

1 APPEARANCES:

2 For the Defendant Compean:

3 Maria B. Ramirez
4 1119 East San Antonio
5 El Paso, Texas 79901

6 Chris Antcliff
7 Stanton & Antcliff
8 521 Texas Avenue
9 El Paso, Texas 79901

10 Proceedings recorded by stenotype. Transcript produced by
11 computer-aided transcription.

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

2 THE COURT: You may be seated.

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

5 MS. KANOF: Debra Kanof and Jose Luis Gonzalez for the
6 United States, Your Honor.

7 MS. STILLINGER: Mary Stillinger and Steve Peters on
8 behalf of Mr. Ramos. We're ready, Your Honor.

9 MR. ANTCLIFF: Chris Antcliff and Maria Ramirez for
10 Mr. Compean. We're ready.

11 THE COURT: All right. Anything we need to take up
12 before we bring in the jury?

13 MS. KANOF: Not from the Government.

14 MR. ANTCLIFF: No, Your Honor.

15 MS. STILLINGER: No, Your Honor.

16 THE COURT: All right. Go ahead and bring in the
17 jury.

18 (Open court, parties and jury present.)

19 THE COURT: You may be seated.

20 Ladies and gentlemen, before we get started this
21 morning, I forgot to mention to you yesterday, members of the
22 jury, it is this Court's plan tomorrow to start a little bit
23 later. I have some other matters I have to take up, and so we
24 will probably not get started until close to noon tomorrow. I
25 will let you know by the end of the day what time I'll need you

1 to come back in. But I do want everyone to know, because I did
2 mean to mention it to you, so you could make whatever
3 arrangements. If there's something that you need to get done
4 in the morning, you'll be able to do that, that we probably
5 will not come in until tomorrow around noon, maybe 12:30. I'll
6 let you know this afternoon. All right? All right.

7 You may call your next witness.

8 MS. KANOF: Thank you, Your Honor. Chris Sanchez.

9 CHRISTOPHER SANCHEZ, GOVERNMENT'S WITNESS, SWORN

10 DIRECT EXAMINATION

11 BY MS. KANOF:

12 Q. You have been sworn. Is that correct?

13 A. Yes, ma'am.

14 Q. And you understand you're still under oath?

15 A. Yes, ma'am.

16 Q. Agent Sanchez, let's first talk about the method of your
17 investigation. You first learned about this investigation, I
18 think you previously testified, around March 3rd or 4th. Is
19 that correct?

20 A. March 4th, ma'am.

21 Q. March 4th. And you proceeded to investigate?

22 A. Yes, ma'am.

23 Q. And you already testified about taking the weapons and
24 find- -- talking to Osvaldo, taking the weapons, finding out
25 about the bullet.

1 Let's talk about your interview process. After -- who
2 is the first person that you took a statement from?

3 A. The first person we spoke to was Oscar Juarez.

4 Q. Do you force people to make written statements?

5 A. No, ma'am.

6 Q. How does that work, that in a lot of cases you have an oral
7 rendition of what they said, and then you have a written, in
8 their own handwriting.

9 A. We usually do the oral interview first. And after we
10 finish, we ask them if they would be willing to make a written
11 statement based on that oral interview.

12 Q. Okay. And you -- what do you do with the oral interview?

13 A. Again, it's just our handwritten notes. And usually it's
14 just -- the written statement goes verbatim, basically, more or
15 less, of what we cover in the oral interview. Then I just need
16 the written statement.

17 If there are differences in the oral and the written
18 statement, then I would proceed and go ahead and write up the
19 oral interview, also.

20 Q. In other words, transcribe your notes?

21 A. Yes, ma'am.

22 Q. And do you ever interview anyone in a criminal
23 investigation without another agent from your agency present?

24 A. There's always another agent present.

25 Q. Okay. Now, first you interviewed Oscar Juarez. Is that

1 correct?

2 A. Yes, ma'am.

3 Q. Why did you interview him first?

4 A. Based on the radio traffic which, from the transcripts, I
5 thought Oscar Juarez was the last person to -- I believe he was
6 the last person that was calling for the 10-28, 10-29 on the
7 warrants or whatever on the vehicle, calling out the license
8 plate.

9 Q. At the very end, after the seizure?

10 A. Yes, ma'am.

11 And when I spoke to the tow truck driver, he stated
12 that there was one agent on top of the levee, on top of the
13 levee, when he came and picked up the van. And, since Oscar
14 Juarez was the last one on there, I assumed that he was the
15 agent that was on the levee. Therefore, I assumed that he
16 might have been one of the -- or one -- one of the shooters, or
17 the shooter.

18 Q. Okay. So you interviewed Juarez because, based on looking
19 at the radio traffic and the -- talking to the tow truck
20 driver, you thought Officer Juarez had been one of the
21 shooters?

22 A. Yes, ma'am. And also, based on the description
23 Aldrete-Davila had given us about the person that he initially
24 encountered there at the lip of the drainage ditch. He
25 described a short Hispanic male, dark skin tone.

1 Looking at Officer Juarez's driver's license, he
2 looked similar -- matched that description somewhat.

3 Q. Okay. When you took -- first interviewed Oscar Juarez, did
4 you interview him orally?

5 A. Yes, ma'am.

6 Q. Did you transcribe that oral interview?

7 A. No, ma'am.

8 Q. Okay. Did he give you a written statement at that time?

9 A. Yes, ma'am.

10 Q. Was the oral rendition and the written statement that he
11 gave you the first time you talked to him, then, substantially
12 the same?

13 A. Yes, ma'am.

14 Q. Okay. Who was the next person you interviewed?

15 A. The next person was Arturo Vasquez.

16 Q. When you first interviewed Agent Juarez, did he tell you
17 that he had seen Compean up there shooting, shooting, shooting?

18 A. No, ma'am.

19 Q. Did he tell you about the magazine exchange?

20 A. No, ma'am.

21 Q. So then you interview Vasquez. Is that correct?

22 A. That is correct.

23 Q. Why did you interview him next?

24 A. We just started going down the line, as far as people to
25 interview. And he just happened to be the next person we

1 interviewed -- we called in to talk to us.

2 Q. What, if anything, did Arturo Vasquez tell you that made
3 you skeptical about what Juarez had told you?

4 A. Nothing, at that point. Again, we didn't know the
5 specifics. But we didn't have anything -- that first interview
6 of Arturo Vasquez, I didn't know that Oscar Juarez had
7 initially lied to us.

8 Q. Okay. And who did you interview next?

9 A. I believe that same day was -- this was March 18th -- would
10 have been Rene Sanchez -- Rene Mendez. And again, I'm always
11 doing other things. I'm in and out with the agents.

12 So Oscar Juarez and Arturo Vasquez, there were other
13 agents interviewing them, and they would bring me in and out of
14 the room to ask me questions, if there was any other
15 information that I needed from these agents. So...

16 Q. So you didn't interview every agent that was out there in
17 this case?

18 A. Not at -- not on March 18th, that initial day, when we
19 started bringing the agents in.

20 Q. You had other agents assisting you?

21 A. Yes, ma'am.

22 Q. And they would communicate to you what they learned?

23 A. Yes, ma'am.

24 Q. Okay. What did you do next?

25 A. Well, based on the interview with Oscar Juarez, I knew that

1 Mr. Ramos and Mr. Compean were the two agents that had chased
2 Aldrete-Davila into the vega, on -- based on his first
3 statement.

4 Also, Arturo Vasquez had confirmed that, because he
5 mentioned about his hearing the shots and his encounter with
6 Mr. Compean at the C.C. Bills gate, when he went up onto the
7 levee, and Mr. Compean was coming down.

8 Q. Okay. What did -- so, taking that -- those two pieces of
9 information into consideration, how did you direct your
10 investigation at that time?

11 A. At that time, I knew that -- I knew the two people, at
12 least, we -- one of them was the shooter. So, again --

13 Q. Did you already have the bullet confirmed at that time?

14 A. On March 16, we knew the bullet had come from a .40 caliber
15 Beretta, which is a weapon that the Border Patrol uses.

16 Q. Did you know whose Beretta yet?

17 A. No, ma'am.

18 Q. Okay. Go ahead.

19 A. And so also, again previously testified to, that we had --
20 we did a ruse. Again, we didn't know which agents. Again, I
21 assumed that -- based on Juarez and Vasquez -- that Ramos --
22 Mr. Ramos and Mr. Compean were the ones that chased him into
23 the vega, but we still didn't know if they were the shooters.

24 So we did a ruse. We went out to the Fabens Border
25 Patrol station, and we took the weapons from the other agents.

1 And it so happened to be that Mr. Ramos and Mr. Compean, and I
2 think Mr. Juarez, were not on duty that day, or were on annual
3 leave or whatever.

4 So we went after -- the Friday morning of the 18th, on
5 March 18th, we pretty much knew, especially after Juarez's
6 interview, and then after Vasquez confirmed that Compean had
7 told him that he had shot at Aldrete-Davila, I knew at least
8 Compean had been one of the shooters, if not the only shooter.

9 But, again, we still had the weapons. So I think the
10 first weapon that was seized that day out of those -- again, we
11 had taken Juarez's weapon the night before. I think Ramos's
12 weapon we took that morning, March 18th. We immediately took
13 that to the Texas Department of Public Safety crime lab, for it
14 to be analyzed.

15 And I believe we had gone to Mr. Compean's house, but
16 he wasn't in. We didn't get Mr. Compean's weapon until we
17 arrested him that night.

18 Q. Okay. The first interviews you did were on March 18th. Is
19 that correct?

20 A. Actually, we interviewed Oscar Juarez the evening of the
21 17th.

22 Q. Okay. And the Defendants Ramos and Compean were arrested
23 on the 18th. Is that correct?

24 A. Yes, ma'am.

25 Q. What day of the week was that?

1 A. Friday.

2 Q. What time of day was Agent Compean arrested?

3 A. He was arrested shortly before midnight.

4 Q. What time -- a Friday night or Thursday night?

5 A. Friday night.

6 Q. Okay. Friday night, going into Saturday morning?

7 A. Yes, ma'am.

8 Q. What time was Agent Ramos arrested?

9 A. I believe he was arrested around 9:00 p.m. I'm not sure of

10 the time.

11 Q. Okay. Did you communicate to Border Patrol that you were

12 going to make these arrests?

13 A. Yes, ma'am.

14 Q. Sometime earlier that day?

15 A. Yes, ma'am. We worked with the Office of Internal Audit,

16 US Border Patrol.

17 Q. Now, I think I jumped all the way to the 18th of March.

18 Let me go back.

19 Since you didn't know who had been involved

20 specifically in this offense, did you go out to the scene to

21 investigate first?

22 A. Yes, ma'am.

23 Q. On what date?

24 A. I believe the first date that I went out there was

25 March 15th. And I picked up the tow truck driver. I was able

1 to find the tow truck driver that towed the van. And I brought
2 him out, and I asked him, Do you recall?

3 And he says, Yeah, it was -- he recalled it vividly.
4 And he said, Yeah, I recall exactly where the van was at.

5 So he took me down to Jess Harris Road, and he showed
6 me where the marks on the lip of the drainage ditch were
7 still -- were still there.

8 Q. Okay. And then what did you do?

9 A. I took photos. And then -- that was on March 15th.

10 On March 16th, I went out to -- to get on top of the
11 levee road. I was assisted by the US Border Patrol. And I
12 went out there, and I had a metal detector from our office.

13 And, again, I didn't know where the shooting occurred.
14 I just had a general idea, so I just started going back and
15 forth on the north slope of the levee, the levee road, the
16 south slope.

17 And again, the vega is pretty big. I just -- I did a
18 little bit, but, again, I was just by myself with a metal
19 detector, so...

20 Q. Okay. Was that successful?

21 A. No, ma'am.

22 Q. So did you take somebody else out there?

23 A. The next day I believe -- again, March 16th, we interviewed
24 Aldrete-Davila.

25 So, on the 17th, I had a better idea of where he ran

1 and the -- and so forth. So I -- I think it was myself and --
2 and I think the majority of the agents out of my office, one
3 agent I think out of the Office of Internal Audit, and one or
4 two agents out of the sector evidence team. And so --

5 Q. Was David Blea, who testified, one of those agents?

6 A. No, ma'am.

7 Q. Okay. But you took a couple of agents from the sector
8 evidence team?

9 A. I know at least one. I'm not sure. I'm thinking it might
10 be two, but I know at least one, for sure, went out there with
11 us on that day.

12 Q. So how many total agents?

13 A. I'd say over ten.

14 Q. And what did you instruct those ten agents to do?

15 A. Again, we had our metal detector out there again. The
16 sector evidence team brought their metal detector out. We
17 combed the drainage ditch, we combed through the vega.

18 We got on line -- all of the agents got on line and
19 basically did just a really slow walk, walked through the vega
20 looking for any evidence, casings, blood. We didn't find
21 anything.

22 Q. Okay. And that would have been March 17th, about 29 days
23 from the date this had occurred, from February 17th?

24 A. Yes, ma'am, more or less.

25 Q. Okay. And you -- you didn't find anything?

1 A. No, ma'am, we did not.

2 Q. That was March 17th. Did you do anything else that you can
3 recall on March 17th?

4 A. March 17th we also had the sector evidence team go and
5 print the van for any fingerprints that Aldrete-Davila or
6 someone else may have left in that van.

7 And I believe we also -- I don't know if it was that
8 day. I'm thinking it was that day, also, that we sent the
9 sector evidence team back out to the drainage ditch to see if
10 they could get a more thorough going over of the drainage
11 ditch.

12 Q. Okay. Looking for what?

13 A. The brass that Arturo Vasquez stated he had thrown into the
14 drainage ditch.

15 Q. So, then, on at least three different occasions you or
16 someone else at your instruction looked for casings?

17 A. Yes, ma'am.

18 Q. To no avail?

19 A. No, ma'am.

20 Q. The water in the Sierra Delta, how -- it's deep at
21 different times of the year. Is that correct?

22 A. Yes, ma'am.

23 Q. And does it move, the water move?

24 A. It appears to flow, so...

25 Q. It's a drainage ditch, correct?

1 A. It's a drainage ditch, sewage, so forth.

2 Q. Okay. Now, with regard to the -- so that's it for the
3 17th, correct?

4 A. I believe so, ma'am.

5 Q. And you had already interviewed Osvaldo Aldrete-Davila on
6 the 16th. Is that correct?

7 A. Yes, ma'am.

8 Q. So now it's the 18th, and you start interviewing agents,
9 and you start with Juarez, correct?

10 A. Again, this -- Juarez was actually, really, the first,
11 really, sit-down interview. When we interviewed him on March
12 17th, he just stated he knew nothing about the shooting, and
13 stated that the only thing he knew is that Mr. Ramos and
14 Mr. Compean had gone over to the -- had chased the --
15 Aldrete-Davila into the vega.

16 Q. Okay. At some point in time did you have an occasion to
17 re-interview Mr. Juarez?

18 A. Yes. He called me on March 18, in the morning, and said he
19 recalled hearing one or two shots.

20 Q. Okay. And you documented that?

21 A. Yes, ma'am.

22 Q. And that was telephonic?

23 A. Yeah. He initially called me telephonically, and then he
24 stated -- he requested a proffer letter, to provide any further
25 information.

1 Q. Okay. And I know that you've worked in other
2 jurisdictions. But, at that point, did you know what a proffer
3 letter was?

4 A. I never really -- on other cases, I've really never had to
5 deal with a proffer letter, so -- until I got it and read it,
6 that I knew.

7 Q. You've worked with U.S. Attorney's offices in other
8 jurisdictions?

9 A. Yes, ma'am.

10 Q. And do they all function identical?

11 A. Basically, yes, ma'am.

12 Q. Okay. Now, at that time, there was a different Assistant
13 United States Attorney, correct?

14 A. Yes, ma'am.

15 Q. When Agent Juarez asked for a proffer letter, what did you
16 do?

17 A. I immediately contacted Assistant United States Attorney
18 Brandy Gardes.

19 Q. And you discussed that issue with her, I'll assume?

20 A. Yes, ma'am.

21 Q. And did she authorize?

22 A. Yes, ma'am.

23 Q. Did she go with you to re-interview Juarez with a proffer
24 letter?

25 A. No, ma'am. He came to our office, and she faxed the

1 proffer letter to our office.

2 Q. Okay. And what date was that?

3 A. March 18th.

4 Q. So, on the same date that he called you saying he recalled
5 hearing some shots, you talked to him again in person?

6 A. I don't -- I think it was two other agents that spoke to
7 him. Again, I was in and out of that interview quite a bit.
8 And then when he was doing his written statement, I sat in
9 there with him when he was doing his written statement.

10 Because, at that same time that he was doing the
11 written statement, we had to move him to a different room,
12 because Arturo Vasquez came in, and we didn't want the agents
13 to know who was talking to us at that time.

14 Q. Okay. And, this time, he made a written statement. Is
15 that correct?

16 A. Correct.

17 Q. And did the agent -- did you transcribe that written
18 statement, since you weren't present?

19 A. No. I sat with Oscar Juarez, when he was writing out his
20 statement, based on the oral interview the agents had talked to
21 him.

22 Q. So other agents did an oral interview, correct?

23 A. Correct.

24 Q. And then they communicated to you the substance?

25 A. Correct.

1 Q. And then you went in and sat with him while he wrote out
2 his written statement?

3 A. Correct.

4 Q. Okay. And did those other agents transcribe their
5 rendition of what he told them?

6 A. No. I think it was the same thing that he had stated in
7 his written statement.

8 Q. Okay. And by "same thing," you don't mean every word.
9 You're not taping it, correct?

10 A. No, ma'am.

11 Q. Okay. But there were no substantial differences?

12 A. Correct.

13 Q. So when you read that written statement, did you -- did you
14 feel like you needed to talk to him again?

15 A. Yes, ma'am. I didn't believe Oscar Juarez at that time.
16 And -- but he stated that's what he remembered. But I really
17 didn't believe that that's what he -- I didn't think he was
18 telling the whole truth at that time.

19 Q. Okay. What happened next?

20 A. Again, we interviewed Arturo Vasquez. And, again, when I
21 was in there with Oscar Juarez, the other agents, the same -- I
22 believe the same two, or possibly different agents had
23 interviewed Oscar Juarez, interviewed Arturo Vasquez. And
24 Mr. Vasquez again went through his attorney -- I think his
25 attorney is Bill Ellis -- requested a proffer letter.

1 Q. Okay. How many agents does the Department of Homeland
2 Security, Office of the Inspector General, have in El Paso?

3 A. I believe seven, or eight, with a supervisor.

4 Q. Eight, with a supervisor?

5 A. Yes, ma'am.

6 Q. And that's how many you had on that date?

7 A. Yes, ma'am.

8 Q. Were all of them involved in one way or another in the
9 investigation of this case?

10 A. More or less.

11 Q. Okay. So they communicate to you, after orally
12 interviewing Vasquez, he wants a proffer letter, correct?

13 A. No. Before Vasquez would even come speak to us -- we told
14 him we wanted to speak to him and what it was about, the
15 incident of February 17th.

16 And Mr. Vasquez said he wanted to speak to his
17 attorney.

18 And then I believe -- I'm not sure if Ms. Gardes and
19 Mr. Ellis spoke before Mr. Vasquez came, but we did not speak
20 to Mr. Vasquez until he showed up at the office with his
21 defense attorney.

22 Q. Who was Oscar Juarez's attorney?

23 A. He did not have an attorney on February -- on March 18th.

24 Q. So he requested a proffer letter even without having a
25 lawyer?

- 1 A. Correct.
- 2 Q. Okay. Did he subsequently retain an attorney, to your
3 knowledge?
- 4 A. Yes, ma'am.
- 5 Q. And who was that?
- 6 A. I believe it's Gary Weiser.
- 7 Q. Okay.
- 8 A. Or was Gary Weiser.
- 9 Q. You -- so you had a proffer letter in hand and talked to
10 Arturo Vasquez. Is that correct?
- 11 A. Yes, ma'am.
- 12 Q. And then what did you do next?
- 13 A. I think the other agent we tried to speak to that day was
14 Rene Mendez. And, again, he didn't really have much to offer,
15 as far as he just observed Aldrete-Davila getting into a
16 vehicle from the south side, in Mexico.
- 17 And we attempted to speak to Border Patrol Agent David
18 Jacquez that same day. And he invoked his right to remain
19 silent and stated he wanted to speak to an attorney.
- 20 Q. Okay. And, at some point in time, were you able to
21 interview Jacquez?
- 22 A. Yes, ma'am, with his attorney.
- 23 Q. Okay. At some point in time do you make a determination
24 that you need to go back and talk to Oscar Juarez?
- 25 A. Yes, ma'am.

1 Q. When was that determination made?

2 A. I don't recall the date. I remember I was telling
3 Ms. Gardes that I -- that I did not believe Oscar Juarez, and I
4 said I wanted to speak with him again.

5 Q. And, based on that representation to -- well, did you speak
6 with him again?

7 A. Yes, ma'am.

8 Q. Under what terms and conditions?

9 A. It was under the conditions of the proffer letter. And,
10 again, he had his attorney there with him.

11 Q. Okay. Do you know whether his attorney contacted someone
12 in the U.S. Attorney's office to ask that his client be
13 re-interviewed?

14 A. I don't recall, ma'am.

15 Q. Now -- so you talked to Oscar Juarez a third time?

16 A. A third time, yes, ma'am.

17 Q. Okay. And where did you have that interview?

18 A. At the U.S. Attorney's office.

19 Q. And who was present for that interview?

20 A. Myself, and I'm not sure if both of you were there.

21 Mr. Gonzalez -- I know one of you was there. And also Gary
22 Weiser was there, Mr. Juarez's attorney.

23 Q. Okay. And so, by that time, Mr. Gonzalez and I had been
24 assigned to prosecute the case?

25 A. Yes, ma'am.

1 Q. Okay. And you said Gary Weiser was there. Is that
2 correct?

3 A. Yes, ma'am.

4 Q. During that interview, did Oscar Juarez provide additional
5 information?

6 A. Yes, ma'am.

7 Q. Let me ask you, in comparing the information, did you think
8 he was lying or --

9 MS. STILLINGER: Your Honor, I'm going to object.
10 She's asked him a couple of times, and he's testified several
11 times about his personal opinion of who is telling the truth,
12 which is completely irrelevant.

13 MS. KANOF: I'll -- I'll withdraw the question,
14 Your Honor.

15 THE COURT: All right.

16 BY MS. KANOF:

17 Q. You talked to -- you took another interview from Juarez.
18 Is that correct?

19 A. Yes, ma'am.

20 Q. And his attorney was present?

21 A. Yes, ma'am.

22 Q. What additional information did he provide on that day?

23 A. He -- at that time, he stated that he observed Mr. Compean
24 shooting and exchanging magazines and shooting.

25 He stated that he also observed Mr. Compean attempt to

1 strike Aldrete-Davila.

2 And he stated that he observed Mr. Compean slip into
3 the drainage ditch, and Aldrete-Davila run around and over the
4 levee.

5 Q. Before providing that information to you, had you told him
6 what you wanted him to say?

7 A. No, ma'am.

8 Q. Had -- in front of you, at least, had anyone from the U.S.
9 Attorney's office indicated what story they wanted to hear?

10 A. No, ma'am.

11 Q. Had Mr. Weiser talked to you about what facts you wanted to
12 hear?

13 A. No, ma'am.

14 Q. At this point in time, then, you had Vasquez's statement
15 and Juarez's statement, correct?

16 A. And I think some of the other Border Patrol agents that
17 have testified, I had their statements.

18 Q. Okay. And -- and then did you proceed to go on with the
19 investigation?

20 A. Yes, ma'am.

21 Q. Okay. What did you do -- we have you on the 18th -- I --
22 and do you remember what you did on the 19th? The 18th is a
23 Friday, right?

24 The next -- after you arrested the defendants, what
25 did you do next?

1 A. On the 19th, early in the morning, we were still
2 interviewing Mr. Compean. I mean, I don't think we got
3 Mr. Compean to the county jail until -- I know I didn't get
4 home till, like, 4:00 in morning.

5 Q. Okay. So you interviewed Mr. Compean starting about what
6 time?

7 A. It was -- like I said, we arrested him shortly before
8 midnight. So, by the time we got back to the office, did the
9 oral interview, it was already past midnight.

10 Q. Did you transcribe both your oral interview and take a
11 written statement from him?

12 A. Yes, ma'am.

13 Q. Okay. Let's talk first about what he told you orally.

14 A. Okay.

15 Q. What did Mr. Compean tell you? And if you need to refresh
16 your memory from your statements, I can provide them to you.
17 What did Mr. Compean tell you orally had happened on February
18 17th, 2005?

19 A. How I started the interview, I just started it from the
20 drainage ditch. I didn't go through the whole pursuit and
21 calling out. We started at the drainage ditch.

22 Q. Go ahead.

23 A. Mr. Compean stated he was on the levee. He got down off
24 the levee. He had a shotgun, and he observed Aldrete-Dav- --
25 again, he referred to him as the driver, but it was

1 Aldrete-Davila.

2 But he stated Aldrete-Davila went into the drainage
3 ditch. And, as Mr. Aldrete-Davila was coming up the south side
4 of the drainage ditch, Mr. Compean pointed his shotgun at him
5 and told him several times in Spanish to Stop, put your hands
6 up.

7 Q. Okay. Did he use the Spanish word?

8 A. Yes. He stated, Parate, parate, (speaking Spanish.)

9 Q. Did you ask him if he called him a Mexican -- in English,
10 but for the Spanish, a Mexico shit?

11 A. Yes, ma'am.

12 Q. What was his response?

13 A. He stated he used no obscenities.

14 Q. Okay. So he said he was yelling at him to stop, correct?

15 A. Correct.

16 Q. Let me ask you something, Agent Sanchez. Did he talk about
17 the way the van traveled toward him?

18 A. No, ma'am.

19 Q. Did he say he had been threatened in any way by the way the
20 van arrived at the drainage ditch?

21 A. No, ma'am.

22 Q. Okay. So he started his story when he's at the top of the
23 drainage ditch holding his shotgun?

24 MR. ANTCLIFF: Object to leading, Judge.

25

1 BY MS. KANOF:

2 Q. What -- when did he start his story?

3 A. Basically, I believe he started it when Aldrete-Davila
4 exited the van, and he's coming up through the drainage ditch,
5 and he encounters him up there on the south lip of the drainage
6 ditch.

7 Q. What did he tell you happened after he told him, Parate,
8 parate?

9 A. He stated that -- he stated that Aldrete-Davila raised his
10 hand.

11 I had him -- I asked him if his hands were raised high
12 or low. He stated they were about -- demonstrated about here
13 (indicating), is where Aldrete-Davila had his hands.

14 Q. And so the court reporter can record the way you're holding
15 your hands, would you describe the way that Agent Compean
16 described how Osvaldo was holding his hands?

17 A. Well, I had him demonstrate. When he was sitting in his
18 chair, like I am, he had -- basically bent at the elbow, palms
19 facing outward, towards Mr. Compean.

20 Q. Okay. With fingers spread apart?

21 A. Well, that's -- yeah. Basically, he had it like this
22 (indicating), fingers spread apart.

23 Q. Okay. And what he did say happened next?

24 A. Even though he told him to stop and raise his hands,
25 Mr. Compean stated Aldrete-Davila continued to come towards

1 him.

2 Q. Okay. Did you ask him if he put his hands down to try to

3 climb up the steep slope of the ditch?

4 A. I didn't ask him that.

5 Q. Okay. What did he tell you happened next?

6 A. As Mr. Davila is coming toward him, he continues to come

7 toward him, Mr. Compean stated he heard someone yell, Hit --

8 hit him, hit him.

9 Q. Mr. Compean said he heard that?

10 A. Yes.

11 Q. Who did he -- who did he say yelled, Hit him, hit him?

12 A. He didn't know.

13 Q. Well, did he tell you who else was at the scene?

14 A. Yes, ma'am.

15 Q. Who else did he say was there at the time he heard somebody

16 say, Hit him, hit him?

17 A. The only thing I can recall is, I believe he stated

18 Mr. Ramos had arrived, and other agents were arriving at that

19 scene at that time.

20 Q. So the only person he named was Mr. Ramos?

21 MS. STILLINGER: Your Honor, I would object to

22 leading.

23 THE COURT: All right.

24 BY MS. KANOF:

25 Q. What other names did he give you was present at the time

1 that he encountered Osvaldo, who kept coming toward him?

2 A. The only name he mentioned was Mr. Ramos and other agents.

3 But he didn't give me specific names.

4 Q. And he said he heard someone say, Hit him, hit him?

5 A. Yes, ma'am.

6 Q. What did he do when he heard that?

7 A. He stated he -- again, he was aiming at him with the
8 shotgun. He heard, Hit him, hit him. And he took the shotgun
9 out of his shoulder, and it -- he stated he attempted to push
10 Aldrete-Davila into the drainage ditch.

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

12 THE COURT: You may.

13 BY MS. KANOF:

14 Q. Did you have him show you what he meant?

15 A. I asked him, How did -- to explain how -- how was he trying
16 to push Aldrete-Davila back into the drainage ditch.

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

18 THE COURT: You may.

19 BY MS. KANOF:

20 Q. And, based on his explanation to you, could you demonstrate
21 for the jury what you understood Mr. Compean to tell you?

22 THE WITNESS: May I stand up?

23 THE COURT: Yes.

24 A. Again, we didn't have the shotgun there during the
25 interview. But how he -- I asked him how.

1 He said -- again, this is made safe. The slide would
2 be forward, for this to be closed.

3 He stated he was holding it like -- basically, this is
4 how he described he was holding it (indicating). And he was
5 attempting to push Aldrete-Davila back into the drainage ditch.

6 BY MS. KANOF:

7 Q. Well, when he showed you that, did you ask him anything
8 about the safety of that position?

9 A. I asked if it made sense, basically --

10 Q. Well, you told him, or --

11 A. I told him it didn't make sense, because you're basically
12 giving Aldrete-Davila, the driver of the van, access to that
13 trigger. I mean, this is basically unsafe. I mean, if
14 Mr. Davila had wanted to, I guess he could have reached up,
15 pulled the trigger.

16 This is -- with the grip down here and everything, it
17 makes it easier for another person on this side -- he could rip
18 the shotgun out of Mr. Compean's hand.

19 Q. Did Mr. Compean tell you that Davila reached for the
20 shotgun?

21 A. No, ma'am.

22 Q. At any time did he tell you he was in fear of his life?

23 A. Not at that time, ma'am.

24 Q. Okay. When he indicated to you how he tried to push him
25 down with the butt of that rifle, did he tell you what position

1 Davila's hands were in at that time?

2 A. I believe they were still raised.

3 Q. Did you ask him if he had pepper spray with him?

4 A. I did not ask him.

5 Q. What did he tell you happened next?

6 A. When he was maneuvering to push Aldrete-Davila back into

7 the drainage ditch, he stated he slipped into the drainage

8 ditch.

9 Q. Agent Compean told you that he or Davila slipped into the

10 drainage ditch?

11 A. He stated he slipped into the drainage ditch.

12 Q. Did he tell you in what direction he slipped, like

13 frontways, backways, sideways?

14 A. No. He just stated he slipped into the drainage ditch.

15 Q. What else did he tell you about that slip? Did he tell you

16 what happened to his shotgun?

17 A. No, ma'am.

18 Q. Okay. Did he tell you whether he got dirt in his eyes when

19 he slipped?

20 A. No, ma'am.

21 Q. What did he tell you?

22 A. He stated, when he slipped, Aldrete-Davila ran around him

23 and over the levee.

