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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

TERRENCE BRESSI,)
)
Plaintiff,)
)
vs.) No. 04-264 TUC-JMR
)
MICHAEL FORD, ERIC O'DELL,)
)
GEORGE TRAVIOLIA, RICHARD)
)
SAUNDERS, AND UNITED STATES OF)
)
AMERICA,)
)
Defendants.)
_____)

THE DEPOSITION OF RICHARD P. SAUNDERS

Tucson, Arizona
November 3, 2006
9:20 a.m.

WENDY J. PULLIUM, RPR
Arizona Certified Reporter, No. 50247

CALABRO REPORTING SERVICES, LLC
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15

ALSO PRESENT: Terrence Bressi
Eric O'Dell

16

* * * *

17

BE IT REMEMBERED that pursuant to Notice
18 for taking depositions in the above-styled cause, the
deposition of Richard P. Saunders was taken upon oral
19 examination at Hotel Arizona, 181 West Broadway
Boulevard, in the City of Tucson, State of Arizona,
20 before WENDY J. PULLIUM, Certified Reporter #50247, on
the 3rd day of November 2006, commencing at the hour
21 of 9:20 a.m. in a certain cause now pending before the
United States District Court in the District of
22 Arizona.

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1 I N D E X

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1 RICHARD P. SAUNDERS,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 E X A M I N A T I O N

5 BY MR. EUCHNER:

6 Q Good morning. Could you please tell us,
7 state your full name for the record and title.

8 A Sure. My name is Richard P. Saunders,
9 S-A-U-N-D-E-R-S. I'm the current chief of police for
10 the Tohono O'Odham Nation Tribal Police Department.

11 Q Okay. I think before we begin, we're going
12 to need to cover a little bit of official ground with
13 the attorneys. But before we do that, I'll just give
14 you some basic ground rules of how depositions work.

15 Have you ever been deposed before?

16 A Once or twice, yes.

17 Q Okay. So you've got a basic idea of what's
18 going to happen. The court reporter is taking your
19 testimony --

20 A Uh-huh.

21 Q -- and it's under oath. It probably
22 wouldn't be used in court, but it could be used in
23 court.

24 A Uh-huh.

25 Q So the testimony you give today is

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1 equivalent to as if there was a judge and/or jury in
2 the room with us.

3 A Yes, uh-huh.

4 Q If there is any questions that I ask that
5 you don't understand because I am not either speaking
6 clearly or the words I use aren't clear enough, please
7 ask me to rephrase the question or repeat it if you
8 couldn't hear it --

9 A Okay.

10 Q -- and I will repeat the question.

11 A Okay.

12 Q If there is any question that you can't
13 answer because you don't know the answer, I don't know
14 is an acceptable answer. If you can't recall, I can't
15 recall, as long as that's the case that you can't
16 recall or you don't know. But if you do know the
17 answer, you need to answer the questions.

18 A Yes.

19 Q Okay. And as far as articulating verbal
20 responses, the court reporter's taking everything down
21 that we say, so it has to be verbal as opposed to a
22 head signal or uh-hmms.

23 A Yes.

24 Q Okay. With that said, I think we'll go into
25 a couple of ground rules with the attorneys present.

1 MR. EUCHNER: So there is some questions as
2 to order of protection that we had covered on Tuesday
3 with Judge Roll. And the understanding that I have
4 regarding this is that plaintiff's counsel cannot ask
5 any questions that relate solely to dismissed claims.
6 However, if the information that's sought pertains not
7 only to dismissed claims but also to currently active
8 claims, or also if defense is raised by the
9 defendants, anything that's still pertinent with the
10 trial that is about to come, then those questions are
11 fair game.

12 Is that your understanding Roger and Gerry?

13 MR. FRAZIER: My understanding is that,
14 right, you are not to ask questions that could be
15 relevant only to the dismissed claims; that in our
16 discussion on Tuesday with Judge Roll we acknowledged
17 that there is likely overlap and some gray areas where
18 it's not going to be determinable, determined -- we
19 won't know whether it will lead to admissible evidence
20 on the existing claims, and maybe it could. And that
21 as we discussed yesterday on the record, I am not
22 seeking to object to that every single time unless I
23 think it is clearly without question only related to
24 the prior claims.

25 But I'm not waiving -- and I think we agreed

1 to this yesterday -- I'm not waiving the right to
2 reject later and object -- object to and reject any
3 notion that every question asked is relevant to the
4 continuing claims, I mean in order to make the process
5 go more smoothly I am not going to object to that
6 every time.

7 MR. EUCHNER: That's understood. I think
8 for the record, you have a reserved objection that you
9 can raise any, any of these issues related to an order
10 of protection at a later date, not too much later, but
11 at least after today.

12 MR. FRAZIER: Correct.

13 MR. EUCHNER: Okay.

14 MR. FRAZIER: Thank you.

15 And the part about the recording --

16 MR. EUCHNER: I was going to get to that
17 next.

18 MR. FRAZIER: I think we can just --

19 MR. EUCHNER: For the record, there are two
20 recordings being taken place, audio recordings. One
21 is mine, which I turned on about two minutes late, and
22 the other is Mr. Bressi's, which I believe was turned
23 on on time. These recordings, the understanding that
24 I presented yesterday I understand might not be
25 exactly what the Judge said, even though we agreed.

1 After the depositions were over yesterday,
2 Mr. Harrison told me he thinks he remembers it a
3 little bit differently in such a way that I
4 misinterpreted the Judge's order, that maybe I
5 actually gave myself too much latitude; and for that,
6 my understanding is that none of these recordings will
7 go on the internet any time soon, certainly not before
8 any objections are ruled on and not before anything is
9 admitted into evidence.

10 I think Mr. Harrison had a little bit of an
11 additional understanding, he was taking more notes
12 while I was doing more talking on the teleconference,
13 so I will let Mr. Harrison explain his understanding.

14 MR. HARRISON: Yes. This is Jim Harrison,
15 co-counsel for Terry Bressi for the First Amendment
16 Project.

17 I recall it a little differently and more,
18 more -- more to what you had said yesterday, that the
19 Judge said that the audio recordings would not be
20 placed on the internet or be public without them first
21 having been entered into evidence with the court.

22 MR. FRAZIER: And of course if I made an
23 objection to any part that is sustained, that part
24 will also not go on the internet.

25 (Interruption by court reporter.)

1 MR. FRAZIER: Will not go on the internet, I
2 think that is what he also agreed, the Judge.

3 Do you agree with that?

4 MR. EUCHNER: After I spoke with
5 Mr. Harrison about this, and our understanding is that
6 not only will it not go on the internet, but it would
7 be an undo burden to expect you to do the deletions or
8 excisions from it. So if we were to put a recording
9 on the internet that involved the portions that were
10 admitted, it would be our responsibility to excise
11 those portions that were excluded.

12 MR. HARRISON: Certainly if the Judge ruled
13 that your motion to exclude evidence is granted, you
14 know, we would not put that evidence on the internet.

15 I just wanted to clarify yesterday's
16 understanding.

17 MR. FRAZIER: Sounds good to me.

18 MR. EUCHNER: And either way, nothing's
19 going on the internet anytime soon, so we'll -- as far
20 as recordings are concerned, so we'll have more time
21 to flesh that out later.

22 Okay. And let's state for the record that
23 the persons who are in the room. This is David
24 Euchner, also in the room co-counsel James Harrison
25 and the plaintiff, Terrence Bressi; counsel for

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1 defense Roger Frazier and Gerald Frank; the defendant,
2 and in this case, in this deposition, the deponent,
3 Richard Saunders; and defendant Eric O'Dell has
4 exercised his right to be present.

5 Okay. I think we are ready to begin.

6 Are you ready?

7 MR. FRAZIER: Sure.

8 E X A M I N A T I O N (continued)

9 BY MR. EUCHNER:

10 Q Chief Saunders is your title, correct?

11 A Yes.

12 Q Okay. I'll call you by your title.

13 A Richard's fine.

14 Q Okay. Have you had a chance to or did you
15 take any opportunity to review any documents prior to
16 your deposition this morning?

17 A Yes. I did brief on my previous
18 declaration.

19 Q Okay. And in earlier discovery you filed a
20 declaration and an affidavit; is that correct?

21 A Yes.

22 Q And you've had a chance to review those?

23 A Briefly, yes.

24 Q Okay. Is there anything about those that
25 you feel is substantially incorrect, anything you want

1 to change before we proceed?

2 A No, not to my -- no.

3 Q Okay. I'm going to start with some
4 questions based on your background as a police
5 officer.

6 Have you worked for any other police
7 agencies other than the Tohono O'Odham Police
8 Department?

9 A No. That's where I started.

10 Q Okay. And what year did you start?

11 A I got hired in April of 1987.

12 Q Okay.

13 A I'm sorry. Yeah, yeah, it was in April,
14 then the academy proceeded that.

15 Q So you went to the academy prior to being
16 hired?

17 A No, no. I got hired and then went into the
18 academy.

19 Q Oh, okay. Was it SALETC that you went to.

20 A No. I went to the -- in fact, it was
21 ALETA --

22 (Interruption by court reporter.)

23 THE WITNESS: ALETA, Arizona Law Enforcement
24 Training Academy here in Tucson, Arizona.

25 ///

1 BY MR. EUCHNER:

2 Q Okay. Was that academy run by the state or
3 what agency operated the academy?

4 A It was a state academy, it was based here in
5 Tucson there along Trails End Road, as I recall the
6 address there.

7 Q Okay. And about how long was your training
8 at the academy?

9 A Back then it was just right at 13 weeks,
10 back then.

11 Q Okay. Since 1986, could you, as best you
12 recall, give me a timeline of when you received your
13 promotions from rank officer up to chief.

14 A Okay. I'd have to think a little bit on
15 that, but...

16 Q And that's fine.

17 A Yeah.

18 I was a patrol officer from upon graduation
19 in July of 1987, probably in nine -- in between 1990
20 and '92 I became a first line supervisor, patrol
21 sergeant, if you will; following that, '94, '94 and
22 '95, approximate, became a -- tested for patrol -- I'm
23 sorry, patrol commander, lieutenant, if you will. And
24 then following that, a few years, in about 1998 I
25 believe, applied for and tested for the captain and/or

1 assistant police chief there and assumed that role for
2 a period of time.

3 And then in -- former chief left in
4 approximately 2000 -- towards the end of 2001, and I
5 was the acting chief of police then, and then
6 appointed by the executive tribal chairman back then
7 in 2002, and currently hold that position going on to
8 my fourth year, in January will be my fourth year as
9 the chief of police, appointed.

10 Q Okay. When you were promoted first to the
11 rank of sergeant, did you have to take any tests or
12 additional qualifications to receive that promotion?

13 A Yes. I had to provide a letter of interest,
14 memorandum of interest to the position there. There
15 that was a, a selection process that involved an oral
16 as well as a written testing process there, and there
17 may have been a couple of other officers that tested
18 also for, for at least a couple of positions, at least
19 two, to my recollection, that were promoted to patrol
20 sergeant.

21 Q What kind of test is involved?

22 A As I recall, just a, just a written test on
23 familiarization with departmental policies and
24 procedures, geographics of the Nation, just any
25 supervisory information that would benefit the

1 individual being tested and considered for promotion
2 there.

3 Q Okay. And likewise, when you obtained the
4 rank of lieutenant, was there any additional testing
5 or qualifications you had to go through before getting
6 that rank?

7 A Years of service obviously helped and some,
8 some additional supervisory, administrative level
9 training, written exam, as I recall about four hours
10 of written exam on, again, departmental policies and
11 procedures, more leadership, a little bit more higher
12 structured leadership requirements there and emphasis
13 on being a patrol commander, as I recall.

14 Q And likewise when you obtained the rank of
15 captain, what additional qualifications or tests did
16 you have to go through other than experience and
17 recommendations?

18 A As I recall, again, more upper management
19 level training and certification, as I recall in
20 box -- I thought it was a little silly then but
21 certainly makes sense now with in basket procedures
22 and just prioritizing in-basket and level of
23 importance and prioritizing that, time management,
24 again, higher management leadership philosophies and
25 concepts, budget, budget of course started to come in

1 play, and goals and objectives if you will, as I
2 recall.

3 Q Then upon obtaining the rank of chief, is --
4 again, is there any additional testing or
5 qualifications that are needed?

6 A Years of service there, hirer level
7 management training there, certainly an FBI academy,
8 attending an FBI academy course certainly assisted in
9 that arena in further development, professional
10 development there, Arizona POST continued education
11 hours in administrative concept and philosophies as a
12 police administrator.

13 Q Can you tell me a little bit about the FBI
14 academy?

15 A The FBI academy was a wonderful opportunity
16 and experience for me to attend. It was based in
17 Quantico, Virginia there, it was a ten week, very
18 stressful at times, physically and mentally and
19 certainly academically there, some constitutional law.
20 What else? Physical fitness concepts, public
21 relations, and just again, theories and concepts in
22 police management, as I recall.

23 Q My understanding is that they've got pretty
24 good law professors that teach the constitutional law
25 at the FBI academy.

1 A Yes.

2 Q Do you remember who was the law professor or
3 which law professors were there?

4 A Not offhand I don't recall. It's been, it's
5 been at least five years ago now. That was in '01
6 that I attended the FBI academy there.

