 A. I don't specifically recall. But, like I said, yes, it
13 appears that way, by the photos that I was shown earlier.

14 Q. Sure. And, periodically, that happens, right? I mean,
15 some days it rains, some days it doesn't?

16 A. Sure. I guess you could put it that way.

17 Q. Okay. You thought nothing unusual about the guy you saw
18 heading south, who ultimately wound up in a blue van, at that
19 time, did you?

20 A. I wouldn't say unusual, I -- no.

21 Q. No?

22 A. No.

23 Q. Okay. You testified that you weren't expecting questions
24 about an assault when you heard Richards yell across the ditch
25 something about an assault. Is that right?

1 A. Yes, sir.

2 Q. You saw Agent Compean coming back up the levee. And he had
3 a lot of dirt on him, didn't he?

4 A. I never saw him coming up the levee, up to the levee, like
5 you said. He was already on top of the levee road when I
6 arrived.

7 Q. Okay. Well, when you get there and he's on the levee road,
8 you see him, and he's got a lot of dirt on him?

9 A. From the -- from what he had told me, it did appear that
10 that was what happened, yes, sir, that he did have some dirt on
11 him.

12 Q. You pointed out to him that he had a cut on his hand?

13 A. Yes, sir. I don't recall if I pointed it out to him, but
14 I -- I did see it, and I did make it -- I did ask him about it.
15 I don't recall specifically if he knew that it was there or
16 not.

17 Q. If, in your statement, you mention that you pointed it out
18 and he seemed surprised, would that be accurate?

19 A. Yes.

20 Q. Okay.

21 A. I guess so.

22 Q. Okay.

23 MR. ANTCLIFF: One moment, Your Honor?

24 THE COURT: Sure.

25 MR. ANTCLIFF: I'll pass the witness, Your Honor.

1 THE COURT: Mr. Gonzalez?

2 REDIRECT EXAMINATION

3 BY MR. GONZALEZ:

4 Q. Agent Yrigoyen, I'm looking at the use of deadly force
5 policy. It states that the subject posing an imminent danger
6 of death or serious bodily injury to the officer.

7 At any time on February 17th did either Compean or
8 Ramos communicate to you or anyone within your earshot that
9 they were in fear of imminent danger of death or serious bodily
10 injury?

11 A. No, sir.

12 Q. Can you think of any reason why you -- if you -- if you had
13 been in fear of imminent danger of death or serious bodily
14 injury, that you would not communicate that to anyone else?

15 A. Yes, sir.

16 MR. ANTCLIFF: I'm going to object, Judge, to
17 relevance. And I don't think he's qualified to answer.

18 MR. GONZALEZ: Well, Your Honor, they've --

19 MR. ANTCLIFF: Your Honor, it calls for speculation,
20 as well.

21 THE COURT: All right. I will sustain.

22 BY MR. GONZALEZ:

23 Q. Okay. What's your training teach you to do when there is a
24 weapon involved?

25 A. To let as many people know about it as you can.

1 Q. Let as many people -- all the other agents present,
2 correct?

3 A. Yes, sir. That would -- that would be the thing to do.

4 Q. And why is that, sir?

5 A. Because, at that point, there's the officer safety issue.
6 And, if you're in that position and there's -- you know that
7 there's other agents responding to your area, you're bringing
8 them into that situation. And that's information that should
9 be relayed to as many people --

10 Q. They need to know, for your own safety, right?

11 A. Yes, sir.

12 Q. And did anyone ever let you know that, Hey, there may be
13 someone out there with a gun?

14 A. No, sir.

15 Q. And that's something that you're trained to tell the other
16 agents at the scene, correct?

17 A. Yes, sir.

18 Q. That did not happen did it?

19 A. No, sir.

20 Q. And you would have called out "cover."

21 What else would you have done, sir? What are some of
22 the things that you are trained to do when someone has a
23 weapon?

24 A. It's to take cover if -- if -- if it's still a threat. And
25 also to relay -- to relay, either verbally, by radio, any way

1 you can, to whoever is in the area or coming into that area.

2 Q. And take cover. You saw the vehicles that were out there
3 on the levee. Can you use those for cover?

4 A. Yes, sir.

5 Q. And would you have stood behind them, if someone was
6 shooting at you?

7 A. Yes, sir.

8 Q. What else would you have done, if there was an imminent
9 threat of death or injury to you, sir?

10 A. In that particular location, you also have the -- you get
11 in your vehicle and drive away, or you go down to the north
12 side of the levee, get down into that irrigation canal, if need
13 be, to avoid.

14 Q. And why is that?

15 A. For -- to take care of yourself, to -- self-preservation.

16 Q. If there's someone with a weapon, sir, do you get off the
17 levee road on the south side and onto the vega?

18 A. No, sir.

19 Q. Nearest to where the danger is?

20 A. No, sir.

21 Q. Why not?

22 A. Because -- there's too many unknowns there. You're in --
23 you're not in control of that situation. And it's -- you're
24 putting yourself in harm's way.

25 Q. Well, you know where the Rio Grande is in that area,

1 correct, near the levee?

2 A. Yes, sir.

3 Q. If someone is in there with a gun, are you going to want to
4 know that that person has a gun?

5 A. Yes, sir.

6 Q. Once again, why is that, sir?

7 A. Because I want to go home at the end of the day. It's
8 officer safety.

9 Q. Thank you. Now, Agents Richards-- or Agent Richards was
10 told about the dirt in the face of Agent Compean?

11 A. I relayed that information, yes, sir.

12 Q. But if Agent Compean doesn't want to pursue that, is that
13 the end of it?

14 A. Like I said, I'm -- I'm not a supervisor. I'm not sure
15 what their responsibility would be in that situation. My -- I
16 could give you my opinion.

17 Q. All right. And do you know that it is our policy, the U.S.
18 Attorney's policy, zero tolerance on officer assaults?

19 MR. ANTCLIFF: Objection. He's testifying.

20 BY MR. GONZALEZ:

21 Q. If you know.

22 THE COURT: All right. I'll sustain.

23 Don't lead your witness.

24 BY MR. GONZALEZ:

25 Q. Do you know that, sir?

1 MR. ANTCLIFF: I've objected, Judge. It was
2 sustained.

3 THE COURT: All right.

4 MR. GONZALEZ: I'll rephrase the question.

5 THE COURT: All right.

6 BY MR. GONZALEZ:

7 Q. Do you know what the policy is for the United States
8 Attorney's office in El Paso on assaults on officers?

9 MR. ANTCLIFF: I'm going to object to the relevance at
10 this point.

11 THE COURT: All right. I'll sustain.

12 BY MR. GONZALEZ:

13 Q. When there's a gun involved, how long should an officer
14 wait before he tells anyone about it?

15 A. I would say you shouldn't wait.

16 Q. You should do it immediately?

17 A. As far as reporting it to --

18 Q. To anyone?

19 A. I would hope that he would -- yeah. I would hope that he
20 would at least say something to the people that are in -- in
21 the area.

22 Q. And, if not that, what else would you expect him to do?
23 Would you expect him, I mean, to tell the supervisor, to tell
24 someone, Hey, there is someone out there with a gun?

25 A. Yes, sir.

1 Q. Certainly, you wouldn't wait a month or two months to say
2 anything like that, would you?

3 A. No, sir. It's an officer safety issue. It would have been
4 pertinent to any other incidents that followed the same type
5 of -- those same things. This occurrence happens pretty often
6 down there. So you would want to be aware of those situations
7 if that does happen --

8 Q. And would you --

9 A. -- for the future.

10 Q. Would you destroy the crime scene by picking up casings?

11 MR. ANTCLIFF: I would object, Judge. What relevance
12 does that have to anything?

13 THE COURT: I'll sustain.

14 BY MR. GONZALEZ:

15 Q. And I think they asked you about it. Did you try to get
16 immunity, sir?

17 A. Did I try? No, sir.

18 Q. Did you request immunity before you spoke to us?

19 A. No, sir. I just -- I was getting Calkin rights.

20 Q. Those are administrative rights?

21 A. Yes, sir.

22 Q. Did you ever seek an attorney to come and see us?

23 A. I -- I initially spoke to an attorney, when I was first
24 contacted by OIG, when I gave my first statement.

25 Q. And you gave your statement to Officer -- Agent Sanchez?

1 A. Yes, sir.

2 Q. It was March 29th or when?

3 A. I believe that was the date, yes, sir.

4 Q. And you haven't had to give another statement. Is that
5 correct?

6 A. No, sir.

7 MR. GONZALEZ: May I have a moment, Your Honor?

8 THE COURT: Yes.

9 MR. GONZALEZ: Thank you, Agent Yrigoyen.

10 I pass the witness, Your Honor.

11 THE COURT: Go ahead, Mr. Peters.

12 RE-CROSS-EXAMINATION

13 BY MR. PETERS:

14 Q. What a Calkin statement does, sir -- or tell me if this is
15 your understanding of a Calkin statement. It basically says
16 you have to answer the questions, you cannot invoke your
17 immunity into the Fifth Amendment, but all your statements
18 cannot be used against you in any criminal prosecution, right.

19 A. Yes, sir.

20 Q. If you refuse to answer, you can be disciplined
21 administratively, you could be fired, but they can't use it
22 against you criminally, right?

23 A. Yes, sir.

24 Q. And that's what you signed when you went and talked to
25 them, right?

- 1 A. Yes, sir.
- 2 Q. When you got there -- and we've all seen this exhibit. And
3 I believe this is the one you were testifying from a moment
4 ago.
- 5 A. I believe so, yes, sir.
- 6 Q. Okay. Did you indicate that, when you saw this individual
7 above the Mexican levee road over here, was he -- he was -- he
8 was -- he was on the left side of -- he was to the left of Jess
9 Harris Road?
- 10 A. That was my perception, yes, sir.
- 11 Q. Was there anybody on the south side of the ditch except
12 those two agents, Ramos and Compean, when you arrived?
- 13 A. No, sir.
- 14 Q. And the alien was well across the river and was heading --
15 and gone across the Mexican levee road, right?
- 16 A. Those are -- it's -- it's two dif- -- it was a little bit
17 afterwards that we noticed the individual running south.
- 18 Q. Right.
- 19 A. It was not at the same time.
- 20 Q. Well, he was -- he --
- 21 A. We had already -- we had already arrived and been at that
22 scene when Mr. Mendez noticed the individual.
- 23 Q. How long had you been at the scene?
- 24 A. I don't know the time. It seemed like a long time, but I
25 think it was -- those records show it was pretty short.

1 Q. Well, he certainly wasn't on the north side of the river,

2 or --

3 A. No, sir.

4 Q. -- you would have seen him, right?

5 A. No, sir. He was definitely south.

6 Q. So, in terms of somebody calling out, Gun, or Cover, or

7 Duck, that wouldn't have affected anybody on the north side of

8 the ditch by that time, because the person would have been --

9 was already on the south side of the river, right?

10 A. That -- I need that question to be clarified, because that

11 doesn't pertain -- I don't know who that individual was. We

12 just saw that individual.

13 Q. Okay. So you're not even sure that that was the same

14 individual who had been involved in the altercation?

15 A. No, sir, I'm not sure it was.

16 Q. Okay. If the individual who may have had a weapon had

17 already left the scene, so that there was no, by that time,

18 imminent immediate threat, you wouldn't go around yelling, Gun,

19 gun, cover, cover?

20 A. Again, that -- you mean in that specific lo- -- because

21 you're saying "if." And I don't know that there was anybody

22 else at the scene, or somebody had -- specifically had left

23 that scene. So if you're --

24 Q. Let me rephrase. Let me rephrase the question, because I

25 understand what you're saying.

1 The time that you're going to yell something like,
2 Gun, cover, something like that, is going to be immediately
3 when you see the gun, right?

4 A. When you yell it, yes, sir.

5 Q. It's not going to be 45 seconds or two minutes after that,
6 when the guy is already gone. That's not when you're going to
7 be yelling, Duck, gun, and cover?

8 A. I would still be advising people in the area that that is
9 the situation, and on the radio, yes, sir.

10 Q. Right. But that's a dif- -- that's not the same warning as
11 the one --

12 A. What you're implying, no. No, sir, it's not.

13 Q. Okay. And the individuals that -- well, let me -- let me
14 just leave that.

15 Do you believe that the circumstances that precede an
16 encounter with an individual are relevant for an officer to
17 factor in in deciding how that danger -- how dangerous that
18 individual is?

19 In other words, would you agree with me that the
20 officer can use the totality of the circumstances, of his
21 observations of an individual, in deciding whether a situation
22 exists or doesn't?

23 A. Yes, sir.

24 Q. So, for example, if an individual had refused to pull over
25 when a Border Patrol agent had tried to pull him over with the

1 emergency lights, would that be one factor that you could
2 consider in evaluating what kind of risk that individual might
3 pose?

4 A. Yes, sir.

5 Q. If that individual had been in a scuffle of some kind with
6 another agent, if he had resisted that agent physically and had
7 refused to stop when ordered, would that be a factor that an
8 agent could properly consider in deciding whether that
9 individual was dangerous?

10 A. Yes, sir.

11 Q. If the agent had heard gunfire immediately before he
12 personally, physically encountered the subject, is that a
13 factor that he is entitled to consider in deciding whether or
14 not that individual poses a danger to him?

15 A. Yes, sir.

16 Q. If the indiv- -- if the agent had -- was aware that another
17 agent had found it necessary to fire his weapon, is that a
18 factor that the agent could consider in determining whether or
19 not an individual posed a danger to him?

20 A. Yes, sir.

21 MR. PETERS: I'll pass the witness.

22 THE COURT: Mr. Antcliff?

23 RECCROSS-EXAMINATION

24 BY MR. ANTCLIFF:

25 Q. Sir, if the person that we're talking about had brandished

1 a weapon, or something that looked like a weapon, would that be
2 another factor that you would consider?

3 A. Yes, sir.

4 Q. Okay. Was anybody shooting at you when you arrived at the
5 scene?

6 A. No, sir.

7 Q. Okay. You were aware, when you arrived, that Agent Compean
8 and his vehicle were on the south side of the ditch, correct?

9 A. Yes, sir.

10 Q. And everybody else, with the exception of Agent Ramos, was
11 on the north side of the ditch, right?

12 A. Yes, sir.

13 Q. And you were aware, based on his appearance, that Agent
14 Ramos is the only agent who crossed through the ditch to the
15 south side. Is that right?

16 A. That's what it appeared like to me, yes, sir.

17 Q. I understand. You didn't ask him if he crossed. It just
18 looked that way?

19 A. Yes, sir.

20 Q. Okay. If -- strike that.

21 MR. ANTCLIFF: I'll pass the witness.

22 THE COURT: Mr. Gonzalez?

23 MR. GONZALEZ: Yes, Your Honor.

24

25

1 REDIRECT EXAMINATION

2 BY MR. GONZALEZ:

3 Q. Assuming all these factors that the defense attorneys just
4 rattled off to you, Mr. Peters and Mr. Antcliff, wouldn't you
5 also want to know that that person had a gun?

6 A. Yes, sir.

7 Q. And wouldn't you expect your fellow officers to relay that
8 to you and to the world?

9 MR. PETERS: Objection, leading.

10 THE COURT: All right. I'll sustain.

11 BY MR. GONZALEZ:

12 Q. What would you expect that officer to do, who is trained as
13 you are, to do with that information that the suspect has a
14 gun?

15 A. To pass it along to me or to anybody involved, because we
16 are now in that situation.

17 Q. You were a sitting duck up there, weren't you?

18 A. Yes, sir.

19 Q. As was Agent Mendez, as was Agent Ramos, as was Agent --

20 MR. PETERS: Leading, Your Honor.

21 THE COURT: I'll sustain.

22 BY MR. GONZALEZ:

23 Q. Would they all have been sitting ducks if any of this were
24 true, if there was a shot -- a gun involved?

25 MR. PETERS: Leading.

1 THE COURT: I'll sustain. Don't lead.

2 MR. GONZALEZ: Yes, Your Honor.

3 BY MR. GONZALEZ:

4 Q. Did anyone, once again, ever mention to you that the
5 fleeing alien had a gun?

6 A. No, sir.

7 Q. That they maybe thought he had a gun?

8 A. No, sir.

9 Q. Did anyone even mention that they saw something shiny in
10 his hand?

11 A. No, sir.

12 Q. And you would have wanted -- would you have wanted to know
13 that information?

14 A. Yes, sir.

15 Q. And what would you have done with that information, had you
16 been told?

17 MR. ANTCLIFF: Objection, Judge. It's not relevant,
18 and it calls for speculation.

19 THE COURT: I'll overrule.

20 MR. GONZALEZ: Thank you.

21 A. I would have -- I would have made an attempt to make sure
22 as many people that were there on the scene and on the radio
23 knew that there was a possibility of somebody in this area with
24 a weapon.

25

1 BY MR. GONZALEZ:

2 Q. And did either Agent Compean or Agent Ramos tell anyone on
3 February 17, 2005, that they thought the alien had a gun?

4 MR. ANTCLIFF: Objection, asked and answered.

5 THE COURT: I'll overrule.

6 A. Not that I know of.

7 MR. GONZALEZ: Pass the witness, Your Honor.

8 THE COURT: Go ahead, Mr. Peters.

9 RECROSS-EXAMINATION

10 BY MR. PETERS:

11 Q. Did either Agent Compean or Agent Ramos tell you that they
12 believed that they had hit an alien with a bullet?

13 A. No, sir.

14 MR. PETERS: Pass the witness.

15 RECROSS-EXAMINATION

16 BY MR. ANTCLIFF:

17 Q. Sir, would you agree with me that, at the time that you
18 arrived up on the levee, nothing happened to you. Is that
19 right?

20 A. I'm sorry. Can you say that again?

21 Q. Nobody tossed a shot at you, did they?

22 A. No, sir.

23 Q. Obviously, the threat had terminated; there was no threat
24 that you perceived, correct?

25 A. I don't know if the threat had been terminated, but I -- at

1 the time, no, I -- it seemed to me that the threat had been --
2 had already passed, or whatever -- whatever had occurred had
3 already --

4 Q. It was over?

5 A. It was over by the time I got there, yes, sir.

6 MR. ANTCLIFF: Pass the witness.

7 REDIRECT EXAMINATION

8 BY MR. GONZALEZ:

9 Q. If the person has a gun, as he's walking away from you, do
10 you decide to remain silent?

11 A. No, sir.

12 Q. You're going to tell the other agents that, Hey, that alien
13 down the road has a gun, aren't you?

14 A. Yes, sir.

15 Q. Did that happen?

16 A. Not that I know of.

17 Q. Thank you.

18 MR. PETERS: I have nothing further.

19 MR. ANTCLIFF: I don't have anymore questions of this
20 witness.

21 THE COURT: Is he free to go?

22 MR. GONZALEZ: Yes, your Honor.

23 THE COURT: Okay.

24 MR. ANTCLIFF: Yes, Your Honor.

25 MR. PETERS: Yes.

1 THE COURT: Thank you. You're free to go.

2 MS. KANOF: Should we call our next witness?

3 THE COURT: Yes.

4 MS. KANOF: Agent Jonathan Richards.

5 THE CLERK: He has not been sworn, Your Honor.

6 THE COURT: All right.

7 (Witness sworn.)

8 THE COURT: Whenever you're ready, Ms. Kanof.

9 MS. KANOF: Thank you, Your Honor.

10 JONATHAN RICHARDS, GOVERNMENT'S WITNESS, SWORN

11 DIRECT EXAMINATION

12 BY MS. KANOF:

13 Q. State your name.

14 A. Jonathan Richards.

15 Q. How are you employed?

16 A. I'm a field operations supervisor with the U.S. Border
17 Patrol, in Fabens, Texas.

18 Q. How long have you been with the Border Patrol?

19 A. A little over 17 years.

20 Q. How long have you been a supervisor?

21 A. About eight years.

22 Q. About -- I'm sorry?

23 A. About eight years.

24 Q. Eight years?

25 What's a field operations supervisor?

1 A. Basically, I supervise the supervisors.

2 Q. Okay. So with regard to the Fabens station on February 17,
3 2005, what were your duties and responsibilities with regard to
4 the agents that worked out of that station?

5 A. I was, again, the field operations supervisor. My job was
6 to oversee field operations.

7 Q. How long had you been at Fabens?

8 A. At that time, about two years.

9 Q. Okay. And you said you have been with Border Patrol 17
10 years. Where were you stationed as a supervisor prior to the
11 Fabens station?

12 A. At the Ysleta, Texas, station.

13 Q. Okay. That's just right next to the Fabens station,
14 correct?

15 A. Yes, ma'am.

16 Q. The Fabens station is about 24 miles long?

17 A. That's correct.

18 Q. And then on one side of it is Ysleta, correct?

19 A. That's correct.

20 Q. And on the other side it's outside of El Paso County?

21 A. That's correct.

22 Q. And, prior to being a supervisor in the Ysleta station,
23 where were you assigned?

24 A. I had been in the Ysleta station my entire career, before
25 going to the Fabens station.

- 1 Q. So for nine years you were in Ysleta, not as a supervisor.
2 Is that correct?
- 3 A. For 14 -- yes, that's correct.
- 4 Q. And then you were at Ysleta as a supervisor for a few
5 years?
- 6 A. Approximately five years.
- 7 Q. And then you were transferred to Fabens as a field
8 operations supervisor?
- 9 A. That's correct.
- 10 Q. When you went from Ysleta to Fabens, basically, was it a
11 promotion?
- 12 A. That's correct.
- 13 Q. Okay. From supervisor to field operations supervisor?
- 14 A. That's correct.
- 15 Q. Okay. Describe what the Fabens station looks like. What's
16 it comprised of?
- 17 A. You mean the geography of the station?
- 18 Q. No, I -- it's a trailer, right? Or what is -- is it --
19 physically, is it a large building?
- 20 A. Yes, ma'am.
- 21 Q. Okay. And are there offices in that building?
- 22 A. Yes, ma'am.
- 23 Q. What else is inside that building?
- 24 A. There's a detention area in the back, processing area.
25 There's a muster room. We have horse stables in the back of

- 1 the station. We have a garage in the back of the station.
- 2 Q. Are there offices?
- 3 A. That's correct.
- 4 Q. How many offices? Well, is there an office for you?
- 5 A. Yes, ma'am.
- 6 Q. Are there other supervisors?
- 7 A. Yes, ma'am.
- 8 Q. And do the other supervisors have offices?
- 9 A. That's correct.
- 10 Q. I take it the individual field agents don't have offices.
- 11 A. No, ma'am, they do not.
- 12 Q. Okay. On February 17, 2005, were you the field operations
13 supervisor officer on duty that day?
- 14 A. That's correct.
- 15 Q. And about 1:00 in the -- well, let me go back.
- 16 Let's talk a little bit about radio traffic. As part
17 of your duties and responsibilities as a supervisor, do you
18 monitor radio traffic?
- 19 A. It's incumbent upon all of the supervisors and managers to
20 monitor the radio.
- 21 Q. And in -- in -- with regards to the location of a radio and
22 your office, can you hear the radio from your office?
- 23 A. Yes, ma'am.
- 24 Q. Where is it located?
- 25 A. I have a base station radio in my office.

