

1 UNITED STATES OF AMERICA
 2 MERIT SYSTEM PROTECTION BOARD
 3 WASHINGTON REGIONAL OFFICE

4 TERESA C. CHAMBERS, x
 5 :
 6 APPELLANT, :
 7 vs. : DOCKET NUMBERS:
 8 : DC-1221-04-0616-W-1
 9 DEPARTMENT OF THE INTERIOR, : DC-0752-04-0642-I-1
 10 :
 11 AGENCY. x

12 Washington, D.C.

13 Monday, August 30, 2004

14 DEPOSITION OF:

15 STEVE KRUTZ,

16 a witness, was called for examination by counsel
 17 for the appellant, pursuant to Notice and agreement
 18 of the parties as to time and date, beginning at
 19 approximately 9:15 o'clock, a.m., at the offices of
 20 Public Employees for Environmental Responsibility,
 21 2001 S Street, N.W., Suite 570, Washington, D.C.
 22 20009, before Belinda D. Lomax, a court reporter and
 Notary Public in and for the District of Columbia,
 when were present on behalf of the respective

1 parties:

2 APPEARANCE OF COUNSEL:

3 FOR THE APPELLANT:

4 KENTUCKY ENVIRONMENTAL FOUNDATION

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9 FOR THE AGENCY:

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15 AND

16 U.S. DEPARTMENT OF THE INTERIOR

17 BY: JACQUELINE JACKSON, ESQUIRE

18 Office of the Solicitor

19 1849 C Street, Northwest, Room 7323

20 Washington, D.C. 20240

21 (202) 208-6848

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1	I-N-D-E-X		
2	Witness:		Page:
3	Steve Krutz		
4	Examination by Mr. Harrison		4
5	- 0 -		
6	Exhibits: (Included in transcript)		Page:
7	Exhibit number 1 marked for identification		
8	to the Krutz deposition		138
9	(Proposed removal)		
10	- 0 -		
11	QUESTIONS THE WITNESS WAS INSTRUCTED NOT TO ANSWER:		
12	PAGE	LINE	
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1 THEREUPON:

2

 STEVE KRUTZ,

3

a witness, was called for examination by counsel

4

for the appellant, and after having been duly

5

sworn by the Notary Public, was examined and

6

testified as follows:

7

 EXAMINATION BY COUNSEL FOR THE

8

APPELLANT

9

BY MR. HARRISON:

10

Q. Good morning, Mr. Krutz.

11

A. Hi.

12

Q. My name is Mick Harrison. I

13

represent Teresa Chambers. As you know, Ms.

14

Chambers has two appeals pending before the Merit

15

System Protection Board, and we will be asking you

16

some questions related to those appeals today.

17

 If you have difficulty understanding

18

me or hearing me, don't hesitate to ask me to

19

repeat, rephrase, whatever you require. If you

20

require a break at any time, just let me know and

21

we will try to accommodate you.

22

 Could you start by telling us your

1 background professionally and educationally before
2 you became a member of the human resources staff at
3 the Department of the Interior?

4 A. How far back do you want me to go?

5 Q. Well, I will leave that somewhat to
6 your discretion. Certainly the most recent.

7 A. I was discharged from the military
8 in 1979, went back to school and got an
9 undergraduate degree, and entered the Federal
10 Service, worked for the Department of Labor for ten
11 or so years, went into the Department of Commerce,
12 served there for four years, and transferred career
13 series from Office of Worker's Compensation
14 specialist to employee relations specialist,
15 continued at the Department of Commerce for let's
16 say two years more, two and a half years, and then
17 was accepted for a position at the Department of
18 Interior where I am currently employed as employee
19 relations specialist and have been employed there
20 for, I believe, in that capacity for two years, six
21 months, I think, two years, something like that.

22 Q. What are your duties as an employee

1 relations specialist?

2 A. My duties include primarily writing
3 policy of an employee relations nature, topics that
4 include the leave share program, the -- well, some
5 other duties and policy writing issues, then
6 finally, as needed to serve as an employee
7 relations specialist for conduct issues for senior
8 management.

9 Q. Do you have a job description?

10 A. Yes.

11 Q. Does your job description state that
12 your primary responsibility is writing policy?

13 A. I don't recall.

14 Q. Do I understand your description of
15 your duties to be your first obligation is to
16 policy duties, and then as sort of an as-needed or
17 on-call basis, you work on individual personnel
18 issues?

19 A. That's not entirely correct.

20 Q. Help me out with that.

21 A. My primary duties are policy
22 writing. My secondary duty as needed would be to

1 serve as an employee relations specialist to senior
2 members of the National Park Service.

3 Q. How would one define senior members?
4 We're not talking about age, I take it?

5 A. No. Seniority in the service such
6 as the main headquarters office and/or consulting
7 to any regional offices with the National Park
8 Service that may need assistance, primarily
9 consulting with those employee relations
10 specialists within those regional offices.

11 Q. So, at least in terms of the
12 regional offices, you would not be handling a
13 personnel matter directly, but would be consulting
14 with an employee relations specialist in the
15 region?

16 A. That's correct. I would receive a
17 call from them and provide them assistance as
18 needed.

19 Q. Now, in terms of your work on
20 personnel matters in the headquarters office, when
21 you get involved there, do you work directly on a
22 personnel matter or do you consult with another

1 human resources staff person?

2 A. Within the headquarters office,
3 there is an employee relations specialist who
4 handles the people within the headquarters
5 building. I, on occasion, am assigned to -- I
6 consult with the people that this person -- when
7 they need assistance regarding their particular
8 supervisors within the building itself. So, I can
9 be been directed by my supervisor to handle -- to
10 make primary assistance to management on an
11 as-needed basis.

12 Q. I see you have been in employee
13 relations for about two and a half years?

14 A. Correct.

15 Q. How many personnel matters do you
16 think you have handled directly in that time as
17 distinguished from consulting with another human
18 resources person who was handling the matter?

19 A. Four.

20 Q. Do you recall those four instances?

21 A. I can recall two.

22 Q. One was Ms. Chambers, I take it?

1 A. Two were Ms. Chambers.

2 Q. Are those are the two you can
3 recall?

4 A. There is another one but I should
5 not mention their names.

6 Q. Can you describe it in a more
7 general way?

8 A. One was theft of government
9 property. The employee was proposed to be
10 terminated and they were reassigned.

11 Q. Were you the only human resources
12 person working on that particular matter?

13 A. No. My supervisor -- actually, that
14 occurred right after my arrival. The supervisor
15 was primarily working the initial work on that and
16 turned the matter over to me upon my arrival.

17 Q. Once you arrived, was it essentially
18 your sole responsibility to handle that matter for
19 human resources?

20 A. To provide consulting service to the
21 senior management, the person who was handling the
22 matter.

1 Q. Understood. In terms of human
2 resources staff involved, you were basically the
3 only one actively involved in that case once you
4 came on?

5 A. Correct.

6 Q. Was that a manager level person or
7 below management level person?

8 A. Below management.

9 Q. Who was your human resources
10 supervisor that turned that case over to you?

11 A. Dave Davies.

12 Q. Was that your first case? Was that
13 your first personnel matter?

14 A. With the Department of Interior,
15 correct.

16 Q. Were you responsible for the
17 recommendation or advice that led to changing the
18 penalty from termination to reassignment?

19 A. I don't recall.

20 Q. Do you recall the basis for the
21 change in the proposed penalty to the ultimate
22 penalty?

1 A. I believe the issue had an EEO
2 aspect.

3 Q. Could you be a little more explicit?

4 A. The Equal Employment Office was
5 involved in negotiations due to a claim the
6 employee made for active discrimination.

7 Q. So, the employee who had the action
8 proposed against them had themselves made a
9 complaint and alleged some kind of discrimination?

10 A. Correct.

11 Q. And correct me if I'm mistaken, but
12 the presence of a potential discrimination issue
13 where the employee may in fact have been
14 discriminated against caused a mitigation of the
15 penalty?

16 A. I can't affirm that.

17 Q. What did cause the mitigation of the
18 penalty?

19 A. I do not know.

20 Q. Did you know at the time?

21 A. No, I didn't.

22 Q. So, you were the one advising the

1 manager who issued the penalty, I take it?

2 A. No. I provided consulting services
3 regarding procedures to be followed by senior
4 management.

5 Q. Who was the manager you advised in
6 that case?

7 A. Dave Davies.

8 Q. So, the employee was in human
9 resources?

10 A. Correct.

11 Q. Mr. Davies made the decision on the
12 penalty?

13 A. I believe he was proposing it.

14 Q. Do you know who the deciding
15 official was?

16 A. I believe it was Lynn Smith.

17 Q. Were you privy to Lynn Smith's
18 reasons for changing the penalty?

19 A. No, I was not.

20 Q. Had you recommended a change in
21 penalty in any way?

22 A. No, I had not.

1 Q. So, in terms of your perception of
2 your role and how you actually implement your role,
3 do I understand you correctly that you advised
4 management on the procedures that should be used in
5 a personnel decision, but you don't get involved in
6 recommending anything on the substance of the
7 decision?

8 A. That would be correct.

9 Q. And, I take it, but please correct
10 me if I'm mistaken, that you do not perceive your
11 role to be either recommending on the substance of
12 whether the charges should be sustained or which
13 ones, and also on what the penalty should be? Both
14 of those are sort of outside your realm?

15 A. I provide reference to the table of
16 penalties and provide input regarding the number of
17 charges and how they may relate to the table of
18 penalties.

19 Q. So, in terms of the first part of my
20 question which you did not qualify, I take it that
21 you don't consider yourself to be responsible for
22 recommending on whether a charge should be

1 sustained or not?

2 A. I do not provide that
3 recommendation, no.

4 Q. And you don't perceive it to be your
5 role to do so?

6 A. I do not.

7 Q. Notwithstanding that, have you ever
8 done so in any particular case?

9 A. Yes, previously when I was employed
10 with the Department of Commerce.

11 Q. I see. Did you get some training or
12 direction once you arrived at the Department of
13 Interior that in some way refined your perception
14 of your role?

15 A. No, because my role within the
16 Department of Interior is more of a consultant,
17 policy writer, while my role at the Department of
18 Commerce was as a line employee relations
19 specialist.

20 Q. I see. So, if I understand you
21 correctly, a line human resources person at the
22 Department of Interior, as at the Department of

1 Commerce, might well get involved in making
2 recommendations on whether a charge should be
3 sustained or not?

4 A. That was the environment within the
5 Department of Commerce.

6 Q. What about at the Department of
7 Interior?

8 A. The Department of Interior, we have
9 regional employee relations specialists. I should
10 clarify that at the Department of Commerce, I
11 worked actually for the International Trade
12 Administration, which was one small bureau within
13 the greater whole of the department.

14 Q. So, what about the answer to my
15 question?

16 A. Can you repeat the question?

17 Q. Sure. My question was at the
18 Department of Interior, what is the approach? You
19 defined it pretty clearly at the Department of
20 Commerce that line -- or at least at the subunit of
21 the Department of Commerce in which you worked,
22 that the line human resources staff would get

1 involved in recommending on whether a charge would
2 be sustained or not. But I was trying to clarify,
3 then, how does the Department of Interior, during
4 your tenure, approach that same question?

5 A. The Department of Interior has --
6 the National Park Service has many regional
7 offices. Each of those are staffed as well as the
8 headquarters building is staffed with employee
9 relations line personnel, to use the phrase.

10 I am not a line personnel. I am a
11 policy analyst with the National Park Service at
12 the headquarters. So, therefore, my role is
13 different in regards to my interaction with
14 regional offices or the headquarters employee
15 relations specialists.

16 Those people are asking for
17 consultative opinions, not necessarily whether
18 there shall be X decision or Y decision proposed.
19 It's merely a matter of whether they want an
20 explanative on regards to facts of a case or
21 evidence that maybe needs to be collected.

22 Q. Now, I understand the distinction

1 you're making between a line human resource person
2 in the regions in DOI versus someone such as
3 yourself who consults with those people from
4 headquarters, but my specific question is do those
5 line human resources persons get involved in
6 recommending on a substance of a personnel decision
7 such as whether a charge should be sustained or
8 not?

9 A. I don't know what those people do.

10 Q. You know that, at least for yourself
11 at least, you don't at least for the reason you
12 have given as a distinction between your role and
13 theirs?

14 A. Correct.

15 Q. Now, you were involved, I take it,
16 in some capacity in the recent decisions regarding
17 Ms. Teresa Chambers that involved administrative
18 leave, proposed removal and removal, at least some
19 subset of those?

20 A. Can you repeat the question again?

21 Q. Yes. You were involved in some
22 capacity in the recent decisions regarding Ms.

1 Teresa Chambers that involved administrative leave,
2 proposed removal and final removal?

3 A. It's no to the first question.

4 Q. On administrative leave?

5 A. Correct. Yes to the second, yes to
6 the third.

7 Q. Thank you. Were you performing the
8 same role you have described for yourself generally
9 of being a consultant to another human resources
10 person? Were you performing that same role in
11 regard to the latter two of these three actions
12 against Ms. Chambers?

13 A. No, I wasn't.

14 Q. I take it there was not another
15 human resources person involved if you were acting
16 as primary in the case?

17 A. That's correct.

18 Q. Now, pardon me for asking, but if
19 you don't know the role of the primary human
20 resource staff people in DOI in regard to whether
21 they get involved in recommending on the substance
22 of a personnel action such as whether to sustain a

1 charge, how did you come to know your role in
2 acting as the primary regarding Ms. Chambers?

3 A. Can you repeat that question?

4 Q. I don't know. I will try. You had
5 indicated in your prior testimony that you were not
6 aware of the role that the primary human resource
7 staff play at the Department of Interior as to
8 whether they get involved in the substance of a
9 personnel decision, particularly whether to
10 recommend sustaining a charge or not, that you
11 weren't familiar either way with how they approach
12 that question. Did I understand you correctly?

13 A. Are you referring to the
14 departmental staff or National Park Service staff?

15 Q. Let's stay within the National Park
16 Service for the moment because I believe that's how
17 you answered the prior question.

18 A. One more time -- I'm sorry --
19 regarding National Park Service.

20 Q. Precision is important, and I
21 appreciate any distinction that needs to be made
22 among units of the Department of Interior. So,

1 we'll explore those.

2 Focused on the National Park
3 Service, which is a unit of the Department of
4 Interior, I believe in your prior testimony, and
5 correct me if I'm mistaken, you indicated you were
6 not personally familiar with whether or not human
7 resources staff in the regions for the National
8 Park Service would play a primary role on personnel
9 matters as distinguished from yourself who
10 consulted with those people.

11 You were not aware of whether those
12 primary staff in the regions in the National Park
13 Service got involved in the substance of personnel
14 decisions such as whether or not to sustain a
15 charge. Did I hear you correctly?

16 A. Correct.

17 Q. Now, having said that, you have also
18 clarified that in the case of Ms. Chambers, you
19 were involved as a human resources staff person on
20 two of the three decisions I mentioned, the
21 proposed removal and the removal final decision.
22 Did I hear that correctly?

