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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-N-297 (BNB)

DUNCAN DUWANE PHILP,

Plaintiff,

v.

KIRK G. BEAULIEU, and
DONALD L. ESTEP,

Defendants.

DEPOSITION OF DONALD L. ESTEP
AUGUST 28, 2002

VOLUME I

APPEARANCES:

FOR THE PLAINTIFF:

VINCENT C. TODD, ESQ.
143 Union Boulevard
Suite 900
Lakewood, Colorado 80228-1829
(303) 980-0922

FOR THE DEFENDANT:

PATRICIA GILBERT, ESQ.
Assistant County Attorney
100 Jefferson County Parkway
Golden, Colorado 80419-5577
(303) 271-8968

ALSO PRESENT:

Duncan Duwane Philp

1 PURSUANT TO PRETRIAL SCHEDULING ORDER and
 2 the Federal Rules of Civil Procedure, the above-entitled
 3 deposition was taken by the Plaintiff at 143 Union
 4 Boulevard, Suite 900, Lakewood, Colorado, on Wednesday,
 5 August 28, 2002, at 10:02 a.m., before Leslie Malecka,
 6 Registered Professional Reporter and Notary Public within
 7 Colorado.

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P R O C E E D I N G S

DONALD L. ESTEP,

having been first duly sworn, was examined and testified
as follows:

EXAMINATION

BY MR. TODD:

Q. Would you please state your name for the
record.

A. Donald L. Estep. E-s-t-e-p.

Q. And how are you employed?

A. I am a deputy sheriff with the Jefferson
County Sheriff's Department.

Q. How long have you been so employed?

A. 29 years, 8 months.

Q. What training did you have specific to your
position as a sheriff's deputy?

A. When I hired on the department, January 15,
'73, I had the basic Sheriff's Department Training
Academy. Which I completed. Where I became a certified
officer.

Q. What was your educational background at that
point?

A. High school plus a couple of credit hours of
college.

1 Q. What high school did you graduate from?

2 A. From? Thomas Jefferson, in Denver,
3 Colorado.

4 Q. What year?

5 A. '69.

6 Q. What college were those credit hours from?

7 A. Red Rocks Community.

8 Q. Have you completed any college degree since
9 that time?

10 A. No, sir.

11 Q. What's your current rank in the sheriff's
12 department?

13 A. Investigator.

14 Q. How long have you been an investigator?

15 A. Let me explain. This is my second time as
16 being an investigator. I was an investigator with the
17 sheriff's department back in the '70s. Then I was
18 reassigned to patrol. Then in 1990, Sheriff Beckham
19 changed my position from a sergeant to an investigator.
20 And I have been at the rank of investigator since
21 approximately January of 1990, to date.

22 Q. So when you transferred back to patrol, you
23 transferred back to patrol as a sergeant?

24 A. No. I transferred back to patrol as a
25 deputy sheriff.

1 Q. Okay. When were you promoted to sergeant?

2 A. Okay. Give me a moment. I have to work
3 this out.

4 Q. Sure.

5 A. Mar -- approximately March, April of 1984.

6 I was promoted to the rank of patrol sergeant.

7 Q. Now, within the hierarchy at Jefferson
8 County Sheriff's Department, the rank of patrol sergeant
9 would be a higher rank than investigator, correct?

10 A. Correct.

11 Q. Okay. Was there some reason for your
12 transfer back to investigator in 1990?

13 A. Yes, there was.

14 Q. What was that reason?

15 A. Okay. In August of '85, under Sheriff Bray,
16 I was transferred from patrol to the intelligence unit to
17 start an in-house narcotics unit. I worked in-house
18 narcotics from August of '85 until 1990, when Sheriff
19 Beckham became sheriff. January of '90, excuse me.
20 Sheriff Beckham did some realignment at that time.

21 Everybody in intelligence was sergeants.

22 And his belief was if you were a sergeant, you would be
23 sergeanteeing somewhere. If you were an investigator, you
24 would be investigating somewhere. So he came down to us
25 and says, You have your option. Every one of you

1 qualified sergeants let me know where you want to
2 supervise, and I will transfer you."

3 "Or, I will freeze your salary. I will
4 change your grade, and you'll stay doing what you're
5 doing." I elected to stay in intelligence, as an
6 investigator, at the same rate of pay, until such time as
7 the other deputy sheriffs reached my level -- level of
8 pay.

9 Q. Does that mean that as he realigned the
10 investigations that there were no sergeants supervising
11 teams in investigation? That the investigative
12 supervisors were all lieutenant or above?

13 A. No. I'm talking about intelligence, not
14 investigations. I wasn't in investigations at that time.

15 Q. Okay.

16 A. Of the sergeants that were there -- and he
17 said one of you can apply for sergeant of this unit. So
18 of the existing intelligence personnel, some of those
19 applied to that position or other positions. I elected
20 to maintain what I was doing, where I was at. And I just
21 changed my grade from a sergeant to investigator.

22 Q. So for what years -- for what years was your
23 assignment intelligence?

24 A. August of 1985 to present.

25 Q. And in December of 2001, you commanded an

1 intelligence unit?

2 A. My immediate supervisor was Sergeant Ken
3 Ester.

4 Q. And who was his supervisor?

5 A. I believe it was Capt. Walcher at the time,
6 and Chief Jeff Shraeder. And there was a period of time
7 there that intelligence, specifically Sgt. Ester,
8 reported to Chief Shraeder, not Capt. Walcher.

9 Q. So during that period of time, intelligence
10 was -- intelligence was a separate command, up to the
11 level of captain from investigations?

12 A. I'm sorry, would you ask that -- I didn't
13 understand your question.

14 Q. Intelligence and investigations have
15 separate captains?

16 A. No, sir.

17 Q. Okay. So, the highest ranking officer who's
18 in intelligence would be the sergeant. And the Sergeant
19 then answers to the investigations captain?

20 A. For a period of time it was investigations
21 captain. For a period of time he answered straight to
22 the division chief, Jeff Shraeder. And now he answers to
23 a different division chief.

24 Q. Okay. Is that because of a realignment of
25 divisions or realignment of Division Chief Shraeder's

1 responsibilities?

2 A. It's going to take two statements to answer
3 that question. One, Division Chief Shraeder has since
4 transferred. And two, there was a period of time that
5 Sgt. Ester advised he was reporting to the captain, or a
6 division chief, for reasons that I don't know.

7 Q. So from the time of this -- at the time that
8 we're specifically concerned with, in December of 2001,
9 the intelligence unit was at that point under
10 investigations, or was it reporting directly --

11 A. On a flow chart, intelligence is under
12 investigations. But reporting responsibilities have
13 changed. At times they were to a captain, or at times
14 there were to a division chief. And now, thinking, we've
15 had a change -- the possibility existed that was under
16 Division Chief Ray Fler. I can't remember when Chief
17 Fler came in, when Chief Shraeder rotated out. But
18 those are my two last -- Chief Fler, Ray Fler, is my
19 present division chief.

20 Q. Okay. Would you spell Fler for the court
21 reporter?

22 A. F-l-e-e-r. So I don't remember if it was
23 Fler or Shraeder.

24 Q. Directing your attention to 14 December
25 2001, did you have some involvement in an operation

1 dealing with a protest by the Tyranny Response Team in
2 Southern Jefferson County?

3 A. Yes, sir.

4 Q. What was the nature of the operation of the
5 sheriff's department that day with respect to the
6 protest?

7 A. To make certain the First Amendment rights
8 of the TR team were not violated. And to make certain
9 that the rights of the neighborhood, the citizens
10 therein, were not violated.

11 Q. Who had command of the sheriff's operation
12 that day with respect to the TRT?

13 A. I don't know. And to add -- it would have
14 been under procedure of the sheriff's department. The
15 ultimate command would have been a patrol commander. I
16 don't know who the patrol commander was that shift.

17 Q. Who arranged for the patrol response as part
18 of the operation dealing with the TRT that day?

19 A. Lt. Teresa Meyer.

20 Q. That's two lieutenants? Teresa and Meyer?

21 A. No. Terry Meyer. Teresa --

22 Q. Teresa?

23 A. -- Teresa Meyer. I believe it's M-e-y-e-r.

24 Q. How did that come about?

25 A. We had previous meetings, discussions about

1 the event.

2 Q. When was the first meeting?

3 A. It was the early part of December.
4 Somewhere around the 4th, 5th, or 6th. And it was at the
5 District Attorney's office.

6 Q. Who was present?

7 A. Senior Deputy District Attorney Mark
8 Pautler. Deputy District Attorney Noel Blum Lt. Meyer,
9 Sgt. Ester, myself, County Attorney Lily Oeffler.

10 Q. Was that in response to some intelligence
11 memorandum that had been circulated with respect to the
12 event?

13 A. No, sir.

14 Q. Who arranged the meeting?

15 A. Either Sgt. Ester or Lt. Meyer, at my
16 request.

17 Q. Did you provide any briefing materials to
18 those at the meeting?

19 A. No, sir. Just gave a verbal overview.

20 Q. To the best of your recollection, what did
21 you tell them in the overview?

22 A. I'd received information that the Tyranny
23 Response Team was going to have a candlelight vigil --
24 I'm not sure if I knew the date at that point or not --
25 at Mr. Mauser's residence. I explained who Mr. Mauser

1 was. Gave some brief history that I -- that I had on the
2 Tyranny Response Team. And asked for some guidance from
3 those attendants.

4 Q. To the best of your recollection, what did
5 you recite as a brief history for the Tyranny Response
6 Team?

7 A. That they are a First Amendment group. They
8 advertise they're one of the most outgoing groups.
9 Members of their organization have had confrontations
10 with law enforcement. Indications are they are going to
11 protest with candlelights, bullhorns, signs. I think
12 that's --

13 Q. Did you elaborate on this confrontation with
14 law enforcement?

15 A. I explained that Mr. Philp had been arrested
16 by the Denver Police Department, recently, in a
17 confrontation in Denver where President Bush was
18 speaking. And the Tyranny Response Team was there in
19 protest. And Mr. Philp left the First Amendment area and
20 refused to go back, and was subsequently arrested.

21 Q. So the only explanation you gave with
22 respect to individuals within the organization having
23 confrontations related to Duncan Philp?

24 A. I probably -- I mean, I don't remember. I
25 identified another TRT member by the name of Triston

1 Trebber. I believe it's T-r-e-b-b-e-r. Who afforded
2 some information to the Lakewood Police Department.

3 Q. What nature of information?

4 A. Kind of summarized the facts which I
5 afforded you a copy of. I mentioned that I believe Bob
6 Glass, the owner of Paladin Arms, is probably in the
7 hierarchy of the Tyranny Response Team. And I suggested
8 that I contact Mr. Glass and/or someone else in the
9 Tyranny Response Team to facilitate a meeting to discuss
10 this event.

11 Q. Was it decided that you should contact
12 someone in TRT to discuss the event?

13 A. Yes, sir.

14 Q. Who did you contact in TRT to discuss the
15 event?

16 A. I made several attempts. No one ever
17 returned my calls. No one ever spoke with me on point
18 about it. I contacted Mr. Trebber, Triston Trebber. I
19 made numerous attempts to contact Mr. Glass. I believe I
20 contacted a gentleman, Zeig -- Zeigenthaler (phonetic).
21 I know him by Zeig, Z-e-i-g.

22 I contacted him at work one day. I was
23 advised he's not the spokesperson for Tyranny Response
24 Team. So I was never able to contact anyone to set up
25 any type of liaison.

1 Q. Did you attempt any e-mail to the TRT's site
2 or to its webmaster?

3 A. No, sir.

4 Q. Did you attempt any e-mail to Mr. Philp?

5 A. No, sir.

6 Q. Did you attempt any written communication
7 with any individual from the TRT?

8 A. No, sir.

9 Q. Were you advised at your first meeting that
10 the planned protest would require any level of county
11 permit?

12 A. That was discussed. And I was advised they
13 would get a reading on this and get back to me.

14 Q. At some point did somebody advise you that a
15 permit was required?

16 A. I'm trying to remember. Because there was a
17 lot of discussion about if that -- if a permit was
18 actually required for down there, unlike the Columbine
19 anniversary event the previous year. My memory is,
20 within discussions, I was to refer to the personnel doing
21 the protest to contact the County Attorney's office to
22 determine if this event fell within the County's policy
23 for permits.

24 Q. Were you provided a copy or reference to any
25 county ordinance or policy with respect to permits?

1 A. No, sir.

2 Q. So is it your testimony that you were
3 directed -- that part of liaisioning was to tell the
4 protestors they needed to contact the county attorney to
5 determine whether or not they needed a permit?

6 A. Yes, sir.

7 Q. And you weren't provided any basis and
8 authority to direct these individuals that they needed to
9 discuss their protest with the county attorney, were you?

10 A. I'm sorry?

11 Q. Nobody cited you to any authority that
12 authorized you to direct them that they needed to speak
13 to the county attorney about whether or not they needed a
14 permit, correct?

15 A. Correct.

16 Q. And throughout the course of your dealing
17 with this particular protest, you were never provided any
18 materials by the county attorney or cited to any county
19 ordinance that would have required a permit, correct?

20 MS. GILBERT: Objection. Mischaracterizes
21 prior testimony.

22 MR. TODD: The objection is noted.

23 Q. (By Mr. Todd) You may answer the question.

24 A. Would you ask the question again, please?

25 MR. TODD: Would you read back the question,

1 please.

