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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA :
 :
 vs. :
 :
 PASCAL ANDRE ETCHEBER : 2:09 - CR - 195

Suppression Hearing in the above-captioned matter
held Thursday, October 8, 2009, commencing at 1:34 p.m.,
before the Hon. Joseph Anderson, in the United States
Courthouse, Courtroom III, 81 Meeting St., Charleston,
South Carolina, 29401.

APPEARANCES:

MARK C. MOORE, ESQUIRE, Office of the U.S.
Attorney, 1441 Main Street, Columbia, SC,
appeared for the Government.

ALSTON C. BADGER, JR., ESQUIRE, Office of the
U.S. Attorney, P.O. Box 978, Charleston, SC,
appeared for the Government.

DAVID P. McCANN, ESQUIRE, P.O. Box 116,
Charleston, SC, appeared for the Defense.

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1 THE COURT: Mr. Moore, please call the case this
2 afternoon.

3 MR. MOORE: Yes, sir, Your Honor, this is United
4 States of America versus Pascal Andre Etcheber. The criminal
5 number is 2:09-195. Mr. Etcheber is present in court with
6 counsel, Mr. McCann. We're here for the purpose of a pretrial
7 conference.

8 There are a number of outstanding motions, I guess there's
9 some discovery issues that are outstanding from the last
10 hearing.

11 I have provided, as we discussed, documents to Your Honor
12 in camera for Your Honor's in camera review. I have provided
13 a number of discovery materials since the last hearing to
14 Mr. McCann. And we'll deal with the issues in the order in
15 which the Court deems appropriate.

16 THE COURT: Why don't we try to clean up what we took
17 up at the last hearing, and then move into these new motions
18 second.

19 MR. MOORE: Yes, sir.

20 THE COURT: All right. First on my list were the 302
21 notes from -- 302 reports from Agent Waizenhofer. Have those
22 been produced?

23 MR. MOORE: I have produced the notes, all the notes
24 I have, to Your Honor in camera.

25 THE COURT: I'm just talking about the 302s

1 themselves, first.

2 MR. MOORE: The 302s have been produced.

3 THE COURT: All right.

4 MR. MOORE: The 302s have been produced.

5 THE COURT: All right. And then a subsidiary issue
6 was the rough notes, the back-up notes to the 302s.

7 MR. MOORE: To the 302s, and --

8 THE COURT: There's Fourth Circuit authority that
9 that's not discoverable, but as you point out, some circuits
10 have recognized that if there's any inconsistencies or
11 discrepancies between the notes and the reports, they may be
12 produced.

13 My law clerk and I have reviewed the rough notes that you
14 provided for us in camera, and find no discrepancies or
15 inconsistencies. So with that, I think that the notes need
16 not be produced; the 302s have been produced.

17 MR. MOORE: That's correct, Your Honor.

18 THE COURT: All right. Now, what about the FBI
19 files?

20 MR. MOORE: Your Honor, we have -- as I said at the
21 last hearing, we have produced to Mr. McCann, documents from
22 the FBI investigation, the SLED investigation of Mr. Ravenel,
23 although I didn't think they were discoverable, I produced
24 them. The only documents that I did not produce were
25 documents from a separate investigation of Mr. Etcheber, which

1 has not resulted in charges. I produced certain documents --
2 I went through that entire file. I produced, I think,
3 approximately seven 302s from that file, produced them, had
4 them declassified and produced them.

5 I have provided the entire file to Your Honor, including
6 what I produced and declassified and filed, and I would ask
7 Your Honor for a ruling that the other information that Your
8 Honor has reviewed in camera is not discoverable, because it
9 was not related to this case.

10 THE COURT: Well, I will say it took quite some time,
11 but my law clerk and I did go through those other documents.

12 Mr. McCann, you've gotten some of the documents, but not
13 all, right?

14 MR. McCANN: Well, Your Honor, I believe before the
15 superseding indictment came down towards the end of August, I
16 did receive a packet of discovery from the Government. And
17 some of those were duplicates of the discovery I had received
18 before. So apparently some of these documents were in the
19 second file, in the file that we're working under today. So I
20 have received those seven 302s, that's correct.

21 THE COURT: Well, but apart from the 302s, what about
22 the other FBI files that were declassified, and according to
23 Mr. Moore, provided.

24 MR. MOORE: Those seven 302s are the portions of that
25 file --

1 THE COURT: All right.

2 MR. MOORE: -- which were declassified, which I
3 believe should be declassified, and were, you know, arguably
4 related to these instant charges, because they're interviews
5 of people who --

6 THE COURT: Right.

7 MR. MOORE: -- were witnesses in the case.

8 THE COURT: But --

9 MR. MOORE: And I provided all of those to
10 Mr. McCann.

11 THE COURT: But the rest of the file, you suggest, is
12 not related to these charges present here?

13 MR. MOORE: That's correct, Your Honor.

14 THE COURT: All right.

15 MR. McCANN: May I ask counsel a question?

16 (Discussion held off the record.)

17 THE COURT: All right. Well, as I said earlier, my
18 law clerk and I looked at the remainder of the file that was
19 not produced, and have determined that they do not need to be
20 produced. But I do think for purposes of appeal, we probably
21 ought to put them in the record under seal.

22 MR. MOORE: Yes, sir, I agree.

23 THE COURT: Is what we have --

24 MR. MOORE: I can make a copy of what Your Honor has,
25 and we can keep it in the record for purposes of appeal.

1 THE COURT: Next on my list is proffers, plea
2 agreements and grand jury testimony from all the Government's
3 trial witnesses.

4 MR. MOORE: I did all proffers that have been
5 executed today, which we're in the process of negotiating a
6 couple agreements. Obviously I can't produce an agreement
7 until it is negotiated, and he's been given the proffers.

8 With respect to the grand jury testimony, I have provided
9 him with all grand jury testimony of witnesses who were
10 expected to testify in this case. I have not provided him
11 with the colloquy between myself or other AUSAs and the grand
12 jury, because that is not the testimony of a witness. With
13 one exception; my legal assistant improperly redacted in one
14 instance the testimony and sent in the presentation. So he
15 has that presentation, but I have also subsequently sent him
16 the testimony. And I provided the colloquies to Your Honor's
17 clerk for Your Honor's in camera review. And I would
18 respectfully request a ruling from Your Honor that those
19 documents also that I provided, the grand jury colloquies, are
20 not relevant. Are not -- Not relevant. Relevant is the wrong
21 word. Are not discoverable.

22 THE COURT: Mr. McCann, do you want to comment on
23 that?

24 MR. McCANN: Yes, Your Honor. I have received the
25 presentments of the grand jury, both the Ravenel indictment

1 and the two presentments on my client. And counsel is correct
2 that -- I assume it's him talking to the grand jurors in the
3 beginning and the end of the witness' testimony, is blacked
4 out.

5 The reason I'm asking for it is that we routinely get it
6 here. And it's not an out-of-the-ordinary motion for me to
7 get the complete transcript of the proceedings. And I think
8 it gives a fuller picture here of what the sense was and what
9 the atmosphere was in the grand jury. And that's all I'm
10 after.

11 If the Court will allow me to look at it in camera and not
12 copy it or present it or show it to anybody, I'd like to do
13 that. It would take five minutes.

14 MR. MOORE: I don't believe that the law allows
15 discovery of a colloquy of the grand jury colloquy or
16 presentment of indictment because it gives one a sense or a
17 better indication of the atmosphere of the grand jury
18 presentment. We cited in our papers the legal standard, and
19 the standard here is he must show a compelling reason to be
20 given colloquy between the AUSA and grand jury.

21 Your Honor, I litigate in Columbia, as does Your Honor.
22 In Columbia, we -- and the District's policy is that we don't
23 give over colloquies here. In some regions of the state, some
24 AUSAs don't always follow that policy to the letter, and
25 that's fine, that's neither here nor there. It doesn't give

1 him a right to get it, just because other lawyers give it.

2 THE COURT: Are you concerned more about setting a
3 precedent? I mean, we looked at the colloquy; it didn't -- to
4 me it didn't look like it was that important to either side,
5 really.

6 MR. MOORE: I don't think it's important to either
7 side, I just don't think he's legally entitled to it. If Your
8 Honor wishes to give it to him out of an abundance of caution,
9 I'm not going to jump up and down about that ruling. But I
10 can tell you that he has not met the legal standard --

11 THE COURT: All right.

12 MR. MOORE: -- for a court-ordered production of it.
13 And I'm not willing to give it to him. Because if it is not
14 something that we give over in our written discovery policy --
15 and we do have a written discovery policy. Everyone doesn't
16 always follow it to the letter, but I do.

17 THE COURT: Right. Well, since we're in Charleston
18 and Mr. McCann is accustomed to getting these, and since I
19 reviewed them and I don't think there's anything damaging to
20 the Government or precedent setting, I'm going to allow the
21 colloquy to be turned over as well, along with the substantive
22 testimony.

23 All right. Now, the NCIC printouts for all the trial
24 witnesses.

25 MR. MOORE: He's been given that.

1 MR. McCANN: I've received that.

2 THE COURT: All right, that's been done.

3 MR. McCANN: All the witnesses thus far. There will
4 be more.

5 MR. MOORE: There are going to be more, and there are
6 two people that we've identified that we have to interview.
7 And as soon as we interview them and do a 302, we'll give him
8 the NCIC.

9 THE COURT: All right. Next on my list is Agent
10 Espie's rough notes.

11 MR. MOORE: Those were the notes that we previously
12 produced to Your Honor in camera. And I thought Your Honor's
13 ruling was that we review the notes --

14 THE COURT: Mr. McCann, I can tell you we
15 conscientiously looked at those notes. My law clerk looked at
16 them independently with me, and we both came to the same
17 conclusion that we just didn't see any discrepancy or
18 inconsistency between the notes and the report. The notes
19 were really very cryptic and hard to make much out of, really.

20 MR. McCANN: Well, Your Honor, I -- following our
21 July 31st hearing, I received one of those seven 302s that
22 were declassified on a key witness here, and that's on Clay
23 Simpson. Clay Stewart, excuse me. And you may recall on
24 July 31st I handed up his short 302 to you, wherein he claimed
25 he was in my client's house on several occasions during the

1 summer or during the calendar year 2007, and witnessed
2 parties, the use of cocaine and so forth.

3 The follow-up report of interview, which is dated at the
4 top 7/29/09 -- actually it was done before our hearing, but
5 produced to me about two weeks later, which was one of the
6 classified items, evidenced by the mark at the top and
7 bottom --

8 MR. MOORE: Mr. McCann is reading the document
9 improperly. It was not done on 7/29/09; it was done, if he
10 looks at the details, the interview was completed on 1/23/08.
11 The declassification was completed, and the document was sent
12 out to us declassified on 7/29/09. Just so the record is
13 clear, his statement was erroneous.

14 MR. McCANN: Your Honor, I haven't finished my
15 statement. But the finish of my statement would have been
16 that this apparently, one, declassified on 7/29/09, was a
17 report of the same and apparently only interview of Lisa
18 Stewart on January 23rd, 2008. And in the documents number
19 410 through 412 of Mr. Stewart's interview, there's no mention
20 whatsoever of parties or drugs at my client's house on Murray
21 Boulevard during 2007.

22 That, to me, is a discrepancy between what the reports
23 have said, and maybe it could be clarified by looking at the
24 agent's notes from that interview. And that agent was Agent
25 Espie.

1 MR. MOORE: Agent Espie interviewed Mr. Stewart about
2 national security matters and also about cocaine. He did a
3 report dealing with the national security matters in the one
4 case, and that's why that document was not turned over to
5 Mr. McCann. The document dealing with cocaine use, which is
6 the subject of these charges, was done in a separate 302 on
7 the same day. I have provided Your Honor a copy of all notes
8 that I have, and I do not -- Mr. McCann is trying to make an
9 issue out of something that isn't an issue, and trying to
10 obscure the issue.

11 The bottom line is, he can't show, based on that
12 explanation, that there's some reason for him to get the rough
13 notes.

14 MR. McCANN: Your Honor, looking at the documents,
15 the case I.D. number is identical for both these reports of
16 interview. And (inaudible) would establish that. And it
17 would seem to me if there is a case I.D. number for a second
18 file, it would be different than the first file. I don't know
19 that, but that seems to make sense to me.

20 THE COURT: Well, it's clear from the two reports
21 that they deal with two different subject matters; don't you
22 agree?

23 MR. McCANN: Well, but on the same case file. So it
24 would seem to me that the report of interview -- I'd just like
25 to see the notes to see what was said; that's all.

1 MR. MOORE: Your Honor, he wants to see the notes, he
2 wants to see what is said. That's his only reason for arguing
3 this. Mr. McCann does not have the authority to dictate to
4 the FBI how it does its interviews or how it prepares its
5 documents. His stated reason is I want to see it. That's not
6 enough.

7 (Brief interruption in proceedings.)

8 MR. MOORE: Your Honor, just to add, Agent Espie
9 tells me that the other file number is something that we don't
10 want to disclose to Mr. Etcheber. So that's the reason why
11 this document, which was declassified and redone on 7/29, has
12 the same FBI file number as this document. Because we were
13 trying -- and, you know, I went through a whole lot, dealing
14 with folks in Washington and otherwise, just to be able to
15 review the file myself and provide it to Your Honor. And I
16 know that these are issues that we don't often deal with, but
17 that's why the file number is the same. We did not disclose
18 to Mr. McCann the name of the other file number, and don't
19 intend to, unless it's on order of the Court.

20 THE COURT: All right.

21 (Brief interruption in proceedings.)

22 THE COURT: Mr. McCann, my law clerk and I have once
23 again reviewed the back-up notes, and it really appears to be
24 three long skinny note pad notes, and very skimpy, not full
25 sentences by any means, just words and amounts and so forth.

1 But it's just nothing inconsistent between the rough notes and
2 the 302. So I would respectfully deny your motion for the
3 rough notes. Once again, Mr. Moore, we need to put this in
4 the record so the appellate court can look at it, if they
5 think I'm wrong.

6 MR. MOORE: I understand, Your Honor.

7 THE COURT: That he can have access to it. So the
8 motion for the back-up notes for the Espie 302s is denied.

9 MR. McCANN: Your Honor, may I make it one time
10 (inaudible).

11 THE COURT: All right.

12 MR. McCANN: While the Court is looking at it, is
13 going to make it a court exhibit, it's from the interview of
14 January 23rd, 2008?

15 THE COURT: The notes?

16 MR. McCANN: Yes.

17 MR. MOORE: I don't know if the notes have a date on
18 them or not.

19 THE COURT: That's the date at the very top, 1/23/08.

20 MR. McCANN: Yes, sir. And just for the record, Your
21 Honor, when I received -- I received two other documents that
22 were the result of declassification. One was on Laura
23 Dekowski, that's phonetic, it's close, former girlfriend of my
24 client who was interviewed by Mr. Espie. And Miss Hardin,
25 Marjorie Hardin, my client's former girlfriend and the mother

1 of his child, was interviewed on 7/5/07. Both had the
2 declassification marks on the top blocked out. And those were
3 absolutely identical to the ones I have received from the
4 discovery earlier in this case.

5 My concern over the Clay Stewart one is he's the key
6 witness here in the second count of this indictment. And it
7 just seems odd that I get three documents back, two are
8 identical, out of the old file, and one is missing reference
9 to drugs altogether. That's the reason I bring it to the
10 Court's attention.

11 Is the Court permitted to tell me, is there any reference
12 in those handwritten notes to the use of drugs on Murray
13 Boulevard?

14 MR. MOORE: I don't think the Court is -- should tell
15 Mr. McCann or should be in a position of answering questions
16 posed by defense counsel about notes. Mr. McCann -- it sounds
17 like we've got a conspiracy theorist on this side. Well, I'm
18 sorry, but there's nothing sinister going on.

19 (Brief interruption in proceedings.)

20 MR. MOORE: Your Honor, Mr. Badger just made a
21 salient point. If Your Honor tells him what's in the notes,
22 just hand them out and giving him the notes over. He's trying
23 to go -- to get through the back door what he can't get
24 through the front door.

25 THE COURT: Well, I would say this. The 302 that

1 begins (inaudible) for Stewart, white male, date of birth.
2 The rough notes as to that are entirely consistent with the
3 second and third paragraphs of the 302. And that's all we
4 need to say about it. And I've looked at it several times
5 now. All right?

6 MR. McCANN: Yes, sir.

7 THE COURT: I think that should take care of
8 everything we left hanging from the last hearing.

9 MR. MOORE: I think so, Your Honor.

10 THE COURT: We need to move into the new motions.
11 The predominant motion is the motion to suppress the statement
12 based on Miranda. I have never had a situation before where
13 the argument was made where someone was in custody, made a
14 statement, that statement serves as a basis for a charge, and
15 then Miranda came into play.

16 Is there any authority on that?

17 MR. MOORE: Say that again, Your Honor?

18 THE COURT: It's my understanding the statements he
19 made during this investigation resulted in some of the charges
20 that were made here.

21 MR. MOORE: Yes, sir.

22 THE COURT: All right. Is there any authority that
23 Miranda comes into play in that situation?

24 MR. MOORE: Well, Miranda comes into play any time
25 there's a custodial interrogation. The Government -- and

1 custodial interrogations, just like non-custodial
2 interrogations, can result in a false statement to an agent,
3 and again, be the basis of a charge.

4 But the Government's position is that this was
5 non-custodial, and the Government's evidence is that
6 Mr. Etcheber voluntarily made these statements, and we're
7 prepared to put up agents to establish that.

8 THE COURT: All right. Well --

9 MR. MOORE: But I'm wondering if we can't -- we can
10 do that now, or we can deal with some of these other issues
11 which I think we can knock out quickly and just save this one
12 for last.

13 THE COURT: Let's do the easy ones first then.

14 MR. MOORE: Let's see.

15 THE COURT: We have the defendant's motion to see
16 polygraph results.

17 MR. MOORE: There are no polygraph results at the
18 present. Obviously if there are -- if someone is polygraphed
19 and there is a result of a polygraph, I would produce it.
20 There are none.

21 THE COURT: All right.

22 MR. MOORE: And I don't expect that there are going
23 to be any, unless Mr. Etcheber chooses to take -- to sign a
24 proffer, and I understand that's not going to happen.

25 Mr. McCann filed a motion to suppress the grand jury

1 minutes. We've already dealt with that. He requested the ICE
2 investigation file, and I responded to that.