1 A. That's correct.

2 Q. Now, my next question was if you
3 didn't know the National Park Service human
4 resources staff role in the regions when they
5 played a primary role and, of course, Ms. Chambers
6 being in the U.S. Park Police, a subunit of the
7 National Park Service, I believe you would agree,
8 and you were put in the role of playing essentially
9 the primary human resources staff person role for
10 Ms. Chambers' proposed removal and final removal,
11 how did you come to know what that role really
12 entailed?

13 A. To be a consultant to senior
14 management regarding the procedures to follow in
15 the issuance of any level of a proposed or final
16 decision.

17 Q. Is that the role that the regional
18 human resources staff play in the National Parks
19 Service?

20 A. It's the role I played.

21 Q. That's not my question.

22 A. Rephrase your question again.

1 Q. It wasn't about you. It was about
2 the human resources staff in the region that play
3 the primary role. Is that what they do?

4 A. I don't know what they do.

5 Q. So, my question stands. How did you
6 come to know what your role was when you were put
7 in the position of being the primary human
8 resources staff person regarding Ms. Chambers'
9 decision? If you didn't know what the human
10 resources people in the regions did in that regard,
11 how did you know what you were to do in that regard
12 in Ms. Chambers' case?

13 A. I'm sorry. I really don't
14 understand your question. How do I know what to
15 do, is what you're asking?

16 Q. In playing a primary human resources
17 staff person's role versus the consulting role,
18 which you said was your primary --

19 A. Because I provide consultation
20 information. Someone wants to know what to do, I
21 tell them what to do.

22 Q. Okay, and --

1 A. I provide them with a copy of the
2 procedure, and if they would like to know how to do
3 something, I would happily explain to them what
4 that means.

5 Q. I take it from your answer, and
6 correct me, that no one sat down with you and gave
7 you a document that said, "Now that we're asking
8 you to help us on Ms. Chambers' case as the sole
9 human resources person or the primary one, here's
10 what your role will be?" Nobody did that?

11 A. No.

12 Q. I take it nobody did that in a
13 verbal manner either?

14 A. No.

15 Q. I take it from your answer that when
16 you played the role in Ms. Chambers' case, you
17 essentially responded to requests for advice?

18 A. Advice regarding the procedures that
19 are mandated to be followed under the departmental
20 directives.

21 Q. Human resource directives?

22 A. The departmental directive.

1 Q. National Park Service or Department
2 of Interior?

3 A. Department of Interior, Departmental
4 Manual 752, complimented by NPS 752, which is
5 presently in effect but being rewritten by myself.

6 Q. So, did someone come to you
7 regarding Ms. Chambers and ask, "What does
8 Departmental Manual 752 say about this issue," or
9 did they say, "How do I handle this?"

10 A. No.

11 Q. That actually was a two-choice
12 question. So, no might be ambiguous. Let me
13 rephrase it for you. The question is did a person
14 asking you for advice make a reference to the
15 manual, or did they just say, "Here is my
16 situation. How do I handle it?"

17 A. The latter.

18 Q. You would be the one who would bring
19 the departmental manual into play in that
20 situation?

21 A. Correct.

22 Q. So, I take it that your role was

1 essentially defined by what questions were brought
2 to your attention?

3 A. That's correct.

4 Q. Now, you indicated that you were not
5 involved in the National Park Service decisions
6 regarding administrative leave for Ms. Chambers; is
7 that correct?

8 A. Correct.

9 Q. Do you know who was involved, from
10 the human resources side, regarding the
11 administrative leave decision for Ms. Chambers?

12 A. I don't know.

13 Q. Were you aware that Ms. Chambers had
14 been placed on administrative leave?

15 A. Yes.

16 Q. Did you know that that occurred on
17 or about December 5th, 2003?

18 A. Yes.

19 Q. Did you come to know that at the
20 time, or did you only learn subsequently?

21 A. I don't recall.

22 Q. Do you know how you came to know

1 that Ms. Chambers was placed on administrative
2 leave?

3 A. I received a copy of the document.
4 I can confirm that it was the --

5 Q. The administrative leave notice?

6 A. Yes.

7 Q. Let me show you a document that's
8 been marked previously as Murphy Exhibit Number 8
9 and see if that looks like the document you're
10 referring to.

11 A. Yes.

12 Q. I take it the document you saw had
13 Mr. Murphy's signature on it as this one does, or
14 do you recall?

15 A. I can't recall.

16 Q. Do you know whether the document you
17 saw was final or draft?

18 A. I assumed it to be final.

19 Q. Do you know why you made that
20 assumption?

21 A. At this moment, no, I can't recall.

22 Q. And it wasn't necessarily because

1 Ms. Chambers was already gone from the work place
2 at that time?

3 A. I can't recall.

4 Q. Do you know who brought this
5 document, this administrative leave notice, to your
6 attention?

7 A. I don't remember.

8 Q. It wasn't Mr. Davies, for example?

9 A. I can't recall.

10 Q. Now, have you been put on notice
11 that you might be involved in Ms. Chambers's case
12 in any way prior to being shown this document, the
13 administrative leave memo?

14 A. Yes.

15 Q. Tell me how that happened.

16 A. I was called to the national office
17 on December -- my recollection tells me on December
18 2nd.

19 Q. I apologize. Which office were you
20 called to?

21 A. Deputy Director Murphy's.

22 Q. I see. Do you know about what time

1 that was?

2 A. Before noon.

3 Q. Did Mr. Murphy himself summon you
4 there?

5 A. I believe Mr. Davies instructed me
6 to go.

7 Q. Did Mr. Davies tell you anything
8 further in giving you that instruction?

9 A. I don't recall.

10 Q. And you did, I guess, walk over to
11 Mr. Murphy's office or drive over?

12 A. I reported to Director Murphy's
13 office.

14 Q. Who was present?

15 MR. L'HEUREUX: You may answer
16 that question.

17 THE WITNESS: Tim. I don't
18 remember his last name.

19 BY MR. L'HEUREUX: Elliot?

20 THE WITNESS: Tim Elliot -- thank
21 you -- Deputy Director Murphy and myself.

22 BY MR. HARRISON:

1 Q. All right. What did Mr. Murphy say
2 at that point, if anything?

3 A. Mr. Murphy was in possession of a
4 newspaper article.

5 Q. Okay. And you noticed that, that he
6 had an article?

7 A. He had the newspaper on his coffee
8 table.

9 Q. Did he say anything to you?

10 A. He said he believed that Teresa
11 Chambers had exceeded her authority and there were
12 some other issues that had been stemming before
13 this, and that he believed it was appropriate at
14 this time to consider an action.

15 Q. Did Mr. Murphy identify for you at
16 that time what those earlier issues he referred to
17 were?

18 A. Not at that moment.

19 Q. As I understand your testimony, Mr.
20 Murphy indicated that because he believed that
21 Chief Chambers had exceeded her authority and there
22 had been some earlier issues, that he thought it

1 was appropriate to consider some kind of
2 disciplinary action?

3 A. That would be correct.

4 Q. Did Mr. Murphy make it clear to you
5 in any manner what he thought the most recent
6 instance of Ms. Chambers exceeding her authority
7 had been that prompted his meeting with you?

8 A. He indicated to me that the
9 newspaper article reflected her failure to --

10 Q. And I'd like you to use his words as
11 best you can. If not, just tell us that you are
12 paraphrasing.

13 A. I can only paraphrase what he said
14 due to length of time. I know he was very
15 concerned about the issue of her responding to the
16 security issues or what he stated to me at that
17 time, and paraphrase, some levels of security
18 lapses that she had given to the press.

19 Q. He used the word "lapses?"

20 A. No, I cannot say that.

21 Q. That was your understanding of what
22 he was saying?

1 A. That would be the gist of what I
2 believed he was saying. Also, her issue about the
3 monetary -- revealing monetary issues that he
4 indicated to me at that time was within the budget
5 cycle that were prohibited to be released.

6 Q. Did you understand that when he made
7 a reference to security and used some words that
8 you're not recalling but you understood to be some
9 sort of security lapse, that he wasn't talking
10 about not posting guards somewhere, he was talking
11 about making a statement to the press?

12 A. I believe that's what my
13 recollection would be.

14 Q. The statement to the press?

15 A. Correct.

16 Q. And in terms of revealing the budget
17 information, I take it that you understood from the
18 context and his words at the time that he was
19 talking about some statement Ms. Chambers made to
20 the Washington Post?

21 A. Correct. It was in the same
22 newspaper article.

1 Q. Had you seen that article prior to
2 coming to Mr. Murphy's office?

3 A. No. I had not read the paper that
4 day.

5 Q. Did Mr. Murphy give you a copy of
6 the article?

7 A. I was able to read the newspaper
8 article at that time, yes.

9 Q. In his office?

10 A. Correct.

11 Q. From his copy?

12 A. Correct.

13 Q. Was that on your own initiative or
14 did he ask you to?

15 A. On my own initiative.

16 Q. So, did Mr. Murphy say anything
17 further to you in terms of what your role was to
18 be?

19 A. He wanted to ask me questions
20 regarding whether or not the newspaper article
21 and/or other information he had available to him
22 would be sufficient enough to render some level of

1 a conduct issue.

2 Q. Did he show you any document at that
3 time that represented the other information?

4 A. Later that day, towards evening, we
5 proceeded to -- I proceeded to get from him
6 materials which were items which I used in drafting
7 a document.

8 Q. I take it this was in written form
9 that you received this information?

10 A. Yes, a series of e-mails, copies of
11 documents from departmental and/or governmental
12 sources.

13 Q. Putting the e-mails aside for the
14 moment, what were the documents that were passed
15 on?

16 A. I believe one was a copy of the OMB
17 circular.

18 Q. A-11?

19 A. Yes.

20 Q. Maybe?

21 A. I'm not very good with numbers.

22 Q. You're not sure?

1 A. I'm not sure.

2 Q. Do you remember the substance of the
3 circular?

4 A. It spoke to the issue of lobbying
5 and restrictions on lobbying.

6 Q. I see. Other documents that were
7 involved?

8 A. I'm sorry. I believe the OMB
9 circular deals with budgetary issues, if I'm not
10 mistaken.

11 Q. Not necessarily lobbying?

12 A. I don't recall the contents of the
13 OMB document.

14 Q. That's fair. What were the other
15 documents?

16 A. E-mails, documents from other
17 departmental sources.

18 Q. I'm looking to identify the
19 documents specifically other than the e-mails. Can
20 you do that?

21 A. I believe --

22 MR. L'HEUREUX: Go ahead.

1 THE WITNESS: I believe one of them
2 was from -- two documents were from Randolph
3 Meyers, one regarding wearing police pins. The
4 other was regarding the OAS issue. There were also
5 a series of e-mails that Deputy Director Murphy had
6 with Teresa Chambers regarding various issues. I
7 can't recall them all. There was also a --

8 BY MR. HARRISON:

9 Q. I apologize. Those e-mails were
10 between Don Murphy and Teresa Chambers?

11 A. Yes. I believe I also saw a copy of
12 one e-mail from -- I believe it was from Teresa
13 Chambers to Ms. Weatherly. I saw -- I can't recall
14 the others. There were probably others.

15 Q. Do you recall what categories of
16 documents those might have been if you don't recall
17 the specifics?

18 A. Probably e-mails.

19 Q. You think they were e-mails that may
20 have involved Ms. Chambers on one end or the other?

21 A. Yes, probably.

22 Q. All right. Did Mr. Murphy ever show

1 you or send to you what would be a computer record
2 he had been keeping of notes regarding his concerns
3 regarding Ms. Chambers over a period of time?

4 A. A computer record?

5 Q. Meaning Mr. Murphy would type onto a
6 word processor or other computer program his
7 concerns, say, on day one in September and day
8 three in October and day ten in November, and each
9 one would talk about some concern he had?

10 A. Yes. I did read them.

11 Q. Was that a document listing Mr.
12 Murphy's observations that he may have typed into
13 his computer at various points in time shown to you
14 at the same time frame as these other documents you
15 have described?

16 A. I can't remember.

17 Q. Might they have been?

18 A. I would be speculating.

19 Q. I'm not sure what that means in this
20 context.

21 A. I saw many documents.

22 Q. Can you at least be sure that you

1 haven't seen this document we're referring to that
2 Mr. Murphy wrote in his computer maybe only in the
3 last couple weeks?

4 A. No. It would have been very early
5 on.

6 Q. That's pretty much what I was trying
7 to get at.

8 A. Right.

9 Q. Thank you. Now, as I understand it,
10 you met with Mr. Murphy prior to noon on his
11 request through Mr. Davies. You had the discussion
12 you have described for us. Later in that same day
13 you received some documents from Mr. Murphy that
14 were basically the ones you have described within
15 the extent of your memory. Let me show you a
16 document that was given to us by the Agency. It's
17 been marked --

18 MR. HARRISON: I'm having a little
19 trouble with the handwriting here. Maybe Mr.
20 L'Heureux can help me with what that's called.

21 MR. L'HEUREUX: Agency Hearing
22 Exhibit Number 3.

1 BY MR. HARRISON:

2 Q. Agency Exhibit Number 3, and see if
3 you recognize that?

4 A. By the date of the document, I
5 cannot be sure but it appears to be in the time
6 line and contain the information similar, if not
7 the same.

8 Q. So, this could be substantively
9 similar to what Mr. Murphy provided to you that you
10 have described as essentially being his recording
11 of observations over time on his computer?

12 A. If not the same.

13 Q. It may or may not be the same?

14 A. Could be.

15 Q. Thank you. During the meeting that
16 you had in Mr. Murphy's office, you described some
17 of the things Mr. Murphy said to you in terms of
18 his wondering whether Ms. Chambers' statements
19 recently imposed plus these earlier matters might
20 be a basis for a disciplinary action, and he was
21 apparently seeking your advice on that question, as
22 I understand it?

1 A. I was there to review the materials
2 and prepare whatever document would be then
3 followed up with the Office of the Solicitor.

4 Q. How did you come to understand that?

5 A. That's normally the procedure I
6 would take. The Office of the Solicitor becomes
7 involved very early in all disciplinary cases,
8 especially senior management.

9 Q. The solicitor doesn't make personnel
10 decisions, do they?

11 A. They provide advice.

12 Q. I understand, but the decision maker
13 is a nonlawyer?

14 A. The decision maker in the deputy
15 director in this case, or proposed official, I
16 should say.

17 Q. So, your role was to take the
18 information given to you by Mr. Murphy and to do
19 something with it, I take it?

20 A. Correct.

21 Q. What is the something you were to do
22 with it?

1 A. Assemble it in some form of coherent
2 argument regarding charges and specifications that
3 would be followed up by the Office of the
4 Solicitor.

5 Q. I see. So, if I can attempt to
6 rephrase in my own words, and tell me if I captured
7 the concept, Mr. Murphy would give you the
8 information he was concerned about. He would
9 format that into perhaps a draft personnel action
10 document according to the human resources policies
11 and procedures, but you would not yourself make the
12 evaluation of whether it was legally sufficient?
13 That would be passed on to the solicitor's office?