2 (The last question was read back.)

3 A. Correct.

4 Q. (By Mr. Todd) So on what basis did you
5 believe directing protestors to contact the county
6 attorney would be lawful?

7 A. The County Attorney's -- Jefferson County
8 Attorney's Office handles zoning violations, permits,
9 within the county. And they enforce those violations.

10 Q. Did you have some reason to believe that a
11 county ordinance would have required a permit where there
12 was no use of parks, and no obstruction of a public
13 right-of-way?

14 A. I'm not familiar with all of the zoning
15 regulations that the County Attorney's office has.

16 Q. Well, the zoning regulations that you are
17 referring to are matters of public record, correct?

18 A. I don't know.

19 Q. You believe it's possible that there are
20 some regulations or policies of Jefferson County that are
21 not matters of public record?

22 A. No.

23 Q. Was there some reason that the County
24 Attorney's office was not going to send a letter if they
25 had some concern about whether or not a permit was

1 required?

2 A. I can't speak for what the County Attorney's
3 office was going to do.

4 Q. When was the next meeting with respect to
5 the sheriff's department's response to the candlelight
6 vigil?

7 A. I believe it was around December 11.

8 Q. Where was that meeting held?

9 A. District Attorney's office.

10 Q. Who was present?

11 A. Senior Deputy District Attorney Noel Paut --
12 excuse me, Mark Pautler; Noel Blum, for a short period of
13 time; Sgt. Ester; and, I think, Lt. Meyer was there.

14 Q. And yourself?

15 A. Yes, sir.

16 Q. No representative from the County Attorney's
17 office?

18 A. That's correct, sir.

19 Q. What was discussed at that meeting?

20 A. The District Attorney's office was going to
21 prepare a guide for possible violations of Colorado
22 Revised Statutes that may apply. I had discussed my
23 attempts to facilitate the meeting with a member of the
24 TRT, which weren't successful at that point.

25 Q. Is that it?

1 A. I believe so.

2 Q. Was a course of action determined?

3 A. The sheriff's department -- yes. The
4 sheriff's department would have a briefing on the day of
5 the event. The directed operations unit and members of
6 the SWAT team would facilitate monitoring of the event,
7 along with members of the sheriff's department
8 intelligence section.

9 Q. But no formal determination had been made as
10 to who would be the event commander?

11 A. Whoever the patrol commander was that day on
12 duty. Sgt. Ester was my immediate supervisor. He was on
13 the scene.

14 Q. Sergeant Ester was present at the -- at the
15 protest?

16 A. Yes, sir.

17 Q. Were there any other sergeants present at
18 the protest?

19 A. No, sir.

20 Q. Any other command personnel?

21 A. Not on site.

22 Q. Was there a written briefing document
23 prepared by the District Attorney's office?

24 A. Yes, sir.

25 Q. Is that one of the documents that you

1 produced?

2 A. Yes, sir. That's right there.

3 MR. TODD: Can I have that marked?

4 (Deposition Exhibit 1 marked for
5 identification.)

6 Q. (By Mr. Todd) I'm handing you Deposition
7 Exhibit 1. Is that the document?

8 A. It is a photocopy of it, yes, sir.

9 Q. Is that the complete document?

10 A. Yes, sir.

11 Q. Do you know who prepared this document?

12 A. No, sir.

13 Q. Do you know how this document was received
14 by the sheriff's department?

15 A. Yes, sir.

16 Q. How was it received?

17 A. I received that from Mark Pautler.

18 Q. On what date?

19 A. December 14.

20 Q. Were there any other written briefing
21 materials prepared with respect to the vigil?

22 A. No, sir.

23 Q. Were copies of this document made for the
24 deputies involved?

25 A. Yes, sir.

1 Q. And was this the only document distributed
2 to the deputies involved?

3 A. That was -- I may have distributed a
4 photograph of Mr. Philp.

5 Q. Why would you have distributed a photograph
6 of Mr. Philp?

7 A. I wanted to advise the deputies that if he
8 was seen driving he should be contacted because he did
9 not possess a valid Colorado driver's license.

10 Q. On what did you base that?

11 A. Motor vehicle checks with the Department of
12 Motor Vehicle.

13 Q. Didn't your search show that he held a valid
14 license from another state?

15 A. At that point, no, sir.

16 Q. Did you check anything in terms of other
17 states?

18 A. No, sir.

19 Q. Did you have any reason to believe that he
20 did not possess a valid license from another state?

21 A. No, sir.

22 Q. You were aware that one can lawfully operate
23 a motor vehicle in this state, if they are validly
24 licensed in another state, and they fall under exceptions
25 to licensing based upon residence, correct?

1 A. Yes, sir.

2 Q. Did you have any information that indicated
3 that Duncan Philp was required to be declared a legal
4 resident of the state of Colorado with respect to motor
5 vehicle licensing?

6 A. Yes, sir.

7 Q. What was that information, and what was its
8 source?

9 A. My information was based on his criminal
10 history. That he qualified as a resident of the state of
11 Colorado. And his contacts with, for example, Denver
12 Police Department.

13 Q. What was it in the Denver Police Department
14 contacts that would establish that he was required to
15 have a Colorado motor vehicle operator's license?

16 A. His residency, which he had provided to
17 Denver Police Department on previous occasion.

18 Q. Did he provide that on some form that
19 indicated it was his legal residence or merely his local
20 address?

21 A. I don't know.

22 Q. Did you review the forms?

23 A. Yes, I did.

24 Q. So there's some document from the Denver
25 Police Department that you reviewed that indicated that

1 Mr. Philp was showing a residence in the state of
2 Colorado?

3 A. Yes, sir.

4 Q. Is that in the documents that you produced?

5 A. Yes, sir.

6 Q. Would you locate that document for us,
7 please.

8 A. Would you like me to pull the paper
9 specifically out of this that have his address on that?
10 Or point you out to the documents and -- because some of
11 the documents are page 1 of 5. Or I can bring out page 3
12 of this document, and page 4 of this document.

13 Q. Locate the document. We will have the
14 document marked, and we will talk about the document?

15 (Deposition Exhibit 2 marked for
16 identification.)

17 Q. (By Mr. Todd) I'm handing you Exhibit
18 No. 2. What is that document?

19 A. It's entitled, "Arrest Record Police
20 Department - Denver, Colorado." Page 1 dated December
21 11, 2001.

22 Q. Does anything in that document indicate
23 Duncan Philp provided an address as his permanent
24 address, or does it merely indicate that he provided an
25 address that was a local address?

1 A. On page 2 of this document has Mr. Philp --
2 and it has an address, 305 Magnolia, Fort Collins,
3 Colorado.

4 Q. Is there anything that indicates what the
5 status of that address is?

6 A. No, sir.

7 Q. Is there anything in that document that
8 indicates that Mr. Philp is not validly licensed to
9 operate a motor vehicle based upon an out-of-state
10 license?

11 A. No, sir.

12 (Deposition Exhibit 3 marked for
13 identification.)

14 Q. (By Mr. Todd) I'm handing you Exhibit
15 No. 3. Is that one of the documents that you just
16 identified as being the source of the information?

17 A. Yes, sir.

18 Q. What is that document?

19 A. This document is "Arrest Record Police
20 Department," Denver, Colorado, page 1 of 1, dated
21 November 11, 2001. Name: Duncan Philp. Middle name
22 Duwane, D-u-w-a-n-e.

23 Page 2, it has entry 8-15-2001 arrest. Same
24 individual. And an address 305 West Magnolia, Fort
25 Collins, Colorado.

1 Q. Is there anything in that document that
2 indicates the status of that address?

3 A. No, sir.

4 Q. Is there anything in that document that
5 indicates that Mr. Philp is not able to lawfully operate
6 a motor vehicle based upon an out-of-state driver's
7 license?

8 A. No, sir.

9 Q. Is there anything in that document that
10 indicates that Mr. Philp did not qualify, even if he had
11 a full-time Colorado address, under student or armed
12 forces exceptions?

13 A. No, sir.

14 Q. Okay?

15 (Deposition Exhibit 4 marked for
16 identification.)

17 Q. (By Mr. Todd) I will hand you what has been
18 marked as Deposition Exhibit No. 4. Can you identify the
19 pages of that exhibit?

20 A. Yes, sir. The first page is -- top page
21 it's dated November -- excuse me -- 12-11-01. The time
22 on it is 10:35:03. Print requested by terminal DP26.
23 It's a Colorado CCH record. And the last name Philp.
24 And it has several addresses listed.

25 Q. Okay. Next page.

1 A. Excuse me?

2 Q. Go through each page, please.

3 A. The next page, page 2 of this thing, on the
4 top is says, "Additional." And there are one, two,
5 three, four, five, six additional addresses.

6 The next page is a State of Colorado
7 driver's license record. It has a PO Box 4161, Denver,
8 Colorado, as an address.

9 The next page is a -- it's from DMV. It's a
10 driver's license information. It has an address of 305
11 West Magnolia, Fort Collins, Colorado.

12 Q. What year?

13 A. Issued 11-9 of 1984.

14 Q. What does it show for the status of that?

15 A. Expired.

16 Q. Okay.

17 A. And the last document is from motor vehicle.
18 It's reference driver's license. It has an address of
19 Box 811, Fort Collins, Colorado.

20 Q. What's its date?

21 A. The report date is 12-11 of '01. It does
22 not have a date on it. It has a license number, but no
23 date.

24 Q. Turning to the page with the numerous
25 addressed on it, are all of those addresses within the

1 state of Colorado?

2 A. Yes, sir.

3 Q. Did you ever attempt to run a multi-state
4 search with the name and date of birth for valid
5 licenses?

6 A. No. I did not.

7 Q. Are Exhibits 2, 3, and 4 the totality of the
8 documents related to your belief that Mr. Philp was not
9 authorized to operate a motor vehicle in the state of
10 Colorado?

11 A. No, sir.

12 Q. Okay. What other documents?

13 (Deposition Exhibit 5 marked for
14 identification.)

15 A. Those also, sir.

16 (Deposition Exhibit 6 and 7 marked for
17 identification.)

18 Q. (By Mr. Todd) I'm handing you what has been
19 marked as Exhibits 5, 6, and 7. Are those the additional
20 documents that you have identified as being the basis of
21 your belief that Mr. Philp was not authorized to operate
22 a motor vehicle in the state of Colorado?

23 A. Yes. And, in one of the previous exhibits,
24 there's also another document which I didn't identify --
25 identify which I think falls within this answer.

1 Q. Let's go back to that. Which document?

2 A. Document No. 4, sir.

3 Q. Exhibit No. 4. Are you referring to the
4 last page of the exhibit, or the second to the last page?

5 A. Second to the last page.

6 Q. What is that?

7 A. His driving history.

8 Q. Which shows what?

9 A. His dates of citations in Colorado for
10 various traffic offenses. Including drove without valid
11 driver's license.

12 Q. Okay. Does that show any restraint action
13 by the department?

14 A. No, sir.

15 Q. So, notwithstanding that, you knew that the
16 Colorado Department of Revenue Division of Motor Vehicles
17 had not initiated any suspension or restraint on his
18 privilege to operate a motor vehicle, correct?

19 A. Correct.

20 Q. And you knew that one can lawfully operate a
21 motor vehicle in this state and maintain an address in
22 this state under certain circumstances with -- based upon
23 the privilege granted by another state, correct?

24 A. Yes, sir.

25 Q. And did any of the documents that you've

1 identified indicate that Mr. Philp was continuously
2 residing in the state of Colorado and, therefore, under
3 Colorado law would even have to fall into an exempt
4 category with respect to continuing to operate a motor
5 vehicle based upon an out-of-state privilege?

6 A. No, sir.

7 Q. You're aware that many individuals have
8 multiple residences, correct?

9 A. Yes, sir.

10 Q. And the State of Colorado does not require
11 individuals who have vacation homes in the state, for
12 example, to have Colorado licenses, correct?

13 A. Yes, sir.

14 Q. That's correct? That's your understanding?

15 A. My understanding is if you are a permanent
16 resident of the state for 30 days, 45 days, or something
17 of that nature. If you are gainfully employed in the
18 state, then there are requirements by the state that
19 require you to have a valid driver's license.

20 Q. Were you aware of any employment Mr. Philp
21 had within the State of Colorado?

22 A. No, sir.

23 Q. Were you aware of any continuous period of
24 30 days or longer that Mr. Philp had resided within the
25 State of Colorado based on Mr. Philp's driving history,

1 arrest history, and contacts?

2 A. I was of the belief Mr. Philp was a resident
3 of the state of Colorado.

4 Q. Now, that would be then based upon Exhibits
5 No. 2 through 7?

6 A. Yes, sir.

7 Q. Now, Exhibits 2 through 7 are then the
8 documents upon which your review caused you to conclude
9 Mr. Philp was a resident of the state of Colorado and not
10 lawfully operating a motor vehicle within the state,
11 correct?

12 A. Yes.

13 Q. Okay. Let's go through and identify the
14 other exhibits.

15 A. Exhibit No. 5 is a Department of Motor
16 Vehicle document obtained by Sergeant Ken Ester on
17 December 11. The first page is a request of a driver's
18 license photo. And it indicates that the photo has been
19 purged from the files.

20 Q. Let's hang on a second. Doesn't that
21 indicate that it's a request being made in the course of
22 a felony investigation?

23 A. I don't know. Yes.

24 Q. What felony was being investigated at the
25 time that you were -- the Jefferson County Sheriff's

1 Department represented to the State Department of Revenue
2 that it needed the photograph for law-enforcement
3 purposes?

