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

2 THE COURT: You may be seated. Go ahead and call the
3 case.

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

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

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

10 MR. ANTCLIFF: Chris Antcliff and Maria Ramirez for
11 Mr. Compean. We're ready, Your Honor.

12 THE COURT: Everyone ready?

13 MS. KANOF: Your Honor, we have one brief matter. The
14 Government would like to admit into evidence in the -- outside
15 the hearing of the jury, and pursuant to the bill that was made
16 by Mr. Ramos yesterday, of the shooting investigation that
17 occurred December -- as a result of a shooting December 3,
18 2004.

19 The Government named it Government's Ramos Bill 1, so
20 it doesn't get confused with the trial evidence. It consists
21 of nine pages of photographs that were taken, both at the scene
22 that night in the dark, and on a different day, of the shell
23 casings, the location of the casings, and all of the other
24 information, measurement of shell casings, and -- it's all
25 shell casings.

1 THE COURT: All right. Nine pages of shell casings?

2 MS. KANOF: Nine pages of shell casings. And that was
3 only for four bullets, Your Honor, so you could have imagined
4 how many pages we would have had in this case.

5 THE COURT: Okay.

6 MS. STILLINGER: And, of course, we have no objection,
7 Your Honor, for the purposes of the bill and, obviously, the --
8 we are not completely informed about the level of their
9 investigation of that shooting.

10 THE COURT: All right. Anything, Mr. Antcliff?

11 MR. ANTCLIFF: For purposes of the bill, I have no
12 objection, Judge.

13 THE COURT: All right. It will be admitted.

14 Okay. And the Court has already ruled on that bill.
15 Anything further before we proceed, then?

16 MR. ANTCLIFF: Not from Mr. Compean.

17 MS. STILLINGER: Nothing else, Your Honor.

18 MS. KANOF: No, Your Honor.

19 THE COURT: All right. We're -- now, what I show is
20 we were not done with Agent Richards. Is he here?

21 MS. KANOF: Yes, he's --

22 THE COURT: Okay. He needs to come back in so we can
23 resume.

24 And, Mr. Antcliff, you had him on cross. Is that
25 correct?

1 MR. ANTCLIFF: Recross, I think, Your Honor.

2 No, it was straight cross, that's right.

3 THE COURT: Cross. All right. We're ready.

4 (Open court, parties and jury present.)

5 THE COURT: You may be seated.

6 Good morning, everyone.

7 JURORS: Good morning.

8 THE COURT: All right. Have a seat.

9 THE WITNESS: Good morning.

10 THE COURT: When you're ready.

11 MR. ANTCLIFF: Thank you, Your Honor.

12 JONATHAN RICHARDS, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

13 CROSS-EXAMINATION

14 BY MR. ANTCLIFF:

15 Q. Good morning, sir.

16 A. Good morning, sir.

17 Q. I don't remember where I was yesterday. So -- I don't know

18 if you do, either. But I'm going to pick up with a new line of

19 questioning.

20 Yesterday you testified that you heard Agent Compean
21 call out a van leaving 76 quickly, which you took to mean at a
22 high rate of speed. Is that right?

23 A. That's correct.

24 Q. Based on the radio traffic that you heard -- and then,

25 admittedly, you didn't hear it all -- you knew that your agents

1 were following that van, correct?

2 A. Yes, sir.

3 Q. Okay. You learned at some point that the van, I guess from
4 the radio traffic, heads back south toward the border, correct?

5 A. Yes, sir.

6 Q. And that you don't know who made the call that you heard,
7 you just know that that's what you heard, right?

8 A. Yes.

9 Q. Was there radio traffic that you recall giving you the
10 exact location -- maybe not you specifically, but out over the
11 radio, giving the location where the van stopped?

12 A. As I recall, I heard on the radio that it was -- that it
13 was somewhere near the area of Jess Harris. And that's
14 where -- kind of where I went out to, that location. And, sure
15 enough, that's where they were.

16 Q. Okay. You're listening to the radio in your car as you are
17 heading to that location?

18 A. That's correct.

19 Q. Okay. There were a number of cars that were parked behind
20 the van when you arrived. You were the last one in line?

21 A. Correct.

22 Q. Okay. The -- you took a look, at some point during your
23 testimony -- and I know there's been a lot of it -- at one of
24 the Border Patrol policies regarding pursuit. Do you recall
25 that?

1 A. Yes.

2 Q. And a pursuit begins when -- if I understand it, and you
3 can tell me if I'm wrong -- when somebody lights up another
4 vehicle, turns on their emergency lights, and the vehicle that
5 they want to stop fails to stop. Is that right?

6 A. I believe that's what it says in the policy, yes.

7 Q. Do you disagree with it?

8 A. I'm not sure that I agree that that's exactly when a
9 pursuit begins, no.

10 Q. Okay. In any event, do you have any knowledge of whether
11 or not any of your agents, on February 17th, turned on their
12 emergency lights to stop this van?

13 A. No, I do not.

14 Q. You didn't hear any calls on the radio regarding, I'm going
15 to light this guy up and see what happens?

16 A. No, sir. I don't recall hearing that.

17 Q. Okay. When you arrived, were the emergency lights on any
18 of the Border Patrol vehicles there at the scene? Did they
19 have their emergency lights on, that you noticed?

20 A. No, I don't believe so.

21 Q. They did not, or you didn't notice?

22 A. I do not remember seeing any lights on when I arrived, no.

23 Q. Did you activate your emergency lights at any time on the
24 way from the Fabens Border Patrol station to the scene?

25 A. No, I don't believe did I.

1 Q. Okay. It is not your testimony that, when a vehicle leaves
2 the -- a suspected load drug vehicle leaves the border at a
3 high rate of speed, Border Patrol should not follow, is it?

4 A. It is not my testimony?

5 Q. You're not saying that Border Patrol agents shouldn't
6 follow a suspected drug vehicle as it leaves the border at a
7 high rate of speed?

8 A. I believe when there's a sensor activation and a vehicle is
9 seen leaving the area quickly, or at a high rate of speed, I
10 think they should investigate, yes.

11 Q. Okay. And that's going to require them -- it may require
12 them to follow that vehicle, correct?

13 A. That's correct.

14 Q. Have you ever followed a suspected load vehicle, in your
15 career as a Border Patrol agent?

16 A. Yes, sir, I have.

17 Q. Within the last two years have you done that?

18 A. Yes, I probably have, sir.

19 Q. Okay. Based on the call that you put out to -- excuse me.

20 Based on the call that you heard from Agent Compean
21 about this van leaving the 76 area, you made a call to
22 Supervisor Arnold on a cell phone. Is that right?

23 A. That's correct.

24 Q. You instructed him to get to the scene. Is that right?

25 A. Yes. I asked him to go out there.

1 Q. When you arrived at that scene Supervisor Arnold had not
2 made it there yet. Is that correct?

3 A. That's correct.

4 Q. Okay. After all of the events that occurred on February
5 17th at -- during that time period were over, you instructed
6 Agent Compean to go back to the Fabens station, correct?

7 A. Yes.

8 Q. And you ultimately went back to the station, as well?

9 A. That's correct.

10 Q. At some point you had a conversation with Agent Compean,
11 right?

12 A. That's correct.

13 Q. You know what? Let's back up a second.

14 While you're by the van at the edge of the ditch, you
15 have a conversation with Agent Compean there, as well. Is that
16 right?

17 A. Yes.

18 Q. At the scene?

19 A. That's correct.

20 Q. Okay. And that conversation consisted basically of you
21 asking him if he was okay and him responding that he was?

22 A. Yes.

23 Q. Did, at that time, Agent Compean give you a description of
24 the individual who had fled the van?

25 A. No, sir.

1 Q. Okay. Did anybody at the scene give you a description of
2 the individual who had fled the van?

3 A. I don't believe so, sir.

4 Q. Okay. When you get back to the Border Patrol station you
5 have a conversation, I think your testimony was, in the
6 processing room. Is that right?

7 A. Yes, sir.

8 Q. And that's with Agent Compean?

9 A. That's correct.

10 Q. What was he doing when you had that conversation?

11 A. He was sitting at the computer.

12 Q. Did you take him into your office?

13 A. No, sir.

14 Q. Did you take him aside, away from other agents?

15 A. No, sir.

16 Q. You had that conversation right there?

17 A. Yes, sir.

18 Q. Was anybody else present?

19 A. I believe Agent Ramos was present, and possibly Supervisor
20 Arnold, and possibly Agent Mendoza. I don't exactly recall who
21 was standing there.

22 Q. I understand. Certainly, those people could have heard
23 your conversation. You don't know if they did?

24 A. That's correct.

25 Q. Okay. That conversation consisted of you asking whether or

- 1 not the driver -- asking Agent Compean whether or not the
2 driver had struck or hit him. Is that right?
- 3 A. That's correct.
- 4 Q. You asked him if he was okay?
- 5 A. That's correct.
- 6 Q. He said that he had slipped and fallen in the ditch, and
7 that's when he got dirt in his eyes?
- 8 A. That's correct.
- 9 Q. Okay. Is that basically the gist of the conversation?
- 10 A. Yes, sir.
- 11 Q. At that time, Agent Compean did not give you a description
12 of the driver of the vehicle, did he?
- 13 A. I do not recall him giving me a description, no, sir.
- 14 Q. It's possible; you don't recall?
- 15 A. Yes, sir. No, I don't recall.
- 16 Q. Okay. While you were out at the scene, you never saw a
17 shotgun lying around on the ground, did you?
- 18 A. No, sir.
- 19 Q. Your activities were confined to the north side of the
20 Sierra ditch. Is that right?
- 21 A. That's correct.
- 22 Q. The closest -- from your vehicle, you walked to the
23 driver's side of the van. Is that right?
- 24 A. Yes, I did walk over there.
- 25 Q. The conversation you had with your agents, where you may

1 have congratulated them and you talked to them about making
2 better radio calls, tell me where you were when that occurred.

3 A. I think I was standing behind the back of the van, if I
4 recall correctly.

5 Q. Okay. And your car was, obviously, farther back. You had
6 walked up?

7 A. Yes. That's correct.

8 Q. And everybody who was on the north side of the ditch was
9 present for that conversation?

10 A. I believe so, yes.

11 Q. Agents, I mean.

12 A. Yes, sir.

13 Q. Okay. During that conversation, Agent Ramos told you that
14 he had seen a white vehicle out there coming to pick up the
15 driver, did he not?

16 A. That's correct.

17 Q. You didn't ask him any further questions about that. Is
18 that right?

19 A. No, sir.

20 Q. You didn't ask any questions about how the van came to rest
21 where it was. Is that right?

22 A. No, sir, I did not.

23 Q. So you didn't ask any questions at all. You just told
24 them, Guys, work on the radio traffic, basically?

25 A. That's correct, and what happened. I was just basically

1 asking what had happened, yes.

2 Q. So you did ask them what happened?

3 A. Right.

4 Q. Who were you talking to when you asked them what happened?

5 The group?

6 A. I don't specifically recall who I directed the questions

7 to, but I know that Agent Ramos answered my questions.

8 Q. Certainly, the most -- two most senior Border Patrol agents

9 at the scene -- this is not counting you -- were Agent Yrigoyen

10 and Agent Ramos. Is that right?

11 A. That's correct.

12 Q. Okay. And you had a conversation with Agent Ramos, because

13 he was on the north side of the ditch with you, right?

14 A. That's correct.

15 Q. You don't remember your other senior Border Patrol agent,

16 Agent Yrigoyen, on the south side, right?

17 A. Yes.

18 Q. Okay. I think your testimony yesterday was that you have

19 responsibility for nine agents, and I guess a supervisor, on

20 any given shift in the 24-mile section of the border of the

21 Fabens station. Is that right?

22 A. Actually, at that time, I had responsibility for three

23 shifts and all the agents.

24 Q. I misunderstood. Okay. On that specific shift there were

25 nine agents and one supervisor. Is that right?

1 A. I don't know the specific number, sir.

2 Q. Okay. Does that sound about right to you?

3 A. On duty that day, yes, sir.

4 Q. Okay. Each of the Border Patrol agents, with the exception
5 of a trainee, Rene Mendez, on this date, rides in their own
6 Border Patrol vehicle. Is that right?

7 A. That's correct.

8 Q. You would certainly like to have more than one in a
9 vehicle, but budgetary constraints don't allow that. Is that
10 right?

11 MS. KANOF: Objection, relevance, Your Honor.

12 THE COURT: All right. Where are we going?

13 MR. ANTCLIFF: Judge, can we approach?

14 THE COURT: Sure.

15 (Bench conference:)

16 MR. ANTCLIFF: Chris Antcliff for Mr. Compean.

17 Judge, there's been a lot of testimony about officer
18 safety and how Agent Compean was alone on the south side of the
19 ditch. And I think that that's what I'm dealing with here. I
20 probably have one or two -- one or more questions in -- one or
21 two questions in this area, and then I will be moving on.

22 THE COURT: All right.

23 Response?

24 MS. KANOF: Yes, Your Honor. All of those questions
25 about him being alone, by the defense, they can't open their

1 own door. I don't think it's relevant whether the Federal
2 Government can afford to have more agents, because this is what
3 they're dealing with. If he wants to say it's unsafe, that's
4 fine. To question whether the United States Government can
5 afford to have other agents is inappropriate.

6 MR. ANTCLIFF: He can answer if he knows, Judge.

7 THE COURT: All right. Well, I will allow you to go
8 into the area where there's only one. But I would ask you to
9 restate the question. So I will overrule the objection -- I'll
10 sustain the objection as to what they can afford or can't
11 afford. I mean, some would argue that we put money other
12 places that we shouldn't. So I don't really want to get into
13 that whole bailiwick. Otherwise, we are going to have a debate
14 going on.

15 MR. ANTCLIFF: All right.

16 (End of bench conference; open court.)

17 BY MR. ANTCLIFF:

18 Q. Sir, you would agree with me that it would certainly be
19 safer to have two Border Patrol agents in each vehicle,
20 wouldn't you?

21 A. Yes.

22 Q. Okay.

23 MR. ANTCLIFF: One moment, Your Honor. I'm sorry.

24 THE COURT: Sure.

25

1 BY MR. ANTCLIFF:

2 Q. In your time at the Fabens station has anybody, to your
3 knowledge, ever filled out a vehicle pursuit report?

4 A. Yes, sir.

5 Q. How many times?

6 MS. KANOF: Objection, relevance.

7 THE COURT: I'll overrule.

8 A. At least once.

9 BY MR. ANTCLIFF:

10 Q. How long have you been at the Fabens station?

11 A. Three years.

12 Q. Okay. So once in the last three years you've seen one of
13 those reports?

14 A. That's correct.

15 Q. Did you author it?

16 A. Yes, sir.

17 Q. Okay. And that was for an agent who had requested a
18 pursuit?

19 A. I assisted in the preparation of the report, yes. I was
20 not on duty at the time the pursuit occurred.

21 Q. The person that you assisted was the person conducting the
22 pursuit?

23 A. No, it was a supervisor.

24 Q. Okay. Did you authorize it, or did that supervisor
25 authorize his own pursuit?

1 A. This was a low-speed/low-risk pursuit.

2 Q. Like OJ?

3 MS. KANOF: Objection.

4 MR. ANTCLIFF: I'll withdraw it.

5 THE COURT: Okay. Sustained.

6 BY MR. ANTCLIFF:

7 Q. Have you ever reprimanded any of your agents at the Fabens
8 station for following suspected load vehicles?

9 A. No, sir.

10 MR. ANTCLIFF: One moment.

11 BY MR. ANTCLIFF:

12 Q. Sir, if you were aware of vehicle pursuits and did not fill
13 out the proper report, would that look bad on you as a
14 supervisor?

15 A. Yes, sir.

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

17 THE COURT: All right.

18 Ms. Kanof?

19 REDIRECT EXAMINATION

20 BY MS. KANOF:

21 Q. Agent Richards, are you aware of any pursuits where you
22 failed to fill out doc- -- that you were aware of where you
23 failed to fill out documentation?

24 A. No, ma'am.

25 Q. Now, Mr. Antcliff asked you a question, that you heard

1 Mr. Compean call out, Van traveling at high rate of speed. Do
2 you recall that question?

3 A. Yes.

4 Q. You did hear that?

5 A. Yes.

6 Q. Okay. Well -- well -- and then he immediately asked you a
7 question, You knew they were following him?

8 A. I knew they were attempting to catch up to him, yes.

9 Q. Okay. Did you know that they were violating speed limits
10 to do so?

11 A. No, ma'am, I did not.

12 Q. Okay. Do you -- let's talk a little bit about the pursuit
13 policy.

14 What's the first kind of stop an agent is authorized
15 to make, without asking for permission?

16 A. A routine vehicle stop.

17 Q. And what's a routine vehicle stop?

18 A. That is where they activate the emergency equipment and the
19 vehicle yields to the right of way and pulls over.

20 Q. Okay. There's no violation of any traffic laws involved in
21 a routine vehicle stop?

22 A. That's correct.

23 Q. And the vehicle submits, correct?

24 A. That's correct.

25 Q. Does a report have to be made about that?

1 A. No, ma'am.

2 Q. Does permission have to be obtained from a supervisor to do
3 that?

4 A. No, ma'am.

5 Q. Let me ask you: When somebody says, "I'm going to light
6 him up," on the radio, what does that mean?

7 A. To me, it would indicate that they are going to activate
8 their lights and attempt to stop someone.

9 Q. Okay. And what would be your expectation about how -- in
10 what manner they were going to do that?

11 A. That they would attempt to stop the vehicle, and then
12 notify sector communications that they would be making a
13 vehicle stop.

14 Q. Okay. And for what purpose?

15 A. To -- for officer safety, for number one, and the
16 documentary purposes.

17 Q. Okay. Would it be consistent with an immigration check?

18 A. Yes.

19 Q. Agent Richards, when some -- when -- if somebody said over
20 the radio they were going to light it up, and then a minute or
21 so later said they were turning their lights off, what, if
22 anything, would you understand that to mean?

23 A. That would lead me to believe that the vehicle did not
24 yield to the Border Patrol vehicle.

25 Q. Well, why are they turning the lights off, then?

- 1 A. Because we don't pursue vehicles.
- 2 Q. Why don't they just keep the light on and turn the siren
3 off?
- 4 A. That would be the same thing, ma'am.
- 5 Q. Okay. And that's not permitted?
- 6 A. That's correct.
- 7 Q. And this is taught to the agents?
- 8 A. They know that they would have to request permission to
9 engage in a pursuit.
- 10 Q. Okay. The routine vehicle stop, does it require an agent
11 to follow customary traffic stops and procedures?
- 12 A. That's correct.
- 13 Q. Okay. The next -- okay. So we have routine stop. Then
14 what's the next thing? Is it low-speed/low-risk vehicle
15 pursuit?
- 16 A. That's correct.
- 17 Q. What's that?
- 18 A. That is where the suspect vehicle refuses to yield to the
19 Border Patrol vehicle. However, they are operating within the
20 posted speed limits and observing all traffic laws, and the
21 agent is doing so, as well.
- 22 Q. And does an agent have to get permission to do that?
- 23 A. No, they do not.
- 24 Q. Should their lights be on or off when they're doing that?
- 25 A. Their lights should be on.

1 Q. Okay. So if somebody has turned their lights off, would
2 you assume -- what would you assume, then, that they were or
3 were not in a low-speed/low-risk vehicle pursuit?

4 A. I'm sorry, I don't understand.

5 Q. If an agent had turned their lights on and then turned them
6 off, what would that mean to you?

7 A. That would mean that the vehicle refused to yield.

8 Q. Okay. But now that the light is off, what would that mean
9 with regard to the pursuit?

10 A. There's no pursuit.

11 Q. Okay. Now, is the -- and no supervisory authorization is
12 required for a low-speed/low-risk vehicle pursuit, correct?

13 A. Notification has to be made through communications, but,
14 no, approval is not required.

15 Q. Okay. Now, notification of pursuits is made through
16 communications. What's communications?

17 A. Communications is sector radio communications, I'm sorry,
18 central.

19 Q. So then you would be on the repeater channel, correct?

20 A. You would have to be to contact them, yes.

21 Q. Inside your car, the little green DIR light would be off?

22 A. That's correct.

23 Q. And you just testified that you, on one occasion in your
24 three years at Fabens, that you assisted in filling out a
25 low-speed/low-risk pursuit report, correct?

- 1 A. That's correct.
- 2 Q. Why did you assist in that?
- 3 A. I assisted Supervisory Agent Buck, because he was quite
4 busy at the time.
- 5 Q. Okay. Was it Supervisory Agent Buck that had engaged in
6 the low-speed/low-risk pursuit?
- 7 A. No, ma'am.
- 8 Q. Who had engaged in that?
- 9 A. If I remember correctly, it was Agent Jose Gutierrez.
- 10 Q. Okay. And do you know whether Agent Gutierrez made a
11 sector communications repeater notice that he was engaging in a
12 low-speed/low-risk vehicle pursuit?
- 13 A. I believe he did, but I was not on duty when that occurred,
14 so...
- 15 Q. But, based on your assistance in the preparation --
- 16 A. Yes.
- 17 Q. Okay. So, basically, when does a pursuit report have to be
18 filled out?
- 19 A. Whenever you have a low-speed/low-risk or a
20 high-speed/high-risk pursuit.
- 21 Q. Okay. Any pursuit?
- 22 A. That's correct.
- 23 Q. Okay. Now, the third kind of pursuit is, in fact, a
24 high-speed/high-risk pursuit, correct?
- 25 A. Yes, ma'am.

1 Q. And in a high-speed/high-risk pursuit, what, first, must
2 the agent determine before they make the decision to engage in
3 that pursuit?

4 A. They have to know what the subject is wanted for. They
5 have to notify communications. And they also have to evaluate
6 whether or not it would be advantageous to chase after the
7 subject, if you would, versus the possible detriment that the
8 public or the agents and the subject could be placed in by
9 having the pursuit.

10 Q. When you said he has to know what the person they're
11 chasing has done, what do you mean?

12 A. I believe the pursuit policy says that they have to be
13 fleeing -- it has to be a fleeing felon.

14 Q. Okay. And is it enough to determine that someone is a
15 fleeing felon, Agent -- van traveling fast from 76 area?

16 A. No, ma'am.

17 Q. What do you need to make the determine that they're a
18 fleeing felon?

19 A. You would, obviously, have to have some prior knowledge of
20 the individual.

21 Q. Or knowledge of what's in the van?

22 A. That's correct.

23 Q. Okay. With regard to a high-speed/high-risk vehicle
24 pursuit, once they have made a determination that it's a
25 fleeing felon, and that the apprehension is necessary to

1 protect -- I'm sorry. I didn't understand.

2 What other determination do they need to make with
3 regard to protecting human life and stuff like that regarding
4 the fleeing felon?

5 A. The benefits of chasing the individual have to outweigh the
6 possible detriment that the public or the agent or the suspect
7 would be placed in by having the pursuit.

8 Q. Or by having that person free in the community?

9 A. That's correct, yes.

10 Q. That determination has to be made, as well?

11 A. Yes.

12 Q. Okay. And if you don't know what he's done, and don't know
13 anything about him, is that an element that would go into the
14 consideration of whether or not letting them go would be a
15 greater danger than pursuing them?

16 A. Yes, ma'am.

17 Q. Then you said they have to notify communications personnel,
18 just like they do in a low-speed/low-risk chase, correct?

19 A. That's correct.

20 Q. And, again, does that have to be done on the repeater
21 channel?

22 A. Yes, ma'am.

23 Q. Okay. Before receiving permission to speed and exceed the
24 speed limit to chase something they don't know what they're
25 chasing, what do they have to tell communications?

- 1 A. They have to give articulable facts.
- 2 Q. What articulable facts?
- 3 A. What the subject is wanted for, his direction of travel,
4 all those items.
- 5 Q. Okay. What, if anything, do they have to do about license
6 plate?
- 7 A. They have to give that, as well as direction of travel,
8 type of vehicle, roadway conditions, weather conditions,
9 traffic conditions in the area.
- 10 Q. This all has to be done on the repeater channel, correct?
- 11 A. Yes, ma'am.
- 12 Q. And the repeater channel is taped, correct?
- 13 A. Yes, ma'am.
- 14 Q. Do you -- you recall reading the transcript of the taped
15 repeater communication for February 17th, do you not?
- 16 A. Yes, ma'am.
- 17 Q. During that -- or preceding the chasing of that van down
18 Fabens Road, which turns into Jess Harris, is there ever a
19 license plate callout?
- 20 A. No, ma'am, I don't believe so.
- 21 Q. There is a license plate callout afterwards, after you're
22 already there and everything's been secured, correct?
- 23 A. Yes, ma'am.
- 24 Q. When -- you said they have to articulate the reason for the
25 pursuit. Is that correct?

- 1 A. That's correct.
- 2 Q. Do they also have to give the description of the person
3 they're pur- -- the identity, or description, of the person
4 they are pursuing?
- 5 A. That's correct.
- 6 Q. Or the known occupants of the vehicle they're pursuing?
- 7 A. That's correct.
- 8 Q. Do they have to provide any information, negative or
9 positive, regarding threats, such as firearms?
- 10 A. That's correct.
- 11 Q. Or any other unusual hazards?
- 12 A. Yes, that's correct, as well.
- 13 Q. And they also -- do they also have to advise if any other
14 agencies are involved?
- 15 A. Yes, ma'am.
- 16 Q. Okay. Once -- and -- and there's no -- it's not a
17 pick-and-choose of all of those criteria, correct?
- 18 A. That's correct.
- 19 Q. All of those criteria must be communicated on the repeater
20 channel, correct?
- 21 A. That's correct.
- 22 Q. If there is a backup unit, what, if anything, is the
23 responsibility of the backup unit before a supervisor
24 authorizes a high-speed/high-risk pursuit?
- 25 A. Well, a supervisor would have to authorize it, and they

1 would -- normally, the backup unit would be the closest unit
2 available that would respond.

3 Q. Okay. And once a supervisor authorizes that pursuit, what
4 does the supervisor do with regard to the backup unit?

5 A. They would assign a backup unit.

6 Q. Does the backup unit have -- does the person that's
7 necessarily following the first agent, the second agent, do
8 they have any duties or responsibilities until a supervisor
9 tells them they do?

10 A. No, ma'am.

11 Q. Agent Richards, the communications monitors at sector have
12 obligations, as well, correct?

13 A. That's correct.

14 Q. Okay. If a supervisor is not listening, what do they have
15 to do with regard to a supervisor?

16 A. They have to contact one.

17 Q. What if they can't find one?

18 A. Then the pursuit is terminated.

19 Q. There could be no pursuit without the contact --

20 A. That's correct.

21 Q. -- of a supervisor.

22 Agent Richards, lots of times things happen very fast,
23 correct?

24 A. Yes, ma'am.

25 Q. Can an agent start following a vehicle at a high rate of

- 1 speed and then get permission?
- 2 A. Yes, ma'am.
- 3 Q. For how long can they do that?
- 4 A. I think that would depend on the circumstances.
- 5 Q. Okay. And what circumstances would be important?
- 6 A. Well, how close they are to the vehicle, and whether or not
- 7 they've had an opportunity to make a routine vehicle stop.
- 8 Q. Okay. If they don't know if the person's committed a
- 9 felony, would that be a consideration?
- 10 A. Yes, ma'am.
- 11 Q. And you're familiar now, basically through
- 12 cross-examination, that agents followed a van from the
- 13 stoplight in Fabens all way to the ditch, correct?
- 14 A. That's correct.
- 15 Q. Would it be permissible for them to have exceeded the speed
- 16 limit for that distance without getting authorization for a
- 17 high-speed pursuit?
- 18 A. No, ma'am.
- 19 Q. You were asked about a lot of administrative penalties. Do
- 20 you remember that?
- 21 A. Yes, ma'am.
- 22 Q. A table of administrative penalties was provided to you,
- 23 and you were asked what the penalty for failure to report the
- 24 discharge of a firearm was, correct?
- 25 A. That's correct.

1 Q. What's the penalty for failure to report shooting somebody
2 in the behind?

3 A. I don't believe that's addressed in the policy.

4 Q. Okay. When -- what's a good shoot?

5 A. It's a situation where an officer has to defend himself,
6 and he morally and ethically and legally shoots and is
7 justified.

8 Q. And someone makes that determination, don't they?

9 A. Yes, ma'am.

10 Q. Based on what?

11 A. Based on the facts surrounding the shooting.

12 Q. Okay. And if they are not told about the facts, then they
13 can't make that determination, correct?

14 A. That's correct.

15 Q. Okay. And you've been -- well, skip that.

16 When an agent -- when a shooting by an agent is ruled
17 a good shoot they go back to work?

18 A. That's correct.

19 Q. Nothing happens to them. And what happens if it's
20 determined that it's a bad shoot?

21 A. I'm not sure if I can answer that. I've never been
22 involved in that.

23 Q. You've never had an opportunity where an agent's shooting
24 was not ruled justifiable?

25 A. No, ma'am.

1 Q. If an agent has a reasonable belief that their actions were
2 proper, consistent with the deadly force policy, the shooting
3 policy, the pursuit policy, consistent with all Border Patrol
4 policies, if they have a reasonable belief that what they did
5 is correct, would they report it?

6 MR. PETERS: Objection, calls for speculation.

7 THE COURT: I'll sustain.

8 BY MS. KANOF:

9 Q. What articulable facts -- you talked to Agent Compean in
10 the processing room, correct?

11 A. That's correct.

12 Q. And you talked to Agent Ramos out in the field, correct?

13 A. That's correct.

14 Q. What articulable facts, first, did Agent Compean give you
15 to justify the use of deadly force?

16 A. None.

17 Q. What articulable facts did Agent Ramos give you to justify
18 the use of deadly force?

19 A. None.

20 Q. You were asked about when you learned that this incident
21 had occurred. And first you said that Agent Sanchez was the
22 first one to give you the details, correct?

23 A. That's correct.

24 Q. But you recalled hearing they had been arrested?

25 A. That's correct.

1 Q. What day of the week was the 18th of March, when they were
2 arrested?

3 A. That was a Friday.

4 Q. Do you recall whether you -- whether you heard they were
5 arrested that day or at some other time?

6 A. I believe it was at another time.

7 Q. Okay. Would it have been Saturday, then?

8 A. Probably Monday, when I returned to work.

9 Q. You don't have an independent recollection of when you
10 learned they were arrested, correct?

11 A. That's correct.

12 Q. Okay. And so Monday, then, would have been the 21st of
13 March?

14 A. That's correct.

15 Q. And I think some questions were asked you regarding you
16 trying to find out what had happened, why they were arrested.
17 Is that correct?

18 A. That's correct.

19 Q. And then the very next day, the 22nd, is when you found out
20 from Agent Sanchez. Is that correct?

21 A. That's correct.

22 Q. Agent Richards, questions were asked you about the
23 dangerousness of the 24 miles of Fabens, and I think they
24 talked about pounds of marijuana that had been seized, or -- I
25 don't remember whether it was marijuana or other drugs

1 combined. Is law enforcement, in and of itself, a dangerous
2 profession?

3 A. Yes, ma'am.

4 Q. How long does a Border Patrol agent spend learning how to
5 handle that responsibility of carrying a gun, in school?

6 A. About six months, academy.

7 Q. Okay. And do they -- they learn how to handle a gun?

8 A. That's correct.

9 Q. Do they learn something called defensive tactics?

10 A. That's correct.

11 Q. What are defensive tactics?

12 A. Defensive tactics are intermediate uses of force below the
13 level of deadly force.

14 Q. Are they taught this because it's a dangerous profession?

15 A. That's correct.

16 Q. And can they quit the academy if they find out they don't
17 want to have a part of this dangerous job?

18 A. Yes, ma'am.

19 MR. ANTCLIFF: I'm going to object to that,
20 Your Honor.

21 MR. PETERS: Objection, relevance.

22 THE COURT: All right. I'll sustain.

23 BY MS. KANOF:

24 Q. There's an emergency button in the car, right?

25 A. That's correct.

1 Q. Okay. And what, if anything, is -- is common to occur with
2 that emergency button?

3 A. It's generally tripped accidentally.

4 Q. But it can also be -- well, tripped or -- describe the
5 button.

6 A. It's a red button. It's on the panel of the radio.

7 Q. So it can be distinguished from the local button?

8 A. That's correct.

9 Q. Okay. And why is there an emergency button in a vehicle?

10 A. Should an agent be in distress and need assistance, they
11 can press this button, and it sends out an alert to sector
12 communications.