3 Now, last week when Mr. McCann met with Mr. Badger and I,
4 he sort of changed hats a little bit and said, well, I'm not
5 seeing so much the ICE investigation file as I'm seeing an ICE
6 file. An ICE file is, I guess, entry into and out of the
7 country.

8 There's no ICE investigative file. I asked the Agent
9 Sherota today to check with ICE to see if there was -- what I
10 call an A file, or an alien file. Because oftentimes there is
11 an alien file when someone applies for status in the United
12 States, applies for permanent status, and/or they're here in
13 the United States illegally and get arrested. There is no
14 alien file for Mr. Etcheber. There is no alien file to
15 produce.

16 The only documents that are possibly produce -- possibly
17 there, it's questionable whether they're producible, but I
18 don't really have an objection to producing them, are the
19 State Department's records of visa applications and entries
20 into the United States. And the entries -- the entry dates
21 and the status, whether it's a B-1 or B-2 visa.

22 I think we can get those, and I'm --

23 THE COURT: Mr. McCann, do you want those?

24 MR. McCANN: Yes, sir.

25 MR. MOORE: And I don't have any objection to

1 producing them.

2 THE COURT: Well, let's produce them then.

3 MR. MOORE: Okay. I just want the Court to be clear,
4 I wasn't put on notice that that's what he really wanted until
5 last week.

6 THE COURT: All right, well, just get them then. If
7 there's no objection, Mr. McCann still wants them, leave it
8 be.

9 MR. MOORE: I have to get them from the State
10 Department, so I can't tell you that I'm going to get them
11 tomorrow, Judge, I'm going to get them as soon as I can get
12 them.

13 THE COURT: All right. What's next?

14 MR. McCANN: Your Honor, it seems to me that the ICE
15 office in Columbia would have some sort of working file on
16 this man. They called him to an interview, wrote them, copies
17 have to be placed in some local file. I don't think you have
18 to go to Washington to get that; seems to me it ought to be
19 here.

20 Your Honor, this case, testimony at a detention hearing,
21 before the grand jury, talks about a joint investigation of my
22 client by ICE and by the FBI. It talks about Agent Espie
23 before the grand jury in this case, the first indictment,
24 states that "During the course of our investigation of him, we
25 (inaudible) through ICE, his travel, and he's a frequent

1 exiter and both enterer into the United States." So someone
2 was keeping an eye on this man during the course of this
3 investigation, before he sat down with them in October of
4 2007. The Government keeps records of everything. And I
5 think it's there somewhere, and that's what I want. I want to
6 know what they were watching him for, when they were watching
7 him, whether there was any concern that they had when they
8 called him in on the 30th of October.

9 THE COURT: Mr. Moore, it does seem like they would
10 have some file.

11 MR. MOORE: The ICE agents can access the computer
12 through the State Department and find out when someone does or
13 does not enter the country. That's what we have determined we
14 can get and we can give to him. Agent Sherota has no file.
15 Agent Sherota didn't even keep a copy of the letter that he
16 sent to Mr. Etcheber. He wrote a letter, signed it and sent
17 it.

18 Mr. McCann would like to tell the Government how it should
19 or should not do its business. Well, you know, I'd like to
20 tell agencies how they should or should not do their business,
21 but I don't have that right and neither does he.

22 There is no ICE file. I've asked that question about four
23 different ways today, and there is no ICE file. There is,
24 through the State Department, they can check and find out when
25 he does enter and exit the country.

1 THE COURT: Mr. McCann, they filled out -- I mean,
2 all I can do is -- and I'll do it, if you request it -- is put
3 the agents up under oath and ask them about the existence of a
4 file.

5 MR. McCANN: I think this agent is going to be
6 testifying here a little bit later; I'll take it up with him.

7 THE COURT: All right.

8 MR. MOORE: Although personally I don't think he has
9 a right to do that, but be that as it may.

10 THE COURT: All right. What's next?

11 MR. MOORE: I think that answers all of the motions,
12 other than the suppression motion.

13 THE COURT: Well, we've got the motion reserving the
14 right to file later motions and adopting other motions, and I
15 assume that's all just routine and not really necessary at
16 this point?

17 MR. McCANN: Well, I received some discovery late
18 last week, and I haven't had the time to review, and so -- and
19 I anticipate filing more motions, but I will (inaudible).

20 MR. MOORE: Well, Your Honor, I don't think
21 Mr. McCann -- we have motions that (inaudible). And if I give
22 him some discovery after a motion's deadline that necessities
23 the filing of a motion, then I think that's fair game. What's
24 not fair game is for Mr. McCann, for example, the most recent,
25 the suppression motion they filed, he's had these documents

1 for months.

2 THE COURT: I understand. Well, he just said -- I'll
3 allow any motion to come in, if they are developed or arise
4 out of new material produced after the deadline.

5 MR. MOORE: Thank you, Your Honor.

6 MR. McCANN: What was the deadline?

7 MR. MOORE: There's a deadline that was issued to you
8 in a notice that said the filing date for filing motions is X.
9 I can't remember what the date was.

10 (Brief interruption in proceedings.)

11 THE COURT: All right. Mr. McCann, do you agree
12 we've covered everything except the suppression motion?

13 MR. McCANN: At this point, Your Honor, yes, sir.

14 THE COURT: All right. Mr. Moore, let me hear from
15 you on the suppression motion.

16 MR. MOORE: Your Honor, what I propose to do is call
17 witnesses, and then Mr. McCann, if he chooses, can call
18 witnesses. We just put up the evidence first and then deal
19 with argument thereafter, if that's acceptable with the Court.

20 THE COURT: That's fine.

21 MR. MOORE: Call Special Agent Sherota, please.

22 MR. McCANN: Your Honor, if it please the Court, I'd
23 like the Court to invoke Rule 615 of Rule 11 (inaudible).

24 MR. MOORE: Well, the rules of evidence don't apply
25 in these hearings. I don't have any problem with sequestering

1 the witnesses, if that's what he's asking for.

2 THE COURT: All right. Any witnesses who are going
3 to be called at this hearing will need to step outside at this
4 time, until you're called to testify. Under Rule 615.

5 I'm told that the deadlines for motions was
6 May (inaudible).

7 MR. McCANN: Well, that was on the first indictment.
8 On the superseding.

9 MR. MOORE: I assume that there was not a generated
10 motions filing deadline.

11 THE COURT: We may not have done (inaudible).

12 MR. MOORE: Mr. McCann has been filing motions for
13 extension of time on 9/3/09, that says now comes counsel
14 asking the Court for an order extending the time for filing
15 pretrial motions from September 15th to the fulfillment of the
16 discovery requested, which indicates that Mr. McCann was put
17 on notice that September 15th was the filing date for filing
18 motions. And he may have been put on notice of that at the
19 arraignment by Judge Marchant.

20 THE COURT: All right. Let's go to the first
21 witness.

22 THE CLERK: State your full name for the record.

23 A. Brian Edward Sherota.

24 BRIAN SHEROTA, a witness called by the Government, first
25 having been duly sworn, testified as follows:

BRIAN SHEROTA - DIRECT EXAMINATION

1 (Discussion held off the record.)

2 MR. MOORE: I'll just put on the record, Mr. McCann
3 asked me for the identity of the other gentlemen. This is
4 Agent Smith from the FBI. Agent Espie is retired from the
5 FBI, so Agent Smith is now going to become the case agent in
6 this case. He's not going to offer testimony in this case,
7 and I don't believe he's prohibited under any rule from
8 remaining.

9 THE COURT: He can stay here.

10 DIRECT EXAMINATION

11 BY MR. MOORE:

12 Q. Special Agent Sherota, where are you employed?

13 A. I'm an ICE special agent with the Department of Homeland
14 Security Immigration and Customs Enforcement in Columbia,
15 South Carolina.

16 Q. And how long have you been employed by ICE?

17 A. Since March of 2003.

18 Q. Okay. Now, at some point did Special Agent Espie contact
19 you about a gentleman named Pascal Etcheber?

20 A. Yes, he did.

21 Q. Do you remember when he contacted you, Special Agent
22 Sherota?

23 A. I recall early September of 2007.

24 Q. And what did he say?

25 A. I'm sorry.

BRIAN SHEROTA - DIRECT EXAMINATION

1 Q. What did he tell you?

2 A. He -- Agent Espie advised me that there was a gentleman
3 that was coming -- French national that was coming in and out
4 of the country, and he asked if I could look at the records of
5 travel in and out of the U.S. for Mr. Etcheber.

6 Q. And so that was September, again, what year?

7 A. Of 2007.

8 Q. All right. Was that the first time you'd been asked to
9 look at Mr. Etcheber's entry into or departure from the
10 country?

11 A. Yes.

12 Q. And how did you do that? How does one do that as an ICE
13 agent?

14 A. Through the text database that we have, we use for
15 investigative purposes. I was provided the name and date of
16 birth of Mr. Etcheber, which I just typed into the database,
17 and was able to retrieve his travel documents.

18 Q. Now, are those travel documents, is the database
19 maintained by the State Department or by ICE?

20 A. I believe it's maintained by CBP, Customs and Border
21 Protection.

22 Q. Um-hum. And you have the authority to access it?

23 A. Yes, I do.

24 Q. At that point were you investigating Mr. Etcheber?

25 A. No.

BRIAN SHEROTA - DIRECT EXAMINATION

1 Q. Okay. At that point had you even known who
2 Mr. Etcheber was?

3 A. No.

4 Q. Okay. And so after you accessed this database, did you
5 provide the information that you discovered to Special Agent
6 Espie?

7 A. Yes, I did.

8 Q. And did Special Agent Espie ask you to do something else?

9 A. Yes.

10 Q. What did he ask you to do?

11 A. He asked -- he stated at that point he would like to
12 discuss things with Mr. Etcheber. And he asked me if I would
13 call him, prepare a letter, something to just ask him to come
14 into the office voluntarily so we could speak to him.

15 Q. Now, did Special Agent Espie tell you what the general
16 concern was with respect to Mr. Etcheber?

17 A. I was told it was a national security issue.

18 Q. Okay. And were you also given some information which
19 might indicate that Mr. Etcheber was doing certain things
20 while here on a visa, that he might not be allowed to do?

21 A. Yes.

22 Q. Is there a difference between a B-1 and B-2 visa?

23 A. Yes, there is. A B-1 or B-2 visa is a nonimmigrant visa.
24 When someone enters on a B-1 visa, it's for a period of six
25 months. And that is for the purposes of business. A person

BRIAN SHEROTA - DIRECT EXAMINATION

1 that enters on a B-2 visa is also valid for six months, and is
2 here for purpose of pleasure, travel or medical-related type
3 visit.

4 Q. And to your knowledge, how many times did Mr. Etcheber
5 enter the country on a B-1 business visa?

6 A. Approximate --

7 Q. (Inaudible).

8 A. Approximately two.

9 Q. And have most of Mr. Etcheber's other entries into the
10 United States been on B-2 --

11 A. About -- been for pleasure, correct, on B-2.

12 Q. And were you given some information that Mr. Etcheber
13 might be performing some business activities while here on a
14 B-2 visa?

15 A. That's what I was told. That's what I understood.

16 Q. So what did you do?

17 A. At that point I drafted a letter, and -- to Mr. Etcheber.
18 I had an address in Charleston, I believed, and just -- just
19 asked him to come into our office, that we needed to discuss
20 his immigration status with him. And at that point signed it
21 and mailed it and just waited for a response.

22 Q. Did you get a response from Mr. Etcheber?

23 A. Not at first, but that wasn't unusual, because I knew that
24 he did travel, according to his records, in and out of the
25 country a lot. But yes, Mr. Etcheber finally did contact me.

BRIAN SHEROTA - DIRECT EXAMINATION

1 Q. And how did he contact you, if you recall.

2 A. I believe by telephone.

3 Q. And at some point did he also mail a letter?

4 A. Yes, he did, he also mailed a letter.

5 Q. Did you arrange at some point for Mr. Etcheber to come see
6 you?

7 A. Yes, I did.

8 Q. Did you tell Mr. Etcheber that he was required to come
9 speak to you under the terms of his visa?

10 A. No, it was purely voluntary, just needed him to come in to
11 discuss his immigration status.

12 Q. And did Mr. Etcheber indicate a willingness to come meet
13 with you voluntarily?

14 A. Yes, he did.

15 Q. And so on what date did Mr. Etcheber come to meet with
16 you?

17 A. October 30th of 2007.

18 Q. And where was that meeting?

19 A. That was at our office in Columbia.

20 Q. And who was present from the Government side (inaudible)?

21 A. Myself from ICE and FBI Agent Dave Espie.

22 Q. Now, Mr. Etcheber alleges in his motion to suppress, that
23 there was a third governmental official there, perhaps an FBI
24 agent. Is that true?

25 A. That is not correct.

BRIAN SHEROTA - DIRECT EXAMINATION

1 Q. Okay. And what was Mr. Etcheber told when he arrived?

2 A. We greeted him, identified ourselves to him by showing him
3 our credentials, both from the ICE side or the FBI side. And
4 we thanked him for coming in, and just told him that we needed
5 just to talk with him.

6 Q. Was he told at any point that -- His presence there was
7 voluntary?

8 A. Yes.

9 Q. What specifically was he told about that?

10 A. We told him that it was a voluntary discussion, for him
11 just to, you know, like we said, we thanked him for coming in,
12 told him it was voluntary, and he seemed pleased to talk to
13 us.

14 Q. Okay. Was the interview at all confrontational at any
15 point?

16 A. No, it was very pleasant.

17 Q. And what was Mr. Etcheber's demeanor throughout the course
18 of the interview?

19 A. Very cordial and friendly.

20 Q. Okay. Was Mr. Etcheber handcuffed in any way?

21 A. No, not at all. He was not restrained in any way.

22 Q. And I believe you sort of described the room for me and
23 Mr. Badger, but describe the room for the Court. Because
24 apparently your office has been reconfigured since that date.

25 A. Correct. The interview took place on the 14th floor, room

BRIAN SHEROTA - DIRECT EXAMINATION

1 1470, where our office previously was. Now we're in the same
2 building, but we've moved to the third floor.

3 The way the room was set --

4 Q. That's in the Strom Thurmond Federal Building?

5 A. Yes, sir.

6 Q. Is that correct?

7 A. That's correct.

8 Q. Okay.

9 A. The way the office is set up, if I was Mr. Etcheber, I was
10 sitting at the head of the table. FBI Agent Dave Espie was
11 sitting to Mr. Etcheber's left. I was sitting to the right.
12 And the door was right here to the left of Mr. Etcheber.

13 Q. Was the door open or closed?

14 A. The door was open.

15 Q. The door was open?

16 A. The door's open, yes, sir.

17 Q. And how many other ICE personnel were in that office that
18 day, if you recall?

19 A. I can't recall. We have four agents in our office, and a
20 secretary. So that would be the most that would be there.

21 Q. How were you dressed?

22 A. I believe I had probably a button-down shirt or a polo
23 type shirt and a pair of khakis or dress slacks.

24 Q. And how was Special Agent Espie dressed, if you recall?

25 A. I don't recall, but I've always seen him in some type of

BRIAN SHEROTA - DIRECT EXAMINATION

1 dress slacks or a tie or a dress shirt.

2 Q. And during the first part of the -- now clearly, Special
3 Agent Espie asked you to arrange this interview.

4 A. That's correct.

5 Q. What was the first part of the interview about?

6 A. His immigration status.

7 Q. Okay. And what questions did you ask him?

8 A. Just basically when he came into the country, asked him
9 what his purpose for being in the country was, and to -- asked
10 him to bring his documents as well.

11 Q. Okay. Did he bring his documents?

12 A. Yes, he did.

13 Q. Did you ask him to see the documents?

14 A. I asked him if I could copy them. He handed them over to
15 me. I believe he had them stuffed in his jacket pocket. He
16 handed them to me, I took them, copied them, took about two,
17 three minutes, and then brought them back to him and gave them
18 back to him, and he slipped them back into his coat.

19 Q. Okay. So you gave him the documents back while Special
20 Agent Espie continued to talk with him?

21 A. Correct. Correct.

22 Q. Okay. You didn't hold the passport until the end of the
23 interview, did you?

24 A. No.

25 Q. And at that point, after you had the discussion with him

BRIAN SHEROTA - DIRECT EXAMINATION

1 about his immigration status, did Special Agent Espie begin to
2 ask him questions?

3 A. Yes.

4 Q. What were the general areas of questions?

5 MR. MOORE: I'm going to call him as a witness in a
6 few minutes, Your Honor.

7 Q. But did he take over the interview at that point?

8 A. Yes, he did. When I stepped out to photocopy the
9 documents, I came back and Mr. Espie was talking to
10 Mr. Etcheber. And they began to discuss other issues that
11 were non-immigration related.

12 Q. Okay. Like national security --

13 A. Correct, national security issues.

14 Q. Did you sit there for the entire interview?

15 A. Yes, I did.

16 Q. Okay. And at some point at the end of that discussion was
17 Mr. Etcheber asked some questions about his drug usage and
18 things of that nature?

19 A. Yes, sir.

20 Q. Was the interview ever at any point combative?

21 A. No.

22 Q. Did Mr. Etcheber's demeanor ever change from pleasant,
23 appeared to be voluntarily answering questions?

24 A. He stayed pleasant the whole time. He seemed to enjoy
25 talking to us.

BRIAN SHEROTA - DIRECT EXAMINATION

1 Q. He seemed to enjoy talking to you?

2 A. Um-hum.

3 Q. Did you at any point tell him that he was not free to
4 leave?

5 A. No.

6 Q. Did you at any point attempt to restrain Mr. Etcheber in
7 any way?

8 A. No, not at all.

9 MR. MOORE: Take a moment, Your Honor.

10 Q. You told him to come -- you wanted him to come in to talk
11 to you about his immigration status.

12 A. Correct.

13 Q. At some point the questioning shifted and went into other
14 areas, correct?

15 A. Correct.

16 Q. At any point did Mr. Etcheber indicate a discomfort, a
17 level of discomfort, an unwillingness to go beyond the stated
18 subject of the interview?

19 A. No.

20 Q. At any point did he say, I want to terminate the interview
21 and speak to a lawyer or talk to someone else?

22 A. No.

23 Q. Now, at any point did you ever close the door or attempt
24 to physically restrain Mr. Etcheber, or do anything which
25 would lead a reasonable person to conclude that they would be

BRIAN SHEROTA - CROSS-EXAMINATION

1 subject to physical restraint if they didn't answer your
2 questions?