4 A. Fraud.

5 Q. What fraud was being investigated?

6 A. This is obtained by Sgt. Ester. Anything I
7 say would be speculation.

8 Q. Well --

9 A. I don't know why.

10 Q. All right. You've produced today all of the
11 documents that the Department of the Jefferson County
12 Sheriff's Department, with respect to Duncan Philp, at
13 least as they existed on the 14 day of December of 2001,
14 correct?

15 A. Correct.

16 Q. So, based upon your search, you have no
17 reason to believe that there was an investigation of
18 Mr. Philp related to any felony fraud in December -- or
19 at least up to December 14 of 2001, correct?

20 A. No, sir.

21 Q. That is correct? Or are you saying that's
22 incorrect?

23 A. That's incorrect.

24 Q. Okay. Then these documents establish that
25 there was some investigation into Mr. Philp, based on a

1 complaint-related felony fraud as of 14 December 2001?

2 A. No, sir. This document is dated December
3 12, 2001.

4 Q. Okay. And your production of documents, by
5 the limiting stipulation that we entered into, would be
6 all documents in the department up to the relevant date
7 here, which is December 14 of 2001, correct?

8 A. Yes, sir.

9 Q. And so what documents that you have produced
10 establish that there was any basis to say that there was
11 a fraud investigation -- felony fraud investigation
12 involving Mr. Philp, as of the time that representation
13 was made to the Department of Revenue Division of Motor
14 Vehicles in order to obtain records?

15 A. None.

16 Q. And the purpose that was set forth, that
17 being an -- felony investigation for fraud, was in
18 response to a request from the Division of Motor Vehicles
19 that is necessary for them to provide information under
20 certain law-enforcement exceptions, correct?

21 A. Correct.

22 Q. So that representation that there was a
23 felony fraud investigation was made to a public official,
24 with the intent to influence a public agency, correct?

25 A. Not that I know of.

1 Q. You don't believe that that representation
2 was made with the intent to influence the official into
3 providing the information requested?

4 A. No, sir.

5 Q. So the representation that's made, in terms
6 of the request is part of a felony fraud investigation,
7 was simply fortuitous?

8 A. No, sir.

9 Q. Then why was the representation made?

10 MS. GILBERT: Object. Lack of foundation
11 for this witness.

12 Q. (By Mr. Todd) Have you made requests to the
13 Department of Motor Vehicles for these types of records?

14 A. Yes, sir.

15 Q. Does the Department of Motor Vehicles
16 require you in specifying a law-enforcement purpose to
17 specify the nature of the investigation?

18 A. For certain documents, yes, sir.

19 Q. In order to obtain the documents that were
20 requested by Exhibit 5, in your experience, does the
21 Department of Motor Vehicles require you to specify a
22 specific law-enforcement purpose?

23 A. Only for a photograph, sir.

24 Q. And a photograph is what was being requested
25 on the first page of Exhibit 5, isn't it?

1 A. Yes, sir.

2 Q. So the representation to the sergeant of the
3 executive director of the Colorado Department of Revenue,
4 as to the nature of the investigation, was necessary in
5 order to obtain the information that was being requested
6 by Sgt. Ester, correct?

7 A. Yes, sir.

8 Q. And to your knowledge, there was no felony
9 fraud investigation of Mr. Philp, in place, on the date
10 that that request was made, correct?

11 A. To my knowledge, there was none.

12 Q. And your understanding of the law is that
13 making a false statement to a public official with the
14 intent to influence an official action constitutes a
15 Class 4 felony under Colorado law, isn't it?

16 A. If you are quoting it -- I don't know the
17 statute.

18 Q. You know that it's a crime to make a false
19 statement to a public official in order to influence an
20 official act, don't you?

21 A. Yes, sir.

22 Q. The information that you have in front of
23 you with, respect to Exhibit No. 5, would indicate that
24 Sgt. Ester probably made a false statement to a public
25 official in order to influence a public agency with

1 respect to obtaining records as to the plaintiff,
2 correct?

3 MS. GILBERT: Objection. Mischaracterizes
4 the prior testimony.

5 MR. TODD: Thank you. The objection is
6 noted.

7 Q. (By Mr. Todd) You can answer the question.

8 A. No, sir. Because I do not know what
9 Sgt. Ester was doing at that time. Sgt. Ester may have
10 made an investigation that I was not aware of.

11 Q. Are you testifying that the production of
12 documents that you have made, pursuant to the subpoena
13 that was issued to the sheriff's office, may be
14 incomplete? And there may have been investigations in
15 place of Mr. Philp, as of the date of protest, in which
16 documents have been withheld?

17 A. No, sir.

18 Q. Well, if you've produced all of the
19 documents that relate to Mr. Philp as of December 14 of
20 2001, how can Sgt. Ester have had a fraud investigation
21 with respect to Mr. Philp in place on December 12 of
22 2001?

23 MS. GILBERT: Objection. Calls for
24 speculation.

25 Q. (By Mr. Todd) Sir, you were designated to

1 provide the materials pursuant to the subpoena duces
2 tecum, correct?

3 A. Yes, sir.

4 Q. And that subpoena duces tecum required the
5 production of all documents in the possession of the
6 sheriff's department with respect to Duncan Philp, at
7 least by agreement as they existed on 14 December of
8 2001, correct?

9 A. Yes, sir.

10 Q. Consistent with the regulations and policies
11 of the Jefferson County Sheriff's office, could an
12 investigation of an individual for a felony be in place
13 with there being no documents indicating on what basis
14 there was belief that a crime had been committed?

15 A. No, sir.

16 Q. Wouldn't there have to be an initiating
17 report?

18 A. Yes, sir.

19 Q. Have you produced any initiating report,
20 with respect to any felony fraud, in your production of
21 documents with respect to Mr. Philp?

22 A. No, sir.

23 Q. Have you produced any ongoing report that
24 indicates that at any point in the course of any
25 investigation of a felony fraud that Mr. Philp's name was

1 mentioned or it was determined that he was a witness or a
2 suspect?

3 A. No, sir.

4 Q. Do you therefore have any reason to believe
5 that there was an ongoing investigation of a felony fraud
6 that related to Mr. Philp, on the 12 day of December
7 2001, when the request that is Exhibit No. 5 was made to
8 the Colorado Department of Revenue Division of Motor
9 Vehicles?

10 A. No, sir.

11 Q. Then you have no reason to believe that the
12 representation that's made on the face of Exhibit No. 5
13 is accurate with respect to the purpose of the document
14 being sought, correct?

15 A. No, sir. That's not correct.

16 Q. What basis do you have to believe that the
17 representation made with respect to the purpose of the
18 document sought in Exhibit No. 5 was, in fact, correct?

19 THE DEPONENT: Would you repeat that
20 question, please.

21 (The last question was read back.)

22 A. The document itself, Sgt. Ester made a
23 request. Sgt. Ester put that down.

24 Q. (By Mr. Todd) You have reviewed, as the
25 representative of the Jefferson County Sheriff's

1 Department, all of the department's documentation related
2 to Mr. Philp as of the time, at least, two days after
3 that request, correct?

4 A. No, sir.

5 Q. Are you telling us that you are not in the
6 deposition to say you produced the complete set of
7 documentation with respect to Mr. Philp as requested in
8 the subpoena to the Jefferson County Sheriff's office?

9 A. I provided documents that were in my care,
10 custody, and control. I am not a member of the records
11 section. I do not know what, if any, records checks were
12 done at the sheriff's department. That is not my
13 function.

14 Q. So it's your testimony that the documents
15 that you have produced do not necessarily comply with any
16 and all documents relating to Duncan Duwane Philp, date
17 of birth 8-22-1957, in possession of the Jefferson County
18 Sheriff's office, including any investigative materials
19 provided by any other agencies?

20 A. The documents that I've provided, are the
21 documents that were in my -- that were my documents. I
22 did not conduct a records check. I do not know if there
23 are other documents in records. That is not . . .

24 MR. TODD: It was my understanding, when we
25 combined the records production into this deposition,

1 that that was because this witness was producing
2 documents pursuant to the subpoena.

3 MS. GILBERT: Yes. May I speak with my
4 client for a moment?

5 MR. TODD: Yes, you may.

6 (Thereupon, the deponent consulted with
7 counsel off the record from 11:17 a.m. to 11:23 a.m.)

8 MR. TODD: Back on the record.

9 MS. GILBERT: It was my intent to produce
10 all of the records that you requested in subpoena. I
11 have realized now that I thought Don Estep was going to
12 contact records and do a thorough check. He thought I
13 was going to do that.

14 That portion of what we should have done to
15 produce all the records fell through the cracks. We put
16 in a phone call. We are getting those documents as soon
17 as we can. I apologize.

18 MR. TODD: Okay. Is there any indication
19 that we are going to have them before we would normally
20 conclude his deposition today? Or --

21 MS. GILBERT: Well, two things need to
22 happen: I need to get them. I need to review them. I
23 cannot tell you when that's going to happen.

24 MR. TODD: Okay. Let's finish with what we
25 can finish with respect to Mr. Estep. And if possible --

1 I don't know how witnesses schedules work out. We will
2 take a look at where we are when we take Mr. Philp's
3 deposition tomorrow.

4 MS. GILBERT: I hope by the end of
5 Mr. Philp's deposition we would be in a position, if you
6 are available to continue the deposition.

7 MR. TODD: Okay. All right. Thank you.

8 MS. GILBERT: I apologize.

9 Q. (By Mr. Todd) Now, you did not make a
10 request for original documents from any of the agencies
11 with respect to booking information on Mr. Philp,
12 correct?

13 A. Correct.

14 Q. So none of the documents that you reviewed
15 indicated what Mr. Philp was presenting for ID, or what
16 he indicated was his permanent address, whether it was a
17 permanent address or a mailing address that was being put
18 into the typed records that you have referred to that are
19 Exhibits 2 through 7, correct?

20 A. Yes, sir.

21 Q. Now, we have gone through Exhibit No. 5.
22 What are Exhibits 6 and 7?

23 A. We got through page 1 of number 5. Page
24 2 -- page 2 is Mr. Philp's criminal history. Page 3 is
25 continuation of his criminal history. Page 4 is -- I

1 don't know what it is. Page 5 is his -- State of
2 Colorado driving record for Mr. Philp. As well as
3 number 6 --

4 Q. What's Exhibit No. 6?

5 A. Number 6 is criminal history by receipt from
6 the Denver Police Department on Mr. Philp. And Number 7
7 is a portion of that criminal history.

8 Q. Now, you were present at a motions hearing
9 that was held in the People versus Duncan Philp case that
10 was initiated by summons issued by one of the patrol
11 deputies on December 14, 2001. That hearing occurred in
12 Judge Hoppin's division, Jefferson County Court, correct?

13 A. Yes, sir.

14 Q. Now, prior to that hearing, had you provided
15 the district attorney with copies of any of the documents
16 that are in Exhibits No. 2 through 7 with respect to your
17 basis for believing Mr. Philp was not authorized to
18 operate a motor vehicle pursuant to the New Mexico
19 license that he presented on December 14 of 2001?

20 A. No, sir.

21 Q. Did you have discussions with the District
22 Attorney's office with respect to defense request for
23 documents relating to investigation into Mr. Philp,
24 probable cause for the stop?

25 A. Yes, sir.

1 Q. Had they requested documents from you in
2 that regard?

3 A. No, sir.

4 Q. So, it's your testimony that Ms. Retsek,
5 that's Carol Retsek, deputy district attorney, never
6 discussed with you if there was additional documentation
7 that should be provided to the defense in response to
8 their specific request for any and all documents that
9 related to the basis for the stop?

10 A. Yes, sir.

11 Q. Didn't you have a meeting with Ms. Retsek
12 the morning of the hearing in one of the conference rooms
13 off of the duty division?

14 A. Yes, sir.

15 Q. Did she discuss with you that there was a
16 defense motion for sanctions for failure to provide
17 discoverable material under Rule 16?

18 A. Yes, sir.

19 Q. Did you, in response to that discussion,
20 tell her that you had other documents that she had not
21 been provided?

22 A. No, sir.

23 Q. Why didn't you?

24 A. We -- the discussion was about -- excuse
25 me -- about a request for some audiotapes. Dispatch

1 communicatoins tapes. We discussed those tapes.

2 Q. You weren't aware that the request for
3 sanctions went beyond the audiotapes? You were aware
4 that you had investigative materials that related to the
5 basis for the stop that hadn't been turned over to the
6 district attorney, weren't you?

7 A. At that point, no, sir. I didn't realize
8 they would be classified as investigative materials.

9 Q. You knew that one of the charges was that
10 Mr. Philp drove a motor vehicle without a valid driver's
11 license, correct?

12 A. Yes, sir.

13 Q. And you knew that that charge was dependent
14 upon establishing he was a Colorado resident and required
15 to possess a Colorado license, correct?

16 A. Yes, sir.

17 Q. So you knew that any and all documents that
18 related to your claim that he was a Colorado resident
19 were, in fact, materials required to be provided under
20 the Brady standard, correct?

21 A. No, sir. I didn't know that at that time.

22 Q. Are you telling us that in your 29 years as
23 a law enforcement officer, that it hasn't been made clear
24 to you by the various district attorneys that have served
25 in the First Judicial District during that period of

1 time, that they are required to provide any and all
2 materials relating to the investigation to the defense,
3 or provide an explanation to the Court for the request
4 for protective order as to why they are not being
5 provided?

