

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

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

2 THE COURT: You may be seated.

3 Are we ready to proceed?

4 MS. KANOF: Yes, Your Honor.

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

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

9 MS. STILLINGER: And Mary Stillinger and Steve Peters
10 for Mr. Ramos. We're ready.

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

13 THE COURT: All right. You may go ahead and bring in
14 the jury.

15 (Open court, parties and jury present.)

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

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

18 THE COURT: Yes, you may proceed, Ms. Kanof. Go
19 ahead, whenever you're ready.

20 IGNACIO RAMOS, DEFENDANT, PREVIOUSLY SWORN

21 CROSS-EXAMINATION

22 BY MS. KANOF:

23 Q. Good afternoon, Mr. Ramos.

24 A. Good afternoon.

25 Q. You believe that your job is a cat and mouse game, right?

- 1 A. I stated that, in a sense.
- 2 Q. Well, you said, It's a cat and mouse game. That's the way
3 we do it.
- 4 A. In Fabens.
- 5 Q. So you think that taking a person's life is a game?
- 6 A. No, ma'am.
- 7 Q. You know, you told this jury yesterday that you did not see
8 any kind of physical contact between Osvaldo Aldrete-Davila and
9 Mr. Compean, correct?
- 10 A. Yes, ma'am.
- 11 Q. And you did not speak, according to you, with Mr. Compean
12 at any time that you were either on the vega or on the levee,
13 correct?
- 14 A. Well, I misspoke.
- 15 Q. Oh. So now you want to change your testimony and say that
16 you did speak to him?
- 17 A. I did ask him if he was okay before I patted him down and
18 checked him.
- 19 Q. Okay. And that's all you asked him?
- 20 A. Yes, ma'am.
- 21 Q. Okay. So all you asked him is, Are you okay?
- 22 A. Yes, ma'am.
- 23 Q. And he said, Yes?
- 24 A. He didn't really answer me.
- 25 Q. Okay. Oh, that's because he was in shock, right?

- 1 A. Yes, ma'am.
- 2 Q. Okay. And you did not see the driver throw dirt in
3 Compean's face, correct?
- 4 A. No, I did not.
- 5 Q. But you told Mr. Richards, The driver threw dirt in
6 Mr. Compean's face, correct?
- 7 A. Well, I didn't think Mr. Compean threw the dirt on his own
8 face, no.
- 9 Q. Well, did you see the driver throw dirt on Mr. Compean's
10 face?
- 11 A. No, I did not.
- 12 Q. So you told Mr. Richards something that you had just made
13 up?
- 14 A. I assumed.
- 15 Q. Okay. You're a sharpshooter, correct? Or I guess you'd
16 call it an expert shot.
- 17 A. I don't remember the scores or -- or the -- the names on
18 how it goes. I think expert would be a perfect score. I guess
19 I would be a sharpshooter.
- 20 Q. Well, the very day before this incident --
- 21 A. Yes, ma'am.
- 22 Q. -- you made a 96 in qualifications for firearms, correct?
- 23 A. Yes, ma'am.
- 24 Q. And the reason that you only shot once at
25 Mr. Aldrete-Davila is because you knew you were a good shot and

1 you knew you had hit him, correct?

2 A. No, I did not.

3 Q. Okay. Now, there was a lot of talk yesterday about how you
4 initiated your participation in this particular incident. And
5 you testified that you were eating lunch at the station,
6 correct?

7 A. Yes, ma'am.

8 Q. And that you heard the radio at the station?

9 A. Yes, ma'am.

10 Q. You got in your vehicle, and you were going to go catch it,
11 correct?

12 A. Yes, ma'am.

13 Q. Your testimony is you were going to catch the load?

14 A. Yes, ma'am.

15 Q. Before you left the Fabens station, you already concluded
16 that there was somebody out there that had a marijuana load,
17 correct?

18 A. Yes, ma'am.

19 Q. Well, is it the Border Patrol's primary responsibility to
20 stop illegal immigration?

21 A. Yes, it is.

22 Q. And so in the area, the 76 area, they smuggle aliens there,
23 too, don't they?

24 A. Yes, they do.

25 Q. But you had already made up your mind this was marijuana?

- 1 A. Yes, ma'am.
- 2 Q. Nobody had told you it was marijuana?
- 3 A. No.
- 4 Q. Nobody had told you it was drugs?
- 5 A. No.
- 6 Q. Just somebody coming into the 76 area going fast?
- 7 A. Well, Agent Compean had said 46.
- 8 Q. Well, 10-46 doesn't mean loading marijuana, does it?
- 9 A. In the 10 code it means narcotic smuggling.
- 10 Q. Well, in the 10 code, doesn't it mean narcotic
- 11 apprehension? The actual definition in the 10 code for
- 12 10-46 --
- 13 MS. KANOF: May I approach?
- 14 BY MS. KANOF:
- 15 Q. Would it help you to refresh your memory as to a list of
- 16 the Border Patrol 10 codes?
- 17 A. I guess it would.
- 18 MS. KANOF: Approach the witness, Your Honor?
- 19 THE COURT: Sure.
- 20 BY MS. KANOF:
- 21 Q. I've highlighted it to assist you. Isn't a 10-46
- 22 apprehended narcotics?
- 23 A. Yes, ma'am, it is.
- 24 Q. Past tense, correct?
- 25 A. Yes, ma'am.

- 1 Q. Well, if the narcotics had already been apprehended, then
2 you didn't need to go out there at all, did you?
- 3 A. It hadn't been apprehended yet.
- 4 Q. Well, you didn't know that there were drugs?
- 5 A. No.
- 6 Q. You didn't know if it was cocaine?
- 7 A. No.
- 8 Q. You didn't know if it was heroin?
- 9 A. No.
- 10 Q. But you were going to catch it?
- 11 A. Yes.
- 12 Q. You were going to catch it?
- 13 A. Well, I was going to help.
- 14 Q. Well, I believe you testified to this jury, I wanted catch
15 the load, correct?
- 16 A. Yes, ma'am.
- 17 Q. Okay. Now, the speed limits from the stoplight in downtown
18 Fabens all the way down, when it becomes Jess Harris Road, to
19 the ditch, change many times, do they not?
- 20 A. I believe so.
- 21 Q. You testified on direct that you went over that bridge,
22 correct?
- 23 A. Which one?
- 24 Q. Well, in the very beginning, after you leave town, you said
25 there was a little bridge that you went over.

- 1 A. Yes, ma'am.
- 2 Q. Okay. And how fast were you going when you went over the
3 bridge?
- 4 A. I really don't know.
- 5 Q. Well, could it have been 40 miles an hour?
- 6 A. I don't think the truck could have picked up that much
7 speed in that little time.
- 8 Q. Well, how fast do you think you were going over the bridge?
- 9 A. I really don't know, ma'am.
- 10 Q. And do you know what the posted speed limit is at the
11 bridge?
- 12 A. Right now, I couldn't tell you.
- 13 Q. Okay. And the speed limit at the S curve is what?
- 14 A. I believe it's 10 miles an hour.
- 15 Q. Okay. There's a school bus loading area on that road,
16 correct?
- 17 A. Yes, there is.
- 18 Q. And what is the last speed limit that is posted before you
19 leave the pavement and get on the dirt?
- 20 A. Right now, I couldn't tell you that.
- 21 Q. Okay. And it really didn't matter to you on that day?
- 22 A. Yes, it does.
- 23 Q. Well, why does it matter to you?
- 24 A. Because I follow the rules.
- 25 Q. Well, I believe you testified that you were speeding on

1 that day.

2 A. Yes, I was.

3 Q. And that the only reason that you didn't call out for
4 permission to -- for a -- for an exceed-the-speed-limit pursuit
5 was because you never do, right?

6 A. I don't think I said I never do.

7 Q. Well, this has been done in the past, and you haven't asked
8 permission in the past?

9 A. I believe I said that's the way we did things in Fabens.

10 Q. Okay. So it's going to be your testimony today that the
11 Fabens Border Patrol station is different than all other Border
12 Patrol stations. Is that correct?

13 A. We work things differently there.

14 Q. What other stations have you worked in?

15 A. Just Fabens.

16 Q. So how do you know it's different than other stations?

17 A. Speaking with other agents from other stations.

18 Q. Okay. So, based on what other agents have told you, Fabens
19 doesn't follow the rules, but other stations do?

20 A. Just an interpretation, I guess.

21 Q. Well, when did you report to Chief Barker, Hey, we're not
22 following the rules down in Fabens?

23 A. I never reported to Chief Barker.

24 Q. Okay. Well, you saw Jonathan Richards testify, correct?

25 A. Yes, ma'am.

1 Q. Isn't it true every single agent who testified said he was
2 a stickler for the rules?

3 A. Yes, they did.

4 Q. Okay. But you don't think that the agents in Fabens follow
5 the rules?

6 A. I just know what I've seen in my tenure there.

7 Q. And you believe that it's all right, if another agent
8 doesn't follow the rules, then you don't have to follow the
9 rules, correct?

10 A. That's not what I said, ma'am.

11 Q. Well, you said they do it different in Fabens.

12 Do you have a memo from some supervisor in Fabens that
13 says, We do it different here?

14 A. No, ma'am.

15 Q. Okay. It's just your opinion that it's done differently in
16 Fabens, correct?

17 A. No, ma'am. It's just what we've done there.

18 Q. Well, when did it start being done differently in Fabens?

19 You've been there your whole career, correct?

20 A. Yes, ma'am.

21 Q. And at what point in your career did things start being
22 done different in Fabens?

23 A. I wouldn't say they started being different. I would say,
24 since I got there, that's the way they were done.

25 Q. Really. In 1996 you were in a shooting incident, correct?

1 A. Yes, ma'am.

2 Q. You reported that incident? Didn't you report that
3 incident?

4 A. I reported it as I called it out on the radio.

5 Q. Well, you're testifying to this jury things are done
6 different in Fabens, and they've always been done differently
7 in Fabens, correct? Isn't that your testimony?

8 A. I wouldn't say always, but --

9 Q. Well, you just said always. Now you're not going to say
10 always?

11 A. Okay.

12 MS. STILLINGER: Objection, Your Honor. I'm going to
13 object to saying "things," without specifying what things,
14 because I think there's a great potential to confuse the
15 witness.

16 MS. KANOF: Your Honor, it's his word. I'm just using
17 his word.

18 THE COURT: All right.

19 MS. STILLINGER: Well, I'm just -- I'm just saying we
20 were talking about the pursuit policy, and now she's getting
21 into shooting, and I don't think that's the things that we were
22 talking about. But if she could just clarify.

23 THE COURT: All right. Well, I will only instruct
24 you, Mr. Ramos, if at any point you don't understand something,
25 then you need to tell her you don't understand. All right?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: If you answer the question, everyone is
3 going to assume you understood what it was.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: All right?

6 All right. Go ahead.

7 BY MS. KANOF:

8 Q. In 1996, you were involved in a shooting, correct?

9 A. Yes, ma'am.

10 Q. And you correctly called out on the radio, Fire, fire,
11 didn't you?

12 A. I believe I called out, Shots fired.

13 Q. Well, would it help you refresh your memory if I gave you
14 the transcript of that shooting?

15 A. Yes, ma'am.

16 MS. STILLINGER: Your Honor, I would request a copy.
17 This is a something we've never seen, to be sure that was --

18 MS. KANOF: It's cross-examination. It wasn't
19 discoverable, Your Honor, and I don't have a copy for the
20 defense.

21 THE COURT: All right. Well, you're welcome to look
22 at it as soon as she uses it to cross. He's refreshing his
23 recollection, is my understanding.

24 A. Yes, ma'am, that's what it says.

25

1 BY MS. KANOF:

2 Q. Okay. And one of the --

3 MS. STILLINGER: Excuse me. Before there's more
4 cross, could I also look at that?

5 THE COURT: All right.

6 MS. STILLINGER: I think it -- if it's his statement,
7 I think we --

8 MS. KANOF: He needs it for the testimony, Your Honor.

9 THE COURT: All right. You can look at it. Just let
10 her finish with him, and then you can --

11 MS. STILLINGER: Okay.

12 THE COURT: -- you're welcome to look at it. Sure.

13 MS. STILLINGER: Okay.

14 BY MS. KANOF:

15 Q. And you're talking over sector communications, correct?

16 A. I believe so.

17 Q. It's transcribed, correct?

18 A. Yes, ma'am.

19 Q. And, in fact, this transcription was done for the shoot
20 investigation, correct?

21 A. I don't know why it was done. This is the first time I
22 have seen it.

23 Q. One of the people that you're talking to in that
24 communication is your supervisor.

25 A. It has his name in there, yes, ma'am.

1 Q. Well, I'm not asking if it had his name in there. Is there
2 a part of the transcript that reflects that you are talking
3 with your supervisor? Your supervisor was Edward Russell,
4 correct?

5 A. Yes, ma'am.

6 Q. Okay. Don't you speak with Edward Russell in this
7 transcript? He's on --

8 MS. STILLINGER: I think this is to refresh his
9 memory, and so I don't think she can have him read from the
10 transcript. She can ask him if it's refreshed his memory and
11 if he recalls it.

12 THE COURT: All right. Well --

13 BY MS. KANOF:

14 Q. Do you recall that you were properly speaking with your
15 supervisor on that day?

16 A. Not directly to him. When I called it out, it was in
17 general, because I was by myself.

18 Q. But --

19 A. Every agent responding on that day was responding on his
20 own that they were on their way.

21 Q. But you were on the sector communications, and your
22 supervisor did speak, so you knew he was around.

23 A. Everything after Fire, I didn't hear. I was returning fire
24 that day. Everything after Fire on that day --

25 Q. When you called out, Fire, fire, you had a handheld?

1 A. On that day?

2 Q. Yes.

3 A. Yes, ma'am.

4 Q. Well, didn't you have a handheld on February 17, 2005?

5 A. Yes, ma'am.

6 Q. Why didn't you call out, Fire, fire, when you heard the
7 shots that day?

8 A. Because, on this day, I was by myself. So when I was
9 taking fire on this day, I actually had to stop and take the
10 time and use the radio.

11 Q. You were by yourself. Wasn't Agent Hertzberg also out
12 there shooting that day?

13 A. Yes, ma'am. But if you look at the time he responded --
14 and he didn't get there until after a few minutes. And it's on
15 my report, as well.

16 Q. Oh. You wrote a report about this shooting, correct?

17 A. I was made to, yes, ma'am.

18 Q. Okay. You were made to because somebody was following the
19 rules out at Fabens?

20 MS. STILLINGER: Your Honor, she's asking him to
21 speculate as to why he was made to. That, obviously, wasn't
22 his decision, so I don't --

23 MS. KANOF: Well, he --

24 THE COURT: Well, okay. What's -- what's your
25 objection?

1 MS. STILLINGER: My objection is it calls for
2 speculation, Your Honor.

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

4 BY MS. KANOF:

5 Q. You were made to?

6 A. Yes, ma'am.

7 Q. Okay. And that's consistent with the shooting policy
8 rules, that you write a report, correct?

9 A. No, ma'am. Because -- if I knew then what I knew now, I
10 wasn't supposed to write a report.

11 Q. Well, you're supposed to report it within an hour?

12 A. Right. But I didn't physically or directly go to
13 Mr. Russell that day and say, Mr. Russell, I shot my gun.

14 He knew because of my callout to him that day.

15 Q. Right. And on February 17, 2005, you never called out,
16 Fire, on the radio?

17 A. No, ma'am.

18 Q. And, as a result of that shooting --

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

20 THE COURT: You may.

21 BY MS. KANOF:

22 Q. -- an investigation was done, correct?

23 A. I guess so. This is the first time I see this.

24 Q. Well, you were exonerated, weren't you?

25 A. I never heard anything after that day.

1 Q. Well, if you never heard anything, you can assume it was a
2 good shoot, that they found it was a good shoot, correct?

3 A. I believe so.

4 Q. Okay. But you reported that that day.

5 A. By reporting, if you say Mr. Russell knew, then, yes, he
6 knew.

7 Q. And it's your testimony to this jury that Mr. Richards
8 knew, because somebody must have told him. Is that correct?

9 A. When I came over -- back to the north side, I heard
10 somebody talking about the shots fired.

11 Q. Oh. In direct testimony you didn't say that. Did you just
12 remember that overnight?

13 MS. STILLINGER: Objection, Your Honor, he did say
14 that.

15 THE COURT: All right. This is cross.

16 MS. STILLINGER: I understand. I'm just objecting to
17 her misstating the testimony.

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

19 BY MS. KANOF:

20 Q. You heard somebody say what to Mr. Richards?

21 A. I didn't say to Mr. Richards. I just said that I heard
22 somebody talking about the shots being fired.

23 Q. But the shooting policy requires a report made by the
24 shooter or someone who sees the shooting within one hour,
25 correct?

- 1 A. I believe or anybody who hears the shots.
- 2 Q. Oh. Would it refresh your memory to see the policy?
- 3 A. Yes, ma'am.
- 4 Q. Let me find the page for you. Do you want to review it?
- 5 If it will assist you, it's on page 17 of 64.
- 6 A. Okay.
- 7 Q. Number 11A.
- 8 A. Yes, ma'am.
- 9 Q. Isn't it true that anyone who participates in or observes a
- 10 reportable shooting incident must report it orally within an
- 11 hour?
- 12 A. Yes, ma'am. That's what it says.
- 13 Q. It doesn't say somebody who just knew about it or heard
- 14 about it, does it?
- 15 A. No, ma'am.
- 16 Q. You're a firearms instructor, aren't you?
- 17 A. Not anymore.
- 18 Q. Well, immediately after the incident in 1996, you went --
- 19 you decided you wanted to be a firearms instructor, correct?
- 20 A. Yes, ma'am.
- 21 Q. And you went to firearms school?
- 22 A. Yes, ma'am.
- 23 Q. You got two weeks of instruction?
- 24 A. Yes, ma'am.
- 25 Q. And you graduated in December of 1997, correct?

- 1 A. Yes, ma'am.
- 2 Q. How long were you a firearms instructor?
- 3 A. To 1991 -- 1991 or 1992.
- 4 Q. Okay. You went in --
- 5 A. I mean 2000. I'm sorry. 2001 or 2002.
- 6 Q. Okay. So up until a couple of -- and pol- -- this part of
- 7 the policy hasn't changed since you were a firearms instructor?
- 8 A. I don't believe so.
- 9 Q. Okay. So you actually used to teach people that they had
- 10 to report this in this manner, didn't you?
- 11 A. I believe so. I don't presume to know the whole policy.
- 12 Q. Well, I understand it's a lengthy policy. But you don't
- 13 recall after -- let's see. You became an instructor in '97
- 14 until 2002. I'm not great at math, but that's about five
- 15 years, right?
- 16 A. Yes, ma'am.
- 17 Q. You taught it for five years and you don't remember this?
- 18 A. I'm sure I went over it.
- 19 Q. But you didn't do this on February 17, 2005 --
- 20 A. No, ma'am.
- 21 Q. -- did you?
- 22 A. No, ma'am.
- 23 Q. And I'll let you keep that up there, because we'll probably
- 24 go back to this policy.
- 25 Now, on February 17th, 2005, you see -- I'm sorry.

- 1 You see a van traveling north, first, on Jess Harris, correct?
- 2 And it's not called Jess Harris towards Fabens, I understand.
- 3 But on that same road?
- 4 A. Yes, ma'am.
- 5 Q. Okay. And you see an agent following that van?
- 6 A. Yes, ma'am.
- 7 Q. And they turn around, and you turn around, correct?
- 8 A. Well, he was -- Agent Juarez was already behind that van
- 9 going north into town.
- 10 Q. Okay. And once they got into town, the van made a U-turn,
- 11 correct?
- 12 A. He made a left turn at the lights --
- 13 Q. Okay. He made a left and then a left and then a right,
- 14 correct?
- 15 A. Well, that's what they did. I didn't -- I saw the first
- 16 left, because I made a U-turn at the lights.
- 17 Q. And you waited in your position, correct?
- 18 A. Yes, ma'am.
- 19 Q. And you were facing north?
- 20 A. After I made the U-turn?
- 21 Q. No, before you made the U-turn.
- 22 A. I was facing south.
- 23 Q. Okay. So you were facing south?
- 24 A. Yes, ma'am.
- 25 Q. Okay. And your back, then, was to Fabens?

- 1 A. Yes, ma'am.
- 2 Q. Okay. And your car is facing south, correct?
- 3 A. Yes, ma'am.
- 4 Q. And the van and Mr. Juarez -- or, no, I'm sorry.
- 5 Mr. Juarez never passed you. The van then passes you?
- 6 A. No, ma'am. Mr. Juarez did pass me.
- 7 Q. Okay. Mr. Juarez passed you before the van?
- 8 A. The van passed me. Mr. Juarez was right behind him.
- 9 Q. Okay. That was my question. The van passed you first?
- 10 A. Yes, ma'am.
- 11 Q. And it's your testimony you're facing south?
- 12 A. Yes, ma'am.
- 13 Q. And the van is approaching your back, correct?
- 14 A. No.
- 15 Q. The van -- I'm talking after they turned around and they
- 16 were going south. I'm sorry if I didn't make that clear.
- 17 A. Oh, okay.
- 18 Q. Okay. You're facing south.
- 19 A. Yes, ma'am.
- 20 Q. When the van first came north, is that when you saw the
- 21 driver?
- 22 A. Okay.
- 23 Q. Go ahead.
- 24 A. Are you talking when I first encountered the van?
- 25 Q. The first time you encountered the van.

- 1 A. When I first encountered the van is when I first saw the
2 driver. And this is when Agent Juarez was behind the van. And
3 this is --
- 4 Q. Describe the driver that you saw. Describe him.
- 5 A. Well, all I could see was, basically, shoulder up.
6 Hispanic male, mustache, dark hair.
- 7 Q. How old?
- 8 A. Young man. I mean, I couldn't tell you --
- 9 Q. And you do not call that out, correct?
- 10 A. No. I do not.
- 11 Q. Okay. And then, when the vehicles pass you going south --
12 or, excuse me. When the van passes you going south -- it's
13 your testimony that the reason that you cut in behind the van
14 was because Juarez stopped --
- 15 A. He did stop.
- 16 Q. -- at a stop sign.
- 17 A. (No verbal response.)
- 18 Q. Is that a yes or a no?
- 19 A. Yes, ma'am.
- 20 Q. He was following the traffic regulations, correct?
- 21 A. I guess you could say that. But he stopped and looked at
22 me.
- 23 Q. And you took that look to mean, Get in front of me?
- 24 A. Well, he hesitated, so I took over.
- 25 Q. Well, he was a lot younger than you in the Border Patrol,

- 1 correct?
- 2 A. Yes, ma'am.
- 3 Q. And you -- you tell other agents, I don't do aliens, I just
4 do drugs, right? I mean other Border Patrol agents.
- 5 A. I may have said that.
- 6 Q. Okay. You have a reputation, based on your words, that you
7 go after drug loads, correct?
- 8 A. I like to catch narcotics, yes.
- 9 Q. Okay. And you don't like to catch aliens?
- 10 A. That's not true. I -- I don't know if it's always aliens
11 or narcotics.
- 12 Q. Well, you just admitted to me that you have told people, I
13 don't do aliens, correct?
- 14 A. I didn't say I don't do aliens. I like -- I like to
15 catch -- if you give me a preference, I like to catch narcotics
16 more than aliens.
- 17 Q. And the -- I think we've talked about this a lot, Agent
18 Ramos. But the primary mission of the United States Border
19 Patrol is illegal immigration, correct?
- 20 A. Yes, ma'am.
- 21 Q. After that, antiterrorism?
- 22 A. Yes, ma'am.
- 23 Q. And you have no original authority for drug investigation,
24 correct?
- 25 A. No.

1 Q. It's not correct? You have Title 21 authority?

2 A. No. You said we said we don't have. I said -- you said.

3 I'm sorry. I misunderstood the question. Can you repeat it?

4 Q. The United States Border Patrol does not have original

5 jurisdiction over Title 21 violations, correct?

6 A. No.

7 Q. No, it's not correct, or you're agreeing with me?

8 A. I'm agreeing with you. I'm sorry.

9 Q. Okay. But that's what you want to do?

10 A. That's what I have done for the last ten years, yes, ma'am.

11 Q. Okay. Area 76 is well known for alien smuggling, correct?

12 A. It's more known for narcotics. A month prior to that, they
13 had tried to --

14 MS. KANOF: Your Honor, I would object to him being
15 nonresponsive. I didn't ask what happened a month prior.

16 THE COURT: Listen to the question and answer the
17 question.

18 THE WITNESS: Yes, ma'am.

19 BY MS. KANOF:

20 Q. Agent Juarez testified he was going to make an immigration
21 stop, correct?

22 A. Yes, ma'am.

23 Q. That's his primary responsibility, correct?

24 A. Yes, ma'am.

25 Q. But you were not going to make an immigration stop?

1 A. Yes, ma'am. That's -- in order to check what's inside the
2 van --

3 Q. Well, I thought you testified yesterday that the reason
4 that you went after him was because you wanted to catch the
5 load.

6 A. Because Agent Compean had already stated he thought it was
7 a 46.

8 Q. Well, he didn't say on the radio he saw the marijuana being
9 loaded, did he?

10 A. I don't believe he did.

11 Q. Okay.

12 A. But I had to trust his judgment.

13 Q. Well --

14 A. We've worked together for five years, so...

15 Q. You've worked together for five years. But when you
16 thought he was shot, you left him laying on the ground and
17 didn't go see how he was?

18 A. I couldn't help Agent Compean if the threat was still
19 there. So if the threat is still there, I have to take care of
20 myself before I take care of Agent Compean.

21 Q. Well, you're going to take care of yourself before you take
22 care of someone else, correct?

23 A. Two agents down can't help each other.

24 Q. Well, we'll talk about that chronologically.

25 Agent Ramos, alien smuggling also occurs at sensor 76,

1 does it not?

2 A. Yes, ma'am.

3 Q. But, boy, you sure hoped they weren't aliens, didn't you?

4 A. I couldn't tell, ma'am.

5 Q. I thought you said, in your testimony yesterday, I knew he
6 had marijuana.

7 Didn't you say that yesterday?

8 A. In my experience.

9 Q. But now you're saying you couldn't tell?

10 A. Well, if you want me to be 100 percent sure, I can't --

11 Q. Well, you can't be 100 percent sure unless you look in the
12 windows, can you?

13 A. No.

14 Q. And you didn't have an opportunity to look into that van
15 before you started chasing it, did you?

16 A. No.

17 Q. But you did decide that it was marijuana?

18 A. In my experience, it's been marijuana.

19 Q. Your experience doesn't tell you that vans that look just
20 like that have carried loads of aliens, also?

21 A. Not when they run from us the way he did.

22 Q. You testified that you had your lights on the whole time,
23 correct?

24 A. Yes, ma'am.

25 Q. Well, you heard Supervisor Arnold say that he heard you

- 1 say, I'm going to light him up, correct?
- 2 A. Yes, ma'am.
- 3 Q. And that meant you were going to turn your overhead light
- 4 on?
- 5 A. Yes, ma'am.
- 6 Q. And then he heard you say that you were turning it off, and
- 7 you were going to follow to see what happened, correct?
- 8 A. Yes.
- 9 Q. So he heard wrong?
- 10 A. That wasn't me.
- 11 Q. Well, you're the one that was following him, weren't you?
- 12 A. Yes, ma'am, but I didn't say that.
- 13 Q. Well, no one else said that they were turning their lights
- 14 on and off on the radio, did they?
- 15 A. I didn't hear them.
- 16 Q. Well, if someone hadn't said they were going to turn their
- 17 lights on, other than you, why would they say they were going
- 18 to turn their lights off?
- 19 A. I couldn't tell you.
- 20 Q. You testified yesterday that you couldn't have possibly
- 21 motioned to Juarez to turn his overheads off, correct, because
- 22 you had the steering wheel in one hand and the mike in the
- 23 other, correct?
- 24 A. Yes, ma'am.
- 25 Q. You will agree that there was very little radio traffic on

- 1 February 17th, 2005, regarding your chase, correct?
- 2 A. I'll agree there's very little on the transcript.
- 3 Q. Well, you also heard pretty much every agent that was
- 4 involved testify, didn't you?
- 5 A. That's what they said.
- 6 Q. That's what they said?
- 7 A. Yes, ma'am.
- 8 Q. But you're going to tell this jury you said lots more?
- 9 A. I was on the radio giving them directions of that van the
- 10 whole time. That's the only reason they knew where we were
- 11 going.
- 12 Q. You must have been on local.
- 13 A. Yes, ma'am.
- 14 Q. But when you're going to be giving directions and you're
- 15 exceeding the speed limit, you're supposed to be on the
- 16 repeater channel, aren't you?
- 17 A. I didn't look to see what channel I was on.
- 18 Q. It didn't matter to you, right? It didn't matter to you?
- 19 A. I didn't pay attention.
- 20 Q. Because people in the Fabens sector don't have to follow
- 21 the rules?
- 22 A. I didn't say that. I -- it's just we've worked things
- 23 differently.
- 24 Q. You did not announce that you were following him at an
- 25 excessive rate of speed on the sector communications channel,

1 did you?