- 1 Q. Okay. And -- a single base station radio, correct?
- 2 A. That's correct.
- 3 Q. Okay. Throughout the trial, the jury has heard a lot about
4 the different kinds of radio traffic. Briefly, does your base
5 station receive all kinds of radio traffic?
- 6 A. Yes, ma'am.
- 7 Q. Does that include repeater traffic?
- 8 A. That's correct.
- 9 Q. Does that include local or direct traffic?
- 10 A. If it's near enough, yes, that's correct.
- 11 Q. Okay. How far away does an agent have to be for local or
12 direct, where you no longer can hear legibly, or intelligibly,
13 hear radio traffic on local or direct?
- 14 A. I don't think you can quantify that in a distance. It all
15 depends on the terrain, the weather, obstructions to block the
16 signal.
- 17 Q. Do you instruct agents which radio -- by the way, do you
18 hear them the same time? In other words, if -- does the radio
19 receive all communications?
- 20 A. Yes. However, if someone is transmitting on the direct or
21 talkaround mode, and someone keys a radio on the repeater, it
22 generally overrides the direct, or talkaround feature.
- 23 Q. Okay. So as soon as somebody starts talking on the
24 repeater, it pushes out your ability to hear the local. Is
25 that correct?

- 1 A. That's correct.
- 2 Q. Okay. Do you make a recommendation to your agents on which
3 frequency they should be when they're out in the field?
- 4 A. I suggest that they work on the repeater.
- 5 Q. Why?
- 6 A. Because I think it allows the other agents in the area to
7 hear what's going on, and also the supervisors and the managers
8 at the station to hear what is going on, if they're not far --
9 or not close enough for us to hear the local traffic.
- 10 Q. Is it -- is there an issue of safety involved in using the
11 repeaters?
- 12 A. Absolutely.
- 13 Q. What is that issue?
- 14 A. It lets other agents that are working in the Fabens area
15 know what's going on.
- 16 Q. Okay. Then why would they use direct or local
17 communications at all?
- 18 A. That's just the preference of the agent, I believe.
- 19 Q. Okay. Physically, inside a patrol unit, describe where the
20 radio is located.
- 21 A. In different vehicles, in various locations. But, for the
22 most part, it's in the center console.
- 23 Q. And does their radio inside the vehicle also receive
24 transmissions, regardless of how they're transmitted?
- 25 A. That's correct.

- 1 Q. And is there anything you have to do to the receiver on the
2 radio to switch from repeater to local?
- 3 A. In order to receive those transmissions?
- 4 Q. To receive the transmissions.
- 5 A. No, ma'am.
- 6 Q. So someone's radio -- they don't have to do anything
7 physically to get different traffic?
- 8 A. No, ma'am.
- 9 Q. What about to send traffic?
- 10 A. They would have to press the direct button.
- 11 Q. Okay. Now, the receiver, is it the same as the piece of
12 equipment that they also use to send communications?
- 13 A. I'm not sure I'm following you there.
- 14 Q. What does an agent that's in a patrol vehicle use to send a
15 communication? Is there something they hold in their hand?
- 16 A. They pick up the mike, yes.
- 17 Q. Okay. And the mike is attached to the receiver?
- 18 A. That's correct.
- 19 Q. Okay. And what do they have to do in order to switch from
20 local to repeater or back?
- 21 A. They would reach down to the radio and press the direct
22 button.
- 23 Q. Is it complicated?
- 24 A. No, ma'am.
- 25 Q. Okay. Take very long?

- 1 A. No, ma'am.
- 2 Q. So, on February 17th of last year, where were you around
3 1:00 in the afternoon?
- 4 A. I was in the office.
- 5 Q. And were you monitoring radio traffic?
- 6 A. Yes, ma'am.
- 7 Q. What, if anything, did you hear at approximately 1:11 p.m.?
- 8 A. I heard Agent Compean call out that he had a vehicle
9 leaving an area at a high rate of speed.
- 10 Q. When you heard that transmission, had you heard anything
11 prior to that, regarding this van and what subsequently became
12 a seizure?
- 13 A. No, ma'am.
- 14 Q. So the first thing you heard was Agent Compean calling out
15 a van leaving at a high rate of speed?
- 16 A. Yes, ma'am.
- 17 Q. And do you know whether that was on local or repeater
18 traffic?
- 19 A. No, ma'am, I do not.
- 20 Q. Okay. Well, when you heard that, what did it cause you to
21 do?
- 22 A. It caused me to listen more attentively to the radio, and
23 also to call Supervisor Robert Arnold, and ask him to respond
24 to that area.
- 25 Q. Who is Supervisor Robert Arnold?

- 1 A. He's a supervisor at the Fabens station.
- 2 Q. And you're his boss?
- 3 A. That's correct.
- 4 Q. So you heard that one callout, and what did you do with
5 regards to Supervisor Arnold?
- 6 A. I called him and asked him to respond to the area.
- 7 Q. Did he?
- 8 A. Yes, ma'am.
- 9 Q. Okay. And what did you do next, or what do you hear next?
- 10 A. I believe I tried -- I wasn't hearing very much
11 communication at all. And I attempted to contact some of the
12 agents, that were talking about the vehicle, responding.
- 13 Q. Okay. So you heard Agent Compean. Did you hear anybody
14 else on the radio before you attempted to make the contact?
- 15 A. No, ma'am.
- 16 Q. Okay. So you heard silence for a while?
- 17 A. Yes, ma'am.
- 18 Q. And what did that make you think?
- 19 A. It made me want to know what's going on.
- 20 Q. Okay. Is that before you sent Arnold out or after you sent
21 Arnold out?
- 22 A. After, I believe.
- 23 Q. Okay. And so what did you do with regard to the fact that
24 you weren't receiving any communications?
- 25 A. I tried -- I got on the radio and tried to contact some of

- 1 the agents.
- 2 Q. Do you recall who you tried -- which -- by the way, which
- 3 frequency did you use?
- 4 A. I used the repeater.
- 5 Q. When you communicate, how -- how often -- or which
- 6 frequency do you use when you communicate?
- 7 A. I most -- 99 percent of the time I use the repeater.
- 8 Q. And what's the purpose for that?
- 9 A. So that everyone can hear my transmission.
- 10 Q. Does the fact that the repeater also records the
- 11 transmission have anything to do with it?
- 12 A. Yes, ma'am.
- 13 Q. Okay. And why would you want a record?
- 14 A. A record of what had transpired, in case it's needed.
- 15 Q. So you -- did you make a general callout or did you call
- 16 out for the specific agent?
- 17 A. I believe I called Agent Ramos at one point.
- 18 Q. How do you know he was out there, if you hadn't heard a
- 19 communication regarding him, or heard his voice?
- 20 A. I obviously had heard his voice.
- 21 Q. Okay. Well, we went back, and you hadn't heard anything,
- 22 so you made a callout. And let me go back and ask you: Did
- 23 you -- had you heard anyone other than Compean's voice when you
- 24 first became concerned and wanted to know what was going on?
- 25 A. I don't remember the exact radio transmissions from that

1 day. But something is making me remember that I know I called
2 Agent Ramos.

3 Q. Okay. And did you call him on the radio or did you use
4 cell phone?

5 A. I called him on the radio.

6 Q. What did you say, if you recall?

7 A. I believe I asked him his 10-20, which is his location.

8 Q. And did he respond?

9 A. No, ma'am.

10 Q. Well, you were on the repeater. Is that correct?

11 A. That's correct.

12 Q. Did that cause you concern?

13 A. Yes.

14 Q. What did you do next?

15 A. Next, I believe I contacted Supervisor Arnold again. And I
16 asked him if he had reached the area where they were yet. And
17 he told me he had not.

18 And about that time I believe I grabbed a camera out
19 of the armory, and I went out to the location myself.

20 Q. When you spoke with Arnold, what type of communication did
21 you use?

22 A. I spoke to him via cellular phone.

23 Q. Why did you use your cell phone?

24 A. So I could communicate with him, and not tie up the radio.

25 Q. Okay. And also, you might want to have a private

- 1 communication with him --
- 2 A. Yes, ma'am.
- 3 Q. -- between supervisors. Is that correct?
- 4 A. Yes, ma'am.
- 5 Q. So you -- what did you -- you grabbed something and took
- 6 off yourself?
- 7 A. That's correct.
- 8 Q. What did you grab?
- 9 A. A digital camera.
- 10 Q. Why did you grab a camera?
- 11 A. Just in case there was a seizure, I wanted to be able to
- 12 document it.
- 13 Q. You had heard that there was a van, so there was a
- 14 likelihood there was a seizure. Is that correct?
- 15 A. It's possible, yes.
- 16 Q. It's a possibility. What did you do next?
- 17 A. I responded out to the field. And then I arrived on Jess
- 18 Harris, that location.
- 19 Q. Now, you're a supervisor. Do you go out on every seizure?
- 20 A. No, ma'am.
- 21 Q. Why did you go out on this one?
- 22 A. Because there was no radio traffic, and I was getting a
- 23 little concerned.
- 24 Q. Okay. And about how long did it take you to get from the
- 25 Border Patrol station to Jess Harris Road?

1 A. It probably took me about five to ten minutes.

2 Q. In the process, in your vehicle, you also have the ability
3 to receive radio communications. Is that correct?

4 A. That's correct.

5 Q. Did you hear other radio communications?

6 A. I believe finally I called again, the last time before I
7 arrived there. And Agent Mendoza -- I asked him if everything
8 was okay, if they were 10-18, is everything okay?

9 And he responded that they were 10-19, which is,
10 everything is okay.

11 Q. Agent Richards, when -- let's just take the gap from when
12 you left the building to when you got in your vehicle. Were
13 you able to hear radio transmissions in that block, from your
14 office to your vehicle.

15 A. No, ma'am.

16 Q. So if there was maybe -- how long a period of time were you
17 closed out of radio communications?

18 A. Probably no more than a minute or two.

19 Q. Okay. Now, when you -- by the way, when you arrived at
20 Jess Harris Road, you say -- when you say Jess Harris Road, do
21 you mean where the action took place?

22 A. Yes, ma'am.

23 Q. Okay. So you don't mean some other part of Jess Harris
24 Road?

25 A. Well, it's a real long road.

1 Q. Okay.

2 A. A mile and a half or so.

3 Q. So you're talking about the drainage ditch and Jess Harris?

4 A. Yes, ma'am.

5 Q. Is that correct?

6 In the entire time, other than the minute or so that
7 it took for you to walk to your car, did you ever ask -- or
8 ever hear communications at sector ask for permission for a
9 hot -- hot pursuit?

10 A. No, ma'am.

11 Q. What is hot pursuit?

12 A. A hot pursuit would be when a suspect vehicle refuses to
13 yield to a Border Patrol vehicle, it's violating traffic laws,
14 and the agent, to pursue that vehicle, would have to violate
15 traffic laws.

16 Q. Okay. Let's go back.

17 Your primary mission is to intercept illegal aliens,
18 correct?

19 A. That's correct.

20 Q. And how often is it that an agent requests a hot pursuit to
21 pursue an illegal alien?

22 A. I have never had a request for that.

23 Q. Your secondary mission is terrorism. We'll skip over that.

24 You also assist the Drug Enforcement Administration in
25 seizing loads that you observe. Is that correct?

- 1 A. That's correct.
- 2 Q. And under what conditions do you authorize a hot pursuit to
3 chase a load vehicle?
- 4 A. I don't.
- 5 Q. What do you mean, you don't?
- 6 A. I don't think that the narcotics load would be worth the
7 safety of the officer, the suspect involved or the public.
- 8 Q. Okay. Well, let's talk a little bit about the Border
9 Patrol hot pursuit policy. Is there a written policy?
- 10 A. Yes, ma'am, there is.
- 11 Q. And is that policy taught to all agents?
- 12 A. Yes, it is.
- 13 Q. Where is it taught?
- 14 A. It's taught at the Border Patrol academy, and then there's
15 annual refresher training.
- 16 Q. Okay. And do you know whether Agents Compean and Ramos
17 have received annual refresher training?
- 18 A. I'm sure they have. I do not have those documents to tell
19 you for sure, but it's SOP.
- 20 Q. If an individual agent wants to engage -- okay. A hot
21 pursuit, then, is for -- is the agent exceeding the speed
22 limit. Is that correct?
- 23 A. Along with the suspect vehicle driving erratically, yes.
- 24 Q. Okay. And can an agent exceed the speed limit without
25 requesting a hot pursuit authorization?

1 A. Only to attempt to catch up to a vehicle to perform a
2 vehicle stop.

3 Q. Okay. Well, how long can they do that before they ask
4 permission?

5 A. I don't believe there's a set time. But it's what's
6 reasonable, to catch up to the vehicle and attempt to make a
7 vehicle stop.

8 Q. Okay. And how -- let's say the speed limit is -- well,
9 you're familiar with the S curve on Fabens Road, correct?

10 A. Yes, ma'am.

11 Q. And do you recall that the speed limit there is ten miles
12 an hour?

13 A. No, I do not.

14 Q. Okay. Well, if it were ten miles an hour, what would be
15 reasonable for an agent, in order to make an immigration stop,
16 to be traveling and following someone who had failed to yield?

17 A. Ten miles an hour.

18 Q. Well, I thought you said that they could exceed the speed
19 limit.

20 A. I'm just talking about the S curve. I wouldn't speed
21 through that curve for anything.

22 Q. Okay. What about the straightaways?

23 A. I don't think I would like to quantify the speed. I would
24 like to feel what the agent feels reasonable and safe.

25 Q. Okay. You are very familiar with that area, because you've

1 worked it for years, correct?

2 A. Yes, ma'am.

3 Q. Is it reasonable and safe to drive 65 miles an hour down
4 Jess Harris -- first Fabens Island, and then Jess Harris Road,
5 in order to make an immigration stop?

6 A. I think that would be excessive.

7 Q. Okay. And would you have expected an agent to have asked
8 permission in order to do that?

9 A. Yes, ma'am.

10 Q. And, if the agent had done that, what would you have said?

11 A. Absolutely not.

12 Q. Well, let's talk about the actual rules of hot pursuit.
13 First of all, does the agent have to have probable cause to
14 believe that the person they're pursuing has committed a
15 felony?

16 A. Yes. But to even engage in a high-speed/high-risk pursuit,
17 an agent would have to be driving a marked sedan. So none of
18 the agents who were in the field that day would have had the
19 opportunity to do that, because they do not have -- were not
20 issued one of those types of vehicles.

21 Q. Okay. Those trucks -- and they're in higher profile
22 vehicles, correct?

23 A. Yes, ma'am.

24 Q. And a high-speed pursuit is never authorized with any other
25 vehicle other than a sedan?

- 1 A. That's correct. It's spelled out in the pursuit policy
2 that you cannot engage in a high-speed/high-risk pursuit
3 without having a marked sedan.
- 4 Q. Why is that?
- 5 A. Because they're much safer.
- 6 Q. Okay. They don't roll as easily?
- 7 A. That's correct.
- 8 Q. Especially on a dirt road?
- 9 A. That's correct.
- 10 Q. And if a -- if -- if what an agent had heard was, Van
11 coming from 76 area at a high rate of speed, would that have
12 been probable cause to believe that the driver of that van was
13 engaging in a felony?
- 14 A. No, ma'am.
- 15 Q. Okay. In a hot pursuit, isn't the idea that you actually
16 know the person is a felon?
- 17 A. That's correct.
- 18 Q. Okay. And that justifies the danger. Is that correct?
- 19 A. That's correct.
- 20 Q. There are other things that need to occur when an agent is
21 engaging in a hot pursuit, correct?
- 22 A. That's correct.
- 23 Q. First of all, what radio transmission frequency should they
24 be on?
- 25 A. Well, they have to notify sector communications. So the

1 only way they could do that would be on the repeater.

2 Q. Okay. What do they notify sector communications?

3 A. They would advise them that they're initiating a
4 high-speed/high-risk pursuit. They would give information as
5 to the suspect vehicle, the direction of travel, the speed,
6 various items.

7 Q. Okay. Was that done on February 17th?

8 A. No, ma'am.

9 Q. And what else do they have to do? Do they have -- you said
10 they have to give a description of the vehicle. What about the
11 license plate?

12 A. That's correct.

13 Q. Do they have to give that license plate number while
14 they're seeking the permission to engage in a high-speed
15 pursuit?

16 A. That's correct.

17 Q. Was that done on that day?

18 A. No, ma'am.

19 Q. Do they have to give directions of travel?

20 A. Yes, ma'am.

21 Q. Do they have to give approximate speed that both they and
22 the vehicle in pursuit are going?

23 MR. ANTCLIFF: I'm going to object to leading.

24 MR. PETERS: Leading.

25 MS. KANOF: I'm trying to make it a little faster.

1 THE COURT: Yeah, I have it in stereo here. Yes,
2 that's leading. I'll sustain.

3 BY MS. KANOF:

4 Q. Okay. With regard to the communication that they must pass
5 on to sector, what, if anything, do they have to say about why
6 they're following the person?

7 A. They have to say what his activity was that led to the
8 pursuit.

9 Q. Okay. And if that activity had been, well, another agent
10 called out he was going at a high rate of speed from area 76,
11 would that have caused you to authorize a hot pursuit?

12 MR. PETERS: Leading.

13 THE COURT: I'll overrule.

14 A. No, ma'am.

15 MS. KANOF: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY MS. KANOF:

18 Q. I'm going to hand you what's -- do you recognize this as
19 the hot pursuit policy?

20 A. Yes, ma'am.

21 Q. I'm going to draw your attention to Number 9, under the
22 responsibilities of the initiating vehicle.

23 And what, if anything, does that requirement imply?

24 A. Which number was that?

25 Q. Number 5.

1 MR. PETERS: Could I have the page number?

2 MS. KANOF: It's page 7.

3 MR. PETERS: Number 9, you said?

4 MS. KANOF: Number 5.

5 A. It says, Provide the identity or description of the known
6 occupants and/or drivers.

7 BY MS. KANOF:

8 Q. Okay. So does that -- what does that tell you?

9 A. It would tell me that you would have to have some prior
10 knowledge of what this individual had done prior to initiating
11 a high-speed pursuit.

12 Q. Okay. Do you also have to give information -- what, if
13 any, information must they provide about the threat that's
14 posed by the individual driving the car?

15 A. They have to be able to show that the benefits of pursuing
16 the individual outweigh the dangers.

17 Q. You've been a Border Patrol agent for 17 years. Is that
18 correct?

19 A. Yes, ma'am.

20 Q. And a supervisor for eight?

21 A. That's correct.

22 Q. Have you ever authorized a hot pursuit?

23 A. No, ma'am.

24 Q. Have you ever requested one while you were an agent?

25 A. No, ma'am.

- 1 Q. Why?
- 2 A. Never been in that situation. And I probably wouldn't do
3 it, unless it was a very, very serious offense.
- 4 Q. A lot of times Border Patrol agents intercept individuals
5 that turn out to be known felons, correct?
- 6 A. That's correct.
- 7 Q. If they were intercepting an individual that turned -- that
8 they knew to be a known felon, who then escaped from them,
9 would that justify a hot pursuit?
- 10 A. For simply an escape?
- 11 Q. Yes.
- 12 A. No, ma'am.
- 13 Q. Even that would not justify a hot pursuit?
- 14 A. Not in my opinion.
- 15 Q. Okay. Let me ask you about other duties and
16 responsibilities that you have as a supervisor. And is a
17 supervisor for Border Patrol a paper intensive job?
- 18 A. I won't say it's paper intensive, but yes, we do have a lot
19 of paperwork.
- 20 Q. Okay. And have you ever shirked from that paperwork?
- 21 A. No, ma'am.
- 22 Q. Have you ever, in your opinion, given anybody the idea that
23 you did not want to do paperwork?
- 24 A. No, ma'am.
- 25 Q. Do you consider that as part of your duty and

1 responsibility as a supervisor?

2 A. Absolutely.

3 Q. Okay. Let's talk about paperwork that is necessary or not
4 necessary in certain circumstances and situations.

5 First, let's talk about an agent being assaulted. If
6 an agent reports to you that they are the victim of assault,
7 what do you do?

8 A. We would do an assault report. We would do a significant
9 incident report. We would pass information up the chain of
10 command --

11 Q. Okay. Who --

12 A. -- and notify the FBI.

13 Q. If an agent is assaulted, what paperwork, if any, does the
14 agent have to do?

15 A. Little or none.

16 Q. And what paperwork does the first-line supervisor have to
17 do?

18 A. It would be the report of assault and also the significant
19 incident report.

20 Q. Okay. Does there have to be an injury to an assault for
21 there to be a report of assault?

22 A. No, ma'am.

23 Q. And what was the other one, the significant incident
24 report?

25 A. Yes, ma'am.

1 Q. Does there have to be an injury to report a -- to generate
2 a significant incident report?

3 A. No.

4 Q. Then you said that you -- something about the FBI?

5 A. Notify the FBI. They're the ones responsible for
6 investigating assaults against federal agents.

7 Q. Okay. And have you communicated what has to be done if an
8 agent is assaulted to the agents that you supervise?

9 A. I believe they're all pretty much aware of what needs to be
10 done.

11 Q. Okay. But my question is: Have you communicated it?

12 A. No.

13 Q. Okay. Has it been communicated to them as part of their
14 training?

15 A. I don't believe so. No, ma'am.

16 Q. Okay. How do you -- then how do you know they know?

17 A. Just by their tenure in the Border Patrol.

18 Q. Well, let me ask you this: After the FBI investigates,
19 where does an assault go?

20 A. It goes to the Assistant U.S. Attorney's, if there's a body
21 involved.

22 Q. Okay. And have you communicated the policy of the U.S.
23 Attorney's office to your agents in the field?

24 A. As far as?

25 Q. As the zero tolerance policy for assaults on federal

1 officers.