7 Yeah, it was, it was pretty tough,
8 constitutional law.

9 Q When did you become an Arizona POST
10 certified officer?

11 A Upon graduation in July of 1987 there.

12 Q Okay. And have you maintained your POST
13 certification consistently through nearly 20 years?

14 A Yes.

15 Q Okay. What do you have to do to maintain
16 your POST certification?

17 A According to Arizona POST, there are at
18 least eight hours of continuing education training
19 each year, daytime and nighttime firearms training
20 there, including a judgmental shoot scenario, if you
21 will, through a, what's called a FATSS, Firearms
22 Training System Simulator there, and everything else
23 in between that you can squeeze in to get briefed up
24 on practices and philosophies and concepts in police
25 administration certainly benefited.

1 Q When you would do your eight hours per year,
2 did you ever take constitutional law courses that were
3 offered?

4 A No, other than the academy itself there.

5 Q Okay. What is the rank within the police
6 department that essentially is the lowest rank where
7 you become essentially a policy maker or involved in
8 making policy?

9 A I would say the opportunity exists within
10 the patrol ranks at the lowest level there, and --
11 because we have some field training officers at that
12 level, we have training instructors, whether they are
13 firearms, driver training instructors there, they can
14 come up with and draft policy, if you will, and then
15 submit for consideration up the chain of command.

16 Q What is the lowest rank that essentially
17 could say, okay, this is policy now because, because I
18 say so and I have the rank to be able to do it? For
19 example, I know chief has that rank, but for example,
20 is captain able to make the policy?

21 A In a sense, yes; both written and verbal
22 policy, if you will, in a sense, orders, yes.

23 (Interruption by court reporter.)

24 THE WITNESS: Orders, yes.

25 ///

1 BY MR. EUCHNER:

2 Q And I think it's safe to assume --

3 A Directive orders, yes.

4 Q I think it's safe to assume that any policy
5 that a lower rank makes can always be overturned by
6 the higher rank?

7 A Yes.

8 Q But absent overturning of that, could a
9 lieutenant make policy?

10 A Along the same lines, yes, they could, they
11 could. Our patrol commanders would give them a good
12 deal of responsibility; they're involved in the
13 day-to-day supervision of their subordinates,
14 particularly in the patrol arena there, our criminal
15 investigations division.

16 Q Fair to say that if a lieutenant or any rank
17 were to put a policy out there, if, if it was carbon
18 copied to you and you didn't object, that it would be
19 understood that this is the policy?

20 MR. FRAZIER: Object to form, form and
21 foundation. Depends on what you mean by policy in any
22 particular situation, of course.

23 MR. EUCHNER: I can rephrase it.

24 BY MR. EUCHNER:

25 Q If there's a policy that's made by a

1 lieutenant in writing and officers know that it's
2 copied to you, and you do nothing to overturn that,
3 would that be considered a policy of the department?

4 MR. FRAZIER: Well, I still object to the
5 form of the question. Maybe you should define what
6 you mean by policy.

7 MR. EUCHNER: I think -- I left it general
8 on purpose.

9 BY MR. EUCHNER:

10 Q If you can answer the question and however
11 you answer it.

12 A In the sense it -- I can could always amend
13 it there and certainly have with -- generally the rule
14 of thumb since I've been there, that that -- you know,
15 more so trying to push that responsibility down to the
16 patrol commander arena there; but certainly over the
17 years we have, we have gotten better at creating new
18 policies and amending other policies that needed to be
19 amended there.

20 Q Now I'm going to go from the more general to
21 a little bit more specific and talk about sobriety
22 checkpoints and roadblocks. I'm going to use the
23 terms interchangeably, so if you have a term of
24 preference, that will be fine.

25 With regard to a roadblock that would be set

1 up to check for sobriety or anything else, are there
2 specific locations within the tribe that are the spots
3 where roadblocks would be set up, or could it be
4 pretty much anyplace?

5 A It, it could pretty much be at any, at any
6 location there. There are state routes, there are
7 federal routes and certainly we have set up sobriety
8 checkpoints at, you know, throughout the Nation there.
9 There's been festivities and a request from the
10 communities hosting those festivities to conduct
11 sobriety checkpoints.

12 Q Are there any particular favorite locations
13 that, you know, this -- for example, this location
14 works, we'll keep using this location, are there spots
15 that are more regularly used for the roadblocks?

16 A No, not necessarily more regularly used
17 there or favorites spots for that matter there. It's
18 just, you know, trying to determination the area that
19 you want to try and deter driving under the influence
20 there. And particularly State Route 86 is a, is a
21 highly traveled state roadway.

22 Q And I use the term "favorite spots" pretty
23 loosely, but a spot that through trial and error
24 you've discovered is more useful for a roadblock.

25 State Route 86, is that more useful for

1 purposes of roadblocks?

2 A Not that it's more useful, perhaps more
3 visible in our deterrence of driving under the
4 influence there, more visibility if you will, we make
5 contact with more people. Sometimes it's, it's --
6 depending on the location, it's, it's safer rather
7 than on some dark, remote back federal route, if you
8 will.

9 Q Right.

10 When a roadblock is going to be set up, in
11 your position as chief, do you -- what action do you
12 take to initiate a roadblock to be set up?

13 A Previously or now?

14 Q Let's go with previously and -- let me then
15 rephrase that and let me add a few extra questions in.

16 Is there a policy that's effective August
17 17th, 2005 that's in place?

18 A August 17th, 2005?

19 Q Related to roadblocks.

20 A Yes.

21 Q Okay. And is that still the policy that
22 you're working with right now?

23 A Yes.

24 Q Okay. I may want to ask some questions with
25 before the 17th, August 17th, and then after.

1 A Uh-huh.

2 Q Why don't we say before, first of all. If a
3 roadblock were to be set up, say, on State Route 86,
4 would you take any action to initiate that or would
5 somebody else?

6 A No, I wouldn't necessarily take any action.
7 At some point in time I'd be briefed on the location,
8 I'd ask some, some question there, is it in a safe
9 area, making sure it's not at a road curve, at a hill
10 top, if you will, just you know, a concern of safety
11 for our police officers out there conducting the
12 checkpoint, dealing with the checkpoint, as well as
13 the people that would come in contact at that location
14 there.

15 Q If not you, who would initiate the
16 organization of the roadblock?

17 A As I recall it would be the commanders, the
18 patrol commanders in charge of patrol operations, if
19 you will. They would be given that ultimate
20 responsibility and duty to, to provide for scheduling,
21 to provide for making sure equipment is provided and
22 the location there.

23 Q Subsequent to August 17, 2005, who would
24 take the initial step of initiating a roadblock?

25 A As I recall perhaps a patrol supervisor or

1 even a commander would go out and check a potential
2 location there and making sure that it's, you know,
3 there is, there is visual access, visual safety access
4 to that area, make sure there's enough pull-off in the
5 event we have to pull a driver aside there and conduct
6 a sobriety testing there, making sure there's good
7 visibility in both directions there.

8 So it's, you know, patrol supervisors have
9 in the past gone to those locations, made
10 recommendations. Patrol commanders, ultimately they
11 would, you know, either agree with that or move it.

12 Q What, what actions would you take, if any,
13 since August 17th, 2005, to be involved in the
14 organization, the running, et cetera, of a roadblock?

15 A Other than the holidays, I wouldn't
16 necessarily be on scene there. There has been times
17 in the past, prior to '05 there, that I worked the
18 holiday DUI checkpoint there at certain locations, be
19 out and just, just to be on scene there, not
20 necessarily directly involved at that point in time.
21 Operational plans since then would come my way and
22 would be reviewed and then signed off as approving the
23 location there and the conditions of the operational
24 plan.

25 Q After two thousand -- August 17th, 2005,

1 would roadblocks -- is one of the purposes of the
2 roadblocks to enforce state law?

3 MR. FRAZIER: Form.

4 MR. EUCHNER: I will rephrase.

5 MR. FRAZIER: Yeah, because it depends when.

6 MR. EUCHNER: I'll rephrase.

7 BY MR. EUCHNER:

8 Q Subsequent to August 17th, 2005, does the
9 published guidelines that the police department has
10 permit the enforcement of state law at the, at the
11 checkpoints?

12 MR. FRAZIER: Foundation.

13 If you need to refer to those, please do.

14 THE WITNESS: Yeah. I'd -- I'm thinking
15 yes, but there may be some language on tribal,
16 obviously, our tribal authority also makes there.

17 BY MR. EUCHNER:

18 Q Okay. And I was going to ask, is there any
19 provision in the, the new guidelines that allows for
20 enforcement of federal law?

21 MR. FRAZIER: Same objection.

22 THE WITNESS: Not -- I would assume -- I
23 don't think there is language in there for possibly
24 federal applicable law, and I'd have to look at --
25 quite honestly I didn't brief the checkpoint policy

1 there in preparation for this, so I'd have to take a
2 look at it more closely.

3 BY MR. EUCHNER:

4 Q And I think it's safe to assume that there
5 is language in there that permits for the enforcement
6 of tribal law?

7 A Yes.

8 (Interruption by court reporter.)

9 BY MR. EUCHNER:

10 Q Do the new guidelines that are in place
11 contemplate the application of federal case law or
12 federal statutes when running a checkpoint?

13 MR. FRAZIER: Objection, foundation for the
14 same reason, and the guidelines speak for themselves.

15 MR. EUCHNER: I will withdraw that question
16 and lay foundation.

17 BY MR. EUCHNER:

18 Q When these guidelines were created, did you
19 author them yourself?

20 A No.

21 Q Do you know who authored them?

22 A There was a policy review committee that --
23 consisting of our director of public safety, command
24 personnel, sergeants, in researching the policy there.

25 Q Do you know who -- excuse me, let me strike

1 that.

2 How long was this committee working in terms
3 of time? Was it organized for a set period of time to
4 come up with these guidelines?

5 MR. FRAZIER: Foundation.

6 BY MR. EUCHNER:

7 Q If you know.

8 A There were other policies that were being
9 looked at there, so it wasn't just that one in itself
10 there, including you know, general orders, and I don't
11 recall how long they were together there.

12 Q When the committee was formed, was it formed
13 by the tribal council or was it formed by some other
14 authority?

15 MR. FRAZIER: Foundation.

16 BY MR. EUCHNER:

17 Q If you know.

18 A No. It was police, police -- in the ranks
19 of the police department there.

20 Q Okay. Were there any public meetings
21 related to the formation of the committee or the
22 committee's findings or work?

23 A No meetings on formation of the committees
24 there, but after the -- certainly there were drafts
25 leading up to a final policy there; there was

1 oversight review with our oversight committee, with
2 our legislative body, there was some executive review
3 and then there was some attorney general of the
4 tribe's review, as I recall.

5 Q Did you personally play any role in the
6 formation of the new guidelines?

7 A There was -- it was at more than one
8 meeting. I mean, that the -- it didn't happen at one
9 meeting. There was several meetings as I recall.
10 Sitting in on, on a couple meeting, not only again of
11 that policy but other policy developments as well.

12 Q So even though you may not have written the
13 policy, you had some say into what was going in?

14 A As I -- yeah, some, some brief input there
15 as I recall. Again, I'd have to look at it just to
16 recollect my memory there.

17 Q It might have been just a memo, for example,
18 possibly you wrote a memo?

19 A No, I don't recall submitting any memos to
20 the policy there.

21 Q Okay. How did the guidelines of August
22 17th, 2005 become the official guidelines?

23 A Again, upon several drafts, as I recall;
24 final review with our, our oversight committees,
25 attorney general's review and then signed off by my

1 director of public safety, as I recall, then the
2 former vice chairman of the Nation under the executive
3 office and myself, as I recall.

4 Q Okay.

5 A And then submitted as our general orders and
6 policy and procedure of conducting sobriety
7 checkpoints, for the sobriety checkpoints.

8 Q So even though you didn't necessarily create
9 them, you had some authority in establishing that
10 these were the guidelines?

11 A Yes.

12 Q Did you read any law, whether it be case law
13 or statutory law, prior to signing the guidelines?

14 MR. FRAZIER: Object to the form.

15 BY MR. EUCHNER:

16 Q Related to roadblocks.

17 MR. FRAZIER: Still object to form.

18 Go ahead, you can answer.

19 THE WITNESS: Not so much law, just you
20 know, police -- brief information that was out there,
21 small departments, if you will, conducting sobriety
22 checkpoints, just information contained in some, some
23 information that was published out there, as I recall,
24 but no, not no specific case law.

25 ///

1 BY MR. EUCHNER:

2 Q Okay. Do you know if anybody else that was
3 working on the guidelines and the preparation of the
4 guidelines had reviewed case law or a statutory law
5 prior to their creation?

6 MR. FRAZIER: Object to foundation. And if
7 you are talking about, I guess, the attorney general,
8 I don't know if there is a attorney/client privilege,
9 but I don't think you continue with what the attorney
10 general may have done --

11 BY MR. EUCHNER:

12 Q Right now it's --

13 MR. FRAZIER: -- whatever you know.

14 BY MR. EUCHNER:

15 Q The nature of the question is, it starts
16 with a yes or no, do you know if anybody reviewed; and
17 then if you do know if anybody reviewed case law or
18 statutory law, who do you know did reviews.

19 And we have -- your counsel is right, if
20 that's the attorney general, that would be privileged.
21 But anybody else on the committee that's not the
22 attorney general.