24 Mr. Compean stated he recovered from slipping into the

25 drainage ditch and ran after Mr. Davila.

1 Q. Okay. What did he tell you next?

2 A. Mr. Compean, like I said, he recovered from slipping into
3 the drainage ditch. He got up, ran over the levee, and he
4 tackled -- or I think his words -- he jumped on the back of
5 Aldrete-Davila, and they rolled into the south slope of the
6 levee into the vega, and they wrestled.

7 Q. Did he ever tell you, That bitch took me to the ground and
8 threw dirt in my face?

9 A. No, ma'am.

10 Q. He jumped -- he told you he jumped on Aldrete-Davila's
11 back. Is that correct?

12 A. I believe so, yes, ma'am.

13 Q. And what did -- what happened to them when he did that?

14 A. They rolled, or wrestled, and went down into the -- into
15 the -- from the south slope of the levee down into the vega.

16 Q. Okay. Did he ever mention that Aldrete-Davila had a gun?

17 A. No, ma'am.

18 Q. Okay. When he said they struggled, did he describe what he
19 meant by that?

20 A. No, ma'am. He just jumped on his back, and I believe he
21 stated they just rolled into the vega.

22 Q. Did he say Aldrete-Davila attempted to strike him or do
23 anything in an aggressive manner at that time?

24 A. No, ma'am.

25 Q. What happened -- what did he tell you happened next?

1 A. He stated -- again, this is where the oral and the written
2 differ, but I don't know which one you want me to get into.

3 Q. I think I forgot some -- when he -- when he turns his --
4 when he describes to you how he turns the butt of his rifle
5 down, does he tell you whether Osvaldo Aldrete-Davila says
6 anything to him?

7 A. Again, Mr. Compean is hearing, Hit him, hit him. And I
8 believe he stated Aldrete-Davila told him, (speaking Spanish),
9 Don't hit me. Don't hit me, in Spanish.

10 Q. And he did tell you that in his oral statement?

11 A. Oral or written, I don't recall.

12 Q. Okay. What did he tell you next?

13 A. We're back at the vega, or --

14 Q. Yeah, we're back to the vega.

15 A. Again, I think in the written statement he stated that
16 Aldrete-Davila broke free from him. He got --- he goes -- I
17 think it's, I got dirt in my eyes.

18 In the oral statement, he stated Aldrete-Davila might
19 have thrown dirt in his eyes.

20 Q. Okay. So those differed -- the oral statement was first,
21 correct?

22 A. Correct.

23 Q. And in the oral statement what did he say?

24 A. That Aldrete-Davila might have thrown dirt in his eyes.

25 Q. And in his written statement what did he say?

1 A. I believe he stated, I got dirt in my eyes.

2 Q. Okay.

3 A. And that's one of the reasons --

4 Q. Did you do something as a result of that?

5 A. That's one reason I did the oral and the written statement.

6 There was a difference.

7 Q. Okay. When -- what did he tell you after the dirt in his
8 eyes, however he got it? What did he tell you happened next?

9 A. Aldrete-Davila broke free from his grasp and began to run
10 toward Mexico.

11 Q. What did he -- what happened next, according to the
12 Defendant Compean?

13 A. Mr. Compean stated, after Mr. Davila broke free -- and I
14 believe I asked him -- and I don't recall if it's in the
15 written or oral. But I asked him if he saw any weapons at that
16 time.

17 When he broke free, he did not observe any weapons
18 on -- in Aldrete-Davila's hands or anything. But, as he's
19 running towards Mexico, Mr. Compean stated he observed
20 something shiny in Aldrete-Davila's left hand.

21 Q. He was -- is that in his written or in his oral?

22 A. I don't recall. It's either or both.

23 Q. Okay. And he said he observed something shiny in his left
24 hand. Was he sure about that?

25 A. He stated he was never certain. Well, he stated he saw

1 something shiny, which he thought was a gun, and that's why he
2 started firing.

3 Q. Okay. What did he say Aldrete-Davila was doing with this
4 shiny object?

5 A. I believe he stated he was running, he observed the shiny
6 object, and he was running. And what concerned him is that
7 Aldrete-Davila continued to look back towards his direction.

8 Q. Did he ever say he pointed this object at him?

9 A. No, ma'am.

10 Q. Did he ever say he fired this shiny object?

11 A. No, ma'am.

12 Q. Where did he tell you he was physically located when he
13 first saw the shiny object?

14 A. In the vega.

15 Q. And what hand did he say was -- the shiny object was in?

16 A. In the left hand.

17 Q. Did the U.S. Attorney's office ask you to investigate
18 whether Osvaldo Aldrete-Davila was right-handed or left-handed?

19 A. Yes, ma'am.

20 Q. What did you do?

21 A. I was told to observe Mr. Davila, and -- which I did. And,
22 again, over this past year I've had to meet with him. I've
23 asked him for his phone numbers, to track -- I had to reach him
24 in Mexico. And he always wrote with his right hand.

25 I asked him to draw a map where his mother lived, if

1 we needed to locate him. Well, at the time I had him draw us a
2 map is when he was living with his mother.

3 It was -- he drew out the streets, the dirt roads, and
4 so forth. And, again, it was all with his right hand.

5 When I would meet with him and show him the pictures
6 that have been demonstrated here during this trial, I would ask
7 him, Okay, where were you? Where is this? Where is that? And
8 he always would use his right hand.

9 Q. Okay. At any time, in either the oral or the written
10 statement, did he --

11 MS. KANOF: Well, may I approach the witness to
12 refresh his memory?

13 THE COURT: You may.

14 MR. ANTCLIFF: He hasn't -- Judge, I object. He
15 hasn't stated he doesn't remember anything.

16 THE COURT: All right. Then I'll sustain.

17 BY MS. KANOF:

18 Q. Did he talk a little bit more about the gun in either his
19 oral or written statement?

20 A. I don't remember.

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

22 THE COURT: You may.

23 BY MS. KANOF:

24 Q. Okay. At some point in time did you ask him specifically
25 about his memory of that shiny object being in the left hand?

1 A. Yes, ma'am.

2 Q. And then what did he say?

3 A. He saw something shiny in his left hand, Aldrete-Davila's
4 left hand, and then added he was never certain that
5 Aldrete-Davila had a gun.

6 MS. KANOF: Approach the witness to retrieve it,
7 Your Honor?

8 THE COURT: You may.

9 BY MS. KANOF:

10 Q. Did he tell you that he shot -- what did he tell you he did
11 next?

12 A. He stated he shot about 10 or 11 times at Aldrete-Davila.

13 Q. Where did he tell you he was standing when he shot at
14 Aldrete-Davila?

15 A. He was in the vega.

16 Q. Later on, did he tell you that he retrieved some of his
17 casings?

18 A. Yes, ma'am.

19 Q. Where did he say he retrieved the casings?

20 A. In his statement, he didn't say specifically where he
21 retrieved them. He stated, after shooting at Aldrete-Davila,
22 he holstered his weapon and went on the levee to retrieve his
23 casings.

24 Q. Okay. He didn't say he retrieved them down there in the
25 vega, where he did the shooting?

- 1 A. No, ma'am.
- 2 Q. All right. So he -- what, if anything, did he tell you
3 about how many times he thought he had shot at Aldrete-Davila?
- 4 A. Again, I think it was 10 or 11 times.
- 5 Q. Okay. And what did he tell you happened next?
- 6 A. After he had shot at Aldrete-Davila, he stopped shooting at
7 Aldrete-Davila just before he reached the bank of the
8 Rio Grande River. And then he --
- 9 Q. What did he tell you he did next?
- 10 A. He holstered his weapon and watched Aldrete-Davila come up
11 on the south side of -- on the Mexican side, the Mexican vega.
- 12 Q. Where was he when he watched Aldrete-Davila go across the
13 river?
- 14 A. In the vega.
- 15 Q. Standing in the middle of the vega?
- 16 A. Yes, ma'am.
- 17 Q. Is there anyplace to take cover in the vega?
- 18 A. No, ma'am.
- 19 Q. Did he ever tell you he took cover?
- 20 A. No, ma'am.
- 21 Q. When -- so he said he watched him cross over to Mexico from
22 the middle of the vega?
- 23 A. Yes, ma'am.
- 24 Q. What did he say he did next?
- 25 A. He observed Aldrete-Davila limping, and assumed he had been

1 shot.

2 Q. Okay. And, after that, what did he do?

3 A. That's when he stated he turned around and went to recover
4 his casings on the levee.

5 Q. What did he do with his gun, and when did he do it with his
6 gun?

7 A. Holstered his weapon when he was in the vega.

8 Q. Okay. Before he turned around or after he turned around?

9 A. I'm not sure if it was before or after.

10 Q. Okay. He holstered his gun, and then -- and then where did
11 he go?

12 A. Walked back toward the levee -- I think his statement
13 states that he went back to the levee, to pick up his casings
14 on the levee.

15 Q. Did he tell you he ran back to the levee or he walked back
16 to the levee?

17 A. He walked back to the levee.

18 Q. But he -- did he tell you anything about seeing what
19 Osvaldo did after he got to the Mexican side of the river?

20 A. Again, he just stated that he observed Aldrete-Davila
21 limping and assumed he had been shot.

22 Q. Okay. What did he tell you next?

23 A. When he was on the levee, he stated that -- I'm not sure if
24 he observed it -- or I think Rene Mendez, or one of the other
25 agents, or Yrigoyen, had told him about Aldrete-Davila getting

1 in a white car or a van.

2 Q. Okay. He -- he indicated to you that, by this time -- by
3 the time he got back to the levee, other people were there?

4 A. More or less, yes, ma'am.

5 Q. Okay. And he didn't recall who, but one of them told him
6 what?

7 A. I believe it's in the statement. I don't remember if it's
8 Rene Mendez or Lorenzo Yrigoyen, told him about Aldrete-Davila
9 get- -- someone picking him up on the -- in Mexico.

10 Q. And what did he do?

11 A. Uh- --

12 Q. Did he turn around and look, or did he tell you?

13 A. I don't recall.

14 Q. Did he tell you whether or not he told Lorenzo Yrigoyen or
15 Rene Mendez to take cover?

16 A. No, ma'am.

17 Q. So what did Agent Compean tell you happened next?

18 A. He stated that he told, I think, Border Patrol Agents David
19 Jacquez and Jose Mendoza about the shooting, and stated that he
20 believed that Aldrete-Davila had been shot.

21 Q. He told who that?

22 A. David Jacquez and Jose Mendoza.

23 Q. Okay. When you interviewed David Jacquez and Jose Mendoza,
24 did they tell you that that occurred?

25 A. David Jacquez said it occurred. Jose Mendoza stated it

1 never occurred.

2 Q. So what happened -- what did he tell you happened next?

3 A. Could I refresh my memory?

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

5 THE COURT: You may.

6 BY MS. KANOF:

7 Q. What did he tell you next?

8 A. After all the agents had arrived, he was told -- I don't
9 know if it was by Arnold or Richards-- to return to the
10 station to start processing the paperwork.

11 As he's driving down, again, he has to exit the -- he
12 exits the levee from the C.C. Bills gate. As he's coming down
13 off the C.C. -- the levee, Arturo Vasquez is coming up, and he
14 has a conversation with Arturo Vasquez.

15 Q. What does he tell you was the substance of the
16 conversation?

17 A. Arturo Vasquez, I believe, asked him what had happened. I
18 heard shots, what happened?

19 And he told Vasquez that, I believe, the alien -- or
20 Aldrete-Davila threw dirt in his eyes, and he shot at him.

21 Q. Okay. What did he tell you next?

22 A. He stated that he asked -- he knew Arturo Vasquez was going
23 back to watch for the tow truck, and asked Arturo Vasquez to, I
24 believe -- you know, I'm missing -- I didn't pick up all the
25 casings, can you go back and pick up some of the casings?

1 Q. Okay. What did he tell you next?

2 A. He stated -- while back at the station, he stated that
3 Arturo Vasquez called him and told him that he had picked up
4 the casings and threw them in the drainage ditch.

5 Q. And what hap- -- what did he tell you happened next?

6 A. I'll have to refresh my memory. Sorry.

7 Q. Okay. Does he tell -- did you ask him why he never
8 reported the discharge of his firearm?

9 A. Yes, ma'am.

10 Q. What did he tell you?

11 A. He stated, I thought I would get in trouble.

12 Q. And did you press him?

13 A. Yes, ma'am.

14 Q. What did you ask him?

15 A. I just asked him, Why did you think you were going to get
16 in trouble?

17 And he just wouldn't elaborate. He just said, I
18 thought I would get in trouble. He just kept repeating that.

19 Q. In his written statement, did -- do you need it to --

20 A. No, ma'am.

21 Q. Okay. You took his written statement and typed it into a
22 separate report, correct?

23 A. Correct.

24 Q. Okay. In his written statement, did he say, when he shot
25 at Osvaldo Aldrete-Davila, what his intent was?

1 A. His intent was to kill.

2 Q. And did he say why his intent was to kill?

3 A. I don't believe so. I just asked him, What was your
4 intent?

5 And he just stated --

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

7 BY MS. KANOF:

8 Q. Do you need this to refresh your memory?

9 A. I guess I need to look at it one more time.

10 Q. Okay. Did he explain to you why he shot to kill?

11 A. He thought he had a gun, but he stated he was never certain
12 that he had a gun.

13 Q. Okay. And he did say that to you. Is that correct?

14 A. Yes, ma'am.

15 Q. Is there anything -- any other difference between his oral
16 statement and his written statement, that you can recall?

17 A. Again, the two differences were, in the written statement,
18 he stated, I thought I got dirt in my eyes. And then -- in the
19 oral statement, he stated Aldrete-Davila might have thrown dirt
20 in his eyes.

21 And also, I think in the oral statement he did not
22 recall Vasquez -- Vasquez picked up any casings, or notified
23 him about it. In the written statement he does recall that
24 Vasquez did contact him and tell him that he had thrown --
25 picked up the casings and threw them away.

1 Q. What did you do next, after taking Mr. Compean's statement?

2 A. Basically, after I took the statement, we processed him and
3 took him to county.

4 Q. And then you completed your investigation?

5 A. Yes, ma'am.

6 Q. And you presented it to the U.S. Attorney's office?

7 A. Yes, ma'am.

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

9 THE COURT: Sure.

10 MS. KANOF: Pass the witness.

11 MS. STILLINGER: If I could have just a moment?

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MS. STILLINGER:

15 Q. Okay. Agent Sanchez, let me ask you -- I guess one of the
16 things in your investigation, when -- when you first heard that
17 a person was shot by a Border Patrol agent, I guess what you're
18 here to say, the first thing you wanted to look at, one, Is
19 this true?

20 A. Yes, ma'am.

21 Q. That he was shot by a Border Patrol agent, right?

22 A. Yes, ma'am.

23 Q. And why was he shot by a Border Patrol, right?

24 A. Yes, ma'am.

25 Q. Okay. So to -- for the purpose of finding out, Is it true,

1 was he really shot, one of your goals was to get the bullet out
2 of this person, correct?

3 A. Well, first, try to find the person.

4 Q. Right. Of course, you had to find the person.

5 Of course, you had a phone number for him. You knew
6 where he was, right?

7 A. Yes, ma'am.

8 Q. Okay. And, in fact, I think you testified before about how
9 you discussed with him, Please don't get the bullet out in
10 Mexico. We would like you to get the bullet out here in the
11 United States, correct?

12 A. Yes, ma'am.

13 Q. Okay. And that was for the purpose of maintaining the
14 integrity of the evidence, right?

15 A. Yes, ma'am.

16 Q. Okay. So once you had that bullet, and once it matched up
17 to Ignacio Ramos' weapon, you had it pretty much proved, or
18 strong evidence, that Ignacio Ramos had shot this man, correct?

19 A. Yes, ma'am.

20 Q. Okay. Now, let's talk about why he was shot. Okay? Lots
21 of times law enforcement officers have to shoot people,
22 correct?

23 A. Yes, ma'am.

24 Q. And that's not a crime, if it's a justified shooting under
25 the guidelines of the law, correct?

1 A. If they report it and it's investigated and it's a good
2 shoot, then, yes, ma'am.

3 Q. All right. You're not saying that if you don't report the
4 shooting, that that makes it an illegal shooting, are you?

5 A. It has to be investigated, ma'am.

6 Q. Right. But not reporting it doesn't make it an illegal
7 shooting, does it?

8 A. It depends.

9 Q. Okay. That's your understanding?

10 A. It depends on the shooting. I mean, if...

11 Q. Well, no, I'm asking. Your understanding is, if it's not
12 reported, that makes it an illegal shooting?

13 A. Not reporting a shooting in itself, without knowing the
14 whole facts of it, is basically a violation of Border Patrol
15 policy.

16 Q. Right. Right.

17 A. And then, once you find out the facts about it, then they
18 will determine whether it's a good or a bad shoot.

19 Q. Right. Okay. Whether or not a shooting was made in
20 self-defense has nothing to do with whether it's reported
21 later, correct?

22 A. Say that again, ma'am.

23 Q. Whether or not a shooting was made in self-defense -- and I
24 guess what -- let's just summarize this by saying, whether or
25 not it was a good shoot, that has nothing to do with whether or

- 1 not it was reported, correct?
- 2 A. Again, I mean, that's...
- 3 Q. Okay. You would want to know whether it was reported,
- 4 correct?
- 5 A. Correct.
- 6 Q. Okay. But you would also want to know other factors that
- 7 would go to whether or not it was a good shoot, right?
- 8 A. There's a lot of factors, yes, ma'am.
- 9 Q. Okay. Certainly, before you participate in charging
- 10 someone with an assault with intent to kill, you would want to
- 11 know all the facts having to do with whether or not it was a
- 12 good shoot, right?
- 13 A. As much as I can obtain.
- 14 Q. Okay. And I guess to find that out, you wanted to talk to
- 15 Mr. Aldrete-Davila, to find out how he was shot, right?
- 16 A. Yes, ma'am.
- 17 Q. Okay. And you would want to know whether he had a gun,
- 18 right?
- 19 A. Yes, ma'am.
- 20 Q. Whether he threatened the agents in any way, right?
- 21 A. Yes, ma'am.
- 22 Q. Whether he physically assaulted the agents in any way,
- 23 right?
- 24 A. Yes, ma'am.
- 25 Q. Okay. And those facts, would you agree -- those facts are

1 very important to your investigation, correct?

2 A. I would want to know those things.

3 Q. Okay. And those are very important facts, aren't they?

4 A. Those are facts I would want to know.

5 Q. Okay. Whether or not he had a gun, you can agree with me

6 that that's important, a very important fact?

7 A. That's important. I mean, that's -- if they saw a gun and

8 he had a gun, that's -- it's important.

9 Q. Okay. And you would agree with me that the only person

10 besides Agent Ramos and Agent Compean that can speak to that

11 issue of whether or not he had a gun in his hand on the vega,

12 the only person is Osvaldo Aldrete-Davila?

13 A. As far as on the vega?

14 Q. Yes.

15 A. Yes, ma'am.

16 Q. Okay. Let's talk about a few things that

17 Mr. Aldrete-Davila said.

18 When you first got this case, I take it you first got

19 this case on March 4th. Is that correct?

20 A. Yes, ma'am.

21 Q. Okay. And you got the two memos -- you said you had a memo

22 from Rene Sanchez and one from his supervisor, Karhoff,

23 correct?

24 A. That's how they were given to me, ma'am.

25 Q. Okay. And who did you get those memos from?

- 1 A. From the Office of Internal Audit, US Border Patrol.
- 2 Q. In El Paso?
- 3 A. In El Paso.
- 4 Q. Okay. Did you have any contact with Rene Sanchez prior to
- 5 that?
- 6 A. No, ma'am.
- 7 Q. Okay. Did you know Rene Sanchez?
- 8 A. No, ma'am.
- 9 Q. Okay. So your first contact with this case is those two
- 10 memos, correct?
- 11 A. Right.
- 12 Q. And at that time it's presented to you that this man,
- 13 Aldrete-Davila, was shot while he was trying to enter the
- 14 country and saw a Border Patrol agent and was trying to leave,
- 15 and he got shot in the back?
- 16 A. It was initially presented that he was trying to enter
- 17 illegally.
- 18 Q. Right.
- 19 A. Yes, ma'am.
- 20 Q. Okay. And you later found out that was a lie, correct?
- 21 A. Correct.
- 22 Q. Okay. And -- but -- but every report you wrote in the case
- 23 starts with a paragraph that contains that lie, doesn't it?
- 24 A. Because that's how it started. That's how it was
- 25 initiated.

1 Q. All right. I understand. This whole investigation was
2 initiated based on false information provided to you, right?

3 A. False information that was provided to Rene Sanchez.

4 Q. And then provided to you, right?

5 A. Correct.

6 Q. Okay. And so you start off your reports, and every one of
7 your reports say that this person was shot while attempting to
8 enter the United States, and when he retreated, he was shot in
9 the back, basically. I'm summarizing, of course.

10 A. That's how we received the case, again.

11 Q. Right. That's how you received the case. You found out
12 that was a lie within a week or two of having the case,
13 correct?

14 A. On March 4th. I believe I spoke to Mr. Sanchez on
15 March 10th; Aldrete-Davila on March 11th.

16 Q. Okay. When did you find out that that was a lie?

17 A. I believe when we spoke to Rene Sanchez on March 10th.

18 Q. And that's when you found that out?

19 A. That's when he told me the full story.

20 Q. Okay. And I guess my question was, which I just want to be
21 clear about, every report you wrote in the case from that point
22 on still began with that lie, right?

23 A. That's just training on my part, when I was with U.S.

24 Customs, that I -- you know, I -- an investigation starts, we
25 start with that paragraph. That way you know how an

1 investigation started, then you would go into what else we've
2 done in the investigation.

3 Q. Okay. But you would agree with me that every report
4 started off with --

5 MS. KANOF: Objection, Your Honor, asked and answered.

6 THE COURT: Sustained. Move on.

7 BY MS. STILLINGER:

8 Q. Okay. And, of course, you would have discovered that that
9 was a lie pretty quick into your investigation anyway, right?
10 If Rene Sanchez hadn't told you on March 10th, you would have
11 discovered it as soon as you found the agents and found out
12 about the incident, correct?

13 A. Yes, ma'am.

14 Q. Okay. Now, Mr. Aldrete-Davila, when you spoke to him --
15 the first time you spoke directly to him was March 11th of last
16 year?

17 A. He telephonically contacted me.

18 Q. Okay. That's the first time you spoke to him, right?

19 A. Yes, ma'am.

20 Q. Okay. And one of the things he told you was that -- and at
21 this time he's telling you, Yes, I had a load of marijuana in
22 the van, right?

23 A. Yes, ma'am.

24 Q. Okay. But he tells you that he got out of the van with his
25 hands up, correct?

1 A. Well, I guess in the translation -- at that time, I didn't
2 know about the drainage ditch. He didn't tell me about the
3 drainage ditch. He just stated when he got out, the first
4 agent he encountered, he put his hands up.

5 Q. Well, when you spoke to him on the phone, you were speaking
6 directly to him, right?

7 A. Yes, ma'am.

8 Q. I mean, not -- not through an interpreter.

9 A. No, ma'am.

10 Q. Okay. And you're fluent in Spanish, right?

11 A. I speak Spanish.

12 Q. Okay. I guess I don't understand what you are saying. Are
13 you saying that -- I mean, you wrote in your report -- am I
14 correct that you wrote in your report that Aldrete-Davila told
15 you he got out of the van with his hands up, right?

16 A. That's how he told me, yes, ma'am.

17 Q. Okay. So that's what you understood at that point in time,
18 right?

19 A. That's what he told me.

20 Q. Okay. And you understand, the way I'm describing it, that
21 he got out of his van with his hands up, correct?

22 A. That's what he told me exactly.

23 Q. Okay. And you understood that he wasn't running from the
24 agents, he wasn't evading them, he was trying to surrender as
25 soon as he got out of the van, right?

1 A. Again, it was a real short conversation. He was going to
2 give more specifics if he got the immunity letter.

3 Q. I understand it was a short conversation. But I'm asking:
4 Was that your understanding from that conversation?

5 A. That's what he told me. He got out of the van with his
6 hands up.

7 Q. Okay. What I'm asking -- I don't mean to be so repetitive.
8 But what I'm asking: Was your understanding that he said he
9 was trying to surrender as soon as he got out of the van?

10 A. The first conversation, I don't think he said he -- he just
11 said he got out of the van and he put his hands up. That
12 was -- the way he told me, it did make it sound like he did try
13 to surrender as soon as he got out of the van.

14 Q. The way he told you, he did make it sound that way?

15 A. In the first conversation, yes, ma'am.

16 Q. Okay. Now, in that conversation, he does not yet have his
17 immunity agreement, right?

18 A. No, ma'am.

19 Q. I mean -- but you discussed it with him, correct?

20 A. He asked for it.

21 And I said, We'll try.

22 Q. Okay. But, of course, you couldn't have arrested him, no
23 matter what. You can't arrest him over the telephone, right?

24 A. And, plus, I don't know where exactly he was living. I
25 can't -- yeah, I could not have.

1 Q. Okay. And you understood he was in Mexico?

2 A. Yes, ma'am.

3 Q. Okay. Had you discussed with Rene Sanchez -- discussed the
4 possibility of getting immunity for Mr. Aldrete-Davila?

5 A. That never came up with Rene Sanchez.

6 Q. Okay. When did you find out that it was not true that he
7 tried to surrender as soon as he got out of the van?

8 A. On March 16th, when I interviewed him in Ciudad Juarez.

9 Q. Okay. Now, he also told you on March 11th that, when he
10 got back to Mexico, that he flagged down a passerby to get a
11 ride, correct?

12 A. Yes, ma'am.

13 Q. Okay. And this was a lie, correct?

14 A. I know someone picked him up. I don't know -- someone
15 picked him up.

16 Q. Okay. Well, you were in court last week when he testified,
17 right?

18 A. Yes, ma'am.

19 Q. And he said it was a friend of his that picked him up,
20 right?

21 A. He did tell that to me.

22 Q. Okay. And he even told us that it was a friend that was
23 somehow involved in the organization, the drug organization?

24 A. I believe what he told me is that the friend was not
25 involved in the drug trafficking organization.

- 1 Q. Okay. Let me back up a little bit.
- 2 He tells you it's a passerby on March 11th, right?
- 3 A. Correct.
- 4 Q. Okay. On March 16th, he's still sticking to that story,
- 5 correct?
- 6 A. Yes, ma'am.
- 7 Q. Okay. And that's after he has the immunity agreement,
- 8 correct?
- 9 A. Correct.
- 10 Q. Okay. So he's still telling you it's a passerby. When do
- 11 you find out that that's a lie, that he actually knows this
- 12 person?
- 13 A. The third or fourth time I spoke to him, when I asked
- 14 specifically about the person that picked him up.
- 15 Q. Okay. And what did he tell you at that time?
- 16 A. I asked him about the white car and the van that picked him
- 17 up.
- 18 Q. Uh-huh.
- 19 A. And he stated that the two people in the white car, which
- 20 was observed by, I believe, Lorenzo Yrigoyen and Rene Mendez,
- 21 were the two persons that had dropped him off near where he
- 22 initially crossed into the United States.
- 23 Q. Okay. I'm sorry. The two people in the van?
- 24 A. The two people in the car.
- 25 Q. In the car, I'm sorry. The two people in the car were the

1 ones that had dropped him off to do this deal, basically,
2 right?

3 A. Yes, ma'am.

4 Q. Okay. And so one of the people that got out of that car
5 assisted him, right?

6 A. He stated no one got out of the car.

7 Q. Oh. Okay. What did he tell you about that?

8 A. I asked him -- because I asked him specifically who got out
9 of the car.

10 He stated they did not get out of the car. They
11 passed him, they slowed down, they passed him.

12 And then the van, a friend of his, who was not
13 involved with the organization, pulled up and put him in the
14 back of the van and then took him to a clinic.

15 Q. Okay. And would you agree with me, though, that when
16 Mr. Aldrete-Davila testified last week, he told us that the
17 friend was involved in the organization?

18 A. I don't recall if he said that or not.

19 Q. Okay. Did you find out who his friend was?

20 A. No, ma'am.

21 Q. Did you ask?

22 A. Yes, I did.

23 Q. Okay. And what did he tell you? Why didn't he tell you?

24 A. He said his friend was not involved, and he didn't want him
25 to get involved.

1 Q. Okay. Isn't one of the terms of the immunity agreement
2 that he cannot protect people?

3 A. Again, to my knowledge, that immunity agreement was for --
4 he had to totally cooperate with the investigation of the
5 shooting.

6 Q. Okay. Well, you're familiar with the immunity agreement,
7 right?

8 A. Yes, ma'am. You showed it to me last time.

9 Q. Okay. And you agree that it says-- one of the conditions
10 is you must neither attempt to protect any person or entity nor
11 falsely implicate any person or entity?

12 A. That's correct, ma'am.

13 Q. Okay. But you allowed him to protect his friend, correct?

14 A. I didn't allow him. He just didn't -- wouldn't provide
15 that information.

16 Q. Well, it's a term of the agreement. Couldn't you have
17 said, I'm sorry, our deal is off unless you tell me that?

18 A. I informed the -- I believe it might have been Brandy
19 Gardes at that time -- I informed her that he was not giving
20 that information out.

21 Q. Okay. So the U.S. Attorney could have said -- because,
22 really, the U.S -- this is a -- because, actually, you -- you
23 haven't signed off on this agreement, correct?

24 A. No, ma'am.

25 Q. Okay. It's an agreement, technically, between the U.S.

- 1 Attorney and Mr. Aldrete-Davila, right?
- 2 A. Yes, ma'am.
- 3 Q. Okay. So the U.S. Attorney could have said, I'm sorry, we
4 don't have an agreement unless you abide by the terms of the
5 agreement, correct?
- 6 A. Yes, ma'am.
- 7 Q. Okay. But that's not what happened, right?
- 8 A. That's not what happened.
- 9 Q. Okay. You didn't put any pressure on him to give you that
10 name?
- 11 A. I asked him who it was, but he did not give the name.
- 12 Q. Okay. Were there any lies that you found out about that
13 Mr. Aldrete-Davila told you?
- 14 A. I don't recall anything offhand.
- 15 Q. Okay. Okay. Did you ask him if he had a gun that day?
- 16 A. Yes, ma'am.
- 17 Q. Okay. And he denied it, right?
- 18 A. He stated he did not have a gun.
- 19 Q. Okay. Did you ask him if he had anything in his hand that
20 could have perhaps been mistaken for a gun?
- 21 A. Well, could I go back?
- 22 Q. Yes.
- 23 A. I did not ask him. He read the newspaper reports, and he
24 contacted me telephonically and told me, Look, I was reading
25 the papers, and it states I had something shiny, or a gun, in

1 my hand. I did not have a gun or anything shiny in my hand,
2 and I'm right-handed.

3 Q. You mean, before you arrested Agents Compean and Ramos, you
4 never asked this man, By the way, did you have a gun?

5 A. I believe we asked him in Ciudad Juarez. We asked him if
6 he had any type of weapons. But he -- I remember specifically
7 that he called me back after reading the papers about the
8 weapon.

9 Q. Okay. Okay. You think you did ask him that on March 16th?

10 A. I believe I did. I'm not sure. I don't recall.

11 Q. Okay. And the other question I just asked -- you went
12 backwards. But the other question I just asked: Did you ask
13 him if he had anything else in his hand when he was running
14 away? Did he point anything --

15 A. I believe I asked him if he had a cellular phone in his
16 hand, because that would possibly be something shiny.

17 And he stated that the only cellular phone he had was
18 the one that he left in the vehicle.

19 Q. Okay. Now, what did you do to confirm the truth of what
20 Mr. Aldrete-Davila was telling you, not just as to those
21 statements, but as to everything?