2 MR. ANTCLIFF: Judge, I'm going to object to
3 relevance. What difference does it make?

4 THE COURT: I'll overrule.

5 A. I believe that the Assistant U.S. Attorney here in El Paso
6 does have a zero tolerance policy for assaults on federal
7 agents.

8 BY MS. KANOF:

9 Q. Are you aware of the fact that the U.S. Attorney's office
10 has prosecuted individuals who have assaulted federal agents?

11 A. Yes, ma'am. They've prosecuted cases from the Fabens
12 station before.

13 Q. Okay. And so is that in the last, say, three years?

14 A. Yes, ma'am.

15 Q. Okay. And -- but, of course, you have to have somebody to
16 prosecute to prosecute them, correct?

17 A. That's correct.

18 Q. Is there any change in the policy or procedures in
19 reporting assaults or the treatment of assaults if you don't
20 have an assaulter?

21 A. No, ma'am.

22 Q. Okay. Except for you don't have anything to tell the FBI?

23 A. That's correct.

24 Q. Okay. So let me take you to the 17th of February 2005, and
25 ask what happens when you get to the end of Jess Harris Road?

1 A. Well, I see several Border Patrol vehicles parked on the
2 north side of the canal. I see two vehicles parked up on the
3 levee road. I get out. The agents tell me everything is okay.

4 Q. Who is there on the north side of the ditch when you get
5 there?

6 A. Agent Ramos, Agent Jacquez, Agent Juarez, Agent Vasquez,
7 Agent Mendoza. And I think a little bit after I arrived Agent
8 Medrano arrived, as well, and then Supervisory Border Patrol
9 Agent Arnold.

10 Q. Okay. So when you first arrived, the whole -- the whole
11 group is there except for Medrano and -- except for Lance
12 Medrano and Robert Arnold, correct?

13 A. That's correct.

14 Q. And they come fairly quickly after you arrived, correct?

15 A. I believe so.

16 Q. Okay. And they're over there standing around the van,
17 correct?

18 MR. ANTCLIFF: Judge, I've let it go. I'm going to
19 object to leading.

20 THE COURT: All right. I'll sustain.

21 MS. KANOF: Okay.

22 BY MS. KANOF:

23 Q. Where are these people standing?

24 A. They're standing on the east side of the van, where the van
25 was parked.

1 Q. Okay. And would that be the driver's side or the passenger
2 side?

3 A. It would be the driver's side.

4 Q. And all of them are -- where are they all with regard to
5 each other?

6 A. They're kind of standing in a group on the driver's side of
7 the van.

8 Q. Okay. And you say that -- and where do you park your car?

9 A. I park my vehicle -- I was the most furtherest back
10 vehicle, if you will, parked behind all the Border Patrol
11 units.

12 Q. Okay. How -- were all the Border Patrol units in one long
13 line, or were there some over on the sides of the car?

14 A. As I recall, there were a couple that were behind the van.
15 And then there was at least one that was on the driver's side
16 of the van, as well.

17 Q. Do you remember whose vehicle that was?

18 A. No, I don't.

19 Q. Okay. And so the first thing you ask is?

20 A. I asked if everything was okay.

21 I was told it was.

22 Q. Who told you it was?

23 A. Agent Ramos.

24 Q. So he was the speaker?

25 A. For the most part, yes.

1 Q. Okay. What happened next?

2 A. He explained to me that the driver stopped there at the
3 north side of the canal, and then he got out and fled through
4 the canal.

5 Agent Compean was on the north side of the levee,
6 which is the south side of the canal. Agent Compean tried to
7 grab him, or did some type of side to side movement to grab
8 him, and fell down to the ground and got dirt in his eyes.

9 Q. Okay. Now, when Agent Ramos tells you that the subject
10 fled from the vehicle, what, if anything, do you assume? Do
11 you assume Agent Ramos saw this or do you think this is
12 information provided to him?

13 A. I wasn't sure at that point.

14 Q. Okay. And so he told you that the driver fled from the
15 vehicle, and then what happened?

16 A. And Agent Compean tried to grab him, or he did some type of
17 side to side movement. Agent Compean fell and then got dirt in
18 his eyes.

19 Q. Did Agent Ramos tell you Agent Compean held a shotgun at
20 the driver?

21 A. No, ma'am.

22 Q. Did Agent Ramos tell you that Agent Compean told the driver
23 to stop?

24 A. No, ma'am.

25 Q. Do you speak Spanish?

1 A. Yes, ma'am.

2 Q. Pretty much every Border Patrol Agent has to speak Spanish?

3 A. That's correct.

4 Q. Okay. Did Agent Ramos tell you that anyone said parate,
5 parate?

6 A. No, ma'am.

7 Q. Did Agent Ramos tell you that Agent Compean tried to hit
8 the driver of the vehicle with the butt of his shotgun?

9 A. No, ma'am.

10 Q. Did Agent Ramos tell you that -- but he did tell you that
11 there was a side to side movement on the part of Agent Compean?

12 A. I'm not sure of his exact words. But what he related to me
13 was that Agent Compean had either tried to grab him, or some
14 way cut him off from running back into Mexico.

15 Q. Okay. And then Agent Ramos said what happened to Agent
16 Compean?

17 A. That he fell and got dirt in his eyes.

18 Q. Okay. Immediately after Agent Ramos told you that Compean
19 got dirt in his eyes, what did you do?

20 A. I looked up on the levee, and I could see Agent Compean.
21 And I kind of yelled over to him, because it's quite a
22 distance, maybe 100 yards or so, or a little less, and asked
23 him if it was okay.

24 He said he was, didn't seem concerned about anything.

25 And I asked him to head on into the office, where I

- 1 could talk to him.
- 2 Q. Did Agent Compean seem upset?
- 3 A. No, ma'am, he did not.
- 4 Q. How about Agent Ramos? How did Agent Ramos appear to you?
- 5 A. He seemed a little hyped up.
- 6 Q. Well, he does have a neurological disorder, correct?
- 7 A. That's correct.
- 8 Q. And you've supervised him for a long time. So was this his
- 9 typical behavior, or was it different?
- 10 A. Well, it varies. When agents catch narcotics loads,
- 11 there's a lot of high fives. They're kind of elated that they
- 12 have apprehended the load, and proud. So it's kind of hard to
- 13 tell.
- 14 Q. High fives? Well, let's talk about that for a minute.
- 15 A. That's a figure of speech, though, ma'am.
- 16 Q. Well, I understand that. But do agents get brownie points
- 17 for apprehending a marijuana load?
- 18 A. No, ma'am.
- 19 Q. Do you keep records regarding what agents apprehended
- 20 loads?
- 21 A. No, ma'am.
- 22 Q. And does the apprehension of a marijuana load enhance their
- 23 career?
- 24 A. No, ma'am.
- 25 Q. Even if it's a big marijuana load?

- 1 A. No, it does not enhance their career.
- 2 Q. However, you were an agent for years. With -- amongst
3 agents, is there a difference between apprehending an illegal
4 alien and a marijuana load?
- 5 A. I would say so.
- 6 Q. What is that difference?
- 7 A. It's just -- you know, the agent feels like he did a good
8 job to apprehend the narcotics. And, you know, they talk about
9 it for a while, and a couple of days later it's back to
10 business as usual.
- 11 Q. Something to brag about?
- 12 A. Yes, ma'am.
- 13 Q. Okay. When you -- you called out to Compean. Did you go
14 up to the lip of the ditch to call out to him, or did you do it
15 from where you were standing by the van?
- 16 A. Well, whenever -- if I said it from the rear of the van, I
17 don't remember where I was standing. The rear of the van was
18 maybe eight or nine feet to the lip of the canal.
- 19 Q. Okay. Let me go back to when you arrived. Did you
20 congratulate them about getting the dope?
- 21 A. No.
- 22 Q. Okay. What did you tell them when you arrived? What were
23 your concerns?
- 24 A. I told them -- I got on to them a little bit, because I
25 didn't -- I wasn't hearing any radio traffic. And I told them

- 1 that they needed to put this stuff over the radio and the
2 repeater, and let us know what's going on.
- 3 Q. And did you say anything about the driver?
- 4 A. No, ma'am.
- 5 Q. Okay. Of the van, I meant.
- 6 A. No.
- 7 Q. Okay. After Agent Compean told you that he was not -- that
8 he was okay -- I guess he had to yell, also?
- 9 A. Yes.
- 10 Q. Okay. Did you tell -- give Agent Compean instructions?
- 11 A. Yes. I told him to go into the office.
- 12 Q. Okay. And what do tell the other agents?
- 13 A. I told them to load the marijuana into the Border Patrol
14 vehicles. And we called for a tow truck to tow in the gray
15 van.
- 16 Q. Okay. And, basically, was that done?
- 17 A. Yes.
- 18 Q. The agents that were not needed to transport the marijuana,
19 what did you tell them to do?
- 20 A. Sent them back out to their areas.
- 21 Q. Okay. Do you have an independent recollection of what
22 Agent Arturo Vasquez's responsibility -- what he was patrolling
23 that day?
- 24 A. No, ma'am, I don't remember the area he was patrolling.
- 25 Q. Was he one of the agents you sent back to work?

- 1 A. I believe he was, yes.
- 2 Q. Okay. Then Arnold, or Robert Arnold, the other supervisor,
3 arrived, correct?
- 4 A. That's correct.
- 5 Q. And what, if anything -- did you instruct him to do
6 anything?
- 7 A. I believe I asked him to call the tow company for us.
- 8 Q. Okay. And then where did you go?
- 9 A. I went -- followed the agents back to the office.
- 10 Q. Okay. When you got back to the office, is there a room
11 that you call the processing area?
- 12 A. That's correct.
- 13 Q. What is the processing area?
- 14 A. That's where we process aliens that we apprehend, as well
15 as narcotic seizures.
- 16 Q. So that's an all-purpose processing room?
- 17 A. That's correct.
- 18 Q. Okay. And, when you arrived at the station, had the
19 marijuana been downloaded into the processing room?
- 20 A. I think I arrived as they were taking it out of the
21 vehicles in the sally port, to be taken in.
- 22 Q. When you arrived at the -- in the process- -- you went to
23 the processing room, I take it, then?
- 24 A. Yes, that's correct.
- 25 Q. Okay. And was Agent Compean there?

1 A. That's correct.

2 Q. What, if anything, did you do when you saw Agent Compean?

3 A. I asked him if he had been assaulted.

4 And he responded no.

5 Q. Okay. And did you use any specific words about the
6 assault?

7 A. I asked him if the suspect had struck or hit him.

8 He told me no.

9 I asked him how he got the dirt in his eyes.

10 And he responded that when he fell to the ground it
11 got kicked up in his eyes.

12 Q. Okay. And did you ask him one more time if he had been
13 assaulted?

14 A. Yes, I did.

15 And he responded no.

16 Q. Okay. Did you also have a conversation with Agent Ramos at
17 the processing center?

18 A. No, did I not.

19 Q. Okay.

20 MS. KANOF: May I approach the witness?

21 BY MS. KANOF:

22 Q. Would it help you to refresh your memory by looking at your
23 statement?

24 A. Yes, please.

25 Q. Have you refreshed your memory?

1 A. Yes, ma'am.

2 Q. Okay. So maybe you didn't ask Agent Ramos anything. But
3 was Agent Ramos present when you were questioning Agent Compean
4 about the assault?

5 A. I believe he was, yes.

6 Q. Okay. And did he offer a comment after you finished
7 talking to Agent Compean about the assault?

8 A. I believe what you pointed out to me is what Agent Ramos
9 had actually told me out in the field.

10 Q. Okay. So your statement, as it's written, or the way you
11 provided it to Agent Sanchez, is not necessarily in
12 chronological order?

13 A. That's correct.

14 Q. Okay. Is there something else now that you recall, after
15 refreshing your memory, that Agent Ramos told you out in the
16 field?

17 A. Yes. Agent Ramos had told me that once the individual fled
18 into Mexico he got into a white car.

19 Q. Okay. And is that -- is there anything else that Agent
20 Ramos told you?

21 A. I don't believe so.

22 Q. Okay. When you were still out in the field, who was up on
23 the levee?

24 A. It was Agent Compean, Agent Mendez, and as I know now,
25 Agent Yrigoyen.

1 Q. At that time, you didn't recall Agent Yrigoyen being up
2 there?

3 A. That's correct.

4 MS. KANOF: Okay. Can I have the lights, please,
5 Mr. Wright?

6 BY MS. KANOF:

7 Q. Let me talk to you a little bit about the shooting policy.
8 Are you familiar with the Border Patrol shooting policy and
9 under what circumstances a Border Patrol agent must report a
10 shooting?

11 A. Yes.

12 Q. Could you please tell the jury the rules and regulations
13 regarding reporting a shooting?

14 A. An agent would need to report it within an hour, or before
15 going off duty, orally, to a supervisor.

16 Q. Agent Richards, is that the rule for just the shooter, or
17 other individuals that have the responsibility of making that
18 report?

19 A. Anyone that participates in or observes a reportable
20 shooting incident has the same obligation.

21 Q. So anyone who participates or observes, correct?

22 A. That's correct.

23 Q. What about someone who just hears about it? Do they have
24 to report it?

25 A. I believe it also contains in the firearms policy that if

1 you come into more information regarding a shooting, or you
2 learn of information regarding a shooting, you also have to
3 report that information.

4 Q. Okay. And what happens with that information if -- we
5 talked about the assault and reporting an assault. What about
6 a shooting? Who is the shooting reported to within an hour?

7 A. The shooting is reported as a significant incident report.
8 It's passed up the chain of command, and also the FBI, again.

9 Q. We're using the term shooting. That's kind of loose. The
10 policy actually says a discharge of a firearm, correct?

11 A. That's correct.

12 Q. Okay. What is a reportable shooting?

13 A. A reportable shooting would be some type of shooting that
14 occurs outside of a practice situation.

15 Q. Okay. If an agent is cleaning his weapon off duty at home,
16 is that a reportable shooting?

17 A. And it goes off?

18 Q. Yes.

19 A. Yes, that is a reportable shooting.

20 Q. Okay. So the only exception to reporting the discharge of
21 a firearm is what?

22 A. Is in a practice situation, such as quarterly firearms
23 qualifications, a sporting event, such as that.

24 Q. Let me take you back to February 17, 2005. How many --
25 what does the term "qualify" mean to a law enforcement

- 1 officer -- federal law enforcement officer?
- 2 A. Well, as Border Patrol agents, we qualify. We go out and
- 3 recertify with our weapons every quarter.
- 4 Q. Okay.
- 5 A. And shoot a qualification course.
- 6 Q. So how many times a year?
- 7 A. Four times a year.
- 8 Q. Was February 17, 2005, a time of year where the Fabens
- 9 station agents were qualifying?
- 10 A. I don't believe so, ma'am.
- 11 Q. You don't remember?
- 12 A. No.
- 13 Q. Okay. With regard to the shooting policy -- so what you're
- 14 saying -- and qualifying is when they go out and -- well,
- 15 what's qualifying?
- 16 A. Qualifying is when you go out to the Border Patrol range,
- 17 you're in a safe environment, you shoot at targets, and they
- 18 are scored.
- 19 Q. Okay. And do you have to make a certain score in order to
- 20 stay active as a Border Patrol agent?
- 21 A. That's correct.
- 22 Q. Okay. And if you fail to make that score?
- 23 A. You're remedial, and then your authority to carry a weapon
- 24 can be withdrawn.
- 25 Q. Okay. Now, when agents have qualification, do they also

1 sometimes receive instruction?

2 A. That's correct, yes.

3 Q. In fact, is that the time when they receive instructions?

4 A. That's correct. There would be at least two or three
5 firearms instructors there that can assist them if they need
6 to.

7 Q. Is there a firearms -- a Border Patrol firearms instructor
8 here in the courtroom?

9 A. I believe Agent Ramos was certified as a firearms
10 instructor.

11 Q. And he used to be a firearms instructor for the Fabens
12 sector, correct?

13 A. Yes, for the Fabens station.

14 Q. Okay. He has other -- oh, by the way, in order to become a
15 firearms instructor, do you have to have special schooling?

16 A. Yes. You're sent to FITP training at the Border Patrol
17 academy.

18 Q. Okay. Where is the Border Patrol academy?

19 A. Artesia, New Mexico.

20 Q. And what are the duties and responsibilities of a firearms
21 instructor?

22 A. They conduct the quarterly qualifications. They provide
23 training to agents who need remedial type training in the
24 firing of weapons. They give demonstrations on how different
25 weapons operate and work.

1 Q. Do they have to know the firearms policy pretty well?

2 A. Yes, ma'am.

3 Q. They teach it?

4 A. Yes.

5 Q. Is the fact that you have to report the discharge of a
6 firearm within an hour to a supervisor part of that firearms
7 policy?

8 A. Yes, it is.

9 Q. And it is -- is that one of the things that a firearms
10 instructor teaches?

11 A. Yes.

12 Q. With regard to other collateral duties that Agent Ramos
13 has, do you have, like, a SWAT team for Border Patrol?

14 A. It's called a special response team.

15 MR. ANTCLIFF: Objection, leading again. I don't know
16 where we're going with this.

17 MS. KANOF: "Do you have a" -- is that leading?

18 THE COURT: He can answer the question, Do they have a
19 SWAT team?

20 A. We have a special response team that is similar to a SWAT
21 team, yes.

22 BY MS. KANOF:

23 Q. And, in order to be on the special response team, what are
24 your qualifications?

25 A. They have to be an above average shooter. And they have to

1 pass a physical efficiency battery, which is a PE test, if you
2 will. And they also have to pass an oral board. And then we
3 also send them to train.

4 Q. Okay. What are the -- what are they called again? I
5 forgot what they were called. I'm sorry.

6 A. Which one?

7 Q. That are on that team, or whatever it's called.

8 A. Special response team.

9 Q. Okay. And members of the -- are there any members of the
10 special response team, or anybody in the courtroom that's ever
11 been a member of the special response team?

12 A. Agent Ramos and myself.

13 Q. Okay. And are there -- what is a sector evidence team?

14 A. A sector evidence team is a team that has been compiled and
15 has attended training in the proper collection of evidence and
16 storage of evidence. And they respond to incidents, serious
17 incidents, regarding the Border Patrol.

18 Q. Okay. Well, as a supervisor, under what circumstances is a
19 sector evidence team called in?

20 A. They could be called in for a motor vehicle accident. They
21 are called in for shootings, serious situations.

22 Q. Would they -- let's first -- with regard to the firearms
23 policy, it does mention the calling in of a sector evidence
24 team, correct?

25 A. Correct.

1 Q. Okay. And under what circumstances is a sector evidence
2 team called in when there's been a discharge of a firearm?

3 A. At any time, if it's outside of practice.

4 Q. Okay. So there's a term in the firearms policy called a
5 reportable shooting, correct?

6 A. Yes.

7 Q. And you've testified that's anything other than if it's
8 during a legitimate practice.

9 A. That's correct.

10 Q. So is the sector evidence team called out in each and every
11 one of the instances where a firearm is discharged, regardless
12 of whether someone is hit by a bullet?

13 A. That's correct.

14 Q. Okay. Whose responsibility is it to call the sector
15 evidence team?

16 A. That would be the supervisor's responsibility.

17 Q. Okay. Did you call a sector evidence team out to the end
18 of Jess Harris Road and the area from Jess Harris Road all the
19 way to the Mexican side of the river on February 17, 2005?

20 A. No, ma'am.

21 Q. Why not?

22 A. Because I was not aware that a shooting incident had
23 occurred.

24 Q. By the way, is there anybody in this courtroom that has
25 sec- -- that is on the sector evidence team?

- 1 A. Agent Ramos was on the sector evidence team.
- 2 Q. Okay. And you said it also takes special training and
3 responsibility, correct?
- 4 A. That's correct.
- 5 Q. A person who is out in the -- are the agents trained to
6 call the sector evidence team, as well?
- 7 A. No, they -- that's a supervisor's responsibility.
- 8 Q. If there's a supervisor that does not respond to the scene,
9 is there a responsibility for the agents at the scene, with
10 regard to securing it for the sector evidence team?
- 11 A. Yes, ma'am.
- 12 Q. And what is that responsibility?
- 13 A. To cordon off the area and make notifications and make sure
14 that the sector evidence team responds.
- 15 Q. Okay. And did -- before you got there, Agent Ramos was
16 there, correct?
- 17 A. That's correct.
- 18 Q. Do you have any indication or knowledge that anyone at that
19 scene called out a sector evidence team?
- 20 A. No one called the sector evidence team.
- 21 Q. Okay. And what does the sector evidence team do?
- 22 A. They would come out. They take photographs, measurements,
23 collect evidence.
- 24 Q. What kind of evidence?
- 25 A. Just like a crime scene type of investigation.

1 Q. Okay. What's a shell casing?

2 A. A shell casing would be the brass cartridge from a spent
3 bullet.

4 Q. What, if anything, does the sector evidence team do with
5 regard to a shell casing?

6 A. They would collect them as evidence.

7 Q. Okay. If it had been reported that an individual had been
8 hit with a bullet, would the sector evidence team look for
9 blood?

10 A. Absolutely.

11 Q. Okay. After a shooting -- I'll take it one by one.

12 First, let's talk about shootings that are reported.

13 When a shooting is reported, what happens next?

14 A. When a shooting is reported?

15 Q. Yes.

16 A. The sector evidence team is called. You notify -- most
17 agents should put that over the radio, a safety situation for
18 other agents who are in the area, as well. And then
19 notifications are made up the chain.

