

14 (JEFFREY KAPCHE, THE PLAINTIFF IN THE CASE, SWORN)

15 DIRECT EXAMINATION OF JEFFREY KAPCHE

16 BY MS. BUTLER:

17 Q. Please state your name for the record.

18 A. My name is Jeff Kapche.

19 Q. Mr. Kapche, where are you from?

20 A. I'm from Katy, Texas.

21 Q. Is that outside of --

22 A. It's a suburb of Houston.

23 Q. Let me ask you just briefly, did you grow up in the  
24 Houston area?

25 A. Yes, I did.

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- 1 Q. And when did you graduate from high school?
- 2 A. I graduated high school in 1986.
- 3 Q. And what did you do after that time?
- 4 A. I went to Texas A&M University.
- 5 Q. And did you graduate from Texas A&M University?
- 6 A. Yes, I did.
- 7 Q. When was that?
- 8 A. That was 1990.
- 9 Q. Now, after you got out of college, did you decide  
10 eventually upon a career that you wanted to pursue?
- 11 A. Yes. I had done a ride-along with a friend of mine that  
12 was a police officer, and what enticed me -- what I liked about  
13 it was I had been a Boy Scout, I had been an Eagle Scout, and I  
14 guess instilled in me was a need for civic duty and helping out  
15 the community. So it seemed like the next logical step for me.  
16 I got the bug, is what happened. I rode along with a friend of  
17 mine during the course of a shift and got to see exactly what a  
18 police officer does. So -- I'm sorry.
- 19 Q. And so how did you then take that idea and go about  
20 getting into policing?
- 21 A. I decided to put myself through a police academy at my  
22 own expense, and I applied with a couple of agencies.
- 23 Q. And when did you go to the police academy?
- 24 A. The fall of '93, 1993.
- 25 Q. How many hours of training did you have in that police

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1 academy?

2 A. A little over 600 hours.

3 Q. Now, tell the jury, if you would, what your first job was  
4 in policing.

5 A. My first job, which is actually still my current job, is  
6 with the Fort Bend County Sheriff's Office. I started there in  
7 February of 1994. I graduated the police academy in  
8 December 1993, and --

9 Q. Just so the jury understands it, can you take them  
10 through the various assignments that you've had and what each  
11 one entails?

12 A. Yes, ma'am. First, when you get hired on with the county  
13 Sheriff's Office -- I don't know how it is there, but at least  
14 in Texas you're broken up into different counties that make up  
15 the state. The Sheriff's Office is responsible for the jail,  
16 patrol, investigations of that county. So everybody that gets  
17 hired is actually employed first with the jail. They, I guess,  
18 first get their feet wet starting out as a jailer. I did that  
19 for nine months, and then I was promoted to patrol deputy, and  
20 it's the same thing as a police officer where you have a police  
21 beat or a patrol district that you travel around and you handle  
22 calls for service, take reports, handle violent offenders, hold  
23 crime scenes, conduct investigations, make arrests, do traffic  
24 stops, handle traffic control. That's all I can think of right  
25 now, but I did that for about four and a half to five years as a

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1 patrol deputy.

2           Then I promoted to a detective, and that was spring of  
3 '99, 1999. I started out in the burglary and theft unit in the  
4 criminal investigation division, which is the detective bureau,  
5 and I spent about a year there, and that's basically, again,  
6 where you get your feet wet and you learn how to -- it's  
7 property crime, so you learn how to investigate people that have  
8 had thefts, cars broken into, their homes broken into, have to  
9 go to pond shops and do seizure hearings where you obtain  
10 property through the court system.

11           And from that point, I moved to special crimes which  
12 entails family violence, anything with child abuse, pedophiles,  
13 any kind of investigation involving children, family-related  
14 issues, sexual assaults, and I did that for five years.

15           Next --

16 Q.       So, just to step back a little bit to give the jury an  
17 understanding about what you're doing, if you're -- you  
18 mentioned the special crimes deal with a child abuse issue, for  
19 example. Can you tell the jury, you know, as a detective, what  
20 is your role in putting together a case that would be  
21 prosecuted?

22 A.       It depends on how I receive that case. There are a  
23 couple of different ways to doing an investigation. I can be  
24 assigned a case by a supervisor. The report comes in taken by a  
25 patrol deputy, it's sent to the detective bureau, and I have to

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1 start investigating it. The other option or way that I could  
2 receive a case is if I was on call. Now, we have on-call  
3 rotation where I could be called out after hours any time of the  
4 night for a complete week, which entails overtime, and I'm the  
5 lead investigator on that case. I handle the crime scene, I  
6 make sure all the evidence is collected, and that's really when  
7 there's a serious scene and they need a detective out there to  
8 take control of a situation to do an investigation. I may stay  
9 out several days in a row trying to apprehend somebody.

10 So that's basically the two ways I can start an  
11 investigation, either because I'm called out to one or I'm  
12 assigned a case. When you have a case, being the case agent,  
13 you have to interview all the witnesses in a case, you have to  
14 process all the evidence. As the lead case agent, you have to  
15 make sure that the identification unit, which is like the CSI  
16 you see on TV, and they collect the evidence and you make sure  
17 they process it the correct way, that it's sent off to the lab,  
18 that if it's evidence that you personally can look at or use to  
19 benefit the case as far as apprehending a suspect and you're in  
20 charge of that, you sign it out to yourself, and you just fill  
21 out a little card to do that. And at one point you either  
22 develop a suspect or a direction to go in the case where you  
23 have to do leads for follow-ups out in the field so you have to  
24 investigate further. And anywhere -- I want to say a case can  
25 be taken care of in a couple of days, but a case can be solved

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1 in a day or several months, maybe over a year.

2           So you do maintain a case load of many cases. And in the  
3 course of an investigation, the end point, hopefully, is that  
4 you're filing your charge with the local district attorney's  
5 office, and that again is putting together all your witness  
6 affidavits; if you found or developed a suspect, interviewing  
7 them. Pretty much they don't have -- their Fifth Amendment  
8 right does not force them to give a statement, so I'm still  
9 putting together a case packet, regardless of whether or not  
10 they give me a statement or not. The whole idea is to develop a  
11 suspect and to file charges on that suspect and to present all  
12 my evidence to the district attorney's office, including my  
13 affidavits and the evidence collected and what may have been  
14 said involving a suspect.

15 Q.       And after you put the whole package together, do you  
16 follow that through by testifying in court --

17 A.       Yes, I have to --

18 Q.       -- to develop a case?

19 A.       I may have forgotten. I also have to do search warrants  
20 and arrest warrants in that process, as well as court subpoenas.  
21 But ultimately, once the case is accepted by the district  
22 attorney's office, either an arrest is made or the case is  
23 accepted and there's a trial if there's not a plea bargain. The  
24 simple explanation for a plea bargain is that the defendant  
25 decides that they're going to plead guilty and they assign for

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1 some time from the district attorney's office. But ultimately,  
2 if that is not agreed upon, there will be a trial and I do have  
3 to testify in trial about me as the case agent and what I did as  
4 far as investigating the case.

5 Q. Now, you took us through two of your assignments,  
6 burglary and theft and special crimes, and then I got you off on  
7 this other path. What was your next assignment as a detective?

8 A. After special crimes, I did robbery-homicide for about  
9 two and a half years. Basically, that entails not just  
10 robberies and bank robberies, but also every aspect of a  
11 homicide; if it's a suicide, any kind of death investigation.  
12 Anything related to either natural or unnatural death, I have to  
13 investigate to make sure there's not any foul play. Any kind of  
14 aggravated assaults. In other words, where it's an assault or  
15 some kind of violence not related to family issues. That's  
16 handled in special crimes. So any kind of -- I'm trying to  
17 think of a -- it's injury squad, is what they call it, so any  
18 kind of injury that you have related to person, a group of  
19 people, whether it be homicide, robbery, anything -- and outside  
20 of the family idea is what that unit handles. Like I said, I  
21 did that for two and a half years.

22 And then recently, last year, '08 -- February of '08 or  
23 March of '08, I transferred to the organized crime unit which is  
24 identity theft, fraud, forgery, embezzlement, computer crimes.  
25 I think that's pretty much it right there. So I'm currently

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1 assigned to the identity theft, fraud unit. White collar crimes  
2 is what they call it.

3 Q. Now, when you're working in the robbery and homicide --  
4 Well, working in all of these special units, do you have a  
5 requirement that sometimes you work overtime?

6 A. Yes. In fact, last week I probably worked 11 hours  
7 overtime on a -- I went out to -- it's a money laundering case.  
8 Before I had to leave for here, I was doing stake-outs, and I  
9 put in for at least 11 hours of overtime, in addition to my  
10 duties time which is 40 hours a week.

11 Q. And is the -- are the overtime assignments something that  
12 you can predict in advance?

13 A. No.

14 Q. So, taking us back, for example, to when you were working  
15 in the robbery and homicide squad, how often did you have to go  
16 out after hours and handle a murder case or some other serious  
17 matter?

18 A. Well, hopefully a short explanation. Unfortunately, the  
19 robbery-homicide unit, we didn't have a lot of detectives on  
20 that, so the on-call rotation was every six weeks, and that one  
21 week which you're on call as a robbery-homicide detective, you  
22 were expected -- that was the most common unit to be called out  
23 for late night investigations. I remember maybe two years ago  
24 that one week I got called out nine times, so that means two of  
25 those nights I got called out twice, but I, in fact, got called

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1 out every night that week, and most of them were after about  
2 11:00 at night.

3 I can think of the last homicide that I was involved  
4 with, that I probably worked from -- I guess it was a Friday  
5 night -- early Saturday morning until maybe the next Monday  
6 morning straight without any sleep, so it was over -- easily  
7 over 24 hours. I can't remember exactly how many. I think I  
8 had over 50 hours overtime that week just because it was a  
9 homicide and because of the nature of the crime. You have to  
10 follow leads through and try to obviously catch the person  
11 before, obviously, it can happen again.

12 Q. And has your diabetes ever interfered with any of your  
13 policing work?

14 A. No. Actually, believe it or not, even in those  
15 situations where I've been up late at night, as long as I was  
16 checking and I was being vigilant, taking care of myself, I  
17 didn't have any highs to where I would have gone to the hospital  
18 or lows to where I would have passed out. So, I mean, I keep  
19 all the supplies with me, I check, and you just have to be  
20 disciplined on making sure that, especially at least with my  
21 diabetes, that I can kind of fine-tune and feel that when I'm  
22 getting too high or too low that I know I need to check or  
23 something's off.

24 Q. Now, you mentioned that you're working in the organized  
25 crime unit at this point and that you were doing -- dealing with

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1 a lot of computer issues. Do you have any specific  
2 certifications to do that?

3 A. Actually, I do. In 2004, May of 2004, I attended a  
4 couple of computer forensic classes that actually FBI and other  
5 federal agents attend and got the same certification that they  
6 would to be a forensic hard drive examiner, or actually be able  
7 to testify as an expert in court for doing hard drive  
8 examinations, and I'm the only one in my department that can do  
9 that. So, I have a certification as an expert to do hard drive  
10 evaluations.

11 In addition to that, because of some of the needs that  
12 were told to me over the phone by the FBI, I also went through a  
13 Cisco certification which is like computer networking. I went  
14 through a couple of semesters of that. So, I have got Cisco I  
15 certification.

16 Q. In addition to your computer certifications that you've  
17 gotten, do you have any other certifications as a police  
18 officer?

19 A. I have a couple. I have certification as a police  
20 instructor. I have a certification as a drug recognition expert  
21 which also allows me to testify as an expert in court. I have  
22 certification for D.W.I. detection. There are some other ones  
23 for using pepper spray and being an instructor for that and  
24 other types of weapon usage and things related to police and law  
25 enforcement, and I've got a list, but I don't want to try to

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1 exhaust that right now.

2 Q. For example, do you have any certifications that relate  
3 to terrorism?

4 A. I did take a handling terrorism and threats school that  
5 was offered to law enforcement when it came out. I believe that  
6 was probably right after 9/11.

7 Q. Do you also have significant experience teaching other  
8 law enforcement officers?

9 A. Yes. I actually teach for three different academies.

10 There's a Wharton Junior College, which is a local community  
11 college. We also run a police academy at the Fort Bend County  
12 Sheriff's Office. It's called the Guss George Academy. I teach  
13 there. And also Texas A&M has a police academy run through  
14 their engineering extension service, which I also teach and I  
15 travel around the state teaching.

16 Q. And give the jury a flavor of the kinds of courses that  
17 you teach on a regular basis or when you teach.

18 A. A couple of them I do teach on a regular basis is mental  
19 health, family violence, D.W.I. detection, juvenile issues.

20 Q. Now, in all your work since you have gone to work at Fort  
21 Bend County, have you been required to make arrests?