22 A. Again, just interviewing the other agents.

23 Q. Okay. Okay. Did you make -- did you do any investigation
24 in Mexico?

25 A. I asked the -- again, the -- from Ciudad Juarez, with the

1 embassy, requested them to see if they could find out any type
2 of criminal history on Aldrete-Davila.

3 Q. Okay. I take it there was none, correct?

4 A. That's a negative.

5 Q. Okay. And did Mr. Aldrete-Davila tell you that he had
6 committed this offense because his mother was ill, and also
7 because he needed money to renew his commercial driver's
8 license?

9 A. That's what he told me.

10 Q. Okay. And sometime -- did you request that he bring
11 documentation to verify that?

12 A. Yes, ma'am.

13 Q. Okay. So -- so one attempt you made to verify his veracity
14 was that you asked him to bring you documentation to confirm
15 what he was telling you, right?

16 A. Correct.

17 Q. Okay. But, when he brought you his commercial driver's
18 license, you saw it actually wasn't expired, correct?

19 A. He explained to me, like he explained in court, that those
20 things are hard to read and understand.

21 Q. Okay. And I know we spent some time on that. I think
22 Ms. Ramirez spent some time with Mr. Aldrete-Davila last week.
23 But you do agree with me his commercial driver's license was
24 not expired, correct?

25 A. Basically, he explained it the way he explained it in

1 court.

2 Q. Okay. And -- but you also reviewed the documents, right?

3 A. Yes, ma'am.

4 Q. Okay. And you saw his commercial driver's license was not
5 expired, right?

6 A. I believe it had a 2013, or some date on it.

7 Q. Right. And then there was some other permit with Pemex
8 that was set to expire ten months down the line, I think?

9 A. I don't know. There was something with Pemex, and he
10 explained it to me that this is -- he needs this permit to do
11 this. And even without -- even if he has a driver's license,
12 without the permit, he can't drive.

13 Q. Okay. And -- I'm sorry, that he can't what?

14 A. I guess he -- I think he said -- had stated in court that
15 he couldn't -- without Pemex, he can't be -- hazardous waste
16 material -- I'm not sure how that was.

17 Q. Okay. Okay. By the way, your interviews with
18 Mr. Aldrete-Davila were not recorded, were they?

19 A. No, ma'am.

20 Q. Okay. And did you ever ask him -- like you asked many of
21 the agents -- did you ever ask him to sit down and write out a
22 statement and swear to it?

23 A. No, ma'am.

24 Q. Okay. What background did you have on Mr. Aldrete-Davila
25 from Rene Sanchez? Did he give you any background on him?

1 A. Just that Rene Sanchez said that he knew about
2 Aldrete-Davila from San Isidro. That his family -- basically
3 what he stated in court, that -- you know, his mother-in-law
4 knew Aldrete-Davila's mother. They had grown up as little
5 girls, and that's why they were very close. And I believe Rene
6 Sanchez had stated he had ran into or knew of Aldrete-Davila
7 when he was growing up in San Isidro.

8 Q. Uh-huh. And Mr. Aldrete-Davila's -- would you agree his
9 purpose in telling you about his driver's license and mother
10 being sick, was he was trying to convince you that he was --

11 MS. KANOF: Objection, Your Honor, speculation as to
12 what his intent was.

13 THE COURT: I'll sustain.

14 BY MS. STILLINGER:

15 Q. Tell me about your conversation with Aldrete-Davila. What
16 were you talking about when he told you that, My driver's
17 license expired, and my mother is sick?

18 A. I asked him why was he bringing -- why was he -- why was he
19 involved in this, smuggling drugs into the United States.

20 Q. Okay. And that's what he told you?

21 A. He stated he needed the money.

22 I told him, Why did you need the money?

23 And that's what he told me.

24 Q. Okay. And you never asked him about any other activity,
25 potential illegal activity, before that day or after that day,

1 did you?

2 MS. KANOF: Objection, Your Honor.

3 THE COURT: All right. Well -- approach.

4 (Bench conference:)

5 THE COURT: I thought if you were going into illegal
6 activity, you're supposed to approach the bench.

7 MS. STILLINGER: I'm just asking -- I'm pointing
8 out -- I asked Aldrete-Davila this question, by the way, and
9 there was no objection. I'm just pointing out the fact he
10 wasn't required to talk about anything else. I'm not going to
11 say, What about this, this, and this?

12 MS. KANOF: How is that relevant?

13 THE COURT: I'll sustain.

14 MS. STILLINGER: Because he got a sweet deal. It's
15 also relevant to what kind of background investigation.

16 THE COURT: The only deal he got was immunity for this
17 incident. So I'm not sure what any prior activity or
18 subsequent has to do with this.

19 MS. STILLINGER: He's also said he investigated this
20 guy. How much investigation can you do if you don't ask him a
21 question about anything other than what happens on February
22 17th?

23 THE COURT: I'll sustain the objection.

24 Hold on.

25 (End of bench conference; open court.)

1 THE COURT: The Court will sustain the objection.

2 You may proceed.

3 BY MS. STILLINGER:

4 Q. You told me, when we talked last week -- and I'm talking
5 about talking in court, when I was questioning you last week.

6 You told me that you just found out about the \$5 million claim
7 that Mr. Aldrete-Davila filed. I think you said you found out
8 sometime around May or June. Is that right?

9 A. I believe it was May.

10 Q. Okay. Did you know that Rene Sanchez had advised
11 Mr. Aldrete-Davila about that?

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

13 Q. Okay. Did you know that Rene Sanchez had talked to
14 Aldrete-Davila about immunity?

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

16 Q. Okay. And did you know that he found him a lawyer?

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

18 Q. Did you just find that out for the first time when
19 Aldrete-Davila testified last week?

20 A. Yes, ma'am.

21 Q. Okay. That's something that would have been interesting
22 for you to know in your investigation, wouldn't it?

23 MS. KANOF: Objection, Your Honor, argumentative.

24 THE COURT: I'll sustain.

25

1 BY MS. STILLINGER:

2 Q. Did you ever ask either Rene Sanchez or Aldrete-Davila
3 about their relationship and have that information withheld
4 from you?

5 A. I asked him how he knew Aldrete-Davila. And, as I
6 explained before, he just mentioned how his -- well, again, he
7 grew up in San Isidro. At some point in his life, he grew up
8 in that area in a small town. So I think he knew the
9 Aldrete-Davila family.

10 I don't know if I asked him specifically how well he
11 knew Aldrete-Davila. He did say he knew him and that his
12 mother-in-law, again, grew up with Aldrete-Davila's mother.

13 Q. Okay. I guess -- let me -- let me put it this way. You
14 asked both Rene Sanchez and Aldrete-Davila about the
15 relationship they had with each other, right?

16 A. Correct.

17 Q. Okay. And neither one of them told you about this aspect
18 of the relationship, right?

19 A. No, ma'am.

20 Q. Okay. Did you know that Rene Sanchez and Aldrete-Davila
21 had spent time together socially in Mexico between the time of
22 the shooting and today?

23 A. No, ma'am.

24 Q. Okay. Did you find that out in court for the first time
25 last week?

1 A. Yes, ma'am.

2 Q. Okay. Did you ever ask either one of them about that?

3 A. No, ma'am.

4 Q. Okay. I think you said that you were extra cautious about
5 the relationship between Rene Sanchez and Mr. Aldrete-Davila,
6 correct?

7 A. I believe said I kept it in the back of my mind.

8 Q. Okay. Were you ever given any information about Rene
9 Sanchez that caused you to be more cautious as this
10 investigation wore on?

11 A. No, ma'am.

12 Q. Okay. Do you recall getting a memo in July of this year --
13 I'm sorry, of last year -- pertaining to Mr. Sanchez?

14 MS. KANOF: Objection, Your Honor. Approach the
15 bench?

16 THE COURT: All right.

17 (Bench conference:)

18 MS. KANOF: You haven't made a ruling, Judge, on the
19 admissibility of the Nolan Blanchette memo. That's what she's
20 going into, that Nolan Blanchette told his supervisors that
21 Rene Sanchez had information about horse trailers being used to
22 traffic.

23 MS. STILLINGER: I don't think you have made a ruling
24 because there hasn't been an objection before the Court yet.

25 THE COURT: I understand. You did provide me with

1 the -- the memo. I have reviewed it.

2 And where are you going with all of this? What's the
3 relevance?

4 MS. STILLINGER: He just said -- I think Rene
5 Sanchez's credibility is relevant. I think his evaluation --

6 THE COURT: How are you impeaching his credibility
7 with that?

8 MS. STILLINGER: Well, Ms. Kanof had him testify a lot
9 about who he believed and who he didn't believe and the steps
10 he took in his investigation, based on what he believed and
11 what he didn't believe. This guy gets a memo in July, where
12 somebody is saying -- not terrible, but saying, I have concerns
13 about Rene Sanchez. And it's not terrible, but he seems
14 unusually well informed.

15 This witness does -- instead of investigating it, he
16 turns the memo over to Rene Sanchez, so Rene Sanchez can call
17 Blanchette and say, Why are you writing these things about me?
18 It's not normal behavior.

19 It's not normal behavior, I don't think, for an OIG
20 agent to turn over an investigatory memo within hours of having
21 received it, turn it over to the subject of the memo. And I
22 think that shows his bias in this investigation.

23 THE COURT: I guess my concern is, this guy has
24 already been indicted, has he not?

25 MS. STILLINGER: Right. But this -- this is the same

1 time period when he was yelling at other agents and getting
2 them to come clean because he doesn't believe them.

3 THE COURT: That memo is dated July of '05?

4 MS. STILLINGER: Yes.

5 THE COURT: So this investigation is essentially
6 completed and turned over.

7 MR. ANTCLIFF: The interviews were in mid-September
8 with the U.S. agents.

9 MR. PETERS: Not to mention there's two additional
10 superseding indictments.

11 THE COURT: But what about this memo tells him that
12 Rene Sanchez has lied about anything regarding this
13 investigation? As a matter of fact, it confirms that, although
14 he may be involved in something shady, his information tends to
15 be very credible, as I recall. So how does this impeach Rene
16 Sanchez's work or put this guy -- I'm concerned about his
17 credibility.

18 MS. STILLINGER: Well, everything impeaches this guy
19 with regard to Rene Sanchez, because of what he did with the
20 information.

21 MS. KANOF: Your Honor, there's an assumption, because
22 he knows about drug trafficking, which it's his job to know,
23 that he's a drug dealer. And they're trying to impeach him by
24 saying Rene Sanchez is a drug dealer. Let's just call a spade
25 a spade. The purpose is they want to make Rene Sanchez look

1 like a drug dealer. And this happens in July.

2 I have done the necessary Giglio inquiries to
3 determine whether the Border Patrol thought this was anything
4 indicative of Rene's character. They didn't.

5 This is Blanchette telling -- the other thing is, who
6 wrote this memo? Nolan Blanchette, who is another line agent,
7 writes a memo with that Rene Sanchez information.

8 MS. STILLINGER: Did you say lying?

9 MS. KANOF: Line. L-I-N-E.

10 THE COURT: Line.

11 MS. KANOF: Okay. And her argument is that she wants
12 to impeach this agent about the believability of Rene Sanchez
13 by something he didn't know at the time he spoke to Rene
14 Sanchez. And --

15 THE COURT: I will ask you, Ms. Stillinger, how is
16 this relevant for impeachment?

17 MS. STILLINGER: I just --

18 THE COURT: I just don't understand what rule this is
19 admissible for purposes of impeachment.

20 MS. STILLINGER: I think it's admissible to show he
21 was not conducting his investigation properly. He's talked
22 about investigation. We know that significant things happened
23 in September, several months after this memo, when he goes back
24 to his agent. He says, I don't think you're telling the truth.
25 So he --

1 MS. KANOF: Your Honor, it wasn't based on anything
2 Rene Sanchez told him.

3 MS. STILLINGER: Right. But I'm just saying the
4 investigation is ongoing. He's testified what he did. This
5 investigation is ongoing.

6 THE COURT: What, in this memo, indicates that Sanchez
7 wasn't telling him the truth? Tell me.

8 MS. STILLINGER: No, I'm not trying to impeach Rene
9 Sanchez.

10 THE COURT: You're saying --

11 MS. STILLINGER: -- his honesty. I'm trying to
12 impeach this guy. Because, instead of getting information,
13 going back to Rene Sanchez and saying -- having more concerns
14 about Rene Sanchez --

15 THE COURT: Why would he have concerns about Rene
16 Sanchez? He's not the subject of his investigation.

17 MS. STILLINGER: Right, but he's an important witness.

18 MS. KANOF: Rene Sanchez didn't do anything wrong.

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

20 And Rene Sanchez is a line agent in Willcox, Arizona,
21 who has -- apparently comes regularly into information about
22 illegal drug activities in the Fabens sector of the Border
23 Patrol here. The question is, Where is he getting that
24 information?

25 THE COURT: What's that got to do --

1 MR. ANTCLIFF: I want to say, also, that nobody is
2 calling Rene Sanchez a drug dealer, by any stretch. I'm
3 calling Aldrete-Davila a drug dealer, and that's where the
4 information is coming from.

5 MS. KANOF: That's not correct. I can tell the Court
6 exactly where he got it, because I talked to Rene Sanchez.

7 THE COURT: Okay. But hold on. I don't care where he
8 got it. The point is not where he got it. The point is, why
9 do you want to admit this? I'm not getting why.

10 MS. STILLINGER: Okay. No, I don't want to admit the
11 document. I just want to ask him, Wasn't he given information
12 that caused concern, and what did he do with that?

13 THE COURT: Why is that --

14 MS. KANOF: Why would that cause him concern? It was
15 indicted. The only thing he used Rene Sanchez for is to
16 initiate the case, to find Osvaldo.

17 THE COURT: Hold on. Hold on. If we're going to go
18 into this depth, perhaps we should do it outside the presence
19 of the jury. But I'm going to tell you, at this point, the
20 Court is going to sustain the objection regarding this
21 questioning. If you want to take up something outside the
22 presence of the jury, I will be happy to do that.

23 MS. STILLINGER: So you'll let me just go on
24 questioning, and we can take it up outside the presence of the
25 jury?

1 THE COURT: Well, all I'm saying, I'm not finding that
2 this is admissible, or that I'm going to allow you to proceed
3 in this line of questioning. There's -- she's objecting to the
4 questioning involving that document, and I'm going to sustain
5 the objection.

6 MS. STILLINGER: Okay. I would just ask to make a
7 bill outside the presence of the jury.

8 THE COURT: You've got it. Okay.

9 (End of bench conference; open court.)

10 THE COURT: You may proceed.

11 BY MS. STILLINGER:

12 Q. Okay. Let me go back to the things that Osvaldo
13 Aldrete-Davila told you.

14 He -- he protected several people, wouldn't you say?

15 A. Three people I know of.

16 Q. Okay. And one is the person that picked him up, right?

17 A. And the two drivers of the sedan.

18 Q. Okay. And the two drivers of the sedan, which were also,
19 apparently, the people who took him to the van at the
20 beginning, right?

21 A. Correct.

22 Q. Okay. That's three people. Who else?

23 A. I don't recall.

24 Q. Okay. How about the doctor at the clinic that treated him?

25 A. I don't know if he's protecting the doctor. For some

1 reason, he did not want to provide me the name of the clinic.

2 Q. Okay. Well, you know, doctors do have an obligation to
3 report gunshot wounds, right?

4 MS. KANOF: I would object, Your Honor. It's the law
5 in Mexico.

6 THE COURT: All right.

7 MS. STILLINGER: Can I just ask if he knows whether --

8 THE COURT: That, you can ask.

9 BY MS. STILLINGER:

10 Q. Do you know whether or not doctors in Mexico are required
11 to report gunshot wounds?

12 A. I don't know, ma'am.

13 Q. You know that's the case here, but you don't know about
14 Mexico?

15 A. Yes, ma'am.

16 Q. Okay. Did you think that that would be an important thing
17 to investigate?

18 A. I wanted to know where the clinic was.

19 Q. Okay. And I understand you're saying you don't know who
20 he's protecting. But, for whatever reason, he never did tell
21 you where that clinic was, right?

22 A. I asked him and his sister, and they wouldn't provide it to
23 me.

24 Q. Okay. And he also wouldn't tell you the name of his
25 friends that were drug traffickers that were making threats to

1 shoot Border Patrol in retaliation for this shooting, right?

2 A. I don't think I asked him who they were.

3 Q. You didn't ask?

4 A. He just said they were friends, and we reported it. I
5 think I might have asked him. He didn't -- he didn't -- and
6 we -- I never came back and asked him specifically.

7 Q. Okay. Certainly, he never told you?

8 A. He never told me.

9 Q. Okay. Didn't you think that would be something important
10 to ask him, so that you could report it to Mexican authorities?

11 A. Yes, ma'am.

12 Q. That's a very serious threat, isn't it?

13 A. That's a very serious threat.

14 Q. Okay. Did you report anything to Mexican authorities about
15 that?

16 A. I believe we did report it to the Mexican authorities,
17 through the diplomatic security service and the American
18 consulate in Ciudad Juarez.

19 And then we also reported it to the US Border Patrol,
20 again -- because there had been a previous, I guess, BOLO, be
21 on the lookout type of warning, where I think it was another
22 Mexican organization had put out a hit on any federal law
23 enforcement agent. I don't recall the exact price. And
24 then -- so we just added that the Border Patrol repeat that
25 same warning.

1 Q. Okay. Would you agree with me that this proffer letter
2 gave you some leverage to get him to tell you who those people
3 were and where they were?

4 A. Again, we were investigating a shooting, not the drugs.

5 Q. Okay. You weren't very concerned about the threats to the
6 agents over here?

7 A. Absolutely. We -- we reported it to Mexican authorities,
8 to the embassy, or the Ciudad consulate -- the American
9 consulate in Ciudad Juarez. And we reported it to US Border
10 Patrol. And they put out another BOLO, as far as agents to be
11 aware of, that there might be a hit put out on them.

12 Q. Okay. Don't you agree that it would have been more
13 complete information to report to the Mexican authorities if
14 you had the names and locations of the people that were making
15 those threats?

16 A. Correct.

17 Q. Okay. And you had some leverage, through this proffer
18 agreement, to get that information, didn't you?

19 A. We asked him, and he didn't provide it.

20 Q. Okay. If you don't understand what I'm saying by leverage,
21 tell me. But what I'm saying is, you had in your hands a way
22 to put pressure on him to tell you that information, didn't
23 you?

24 A. I think Mr. Aldrete-Davila understood that, as far as he
25 had to cooperate fully in the shooting investigation, as far

1 as -- not anything to do with the drugs.

2 Q. Okay. Well, retaliation for shooting has something to do
3 with this shooting, doesn't it?

4 A. Yes, ma'am.

5 Q. Okay. And you did explain to him paragraph number 3, about
6 you can't protect any person or entity, correct?

7 A. That's correct.

8 Q. Okay. You understood that you could get him to tell you
9 that information, didn't you?

10 A. We asked him the information; he did not provide it.

11 Q. Okay. You understood that this proffer agreement, this
12 immunity agreement, could have been declared null and void for
13 him not giving you that information, didn't you?

14 A. Like I said before, Mr. Aldrete-Davila's noncooperation
15 with questions -- we asked about certain things. I did relate
16 to the Assistant United States Attorney, which I believe was
17 Brandy Gardes at that time.

18 Q. Right. Your understanding -- I'm just asking you about
19 your understanding at this point in time, not what you did.
20 But your understanding was that this immunity agreement could
21 have been canceled for his failure to give you that information
22 you were requesting, correct?

23 A. Yes, ma'am.

24 Q. Okay. And it didn't cause you to doubt
25 Mr. Aldrete-Davila's credibility, that he had lied to you?

1 A. Well, a lot of things -- like I said, his credibility, I
2 mean, this person was smuggling in marijuana that day.

3 Q. Right.

4 A. I did take that into consideration, because, again, prior
5 to coming to this agency, that's primarily what I did is
6 investigate drug traffickers, when I was with U.S. Customs.

7 Q. Uh-huh.

8 A. So, yeah, that did take -- that was in the back of my mind.
9 But again, everything that -- more or less, basically
10 everything he told us was substantiated through the
11 investigation.

12 Q. Okay. It was -- but I've pointed out to you some lies that
13 you know that he told you, right?

14 MS. KANOF: Your Honor, at this point, I'm going to
15 object to the whole line of questioning. She asked this
16 previously, and it's been asked and answered, and it is outside
17 the scope of my direct and purpose of this testimony at this
18 point.

19 THE COURT: Well, I'm not sure what the question --
20 this question is. But I will overrule the objection, and just
21 ask whatever the question is. Ask the question.

22 BY MS. STILLINGER:

23 Q. I think the question was: Didn't it concern you that
24 Mr. Aldrete-Davila had told you some lies?

25 A. Yes, ma'am.

1 Q. Okay. Now, Mr. Aldrete-Davila has been allowed to go back
2 to Mexico now, correct?

3 A. Yes, ma'am.

4 Q. Okay. And you don't have any way -- legal way of making
5 him come back here, do you?

6 A. No, ma'am.

7 MS. KANOF: I would object, Your Honor. That's very
8 misleading. Ms. Stillinger agreed that he could go back to
9 Mexico. She knows he was in custody.

10 THE COURT: All right. Restate the question.

11 BY MS. STILLINGER:

12 Q. Well, let me -- okay. I'm sorry.

13 I think -- I think that you answered this question,
14 but let me just ask it again, and make sure that we're all
15 clear on this.

16 There's nothing you can do to make Mr. Aldrete-Davila
17 come back from Mexico legally, correct?

18 A. I can ask him and then obtain another permit. But as far
19 as making him come back, no, ma'am.

20 Q. Okay. Just one thing about Mr. Compean's statements.
21 Ms. Kanof was asking you about Agent Compean telling you that
22 somebody was saying, Hit him, hit him.

23 A. Correct.

24 Q. Right? Okay. And I think she was asking who was
25 present -- what other agents were present at that time. You

1 said there -- Mr. Compean told you Mr. Ramos and some other
2 agents, right?

3 A. And other agents.

4 Q. Okay. Mr. Compean specifically told you that he did not
5 know who said that, didn't he?

6 A. That's correct.

7 Q. Okay. Because you specifically asked that. You wanted to
8 know who had said that, right?

9 A. Yes, ma'am.

10 Q. Okay.

11 MS. STILLINGER: Can I have just a moment, Your Honor?

12 THE COURT: Sure.

13 MS. STILLINGER: Pass the witness.

14 THE COURT: All right.

15 CROSS-EXAMINATION

16 BY MR. ANTCLIFF:

17 Q. Good morning, sir.

18 A. Good morning, sir.

19 Q. You interviewed a lot of witnesses in this case. Agreed?

20 A. Yes. Yes, sir.

21 Q. Okay. Your testimony, I believe, was that the first formal
22 interview that you conducted of a Border Patrol agent was with
23 Agent Juarez. Is that right?

24 A. That's correct, sir.

25 Q. And did you interview him three or four different times?

1 A. If you count the very first one, which was just basically
2 to take the weapon from him, if you count that one, then I
3 would say four.

4 Q. What day did you take the weapon from him?

5 A. March 17th; the evening of March 17th. Myself and two
6 other agents went to his house in west El Paso.

7 Q. And you talked to him at that time, when you were taking
8 his weapon. Is that right?

9 A. Correct.

10 Q. He gave you a statement?

11 A. He just -- I just asked him if he knew anything about a
12 shooting.

13 He stated no.

14 Q. Oh, my mistake. And so that was the end of that --

15 A. Correct.

16 Q. -- interview, I guess. Okay.

17 Then, on March the 18th, you formally interviewed him
18 at your offices?

19 A. He called me back telephonically and stated, Mr. Sanchez,
20 after sleeping on it, I recall hearing one or two shots.

21 Then I asked him to come in.

22 Q. Did you document -- I guess this -- it's not really an
23 interview -- but what had happened when you took his weapon and
24 he said he didn't know anything?

25 A. I don't think I documented it at that time. I think in

1 another interview I -- I'm thinking. I'm not sure if I
2 documented it or not. Again, it was just basically the seizure
3 of his weapon.

4 Q. And one of the reasons you take notes and document things
5 is to preserve that for situations like we're in right now. Is
6 that right?

7 A. Yes, sir.

8 Q. Okay. You talked to Agent Juarez formally, and he gives
9 you a written statement. And you also transcribe the notes of
10 what you heard during the course of that interview on the 18th.
11 Is that right?

12 A. Yes, sir. I take notes as we're doing the oral interview.

13 Q. Sure. And you stayed in for that interview. Is that
14 right? Or were you in and out of that one, too?

15 A. I was in and out of that one. Again, I was doing a lot of
16 stuff on this case.

17 Q. I understand. Things were moving pretty fast during that
18 time frame, right before these two agents were arrested, right?

19 A. Yes, sir.

20 Q. Okay. So you're in and out, and you're aware that he's
21 going to give a written statement in his own hand, as well. Is
22 that right?

23 A. I asked the agents to make a written -- or not make him,
24 but ask him if he would do a written statement.

25 Q. He apparently agreed, because a written statement was

1 prepared, right?

2 A. Correct.

3 Q. And it's your testimony today that the only -- there are
4 only two real differences between what you recall in your notes
5 and what he wrote in his written statement. Is that right?

6 A. Say that again, sir?

7 Q. You said, on direct, that there were pretty much two
8 differences, is that right, between the written and the oral?

9 A. Well, the oral -- you do an oral, and you interview them
10 and you ask, Will you do a written statement? Most of the time
11 they will agree to do the written statement. And if it's the
12 same that was given in the oral, there's no reason to do a
13 subsequent oral. I mean, that's -- I guess it's up to the
14 individual agent. But --

15 Q. So, on the first one, there wasn't any notes transcribed
16 from the oral interview. It was just his written statement.
17 Is that right?

18 A. Now, which first one are you talking about?

19 Q. March 18th.

20 A. March 18th, I believe the other agents -- I don't know if
21 they just sat there and talked to him and took notes, or if
22 they took notes. But again, after the interview -- and again,
23 I was in and out. They informed me what Mr. Juarez had told
24 them.

25 I said, Ask if he would be willing to do a written

1 statement.

2 Q. And so he did a written statement?

3 A. Correct, sir.

4 Q. What I'm asking you is: Are there -- was there a report
5 prepared regarding the oral interview that you did on that
6 day --

7 A. No, sir.

8 Q. -- for that interview?

9 A. No, sir.

10 Q. Okay. So the only one from that day is his written one?

11 A. Correct, sir.

12 Q. Okay. I guess at some point, within the next several
13 hours, or 24 hours, you read that written statement, right?

14 A. I believe I read it at that time. Because, like I stated,
15 Arturo Vasquez was coming in at that time. So we moved
16 Mr. Juarez out of the interview room and placed him in another
17 room, so he could finish his written statement. And all the
18 other agents were tied up with other things. I sat in with
19 Mr. Juarez while he wrote up that written statement.

20 Q. I see. So you were in the room while he wrote it?

21 A. Correct, sir.

22 Q. Were you guys conversing, you and Agent Juarez, while he
23 was writing up that statement?

24 A. No, sir. He just -- I said, Write what you told the agents
25 about. And then he -- I think the only thing I might have

1 shown him is the -- which was already shown to him, because he
2 made some notes on a picture, where he thought he observed
3 certain -- Mr. Compean and so forth. And that's about it.

4 Q. In the first interview, did -- well, let's go back.

5 You said that he made some notes where he observed
6 Agent Compean. Do you recall where he may have observed Agent
7 Compean?

8 A. Like I said, I think I gave him a picture -- or the other
9 agents gave him a picture. And he drew on there where he
10 observed, I think, Agent Compean. He drew on what he
11 thought -- where the agent -- where Aldrete-Davila was running
12 when he went over the levee.

13 Q. Sure. And then what he drew was Agent Compean, where he
14 was on the levee when he was coming back. Is that right?

15 A. I don't recall. I would have to look at it to refresh my
16 memory.

17 Q. During the first interview of Agent Juarez, he never told
18 you that he saw Agent Compean shoot at anything, did he?

19 A. That's correct, sir.

20 Q. He told you that he gets to the scene and goes directly to
21 the van, correct?

22 A. Correct, sir.

23 Q. He looks in the van, sees the marijuana, and is checking
24 under the seats for a weapon, right?

25 A. Yes, sir.

1 Q. Then he hears -- while this is going on, he hears some
2 shots, right?

3 A. The first statement, he stated he only heard one or two
4 shots.

5 Q. Okay. One or two shots. And he hears somebody yell,
6 Shots. Is that right?

7 A. Yes, sir.

8 Q. Okay. Then he tells you that he pretty much disregarded
9 those shots and continued on with what he was doing in the van,
10 right?

11 A. Yes, sir.

12 Q. That's all he said related to Agent Compean and shots. I
13 mean, it didn't even involve Compean, did it?

14 A. That first statement, yes, sir.

15 Q. And so he writes this up and signs it and dates it, or
16 whatever. And you now have this as a record, right?

17 A. Yes, sir.

18 Q. You've read it, and you don't believe it?

19 A. Yes, sir.

20 Q. Immediately. I mean, you don't believe it almost
21 immediately.

22 A. Yes, sir.

23 Q. That's because you talked to Agent Vasquez, and the
24 information he provides, I guess, is contradictory to what
25 Juarez has said. Is that right?

1 A. No, sir. Just based on my experience as a law enforcement
2 agent, I did not believe Oscar Juarez at that time.

3 Q. And, at the time that you interviewed Agent Juarez, you had
4 information from Rene Sanchez, I guess, which had initiated
5 this investigation, right?

6 A. Yes, sir.

7 Q. And you had talked to other -- Osvaldo Aldrete-Davila
8 telephonically and in person. Is that right?

9 A. Yes, sir.

10 Q. And had you talked to any of the other agents out there at
11 the Fabens station when you interviewed Juarez?

12 A. That first statement, he gave us the witness statement.

13 Q. Okay.

14 A. I just want to correct that Arturo Vasquez was just being
15 interviewed when Oscar Juarez was giving his statement. So we
16 did not -- I did not have information on what Arturo Vasquez
17 had said.

18 Q. Sure. I understand. You -- and you corrected me and said
19 that, based on your experience, you didn't believe him,
20 correct?

21 A. Correct, sir.

22 Q. Okay. The next time you interview him is April 25th. Is
23 that right?

24 A. That sounds about correct, sir.

25 Q. And, at the time that he gives this first interview, he is

1 under the terms of the proffer letter, correct?

2 A. That's correct, sir.

3 Q. Didn't have a lawyer present at your offices when he gives
4 it, but he is immune from prosecution, provided he tells the
5 truth, right?

6 A. The first interview he did not have an attorney.

7 Q. Right. But he had a letter?

8 A. Yes, sir.

9 Q. Okay. The second interview he does have a lawyer, who is
10 with him during the course of the interview, and it is under
11 the terms of the proffer letter, right?

12 A. Correct, sir.

13 Q. In the second interview he tells you some information which
14 is different from what he told you in the first interview. Is
15 that right?

16 A. Correct, sir.

17 Q. So let's talk a little bit about that. In the first
18 statement he said he went directly to the van, is that right,
19 and saw nobody else.

20 A. Yes, sir.

21 Q. In the second interview he doesn't quite go straight to the
22 van. He sees Agent Compean and the driver of the vehicle about
23 six to eight feet apart, somewhere near the ditch?