20 Q. Okay. You're familiar with the topography of the area that
21 I'm showing you on this photograph, correct?

22 A. If that dash line is Jess Harris Road, yes, ma'am.

23 Q. Well, it's after Jess Harris Road.

24 MS. KANOF: Can I approach the witness?

25 THE COURT: Sure.

1 BY MS. KANOF:

2 Q. I will let you see it close up first --

3 A. Okay.

4 Q. -- and then -- okay. What -- what's depicted -- this is

5 Government's -- for the record, this is Government's Exhibit

6 Number -- I don't know what I did with the sleeve.

7 Government's Exhibit Number 30.

8 And, now, do you recognize the area that's depicted in

9 this photo?

10 A. Yes. I believe that's the photograph of the Jess Harris

11 crossing area.

12 Q. Okay. And would this be Jess Harris?

13 A. Yes, ma'am.

14 Q. Okay. And then where the dotted line begins, is that the

15 ditch?

16 A. That's correct.

17 Q. It goes down, comes back up, and then that area -- there's

18 an area -- does that area have a name, between the ditch and

19 the levee?

20 A. No, ma'am.

21 Q. Okay. And then the levee road is raised, correct?

22 A. That's correct.

23 Q. And then it goes back down, correct?

24 A. Yes.

25 Q. And then there's the vega area?

1 A. That's correct.

2 Q. Okay.

3 MR. ANTCLIFF: Judge, I'm going to object to leading.

4 THE COURT: I'll sustain. Don't lead your witness.

5 BY MS. KANOF:

6 Q. What's over here, way over here (indicating)?

7 A. I'm sorry, where are you pointing?

8 Q. Over here (indicating).

9 A. That would be Mexico, on the other side of the river.

10 Q. Okay. Let me put that picture that was up before, so you
11 can see Mexico.

12 Okay. You understand that this is just a different
13 view of the other photograph?

14 A. Yes, ma'am.

15 Q. All right. I'm going to follow -- you tell me to stop when
16 I get to the river.

17 A. Stop, right -- back up a little bit. Back.

18 Q. Okay.

19 A. Right there.

20 Q. Right there (indicating).

21 You talked about one of the things that has to be done
22 at a shooting is to inform others for safety. Is that correct?

23 A. That's correct.

24 Q. If an individual -- if an agent is engaged in a shooting
25 with a suspect, and you can still see the suspect on the other

1 side of the river, when agents are up on the levee, what, if
2 any, obligation would that agent have with regard to warning
3 the agents that had arrived?

4 A. Well, he would absolutely have to warn them --

5 Q. Could you --

6 A. -- for their safety.

7 Q. Go ahead.

8 Can somebody shoot from the other side of the river up
9 to the levee?

10 A. Absolutely.

11 Q. The levee is a raised area, correct?

12 A. That's correct.

13 Q. So in your experience, your 17 years of experience as a
14 Border Patrol agent and as a supervisor, somebody standing up
15 on the levee, what, if any, kind of target does that make for
16 somebody on the other side of the river?

17 A. A large target. They would be silhouetted standing up
18 there.

19 Q. Did anyone ever tell you that anyone ever warned Yrigoyen
20 or Mendez that the person they saw fleeing had a gun?

21 A. No, ma'am.

22 Q. Okay. Once a -- the discharge of a weapon has been
23 reported to the supervisor -- that would be you -- what do you
24 do?

25 A. We would call out the sector evidence team. We would make

1 notifications up the chain of command --

2 Q. Okay. That's enough. Notification up the chain of

3 command. What -- what exactly do you have to notify and to

4 whom?

5 A. I would have notified my patrol agent in charge.

6 Q. And on February 17, 2005, who was that?

7 A. That would have been Benjamin Robinson.

8 Q. And then what happens?

9 A. And then he would, again, make notifications up higher to

10 his boss.

11 Q. And who was that?

12 A. That would be the assistant chief patrol agent.

13 Q. Do you recall who it was last February?

14 A. At that time, I believe it may have been Salvador Nieto.

15 But we have changed assistant chiefs about three times in the

16 last year, so I don't remember.

17 Q. And then would he have to report it to someone?

18 A. Absolutely. He would report to the deputy chief, and on up

19 to the chief and then to headquarters.

20 Q. Who was the chief of the El Paso Border Patrol sector on

21 February 17th, 2005?

22 A. Luis Barker.

23 Q. Okay. Are all those reports oral or are they in writing?

24 A. They would have been initially reported orally, and

25 followed up in writing.

1 Q. Who has to write that report?

2 A. Supervisors.

3 Q. Would that be you?

4 A. Myself or a supervisory Border Patrol agent.

5 Q. If Agents Ramos or Compean had reported to you on February
6 17th that they had to shoot at someone who was shooting at
7 them, what would you have done?

8 A. Executed a report.

9 Q. Would you have shirked from that responsibility?

10 A. Absolutely not, ma'am. That's not my -- my demeanor at the
11 station. That's not my reputation.

12 Q. Do you know what your reputation is?

13 A. I don't think people really tell others of their
14 reputation, but I believe I have a --

15 MR. ANTCLIFF: Judge, I'm going to object. I don't
16 think he can talk about his own reputation.

17 THE COURT: I'll sustain.

18 BY MS. KANOF:

19 Q. What is your policy with regard to paperwork?

20 A. That we complete it, and we complete it timely and
21 correctly.

22 Q. Do you communicate that to the agents all the time?

23 A. I think they know that of me.

24 Q. Okay. Has there ever been an incident where you have
25 intentionally not done paperwork because it's too much

1 paperwork?

2 A. Absolutely not.

3 Q. The paperwork that you would have done, what would that
4 have been?

5 A. For which?

6 Q. My hypothetical, that Compean and Ramos reported to you
7 that they had to shoot at somebody who they thought might have
8 a shiny object that might have been a gun in their left hand.

9 A. That would have been a significant incident report, and
10 also memorandums and, again, notifications.

11 Q. Okay. Would you -- all that paperwork, what does it
12 generate? Does it generate an investigation?

13 A. Yes, ma'am.

14 Q. Okay. Who does the investigating?

15 A. In a shooting incident, it would have been -- it could have
16 been the local authorities, or it could have been the FBI.

17 Q. Okay. What local authorities?

18 A. El Paso County Sheriff's office.

19 Q. And under what circumstances would the local authorities do
20 the investigating?

21 A. That would be between them and the FBI. We're -- we have
22 no control over who actually investigates. But we would notify
23 both agencies.

24 Q. Okay. And that investigation, is it separate than your
25 internal investigation?

- 1 A. That's correct.
- 2 Q. The sheriff's department investigates on behalf of the
3 District Attorney's office. Is that correct?
- 4 A. That's correct.
- 5 Q. And the FBI investigates for what purpose, if you know?
- 6 A. On behalf of the U.S. Attorney.
- 7 Q. Okay. And do you know whether the FBI investigates for
8 civil rights violations?
- 9 A. Yes, ma'am.
- 10 Q. In fact, they're the only agency that can investigate civil
11 rights violations, correct?
- 12 A. That's correct.
- 13 Q. And the -- let's just talk about your internal
14 investigation. When a weapon is discharged in the confines of
15 duty, and they're discharged in the direction of a human being,
16 you've talked about some of the paperwork that's generated.
17 What happens to the internal paperwork?
- 18 A. It's forwarded up the chain of command.
- 19 Q. Okay. For what purpose?
- 20 A. For documentation purposes.
- 21 Q. Okay. What is a shooting review team, or committee? I
22 guess a shooting review committee.
- 23 A. A shooting review committee reviews reportable shooting
24 events --
- 25 Q. Okay.

1 A. -- that occur.

2 Q. And for what purpose -- well, okay.

3 First of all, what do they review? What do they have
4 before them to review?

5 A. That would be the documentation that we would have
6 prepared.

7 Q. Is there an investigation that's done internally?

8 A. That would be done by the sector evidence team.

9 Q. And when -- does the sector evidence team make a report
10 after they finish their investigation?

11 A. Yes, ma'am. They provide a report to the chief.

12 Q. And is that the paperwork that you generate plus the
13 paperwork the sector evidence team generates? That's what's
14 used by this review committee?

15 A. I believe so, yes.

16 Q. What is the purpose of that committee?

17 A. To be quite honest with you, ma'am, I do not have much
18 knowledge of the workings of those review committees.

19 Q. Okay. But it is an official proceeding that has to be
20 followed. Is that correct?

21 A. That's correct.

22 Q. You do know -- or do you know -- that the -- the review
23 committee issues findings?

24 MR. ANTCLIFF: I'm going to object, Judge. He's
25 testified he doesn't know what the workings of the committee

1 are or what they do.

2 THE COURT: All right. I'll sustain.

3 BY MS. KANOF:

4 Q. When an individual is involved in a shooting, what happens
5 to them with regard to their job and their daily duties and
6 responsibilities?

7 A. They're placed on administrative leave for two or three
8 days.

9 Q. And then what happens to them?

10 A. Then they come back to duty.

11 Q. Okay. And does this entire process of investigating the
12 shooting only take two or three days?

13 A. No, ma'am. That can take much longer.

14 Q. Okay. So a shoot is assumed to be a good shoot, then,
15 until they finish the investigation?

16 MR. ANTCLIFF: I'm going to object to leading.

17 THE COURT: All right. I'll sustain.

18 BY MS. KANOF:

19 Q. By -- by all the -- first of all, why are they taken off of
20 duty for two or three days?

21 A. I think that's for emotional well-being.

22 Q. Okay. What is the -- oh, I can't remember the acronym, the
23 psychological people that we --

24 A. We have a program called the employee assistance program.

25 Q. The EAP?

- 1 A. The EAP, yes.
- 2 Q. Okay.
- 3 A. They are put in contact with them.
- 4 Q. Okay. Are they required to contact the EAP?
- 5 A. They are provided the number. If they should feel the need
- 6 to talk to them, they certainly have that available.
- 7 Q. And why is that?
- 8 A. Well, in any traumatic event, such as a shooting event, and
- 9 if you shot someone, I'm sure you would have turmoil within
- 10 yourself that you need to talk out.
- 11 Q. But you don't force them to go?
- 12 A. No, ma'am.
- 13 Q. And then after a couple of days they're put back on duty?
- 14 A. Yes, ma'am.
- 15 Q. Well, how do you know if what they did, when they
- 16 discharged the firearm, was righteous after three days?
- 17 A. I think there would be some indications at that time.
- 18 Q. Okay. Under what circumstances would they not be put back
- 19 on duty?
- 20 A. Maybe if they were indicted, ma'am. I don't know the
- 21 answer to that.
- 22 Q. Okay. But nobody gets indicted in three days, right?
- 23 A. No, ma'am.
- 24 Q. Okay. With regard to -- and so I'm asking you: At some
- 25 point in time do you, as an FOS, as a field operations

1 supervisor, receive some kind of report regarding that shooting
2 incident that was investigated?

3 A. Not typically. Most of those reports -- other than the
4 reports that we produce ourselves, which we obviously see,
5 those are forwarded up. And the sector evidence team's report
6 is forwarded to the chief. Those aren't typically sent back
7 down to the station level to review.

8 Q. Okay. As part of the firearms policy, that a firearms
9 instructor learns to teach, is the use of deadly force included
10 in the firearms policy?

11 A. Yes, it is.

12 Q. And is direction given to Border Patrol agents on the use
13 of deadly force?

14 A. Yes, it is.

15 Q. And does that use of deadly force direction include
16 firearms?

17 A. Yes.

18 Q. Specifically, with regard to the use of discharging a
19 firearm, what, if anything, is taught to Border Patrol agents
20 about the circumstances under which they may use their -- their
21 weapon, their firearm, in an act of deadly force?

22 A. When they feel that their life, their partner's life, or
23 the life of an innocent party is in jeopardy, and the subject
24 has the means, the intent, and the opportunity to either kill
25 them or do them grievous bodily harm.

1 Q. Means, intent, and opportunity?

2 A. Yes, ma'am.

3 Q. Okay. Can they also shoot animals?

4 A. I'm sorry?

5 Q. Can they also shoot animals?

6 A. If it's possibly going to attack them, yes.

7 Q. Okay. Pretty much under the same circumstances, correct?

8 A. Yes, ma'am.

9 Q. And, if they shoot an animal, do they have to report it,
10 just like if they shoot a human being?

11 A. Yes, ma'am.

12 Q. Okay. Why is that?

13 A. So that all shootings can be investigated.

14 Q. When -- when you were initially interviewed by Agent Chris
15 Sanchez -- well, let me go back. When was the first time you
16 learned that Agents Compean and Ramos discharged their firearms
17 on February 17, 2005?

18 A. I believe I gave my statement sometime in mid-March of '05.

19 Q. But when did you first learn that they discharged their
20 firearms?

21 A. At that time.

22 Q. Oh. At the time that you gave your statement?

23 A. That's correct.

24 MS. KANOF: Approach the witness, Your Honor?

25 THE COURT: Yes.

1 Could the attorneys approach for just a second?

2 (Bench conference:)

3 THE COURT: I'd like to take a midafternoon so they
4 can stretch. How much longer?

5 MS. KANOF: I need to take a break, too.

6 THE COURT: Any problems with taking a midafternoon
7 break?

8 MR. PETERS: We're in favor of that.

9 (End of bench conference; open court.)

10 THE COURT: All right. Ladies and gentlemen of the
11 jury, we're going to go ahead and take a break. It's about
12 3:45, so we will take about a 15-minute break.

13 We stand in recess for 15 minutes.

14 (Open court, parties present, jury not present.)

15 THE COURT: You may be seated.

16 Anything we need to take up?

17 MS. KANOF: Nothing from the Government.

18 MS. STILLINGER: No, Your Honor.

19 MR. ANTCLIFF: No.

20 MS. RAMIREZ: No, Judge.

21 THE COURT: Stand in recess for 15 minutes.

22 (Recess; open court, parties present, jury not
23 present.)

24 THE COURT: You may be seated.

25 Ready to bring the jury in?

1 MS. KANOF: Yes, Your Honor.
2 THE COURT: Yes? Everybody ready?
3 Mr. Antcliff? Mr. Peters?
4 MR. ANTCLIFF: I'm sorry?
5 THE COURT: Can we bring the jury back in? Ready?
6 MR. ANTCLIFF: Absolutely.
7 THE COURT: Yes?
8 MR. ANTCLIFF: Yes.
9 THE COURT: Mr. Peters?
10 MR. ANTCLIFF: Yes, for him, too.
11 THE COURT: Okay. Thank you.
12 MR. PETERS: I'm sorry, Judge.
13 THE COURT: Fine.
14 (Open court, parties and jury present.)
15 THE COURT: You may be seated.
16 You may proceed, Ms. Kanof.
17 MS. KANOF: Thank you, Your Honor.
18 BY MS. KANOF:
19 Q. Agent Richards, I think I was handing you your statement to
20 refresh your memory about when you had made it. And let me ask
21 you the question, then.
22 When did you first learn that both Agents Ramos and
23 Compean had discharged their firearms on February 17th, 2005?
24 A. On the date that I made this statement, which was March 22,
25 2005.

1 Q. Okay. And, prior to that time, did you know anything about
2 that?

3 A. No, ma'am.

4 Q. From whom did you learn that they had discharged their
5 firearms?

6 A. From Agent Christopher Sanchez, of the Department of
7 Homeland Security, Office of the Inspector General.

8 Q. Before, I was asking you about the other agencies that you
9 were involved with, and I think I left them out. Does the
10 Department of Homeland Security, Office of the Inspector
11 General, have special agents who investigate?

12 A. That's correct.

13 Q. What do they investigate with regard to your agency?

14 A. They can investigate allegations of misconduct.

15 Q. Do they -- both administrative and criminal?

16 A. Yes, ma'am.

17 Q. And do they also have authority to investigate civil rights
18 investigations?

19 A. I believe they do, yes.

20 Q. Okay. With regard to the firearms policy that we were
21 talking about, does that firearms policy change sometimes?

22 A. Yes, ma'am.

23 Q. For example, the shooting review committee, is that sort of
24 in flux?

25 A. That's my understanding, yes.

1 Q. Okay. And, when it changes, how are the changes
2 communicated to the agents in the field?

3 A. New policies come out.

4 Q. Okay. And are they distributed?

5 A. Yes, ma'am.

6 Q. And during firearms qualification time, that quarterly time
7 when they go out and shoot their weapons, do they receive
8 training about any new changes in the firearms policies?

9 A. Yes, ma'am.

10 Q. And do they receive training concerning the use of deadly
11 force? Is that when deadly force is updated, also, during
12 firearms qualifications?

13 A. I don't think the situation where an agent would use deadly
14 force has ever changed, to my knowledge.

15 Q. Okay. So you don't remind them, then?

16 A. I'm sorry?

17 Q. You don't remind them, the agents, then?

18 A. Oh, yes, they're reminded at the refresher training.

19 MS. KANOF: Okay. Pass the witness.

20 THE COURT: Mr. Peters?

21 CROSS-EXAMINATION

22 BY MR. PETERS:

23 Q. Good afternoon, Agent Richards.

24 A. Good afternoon, sir.

25 Q. My name is Stephen Peters. I represent Ignacio Ramos.

1 A. Okay.

2 Q. Agent Ramos -- I mean -- excuse me. Agent Richards, I am a
3 little bit confused about the pursuit policy. The first
4 thing -- I was looking through here. Do you have a copy of
5 that policy up there?

6 A. Not with me, no.

7 MR. PETERS: May I approach the witness?

8 THE COURT: You may.

9 BY MR. PETERS:

10 Q. I'm going to hand you a copy of the pursuit policy that
11 Ms. Kanof was showing you and asking questions about.

12 A. Okay.

13 Q. Can you find the term "hot pursuit" in there anywhere?

14 A. It's not.

15 Q. Okay. Well, let's talk about pursuit. You know, we've
16 been talking about hot pursuit. But, actually, this policy is
17 triggered any time anybody fails to stop when an agent tries to
18 the pull them over. Would that be correct?

19 A. Yes.

20 Q. And that would be, on page 3 of the policy, it would
21 include any attempt by a Border Patrol agent in an authorized
22 emergency vehicle, or a pursuit vehicle, to stop a vehicle,
23 regardless of whether or not the pursuit vehicle is violating
24 traffic laws, as long as a person doesn't stop, right?

25 A. Okay.

1 Q. Okay. So the first time that an agent turned on his lights
2 and attempted to pull over this van, the pursuit policy was
3 implemented -- was -- was brought into play, as soon as that
4 guy didn't pull over. Is that correct?

5 A. That's correct. In all vehicle stops, it would.

6 Q. Right. Now -- and that would have been -- and that would
7 have been the first -- that would have -- so the pursuit in the
8 case would have initiated by the first officer who attempted to
9 pull over the van, correct?

10 A. That's correct.

11 Q. Okay. Now, something happens when -- now, when the officer
12 attempts to pull over a van and he doesn't stop, that's when it
13 starts to trigger the requirements of the pursuing officer to
14 start making reports. Is that correct?

15 A. More or less, yes.

16 Q. Okay. However, once a secondary unit, backup unit, gets
17 into position, that unit assumes the duties to make the radio
18 reports. Is that correct?

19 MS. KANOF: I would object, Your Honor. That assumes
20 facts not in evidence. That's not how the policy states. He's
21 misrepresenting the policy.

22 BY MR. PETERS:

23 Q. Well, why don't you turn to page 8 of the policy, and look
24 up there on paragraph C, and see what that says.

25 A. I believe what that's referring -- it is -- once a backup

1 agent arrives, he would take over notifying radio
2 communications of the direction, travel, speeds, et cetera.

3 Q. Exactly. Okay. And there's good reason for that, because
4 the first agent is trying to keep -- if he's pursuing -- is
5 trying to keep up with the vehicle, and probably needs to use
6 both his hands and his eyes to focus on that; whereas, the
7 second agent is a little further back, and he can assume the
8 communications duties, right?

9 A. Okay.

10 Q. Do you agree with that?

11 A. I'll agree with that, yes.

12 Q. Okay. Now, are you familiar with what the agents have
13 testified to in this trial, or in the investigation concerning
14 how this pursuit -- how and where this pursuit began and by
15 whom?

16 A. Only what I've read in the paper.

17 Q. Okay. Well, assume with me, if you will, that the first
18 thing that happened with regard to the pursuit was that Agent
19 Juarez attempted to pull over the individual, and that the
20 individual didn't pull over, but drove one block, turned left,
21 drove about another block. And, at that moment, Agent Ramos
22 got the eyeball behind the vehicle that was being pursued, and
23 Agent Juarez at that moment was in second, behind Agent Ramos.
24 Okay?

25 A. How did that occur?

1 Q. Agent Juarez initiated the pursuit, because he turned on
2 his lights --

3 A. No, I understand that. How did Agent Ramos get ahead of
4 Agent Juarez?

5 Q. Well, I believe the evidence will show that Agent Ramos was
6 on Fabens Island Road facing south, when the suspect vehicle
7 came out of that round-the-block turn --

8 A. Okay.

9 Q. -- that it made, and turned right, toward the river, on
10 Fabens Island Road. Agent Ramos was already facing south, and
11 so he got behind him. Whereas, Agent Juarez had to negotiate
12 the turns and come out. And, in the process, Agent Ramos fell
13 in -- Agent Juarez fell into the second position.

14 A. Okay.

15 Q. In that case, you'll agree with me that, by the time Agent
16 Ramos got into that position, the radio reports were the duty
17 of Agent Juarez?

18 A. There were no radio --

19 MS. KANOF: Object, Your Honor. This is
20 mischaracterizing. He is asking questions after a vehicle
21 pursuit -- after what is known as a high-speed/high- -- a
22 high-speed vehicle pursuit, after it's been authorized, then
23 these kick in. It hasn't been authorized at this point.

24 MR. PETERS: Well, Judge, first of all, I'm not sure
25 that I understand these policies to mean that. But, second of

1 all, if the witness can answer based upon these policies we're
2 both looking at, I think he should be allowed to -- I don't
3 know what the objection is.

4 THE COURT: All right. Well, I assume the objection
5 is that you're misrepresenting what it says. But, again, he --
6 this is a supervisor. He can answer the question. Go ahead.

7 BY MR. PETERS:

8 Q. By the time the secondary unit gets in line, it becomes the
9 secondary unit's responsibility to --

10 A. Well, that's assuming that the high-speed/high-risk pursuit
11 had been initiated.

12 Q. Well, I'm just talking about a pursuit. Okay?

13 If you look on page 7 -- and I'm sure you understand
14 this better than I do. I have to say I find it kind of
15 confusing, and I don't mean to misrepresent it.