2 A. No, ma'am.

3 Q. You did not provide identification of your unit pursuing
4 him, did you?

5 A. No, ma'am.

6 Q. You did not radio sector communications a license plate
7 number of the fleeing vehicle, did you?

8 A. No, ma'am.

9 Q. You did not provide the speed and direction of travel, did
10 you?

11 A. No, ma'am.

12 Q. You did not articulate the reason for your pursuit?

13 A. No, ma'am.

14 Q. Isn't it true that you may only exceed the speed limit when
15 you have an inten- -- when the subject that you are following
16 has an intention to avoid arrest and engages in excessive speed
17 or hazardous violation -- moving violations?

18 A. I'm sorry. Can you repeat that?

19 Q. Isn't it true that you may only follow at an -- make a
20 decision to follow a suspect exceeding the speed limit if that
21 suspect is exceeding the speed limit or committing hazardous
22 moving violations?

23 A. I believe so.

24 Q. To flee apprehension for a felony that would normally
25 require a full custody arrest, correct?

- 1 A. If that's what the policy says, yes, ma'am.
- 2 Q. Well, you get pursuit policy refresher training
- 3 semiannually, correct?
- 4 A. I believe so.
- 5 Q. Two times a year?
- 6 A. Yes, ma'am.
- 7 Q. What was the pursuit policy refresher training date
- 8 immediately preceding February 17th, 2005?
- 9 A. I don't remember.
- 10 Q. But you have to sign a log that you've received that
- 11 training twice a year, correct?
- 12 A. Yes, ma'am.
- 13 Q. And it is the policy -- and you don't remember that that's
- 14 the policy that I'm reading from?
- 15 A. I'm sure you're reading from it, yes, ma'am.
- 16 Q. But you don't remember that as being the policy?
- 17 A. I don't presume to know it all.
- 18 Q. Well, you didn't call out the license plate number?
- 19 A. No, ma'am.
- 20 Q. Because you didn't care whether he was wanted or not,
- 21 correct?
- 22 A. The license plate number would only give me registration on
- 23 that van and who it belonged to.
- 24 Q. Well, it would also have an NCIC readout on whether or not
- 25 he was a convicted felon or was a fugitive, wouldn't it?

- 1 A. It wouldn't have told me on the driver, ma'am, no, ma'am.
- 2 Q. Oh, it --
- 3 A. It would have given me --
- 4 Q. It would have told you if the driver owned that van,
5 wouldn't it?
- 6 A. At that point, I wouldn't have known if the owner of the
7 van was in that van. I couldn't have told -- without speaking
8 to him.
- 9 Q. But it would give you some idea?
- 10 A. Yes, ma'am.
- 11 Q. Okay. But you didn't bother to do that?
- 12 A. At that point it was moot. He wasn't stopping for us. I
13 couldn't have talked to him anyway.
- 14 Q. What felony was Osvaldo Aldrete-Davila fleeing from?
- 15 A. At that point, I presume narcotic smuggling.
- 16 Q. You -- I'm not asking what you presumed. What -- the --
17 the pursuit policy doesn't allow for presumption. It allows
18 for knowledge, correct?
- 19 A. Yes, ma'am.
- 20 Q. What felony did you know for a fact the driver of that van
21 had committed?
- 22 A. I didn't.
- 23 Q. You did not provide the identity or the description of the
24 occupants in the van, did you?
- 25 A. No, I didn't.

1 Q. Well, you didn't know his identity. But you knew what he
2 looked like?

3 A. Yes.

4 Q. Okay. Isn't it true that many times Border Patrol agents
5 encounter the same people, especially illegals, over and over
6 again?

7 A. Yes, it is.

8 Q. If you need water, there's water right there.

9 A. Yes, thank you.

10 Yes, it is.

11 Q. Maybe somebody would have recognized him. Don't you think?

12 A. By that description, I don't know. It probably describes a
13 lot of people.

14 Q. So you really didn't know anything about him?

15 A. No, I didn't.

16 Q. Okay. You didn't provide any pertinent information to
17 sector communications on the repeater channel of any threat or
18 any other hazard, correct?

19 A. No.

20 Q. And you didn't advise if any other agencies were involved?

21 A. No, ma'am, I didn't.

22 Q. Isn't it true, in block letters, bolded and underlined,
23 this policy that you refresh yourself on twice a year, says, If
24 a supervisor or acting supervisor cannot be contacted, the
25 high-speed/high-risk vehicle pursuit shall be immediately

1 terminated?

2 A. I believe it does. I -- I can't see it, but...

3 Q. But you didn't give a supervisor an opportunity to even
4 make that decision, correct?

5 A. No, ma'am.

6 Q. Because you didn't call out to sector communications that
7 you were exceeding the speed limit.

8 A. No, ma'am.

9 Q. And that's because you didn't have an articulable reason of
10 why you were doing it, other than you were going to catch that
11 load, correct?

12 A. Well, I didn't believe we were in a high-speed pursuit.

13 Q. When -- you had testified that, in the past, you have
14 filled out pursuit forms, correct?

15 A. I don't believe I've ever filled out a pursuit form, no,
16 ma'am.

17 Q. Oh. I thought you testified in direct that you had filled
18 out a pursuit form before.

19 A. No, ma'am. I've written a memo.

20 Q. You've written a pursuit memo?

21 A. I've written a memo of -- as to --

22 MS. STILLINGER: Your Honor, I guess I'm going to
23 object, because this is a matter that Ms. Kanof -- when I was
24 questioning the witness about this, Ms. Kanof objected and
25 didn't want us to get into it, so...

1 THE COURT: Well --

2 MS. KANOF: I'm just asking whether --

3 THE COURT: -- the question was whether or not he
4 wrote a pursuit memo.

5 MS. STILLINGER: Right. Which I think he answered.

6 THE WITNESS: No. I had never written a pursuit memo.
7 I mean, a pursuit --

8 BY MS. KANOF:

9 Q. Because they don't do that in Fabens. Is that why?

10 A. I guess they do.

11 Q. Well, you said that they chase people like this in Fabens
12 all the time, correct?

13 A. Yeah, most of the time.

14 Q. You've done it before?

15 A. Yes, ma'am.

16 Q. Exceeding the speed limit?

17 A. If we can get them to turn back south, yeah.

18 Q. Okay. Well, the policy doesn't include that for you
19 exceeding your speed limit, correct?

20 A. No, ma'am.

21 Q. Okay. And you've never filled out a pursuit memo?

22 A. No.

23 Q. Or -- because, in Fabens, you don't have to do that, right?

24 A. I didn't say in Fabens they don't have to. I'm just
25 telling you what we've -- what I've done there --

- 1 Q. Well, you said --
- 2 A. -- in my tenure there.
- 3 Q. You said that one time a supervisor participated, right?
- 4 A. Uh-huh.
- 5 Q. Is that a --
- 6 A. Yes, ma'am.
- 7 Q. Okay. But, of course, if a supervisor is participating,
- 8 then the supervisor can give the authorization, right?
- 9 A. Yes, ma'am.
- 10 Q. Okay. Now, you didn't know anything about the person that
- 11 was driving the van, correct?
- 12 A. No, ma'am.
- 13 Q. And, from your vantage point, you couldn't see into the
- 14 van, correct?
- 15 A. No, I could not.
- 16 Q. You didn't know what was in the van, right?
- 17 A. No.
- 18 Q. Although, in your experience you didn't think so, it could
- 19 have contained a load of aliens, right?
- 20 A. Could have.
- 21 Q. With children?
- 22 A. Might have.
- 23 Q. Women?
- 24 A. Sure.
- 25 Q. In fact, isn't it true that Border Patrol is stopping more

- 1 and more juvenile alien smugglers?
- 2 A. I wouldn't know. I haven't seen the statistics on it.
- 3 Q. Well, you've stopped them, haven't you?
- 4 A. Juvenile smugglers?
- 5 Q. Juvenile smugglers.
- 6 A. I've stopped juvenile narcotic smugglers.
- 7 Q. And -- okay. Do you know how old the driver was?
- 8 A. This one?
- 9 Q. Right.
- 10 A. I do now. Approximately 24.
- 11 Q. Well, on the day, did you know how old he was?
- 12 A. No. I never talked to him.
- 13 Q. You didn't know if there was anybody else in the van, did
- 14 you?
- 15 A. No. I didn't stop to clear the van.
- 16 Q. Okay. You didn't know if there were passengers?
- 17 A. No.
- 18 Q. Narcotic smugglers frequently bring children with them,
- 19 don't they, so they look innocent if they are stopped?
- 20 A. I've never encountered that myself, no, ma'am.
- 21 Q. By the way, you were sure there was marijuana in that van,
- 22 correct?
- 23 A. In my opinion, yes.
- 24 Q. Not another kind of drug?
- 25 A. In my ten years there, I've never seen them smuggle

1 anything else.

2 Q. Okay. You didn't know how much was in there, did you?

3 A. Not at the time.

4 Q. It could have had ten pounds?

5 A. Could have. But for a van, no, not hardly.

6 Q. Oh. You've never seen ten pounds in a van?

7 A. No.

8 Q. Okay. Have you ever worked a port of entry?

9 A. No.

10 Q. You testified to this jury yesterday that, We all knew what

11 we were going to do, when you were chasing him, correct?

12 A. Yes, ma'am.

13 Q. What were you going to do?

14 A. Catch him.

15 Q. At any cost?

16 A. Not any cost.

17 Q. Regardless of any rule?

18 A. No, ma'am.

19 Q. Isn't it true that the pursuit policy is so strong about

20 letting people go that they actually talk about it in the

21 policy? Do you recall that?

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

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

24 THE COURT: Yes, you may.

25

1 BY MS. KANOF:

2 Q. I'm going to hand you page 12 of that policy.

3 Don't you learn that discontinuing a pursuit does not
4 mean giving up, right?

5 A. That's what it says there, yes, ma'am.

6 MS. STILLINGER: Excuse me. Can I just have a page
7 reference so I can follow along?

8 MS. KANOF: 12.

9 MS. STILLINGER: Thank you.

10 BY MS. KANOF:

11 Q. Don't you learn twice a year that discontinuing the pursuit
12 is not a reflection of your courage or ability?

13 A. Yes, ma'am.

14 Q. Okay. And that in most cases --

15 A. But it doesn't say that there.

16 Q. Look at E.

17 A. Okay.

18 Q. And, in most cases, isn't it true you learn twice a year,
19 if an apprehension is not made quickly and at a reasonable
20 speed, the most intelligent action for an agent is to
21 discontinue the pursuit?

22 A. Yes, ma'am.

23 Q. And you're taught that twice a year?

24 A. Uh-huh.

25 Q. And then aren't you taught, and isn't it underlined, this

1 is the professional approach?

2 A. Yes, ma'am.

3 Q. But you don't do that in the Fabens sector?

4 A. Yes, ma'am. But it also says, it's possible that a pursuit
5 may be reestablished by pursuing agents or other patrol units
6 or other law enforcement agencies.

7 When they go back south, there's no other way of
8 reestablishing that. When they go back south, they're 50 to
9 100 yards from that river. They're going to get away.

10 Q. Oh. So -- so, since it's not possible in this case, you're
11 going to ignore the policy?

12 A. It's not to ignore the policy, ma'am. It's just to try and
13 get the drug smuggler.

14 Q. You said you were three car lengths behind, correct?

15 A. Yes, ma'am.

16 Q. You also said that the van was driving -- was not driving
17 dangerously.

18 A. He wasn't swerving back and forth. I mean --

19 Q. Well, you testified that you had to slow down at one point
20 so you did not catch air, correct?

21 A. That was on the dirt road.

22 Q. Okay. Correct. And "catch air" means your vehicle goes
23 airborne, right?

24 A. Right.

25 Q. And you had to slow down for your safety, correct?

- 1 A. Right. That's al- -- because I couldn't see. And he was
2 in front of me, so I'm sure he could see what was in front of
3 him.
- 4 Q. Oh. So the fact he would go airborne didn't matter,
5 because he could see?
- 6 A. No. He could see. There -- he was in front. There was no
7 dust covering his sight.
- 8 Q. You started braking before you even got to that dirt road?
- 9 A. Yes, I did.
- 10 Q. Do you have any knowledge that the driver of that van knew
11 the road was going to turn to dirt?
- 12 A. He had the clear line of sight. I'm sure he could see it.
- 13 Q. You're sure of it?
- 14 A. He could see everything else that was in front of him, from
15 Fabens all the way down there. He had to have seen that.
- 16 Q. Just like you're sure that he threw dirt in Mr. Compean's
17 face?
- 18 A. I'm pretty sure of that.
- 19 Q. You jumped out of the van -- out of your vehicle, correct?
- 20 A. Yes, ma'am.
- 21 Q. You went to the edge of the ditch, and you saw the driver
22 getting in the water?
- 23 A. I saw him jump in the ditch first.
- 24 Q. Okay. Now, you saw Compean on the other side, correct?
- 25 A. Yes, ma'am.

- 1 Q. And he had this large weapon pointed already at the driver?
- 2 A. I didn't see that.
- 3 Q. Oh, you didn't -- you're standing right across from him on
- 4 the ditch, and you don't see him pointing the rifle?
- 5 A. No, ma'am. When I -- when I got there, I glanced up at
- 6 Mr. Compean. But my attention was not at Agent Compean.
- 7 Q. Well, let's talk about your intention. Your intention --
- 8 your attention was on the driver, correct?
- 9 A. Yes, ma'am.
- 10 Q. You were looking at that face?
- 11 A. No, I was looking at him.
- 12 Q. What part of him were you looking at?
- 13 A. Well, he was running away from me. I lost sight of him the
- 14 little moment that he jumped into the ditch, and I had to run
- 15 to the lip of -- I mean, I saw of him what I could, especially
- 16 once he got in there. The ditch is covered with brush. Once
- 17 he got into the water, there's parts of him that you lose.
- 18 Q. Well, this was February, wasn't it?
- 19 A. Yes, ma'am.
- 20 Q. And there's a great deal less brush in February than there
- 21 is in the summer, isn't there?
- 22 A. No, ma'am. It's pretty much the same.
- 23 Q. You're saying that the conditions of the ditch are the same
- 24 all year round?
- 25 A. They're different, but I've been out there for ten years,

- 1 and I --
- 2 Q. But you said it was pretty much the same, and now that --
- 3 you're saying it's different. Which is it?
- 4 A. Do you -- are you asking me the height of the brush?
- 5 Q. No. You're saying the brush is equally as dense in
- 6 February as it is in June, correct?
- 7 A. They don't go mow the brush down out there.
- 8 Q. But some of it turns brown and dies, doesn't it?
- 9 A. Yes.
- 10 Q. You were watching him. Were you looking at his hands?
- 11 A. When he was down there, I was looking at what I could see
- 12 of him.
- 13 Q. Okay. Well, he started to come out, didn't he?
- 14 A. Uh-huh.
- 15 Q. And you tes- -- is that a yes or a no?
- 16 A. Yes, ma'am. I'm sorry.
- 17 Q. And you testified that, when you came out, you had to use
- 18 your hands to climb out because it's steep, correct?
- 19 A. Yes, ma'am.
- 20 Q. So did he?
- 21 A. Yes, ma'am.
- 22 Q. Okay. And so he didn't have anything in his hands?
- 23 A. Not that I could see.
- 24 Q. You're -- you were a firearms instructor for five years.
- 25 Didn't you always also teach defensive tactics?

- 1 A. Yes, ma'am.
- 2 Q. And isn't one of the first things they teach you in
3 defensive tactics, Look at their hands?
- 4 A. Of course.
- 5 Q. Their hands tell you their intent?
- 6 A. So does their body language.
- 7 Q. Well --
- 8 A. Their hands --
- 9 Q. -- do their hands tell you their intent?
- 10 A. Their hands tell you if they have something in it at the
11 time.
- 12 Q. You heard Agent Juarez testify that hands -- he is -- he is
13 taught -- by the way, were you his firearms instructor at one
14 point?
- 15 A. I may have been.
- 16 Q. Uh-huh. And he learned, maybe from you, that your hands --
17 that looking at the hands give you the intent of the subject,
18 correct?
- 19 A. I wouldn't say they -- that the hands give you the intent,
20 no, ma'am.
- 21 Q. Well, but you did see his hands when he was climbing up?
- 22 A. I wouldn't say that, either. Like I said, there's a lot of
23 brush up along the side. The pictures have shown that, as
24 well.
- 25 Q. Oh. So, now, you didn't even see his hands?

- 1 A. I said I saw what I could see of him.
- 2 Q. And what did you see of him?
- 3 A. His body, torso, mainly. I mean, you could see this
- 4 movement.
- 5 Q. And you yelled at him, Parete, parete, correct?
- 6 A. Yes, ma'am, I did.
- 7 Q. And so did Mr. Compean?
- 8 A. Yes, he was.
- 9 Q. Okay. And someone yelled, Hit him, hit him, in English,
- 10 correct?
- 11 A. I didn't hear that.
- 12 Q. Well, let's see. Mr. Compean was there, correct?
- 13 A. Yes, he was.
- 14 Q. And he told Chris Sanchez, in his written statement, that
- 15 he heard somebody say, Hit him.
- 16 A. I guess he did.
- 17 Q. And Mr. Juarez was there, correct?
- 18 A. I guess he was.
- 19 Q. And you were there?
- 20 A. I was there.
- 21 Q. Well, if Mr. Compean didn't say it, it had to be you or
- 22 Agent Juarez, correct?
- 23 A. There was also agents that were arriving behind me.
- 24 Q. Oh. So maybe it was somebody behind you that said it?
- 25 A. I said yesterday there was other agents getting there

- 1 yelling.
- 2 Q. Well, when this -- he still isn't out of the ditch yet.
- 3 So, even if agents are behind you, how do they see that the
- 4 driver is in the ditch to say, Hit him?
- 5 A. By that time, when I said the agents were behind me,
- 6 Mr. Davila was almost up to or at Agent Compean.
- 7 Q. So people standing behind you could see Mr. Davila --
- 8 Aldrete-Davila. That's your testimony?
- 9 A. Sure. Nothing was blocking their view.
- 10 Q. Okay. So it could --
- 11 A. I'm not saying they could see what was in front of him, but
- 12 they could see behind him. They could see his back.
- 13 Q. So when Osvaldo testified that he turned around and he saw
- 14 several agents pointing a gun, he must have been right,
- 15 correct?
- 16 A. I guess so.
- 17 Q. You were one of them?
- 18 A. I didn't say I was pointing my gun at him.
- 19 Q. Well, I thought you said that, when you get out --
- 20 yesterday, in testimony, you said when you got out you drew
- 21 your gun.
- 22 A. I drew my gun.
- 23 Q. Oh. You drew your gun, and you just left it by your side?
- 24 A. No, ma'am. I had it in a ready pistol position.
- 25 Q. Okay.

- 1 A. Just right here (indicating).
- 2 Q. So you're standing at the edge. You have it in the ready
3 pistol position, you're watching the guy?
- 4 A. Yes, ma'am.
- 5 Q. Okay. Well, if Mr. Aldrete-Davila saw you like that, don't
6 you think he might have thought you were pointing your gun at
7 him?
- 8 A. He might have thought.
- 9 Q. You had it ready?
- 10 A. Yes, ma'am.
- 11 Q. Even though Mr. Compean had a shotgun out?
- 12 A. Yes, ma'am.
- 13 Q. At this point in time, you say that you drowned out --
14 there was noise behind you. You heard trucks arriving, but you
15 drowned it out, correct?
- 16 A. Well, I couldn't hear what they were clearly yelling.
- 17 Q. Okay. But you knew they were there?
- 18 A. Yes, ma'am.
- 19 Q. Reinforcements had arrived, correct?
- 20 A. Yes, ma'am.
- 21 Q. Okay. And it's your testimony that you didn't hear --
22 well, I'm sorry. Maybe you weren't asked. Let me ask you.
23 Did you hear Aldrete-Davila say, No me pegues. No, me
24 pegues, Don't hit me, don't hit me?
- 25 A. No, ma'am, I did not.

1 Q. And in English, Take it easy, man?

2 A. I didn't hear him say anything.

3 Q. Okay. And you didn't hear anyone say, Hit him, correct?

4 A. No.

5 Q. And that was because -- for what reason? I mean, you were
6 just so -- concentrating so hard at waiting for that dooper that
7 you just weren't listening?

8 A. I was focused on what was in front of me. But, I mean, if
9 he would have said something, I would have heard him. But we
10 were yelling at him to stop.

11 Mr. Aldrete-Davila was ignoring every command we were
12 giving him.

13 Q. Well, every command. Basically, the only command was to
14 stop, right?

15 A. Well, we wanted him to stop. I mean, I -- I didn't want to
16 get in that water. That's why I didn't jump in right away. If
17 I was able to coax him back to the north side of the ditch, I
18 would have.

19 Q. Well, wait. I thought you were telling him to stop when he
20 was already on the south side of the ditch climbing up.

21 A. I was -- no. I was -- I was trying to get him to stop when
22 he was in the water. He ignored me. He was --

23 Q. Well, you wanted him to stop and stand in that water?

24 MS. STILLINGER: Objection, Your Honor. If she could
25 let him finish his answers.

1 MS. KANOF: I apologize.

2 THE COURT: All right.

3 Go ahead and finish your answer.

4 A. I wanted him to stop. Had I gotten him to stop, then I
5 would have given him commands to come back to the north side of
6 the ditch.

7 BY MS. KANOF:

8 Q. Okay. You -- all this time you don't see Mr. Compean with
9 a shotgun?

10 A. No. I said I saw Mr. Compean with a shotgun, but he wasn't
11 pointing it at him.

12 Q. Okay. Well, Mr. Compean says he did point it at him. So
13 is he wrong?

14 A. He might have been.

15 Q. Okay.

16 A. My --

17 Q. And you didn't see him --

18 A. I --

19 Q. -- turn the shotgun around, correct?

20 A. No, I did not. My focus was on Mr. Aldrete-Davila. He was
21 the threat.

22 Q. Okay. And --

23 A. Agent Compean wasn't.

24 Q. And so he's going towards Agent Compean, correct?

25 A. Yes, he is.

- 1 Q. His hands are up?
- 2 A. No.
- 3 Q. You never see his hands up?
- 4 A. No. He needed them to climb up out of that ditch.
- 5 Q. Well, Mr. Compean says his hands are up, right, in his
6 statement to Mr. Sanchez?
- 7 A. I guess so.
- 8 Q. And Mr. Juarez says his hands are up.
- 9 A. I guess so.
- 10 Q. And he's standing right next to you.
- 11 A. I never saw Agent Juarez.
- 12 Q. Okay. And Osvaldo says his hands were up, correct?
- 13 A. If he says so.
- 14 Q. But you didn't see that?
- 15 A. I didn't see that.
- 16 Q. And I think you testified, along this period of time, that
17 you knew for a fact he had narcotics back in that van. I think
18 you used the word narcotics, correct?
- 19 A. It's my belief, yes, ma'am.
- 20 Q. Now, you recall that Osvaldo said that one of the people,
21 one of the agents that was pointing a gun at him, was wearing
22 glasses.
- 23 A. Uh-huh.
- 24 Q. Is that a yes or no?
- 25 A. Yes, ma'am. I'm sorry.

1 Q. That was you, wasn't it?

2 A. I was wearing contacts that day.

3 Q. Well, don't we have a photograph of you at the van?

4 A. I don't believe I was wearing my glasses.

5 Q. I thought I recalled we had a photograph of you with your
6 glasses on.

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

8 THE COURT: You may.

9 BY MS. KANOF:

10 Q. I hand you what's been marked and admitted into evidence as
11 Government's Exhibit Number 12.

12 Do you have your contacts on today?

13 A. Yes, I do.

14 Q. And that's you looking in the back of -- well, that's you
15 catching it, isn't it?

16 A. Well, it's not me catching it. I'm looking at the back of
17 the van.

18 Q. With glasses on?

19 A. I can't tell if I'm wearing my glasses there.

20 Q. Okay. Now, you said you were focused on the driver,
21 correct?

22 A. Yes, ma'am.

23 Q. And, at some point, you see the driver make a move on
24 Compean. Is that correct?

25 A. Yes, ma'am.

1 Q. Describe that move.

2 A. Well, I don't know how well I can describe it. I mean,
3 he -- he was on the lip of the canal, and he made a motion to
4 get around Agent Compean. I mean, to --

5 Q. Well, to get around him isn't making a move on him, is it?

6 A. No.

7 Q. Okay. You testified you saw the driver make a move on
8 Compean. Could you please demonstrate how he made a move on
9 Compean?

10 A. Do you want me to stand?

11 Q. Please.

12 A. If Agent Compean is right there (indicating), what he did
13 was -- do you want me to go over the whole thing?

14 Q. Just -- if you would, demonstrate the move that he made on
15 Compean.

16 A. The last thing he did was look at me and turn around, and
17 he went like this (indicating). I mean, that's the best way I
18 can describe it.

19 Q. You can be seated now.

20 And, in fact, that's not making a move on him, is it?

21 A. Well, that's when he made his move to get away.

22 Q. Oh, okay. Well, so making a move on him doesn't mean he
23 was trying to attack him, right?

24 A. No.

25 Q. Okay. It wasn't a threatening gesture?

- 1 A. No.
- 2 Q. What he was trying to do is get back south?
- 3 A. Maybe at that time.
- 4 Q. Well, was there another time you saw him do something else
5 that was threatening?
- 6 A. No, ma'am.
- 7 Q. In fact, you told Mr. Richards, back at the van, that the
8 driver made a back-and-forth motion to try to get around Agent
9 Compean, correct?
- 10 A. I believe those were Agent Richards' words, not mine.
- 11 Q. Okay. But that's pretty much what you've demonstrated,
12 isn't it?
- 13 A. I don't think I went back and forth. On that edge of that
14 canal, it's hard to move back and forth without falling over.
- 15 Q. You didn't see Agent Compean, then, after that move, slip
16 and fall and get dirt in his face?
- 17 A. No, ma'am.
- 18 Q. Now --
- 19 A. Well, when --
- 20 Q. -- he told Agent Sanchez that he did, correct, that he
21 slipped?
- 22 A. I don't know what Agent Compean told Agent Sanchez.
- 23 Q. Well, you heard Agent Sanchez testify regarding
24 Mr. Compean's statement. And he said, at that point, he
25 slipped, correct?

- 1 A. I guess so.
- 2 Q. And Agent Juarez testified that he saw him slip and fall,
3 correct?
- 4 A. Uh-huh. Yes, ma'am.
- 5 Q. And Osvaldo testified that, when he took off, he doesn't
6 know what happened, right?
- 7 A. Yes, ma'am.
- 8 Q. Of course, his back was to Agent Compean at that point,
9 right?
- 10 A. That's what he says.
- 11 Q. Okay. And did you -- you saw him make the move. And then
12 you saw him take off, right?
- 13 A. No. When he made his move to get around Agent Compean,
14 that's when I jumped into the ditch.
- 15 Q. Oh. So you stopped watching him?
- 16 A. At that point I jumped in the ditch, yes.
- 17 Q. Okay. The threat, at that point, is gone, isn't it, Agent
18 Ramos? The guy has taken off.
- 19 A. The threat is trying to get away. Agent Compean is by
20 himself. My -- my priority there is to get to Agent Compean
21 and help him.
- 22 Q. Okay. Well, I'm talking about the perception of deadly
23 threat. There is no deadly threat, once that young man heads
24 towards Mexico, is there?
- 25 A. I don't know that.