6 A. I thought in traffic matters the summons
7 stood on its own.

8 Q. Was there some briefing that you were
9 provided in the course of your years with the sheriff's
10 department that told you that a criminal traffic matter
11 was not subject to the same procedural safeguards and
12 constitutional protections that all other criminal
13 charges are subject to?

14 A. No, sir.

15 Q. Is it your testimony that Ms. Retsek never
16 discussed with you that the defense was claiming that it
17 was entitled to all materials that related to reasonable
18 suspicion or probable cause for the stop?

19 A. No, sir. She had -- we had discussed it,
20 and I told her my impression. Mr. Philp was a resident
21 of the State of Colorado.

22 Q. Did you discuss with her what the basis for
23 that impression was?

24 A. Uh-huh.

25 Q. Did you refer to records checks that you had

1 done?

2 A. No, sir. I didn't have any with me.

3 Q. So you can't tell her that you had done
4 records checks?

5 A. I -- I may have told her I had done record
6 checks. I didn't have any records checks with me. I
7 didn't -- I just responded out there to listen to a
8 motions hearing.

9 Q. Did you tell her that there were materials
10 that you had that you could provide her that constituted
11 an intelligence file on the defendant, or the Tyranny
12 Response Team, as it related to either -- as of
13 December -- the defendant or the December 14, 2001
14 protest?

15 A. No, sir.

16 Q. Did you tell her that there were briefing
17 materials communicated to the officers involved on
18 December 14, 2001 concerning the Tyranny Response Team
19 protest at the Mauser residence?

20 A. I don't know, sir. I don't remember.

21 Q. Did she show you the motion to compel
22 discovery and for sanctions?

23 A. She may have. I don't remember.

24 Q. Had she communicated with you prior to the
25 date of the hearing with respect to defense request for

1 materials?

2 A. No, sir.

3 Q. Would there have been someone else who she
4 would normally communicate with with respect to the
5 request for those materials?

6 A. I know she communicated to the
7 communications section for copies of audiotapes. But
8 other than that, I don't know who she contacted.

9 Q. You received no request from anywhere in
10 your command in response to a January 14 letter demanding
11 that briefing materials in the intelligence files are
12 related to the response to the TRT?

13 A. No, sir.

14 Q. Did you individually communicate with any
15 patrol officers with respect to requesting their presence
16 on 14 December 2001 at the staging area for the protest?

17 A. Several deputies were assigned to monitor
18 the event. During a briefing, I asked those deputies to
19 meet at a specific location.

20 Q. Did you make any requests, that were not in
21 conjunction with a briefing, that you advised them they
22 were there with respect to the TRT's protest?

23 A. Sorry, would you ask that question again?

24 Q. Did you have any individual discussions,
25 with any deputy, in which you requested their response to

1 the location, without disclosing that it was part of an
2 operation involving monitoring or responding to the
3 Tyranny Response Team's protest?

4 A. The only ones would have been the officers
5 from the SWAT team that were not able to attend the
6 briefing. When they got into the area, I spoke with them
7 and explained to them what I had advised the other
8 deputies of during the briefing.

9 Q. Which officers would have been SWAT team
10 officers?

11 A. Deputy Beaulieu and Deputy Roe. Excuse me.
12 I believe it's Gordon Roe.

13 Q. What was your contact with Deputy Beaulieu?

14 A. He had arrived at the parking lot. The
15 staging area. And I was in a marked unit with another
16 deputy. And I'm not sure if Deputy Beaulieu was directly
17 next to me or one vehicle between us, when I explained
18 what I thought was going to occur. I gave him the same
19 briefing I had given to patrol deputies earlier.

20 Q. So account for us, to the best of your
21 recollection, what you told Deputy Beaulieu?

22 A. There was going to be a demonstration. A
23 candlelight demonstration, by the Tyranny Response Team.
24 I had been unsuccessful in facilitating a meeting with
25 them to set up some ground rules, to advise them of some

1 various statutes that might be applicable. We're going
2 to monitor it, keeping the Tyranny Response Team and the
3 local citizens' rights. And we're going to protect both
4 factions' rights. And I may have told Deputy Beaulieu, I
5 believe Mr. Philp does not possess a valid Colorado
6 driver's license.

7 Q. Did you provide him with any briefing
8 material?

9 A. If I did, it would have been the list of
10 Colorado Revised Statutes as prepared by the District
11 Attorney's office, and a photograph of Mr. Philp.

12 Q. What time did this individual briefing of
13 Deputy Beaulieu occur?

14 A. Probably sometime after 5 p.m.

15 Q. What time were officers directed to respond
16 to the location of the protest?

17 A. 5 p.m. Approximately 5 p.m.

18 Q. Where were they directed to respond?

19 A. Some officers were going to be in the
20 parking lot there at Ken Caryl and Pierce. And some of
21 the officers were going to be in the neighborhood of the
22 demonstration.

23 Q. Who made the assignments as to who was
24 placed where?

25 A. I don't know.

1 Q. Was there some document that constituted the
2 response plan?

3 A. No, sir.

4 Q. At your briefing earlier in the day, were
5 locations assigned?

6 A. Yes, sir.

7 Q. Who made the location assignments?

8 A. I believe it was a shift supervisor off
9 patrol. Although, I don't know if that would have been
10 Lt. Meyer or a sergeant.

11 Q. Had you contacted Beaulieu earlier in the
12 day to request his presence? Or how was his presence
13 requested?

14 A. Lt. Meyer had advised that members of the
15 SWAT team were going to be involved in this operation.

16 Q. Were you advised why the SWAT team was going
17 to be involved in the operation?

18 A. Patrol thought it was appropriate.

19 Q. Does that mean that some arrangements were
20 made to have their equipment available, or just to use
21 them as personnel?

22 A. I think to use them as personnel. I do not
23 know about their equipment.

24 Q. At the time that Deputy Beaulieu arrived,
25 how many marked sheriff's vehicles were in the parking

1 lot at Ken Caryl and Pierce?

2 A. Two or three, when he arrived.

3 Q. Was he directed to report to you, as opposed
4 to the event commander?

5 A. Yes.

6 Q. Were you coordinating your activities, in
7 terms of how you dealt with the TRT's protest, with any
8 other government agencies outside of Jefferson County?

9 A. Yes.

10 Q. What agencies?

11 A. Denver Police Department and the FBI Denver.

12 Q. Were you provided any materials on the
13 Tyranny Response Team by FBI Denver?

14 A. Sir, I believe that falls under the privacy
15 act, and I would suggest that you contact the Denver FBI.

16 Q. So are you telling us that the materials
17 that you have produced are incomplete, in the materials
18 provided to you on the Tyranny Response Team by the FBI
19 and in your possession at the time of the incident, have
20 not been provided in response to the subpoena?

21 A. No.

22 Q. So, have any such materials that you
23 received from the Denver office of the
24 FBI, or from any office of the Federal Bureau of
25 Investigation with respect to the Tyranny Response Team

1 or Mr. Philp, which were in your possession in December
2 of 2001 up to December 14 of 2001, been produced?

3 A. Sir, I believe that information would fall
4 under the privacy act, and I suggest that you contact the
5 Denver FBI.

6 MR. TODD: Counsel, do you want to talk to
7 your client before we make a record?

8 MS. GILBERT: May I have a moment, please?

9 (Thereupon, the deponent consulted with
10 counsel off the record from 11:50 to 11:55.)

11 MR. TODD: May we have the last question
12 repeated for the witness?

13 MS. GILBERT: Can you repeat the question,
14 and then I want to talk to you before --

15 (The last question was read back.)

16 MS. GILBERT: I don't want to make an
17 improper objection. So you know I'm doing that.

18 MR. TODD: Okay, Counsel.

19 MS. GILBERT: In order for Mr. Estep's
20 responses to make sense, you need to understand, and you
21 may want to ask him questions. He has a dual role. He
22 is a Jefferson County deputy sheriff, and he's part of
23 the Terrorist Task Force, which is controlled by the FBI.
24 He has gotten some assistance through the counsel for the
25 FBI, with respect to documents and materials related to

1 FBI.

2 MR. TODD: I understand that, Counsel. I
3 guess my problem is, so we're clear, for the record, I
4 don't believe his response is responsive. We are in a
5 proceeding under Article 3 of the Constitution of the
6 United States, before an Article 3 court of the United
7 States of America.

8 If the Federal Bureau of Investigation
9 wishes to pose objection, they know how to do it. If the
10 United States Attorney wishes to appear and argue that
11 materials should not be produced, material that was
12 apparently a basis, in part, of why things took place in
13 this case, they know how to appear and do it.

14 MS. GILBERT: We have produced all of the
15 Jefferson County documents related to your request. If
16 an FBI document got -- was in the Jefferson County file,
17 which it was not, we would have produced that. We did
18 not, because it didn't exist.

19 MR. TODD: Well, when this witness functions
20 on the Anti-terrorism Task Force, he's still a Jefferson
21 County sheriff's deputy. He's there pursuant an
22 interagent agreement. To the extent they provide him
23 access to documents, those documents come that way within
24 the control of Jefferson County Sheriff's Office. If
25 there's some need to assert some level of privilege on a

1 national security basis and request protective orders,
2 that should have been done.

3 But, quite frankly, if he has information
4 from the FBI which provided documents that relate to how
5 this occurred, that should have been disclosed at the
6 time of Rule 16 disclosures with the opportunity to
7 address that early in discovery with the magistrate or
8 with Judge Nottingham. So, Counsel, I'm disturbed to
9 hear he may have based things on information which he had
10 in his possession, but he views is compartmented by a
11 Chinese wall at the point that we are in deposition.
12 That's the way I interpret the responses I'm getting at
13 the moment. So . . .

14 MS. GILBERT: What would you like me to do?

15 MR. TODD: Well, Counsel, if the witness had
16 other documents, and relied on other documents, I think
17 he's required to disclose the existence of the documents,
18 sufficiently, as to meet the requirements of privilege
19 law or whatever, before he's going to assert objection to
20 their contents. At which point I think we need -- if you
21 and I can't agree, we need to be before the magistrate or
22 before Judge Nottingham as to whether or not that forms
23 any basis under the laws of the United States of America
24 to decline to answer a question.

25 MS. GILBERT: That I understand. I mean, we

1 are responding to the subpoena that you just issued last
2 week.

3 MR. TODD: I understand. But the question
4 that I asked -- asked him with respect to the existence
5 of documents doesn't relate to the subpoena. And telling
6 me that he -- that his response to whether or not
7 documents exist or he saw documents, referring me to the
8 privacy act, is not a responsive answer.

9 MS. GILBERT: Let's go back to what you want
10 me to do.

11 MR. TODD: Well, I guess at the moment I
12 want to know whether the witness is going to identify
13 specific information upon which he relied and which he
14 had, or whether he's simply going to refer to the privacy
15 act. In which case, I think we can deal with other areas
16 of the deposition. And then we need to get a ruling from
17 the Court as to whether or not there has been a failure
18 to respond to questions lawfully propounded.

19 MS. GILBERT: May I have a moment with my
20 client.

21 (Thereupon, the deponent consulted with
22 counsel off the record from 12 p.m. to 12:11 p.m.)

23 MS. GILBERT: We are waiting for someone
24 from the FBI to give me some direction.

25 MR. TODD: I guess what the question is,

1 would it make more sense to recess the deposition and
2 continue these only after we know where we are on there,
3 so we aren't taking everyone's time up waiting to see if
4 at this point the United States of America wants to
5 attempt to intervene in the proceedings or whether --

6 MS. GILBERT: I cannot guess what they are
7 going to do. And if I have had an inclination, I would
8 let you know, but I do not.

9 MR. TODD: I understand, Counsel. So, I
10 think the best thing for us to do then -- we don't know
11 whether they are going to have a response by tomorrow, do
12 we?

13 THE DEPONENT: Excuse me.

14 (Thereupon, the deponent consulted with
15 counsel off the record from 12:13 to 12:36.)

16 MR. TODD: Okay. Where are we?

17 MS. GILBERT: Let me start by saying a
18 couple of things: We have treated Jefferson County files
19 separately from FBI files. The FBI files -- the FBI may
20 have an interest in those files. And their counsel might
21 have to assert that interest on behalf of the FBI.

22 You stop me if I'm doing anything that you
23 don't want me to do. But, if I can give you a
24 background, we may not need to go there. I have gotten
25 some more clarification from the FBI about -- well, let

1 me start over again.

2 It's my opinion that documents that
3 Mr. Estep reviewed and relied on in forming the basis of
4 his action in this case, to the extent those are FBI
5 documents, you would need to go to the FBI and get those.
6 But, he didn't rely on any FBI documents in forming the
7 course -- the basis of his action in this case. You can
8 certainly inquire about that. If you don't get those
9 same answers, you can pursue it. But. . .

10 MR. TODD: Well, I guess where I'm going to
11 have a problem, Counsel, is that I'm certainly getting
12 the feeling that, for example, parts of the answers with
13 respect to Exhibit 5 might potentially relate to
14 something that's believed to flow from FBI 302s that were
15 provided to the sheriff's department. And I'm not aware
16 of any statutory protection under federal law when those
17 documents are used by another agency after they are
18 provided by the bureau.

19 MS. GILBERT: I agree with you. And counsel
20 for FBI provided me clarification. To the extent that
21 those documents exist in our files, that's a different
22 story. But what we were talking about previously, with
23 documents that we -- don't exist in our file,.