16 But Roman numeral VI says, Vehicle pursuit procedures
17 and responsibilities, right?

18 A. That's correct.

19 Q. Okay. And then it says, The following procedures would be
20 followed in vehicle pursuits, right?

21 A. That's correct.

22 Q. And then it says, Upon -- under paragraph A it says, Upon
23 deciding to initiate a vehicle pursuit, the initiating agent
24 will take certain steps, right?

25 A. That's correct.

1 Q. Okay. Now, in this case, you have already, I think, agreed
2 with me that the initiating agent was Agent Juarez.

3 A. No, sir. I would disagree with that.

4 Q. Well, didn't -- isn't a fact that the --

5 A. Are we talking hypothetical or actual?

6 Q. Well, I'm talking actual.

7 A. Okay. Well, then, I would disagree with you, because I
8 don't think Agent Juarez or any of the agents out there had
9 called in and initiated a pursuit.

10 Q. Well, then, the first agent that starts the pursuit is the
11 one who has the initial responsibility, right?

12 A. I don't believe you'll find that in the pursuit policy.

13 Q. Okay. But the one who falls in as backup is the one who is
14 supposed to be radioing the information to the -- to the
15 super- --

16 A. Once the pursuit has been formally notified and the
17 supervisor has approved it, that's correct.

18 Q. Okay. Could you tell me where it says that, sir?

19 A. Says exactly what?

20 Q. What you just said.

21 A. On page 6, letter C, High-speed/high-risk vehicle pursuits,
22 Number 2.

23 And if you look down, it says, A high-speed/high-risk
24 vehicle pursuit may be initiated by a Border Patrol agent in a
25 pursuit vehicle when all of the following criteria are met:

1 The suspect exhibits the intention to avoid arrest by
2 using a vehicle in excessive speed or committing hazardous
3 moving violations to flee apprehension for a felony or
4 misdemeanor that would normally require a full custody arrest.

5 Letter B, The operator of the vehicle refuses to stop
6 at the direction of the agent.

7 C, the suspect, if allowed to flee, would present a
8 danger to human life or cause serious injury.

9 And, D, communications personnel are notified by the
10 agent who initiates the pursuit.

11 Q. Okay. So let's take those one at a time. Let's start out
12 with notification of communications personnel. Let's take them
13 in reverse order.

14 Assume with me that Agent Arnold will testify -- and I
15 assume he will, because I'm looking at his report -- that's
16 Supervisor Arnold, right?

17 A. That's correct.

18 MS. KANOF: I'm going to object to what prospectively
19 might be testified to, Your Honor. It's assuming facts not in
20 evidence.

21 MR. PETERS: Judge, I've got report from Agent Arnold
22 about radio traffic that he heard. He's a supervisor. They're
23 claiming he didn't notify a supervisor. Agent Arnold -- I
24 can't call him before they -- I mean, if you want me to re-call
25 this witness after -- and call Agent Arnold first, I can do

1 that.

2 THE COURT: All right. Well, you may have to do that,
3 because we don't have that evidence.

4 BY MR. PETERS:

5 Q. If Ignacio Ramos got on the radio and said he's going to
6 light it up and see what happened, what would you take that to
7 mean?

8 A. I would take that to mean that he was going to attempt to
9 make a vehicle stop.

10 Q. And if he got back on the radio after that and said he had
11 a failure to yield, what do you take that to mean?

12 A. I don't believe that was said over the radio, sir.

13 Q. But that's not what I asked you.

14 A. Well, I'm not going to presume.

15 Q. Okay. If Agent Ramos got on the radio and said he had a
16 failure to yield, what would that mean to you?

17 A. That would mean the vehicle refused to stop.

18 Q. Okay. And then if he said he was going to deactivate his
19 lights and follow, to get a direction of travel, that would be
20 the type of radio communication that an agent initiating a
21 pursuit is required to do. Is that correct?

22 A. I believe so.

23 Q. Okay. And once an agent initiates a pursuit and notifies
24 supervisors over the radio that that's what he's doing, it
25 becomes a supervisor's responsibility to say, Wait a minute.

- 1 Stop. Or, Let it go. Correct?
- 2 A. Yes and no.
- 3 Q. Well, what part of it is yes?
- 4 A. That didn't happen that day, so that I don't -- I'm not
5 comfortable testifying that that's what -- I think that's what
6 you're trying to get me to say, and that's not the case.
- 7 Q. You didn't read Agent Arnold's report, right?
- 8 A. No, sir.
- 9 Q. And I'm asking you, if that happened -- and if it turns out
10 that it didn't happen, then we will all stand corrected.
- 11 A. Okay.
- 12 Q. Okay? So would that answer be that, if that happened,
13 then, yes, that's what an agent has to do, to report to -- the
14 communications portion -- to the supervisors about initiating a
15 high-speed chase?
- 16 A. Yes.
- 17 Q. Okay.
- 18 A. Not a high-speed chase for a vehicle stop.
- 19 Q. A pursuit.
- 20 A. I think we're splitting hairs. I don't think I would term
21 it as -- the way you're terming it.
- 22 Q. You wouldn't call it a pursuit?
- 23 A. No.
- 24 Q. Well, do you disagree with the definition of pursuit that
25 is in the administrative manual of the Immigration and

- 1 Naturalization Service?
- 2 A. What page is that on, sir?
- 3 Q. That page would be on page 3, at the top of the page. We
4 already went through that.
- 5 A. To my recollection, it sounds like a contradiction in
6 terms.
- 7 Q. Well, it's -- this is kind of a confusing policy, isn't it?
- 8 A. I won't say that it's confusing, but I'm sure if it's -- it
9 left a question, as far as the term of pursuit, in my mind.
- 10 Q. And it's also part of the policy that, whenever there is a
11 pursuit, that the supervisor of the agents initiating a pursuit
12 has to prepare a report outlining the details of the pursuit.
- 13 A. That's correct.
- 14 Q. Do you know whether such a report was prepared in this
15 case?
- 16 A. No, sir, there was not.
- 17 Q. Okay. And just so the jury is clear on it, there's a
18 sample pursuit form that is provided in the pursuit policy,
19 correct?
- 20 A. I believe there is, yes.
- 21 Q. And the sample form that I seem to have here has got about
22 four different pages to it. Does that sound about right?
- 23 A. Actually, I think there are some updated forms, since these
24 aren't the current pursuit reports.
- 25 Q. Well, is the new form -- were they -- which forms would

- 1 have been in effect in February 2005?
- 2 A. I believe the new form.
- 3 Q. And do you happen to know how many pages that form is?
- 4 A. I believe it's a two-page form.
- 5 Q. Okay. In any event, it's a separate report. It's not just
6 going to be a line included in another report, right?
- 7 A. That's correct.
- 8 Q. And that wasn't done on this occasion, right?
- 9 A. No, sir.
- 10 Q. Who would have been responsible for filing a pursuit report
11 if the supervisors had been notified of a pursuit?
- 12 A. The agent and the supervisor.
- 13 Q. Okay. And who was the supervisor?
- 14 A. It would have been Robert Arnold or myself.
- 15 Q. Okay. So how would it -- how would it be determined
16 whether it was you or Robert Arnold who was responsible for
17 filing that report?
- 18 A. I would have either assigned him the task or I would have
19 done it myself.
- 20 Q. So, ultimately, it was your responsibility, or it would
21 have been your responsibility?
- 22 A. That's correct, as well as the supervisor.
- 23 Q. Okay. What is the administrative penalty for violating the
24 duty to report the discharge of a firearm by a Border Patrol
25 agent?

1 A. Off the top of my head, I don't know the table offense for
2 that.

3 Q. Is it in the order of somewhere between a reprimand and a
4 suspension of a few days?

5 A. I'd have to look at that, sir.

6 Q. I'll find it for you here in a minute.

7 Now, you've talked about the -- okay. Now --

8 MR. PETERS: May I approach the witness, Your Honor?

9 THE COURT: You may.

10 BY MR. PETERS:

11 Q. I'm going to hand you -- do you recognize that?

12 A. Yes.

13 Q. What is it?

14 A. That's the table of offenses.

15 Q. Okay. And does that include the offense of not reporting
16 the discharge of a firearm?

17 A. Yes, it does.

18 Q. What is the penalty for that?

19 A. The first offense reads, Written reprimand to five days'
20 suspension.

21 Q. Okay. Is there a subsequent offense?

22 A. Second, subsequent offenses, are five days' suspension to
23 removal.

24 Q. "Removal" meaning you lose your job, right?

25 A. That's correct.

1 Q. It doesn't say anything in there about incarceration, does
2 it?

3 A. No, sir.

4 Q. Okay.

5 MR. PETERS: May I retrieve that exhibit?

6 THE COURT: Sure.

7 BY MR. PETERS:

8 Q. Now, you testified that there are not kept reports of
9 marijuana or drug seizures in the Fabens station by agent. Did
10 I understand that correctly, or did I not?

11 A. By agents?

12 Q. Yes, sir.

13 A. I think you misunderstood it.

14 Q. Okay. So you -- do you keep --

15 A. We keep copies of apprehensions and seizures, that's
16 correct, form I-44.

17 Q. Right. And is there any accumulation of this data, to show
18 which agents made which seizures?

19 A. That's correct. Yes, there are.

20 Q. Okay. And, in fact, we were presented, prior to this
21 trial, with a --

22 MS. KANOF: I would object as to the relevance of what
23 he was presented with.

24 MR. PETERS: I'll rephrase the question.

25 THE COURT: All right.

1 MR. PETERS: May I approach the witness?

2 THE COURT: Yes, you may.

3 MR. PETERS: I'm going to -- what is our next number?

4 THE COURT: Give me just a second.

5 MS. KANOF: Your Honor, I'm going to object to his use
6 of this document with this witness. This was a document that
7 was generated by Christopher Sanchez in the investigation of
8 this case. It is not a Border Patrol document kept in the
9 normal course of business.

10 MR. PETERS: Well, I appreciate learning that,
11 Your Honor. We didn't know that up until that moment.

12 THE COURT: All right. Well, I --

13 MR. ANTCLIFF: Judge, on behalf of Mr. Compean -- I'm
14 sorry to interrupt. I'm going to object to her testifying in
15 that objection and move to strike everything after "I object."

16 THE COURT: All right.

17 Hold on. Let me look at something first.

18 All right. That's Defendant Ramos Exhibit, I show,
19 10.

20 And, regarding the objection and the move to strike,
21 the Court will deny the objection at this time. I don't know
22 what this document is. And then I will rule on the objection.

23 Regarding the move to strike, I'll overrule that.

24 MR. PETERS: Let me just ask the question.

25

1 BY MR. PETERS:

2 Q. It is possible, using data kept by the Border Patrol, to
3 ascertain the number of seizures made over a period of time by
4 the Fabens sector, and the agents who were given responsibility
5 for those seizures, correct?

6 A. That's correct. That could be compiled, yes.

7 Q. Okay. But you don't compile it in the ordinary course of
8 business, right?

9 A. Not as far as to a specific agent, no.

10 Q. You do compile it, however, for the entire station over a
11 period of time, correct?

12 A. That's correct.

13 Q. For example, between January of 2004 and March of 2005, the
14 agents -- the -- the sector -- excuse me -- the station, Border
15 Patrol agents working out of the Fabens station, seized 43,703
16 pounds of marijuana. Would that be correct?

17 A. That probably would be correct, sir.

18 Q. And, by my count, it was in 155 seizures, correct?

19 MS. KANOF: Objection, relevance, Your Honor.

20 THE COURT: Where are we going?

21 MR. PETERS: I want to explore how common it is for
22 those marijuana seizures to occur.

23 MS. KANOF: I couldn't hear.

24 MR. PETERS: I want to explore how common it is for
25 the seizures to occur.

1 THE COURT: What's the relevance?

2 MR. PETERS: The relevance, state of mind of agents
3 acting in the field on the day in question.

4 MS. KANOF: Can we approach?

5 (Bench conference:)

6 MR. PETERS: It also shows -- Stephen Peters. It also
7 shows how many people got away.

8 THE COURT: What's that got to do with this?

9 MR. PETERS: It was Agent Juarez's testimony that
10 frequently agents let them go, and that's not what they're
11 supposed to do. And, in fact, the defendants were obviously
12 not letting this guy go, from all the evidence. And it is
13 relevant to the state of mind of the agents on the day in
14 question.

15 THE COURT: State of mind as to what? I don't know
16 what this --

17 MS. STILLINGER: There is testimony specifically about
18 Mr. Ramos being excited that day. They've brought out that
19 testimony, of him being excited that day. This report shows
20 that the seizure in question was approximately two to three
21 times bigger than the typical seizure they get. It also shows
22 he hadn't made a seizure for quite some time. But also, the
23 testimony of Agent Juarez is frequently -- they usually let
24 people go back to Mexico, because people don't like to do
25 paperwork.

1 THE COURT: That's testimony of who?

2 MS. STILLINGER: Agent Juarez, the first agent that
3 testified. He says, because we always let people run back to
4 Mexico, rather than do the paperwork. And this shows how many
5 absconders there are.

6 This guy says we always do the paperwork.

7 THE COURT: What has absconding got to do with doing
8 paperwork?

9 MR. PETERS: If they don't catch them.

10 THE COURT: What has it got to do with whether they
11 catch them? If they let them go, what does he --

12 MR. PETERS: Because he testifies that, Oh, he's the
13 head guy at the station, and he has got such a reputation to
14 make sure paperwork is done.

15 THE COURT: When he got to the scene, he scolded them
16 because the guy had absconded.

17 MR. PETERS: Right. They seem to always abscond.
18 What probative value does this have?

19 THE COURT: Again, I'm not sure I understand.

20 MR. PETERS: Impeachment of --

21 THE COURT: What did he say that is impeaching?

22 MR. PETERS: It shows this -- this -- he's either not
23 close to getting general allegations. But this shows this
24 specific area is a combat zone.

25 MS. KANOF: It does not. If they do, this -- I can

1 get all the statistics. But in years they found one gun.

2 THE COURT: There's --

3 MR. PETERS: Seizures, they do three loads a week for
4 a year and a half prior to --

5 THE COURT: And everyone has said this is a high drug
6 trafficking area. I haven't heard anyone say otherwise. I
7 don't understand how this is relevant at all. If we need to,
8 we'll examine outside the presence.

9 MS. STILLINGER: Mary Stillinger for Mr. Ramos. If we
10 could at least know why they compile this data. We understand
11 they do it weekly and monthly and cumulatively by agent.

12 MR. PETERS: But, apparently, Agent Sanchez was able,
13 using Border Patrol records, to figure out all the ones that
14 Compean and Ramos got, and in some of the other ones who they
15 crossed out --

16 THE COURT: Right. This agent, they keep it through
17 the I-44s, and they should be able to compile it through I-44s.
18 I think he just said that.

19 Again, my concern is, what is the probative value
20 of -- he's testified to the amount of the seizures. I don't
21 have any problems with that. I don't have any problems with,
22 you know, do they keep records of how much for that sector.
23 He's already said, yes, they do. But, unless you can show this
24 is probative of something or impeachment of something, I don't
25 understand.

1 MR. PETERS: I would like to ask him, then -- I've
2 already asked, and he's answered, they seized 43,000 pounds of
3 marijuana over that time. I just want to ask him to find the
4 geographical parameters of the Fabens sector, just so they can
5 get a picture of it.

6 THE COURT: Not a problem.

7 (End of bench conference; open court.)

8 THE BAILIFF: Your Honor, some of the jurors have
9 expressed that they are unable to hear and understand
10 Mr. Peters, if he could please speak up.

11 THE COURT: I noticed that the speaker doesn't seem to
12 be loud, but I don't know anybody touched the volume. Maybe if
13 you could turn it down. Yeah. Point it more towards him, so
14 that -- perhaps it's just not picking him up, because it didn't
15 seem as loud to me, either.

16 Whenever you're ready, Mr. Peters.

17 MR. PETERS: Yes, Your Honor.

18 BY MR. PETERS:

19 Q. Sir, there are 12 stations in the El Paso sector of the
20 Border Patrol, correct?

21 A. Yes, sir.

22 Q. Eight of them are in New Mexico, right?

23 A. That's correct.

24 Q. Three of them are in El Paso County, correct?

25 A. Yes, sir.

1 Q. One of them is in Fort Hancock, just across the line in
2 Hudspeth County?

3 A. That's correct.

4 MR. PETERS: Can you all hear me?

5 JURORS: Yes.

6 BY MR. PETERS:

7 Q. Fabens station covers roughly the lower portion of the
8 El Paso County border with Mexico over a distance of how many
9 miles?

10 A. 24.

11 Q. 24 miles of river frontage, right?

12 A. That's correct.

13 Q. And all these seizures we've been talking about over that
14 15-month period took place in that little 24-mile stretch of
15 river frontage in southeastern El Paso County?

16 A. I would deem that a large 24 miles.

17 Q. Well, it's large if you've got to patrol it?

18 A. Exactly.

19 Q. Now, you were talking about the firearms policy. And an
20 agent is entitled to use deadly force when he reasonably
21 believes it's necessary to protect his life or the life of
22 another or to protect himself or another from grievous bodily
23 injury, correct?

24 A. Or death. That is correct.

25 Q. Or death. That's right.

1 And you'll agree with me that the determination of
2 when that type of use of force is appropriate is something that
3 has to be made in an evolving situation on -- often in a split
4 second, right?

5 A. Yes, sir.

6 Q. An agent is not required to wait to get shot to make sure
7 that the object that he thinks is being pointed at him is
8 actually a pistol, right?

9 A. That's correct.

10 Q. Okay. And the agent is entitled to take into account the
11 totality of the circumstances in making that determination. Is
12 that correct?

13 A. I would think that would be reasonable.

14 Q. Okay. And the fact, if any, that the -- that the agent
15 pursues somebody who's refused an order to stop would be one
16 factor he could consider, correct? And I'm not saying that
17 that, by itself, would be sufficient. I'm just saying it's a
18 factor that would weigh into the balance.

19 A. Yes.

20 Q. The fact that the person he's attempting to stop has been
21 in some kind of physical confrontation with another agent is a
22 factor that he could consider, correct?

23 A. Could you repeat that?

24 Q. Yeah. If -- if an agent sees a fleeing suspect get into
25 some kind of little altercation of some kind with another

1 agent, that's a factor he can consider in --

2 A. Yes. Yes.

3 Q. If an agent hears gunfire, that's a factor he can consider,
4 isn't it?

5 A. Yes.

6 Q. And if an agent knows that a fellow agent has felt the need
7 to fire his weapon, that's a factor he can consider, correct?

8 A. Yes.

9 Q. Okay. And if, in situations such as that -- oh, and the
10 fact that the person that's fleeing is suspected of drug
11 trafficking is also a factor that the agent could take into
12 consideration?

13 A. That's correct.

14 Q. And the fact that the agent is -- is on the border instead
15 of, say, in a mall or in downtown El Paso, is another factor
16 that might play into his calculations, right?

17 A. Yes, sir.

18 Q. And if, in that situation, an agent believes that someone
19 is pointing a weapon at him, or even sees something that he can
20 reasonably mistake for a weapon, it would be reasonable for him
21 to defend himself, correct?

22 A. I think I would have to walk in their shoes, sir. But,
23 yes, that could be an articulable fact.

24 Q. And it's hard to figure these things out after the fact
25 sometimes, isn't it?

1 A. Yes.

2 Q. The question is whether the agent has a reasonable belief,
3 and it's not ultimately whether that belief turns out to be
4 well-founded or correct. Do you agree?

5 A. Yes.

6 MR. PETERS: Thank you.

7 THE COURT: Mr. Antcliff, Ms. Ramirez?

8 MR. ANTCLIFF: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. ANTCLIFF:

11 Q. Good afternoon, sir.

12 A. Good afternoon.

13 Q. I believe your testimony on direct was that all you knew
14 about the commission of this offense you learned from the
15 newspapers. Did I misunderstand you?

16 A. What I've read about agents' testimony has been in the
17 papers.

18 Q. Okay. Let's talk about that for a few minutes. The first
19 time you learned that there had been a shooting on February 17,
20 2005, was at the time you give your statement, on March 22nd.
21 Is that your testimony?

22 A. I believe so, yes.

23 Q. You did not learn that Agents Ramos and Compean had been
24 arrested on March 18th?

25 A. That may be true. But, at that time, I don't think I knew

1 the particulars of the case.

2 Q. I understand. So on the 18th of March you did learn that
3 they had been arrested, correct?

4 A. I did learn that they had been arrested. On what date it
5 was, I do not know.

6 Q. Okay. It was prior to you giving your statement?

7 A. I believe so, yes.

8 Q. That was a topic of conversation, I would imagine, at the
9 Border Patrol station, was it not?

10 A. I'm sure it was.

11 Q. You had conversations with other agents about that, did you
12 not?

13 A. About their being arrested?

14 Q. Yes.

15 A. Yes.

16 Q. And you were looking for information from those agents
17 about what that was. Is that your testimony?

18 A. Looking for information?

19 Q. You didn't know why they had been arrested. I think that's
20 what you --

21 A. I think everybody was kind of scratching their heads as to
22 why they were arrested.

23 Q. I'm talking about you, not everybody.

24 A. Okay.

25 Q. You didn't know why they were arrested on March 18th. Is

- 1 that what you're testifying to?
- 2 A. I believe so, sir.
- 3 Q. Okay. And so you're talking to the other agents, trying to
- 4 figure out what's going on. Is that right?
- 5 A. I think you're putting words in my mouth.
- 6 Q. I'm asking you.
- 7 A. I'm sure I talked to some agents. But, no, I wasn't
- 8 talking to all agents.
- 9 Q. Okay. Were you trying to figure out why two of your agents
- 10 had been arrested?
- 11 A. Absolutely.
- 12 Q. Okay. Did you get any information from anyone at the
- 13 Fabens station about why your agents had been arrested?
- 14 A. I don't believe so, sir.
- 15 Q. Okay. So you didn't know at all, on March 18th, until the
- 16 day you gave your statement, why they had been arrested?
- 17 A. I can't sit here and tell you for sure whether or not I had
- 18 learned something. But I think it was right around the time
- 19 that I gave my statement.
- 20 Q. And the information, at the time you gave your statement
- 21 about what had happened, that you learned, came from Agent
- 22 Sanchez sitting here. Is that right?
- 23 A. That's correct.
- 24 Q. He told you what he had learned, what he believed he
- 25 learned to that point, and then told you he wanted a statement,

1 right?