1 Q. Well, you didn't see anything in his hands.

2 A. I also didn't see anything in his waistband. His shirt was
3 untucked.

4 Q. Oh. Well, so you assumed he had a gun?

5 A. When we're taught at the academy, we have to take those
6 assumptions into consideration, yes, ma'am.

7 Q. You're taught at the academy to assume everybody whose
8 shirt is untucked has a gun?

9 A. No, ma'am. We have to take precautions. And where anybody
10 can hide a knife, pistol, or a weapon, you have to look for it.

11 Q. You don't remember what his hands looked like, because you
12 couldn't see them, but you could see his waistband?

13 A. No, I couldn't see his waistband.

14 Q. Well, you saw it well enough to know his shirt was
15 untucked.

16 A. Sure, when he jumped out of the van.

17 Q. When he jump- -- you saw him jump out of the van and run?

18 A. Yes, ma'am. I had the -- a glimpse of him when he did,
19 yes.

20 Q. He -- he didn't jump out of the van with a weapon in his
21 hand, did he?

22 A. No. That doesn't mean he doesn't have one stuffed in his
23 waistband.

24 Q. Okay. And so it's going to be your testimony, then, that
25 he moved side to side, and you stopped looking at that scene?

1 A. No, ma'am. I didn't say he moved side to side.

2 Q. Well, whatever your gesture was, how do you characterize
3 that gesture that he made?

4 A. I just said he made a move to get around him. I mean,
5 that's the best way I can -- I can do it.

6 Q. Okay. And then you stopped watching them?

7 A. Yes, ma'am.

8 Q. So you, obviously, thought he was not a threat to
9 Mr. Compean at that time, if you took your eyes off of him.

10 A. No. I jumped into the ditch, because he was a threat to
11 Mr. Compean.

12 Q. He was a threat after he took off running?

13 A. He was a threat, because Mr. Compean was by himself.

14 Q. From --

15 A. That's a --

16 Q. By himself? I thought you said there were legions --

17 MS. STILLINGER: Objection, Your Honor. He was in the
18 middle of his answer, in the middle of a word.

19 THE COURT: All right. Let him finish his answer.

20 A. Agent Compean was by himself on the south side of that
21 ditch on the levee.

22 BY MS. KANOF:

23 Q. But how do you --

24 A. That's an officer safety issue.

25 Q. Well, there's agents patrolling the levee all over -- all

- 1 over the place, right?
- 2 A. Well, they weren't there yet.
- 3 Q. Well, I thought you said you had tunnel vision, and you
- 4 didn't even notice Juarez standing right next to you, correct?
- 5 A. Right.
- 6 Q. So how did you know that there weren't other vehicles and
- 7 other agents there up on the levee?
- 8 A. Well, I didn't see them.
- 9 Q. Well, you didn't see Juarez, either, correct?
- 10 A. It didn't matter to me. I was going to go help him.
- 11 Q. Okay. So it didn't matter to you whether there was help or
- 12 not?
- 13 A. In my opinion, the --
- 14 Q. The question was --
- 15 A. -- I was going to help --
- 16 Q. -- it didn't matter to you whether there was help or not,
- 17 correct?
- 18 A. Oh, it does matter.
- 19 Q. You were going to go help Compean. Is that what you're
- 20 going to testify?
- 21 A. I was going to go help him, yes, ma'am.
- 22 Q. But he's still on the lip of the ditch, and Osvaldo is
- 23 gone. What were you going to help him do?
- 24 A. I didn't know that. I just knew I needed to go help him.
- 25 Q. You needed to go help him when someone had hotfooted it

- 1 back south?
- 2 A. I didn't see him, in your words, hotfoot it back south.
- 3 Q. Because he wasn't a threat, and you weren't looking at him,
- 4 right?
- 5 A. When I saw him try to get away, I just knew I needed to go
- 6 help Agent Compean.
- 7 Q. Go help Agent Compean go after him, right?
- 8 A. Well, I still wanted to catch him.
- 9 Q. Right. Not help Agent Compean for his safety?
- 10 A. No, of course. He was by himself.
- 11 Q. Well, you saw -- you didn't see him slip, but you were
- 12 going to help him because he was by himself?
- 13 A. Yes, ma'am.
- 14 Q. So you somehow knew that he was going to run into the vega,
- 15 Agent Compean?
- 16 A. I didn't know what his intentions were.
- 17 Q. Then how did you know you were going to go help him?
- 18 A. I was going to get to the south side. If he -- when I got
- 19 to him -- he didn't go run after him, then it was over.
- 20 Q. Okay. All those agents that arrived, you didn't have the
- 21 faith that they might not jump in the ditch and go try to help
- 22 Compean, as well?
- 23 A. I sure did. I fully expected them to be right behind me.
- 24 Q. Well, then, Agent Compean wouldn't have been alone too
- 25 long, would he?

- 1 A. No, he wouldn't have been.
- 2 Q. Okay. I think, at this point, you testified, I knew he was
3 going to be a problem, he's so close to getting across.
- 4 Do you recall that testimony?
- 5 A. No, ma'am, I don't.
- 6 Q. Okay. Basically, you weren't concerned that he was going
7 to hurt anyone, were you?
- 8 A. I don't understand.
- 9 Q. You were not concerned that the driver of that van was
10 going to hurt anyone, were you?
- 11 A. At what point?
- 12 Q. At the point that he takes off running.
- 13 A. He hasn't hurt anyone yet.
- 14 Q. You weren't concerned that he was going to hurt anyone,
15 were you?
- 16 A. No.
- 17 Q. And --
- 18 A. I didn't know that.
- 19 Q. And your policy says, Let them go, doesn't it?
- 20 A. That's the pursuit policy.
- 21 Q. Okay.
- 22 A. We weren't pursuing anymore. We were on foot.
- 23 Q. Well, Chief Barker testified that the primary
24 responsibility is agent safety, correct?
- 25 A. And that's why I crossed the ditch.

1 Q. I thought you crossed the ditch to chase him.

2 A. I just said because Agent Compean was by himself.

3 Q. Well, you said that he wasn't a threat. Right now you said
4 he wasn't a threat, correct?

5 A. When somebody is that close to the proximity of the border,
6 and they knew they have safety or freedom that way -- that near
7 to them, they're going to fight.

8 Q. Agent Ramos, from the very beginning of your testimony, you
9 said you knew when he turned south that he was trying to go
10 back to Mexico, correct?

11 A. Yes, ma'am.

12 Q. That, in your mind as a Border Patrol agent, is logical,
13 correct?

14 A. Yes, ma'am.

15 Q. You knew that all that man wanted to do was escape from
16 you.

17 A. Sure.

18 Q. And that's what he did at the ditch, correct?

19 A. Sure. But the closer they are to freedom, the more -- the
20 more willing they are to fight.

21 Q. You never met this man before, correct?

22 A. No.

23 Q. But he wasn't fighting, was he? He was running.

24 A. Well, he wasn't fighting because we hadn't caught him yet.

25 Q. Well, he took off, and he was almost in Mexico before you

- 1 went after him, correct?
- 2 A. Before I went after him?
- 3 Q. Right.
- 4 A. I was already after him at the ditch.
- 5 Q. You hear -- at what point -- you're crossing the ditch,
6 correct?
- 7 A. Yes, ma'am.
- 8 Q. And you get to the south side of the ditch. And the levee
9 looms in front of you, correct?
- 10 A. Yes, ma'am.
- 11 Q. Where was Mr. Compean?
- 12 A. I didn't see Mr. Compean.
- 13 Q. He was already gone?
- 14 A. Yes, ma'am.
- 15 Q. Okay. Before you got up to the levee, Compean had
16 disappeared?
- 17 A. Yes, ma'am.
- 18 Q. Okay. And then you went up the levee, once the -- the
19 north side of the levee, correct?
- 20 A. Yes.
- 21 Q. You crossed the road?
- 22 A. Yes.
- 23 Q. And then you went to the south side of the road?
- 24 A. Yes.
- 25 Q. And you never saw Agent Compean shooting?

1 A. I heard the shots when I was in the canal, or the ditch.

2 Q. Okay. You heard the shots when you were in the canal,
3 correct?

4 A. Yes, ma'am.

5 Q. When you got over to the other side of the levee -- well,
6 let's go back to you hearing the shots.

7 I think your testimony was that you heard a gun
8 exchange, correct?

9 A. Yes, ma'am.

10 Q. Okay. Well, gun exchange implies two people shooting at
11 each other, right?

12 A. Yes, ma'am.

13 Q. You didn't see it happen?

14 A. No, ma'am.

15 Q. How did you know it was a gun exchange?

16 A. It was an assumption.

17 Q. Okay. It could have just been Agent Compean shooting and
18 nobody else?

19 A. I guess it could have been.

20 Q. You're a firearms instructor, correct?

21 A. Yes, ma'am.

22 Q. And you pride yourself on your firearms acuity, right?

23 A. By my acuity, you mean --

24 Q. Your knowledge of firearms.

25 A. Limited knowledge.

1 Q. Oh. It's only limited?

2 A. Well, I don't have a vast knowledge of it. I mean, it
3 depends on how much you're asking of me.

4 Q. Well, you've been a Border Patrol agent for approximately
5 11 years, correct?

6 A. Yes, ma'am.

7 Q. And the sound of a .40 caliber Beretta is common to you,
8 right?

9 A. Yes.

10 Q. Okay. So what other kind of gun did you hear, other than a
11 .40 caliber Beretta?

12 A. I couldn't tell you. Because, depending on the handguns, a
13 lot of them are similar.

14 Q. Okay. So you -- when -- when you made the assumption of
15 gun exchange, it wasn't because you heard two different kinds
16 of gunshots?

17 A. Well, at that time -- I mean, there's many guns that sound
18 alike. And, I mean, unless you get one big difference from
19 another, you can't really tell the difference.

20 Q. Well, let's talk about the .40 caliber Beretta for a
21 minute.

22 The -- when you shoot the weapon, the casings
23 discharge to the right and behind, correct?

24 A. They're supposed to. But the tolerances to this gun aren't
25 very good.

1 Q. Do they fall to the right and behind?

2 A. Sometimes they do. Sometimes they go straight to the
3 right. Sometimes they go back.

4 Q. Okay. Sometimes straight to the right, sometimes curved to
5 the right, sometimes they go back to the right, correct?

6 A. Sometimes they fall short, sometimes they fall long.

7 Q. Okay. And when you -- well, I'm going to jump forward for
8 a minute here.

9 When you were walking back up the vega with
10 Mr. Compean in shock, you were helping him walk, right?

11 A. No, I didn't touch him, except for that time I patted him
12 down.

13 Q. So he wasn't in so much shock that he couldn't walk by
14 himself?

15 A. Right. I mean, he was walking by himself.

16 Q. But he was picking up casings?

17 A. I didn't see him pick up casings.

18 Q. You were standing right next to him, and he was not picking
19 up casings?

20 A. I didn't see him pick up casings.

21 Q. Okay. Well, in his written statement, he says he was
22 picking up casings on the levee when you-all were walking back.

23 A. I didn't see him pick up casings.

24 Q. Just like you didn't see Agent Juarez, correct?

25 A. I didn't see Agent Juarez, either.

1 Q. And just like you didn't see Agent Compean when he slipped,
2 correct?

3 A. No, ma'am.

4 Q. You have testified that you've been in a shooting accident
5 before, correct -- incident, not accident. Incident. Correct?

6 A. Yes, ma'am.

7 Q. Did you go to the employee assistance program for
8 assistance with that shoot?

9 A. I don't remember. I don't think I did.

10 Q. And you've also been assaulted. Is that correct?

11 A. Yes, ma'am.

12 Q. Did you go the employee assistance program for those
13 assaults?

14 A. I may have called once on the needle incident, but I don't
15 think I followed up on it.

16 Q. So --

17 A. I don't remember.

18 Q. You don't remember?

19 A. I don't -- I really don't remember.

20 Q. By the way, the needle incident. You -- you were upset
21 that the U.S. Attorney's office didn't prosecute that, correct?

22 A. I wouldn't call it upset, but just -- you know, I -- I
23 wondered why.

24 Q. Well, isn't it true that, when you were struggling with
25 him, you got poked because it was in his pocket?

1 A. It was while I was searching him. But when I was pulling
2 it out, he motioned -- he didn't motion -- he slapped away at
3 me.

4 Q. Well, you made a report regarding that incident, correct?

5 A. Yes, ma'am.

6 Q. And you didn't say that in your report, that he slapped it
7 away from you.

8 A. Well, I don't remember. If you would show me, I guess I
9 can recall.

10 Q. Let me find it.

11 MS. KANOF: If I can have a moment, Your Honor?

12 THE COURT: Sure.

13 MS. KANOF: Here it is.

14 Approach the witness, Your Honor?

15 THE COURT: You may.

16 BY MS. KANOF:

17 Q. September 4, 2002. This is a memo from you, correct?

18 A. Yes, it is.

19 Q. You recognize it?

20 A. Yes.

21 Q. And it was to the Border Patrol agent in charge regarding
22 this assault incident, correct?

23 A. Yes, ma'am.

24 Q. And, in your words, didn't you say, During the --

25 MS. STILLINGER: Your Honor -- Your Honor, this is not

1 the appropriate way to refresh his memory, to read it to him.

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

3 BY MS. KANOF:

4 Q. Okay. Do you want to take a look at it?

5 A. Sure.

6 (Reading.) Okay.

7 Q. You don't say that he made a gesture that caused it to
8 happen, right?

9 I think I highlighted it to assist you.

10 A. Right. But --

11 Q. Right, you don't say that?

12 A. No. But before, where it's -- where you highlighted it, I
13 do say he became combative and assaultive --

14 Q. Okay. But --

15 A. -- and striking at his pocket, when it -- with his left
16 hand, and striking me with his left elbow on my left shoulder.
17 During this struggle, I felt something in his left pocket poke
18 my left thumb.

19 Q. Okay. You felt something in his left pocket poke your left
20 thumb?

21 A. Right.

22 Q. Right? You noticed that --

23 A. That was when he was doing this to me.

24 Q. Okay. But you didn't say that in that report?

25 A. Right before that sentence, yes, ma'am.

- 1 Q. Okay. You hadn't even felt it yet, right? He didn't pull
2 out that hypodermic needle and hit you with it, did he?
- 3 A. No, he didn't give me a chance to.
- 4 Q. Okay.
- 5 A. I didn't give him a chance to.
- 6 Q. You know the elements of assault?
- 7 A. I can't say I know them all, but he did fight me.
- 8 Q. Okay. But you were concerned that we didn't prosecute him
9 for sticking that hypodermic needle in you, right?
- 10 A. Yes, ma'am. I had to go through several testings, AIDS,
11 which concerned me most.
- 12 Q. But he didn't stick it in you, did he? It happened as a
13 result of the struggle, correct?
- 14 A. Well, I felt that, if he wouldn't have struggled with me,
15 it wouldn't have poked me.
- 16 Q. You're not a lawyer, right?
- 17 A. No, I'm not.
- 18 Q. But you have some kind of anger that you still hold about
19 that not getting prosecuted?
- 20 A. No, not at all.
- 21 Q. Okay.
- 22 A. I just have to still undergo testing.
- 23 Q. Let's go to the vega. You get down on the other side of
24 the levee, and you see Compean on the floor, is your testimony,
25 correct?

- 1 A. Yes, ma'am.
- 2 Q. And you think he's been shot?
- 3 A. After hearing the gunshots, and being on the floor, it was
4 my presumption, yes, ma'am.
- 5 Q. And you don't yell, Are you shot?
- 6 A. No.
- 7 Q. You don't yell, Are you hit?
- 8 A. No.
- 9 Q. You don't yell, Are you okay?
- 10 A. No. The threat was still in the vega. If I stopped to
11 help him, I'm leaving myself vulnerable.
- 12 Q. Right. Didn't -- okay.
- 13 You don't learn, in defensive tactic school, that if a
14 partner is down the first thing you do is go to that partner?
- 15 A. I don't believe so, ma'am. If I go to that partner and the
16 threat is still in that vega, I'm leaving myself vulnerable.
17 That means two agents go down.
- 18 Q. Didn't -- didn't Chief Barker testify that the single most
19 important thing was the safety of the agent?
- 20 A. Yes, ma'am. But I can't take care of that agent if that
21 threat turns around and hurts me.
- 22 Q. Well, you could go and put your body in between that threat
23 and the agent, couldn't you?
- 24 A. And that's what I did when I ran after him.
- 25 Q. You didn't go protect him, did you?

- 1 A. I was doing that when I ran after him, yes, ma'am.
- 2 Q. Well, you said this vega was a very dangerous place, right?
- 3 A. Yes. I've been there before.
- 4 Q. There's bushes where people can hide?
- 5 A. Not in the vega, on the riverbank.
- 6 Q. Well, along the riverbank, there are?
- 7 A. Yes, ma'am.
- 8 Q. But you said the vega is a very dangerous place.
- 9 A. Yes, ma'am. We were still exposed. The threat was still
- 10 there.
- 11 Q. And, instead of protecting him from any other threat, you
- 12 wanted to catch it, right?
- 13 A. At that point I wanted to catch him because, in my mind, he
- 14 had hurt Agent Compean.
- 15 Q. Without even asking Agent Compean?
- 16 A. He was down. I mean, I assumed.
- 17 Q. Well, Agent Compean, in his written statement, as testified
- 18 to by Chris Sanchez, says he was standing in the vega shooting.
- 19 A. I didn't see him standing.
- 20 Q. He said he holstered his weapon and then walked back up to
- 21 levee.
- 22 A. That may have been after I passed him. When I saw Agent
- 23 Compean -- I passed him. I didn't stand right next to him.
- 24 Q. Oh. After you passed him, he got up, then holstered his
- 25 weapon, and turned around and walked up the vega. Is that what

- 1 you're saying could have happened?
- 2 A. I don't know what Agent Compean did after I passed him.
- 3 Q. I thought you said you went back and got him up, because he
- 4 was in shock --
- 5 A. No.
- 6 Q. -- and you patted him down.
- 7 A. No. I'm telling you, after I passed Agent Compean, I
- 8 chased the suspect.
- 9 Q. Okay. You did not, like you did in 1996, call out, Fire,
- 10 fire, did you?
- 11 A. No, ma'am.
- 12 Q. You didn't call out, Agent down, correct?
- 13 A. No, ma'am.
- 14 Q. You knew there were a bunch of agents right behind you, and
- 15 you didn't even try to communicate to them to go save your
- 16 partner, correct?
- 17 A. No, ma'am, because I expected them to be right behind me.
- 18 Q. You expected it?
- 19 A. Yes, ma'am, I did. They should have been right behind me
- 20 in the vega.
- 21 Q. And you didn't call out, Fire, fire, so they would know
- 22 that your partner had been injured, and they should be careful
- 23 about a gun?
- 24 A. I expected them right behind me in the vega. I expected
- 25 one of them to call it out. That's why I didn't get on the

- 1 radio. There was more than enough of us for somebody to get on
2 the vega. I knew I was the first one through the ditch.
- 3 Q. Agent Compean's in shock, right?
- 4 A. Well, I'm not a medical doctor, but...
- 5 Q. But you were willing to testify to it on direct?
- 6 A. Well, to me, he looked like he was in shock.
- 7 Q. Okay. You have -- you don't have medical training?
- 8 A. No.
- 9 Q. The vega is a dangerous place, and you're running after the
10 driver, right?
- 11 A. Yes, ma'am.
- 12 Q. Okay. How far did you get before you saw this shiny object
13 in his left hand?
- 14 A. How far did I get where?
- 15 Q. Chasing him down the vega.
- 16 A. I must have ran -- well, past the little drag road, 15, 20
17 feet, when I yelled, Parete, and he turned around.
- 18 Q. Okay. You yelled, Parete, and he turned around?
- 19 A. Yes, ma'am.
- 20 Q. And was it at this time that he was, with his left hand,
21 pointing something at you that was shiny?
- 22 A. Yes, ma'am.
- 23 Q. Okay. Why didn't you shoot him then?
- 24 A. Because he made an overt threat at me.
- 25 Q. Why didn't you shoot him then?

- 1 A. Oh, why didn't I shoot?
- 2 Q. Right.
- 3 A. I shot at him at that time.
- 4 Q. Okay. You shot at him while he was still on the vega?
- 5 A. He was at the lip of the riverbank.
- 6 Q. Well, just a minute ago you said he was on the vega.
- 7 A. He was running in the vega. I was still running --
- 8 Q. He was running and turning around and shooting all at the
- 9 same time?
- 10 A. No, I didn't say he was running and shooting at the same
- 11 time.
- 12 Q. Okay.
- 13 A. I didn't say he turned around until I yelled, Parete.
- 14 Q. Okay. So he only turned around once, then?
- 15 A. I only yelled Parete one time. That's when he made the
- 16 gesture at me.
- 17 Q. Okay. And you shot him and he fell?
- 18 A. I didn't say he fell.
- 19 Q. So you didn't think you shot him?
- 20 A. No, I didn't.
- 21 Q. And you didn't keep shooting at him?
- 22 A. I shot one time.
- 23 Q. Well, the threat is still there, isn't it?
- 24 A. He disappeared.
- 25 Q. He disappeared?

- 1 A. Yes, ma'am.
- 2 Q. Why didn't you run after him?
- 3 A. Because, at that point, when he disappeared at the river,
4 there's too much brush there for me to go run after him. He
5 could hide anywhere, and I wouldn't have been able to find him.
6 He had total advantage at that time.
- 7 Q. Just like the other people that could have been in that
8 brush had total advantage on your partner at that time?
- 9 A. I don't understand.
- 10 Q. Well, there's so much brush there that you never run to the
11 river. Is that it?
- 12 A. You're -- you're cautious when you go to the river, because
13 you don't know what's there. You're right.
- 14 Q. And this was February?
- 15 A. Yes, ma'am.
- 16 Q. And you're going to testify that it's the same density of
17 foliage in February as it is in June again. Is that correct?
- 18 A. Along the river?
- 19 Q. Yeah.
- 20 A. Yes, ma'am. There's some brush that turns brown, but it
21 doesn't just wither away and die. I've been there long enough
22 to know it just doesn't go away.
- 23 Q. He's running, you said, Parete -- trying to get back to
24 Mexico. But when you say, Parete, he stops and turns around to
25 shoot at you, correct?

- 1 A. He doesn't stop.
- 2 Q. He's running with his -- how can he run and look at you to
3 shoot you at the same time?
- 4 A. I just know what he did, ma'am.
- 5 Q. Well, I'm asking you a question.
- 6 A. I just know what he did.
- 7 Q. Well, you know he's not left-handed, right?
- 8 A. I didn't know that at the time.
- 9 Q. Right. You didn't know that at the time that you -- you
10 didn't know that at the time.
- 11 A. Right. I just know what he did on that day.
- 12 Q. And so then he's gone in the river, right?
- 13 A. Yes, ma'am.
- 14 Q. And you turn around, and you walk back to see if Compean is
15 okay?
- 16 A. No. By that time, he walked up close to me. But I kept my
17 eye on the river. I said yesterday I kept my pistol here
18 (indicating), at ready pistol.
- 19 Q. How is that going to help you if there are people in other
20 locations on that dangerous vega?
- 21 A. What do you mean?
- 22 Q. Well, you and Compean are standing out on the vega in the
23 open, right?
- 24 A. I didn't know if there was other people there. I just said
25 I didn't approach the river because I knew he was there.

1 Q. But you have testified repeatedly the vega is dangerous,
2 correct?

3 A. Yes, ma'am.

4 Q. You have testified that the brush is so thick that you
5 don't know what's back there, correct?

6 A. Right.

7 Q. You have testified that you know he had a load of
8 narcotics, correct?

9 A. I believed he did.

10 Q. Yes. So you know there could have been other people out
11 there.

12 A. There could have been.

13 Q. And you're just standing out there with Mr. Compean in the
14 vega feeling him, to make sure he's okay.

15 A. No. I waited until the threat that I knew about got out of
16 the river and headed back toward Mexico.

17 Q. You watched him head back towards Mexico?

18 A. Yes, ma'am, I did.

19 Q. So you stood there -- I thought you said you couldn't see
20 him.

21 A. Not for a while.

22 Q. Well, for how long?

23 A. I don't know exactly. It was a few seconds.

24 Q. And I think your testimony of the reason that that wouldn't
25 be a threat, once he got -- how wide is the river?

- 1 A. I don't know exactly. Maybe 90 feet.
- 2 Q. That that 90 feet made you feel safe?
- 3 A. No, no, no. I said he wasn't a threat until he went over
4 the Mexican levee, when he was out of sight from us. I think
5 that's what I said.
- 6 Q. What you said, I believe, and tell me if I'm wrong, is
7 that, at that distance, he would not have been accurate.
- 8 A. From the other side of the Mexican levee?
- 9 Q. Yes.
- 10 A. Right.
- 11 Q. From wherever it was that you were testifying about.
- 12 A. Right.
- 13 Q. Okay. So --
- 14 A. That's almost -- I'm going to -- I'm guesstimating almost
15 700 feet.
- 16 Q. And you're -- you're telling this jury that you stand there
17 and watch him, to make sure the threat is gone, right?
- 18 A. When I see him get out of the river, I check Mr. Compean,
19 and we start walking back. But I never turn my back on him
20 completely.
- 21 Q. Well, I don't know how you walk back to the levee without
22 turning your back on him.
- 23 A. I walk like this, (indicating).
- 24 Q. You walk sideways?
- 25 A. Bladed. No, I didn't say that. Bladed. I mean, that's

1 the best way I can say it. I -- I walked a little bit -- I
2 kept going back like this (indicating). I -- I'm checking
3 where he's at, making sure he doesn't turn around.

4 Q. So you can't see him for a while, because the brush in the
5 river obscures your view, correct?

6 A. Right.

7 Q. But you're just standing there?

8 A. Well, I'm making sure he doesn't come back, yes, ma'am.

9 Q. Okay. But you -- you don't see him?

10 A. No.

11 Q. And you don't think you're in a dangerous situation?

12 A. You still are, yes, ma'am.

13 Q. Yeah, you are.

14 Now, you go -- by that time, Mr. Compean is up, right?

15 A. Yes.

16 Q. Okay. And the two of you stand there and watch him go
17 towards the Mexican side?

18 A. Yes.

19 Q. Okay. And Mr. Compean told several people that he was
20 limping. Do you recall that?

21 A. I guess in his statement he did.

22 Q. And he also told several agents who testified here,
23 correct?

24 A. I didn't hear him say that.

25 Q. Well, I'm talking about the agents who testified.

1 A. Yes, I guess they --

2 MS. STILLINGER: I think it's inappropriate to
3 question him about that the testimony was.

4 THE COURT: What's your question?

5 BY MS. KANOF:

6 Q. You didn't see him limping?

7 A. I didn't see him limping.

8 Q. Isn't it true the reason that you only shot once is because
9 you knew you hit him?

10 A. No, ma'am, I didn't.

11 Q. Why didn't you keep shooting at him?

12 A. Because he was gone.

13 Q. He was gone behind some brush?

14 A. Right.

15 Q. And so you don't shoot your weapon even as a threat --

16 A. I don't shoot --

17 Q. -- when they're behind brush?

18 A. I don't shoot my weapon when I don't have a target.

19 Q. Well, you knew he was back there somewhere, didn't you?

20 A. Yeah, but I don't --

21 Q. It was only 90 feet, correct?

22 A. No, ma'am.

23 Q. Well, you just said the river was only 90 feet.

24 A. From riverbank to riverbank. The vega is much wider than
25 that.

- 1 Q. When you checked Mr. Compean, you found out he hadn't been
2 shot, right?
- 3 A. When I -- I'm sorry, I didn't hear the whole question.
- 4 Q. When you checked Mr. Compean, you found out he had not been
5 shot, correct?
- 6 A. Right. Right.
- 7 Q. But you're still there, the two of you, watching him limp
8 back to the Mexican vega, correct?
- 9 A. I didn't say he was limping back.
- 10 Q. Walking back?
- 11 A. Walking back.
- 12 Q. He wasn't jogging or running?
- 13 A. No.
- 14 Q. Wasn't turning around trying to shoot you?
- 15 A. No, he was just walking back.
- 16 Q. And when he got to the Mexican levee, you said that, at
17 that distance, he would not have been accurate, correct?
- 18 A. I don't believe so.
- 19 Q. How do you know?
- 20 A. I don't even think I can be accurate at that distance, not
21 with a handgun. That's why I said he didn't have a rifle in
22 his hand.
- 23 Q. So you didn't feel a need to take cover?
- 24 A. By that time we were up on our levee.
- 25 Q. And you didn't tell Yrigoyen or Mendez, That guy had a gun?