22 A. Yes.

23 Q. Have you been required to deal with angry and violent  
24 people?

25 A. Unfortunately, yes.

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1 Q. Have you had to use a weapon?

2 A. I have not had to shoot anybody, if that's -- just to get  
3 that off the table, but I've had to use different weapons to  
4 apprehend suspects, yes.

5 Q. And do you have to know how to handcuff violent  
6 offenders?

7 A. Yes.

8 Q. Anything, any problems because of diabetes with doing any  
9 of the functions of a police officer?

10 A. No. I've been in a couple high speed pursuits. I've  
11 been in foot pursuits. I've had to roll around in the ditch  
12 with violent offenders that don't want to be arrested and  
13 handcuff them, people that just plain don't want to go to jail  
14 and I'm the only one there. In other words, I don't have any  
15 backup and it's just me and nobody else. I've had to arrest  
16 people in those situations.

17 Q. Now, we talked about how you had gotten a degree from  
18 Texas A&M. Are you now in the process of seeking an advanced  
19 degree?

20 A. Yes, I am. I'm getting a master's degree right now in  
21 leadership and management out of the criminal justice school of  
22 Sam Houston State University, and unfortunately for me, this  
23 Saturday morning I've got to take two finals.

24 Q. So, as I understand it, you have to fly back to Houston  
25 on Friday and get up at the crack of dawn to --

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1 A. Late Friday I'll have to fly back to Houston and then  
2 drive an hour and a half to take finals at 8:00 in the morning  
3 Saturday.

4 Q. And are you also having to write a bunch of papers while  
5 you're here in D.C.?

6 MS. KELLEHER: Objection, Your Honor, relevance.

7 THE COURT: Sustained.

8 BY MS. BUTLER:

9 Q. Now, Mr. Kapche, let me ask you to turn now to your  
10 experience applying to work for the FBI. How did you first come  
11 to apply for a job with the FBI?

12 A. Well, there were two FBI agents that were assigned to the  
13 Fort Bend County Sheriff's Office. They were doing a lengthy  
14 investigation of one of the smaller cities in Fort Bend County,  
15 and they were given storage space and a work area to work on  
16 this case. It was a case with a lot of documentation. It took  
17 them over a year to put the case together.

18 Q. Wasn't that a public corruption case?

19 A. Yes.

20 Q. Go ahead.

21 A. And I got to know them because they were right next to  
22 the Detective Bureau, I got to know the agents really well. And  
23 they had made a suggestion to me that, because of my experience,  
24 that I would be a good agent and that I should apply.

25 Q. And did you immediately go to apply?

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1 A. No, actually I did not. I had been through a previous  
2 litigation where I was denied employment because of my diabetes,  
3 and I did not want that to be an issue again -- I did not want  
4 to go through the time that it took to do that and get through  
5 the process, the whole process again and then have them tell me  
6 that I could not have the job because I was diabetic.

7 So, what I requested of the agent is to check for me that  
8 me having diabetes would not be an issue for me applying with  
9 the FBI. He told me he would get back to me in a week or two  
10 and he did. He checked and advised me that --

11 MS. KELLEHER: Objection, Your Honor, hearsay.

12 THE COURT: Let's hear what the answer is. I assume this  
13 is not being offered for the truth.

14 MS. BUTLER: No, Your Honor.

15 THE COURT: I'll overrule the objection until I hear  
16 something.

17 THE WITNESS: He told me he checked with local  
18 headquarters and they could not reject me for being diabetic  
19 because that was discrimination.

20 BY MS. BUTLER:

21 Q. And so using that information, did you decide that you  
22 wanted to apply for the FBI?

23 A. Yes. Once -- after I heard that, then I went and turned  
24 my application in.

25 Q. Now, let me ask you, why were you interested in becoming

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1 an FBI agent?

2 A. Well, in law enforcement, at least to me, that is the  
3 pinnacle of law enforcement, that you work with the best people.  
4 The agents that I had worked with doing search warrants, talking  
5 to, very professional. That's like the best of the best as far  
6 as law enforcement is concerned. I try to aspire and better  
7 myself and not just in school, but also in my law enforcement  
8 career, and because I was recommended to do it by one of the  
9 agents and he thought that I would be a good agent, and it's  
10 something that -- when you have a dream of doing something with  
11 your life, this was my dream, this was my dream to do this,  
12 is -- I always was fearful that the diabetes would be an issue  
13 because I've heard that in the past and it's been past issues of  
14 having to deal with it, people just either don't understand or  
15 they stereotype it, so it's been an issue in the past of -- not  
16 because of anything I have done, it's as perfect as I can take  
17 care of myself, or that I don't restrict what I can do as long  
18 as I maintain good management and discipline of myself; that  
19 sometimes you're a faceless person, that no matter what you do,  
20 how good you do it, it's not good enough, and that's tough.  
21 It's tough to get through that. I'm sorry, what was the  
22 question?

23 Q. It was about your application. And let me ask you if you  
24 would turn to Plaintiff's Exhibit 1.

25 A. Okay.

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1 Q. And I just want to go through the process. You've said  
2 that you first were recommended to the FBI by other agents, but  
3 explain to the jury, what is the first thing you did to start  
4 the process going?

5 A. I had to receive a short application form and fill it  
6 out; it was only a couple pages, turn it in. After that, you --  
7 did you want me to continue?

8 Q. And so you turned that in and then what happened? Yeah,  
9 go ahead.

10 A. After that, they call you to take a -- I call it like a  
11 level test or an aptitude test or some kind of assessment test  
12 to see what your aptitude is for doing certain things. I can't  
13 remember exactly if it was -- it wasn't all math and words, but  
14 it was a type of aptitude test to see where you are, I guess  
15 education-wise.

16 Q. All right. So, in looking at this flowchart, you were  
17 told that you were qualified?

18 A. Yes.

19 Q. You met the first qualification review and you got to  
20 phase 1 testing; is that right?

21 A. Yes.

22 Q. And what did that -- is that the test that you just  
23 talked about?

24 A. Yes, the phase 1 testing.

25 Q. Okay. And then what -- tell me what happened after that.

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1 A. Well, you either pass or don't pass. And if you pass,  
2 they let you know ahead of time that there's maybe 50,000  
3 applicants that try to be FBI agents. Most of you will not get  
4 to phase 2. Phase 2 is very hard to get to. You have to be  
5 competitive. You have to be something under the idea of -- a  
6 specific need for the FBI. You have to have some kind of  
7 competitiveness about you that they're going to need help, the  
8 FBI in their mission.

9 So, just because you pass the test does not mean  
10 necessarily that you'll make it to phase 2, that they handpick  
11 exactly -- basically the cream of the crop who they want to pick  
12 to go to phase 2.

13 Q. And so then did you have the same experience that we  
14 heard Mr. Raucci talk about where there was a lag time there and  
15 you didn't hear anything from the FBI, just like he did?

16 A. Exactly. And I also went through about a year or year  
17 and a half of a hiring freeze. I was obviously in communication  
18 with the agents that were there assigned to my agency. They had  
19 to check for me, and he would say, no, there's a hiring freeze  
20 now with the FBI. And he's actually the one who approached me  
21 and said, you know, they lifted the hiring freeze, you need to  
22 look back into it and see what your application status is.

23 Q. And so, what did you learn when you called and checked on  
24 your application status?

25 A. Being this is almost seven years ago, I'm trying to

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1 think. Actually, this was only four years ago. In 2003 -- I  
2 applied in 2002. In 2003 I either received a letter or they  
3 told me over the phone that in order to be competitive, I need  
4 to have one of four things. I needed to have a language skill,  
5 I had to have a law degree, finance/accounting, or computer  
6 specialization.

7           So, seeing that a lot of these were probably going to  
8 cost a couple of years and I don't want to learn a new  
9 language -- I wanted to get another degree. I had a degree in  
10 journalism. The computers seemed like the natural -- since I  
11 enjoyed doing it already and I seemed to be good at it, that's  
12 the approach that I wanted to take. So I asked them what do I  
13 need to do as far as computer specialization that you need to  
14 make me competitive. They said, Well, you can get a degree in  
15 computers, you can get a Cisco networking certification, or some  
16 kind of expert certification in computers. So I did that. I  
17 went and spent two semesters getting my Cisco certification.  
18 During that time I also got certified to be a forensic computer  
19 examiner. And maybe a month or two after that I went back to  
20 the FBI to present my certificates.

21 Q.       And when you went back, what happened then?

22 A.       That's actually when I met Lucretia Robinson. She works  
23 for recruiting in Houston for the FBI.

24 Q.       And Lucretia, you mean the woman sitting at the counsel  
25 table there?

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1 A. Yes, the lady with the curly hair.

2 Q. And so, what did the two of you discuss?

3 A. Well, it -- it was going to be a process because in  
4 several months -- in October I think is when I was there that I  
5 met her. That January was when I was going to turn 37 so that  
6 if they were going to send me to phase 2, it needed to be done  
7 quickly and there needed to be things put in place in line to  
8 where there wasn't a lot of waiting around.

9 Q. And so, did you get the phase 2 approval?

10 A. Yes, actually I attended a -- like an orientation with  
11 maybe about 15, 20 people, and Lucretia Robinson there -- I'm  
12 sorry, Agent Robinson was there and talked about what to expect  
13 from the oral interview, what to expect from the written portion  
14 of phase 2. And I mean, this to me -- the phase 2 acceptance  
15 was really important to me because not very many people make it  
16 to that portion. I remember that she told us what to expect and  
17 tried -- she was a recruiter, she tried to help us out. She did  
18 a great job of doing that.

19 And we individually spoke about ourselves and what we  
20 thought we had to offer the FBI, and I remember she took me  
21 aside and said that I presented myself well, had a good presence  
22 about me, that I should do really good in the oral interview.  
23 And she did an outstanding job of getting me through the  
24 different -- I'm getting ahead of myself, but the different --  
25 once you pass phase 2, you have some tests you have to do, and

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1 she took care of that as well.

2 Q. So, in terms of the phase 2 testing, just real briefly,  
3 was that in Houston?

4 A. Yes -- No, I'm sorry. The phase 2 testing -- the first  
5 test was in Houston; the phase 2 testing was actually in  
6 Philadelphia. They fly you out of town, my idea is to just  
7 unsettle you to where you're not comfortable. So it's like a  
8 one-day turnaround. You fly in the night before, you take your  
9 oral board assessment, and you do a written portion test, and  
10 then they fly you out that afternoon. So you're there maybe  
11 less than 24 hours, and I was flown in November to Philadelphia  
12 to do my phase 2 testing, which I did pass.

13 Q. And so the oral interview that you were talking about in  
14 the phase 2 testing, was that just one person or were there  
15 multiple persons? How did that work?

16 A. No, that was a board of people, and they ask you -- it's  
17 like an assessment board where they ask you a bunch of questions  
18 and you have a specific amount of time to answer. And obviously  
19 you have to be thorough with your answers and be concise. And  
20 some of them dealt with scenarios, some of them dealt with  
21 integrity issues, some of them dealt with what-if situations,  
22 what would you do in this situation, more of a scenario  
23 question, and then also speaking about yourself, why you wanted  
24 to become an agent.

25 Q. And you also had a written portion of the phase 2; is

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1 that correct?

2 A. Yes, and that was right after my oral board. And I  
3 believe the whole purpose of that is they give you a set of  
4 facts or some kind of -- like a booklet where you have an  
5 embezzlement case or they give you the facts of an embezzlement  
6 case, or something along those lines, where you've got to  
7 dissect, pull out the pertinent information, write an  
8 investigative report, I think maybe even put together some kind  
9 of recommendation. Basically a field report where you've put in  
10 as much information as you can that you think is pertinent  
11 written in a concise, smart, intelligent manner, and obviously  
12 have good sentence structure and spelling. But the interesting  
13 thing is that, especially in the computer age, it's got to be  
14 handwritten. So it was easily -- it was either 90 minutes or a  
15 little bit over 90 minutes, but I remember it was really painful  
16 for my hand because I'm used to typing. And I think I actually  
17 had to use a pencil, too, so it was -- I found it to be a little  
18 more difficult than the oral board, but that's two phases or two  
19 aspects of phase 2. And once you're finished with that that  
20 afternoon, then you're flying out back to your hometown.

21 Q. So, am I right, you don't hear whether you passed there  
22 in Philadelphia?

23 A. No, you don't hear whether you passed or not, but they  
24 address that issue or they mail you a letter to tell you whether  
25 you passed or not.

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1 Q. And how did you find out?

2 A. Well, I felt like I had a really good relationship, and  
3 maybe she does this for all the applicants, but Lucretia really  
4 went out of her way. She said, Look, as soon as I find out,  
5 I'll give you a call, I'll let you know whether you passed or  
6 not just so you know. And it was within a couple of days that  
7 she called me, and I was obviously excited about that.