23 A No, I don't know.

24 Q Okay. When you were at the academy in 2001,
25 the FBI academy, do you recall if there was any review

1 of constitutional law related to roadblocks?

2 A I don't recall specifically to roadblocks,
3 there may have been some brief coverage of that, if
4 you will. I think perhaps more search and seizure as
5 I recall. I think there may have been references to
6 checkpoints, for example, as I recall, that the
7 professor provided.

8 Q With regard to search and seizure, was there
9 any review of automobile rules of search and seizure
10 as applied to automobiles?

11 A As I recall there was some brief, yeah, on
12 warrantless searches, if you will, and yeah, along
13 those lines.

14 Q Do you have an understanding as to what the
15 law is on warrantless searches with automobiles? And
16 if so, what is that understanding?

17 A Okay.

18 MR. FRAZIER: I'm going to object just to
19 the legal aspect of this, but he can certainly testify
20 as to his understanding.

21 THE WITNESS: As I recall, again based on
22 academy and limited instruction at the academy and
23 brief as I recall it at the academy there, the FBI
24 academy, just obviously probable cause having to exist
25 to want to initiate a stop, checking on a vehicle; and

1 then subsequent to a little bit more guidelines, if
2 you will, on doing a search, a visual of the vehicle
3 there, officer safety comes into play there, within
4 the, within the immediate reach of the driver and/or
5 passenger of the vehicle there; some brief knowledge
6 on obtaining consent search if probable cause doesn't
7 exist to further search the trunk of the vehicle, if
8 you will. What else? That's it briefly as I recall.

9 Q Okay. Do you know the tribal court opinion
10 of Ahill, A-H-I-L-L?

11 A I'd have to refer to it, again, specifically
12 I, I -- I browsed through it in preparation for this,
13 so I'd have to refer to it here.

14 Q Okay. But you know what it is?

15 A Yes.

16 Q Can you say what it is?

17 A As I recall in reviewing, there was a
18 particular case where several plaintiffs brought
19 liquor law violations to the matter of the Tohono
20 O'Odham Tribal Court, and as a result, the then Judge
21 provided an opinion providing information that -- just
22 some briefs on, on liquor violations that, that exist
23 on the Nation there; and nationally, some additional
24 briefs that I believe it was determined that overall
25 we have a responsibility, the Nation has a

1 responsibility and perhaps a duty under the
2 Constitution to provide for the safety of not only the
3 Nation's members, but individuals traveling in our
4 efforts to deter DUI and allowing us to utilize
5 sobriety checkpoints as an effective means of
6 deterrence, as I recall in review.

7 Q Do you recall any balancing of interests
8 that the tribal court used in that opinion?

9 A I'm not sure I understand that.

10 Q Balancing of interests of public safety
11 versus the rights of drivers?

12 A I don't recall the specifics, no.

13 Q Is there any part of the opinion that
14 expects that the tribal police department should have
15 published guidelines in order to operate checkpoints?

16 MR. FRAZIER: I have to -- I'm going to
17 object because that decision says what it says, and I
18 do not see that this has any relevance whatsoever to
19 the state law violation that Mr. Bressi was cited
20 for --

21 (Interruption by court reporter.)

22 MR. FRAZIER: -- Mr. Bressi was cited for
23 because the Ahill decision is what gives the tribal
24 authority and it's only part of which the prior ruling
25 dismissing certain claims was based, so...

1 MR. EUCHNER: How about if I lay a little
2 bit more foundation and then we'll get to that
3 objection.

4 MR. FRAZIER: Okay, that's fine.

5 BY MR. EUCHNER:

6 Q Back to the question again.

7 Does the Ahill opinion look at jurisdictions
8 outside of the tribal Nation to come up with its
9 decision?

10 MR. FRAZIER: Form and foundation.

11 Go ahead.

12 THE WITNESS: As I recall, yes, it does,
13 there are several references to it.

14 BY MR. EUCHNER:

15 Q Do you know if it looks at the United States
16 Supreme Court for guidance?

17 A I don't recall, I'm not certain.

18 Q Okay. When Ahill was decided, you were a
19 patrol officer, correct?

20 A Yes, I would have been a patrol officer,
21 officer. Yes.

22 Q Were you involved in conducting roadblocks
23 at the time the decision came out?

24 A I would have to say yes, I was.

25 Q Okay. And I understand this is 17 years ago

1 now and I'm going to ask you to dust off a couple
2 cobwebs of memory. But did that case make any impact
3 upon you as a police officer?

4 MR. FRAZIER: Object to form.

5 BY MR. EUCHNER:

6 Q I should rephrase it.

7 Did that -- when that case came out, did --
8 were you aware of it and did it have any relevance to
9 the work you were doing as a police officer?

10 MR. FRAZIER: Object to form.

11 BY MR. EUCHNER:

12 Q You can answer.

13 A No. I don't think until years later did we
14 finally at some point in time get a brief on that, so
15 no, it didn't have an impact upon me then.

16 Q Other than the Ahill opinion, were there any
17 published guidelines from the tribal police related to
18 roadblocks until August 17th, 2005?

19 A No, no not from -- other than, you know,
20 some direction to put in writing operational plans as
21 well as debriefs following deployments there.

22 Q Related to the August 17th, 2005 guidelines,
23 are they in fact published? Are they available to the
24 public?

25 MR. FRAZIER: If you know.

1 THE WITNESS: I would have to say yeah,
2 yeah, that they would be available, certainly. They
3 have been provided copies to our oversight committees
4 and, yes, I would have to say they are available.

5 BY MR. EUCHNER:

6 Q Obviously I have a copy, but suppose I
7 didn't and I drove down to the police station and
8 spoke with somebody in your office and said I'd like
9 to see the published guidelines for roadblocks, would
10 they be able to show me right there on the spot,
11 assuming they had a copy handy, of course?

12 A Yes.

13 Q Okay. Would they be able to do that on
14 their own authority as even a secretary who was right
15 there or do they have to seek approval?

16 A I would say they would have to seek approval
17 with me there, and, you know, I'd probably make some,
18 ask some questions, who's requesting and circumstances
19 there.

20 Q If it was just Joe Blow, citizen of Arizona
21 that swung by and wanted a look, would that be okay?

22 A I would think so.

23 Q Okay. Can you imagine a circumstance where
24 it wouldn't be okay to show them the guidelines?

25 MR. FRAZIER: Objection, foundation, form of

1 the question.

2 THE WITNESS: I would -- if it showed up by
3 way of a, a legal document, if you will, in a lawsuit
4 pending, I would have to probably refer to our
5 attorney general and let them release it.

6 BY MR. EUCHNER:

7 Q Prior to August 17th, 2005, the operational
8 plans and memos that were released with regard to
9 roadblocks, were they publicly available or would they
10 be proprietary within the department?

11 A As I recall, I don't think they were -- it
12 depended on the memo, there, if it was a public -- if
13 it was an officer safety issue, if there was
14 statistical information, I don't think it was
15 proprietary to -- within the department there. If it
16 had to deal with scheduling, yeah, you know,
17 scheduling of officers and locations within certain
18 time matters there, then we may be a little reluctant
19 to release that information.

20 (Deposition Exhibit No. 1 was marked for
21 identification.)

22 BY MR. EUCHNER:

23 Q I'm showing you what has been marked as
24 Exhibit 1. Take a moment to review this.

25 A (Witness complies.)

1 Uh-huh.

2 (Deposition Exhibit No. 2 was marked for
3 identification.)

4 BY MR. EUCHNER:

5 Q Okay. Do you recognize what this document
6 is?

7 A Yes.

8 Q What is this?

9 A This, I recognize it to be a shift schedule
10 assigning various police officers, criminal
11 investigations and rangers too, to two different
12 checkpoint locations there; one on State Route 86 and
13 then the other one on Federal Route 15, and then their
14 times that they are assigned to those particular
15 locations there.

16 Q Okay. So you had just testified about you
17 wouldn't want to release locations and times of
18 specific officers. So if somebody came in and asked
19 to see an operational plan for a roadblock, would this
20 document be shown?

21 MR. FRAZIER: Foundation. You mean before
22 or after the roadblock? And maybe there's no
23 distinction there.

24 MR. EUCHNER: Prior.

25 ///

1 BY MR. EUCHNER:

2 Q And all of this line of questioning is prior
3 to August 17th, 2005.

4 If somebody were to come in and say I would
5 like to see operational plans for roadblocks, would
6 you show them this document, assuming that this had
7 not yet happened?

8 A I probably wouldn't, I'd feel uncomfortable
9 about that. Again, just reference my earlier
10 statement about, you know, officer safety concerns, if
11 you will, so probably would not. But after the fact,
12 I don't think I'd have a problem.

13 Q If it was before the fact, would you have
14 released it with redactions?

15 A Again, I would probably have to make some
16 inquiries as to, you know, who's requesting it and for
17 what reason and then decide from there.

18 Q Prior to August 17th, 2005, were roadblocks
19 ever announced in advance to the general public?

20 A Yes.

21 Q By what means?

22 A Each year we have what's called an October
23 4th Saint Francis Feast celebration, and over the
24 years as patrol supervisor, patrol commander and up
25 the ranks there, it is our, been our responsibility

1 and duty to provide law enforcement and in attempts to
2 reduce alcohol impaired driving and liquor to those
3 areas there because it's a, it's a -- it's not a
4 party, if you will, it's a, a feast, Saint Francis
5 Feast celebration, if you will.

6 So as long as I can recall we've been
7 involved at the meetings leading up to those, we've
8 had requests from those committees, we've even had
9 resolutions from the local district there asking us to
10 set up sobriety checkpoints to deter and reduce
11 alcohol from those areas there.

12 So yes, there's -- we do provide advanced
13 notice, you know, if you are going to drink and drive
14 don't do it that weekend, has been kind of our
15 message. And even fast forward there, we've got the
16 radio station now, so we're able to do PSAs over the
17 radio.

18 Q What radio station is it?

19 A It's KOHN.

20 Q Do you know what that is on the dial, AM or
21 FM?

22 A FM 91.9.

23 MR. EUCHNER: I actually need to take a
24 break, so we will go off the record for a few minutes.

25 (A break was taken.)

1 (Deposition Exhibit No. 3 was marked for
2 identification.)

3 MR. EUCHNER: Back on the record.

4 Sorry. Okay, we're back on the record.

5 BY MR. EUCHNER:

6 Q Okay. I am going to show you what has been
7 marked as Exhibit 2. It's a two-page narrative
8 document. Take a look at that and let me know when
9 you've had a chance to review it.

10 A (Witness complies.)

11 Uh-huh.

12 Q Do you recognize this document?

13 A As I recall, yeah, I recognize it at some
14 point in time in the past that it was written by then
15 patrol commander Lieutenant Kevin Shonk.

16 (Interruption by court reporter.)

17 THE WITNESS: Lieutenant Kevin Shonk,
18 S-H-O-N-K.

19 BY MR. EUCHNER:

20 Q Okay. And at this time you were the
21 captain?

22 A Yes.

23 Q When this document was sent out, were there
24 any previous documents related to roadblocks that this
25 replaced in any way?

1 A I don't recall.

2 Q When this document was sent out, did either
3 yourself or Chief Seligman also send out any kind of a
4 correction or an additional information, a supplement
5 to this memorandum?

6 MR. FRAZIER: Foundation.

7 THE WITNESS: I don't recall. I can't speak
8 for Chief Seligman then, but I don't recall that I had
9 sent anything out to deviate from this.

10 BY MR. EUCHNER:

11 Q Was this, in fact, sent to all personnel
12 assigned to a particular checkpoint?

13 MR. FRAZIER: Foundation.

14 THE WITNESS: Yeah, I would have to assume
15 that, that it was, sir, yes.

16 BY MR. EUCHNER:

17 Q Were there any other -- to your knowledge,
18 was there any deviation from this policy at the time
19 that it was put into place in 2000?

20 MR. FRAZIER: Foundation.

21 THE WITNESS: No, I don't believe so.

22 BY MR. EUCHNER:

23 Q Okay. And I should go back a question and
24 ask the preliminary question: Would this qualify as
25 one of those memos that a patrol commander could send

1 out and, and make the policy for, at least for a
2 particular event?

3 MR. FRAZIER: Form and foundation.

4 THE WITNESS: Yes.

5 BY MR. EUCHNER:

6 Q If Chief Seligman had sent out any kind of a
7 memorandum to all personnel, would you expect that you
8 would have been copied on it?

9 A Yes.

10 Q Do you recall ever receiving anything from
11 Chief Seligman subsequent to this memorandum that
12 related to this memorandum?

13 A I don't recall. We certainly sent out a lot
14 of memos there, but I don't recall specifically, no.

15 Q Do you know if this particular memorandum
16 was used in relation to any other checkpoints besides
17 a checkpoint on May 5th, 2000?

18 A No, I don't know.

19 Q Supposing there was a checkpoint maybe six
20 months later, would this memo still have full force
21 and effect in terms of what Lieutenant Shonk would
22 expect officers to do?

23 MR. FRAZIER: Form and foundation.

24 THE WITNESS: Yes, I would think so.

25 ///

1 BY MR. EUCHNER:

2 Q Do you know if there were any memorandums --
3 I'm sorry, memoranda after May 4th, 2000 that changed
4 the substance of these expectations as contained
5 within the memorandum?