13 Q. Okay. So if -- if they don't -- if they're in danger, and
14 they don't have an opportunity to communicate they're in
15 danger, they can push that button?

16 A. That's correct.

17 Q. And it happens accidentally a lot?

18 A. That's correct.

19 Q. It's pretty easy to push that button?

20 A. Yes, ma'am.

21 Q. Do you recall what the weather was on that day?

22 A. I believe it was a normal spring day. It was clear, as I
23 recall.

24 MS. KANOF: Approach the witness, Your Honor?

25 THE COURT: Sure.

1 BY MS. KANOF:

2 Q. Now, you took some photographs at that day, correct?

3 A. That's correct.

4 Q. I'm handing you what's been marked as Government's Exhibits
5 Number 9 and 10, to refresh your memory.

6 A. Pretty much looks more like a hazy day.

7 Q. It was cloudy that day. Is that correct?

8 A. Yes.

9 Q. It was windy, also?

10 A. I don't recall if it was windy or not, ma'am.

11 Q. Would wind interfere with direct or local radio
12 communication?

13 A. It might, on the outskirts of where you could hear someone
14 on local. It could have an effect, yes.

15 Q. If an 18-wheeler pulled up behind a Border Patrol vehicle,
16 would that interfere with communications on local?

17 MR. ANTCLIFF: Object to relevance.

18 MS. KANOF: He asked the questions -- a whole bunch of
19 questions about hearing stuff on local.

20 MR. PETERS: There's been no evidence of any
21 18-wheeler.

22 MS. KANOF: Okay. I'll rephrase the question.

23 THE COURT: Okay. That, I will sustain.

24 BY MS. KANOF:

25 Q. If an object stood in between the -- a vehicle and another

1 vehicle, might it affect the communications on local?

2 A. That's correct.

3 Q. Is that why you like them to use the repeater?

4 A. That's correct.

5 Q. When we were talking about the pursuit policy before, in
6 cross-examination, they asked you about what kind of a
7 vehicle -- or you talked about what kind of a vehicle someone
8 even had to be in to engage in a high-speed/high-risk pursuit.
9 Do you recall?

10 A. Yes, ma'am. That would be a marked sedan.

11 Q. Okay. And that's actually in the policy?

12 A. That's correct.

13 Q. Why don't you want people speeding around in those drop-in
14 units?

15 A. They're very heavy, bulky vehicles.

16 Q. What's a drop-in unit?

17 A. A drop-in unit is an extended cab pickup truck that they
18 have manufactured alien transport compartments and mounted them
19 in the bed of the truck.

20 Q. And they actually drop that compartment into the bed of the
21 truck?

22 A. That's correct. It's bolted in.

23 Q. And that -- the purpose of that compartment is what?

24 A. To detain the aliens for transport.

25 Q. Okay. Did you ever discourage -- oh, I'm sorry. Let me

1 finish with that line.

2 And why is the reason that they can only pursue in a
3 sedan?

4 A. Because it's more -- a much more -- a safer vehicle.

5 Q. Some Border Patrol agents also drive those SUVs, correct?

6 A. Yes, ma'am.

7 Q. I forget what the make and model is.

8 A. Tahoes.

9 Q. Okay. And what about Tahoes going 65 or 70 miles an hour
10 on a dirt road -- dirt and gravel road?

11 A. They're not as safe as a sedan would be. They don't handle
12 the corners and things as well.

13 Q. Okay. Now, did you ever discourage anyone from filing an
14 assault report on Mr. Compean?

15 A. No, ma'am, I did not.

16 Q. Okay. In fact, why were you asking him if he were
17 assaulted?

18 A. Because I wanted to find out whether or not he had been
19 assaulted.

20 Q. Okay. Did -- did Mr. Compean, when you were there in the
21 processing room asking him about the assault, ever say he
22 thought that van was going to jump that ditch and run right
23 into him?

24 A. I don't recall hearing that, ma'am.

25 Q. Okay. And did Mr. Compean ever tell you he was in fear of

1 the man that he -- that absconded back to Mexico?
2 A. No, ma'am.
3 Q. Did Mr. Compean ever tell you -- I'm sorry. And again,
4 when you were in the processing room, you asked him what?
5 A. I asked him if he had been assaulted.
6 Q. And he said?
7 A. His response was no.
8 Q. What was your tone of voice?
9 A. I believe it was inquisitive.
10 Q. Would you characterize your tone of voice as discouraging
11 him from filing an assault report?
12 A. No, ma'am.
13 Q. Did he ever tell you anybody threw dirt in his eyes?
14 A. No, ma'am.
15 Q. Did he ever tell you anyone kicked dirt in his eyes?
16 A. No, ma'am.
17 Q. With regard to the shotgun, when you got to the van, did
18 anyone draw your attention to a shotgun on the ground, in the
19 ditch, on the levee, anywhere?
20 A. No, ma'am.
21 Q. Okay. Did you have any knowledge that a shotgun had been
22 used in this case?
23 A. No, ma'am.
24 Q. Okay. Would you have any reason to believe a shotgun had
25 been used?

1 A. No, ma'am.

2 Q. Were you looking for a shotgun?

3 A. No, ma'am.

4 Q. Why not?

5 A. I had no knowledge of one being used.

6 MS. KANOF: May I have moment, Your Honor?

7 THE COURT: Sure.

8 MS. KANOF: Pass the witness.

9 THE COURT: All right. Go ahead, Mr. Peters.

10 MR. PETERS: Thank you. Your Honor.

11 RE-CROSS-EXAMINATION

12 BY MR. PETERS:

13 Q. Agent Richards, do you have the pursuit policy in front of
14 you?

15 A. No, sir.

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

17 THE COURT: You may.

18 BY MR. PETERS:

19 Q. I'm going to hand you what I believe is an extra copy of
20 that policy. Can you point out to me where in there it says
21 that a high-speed pursuit can only be initiated when the agent
22 knows that a felony has been committed?

23 A. If you look on page 6, letter C, high-speed/high-risk
24 vehicle pursuits. And then continue over to the next page,
25 page 7, letter A. Suspect exhibits the intention to avoid

1 arrest by using a vehicle and excessive speed or committing
2 hazardous moving violations to flee apprehension for a felony
3 or misdemeanor that would normally require a full custody
4 arrest.

5 Q. Okay. It says "or committing hazardous moving violations
6 to flee apprehension for a felony," doesn't it?

7 A. Yes, it does.

8 Q. And, in fact, there's no doubt, from your understanding in
9 this situation, that the suspect did exhibit the intention to
10 avoid arrest by using a vehicle and excessive speed?

11 A. That's correct.

12 Q. Now, tell me where it says in here that the reports that
13 have to be made by an agent initiating a pursuit have to be
14 made on the repeater channel.

15 A. It says that they have to notify sector communications.

16 Q. Show me where it says that.

17 A. Okay. Letter D, communications personnel --

18 Q. What page are you on, sir?

19 A. Same page, page 7. Communications personnel are notified
20 by the agent who initiates the pursuit.

21 Q. Okay. It doesn't say sector communications personnel. It
22 says communications personnel, right?

23 A. That's what I meant by sector.

24 Q. Okay. But, in fact, there are communications personnel who
25 are listening to the local traffic?

- 1 A. I don't believe so, sir.
- 2 Q. So your interpretation of that paragraph is that that means
3 that they can't communicate what's going on on a local channel.
4 They have to use the repeater channel?
- 5 A. To reach the sector communications, they would have to be
6 on the repeater.
- 7 Q. Okay. So -- all right. And is there -- so -- all right.
8 That's where -- that's where you're getting that about the
9 repeater?
- 10 A. That's correct.
- 11 Q. Okay. It's not real clear, is it?
- 12 A. It's clear to me.
- 13 Q. Okay. Now, you also said that you had a problem with the
14 definition of the term pursuit as being any attempt by a Border
15 Patrol agent to stop a vehicle.
- 16 A. Yes, sir.
- 17 Q. What is your problem with that?
- 18 A. I did not -- I'm not of the opinion that when a vehicle
19 fails to yield and the agent does not pursue that that's a
20 pursuit.
- 21 Q. But that's what the policy says.
- 22 A. Well, I think it goes in further detail in
23 high-speed/high-risk pursuits, and there's other criteria.
- 24 Q. Okay. But I'm just talking about a pursuit, about what --
25 I'm talking about what the administrative manual policy

1 statement defines as a pursuit for purposes of this policy.

2 That's what I'm asking you about.

3 A. I think it's an interpretation, sir.

4 Q. Well, the term -- what it says is that the term pursuit
5 also includes any attempt by a Border Patrol agent in an
6 authorized emergency vehicle or pursuit vehicle to stop a
7 vehicle, regardless of whether or not the pursuit vehicle was
8 violating traffic laws governing direction of travel, speed of
9 travel, traffic signs, signals, and other illegal actions.
10 That's pretty plain, isn't it?

11 A. Yes, sir.

12 Q. And it doesn't -- and it includes any attempt to stop a
13 vehicle, right?

14 A. That's correct.

15 Q. And if the vehicle doesn't pull over, then you have a
16 pursuit that requires a report to be prepared by a supervisor,
17 correct?

18 A. Yes, but there are other criteria that has to also come
19 into play when a vehicle pursuit occurs.

20 Q. Well, so you're saying that the manual is wrong?

21 A. No, I'm not saying that. I'm saying you have a different
22 interpretation than I do.

23 Q. Well, I don't -- what is it about that paragraph I just
24 read that would support any other interpretation?

25 A. I believe, if you look further into the policy, there are

1 other guidelines that deem a vehicle pursuit that also have to
2 be met.

3 Q. That paragraph is under Roman numeral III, Definitions,
4 right?

5 A. Which letter was that, sir?

6 Q. H.

7 A. Letter H?

8 Q. Yes.

9 A. Yes, that's correct. Page 2.

10 Q. And there's two paragraphs that define pursuit -- actually,
11 three. The first one is, it says it exists if the agents
12 attempt to apprehend a suspect who is attempting to avoid
13 capture by operating a motor vehicle in violation of traffic
14 laws, right?

15 A. Yes, sir.

16 Q. The second says it means any attempt by a Border Patrol
17 agent to pull over a vehicle. And then it clarifies that in
18 the next paragraph that says it doesn't exist if a routine
19 vehicle stop is successfully completed.

20 A. That's correct.

21 Q. So what that says is that any time somebody tries to pull
22 over a vehicle and they don't stop, it qual- -- it fits the
23 definition of a pursuit.

24 A. That's correct.

25 Q. And if you look on page 12 of your policy, Roman numeral

1 XII, Report Procedures, what does that say?

2 A. It says, Supervisors will ensure the report is prepared by
3 all agents involved in any pursuit. Primary agents involved in
4 the pursuit will execute reports before the end of their tour
5 of duty, regardless of whether an arrest was made, outlining
6 the specifics of the pursuit.

7 Q. All right. I -- there's several other paragraphs.

8 Actually, I wanted to draw your attention to where it says
9 Report Procedures. It says, Supervisors will ensure the report
10 is prepared by all agents involved in any pursuit, right?

11 A. That's correct.

12 Q. So here we had what the Border Patrol policy defines as a
13 pursuit, and we had supervisors who didn't require any reports
14 to be prepared.

15 A. Again, I disagree with you.

16 Q. That's because you're saying that you disagree with the
17 Border Patrol manual about what a pursuit is?

18 A. No, I disagree with your interpretation of it.

19 Q. Okay. And you were listening to the same local channel in
20 your vehicle at the time this occurred as the other agents on
21 patrol were listening, right?

22 A. I was listening to my radio, yes. And yes, I can hear
23 local traffic, if I'm close enough or there's no obstructions.

24 Q. Not only what Agent Arnold could hear, but what Agents
25 Vasquez, Jacquez, Yrigoyen -- you could hear the same things

1 that they were hearing, right?

2 A. Depending on locations, again, yes, I could have possibly
3 heard that.

4 Q. Okay. Now, as far as the -- as far as the -- the rim rock
5 channel, the repeater channel, are there any disadvantages to
6 using that?

7 A. To using the rim rock repeater?

8 Q. Correct.

9 A. Only that we have a large area, and that if agents on one
10 side of the area are working some type of traffic, if you will,
11 they won't drown out, if they use local, the other agents
12 working on the other side of our area.

13 Q. There's also some dead spots, correct?

14 A. I believe there are, yes, correct.

15 Q. And also, it takes a moment longer to engage and disengage
16 that channel than it does the local channel?

17 A. I wouldn't exactly agree with that, no.

18 Q. You don't agree with that?

19 A. No.

20 Q. Okay. But, in any event, it's normal for the agents in the
21 Fabens station to communicate with each other on the local
22 channel, as well as on the repeater channel, right?

23 A. For normal -- normal nonemergency, yes, type items, yes.

24 Q. Because, otherwise, there wouldn't be any reason for them
25 to have the local channel, right?

1 A. That's correct.

2 Q. Now, you talked about --

3 MR. PETERS: Excuse me a second, Your Honor.

4 THE COURT: Sure.

5 BY MR. PETERS:

6 Q. Now, we talked about an agent having to ask for permission
7 before he initiates a pursuit.

8 A. That's correct.

9 Q. But, in fact, the agent initiates the pursuit and is
10 supposed to kind of ask permission at the same time. Is that
11 right?

12 A. That's correct.

13 Q. Because, obviously, if somebody were about to do something
14 that was extraordinarily dangerous to civilians or Border
15 Patrol agents, it wouldn't make sense for the guy to pull
16 over -- the agent would have to pull over, radio a supervisor,
17 meantime this guy is getting further away, right?

18 A. That's correct.

19 Q. And the decision to institute a pursuit in the first place
20 relies on the good common sense and sound judgment of the agent
21 involved. Is that right?

22 A. That's correct.

23 Q. And they have the leeway to exercise that common sense and
24 good judgment. Is that correct?

25 A. That's correct.

1 Q. And it's only once they notify a supervisor that they have
2 begun a pursuit and provide them with whatever information they
3 need to be provided with, that the supervisor makes the
4 decision, You better stop it, or, You can go on, right?

5 A. That's correct.

6 Q. And, unless a supervisor notifies an agent that he needs to
7 stop a pursuit, if the agent had reason to begin it in the
8 first place, he should just continue it, right, once he's
9 notified the supervisor of the relevant facts?

10 A. I'm sorry, could you say that again?

11 Q. Once an agent has notified a supervisor of the relevant
12 facts, the reasons for initiating the pursuit, he should -- and
13 if he feels in his good judgment and common sense that that
14 pursuit is justified, he should continue it until the
15 supervisor tells him to stop, right?

16 A. Yes, sir.

17 Q. And you don't have any evidence that anybody here asked
18 Agent Ramos to stop.

19 A. How could they, if they did not request to engage in a
20 pursuit, sir?

21 Q. Well -- and you also didn't -- didn't hear the radio
22 traffic that we were referring to yesterday and -- from the
23 other agents, where Agent Ramos was telling him that he was the
24 eyeball, right?

25 A. No, sir, I did not hear that.

1 Q. And that term, "eyeball," that would -- that term would
2 only occur if there were a pursuit, right?

3 A. I think that could be interpreted many ways.

4 Q. Well, what do you -- what's your interpretation of the
5 eyeball?

6 A. It might mean he has a visual of the vehicle.

7 Q. So if this term has been used in this trial to indicate the
8 person right behind the vehicle that's being pursued, that was
9 a mis- -- a misnomer?

10 A. I can't say what -- testify to what someone else said, sir.
11 That would be my personal interpretation.

12 Q. And, if other agents interpreted that term eyeball to mean
13 that he was the guy behind the vehicle being pursued, that
14 wouldn't be your understanding, right?

15 A. It would have to be taken in context, sir.

16 Q. Right. If all the other agents that have testified here
17 today, who listened to radio traffic -- or in this trial for
18 the last few days testified that they understood from the radio
19 traffic that he was following a suspected vehicle, is there any
20 reason why you, who say you heard the same traffic, wouldn't
21 have known the same thing?

22 A. Had I heard that, I might have interpreted it the same,
23 sir.

24 Q. All right. So it's just possible that you just didn't hear
25 some of the traffic, right?

1 A. That's correct.

2 Q. Okay. Now, did you first interview -- or give an interview
3 to Agent Sanchez on the 22nd?

4 A. I believe that was the date, sir.

5 Q. You hadn't spoken to Agent Chris Sanchez prior to that
6 time?

7 A. No, I don't believe so, other than when I scheduled the
8 appointment.

9 Q. So you didn't know -- or, rather, Agent Chris Sanchez
10 couldn't have known prior to that time that nobody had reported
11 a firearm discharge to you, correct?

12 A. I'm not sure what he learned, sir.

13 Q. Well, if he hasn't talked to you, he couldn't have known
14 that it wasn't reported to you, right?

15 A. I believe he had already talked -- spoken to the agents
16 involved.

17 Q. Well, you do? You think he had spoken to my client?

18 A. I have no idea who he spoke to, sir.

19 Q. Did you know my client was arrested on March 18th?

20 A. I've learned that, sir, yes.

21 Q. Before Agent Sanchez confirmed with you or learned from you
22 that there had been no report of the shooting.

23 A. Okay.

24 Q. And, as far as what you've testified to about what units
25 are allowed to participate in certain types of pursuits, if an

1 agent is driving at an excessive rate of speed in his vehicle,
2 the main people that are endangered by that are the occupants
3 of his vehicle, correct?

4 A. Or the traveling public, yes.

5 Q. Right. If there is -- if there is a traveling public.

6 A. That's correct.

7 Q. If there's no other vehicles around, there's no other
8 vehicles that are coming down the other way, or in danger where
9 they can be affected by some kind of crash, it's the agent in
10 the vehicle whose safety is being protected by that provision
11 that limits what vehicles could be used for high-speed chases,
12 correct?

13 A. That's correct.

14 MR. PETERS: Pass the witness.

15 THE COURT: Mr. Antcliff?

16 RE CROSS-EXAMINATION

17 BY MR. ANTCLIFF:

18 Q. Sir, you're not at a policymaking level within the Border
19 Patrol, are you?

20 A. No, sir.

21 Q. And, certainly, the agents who work for you don't get to
22 make or interpret policy. Is that right?

23 A. That's correct.

24 Q. How many marked sedans do you have at the Fabens station?

25 A. I believe we have two.

- 1 Q. Okay. And you have a number of other vehicles, pickup
2 trucks and whatever they are?
- 3 A. Yes, sir.
- 4 Q. Okay. How many total vehicles out there, if you know?
- 5 A. I believe around 50.
- 6 Q. 50?
- 7 A. I believe so, yes.
- 8 Q. Okay. On February 17, 2005, as this incident arose, you
9 got information from the radio, correct?
- 10 A. Correct.
- 11 Q. You got further information from Agent Ramos at the scene,
12 correct?
- 13 A. Right.
- 14 Q. You got even more information from Agent Compean at the
15 scene and later at the station, right?
- 16 A. Correct.
- 17 Q. You asked no questions about the agents following the van
18 that day, did you?
- 19 A. I don't believe so, sir.
- 20 Q. You asked no questions about any foot chase of the driver,
21 did you?
- 22 A. It was explained to me what had happened. I didn't need
23 to.
- 24 Q. Did you ask any follow-up questions about the information
25 that you got?

1 A. Yes, with Agent Compean.

2 Q. And, specifically, you asked him, I think your testimony
3 was, Were you assaulted? Did you ask that question?

4 A. Yes.

5 Q. Yesterday you testified that you asked more specific
6 questions, like, Did anyone hit or strike you? Is that right?

7 A. That's correct.

8 Q. And so you asked both of those questions. Were you
9 assaulted? Did anybody hit or strike you?

10 A. I believe I did, sir, yes.

11 Q. Okay. You asked no questions of Agents Juarez, Jacquez,
12 Vasquez, Mendoza, or Yrigoyen, either at the scene or at the
13 station, did you?

14 A. I don't believe so, sir, no.

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

16 THE COURT: Anything further, Ms. Kanof?

17 MS. KANOF: Yes, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. KANOF:

20 Q. Page 3 of pursuit is definitional, correct?

21 A. That's correct.

22 Q. And then this pretty long policy, right?

23 A. Yes, ma'am.

24 Q. How long is this policy, not including attachments; not --
25 there are four attachments.

- 1 A. Minimum of 14 pages.
- 2 Q. Okay. And the rest of it explains everything else you've
- 3 testified about here today?
- 4 A. I'm sorry?
- 5 Q. And the rest of it explains the other things you've
- 6 testified about today?
- 7 A. References.
- 8 Q. Not everything, but...
- 9 A. Yes.
- 10 Q. So there's a definitional section. And is an agent allowed
- 11 to just comply with one paragraph of the pursuit policy?
- 12 A. No, ma'am.
- 13 Q. Turn to page 7, please. You were asked about sector
- 14 communications. You pointed out little D, correct?
- 15 A. Yes, ma'am.
- 16 Q. What does it say?
- 17 A. Communications personnel are notified by the agent who
- 18 initiates the pursuit.
- 19 Q. Okay. Would you then -- that's one place. And
- 20 communications personnel, you said there are no local
- 21 communications personnel, correct?
- 22 A. That's correct.
- 23 Q. They're sector communications personnel?
- 24 A. That's correct.
- 25 Q. By the way, to find -- to run a license plate, do you have

1 to do it on the repeater?

2 A. Yes, ma'am. And you would contact the sector
3 communications.

4 Q. Okay. So if you look at Roman numeral VI A, the last
5 line -- well, starting with, Upon deciding, what does that say?

6 A. Upon deciding to initiate a vehicle pursuit, the initiating
7 agent will immediately notify the appropriate communications
8 operator of the following.

9 Q. Okay. And do they announce the pursuit is being initiated?

10 A. Yes.

11 Q. Do they provide identification of the unit initiating the
12 pursuit?

13 A. That's correct.

14 Q. Did you see that on the tape?

15 A. No, ma'am.

16 Q. Do they radio a description and license plate?

17 A. No, ma'am.

18 Q. Is that one of the things they have to do?

19 A. Yes, ma'am.

20 Q. Is it on the tape?

21 A. No, ma'am.

22 Q. Do they provide the location, speed, and direction of
23 travel?

24 A. No, ma'am.

25 Q. Is that on the tape?

1 A. No, ma'am.

2 Q. Do they articulate -- do they have to articulate the reason
3 for the pursuit?

4 A. That's correct.

5 Q. Is that on the tape?

6 MR. ANTCLIFF: Objection, leading.

7 THE COURT: I'll sustain.

8 BY MS. KANOF:

9 Q. What do they have to do next, number 4?

10 A. They have to articulate the reason for the pursuit.

11 Q. What, if anything, did you hear on the -- or did you read
12 in the transcript of the sector repeater communications
13 regarding that number?

14 A. Nothing.

15 Q. Number 5, what did they have to do next?

16 A. They have to provide the identity or description of the
17 known occupants and/or drivers.

18 Q. What, if anything, did you hear regarding a description of
19 the driver of the van?

20 A. I didn't hear anything to that.

21 Q. What else do they have to do?

22 A. They also have to provide any pertinent information
23 concerning firearms, threat, force, or other unusual hazardous
24 and --

25 Q. And -- and did you -- I'm sorry. What did you -- what, if

1 anything, is reflected in the transcript of the sector
2 communications tape regarding that?

3 A. Nothing, ma'am.

4 Q. And then finally?

5 A. They would have to advise if other agencies are involved.

6 Q. Do you also -- is it part of the policy, and minimally so,
7 but part of the policy, to keep the guy that's fleeing safe?

8 A. Absolutely.

9 Q. Okay. There's -- you were asked yesterday about that van
10 almost being in that ditch. Is that correct?

11 A. That's correct.

12 Q. Okay. And if somebody is chasing somebody really fast, and
13 they're trying to get away from it, might the van end up in the
14 position it was?

15 A. That's correct.

16 Q. Was it in a safe position?

17 A. No, ma'am.

18 Q. And, oddly enough, you're supposed to protect the people
19 that you are pursuing?

20 A. That's correct.

21 MS. KANOF: That's it.

22 THE COURT: Mr. Peters?

23 MR. PETERS: I have no further questions, Your Honor.

24

25

1 MS. STILLINGER: Just a brief one.

2 THE COURT: All right. Let's take a really short
3 break, because we did get started a little late. So we will go
4 ahead and take about a ten-minute break, so that everybody can
5 sort of stretch.

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

7 THE COURT: You may be seated.

8 MS. KANOF: Robert Arnold.

9 THE COURT: Have you been sworn?

10 THE WITNESS: No, ma'am.

11 (Witness sworn.)

12 MS. KANOF: May I proceed, Your Honor?

13 THE COURT: Yes, you may.

14 ROBERT ARNOLD, JR., GOVERNMENT'S WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MS. KANOF:

17 Q. State your name, please.

18 A. Robert H. Arnold, Jr.

19 Q. And how are you employed?

20 A. Border Patrol supervisor at the Fabens station.

21 Q. Okay. What are your duties and responsibilities as a
22 supervisor at the Border Patrol Fabens station -- sector
23 station?

24 A. Supervise approximately 20 people right now that I have in
25 my unit.

- 1 Q. Okay. What level of supervisor are you?
- 2 A. First-line supervisor.
- 3 Q. And what does that mean?
- 4 A. We're the first supervisors that the line agents go to.
- 5 Q. For want of a better term, you're the lowest-level
- 6 supervisor?
- 7 A. Yes, ma'am.
- 8 Q. Okay. How long have you been with the Border Patrol?
- 9 A. A little over 11 years.
- 10 Q. And how long have you been at the Fabens station?
- 11 A. About a year and a half.
- 12 Q. How long have you been a supervisor?
- 13 Okay, you need to speak up, so that everyone can hear
- 14 you.
- 15 How long have you been a supervisor at Fabens?
- 16 A. About a year and a half.
- 17 Q. Okay. So did you actually get promoted to supervisor and
- 18 put in Fabens?
- 19 A. Yes, ma'am.
- 20 Q. Where were you before the Fabens sector -- the Fabens
- 21 station, I'm sorry.
- 22 A. Before the Fabens station I was at Fort Hancock.
- 23 Q. Okay. And how long were you there?
- 24 A. Almost seven years.
- 25 Q. And does that account for the entire 11 years, or were you

1 somewhere else?

2 A. No, ma'am. I was at Ysleta station before that for almost
3 three years there.

4 Q. Okay. Were you on duty on February 17, 2005?

5 A. Yes, ma'am.

6 Q. What were you doing on that date?

7 A. My supervisory duties.

8 Q. Who is your supervisor?

9 A. Jon Richards.

10 Q. The guy that just testified --

11 A. Yes, ma'am.

12 Q. -- right before you? Okay.

13 Where were you located at about 1:00 in afternoon?

14 A. We had a bunch of people in the back that we were
15 processing, undocumented aliens. And I was back there with the
16 agents, assisting them.

17 Q. Okay. And what happened that was unusual?

18 A. Well, I had just -- I think one of the guys had finished a
19 packet, the prosecution's packet, and I was walking back up to
20 my office to review the packet, when I heard the radio.

21 Q. Where is the radio located with regard to your office?

22 A. It's just right on the wall directly across from my door.

23 Q. I'm sorry?

24 A. On the wall, directly across from my door.

25 Q. From your door?

- 1 A. To my office, yes.
- 2 Q. Okay. And were you already in your office when you first
3 heard some -- when your attention was drawn to the radio
4 traffic?
- 5 A. Yes, I believe I was. I think I had already sat down and
6 started reviewing the packet.
- 7 Q. So there's a radio receiver on the wall?
- 8 A. Yes, ma'am.
- 9 Q. And is that in a hallway or...
- 10 A. Yes, ma'am, in the hallway.
- 11 Q. So can anyone hear it?
- 12 A. Well, there's -- there's two -- well, one besides that one
13 in the hallway. And then there's another one in the watch
14 office --
- 15 Q. Okay.
- 16 A. -- which is about four offices down from my office.
- 17 Q. And then does Mr. Richards also have one in his office?
- 18 A. Yes, ma'am. He has one in his office, also.
- 19 Q. Okay. Do any other supervisors have them in their offices?
- 20 A. The special operations supervisor has one in his office,
21 and Mr. Robinson the PAIC, also has one.
- 22 Q. Okay. So -- but the first lines don't?
- 23 A. No, ma'am.
- 24 Q. But were there any other first-line supervisors at Fabens
25 at the time that -- on February 17, 2005?

- 1 A. I was the only one on duty.
- 2 Q. Okay. But are there others?
- 3 A. Yes, ma'am.
- 4 Q. Okay. Where was the -- okay. What is firearms
5 qualification?
- 6 A. That's the quarterly qualification that we have to show our
7 proficiency in firearms.
- 8 Q. Where was the other supervisor that day?
- 9 A. She was at firearms qualifications.
- 10 Q. Okay. And who was with her, the other agents from the
11 Fabens station?
- 12 A. Yeah. I believe there was probably about four -- four
13 other people from my unit that were up there qualifying.
- 14 Q. Okay. The day before this happened, on February 16th,
15 2005, what, if anything, occurred with Fabens station agents
16 with regard to firearms qualification?
- 17 A. Other agents were qualifying during that period.
- 18 Q. Okay. Do you know whether Agents Ramos and Compean
19 qualified with their firearms on February 16th, 2005?
- 20 A. I believe they did, ma'am.
- 21 Q. Okay. Now, you hear some radio traffic. Is that correct?
- 22 A. Yes, ma'am.
- 23 Q. Was there anything about that radio traffic that drew your
24 particular attention to it?
- 25 A. I believe I heard -- I don't know which agent it was.

- 1 Somebody said something, I think a got a vehicle out here, and
2 it's leaving. It's -- may have loaded up.
- 3 Q. Okay. May have loaded up?
- 4 A. Yes.
- 5 Q. That's what you think you heard?
- 6 A. Yes, ma'am.
- 7 Q. Can you tell, from that hallway receiver, whether they're
8 on direct, that is, local, or on sector communications, that
9 is, repeater?
- 10 A. Not unless you go out there and actually look at the radio.
- 11 Q. Okay. But is there something on the radio that actually --
- 12 A. Yes. There's a little indicator light that shows whether
13 it's on or off --
- 14 Q. Does the radio receive all communication, regardless of the
15 channel that somebody is communicating on?
- 16 A. Yes, ma'am.
- 17 Q. Okay. So you thought you heard something about a van
18 loading up. Did you hear where?
- 19 A. No, ma'am. I didn't hear exactly where it was.
- 20 Q. Okay. What happened next?
- 21 A. I think what I heard was that they called out a blue van,
22 and they gave direction of travel. They said, van is going up
23 towards Fabens at the lights.
- 24 Q. Okay. What did you hear next?
- 25 A. About that time Mr. Richards walks up, and we start

1 listening to what's going on.

2 And a few -- I don't know, maybe a minute goes by or
3 so, and then we hear -- well, I hear -- I don't know what
4 Mr. Richards heard. But what I heard was Mr. Ramos on the
5 radio saying, I'm up here by the lights, and I'm standing by.

6 Q. Did Mr. Richards give you any instructions?

7 A. Not at that point.

8 Q. Okay. What happened next? Did he -- he said he was by the
9 lights, or near the lights?

10 A. Near the lights.

11 Q. You gave a handwritten statement in the case, correct?

12 A. Yes, ma'am.

13 Q. And have you reviewed Agent Sanchez's transcription of your
14 handwritten statement?

15 A. Yes, ma'am. He had a problem --

16 Q. Reading your handwriting?

17 A. -- reading my handwriting, yeah.

18 Q. Okay.

19 A. There were some words that he misinterpreted there.

20 Q. So in his transcription, where it said that -- he had, The
21 vehicle ran the lights, you corrected it. Is that correct?

22 A. It should have been near the lights.

23 Q. Okay. So the word was near, not ran?

24 A. Yes, ma'am. It was -- nobody ran a light.

25 Q. Okay. And near what lights?

1 A. The lights there in town. It's the only lights that we
2 have. It's the intersection of Texas 20 and Fabens.

3 Q. And who called out that there was a van near the lights, if
4 you can recall? Would it help you refresh your memory by
5 presenting your statement to you?

6 A. Yes, ma'am. Okay.

7 MS. KANOF: May I approach the witness, Your Honor?

8 THE COURT: You may.

9 BY MS. KANOF:

10 Q. Can you read your writing?

11 A. I can read my writing. Thank you.

12 Q. Okay. I think, on page 2 of your handwritten statement,
13 who was it that you thought that you heard say that there was a
14 van near the lights?