8 I mean, that was a -- you know, the idea of getting your  
9 dream job. And to me, you know, that's the top part of the  
10 application process because the rest is basically a downhill  
11 slide, unless you've been bad or arrested for felonies or you  
12 can't pass a drug screen, the typical stuff they want to make  
13 sure everything is working right, and you're not a bad person,  
14 that -- the hard part was over. Getting to phase 2 was over and  
15 that was the most important part of the application process  
16 because not many people get to that point. So, by her calling  
17 me, I mean, other than my children being born, that was the high  
18 point of my life.

19 THE COURT: It seems like a good place to stop for the  
20 evening. It's 5:00.

21 MS. BUTLER: Okay.

19 BY MS. BUTLER:

20 Q. Mr. Kapche, let me hand you what has been marked as  
21 Plaintiff's Exhibit 3 and ask you to look at this document.

22 A. Yes, I recognize this document. It's the application that I  
23 filled out for the FBI.

24 MS. BUTLER: Your Honor, we would move the admission of  
25 Plaintiff's Exhibit 3.

1 THE COURT: Without objection, it's received.

2 (PLAINTIFF Exhibit Number 3 was moved into evidence.)

3 BY MS. BUTLER:

4 Q. Let me hand you what has been marked as Defendant's  
5 Exhibit 16 and ask you if you've seen this before and can  
6 identify it for the jury.

7 A. Yes, I do recognize the document. It's a letter handwritten  
8 by my physician, Dr. Tulloch.

9 Q. And were you asked to obtain that document by the FBI as  
10 part of your application?

11 A. Yes, I was.

12 MS. BUTLER: Your Honor, we move the admission of  
13 Defendant's Exhibit 16.

14 MS. KELLEHER: Objection, Your Honor. It's hearsay.

15 MS. BUTLER: We're not offering it for the truth of the  
16 matter, Your Honor, we're offering it to show that the FBI had  
17 certain requirements.

18 MS. KELLEHER: I don't think there's anything about the  
19 exhibit that indicates what was sought by the FBI.

20 MS. BUTLER: But we're going to connect that up in the  
21 testimony.

22 THE COURT: Well, let's get the testimony out first,  
23 then we'll decide whether the document is admissible.

24 MS. BUTLER: We also note that it's their exhibit,  
25 Your Honor.



1 THE COURT: Well --

2 MS. KELLEHER: It's a party admission, Your Honor, for  
3 our purposes.

4 BY MS. BUTLER:

5 Q. Now, Mr. Kapche, let's step back to where we were yesterday.  
6 And I believe where we left it was that you had just gotten a  
7 conditional offer from the FBI. Do you recall that?

8 A. Yes, that's correct.

9 Q. All right. Now, going back to Plaintiff's Exhibit 1 --

10 MS. BUTLER: And if we could just, Garin, get the last  
11 part of this after -- okay.

12 BY MS. BUTLER:

13 Q. After you get a conditional offer of employment, are there  
14 various other things that you have to do before you get a final  
15 approval to be an FBI agent?

16 A. Yes.

17 Q. And does this exhibit accurately state the things that you  
18 were required to do before you got the final word?

19 A. Yes, that is accurate.

20 Q. And I think you mentioned yesterday that the applicant  
21 coordinator who was helping you through the process was  
22 Ms. Robinson. Correct?

23 A. Yes, that's correct.

24 Q. And did Ms. Robinson schedule appointments for you so that  
25 you could go through all of the drug tests, the polygraph --

1 A. Yes --

2 Q. -- all those things?

3 A. I'm sorry, I didn't mean to cut you off. Yes, she did a  
4 very good job of scheduling them almost right after each other  
5 so that it could be done over a course of several days, and done  
6 quickly, so there wasn't a lot of lag time between the different  
7 examinations or tests that were conducted.

8 Q. So let me ask you this, Mr. Kapche: Did you get word that  
9 you had passed the polygraph examination?

10 A. Yes, I did get word that I passed the polygraph.

11 Q. Did you get word that you had passed the drug test?

12 A. Yes.

13 Q. Did you get word that you had passed the personal security  
14 interview?

15 A. Yes.

16 Q. Did you get word that you had passed a background  
17 investigation?

18 A. Yes.

19 Q. And did you get word that you had passed the preemployment  
20 physical examination?

21 A. Yes.

22 Q. Now, the preemployment physical examination is an  
23 examination that Dr. Burpeau conducted. Correct?

24 A. Yes, that is correct.

25 Q. Can you tell the jury -- well, for one thing, can you tell

1 me how long that examination lasted?

2 A. Well, the examination is actually several examinations. It  
3 lasts pretty much all day. And you start off the morning, I  
4 went to see Dr. Burpeau and he had a conversation with me and I  
5 did a couple of tests with him in his office. Then, during the  
6 rest of the course of the day, he actually sent me to different  
7 areas of the building where I could do blood work and chest  
8 X-rays, and I had to do eye tests, ear tests. I was kind of  
9 like a pin cushion there for the day. And they ran just about  
10 every test imaginable to make sure, I guess, I was in good  
11 physical condition.

12 Q. And at the end of the day, did you get any kind of statement  
13 from the doctor about whether or not he was going to clear you  
14 for duty?

15 A. He said that he wanted to check one thing out, or have me  
16 see another specialist outside of the building. I had what was  
17 termed in the, I guess, review a granuloma, when they did a  
18 chest X-ray, and I needed to see a lung specialist to make sure  
19 that there was not an issue with what. And I did do that.

20 So he did not give me a final determination at that  
21 point, but I did go to the physician a couple of days later,  
22 which reported back to Dr. Burpeau, which after that, then  
23 cleared me as far as the medical.

24 Q. Now let me ask you to look at Plaintiff's Exhibit 4, and  
25 I'll turn to the second page. Or maybe it's the third page.

1                   So how long did you have a chance to meet with  
2 Dr. Burpeau?

3                   MS. KELLEHER:  Objection, Your Honor.  Asked and  
4 answered and relevance.

5                   MS. BUTLER:  No, I'm just talking about -- he's  
6 described the whole process, but now I'm turning to his actual  
7 discussions with Dr. Burpeau.

8                   THE COURT:  Overruled.

9                   A.  I actually met with him -- at least two or three times we  
10 had discussions talking about the tests, or at the end of the  
11 day he had a questionnaire of several sheets that he needed to  
12 fill out, and we had an at-length conversation not only at the  
13 beginning of the morning but also at the end of the day.

14                  Q.  So is it accurate to say that Dr. Burpeau asked you a lot of  
15 questions about your medical situation to gather a complete  
16 record?

17                  MS. KELLEHER:  Objection, Your Honor --

18                  A.  Yes.

19                  MS. KELLEHER:  -- leading.

20                  THE COURT:  It is, but I'll allow it.

21                  A.  Yes.

22                  BY MS. BUTLER:

23                  Q.  Turning to FBI 786, which is two pages over, he has a whole  
24 list of things there that he's supposed to figure out in terms  
25 of your fitness for duty, correct, if you look at the bottom

1 part of this page?

2 MS. KELLEHER: Objection, Your Honor. Leading.

3 THE COURT: We'll call that foundational. Overruled.

4 A. I recognize the form because I believe I had to fill it out.

5 BY MS. BUTLER:

6 Q. All right. So then you were asked and you got  
7 information -- gave him information, he received information.  
8 Did you discuss your diabetes with Dr. Burpeau?

9 A. Yes, I did. The reasoning for me discussing my diabetes  
10 with Dr. Burpeau is because I had a bad experience before with  
11 an employment situation and I did not want that to be an issue.  
12 I did bring in documentation with me because of my fears related  
13 to that, and letters from my personal doctor, which  
14 coincidentally is in the same building as Dr. Burpeau.

15 And I told Dr. Burpeau that if there was any  
16 documentation he needed to see, that I've already talked to my  
17 physician, that he's more than welcome to go review my  
18 documentation with my doctor because he was only two floors, I  
19 think, away from his office.

20 Q. So turning to, I guess it 's about 11 pages over, it's  
21 FBI 797, is this the letter that you took -- is this one of the  
22 letters that you took to Dr. Burpeau from your physician?

23 A. Yes, I recognize it as one of the letters.

24 Q. And why did you do that, Mr. Kapche?

25 A. Again, because I was concerned about the issue of diabetes,

1 and I wanted to make sure the doctor understood, whether he  
2 asked for it or not, that I was in good control of my diabetes.

3 Q. Now turning to the next page, is this a note from  
4 Dr. Tulloch?

5 A. Yes, it is.

6 Q. And why did you bring that in?

7 A. I'm trying to remember if this is something I had to fax to  
8 Dr. Burpeau or if I requested Dr. Tulloch to give to  
9 Dr. Burpeau, just as an added piece of documentation that I had  
10 something from the doctor about my control of my diabetes.

11 Q. Did you offer Dr. Burpeau any particular records if he  
12 needed them?

13 A. Yes, I did tell him in addition to what I had brought him,  
14 that any logs or anything he needed to see, that I would be more  
15 than happy to share with him.

16 Q. Now turning to FBI 795, which is just a few pages earlier,  
17 did you get word from Dr. Burpeau that you were medically  
18 cleared?

19 A. Yes, I believe it was a phone call.

20 Q. And what did Dr. Burpeau tell you?

21 MS. KELLEHER: Objection, Your Honor. Calls for  
22 hearsay.

23 THE COURT: Sustained.

24 BY MS. BUTLER:

25 Q. What did you learn?

1 MS. KELLEHER: Objection, Your Honor. Calls for  
2 hearsay.

3 THE COURT: What did he do on the basis of what he  
4 heard?

5 THE WITNESS: I'm sorry, I was...

6 A. I learned that I had passed the physical.

7 BY MS. BUTLER:

8 Q. That Dr. Burpeau had said you were medically clear, fit for  
9 duty?

10 THE COURT: Sustained. Come on, Ms. Butler.

11 BY MS. BUTLER:

12 Q. What did you do after you heard from Dr. Burpeau?

13 A. What did I do? I understood that the medical that I needed  
14 that was one of the phases or facets of the application was over  
15 with, and that I had passed the medical portion of the  
16 application process.

17 Q. Now, did there come a time when you heard that there were  
18 additional concerns?

19 A. Yes.

20 Q. And let me ask you to look at Exhibit FBI 799.

21 A. (Witness complies.) Yes, I see it.

22 Q. Is this a letter that you wrote on -- when did you write  
23 this letter?

24 A. As it says on the document, January 4th of 2005.

25 Q. And do you remember why you wrote it?

1 A. I was requested, I believe by the nurse at the FBI, that  
2 they needed more information, which I was more than happy to  
3 share with them, about my diabetes and my ability to use  
4 firearms.

5 Q. Do you know where -- first of all, the nurse that you're  
6 talking about, is this a nurse at FBI headquarters or in  
7 Houston?

8 A. I believe it was in Houston.

9 Q. And so do you remember what you were told about this, why  
10 you needed to get these letters?

11 A. Headquarters needed --

12 MS. KELLEHER: Objection, Your Honor. Calls for  
13 hearsay.

14 THE COURT: I'm going to allow that because it's what  
15 he acted on.

16 A. Headquarters needed more information about my condition and  
17 ability to do the job. They requested me to write a letter and  
18 get a letter from my personal physician concerning issues they  
19 wanted more information on.

20 BY MS. BUTLER:

21 Q. And did anyone tell you who was making the request from  
22 headquarters?

23 A. I did not have a name at that time, no.

24 Q. Is that why you wrote this "To Whom It May Concern"?

25 A. Yes.



1 Q. Now, do you have any idea, or was it explained to you what  
2 this concern was about your ability to handle firearms?

3 MS. KELLEHER: Objection, Your Honor. Calls for  
4 hearsay.

5 THE COURT: Well, answer the question yes or no.

6 A. Can you repeat the question?

7 BY MS. BUTLER:

8 Q. Do you know what concerns the FBI had about your use of  
9 firearms?

10 THE COURT: The question is yes or no.

11 A. No.

12 BY MS. BUTLER:

13 Q. All right. This letter is dated January 4th. When were you  
14 asked for this information?

15 A. I believe I was asked either that day or the day before  
16 that.

17 Q. And turning now -- okay. So at the end of the letter -- let  
18 me just say this: It says, "For further information, do not  
19 hesitate to contact me or Dr. Tulloch." Do you see that?

20 A. Yes.

21 Q. And did anyone ever call you from the FBI about your medical  
22 condition or asking for additional documents after that date?

23 A. No.

24 Q. If they had, would you have been happy to provide them?

25 A. I would have been more than happy --

1 MS. KELLEHER: Objection. Calls for speculation.

2 THE COURT: Overruled.

3 A. I would have been more than happy to share any documentation  
4 they requested of me.

5 BY MS. BUTLER:

6 Q. Now, turning now to this Defendant's Exhibit 16, is that a  
7 letter that -- you said that you were asked to get a letter from  
8 your physician?