6 A I don't recall.

7 Q On December 20th, 2002, would this
8 memorandum still be the policy of roadblocks for the
9 tribal police?

10 MR. FRAZIER: Form and foundation and -- I
11 will explain later.

12 THE WITNESS: Yeah, I would have to say it
13 would still be the practice to follow. Yes.

14 BY MR. EUCHNER:

15 Q Could you turn to the second page.

16 The very first line says, "After contacting
17 the driver...." What does Lieutenant Shonk mean, to
18 our understanding, of what contact with the driver
19 means here?

20 A I would think having a, a visual on him,
21 visual observation, if you will, upon checking on him,
22 there just a quick visual, is what I am thinking he is
23 meaning there.

24 Q Other than potentially a pleasantry such as
25 hello, would any words be exchanged between the

1 officer and the driver at contact --

2 MR. FRAZIER: Form and foundation.

3 BY MR. EUCHNER:

4 Q -- at this stage, prior to question number
5 one?

6 MR. FRAZIER: Same.

7 THE WITNESS: Yes. I'm sure he would, would
8 ask them to identify themselves, who they are and the
9 purpose of -- the purpose of conducting the, the check
10 there; and then subsequent asking for driver's
11 license, identification, vehicle information; that may
12 include registration and/or proof of insurance.

13 BY MR. EUCHNER:

14 Q Okay. Is a driver's license required when
15 driving on State Route 86 for a United States citizen?

16 A I would think yes, anybody that's operating
17 a vehicle, a license would be a requirement, yes.

18 Q Is registration of the vehicle required for
19 a United States citizen, same context of an automobile
20 driving down the road on State Route 86?

21 A I'm sorry, is registration required?

22 Q If somebody is driving on State Route 86 and
23 they are a U.S. citizen, are they required to have a
24 vehicle registration?

25 A Yes.

1 Q If the United States citizen is driving down
2 State Route 86, are they required to have proof of
3 insurance?

4 MR. FRAZIER: Form.

5 MR. EUCHNER: Let me rephrase that one --

6 MR. FRAZIER: Okay.

7 MR. EUCHNER: -- because I've lived in
8 states where it's not required.

9 BY MR. EUCHNER:

10 Q If an Arizona citizen is driving down the
11 State Route 86, are they required to have proof of
12 insurance in the vehicle?

13 MR. FRAZIER: Form.

14 THE WITNESS: Yes.

15 BY MR. EUCHNER:

16 Q If is a tribal member is driving down State
17 Route 86, are they required to have a driver's
18 license?

19 MR. FRAZIER: Form and foundation.

20 THE WITNESS: Under tribal law, yes.

21 MR. FRAZIER: Sorry, did you say driver's
22 license?

23 MR. EUCHNER: I said driver's license.

24 MR. FRAZIER: Okay. My objection was to
25 proof of insurance, so I withdraw that.

1 BY MR. EUCHNER:

2 Q Excuse me. And actually, I should lay a
3 foundation.

4 When I'm talking State Route 86, I am the
5 part that's within the Reservation boundaries, not the
6 part off the Reservation boundary.

7 On State Route 86, is a tribal member
8 required to have registration in the vehicle when
9 driving on State Route 86?

10 A Yes.

11 Q Within the boundaries of the Nation on State
12 Route 86, is a tribal member required to have proof of
13 insurance?

14 MR. FRAZIER: Foundation.

15 THE WITNESS: Under tribal law, no.

16 BY MR. EUCHNER:

17 Q The memorandum that we are looking at, the
18 title of it in the two section has a particular mile
19 post. Can you tell us what that mile post number is?

20 A Mile post 144.7 on State Route 86.

21 Q Where is that mile post in relation to the
22 boundaries of the Nation?

23 A It's just inside the Nation's eastern
24 boundary on State Route 86.

25 Q Do you know what mile post is the boundary?

1 A I believe it's right at about mile post 152.

2 Q Are there any businesses or residences or
3 any other streets between mile post 144.7 and 152?

4 A Yeah. As I recall there is a Coyote
5 convenience store there nearby to the west, and then I
6 think Coleman, formerly Coleman Road there, it's
7 closed now, is within that proximity. There is no
8 residence. There is an abandoned residence just off
9 the Nation's boundaries to the south side of the road
10 there.

11 Q The convenience store to which you were
12 referring, is that on the Nation's -- within the
13 Nation or is that past the Nation's boundary?

14 A It's within the Nation.

15 Q Can you turn to page 2 again.

16 A (Witness complies.)

17 Q Also in part 1, do you see on the third line
18 of paragraph 1: Establish that the driver has
19 permission to have the vehicle?

20 A Uh-huh, yes.

21 Q Do you know what that means?

22 A If, if the owner of the vehicle isn't within
23 the vehicle, then the driver would, you know, be asked
24 if they have permission to be in operation of the
25 vehicle.

1 Q Related to the request for the driver's
2 license and registration and proof of insurance, upon
3 a driver giving the driver's license, what is the
4 policy of what should be done with that driver's
5 license by the officer?

6 A I'm sorry, I lost track of your question.

7 THE WITNESS: Could you just read it back?

8 MR. EUCHNER: Well, I will repeat it a
9 little bit differently.

10 MR. FRAZIER: Okay.

11 BY MR. EUCHNER:

12 Q Once a driver complies with the officer's
13 request to see the driver's license, registration, and
14 proof of insurance, what does the officer do with that
15 information?

16 A I think it varies from officer to officer.
17 I can provide my experience, if you will.

18 Q Please.

19 A A quick check of the -- taking possession of
20 it, a quick check at it, make sure it's the person
21 who's handing it to me, verify that that is the
22 individual; make sure it's not expired; make sure if
23 there's, if there's, you know, a corrective lens
24 requirement, if there is a daytime only driving
25 restriction there. Just a quick -- you know, all of

1 this happens within, within, within several seconds
2 there. And if -- if time permits even, I would run a,
3 a wants and warrant check on the individual there,
4 which is, you know, considered a 29 check, if you
5 will.

6 Q What does "if time permits" mean to you?

7 A If there is a long line of people there,
8 obviously I'm not going to spend a whole lot of time,
9 everything's going to happen real, real quickly there
10 in an effort to keep traffic moving there and, you
11 know, in an effort to allow the driver to continue on
12 their way as long as nothing else exists that alerts,
13 alerts my attention there (indicating with hands).

14 Q And for the record, you did a quotes mark
15 with "alerts". I assume you mean he didn't breathe a
16 real heavy odor of alcohol onto you, would be an
17 example of something that would alert you?

18 A Yes. Signs of alcohol consumption, bundles
19 of marijuana maybe, things of that nature.

20 Q Okay. At the end of this memorandum on
21 page 2, there is a sentence that says: Any
22 arrestees....

23 Can you read that sentence?

24 A Any arrestees will be transported to the
25 appropriate correctional facility and booked or cited

1 and released, depending on the charges.

2 Q Which corrections facilities would this be
3 referring to?

4 A If it were a tribal violator, then certainly
5 they would be transported and booked into tribal
6 jurisdiction, the tribal detention facility. If it
7 were a non-tribal, certainly they wouldn't be housed
8 or transported and booked in a tribal corrections
9 facility. So it would be a county, for a non-tribal,
10 a county jurisdiction correctional facility.

11 Q Would the Pima County jail be one place that
12 people would be taken?

13 A Yes, Pima County jail in Tucson and in Ajo.

14 Q Okay.

15 MR. FRAZIER: At what period of time?

16 MR. EUCHNER: And at this point I think we
17 are talking about May, 4th, 2000 --

18 MR. FRAZIER: Okay.

19 MR. EUCHNER: -- and all subsequent time,
20 but why don't we say, call the cutoff date August
21 17th, 2005.

22 MR. FRAZIER: Object to form and foundation.

23 BY MR. EUCHNER:

24 Q Would there be any difference between
25 whether you would transport somebody to Pima County

1 jail in Tucson, the main jail, or the Ajo jail or the
2 Pima County jail?

3 A Yes, there would be.

4 Q What would be the difference between taking
5 somebody to Ajo versus Tucson?

6 A I could say an example, if they had a
7 federal warrant, if we came across an individual who
8 traffic violation encountered them and did a warrants
9 check and they had a federal warrant, they wouldn't go
10 to either, they would end up at a federal corrections
11 institute, if you will.

12 And then, yeah, our -- we deal with Justice
13 of the Peace, Precinct 3, which is in Ajo, Arizona,
14 and that's where we would transport our arrestees to.
15 And then if an officer is in San Xavier District, then
16 that gets taken to Pima County in Tucson.

17 Q Okay. Which district is mile post 144.7 and
18 within the Tribal Nation?

19 A It's within the Schuk-Toak District.

20 (Interruption by court reporter.)

21 THE WITNESS: Schuk-Toak, S-C-H-U-K, hyphen,
22 T-O-A-K.

23 BY MR. EUCHNER:

24 Q If you do have time at the roadblock to do a
25 wants and warrants check, which databases are you

1 looking for wants and warrants?

2 A We --

3 MR. FRAZIER: Foundation.

4 You can still answer.

5 (Interruption by court reporter.)

6 MR. FRAZIER: Foundation.

7 THE WITNESS: We would, we would, we would
8 check through our via communication or police radio,
9 with our dispatcher, and they would, they would make
10 the inquiry. If it's a local wants and warrants
11 check, it would be within Arizona; if it's a
12 national -- actually they automatically do a national
13 check there, so it's NCIC, which is the National Crime
14 Information Center, by way of our communications
15 system and through Arizona DPS there that the inquiry
16 is made.

17 BY MR. EUCHNER:

18 Q When the wants and warrants check is done,
19 does dispatch create any kind of a log?

20 A Yes.

21 Q When they create that log, is it put under
22 any kind of a separate case number or, or are all the
23 logs on one sheet?

24 A No. It would, it would fall under that case
25 number. If -- obviously, we get audited by Arizona

1 POST for use of our, of our system there and so
2 everything would have to fall in line there in terms
3 of we can't just randomly run people's names, we have
4 to have law enforcement purposes for its, for its use.

5 Certainly if they are dealing with the
6 scenario or situation where there is law enforcement
7 action, someone cited, an individual arrested, then
8 certainly they would, they would be assigned a -- an
9 incident number, police records management incident
10 number, if you will.

11 Q With regard to the guidelines that are in
12 place right now, as of August 17, 2005, is the request
13 for a driver's license registration and proof of
14 insurance still included in those guidelines?

15 MR. FRAZIER: Foundation.

16 THE WITNESS: Yes.

17 BY MR. EUCHNER:

18 Q What you described before about doing a
19 wants and warrants check, is that still part of the
20 guidelines, assuming time permits of course?

21 MR. FRAZIER: Foundation. My objections are
22 as before, the document speaks for itself. You have
23 to let him review it.

24 Go ahead if you know.

25 THE WITNESS: I'm sorry, the question again?

1 BY MR. EUCHNER:

2 Q With regard to the guidelines that are in
3 place right now that were adopted or in effect as of
4 August 17th, 2005, does the license check that
5 includes a wants and warrants check, is that still
6 part of the procedure within those guidelines?

7 A I don't recall if it's, it's specifically in
8 the guidelines. I do believe and would hope that it
9 is still practiced when time permits there, yes.

10 Q All right. And I think we are done with
11 No. 2.

12 I'm going to now show you what's been marked
13 as Exhibit 3. Take a quick look at this (indicating).
14 Let me know when you've had a chance to review it.

15 A (Witness complies.)

16 Okay.

17 MR. FRAZIER: That is Operations Plan?

18 MR. EUCHNER: Yeah.

19 (Discussion off the record.)

20 THE WITNESS: Okay.

21 BY MR. EUCHNER:

22 Q Okay. You have had a chance to review this?

23 A Yes.

24 Q Do you recognize this document?

25 A Yes.

1 Q What is this document?

2 A This is our, our standard operations plan of
3 the Tohono O'Odham Nation Police Department, and more
4 specifically the operational plan for deployment to
5 the October 4th, 2003 operations plan for the
6 celebration there within the San Pedro Village of the
7 Schuk-Toak district there.

8 It's got kind of our summary, details of our
9 operation, operational objectives, description of the
10 property, danger, high-threat area hazards, additional
11 information, scheduling of officers, commander,
12 sergeants' assignments, if you will, and...

13 Q Okay. I think it's enough.

14 And I think this refers to the Saint Francis
15 Feast you were talking about earlier?

16 A Yes.

17 Q Suppose Joe Blow citizen came to the police
18 station and asked to see this particular operational
19 plan, absent possible redactions for names of
20 officers, would you produce this operational plan for
21 a citizen, a U.S. citizen or a tribal member that came
22 in?

23 A Yes, I would. I would be happy to.

24 Q Okay. On page 1 there is a section that has
25 a list of other agencies.

1 Do you see where that section is?

2 A Yes.

3 Q What is that section entitled?

4 A Other Agencies Involved.

5 Q Okay. How many agencies are -- in total are
6 listed as possible checkmarks?

7 A I'm sorry, that have checkmarks next to
8 them? Overall?

9 Q Well, overall --

10 A Okay.

11 Q -- checked and unchecked.

12 A Twelve.

13 Q How many are checked?

14 A Three.

15 Q Which three are they?

16 A DPS, Pima County Sheriff's Office, U.S.
17 Border Patrol.

18 Q When the Pima County sheriffs are involved
19 in a -- strike that.

20 Were the Pima County sheriffs involved in
21 this particular checkpoint?

22 MR. FRAZIER: Foundation.

23 BY MR. EUCHNER:

24 Q If you know.

25 A No, they were not. To my knowledge they

1 were not.