14 A. That would be correct.

15 Q. Did you do that in this particular
16 case?

17 A. I did.

18 Q. When did you first prepare your
19 draft document?

20 A. If my recollection is correct,
21 December 2nd was the date of the meeting with Tom
22 Murphy, that would be on that evening.

1 Q. Of December 2nd?

2 A. Yes.

3 Q. So, you got right on it?

4 A. I was directed to do it this
5 evening.

6 Q. Did you work late on it?

7 A. Until approximately 8 p.m.

8 Q. Did Mr. Murphy ask you to do it that
9 evening?

10 A. That's correct.

11 Q. Did the document have a title that
12 you drafted?

13 A. I don't recall. It must have.

14 Q. I take it it didn't have a signature
15 block for you, it had a signature block for Mr.
16 Murphy?

17 A. That's correct.

18 Q. When you finished drafting it at
19 about 8 o'clock p.m. on the 2nd, did you provide it
20 to Mr. Murphy in any way?

21 A. Yes. I sent him electronically a
22 copy and placed the document on a disk drive. On a

1 floppy. I'm sorry.

2 Q. Did you provide the floppy to Mr.
3 Murphy or his staff?

4 A. I took the floppy back to my office
5 where it was kept in the main file.

6 Q. I see. Is that floppy still in your
7 files today?

8 A. I don't know.

9 Q. You didn't destroy it or remove it?

10 A. I have not destroyed it, no.

11 Q. I take it you don't know the
12 disposition of the floppy at the moment?

13 A. I have not seen it for many months.

14 Q. Have you checked on it at all?

15 A. No.

16 Q. The electronic document you sent to
17 Mr. Murphy, was that by e-mail?

18 A. Yes.

19 Q. Is that e-mail still in your sent
20 box?

21 A. Yes.

22 Q. Did Mr. Murphy communicate with you

1 about this matter on that evening after he received
2 your e-mail?

3 A. No.

4 Q. Did you have any communications with
5 any nonlawyer on the evening of December 2nd
6 regarding the work you were drafting for Mr. Murphy
7 regarding Ms. Chambers?

8 A. Other than to inform Dave Davies
9 that I was staying late that evening to secure
10 compensatory time, no, I did not.

11 Q. You told Mr. Davies at least the
12 reason why you needed the compensatory time and why
13 you were working late?

14 A. I was working, yes.

15 Q. You told him you were working on the
16 Chambers matter?

17 A. I was working for Deputy Director
18 Murphy that evening and I was going to be late.

19 Q. Did you tell him you were working on
20 a matter regarding Ms. Chambers?

21 A. I can't recall.

22 Q. When you drafted your document, did

1 you make an effort to include all the information
2 Mr. Murphy gave you in some intelligible form?

3 A. No. There was -- I recollect the
4 pin issue was not included by myself. I can't
5 recall if any others, but I know the pin issue was
6 not. I did not put that in there.

7 Q. And that was a decision of your own?

8 A. Correct.

9 Q. Other than excluding that issue, did
10 you make an effort to include everything else Mr.
11 Murphy gave you?

12 A. Again, I cannot recall all of the
13 other pieces of information that were given to me
14 that night, but the initial contents of the memo
15 are what was reflected in the document as the
16 contents, the broad range.

17 Q. That's slightly different than my
18 question, although you may mean it to answer the
19 question. I will restate my question. Listen to
20 it very carefully.

21 Mr. Murphy gave you some information
22 verbally in the meeting he had with you. He then

1 gave you some documents and some e-mails. As I
2 understand the role that you have described you
3 were playing, you were to compile that information
4 in a proper format perhaps exercising some
5 discretion, as you have, in deleting the pin issue,
6 and that draft was to be forwarded to Mr. Murphy
7 and apparently to counsel. Am I right so far?

8 A. Correct.

9 Q. Now, my question is in performing
10 that role, when you received the verbal information
11 from Mr. Murphy and written information from Mr.
12 Murphy, which were e-mails, certain documents you
13 identified, information substantively similar to
14 this computer record of Mr. Murphy's, if not the
15 same document, did you make an effort to compile
16 all of that information in some form into your
17 draft with the exception you noted for the pin
18 issue?

19 A. There could have been additional
20 information that we -- that was not included but I
21 I can't recall that information.

22 Q. So, as best you can remember, the

1 only issue you remember excluding was the pin
2 issue, but there might have been others?

3 A. Correct.

4 Q. Apart from those others that you're
5 not recalling, you did attempt to do what I just
6 described, which was to include all the information
7 Mr. Murphy gave you with the expectation of any
8 deletions you chose to make?

9 A. Correct.

10 Q. Now, the document that you drafted,
11 apart from summarizing what we might call the
12 charges or specifications, which I don't know if
13 you will recall the information, did you use the
14 phrase "charge or specification" in the document?

15 A. Yes, I did.

16 Q. Did the document have a type of
17 disciplinary action that was indicated as the
18 proposed or the target action?

19 MR. L'HEUREUX: I'm going to
20 object on grounds of attorney/client communication.
21 What we're describing here and what the questions
22 appear to be asking him to describe are the

1 contents of a client created communication for the
2 purpose of sending it to the solicitor for legal
3 opinion. This is identical to the privilege that
4 we have asserted earlier, counsel, with respect to
5 Mr. Davies.

6 Before this deposition, I instructed
7 this witness not to answer any questions concerning
8 the communications that he assisted Mr. Murphy in
9 creating for the purpose of communicating with
10 counsel for an opinion, nor is he to describe, as I
11 have instructed him previously, any communications
12 that came from counsel to Mr. Murphy that were
13 transmitted or accessed by him.

14 In his transactions with Mr. Murphy,
15 he was an agent for Mr. Murphy, who we assert is
16 the client in this case. I will extend my remarks
17 to say he performed a similar role with respect to
18 Mr. Hoffman, the deciding official. So, I am
19 instructing this witness not to answer these
20 questions concerning the content of communications
21 between Mr. Murphy or intended to be made by Mr.
22 Murphy to counsel and back.

1 MR. HARRISON: You mean Mr. Krutz,
2 I take it, not Mr. Murphy? Or do you mean Mr.
3 Murphy?

4 MR. L'HEUREUX: I do mean Mr.
5 Murphy. Mr. Krutz was Mr. Murphy's agent in this.
6 He was an agent of the client, Mr. Murphy being the
7 client in this precise context. With respect to
8 those communications that he prepared for Mr.
9 Murphy to send to the solicitor, we are asserting
10 the privilege over those.

11 MR. HARRISON: I understand your
12 point. So, my last question which prompted this
13 assertion of privilege, as I understand it, was did
14 the document that was drafted by Mr. Krutz identify
15 a proposed or target action, and it is that
16 question you're asserting a privilege in regard to?

17 MR. L'HEUREUX: Yes. I am
18 asserting the privilege to any of the contents of
19 that document. As I understand it, communications
20 are what are subject to the privilege.

21 MR. HARRISON: We have already gone
22 into the contents of the document to some extent.

1 We have identified it containing the bulk of the
2 information Mr. Murphy provided with the exception
3 of the pin deletion and charges and specifications
4 and certainly regarding Ms. Chambers.

5 Pretty much the only thing we don't
6 know about it is what the proposed disciplinary
7 action was. So, it would appear to me that the
8 privilege is asserted late if it does apply.

9 I guess we have a couple ways to go.
10 We can call the judge and get a ruling on it,
11 obviously expedite us finishing this deposition.
12 If not, we can proceed with the questions we have,
13 which we can still ask. We'll have to ask the
14 judge to compel in the conference this afternoon.
15 Then we have to have Mr. Krutz come back this
16 afternoon if the judge allows the question to be
17 answered. Is Mr. Krutz available for that this
18 afternoon if we have to do that?

19 MR. L'HEUREUX: I don't know. Are
20 you available this afternoon?

21 THE WITNESS: Probably not after 1
22 or 1:30.

1 MR. HARRISON: It looks like we
2 have to call the judge.

3 MR. L'HEUREUX: That's your choice.

4 MR. HARRISON: Let's go off the
5 record for a moment.

6 (Thereupon, a conference call was
7 attempted with Judge Bogle. The parties will await
8 a return phone call from Judge Bogle.)

9 (Thereupon, a recess was taken and
10 then the proceedings continued as follows:)

11 - - -

12 (Thereupon, a conference call
13 occurred between Judge Bogle and counsel as
14 follows:)

15 THE COURT: Good morning.

16 MR. HARRISON: Good morning, Judge.
17 I am Mick Harrison, counsel for Appellant Teresa
18 Chambers. With me is Mr. L'Heureux, counsel for
19 the agency.

20 We are presently taking the
21 deposition of Steve Krutz, in what he hope will be
22 our last depositions in this case. This is our

1 last day of discovery, and an issue has come up
2 that we would like your decision on, if possible.

3 We were inquiring to Steve Krutz.
4 Mr. Krutz is the human resource specialist for the
5 Department of Interior. He was working on advising
6 Mr. Murphy, the proposed decision maker, regarding
7 Ms. Chambers, and I was asking Mr. Krutz to
8 describe his role and the personnel actions and
9 decisions regarding Ms. Chambers, which he was
10 doing.

11 He explained that he had received
12 information from Mr. Murphy on December 2nd
13 regarding Mr. Murphy's concerns about Ms. Chambers.
14 He was given some verbal information and some
15 written information by Mr. Murphy, who was the
16 Deputy Director for the National Parks Service, and
17 his role was to write up that information in proper
18 format for a proposed disciplinary action, which he
19 proceeded to do on December 2nd.

20 I inquired to Mr. Krutz as to
21 whether he had included the bulk of the information
22 on various issues Mr. Murphy gave him, which he

1 First of all, let me just correct a fact that Mr.
2 Harrison related. My understanding is of what the
3 witness' testimony was and will be is that Mr.
4 Murphy asked him to create this document, and Mr.
5 Murphy's purpose in having this document was to
6 forward it to the solicitors for legal advice. I
7 don't understand that Mr. Krutz himself directly
8 forwarded it to the solicitor. He gave it to Mr.
9 Murphy to send it to the solicitors for legal
10 advice.

11 The basic premise that we're
12 asserting here, Your Honor, is that Mr. Krutz was
13 Mr. Murphy's agent in doing this. Mr. Murphy
14 stands as the client, and Mr. Murphy had his agent
15 create for him a client created communication which
16 was expressly created for the purpose of receiving
17 legal counsel and that we should not be compelled
18 to disclose the content of these communications,
19 nor the communications that came back the other way
20 from counsel whether or not they went -- they were
21 transmitted through Mr. Krutz or if Mr. Krutz got
22 to see them. That's our basic position with

1 respect to all of these communications, Your Honor.

2 MR. HARRISON: Your Honor, if I
3 might clarify, we do not seek to know what Agency
4 counsel said to Mr. Murphy or anyone, and we don't
5 really want to know the questions Mr. Murphy may
6 have asked of his counsel.

7 What we do want to know is the
8 substance of the draft disciplinary action that was
9 drafted on December 2nd, the day of the Washington
10 Post article, what action may have been proposed at
11 that time, which is in close proximity to the
12 disclosures, and the substance of the human
13 resources person's work product and Mr. Murphy's.
14 We don't want the attorney's work product.

15 THE COURT: Well, this sounds
16 factually very complicated to me and probably not
17 something I would choose to answer on the
18 telephone, but I do want you to finish up today.
19 If the question concerns the document that the
20 human resources officer drafted, I think he can
21 answer the question. If it concerns anything after
22 that, after the attorney had input, then I think it

1 may well be privileged.

2 The ruling is that the human
3 resources officer can go ahead and answer what he
4 prepared, and that other questions concerning what
5 returned from the solicitor's office would be
6 privileged.

7 MR. HARRISON: I appreciate that,
8 Your Honor, and can I ask only in anticipation of a
9 subsequent issue coming up, we might save some
10 time. I don't know but I'm presuming there may be
11 additional drafts that were created at different
12 points in time, some of which Mr. Murphy and Mr.
13 Krutz would have had the benefit of Agency counsel
14 on, but then Mr. Murphy or Mr. Krutz would have
15 made amendments.

16 I'm presuming from Your Honor's
17 direction, but I would like to be clear, I don't
18 want to transgress Your Honor's instruction, that
19 if we are talking about a draft at any point in
20 time authored by a human resources person or a
21 decision maker, that that work product is
22 discoverable, but if we're talking about content of

1 the attorney's communication, it is not?

2 THE COURT: That's why I think this
3 is factually complicated because I think what we're
4 talking about now is just the first draft that was
5 prepared by the human resources officer at the
6 request of Mr. Murphy. So, at that point I don't
7 see any attorney involvement. Once the draft goes
8 to the solicitor's office for review and perhaps
9 rewrite, I think those rewrites might well begin to
10 become based on information that privilege would
11 apply to. So, I think that's a little muddier.

12 MR. HARRISON: Should we wait on
13 those questions and if see they arise, or how would
14 Your Honor suggest we proceed?

15 THE COURT: Well, my basic guidance
16 to you, I guess, is that the first draft was not
17 based on any attorney advice as far as I can tell.
18 The subsequent draft, if your questioning turns out
19 they were based on attorney advice, then they are
20 covered by privilege.

21 MR. HARRISON: Okay, Your Honor.
22 If I could, then, inquire further, eventually there

1 he was asked to redraft it after counsel advised
2 either him or Mr. Hoffman, then I think we're
3 talking privilege.

4 MR. HARRISON: Your Honor, I
5 apologize for being persistent but it's part of my
6 job. Is Mr. Krutz' work product in adding or
7 deleting something privileged if it is an action he
8 takes upon a draft that had input from counsel?

9 THE COURT: I think I'm saying yes.
10 I think I'm saying once the solicitor's office
11 became involved, what I envision happening here is
12 you have a human resources officer who is being
13 asked to write this because he's familiar with
14 personnel rules that have to be followed. Then it
15 goes to the solicitor's office who may be providing
16 legal advice. Then when that draft is rewritten,
17 it's based on the legal advice. At that point, I
18 think it becomes privileged.

19 MR. HARRISON: I understand that,
20 Your Honor, but then if a nonattorney does
21 something else with the document, aren't those
22 actions not privileged?

1 THE COURT: Well, ask him if he did
2 it based on advice that he got from the legal
3 office.

4 MR. HARRISON: I see.

5 THE COURT: Did he do it based on
6 his knowledge of personnel rules that he thought
7 required a change.

8 MR. HARRISON: Understood. Thank
9 you, Your Honor.

10 THE COURT: All right.

11 - - -

12 (Thereupon, the conference call
13 concluded and then the deposition continued as
14 follows:)

15 BY MR. HARRISON: (resumed)

16 Q. Mr. Krutz, we had asked you a
17 question. The question was on the draft that you
18 first initiated on December 2nd, which you finished
19 about 8 p.m., you transmitted to Mr. Murphy by
20 e-mail, you have described concern about the
21 general content of the document which was intended
22 to capture the information that Mr. Murphy gave you

1 with some exceptions that you chose to delete, one
2 of which you identified.