24 A. Yes, sir.

25 Q. Okay. There were other inconsistencies between the two

1 statements like that, correct?

2 A. Yes, sir.

3 Q. He gives the second statement to you and writes it up, as
4 well. Is that right?

5 A. Yes, sir.

6 Q. You prepare a transcription of the notes that you made from
7 that interview. Is that right?

8 A. Basically, just transcribed his written statement, because
9 his handwriting is not that legible.

10 Q. That's true, it's not. But your recollection of the
11 interview and what he wrote in his written statement pretty
12 much coincided. Would you agree with that?

13 A. Yes, sir.

14 Q. But you still didn't believe him. Is that true?

15 A. Yes, sir.

16 Q. And so September 27th, I think, comes along, and you
17 reinterview. Is that right?

18 A. Correct, sir.

19 Q. And he is threatened with indictment at that time.

20 A. I believe his attorney had come in and -- I guess Oscar
21 Juarez had told his attorney new information, and the attorney
22 decided that information, based on the proffer letter, that we
23 needed to speak with him -- he needed to speak with us again.

24 Q. Okay. He was threatened with indictment on that occasion.
25 That was my question. Do you recall that?

1 A. He was told he would be indicted if he didn't tell the
2 truth.

3 Q. He was told he would be indicted if he didn't tell the
4 truth?

5 A. I believe so, sir.

6 Q. Okay. So now he gives you information that is wholesale
7 different from the first interview. Would you agree?

8 A. It's -- yes, sir.

9 Q. I mean, pretty much the only thing that -- is the chase.
10 All of the stuff he gave you regarding his driving a vehicle
11 around, that was all the same. But once he got to the ditch,
12 everything is pretty much different, right?

13 A. Right. A lot of new information, sir.

14 Q. It's different from what he told you in the first two
15 interviews, correct?

16 A. Yes, sir.

17 Q. Okay. This time he's telling the truth. Is that right?

18 A. I still don't believe him.

19 Q. You heard his testimony in court. You still don't believe
20 him, do you?

21 A. Not about in the drainage ditch.

22 Q. Okay. Some of the Border Patrol agents are -- have
23 difficulty expressing their thoughts, would you agree with
24 that, based on your experience in interviewing them?

25 A. They have different educational levels, sir.

1 Q. Certainly. And they have difficulty telling you what they
2 believe they saw.

3 A. Again, just based on my experience as an agent, Office of
4 Inspector General, agents -- even more experienced agents,
5 people with a lot of education, it's not a pleasant experience
6 coming -- being called into the Office of Inspector General.
7 They know we're internal affairs. It's not a pleasant
8 experience.

9 Q. Absolutely. It wouldn't be pleasant for anybody, I agree.
10 But what I'm asking you is: Some of those agents, given their
11 educational levels and the seriousness of the situation you're
12 investigating, had difficulty telling you what they remember
13 and what went on. They had difficulty expressing themselves.
14 Would you agree?

15 A. Some of them, yes, sir.

16 Q. Oscar Juarez would be one of them?

17 A. Correct, sir.

18 Q. Okay. You interview Arturo Vasquez on the same day that
19 you interview Oscar Juarez, correct?

20 A. Correct, sir.

21 Q. He provides you information that's a little bit different
22 from what Mr. Juarez told you. Is that right?

23 A. Correct, sir.

24 Q. And Agent Vasquez tells you that he heard shots when he got
25 out of his vehicle at the scene that day. Is that right?

- 1 A. Correct, sir.
- 2 Q. The only person he saw -- this is his first interview --
3 the only person he saw at that time was Juarez, standing by the
4 van, right?
- 5 A. Correct, sir.
- 6 Q. And he also tells you that Agent Compean told him that he
7 had fired some shots that day, right?
- 8 A. Say that again, sir?
- 9 Q. Arturo Vasquez told you, in this first interview on March
10 18th, that Agent Compean told him that he had fired some shots?
- 11 A. That's correct, sir.
- 12 Q. Okay. You had problems with his statement, too, didn't
13 you?
- 14 A. At that time, I believe Mr. Vasquez had -- it appeared that
15 he wasn't providing a full statement.
- 16 Q. Later, you discovered that wasn't the case. Is that right?
- 17 A. No, sir.
- 18 Q. Did you ever get a second statement from Arturo Vasquez?
- 19 A. Yes, sir.
- 20 Q. Did he add information to what he had provided you on the
21 first statement?
- 22 A. Yes, sir.
- 23 Q. When did you take the second statement?
- 24 A. I don't recall, sir.
- 25 Q. Okay. Months after the first one?

1 A. At least a couple months.

2 Q. Could it have been as late as September?

3 A. I don't recall, sir. I'd have to look at the statement.

4 MR. ANTCLIFF: One moment, Your Honor?

5 THE COURT: Sure.

6 BY MR. ANTCLIFF:

7 Q. Next in the line of interviews, I guess, that you conducted
8 with the Border Patrol agents, was who?

9 A. On which day, sir?

10 Q. Who else did you interview March 18th besides Agents Juarez
11 and --

12 A. One of the other agents in the office interviewed Rene
13 Mendez.

14 Q. That's the trainee who was with Agent Yrigoyen on that --
15 the day?

16 A. Yes, sir. It just happened that's the person. We were
17 calling out to the other agents. He just happened to answer
18 his phone.

19 Q. And the information that Agent Mendez was able to provide,
20 basically, was corroboration of what Agent Yrigoyen had said
21 about the white car and the blue van. Is that right?

22 A. Yes, sir.

23 Q. Other than that, nothing?

24 A. Correct, sir.

25 Q. He did not corroborate, or did -- if you can tell me --

1 what Agent Yrigoyen -- the conversation Agent Yrigoyen had with
2 Agent Richards at the scene?

3 A. I don't believe there was -- he stated anything about him
4 being part of the conversation.

5 Q. Did you ask him?

6 A. I don't believe he was asked at that time. We didn't know
7 about it at that time.

8 Q. Okay. After you talked to Agent Yrigoyen, and he states
9 that he had a conversation with Agent Richards out at the
10 scene, did you ask Agent Mendez, then, whether he had any
11 recollection?

12 A. Didn't need to.

13 Q. Okay. You don't believe it happened?

14 A. No, sir. Mr. Yrigoyen stated he was down there speaking to
15 Mr. Compean. Mendez was up on the levee still. That's why
16 Mendez was not near to hear that conversation.

17 Q. Oh, I understand. I'm sorry. I didn't understand that.
18 Okay.

19 In March you went back out to the scene. Is that
20 right?

21 A. Yes, sir. I went out several times.

22 Q. But sometime in March you went out for the first time,
23 right?

24 A. I believe that was March 15th, the very first time I ever
25 went out to the scene.

1 Q. Okay. And you go out several times in there looking for
2 casings or blood, or to get an idea of what went on, from
3 viewing the scene, right?

4 A. Correct.

5 Q. You took pictures and looked around?

6 A. Correct.

7 Q. You didn't find any casings or any blood, correct?

8 A. Correct.

9 Q. Okay. Later, you contact the sector evidence team and ask
10 them to go out to the scene. This is October 2005, now?

11 A. No, sir. That's in March. When we went out -- when I went
12 out there in March, again, March 16th, that was myself and a
13 Border Patrol agent from the Office of Internal Audit. Again,
14 I didn't know my way around there, so he was able to get me up
15 on top of the levee.

16 I had a metal detector. I just kind of -- again, I
17 didn't know where. Basically, I knew it was there on the
18 levee, in that vicinity. I didn't know which -- where he ran,
19 so forth. I went with the metal detector and didn't find
20 anything.

21 That same day, March 16th, is when we interviewed
22 Aldrete-Davila. He pointed out on the pictures where he ran,
23 where the incident occurred.

24 And March 17th, I believe, is when we got all the
25 agents -- or the majority of the agents out of my office, the

1 Office of Internal Audit -- at least one, if not two, agents
2 from the sector evidence team, and agents from other agencies,
3 go out there and help us go on line and look through it.

4 And also, we had, I believe, the Mexican investigators
5 from the American consulate in Ciudad Juarez, and Mexican
6 police, on the south side of the river assisting, also.

7 Q. And nobody found anything?

8 A. Nothing.

9 Q. Okay. You had the sector evidence team go back out there
10 in October to prepare a report, did you not?

11 A. To get measurements and so forth, yes, sir.

12 Q. Okay. And you heard the testimony of the commander of the
13 sector evidence team -- I don't know when -- sometime earlier
14 this week or last week.

15 A. Yesterday, sir.

16 Q. And did you talk to that individual, when you had members
17 of the sector evidence team go out and help you in March?

18 A. I believe he was on annual leave.

19 Q. Okay. So he wasn't present out there?

20 A. Correct.

21 Q. You didn't talk to him?

22 A. No. Just -- as far as the assistance from the sector
23 evidence team, that was arranged through the Border Patrol.

24 Q. Are you a certified crime scene investigator, I guess? I
25 don't know what it's called.

- 1 A. I've had training.
- 2 Q. You've had some training?
- 3 A. Some training.
- 4 Q. In the use of a metal detector, to look for shell casings?
- 5 A. No, sir.
- 6 Q. You arrest Agent Compean in the late evening, early morning
7 hours of the 18th. Is that right?
- 8 A. I believe it was around 11:45 or 11:55 p.m.
- 9 Q. Okay. And you process him, and then you want to talk to
10 him, right?
- 11 A. Actually, we bring him in, read him his rights, had him
12 sign a Miranda form. He waives his rights and agrees to
13 cooperate with the investigation. And, at that time, we
14 interview him.
- 15 Q. He did all of that, and then he gave an interview to you,
16 correct?
- 17 A. Correct.
- 18 Q. Okay. He wrote a handwritten statement of what he
19 perceived as the events of February 17th, that you were looking
20 into. Is that right?
- 21 A. Correct.
- 22 Q. And there are differences between the handwritten
23 statement, in effect, what he says happened and what you recall
24 from the notes that you took, correct?
- 25 A. There's two discrepancies, which I thought it was important

1 to...

2 Q. Right. And you testified to those on direct, correct?

3 A. Yes, sir.

4 Q. Okay. Tell me what they are again.

5 A. I think on the oral interview he stated he did not recall

6 if Arturo Vasquez picked up any casings or threw them away.

7 In his written statement, he recalls Arturo Vasquez

8 contacted him, and he threw away -- picked up casings and threw

9 them in the ditch.

10 Oral interview, Mr. Compean stated that Aldrete-Davila

11 threw dirt in his eyes.

12 Written statement, he stated, I got dirt in my eyes.

13 Q. I think in the oral interview you testified that he said

14 may have thrown dirt in his eyes.

15 A. I think he said might have thrown dirt in his eyes.

16 Q. Okay. In the written he said?

17 A. I got dirt in my eyes.

18 Q. Those are the differences that you recall?

19 A. Two of the differences, yes, sir.

20 Q. There could have been more, or maybe there are more. You

21 just don't know right now?

22 A. I believe those are the two that mostly made me decide

23 to -- I needed to write a statement on the oral interview.

24 Q. Okay. Is there a difference between Mr. Aldrete-Davila's

25 hand position in the oral versus his written statements?

- 1 A. No, sir. It's in the left hand.
- 2 Q. No, I'm talking about whether he was raising his hands up
3 to surrender. Do you recall any differences regarding that?
- 4 A. No. I believe he said his hands were raised. I don't know
5 if it's in the written statement.
- 6 Q. Okay. You're sitting there when he's writing the written
7 statement. Is that right?
- 8 A. Yes, sir.
- 9 Q. And are you coaching him, or is he just writing it out?
- 10 A. I was just reminding him of things that -- when he -- that
11 he wrote -- that we talked about in the oral statement.
- 12 Q. Certainly, he's putting what he thinks is important in the
13 written statement, and that's why you took notes. You're
14 keeping track of what you think is important. Is that right?
- 15 A. Correct, sir.
- 16 Q. Did you videotape or audiotape the statement that Agent
17 Compean gave you?
- 18 A. No, sir.
- 19 Q. Okay. If you had, that certainly would have been a
20 fabulous record to present to the jury today, wouldn't it?
- 21 A. Correct, sir.
- 22 Q. If fact, you didn't tape anybody's interview, any Border
23 Patrol agent's interview, did you?
- 24 A. We interviewed one agent that we did tape.
- 25 Q. Who did you tape?

1 A. That was Manny Fuentes.

2 Q. And you interviewed him in relation to this investigation?

3 A. It was another shooting investigation.

4 Q. I see.

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

6 THE COURT: Sure.

7 BY MR. ANTCLIFF:

8 Q. Agent Compean told you that he heard somebody say, Hit him.

9 Is that right?

10 A. Correct, sir.

11 Q. Did -- nobody else at the scene that day heard that
12 statement, correct?

13 A. Correct, sir.

14 Q. Okay. He tells you that he told the alien to stop several
15 times and put his hands up, in the written statement, correct?

16 A. Correct, sir.

17 Q. And he told you that that didn't occur, correct? He didn't
18 stop.

19 A. He continued to come toward Agent Compean.

20 Q. He did. Agent Compean has a shotgun as the alien, the
21 driver, is approaching him, right?

22 A. Correct, sir.

23 Q. And your understanding of what Agent Compean told you is
24 that he grabs the barrel of the gun and starts poking at the
25 guy?

1 A. I asked him how he pushed him. And he -- again, we didn't
2 have the shotgun in the room when we were interviewing him.

3 And I said, How did you have it?

4 And he said he grabbed it up by the slide and was
5 pushing him back.

6 Q. Okay. And he showed you with both hands on it, right?

7 A. Correct, sir.

8 Q. So -- and that seemed like pure lunacy to you, didn't it?

9 A. Correct, sir.

10 Q. No training out there under the sun is going to teach
11 somebody to have a weapon pointed directly at them and give
12 access to the trigger to the person you're trying to arrest,
13 correct?

14 A. Correct, sir.

15 Q. Okay. Nobody else told you that they saw that specific
16 action, did they?

17 A. Correct, sir.

18 Q. Agent Juarez says that one hand was on the stock and one
19 hand was up near the slide, right?

20 A. Correct, sir.

21 Q. That's when he saw, for the -- in the third statement,
22 that's when he saw that, right?

23 A. Correct, sir.

24 Q. Prior to Agent Juarez telling you how he saw Agent Compean
25 swinging the shotgun, you had no information from anybody else

1 at the scene in that regard, correct?

2 A. Aldrete-Davila.

3 Q. Oh, I take it back. You did. And Aldrete-Davila said that
4 he was trying to use this -- that Agent Compean was trying to
5 use the shotgun to hit him?

6 A. Correct, sir.

7 Q. And it was his testimony that, basically, that -- that
8 Agent Compean was trying to butt stroke him. Is that right?

9 A. I don't know if he used the word "butt stroke". He just
10 said he hit him in the head.

11 Q. The physical way that Aldrete-Davila showed you how that
12 would occur would be what you commonly know as a butt stroke,
13 right?

14 A. Correct, sir.

15 Q. Okay. At the time when the driver and Agent Compean are at
16 the ditch, Agent Compean told you he wasn't in fear for his
17 life. Is that right?

18 A. Correct, sir.

19 Q. At some point that certainly changes, correct?

20 A. When they were rolling down on the south side of the vega.

21 Q. He's in fear for his life when he's rolling down the south
22 side of the vega, right?

23 A. Afterwards, when he sees Aldrete-Davila.

24 Q. Okay. And he told you that when Aldrete-Davila started
25 running away, he thought -- Agent Compean -- thought he had a

1 gun, and he was in fear for his life then, right?

2 A. He saw something shiny. He was not certain.

3 Q. Excuse me. Something shiny, that could have been a gun.

4 And he was then in fear for his life, right?

5 A. Correct.

6 Q. Things happen in the field, you're aware, very quickly,
7 correct?

8 A. Yes, sir.

9 Q. Have you ever had a gun pointed at you?

10 A. I was in the Marine Corps. I was a Gulf War veteran.

11 Q. Okay. So that's a yes?

12 A. Yes.

13 Q. And things happen really quickly under those circumstances,
14 right?

15 A. Correct, sir.

16 Q. You perceive things a little bit differently when your life
17 is threatened, correct.

18 A. Based on my experience?

19 Q. That's what I'm asking.

20 A. Again, just as far as a law enforcement agent, I've never
21 really had a gun pointed at me. But I would say, being in
22 combat during the first Gulf War, it's -- and I know you hear
23 it on TV, but it actually -- everything does seem to move in
24 slow motion.

25 And so I don't know if -- I guess it would be just

1 seconds that it's happening. But when you're there and it's
2 happening to you, it's like moving in slow motion.

3 Q. And that's what I'm saying. You perceive things
4 differently, right, than they actually are. Time seems to slow
5 down?

6 A. Correct, sir.

7 Q. Okay. And you were in the Marine Corps for how many years
8 before you became a law enforcement agent?

9 A. Almost eight years, sir.

10 Q. And you're aware that Agent Compean was not in the Marine
11 Corps, right?

12 A. He was in the Navy.

13 Q. On a ship?

14 A. I don't know what he was on.

15 Q. Okay. Not in combat?

16 A. I don't know, sir.

17 Q. You never asked those questions?

18 A. He just -- when they were doing the booking form, he just
19 stated he had been in the Navy.

20 Q. Okay. He told you, at the time that he saw what he
21 believed to be a gun, he was in fear for his life, right?

22 A. He was -- he saw something shiny. He was never certain
23 that he saw a gun. I don't know if he ever stated to me he was
24 in fear of his life.

25 Q. Okay. So he shoots?

- 1 A. He shoots.
- 2 Q. You don't know, to this day, exactly how many times. You
3 just -- you have an idea. Is that right?
- 4 A. Correct.
- 5 Q. He told you that he was down on the vega south of the levee
6 when those shots happened. Is that right?
- 7 A. Well, I don't think he stated that exactly. But he stated
8 he rolled down the south -- jumped on Aldrete-Davila, they
9 rolled down the south side of the levee, so they were in the
10 vega. Aldrete-Davila breaks free, starts running, sees
11 something shiny, thinks it's a gun, not certain, and he starts
12 shooting.
- 13 Q. Okay. And do you ask him what position he's in when he
14 shoots?
- 15 A. No, sir, I did not.
- 16 Q. The only information you have regarding the position that
17 Agent Compean was in when he fired the shots came either from
18 Agent Juarez's third statement or Aldrete-Davila. Is that
19 right?
- 20 A. I believe Aldrete-Davila never observed Mr. Compean
21 shooting at him.
- 22 Q. Isn't his testimony -- didn't you hear his testimony that
23 he was looking back?
- 24 A. He looked back after he was -- after he was shot.
- 25 Q. So he never looked back -- you believe he never looked back

1 prior to that?

2 A. That's what he told us.

3 Q. What do you believe? That's what I'm asking.

4 A. That's all we have, is that Aldrete-Davila stated he was
5 running. Right before he hits the riverbank, he gets shot in
6 the buttocks, he goes down. He goes -- he goes back, reaches
7 back, looks at the blood, looks back to the agents, thinking
8 that they're going to come up and arrest him --

9 Q. Okay.

10 A. -- and --

11 Q. You heard his testimony, Aldrete-Davila's testimony, that
12 while he was in the ditch he looked back and saw several agents
13 pointing their handguns at him, did you not?

14 A. He did state that, yes, sir.

15 Q. But, to your knowledge, the only agents who drew weapons on
16 that day were Ramos and Compean, correct?

17 A. We've never spoken to Mr. Ramos.

18 Q. Do you know whether he drew his weapon?

19 A. No, I don't.

20 Q. The bullet that came from -- it came from somewhere -- you
21 know whose gun it came from, right?

22 A. Well, no. I thought you were talking about when they were
23 in the drainage ditch.

24 Q. In -- the only agents you know who pulled a weapon on
25 February 17th between 1311 and 1328 were Agents Ramos and

1 Compean, correct?

2 A. Yes, sir.

3 Q. Okay. After this is over, the shooting is over, at that
4 immediate moment --

5 THE COURT: Could you go back to the podium? It's
6 getting hard to hear you.

7 MR. ANTCLIFF: I'm sorry.

8 BY MR. ANTCLIFF:

9 Q. At that moment, Agent Compean told you that he walked back
10 to the levee and picked up shell casings. Is that right?

11 A. Yes, sir.

12 Q. He also told you that the shots that he fired were down in
13 the vega. Is that right?

14 A. To my understanding, yes, sir.

15 Q. The first interview you make -- you take of him is about 30
16 days after the incident, correct?

17 A. Correct, sir.

18 Q. And I understand the investigation did not arise right
19 away. All of those interviews of Border Patrol agents are
20 about 30 days after the fact, right?

21 A. Correct, sir.

22 Q. And none of them -- well, you heard -- most of them have
23 testified that it was an unremarkable day, for the most part,
24 correct?

25 A. I think that's what they testified to, sir.

1 Q. People generally will make mistakes in their recollection
2 the more time passes, correct?

3 A. Some people, yes, sir.

4 Q. Okay. Some people remember more the further the time
5 passes?

6 A. Some people remember, some people don't. It just depends
7 on the person.

8 Q. People make mistakes, you would agree?

9 A. I think everybody makes mistakes, yes, sir.

10 Q. Particularly, mistakes can be made in a situation that
11 somebody perceives as life threatening, right?

12 A. That's a very serious mistake.

13 Q. Sure. I understand. But that's what training is about, is
14 it not?

15 A. Correct, sir.

16 Q. And law enforcement agents go through training repeatedly
17 to avoid mistakes. But mistakes are still made, correct?

18 A. Correct.

19 Q. You testified that you searched the vega for the shells and
20 that you did measurements and -- during the course of your
21 investigation. Do you have any idea of the distance apart that
22 Mr. Aldrete-Davila and Mr. -- Agent Compean were at the time
23 that that -- the shooting happens?

24 A. Based on Mr. Aldrete-Davila, when we took him out to the
25 scene where he thinks he observed -- when he turns around after

1 being shot, and he observed Mr. Compean and Mr. Ramos,
2 that's -- I think the -- I would have to look at that chart.
3 It's about half -- it appears to be about the middleway --
4 midway between the vega and the midpoint of the vega.

5 Q. There is not a lot of high-level vegetation out there,
6 would you agree?

7 A. No, sir.

8 Q. I mean, there aren't any trees out there?

9 A. No, sir.

10 Q. Everything is probably knee level or lower, correct?

11 A. When I was out there it was lower.

12 Q. So when you're on that side of the vega, the south side of
13 the vega, two people looking at each other ought to be able to
14 see each other, right?

15 A. Easily.

16 Q. And you can see, on a clear day, pretty deep into Mexico,
17 correct?

18 A. Correct, sir.

19 Q. Although this, admittedly, was not a clear day. It was
20 overcast, right?

21 A. Yes, sir.

22 Q. Given your investigation.

23 MR. ANTCLIFF: One moment, Your Honor?

24 THE COURT: Sure.

25

1 BY MR. ANTCLIFF:

2 Q. Law enforcement agents generally are trained -- I mean, if
3 you're going to fire, shoot to kill. Is that right?

4 A. Correct.

5 Q. Or stop the threat?

6 A. Stop the threat.

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

8 THE COURT: All right.

9 Could the attorneys approach real quick?

10 (Bench conference:)

11 THE COURT: I want to try to finish this witness up
12 before lunch. However, I also have a sentencing at 1:00. So I
13 was just wondering, how long do you anticipate taking?

14 MS. KANOF: Five to ten minutes in redirect.

15 THE COURT: Do you have other witnesses after that?

16 MS. KANOF: No.

17 THE COURT: The only reason I ask that is, I may have
18 you, if you are going to rest at that point, have you rest
19 before lunch.

20 MS. KANOF: Okay.

21 THE COURT: That way we can talk about everything
22 during lunch.

23 (End of bench conference; open court.)

24 THE COURT: Okay. Are you ready to proceed,

25 Ms. Kanof?

1 MS. KANOF: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. KANOF:

4 Q. Agent, you've been with other law enforcement agencies
5 before DHS-OIG correct?

6 A. Yes, ma'am.

7 Q. Do any other law enforcement agencies routinely tape
8 interviews?

9 A. No, ma'am. Federal agencies, no.

10 Q. Okay. And any of the agencies you've been with?

11 A. Correct.

12 Q. So it wasn't an unusual process on this part?

13 A. Correct.

14 Q. You carry -- not today, but you carry a gun, right?

15 A. Yes, ma'am.

16 Q. A service weapon?

17 A. Yes, ma'am.

18 Q. Do you have to qualify with that weapon?

19 A. Quarterly.

20 Q. And when you do that, you go to a range to do it?

21 A. Correct.

22 Q. When you shoot a gun, where do the casings go?

23 A. They go back and to the right.

24 Q. And how is it that you learn that, when you're out
25 shooting?

- 1 A. We have to police up the casings.
- 2 Q. Okay. After you shoot them, you've got to go pick them up,
3 correct?
- 4 A. Correct.
- 5 Q. Okay. And do you also learn to stand out of the way, or to
6 the right and hind side of the person that's shooting?
- 7 A. Say that again, ma'am?
- 8 Q. You also learn to stand out of the way of somebody who's
9 shooting. You don't stand to the right side behind them,
10 correct?
- 11 A. Basically, because the shell casings could go in your
12 shirt. And they're hot shell casings, so...
- 13 Q. About how far would you stand away to make sure that
14 doesn't happen to you?
- 15 A. It varies. I know usually the shell casings could fly back
16 maybe 10 or 15 feet, at the most. Again, it depends on if
17 there's wind, so forth.
- 18 Q. Of course. Atmospheric?
- 19 A. Correct.
- 20 Q. Okay. And Agent Compean told you that all of the shooting
21 was done down on the vega, correct?
- 22 A. Correct.
- 23 Q. But he picked up his casings on the levee?
- 24 A. He says he returns on top of the levee to pick up casings.
- 25 Q. Okay. Arturo Vasquez -- your last interview of him was May

1 11th, correct?

2 A. Again, I don't know if that was May or September.

3 MS. KANOF: May I approach the witness?

4 BY MS. KANOF:

5 Q. Would it help you to look at your --

6 A. Yes, ma'am.

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

8 THE COURT: Yes, you may.

9 A. That's correct.

10 BY MS. KANOF:

11 Q. What's correct?

12 A. May 11th.

13 Q. You didn't interview him after that?

14 A. No, ma'am.

15 Q. I mean, I know you were present when we talked to him, but
16 for a formal interview.

17 A. Yes, ma'am.

18 Q. Okay. Questions were asked you by Ms. Stillinger regarding
19 documentation provided to you by Osvaldo Aldrete-Davila about
20 his reasons. One of the things you said was that his mom was
21 ill?

22 A. Correct.

23 Q. Did he present any documentation regarding that?

24 A. Yes, he did.

25 Q. What was that?

1 A. It was basically a note from the doctor stating that she
2 had hypertension. And I believe there was a date, February of
3 last year.

4 Q. Okay. With regard to Rene Sanchez, did you keep going back
5 to him and asking him questions about Osvaldo, as you
6 investigated this?

7 A. No, I did not.

8 Q. What purpose -- or, in your mind, in your investigation,
9 what position, or what importance, is Rene Sanchez?

10 MS. STILLINGER: I'm going to object as to his
11 evaluation of Rene Sanchez's importance being irrelevant,
12 Your Honor.

13 MS. KANOF: They asked tons of questions about the
14 relationship with Rene Sanchez.

15 THE COURT: All right. Well, I'm not sure I
16 understand the question, so I'm going to ask you to restate the
17 question. Then I will rule.

18 BY MS. KANOF:

19 Q. Did you feel a need, after the initiation -- let me go --
20 once you talked to Osvaldo, did you think you needed to go back
21 and talk to Rene Sanchez?

22 A. About the investigation, no.

23 Q. Okay.

24 THE COURT: I'll overrule the objection. Obviously,
25 he's already answered it, but for purposes of the record.

1 BY MS. KANOF:

2 Q. You were asked -- I think it was by Mr. Antcliff, I
3 think -- why that -- whether or not you believe Agent Juarez's
4 statement, or testimony that he made to the jury. And you said
5 you still don't believe him, correct?

6 A. I believe what he stated, but there's still parts that I
7 don't believe. I think he still knows more information. Not
8 that the information he's provided is false, but I think he
9 knows more information still.

10 Q. What do you think he knows?

11 A. I -- I -- he slipped into the drainage ditch. He was in
12 that drainage ditch. I don't believe that he did not see
13 Mr. Ramos in that drainage ditch.

14 Q. When you talked to Mr. Davila about the scene with the
15 weapon, at the lip of the drainage ditch, when Compean had his
16 shotgun, what did Osvaldo Davila tell you about the first
17 position of the gun that he saw?

18 A. I don't remember. Like I said, there's so many interviews.
19 I don't remember if it was port arm. But I think he stated it
20 was aimed in at Mr. Davila.

21 Q. Okay. That he aimed it at Mr. Davila?

22 A. It was aimed in at him.

23 Q. And in Mr. Juarez's third statement, did he say the same
24 thing?

25 A. Correct.

1 Q. And what did Osvaldo tell you that Mr. Compean did with the
2 gun next?

3 A. He took it out of his shoulder and took a swing at him.

4 Q. And what did Mr. Juarez tell you he saw happen with the gun
5 after it was aimed?

6 A. Mr. Compean took it out of his shoulder and took a swing at
7 him.

8 Q. To your knowledge, at any time, has Mr. Juarez talked to
9 Mr. Aldrete-Davila about what happened?

10 A. Not to my knowledge.

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

12 THE COURT: Sure.

13 MS. KANOF: Pass the witness.

14 THE COURT: All right.

15 Ms. Stillinger?

16 RE CROSS-EXAMINATION

17 BY MS. STILLINGER:

18 Q. Agent Sanchez, you just were telling us that you didn't
19 believe some of Juarez's testimony in trial, correct?

20 A. I believe what he stated. I don't -- I think there's more
21 information he has not told us.

22 Q. Okay. And specifically, you said about Ramos being in the
23 drainage ditch, right?

24 A. I don't see how he could have slipped into that drainage
25 ditch and not seen Mr. Ramos.

1 Q. Right. Now, there wasn't anything wrong with Agent Ramos
2 going across that drainage ditch, was there?

3 A. Absolutely not.

4 Q. Okay. And, in fact, we've heard testimony from several
5 people that said that that's the appropriate thing to do when
6 you see your agents get -- your fellow worker having a hard
7 time, correct?

8 A. I would have been across that ditch in a heartbeat.

9 Q. Right. So what possible motive would Agent Juarez have to
10 lie about that?

11 A. I don't know.

12 Q. Okay. But it's just your opinion that he's not telling the
13 truth about not seeing him?

14 A. Well, I do know he did -- I think it was on the third
15 interview, I think that he did state why he was, and that's
16 possibly a reason why he has not, I think, told everything.

17 Q. Well, but I guess what I'm saying, Ramos was -- I think
18 what you're saying, even you agree that, in crossing over the
19 ditch, that was a good thing, under anybody's evaluation,
20 right?

21 A. Officer safety, that was the correct thing to do.

22 Q. Right. Okay. So he's certainly not protecting Agent Ramos
23 by withholding that information, correct?

24 A. Correct.

25 Q. Okay. But you have your own ideas about what makes sense

1 and what doesn't make sense, right? I mean, you've testified
2 about that?

3 A. I know, based on my experience as an agent, yes, ma'am.

4 Q. Right. And that's what you're using in evaluating whether
5 what the agents tell you is complete and truthful, correct?