2 Q Okay. Do you know if DPS was involved in
3 this particular checkpoint?

4 MR. FRAZIER: Foundation. And you are
5 referring to this one in October 2003?

6 MR. EUCHNER: Yes.

7 BY MR. EUCHNER:

8 Q Specifically in this operational plan, do
9 you know if DPS was involved?

10 A No, they weren't involved.

11 Q Do you know if the U.S. Border Patrol was
12 involved in this particular checkpoint?

13 MR. FRAZIER: Foundation.

14 THE WITNESS: Not to the best of my
15 knowledge they were not involved, no.

16 BY MR. EUCHNER:

17 Q Okay. Actually, I would like to go back to
18 No. 2 very briefly. With regard to a wants and
19 warrants check, suppose when a driver comes through
20 and the ACIC database shows they've got a warrant for
21 arrest -- well, I'm making up a hypothetical, we'll
22 say it's a traffic warrant out of City of Tucson --
23 and the tribal police department discovers this
24 warrant, what would the tribal police do to ensure
25 that this person was brought into custody and brought

1 before a Judge?

2 MR. FRAZIER: Well, what's your reference to
3 Exhibit 2? I thought you said --

4 MR. EUCHNER: There's a -- there's a part
5 related to arrestees transported at the very end, so
6 we may not even need the exhibit, but the idea is to
7 find out what's the appropriate correctional facility,
8 what -- so I'll rephrase, repeat the hypothetical.

9 BY MR. EUCHNER:

10 Q You come across a driver, they have an ACIC
11 warrant, a traffic violation out of the City of
12 Tucson, what action -- and assume that only tribal
13 police are present for this, what action do tribal
14 police do to ensure that this person is taken into
15 custody and brought before the court?

16 MR. FRAZIER: In general?

17 MR. EUCHNER: In general.

18 MR. FRAZIER: Okay.

19 BY MR. EUCHNER:

20 Q Actually, what would you personally do if
21 you were in such a situation?

22 A It would depend if the individual is a
23 tribal member or a non-tribal member.

24 Q If they were a non-tribal member?

25 A Okay. We wouldn't have knowledge of the

1 individual having a traffic warrant out of the Tucson
2 Police Department until we ran the check, obviously.
3 Dispatch would provide us information, is it a -- you
4 know, is it a major, a major traffic violation, if you
5 will, and dispatch -- or is it just a failure to
6 appear, a minor traffic violation warrant, if you
7 will.

8 Dispatch would then send back the, via
9 teletype, there to the originating agency, Tucson
10 police in this case I think is what you referenced,
11 and if they have an interest in this individual, then
12 there may be a, there may be a little quote on the
13 teletype, you know, we'll extradite, you know, within
14 50 miles.

15 If the individual -- if they're willing to
16 extradite, then we'll ask them to come pick them up
17 there. If manpower exists, we may go ahead and
18 apprehend and then transport him or her to that, to
19 that facility there for booking on that outstanding
20 warrant, on being a non-tribal member, yes.

21 Q Okay. And although the specifics could
22 change with any case, would that general practice
23 apply regardless of what the warrant was, whether it
24 was ACIC or NCIC, whether it was a traffic violation
25 or a felony murder warrant?

1 A Yes. Yes, it could change.

2 Q I would like to turn now to December 20th,
3 2002. There was a roadblock on this day, correct?

4 A Uh-huh.

5 Q And I believe Exhibit 1 is the sheet related
6 to this particular roadblock?

7 A Uh-huh.

8 Q Understanding that you don't remember every
9 single officer that was present, but does this look
10 like the list of officers that were present at the
11 roadblock on December 20th?

12 MR. FRAZIER: Foundation.

13 BY MR. EUCHNER:

14 Q To your knowledge?

15 MR. FRAZIER: Lack of foundation.

16 THE WITNESS: It -- you know, although I
17 didn't, you know, show up on scene there other than
18 the northern one at Federal Route 15 there, I did have
19 an occasion to drive through there, and as I recall a
20 couple of the officers, I did visually remember seeing
21 them there, at least the second one there.

22 BY MR. EUCHNER:

23 Q Okay. And basically we are here on this
24 case because of an arrest that was made on that
25 particular date. You didn't personally observe that

1 arrest, did you?

2 A No.

3 Q You didn't meet Mr. Bressi that evening, did
4 you?

5 A No.

6 Q Have you ever met or -- have you ever met
7 Mr. Bressi before today?

8 A No, today was --

9 Q Have you ever seen Mr. Bressi before today?

10 A Today was the absolutely first time I have
11 ever seen him.

12 Q Okay. On December 20th, 2002, who was in
13 command of the roadblock on State Route 86 to which
14 this memorandum refers?

15 A Lieutenant Ford, Lieutenant Michael Ford,
16 yes.

17 Q Did Lieutenant Ford have, you know, command
18 authority on the scene over all of the tribal officers
19 that were there?

20 A Yes.

21 Q With relation to policies for operating this
22 roadblock, was the memorandum we looked at in
23 Exhibit 2 still in effect?

24 MR. FRAZIER: Form and foundation.

25 THE WITNESS: To the best of my

1 recollection, yes, it was still in effect.

2 BY MR. EUCHNER:

3 Q It's always possible that an officer will do
4 something a little bit different, but was it the
5 expectation of Lieutenant Ford and superiors that
6 officers would follow that directive?

7 MR. FRAZIER: Form and foundation.

8 THE WITNESS: Yes.

9 BY MR. EUCHNER:

10 Q Okay. Were any other agencies -- strike
11 that.

12 Is there an operational plan for December
13 20th, 2002, similar to the one we were looking at for
14 October 4th, 2003?

15 MR. FRAZIER: Foundation.

16 THE WITNESS: This is a, more of a template
17 enhanced, if you will, operational plan that we have
18 since utilized for not only sobriety checkpoints, but
19 other operational necessities, doing search warrants,
20 going after wanted persons there, doing enforcement
21 activities on holiday, holiday traffic enforcements up
22 and down the roadways, saturated patrols, if you
23 will --

24 (Interruption by court reporter.)

25 THE WITNESS: Saturated enforcement patrols.

1 So, no, since as of lately, we've been, at
2 least since '03 there, we've been utilizing this, this
3 format here.

4 BY MR. EUCHNER:

5 Q Okay. Do you know what format was used
6 prior to the format in Exhibit 3? Could you describe
7 it?

8 A It was probably more along the lines of, as
9 I recall, just a memoranda from the commander there
10 with specific, specific and/or general information on
11 operations there, the objectives there, assignment and
12 scheduling of officers there that would participate
13 in, in the activity there.

14 Q The memorandum you have in front of you
15 that's Exhibit 1, would this be such a memorandum as
16 you've just described?

17 A Yeah. I think it -- it depends on the
18 commander. There are some commanders are very good
19 in, in detailing, detailing more, if you will, on the
20 assignment there; and others, you know, just the, the
21 scheduling, just the bare minimum that they can
22 provide.

23 Q For an officer who receives this memorandum,
24 are they basically -- are they given any other
25 information other than what time to show up?

1 MR. FRAZIER: Object to form and foundation.

2 BY MR. EUCHNER:

3 Q And that's a to-the-best-to-your-knowledge
4 kind of question.

5 MR. FRAZIER: Form and foundation.

6 THE WITNESS: To the best of my knowledge
7 a -- I encourage and at least would hope that there'd
8 be a briefing leading up to the operation itself, and
9 then certainly a debriefing following, following the
10 actions there, the operations.

11 BY MR. EUCHNER:

12 Q What would a debriefing entail?

13 A Debriefing would, just a -- the ones that
14 I've been involved in provide you statistical
15 information providing total number of vehicles checked
16 on, providing arrests for, arrests on or cited,
17 individuals that have been cited, individuals that
18 have been arrested. We occasionally, prior to our
19 seat belt, mandatory child restraint laws there, we
20 would get someone to assist us in doing observation of
21 seat belt and child restraint usage there and that
22 really assisted us in making the new laws part of the
23 Nation, become law as part of Nation there.

24 Q Would this debriefing be documented in any
25 way?

1 A Yes, it would -- as well as photos, if you
2 will, we've fortunately been very successful at our
3 sobriety checkpoints in seizing alcohol, narcotics,
4 and stolen vehicles there as a result. And certainly
5 in the public's eye had been very, very, very
6 beneficial in deterring and just good public relations
7 there. And with that information, we would compile
8 that and provide a debrief to our -- the command
9 staff, the chief of police, and the executive officer.

10 Q Do you know if the debriefing summary or any
11 debriefing documents from the December 20th, 2002
12 roadblock still exist?

13 A I don't recall.

14 Q Do you know if -- let me lay some
15 foundation.

16 How are those documents maintained within
17 the department, the debriefing documents?

18 A If I obtained them, then I would, I would
19 have a master file for that information there. And --
20 yeah, paper documentation, or I would hope that the
21 patrol commanders as well would maintain them within
22 their file there. But if I received them, then I
23 would, you know, I would hang on to them. I've got
24 quite a pile of information there.

25 Q Is it the responsibility of the patrol

1 commander, the on-scene commander, to give you that
2 documentation afterwards?

3 A Yes. Especially if I'm requesting it, yes,
4 I would. Yeah, if I'm requesting I would have an
5 interest in the outcome of those, those deployments.

6 Q And the creation of those documents is
7 standard practice for the commanders?

8 A Yes.

9 Q You had just mentioned something about
10 photographs. At what point did -- strike that.

11 Does the police department take photos, have
12 cameras and photography equipment at checkpoints just
13 in case something happens?

14 A We wouldn't necessarily have them there, if
15 you will, but officers are assigned -- our criminal
16 investigators are assigned photography equipment that
17 they use in their, their related work field. Not all
18 police patrol officers do have an assigned camera,
19 although it's a piece of equipment, it's not
20 necessarily a requirement but, you know, if we have,
21 if we have the funds available, if we have the
22 equipment, certainly we assign it to them there, but
23 yeah.

24 Q Do you know if any video cameras or digital
25 photography equipment is present at roadblocks?

1 MR. FRAZIER: Foundation.

2 BY MR. EUCHNER:

3 Q You may answer.

4 A No, not, I mean -- no. I would have to say
5 no because obviously the officers, you know, their
6 goal and objective and focus is, you know, their
7 safety and the safety of the people traveling through
8 and I can't see them videotaping and/or taking
9 pictures of people coming through a checkpoint there.
10 More so the, the end result, if you will, of seizures
11 of alcohol or contraband there at the end of a
12 roadblock is show me a picture, if you will, and
13 attach it to the debriefing sheet, is what I would
14 require. And certainly if they come across a stolen
15 vehicle, then they could photograph either damaged
16 steering column; if they come across contraband in the
17 trunk of a vehicle, upon appropriate search and
18 seizure leading up to that, then they could take a
19 photograph as evidence there and attach that also as
20 part of evidence.

21 Q Okay. Now going back to December 20th,
22 2002. What was --

23 MR. FRAZIER: Excuse me.

24 MR. EUCHNER: Yes, go ahead.

25 MR. FRAZIER: Since you've started a

1 transition there, I've got to take a moment now.

2 MR. EUCHNER: Okay. We will go off the
3 record then.

4 (A break was taken.)

5 MR. EUCHNER: We are back on the record.

6 BY MR. EUCHNER:

7 Q Lieutenant Saunders, we were getting ready
8 to talk about the 12/20/02 roadblock, the east one on
9 State Route 86.

10 A Uh-huh.

11 Q Do you have any information on whether
12 officers from other agencies were at that roadblock?

13 A Yes. After the fact I got information that
14 at least one other agency was on scene.

15 Q Okay. Do you know from the information you
16 have whether they were on scene at the beginning of
17 the roadblock or if they were on scene later?

18 A No, I don't have that information. No.

19 Q Okay. Related to this roadblock, do you
20 know what the purposes of the roadblock were?

21 A Yes.

22 Q Was one of those purposes to detect drunk
23 drivers on the road?

24 A Yes, absolutely. That was -- it was the
25 holiday season there and we certainly do our part,

1 although we don't participate in the Southern -- we --
2 in the sense do we participate in the Southern Arizona
3 DUI Task Force, and particularly during the holidays
4 after Thanksgiving, leading up to Thanksgiving, they
5 have deployments, so they ask for our information
6 there and we try to do our part within our
7 jurisdiction on curbing alcohol-related DUI driving
8 and alcohol-related crashes.

9 (Interruption by the court reporter.)

10 BY MR. EUCHNER:

11 Q Could you tell me a little more about the
12 Southern Arizona DUI Task Force?

13 A We don't participate directly with them,
14 within the -- within their jurisdiction. It's made up
15 of Southern Arizona law enforcement; a couple that I
16 am familiar with is Tucson Police Department, Arizona
17 DPS, South Tucson, Pima College, as I recall.

18 And we have attended a couple of kick-off
19 meetings, if you will, public relations campaigns
20 related to Southern Arizona Task Force. They don't
21 come onto our jurisdiction, onto the Tohono O'Odham
22 Nation there.

23 Again, we don't participate directly with
24 them. We do our part within our boundaries there, but
25 certainly we stand shoulder to shoulder with them to

1 address alcohol-related DUI driving and reducing
2 alcohol-related crashes, particularly during the
3 holidays there.