3 Now, at some point you have
4 explained to us that this draft had charges and
5 specifications indicated in it, and I had asked you
6 whether it also indicated a proposed or target
7 disciplinary action. I believe you indicated it
8 did, but before I could ask you what it was, there
9 was an objection.

10 The judge has ruled that you may
11 answer that particular question at least. So, what
12 was, in your draft, the targeted or proposed
13 disciplinary action identified?

14 A. Proposed removal.

15 Q. Thank you. Had you made the
16 decision to put the proposed removal as the target
17 action yourself, or had that been suggested to you
18 by Mr. Murphy or some other nonattorney person?

19 A. I have used an existing letter
20 available to me.

21 Q. For action on another employee?

22 A. No.

1 Q. For action on Chief Chambers?
2 A. No.
3 Q. What do you call it, a template?
4 A. Template.
5 Q. Do you have templates for
6 administrative leave?
7 A. No, I don't have one for that.
8 Q. Do you have templates for
9 suspensions?
10 A. Yes.
11 Q. Do you have templates for letters of
12 reprimand?
13 A. Yes.
14 Q. So, did you choose to use the
15 template for a proposed removal or did someone
16 indicate that you should do so?
17 A. I chose.
18 Q. Was there a reason why you did?
19 A. Looking at the charges, I felt an
20 adverse action was in order.
21 Q. Had Mr. Murphy indicated to you the
22 type of action he had in mind?

1 A. Not that I can recall.

2 Q. When you had your meeting with Mr.
3 Murphy on December 2nd before noon, after Mr.
4 Murphy explained to you what you described in your
5 testimony, that you felt Ms. Chambers may have
6 exceeded her authority by remarks in the Washington
7 Post, that there were some earlier issues that he
8 was concerned about and there might be a need for
9 disciplinary action, was there anything additional
10 that Mr. Murphy said to you during that meeting?

11 A. I don't recall.

12 Q. He didn't say, "Please draft
13 something up and get back to me tonight," for
14 example?

15 A. Yes.

16 Q. He did say that?

17 A. Yes.

18 Q. That's something additional.

19 Anything further that he may have said?

20 A. I don't recall.

21 Q. Now, did you communicate with Mr.
22 Murphy on December 3rd, the day after you gave him

1 this draft on the evening of December 2nd?

2 A. I don't recall. I believe I wasn't
3 at work.

4 Q. Where were you on December 3rd?

5 A. I believe it snowed that night, but
6 my recollection is dim on that.

7 Q. You believe you didn't come into the
8 office for some reason?

9 A. That's correct.

10 Q. I take it you did not communicate
11 with Mr. Murphy by phone or e-mail that day, or did
12 you?

13 A. No.

14 Q. How about that evening? Did you
15 communicate with Mr. Murphy?

16 A. I did not communicate with Mr.
17 Murphy.

18 Q. Did you communicate with Mr. Murphy
19 on December 4th?

20 A. I don't recall.

21 Q. Do you know whether you were at work
22 on December 4th?

1 A. I don't recall.

2 Q. Did you communicate with Mr. Murphy
3 on December 5th?

4 A. I don't recall.

5 Q. Were you at work on December 5th?

6 A. Again, I don't recall.

7 Q. Did you attend a meeting in which
8 Ms. Chambers was handed a notice of administrative
9 leave on December 5th?

10 A. No, I was not.

11 Q. Do you think had you been present at
12 work on that day, whenever that occurred, that you
13 would have attended that meeting?

14 A. Probably.

15 Q. Do you know that Mr. Davies attended
16 that meeting?

17 A. I understand, yes.

18 Q. Do you understand that Mr. Davies
19 was essentially filling in for you in attending
20 that meeting?

21 A. Yes.

22 Q. You don't recall why you missed that

1 meeting, or do you?

2 A. I don't recall if I was at work or
3 why.

4 Q. Did you ever have occasion to
5 communicate to Mr. Murphy your personal opinion on
6 whether Ms. Chambers should be removed?

7 A. Yes.

8 Q. When did you do that for the first
9 time?

10 A. Much later. Don't recall the date.

11 Q. Maybe weeks later, months?

12 A. Yes.

13 Q. Would it have been after the
14 proposed removal was issued on December 17th?

15 A. I can't be that specific.

16 Q. Was it after Mr. Hoffman was
17 appointed as the deciding official?

18 A. Could you restate your original
19 question?

20 Q. I could. The question was did you
21 communicate to Mr. Murphy your opinion on whether
22 or not Ms. Chambers should be removed? You

1 indicated you did express an opinion. It was
2 sometime after you had drafted this document on
3 December 2nd. I'm just trying to get a ball park
4 of when that might have taken place.

5 A. I can't recall. It's many months.
6 I can't recall.

7 Q. I'm taking it that you cannot recall
8 the answer to the question that I had asked you
9 most recently, which was did you communicate your
10 opinion to Mr. Murphy before or after Mr. Hoffman
11 had been appointed as the deciding official?

12 A. I can't recall.

13 Q. Do you recall whether you had
14 communicated that opinion in person or by telephone
15 or otherwise?

16 A. I cannot recall.

17 Q. Do you recall whether you
18 volunteered the opinion or whether you were asked?

19 A. I don't recall. I can't recall.

20 Q. Do you recall the substance of your
21 opinion?

22 A. No.

1 Q. And I take it, and correct me if I'm
2 wrong, that means you don't recall whether you were
3 pro or con removal, or do you?

4 A. Is it before or after the issuance
5 of the proposed removal?

6 Q. That's the question I asked you and
7 you couldn't remember.

8 A. I don't know when I would have
9 expressed an opinion or by what means I did that.

10 Q. You have made that clear, and my
11 question of the moment is the substance of the
12 opinion pro or con?

13 A. Well, if it had been issued in a
14 proposal, I would have supported the department's
15 opinion.

16 Q. I'm not asking you to tell me what
17 you expect would have happened based on
18 circumstances. I'm asking your memory. What would
19 your memory of your opinion be?

20 A. I don't really follow your question.
21 You're asking me for my personal opinion?

22 Q. I'm asking did you communicate your

1 personal opinion to Mr. Murphy, pro or con, on the
2 removal of Ms. Chambers, and was it pro or con?
3 You said you did communicate it. Now I'm trying
4 find out was it pro or con?

5 A. I would imagine it's pro.

6 Q. I don't want you to imagine. Before
7 you said you didn't want to speculate. I don't
8 want you to speculate. Do you have a memory of
9 what your opinion was that you expressed?

10 A. Yes.

11 Q. What, as best you can remember, was
12 your opinion?

13 A. I don't know when it was but I
14 believe the issue was that it supported removal.

15 Q. So, you believe you communicated the
16 opinion that removal was important?

17 A. That's correct.

18 Q. Was anyone present at the time you
19 communicated this?

20 A. I don't recall.

21 Q. Do you know whether you ever placed
22 that in writing?

1 A. I don't recall.

2 Q. Do you know if you ever expressed
3 that opinion to anyone in addition to Mr. Murphy
4 other than counsel?

5 A. I don't recall.

6 Q. Do you know, from your own personal
7 knowledge, what events transpired between the
8 evening of December 2nd, when you communicated your
9 draft for a proposed removal document for Ms.
10 Chambers to Mr. Murphy, and December 5th, at about
11 4 o'clock when Mr. Murphy, with Mr. Davies present
12 and others, handed Ms. Chambers an administrative
13 leave notice that might have caused Mr. Murphy to
14 give Ms. Chambers administrative leave on the 5th
15 rather than a proposed removal?

16 A. I don't remember.

17 Q. Do you think you knew at the time?

18 A. No.

19 Q. Do you think you learned subsequent
20 to the time that happened and have since
21 forgotten?

22 A. I can't recall.

1 Q. You may never have known those
2 reasons? Is that what you're saying?

3 A. It's possible.

4 Q. Who at human resources would know
5 why administrative leave was issued to Ms. Chambers
6 rather than the proposed removal you had drafted?
7 Who would know that?

8 A. I don't know.

9 Q. You don't know?

10 A. No.

11 Q. Aren't there like two possibilities,
12 you and Mr. Davies?

13 A. I can't speculate on what Mr. Davies
14 knew.

15 Q. If Mr. Davies doesn't know, is there
16 anybody else who might know in human resources?

17 A. I wouldn't know. No, I don't think
18 so.

19 Q. So, I'm taking it from your answer
20 that you really don't know or at least don't
21 remember how the decision was made to issue
22 administrative leave on December 5th?

1 A. That's correct.

2 Q. Did you have any involvement in any
3 disciplinary action involving Ms. Chambers prior to
4 December 2nd?

5 A. Yes, I did.

6 Q. Was that regarding the use of the
7 government vehicle?

8 A. Yes, it was.

9 Q. Did you in that case propose a
10 penalty greater than that was eventually
11 administered to Ms. Chambers?

12 A. No, I did not.

13 Q. Did you recommend any penalty
14 greater than what was eventually given to Ms.
15 Chambers?

16 A. No, I did not.

17 Q. Did you ever draft a document that
18 included a proposed penalty greater than what was
19 given to Ms. Chambers?

20 A. No, I did not.

21 Q. Do you know whether anyone ever
22 referenced a 45-day suspension in regard to Ms.

1 Chambers' use of a vehicle?

2 A. I do not recall a 45-day suspension.

3 Q. Do you recall any suspension being
4 referenced regarding Ms. Chambers in that vehicle
5 incident?

6 A. I know a discussion occurred
7 regarding 30 days.

8 Q. Did you take a position on that
9 30-day suspension yourself?

10 A. No.

11 Q. Who in the human resources office,
12 as a matter of routine, would normally be assigned
13 to draft a proposed disciplinary action regarding
14 an official at the level of Ms. Chambers? In other
15 words, chief of police or higher.

16 A. Probably myself.

17 Q. No one else, to your knowledge, has
18 at least that routine assignment?

19 A. Dave Davies in my absence and/or
20 Nancy Fishbein, who is the Washington office's
21 employee relations specialist, which I guess would
22 be the last level.

1 Q. All right. When you worked on your
2 draft on December 2nd of 2003 until about 8 o'clock
3 in the evening on the proposal for Ms. Chambers,
4 did you solicit input from anyone?

5 A. Just Mr. Murphy.

6 Q. No one, to your knowledge?

7 A. No. No one else was present.

8 Q. I realize, but e-mail was available
9 and so forth.

10 A. No.

11 Q. Do you know, at any time from
12 December 2nd through July -- pardon me -- December
13 2nd, 2003 through July 9th, 2004, did any person
14 outside of the Department of Interior ever review
15 any documents in relation to the proposed decisions
16 regarding Ms. Chambers?

17 A. What were the dates again, please?

18 Q. December 2nd, 2003, the evening you
19 drafted your draft, and then July 9th, 2004, the
20 final decision being issued by Mr. Hoffman.

21 A. No.

22 Q. Do you know whether anyone outside

1 the Department of Interior ever reviewed any
2 documents related to actions taken against Ms.
3 Chambers, or proposed, outside of the Department of
4 Interior after July 9th, 2004?

5 A. I would like to add we do exclude
6 the Office of Special Counsel for that.

7 Q. That's fine. You may exclude it. I
8 appreciate the clarification.

9 A. Can you restate your current
10 question?

11 Q. Yes. After the date of December
12 9th, 2004, were any documents regarding Ms.
13 Chambers, actions taken or proposed, reviewed by
14 anyone outside the Department of Interior, to your
15 knowledge?

16 A. Not to my knowledge.

17 Q. If we can ask the same question but
18 change the time frame to prior to December 2nd,
19 2003, if you remember the question, what would your
20 answer be?

21 A. Not to my knowledge.

22 Q. I take it from your testimony that

1 you're involved in drafting revisions to human
2 resources policy for Department of Interior?

3 A. For the National Parks Service.

4 Q. The National Parks Service
5 specifically?

6 A. Yes.

7 Q. I take it that your policies have to
8 live within the greater policies for the Department
9 of Interior?

10 A. Yes.

11 Q. Is there any procedure that you're
12 aware of written for the National Parks Service for
13 sending a proposed disciplinary action regarding an
14 employee outside of the Department of the Interior
15 for review and comment?

16 A. One more time, please.

17 Q. Yes. Are you aware of any
18 procedures for the National Parks Service, meaning
19 human resources procedures, which, I take it,
20 you're intimately familiar, that would provide for
21 sending a proposed action against an employee
22 outside of the Agency, meaning outside of the

1 Department of Interior in this case, for review and
2 comment?

3 A. No, none.

4 Q. Is there a written policy in human
5 resources for the National Parks Service that
6 addresses administrative leave?

7 A. Not to my immediate knowledge.

8 Q. Is there a written policy for human
9 resources for the National Parks Service that
10 addresses whether or not, when an action is taken
11 regarding an employee, a personnel action, whether
12 that employee is entitled to know the reasons for
13 the action at the time it is taken?

14 A. I don't recall right away.

15 Q. Do you have an opinion on that
16 question?

17 MR. L'HEUREUX: Objection: He's
18 not called as an expert witness. He is called as
19 an occurrence witness. His opinions are valueless.
20 Nevertheless, you may answer the question.

21 MR. HARRISON: I wouldn't say his
22 opinions are valueless. I understand your point.

1 MR. L'HEUREUX: Legally valueless.

2 BY MR. HARRISON:

3 Q. You may answer, sir, if you recall
4 the question.

5 A. Will you repeat the question?

6 Q. I'll see if I can. Do you have an
7 opinion on the question of whether or not an
8 employee is entitled to know the reasons for an
9 Agency action at the time that action is taken?

10 A. What action are we speaking of?

11 Q. A personnel action, any personnel
12 action.

13 A. Yes, any personnel action.

14 Q. If an employee is given a notice of
15 suspension -- I'm just giving a specific example --
16 would you agree that the employee is entitled to
17 know the reasons for the suspension at the time?

18 A. In terms of suspension, absolutely
19 correct.

20 Q. If an employee is to be proposed to
21 be removed, are they entitled to know the reasons
22 for their proposed removal at the time?

1 A. Yes.

2 Q. If an employee a given a notice of
3 final removal, is the employee entitled to know the
4 reasons relied on for the final removal decision at
5 that time?

6 A. Yes.

7 Q. Now, if an employee is put on
8 administrative leave, relieved of their -- in this
9 case, a police officer -- their badge, their gun
10 and police authority, their uniform, all their
11 duties, are they entitled to know the reasons for
12 that action at the time it's taken?

13 A. No.

14 Q. Why not?

15 A. Because as long as they remain in a
16 pay status and it's under, I believe, ten days, no,
17 they are not. Because within ten days, in a nonpay
18 status you would receive a letter proposing some
19 action for them to take.

20 Q. Are you describing a written policy?

21 A. No, not that I'm aware of, but I
22 have for many years -- there is what's called a

1 constructive suspension where you place an employee
2 without pay for a period of ten days. Therefore,
3 that would require a notice within that period of
4 time of specifically why, what the remedy is to be.
5 Employees that are placed on administrative leave
6 with pay, there isn't such a requirement.