15 A. In my statement I wrote that I heard Mr. Ignacio Ramos say
16 that he had the vehicle near the lights, and -- at the Good
17 Times Store, and that he was getting ready to light it up to
18 see what would happen.

19 Q. Okay. And what does "light it up and see what would
20 happen" mean to you?

21 A. Activate the vehicle's emergency equipment and attempt to
22 stop.

23 Q. Okay. And then what did you hear next?

24 A. I believe it was that the vehicle had turned around and was
25 headed south towards Davis farms.

1 Q. Okay. If you need to refresh your memory from your
2 statement, feel free to do so.

3 Immediately after he said he was going to light it up
4 and see what happened, shortly after that, what did Ramos say
5 on the radio?

6 A. He said that he had a failure to yield.

7 Q. Okay. What's a failure to yield?

8 A. A vehicle failed to stop.

9 Q. Okay.

10 A. It was --

11 Q. And then what did he communicate to you after that, or
12 communicate on the radio after that?

13 A. Nothing.

14 Q. Well, did he advise that he was going to deactivate his
15 lights at some time?

16 A. Yes. Yeah, I heard that on the radio.

17 Q. Okay. Did you hear it at this time, or had you already
18 left to go out there when you heard that?

19 A. No, it was there while I was in the hallway.

20 Q. Okay. So first he's going to activate the lights, and then
21 he's going to deactivate the lights. Is that correct?

22 A. Yes, ma'am.

23 Q. What does that mean to you, when an agent says they're
24 going to deactivate their lights?

25 A. That they're not going to pursue the vehicle. They are

1 going to follow the vehicle at a safe distance and see where it
2 goes.

3 Q. Okay. And, in fact, is that what he said?

4 A. He didn't say that. He just said he was going to
5 deactivate his lights.

6 Q. Okay. And did he say he would follow to get a direction of
7 travel on the vehicle?

8 A. Yes.

9 Q. Okay. And, to you, is that different than pursuing the
10 vehicle?

11 A. Yes, ma'am.

12 Q. In fact, in order to pursue it, he has to give you a
13 direction, correct?

14 A. Well, he has to call the pursuit out to communications.

15 Q. Okay. What happened next?

16 A. Mr. Richards instructed me to go out and see what was going
17 on. I went and got the keys to my vehicle, and I left the
18 office. I left, got onto Socorro Road, made a right turn, and
19 went westbound on Socorro Road towards Hole In The Wall.

20 And, there, I turned south at Hole In The Wall and
21 proceeded down to the levee area.

22 Q. Why did you go in that direction?

23 A. Well, they said they were going to Davis farms, and
24 that's -- that's the route that I knew at that time. I'd been
25 there about --

1 Q. You understood the van was headed towards --

2 A. I said that that's the route that I took, because that's
3 what I knew. I had been there six, six and a half months.

4 Q. Okay. When -- when this occurred, you hadn't been at the
5 Fabens station very long. Is that correct?

6 A. No, ma'am.

7 Q. Were you still learning the geography?

8 A. Yes, ma'am.

9 Q. And you -- your understanding was they said that the van
10 was going towards Davis farms?

11 A. Davis farms, yes.

12 Q. And, as it turns out, Davis farms is not where the van was
13 headed, correct?

14 A. It was maybe a quarter mile to the east of the east tree
15 line of Davis farms.

16 Q. When you get into your vehicle, do you continue to hear
17 radio traffic from Agent Ramos?

18 A. No, ma'am.

19 Q. Okay. When you're going to Davis farms, what radio traffic
20 do you hear?

21 A. I didn't hear anything.

22 Q. Well, let's go back, then, to the rest of the radio traffic
23 you heard before you got in your vehicle. And if you need your
24 statement to refresh your memory, feel free to use it.

25 He said he was going to deactivate his lights. And

1 then, after that, did Agent Ramos request a sheriff's unit?
2 A. Yes, ma'am, he did, yeah.
3 Q. And then did he request everyone to go 10-23?
4 A. Yes, ma'am.
5 Q. Okay. Do you -- what is 10-23?
6 A. That means cease all radio transmissions.
7 Q. Okay. And when an agent goes 10-23, do you know whether he
8 did it on the local channel or on the sector communications
9 channel?
10 A. No, ma'am, we wouldn't know.
11 Q. Okay. What does 10-23 mean?
12 A. Cease all radio transmissions.
13 Q. And what is the purpose of ceasing all radio transmissions?
14 A. It's only for emergency transmissions.
15 Q. Okay.
16 A. It's usually only by the person who initiated the --
17 whatever was going on -- and supervisory personnel.
18 Q. So Ramos is communicating on the radio that everyone else
19 should not talk except him. Is that correct?
20 A. Yes.
21 Q. Okay. That's when you got your keys and took off in the
22 wrong direction?
23 A. Yes, ma'am.
24 Q. Okay. When you were on your way to Davis farms, did you
25 try to contact Agent Ramos?

- 1 A. Yes, ma'am, at least twice.
- 2 Q. How did you try to contact him?
- 3 A. On the service radio in the vehicle.
- 4 Q. Using local, direct, or sector communications?
- 5 A. That, I'm not too sure about. I jumped in the vehicle, and
- 6 I took off. I don't know if it was on local or on repeater.
- 7 Q. Okay. You were a brand-new supervisor, correct?
- 8 A. Yes, ma'am.
- 9 Q. And you were brand-new to Fabens?
- 10 A. Six and a half months or so.
- 11 Q. Okay. What happened when you got to Davis farms?
- 12 A. I stopped right there -- when we're at Davis farms, there's
- 13 a Lee Moor gate, which is west of Davis farms. And I stood by
- 14 there for -- maybe no more than a minute, and I realized that
- 15 they weren't coming towards me. And I couldn't get ahold of
- 16 anybody, so I proceeded eastbound on the road that's north of
- 17 the canal.
- 18 Q. What do you mean you couldn't get ahold of anybody?
- 19 A. Nobody would answer the radio.
- 20 Q. What efforts were you making to try to contact people?
- 21 A. I called out the -- I know I called out Mr. Ramos's number
- 22 one time.
- 23 Q. What's his number, if you recall?
- 24 A. Foxtrot 15.
- 25 Q. Okay.

1 A. And I asked him to -- what the situation was. There was no
2 response. Then I asked for any other agent to respond. Nobody
3 responded.

4 Q. And again, you don't recall what frequency you were using?

5 A. No, ma'am. I couldn't tell you whether I was local or
6 repeater.

7 Q. Well, if you were local, if you used the local frequency,
8 how close were you to Jess Harris Road, where all this was
9 going on?

10 A. Maybe two miles.

11 Q. Would you have had an expectation that they would have been
12 able to read you on the local frequency?

13 A. Should have been able to, yes.

14 Q. But you could have also done it on the sector repeater
15 frequency?

16 A. I could have.

17 Q. Okay. And, at that point in time, when you couldn't raise
18 anybody, did you get a phone call from someone?

19 A. Yes. That was a few minutes later, when I was already
20 eastbound.

21 Q. Okay. So you get to Davis, you realize they're not coming
22 towards you, and what do you do next?

23 A. Well, I'm driving eastbound on the road -- on the dirt road
24 that's on the north side of the canal. And --

25 Q. The one that runs right along the north side of the canal?

- 1 A. Yeah, east-west, along the canal.
- 2 Q. Okay.
- 3 A. And I get behind Davis farms, and the farmer had plowed the
4 road. So I get there, and I'm trying to get through this
5 without getting stuck, and I receive a phone call from
6 Mr. Richards.
- 7 Q. Okay. Well, what does the -- plowing the road have to do
8 with you getting stuck?
- 9 A. No, I didn't get stuck. I was trying to keep from getting
10 stuck.
- 11 Q. Okay. Well, describe what the obstacle was.
- 12 A. Big old chunks of dirt clods --
- 13 Q. Okay.
- 14 A. -- that were in the --
- 15 Q. And so you're trying to get past this, and you get a phone
16 call?
- 17 A. Yes.
- 18 Q. And who was it from?
- 19 A. Mr. Richards.
- 20 Q. What does he say to you?
- 21 A. He wants an update. He says, What's going on?
22 And I said -- I told him, I haven't -- I haven't
23 gotten there yet. I'm over here in this area where the road is
24 plowed up.
- 25 Q. Okay. And what happens next?

1 A. And he says, Okay, well, I'm almost there. I'm here on
2 Jess Harris. And I'm within a quarter mile, unobstructed view,
3 and I can see his vehicle coming down Jess Harris towards the
4 levee area.

5 Q. So while you're trying to make it through the
6 freshly-plowed field, you can actually see Jess Harris Road?

7 A. Yes.

8 Q. Okay. And you see -- how do you know it's Richards'
9 vehicle?

10 A. It's a white unmarked vehicle, and he told me, he said, I'm
11 coming down Jess Harris right now.

12 Q. Okay. What happens next?

13 A. Well, I told him, I'll be there in just a little bit.

14 And he says, Okay. Well, I'll talk to you when I get
15 there. I'm almost there.

16 Q. And then --

17 A. And then I continue on.

18 He gets there, and we get there very, very close to
19 each other, I mean, within, no more than a minute. It couldn't
20 have been any more than a minute. Probably sooner than that.

21 Q. Okay. And what do you find when you arrive?

22 A. When I arrive, Mr. Richards was already out of the vehicle.
23 He's speaking with -- I believe Mr. Ramos was there.

24 Mr. Mendoza, Mr. Jacquez, and Mr. Vasquez, I believe.

25 Q. Okay. And what happens next?

- 1 A. I get out, I go up to where Mr. Richards is. And everybody
2 is looking at the van. It's loaded with a lot of burlap sacks
3 of -- or not burlap sacks, but bundles of what looks like
4 marijuana.
- 5 Q. And then what happens?
- 6 A. We are looking, and Mr. Compean comes across the levee and
7 walks down to the --
- 8 Q. Mr. Compean?
- 9 A. Jose Compean.
- 10 Q. Okay.
- 11 A. He walks from the back side of the levee.
- 12 Q. The vega area?
- 13 A. I couldn't tell if it was the vega. But he walked across
14 the back side of the levee into the south side of the canal
15 area right there, and he stops there.
- 16 Q. Okay. He doesn't cross the canal, correct?
- 17 A. No, ma'am.
- 18 Q. Okay. But he comes close -- he comes down off the levee
19 road to the southern lip of the --
- 20 A. To the edge.
- 21 Q. -- ditch, correct?
- 22 A. Yes. Yes, to the lip.
- 23 Q. Okay. And you observe him do this?
- 24 A. Yes, ma'am.
- 25 Q. And Agent Ramos is already standing with the agents on the

1 north side of the ditch, correct?

2 A. Yes, ma'am. He's over by the van.

3 Q. Okay. What happens next?

4 A. Mr. Compean had dirt and sand around his shoulder area and
5 head area.

6 And Mr. Richards asked him, Hey, you okay? What
7 happened?

8 And Mr. Compean said, Ah, I got some dirt kicked up in
9 my face when I was chasing the guy.

10 Q. Okay. And you heard that communication between the two of
11 them?

12 A. Yes, ma'am.

13 Q. What did you observe with regard to the behavior of the
14 agents that were around the van?

15 A. Nothing in particular from any of the agents, other than
16 Mr. Ramos was, you know, very hyper. He looked -- well, he was
17 very hyper, just, you know, bouncing around.

18 Q. Okay. And you knew him for at least six and a half months
19 prior to this time, correct?

20 A. Yes, ma'am.

21 Q. And you had been his first line supervisor?

22 A. (No verbal response.)

23 Q. Was -- is that a yes or a no?

24 A. Yes, ma'am.

25 Q. You have to speak, so the court reporter can get your

1 answers.

2 Was the behavior that you observed on the part of
3 Mr. Ramos the same or different than his normal demeanor?

4 A. Mr. Ramos is a very hyper person. Usually he's hyper, but
5 at this -- this particular time, he -- he was extremely hyper.

6 Q. Did anybody point that out to him?

7 A. Yes, ma'am. Mr. Richards.

8 Q. What did he say?

9 A. He told -- we call Mr. Ramos Nacho. He told him, Hey,
10 Nacho, settle down. You know, you're acting like this is your
11 first load.

12 Q. Okay. How did Mr. Ramos respond?

13 A. And he said, Ah, it's been a long time.

14 Q. Did he then settle down?

15 A. Pretty much, yes, ma'am.

16 Q. What happened next?

17 A. Mr. Richards instructed everybody to load up the marijuana
18 into the service vehicles, take it back to the station, and for
19 Mr. Ramos to start his I-44.

20 And he -- I don't know who he told. He told a couple
21 of guys to stay there with the vehicle until the wrecker came.

22 Q. He told Mr. Ramos to start his I-44?

23 A. Yes, ma'am, he did.

24 Q. Okay. And, subsequently, did you -- well, never mind.

25 And why would he tell Mr. Ramos to do the I-44?

1 A. I believe he probably thought Mr. Ramos was going to do the
2 I-44.
3 Q. Why?
4 A. He --
5 Q. Who usually does the I-44?
6 A. Usually the person that initiates the case.
7 Q. Okay. So then why wouldn't Agent Compean be the one that
8 you would expect?
9 A. Well, I don't know if they worked it out between them or
10 what they did, you know, but...
11 Q. What's an I-44?
12 A. An I-44 is a report of apprehension or seizure.
13 Q. Okay. And it has to be filled out every time you apprehend
14 a person or drugs or anything illegal?
15 A. Anything that you seize, yes, ma'am.
16 Q. Anything that you seize?
17 A. Yes, ma'am.
18 Q. Even if it's not illegal?
19 A. Cell phones, horses, whatever you seize.
20 Q. Okay. Now, after Mr. Richards instructed the agents to
21 unload the contraband and take it to the station, what happened
22 next?
23 A. We all left the area, except the agents that stayed there.
24 I don't know which ones they were, but we went back to the
25 station, and the guys started processing in the back.

1 I went back to my office and continued with my --
2 reviewing the cases that I had pending.

3 Q. Okay. And at some point in time did you overhear, or were
4 you present, during a conversation that occurred between
5 Mr. Richards and Agent Compean?

6 A. Yes, ma'am. Mr. Richards came by the office there and he
7 said, Hey, let's go check and see what's going on. Let's see
8 if -- how -- how they're doing back there.

9 So we were walking back, and Mr. Compean was coming
10 out of the bathroom. He had cleaned up already. And
11 Mr. Richards asked him, said, Hey are you okay? He says, did
12 anything happen?

13 He said, No, I'm okay. Nothing happened.

14 Q. Okay.

15 A. He said, I just hurt my hand, that's all.

16 Q. Did he say how he'd hurt his hand?

17 A. He fell down, is what he said.

18 Q. Okay. What exactly did he say?

19 A. He said -- he said, No, I just hurt my hand when I fell
20 down.

21 Q. Did he say somebody took him down?

22 A. No, ma'am.

23 Q. Did he say that he struggled with an unknown suspect?

24 A. No, ma'am.

25 Q. Did he say that he received that injury as a result of an

1 assault?

2 A. No, ma'am, he didn't.

3 Q. Did he say that they had to shoot at anyone?

4 A. No, ma'am.

5 Q. When is the first time you ever heard that there was a

6 discharge of firearms on February 17, 2005?

7 A. Let's see. It was in March, I received a call from

8 Mr. Robinson, patrol agent in charge of the station. And he

9 instructed me to warm up my computer, that he was going to have

10 to do a significant incident report on a couple of agents that

11 were getting ready to be arrested.

12 And he didn't tell me at that time. He didn't give

13 any names or any specifics. He said, I'll get back with you in

14 a little bit and let you know what's going on.

15 Q. To warm up your computer?

16 A. Yes, ma'am.

17 Q. Do you remember what day that was?

18 A. It was -- I'm going to say the day before I did this

19 statement. I don't know exactly the date. But I think it was

20 the day before, which would have been --

21 Q. What's a significant incident report?

22 A. It's a report that we send up to headquarters any time

23 there's a -- some kind of significant incident, a shooting,

24 major accident, arrest, media interest, something like that.

25 Q. Did he tell you what the incident was going to be about?

- 1 A. Just that two agents were going to be arrested. That's all
2 he said.
- 3 Q. And he didn't tell you who the agents were?
- 4 A. No, ma'am.
- 5 Q. Or why they were going to be arrested?
- 6 A. No, ma'am.
- 7 Q. Did you warm up your computer?
- 8 A. Yes, ma'am, I did.
- 9 Q. Okay. And -- well, when were you next instructed, with
10 regard to the significant incident report?
- 11 A. I guess about an hour later. He called back, and at that
12 time he instructed me to pull in -- I think I had three people
13 on duty that day: Mr. Vasquez, Mr. Juarez -- and I think
14 Mr. Jacquez was coming in on the evening shift. And he
15 instructed me to pull their weapons and badges and credentials.
- 16 Q. Okay. That would be Jacquez, Juarez, and who?
- 17 A. And --
- 18 Q. Vasquez?
- 19 A. -- Vasquez, yes, ma'am.
- 20 Q. And you said pull their weapons and --
- 21 A. Pull their weapons and their badges and credentials, and
22 advise them to -- you're on administrative leave until further
23 notice, to report to OIA the next working day.
- 24 Q. Did you do that?
- 25 A. Yes, ma'am.

- 1 Q. Did you know why you were doing it?
- 2 A. Not at that time.
- 3 Q. Okay. So he still hadn't told you why you were doing it?
- 4 A. No, ma'am.
- 5 Q. Okay. What happened next?
- 6 A. No. Then right after -- about 2:00, right at shift change,
- 7 is when -- when he called back and he told me, This is what's
- 8 going on. He said, Mr. Ramos and Mr. Compean are going to be
- 9 arrested for -- well, he said attempted murder, is what he
- 10 said.
- 11 Q. Okay.
- 12 A. And that was the first that I heard.
- 13 Q. Did you ask him, For what? For when?
- 14 A. No. It's -- he's patrol agent in charge. He gives me an
- 15 order, tells me to something, that's what I did.
- 16 Q. He asks the questions, not you. Is that right?
- 17 A. Yes, ma'am, he asks the questions.
- 18 Q. Okay. So had you filled out that significant incident
- 19 report yet?
- 20 A. No, ma'am. He told me to hold off on that, that the OIA
- 21 people were going to do the significant incident report.
- 22 Q. Oh. At that point he changed his mind?
- 23 A. Yes, ma'am.
- 24 Q. Okay. And he said OIA -- who is OIA?
- 25 A. Office of Internal Audit.

1 Q. Okay. And did you follow his instructions with regard to
2 those three agents?

3 A. Yes, ma'am.

4 Q. Juarez, Jacquez, and Vasquez?

5 A. Yes, ma'am.

6 Q. What did you do?

7 A. I believe Mr. Jacquez had all of his stuff there, all of
8 his equipment. He turned it in. I had to follow Mr. Vasquez
9 and Mr. Juarez home to pick up the rest of the things that they
10 had at home. And they turned over their equipment, badges,
11 everything, and then I went back to the office.

12 Q. Well, let me ask you this: When you were following Juarez
13 and Vasquez -- I guess to one home and then the other. Is that
14 correct?

15 A. Yes, ma'am.

16 Q. And picking up, did they say anything to you about what
17 happened on that date?

18 A. No, ma'am.

19 Q. They didn't tell you there had been a shooting?

20 A. No, ma'am.

21 Q. Did you ask them?

22 A. No, ma'am.

23 Q. What happened next?

24 A. I picked up their stuff, and -- I picked up Mr. Juarez's
25 things first. And Mr. Vasquez had already gone home, and he

1 told me that he was going to get things ready, and he would
2 give me a call on my cell phone and let me know where he lived,
3 because I had no idea where he lived.

4 So he called me and gave me instructions on how to get
5 to the residence. I went to his house and picked up his things
6 there, and then went back to the station and secured them.

7 Q. Okay. And what, if anything else, did you do with regard
8 to the incident that occurred on February 17, 2005?

9 A. The only other thing was prepare a sworn statement.

10 Q. Okay. And when did that occur?

11 A. March 23rd of '05.

12 Q. Okay. And was that sworn statement prepared at the request
13 of Special Agent Christopher Sanchez, from DHS-OIG?

14 A. Yes, it was.

15 MS. KANOF: I'll pass the witness.

16 THE COURT: Ms. Stillinger?

17 CROSS-EXAMINATION

18 BY MS. STILLINGER:

19 Q. Agent Arnold, let me start at that the beginning of your
20 testimony about the radio traffic that you heard at the Fabens
21 station.

22 A. Yes, ma'am.

23 Q. Okay. That radio traffic, I think what you were saying, is
24 that the radio picks up all of the traffic, meaning car-to-car
25 traffic, which I guess sometimes you call local traffic?

- 1 A. It can be handheld to car or handheld to base station.
- 2 Q. Okay.
- 3 A. Handheld to handheld.
- 4 Q. Okay. And -- and -- okay. And you call that local
5 traffic, right?
- 6 A. Yes, ma'am.
- 7 Q. As distinguished from the tower traffic, right?
- 8 A. The repeater traffic, yes, ma'am.
- 9 Q. The repeater. Okay. But that radio receiver in the
10 station picks up both kinds of radio traffic. Is that right?
- 11 A. Yes, ma'am.
- 12 Q. Okay. And, unless you're looking at the radio to see what
13 little light is lighting up, you're not going to know which
14 kind of traffic is coming in, right?
- 15 A. Well, let me go back on that. Let me explain that.
- 16 Q. Okay.
- 17 A. At the base station you're not going to know what you're
18 receiving.
- 19 Q. I'm sorry, where?
- 20 A. At the base station, in the station. You're not going to
21 know what you're receiving.
- 22 Q. Okay.
- 23 A. You don't know whether it's local traffic or repeater
24 traffic.
- 25 Q. Okay. And just to be clear, for all of us that don't --

1 aren't familiar with it, what is the base station?

2 A. That's the station that's hooked up directly to the
3 repeater there at the station. It's -- it's -- it has a higher
4 output.

5 Q. Okay. And -- and could I call that a radio receiver?

6 Would that be --

7 A. Yes.

8 Q. Okay. -- the way to think of it that we could understand?

9 A. Receiver and -- receiver and transmitter.

10 Q. Okay. Okay. And so it's a very powerful radio. Is that
11 right?

12 A. Yes, ma'am.

13 Q. I mean, it's going to -- because it's picking up both
14 kinds --

15 A. Yes.

16 Q. -- of traffic.

17 And what you're saying, because maybe I was confused
18 about this. But what you're saying is you can't tell, from
19 that base station, or that radio receiver, you can't tell
20 whether it's local traffic or repeater traffic. Is that right?

21 A. Not by any kind of indicator. I mean, you can listen to
22 the traffic, and you can -- if it's real, real weak, you know
23 that they're transmitting probably on handheld, and that's
24 probably going to be on direct, on local.

25 Q. Okay. And, of course, if somebody from sector is on there,

- 1 you know that it's --
- 2 A. Yes.
- 3 Q. -- that it's repeater traffic, right?
- 4 A. Yes.
- 5 Q. But there might be lots of traffic from agents that you
6 wouldn't have any way of knowing if it's -- if it's local or if
7 it's repeater traffic, right?
- 8 A. No, ma'am.
- 9 Q. Okay. And this base station is in the hallway. Is that
10 right?
- 11 A. There's two that are mounted in the hallway.
- 12 Q. Okay.
- 13 A. And one in the watch office. And one in Mr. Richards --
14 Mr. Richards has one in his office, and Mr. Lucero, which is
15 our new SOS, has one in his office.
- 16 Q. Okay.
- 17 A. And Mr. Robinson has one in his.
- 18 Q. Okay. And the ones that are -- particularly the ones that
19 are mounted in the hallway, is it -- is it correct that pretty
20 much anybody in the station can hear those?
- 21 A. If they're turned loud enough, yes.
- 22 Q. Okay.
- 23 A. You should be able to hear them.
- 24 Q. Okay. And is one of your responsibilities to monitor that
25 radio traffic?

- 1 A. Part -- part of my responsibilities, yes.
- 2 Q. Okay. Are you a -- were you, not specifically on this
3 date, February 17, 2005, were you designated as the pursuit
4 manager, as far as vehicle pursuits are concerned?
- 5 A. That's the way that -- whoever is -- supervisors are -- all
6 of them are designated like that on the -- you're talking about
7 the G-481, the --
- 8 Q. I -- I -- I'm not familiar with that term, but --
- 9 A. That's -- that's our -- our shift schedule.
- 10 Q. Okay.
- 11 A. It's -- that's the document number, G-481.
- 12 Q. Oh, okay. No, I haven't seen that one. I was just -- my
13 understanding is that somebody is supposed to be designated as
14 a pursuit manager.
- 15 A. Well, on our G-481s, all the supervisors that are on duty
16 are designated as pursuit managers.
- 17 Q. Okay. So when you're on duty on February 17th, you're
18 designated that way. Is Richards also designated as a pursuit
19 manager?
- 20 A. He would also be -- all of the supervisors would be.
- 21 Q. Okay. All of them.
- 22 A. It wouldn't show up on the 481, but all the supervisors are
23 pursuit managers.
- 24 Q. Okay. Now, I understand that local traffic -- you said
25 sometimes it's very weak, and then you know it's local traffic,

- 1 right?
- 2 A. Yes.
- 3 Q. Okay. The weakness is going to depend on how far away the
4 transmitting radio is. That's one of the factors?
- 5 A. Part of it. It's a line of sight radio.
- 6 Q. Okay.
- 7 A. So if you have -- if you have things between the two
8 radios, the base station and the -- and the receiving radio --
- 9 Q. Uh-huh.
- 10 A. -- handheld, or whatever it is, there may be some
11 interference.
- 12 Q. Okay. And how about if somebody is at the -- well, how
13 close is the intersection, approximately, of -- the
14 intersection of Fabens Road and Alameda? How close is that to
15 your station?
- 16 A. Maybe a mile.
- 17 Q. Okay.
- 18 A. Around there.
- 19 Q. Okay. That's certainly within the distance that the direct
20 radios would travel, correct?
- 21 A. Yes, ma'am, it should.
- 22 Q. I mean, they travel pretty well, right?
- 23 A. Yes, ma'am.
- 24 Q. Okay. So would you expect radio traffic coming from that
25 vicinity, of the intersection of the Fabens Road and Alameda,

1 to be coming in pretty clear to the station?

2 A. It should be, yes.

3 Q. Okay. Now, have you had an opportunity to look at the
4 transcript of the repeater radio traffic from February 17,
5 2005?

6 A. I looked at it a little bit, not too much.

7 Q. Okay. Did you notice whether or not your name ever comes
8 out on that radio traffic?

9 A. I didn't go that far in it. I just looked at a few of the
10 transmissions.

11 Q. Okay.

12 MS. STILLINGER: If I could have just a moment,
13 Your Honor.

14 THE COURT: I think it's Number 92.

15 MS. STILLINGER: Okay. Might I approach the witness?

16 THE COURT: Yes, you may.

17 BY MS. STILLINGER:

18 Q. I'm going to hand you what has been marked and admitted as
19 Government's Exhibit 92. And you can take as much time to look
20 at that as you need. My question to you is going to be whether
21 you appear on that transcript of radio traffic.

22 A. Okay.

23 Q. Did you have a chance to look at that transcript, then?

24 A. Yes, ma'am.

25 Q. Okay. And do you see your name on there anywhere as one of

1 the speakers?

2 A. No, ma'am, I don't.

3 Q. Okay. And would you agree that, if this is an accurate
4 transcript of the radio traffic that -- that this is going to
5 be all of the repeater traffic?

6 A. Yes, ma'am, it should be.

7 Q. Okay.

8 A. I saw a lot of unintelligible stuff there.

9 Q. Right. There is some unintelligible, correct. Okay.

10 Would you agree, though, if you're not appearing on
11 this transcript, that that would mean that you were using
12 direct radio?

13 A. Probably.

14 Q. Okay. There's nothing wrong with using direct radio, is
15 there?

16 A. No, ma'am.

17 Q. Okay. There's no policies that say, in these certain
18 situations you must use repeater, correct?

19 A. No, ma'am.

20 Q. Okay. Sometimes there are reasons you want to use the
21 direct radio rather than the repeater, correct?

22 A. If you're on handheld and working foot traffic or
23 something, two agents are close together, they don't want to be
24 tying up repeater traffic, yes.

25 Q. Okay. Well, that's one reason. Of course, that wasn't

1 your situation that day, was it?

2 A. No.

3 Q. Okay. But you had -- whatever your reasons were for using
4 the -- the direct radio, they weren't bad reasons, right?

5 A. Probably I just didn't realize it was on direct, or
6 whatever it was on.

7 Q. Okay. Sometimes you can use the radio and not realize
8 which one you're talking on, right?

9 A. Yes, ma'am.

10 Q. Okay. And I know that you said -- when Ms. Kanof was
11 asking you questions, you said that it was Agent Ramos who said
12 the van was near the lights, right?

13 A. Yes, ma'am. That's what I heard.

14 Q. Okay. Now, there's not a lot of traffic lights in Fabens.

15 A. Only one set of lights.

16 Q. Okay. And it's the intersection of Alameda and Fabens
17 Road, right?

18 A. Yes, uh-huh.

19 Q. Okay. So you knew what they were talking about, right?

20 A. Yes, ma'am.

21 Q. Okay. Now, if you would, look at page 3 of that
22 transcript. And I know you looked through the whole thing.

23 I'm not sure if you looked through it -- how carefully. But --

24 but if you look at the top of page 3, you see where it says

25 Agent Juarez is saying, The van is going northbound towards the

- 1 light.
- 2 A. Yes, ma'am, I see that.
- 3 Q. Okay. Looking at the transcript of the radio traffic, do
4 you think that maybe you were mistaken about whether it was
5 Agent Ramos that said that?
- 6 A. No, ma'am, I believe it was Mr. Ramos that said it.
- 7 Q. Okay.
- 8 A. What I heard. I don't know if he was on the repeater or
9 on -- on direct, but I believe it was him.
- 10 Q. Okay.
- 11 A. I believe it was his voice.
- 12 Q. There -- there certainly could have been other radio
13 traffic --
- 14 A. Yes, ma'am, there could have been.
- 15 Q. Right -- besides what's on the repeater, correct?
- 16 A. Yes.
- 17 Q. Okay. And I know you said that you were getting used to --
18 still learning the geography of the area, right?
- 19 A. Yes.
- 20 Q. Okay. Would it be fair to say you were learning the voices
21 of the different agents, also?
- 22 A. Some of the agents, yes.
- 23 Q. Okay. But the agents don't call in and say, This is Agent
24 Juarez, and I see -- they don't identify themselves when they
25 call in on something like this, correct?

- 1 A. No.
- 2 Q. Okay.
- 3 A. They'll just use their numbers, their star numbers.
- 4 Q. Okay. Well, and they don't always -- they don't announce
5 their star number either, do they?
- 6 A. Sometimes no, they'll get excited, and they'll just start
7 talking on the radio.
- 8 Q. Okay. Now, looking at this transcript -- have you had a
9 chance to hear the tape of the radio transmissions?
- 10 A. No, ma'am.
- 11 Q. Okay. So, just looking from this transcript -- I'm sorry,
12 from this transcript, it doesn't appear that the agents were
13 identifying themselves as they spoke, correct?
- 14 A. Correct.
- 15 Q. Okay. You also said it was -- I think you said it was
16 Agent Ramos that said that the vehicle was going back south.
17 Looking at the transcript -- and again I'm on page 3,
18 a couple lines down from where you just looked, where Juarez
19 says, Yes, it's going back the same way. Do you think it might
20 have been Agent Juarez that said that?
- 21 A. According to the transcript, yes.
- 22 Q. Okay. And -- and -- and what does that mean to you, if
23 he's saying it's going back the same way? What -- how --
- 24 A. It's going back towards where they had originally called it
25 out, the Davis farms.

1 Q. Okay. Which is down by the river, right?

2 A. Yes.

3 Q. Okay. And, in your experience, you know that -- that load
4 vehicles sometimes do that, correct? They try to get away by
5 going back south?

6 A. Yes, ma'am.

7 Q. Okay. And you see the next line down where Juarez says,
8 It's close, we got this baby.

9 Do you think that might have been Juarez speaking --
10 I -- I -- I think you testified that you heard Ramos say, I'm
11 going to light up this baby.

12 A. No, not baby. I said, I -- I'm going to light this -- I'm
13 going to light it up and see what happens.

14 Q. Okay. You're right. That's -- okay. And -- and, in any
15 event, what you heard Ramos saying about lighting it up and
16 seeing what happens, that's not in this transcript, correct?