4 Q So one of the purposes is sobriety?

5 A Yes.

6 Q Is another purposes license checks?

7 A Yes.

8 MR. FRAZIER: Are you talking about
9 12/20/02?

10 MR. EUCHNER: Yes, all these questions are
11 about 12/20/02.

12 BY MR. EUCHNER:

13 Q License and registration and insurance
14 checks?

15 MR. FRAZIER: Foundation.

16 THE WITNESS: Yes. If they -- yeah, where
17 they are applicable.

18 BY MR. EUCHNER:

19 Q Okay. Is the other reason to check for
20 drugs, contraband, smuggling?

21 MR. FRAZIER: Form.

22 THE WITNESS: It's not a reason. It's not a
23 reason there, but unfortunately where we are located
24 at, we encounter a lot of the above just in relation
25 to where the Tohono O'Odham Nation exists next to the

1 international border there.

2 BY MR. EUCHNER:

3 Q Is another reason to check for stolen
4 vehicles?

5 MR. FRAZIER: Form.

6 THE WITNESS: Again, it's not a reason to
7 have a checkpoint there solely to check on stolen
8 vehicles there, but unfortunately because of where we
9 are situated at in relation to the international
10 border there, we are just bombarded by border-related
11 activity there to include stolen vehicles.

12 BY MR. EUCHNER:

13 Q And we said Lieutenant Ford was in command
14 at this particular checkpoint?

15 A Yes.

16 Q And is there any other information you have
17 in terms of the details of what occurred at this
18 particular checkpoint that you personally have?

19 MR. FRAZIER: Form and foundation.

20 THE WITNESS: That I have with me or that
21 exists, information that exists?

22 BY MR. EUCHNER:

23 Q That you have in your mind that you can
24 testify to. Do you know anything within your personal
25 knowledge that happened at this particular roadblock?

1 MR. FRAZIER: Same objection, foundation.

2 THE WITNESS: I -- no, other than border
3 patrol. There was times in the past that I would...

4 MR. FRAZIER: I think he is asking you about
5 this specific, and if you start talking about some
6 other time, then I'm not knowing what the question is
7 to make an objection, so please just stick to his
8 question.

9 THE WITNESS: Yes.

10 BY MR. EUCHNER:

11 Q So were you -- do you know if you were
12 debriefed after the roadblock by Lieutenant Ford?

13 A I don't recall if it was specifically by
14 Lieutenant Ford or the assistant chief there. Yeah, I
15 don't recall.

16 Q Who was the assistant chief at this time?

17 A That would have been probably Acting
18 Assistant Chief Delgado.

19 Q How would he be able to debrief you if he
20 wasn't there? Would he get the information from
21 someplace else?

22 A Yes.

23 Q Okay. So in a context like this
24 Lieutenant Ford might debrief Assistant Chief Delgado?

25 A Yes.

1 Q Regarding the officers that are working at
2 the checkpoint, do they know what the stated purpose
3 is of running the checkpoint?

4 MR. FRAZIER: Form.

5 THE WITNESS: Yes, they should. Yes.

6 BY MR. EUCHNER:

7 Q How do they find out what the stated purpose
8 is?

9 A Again, that would -- I encourage briefings
10 at the location there, and then the person in charge
11 there would state the purpose. And we provide an
12 officer safety briefing in relation to the deployment
13 there.

14 Q If other officers said that the purpose of
15 the roadblock was to detect stolen vehicles, would
16 they be unreasonable in making that assumption or
17 having that understanding?

18 MR. FRAZIER: Form and foundation. And you
19 are just asking him to speculate on what their
20 thinking would be.

21 You can answer the question if you
22 understand it, but my objections stand.

23 THE WITNESS: No. They, they would -- again
24 the purpose is detection of alcohol impaired drivers
25 there, and they would deviate from that if they were

1 simply there for stolen vehicle recovery there, that
2 wouldn't be the intent of the purpose there.

3 BY MR. EUCHNER:

4 Q Detective Romero filed a report on December
5 20th, 2002 from the roadblock, saying that he was
6 working a checkpoint to locate intoxicated drivers,
7 stolen vehicles, undocumented alien smuggling, and
8 drug contraband.

9 Is he wrong in making that statement?

10 MR. FRAZIER: Form.

11 Go ahead.

12 THE WITNESS: I don't think he is wrong in
13 per se making that statement. I think associated with
14 a sobriety checkpoint there are all those other
15 elements, unfortunately, come into play there.

16 BY MR. EUCHNER:

17 Q It is understood when the checkpoint is
18 being formed that all of those elements come into
19 play?

20 MR. FRAZIER: Form.

21 BY MR. EUCHNER:

22 Q In this context is it understood amongst
23 yourself and the on-scene commander?

24 MR. FRAZIER: Form. The objection is to the
25 term "come into play".

1 THE WITNESS: I think, I think we all
2 understand that, again from experience, that
3 fortunately or unfortunately that we do encounter
4 stolen vehicles and narcotics there, again because it
5 is a corridor on State Route 86, the Nation, that is
6 utilized unfortunately; but as well, alcohol impaired
7 driving and alcohol is introduced into the Nation
8 there, and we have certainly had our, our incidents of
9 vehicle-related crashes there that are alcohol
10 related.

11 BY MR. EUCHNER:

12 Q And I think you have already answered the
13 question, but just to make sure I am clear in my mind,
14 you don't recall any of the debriefing that was done
15 after this particular roadblock?

16 A No, I don't.

17 Q Do you know if any debriefing documents from
18 this particular roadblock still exist?

19 A No. No, I don't.

20 Q Would you expect as the chief of police that
21 they should exist?

22 MR. FRAZIER: Form.

23 THE WITNESS: Yes. Statistical information
24 would be beneficial there, certainly.

25 ///

1 BY MR. EUCHNER:

2 Q Is debriefing information or summaries filed
3 with anybody else within the police department besides
4 yourself and the person who generates a report?

5 A Debriefings could be just verbal in nature
6 there amongst, you know, the people that are deployed
7 there; and then a summary I would, you know,
8 anticipate the summary -- at least a summary of, you
9 know, the deployment activities itself there. And,
10 yeah, I hope they would be -- they would be kept and
11 maintained.

12 Q If there is a statistical summary that's
13 made of the roadblock, that would probably have to be
14 done in writing, though, correct?

15 A Yes.

16 Q You wouldn't be able to relay statistics
17 verbally too much?

18 A Although there has been times, other than
19 the December 20th sobriety checkpoint there, that I
20 have received a call and just given a verbal and then,
21 you know, at some point in time followed up by a
22 written summery.

23 Q But even when it was verbal at first, it was
24 followed up by something committed to writing?

25 A In most cases, yes.

1 Q Would the statistical summary include the
2 number of arrests that are made on that particular
3 date at the roadblock?

4 A Yes. Just the major notable information
5 there, yes.

6 Q Would that statistical summary include the
7 number of cars that drove through the roadblock?

8 A Yes. As I recall, yes.

9 Q Would that statistical summary include the
10 number of wants and warrants checks that are run from
11 the roadblock?

12 A Not necessarily, no.

13 Q Do you have any personal information going
14 back to December 20th, 2002, related to Mr. Bressi's
15 arrest at this particular checkpoint?

16 MR. FRAZIER: Form.

17 BY MR. EUCHNER:

18 Q And what I mean is at that time when you
19 were debriefed, were you given any information about
20 Mr. Bressi's arrest?

21 A As I recall, yes, after I was provided a
22 debrief by way of a phone call, it was kind of the
23 brief circumstances surrounding that; and then, you
24 know, just another general debrief from the sobriety
25 checkpoint itself, but I don't recall any of the

1 specifics.

2 Q Do you know who provided you that
3 information?

4 A It might have been Lieutenant Ford there at
5 some point in time.

6 Q Do you know what happened with Mr. Bressi's
7 misdemeanor charge as -- at the time of about January
8 of 2003?

9 A As --

10 Q And I mean if you were to go back in time
11 and put yourself in your shoes where you were January
12 of 2003, did you have any personal information as to
13 what happened to misdemeanor charges against
14 Mr. Bressi?

15 A As I recall, they were -- again, now as I
16 recall, they were, they were dismissed, dismissed in
17 the Ajo courts there.

18 Q In June of 2003, did you receive a Notice of
19 Claim from Mr. Bressi?

20 A Yes. As I recall, yes.

21 Q Do you recall what was the content of that
22 Notice of Claim?

23 A Not exactly, no, I don't recall.

24 Q If you could summarize your recollection of
25 what that Notice of Claim was, how would you summarize

1 it?

2 A As I recall, constitutional rights, alleged
3 constitutional rights violation, improper, the
4 authority of a tribal police in providing a
5 checkpoint, questionable detainment, and questions
6 with the constitutionality of the checkpoint itself at
7 that location there.

8 Q Do you remember when you received that?

9 A I don't recall, no.

10 Q What did you do with that Notice of Claim
11 when you received it?

12 A I provided that information to our legal
13 attorney general's office there for, for review and
14 handling at that point in time.

15 Q This is just a yes or no question, but did
16 you speak with an attorney from the attorney general's
17 office?

18 A Yes.

19 Q This is again a yes or no question. Was it
20 Jonathan Jansen or was it somebody else?

21 A Yes.

22 Q It was Jonathan Jansen?

23 A Yes.

24 Q Okay. Was that on the same day that you
25 received the Notice of Claim or was it afterwards?

1 A I don't recall.

2 Q After receiving the Notice of Claim, either
3 that day or shortly thereafter, did you go up to Kitt
4 Peak at all, to the observatory on Kitt Peak?

5 A Yeah, I went up there, but I don't recall if
6 it was shortly thereafter. I don't know -- yeah, I
7 don't recall.

8 Q Do you know if you went up to the Kitt Peak
9 Observatory in uniform sometime in mid June of 2003?

10 A Probably, probably in uniform, yes.

11 Q Do you know if it was before or after you
12 received the Notice of Claim that you went up to the
13 Kitt Peak Observatory in uniform?

14 A Again, I don't recall. Yeah, I don't
15 recall.

16 Q How often do you dress in uniform for work?

17 A Four, if not five times a day out of the
18 work week.

19 Q In uniform?

20 A Yes. If I have business elsewhere, then I
21 may be in appropriate business attire there, or if I'm
22 at a law enforcement function, certainly off the
23 Nation's boundaries, then probably a uniform.

24 Q After conferring with the attorney general,
25 did you have any further involvement with the Notice

1 of Claim in June of 2003?

2 MR. FRAZIER: Form.

3 THE WITNESS: I am not sure what you mean by

4 Notice of --

5 MR. EUCHNER: I will rephrase it.

6 BY MR. EUCHNER:

7 Q When you received the Notice of Claim, you
8 already said that you talked to the attorney general?

9 A Uh-huh.

10 Q After having that conversation with the
11 attorney general, did you do anything else? Did you
12 take any other action?

13 A Just -- yeah, stayed in touch with him and
14 then subsequently I --

15 MR. FRAZIER: Don't talk about your
16 conversations.

17 MR. EUCHNER: Not with the attorney general.

18 MR. FRAZIER: But otherwise go ahead and
19 answer.

20 THE WITNESS: And then follow-up meetings
21 with the -- Mr. Frazier.

22 BY MR. EUCHNER:

23 Q I can ask you if you had a meeting; I can't
24 ask you what the substance of the meeting was.

25 A I probably won't recall.

1 Q So if I do ask you about conversations like
2 that, it would be a yes-or-no question.

3 MR. FRAZIER: For the record, I'm not so
4 sure that was -- your question was about June of 2003,
5 right?

6 MR. EUCHNER: Correct.

7 MR. FRAZIER: So I don't know if I was
8 involved at that time.

9 BY MR. EUCHNER:

10 Q Did you have any conversations with any
11 other police officers in June of 2003 about the Notice
12 of Claim you received?

13 A I am certain I did, but I don't -- yeah, I'm
14 certain I did.

15 Q Do you know who else received notices of
16 claim besides yourself?

17 A As I recall according to the notice there
18 Officer Eric O'Dell, Lieutenant Michael Ford, myself.

19 Q And Officer Traviolia was another?

20 A Yes, of course. Yeah.

21 Q Did you speak with Officer O'Dell after
22 receiving the Notice of Claim?

23 MR. FRAZIER: I think he just answered that.

24 MR. EUCHNER: I'm sorry. No, I think I
25 asked if he knew who received them.

1 MR. FRAZIER: Sorry.

2 BY MR. EUCHNER:

3 Q Did you speak with Officer O'Dell after
4 receiving the Notice of Claim?

5 A Yes.

6 Q Did you initiate the conversation or did
7 Officer O'Dell initiate it?

8 A I don't recall.

9 Q What was said during that conversation?

10 MR. HARRISON: You know what, I have to
11 interject here and place an objection on the record.
12 Officer O'Dell is presently in the room at the table,
13 hearing testimony from his superior as to their
14 conversations at a previous point. I think that
15 his -- and Officer O'Dell is scheduled to be deposed
16 within two hours of this time.

17 I would place an objection as to his
18 presence here presently and would ask that he leave
19 the room while testimony relating to his involvement
20 in the conversation is spoken about.

21 MR. FRAZIER: Is that your objection too,
22 David?

23 MR. EUCHNER: I will make an objection and
24 say we would only require him to leave the room for a
25 couple of minutes.