- 1 A. When Yrigoyen and Mendez got there, he was already over the
2 Mexican levee.
- 3 Q. But Yrigoyen and Mendez could see him, correct?
- 4 A. I think they testified they didn't see him until he was way
5 past the Mexican levee.
- 6 Q. But they see him being picked up by people that you-all
7 assume were Mexican drug dealers, correct?
- 8 A. I guess that's what they said.
- 9 Q. And you had no fear, and didn't feel the need to warn the
10 people that were standing next to you?
- 11 A. The threat was gone.
- 12 Q. So you don't see him picking up casings when he's coming up
13 the levee, correct?
- 14 A. No.
- 15 Q. And you get to the top of the levee?
- 16 A. Yes.
- 17 Q. You hear Jonathan Richards call out to Mr. Compean, Are you
18 okay? Right?
- 19 A. That was when I had already crossed back to the north side.
20 And this was after I had already told Mr. Richards.
- 21 Q. That he threw dirt in his face?
- 22 A. Right.
- 23 Q. Even though you didn't see that?
- 24 A. Right.
- 25 Q. And you did not tell -- you had two supervisors there at

1 the scene, right?

2 A. Right.

3 Q. And you didn't tell either of them, according to the
4 policy, that you discharged your firearm?

5 A. No.

6 Q. And neither did Mr. Compean?

7 A. No.

8 Q. If you had, one of these thick reports would have been
9 generated, right?

10 A. I guess so.

11 Q. And they would have tried to determine whether or not it
12 was a good shoot?

13 A. I guess so.

14 Q. And the reason you didn't report it is because you knew it
15 wasn't a good shoot?

16 A. No. I just messed up.

17 Q. You just messed up?

18 A. I was just worried about a lot of other things. I was full
19 of adrenaline from chasing him. I was full of adrenaline from
20 being threatened again, from having shot the pistol. I was
21 worried about Mr. Compean. I had a lot of other things on my
22 mind.

23 Q. An hour later, as well? You were still so full of
24 adrenaline that you couldn't remember to report the shooting an
25 hour later? You have a whole hour, right?

- 1 A. Right.
- 2 Q. Okay. So, an hour later, you were still so full of
3 adrenaline that you forgot to report it?
- 4 A. No. I just made the assumption I shouldn't have.
- 5 Q. Well, what assumption is it that you made, again?
- 6 A. That somebody else had told him.
- 7 Q. But if somebody else had told him, wouldn't he have come
8 and asked you about it?
- 9 A. I guess he would have.
- 10 Q. So then you could have made the assumption that somebody
11 hasn't told him, correct?
- 12 A. I guess so.
- 13 Q. You testified that you think your shell casing is still out
14 there, right? Is that correct?
- 15 A. Maybe, after all this time. I don't know.
- 16 Q. Well, you went out to look for it, didn't you?
- 17 A. No, I didn't.
- 18 Q. Well, you've been out to that scene a couple of times,
19 haven't you?
- 20 A. With my attorney.
- 21 Q. Well, you weren't with your attorney the Friday before last
22 when you went out there, were you?
- 23 A. No.
- 24 Q. So you went out to that scene on occasion, have you not?
- 25 A. Just once.

- 1 Q. You were looking for your casing?
- 2 A. No, I was not.
- 3 Q. Okay. This is what the firearms policy calls a reportable
4 shooting, correct?
- 5 A. I believe so.
- 6 Q. Well, you taught it for five years. If you don't remember,
7 I can give you the policy to refresh your memory.
- 8 A. Yes, ma'am.
- 9 Q. It is a reportable shooting?
- 10 A. Yes, ma'am.
- 11 Q. And when there's a reportable shooting, the first thing
12 you're supposed to do is secure the scene, correct?
- 13 A. I believe so.
- 14 Q. You didn't secure the scene?
- 15 A. No.
- 16 Q. You are also educated, as a sector evidence team member,
17 correct?
- 18 A. Yes.
- 19 Q. You went to sector evidence school?
- 20 A. Many years ago.
- 21 Q. So you forgot about it since then?
- 22 A. It's been a long time. I never applied any of what I was
23 trained in that.
- 24 Q. Well, regardless of whether you've gone to evidence school,
25 every agent is told that, if there is a crime scene, they need

- 1 to not touch it, right?
- 2 A. I don't know if every agent is told that.
- 3 Q. You weren't told that in Quantico?
- 4 A. I never went to Quantico, ma'am.
- 5 Q. FLETC, whenever you went?
- 6 Sorry, you're not an FBI agent. FLETC? That's
- 7 F-L-E-T-C.
- 8 A. I don't remember ever being told that. I -- I can't be
- 9 certain, no, ma'am.
- 10 Q. Okay. But you did get evidence response training?
- 11 A. Yes.
- 12 Q. Okay. You didn't secure the scene, did you?
- 13 A. No.
- 14 Q. You didn't make a call to ask for the evidence team to come
- 15 out, did you?
- 16 A. No.
- 17 Q. You didn't notify sector communications that you needed a
- 18 SET team, correct?
- 19 A. No.
- 20 Q. The SET commander didn't come out to check to see whether
- 21 or not they needed to do an investigation, did they?
- 22 A. No.
- 23 Q. So, therefore, nobody took custody of your weapons at the
- 24 scene, correct?
- 25 A. No.

- 1 Q. By not reporting it, you prevented that, right?
- 2 A. I guess so.
- 3 Q. Nobody was able to make scene attendance logs, correct?
- 4 A. I don't know.
- 5 Q. Well, the first thing that a sector evidence person does is
- 6 make a log of everybody that's at the scene at the time of the
- 7 crime, correct?
- 8 A. I guess so, yes.
- 9 Q. And you prevented that from occurring by not reporting it,
- 10 correct?
- 11 A. I guess so.
- 12 Q. So the next thing that happens is they take DPS coordinates
- 13 to determine where the shooting occurred. You prevented that,
- 14 as well, correct?
- 15 A. I wouldn't know what those procedures are. It's been a
- 16 long time, so I don't know.
- 17 Q. When did you go to the SET training?
- 18 A. I believe Mr. Blea testified it was 1999. I have never
- 19 applied any of what I've been trained.
- 20 Q. Okay. They were -- well, regardless of what you were
- 21 trained, because you did not call them, they could not come out
- 22 and find the casings on February 17, 2005, correct?
- 23 A. Correct.
- 24 Q. They could not find any bullets that might have been shot
- 25 by you or Mr. Compean, correct?

1 A. No.

2 Q. They could not find any bullets that might have been shot
3 by the man who was running with his left hand behind him with a
4 shiny object in it, correct?

5 A. No.

6 Q. They couldn't look for blood of Mr. Compean, if you thought
7 he was shot, correct?

8 A. No.

9 Q. They couldn't look for blood of a person that you might
10 have shot, correct?

11 A. No.

12 Q. They couldn't look at the tire marks, to determine whether
13 or not braking had occurred, correct?

14 A. No.

15 Q. They couldn't place a marker near all the evidence, so that
16 they could prepare a report, so Chief Barker could review it,
17 to determine if it was a good shooting, correct?

18 A. No.

19 Q. They could not take photographs, to preserve the accuracy
20 of the shoot, at the time that it occurred, correct?

21 A. No.

22 Q. They could not take measurements, to determine how far the
23 casings had flown from the location where the shooting had
24 occurred, correct?

25 A. No.

- 1 Q. They could not go look at foot sign of Osvaldo
2 Aldrete-Davila, to determine what direction he ran in, correct?
- 3 A. No.
- 4 Q. They could not make a rough sketch, so they could provide
5 it to a shooting review committee, correct?
- 6 A. No.
- 7 Q. They could not recover all of the potential evidence that
8 would have helped prove a marijuana prosecution, correct?
- 9 A. No.
- 10 Q. They could not secure evidence that would assist in
11 identifying the marijuana transporter, correct?
- 12 A. No.
- 13 Q. All of that information you prevented from being put into a
14 report, correct?
- 15 A. I guess so.
- 16 Q. So a comprehensive administrative report, to make a
17 determination of whether or not this was a good shoot, was
18 never made in this case, correct?
- 19 A. No, ma'am.
- 20 Q. Agent Ramos, you are trained to shoot to kill, correct?
- 21 A. To stop the threat.
- 22 Q. You are trained to shoot at center mass, correct?
- 23 A. Yes, ma'am.
- 24 Q. To shoot somebody in the heart?
- 25 A. Well, if center mass includes the heart, I guess so.

1 Q. As a firearms instructor, you train people, shoot to kill,
2 correct?

3 A. Yes, ma'am.

4 Q. And if this was not a good shoot, then you just killed him,
5 correct, if he had died?

6 A. I'm sorry?

7 MS. STILLINGER: Objection, Your Honor. He didn't
8 die, and that's a hypothetical I don't think it's proper to get
9 into.

10 MS. KANOF: I'll restate my question, Your Honor.

11 THE COURT: All right. Please restate.

12 BY MS. KANOF:

13 Q. You hit him in the buttocks, right?

14 A. Yes, ma'am.

15 Q. And it severed his urethra?

16 A. Apparently.

17 Q. And there's no way anybody can really tell whether he will
18 ever have his urinary function back, correct?

19 A. That's what the doctor said.

20 Q. Okay. So were you not shooting at center mass?

21 A. Yes, ma'am, I was.

22 Q. Okay. You were shooting at center mass?

23 A. Yes, ma'am.

24 Q. You weren't on your knees when you were shooting?

25 A. I was standing.

1 Q. You were standing. You weren't crouched down?

2 A. No.

3 Q. And your -- but your intent, though, was to --

4 A. Stop the threat.

5 Q. -- stop the threat.

6 And you testified that you've never applied the
7 training that you received as an evidence response team member,
8 correct?

9 A. Not any of what you are asking me about.

10 Q. Well, on November 12, 1999, you responded, as a member of
11 the team, to go out and do a scene investigation, didn't you?

12 A. I took pictures from a helicopter.

13 Q. Well --

14 A. I never took coordinates, I never set off or coordinated
15 the site. I just took pictures from a helicopter.

16 Q. So you used some of the skills that you learned, correct?

17 A. But none of what you were asking me.

18 Q. Well, then, let me ask you: If you had called -- if you
19 had called the sector evidence team and secured -- if there had
20 been a need for a helicopter, they could have used it then,
21 right?

22 A. On that day?

23 Q. Right.

24 A. I don't know.

25 Q. Well, you saw that David Blea took aerial photographs for

1 the purpose of use in this trial.

2 A. The day I took -- the pictures that I took was the day
3 after. They didn't use those. They didn't use the helicopter
4 on the day of that incident. So I doubt they would have sent a
5 helicopter on that day.

6 Q. So the only thing you remember is how to take pictures from
7 the air, from your evidence training, correct?

8 A. That's it.

9 MS. KANOF: Pass the witness.

10 THE COURT: You may proceed, Ms. Stillinger.

11 REDIRECT EXAMINATION

12 BY MS. STILLINGER:

13 Q. Mr. Ramos, Ms. Kanof was just asking you about shooting to
14 kill or stopping the threat.

15 A. Yes, ma'am.

16 Q. Are you taught that it's okay to shoot to --

17 MS. KANOF: Objection, leading, Your Honor.

18 MS. STILLINGER: I can ask it differently.

19 THE COURT: All right.

20 BY MS. STILLINGER:

21 Q. What are you taught about shooting to maim versus shooting
22 at center mass?

23 A. You're not taught to shot to maim. You're not taught to
24 shoot somebody in the leg to keep them from running. You're
25 not to taught to shoot them in the arm. You're taught to stop

1 the threat.

2 Q. Okay. And what do you mean when you say center mass? What
3 does that mean?

4 A. Torso.

5 Q. Okay.

6 A. That means from the stomach area -- and we're not taught to
7 shoot at the head. So I guess you could say from the shoulder
8 to the stomach area. And that involves all your inner organs
9 from there. And that includes heart, lung, liver, everything
10 in there.

11 Q. Okay.

12 A. All vital organs, I should say.

13 Q. Okay. And where were you trying to shoot the fleeing
14 suspect that you thought was pointing a gun at you?

15 A. Center mass.

16 Q. Okay. Let me back up just a little bit. I just have a few
17 questions for you.

18 But Ms. Kanof asked you about what 46 means. She
19 showed you the -- the -- I guess that's -- well, what were you
20 looking at, by the way? Is that a code book or...

21 A. It's a code book.

22 Q. Okay. What's your understanding of what 46 means?

23 A. Well, when we call out a 46 -- it might say apprehended,
24 but if it -- if we call it out, it's -- to us, it means we've
25 got a 46 happening, or a probable, or that we saw it. If I

1 call somebody on the radio, I've got a 46, it's because I'm
2 watching it happen, and that's what it is.

3 Q. Okay. That's your understanding. In your experience, how
4 do other agents use that code?

5 A. The same way.

6 Q. Okay.

7 MS. STILLINGER: Your Honor, may I approach?

8 THE COURT: Yes.

9 MS. STILLINGER: I forgot I have a couple of
10 documents.

11 THE COURT: Sure.

12 BY MS. STILLINGER:

13 Q. Okay. And the area 76, in your experience, what is that
14 most commonly used for?

15 A. Narcotics.

16 Q. Now, Ms. Kanof asked you about the primary function of
17 Border Patrol. What -- how do you understand what your duties
18 and responsibilities are as a Border Patrol agent, as far as
19 the areas that you're supposed to police, or investigate?

20 A. Well, primary area, is immigration.

21 Q. Okay.

22 A. However, anything between the ports of entry that comes in
23 does belong to us. Customs doesn't go out to investigate it.
24 Neither does immigration, at the ports of entry. So anything
25 that comes in between the ports of entry we investigate. And

1 if that means drugs, then that means drugs.

2 Q. And what -- tell me a little about this area, I mean, the
3 area we're talking about, the Fabens area. I mean, is it
4 unusual for drugs to cross or is it a common thing?

5 A. It's well known that a lot of drugs come in through Fabens.

6 Q. Okay. What is the Mexican side of the border like in that
7 area?

8 A. The Mexican side of that Fabens area is -- it's not like
9 looking over from here into Juarez. There's no infrastructure
10 out there. It's very small towns. You don't see very much
11 traffic. There's no houses, there's no industry, there's no
12 buildings out there. There's --

13 Q. Do you -- I'm sorry. Go ahead.

14 A. It's very much agriculture, as it is in Fabens. So what
15 you see is sporadic houses. You can see the small towns out
16 there, and that's about it.

17 You don't see any type of law enforcement out there.
18 And it's pretty much owned by the drug dealers.

19 Q. Have you ever been able to call Mexican law enforcement for
20 backup on the other side of the border?

21 A. We have a channel for immigration on our radio, but that's
22 for immigration. The station --

23 Q. You mean -- I'm sorry. But you mean Mexican immigration?

24 A. Yes, I'm sorry.

25 Q. Okay. Okay.

1 A. Back at the station there -- they've tried it before.
2 There's various telephone numbers to call for Mexican police,
3 but they respond further from -- from the outskirts of Juarez.
4 So, by the time you get any type of response, it's almost none.
5 And if they do respond, by the time they get out there, you
6 know, you're looking at an hour or two, best, sometimes.

7 And they don't want to give --

8 MS. KANOF: I would object, Your Honor, as to
9 narrative, nonresponsive, and relevance.

10 THE COURT: All right. Well, I'll sustain.

11 Ask your next question.

12 MS. STILLINGER: We can move on.

13 BY MS. STILLINGER:

14 Q. Agent Sanchez, Chris Sanchez, testified about getting
15 assistance from -- through the embassy, getting assistance with
16 Mexican law enforcement. Is that something you can do?

17 A. Not on a -- not just on a whim, not like that, no.

18 Q. And Ms. Kanof asked you if you prefer seizing drug loads
19 versus catching illegal immigrants. Why -- why is that?

20 A. Well, illegal immigrants is just more an administrative
21 level. You're catching some people on a revolving door. All
22 you're going to do is get them, process them, send them back to
23 Mexico. You hear about that all the time. And those are the
24 people you hear about coming to look for jobs. So...

25 Q. And how do you feel about drugs coming into our country?

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

2 THE COURT: I'll sus- --

3 MS. STILLINGER: Your Honor, she -- she's the one that
4 asked him, you know, if he had a particular -- I guess interest
5 in seizing drug loads. I think he's --

6 THE COURT: All right. I'll let him answer.

7 BY MS. STILLINGER:

8 Q. The question was: How do you feel about drugs coming into
9 our country?

10 A. Well, if I have a preference, that's what I want to do. I
11 mean, I still do my immigration duties, because that's what I'm
12 supposed to be doing out there.

13 On a wide spectrum, am I doing a big part? No. But
14 me, as a person, me personally, that's my little part. That's
15 what I play. That's what I do. That's the part I take in my
16 job.

17 Q. Okay.

18 A. That's the little part I -- I take, and that's what I take
19 pride in.

20 Q. And what is your supervisor's -- or, I mean, not just your
21 immediate supervisor, but supervisors, or next level of
22 supervisors or chiefs, basically, the agency's attitude toward
23 catching drug smugglers? Do they want you to catch them, or
24 they don't want you to catch them?

25 A. It depends. Some -- to his credit, Mr. Richards does say,

1 you know, he likes to catch them. Because, you know, he wants
2 to put a body, I guess, to the load. But, you know, some --
3 some supervisors would rather not, because it adds to the
4 paperwork.

5 MS. KANOF: Objection, Your Honor. Who, what, where,
6 when? It's speculative.

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

8 BY MS. STILLINGER:

9 Q. Mr. Ramos, let me ask you a question. Ms. Kanof referred
10 to Agent Compean several times as your partner. Is he your
11 partner?

12 A. No, he's a co-worker. We ride by ourselves.

13 Q. Okay. Is there any special relationship between you, more
14 special than any of your co-workers?

15 A. No. I called him Joe the other day, but all our co-workers
16 we usually refer to as -- on a first-name basis. We work
17 together. We put our lives on the line on a daily basis with
18 each other. So, yeah, we're on a first-name basis.

19 Q. Okay. Let me talk you to a little bit about assaults.

20 Ms. Kanof asked you a couple of things about the time that you
21 were assaulted and stuck with a needle, right?

22 Okay. And -- and do you know whether or not forcibly
23 resisting arrest is an assault?

24 A. In my understanding, it is.

25 Q. Okay. And is that -- I mean, what had happened that time,

1 when you got stuck by the needle?

2 A. Well, he was forcibly resisting my arrest.

3 Q. Okay. And, in your experience, how do they prosecute those
4 kinds of resisting -- forcibly resisting arrest? What is --
5 what is the policy, as far as you understand it, on prosecuting
6 those?

7 A. Well, on that case, they didn't prosecute him.

8 Q. I'm sorry, they --

9 A. They didn't.

10 Q. They didn't. They did not?

11 A. Not on the assault.

12 Q. Okay. Now, you mentioned very quickly that -- you know,
13 Ms. Kanof asked about the ongoing -- you know, if you have any
14 anger over this. And you said you had to get tested. What are
15 you getting tested for?

16 A. I have to continue to get tested for AIDS and hepatitis,
17 because he did test positive for hepatitis C and AIDS. So I
18 continually have to get tested for that.

19 Q. Okay.

20 A. Plus, on both assault cases, where --

21 MS. KANOF: Objection, Your Honor, narrative,
22 nonresponsive to a question.

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

24 Wait until the next question.

25 Go ahead.

1 BY MS. STILLINGER:

2 Q. Mr. Ramos, when you testified about seeing Agent Compean
3 and he was in shock, did you mean a medical term shock, or just
4 appeared to be in shock? What did you mean by that?

5 A. He appeared to be. I mean, you can tell when somebody you
6 know is was afraid. He was afraid.

7 Q. Tell me about -- Ms. Kanof asked you about going to the
8 scene of this event. You said you went out -- since you were
9 charged with this offense, how many times have you been out
10 there?

11 A. With you --

12 Q. Uh-huh.

13 A. -- and Mr. Peters.

14 Q. Okay. That's one time, right?

15 A. Yes.

16 Q. Okay.

17 A. And the Friday, that you knew about, that I didn't go with
18 you.

19 Q. Okay. And without going into any -- you know, into the
20 details of the hour or two that we were out there, what were --
21 what was the purpose of that trip, the first, when we all went?

22 A. We were -- you were looking at the scene of where it
23 happened. We were looking at the scene of where the drugs had
24 come in.

25 I showed you the route of where he drove, went into

1 Fabens, went back. We looked at the scene of the entire
2 incident.

3 Q. Okay. And when you went out Friday -- I guess it was
4 Friday before last?

5 A. Uh-huh.

6 Q. Okay. I was thinking it was Thursday before last. But
7 when you went out Thursday before -- or whenever it was, the
8 week before last, what were you doing there?

9 A. You asked me to go videotape myself, to see how long it
10 would take me to get through the ditch.

11 Q. Okay. And about how long was that?

12 Well, that's outside the scope.

13 Now, Ms. Kanof kept talking about the scene of the
14 crime. Other than the marijuana smuggling and maybe an
15 assault, did you think any other crime had occurred there on
16 February 17, 2005?

17 A. Aside from the assault on Agent Compean?

18 Q. Aside from the marijuana smuggling and maybe an assault,
19 did you think any other crime had occurred there?

20 A. Well, I didn't know if he had been deported before, so he
21 might have -- he may have been a re-entry, what we call a
22 re-entry. So he may have been -- he may have been -- he may
23 have violated that, as well.

24 Q. Okay. Well, and -- and, right. I guess we have learned
25 that he didn't have paperwork to enter the country. So there

1 was also an illegal entry --

2 MS. KANOF: Objection, leading.

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

4 Don't lead your witness.

5 BY MS. STILLINGER:

6 Q. Let me just ask you, then: Besides the marijuana smuggling
7 and the illegal entry, or whatever kind of immigration offense,
8 and a potential assault, did you think any other crime had
9 occurred there?

10 A. Well, he was speeding around town. He was breaking all
11 those laws.

12 Q. Okay. And I'm sorry I'm not being clear. But I'm asking
13 you, really, about what happened on the vega.

14 Did you think the shooting was a crime?

15 A. Yes.

16 Q. Well, whose shooting?

17 A. I mean, I thought he was shooting at Agent Compean.

18 Q. Right. Okay.

19 A. I mean, I didn't know where the shots were coming from.

20 But I'm assuming Agent Compean was firing for a reason. I had
21 to trust his instinct, or his judgment.

22 Q. Okay. Why didn't you secure the scene as a crime scene
23 afterwards, obviously? Why didn't you?

24 A. I didn't think he was hit, and he was gone. I mean...

25 Q. Okay.

1 A. In other instances, where -- where shots were --

2 MS. KANOF: Objection, Your Honor, narrative.

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

4 Listen to the question and answer the question.

5 BY MS. STILLINGER:

6 Q. Okay. Ms. Kanof showed you a report having to do with a
7 shooting that you were involved in, right?

8 A. Yes.

9 Q. Okay. Had you ever seen this before?

10 A. No.

11 Q. Did you have to go to a hearing regarding that shooting?

12 A. No, I did not.

13 Q. Did anybody give you any results of any hearing?

14 A. No.

15 Q. Were you aware that this report had even been prepared?

16 A. No, I didn't. I was not.

17 Q. Okay. Were you -- were you trying to prevent the
18 preparation of a report like this?

19 A. No, I was not.

20 MS. STILLINGER: If I could have just a moment,
21 Your Honor?

22 THE COURT: Sure.

23 BY MS. STILLINGER:

24 Q. And Ms. Kanof showed you a transcript from some radio
25 communications from that 1996 incident, also, correct?

1 A. Yes, ma'am.

2 Q. Had you ever seen that before?

3 A. No, never.

4 Q. You know, Mr. Ramos, yesterday, I asked you a series of
5 questions about if you had to do anything over again, would you
6 do anything different, as far as the vehicle pursuit and the
7 foot pursuit and the shooting. And I forgot to ask you the
8 last part of that.

9 Would you do anything different, as far as the
10 reporting to your supervisor?

11 A. Yes. I would make sure I would have gone and reported it
12 to him, and made sure that everyone heard me.

13 MS. STILLINGER: I'll pass the witness.

14 THE COURT: Mr. Antcliff?

15 MR. ANTCLIFF: No questions.

16 THE COURT: Ms. Kanof.

17 REXCROSS-EXAMINATION

18 BY MS. KANOF:

19 Q. Mr. Ramos?

20 A. Yes, ma'am.

21 Q. You testified yesterday that you know that the individual
22 who had the hypodermic needle you got stuck with was prosecuted
23 for a 1326, correct?

24 A. No. I said he wasn't prosecuted for the assault.

25 Q. Okay. But you said he was prosecuted for the illegal

1 re-entry after deportation.

2 A. If I said that, I don't remember. I'm sorry.

3 Q. Well, you know he was prosecuted, right?

4 A. I believe so.

5 Q. Okay. And do you know that an 18 USC 1326 carries a higher
6 penalty than assault?

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

8 MS. STILLINGER: Objection, Your Honor.

9 THE COURT: All right.

10 MS. STILLINGER: I think he answered.

11 THE COURT: He said he doesn't know.

12 BY MS. KANOF:

13 Q. You testified just now, if I have a preference, that's what
14 I'm going to do, drugs, right?

15 A. I guess so.

16 Q. You guess so. You didn't testify to that?

17 A. I don't remember.

18 Q. Well, you just answered your attorney's question about it.

19 A. Okay. I -- I guess if I said that, yes.

20 Q. You wanted to catch that load, right?

21 A. Yes, I did.

22 Q. You prefer doing drugs, because illegal alien work is
23 administrative, and it's a revolving door, correct?

24 A. Well, it is.

25 Q. Why don't you join the Drug Enforcement Administration?

1 A. Because I don't want to do DEA.

2 Q. Why don't you join ICE and do loads at the port of entry?
3 There's plenty of that work, isn't there?

4 A. Because I want to be a Border Patrol agent.

5 Q. But a Border Patrol agent is primarily doing that revolving
6 door administrative work, isn't it?

7 MS. STILLINGER: Your Honor, I object to this. This
8 is argumentative.

9 THE COURT: I'll overrule.

10 BY MS. KANOF:

11 Q. Isn't it?

12 A. Yes, ma'am.

13 Q. But you don't like that, right?

14 A. It's part of the job. You don't have to like everything
15 about your job, but it's part of it.

16 Q. Well, when you talked about preferring to chase drugs, you
17 just told Ms. Stillinger, didn't you, That's the part I play,
18 right?

19 A. I don't think I used those words.

20 Q. You don't recall saying, That's the part I play?

21 A. If I did, then I apologize, yes.

22 Q. And that is the part you play in the cat and mouse game,
23 isn't it?

24 A. I meant that as, that's the role I play. I mean, I go out
25 and do my job. Some days I catch aliens, undocumented

1 immigrants, and some days I catch drugs.

2 Q. Are they both cat and mouse games, or just -- just the drug
3 part?

4 A. I wouldn't call it a cat and mouse game. If I used those
5 words, I apologize.

6 Q. Agent Ramos, just now Ms. Stillinger asked you whether you
7 thought there was a crime scene to secure out there, correct?