9 A. Yes, that's correct.

10 Q. Is that the letter that you took to the FBI office on  
11 January 4th, 2005?

12 A. Yes, that same day that I wrote my letter, I traveled to my  
13 doctor's office and he handwrote out the letter I have in front  
14 of me. And I then it looks like I faxed it to the FBI.

15 MS. BUTLER: Your Honor, at this point we move the  
16 admission of Defendant's Exhibit 16 into evidence.

17 MS. KELLEHER: Your Honor, I think it's still hearsay.  
18 And to the extent it was sent to the FBI, it's reflected in the  
19 exhibit the plaintiffs just pointed Mr. Kapche to.

20 THE COURT: Which part of Exhibit 16? There are two  
21 pages in my book.

22 MS. BUTLER: Well, page one is all we need, Your Honor.

23 THE COURT: Page one is a fax to Dr. Tulloch.

24 MS. BUTLER: I'm sorry, I have that as page two.

25 THE COURT: You want the handwritten "To Whom It May

1 Concern"?

2 MS. BUTLER: The handwritten, Your Honor. Because this  
3 is something he had to do. We're not offering it for the truth  
4 of the matter.

5 THE COURT: Re-mark that as a plaintiff's exhibit and  
6 it will be received, this single sheet.

7 BY MS. BUTLER:

8 Q. Did the FBI give you any kind of guidance of what they  
9 needed Dr. Tulloch to say in this letter?

10 MS. KELLEHER: Objection. Calls for hearsay.

11 MS. BUTLER: Your Honor, it's the FBI. We're talking  
12 about a party opponent in this case.

13 MS. KELLEHER: But they haven't asked --

14 MS. BUTLER: They keep making hearsay objections about  
15 the FBI.

16 THE COURT: Well, you keep asking for hearsay. But I'm  
17 going to allow that one.

18 A. Okay. They needed to show that I was in good control, is  
19 what they requested for me to get from Dr. Tulloch. And  
20 additionally it says on here in the letter that I'm able to  
21 perform the duties or physical training program at the bottom of  
22 the letter.

23 BY MS. BUTLER:

24 Q. Now, Mr. Kapche, going back to Plaintiff's Exhibit 1, and at  
25 the bottom there, the various stages, it looks to me like we've

1 gone through that you passed all the stages. Is there one stage  
2 that they didn't put on their chart?

3 MS. KELLEHER: Objection, Your Honor.

4 BY MS. BUTLER:

5 Q. The physical fitness test, you had to do that as well.  
6 Correct?

7 A. Yes, there's a PFT test, a physical fitness test, that  
8 you're also required to do and pass.

9 Q. And tell us what that involves.

10 A. For me it was the hardest one. The requirement for passing  
11 a PFT test is the same for if you're 21 or 41. It doesn't  
12 matter what your age is, you have to -- it's a circuit training,  
13 where you have to be not just good at doing individual events;  
14 you have to be good endurance-wise to where you can do several  
15 events in a row in a short time frame.

16 So individually I can do all these events, but when you  
17 lump them all together, it becomes increasingly hard. It was  
18 probably one of the hardest physical agility or performance  
19 tests I've ever had to do. In other words, I had to be in shape  
20 before the two months I had before I was tested to do this, or  
21 the month or two that I was required to do this test.

22 It entails doing sit-ups to exhaustion in a minute.  
23 And just as an explanation, there's four tests; each one of the  
24 tests require a certain number of points. You have to get at  
25 least one point on a test or you fail. You have to get a total

1 number of 12 or more points in all the tests together or you  
2 fail.

3 So, for instance, just to step you through it real  
4 quickly, the sit-up test, if you do like above 58 sit-ups, you  
5 get nine points. And it goes in a graded scale below that. The  
6 less sit-ups you do, the less points you get. Then you wait  
7 seven minutes and do a 300-meter dash, and that has to be under  
8 52 seconds. The more you get it underneath that time, the more  
9 points you get. I mean -- yes, the more points you get.

10 Then you wait seven minutes, and the third test, you've  
11 got to do as many push-ups as you can. And that starts off at  
12 70, and the less you do, the less points you get. The last  
13 test, seven minutes later after that, you have to run a mile and  
14 a half, and it has to be under 12 minutes, 21 seconds. The less  
15 time you do on that test, the more points you get.

16 So basically you have to have at least one minimum  
17 point on all the tests, and all the points together have to add  
18 up to 12. If any one of those requirements is not met, then you  
19 fail.

20 Q. Did you pass this physical fitness test on January 13th,  
21 2005?

22 A. Yes.

23 Q. Now, did you think that was the last step in the process?

24 A. Yes, I did.

25 Q. And had you had any discussions with Ms. Robinson, over

1 here, about setting a date for you to start at Quantico?

2 A. I actually had several phone calls or discussions with her  
3 because of my age and because of me needing to put two weeks  
4 notice at work, letting my employer know I had to take time off,  
5 obviously, to do these tests and to do these exams, in addition,  
6 the supervisors know, up to date on everything.

7 So the discussions I had, to answer your question,  
8 about when the academy date was, when I would be going, things  
9 of that nature. Do you want me to be more specific?

10 Q. Well, did you get an actual date to go to the academy?

11 A. I was told it would be January 24th, as long as they had  
12 enough positions in that class. Because I had passed the PFT  
13 test in the middle of the month of January and we're about a  
14 week away from the academy class, I, for one, needed to tell my  
15 employer that I would be leaving in possibly a week, which they  
16 seemed to be fine with, or there had to be enough positions in  
17 that particular academy class to be able to attend it.

18 Otherwise, it would be February or March, which would have to be  
19 approved by headquarters.

20 Q. Okay. So you had a date for Quantico. Did there come a  
21 time when you found out that you wouldn't be going to Quantico?

22 A. I believe at the end of that week I had been on the phone  
23 with Agent Robinson several times, and I don't remember the  
24 exact date, but I remember that, yeah, she did call me and tell  
25 me that the health department of the Department of Justice had

1 issues with my application, or problems; ultimately, that I was  
2 going to be rejected because the diabetes I had was -- because I  
3 had diabetes, that it would be too dangerous for me to travel to  
4 foreign countries where there wouldn't be insulin or they would  
5 not have the availability to obtain insulin, which obviously I  
6 disagreed with, because even third world countries have insulin.

7 In addition to that, the other times I've traveled to  
8 foreign countries, either Europe or Mexico or even Costa Rica, I  
9 take enough supply with me that -- you take more than what you  
10 think you're going to need in case something happens, more than  
11 how long you think you're going to be there. I mean, you can  
12 research where there would be places or hospitals to find  
13 insulin before you leave.

14 So I didn't necessarily agree with that statement that  
15 I would not be able to obtain insulin if I had to travel abroad.

16 Q. Do you remember how that felt, to get that call?

17 A. Well, I mean, kind of like my legs had been cut out from  
18 underneath me. An easy word to say is upsetting. I know I was  
19 a little angry, too. I mean, I didn't understand what they were  
20 trying to say or ask me for, because I thought I had provided  
21 everything to them. They had my application since 2002 that  
22 says I had been a diabetic, and they had had plenty of time to  
23 review that documentation and ask me for anything. In fact,  
24 when they did, I either supplied them a letter or got a letter  
25 from my doctor the same day they needed it.

1           It was frustrating. I was -- like I said before, I was  
2           upset, and I may have translated that a little bit to  
3           Agent Robinson, which I apologize for. I don't know how it  
4           translated over, but that wasn't something that had anything to  
5           do with her, or her fault, because she had been so great to me  
6           the whole time.

7           And just disbelief. I couldn't believe it. It was  
8           like I was in shock, because it didn't make any sense. Just I  
9           didn't understand it. I needed to get more information. And  
10          she offered to do that for me, to find out -- well, that can't  
11          be right. I don't understand, that can't be true. Can you  
12          please get more information for me? Which she said she would  
13          check into it.

14         Q. Was Ms. Robinson able to get more information for you?

15         A. Well, I know that she said a letter would be coming, they  
16         would be sending a letter to me describing exactly why they were  
17         rejecting me. I may have combined some of that information with  
18         her into a couple of phone calls. It being four or five years  
19         ago, I don't really remember exactly. I talked to her a lot,  
20         but I may have -- I think I've covered that, sort of what she  
21         told me.

22         Q. So let me ask you to look at Plaintiff's Exhibit 14. Is  
23         this the letter that you received from the FBI telling you that  
24         you had been rejected as an FBI agent?

25         A. Yes, it is.



1 Q. Now, I note that the document is dated February 11th, 2005.

2 Is that when you received it --

3 A. No, I received --

4 Q. Sorry --

5 A. I received it at the end of the month.

6 Q. And the document -- does the document have the same reason  
7 that you were given before for why you were being rejected?

8 A. No, it does not. It has a totally different reason than was  
9 given to me over the phone from headquarters. It states that my  
10 diabetes is not sufficiently controlled, which means that I'm  
11 not in good control of my diabetes, which is all the  
12 documentation I had provided to say contrary to that. I guess  
13 it was even more shocking to me.

14 Q. Now let me ask you to look at Plaintiff's Exhibit 8. Now,  
15 this is a memo that Dr. Yoder wrote about rejecting you.

16 Correct?

17 A. Yes, it has his name on it.

18 Q. When is the first time you saw this document?

19 A. I did not see this document until my deposition, which was  
20 last fall.

21 Q. Let me ask you to turn to the second page of that document.  
22 Is there anything that -- actually, right at the top.

23 Is there anything about this particular document that  
24 struck your attention?

25 MS. KELLEHER: Objection, Your Honor. Lack of

1 foundation.

2 MS. BUTLER: I think he's --

3 MS. KELLEHER: And relevance.

4 THE COURT: Overruled.

5 A. A couple of things. First of all, it says, regarding  
6 somebody else's name, which is David Keith, which is not me; and  
7 secondly, it talks about insulin pump, which was never even  
8 brought to my attention.

9 BY MS. BUTLER:

10 Q. Now, looking at the -- so it looks -- did it look to you  
11 that Dr. Yoder had kind of cut and pasted something he had done  
12 previously?

13 MS. KELLEHER: Objection, Your Honor. Leading, calls  
14 for speculation.

15 BY MS. BUTLER:

16 Q. Did it look that way?

17 THE COURT: No, sustained.

18 BY MS. BUTLER:

19 Q. Turning to the first page of that document, and going down  
20 to -- well, at the first paragraph, Dr. Yoder says that you were  
21 well controlled. Correct?

22 A. Yes, I can read that right there. It says, "Kapche was well  
23 controlled."

24 Q. How did it feel to read that, when you had been told that  
25 the reason was that you weren't well controlled?

1 MS. KELLEHER: Objection, Your Honor. Relevance and  
2 lack of foundation. He said he only learned of this document at  
3 his deposition.

4 MS. BUTLER: This has got to be relevant --

5 THE COURT: Let's just put a question mark after "how  
6 did that make you feel," and drop the rest of the sentence, and  
7 I'll --

8 BY MS. BUTLER:

9 Q. How did that make you feel?

10 THE COURT: Thank you.

11 A. A mixture of emotions. I was upset.

12 THE COURT: Excuse me. You need a break? One of the  
13 jurors needs a break. Now, let's see how this works. My guess  
14 is that two or three will follow. Anybody else need to go? We  
15 don't want to embarrass you, but we'll be waiting for you  
16 because I don't want to let everybody out.

17 (Pause.)

18 MS. KELLEHER: Your Honor, would we be able to have a  
19 side-bar with you a moment?

20 THE COURT: Since we have to take the time anyway,  
21 sure.

22 (BENCH CONFERENCE OFF THE RECORD.)

23 THE COURT: Okay, Ms. Butler. Continue, please.

24 BY MS. BUTLER:

25 Q. All right. Looking again at Plaintiff's Exhibit 8, it

1 also -- Dr. Yoder -- what does he say about whether you were  
2 qualified for worldwide duty by Dr. Burpeau?

3 MS. KELLEHER: Objection, Your Honor. He's testified  
4 he's never seen this document outside of this litigation.

5 THE COURT: Well, the document speaks for itself, in  
6 any event.

7 BY MS. BUTLER:

8 Q. Now, moving down the page to the third paragraph, let me ask  
9 you about the concerns that Dr. Yoder expressed in his internal  
10 memo. And let me ask you this: Have you ever worked a grueling  
11 schedule?

12 A. Seems like I do every week with the job that I have. Yes.  
13 The answer is yes.

14 Q. Have you ever had irregular working hours with prolonged or  
15 nontraditional shifts?

16 A. Yes. And I did mention a little bit yesterday, I believe,  
17 how I sporadically and sometimes continually work overtime.  
18 Just last week I think I put in 11 hours on a big case that I'm  
19 working, of overtime, in addition to the 40 hours that I worked.