17 A. No, ma'am.

18 Q. Okay. So if that was said, that would have been on direct
19 traffic, right?

20 A. Yes, ma'am.

21 Q. Okay. And -- okay. If it turned out that Ramos, Agent
22 Ramos, was not the person who initiated the emergency lights,
23 do you think you might have gotten that mistaken about who it
24 was talking when that was said?

25 A. It's possible. I don't know.

1 Q. Okay. Okay. You also mention that it was Ramos that said
2 something about a 10-23. Is that right?

3 A. Yes, ma'am.

4 Q. Okay. If you would look down a couple more lines, we're
5 about to the middle of the page, where it says, Mendoza. Well,
6 actually, right above that. I'm sorry. Right above that,
7 Juarez -- this shows Juarez saying 10-23. Then it shows
8 Mendoza saying 10-23. Is that right?

9 A. Yes, ma'am.

10 Q. Okay. I know you testified that you heard Ramos saying
11 10-23.

12 A. Yes, ma'am. I believe I did hear him calling out a 10-23,
13 also.

14 Q. Okay. Okay. So -- so do you think you might have mixed up
15 Ramos's voice with Juarez or Mendoza?

16 A. No, ma'am. I think everybody was probably calling 10-23.

17 Q. Okay. Okay. And 10-23, I think you said that -- that
18 Ramos was telling everybody, Nobody but me talk on the phone,
19 right?

20 A. No, ma'am, I didn't say that.

21 Q. Okay. Okay. Well, I might have misunderstood you.
22 Because, really, it's the group of agents involved in this
23 pursuit are saying, Please, everybody else, clear the radio,
24 right?

25 A. Uh-huh.

1 Q. You have to answer yes, because -- so the court reporter
2 can hear it.

3 A. Yes.

4 Q. And that's because they want -- they're saying, We have an
5 important communication going on. We don't want anybody else
6 interrupting us, right?

7 A. Yes, ma'am.

8 Q. Okay. And that's an appropriate thing to do, right?

9 A. Yes.

10 Q. Okay. It's not like they're telling each other, don't make
11 anymore radio communications, right?

12 A. No, ma'am.

13 Q. Okay. I just want to make sure there wasn't any
14 misunderstanding about that.

15 Now, you wrote down your recollections of the radio
16 traffic you heard when you were interviewed by Agent Sanchez a
17 little over a month after that.

18 A. A little over a month afterwards, yes, ma'am.

19 Q. Okay. On February 17th, had you made any notes about the
20 radio traffic?

21 A. No, ma'am, I had not.

22 Q. Okay. In fact, this really was not a very remarkable
23 incident on February 17th, was it?

24 A. No, ma'am, it was not.

25 Q. Okay. And so when you're asked to write down what you

1 remembered over a month later, you're doing your best to
2 recollect that, correct?

3 A. Yes, ma'am, correct.

4 Q. Okay. And do you think -- I mean, you've -- well, had
5 there been any other vehicle pursuits and loads seized in
6 between February 17th and the time you wrote your statement?

7 A. I would ask to check the records. I don't remember.

8 Q. Okay. Probably, though, right?

9 A. It's possible.

10 Q. Okay. And it's possible that your memory was not perfect
11 when you recounted what you remembered about the radio traffic,
12 correct?

13 A. It's possible, also.

14 Q. Okay. I'm sorry. I just lost my train of thought there.

15 One of the things that you said you recalled was Agent
16 Ramos calling out for a sheriff's unit. Is that right?

17 A. Yes, ma'am.

18 Q. Okay. And -- but there was never a sheriff's unit that
19 responded to this incident, was there?

20 A. No, ma'am.

21 Q. Okay. Do you think, in retrospect, knowing more about
22 this, that maybe you confused that part of the radio
23 conversation with some other pursuit?

24 A. No, ma'am. I believe that was Mr. Ramos that called for a
25 sheriff's unit.

1 Q. Okay. And -- and -- if -- if that happened, that was not
2 on the repeater traffic, correct?

3 A. No, ma'am.

4 Q. Well, let me ask you, Agent -- your supervisor is Jonathan
5 Richards, right?

6 A. Yes, ma'am.

7 Q. Okay. And he called you on the cell phone?

8 A. Yes, ma'am.

9 Q. As you were headed towards -- I guess south, towards the
10 bottom of Jess Harris Road, correct?

11 A. I was headed eastbound on the road that parallels the
12 canal.

13 Q. Okay. You were going eastbound. Did you know what your
14 destination was at that time? I mean, did you know you were
15 trying to get to Jess Harris Road?

16 A. I was trying to get to the west side of Davis farms. I
17 thought that's where we were going to be.

18 Q. Okay. Had you heard the radio traffic about the guy going
19 down Jess Harris Road?

20 A. No, ma'am.

21 Q. Okay. And what did you and Agent Richards discuss?

22 A. On the phone?

23 Q. Uh-huh.

24 A. The only thing he asked me, he wanted an update. And I
25 said, Hey, I'm not there yet. I'm almost there. I'll get

1 there as soon as I can.

2 Q. Okay.

3 A. And he said he was -- he was on Jess Harris headed
4 southbound already, and he would be there in a little bit.

5 Q. Okay. And did you discuss the ongoing pursuit at all?

6 A. No, ma'am.

7 Q. Okay. You knew that there was a pursuit of the van going
8 on at the time you were listening to the radio traffic, didn't
9 you?

10 A. I knew they were following it. I didn't know there was a
11 pursuit.

12 Q. Okay. Well, let me ask you about that, because Ms. Kanof
13 asked you -- you remember hearing, after -- that somebody
14 called out -- I believe you said you thought it was Ramos
15 called out that there was a failure to yield, correct?

16 A. Yes, ma'am.

17 Q. Okay. And you recalled Agent Ramos also saying he was
18 deactivating his lights, right?

19 A. Yes, ma'am.

20 Q. Okay. If -- if -- let me back up a little bit more. Okay?

21 The way this event was initially called out, as
22 being -- I guess you don't remember exactly what the words
23 were, but being some sort of suspected smuggling, correct?

24 A. Yes, ma'am.

25 Q. Okay. Do your Border Patrol agents have the right -- well,

1 and the duty and responsibility -- to investigate that van?

2 A. Yes, ma'am.

3 Q. Okay. And part of that investigation would be following it
4 and putting on their emergency lights to try to pull the
5 vehicle over, correct?

6 A. Yes, ma'am.

7 Q. Okay. Now, if the van fails to yield, and the Border
8 Patrol agent keeps following, that becomes a pursuit, doesn't
9 it?

10 A. It can be either a low-speed/low-risk pursuit, or it can be
11 a high-speed pursuit.

12 Q. Okay.

13 A. Whatever.

14 Q. Sure. But it's a pursuit, anyway, in any event, correct?

15 A. Yes.

16 Q. Okay. Even if the van -- or vehicle -- we don't have to
17 talk about this van. But even if the vehicle is driving along
18 at the speed limit, apparently following all traffic laws, if
19 you're following behind with your lights, and he's not
20 stopping, that's a pursuit, correct?

21 A. Yes.

22 Q. Okay. It might be a low-speed/low-risk pursuit, but it's a
23 pursuit, correct?

24 A. Yes.

25 Q. Okay. And so you are saying, though, if the emergency

1 lights are turned off and the Border Patrol agent follows --

2 A. Follows at a safe distance, we're allowed to do that.

3 Q. Okay. And that's just called following the van, instead of
4 pursuing the van?

5 A. Yes. And the only thing you're doing is you're following,
6 until you get your backup there and a direction of travel.

7 Q. Okay. But let me ask you this. Let's say, for instance,
8 the van is traveling the speed limit. Let's say the speed
9 is -- well, let's not even talk about the van. Okay? Let's
10 talk about a vehicle is traveling the speed limit, going
11 45 miles an hour. The speed limit is 45, he's going 45 miles
12 an hour, he's obeying all traffic laws. Your vehicle, your
13 Border Patrol agent's vehicle, turns on his emergency lights
14 and it doesn't stop.

15 A. Yes, ma'am.

16 Q. Okay. If he keeps following with his lights on, that's a
17 pursuit, correct?

18 A. If he follows with the lights, yes.

19 Q. Okay. If he turns off his lights and still follows within
20 the speed limit, that's not considered a pursuit, it's called
21 following him?

22 A. Well, it's still a pursuit, on that part right there.

23 Q. Okay.

24 A. According to the policy.

25 Q. Okay. So following a vehicle even without your lights on

1 could be a pursuit, correct?

2 A. It could be, yes.

3 Q. Or --

4 A. It's subjective. I mean, there's lot of things -- a lot of
5 factors that fall into that.

6 Q. Okay. Would you agree that the vehicle pursuit policy is
7 not simple and clear?

8 A. That's true.

9 Q. Okay.

10 A. Yes.

11 Q. And are -- are -- well, the kind of pursuit that occurred
12 in this case was not an unusual occurrence in the Fabens area,
13 was it?

14 A. No, it was not.

15 Q. Okay.

16 MS. KANOF: Your Honor, I would object and have her --
17 which pursuit? She said the kind of pursuit in this case. It
18 appears that there's testimony of several kinds, so I would
19 object and --

20 THE COURT: All right. Restate the question.

21 BY MS. STILLINGER:

22 Q. Well, the pursuit that occurred of this van on February
23 17th, 2005, the pursuit that we've been talking about that was
24 going on when you were listening to the radio traffic, that
25 pursuit was not an unusual pursuit in the Fabens area, was it?

1 A. No, ma'am.

2 Q. Okay. And how many pursuit vehicle pursuit forms have --
3 do you know that have been filled out or filed in -- in --
4 under your watch, I guess?

5 A. At that time, I don't believe any.

6 Q. Okay. If you really read the letter of the Border -- I'm
7 sorry -- of the vehicle pursuit policy, doesn't it require that
8 a vehicle pursuit form be filled out for any pursuit?

9 A. Yes, it does.

10 Q. Okay. And that technical literal reading of the policy is
11 not followed in Fabens, is it?

12 A. I would say no.

13 Q. Okay. Agents aren't reprimanded for not filling out these
14 forms, are they?

15 A. No, ma'am.

16 Q. Okay. And it's not because you're trying to hide anything,
17 are you?

18 A. No, ma'am.

19 Q. Okay. The pursuit and the seizure of drugs in this case,
20 that looked to you, on February 17th, it looked like a job well
21 done, didn't it?

22 A. Yes, ma'am.

23 Q. Nothing you felt you needed to cover up, right?

24 A. There was no cover-up.

25 Q. Okay. I just wanted to clear up -- I was a little

1 confused. I know the statement that you made was March the --
2 I'm sorry. Let me -- let me check my copy and see.

3 I -- I've got a date on here of March 23rd. Does that
4 sound correct?

5 A. Yes, ma'am.

6 Q. Okay. And were you aware that -- that Agents Compean and
7 Ramos were arrested on March 18th?

8 A. No, ma'am, I don't recall that.

9 Q. Okay. Do you recall, when you gave this statement, whether
10 you knew they had been arrested?

11 A. No, ma'am, I don't recall.

12 Q. Okay. But -- but what your recollection is is that you
13 were advised about their impending arrest before they were
14 arrested, correct?

15 A. I believe it was the day that they were arrested.

16 Q. Okay.

17 A. When -- when I was advised, whatever day that was.

18 Q. Okay. And you had to do these other duties about putting
19 these other agents on administrative duties, correct?

20 A. Yes, ma'am.

21 Q. Okay. And you couldn't inform them of why it was
22 happening, because you didn't know at the time why it was
23 happening, right?

24 A. Correct.

25 Q. Okay. And, as of that time -- and I know the answer to

1 this. But, as of that time, which is the day that they were
2 arrested, the day you had to do these things for the other
3 agents, had anybody come to ask you -- anybody, Agent Chris
4 Sanchez or anybody else, come to ask you, By the way, did these
5 guys report a shooting to you?

6 A. Not until the day that I gave the statement.

7 Q. Okay. So -- so nobody asked you about whether or not the
8 proper oral notification of a shooting had been made to you
9 until the day you gave a statement, correct?

10 Okay.

11 THE COURT: I'm sorry. Did you answer?

12 A. I said no.

13 THE COURT: Okay.

14 BY MS. STILLINGER:

15 Q. Now, from the radio traffic you heard and from the scene --
16 and when I say "the scene," I'm talking about -- I'm showing
17 you Government's Exhibits 9 and 10.

18 Can you see those from here?

19 A. The full size van?

20 Q. Uh-huh.

21 A. Yes.

22 Q. And it's sort of perched on the lip of the drainage ditch,
23 right?

24 A. Yes.

25 Q. Okay. From the radio traffic that you heard, and the scene

- 1 when you arrived, was it pretty obvious that a pursuit had
2 occurred?
- 3 A. You couldn't tell by that.
- 4 Q. Well, I'm asking --
- 5 A. There was a vehicle that was stopped at the edge of the
6 canal there, but you couldn't tell whether there was a pursuit
7 that had happened.
- 8 Q. Right. But I'm asking you to take into account the radio
9 traffic, also. The radio traffic, combined with the physical
10 evidence that you saw.
- 11 A. No one came on the radio saying that they were chasing this
12 guy, you know 100 miles an hour, or anything like that.
- 13 Q. Sure. And I don't think anybody was chasing him at
14 100 miles an hour, right?
- 15 A. Not to my knowledge they weren't.
- 16 Q. Right. Right. I'm just asking you about pursuing, not a
17 high-speed pursuit. But was it fairly clear, with the
18 combination of the radio traffic and the physical evidence when
19 you got there, that this van had been pursued by Border Patrol?
- 20 A. They were following it, yes.
- 21 Q. Okay.
- 22 A. Chasing it, whatever you want to call it.
- 23 Q. Sure. Following, chasing, pursuing; something like that
24 was going on, right?
- 25 A. Uh-huh.

- 1 Q. Okay.
- 2 A. Yes, ma'am.
- 3 Q. And did you ask questions when you arrived? Did you
4 interview or ask any questions of the agents that were there
5 about, Tell me about this pursuit. Tell me how it happened.
- 6 A. No, ma'am. My immediate supervisor was there.
- 7 Q. Okay. And if he wanted to know anything, he could have
8 asked, right?
- 9 A. He's -- basically, he's -- you -- if you have a senior
10 person above you, you let that person take care of it. You
11 don't jump your chain of command.
- 12 Q. Right. You're going to defer to him, right?
- 13 A. Yes.
- 14 Q. Okay. And he didn't ask any questions of any of those
15 agents about the pursuit, right?
- 16 A. He just asked what had happened, when he asked Mr. Compean
17 what had happened to him.
- 18 Q. Okay. No, but I'm -- but I'm specifically asking about the
19 pursuit, the -- the vehicle pursuit, or chase, or following.
- 20 A. No. No.
- 21 Q. He didn't ask any questions about that, right?
- 22 A. No, ma'am.
- 23 Q. Okay. And you have to defer to, I guess, his
24 interpretation of the vehicle pursuit policy, correct?
- 25 A. Yes, ma'am.

1 Q. And his interpretation about what a pursuit is and what it
2 isn't, right?

3 A. Yes, ma'am.

4 Q. You certainly don't try to hide anything from him, do you?

5 A. No, ma'am.

6 Q. Okay. Would you say it's fair to say that his attitude
7 about vehicle pursuits is, Don't ask, don't tell?

8 A. Well, he's a stickler for paperwork. Mr. Richards is a
9 stickler for paperwork.

10 Q. Okay. Okay. Well, the vehicle pursuit policy wasn't being
11 followed to the letter, correct?

12 A. No, ma'am.

13 Q. Okay. Not on this day and not on any other time that
14 you've been at the Fabens area, right?

15 A. I think that was the very first one that I had been
16 involved in --

17 Q. Okay.

18 A. -- since -- at Fabens.

19 Q. Okay. Doesn't that fall on your supervisor, to make the
20 decision whether the policy should be enforced or not?

21 A. You're speaking about Mr. Richards?

22 Q. Yes.

23 A. Yes. I mean, he's the senior supervisor there.

24 Q. Okay.

25 MS. STILLINGER: If I could have just a moment,

1 Your Honor?

2 THE COURT: Sure.

3 MS. STILLINGER: I'll pass the witness, Your Honor.

4 THE COURT: Mr. Antcliff?

5 CROSS-EXAMINATION

6 BY MR. ANTCLIFF:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. A violation of the vehicle pursuit policy is not a crime,
10 if you know, is it?

11 A. No, sir, it's not.

12 Q. It's a violation of policy, right?

13 A. Administrative policy, yes.

14 Q. Sure. And it carries a penalty that may range from a
15 reprimand up to suspension or termination, depending on
16 multiple violations or factors right?

17 A. Correct.

18 Q. Okay. Did I hear you say that -- that you defer to your
19 supervisor. You don't jump the chain of command?

20 A. Correct.

21 Q. And agents are trained not to jump the chain of command.
22 They go to their first-line supervisor and up the chain, right?

23 A. Yes, sir.

24 Q. And that starts with the most junior agent who's been on
25 the job six months. Or a trainee, for example, would defer to

- 1 his FTO. Is that right?
- 2 A. Correct.
- 3 Q. And then that person is responsible for -- deals with the
4 first-line supervisor, who would be you. Is that right?
- 5 A. Correct.
- 6 Q. Okay. I think you talked about firearms qualification
7 going on during the time of February 17, 2005, right?
- 8 A. Yes, sir.
- 9 Q. And some agents the day before, including Agents Ramos and
10 Compean, had been out qualifying, I guess February 16th, and
11 then there were more doing it on the 17th. Is that right?
- 12 A. Yes, sir.
- 13 Q. How many supervisors are there -- first-line supervisors --
14 at the Fabens station?
- 15 A. At that time, six.
- 16 Q. Okay. And one of them was out with other agents on
17 February 17th going through the qualification process, right?
- 18 A. Yes, sir.
- 19 Q. And would it be fair to say that there are agents who are
20 good shots and bad shots?
- 21 A. Yes, sir.
- 22 Q. Everybody qualifies at a different level?
- 23 A. Yes, sir.
- 24 Q. Okay. Your station is not all that big. Would you agree
25 with that?

- 1 A. At the time of this incident it wasn't, not that big.
- 2 Q. Okay. It's grown since then?
- 3 A. Yes, sir.
- 4 Q. Okay.
- 5 A. A lot.
- 6 Q. And people talk, out at the station, at the time I'm -- and
- 7 all of these questions are dealing with back then.
- 8 A. Yes, sir.
- 9 Q. But the agents talk to one another, right?
- 10 A. Yes, sir.
- 11 Q. Supervisor Richards met with his first-line supervisors to
- 12 talk about policy and agents and whatnot. Is that right?
- 13 A. I'm not sure I understand what you're saying here.
- 14 Q. Did you-all, as a group, meet with your supervisor, the
- 15 first-line supervisors, did you meet periodically with
- 16 Supervisor Richards?
- 17 A. We have a monthly meeting with the patrol agent in charge.
- 18 Q. Okay. And the patrol agent in charge is the main guy at
- 19 the Fabens station. Is that right?
- 20 A. Correct.
- 21 Q. Even Supervisor Richards answers to him?
- 22 A. Yes, sir.
- 23 Q. And so, at that monthly meeting, you-all discuss policy and
- 24 discipline and whatever else needs to be talked about. Is that
- 25 right?

- 1 A. Whatever was on his agenda at that time.
- 2 Q. Okay.
- 3 A. I don't recall.
- 4 Q. Everybody participates, or no?
- 5 A. Sometimes there's maybe one supervisor missing, but he's on
6 annual leave or sick leave or something.
- 7 Q. Okay. But -- but not just are they there, do they
8 participate? Do you?
- 9 A. Actively participate in what's going on? Not really.
- 10 Q. Okay. You're pretty much sitting there listening?
- 11 A. Yes, sir.
- 12 Q. I understand. Do you hold briefings with your agents at
13 the start of a shift?
- 14 A. Yes, sir.
- 15 Q. And you talk about what's going on and tell them to be
16 careful or whatever?
- 17 A. Vehicle assignments, give out area assignments, vehicle
18 assignments, and any intel that we have for the shift, and send
19 them on their way.
- 20 Q. Sure. And you talk about threats that have been made to
21 agents, as well, or things like that. Is that right?
- 22 A. Whatever intel we have.
- 23 Q. Okay. I guess what I'm headed for is, it's your job to
24 know what's going on with your agents. Is that right?
- 25 A. Yes, sir.

1 Q. And the same would be true of Agent Richards, your
2 supervisor, right?

3 A. Correct.

4 Q. And he knew that you-all were in the process of qualifying
5 during this time frame. Is that right?

6 A. Yes, sir.

7 Q. Okay. There was a lot of radio traffic going on, some of
8 which you heard on February 17th during this incident. Is that
9 right?

10 A. Correct.

11 Q. At some point, you don't hear anything on the radio for a
12 period of time. Is that right?

13 A. A minute, two minutes, something like that.

14 Q. Okay. And that's a lot of time during an incident which
15 started at 1311 -- do you know when this incident started?

16 A. Not without looking at the --

17 Q. Take a look at the transcript, and tell us when the first
18 call was made.

19 A. 1315.

20 Q. I think it may have actually been a little earlier.
21 There's another page there, a little piece of a page.

22 A. Oh, all right. 1311.

23 Q. And that call is the one that Agent Compean calls out a van
24 leaving 76 quickly. Is that right?

25 A. Yes, sir.

1 Q. And the last call, on the last page of the transcript, is
2 at about 1328, right? Where somebody says, Everything is back
3 to normal, on the radio?

4 A. Yes, sir.

5 Q. Okay. That period of time is about 17 minutes, right?

6 A. Yes, sir.

7 Q. So you not hearing radio traffic for one or two minutes is
8 a significant period of time, to you, in that limited period of
9 time, right?

10 A. Yes, sir.

11 Q. Is it possible that you were in a location where there
12 was -- you weren't able to pick up local radio traffic?

13 A. You're saying a dead spot?

14 Q. Yes.

15 A. It's possible.

16 Q. Okay. If agents were not in their cars at the time that
17 you're making calls trying to find out what's going on, they
18 don't hear you. Is that right?

19 A. If they don't have their radio on, or -- I mean, these
20 handhelds aren't the best, either. I mean, it could have been
21 that they didn't hear it.

22 Q. Okay. So you were interested in finding out what was going
23 on, but you weren't overly concerned at that moment that
24 something was wrong. Is that right?

25 A. Correct.

- 1 Q. Okay. You got a cell phone call at some point from your
2 supervisor, Agent Richards. Is that right?
- 3 A. Yes, sir.
- 4 Q. That wasn't unusual. He calls you on the cell phone
5 periodically, doesn't he?
- 6 A. Yes, sir.
- 7 Q. And it's not just when there's a seizure going on, it's
8 when he wants to talk to you and not tie up the radio. Is that
9 right?
- 10 A. If there's a supervisory issue he wants to talk to me
11 about, or I'm out in the field or something like that, yes, he
12 calls.
- 13 Q. Sure. It's stuff he doesn't want all of the agents to hear
14 when -- over the radio, right?
- 15 A. Yes, sir.
- 16 Q. Because if he broadcasts on the repeater everybody is going
17 to hear it?
- 18 A. I guess he could --
- 19 Q. Within range.
- 20 A. (No verbal response.)
- 21 Q. Is that a yes?
- 22 A. Yes.
- 23 Q. Okay. You got to the scene of Jess Harris Road and the
24 ditch about the same time, maybe up to a minute after Agent
25 Richards. Is that right?

- 1 A. Yes, sir.
- 2 Q. He was already in a conversation with all of the agents on
3 the north side of the ditch. Is that right?
- 4 A. Yes, sir.
- 5 Q. Did you get out of your vehicle?
- 6 A. Yes, sir.
- 7 Q. Did you walk over to this group?
- 8 A. Yes, sir.
- 9 Q. And I believe your testimony was you took a look in the
10 van, correct?
- 11 A. Uh-huh. Yes, sir.
- 12 Q. Did you witness a conversation between Agent Yrigoyen and
13 Supervisor Richards?
- 14 A. I don't even recall Mr. Yrigoyen being out there.
- 15 Q. At all?
- 16 A. I don't remember him being out there. I remember
17 Mr. Mendoza, Mr. Jacquez, Mr. Ramos, Mr. Compean, Mr. Vasquez.
18 Those are the ones I remember.
- 19 Q. Okay.
- 20 A. Those five being out there. Those are the ones I remember.
- 21 Q. Sure. When you pulled up to the area, I guess, there were
22 a number of agents on the north side of the ditch, right?
- 23 A. Yes, sir.
- 24 Q. You saw at least two vehicles on the south side of the
25 ditch, right, Border Patrol vehicles?

- 1 A. I believe there was only one.
- 2 Q. Only one?
- 3 A. I believe so.
- 4 Q. So the only vehicle you saw on the south side of the ditch
- 5 when you arrived was Agent Compean's?
- 6 A. Mr. Compean's vehicle.
- 7 Q. Is it possible that Agent Yrigoyen's vehicle was there and
- 8 you just didn't notice it?
- 9 A. It's possible.
- 10 Q. Do you know whether or not Agent Yrigoyen had a trainee
- 11 with him that day?
- 12 A. He was assigned a trainee that day.
- 13 Q. Rene Mendez, right?
- 14 A. Mr. Mendez.
- 15 Q. Who had not been on the job very long, right?
- 16 A. Correct.
- 17 Q. Trainee means he's in his probationary period?
- 18 A. Yes, sir.
- 19 Q. Okay. At some point you hear Agent Richards tell Agent
- 20 Ramos to go back and start his I-44. Is that right?
- 21 A. Yes, sir.
- 22 Q. And he tells a couple of other agents to load up the dope
- 23 and head back to the station, right?
- 24 A. Correct.
- 25 Q. You heard him instruct Agent Compean to go back to the

1 station, right?

2 A. That, I don't recall.

3 Q. Okay.

4 A. I don't remember him telling Mr. Compean to go back to the
5 station.

6 Q. In any event, back at the station, you're there and
7 Richards -- Agent Richards comes to your office and says, Hey,
8 let's go talk to the guys. Is that right?

9 A. Yeah. Let's go see what -- how they're doing on their
10 paperwork.

11 Q. And you run into Agent Compean coming out of the bathroom.

12 A. Coming out of the bathroom.

13 Q. And you witness, I guess for lack of a better term, a
14 conversation between Agent Compean and Agent Richards. Is that
15 right?

16 A. Correct.

17 Q. Did you participate in that conversation?

18 A. I don't believe I did.

19 Q. You heard Agent Richards ask Agent Compean whether or not
20 he had been struck or hit, didn't you?

21 A. I think what he said was -- he said, Are you all right,
22 Joe?

23 And Mr. Compean said, Yeah, I'm okay, just cut my
24 hand.

25 Q. And he mentioned that he had slipped. Is that right?

- 1 A. He said he had fallen.
- 2 Q. Okay. And that's how he cut his hand, is what he said?
- 3 A. Yes, sir.
- 4 Q. You didn't near Agent Richards specifically ask him, Were
5 you hit or struck? If you recall?
- 6 A. I don't recall.
- 7 Q. And that conversation, as you recall it, took place outside
8 of the bathroom at the station. Is that right?
- 9 A. Correct.
- 10 Q. It did not take place in front of a computer, where Agent
11 Compean was preparing an I-44?
- 12 A. No, that happened later.
- 13 Q. You were present for that conversation, as well?
- 14 A. Yes, sir.
- 15 Q. Okay. I'm sorry. How much after -- later, after the
16 conversation outside the bathroom, did this next conversation
17 take place?
- 18 A. Four or five minutes later.
- 19 Q. Okay. And both you and Agent Richards are there, and Agent
20 Compean is at the computer?
- 21 A. We went back to look at the dope that was in the evidence
22 room, the marijuana, that had been seized.
- 23 Q. Right.
- 24 A. And we came out. Mr. Compean was sitting at the computer.
- 25 Q. Who is "we"?

- 1 A. Mr. Richards and I.
- 2 Q. You guys went back to look at the dope?
- 3 A. Yes, sir.
- 4 Q. Did Agent Compean go with you?
- 5 A. He may have followed, but I think he stopped at the
6 computer.
- 7 Q. Anybody else there?
- 8 A. Mr. Ramos was there, Mr. Mendoza, possibly Mr. Jacquez. I
9 don't recall, but I think he was there unloading the dope,
10 also.
- 11 Q. Pretty much everybody who got sent back to the station was
12 there, then?
- 13 A. The ones that transported the marijuana back, and the
14 agents that were working on the I-44.
- 15 Q. Okay. So after you and Agent Richards view the marijuana,
16 you're coming back, and Agent Compean may have stopped at the
17 computer. Is that right?
- 18 A. Yes, sir.
- 19 Q. And another conversation takes place?
- 20 A. I think what happened was that he had the cut in the web of
21 his hand, right here (indicating).
- 22 Q. Who is "he"?
- 23 A. Mr. Compean.
- 24 Q. Okay.
- 25 A. And he was rubbing it, like that, like it hurt. And --

1 Q. While he was sitting there typing or --

2 A. I don't think he was typing at that time. I think he was
3 just -- he was sitting there.

4 Q. Okay.

5 A. And Mr. Richards asked him, Are you okay? You know, did
6 anything happen?

7 Q. And he said he was okay and nothing happened?

8 A. He said he was okay, nothing happened.

9 Q. He didn't change what he had said, basically. It was the
10 same thing he had said at the bathroom?

11 A. Yes, sir.

12 Q. And did you, at that point, hear Agent Richards ask Agent
13 Compean whether or not he had been struck or hit?

14 A. That, I don't recall. I remember he asked him, you know,
15 Are you okay? Anything happen?

16 Q. I understand.

17 A. And that's what I recall.

18 Q. Those are the only two conversations where that was the
19 topic of conversation that you were present for. Is that
20 right?

21 A. Correct.

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

23 THE COURT: Sure.

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

25 THE COURT: Ms. Kanof?

1 REDIRECT EXAMINATION

2 BY MS. KANOF:

3 Q. I have to find it. There were some questions that were
4 asked you about the filing of pursuit reports. At -- and
5 whether or not -- okay. I think pictures were held up, and you
6 were asked, There was a pursuit going on that day?

7 And you answered, Yes. Is that correct?

8 A. Pursuit, chase, whatever you want to call it.

9 Q. Okay. Well, when did you find out that there was a chase
10 going on on that day?

11 A. Nobody ever said anybody about a chase.

12 Q. Well --

13 A. None of the agents involved in this said, Yeah, we chased
14 this vehicle back to the river, or anything like that.

15 Q. I think you previously testified, I knew they were
16 following the van, but I did not know it was a pursuit. Is
17 that correct?

18 A. Yes.

19 Q. Okay. Did you know that there was a pursuit going on down
20 to the levee on 2-17-05?

21 A. No, ma'am.

22 Q. Okay. When Ms. Stillinger asked you, Wasn't this common?

23 You said, Yes.

24 What were you referring to that was common?

25 A. To vehicles being followed back to the levee.

1 Q. Okay.

2 A. And it's happened before. Not while I've been there, but
3 it's happened before.

4 Q. Okay.

5 A. I know that.

6 Q. Did you have any idea that Agent Ramos and Agent Juarez
7 were going 65 to 70 miles an hour down Jess Harris Road, ending
8 up at the edge, at the lip of the ditch?

9 MS. STILLINGER: Your Honor, I think that's a
10 misstatement of the evidence, because the speed did change when
11 they hit the dirt. Everybody's testified to that.

12 MS. KANOF: Well, I'm talking about back when it
13 started going fast, when all the agents said it was at least 65
14 to 70 miles an hour.

15 THE COURT: All right. Restate your question.

16 BY MS. KANOF:

17 Q. Did you know -- have you ever learned that the agents at
18 one point were following that van 65 to 75 miles an hour on
19 Jess Harris Road?

20 A. No, ma'am. This is the first I've heard of that.

21 Q. Today, me telling you?

22 A. Yes, ma'am.

23 Q. Okay. What's that?

24 A. That would be a pursuit.

25 Q. Would that be a high-speed/high-risk pursuit, if the -- if

1 the speed limit is not 65 to 70?