8 A. Yes, ma'am.

9 Q. Isn't it true the shooting policy requires securing of the
10 scene in a discharge of a firearm?

11 A. Yes, ma'am.

12 Q. There doesn't have to be a crime, right?

13 A. Yes, ma'am.

14 Q. And they secure the scene in a discharge of a firearm to
15 investigate if it's a good shoot, correct?

16 A. Yes, ma'am.

17 Q. And, because you did not secure the scene, they could not
18 investigate if your shoot was a good shoot in this case,

19 correct?

20 A. Yes, ma'am.

21 MS. KANOF: No further questions.

22 THE COURT: Ms. Stillinger?

23 MS. STILLINGER: I have nothing else, Your Honor.

24 THE COURT: Mr. Antcliff?

25 MR. ANTCLIFF: No, questions, Your Honor.

1 THE COURT: May he step down?

2 MS. STILLINGER: Yes.

3 THE COURT: All right. Thank you. You may step down.

4 Ladies and gentlemen of the jury, it's 3:00. We're
5 going to go ahead and take the midafternoon break, so the Court
6 stands in recess at this time.

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

8 THE COURT: You may be seated.

9 Are there any matters we need to take up before we
10 take a break?

11 MS. RAMIREZ: No, Judge.

12 MS. KANOF: Nothing from the Government.

13 MR. ANTCLIFF: No, Your Honor.

14 MS. STILLINGER: No, Your Honor.

15 THE COURT: All right. We'll take a 15-minute recess.

16 (Recess; open court, parties present, jury not
17 present.)

18 THE COURT: You may be seated.

19 Anything we need to do before we bring in the jury?

20 MS. STILLINGER: Just briefly, Your Honor, I don't
21 think I'm going to have a lot more testimony. I did want to
22 make my bill before we rested. And I don't know if -- I mean,
23 of course, that would require the jury going out again. I
24 don't know if you want me to just rest, but we'll know that
25 it's just provisional of me making my bill.

1 THE COURT: Okay.

2 MS. STILLINGER: We can do it at the end of the day or
3 at the beginning of the day tomorrow.

4 THE COURT: Okay.

5 MS. STILLINGER: But I just know that I will be
6 resting fairly soon.

7 THE COURT: Okay. Do you have any problem with her
8 making a bill after she rests, or do you want her to make the
9 bill before?

10 MS. KANOF: I don't have a problem with her making it
11 after she rests, if she's going to rest today.

12 MS. STILLINGER: Yes.

13 MS. KANOF: But before she makes the bill, if we could
14 approach the bench.

15 THE COURT: Sure. That would be fine.

16 MS. STILLINGER: Okay. We're ready, then.

17 THE COURT: All right. That way we don't keep the
18 jury waiting too much longer, because I'd like to get rolling
19 again.

20 MS. STILLINGER: Rene Sanchez will be our next
21 witness.

22 THE COURT: We're ready for the jury.

23 (Open court, parties and jury present.)

24 THE COURT: You may be seated.

25 You may call your next witness.

1 MS. STILLINGER: The next witness is Rene Sanchez.

2 THE COURT: And, Mr. Sanchez, you are still under
3 oath.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Go ahead.

6 MS. STILLINGER: Thank you.

7 RENE SANCHEZ, DEFENDANT'S WITNESS, SWORN

8 DIRECT EXAMINATION

9 BY MS. STILLINGER:

10 Q. Agent Sanchez, I know you testified last week, right?

11 A. Yes, ma'am.

12 Q. Okay. And I think I heard you testify that you did not
13 discuss with Mr. Aldrete-Davila his claim for damages that he
14 was making against the Border Patrol. Is that right?

15 A. Yes, ma'am.

16 Q. Okay. And is that still your testimony today?

17 A. Yes, ma'am.

18 Q. Okay. Did you advise him on how to get immunity from
19 prosecution?

20 A. No, ma'am.

21 Q. Okay. Did you help him find a lawyer to make his claim
22 against the Border Patrol?

23 A. No, ma'am.

24 Q. Okay. Did you give him advice on how to tell his story?

25 A. No, ma'am.

1 Q. Okay. I also thought I asked you about occasions that you
2 had met with Mr. Aldrete-Davila recently.

3 A. Yes, ma'am.

4 Q. Do you recall meeting with him in Mexico since -- sometime
5 since the shooting in this case?

6 A. No, ma'am.

7 Q. Okay. I'm sorry. You can rethink that if you would like.

8 A. Okay. Did you say before this shooting?

9 Q. No, after -- after the shooting?

10 A. After the shooting.

11 Q. Sometime since February 17th of 2005.

12 A. In Mexico?

13 Q. Yes.

14 A. No.

15 Q. Okay. Has Mr. Aldrete-Davila ever given you information to
16 help you in your work?

17 MS. KANOF: Objection, asked and answered last time.

18 THE COURT: I'll overrule.

19 BY MS. STILLINGER:

20 Q. I think I asked Mr. Aldrete-Davila. I don't think I asked
21 this witness.

22 A. Can you repeat the question?

23 Q. Yes. Has Mr. Aldrete-Davila ever given you information
24 about activities in the Fabens area that might help you in your
25 work?

- 1 A. No, ma'am.
- 2 Q. Okay. When you were first contacted -- your first
3 knowledge about this was from your mother-in-law. Is that
4 right?
- 5 A. Yes, ma'am.
- 6 Q. Okay. And I think you said you advised your supervisor.
- 7 A. Yes, ma'am.
- 8 Q. And then you decided to investigate, correct?
- 9 A. I was ordered to. Yes, ma'am.
- 10 Q. Okay. You testified that you looked in a Border Patrol
11 computer. What computer system was that?
- 12 A. BPETS.
- 13 Q. Okay. What does BPETS have in it?
- 14 A. It has number of apprehensions by station, sector, area,
15 any seizures, any agents assigned to a particular area.
- 16 Q. Okay. Wouldn't the BPETS computer that you have access to
17 just cover just Arizona?
- 18 A. No, ma'am.
- 19 Q. Okay. Your testimony is you could get into the computer
20 system that covers the Fabens area?
- 21 A. Yes, ma'am.
- 22 Q. Okay. And would an SIR, a significant incident report
23 about a shooting, be in BPETS?
- 24 A. It should be in there, ma'am.
- 25 Q. Okay. How do you -- how do you search your computer to

1 find that?

2 MS. KANOF: Your Honor, I'm going to object to, first
3 of all the relevance. And, secondly, I think we might be
4 getting into governmental confidentiality.

5 THE COURT: All right.

6 Where are we going?

7 MS. STILLINGER: Well, Your Honor, he testified about
8 looking in the computer, and I have information -- well, I'm
9 just trying to, I guess, test the validity of his information
10 about the computer system. But you know, I could move on now.

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

12 BY MS. STILLINGER:

13 Q. Did you make any other efforts to find out what had
14 happened in Fabens?

15 A. Yes, ma'am.

16 Q. Okay. What did you do?

17 A. I contacted another agent that was on detail to the Fabens
18 station.

19 Q. Okay. And who was that?

20 A. Agent Nolan Blanchette.

21 Q. Okay. And do you remember when that was, more or less?

22 A. It was within a week or two of the -- of the shooting.

23 Q. Okay. Within a week or two of the shooting?

24 A. Yes.

25 Q. And he told you about the dope load that had been seized,

1 right?

2 A. Yes, ma'am.

3 Q. Okay. Was this how you first found out about the dope
4 load?

5 A. No, I saw it on BPETS.

6 Q. Okay. Did you see it on BPETS before Mr. Aldrete-Davila
7 told you about it?

8 A. Yes, ma'am.

9 Q. So if you talked to Nolan Blanchette a week or two after
10 the shooting, and you had already found out about it on BPETS,
11 you knew about -- you certainly knew about the dope load before
12 March the 3rd, right?

13 A. Yes. Because that's when I --

14 Q. Okay. Well, you left that kind of important fact out of
15 the memo that you wrote, didn't you?

16 MS. KANOF: Objection, Your Honor, argumentative.
17 Your Honor, can we approach the bench?

18 THE COURT: Sure.

19 (Bench conference:)

20 MS. KANOF: Maybe I just need to do it on direct, but
21 I don't know how to do it in redirect. I'm a little concerned
22 about impeaching, and I don't know if this is where she's
23 going; she sort of has already been there. I'm impeaching him
24 about seeing the drugs, which he did not testify to in direct,
25 because he was instructed under a motion in limine not to.

1 And I guess I'm -- I'm asking that there not be any
2 questions misleading -- or the Court instruct the jury that
3 during his first testimony he had been instructed under a
4 motion in limine that he could not discuss the fact that he had
5 seen a drug report.

6 THE COURT: Well, I guess my question is, how can
7 you -- the only way to impeach him is if he said something on
8 the witness stand that's contrary to what he's saying now or
9 said in a prior statement. So I guess my question is, What are
10 we going into now, that you're saying he previously took a
11 different position on?

12 MS. STILLINGER: Well, he testified about his March
13 3rd memo previously, and he testified at that time he hadn't
14 talked to Aldrete-Davila. And so he didn't know -- he believed
15 that it was correct -- the information in that was correct.

16 THE COURT: Okay. And what's that got to do with my
17 motion in limine, then?

18 MS. STILLINGER: Well, no. What she's saying is --
19 which I actually hadn't thought about doing, and I won't. What
20 she's saying, she was concerned that somehow I'd make it look
21 like the fact that he didn't talk about the load the last time
22 he testified, make it look like he was holding something back,
23 which I'm not trying to do that, because there was a motion in
24 limine when he testified last week. And he couldn't talk about
25 the load.

1 But really what I'm saying is, he wrote a memo on
2 March 3rd and said this guy was shot in the back when he was
3 trying to return after an illegal entry, and he knew that
4 wasn't true. I mean, he wrote that memo on March 3rd.

5 MS. KANOF: No, he didn't testify that he knew it
6 wasn't true. He testified that when he wrote that memo March
7 3rd, he had talked to his mother-in-law, who had taken the
8 telephone to Mexico and he talked to Osvaldo.

9 MR. ANTCLIFF: He just said, though that, he knew
10 about the dope before he wrote the memo.

11 MS. KANOF: And I think that was -- I think the
12 question was confusing. I don't think that's what he meant to
13 say. And I'll do it on redirect.

14 MR. ANTCLIFF: She's right about the limine stuff.

15 THE COURT: Yeah, I understand. Well, if I feel -- I
16 mean, depending on where it goes, I may instruct them. I just
17 wasn't sure what the concern was. But if there is a valid
18 concern, then I will instruct them on it.

19 You may proceed.

20 (End of bench conference; open court.)

21 THE COURT: All right. Go ahead, Ms. Stillinger.

22 MS. STILLINGER: Thank you.

23 BY MS. STILLINGER:

24 Q. Agent Sanchez, when you found out about the seizure of
25 marijuana on the computer, did you tell someone, Hey, I know

1 who the smuggler in this marijuana case is?

2 A. No, ma'am.

3 Q. Okay. And it was important to you to find out whether or
4 not the shooting had been reported, right?

5 A. Yes, ma'am.

6 Q. Okay. Because there might be a good lawsuit, if the
7 shooting wasn't reported, right?

8 A. If the shooting wasn't reported?

9 Q. Right.

10 A. If it wasn't reported, I guess, ma'am.

11 Q. I guess what I'm asking you is: What you were really doing
12 was investigating the viability of a lawsuit, wasn't it?

13 A. No, ma'am.

14 Q. Okay. So even if you saw there wasn't any chance for a
15 lawsuit, because the shooting had been reported and it had been
16 declared a justified shooting, you weren't going to tell them,
17 Yes, but I knew who the drug smuggler is, anyway, were you?

18 A. At the point when I saw the seizure on BPETS, I didn't know
19 who the smuggler was.

20 Q. Well, you were only looking at it because you knew that
21 Aldrete-Davila had been involved in an incident there, right?

22 A. I wasn't -- yes, ma'am.

23 Q. Okay. And then you connected it to a seizure, right?

24 A. The first time I looked at BPETS, I didn't have any
25 knowledge of the shooting incident being connected to the

1 seizure.

2 Q. I see what you're saying. And then, when you spoke to
3 your -- to another agent out here, he told you about the
4 seizure, the big seizure of drugs, right?

5 A. Yes, ma'am.

6 Q. Okay. And were you starting to think then, Well, maybe
7 that has something to do with the shooting?

8 A. No, ma'am.

9 Q. Okay. So you're saying you didn't put two and two together
10 until Aldrete-Davila confessed to you?

11 A. Yes, ma'am.

12 Q. Okay. And -- and aside from communicating that information
13 to your supervisor, knowing it would be passed on to OIG, you
14 didn't do anything to help him, Mr. Aldrete-Davila, in this
15 case. Is that what you're saying?

16 A. Yes.

17 Q. Okay. Thank you.

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

19 THE COURT: Sure.

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

21 CROSS-EXAMINATION

22 BY MS. KANOF:

23 Q. Agent Sanchez, when you testified before, you were under a
24 Court order, known as a motion in limine, correct?

25 Do you remember you were not allowed to talk about the

- 1 marijuana at all when you first testified, correct?
- 2 A. Yes, ma'am.
- 3 Q. And you were advised that the Court had ordered that it
- 4 wasn't the time when the marijuana could be talked about,
- 5 correct?
- 6 A. Yes, ma'am.
- 7 Q. So, at that time, you weren't able to tell the jury, when
- 8 you first looked in BPETS, what you found, correct?
- 9 A. Correct, ma'am.
- 10 Q. Okay. Now, you can?
- 11 A. Yes.
- 12 Q. Okay. When -- I just want to get the chronology straight.
- 13 A. Yes, ma'am.
- 14 Q. The first time you hear about anything is, you hear about
- 15 what? Marijuana or a shooting?
- 16 A. A shooting, ma'am.
- 17 Q. From your mother-in-law, correct?
- 18 A. Yes, ma'am.
- 19 Q. What date?
- 20 A. It was February 28th, 2005.
- 21 Q. Okay. Then you talked to Mr. Karhoff, your supervisor,
- 22 correct?
- 23 A. Yes, ma'am.
- 24 Q. And what does he tell you to do?
- 25 A. To get more information, because I just had the information

1 from a shooting. He needed the specifics.

2 Q. And, at that time, you didn't know Osvaldo had marijuana,
3 correct?

4 A. Correct.

5 MS. STILLINGER: Your Honor, she's leading the
6 witness. I object.

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

8 BY MS. KANOF:

9 Q. Was it part of what he instructed you to do that you looked
10 in BPETS?

11 MS. STILLINGER: Your Honor, that's still leading.

12 THE COURT: I'll sustain.

13 BY MS. KANOF:

14 Q. Why did you look in BPETS?

15 A. I looked in BPETS to see what incidents had happened on
16 the -- on the day of the incident.

17 Q. February 17th?

18 A. Yes, ma'am.

19 Q. Okay.

20 A. To see if there was a shooting on the -- when you open the
21 computer page, the window, it's there. Everything is there,
22 the apprehensions, the shooting incidents, the...

23 Q. When you looked at February 17, 2005, what did you find?

24 A. I found there was a drug seizure on that day.

25 Q. And what document did you find that related to a drug

1 seizure?

2 A. An I-44.

3 Q. Was the text of the I-44 part of that?

4 A. No, ma'am.

5 Q. Just that there -- that one existed. Is that correct?

6 A. Yes.

7 Q. And what's an I-44?

8 A. It's a report of apprehension or seizure.

9 Q. And so you saw that there had been a seizure of drugs on

10 2-17, correct?

11 A. Yes, ma'am.

12 Q. What, if any, evidence did you find on February 17th that

13 there had been a shooting?

14 A. None.

15 Q. Okay. Then what was the next -- did you take that

16 information back to your supervisor?

17 A. No.

18 Q. Okay. What did you do next?

19 A. I believe I contacted Nolan Blanchette --

20 Q. Okay.

21 A. -- and asked him if he had heard about a shooting in the

22 Fabens area.

23 Q. When you contacted Nolan Blanchette, did you tell him that

24 you had seen the I-44 in BPETS?

25 MS. STILLINGER: Objection, Your Honor, leading.

1 THE COURT: All right.

2 BY MS. KANOF:

3 Q. Did you -- what did you tell him?

4 A. I told him that -- I asked him if he had heard -- if he
5 heard about a shooting in the Fabens area, or any shooting
6 incidents.

7 Q. Okay. At that time, did you relate this shooting incident
8 to the I-44 drug seizure?

9 A. No, ma'am.

10 Q. Did BPETS have the name of the drug transporter?

11 A. No, ma'am.

12 Q. So you asked him about a shooting, and he -- what did he
13 say?

14 A. He said that he hadn't heard about a shooting in the Fabens
15 area.

16 Q. Okay. And that was what date? Was that before you wrote
17 your memo?

18 A. I believe it was, ma'am.

19 Q. Okay. Part of your investigation to find out if there had
20 been a shooting?

21 A. Yes.

22 Q. And then did you write your memo?

23 A. Yes.

24 Q. Okay. When -- your memo is dated March 3rd. Is that the
25 day you wrote it?

1 A. March 3rd? Yes, ma'am.

2 Q. Okay. And had you yet found out that Osvaldo had marijuana
3 with him when you wrote the memo?

4 A. No, ma'am.

5 Q. Okay. After you wrote that memo, did you give it to your
6 supervisor?

7 A. Yes, ma'am.

8 Q. And at what point in time did you find out Osvaldo had
9 drugs?

10 A. Later on, I think. I don't know the exact date, but I
11 think it was about a week later, or something like that, during
12 the course of that week.

13 Q. Okay.

14 MS. KANOF: Pass the witness.

15 THE COURT: All right.

16 Ms. Stillinger, any questions?

17 REDIRECT EXAMINATION

18 BY MS. STILLINGER:

19 Q. Agent Sanchez, when you were looking in BPETS -- I'm sorry.
20 Your memo about this incident reflects that you thought the
21 shooting occurred in the San Elizario area, right?

22 A. Yes, ma'am.

23 Q. Okay. So when you were looking in BPETS, weren't you
24 looking in the San Elizario area?

25 A. Yes, ma'am.

1 Q. Okay. So you wouldn't have found a drug seizure in the
2 Fabens area, would you?

3 A. Yes, ma'am.

4 Q. Yes, you would have? Or --

5 A. Yes. I believe San Elizario and Fabens, that area should
6 be in the Fabens area.

7 Q. I'm sorry. Are you saying that San Elizario is part of the
8 Fabens area?

9 A. Yes, ma'am.

10 Q. Oh, okay. So you were looking in the Fabens area, I guess,
11 searching whatever access you have to the Fabens area computer,
12 right?

13 A. Yes, ma'am.

14 Q. Okay. And your testimony is you have full access to
15 information about drug seizures in every Border Patrol station
16 in the country?

17 A. As far as BPETS goes, I don't know if it's every station,
18 but I believe it's every station in the country.

19 Q. Okay. And, of course, you know now that San Elizario is in
20 the Ysleta station, right?

21 A. I was not aware of that.

22 Q. You don't know? Okay. Okay.

23 A. No.

24 Q. You didn't tell your supervisor that you had found out
25 about this drug seizure when you found that in BPETS, did you?

1 A. No.

2 Q. Okay. And I think you said earlier your supervisor had
3 actually not given you permission to search the computer for
4 information about this incident, had he?

5 A. Not given me?

6 Q. Right.

7 A. He told me to investigate the subject, to get more
8 information.

9 Q. Okay.

10 A. Yes. So I took it as I can look on the system.

11 Q. You assumed that that was all right?

12 A. Yes.

13 Q. Is that fair to say?

14 A. Yes.

15 Q. Okay. Even though you know, generally speaking, you're not
16 supposed to investigate things for friends or family members,
17 right?

18 A. Yes, ma'am.

19 Q. Okay.

20 MS. STILLINGER: I'll pass the witness.

21 THE COURT: Mr. Antcliff, did you have any questions?

22 MR. ANTCLIFF: I don't, Your Honor.

23 THE COURT: All right.

24 Ms. Kanof?

25 MS. KANOF: One.

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RECCROSS-EXAMINATION

BY MS. KANOF:

Q. Were you looking in the computer for a friend or a family member?

A. No, ma'am.

Q. Thank you.

MS. KANOF: I pass the witness.

MS. STILLINGER: I have no other questions.

MR. ANTCLIFF: No questions.

THE COURT: All right. May -- is he free to go?

MS. KANOF: Yes, from the Government.

MS. STILLINGER: Yes. We have no objection.

MR. ANTCLIFF: Yes, Your Honor.

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

You may call your next witness.

MR. PETERS: We call Rob Russell.

THE COURT: Rob Russell?

MR. PETERS: Rob Russell.

THE COURT: You have not been sworn. Is that correct?

THE WITNESS: No, ma'am, I was.

THE COURT: You were?

THE WITNESS: Yes.

1 ROBERT RUSSELL, DEFENDANT'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MR. PETERS:

4 Q. State your name, please.

5 A. Robert Russell.

6 Q. Mr. Russell, how are you employed?

7 A. U.S. Border Patrol agent.

8 Q. How long have you been so employed?

9 A. Eight and a half years.

10 Q. Where are you stationed?

11 A. El Paso station.

12 Q. How long have you been stationed here?

13 A. Six years now.

14 Q. In connection with your employment with the Border Patrol,
15 do you hold some other office?

16 A. Yes, sir.

17 Q. What is that?

18 A. Vice president of the local union.

19 Q. What's the name of that union?

20 A. Local 1999 of the National Border Patrol Council.

21 Q. How long have you held that position?

22 A. Three years as vice president.

23 Q. Okay. And you've been active in the union for some time?

24 MS. KANOF: Objection, leading, Your Honor.

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

1 BY MR. PETERS:

2 Q. Have you been active in the union for more time than that?

3 A. Yes, sir.

4 Q. Okay. In the course of being involved in the union,

5 what -- what kind of function, if any, do you perform?

6 A. We represent agents individually on disciplinary cases, as
7 well as the bargaining unit as a whole, all the employees in
8 the sector.

9 Q. And with regard to representing agents on disciplinary
10 cases, what do you do?

11 A. If the agency proposes a disciplinary action against an
12 employee for something happening on duty, usually violating a
13 rule or a policy, or something that took place at the station
14 or the field, once it's proposed, we represent them, if they
15 request it.

16 Q. And in what kind of proceeding do you represent them?

17 A. Strictly administrative.

18 Q. Describe, just briefly, these administrative proceedings,
19 how they -- how they operate.

20 A. The employees propose some type of discipline, depending on
21 what the allegation may be. We take the case file, request the
22 information, prepare documents, usually a written and an oral
23 response, meet with management from the agency, usually an
24 A-chief or the chief himself, present our case, and wait for a
25 decision to be reached.

1 Q. Are you familiar with the term "past practice"?

2 A. Yes, sir, I am.

3 Q. What does that mean?

4 A. Past practice, in most case law, has been defined as

5 something that --

6 MS. KANOF: I would object to him talking about case
7 law, Your Honor. He hasn't said he was a lawyer.

8 MR. PETERS: I'm not ask- -- okay.

9 THE COURT: I'll sustain.

10 BY MR. PETERS:

11 Q. Okay. Without talking about case law, just say what the
12 term "past practice" is in your duties as a union
13 representative.

14 A. The past practice, for the union, we utilize that where the
15 agency establishes a certain way of doing things. Usually --
16 whether it be anything from how we handle situations on the
17 line, the policies, procedures. Sometimes they can be doing
18 something a certain way for such a long period of time, the
19 agency may come out and create a whole new policy.

20 And in most cases, if that happens, the union will
21 intervene, because the past practice is established for the
22 employees to do it a certain way, usually remains that way.
23 They are not supposed to change it.

24 Q. Okay. Well, in the event that an employee is brought up in
25 an administrative proceeding for violating a written

1 regulation, is past -- is past practice a defense to that?

2 A. Yes, in some cases, it is.

3 Q. Okay. And does it happen very often?

4 A. I would say about maybe half the time, in some of the cases
5 I've dealt with.

6 Q. Okay. And what that would be, would be where there's a
7 written policy, but there's actually a practice --

8 MS. KANOF: Objection, leading, Your Honor.

9 THE COURT: I'll sustain. Don't lead.

10 BY MR. PETERS:

11 Q. Okay. If there's a written -- okay. Okay. Let me
12 rephrase it.

13 When a written policy -- in the context of an employee
14 disciplinary proceeding, when an established practice -- a past
15 practice differs from a written policy, which one is the agent
16 required to follow?

17 A. I would say the past practice would be the one to follow.

18 Q. And has that been upheld or not, by the administrative
19 proceedings that you've participated in?

20 A. Yes, sir. When we filed on them, it usually comes down to
21 the past practice being the precedent.

22 Q. And is that common?

23 A. Yes, it is.

24 Q. Okay. Are you familiar with the Border Patrol Enforcement
25 Tracking System, known as BPETS?

1 A. Yes, sir, I am.

2 Q. As a Border Patrol agent, do you use that?

3 A. Only for doing our scheduling, picking our days off and
4 stuff.

5 Q. Okay. Are you familiar with -- when you have access to it,
6 is there a limitation to what sectors you can have, or is there
7 not -- or what -- what stations you can access? Or are you
8 able to get the whole national BPETS system?

9 A. It varies. When I performed as acting supervisor, I had
10 access to multiple ones. As an agent, some of us are limited
11 to just our specific station.

12 Q. Do some agents get broader access than just the specific
13 station --

14 A. Yes.

15 Q. -- if they're not supervisors?

16 A. Yes, they do.

17 Q. Under what circumstances do they get it?

18 A. Intel agents, supervisors that may be acting in the
19 capacity of a supervisor.

20 Q. Just a normal Border Patrol agent, how much access to that
21 does he have?

22 A. To my knowledge, I believe just the station.

23 MR. PETERS: Pass the witness.

24 THE COURT: Mr. Antcliff?

25 MR. ANTCLIFF: No questions, Your Honor.

1 THE COURT: Ms. Kanof?

2 CROSS-EXAMINATION

3 BY MS. KANOF:

4 Q. Your collective bargaining agreement does not permit you to
5 give criminal legal advice, does it?

6 A. No, ma'am, it does not.

7 Q. But you do it all the time, don't you?

8 A. No, ma'am.

9 Q. You gave Mr. Jacquez criminal legal advice in this case,
10 and you told him, Take the Fifth, when the Government wants to
11 talk to you, didn't you?

12 A. Yes, ma'am, I did.

13 MR. PETERS: Objection, Your Honor. This is outside
14 the scope.

15 THE COURT: All right.

16 MS. KANOF: It's impeaching his credibility,
17 Your Honor.

18 MR. PETERS: No, it's impeaching his --

19 THE COURT: I'll sustain.

20 BY MS. KANOF:

21 Q. You were present when Chief Barker interviewed both
22 Mr. Compean and Mr. Ramos, correct?

23 MR. PETERS: Same objection.

24 MS. KANOF: Oh, no. This goes to past practice.

25 THE COURT: Okay. Well, hold on.

1 Don't answer until I rule.

2 And -- yes?

3 MR. ANTCLIFF: I want to approach.

4 THE COURT: Oh, okay. Well, then, come on, before I
5 rule.

6 (Bench conference:)

7 MR. ANTCLIFF: Sorry, it was me. I'm not sure where
8 Ms. Kanof is going right now. But if she's going to ask him
9 questions about his participation in the -- whatever, with
10 Compean and Barker, then I may, at the bench, outside the
11 presence of the jury.

12 THE COURT: But what's your objection?

13 MR. ANTCLIFF: Outside the scope of my direct. I
14 didn't ask any questions. And I -- she got her chance, her
15 crack at this already, when she was dealing with Chief Barker.

16 MS. KANOF: I never heard of past practice before this
17 very moment, Your Honor. And the reason is because he was
18 present at both of the hearings with Barker. He asked about
19 the shooting, and he never invoked past practice, and he did
20 most of the talking.