3 A. No.

4 MR. MOORE: Thank you. Please answer any questions
5 Mr. McCann might have.

6 THE COURT: Mr. McCann, you may cross-examine the
7 witnesses.

8 MR. McCANN: Please the Court, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. McCANN:

11 Q. Agent Sherota, you remember meeting me on July 31st of
12 this year?

13 A. Yes, sir.

14 Q. Came up to your office and we went into the room that --
15 where my client was interviewed back in October of 2007.

16 A. Correct.

17 Q. At that point when I saw you in July, you had vacated
18 those spaces; they were empty.

19 A. That's right.

20 Q. When I looked at the room where you conducted this
21 interview, it was physically different than it was when you
22 conducted the interview, was it not?

23 A. It was missing the furniture, correct.

24 Q. And boxes that were lined against the walls as well?
25 Moving boxes?

BRIAN SHEROTA - CROSS-EXAMINATION

1 A. Yeah, there was moving boxes in that room and a conference
2 table.

3 Q. Okay. And in my motion -- and I viewed the room -- I said
4 the room was approximately 16 by, I think I said 24. Is that
5 accurate, with the boxes in there?

6 A. I can't tell you what a 16-by-24 room looks like, but --
7 I'm just not 100 percent sure.

8 Q. And you mentioned that there was a door coming into the
9 room.

10 A. Correct.

11 Q. And there were no windows in that room.

12 A. Correct.

13 Q. Now, when you -- you stated that you had talked to Agent
14 Espie in early 2007 about Mr. Etcheber.

15 MR. MOORE: Objection. The statement was September
16 of 2007. That's not early. Mr. McCann should not
17 mischaracterize the testimony of the witness.

18 MR. McCANN: I think the witness can answer the
19 question on his own, Your Honor. I heard early, and I wrote
20 down early. If I'm mistaken, the agent can correct me.

21 THE COURT: When was it?

22 A. I wrote the letter on September 11th, Your Honor, and
23 that's the date it was mailed. So I was assuming I was
24 contacted in early September at some point.

25

BRIAN SHEROTA - CROSS-EXAMINATION

1 BY MR. McCANN:

2 Q. And Agent Espie's concern was that my client was going in
3 and out of the country on a frequent basis.

4 A. Correct.

5 Q. Now, at that point, when you got a call from Agent Espie,
6 what did you know my client's visa status to be?

7 A. I did not know. That's why I checked it.

8 Q. And you checked it and what did it turn out to be?

9 A. It was the B-2 visa.

10 Q. As of when?

11 A. I don't recall the date.

12 Q. As of the date you wrote this letter, for sure?

13 A. Oh, correct, as of the date I wrote the letter.

14 MR. McCANN: Your Honor, I've shown counsel a copy of
15 the -- I have the original of the letter written on
16 September 11th, 2007. I'd like to offer it.

17 MR. MOORE: I don't have any objection.

18 THE COURT: Without objection. It will be Defense
19 Exhibit 1.

20 (Defense Exhibit 1 received.)

21 MR. McCANN: May I have a moment, Your Honor, please.

22 (Brief interruption in proceedings.)

23 A. Can I correct something I said? You asked me about the
24 status as B-2 as of the date of the letter was written. I
25 cannot recall that. What I recalled was the date that he --

BRIAN SHEROTA - CROSS-EXAMINATION

1 when the interview took place on October 30th, I believe he'd
2 entered the country two or three days prior, and I know for
3 sure he came in on a B-2. I cannot state for sure what his
4 exact entry was at the time that I wrote the letter.

5 Q. Okay. Is it routine for you, when you're conducting an
6 investigation on someone as a result of a request from another
7 agency, that you'll check their visa status, since the concern
8 is coming in and out of the country?

9 A. Correct.

10 Q. So you're stating now that you did not check it before you
11 wrote the letter on September 11th?

12 A. No, no, I did check it, I just couldn't -- you asked me
13 what the status of the visa was at the time I wrote the
14 letter, and I could -- I can't tell you two years later what
15 it was, but I did check. When Mr. Espie gave me the name and
16 date of birth, I did run and check all the records.

17 Q. And it's your recollection you checked the first one,
18 before you wrote the letter on September 11th, that he had a
19 B-2 visa.

20 A. He had a B-2 and he had a B-1 visa. He's traveled quite
21 frequently.

22 Q. Okay. I'm still confused. The knowledge you had in your
23 mind when you wrote the letter in September 11th, requesting
24 my client to come meet with you --

25 A. Correct.

BRIAN SHEROTA - CROSS-EXAMINATION

1 Q. -- what did you know about his visa status?

2 A. That he'd -- that he'd traveled in on a B-1 and a B-2
3 visa. He's traveled frequently.

4 Q. And having that knowledge, did you let Agent Espie know
5 that he was on a B-1/B-2 visa?

6 A. Yes.

7 Q. And that was before you wrote the letter of
8 September 11th?

9 A. Correct.

10 Q. Now, there was some testimony in this case before the
11 grand jury, that -- by Agent Espie -- that in the course of
12 your joint investigation, that is, you and the FBI, that my
13 client's comings and goings were being monitored. Do you know
14 what that means? Can you tell us what that means?

15 A. I could tell you that ICE was not monitoring his comings
16 and goings. We just checked on his comings and goings out of
17 the country.

18 Q. And again, this issue of a file, as I understand the U.S.
19 Attorney, when you wrote this letter, on September 11th --

20 A. Right.

21 Q. -- you did not keep a copy of the letter.

22 A. Correct. Mr. Etcheber was never under investigation by
23 our office. No file was ever opened, no investigation -- no
24 official investigation was ever opened.

25 Q. Do you have a copy of the letter on your computer?

BRIAN SHEROTA - CROSS-EXAMINATION

1 A. No, I checked for Mr. Espie when he -- he called me and
2 asked if I had a copy of it; I researched it and did not have
3 a copy of it. That's not something I would keep a copy of.
4 We just -- I just wanted Mr. Etcheber to come in and
5 voluntarily talk to us. I drafted a quick letter, signed it
6 and mailed it.

7 Q. What if Mr. Etcheber hadn't shown up?

8 A. We could have just drafted another letter and sent it to
9 him.

10 Q. Okay. But, in fact, he wrote you back.

11 A. Correct.

12 Q. And outlined his busy schedule.

13 A. Correct. Correct.

14 Q. And that he traveled a good bit, correct?

15 A. Correct.

16 Q. And that it would be inconvenient for him to come to
17 Columbia, because he's living here in Charleston, to talk to
18 you.

19 A. That's why I asked him what day would work out for him.

20 Q. But he did contact you and told you it was inconvenient
21 for him to come from here up to there.

22 A. I don't recall him saying it was inconvenient. I do
23 recall him saying in his letter, the -- the schedule and the
24 traveling.

25 Q. And you had an ICE office here in Charleston in September

BRIAN SHEROTA - CROSS-EXAMINATION

1 of 2007, didn't you?

2 A. That's correct.

3 Q. Or October 2007.

4 A. Mr. Etcheber never requested the meeting to be down here
5 in Charleston.

6 Q. He just didn't want to come to Columbia because he
7 outlined for you his whereabouts or his job --

8 MR. MOORE: Objection. That's argumentative. And
9 it's also asked and answered. And it's also irrelevant.

10 THE COURT: I do think it's argumentative. Just
11 restate the question.

12 BY MR. McCANN:

13 Q. Did you have a series of phone calls with my client before
14 the eventual meeting on October 30, 2007?

15 A. I don't know about a series, but I do recall talking to
16 Mr. Etcheber.

17 Q. On more than one occasion?

18 A. I can't recall.

19 Q. Okay. And he sent you a letter on Tuesday, October 9th,
20 2007.

21 A. He did send me a letter; I don't recall the date.

22 Q. And you kept a copy of that letter?

23 A. No, I don't have a copy of that letter.

24 Q. It's in the discovery. I got a copy.

25 A. Then I must have given it to Agent Espie.

BRIAN SHEROTA - CROSS-EXAMINATION

1 Q. Out of a file?

2 A. No. I just -- I got the letter. Next time I saw Mr.
3 Espie, I handed it over to him.

4 Q. And in your letter of September 11th, Government's
5 Exhibit -- I mean Defense Exhibit 1 -- you knew at the time
6 you wrote that letter that this was at the request of the
7 FBI --

8 A. Correct.

9 Q. -- that had an ongoing investigation of my client.

10 A. Correct. But I did not know anything about that
11 investigation.

12 Q. And the FBI conducts criminal investigations, correct?

13 A. That's correct.

14 Q. So you knew, when you wrote the letter, that there was a
15 criminal investigation involving my client underway by the
16 FBI.

17 A. I knew that he was under investigation.

18 Q. Okay. A criminal investigation.

19 A. Correct.

20 Q. And it had something to do with unlawful activity, as I
21 recall Mr. Espie telling you. Is that right?

22 A. Unlawful --

23 Q. What did Agent Espie tell you was the reason he wanted you
24 to bring him in?

25 A. It was in reference to his travels and some national

BRIAN SHEROTA - CROSS-EXAMINATION

1 security-related issues.

2 Q. National security-related issues. Okay. And
3 coincidentally, your letter was written on 9/11 to him, to
4 come in, it was about national security concerns of the FBI,
5 correct?

6 A. Purely, yeah, coincidental, yeah.

7 Q. And the point I'm trying to make is that at no time during
8 your phone conversation with my client, in this letter to him
9 telling -- requesting him to come in, did you mention that the
10 FBI was going to be there to interview him?

11 A. Correct.

12 Q. So when he walked into that room, there sat Agent Espie, a
13 man he had never seen before. Correct?

14 A. Correct.

15 Q. Who was on a criminal investigation, correct?

16 A. Correct.

17 Q. Agent Sherota, how long -- how long did this interview
18 take, timewise, as you recall?

19 A. I would say between 45 minutes to an hour.

20 Q. Forty-five minutes to an hour. Did you take notes during
21 the course of that interview?

22 A. No, I did not. Like I said, my main concern was the
23 immigration status. I saw the documents, and he was clearly
24 legally here to be in the country.

25 Q. Okay.

BRIAN SHEROTA - CROSS-EXAMINATION

1 A. That was the -- that was the scope of what I was looking
2 at.

3 Q. But you knew that before he showed up.

4 A. Correct.

5 Q. So what was the point, other than (inaudible) Agent Espie?

6 A. To talk to him. To ask him about his different travels on
7 his different visas.

8 Q. And it's your testimony that he asked him in detail about
9 his travels on the visas, under his visas?

10 A. He asked him about the travels.

11 Q. Give me one travel that you asked him about.

12 A. I can't give a specific date.

13 Q. Did you ask him about travels to certain countries in the
14 United States? I mean certain countries in the world --

15 A. Yes.

16 Q. -- outside the United States? Do you remember any one
17 name?

18 A. Of another country?

19 Q. Yeah.

20 A. No.

21 Q. Did you have a copy of his passport and visa before you --

22 A. No.

23 Q. -- (inaudible)? So you had the copy in front of you when
24 you were questioning him about his comings and goings,
25 correct?

BRIAN SHEROTA - CROSS-EXAMINATION

1 A. The photocopy?

2 Q. Yeah.

3 A. Yes.

4 Q. Because you went and copied it.

5 A. Correct.

6 Q. Did you make a copy for Agent Espie, too?

7 A. I gave Agent Espie that copy.

8 Q. So there was one copy made of his passport and visa?

9 A. Correct.

10 Q. And who kept it at the end of the interview?

11 A. It was sitting on the conference table, and at the
12 conclusion of the interview, Mr. Etcheber left the office. At
13 that point Dave and I probably talked for a few minutes; I
14 handed it over to him.

15 Q. Over to Agent Espie?

16 A. Correct.

17 Q. So on the 30th of October, 2007, Agent Espie had a copy,
18 full copy of his passport.

19 A. Correct.

20 (Brief interruption in proceedings.)

21 MR. MOORE: I have no objection. I don't see the
22 relevance, but rather than fight it --

23 MR. McCANN: Defendant's Exhibit No. 2, passport/visa
24 of (inaudible).

25 (Defense Exhibit 2 received.)

BRIAN SHEROTA - CROSS-EXAMINATION

1 MR. McCANN: Your Honor, I have a copy of the -- that
2 document, it's not in color, that's the only one in color,
3 that's why I handed it up for the Court's review. I'd like to
4 question the witness from that copy.

5 MR. MOORE: One of the questions I have is, was this
6 the passport as it was at the time of the interview in 2007?
7 Because if it's updated -- When was the copy made?
8 (Inaudible).

9 MR. McCANN: These copies were made, I want to say
10 in -- the color copy was made during calendar year 2008 by his
11 domestic lawyer, Jack Cordray. The black and white copy was
12 made after my client's arrest, March/April of this year. I
13 retrieve it from, I think, Probation or Pretrial Services has
14 a copy -- had the copy of his passport.

15 MR. MOORE: It's an improper questioning based on
16 those documents, because they're not the documents as they
17 were in existence at the time of this interview.

18 THE COURT: Where are you going with this,
19 Mr. McCann?

20 MR. McCANN: I want to talk to him just about one
21 item that's in that passport.

22 THE COURT: I'll allow it for that. Reserve the
23 right to disregard it later if I don't think it's relevant.
24 Go ahead.

25 MR. MOORE: Can you show me the document you're going

BRIAN SHEROTA - CROSS-EXAMINATION

1 to be questioning him about beforehand?

2 BY MR. McCANN:

3 Q. I've got it marked, it's about three-quarters of the way
4 back, I think it's marked with a paper clip. And it is the
5 visa, United States visa for my client. Do you see that?

6 A. Yes, sir.

7 Q. Okay. And from that document it states that it is, in
8 fact, a B-1/B-2 visa.

9 A. Type class, I see B-1/B-2. Correct.

10 Q. And the date of issue?

11 A. September 25th, 2007.

12 Q. Okay. And back to the line of questioning I was asking
13 you about, you had a copy of the document, the passport, as it
14 existed in October 2007 in front of you, correct?

15 A. Correct.

16 Q. And in that document that you copied, was the visa that we
17 just talked about, correct?

18 A. I did copy his visa, yes, sir.

19 Q. And you told me that you and Agent Espie asked him, or
20 Agent Espie asked him about certain comings and goings, as
21 evidenced by what was in that passport.

22 A. Correct.

23 Q. How long did that portion of the interview take place?

24 A. Five to ten minutes.

25 Q. By the way, during the course of this interview, based on

BRIAN SHEROTA - CROSS-EXAMINATION

1 the letter my client had sent you in October, you knew that he
2 had a young child here in Charleston, that he was estranged
3 from the mother of the child. Do you remember him writing you
4 that?

5 A. I recall him having a child and a girlfriend. Why I
6 thought -- I didn't really understand the relationship.

7 Q. Were you present when Agent Espie asked him the five
8 questions that brought him here to court, about the use,
9 distribution of drugs, transfer of drugs, manufacture of
10 drugs, importation of drugs?

11 A. Yes.

12 Q. Okay. And those were asked in your presence?

13 A. Yes.

14 Q. And he made a one-word denial as to each question, which
15 was no, correct?

16 A. I don't recall.

17 Q. If Mr. Etcheber, in your presence, with his passport
18 there, and in your office --

19 A. Um-hum.

20 Q. -- had said, I used cocaine; in violation of his stay here
21 in the United States?

22 A. Correct.

23 Q. If he said, I have shared cocaine --

24 MR. MOORE: Objection to the relevance of this line
25 of questioning as to this issue. It may well be relevant at

BRIAN SHEROTA - CROSS-EXAMINATION

1 trial, but it's not relevant to the issue of whether or not
2 this defendant was in custody or appeared voluntarily. I've
3 given Mr. McCann a lot of leeway, but we're here for a
4 suppression hearing, not to try this case.

5 THE COURT: All right, well --

6 MR. McCANN: The issue is also whether he
7 voluntarily --

8 THE COURT: I understand. I'm going to overrule the
9 objection. Go ahead.

10 BY MR. McCANN:

11 Q. If he had admitted sharing cocaine, or any other illegal
12 substance while here in the United States, in answer to Mr.
13 Espie's question, he'd be in violation of his visa.

14 A. Correct.

15 Q. And the other three questions, which are more serious
16 allegations, distribution, manufacturing, and I think
17 importation of drugs; again, in violation of his visa.

18 A. Correct.

19 Q. Subject to losing his status in this country, right?

20 A. If convicted.

21 Q. But the -- he would have been in violation by admitting
22 that he had done that, correct?

23 A. I'm not sure.

24 MR. McCANN: May I have a moment, Your Honor?

25 THE COURT: Sure?

BRIAN SHEROTA - CROSS-EXAMINATION

1 BY MR. McCANN:

2 Q. Do you remember a discussion with my client on
3 October 30th, 2007, about staying at a hotel in Israel?

4 A. No, I do not.

5 Q. (Inaudible)?

6 A. No.

7 Q. Okay. There was no discussion that you recall about a
8 hotel in Israel?

9 A. No. I recall Mr. Espie, again, talking about the travels
10 to the different countries, but I can't tell you about Israel.

11 Q. How about the name Pasquale Pellicoro; did that come up?

12 A. I do not -- I do know that name, but I don't know if it
13 came up during our interview of Mr. Etcheber.

14 Q. You do know that name from prior --

15 A. I can't tell you -- I can't recall if I learned it prior
16 or after, but I do know that name now.

17 Q. Pellicoro is a fugitive in this case.

18 A. Correct.

19 Q. Is that your case or somebody else's?

20 A. No, that's the FBI's case.

21 Q. You've probably discussed my motion to suppress here with
22 the Government -- I know you have -- and my client makes the
23 allegation -- Have you discussed this motion here with your
24 counsel before we came in?

25 A. Just this morning.

BRIAN SHEROTA - CROSS-EXAMINATION

1 Q. This is some two years ago now?

2 A. Correct.

3 Q. This month.

4 A. Correct.

5 Q. No notes, no file, and you now say, under oath, that there
6 was not a third agent in that room.

7 A. Correct. It was myself, Mr. Etcheber and FBI Agent Espie.

8 Q. And that's your absolute recollection --

9 A. Yes.

10 Q. -- of who was there?

11 MR. McCANN: That's all I have of this witness.

12 THE COURT: Any redirect?

13 MR. MOORE: Just very briefly.

14 REDIRECT EXAMINATION

15 BY MR. MOORE:

16 Q. If, rather than lie about cocaine use, Mr. Etcheber had
17 simply refused to answer those questions about cocaine use,
18 would he have been free to leave?