1 MR. FRAZIER: I am not going to let him
2 leave the room.

3 MR. EUCHNER: Okay. Well, it's on the
4 record.

5 MR. HARRISON: Objection stands.

6 BY MR. EUCHNER:

7 Q Okay. What was the substance of the
8 conversation between yourself and Officer O'Dell?

9 A This matter has been forwarded to the
10 attorney general's office for representation, as I
11 recall.

12 Q Did you ask him any questions about what
13 this is about?

14 A No.

15 Q Did you speak with Officer Traviolia about
16 the Notice of Claim?

17 A If I did, it was probably along the same
18 lines, I don't recall.

19 Q No details of the case were discussed?

20 A No.

21 Q Did you speak with Lieutenant Ford about the
22 Notice of Claim?

23 A Yes.

24 Q Were any details of the case discussed?

25 A No. Same thing again, it was referred for

1 representation by the attorney general's office
2 initially.

3 Q Are you aware that the misdemeanor charges
4 were refiled against Mr. Bressi shortly after the
5 Notice of Claims were received?

6 A Yes, I do believe.

7 Q Were you aware in June of 2003 that the
8 misdemeanor charges were being refiled?

9 A Yeah, I would have to say I was, was -- I
10 was aware.

11 Q In the course of the misdemeanor charges
12 being prosecuted in the Ajo Justice Court. did you
13 personally have any involvement in the prosecution of
14 that case?

15 A No.

16 Q Did you ever have a conversation with a
17 Deputy Pima County Attorney Bill Perkin related to
18 this particular case?

19 A No, I did not.

20 Q Do you ever appear in any court proceedings
21 related to State versus Bressi in the Ajo Justice
22 Court?

23 A No, I did not.

24 Q You never provided any disclosure or
25 discovery or testified in that case, correct?

1 A No.

2 Q Okay. Are you aware there were discovery
3 requests made in State versus Bressi?

4 A Yes.

5 Q Did you have any contact with state
6 authorities to let them know that discovery would not
7 be produced?

8 A Me personally, no.

9 Q Do you know if Lieutenant Ford had
10 discussions with any state authorities saying
11 discovery would not be produced?

12 A Yes, as I recall.

13 Q What was the substance of that discussion as
14 best you can recall?

15 A As best as I can recall it had to do with a,
16 a, a memorandum and/or an operational plan that could
17 not be located and produced and provided as part of
18 disclosure.

19 Q Could not be provided or would not be
20 provided?

21 A Could not be located.

22 Q Do you know if Jonathan Jansen had any
23 communications with any state officials related to
24 State versus Bressi?

25 A I don't know.

1 Q Do you know if any other attorney within the
2 tribal attorney general's office communicated with
3 state authorities related to State v. Bressi?

4 A I don't know.

5 Q And you are aware that the end result of
6 that was a dismissal with prejudice in State v.
7 Bressi?

8 A As I recall now, yes.

9 Q Have you ever spoken at any conferences
10 related to task forces with federal agencies before?

11 A I have spoken at many conferences, but
12 specifically on task forces, I don't recall that being
13 part of our presentation other than, you know,
14 cooperative working relationships with other agencies
15 such as a task force.

16 Q You refer to a singular presentation. Is
17 there a presentation that you have for multiple
18 conferences or conventions?

19 A No.

20 Q When you referred to "this presentation" a
21 couple statements ago, what were you referring to?

22 MR. FRAZIER: Object to form. I thought he
23 said many presentations.

24 BY MR. EUCHNER:

25 Q I heard a singular presentation.

1 A I have spoken all over the country, and it's
2 been on border-related impacts, border-related
3 activity and impacts on the Tohono O'Odham Nation
4 there, is what I speak to.

5 Q Have you ever spoken about integrated border
6 enhancement teams or IBETs?

7 A No. That's -- I'm sorry, what was the
8 acronym again?

9 Q IBET. I believe it stands for Integrated
10 Border Enhancement -- Enforcement Teams.

11 A No. That's not part of our operation there,
12 so no.

13 Q Related to the procedures that are in place
14 now, the August 17th, 2005 guidelines, is there -- is
15 it acceptable within those procedures for federal
16 agencies to be working alongside the tribal police at
17 the checkpoint?

18 MR. FRAZIER: Form and foundation.

19 THE WITNESS: No, I don't believe so. I
20 would have to refresh, look at the policy again, but
21 no. I think they are called upon kind of after the
22 fact there, if they're needed for illegal aliens or
23 narcotics.

24 BY MR. EUCHNER:

25 Q With regard to the August 17, 2005

1 procedures, is it permissible or acceptable for state
2 agencies to be working alongside the tribal police
3 such as the Pima County sheriff?

4 MR. FRAZIER: Form and foundation.

5 THE WITNESS: Again, I would have to look at
6 the policy again just to refresh, but, I don't recall
7 them ever, that date or any other dates, that they
8 have been involved directly in a sobriety checkpoint
9 that we have operated.

10 BY MR. EUCHNER:

11 Q Do you know how often the tribal police
12 operate checkpoints in terms of how many times per
13 year? And I expect this to be more or less of an
14 average figure as opposed to a definite figure.

15 A Well, at least once a year at the October
16 4th feast celebration there. However, there has been
17 times in the past where at a particular community
18 there is six or seven entryways into the community
19 that would -- it was just not possible for us to
20 operate a sobriety checkpoint at numerous locations
21 into this village there.

22 On average prior to December 20th of '02, at
23 least three or four per year. After December 20th,
24 '02, at least one a year.

25 Q Going back to June of 2003, we were talking

1 about Kitt Peak and you were up at -- on the
2 observatory in uniform, is that what we had said
3 before?

4 A As I recall, yes.

5 Q As I recall your testimony, it was that you
6 don't recall exactly what date it was and you don't
7 recall exactly if it was before or after receiving the
8 Notice of Claim; is that correct?

9 A Yes, as I recall.

10 Q Do you recall if you were with any other
11 tribal officers in uniform at the time?

12 A There were a number of us to include the
13 fire chief, as I recall our former director of public
14 safety, I don't recall if he was in uniform, the wild
15 land fire person I believe was probably part of that
16 meeting there, and then one or two other civilian,
17 non-uniform dressed department heads.

18 Q Do you recall how long you were on Kitt Peak
19 that day when you went up?

20 A As I recall, our hour probably took -- our
21 meeting took less than an hour, with administrators
22 from Kitt Peak, various division heads, if you will.
23 And typically they, they offer for us to stay for
24 lunch after, after the meetings there. One time I did
25 stay for lunch and other times I passed lunch and went

1 on down the mountain.

2 Q So how long would you estimate, if you can
3 remember, how long you were on the mountain?

4 A I would say no more than -- drive time up
5 there, 15 minutes, if that, no more than an hour for
6 the actual meeting there, and if I stayed for lunch,
7 less than half an hour, another 15 minutes. Two hours
8 minimum.

9 Q Okay. Have you ever spoken with anybody at
10 the University of Arizona related to Mr. Bressi?

11 A No, I have not.

12 MR. HARRISON: Sorry, could you speak up,
13 please.

14 THE WITNESS: No, I have not. I'm sorry.

15 MR. HARRISON: Thank you.

16 BY MR. EUCHNER:

17 Q Have you ever spoken with any other tribal
18 officials related to Mr. Bressi having a web site on
19 the University of Arizona server?

20 A Any other tribal officials?

21 Q Any other tribal officials.

22 MR. FRAZIER: Let me just make an objection
23 to --

24 MR. EUCHNER: Maybe I need to rephrase the
25 question.

1 MR. FRAZIER: I will tell you what the
2 objection is.

3 MR. EUCHNER: I know what it is, that's why
4 I am rephrasing it.

5 MR. FRAZIER: Okay, go ahead.

6 BY MR. EUCHNER:

7 Q Have you ever asked anybody else to call the
8 University of Arizona related to Mr. Bressi or his web
9 site?

10 A No, I have not.

11 Q Are you aware of any tribal officials
12 calling the University of Arizona to lodge complaints
13 against Mr. Bressi and his web site?

14 A No, I am not familiar.

15 MR. EUCHNER: I have no further questions at
16 this time.

17 MR. FRANK: I would like to take a break
18 before we start.

19 (A break was taken.)

20 MR. EUCHNER: Okay. We are back on the
21 record.

22 BY MR. EUCHNER:

23 Q I just have one other question.

24 When we were talking about running warrants and
25 warrants checks before with regard to driver's

1 licenses, if a driver produced a registration, what
2 was done with the registration?

3 A They would verify that that registration was
4 pertaining to that vehicle that was being checked
5 upon.

6 Q If the registration corresponded with the
7 vehicle that was being driven, was any further
8 checking done with regard to the registration?

9 A They may check, they may -- what I do, if I
10 make a traffic stop or checking on somebody there,
11 it's with that information, go to the back of the
12 vehicle, verify that that registration is to that
13 plated vehicle and, you know, the vehicle description
14 matches. In addition, the expiration date on it is
15 also checked there. If everything is clean, then we
16 give it back to them.

17 MR. EUCHNER: Okay. I have no further
18 questions.

19 E X A M I N A T I O N

20 BY MR. FRAZIER:

21 Q Richard, why did you go to Kitt Peak in June
22 of 2003? What was going on there that took you up
23 there?

24 A As I recall over the last, even years
25 leading up to '03 there, we've had an annual meeting

1 up there at the request of Kitt Peak administration,
2 department -- division staff up there, if you will,
3 and our, our Department of Public Safety there, to
4 address issues of mutual concern, if you will, safety
5 issues for travelers up and down the road. I know the
6 fire management was working with Kitt Peak on a fuel
7 reduction plan, if you will, and just there is new
8 personnel on our part, new personnel on their part,
9 sharing of information, exchange of phone contact
10 information there, just a nice, you know, sit down and
11 information sharing forum there for us.

12 Q So this was a routine thing that you did as
13 the head of the TOPD and other heads of other
14 departments did annually, correct?

15 MR. EUCHNER: Objection, leading.

16 BY MR. FRAZIER:

17 Q Was it a routine thing?

18 A Yeah, not other departments, just
19 departments under the Department of Public Safety
20 there, yes, would -- yeah, I wasn't aware of other
21 departments, just specifically under the Department of
22 Public Safety.

23 Q Was it usually in June of each year?

24 A It, it varied. It varied from year to year,
25 just depending on everybody's schedule there.

1 Q Did you personally set the dates for that
2 meeting?

3 A No. My calendar was checked, and no, I
4 didn't set it. It was just everybody -- with that
5 many people there, everybody's schedules had to, had
6 to, had to match there.

7 In addition we would talk about, you know,
8 information on the -- oh, I forget what it's called --
9 the O'Odham, they have a night out for O'Odham tribal
10 members there and we talked about that there also
11 briefly.

12 Q Is the Kitt Peak Observatory within the
13 jurisdiction in which the TOPD operates?

14 A Yes.

15 Q And it's your department and these -- and
16 various tribal department of safety entities that
17 provide the police or other services, if needed, at
18 Kitt Peak?

19 A Yes.

20 Q Did you go up there for any reason to see
21 Mr. Bressi?

22 A No.

23 Q Did you go up there for anything having to
24 do with the Notice of Claim that was served on you?

25 A No, absolutely not.

1 Q Do you even know if you saw Mr. Bressi
2 there?

3 A No. Again, today was the first time I had
4 officially seen him here, so if I did see him there, I
5 wouldn't have known who he was there.

6 Q Okay.

7 A And certainly if he was within the meeting,
8 I'm sure I would -- when he introduced himself, I
9 would have known who he was, but clearly he wasn't in
10 our meeting.

11 And as I mentioned, they offer up a lunch
12 for us there and we will sit and have lunch, at least
13 once I recall having lunch there. I don't recall if I
14 had lunch that particular year, but in years past I've
15 had lunch.

16 Q I wanted to ask you about Exhibit 2, which
17 you should have over there (indicating). That's the
18 memorandum dated May 4th, 2000, by Lieutenant Kevin
19 Shonk, who was a patrol commander.

20 When you testified -- before we talked about
21 Exhibit 2 you talked about personnel at various levels
22 of the hierarchy within the department making policy.

23 Is a lieutenant like Lieutenant Shonk was
24 back then, a commander that, who would draft a memo
25 like this, is that what you meant by policy?

1 A Yeah. More specific to their area of
2 operations there, if you will. In this case, you
3 know, he is describing some operations towards a
4 checkpoint there, and that would fall within the area
5 of his responsibility.

6 Q If you look at Exhibit 1, it's indicated
7 that Lieutenant Shonk did not work at the 12/20/02
8 checkpoint, correct?

9 A According to the memo, yes, just a little
10 note there, did not work.

11 Q And Lieutenant Shonk -- first of all, did
12 you request that Lieutenant Ford take care of setting
13 up and arranging the checkpoints on December 20th,
14 2002?

15 A I don't recall if I gave specific direction
16 to Lieutenant Ford, however, a commander needed to be,
17 needed to be there to oversee the deployment.

18 Q And Lieutenant Ford was a commander who
19 could fill that role?

20 A Yes.

21 Q Between Lieutenant Shonk and Lieutenant
22 Ford, do you know one way or another why it was
23 Lieutenant Ford who did it in this case?

24 A No, I don't know.

25 Q Now, if Lieutenant Ford was the -- was he

1 also patrol commander?