21 MR. PETERS: Past practice goes into what you invoked
22 in this trial, which is the pursuit policy, which was not an
23 issue in those hearings, and really shouldn't be an issue in
24 the trial. But you opened the door, and we're entitled to show
25 violations of minor technical written regulations that are not

1 necessarily --

2 THE COURT: Well, then, why don't we clarify what
3 practices we're talking about?

4 MR. PETERS: Well, we're not talking -- it could apply
5 to those. The fact he didn't invoke the past practices -- we
6 didn't invoke any defenses to speak of at our hearings. All we
7 did was write him a letter and say that the shooting was
8 justified. There was no discussion.

9 MS. KANOF: Now, you represent Ramos -- no,
10 Ms. Stillinger was present, and she didn't just write a letter.

11 MR. PETERS: I know. But, basically, we were very
12 careful, for reasons -- for -- we were being criminal lawyers,
13 rather than civil lawyers. We were careful not to go outside
14 of saying, basically, look at the transcript of the hearing of
15 the prelim, this is what it shows. And that's all we did. The
16 fact that we didn't invoke past practice at that hearing is
17 irrelevant. He wasn't at our hearing anyway.

18 MR. ANTCLIFF: I wasn't in this case when Mr. Compean
19 went before Chief Barker. Ms. Ramirez was. I do not believe
20 she was present at either hearing. This guy was. But he
21 hasn't heard from his criminal defense lawyer under any
22 circumstance that I understand, and I wasn't --

23 THE COURT: Okay. So where --

24 MR. ANTCLIFF: It's not relevant.

25 MR. PETERS: What they're trying to say is you didn't

1 invoke past practice in Compean's -- at his administrative
2 hearing. And all we're trying to establish by this witness is
3 that it is the practice in the Border Patrol that sometimes the
4 procedures the agents are required to follow, expect to follow,
5 and allowed to follow, are not exactly what's written down on
6 that paper.

7 THE COURT: And I got that. But she's allowed them to
8 cross-examine about that.

9 MS. KANOF: I have questioned -- Your Honor -- are you
10 going to call a witness to say that the pursuit policy is now
11 past practice? I'm asking the question.

12 MR. PETERS: I don't really intend to call anymore
13 witnesses at this point, depending on how this comes out.

14 MS. KANOF: Your Honor, basically, what they have done
15 is they have left this idea of past practice so that they can
16 argue that everything that happened was past practice.

17 THE COURT: I understand. That's why I'm saying --

18 MR. PETERS: There's been testimony on that, Judge,
19 already.

20 THE COURT: Hold on. One at a time.

21 MR. PETERS: And you crossed our client about it.

22 THE COURT: Okay. But the problem becomes that you've
23 got him up there saying that there's past practice. How is she
24 not allowed to cross-examine them about what past practice
25 means?

1 MR. PETERS: She can.

2 MR. ANTCLIFF: I think she can. She's certainly
3 entitled to cross-examine about what past practices we're
4 talking about. What I wanted to approach about is, I don't
5 want her to go into the testimony this guy gave, or whatever it
6 was, at those hearings.

7 MR. PETERS: Or raise the issue whether it was invoked
8 at the administrative hearing.

9 THE COURT: Well, I'm not concerned about what he
10 invoked at the administrative hearing. It's not relevant for
11 this, unless it's a -- unless it's a -- but I am concerned
12 that -- that the jury understands what he's saying is past
13 practice and what that allows or doesn't allow.

14 MR. PETERS: I don't have a problem with that, Judge.

15 THE COURT: All right. So you can cross.

16 MS. KANOF: I'm sorry, Your Honor. I didn't
17 understand the ruling.

18 THE COURT: Well, then, welcome to my world. Half the
19 time I don't understand your objections.

20 What I said is that he has alluded to an issue
21 regarding past practice. I have no problems with you
22 cross-examining about the issue of past practice. I don't want
23 to get into what was invoked at some hearing. They don't even
24 know about this hearing. It's way too confusing. It has
25 nothing to do with it.

1 (End of bench conference; open court.)

2 THE COURT: You may proceed, Ms. Kanof, when you're
3 ready.

4 BY MS. KANOF:

5 Q. You're not telling this jury that it's past practice not to
6 report a discharge of a firearm within an hour of its
7 discharge, are you?

8 A. No, ma'am.

9 MS. KANOF: Pass the witness.

10 THE COURT: Anything further of this witness?

11 MR. PETERS: No further questions, Your Honor.

12 MR. ANTCLIFF: No questions.

13 THE COURT: All right. Is he free to go?

14 MR. PETERS: Yes.

15 MR. ANTCLIFF: Yes, ma'am.

16 THE COURT: Thank you. You may step down.

17 You may call your next witness.

18 MS. STILLINGER: Subject to the bill, we are resting
19 at this time, Your Honor.

20 THE COURT: Okay. You may call your first witness.
21 Would you like to take a short break?

22 MR. ANTCLIFF: Yes, Your Honor.

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, we're going to take a real short break. It is about
25 4:20. We will break until about 4:30. All right?

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

2 THE COURT: You may be seated.

3 All right. We're outside the presence of the jury.

4 Do -- is there anything we want to take up?

5 MS. STILLINGER: We were just talking about
6 scheduling.

7 THE COURT: Okay. Did you --

8 MR. ANTCLIFF: Not as far as I'm concerned,
9 Your Honor.

10 THE COURT: Okay.

11 (Recess; open court, parties present, jury not
12 present.)

13 THE COURT: Are we ready to bring in the jury?

14 MR. ANTCLIFF: Yes, Your Honor. I'm sorry.

15 (Open court, parties and jury present.)

16 THE COURT: You may be seated.

17 You may call your first witness.

18 MR. ANTCLIFF: Thank you, Your Honor. I call Jose
19 Compean.

20 THE COURT: And he has not been sworn, so if you would
21 swear him in.

22 (Witness sworn by the Clerk.)

23 THE COURT: Whenever you're ready, Mr. Antcliff.

24 MR. ANTCLIFF: Thank you, Your Honor.

25

1 JOSE ALONSO COMPEAN, DEFENDANT, SWORN

2 DIRECT EXAMINATION

3 BY MR. ANTCLIFF:

4 Q. Good afternoon, sir.

5 A. Good afternoon.

6 Q. Would you please, for the record, state your name?

7 A. Jose Alonso Compean.

8 Q. Mr. Compean, what do you do for a living?

9 A. I'm a Border Patrol agent.

10 Q. How long have you been a Border Patrol agent?

11 A. Approximately six years.

12 Q. Are you on active duty right now?

13 A. No, sir, I am not.

14 Q. And what is your status with the Border Patrol now?

15 A. I have been suspended without pay since about May of last
16 year.

17 Q. Okay. How old are you, Mr. Compean?

18 A. I'm 29.

19 Q. Are you from El Paso?

20 A. Yes, sir, I am.

21 Q. And where did you go to school?

22 A. I graduated from Del Valle High School in 1994.

23 Q. Tell the jury a little bit about yourself. Are you
24 married?

25 A. Yes, sir, I am. I'm married. We've got two children, and

- 1 one on the way.
- 2 Q. Okay. How long have you been married?
- 3 A. I've been married almost 11 years.
- 4 Q. What did do you after high school?
- 5 A. After high school, I went to school for approximately one
6 semester, then I joined the Navy, did four years in the U.S.
7 Navy.
- 8 Q. Where did you go to school?
- 9 A. I went to El Paso Community College.
- 10 Q. Okay. Where did you serve your time in the Navy?
- 11 A. I was stationed in Corpus Christi, Texas.
- 12 Q. For how long?
- 13 A. Approximately three and a half years.
- 14 Q. And, at some point, did you get out of the Navy?
- 15 A. Yes, sir.
- 16 Q. And did you come back to El Paso?
- 17 A. Yes, sir, I did.
- 18 Q. And when was that?
- 19 A. That was in January of, I believe, 1999.
- 20 Q. Okay. And have you lived in El Paso since then?
- 21 A. Yes, sir, I have.
- 22 Q. What did you do once you got back to El Paso in 1999?
- 23 A. After that, I -- I worked different jobs. I did different
24 things, for approximately a year -- well, it was about six
25 months, before I -- I applied to the Border Patrol.

- 1 Q. I -- I guess you were accepted into the Border Patrol,
2 right?
- 3 A. Yes, sir.
- 4 Q. Did you go to the academy?
- 5 A. Yes, sir, I did.
- 6 Q. Where was that?
- 7 A. That was in Charleston, South Carolina.
- 8 Q. In what year?
- 9 A. January of 2000 was the first time I went up there.
- 10 Q. You went to the academy more than once?
- 11 A. Yes, sir, I did.
- 12 Q. When did you go the second time?
- 13 A. The second time, I believe, was -- I'm not sure about the
14 exact date, but maybe mid-March.
- 15 Q. Was --
- 16 A. Of that same year.
- 17 Q. Why did you go to the Border Patrol academy twice?
- 18 A. When I left, I believe the first time I left was
19 January 30th. We left on a Tuesday or Wednesday. That first
20 weekend I was up at the academy, at the time, my wife was six
21 months pregnant. And that first weekend we received a
22 telephone call saying that they were going to have to induce
23 labor, because she was -- she was at a high-risk of -- she was
24 going to die, basically, her and the -- and the baby.
- 25 Q. And so you got back here to support your family?

- 1 A. Yes, sir, I did.
- 2 Q. And did you later go back to the Border Patrol academy?
- 3 A. Yes, sir, approximately two months later.
- 4 Q. Okay. And how long were you at the academy that time?
- 5 A. Almost six months.
- 6 Q. And where were you assigned after you got out of the Border
7 Patrol academy?
- 8 A. Fabens, Texas.
- 9 Q. Have you been at Fabens for your entire time with the
10 Border Patrol?
- 11 A. Yes, sir, I have.
- 12 Q. Okay. I'm going to draw your attention to February 17,
13 2005. Do you recall that day?
- 14 A. Yes, sir.
- 15 Q. Tell me why.
- 16 A. Just everything that's been -- everything that's -- that's
17 happened.
- 18 Q. You've heard a lot about it in here?
- 19 A. Yes.
- 20 Q. Okay. Where were you at about 1:00 in the afternoon on
21 February 17, 2005?
- 22 A. I was parked on the vega, approximately -- near the
23 Grijalva headgates. That's about, maybe, five to six miles
24 away from -- from Jess Harris.
- 25 Q. Okay. Were you alone?

1 A. No, sir, I was not.

2 Q. Who was with you?

3 A. Agent Jose Mendoza.

4 Q. Agent Jose Mendoza, that testified in this trial?

5 A. Yes, sir.

6 Q. Okay. While you're out there, did anything unusual happen?

7 A. Well, we thought it was unusual.

8 Q. What?

9 A. We were parked out there most of the morning. It had been
10 a slow day.

11 MR. GONZALEZ: Your Honor, I would object, unless --
12 Mr. Mendoza is not here to testify. I ask that he be asked
13 what he did, not what some other person did.

14 MR. ANTCLIFF: I'm asking what he did.

15 THE COURT: All right.

16 MR. GONZALEZ: He's answered that they did this or
17 that.

18 MR. ANTCLIFF: I'll fix it.

19 THE COURT: All right. Thank you. I'll sustain.

20 BY MR. ANTCLIFF:

21 Q. Just tell the ladies and gentlemen of the jury what you did
22 when I ask you the questions. Okay?

23 A. Okay.

24 Q. What did you do?

25 A. I was parked there on the vega most of the day. It had

1 been a very slow day, very quiet. The first part of the
2 morning it was -- it was pretty windy. And we just -- were
3 just watching the -- up and down the river, just patrolling our
4 areas.

5 Q. Did you see anything while you were watching?

6 A. Nothing at all.

7 Q. Okay. When 1:00 rolls around, do you see anything?

8 A. Yes, sir.

9 Q. What do you see?

10 A. It might have been a little before 1:00, but I observed a
11 white -- a small white sedan on the Mexican side, on the
12 Mexican levee, and it was riding very low. The trunk -- there
13 was something very heavy in the trunk. It was almost dragging.
14 It was creating sparks on the levee.

15 Q. What did you do?

16 A. I told Agent Mendoza, That's probably going to be the load
17 we've been waiting for, because the Mexican military usually
18 patrols out there every morning, and they weren't out there.
19 We didn't see them at all that day.

20 Q. And it's unusual, to you, not to see the Mexican military?

21 A. Yes, sir, it is. For about the last six months from that
22 date, they had been patrolling the -- all different areas of
23 the river, specifically that area where we were -- we were
24 parked. They usually set up their tents, and they camp out
25 there for the entire day on the riverbank.

1 Q. So you see a white car traveling low. What do you do?

2 A. I mentioned it to -- to Agent Mendoza. And he -- he then
3 proceeded to get off the levee, and he was going to -- he was
4 going to get off of the -- head towards one of the main roads.

5 Q. So he drove away?

6 A. Yes.

7 Q. What did you do?

8 A. I then got on the levee and parked my vehicle facing east
9 on the levee, towards the 76 area.

10 Q. What kind of a vehicle were you driving that day?

11 A. I believe I was riding a pickup truck drop-in unit, that I
12 think they've shown pictures of.

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

14 A. That's a -- it's a pickup truck, and it's been modified to
15 create almost like a holding cell.

16 Q. All right. So now you're up on the levee. What do you do
17 then?

18 A. I was just watching the area with my binoculars. I just
19 kept watching.

20 Q. And what do you see next?

21 A. I don't remember if I heard -- there was sensor activation,
22 and it -- the 76 port 1.

23 Q. How do you know there was sensor activation?

24 A. Through sector communications. They were calling out a
25 sensor taking hits.

- 1 Q. Okay. Did you hear it over the radio?
- 2 A. Yes, sir, I did.
- 3 Q. I see. And what do you do when you hear that?
- 4 A. I began to look north of that area. That's the area I had
5 already been watching.
- 6 Q. And do you see anything?
- 7 A. Not at first. Approximately 15 to 20 seconds later I saw
8 what looked like a blue van leaving the area pretty fast.
- 9 Q. And what did you do in response to that?
- 10 A. I then called it out on the radio to the other agents.
- 11 Q. What did you call out?
- 12 A. I believe I called out a blue van leaving the 76 area at a
13 high rate of speed, or going fast. I don't remember the exact
14 words.
- 15 Q. Were there other agents working in the Fabens station, or
16 sector, whatever it's called, that day?
- 17 A. Yes, sir, there was.
- 18 Q. And so what did you expect would happen in response to your
19 call?
- 20 A. I expected them to start heading towards my area --
- 21 Q. Okay.
- 22 A. -- to assist.
- 23 Q. Did you hear any radio traffic after you make that call?
- 24 A. Yes, sir, I did.
- 25 Q. What do you hear?

1 A. I believe the first person I heard was Agent Juarez. I
2 believe he mentioned he was near the -- near the Martinez
3 orchard. I don't remember exactly. But he said he was headed
4 that way.

5 Q. Did you call out a minivan?

6 A. No, sir, I did not.

7 Q. Okay. Where do you go, from your position on the levee,
8 after you see the van?

9 A. The first thing I did, as soon as I called out the blue van
10 leaving the area, after I got a response, I then switched my
11 radio to -- to direct. And then I gave them a better
12 description of the vehicle. I -- I told them it was going to
13 be a light blue van, maybe a gray van, but it was going to be a
14 full-sized van.

15 Q. And why do you switch from the repeater to direct?

16 A. Because I knew that the agents that were in the area were
17 going to be able to hear -- from -- from the radio traffic I
18 heard, I knew they were nearby, and they would be able to hear
19 me.

20 Q. Okay. What happens next?

21 A. I then -- I believe I -- there was some other radio
22 traffic, I don't remember exactly. But I started driving down
23 towards that -- towards that road on the -- on the levee.

24 Q. Towards what road, sir?

25 A. Towards the 76 area, the dirt road.

1 Q. Do you see anymore traffic out there?

2 A. Not at first. I -- I looked towards the south side,
3 towards the river, and I saw two people climbing out of the
4 river going back south, towards Mexico.

5 Q. Okay. And what else do you do?

6 A. I then waited a few seconds. I looked to make -- to check,
7 to see if there wasn't anyone else in the river or along the
8 river's edge, on the riverbank.

9 Q. Did you see anything else unusual in the 76 area?

10 A. Yes, sir, I did.

11 Q. What?

12 A. After I looked on the south side, I looked -- I got out of
13 my truck, and I looked inside the ditch, to make sure there
14 wasn't any -- I was checking to see if there was people in
15 there.

16 Q. In -- in --

17 A. Inside the ditch.

18 Q. Is this the ditch that has been so prominent in this trial?

19 A. Yes, sir. It extends all the way into that area.

20 Q. Okay. Did you find any people?

21 A. No, sir, I did not.

22 Q. See anything else?

23 A. Yes, sir, I did. I -- I saw what looked like a -- there
24 was water inside the ditch, and there was water marks, I guess,
25 or -- water spots is, I guess, the best way I could describe

1 it. There was -- where something came out of the river. And
2 then I also observed several drag marks.

3 Q. Okay. You didn't know what it was, did you?

4 A. Not at first. When I saw the drag marks, I figured it was
5 going to be a -- a 10-46.

6 Q. Okay. And what did you do after you see that?

7 A. I then called it out on the radio, It's going to be a
8 10-46.

9 Q. What do you do next?

10 A. I then -- I believe, by then, someone had -- had -- it
11 might have been Agent Ramos that mentioned that they were --
12 they were either in town, or near the light, so they were going
13 to wait. And Agent Mendoza, when he got off the levee and he
14 positioned himself on the west side, there's only -- there's
15 only two ways that you can get off of the -- go up on that road
16 east and west. And we had the west side already covered, and
17 he never saw a vehicle headed that way.

18 Q. So what did you do, in response to the radio traffic that
19 you heard?

20 A. I then started driving eastbound on the levee, at a slow --
21 at a slow pace.

22 Q. What's a slow pace?

23 A. I was doing anywhere from 20 to 30 miles an hour.

24 Q. Is the levee a dangerous place to drive?

25 A. If you're driving fast it is.

1 Q. Why?

2 A. Because of the -- it's made up mostly of -- there's rocks,
3 gravel. And there's a lot of ruts in this road from people
4 driving -- driving over there when it's wet.

5 Q. Okay. Where do you go when you start driving on the levee?

6 A. I continued eastbound, and I was just observing the south
7 side, making sure there wasn't any other people anywhere near
8 the area.

9 Q. Did you see anymore people?

10 A. No, I did not.

11 Q. And what happened next?

12 A. By then, I had already heard agent -- I believe it was
13 Agent Ramos, stating he was -- they were going back south, or
14 someone said the vehicle was turning around.

15 Q. Okay. What did that mean to you?

16 A. Well, I thought that he was going to try to drive back
17 south, to the area where he went and picked up, which was the
18 76.

19 Q. Okay. So what do you do?

20 A. I slowed down a little bit, just to listen, to get a better
21 direction on the vehicle. He then mentioned, We're hitting --
22 then he said, We're hitting the S curves. And I --

23 MR. GONZALEZ: Objection, Your Honor, vague as to who
24 said what.

25 THE COURT: Please identify.

1 BY MR. ANTCLIFF:

2 Q. Do you recall who said he was hitting the S curve?

3 A. Yes, sir. It was Agent Ramos.

4 Q. Okay. And what do you do in response to that call?

5 A. All right. After he said -- he said, We're hitting the --

6 he's hitting the first -- the first S curve on Fabens south.

7 So then when he said that, I knew that he was --

8 MR. GONZALEZ: Objection, Your Honor, narrative

9 response, unresponsive.

10 MR. ANTCLIFF: I think I asked, What did you do next?

11 THE COURT: All right. But let's try to break it

12 down, because this is the whole long day on this. Okay?

13 So go ahead.

14 BY MR. ANTCLIFF:

15 Q. You hear Ramos call out that he's at the S curves, right?

16 A. Yes, sir.

17 Q. Where did you go?

18 A. I continued eastbound at the same -- about -- approximately

19 the same speed on the levee.

20 Q. To where?

21 A. I was heading towards the Davis -- Davis orchards, which is

22 about a mile, mile and a half away from -- from Jess Harris.

23 Q. And why were you going to the Davis orchards?

24 A. Because I still wasn't sure if the vehicle was going to

25 drive back towards that 76 road where he had picked up, or if

- 1 he was going to drive down towards Jess Harris.
- 2 Q. So do you continue to monitor the radio traffic?
- 3 A. Yes, sir, I did.
- 4 Q. And, at some point, do you figure he's not going back to
- 5 76?
- 6 A. Yes, sir, I did.
- 7 Q. And what do you do then?
- 8 A. I heard Agent Ramos say, We're going south on -- on Jess
- 9 Harris. So, when he said that, I -- I continued going
- 10 eastbound. And when he said -- I believe his next statement
- 11 was, We're passing Island Road.
- 12 And, by then, I knew he was going to go down to Jess
- 13 Harris on that road to the ditch.
- 14 Q. So where did you go?
- 15 A. I continued eastbound on the ditch.
- 16 Q. And do you arrive at Jess Harris sometime?
- 17 A. Yes, sir, I did.
- 18 Q. Where did you position your vehicle?
- 19 A. I positioned my vehicle facing eastbound on the levee, just
- 20 on the -- maybe the east side of the road, a little bit off to
- 21 the side, not directly in the center.
- 22 Q. Are you able to see the Jess Harris Road from there?
- 23 A. Yes, sir.
- 24 Q. And do you see anybody?
- 25 A. Not at first. Agent Ramos then -- I heard on the radio him

1 saying, We're hitting -- he -- he just hit the dirt road.

2 And I -- then again I looked north, and I still
3 couldn't see the -- the van.

4 Q. Do you stay in your vehicle?

5 A. At first I did, because I didn't see the van. I didn't
6 know where it was. Even though he had just said that he just
7 hit the dirt road, I -- I didn't see it.

8 Q. Okay. At some point, do you get out?

9 A. Yes, sir. I -- I looked again a few seconds later, and I
10 was able to pick up a big dust trail. And I followed that dust
11 trail, and I followed the van heading south.

12 Q. So what did you do?

13 A. I then exited my vehicle with my shotgun, and I started --
14 I proceeded to walk down towards the end of the drainage ditch.

15 Q. Why did you take your shotgun out of the vehicle?

16 A. Because, from all the radio traffic that I had heard, I
17 knew he was going to try and go back south. And I didn't know
18 what exactly he was -- what his intentions were.

19 Q. Have you had experience in catching other drug smugglers in
20 the Fabens area?

21 A. Yes, sir.

22 Q. Okay. You're standing, I guess, near the ditch. What do
23 you do?

24 A. I was waiting until -- I just waited for the driver to get
25 there. It took maybe about 20 seconds -- 15 to 20 seconds,

- 1 approximately.
- 2 Q. So do you see him arrive?
- 3 A. Yes, sir, I do.
- 4 Q. What happens?
- 5 A. When he started -- he was maybe about 10 to 15 feet away
6 from the -- from the edge of the ditch. I saw the driver's
7 side door open, and I observed him jump out.
- 8 Q. He jumped out of a moving vehicle?
- 9 A. Yes, sir, he did.
- 10 Q. Where did he jump to?
- 11 A. He jumped out. And when he jumped out, he -- he took maybe
12 four to five steps on the -- on the road, and then he climbed
13 into the ditch.
- 14 Q. And what side of his vehicle was he on when he went into
15 the ditch?
- 16 A. He was on the driver's side.
- 17 Q. And where did he go once he went into the ditch?
- 18 A. He went straight into the ditch. As soon as he jumped out
19 of the vehicle, I -- I had my shotgun, and I proceeded -- I
20 pointed the shotgun at him, and I was yelling at him to stop
21 and to put his hands up.
- 22 Q. Okay. Were you yelling obscenities at him?
- 23 A. No, sir, I was not.
- 24 Q. Does he see you?
- 25 A. Yes, sir, he did.

1 Q. And what did he do?

2 A. He saw -- the first time he saw me was when I was --
3 when -- right before he jumped out of the van. He looked at
4 me. I saw him. He opened the door, and then he jumped out.
5 That was the first time he saw me.

6 Q. And after he gets into the ditch, does he look at you
7 again?

8 A. Yes, sir, he did.

9 Q. And what did he do?

10 A. When he got into the ditch, he put his hands up, and he
11 looked at me. And I thought that was going to be the end of
12 it, because I heard units already on the way. And I thought he
13 was going to surrender right there.

14 Q. Which side of the ditch was he on when he jumped into it?

15 A. He was on the north side of the ditch. He was right on the
16 edge. He was just climbing in.

17 Q. And which side of the ditch were you on?

18 A. I was on the south side.

19 Q. Were you in it?

20 A. No, sir, I was not.

21 Q. Okay. In terms of height, where were you, in relationship
22 to him?

23 A. I was standing on the edge of the ditch. He was maybe --
24 well, at first, he was -- he started to climb in. He was still
25 on the other side. He hadn't gone all the way down.

1 Q. Okay. And where did he go from there?

2 A. He continued to walk down. I repeatedly told him to stop
3 and put his hands up, over and over. He still was not obeying
4 my commands.

5 Q. So did he -- when he first gets in the ditch, he did put
6 his hands up. Is that what you're saying?

7 A. Yes, sir, he did.

8 Q. At some point did he put them down?

9 A. Yes, sir. He looked up at me, he saw me. He put his hands
10 back down, and then he started walking inside the ditch.

11 Q. Where did he go?

12 A. He was directly across from me, walking to the edge of
13 the -- of the water.

14 Q. And did he come across the water?

15 A. At first I believe he -- I saw him turn around. I saw him
16 look back, and then he looked again at me, and he went through
17 the water.

18 Q. Okay. Your testimony, I think, was that he put his hands
19 up, and you thought he was going to surrender. Did he
20 surrender?

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

22 Q. Once he gets into the water, where does he go?

23 A. At first he would -- he walked straight towards -- towards
24 where I was. He walked to the other side of the water, right
25 on the edge. And then he -- I believe he took a few steps to

1 the right. He ran off to the right.

2 Q. Was -- was he moving fast or slow or what?

3 A. He was moving fast. He was trying to -- he was trying to
4 get around me.

5 Q. While you're observing him in the ditch, do you see Agent
6 Ramos anywhere?

7 A. I -- I saw an agent, but I couldn't tell who it was. All I
8 saw was maybe up until their -- up to their waist. I was
9 looking down at the suspect.

10 Q. Okay.

11 A. I never saw who the agent was.

12 Q. Does the driver approach you at any time?

13 A. Yes, he did. After he -- he ran to the other side. I
14 followed him. I -- I was still directly in front of him. And
15 I again told him repeatedly, Stop. Put your hands up.

16 And he did not, and he ran back the other way again,
17 the opposite direction.

18 Q. Did he touch you at any time?

19 A. No, sir, not there.

20 MR. ANTCLIFF: Approach the witness, Your Honor?

21 THE COURT: Yes, you may.

22 BY MR. ANTCLIFF:

23 Q. Sir, I would ask you -- I'm going to hand you what's been
24 marked as Government's Exhibit Number 13. And I would ask you
25 to hold this however you were holding it while you were

1 standing on top of the ditch.

2 A. When -- when he first jumped out of the ditch -- or jumped
3 out of the van, the vehicle, I had the shotgun pointed at him
4 like this (indicating). I kept it on him the whole time.

5 Q. Is your finger on the trigger at that moment?

6 A. Yes, sir, it was.

7 Q. Okay. And did you later stop pointing it at him?

8 A. Yes, sir. When he got -- when he was approximately three
9 feet away from me.

10 Q. And what did you do?

11 A. After that, I brought it back. I wanted to keep the
12 shotgun away from him.

13 Q. Okay. And what did you do with the shotgun when he
14 approached you?

15 MR. GONZALEZ: Excuse me.

16 BY MR. ANTCLIFF:

17 Q. What did you do with the shotgun when he approached you?

18 A. I was standing on the edge, just about like this
19 (indicating). I kept repeatedly telling him, Stop, put your
20 hands up.