7 Q. Do you know whether there was a
8 decision made by any manager or nonattorney in the
9 National Parks Service or the Department of
10 Interior to make use of administrative leave in
11 regard to Ms. Chambers on December 5th to avoid
12 telling her the reasons that were being
13 contemplated at that time?

14 A. No.

15 Q. And I take it you also don't know to
16 the contrary and you don't really know either way
17 why there was use of administrative leave? I
18 believe you testified to that already this morning.

19 A. I don't know the answer to that.

20 Q. Do you recall, in your draft of the
21 December 2nd proposed removal document, was there a
22 reference to the detailing or the proposed

1 detailing of Ms. Pamela Blythe?

2 A. Yes.

3 Q. In that same draft of December 2nd,
4 was there a reference to an issue involving
5 psychological tests needing to be taken by two
6 deputy chiefs, Mr. Beam and Mr. Pettiford?

7 A. I don't recall that.

8 Q. Are you believing it was not
9 included, or that it may or may not have been?

10 A. I don't believe it was included.

11 Q. Now, I take it you will recall it
12 was included in the information Mr. Murphy gave
13 you?

14 A. I can't recall that.

15 Q. Let me show you Agency Hearing
16 Exhibit Number 3, and see if that may or may not
17 refresh your memory. I believe the first paragraph
18 may help you.

19 A. Right, yes.

20 Q. Does that refresh your memory?

21 A. As to whether or not the information
22 was given to me?

1 Q. Yes.

2 A. Yes, that document was given to me.

3 Q. And you're recalling, I take it,
4 that for one reason or another of your own, that it
5 was not included in the draft?

6 A. That's correct.

7 Q. Do you recall the issue of Ms.
8 Chambers allegedly being unresponsive in providing
9 budget information to the comptroller or other
10 officials being something that was included in your
11 December 2nd draft?

12 A. Yes.

13 Q. Do you recall the issue of delay in
14 hiring a budget officer for the U.S. Park Police
15 being included in your draft of December 2nd?

16 A. No, it was not.

17 Q. Do you recall the issue of a memo
18 written by Chief Chambers regarding use of police
19 captains as regional law enforcement specialists
20 being included in your December 2nd draft?

21 A. No, it was not.

22 Q. Do you recall an issue about Ms.

1 Chambers going to a Deputy Secretary Griles to
2 obtain a rescission or cancellation of the proposed
3 detailing of Ms. Blythe and whether that might have
4 been breaking the chain of command being an issue
5 you included in your draft?

6 A. I don't know if that was in there.
7 I don't recall.

8 Q. Do you recall any issue regarding
9 delay of a critique of the tractor man incident
10 being included in your draft?

11 A. Yes, I do.

12 Q. And it was?

13 A. Yes.

14 Q. Do you recall any issue of the
15 content of any review of the tractor man incident
16 and perhaps any inadequacy in content being
17 included in your draft?

18 A. I'm sorry. I don't understand that
19 question.

20 Q. The last question had to do with
21 delay in producing your critique, and I think you
22 said that was included in your draft, the tractor

1 man incident?

2 A. Yes.

3 Q. Now I'm asking whether, regarding
4 the same tractor man incident, any issue of an
5 inadequate assessment, inadequate content of the
6 assessment, was that an issue, not delay but
7 content?

8 A. Of whose assessment?

9 Q. The chief's in assessment of the
10 tractor man incident.

11 A. I don't recall.

12 Q. Do you know whether the content of
13 anyone's assessment of the tractor man incident was
14 at issue in your draft of December 2nd?

15 A. I don't know.

16 Q. Do you know whether the issue of
17 alleged improper lobbying became an issue in your
18 December 2nd draft?

19 A. I can't recall.

20 Q. Do you recall a statement by Mr.
21 Murphy and referred to in the newspapers during the
22 week of December 2nd where Mr. Murphy was asked or

1 chose to comment on Ms. Chambers' personnel
2 situation? Do you recall that happening?

3 A. I believe I read a newspaper article
4 copy of that, but not necessarily on the date.

5 Q. Do you recall in what you read Mr.
6 Murphy indicating that he was concerned that Ms.
7 Chambers may have violated two procedures which he
8 made reference to?

9 A. I don't recall the content of it.

10 Q. Were you involved in consulting with
11 Mr. Murphy as to what he might say to the press on
12 that matter?

13 A. No, I was not.

14 Q. Were you involved in any discussion
15 with Mr. Murphy and members of the public affairs
16 or communications office to discuss any press
17 strategy regarding Ms. Chambers prior to December
18 5th?

19 MR. L'HEUREUX: You may answer that
20 question.

21 THE WITNESS: On December 2nd,
22 early, about 11 a.m., there was a meeting in which

1 three members of the departmental public affairs
2 office were presence. I do not believe the
3 National Parks Service's public affairs officer was
4 present.

5 BY MR. HARRISON:

6 Q. Who do you recall being present?

7 A. I don't have their names. It was a
8 very quick introduction and I don't remember the
9 names.

10 Q. You met them at that time?

11 A. That was my first and only occasion
12 to see them.

13 Q. What offices did you understand that
14 they work out of?

15 A. The Department of Public Affairs
16 office.

17 Q. Department of Interior?

18 A. Correct.

19 Q. How or why did you come to be
20 introduced to them at that time?

21 A. There was a meeting called and they
22 were called down to come to this meeting.

1 Q. Was this a meeting you were to
2 attend yourself?

3 A. I attended.

4 Q. Was this before or after you spoke
5 with Mr. Murphy?

6 A. After.

7 Q. Was it immediately after?

8 A. Correct.

9 Q. And was Mr. Murphy present?

10 A. Yes.

11 Q. Was the issue potential press
12 coverage of actions against Ms. Chambers?

13 A. Please repeat that.

14 Q. Yes, sir. Was the meeting about
15 potential press coverage of the actions planned to
16 be taken against Ms. Chambers?

17 A. No.

18 Q. Was the meeting about press coverage
19 of any matter regarding Ms. Chambers?

20 A. Yes.

21 Q. How did you understand the matter
22 being discussed?

1 A. The discussion involved what the
2 press office could do in terms of responding to the
3 media.

4 Q. I see. For example, the December
5 2nd Washington Post article on the follow-up media?

6 A. There was talk of a statement being
7 placed and what the content of the statement in
8 terms of what we are allowed to say.

9 Q. Basically a responsive statement to
10 the press, and you said "in terms of what we were
11 allowed to say." What do you mean by that?

12 A. We're governed by the Privacy Act.
13 We cannot release information directly about Chief
14 Chambers' case.

15 Q. I see. Understood. So, I'm taking
16 it from that answer that those in the meeting
17 agreed that they would not talk about disciplinary
18 actions to be taken against Chief Chambers?

19 MR. L'HEUREUX: Objection:
20 Attorney/client privilege. There was counsel
21 present at this meeting. The meeting was held for
22 the purpose of soliciting counsel's opinions about

1 what could and could not be released. We're
2 asserting privilege over the communications that
3 occurred during this meeting.

4 BY MR. HARRISON:

5 Q. Who was present from any attorney's
6 office at that time; do you know?

7 A. Tim.

8 Q. Elliot?

9 A. Elliot, again.

10 Q. Anyone else who was an attorney?

11 A. It is possibly Hugo was involved,
12 Hugo Twifel, but I'm not certain of that.

13 Q. Did you state any opinion yourself
14 based on human resource policy as to what could and
15 could not be talked about at that meeting?

16 A. No, I didn't.

17 Q. Was there any statement by Mr.
18 Murphy as to his decision, if any, as to how to
19 proceed with the press regarding Ms. Chambers?

20 A. I don't understand the question.

21 Q. Did Mr. Murphy announce any decision
22 he had made as to how he wished the press to be

1 handled in regard to Ms. Chambers?

2 A. My memory serves that he asked for
3 assistance.

4 Q. In how to do that?

5 A. In how a response should be drafted.

6 Q. Was someone assigned the task of
7 drafting the response?

8 A. Yes.

9 Q. Who was assigned?

10 A. One of the three individuals
11 present.

12 Q. From the public affairs office?

13 A. Yes.

14 Q. Did you ever see a work product from
15 the public affairs office on that issue?

16 A. No, I did not.

17 Q. Did you ever speak to the press
18 yourself on Ms. Chambers' issues?

19 A. No.

20 Q. Do you know whether some responsive
21 statement was ever issued?

22 A. No.

1 Q. You don't know either way?

2 A. (The witness is nodding.)

3 MR. L'HEUREUX: You have to answer
4 out loud.

5 THE WITNESS: I'm sorry. No, I do
6 not.

7 BY MR. HARRISON:

8 Q. Was there something specific that
9 Mr. Murphy stated to you in this meeting that he
10 felt required a response in the press?

11 MR. L'HEUREUX: Objection: Same
12 objection on attorney/client privilege. If Mr.
13 Murphy stated anything at this meeting, it was in
14 the presence of counsel for the opinion of
15 counsel.

16 MR. HARRISON: We haven't
17 established that, that it was for the opinion of
18 counsel. I have asked whether Mr. Murphy said
19 anything to his human resources staff person
20 regarding what he felt needed to be responded to,
21 not what he asked his counsel and needed advice on.

22 BY MR. HARRISON:

1 Q. It's important for you to make the
2 distinction your counsel is making in answering the
3 question. If Mr. Murphy said something to counsel
4 and said, "I want your advice on this," I'm not
5 asking you that. I don't want you to tell me that.
6 I'm wondering if Mr. Murphy spoke to you and asked
7 your opinion as the human resources person, or was
8 just telling you something as the human resources
9 person?

10 MR. L'HEUREUX: I will instruct
11 this witness to answer any questions the answer to
12 which involved a communication obviously directly
13 from Mr. Murphy to you even during this meeting
14 and obviously not directed to counsel. You may
15 answer any questions to which that is the answer.

16 Is that sufficient? Counsel?

17 MR. HARRISON: It is. I appreciate
18 it.

19 BY MR. HARRISON:

20 Q. Do you understand what your
21 instructions are at the moment?

22 A. Yes. Ask the question again.

1 Q. I will. Did Mr. Murphy say anything
2 to you, that wasn't directed at his counsel for
3 advice, as to what Mr. Murphy felt needed to be
4 responded to in the press?

5 A. No.

6 Q. When you were getting input from Mr.
7 Murphy to draft your document on December 2nd, did
8 Mr. Murphy in any manner identify for you what
9 statements in the Washington Post article were of
10 concern to him?

11 A. Yes.

12 Q. Do you think if I showed you the
13 article, you could tell me?

14 A. Probably.

15 Q. Sir, I'm going to show you a
16 document that's been market variously as Murphy
17 Exhibit 7 and Hoffman Exhibit 2. It's the December
18 2nd Washington Post article in a different format
19 perhaps than you have seen it.

20 I would like you to go through it
21 carefully. When you identify a sentence or a
22 paragraph you believe was of concern to Mr. Murphy,

1 I'd like you to read it for us. Take your time and
2 do that systematically. If you're not sure, you
3 should tell us that.

4 A. Paragraph 2, starting with
5 Chambers.

6 Q. If you will just read that, the full
7 text that you believe was a concern to Mr. Murphy.

8 A. "Chambers said traffic accidents
9 have increased on Baltimore/Washington Parkway,
10 which now often has two officers on patrol instead
11 of the recommended four." The next paragraph, "It
12 is fair to say where it's green, it belongs to us
13 in Washington, D.C."

14 Q. Do you mean the whole paragraph, or
15 just the portion you read?

16 A. To the best of my knowledge, it was
17 the portion of the paragraph I read.

18 Q. Okay.

19 A. Fifth paragraph, "In the long run,
20 Chambers said her 620 member department needs a
21 major expansion perhaps 1400 officers."

22 Paragraph on Page 3 of the document

1 starting, "She said a more pressing need is an
2 infusion of Federal money to hire recruits than to
3 pay for officers' overtime. She said she has to
4 cover a \$12 million shortfall for this year and has
5 asked for 8 million next year. She also would like
6 7 million to the replace the Force's aging
7 helicopter."

8 Q. Okay.

9 A. I'm not sure, but on Page 2, the
10 last paragraph starting, "The Park Police's new
11 force of 20 unarmed security guards will be serving
12 around the monuments for the next few weeks.
13 Chambers said she eventually hopes to have a
14 combination of two guards and two officers at the
15 monuments."

16 Q. You're not sure about that one?

17 A. I'm not sure if that was at that
18 point.

19 Q. Okay.

20 A. Those are the only ones I recall at
21 this moment.

22 Q. Thank you. At some point after

1 December 5th or perhaps on December 5th, after Ms.
2 Chambers was given her administrative leave notice
3 and was removed from the work place, you became
4 involved again in Ms. Chambers' disciplinary
5 actions and the contemplation of those. When did
6 you resume an active role?

7 I know that you have described your
8 December 2nd role. You're not recalling whether
9 even you were present on the 3rd, 4th, or 5th. You
10 are recalling you were not present when Ms.
11 Chambers was given her notice on the 5th and Mr.
12 Davies was present. When did you become active
13 again in any matter regarding Ms. Chambers'
14 disciplinary action?

15 A. I don't recall the date, but it was
16 sometime when the final decision process was
17 beginning.

18 Q. Let's talk about with precision what
19 you mean by final decision process. I take it
20 you're aware that on December 17th, Mr. Murphy
21 signed a notice of proposed removal of Ms.
22 Chambers?

1 A. It would have been shortly after
2 that date.

3 Q. Did you have any involvement, to
4 your recollection, regarding Ms. Chambers'
5 disciplinary actions between your, let's say,
6 December 5th, when Ms. Chambers was given her
7 notice for administrative leave, and December 17th,
8 when Mr. Murphy signed that proposed removal? Were
9 you involved in that time period?

10 A. Other than collecting documents for
11 maintenance of the main file.

12 Q. Your only role would have been
13 collecting those documents?

14 A. As far as I can remember, yes.

15 Q. What documents did you collect in
16 that regard?

17 A. I don't recall. Many.

18 Q. Did you say many? How many is many?

19 A. I have no idea.

20 Q. More than 100?

21 A. I don't know. I can't recall.

22 Q. It could be more than 100?

1 A. I can't recall.

2 Q. So, you can't rule out that it was
3 more than 100, I take it?

4 A. No.

5 Q. It could have been two?

6 A. More than two.

7 Q. More than two. Okay. And this was
8 for, you say, the main file?

9 A. The Agency file.

10 Q. The Agency file. What do you mean
11 by the Agency file?

12 A. In conduct issues, there is one file
13 maintained by the Agency as a confidential folder.
14 This file is kept for, depending on the
15 circumstances of the conduct issues, it is kept by
16 the human resources office in a confidential file.