2 A. Going down Fabens south, I believe the speed limit is like
3 50 miles an hour through there.

4 Q. Okay. So would that--

5 A. So it would be in excess of the speed.

6 Q. Okay. And did anybody ever report that to you?

7 A. No, ma'am.

8 Q. In order to go high speed, to exceed the speed limit, don't
9 you have to -- what channel do you use on the radio?

10 A. Use the repeater.

11 Q. And why do you use the repeater?

12 A. There's a record of it, and everybody is clear on what's
13 going on.

14 Q. And do you have to request permission from a supervisor?

15 A. You call the --

16 MS. STILLINGER: I'm going to object to her leading.

17 THE COURT: All right. I'll sustain.

18 BY MS. KANOF:

19 Q. Today is the first day you ever found out about this. Is
20 that correct?

21 A. Correct.

22 MR. ANTCLIFF: Objection, asked and answered.

23 THE COURT: Sustained.

24 BY MS. KANOF:

25 Q. What kind of traffic did you believe had occurred with

1 regard to the van and the agents until today?

2 A. I thought they had followed the vehicle back to the river,
3 the guy just bailed out and had taken off south. Well, I guess
4 something else happened, but that's what I was under the
5 impression of that day.

6 Q. Did you think a pursuit, low-speed/low-risk pursuit, had
7 occurred?

8 A. No.

9 Q. Did you think a high-speed/high-risk pursuit had occurred?

10 A. No.

11 Q. Did you violate any rules, then, by not filling out a
12 report?

13 A. No.

14 Q. And you were one of the managers responsible. Is that
15 correct?

16 A. Correct.

17 Q. For filling out reports. If you had known it, would you
18 have filled out a report?

19 A. Yes, ma'am.

20 Q. You testified that Mr. Richards is a stickler for policy.
21 What did you mean by that?

22 A. He's -- if anything happens, you're doing a memo on
23 whatever -- whatever is going on.

24 Q. What about him doing memos? Does he shirk from doing
25 memos?

- 1 A. No. He'll do memos, too.
- 2 Q. Okay.
- 3 A. That's part -- whenever -- whenever an agent does a memo, a
4 supervisor has to do a cover memo. And then, depending on what
5 it is, your second-line supervisor may have to do a memo, also.
- 6 Q. You testified about two different occasions when you were
7 present when Mr. Richards talked to Mr. Compean. Is that
8 correct?
- 9 A. Correct.
- 10 Q. When and where was the first occasion?
- 11 A. Well, actually, it's three occasions. The first one was at
12 the levee.
- 13 Q. Okay. And what did Mr. Richards ask?
- 14 A. He asked Mr. Compean if he was okay.
- 15 Q. And what did Mr. Compean answer?
- 16 A. He stated, Yeah, I'm okay. I just got some dirt kicked up
17 in my face.
- 18 Q. When Mr. Compean -- or when Mr. Richards asked the
19 question, what, if anything, was his tone and demeanor?
- 20 A. I'm not sure I understand --
- 21 Q. Did you ever get the idea he was discouraging --
- 22 A. No, ma'am.
- 23 Q. -- the agent from saying the truth?
- 24 A. No, I never got that impression at all.
- 25 Q. Okay. The second time, coming out of the bathroom. Is

1 that right?

2 A. The second time was at the bathroom, yes, ma'am.

3 Q. And Mr. Richards -- the response from Mr. Compean to
4 Mr. Richards' questions, again, are negative. Is that correct?

5 A. I think he was worried about him. That was the impression
6 I got.

7 Q. I was going to ask you what his tone was.

8 A. That's the impression I got, that he was worried about the
9 injury to his hand.

10 Q. Okay. And did he tell -- did -- what, if anything, was
11 your impression with regard to him wanting Compean to be
12 truthful?

13 A. At that point --

14 MS. STILLINGER: Your Honor --

15 A. -- nobody had any --

16 MS. STILLINGER: I'm sorry.

17 I'm going to object to that as being too confusing and
18 speculative.

19 THE COURT: Well, I don't know. Somehow he was
20 answering, but go ahead and restate the question, and I'll
21 sustain.

22 BY MS. KANOF:

23 Q. Well, you said he acted concerned?

24 A. Yes, ma'am. He was concerned. That's the impression I
25 got, he was concerned.

1 Q. Did you ever get the impression that Richards was
2 discouraging Compean from saying he was assaulted?

3 A. No, ma'am, he did not.

4 Q. And what about the third time, in the processing room?

5 Again, what was Richards' tone?

6 A. He was worried about him, the injury.

7 Q. Okay. And a third time he asks him, and what's the answer?

8 A. No, I'm okay. Nothing happened.

9 Q. Have you ever known Mr. Richards to discourage people from
10 filing reports?

11 A. No, ma'am.

12 Q. What, if anything, is Mr. Richards' policy with regard to
13 filing reports?

14 A. He's a stickler for paperwork. He wants everything
15 detailed and, you know, filed.

16 MS. KANOF: Pass the witness.

17 THE COURT: Ms. Stillinger?

18 RE-CROSS-EXAMINATION

19 BY MS. STILLINGER:

20 Q. I'm sorry, I have to ask you a few more questions about the
21 pursuit policy. Because you do agree with me the policy
22 requires the filing of a vehicle pursuit form for any kind of
23 pursuit, right?

24 A. Yes. But the policy is very subjective.

25 Q. Very subjective?

1 A. Yes.

2 Q. Meaning subject to interpretation?

3 A. Yes.

4 Q. Okay. And -- and if a policy is subject to interpretation,
5 I'm guessing they don't want each individual agent to interpret
6 it their way. They're generally going to go with a
7 supervisor's interpretation, correct?

8 A. Correct.

9 Q. Okay. I mean, you do agree with me that there's a sentence
10 in there that says the report is supposed to be filed after any
11 pursuit?

12 A. Correct.

13 Q. And there's a definition of pursuit in the policy, correct?

14 A. Correct.

15 Q. Okay. And the definition of pursuit is when a vehicle --
16 when emergency lights are turned on and the vehicle --

17 A. When you have a suspect attempting to evade an arrest or
18 apprehension, he uses excessive speed or dangerous or hazardous
19 traffic violations to abscond or -- that's not word-for-word,
20 but that's -- that's the gist of it.

21 Q. Okay. Let me -- let me read this, and see if you disagree
22 with it. That the term pursuit also includes any attempt by a
23 Border Patrol agent in an authorized emergency vehicle -- and
24 I'm sorry. Let me stop there.

25 But an authorized emergency vehicle, these agents were

1 all driving authorized emergency vehicles on that day, right?

2 A. Emergency vehicles, yes.

3 Q. Okay. Not authorized pursuit vehicles, but authorized
4 emergency vehicles?

5 A. A pursuit vehicle is something else.

6 Q. Okay. So the term pursuit also includes any attempt by a
7 Border Patrol agent in an authorized emergency vehicle or
8 pursuit vehicle to stop a vehicle regardless of whether or not
9 the pursuit vehicle is violating traffic laws governing
10 direction of travel, speed of travel, traffic signs, signals,
11 and/or other illegal actions.

12 Would you agree that that's part of the policy?

13 A. That's the policy.

14 Q. Okay. So -- so they're being fairly clear in here, it
15 doesn't require a violation of traffic laws in order for it to
16 be a pursuit, correct?

17 A. Correct.

18 Q. Okay.

19 A. In that part right there.

20 Q. Okay. Is there some other part where it talks about that
21 that -- that -- that --

22 A. About the subjective part, that each individual agent has
23 to weigh the dangerous factors in -- in stopping these
24 vehicles.

25 Q. Right.

1 A. The agent has to communicate a pursuit is in progress to
2 communications, to sector communications --

3 Q. Right.

4 A. -- not to a supervisor, it goes to sector communications.
5 Sector communications --

6 Q. Right.

7 A. -- is the one who contacts the supervisor.

8 Q. Uh-huh. Sure. And does that apply to pursuits, as defined
9 in this pol- -- I mean, your understanding of the policy, or --
10 or someone else's in your interpretation, that you -- I mean,
11 maybe it's your station's interpretation of the policy, is that
12 this definition of pursuit doesn't apply to the rest of the
13 policy, or --

14 A. Well, again, we're looking at subjective.

15 Q. Okay.

16 A. Was the agent chasing this vehicle, or did he back off and
17 was he following it?

18 Q. Okay. Well, would you agree that if the vehicle -- let's
19 say the speed limit is 50 miles an hour, and the suspect
20 vehicle is going 50 miles an hour. So the pursuing vehicle is
21 going, say, three or four car lengths behind at 50 miles an
22 hour. Without his -- he's turned off the emergency lights,
23 because the guy didn't stop when the lights were on. He's
24 turned off the emergency lights.

25 Would you agree that's still a pursuit, though?

- 1 A. In those circumstances, yes.
- 2 Q. Okay. Okay. And somebody went to a lot of trouble to
3 write this 14-page policy, right?
- 4 A. Yes.
- 5 Q. Okay. And it is part of the policies that you're supposed
6 to make sure your agents know about, right?
- 7 A. Semiannually.
- 8 Q. Okay. And you're supposed to help uphold those policies,
9 right?
- 10 A. Correct.
- 11 Q. Okay. So -- I know Ms. Kanof has asked you, when did you
12 find out that was a -- I don't know what she said a 60- or
13 70-mile-an-hour pursuit. And you're saying today, because
14 she's told you that.
- 15 A. Correct.
- 16 Q. But -- but you did believe that day that there had been a
17 pursuit, correct?
- 18 A. Not correct.
- 19 Q. Okay. Because I thought I asked you that question just the
20 last time I was up here, and you said that you did believe that
21 there had been a pursuit.
- 22 A. I believed they were following the vehicle back --
- 23 Q. Okay.
- 24 A. -- is what I thought.
- 25 Q. Okay. So we can distinguish the words -- we can say you

1 believed they were following or chasing, but you're saying you
2 don't think it was a pursuit under the terms of the Border
3 Patrol's pursuit policy?

4 A. With the information that we had on that day, no.

5 Q. Okay. Well, you knew there had been a failure to yield,
6 correct?

7 A. Yes.

8 Q. Okay. Which is really the main thing that contributes to
9 the definition of pursuit, correct?

10 A. Active attempt to evade.

11 Q. Okay. When I say failure to yield, of course, I'm talking
12 about the emergency lights have been activated and the person
13 does not stop, right?

14 A. Yes.

15 Q. Okay. So you knew there had been a failure to yield. And
16 you knew the vehicles were still following the suspect vehicle,
17 right?

18 A. I was under the impression that they were, yes.

19 Q. Okay. Okay. But I guess what you're saying is that --
20 that the way this policy is interpreted, at least in Fabens,
21 you feel like that would not qualify as a pursuit?

22 A. If they were following the vehicle?

23 Q. Right.

24 A. Again, it depends on how far they were following behind.

25 Did they let the vehicle go up ahead, and they were following

1 just to get a direction of travel, they were a quarter mile
2 behind it? It would all depend on circumstances.

3 Q. Okay. And Supervisor Richards, when you were there, and
4 you were there at the scene with all the other agents, he made
5 no effort to find out the answer to any of those questions,
6 correct?

7 A. No, I didn't hear him ask any questions like that.

8 Q. Right. And -- and -- and you said you didn't feel it was
9 your place to do that, because he outranked you there, right?

10 A. Correct.

11 Q. If he wanted to know the answer to those questions he
12 certainly could have asked, right?

13 A. Correct.

14 Q. Okay. And -- and the policy that requires the filing of a
15 report, it doesn't say you only file a report if it was
16 authorized, if the pursuit was authorized in advance, right?

17 A. I don't think there's anything in the policy that says
18 that.

19 Q. Okay. You're supposed to file a report even if you find
20 out about the pursuit after it's over, right?

21 A. Are you talking about immediately afterwards?

22 Q. Um --

23 A. Or a week later, two weeks later, or...

24 Q. Well, let's talk about immediately after. Let's say that
25 you find out -- let's just say, when you come upon the van, and

1 so we're talking about within maybe 15 minutes of the
2 termination of the pursuit, if you find out at that point in
3 time there's been a pursuit, should the paper- -- the proper
4 paperwork be generated?

5 A. Yes.

6 Q. Okay. But if you don't ask anybody any questions about it,
7 you're not going to find out the details to fill out that form,
8 right?

9 A. Correct.

10 Q. Okay. Now, your agents are pretty busy in the Fabens area,
11 correct?

12 A. Yes, ma'am.

13 Q. And, in fact, overwhelmed with the amount of traffic they
14 are charged with monitoring. Is that fair to say?

15 A. Correct.

16 Q. Okay. Part of the interpretation of the pursuit policy is
17 common sense, right?

18 A. Yes, ma'am.

19 THE COURT: Could the attorneys approach a second?

20 (Bench conference:)

21 THE COURT: Okay, guys. I am trying to let everybody
22 try this case. This pursuit case is sort of ad nauseam. I
23 mean, they're not on trial for a pursuit. But I'm telling you,
24 you need to look at your jury, because I think you're going to
25 totally lose them. And --

1 MR. GONZALEZ: That's why we haven't objected, Judge.

2 THE COURT: I'm just warning you. I'm -- again, I
3 don't want to -- you can go on this forever.

4 MS. STILLINGER: I only have two more questions for
5 him.

6 THE COURT: You know, I was counting how many times
7 you said the word pursuit. We're in the hundreds, okay?

8 MS. KANOF: Do we get a prize?

9 THE COURT: I'm trying to stay awake.

10 (End of bench conference; open court.)

11 THE COURT: You may proceed.

12 BY MS. STILLINGER:

13 Q. Agent Arnold, I think I just asked you -- there has to be
14 common sense used by the agents out in the field, correct?

15 A. Correct.

16 Q. And that includes common sense by supervisors and -- higher
17 level supervisors -- in how to utilize and execute policy,
18 correct?

19 A. Correct.

20 Q. Okay. And would it be fair to say that, on February 17,
21 2005, you didn't think your agents had done anything wrong in
22 the way they followed this vehicle, did you?

23 A. Not on that day.

24 Q. Okay. If you found out, instead of going 50 miles an hour,
25 that they were going 52 miles an hour, would that be a subject

1 of discipline?

2 A. That would be up to somebody else besides me.

3 Q. Okay.

4 A. We do the memos, but it would be up to somebody else.

5 Q. Okay. That's -- that's not something that you would be in
6 a position to counsel an agent on?

7 A. 52 miles an hour in a 50-mile zone? That would be -- when
8 these things happen, nobody really knows how fast they're
9 going --

10 Q. Right.

11 A. -- as far as within 45, 50, 50 miles -- 52 miles per hour.
12 I don't think they can actually say how fast they're going.

13 Q. Okay. Your agents out there believed they were trying to
14 do their best job that day?

15 A. Yes, ma'am.

16 MS. STILLINGER: I'll pass the witness.

17 THE COURT: All right.

18 Mr. Antcliff?

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

20 MS. KANOF: Nothing further from the Government.

21 THE COURT: All right.

22 Ladies and gentlemen of the jury, it is about 12:45.

23 We are going to go ahead and break for an hour -- actually,
24 hold on a second.

25 I'm going to ask you to go ahead -- we're going to

1 break for lunch. It's 12:45. Please be back in the jury room
2 at about 2:00. So we stand in recess until 2:00.

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

4 THE COURT: You may be seated.

5 May this witness be excused?

6 MS. KANOF: Yes, please, Your Honor.

7 MR. ANTCLIFF: Yes, ma'am.

8 THE COURT: You're free to go.

9 We'll see everybody back -- I have some work to do
10 around 1:00, so you don't need to be back until close to 2:00.

11 (Recess; open court, parties present, jury not
12 present.)

13 THE COURT: You may be seated.

14 Anything we need to take up before the jury comes in?

15 MS. KANOF: Nothing from the Government.

16 MS. STILLINGER: Your Honor, I just have one brief
17 thing, and I was wondering if the Court made a decision on that
18 Karhoff memo they gave to you yesterday.

19 THE COURT: Yes. I have looked at it. I don't know
20 if there's anything that anyone wants to argue before I tell
21 you, or if you want to sort of hear my position.

22 You haven't ever seen the memos, have you?

23 MS. STILLINGER: No, we have not.

24 THE COURT: I've reviewed the memo. And, frankly,
25 I -- there's nothing -- this is the memo that was generated as

1 a -- as a response to Mr.- -- I guess it's Agent Sanchez's
2 report to Karhoff. And I don't know how it would be
3 admissible, for what purpose. Or -- and, certainly, if not
4 admissible, there is nothing in here that you haven't
5 questioned Sanchez about. So I'm not exactly sure what -- how
6 you feel it would enlighten anything. I just, frankly, don't
7 see any -- anything in it.

8 MS. STILLINGER: Well, I mean, I'm at a loss to argue
9 specifically about that, because I don't know what it says.
10 But what I do know is that Agent Chris Sanchez testified that
11 that's a document received, and that's one of the things that
12 he acted on in initiating his investigation.

13 And I think if -- you know, he's testifying about a
14 document that caused him to take some action, I don't see how
15 that isn't discoverable by us, unless there's some reason that
16 there's something -- something in there that is not
17 discoverable.

18 But the other reason, Your Honor, is that --

19 THE COURT: Go ahead. I'm listening.

20 MS. STILLINGER: -- I anticipate Rene Sanchez may
21 testify again in this case. There were obvious discrepancies
22 between his testimony and Osvaldo Aldrete-Davila about the
23 initiation of this investigation -- about discussions between
24 Rene Sanchez and Aldrete-Davila, there were discrepancies about
25 how they characterized, or what did they talk about.

1 And Rene Sanchez, I think his credibility, whether he
2 was acting as a Border Patrol or acting as a friend to
3 Aldrete-Davila is a very important question for this jury to
4 hear about. And I'm thinking that memo might enlighten us as
5 to whether he did have the authority of his supervisor to
6 proceed to investigate this on his own, as he said he did, or
7 the dates. Because I was making a point of the dates, that his
8 memo was dated, I think March 3rd, when he says he found out
9 about this on February 28th and started investigating on
10 February 28th.

11 So I'm very curious about the dates, because he said
12 he told his supervisor -- if I -- and I might have
13 misunderstood his testimony, because I thought he went back and
14 forth on that date when he was testifying about when his
15 supervisor became aware of this and when he was authorized to
16 do his own research.

17 So it would be impeachment on Rene Sanchez' testimony,
18 Your Honor, potentially. But I don't know.

19 THE COURT: Ms. Kanof -- and what is -- I mean,
20 frankly, I -- what is the reason that you do not want to share
21 this with counsel?

22 MS. KANOF: She can't -- she can't impeach Rene
23 Sanchez on it, because she doesn't know what information
24 Mr. Karhoff thought was important to put in his memo.

25 THE COURT: I certainly understand that. But there is

1 nothing in this memo, other than that he received notice from
2 Mr. Sanchez.

3 MS. KANOF: But it's not clear -- I mean, you would
4 have to have Mr. Karhoff here. Did you put everything
5 Mr. Sanchez said? Did you do it exactly how he says? Did you
6 use the memo as a basis? Did he tell you the same story? Did
7 he -- this is a document generated by an individual who isn't
8 going to testify, unless -- they don't have under subpoena --
9 unless they're going to call him, and so it's -- it's hearsay.
10 The document is -- is hearsay for admissibility, but also
11 inappropriate to cross-examine Rene Sanchez, because it's not
12 Rene Sanchez's paperwork. He did not generate it. He did not
13 write it.

14 THE COURT: Well, it refers to a document that Rene
15 Sanchez did generate, has been given?

16 MS. STILLINGER: Yes.

17 MS. KANOF: Yes.

18 MS. STILLINGER: We do have that document, Your Honor.
19 And -- and I understand what Ms. Kanof is saying, that those
20 are issues of admissibility, not of -- but that doesn't go to
21 whether or not we can see it.

22 THE COURT: I mean, I -- frankly, I -- I mean, there's
23 nothing in this document. And certainly -- I mean, I -- as far
24 as it being discoverable, I see no reason why it can't be
25 discovered. I just don't -- I mean, I think it's sort of

1 extraneous, given that there's an underlying document, and all
2 he does is -- it's sort of like a cover letter saying he got a
3 report.

4 I haven't seen the report, so I don't know what Rene
5 Sanchez puts in his report. But other than it being sort of a
6 cover letter that he received the report, I don't see it as
7 anything else.

8 MS. KANOF: Defense counsel got the report, and they
9 crossed him at length about it.

10 THE COURT: All right. Well, for the purposes of
11 discovery, I will allow it. But I'm not ruling that it is in
12 any way admissible.

13 MS. STILLINGER: I understand, Your Honor.

14 THE COURT: All right. All right. So I don't know if
15 you want to provide it to them. Do you want copies?

16 MS. KANOF: Can you give them that copy?

17 THE COURT: Sure. I'd be happy to. All right. So,
18 for purposes of the record, the Court is turning over the March
19 3 memorandum from Russell Karhoff regarding Agent Sanchez.

20 MS. STILLINGER: Thank you.

21 THE COURT: Do you need a moment to look at it?

22 MS. STILLINGER: No, that's fine.

23 MR. PETERS: We're ready.

24 MS. STILLINGER: This won't come up till later.

25 THE COURT: All right. That's fine.

1 MS. KANOF: We're ready to proceed, Your Honor.

2 THE COURT: All right. We can go ahead and bring in
3 the jury, then.

4 (Open court, parties and jury present.)

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

6 MS. KANOF: The Government calls Chief Luis Barker.
7 I don't believe this witness has been sworn.

8 THE COURT: All right. Go ahead.

9 (Witness sworn.)

10 THE COURT: You may be seated.

11 And whenever you're ready.

12 MS. KANOF: Thank you.

13 LUIS BARKER, GOVERNMENT'S WITNESS, SWORN

14 DIRECT EXAMINATION

15 BY MS. KANOF:

16 Q. Could you tell the jury your name?

17 A. My name is Luis Barker.

18 Q. How are you employed?

19 A. I'm employed by the Department of Homeland Security, Custom
20 and Border Protection, and specifically, the United States
21 Border Patrol.

22 Q. What is your duty station at this time?

23 A. Right now, I'm in Washington, D.C.

24 Q. And what is your title?

25 A. I'm the deputy chief of Border Patrol.

1 Q. Are you the number two man in the United States Border
2 Patrol?

3 A. Yes, ma'am.

4 Q. What did you do before you went to Washington, D.C.?

5 A. I was the chief of the El Paso sector.

6 Q. How long have you been in the Border Patrol, Chief Barker?

7 A. Just over 26 years.

8 Q. Okay. And, prior to coming to El Paso -- well, I want to
9 do this briefly, but how long were you just a line agent?

10 A. About five and a half years.

11 Q. And then what happened with your career?

12 A. I was an instructor at the academy, supervisor. I was a
13 staff officer for the Assistant Commission of Border Patrol in
14 Washington, D.C. from 1986 to 1989.

15 I was a deputy regional chief in the southern regional
16 office in Dallas from 1989 to 1990; assistant chief in Del Rio
17 sector in 1990 to 1993; and deputy chief in Laredo -- in
18 Del Rio, also; chief patrol agent in Laredo in 1995 to 1998,
19 when I became chief in the El Paso sector.

20 Q. So you became chief of the El Paso sector in 1998 until
21 when?

22 A. Until May of 2005.

23 Q. In February of 2005 were you chief of the El Paso sector?

24 A. Yes, ma'am.

25 Q. And, as chief of the El Paso sector, are you res- -- what

1 are you responsible for?

2 A. I'm responsible for the administrative and the operational
3 well-being of the sector.

4 Q. Okay. Is El Paso a large sector?

5 A. Yes, it is. It's the fourth largest of the 22 sectors.

6 Q. Okay. Chief Barker, let me draw your attention to the
7 duties and responsibilities of Border Patrol agents under
8 certain -- in certain situations. And first, let me direct
9 your attention to the Border Patrol shooting policy.

10 Under what circumstances is a Border Patrol line agent
11 permitted to discharge their weapon?

12 A. It says it should stop an action against the agent. The
13 shoot- -- the firearms policy has been expanded since, or --
14 since the -- since about 2000, more or less.

15 Prior -- prior to that, it was simply in three
16 instances: self-defense; defense of another person, or your
17 partner; and defense of a third innocent party, who in -- who
18 is at risk of extreme danger.

19 With the new policy they expanded it to include
20 discharging a weapon against animals, for those same -- for
21 those certain reasons.

22 Q. Okay. PETA got involved somewhere or something?

23 With regard to that policy, under what circumstances
24 do you, as chief of the Border Patrol, find out that the policy
25 has been violated?

1 A. In has to be via reporting. The policy is clear. It says
2 if, in fact, the firearm is discharged, except when -- during
3 qualifications, it has to be reported.

4 Q. Okay. Except during when they're qualifying, if a firearm
5 is discharged, it has to be reported. Is that correct?

6 A. If it's accidental, while you're qualifying, still, it is.
7 But if, in the act of qualification, if it's part of the
8 qualifying course, it doesn't have to be reported.

9 Q. So even if you're qualifying out there and it accidentally
10 goes off, you have to still report it?

11 A. Yes.

12 Q. Okay. And does the reporting requirement trigger an
13 official proceeding on the behalf of the United States Border
14 Patrol?

15 A. Yes, it does. An investigation is started.

16 Q. And does that -- what is the purpose of that official
17 proceeding?

18 A. For a number of reasons. One, first and foremost, to make
19 sure that if, in fact, it's one where you are trying to stop a
20 threat, to make sure that, one, it was. That it's consistent
21 with the -- that the person had the authority to do so. One,
22 that the policy is -- is maintained, make sure there's no
23 violation of policy, also.

24 Q. Okay. And what are the duties and responsibilities of an
25 agent who discharges their firearm, other than when they're in

1 the act of qualifying?

2 A. It's clear that, within an hour, they must make it known to
3 a supervisor.

4 Q. Orally or in writing?

5 A. It says orally.

6 Q. And, after they make that oral statement to a supervisor,
7 what, if anything, are the responsibilities of the supervisor,
8 with regard to the oral statement they've received?

9 A. They are required, within an hour, to make an official
10 documentation of it.

11 Q. And by official documentation, do you mean in writing?

12 A. It's generally in writing yes, ma'am.

13 Q. Okay. And so the report generates a document. Is that
14 correct?

15 A. Yes, ma'am.

16 Q. And what is the purpose of the document that the supervisor
17 authors?

18 A. It's one to make the supervisors up the chain -- and make
19 them -- make them aware that did occur, that a discharge did
20 occur. And, again, to start an investigation, to make sure
21 that, one, the agent that could appropriately -- and also,
22 it -- it's also a training issue, to make sure that there are
23 no training issues that are -- that are re- -- that are
24 required.

25 Q. So you are also looking for deficiencies in your training,

1 as well?

2 A. Yes.

3 Q. Is the United States Border Patrol a Federal Government
4 agency?

5 A. Yes, it is.

6 Q. In addition to having -- what -- what else does an agent
7 have to do, other than orally tell their supervisor?

8 A. Pretty much that -- and if, in fact, there is an inquiry,
9 that they must submit to an inquiry. But they are not required
10 at the time to do anything in writing.

11 Q. Do they have to surrender their firearm?

12 A. Depending on the circumstances. If it is an accidental
13 discharge, generally it's not. But if it's one where -- to
14 negate a threat, yes.

15 Q. Okay. At -- say, hypothetically, that there is a discharge
16 of a firearm that's neither accidental nor during
17 qualification. What, if anything, is the responsibility of the
18 agents who arrive at that scene to secure the scene for the
19 official proceeding?

20 A. They are required to secure the scene, to make sure that --
21 one of the first things that we do, when there is a discharge,
22 is the -- our evidence team is dispatched. Even though they do
23 not independently conduct an investigation outside of the FBI
24 or OIG, they secure the scene, because, generally, they are the
25 first to arrive.

1 Q. Okay. So the evidence team itself does not conduct an
2 investigation, correct?

3 A. Not independent of the primary agencies.

4 Q. Do they gather information to provide to the individuals
5 conducting the official proceedings?

6 A. Yes, ma'am. And what that calls --

7 MS. STILLINGER: Your Honor, excuse me. I need to
8 object. I've heard Ms. Kanof use the term official proceeding
9 a couple of times. And I would ask -- I'm objecting to that
10 terminology, because it is an element in the statute for some
11 of these offenses. And that element is going to have a meaning
12 that is supplied by the Court. I would ask that the Court
13 instruct the jury that, just because Ms. Kanof is using the
14 terminology official proceeding, and Mr. Barker is answering in
15 the same terminology of official proceeding, that the Court is
16 going to instruct the jury what an official proceeding is, and
17 that will be up to them to determine.

18 MS. KANOF: May have we have a side-bar, Your Honor?

19 THE COURT: Sure.

20 (Bench conference:)

21 MS. KANOF: -- element of an offense. And, actually,
22 the Court doesn't instruct because there is no definition of an
23 official proceeding. And in -- in this statute, the case law
24 does say investigation can be an official proceeding. And I
25 don't see any -- I don't see where the Court can instruct the

1 jury -- is going to instruct them as to what this is, when
2 there is no definition. I can't find any jury instruction that
3 does that.

4 THE COURT: And I haven't seen any.

5 MS. STILLINGER: Actually, I was looking for a
6 definition, and I couldn't find it. I would ask the Court not
7 to use that terminology, because it is a term of art in the
8 statute. And just because she says it, Chief Barker says it,
9 doesn't -- makes it confusing to the jury.

10 THE COURT: Is that not part of the procedures, that
11 there's an official proceeding?

12 MR. ANTCLIFF: Chris Antcliff.

13 Obviously, Judge, not everything that goes on is an
14 official proceeding related to an investigation on the shooting
15 afterwards.

16 MS. KANOF: The investigation in and of itself, that
17 is in the statute. And, Your Honor, I'm not leading him. I'm
18 very careful not to lead him. The words alter, destroy,
19 mutilate, and conceal, because we can ascertain they are
20 elements, as much as an official proceeding, is an element.

21 The words knowingly, intentionally, willfully, and
22 corruptly, we could use those. They're picking out a word and
23 asking the Court to exclude it with no legal basis.

24 THE COURT: I'm saying the only legal basis I would
25 see, if it's not used in the statute, but you're saying it is

1 used.

2 MS. KANOF: The statute says the official proceeding
3 may include an investigation of the Federal Governmental
4 agency. It's in 1512, if the Court wants to look at it. And I
5 don't want to misquote it, but it's at the very end. It has
6 all kinds of definitional things.

7 MS. STILLINGER: Perhaps it's more a subject of
8 cross-examination.

9 THE COURT: Anything else before I rule?

10 MR. PETERS: Judge, maybe an investigation can be an
11 official proceeding. But it kind of begs the question for the
12 Government to use that term, asking, Is this an official
13 proceeding? He's not the one who gets to provide -- I mean,
14 I -- even if -- even if the statute used that term, and even if
15 the term was used, it wasn't defined. I mean, he's like --
16 he's -- he's giving an opinion of ultimate fact.

17 THE COURT: How does the procedural -- I know there's
18 procedures that are defined. How it goes through the process
19 to get to the point where they review it, how does it call it a
20 proceeding?

21 MS. KANOF: It names each stage of the proceeding.

22 THE COURT: And what's it called?

23 MS. KANOF: Shooting review committee.

24 MR. PETERS: It's not --

25 MS. KANOF: Investigation shooting review committee.

1 It doesn't say this is an official proceeding.

2 THE COURT: Now, I forgot the exact wording of your
3 question. The only thing -- I do think official proceeding is
4 a term of art. My concern is that there is no definition, and
5 I don't know that I will be defining that. I think official
6 proceeding has a general understanding, unless somebody can get
7 me a specific definition, which you're worried about. I'm
8 going to ask you to restate the question, then I will rule.

9 MS. KANOF: I don't remember what question I was
10 asking, so I can't do that.

11 This is Debra Kanof.

12 My other argument is that they can cross on it.

13 THE COURT: I know. I have -- don't have a problem,
14 depending on how it's worded, I may have concerns. Go ahead.

15 (End of bench conference; open court.)

16 BY MS. KANOF:

17 Q. Okay. We were talking about the --

18 THE COURT: Hold on. I think I do have an objection.

19 And, at this time, the Court will overrule the
20 objection.

21 You may proceed.

22 MS. KANOF: Sorry, Your Honor.

23 BY MS. KANOF:

24 Q. The sector evidence team, you said, does not in and of
25 itself conduct an investigation, correct?

1 A. The investigation into the incident. But what they do is
2 they conduct an investigation for administrative purposes.