19 A. He was free to leave the whole time.

20 Q. If Mr. Etcheber had stopped the interview at any point and
21 said, I don't want to answer those questions, would he have
22 been free to get up and go?

23 A. Yes.

24 Q. Would you have attempted to restrain him in any way?

25 A. No.

BRIAN SHEROTA - REDIRECT EXAMINATION

1 Q. Did you do anything during the course of that interview to
2 make him think otherwise?

3 A. No.

4 Q. And just two other questions. Mr. Etcheber also alleges
5 in his motion, in addition to this mysterious third agent who
6 wasn't there, that you told Etcheber that he had to appear in
7 Columbia to check his immigration status. Is that correct?

8 A. No.

9 Q. And, however, Mr. Etcheber (inaudible) a copy of the
10 letter that he wrote back to you. And did the letter not say
11 I'm leaving on Sunday, the 14th of October, for Paris, and
12 will be returning next month for my week visit. Should you
13 still want to meet up with me, I will accommodate you on any
14 of my visits.

15 Is that -- do you recall him stating that?

16 A. In the letter, yes.

17 Q. He said he would accommodate you.

18 A. Um-hum.

19 MR. MOORE: Thank you. No further questions.

20 THE COURT: Thank you, sir, you may step down.

21 MR. McCANN: Briefly, Your Honor, that prompted one
22 question.

23 MR. MOORE: Your Honor, I don't think that recross is
24 proper in a suppression hearing.

25 THE COURT: It's discretionary with the Court. I'll

BRIAN SHEROTA - RECROSS-EXAMINATION

1 allow it, go ahead.

2 MR. McCANN: Thank you.

3 RECROSS-EXAMINATION

4 BY MR. McCANN:

5 Q. Your reason for asking, on the telephone, you recall
6 talking with Mr. Etcheber and asking him to come in because
7 his name had popped up on the computer.

8 A. No, I do not recall that. No.

9 MR. McCANN: That's all I have.

10 THE COURT: Thank you, sir, you may step down. Next
11 witness.

12 MR. MOORE: Special Agent Espie.

13 MR. McCANN: Your Honor, would you instruct the
14 witness, please, under 615?

15 THE COURT: Not to what?

16 MR. McCANN: Would you instruct witness under
17 Rule 615, not to discuss his testimony, please.

18 THE COURT: Don't discuss your testimony with anybody
19 that was here.

20 MR. MOORE: Your Honor, it would be almost impossible
21 for him to discuss the testimony with the next witness which
22 is about to come in, but (inaudible).

23 THE CLERK: Please state your full name.

24 A. David A. Espie.

25 DAVID ESPIE, a witness called by the Government, first

DAVID ESPIE - DIRECT EXAMINATION

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MOORE:

4 Q. Special Agent Espie, where are you employed?

5 A. I'm currently employed as a consultant contractor with the
6 Federal Bureau of Investigation, Columbia, South Carolina.

7 Q. Prior to -- you recently retired, is that correct, as an
8 agent?

9 A. Yes, sir.

10 Q. And were you, prior to retirement, the case agent in this
11 case?

12 A. Yes, sir.

13 Q. At some point did you have access, I guess before this
14 interview on October 30th, 2007, did you have access to some
15 interviews in connection with the Ravenel investigation where
16 Mr. Etcheber's name came up regarding drug use and drug
17 distribution?

18 A. Yes, I did.

19 Q. Did you also have a separate investigation of
20 Mr. Etcheber?

21 A. Yes.

22 Q. A national security investigation?

23 A. That's correct.

24 Q. And based on that national security investigation, did you
25 request that Agent Sherota contact Mr. Etcheber?

DAVID ESPIE - DIRECT EXAMINATION

1 A. Yes.

2 Q. And did you have any discussions with Mr. Etcheber prior
3 to his appearance in Columbia on October 30th?

4 A. No, sir.

5 Q. On October 30th, 2007, tell the Court what happened.

6 A. On that date I went to the Federal Building in Columbia to
7 meet with Agent Sherota, in order to conduct an interview of
8 Mr. Etcheber.

9 Q. Okay. And had Agent Sherota, to your knowledge, arranged
10 Mr. -- sent Mr. Etcheber a letter and asked him to come in
11 voluntarily?

12 A. Yes.

13 Q. Tell us what happened when Mr. Etcheber --

14 MR. McCANN: Object to the language come in
15 voluntarily. It's nowhere in that letter.

16 THE COURT: All right. Go ahead. Rephrase the
17 question.

18 MR. MOORE: I will rely on Agent Sherota's testimony
19 as he's the one who handled the discussions.

20 THE COURT: All right.

21 BY MR. MOORE:

22 Q. Tell us what happened when Mr. Etcheber appeared on
23 October 30th. Who was present for that interview?

24 A. Yes. Within a conference room of the Immigration and
25 Customs Enforcement Agency, ICE, was myself, as an agent with

DAVID ESPIE - DIRECT EXAMINATION

1 the FBI, and a Special Agent Brian Sherota of ICE. And at the
2 entryway there was a receptionist for ICE. So when
3 Mr. Etcheber arrived, he was greeted there. And we came --
4 actually Agent Sherota came up to the front and escorted
5 Mr. Etcheber back to our interview room.

6 Q. Okay. Was the interview room, was the door open or closed
7 during this interview?

8 A. It was opened approximately halfway.

9 Q. All right. And did you introduce yourself to
10 Mr. Etcheber?

11 A. Yes, I identified myself verbally by name, and also showed
12 him my credentials as a special agent with the FBI.

13 Q. Okay. Now, at that point did Mr. Etcheber say, wait, I
14 didn't think I was coming here to talk to the FBI. Did he say
15 anything of that nature?

16 A. Not whatsoever.

17 Q. Okay. And was it communicated to Mr. Etcheber that his
18 discussion, that you made sure it was voluntary, and if so,
19 how?

20 A. Yes. When he came into the room, following my
21 identification of myself, my official identity, I advised
22 him -- I thanked him for coming, we appreciated his coming in
23 voluntarily, and again, that was reaffirmed probably two or
24 three times. It was voluntary at that point in time. So it
25 was clear. And also, I had Agent Sherota also identified

DAVID ESPIE - DIRECT EXAMINATION

1 himself showing his credentials to him.

2 Q. Okay. Did the interview ever become combative or hostile?

3 A. Never.

4 Q. Okay. How would you characterize Mr. Etcheber's demeanor
5 throughout the course of that interview?

6 A. Very relaxed, very cooperative, seemingly. Jovial,
7 smiled. Any time we would ask him a question, almost
8 sometimes we would apologize, say, well, we'd like to ask
9 you -- he'd say no problem, be glad to answer, basically
10 anything you would like to pose to me.

11 Q. The first part of the interview, did that deal with his
12 immigration status?

13 A. Yes, that was -- following the advisement of our identity,
14 official identities through verbally and showing our
15 credentials, and then basically outlined the interview. And I
16 noted that we would be discussing the Immigration or visa
17 matters, national security agencies, and drug issues. We then
18 began interviewing, which it was led by Agent Sherota.

19 Q. Okay. Now, at some point after the general discussion of
20 the immigration issues, did you begin to take over the
21 interview, for lack of a better term?

22 A. Yes, I did.

23 Q. And did you tell him what area you wanted to go into next?

24 A. Yes, I advised him I wanted to talk about national
25 security-related issues.

DAVID ESPIE - DIRECT EXAMINATION

1 Q. Okay. At that point did Mr. Etcheber say, well, I thought
2 I was only here to talk about my immigration status, I don't
3 want to talk with you.

4 A. No.

5 Q. What happened next?

6 A. I again advised him of the nature what I wanted to
7 question him about, and he said something to the effect, sure.
8 And again, I felt that he was very cooperative and willing to
9 answer any questions I did pose to him.

10 And then I followed through with an interview in general
11 regarding questions concerning initially his associates,
12 family, education, employment history, places of residency,
13 his health, alcohol consumption, adverse contact with law
14 enforcement, finances, memberships in associations or
15 organizations, foreign travel, foreign associations,
16 associations with foreign nationals, and possibly any
17 involvement with the French government, French intelligence
18 services.

19 Q. Did he indicate to you that he had some knowledge of the
20 French intelligence services?

21 A. No, he indicated he had not -- he had none.

22 Q. Did he indicate to you that he had been in the French
23 military at some point?

24 A. Yes, sir.

25 Q. What did he say?

DAVID ESPIE - DIRECT EXAMINATION

1 A. Just minimal amount of experience. I recall that he
2 mentioned in terms of experience as a pilot or training
3 thereof.

4 Q. When you were asking him those sort of probing questions,
5 did his demeanor change at any point?

6 A. Not at all. Very cooperative. And sometimes he acted per
7 se surprised on some of my questions which were fairly direct,
8 in regards to intelligence affiliation. But again,
9 cooperative. And remained there comfortably and relaxed and
10 tried to -- appeared to try to answer each question the best
11 he could.

12 Q. And at some point did you ask him some drug questions?

13 A. Yes, sir, I did.

14 Q. And had you -- did you ask him those drug questions
15 because of the information that had been provided to you by
16 Special Agent Waizenhofer?

17 A. That's correct.

18 Q. And based on the information that you had in the case, did
19 he lie to you?

20 A. Yes, he did.

21 Q. Now, when you began asking him the drug questions, you're
22 aware that he already previously voluntarily agreed to be
23 interviewed by agents of SLED, sometime prior to that,
24 correct?

25 A. Yes, he did.

DAVID ESPIE - DIRECT EXAMINATION

1 Q. And you had been provided with a copy of that interview.

2 A. That's right.

3 Q. Did you use that interview to help you question him?

4 A. Yes, I did.

5 Q. Okay. And did he at any point, when you began to ask him
6 the drug questions, say, I'm uncomfortable about talking about
7 drugs, I don't want to talk about it because it might affect
8 my visa status?

9 A. No, he did not.

10 Q. Did you attempt during this interview to restrain
11 Mr. Etcheber in any way, shape, form or fashion?

12 A. Not so whatsoever.

13 Q. Was Mr. Etcheber there voluntarily?

14 A. Yes, he was.

15 Q. If Mr. Etcheber had indicated a desire to stop the
16 questioning, and to leave the ICE office, would you have
17 prevented that?

18 A. No, sir.

19 Q. Was Mr. Etcheber appeared to be calm, cooperative and
20 level-headed throughout that entire interview?

21 A. Yes, he was.

22 Q. Now, Mr. Etcheber alleges that at -- there were two FBI
23 agents there in addition to Special Agent Sherota. Is that
24 true?

25 A. That's incorrect.

DAVID ESPIE - DIRECT EXAMINATION

1 Q. Was there anyone else there from the FBI that day?

2 A. Only me, sir.

3 Q. Okay. And you also indicated that at some point you
4 identified yourself as an NSA agent. NSA being National
5 Security Agency. Is that correct?

6 A. He did apparently indicate that, but that's incorrect. I
7 never did that.

8 Q. Did you use the words NSA at some point in the course of
9 the interview?

10 A. Yes, sir.

11 Q. Tell us how.

12 A. When I was discussing, again, an affiliation with French
13 intelligence services, I gave an example such as, again,
14 possibly an affiliation with an agency similar in France to
15 our country's national security agency. An agency that's in
16 charge of signals intelligence, and also electronic
17 intelligence. In fact, I even volunteered that that's where I
18 previously worked. And then once I explained what NSA was, I
19 asked him then, did you ever have an affiliation with a
20 similar type organization in your country in France?

21 Q. Okay. And his response was?

22 A. No.

23 Q. Now, did you, however, at the beginning you displayed
24 credentials identifying you as a what?

25 A. Special agent of the Federal Bureau of Investigation. And

DAVID ESPIE - DIRECT EXAMINATION

1 also my badge as well.

2 MR. MOORE: I'd like a moment, Your Honor.

3 (Brief interruption in proceedings.)

4 BY MR. MOORE:

5 Q. Special Agent Espie, at the beginning of the interview did
6 Special Agent Sherota ask Mr. Etcheber to review his passport
7 and other immigration documents?

8 A. He did.

9 Q. Okay. And did Special Agent Sherota leave the room early
10 on and make a copy of those documents?

11 A. Once those materials were voluntarily provided to Mr. --

12 MR. McCANN: Objection to the characterization of
13 voluntary.

14 THE COURT: Overruled. Overruled. Go ahead.

15 A. Once Mr. Etcheber provided those materials of what he
16 seemingly brought or had in his possession to Agent Sherota,
17 Agent Sherota left the room for two or three minutes, made
18 photocopies of those documents, immediately came back into the
19 room, handed them right back to Mr. Etcheber. And I remember
20 particularly the passport, Mr. Etcheber, he had a sports coat
21 on that day, put it in his pocket.

22 Q. Okay. So Mr. Etcheber was given his passport back, and
23 put the passport back in his pocket early on in this
24 interview, is that correct?

25 A. First five minutes, yes, sir.

DAVID ESPIE - DIRECT EXAMINATION

1 Q. Did anyone try to hold his passport over his head?

2 A. No, sir, no reason.

3 Q. Did you say, we're not going to give you this stuff back
4 unless you tell us what we want to hear or anything of that
5 nature?

6 A. Absolutely not.

7 MR. MOORE: Thank you, Special Agent Espie, please
8 answer any questions Mr. McCann may have. I'm sure he's got
9 quite a few.

10 THE COURT: Mr. McCann, you may cross-examine.

11 CROSS-EXAMINATION

12 BY MR. McCANN:

13 Q. Have you seen the letter that Agent Sherota wrote to my
14 client requesting that he come to the ICE office in Columbia?

15 A. No, sir, Agent Sherota prepared that and sent it directly
16 to Mr. Etcheber. I never did see it, sir.

17 Q. This has been marked as Defendant's Exhibit 1.

18 A. Um-hum.

19 Q. Identified by Agent Sherota as a letter that he wrote.

20 A. Okay. Yes, sir.

21 Q. Any mention in there that the interview was really at your
22 request, to conduct an ongoing investigation of my client?

23 MR. MOORE: Your Honor, the Government will stipulate
24 that no such identification was made. It's clear from the
25 record. So I'll so stipulate to move this matter along.

DAVID ESPIE - CROSS-EXAMINATION

1 MR. McCANN: I want the agent to answer that.

2 THE COURT: Go ahead. Answer the question, if you
3 can.

4 A. Yes, sir. The three reasons we -- I had this conversation
5 with Agent Sherota initially, or prior to the preparation of
6 this letter, was that I felt during the course of my
7 investigation, national security investigation, that there was
8 issues that the ICE agency would be interested in, in terms of
9 Mr. Etcheber. So that was the one premise of the preparation
10 of the letter.

11 Secondly, I had my own interests, yes, in terms of
12 national security issues regarding Mr. Etcheber. And thirdly,
13 this evolving drug matter with Mr. Ravenel, where Mr. Etcheber
14 was identified to be part of it. Again, following those three
15 issues, I felt that ICE's assistance would be helpful.

16 Q. One issue that you wanted to talk to him about was
17 national security, correct?

18 A. Yes, sir.

19 Q. Second was this ongoing investigation in the Ravenel
20 matter about the use of drugs in Charleston and other places,
21 primarily cocaine.

22 A. Yes, sir.

23 Q. You interviewed other people in this matter on the cocaine
24 matters involving Ravenel?

25 A. I believe the majority of my interviews were done after my

DAVID ESPIE - CROSS-EXAMINATION

1 interview with Mr. Etcheber, but, yes, sir.

2 Q. And when you conduct those interviews and when you want to
3 talk to a witness, as in this case, as in most FBI cases, you
4 contact that individual and say, I am Dave Espie from the FBI,
5 and I want you to come in and talk to me. Right?

6 A. I do identify myself, yes, sir.

7 Q. Yeah. And before the interview, right?

8 A. Yes.

9 Q. Okay. And very often what happens, and it's happened in
10 this case, when someone gets that call, the next call you get
11 is from a lawyer. Right?

12 A. Not usually.

13 Q. But a lot.

14 A. No.

15 Q. And it happened in this case, right?

16 A. Not a lot, no, sir.

17 Q. The witnesses I've seen in the discovery who you've
18 interviewed by way of a proffer, in this very investigation,
19 they've been there with a lawyer. Based on their --

20 MR. MOORE: I don't know that this agent has
21 interviewed anybody who's shown up for a proffer. Mr. McCann
22 would love to mischaracterize the discovery and the evidence.

23 THE COURT: All right. Well, just ask it on a
24 general level, don't refer to this case.

25 MR. McCANN: I will, thank you, Judge.

DAVID ESPIE - CROSS-EXAMINATION

1 BY MR. McCANN:

2 Q. So it's your testimony that when you call someone out of
3 the blue and say, I'm Dave Espie, I work for the FBI, we want
4 to come talk to you about an investigation, implying it's a
5 criminal investigation, because that's what the FBI do, that
6 does not generally prompt a call from a lawyer?

7 A. I usually don't tell them exactly what the premise of the
8 interview is. And very few individuals I've ever interviewed
9 in 23 years requested a lawyer up front.

10 Q. You knew, going into this interview of my client, that he
11 had no criminal record, correct?

12 A. I wasn't aware of one, yes, sir. We were going to conduct
13 Interpol and confirm whether he's had an arrest outside the
14 United States, but it had not been done and hasn't been done.

15 Q. Has or has not?

16 A. Has not, sir.

17 Q. So your concern was not then, and it is not now, two years
18 ago, that he had a record outside the United States.

19 A. No, I was concerned whether he was affiliated with French
20 intelligence, had used illegal drugs while in the United
21 States or purchased them or distributed them. And also
22 whether there was an immigration matter that was concerning to
23 the ICE agency.