17 Q. Is this done on every employee, or
18 only when there is a proposed action?

19 A. I'm speaking of a conduct file. So,
20 only for employees who have conduct issues.

21 Q. Conduct file?

22 A. Or misconduct.

1 Q. Or alleged misconduct?

2 A. Very well.

3 Q. Okay. So, what triggers the
4 creation of an alleged misconduct file for an
5 employee?

6 A. When a supervisor indicates that an
7 employee's conduct is less than acceptable.

8 Q. When, if ever, was the creation of
9 such a file for Ms. Chambers triggered, to your
10 knowledge?

11 A. Are we speaking of the proposed
12 removal?

13 Q. Yes, sir.

14 A. December 2nd.

15 Q. December 2?

16 A. Correct.

17 Q. Did you begin collecting documents
18 for this file on December 2nd?

19 A. That is correct.

20 Q. Did anyone direct you to do so, or
21 was it an automatic step on your part knowing that
22 procedure?

1 A. Automatic step.

2 Q. Did anyone assist you in collecting
3 these documents?

4 A. No.

5 Q. Did anyone know you were collecting
6 the documents?

7 A. I don't know the answer to that.

8 Q. You didn't make a point of informing
9 anyone?

10 A. That's correct.

11 Q. When you collected these documents,
12 where did you place them?

13 A. In a secure folder in my desk.

14 Q. Did this folder have a label or a
15 title?

16 A. Teresa Chambers.

17 Q. All right. I take it that you
18 placed documents in this folder as they became
19 available to you or as you acquired them from
20 December 2nd to December 17th?

21 A. And to the current date.

22 Q. You continue to do so?

1 A. As well as I should.

2 Q. That's another question, but you
3 continue to do so?

4 A. Yes.

5 Q. So, have you added any documents to
6 your folder for Ms. Chambers after the Agency filed
7 its Agency record in the MSPB case?

8 A. Yes.

9 Q. Is every document in your file
10 contained in the -- well, strike that. As of the
11 time the Agency filed its record for the proposed
12 removal in the MSPB case, was every document in
13 your file folder of Ms. Chambers included in the
14 Agency record that was filed?

15 A. Every file I had access to.

16 Q. Which would include every one in
17 your desk?

18 A. Correct.

19 Q. Is there anything that you
20 considered to be in your confidential file that you
21 don't have access to?

22 A. I'm sorry. I don't understand the

1 question.

2 Q. I appreciate that. Is there
3 anything that you consider to be in the
4 confidential file for Ms. Chambers that you do not
5 have access to?

6 A. I maintain the confidential file.

7 Q. I know.

8 A. Are you suggesting -- I'm sorry if I
9 asked a question.

10 Q. Just answer my question. It might
11 be a simple and obvious answer but you still have
12 to give it.

13 A. One more time with the question.

14 Q. Yes. Is there any information that
15 you consider to be in the confidential file for Ms.
16 Chambers, this alleged misconduct file, that you do
17 not have access to yourself?

18 A. No.

19 Q. Now, back to my earlier question,
20 which I think I now know the answer to but to be
21 clear, because you have access to everything in
22 this alleged misconduct file for Ms. Chambers, and

1 it's your understanding everything in this file
2 that was present there at the time the Agency filed
3 its record in the MSPB case for the proposed
4 removal was included in the filing with MSPB, to
5 the best of your knowledge, there was nothing in
6 your file for Ms. Chambers at the time that wasn't
7 filed with MSPB?

8 A. I need to have that question again.

9 Q. Let me break it down for you. Were
10 you involved in the preparation of the filing in
11 the MSPB case for Ms. Chambers of the Agency
12 record?

13 MR. L'HEUREUX: Counsel, can I
14 clarify? You're talking about the Agency file and
15 the Agency response that had to go in as part of
16 the procedural requirements?

17 MR. HARRISON: That's an important
18 clarification. You may want to clarify this
19 yourself.

20 MR. L'HEUREUX: Counsel, I think
21 we have a problem with terminology. I think what
22 he's describing as the file he maintained is

1 classically called an adverse action file. The
2 confusion here may come from the document that has
3 to be filed in response to --

4 MR. HARRISON: I don't want to
5 coach the witness. I understand the distinction
6 you're making and I'm not confused about it. I'm
7 not sure that the witness is confused about it. We
8 may be not as efficient as we might be in eliciting
9 the information from the record. We will do our
10 best to do that.

11 BY MR. HARRISON:

12 Q. Do you know that there was a set of
13 documents filed with the MSPB that were represented
14 as the Agency record for the proposed removal?

15 A. Correct.

16 Q. And did you know what those
17 documents were at the time they were filed?

18 A. Yes.

19 Q. And, of course, you also know what's
20 in your alleged misconduct file for Ms. Chambers in
21 your desk?

22 A. Yes.

1 Q. Were those two sets of documents the
2 very same, identical documents as of the day the
3 MSPB file was made on the proposed removal?

4 A. Yes.

5 Q. Thank you. Now, are you also aware
6 that the Agency filed a separate -- strike
7 separate. A second set of documents that were
8 represented as the Agency record for the final
9 removal decision with MSPB? Did you know that?

10 A. No, I did not know that.

11 Q. So, you were not involved in that?

12 A. I'm sorry. I guess I didn't
13 understand the question. Perhaps you could --

14 Q. I'll try again if it helps you.
15 Let's make sure we're on the same page on the first
16 round. You did know that a set of documents were
17 filed with the Merit System Protection Board in
18 this case that were represented as those records
19 related to the proposed removal action by the
20 Agency for Ms. Chambers? You knew that happened?

21 A. Right.

22 Q. And you knew what those documents

1 were?

2 A. Yes.

3 Q. And I take it you were involved in
4 some way in helping prepare that filing?

5 A. Right.

6 Q. And you also knew that essentially
7 the documents in your file folder, what Mr.
8 L'Heureux calls the adverse action folder and we
9 have called the alleged misconduct file, as of the
10 time of the filing with the MSPB, what was in your
11 file folder was the same as what was filed with
12 MSPB?

13 A. I would agree, yes.

14 Q. We're on the same page on that?

15 A. Okay.

16 Q. Now, moving from the proposed
17 removal decision, which is a later final removal
18 decision by Mr. Hoffman, do you understand what I'm
19 referring to?

20 A. Yes.

21 Q. Do you know whether a second set of
22 documents were filed with MSPB regarding the final

1 removal decision by Mr. Hoffman?

2 A. Yes.

3 Q. You did know that that happened?

4 A. Yes.

5 Q. Were you involved in preparing those
6 documents?

7 A. Yes.

8 Q. Now, as of the time that that second
9 filing with MSPB was made, you had, I take it,
10 maintained your alleged misconduct file for Ms.
11 Chambers in your desk through that period of time
12 as well?

13 A. They were one in the same.

14 Q. What was one in the same?

15 A. My folder is the same information
16 that would have gone forward.

17 Q. You're sort of getting ahead to my
18 next question, and that's okay, but pardon me for
19 attempting to be precise. Physically you maintain
20 those documents to this day in your desk?

21 A. Correct.

22 Q. And did you at the time of the

1 second filing with MSPB?

2 A. Right.

3 Q. So, you didn't give up your
4 originals to go to MSPB? They remained in your
5 desk?

6 A. They are one in the same documents.

7 Q. Not physically. They can't be in
8 two places at the same time.

9 A. Sure, they are. There is one file.

10 Q. So, are you telling me MSPB now has
11 your only copy of those documents?

12 A. No. I have a copy of what went
13 forward to MSPB. So, I have a copy of everything
14 that went forward, but those are the same copies
15 that I had originally.

16 Q. I'm not disputing that at all. I'm
17 just trying to clarify that the nature of the
18 documents that were filed with MSPB on the second
19 occasion represented as the Agency record for the
20 final removal decision by Mr. Hoffman, at the point
21 that filing was made, were identical to those
22 documents in your file folder for Ms. Chambers in

1 your desk at that time?

2 A. Correct.

3 Q. Now, you have added some to your
4 folder since then, I take it, some documents?

5 A. I think there are some
6 acknowledgment orders.

7 Q. Records related to the case
8 proceedings?

9 A. Right.

10 Q. I take it you have not added any
11 substantive document alleged to sustain any charge
12 since the second filing with MSPB?

13 A. No. I believe the documents were
14 just released recently to the MSPB.

15 Q. How recently are you referring to?

16 A. Last week, the last batch.

17 Q. You mean the filings for maybe the
18 pretrial filing?

19 A. Right.

20 Q. Is that what you thought I meant by
21 the second filing?

22 A. That's what I thought you meant.

1 Q. That's not what I meant. So let me
2 be clear. You know there was a filing made with
3 MSPB on the proposed removal?

4 A. Yes.

5 Q. Do you know it was on the proposed
6 removal or might it have been the final removal?

7 A. No, it was the proposed removal.
8 There was one on the final.

9 Q. Do you think that that final removal
10 filing was the same as what you were referring to
11 as being made last week?

12 A. I thought so, yes.

13 Q. There is no other filing in-between
14 that you're aware of with MSPB?

15 A. Not that I'm aware.

16 Q. To your knowledge, is there any
17 document in your alleged misconduct file for Ms.
18 Chambers in your desk today that is not either a
19 document that was in the set that was filed with
20 the proposed removal decision record, the first
21 Agency filing with the MSPB, or with the Agency
22 filing last week, to your knowledge?

1 A. Yes, there are one or two documents.

2 Q. Are those documents essentially
3 records of court proceedings, maybe a decision by
4 the judge or some filing, or are they something
5 else?

6 A. Something else.

7 Q. What would those be?

8 A. There was several posters hung in
9 the elevators at I Street in support of Teresa
10 Chambers by persons unknown. One copy of that
11 exists in my folder. There is a letter from a
12 congressman that was given to me that Paul Hoffman
13 responded to. That's in the -- wanting to get
14 feedback on the early case development on this. I
15 kept a copy. I don't recall anything else.

16 Q. Do you recall the congressman who
17 had inquired?

18 A. No, I don't.

19 Q. Was the congressman complaining to
20 Chief Chambers, or expressing a concern about what
21 happened to her or something different?

22 A. My recollection is they wanted to

1 keep abreast of what happened.

2 Q. Is there a reason why you would keep
3 that document in an alleged misconduct file?

4 A. It's part of the case.

5 Q. It's just related? It doesn't
6 necessarily reflect a misconduct?

7 A. No.

8 Q. I see. Now, your role between
9 December 2nd and December 17th you have described,
10 in regard to Ms. Chambers, was to collect on your
11 own initiative, according to your own understanding
12 of procedure, documents related to Ms. Chambers'
13 case that would be filed in this alleged misconduct
14 file for future reference, I take it?

15 A. Yes.

16 Q. And I believe you said that was your
17 sole role regarding Ms. Chambers' case for that
18 particular time period; is that correct?

19 A. Correct.

20 Q. Now, during that time period, Mr.
21 Murphy, I take it, you understand became the
22 proposing official and actually proposed on

1 December 17th to remove Ms. Chambers from her
2 position. Did you become aware of that?

3 A. Yes.

4 Q. And that proposal document that Mr.
5 Murphy issued on December 17th, was it
6 substantially similar to your draft, to your
7 knowledge? Do you remember the December 2nd draft
8 that you created for proposed removal?

9 A. Substantially.

10 Q. Did you have any role in the
11 drafting of the final proposed removal document
12 issued on December 17th by Mr. Murphy other than
13 your role in drafting the December 2nd draft?

14 A. No.

15 Q. Did Mr. Murphy seek your input or
16 advice between December 2nd and December 17th
17 regarding a proposed removal decision for Ms.
18 Chambers?

19 A. I don't recall.

20 Q. Did you issue any written
21 communications to Mr. Murphy between December 2nd
22 and December 17th other than your draft?

1 A. I don't remember.

2 Q. Are there any such written
3 communications reflected in your file for Ms.
4 Chambers?

5 A. Not that wouldn't be in the record
6 already submitted.

7 Q. To the MSPB?

8 A. Correct.

9 Q. Were you ever called to a meeting
10 between December 2nd and December 17th with any
11 other party other than yourself to discuss Ms.
12 Chambers?

13 A. I don't recall.

14 Q. Do you know Mr. Paul Hoffman?

15 A. Not socially. Professionally.

16 Q. You know who he is?

17 A. Yes.

18 Q. And you met him?

19 A. That's correct.

20 Q. What position does he hold?

21 A. Assistant Secretary for U.S. Fish,
22 Wildlife and Parks.

1 Q. You're aware that Mr. Hoffman became
2 the deciding official on Ms. Chambers' removal?

3 A. Yes, I was made aware.

4 Q. When did you first come to know that
5 Mr. Hoffman would be or might be the deciding
6 official?

7 A. I think it might have actually been
8 on December 2nd. There was talk that the director
9 was not going to be involved.

10 Q. Mr. Hoffman's name was mentioned as
11 a person who might be?

12 A. I believe so.

13 Q. Did Mr. Murphy say that at that
14 time?

15 A. I don't recall who said that.

16 Q. You don't recall. Did you ever
17 speak with Mr. Hoffman on or after December 2nd,
18 prior to or on December 17th, in that time frame?

19 A. No, I did not.

20 Q. To your knowledge, do you intend to
21 do anything that would have influence, procedurally
22 or substantively, on Mr. Murphy's decision on the

1 proposed removal of Ms. Chambers that he issued on
2 December 17th at any time after you issued your
3 draft on December 2nd in the evening and prior to
4 Mr. Murphy's issuance of the proposed removal on
5 December 17th?

6 A. No, I did not.

7 Q. I take it from that answer but I
8 have to be clear, I take it that you were not
9 tasked to do anything that would have influenced
10 that proposed removal decision, procedurally or
11 substantively, after your communication of your
12 draft on December 2nd, prior to Mr. Murphy's
13 issuance of his proposal on December 17th?

14 A. No, I did not.

15 Q. No, you were not so tasked?

16 A. I was not tasked.

17 MR. HARRISON: Let's take a five
18 minute break.

19 (Thereupon, a recess was taken and
20 then the deposition continued as follows:)

21 BY MR. HARRISON: (resumed)

22 Q. Mr. Krutz, I'm going to show you a

1 binder that was provided to us and see if you
2 recognize it. We're not going to mark it at the
3 moment but we may before we're done.

4 A. Yes.

5 Q. Do you recognize that?

6 A. Yes, I do.

7 Q. What do you understand it to be?

8 A. This was the -- I think it's called
9 a premotion response, is it?

10 Q. Don't worry about the title.
11 Substantively what do you understand it to be?

12 A. It was a document going from the
13 earliest record through the record right before --
14 well, with the proposed removal document containing
15 all Agency records regarding the development of the
16 proposed removal, and then to include three
17 additional documents at the very beginning, one of
18 which I had no role in playing.

19 Q. What are those three documents?

20 A. One is the Agency response. I was
21 not involved in preparing that. Collective
22 bargaining unit status, I prepared that document,

1 and the Agency knowledge of employee filing a
2 formal complaint of discrimination, I prepared that
3 document.

4 Q. I appreciate that. Is there a set
5 of documents which are numbered 1, 2, 3, and 4-A
6 through 4-T, what you recall to be that first
7 filing with the MSPB we were discussing?

8 A. Yes, I recall that.

9 Q. Okay. Now, I'm going to show you
10 two binders. We may or may not need to mark them,
11 but do the same thing. Look through those and
12 their indices and see if you recognize what those
13 are.