6 A. Yes, ma'am.

7 Q. Just to be clear, you mentioned taping an interview with a
8 Manny Fuentes, having to do with another shooting. That didn't
9 have anything to do with Agent Ramos, correct? Or Agent --
10 they -- neither one of these agents were involved in that
11 shooting, correct, as far as...

12 A. Involved how?

13 Q. By shooting.

14 MS. KANOF: Your Honor, I need to object to this.

15 THE COURT: All right. Well, I'll sustain the
16 objection.

17 MS. STILLINGER: Well, I -- I'm just concerned,
18 because he testified it was part of the investigation in this
19 case, and he brought up --

20 THE COURT: Well, you can ask him if that
21 investigation was part of this investigation. I don't have a
22 problem with that question.

23 MS. STILLINGER: Well, I think he said that. I just
24 wanted to clarify.

25

1 BY MS. STILLINGER:

2 Q. Let me ask, Mr. Ramos -- maybe -- maybe there's something I
3 don't know about this. But Mr. Ramos didn't discharge his
4 weapon in that event, did he?

5 A. Mr. Ramos did not.

6 Q. Okay. Okay. Do you know whether Mr. Aldrete-Davila ever
7 told Agents Ramos or Compean that he was right-handed?

8 A. No, ma'am.

9 Q. He probably didn't, right?

10 A. I don't believe he would.

11 Q. Okay. And do you know whether they had an opportunity to
12 observe him writing, in the couple of seconds they had to
13 evaluate whether their lives were in danger?

14 A. No, ma'am.

15 Q. Okay. So that's -- the fact that Mr. Aldrete-Davila might
16 be right-handed is certainly not one of the things that you're
17 saying they could have taken into consideration when deciding
18 whether or not there was a gun in his hand, correct?

19 A. Say that again, ma'am?

20 Q. The fact that Mr. Aldrete-Davila might be right-handed is
21 not information that was available to them when they were
22 evaluating whether that was a gun in his left hand, correct?

23 A. That's correct.

24 Q. Okay. Now, Ms. Kanof just asked you if you had an
25 opportunity, or whether you felt a need to reinterview Rene

1 Sanchez, right? And you said no.

2 A. Correct.

3 Q. Okay. But you didn't know until last week that Rene
4 Sanchez had been the one helping Aldrete-Davila set up his
5 lawsuit, right?

6 A. I assumed Mr. Davila did that on his own.

7 Q. Right. And so you didn't know that until last week?

8 A. Correct.

9 MS. STILLINGER: Okay. I'll pass the witness.

10 THE COURT: Mr. Antcliff?

11 MR. ANTCLIFF: Thank you, Judge.

12 RECCROSS-EXAMINATION

13 BY MR. ANTCLIFF:

14 Q. Sir, you testified that .40 caliber Beretta casings go back
15 and to the right. Is that right?

16 A. I carry a Glock .40 caliber. They carry Berettas. But --

17 Q. Okay.

18 A. And I've carried other weapons, and they usually kick back
19 and off to the right.

20 Q. Okay. Did you test that on the 40-millimeter Beretta?

21 A. No, sir, I did not.

22 Q. So you don't know whether they go right or left?

23 A. I did -- I think it was a .40 caliber, but I did fire a
24 Beretta when I was in the Marine Corps, when I was overseas.

25 And my recollection, that Beretta -- and again, I don't recall

1 the caliber -- I think it was a 9 millimeter -- shot to the
2 right and to the back.

3 Q. But you didn't test this -- the guns involved in the case?

4 A. Correct, sir.

5 Q. Okay. In your experience, shell casings aren't flying
6 15 feet backwards unless there's wind or some other factor
7 causing that to happen, right?

8 A. There's a lot of variables, sir.

9 Q. Certainly. And when you're at the range qualifying, it's
10 your obligation to pick up your brass, correct?

11 A. Correct, sir.

12 Q. Did I hear you testify -- and I may not have heard
13 correctly -- that Agent Jacquez told you that Agent Compean
14 said he had hit Aldrete-Davila?

15 A. Tried to strike him.

16 Q. With a bullet, shot him?

17 A. No, sir.

18 Q. No?

19 A. Jacquez did not state that.

20 Q. He did not state that?

21 A. Jacquez just stated that Mr. Compean told him that he shot
22 at Aldrete-Davila.

23 Q. At him?

24 A. At him.

25 Q. Very well. You and other law enforcement agencies don't

1 routinely tape interviews of suspects or the people you're
2 interviewing. Is that right?

3 A. Agencies that I've been with, yes, sir.

4 Q. Sure. But you certainly have that capability and have done
5 it in the past, correct?

6 A. I think I've only done it maybe twice in my career.

7 Q. I understand. You have the capability?

8 A. Yes, sir.

9 Q. And you've done it in the past?

10 A. Yes, sir.

11 MR. ANTCLIFF: Pass the witness.

12 THE COURT: All right.

13 Anything else, Ms. Kanof?

14 MS. KANOF: Just one question.

15 THE COURT: Go ahead.

16 REDIRECT EXAMINATION

17 BY MS. KANOF:

18 Q. Agent Sanchez, you started to say, in Juarez's third
19 statement, that he told you why he had not told you everything
20 before.

21 A. Correct.

22 Q. What did he tell you?

23 MS. STILLINGER: Object, Your Honor, to hearsay.

24 Agent Juarez has already testified, and they could have asked
25 these questions then.

1 MS. KANOF: She asked -- Ms. Stillinger opened the
2 door, Your Honor. She asked the question. He just didn't get
3 to finish.

4 MS. STILLINGER: May we approach the bench,
5 Your Honor?

6 THE COURT: Yes, you may.

7 (Bench conference:)

8 MS. STILLINGER: Your Honor, I know what she's going
9 for, but it has nothing to do with my questions. My questions
10 were, there's no reason that Agent Juarez would hide this
11 because -- that's the point I was making. He has no motive to
12 hide this.

13 What she wants to get into is what Agent Juarez said,
14 insofar as he withheld information at the beginning -- not
15 withholding at trial, but at the beginning -- it was because he
16 thought Nacho was a mean guy.

17 MS. KANOF: He said he was afraid of him.

18 MS. STILLINGER: If you could keep your voice down,
19 please.

20 THE COURT: All right. I'll sustain the objection.

21 (End of bench conference; open court.)

22 THE COURT: You may proceed, Ms. Kanof.

23 MS. KANOF: I have nothing further, Your Honor.

24 THE COURT: Anything further, Ms. Stillinger?

25 MS. STILLINGER: No, Your Honor.

1 THE COURT: Mr. Antcliff?

2 MR. ANTCLIFF: No, Your Honor.

3 THE COURT: All right.

4 May he step down?

5 MS. KANOF: Please, Your Honor.

6 THE COURT: You may step down. Thank you.

7 You may call your next witness.

8 MS. KANOF: Your Honor, the Government rests.

9 THE COURT: All right. Ladies and gentlemen of the
10 jury, it is now 12:06. The Government has rested, so it's a
11 good time to take a lunch break.

12 I have some things I have to do, so I'm going to tell
13 you you're on lunch break until -- we're going to start again
14 at 2:00. So you need to be back at 1:45.

15 Between now and then, remember that this case is not
16 over. I have not given you your charge. I have not told you
17 to start deliberations. You cannot talk about this case. Do
18 you understand that? You can't talk about it with each other.
19 You can't talk about it with anyone.

20 And we will see you back at 1:45. All right?

21 Thank you.

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

23 THE COURT: You may be seated.

24 Anything we need to take up outside the presence of
25 the jury before we break for lunch?

1 MR. PETERS: Your Honor, we have a Rule 29 Motion.

2 THE COURT: Go ahead.

3 MR. PETERS: Your Honor, first of all, we are going to
4 make a motion for dismissal on all counts as to sufficiency.

5 And we're also going to make a motion for acquittal on
6 Counts 8 and 9. Essentially --

7 THE COURT: Now, hold on. Just so I'm clear, when you
8 say on all counts, you represent Ignacio Ramos. Are you saying
9 all counts as to both defendants or just --

10 MR. PETERS: Well, I'm making the motion as to all
11 counts pertaining to Ignacio Ramos. But my understanding is
12 Mr. Antcliff is going to adopt the same motion.

13 MR. ANTCLIFF: And I am, Judge. Or, obviously, I
14 can -- I'll argue it, however you want me to, afterwards.

15 THE COURT: I -- okay. So --

16 MR. ANTCLIFF: I'm adopting whatever he says, for now,
17 relating to me.

18 THE COURT: That's fine. I just want to make sure.
19 So you're arguing on behalf of Ignacio Ramos at this
20 point?

21 MR. PETERS: That's correct, Your Honor.

22 THE COURT: All right. Go ahead.

23 MR. PETERS: I have a written motion I would like to
24 present to the Court. And then I'll just basically tell you
25 what it says.

1 THE COURT: All right. Go ahead.

2 MR. PETERS: Basically, Counts 8 and 9 are the
3 obstruction counts. And, in Count 8, Agent Ramos -- Mr. Ramos
4 is -- it's alleged that he corruptly obstructed, influenced, or
5 impeded an official proceeding, or attempted to do so by
6 failing to report to the appropriate authorities the discharge
7 of a firearm.

8 Count 9 says that, by failing to report to
9 authorities, having a duty to do so, he was corruptly altering,
10 destroying, mutilating, or concealing a record, document, or
11 other object, or with the intent to do so.

12 Essentially what I'm saying is, there are two reasons
13 why these counts didn't -- do not state an offense against the
14 laws of the United States.

15 The first is that these -- this is an attempt to
16 punish Mr. Ramos for failing to incriminate himself orally,
17 failing to make a statement against his penal interest.

18 Under the Government's theory of the case, his
19 administrative duty to reveal that he had discharged a firearm
20 would have been inculpatory if he had done so. And he cannot
21 be prosecuted for failing to inculcate himself by an oral
22 statement.

23 I have some case law, and it's a little thin. I would
24 say that the Government prob- -- I would be surprised if the
25 Government could find a case where the failure to reveal a --

1 an incriminatory fact has sustained a conviction for
2 obstruction.

3 But we do have a couple of cases. In *Gasho versus the*
4 *United States*, a refusal to turn over the log books requested
5 by federal officers who lacked a subpoena was held insufficient
6 to establish an obstruction of justice charge. That's 39
7 Federal 3rd 1420, 1431, Ninth Circuit, 1994. It's cited in the
8 motion I gave you.

9 The Court says that, because a citizen has a privilege
10 to refuse a warrantless search and seizure, the passive refusal
11 to consent to such a thing cannot be considered as evidence of
12 criminal wrongdoing, because it would place an impermissible
13 burden on assertion of a constitutional right.

14 Similarly, the exercise of the right to remain silent
15 cannot be converted into a criminal offense such as obstructing
16 legal process or official duty. That was the holding in
17 *Fillmore versus Ordonez*, which was at 829 Federal Supplement
18 1544, 1556. It was from the District of Kansas, and it was
19 affirmed by the Tenth Circuit at 17 F.3d 1436.

20 In this case, the Government has not alleged a single
21 affirmative act by my client in violation of the obstruction
22 statute. The only thing they're alleging -- the only thing
23 they state in the indictment is that he had a duty to report
24 this, and he didn't do it. That cannot sustain it, because of
25 the Fifth Amendment.

1 There's another reason why their Counts 8 and 9 are
2 legally unsound, and that has to do with the line of cases
3 pertaining to whether or not the violation of a civil
4 regulation can be -- can constitute, in itself, a criminal
5 violation. The -- the landmark case in the Fifth Circuit is
6 United States versus Christo, 614 F.2d 486. It's a 1980 case.
7 That was a -- in that case, the Fifth Circuit held that the
8 Government could not equate the violation of a civil banking
9 regulation with the violation of a criminal statute.

10 As recently as 2005, in United States versus Butler,
11 429 F.3d 140, at 149, the Fifth Circuit interpreted Christo to
12 mean, quote, civil regulations cannot be used to establish
13 criminal liability.

14 This same line of cases is cited in the request for a
15 jury instruction that I provided -- that we provided the day
16 trial began, in the United States versus Kendig, which is a
17 1988 case, allowing a defendant to the instruction that a
18 violation of a civil regulation, while it could be considered
19 as evidence, in itself, could not amount to a criminal
20 violation.

21 In this case, the Government has alleged absolutely
22 nothing, and they've provided no evidence of anything
23 constituting obstruction of justice by Ignacio Ramos, except
24 the failure to report orally to his supervisors that he
25 discharged his firearm. And, under both these lines of cases,

1 that doesn't state the offense of obstruction.

2 And that's what our motion for judgment of acquittal
3 as to Counts 8 and 9 is based upon.

4 THE COURT: All right. Do you want to address the
5 other counts, or just that you have a -- you would like to urge
6 the Rule 29 motion?

7 MR. PETERS: I would just like for the record to
8 reflect that we have requested that the Court enter a judgment
9 of acquittal as to all counts on the grounds that the evidence
10 is insufficient as to any count to support a conviction of
11 Ignacio Ramos.

12 THE COURT: All right.

13 Ms. Ramirez?

14 MS. RAMIREZ: Thank you, Your Honor.

15 Your Honor, Maria Ramirez and Christopher Antcliff on
16 behalf of Jose Alonso Compean. And I'm going to go through
17 each count.

18 On Count 1, Your Honor, we're asking for a motion for
19 directed verdict or a judgment of acquittal of not guilty, as
20 the Government has failed to prove every element of the
21 offense. Specifically, that Mr. Compean aided and abetted and
22 assaulted one person, Osvaldo Aldrete-Davila, in this case,
23 OAD, with the intent to commit murder.

24 On Count 2 of the indictment, we are requesting a
25 judgment of acquittal, as the Government has failed to prove

1 each and every element of the offense. Specifically, in this
2 case, the Government has failed to allege sufficient facts, in
3 that Mr. Compean, or Defendant Compean, assaulted OAD with a
4 dangerous weapon with intent to do bodily harm.

5 As to Count 3, Your Honor, we are requesting a
6 judgment of acquittal, in that the Government has failed to
7 prove each and every element of the offense, in that the
8 Government failed to prove that Defendant Compean assaulted
9 OAD, and that that assault resulted in serious bodily injury,
10 by shooting him with a firearm.

11 Count 4 of the indictment, Your Honor -- I'm sorry,
12 Count 5 of the indictment, that pertains to Mr. Compean, we're
13 asking for a judgment of acquittal, in that the Government has
14 failed to prove each and every element of the offense. And
15 specifically, that Defendant Compean knowingly discharged the
16 firearm in relation to a crime of violence.

17 On Count 6 of the indictment, I am going to file a
18 motion for a judgment of acquittal, Judge, and I have it right
19 here for the Court to review. And, basically, we're
20 adopting -- or I'm adopting all of the arguments made by
21 Mr. Peters and Ms. Stillinger.

22 Basically, the case law indicates that whenever there
23 is a specific Constitutional right that could be burdened, then
24 the allegation, or the basis of the allegation, which in this
25 case forms the basis of the conduct that's alleged by the

1 Government, then the Government cannot -- cannot basically say
2 that is the conduct, or you have to inculcate yourself,
3 whenever you are -- whenever you are charged with some conduct.

4 In other words, in this case, if my client,
5 Mr. Compean, had stated, I discharged the firearm today, then
6 he would have been burdened by incriminating himself, and he
7 would have had to violate his Fifth Amendment right. And that
8 is a right that he has under the Constitution of the
9 United States.

10 I couldn't find a case, Judge, that was directly on
11 point.

12 THE COURT: Okay. My question has more to do with --
13 I understand the argument by both you and Mr. Peters regarding
14 the reporting. But my understanding is Count 6 has to do with
15 the disposing of the casings.

16 MS. RAMIREZ: Yes.

17 THE COURT: How is that not different than reporting a
18 procedural -- an agency's procedural requirement that you
19 report something? How is --

20 MS. RAMIREZ: It is different --

21 THE COURT: Let's assume this was a crime scene, and
22 let's assume that he goes -- as some testimony has indicated --
23 he picks up these bullets, casings, and disposes of them. How
24 is that not different than just reporting that you've
25 discharged a weapon?

1 MS. RAMIREZ: And it is, Judge. And, actually, by
2 looking at my motion for judgment of acquittal, I specifically
3 stated that it's for Counts 7 and 8, which are the discharge of
4 the --

5 THE COURT: Okay. Because I thought you said as to
6 Count 6.

7 MS. RAMIREZ: And you're right. It's for Counts 7 and
8 8, which are not reporting the discharge of a firearm.

9 THE COURT: Okay. Go ahead.

10 MS. RAMIREZ: For Count 6, I'm going to go ahead and
11 make a motion for a judgment of acquittal, as the Government
12 has failed to prove each and every element of the offense.

13 In this case, they have failed to prove that, one,
14 that the casings could not be used in an official proceeding,
15 and that they could not be used for the presentation of the
16 circumstances of the shooting of OAD to a federal grand jury,
17 or for other facts and circumstances of the shooting of OAD to
18 a jury trial.

19 THE COURT: All right. Okay.

20 MS. RAMIREZ: For Counts 7 and 8, my arguments are
21 contained in the motion of -- for the judgment of acquittal.
22 Unfortunately, I could only find that Ninth Circuit case which
23 Mr. Peters already cited. That was a civil case, Judge, but
24 there was a mention of the Fourth Amendment in that case.

25 In that case, basically, the plaintiffs were arrested,

1 and they filed some federal tort claims against the Government
2 agents that arrested them and seized some evidence.

3 Although it is not directly on point, in that case the
4 Ninth Circuit stated that the Fourth Amendment was very
5 important, and that they looked upon it very suspect, whenever
6 the Government was trying to burden defendants when a
7 Constitutional right was -- basically, when a Constitutional
8 right was incriminating to the defendant.

9 There was another case cited which was United States
10 versus Prescott, but I didn't get a chance to look at that
11 case. But I did cite it to the Court, because it was -- in the
12 motion, because it was cited in Gasho versus Bell, I think it
13 is, Judge.

14 On Count 8, again, Your Honor, I'm making a motion for
15 a judgment of acquittal because the Government has basically
16 burdened my client, in that policy of him having to report the
17 discharge of the firearm, basically, he has to incriminate
18 himself --

19 THE COURT: All right.

20 MS. RAMIREZ: -- by going and saying, I did something,
21 and that would make them come and have to investigate him.

22 THE COURT: All right.

23 MS. RAMIREZ: On Count 10, I'm making a motion for a
24 judgment of acquittal based on the fact that the Government has
25 failed to prove each and every element of the offense as stated

1 in the indictment. They have failed to prove that there was an
2 official proceeding.

3 And I believe that they have cited the Border Patrol
4 policy in that count, and they have tried to equate it to
5 criminal conduct. And, although I understand their argument, I
6 don't believe that violating a civil regulation is equivalent
7 to violating a criminal statute.

8 And also, Judge, when I was trying to do the jury
9 instructions on Count 10, I just didn't understand the way that
10 it was written, because the facts as they are stated in Count
11 10 don't make any sense.

12 They state that the defendant, Jose Alonso Compean,
13 having an affirmative duty pursuant to US Border Patrol rules
14 and regulations to report the discharge of a firearm, provided
15 to him for his use in the capacity of a US Border Patrol agent,
16 failed to report that he had discharged his .40 caliber firearm
17 when he shot at OAD, which firearm had been provided to him by
18 the US Border Patrol for his official use, and which failure to
19 report impeded the generation of a written report and document,
20 preventing said document from being available in an official
21 proceeding.

22 And I do not believe that the Government proved those
23 facts, or that there is any evidence to support those facts and
24 to support a conviction of that count against my client.

25 As to Count 11, I'm also making a motion for judgment

1 of acquittal. I don't believe that there was any evidence
2 presented by the Government that OAD was detained. In fact, I
3 think that the evidence was very clear from the Government's
4 case that OAD was never detained. I think his testimony was
5 uncontroverted and clear that he was never touched by any of
6 the agents, either at the ditch or at any other time when he
7 got to Jess Harris Road, when he got to the ditch, and then
8 when he ran south towards the Rio Grande. And I don't believe
9 that there is any evidence to support that element in that
10 offense, as it was stated in the indictment.

11 It states, On or about the above-mentioned date, the
12 defendant, Jose Alonso Compean, acting under the color of law
13 as a Border Patrol agent, attempted to strike the OA -- OAD
14 with a shotgun, while OAD was detained by the defendant.

15 So I don't believe that the Government has proved that
16 allegation.

17 And that's all I have, Judge. I would ask for a
18 motion for a judgment of acquittal on that.

19 THE COURT: All right.

20 MS. RAMIREZ: Your Honor, finally, I'm asking the
21 Court -- I'm arguing to the Court that all the evidence on all
22 the counts in the indictment is insufficient, and that no
23 reasonable jury could find that Mr. Compean is guilty beyond a
24 reasonable doubt of any of these offenses. And so I'm asking
25 for a judgment of acquittal based on that, and based on the

1 fact that no jury could find him guilty.

2 THE COURT: All right.

3 MS. RAMIREZ: Thank you, Judge.

4 THE COURT: Ms. Kanof?

5 MS. RAMIREZ: Oh, Judge, just one more thing. I don't
6 believe that the Government has proved that the casings are
7 material. And that would be for counts -- and I'm sorry. I
8 apologize to the Court. That would be for Count 6.

9 THE COURT: All right.

10 MS. RAMIREZ: I don't believe that I made that
11 argument to the Court when I was arguing for a judgment of
12 acquittal on that.

13 THE COURT: All right.

14 MS. RAMIREZ: Thank you, Judge.

15 THE COURT: You're welcome.

16 Go ahead.

17 MS. KANOF: Your Honor, I'm going to jump right to the
18 meat, and that's 1512.

19 Unfortunately, this is a brand-new statute. It was
20 enacted in 2002. And when Congress enacted this statute, you
21 can assume that they meant for the words that they put in that
22 statute to be consistent with the meaning of those words
23 throughout their legislation.

24 The only case -- the most recent case under 1512, of
25 course, is Arthur Andersen. But even Arthur Andersen doesn't

1 talk about C. It only talks about B. And all of the
2 allegations in the indictment are related directly to the C, of
3 which there is no case law.

4 So the Government reached back. And, basically, what
5 we were doing with regard to C1, which requires alters,
6 destroys, mutilates, or conceals a record, document, or other
7 object, or attempts to do so with regard to both defendants,
8 was reaching and looking at what Congress meant by the word
9 "conceal" in other statutes.

10 The most analogous statute is 18 USC 1001, and I'll
11 talk about that in a minute. But I would like to point out to
12 the Court that that same terminology of conceal also exists in
13 Title 42, under certain Social Security violations, and in
14 Title 31, under certain money laundering, specifically, the
15 failure to file a currency transaction report.

16 In 1001, specifically, it alleges that a person
17 commits a crime if they knowingly and willfully falsify,
18 conceal, or cover up, by trick, scheme, or device, a material
19 fact. It's similar.

20 If you look at the case law under 1001, conceal, under
21 1001, because of the materiality aspect, requires that they had
22 an affirmative duty to report something and failed to do so.
23 And that's the definition of concealed.

24 So, taking the -- the vast caseload under -- of other
25 statutes -- and, by the way, I don't have any cases to cite to

1 the Court today. But almost every case that substantiates the
2 Government's argument has been provided to the Court in their
3 proposed jury instructions, whenever they are appropriate.

4 And basically, in 1001, what the Court did initially
5 was say, you know, if they had an affirmative duty to report
6 something and didn't do it, they committed a crime.

7 The reporting of something in and of itself is not a
8 crime. Basically, the argument of the defense attorneys is
9 it's illegal for Border Patrol to ask them to report the
10 discharge of a firearm. That's ridiculous, because the
11 discharge of a firearm, in and of itself, is not incriminating.

12 And they didn't quit their jobs that day. They didn't
13 say, I don't want to -- I think what you're telling me to do,
14 by having to report a discharge, is illegal. It violates my
15 Fifth Amendment right. I'm quitting this job.

16 No. There are terms in all law enforcement agencies,
17 in the Social Security Administration, for a citizen, that they
18 have a duty to report their taxes truthfully, to do -- to
19 properly report what your lifestyle is like, and your income
20 for Social Security benefits, whether you're really disabled.

21 If they report falsely, it is incriminating. That's
22 why we're here.

23 So, basically, what the Government did was, they
24 looked to what Congress must have meant by the word "conceal".
25 And I think there's a huge line of case law that says that

1 when -- you know, that you have to assume that Congress knew
2 what they were doing at the time.

3 So here is how the Government then alleged, similar to
4 a 1001 violation, 1512 C1, which I think are counts -- and I'm
5 sorry that the indictment doesn't chronologically have C1 and
6 then C2. But, of course, we superceded, and that explains it.

7 THE COURT: I think they're Counts 6 and 9.

8 MS. KANOF: Okay. First of all, Count 6 I'm not
9 talking about, because Count 6 is alters, destroys, and
10 mutilates. And that's the casings. So the argument I'm
11 talking about here doesn't go to Count 6.

12 And I think there's more than sufficient evidence to
13 show that those casings were material to any kind of official
14 proceeding, including an investigation by Border Patrol, an
15 investigation by DHS-OIG, and investigation by the grand jury,
16 and this jury itself, more than ample official proceedings that
17 were impeded and -- by the impairment of the integrity of the
18 casings, that is, destroying and mutilating them.

19 So it's not Count 6. I'll get back to C2 later.

20 But C1, then, appears in Counts 9 and 10. They're
21 identical. And this is the failure to report that they had
22 discharged their firearm. The failure to -- the Border Patrol
23 has a right to impose rules and regulations, and they have to
24 comply with them. And, if they don't, they can't be Border
25 Patrol agents.

1 In this particular instance, they can't pick and
2 choose, I want to be a Border Patrol agent, but I don't want to
3 comply by the rules. It is not an act in and of itself of a
4 violation of the Fifth Amendment right to report the discharge
5 of a firearm.

6 In fact, I think the testimony was that most shoots
7 are good shoots, and they -- and I think they were asked on
8 this stand. I think Chief Barker was asked, or Mr. Richards,
9 were asked whether the failure to report the discharge of a
10 firearm was a criminal act. And they said no.

11 Their own questions elicited an opposite response to
12 their position now.

13 And the Government does agree that the mere failure to
14 follow a regulation that's imposed by a law enforcement agency,
15 or any federal agency, is not a criminal act. It's
16 inconsistent to say it is on one hand and it isn't on the other
17 hand. They are internally inconsistent in their presentation
18 of the case.

19 With regard to the way it's alleged, because C1
20 requires the alteration, destroying, mutilation, or concealment
21 of a record, document, or other object -- in 6, the objects, of
22 course, the casings.

23 In this case, the Government is explaining in the
24 indictment that their failure to follow a noncriminal, but
25 required, affirmative duty to report the discharge of a

1 firearm, also impeded the preparation of the document.

2 They themselves, when they report a discharge of a
3 firearm, a Border Patrol agent doesn't have to write anything.
4 But they know from their schooling that, when they discharge
5 the firearm and tell their supervisor, the supervisor does have
6 to write something. He generates a document that goes through
7 a lengthy official proceeding.

8 Mr. Barker testified about it. Mr. Arnold testified
9 about it. Mr. Richards testified about it, that that
10 investigation is their official proceeding. They're a
11 United States Government agency.

12 And, by failing to report the discharge of a firearm,
13 they obstructed, or they tampered with that official
14 proceeding, because they prevented the creation of that
15 document. And that document would have been used in that
16 official proceeding. Thus, they didn't follow an affirmative
17 duty that they were required to do, which is not incriminating.
18 And when they did not do it, it impeded and altered the -- it
19 impaired the integrity of that proceeding, because that
20 document was not generated.

21 So that is the theory on Count 9 and Count 10. And
22 again, if you look at Title 42, if you look at Title 18, 1001,
23 and if you look at Title 31 regarding reporting requirements,
24 which every person -- you don't even have to be a law
25 enforcement officer. Your average person has to do things.

1 If I have to truthfully report something to the IRS
2 and I fail to do so, that report, in and of itself -- or my
3 failure to report, in and of itself, may not be criminal,
4 because it may not be material.

5 The failure of someone to file a currency transaction
6 report when they deposit -- or they engage, or an -- I think
7 it's an 801 -- I forget the number -- for a store, like a
8 jewelry store, they have an affirmative duty to report when
9 somebody brings them more than \$10,000 -- or more than
10 \$9,999.99 in cash. Their failure to do that, in and of itself,
11 is not criminal. It becomes criminal when you look at motive,
12 when you look at intent, when you look at what the fallout of
13 the failure to follow that civil regulation is.

14 Lots of law talks about concealment and what it means.
15 The statute uses that term. The Government used that term for
16 C1.

17 With regard to C2 -- I think that's primarily Counts 7
18 and 8. C2 is a little bit more general. It gives the
19 Government the opportunity, if -- not having to have an
20 affirmative duty, not having to have anything other than
21 corruptly obstructing, influencing, or impeding an official
22 proceeding.

23 And, obviously, Your Honor, they have done that.
24 There were lots of requirements that the defendants had as
25 Border Patrol agents on that day to -- to perform, that they

1 did not perform. They -- they -- they didn't really act like
2 Border Patrol agents that day. They followed very little
3 rules. But, basically, 2 talks about general conduct.

4 Again, we have a very high burden of mens rea. It's
5 corrupt -- but that they corruptly obstructed, influenced, or
6 impeded an official proceeding.

7 The official proceedings in these cases are -- there's
8 a multitude of them. The first official proceeding is that --
9 is reviewing whether or not they properly were engaged in their
10 business that day.

11 I apologize to the Court about ever bringing up
12 high-speed/high-risk pursuits. The only purpose that the
13 Government started that horrible debacle was to show that they
14 didn't follow their own rules that day, because they didn't
15 follow their own rules about pursuit.

16 They didn't follow their own rules about deadly force.

17 They didn't follow their own rules about destroying
18 the scene.

19 They didn't follow their own rules about calling out a
20 SET team.

21 They didn't follow their own rules about reporting
22 that they discharged a firearm.

23 Every one of those acts, had they properly behaved,
24 would have triggered some kind of an official proceeding. Some
25 of them would only have been a mild investigation to see, Hey,

1 why didn't you call out to sector communication that you're
2 chasing this guy fast? All the way to a grand jury, depending
3 on which act you're talking about.

4 With regard to the argument about the civil rights
5 violations, I disagree with Ms. Ramirez about the civil rights
6 violations. There's all kinds of United States Supreme Court
7 law on the fact that shooting somebody in the back is detaining
8 them and violating their Fourth Amendment right.

9 In addition to that -- and the evidence -- the
10 credibility of that is up to the jury -- is that he was, in
11 fact, shot. The first three counts say that that shooting act
12 was aiding and abetting. They are both equally responsible for
13 it.

14 And I would also point out to the Court that assault
15 does not require someone to be successful. An assault can be
16 shooting at someone. It doesn't have to be actually hitting
17 somebody. So I think that's -- may I have a moment,
18 Your Honor?

19 THE COURT: Sure.

20 MS. KANOF: I'm talking to Mr. Garcia, my lawyer.

21 All in all, Your Honor, about the general allegations
22 of the lack of evidence, the Government -- the insufficiency of
23 the evidence on all counts, the Government believes that
24 there's more than sufficient evidence for all of the counts to
25 go to the jury.

1 THE COURT: Mr. Peters?

2 MR. PETERS: Your Honor, I may not have made this
3 clear at first, but I would like the record to reflect that we
4 are not only alleging that there is insufficient evidence to
5 prove Counts 8 and 9, but we are also alleging, in addition to
6 that, that the counts, as worded in the indictments themselves,
7 do not state an offense.