24 Q. Now, after Agent Schroeder took the passport and copied
25 it, were you provided a copy of it?

DAVID ESPIE - CROSS-EXAMINATION

1 A. Yes, sir.

2 Q. All right. And you still have that copy?

3 A. I believe so. Yes, sir.

4 Q. And that, again, was October 30th, 2007.

5 A. Yes.

6 Q. And in that passport was a visa issued by the United
7 States to Mr. Etcheber. Correct?

8 A. I believe one was attached inside of the cover, yes, sir.

9 Q. This is Defense Exhibit No. 2, and ask you to take a look
10 at that.

11 A. Yep.

12 Q. Is that what you recall from the 30th of October?

13 A. This appears to be what was photocopied, but can't recall
14 specifically, but it does appear to be.

15 Q. Well, the pages are not marked --

16 A. Yes, sir.

17 Q. -- so I marked it with paper clip.

18 A. Yes, sir.

19 Q. Does that appear to be the visa that you saw on
20 October 30, 2007?

21 A. Can't specifically recall, but I don't have any reason to
22 doubt it, sir.

23 Q. Okay. And what type of a visa is that? Read off of it,
24 please.

25 A. It appears to be a visa issued by the United States

DAVID ESPIE - CROSS-EXAMINATION

1 Department of State, allowing him entry into the country.

2 Q. Do you see B-1 visa on there?

3 A. Yes, sir.

4 Q. The Bureau has many forms that it uses in the course of
5 investigations; one is a waiver of your rights --

6 A. Yes.

7 Q. -- before you sit down and are questioned in a criminal
8 investigation. Correct?

9 A. That's right.

10 Q. And this is a detail -- I've seen many of them -- you've
11 used those in your practice before, correct?

12 A. Yes, they're called an FD-395, advice of rights form.

13 Q. Did you have one of those with you?

14 A. On that date, no, sir. I didn't have a form, but I always
15 carried Miranda in my credential case, just in case I needed
16 to use it.

17 Q. So you had your Miranda card in the file?

18 A. Yes, sir.

19 Q. Did you read him his rights at any time during the course
20 of this investigation?

21 A. No, sir. Through my training and expertise, I knew that I
22 was not required to, because it was not a custodial situation,
23 nor did I incorporate interrogation.

24 Q. Okay. So you're saying that this was not an
25 interrogation; this was, in your language, a voluntary --

DAVID ESPIE - CROSS-EXAMINATION

1 voluntary appearance, where my client wasn't told you were
2 coming to ask him about two serious matters involving national
3 security and drugs. And that wasn't an interrogation on your
4 part?

5 A. No, sir, and I advised him when he entered the room that
6 it was voluntary. Several times.

7 Q. Would you agree with me, Agent Espie, that a -- and you
8 probably were taught in this school -- that interrogations can
9 take certain -- use certain methods of interrogation. What
10 you see in television where they're pinning somebody down and
11 yelling at them, and good cop/bad cop; or, they can be the
12 soft soap sweet stuff. And it still amounts to an
13 interrogation, because you get your information without the
14 benefit of the person knowing his rights. Right?

15 MR. MOORE: I object to the form of that question.

16 But --

17 THE COURT: Overruled.

18 A. Could you repeat the question, sir? It got kind of
19 convoluted.

20 BY MR. McCANN:

21 Q. There are many ways to conduct an interrogation; it
22 doesn't have to be pounding on the table and pointing fingers
23 and saying you've got to tell me or you'll never see your
24 daughter again. That's not what you did here. But you knew
25 his background, you know he had a child, and you knew that

DAVID ESPIE - CROSS-EXAMINATION

1 you'd go in and soft soap it, and it was congenial, it was
2 open, and get to the same results, making him make an
3 admission to lie to you, right? It was an interrogation,
4 wasn't it?

5 A. I just did an interview. I asked questions and looking
6 for a response.

7 Q. Did you ever present anything to my client -- I know you
8 have testified that it was purely voluntary -- did you present
9 anything to my client that said this is a voluntary appearance
10 on your form, please sign it and we'll go on. Did you ever do
11 that?

12 A. No, sir, it wasn't -- we don't incorporate that kind of
13 procedure.

14 Q. Did you have -- knowing that he didn't have any record in
15 the United States, do you have any idea if a French national
16 understood his right to not talk to you, the FBI, in such a
17 setting? In any setting? Do you know that he understood
18 that?

19 A. I tried to incorporate, again, the -- emphasize the word
20 voluntary, number one. And I saw Mr. Etcheber as a very
21 educated individual, so I assume -- believed that he
22 understood the situation.

23 Q. Without asking him the standard questions under Miranda,
24 how would he possibly have known that a man not educated in
25 this country, not a citizen of this country, no criminal

DAVID ESPIE - CROSS-EXAMINATION

1 record, would understand his right to be silent?

2 A. Because he had been coming --

3 MR. MOORE: Objection.

4 THE COURT: Overruled.

5 A. He had been coming to the United States for numerous
6 years, conducted business here with significant companies and
7 manufacturers in the United States, had written several
8 articles and a book, all in English, so I assumed that he knew
9 our language, our culture and our laws.

10 Q. You assumed he knew his rights under our Constitution to
11 remain silent. You just said that, right? You assumed he
12 knew.

13 A. I didn't say that.

14 Q. You assumed he knew, you said.

15 A. I said knew our culture and general laws. But again, I
16 emphasized the word voluntary throughout the interview.

17 Q. How long does it take to read the Miranda warnings?

18 A. Depends on who I'm reading them to.

19 Q. Reading it to an intelligent fellow from France, like you
20 just characterized him.

21 A. Just a few minutes, most likely. But again, it wasn't a
22 requirement to do so, because the voluntary aspect of the
23 interview.

24 Q. At the point that you went to see -- interview my client
25 in October -- question my client on October 30th, 2007, how

DAVID ESPIE - CROSS-EXAMINATION

1 long had you been working on the Ravenel matter?

2 A. I was never involved directly in the Ravenel matter, sir.

3 Q. But you had talked with SLED apparently about their
4 investigation?

5 A. I talked to our own drug squad.

6 Q. And --

7 A. Just -- just a few short conversations.

8 Q. And based on those few short conversations, my client's
9 name had come up as a result of interviews with other people,
10 including Ravenel in this investigation, and you knew that,
11 right?

12 A. The only person that I knew that had related information
13 concerning his involvement with illegal drugs and narcotics
14 was an interview done by FBI Special Agent Rodney Crawford of
15 Marjorie Sarah Hardin, or Marjorie Hardin. That's the only
16 one I was aware of, and that's the only copy of a 302 that I
17 got to read, review, before I interviewed Mr. Etcheber.

18 Q. So you knew nothing about anybody else having mentioned my
19 client's name in the course of the Ravenel investigation?

20 A. At that point I do not recall others, although obviously
21 through your interviews and discovery there's several other
22 people we interviewed, but at that time it was the very
23 infantile stage of that side of the investigation.

24 Q. And you had a list of questions that you read to my client
25 from, didn't you?

DAVID ESPIE - CROSS-EXAMINATION

1 MR. MOORE: Your Honor, how does this go to
2 voluntariness? He now wants to get the very -- we've gotten
3 far afield already, but how does this go to voluntariness?

4 THE COURT: Well, I'll allow this question. I'm not
5 sure how much further we need to go, but overruled for now.

6 BY MR. McCANN:

7 Q. Did you have a list of questions written out?

8 A. I didn't have them written out. Those are questions --
9 I've done several thousand background investigations on White
10 House staffers, congressional people, U.S. attorneys, and I
11 know that area covering illegal drugs and narcotics inside and
12 out from my experience, so I knew those by heart, the area.
13 But it came after those certain questions I have noted on the
14 page one of the 302.

15 Q. So your purpose in going to this meeting was to catch my
16 client off guard regarding two ongoing criminal
17 investigations, correct?

18 A. I was there to conduct an investigation, required to do so
19 by the United States Congress and the Director of the FBI.

20 Q. And is it fair to say that he was under suspicion on
21 national security matters?

22 A. Yes.

23 Q. Under suspicion for drug use in connection with the
24 Ravenel case?

25 A. Drug involvement, yes, sir.

DAVID ESPIE - CROSS-EXAMINATION

1 Q. Okay. And if you're under suspicion, you're a suspect.
2 Right?

3 A. At that time I didn't identify him as a suspect, but
4 certainly he was a person of investigative interest, yes.

5 Q. Agent Espie, if you're under suspicion and you go
6 interview somebody, unknown to them, he's a suspect, right?

7 A. In regards to national security issues, that case would
8 have -- if we continued that, take multiple multiple years.
9 So at that point in time I wasn't ready to fully identify him
10 as per se a subject or a member or a (inaudible) of a foreign
11 intelligence.

12 In terms of the drug matter, yes, if you want to call him
13 a suspect. More of a suspect, I would call him a subject,
14 because I was absolutely convinced that he had used or
15 distributed or purchased illegal drugs or narcotics.

16 Q. So you were convinced before you walked in there, that he
17 had used, based on you talking to SLED earlier, and still you
18 didn't read him his rights.

19 A. Because I wasn't aware of any per se violation of a
20 federal drug offense at that time. And again, I'm not on a
21 drug squad, so I didn't make an effort to determine whether he
22 was in violation of a federal offense, which would be my
23 jurisdiction. I wasn't aware at that time of contact with
24 local law enforcement, who would be more in their purview, I
25 thought, at that time.

DAVID ESPIE - CROSS-EXAMINATION

1 Q. You didn't know he'd been interviewed by SLED at that
2 point?

3 A. I was aware -- no, I was only aware, again, I mentioned
4 earlier, of his interview with -- that our agent, Rodney
5 Crawford, conducted with Sarah Margorie Hardin at that time.
6 That was the only interview I had access to, in regard to his
7 involvement.

8 Q. Who is Robert Waizenhofer?

9 A. He is a supervisory special agent of our violent crime
10 drug squad, sir.

11 Q. And on October 30th, 2007, you weren't aware that Agent
12 Waizenhofer, with your office, had participated in an
13 interview of my client in July of the same year, at his home
14 on Murray Boulevard.

15 A. Agent Waizenhofer did not conduct that interview, sir.

16 Q. He was present at the interview.

17 A. The only knowledge I have is that Special Agent Aaron Rawl
18 of the State Law Enforcement Division, and an investigator
19 with the Charleston police department conducted that
20 interview. I'm not aware that Agent Waizenhofer was at that
21 interview, sir.

22 MR. McCANN: That's all I have of this witness, Your
23 Honor, thank you.

24 MR. MOORE: Just very briefly.

25 REDIRECT EXAMINATION

DAVID ESPIE - REDIRECT EXAMINATION

1 BY MR. MOORE:

2 Q. FBI policy doesn't require you to read Miranda warnings to
3 subjects or targets of investigations, if they're not in
4 custody, does it?

5 A. That's correct.

6 Q. And your training says that you give Miranda warnings only
7 when the person is in custody. Correct?

8 A. And you're going to incorporate interrogation. Both.
9 Actually have both issues, both elements.

10 MR. MOORE: Thank you.

11 THE COURT: Agent Espie, you may have covered this,
12 but what was the purpose for you, from Immigration and Customs
13 Enforcement, to make the request to come in, as opposed to you
14 asking the defendant to come in?

15 A. Yes, sir. As I first mentioned, I believe there was an --
16 a visa, immigration interest to ICE, so that's why I alerted
17 them to that effect. Secondly --

18 THE COURT: You believe there was a visa
19 immigration --

20 A. I thought there may be --

21 THE COURT: -- issue?

22 A. -- that ICE would like to look at.

23 THE COURT: Right.

24 A. Yes, sir. And secondly, we had a national security matter
25 of interest. And thirdly, the drug issue.

DAVID ESPIE - RECROSS-EXAMINATION

1 I felt that it would be more, I guess -- it would make
2 Mr. Etcheber more accessible to have ICE invite or do the
3 letter to come to their office for purposes, number one is
4 that Mr. Etcheber was traveling quite a bit in and out of the
5 country. So for us to come down to Charleston, knock on his
6 door at 8 Murray Boulevard, we felt that he probably wouldn't
7 be there. But second, yes, sir, we did not, again,
8 straightforward, did not want to alert him that we're
9 conducting a national security investigation regarding him.
10 Very sensitive classified case.

11 THE COURT: All right. That's all I have.

12 MR. MOORE: I have no questions, Your Honor.

13 MR. McCANN: Briefly, Your Honor, please.

14 RECROSS-EXAMINATION

15 BY MR. McCANN:

16 Q. You did it the way you did in October 30th, or actually
17 planned this for over a month, because he'd be more accessible
18 to come to ICE, than if you went and knocked on his door.

19 A. We felt that --

20 Q. Is that what you said?

21 A. We did not have a clear time frame when he would be
22 actually at his 8 Murray Boulevard address. But secondly, we
23 did not -- and primarily, if you want to put a percentage on
24 it, primarily because we did not alert him that we were
25 conducting this national security investigation.

DAVID ESPIE - RECROSS-EXAMINATION

1 But when he -- as soon as he came into the office, again,
2 we advised him it was voluntary, and that we were, in fact,
3 going to address that issue.

4 MR. McCANN: That's all I have, thank you.

5 THE COURT: Just so I understand it.

6 A. Yes, sir.

7 THE COURT: ICE's interest would have been whether or
8 not he was illegally working under the type visa he was here
9 on presently. At that time.

10 A. Yes, sir, that would be a major issue. And particularly
11 since 9/11, our work with ICE and the State Department
12 is really -- we're almost together almost daily, if not in
13 person, on the phone. Because of the great ties between
14 counterintelligence matters and the terrorism matters, we
15 really have to work together, communicate better. So if I'm
16 initially right up front in contact communication with ICE, it
17 usually has a clear flow of investigation through the outcome
18 at the end.

19 THE COURT: Thank you, sir, you may step down.

20 MR. McCANN: Your Honor, one quick question, please.

21 BY MR. McCANN:

22 Q. You testified before the grand jury in this case about the
23 visa status of my client in this country.

24 MR. MOORE: Objection. How is that responsive to
25 Your Honor's question?

DAVID ESPIE - RECROSS-EXAMINATION

1 THE COURT: All right.

2 MR. MOORE: We can't keep playing and playing and
3 playing --

4 THE COURT: I do think we covered it pretty well,
5 Mr. McCann.

6 MR. McCANN: Well, the Court's question was, ICE was
7 there to question him about his status --

8 THE COURT: Right.

9 MR. McCANN: -- and working in the United States.

10 MR. MOORE: That wasn't the Court's question at all.

11 THE COURT: Well, I think you've already explored
12 that with him already on your cross, I believe. Go ahead.
13 Ask him one more time.

14 MR. McCANN: All right.

15 BY MR. McCANN:

16 Q. You testified in front of the grand jury that he had a --
17 the court reporter took it down as a V.

18 A. Right.

19 Q. A V-2 visa. What's your understanding of a B-2 visa?

20 A. That's here for pleasure.

21 Q. And a B-1 allows you to conduct business in the United
22 States, right?

23 A. From what I've been told, yes.

24 Q. And he had a B-1 and a B-2, right?

25 A. There was a fluctuation. And what I've been advised by --

DAVID ESPIE - RECROSS-EXAMINATION

1 (Inaudible interruption by Mr. McCann.)

2 MR. MOORE: Your Honor, he can finish his answer.

3 THE COURT: Finish his answer. Finish your answer.

4 A. I was advised that, as recently today, you cannot --
5 again, I'm not an expert, this is really a State Department
6 issue, but advised that you cannot carry both a B-1 and B-2
7 coming into the United States. It has to be one or the other.
8 And according to our records here, for the past almost seven
9 or eight years, Mr. Etcheber has only entered the United
10 States on a visa for business on two occasions. The other
11 five to six occasions were for pleasure only. But again, that
12 was erroneous by the court reporter there, the transcriber. I
13 said B as in boy, not V as in victory.

14 Q. But you go on to say in the same testimony under oath that
15 he only had a B-2 and not a B-1, which would permit you to
16 carry on some business dealings in the United States.

17 A. I can't recall what exactly I said, sir.

18 THE COURT: All right. Thank you, sir, you may step
19 down.

20 A. Thank you, sir.

21 THE COURT: Any other witnesses from the Government?

22 MR. MOORE: No.

23 THE COURT: Any witnesses from the defendant?

24 MR. McCANN: Your Honor, may I have a short recess?

25 THE COURT: Yes, sir, it's time to take a break

1 anyway. We'll take a 15 minute recess.

2 MR. MOORE: Your Honor, could I just approach? I'm
3 supposed to meet with Judge Norton at 3:30. I'm going to go
4 and contact him and see if I can go do this during a break, if
5 that's okay.

6 THE COURT: You want to take a little bit longer
7 break, in other words?

8 MR. MOORE: Hopefully if Judge Norton is finished
9 with his hearing, it won't take me ten to 15 minutes.

10 THE COURT: That will be fine. Very good. We'll be
11 in recess.

12 (A recess was held at this time.)

13 THE COURT: All right. Mr. McCann, any evidence from
14 the defendant?

15 MR. McCANN: Please the Court, Your Honor, I need
16 some guidance from the Court. Over the past six months I've
17 been representing this man, he's learned a lot about
18 procedures in this court. I have advised him that the
19 testimony he offers today, our purpose is to show the setting,
20 where I would think that his statements were not voluntary, he
21 did not voluntarily appear. I was not going to get into him,
22 for obvious reasons, about any substantive matters.

23 My understanding is that any testimony he could offer at a
24 pretrial hearing could not be used by the Government in its
25 case in chief, but only to impeach or on cross-examination of

1 him, should he --

2 THE COURT: That's my understanding. He does not
3 waive his right not to testify, by testifying at a suppression
4 hearing.

5 MR. MOORE: The Government agrees with that.
6 However, he should also know that if he lies during this
7 hearing, the Government has evidence that he lies, he can be
8 charged with lying in this hearing. It's a separate charge, a
9 perjury charge. He should also be advised that if he is later
10 convicted, and the Court determines that he's offered perjured
11 testimony in this hearing, it could be used as a basis for
12 obstruction enhancement, a two level enhancement, which could
13 affect his guidelines in sentencing. He needs to know all of
14 that. I agree that it can't be used in the case in chief, but
15 it has two other ramifications.

16 MR. McCANN: Well, that kind of chills our right to
17 be here, Judge, on the issue of whether or not the Government
18 did it right when they sat him down. If the Government has
19 told him they're going to go into, did you use drugs with this
20 person, did you do this with that person --

21 THE COURT: I think that ought to be off the table.
22 I think his testimony should be limited to just the
23 surroundings of the --

24 MR. MOORE: Judge, his credibility is an issue.
25 Okay? And I -- and credibility is always an issue for any

1 witness. He's obviously going to testify to something that's
2 different than what the agents testified to.

3 THE COURT: Right.

4 MR. MOORE: So credibility is an issue.

5 THE COURT: Well, the use of drugs doesn't go to
6 credibility though, does it?

7 MR. MOORE: Use of drugs does go to credibility. And
8 lying about the use of drugs goes to credibility. And
9 Mr. McCann has sort of planted the seed in cross-examination
10 that maybe he said no because he was afraid of the
11 consequences of the visa, which goes to the voluntariness.