20 Q. Now, you see that Dr. Yoder also expresses a concern with  
21 hypoglycemia. Do you see that?

22 A. "Hypoglycemia results in a sudden incapacitation that can be  
23 life-threatening." Is that the part you're talking about?

24 Q. Yes.

25 A. Okay. Yes, I see it.

1 Q. And have you ever experienced episodes of hypoglycemia?

2 A. No.

3 Q. And he says also that, "Individuals who have diabetes are  
4 normally restricted from situations that would place those or  
5 others at increased risk."

6 My question to you is, have you worked over the years,  
7 as a law enforcement officer, in positions that were stressful  
8 and at increased risk?

9 A. Yes, definitely.

10 Q. Can you tell the jury -- moving to your diabetes, let's talk  
11 about when you first learned you had diabetes. When was that?

12 A. I was about 16 years old and I had lost quite a few pounds.  
13 My mother took me to the doctor; the pediatrician, I guess, knew  
14 immediately what it was. He did a couple of tests on me and  
15 immediately admitted me to the hospital; in other words, when we  
16 left the doctor's office, we drove to the hospital.

17 And I stayed in the hospital for a week or two,  
18 probably two weeks, not only to treat the problems I was having  
19 as far as being a diabetic without having any insulin, but also  
20 educating me in what to do and how to take care of myself.  
21 There would be some psychological adjustment to that, too,  
22 because it's something -- you're stricken with a lifelong  
23 disease, that there is some psychology to how you deal with  
24 that. And it was nice to have -- people from my high school had  
25 visited me, and that helped out.

1           I was upset for a period of time, until I decided that  
2 I was not going to let it control me, that I was going to take  
3 charge and pick myself up, dust myself off, and get on with my  
4 life.

5 Q. Mr. Kapche, in terms of the burdens that you have to control  
6 your diabetes, can you share with the jury the treatment regimen  
7 that you have?

8 A. Well, let me just try to answer that by taking a daily  
9 routine. As a diabetic, I'm restricted in how I eat, how I  
10 conduct myself physically, and how I care for myself; you know,  
11 physical health issues. So when I get up, the first thing is  
12 you need to check to see where your blood is. So you do a blood  
13 finger stick check. It doesn't take long, but I have to stop  
14 what I'm doing to do that. I can't be running while I check my  
15 blood. And then I have to decide if I'm going to make an  
16 adjustment or not, if I need to eat a snack or I need to take  
17 insulin.

18           And during the course of the day I'll check myself  
19 anywhere from three to five times, most likely. That varies on  
20 a day-to-day basis, depending on what kind of routine I'm in.  
21 If I'm doing the same routine where I may be in the office most  
22 of the day and I'm eating the same type of food that I usually  
23 eat, I will probably not check myself as much as if I'm being  
24 active or running around in the field as a detective doing  
25 investigations. Or if I'm sick, where I need to have more

1 vigilant control and make sure everything is in line. Or if  
2 something doesn't feel right.

3 With a diabetic, at least with me - and it's not true  
4 with everybody - but there's some fine tuning involved, or you  
5 can feel if you're getting high or low. And then that's a  
6 really good opportunity to check. So with those conditions, it  
7 takes vigilance to make sure that you check all the time.

8 In addition to that, I have to administer insulin.  
9 People I work with, it's like a nonissue to them, and they know  
10 I always go to the bathroom before we go to lunch. So every  
11 time I eat, I have to do an injection. If I'm a little bit  
12 high, I have to do an injection; if I'm a little bit low to what  
13 I would like the range to be in, then I have to eat a snack.

14 And typically before I exercise, I'll eat some form of  
15 a snack that I think, depending on how long I'm going to work  
16 out, just the type of snack I'm going to eat. And then  
17 obviously I'm going to check before and after exercising.

18 When I work long hours, I'll check myself just to make  
19 sure. Because of my job, I have missed meals because of that,  
20 but because I take Lantus, which is a 24-hour insulin, that  
21 covers me if I don't eat a meal. I've worked homicides where  
22 I've been out all night or a couple of days in a row, where I've  
23 had odd time of eating meals, or doing stakeouts or  
24 surveillance, where I'll be in a van or watching some remote  
25 location for many hours in a day.

1           And to me, I equate it with if somebody has to go to  
2           the bathroom. So there's breaks that you have to take as a  
3           human being either to eat or go to the bathroom, no matter what,  
4           no matter who you are, even if you're not a diabetic, and I use  
5           those opportunities to check myself or test myself or administer  
6           insulin.

7           So to kind of sum up, it's a hassle. It's a constant  
8           battle every day. The minute that you don't do that is when you  
9           can have problems or complications. So I've decided that I want  
10          to walk my daughters down the aisle for their weddings and I  
11          want to be able to be there when they graduate, so I want to  
12          take care of myself so I'm there for them. And that won't  
13          happen if you don't take care of yourself. You have  
14          complications, you have issues.

15          So very early on, even before I had a family, there's  
16          things I wanted to do and be able to accomplish. I think I'm a  
17          better police officer because I check myself so much.

18          Q. Now, when you eat, Mr. Kapche, do you have to do anything  
19          special? Do you just go sit down and have a meal? How does  
20          that work?

21          A. No. A new title to it, for what we've been doing the whole  
22          time I've been a diabetic, is you kind of have to watch what you  
23          eat. And the new title to it is carb counting. So very simply,  
24          without being too exhaustive with it, you have to tally up the  
25          number of grams of carbohydrates you're going to intake for a



1 specific meal, and you've got to adjust your insulin to cover  
2 that. So as long as you know your insulin-to-carb ratio, then  
3 you dial up how much you need. And if it's going to be a big  
4 meal, then you know you need to give yourself a little extra; if  
5 it's going to be a smaller meal, you need to give yourself a  
6 little less. And certain things you'll know. Like if you eat  
7 the same kind of meals over and over again, then you know how  
8 much you're going to need.

9           So as far as answering your question, no, it's not just  
10 simply sitting down and eating. You do have to be cognizant of  
11 what you're eating and how much you're eating.

12 Q. And in terms of a meal you might have, does that change with  
13 the particular kind of meal you're having, how you -- how much  
14 insulin you need to take for any particular meal?

15 A. Yes. It changes, depending on what you're eating or how  
16 much you're eating. Because there can be a glycemic index --  
17 like, for instance, a date, where it has a higher glycemic  
18 index, it's going to cause you to raise up higher. The  
19 difference between -- people don't know that much between a  
20 bagel and maybe a donut. They think a donut may have more sugar  
21 in it, but actually, it doesn't. A bagel has more sugar in it.  
22 Even though it's not sweet tasting, it has maybe 29 grams of  
23 sugar; whereas a donut may only have 14 grams of sugar, so it's  
24 like half of the amount of carbohydrate, as far as sugar intake,  
25 that you would have with a bagel.

1           So simple things like that you have to be cognizant of,  
2           when you add up everything as far as what you're eating, and you  
3           adjust your insulin accordingly.

4           Q.   So is it accurate to say that you have to know what kind of  
5           sugar content is in various foods?

6           MS. KELLEHER:  Objection.  Leading.

7           THE COURT:  Overruled.

8           A.   Yes.  If I don't know something, I'll either look it up or I  
9           do have a packet with me that if it's, hey, you know, I don't  
10          remember eating this in a while, I wonder how many carbs it has,  
11          and I have a chart about maybe 15 or 20 pages that has a list of  
12          just about everything you can think of.

13          Restaurants are getting better about it, even the fast  
14          food places.  In law enforcement you don't really eat too good  
15          sometimes, and Burger King even has a big old chart on their  
16          wall about exactly how many carbs everything is.  So it's nice  
17          when they do it.  And, of course, packaging, the FDA requires  
18          the carb count on the packaging, so it's simply looking that up  
19          if it's something maybe you don't know about.

20          Q.   Now, I think you've explained how things change when you  
21          exercise, but can you share with the jury what happens if you  
22          become ill in terms of how you care for yourself?

23          A.   Well, unfortunately, becoming ill, it causes issues with a  
24          diabetic in that it raises your blood sugar level and you have  
25          to check yourself more often.  Because it's harder to make sure

1 that -- you know, depending on the illness, it reacts to your  
2 body differently. You may need more insulin on one particular  
3 illness and less on another. So that just means more vigilance  
4 in checking yourself while you're sick.

5 I may check myself eight or more times in a day when  
6 I'm sick because of the illness, and make sure that it doesn't  
7 spike or my blood sugar raises too high.

8 Q. In terms of how you care for yourself, are there any limits  
9 on the kinds of food that you eat?

10 A. Well, there's probably not any limits, but just since I  
11 became a diabetic, there's certain foods that I just refuse to  
12 eat. I don't eat sweets, I don't drink colas, I don't eat candy  
13 bars. And believe it or not, I've lost a taste for sugar.

14 So if for some reason somebody in a restaurant gives me  
15 a regular Coke, all I have to do is take a sip and say, oh, wait  
16 a minute. I immediately know it's different than, say, a  
17 Diet Coke. Did I answer the question?

18 Q. You did. And why have you made this choice about limiting  
19 the quality of food you have?

20 A. The reason I made the choice is I don't want to have to  
21 worry about a particular sweet or dessert spiking my blood sugar  
22 levels. And I was 16 when I got it; I figure I got all the  
23 candy and stuff out of the way by then anyway. And it's just a  
24 personal choice. I guess I could if I had to, I just choose not  
25 to.

1 Q. Does that choice help your blood sugar levels stay within  
2 tight control?

3 A. Yes. It makes it easier for me.

4 Q. Now, as a person with diabetes, are you also attentive to  
5 going to the doctor to have the checks that you need?

6 MS. KELLEHER: Objection, Your Honor. Leading.

7 THE COURT: Overruled.

8 A. I do go to the doctor. It's unfortunately sporadic because  
9 of the type of job I have. I try to go at least twice a year to  
10 see my doctor, Dr. Tulloch. Unfortunately, because of my  
11 schedule, I cancel a lot of appointments with him. Depending on  
12 the type of case I'm working on, or if I get called out for  
13 something, and I'm required by my job to be there to do the job,  
14 and he's a very busy man. He's very popular in Houston.

15 And in fact, the last time I saw him, about a month and  
16 a half ago, he got snowed in in Amarillo so I couldn't see him.  
17 So that was one of the weird turnarounds, where I didn't  
18 actually get to see him and it wasn't my schedule.

19 So actually, when I had the appointment maybe two  
20 months ago, it took me another half a month to try to see him.  
21 It just worked out that there was somebody that had given up an  
22 appointment, that there was an availability that he could slide  
23 me in and get me in.

24 Q. Now, you mentioned that exercise was an important component.  
25 Tell the jury what your current exercise routine is.

1 A. I like to run, typically at least every other day. I've  
2 actually enjoyed running here at the capital. I either run with  
3 my dog, which is usually a harder workout because she's a puppy  
4 and likes to go everywhere, but I have more intense runs when I  
5 run without my dog and I can time myself better.

6 To me, the not giving up is part of stopping the  
7 physical activity for me. I don't seem to have time to go to  
8 the gym as much anymore, but I still do the same training that I  
9 did when I was taking the PFT tests, which is just basically  
10 doing sit-ups and push-ups. It's easy to do that at home, and  
11 at home I can also run around my neighborhood. Unfortunately,  
12 because of my schedule with work and with going to school, then  
13 that's essentially all the working out that I do at this point.  
14 I have worked out at gyms in the past.

15 Q. Now, let me go back. Going back to the FBI's rejection, can  
16 you tell the jury how that rejection impacted you?

17 MS. KELLEHER: Objection, Your Honor. Asked and  
18 answered.

19 THE COURT: I think so.

20 MS. BUTLER: I don't think he's really had a chance to  
21 share with the jury, Your Honor, the specifics. I mean, he said  
22 it was devastating, but as this court know, there's a need to --

23 THE COURT: Let's have lunch, and we'll come back and  
24 hear about it after lunch. We'll be in recess for an hour,  
25 ladies and gentlemen.

12 CONTINUED DIRECT EXAMINATION OF JEFFREY KAPCHE

13 BY MS. BUTLER:

14 Q. Mr. Kapche, can you tell the jury how the FBI's rejection  
15 affected you.

16 A. Well, I'm sorry I didn't get to finish the last time. I  
17 think we had a break. But I did say it upset me and I didn't  
18 get a chance to go on from there.