8 I'm looking at 1001 -- 18 USC, Section 1001. It says
9 that an offense is committed when someone falsifies, conceals,
10 or covers up by any trick, scheme, or device, or makes a
11 materially false, fictitious, or fraudulent statement or
12 representation, or uses any false writing or document, knowing
13 the same to contain materially false -- et cetera, et cetera,
14 et cetera.

15 All those require an overt act. Every one of those
16 requires some overt act. Even -- even falsifying, concealing,
17 or covering up by any trick, scheme, or device, requires an
18 overt act. There is no overt act alleged here. It is merely a
19 failure to make a statement.

20 Whenever the Government got a statement from any one
21 of these agents, they gave them some form of immunity for it.
22 And that's because they had to, because they could not compel a
23 statement. Okay?

24 I'm not sure exactly what was meant by the claim that
25 this assertion we're making is somehow inconsistent. I don't

1 think it's inconsistent at all. I don't have to be guilty of
2 robbing a bank to refuse to give a statement to a police
3 officer about it, because that statement may inculcate me, even
4 though I believe I'm completely innocent, even though I am, in
5 fact, completely innocent. And that right to not have to
6 inculcate yourself by oral statements does not apply only to
7 the guilty, it applies to the innocent, as well.

8 And the only -- you know, nothing that has been said
9 up here by the Government changes the fact that the only
10 allegation and the only evidence against Ignacio Ramos having
11 anything to do with obstruction of justice is that he didn't
12 say, I shot my gun.

13 The fact of shooting his pistol did not have to be --
14 did not, in and of itself, have to amount to a criminal
15 offense, for his failure to make that statement to be legally
16 privileged under the Fifth Amendment.

17 The Government does not have the power to burden
18 nor -- nor does Congress have power to burden the person's
19 exercise of his right under the Fifth Amendment not to make an
20 inculpatory statement by making that act in any way criminal.
21 And I have heard no -- I have heard no example of when it's
22 successfully been able to do that.

23 If you make a currency transaction, as part of that,
24 you're required to fill out a form. It's the failure -- and
25 the failure to fill out the form is criminal -- can be a

1 criminal violation. But that's not the same -- that is -- that
2 is part of the transaction of making the currency transaction
3 itself, and it has to be done as a part of the transition.

4 This is simply a requirement of the Border Patrol.
5 And, by the way, they're free to -- there's -- we're not saying
6 that they can't terminate him, or at least put him on a
7 five-day leave for failing to do it. We're not saying that --
8 that the Government can't, as a condition of being a Border
9 Patrol employee, require him to waive his Fifth Amendment
10 rights.

11 But if he chooses not to do so, their remedy is to
12 burden his employment, not to burden his Fifth Amendment
13 rights. And there's a line of cases like that, beginning with
14 Garrity and Calkin and all those other cases that say, If
15 you're going to compel a police officer or a Government
16 employee or any person to make a statement under penalty of
17 losing their job, you're going to have to immunize them from
18 criminal penalties for these -- that statement.

19 THE COURT: All right.

20 MS. KANOF: Your Honor, may I respond?

21 THE COURT: Well, I don't know if Ms. Ramirez has
22 something she wants to add.

23 MS. RAMIREZ: I'm just going to -- I'm just going
24 to -- just -- because I think he's right. I think that, in
25 that line of cases that Ms. Kanof cited, that everything

1 required an overt act, and this is not requiring an overt act.

2 What they're alleging is an act of omission. And I
3 think that's the difference between the cases that Ms. Kanof
4 cited and the difference in this way that the Government pled
5 the offenses here, that they're saying that because they failed
6 to do something, that that act of omission makes it a criminal
7 act. And that is all I'm going to say on those two counts.

8 The other thing that I wanted the Court to consider is
9 that, in Counts 8 and 9, I'm also asking for a judgment of
10 acquittal because I think that the Andersen case made it very
11 clear that -- that, although there doesn't have to be a
12 proceeding -- official proceeding pending, the Government has
13 to prove -- or there has to be at least some evidence that the
14 defendant knew or could have reasonably foreseen that there was
15 going to be some type of official proceeding.

16 And official proceeding is defined, Judge. It's
17 defined in 18 USC 1515. And it states specifically what
18 official proceedings qualify under this section. And it's a
19 jury trial, it's a trial by jury, it's a grand jury.

20 And I don't believe that a law enforcement proceeding,
21 which is what Ms. Kanof is arguing, can be an official
22 proceeding, as the Government has pled in Count 8 and Count 9
23 of the indictment.

24 THE COURT: All right.

25 MS. RAMIREZ: Okay? And so I'm asking for a motion --

1 for a judgment of acquittal on those two counts.

2 THE COURT: All right.

3 MS. RAMIREZ: Thank you, Judge.

4 THE COURT: All right. Go ahead, Ms. Kanof.

5 MS. KANOF: In 1515, Ms. Ramirez left out a proceeding
6 before a Federal Government agency, which is authorized by law.
7 Border Patrol is a Federal Government agency.

8 Okay. Your Honor, we're not talking about a citizen
9 talking about a bank robbery. A citizen does not have an
10 affirmative duty to talk to a cop about a bank robbery.

11 We're talking about a law enforcement agent, a federal
12 law enforcement agent, who does have an affirmative duty.

13 And I disagree. Concealment does not require an
14 affirmative act. It does not require, as they termed it, an
15 overt act to conceal, unless the statute specifically requires
16 it. This statute doesn't. Conceal is defined in the
17 Government's pattern jury instruction offerings to the Court.
18 It comes right out of the pattern jury charge of another
19 jurisdiction, because the Fifth Circuit doesn't have it. And
20 it does not require any kind of an affirmative act.

21 But I will tell the Court that, when you have an
22 affirmative duty to report something and you fail to do it, it
23 is sufficient for concealment.

24 THE COURT: All right.

25 At this time, the Court is going to take the motion

1 under advisement. I will rule prior to bringing the jury back
2 in. So, at this time, anything else before we go to recess?

3 MS. STILLINGER: No, Your Honor.

4 MR. ANTCLIFF: No, Your Honor.

5 THE COURT: All right. Court stands in recess.

6 (Recess; open court, parties present, jury not
7 present.)

8 THE COURT: You may be seated.

9 MS. KANOF: I have an oral motion in limine at the
10 bench.

11 THE COURT: You may approach.

12 (Bench conference:)

13 MS. KANOF: Your Honor, the Government -- this is
14 Debra Kanof.

15 I'm going to make an oral motion in limine. I noticed
16 that the child of one of the defendants is in the front row. I
17 believe he's 11 or 12 years old. Aside from the fact I think
18 it's child abuse to have a child watch you be cross-examined,
19 in opening statement Ms. Ramirez mentioned that the -- her
20 defendant's -- her client's wife was in the audience.

21 I'm going to make a motion in limine that they not
22 refer to the presence in the office of -- presence, or point
23 out in the audience any family members. I don't think it's
24 relevant. I don't think it's appropriate.

25 MR. PETERS: Well, would that be during examination of

1 witnesses, or would that include during argument?

2 MS. KANOF: I would ask in both instances.

3 THE COURT: I'll -- let me think about it. Certainly,
4 for the purposes of examination, there's no question. We're
5 not at argument yet, so I will think about it. I think it will
6 include argument. I don't think it's relevant for purposes of
7 this trial.

8 I don't have any problems saying he's married or got
9 kids. But I don't want -- and your child -- that the child is
10 going to remain, let me be perfectly clear. I don't want any
11 motions. I don't want any smirking. I don't want any faces.
12 I don't want any crying. As much as you can control them.

13 MR. PETERS: We didn't know anything about the child.
14 It was a decision they made.

15 THE COURT: And I understand.

16 MR. PETERS: It's not that -- we're not setting up for
17 purposes of cross-examination.

18 THE COURT: I understand. If my dad were on trial,
19 I'd be there too. But I -- my concern, however, that they
20 understand that you can't -- they have to maintain, and so that
21 includes this child. And so far, the relatives have been fine.
22 I don't have any problems with that. I don't know about a
23 13-year-old. It might be a little tough. So just so he's
24 clear.

25 MS. STILLINGER: And I would just ask that it be

1 mutual, so Ms. Kanof won't mention that it's child abuse.

2 MS. KANOF: Oh, no, I won't say that. I said that was
3 my personal opinion.

4 THE COURT: Okay. And, other than that, are we ready
5 to go?

6 MS. KANOF: Yes, ma'am.

7 THE COURT: Okay. And then I'll rule.

8 (End of bench conference; open court, parties present,
9 jury not present.)

10 THE COURT: All right. We are outside the presence of
11 the jury. The jury is ready. Is that correct, Kenny?

12 THE BAILIFF: Yes, Your Honor.

13 THE COURT: All right. Before we bring the jury back
14 in, prior to taking the break for lunch, and outside the
15 presence of the jury, various motions were presented to the
16 Court, a motion for judgment of acquittal, a Rule 29 motion.

17 And the Court is, based on -- has reviewed all of
18 that, and the case law documentation provided. The Court will
19 overrule defendants' motions for judgment of acquittal based on
20 Rule 29, and that is to all counts.

21 Anything further?

22 MS. STILLINGER: No. We're ready, Your Honor.

23 THE COURT: All right.

24 (Open court, parties and jury present.)

25 THE COURT: You may be seated.

1 You may call your first witness.

2 MS. STILLINGER: Thank you, Your Honor. I would like
3 to call Ignacio Ramos. And he has not been sworn, Your Honor.

4 THE COURT: All right.

5 (Witness sworn by the Court.)

6 IGNACIO RAMOS, DEFENDANT, SWORN

7 DIRECT EXAMINATION

8 BY MS. STILLINGER:

9 Q. Mr. Ramos, you've been identified several times in this
10 courtroom. But just for the purpose of making our record
11 clear, could you state your name, please?

12 A. Ignacio Ramos, Jr.

13 Q. Okay. You're one of the defendants in this case, right?

14 A. Yes, ma'am.

15 Q. Okay. Mr. Ramos, I would like to ask you first about
16 something the Judge mentioned at the beginning of the case,
17 which is Tourette's syndrome.

18 A. Yes, ma'am.

19 Q. What is that?

20 A. A neurological disorder.

21 Q. Okay. And do you have that?

22 A. Yes, I do.

23 Q. How does it affect you?

24 A. In many ways; motion ticks, verbal ticks.

25 Q. Okay. Does it cause your body to move involuntarily?

- 1 A. Yes, it does.
- 2 Q. How about --
- 3 A. Sometimes head movements, sometimes hand/shoulder
4 movements. I have verbal ticks. I guess you would call them
5 grunting noises. Sometimes it's delay of answering or, for
6 lack of a better word, I'll -- I can't say -- I kind of like go
7 like that (indicating). I can't explain it any other way. I
8 just -- or I hold it -- I hold it in and then answer. It's
9 just like a -- it's hard to describe.
- 10 Q. Okay. Is this something -- do you take any medication for
11 this?
- 12 A. Yes, I do.
- 13 Q. Okay. But -- but does the medication completely control
14 it?
- 15 A. No, it does not.
- 16 Q. Okay. Is your Tourette's -- I mean, are your -- rather,
17 your symptoms, are they increased by a stressful situation?
- 18 A. No, it's not. As a matter of fact, sometimes when I have
19 something to concentrate on, they actually go away. It's just
20 when I have a -- when I don't have something to concentrate on,
21 or when I don't focus on something anymore, it's at that time
22 that they actually come out.
- 23 Q. Okay. What about nervousness? I mean, some people talk
24 about nervous ticks. Are your -- are those ticks of Tourette's
25 syndrome related to nervousness?

- 1 A. No. They just -- they just -- they come out by themselves.
- 2 Q. Okay. And does your Tourette's syndrome affect you as a
- 3 Border Patrol agent at all?
- 4 A. No.
- 5 Q. Okay. I just wanted to get that out of the way.
- 6 Mr. Ramos, tell me where you live.
- 7 A. I live in Horizon City.
- 8 Q. Okay. And who do you live with?
- 9 A. My wife and three boys.
- 10 Q. Okay. And how old are your kids?
- 11 A. 6, 8, and 13, respectively.
- 12 Q. Where do you work?
- 13 A. I work with the United States Border Patrol.
- 14 Q. Okay. Are you currently actively employed there?
- 15 A. No. I'm currently on suspension without pay.
- 16 Q. Okay. And what are you doing, as far as employment, now?
- 17 A. I work in a warehouse in PPG Glass.
- 18 Q. Okay. And, of course, we may have heard about this. But
- 19 your suspension is related to this case, correct?
- 20 A. Yes, ma'am.
- 21 Q. Mr. Ramos, where did you grow up?
- 22 A. Here in El Paso.
- 23 Q. Okay. Where did you graduate from high school?
- 24 A. J.M. Hanks. J.M. Hanks High.
- 25 Q. And how about after high school? What did you do?

- 1 A. I attended UTEP.
- 2 Q. For how long?
- 3 A. A couple semesters.
- 4 Q. And then what did you do after that?
- 5 A. I joined the US Navy, to help pay for my college.
- 6 Q. Okay. Did you have to go somewhere else for that?
- 7 A. I went to San Diego.
- 8 Q. Okay. For how long?
- 9 A. Approximately two months for boot camp. And then from
- 10 there, I went to Fort Wanini for my school.
- 11 Q. I'm sorry, you went where?
- 12 A. Fort Wanini.
- 13 Q. Okay. For school?
- 14 A. Right.
- 15 Q. Okay.
- 16 A. And then -- and then I came back.
- 17 Q. Okay. And what did you do when you got back to El Paso?
- 18 A. I started attending UTEP again.
- 19 Q. Now, when you did you join the Border Patrol?
- 20 A. I believe it was March of 1995.
- 21 Q. Okay. And between the time that you got out of the Navy --
- 22 or I -- well, I guess you were in the Navy reserves. Is that
- 23 right?
- 24 A. Yes, ma'am.
- 25 Q. Okay. Did you remain in the reserves for some time period

- 1 after that?
- 2 A. Approximately eight years.
- 3 Q. Eight years?
- 4 A. Yes, ma'am.
- 5 Q. Okay. Did that require any training or activity?
- 6 A. Monthly. Weekends every month, and two weeks a year.
- 7 Q. Okay. From the time that you got out of the six-month
- 8 stint with the -- you know, the -- the -- I guess the active
- 9 training with the Navy is a six-month period. Between that
- 10 time and the time you joined the Border Patrol, just
- 11 summarizing, what did you do in that time period?
- 12 A. I worked at -- when I came back, I worked at -- it was
- 13 Homebase, and then worked at McCoy shortly afterwards. I tried
- 14 to -- well, I moved to San Diego for approximately -- I would
- 15 say five months, trying to go to school up there, but it was
- 16 too expensive, even with family. So I moved back.
- 17 I continued to go to school up here.
- 18 I worked for my dad for a while. Then I worked at a
- 19 couple of hardware places.
- 20 Q. Did you ever finish your college degree?
- 21 A. No, did I not.
- 22 Q. And about how many hours of college do you have?
- 23 A. Approximately 38.
- 24 Q. Okay. Why did you decide to apply for a job with the
- 25 Border Patrol?

1 A. I always wanted to work for the Border Patrol. I had
2 seen -- I had always seen them, growing up, as we -- you know,
3 we used to drive along the Border Highway. And I just liked
4 what they did.

5 Q. Okay.

6 A. I like the aspect of the job. It was law enforcement, but
7 it wasn't just law enforcement working in the city. It was
8 working outdoors, and I liked -- I liked being outdoors. So...

9 Q. Okay.

10 A. It had all the aspects of what I liked in a job.

11 Q. Okay. Did you get any particular training when you joined
12 the Border Patrol?

13 A. I went to the Border Patrol academy in Glenco, Georgia, for
14 approximately six months.

15 Q. Okay. In that six-month period is that basically what
16 you're doing every day, is training to be a Border Patrol
17 agent?

18 A. Yes, ma'am.

19 Q. Okay. What kinds of classes do you take at the training
20 academy?

21 A. Immigration law, naturalization law, Spanish, firearms
22 training, driver's training, physical training. I'm sure
23 there's a few more classes in there that I -- I'm sure I
24 missed.

25 Q. Okay. How about defensive tactics?

1 A. Yes.

2 Q. Okay. And is there some course where they teach you how to
3 respond in a dangerous situation? I guess -- I guess what I'm
4 asking, you know, I mean specifically about a dangerous
5 situation.

6 Do they -- do they have you do any drills or sort of
7 hypothetical situations where you're putting yourself in
8 danger?

9 A. Well, you touch on that in firearms training.

10 Q. Okay.

11 A. But training like that is -- you go over that more
12 specialized when -- if you go to instructor training.

13 Q. Okay.

14 A. Not so much at the academy.

15 Q. Okay. Do they teach you what the use of force policy is at
16 the academy?

17 A. Yes, they do.

18 Q. Okay. And you're familiar with the use of force policy?

19 A. Yes, I am.

20 Q. Okay. Mr. Ramos, after your six months at the training
21 academy, where were you stationed?

22 A. In Fabens, Texas.

23 Q. Okay. And that would have been about how many years ago
24 that you started working in Fabens?

25 A. In '95.

1 Q. In '95?

2 A. Yes, ma'am.

3 Q. Okay. Okay. And have you always been at Fabens?

4 A. Yes, I have.

5 Q. Okay. How about -- have there been some time periods where
6 you went somewhere else?

7 A. Shortly after that I was detailed for 30 days to
8 California. In 1998, I was assigned back to Glenco as a
9 Spanish instructor for approximately 10 months.

10 And then in, I believe 1990 or 1991, I went to the
11 Border Patrol academy in South Carolina as a physical training
12 instructor.

13 Q. Okay. And, other than those time periods where you may
14 have been specially assigned, or you were acting as an
15 instructor, have you always been at Fabens?

16 A. Yes.

17 Q. Okay.

18 MS. STILLINGER: Can I have a just a moment,

19 Your Honor?

20 THE COURT: Sure.

21 BY MS. STILLINGER:

22 Q. I'm sorry. Mr. Peters was telling me that -- that you just
23 said that you were a physical training instructor in 1990, but
24 you joined the Border Patrol in '95. So did you -- did you --

25 A. I'm sorry. In 2000.

1 Q. Okay. Okay. Let's get that clear.

2 Let me take you back to February 17, 2005. Okay?

3 Mr. Ramos, tell me where you were -- well, let me ask the
4 question first.

5 Did you hear a callout about activity at area 76?

6 A. Yes, I did.

7 Q. Where were you at that time, when you heard it?

8 A. I was at the Border Patrol station.

9 Q. And why were you at the Border Patrol station?

10 A. I was eating lunch.

11 Q. Okay. What did you do when you heard that -- first of all,
12 what do you remember the callout being?

13 A. Well, before the callout, there was a lot of radio traffic
14 about many sensor hits in that area.

15 Q. Okay. Let me just have you describe that, briefly. What
16 is a sensor hit?

17 A. Well, a sensor hit is what sector radio is calling out,
18 that a sensor is being activated. So as many times as a sensor
19 is being activated, they call us, and they tell us -- they
20 don't say, Hey, Fabens, this sensor is being activated. They
21 just say the sensor 76, port 1, 10 times. And that's how we
22 know that sensor has been going off 10 times.

23 Q. Okay.

24 A. To us that means, you know, there's activity on that for
25 quite a while. Because each sensor is set to go off every two

1 or three seconds, depending on how it's put into the ground.

2 Q. Okay.

3 A. Because it doesn't just go off when somebody steps around
4 it, or else it would just go off all the time.

5 Q. Okay. What makes it go off, then?

6 A. Well, they are seismic.

7 Q. Okay.

8 A. So it's the vibrations. So something has to be around that
9 area setting it off for quite some time. So it won't go off as
10 soon as somebody steps around it. Somebody has to be stepping
11 around the sensor, or in that general area, for quite some time
12 before it will go off. So if it's set to go off every two or
13 three seconds, that's one hit.

14 Q. Okay.

15 A. So if it goes off another two or three seconds, that's
16 another hit.

17 Q. Okay.

18 A. So if it goes off 10 times, that's approximately 30 seconds
19 of activity on that sensor.

20 Q. Okay. And then, just to be clear, the sensor -- and let's
21 just talk about 76. And -- I mean, is that how the sensor is
22 designated by, the number?

23 A. Yes.

24 Q. Okay. So when you talk about area 76, you're talking about
25 the area around sensor 76?

- 1 A. Yes.
- 2 Q. And I know you can't tell us exactly where it is, right?
- 3 A. No.
- 4 Q. Because that's something that Border Patrol keeps to
5 themselves, right?
- 6 A. Yes.
- 7 Q. Okay. But as far as -- you know, in connection -- we've
8 heard a lot about the drainage ditch, or the Sierra Delta,
9 there's the levee. You know, I mean, there's roads on the
10 north side of the ditch. There's a levee on the south side,
11 levee road?
- 12 A. Right.
- 13 Q. What area are the sensors in?
- 14 A. It depends on the sensor.
- 15 Q. Okay. Okay. How about sensor 76? Is it north or south of
16 the ditch?
- 17 A. That sensor is on the north side of the ditch.
- 18 Q. Okay. And how close to the ditch is it, approximately?
- 19 A. It's within five feet.
- 20 Q. Okay. So what does that indicate to you, in your
21 experience of ten years with the Border Patrol in Fabens? If
22 that sensor is going off over and over again, what does that
23 cause you to think?
- 24 A. There's a lot of activity on it.
- 25 Q. Okay. Would that be normal for that area? I mean, there

1 are farms in that area, right?

2 A. Yes, there is.

3 Q. Okay. And do you get that kind of sensor activity from
4 farmers working in the area?

5 A. Yes, we do.

6 Q. Okay. How are you supposed to respond when you hear that
7 kind of sensor activity?

8 A. Well, if there was farm traffic in that area -- and, by
9 farm traffic, I mean either a tractor or a farmworker, an agent
10 would have already responded earlier in that day, or responded
11 and seen the farmworkers in that area already.

12 Now, if that sensor was going to be a nuisance to us
13 all day long because of the farmworkers in that area, we would
14 have inhibited that sensor ourselves.

15 Q. And when you say "inhibited the sensor," what do you mean?

16 A. We would have called sector -- and I don't mean radio,
17 because there's a difference between sector radio and whoever
18 is calling out the sensor. A lot of times it's the same
19 person, but there's a designation to them. 880 is wherever we
20 would call a plate in to. 896 is who we would call a sensor
21 to.

22 And we would tell them to inhibit that sensor for at
23 least a couple hours, so that we don't have to hear about that
24 sensor all day long, or for at least those two hours, because
25 that tractor is going to be there.

- 1 Q. Okay. And -- and --
- 2 A. Or that worker is going to be there.
- 3 Q. Okay. And by "inhibit," you mean --
- 4 A. Don't call it out.
- 5 Q. -- cut off, right?
- 6 A. Don't call it out.
- 7 Q. Okay. Okay. So do your agents pretty much have a good
- 8 idea -- you Border Patrol agents in the Fabens area have a good
- 9 idea of when there's farm activity going on?
- 10 A. Right.
- 11 Q. Okay. So on this particular date, February 17, 2005, the
- 12 first thing -- you just said the first thing you heard was the
- 13 sensor activity. What do you hear next?
- 14 A. I heard Agent Compean, shortly after that, call out a 46.
- 15 Q. Okay. And what is a 46?
- 16 A. Narcotic smuggling.
- 17 Q. Okay. And how did you know it was Agent Compean calling it
- 18 out?
- 19 A. I heard his voice.
- 20 Q. Okay. How long have you worked -- at that point in time,
- 21 how long had you worked with Agent Compean in Fabens?
- 22 A. I believe it's almost five years.
- 23 Q. Okay. So he calls out a 46, suspected narcotic
- 24 trafficking. What do you do, if anything, in response to that
- 25 callout?

1 A. I get up and leave the station.

2 Q. Okay. You're on your lunch break. Why do you get up and
3 leave the station?

4 A. Because he called out a 46, and I want to go catch it.

5 Q. Okay. From the station -- and let me go ahead and -- I'm
6 going to try not to spend too much time with these maps, but I
7 would like us to look at a couple of things.

8 Okay. Can you see that all right?

9 A. Yes, ma'am.

10 Q. And you know what?

11 MS. STILLINGER: May I approach the witness and give
12 him a pointer, Your Honor?

13 THE COURT: And give him a what? I'm sorry.

14 MS. STILLINGER: A pointer.

15 THE COURT: Yes.

16 BY MS. STILLINGER:

17 Q. First of all, do you -- you've looked at this map before,
18 right?

19 A. Yes, ma'am.

20 Q. Okay. And you recognize this area here?

21 A. Fabens.

22 Q. Okay. Where is the -- your Border Patrol office?

23 A. In relation to that?

24 Q. Yes. Is it on the map?

25 A. It's not on the map.

- 1 Q. I mean, it's not designated on the map, but is it in this
2 area?
- 3 A. Well, the lights would be right there (indicating).
- 4 Q. Okay. The lights are there (indicating). And when you're
5 talking about the lights, we've heard there's only one traffic
6 light.
- 7 A. Right. The only set of lights in town.
- 8 Q. Okay.
- 9 A. If you would follow that (indicating), that's Alameda.
- 10 Q. Okay.
- 11 A. You would follow this (indicating), and that's 258, or
12 Socorro Road. And the station -- I mean, I'm shaking the light
13 there, but it would be right there in the corner (indicating).
14 It's less than a quarter of a mile from that corner right
15 there.
- 16 Q. This one, basically, is this -- is this intersection here
17 (indicating)?
- 18 A. Right there (indicating).
- 19 Q. Okay. Okay. You said it's less than a mile from the
20 intersection, from the lights?
- 21 A. No. From the lights, it's -- it's maybe a mile.
- 22 Q. Okay. And we're talking about the lights, of course, at
23 Alameda and Fabens Road?
- 24 A. Right.
- 25 Q. Right? Okay.

1 Then what do you do when you're over here
2 (indicating)? You said you get up to leave. And where do you
3 go?

4 A. Well, I'm listening, because everyone is still looking for
5 the van.

6 Q. Okay.

7 A. By the time I get up and get out and get into my vehicle,
8 they haven't noticed the van going westbound. In our area
9 there's only -- from where that van loaded up, there's only two
10 areas of exit that it can go. So I head into town --

11 Q. Okay.

12 A. -- into Fabens, and I wait there.

13 Q. Okay. And then let me switch to -- let me switch to...

14 This is an exhibit. It hasn't been admitted, but I
15 have marked it as Defendant Ramos Number 9. And do you
16 recognize this map?

17 A. Yes, I do.

18 Q. Okay. And what's that a map of?

19 A. The town of Fabens, close up, and the streets.

20 Q. Okay. Really centering around that intersection that we're
21 talking about, right?

22 A. Right.

23 Q. Okay. So where did you go when you drove into town?

24 A. Well, by the time I got into town, Agent Juarez had spotted
25 the van.

- 1 Q. Okay.
- 2 A. They were --
- 3 Q. And what did -- what did you hear on the radio about him
- 4 spotting the van?
- 5 A. They were headed toward Fabens.
- 6 Q. Okay. Now, let me -- just as an aside, you've looked at
- 7 the transcript of the radio traffic, right?
- 8 A. Right.
- 9 Q. And have you had a chance to listen to the tape of the
- 10 radio traffic?
- 11 A. Yes.
- 12 Q. Okay. Do you remember whether or not there was more radio
- 13 traffic that day than what's in that transcript?
- 14 A. Yes, there was.
- 15 Q. Okay. Then -- I'm sorry, go ahead. You had just said that
- 16 Juarez had called out it was coming into Fabens, the van,
- 17 correct?
- 18 A. Right.
- 19 Q. Okay. Then where did you go?
- 20 A. I went to this area right here (indicating).
- 21 Q. And it might not be the most legible mark, but we've put a
- 22 Number 1 there, right?
- 23 A. Yes, ma'am.
- 24 Q. Okay. And does that designate your first position?
- 25 A. Yes.

1 Q. Okay. What are you driving that day?

2 A. I believe it was a pickup truck that they said has a
3 drop-in unit.

4 Q. Okay. And are you by yourself?

5 A. Yes, I am.

6 Q. Okay. And why do you go to this spot here (indicating)?

7 A. Because it's south of town, and the truck is already coming
8 north. There's no reason for me to go down south, because
9 all -- all it's going to do is pass me going north, and I'm
10 going to have to come back up and follow it up into town
11 anyway.

12 Q. Okay. And how do you position yourself? What -- what --
13 well, I'm sorry.

14 First of all, what's at that little spot where we've
15 marked the 1?

16 A. Well, the -- it's actually a little triangle there. And
17 all that is is just a big, open area. So I park in there and I
18 face south.

19 Q. Okay. And then what happens? After you park there, you're
20 facing south, what happens?

21 A. Then, in a matter of seconds, the van and Agent Juarez pass
22 me.

23 Q. Okay. Now, do you remember whether or not Agent Juarez had
24 his emergency lights on?

25 A. Yes, he did.

1 Q. Okay. And do you know for sure that this is the same van
2 that Agent Compean had called out?

3 A. At that time, I can't be for sure that it's the same. But
4 it's the van that Agent Juarez was going to check out, because
5 he was behind it, and he had his lights on.

6 Q. Okay.

7 A. So that's the van he was going to check out.

8 Q. Okay. What do you do when you see them coming towards you?

9 A. Well, I just wait, basically, for them, to see what
10 happens, whether or not the van is going to stop. And I wait
11 for them to pass me.

12 Q. Can you tell whether or not the dr- -- well, first of all,
13 do you see the driver of the van?

14 A. Yes, I do.

15 Q. Can you tell whether or not he sees you?

16 A. Yes, I do.

17 Q. How do you know he sees you?

18 A. Because he looks at me, and he gives me a -- a look of
19 shock, or a look of fear. Because he looks over at me and he
20 goes (indicating) -- he goes like that (indicating), right
21 afterwards.

22 Q. Okay. So you stay there while they pass you by. Is that
23 right?

24 A. Yes.

25 Q. Okay. And then what do you do?

- 1 A. Well, as soon as they pass me, I make a U-turn and get
2 behind them.
- 3 Q. Okay. So they're coming up this road here --
- 4 A. Yes.
- 5 Q. -- pass you, and you do a little U-turn to pull in behind
6 them?
- 7 A. Yes.
- 8 Q. Okay. And then where did they go?
- 9 A. They follow the road up here (indicating), and they head
10 into the middle of town. The light's right here (indicating).
- 11 Q. Okay. And where do you see them go at that intersection?
- 12 A. From this intersection here, the van went straight through,
13 made a left, and Agent Juarez went right behind him.
- 14 Q. Okay. And how far back -- when they're at this
15 intersection, how far back are you?
- 16 A. By the time I made the U-turn, I was coming up right here
17 (indicating). Because this -- this line right here
18 (indicating) is actually a canal.
- 19 Q. Okay.
- 20 A. And I was crossing this bridge right here (indicating).
- 21 Q. Okay. And so you see them turn left here (indicating).
- 22 A. Yes.
- 23 Q. What do you do then?
- 24 A. Well, I continued to follow them. By the time I got to
25 this intersection (indicating), the van and Agent Juarez were

1 making the turn at this intersection right here (indicating).

2 Q. Okay.

3 A. They were turning left at that intersection.

4 Q. Okay. And what conclusions did you draw from the fact that
5 they were turning left?

6 A. Well, I know, from here (indicating), there's nowhere else
7 go, except they were going to come back down here (indicating).
8 So from here (indicating), all I did was turn around and make a
9 U-turn and come back down here (indicating) and wait for them.