24 MR. TODD: Okay. Let's go into that
25 briefly, and we will see whether I think we are in a

1 position where we can proceed or whether we are --

2 MS. GILBERT: Fair enough.

3 Q. (By Mr. Todd) Were you provided
4 documents -- or shown documents by other agencies,
5 including the FBI or any other federal agency, that
6 related to Duncan Duwane Philp?

7 A. I have reviewed the documents -- I have
8 reviewed documents within the FBI. There were no
9 documents that I reviewed that I based my knowledge --
10 and my knowledge of Mr. Philp for the December 14 event.

11 Q. Did any documents of the FBI indicate
12 Mr. Philp's status with respect to any other states and
13 driving privilege?

14 A. My understanding, that information would
15 have to come from the FBI.

16 MS. GILBERT: Can you read back the question
17 for me?

18 (The last question was read back.)

19 MS. GILBERT: I guess I'm going to say, on
20 the record, the FB -- if you issue subpoena to the FBI
21 and get the FBI documents --

22 MR. TODD: Counsel, I need to indicate, on
23 the record, his knowledge is what's relevant. And his
24 refusal to answer questions about what was present in
25 documents that he reviewed at the FBI that were part of

1 his knowledge, that's not acceptable for either trial or
2 deposition.

3 I mean, clearly, the question I believe it's
4 reasonably calculated to lead to admissible evidence
5 that's directly relevant on the issues of probable cause
6 and issues with respect to his motivation on the First
7 Amendment claims and the due process claim.

8 MS. GILBERT: It's our position that those
9 documents are FBI documents. You may go to the FBI and
10 subpoena those documents.

11 MR. TODD: I didn't ask for the document at
12 this point. I asked him with respect to the contents of
13 what he reviewed. That does not require me to go to the
14 FBI. His knowledge from those documents are issues upon
15 which he's required to answer under oath. And if the
16 position is going to be that his knowledge, as it relates
17 to information that may have flowed from those documents,
18 if the answer I'm going to get is "I have to go to the
19 FBI," we need to recess deposition and we need to go
20 before the Court.

21 MS. GILBERT: Well, your question was about
22 the content of the FBI documents.

23 MR. TODD: Based on his knowledge of the
24 document, yes.

25 MS. GILBERT: And to the extent that you're

1 asking about the content of an FBI document, I think the
2 FBI is entitled to protect those documents to the extent
3 that they think they are --

4 MR. TODD: Well --

5 MS. GILBERT: -- entitled to protection.

6 MR. TODD: Counsel, we have had this
7 deposition scheduled for a long time. This witness has
8 known that he was going to be asserting a dual role. And
9 there's been ample time for the Federal Bureau of
10 Investigation to determine whether or not they wished to
11 get involved. I haven't heard any citation to any
12 portion of the United States code that would indicate
13 that there's a lawful privilege with respect to the
14 question asked.

15 MS. GILBERT: The Privacy Protection Act.

16 MR. TODD: That does not give him a
17 privilege to refuse to answer with respect to his
18 knowledge based on the document. And furthermore, we are
19 now dealing with documents that relate specifically to
20 the plaintiff. And so I doubt that the Privacy
21 Protection Act would be applicable, in any event.

22 MS. GILBERT: What would you like to do?

23 MR. TODD: Well, I believe that at this
24 point if you want time for the bureau to ask for a
25 protective order with respect to questions of this

1 witness, that we should recess proceedings. Give them an
2 opportunity to file it. Otherwise, I believe this
3 witness is required by the current state of the law of
4 the case to answer the questions that are put to him.

5 An FBI agent does not get to claim Privacy
6 Protection Act when being asked about the basis of his
7 knowledge when we are dealing with the accuracy of
8 information provided to the Court that is a basis of any
9 seizure or any issue of due process. He's now asserting
10 a claim that would appear to be superior to that that any
11 bureau agent could assert before the Court.

12 MS. GILBERT: I don't want to go on and on
13 and fight with you about this.

14 MR. TODD: Okay.

15 MS. GILBERT: But, I think for the record I
16 need to say, to the extent that the question asked for
17 disclosures of the contents of FBI documents, that is
18 where I think the FBI needs to assert their interest.

19 MR. TODD: Okay.

20 MS. GILBERT: That's what I saw the last
21 question asking for.

22 MR. TODD: And I'm going --

23 MS. GILBERT: If you want to ask about his
24 knowledge, that's fine.

25 MR. TODD: All right. I'll rephrase the

1 question.

2 Q. (By Mr. Todd) To your knowledge, did any of
3 the materials that you reviewed provided by any
4 government agency, including the Federal Bureau of
5 Investigation, reveal anything with respect to
6 Mr. Philp's status on driving privileges in any state
7 other than Colorado?

8 A. I have reviewed the information supplied to
9 me by Denver PD. A driving history -- criminal histories
10 that have the addresses listed. And that's that.

11 Q. So it's your testimony that no documents
12 supplied to you by any other agency made reference to
13 Mr. Philp's driving privileges from the the state of New
14 Mexico?

15 A. As of December 14, excluding the stuff we
16 discussed, the stuff from Sgt. Ester, that's correct,
17 sir.

18 Q. Well, does the material Sgt. Ester had make
19 reference to Mr. Philp's driver's license issued by the
20 state of New Mexico?

21 A. No, sir. It does not.

22 Q. Then I don't understand. What was the
23 reason for you excluding that material from your last
24 answer?

25 A. I apologize. Maybe I didn't understand the

1 question.

2 Q. At the time that you saw Mr. Philp, first on
3 December 14 of 2001, how old was the last inquiry that
4 you had to the Colorado Department of Revenue Division of
5 Motor Vehicles?

6 A. Two days.

7 Q. And it showed no restraint. So Mr. Philp
8 could apply for and receive a Colorado privilege at any
9 time, correct?

10 A. Correct.

11 Q. Up to the point that Mr. Philp was stopped
12 by Deputy Beaulieu, on December 14, had there been any
13 update of the information from Colorado Department of
14 Revenue Division of Motor Vehicles?

15 A. Not to my knowledge, sir.

16 Q. How did the stop of Mr. Philp occur? What
17 caused it to occur? What were your observations with
18 respect it?

19 A. I observed Mr. Philp get into a pickup. He
20 backed up. Drove north through the lot. And then I lost
21 view. Moments later, his vehicle exited on to southbound
22 Pierce. A radio deputy over the radio advised Mr. Philp
23 failed to use his turn signal when he left the parking
24 lot turning southbound onto Pierce.

25 Q. What deputy advised over the radio?

1 A. I don't know, sir.

2 Q. So this was radio traffic that was not
3 turned over to the district attorney to be turned over to
4 the defense, correct?

5 A. Yes, sir.

6 Q. Yes, sir, that's correct?

7 A. Yes, sir. That is correct.

8 Q. To your knowledge, was the individual --
9 were you with -- at the time that that traffic aired,
10 where was Deputy Beaulieu?

11 A. He was in the vehicle next to, or one
12 away -- two vehicles away -- next to me. There were two
13 or three patrol cars there. I'm not sure if Deputy
14 Beaulieu's was directly next to me or the vehicle one
15 over from that. We were all sitting in the shopping
16 center there.

17 Q. Would the Jefferson County Sheriff's office
18 procedures require the deputy witnessing the act to be
19 identified in the reports or on the summons?

20 A. Yes.

21 Q. To your knowledge, did Deputy Beaulieu
22 execute or create any document that identified who
23 witnessed Mr. Philp not signaling?

24 A. Not to my knowledge. I don't know that
25 Deputy Beaulieu did not see it himself. I just heard it

1 over the radio.

2 Q. You didn't recognize the voice as being
3 Deputy Beaulieu's voice, did you?

4 A. It was not Deputy Beaulieu's voice, sir.

5 Q. Where was -- Deputy Beaulieu was one or two
6 cars over from you?

7 A. Yes, sir.

8 Q. And you were parked where in relation to the
9 exit from the parking lot?

10 A. South of the parking lot. And we were all
11 east of Pierce. On the east side of Pierce. I was
12 parked south of Mr. Philp.

13 Q. Was Deputy Beaulieu east or west of you?

14 A. Neither.

15 Q. Okay?

16 A. He was south of me, sir.

17 Q. He was south of your location?

18 A. Yes, sir.

19 Q. And what obstructed your line of vision when
20 you indicated that you lost sight of Mr. Philp?

21 A. Other vehicles. There were other vehicles
22 parking. There were other parked vehicles. I couldn't
23 see his exit.

24 Q. Would those vehicles also have been in
25 direct line of sight between Deputy Beaulieu and

1 Mr. Philp?

2 A. I don't know.

3 Q. The vehicles that you are describing were
4 north of your location; is that correct?

5 A. Yes, sir.

6 Q. Deputy Beaulieu would have been within how
7 many feet of you to the south?

8 A. If it would have been one vehicle, within 6
9 feet. If it would have been -- if he would have been in
10 the third vehicle, it would have been in excess of 12
11 feet, using 6 feet as the approximate width of the
12 automobile.

13 Q. Well, you were parked in lined spaces?

14 A. I believe so, yes, sir. I wasn't driving.
15 I was in the passenger side of a patrol vehicle.

16 Q. And so if you were in the passenger side of
17 a patrol vehicle facing east, you were facing east or
18 facing west, correct?

19 A. I think I was facing west.

20 Q. If you were in the passenger side of the
21 vehicle facing west, then you would have had to have been
22 talking cross the driver of that vehicle in order to talk
23 to someone in a vehicle south of you, correct?

24 A. That is incorrect, sir. If I understand the
25 question, if I'm sitting in the vehicle, the passenger

1 side, westbound direction, speaking to someone -- excuse
2 me, north of me. You are correct. If I had been
3 speaking to someone south of me, I would have had to have
4 spoke across the deputy.

5 Q. And you indicated that Deputy Beaulieu was
6 south of you?

7 A. If I did, I was incorrect. I believe
8 Beaulieu was north of me, sir.

9 Q. When someone indicated that the vehicle had
10 not signaled, was there any other radio traffic?

11 A. Yes, there was.

12 Q. Those would have been contemporaneous
13 statements of witnesses, correct?

14 A. Possibly.

15 Q. Were those on a frequency that would have
16 been recorded in the normal course of operations by the
17 Jefferson County Sheriff's Department's communications
18 division?

19 A. I believe so.

20 Q. So when you had this discussion with
21 Ms. Retsek the morning of February 8, prior to the
22 hearing, did you tell her that there were specific
23 statements over the radio that were witness statements
24 with respect to having observed the acts at issue?

25 A. After listening to the tape, Deputy Beaulieu

1 and I advised Deputy District Attorney Retsek that the
2 tape that was provided was not all of the radio
3 transmissions involving the TRT demonstration and the
4 citing of Mr. Philp.

5 Q. And, in fact, the tape that was produced
6 related to a traffic stop that occurred after the
7 demonstration had broken up, correct?

8 A. No, sir.

9 Q. Is it your testimony that the tape that was
10 provided related to the stop of Mr. Philp?

11 A. Yes, sir. In that, my understanding from
12 Deputy Beaulieu, an after he had cleared the stop,
13 sometime thereafter, he asked for a CR number. An
14 offense report -- a report number. And there was some
15 discussion at that time about that. But the tape that
16 was provided to the district attorney did not -- was not
17 earlier in the evening.

18 Q. Wasn't the radio traffic that was turned
19 over an hour after the stop of Mr. Philp?

20 A. I'm sorry, sir?

21 Q. Wasn't the radio traffic actually -- sorry.
22 The stop of Mr. Philp was at 1840, correct?

23 A. I believe so, sir.

24 Q. Wasn't the radio traffic that was turned
25 over 2140?

1 A. Yes, sir. I believe so.

2 Q. So three hours after Mr. Philp's stop is the
3 material that the sheriff's department turned over to the
4 DA?

5 A. Yes, sir.

6 Q. So it's your testimony that when the hearing
7 started, Ms. Retsek was aware of the disclosure that was
8 provided with respect to the communications tapes was, in
9 fact, incomplete and not responsive to the defense
10 request?

11 MS. GILBERT: Objection. Calls for
12 speculation.

13 Q. (By Mr. Todd) You can answer the question.

14 A. We advised Deputy Retsek that the tape she
15 received from the communications section was an audio
16 recording of Deputy Beaulieu when he requested the CR,
17 and some fragments before and after. But it was not the
18 time surrounding the TRT candlelight vigil and the
19 contact of Mr. Philp.

20 Q. Was there an agreement reached as to how the
21 relevant material was to be requested and provided from
22 communications at that point?

23 A. No, sir.

24 Q. Did Deputy District Attorney Retsek request
25 that you obtain the relevant material?

1 A. I don't believe so.

2 Q. Okay. Who made the decision as to which
3 vehicle was going to stop Mr. Philp?

4 A. I believe Deputy Beaulieu did.

5 Q. Was there discussion of that over the air?

6 A. May have been.

7 Q. Did you at any time during the stop move to
8 the location where Deputy Beaulieu had stopped Mr. Philp?

9 A. Yes, sir.

10 Q. What was the reason for that?

11 A. After the contact was concluded, I wanted to
12 give Mr. Philp a copy of the information supplied to me
13 by the District Attorney's office that pertains to the
14 statutes.