12 THE COURT: I'm sorry. Maybe he said no because --

13 MR. MOORE: Maybe Mr. Etcheber said no to these
14 questions about drug use because he was afraid that if he
15 admitted to them, there would be ramifications for his
16 immigration status. That's a concern that's well-founded,
17 because it very likely could have had a ramification. We
18 don't intend to go into our national questions or, you know,
19 go to our field, but the drug question is the reason why he
20 was there, it's why he's charged. The voluntariness issues
21 relate to drugs and drug dealing, and it's -- and it's -- also
22 relates to his credibility. Because if he denies, for
23 example, that he's ever used drugs or ever hosted parties at
24 his house where drug usage was prevalent, then the Government
25 can call a witness in reply to say that we have obtained

1 witnesses who said that they've done X, Y and Z. So we think
2 that much -- we don't intend to go any further than the drug
3 issue. But I believe that that's admissible on cross.

4 THE COURT: To show --

5 MR. MOORE: To show credibility.

6 THE COURT: -- that if he lies about drug usage here,
7 and you can prove it, that means he was also maybe lying about
8 whether there was a third officer in the room?

9 MR. MOORE: Or whether he believes -- or the
10 circumstances under which he made the statements. And I don't
11 think he's entitled to a preview of Your Honor's ruling on
12 that issue, until you see exactly what his drug testimony is.

13 THE COURT: Well, I assume Mr. McCann is going to try
14 to tightly limit it to just what the surroundings of the
15 interview.

16 MR. McCANN: That's my purpose.

17 MR. MOORE: We'll see. Mr. McCann hasn't done
18 anything that's tightly limited thus far today, so I just --
19 Your Honor, I think that Mr. Etcheber needs -- first of all,
20 Mr. McCann made the statement about chilling. I can't help
21 that the law is that if you lie in a proceeding, that can be
22 used in an obstruction enhancement. That's the law whether
23 Mr. McCann likes it or not. I didn't come up with it, Your
24 Honor didn't come up with it, it's the law in the Fourth
25 Circuit Court of Appeals. He makes a decision based on that.

1 On the issue of what Your Honor will permit and not permit
2 in cross-examination, I'd ask you not to rule on that issue
3 until you hear his testimony. I don't think he's entitled to
4 an advanced ruling in a vacuum.

5 THE COURT: All right, Mr. McCann, what's your reply?

6 MR. McCANN: Your Honor, if the Court allows the
7 Government to go into the -- they're going to limit it to drug
8 issues surrounding the Ravenel investigation, then I think
9 that my client has the right to refuse to testify on those
10 issues in this proceeding. And I think he's going to do that,
11 based on my advice.

12 MR. MOORE: He clearly does. We can ask him a
13 question and he can refuse -- he can assert his Fifth
14 Amendment privilege. And if he asserts his Fifth Amendment
15 privilege, that can be used for Your Honor in determining
16 credibility issues. He can clearly do that. He's not waiving
17 his Fifth Amendment --

18 THE COURT: What about that, Mr. McCann, what if he
19 just claims the Fifth Amendment to the questions about the
20 drugs?

21 MR. McCANN: Well, if he does that, I don't know that
22 goes to his credibility; that's an absolute right that he
23 enjoys here.

24 THE COURT: I'm not sure -- I don't -- I think I
25 agree with you that it won't really damage his credibility

PASCAL ETCHEBER - DIRECT EXAMINATION

1 that much, because I understand he's going to trial on these
2 charges. That might be the best way to handle it; just let
3 him claim the Fifth Amendment.

4 MR. McCANN: With that in mind, Your Honor, I would
5 call Mr. Etcheber to the stand.

6 THE COURT: Go ahead.

7 PASCAL ETCHEBER, a witness called by the Defense, first
8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. McCANN:

11 Q. State your full name, please, sir.

12 A. My name is Pascal Andre Pierre Etcheber.

13 Q. Move the microphone --

14 A. Sorry, Pascal Andre Pierre Etcheber.

15 Q. I want you to sit back in the chair, be relaxed, pull that
16 microphone towards you so you don't have to lean over every
17 time you speak. What's your age?

18 A. I am 46.

19 Q. Do you have any trouble understanding and speaking the
20 English language?

21 A. Normally not.

22 Q. If you do, if you are concerned about a question or the
23 phrasing of a question, please let us know.

24 A. I will.

25 Q. You are 46 years of age?

PASCAL ETCHEBER - DIRECT EXAMINATION

1 A. Correct.

2 Q. And you're a native of France?

3 A. Correct.

4 Q. Is that the only citizenship you hold at this time?

5 A. Yes.

6 Q. Do you have a child in the United States?

7 A. I do.

8 Q. And how old is that child?

9 A. She is two years and eight months.

10 Q. She lives here in Charleston?

11 A. She does.

12 Q. Now, in taking you back to calendar year 2007, did you
13 receive a letter from Agent Sherota?

14 A. I did.

15 Q. And I show you Defense Exhibit 1. Is that the letter you
16 received?

17 A. Correct.

18 MR. McCANN: Your Honor, if I agree with the
19 Government, I have the envelope, the original envelope it came
20 in, I just want to attach that, if that's all right.

21 THE COURT: All right. That's all part of the same
22 exhibit.

23 MR. McCANN: The same one. Thank you.

24 BY MR. McCANN:

25 Q. When you received that letter, which is dated

PASCAL ETCHEBER - DIRECT EXAMINATION

1 September 11th, did you contact Agent Sherota?

2 A. Well, I'm sure I was away when the letter arrived in my
3 house. So as soon as I saw the letter, I called the agent,
4 who was not responding. And that was on the 8th of -- I
5 believe it was on the 8th of September.

6 Q. Eighth of September?

7 A. Oh -- no, the letter was dated the 11th of September, and
8 it must have been the 8th October. Sorry.

9 Q. And did you respond to him -- did you phone him and then
10 respond to him by mail?

11 A. Well, I phoned several time; I never got an answer. So I
12 decided to write a letter, and that was my letter, my letter
13 dated the 9th of October.

14 Q. Okay.

15 A. And I found out later it was Monday 8th was Columbus Day,
16 so that's why the office was not responding.

17 Q. When you finally got to talk to the agent, what was your
18 concern about coming to Columbia, if you did have a concern.

19 A. Well, I wrote a full letter detailing all my immigration
20 status, and that there was no -- nothing wrong with my
21 immigration status, gave him all the numbers on my passport,
22 my visa, explained about my daughter. And I said that there
23 was no -- it was a waste of time to try to agree to talk to
24 ICE, and ICE trying to talk to me. And I did say -- I did it
25 politely, said at the end, if you really want to see me, you

PASCAL ETCHEBER - DIRECT EXAMINATION

1 know, this is my number. And then the agent called me.

2 Q. And did the ICE agent, in fact, contact you?

3 A. Yes, the agent called me, I believe on my French mobile,
4 it was the only number I had. And I told the agent that I
5 really didn't need to see him, he's got all the evidence that
6 he needs that I'm legal in the U.S., and I didn't see the
7 point of him talking to me.

8 Q. And did he set an appointment anyway for you to come to
9 Columbia?

10 A. Well, I mean, he was -- he said to me, you know, your name
11 came up on a computer, you know, you need to come and see me.
12 I said, well, if I have to come see you, I'll come and see
13 you.

14 Q. Okay. And a date was set for October 30th?

15 A. Correct, because I was out of the country, so it was
16 the -- it was the next time I was coming to Charleston.

17 Q. I should have asked you earlier, do you have any criminal
18 record in the United States?

19 A. I don't have any criminal records in the States or
20 anywhere else.

21 Q. Have you ever been arrested other than this instance?

22 A. I've never been arrested before March the 18th, 2009.

23 Q. Have you ever been interrogated, questioned by any law
24 enforcement agents in the United States?

25 A. Never in the States and never anywhere else.

PASCAL ETCHEBER - DIRECT EXAMINATION

1 Q. Now, were you told that there was going to be anybody
2 there but ICE?

3 A. No. I mean, from the voice of -- from the wording of
4 Brian Sherota, he -- you know, this was just purely
5 administrative. It was just, you know, just my name came up
6 on the computer, as he said.

7 Q. Now, when you arrived in Columbia, you drove from
8 Charleston, is that right?

9 A. I did, yes.

10 Q. When you arrived in Columbia, you went to the --

11 MR. BADGER: Objection, Your Honor, he's clearly
12 leading the witness. We'd ask him not to do that.

13 THE COURT: All right, don't lead your witness. I'll
14 sustain the objection.

15 BY MR. McCANN:

16 Q. When you arrived in Columbia on the appointed day, what
17 did you do?

18 A. Well, I went into the building, and I rang the bell. I
19 think a black lady -- I think wearing a little telephone is
20 good, came to show me the way. And there was Brian Sherota,
21 who came out of the room and was in the corridor, when I
22 entered the room, and there were three -- There were two other
23 men in the room. There was Espie and an older agent who was
24 standing up.

25 Q. Okay. Did you know those other two gentlemen were going

PASCAL ETCHEBER - DIRECT EXAMINATION

1 to be there at that point?

2 A. No, I had no idea. I was just expecting Brian Sherota.

3 Q. Had you ever met Mr. Sherota before?

4 A. No.

5 Q. Now, describe the room that they led you into.

6 A. Well, it was a -- the room was small, because it was only
7 room for one big large table. So all there was is a large
8 table. And if my memory is right, there were four seats on
9 the table.

10 Q. And of course you've known Agent Espie, you've seen him
11 then, you've seen him since. You said there was a third agent
12 in the room.

13 A. Correct.

14 Q. And describe that person for me, please.

15 A. Well, it was an older gentleman, and he was well-spoken.
16 And I was actually impressed by -- I thought this was the
17 senior person in the room, because he sounded educated, he was
18 older, he was in his sixties, he had silver gray hair, and he
19 had a little bit of a -- you know, he had a bit of a tummy, I
20 mean he was slightly fat. Fat.

21 Q. Did he engage you during the course of this interview?

22 Did he talk with you?

23 A. Oh, yes, he talked to me at length.

24 Q. Once you sat down, did you have your passport with you?

25 A. Yes, I came with my passport, yes.

PASCAL ETCHEBER - DIRECT EXAMINATION

1 Q. Was that at the direction of Agent Sherota?

2 A. Well, I just assumed if I'm going to see ICE, I have to
3 come with my passport. And as a matter of fact, I've always
4 had -- always had my passport on me, you know, even when I'm
5 out anywhere in -- anywhere in any country, I always have my
6 passport on me. I never leave my passport behind.

7 Q. Without your passport, are you legal in this country?

8 A. No, I need my passport to get out. And to go to France,
9 definitely.

10 Q. Now, after you entered the room, was -- did someone ask
11 you for your passport?

12 A. Yes, Brian Sherota asked me for my passport.

13 Q. And did you turn it over?

14 A. I did, yes.

15 Q. And what did the agent do, if anything, with your
16 passport?

17 A. Well, the agent left the room. I believe he gave the
18 passport that was behind me to someone else, and he was back
19 almost immediately.

20 Q. And then the interview began?

21 A. Correct.

22 Q. Okay. Who started the interview?

23 A. Brian Sherota is the person who started talking almost
24 immediately.

25 Q. Were introductions made to you by the other agents in the

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1 room?

2 A. Well, I recall a very brief introduction, and my
3 recollection is that Mr. Espie presented himself as NSA, and
4 the other -- the other person -- my recollection was the other
5 person said he was FBI.

6 Q. How long did the interview take total from start to finish
7 when you entered the room?

8 A. I think it took an hour and 50 minutes.

9 Q. Agent Sherota started off the interview, you said?

10 A. For about ten minutes, asking me questions on immigration.
11 But he looked like he was satisfied that he knew I was legal
12 already.

13 Q. And then who took over after that?

14 A. Well, Agent Espie and the older man started talking to me.
15 In fact, the older man explained to me, the senior guy, he
16 said this first, he said, it is not unusual for foreign agents
17 to infiltrate persons of interest, and in this particular case
18 Thomas Ravenel, and this is the reason that we're in this
19 room, to try to talk to me about national security issues.

20 Q. And were you talked to about national security issues?

21 A. Yes. I would say at length, for at least 40 minutes.

22 Q. Did both Agent Espie and the other unidentified agent
23 question you on these issues?

24 A. Yes, but my recollection is that the senior agent was the
25 one who was much more detailed. He mentioned -- he talked

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1 about Jerusalem, he mentioned which hotel he was staying in
2 Jerusalem. He was much more detailed than Agent Espie was a
3 bit rough. You know, not very -- he haven't very much
4 conversation at the time, I thought.

5 Q. And then the interview proceeded on to the Ravenel
6 investigation?

7 A. Only towards the end, yes.

8 Q. And you remember, I'm sure, very well, those five
9 questions that were asked of you?

10 A. Quite.

11 Q. Now, when those five questions were asked of you, Agent
12 Sherota's still in the room?

13 A. Correct. He's on my right-hand side, Espie's opposite me,
14 a bit on the left, and the older man, the senior agent is the
15 closest to me. He's on my left.

16 Q. And at that point had you gotten your passport back?

17 A. No, I didn't get my passport until the end.

18 Q. Did you see a copy of the passport on the table during the
19 course of the interview?

20 A. No, I did not.

21 Q. Were you ever told that you could leave at any time?

22 A. No, I was not.

23 Q. Did you feel, sitting there that -- at that point, that
24 you were there voluntarily to be questioned by the FBI?

25 A. No. I mean, I didn't expect the FBI, and I was very

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1 surprised by this spying accusation, and I really felt they
2 were ridiculous, to be honest. But I was concerned because I
3 have a daughter in the U.S., and I was concerned that these
4 people have the power over me, that they could ask me to leave
5 the country and never come back and I lose my daughter. And
6 I'm already in a custody fight for my daughter.

7 Q. And did you feel -- Strike that. What was your
8 understanding of the power of ICE at that point over you as a
9 foreign national on a visa to the United States?

10 A. Well, I know it's in the discretion of ICE, actually, to
11 allow any foreign nationals into the country. They can --
12 they can -- they can eject -- they can stop you at Customs,
13 and they don't have to give you a reason.

14 Q. Were there any other subjects that you discussed with this
15 older agent that you recall at this point?

16 A. Oh, yes. I mean, there were quite a few. There's one
17 worth pinpointing this man. When we're talking about Pasquale
18 Pellicoro, he wanted to know a little bit more, and I
19 explained that the reason Pasquale Pellicoro was very popular,
20 is because he also have these big stories, but he was a little
21 man, and he was inventing stories, but he was effable, always
22 have all these stories. And the senior agent responded to me,
23 said oh, that's exactly what Thomas Ravenel told me. So I
24 knew right then that this senior agent was someone who has
25 been talking to Thomas Ravenel.

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1 And also at the end, the -- I was not talking very much
2 with Agent Espie, because Agent Espie was asking me what car
3 did I use to drive here, if I owned a house. And I was -- I
4 felt these questions were ridiculous, and I didn't see the
5 relevance of those questions, whether I have an expensive car
6 or not, whether I own a house or not. And on the contrary,
7 the senior guy, his questions were much more -- have much more
8 value, made more sense.

9 So at the end, after I show the picture of my daughter, I
10 asked the senior agent what was going to happen. And he
11 responded that he was going to make a report to SLED -- I
12 don't know why SLED, but that's what he said -- and that
13 depending on whether I was truthful in this interview, they
14 would decide to do something with me or not. So far, he said,
15 SLED had decided not to do anything with me. He just said
16 they most likely are going to go after my girlfriend, my
17 ex-girlfriend, the mother of my child.

18 MR. McCANN: Thank you, sir, answer any questions
19 Mr. Moore may have.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. BADGER:

23 Q. Mr. Etcheber, when you received the letter from the agent,
24 you wrote the letter back to him, correct?

25 A. Yes.

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1 Q. You first tried to reach him by telephone.

2 A. I did, yes.

3 Q. You were quick to try to respond to him, to his letter,
4 when you came in contact, correct?

5 A. Well, you know, I've always been a law abiding citizen, so
6 when I've got the authorities asking me for something, I
7 respond immediately, I have no reason to delay.

8 Q. Exactly. So you were quick to try to reach him. And I
9 think your testimony was you first tried to reach him by
10 telephone, but you were unsuccessful, correct?

11 A. Correct. I thought that was -- well, he actually asked me
12 to call him, so I called.

13 Q. And when you weren't able to reach him by telephone is
14 when you wrote a letter?

15 A. Correct.

16 Q. And in that letter you told -- you gave him your French
17 phone number, whereby he could try to reach you?

18 A. Well, if he needed to reach me, but as you can see from
19 the length of the letter, I basically gave him every detail he
20 needs to realize that I'm legal in this country, and there is
21 no mystery about my legal immigration status.

22 Q. So there was no hesitation on your part to try to comply
23 with his letter, to get together with him, correct?

24 A. Well, I've always complied with authorities, and I don't
25 see why I should not comply.

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1 Q. And you were eager to meet with him, if that's what he
2 wanted to do?

3 A. I was not eager to meet with him. I wrote him a two-page
4 letter explaining why I cannot meet him.

5 Q. And you said in your letter, "I will accommodate you on
6 any of my visits."

7 A. It's -- it's -- you know, when you finish a letter, you're
8 polite, you know. And it's a polite statement. But if you
9 read the substance of the whole letter, I'm saying you don't
10 need to see me; is there any information you need? And I did
11 say you should -- you're wasting your time, you know, don't
12 waste your time on me, waste -- you know, you should focus on
13 real criminals or whatever. You know. Or real national
14 security issues, not me.

15 MR. McCANN: Your Honor, may I interrupt a minute,
16 please? We're talking about this letter the whole time. I
17 have a copy here, I think the Government would agree that it's
18 an accurate copy; I'd like to put it in.

19 MR. BADGER: Well, I think he can put it in during
20 redirect examination.

21 THE COURT: I've seen the letter; it was attached to
22 the --

23 MR. McCANN: No, no, this is the letter he wrote.

24 MR. BADGER: Yeah, I'm not asking that the letter be
25 introduced.

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1 THE COURT: I thought I had read that letter.

2 MR. BADGER: He's quoted -- he put a portion of it in
3 his motion.

4 THE COURT: All right.

5 MR. BADGER: That's probably where you saw it.

6 THE COURT: But you object it to coming in now?

7 MR. BADGER: Well, I've not seen the full letter. I
8 only have the portion (inaudible). But yeah, I don't have a
9 need for it right now.