10 Q. Okay. And we've put a -- it's not terribly legible on this
11 screen, and I'm sorry. But we put a Number 2 there.

12 What happens where that number -- what do you do where
13 that Number 2 is?

14 A. I just sit there and wait for them to come out.

15 Q. Well, no. The number I'm talking -- that, right there
16 (indicating.)

17 A. Oh. At that, that's where I made the U-turn.

18 Q. Okay.

19 A. Because I already see them make the left turn there
20 (indicating).

21 Q. Okay.

22 A. So I just make the U-turn here (indicating), at the
23 intersection.

24 Q. Okay. How did you make the U-turn when they were -- was
25 there oncoming traffic? Was it --

- 1 A. No. The traffic had already stopped for the van and Agent
2 Juarez.
- 3 Q. Okay.
- 4 A. I basically got to the intersection, saw them make the left
5 turn, and finished making my U-turn, to come back down and wait
6 for them.
- 7 Q. Now, at this point in time, do you have your emergency
8 lights on?
- 9 A. Yes, I do.
- 10 Q. Okay. And why do you have your emergency lights on?
- 11 A. Because we were in the middle of Fabens proper, and I
12 needed my lights on. One, because we were in the middle of
13 Fabens --
- 14 Q. Uh-huh.
- 15 A. -- and I was stopping all of the traffic, because we were
16 there.
- 17 Q. Okay.
- 18 A. I mean, all of this -- all of the traffic was sitting there
19 looking at me, because I was in the middle of the intersection.
- 20 Q. When you're at this intersection here (indicating)?
- 21 A. Yes.
- 22 Q. Making your U-turn?
- 23 A. Yes.
- 24 Q. Then you make your U-turn, and where do you go from there?
- 25 A. I went -- I went back south to this point (indicating).

1 Q. Okay. And you probably can't see it from where you are,
2 but we've marked a 3 at that point?

3 A. Right.

4 Q. Okay. What do you do there?

5 A. I just wait for the van and Agent Juarez to come back
6 around.

7 Q. Okay. Why -- why are you waiting for them to come out?

8 A. Because I know that's the only exit point from -- from that
9 street.

10 Q. And does that happen? Did they come out?

11 A. Yes, they did.

12 Q. Okay. Do you cut Agent Juarez off when -- I mean, do you
13 cut him off, as he's coming out of that street?

14 A. No, I don't. The van comes out of the street without
15 stopping. Agent Juarez gets to the intersection, stops and
16 looks at me and just stops.

17 Q. Okay.

18 A. So I continued on.

19 Q. Okay. Does Agent Juarez have his emergency lights on
20 still?

21 A. Yes, he does.

22 Q. Okay. And do you?

23 A. Yes, I do.

24 Q. Okay. So from here (indicating) -- where does the van go
25 from here (indicating)?

1 A. From there (indicating), the van just continued along this
2 road (indicating), and then we went down Fabens south.

3 Q. Okay. And, at this point in time, you were the one closest
4 to the van?

5 A. Yes, I am.

6 Q. Okay. Now, did you, at some point in time in here
7 (indicating), did you motion to Agent Juarez to turn off his
8 emergency lights?

9 A. No, I did not.

10 Q. Okay. What are you doing with your hands when you're
11 driving the vehicle?

12 A. Well, by that time, I was calling out to everybody the van
13 had -- was turned back south. And I was communicating to
14 everybody where we were going to go from there.

15 Q. Okay.

16 A. So I was driving with my left hand and holding the radio
17 with my right.

18 Q. Okay. Would that make it kind of hard, to be doing this
19 (indicating) with your left hand?

20 A. I couldn't have done both.

21 Q. Okay. Did you -- as you're heading south on Fabens Road,
22 did you keep your emergency lights on?

23 A. Yes, I did.

24 Q. And why is that?

25 A. Because -- you can't see it on this map. On this road, on

1 Fabens south, there was still the possibility of traffic coming
2 up from the port of entry from our east end. So if there was
3 any traffic that was going to come up, I wanted them to at
4 least clear off to the side of the road, if any. There was no
5 traffic.

6 Q. What -- if you can, approximate the speed. About what
7 speed -- when you see Agent Juarez and the van going
8 northbound, do you have any idea how fast they were going?

9 A. I couldn't say how fast they were going when they were
10 going northbound.

11 Q. Okay. How about after you-all turned back southbound?

12 A. After we turned back southbound, I don't know. Once we hit
13 down here (indicating), we're probably going about 60 miles an
14 hour.

15 Q. Okay. What -- what is down here (indicating)? I mean --
16 well, first of all, what's -- what's up here (indicating)?
17 This is showing the streets. It's not a satellite map that
18 shows buildings.

19 A. Right. Basically, where this blue line is (indicating),
20 you can't tell. It's just open there, because it's just a
21 canal.

22 Q. Uh-huh.

23 A. Down here (indicating), over here (indicating), there's
24 houses. But that's off to the side.

25 Q. Okay.

1 A. Then there's just a couple of houses over here
2 (indicating). Other than that, it's -- there's nothing.

3 Over here (indicating) there's pecans, pecan groves.

4 Q. Okay.

5 A. And off to this side (indicating) there's open fields.

6 Q. Okay. Did you notice other traffic on the road that day?

7 A. No.

8 MS. STILLINGER: Your Honor, I would move for the
9 admission of Defendant Ramos Exhibit 9. I would take off my
10 little stickie where I -- where the lights are.

11 THE COURT: All right. Has counsel seen it?

12 MS. KANOF: I have not seen it, but I have no
13 objection. I saw it on the screen.

14 THE COURT: All right. Then Defendant Ramos Exhibit 9
15 will be admitted.

16 BY MS. STILLINGER:

17 Q. Did you request permission to initiate a pursuit of this
18 vehicle?

19 A. No, I did not.

20 Q. Why is that?

21 A. Because I've never done so in the past.

22 Q. Okay. Was there anything unusual about this pursuit?

23 A. No, there wasn't.

24 Q. Well, let me ask you: We've heard a lot about the pursuit
25 policy over the last several days. Was this a pursuit, under

1 Border Patrol policy?

2 A. I didn't think so.

3 Q. Okay. In your ten years of working as a Border Patrol
4 agent in the Fabens station, have you ever engaged in
5 similar -- I'm trying to give you another word for pursuit --
6 chases, or pursuits, or followings of vehicles?

7 A. Many.

8 Q. Okay. Many, like one a year or more than that?

9 A. I'm sure more than that.

10 Q. Okay. Was there anything very different about this event?

11 A. Other than we got him to go back south a little later, no.

12 Q. Okay. And -- and I'm going to call it a pursuit, just
13 because it's a more convenient word.

14 But how were you trained to conduct these types of
15 pursuits?

16 A. Well, once -- once he got back turned south, we all knew
17 where he was going. We all knew what he was going to do.

18 Most of the time they weren't going to go into town
19 anymore, and they were just going to try and get away from us.

20 Q. Okay.

21 A. So we just followed him back to the border. And, you know,
22 from there, it became a cat and mouse game, and we just tried
23 to get him from there. I mean, that's -- that's the way we did
24 business there.

25 Q. Are -- are -- have you ever been told that you're not

1 supposed to continue to follow --

2 MS. KANOF: Objection, Your Honor, leading.

3 THE COURT: All right. I'll sustain. Don't lead.

4 BY MS. STILLINGER:

5 Q. Can -- well, let me ask you. You said there wasn't
6 anything unusual about this pursuit, from your experience.

7 Have you known how other agents conduct pursuits?

8 A. That's the way we did it there.

9 Q. Okay. And how do you know that's the way other agents do
10 it?

11 A. Because I've been involved in other pursuits where -- if
12 you want to call them that -- where other agents have done the
13 same thing.

14 Q. Okay. Do you know of anybody being reprimanded for
15 conducting a pursuit --

16 MS. KANOF: I would object, Your Honor. That assumes
17 facts not in evidence. And you have to report it to be
18 reprimanded for it, so it's not the proper predicate.

19 THE COURT: All right. Well, I'll object to the -- I
20 guess that's sort of a two-parted objection. But, I mean, I'll
21 sustain the objection regarding it assumes facts not in
22 evidence.

23 MS. STILLINGER: Okay.

24 BY MS. STILLINGER:

25 Q. Do you know whether or not your supervisors have known

1 about you conducting similar pursuits?

2 A. Yes.

3 Q. Okay. And what do you know about whether they knew that?

4 I mean, did -- do you have knowledge that a supervisor knows

5 about those things?

6 A. Yes.

7 Q. And how do you know that?

8 A. Because they have been involved.

9 Q. Okay. How about, have you ever written up a report where
10 you describe something like that?

11 A. Yes, I have.

12 Q. Okay. And this is a report that would go to whom?

13 A. I have written one that went to the patrol agent in charge.

14 Q. Okay. So, in your understanding, is there anything wrong
15 with following a vehicle after it fails to yield?

16 MS. KANOF: I would object to the leading nature,
17 Your Honor.

18 THE COURT: I'll sustain.

19 MS. STILLINGER: I'm just asking what his
20 understanding is.

21 BY MS. STILLINGER:

22 Q. Is it wrong or is it not wrong to follow a vehicle after
23 it's failed to yield?

24 A. No. You can't just let it get away.

25 Q. Okay. Now, we've heard a lot about the pursuit policy,

1 Border Patrol pursuit policy. Are you very familiar with that
2 policy?

3 A. I thought I was.

4 Q. Okay. I think you told me about the speed you were going
5 as you were headed southbound. Were you-all traveling at a
6 constant speed?

7 A. More or less. I was keeping up with him, but not gaining
8 on him and not losing ground.

9 Q. Okay. And I said "you-all". At this point, who -- who is
10 you-all that are headed southbound at this point?

11 A. Well, at that point, it's just the driver of the van.

12 Q. Okay.

13 A. I'm behind him, and I know Agent Juarez is behind me.

14 Q. Okay. And we've heard a lot about the S curves on this
15 road.

16 A. Yes.

17 Q. Let me put up here Defendant Ramos Exhibit 7.

18 Where is the S curve on that road?

19 A. We travelled down this road (indicating), and the S curves
20 would be -- start -- the first one would be here (indicating).
21 The second one would be there (indicating).

22 Q. Okay. On the map, they really look more like right angles,
23 right?

24 A. Yes.

25 Q. Rather than an S. Okay.

1 And are you still going 60 miles an hour when you go
2 around the S curves?

3 A. No, you can't.

4 Q. Okay.

5 A. Especially not in the trucks we drive.

6 Q. Is the van driving dangerously, in your opinion?

7 A. No. There's no way he could have taken the turns at those
8 speeds, not in that vehicle.

9 Q. How about -- otherwise, is he being reckless? Is he doing
10 anything unusual as he drives down south?

11 A. He wasn't swerving. He wasn't going off the road.

12 Q. Okay. And how about you? Were -- how were you driving?

13 A. I had to slow down. I was staying in my lane. I mean, I
14 wasn't -- I wasn't doing anything reckless --

15 Q. Okay.

16 A. -- other than following him.

17 Q. Okay. And how far behind him are you? And when I say

18 "him," I'm sorry, I mean the van. How -- how far are you back
19 from him?

20 A. Three car lengths.

21 Q. Okay. Now, you said you were going about 60 miles an hour,
22 you thought. How do you know that?

23 A. I'm just guessing, by the -- by the rate of movement, and
24 the -- as we were going. I never really looked down at my --
25 my speedometer.

1 Q. Okay. Do you know what the speed limit is on this road?

2 A. I believe it's 50.

3 Q. Okay. Do you have your emergency lights on the whole trip
4 down south?

5 A. Yes, I do.

6 Q. Okay. Is there a point in time where the road turns to a
7 dirt road?

8 A. Down here (indicating).

9 Q. Okay. And what happens when you get on the dirt?

10 A. When I -- when I get on the dirt?

11 Q. Well, or -- well, let's start with when the van gets on the
12 dirt, what happens?

13 A. By the time he gets on the dirt, he's kicking up a big
14 cloud of dust.

15 Q. Okay.

16 A. So I -- I had to slow down, because there's no way I could
17 see what he's doing. Plus, that road -- you can't see it
18 there, but this is one of them (indicating). This line right
19 here (indicating) is one canal. There's another one that
20 doesn't show. It's an irrigation canal. And those irrigation
21 canals cut through the road, and they're -- there's a bridge
22 that's built over them. So if you don't slow down for them, or
23 if you don't know that they're there, if you don't see them, if
24 you're travelling at a high rate of speed, you're going to
25 catch air. You're going to -- you can fly over them.

- 1 Q. Uh-huh.
- 2 A. So -- I know they're there, so I had to slow down.
- 3 Q. Okay. And about how fast do you think you're driving down
4 here (indicating), once the dirt has -- I mean, I'm sorry --
5 once the road has turned to dirt?
- 6 A. Well, I know how fast I can go on that road, because I've
7 been down it many times. I know I'm not going any faster than
8 about 30 miles an hour, especially since I can't see because of
9 the dust cloud.
- 10 Q. Okay. My next question is: How close were you to the van
11 when you you're on the dirt road?
- 12 A. I don't really know.
- 13 Q. Okay. Why don't you know?
- 14 A. I can barely see him.
- 15 Q. Okay. Okay. Now, at this point in time, before you get to
16 the end of the Jess Harris Road, is there anything remarkable
17 about this pursuit or chase or following?
- 18 A. No. We just went down, like many others have. I mean,
19 he's going south and we're going south along with him.
- 20 Q. Okay. What happens when you get to the end of the road?
- 21 A. Well, two things. I -- I'm starting to stop sooner,
22 because on that road, aside from vehicles slipping, the brakes
23 don't work on dirt roads and on washboard roads. The ABS
24 brakes on these vehicles don't work well.
- 25 Q. Okay.

1 A. So, one, that I want to be out of the vehicle before the
2 driver of the van, I start braking early. And, two, they don't
3 work right. The vehicle just slides. So I start to brake
4 early, to try and get out of the vehicle before the driver.

5 Q. Okay. And let me ask you one other question off the map,
6 so we can put it away.

7 But where is the 76 area, in relationship to -- this
8 is -- "this" being the end of Jess Harris Road.

9 A. Uh-huh.

10 Q. Where is the 76 area?

11 A. Well, it would be -- it would be up here (indicating).

12 Q. Uh-huh.

13 A. I mean, more or less, it's almost three miles away.

14 Q. Okay. I know we had -- I -- we said -- I don't remember
15 what other witness identified this as 76 up here (indicating).
16 Does that look about right to you?

17 A. That's about right.

18 Q. Okay. Then I'm going to put the map away and not use it
19 again.

20 Okay. Mr. Ramos, what do you see when you get out of
21 your vehicle?

22 A. I see the suspect jump out of his van.

23 Q. Okay. And about how far back from him are you when you see
24 that?

25 A. Approximately two to three car lengths, I believe.

1 Q. Okay. You mean you parked two to three car lengths behind
2 him?

3 A. I believe so.

4 Q. Okay. What do you see the suspect do?

5 A. He jumps straight into the canal.

6 Q. Okay. And what do you do?

7 A. I run towards the canal.

8 Q. Okay. Tell me a little bit about the canal. This is the
9 same thing as the ditch or the Sierra Delta, right?

10 A. The Sierra Delta. Yeah, we call it the Sierra Delta.

11 Q. Okay. Tell me about that. Just describe it for me a
12 little bit.

13 A. It's a deep ditch, a deep canal. It's a -- it has dark,
14 green, murky water. It has lot of shrubbery in it, different
15 kinds of shrubbery. Some hard mesquite, some -- I don't know
16 what you call it. It's just those straight reeds that grow out
17 of it. It just has a lot of brush in it. It's very dense in
18 some areas, and some other areas you can see where undocumented
19 immigrants have cut trails through it.

20 Q. And what --

21 MS. KANOF: Your Honor, I would -- I think that's
22 pretty speculative. I would object to his --

23 THE COURT: Well, I heard -- I heard part, and then I
24 heard the --

25 MS. KANOF: I'm objecting that it's speculative as to

1 how those trails were cut, unless he saw them do it.

2 THE COURT: I'll sustain the objection.

3 BY MS. STILLINGER:

4 Q. Well, let me ask you: Do you know whether or not there are
5 illegal entries in this area?

6 A. There's a sensor there, and we have caught illegal -- or
7 undocumented immigrants in that area from that sensor.

8 Q. Is it a rare occurrence or a frequent occurrence?

9 A. It's frequent.

10 Q. Okay. In any event, let me -- let me ask you: What's at
11 the bottom of this ditch?

12 A. I couldn't tell you. It's just -- I've stepped in it
13 before.

14 Q. Okay.

15 A. And all you do is sink into it.

16 Q. Okay. And we're talking about something like water, right?

17 A. Well, it's water.

18 Q. Okay.

19 A. But it's -- it's green. And when you stir it around,
20 it's -- it smells, and it's nasty.

21 Q. Okay. And on this day -- let me take you back --
22 frontwards a little bit. On this day, about how deep was the
23 water?

24 A. A little past my knees. A little over my knees, I should
25 say.

1 Q. Okay. Then let me take you back to -- I think you said you
2 saw the suspect go into the ditch.

3 A. Yes.

4 Q. And you ran over there. What -- what happened next?

5 A. Well, he jumped in the ditch, and he started going through
6 the ditch.

7 Q. Okay. Where were you when you -- well, where did you run
8 up to?

9 A. I ran --

10 Q. You said you ran towards him. What did you do?

11 A. I ran up to the edge of the ditch, the north side of the
12 ditch.

13 Q. Okay. And did you stop there or did you keep going?

14 A. Well, I stopped there.

15 Q. Okay. Where was the suspect when you stopped at the north
16 edge of the ditch?

17 A. By that time, he was in the water -- well, just getting
18 into the water.

19 Q. Okay. Did you see anybody else there?

20 A. No, I did not.

21 Q. Okay. Well, how about on the south side of the ditch?

22 A. Well, Agent Compean was already there.

23 Q. Okay.

24 A. When I was arriving, Agent Compean was -- his truck was
25 already on the levee, and Agent Compean was already waiting, on

- 1 foot, on the south side of that ditch.
- 2 Q. Okay. And did he have anything in his hands?
- 3 A. I believe his shotgun.
- 4 Q. Okay. And what do you do when you get to the edge of the
5 ditch?
- 6 A. I started yelling at the suspect to stop.
- 7 Q. Okay. How did you yell at him to stop?
- 8 A. I yelled, Parate.
- 9 Q. Okay. Which means?
- 10 A. Stop.
- 11 Q. Okay. Anything else you yelled at him?
- 12 A. Nope.
- 13 Q. Okay. Was anybody else yelling anything at him?
- 14 A. Agent Compean was.
- 15 Q. And what was he yelling at him?
- 16 A. Parate.
- 17 Q. Okay. Anything else?
- 18 A. That's all I heard him yell, Parate.
- 19 Q. Okay. Was the suspect yelling anything back?
- 20 A. No. He just kept going.
- 21 Q. Okay. Did you know whether or not any other agents
22 arrived?
- 23 A. I could hear the trucks arriving. I could hear them.
- 24 Q. Uh-huh.
- 25 A. I mean -- but I never turned my back to look at them. I

- 1 kept my eyes on -- on the suspect.
- 2 Q. Okay. Could you tell whether or not the suspect saw you?
- 3 A. He turned around and looked at me once while he was going
- 4 through there. But I guess, since I didn't chase him
- 5 immediately, he didn't really care about me.
- 6 Q. Okay. Where was your gun at this time, when you're on the
- 7 north lip of the ditch?
- 8 A. I had already drawn my weapon, and I was pointing it at the
- 9 suspect.
- 10 Q. Okay. And we're talking about your weapon. What kind of
- 11 weapon was that?
- 12 A. A Beretta.
- 13 Q. Okay. Why did you draw your weapon?
- 14 A. Because I was sure that it was a narcotic smuggling.
- 15 Q. Okay.
- 16 A. And for my safety and the safety of Agent Compean and the
- 17 others that were getting there.
- 18 Q. Okay. And you're at the lip of the ditch. You see the
- 19 suspect going through the ditch. What do you see Agent Compean
- 20 doing?
- 21 A. I'm not really looking at --
- 22 Q. Okay. I'm sorry. If anything?
- 23 A. I'm not really looking at Agent Compean. My eyes are
- 24 focused on the suspect.
- 25 Q. Okay. What do you do next?

1 A. I'm just -- I keep yelling at the -- at the suspect to
2 stop. But he's not listening to me, and he's not listening to
3 Agent Compean. He just keeps going right up the side of the --
4 of the south side of the ditch.

5 Q. Okay. He's headed up the south side?

6 A. Yes.

7 Q. Okay. And while he's headed up the south side, you're just
8 standing there on the edge of the north side?

9 A. Yes.

10 Q. Okay. And did there come a time when you decided to make a
11 move?

12 A. Well, he kept ignoring Agent Compean, and he got up to
13 within, I would say, two feet of Agent Compean.

14 Q. Okay.

15 A. By that time, there was plenty of yelling going on behind
16 me. I knew the other agents were there.

17 Q. Okay. What -- what kind of yelling? Did you hear what
18 they were saying?

19 A. Not legibly. I mean, there was -- there was yelling going
20 on, but I couldn't understand it. I -- you know, I was
21 drowning out everything except for what was in front of me.

22 Q. Do you know what they were -- well, do you know who was
23 saying what? I know you couldn't understand exactly what they
24 were saying, but do you know who was saying it?

25 A. No, I don't.

- 1 Q. Uh-huh.
- 2 A. No, because I never turned around to look at anybody.
- 3 Q. Okay.
- 4 A. My eyes were focused on the suspect.
- 5 Q. Okay. Did you ever see Agents Juarez or Vasquez?
- 6 A. I -- I couldn't tell you where anybody was standing.
- 7 Q. Okay. Is there a time, then, when you decide to make a
8 move?
- 9 A. When that suspect got up to Joe, or Agent Compean, and
10 everybody else was yelling, he turned around to look at
11 everybody else. And I guess he knew he was outnumbered a lot
12 by then.
- 13 Q. Uh-huh.
- 14 A. He turned around to look at everybody. He turned around
15 and looked at me. And it was at that time he had a look
16 like -- well, to me, it was now or never.
- 17 Q. Okay.
- 18 A. It was at that time I holstered my gun. And he, at that
19 time, made a move on Agent Compean. And that's -- at that time
20 I jumped in the ditch.
- 21 Q. Okay. When you say he made a move on Agent Compean, what
22 did -- what did he do?
- 23 A. That's when I saw him try and get around Agent Compean.
- 24 Q. Okay. Now, you did call him Joe, and you said you'd worked
25 together with him for five years. Are you and Agent Compean

1 friends?

2 A. Well, we're friends at work, I -- I mean, as far as
3 co-workers. I mean, I consider him a -- a friend at work, a
4 co-worker.

5 Q. Uh-huh. Do you ever socialize together outside of work?

6 A. No, we don't.

7 Q. Okay. Even before this case did you socialize outside of
8 work?

9 A. We have never socialized outside of work.

10 Q. Okay. Then back to what's going on here.

11 You said you decide to go into the ditch?

12 A. Yes, I did.

13 Q. Okay. Tell me about how you got through the ditch.

14 First of all -- I'm sorry. First of all, why did you
15 holster your weapon?

16 A. Well, I couldn't go through the ditch with the gun in my
17 hand. It's too steep, and it would have been unsafe, and I
18 needed both hands to go through the ditch. One, because with
19 at all brush that's in there, and -- because it's happened to
20 me before, on another occasion.

21 There's a lot of brush on the side, and I've stepped
22 and stumbled before, and I've fallen into the water and
23 swallowed that water before. So I had to holster my weapon,
24 use both hands, to make sure I kept my balance to go down,
25 climb through the water. And I needed both hands to climb up

1 out of the ditch.

2 Q. Okay. So that's why you holstered your weapon. What are
3 you thinking as you -- I mean, why do you make that decision to
4 go through the ditch?

5 A. Well, I -- at that time, I knew he was going to be a
6 problem. For suspects like this, he's so close to freedom,
7 they're going to do anything they need to to get away.

8 Q. Okay. Were you worried about Agent Compean?

9 A. Most definitely. He's by himself.

10 Q. Okay. What's going on while you're going through the
11 ditch? What did you see or hear or observe while you were
12 going through the ditch?

13 A. Shortly after I started going into the ditch and crossing,
14 I heard shots.

15 Q. Okay. Gunshots?

16 A. Gunshots.

17 Q. Do you know how many gunshots you heard?

18 A. No, I do not.

19 Q. Do you know whose weapon was being fired?

20 A. No, I do not.

21 Q. Okay. What did you think when you heard the gunshots? I
22 mean, at that point in time when you heard the gunshots, what
23 were you thinking? What went through your mind?

24 A. Well, at first, there was an exchange of gunfire. I
25 couldn't tell who was shooting, and I couldn't tell if it was

1 just Agent Compean shooting or the suspect shooting at Agent
2 Compean.

3 Q. Okay. What do you think you should do when you heard the
4 gunfire?

5 A. Well, I needed to get to Agent Compean and help him.

6 Q. Okay. Did you -- did you slow down and stay in the ditch
7 for cover?

8 A. No.

9 Q. Okay. What did you do?

10 A. I needed to get out of there as quick as possible, to get
11 to Agent Compean.

12 Q. Okay. And how did you do that?

13 A. I climbed out of there.

14 Q. Okay. I know you said you were moving as quick as you
15 could. I mean, did it take a little while to get through the
16 ditch, though?

17 A. Yeah. Because, like I said, when you go through the water
18 you sink. It's just soft, murky, you know, dirt in there.

19 Q. Uh-huh.

20 A. And with the boots we wear, it just -- we just sink in
21 there.

22 Q. Okay. While you're going through the ditch, what do you
23 see the suspect and Agent Compean doing?

24 A. I can't see them.

25 Q. Okay. Why not?

1 A. Well, the ditch, I guess from the photos we've seen, is
2 approximately 11 feet deep.

3 Q. And I was going to ask you about that. I was actually
4 looking for that exhibit. But -- but we've seen that diagram
5 before that shows the depth of the ditch, right, and the height
6 of the levee, right? And do you agree that that looks pretty
7 accurate?

8 A. Yeah.

9 Q. Okay. So you just said it was 11 -- about 11 feet deep,
10 according to that diagram?

11 A. I believe that's what I saw in that photo.

12 Q. Okay. When do you first get sight of either Compean or the
13 suspect?

14 A. Not until I get out of the ditch and run to the edge of the
15 levee.

16 Q. Okay. So when you first get out of the ditch, do you see
17 anybody then?

18 A. No.

19 Q. Okay. And how do you know where to run?

20 A. I just ran. I mean, I just ran.

21 Q. Okay.

22 A. I had to go -- I had to go find them.

23 Q. Okay. And -- and I'm sorry. Where do you run to?

24 A. I run to -- well, the direction I took, I ran toward, I
25 guess at that point, the back of where Agent Compean's vehicle

1 was.

2 Q. Okay. And did you, at some point, see Agent Compean?

3 A. When I got to the edge of the levee, the south side of the
4 edge of the levee, I saw Agent Compean. Yes, I did.

5 Q. Okay. Okay. I'm sorry. I'm going to show you a couple
6 of...

7 When I was asking you about the diagram that the
8 Government admitted into evidence, I was talking about Exhibit
9 31.

10 There we go. This is Government's Exhibit 31. And
11 this is one you've looked at before that has the heights and
12 measurements at the bottom, right?

13 A. Yes.

14 Q. Okay. And that's the one that we were talking about. You
15 think that that's pretty accurate --

16 A. Yes.

17 Q. -- these measurements?

18 You've never gone out there and measured it yourself,
19 right?

20 A. No.

21 Q. Okay. Let me ask you if you can show me -- I know there's
22 a yellow line on that. But in relationship to that yellow
23 line, about where did you cross the ditch, and about where did
24 you run up to the levee? If you can see -- I can approach, if
25 you would like to see it closer.

1 A. Well, Jess Harris is right there (indicating).

2 Q. Right.

3 A. The van was just to the right of that. So I would have
4 crossed to the left of the van.

5 Where I crossed was approximately in that area
6 (indicating), because where I ran up was along that slope
7 that's there. I don't know if that -- that dotted line is
8 covering it.

9 Q. Uh-huh.

10 A. But I run up along that slope, because Agent Compean's
11 vehicle was parked right along that area (indicating), more or
12 less.

13 Q. Okay. That slope, is that like a little -- sort of like a
14 road that goes up towards the levee road?

15 A. It's like a little grade.

16 Q. Okay. And that's reflected down here (indicating) on the
17 diagram, right?

18 A. Yes.

19 Q. Okay. So you ran up to the levee and -- I am sorry if I'm
20 being repetitive, but is that when you saw Agent Compean?

21 A. I didn't see Agent Compean until I got to this part of the
22 levee (indicating).

23 Q. Okay. Now, of course, this picture doesn't show his
24 vehicle in it.

25 A. No.

1 Q. But where did you run to in relationship to where his
2 vehicle was?

3 A. Well, his vehicle was approximately in that area
4 (indicating), facing east. So I -- I ran this way
5 (indicating).

6 Q. Uh-huh.

7 A. So I was -- I guess you could say I ran behind it.

8 Q. Okay. And I'm going to switch pictures on us and show you
9 Government's Exhibit 29.

10 Now, this is taken from the different point of view,
11 because this is Jess Harris Road (indicating). So this is, I
12 guess, taken from the east. Is that right?

13 A. Yes.

14 Q. Okay. Now, I'm just thinking that one -- it's a little bit
15 bigger picture, and it might be easier to show Agent Compean's
16 vehicle --

17 MS. KANOF: I'm objecting to the commentary,
18 Your Honor.

19 THE COURT: All right. Well, ask your question.

20 BY MS. STILLINGER:

21 Q. Yeah. On this -- well, let's just back up one question,
22 which is: Where did you run up to on the levee road on this --
23 on this picture?

24 A. You can see the grade a little bit better here, and that
25 would be right there (indicating). That's what that is.

1 Q. Okay.

2 A. His vehicle was approximately right there (indicating).

3 Q. Okay.

4 A. So I ran up from the ditch in here (indicating). I ran up
5 that grade, because I got up right about there (indicating). I
6 ran up the grade there (indicating), came out from the vehicle
7 there (indicating). This is where I ran to (indicating).

8 Q. Okay. And where did you see -- where was Agent Compean
9 when you saw him?

10 A. Where I saw Agent Compean was approximately right there
11 (indicating) on that drag road.

12 Q. Okay. What -- what is a drag road?

13 A. Back when I first got to Fabens, that road that you see
14 there, we used to drag it with tires. And that's how we
15 would -- we would keep that road clean, so that we could see
16 where people -- or undocumented immigrants -- crossed in --
17 into the United States.

18 Q. Okay. How could you see it, if you were dragging it clean?
19 How could you see that?

20 A. Well, we'd drag it clean with the tires, and then we would
21 check it -- check it periodically. And then you could see the
22 footprints on it. That's how we would cut for sign.