2 A As -- he was a commander. I don't recall if
3 he was a patrol commander. We typically just have one
4 patrol commander and then he might have been
5 responsible for other operations, criminal
6 investigations.

7 Q Okay. But Lieutenant Shonk, who wrote this
8 May 4th, 2000 memoranda, which is Exhibit 2, to your
9 knowledge he was not the person who handled the two --
10 the 12/20/02 roadblock, correct?

11 A Correct.

12 Q Okay. And you would have expected -- you
13 said earlier with regard to this Exhibit 1, you would
14 have expected more than just this sheet that listed
15 the names of the people and where they were going to
16 work.

17 A Yes.

18 Q Is that right?

19 A Uh-huh.

20 Q And the additional information, you would
21 expect Lieutenant Ford to produce that?

22 A Yes.

23 Q To prepare that?

24 A Yes.

25 Q Okay. And do you recall one way or another

1 whether you actually saw what he had prepared at any
2 time?

3 A I don't recall. No, I don't recall.

4 Q So it's possible you did, possible you
5 didn't?

6 A Correct.

7 Q And Lieutenant Ford would have been the
8 person who set the policy, at least as far as
9 directing his crew, this crew that's listed on this
10 sheet, on what to do at that particular checkpoint; is
11 that correct?

12 A He would have been given responsibility,
13 yes.

14 Q Okay. Are you aware -- well, let me just
15 tell you that Mr. Bressi relies on a case in this
16 action called City of Indianapolis versus Edmonds or
17 vice versa, I don't know which name comes first.

18 MR. EUCHNER: It's actually Edmond,
19 E-D-M-O-N-D.

20 MR. FRAZIER: Edmond.

21 BY MR. FRAZIER:

22 Q Which is a case that specifically said there
23 shall not just be general searches for criminal
24 activity, including searches for drugs, as the primary
25 basis for a checkpoint.

1 Were you aware of that case?

2 A I had some brief knowledge of it, yes.

3 Q And do you know when that came out versus
4 the date of Lieutenant Shonk's May 4th memo?

5 A I don't recall exactly, no.

6 Q Okay. When you said before that you, that
7 this May 4th memo would have been in effect -- let me
8 back up a second.

9 Look at the last sentence of Exhibit 2.
10 What does that say? Read that for the record.

11 A Any arrestees will be transported to the
12 appropriate --

13 Q The next one, the last sentence.

14 A Oh, the last sentence.

15 Thanks in advance for a great job and I will
16 see you there.

17 Q Yes. Is that what it says?

18 A Yes.

19 Q And that refers to one particular
20 checkpoint, doesn't it?

21 A Yes.

22 Q Okay. So do you have any personal memory or
23 knowledge that this particular memorandum was referred
24 to on other checkpoints?

25 A No, I don't.

1 MR. FRAZIER: Okay. Do we have the exhibits
2 from yesterday's depositions?

3 MR. EUCHNER: Yes.

4 BY MR. FRAZIER:

5 Q I would like you to look at what was marked
6 as Exhibit 1 to Senior Special Agent Dreland's
7 deposition which took place yesterday (indicating).

8 That's a rather lengthy report, but if you
9 would, just at the end of that first full paragraph --

10 A Uh-huh.

11 Q -- on the first page, maybe it's the -- it's
12 the first large paragraph.

13 A Okay.

14 Q And you see the, the last two sentences
15 there, it says, detective, and it's blotted out.

16 A Yes.

17 Q Detective asked the driver for the driver's
18 license, and quoting from detective, whoever's report,
19 and then you see it says, the driver stated, I don't
20 have one, it's suspended. Do you see that?

21 A Yes.

22 Q Okay. I would like to have you look at what
23 the defendants produced in response to Mr. Bressi's
24 request for production, a particular report that we
25 will have marked at whatever the next number for this

1 one, what would that be? Exhibit 4 if you would.

2 (Deposition Exhibit No. 4 was marked for
3 identification.)

4 BY MR. FRAZIER:

5 Q Okay. Exhibit 4 is -- consists of three
6 pages. Do you see that?

7 A Yes.

8 Q And the first page appears to be a law
9 incident table -- I guess they're all called that.

10 (Interruption by court reporter.)

11 BY MR. FRAZIER:

12 Q What is the first page? Do you recognize
13 what that would be just by that format?

14 A Yes. This would be probably the, the
15 beginning of our reporting, records management system,
16 if you will, entry. It's got various, you know,
17 information, briefs on the, the dates, the times, the
18 dispositions, incident number, incident nature,
19 location information there, officer involved,
20 responsible officer, disposition on the matter there.

21 Q Okay. Then on the next page, that is a
22 narrative; is that correct?

23 A Yes. That would be the actual narrative of
24 the incident there.

25 Q On the first page it says, responsible

1 officer: N. Romero.

2 Do you see that?

3 A Yes.

4 Q Do you know who that is?

5 A Yes. That would be Officer Nick, Nicholas
6 Romero.

7 Q Okay. And then with regard to the
8 narrative, does that appear to be the narrative that
9 you see included in what was Exhibit 1, the Dreland's
10 report?

11 A Yes, it appears to be.

12 Q Okay. And when Mr. Euchner asked you
13 earlier about an officer stating that the checkpoint
14 was, was for -- I don't remember his exact language,
15 but he referred to stolen vehicles, undocumented
16 illegal aliens or drugs. Do you remember that?

17 A Yes.

18 Q Okay. And you said that that would be
19 wrong, if the officer said that?

20 A Right. The primary --

21 MR. EUCHNER: Objection, mischaracterizes
22 the previous testimony.

23 BY MR. FRAZIER:

24 Q Okay. Go ahead.

25 A The primary would be the sobriety checkpoint

1 itself, and it's likely that we will encounter other
2 activity to include, illegal activity to include
3 illegal alien entries, narcotics, and stolen vehicle
4 recoveries.

5 Q But that was not a primary purpose to your
6 knowledge?

7 A No, it was not.

8 Q You said that you had, you thought you had
9 driven through the checkpoint that was located
10 somewhere else on the -- within the boundaries that's
11 indicated in Exhibit 1?

12 A Yes.

13 Q That's Federal Route 15?

14 A Yes.

15 Q And but you did not drive through the one
16 that was on State Route 86 that day?

17 A Yes.

18 Q Is that correct?

19 A I did not. I did not.

20 Q Okay. And you had nothing to do with any of
21 the conversations with Mr. Bressi or any decision
22 ultimately to cite him; is that correct?

23 A No.

24 Q Is that correct?

25 A That's correct.

1 Q Okay. On what was marked as Exhibit 3 to
2 your deposition, which is an operation plan for
3 October 4th, 2003. First of all, that's almost a year
4 after the one involving Mr. Bressi, correct?

5 A Yes.

6 Q And that is not on -- is it on State Route
7 86?

8 A This one here, no. It's north of State
9 Route 86, the federal route there, it's Federal Route
10 41 there.

11 Q Okay. And where it refers to other agencies
12 involved, you were -- you had testified earlier that
13 there were three agencies who were checked, but to
14 your knowledge none of them participated?

15 A No, none of them participated.

16 Q Okay. What does it mean where it says other
17 agencies advised of celebration? See that line there,
18 agencies advised of celebration?

19 A Yes. That would just indicate that those
20 agencies that were checked there were advised of our
21 operation and our deployment in the event that we
22 needed assistance, then they could hopefully respond
23 to our calls for assistance there in the location
24 there.

25 And I actually went to that celebration

1 there and there was no other agencies there but our
2 staff there.

3 Q So is it routine, to your knowledge, to let
4 certain other agencies know that you are going to have
5 a sobriety checkpoint?

6 A Yes. So that again, if there's a need for
7 assistance there, that they are aware of it and know
8 the circumstances there and could hopefully respond to
9 our calls for assistance there.

10 Q Okay. Do you know who prepared what is
11 Exhibit 3? Is that indicated on here?

12 A Yes. This would have been prepared by the
13 division commander at the time, Lieutenant Michelle
14 Begay.

15 Q Okay. And this was not prepared by
16 Lieutenant Ford to your knowledge?

17 A No, this was not.

18 Q Do you know anything about the attempt to
19 respond to a subpoena for the operation plan in the
20 case of State verses Bressi, or any documents for the
21 state attorney? What -- do you know anything about
22 the attempts or non-attempts to respond to those?

23 A Yeah. As I recall there was attempts to get
24 documentation or information pertaining to the case to
25 Pima County courts in Ajo, that's all I recall.

1 Q Okay. Were you -- did you instruct anybody
2 not to provide an operation plan or other
3 documentation to the Pima County attorney?

4 A No, I did not.

5 Q Okay. And it was your decision to have the
6 roadblock on December 20th, 2002; is that correct?

7 A Yes.

8 MR. FRAZIER: I don't have anything further.
9 Thank you.

10 MR. FRANK: I don't have anything.

11 MR. EUCHNER: And I just have a couple of
12 follow-up questions.

13 FURTHER EXAMINATION

14 BY MR. EUCHNER:

15 Q Mr. Frazier was asking you about the Edmond
16 case and if you were aware of it.

17 Do you remember when it came out?

18 A No, I don't recall.

19 Q Do you remember if it had any sort of impact
20 on you as a policymaker when it did come out?

21 A As I recall there was -- I'm trying to think
22 of the summary rather than the details of any case law
23 for that matter, and it's pretty detailed reading
24 there and pretty technical in terms of
25 constitutionality in most cases, so I'm trying to

1 think of the summary there.

2 But essentially, as I recall,
3 unconstitutional to merely have a checkpoint for
4 contraband, as I recall.

5 Q If I told you that that decision came down
6 in the year 2000, would that sound about right?

7 MR. FRAZIER: Form.

8 THE WITNESS: Yeah, I guess. I mean, I
9 don't...

10 BY MR. EUCHNER:

11 Q And thereby be around the same time as
12 Lieutenant Shonk's memo of May 4th, 2000?

13 A Uh-huh.

14 Q Were any changes made to policies of running
15 a roadblock subsequent to the Edmond case coming out?

16 MR. FRAZIER: Form.

17 THE WITNESS: Nothing in writing, no.

18 BY MR. EUCHNER:

19 Q Anything in practice?

20 A Yeah, I would have to say yes. It just,
21 again, the -- the initial meaning for the sobriety
22 checkpoints being alcohol, and none of those other
23 questionings should, should occur.

24 Q Uh-huh.

25 A So it's probable cause leading up to

1 suspicion.

2 Q But in terms of the questions that officers
3 asked, was it still substantially similar to the May
4 4th, 2000 memo?

5 MR. FRAZIER: Form.

6 THE WITNESS: I don't -- I don't know. I,
7 I'm typically not on scene there so I --

8 (Interruption by court reporter.)

9 THE WITNESS: I typically have not been on
10 the scene there and could not answer.

11 BY MR. EUCHNER:

12 Q Were there any memos distributed
13 that updated the May 4th, 2000 memo?

14 A Not to my knowledge, no.

15 Q Okay. Do other agencies, state or federal,
16 show up at roadblocks without getting a call for
17 assistance?

18 A When they're summoned. To the best of my
19 knowledge when they are summoned, then they respond,
20 respond after that.

21 Q Do they ever come without being summoned?

22 A Oh, I'm sure they do.

23 MR. FRAZIER: Foundation.

24 THE WITNESS: I'm sure they do. We have tow
25 trucks that show up on scene without being summoned.

1 MR. HARRISON: I'm sorry, I didn't hear what
2 you said.

3 THE WITNESS: We have tow trucks that
4 occasionally show up on scene without being summoned
5 and, you know, anticipating vehicles.

6 MR. HARRISON: From who?

7 THE WITNESS: Tribal and non-tribal tow
8 companies.

9 MR. HARRISON: I mean, but who called them?

10 THE WITNESS: Nobody calls them, they show
11 up. They have knowledge -- because they drive through
12 a checkpoint and, oh, they've got a checkpoint going
13 on here, so then they show up a while later with, with
14 their tow truck and ready for a quick respond and
15 occasionally some ice cream.

16 MR. EUCHNER: In our field they're known as
17 ambulance chasers.

18 BY MR. EUCHNER:

19 Q In your opinion is it legal under state law
20 to run a wants and warrants of driver's licenses at
21 checkpoints?

22 MR. FRAZIER: Form.

23 THE WITNESS: In my opinion is it legal?

24 BY MR. EUCHNER:

25 Q To ask for a driver's license upon stopping

1 somebody and then run a wants and warrants check on
2 that.

3 MR. FRAZIER: Form.

4 THE WITNESS: Yes, in my opinion it is
5 legal.

6 MR. HARRISON: At checkpoints, is what --

7 THE WITNESS: At checkpoints, yes.

8 BY MR. EUCHNER:

9 Q Is it also legal under federal law, in your
10 opinion?

11 A I am not certain.

12 Q Is it also legal under tribal law, in your
13 opinion?

14 MR. FRAZIER: Again, form.

15 But go ahead and answer.

16 THE WITNESS: Yes, in my opinion under
17 tribal law, yes.

18 MR. EUCHNER: I don't think I have any
19 further questions.

20 Any follow-up?

21 MR. FRANK: No.

22 MR. FRAZIER: Read and sign.

23 MR. EUCHNER: Okay. This deposition is
24 concluded. Thank you very much.

25 (Deposition concluded at 12:36 p.m.)