21 He was -- he still was not doing it. He put his hands
22 up, but, to me, it looked like he was coming at me.

23 Q. Okay. At any point, do you have both hands on the barrel?

24 A. No, sir, I did not.

25 Q. You never held the gun by the barrel?

1 A. No, sir.

2 Q. Okay. Did you try to butt stroke him? I think there was
3 testimony about that.

4 A. No, sir. I was trying to push him in -- back into the
5 ditch.

6 Q. Why were you trying -- you can sit down. I'm sorry.

7 Why were you trying to push him back into the ditch?

8 Well, I'll ask that. How were you trying to push him
9 back into the ditch?

10 A. I was standing like this (indicating), and I took a step
11 forward this way (indicating).

12 When I did this (indicating), I lost -- I slipped into
13 the -- into the ditch. I didn't fall all the way in. I lost
14 my -- my footing, and I came down onto one knee.

15 Q. Okay. You can take your seat.

16 Why were you trying to push him back into the ditch?

17 A. Well, with him in the -- inside the ditch, I had the
18 advantage. I had the upper hand on him. He was -- he was --
19 he was inside. I had -- I had more of an advantage, being on
20 top, on the outside.

21 Q. You were on the high ground. Is that what you're saying?

22 A. Yes, sir.

23 Q. Okay. You go down to one knee at the edge of the ditch.

24 What do you do -- what does he do after that?

25 A. I saw him go around. And he ran around and started

- 1 climbing out of the ditch.
- 2 Q. In relationship to you, does he run left or right?
- 3 A. I believe he ran to my left.
- 4 Q. And so you've gone down on one knee. What do you do in
5 response to that?
- 6 A. I saw him get up. And once he started climbing out of the
7 ditch, I -- I recover-- -- I was able to recover. I stood up, I
8 threw my shotgun down on the ground and ran after him.
- 9 Q. Well, why would you throw your shotgun on the ground?
- 10 A. Because I had a better chance of catching him.
- 11 Q. Isn't it dangerous to leave a shotgun laying around out
12 there?
- 13 A. There was already other -- I had already heard the other
14 agents there. And I figured they would cross the ditch, and --
15 and they would be able to help me. So I didn't feel the
16 shotgun was going to be a -- a threat.
- 17 Q. Why did you figure they would cross the ditch?
- 18 A. Because I needed help.
- 19 Q. And why did you need help?
- 20 A. I was trying to apprehend the suspect.
- 21 Q. Okay. Was there anybody else on your side of the ditch?
- 22 A. No, sir.
- 23 Q. So what did you do after he ran around you and you throw
24 the shotgun down?
- 25 A. I was able to grab the -- I believe it was the back of his

1 shirt, and I tried to -- tried to bring him back. But he was
2 just -- he was too strong for me, and I ended up on his back.
3 I -- I jumped on him.

4 Q. Where did that happen?

5 A. That was right on the south edge of the levee.

6 Q. Are you talking about the down slope, or down at the
7 bottom?

8 A. On the -- on the slope, on -- right before the -- the
9 slope.

10 Q. So you wind up tackling him. Is that what you're saying?

11 A. Yes, sir.

12 Q. What do you do then?

13 A. We both tumbled down. We went over -- down on the slope.
14 We rolled down to the ground. And once we stopped moving, I
15 had -- all I had was a grasp of his -- of his ankle.

16 Q. Okay. And what happens next?

17 A. I was trying to hold on, because I was hoping that the
18 other agents were already on their way, and they would be able
19 to apprehend him.

20 Q. Were you able to hold on to him?

21 A. No, sir.

22 Q. What happened?

23 A. He was on the ground, as well. And he was -- as he was
24 trying to stand up, he had his, I believe his left hand, in
25 front of my face. And he was pushing up. He reached down and

- 1 pushed some dirt -- threw some dirt back onto my face.
- 2 Q. He was trying to get away. Is that right?
- 3 A. Yes, sir.
- 4 Q. When you get dirt in your face, what happened?
- 5 A. I released -- I -- instinctively, I just let go of his leg,
- 6 and I tried to shield my -- to shield my face from the dirt, my
- 7 eyes.
- 8 Q. Were you able to see where he went?
- 9 A. Yes, sir.
- 10 Q. And where did he go?
- 11 A. I saw him running at about a 45-degree angle, maybe, to the
- 12 left.
- 13 Q. He was heading where, that you --
- 14 A. He was heading to the river.
- 15 Q. Okay. And what do you do in -- do you get up?
- 16 A. No, sir. As soon as I released -- let go of his leg, when
- 17 I didn't have ahold of him, I reached down, and I was
- 18 protecting my weapon.
- 19 Q. Okay. And why would you do that?
- 20 A. I didn't know if he was going to stay and fight or if he
- 21 was going to try and take my weapon. I didn't know what he was
- 22 going to do.
- 23 Q. What did he do at that time? Did he take off?
- 24 A. Yes, sir.
- 25 Q. And then what?

1 A. He started running. I looked up, and I saw him running
2 away. A few seconds later I saw him turn around, and he was
3 pointing -- he was pointing something at me.

4 MR. ANTCLIFF: I would ask that he be allowed stand
5 up, Judge.

6 THE COURT: Sure.

7 BY MR. ANTCLIFF:

8 Q. Show the ladies and gentlemen -- stand up. Show the ladies
9 and gentlemen of the jury how -- what you're talking about
10 right there.

11 A. He was running. He was -- he started running away from me.
12 And I saw him turn, and he started -- and he kind of did -- did
13 this (indicating).

14 Q. Did you see -- you can sit down.

15 Did you see a gun in his hand?

16 A. I couldn't tell for sure. It looked -- it looked like a
17 gun to me.

18 Q. What, specifically, did you see in his hand?

19 A. It was something black, shiny, in his hand.

20 Q. At -- black or shiny?

21 A. Well, it was like a shiny black.

22 Q. Okay. At that moment, were you in fear for your life?

23 A. Yes, sir, I was.

24 Q. What did you do?

25 A. I immediately drew my weapon. I was -- I believe I was

1 down on two knees. I came up on one knee and began firing.

2 Q. So you -- on one knee, you're firing at him?

3 A. Yes, sir.

4 Q. Do you know how many times you fired?

5 A. It had to have been approximately -- from what I had
6 mentioned to Agent Sanchez, it was about 10 or 11 rounds.

7 My -- my gun never went empty, so it couldn't have been more
8 than 12.

9 Q. How many rounds does the magazine in your gun hold?

10 A. I believe there's 11, and there's one in the chamber
11 already loaded.

12 Q. Okay. Do you hit him?

13 A. No, sir.

14 Q. You're sure you didn't hit him?

15 A. I didn't think I had. He continued running, and he was
16 still pointing.

17 Q. Okay. What happens next?

18 A. The next thing I remember is I was trying to reload my
19 weapon. I had dropped the -- I had dropped the -- the
20 magazine. There's a -- there's a button on the side of the
21 weapon, where you can release the magazine.

22 I did that, and as I was reaching down to grab the
23 second magazine, I couldn't open -- get my belt open.

24 So then I began standing up. And, as I was standing
25 up to load it, I heard another shot. And I looked over, and I

- 1 saw Agent Ramos standing a few feet ahead of me.
- 2 Q. Did you see Agent Ramos run past you?
- 3 A. No, I did not.
- 4 Q. Okay. You see -- did you see him actually shoot?
- 5 A. No, sir, I did not. I -- I heard the shot, and I looked
- 6 over, and he was standing there.
- 7 Q. Okay. What -- what happens next?
- 8 A. I finished loading the magazine, and I began walking slowly
- 9 towards Agent Ramos.
- 10 Q. When you say you finished loading the magazine, are you
- 11 talking about you put it back in the gun?
- 12 A. Yes, sir.
- 13 Q. Okay. And does Agent Ramos come back to you, or what
- 14 happens?
- 15 A. I walked up to him. And he -- I never saw the -- the
- 16 suspect after that. After I saw -- I saw Agent Ramos after he
- 17 took the shot. I looked. And before that, I had seen the
- 18 suspect near the -- near the edge of the river.
- 19 And once I looked again, he was gone.
- 20 Q. Okay.
- 21 A. And we just kept our weapons pointed the whole time we were
- 22 looking for him.
- 23 Q. Pointed where?
- 24 A. Towards the -- the river.
- 25 Q. Okay. Did you -- at some point -- and there's been a lot

1 of testimony about it. You pick up your brass.

2 A. Yes, sir.

3 Q. When did that happen?

4 A. As we -- we had -- well, we -- we had -- we didn't holster
5 our weapons until we saw him -- he was out of the area. I
6 holstered my weapon.

7 And I believe Agent Ramos said -- asked me if I was
8 okay.

9 We then turned around, and we started walking back up.
10 A few -- a couple of times I stopped, and I looked to the
11 south, looking for him, to see if he was coming back or if he
12 was going to do anything else.

13 Q. Okay.

14 A. And on my way up, I just -- I looked down. I looked down
15 on the ground in front of me, and I saw some casings, and I
16 picked them up.

17 Q. Why on earth would you pick up those casings?

18 A. I just wasn't thinking. I just -- I just saw them there,
19 and I picked them up.

20 Q. Had you ever discharged your firearm in the line of duty
21 before?

22 A. Only at the firing range.

23 Q. When you qualify?

24 A. Yes, sir.

25 Q. And when was the last time you had qualified?

- 1 A. I believe it was the day before.
- 2 Q. What do you do with your brass at the range?
- 3 A. We pick it up.
- 4 Q. Is -- and that's -- February 17th, 2005, was that the only
- 5 time that -- other than the qualifying -- that you had
- 6 discharged your gun in the line of duty?
- 7 A. Yes, sir.
- 8 Q. What do you do with the brass?
- 9 A. I -- I had it in my hand. I started walking up towards the
- 10 levee. I looked down. I saw them. I had them in my hand, and
- 11 I just tossed him into the ditch.
- 12 Q. Were you scared?
- 13 A. I wasn't thinking about anything at the time. I just -- I
- 14 just looked down, I saw them. I -- I didn't -- I just noticed
- 15 them there, and I just tossed them in.
- 16 Q. Okay. While this is happening and you're shooting, and
- 17 Agent Ramos shoots, are you scared?
- 18 A. Yes, sir.
- 19 Q. Were you -- were you hurt?
- 20 A. I was shook up.
- 21 Q. Okay. You walk back up to the levee, and you throw the --
- 22 the brass into the ditch. What do you do then?
- 23 A. I believe I asked Agent -- Agent Juarez -- I asked him if
- 24 he had my shotgun.
- 25 Q. Okay. And did he?

- 1 A. No, he did not.
- 2 Q. What did you do?
- 3 A. I asked him where it was, and he pointed to the -- to the
4 edge of the ditch.
- 5 Q. Are you talking to him across the ditch?
- 6 A. Yes.
- 7 Q. So he pointed it out to you?
- 8 A. Yes, sir, he did.
- 9 Q. What did you do?
- 10 A. I went down and picked it up.
- 11 Q. Okay. Do you have a conversation with anybody else at that
12 time?
- 13 A. Not at first. I believe I picked up my shotgun, and I
14 headed back to my vehicle to secure it. And I believe that's
15 about the same time Agent Yrigoyen was walking -- walking
16 towards me. He was getting out of his truck.
- 17 Q. When did he arrive?
- 18 A. It was a few seconds later. I -- I loaded up my -- I
19 secured my shotgun, and then that's -- he -- he walked up to
20 me.
- 21 Q. Okay. And what conversation did you have with him?
- 22 A. He asked me if I was okay.
- 23 Q. Okay. What happened next?
- 24 A. I said, I'm -- Yeah, I'm okay. I got some -- I had some
25 dirt in my face, thrown in my face. And I said, But I'm okay.

- 1 Q. Was it thrown in your face or was that accidental?
- 2 A. It was thrown in my face.
- 3 Q. Okay. You told Agent Yrigoyen you're okay. Do you have a
4 conversation with anybody else out there?
- 5 A. I believe Agent Richards. He asked me if I was okay. He
6 asked me. I don't remember if he said, What happened, but he
7 asked me.
- 8 Q. Where was he, in relation to you, on the south side of the
9 ditch?
- 10 A. He was standing near the edge of the ditch, on the north
11 side, close to the van.
- 12 Q. Close to what -- which side of the van?
- 13 A. It might have been the passenger side.
- 14 Q. Okay. He asks you if you're okay. Does he ask you
15 anything else?
- 16 A. No, sir. He said, Joe, are you okay?
- 17 I said, I'm okay. I've got a cut on my hand, and I
18 think on my chin. Because Agent Yrigoyen, when he walked up to
19 me, he mentioned it to me. He mentioned the cuts.
- 20 Q. Sure. Did he tell you -- Agent Richards tell you to do
21 anything?
- 22 A. I believe he said, Go back to the station to process.
- 23 Q. Did you tell him at that moment that you had fired your
24 gun?
- 25 A. No, sir, I did not.

- 1 Q. Why not?
- 2 A. I was afraid he wasn't going to believe me.
- 3 Q. What do you mean, he wasn't going to believe you?
- 4 A. I didn't think -- well, with what had happened, and with me
5 telling him what had occurred, I didn't think he would believe
6 me. We didn't have a suspect. There is nobody to, I guess,
7 corroborate what had happened or what had occurred.
- 8 Q. Okay. Where did you go from there?
- 9 A. I headed back -- I got back into my vehicle and started
10 driving towards the C.C. Bills gate.
- 11 Q. Okay. What happens at C.C. Bills, if anything?
- 12 A. Agent Vasquez was on the -- was coming up to the levee, as
13 I was coming down.
- 14 Q. Was the gate unlocked when you got there?
- 15 A. Yes, sir, it was.
- 16 Q. Who unlocked it, if you know?
- 17 A. I don't know. Agent Vasquez was already on the north side
18 coming up on the levee.
- 19 Q. Was he driving a vehicle or walking?
- 20 A. Driving.
- 21 Q. Were you driving your vehicle?
- 22 A. Yes, sir, I was.
- 23 Q. At any point did you get out of your vehicle?
- 24 A. No, sir, I did not.
- 25 Q. What happens next?

1 A. I parked up alongside of him. And I believe he asked me,
2 What happened? Or either, What happened, or, I heard some
3 shots.

4 Q. What did you tell him?

5 A. And I told him, I had to fire some rounds.

6 Q. Did you say anything like, That little bitch took me down?

7 A. No, sir.

8 Q. What did you tell him?

9 A. I told him I wrestled with the suspect, with the driver, is
10 what I told him, with the driver of the van, and fired some
11 rounds.

12 Q. Okay. What did he say in response to that?

13 A. I believe he asked me, How many did you fire?

14 Q. Okay. And what did you tell him?

15 A. I told him, About 10 or 11. I'm not sure.

16 Q. Were you holding anything in your hand at that time?

17 A. Yes, sir, I was.

18 Q. What?

19 A. I was holding some extra rounds. I was reloading my
20 magazine.

21 Q. Is there a difference between rounds and casings?

22 A. Yes, sir, there is.

23 Q. What's the difference?

24 A. A round is the bullet with the gunpowder, and the casing is
25 just the shell without the bullet or the powder.

1 Q. Did you have any casings in your hand when you were talking
2 to Agent Vasquez?

3 A. No, sir, I did not.

4 Q. How many rounds did you have in your hand, if you know?

5 A. I didn't count them. I was loading the magazine.

6 Q. Why were you reloading the magazine?

7 A. Because I had -- when -- he asked me -- he also asked me,
8 Did you reload?

9 And I said, Yes, I did. Because when I got off the
10 levee I had already reloaded my magazine.

11 Q. In other words, you had a fresh magazine in your gun?

12 A. Yes.

13 Q. Had you fired any of the rounds from the second magazine at
14 the suspect?

15 A. No, sir, I did not.

16 Q. So as you're driving down the levee, is that when you're
17 reloading the gun?

18 A. I wasn't going to reload -- I started reloading once I
19 stopped there, because I was talking with him. As I was
20 talking to him, I was loading the empty magazine.

21 Q. Did you ever show him any empty casings on that day?

22 A. No, sir, I did not.

23 Q. What else did you guys talk about?

24 A. I believe we were there talking about that. I was
25 mentioning that to him.

1 And then I believe FOS Richards asked him to get on
2 the levee and wait for the tow truck to arrive.

3 Q. Was that a radio conversation?

4 A. Yes.

5 Q. You could hear it on your radio?

6 A. Yes, sir.

7 Q. Okay. This conversation, you were inside your vehicle?

8 A. Yes, sir, I was.

9 Q. Okay. So you leave the C.C. Bills area, right?

10 A. I mentioned to him, If you're going to be up there, you're
11 probably going to see some casings up there.

12 Q. Why did you say that to him?

13 A. Because he was going to be up there. I didn't know if he
14 was going to -- I figured he may have seen them, or I don't
15 know if he was going to --

16 Q. What difference did it make, though?

17 A. It didn't. I just told him, I said, You're are going to
18 see them up there.

19 Q. Did you ask him to let you know?

20 A. No, sir, I did not.

21 Q. Did he call you at some point?

22 A. Yes, sir, he did.

23 Q. What did he tell you?

24 A. I believe he said, I found -- I believe he said, I found
25 five. I picked up five and threw them in the ditch.

- 1 Q. This was a phone call?
- 2 A. Yes, sir, it was.
- 3 Q. Where were you?
- 4 A. I was at the station processing.
- 5 Q. And did you ask him to call you?
- 6 A. No, sir, I did not.
- 7 Q. Did you ask him to throw away casings?
- 8 A. No, sir, I did not.
- 9 Q. Did you ever see Agent Ramos pick up any casings?
- 10 A. No, sir, I did not.
- 11 Q. So you leave the C.C. Bills area and go back to the
12 station. What do you do there?
- 13 A. I went straight to the bathroom to wash the cut, to clean
14 up, basically.
- 15 Q. Okay. And you've heard testimony about a conversation
16 at -- when you came out of the bathroom. Do you remember that?
- 17 A. I don't remember that one.
- 18 Q. It could have happened, you don't remember?
- 19 A. Yes, sir. I don't remember that.
- 20 Q. Do you recall any conversations at the station with your
21 supervisors?
- 22 A. Yes, sir, I do.
- 23 Q. And where was that?
- 24 A. It was at the processing area.
- 25 Q. Where were you?

- 1 A. I was in front of the computer. I had already begun
2 working on the I-44.
- 3 Q. Okay. And what happens?
- 4 A. I believe Agent Richards walked up to where -- well, he was
5 standing a few feet away from me. And he asked me -- his words
6 were, Joe, are you sure you weren't assaulted? Because if you
7 were, then I'm going to have to do an SIR, and then I'm going
8 to have to call the FBI, and then they're going to have to come
9 down here and interview everybody that was out here, and we're
10 going to be here for a long time.
- 11 Q. What did you take that to mean?
- 12 A. To me, it seemed like he didn't care. He didn't want me to
13 say yes.
- 14 Q. So what did you say?
- 15 A. I said, I'm fine. I'm okay.
- 16 Q. Any other conversations at the station with your
17 supervisors?
- 18 A. No, sir. That was it.
- 19 Q. Was Supervisor Arnold present for the conversation you had
20 with FOS Richards?
- 21 A. I believe he may have been. I don't remember seeing him,
22 but he may have been standing nearby.
- 23 Q. Did you have any conversations with Supervisor Arnold?
- 24 A. No, sir, I did not.
- 25 Q. Okay. On that occasion, with respect to the shooting, do

- 1 you believe you did anything wrong?
- 2 A. No, sir.
- 3 Q. If you had it to do over again, as we sit here today, would
4 you do anything different?
- 5 A. Yes, sir, I would.
- 6 Q. And what would you do differently?
- 7 A. I would report the assault and the shooting.
- 8 Q. Okay. Did you think you had hit the driver?
- 9 A. No, sir, I did not.
- 10 Q. Did you think that Agent Ramos had hit the driver?
- 11 A. It didn't look like it. When I saw him climb out, he
12 looked like he was limping. I didn't know -- because he did
13 jump out of the van. The van was still moving. And I've seen
14 them hit the windshield and break through the glass, come out
15 on the other side, out of the vehicle, and they still run
16 south. So I wasn't sure.
- 17 Q. Did things happen out there pretty fast that day?
- 18 A. Yes, sir.
- 19 Q. You've heard testimony that things kind of slow down. Did
20 that happen for you?
- 21 A. Somewhat.
- 22 Q. After you have the conversations with -- with -- the
23 conversation with FOS Richards, and you prepare your I-44, what
24 do you do next?
- 25 A. I believe I started working on the form when -- I believe

1 Agent -- Agent Jacquez went to the back, and he asked me what
2 had happened.

3 Q. And what did you tell Agent Jacquez?

4 A. I told him that I got into a wrestling match with the guy.

5 Q. And anything else?

6 A. And that I had to fire some shots.

7 Q. What did he say?

8 A. I believe he asked about -- well, he asked about the shots,
9 if we had shot at anybody, was the first thing he said.

10 And that's when I told him -- and then I told him, I
11 tried to push him down with the shotgun. I was trying to keep
12 him in, before -- when he went around me.

13 Q. Did you tell him you tried to butt stroke him?

14 A. No.

15 Q. On that day, out at the levee in the ditch, both north and
16 south, how many of the people on duty do you recall?

17 A. On the north side there was, I believe, Agent Vasquez,
18 Agent Juarez, Agent Ramos, I believe Agent Mendoza. And Agent
19 Jacquez arrived once I was already on the other side of the
20 levee. I think they were the last ones there. And FOS
21 Richards and Supervisor Arnold. But I don't remember seeing
22 him out there.

23 Q. When the driver's still in the ditch, did you notice Agent
24 Juarez out there anywhere?

25 A. I heard another agent, but I didn't see him. I was focused

1 on the suspect. I never -- I don't know if he was on the other
2 side. I knew -- I figured Agent Ramos had to have been the one
3 that was there, because he was the first unit behind him.

4 Q. You only saw the legs of one agent, or more than one?

5 A. Just one.

6 Q. Did you ever see anybody else point their weapons at the
7 driver that day?

8 A. No, sir, I did not.

9 Q. Later, I guess sometime in March, what happens?

10 A. I believe March -- I can't remember the date, but it was
11 approximately just a little before midnight, there's a knock on
12 my door.

13 Q. And who's at your door?

14 A. About -- I guess, from listening to Agent Sanchez, I
15 believe it was -- may have been the whole OIG station, or --
16 and -- along with two police officers.

17 Q. And did they arrest you?

18 A. Yes, sir, they did.

19 Q. Where were you at that time? Where did that arrest take
20 place?

21 A. That was at my home.

22 Q. And where did you go from there?

23 A. We went to their office. I'm not sure the location.

24 Q. Did you agree to talk to them, those agents, without the
25 presence of an attorney?

- 1 A. Yes, sir, I did.
- 2 Q. Why?
- 3 A. Because I did nothing wrong. I had nothing to hide from
- 4 him, or from them.
- 5 Q. You've heard the testimony about how different your written
- 6 and oral statements are, right?
- 7 A. Yes, sir.
- 8 Q. What time did you give your written statement?
- 9 A. I believe it was sometime after 1:00 in the morning. I'm
- 10 not sure of the exact time.
- 11 Q. And after that happens, after you give a written statement,
- 12 where did you go?
- 13 A. We stayed there for another maybe 30 minutes, while they
- 14 were taking my fingerprints, photos.
- 15 Q. Okay. The differences in the statements, in the two
- 16 statements, let's try to go through those.
- 17 Did you think that the driver was going to surrender
- 18 at any point after he first raised his hands?
- 19 A. That first time I -- as soon as -- when he got out of the
- 20 van, I did.
- 21 Q. After that?
- 22 A. No.
- 23 Q. Did he ever raise his hands in surrender again?
- 24 A. No, sir. He raised up his hands, but it looked like he was
- 25 coming at me.

1 Q. Did he ever say anything to you?

2 A. He said, No me pegues. I believe he said it twice.

3 Q. And that was in response to what?

4 A. I heard someone behind him yelling, Hit him.

5 Q. Do you know who that was?

6 A. No, sir, I do not.

7 Q. Did you ever hit him?

8 A. No, sir, I did not.

9 Q. What did you do?

10 A. That's when -- it was a few seconds later when I tried
11 pushing him off, as he was coming up towards me again.

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

13 THE COURT: Sure.

14 BY MR. ANTCLIFF:

15 Q. Sir, you talked to Agents Vasquez and Jacquez about the
16 shooting. Did you ever tell them not to report it?

17 A. No, sir, I did not.

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

19 THE COURT: All right.

20 Do you -- well, I guess you're next, Mr. Gonzalez.

21 MR. GONZALEZ: One of them is --

22 THE COURT: Well, I know. I never quite know which --
23 okay. Go ahead.

24 MR. PETERS: I would like to ask a few questions.

25 THE COURT: All right. Go ahead.

1 CROSS-EXAMINATION

2 BY MR. PETERS:

3 Q. Agent Compean, do you know whether Agent Ramos saw you
4 picking up the brass?

5 A. No, sir, I do not.

6 Q. Do you know, was he walking behind you when you picked up
7 the brass?

8 A. No, sir. He was ahead of me.

9 Q. Did you ever hear Agent Ramos tell anyone not to report the
10 shooting?

11 A. No, sir, I did not.

12 Q. Did he tell you not to the report the shooting?

13 A. No, sir, he did not.

14 Q. Did he ever raise the question or discuss with you, after
15 the fact, whether or not the shooting had been reported?

16 A. No, sir.

17 MR. PETERS: That's all I have.

18 THE COURT: Go ahead, Mr. Gonzalez.

19 CROSS-EXAMINATION

20 BY MR. GONZALEZ:

21 Q. Mr. Compean, could you tell us again about that white car
22 that you saw initially?

23 A. The -- when -- from -- on the Mexican levee?

24 Q. Yes, sir.

25 A. It was a small white sedan traveling east, on the Mexican

1 side of the levee.

2 Q. Okay. And is there -- you've seen all the different maps
3 that we have here in the courtroom today. Is there any one
4 that would help you point out to the jury which area you saw
5 this vehicle traveling in?

6 A. I'm not sure if there's one of that -- of that area. It's
7 further east of the 76 area, the road. And -- well, sorry --
8 further west, approximately a mile.

9 Q. And so --

10 A. I -- I don't think I've seen one.

11 Q. You didn't show one of those maps to your attorneys, to
12 tell them this story that you told us today?

13 A. I didn't -- we -- I don't -- I don't remember showing them
14 a map of anything.

15 Q. Well, sir, have you ever told this story about the white
16 car, you know, scraping on the road, to anyone else before
17 today?

18 A. I was never asked.

19 Q. Sir, that's not my question. My question to you was: Have
20 you ever told anyone?

21 A. My attorneys.

22 Q. But have you ever told any of your other fellow Border
23 Patrol agents, Fabens --

24 A. Agent Mendoza was there with me.

25 Q. That wasn't my question.

1 A. No, sir, I did not.

2 Q. You did not tell anyone?

3 A. No, sir.

4 Q. Today is the first time that you've told anyone other than
5 your attorneys. Is that correct?

6 A. Yes, sir.

7 Q. And, sir, that incident about the car -- you know -- well,
8 obviously, if you didn't tell anyone, you didn't write it or
9 record it anywhere. Is that correct?

10 A. Correct.

11 Q. You prepared an I-44 in relation to what occurred that day.
12 Is that correct?

13 A. Yes, sir.

14 Q. And in there you, you know, set out what caused you to
15 believe that there was a vehicle that may have marijuana,
16 correct?

17 MR. ANTCLIFF: I'm going to object, Judge, and ask to
18 approach.

19 THE COURT: Okay.

20 (Bench conference:)

21 MR. ANTCLIFF: This is Chris Antcliff for Jose
22 Compean.

23 We had this arise earlier in trial, and we weren't
24 allowed to cross with respect to the October. There was an
25 I-44 filled out in December that we couldn't go into. And they

1 said that the only thing that -- for an I-44 is we needed
2 apprehension of seizure, and you don't include all the facts in
3 it. And if he wants to ask my client questions about who was
4 included in this I-44, I think he's opening the door to allow
5 me to go into the December shootout.

6 MR. GONZALEZ: That's absolutely ridiculous,
7 Your Honor. I can ask what he did on that day in the
8 investigation. I'm not questioning him about what happened in
9 some other investigation.