15 Q. You are referring to Exhibit No. 1?

16 A. Yes, sir.

17 Q. Did you tell Mr. Philp at that time that he
18 needed to have a permit for the demonstration?

19 A. I believe he -- I believe I told him he
20 needed to contact the County Attorney's office to
21 determine if a permit was needed if he planned any
22 further demonstration inside Jefferson County.

23 Q. What ordinance of Jefferson County required
24 a permit for a demonstration?

25 A. I know of none, sir.

1 Q. If you knew of no ordinance that would
2 require a permit, why did you tell Mr. Philp he needed to
3 talk to the County Attorney's office about getting a
4 permit, or whether one was required?

5 A. Because my understanding from the County
6 Attorney's office, that the county attorneys and the
7 county commissioners are the ones that deal with specific
8 permits on county property -- or on open-space
9 properties. And they are the ones that deal with
10 permits. So, it's not -- that's not handled by the
11 sheriff's department. So I then referred Mr. Philp to
12 the County Attorney's office to determine if a permit was
13 needed.

14 Q. Did you have any reason to believe that the
15 Tyranny Response Team's protest involved open-space lands
16 or county property?

17 A. No, sir.

18 Q. So you had no reason to believe that
19 anything the Tyranny Response Team was doing would have
20 fallen within the scope of any permit requirement?

21 A. I am not totally aware of all the permit
22 requirements inside the county. As I have indicated,
23 those are handled by the commissioners and the County
24 Attorney's office. I don't have knowledge of all of
25 those. I was directed to refer the individuals to the

1 County Attorney's office to determine if a permit was
2 needed. That's what I have done.

3 Q. Who directed you to tell Mr. Philp that he
4 needed to contact the County Attorney's office to inquire
5 as to a permit for a protest?

6 A. A member of the Jefferson County County
7 Attorney's office.

8 Q. Did you -- do you answer to the County
9 Attorney's office?

10 A. Yes, sir.

11 Q. You do? The County Attorney's office is
12 within your chain of command?

13 A. No, sir.

14 Q. The County Attorney's office employees are
15 entitled to the status as peace officers?

16 A. No, sir.

17 Q. So you elevated the county attorney's
18 request to a direction from a law enforcement officer,
19 correct?

20 A. Yes, sir.

21 Q. And you did that without any belief that
22 there was a specific ordinance that would have required a
23 permit, correct?

24 A. I was directed that the county attorneys and
25 the county commissioners are the ones that deal with

1 permits. I do not have total knowledge of what permits
2 are required. And the sheriff's department does not
3 enforce those. The county commissioners or some zoning
4 board or something like that does. I didn't know. So I
5 just directed Mr. Philp, if he was going to have any
6 further demonstrations, to contact the County Attorney's
7 office to see if there are any permits required.

8 Q. You met with the County Attorney's office,
9 or a representative of their office, in the initial
10 meeting. And they had failed to provide you with any
11 authority indicating that any permits would be required,
12 correct?

13 MS. GILBERT: Objection. Mischaracterizes
14 prior testimony.

15 MR. TODD: You can answer.

16 THE DEPONENT: I'm sorry. I apologize.
17 Would you ask -- would you repeat that question?

18 (The last question was read back.)

19 A. Correct. I was advised they were -- they
20 would look into it and get back with me at that meeting.

21 Q. (By Mr. Todd) So the County Attorney's
22 office never provided you with information that a permit
23 would be required, or could be required, for the type of
24 protest Tyranny Response Team was conducting; is that
25 correct?

1 A. No. I was directed that I should ask the
2 members of the Tyranny Response Team to please contact
3 the County Attorney's office to see if there are any
4 permits required for any further demonstrations.

5 Q. In your years in law enforcement, have you
6 become aware that permitting requirements may be an issue
7 in terms of burdening speech under the First Amendment?

8 A. No, sir.

9 MS. GILBERT: Objection. Calls for a legal
10 conclusion.

11 Q. (By Mr. Todd) So at no time did you
12 understand that any of the court cases have indicated
13 that permit requirements may burden the exercise of
14 protected speech under the First Amendment.

15 THE DEPONENT: I apologize. It's been --
16 can you repeat his question so I understand it fully?

17 (The last question was read back.)

18 THE DEPONENT: Would you re-ask the
19 question? Restate the question? I don't think I
20 understand it.

21 Q. (By Mr. Todd) In your years of training and
22 experience, did you come to understand that the courts of
23 the United States of America have held that requiring a
24 permit for a protest may burden protected speech under
25 the First Amendment?

1 A. No, sir.

2 Q. You have never understood that?

3 A. I have not heard that, no, sir.

4 Q. So is it your belief that the county is free
5 to impose permit requirements on any demonstration it
6 wishes to?

7 MS. GILBERT: Objection. Calls for a legal
8 conclusion.

9 Q. (By Mr. Todd) You can answer the question.

10 A. I'm unaware of the county's specific
11 policies, guidelines, rules, as pertains to permits over
12 the entire county.

13 Q. (By Mr. Todd) Prior to December of 2001,
14 were you aware of the Skokie protest case where the Nazi
15 party went to court when the City of Skokie, Illinois
16 refused to grant them a parade permit?

17 A. Only in the light that I had heard about it.
18 But I'm not familiar with the case. I'm not familiar
19 with the facts. I'm not familiar with the results.

20 Q. So you did not know that the courts held
21 that the City of Skokie could not deny the American Nazi
22 party a permit to march in Skokie?

23 A. No, sir.

24 Q. Was there some reason why you didn't receive
25 a request in writing, or why the County Attorney's office

1 did not attempt to communicate in writing with the
2 Tyranny Response Team with respect to whether or not a
3 permit would be required for what the Tyranny Response
4 Team wished to do in Jefferson County?

5 A. I can't speak for the District Attorney's
6 office.

7 Q. I think we are talking about the County
8 Attorney's office?

9 A. I apologize. I thought you said district
10 attorney. And I'll answer the same. I cannot speak why
11 the County Attorney's office did not write letters to
12 Tyranny Response Team.

13 Q. Did the County Attorney's office provide you
14 any guidance, with respect to the permissible parameters
15 for your request or instruction to the Tyranny Response
16 Team or its representatives, that they contact the county
17 attorney?

18 A. I apologize. You are going to have to
19 rephrase it or I have to have it repeated. It was a long
20 question. I want to make sure I get everything correct.

21 Q. Were you provided any guidelines or
22 parameters in the way in which you were to make the
23 request that they were to speak with the county attorney
24 about the need for a permit?

25 A. Just verbal.

1 Q. Did the -- that verbal instruction include
2 that there was no legal requirement that they do so?

3 A. No. Because it was a suggestion that in the
4 event they planned a further demonstration they could
5 contact the County Attorney's office to determine if
6 there's any permits required.

7 Q. The last direction to the County Attorney's
8 office that you had was at the initial meeting, correct?

9 A. No, sir.

10 Q. What subsequent direction did you receive
11 from the County Attorney's office after the initial
12 meeting that, I believe you testified, was early in
13 December, perhaps the 4th, 5th, or 6th?

14 A. Prior to the event. Possibly the 13th or
15 14th I contacted the County Attorney's office,
16 telephonically, when I received the direction.

17 Q. Who at the County Attorney's office?

18 A. Lily Oeffler.

19 Q. Did Ms. Oeffler provide you with any county
20 ordinance at that point that would require a permit?

21 A. No, sir.

22 MS. GILBERT: I'm going to object. We are
23 starting to get into attorney/client privilege. I
24 mean -- I think --

25 MR. TODD: I think there may be a very

1 serious question, if there's attorney/client privilege,
2 since he's indicating he's receiving direction, not
3 advice, of counsel. And he has already indicated that he
4 believes that he's subject to direction from the County
5 Attorney's office, rather than them providing advice,
6 with respect to how he's to conduct his office. So, let
7 me clarify that and then we can deal with this.

8 MS. GILBERT: Okay.

9 Q. (By Mr. Todd) You were seeking advice from
10 the County Attorney's office with respect to how the
11 lawfully conduct yourself?

12 A. Yes.

13 Q. So, is it now your position that there was
14 direction from the County Attorney's office that the
15 county attorney should be contacted by the TRT?

16 A. The direction I was given is if the TRT
17 wished to protest again in Jefferson County, they were --
18 the County Attorney's office be contacted to determine if
19 a permit is required.

20 Q. So when you completed your conversations
21 with the County Attorney's office, you were under the
22 impression that you had received direction equivalent of
23 direction from your chain of command, that you were to
24 tell the TRT that they needed to contact the County
25 Attorney's office to determine whether a permit was

1 necessary with respect to any future activity in
2 Jefferson County?

3 A. I contacted the County Attorney's office.
4 Asked a question pertaining to protest. They advised.

5 MS. GILBERT: You -- I'm concerned about the
6 attorney/client privilege here.

7 MR. TODD: I'm concerned about the privilege
8 at this point, and whether or not there's a conflict of
9 interest, since he seems to have indicated he was given
10 directions that were orders rather than advice from an
11 assistant county attorney.

12 MS. GILBERT: It's out there. It's in the
13 room. I can't say it doesn't exist.

14 MR. TODD: I understand that. So . . .

15 Q. (By Mr. Todd) What was your purpose in the
16 contact on the 13th or 14th with the County Attorney's
17 office with Ms. Oeffler?

18 A. To determine a course of action as it
19 pertains to the county's zoning and permit processes in
20 reference to demonstration.

21 Q. So was your contact with Ms. Oeffler related
22 to your belief that enforcement of those areas on behalf
23 of the commissioners lies with the County Attorney's
24 office?

25 A. It lies within some entity inside the

1 county. The sheriff's department does not deal with
2 those. Now, I do not know if it's the County Attorney's
3 office, if it's commissioners, or some zoning board.

4 Q. You were seeking policy direction at the
5 time you contacted Ms. Oeffler --

6 A. I was seeking direction.

7 Q. -- with respect to the position that the
8 county was taking?

9 A. With respect to the county's policies or
10 guidelines.

11 Q. So you were not seeking legal advice, as
12 such, in terms of how to conform your conduct to the
13 requirements of the law, correct.

14 A. I was seeking guidance from the county
15 attorneys so I would know how to respond and stay within
16 the guidelines and, you know, the statutes in Colorado.

17 Q. You knew at that point what the staging area
18 was going to be; is that correct? Where the staging area
19 was going to be?

20 A. Yes, sir.

21 Q. Did you ask for any direction with respect
22 to the application of the state traffic statutes to
23 private property?

24 A. No, sir.

25 Q. Did you ask for any direction about what the

1 definitions of intersection, highway, or roadway were
2 under Title 42 of Colorado Revised Statutes?

3 A. No, sir.

4 Q. Did you ask for any direction as to your
5 ability to initiate a stop rather than a voluntary
6 contact with any member of the Tyranny Response Team?

7 A. No, sir.

8 Q. Did you have any reason to believe, at that
9 point in time, that there would be no trespassing signs
10 posted on private property, clearly visible, such as to
11 invoke second-degree criminal trespass under 18-4-405.3
12 Colorado Revised Statutes.

13 A. Would you ask that question again, sir?

14 MR. TODD: Repeat the question.

15 (The last question was read back.)

16 A. I was aware trespass signs were going to be
17 posted in that neighborhood.

18 Q. (By Mr. Todd) And this is because you had
19 conversations with individuals in the neighborhood?

20 A. Yes, sir.

21 Q. How did those conversations occur?

22 A. Telephonically.

23 Q. Who initiated them?

24 A. One initiated by a neighbor. And that
25 information passed on to me. And I returned that

1 neighbor's call. The other was initiated by me. I
2 contacted Mr. Mauser when I learned of the event.

3 Q. So you contacted Mr. Mauser and discussed
4 with him ways in which he could alter his current
5 behavior, or status, in order to permit the opportunity
6 to perhaps interfere with or arrest protestors?

7 MS. GILBERT: Object to the form of the
8 question.

9 Q. (By Mr. Todd) Did you discuss posting "no
10 trespassing" signs with Mr. Mauser?

11 A. Mr. Mauser indicated he was going to. I
12 said, "That's within your right, and you do as you want."

13 Q. Now, this was immediately after Mr. Mauser's
14 arrest at NRA offices, correct?

15 A. I don't know.

16 Q. You didn't know anything about Mr. Mauser's
17 arrest, back east, for a protest at the NRA office and
18 his refusal to leave private property?

19 A. I knew of the incident. I don't know
20 exactly when that occurred. I know when I contacted
21 Mr. Mauser, but I don't know when he had his contact with
22 NRA.

23 Q. Wasn't that, indeed, discussed in the
24 materials in the Tyranny Response Team site, and part of
25 the reason for the protest, candlelight vigil to his

1 residence?

2 A. Yes.

3 Q. So you did know that that had preceded this,
4 correct?

5 A. Yes. I knew it preceded. How close it had
6 preceded, I don't remember.

7 Q. Did you have any reason to believe that
8 members of the Tyranny Response Team intended to pass on
9 to private property and off of the public right-of-way?

10 A. Yes.

11 Q. What was that information?

12 A. Based on Mr. Philp's contact as a Tyranny
13 Response Team member, in August, at the presidential Bush
14 visit, where he elected to leave the appointed First
15 Amendment area. I --

16 Q. What statute of the State of Colorado, or
17 ordinance of the City and County of Denver, authorized an
18 appointed First Amendment area?

19 A. I believe that is covered under the
20 presidential security. You know, Secret Service sets up
21 a boundary for presidential security area.