14 A. Yes. These were two documents I
15 have prepared at the request of the solicitor's
16 office regarding all documents beginning with the
17 written reply of Teresa Chambers through the final
18 decision, final decision memo to remove, and to
19 include also, again, an Agency response which I was
20 not involved in, collective bargaining unit status,
21 and, again, the Agency knowledge of employee filing
22 formal complaint of discrimination. Again, I

1 produced those two latter documents.

2 Q. Okay. Thank you. And this
3 two-volume set of documents which has documents
4 numbered 1, 2, 3, and then 4-A through 4-M, it
5 looks like, according to the initial index --

6 A. Yes.

7 Q. Is this what you referred to as the
8 second filing of the MSPB, or is this something
9 different?

10 A. No. I was reminded by counsel that
11 the one I was referring to was the very large,
12 10,000 or so page documents that were submitted
13 just recently. I had forgotten the second one.
14 There was two separate documents.

15 Q. Okay. I take it the one we just
16 referred to, the two-volume set with the documents
17 related to the final removal decision but not the
18 more voluminous one you're referring to, the
19 two-volume is one you're not remembering?

20 A. Correct.

21 Q. The larger set of documents that
22 you're remembering, I take it, included, for

1 example, the testimony of Mr. Hoffman and the
2 transcripts of those testimonies?

3 A. Yes.

4 Q. That's the set of documents you're
5 remembering?

6 A. That's correct.

7 Q. Understood. Now, do you also
8 understand that the Agency filed something, perhaps
9 on Friday, which would have been its pretrial
10 filing? Were you involved in that as well?

11 A. Friday?

12 Q. That would be three days ago.

13 A. I don't know.

14 Q. To your knowledge, you weren't
15 involved in such a filing?

16 A. I don't know.

17 Q. You don't know if you were involved
18 three days ago?

19 A. Three days ago. Oh, Friday. I was
20 not at work Friday.

21 Q. That's sounds like a, "No, I was not
22 involved."

1 A. No. I'm sorry. I'm not good with
2 dates.

3 Q. No problem. Now, we have an
4 understanding now that we may have four sets of
5 documents or potentially four set of documents
6 filed by the Agency at one point or another. We
7 have the one-volume set on the proposed removal you
8 have identified?

9 A. Yes.

10 Q. The two-volume set on the final
11 removal you have identified?

12 A. Yes.

13 Q. We have the larger volume of
14 documents which includes the transcripts of
15 testimony of Mr. Hoffman and other documents which
16 you recall, and we have an Agency filing of three
17 days ago which you were not involved in. Are you
18 with me so far?

19 A. Correct on the first three. The
20 last one, I do not know.

21 Q. You may or may not have been
22 involved, is what you're saying?

1 A. I was not involved in it as far as I
2 remember.

3 Q. You're not familiar with it?

4 A. Correct.

5 Q. Understood. Now, the documents in
6 the file you have maintained in your desk for Ms.
7 Chambers, the alleged misconduct file for Ms.
8 Chambers, do you believe there are any documents in
9 that file today, other than the poster you
10 mentioned and the inquiry from a congressman or a
11 response that you mentioned, besides those, that
12 are not included in this single volume on the
13 proposed removal or this two-volume set on the
14 latter removal or in the third set that included
15 the testimony to Mr. Hoffman?

16 A. As we sit here today, I cannot say
17 for certain there are more documents than the two I
18 mentioned. As I indicated at that time, I was not
19 sure if there were additional. But as far as I
20 can say, all the three documents we sent forward
21 contained all the relevant material related to the
22 decision process for Teresa Chambers.

1 Q. So, at least any document relied on
2 by the Agency would be within those three sets?

3 A. I would say yes.

4 Q. That's your understanding?

5 A. Yes.

6 Q. But you're not ruling out the
7 possibility that there might be a document in your
8 file folder that didn't find its way into one of
9 those three sets of documents?

10 A. I said already there are two
11 documents.

12 Q. Beyond those, I mean.

13 A. I'm not certain.

14 MR. HARRISON: Let's stay on the
15 record, but let me ask counsel for a clarification
16 before we spend more time with this witness. I had
17 noticed Mr. Hoffman with his deposition today. We
18 had indicated a default time of 11 o'clock had he
19 not found a more convenient time.

20 I have not heard from him. My last
21 communication with you is he was not available
22 today. So, I have not seen him around the office.

1 Do you understand that he is not showing up for his
2 deposition today?

3 MR. L'HEUREUX: Mr. Hoffman will
4 not be appearing for a deposition today.

5 MR. HARRISON: Thank you. Is there
6 any reason which you can state for the record?

7 MR. L'HEUREUX: He is unavailable.

8 MR. HARRISON: Do you know why Mr.
9 Hoffman might be unavailable for the last several
10 days?

11 MR. L'HEUREUX: I don't
12 specifically know, but my understanding is that
13 he's been on travel. Whether it's personal travel
14 or official travel, I'm not certain.

15 MR. HARRISON: Do you know whether
16 Mr. Hoffman or the Agency on his behalf has agreed
17 to schedule his deposition beyond the close of
18 discovery today?

19 MR. L'HEUREUX: We have not?

20 MR. HARRISON: Is there any reason
21 why we shouldn't consider Mr. Hoffman failing to
22 appear for his duly noticed deposition?

1 MR. L'HEUREUX: Yes. Because he
2 wasn't properly renoticed for the deposition.

3 MR. HARRISON: And what was it that
4 was improper about his renotice?

5 MR. L'HEUREUX: The time period
6 was too short.

7 MR. HARRISON: Did you seek a
8 protective order for his deposition?

9 MR. L'HEUREUX: I did not.

10 BY MR. HARRISON:

11 Q. Mr. Krutz, how did you go about
12 collecting the documents that you put in this file
13 folder in your desk related to the alleged
14 misconduct of Ms. Chambers? What procedure did you
15 use to collect those?

16 A. As documents became available that I
17 was aware of, I would have tried to get a copy.

18 Q. Did you make an active search
19 yourself to acquire documents?

20 A. Could you define --

21 Q. Active search?

22 A. Active search.

1 Q. Did you take steps to inquire with
2 other parties to seek out documents related to Ms.
3 Chambers like did you go to Mr. Murphy and say,
4 "What documents do you have related to Ms.
5 Chambers?"

6 A. Yes, I did.

7 Q. You didn't wait on someone to bring
8 documents to your attention? You sought them out?

9 A. Yes, when I knew of those people.

10 Q. When you knew of people that might
11 have relevant documents?

12 A. Yes.

13 Q. And Mr. Murphy was one?

14 A. Yes.

15 Q. When did you seek out documents from
16 Mr. Murphy for this file?

17 A. I don't recall the dates.

18 Q. What time period approximately?

19 A. Well, I would have received most of
20 the documents on December 2nd and subsequent during
21 times when, involved with counsel, I would have
22 received additional documents that would have been

1 used.

2 Q. So, you received most of the
3 documents for Mr. Murphy on the 2nd. Others may
4 have come from Mr. Murphy through counsel to you?

5 A. Or from counsel.

6 Q. Not necessarily from Mr. Murphy?

7 A. Right.

8 Q. Apart from counsel and Mr. Murphy,
9 were there other people you went to to seek out
10 documents related to Ms. Chambers?

11 MR. L'HEUREUX: Do you need to
12 confer with counsel?

13 THE WITNESS: Yes, I think I do.

14 MR. HARRISON: Before you do, I
15 take it that you need to consult about something
16 that may be privileged?

17 THE WITNESS: Yes.

18 MR. HARRISON: You don't need to
19 explain. You can consult.

20 (Thereupon, a recess was taken and
21 then the deposition continued as follows:)

22 MR. L'HEUREUX: Counsel, let me

1 explain what the problem was. Then we can go on
2 with your question.

3 While we were out, Mr. Krutz
4 informed me that there were occasions when he
5 accompanied counsel and acted as counsel's agent to
6 obtain documents from individuals, those kinds of
7 things. We consider those communications to be
8 either privileged as attorney/client communications
9 or attorney work product privilege.

10 Respecting any other activities
11 where he was not acting as the agent of counsel, we
12 won't impose an objection. I understand your
13 question to be did he obtain documents from
14 individuals. He did, but he did so on some
15 occasions acting as the agent of counsel.

16 BY MR. HARRISON: (resumed)

17 Q. Putting aside the details of what
18 counsel told you and what you may have told counsel
19 and what you may have obtained from counsel, I'm
20 not really interested in the intermediate
21 communications there. What I am interested in is
22 what documents did you obtain and which documents

1 found their way into your folder. I don't really
2 care how they got there.

3 A. In the two-volume document we are
4 speaking of today?

5 Q. Absolutely not. I'm not talking
6 about that document at the moment. I have always
7 been talking about your folder in your desk
8 regarding Ms. Chambers and what we call the alleged
9 misconduct file.

10 Without getting into anything your
11 attorney said to you or you to them, or any
12 specifics you may have done on your attorney's
13 instruction, I would like to know what documents
14 you did obtain that found their way into the file
15 for Ms. Chambers in your desk?

16 A. Obviously I had access to the
17 official personnel folder and may have put a copy
18 in the personnel folder. I requested Robin Brown
19 at the human resources office to U.S. Park Police
20 to obtain a copy of all salary and pay scales. I
21 would have --

22 Q. You have indicated the documents

1 from Mr. Murphy?

2 A. The documents from Mr. Murphy. I
3 believe that might have been all. Yes, I believe
4 that's all.

5 Q. I want to be clear that, without
6 wanting to know how they got there or why they got
7 there, are there any other documents that you will
8 put in your folder for Ms. Chambers in your desk
9 other than what you just identified?

10 A. All the documents that are contained
11 in the two files in front of us.

12 Q. Maybe all three files?

13 A. Probably all three files.

14 Q. So, that would be the one-volume
15 binder on the proposed removal decision filed with
16 MSPB? Those you would expect to be in the folder?

17 A. Absolutely.

18 Q. The two-volume binders on the final
19 decision filed with MSPB, you would expect those
20 documents to be in your folder?

21 A. That's correct.

22 Q. And anything else you can remember

1 that would be in that folder?

2 A. Any other documents requested in
3 your document request.

4 Q. Okay. So, Appellant Chambers'
5 document request of the Agency file in this matter
6 would have caused certain documents to be generated
7 in response?

8 A. All the documents that I assisted in
9 producing for the solicitor's office, a copy would
10 be in my file.

11 Q. Which is that same file folder for
12 Ms. Chambers?

13 A. It's a combination of the two file
14 folders in front of us, as well as this other file
15 folder document request. And there is a folder
16 with attorney representation letters that are not
17 contained within this record. Then there is a copy
18 of these two letters I was mentioning before as
19 well as potentially some other matters that I don't
20 recall if there are any, but potentially there
21 could be others.

22 Q. What I'm trying to do at the moment

1 is to identify -- and I don't know whether this is
2 one file folder or a desk drawer or a cabinet full.
3 I don't know. What volume are we talking about
4 here at the moment?

5 A. All three.

6 Q. All three of these binders?

7 A. These three binders and the document
8 request contain all the records relevant, material
9 relevant to Teresa Chambers' case.

10 Q. I understand. My question at the
11 moment isn't framed in that regard, although I
12 appreciate your answer. My question is framed in
13 regard to what physically is in the file folder in
14 your desk. Do you understand that? Do you
15 understand my question?

16 A. Yes. These two records, the
17 document request file, a small folder containing
18 representation and acknowledgement orders, and
19 another small folder that contains at least those
20 two documents that I mentioned.

21 Q. And perhaps others you can't
22 remember, but possibly not?

1 A. Right.

2 Q. Nothing else you remember in that
3 file, sitting here today?

4 A. That's all I can remember, yes.

5 Q. Were you aware at any time that Ms.
6 Chambers filed a complaint to Director Mainella on
7 December 2nd, 2003 that complained of conduct by
8 Mr. Murphy and complained of conduct regarding
9 yourself in regard to release of certain personnel
10 records or disciplinary records regarding Chief
11 Chambers?

12 A. I was aware that my name was used in
13 a memo by Teresa Chambers, but it was many, many
14 months after December. I can't recall the exact
15 date.

16 Q. When you first learned that, you
17 mean?

18 A. I actually read it the first time
19 probably in preparing the document request.

20 Q. Preparing the Agency's answers to
21 the document request?

22 A. I believe that was the first time I

1 had a chance to read the document.

2 Q. Do you recall that document being
3 more or less as I described it, a letter from Ms.
4 Chambers complaining of certain conduct by Mr.
5 Murphy and yourself regarding certain personnel
6 files?

7 A. I would say that's accurate.

8 Q. How close in time can you place that
9 event when you first learned that or saw that,
10 summer of 2004?

11 A. No.

12 Q. Later, before?

13 A. We're in summer now.

14 Q. Technically probably still in
15 summer.

16 A. Probably within the last month.

17 Q. That was the first time you had seen
18 the document?

19 A. That's correct.

20 Q. When was the first time you were
21 aware that Teresa Chambers had delivered a letter
22 to Director Mainella on December 2nd, 2004?

1 A. Probably several months after
2 December.

3 Q. How did you first come to know that
4 such a document had been delivered?

5 A. I believe counsel sent it.

6 Q. You were not aware until then?

7 A. No.

8 Q. Were you aware generally that Ms.
9 Chambers was complaining about some personnel
10 records that related to her prior disciplinary
11 action that may have been released to some other
12 party?

13 A. No, I was not aware of that.

14 Q. So, I take it that you have never
15 had occasion to discuss with Mr. Davies whether it
16 may have been appropriate to have some other human
17 resource staff person involved in decisions
18 regarding Ms. Chambers because you might have been
19 the subject of a complaint by Ms. Chambers?

20 A. No, that never came up in
21 discussion.

22 Q. Did you ever talk to Mr. Davies

1 regarding what transpired in the December 5th
2 meeting in which Ms. Chambers was given her notice
3 of administrative leave?

4 A. Yes.

5 Q. When did you chat with him about
6 that?

7 A. Shortly after December 5th, when he
8 handed me the document. I'm assuming he handed me
9 the document.

10 Q. That document would have been which?

11 A. Effecting administrative leave.

12 Q. The notice of administrative leave?

13 A. Right.

14 Q. Did Mr. Davies at least attempt to
15 describe to you what had been said in the meeting?

16 A. Yes.

17 Q. Did Mr. Davies describe to you what
18 Mr. Murphy stated in that meeting?

19 A. I don't recall.

20 Q. Did Mr. Davies state to you what Ms.
21 Chambers said in that meeting?

22 A. I don't recall that either.

1 Q. And do you recall any details or
2 generalities of what either party said?

3 A. I vaguely remember a discussion
4 about guards are there or something like that.

5 Q. Anything further?

6 A. Nothing specific.

7 Q. Anything further generally?

8 A. The document was issued, badges
9 collected, gun collected. That's the extent of it.

10 Q. Was there a human resource person
11 that advised Mr. Murphy in the preparation of his
12 proposed removal decision issued on December 17th
13 for the time period of December 2nd through
14 December 17th?