2 A. No. I gave him a statement. And I think, after that, we
3 discussed what actually had transpired, or what they had found
4 out had transpired.

5 Q. Okay. So, prior to you giving your statement -- was it a
6 written statement?

7 A. Yes.

8 Q. Okay. Prior to writing out your statement, you had no
9 information from Agent Sanchez about what had happened on
10 February 17th. Is that right?

11 A. I don't believe so.

12 Q. Okay. Let's talk about what you did know on February 17th.

13 You heard over the radio a call, I think it's a 10-46,
14 from Agent Compean. Is that right?

15 A. I don't recall hearing the 10-46.

16 Q. Okay. What did you specifically hear?

17 A. I specifically heard that Agent Compean had a vehicle
18 leaving the specific area, and that it was leaving at a high
19 rate of speed.

20 Q. And the area that it was leaving was known to you, and I
21 guess the Border Patrol, as 76. Is that right?

22 A. I believe that's the case, yes.

23 Q. That's an area notorious for alien -- illegal alien and
24 narcotics smuggling, correct?

25 A. It has been used for that, yes.

1 Q. It's not commonly known among Border Patrol agents?

2 A. Sir, we have drugs and aliens that come in at our station
3 at various locations.

4 Q. Sure. 43,000 pounds during a 15-month period.

5 I'm asking you: Are you disputing that area 76, or
6 sensor 76, is an area common for narcotics and alien smuggling?

7 A. It's an area that's commonly used for illegal alien
8 traffic. I know there have been seizures there in the past.
9 Is it notorious? I'm not going to put those words on.

10 Q. Okay.

11 MR. ANTCLIFF: May I have a moment, Your Honor?

12 THE COURT: Sure.

13 BY MR. ANTCLIFF:

14 Q. Okay. In the statement that you gave, did you mention that
15 you took that call from Agent Compean to mean that he possibly
16 had a load of aliens or narcotics?

17 A. That's correct.

18 Q. Okay. Tell me why.

19 A. Generally, when we have sensor activations and a vehicle is
20 seen leaving the area shortly thereafter, a lot of times it can
21 be a narcotics case or it can be an illegal alien smuggling
22 case. Or it can be other things.

23 Q. Sure. It certainly, coming from that area, with what is
24 known about that area, gives rise to a reasonable suspicion to
25 investigate, does it not?

- 1 A. Yes, sir.
- 2 Q. Okay. And, based on the radio traffic you heard that day,
3 your agents were moving to investigate that van, correct?
- 4 A. That's correct.
- 5 Q. Okay. Have you read the transcript of the radio traffic
6 that the repeater recorded for this incident on that day?
- 7 A. Yes, I have.
- 8 Q. Your voice is certainly on that repeater-recorded radio
9 traffic, correct?
- 10 A. That's correct.
- 11 Q. You're aware that a great -- I don't know what the volume
12 would be -- but, certainly, you're aware that not all radio
13 traffic related to that incident was recorded?
- 14 A. That's correct.
- 15 Q. And that's because your agents out there are not all on the
16 repeater. Is that right?
- 17 A. That's correct.
- 18 Q. Okay. There's a button, as I understand it, to push on
19 the -- or there's several buttons on the front of a radio, and
20 one of them designates local, or car-to-car traffic. Is that
21 right?
- 22 A. That's correct.
- 23 Q. And one is for repeater?
- 24 A. That's correct. Well, there's -- you take it on direct or
25 you take it off direct. When it's off direct, it goes over to

1 the repeater. But there's a not a button that you press for --
2 to hit the repeater.

3 Q. Okay. So is it just one button, or is it a switch?

4 A. There is a button on the radio. It has D-I-R on it, which
5 stands for direct. And you press that, if you wish to talk in
6 the direct mode.

7 Q. Is there a way on the radio to know what mode you're in?

8 A. As I recall, I believe there's a -- it says DIR in the
9 upper right-hand corner, of green illumination letters.

10 Q. And DIR is repeater traffic?

11 A. No. DIR is direct.

12 Q. Okay. I'm sorry. I'm getting confused, too.

13 And so when it's not saying DIR up there, that's when
14 you're on the repeater?

15 A. That's correct.

16 Q. Okay. You would like your agents in the Fabens station, or
17 sector -- I don't know what to call it -- to use the repeater
18 as much as possible, to record their traffic, right?

19 A. Yes.

20 Q. In fact, you kind of berated them on February 17th, 2005,
21 because they not only had not used the repeater as much, but
22 there was kind of a lack of radio traffic, in your estimation.
23 Is that right?

24 A. That's correct.

25 Q. It's your testimony today that you did not congratulate

1 them or tell them that they had done a good job after you
2 learned of that seizure?

3 A. Okay.

4 Q. I'm asking you.

5 A. Did I congratulate them?

6 Q. Yes.

7 A. Sir, that was a year ago. I don't remember every word I
8 said out there in the field.

9 Q. Okay. Is it possible that you congratulated them?

10 A. Yes, it is.

11 Q. And was it your practice to congratulate your agents on a
12 seizure?

13 A. I congratulate my agents whenever they do a good job.

14 Q. And certainly, picking up 700 pounds of marijuana was a
15 good job?

16 A. Yes, sir.

17 Q. Okay. Did you not, on that day -- strike that. I'll move
18 on.

19 Where is the Border Patrol station in Fabens located?

20 I know it's in Fabens.

21 A. 16001 Socorro Road.

22 Q. Approximately how far is that station from the intersection
23 of the Sierra ditch and Jess Harris Road?

24 A. I'm going to guesstimate five to seven miles.

25 Q. I believe your testimony on direct was it took you four to

1 five minutes to get from the station to the scene. Is that
2 about right?

3 A. Probably somewhere around five to ten minutes, I thought I
4 said.

5 Q. Okay. So it could have been as many as ten minutes?

6 A. Yes.

7 Q. You weren't in any particular hurry going out there?

8 A. No.

9 Q. Okay. Nothing seemed unusual to you, as you headed out
10 there, other than you hadn't heard quite as much on the radio
11 as you would like?

12 A. That's correct.

13 Q. All right. You arrive at the scene and see a number of
14 your agents standing around, I guess. Is that right?

15 A. Yes, sir.

16 Q. And a number of vehicles parked, as well?

17 A. That's correct.

18 Q. One of those vehicles was a van that had moved kind of into
19 the Sierra ditch. Is that right?

20 A. The front tires were, like, on the lip of the ditch, yes.

21 Q. Sure. You didn't notice any of the vehicle's doors open,
22 did you?

23 A. As I recall, I believe the back door of the vehicle was
24 open.

25 Q. The doors on the back of that van, are they the tall kind,

- 1 there's two of them --
- 2 A. Yes.
- 3 Q. -- that open outward?
- 4 A. I believe they were, yes.
- 5 Q. Okay. And you recall one of those doors being open, or
- 6 both?
- 7 A. I believe one of them was open.
- 8 Q. You didn't notice the driver's side door of that van being
- 9 open, did you?
- 10 A. I believe that door may have been open, as well.
- 11 Q. What about the passenger side door? Was that open, as
- 12 well?
- 13 A. No, I don't believe so.
- 14 Q. Okay. You walked up and took a look in the van, did you
- 15 not?
- 16 A. Yes, I did.
- 17 Q. Who was there when you did that?
- 18 A. Which agents?
- 19 Q. Yes.
- 20 A. Agent Ramos was there, Agent Mendoza, Agent Jacquez, Agent
- 21 Juarez, and Agent Vasquez, I believe.
- 22 Q. How many agents are on that shift? I don't know what the
- 23 shift was that day. I mean, I think it expired at 4:00 in the
- 24 afternoon.
- 25 A. Uh-huh.

1 Q. The shift you were responsible for, how many agents were on
2 that shift in the Fabens area?

3 A. On that day?

4 Q. Yes.

5 A. I don't recall the exact number, sir.

6 Q. Generally, how many are on duty at any given moment when
7 you're on duty?

8 A. About nine or so. It all depends.

9 Q. Sure. The good bulk of the agents responsible to you, or
10 that you supervise, were at this scene. Is that right?

11 A. I believe so, yes.

12 Q. Okay. I believe your testimony was that, at some point
13 when you left the station, you used a cell phone to contact one
14 of your supervisors, Robert Arnold, correct?

15 A. That's correct.

16 Q. And the reason that you did that, I think Ms. Kanof said,
17 was so that -- maybe you said it, I'm not sure -- to have a
18 private conversation. Is that right?

19 A. I believe I said yes to that.

20 Q. Okay. And it was also because you didn't want to the tie
21 up traffic on the radio, correct?

22 A. That's correct.

23 Q. How does an agent, when they're interested -- or when
24 they've got something serious, or important to say on the
25 radio, tell everybody else to shut up?

1 A. They 10-23 the channel, which is a request that radio
2 communication clears the channel for emergency traffic.

3 Q. During the course of the time that you heard the first call
4 of the vehicle, the van, leaving the 76 area, and the
5 conclusion of this incident on February 17th, do you recall
6 hearing anybody call out a 10-23?

7 A. I don't believe I recall hearing it. I believe I saw it in
8 the radio testimony that we talked about.

9 Q. The transcript?

10 A. Yes, exactly.

11 Q. Okay. So you didn't hear all of the radio traffic during
12 the course of this incident, but you have reviewed that
13 transcript?

14 A. That's correct.

15 MR. ANTCLIFF: May have a moment, Your Honor?

16 THE COURT: Sure.

17 MR. ANTCLIFF: May I approach the witness?

18 THE COURT: Yes.

19 BY MR. ANTCLIFF:

20 Q. Sir, I'm going to show you Government's Exhibit 92, and ask
21 you to take a look at that. Do you recognize it?

22 A. I believe this is a transcript of the radio traffic.

23 Q. Would you review that transcript and let me know how many
24 times you made radio calls within the time frame of that
25 transcript?

1 A. I believe it is seven times. Seven or eight, depending on
2 this scratchout here.

3 Q. Okay. Is it your testimony that you never said anything on
4 the radio on direct, on -- or local to local -- on February 17,
5 2005, during that time period?

6 A. No. That's not my testimony.

7 Q. So, while using the radio, you all -- you used both direct
8 and local between 1311 and 1328, about, on February 17, 2005?

9 A. I do not know if I used it, sir.

10 Q. Pardon?

11 A. I do not know if I used local during those time periods
12 that you said.

13 Q. Your testimony is that you have to push a button on the
14 radio in order to switch between local and direct. Is that
15 right?

16 A. That's correct.

17 Q. And, certainly, you were on direct at some point during
18 this radio traffic, right -- I mean, off of direct.

19 A. You mean was I using the repeater?

20 Q. Yes.

21 A. Yes, sir.

22 Q. Okay. Are there other points in time during this period of
23 time where you were on local?

24 A. I could not tell you whether I used local that day or not,
25 sir.

- 1 Q. Possible?
- 2 A. Anything is possible.
- 3 Q. I understand anything is possible. Is it possible you used
4 local that day?
- 5 A. Anything is possible, sir.
- 6 Q. Okay. Isn't it true that you had conversations on local
7 with some of your agents on February 17th, 2005, between 1311
8 and 1328?
- 9 A. On local?
- 10 Q. Yes.
- 11 A. That would be news to me.
- 12 Q. That's what I'm asking you. Did you --
- 13 A. Sir, I'm telling you that, on that day, I know I used the
14 repeater. Do I recall whether or not I used the local that
15 day? I cannot sit here and say that. I'm not going to
16 testify --
- 17 Q. Is everything you've said --
- 18 A. -- to something I'm not sure of.
- 19 Q. I understand. Is everything you said on that day during
20 that time frame, was it all recorded?
- 21 A. Everything I said on the repeater was recorded, sir.
- 22 Q. Sure. And everything anybody says on the repeater is
23 recorded.
- 24 A. That's correct.
- 25 Q. Okay. I'm asking you: Do you have a specific recollection

1 of punching to go off of the repeater that day?

2 A. I do not recall pressing that button that day, sir.

3 Q. Do you have a conversation with Agent Juarez on local that
4 day?

5 A. I do not recall that conversation, sir.

6 Q. Did you have a conversation with Agent Yrigoyen on local
7 that day?

8 A. I do not recall that conversation, sir.

9 Q. And is -- that will be your answer as to every one of your
10 agents on that day between 1311 and 1328, right?

11 A. Yes, sir.

12 Q. Okay. You did not speak to Supervisor Arnold on the
13 repeater that day, either, did you, between 1311 and 1328?

14 A. It does not show that I spoke to him on the repeater in
15 this summary, sir.

16 Q. Do you have a specific recollection that the only time you
17 spoke to him over -- not in person, the radio or something
18 else -- was on the cell phone?

19 A. I'm sorry. Rephrase that for me.

20 Q. The only conversation you had with Robert Arnold, between
21 those time periods after you heard the first call, was on the
22 cell phone. Is that correct?

23 A. I believe that to be the case, now that I'm reading this
24 report of the radio traffic.

25 Q. Okay. Your testimony is that you've been a Border Patrol

1 agent for 18 years, correct?

2 A. No, 17 years.

3 Q. My mistake. 17 years.

4 You've been assigned to various job duties, or
5 sectors, or sections, whatever they're called, over the years.

6 Is that right?

7 A. That's correct.

8 Q. And you've moved up within the ranks of the Border Patrol?

9 A. That's correct.

10 Q. You are familiar with the assorted policies, generally, of
11 the Border Patrol, as a field operations supervisor, right?

12 A. That's correct.

13 Q. You testified that it is incumbent on any supervisor to
14 monitor the radio traffic of your agents, correct?

15 A. Yes.

16 Q. And you were, indeed, monitoring the radio traffic of your
17 agents in the Fabens section -- or sector -- on February 17th,
18 2005?

19 A. That's correct.

20 Q. You were aware that a van leaves 76. And that's -- based
21 on what you heard, Agent Juarez began to follow it, right?

22 A. I remember Agent Compean calling out that he had that
23 vehicle leaving that area at a high rate of speed. I do not
24 recall what Agent Juarez said over the radio.

25 Q. Did Agent Compean actually say a high rate of speed, or did

- 1 he actually -- did he say a van leaving 76 quickly?
- 2 A. Something along those lines, yes.
- 3 Q. Is there a difference, in your mind?
- 4 A. Someone -- I think a vehicle leaving an area, when they say
- 5 quickly or at a high rate of speed is pretty -- pretty much in
- 6 tune.
- 7 Q. Okay. So you took that to mean a high -- quickly to mean a
- 8 high rate of speed?
- 9 A. Yes.
- 10 Q. Very well. You don't recall Agent Juarez any time -- any
- 11 radio traffic from him, as he tries to find this van. Is that
- 12 right?
- 13 A. No, sir.
- 14 Q. What is the next radio traffic you hear from any agent
- 15 regarding this van?
- 16 A. I believe the next thing I hear is when I -- I called out
- 17 there a couple of times, and finally Agent Mendoza answered me
- 18 and responded that everything was 10-19, okay.
- 19 Q. Did an emergency beacon -- or I don't know what to call
- 20 it -- go off that day in one of your -- the Border Patrol
- 21 units?
- 22 A. I believe there was.
- 23 Q. And whose vehicle was that?
- 24 A. I would have to review this transcript, sir, to tell you
- 25 that.

- 1 Q. Go right ahead.
- 2 A. That was vehicle hotel 9173.
- 3 Q. Who was hotel 9173?
- 4 A. I don't know that, sir.
- 5 Q. Did you assign the vehicles?
- 6 A. No, sir. The supervisor did.
- 7 Q. Who is the supervisor?
- 8 A. Robert Arnold.
- 9 Q. How many field operations supervisors are there at the
10 Fabens station?
- 11 A. One.
- 12 Q. And that's you?
- 13 A. That's correct.
- 14 Q. How many supervisors are there at the Fabens station?
- 15 A. There's six.
- 16 Q. Okay. And how is their work divided up? I mean, are
17 they -- do they work in shifts?
- 18 A. That's correct. There's two supervisors to each shift.
- 19 Q. Okay. You gen- -- so you're the guy in charge of the
20 Fabens section -- or station. Is that right?
- 21 A. No, sir. I have two higher ranking officers at that
22 station.
- 23 Q. Who are they?
- 24 A. Currently, it's special operations supervisor Donald Lucero
25 and patrol agent in charge Benjamin Robinson.

1 Q. On February 17, 2005, who did you answer to at the Fabens
2 station?

3 A. Patrol agent in charge Benjamin Robinson.

4 Q. And was there another supervisor over you at that time?

5 A. Special operations supervisor Bernard King.

6 Q. Okay. If you would, look at page 3 of the transcript of
7 the radio traffic. Do you see at 1318 and 1319, two calls from
8 Agent Juarez? Do you see those?

9 A. Yes, sir.

10 Q. Did you hear those on that day, February 17, 2005?

11 A. Sir, I don't remember hearing those.

12 Q. I understand. Okay. It took you five to ten minutes, is
13 your testimony now, to get from the Fabens station to the
14 intersection of Jess Harris Road and the ditch. Is that right?

15 A. Yes, sir.

16 Q. You didn't break any traffic laws on your way out there?

17 A. No, sir.

18 Q. Okay. There was no need, in your mind, to hurry?

19 A. Well, I wasn't lollygagging, but I wasn't exceeding the
20 speed limit, either.

21 Q. I believe there's been testimony that the speed limit along
22 the S curve of Fabens and Jess Harris is ten miles -- has a
23 ten-mile-an-hour speed limit. Are you aware of that?

24 A. I know that there's a low speed limit there. I was not
25 aware of the actual speed limit in the S curves.

- 1 Q. Were you obeying that speed limit when you went through
2 there?
- 3 A. Yes, sir.
- 4 Q. Okay. Is ten miles an hour kind of slow?
- 5 A. Not for that curve, sir.
- 6 Q. Is ten miles an hour kind of slow?
- 7 A. For the curve or in general?
- 8 Q. In general.
- 9 A. Yes.
- 10 Q. Okay. You never reprimanded any of your agents regarding
11 their pursuit of the van that the seizure came from on February
12 17, 2005, did you?
- 13 A. Sir, I was not aware that we had a pursuit.
- 14 Q. You never reprimanded any of your agents from that, did
15 you?
- 16 A. I was not aware that we had a pursuit. And, no, I did not
17 reprimand anyone for a pursuit I was not aware of.
- 18 Q. When you hear the call going out from Agent Compean that a
19 van is leaving quickly, you don't hear any radio traffic when
20 that van gets into the Fabens town proper. Is that right?
- 21 A. I don't remember that -- if I did or not, sir.
- 22 Q. The station is in the town of Fabens, right?
- 23 A. That's correct.
- 24 Q. And if a Border Patrol agent has his radio on local, it's
25 picked up in the Fabens station, correct?

1 A. That all depends, sir, on how far away they are, where --

2 Q. Well, they're in the town of Fabens.

3 A. Sir, I'm not going to say that I would have -- that we
4 would have heard that traffic on local. There are many
5 variances that go into that.

6 Q. Okay. How far is Fabens Road and Alameda, that
7 intersection, from the Fabens Border Patrol station?

8 A. About a mile and a half.

9 Q. Traffic certainly could be heard from that distance, given
10 some of those variables, correct?

11 A. Under normal circumstances, I would think in -- within a
12 mile and a half, yes, you would have heard direct traffic.

13 Q. Okay. But you didn't hear any calls related to the travel
14 of the van in question at that time?

15 A. I may have, sir. I don't recall.

16 Q. Okay. There were -- you're now aware, I assume, that there
17 were many calls relating to the direction of travel of the
18 vehicle between your agents on local on February 17, 2005,
19 correct?

20 A. I'm assuming that, sir, yes.

21 Q. Okay. You just didn't hear any of them?

22 A. That's correct.

23 Q. Do you know how many Border Patrol vehicles were following
24 that van on Fabens Road, as it turned into Jess Harris Road?

25 A. Do I know how many? No, sir.

1 Q. Okay. When you got to the scene, the only agents on the
2 south side of the Sierra ditch were who?

3 A. On the south side, that would have been on the levee. That
4 would have been Agent Compean, Agent Mendez, and Agent
5 Yrigoyen.

6 Q. Okay. It's your testimony that you never saw Agent
7 Yrigoyen over there?

8 A. When I gave my statement, I did not recall seeing Agent
9 Yrigoyen at the scene. But it's my understanding now he was
10 the agent up on the levee.

11 Q. Sir, I understand. But, that day, you didn't notice him
12 over there?

13 A. I noticed someone, sir. But I didn't -- at -- when -- the
14 time I gave my statement, I did not recall that it was Agent
15 Yrigoyen, if I even realized it was Agent Yrigoyen on that day.

16 Q. Did you have a conversation with Agent Yrigoyen on February
17 17th, 2005, from a distance over that ditch?

18 A. I do not recall a conversation with him, sir.

19 Q. So it's possible, again, but you don't know?

20 A. That's correct.

21 Q. I see. Over the ditch, did you have a conversation with
22 Agent Mendez?

23 A. I do not believe I did, sir.

24 Q. Okay. Is it possible, or you did not?

25 A. That was a year ago, sir. I don't recall for sure.

1 Q. Very well. You did have a conversation that you recall
2 with Agent Compean. Is that right?

3 A. That's correct.

4 Q. And you recall asking him if he was okay.

5 A. That is correct.

6 Q. And he responded that he was fine?

7 A. That is correct.

8 Q. You did not have that conversation with Agent Yrigoyen?

9 A. I don't recall having that conversation with him, sir.

10 Q. Okay. You don't believe that there is ever a justification
11 for -- I guess "hot pursuit" is the bad word now -- but a
12 high-speed pursuit. Is that right?

13 A. No, I don't agree with that. There could be a situation
14 where a high-speed/high-risk pursuit is necessary.

15 Q. Okay. Then I misunderstood your testimony, and I
16 apologize.

17 In this case, it wasn't -- it wouldn't have been
18 justified, if it had been requested. Is that right?

19 A. That's correct.

20 Q. And, in all of your years as a Border Patrol agent, you
21 never requested the authority to do that. Is that right?