22 Q. Was Mr. Philp arrested under the authority
23 of the Secret Service on federal charges?

24 A. No. I was -- I believe he was arrested
25 under the authority of the Denver Police Department for

1 disobeying a lawful order.

2 Q. In order for there to be a lawful order,
3 there would have had to have been what?

4 A. An order given to him to please stay back
5 where he was at.

6 Q. Doesn't there have to be a statute, or an
7 ordinance, restricting the right of access on a public
8 right-of-way and refer to the lawful order to tell him to
9 leave?

10 MS. GILBERT: Objection. Calls for a legal
11 conclusion.

12 MR. TODD: You can answer the question.

13 A. I don't believe so. I'm not sure what
14 ordinances Denver has. This is a Denver ordinance. And
15 he was in violation -- I was just reading the reports.
16 He was issued a summons for this offense.

17 Q. Was he convicted?

18 A. I do not know.

19 Q. Did any court determine that there was
20 probable cause to believe that he had violated the law?

21 A. I don't know.

22 Q. Do you know of any basis to believe that the
23 arrest was for anything which was legally cognizable in
24 light of the First Amendment to the Constitution of the
25 United States?

1 MS. GILBERT: Objection. Calls for a legal
2 conclusion.

3 MR. TODD: You can answer.

4 A. I don't know. The only thing I know is what
5 I stated.

6 Q. (By Mr. Todd) Did you have any reason to
7 believe that any members of the Tyranny Response Team
8 would intentionally, knowingly, or recklessly make
9 unreasonable noise, in a public place, outside of
10 their -- what they had a right to do pursuant to the
11 First Amendment to the Constitution of the United States?

12 A. Based on their postings on their website,
13 they indicated there were bringing bullhorns -- bullhorns
14 in that neighborhood. I thought that possibly could be
15 identified as unreasonable noise.

16 Q. You understood that under the First
17 Amendment they would have a right to make a speech,
18 correct?

19 A. Correct.

20 Q. They'd have a right to speak to their
21 supporters that were moving through the public
22 right-of-way, correct?

23 A. Correct.

24 Q. Amplification wouldn't necessarily make that
25 exceed the bounds of the First Amendment protection under

1 your understanding, correct?

2 A. No, sir.

3 Q. Do you believe the amplification would be or
4 or would not?

5 A. I believe amplification in that cul-de-sac,
6 in that neighborhood, could be deemed as excessive.

7 Q. Does anything in Exhibit No. 1 provide any
8 guidance to at what point the noise becomes unreasonable?

9 A. No, sir.

10 Q. Did you have any reason to believe the
11 plaintiff or any member of the Tyranny Response Team was
12 intending to obstruct the public highways?

13 A. Highways? No. Roadways? Possibly.

14 Q. Okay. What information did you have that
15 they would block any street?

16 A. That's a cul-de-sac. It has a small
17 sidewalk. I was concerned if there were too many people
18 that they could fall into the street and block the
19 street.

20 Q. Well, doesn't obstruction require them to
21 remain stationery at a time that traffic is attempting to
22 pass?

23 A. Yes, sir.

24 Q. Did you have any reason to believe that they
25 intended to do that?

1 A. I didn't know, sir. I attempted to
2 communicate with them to determine how many people were
3 going to be there, to try to facilitate this. They were
4 not responsive.

5 Q. You had Mr. Philp's e-mail address
6 throughout this period of time, correct?

7 A. Yes, sir.

8 Q. You made no attempt to communicate with him,
9 either by United States mail, what you believe to be his
10 mailing address, or through e-mail, correct?

11 A. Correct.

12 Q. You made no attempt to communicate with any
13 of the TRT through any means that would be preserved by a
14 writing, correct?

15 A. Correct.

16 Q. You made no attempt to communicate through
17 any means that would be verifiable at a future date,
18 correct?

19 A. Incorrect.

20 Q. Okay. What subsequently verifiable means
21 did you use in attempting to contact the Tyranny Response
22 Team with respect to the candlelight vigil at the
23 Mausers?

24 A. Notes of my phone calls, the conversations
25 that I had with the individuals, I believe, would

1 corroborate my attempts.

2 Q. Okay. Could you please show us, in the
3 documents that you produced, the notes of your phone
4 calls.

5 A. Certainly. Okay. Those are the only notes
6 that I have of the phone calls.

7 (Deposition Exhibit 8 marked for
8 identification.)

9 Q. (By Mr. Todd) I'm handing you what has been
10 marked as Deposition Exhibit No. 8?

11 A. Yes, sir.

12 Q. Those are the notes that you have of the
13 phone calls?

14 A. Yes. These are the notes that I have of the
15 phone calls. I believe, in here, there's a response from
16 Mr. Philp -- or someone from TRT directing me please
17 don't call anymore. Would you like me to pull that out,
18 too?

19 Q. Okay.

20 A. This is going to take me one moment, sir.
21 Okay. It's right here, sir.

22 (Deposition Exhibit 9 marked for
23 identification.)

24 Q. (By Mr. Todd) You have handed me now what
25 is marked as Exhibit No. 9 as being the indication that

1 you should stop calling?

2 A. Yes, sir.

3 Q. Now, are you referring to -- first, Exhibit
4 No. 9 is a printout from a TRT website; is that correct?

5 A. Yes, sir.

6 Q. And there was an e-mail comment posted on
7 there. Are you referring to the middle of the first
8 page, "Oh Sheriff Estep stop calling elizabeth she is not
9 a representative of the TRT and is tired of your calls"?

10 A. Yes, sir.

11 Q. Now, there was a reply button on the site
12 for that, correct?

13 A. Yes, sir.

14 Q. So you could have, by pressing that reply
15 button, communicated with the individual that told you
16 Elizabeth was not the appropriate person to be
17 contacting, correct?

18 A. Correct.

19 Q. Did you?

20 A. No.

21 Q. So you weren't told to not call the TRT, you
22 were told that the person that you were calling was not
23 the appropriate contact person, correct?

24 A. Correct.

25 Q. And you didn't do anything to determine who

1 the appropriate contact person would be, correct?

2 A. Yes. I did.

3 Q. What did you do to determine who the
4 appropriate contact person would be?

5 A. I contacted both Tristin Trebber and Mr. --
6 his last name starts with a "Z".

7 A. I'll spell the last name.

8 Z-i-e-g-e-n-h-a-g-e-n. Mr. Trebber acknowledged he was
9 aware, and a member of TRT, but without being involved in
10 that event, and directed me to contact someone else. I
11 contacted Mr. Ziegenhagen. And he advised me he would
12 get the information to the responsible person that was
13 going to be handling TRT event, and someone would get
14 back with me.

15 Q. Now, was there any secret at this point in
16 time, with respect to your contact, that Duncan Philp was
17 designated as the director of political agitation for TRT
18 in December of 2001?

19 A. No, sir.

20 Q. You knew that?

21 A. Yes, sir.

22 Q. Didn't you believe that the director of
23 political agitation would mean that he was the individual
24 responsible for a public protest?

25 A. Yes. It did. I had no means of contacting

1 Mr. Philp by phone.

2 Q. You could have sent him a letter or an
3 e-mail, correct?

4 A. I did not feel there was adequate time to
5 send a letter. And I did not send an e-mail.

6 MS. GILBERT: I don't know how far you are,
7 but if I don't eat by 2:00, I can't function.

8 MR. TODD: Okay. What's your pleasure,
9 Counsel?

10 MS. GILBERT: What makes sense? I mean, you
11 know where you are going and where you are trying to go.
12 So I think, you know, if you give me 20 minutes I can get
13 a piece of fruit out of my car and come back. But . . .

14 MR. TODD: Shall we break until a quarter
15 after?

16 MS. GILBERT: Okay.

17 MR. TODD: Okay.

18 MS. GILBERT: What -- can we go off the
19 record?

20 MR. TODD: Yes.

21 (Break from 1:42 p.m. to 2:23 p.m.)

22 Q. (By Mr. Todd) Okay. Now, with respect to
23 information that you have from other agencies with
24 respect to either Mr. Philp or the Tyranny Response Team,
25 and which you've had prior to, or on December 14 of 2001,

1 were you provided copies of documents or merely permitted
2 to review files?

3 A. Provided copies of documents by the Denver
4 Police Department.

5 Q. Okay. Did the Federal Bureau of
6 Investigation provide you copies of materials, or merely
7 have you review files at their offices?

8 A. I have reviewed files, reviewed documents at
9 the FBI. And there were no documents that pertained to
10 the events involving December 14, or that I base my --

11 Q. When you were permitted to review FBI
12 documents, how would that occur?

13 A. I believe I can explain your question with
14 an explanation of what I'm doing. I have been assigned
15 to a task force for the past five years. I work in their
16 space. I have an office in the Denver FBI.

17 Q. Okay.

18 A. I have a clearance. I have access to the
19 files. All files.

20 Q. And you're provided access to those files,
21 does that mean that you copy documents and have them as
22 part of your individual investigative file at times?

23 A. On matters that I'm investigating as a
24 member of the FBI Joint Terrorism Task Force on matters
25 that I have open FBI matters on, yes.

1 Q. Now, as part of their task force, then you
2 have unescorted access within the offices of the Federal
3 Bureau of Investigation within the Denver office,
4 correct.

5 A. Yes, sir. Excluding -- excuse me, this is
6 only a recent exclusion. All agents. The file room. If
7 I want a file, I ask a clerk/secretary to get the file,
8 and they bring the file up to me. I can't go down to the
9 file room and just look anywhere.

10 Q. So you have the same unescorted access that
11 an FBI agent would have within the offices? There are
12 certain restricted areas in items of the file room in
13 order to maintain a record of who has the files?

14 A. Yes, sir.

15 Q. And at any time were you conducting any part
16 of any investigation of the Tyranny Response Team or
17 Duncan Philp as part of your responsibilities with the
18 Joint Terrorism Task Force?

19 A. Would you ask that question again?

20 THE DEPONENT: Could you repeat the
21 question?

22 (The last question was read back.)

23 A. If there's information out there -- in
24 response to your question, I believe that would have to
25 be obtained from the FBI.

1 Q. I think your answer was non-responsive. Let
2 me ask that you answer the question that I asked.

3 MS. GILBERT: Would you repeat the question,
4 please.

5 (The second to the last question was read
6 back.)

7 MS. GILBERT: I don't want to confer with a
8 question pending, but . . .

9 A. I believe that information -- if there is
10 information out there, that is FBI's information and you
11 would have to get that from them.

12 Q. (By Mr. Todd) Investigator, I believe the
13 answer can be answered -- this is a yes or no question.
14 And I believe that unless you are asserting a statutory
15 privilege, that you are required, by your oath, to answer
16 the question.

17 MS. GILBERT: If I can say something here.
18 If you'd allow me a moment to contact counsel for the
19 FBI? And the thing the witness is concerned about is
20 divulging information the FBI would protect. If I can
21 have that moment, I might be able to get an answer to
22 your question.

23 Let me make sure I have this down.

24 (Break from 2:30 p.m. to 2:54.)

25 MR. TODD: Okay. So do you want the

1 question reread, or are we --

2 MS. GILBERT: I'm going to give you my
3 spiel.

4 MR. TODD: Okay.

5 MS. GILBERT: The witness has testified that
6 he's a member of the Joint Terrorism Task Force. The FBI
7 controls the Joint Terrorism Task Force. The question
8 calls for protective FBI investigative information. The
9 FBI has instructed the witness not to answer the
10 question. I have the name of counsel, and a phone
11 number, if you would like that.

12 MR. TODD: Does the FBI intend to request a
13 protective order?

14 MS. GILBERT: I -- I do not know the
15 specific answer to that question. Based on my discussion
16 with counsel, I would imagine that the answer is yes.

17 MR. TODD: Okay. Are you requesting that we
18 recess these proceedings until they obtain a protective
19 order?

20 MS. GILBERT: Before I say that -- I mean,
21 one of the FBI's positions is that -- before I even state
22 that -- is it your position that they need to seek a
23 protective order?

24 MR. TODD: It's my position that absent a
25 statute that says it's privileged, the confidential

1 information is not a basis not to answer a question under
2 oath in a federal proceeding. And if they are directing
3 him not to answer without seeking a protective order,
4 they are obstructing justice.

5 MS. GILBERT: I need to consult with counsel
6 from the FBI. I'm not trying to make this difficult.

7 MR. TODD: I understand, Pat.

8 (Break from 2:56 p.m. to 3:00p.m.)

9 MR. TODD: Okay. Where are we now?

10 MS. GILBERT: I don't have an answer to you
11 as to whether they are going seek a protective order.
12 The chief division counsel is contacting the U.S.
13 Attorney's office, and they are going to have that
14 discussion.

15 MR. TODD: Okay. Well, then it is my guess
16 we should deal with a couple other elements here and then
17 continue the balance of the deposition.

18 MS. GILBERT: Okay. You mean by that
19 continue -- what other elements?

20 MR. TODD: I mean -- well, I have some
21 questions that I don't think relate to --

22 MS. GILBERT: Okay.

23 Q. (By Mr. Todd) Investigator, we were told
24 this afternoon that there was a videotape made by the
25 sheriff's department employees of the protest December 14

1 of 2001; is that correct?

2 A. Correct.

3 Q. Who made the videotape?

4 A. Investigator Ralph Gallegos,
5 G-a-l-l-e-g-o-s.

6 Q. Would there have been some report or
7 evidence put in that would have related to the making and
8 storage of the videotape?