19 I mean, I had to go back to work. To me, it was  
20 humiliating because everybody thought I was leaving to go to the  
21 FBI and I was not at that point. And immediately, I started to  
22 have headaches and couldn't sleep, which I don't typically have  
23 headaches, stomach problems, problems at home, because of the  
24 fact that, no matter what I did, I felt like I could not reach  
25 my dream because of somebody that didn't know something about

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1 diabetes, not that -- no matter how high -- the example, how  
2 high they ask you to jump, that's really high to jump, I don't  
3 know if I can jump that high. And then you do jump that high.  
4 Well, you know what? That wasn't enough.

5 And no matter what I did, it was a, really, blow to my  
6 self-esteem, my ego, just being able to do work at the Sheriff's  
7 Office. My supervisor even commented that my work production  
8 was sporadic and there were problems. He told me that if you  
9 need to take some time off, do that. And I felt like a zombie  
10 at work, to where I wasn't getting a lot done in a day.

11 And I was taking headache medication. I wasn't as  
12 happy-go-lucky as I usually was and just depressed is, I guess,  
13 the right word for it, to where at one point I was getting --  
14 after a couple of months, I don't know the exact date or number,  
15 I had to make a decision that I was going to move forward and  
16 not let this hold me down or affect me for the rest of my life.  
17 And I chose to move on.

18 Q. Are you willing to do whatever it would take to serve  
19 this country as an FBI agent?

20 A. Yes.

21 MS. KELLEHER: Objection, Your Honor, relevance.

22 MS. BUTLER: It has to do with his qualifications.

23 THE COURT: I'll allow it.

24 THE WITNESS: Yes, I am.

25 BY MS. BUTLER:

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1 Q. Wherever they need you to go on a moment's notice, would  
2 you be willing to go?

3 A. Yes, I would.

4 Q. Even if it meant a foreign location?

5 A. Yes, because I have been to foreign locations. In  
6 college, I back-packed and in Europe, I was actually on a  
7 sailboat for six weeks, where there was no hospitals, no  
8 doctors, only me and my insulin and my blood checking devices on  
9 the sailboat for weeks on end and hundreds of miles off land.  
10 Trips to Costa Rica, which, I guess, is considered third world.  
11 That's actually where my honeymoon was. And we actually went to  
12 Turkey. The sailboat was the Greek islands and there's some  
13 pretty remote locations there.

14 I had no question or doubt that I could be placed in  
15 those positions and, obviously, I did research before I left to  
16 make sure that I had the ample supplies I needed and that there  
17 was places to obtain insulin at various locations. And so  
18 there's no doubt that I could go to those places.

19 Then I, in turn, also talked to my wife about her  
20 willingness to move over a -- newly married -- a couple years we  
21 had been traveling. The traveling I did was mainly with my  
22 wife, and prior to that was in college, when I went backpacking.  
23 So, there was no question whether or not I could travel to  
24 remote locations and do fine.

25 Q. Do you have special skills to offer the FBI?

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1 A. I believe I do. Currently, what I understand they're  
2 looking for is financial crime type investigations. I've done  
3 that. I've been a detective for ten years. I've done just  
4 criminal investigations. They do that. I have a certification,  
5 same type of certification in computer forensics that the Secret  
6 Service/FBI/Customs get, the one they requested me to get, the  
7 Cisco networking certification. And just the idea that I'm in  
8 financial crimes right now, is my main job, and I'm currently  
9 working on a case, multi-million dollar case that's an  
10 international case to where I've got people all across the  
11 United States that are victims -- that are victims of a money  
12 laundering scam.

13 It just so happens that Fort Bend County, where I work,  
14 is where a lot of the money is coming in and I'm looking at  
15 several businesses. And that's why I was doing stakeouts last  
16 week, investigating this particular case where you've got a lot  
17 of tentacles in this. There's no way out of my jurisdiction to  
18 get everybody or help everybody, but it's the exact same type of  
19 job that they would be doing.

20 I have a lot of friends down in the Texas city branches  
21 as well as the Houston branch that I confer with and talk and we  
22 help do search warrants with. And of course, they're jumping to  
23 try to help me out with this case because it's going to be a  
24 really big case, easily over \$10 million that's been stolen from  
25 people all around the country.

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1           So that to me is exactly what -- the kind of job that  
2 they are doing right now. And the fact that some of the agents  
3 that I know are ex-police officers and the difference between  
4 the job as a police officer and being an FBI agent is very  
5 similar. I mean, obviously, I file state charges, they file  
6 federal charges, but the investigation is the same. Getting  
7 search warrants is the same. Developing interview interrogation  
8 tactics. And I've interviewed over a thousand suspects and, you  
9 know, made several thousand cases in the ten years I've been a  
10 detective.

11           So, to answer your question, that's exactly what I feel I  
12 can do.

13 Q.       And, Mr. Kapche, are you in your life doing the things  
14 that Dr. Gavin testified today a diabetic must do to maintain  
15 excellent control?

16 A.       Yes.

17 MS. KELLEHER: Objection, leading.

18 THE COURT: Overruled.

19 MS. BUTLER: No further questions, Your Honor.

20 THE COURT: All right. Any cross?

21 MS. KELLEHER: Yes, Your Honor.

22                           CROSS-EXAMINATION OF JEFFREY KAPCHE

23 BY MS. KELLEHER:

24 Q.       Good morning, Mr. Kapche.

25 A.       Good morning.

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1 Q. I wanted to start by asking you some questions about your  
2 diabetes.

3 A. Yes, ma'am.

4 Q. Now, you take insulin to manage your diabetes; is that  
5 right?

6 A. Yes.

7 Q. You take a long-acting insulin once a day?

8 A. Long-acting meaning Lantus, yes.

9 Q. Yes. And you take that in the evening?

10 A. Yes.

11 Q. And you take short-acting insulin every time you're going  
12 to eat something?

13 A. Yes. In addition to having a necessity to have  
14 short-acting insulin, that if I start noticing my sugar levels  
15 rising, I have to use that in addition to meals.

16 Q. Okay. But focusing on meals, you take a short-acting  
17 insulin so that you can metabolize the food that you're about to  
18 eat?

19 A. Yes.

20 Q. Okay. And each time you inject yourself with insulin,  
21 whether it's long-acting or short-acting, that takes you less  
22 than a minute?

23 A. Not including the finger check and testing my blood. It  
24 takes more than a minute, actually.

25 Q. Well, I'm just focusing on the actual injection itself.

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- 1 A. Yes.
- 2 Q. So that takes less than a minutes?
- 3 A. Yes.
- 4 Q. Okay. And you also talked about your blood glucose  
5 testing. You said you usually test your blood sugar around  
6 three to five times a day; is that right?
- 7 A. Yes.
- 8 Q. And when you test your blood sugar, that takes less than  
9 a minute, too; is that right?
- 10 A. Yeah. It takes about a minute. You're right.
- 11 Q. Okay. And when you said you're checking your blood sugar  
12 all the time, you're referring to the three to five times a day  
13 that you check your blood sugar?
- 14 A. Well, when you say "all the time," that makes it all  
15 encompassing of every day. So, I would say no to that. It  
16 varies on a day-to-day basis. If I'm sick, I'm obviously going  
17 to check more. If I'm working out, I'm going to check more.
- 18 Q. But when you testified on direct examination that you  
19 check your blood sugar all the time on a typical day, that's  
20 three to five times a day?
- 21 A. Yes.
- 22 Q. Okay. And before you eat, you testified you need to  
23 count the carbohydrates?
- 24 A. Yes.
- 25 Q. And that's so you can match up the carbs you're about to

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- 1 eat with how much insulin you need?
- 2 A. Yes.
- 3 Q. And you've characterized your carb counting process as
- 4 ritualistic?
- 5 A. Yes.
- 6 Q. And that means it's pretty routine for you to do that
- 7 kind of match between the carbohydrates and the meal and the
- 8 snack and the insulin you need?
- 9 A. Well, this week has not been routine because it's --
- 10 obviously, we're here in trial, so when you say "routine," that
- 11 makes it kind of confusing because like last week at work, I
- 12 didn't do anything routine because I was on stakeouts. So on a
- 13 routine day, I could say yes to that, but when it's not a
- 14 routine day, then I would have to say no.
- 15 Q. But the process -- I'm talking about the process of
- 16 counting carbohydrates. For you, that's a ritualistic routine
- 17 process?
- 18 A. All right. I'm sorry. Then yes.
- 19 Q. Thank you. And your own doctor, Dr. Tulloch, has never
- 20 told you you can't eat certain foods; is that right?
- 21 A. No.
- 22 Q. He never told you sweets are off limits?
- 23 A. No.
- 24 Q. Or soda?
- 25 A. I don't believe so, no.

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1 Q. And as a result of the way that you manage your diabetes,  
2 you have good control of it?

3 A. I believe I do, yes.

4 Q. And other than when you were first diagnosed with  
5 diabetes when you were 16, you've never been hospitalized?

6 A. No.

7 Q. And your diabetes has not interfered with your job at  
8 Fort Bend County?

9 A. No, it has not.

10 Q. And you've been able to avoid high blood sugar?

11 A. If I understand your definition of high blood sugar to  
12 where it causes a problem, yes, I'm able to avoid it.

13 Q. Okay. And the same for low blood sugars that cause  
14 problems as well?

15 A. Yes, that's correct.

16 Q. And you've never had to hire anyone to help you take care  
17 of yourself?

18 A. No, I have not.

19 Q. And you give yourself insulin?

20 A. Yes.

21 Q. And you count your own carbohydrates?

22 A. Yes.

23 Q. And you check your blood sugar?

24 A. Yes.

25 Q. Okay. And there are no activities that you decline to

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1 participate in because of your diabetes?

2 A. Because I take care of myself, I have not declined  
3 myself.

4 Q. Sure. Assuming that's a given, because you testified  
5 that's what you do, there's no activities you don't participate  
6 in because of your diabetes?

7 A. If I'm understanding your question, there's nothing that  
8 I refuse myself from doing because of my diabetes.

9 Q. Yes, exactly.

10 A. Okay. Then yes.

11 Q. And the bottom line, Mr. Kapche, is that when you're  
12 taking good care of yourself in terms of your insulin and your  
13 food intake, there's nothing that you can do -- you can do  
14 anything a nondiabetic can do?

15 You'd agree with me, would you not?

16 A. If you're including doing the finger checks and the  
17 insulin and checking myself, because that's -- a nondiabetic  
18 doesn't have to worry about that, so that as long as I'm doing  
19 that, then yes.

20 Q. And you currently use Lantus as your long-acting insulin?

21 A. Yes.

22 Q. And that's a brand name?

23 A. Yes.

24 Q. And glargine is the generic name for that?

25 A. You know, this trial is the first time I ever heard that,

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- 1 so --
- 2 Q. You've always referred to it as Lantus?
- 3 A. Yes.
- 4 Q. Okay. And before you were on the Lantus insulin, you  
5 were on NPH?
- 6 A. Yes.
- 7 Q. And when you were on one -- when you were on NPH insulin,  
8 you didn't just take that once a day; is that right?
- 9 A. That is correct.
- 10 Q. And you tended to take it either two or even three times  
11 a day?
- 12 A. Yes.
- 13 Q. And NPH wasn't as sort of smooth as Lantus; is that  
14 right?
- 15 A. No.
- 16 Q. And you couldn't skip meals when you were on NPH?
- 17 A. No.
- 18 Q. Okay. And in fact when you were on NPH, I believe at one  
19 point when you were working at Fort Bend County in the Sheriff's  
20 Office, you had to take a break while working on a crime scene;  
21 is that right?
- 22 A. Well, the specific incident I think you're talking about  
23 was a long after hours thing and I took a break to eat, but I  
24 think that's because it was like 20 hours and I was probably  
25 just hungry.