23 Q. Okay. So you're pointing to over here (indicating),
24 this -- this is a separate little road here (indicating)?

25 A. That's what that road is right there (indicating).

1 Q. Okay.

2 A. This is the levee (indicating).

3 Q. Okay.

4 A. And then that -- that's below the levee. That's what that
5 road is right there (indicating).

6 Q. Okay. And what is the vega on this picture? Where is the
7 vega?

8 A. This is a vega (indicating).

9 Q. Okay. That whole area between the levee and the river?

10 A. Yes.

11 Q. Okay. Now, is the vega a safe place to be?

12 A. No, it's not.

13 Q. Okay. And why do you say that?

14 A. Because you're exposed out there. There's really nowhere
15 to hide if you needed to. There's no -- the brush out there is
16 nothing you can hide behind. It's not thick enough. There's
17 relatively no trees out there, if any. And -- in a couple of
18 areas there's a few trees. But, other than that, your
19 proximity to the -- to the river and to the border, you're so
20 close that you're vulnerable to gunfire, to -- from Mexico and
21 from the river.

22 Plus, along the river, there's -- the brush that goes
23 along it is so thick and dense you couldn't see anybody hiding
24 there.

25 MS. KANOF: Objection, Your Honor; nonresponsive,

1 narrative.

2 THE COURT: I'll overrule. But I will sustain -- on
3 nonresponsive. But I will sustain the objection to narrative.

4 Ask your next question.

5 MS. STILLINGER: Okay.

6 BY MS. STILLINGER:

7 Q. Mr. Ramos, have you had -- ever had any experiences with
8 being shot at when you were at the -- on the vega?

9 A. Yes, I have.

10 Q. Okay. And when was that?

11 A. In 1996.

12 Q. Okay. And do you remember when it was in '96?

13 A. I just remember it was sometime during the summer.

14 Q. Okay. And what happened in that incident?

15 A. In that incident, I chased back another narcotic smuggler.
16 In that incident, he crashed through what we've come to know
17 here as the C.C. Bills gate.

18 Q. Okay.

19 A. He crashed his pickup through that -- that gate. I chased
20 him back to the river.

21 And right before I caught him, he yelled to --

22 MS. KANOF: I would object, Your Honor, to what he
23 yelled, as being relevant.

24 THE COURT: All right.

25 MS. STILLINGER: I could ask him questions and make

1 this a little more condensed, Your Honor.

2 THE COURT: That's fine. Go ahead, then,
3 Ms. Stillinger.

4 BY MS. STILLINGER:

5 Q. Were you shot at?

6 A. Yes, I was.

7 Q. Did you return fire?

8 A. Yes, I did.

9 Q. Okay. And on that occasion, by the way, did you report it
10 to the supervisor?

11 A. The --

12 Q. I'm sorry. Report, specifically, the discharge of your
13 firearm. Did you specifically report that to a supervisor?

14 A. The supervisor knew about it.

15 Q. Okay. But I'm asking: Did you actually make a report to
16 the supervisor --

17 A. No, I did not.

18 Q. -- and say, This is what happened?

19 A. No, I did not.

20 Q. Okay. Why not?

21 A. Because I -- I called it out on the radio.

22 Q. Okay. And why did you call it out on the radio?

23 A. Because that day I was by myself.

24 Q. Okay. And you were calling why?

25 A. Because I needed help.

1 Q. Okay. And what was your supervisor's involvement, if
2 any --

3 MS. KANOF: I would object, Your Honor, as to
4 relevance.

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

6 MS. STILLINGER: Well, I think it goes to his state of
7 mind on two things. One is the dangerousness of the area that
8 he's entering into.

9 THE COURT: And we've gotten into that.

10 MS. STILLINGER: And the other is the manner in which
11 he's required to report the discharge of a firearm.

12 THE COURT: Hold on. Your question was -- well,
13 before Ms. Kanof objected, I don't know what the full question
14 was. But it was: And what was your supervisor's involvement?
15 What has that got to do with?

16 MS. STILLINGER: Well, he's saying he -- Mr. Ramos
17 said that he didn't make an actual report to his supervisor.

18 THE COURT: Okay.

19 MS. STILLINGER: But his supervisor knew about it. So
20 I'm trying to find out, Why did he think his supervisor knew
21 about it? I guess I can ask it that way.

22 THE COURT: All right. Then --

23 MS. KANOF: Your Honor, I'm going to object to
24 remoteness, if it was ten years ago.

25 THE COURT: Well, I'll overrule.

1 Go ahead.

2 BY MS. STILLINGER:

3 Q. Why did you think that -- on this event that was in 1996,
4 why did you think your supervisor knew about the discharge of a
5 firearm if you didn't make a report?

6 A. Well, I called it out over the radio.

7 Q. Okay.

8 A. And he responded to the scene.

9 Q. Okay. Were you ever asked to write up a memo or report of
10 that incident?

11 A. That's all I did.

12 Q. Okay. So yes, you did?

13 A. Yes, I did.

14 Q. Okay. What other investigation or official proceeding
15 happened after that?

16 A. None, that I know of.

17 Q. Okay. How about -- have you been involved in any other
18 shootings in the vega?

19 A. No.

20 Q. Okay. Were you aware of those shootings in the vega?

21 MS. KANOF: Objection, Your Honor.

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

23 BY MS. STILLINGER:

24 Q. Okay. Specifically, then, let me ask you: Are you aware
25 of any circumstances where a supervisor knew about a Border

1 Patrol doing a shooting and didn't report it?

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

3 MS. STILLINGER: I think this goes to his state of
4 mind of the importance of reporting, and specifically, how the
5 supervisors react to the discharge of firearms.

6 THE COURT: I'll sustain.

7 BY MS. STILLINGER:

8 Q. How about -- is there any other reason -- you've talked
9 about -- well, only one shooting on the vega. But any other
10 reason -- do you have any other experiences? I'm just speaking
11 generally, not to go into detail of other experiences. But any
12 other experiences that makes you think this is a dangerous
13 place to be?

14 A. Yes.

15 Q. Okay. Now, how about dealing with people you investigate
16 and the people you arrest? Have you ever had any incidents of
17 violence with these people?

18 A. Yes.

19 Q. Okay. Have you ever been assaulted?

20 A. Yes, I have.

21 Q. Okay. Do you go down on the vega a lot during the regular
22 course of your work, or do you try to stay out of there?

23 A. If I don't need to go down there, I -- I don't.

24 Q. Okay. Then let me back up and take you to February 17th,
25 2005. You told us where you saw Agent Compean. What was Agent

- 1 Compean doing, or -- yeah. What was he doing when you saw him?
- 2 A. When I saw him he was on the floor.
- 3 Q. Okay. And let me back up just a second. You said you
- 4 heard gunshots when you were in the ditch. Did you hear
- 5 anymore gunshots after you got out of the ditch?
- 6 A. No.
- 7 Q. Okay. He was on the floor. What do you mean?
- 8 A. Well, he wasn't standing.
- 9 Q. Okay.
- 10 A. I don't remember his exact position.
- 11 Q. Okay.
- 12 A. But he wasn't standing when I saw him.
- 13 Q. Okay. Was he laying flat on the ground?
- 14 A. He wasn't laying on his back --
- 15 Q. Okay.
- 16 A. -- but he wasn't -- he wasn't standing.
- 17 Q. Okay. What did you think, at that point in time, based on
- 18 everything you'd seen and heard, and your experience working
- 19 there? What did you think when you see him?
- 20 A. I thought he had been shot, that he had been injured.
- 21 Q. Okay. What do you do?
- 22 A. I immediately look for the suspect.
- 23 Q. Okay. Did you see him?
- 24 A. Yes, I did.
- 25 Q. Okay. Where was he?

- 1 A. Agent Compean was approximately in this area (indicating).
2 The suspect was running away from Agent Compean in this area
3 (indicating). He was running in this direction (indicating).
4 Q. Okay. And what do you do?
5 A. I ran after him.
6 Q. I'm sorry. You ran after him?
7 A. I ran after him.
8 Q. Okay. Why?
9 A. Because I wanted to catch him.
10 Q. And did you say or do anything?
11 A. I yelled at him, Parate.
12 Q. And, by the way, where is your gun at this point in time?
13 A. It was in my hand.
14 Q. Okay. When did you take it back out of the holster?
15 A. As soon as I cleared the ditch.
16 Q. Okay. And how long -- well, how long do you run after him?
17 A. I must have run in the vega approximately 15 feet -- I
18 don't know. It was in this area right here (indicating), I
19 would say more or less, when I yelled Parate, to him.
20 Q. Okay. And what happens then?
21 A. As soon as I yelled Parate, to him, he went like this
22 (indicating) to me.
23 Q. Okay. Now, of course, you don't have anything in your
24 hand. But they -- you could stand up, if you would. And
25 pretend that I'm you.

1 By the way, did you have -- you have your gun in your
2 hand, right?

3 A. Yes, I did.

4 Q. Are you pointing it at him?

5 A. Not at that time, because I'm still running.

6 Q. Okay. You're running with it. Okay.

7 What does he do? You -- you're -- pretend you're him
8 running away from me. What does he do?

9 A. As soon as I yell Parate -- he was running, and he went
10 like this (indicating).

11 Q. Okay. You can have a seat, then.

12 Of course, you've got a clicker in your hand, in your
13 left hand, right?

14 A. Yes.

15 Q. Okay. What did you see in his left hand that day?

16 A. I believed I saw a gun.

17 Q. Okay. Are you --

18 MS. STILLINGER: May the record reflect that the
19 witness demonstrated turning around and shooting backwards?

20 MS. KANOF: Excuse me, Your Honor, I would object,
21 unless it reflected with his left hand.

22 MS. STILLINGER: I'm sorry?

23 MS. KANOF: I would object, unless it was accurately
24 described to the record that he did it with his left hand.

25 MS. STILLINGER: That would be fine, Your Honor.

1 THE COURT: All right. So noted.

2 BY MS. STILLINGER:

3 Q. And is that what you saw, was -- I mean, I know you used
4 your left hand. Is that what you saw?

5 A. That's what I saw.

6 Q. Okay. Are you absolutely sure that he had a gun in his
7 hand?

8 A. On that day, at that time, I believe so.

9 Q. Okay. Were you absolutely 100 percent sure?

10 A. At that time, I was.

11 Q. Okay. How about today, looking back on it? Do you think
12 he had a gun or do you know?

13 A. I can't be sure.

14 Q. Okay. You can't be sure. What do you think?

15 A. He had something in his hand.

16 Q. Okay. Now, what did you do when the suspect made the
17 motion that you just demonstrated? What did you do?

18 A. I picked up my gun and fired.

19 Q. Okay. How many times did you fire?

20 A. One time.

21 Q. Okay. And what happened when you fired at him? I mean,
22 did you see any response from him?

23 A. Not immediately. I -- because I'm looking down my sights,
24 so I'm not looking at him directly. I'm looking down the
25 sights of my gun.

1 Q. Okay. And let me ask you -- let me back up just a little
2 bit.

3 From the time you see Agent Compean run and you shoot,
4 how -- what kind of time frame are we talking about?

5 A. A matter of seconds.

6 Q. Okay. Now, what do you do immediately after you shoot?

7 A. I pick up my gun again, reassess -- look for him again, or
8 reassess my -- reassess my target.

9 Q. Okay.

10 A. I don't see him.

11 Q. Okay. Now, where is he when -- when -- I mean, at the time
12 that you're aiming at him and shooting at him -- I don't mean
13 at the -- but at the time you're aiming at him and shooting at
14 him, where is he?

15 A. After I shot, I don't see him anymore.

16 Q. Okay. But where is he -- I guess what I mean, as far as
17 proximity to the river, where is he?

18 A. He was right on the edge.

19 Q. Okay. You don't see him anymore. Did you think maybe he
20 went down?

21 MS. KANOF: Objection, leading.

22 THE COURT: I'll sustain.

23 BY MS. STILLINGER:

24 Q. What did you think when you didn't see him anymore?

25 A. Well, he didn't go down, because I would have seen him.

- 1 Q. Okay.
- 2 A. You know, like I said, the -- the brush there is low enough
3 I would have seen somebody go down.
- 4 Q. Okay. Because you just said there came a time when you
5 didn't see him. So what -- what happened?
- 6 A. Well, I didn't just immediately put my gun down and walk
7 away.
- 8 Q. Okay.
- 9 A. To me, he was still a threat at that time, because I didn't
10 know where he went.
- 11 Q. Okay.
- 12 A. So I had my gun down at what we call ready pistol, which is
13 right here (indicating). And then I was assessing the area
14 looking for him.
- 15 Q. Okay. Well, where did you think he was? I mean, I know
16 the -- the -- you said the vega doesn't have a lot of cover.
17 Where did you think he was when you couldn't see him anymore?
- 18 A. In the river.
- 19 Q. Okay. Do you have a clear view of the river?
- 20 A. No.
- 21 Q. Okay.
- 22 A. Well, from where I'm standing, I can look into the river.
23 But along the bank there's a lot of brush, so...
- 24 Q. Okay.
- 25 A. I mean, it's -- it's covered real well in -- in a lot of

1 areas.

2 Q. Okay. How long did you stay there watching him, or
3 watching -- I'm sorry, you weren't -- you said you couldn't see
4 him -- watching for him?

5 A. I watched for him until I saw him get out of -- climb --
6 get out of the river on the Mexican side.

7 Q. How did you see him -- how was he moving when you saw him?

8 A. He was walking fine. I mean, he was walking in a normal
9 pace.

10 Q. Okay. Did you know whether or not you had hit him?

11 A. No, I did not.

12 Q. Okay. And just to be clear, today, as we are in this
13 courtroom, are you denying that you did hit him?

14 A. No.

15 Q. Okay. Now, if you thought that you'd hit him, what would
16 you have done?

17 A. Well, I would have rendered aid, if he would have fallen on
18 our side.

19 Q. Okay. And -- and then what?

20 A. Well, I would have arrested him.

21 Q. Okay. I think you said you watched him until you saw him
22 get out of the river.

23 A. Uh-huh.

24 Q. Okay. And then what do you do?

25 A. By that time, I think Agent Compean walked over next to me.

1 Q. Okay.

2 A. I turned around and I looked at him. Basically, he -- he
3 was scared. He looked like he was in shock.

4 MS. KANOF: Objection, nonresponsive.

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

6 BY MS. STILLINGER:

7 Q. Just try to listen to the question.

8 A. Okay.

9 Q. I'm just asking what you did. He walked up to you. Was
10 there an exchange of words?

11 A. No.

12 Q. Okay. I was going to ask how he looked to you, but I think
13 you answered that already.

14 What did you do when you saw him?

15 A. I started patting him down, to make sure he had not been
16 hit.

17 Q. Okay. Well, why were you doing that? I mean, he's gotten
18 up and walked over to you. Why were you doing that?

19 A. Because he looked like he was in shock. And I know
20 sometimes, as far as people in shock or trauma, they don't know
21 they're hurt. And I was making sure he hadn't been hurt or
22 shot.

23 Q. And how did -- how did you do that, if you would just
24 demonstrate it for a second with your hands, of how -- how did
25 you --

- 1 A. Well, I just -- I just felt him like this (indicating),
2 made sure he hasn't been physically hurt seriously.
- 3 Q. Okay.
- 4 A. Basically, I was checking him for bullet holes and making
5 sure there was no visible blood or anything like that on him.
- 6 Q. Okay. And did you find anything like that?
- 7 A. No, other than he was cut on the chin, that I saw at that
8 time.
- 9 Q. Okay. And what do you do after you -- after you check him
10 out, what do you do?
- 11 A. Started walking back to the levee.
- 12 Q. Okay. Do you-all have a discussion about anything?
- 13 A. No, we did not.
- 14 Q. Okay. When you are heading back to the levee, what do you
15 see? Are there other agents?
- 16 A. Well, I still keep my eye on the suspect. I -- I never
17 gave my back completely to the suspect. Basically, when I
18 walked back to the levee, I kept my body bladed, so I could
19 keep my eye on him, to make sure that he didn't -- that he
20 wasn't a threat anymore.
- 21 Q. Okay. So what do you see the suspect doing? As you're
22 walking back to the levee and saying that -- you're sort of
23 walking in a kind of sideways way?
- 24 A. Yeah.
- 25 Q. Okay. What do you see the suspect doing?

- 1 A. He just kept walking south.
- 2 Q. Okay. How far south did you watch him walk?
- 3 A. I believe we got to our levee about the same time he got to
- 4 his levee, or the Mexican levee.
- 5 Q. Okay. And was there anybody there at your levee when you
- 6 got there?
- 7 A. Agent Yrigoyen was arriving at about the time that I lost
- 8 sight of the suspect going over the Mexican levee.
- 9 Q. Okay. Did you -- did Yrigoyen -- did he have someone with
- 10 him that day?
- 11 A. Agent Mendez.
- 12 Q. Okay. Did you notify them that a suspect with a weapon had
- 13 just crossed back over the river?
- 14 A. No, I did not.
- 15 Q. Why not?
- 16 A. He wasn't a threat anymore.
- 17 Q. Okay. Why is he not a threat anymore?
- 18 A. He just kept walking south. He walked over the Mexican
- 19 levee. He had made no -- no more overt gestures or threats to
- 20 us.
- 21 Q. Is there any distance at which -- I'm talking about
- 22 distance south. Is there any distance south at which a person
- 23 with a handgun is no longer a threat?
- 24 A. Well, at that distance, he wouldn't have been very
- 25 accurate, or -- I mean, he had no rifle with him.

- 1 Q. No -- no rifle?
- 2 A. Right.
- 3 Q. Okay. I was going to ask you: What -- what did this gun
- 4 look like, to you?
- 5 A. A handgun.
- 6 Q. Okay. Could you tell what kind of gun it was?
- 7 A. He was too far away.
- 8 Q. Okay. Okay. So what do you do when you get back to the
- 9 levee? And I'm talking about your -- your levee on the
- 10 American side, of course.
- 11 A. Well, as soon as the suspect went over the Mexican levee, I
- 12 just started crossing back over to the north side of the Sierra
- 13 Delta.
- 14 Q. Okay. And why did you cross back to the north side?
- 15 A. Well, I had to get back to my vehicle.
- 16 Q. Okay. Who was on the north side -- well, you've already
- 17 said Yrigoyen and Mendez were on the south side of the ditch,
- 18 correct?
- 19 A. Yes.
- 20 Q. Okay. Who was on the north side when you got there?
- 21 A. FOS Richards, Agent Vasquez, Agent Juarez, Agent Mendoza,
- 22 Agent Jacquez, Agent Arnold. That's all I can remember right
- 23 now.
- 24 Q. Okay. And how many agents are working in the Fabens area
- 25 on a day like February 17, 2005? How many agents are there

1 working the line in the Fabens area?

2 A. It varies.

3 Q. Approximately?

4 A. 8 to 12.

5 Q. Okay. So this was a good part of your workforce that day
6 that was there, right?

7 A. Yes.

8 Q. Okay. Did you have any conversation with FOS Richards?

9 A. Yes, I did.

10 Q. Okay. And what was the conversation?

11 A. Well, he asked me if we had gotten the suspect.

12 Q. Okay. And what did you answer?

13 A. I told him, No, we didn't. But I told him that he had
14 assaulted Agent Compean.

15 Q. Okay. How did you say that he had assaulted? Did you use
16 those words, or did you use some other words --

17 A. No, I just --

18 Q. -- did you describe it?

19 A. I told him he had assaulted Agent Compean. I told him the
20 suspect had assaulted Agent Compean, and he threw dirt in his
21 face, because Agent Compean had dirt all along this area
22 (indicating). I mean, he had dirt all over his face.

23 Q. Okay. And did he say anything back to you?

24 A. Well, he asked me, Is he okay?

25 I said, Well, you might want to ask him.

1 I mean, that's not -- I mean, I checked Agent Compean
2 out, but that's not for me to say.

3 Q. Okay. Any other conversation between you and Richards?

4 A. That was it.

5 Q. Okay. And when you got to the north side of the ditch,
6 were the other agents -- well, what were they doing?

7 A. Well, they were talking about the whole situation.

8 Q. Okay. And the whole situation, what --

9 A. Everything that had transpired, that had just transpired.

10 Q. Okay. Do you specifically remember who said what about
11 what?

12 A. No, I don't.

13 Q. Okay. Did you hear whether or not the shooting was
14 mentioned, the gunshots were mentioned?

15 A. I had heard somebody say something about the shots being
16 fired.

17 Q. Okay. And did you have any -- do you recall any specifics
18 of any conversations you had with anybody else other than
19 Richards when you were there?

20 A. No, I do not.

21 Q. Okay. And what did you do after that?

22 A. After that, I unloaded whatever marijuana was in the van,
23 part of it, into my truck, and headed back to the Fabens
24 station to process it.

25 Q. Okay. So you took part of it, and somebody else took

- 1 another part?
- 2 A. Uh-huh.
- 3 Q. Okay.
- 4 A. Yes, ma'am.
- 5 Q. Now, let me backtrack a little bit. You mentioned that
6 you've been assaulted a couple of times, right?
- 7 A. Yes, ma'am.
- 8 Q. Were the assailants prosecuted on those occasions?
- 9 A. One of them was.
- 10 Q. Okay. Without going into every detail about it, how were
11 you assaulted, or what happened to you?
- 12 A. On one occasion -- well, both of them involved undocumented
13 immigrant smuggling.
- 14 Q. Okay.
- 15 A. On one occasion, when I caught the smugglers, they tried to
16 run south. I caught him, and he didn't resist at first, until
17 I started searching him. As I started to search him, that's
18 when he started fighting me. During the fight, I was poked in
19 the -- in my left thumb with a syringe that he carried.
- 20 Q. Okay.
- 21 A. And I had to go to the hospital after that.
- 22 Q. Okay. Did you file -- I don't remember what the form -- I
23 think we heard some testimony from Supervisor Richards about
24 some sort of --
- 25 A. A CA-1.

- 1 Q. I'm sorry?
- 2 A. A CA-1 form.
- 3 Q. A CA-1 form. Okay.
- 4 A. Yes.
- 5 Q. Did you file that when you got poked with the hypodermic
6 needle?
- 7 A. Most definitely.
- 8 Q. Okay. Was that assailant prosecuted?
- 9 A. He was prosecuted for the re-entry, because he had a
10 deportation. He was not prosecuted for the assault.
- 11 Q. Okay. So we've heard some testimony about how they have a
12 zero tolerance for assaults. Is that your experience?
- 13 A. No, ma'am, it is not.
- 14 Q. Okay. Were -- was it ever explained to you why he was not
15 prosecuted for the assault?
- 16 A. He was not prosecuted for the assault because it was said
17 that since he did not pick up the syringe and actually make a
18 stabbing motion at me, that that's why he wasn't prosecuted for
19 the assault.
- 20 Q. Okay. And the other time -- I think you said the other
21 time you were assaulted the person was prosecuted?
- 22 A. Yes, he was.
- 23 Q. Okay. And were you injured that time?
- 24 A. Yes, I was.
- 25 Q. What was your injury?

- 1 A. I broke my hand.
- 2 Q. Okay. And did you file a CA-1 form then?
- 3 A. Yes, I did.
- 4 Q. Okay. Have you ever been assaulted on other occasions when
5 it was not reported?
- 6 A. Yes, I have.
- 7 Q. Okay. Well, if you've been assaulted on other occasions,
8 why wouldn't you report that as an assault?
- 9 A. Because unless they see it as a serious injury to you, they
10 are not going to go on the assault.
- 11 Q. Okay. You're saying "they". Okay? Who are you talking
12 about, "they"?
- 13 A. One, it has to be reported to the FBI --
- 14 Q. Uh-huh.
- 15 A. -- and, ultimately, to the office of the United States
16 Attorney's office.
- 17 Q. Okay. And, of course, you're just talking about your
18 understanding, right?
- 19 A. Yes, ma'am.
- 20 Q. Okay. Do you know whether or not it's required that you
21 report the discharge of a firearm in the course of your duty?
22 Do you know whether that's part of your policy, that you're
23 supposed to report -- report that?
- 24 A. Yes.
- 25 Q. Okay. Did you report the discharge of your firearm, or the

1 discharge of Agent Compean's firearm, on February 17th?

2 A. No, I did not.

3 Q. Why not?

4 A. Because, with all the agents that were arriving, especially
5 with Agent Yrigoyen arriving on the levee, I had heard somebody
6 yelling, Shots, when I was crossing through the canal. I
7 assumed it had been reported by somebody.

8 Q. Okay. Well, what did you think -- did you ever see Vasquez
9 or Juarez cross over the -- the ditch, to get to where you
10 were?

11 A. No, I did not.

12 Q. What did you think -- and I'm talking about at the time.
13 I'm not talking about now. But when you were running over
14 to -- to assist Compean, what did you think they were doing?

15 A. I didn't know what they were doing.

16 Q. Okay. Did you feel like you had anything to cover up that
17 day?

18 A. No, I did not.

19 Q. Okay. Were you trying to cover up anything by not
20 reporting the discharge of a firearm?

21 A. No, I was not.

22 Q. Did you ever have any conversations with any fellow agents
23 about whether or not it should be reported?

24 A. No, I did not.

25 Q. Did you tell anyone to pick up any shells?

1 A. No, I did not.

2 Q. What happened to your shell, from the one shot you fired?

3 A. It's out there.

4 Q. Okay. And when you say, "It's out there," have you
5 actually gone to see it out there?

6 A. No.

7 Q. Okay.

8 A. I didn't pick it up.

9 Q. Okay. Did you see anyone else picking up any shells?

10 A. No, I did not.

11 Q. When some time period passed, hours or days, and nobody
12 asked you to write a memo about this shooting, did you think
13 maybe you should ask one of your supervisors, Why haven't you
14 asked me to write a memo about this?

15 A. It wasn't my place to tell them.

16 Q. Okay. Were you worried about whether or not they knew
17 about the shooting?

18 A. If they knew, and they didn't say anything, it wasn't -- it
19 wasn't my place to question the supervisor.

20 Q. Okay. Looking back on this day, February 17, 2005, would
21 you have done anything differently?

22 And I want to start with the vehicle pursuit or chase
23 or following. Would you have done --

24 MS. KANOF: I'm going to object to relevance,

25 Your Honor.

1 MS. STILLINGER: It's relevant as to whether he
2 thought he did anything wrong that day, Your Honor.

3 MS. KANOF: I think it can be asked in a different
4 way, Judge.

5 THE COURT: Well, I'll overrule the objection.

6 BY MS. STILLINGER:

7 Q. Would you do anything differently? And I'm going to start
8 with the vehicle aspect of it, the vehicle pursuit or chase or
9 following of that vehicle -- of course, knowing what you knew
10 on February 17th. I'm not asking you to use all the knowledge
11 that you have today.

12 But, knowing what you knew then, would you have done
13 anything differently?

14 A. No.

15 Q. Okay. How about the part from where you get out of the
16 vehicle and you run over to help Compean? Do you think you
17 should have done anything differently there?

18 A. No.

19 Q. And how about the part where you shot at Osvaldo
20 Aldrete-Davila? Do you think you should have done anything
21 there?

22 A. No.

23 Q. Okay. Are you glad that you shot him?

24 A. No, I'm not.

25 Q. And why is that?

1 A. I don't want to shoot anybody.

2 Q. Okay. What were you doing this day? And I'm talking about
3 from the time the shooting -- the -- the chase began through
4 the end of the day, when you're taking the marijuana out to be
5 processed, weighed, and everything. What were you doing out
6 there that day?

7 A. I was just doing my job.

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

9 THE COURT: All right.

10 Okay. Mr. Peters? Mr. Antcliff? Who's next?

11 Go ahead.

12 MR. ANTCLIFF: Mr. Peters is --

13 THE COURT: You're right. I'm getting confused here.

14 Go ahead, Mr. Antcliff.

15 CROSS-EXAMINATION

16 BY MR. ANTCLIFF:

17 Q. Good afternoon, sir. I just have a few questions.

18 A. Yes, sir.

19 Q. When you see this guy run into the ditch, and you're
20 standing at the top and then you go into the ditch, you're
21 focused on him. Is that right?

22 A. Yes, sir.

23 MS. KANOF: Your Honor, I'm going to have to get
24 instructions from the Court. Does he get to lead or direct?
25 I've not seen this before.

1 MR. ANTCLIFF: I'll do whatever you want, Your Honor.

2 THE COURT: Well, I -- I think you're -- that you're
3 leading, and I'll sustain the objection.

4 MR. ANTCLIFF: Okay.

5 BY MR. ANTCLIFF:

6 Q. Do you see any kind of a confrontation between the driver
7 of the van and anybody else?

8 A. No, I do not.

9 Q. Do you see Agent Compean --

10 MS. KANOF: Your Honor, that's leading.

11 MR. ANTCLIFF: Okay.

12 MS. KANOF: What did you see, would be the --

13 MR. ANTCLIFF: Yeah, I understand, but I'm trying to
14 focus him.

15 THE COURT: I'll sustain.

16 BY MR. ANTCLIFF:

17 Q. Where is Agent Compean when you're getting ready to enter
18 the ditch?

19 A. South side of the canal, on the --

20 Q. He's -- what's he's doing?

21 A. Trying to stop the suspect from going back south.

22 Q. How is he trying to stop the suspect from going back south?

23 A. He's yelling Parate, but he's standing in front of him.

24 Q. Standing in front of the suspect?

25 A. Yes, sir.

1 Q. Okay. Is he holding anything?

2 A. He's got the shotgun.

3 Q. Do you see Agent Compean do anything with the shotgun?

4 A. No, I do not.

5 Q. Okay. Did you, on that day, ever see those two individuals
6 make contact with each other?

7 A. Not at that point.

8 Q. Did you see them make contact with each other at any point?

9 A. No.

10 MR. ANTCLIFF: I guess that's all I have, Judge.

11 THE COURT: All right.

12 Could the attorneys approach a minute?

13 (Bench conference:)

14 THE COURT: Who is going to do the cross?

15 MS. KANOF: I am.

16 THE COURT: Are you going to take longer than 15
17 minutes?

18 MS. KANOF: Much.

19 THE COURT: And the reason I'm debating is, frankly,
20 it's my son's birthday, and there's a game tonight, and I don't
21 want to be here till 7:00. It's his 13th.

22 MS. KANOF: Is he being bar mizvah'd?

23 THE COURT: No. Anyway, I don't want this trial to go
24 on forever. So I'm just trying to -- because we're going to
25 come back tomorrow, and we have a really full morning. And so

1 far, David and I have had 15-minute lunches two days in a row.
2 But what I'm trying to figure out is, what time tomorrow would
3 be good to come back?

4 MS. KANOF: Whenever the Court says.

5 THE COURT: All right. How about if I have them come
6 at 12:00 and probably try to start at 12:30?

7 MS. KANOF: Okay. That would be fine, Judge.

8 THE COURT: Because I want to try to get this done.

9 (End of bench conference; open court.)

10 THE COURT: All right. Ladies and gentlemen of the
11 jury, it's about 4:50, real close to 5:00. We're going to go
12 ahead and break for the evening.

13 Now, as I told you, tomorrow I'm not going to need you
14 to come back in the morning, because I have some stuff I have
15 to do. I'm going to ask you to be back around noon. So I
16 would ask you to try to have a little bit early lunch, so we
17 can try to work in the afternoon and get as far along as we
18 can. So, if you could, be back about noon. We probably won't
19 get started until a little bit after that, but I just want to
20 make sure we're ready to go. So if you could be here about
21 noon, that would be great.

22 Remember you remain under all the rules of the Court,
23 and we'll see you tomorrow at noon.

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

25 THE COURT: Anything we need to take up?

1 MS. KANOF: Nothing from the Government.

2 MR. ANTCLIFF: No, Your Honor.

3 MS. STILLINGER: No, not at this time, Your Honor.

4 THE COURT: All right. Then we stand in recess until

5 tomorrow at around noon. See you then.

6 (Transcript continues in Volume XIII.)

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Signature: _____ Date: _____
David A. Perez, CSR, RPR

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David A. Perez, CSR, RPR

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