3 Q. Okay. And what -- who uses the information that they
4 develop as a result of their investigation?

5 A. I do.

6 Q. Okay. By "I do," you mean you did when you were a chief --

7 A. Chief patrol agent.

8 Q. That's a little bit -- you're a little bit too lofty for
9 that now, aren't you?

10 A. The chief patrol agent does.

11 Q. Yes, sir. And we are talking about February 17, or the
12 time surrounding February 17, 2005.

13 What -- so I think I asked you what the duties and
14 responsibilities of the agents that are involved in discharge
15 of a firearm have with regard to preserving the scene. Could
16 you explain that, please?

17 A. They do es- -- their primary responsibility is certainly to
18 render aid, if there is anyone that is hurt, and then to
19 preserve the scene, to make sure that the investigation can
20 unfold in a proper way, for a number of reasons, to make sure
21 that if, in fact, someone is injured we can determine whether
22 it was a good shoot or was not a good shoot.

23 Q. Okay. What's a good shoot?

24 A. When the person has the legal authority, the proper
25 authority, the circumstances warrant deadly force.

1 Q. Okay. And -- and, granted, it's in hindsight, correct?

2 A. Yes, ma'am. But they're all reviewed.

3 Q. Okay. Why do you make a determination of whether there's a
4 good shoot or not?

5 A. Certainly, we want to make sure -- it's a matter of trust.
6 We want to make sure that when an agent discharges his or her
7 firearm it's done properly, they have the legal authority to do
8 so. Agents have a very -- you know, that's a -- the authority
9 to take a life is one that should be taken quite seriously. So
10 when a person uses deadly force, we need to make sure that they
11 had the reason to do so.

12 Q. Okay. And that's why you do all of this paperwork and
13 stuff?

14 A. They're all investigated, yes.

15 Q. All right. If you find out that -- if the agency
16 determines that a firearm was discharged and not reported, and
17 that the scene was not secured, what, if anything, does that
18 trigger?

19 A. Again, it triggers another type of -- it triggers an
20 investigation, but now it's just a little bit different.
21 Certainly, it's to determine why it was not done. And the
22 focus of the investigation is a little bit different.

23 Q. In addition to the investigation that the federal agency
24 does, what other investigations can result from failure to
25 report the discharge of a firearm, failure to secure the scene,

1 and let me add to that, destroying evidence at the scene?

2 MS. STILLINGER: Your Honor, I would object to the
3 question as to relevance, and -- as to what kind of
4 investigations could result from something like that.

5 MS. KANOF: It goes directly to Count VI, VII, VIII,
6 IX and X, Your Honor.

7 THE COURT: I'll overrule the objection.

8 MR. ANTCLIFF: It was also a compound question, Judge,
9 and I would object to that.

10 MS. KANOF: Okay. Well, I'll break it down.

11 THE COURT: All right. That --

12 BY MS. KANOF:

13 Q. What other investigation or proceeding can ensue from an
14 agent's -- you know, logically, from an agent's failure to
15 report the discharge of a firearm?

16 A. Certainly, one of misconduct in office.

17 Q. What else? What if they hit somebody?

18 A. Again, to determine whether the person had the legal -- the
19 authority to use deadly force.

20 Q. In addition to the Border Patrol investigation, what other
21 proceedings can that trigger?

22 A. The FBI certainly would look into it, to see whether there
23 is a violation of the person's -- the person's civil rights.

24 Q. And if a determination is made by the FBI investigation
25 that such has occurred, what would happen next?

1 A. It's referred to the U.S. Attorney's office and possibly to
2 a Grand Jury.

3 Q. To a Federal Grand Jury?

4 A. Yes, ma'am.

5 Q. Okay. And is the investigation by a Federal Grand Jury a
6 logical outcome of an agent's failure to report shooting
7 somebody?

8 A. It could be, yes.

9 Q. Okay. What documents are generated in a shooting incident?

10 A. First and foremost, a memorandum is -- is done. And again,
11 even though an agent is not required to write -- write
12 anything -- it's certainly not required; it can be done
13 orally -- the person can, if they want to. But, certainly,
14 it's not required of them.

15 But anyone who is familiar with the case, if it's been
16 reported to them, they will do a memorandum outlining the
17 facts.

18 If there is any other evidence, an I-44 is going to be
19 done in the case, and -- which outlines the facts, also.

20 Q. Okay. And what happens to those documents, with regard to
21 the investigation? What's the purpose of the memorandum that's
22 done by the supervisor regarding the discharge of the firearm?

23 A. It's to document the facts. That's the only means to --
24 you know, to document the facts.

25 Q. Where does that memo go?

1 A. Certainly, we have a copy of it, and, certainly, it's
2 available to the investigating agencies.

3 Q. What's the inves- -- okay. So now you've generated a
4 memorandum that a weapon was discharged. Where -- and that
5 memorandum is used in your internal investigation. Is that
6 correct?

7 A. It is in a record, right. But we --

8 Q. Go ahead.

9 A. But we do not start the internal investigation if there is
10 a criminal investigation. That's -- that's what I -- we hold
11 ours in abeyance.

12 Q. Okay. That's a good point. In this particular case, there
13 are several agents who are on administrative duty. Do you wait
14 until the outcome of this trial before you go forward with your
15 administrative proceedings?

16 A. Yes.

17 Q. Okay. With all of your agents. Is that correct?

18 A. Yes, ma'am.

19 Q. Okay. So you -- you take a backseat, then, if there's a
20 criminal investigation?

21 A. Yes, ma'am.

22 Q. And, with regard, again, to that document that's generated,
23 if the document -- if there is no report of a shooting, then
24 that document is not generated, correct?

25 A. Correct.

1 Q. If there's a shooting and the agent does not make a report,
2 then the document is not generated, correct?

3 A. Correct.

4 Q. And does that impede your ability to investigate?

5 A. Yes, it does.

6 Q. Does it interfere with the process of the Border Patrol, as
7 you have explained it here today, regarding investigating
8 shootings?

9 A. Yes, it does.

10 Q. Okay. What about the existence of an assault? And I'm
11 going to talk about two kinds of assault: The agent being
12 assaulted or another individual being assaulted by the agent.
13 What, if anything, is generated if an agent is assaulted?

14 A. The agent certainly can report it. Generally, they will do
15 a memorandum. And there is also another form. I think it's a
16 G-725, I think it is, that is the evidence of an assault. That
17 one is more for statical purposes, more, but it can be used in
18 the investigation, also.

19 Q. Okay. And if the agent is injured in an assault, what
20 happens with that report?

21 A. Certainly, it -- it can be used with the -- it can be used by
22 the FBI. Normally, assaults are reported to the FBI, and in
23 consultation with the U.S. Attorney's office --

24 Q. Is the FBI a Federal Government agency?

25 A. Yes, ma'am.

1 Q. Is the U.S. Attorney's office a Federal Government agency?

2 A. Yes, ma'am.

3 Q. Okay. Go on.

4 A. And I must say that here, in this jurisdiction, we take
5 those quite seriously, and are usually pretty good in getting
6 them prosecuted. So our aim is, if an agent is assaulted, is
7 to get the person prosecuted.

8 Q. And, in order to get them prosecuted, does that have to go
9 before a Federal Grand Jury?

10 A. Yes, ma'am.

11 Q. If an agent is assaulted but denies that they are
12 assaulted, then those reports are not generated, correct?

13 A. They are not generated.

14 Q. Okay. Does -- if -- if a supervisor suspects that maybe
15 the agent was assaulted but doesn't want to say they're
16 assaulted, what is the supervisor's responsibility?

17 A. The supervisor's responsibility is to ask whether there has
18 been an assault or not.

19 Q. Okay.

20 A. And if there isn't an assault, they're not required to
21 generate any documents. But, again, that does not prevent the
22 agent themselves from -- from documenting.

23 Q. He could do it anyway?

24 A. Yes.

25 Q. Now, let's talk about even if the -- if the agent gets the

1 feeling maybe the supervisor just doesn't want to hear about it
2 that day, does that stop the agent from reporting it to someone
3 else?

4 A. If the -- the agent shares the responsibility, also, to
5 make sure -- because, again, I think it -- it's driven by
6 making sure that the person who perpetrates the assault is
7 prosecuted.

8 Q. Chief Barker, now, let's talk about the other kind of
9 assault, when the agent is the assaulter, and there is another
10 party that is assaulted. What, if anything, is generated under
11 those -- first of all, does that have to be reported by -- if a
12 Border Patrol agent hits somebody with a fire- -- well, let me
13 go back.

14 Shooting at somebody, even without hitting them, does
15 that fit the Border Patrol's definition of assault, even if you
16 don't hit them?

17 A. If the -- if the circumstances for shooting at the person
18 does not warrant deadly force, yes, it's an assault.

19 Q. Okay. And, then, if the individual is actually hit, say by
20 a bullet, is that an assault?

21 A. Again, if the circumstances that -- that cause the agent to
22 shoot at them was -- did not require deadly force, yes, it's an
23 assault.

24 Q. But you have to know that it happened in order to figure
25 that out. Is that correct?

1 A. Yes, ma'am.

2 Q. All right. So if an agent does not report that they have
3 assaulted someone, or discharged a firearm, no documentation is
4 generated, correct?

5 A. Yes, ma'am.

6 Q. What happens when an agent does report that they think they
7 might have hit somebody with a weapon?

8 A. Certainly, again, we -- we investigate it. And the other
9 part -- the other thing that we would do, too, is we make --
10 especially if the person flees to Mexico, we contact the
11 Mexican authorities, to let them know what has occurred.

12 Q. Okay. And do you know what the Mexican authorities do?

13 A. What they do? Normally, we've got a relationship where
14 they will investigate, also, to see whether the person is on
15 their side, especially if we've told them that they're involved
16 in some kind of crime.

17 Q. Okay. Is the relationship between the two governments here
18 in the El Paso portion of the border good or bad?

19 A. On the working level, I think it's pretty good.

20 Q. Okay. Why does Border Patrol want to know if an agent has
21 assaulted somebody out in the field?

22 A. Certainly, to hold them accountable. If he is -- and then
23 the other part --

24 Q. If it's a bad shoot?

25 A. If it's a bad shoot. But you're saying if he assaulted

1 someone.

2 Q. Okay. And so your definition of assault is that it's bad?

3 A. Yes.

4 Q. Okay. Go ahead.

5 A. The person is held accountable. And it's certainly to make
6 sure that it's investigated fully.

7 Q. In -- in this particular case, I think the evidence will
8 show that -- that somebody had a load of marijuana but was able
9 to get back into Mexico. Would that make any difference, with
10 regard to your approach in investigating an assault?

11 A. No, it would not.

12 Q. Okay. Would -- would you -- what, if anything, would you
13 want to know about the individual who had been shot?

14 A. Whether there was reason to shoot at the person.

15 Q. Okay. And is marijuana a reason to shoot at somebody?

16 A. No, it's not.

17 Q. Chief Barker, your agent -- well, let me go back.

18 The process, then, when an agent is -- what is the
19 process when an agent is suspended without pay or with pay?
20 Start with pay first.

21 A. With pay, normally, it's for administrative purposes. If
22 the person is suspended with pay, which we don't do, normally,
23 the person is put out on administrative duty. Generally, they
24 are required to report, or check in, if you will, every day,
25 not physically, but in -- telephonically --

- 1 Q. Okay.
- 2 A. -- so we will know where they are.
- 3 Q. Can they appeal that?
- 4 A. If it's an indefinite suspension, yes, they can.
- 5 Q. Okay. And what about suspension without pay?
- 6 A. Well, that's -- indefinite suspension is without pay. I'm
7 sorry.
- 8 Q. Okay.
- 9 A. Indefinite suspension, that's without pay. Yes, they can
10 appeal it. Yes.
- 11 Q. Chief Barker, do you -- when -- if they appeal, or if
12 they're trying to appeal to you not to suspend them, do you
13 give them a hearing?
- 14 A. Yes.
- 15 Q. What's the name of that hearing?
- 16 A. It's a -- it's simply a -- it's an oral reply.
- 17 Q. A what? I'm sorry.
- 18 A. Oral reply to the charges, or --
- 19 Q. What's the process of that?
- 20 A. It's -- I think the person has -- once we have proposed to
21 indefinitely suspend them, I think it's seven days they -- we
22 give them seven days to prepare and then come back to us, to
23 give cause why they should not --
- 24 Q. Okay. So, first, you give them notice of a proposal to
25 suspend. Is that correct?

- 1 A. Yes, ma'am.
- 2 Q. Then you give them seven days --
- 3 A. Yes. We give them seven days --
- 4 Q. -- to respond.
- 5 A. -- to respond, yes.
- 6 Q. Okay. And how do they respond?
- 7 A. They can orally, or in writing, or both. We accept both.
- 8 But they come before me and give reasons why they should not
- 9 be --
- 10 Q. Did you provide a notice of proposal to suspend to
- 11 Mr. Compean?
- 12 A. Yes, ma'am.
- 13 Q. Is he here in the courtroom?
- 14 A. Yes, ma'am.
- 15 Q. Would you identify him, please?
- 16 A. (Indicating.)
- 17 Q. He's -- you're pointing at somebody standing up?
- 18 A. Yes, ma'am.
- 19 MS. KANOF: Let the record reflect that the witness
- 20 has identified the Defendant Compean.
- 21 THE COURT: It will so reflect.
- 22 BY MS. KANOF:
- 23 Q. Chief Barker, did you have an oral meeting with him?
- 24 A. Yes, ma'am.
- 25 Q. And who else was present?

1 A. In his, there was myself, his union representative, and a
2 gentleman from our labor employee relations office.

3 Q. Okay. A union representative? What's that?

4 A. All employees that are not supervisors are -- are part of
5 the bargaining unit. They have a union. And -- and they are
6 represented by these unions in situations like this.

7 Q. And, in an investigation of a shooting, does the union play
8 a prominent role?

9 A. They could. If it is reported, normally the union -- a
10 union official shows up at the scene, or at the station, to
11 make sure that agent's rights are safeguarded.

12 Q. Okay. So if -- if it's immediately reported, within an
13 hour, the union representative goes to the scene, correct?

14 A. Or to the station. We normally let the union know what's
15 occurring, so that they can, if they want to, show up.

16 Q. And what role does that union representative play with
17 regard to the investigation?

18 A. All they -- they are just there to advise the agent.

19 That's pretty much --

20 Q. But they do advise the agent. Is that correct?

21 A. Yes.

22 Q. Is it part of your collective bargaining agreement for a
23 union representative to advise an agent about criminal
24 proceedings?

25 A. I don't think so.

1 Q. Okay. So did you actually meet, then, with Agent Compean,
2 his union representative, and somebody else from, what, labor
3 relations, did you say?

4 A. Yes.

5 Q. Okay. On, let's see, April 7th, 2005?

6 A. Yes. I think that was one of the dates.

7 Q. Okay. And then you met with him again. Is that correct?

8 A. Yes, ma'am.

9 Q. And did you actually tape the conversation that you had?

10 A. Yes, ma'am.

11 Q. I guess the one that I want to draw your attention to is
12 April 28, 2005. And the union representative can talk as much
13 as they want. Is that correct?

14 A. Yes, ma'am. And they generally do most of the talking.

15 Q. They gen- -- that's pretty common?

16 A. Yes.

17 Q. And the purpose of this meeting is what, again?

18 A. It's an oral reply, to give reasons why we should not go
19 with the proposal of indefinite suspension.

20 Q. Okay. Let me ask you, if -- and we're not going to talk
21 about what the union -- by the way, who was the union
22 representative for Mr. Compean?

23 A. I think it was Robert Russell.

24 Q. Okay. I'm going to ask you not to talk about anything
25 Mr. Russell said, but just about your conversation and

1 interaction with Mr. Compean.

2 Did you -- and I'm going to draw your attention to
3 page 5.

4 Do you have it there? You don't have it there?

5 A. No.

6 Q. Okay. Well, if you need it to refresh your memory, let me
7 know, and I will bring it up to you.

8 Did you ask Agent Compean why he didn't report the
9 shooting?

10 A. Yes, I did.

11 Q. What did he reply?

12 A. He said, if I can remember correctly what he said, I -- I
13 just didn't.

14 Q. Okay. Did he tell whether or not he knew it was wrong not
15 to report it?

16 A. He did say, I knew it was wrong.

17 Q. Okay.

18 MS. KANOF: May I approach the witness?

19 THE COURT: You may.

20 BY MS. KANOF:

21 Q. I just want to make sure that --

22 I'm going to hand you -- can you review it and tell me
23 if that's the transcript from the tape that you made of the
24 April 28 proceeding?

25 A. Yes, it is.

1 Q. Okay. Again, you asked him, sometime in that proceeding,
2 why he didn't report the shooting. And what did he tell you?

3 A. He said, I didn't. I just didn't. I know it was wrong for
4 us not to report it. And I would have thought --

5 Q. If I --

6 A. -- if I would have thought that I had been hit or --

7 Q. That he had been hit?

8 A. -- that he had been hit or anything like that had happened,
9 I would have. I just didn't.

10 Q. What else did he tell you in response to that question?

11 A. He said, I knew -- I knew we were going to get in trouble,
12 because the way -- the way it's been at the station for the
13 last two or three years. I mean, everything always comes down
14 to the alien. The agents are -- as soon as anything comes up,
15 it is always -- always the agent's fault.

16 Q. What else did he tell you?

17 A. The agents have always been cleared, but management -- but,
18 with management, it's always been the agent's fault.

19 Q. Okay. But he says the agents have always been cleared,
20 right?

21 A. Yes.

22 Q. And then one more thing that he said?

23 A. And he said, We are the ones that get in trouble.

24 Q. Is that true, Agent Barker?

25 A. No.

1 Q. And then does he continue -- you let him talk. Is that
2 correct?

3 A. Yes.

4 Q. Does he continue, then, and explain what happened on the
5 day that you're asking him why he didn't report the shooting?

6 A. Yes.

7 Q. What does he say?

8 A. It says, And -- and, as for the assault, Mr. Richards
9 was --

10 Q. No, before that. The very next thing that he tells you.

11 A. He was already gone back south. I really didn't -- didn't
12 think he had been hit. The way I saw him walking back south,
13 he looked -- pause -- he looked fine to us. And we didn't --
14 no, we just didn't. Nothing was ever said as to don't say
15 anything, keep your mouth shut. Nothing like that was ever --
16 was ever brought up, either. We just -- pause -- we just
17 didn't bring it up.

18 Q. Okay. Chief Barker, does it matter -- well, first of all,
19 did he ever tell you that he actually saw the guy limping that
20 was shot?

21 A. No, I don't remember seeing that.

22 Q. Okay. He tells you he looked just fine?

23 A. Correct.

24 Q. And then does he refer to his being assaulted? Does he
25 talk about his being assaulted?

1 A. Yes.

2 Q. You don't ask him about that, do you? He just volunteers
3 information?

4 A. There wasn't any --

5 Q. Correct.

6 A. -- any evidence that that was one of the questions that was
7 asked.

8 Q. Okay. And what does he say about the purported assault on
9 him?

10 A. He says, And, as for the assault, Mr. Richards was
11 notified. When I was on the levee, he asked me, and I told
12 him, Yes, he -- he threw dirt in my eyes. We wrestled for a
13 bit.

14 And then I told him about the cut on my hand. The cut
15 I believed -- oh, I wasn't aware until one of the other agents
16 pointed it out to me. He was the one who told me, You have a
17 cut on your -- pause -- I have a cut on my hand and on my chin,
18 a small cut.

19 Q. And then does he continue to tell you what happen when they
20 got back at the station?

21 A. Yes.

22 Q. What does he say?

23 A. He said, When we got back to the station it was the same
24 thing. He asked me, and I -- and the way -- the way I --
25 pause -- the way he -- pause -- asked me -- and then he paused

1 again -- he made it seem like he wanted me to say no, and
2 that's why I said it.

3 Q. Continue.

4 A. It goes on. He said, I asked -- I said, You know what?
5 I'm fine. I'm okay. All I have is a cut on my hand and a cut
6 on my chin. I'm okay. Nothing happened, is what I said. And
7 then I said, Don't worry about it. I'm okay.

8 Q. And one more thing -- I understand he's interrupted at that
9 point by Mr. Russell. But, after that, does he finish his
10 statement to you?

11 A. Yes. He said, I was fine.

12 Q. Okay. Chief Barker, with regard to the accusation he makes
13 about Chief Richards, that he felt that Chief Richards didn't
14 want him to report it, did you take any action with regard to
15 that?

16 A. No.

17 Q. Why?

18 A. There was no evidence that he did -- it was part of the
19 investigation. And there was nothing that came back to us in
20 that investigation that said that -- and it's not chief,
21 it's -- Jonathan Richards is the FOS, field operation
22 supervisor.

23 Q. Right.

24 A. There was nothing that came back that said that he did
25 anything improper.

1 Q. Okay. Even if -- even if the tone of Jonathan Richards'
2 voice was discouraging to Agent Compean, did that in any --
3 would that, in any way, stop Agent Compean? Would he be
4 prohibited from filing a report on the assault himself?

5 A. No.

6 Q. When he's explaining to you what happened, you just let him
7 talk, correct?

8 A. Yes, ma'am.

9 Q. Did he ever tell you that the man that ran back across the
10 river had a gun?

11 A. No.

12 Q. Did he ever tell you that he saw something that -- shiny,
13 that appeared to be shiny in his left hand?

14 A. No.

15 Q. Would that have been something that you would have figured
16 into your determination, if he had told you that?

17 A. Possibly, yes.

18 MS. KANOF: Pass the witness.

19 THE COURT: All right.

20 MS. STILLINGER: May we approach the bench before I
21 begin my cross?

22 THE COURT: Sure.

23 (Bench conference:)

24 MS. STILLINGER: Mary Stillinger for Agent Ramos --
25 Mr. Ramos.

1 This witness has said -- he's testified on direct
2 about the relationship that the United States has with Mexico
3 with respect to law enforcement. I think that opens the door
4 for me to ask -- we've had testimony from the Border Patrol
5 agent that the Mexican military fires down the border. We've
6 had -- I mean, the reality of Mexican authorities helping
7 Border Patrol agents, I think, in light of what we know about
8 the border, is ridiculous, and I should be able to
9 cross-examine him about that.

10 THE COURT: What relevance does it have?

11 MS. STILLINGER: Because they -- I believe they
12 brought that direct testimony of him as showing a reason why it
13 was bad that these agents didn't report the assault. Because,
14 if they had, Border Patrol could have notified Mexican
15 authorities, and they would have rounded this guy up and him
16 brought back, or prosecuted in Mexico or something.

17 THE COURT: Okay. So what's the question you want to
18 ask?

19 MS. STILLINGER: The question I want to ask, You've
20 said the United States has good relationships with Mexican
21 authorities, right?

22 He'll say, Right.

23 Well, were you aware that the Border Patrol has had a
24 lot of problems with the Mexican military? You agree Mexican
25 military is part of the government?

1 Right.

2 You agree they've had a lot of problems?

3 THE COURT: You honestly think he is going to agree to
4 that?

5 MS. KANOF: Can I respond?

6 THE COURT: Sure.

7 MS. KANOF: This is Debra Kanof.

8 First of all, we didn't open the door. They did.
9 They asked Osvaldo Aldrete-Davila, Isn't it true you could have
10 contacted the Mexican authorities?

11 And we didn't object at that time, even though it was
12 outside the motion in limine.

13 The second response the Government has is, I asked
14 him, in response to a legitimate question, what they do with
15 the information about the assault.

16 He said that they would tell the Mexican authorities.
17 He didn't say the Mexican military. The topic has nothing to
18 do with the Mexican military shooting downriver in Hudspeth
19 County. I don't think we've opened the door.

20 And I don't think he's vouching for the Mexican
21 Government, either. He didn't say they would investigate. He
22 didn't say they would throw them back across the river.

23 If you want to get into the extradition process, we'll
24 be here for another five days. We can do that, too. But I
25 don't think we opened the door. I don't think it's relevant.

1 MS. STILLINGER: I'm -- oh --

2 THE COURT: I'm not going to find that you opened the
3 door by questioning Oscar Aldrete-Davila. What the Court will
4 rule is that I don't think Ms. Kanof opened the door, however,
5 to the issue on the Mexican military.

6 If you have a question about what he meant by his
7 statement, I have no problems with a question like that. But
8 going into other incidents along the border, I will sustain any
9 objection.

10 MS. STILLINGER: Could I ask the question, You haven't
11 heard of any problems the United States has had with Mexican
12 authorities in regard to enforcement of drugs?

13 MS. KANOF: See, Mexican authority -- he's not talking
14 about the military.

15 MS. STILLINGER: I'm not putting military into my
16 question. We could talk about the comandante killing all the
17 people in Juarez.

18 THE COURT: So your question is, You have not heard
19 about what --

20 MS. STILLINGER: Problems that American authorities
21 have had with cooperation of Mexican authorities with respect
22 to drug laws.

23 MS. KANOF: All he's talking about is he reports it.
24 I didn't ask him any more. He says he reports it. I didn't
25 follow it.

1 THE COURT: Okay. You can ask. I'll allow that
2 question. Again, I do not want to go into specific incidents.
3 If you do, then we're going to have a problem.

4 (End of bench conference; open court.)

5 THE COURT: Ms. Stillinger, is that correct, you're
6 going to cross?

7 MS. STILLINGER: Yes.

8 THE COURT: You may proceed, then.

9 CROSS-EXAMINATION

10 BY MS. STILLINGER:

11 Q. Agent Barker -- I'm sorry, Chief Barker.

12 A. Agent -- Agent is fine.

13 Q. I was talking about the good old days, when you were an
14 agent.

15 Now, Chief Barker, I would just like to ask you a
16 couple of questions about some of the things you talked about.

17 First of all, you said that when there is a shooting,
18 other than on the firing range when one is qualifying, if there
19 is a discharge of a firearm, it has to be reported, correct?

20 A. Yes, ma'am.

21 Q. Okay. And that may trigger some sort of investigation,
22 correct?

23 A. Yes, ma'am.

24 Q. Okay. Because I think you said, if there's an inquiry, the
25 agent may have to do certain things, correct?

- 1 A. If there was an inquiry --
- 2 Q. Into the shooting.
- 3 A. Yes. Yes.
- 4 Q. Okay. Because there's not always an inquiry, correct?
- 5 A. Any time there is a discharge there is an inquiry. But it
- 6 depends, and the circumstances determines how much, how
- 7 deeply -- not how deeply they are looked into -- but the
- 8 significance of the inquiry, if you will.
- 9 Q. Sure. And -- and does Border Patrol have some sort of
- 10 shooting review team or shooting review committee?
- 11 A. They used to.
- 12 Q. They used to. Okay. How about in February of '05?
- 13 A. In February of '05, the shooting review committee did not
- 14 exist.
- 15 Q. Okay. Is there some other name for -- or is there any
- 16 other entity that does that?
- 17 A. Yes. What happens is, the responsibility of the shooting
- 18 review committee has been taken over by what we call DRB. The
- 19 DRB is the disciplinary review board.
- 20 Q. Okay.
- 21 A. And the disciplinary review board is -- is convened to
- 22 dispose of cases where the penalty imposed is more than 14
- 23 days.
- 24 Q. Okay.
- 25 A. And then the other part of it is, those that do not fall

1 within that -- that fall below that threshold, goes to
2 headquarters Border Patrol.

3 When we came into the CBP, a lot of the regs --

4 Q. I'm sorry. Mostly for the jury's --

5 A. Customs and Border Protection. I'm sorry.

6 Q. And that was a change in the name of the agency, correct?

7 A. Yes, correct.

8 Q. Okay. I'm sorry. Go ahead.

9 A. That's the way they merged Border Patrol, the ports of
10 entries and the -- the agencies at the ports of entries.

11 When -- when we merged, a lot of the processes went to
12 different offices.

13 Q. Okay.

14 A. So they had to go back and look to see where -- if those
15 offices still existed. And where they did, those processes
16 remained. When the offices ceased to exist, they adjusted so
17 that, you know, the process could -- could, you know -- could
18 continue.

19 And in the case of the shooting, it went to two
20 locations. One to DRB and the headquarters Border Patrol.

21 Q. And when you say headquarters, does that mean Washington or
22 does that mean --

23 A. Washington.

24 Q. Okay. And it would go to the DRB if a penalty of over 14
25 days' suspension was imposed?

1 A. Depending on the seriousness of the case. And, in
2 reviewing it, the initial review, it's deemed that the penalty
3 would be over 14 days.

4 Q. Okay. So somebody else is doing the initial review,
5 someone other than those two entities, correct?

6 Let me -- I mean, here is my question. I guess I
7 might be missing something. But it goes to the DRB if the
8 proposed penalty is more than 14 days. But who's deciding the
9 initial question of whether the proposed penalty is more than
10 14 days?

11 A. That comes from -- the investigation would have been long
12 completed --

13 Q. Okay.

14 A. -- before it gets to those two locations.

15 Q. Okay. And would it have been you, in your position as
16 chief, that would have decided what -- well, okay. Let me just
17 ask the simple question.

18 Who makes the first determination of whether it's a
19 good shoot or a bad shoot?

20 A. It's the investigation. The investigation is going to
21 determine that. The -- if I might put it -- if you would allow
22 me to put it in a context --

23 Q. Sure.

24 A. The report to the DRB has not occurred yet, because the
25 administrative process has not run its course.

1 Q. Okay.

2 A. Okay. The part that goes to the headquarters of Border
3 Patrol, it's a reporting process.

4 Q. Okay.

5 A. And it's only a reporting process to make -- to document
6 that the shooting had occurred. But the disciplinary action is
7 left to sector to do.

8 Q. Okay. Okay. So let's say that the shooting is reviewed,
9 and the people reviewing it say it looks like a good shoot, it
10 was obviously self-defense. Does that even go to the DRB or to
11 headquarters? Or could it --

12 A. It would be reported to headquarters, correct.

13 Q. For reporting purposes?

14 A. Yes, ma'am.

15 Q. But not because there's any proceeding pending?

16 A. Correct.

17 Q. Okay. And -- and when you use the term "official
18 proceeding," you're talking about some things that happen
19 within the agency, correct?

20 A. Yes, investigation.

21 Q. Okay. You don't mean to be necessarily using that term as
22 it's used in Section 1512 of Title 18, are you?

23 A. I'm looking at it from an investigation -- from our
24 perspective, it's an investigation.

25 Q. Okay. You wouldn't have any particular knowledge about

1 how -- how the obstruction of justice statute defines official
2 proceeding, would you?

3 A. Not as an attorney, no.

4 Q. Okay. You talked about the agents' duties and
5 responsibilities when there is a shooting. And you mentioned
6 the first one is to render aid, correct?

7 A. Yes, ma'am.

8 Q. Okay. And -- and, actually, that would include, if the
9 shooting is ongoing, that would include helping your fellow
10 agent, if he's being shot at, or you think he's being shot at,
11 right?

12 A. The agent is the first -- is the priority, and then anyone
13 else involved. But certainly, our attention will focus on the
14 agent first.

15 Q. Okay. And you -- you would expect, if shots are fired in
16 the course of a pursuit between -- a foot chase between an
17 agent and a suspect, and agents -- other agents hear shots, you
18 would expect them to go help, wouldn't you?

19 A. Yes.

20 Q. Okay. That would be their first duty and responsibility
21 before worrying about securing the scene, right?

22 A. Correct.

23 Q. And then, of course, check to see if anybody is wounded,
24 right?

25 A. Yes.

1 Q. And then, after that, maybe the third thing on the list
2 would be preserving the scene, correct?

3 A. In the order of importance, yes. The safety of the agent
4 and anyone who might be injured is -- would be primary.

5 Q. Okay. Now, I know that you've talked about there being
6 zero tolerance within Border Patrol for assaults on your
7 agents. Were you aware of an instance, when you were chief,
8 and Agent Ignacio Ramos was stuck with a needle by somebody
9 that he was arresting?

10 A. Not -- not definitively, no.

11 Q. Okay. I mean, I know you're the chief over a lot of
12 people, right? So you wouldn't necessarily recall all of those
13 things, right?

14 A. Well, I do remember an incident where someone was stuck by
15 a needle, but I can't say whether it was Agent Ramos.

16 Q. Okay. Do you know whether that case was prosecuted?

17 A. I'm not aware.

18 Q. Okay. And you said that the United States law enforcement
19 has a good relationship with Mexican law enforcement, right?

20 A. On the local level, yes.

21 Q. Okay. You are aware that there have been problems with
22 Mexican law enforcement with respect to enforcement of drug
23 laws on some occasions, haven't there been?

24 A. Let's see. I don't know any of specific instance, no.

25 Q. Okay. But I wasn't going to ask you about specifics. I

1 was asking if you were aware that that's not always the case.