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- 1 Q. Okay. And that was when you were on NPH insulin?
- 2 A. Does it say what date that was? If it's --
- 3 Q. I'm just asking if you recall today.
- 4 A. That's probably over ten years ago. I can't remember.
- 5 Q. And on direct examination, you testified that you can
- 6 skip meals all day with the Lantus because that's going to give
- 7 you your basal insulin that you need throughout the day?
- 8 A. Yes.
- 9 Q. But you actually never skipped meals for a whole day?
- 10 A. I have skipped meals, but you're asking for all three
- 11 meals in a day, correct?
- 12 Q. 24-7 -- or 24 hours. I'm sorry.
- 13 A. I don't recall missing all of the meals in one day.
- 14 Q. Okay. And so you don't actually know how you would
- 15 function in that circumstance even with the Lantus in your
- 16 system, do you?
- 17 A. No.
- 18 Q. And in fact, the longest you've gone without eating since
- 19 you were a Type -- diagnosed as a Type 1 diabetic was overnight
- 20 for a blood test the next morning?
- 21 A. I'm sorry. Can you say that again?
- 22 Q. Sure. The longest you've gone without eating, skipping
- 23 meals, is overnight when you had a blood test the next morning?
- 24 A. No. I've worked some investigations where I've had to
- 25 miss a couple meals because of either stakeout or because --

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- 1 interviewing tons of witnesses on a bank robbery or -- eating  
2 later instead of just missing a meal overnight. I've had to  
3 miss two meals in a day before. I can't recall if I missed all  
4 three, but I have missed at least two meals in a day before.
- 5 Q. Okay. But I'm talking about the longest period of time  
6 that you've gone without eating and that's been overnight?
- 7 A. Are you asking me the number of hours?
- 8 Q. Yes, the longest period of time.
- 9 A. Maybe 16 hours.
- 10 Q. That's -- so that's more than overnight; is that your  
11 testimony?
- 12 A. No. With the hours I'm adding up are actually like  
13 daytime hours, so --
- 14 Q. I'm asking about the longest number of hours in any one  
15 setting when you've had to not eat.
- 16 A. 16 hours, but it wasn't overnight, so I guess I'm a  
17 little confused.
- 18 Q. Okay. Do you remember you were deposed in this case,  
19 Mr. Kapche?
- 20 A. Yes.
- 21 Q. And I took your deposition?
- 22 A. Yes.
- 23 Q. And you swore to tell the truth?
- 24 A. Yes.
- 25 Q. Okay. And I'm going to ask you to -- give you a copy of

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1 your deposition, and we also have the video of it as well.

2 A. Okay.

3 MS. KELLEHER: Can you cue up page 132, lines 14 to line 7  
4 on 133.

5 MS. BUTLER: Your Honor, that's an improper impeachment.  
6 She has to show him his deposition first, let him read it.  
7 There's nothing to impeach him with.

8 THE COURT: She can --

9 Are you going to --

10 MS. BUTLER: She's asking him to look at the deposition  
11 and then ask him a question.

12 THE COURT: Well, the first question is knowing --  
13 everybody by now understands my sensitivity to impeachment. Let  
14 me see what you think you're going to impeach him with on the  
15 screen.

16 MS. KELLEHER: Certainly, Your Honor.

17 THE COURT: What page did you want me to turn to?

18 Show him that and ask if it refreshes his recollection.  
19 You're not impeaching him with that.

20 BY MS. KELLEHER:

21 Q. Does that refresh your recollection, Mr. Kapche?

22 A. I'm sorry. I don't know what page you're talking about.

23 Q. Sure. Page 132, line 14 through 133, line 7.

24 Does that refresh your recollection about what you said  
25 at your deposition about the longest --

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1 THE COURT: Not what he said at his deposition. He's not  
2 required to remember what he said at his deposition. He's  
3 required to remember what happened in his life.

4 BY MS. KELLEHER:

5 Q. Okay. Does that refresh your recollection as to the  
6 longest you've gone without eating since you were diagnosed as a  
7 Type 1 diabetic?

8 A. Do you need me to read it out loud or just refresh my  
9 recollection?

10 Q. I'm just asking if that refreshes your recollection here  
11 today.

12 A. Okay. I remember, yes.

13 Q. Okay. And so the longest you've gone without eating  
14 since you were a Type 1 diabetic was overnight?

15 A. Now, since then -- this was taken last fall; I believe it  
16 was taken on October -- I've had a couple of investigations  
17 where I've -- I mean, this time, the 16 hours, is something more  
18 recent than this deposition.

19 Q. And when was that?

20 A. There was a couple of times when we had a couple of  
21 special operations where we had a sex offender roundup where I  
22 worked four or five hours in the night and I think I missed  
23 dinner, and that's one meal I missed. And then this stakeout is  
24 one I'm thinking of that I know I missed at least one meal then.  
25 And we had a homicide either in January or February where I

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1 think is the 16 hours I'm referring to.

2 Q. But I thought you testified earlier that you typically  
3 always have snacks with you when you're working; is that right?

4 A. Yes.

5 Q. So you were able to eat those snacks while you were  
6 working in these particular investigations?

7 A. Well, just so I can be clear, the idea of the snacks is  
8 if I'm low. I can't substitute a snack as a meal, so I wouldn't  
9 use a snack as a meal and take an insulin injections just to eat  
10 a snack unless I was low. So I maintain the snack for a low  
11 that I may have, but not if I choose not to eat a full meal if  
12 I'm in the middle of something.

13 Q. So you didn't eat any of the snacks during the 16 hours  
14 even though you had them with you?

15 A. No, because I did not have a low at the time.

16 Q. Okay. Now, you've been a detective with Fort Bend County  
17 since about 1999; is that right?

18 A. Yes.

19 Q. Okay. And you've worked in the different offices within  
20 Fort Bend that you talked about on direct?

21 A. Yes. Yes, ma'am.

22 Q. Now the whole time you've been a detective, you've been  
23 assigned to the day shift; is that right?

24 A. Yes.

25 Q. Okay. And when you work the day shift, that can be

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1 either from 8 a.m. to 5 p.m.; that's one?

2 A. Yes.

3 Q. Or from 7 a.m. to 6 p.m.?

4 A. Well, recently we went to ten-hour shifts where I work 7  
5 to 6 and then there's an 8 to 7 shift, just to clarify.

6 Q. Okay. And when you work the ten-hour shift, you have  
7 Fridays off; is that right?

8 A. Yes.

9 Q. Okay. And that's a three-day weekend?

10 A. Yes.

11 Q. Okay. Now, I understand your hours vary somewhat with  
12 overtime, but typically, you work about 160 hours a month; is  
13 that right?

14 A. Lately that has not been typical because of this big  
15 investigation that I've been working on in the last couple of  
16 months. And I am on call now every nine weeks, so typically, I  
17 would not have a regular 40 hours on an on call week because  
18 I'll be called out. I would say no.

19 MS. KELLEHER: Your Honor, I refer to his deposition  
20 again, but I don't know if I need guidance from the Court in  
21 terms of -- I think it's a clear question.

22 MS. BUTLER: Your Honor, I believe he just said it was  
23 recently, so maybe she should investigate the timeframe.

24 THE COURT: Ms. Kelleher, can I see you at sidebar. And  
25 bring the page.

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1 MS. KELLEHER: Sure.

2 (Following sidebar discussion had on the record:)

3 MS. KELLEHER: Right here.

4 THE COURT: Before I look at it, I do not understand why  
5 lawyers are so hooked on this prior inconsistent statement thing.  
6 You hardly ever score any points with it. The jury doesn't get  
7 the idea that you're making a liar out of this guy if he says  
8 things differently one day than he says it the other day. It's a  
9 technique that should be reserved for cases in which you've got a  
10 bald-faced liar on the stand and nailed him in his deposition.  
11 You're not going to make this guy look like a liar and you're  
12 just -- they all turn into these little fights. So that's my  
13 advice to you.

14 Now my ruling is --

15 MS. KELLEHER: Page 197.

16 THE COURT: And what did he say that's different from  
17 this?

18 MS. KELLEHER: Now he says he doesn't have a typical work  
19 week. And I'm not sure he's cabined his answer to just recently  
20 because I think he referred to being on call generally. I'm just  
21 trying to get a sense of --

22 THE COURT: But he says -- in the very next sentence: "Is  
23 there a typical amount of overtime that you work?"

24 And he says, "Well, no, because it's all subject to being  
25 on call."

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1           If you want to have him read it, read all of it.

2           MS. KELLEHER: Okay. Okay. I'll just move on, Your  
3 Honor.

4           THE COURT: I thought you might.

5           (Sidebar discussion concluded.)

6 BY MS. KELLEHER:

7 Q.       So, Mr. Kapche, barring when you're on call, your work  
8 week is 40 hours; is that right?

9 A.       Yes.

10 Q.       And you've done surveillance work as a Fort Bend  
11 detective?

12 A.       Yes.

13 Q.       And when you work surveillance, you're also working an  
14 eight to 12-hour shift?

15 A.       It varies, but that would be a good range, I believe,  
16 yes.

17 Q.       And the longest sort of surveillance job that you've had  
18 has been two or three days, right, working these shifts on those  
19 days?

20 A.       I did three days in a row on surveillance.

21 Q.       Okay. Now, I want to ask you some questions about your  
22 application to be an FBI agent. You testified earlier that you  
23 knew some FBI agents who were working out of your office?

24 A.       Yes.

25 Q.       You weren't working with those agents on their

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1 investigation, were you?

2 A. No, I was not.

3 Q. Okay. And when you applied to the FBI in 2002, you knew  
4 that the FBI had an age cutoff at 37 for special agents; isn't  
5 that right?

6 A. I believe I read that, yes.

7 Q. Okay. And you knew this before you filled out the FBI  
8 application?

9 A. It was in the literature, yes.

10 Q. Okay. And when you applied, when you filled out this  
11 application in 2002, you were 34 years old?

12 A. I'm trying to do my math in my head, but I'll take your  
13 word for it, yes.

14 Q. And you understood this requirement that the FBI had  
15 meant that you had to start at the FBI Academy in Quantico no  
16 later than the month you turn 37?

17 A. At the time, yes.

18 Q. Okay. Now, let's take a look at your application. It's  
19 Plaintiff's Exhibit 3.

20 And if you could highlight the upper left-hand corner,  
21 Tori, the boxes.

22 Okay. Now, on that application, Mr. Kapche, there were  
23 four boxes for -- special agent is one. Do you see that?

24 A. Yes, ma'am.

25 Q. Clerical? I think it's a little hard to read. And then

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- 1 there's a box for Honors Intern. Do you see that?
- 2 A. Yes.
- 3 Q. And professional/technical?
- 4 A. Yes.
- 5 Q. And you filled out the -- checked the box for special  
6 agent?
- 7 A. Yes, I did.
- 8 Q. So that was the only job you were applying for?
- 9 A. Yes.
- 10 Q. Now, you also understood when you filled out this FBI  
11 application that if you were hired by the FBI, you could be sent  
12 anywhere in the world?
- 13 A. Yes.
- 14 Q. And let's take a look at page FBI 913 in that same  
15 exhibit.
- 16 And if you could highlight the section marked  
17 "Availability of Applicant." It's the bottom section, Tori.
- 18 Thanks.
- 19 Now, you checked -- in question number 4, you checked the  
20 "Yes" box in response to a question that asked if you clearly  
21 understood that you must be available for an assignment wherever  
22 your services are needed. Do you see that?
- 23 A. I do see that, yes.
- 24 Q. Okay. And then you also checked "Yes" to the question  
25 that asked you -- the previous question, question 3 -- I'm

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1 sorry.

2 Question 3 asked if you clearly understood that you had  
3 to be available for an assignment wherever your services are  
4 needed and you checked "Yes"?

5 A. Yes.

6 Q. And in question 4, you were asked if you were hired for a  
7 position that typically -- whose duties typically require  
8 travel, are you prepared to accept temporary duty assignments  
9 anywhere worldwide?

10 A. Yes.

11 Q. And you checked "Yes" to that as well?

12 A. Yes.

13 MS. KELLEHER: Okay. Can you highlight the previous  
14 section.

15 BY MS. KELLEHER:

16 Q. Now, by the time you filled out the FBI application in  
17 2002 when you were 34 years old, you had already applied for  
18 other law enforcement jobs?

19 A. Yes, that's correct.

20 Q. And some of those law enforcement jobs are listed here in  
21 your application in this section called "Personal Declarations."

22 Can you highlight that, Tori.

23 So you'd applied to the Secret Service?

24 A. Yes.

25 Q. The Houston police?

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- 1 A. Yes.
- 2 Q. The Sugarland police?
- 3 A. Yes.
- 4 Q. The Harris County Precinct Five Constables?
- 5 A. Yes.
- 6 Q. The San Antonio police?
- 7 A. Yes.
- 8 Q. And Fort Bend County Sheriff's?
- 9 A. Yes.
- 10 Q. And after you completed this application in 2002, a
- 11 couple years later, the FBI told you that you weren't considered
- 12 competitive and they were going to put your application in an
- 13 inactive status?
- 14 A. Yes.
- 15 Q. Okay. And -- and they told you that about two years
- 16 later, when you were --
- 17 A. It was '03, so it was like a year and a half.
- 18 Q. Okay. So at that time, you were 35 years old? Close to
- 19 36?
- 20 A. Yes.
- 21 Q. Okay. And in late November 2004, you did get a
- 22 conditional offer from the FBI; is that right?
- 23 A. Yes.
- 24 Q. Okay. And when you got this offer -- I think the letter
- 25 was dated November 23rd -- you were less than two months away

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- 1 from turning 37?
- 2 A. About that time, yes.
- 3 MS. KELLEHER: Okay. And let's look at the conditional
- 4 offer letter that's Plaintiff's Exhibit 2, and the second full
- 5 paragraph, if you could enlarge that and highlight it.
- 6 BY MS. KELLEHER:
- 7 Q. So, you understood, Mr. Kapche, that when you got this
- 8 letter, this was not a guarantee of employment with the FBI?
- 9 A. Yes.
- 10 Q. Okay. And you understood that there were five conditions
- 11 you still had to satisfy?
- 12 A. Yes.
- 13 Q. Okay. And they were a background check?
- 14 A. Yes.
- 15 Q. Is that right?
- 16 A polygraph?
- 17 A. Yes.
- 18 Q. A fitness test?
- 19 A. Yes.
- 20 Q. A medical examination?
- 21 A. Yes.
- 22 Q. And a drug test?
- 23 A. Yes.
- 24 Q. And this letter -- you understood this letter, that the
- 25 FBI would determine if you satisfied those conditions?