10 MR. ANTCLIFF: You were asking him what he put in this
11 I-44.

12 MR. GONZALEZ: That's absolutely correct. Yes.

13 MR. ANTCLIFF: No.

14 THE COURT: Hold on. I'm not sure I understand. Why
15 is he not allowed to ask him what he put in this I-44 -- I can
16 understand if he says, Why didn't you put the shooting in the
17 I-44?

18 MR. ANTCLIFF: Because it doesn't contain all of the
19 relevant facts of what he saw in there. I thought -- I need to
20 think.

21 THE COURT: Okay. I know it's getting late.

22 MR. ANTCLIFF: If you have anything you want to say,
23 go ahead.

24 MS. STILLINGER: Mary Stillinger for Mr. Ramos.

25 I was the one trying to get into the I-44 December

1 shooting. This is a shooting involving other people.

2 THE COURT: Right.

3 MS. STILLINGER: And that I-44 doesn't say anything
4 about the fact that there was a shooting, even though it was
5 reported. And they objected, saying that has nothing to do
6 with anything, because the shooting wouldn't go on an I-44. So
7 I think Mr. Antcliff is saying they're being inconsistent --

8 MR. ANTCLIFF: And probable cause isn't --

9 MS. KANOF: No, we never --

10 MR. ANTCLIFF: -- part of the I-44. It's a form for
11 apprehension of seizure.

12 MS. KANOF: Your Honor, we never -- she's remembering
13 another time, not this trial. We have never, in this trial --
14 she's remembering one of the hearings. The hearing in the
15 motion in limine is when we said a shooting doesn't go in an
16 I-44. In this courtroom, we have never --

17 MR. ANTCLIFF: Yes, you have.

18 THE COURT: Hold on. Where are you trying to go,
19 Mr. Gonzalez?

20 MR. GONZALEZ: We've never heard this story before.
21 I'm trying to impeach him as to what he's making up.

22 MR. ANTCLIFF: Then ask him if he's making it up.

23 THE COURT: Hold on. The question had to do with what
24 was in the I-44.

25 MR. GONZALEZ: Yes. He can include anything he wants

1 to in that I-44.

2 THE COURT: I -- I have no problems with the question
3 about what he put in the I-44.

4 MR. GONZALEZ: He didn't mention anything about some
5 car driving on the road that had marijuana in it.

6 THE COURT: He's talking about --

7 MR. ANTCLIFF: I don't think -- I want to go into the
8 shooting in the I-44.

9 THE COURT: If he does, then I will take it up as far
10 as this incident about --

11 MR. ANTCLIFF: I don't want to object in front of the
12 jury. That's why I'm asking you to rule on this issue right
13 now.

14 THE COURT: I haven't heard the question. I'm telling
15 you that, depending on how -- I don't know what the question
16 is. I can't rule on something when I haven't heard a question.

17 MR. ANTCLIFF: I understand you haven't heard a
18 question, Your Honor. What I'm saying is, this issue has
19 arisen with respect to the shootings and I-44s from December
20 2004.

21 THE COURT: It is my understanding that if there's a
22 shooting there is a separate report.

23 MR. ANTCLIFF: Right.

24 THE COURT: Okay. So it is obvious that he did not
25 file a separate report and that he didn't report the shooting.

1 It's been said ad nauseam. So let's move on.

2 MR. ANTCLIFF: I agree.

3 MR. GONZALEZ: And, Your Honor, he's had the benefit
4 of sitting here for these past two weeks. He's heard all the
5 witnesses. Now he's concocted this story that there was this
6 car that he saw.

7 THE COURT: You can question him about that. I have
8 no problems.

9 All right. Let's go.

10 (End of bench conference; open court.)

11 MR. GONZALEZ: May I proceed, Your Honor?

12 THE COURT: Yes, you may.

13 BY MR. GONZALEZ:

14 Q. Now, sir, you have sat here for approximately two weeks,
15 correct?

16 A. Yes, sir.

17 Q. And there's been testimony about a little white car
18 dropping off or picking up Mr. Osvaldo Aldrete-Davila. Is that
19 true?

20 A. Yes, sir.

21 Q. Is that where you got the idea to come up with this story?

22 A. No, sir.

23 Q. Okay. But -- so you've never reported this anywhere else,
24 have you?

25 A. I -- I mentioned it to Agent Mendoza, when we were out

1 there. I don't recall if I did mention it to other agents
2 after or not.

3 Q. And you heard Agent Mendoza testify. Did he ever testify
4 that he was out there and saw a little white car dragging
5 around what probably appeared to you was a load of marijuana?

6 A. No, sir.

7 Q. So, once again, that did not occur, did it?

8 A. Yes, it did.

9 Q. Okay. So you see this car dragging along, and you do what?

10 A. I just mentioned it to him as -- almost as a joke. I said,
11 There's probably our load right there.

12 Q. Okay. Explain that to me again. What do you mean, "our
13 load"?

14 A. Well, a load of marijuana.

15 Q. Because --

16 A. I didn't -- I didn't believe it to be undocumented
17 immigrants on -- there was -- there was only one driver. There
18 was no one also in the back seat or in the passenger side.

19 Q. And so what were you saying about the Mexican military not
20 being out there? Tell me about that again.

21 A. The Mexican military usually -- I don't know if they still
22 do, but they usually patrol up and down the river, because I
23 believe there's the -- the Juarez police, I guess, doesn't
24 cover the entire area. So the Mexican military patrols out
25 there.

1 Q. And so with the Mexican military out there, that has the
2 effect of keeping the drug smugglers away from that area?

3 A. I believe so.

4 Q. Well, I'm not -- is that your testimony? I mean, I don't
5 know. You tell us.

6 A. Well, the times that we have -- we have not seen Mexican
7 military or any -- any other type of Mexican law enforcement,
8 we've had loads of both marijuana and undocumented immigrants.

9 Q. So they've actually helped you deter the importation of
10 marijuana and other drugs, is that correct, their presence?

11 A. I really don't know. It may have.

12 Q. Okay. So that day you're expecting a load, and you relay
13 this to who?

14 A. Agent Mendoza.

15 Q. And you told him what?

16 A. I said that be- -- well, before that, before 1:00, we had
17 had some sensor activation in that same area where the van --

18 Q. Well, explain something to me. You're assigned to patrol
19 certain areas of the levee. Is that correct?

20 A. Yes, sir.

21 Q. And what zone were you assigned to patrol?

22 A. I believe I was assigned zone 3.

23 Q. And where was Agent Mendoza assigned to patrol that day?

24 A. 3A.

25 Q. That's adjacent to 3, I assume?

1 A. Yes, sir. I believe 3A begins at the Grijalva headgates,
2 which is -- I was on the edge of mine, and that was where his
3 area starts. I -- I'm not too sure.

4 Q. And so your cars were adjacent to one other? Or where are
5 you having this conversation about the little white car?

6 A. We -- we didn't have the conversation about the white car.
7 We were just sitting there talking about how we had not seen
8 anyone -- anyone, for that matter, Mexican military or people,
9 most of -- for that entire day.

10 Q. Sir, my question was: Where are you when you are having
11 this conversation?

12 A. We were on the radio.

13 Q. And where is he? What position -- is his car next to your
14 car? Are you next to him? What?

15 A. Yes, sir. The -- the vehicles are facing in opposite
16 directions, and we're parked right next to each other a few
17 feet away.

18 Q. And so how long were you out there parked talking to one
19 another?

20 A. It was only for about, maybe, ten minutes -- five, ten
21 minutes.

22 Q. And so if you can position us on the --

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

24 THE COURT: Yes, you may.

25

1 BY MR. GONZALEZ:

2 Q. Mr. Compean, I'm showing you what's been marked and
3 admitted into evidence as Government's Exhibit Number 26. And
4 I know this is not the area that you and Agent Mendoza were in,
5 correct?

6 A. Correct.

7 Q. Because this is the Jess Harris Road.

8 Are you on the levee road that's depicted on this
9 photograph?

10 A. Yes, sir. Well, we're off of the levee.

11 Q. Off of the levee?

12 A. Yes.

13 Q. What does that mean?

14 A. We're on the -- on the vega.

15 Q. On the vega?

16 A. Yes, sir.

17 Q. And your cars are, what, facing each other, next to one
18 another?

19 A. They're facing opposite directions.

20 Q. Okay. And you were faced in what direction, sir?

21 A. I believe I was facing east.

22 Q. Okay. Facing east, which is --

23 A. Right.

24 Q. All right. So help me with this, please. Is east facing
25 that direction (indicating)?

- 1 A. No, sir. It's facing the other way.
- 2 Q. The other way. Okay. And so his car is facing the
3 opposite direction, correct?
- 4 A. Yes, sir.
- 5 Q. And so then your driver's seat is closest to his seat. Is
6 that correct?
- 7 A. Yes, sir.
- 8 Q. And you're -- how close are you to one another?
- 9 A. Approximately -- anywhere from about five feet, maybe.
- 10 Q. Okay. And you're out there, what, just passing the time,
11 having a conversation, doing what, sir?
- 12 A. Yes, sir.
- 13 Q. Okay. So when is it that you pull out your binoculars to
14 see this car on the road?
- 15 A. I didn't. I looked -- I looked out my passenger side
16 window, and I could see it.
- 17 Q. So when you're having this conversation, you happen to
18 glimpse around, you see this white car coming?
- 19 A. Yes, sir.
- 20 Q. And when did you pull out your binoculars? I think you
21 testified something about using your binoculars. Is that
22 correct?
- 23 A. Yes, sir.
- 24 Q. When was that, sir?
- 25 A. After we -- we observed -- or I observed the car. After we

1 lost sight of the car, Agent Mendoza got off the levee.

2 Q. So you're in your car -- I'm sorry. Go ahead and finish
3 your answer, please.

4 A. Agent Mendoza left the levee. Well, he got onto the levee
5 and got off -- off of the levee, onto the -- he was heading
6 towards the main road.

7 Q. Okay. So you tell him, Look, there's the load that we're
8 waiting for, and he just leaves?

9 A. I said, That's probably our load. I didn't say, That's the
10 load we're waiting for. I said that was probably our load.

11 Q. So he doesn't go up somewhere so he can stage and wait for
12 this car to come across?

13 A. Yes, sir, he did. That's what we did.

14 Q. Okay. And then what happened, sir?

15 A. Once he got off, I -- I didn't see him exact- -- I didn't
16 see exactly where he went. But from what he mentioned, he was
17 going to position himself somewhere near -- near Island Road.

18 Island Road is -- from the pictures that you've shown
19 earlier, the -- that -- the 76 road, it goes up and hits Island
20 Road. Once you hit Island Road there, you -- you can only
21 either go east or west. He was covering the west side of that
22 road.

23 Q. Okay. And so then this road that you saw this vehicle
24 traveling is approximately how far away from the American
25 levee, or the -- I guess sensor 76?

1 A. It's on the Mexican levee. The vehicle was on the Mexican
2 levee. I'm not sure of the distance. It's probably about --
3 it looks about the same distance as -- as our levee to the
4 river.

5 Q. And what distance is that?

6 A. I couldn't say.

7 Q. And how long did -- this all happened at about what time?

8 A. It was before 1:00.

9 Q. Approximately what?

10 A. Maybe anywhere between 12:30 and maybe 1:00. I'm not
11 really sure.

12 Q. Okay. And you didn't relay this information to sector, to
13 anyone else?

14 A. No, sir.

15 Q. There's -- and it was a suspicious vehicle. That's what
16 you're telling us today, right?

17 A. Yes, sir.

18 Q. Because it was, what, riding low, or what?

19 A. Yes.

20 Q. And so then what do you think happened with that car?

21 A. I saw it continuing on the Mexican levee eastbound, and we
22 lost sight of it.

23 Q. And you think that that -- whatever was in that car is what
24 ended up in the van that you ended up chasing? Or what did --

25 A. We thought it -- we -- we thought it could be. We -- we

- 1 didn't know for sure.
- 2 Q. Is that your testimony today?
- 3 A. Yes, sir.
- 4 Q. That you think that the load that was in that car at about
5 12:30, 1:00, made it from the Mexican levee to the van on the
6 American levee in the 76 area. Is that your testimony?
- 7 A. Yes, sir.
- 8 Q. You know how much marijuana was in that van, correct?
- 9 A. Yes, sir, I do.
- 10 Q. And so you think all that marijuana was transported in the
11 matter of, what, 30 minutes, 15 minutes?
- 12 A. When the -- when the marijuana gets to the river, it takes
13 anywhere from 30 seconds to one minute to load it up. I've
14 seen -- I've seen 1,300 pounds be loaded up in less than one
15 minute, sir.
- 16 Q. And since you know where this car is heading, and you know
17 the areas where drugs are crossing, do you set up in that area?
- 18 A. Yes, sir.
- 19 Q. And what do you see?
- 20 A. At first I couldn't -- I didn't see anything, until the
21 sensors started going off again.
- 22 Q. Because you have 15 to 30 minutes to set up, don't you?
- 23 A. I'm not sure about the time.
- 24 Q. And what do you see, sir, at that -- where that -- sensors
25 are being activated?

- 1 A. I didn't see anything at first, until I heard it again.
- 2 And then that's when I observed the van.
- 3 Q. Well, weren't you looking, paying attention, seeing what's
- 4 going on at that area?
- 5 A. Yes, sir, I was.
- 6 Q. Didn't you have your binoculars with you?
- 7 A. Yes, sir, I did.
- 8 Q. Did you see a bunch of people running over there? What did
- 9 you see?
- 10 A. You can't -- from where I was positioned, I couldn't see
- 11 the -- the river, because the river bends. The levee road, it
- 12 goes almost in a curve, so I couldn't see the river.
- 13 Q. But you thought, Uh-oh, here comes our load, correct?
- 14 A. Yes, sir.
- 15 Q. And you don't bother telling anyone, do you?
- 16 A. I had mentioned it to Agent Mendoza earlier.
- 17 Q. You don't -- other than Mendoza, do you call -- radio
- 18 sector, sector communications?
- 19 A. No, sir, I do not.
- 20 Q. Do you call your other fellow agents that are out in the
- 21 field, all 9, 10, 11 that were out there, a load's coming
- 22 across?
- 23 A. I didn't know it was coming across. I -- I don't remember
- 24 if I mentioned to them that there might be some -- may be
- 25 something coming in or not. I -- I don't remember.

- 1 Q. Okay. There was nothing on the repeater traffic. Would
2 you agree?
- 3 A. Right.
- 4 Q. You didn't tell anyone, did you?
- 5 A. I don't remember, sir. If I did -- if I did tell them, I
6 would have told them on direct, because there was nothing on
7 the repeater.
- 8 Q. And now, of course, there's no record of that, is there?
- 9 A. No, sir, there isn't.
- 10 Q. So then you're setting up. The van comes across, gets --
11 somehow gets loaded up. Do you have any explanation for that?
- 12 A. No, sir.
- 13 Q. So the van is on the American side, and you know where the
14 dope is going to be heading towards, right, because you're
15 waiting for this load, aren't you?
- 16 A. No, sir, I -- I had -- I didn't know exactly where. But
17 they -- it was obviously in my -- it had to be in my area.
- 18 Q. And this is a pretty good-sized van, isn't it?
- 19 A. Yes, sir, it is.
- 20 Q. And somehow you can't see this van in the area that you're
21 expecting that the marijuana is going to show up. Is that
22 true?
- 23 A. I -- I saw the van leave the area.
- 24 Q. But you don't see it sitting there?
- 25 A. No, sir.

1 Q. So, somehow, this van shows up, they managed to load it up,
2 all the whole -- the entire time you're waiting for this van?

3 A. Yes, sir. From where I was positioned, you -- I can't see
4 the -- the edge of the -- I can't see the ditch. I saw -- from
5 where I -- I had a better vantage point. It was maybe about 30
6 yards north of the -- of the ditch. I can't see the ditch from
7 where I --

8 Q. Well, did you ever think of getting out of your car and
9 walking closer, so you could have a better view?

10 A. Yes, sir, I did, and I did not see anything. So I --

11 Q. Oh, you did get out of your car?

12 A. I -- I got out of -- I stood up on the side of my -- I
13 opened my -- my driver's side door. I stood up on the edge of
14 the -- of the truck, so I could see it a little bit -- get a --
15 I guess a higher -- a higher vantage point.

16 Q. Yes, sir. But you didn't walk towards -- you just got
17 off -- out of your vehicle, and you didn't do anything else.
18 Is that correct?

19 A. It was too far away for me to -- to see anything.

20 Q. And you couldn't move your truck, either, any closer, could
21 you?

22 A. Yes, sir, I could have.

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

24 A. No, sir, I did not.

25 Q. All right. So then the next thing you know, then, you're

- 1 getting all these sensor hits, right?
- 2 A. Yes, sir.
- 3 Q. What do you do?
- 4 A. I kept -- I continued looking at that road. All I could
5 see was the road. I could not see the -- the ditch or the
6 river.
- 7 Q. And how far away are you from the 76 area, you know, when
8 you're -- you're out there with your binoculars? You're out
9 there knowing a load is coming across. How far away are you
10 from that area, sir?
- 11 A. I'm not sure about the distance. At least a mile. I'm not
12 really sure.
- 13 Q. Okay. And it's back in February, so there's a lot of
14 plowed fields. There's nothing growing. Is that correct?
- 15 A. Correct.
- 16 Q. And so you can see pretty well?
- 17 A. There was a -- it was a -- it was kind of a windy day, and
18 it was a little bit -- looking through the binoculars, it was a
19 little -- almost hazy. I don't know if -- if from the -- there
20 was just -- I couldn't really get a -- a good -- a good look at
21 the -- at the road.
- 22 Q. Well, the binoculars, what's their purpose?
- 23 A. To enable -- it enables us to see at a longer -- longer
24 distance.
- 25 Q. And what distances can you see with binoculars, for --

- 1 A. I am not really sure. I've never measured.
- 2 Q. Pretty far distances, correct?
- 3 A. Yes, sir.
- 4 Q. You can see with binoculars this area between the drainage
5 ditch and the Rio Grande easily, correct?
- 6 A. The river?
- 7 Q. Yeah.
- 8 A. More than likely.
- 9 Q. Correct or not?
- 10 A. Yes.
- 11 Q. All right. And -- now, you had your binoculars earlier in
12 the day, and yet you couldn't see anything through them. Why
13 was that?
- 14 A. I didn't see the -- I -- I never saw the van come in. It
15 may have not come in through that road.
- 16 Q. And it was a gray day, a windy day?
- 17 A. Yes, sir, I believe so, from the -- from the pictures.
- 18 Q. And, with the aid of the binoculars, you can't see this
19 van. And yet when you're on the road, you think you see a
20 shiny black object. Is that what you're telling this jury?
- 21 A. The -- the wind -- the wind, or the speed, did not -- does
22 not -- did not stay at a -- it was not at a high -- high wind
23 speed the entire day.
- 24 Q. I'm sorry, sir. That's not what I asked you. I asked
25 you -- you've told the jury that you're out there with your

1 binoculars, and you can't see into the distance. And the
2 purpose of the binoculars is to see more clearly. And you're
3 telling us you couldn't see this van, correct?

4 A. I never saw it leave -- or go down. I saw it leave, and I
5 did not --

6 Q. And now --

7 A. -- go in.

8 Q. I'm sorry. Go ahead.

9 A. I never -- I saw it leave the area. I never saw it go in
10 on that road.

11 Q. All right. And, at the same time, you want them to believe
12 that, when you're rolling over this levee road, that you see a
13 gun, after someone's thrown dirt in your eyes. Is that
14 correct?

15 A. That's what I saw, sir.

16 Q. Does that make any sense to you, sir?

17 A. Yes, sir. That's what I saw.

18 Q. The van takes off. What do you do next?

19 A. I saw the van leave the area northbound. I got on the
20 radio, and I checked and -- and made sure I was on repeater, so
21 that every -- I could -- I didn't know any agents were nearby,
22 other than Agent Mendoza, and so I just called it out. No one
23 specific, I just put it out over the radio.

24 Q. Sir, why did you put it out over the repeater? What was so
25 important that you had to get it on the repeater?

1 A. I wanted to make sure there were agents close -- close by.

2 I didn't know if there were agents close by. I put it on the
3 repeater because it travels at a little bit longer distance.

4 Q. Okay. But it was your testimony earlier that you also kept
5 a lot of the communication on local, so that everyone could
6 hear you. Is that correct?

7 A. Yes, sir.

8 Q. But now you're saying that you used the repeater for what
9 purpose?

10 A. I used the repeater at that instance to -- because I didn't
11 know if there were agents close by.

12 Q. Sir, you didn't only use it at that instance. That
13 transcript goes on for 17 minutes. And you're on there
14 numerous times, are you not?

15 A. Yes, sir, when I called out a 10-23 to sector radio.

16 Q. And you used the repeater, as you should, so that everyone
17 could know what was going on. Is that right?

18 A. I used it to let sector radio know to stop all of their
19 sensor -- or calling out the sensors.

20 Q. And you wanted them to stop calling out the sensors for
21 what reason?

22 A. Because we had some -- some, I guess, emergency traffic.

23 Q. And you want the radio waves cleared, so that you can talk
24 to your fellow agents out in the field, correct?

25 A. Yes, sir.

1 Q. And tell them what's going on, correct, and they can tell
2 you. That's the whole purpose behind clearing the channel.
3 Isn't that true?

4 A. Yes, sir.

5 Q. And that happens. They clear the channel for you upon your
6 request?

7 A. No, sir, they did not. They -- I believe -- I'm not sure
8 who it was, but it's on that transcript. A couple of other
9 agents repeatedly asked for 10-23 on -- on that same channel.

10 Q. And that channel records those conversations, correct?

11 A. Yes, sir.

12 Q. And you're not saying that there are a lot of conversations
13 on the repeater that were not -- that were not recorded, are
14 you?

15 A. I'm not sure. There's --

16 Q. You're not sure about what, what you're saying or --

17 A. There's not -- there isn't always -- not all of the
18 communication on the repeater is -- is recorded. If you hit
19 dead spots, people won't hear you, and it doesn't get -- it
20 doesn't get transmitted.

21 Q. But the repeater is a lot more effective than the local
22 radio, correct?

23 A. If you're trying to get ahold of someone on the other side
24 of -- of town, or on the other edge, yes.

25 Q. And this was an important event, and this was something

1 that needed to be broadcast to as many agents as possible?

2 A. Yes, sir. And that's why I said it on the repeater the
3 first time.

4 Q. All right. So then you're on the repeater. You're telling
5 them, you know, This van is going to -- you give a description
6 of the van, right?

7 A. Yes, sir.

8 Q. And then you don't give a very good description, because
9 apparently Agent Juarez asked you if he, in fact, is after the
10 correct van. Is that true?

11 A. Yes, sir.

12 Q. What did he ask you? Do you remember?

13 A. I believe on the -- on the transcript? I didn't remember
14 until I -- I viewed it. But he asked if it was a minivan.

15 Q. Well, first of all, when did you see this van? Are you
16 sure this is even the same van that you saw?

17 A. Yes, sir, it is.

18 Q. Okay. You first saw this van where, sir?

19 A. The van was leaving the -- well, it was on that dirt road
20 directly north of that sensor.

21 Q. Within a mile of you, correct?

22 A. I'm not sure the distance. Approximately.

23 Q. Okay. Less than a mile?

24 A. I -- it could be.

25 Q. Okay. And how did you give a description of the van, if

1 you didn't see it with your binoculars?

2 A. I did see it with my binoculars. I saw it leave the area.

3 I called out a blue van at first, because I wasn't able -- I

4 wanted to get it out as soon as possible. I just called out

5 what first -- what looked like the color to me.

6 Q. Okay. And then Oscar calls back and says what to you?

7 A. I believe at first he said he was getting off the levee,

8 or -- or something to that effect.

9 But from what -- from his transmission, I knew he was

10 close, and -- as well as, I believe, other agents responded.

11 And, from their transmission, I knew they were close. And by

12 then, I believe I had already switched to -- to direct.

13 Q. But then Agent Juarez, as you heard him testify, asked you

14 for a better description?

15 A. Yes, he did.

16 Q. And what did he ask you?

17 A. He said, Is it a minivan?

18 Q. And what did you say?

19 A. I said, No, it's not. It's going to be either a light blue

20 or a gray full-sized van. And I said, It's going to be a

21 full-sized van, because I was able to see the outline of -- of

22 the windows on that van.

23 MR. GONZALEZ: Your Honor, may we approach the bench?

24 THE COURT: Yes.

25 (Bench conference:)

1 MR. GONZALEZ: I just wanted to know how long we were
2 going to be here for today.

3 THE COURT: I was thinking about breaking pretty soon.

4 MR. GONZALEZ: If you want to break, that's fine.
5 Otherwise, I'm going to start a different line of questioning.

6 MR. PETERS: Make him do it now.

7 MR. GONZALEZ: I need at least another hour or so.

8 MR. ANTCLIFF: I don't care.

9 THE COURT: Let's take a break.
10 I have about eight sentencings in the morning.

11 (End of bench conference; open court.)

12 THE COURT: All right. It's -- well, I can't see the
13 clock again, but I show it's a little bit before 6:00. And so,
14 ladies and gentlemen of the jury, we are going to go ahead and
15 break for this evening.

16 Remember you remain under all the rules of the Court,
17 particularly those about not discussing the case. You haven't
18 heard all of the evidence -- you haven't received the charge --
19 and not reading or listening to anything regarding this case.

20 Now, tomorrow morning, again, I have some things I
21 have to do. I'm going to ask you to be back in the jury room
22 about 9:15. I think we will get started at about 9:30, and so
23 I will see you back here tomorrow morning at that time. All
24 right? Thank you.

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

1 THE COURT: You may be seated.

2 Before we recess for the evening, I believe that we
3 have a rough draft of the charge ready, so if you would give me
4 just a minute, I will get that for you.

5 For those of you who haven't tried a case before me,
6 what I would like you to do is take it, review it, go through
7 it. Any corrections or changes that you believe -- including
8 typos, because that will happen, too. But any corrections,
9 changes, or things that you want to see, I would ask you to go
10 ahead and mark up your copy. And then we will talk about it,
11 you know, in chambers, outside the presence of the jury.

12 Sometimes, depending on your positions, you may
13 persuade me to include something, exclude something. We will
14 work on that change, depending when we finish, depending on my
15 rulings and your okays, we will put those objections on the
16 record.

17 He will get you that copy. But, again, it is a rough
18 draft based on where we're at now.

19 MS. KANOF: I have a question. It looks like we might
20 be able to argue tomorrow afternoon, so I don't want to make
21 the same mistake. How long are you going to give us to argue?
22 I was going to ask you that before --

23 THE COURT: I will tell you now, the way the charge is
24 looking -- and I think some of you have not seen it. They're
25 not complete, but it's 60 pages, which means that I'm going to

1 have to read it to them. And I would ask -- it takes 30 to 40
2 minutes. And then you will both have to argue your cases and
3 go over the charge.

4 So what do you think?

5 MS. KANOF: Hour and a half.

6 MS. STILLINGER: I was thinking split it, an hour for
7 each.

8 MR. ANTCLIFF: I was, too, actually, Judge.

9 THE COURT: Let me think about it, and I will let you
10 know tomorrow. But I need you to be back here at 9:15.

11 MS. STILLINGER: Also, could I ask you, Judge --
12 Mr. Peters was asking -- talking about splitting. If we don't
13 split the same way, we wanted to split whatever we have.

14 THE COURT: That's all right, if I give you an hour,
15 that you split, you know, half hour for you, half hour for him,
16 and you do it together. They get final closing.

17 MR. GONZALEZ: Assuming we finish by 1:00 tomorrow, it
18 is your intent for us to argue tomorrow afternoon?

19 THE COURT: I have sentencings tomorrow afternoon. I
20 do anticipate if we finish tomorrow morning that you will argue
21 in the afternoon.

22 (Transcript continues in Volume XIV.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: _____ Date: _____
David A. Perez, CSR, RPR

David A. Perez, CSR, RPR

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