2 A. I -- we've got a -- a good relation. We've got the Mexican
3 liaison unit that works tirelessly to make sure that in
4 instances like these we get a response.

5 Can I say that every time they respond? No, they
6 don't. But it's better than some -- most locations. We do
7 that because we cannot continue a pursuit, if you will, across
8 the border. So we need to have an alliance there. Perfect
9 situation? No, it's not.

10 Q. Right.

11 A. But we do get -- we do get results.

12 Q. Okay. Now, Ms. Kanof asked you if, in evaluating the
13 validity of a shoot -- when I'm talking validity of a shoot,
14 I'm talking about whether or not it's a justified shooting.
15 When evaluating that, it wouldn't make any difference if the
16 person had a load of marijuana with them, right?

17 A. No.

18 Q. Okay. Because you -- of course, that doesn't give you any
19 more right to shoot somebody, just because they have a load of
20 marijuana, correct?

21 A. Correct.

22 Q. And it wouldn't matter how much that marijuana was,
23 correct?

24 A. Doesn't matter.

25 Q. Okay. How about -- would it make a difference if the

1 suspected drug trafficker led agents on a chase?

2 A. No.

3 Q. That wouldn't be a factor that a person could consider in
4 evaluating the dangerousness of that person?

5 A. To -- you know, the agent is going to make a determination
6 whether to use deadly force by the circumstances of the case.
7 And if that person determines that a chase gives him or her the
8 reason to use deadly force, that's the decision they're going
9 to have to make, but it's contrary to the policy we --

10 Q. Right. And I'm not saying that would be the only factor.
11 I'm just saying, is that one factor that they could take
12 into --

13 A. Sure.

14 Q. -- account when they're evaluating the dangerousness of a
15 particular situation?

16 A. Sure.

17 Q. Okay. And how about the -- if -- if the suspect, after
18 leading agents on a vehicle chase, gets out and runs away?
19 Even when he's being told to stop by agents, he runs away.
20 Would that be a factor that agents could take into
21 consideration in evaluating the dangerousness?

22 A. By itself, no.

23 Q. Well -- and I understand it's certainly not justification
24 to shoot, correct?

25 A. Correct.

1 Q. I mean, it's very clear you can't just shoot a fleeing
2 suspect in the back, right?

3 A. Correct.

4 Q. You can't even shoot the fleeing suspect in the face,
5 right? I mean, in the front.

6 A. Correct.

7 Q. Okay. But what I'm asking is is that the agent has to
8 evaluate a lot of circumstances, and usually in an extremely
9 small amount of time, correct?

10 A. Correct.

11 Q. Okay. And would the fact that the suspect has ignored
12 repeated orders to stop, would that be a factor that the agent
13 could take into account when evaluating whether or not the
14 person's a danger?

15 A. Correct, they could.

16 Q. Okay. And what about if the agent hears -- if an agent
17 hears shots being fired from the direction where he knows that
18 suspect is? Is that something he could take into account in
19 evaluating whether or not that person is a danger?

20 A. Sure. Yes.

21 Q. Okay. Because it's reasonable that agent might think the
22 suspect is shooting, right?

23 A. Sure.

24 Q. And would it be, perhaps the most important factor, if the
25 agent sees someone -- telling him to stop, and isn't stopping,

1 that person turns around and points something, and it looks
2 like a gun, that would be something the agent could take into
3 account in deciding whether or not to shoot, correct?

4 A. Most definitely, yes.

5 Q. Okay. In fact, that's something that, obviously, might put
6 that agent in fear of his life, wouldn't it?

7 A. Yes, ma'am.

8 Q. And would you agree that the reasonableness of a belief, or
9 a decision to shoot, must be viewed from the perspective of the
10 officer on the scene who may often be forced to make
11 split-second decisions in circumstances that are tense,
12 unpredictable, and rapidly evolving, and that reasonableness is
13 not to be viewed from the calm vantage point of hindsight?

14 A. I agree.

15 Q. You would agree. And that -- that's part of you-all's
16 policy in firearms, isn't it?

17 A. Yes, ma'am.

18 MS. STILLINGER: I'll pass the witness.

19 THE COURT: All right.

20 Mr. Antcliff?

21 CROSS-EXAMINATION

22 BY MR. ANTCLIFF:

23 Q. Good afternoon, sir.

24 A. Afternoon.

25 Q. The Border Patrol has tons of policies. Would you agree

1 with that statement?

2 A. Yes, ma'am -- I mean, yes, sir. I'm sorry.

3 Q. No problem.

4 And violation of some of those policies carries
5 administrative penalties. Would you agree?

6 A. Yes, sir.

7 Q. And those penalties, for whatever the policy happens to be,
8 can range all the way from nothing, to a reprimand, up to
9 suspension and termination, if need be. Is that right?

10 A. Yes, sir.

11 Q. In this case, you made a decision, or the Border Patrol --
12 I guess you are the Border Patrol -- made a decision to suspend
13 Agents Ramos and Compean indefinitely. Is that right?

14 A. Yes, sir.

15 Q. And that's a procedure that pretty much comes into play
16 when an indictment against someone comes down. Is that right?

17 A. Generally, an indictment. But it does not require an
18 indictment.

19 Q. Certainly not. But, if there's an indictment, that
20 decision is made a lot easier for you. Would you agree?

21 A. Yes, sir.

22 Q. Okay. In any event, the -- whether there's an indictment
23 or not, the agent still has an opportunity to respond to the
24 proposed indefinite suspension, right?

25 A. Yes, sir.

1 Q. And Agent Compean took advantage of that and had a meeting
2 with you, or two?

3 A. Two, yes, sir.

4 Q. I guess two meetings. And he only -- I guess he only spoke
5 at one of those meetings, right?

6 A. I think that's the case.

7 Q. Okay. At that meeting where he spoke, he told you -- one
8 second.

9 He told you -- one of the things he told you, and
10 there were many in that little block that you read to the jury.
11 But one of the things that he told you was that he had informed
12 Agent -- or Supervisor Richards of an assault. Is that right?

13 A. Yes, sir.

14 Q. And that wasn't the only information that you had in making
15 your determination as to whether or not to suspend him
16 indefinitely, was it?

17 A. Correct.

18 Q. You had reviewed statements of other agents, correct?

19 A. I don't -- I know I had the case. And what -- a case file
20 is presented with the memorandums that are -- that are -- that
21 are presented.

22 Q. Sure.

23 A. Or that are submitted, rather.

24 Q. And who prepares the case file?

25 A. The -- our labor employee relation section.

1 Q. Okay. There -- do those people, when they're preparing
2 this case file, interview other individuals?

3 A. No.

4 Q. They don't interview other agents?

5 A. In the labor employee section, no. They -- they compile
6 the case by putting the documents that are available, that are
7 on the official record in the -- in the file.

8 Q. Okay. Let's try it this way.

9 Did you have any written statements from any agents
10 other than Compean and/or Ramos?

11 A. I don't recall how much was in the file, but I'm pretty
12 sure there was additional documentation.

13 Q. And you had not seen any indication that any other agents
14 had told Supervisor Richards about an assault on Compean that
15 day?

16 A. Not that I can remember.

17 Q. Okay. If that had happened, would it have made a
18 difference in your determination?

19 A. Of indefinite suspension?

20 Q. Yes.

21 A. No.

22 Q. And the reason for that is there was an indictment pending,
23 right?

24 A. Not -- not only the -- the issue of an assault was not
25 the -- was not the only thing to be considered, so --

1 Q. Certainly.

2 A. -- the seriousness of the case. So if they had said there
3 was an assault, that certainly would not have changed my mind
4 on the indefinite suspension.

5 Q. Okay. I understand. But it would have been relevant to
6 your thinking --

7 A. Yes.

8 Q. -- at the time?

9 A. Yes.

10 Q. Okay. At the time that these two meetings happened between
11 you and -- I don't know if he's an agent or not -- Mr. Russell?

12 A. He's an agent.

13 Q. -- you and Agent Russell and Agent Compean, there was a
14 criminal investigation still going on. Is that right?

15 A. Yes, sir.

16 Q. Okay. Are you -- I don't know how it works, but maybe you
17 can enlighten me -- "instrumental" would be a good word. Are
18 you instrumental in making the decision on who to promote --
19 I'm talking about back then -- in the El Paso sector?

20 A. All the promotions in sector are mine. Some of them I --
21 the process I allow, depending on the level of supervision, I
22 allow input across the board, especially from my immediate
23 staff, and, also those people who are responsible for the
24 stations, that's the first-line supervisor. They generally get
25 a pretty good -- a fair amount of input as to who should be

1 promoted, yes.

2 Q. Sure. And, in -- in order for the Border Patrol to
3 function effectively, you, at the level you were at, certainly
4 had to have trust in your management team. Would you agree?

5 A. Yes.

6 Q. Okay. And trust, I guess, that supervisors and agents are
7 going to uphold the laws of the United States and the policies
8 of the Border Patrol, right?

9 A. Yes, sir.

10 Q. Okay. I'm sorry, I got lost.

11 You would want to know if a member of the management
12 team of the Border Patrol had violated policy, wouldn't you?

13 A. Yes.

14 Q. Certainly, that would impact on the trust we talked about?

15 A. Yes.

16 Q. You didn't perform any investigation yourself into the
17 allegations that were raised for indefinite suspension, did
18 you?

19 A. No, I didn't.

20 MR. ANTCLIFF: Pass the witness, Your Honor.

21 THE COURT: Ms. Kanof?

22 REDIRECT EXAMINATION

23 BY MS. KANOF:

24 Q. Chief Barker, Ms. Stillinger gave you a hypothetical where
25 she kept adding things. Do you remember that hypothetical?

1 A. Yes, ma'am.

2 Q. Okay. How do you remember that hypothetical? What was the
3 scenario that was painted?

4 A. That there was actually reason to -- you know, to shoot.

5 Q. Okay. If there was a reason to shoot, wasn't there a
6 reason to report it?

7 A. I would -- I would think so.

8 Q. Okay.

9 A. Yes.

10 Q. And if a shooting isn't reported, is that a factor that
11 investigators would take into consideration in determining
12 whether or not it was a good shoot?

13 MS. STILLINGER: Objection, Your Honor, it's
14 irrelevant. That's something for the jury to weigh.

15 MS. KANOF: She asked the questions, Your Honor.

16 THE COURT: Well, the question is for investigators,
17 right?

18 MS. KANOF: Yes.

19 THE COURT: Whether it was a good shoot?

20 MS. KANOF: Yes.

21 THE COURT: I'll overrule.

22 MS. STILLINGER: I didn't ask how they -- I didn't ask
23 how they make determinations on good shoots, Your Honor.

24 THE COURT: All right. Well, I'll overrule the
25 objection.

1 BY MS. KANOF:

2 Q. Do you remember my question?

3 A. Could you repeat the question, please?

4 Q. Okay. Would the fact -- given the circumstances that
5 Ms. Stillinger has given you in her hypothetical -- would the
6 fact that the agent did not report that shooting, that you
7 didn't find out about the shooting from anybody but a third
8 party, go into the investigator's determination of whether or
9 not it was a good shoot?

10 A. Yes, ma'am.

11 Q. Mr. Antcliff asked you, towards the end, about management
12 decision-making, and I want to -- about the assault. I want to
13 get the exact --

14 Other than Mr. Compean saying to you -- let's see. He
15 made it seem like -- speaking about Mr. Richards. He made it
16 seem like he wanted me to say no, and that's why I said it.

17 Did you have any indication, other than what
18 Mr. Compean told you when he was trying to keep from being
19 suspended, that Richards had done anything wrong?

20 A. There wasn't any.

21 MS. KANOF: Thank you.

22 THE COURT: Ms. Stillinger?

23 RE CROSS-EXAMINATION

24 BY MS. STILLINGER:

25 Q. Chief Barker, if -- if the person that was shot had a

1 weapon at the time he was shot, that certainly would be an
2 important factor in determining whether it was a good shoot by
3 the agent or not, wouldn't it?

4 A. Yes.

5 Q. Okay. Did you know, at the time that you were having these
6 hearings, or meetings on proposed suspension, that Osvaldo
7 Aldrete-Davila had filed a claim for \$5 million against the
8 Border Patrol?

9 A. I knew sometime that he did, yes.

10 Q. But you're not sure if you were aware of it at the time of
11 these meetings?

12 A. I'm not -- I'm not aware of when I did, but I know he did
13 file.

14 Q. Okay. And if you were aware that the only person that said
15 he didn't have a gun was a person that committed a serious
16 crime and then was making a claim for \$5 million against the
17 Border Patrol, wouldn't that be a factor that might weigh into
18 your consideration over whether he was a credible witness as to
19 him not having a gun?

20 A. The fact that he filed the claim?

21 Q. That he filed a claim for \$5 million and that he had
22 committed a serious offense against the United States. Would
23 that, when you're considering his credibility, if he's the only
24 witness that said he didn't have a gun, would that influence
25 your determination regarding his credibility?

1 A. Under the -- that's a very difficult question.

2 Q. It is a hard question. If you're comfortable answering --
3 I mean, you may not be able to put yourself in that situation,
4 if you didn't have the facts in front of you.

5 A. And because I -- no, I didn't have those facts, because
6 I -- I'm not aware that Mr. Davila said that he didn't have a
7 gun. A gun was never an issue, that I can recall, when I did
8 the oral reply. There was no mention of any gun by anyone.

9 Q. Uh-huh. Okay. So you were not aware that -- oh, I see
10 what you're saying. I see.

11 Well, let me -- you didn't have those facts, as I
12 stated -- you didn't have those in front of you, so it's hard
13 to say how you would have considered it.

14 A. Right.

15 THE COURT: Mr. Antcliff?

16 RE CROSS-EXAMINATION

17 BY MR. ANTCLIFF:

18 Q. Chief Barker?

19 A. Yes, sir.

20 Q. Indefinite suspension was a pretty foregone conclusion, on
21 April 20, 2005, for Agents Ramos and Compean, right?

22 A. On the 28th?

23 Q. The last meeting with Agent Compean.

24 A. It was a foregone conclusion? No. I think I said in my
25 report we would look at the evidence. And there was nothing

1 else presented after that, because it doesn't end there. You
2 know, we have to take a look at -- at the totality. I've got
3 to review the other information that's there, to make sure that
4 there isn't anything that supports what they are saying, before
5 I make a decision.

6 Q. And -- okay. We're here in a trial. They have not yet
7 been terminated from the Border Patrol, correct?

8 A. Correct.

9 Q. And I guess the possibility of them being reinstated down
10 the line certainly exists?

11 MS. KANOF: Objection, relevance, Your Honor.

12 THE COURT: All right.

13 MR. ANTCLIFF: Judge --

14 THE COURT: Where are we going?

15 MR. ANTCLIFF: There's been a lot of testimony about
16 indefinite suspension and what it means and why he did it. And
17 that's what I'm dealing with right now. I think that the fact
18 of the matter is that they are on suspension, not having been
19 terminated --

20 THE COURT: All right.

21 MR. ANTCLIFF: -- what does that mean?

22 THE COURT: I'll overrule the objection. You can
23 answer the question.

24 MR. ANTCLIFF: I don't remember what I asked.

25

1 BY MR. ANTCLIFF:

2 Q. At some point it's possible that these two agents could be
3 reinstated. Is that right?

4 A. There is a possibility.

5 Q. Okay. The failure to report the discharge of a firearm is
6 a violation of Border Patrol policy. Is that right?

7 A. Yes, sir.

8 Q. And it also carries an administrative penalty, correct?

9 A. Yes, sir.

10 MR. ANTCLIFF: Pass the witness.

11 MS. KANOF: Nothing further, Your Honor.

12 MS. STILLINGER: Nothing -- I'm sorry. Nothing
13 further, Your Honor.

14 THE COURT: All right. Is he free to go?

15 MS. KANOF: Please, Your Honor.

16 MS. STILLINGER: No objection, Your Honor.

17 MR. ANTCLIFF: No objection.

18 THE COURT: Thank you, Chief Barker. You're free to
19 go.

20 At this time, ladies and gentlemen, it's about 3:40.
21 We're going to go ahead and take our midafternoon break.

22 We stand in recess for 15 minutes.

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

24 THE COURT: You may be seated.

25 Anything we need to take up?

1 MS. KANOF: No, Your Honor.

2 MR. ANTCLIFF: No, Your Honor.

3 MS. STILLINGER: No Your Honor.

4 THE COURT: Stand in recess for 15 minutes.

5 (Recess; open court, parties present, jury not
6 present.)

7 THE COURT: You may be seated.

8 Are we ready to bring in the jury?

9 MS. KANOF: Judge, I was wondering -- you said
10 yesterday about one of the jurors not being available in the
11 morning.

12 THE COURT: No, Thursday. As a matter of fact, I'm
13 going to announce to the jury tonight, and to you guys, that
14 not only do we have that issue, but my Thursday is pretty
15 horrendous. So we are going to start -- the jury, I'm going to
16 have them come in around 12:30, to start at 1:00 or 1:30.

17 (Open court, parties and jury present.)

18 THE COURT: You may be seated.

19 You may call your next witness.

20 MS. KANOF: Thank you, Your Honor.

21 The United States calls David Blea.

22 (Witness sworn.)

23 MS. KANOF: May I proceed, Your Honor?

24 THE COURT: You may.

25

1 DAVID JOSEPH BLEA, GOVERNMENT'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MS. KANOF:

4 Q. State your name, please.

5 A. David Joseph Blea.

6 Q. How are you employed?

7 A. Agent with the United States Border Patrol.

8 Q. How long have you been an agent with the United States
9 Border Patrol?

10 A. December of 1994.

11 Q. Are you -- so 1994?

12 A. 12 years this year.

13 Q. Okay. And what are your duties and responsibilities with
14 the Border Patrol?

15 A. I'm a supervisor Border Patrol agent at the Santa Teresa
16 Border Patrol station. I'm also the El Paso sector evidence
17 team commander.

18 Q. Is the El Paso -- is the Santa Teresa, New Mexico, Border
19 Patrol station part of the El Paso sector?

20 A. Yes, it is.

21 Q. So the fact that you're physically located in New Mexico
22 does not limit your responsibilities with regard to the El Paso
23 area?

24 A. No, ma'am.

25 Q. Okay. And you said you're the sector evidence team

- 1 commander?
- 2 A. Yes.
- 3 Q. What's the sector evidence team?
- 4 A. We res- -- we respond to --
- 5 Q. First, what is it comprised of? Who is it comprised of?
- 6 A. The evidence team is comprised of supervisory Border Patrol
- 7 agents, senior Border Patrol agents selected from stations
- 8 throughout sector.
- 9 Q. Okay. And how is an agent selected to be on the evidence
- 10 response team?
- 11 A. When there is a time where we need to have agents join the
- 12 team, a memo is put out by the chief. And then, if you would
- 13 like to join the team, you put a memo in to the chief
- 14 requesting to be -- requesting consideration to be put on the
- 15 team.
- 16 Q. It can be any Border Patrol agent, correct?
- 17 A. Yes, ma'am. I believe all you need is three years in the
- 18 Border Patrol.
- 19 Q. Okay. And, once selected to be on the team, does a member
- 20 have to be educated?
- 21 A. Trained?
- 22 Q. Right.
- 23 A. Yes, ma'am.
- 24 Q. Okay. Explain to the jury what the training process is for
- 25 a sector evidence team member.

1 A. It's a one-week basic class given at the Mattox training
2 facility, which is right off Montana, at the Border Patrol
3 headquarters. It's a one-week basic evidence technology, where
4 you learn everything from how to handle a scene to basic
5 fingerprinting, things like that.

6 Q. Okay. And is there any training after the graduation from
7 that one-week course?

8 A. Everyone who is able to, and within commuting area, is
9 asked to go -- to ride along with the El Paso Police
10 Department's crime scene unit for one month.

11 Q. Okay. Now, Agent Blea, what exactly does the sector
12 evidence team do once in place?

13 A. We respond to and investigate critical incidents in --
14 throughout sector. They may be reportable shootings, vehicle
15 accidents, stuff along those lines.

16 Q. Okay. And what is the purpose of your response?

17 A. To look for any evidence and compile an administrative
18 investigation and submit it to the chief patrol agent.

19 Q. Okay. And the chief patrol agent, in February of 2005, was
20 Luis Barker?

21 A. Yes, ma'am.

22 Q. Okay. And do you -- you don't draw any conclusions based
23 on your investigation, do you?

24 A. None whatsoever.

25 Q. Just the facts, ma'am?

- 1 A. Yes, ma'am.
- 2 Q. Okay. How many people are on the team?
- 3 A. Currently, I have -- an exact number, I don't know. It's
4 right around 40, I believe.
- 5 Q. Okay. And how many usually go out to a critical incident,
6 as you called it?
- 7 A. When I get the call, depending on the incident, it may be
8 anywhere from two to five or six, depending on --
- 9 Q. Who makes -- who makes the determination of how many agents
10 should respond to a critical incident scene?
- 11 A. I do.
- 12 Q. And what information do you receive that you base that
13 opinion on?
- 14 A. Number one, what type incident, whether it's a shooting,
15 whether it's the type of vehicle accident, whether there's
16 deaths involved. Once I get a basic picture of what kind of
17 situation it is, then I will call out the appropriate personnel
18 to handle it.
- 19 Q. And when -- how do you determine what members of that
20 40-member team will be the ones that will go out and handle a
21 critical incident scene investigation?
- 22 A. Whoever answers their telephone.
- 23 Q. Okay. It's a collateral duty?
- 24 A. Yes, ma'am.
- 25 Q. So the likelihood is, if somebody is on duty when you call,

1 they can't come out?

2 A. If they're on duty, then they can come out.

3 Q. Okay. Then it's more likely that they would come out?

4 A. Yes.

5 Q. Okay. And do you have a rotating list or something like
6 that?

7 A. At the -- now, at the present time, we rotate agents in
8 every month for a one-month period. That started last year.

9 Q. Was it in effect on February 17, 2005, the rotation system,
10 if you recall?

11 A. I can't remember that.

12 Q. In February -- I'm going to draw your attention to February
13 17th of last year, just over a year ago.

14 Was an individual by the name of Ignacio Ramos a
15 member of the sector evidence team?

16 A. Yes.

17 Q. An active member?

18 A. Yes.

19 Q. Okay.

20 A. Well, he was not -- well, by active, I consider active as
21 someone who has participated, you know, in callouts, in -- in
22 some of the training. Mr. Ramos had not, since I've been the
23 commander, responded to any scenes.

24 Q. Do you know whether he had responded to a scene prior to
25 the time of you being a commander?

1 A. I believe on one occasion, that I'm aware of.

2 Q. And, in fact, do you know when he went to that one-week
3 training to become a member of the sector evidence team?

4 A. That was when I first joined the evidence team.

5 Q. So you were in the same class at the same time?

6 A. Yes.

7 Q. And when was that?

8 A. I want to say it was -- I don't want to guess. I think it
9 was in '99 -- 1999. I don't want to guess, though. I'm not
10 sure.

11 Q. How does it occur that you find out that there has been a
12 critical incident that you need to respond to?

13 A. Usually what will happen is, if something happens at a
14 particular station, they will call our sector radio who will,
15 in turn, notify an assistant chief patrol agent, who's in
16 charge of the evidence team. And he will make the
17 determination whether or not the team gets called out.

18 If it's made -- if he makes the determination that
19 we're going to go -- get called out, he calls me, and I go.

20 Q. If a critical incident occurs, for example, the discharge
21 of a firearm, not within the confines of a qualification or
22 official Border Patrol exercise, what are the responsibilities
23 of the agent at the scene who had been involved in that
24 shooting with regard to the sector evidence team?

25 A. Are you talking about the agent -- an agent who actually

1 shot the weapon, what their responsibilities are?

2 Q. Right. If they're the only one on the scene.

3 A. Oh, just going back to our sector firearms policy, you're
4 supposed to immediately notify a supervisor.

5 Q. Okay. And what about -- what do they have to do with
6 regards to the scene itself?

7 A. Try and preserve it. It would be nice if they would do
8 that. Whether or not it's written in a policy somewhere, I'm
9 not sure.

10 Q. What is meant by crime scene protection?

11 A. Preserving any evidence that may be at the scene. Not
12 allowing unnecessary people to enter the scene which may
13 contaminate the scene.

14 Q. And the question I'm asking you is: Is the importance of
15 crime scene protection taught at that one-week course?

16 A. Yes.

17 Q. Okay. And you said preserving the scene. What is an
18 original scene?

19 A. I would consider an original scene a scene in which no
20 outside forces, if you will, have entered the scene after it
21 had occurred.

22 Q. Would that include mother nature?

23 A. Correct.

24 Q. So if there's possibly blood, say, at the scene, should the
25 individual agent that's at the scene waiting for the sector

1 evidence team to respond attempt to cover that area from, say,
2 the rain?

3 A. I would not say that an agent's responsible for doing that.
4 I would --

5 Q. Go ahead.

6 A. I would say it's more the responsibility of the supervisor.

7 Q. Okay.

8 A. The agent should notify the supervisor, and it should be
9 the supervisor's responsibility to take care of the scene.

10 Q. Okay. So the agent notifies the supervisor, and the
11 supervisor takes over, until you get there, protecting the
12 scene?

13 A. Correct.

14 Q. Okay. Now, the location of the evidence can be indicators
15 of what occurred. Is that correct?

16 A. Yes.

17 Q. For example, what, if anything, are you taught regarding
18 shell casings?

19 A. As far as evidence on the scene?

20 Q. Yes.

21 A. When there are shell casings at a scene, they may determine
22 the general area where someone may have fired a weapon, if they
23 haven't been moved.

24 Q. So you would hope, when you went out -- well, do you ask,
25 when you get to the scene, whether the shell casings have been

1 moved?

2 A. When I get to a scene, I will talk to the scene supervisor,
3 and I'll get a general idea. If they tell me there's shell
4 casings, I will kind of try to get an idea, is that where they
5 landed, is that where he shot from? Or, were they moved? Was
6 anything touched? I'll kind of try to answer those questions
7 when I get there.

8 Q. Oh, if an individual had shot multiple times, would there
9 be shell casings, if they hadn't been moved?

10 A. Yes.

11 Q. If those casings are moved and not present when you arrive,
12 would that impede your investigation?

13 A. Yes.

14 Q. Substantially?

15 A. Yes.

16 Q. Why?

17 A. If there had been shots fired, the shell casings would show
18 that there had been shots fired. The lack of shell casings may
19 or may not prove that there was a shooting.

20 Q. Okay. What about blood? How do you know whether you
21 should look for evidence of blood?

22 A. Well, depending on the scene, if I get to a scene and it
23 was a shooting in which there was a suspect, and someone fired
24 at the suspect, and the suspect is no longer there, absconded,
25 what have you, as the evidence team, we would look for signs

1 that that suspect was shot.

2 Q. This is --

3 A. And --

4 Q. -- is this taught to you in that one-week course?

5 A. Yes.

6 Q. Okay. What evidence would you look for to determine
7 whether that individual had been shot?

8 A. Blood on the ground. First -- if we got to the scene --
9 depending on the scene. If it's an area where there's a lot of
10 dirt, we can follow the footprints, if it hasn't been
11 contaminated. And then along those lines where the footprints
12 were, we could look for any signs of blood.

13 Q. Let me ask you: Does Border Patrol -- does Border
14 Patrol -- you were a patrol agent before you became the
15 supervisor and the sector evidence team commander, correct?

16 A. Yes.

17 Q. Are Border Patrol agents that even aren't evidence team
18 members taught to follow sign?

19 A. Depending on the station you're at. If you're at a station
20 along the border where there's going to be dirt, you're taught
21 sign.

22 Q. What's sign?

23 A. Footprints in the sand, in the mud, on wet grass.

24 Q. So even an agent who isn't on the sector evidence team, if
25 they're in the El Paso sector, learns how to follow footprints,

1 correct?

2 A. I would say, yes.

3 Q. And were you ever an agent in the El Paso sector patrolling
4 the border?

5 A. Yes.

6 Q. Did you use your education in following sign to apprehend
7 individuals?

8 A. Yes.

9 Q. Frequently?

10 A. Yes.

11 Q. Now, with regard to footprints, would that also tell you
12 what direction somebody had proceeded in?

13 A. Yes.

14 Q. Could you tell from a footprint whether the person was
15 running or walking?

16 A. Yes.

17 Q. How do you tell?

18 A. The stride, the length between the footprints. Normal
19 stride, you can -- you can take a normal stride next to
20 someone's footprints and then compare it to the footprints
21 you're looking at. That, along with someone who's walking,
22 their toe is not going to dig into the ground as much as
23 someone who is running. When they hit the sand, their toe is
24 going to push down, so you will see that.

25 Q. Could you tell, looking at sign, footprints, whether

1 someone is limping?

2 A. I'm not able to.

3 Q. You don't know? Okay.

4 What other -- we talked just very briefly about blood.

5 In order to search for blood, first of all, you have --

6 I'm sorry. Yes, sir?

7 A. Just going back to the limping, if it was an exaggerated

8 limp, or he's limping and then dragging his foot, you would

9 then be able to see.

10 Q. Okay. Back to blood. What do you need to know, when you

11 arrive at the scene, to determine whether you should look for

12 blood or not?

13 A. I would need all the circumstances of the shooting. How

14 many shots were fired. Whether there were suspects, not

15 suspects. Whether they're in custody, not in custody.

16 Direction, where he was standing. Location of the agents.

17 Location of the suspect.

18 Q. In order to do a full investigation you would have to know

19 all of that, correct?

20 A. Yes.

21 Q. And, in order to determine whether to -- to check for

22 blood, you would definitely need to know the things you

23 testified about?

24 A. Yes.

25 Q. Okay. What if it's just a little tiny bit of blood? Is

1 there a way to detect that?

2 A. Depending on whether it's in the sand. It might get
3 absorbed. It -- I would say, depending on the amount and the
4 conditions of the scene, a little bit of wind over a drop of
5 blood, you're not going to be able to find it.

6 Q. Okay. But you have some kind of process that will search
7 for blood, even if it's not visible?

8 A. No. We can borrow some materials from the El Paso Police
9 Department, which is a Luminol product, which -- but we have
10 never -- we have never employed that -- that instrument.

11 Q. Well, have you ever -- you haven't had a need to. Is that
12 what --

13 A. No, we have never used it.

14 Q. Okay. You talked about shoeprints. What about tire
15 tracks? Is it important to preserve the integrity of tire
16 tracks at a scene?

17 A. Yes.

18 Q. Why?

19 A. They may show -- if you're looking at tire tracks --
20 whether it's a suspect vehicle, depending on whether he was
21 braking or not, you might be able to determine the speed of the
22 vehicle, direction of the vehicle, where it came from, that
23 type of thing.

24 Q. Okay. You talked about shell casings. Are shell casings
25 easily moved from the location where they land?

1 Let me rephrase my question.

2 Regarding protecting the crime scene, what are agents
3 instructed to do -- or -- sorry, sector evidence team agents --
4 instructed to do to protect the presence of shell casings?

5 A. In the basic evidence technology course, the best course of
6 action to preserve an evidence scene is to stay out of it.
7 That's not always possible. But you try, within the confines
8 of the incident itself.

9 Sometimes if there's injuries, the paramedics will
10 arrive. You've got to let them in. They need to do their job.
11 Safety is foremost -- it's taught is foremost, whether it's the
12 safety of the public, any individuals. But you are also
13 taught, Do not allow people in who do not need to be in.

14 Q. Why does Border Patrol have a sector evidence team?

15 A. We provide the chief with a comprehensive administrative
16 investigation.

17 Q. What other use is made of your investigation, other than
18 for the chief to use it?

19 A. I know copies of our cases are sent to our OIA. They are
20 used in LMR proceedings.

21 Q. What's that?

22 A. The labor management.

23 Q. Are they used in criminal proceedings?

24 A. I am not aware. I haven't been party to one which has,
25 whether it has or not.

1 Q. Okay. Well, you prepared a notebook for this case -- sort
2 of late in the day. But, in October, did Special Agent
3 Christopher Sanchez ask you to do whatever you could do with
4 regard to something that had occurred many months before?