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1 A. Yes.

2 Q. Okay. And this letter also told you that once you  
3 satisfied these conditions, you would get another communication  
4 from the FBI that would tell you whether you had successfully  
5 completed all of these last conditions?

6 A. Verbal and then a letter, yes.

7 Q. Okay.

8 Well, can we turn to the second page of this letter --  
9 actually, the last page. I'm sorry, Tori. Next page. And go  
10 to the fourth full paragraph on the page: "You will be  
11 notified."

12 So this letter told you that if you satisfied those five  
13 conditions, you would receive another communication from the FBI  
14 that would tell you whether you had successfully met those  
15 conditions?

16 A. Yes.

17 Q. Okay. And one of the conditions, I think you testified,  
18 that was particularly difficult for you was the fitness test?

19 A. Yes.

20 Q. And in fact, when you passed the fitness test on  
21 January 13th, 2005, you'd actually failed the fitness test twice  
22 before?

23 A. Yes. I pulled my hamstring and I'd gotten an upper  
24 respiratory infection in that November to December range. And  
25 actually, I needed about a month rehabilitation on my hamstring.

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1 I guess I was training too hard. And I also had a problem with  
2 relapsing when I was taking antibiotics for my infection. The  
3 minute I started feeling better, I would start training again  
4 because the most important thing in my life was passing this  
5 physical fitness test, and I would get sick again because I  
6 would start training again too quickly, before I was actually  
7 fully recovered.

8 So, yes, I did not pass it the first time, but I did end  
9 up passing it.

10 Q. Okay. And in fact, you didn't pass it the second time  
11 you took it either?

12 A. Probably not.

13 Q. And you passed it on January 13th --

14 A. Yes.

15 Q. -- just four days shy of your 37th birthday?

16 A. If it's the 13th, yes, that's true.

17 Q. I believe you testified on direct that it was the 13th?

18 A. I don't remember it being the 13TH, but if the  
19 documentation says the 13th, yes, that's true.

20 Q. Okay. Now, you're aware, are you not, sir, that the FBI  
21 has a much broader jurisdiction than the Fort Bend County  
22 Sheriff's Office?

23 A. Yes.

24 Q. And at the Sheriff's Office as a detective, you're  
25 working on crimes that involve the people and residents of Fort

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- 1 Bend County?
- 2 A. Yes.
- 3 Q. Okay. And can you tell the jury the last time you went  
4 overseas for work?
- 5 A. I did not, but the guy that's right next to me went to  
6 Panama with an FBI agent on a similar fraud case.
- 7 Q. Okay. But you yourself have not traveled overseas for  
8 work?
- 9 A. I have not.
- 10 Q. And can you tell the jury the last time you wore night  
11 vision goggles as a detective for the Fort Bend County Sheriff's  
12 Office?
- 13 A. For work or just playing around?
- 14 Q. For work.
- 15 A. Okay. Six months maybe.
- 16 Q. Okay. And can you tell the jury the last time you took a  
17 cross-country trip on behalf of the Fort Bend County Sheriff's  
18 Office as a detective?
- 19 A. Recently, no, I have not, but we do take cross-country  
20 trips.
- 21 Q. Okay. And are those in connection with investigations --
- 22 A. Yes.
- 23 Q. -- involving crimes with the people of Fort Bend?
- 24 A. Yes. Homicides or suspects fleeing. Or the Panama trip  
25 was specifically for a suspect that fled to Panama.

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1 Q. And they were accompanying an FBI agent on that trip  
2 or --

3 A. No. We had to ask an FBI agent to come along with us  
4 just so we could have a gun on the plane.

5 Q. Okay. Because you're not authorized?

6 A. We paid for the ticket for the FBI agent. It was our  
7 investigation.

8 Q. You're not authorized to do that as a detective?

9 A. We cannot fly internationally with a firearm as a local  
10 law enforcement agency.

11 Q. And then in your work in Fort Bend, you've primarily been  
12 focused on Fort Bend County?

13 A. Victims in Fort Bend County, but obviously, the many  
14 investigations -- because Houston's a big city that's adjacent  
15 to us, as well as Harris County is a bigger county -- a lot of  
16 the crime and investigation does occur in another county outside  
17 of Fort Bend County.

18 Q. So in Harris County, where Houston is?

19 A. Yes.

20 Q. Okay. And in fact, when you're doing surveillance,  
21 typically, if you're not in Fort Bend, you might be in the  
22 Houston area?

23 A. Yes.

24 Q. Okay. Now, with regard to the rejection letter that you  
25 received from the FBI, you understood that this was a rejection

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1 letter only for the special agent position; is that right?

2 A. Yes.

3 Q. And you understood from the FBI's letter that in fact you  
4 were free to apply for other jobs that the FBI might have?

5 A. Yes, I did understand that, but that's not what I wanted  
6 to do. I wanted to be in law enforcement.

7 Q. But my question for you was the FBI in the letter --

8 And if we could take a look at Plaintiff's Exhibit 14.

9 -- the FBI actually encouraged you to apply for other  
10 jobs at the bureau and told you that the fact that you couldn't  
11 be a special agent didn't have any impact on other jobs you  
12 might apply for?

13 A. It's not up yet, but I'll answer you.

14 That was not my dream, was to do anything else other than  
15 be a special agent.

16 MS. KELLEHER: Okay. Can you turn to the second page,  
17 Tori, and highlight the paragraph, "This decision."

18 BY MS. KELLEHER:

19 Q. But in is this letter, the FBI told you you could apply  
20 for other jobs at the bureau; isn't that right?

21 A. Yes. It's in the letter.

22 Q. Okay. And if we could go back to the first page of the  
23 letter, you also understood that the FBI had told you in the  
24 third paragraph on this page that you couldn't have your  
25 application reconsidered because at this time, by the date of

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1 this letter, you were already 37?

2 A. Yes, it's in there.

3 MS. KELLEHER: Okay. Now, I want to blow up another  
4 paragraph there, Tori. If you could blow up the third full  
5 paragraph, the one beginning "Our medical staff," and highlight  
6 that, please.

7 BY MS. KELLEHER:

8 Q. Now, you testified when Ms. Butler was asking you  
9 questions that when you got this letter, this letter had  
10 different information than what you had heard when you received  
11 your phone call from Agent Robinson; is that right?

12 A. Yes.

13 Q. And because Agent Robinson had indicated to you that  
14 there was a concern about your ability to travel  
15 internationally?

16 A. Yes.

17 Q. Okay. But in this letter --

18 The first page, Tori.

19 I think I did the wrong paragraph. I'm sorry. The  
20 second full paragraph. I apologize.

21 Now, in this letter, the FBI told you that "The concerns  
22 regarding Insulin-Dependent Diabetes Mellitus related to the  
23 requirements of the special agent position for unexpected  
24 emergency travel to international duty locations."

25 Do you see that there?

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1 A. Yes.

2 Q. And so this letter in fact did reference international  
3 travel, just as you had learned in a phone call?

4 A. But it's contrary to what I was told on the phone. Both  
5 mentioned international travel, but both -- the reasoning behind  
6 the international travel is totally different.

7 Q. Well, both of them mention concern about insulin  
8 dependent diabetics traveling to international duty locations  
9 where special agents are expected to go; isn't that right, sir?

10 A. If you're asking just the international travel, yes, but  
11 that -- the reasoning before that is incorrect as far as the  
12 phone call.

13 Q. I understand that's your view. But my question to you is  
14 both in your phone call with Agent Robinson and in this letter,  
15 you understood the FBI's concerns to be regarding international  
16 travel, did you not?

17 A. Yes.

18 Q. Okay. Now, in your answering Ms. Butler's questions, you  
19 talked about the emotional stress that you suffered when the FBI  
20 sent you this letter. Now, you testified that those feelings  
21 lasted for a couple of months; is that right?

22 A. I said a couple of months, but I really couldn't put an  
23 exact timeframe on it. I don't know the exact day or number of  
24 months. It was more than one or two months, I know that. I  
25 can't put a specific range on it. I'm sorry about that, but I

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- 1 mean, it was several months. I mean, I can't --
- 2 Q. A few months? Does that sound about right?
- 3 A. A few means two and I know it was more than two.
- 4 Q. Would you say it was more than three?
- 5 A. Three to five, maybe.
- 6 Q. Okay. And during these months, these three to five
- 7 months, you didn't see a doctor to deal with your emotional
- 8 distress, did you?
- 9 A. No.
- 10 Q. And you didn't take any prescription medications to deal
- 11 with it either?
- 12 A. No.
- 13 Q. And you testified that you had headaches; is that right,
- 14 sir?
- 15 A. Yes.
- 16 Q. And you took things like Tylenol?
- 17 A. Yes.
- 18 Q. Okay. And you don't recall taking any time off work to
- 19 deal with any of these feelings of emotional distress?
- 20 A. I don't recall any, no.
- 21 Q. Okay. And you don't have any documents from this time, a
- 22 diary or journal, which would reflect these feelings that you
- 23 had when you received this letter from the FBI?
- 24 A. No.
- 25 Q. Now, Mr. Kapche, you testified earlier in this case about
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1 the complaint you brought against the San Antonio Police  
2 Department --

3 A. Yes.

4 Q. -- is that right?

5 And in that case -- and you also indicated, because of  
6 your experience in that case, that led you to feel more upset  
7 when you received this letter from the FBI stating that you  
8 would not be hired as a special agent; is that right?

9 A. Yes.

10 Q. Now, you settled that case against San Antonio?

11 A. Yes.

12 Q. Okay. And in that settlement, the City of San Antonio  
13 never admitted any liability?

14 A. No. The reason for the suit was because of the ban and  
15 the settlement was that they admitted that they were wrong for  
16 discriminating against me for being diabetic, so I don't believe  
17 that to be true.

18 Q. I'm going to show you a document, Mr. Kapche, and see if  
19 that can refresh your recollection on that point.

20 A. Okay.

21 MS. BUTLER: May I object, Your Honor, to the relevance of  
22 whether a settlement document, which we all know always says  
23 nobody admits liability, should be -- he should have to --

24 THE COURT: That's what we call a speaking objection up  
25 here, Ms. Butler. Overruled.

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1 MS. KELLEHER: I'll move on, Your Honor. I can't locate  
2 it right now.

3 BY MS. KELLEHER:

4 Q. And as a result of that settlement, you received a  
5 payment from San Antonio; isn't that right?

6 A. Yes.

7 Q. And that was approximately 300 --

8 MS. BUTLER: Your Honor, I'm going to object to the  
9 relevance under 403 --

10 THE COURT: Under what?

11 MS. BUTLER: 403.

12 THE COURT: This time, I think I do need a sidebar.

13 (Following sidebar discussion had:)

14 THE COURT: What's the chronology of this? When did he  
15 sue the San Antonio Police Department?

16 MS. KELLEHER: He filed the lawsuit, I believe, in 1988 or  
17 1999, but he received the settlement in April 2003. And I think  
18 he's sort of indicated during his testimony to the jury about  
19 this that this is the same thing that's happening again, so --

20 THE COURT: So what's the point? That he's already been  
21 paid for his --

22 MS. KELLEHER: That there was a settlement when, I believe  
23 at one point, he said, "I was being discriminated against by San  
24 Antonio," and there was no finding on that.

25 THE COURT: I'm going to sustain the objection.

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1 MS. KELLEHER: Okay.

2 (Sidebar discussion concluded.)

3 MS. KELLEHER: Your Honor, just one on moment.

4 I think I'm finished, Your Honor. Thank you.

5 THE COURT: Any redirect, Ms. Butler?

6 REDIRECT EXAMINATION OF JEFFREY KAPCHE

7 BY MS. BUTLER:

8 Q. Mr. Kapche, can you tell the jury what did come out of  
9 this San Antonio settlement?

10 THE COURT: Whoa. Wait a minute. That's going to open  
11 the door to what you just objected to. Do you want to do that?

12 MS. BUTLER: I think I'll stop.

13 THE COURT: All right.

14 MS. BUTLER: No further questions.

15 THE COURT: All right. You may step down, Mr. Kapche.

16 THE WITNESS: Thank you, Your Honor.