15 A. I'm sorry. One more time.

16 Q. No problem. Was there a human
17 resource person who advised Mr. Murphy regarding
18 his proposed removal decision of Ms. Chambers
19 issued on December 17th, 2003, during the time
20 period of December 2nd through December 17th, 2003?

21 A. I don't know.

22 Q. I take it your "I don't know" means

1 not only that you don't know what that person's
2 name might be, but you don't know whether there
3 existed such a person? Am I understanding your
4 answer correctly?

5 A. Yes.

6 Q. Now, you became involved again on or
7 after December 17th, 2003 in regard to the final
8 removal decision for Ms. Chambers; is that correct?

9 A. That's correct.

10 Q. At what point in time did you become
11 involved?

12 A. When I was aware that the proposal
13 had been issued, I communicated with Paul Hoffman
14 offering my assistance.

15 Q. Do you recall when that might have
16 been?

17 A. Not exactly. Shortly after the
18 date.

19 Q. Did you get a copy of their proposal
20 when it was issued?

21 A. Yes.

22 MR. HARRISON: Let me show you a

1 document. This one is not marked even though it
2 has been previously. Let's go ahead and mark it as
3 Krutz Exhibit Number 1.

4 (Krutz Deposition Exhibit Number 1
5 was marked for identification.)

6 BY MR. HARRISON:

7 Q. Just look at it, Mr. Krutz, and see
8 if you recognize that.

9 (The witness complies.)

10 Q. Do you recognize it?

11 A. Yes.

12 Q. What is it?

13 A. It is the proposed removal issued by
14 Don Murphy on December 17th.

15 Q. Is this the document that you
16 received, or did you receive this document shortly
17 after its issuance, to your knowledge?

18 A. Yes, I did.

19 Q. Is it receipt of this document that
20 prompted you to call Mr. Hoffman?

21 A. Yes.

22 Q. What did you say to Mr. Hoffman when

1 you called?

2 A. I actually spoke with his secretary,
3 not Paul Hoffman. I indicated to his secretary
4 that I was an employee relations specialist with
5 the National Parks Service, and was ready and able
6 to provide assistance to him in the formulation of
7 his proposed findings.

8 Q. Did Mr. Hoffman get back to you in
9 response to that call?

10 A. Yes, he did.

11 Q. When did that happen?

12 A. I don't recall exactly how long.

13 Q. How much time do you think
14 approximately transpired, minutes?

15 A. Several days.

16 Q. Did he speak with you personally?

17 A. I believe I went to meet him and we
18 had a meeting.

19 Q. Did Mr. Hoffman request that you
20 show up at this meeting, or did you initiate the
21 encounter?

22 A. I actually suggested that I come see

1 him and bring him some documents to work from in
2 terms of templates.

3 Q. Had he responded to your phone
4 message prior to then, prior to your initiating --

5 (Ms. Jackson left the room.)

6 A. I began immediately upon getting
7 this and getting, of course -- I should clarify
8 that actually it was with the Teresa Chambers'
9 written reply that, therefore, I initiated contact
10 with Paul Hoffman.

11 Q. I apologize for that.

12 A. No problem. Because I couldn't have
13 begun the process to think about the template until
14 I had a response.

15 Q. So, let's be clear. I appreciate
16 your clarification. Are you certain, and I do
17 emphasize the word certain, sitting here today,
18 that you did not initiate your involvement with Mr.
19 Hoffman on Ms. Chambers' removal decision until you
20 had received both the proposed removal and Ms.
21 Chambers' answer?

22 A. I can't be absolutely certain, but

1 my reflection seems to be that I would have had to
2 have it. Either I contacted him shortly before
3 receiving the written reply or shortly after I
4 began preparing the document for his review.

5 Q. So, had Mr. Hoffman called you back
6 or otherwise replied to your phone message that you
7 were ready to assist him prior to your initiating
8 this communication where you wanted to bring him
9 certain documents?

10 A. No.

11 Q. How did you initiate that second
12 communication? Did you call? Did you e-mail? Did
13 you walk over to his office?

14 A. I wanted to be clear on this. As
15 far as my memory is, I did not talk to him before I
16 was prepared to meet with him.

17 Q. I think that's clear.

18 A. Okay.

19 Q. But my question is had he talked to
20 you or communicated with you by e-mail or otherwise
21 to say, "I'm responding to your phone message.
22 Come on over." I take it that he did not respond

1 to your message prior to you initiating that second
2 communication?

3 A. No. Again, I want to make clear
4 that there is only one message, one call I made to
5 him to initiate it. What I'm saying is that when I
6 initiated the call, I am uncertain of when that
7 was, whether it was prior to or after the receipt
8 of Teresa Chambers' written reply.

9 Q. You clarified that. My question is
10 not about your call to Mr. Hoffman where you
11 offered your services, but about your subsequently
12 going to Mr. Hoffman's office and offering
13 documents. My question is did you receive any
14 response by Mr. Hoffman after your phone message,
15 your first communication offering your services,
16 before you went over to Mr. Hoffman's office and
17 offered the documents?

18 A. I don't recall.

19 (Ms. Jackson entered the room.)

20 Q. You don't recall any?

21 A. His initiating, no.

22 Q. Right, or responding to your known

1 message?

2 A. No, I do not.

3 Q. Why is it you didn't wait for Mr.
4 Hoffman to call you back or otherwise respond
5 before you went over to his office? Why did you
6 initiate this second communication which, I guess,
7 was in person?

8 A. My role is to provide assistance to
9 decision makers or proposing officials. Therefore,
10 to introduce myself at an early stage would be most
11 appropriate.

12 Q. Did Mr. Davies direct you to do
13 that?

14 A. No, he did not.

15 Q. Did Mr. Davies tell you that you
16 were going to be handling the final removal
17 decision and assisting Mr. Hoffman?

18 A. No. I took the initiative to assume
19 that I would be the one handling the next stage.

20 Q. I see. So, tell me exactly what
21 happened, then, on this occasion when you, I take
22 it, went to Mr. Hoffman's office. Describe that

1 for us, if you would.

2 A. To the best of my recollection, we
3 met very briefly. It was only to say who I am, my
4 phone number, to get his fax number, to get his
5 e-mail address, to get his phone number, exchanging
6 numbers in that regard, and then to advise him that
7 I was going to prepare for him a template for his
8 thoughts to begin in terms of how he wanted to
9 approach it.

10 I inquired as to whether Mr. Hoffman
11 had done any of these kinds of decisions in the
12 past to get a feel for whether or not he needed
13 more than a moderate amount of guidance. My belief
14 was that he had not. So, my template was fairly
15 constructed in terms of process.

16 Q. What was the template you're
17 referring to?

18 A. It was a proposed final decision
19 which contained a listing of the charges and
20 specifications, a brief description of each charge
21 or specification, a brief description of what the
22 employee's reply was, and then a blank space for

1 Mr. Hoffman to consider how he wanted to address
2 the issue of each charge and specification. It
3 also included an ending for employee rights which
4 included all the necessary reference material that
5 the employee had a right to present to him.

6 Q. Have you maintained a copy of that
7 original template that you gave Mr. Hoffman?

8 A. I believe so, yes.

9 Q. Is it in electronic form on your
10 computer?

11 A. Yes.

12 Q. Is it also in hard copy and in Ms.
13 Chambers' file?

14 A. I don't believe so.

15 Q. Is it in a hard copy elsewhere?

16 A. I don't believe so. Not to my
17 knowledge.

18 Q. Did Mr. Hoffman at some point make
19 findings for each of those charges as to how he
20 would resolve what we might call the competing
21 evidence or allegations of the proposing official
22 and Ms. Chambers?

1 A. I believe he subsequently did.

2 Q. Did you see them?

3 A. Yes, I did.

4 Q. Did you maintain a copy of that
5 particular document?

6 A. I'm not sure.

7 Q. You may have?

8 A. I may not have.

9 Q. Which means you may have?

10 A. It's possible. I don't recall.

11 Q. All right. Did you or any
12 nonattorney person that you know of delete any of
13 the findings that Mr. Hoffman first put down in his
14 decision document that you saw?

15 A. Not to my knowledge.

16 Q. Do you know whether those findings
17 were still intact in the final decision document
18 issued?

19 A. No, they weren't.

20 Q. Without giving me an answer of who
21 might have deleted them, do you happen to know who
22 deleted them?

1 A. I can't answer that. I don't know
2 the answer to that, I should say.

3 Q. You're not saying you don't have
4 permission to answer?

5 A. I do not know the answer to that.

6 Q. And I take that to mean that you
7 don't know who may have deleted those findings?

8 A. I do not know, no.

9 Q. You know it wasn't you?

10 A. It wasn't me.

11 Q. Do you know what category of person
12 who might have done that, human resources manager,
13 attorney?

14 A. I suggest it was within the office
15 of the solicitor.

16 Q. Is that a guess or do you know?

17 MR. L'HEUREUX: I'm going to object
18 to that. You're not entitled to know what the
19 office of solicitor recommended to Mr. Hoffman or
20 what he asked to be recommended. We have a ruling
21 from the judge about that.

22 MR. HARRISON: Well, I don't know

1 that we do have a ruling.

2 MR. L'HEUREUX: I'm objecting on
3 the ground of attorney --

4 MR. HARRISON: I would appreciate
5 it if you wouldn't interrupt me when I'm speaking.

6 MR. L'HEUREUX: I accept that you
7 appreciate that but I'm trying to finish my
8 objection.

9 MR. HARRISON: You were finished
10 when I started talking.

11 MR. L'HEUREUX: Well, my objection
12 is on the record.

13 MR. HARRISON: I don't mind you
14 finishing your objection. I just want to note that
15 in the future, we should try to avoid interpreting
16 each other.

17 MR. L'HEUREUX: I agree.

18 MR. HARRISON: If I haven't allowed
19 you to say what you wanted to say, please go ahead.

20 MR. L'HEUREUX: I made my objection
21 and I instruct the witness not to answer any
22 further questions about this particular

1 communication.

2 MR. HARRISON: Which particular
3 communication?

4 MR. L'HEUREUX: The communication
5 of documents or about documents back and forth
6 between the solicitor and Mr. Hoffman.

7 MR. HARRISON: Okay. My question
8 of the moment is, and I don't know whether you're
9 stating this instruction to the witness on this
10 question. So let's be clear about it.

11 BY MR. HARRISON:

12 Q. My only question of the moment is do
13 you know the category of person who would have
14 deleted the findings by Mr. Hoffman? I'm not
15 asking the communication given by counsel. I'm
16 asking whether the person who performed the act of
17 deletion fell into the category manager, human
18 resources, attorney or other?

19 MR. HARRISON: Do you instruct the
20 witness not to answer that question?

21 MR. L'HEUREUX: You may answer that
22 question.

1 THE WITNESS: I don't know who did
2 it.

3 BY MR. HARRISON:

4 Q. That was not my question.

5 A. I don't know what category.

6 Q. That's my question.

7 A. I have no idea.

8 Q. Thank you. Did you work with Mr.
9 Hoffman when he physically typed in his findings
10 for that version of the decision document that you
11 read where he essentially resolved the competing
12 evidence for each charge?

13 A. No, I did not.

14 Q. Do you know whether anyone assisted
15 him in doing that?

16 A. No, I don't.

17 Q. Did you bring any documents with you
18 today?

19 A. No, I didn't.

20 Q. Do you recall any specific findings
21 that Mr. Hoffman, in the document that you
22 reviewed, where he had his findings made resolving

1 the competing evidence?

2 MR. L'HEUREUX: Objection: The
3 document that you're asking the question about is a
4 privileged attorney/client communication. I
5 instruct the witness not to answer that question.

6 MR. HARRISON: This witness has not
7 indicated any knowledge of attorney involvement in
8 the creation of that document. There is nothing on
9 the record that establishes an attorney involvement
10 in the creation of Mr. Hoffman's initial draft of
11 his findings.

12 Can counsel state for the record
13 specifically what is the basis for asserting
14 attorney/client privilege for that particular
15 document?

16 MR. L'HEUREUX: I am asserting the
17 privilege over that document because it is a client
18 created communication between Mr. Hoffman and the
19 solicitor for the purpose of obtaining legal
20 counsel. The responses back from the legal counsel
21 to Mr. Hoffman are also privileged communications.

22 MR. HARRISON: I'm not asking about

1 those at the moment.

2 MR. L'HEUREUX: To the extent that
3 Mr. Krutz saw any of those documents, he did so as
4 the agent of Mr. Hoffman and not as a third person.
5 Therefore, we continue to assert the privilege over
6 those attorney/client communications between Mr.
7 Hoffman and the solicitor, including the one that
8 you're asking about.

9 MR. HARRISON: Now, as I understand
10 counsel's proffer of the basis for the privilege,
11 it is that Mr. Hoffman created this draft with his
12 findings with the intent to communicate it to
13 counsel to receive counsel's advice, but not that
14 counsel was involved in drafting the document. Do
15 I understand the proffer correctly?

16 MR. L'HEUREUX: That is correct.

17 MR. HARRISON: My understanding of
18 the judge's ruling today regarding Mr. Krutz'
19 initial draft is that the initial draft by a
20 decision maker or nonattorney, such as a human
21 resources person, is not privileged, may become
22 privilege after involvement of an attorney in a

1 subsequent draft.

2 My understanding of the scenario
3 we're asking about at the moment regarding Mr.
4 Hoffman's first draft of his findings would be the
5 same as Mr. Krutz' first draft of his proposal
6 notice, it would not be privileged. Is there any
7 factual basis that you know of, counsel, that would
8 indicate a different posture for these findings by
9 Mr. Hoffman?

10 MR. L'HEUREUX: Yes. I disagree
11 with your recollection of the judge's order. The
12 judge's order was that Mr. Krutz' drafts to Mr.
13 Hoffman could be discussed because the solicitor
14 was not involved. Mr. Hoffman's draft, however,
15 was done with the express purpose of obtaining
16 advice from legal counsel, and such a communication
17 is protected by the privilege for all the reasons
18 stated in our opposition to motion to compel.

19 MR. HARRISON: I don't see a
20 difference. Let's call the judge back.

21 MR. L'HEUREUX: Go ahead. This
22 deposition is over.

1 MR. HARRISON: It's not. Don't
2 stop the record.

3 MR. L'HEUREUX: Keep the record
4 going but the deposition is over. You noticed him
5 from 9 to 12. It's 12. We have a conference with
6 the judge at 1 p.m.

7 MR. HARRISON: We need to have
8 that. Let's get this decision decided.

9 MR. L'HEUREUX: Go ahead.

10 (Thereupon, a recess was taken while
11 counsel attempted to place a telephone call to
12 Judge Bogle.)

13 (Thereupon, the above deposition was
14 adjourned at approximately 12:15
15 o'clock, p.m., and signature was
16 waived.)

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REPORTER'S CERTIFICATE

I, BELINDA D. LOMAX, Professional
Reporter, certify:

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

I further certify that I am not a
relative or employee of any attorney of any of the
parties nor financially interested in the action.