22 A. No, sir. I never have.

23 Q. And you never, as a supervisor, have granted any agent that
24 authority, correct?

25 A. That's correct.

1 Q. You've been a supervisor and a field operations supervisor
2 for how many years?

3 A. Total of about eight years.

4 Q. How many requests for high-speed pursuits have been made of
5 you in that capacity?

6 A. I don't believe any, sir.

7 Q. Okay. It's your testimony today that you are unaware that
8 there was any kind of a pursuit going on related to this
9 incident. Is that right?

10 A. That's correct.

11 MR. ANTCLIFF: One, moment, Your Honor?

12 THE COURT: Sure.

13 BY MR. ANTCLIFF:

14 Q. Do you recall ever hearing any radio traffic on February
15 17, 2005, during this time period, that that van was headed
16 south?

17 A. That's possible, sir, but it doesn't stick out in my mind.

18 Q. In your experience, generally, if you hear something like
19 that -- and I understand you're not there at that moment. But
20 when the agents are talking about somebody heading back south,
21 they are talking about somebody heading home. Is that right?

22 A. Yes.

23 Q. Back to Mexico?

24 A. That's correct.

25 Q. Okay. Okay. Is it your testimony that the Border Patrol

1 policy requires an agent to be in a marked sedan in order to
2 initiate or participate in a high-speed pursuit?

3 A. To engage or initiate a high-speed/high-risk pursuit you
4 have to be in a marked sedan. That's correct.

5 Q. All right. Let me ask you a couple other questions.

6 Had you known that there was a pursuit going on that
7 day, as the supervisor, you certainly had the authority to get
8 on the radio and terminate it, did you not?

9 A. Yes, I would have had that authority.

10 Q. And that goes for any pursuit --

11 A. That's correct.

12 Q. -- not just this day.

13 A. That's correct.

14 Q. But you didn't know about a pursuit?

15 A. That's correct.

16 Q. Okay. There's been a lot of talk about paperwork in this
17 case. The responsibility for the bulk of paperwork at the
18 Fabens station, it lays with the supervisors. Is that right?

19 A. Depends on which way you look at it, sir.

20 Administratively, you know, processing aliens, what are you --

21 Q. All right. Let's start with significant incident reports.
22 Who fills those out?

23 A. Supervisors.

24 Q. Reports related to an assault have to be filled out if
25 there is an assault, correct?

- 1 A. That's correct.
- 2 Q. And who fills those out?
- 3 A. Agents could complete a memorandum, and supervisors would
- 4 be responsible for the report of assault.
- 5 Q. Ultimately, the supervisors are pretty much responsible for
- 6 everything that goes on out there. Is that right?
- 7 A. Yes. We're responsible for things that happen in our
- 8 station, yes.
- 9 Q. Sure. You're in charge. If you're dealing with reports of
- 10 the discharge of a firearm, agents have an obligation to report
- 11 it orally, and then a supervisor fills out a report. Is that
- 12 right?
- 13 A. That's correct.
- 14 Q. That could be, I guess in this case, filling out those
- 15 reports could be the responsibility of either Robert Arnold or
- 16 you. Those -- you were the two on duty that day, right?
- 17 A. Or my superior, yes.
- 18 Q. Okay. So --
- 19 A. Any supervisory staff, yes.
- 20 Q. That starts at the low level line supervisor and moves all
- 21 the way up to management?
- 22 A. That's correct.
- 23 Q. Everybody at the station?
- 24 A. That's correct.
- 25 Q. Okay. You have an obligation, then, in some respects, to

1 make sure that that paperwork is done, when you know that
2 there's been an assault or an incident, or some -- or a
3 discharge of a firearm. Is that right?

4 A. If I would have been aware of that, yes, sir.

5 Q. Okay. Is it -- did you --

6 MR. ANTCLIFF: I'll take that back, Your Honor.

7 BY MR. ANTCLIFF:

8 Q. When you arrived to the scene and you saw the van with its
9 wheels kind of in the ditch, the front wheels, you noticed
10 that?

11 A. I wouldn't call them in the ditch. I would say they're
12 right on the lip, and I think we have some -- well --

13 Q. I appreciate you pointing out the pictures. I'll give you
14 one right now.

15 A. I took them, sir.

16 Q. All right. Can you see this one?

17 A. Not very well.

18 Q. Hold on. Let me hit a button here.

19 Does that help?

20 A. Yes.

21 Q. Do the front wheels of the van appear to be just over the
22 lip of the ditch and in the ditch?

23 A. Yes, sir.

24 Q. Do you see any tracks behind the back wheels of the van,
25 there?

1 A. I can't see from --

2 MR. ANTCLIFF: May I approach, Your Honor?

3 THE COURT: Yes, you may.

4 BY MR. ANTCLIFF:

5 Q. I'm going to show you Government's Exhibit Number 9. And
6 I'm asking you to take a look at the tracks behind that van, if
7 there are any. Do you see any?

8 A. Tracks of vehicles, people, or what, sir?

9 Q. The vehicle tracks behind the tires to the van.

10 A. Yes, I do see vehicle tracks.

11 Q. Okay. When you saw that, did you think that you shouldn't
12 ask any questions about that van?

13 Let's try it this way. You didn't ask any questions
14 about it, other than the marijuana in it, correct?

15 A. About the van, no.

16 Q. You didn't ask any of your agents how fast that van had
17 been traveling on that day?

18 A. No, I did not ask them how fast it had been traveling.

19 Q. Okay. You see the tracks there now, as you look at that
20 picture that you took. Did you see them on that day?

21 A. I'm sure I did, sir.

22 Q. Those are an indicator that that van was going pretty
23 quickly when it braked and wound up just over the edge of the
24 ditch, correct?

25 A. I can't say that, just looking from the picture, sir.

1 Q. Okay. It's not an indication to you that that van was
2 moving fairly quickly when it stopped with its wheels just over
3 the ditch?

4 A. It's possible.

5 Q. And I agree with you, anything is possible.

6 A. Every tire leaves a track, sir.

7 Q. You bet.

8 Is it your testimony --

9 MR. ANTCLIFF: Ken, you can turn the lights on.

10 Thank you.

11 BY MR. ANTCLIFF:

12 Q. Is it your testimony today that Agent David Jacquez
13 never -- excuse me -- Agent Lorenzo Yrigoyen never told you
14 that the driver of the van had thrown dirt in Compean's eyes?

15 A. I don't recall having any conversation with Agent Yrigoyen
16 that day, sir.

17 Q. Okay. And I believe on direct you testified that you would
18 consider it an assault if an agent got dirt thrown into their
19 eyes. Is that right?

20 A. That's correct.

21 Q. So if you had known that, that day, that dirt had been
22 thrown into Agent Compean's eyes, that would have been an
23 assault, in your mind, that you had to report?

24 A. Yes, sir.

25 Q. Okay. Is it your testimony that Agent David Jacquez never

1 told you that dirt was thrown into Agent Compean's eyes?

2 A. I don't believe Agent Jacquez told me that, sir.

3 Q. You had a conversation with Agent Ramos after he returned
4 from the south side of the ditch on February 17, correct?

5 A. That's correct. And when I first arrived there, Agent
6 Ramos was already on the south side -- or north side of the
7 ditch.

8 Q. All right. Well, okay. So you didn't see him come over,
9 right?

10 A. No, sir.

11 Q. You saw him on the north side of the ditch, and his pants
12 were wet from the knees down?

13 A. That's correct.

14 Q. Is it your testimony that he didn't tell you that the
15 driver of the vehicle threw dirt in Agent Compean's eyes?

16 A. He told me that Agent Compean attempted to grab the guy and
17 moved side to side, and Agent Compean fell and got dirt in his
18 eyes.

19 Q. Is it your testimony that Agent Ramos did not tell you that
20 Agent -- the driver of the van threw dirt in Agent Compean's
21 eyes?

22 A. Sir, I don't remember his exact words to me.

23 Q. So it's possible he told that; you don't remember?

24 A. What he told me is what's in my statement, what I just
25 testified to.

1 Q. I'm asking you if he said the driver threw dirt in his --
2 in Agent Compean's eyes.

3 A. And what I said was, I'm not su- -- I don't recall his
4 exact words to me that day.

5 Q. Certainly, then, in your statement, there's no mention of
6 anybody throwing dirt in anybody's eyes, right?

7 A. In my statement, you will see where I made the statement
8 that Agent Ramos had told me that Agent Compean fell and got
9 dirt in his eyes.

10 Q. Sir, we will get through this a lot quicker if you would
11 answer the question that I ask.

12 MS. KANOF: Objection, Your Honor, on instructing the
13 witness to answer the question.

14 MR. ANTCLIFF: Judge, I would ask you to ask the
15 witness to answer my questions.

16 THE COURT: Okay. Hold on. I thought he was, but let
17 me check.

18 Okay. Your question --

19 MR. ANTCLIFF: I've asked a lot of them, and I don't
20 remember. But I think it was dealing with what was in his
21 statement, specifically, whether there was a statement about
22 throwing dirt in someone's eyes.

23 THE COURT: Right. And his answer had to do with what
24 he said in his statement. So I believe he answered the
25 question. So I will overrule your objection.

1 BY MR. ANTCLIFF:

2 Q. So there's nothing in your statement about throwing dirt in
3 somebody's eyes?

4 A. In my state- -- in my statement it says what I've already
5 said Mr. Ramos told me, and what I remember the gist of the
6 conversation being.

7 Q. Okay. The mission of the Border Patrol, sir, as you
8 understand it, is to apprehend illegal aliens. Is that right?

9 A. That's correct, sir.

10 Q. One of the duties of the Border Patrol is also to -- I
11 mean, they're the primary drug interdicting agency on the
12 border. Is that right?

13 A. I would agree with that, yes.

14 Q. And I understand the Border Patrol doesn't investigate.
15 Once they've made a seizure, they turn everything over to the
16 DEA, correct?

17 A. That's correct.

18 Q. And the DEA pursues that investigation, correct?

19 A. That's correct.

20 Q. Although, would you agree with me, that there is some
21 limited investigation that the Border Patrol does when they
22 make a seizure?

23 A. Yes.

24 Q. Okay. You're aware -- you would agree with me that being a
25 Border Patrol agent on the line down there on the levee and

1 everything is a fairly dangerous job. Is that right?

2 A. Yes, sir. I would agree with that.

3 Q. You're aware of a prior shooting involving two of your
4 agents on --

5 MS. KANOF: Objection, Your Honor.

6 THE COURT: All right. Could you approach the bench?

7 (Bench conference:)

8 THE COURT: I thought this was a subject of my motion
9 in limine. Where are we going?

10 MR. ANTCLIFF: I want to know -- there was a prior
11 shooting in December of 200- -- this is Chris Antcliff on
12 behalf of Jose Compean.

13 There was a prior shooting in December of 2004
14 involving two of this agent's supervisees, for lack of a better
15 term. And all of the reports were apparently filled out
16 then -- I lost my train of thought. One second, Your Honor.

17 MS. STILLINGER: What Chris wants to know -- Mary
18 Stillinger for Mr. Ramos, reading Chris Antcliff's mind.

19 What he wants to know, did this supervisor fill out
20 assault reports in that case? And, also, there was testimony
21 about what the sector evidence team does in that case.

22 MR. ANTCLIFF: That goes to the brass -- I'm headed
23 there ultimately. But there are other questions certainly
24 relevant to the defense of these two individuals today that
25 stem from that incident.

1 THE COURT: I thought we had specifically talked about
2 not bringing up other shootings, and so -- that there was a
3 motion in limine granted regarding other shootings. How are
4 they all of a sudden relevant?

5 MR. ANTCLIFF: I thought -- I wasn't here, and I
6 thought -- I didn't realize that was the subject of a motion in
7 limine. I mean, we've been talking about how dangerous the
8 border is, and that's the subject of a motion in limine. We've
9 been talking about that for three days.

10 THE COURT: Okay. The only other shooting I recall
11 having talked about was some shooting -- no, there was a
12 shooting of another officer that was brought up during a motion
13 in limine. And it was specifically said that that would not be
14 brought up.

15 MR. ANTCLIFF: This isn't a shooting of another
16 officer, as far as --

17 MS. RAMIREZ: Maria Ramirez on behalf of Jose Alonso
18 Compean.

19 I think the only time that -- the Government turned
20 over a December '04 shooting. It involved Manny Fuentes,
21 Border Patrol Agent Fuentes. And the -- I can't remember the
22 other name. But Ms. Stillinger brought it up in a motion in
23 limine. And she brought it up as a good act, to try and keep
24 it out.

25 THE COURT: I said no reference to other shootings by

1 Border Patrol agents, okay, good acts or bad acts. There is no
2 relevance.

3 MR. ANTCLIFF: Judge, I understand that. I'm asking
4 you to revisit that. It's only a limine motion right now. And
5 the fact of the matter is that there have been several agents
6 testifying as to the danger.

7 THE COURT: A limine motion requires you to approach
8 the bench before you can go -- so, guys, you need to do that,
9 because it's not fair to the counsel. If I grant a motion in
10 limine, you're supposed to approach the bench. Go ahead.

11 MR. ANTCLIFF: You're right. And it's not -- and I
12 apologize. I misunderstood what the subject of the motion in
13 limine was regarding that. I thought, because we talked about
14 the dangerousness, we were done with that one.

15 Now, having spoken -- and I apologize to counsel, as
16 well.

17 MR. GONZALEZ: That's not the only one you
18 (indiscernible) drugs that were in the van.

19 MR. ANTCLIFF: All right. Now, I forgot. Because
20 there have been a number of witnesses testifying about the
21 danger on the border down there, that there were -- some of
22 them said, Yeah, it's a pretty scary place. This agent said
23 it's a dangerous place. This incident occurred -- that we're
24 talking about here -- occurred 60 days, maybe 90 at the
25 outside, but within -- certainly 75 days, for example, of the

1 one that we're dealing with right now. I think certainly it
2 goes to the state of mind of the agents on the border, in
3 particular, these two, in defending that.

4 THE COURT: I don't know anything about this other
5 shooting.

6 MS. KANOF: Your Honor, it was a rock throwing.

7 THE COURT: I don't know where it occurred. I don't
8 know how it occurred. I don't know if it occurred at night. I
9 don't know if it occurred between more than one person. Until
10 I have some indication that -- I think there was testimony, and
11 I will agree, Mr. Antcliff, that if there's testimony about if
12 you're standing up on the levee down through the vega that
13 you're a sitting duck, and I don't disagree.

14 But I don't know that shooting you're making reference
15 to had any similarity.

16 MR. ANTCLIFF: I can give it all to you through the
17 report, or I can tell what it was for the record. I can ask
18 this agent, who certainly knows the details of that.

19 THE COURT: Not in the presence of the jury. I've
20 ruled it's inadmissible. So if you --

21 MR. ANTCLIFF: I misunderstood then, Judge. I didn't
22 hear you rule inadmissible, that I had to approach the bench
23 before I got into it.

24 THE COURT: I understand. But we're at the bench, and
25 I haven't ruled that you can now put that in front of the jury.

1 And the only way I can is if I hear some information regarding
2 this other shooting. So do you want to break for the evening
3 and take this --

4 MR. ANTCLIFF: Take it up outside the presence of the
5 jury right now.

6 THE COURT: Well, I'm going to let them go.

7 How -- how -- how much more do you have left with this
8 witness? If I rule --

9 MR. ANTCLIFF: You want me to go to whatever else I
10 have and then --

11 THE COURT: No. No, no. My question, should I let
12 them go tonight, or once I rule on this, are you almost done?
13 Because I can make them wait. If we can finish this witness by
14 6:00. I would rather finish.

15 Should I let them go for the evening?

16 MR. ANTCLIFF: It's okay with me. However you want.

17 THE COURT: If we're going to take this up, then I
18 would rather take this up outside the presence of the jury.

19 MS. KANOF: While we're at the bench, it was our
20 understanding that the Court had -- that the Court had ordered
21 that the bench be approached before any mention of the amount
22 of marijuana within the van was made. Mr. Antcliff did not do
23 that. I didn't object at the time, because I didn't want to
24 make a big deal of it in front of the jury. But my lack of
25 objection is not -- does not connote the fact that I do object

1 to the violation of the motion in limine.

2 THE COURT: All right. So noted for the record.

3 I will caution everybody -- you guys -- I've ruled on
4 those motions. I was very clear. I even put it in writing,
5 and we've talked about it a number of times. I expect you to
6 approach the bench.

7 Let me dismiss the jury tonight.

8 (End of bench conference; open court.)

9 THE COURT: Ladies and gentlemen of the jury, it is
10 now 5:30. We are going to go ahead and recess for the evening.
11 Tomorrow morning I have a couple things I have to do, so I'm
12 going to ask you to be back about 9:00. And then, as soon as
13 we're -- as soon as I'm finished, we will resume. So if you
14 will be back in the jury room tomorrow morning at 9:00, and
15 then shortly thereafter we should resume with the trial. All
16 right?

17 So we'll see you tomorrow morning. Remember you
18 remain under all the rules of the Court, specifically not to
19 talk to anybody about this case, and not to read or watch or
20 listen to any media coverage of this case.

21 Thank you.

22 (Open court, parties present, jury not present.)

23 THE COURT: All right. We are outside the presence of
24 the jury. And before we recess for the evening, I do want to
25 take up a matter regarding, I guess, the last line of

1 questioning.

2 If you would proceed, Mr. Antcliff, to advise the
3 Court what it is we are talking about and why you believe it's
4 relevant.

5 MR. ANTCLIFF: Judge, before I do that -- and first,
6 for the record, I understood, based on -- I don't know how many
7 days we've been at it -- of drugs, that the issue surrounding
8 the dope had been lifted. I mean, the motion in limine had
9 been lifted around that. And I wouldn't have asked the
10 question had I thought that it was still in place with regard
11 to the quantity. I thought once we opened that issue up with
12 Mr. Aldrete-Davila that that issue was done. So I want to
13 apologize for that.

14 The second thing is, outside the presence of the jury,
15 as the Court has indicated, the defense would like to make a
16 bill related to the potential admissibility of a prior shooting
17 from December of 2004, which happened in the Fabens section.
18 And, for purposes of that, Ms. Stillinger is going to proceed,
19 if that's all right with the Court.

20 THE COURT: All right. Is someone going to let me
21 know what relevance it has, or why you're requesting the Court
22 to allow you to question this witness about it at some point?

23 MR. ANTCLIFF: Yes, Judge.

24 THE COURT: All right. You may proceed,
25 Ms. Stillinger.

1 MS. STILLINGER: Your Honor, I think what -- and I
2 mentioned -- I'm the one that filed the motion in limine on
3 keeping that evidence out, because I anticipated they were
4 going to call Manuel Fuentes to testify about how he did
5 report.

6 This is an incident that happened in December of 2004,
7 specifically, December 3rd, 2004, with an Agent Richard Lujan
8 and Manuel Fuentes, Border Patrol agents in the Fabens area,
9 who fired their firearms at people that were throwing rocks at
10 them. They did report the discharge of their firearms, and
11 they reported that they had been assaulted.

12 THE COURT: Now, hold on. And I granted a motion in
13 limine regarding that.

14 MS. STILLINGER: Yes.

15 THE COURT: You're asking me now to lift the motion in
16 limine that you requested. Is that what I'm understanding?

17 MS. STILLINGER: Well, I -- I -- I was asked -- well,
18 the short answer would be yes.

19 THE COURT: Okay. Now, what's the long answer?

20 MS. STILLINGER: The long answer is, I was asking that
21 it be kept out because my understanding was that they were
22 going to bring in an agent to talk about how he did the right
23 thing under similar circumstances, and I didn't think that was
24 admissible, to show that the agent did the right thing under
25 similar circumstances.

1 The purpose, as I understand it, of Mr. Antcliff's
2 cross-examination of this witness at this time, is to ask this
3 witness about the procedures he followed when that situation
4 confronted him. For instance, there is Mr.-- --

5 THE COURT: And what's the purpose behind -- okay.
6 Assuming -- and we're going to go -- I guess go into what
7 procedures he followed. But what is the purpose behind
8 questioning him for that?

9 MS. STILLINGER: Well --

10 THE COURT: I mean, are we talking about is it
11 relevant, is it impeachment? What are we talking about?

12 MS. STILLINGER: Specifically, one of the things that
13 this witness testified was about the sector evidence team and
14 what they would have done if they had known that there would
15 have been a shooting. And he said they would have come in, and
16 one of the things they would have done is they would have
17 looked for brass, meaning the bullet casings --

18 THE COURT: Okay.

19 MS. STILLINGER: -- that had been discharged when the
20 firearm is discharged.

21 And, in the case -- the evidence that we've been
22 provided by the Government, at least from Agent Fuentes'
23 knowledge, is that the evidence team came in, they looked for
24 bodies. They didn't look for brass.

25 And so, yes, it would be impeachment of this witness,

1 who said, after any discharge of a firearm, they come in and
2 they look for brass. It would be impeachment of this witness'
3 testimony, when he's saying they -- that's what they would do.

4 Well, they didn't do that two months before --

5 THE COURT: Okay.

6 MS. STILLINGER: -- you know, when they had a similar
7 situation.

8 THE COURT: All right. Go ahead and make your bill,
9 and then I will rule.

10 VOIR DIRE EXAMINATION

11 BY MS. STILLINGER:

12 Q. Agent Richards, were you aware of the shooting incident on
13 December 4, 2004?

14 A. Yes, ma'am.

15 Q. Okay. And that was with an Agent Richard Lujan and Manuel
16 Fuentes?

17 A. That's correct.

18 Q. And these are both Border Patrol agents that are under your
19 supervision?

20 A. They work for lower level supervisors, but yes.
21 Ultimately, they are under my supervision.

22 Q. Okay. And, basically, what we're talking about is these
23 agents discharged their firearms at some other persons,
24 correct?