5 A. Yes.

6 Q. And you prepared a notebook, correct?

7 A. Yes.

8 MS. KANOF: Approach the witness, Your Honor?

9 THE COURT: You may.

10 BY MS. KANOF:

11 Q. I'm going to hand you what's been marked as Government's
12 Exhibit Number 99 and ask: Is that the notebook that you
13 prepared --

14 A. Yes, ma'am.

15 Q. -- for our purposes?

16 A. Yes, ma'am.

17 Q. Okay. When -- when you prepared that notebook, though,
18 it -- well, it was in October, right?

19 A. Yes.

20 Q. Okay. When -- so, basically, all you were able to do is
21 take pictures?

22 A. We took pictures. We also spent a good -- I think over
23 three hours with the metal detector. We did a strip search of
24 the area with a metal detector, trying to look for any shell
25 casings or any other evidence, whether it was shell casings or

1 the fired bullets, maybe some -- ones that had gone into the
2 ground.

3 But we really couldn't narrow down the actual place
4 where we needed to look, so it was kind of broad. And we
5 didn't come up with anything.

6 Q. Okay. So still, in October, Special Agent Sanchez took you
7 out to the area he understood that the shooting occurred. Is
8 that correct?

9 A. I'm sorry?

10 Q. Agent Sanchez took you out to the area that he understood
11 the shooting had taken place?

12 A. Yes, he told us about it.

13 Q. Okay. And you did try to find shell casings. Is that
14 correct?

15 A. Yes.

16 Q. There's a ditch that has water in it immediately -- on the
17 American side, immediately before you get to the levee road,
18 correct?

19 A. Yes.

20 Q. Did he tell you that there was a suspicion that the shell
21 casings had been thrown in the ditch?

22 A. Yes.

23 Q. What, if anything, did you do in order to try to locate the
24 shell casings in this case?

25 A. Again, we utilized the metal detector from, I guess, Jess

1 Harris Road. We went a good 20 or 30 yards on both sides of
2 the -- of that road, and then up and down one side on the south
3 side of the canal and up and down on the north side.

4 Q. Did you find other shell casings out there, other than .40
5 caliber Beretta shell casings?

6 A. I don't believe we found -- there was a lot of old metals
7 in the ground, so it was kind of hard for the metal detector.
8 It was always hitting -- when they built up the sides of
9 those -- of that canal, there was barbed wire fence, old nails.
10 So it was constantly hitting on things.

11 Q. Okay. But actually in your view, visually, were there a
12 lot of shell casings lying around out there?

13 A. No, we didn't find any.

14 Q. Okay. And with regard to the -- you said the other thing
15 that you would find, other than shell casings -- wait. What
16 is -- what is a shell casing, by the way? I don't think I ever
17 asked that question.

18 A. The spent shell casing is what's thrown out of the weapon
19 after the fired bullet has gone out of the chamber.

20 Q. Okay. So there's two metal objects that come from a gun
21 when it's shot -- when it's discharged, correct?

22 A. Yes. I would say yes.

23 Q. The bullet and the casing?

24 A. Yes.

25 Q. Okay. So, in addition to looking for casings, when you go

1 out to a scene and you know there's multiple bullets that have
2 been discharged from a weapon, you also look for the bullets?

3 A. Correct.

4 Q. And you look for them where?

5 A. If we know the direction where they were firing to, then we
6 will look in that direction.

7 Q. Did Agent Sanchez indicate to you the direction that he
8 understood the agents were firing in on February 17th?

9 A. Yes.

10 Q. Did you attempt to find any bullets out there in the vega?

11 A. Yes.

12 Q. Were you successful?

13 A. No.

14 Q. By the way, were there bullets laying around out on the
15 vega?

16 A. No.

17 Q. Were there casings laying around out on the vega?

18 A. No.

19 Q. Okay. And you didn't even bother looking for footprints or
20 blood in October.

21 A. No.

22 Q. Is that correct?

23 If you -- when you're protecting a scene -- you talked
24 about the importance of protecting a scene. Is the importance
25 of making sure that evidence is not tampered with, destroyed or

1 altered, more or less important when you're responding to a
2 shooting?

3 A. As compared to?

4 Q. As compared to an accidental discharge of a firearm.

5 A. Yes.

6 Q. Okay. When you're searching the crime scene, are you --
7 are you trying to provide evidence so a determination can be
8 made as to whether or not a crime was committed?

9 A. I -- my job, as the evidence team, we provide sector with
10 any and all evidence we find. It is up to them to determine
11 what happens after that.

12 Q. Do you limit that evidence to just determining whether or
13 not it's a -- how the shooting took place?

14 For example, if you know that there's marijuana that
15 has been seized, would you do anything in regard to that
16 seizure?

17 A. Yes.

18 Q. Okay. What would you do?

19 A. Well, in this case, if there was a vehicle involved, we
20 would dust for fingerprints, the van, inside and out, the
21 doors -- especially if the suspect had absconded. We would
22 attempt to get some fingerprints from the vehicle, in order to
23 try and identify the suspect.

24 Q. Okay. So if a suspect is absconded, and you hope some day
25 to be able to prosecute that person, you try to identify them.

- 1 Is that correct?
- 2 A. Correct.
- 3 Q. In addition to the fingerprints, what else do you do, if
4 you have a vehicle, to determine who it was that had the
5 marijuana?
- 6 A. We would also fingerprint the marijuana.
- 7 Q. Okay. And would you look for documents?
- 8 A. Anything in the vehicle, from title to -- we would -- we
9 would go through the entire vehicle.
- 10 Q. Okay.
- 11 A. Sometimes there's a wallet -- who knows -- cell phone.
- 12 Q. And what do you do with the information that you gather in
13 this investigation?
- 14 A. If it's something that we cannot process, whether it's a
15 firearm or documents, we will try and get it through -- whether
16 it's a different agency who has that capability.
- 17 Q. Okay. When you are conducting, or implementing a crime
18 scene search, do you take external factors into consideration
19 in implementing that search?
- 20 A. As far as the weather?
- 21 Q. That would be one of them. Do you take weather conditions
22 into account?
- 23 A. Weather, lights --
- 24 Q. By light, you mean time of day?
- 25 A. By time of day, yes.

1 Q. Okay.

2 A. If it's at night, we'll go, we will try and find as much as
3 we can. We'll cordon it off. We'll mark any evidence, collect
4 what we can. And then any time it happens during the day -- I
5 mean, at night, we would always come back during the day.

6 Q. Okay. Do you have anybody stay out there at night, if
7 it's -- say, somebody was shot?

8 A. Depending on the scene. If it's -- if it's a scene where
9 someone was shot, I don't care if it happened at 10:00 at
10 night, we would probably still be there till the next morning.

11 Q. Okay. You would stay out there, if somebody had been
12 struck by a bullet?

13 A. Yes.

14 Q. Okay. Whether it be the agent or someone that was
15 trafficking in marijuana?

16 A. Correct. Unless it was unsafe.

17 Q. Okay. What would be --

18 A. To be a -- well, to be along the border, if it was
19 receiving gunfire from the other side, I wouldn't put my guys
20 in jeopardy, or any other agent sitting on the levee.

21 Q. Or if there was, perhaps, 50-mile-an-hour winds out there
22 in March?

23 A. Yeah.

24 Q. Okay. Do you have the ability to do an aerial search?

25 A. With the cooperation of our sector pilots, for every

1 critical incident we are called to, they usually -- within
2 the -- we try and get it the same day. It's not always
3 possible, but within the next few days we'll go and take aerial
4 photographs.

5 Q. Okay. And have you ever -- aside from aerial photographs,
6 have you ever used air operations for another purpose in
7 investigating a crime scene?

8 A. No.

9 Q. You don't look for people?

10 A. We don't. My guys, the only time we go up in the
11 helicopter is to take photographs.

12 Q. Okay. And you actually did do that for us in this case,
13 correct?

14 A. Yes.

15 Q. Now, what's gunshot residue?

16 A. It's what's left after the explosion of the fired
17 projectile coming out of the shell casing. When it separates,
18 there's a mini explosion, and that -- I don't know -- I don't
19 know how to say it -- gunpowder, maybe it is, I'm not sure.
20 But I think it's gunpowder. It gets -- it disperses from the
21 gun, and it lands on anything that's close.

22 Q. Okay. And what, if anything, do you do with regard to
23 testing for gun -- well, first of all, why would you test for
24 gunshot residue?

25 A. If it tested positive, it would show that that -- whoever

1 was tested -- fired a weapon recently.

2 Q. Okay. And do you -- do you do that? Do you preserve for
3 gunshot residue testing?

4 A. We have never.

5 Q. You have never done it?

6 A. I have never.

7 Q. Are you taught how to do it, however?

8 A. Yes.

9 Q. Okay. So, suppose you had an individual who claimed that
10 the person that they had shot had shot at them.

11 A. Uh-huh.

12 Q. Would you have the ability to test for gunshot residue on
13 the nonagent shooter?

14 MR. PETERS: Objection, Your Honor, assumes facts not
15 in evidence.

16 THE COURT: I'll sustain the objection.

17 BY MS. KANOF:

18 Q. Okay. But you have the capability to test for gunshot
19 residue, correct?

20 A. Yes, ma'am.

21 Q. Okay. So suppose you go out to a crime scene -- and, by
22 the way, is there anything you've testified to you that you did
23 not learn in your one-week course?

24 A. No.

25 Q. Suppose that you go out to a scene and there are shell

1 casings. What do you do to those shell casings?

2 A. When we locate evidence, we'll mark it with either
3 fluorescent flags, numbered markers, what have you. We will
4 make a rough sketch of the scene, take distances from a known
5 point, so that we can use them later to make a diagram.

6 Once that -- the shell casings have been marked and
7 photographed, we will then lift them and preserve them as
8 evidence until the case is complete.

9 Q. What is preserving evidence?

10 A. Holding on to it, maintaining the chain of custody,
11 until -- keeping -- actually, keeping it in our office.

12 Q. So if you had found shell casings -- if you had been -- let
13 me just ask you: Were you called out by anyone on February
14 17th, 2005, to do a crime scene search?

15 A. No.

16 Q. And if you had been called out on that date, and found
17 casings, what would you have -- after you had marked the
18 location of the casings and photographed them, what would you
19 do with them?

20 A. I would hold on to them.

21 Q. Okay. And how do you hold on -- physically, how is that
22 done?

23 A. We have a locked evidence locker within a locked evidence
24 room in our station.

25 Q. Why are you holding on to this evidence?

1 A. In case it's needed in court.

2 Q. So is one of the purposes of your investigation
3 preservation of evidence for eventual courtroom proceedings?

4 A. If need be.

5 Q. You said something about making a sketch. What kind of
6 sketches do you make out at the scene?

7 A. A basic field sketch is nothing more than someone going out
8 to the scene with a pad and a pencil, drawing what they see,
9 basic layout, street, tree, whether it's shell casings, a
10 weapon, a knife, skid marks.

11 On that field sketch we'll take measurements and put
12 them on there, whether it's length of skid marks, distance from
13 weapon to shell casing, distance from suspect to agent. It
14 just depends on the situation.

15 Q. Why do you take all those measurements and put them in a
16 sketch?

17 A. It provides more than what a photograph can show. It
18 provides more of a permanent visual record of the distances and
19 spacial relationships between pieces of evidence.

20 Q. Do you know for what purpose those are used later on down
21 the road?

22 A. I don't understand your question.

23 MS. KANOF: May I approach the witness, Your Honor?

24 THE COURT: You may.

25

1 BY MS. KANOF:

2 Q. I'm going to hand you what's been marked and admitted into
3 evidence as Government's Exhibits 30 and 31, photographs with
4 some legends on them.

5 And, first of all, let me ask you: Did you take those
6 pictures?

7 A. No, I did not.

8 Q. Okay. Who took those pictures, if you know?

9 A. I don't want to guess. Someone on our team who I sent up
10 there.

11 Q. Okay. But by "you," I meant the sector evidence team. I
12 apologize for not being specific.

13 Did the sector evidence team, at the request of Agent
14 Christopher Sanchez, take some aerial photographs of the scene?

15 A. Yes.

16 Q. And also, on request of Special Agent Sanchez, did you do
17 some diagramming with regard to those two photographs?

18 A. Yes.

19 Q. And is that what you mean by a crime scene sketch?

20 A. Well, this is more computer-generated. A crime scene
21 sketch is done with your hand.

22 Q. Okay.

23 A. Just drawn on the scene, on -- whether it's lined paper,
24 blank paper.

25 Q. Just so the jury knows what I'm referring to, this is

1 Government's Exhibit 30, an aerial photograph of Jess Harris
2 Road, the levee, and part of the vega.

3 And you said that this line down here is computer
4 generated?

5 A. Yes.

6 Q. How do you -- how do you computer generate something like
7 that? I don't understand.

8 A. We have a diagramming program called Vista FX that we use.
9 We can go to a scene and determine the angle of the canal, the
10 angle of the levee road. And then, back in our office, we can
11 put that on the computer.

12 Q. You input that information into the computer and it spits
13 out a diagram?

14 A. It's more than just typing, actually. You do it on the
15 computer, but --

16 Q. You actually draw it on the computer?

17 A. Yeah. Yes and no.

18 Q. Anyway, did you go out and measure the distances and create
19 this exhibit?

20 A. Yes.

21 Q. Okay. What, if anything else, did you do with regard to
22 assisting Agent Sanchez, other than looking for the casings and
23 taking aerial photographs?

24 A. We were asked to try and lift fingerprints from the van.

25 Q. Okay.

1 A. And we were able to, I believe, lift a few prints. But
2 when we had them taken to the fingerprint section of the
3 El Paso crime scene unit, they were unable to get any hits on
4 them.

5 Q. Okay. And isn't that what you would normally do with that
6 information?

7 A. Yes.

8 Q. Okay. You talked about taking photographs. What is the
9 purpose of taking a photograph out at the crime scene?

10 A. It shows, if any evidence hasn't been contaminated, or the
11 scene hasn't been contaminated, it shows it in a somewhat
12 pristine form.

13 Q. Okay. A true and accurate representation, as we say, when
14 we admit a picture?

15 A. Yes.

16 Q. And do they actually teach you, in that one-week course,
17 the best way to take photographs of a scene?

18 A. Yes.

19 Q. Okay. What do they teach you about that?

20 A. Start far -- far from the scene, work your way in, take
21 pictures of any and all evidence. If need be, you can utilize
22 a scale, a ruler, to show sizes of any objects.

23 Q. When you have gathered all of the evidence at the scene
24 that you're going to be able to gather, what do you do next?

25 A. If we're complete at the scene, then we go back to our

1 offices, and we'll spend the next two weeks to two months
2 completing our investigation.

3 Q. What else does your investigation entail, other than going
4 out to the scene?

5 A. Well, we retrieve the radio transcript from our sector
6 radio.

7 Q. Why?

8 A. It would show, if they're using their radio, whether they
9 said shots fired, or someone is after me, or I got drugs, or
10 whatever happened.

11 Q. Okay. And what else do you do? Do you do anything with
12 regard to any potential witnesses that were out at the scene?

13 A. If they haven't been already identified and talked to, we
14 may go and interview them.

15 Q. Okay. What do you do with the interviews?

16 A. They're all -- they're all added to our report.

17 Q. You didn't have a -- since you weren't called out on
18 February 17th, you never interviewed anybody in this case,
19 correct?

20 A. No.

21 Q. Okay. Do you obtain supporting documentation -- okay.
22 What, if anything, do you do to obtain supporting documentation
23 for people in vehicles, or other property that's involved in
24 the incident?

25 A. Whether -- if there's property damage, private property

1 damage, we'll try and locate the owner of the property, get his
2 name. If he was a witness, maybe get a witness statement. I
3 don't know if that's where you're --

4 Q. Okay. And do you ever -- what -- okay.

5 So now you have all your evidence. Do you analyze it?

6 A. Up to a point. Usually, we'll just -- any evidence we get
7 is just obtained from the scene. We don't do any kind of
8 forensic, you know, if that's what you're asking.

9 Q. No. I was -- I was asking -- what I meant to ask you was,
10 in -- do you eventually generate a report?

11 A. Yes.

12 Q. Okay. And, as a part of the report, do you analyze the
13 evidence for its significance with relationship to the incident
14 that occurred?

15 A. I -- we do not draw any conclusions. But whether -- if it
16 was a vehicle accident, or there was a question of a vehicle, I
17 might be able to determine speed from skid marks, from other
18 factors. And then I would take measurements of the skid marks,
19 plus the drag factor of the road, and then I would use that to
20 try and determine speed.

21 Q. Okay. So you do make some conclusions?

22 A. Yes.

23 Q. Okay. And now you're done. You've crea- -- you've
24 finished your report. What do you do with your report?

25 A. I submit it to the chief.

1 Q. Do you know how it's used by the chief?

2 A. No.

3 Q. Okay. You're done, then, once you've submitted your
4 report. Is that correct?

5 A. Yes.

6 Q. Unless somebody drags you in front of a jury to testify
7 about it?

8 A. Yes.

9 MS. KANOF: May I have a moment?

10 THE COURT: Sure.

11 MS. KANOF: Pass the witness.

12 THE COURT: Go ahead, Mr. Peters.

13 MR. PETERS: May I proceed, Your Honor?

14 THE COURT: Yes, you may.

15 CROSS-EXAMINATION

16 BY MR. PETERS:

17 Q. Is it Agent Blea? Is that how you pronounce your name?

18 A. Yes.

19 Q. Because I had only seen it in writing before today, so I
20 want to pronounce your name correctly.

21 When were you contacted and asked to process the scene
22 at the end of Jess Harris Road?

23 A. I don't recall the exact date.

24 Q. Well, do you have your -- do you have this notebook in
25 front of you still?

- 1 A. Yes.
- 2 Q. Would it refresh your memory to look at the first page of
3 it?
- 4 A. October 3rd.
- 5 Q. Of what year?
- 6 A. 2005.
- 7 Q. You weren't asked to go over there -- Ms. Kanof asked
8 whether you were asked to go over there in February 2005, and
9 you said no.
- 10 Were you asked to go over there in March 2005?
- 11 A. I believe it was sometime after. I'm not sure.
- 12 Q. April 2005?
- 13 A. I -- I'm not -- I don't want to guess.
- 14 Q. The first time you were asked to go over there was in
15 October 2005, or some eight months after the incident in
16 question?
- 17 A. I was contacted to go over there, I believe while I was on
18 annual leave. They were contacted to go over -- I don't want
19 to guess, but it was maybe a month or two after.
- 20 Q. Well, do you know this or not?
- 21 A. What's that?
- 22 Q. Is this something you know or is it something you don't
23 know?
- 24 A. No, we did.
- 25 Q. So your --

1 A. Our evidence team was contacted, but we were not told any
2 kind of -- anything about circumstances of any shooting of
3 anything. We were asked to go out and process a van for
4 fingerprints, and that's what we did.

5 Q. Okay. You were asked to process a van for fingerprints.
6 And do you remember what month that was?

7 A. No, I don't.

8 Q. Okay. Was the van, at the time you were processing it, was
9 it located down on Jess Harris Road?

10 A. No.

11 Q. Where was it?

12 A. I do not know. It was --

13 Q. It was in the custody of the Border Patrol, right?

14 A. I do not know. I was not -- I didn't go.

15 Q. Okay. But as far as actually going to the scene, you
16 didn't do that until October, correct?

17 A. Correct.

18 Q. Now, in terms of the integrity of a crime scene, the closer
19 it is to the event in question the less degradation you have,
20 correct?

21 A. Correct.

22 Q. Okay. If, for example, you were looking for bullets that
23 may have been fired, it would be more likely that you could
24 have found those a month or six weeks after the shooting than
25 eight months after the shooting?

- 1 A. Depending on -- on the terrain. I mean, a bullet lodged in
2 a tree is going to be there for a long time.
- 3 Q. Right. But in -- but in -- but as a general principle, the
4 longer you wait, the worse off you are?
- 5 A. Correct.
- 6 Q. And in -- in October, when you -- when you were asked to go
7 and do a crime scene investigation in October, were you told,
8 well, that this case was scheduled for trial that month?
- 9 A. I don't recall.
- 10 Q. Were you called in February to fingerprint the van?
- 11 A. I wasn't, but the evidence team was.
- 12 Q. At the time that it was seized? At or about the time that
13 it was seized?
- 14 A. Well, in February, when it happened?
- 15 Q. Right.
- 16 A. No, we did not. I'm sorry.
- 17 Q. Okay. This -- you were called to investigate and
18 fingerprint the van, not in connection with the marijuana
19 seizure, but in connection with this case, right?
- 20 A. I do not -- we were not told what the circumstances were
21 about the van. We were -- we were first told to go and
22 fingerprint the van.
- 23 Q. Okay.
- 24 A. We were not told any circumstances about it.
- 25 Q. But you don't remember exactly when that was?

1 A. I -- when they fingerprinted the van, no. I would have to
2 research. But I want to say it was maybe a month or a month
3 and a half after.

4 Q. Okay. And what about fing- -- were you asked to
5 fingerprint anything else?

6 A. No, I don't believe so.

7 Q. Are you ordinarily called to the scene to fingerprint, say,
8 bales of marijuana, if they're seized?

9 A. Not -- not ordinarily. We have in the past. It is not a
10 frequent occurrence, no.

11 Q. Not --

12 A. Not normally.

13 Q. Or cell phones, maybe?

14 A. No.

15 Q. Are agents in the field instructed not to handle evidence
16 because they may destroy fingerprints?

17 A. I'm not sure if there's a policy that -- each trainee at
18 each station throughout sector is given a field training
19 officer. And what each person tells them, I'm not sure.

20 Q. All right. Well, in terms of trying to recover
21 fingerprints from, say, a bale of marijuana, you would be
22 better able to recover the fingerprints of a suspect, or
23 perpetrator, if that bale of marijuana weren't handled by the
24 agents who seized it, right?

25 A. Correct. We also take fingerprints from -- we pull the

1 tape up. We can get fingerprints from the sticky side of tape,
2 which would have been left by only a suspect.

3 Q. Right. Or by somebody who helped him --

4 A. Right, wrap the marijuana.

5 Q. -- wrap the marijuana.

6 Yeah. And the same would be true, for example, of a
7 cell phone, right?

8 A. Correct.

9 Q. But you're aware of no policies that prohibit Border Patrol
10 agents, for example, who make a seizure, from handling that
11 type of evidence?

12 A. No.

13 Q. As far as gunshot residue, okay, what that's typically used
14 for is determining whether a person fired a weapon at a
15 particular time, correct?

16 A. I would say yes.

17 Q. Typically, you take the gunshot residue off the hand of
18 somebody that may or may not have been a shooter. And if it's
19 there, that shows that they probably fired a gun, right?

20 A. Right.

21 Q. In terms of trying to find out whether or not somebody
22 fired a gun, if -- if that person, for example, tells an
23 investigator he fired a gun, and the question really isn't in
24 dispute, then the gunshot residue is not going to be of any
25 importance to the case, right?

- 1 A. I'm not sure.
- 2 Q. Unless somebody doubts that he actually fired the weapon,
3 right?
- 4 A. I'm not sure.
- 5 Q. You don't know, because you just gather information. You
6 don't really process it?
- 7 A. Right.
- 8 Q. Is that what you said?
- 9 A. (No verbal response.)
- 10 Q. Now, I believe you mentioned that you attended an initial
11 one-week training program with Agent Ramos. Is that correct?
- 12 A. Correct.
- 13 Q. What year was that?
- 14 A. I want to say it was 1999.
- 15 Q. Okay. And -- and have you attended any other courses with
16 him?
- 17 A. Courses, as any Border Patrol training?
- 18 Q. Any evidence gathering courses.
- 19 A. No.
- 20 Q. He hasn't participated in any other ones, that you know of,
21 has he?
- 22 A. Not that I know of.
- 23 Q. He did not rotate through the ride-along program, that you
24 know of, did he?
- 25 A. No.

1 Q. And he's -- are you aware of how many times he's been asked
2 to assist, since 1999, with investigating a crime scene?

3 A. No, I don't.

4 Q. Have you ever seen him being called out to investigate a
5 crime scene?

6 A. No.

7 Q. You have no information he got any further training than
8 that one course in 1999, right?

9 A. That's correct.

10 Q. And he's not a member of the sector evidence team, is he?

11 A. He's not as of today, no.

12 Q. Well, is there a difference between the evidence response
13 team and the sector evidence team?

14 A. There is no evidence response team, or sector response
15 team. Well -- well, SRT, if that's what you're saying, yeah,
16 that -- that's separate from the evidence team.

17 Q. Okay.

18 A. If that's what you're --

19 Q. Okay. And which one are you saying that Agent Ramos is a
20 member of?

21 A. The sector evidence team. I didn't know if you were
22 talking about the special response team.

23 Q. And there's something else called the special response
24 team. You're on that?

25 A. No, I'm not.

1 Q. Okay. He's not on that?

2 A. I'm not sure.

3 Q. Okay. You don't have any evidence that he's on that?

4 A. No.

5 MR. PETERS: Pass the witness.

6 THE COURT: All right.

7 Mr. Antcliff?

8 CROSS-EXAMINATION

9 BY MR. ANTCLIFF:

10 Q. Good afternoon, sir.

11 A. Good afternoon.

12 Q. As I understand your testimony, you were asked, as the
13 commander of the sector evidence team -- I guess the sector
14 evidence team is asked to respond to and investigate critical
15 incidents in the sector. Is that right?

16 A. Yes.

17 Q. And, to be clear, you're not crime scene investigators.
18 Your -- your job is to perform administrative investigations
19 for the sector evidence team and then send them up the chain.
20 Is that right?

21 A. No. I wouldn't put it that way, no.

22 Q. You investigate crimes?

23 A. We are the scene -- I wouldn't say crime scene
24 investigators, but we do, basically, the same job as a crime
25 scene. We don't look for a crime, but we investigate the

- 1 scene.
- 2 Q. I understand. Is your title crime scene investigator?
- 3 A. No.
- 4 Q. What is it?
- 5 A. Sector evidence team commander.
- 6 Q. Okay. And as I -- I mean, what you said was you guys
- 7 investigate the scene -- you didn't define it as a crime
- 8 scene -- and that you process evidence. Is that right?
- 9 A. Correct.
- 10 Q. You prepare a report that doesn't draw any conclusions, and
- 11 you send it up the chain. Is that right?
- 12 A. Correct.
- 13 Q. Okay. The first time you were asked to do that in this
- 14 case with respect to the scene out in the Fabens station's area
- 15 of responsibility was in October of 2005. Is that right?
- 16 A. Correct.
- 17 Q. Okay. With respect to -- you said that agents on the scene
- 18 have some duties, and so do the supervisors. And one of those
- 19 duties, I think you said, was to try and preserve the scene. I
- 20 think your exact testimony was, That would be nice. Do you
- 21 recall that?
- 22 A. Correct.
- 23 Q. There is no training for your average Border Patrol agent
- 24 on the preservation of evidence, is there?
- 25 A. I don't know if one is being taught at the academy, no.

1 Q. I understand. But there is training, for people who want
2 to be on the sector evidence team, in that regard, right?

3 A. Yes.

4 Q. For a trainee riding along with a field training officer,
5 if the field training officer wants to teach them about
6 preservation of evidence, they can, right?

7 A. I assume so.

8 Q. There's no obligation on that officer to teach that, is
9 there?

10 A. I'm not sure.

11 Q. Okay. Is it your testimony that the sector evidence team
12 responds to all discharges of a firearm by a Border Patrol
13 agent?

14 A. We are -- we respond to all reportable shootings, as
15 defined by our sector firearms policy.

16 Q. At the direction of an assistant chief who contacts you.
17 Is that right?

18 A. Correct.

19 Q. Okay. Shell casings. I guess we talked about those a
20 little bit. Would you agree with me that they are fairly
21 light, given that they're empty?

22 A. As compared to -- I don't know.

23 Q. Okay. Lighter than when they have a bullet in it.

24 A. Yes.

25 Q. Okay. So the powder and the bullet are gone. They're

1 lighter than that?

2 A. Correct.

3 Q. Would you agree with me that in the February time, March
4 time frame, wind generally blows in the El Paso area?

5 A. Yes.

6 Q. Is the wind strong enough to blow around shell casings?
7 Can it be?

8 A. I'm assuming wind can.

9 Q. It could. A 25 or 30-mile-an-hour wind would blow those
10 around, wouldn't it?

11 A. I don't know.

12 Q. Don't know. Okay.

13 You talked about footprints. And it's not your
14 testimony that all agents learn how to preserve footprints,
15 they just learn how to track them. Is that right?

16 A. Correct.

17 Q. Okay. You can't tell whether somebody had a gun in their
18 hands from footprints, can you?

19 A. No.

20 Q. Agent Compean, to your knowledge, is not on the sector
21 evidence team, nor has he been during your tenure, correct?

22 A. No.

23 Q. You testified that you searched the vega on -- let me make
24 sure I understand -- on the south side of the levee, there's
25 vega and then there's the river, right?

- 1 A. Correct.
- 2 Q. Out in the Fabens area.
- 3 You searched that area on the south side of the levee
- 4 to the river for shell casings and bullets, right?
- 5 A. Correct.
- 6 Q. You obviously could not cross the river to search for
- 7 bullets, right?
- 8 A. Correct.
- 9 Q. And you didn't?
- 10 A. No.
- 11 Q. Okay. In a seizure situation, in a load involving
- 12 marijuana, for example, the Border Patrol turns over the
- 13 products of that seizure to the DEA, don't they?
- 14 A. Most of the time. It could be different agencies, but,
- 15 yes.
- 16 Q. Okay. And it depends on where it happens, I guess?
- 17 A. Correct.
- 18 Q. And whoever that agency is receiving that evidence
- 19 continues on with the investigation. Is that right?
- 20 A. Correct.
- 21 Q. The Border Patrol generally performs a limited
- 22 investigation prior to turning that evidence over to the
- 23 receiving agency, right?
- 24 A. Okay.
- 25 Q. Okay or yes?

1 A. Correct.

2 Q. Thank you.

3 You lifted fingerprints from the van. Is that right?

4 A. Correct.

5 Q. You took them to the El Paso crime scene people. Is that
6 right?

7 A. The latent print section of the El Paso Police Department's
8 crime scene unit.

9 Q. Trying to identify them, or see if they were usable or
10 what?

11 A. Trying to -- they ran them through their database of
12 fingerprints.

13 Q. And all that means is that there was nobody in the database
14 comparable -- that those prints would match to. Is that right?

15 A. I believe it was because the prints were not complete
16 prints, to where they could compare them. They were not
17 usable. They were partials, smudges, that type of thing.

18 Q. None of them were usable?

19 A. Correct.

20 Q. Okay. As part of your investigation, did you learn that
21 Field Operations Supervisor Richards took pictures of the scene
22 on February 17, 2005?

23 A. No.

24 Q. Okay. You -- and by "you," I mean the sector evidence
25 team -- did not interview any witnesses to the events of

1 February 17, did you, in preparation of the --

2 A. No.

3 Q. -- the booklet you got?

4 A. No.

5 Q. Okay.

6 MR. ANTCLIFF: One moment, Your Honor, please.

7 THE COURT: All right.

8 MR. ANTCLIFF: Pass the witness.

9 THE COURT: All right. Ms. Kanof?

10 MS. KANOF: Nothing further, Your Honor.

11 THE COURT: Mr. Peters?

12 MR. PETERS: Nothing further, Your Honor.

13 THE COURT: Could the attorneys approach?

14 Is he free to leave?

15 MR. ANTCLIFF: As far as I'm concerned, yes,

16 Your Honor.

17 MR. PETERS: Yes, Your Honor.

18 THE COURT: All right. Thank you. You may step down.

19 You're free to go.

20 (Bench conference:)

21 THE COURT: How many more witnesses do you have?

22 MS. KANOF: One more.

23 THE COURT: How long do you think it will take?

24 Sanchez?

25 MS. KANOF: Uh-huh. We're not going to do him

1 tonight.

2 THE COURT: Then we will recess for the evening.

3 MR. ANTCLIFF: Thanks, Judge.

4 (End of bench conference; open court.)

5 THE COURT: All right. Ladies and gentlemen of the
6 jury, it is about 5:00. We are going to go ahead and recess
7 for the evening.

8 Again, tomorrow morning, I have some matters I have to
9 do, so I will ask you to be back in the jury room tomorrow
10 morning at 9:00. We'll see you then.

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

12 THE COURT: You may be seated.

13 Anything we need to take up at this time?

14 MS. STILLINGER: No, your Honor.

15 MR. GONZALEZ: No, Your Honor.

16 MR. ANTCLIFF: I don't.

17 THE COURT: We'll stand in recess.

18 Again, tomorrow morning I have stuff I need to do, so
19 if you will be back tomorrow morning about 9:00 -- not before
20 9:00.

21 (Transcript continues in Volume XII.)

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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

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