10 THE COURT: All right, go ahead.

11 BY MR. BADGER:

12 Q. My point is, you were -- you were ready to accommodate the
13 agent -- let me finish my question -- if he wanted to meet
14 with you, you were ready to accommodate him, correct?

15 A. I said -- I said politely, yes, but my letter said the
16 opposite. I was not eager, jumping up and down and laughing
17 at the idea of going to see ICE in Columbia, if that's what
18 you're asking.

19 Q. No, I'm --

20 A. No, I was not. Definitely not.

21 Q. Despite the fact that you wrote that you would accommodate
22 him if --

23 A. Because it's a polite -- you know, you finish letters with
24 a polite statement, you know. But, you know, what's important
25 is the content of the letter, what the letter says. The

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1 letter says you don't need to waste your time on me, I don't
2 need to see you, and here is the information you need to
3 satisfy yourself that I'm legal in this country.

4 Q. And he contacted you on the telephone number that you gave
5 him, correct?

6 A. Correct.

7 Q. And when he did, the two of you arranged for you to come
8 to his office to meet, correct?

9 A. Well, he asked me to meet him, and again I reinforced him
10 the fact that I'm here to visit my daughter for one week. I'm
11 a busy man. So going to Columbia is not, you know, it's a
12 waste of my time. And he insisted. He said -- he insisted
13 like a civil servant. He said your name came up on a
14 computer. If you don't come, I'm in trouble. And that's the
15 way he -- that's the way --

16 Q. Those weren't his words though.

17 A. No, he said your name came up on a computer, but he said
18 it in a very, you know, like, you know, I have to do this, you
19 know, you have to come and see me, you know.

20 Q. And you arranged to meet him in his office.

21 A. I didn't arrange. I mean, he arranged, he said to me, you
22 have to come and see me. We agreed on a date.

23 Q. You have to come see me.

24 A. Oh, yes, he did.

25 Q. He said you have to come see me?

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1 A. You have to come and see me, your name came up on the
2 computer. You know, you have to come.

3 Q. And your testimony is he told you, you had to come see
4 him?

5 A. You know -- Yes. I was not given -- you know, he didn't
6 tell me -- you know, you don't have to come, it's no big deal,
7 you know, I've got all the information, thank you very much.
8 He said no, you have to come to the office and see me. That's
9 the only reason I would go and see him after I wrote a
10 two-page letter saying really, you know, I really -- you don't
11 really need to see me. I mean, there's nothing remotely
12 mysterious about my legal status in the U.S.

13 Q. And you drove to see him, correct?

14 A. I drove to see him. I'm a nice guy.

15 Q. Did you contact an attorney before you went to see him?
16 An immigration attorney?

17 A. I did.

18 Q. You did?

19 A. Yes.

20 Q. And did you take your attorney with you?

21 A. I did not take my attorney with me. The attorney told me
22 this is very unusual. And what we're going to do is if you're
23 not at that meeting -- you could be arrested -- so if you're
24 not out of that meeting by certain time, arrange for somebody
25 to call me. So I -- I have this organized. If I was not out

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1 of the meeting by 4:00 o'clock, I had my girlfriend at the
2 time, a new girlfriend, who would call my immigration
3 attorney.

4 Q. And who was your Immigration attorney?

5 A. His name is Joel, and he's -- surname I think is Omanstein
6 (phonetic) or something. I'm not completely sure. He's an
7 attorney in Philadelphia.

8 Q. And so you went to the office, just as you wrote, correct?

9 A. I did.

10 Q. And when you got there you indicated that he was the first
11 one who spoke to you? Correct?

12 A. No. There was this black lady.

13 Q. Who was the first agent that -- a receptionist brought you
14 in?

15 A. Correct. Because he was outside the room, I believe.

16 And, you know, he started talking to me, introducing himself,
17 I'm Brian Sherota, and I said who I was, and lead me into the
18 room.

19 Q. First time you ever met him, correct?

20 A. Correct.

21 Q. And you did discuss, at first, your immigration status,
22 correct?

23 A. It took for about ten minutes, you know, whether I've ever
24 tried to get in the U.S., you know, whether I ever, you know,
25 did anything that could be illegal in the U.S.

PASCAL ETCHEBER - CROSS-EXAMINATION

1 Q. So you talked first about your immigration status?

2 A. Correct, for about ten minutes, yes.

3 Q. And you gave him your passport to copy, correct?

4 A. He asked me for my passport, so he could copy it.

5 Q. He asked you for your passport and you gave it to him.

6 A. Yes, I did, yes.

7 Q. He went and made a photocopy of it, correct?

8 A. I think he said he was going to copy it, but I'm not sure.

9 He asked for my passport; you know, he's the authority; I gave
10 it to him, yes.

11 Q. So you said he stepped out of the room for a couple
12 minutes?

13 A. I think -- he went behind my back. No, not for a couple
14 minutes. He went behind my back, and I believe he gave the
15 passport to someone else.

16 Q. You saw that or you --

17 A. No, it was behind my back. I didn't see it. But what I
18 know for sure is I did not start the conversation with either
19 Agent Espie or the other agent. You know, Brian Sherota was
20 back in the room immediately, and he started talking about
21 immigration.

22 Q. So you don't know if he gave your passport to someone else
23 or not, because you didn't see it.

24 A. I did not. But, you know -- yes -- no, I did not see what
25 was behind my back, that's for sure.

PASCAL ETCHEBER - CROSS-EXAMINATION

1 Q. Okay. So your earlier testimony that he gave it to
2 somebody else, was your guess?

3 A. It's my guess, because I don't think the passport walked
4 away from the room alone.

5 Q. And he gave your passport back to you?

6 A. I got my passport back at the end.

7 Q. At the end of the interview?

8 A. Correct.

9 Q. Not before the interview ended.

10 A. Not before.

11 Q. You left with your passport?

12 A. I would not have left without my passport. I could not
13 leave without my passport.

14 Q. So you did --

15 A. I did, yes.

16 Q. Okay. And after some period of time of talking about the
17 immigration matters, then you began to discuss these national
18 security matters, correct?

19 A. Well, I didn't start discussing it. The agents --

20 Q. They put to you regarding national security matters.

21 A. Correct. As I said to you earlier, the senior guy
22 mentioned the fact that there could have been a connection,
23 simply because Thomas Ravenel could be somebody of importance,
24 and it's not unusual for foreign agents to infiltrate, you
25 know. So he was intimating that I could be a foreign agent,

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1 and they wanted to clarify if I was a foreign agent.

2 Q. And when the subject changed from immigration matters to
3 national security matters, did you then say that you wanted to
4 stop the interview?

5 A. I (inaudible) you know, I'm a candid man, I'm not a spy,
6 I've nothing to hide. And I thought it was almost, you know,
7 just another rumor, you know.

8 Q. So you had no reason to stop the meeting, you're a candid,
9 honest person, and you wanted to continue being a candid,
10 honest person, and apparently whatever they were talking about
11 was just rumors that they heard, correct?

12 A. From my point of view I knew they were rumors, because I
13 know I'm not a spy. Okay? And -- but you know, if you find
14 yourself facing ICE, what I thought was NSA and FBI, you know,
15 it's pretty serious. I mean, it's not like I have the choice
16 to walk away from those people. These people could decide --
17 and indeed they have decided, I mean, I've been -- I've been
18 arrested for seven months now. So these people could decide
19 my life, you know, on --

20 Q. If you could answer my question.

21 A. Um-hum.

22 Q. Okay? If you could just give me a yes or no answer, then
23 you can explain. But first if you'd answer my question, okay?
24 Did you, when they got into that subject matter that you felt
25 was just rumors, you did not at that point ask to stop the

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1 interview; yes or no?

2 A. I would never -- no, I did not ask to stop, and I would
3 never have -- and I would never under any circumstances, like
4 here, I could not just walk out and say I'm stopping this.
5 You can't.

6 Q. Did you ask if you could leave?

7 A. I did not ask if I could leave. It was pretty obvious
8 that these people were very eager to interrogate me. And, you
9 know, I have to go through it.

10 Q. You thought the things that they were asking you about
11 were just some rumors that they had heard?

12 A. Well, I know they are without foundations, yes.

13 Q. And you were comfortable answering their questions,
14 because you have nothing to hide from them, correct?

15 A. That's correct.

16 MR. McCANN: Your Honor, I think we're getting into
17 the area here that is my concern. I think the broad question
18 like that could be used possibly --

19 THE COURT: I don't think so yet. He's getting close
20 to the line, but I overrule for now. Go ahead.

21 MR. McCANN: Well, I'm going to instruct my client to
22 invoke his rights under the Fifth Amendment on that question.

23 THE COURT: All right.

24 MR. BADGER: He's already answered the question, I
25 believe.

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1 THE COURT: All right, well, move on to the next
2 question.

3 BY MR. BADGER:

4 Q. The subject then changed from national security matters to
5 some questions about drugs, correct?

6 A. Well, he changed to questions about Thomas Ravenel and
7 Pellicoro. And then if you're asking about the five specific
8 questions on drugs, yes, but that was at the end of the
9 interview. There were many other, you know -- the gist of
10 that -- the interview was national -- well, national security.
11 He's asking me, you know, why I go to Taiwan, why I go to
12 Jerusalem, why I do this, do this and this and this. You
13 know.

14 Q. You said about 40 minutes of the interview.

15 A. I believe so, yes. I was not looking at my watch, but I
16 believe so. It was the (inaudible) of the interview, yes.

17 Q. And at the end, the third subject you discussed was
18 Ravenel, Pellicoro --

19 A. Correct.

20 Q. Okay.

21 A. And that's when the subject returned to Mr. Espie, who had
22 been quiet.

23 Q. And all of the questions that were posed to you that day,
24 all of the questions put to you, you answered them. Correct?
25 You answered all of their questions.

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1 A. Yes, I did, yes.

2 Q. No matter who asked the questions of you, you answered all
3 of them, correct?

4 A. Like I do now, yes.

5 Q. And you never asked to stop, even when it went into that
6 third subject, you didn't ask to stop the interview, did you?

7 A. No, I never asked to -- I never asked to stop the
8 interview. And frankly, I would have thought that if I said
9 stop the interview, as I stated earlier, it's like if here, it
10 was an unstoppable thing, I felt that I would have -- it would
11 have looked suspicious that I want to stop the interview.

12 Q. Okay. You didn't ask to call your lawyer in Philadelphia,
13 did you?

14 A. No, I did not.

15 Q. You didn't ask for your passport back so that you could
16 leave, did you?

17 A. No, but I didn't feel that -- as I said to you, you know,
18 it was -- I couldn't -- I could not believe that I could just
19 say, wait a minute, Mr. NSA, Mr. FBI, Mr. ICE, I'm not happy
20 here, let's cancel all this and I'll walk away. Now, walking
21 away was not something I could -- I could do, because it would
22 make me look guilty.

23 Q. But you felt as though the questions they were asking you
24 were without any foundation, correct?

25 A. That's correct.

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1 Q. Even the questions on the third subject --

2 A. Well, you know, you don't know until they ask the
3 questions, whether the questions are without foundation.

4 MR. McCANN: Your Honor, I'm going to object here at
5 this point and tell my client not to answer that question. I
6 see what the Government's doing with it, and I tell him,
7 advise him to take the Fifth Amendment.

8 MR. BADGER: Your Honor, this --

9 THE COURT: Do you want to invoke the Fifth Amendment
10 on this line of questions?

11 A. If my lawyer says to me, yes, I'll invoke the Fifth
12 Amendment.

13 BY MR. BADGER:

14 Q. When you were asked whether or not you had ever used
15 illegal drugs, that being the first question they asked you on
16 this subject --

17 A. Well, that's not the first question.

18 MR. McCANN: Same advice, Your Honor.

19 A. That was not the first question.

20 THE COURT: Finish the question. Then don't answer
21 the question until you decide whether you want to invoke the
22 Fifth Amendment.

23 BY MR. BADGER:

24 Q. When you were asked that question, whether it was first or
25 whenever it was, when you were asked that question about

PASCAL ETCHEBER - CROSS-EXAMINATION

1 whether you had ever used illegal drugs in the United States,
2 did you feel coerced to answer that question?

3 A. I take the Fifth Amendment.

4 Q. When you were asked whether or not you had ever knowingly
5 given money to anyone for the purpose of purchasing drugs, did
6 you feel coerced to answer that question?

7 A. I take the Fifth.

8 MR. McCANN: -- that question. He can answer that
9 question.

10 THE COURT: All right.

11 BY MR. BADGER:

12 Q. Did you feel coerced to answer that question?

13 A. Well, Agent Espie was very clear. Because during -- I
14 don't know if you know this, but during the whole interview,
15 I'm not the kind of person to answer yes or no. I'm usually
16 (inaudible). And I tried to put some nuances, explain, you
17 know, trying to -- because in life is rarely black or white.

18 So Agent Espie said to me, I have five questions to ask
19 you, and I want you to answer by yes or no. And so I did feel
20 I had to either say yes or no. And it's only after I answered
21 those five questions that I started putting, you know, giving
22 stories, putting some nuances and, you know, and be making
23 sure that my answers were required answers.

24 Q. But you would agree -- Well, were your answers correct?

25 MR. McCANN: Objection. Invoke it.

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1 A. I invoke the Fifth Amendment.

2 BY MR. BADGER:

3 Q. You would agree that the question of whether or not you
4 had ever used drugs while in the United States, that question
5 only requires a yes or no answer. You would agree with that.

6 MR. McCANN: Objection. Invoke the fifth.

7 A. Fifth Amendment.

8 Q. Would you agree whether or not you were giving someone
9 drugs, requires a only a yes or no answer?

10 MR. McCANN: Same objection.

11 A. Yeah, Fifth Amendment.

12 Q. Did you recall, when you were asked whether or not you had
13 given illegal -- given money for anyone for buying drugs, that
14 you had given a different interview earlier?

15 MR. McCANN: Same right.

16 A. Fifth Amendment.

17 Q. Do you remember your previous interview with SLED?

18 A. I do, yes.

19 Q. Okay. Do you remember in that interview you said you had
20 given your girlfriend money to buy cocaine?

21 MR. McCANN: Same. Same objection, same advice.

22 THE COURT: You need to state it on the record. You
23 want to invoke the Fifth Amendment to the question?

24 A. Okay. Well, I mean, I'd like to answer that question.

25 THE COURT: Wait just a minute.

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1 A. My lawyer says --

2 MR. McCANN: I advise you to invoke to Fifth
3 Amendment.

4 A. Fifth Amendment. Okay.

5 MR. BADGER: Court's indulgence, please.

6 THE COURT: All right.

7 BY MR. BADGER:

8 Q. You indicated that while this was going on, you had the
9 services of an immigration lawyer, correct?

10 A. Well, I sent some e-mails -- I sent some e-mails to an
11 immigration lawyer just to find out, you know, what I should
12 do.

13 Q. And you also had a lawyer helping you in family court?

14 A. Not at the time.

15 Q. Not at the time --

16 A. Not yet, no.

17 Q. -- yet?

18 A. Not yet.

19 Q. Did you have any other lawyers that you had at your
20 service at the time?

21 A. No.

22 Q. You said you did recall an earlier interview with SLED.
23 Correct?

24 A. Correct.

25 Q. During that interview you answered their questions,

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1 correct?

2 A. I believe that in 46 years, I've always answered questions
3 (inaudible).

4 Q. And during that interview --

5 MR. McCANN: Excuse me, Your Honor. I didn't get a
6 chance to object and give my client the advice I was giving
7 him. I'd ask that his answer be stricken and this --

8 THE COURT: All right. Let's lay the grounds. When
9 he asks the question, Mr. Etcheber, don't answer the
10 question --

11 A. Okay.

12 THE COURT: -- until first your attorney has a chance
13 to stand up and advise you what he wants the record --

14 A. Very good. I'll do that.

15 THE COURT: And then -- because you're jumping in and
16 interrupting both of them, and that's confusing the record.
17 So let's have a question, a response from the attorney and
18 then a response from the witness.

19 A. Okay. I'm very sorry, Your Honor, I just -- it's been
20 seven months that I've been wanting to talk, so --

21 THE COURT: I understand. I understand.

22 BY MR. BADGER:

23 Q. In the earlier interview with SLED, weren't you asked
24 about some of the same things that you were asked during this
25 interview?

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1 MR. McCANN: Your Honor, my advice to my client is to
2 invoke the Fifth Amendment right.

3 A. Fifth Amendment.

4 Q. When you answered the five questions that we're talking
5 about here today, were you concerned that your answers might
6 affect your visa, your immigration status?

7 MR. McCANN: You can answer that question.

8 A. Yes, as soon as -- the reason I contacted an immigration
9 lawyer, and had this girlfriend with me to talk to the
10 immigration lawyer, is because I had serious concerns, whether
11 founded or unfounded, you know, that people in authority could
12 decide to -- I be deported. You know, because Pasquale
13 Pellicoro was a fugitive, and I knew there was a strong
14 suggestion, I knew that my ex-girlfriend was involved, I knew
15 that we were fighting over the baby, so I had no ideas what
16 information these people were fed, and you know, I thought
17 there was a risk that even for unjustified reasons, that I
18 could be deported. Correct.

19 Q. But as to these five questions that we've discussed, were
20 you concerned about the answer to those five questions could
21 affect your potential deportation?

22 MR. McCANN: Asked and answered.

23 THE COURT: You've covered that. Sustained.

24 MR. BADGER: It was a long answer and I wasn't sure
25 of that.

PASCAL ETCHEBER - CROSS-EXAMINATION

1 THE COURT: All right, you've covered that.

2 MR. BADGER: Okay.

3 BY MR. BADGER:

4 Q. Did you answer no to the question because you were fearful
5 of what might happen with a yes answer?

6 MR. McCANN: Invoke the Fifth Amendment.

7 A. Fifth Amendment.

8 Q. Isn't it true that the answers that you gave, the answer
9 no that you gave, was, in fact, not a true answer, as to
10 whether or not you had used cocaine?

11 MR. McCANN: Your Honor, again, I instruct my client
12 to invoke the Fifth Amendment.

13 A. I invoke the Fifth Amendment.

14 MR. BADGER: That's all I have, Your Honor, thank
15 you.

16 THE COURT: Any redirect?

17 MR. McCANN: Briefly, Your Honor. The letter in
18 question that he wrote back to ICE, I was going to have the
19 original --

20 THE COURT: You want to make it an exhibit? You want
21 to offer it as an exhibit?

22 MR. MOORE: Yes, sir.

23 THE COURT: Any objection?

24 MR. BADGER: No, sir.

25 THE COURT: All right, without objection.

PASCAL ETCHEBER - REDIRECT EXAMINATION

1 (Defense Exhibit 3 received.)