9 A. No, sir.

10 Q. So the videotape was made, but it was never
11 logged anywhere in Jefferson County Sheriff's Department
12 records?

13 A. Yes, sir.

14 Q. It was logged?

15 A. It was not logged.

16 Q. It was not logged?

17 A. The videotape was made. Investigator
18 Gallegos gave it to me. It's been in my care, custody,
19 and control.

20 Q. And when does the videotape start?

21 A. 6:05 -- shortly after 6:00.

22 Q. Where was Investigator Gallegos at
23 approximately 6:40 p.m.?

24 A. At 6:40?

25 Q. At the time that Mr. Philp was alleged to

1 have committed a traffic violation that resulted in
2 Summons No. 147323 issued by Deputy Beaulieu, where was
3 Deputy Gallegos with the video camera?

4 A. I don't know.

5 Q. Have you reviewed the videotape?

6 A. Briefly. Just to obtain the beginning and
7 ending -- and ending times. And to see, basically, what
8 it depicted. I reviewed it fast-forward motion.

9 Q. Does it depict Mr. Philp's car in the
10 parking lot at the staging area? Or Mr. Philp's truck in
11 the parking lot of the staging area?

12 A. It depicts Mr. Philp. Mr. Philp's truck may
13 be there. Unfortunately, at that time of night it was
14 dark. There was no external light. No IR light. So
15 it's very poor quality of a nighttime video without any
16 additional lights. It's very hard to see.

17 Q. But it would possibly provide an indication
18 as to whether or not there was or was not a signal as
19 Mr. Philp's truck exited the parking lot, correct?

20 A. It may.

21 Q. Is it your testimony that you didn't realize
22 that that would be evidence that was required under Brady
23 v. Maryland to be made available to the defense in the
24 underlying criminal prosecution before Judge Hoppin?

25 A. Yes. Yes, sir.

1 Q. And this is because you thought that the
2 rules of due process didn't apply to a traffic case?

3 A. No, sir. I was under the impression the
4 ticket stood on itself. And I had forgotten about the
5 video.

6 Q. Was it the intent in having the videotape
7 made to provide evidence with respect to what was
8 occurring?

9 A. Yes.

10 Q. Do the policies and procedures of the
11 Jefferson County Sheriff's Department require that
12 evidence be appropriately documented and booked in with
13 an evidence custodian?

14 A. If a criminal offense had occurred that was
15 witnessed on the tape, I would say yes.

16 Q. What's your understanding of what is or is
17 not a criminal offense?

18 MS. GILBERT: Objection. Calls for a legal
19 conclusion.

20 MR. TODD: Counsel, I believe I asked him
21 for his understanding, not what actually was or was not a
22 criminal offense under Colorado law.

23 Q. (By Mr. Todd) And you may answer the
24 question.

25 A. A violation of the Colorado Revised

1 Statutes.

2 Q. Any violation of Colorado Revised Statutes
3 you believe is criminal?

4 A. I'm unclear when it comes to certain traffic
5 matters. Because when I was last on patrol, they have
6 since changed the traffic infractions. And I don't know
7 the answer to that one when it pertains to traffic.

8 Q. You have never had occasion to look that up
9 in the statutes?

10 A. Not since I left patrol, no, sir.

11 Q. You are aware that a failure to provide
12 proof of insurance, or otherwise comply with 42-4-1409,
13 Colorado Revised Statutes, carries up to a year in jail,
14 aren't you?

15 A. No, sir.

16 Q. You weren't aware of the penalty for failure
17 to have mandatory insurance?

18 A. I knew there's mandatory insurance. I was
19 not aware of the penalty, sir.

20 Q. I take it that you are licensed to operate a
21 motor vehicle in the State of Colorado?

22 A. Yes, sir.

23 Q. In the course of obtaining and remaining
24 licensed, you have indicated your proficiency to
25 representatives of the Colorado Department of Revenue

1 Division of Motor Vehicles with respect to the traffic
2 laws?

3 A. Yes, sir.

4 Q. Have you ever had occasion to cite anyone
5 for failure to present proof of insurance?

6 A. No, sir.

7 Q. Did you have any reason to believe that the
8 parking lot from which Mr. Philp was turning was publicly
9 maintained?

10 A. No, sir.

11 Q. Did you have any reason to believe that
12 there was a publicly maintained traffic control device at
13 the intersection of the parking lot and the entryway into
14 South Pierce?

15 A. No, sir.

16 Q. Did you have any reason to believe that
17 Mr. Philp was on a public roadway at the time that he
18 exited, prior to entering Pierce, at the time he exited
19 the parking lot?

20 A. No, sir.

21 Q. Did you have any reason believe that that
22 cut through the sidewalk, into the parking lot,
23 constituted an intersection as defined under Colorado
24 Revised Statutes entitled 42.

25 THE DEPONENT: Would you repeat that

1 question, please?

2 (The last question was read back.)

3 A. Yes.

4 Q. (By Mr. Todd) What was that basis?

5 A. I thought it was an intersection. I thought
6 when you left a parking lot, at a -- I thought that, you
7 know, it turned into an intersection.

8 Q. Did you ever have occasion to review the
9 definition of the terms "intersection" or "roadway"
10 within Colorado Revised Statutes?

11 A. Probably not since prior to 1983.

12 Q. So your belief that it was an intersection
13 was without having read §42-4-101 defining those terms?

14 A. Yes, sir.

15 Q. And you were aware that since the time that
16 you testified that you had reviewed those terms that
17 Title 42 of Colorado Revised Statutes was recodified?

18 A. No.

19 Q. You weren't aware that the general assembly
20 had recodified Section 42, shifted sections, changed
21 definitions, and moved to a comprehensive recodified
22 code?

23 A. No.

24 Q. Were you aware that citation to careless
25 driving and driving under the influence had changed in

1 terms of the statute number?

2 A. No, sir.

3 Q. When you were in patrol, did the Jefferson
4 County Sheriff's Department generally handle traffic
5 investigations of events on private property if a DUI or
6 leaving the scene of an accident was not involved?

7 A. No.

8 Q. Didn't it, by policy, provide that those
9 were not investigated because they were not within the
10 jurisdiction of the department?

11 A. I don't remember what policy was back in
12 1983, and prior.

13 Q. Do you recall investigating accidents on
14 private property that didn't involve an allegation of DUI
15 or leaving the scene?

16 A. Yes. Exceptions to that was we had contract
17 services for a period of time at Lakeside. We were
18 required to handle all the reports there as a
19 municipality. And they were -- the accidents
20 investigated at that locale.

21 Q. That would involve specific municipal
22 ordinances, correct?

23 A. No, sir. Because Lakeside at the time did
24 not have municipal ordinances.

25 Q. Then what would you be investigating?

1 A. Accidents. Traffic accidents that occurred
2 on private property. Primarily hit and run. But there
3 were traffic accidents being investigated on private
4 property. I don't have a real vivid, but I have a vague
5 recollection.

6 Q. Other than Lakeside, what was your
7 understanding of what would occur if there was a request
8 with respect to an accident that occurred on private
9 property where there was not an indication of alcohol or
10 hit and run?

11 A. At that date and time, those calls were sent
12 to Colorado State Patrol. And they were handling
13 accidents. We would respond to assist with first aid,
14 maintain the scene until relieved by Colorado State
15 Patrol, back in the early '80s.

16 Q. In fact, isn't that still the policy of the
17 Jefferson County Sheriff's office that primary
18 responsibility for traffic enforcement rests with the
19 Colorado State Patrol in the unincorporated areas of
20 Jefferson County?

21 A. I don't know, sir.

22 Q. Do you recall any training materials that
23 indicated to you that the exit of a privately owned and
24 privately maintained parking lot could be considered
25 either a roadway or a highway under 42-1-102, Colorado

1 Revised Statutes?

2 A. No, sir.

3 Q. Do you recall lectures at the academy that
4 stated that was the case.

5 A. No, sir.

6 THE DEPONENT: Excuse me. I need to use the
7 restroom, if we are going to continue for a while.

8 MR. TODD: Sure.

9 (Break from 3:17 p.m. to 3:20 p.m.)

10 MR. TODD: Could you read me back the last
11 question and answer.

12 (The last question and answer was read
13 back.)

14 Q. (By Mr. Todd) Do I understand you correctly
15 that you only recalled sometime within the past several
16 days that there was a videotape?

17 A. Yes, sir.

18 Q. Did you label this videotape at the time
19 that you received it from Investigator Gallegos?

20 A. No, sir. Investigator Gallegos labeled it.

21 Q. Was it somehow indexed with records?

22 A. No, sir.

23 Q. Does the Jefferson County Sheriff's office
24 have any policies with respect to documenting when
25 videotapes are made and retained with respect to

1 activities of officers or investigations?

2 A. I believe so.

3 Q. Would those policies have required that some
4 written notation be made so that records would have an
5 indexing that the item existed?

6 A. I don't believe so, sir.

7 Q. So are you telling us that the policies of
8 the department are such that upon receiving a subpoena to
9 produce documents, or a request under the Criminal
10 Justice Records Act, the sheriff would not be able to
11 comply without individually asking each officer whether
12 or not they had material that fell within the scope of
13 the request?

14 A. No, sir.

15 Q. Well, was there some way that the sheriff
16 would have known, on a request for all materials related
17 to the December 14, 2001 protest of Tyranny Response
18 Team, that this videotape existed, in order to produce
19 it?

20 A. The sheriff would have had to have contacted
21 the intelligence section, who were involved with that
22 investigation, and determine if they had a video.

23 Q. Well, in fact, the County Attorney's office
24 did contact you with respect to you providing them
25 information so they could make disclosures --

1 A. Uh-huh.

2 Q. -- pursuant to the Federal Rules of Civil
3 Procedure with respect to all documents and tangible
4 objects, correct?

5 A. I received a subpoena from the County
6 Attorney's office for all documents and records
7 pertaining to TRT and to Mr. Philp. And I honored that.

8 Q. You had previously received a summons and
9 complaint in this action and had been requested by the
10 County Attorney's office to make available to them all
11 information so they could disclose its existence with
12 respect to this case, correct?

13 A. Correct.

14 Q. And nothing you provided them at that point
15 identified there being a videotape, correct?

16 A. I provided the requested discovery by the
17 County Attorney's office, this morning, with the county
18 attorney. At which time I provided them with the video.

19 Q. Back when you initially met with the county
20 attorney, after commencement of this action, did you
21 provide them anything that disclosed the existence of the
22 videotape?

23 A. No.

24 Q. Did you provide them with anything that
25 disclosed the existence of any documents that had not

1 been provided by the district attorney in the course of
2 criminal discovery?.

3 THE DEPONENT: I'm sorry. Would you ask --
4 repeat that question, please.

5 (The last question was read back.)

6 A. I provided everything that I had to the
7 County Attorney's office.

8 Q. But that didn't include the videotape?

9 A. I provided the videotape to the county
10 attorney this morning.

11 THE DEPONENT: Excuse me. I'm not sure if
12 this is for me or for --

13 (Thereupon, the deponent consulted with
14 counsel off the record from 3:26 p.m. to 3:49 p.m.)

15 MR. TODD: We are going to be doing the
16 deposition of the plaintiff tomorrow commencing at 9 a.m.
17 at the County Attorney's offices. It's my understanding
18 that defendant's counsel is going to contact the U.S.
19 Attorney's office, and the magistrate, to arrange a time
20 where we will all be present at the County Attorney's
21 office to take up the issues as they relate to the
22 instructions that this witness believes he has received
23 from counsel for the FBI not to answer certain questions
24 that I have interposed.

25 And that we would then be continuing this

1 matter to get guidance from the magistrate. And having
2 gotten guidance from the magistrate, would then tomorrow
3 reset the balance of this witness's deposition. Is that
4 your understanding, Counsel?

5 MS. GILBERT: Yes.

6 MR. TODD: Thank you. Then, with that, we
7 can recess for the day.

8 WHEREUPON, the within proceedings were
9 concluded at the approximate hour of 3:50 p.m. of this
10 28th day of August, 2002.

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S I G N A T U R E O F W I T N E S S

I, DONALD L. ESTEP, do hereby certify that I have read the foregoing deposition and that the foregoing transcript and accompanying change sheets, if any, constitute a true and complete transcript of my testimony.

DONALD L. ESTEP

SUBSCRIBED AND SWORN TO before me this ____ day of _____, _____.

() No changes () Changes attached

NOTARY PUBLIC

Address: _____

My commission expires: _____

Re: Philp v. Estep and Beaulieu
Date of Deposition: August 28, 2002
Trial Date:
Volume: --
Reporter: LM

1 C E R T I F I C A T I O N

2 I, LESLIE MALECKA, RPR, appointed to take
3 the deposition of

4 DONALD L. ESTEP

5 certify that prior to the deposition the witness was
6 sworn by me to tell the truth; that the deposition was
7 taken by me at 143 Union Boulevard, Suite 900, Lakewood,
8 Colorado 80228-1829 on August 23, 2002; that the
9 proceedings were reduced to typewritten form by
10 computer-aided transcription consisting of 108 pages
11 herein; that the foregoing is an accurate transcript of
12 the proceedings.

13 I certify review of the transcript was
14 requested off the record.

15 I further certify I am not related to any
16 party herein or their counsel and have no interest in the
17 result of this litigation.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 5 day of September, 2002. My Commission
20 expires December 15, 2004.

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LESLIE MALECKA
Registered Professional Reporter