25 A. That's correct.

1 Q. And they said that they did it in response to what they
2 perceived as a threat, correct?

3 A. That's correct.

4 Q. Okay. And was the border sector evidence team -- or, I'm
5 sorry -- your sector evidence team called in?

6 A. I believe they were, yes.

7 Q. Okay. Do you have knowledge about that?

8 A. As far as?

9 Q. Well, I -- I'm just asking you. You said you believed that
10 they were.

11 A. I didn't personally call them, no. But I believe they did
12 come out for that shooting.

13 Q. Okay. Did you respond to the scene?

14 A. No.

15 Q. Okay. Did you review any reports of that incident?

16 A. Yes.

17 Q. Okay. Do you know what the sector evidence team did when
18 they came out?

19 A. I was not there, so I couldn't say what they did or did not
20 do.

21 Q. Okay. Did you read -- well, I mean, you've testified on
22 direct, when Ms. Kanof was asking you questions, you testified
23 about what the sector evidence team generally does, right?

24 A. Yes.

25 Q. You testified one of the things that they would do is, they

1 would pick up or look for casings?

2 A. Yes.

3 Q. Did you know if they did that in this case of the
4 December 4, 200- -- I'm sorry -- December 3rd, 2004, shooting
5 incident?

6 A. I would assume they did. I have a working knowledge of
7 what -- the sector evidence team. I'm not part of it, so I
8 cannot say for sure exactly what they do. But my -- my
9 understanding is that they collect evidence, photograph things,
10 take measurements of skid marks, et cetera, et cetera.

11 Q. Okay. So I guess the short answer would be you don't know
12 if they looked for casings in reference to the December 3rd,
13 2004, shooting?

14 A. I could not say for sure whether they did or did not,
15 ma'am, no.

16 Q. Okay. So your testimony about what the sector evidence
17 team does, that's based on your understanding of what they
18 should do, not necessarily what they actually do. Is that
19 correct?

20 A. Yes.

21 Q. Okay. Would you view it as a violation of policy if they
22 did not look for casings?

23 A. I don't make policy for the evidence team, so I could not
24 give you an answer on that.

25 Q. I understand you don't make policy. But you are familiar

1 with their policies, aren't you?

2 A. No. I have a working knowledge of what they do. I've
3 never seen their policy book or reviewed it.

4 Q. So you don't even know what their duties and
5 responsibilities are when they respond?

6 A. Yes, ma'am. Like I said, I have a general working
7 knowledge of that they do in certain situations.

8 Q. You have a general working knowledge of what they do, but
9 you don't know what their policies are or what they're supposed
10 to be doing. Is that it?

11 A. I'm not their boss, so, no, I don't know.

12 Q. Okay. Additionally, do you know if assault reports were
13 filed, or significant incident reports filed, with respect to
14 the assaults on Agents Lujan and Fuentes?

15 A. Yes, I believe they were.

16 Q. Okay. And that belief is based on what?

17 A. Based on, I know that I reviewed the report of assault.
18 And I would assume that a significant incident report was also
19 done. I don't specifically recall.

20 Q. Okay. That's not something you would follow up on. Is
21 that -- is that right?

22 A. I would have seen it. Whether or not it was done or not --
23 but I -- again, right, now, I do not recall whether I saw that
24 document.

25 Q. Okay. You would assume it was done because they were

- 1 assaulted, right?
- 2 A. Yes, ma'am.
- 3 Q. Okay. Of course, you would assume it was done in this
4 case, since Agent Compean was assaulted, correct?
- 5 A. I don't think I would agree with that.
- 6 Q. Okay. Do you know the location of that incident, the
7 December 3rd, 2004, incident?
- 8 A. I know it was out on our west end. I couldn't tell you
9 specifically where it was, though.
- 10 Q. Okay. Do you know if it happened on the levee or on the
11 vega?
- 12 A. I believe it was just north of the levee.
- 13 Q. Okay. Do you know if it was north of the Sierra Delta, the
14 ditch?
- 15 A. Yes, I believe it was.
- 16 Q. Okay. Okay.
- 17 A. Ma'am, if you have those documents, I could review them and
18 give you a much better response.
- 19 Q. Well, I -- my -- my information doesn't include that in --
- 20 A. Okay.
- 21 Q. -- the reports I have don't include that information.
22 That's why I was asking.
- 23 A. Okay.
- 24 Q. Do you know if either of those agents were actually
25 injured?

1 A. I know that one, if not both of them, were struck by a
2 rock. I recall that, yes.

3 Q. Okay.

4 A. I don't believe they were injured, but they were hit by a
5 rock.

6 Q. Okay. And do you know if the shooting review -- I guess
7 you call it the shooting review commission? Is that what you
8 testified about to Ms. Kanof?

9 A. What about it?

10 Q. I'm just asking: Is that what you call the group that
11 comes in to investigate the --

12 A. They don't come in here. That would be done at, like, the
13 headquarters level.

14 Q. Okay.

15 A. I don't --

16 Q. You talked about something that was like a shooting review
17 team, but maybe it was called a committee or something?

18 A. I believe there's a shooting review committee.

19 Q. Okay. Shooting review committee?

20 A. Right.

21 Q. And you testified that's one of the things that always
22 happens when a firearm is discharged, the shooting review does
23 an investigation, correct?

24 A. I have -- I know that is in the firearms policy. I have
25 never been to a shooting review committee meeting. I have

1 never heard of them taking place. But I'm sure that it's done
2 at the headquarters level. That is in the firearms policy.

3 Q. Okay. Do you know if there is -- if the shooting review
4 committee investigated the shooting by Richard Lujan and Manuel
5 Fuentes that took place on December --

6 A. No, I do not know if they actually reviewed that.

7 Q. Well, that's something you would be aware of if it
8 happened, wouldn't you?

9 A. No, ma'am.

10 Q. Okay. Do you know if -- who -- well, who did investigate?
11 There was some investigation of the validity of the shooting by
12 these agents, wasn't there?

13 A. I'm sure there was. And I'm sure that it was at the
14 chief's level or higher.

15 Q. Okay. You -- you had no input, played no role, and had no
16 knowledge of that. Is that your testimony?

17 A. Of reviewing that shooting?

18 Q. Of even knowing about the process going on.

19 A. There was an assault report done. I reviewed that, and any
20 other documents that were generated at the time of the
21 occurrence. And those were forwarded to sector, to our -- up
22 our chain of command. What happened after that, I do not know.

23 Q. Okay. Specifically, I'm asking about -- about whether
24 there was a review of the shooting. And I guess, when I say
25 "validity of the shooting," I mean whether there was an

1 investigation of whether the shooting was justified.

2 A. I do not know if that occurred, ma'am.

3 Q. Okay. So the testimony you gave when Ms. Kanof was asking
4 questions, about these are all the things that happen, that's
5 just based on your understanding of what should happen, not
6 your understanding of -- or not your knowledge of whether it
7 actually happens?

8 A. Yes.

9 Q. Okay.

10 MS. STILLINGER: May I approach the witness,
11 Your Honor?

12 THE COURT: Yes.

13 BY MS. STILLINGER:

14 Q. Agent Richards, I would like to show you a document.

15 Do you recognize that to be an I-44?

16 A. Yes, I do.

17 Q. Okay. And could you identify for me the date of that I-44?

18 A. December 3rd, 2004.

19 Q. Okay. Does this appear to refer to the incident we're
20 talking about with Agent Manuel Fuentes?

21 A. Going off the date, I would say yes.

22 Q. Okay. Because it also has his name on it, correct?

23 A. Right.

24 Q. Okay. And you're aware that they did seize some marijuana
25 in that event, correct?

- 1 A. Yes.
- 2 Q. Okay. And if you could look -- there is, basically, the
3 second page containing a narrative of the event --
- 4 A. Okay.
- 5 Q. -- correct?
- 6 Okay. And, if you could look for a moment -- it's
7 pretty brief. If you could, read that for a moment.
- 8 A. Okay.
- 9 Q. And, by the way, back to the first page of that I-44, does
10 it also mention Agent Compean's name?
- 11 A. Yes, it does.
- 12 Q. Okay. So he was involved in this incident, as well?
- 13 A. Yes, ma'am.
- 14 Q. Okay. My question to you, having reviewed the -- the
15 factual summary in the I-44, does that I-44 make any reference
16 to the assault and the shooting that took place in connection
17 with this seizure of marijuana?
- 18 A. No, it does not.
- 19 Q. Okay. And would that be a violation of Border Patrol
20 policy, as far as you know?
- 21 A. I don't think it's a very clear and concise report, but it
22 would not be a violation of policy.
- 23 Q. Certainly not a crime to not include it, right?
- 24 A. No, ma'am, it would not be.
- 25 Q. Okay.

1 MS. STILLINGER: I think that's all I have,
2 Your Honor. And I think --

3 THE COURT: Okay.

4 MS. STILLINGER: -- we could argue about whether or
5 not that might be admissible in front of the jury.

6 THE COURT: Okay. And so tell me why you believe this
7 is relevant.

8 MS. STILLINGER: Your Honor, the Government has made
9 significant mention of the fact that the I-44 prepared by Jose
10 Compean in the case doesn't mention an assault or a shooting,
11 and that that is a terrible thing.

12 Obviously, this assault and shooting, that the same
13 Agent Compean was involved with, didn't mention an assault --
14 I'm sorry, the same -- yes, the same -- a similar incident
15 happening only about 75 days prior to this incident, involving
16 the same agent. There was an I-44 prepared, only talked about
17 the seizure of marijuana, not about the assault and the
18 shooting, which would tend to support our theory that the I-44s
19 are supposed to only be about the seizures and not necessarily
20 include the information about the assault and the discharge of
21 the firearms.

22 Additionally, Your Honor, I think some of this has got
23 to come in front of the jury, because --

24 THE COURT: Okay. Hold on. I -- and maybe I'm not
25 clear on this. I mean, I know that an I-44 is -- I guess I

1 stands for incident. But I also heard reference to an SIR,
2 which is a special incident report --

3 MS. STILLINGER: Significant incident report.

4 THE COURT: Significant incident report. And so
5 you're saying that if it's -- because I don't know what was
6 filed in this December 2004 shooting. But you're saying
7 there's no reports, or it's just not in the I-44, but there are
8 other reports that have it? I'm not sure what you're saying.

9 MS. STILLINGER: I don't know if there's other
10 reports, and this witness doesn't apparently know. He believes
11 that other reports were filed --

12 THE WITNESS: I do know there were reports filed.

13 MS. STILLINGER: Okay. Actually, it's not your turn
14 to talk. But --

15 THE WITNESS: That's what I said.

16 MS. STILLINGER: -- he said that he saw some, he
17 reviewed some.

18 My recollection -- perhaps I'm wrong -- but his
19 testimony was that he assumed that they were filed, but he was
20 not sure if they were filed. He said he saw them.

21 But the I-44 specifically is something that the
22 Gov- -- I mean, I think it's even mentioned in the indictment,
23 isn't it?

24 MS. KANOF: No.

25 MS. STILLINGER: It's not? Okay.

1 But it's something that they have -- the Government
2 has made an issue of the fact that the I-44 prepared by Agent
3 Compean in our case didn't include important data that should
4 have been included. In this case, it obviously wasn't
5 included, and it didn't seem to be any big deal.

6 Now, as far as the other reports, I don't know if they
7 were filed or not. I think this witness has said that he saw
8 them, he's not sure if they were filed or not. He probably
9 will know by the time we come back tomorrow morning.

10 But -- but, Your Honor, more importantly, I think,
11 this witness has testified about -- on direct to Ms. Kanof --
12 about this is what happens after a shooting. There's a
13 shooting review committee. There's a Border -- sector evidence
14 team. These things all happen. And in an incident that
15 happened two and a half months prior, he doesn't know whether
16 those things happened or not. And it certainly goes to the
17 quality of his knowledge of these procedures.

18 The reason his testimony about these procedures is so
19 important is because the obstruction of justice counts talk
20 about how, because they didn't report it, all these things
21 weren't done that should have been done. Well, they weren't
22 done in this case. They didn't go out there and look for
23 casings in this case when the shooting was reported.

24 THE COURT: Okay. Now -- and, Ms. Stillinger, maybe
25 I'm not -- maybe I'm not hearing what you're hearing. But I

1 believe I heard this witness say that the incident in
2 December 2004 happened, that he wasn't the direct supervisor,
3 but he reviewed the reports, he saw reports that indicated that
4 there had been an assault with rock throwing. That there is no
5 major injuries, but that they got hit by the rocks.

6 That a special response team was sent out. He doesn't
7 know if they looked for bullets, but he said that there was no
8 way -- he wasn't out there, so he doesn't know what they did --
9 doesn't know what they did or didn't do, I think he said.

10 He said then he forwarded all of that to his chain of
11 command, whoever that is. And then it's the chain of command's
12 job to review the shooting and to determine what happens after
13 that.

14 So I'm not sure where you're saying that the December
15 2004 shows that something was done -- that something that
16 should have been done in 2004 -- that it was done the same way
17 that this case was done.

18 I -- I from what I understood this witness to testify
19 to, 2004 was completely different, in that a special response
20 team -- I mean a --

21 MS. STILLINGER: Sector evidence team.

22 THE COURT: -- a sector evidence team was sent out
23 there, they did their job. They -- reports were filed, he
24 reviewed the reports, he passed them on, like he was supposed
25 to, and then the chain of command reviewed them.

1 So I'm not sure I understand how that is relevant in
2 this case.

3 MS. STILLINGER: Because the sector evidence team
4 didn't look for casings.

5 MS. KANOF: Your Honor --

6 THE COURT: What's that got to do with this witness?

7 MS. STILLINGER: Well, he's testified that's what they
8 do.

9 THE COURT: He's -- it's his understanding that's what
10 they do.

11 MS. STILLINGER: Right.

12 THE COURT: Okay.

13 MS. STILLINGER: And I guess I would say, at a
14 minimum, we should certainly be able to, on cross, get into the
15 fact that he doesn't know what they actually do. That's just
16 his understanding of what they're supposed to.

17 THE COURT: Okay. Well, I think you can ask that
18 question. Do you know that that's what they do when they get
19 there?

20 But I don't think you have to go into the
21 December 2004, and go into at all facts of the December 2004,
22 to ask him that question.

23 MS. STILLINGER: And -- and I guess the -- the main
24 relevance of the December 2004 and what happened maybe
25 Mr. Antcliff would like to argue it. Really, it more goes to

1 his client's state of mind, because his client was involved in
2 that, and his client saw how things were done in that case.
3 And I guess I would say that's how the specifics of that
4 incident become relevant.

5 THE COURT: All right.

6 Do you want to add something, Mr. Antcliff?

7 MR. ANTCLIFF: The testimony I've heard so far is that
8 the totality of the circumstances is relevant to the
9 determination of what an agent is doing out there and what they
10 should or should not do.

11 THE COURT: And you're talking about when an agent
12 reacts to a --

13 MR. ANTCLIFF: A given situation, whatever.

14 THE COURT: And whether he decides to shoot or not to
15 shoot. Is that what you're talking about?

16 MR. ANTCLIFF: Yes, Your Honor.

17 THE COURT: Okay. Go ahead.

18 MR. ANTCLIFF: And, in this case, obviously, with
19 respect to my client, the December 2004 incident is directly
20 relevant to his state of mind 60 days or 75 days or 90,
21 whatever days later. I mean, there's been testimony that the
22 border is dangerous. There's been testimony that the area is
23 notorious for narcotics and illegal alien smuggling. There's
24 been testimony from agents that it's scary out there. And
25 there's been testimony that the totality of the circumstances

1 certainly should be considered.

2 I think this issue goes to the totality of the
3 circumstances, and it goes to my client's state of mind on
4 February 17, 2005, when somebody leans back and points at him.

5 THE COURT: And how does it go to your client's state
6 of mind?

7 MR. ANTCLIFF: Somebody assaulted him and -- I mean,
8 on February 17. I'm not saying he was assaulted by -- as I
9 understood, it was a rock throwing incident by the levee. I
10 don't know.

11 THE COURT: Okay.

12 MR. ANTCLIFF: My client was involved in that. Shots
13 were fired. I think that two agents were assaulted that day,
14 apparently. I don't -- I don't know the details of the 2004
15 incident right now as well as I probably should. But all of
16 those facts are certainly in his head when everything is going
17 on.

18 THE COURT: That may all be true. But why is it
19 admissible with this witness?

20 MR. ANTCLIFF: Because he's the one on the stand.

21 THE COURT: Well, I understand that. But I'm not sure
22 what -- how this guy -- I'm sorry, Agent -- how this witness
23 can possibly know what's in your client's state of mind.

24 MR. ANTCLIFF: I'm not saying he knows what's in my
25 client's state of mind. I don't want to ask him what was in my

1 guy's head.

2 THE COURT: Okay.

3 MR. ANTCLIFF: What I want to ask him about is that
4 incident, which goes to the totality of circumstances, and is
5 relevant to my guy's state of mind on that day. And he was the
6 direct supervisor responsible for those agents in the December
7 incident, as well.

8 THE COURT: Okay. All right.

9 Ms. Kanof, do you have -- do you have any questions on
10 this bill of review, and then you can certainly argue.

11 MS. KANOF: I don't have any questions, Judge.
12 They're wrong. The casings were reviewed, and we have
13 photographs of the casings from the 2004 incident.

14 Let me tell the Court how the defense got this
15 documentation. I made a mistake. I've never given rebuttal
16 evidence to a defense attorney before, and after this incident,
17 I never will again.

18 We gave them some reports from a 2004 shooting,
19 thinking that Manny Fuentes might testify in rebuttal, because
20 Compean was not there when the rocks were thrown, was not there
21 when there was a shooting. He responded afterwards, like a lot
22 of these other agents responded afterwards.

23 Let me correct the record. Number one, it did not
24 happen on December 4th, it happened on December 3rd.

25 Number two, it happened at night. Because, in

1 December, it gets dark, I think the Judge can take judicial
2 notice, about 5:30 or 6:00. This happened at 7:20 to 7:30 at
3 night.

4 We didn't give them everything about this report.
5 What we basically gave them was the transcripts of Manny
6 Fuentes' testimony that was taken for the shooting
7 investigation, and documents that were attached to it. We
8 didn't give them the photographs of the evidence response team.
9 Special Agent Sanchez tells me we have photographs that were
10 taken of the casings, and the casings were seized, so they're
11 wrong.

12 And, in this case, this is not relevant, because there
13 were five individuals that were throwing rocks. The agents
14 were hit by the rocks. Their cars were hit. One agent shot
15 once. The other agent shot three times. Nobody was hit by the
16 shots.

17 And -- but what's really different from the case at
18 bar is, it was reported. It was reported absolutely
19 immediately. Every rule was followed. It was reported within
20 an hour. People responded. The evidence response team
21 responded.

22 And I will represent to the Court, based on what Agent
23 Sanchez has represented to me, they did look for the casings.
24 So if the whole idea is to try to cross-examine someone who
25 wasn't even there as to whether the evidence response team

1 looked for the casings, whether the evidence response team did
2 their job, which it appears that that's what they really want
3 it for, then, first of all, I think they're getting into a
4 trap, because the casings were photographed and seized. And,
5 secondly -- and measurements taken. And, secondly, this agent
6 wouldn't be the person to talk to about it.

7 THE COURT: All right. Any further response?

8 MS. STILLINGER: No. Your Honor, just for the record,
9 I -- I mean, Ms. Kanof may well be right that I'm wrong. The
10 only information we got from the Government about this incident
11 was an interview of testimony, where Agent Fuentes says they
12 didn't look for brass, which I take to mean casings, they were
13 just looking for bodies. So that's what my questions were
14 based on.

15 There certainly may be other evidence they didn't give
16 us.

17 THE COURT: All right.

18 MS. STILLINGER: And, Your Honor, I would like to
19 offer -- make an exhibit -- it's a two-page -- of the I-44 that
20 I had Supervisor Richards look for, just for the purpose of
21 this hearing.

22 THE COURT: Okay. Any objections to the I-44 for
23 purposes of this hearing?

24 MS. KANOF: Oh, yes. I'm sorry, Your Honor, I didn't
25 finish responding.

1 THE COURT: Okay. Any objection to the I-44?

2 MS. KANOF: No, and that's what reminded me.

3 The I-44 issue, we have not made any mention of what
4 should go in the I-44 in this case. We talked about it in
5 pretrial hearings. But not once that I can recall, or anybody
6 at prosecution counsel table can recall, we haven't asked about
7 the fact that a shooting or an assault should go into the I-44.
8 The only reference to the I-44 was that's what Compean was
9 filling out when Agent Richards and others spoke to him in the
10 processing room. But the contents of the I-44 have not been
11 talked about in the trial.

12 THE COURT: All right. For the purposes of the bill
13 of exception, the Court will admit the I-44 which is marked --
14 what did you mark it?

15 MS. STILLINGER: I can mark it as Defendant Ramos --

16 THE COURT: How about Bill Ramos 1.

17 MS. STILLINGER: Bill Ramos --

18 THE COURT: -- 1? Is that all right?

19 MS. STILLINGER: That would be fine, except I have one
20 other exhibit I admitted for the purposes of a bill,
21 Your Honor.

22 THE COURT: You do?

23 MS. STILLINGER: I think it was the proffer letter
24 to -- or, rather, the immunity agreement for Mr. Davila. It
25 wasn't a bill, I'm sorry. It was for the -- out of the hearing

1 of the jury issue that we had.

2 THE COURT: I don't think it was technically a bill,
3 though.

4 MS. STILLINGER: You're right. I don't think it was
5 a bill.

6 THE COURT: Okay. So -- if you have no problems,
7 let's mark this as Bill Ramos 1.

8 MS. STILLINGER: Bill Ramos 1. Yes, Your Honor.

9 THE COURT: All right. And then, regarding the motion
10 in -- the request to go into this evidence, and the Court's
11 prior ruling on the motion in limine, the Court's ruling will
12 stand. This evidence will not be submitted to the jury.

13 Anything further before we adjourn for the evening?

14 MS. KANOF: Yes, Your Honor. With regard to the
15 amount of marijuana. I don't know if the Court has that exact
16 motion, regardless of the question that Mr.- --

17 THE COURT: That motion in limine is still in effect.

18 MS. KANOF: Thank you.

19 THE COURT: All right. Anything further?

20 MS. STILLINGER: No, Your Honor.

21 THE COURT: All right. Then we stand in recess until
22 tomorrow morning.

23 (Transcript continues in Volume XI.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: _____ Date: _____
David A. Perez, CSR, RPR

David A. Perez, CSR, RPR

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