2 REDIRECT EXAMINATION

3 BY MR. McCANN:

4 Q. Mr. Etcheber, I show you Defense Exhibit No. 3, which is a
5 letter that you've been talking about for awhile with the
6 prosecutor; is that the letter --

7 A. That's correct.

8 Q. -- (inaudible)?

9 A. Yes.

10 Q. And is that a copy of the letter that you sent to --

11 A. It's an exact copy of the letter I sent to the agent.

12 Q. (Inaudible)?

13 A. Yes.

14 Q. Mr. Etcheber, during this hour plus or minus ten minutes
15 that you were being in the presence of these agents and being
16 interviewed -- interrogated, I think was your language -- were
17 you ever told that you had the right to stop and call your
18 lawyer?

19 A. No.

20 MR. McCANN: That's all I have. Thank you.

21 THE COURT: Anything further?

22 A. In fact, if I can add something.

23 MR. McCANN: No, don't add anything.

24 MR. BADGER: If I may.

25 THE COURT: All right.

PASCAL ETCHEBER - RE-CROSS-EXAMINATION

1 RE-CROSS-EXAMINATION

2 BY MR. BADGER:

3 Q. At no point in even -- even during the five questions in
4 which you were concerned about how your answer might affect
5 your status, during any of those questions -- during none of
6 those questions do you ask to call your lawyer. Is that
7 correct? Is that correct?

8 A. Can I --

9 Q. You didn't ask to call your lawyer.

10 A. Do I have the right to answer the way I want to answer it?

11 MR. McCANN: All right. I would instruct my client
12 to invoke the Fifth Amendment on that. The question -- I
13 think the standard is whether he was ever told he was allowed
14 to have counsel.

15 MR. BADGER: That wasn't the question I posed to him.
16 That's a different question he asked.

17 A. But --

18 THE COURT: Wait, wait.

19 A. All I wanted to say is I was worried the three agents were
20 asking me questions one after the other. So after Brian
21 Sherota spoke for ten minutes, then it was the senior agent
22 who talked. When the senior agent finished, it was Espie to
23 talk. To these agents were asking me questions all the time.
24 It was not -- there was not a minute of would you like a
25 coffee, would you like some water, do you want to think about

PASCAL ETCHEBER - RE-CROSS-EXAMINATION

1 this? No, it wasn't like that. You know.

2 Q. You told the judge that the advice that your Philadelphia
3 lawyer told you, was to call him if you needed to.

4 A. No. No, that's not what I said. What I said is if at
5 4:00 o'clock I'm not out of that interview, my ex-girl -- my
6 girlfriend, she's my girlfriend, calling to tell him I've been
7 arrested. And then you act. That was the idea.

8 Q. At no time though during any questioning that happened
9 that entire day, did you ever ask to stop the questioning so
10 that you could speak to your lawyer?

11 A. I've never been interrogated by three people at the same
12 time.

13 Q. Answer my question, then you can --

14 A. Okay.

15 Q. -- make whatever statement you like.

16 A. I said --

17 Q. At any time did you ask to call your lawyer?

18 A. I never asked to call a lawyer. I was busy answering the
19 questions of the three agents. Thank you.

20 THE COURT: All right. Thank you, sir, you may step
21 down. Anything further from the defendant?

22 MR. McCANN: Nothing, Your Honor, thank you.

23 MR. MOORE: I could re-call Agent Sherota or I could
24 simply proffer that Agent Sherota told me that at the time of
25 this interview there was no African-American employee of the

BRIAN SHEROTA - RE-CALLED ON DIRECT EXAMINATION

1 Bureau of Immigrations and Customs Enforcement. There was no
2 African-American receptionist. And --

3 THE COURT: Well, I think you need to put --

4 MR. MOORE: Then I re-call him.

5 THE COURT: Mr. McCann, unless you want to accept the
6 stipulation.

7 MR. McCANN: It might be easier to testify about
8 what happened.

9 THE COURT: All right. Agent Sherota, you're still
10 under oath.

11 BRIAN SHEROTA, a witness re-called by the Government,
12 having been previously duly sworn, testified further as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. MOORE:

16 Q. Special Agent Sherota, at the time of this incident in
17 October, did you have a receptionist?

18 A. Yes.

19 Q. What was her race?

20 A. She's a Caucasian female.

21 Q. Did you have any African-American female employees in your
22 office at that time?

23 A. No, she's the only female employee.

24 Q. Okay. And was there a third agent in this room?

25 A. No.

BRIAN SHEROTA - RE-CALLED ON CROSS-EXAMINATION

1 Q. Was there ever a third agent in the room?

2 A. No.

3 MR. MOORE: Thank you.

4 THE COURT: Any cross?

5 CROSS-EXAMINATION

6 BY MR. McCANN:

7 Q. Do you recall the receptionist's name?

8 A. I do.

9 Q. That's her name.

10 A. Laurie Hannah.

11 Q. Hannah?

12 A. Hannah. H-A-N-N-A-H.

13 Q. Thank you. By the way, do you have a sign-in procedure
14 when people come in your office?

15 A. No, we don't.

16 MR. McCANN: That's all I have, Judge, thank you.

17 THE COURT: Thank you, sir, you may step down.

18 All right, now that we have a record of the evidence on
19 this motion, I'd like to take it under advisement, and I may
20 want to invite the parties to submit briefs, if you want to;
21 I'm not saying you have to. I think the law is pretty clear,
22 I've just got to go back and kind of sort out what I've heard.

23 MR. McCANN: Yes, sir.

24 MR. MOORE: I think it all boils down to a
25 credibility issue.

1 THE COURT: Right.

2 MR. MOORE: I think it's --

3 THE COURT: I think you're right.

4 MR. MOORE: If Your Honor accepts the testimony of
5 the agents here, it's clearly a noncustodial interview, he was
6 told he was free to -- he was told he could stop at any point,
7 he was treated cordially and with respect. If you accept
8 Mr. Etcheber's version of the events, it's completely
9 different. I think it's solely credibility.

10 THE COURT: I think you might be right.

11 MR. McCANN: Your Honor, I'd like to order the
12 transcript today and have an opportunity to review it.
13 Sometimes things get lost in the rush of things. And then if
14 you want us to brief it, we'll brief it.

15 THE COURT: Well, we have a Court Smart transcript we
16 have to order. Madam Clerk, how long does that normally take?

17 (Discussion held off the record.)

18 THE COURT: Well, go ahead and order it and ask them
19 to get it to you as quickly as possible.

20 MR. McCANN: I will, Judge, and I'll provide the
21 Court with that.

22 MR. MOORE: Your Honor, I guess that means that the
23 Court's going to have this issue under advisement for some
24 time, because you're going to wait for whatever Mr. McCann's
25 going to file. One of the things I think we need to talk

1 about is a trial schedule.

2 THE COURT: That's what I was going to bring up next.
3 Because there's another half a case, no matter what happens on
4 this issue. There's another charge.

5 MR. MOORE: But I think we need a ruling from Your
6 Honor on this issue before jury selection.

7 THE COURT: I agree. I agree. I agree.

8 MR. MOORE: And it's my understanding, from
9 discussing the matters with the ladies here, that the next
10 jury selection for Charleston is October 16th. October 19th.
11 And that there are no jury selections scheduled for the months
12 of November or December.

13 THE COURT: Well, I may have to just bring in my own
14 jury. I -- you know, it's a fair amount of Government
15 expenditure, but I've been saving the Government a lot of
16 money in Columbia lately.

17 MR. MOORE: I understand. You guys have helped with
18 some pleas.

19 THE COURT: Right. Right.

20 MR. MOORE: But, Judge, my point is, I am in a trial
21 in November for the entire month of November with Judge --
22 when I say the entire month of November, my trial begins with
23 Judge Seymour on the 10th of November, it's the three Hebrew
24 boys, it's this \$82 million Ponzi scheme. And we are
25 budgeting the entire month of November into perhaps the first

1 week of December, and it's the week that begins on November
2 30th. I could try this case the week of December 7th, I could
3 try this case the week of the 14th. But given the issue
4 that's been raised, and given the fact that he needs to order
5 transcripts, et cetera, I would ask the Court to -- as I
6 understand it, Judge Blatt has a jury that comes in here on
7 January the 5th. It's a Tuesday. I would ask Your Honor to
8 continue this matter so that you can get what you need from
9 Mr. McCann, we can have a ruling on this issue, whether Your
10 wishes to issue a ruling in writing or not, and then pick this
11 jury on January 5th and start this trial right after.

12 THE COURT: Well, the defendant's here, as I
13 understand, I spoke to the magistrate today, he's not allowed
14 to leave the country, he can't work while he's here, and we're
15 really stretching out his status here a long time while we're
16 waiting on a trial.

17 MR. MOORE: Well, the defendant has requested two,
18 three of these continuances. We were prepared to try this
19 case at the end of September, if we had picked a date, and
20 Mr. McCann asked for a continuance. Now, I cannot help the
21 fact that I have a trial the entire month of November. And
22 that case is older than this case. And there are five lawyers
23 in it. I can do it the week of December the 10th -- excuse
24 me, I think Monday is -- December 7th is a Monday -- or
25 December 14th. I understand from talking with Your Honor on

1 previous dates that Your Honor has a personal conflict the
2 week of the 10th. The week of the 7th. Towards the end of
3 the week.

4 THE COURT: My son is getting married Saturday the
5 12th, out of town, so I sort of need to be available the
6 second half of that week.

7 MR. MOORE: Would it suit Your Honor's schedule if we
8 tried it beginning Monday, December the 14th?

9 THE COURT: I could do it then. Mr. McCann, what
10 about that? Oh, I've got a major problem. I'm getting an
11 honorary degree from Clemson at graduation ceremony on the
12 17th of December.

13 MR. MOORE: Now, I also have a hearing -- I have a
14 sentencing on the 17th. You know, normally I would think that
15 we could try this case -- we ought to be able to try this case
16 in a few days. Given what I've seen, I think you need to
17 budget at least the next day for it. But I don't know why we
18 couldn't try this case in three days.

19 THE COURT: We should be able to finish it in three
20 days.

21 MR. McCANN: I agree.

22 THE COURT: What about -- you don't think you can
23 finish by the first week of December? Like Tuesday,
24 December 1?

25 MR. MOORE: Judge, you know, I'd love to say yes; the

1 problem is, if it doesn't pan out. I mean, we could -- we
2 could take a jury, I suppose, and tentatively -- and tell that
3 jury, rather than start on Tuesday the 1st, or we're going to
4 start on Monday the 14th.

5 THE COURT: I was thinking about bringing in a
6 special jury panel on the 3rd. I mean on the 1st, Tuesday the
7 1st, draw the jury and start the trial. Or draw the jury and
8 tell the jury to come back in a week. But could you --

9 MR. MOORE: (Inaudible).

10 THE COURT: Could you get someone to draw the jury
11 for you, if you're still in trial?

12 MR. MOORE: Mr. Badger's happy to draw the jury.

13 THE COURT: What about that, Mr. McCann, draw the
14 jury on the 1st and hopefully start the trial then. If we
15 can't start it then, we'd start it within about a week.

16 MR. McCANN: I have the same conflict during that
17 middle part of December; I'm scheduled to be at graduation at
18 Clemson as well. So that's my only restriction.

19 THE COURT: That's the 17th, right?

20 MR. McCANN: Well, I have it written down 15th and
21 16th. My nephew is graduating and being commissioned at the
22 same time. So I don't have December with me, but I have the
23 15th and 16th.

24 THE COURT: It may be. May be the 15th; I might be
25 wrong.

1 MR. MOORE: Judge, I don't have any doubt that we can
2 start this trial on the -- if we don't -- we can't start it on
3 the 1st, we can start it on the 7th, if we had to, and then if
4 we went longer than three days in that week, and Your Honor
5 had to leave, we could stop.

6 THE COURT: Right.

7 MR. MOORE: And we could come back the following
8 Monday and that would work.

9 THE COURT: Yeah, I don't like --

10 MR. MOORE: It's not ideal, but it would work.

11 THE COURT: I don't like to do it in a criminal case,
12 but I think that's the best option right now is plan on
13 bringing in a special jury on Tuesday, the 1st, start the
14 trial that day, if everyone is available, and try to finish
15 it. If not, reschedule it later, depending upon --

16 MR. MOORE: I am almost certain that my trial with
17 Judge Seymour will finish. If it hasn't finished by the 30th,
18 it will finish that week. So we could start the 7th, which is
19 a Monday, and if we could try it in three days, it will be --
20 finish it before Your Honor had to --

21 THE COURT: I understand. But if you finish with
22 Judge Seymour, I'd still like to draw the jury the 1st and
23 start on the 1st.

24 MR. MOORE: Yes, sir. I understand that. I'm --

25 THE COURT: Mr. McCann, can you kind of juggle your

1 schedule and keep both those time periods available?

2 MR. McCANN: Yes.

3 THE COURT: Let's do that then. I'll make
4 arrangements first thing tomorrow to have a special jury
5 brought into Charleston on the 1st.

6 MR. McCANN: Your Honor, I'd like to put the Court on
7 notice that I have two other motions I intend to file, based
8 on the most recent discovery I got within the past ten days,
9 some of which I haven't even had a chance to look at. So
10 they're coming. One is already drafted and will be filed
11 tomorrow or today, and the other will be filed first --

12 MR. MOORE: Could we hear what these motions are, and
13 whether they're going to consume extra time that's going to
14 make it almost impossible for us to meet this schedule?

15 THE COURT: Go ahead and give us a preview,
16 Mr. McCann.

17 MR. McCANN: Your Honor, the motion that's about
18 ready to be filed is a motion to dismiss the indictment based
19 on misleading and/or false statements before the grand jury at
20 both presentments. The Government knows about it. I've put
21 them on notice about that a week ago.

22 THE COURT: All right.

23 MR. McCANN: The second one that I'm researching now
24 is to dismiss count two, the stash house count, because it
25 simply doesn't state a violation of the law as applies to my

1 client.

2 MR. MOORE: My first question is, why couldn't
3 Mr. McCann have filed that motion some time ago? He's had --
4 he's had the presentment from the first indictment for some
5 time. He's known that there was a stash house charge that was
6 going to be brought in this case. That's going to require
7 another hearing, it's going to require further briefing, and I
8 don't see how we can do that, and try this case in December,
9 Judge.

10 THE COURT: Well, I don't have to have a hearing on a
11 motion. I might decide it on the briefs. I mean, I don't
12 want to tell Mr. McCann he can't file a motion, but I'm not
13 sure we need to have another hearing.

14 MR. McCANN: Your Honor --

15 THE COURT: Especially if it just relates to whether
16 a claim is stated. I mean, I don't probably need briefing on
17 that, I can --

18 MR. McCANN: Okay. We'd like to file those motions.
19 And while we're here, if you could put a deadline on this,
20 Judge, for filing of motions and for turning over discovery.
21 You've ordered the Government to do certain things here today;
22 I've written most of them down; but some deadline here,
23 keeping in mind that this might be tried the first or second
24 week of December.

25 THE COURT: Well, what else are you due from

1 Mr. Moore; what else are you looking for?

2 MR. McCANN: Well, I think he was going to give me
3 the grand jury testimony in full. I think you agreed to do
4 that.

5 MR. MOORE: Um-hum.

6 MR. McCANN: And I'm not sure if there was anything
7 else.

8 MR. MOORE: I believe I said that I would get the
9 information from the State Department as quickly as I could.
10 I said I would do that. But I can't turn over discovery that
11 I don't have. For example, we've got two other witnesses.
12 And I can't tell Mr. McCann that I'm going to go interview
13 those people tomorrow. I might interview them the week before
14 this trial.

15 THE COURT: Let's just say this. All motions are due
16 within seven days from today. And all discovery the
17 Government currently has in its possession is due to be
18 delivered within seven days from today. Future stuff has to
19 be timely turned over as soon as it's produced.

20 MR. MOORE: And if in the Government's possession
21 means in my hands --

22 THE COURT: In your hands.

23 MR. MOORE: -- rather than the hands of the State
24 Department in Washington. Correct, Your Honor?

25 THE COURT: That's what I meant.

1 MR. MOORE: I still don't see how I'm going to be
2 able to respond, even with Mr. Badger's assistance, to these
3 motions, and we're going to deal with them and try this case
4 in December. I just don't see it.

5 THE COURT: Hold on one second.

6 MR. MOORE: And Mr. McCann could have filed both of
7 these motions a long time ago; he chose not to.

8 (Brief interruption in proceedings.)

9 THE COURT: Mr. McCann, what about the first week of
10 January, first of the year, January 3rd?

11 MR. MOORE: And I would note for the record that the
12 pendency -- the filing -- the speedy trial clock stops when
13 you file a motion --

14 THE COURT: Right.

15 MR. MOORE: -- through the pendency of the Court's
16 ruling on it. We're just now told that we're about to have
17 some motions filed. And this is going to be difficult for me,
18 but Mr. Badger's going to have to help me, it's going to be
19 difficult for us to get meaningful responses filed,
20 particularly to a motion to dismiss an indictment based on
21 misleading promises to a grand jury. It's going to be
22 difficult for us to get a response out.

23 THE COURT: All right.

24 MR. McCANN: Your Honor, I'd like to discuss that
25 with my client. As you stated earlier, he can't work here.

1 People are supporting him, friends from Europe are supporting
2 him, and times are tough. He's got his daughter's in private
3 school, he has child support obligations, he has obligations
4 to me working up to this case. I'd like to confer with him.

5 THE COURT: All right. Confer with him and just
6 write me a letter on your position.

7 MR. McCANN: I will, and you'll have it tomorrow.

8 THE COURT: And copy Mr. Moore on it.

9 MR. McCANN: Yes.

10 THE COURT: All right. We'll take the motion under
11 advisement. Thank you very much. We'll be in recess.

12 MR. MOORE: Thank you, Your Honor. And if after that
13 response I feel like I need to file a motion for continuance,
14 I'll file a motion for continuance, and I assume that Your
15 Honor can decide that without a hearing.

16 THE COURT: Right.

17 MR. MOORE: On a brief if need be, is that correct?

18 THE COURT: That's correct.

19 MR. MOORE: Thank you, Your Honor.

20 THE COURT: Thank you.

21

22 (Court adjourned at 4:31 p.m.)

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REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the electronically recorded above proceedings, to the best of my ability.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR