

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

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4 TERESA C. CHAMBERS, x
5 PLAINTIFF, :

6 vs. : Case Number:

7 U.S. DEPARTMENT OF THE INTERIOR, : 1:05CV00380 (JR)

8 DEFENDANT. x

9 _____

10 Friday, October 7, 2005

11 Washington, D.C.

12 DEPOSITION OF:

13 TERRIE FAJARDO,

14 a witness was called for examination by counsel for the
15 plaintiff, pursuant to Notice and agreement of the
16 parties as to time and date, beginning at approximately
17 9:46 o'clock, a.m., taken at the law offices of Richard
18 E. Condit, Esquires, 2001 S Street, N.W., Suite 570,
19 Washington, D.C. 20009, before A. Richard Obester, a
20 court reporter and Notary Public in and for the District
21 of Columbia, when were present on behalf of the
22 respective parties:

1 APPEARANCE OF COUNSEL:

2 Counsel for the Plaintiff:

3 PUBLIC EMPLOYEES FOR
4 ENVIRONMENTAL RESPONSIBILITY

5 BY: RICHARD E. CONDIT, ESQUIRE

6 2001 S Street, N.W., Suite 570

7 Washington, D.C. 20009

8 (202) 265-7337

9 Counsel for the Defendant:

10 U.S. ATTORNEY'S OFFICE

11 BY: LISA S. GOLDFLUSS, ESQUIRE

12 555 4th Street, N.W., 10th Floor

13 Washington, D.C. 20001

14 (202) 514-7198

15 and

16 U.S. DEPARTMENT OF THE INTERIOR

17 BY: STEPHANIE YU, ESQUIRE

18 AGENCY COUNSEL

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21

22

1 I-N-D-E-X

2 Witness: Page:

3 Terrie Fajardo

4 Examination by Mr. Condit 4

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6 Exhibits: (Included in transcript) Page:

7 Exhibit number 1 marked for identification

8 to the Fajardo deposition 28

9 (Employee Performance Plan and results report)

10 Exhibit number 2 marked for identification

11 to the Fajardo deposition 56

12 (Senior Executive Service Performance Plan)

13 Exhibit number 3 marked for identification

14 to the Fajardo deposition 61

15 (Excerpts, Deposition of Donald W. Murphy)

16 Exhibit number 4 marked for identification

17 to the Fajardo deposition 66

18 (Declaration of Donald W. Murphy)

19 Exhibit number 5 marked for identification

20 to the Fajardo deposition 92

21 (Plaintiff's request for production of documents)

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1 THEREUPON,

2 TERRIE FAJARDO,

3 a witness, was called for examination by counsel for the

4 plaintiff, and after having been duly sworn by the

5 Notary Public, was examined and testified as follows:

6 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

7 BY MR. CONDIT:

8 Q. Could you please state your name, first

9 and last, and spell it for the record.

10 A. Terrie Fajardo.

11 Q. Your address, please.

12 A. [REDACTED]

13 [REDACTED]

14 Q. Are you appearing today pursuant to a

15 subpoena and notice of deposition you received?

16 A. Yes.

17 Q. And with that subpoena and notice of

18 deposition did you receive payment for a witness and

19 mileage fee?

20 A. Yes, I did.

21 Q. Now this is a deposition in the case of

22 Theresa Chambers vs the Department of the Interior,

1 which is a matter that involves events concerning the

2 Privacy Act. Were you aware of that?

3 A. I did not know it was entitled the

4 Privacy Act, but I knew that there was a case, yes.

5 Q. What will happen today is that your

6 testimony will be recorded and ultimately it will be

7 transcribed into a written form, you understand that?

8 A. Yes. Will I have an opportunity to

9 review it?

10 Q. Yes, you may, if you so request.

11 A. I do request.

12 Q. I will be asking you a series of

13 questions relevant to the case. If at any time you

14 don't understand my question or it is confusing in any

15 way, I will need you to simply let me know and I will be

16 happy to rephrase the question, do you understand?

17 A. Yes.

18 Q. Also because this is being recorded and

19 ultimately will be transcribed, any response that you

20 give must be verbal.

21 A. I understand.

22 Q. Meaning that gestures are not going to be

1 recorded. Are you represented today by counsel?

2 A. Yes, I am.

3 Q. Who is your counsel?

4 A. Lisa Goldfluss.

5 MS. GOLDFLUSS: I am representing Ms.

6 Fajardo in her capacity as a former official of the

7 United States.

8 BY MR. CONDIT:

9 Q. I see that there is Department of

10 Interior Solicitor's Office here. Are you represented

11 by that person as well?

12 A. Yes.

13 MR. CONDIT: Could you identify yourself for

14 the record, please.

15 MS. YU: Stephanie Yu.

16 BY MR. CONDIT:

17 Q. Have you had occasion, Ms. Fajardo, to

18 provide testimony under oath before?

19 A. Yes.

20 Q. When was the last time you provided

21 testimony under oath?

22 A. It was after the year 2000. The exact

1 date I cannot tell you.

2 Q. Do you remember what kind of case or
3 issue it was?

4 A. Yes, it involved an EEO case.

5 Q. In what capacity were you providing
6 testimony?

7 A. I was the Chief of Human Resources for
8 the National Parks Service, Washington office. My exact
9 title was Chief, Human Resource Operations.

10 Q. And you were providing testimony as to
11 your assessment of the situation in that role?

12 A. The administrative procedures that the
13 case was concerned with, the OPM regulations dealing
14 with promotions and hiring procedures.

15 Q. Other than the time that you just
16 mentioned that you testified under oath, have there been
17 any other cases where you testified under oath?

18 A. Many times.

19 Q. Would all these be matters relating to
20 your professional position as a Human Resources
21 professional?

22 A. Yes.

1 Q. These would be matters involving
2 challenges by employees or terminations, or how would
3 you characterize them?

4 A. There is a variety of different kinds of
5 cases that comes under Human Resources. They can be no
6 promotion, I did not get selected kind of thing, the EEO
7 cases concerning performance appraisals, or
8 non-selection from the ballot certificate. There can be
9 many different cases.

10 Q. Do you have any concerns about providing
11 truthful testimony here today?

12 A. No.

13 Q. Have you done anything to prepare for
14 your testimony here today?

15 A. In what regard?

16 Q. Have you reviewed any documents, talked
17 to anyone, anything of that nature?

18 A. I have spoken with my attorneys.

19 Q. Aside from speaking to your attorneys,
20 have you done any other preparation?

21 A. I assisted in looking for a specific disc
22 in my old office.

1 Q. Did you physically conduct that
2 inspection?

3 A. Yes.

4 Q. When did that occur?

5 A. Approximately four to six weeks ago.

6 Q. Describe for me what you did when you
7 went to look for your disc?

8 A. I asked that the box of discs that I left
9 at the office containing the work that I had performed
10 be given to me so that I could review them to see if
11 there were documents on there that might be related to
12 this situation.

13 Q. Did you locate the disc?

14 A. Yes, I did.

15 Q. Did it have the documents on it that you
16 were looking for?

17 A. It had one document on it, yes.

18 Q. What was that document?

19 A. It was the part of the performance
20 standards that I had prepared.

21 Q. Now when you say the document you located
22 was part of the performance standards that you prepared,

1 describe for me the document physically, what was on it?

2 A. In preparing performance standards you
3 determine the duties and responsibilities of the
4 position and what the criteria will be for the incumbent
5 to make a satisfactory rating, or in this case it was
6 pass fail.

7 Q. Was the document that you located, was it
8 in your understanding a part of a performance appraisal
9 document, or part of some other kind of document?

10 A. It was part of a performance appraisal
11 document.

12 Q. Now you say part of the document was
13 located. What part was missing, to your understanding?

14 MR. GOLDFLUSS: Objection, it assumes a
15 fact not in evidence.

16 BY MR. CONDIT:

17 Q. You described the document as being part
18 of the appraisal, is that correct?

19 A. There is two parts to the appraisal
20 process.

21 One is the development of the standards, and
22 the other is the evaluation.

1 Q. Which part did you locate?

2 A. The performance standards.

3 Q. So the second part, as I understand it,
4 would be the performance appraisal you did not locate?

5 A. No.

6 Q. Tell me about the search you conducted in
7 seeking this document. What exactly did you look for,
8 what did you go through to figure whether or not you
9 could locate the document you were seeking?

10 A. I asked that the discs that I had left in
11 the office when I retired be brought to me, and they
12 were and I looked through the disc boxes.

13 Q. The discs that you were looking through,
14 were these computer floppy discs?

15 A. Yes.

16 Q. 1.44 megabyte discs?

17 A. They are the average size.

18 Q. The small, square disc?

19 A. Yes.

20 Q. Aside from looking at those discs, did
21 you look through any other materials, any hard copy
22 files, any computer files of any other nature?

1 A. No, I had asked for the files, but they

2 indicated that they could not be located.

3 Q. What files did you ask for?

4 A. I had a file folder with material in it

5 that was either labeled Chief Chambers or Theresa

6 Chambers or something of that nature, and all of the

7 documents that I had been involved with were in that

8 folder.

9 Q. Who did you ask for that folder or those

10 documents?

11 A. May I have a moment with my counsel?

12 Q. Is this a concern about privilege?

13 A. No. I had asked Stephanie to ask them

14 for the materials that I had had, and I did not talk to

15 them specifically until I got there, about where is the

16 folders.

17 I asked the person who took my place where

18 the folders were, and she indicated she did not know.

19 Q. Who is that that you asked?

20 A. Mary Plumly, I believe. I may be

21 incorrect in the spelling of the name.

22 Q. Describe for me if you will the physical

1 nature of the hard copy file that you were looking for.
2 For example, was it when you last left it in some kind
3 of file folder of a particular nature, of an expandable
4 type that had a particular color? How thick was it, any
5 descriptive information you can provide along those
6 lines.

7 A. It would have been either a manila
8 folder, colored manila, the regular manila folder color,
9 or it would have been yellow, which is the color that I
10 used for the United States Park Police when I did things
11 for them. I tried to color code things because in my
12 profession I had so many files and so much paper I had
13 to be able to find them.

14 Q. You described this previously as a file
15 that was labeled Chief Chambers or Theresa Chambers, is
16 that correct?

17 A. Yes.

18 Q. About how much material was in there, if
19 you recall?

20 A. It would have had in it the materials
21 that I wrote, the vacancy announcement for the position
22 of the Chief, United States Park Police, a copy of the

1 position description, a copy of any waiver material that
2 was used at the time that the Chief was selected, the
3 standards that I wrote, and a copy of the performance
4 rating that I prepared. There could have been other
5 things in the file, notes, I don't know.

6 Q. I am going to go through each of these
7 categories. If you could tell me what each of those
8 categories or collection of documents might have been
9 and describe how many pieces of paper might have been
10 associated with each, that would be great. I know you
11 may not remember all that.

12 A. We are talking about something that
13 happened a few years ago.

14 Q. I understand that. I respect that. You
15 can qualify it in any way you feel comfortable, but I
16 just want to try to get a description since the issue in
17 this case is documents in part. I want to try to get as
18 much of a description as I can.

19 So you just described a vacancy
20 announcement. Was that in the file, and I assume that,
21 and you correct me if I am wrong, that was the vacancy
22 announcement that Chief Chambers responded to?

1 A. Yes.

2 Q. The position description, what was that?

3 A. A position description outlines the
4 duties of the position as well as the knowledge, skills
5 and abilities needed to perform the position, any other
6 information about wearing the uniform, carrying a
7 weapon, drug testing, financial disclosure, any of that
8 sort of thing would be in the position description.

9 Q. Do you recall when the position
10 description you described that was in your file was
11 created? In other words, was it created specifically
12 for Chief Chambers? Was it a prior Chief's position
13 description? Do you recall about that?

14 A. It was a prior Chief's position
15 description. It was not created by me.

16 Q. You also mentioned in your list of
17 documents that were part of your folder or file on Chief
18 Chambers that there was waiver material.

19 A. Yes.

20 Q. Please tell me what that is.

21 A. Chief Chambers was over 40 years old when
22 we hired her. The guidelines for hiring external

1 candidates for the United States Park Service, the
2 criteria indicated that there were certain tests,
3 physical tests, mental, psychological testing, things
4 like that that were meant for a rookie coming in.

5 Theresa Chambers had been a police officer
6 for many, many years. She was 40 years old at the time.
7 I did not know her at all, but it would have been
8 unlikely that she could have performed the physical
9 dexterity test the same way as a 20 year old could have.

10 So the agency requested from the department
11 a waiver of the physical dexterity test that Chief
12 Chambers would have to perform. She was the first
13 outside person, that is someone who did not come up
14 through the ranks, to be hired as the Chief of the
15 United States Park Police.

16 So some of the criteria that was meant for a
17 rookie obviously had to be reviewed in terms of an older
18 person, not that she was old, but the tests were for
19 much younger people.

20 Q. I understand. What you just described,
21 is that the extent of the waiver material as you recall
22 it?

1 A. Yes, there was also the psychological
2 testing waiver too because obviously she was fit for
3 police work. She had been for many years.

4 Q. Who prepared that waiver material, if you
5 recall?

6 A. I don't recall whether I prepared it.
7 Actually I believe it was Steve Krutz who prepared it.

8 Q. Could you spell Mr. Krutz's last name?

9 A. I am sorry I cannot.

10 Q. You also mentioned that this part of
11 Chief Chambers folder was standards that you wrote, is
12 that correct?

13 A. Yes.

14 Q. Describe what those are.

15 A. I cannot remember every element that was
16 in the standards of what was required of the Chief of
17 the United States Park Police.

18 It would have been based on her position
19 description and the information provided by the United
20 States Park Police as to what the duties of the Chief
21 were, and that was put into a standard format so that
22 the Chief would know what was expected of her in the

1 position.

2 Q. As you recall it, was that a final
3 document, a draft document?

4 A. It was a final document. It had been
5 drafted and reviewed by Mr. Murphy and given back to me.
6 I prepared it in final form.

7 Q. You mentioned Mr. Murphy. Who is Mr.
8 Murphy?

9 A. Mr. Donald Murphy, the Deputy Director of
10 the United States National Park Service.

11 Q. And as Chief Chambers was hired in the
12 year 2002, about when do you think this document, this
13 standards document you referred to, was prepared?

14 A. It would have been prepared shortly after
15 her arrival. I do not remember the date that she was
16 hired. I do not remember the date that that was
17 completed.

18 Q. Did anyone other than Mr. Murphy review
19 that document material?

20 A. I don't know. To my knowledge, I don't
21 know.

22 Q. Do you know whether or not the standards

1 document that you were just describing was provided to
2 Chief Chambers at any time?

3 A. I don't know whether it was or it wasn't.

4 Q. Now the last document that you mentioned
5 in the collection of documents that you recall were in
6 Theresa Chambers' folder was what you referred to as a
7 copy of the performance rating.

8 A. Yes.

9 Q. Please describe what that is.

10 A. It is the performance standards with a
11 pass fail and a narrative summation of her performance.

12 Q. Would this document have included what we
13 consider to be the performance plan and the appraisal
14 together?

15 A. Yes, because the performance standards
16 were section one and then there is the section that
17 deals with a six month review. This is a form that is
18 not for the Chief. It is for every employee. So it is
19 from the clerk to the Director of the National Park
20 Service. Everybody has the same form. It is not
21 something that is for Theresa Chambers.

22 Q. I understand.

1 A. The standards are one section and then
2 there is a section dealing with the six month appraisal,
3 "How am I doing?" kind of thing, and it was signed by
4 both the supervisor and the employee, whoever it is.

5 Then there is the section that deal with
6 what was the performance, did the person pass or fail,
7 and there is a narrative that goes with that part.

8 Then at the bottom the person signs again
9 that they understand and that they received it, that
10 kind of thing.

11 Q. Now with regard to the document you were
12 just describing, was that document in a draft or final
13 form as you understood it when you last saw it?

14 A. Final.

15 Q. Who has been involved in the preparation
16 of that document, to the best of your recollection?

17 A. Myself and Mr. Murphy.

18 Q. Do you know about when that document was
19 prepared?

20 A. I retired in March of 2004. It had to
21 have been either in the fall, up to the latter part of
22 December because I did not deal with it after that. It

1 could have been, everything could have been late summer,
2 early fall. It was done within six months of my
3 retiring, at least around that time.

4 Q. So again if you retired in March of 2004
5 then it could have been any time through September to
6 December of 2003?

7 A. Yes, right around there.

8 Q. Now what do you recall about the content
9 of that performance plan and appraisal in terms of how
10 the Chief was rated?

11 A. I had a conversation briefly with Mr.
12 Murphy and he asked me to prepare it, and I said
13 something to the effect "Well, how is she doing?"

14 And his response was "She is doing fine."

15 So what I wrote was not outstandingly
16 glowing because I did not know that it should be
17 outstandingly glowing, but it was satisfactory. I mean
18 she had been performing her duties as she should have
19 been performing them.

20 Q. Now at the time you were preparing the
21 document, did Mr. Murphy, aside from the statement he
22 made to you that Chief Chambers was doing fine, did he

1 indicate any problems or concerns he wanted reflected in
2 the performance appraisal?

3 A. At that time?

4 Q. Yes.

5 A. No.

6 Q. Did he ever ask you, after you completed
7 the performance appraisal, to adjust it, or edit it, or
8 change it in any way?

9 A. No.

10 Q. Now when you worked with Mr. Murphy on
11 the performance appraisal, did you share it with him
12 electronically through e-mail, for example?

13 A. No. I took it to him personally in a
14 blue envelope and handed it to him.

15 Q. A blue envelope? Why do you remember it
16 being in a blue envelope?

17 A. Because all, everything going to the
18 Director of a sensitive nature went in a blue envelope.
19 The envelope is blue.

20 Q. Do you know whether anyone other than Mr.
21 Murphy was aware of the creation of this document?

22 A. No, I do not.

1 Q. Was anyone else in the personnel office

2 that you worked in aware of the document?

3 A. At that time?

4 Q. Yes.

5 A. I don't know. I was the Chief of Human

6 Resources for the Washington office. I did not have to

7 have my work reviewed by anyone, or I should not have

8 been the Chief.

9 Q. At the time you prepared this evaluation,

10 or excuse me appraisal for Chief Chambers, how long had

11 you been the Chief, Human Resources?

12 A. Seven years.

13 Q. What are the primary duties of the Chief

14 of Human Resources?

15 A. During the seven years they evolved from

16 doing various things.

17 I was in charge initially of all staffing

18 policy, all staffing operations, all classification

19 service-wide, both of them service-wide.

20 I was Chief of the personnel operations for

21 the entire Washington office from the Director's office

22 down.

1 I advised all the regions when they had
2 complex questions regarding Human Resource issues.

3 I was the head of all employee relations
4 activity negotiations with union discussions with the
5 union with respect to the Washington office employees.

6 I was the head of the Park Ranger
7 certification section that issued all certificates for
8 temporary Park Rangers throughout the United States, all
9 385 parks at the time and I was also the initial
10 chairman of the Medical Standards Board for the medical
11 standards for all law enforcement officers throughout
12 the National Park Service. I created the position and
13 the standards were created by doctors that I had on a
14 board that worked with them.

15 Q. Now at the time, the seven years that you
16 were Chief of Human Resources, what types of employees
17 were you directly involved in in terms of evaluation or
18 classification or discipline? I imagine you were not
19 involved with, say, clerks or people at a lower level
20 than perhaps people at a higher level? That is what I
21 am trying to understand.

22 A. It depended upon the severity and the

1 complexity of the issues. Obviously I hired my own
2 staff and I was involved with the clerks because they
3 worked for me.

4 I was involved with maintenance crews,
5 workers in parks if the questions arose that were of a
6 complex and difficult nature that the park or region
7 raised it to my level.

8 Q. Every day?

9 A. No, many times, yes. To the point where
10 I could not handle everything myself. So we had to
11 divide duties up to some other folks too because I was
12 slowly going mad.

13 Q. Too much work?

14 A. Too much work.

15 Q. I understand. That was a brief
16 digression on the issue of performance appraisal work
17 because I wanted to understand something about your
18 background.

19 Back to the performance appraisal. Do you
20 recall if there was more than one copy of that document?

21 A. I had a copy and he had a copy, so I know
22 that there were two copies. Were there more than that?

1 After I left I have no idea.

2 Q. Now when you prepared the document, was
3 this prepared on a computer, on a typewriter, by hand?

4 How was it prepared?

5 A. It was prepared on a computer.

6 Q. Was this a computer that was in your
7 office?

8 A. Oh, yes.

9 Q. Is there any way to specifically identify
10 this computer, what kind of computer it was?

11 A. It was a Dell, but then all the others
12 were Dell also.

13 Q. Did it have any distinct serial numbers,
14 any kind of marking on it that would have identified it
15 as a computer that was in your office?

16 A. Yes, but I have no idea what that was.

17 It was not something that I kept track of.

18 Q. So when you say yes, describe for me what
19 you know about distinctive markings or serial numbers.

20 A. Well, I am sure every computer has a
21 serial number. That is what I know. After that I don't
22 know.

1 Q. Do you know whether there was any kind of
2 inventory type label on it?

3 A. Yes, but there again I had nothing to do
4 with that.

5 Q. Now when you prepared the document in
6 final form, was a copy maintained in your computer file
7 somewhere?

8 A. I did not delete what I prepared, so I am
9 sure it was.

10 Q. Describe for me the best you can, the
11 file name, the file folder, anything you can describe
12 about the location of the document on your computer.

13 A. The file name would have been Chambers or
14 Chief Chambers. It would have been under My Documents.

15 Q. Was there a separate folder within the My
16 Documents such as a folder that is called appraisals or
17 evaluations or anything of that nature?

18 A. No. All of those were kept on discs. I
19 divided things by discs, not on the computer because I
20 wanted to have the ability to find things quickly.

21 Q. About how many pages was the document?

22 A. I don't know. It could have been three.

1 It was a form. How it printed out, it could have been
2 three. I don't recall.

3 Q. As you recall within its final form were
4 all the sections of the document filled out?

5 A. Not the signature blocks, but yes.

6 Q. Other than signature blocks, was it
7 complete?

8 A. Yes.

9 Q. I am going to show you what I am going to
10 mark as Deposition Exhibit 1.

11 (Employee Performance Plan and
12 results report marked Deposition
13 Exhibit 1 and attached to the court
14 copy of this deposition.)

15 BY MR. CONDIT:

16 Q. Ms. Fajardo, I am going to present to you
17 what I have had marked as Deposition Exhibit 1. This is
18 a United States Department of Interior Employee
19 Performance Plan and results report. It is form
20 DI-2002. I provide a copy to you and I provide a copy
21 to counsel. Please take a look at that and tell me if
22 you recognize it.

1 A. Yes.

2 Q. Is this the document that you filled out
3 that you have been describing as the final appraisal for
4 Chief Chambers?

5 A. Yes. Well, it is the standards form, the
6 appraisal form.

7 Q. Now let's go through this a little bit,
8 specifically with respect to this Exhibit 1, and
9 focusing again on what you prepared in terms of Chief
10 Chambers approval. I notice on the first page there is
11 a section Part I performance plan.

12 A. Yes.

13 Q. And critical results. Do you see that?

14 A. Yes.

15 Q. And then under it there are five rows,
16 boxes basically labeled A through E, do you see that?

17 A. Yes.

18 Q. What kind of information was in that part
19 of Chief Chambers appraisal, as best you can recall?

20 A. The critical elements of her position.

21 Q. And those would be things like what, if
22 you recall any?

1 A. Performing budgetary functions for the
2 United States Park Police.

3 Q. Managing employees?

4 A. Arresting people, trying not to shoot
5 anyone.

6 Q. Now to the right of that critical results
7 boxes there is a separate set of boxes aligned with them
8 called results and it says enter achieved or not
9 achieved. Do you see that?

10 A. Yes.

11 Q. Do you recall, well, what does that mean
12 achieved or not achieved in your professional
13 understanding?

14 A. That the employee met the standard or the
15 employee did not meet the standard.

16 Q. So achieved meant that you achieved and
17 not achieved, if you did not meet it, correct?

18 A. Correct.

19 Q. Now with respect to those boxes, what do
20 you recall was filled in there for Chief Chambers?

21 A. Achieved.

22 Q. Achieved for all of them?

1 A. All of them or however many we used. I

2 cannot recall whether we used all five.

3 Q. Let me turn to the second page of the

4 document, and there seems to be three different areas of

5 assessment. One is entitled quality, one is entitled

6 teamwork and one is entitled customer service. Do you

7 see that?

8 A. Yes.

9 Q. Can you tell me to the best of your

10 recollection with respect to Chief Chambers appraisal

11 what was filled out among those three categories?

12 A. In category one everything was filled

13 out, all circled, all except the last where it says

14 other and that was not.

15 Teamwork, all except other which was not.

16 Customer service, all except other which was

17 not.

18 And in each case I was not told that there

19 wasn't anything other to be put in.

20 Q. I understand. Now what did it mean when

21 you circled all in the critical results section of those

22 categories?

1 A. Knowledge of the field, for example,
2 knowledge of the field or profession, the critical
3 elements is, was this quality for all A,B,C,D or E, or
4 does it only apply to A or C or E? As the Chief she had
5 to have a knowledge of all of it.

6 Q. All right. So let's turn to the next
7 page, page three of the document of Exhibit 1 and I see
8 a section again with a couple boxes labeled Part II
9 Progress Reviews. Do you see that?

10 A. Yes.

11 Q. Do you recall what if anything was filled
12 in that box?

13 A. I did not fill anything in in that box,
14 so I have no idea whether it was or wasn't.

15 Q. Move down on that same page. There is a
16 section called Part III, Summary Rating. It says enter
17 achieved or not achieved on this line and then there is
18 a separate section or separate reference to results. Do
19 you see that?

20 A. Yes.

21 Q. Do you remember what was reflected in
22 that box?

1 A. It was that the Chief had satisfactorily
2 performed and achieved all of the critical elements
3 necessary for her position. I don't know if those are
4 the exact words but that was the basis of what was put
5 in there.

6 Q. Moving to the next section of page three
7 of Exhibit 1 of the appraisal form, I see Part IV
8 entitled Certification. Do you see that?

9 A. Yes.

10 Q. What if anything was filled in that box,
11 if you recall, or those boxes, I should say?

12 A. I did not fill in any.

13 Q. Who would normally fill that section out?

14 A. The Chief and Mr. Murphy.

15 Q. So Mr. Murphy, if he were to present it
16 to the Chief, he would sign it. He would have the Chief
17 review it and she would sign it?

18 A. Yes.

19 Q. Now I have three pages to this document.
20 Do you recall any other pages being attached?

21 A. Not that I attached, no.

22 Q. At the time that you prepared this

1 document did you receive any communication from Mr.
2 Murphy or anyone else as to the plan to present it to
3 Chief Chambers?

4 A. When I gave it to him I asked him that
5 when he presented it to the Chief that the original and
6 a copy would come back to me so that it would be in the
7 official folder, and that he would see that the Chief
8 got a copy for herself. I could not make the copy for
9 him. The form was not completed with the signature.

10 Q. I understand, thank you. Did you have
11 occasion to have any other conversations with Mr. Murphy
12 about this document, other than the conversations you
13 have just described?

14 A. I don't know.

15 Q. Do you recall ever communicating with Mr.
16 Murphy or anyone else via e-mail about Chief Chambers'
17 appraisal?

18 A. I do not recall.

19 Q. Did you use e-mail when you were the
20 Human Resources Chief?

21 A. Of course.

22 Q. What was your e-mail address?

1 A. Terrie Underscore Fajardo at NPS.gov.

2 Q. And I assume the same format would have
3 applied to Mr. Murphy's e-mail?

4 A. Yes.

5 Q. Did you discuss this evaluation at the
6 time it was created, or around the time it was created
7 with Chief Chambers?

8 A. No.

9 Q. Now you have mentioned to me that the
10 computer location, that is the hard drive location where
11 you kept the document would have been under your My
12 Documents folder with a file name that had something
13 like Chambers or Chief Chambers, is that correct?

14 A. Yes.

15 Q. And I think you indicated to me that you
16 also believe you stored it in a floppy disc, is that
17 correct?

18 A. Yes.

19 Q. Do you recall actually storing it on the
20 floppy disc?

21 A. My normal practice would have been to do
22 that. After 35 years it would be unlikely that I would

1 not do that.

2 Q. I believe you were mentioning the fact
3 that you color code the discs or the files. Was there a
4 particular color disc that you would have used for this
5 storage?

6 A. No, I kept the discs by 2001, No. 1,
7 2002, No. 2, whatever it was.

8 Q. So if this document was created in 2003?

9 A. It would have been a disc marked 2003 No.
10 1 or 2 or 3, whatever it was for the year for that point
11 of the year.

12 Q. How were the discs labeled? Were they
13 labeled by hand, for example?

14 A. Yes.

15 Q. So you would have put a disc marked, for
16 example, 2003 with an approximate number in sequence
17 that would have been in your handwriting, is that right?

18 A. Yes.

19 Q. What kind of label did you use for these
20 discs? Was it a file label?

21 A. Just the label that came with the disc
22 box of discs.

1 Q. Now you mentioned earlier in your
2 testimony that you asked for an opportunity to look
3 through your discs that you left, that you had left when
4 you retired, is that right?

5 A. Yes.

6 Q. When you looked through the discs that
7 you were provided, did you find discs labeled 2003?

8 A. I found a disc where part of this was on.
9 I don't recall what the disc title of it was.

10 Q. About how many discs were you given to
11 review, if you recall, what folder of material were you
12 given?

13 A. There were some discs that were not
14 there, but there was at least three fourths to one half
15 of a disc box tray full of discs, but that was not all
16 the discs that I had.

17 Q. How did you know there were discs
18 missing?

19 A. Because I know what I had.

20 Q. What did you detect that you were
21 missing, or what categories of things that you think
22 were missing in the disc box that you were given.

1 A. I don't know the categories, but the
2 number, I mean the whole disc box was full and then
3 there was other discs in other disc boxes.

4 Q. The disc box that you were given was
5 labeled in some way?

6 A. No, it wasn't. It was not labeled when I
7 had it.

8 I have a private office. All of these
9 things were in my private office. I left my office
10 every day.

11 Q. Was the disc box that you were shown by
12 the Department of Interior employee the same type of
13 disc box that you left the discs in?

14 A. Yes.

15 Q. Did you ask or inquire where the rest of
16 the discs were?

17 A. Yes.

18 Q. What answer did you get?

19 A. "I don't know".

20 Q. Who gave you that answer?

21 A. Mary Plumly.

22 Q. Do you know whether Mary Plumly made any

1 effort to find out what happened to the other discs?

2 A. I don't know.

3 Q. Did anyone from the Department of
4 Interior or the National Park Service make any
5 representations to you about whether or not they would
6 look for and advise you when they found the other disc?

7 A. I believe Stephanie said that they would
8 take a look to see if they could find any, but not that
9 they would get back to me on it.

10 Q. Since you reviewed those discs have you
11 been advised that any new discs or additional
12 information was found?

13 A. No. Can we take a break?

14 MR. CONDIT: Let's take a ten minute break.

15 (Short Recess)

16 BY MR. CONDIT:

17 Q. Ms. Fajardo, you mentioned during your
18 testimony that when you reviewed the discs that you were
19 recently provided that were from your files, you found
20 part of Chief Chambers appraisal on a disc, is that
21 correct?

22 A. Yes.

1 Q. Now is that just part of it was on a
2 disc?

3 A. I don't know.

4 Q. Now was it on a disc you had any kind of
5 labeling on it?

6 A. Yes. I do not recall what the labeling
7 was, but yes it did.

8 Q. Did you recognize it as your label or
9 your disc?

10 A. Oh, yes, it was my handwriting.

11 Q. I am sorry if I asked this before, but
12 remind me, what part of it was missing?

13 A. The summation, the results achieved
14 section.

15 Q. Now you are referring to Exhibit 1?

16 A. Yes, Part III and Part I, the far right
17 hand column on results and Part III, the summary rating
18 results.

19 Q. As I understand it, both Part I and Part
20 III of the document you prepared as Chief Chambers
21 appraisal indicated that she had achieved the goals?

22 A. Yes.

1 Q. But in the document that you were able to
2 review recently, those pieces were omitted or missing?

3 A. Yes.

4 Q. You also indicated in your testimony that
5 when the document was finalized you gave it to Mr.
6 Murphy in a blue folder, correct?

7 A. Blue envelope.

8 Q. Blue envelope, I am sorry, and that you
9 told him that, words to this effect and correct me if I
10 am wrong, that he should make a copy of it once it was
11 signed and give it back to you?

12 A. Give the original back to me and a copy,
13 and make a copy for Chief Chambers. He could also make
14 a copy for himself.

15 Q. Did he acknowledge you in any way when
16 you made that request of him?

17 A. I am sure he said something like "okay",
18 something like that.

19 Q. But you don't recall him saying "no" or
20 "I won't do that"?

21 A. No.

22 Q. Was that the normal procedure?

1 A. Yes, for everyone, not whether you are a

2 mail clerk or you are the Director of the Park Service.

3 Q. Now you were the Human Resources Chief.

4 A. Yes.

5 Q. Describe if you will, was it in the Park

6 Service or the Department of Interior?

7 A. It was the National Park Service,

8 Washington Headquarters office.

9 Q. Who was your immediate superior at the

10 time you were there?

11 A. J. Lynn Smith.

12 Q. What title did Mr. Smith have?

13 A. Assistant Director of Human Resources.

14 Q. Was Mr. Smith the person who evaluated

15 you?

16 A. Yes.

17 Q. Do you recall what your last performance

18 evaluation was, just generally?

19 A. I received a \$3,500 award. I received

20 approximately 32 outstanding performance ratings and

21 special achievement awards over my career.

22 Q. Was Mr. Smith aware of your preparation

1 of the appraisal for Chief Chambers?

2 A. At that time?

3 Q. Yes.

4 A. I don't know.

5 Q. Do you know if at any time he became

6 aware of your preparation of Chief Chambers performance

7 appraisal?

8 A. I don't know.

9 Q. Would Mr. Smith have had access to your

10 hard files, that is your physical files and your

11 computer?

12 A. Of course.

13 Q. Who is Mr. Smith's boss?

14 A. At that time it was Richard G. Ring.

15 Q. Who is Mr. Ring?

16 A. He was the Associate Director

17 Administration Business Practices and something else, I

18 can't recall. It was a long title and it had to take

19 two lines.

20 Q. If you can recall, who did Mr. Ring

21 report to, or who was his immediately boss in the chain?

22 A. Mr. Murphy, Deputy Director Murphy.

1 Excuse me, it might have been Deputy Director Randy

2 Jones, one of the two of them.

3 Q. At the time that you retired and you

4 turned over your files and your floppies, etc., did you

5 provide them to a particular person?

6 A. Yes.

7 Q. Who was that?

8 A. Ella Drummond. She was my deputy.

9 Q. Did you give her any directions or

10 instructions as to who to handle this material?

11 A. Well, I suggested that everything

12 regarding Chief Chambers be kept because by that time

13 there was the action being taken, so I would have said,

14 you know, "Don't throw it out".

15 Q. Do you remember specifically mentioning

16 to Ms. Drummond to maintain the files of Chief Chambers?

17 A. Yes.

18 Q. Do you recall receiving any type of

19 response from Ms. Drummond?

20 A. It would have been "okay", something like

21 that.

22 Q. So you did indicate that you had an

1 indication that she acknowledged it when you told her to
2 save the documents?

3 A. Of course, yes.

4 Q. Is Ms. Drummond still employed at the
5 agency, do you know?

6 A. Yes, she is.

7 Q. Do you know what position she holds
8 presently?

9 A. The same one she had when I left, I
10 believe, but I have to say that she was not involved in
11 the Chief Chambers, anything to do with the Chief
12 Chambers action at all.

13 Q. Why do you say that?

14 A. Because she wasn't. I mean she helped me
15 with the day to day operations of the organization. I
16 handled everything that was senior level myself, and
17 things of that nature were sensitive so she wouldn't
18 have, unless she was acting for me in my absence.

19 Q. Do you know who filled in for you when
20 you retired, or who was acting in your role?

21 A. Ella Drummond.

22 Q. Do you know how long she was in that

1 role?

2 A. At least 120 days. I don't know how much
3 longer then that because I suggested and secured for her
4 a temporary promotion before I left. That was not out
5 of the ordinary.

6 Q. You say now it is your understanding that
7 today Ms. Drummond is still the deputy?

8 A. I don't know.

9 Q. Did you have an understanding of what
10 would happen to your discs and hard files once you
11 provided them to Ms. Drummond on your departure?

12 A. I left everything in my office as it was.
13 I only removed my own personal golf paraphernalia.

14 Outside of that I did not pick up a disc and
15 hand her one and say "Here, you have to keep this here,
16 you have to keep that here", no.

17 Q. Prior to your departure did you delete
18 any files on your computer and disc that related in any
19 way to Chief Chambers?

20 A. No.

21 Q. Prior to your retirement and departure
22 from the agency, did you destroy or dispose of any hard

1 copy files that related to Chief Chambers?

2 A. No.

3 Q. Now when you mentioned your hard copy
4 file regarding Chief Chambers, where was that kept
5 physically? Was it in a particular type of file drawer?

6 A. It was in a file cabinet, yes.

7 Q. Was that file cabinet labeled in some
8 way?

9 A. No, the file cabinets themselves are not
10 labeled. They were in my office.

11 It was the top drawer of the file, a long
12 short file, short in stature file, cabinet lengthwise
13 behind my desk, and it was locked and obviously I left
14 the keys.

15 Q. At the time you were working in the
16 agency did Mr. Murphy have access to your files, either
17 on computer disc or hard copy?

18 A. As the Deputy Director of the agency,
19 either Deputy Director or the Director of the agency had
20 access to my office.

21 Would it be likely that they would go in
22 there, no. They were in a separate building.

1 Q. The office that you had at the time of
2 your retirement, was it a single office or did you share
3 it with someone?

4 A. It was a single office.

5 Q. Did it have a room number or other
6 designation?

7 A. I am sure it did, but I don't recall what
8 it was.

9 Q. What floor was it on?

10 A. The twelfth.

11 Q. Did you have any other offices adjacent
12 or adjoining yours?

13 A. With other people in them?

14 Q. Yes.

15 A. Yes.

16 Q. Who would have been on the immediate side
17 of your office?

18 A. If I am sitting facing my front door, on
19 my right side was a file room that another organization
20 had. It is a large room.

21 On my left was Deborah Thompson.

22 Q. Who is Ms. Thompson?

1 A. She is the Chief, she is the one that we
2 hired to take over part of the things that I did, the
3 Chief of Policy Staffing.

4 Q. How many offices were shared on the same
5 floor, the twelfth floor?

6 A. Offices on the twelfth floor?

7 Q. Yes, just an idea.

8 A. I have absolutely no idea.

9 Q. Would it be more than five people?

10 A. Oh my Lord, yes.

11 Q. This is the twelfth floor at what
12 address?

13 A. 1201 Eye Street, NW.

14 Q. Do you recall any other offices near
15 yours and within two or three offices of yours?

16 A. At the far right with me was the Chief of
17 Training.

18 The next office was the Deputy Chief of
19 Training.

20 The next office was the file room I spoke
21 of.

22 The next office was mine.

1 The next office was Deborah Thompson.

2 The next office after that was David Davies.

3 The next office after that was a person who
4 worked in Denver and used the office occasionally.

5 The next office after that was Jim Poole,
6 and that was the entire side as I recall.

7 Q. Was Mr. Poole involved in Freedom of
8 Information, do you recall what his job was?

9 A. At the time he was involved with
10 activities having to do with the Boy Scouts and he could
11 have had other duties, I don't know. He subsequently
12 took over as acting Associate Director when Dick Ring
13 retired.

14 Q. Who is David Davies?

15 A. The Chief of Employee Labor Relations.

16 Q. Did Mr. Davies have access to your office
17 and your files?

18 A. He could have, yes. I mean he was one of
19 my partners and he could have gone into my office when I
20 was not there, yes.

21 Q. You mentioned earlier a person by the
22 name of Steven Krutz.

1 A. Yes.

2 Q. Do you recall what Mr. Krutz's position
3 was?

4 A. He is an Employee Relations Specialist.

5 Q. Do you know whether Mr. Krutz would have
6 had access to your office?

7 A. He would have asked someone if he wanted
8 something from my office. He would not himself have
9 gone in and taken anything from my office.

10 Q. When you gave the appraisal, Chief
11 Chambers' appraisal in a hard copy to Mr. Murphy, did
12 anyone see you or was anyone in the room?

13 A. It was in the hall and there were lots of
14 people in the hall. I have absolutely no idea who was
15 watching me do anything.

16 Q. This was in the hallway?

17 A. Of the main Interior building outside his
18 office.

19 Q. Do you recall about what timeframe this
20 occurred, this transaction?

21 A. No, I mean, I don't know the date it was.
22 I know that it was in the afternoon.

1 Q. Do you recall whether or not Mr. Murphy
2 took some specific action with the information that you
3 gave him? In other words, did he go back in his office
4 and put it on his desk, did you see anything?

5 A. I don't recall.

6 Q. When you came back to the agency to
7 review your files and your discs, did you expect to find
8 the appraisal on a disc?

9 A. Yes.

10 Q. Why would you have that expectation?

11 A. Because that is where I put it.

12 Q. Were you surprised when you did not find
13 it on a disc?

14 A. Yes, I was.

15 Q. I apologize if I have forgotten your
16 answer to this, but were you also shown the hard copy
17 file or any hard copy file regarding Chief Chambers when
18 you reviewed the files and materials of the agency?

19 A. I was given, shown a copy of a hard, a
20 copy of this. I don't recall whether it was filled out
21 or not.

22 Q. The this you are referring to is

1 Deposition Exhibit 1?

2 A. Yes.

3 Q. Were you shown any other materials from
4 the file as you recall?

5 A. No.

6 Q. Did anyone explain to you where those
7 materials were, or if those materials existed?

8 A. They said they could not find the file.

9 Q. Did you ask to see or to go to your
10 computer that you had used to check for a copy of this
11 file?

12 A. I was given to understand that the
13 computer that the person was now using was not the one
14 that I had.

15 Q. Did anyone explain to you where the
16 computer you were using was or might be?

17 A. No, I don't think the question came up.

18 Q. Did you ask at all to see your e-mail
19 files?

20 A. I don't recall whether I did or not, but
21 I did not send it to Mr. Murphy on e-mail. So --

22 Q. Do you recall having any exchanges with

1 Mr. Murphy or any other person regarding Chief Chambers
2 via e-mail in your official role as the Chief of Human
3 Resources?

4 A. I am sure I have. I mean over the years,
5 of course. What they were I cannot tell you.

6 Q. Do you know at the time you were retired,
7 do you know what the policy was of the department for
8 storage of hard copy files, storage of computer files?

9 A. No.

10 Q. Do you know if there was a particular
11 document retention or protection policy in place?

12 A. I am sure there is but I don't know what
13 it is.

14 Q. Why do you say you are sure that there
15 was?

16 A. Because there is something in the
17 department manual that deals with it.

18 Q. You mentioned to me that a number of
19 discs you left when you retired, you indicated that
20 there was a full box plus others beyond the full box.

21 A. It was not a box. It was not a disc box
22 like you buy of discs from Staples. It was a container

1 that was for the storage of discs that was quite long.

2 It could have been twelve inches long. I don't know.

3 It was gray, off white, shell white.

4 I pulled it out and there was a drawer. How

5 many discs in there, I don't know. It was full when I

6 left.

7 Q. So this was a file box that was made

8 separately for these small floppy discs?

9 A. It was not made by the National Park

10 Service for floppy discs. It was made by --

11 Q. An office supply company?

12 A. Yes.

13 Q. I understand, thank you. Beyond that

14 whole box of discs, were there other discs that you left

15 as well?

16 A. Yes.

17 Q. What kinds? How were they stored when

18 you left?

19 A. In smaller disc boxes that would be more

20 portable, and some that were not in disc boxes but were

21 just stacked up next to my computer.

22 Q. Now with respect to the disc that would

1 have contained Chief Chambers' appraisal at the time of
2 your departure, do you recall what took place? Would it
3 have been in the file box on the stack next to your
4 computer, in a different box, any recollection there?

5 A. It should have been in the disc box, the
6 large off white gray box.

7 Q. Why do you think it should have been in
8 that box?

9 A. Because important discs of performance
10 appraisals of my own staff were on their own separate
11 discs, things like that were in that file drawer box.

12 Q. Now up through the time you handed Mr.
13 Murphy the final version of Chief Chambers' appraisal,
14 had you been given any indication that Chief Chambers
15 was doing anything but satisfactory performance?

16 A. No poor performance. Everything seemed
17 to be fine.

18 MR. CONDIT: Would you mark this as Exhibit
19 2?

20 (Senior Executive Service
21 Performance Plan marked Deposition
22 Exhibit 2 and attached to the court

1 copy of this deposition.)

2 BY MR. CONDIT:

3 Q. Ms. Fajardo, I am going to show you what
4 has been marked as Deposition Exhibit 2. It is a
5 document entitled United States Department of the
6 Interior Senior Executive Service Performance Plan, and
7 it has got some other language, accountability,
8 integration, modernization and customer value. I will
9 provide a copy to counsel and provide a copy to you and
10 ask you to look at it.

11 A. Yes.

12 Q. Is Exhibit 2 a document that you have
13 seen before?

14 A. Yes, I wrote it. Yes, I did. When I say
15 I wrote it, I put it on this form and these are elements
16 that are standard in senior level positions that are
17 equivalent to SES, Senior Executive Service.

18 Q. Is there any way that as you are sitting
19 here today that you can identify this document as a
20 document that you actually prepared? In other words,
21 through your memory, through indications on the
22 document.

1 A. There isn't anything here that says that

2 I prepared it.

3 Q. You know you prepared it?

4 A. Yes. I did not create the performance

5 plan elements. They were created by the department. I

6 basically put the information on top unless another one

7 was done prior to or after I did it.

8 Q. Now I notice at the top of the document

9 there is a reference to Attachment 1. Do you see that?

10 A. Yes.

11 Q. Do you know what that means?

12 A. Yes. This would have been an attachment

13 to the Senior Executive Service Performance Plan

14 Guidelines as a blank form.

15 Q. And to the right of the words Attachment

16 1, there is a reference that says 2/11/03 version. Do

17 you see that?

18 A. Yes.

19 Q. Do you know what that means?

20 A. No, other than if the form had been

21 revised, not what I did revised, not the elements

22 revised, but that the form itself, the form match of the

1 form may have been revised.

2 Q. Okay. Do you recall about when you may
3 have prepared this document? Were there any indications
4 on the document about when you may have prepared it?

5 A. No, but it would have been after she was
6 hired, and around the time of the other, this is for
7 management, all of this deals with criteria for managing
8 people, for programs.

9 The other one is how did she or anyone
10 perform in the basic subject matter, knowledge of the
11 duties. This is not all that the Chief United States
12 Park Police does or Chief of Human Resources does.

13 Q. What is the purpose of this document,
14 Exhibit 2?

15 A. Well, when Mr. Clinton and Mr. Gore came
16 into office there was restructuring of the government,
17 restructuring, redefining to have more accountability.
18 That was the purpose of this document.

19 Q. After its creation what would have been
20 done with it, in other words, to achieve those goals you
21 just described?

22 A. It would have been given to Chief

1 Chambers. She would have signed it in the space

2 allocated and then a progress review.

3 The only problem with this document is that
4 there is no certification of what happened, how the
5 person performed on these duties at the end. So once
6 the heading is done and given to someone, I have never
7 seen it since.

8 Q. You said you prepared this document.
9 Would you have provided it directly to Chief Chambers?

10 A. No. Anything having to do with the
11 relationship between the supervisors and the employee,
12 whether the supervisor is the Deputy Director and the
13 employee is the Chief of the Park Police, or it is the
14 supervisor of the mail room, I would not give this to
15 her myself, unless she called and said "Could I have a
16 copy of what I signed?" Or something of that nature.

17 Q. Now do you know whether or not Chief
18 Chambers actually signed a document like this?

19 A. I do not know.

20 Q. Do you recall whether or not Exhibit 2 or
21 a document like Exhibit 2 was in the hard copy file that
22 you had maintained for Chief Chambers?

1 A. It was not.

2 Q. Do you know where this document, Exhibit
3 2, was maintained?

4 A. No, it could have been maintained in our
5 official personnel file. I don't know whether it was.

6 Q. Were you shown a copy of this document or
7 a document like this Exhibit 2 when you recently went to
8 the agency to review your discs and documents?

9 A. No.

10 MR. CONDIT: Would you mark this as Exhibit
11 3?

12 (Excerpts, Deposition of Donald W.
13 Murphy was marked Deposition Exhibit
14 3 and attached to the court copy of
15 this deposition.)

16 BY MR. CONDIT:

17 Q. Ms. Fajardo, I am going to show you what
18 has been marked as Deposition Exhibit 3 and I will
19 represent to you that this is an excerpt of a deposition
20 transcript of the deposition of Donald W. Murphy taken
21 in the Chief Chambers case. I will show you Exhibit 3
22 and I will show a copy to counsel. Have you seen a copy

1 of Mr. Murphy's deposition?

2 A. No.

3 Q. Let me direct your attention to some
4 questions and answers that were presented by Mr. Murphy,
5 and just for your reference as you flip through the
6 pages, the page numbers are on the top left side so you
7 can see the sequence of pages. The pages that are
8 provided are the title page, which is page one and then
9 pages 18 through, it looks like 25 of the deposition.

10 Now I want to direct your attention on what is marked as
11 Exhibit 3 to page 18 and draw your attention to the
12 question beginning at line 16 on that page and the
13 question to Mr. Murphy is, "Have you prepared a written
14 performance appraisal for Ms. Chambers in her position
15 as the Chief since she took that job?" Do you see that?

16 A. Yes.

17 Q. Do you see his answer is "Yes"?

18 A. Yes.

19 Q. So you would agree with that, correct?

20 A. Yes, in that he directed me to prepare
21 it.

22 Q. And the next question to Mr. Murphy was

1 "And that was a written appraisal?" Do you see the
2 answer there of "Yes" to that?

3 A. Yes.

4 Q. And that is correct to your knowledge?

5 A. Yes.

6 Q. And the next question was "And what form
7 did it take? Was it a narrative?" And the answer was
8 "It was a narrative." Do you see that?

9 A. Yes.

10 Q. Is that correct to your knowledge?

11 A. Yes, partly it was a narrative.

12 Q. Partly a narrative and partly a form that
13 you circled and checked?

14 A. Yes.

15 Q. Then he is asked "Was it titled a job
16 appraisal? Performance appraisal?" and he says "It was
17 just titled Performance Appraisal." Do you see that?

18 A. Yes.

19 Q. And the document we have been speaking of
20 was a performance appraisal, is that correct?

21 A. Yes.

22 Q. Then he indicates in response to a

1 question "And was it communicated to Ms. Chambers?" and
2 he says "No." Did you have any knowledge about whether
3 or not he communicated with Ms. Chambers?

4 A. No.

5 Q. Skipping down to the bottom of page 19,
6 the page is 19 on the Exhibit, starting at line 17 there
7 "Okay. Then go ahead and think about when you prepared
8 it." Do you see that?

9 A. Yes.

10 Q. And his answer was "It was in the summer,
11 around the summer, late summer of 2003." Now does that
12 comport with your recollection as well?

13 A. It could have been late summer, early
14 fall, yes.

15 Q. Let me scan through here. I am on page
16 20. On page 20 of the document I draw your attention to
17 line 14 and the question to Mr. Murphy is "Is there a
18 particular document, a final or a draft?" And the
19 answer was eyed was, it was a final. Do you see that?

20 A. Yes.

21 Q. And your understanding as well is that it
22 was a final document?

1 A. Yes.

2 Q. Turning over to page 21, from the bottom
3 o page 20 through the beginning of page 21 Mr. Murphy is
4 referring to the fact that Human Resources would have
5 looked at the document.

6 A. Yes.

7 Q. And then he gave it to Human Resources to
8 review?

9 A. Yes.

10 Q. And that is all correct, is it not?

11 A. I originally wrote it. He reviewed it.
12 I put it in final, yes.

13 Q. Turning to page 22, drawing your
14 attention to the bottom of page 22 starting at line 21
15 and the question to Mr. Murphy goes to the next page,
16 page 23 and it reads "Who in the Human Resources office
17 saw the document that you prepared as a performance
18 appraisal for the Chief?o and the answer was "The
19 personnel list" -- that is a typo I think, "is no longer
20 with us. It's I believe, I'm not sure if I'm absolutely
21 correct about this, but it would have been Terrie
22 Fajardo.o Do you see that?

1 A. Yes.

2 Q. And of course that is you.

3 A. Yes.

4 Q. It indicates further on that page you
5 retired.

6 A. Yes.

7 Q. So those sections about you comport with
8 your understanding of what transpired with respect to
9 the preparation of Chief Chambers" appraisal, is that
10 correct?

11 A. Yes.

12 MR. CONDIT: Let me mark the next Exhibit as
13 Deposition Exhibit 4.

14 (Declaration of Donald W. Murphy was
15 marked Deposition Exhibit 4 and
16 attached to the court copy of this
17 deposition.)

18 BY MR. CONDIT:

19 Q. Ms. Fajardo, I am going to show you what
20 has been marked as Deposition Exhibit 4. This document
21 is a declaration of Donald W. Murphy provided in this
22 case, the case in which you are sitting in deposition

1 and I will provide to you and counsel a copy of this
2 exhibit. It is a short document so I will just ask you
3 to scan through it and generally read it and let me know
4 when you have had a chance to read it.

5 A. Okay.

6 Q. I would like to direct your attention to
7 page two of Mr. Murphy's declaration which we have had
8 marked as Exhibit 4 and paragraph four and five, and I
9 will start with paragraph four. Paragraph four says "On
10 March 14, 2005 the department released the performance
11 plan to Mr. Condit. This is the only document created
12 in connection with the review of Theresa Chambers'
13 performance. I have reviewed my files to confirm that
14 there are no documents that are either labeled as or
15 constitute a performance evaluation or appraisal.o Do
16 you see that?

17 A. Yes, I do.

18 Q. Just for your reference, the plan that it
19 is referring to that was released to us is a previous
20 exhibit. Would you identify what exhibit number it is,
21 please?

22 A. Exhibit 2.

1 Q. Is that your understanding of the
2 performance plan?

3 A. That is part of the performance plan, not
4 the whole performance plan.

5 Q. Now in paragraph four of Mr. Murphy's
6 declaration when he says this being the performance plan
7 or part of the plan is the only document created in
8 connection with the review of Theresa Chambers'
9 performance, do you take any issue with that statement?

10 A. I believe that he has not, I don't know
11 about an issue, but I think that there was another
12 document that I prepared and gave to him.

13 Q. So to the best of your recollection he is
14 incorrect or he is mistaken in making that statement?

15 A. Yes, maybe he misremembers.

16 Q. Now let me direct your attention to
17 paragraph five. He says in that paragraph "I never
18 drafted or completed a performance evaluation or
19 appraisal of Theresa Chambers.o Do you see that
20 statement?

21 A. Yes.

22 Q. He is mistaken in that as well?

1 A. In that, he did not prepare one himself,
2 but he asked that I do.

3 Q. So it may be technically correct for him
4 to say that he never drafted or completed it?

5 MS. GOLDFLUSS: Objection to the question
6 as to form.

7 BY MR. CONDIT:

8 Q. You understand the question?

9 A. Would you repeat the question?

10 Q. Certainly. When Mr. Murphy says in his
11 declaration that he never drafted or completed a
12 performance evaluation, would you say that that is a
13 technically correct statement?

14 MS. GOLDFLUSS: Objection to the question.
15 It is vague and ambiguous as to what is meant by
16 technically. Either something is correct or it isn't.

17 BY MR. CONDIT:

18 Q. Well, is it a correct statement then, in
19 your opinion?

20 A. No.

21 Q. Why do you think it is not a correct
22 statement?

1 A. Because I did prepare one.

2 Q. It goes on, in paragraph five, Mr. Murphy
3 says, and this is at the end of the page and goes on to
4 the next page, Mr. Murphy states "At no time have I or
5 any other member of my staff destroyed documents related
6 to any performance evaluation of Theresa Chambers.o Do
7 you see that?

8 A. Yes.

9 Q. And then he says in the next sentence "I
10 have personal knowledge that the document that the
11 plaintiff seeks never existed.o Do you see that
12 statement?

13 A. Yes, I do.

14 Q. Is that statement correct in your
15 understanding?

16 A. No, it is not. That one sentence is not.

17 Q. I understand. Following that you
18 presented Mr. Murphy with the final hard copy of Chief
19 Chambers" appraisal. Did you come to learn of any
20 dispute concerning, raised by Mr. Murphy or others
21 regarding Chief Chambers" conduct or performance?

22 A. Yes.

1 Q. Tell me about the first time you came to
2 learn those issues.

3 MS. GOLDFLUSS: Could you restate the
4 question?

5 BY MR. CONDIT:

6 Q. Do you understand the question?

7 A. Could you restate the question?

8 Q. Sure. You answered "Yes" to my question
9 of "Did you come to learn of some concern or problem
10 that Mr. Murphy or others had with respect to Chief
11 Chambers performance or conduct after you had prepared
12 the evaluation.o And you said "Yes". Do you recall
13 that?

14 A. I cannot recall whether I heard it before
15 or after I prepared the document.

16 Q. All right. Did you ever have a meeting
17 with Mr. Murphy or anyone regarding subsequent concerns,
18 that is concerns subsequent to your preparation of the
19 appraisal regarding Chief Chambers?

20 A. It was not a formal meeting.

21 Q. Just tell me what transpired.

22 MS. GOLDFLUSS: I just want to object to

1 the scope of the deposition as going beyond that which
2 was ordered by Judge Robertson. The issue as I
3 understand it is to identify here whether or not there
4 was a performance appraisal and to identify it and
5 locate it, and that is what we are doing.

6 The issue is not whether or not we can
7 discuss what transpired with respect to the relationship
8 between Chief Chambers and the Department of Interior,
9 and if we start to go down that road I will object to
10 that as being outside the scope of what Judge
11 Robertson's orders were.

12 MR. CONDIT: Your objection is obviously
13 noted for the record.

14 BY MR. CONDIT:

15 Q. Do you have the question in mind now?

16 A. Since you both have been discussing
17 things I think we should have the question restated so
18 that I understand what I have been asked.

19 MR. CONDIT: Actually let's take a five
20 minute break.

21 (Short Recess)

22 BY MR. CONDIT:

1 Q. Before we broke, Ms. Fajardo, we were
2 talking about an informal discussion you may have had
3 with Mr. Murphy or others following your delivery of
4 Chief Chambers' appraisal in hard copy form to Mr.
5 Murphy. Do you recall that?

6 A. Yes.

7 Q. Describe to me what this informal meeting
8 was you generally referenced prior to the break.

9 A. It was not at the same time that I
10 delivered the blue envelope to him. It was sometime
11 later.

12 Q. Do you know about how much later?

13 A. No, it was between that time and the time
14 I retired, so however long that was.

15 MS. GOLDFLUSS: Again we
16 object to any questions that don't go to the question of
17 the existence of the document and efforts to locate it.
18 This is not supposed to be a deposition about Chief
19 Chambers relationship with the Department of Interior or
20 the personnel matter, and we would object to going
21 outside the scope of that which has been ordered by
22 Judge Robertson.

1 MR. CONDIT: Well, we believe that the
2 question, the few questions I wanted to ask in this area
3 are within the scope, and your objection is noted and
4 obviously we can deal with it if we need to.

5 BY MR. CONDIT:

6 Q. Would you please complete your answer on
7 the meeting and who was in it and what was discussed?

8 A. It was not a meeting like we are sitting
9 here. It was a chance encounter in the hall of the main
10 Interior building on the floor where Mr. Murphy's office
11 is, and I had not gone there to see Mr. Murphy.

12 We started the conversation because we are
13 both avid golfers and we were talking about our golf
14 games. For the record, I can beat him.

15 He asked informally to me "Did you hear what
16 is happening with the Chief?"

17 And I said "Yes" and he said "Well, what do
18 you think?"

19 And I said "Well, I think I have to know
20 more because before I make a decision as to whether or
21 not there was any validity of any action of conduct
22 nature, because it was not a performance issue, it is a

1 conduct issue.o

2 And he said "Okay." And that was the end of
3 that conversation.

4 Q. What was the issue as you understood it
5 at that time?

6 MS. GOLDFLUSS: Object to the question.
7 It is outside the scope of discovery in this case. You
8 can answer the question.

9 THE WITNESS: It dealt with the use of a
10 government car by the Chief.

11 BY MR. CONDIT:

12 Q. After this chance encounter that you just
13 described, did you have occasion to have any other
14 meetings or exchanges of any kind with Mr. Murphy
15 regarding Chief Chambers?

16 MS. GOLDFLUSS: Object to the question
17 insofar as it goes outside the scope of Judge
18 Robertson's order.

19 BY MR. CONDIT:

20 Q. You may answer.

21 A. There was another, I am trying to recall
22 whether there was another encounter or whether there was

1 a telephone call, and I can't recall whether it was or
2 wasn't, which one it was, but in the course of a
3 discussion the question arose whether it was a
4 sufficient conduct issue to take some action against
5 Chief Chambers.

6 Q. Whether what was conduct issue?

7 A. Having to do with the car.

8 MS. GOLDFLUSS: Excuse me, I am going to
9 interrupt here because I think this really does
10 contradict Judge Robertson's order that the discovery in
11 this case be limited to identification of the document,
12 identifying whether it existed, and then locating the
13 document.

14 A discussion of the extent to what Ms.
15 Chambers relationship with the Department of Interior
16 was disruptive by "conduct" or "performance" is directly
17 outside the scope of the discovery and is precisely the
18 kind of discovery that Judge Robertson foresaw as a
19 possibility during these discovery proceedings and
20 warned against.

21 If counsel demands that we continue then I
22 think we are going to have to call chambers to determine

1 whether or not the discovery of this matter is to
2 continue.

3 MR. CONDIT: Well, in response to that I
4 will say that I believe it is within the scope of
5 discovery that the Judge has authorized to determine
6 what may have happened to the documents and why, and the
7 questions that I am asking, which will not be many, if I
8 could ask them, will go to the why, and the why is
9 critical because it helps establish why things that I
10 think should have been maintained are not maintained and
11 why things that I thought were in her file are no longer
12 in her file, and that is a very critical component of
13 this case.

14 MS. GOLDFLUSS: Well, the scope of the
15 discovery if you define it in those terms can be huge
16 because that goes to everything that ever happened in
17 order to determine whether there is anything that could
18 have created a reason for anything.

19 If you want to narrow your question to ask
20 Ms. Fajardo whether or not, for example, there are any
21 reasons why she believes Mr. Murphy would not have kept
22 the document or destroyed the document, or where he

1 would have put it or something like that, then that
2 needs to be within the scope, but if it is going to be
3 broad open questions regarding discussions about the
4 matter in general, then I think that goes beyond the
5 scope of discovery.

6 I think there is a distinction between
7 talking, everything that you know about the relationship
8 between the Department of Interior and Theresa Chambers
9 on the one hand and, you know, did Mr. Murphy say
10 anything to you that would indicate to you that he would
11 have motive to destroy the document, or to locate it or
12 perhaps forgetting that it existed.

13 MR. CONDIT: I appreciate that
14 clarification. I think we may room for agreement at the
15 moment and that is leading up to the kind of question
16 that you just described, seems to me for the record to
17 be reasonably understandable and has to be at least a
18 modest foundation. So in other words to establish that
19 there was some issue going on prior to asking the
20 concluding question, do you have any reason yourself to
21 believe that Mr. Murphy would have done anything with
22 the record or directed its destruction or anything like

1 that, there has to be some basis for my asking that
2 question.

3 MS. GOLDFLUSS: Well, we can stipulate,
4 the parties can stipulate and I think Ms. Fajardo is
5 aware that there is a proceeding for Ms. Chambers'
6 termination. That is all there. I don't think we need
7 to go through all that.

8 MR. CONDIT: As I said I am not intending to
9 go through all of that. I am intending to ask a couple
10 questions to establish the foundation that leads to the
11 question that you suggested essentially.

12 MS. GOLDFLUSS: Well, let's just see how
13 it goes.

14 THE WITNESS: Don't tell me to answer the
15 question until you would reframe it.

16 BY MR. CONDIT:

17 Q. I am going to reframe something for you
18 so that you will have something directly in front of
19 you, and I am going to try to shorten this a little bit
20 or condense it. Did you come to learn at some point
21 that Chief Chambers was going to be put on an
22 administrative leave?

1 A. Yes.

2 Q. Were you consulted in any way with regard
3 to the decision to put Chief Chambers on administrative
4 leave?

5 A. By Mr. Murphy or by anyone?

6 Q. By anyone.

7 A. There was a discussion in the office
8 between David Davies and myself and myself and Lynn
9 Smith regarding this matter, and it was my opinion, my
10 personal opinion that --

11 MS. GOLDFLUSS: Well, I object to going
12 into personal opinion especially where the deliberative
13 process privilege would be appropriate to be asserted.
14 We are talking about deliberations between government
15 officials going to the honest exchange of
16 recommendations and all that, dealing with policy
17 matters. We are talking about the deliberative process
18 privilege and at this point I would have to assert that
19 on behalf of the government to instruct the witness not
20 to answer.

21 I don't want to have to do this. I think if
22 you want to ask questions about the document and about

1 the location of the document, but we are not going to
2 have a discussion about what occurred between, closed
3 door discussions of the Department of Interior officials
4 on the merits of putting Chief Chambers on
5 administrative leave. That is not what we are here for.

6 I believe Judge Robertson would agree that
7 is not what we are here for. We are not going to do
8 that under the sense that we are creating a foundation
9 for something. I object to it and if you want to
10 proceed, then we are going to have to assert the
11 deliberative process privilege on a discussion of these
12 types.

13 MR. CONDIT: Just so that I understand, are
14 you then instructing the witness not to answer the
15 question?

16 MS. GOLDFLUSS: I think at this point we
17 would have to. If you want to go ahead and call Judge
18 Robertson's chambers now we can do that and we can get a
19 sense from him as to when he can talk to us. We can
20 suspend the deposition now and we are going to have to
21 re-notice it anyway pursuant to our discussion a few
22 days ago that Ms. Fajardo cannot stay today. She can

1 only stay until 12:30 and as we discussed I would like
2 to ask her some questions too, which I am entitled to
3 do, and it is now five minutes to 12.

4 Perhaps the best thing to do is for us to
5 think about this, for me to think about it and to have a
6 conference call with the judge perhaps on Tuesday or
7 whenever since Monday is a holiday and see if we can
8 straighten it out before, I mean if he agrees with you,
9 then maybe you can tell me what questions you are
10 interested in asking and we can present the package to
11 him so that he can make a decision so that we don't end
12 up in this situation.

13 (Discussion Off the Record)

14 MR. CONDIT: Counsel, we discussed off the
15 record your concerns about scope and I think we will
16 have a scope problem.

17 Our view is that in order to present that
18 scope issue fully to the Judge we would like to do two
19 things. I have two or three questions I would like to
20 ask the witness. It will not intrude on, and I will
21 instruct the witness not to answer it in terms of
22 providing matters involving deliberative process, but

1 matters with respect to her role. We would like to then
2 get the transcript of this part of the deposition and
3 then go to the Judge with the scope and other issues
4 before the deposition is continued. So that is our
5 decision or thought on those issues at the moment.

6 MS. GOLDFLUSS: Why do we need the
7 transcript of the deposition?

8 MR. CONDIT: Because we believe that the
9 judge needs to see what has been said by the witness,
10 and that is obviously the best way to do that.

11 MS. GOLDFLUSS: Well, I would be concerned
12 to do that before we have the cross examination because
13 that is like showing the judge one side of the picture,
14 and I am not going to do that. I don't think the judge
15 would agree to that.

16 I mean again if the issue is establishing
17 some sort of motive to destroy a document or to forget
18 about a document to whatever, to establish that there
19 was a disagreement between Mr. Murphy and Chief Chambers
20 is already pretty much out in the open.

21 I mean if you wanted to ask the witness
22 whether or not there is anything specific that she knows

1 of that would provide the basis to believe that Mr.
2 Murphy would have gone into her computer, whatever you
3 want to ask, we don't have any problem with that.

4 We don't have any problems with the
5 questions that are targeted at the issues, but to have
6 broad questions about what was said in these
7 conversations I think goes outside the scope, and also
8 we would want to have an opportunity to cross examine
9 the witness before we presented anything to Judge
10 Robertson.

11 MR. CONDIT: Okay, I think we can probably
12 agree to the completion of your examination and maintain
13 the scope issue as an issue to be before the judge once
14 you are satisfied. We can continue with your questions.

15 I would like to attempt a couple of these
16 other questions to see if they fall within, because I
17 think from our point of view they meet the foundational
18 aspects of making a case to the judge. If you have
19 further objections and are instructing the witness not
20 to answer anything more, then we will just stop for the
21 day, but I think two or three questions might help
22 clarify things without going into the deliberative

1 process concerns that you have. I just want to see if I
2 can navigate this mine field.

3 BY MR. CONDIT:

4 Q. Ms. Fajardo, in your position as the
5 Chief of Human Resources at this time, which is 2003 we
6 are talking about now, what role would you normally have
7 played in a decision to remove someone at the level of
8 Chief of Police or a senior person of that nature?

9 A. As the Chief of Washington Human
10 Resources operation, anything having to do with an
11 employee that was covered under the Washington office
12 would have been my role to discuss and take the action.

13 The United States Park Service was a
14 Washington office organization function as such and it
15 would have been asked of me in my role what or about the
16 case regarding any action to be taken against any
17 employee, it would include Chief Chambers.

18 Q. Without getting into any discussion with
19 anyone, were you asked to take an action to remove Chief
20 Chambers?

21 A. I was not asked.

22 Q. The same question of being put on

1 administrative leave, someone at the level of Chief of
2 the United States Park Police or similar senior level,
3 have you been consulted or asked to take the action to
4 put that person on administrative leave?

5 A. Yes, I would have been.

6 Q. Were you asked to take that action with
7 respect to Chief Chambers?

8 A. No.

9 Q. Do you know why you were not asked to
10 play a role in either the removal or the administrative
11 leave of Chief Chambers, and again I advise you not to
12 go into any discussions you may have had.

13 MS. GOLDFLUSS: I do object to the scope
14 of that as being outside the scope of discovery.

15 Also it asks the witness to speculate.

16 BY MR. CONDIT:

17 Q. You can answer.

18 A. Could you ask me the question again?

19 Q. Do you know why you were not charged or
20 asked to take the action to put Chief Chambers on
21 administrative leave or to remove Chief Chambers?

22 A. Yes.

1 Q. Why?

2 MS. GOLDFLUSS: Well, I mean I don't know
3 that, I just don't know that that goes to the issue of
4 whether the document exists. If you want to ask her
5 whether the reason or whether she believes there is any
6 nexus between the reason that she was not asked to do
7 something and why it is the Department of Interior has
8 not been able to find this document, or confirm that it
9 exists, it seems to me that that is a fair question, but
10 if she answers yes to that, then it seems to me that is
11 fair game.

12 But is she answers no to it --
13 (Someone not a party indicated on the notice of
14 deposition said something that was not audible.)

15 MR. CONDIT: And it is often not direct
16 evidence.

17 MS. GOLDFLUSS: Well, you know the problem
18 with that is that we can retry the entire case within
19 the scope of this privacy action under the guise of
20 motive to do something with the document, but whether or
21 not one is looking, I mean these questions are covering
22 areas that really go beyond the scope of the

1 identification of the document, and you know the
2 confirmation of its existence.

3 I mean I do think that we need to talk to
4 the judge about this because this is precisely the kind
5 of discovery that he was very reluctant, remember he was
6 very reluctant to grant discovery in this case at all,
7 and I mean I don't see how you can be ambivalent about
8 that. He was very reluctant to grant discovery, but
9 anyway, the bottom line is that I think he was sensitive
10 to the notion that there would be some sort of
11 invitation to retry this issue of why would somebody,
12 what is the motive for the termination? I mean isn't
13 that really almost the same thing, what is the motive
14 for the termination? It is hard to say.

15 MR. CONDIT: It is hard to say.

16 MS. GOLDFLUSS: That is exactly right. It
17 is hard to say, and that is why we are getting into a
18 lot of gunk here and I think that we need to bring this
19 to the court's attention.

20 I know Judge Robertson would prefer to do it
21 in the context of informal discussion rather than a
22 protective order motion to compel, that kind of thing.

1 We should be able to work it out. I understand the
2 relevance of motive, but the problem here is I just
3 think we should avoid, I don't know whether or not, what
4 was the, I can't remember what the immediate last
5 question was. My objection is it sounds like what Judge
6 Robertson has ordered. I know there was one question to
7 which I objected on grounds of deliberative process
8 privilege and I am absolutely comfortable with that. I
9 don't think that I asserted the privilege.

10 MR. CONDIT: The question to this witness at
11 this moment is, my question to her was, did you know why
12 you were not asked to participate in either the leave or
13 removal actions, and she said she knew, and I said
14 "why?" and this is when you objected. The question is
15 --

16 MS. GOLDFLUSS: Why don't we go ahead with
17 that question, but I feel strongly that we don't, I mean
18 if you just have a few, but I don't want to ask this
19 witness to speculate about things that she may not know
20 because then you really, I mean I understand the issue
21 is do you know as opposed to, well, what do you think
22 was your opinion? Now I feel strongly that she not be

1 asked her opinion about something, but only whether she

2 has firm --

3 MR. CONDIT: That is the question as I would

4 pose it to her.

5 MS. GOLDFLUSS: Well, why don't we do

6 that.

7 MR. CONDIT: That would be the last question

8 until we are able to --

9 MS. GOLDFLUSS: Yes, until we are able to

10 -- okay, let's go back to it.

11 MR. CONDIT: Back on the record, please.

12 For the record, to get us back to where we were.

13 BY MR. CONDIT:

14 Q. Ms. Fajardo, please correct me if I am

15 wrong, but I had asked you whether or not you have

16 participated in the decisions or actions taken with

17 respect to Chief Chambers administrative leave, being

18 put on administrative leave or removal, and you answered

19 that you had not or you were not asked to, is that

20 correct?

21 A. Yes.

22 Q. Then I asked you if you knew why, and I

1 believe you said yes.

2 A. Yes.

3 Q. Now the question is why?

4 MS. GOLDFLUSS: Again I object on the
5 grounds that it is beyond the scope. You can answer.

6 BY MR. CONDIT:

7 Q. Yes, go ahead.

8 A. In having talked about it within the
9 organization I did not believe that the issue pertaining
10 to Chief Chambers warranted so severe an action, and
11 therefore I was left out of that loop.

12 MR. CONDIT: Thank you. Before we go off
13 the record I have in light of the deposition today, I
14 have a document request, a production request to review
15 and inspect things and I wanted to present that to
16 counsel and I want to make it part of this record. This
17 may be an issue procedurally in terms of our discovery,
18 where we are at the moment and I want to issue this now
19 so that this material and this information becomes very
20 clearly subject to what we are seeking and wanting to
21 protect at this point.

22 So I am going to provide an original to

1 counsel of plaintiff's first request for the production
2 of documents and things and I am going to ask the
3 reporter to mark a copy and place it in the record.

4 (Plaintiff's first request for the
5 production of documents and things
6 was marked Deposition Exhibit 5 and
7 attached to the court copy of this
8 deposition.)

9 MS. GOLDFLUSS: The second request we will
10 have to work with Ms. Fajardo because the Department of
11 Interior, the people at the Department of Interior right
12 now may not know what was "Used by Terrie Fajardo".

13 MR. CONDIT: I understand, and Ms. Fajardo I
14 will say now that you have heard in the discussion from
15 counsel, we are concluding the deposition but only for
16 now. We will probably have to resolve some legal
17 questions with the court, and obviously Ms. Goldfluss
18 for the government will want to ask her questions of
19 you. So we will work with you to establish a schedule
20 that will work with your schedule.

21 THE WITNESS: Just for all concerned, I will
22 not be available until after the first November as I

1 will be vacationing in Montana.

2 MR. CONDIT: Thank you for your time.

3 (Thereupon, at 12:13 o'clock, p.m., the

4 taking of the deposition was concluded

5 and signature was Not waived.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, A. RICHARD OBESTER, Notary Public in and for
3 the District of Columbia, before whom the foregoing
4 deposition was taken, do hereby certify that the witness
5 whose testimony appears in the foregoing deposition was
6 duly sworn by me; that the testimony of said witness was
7 taken by me in shorthand at the time and place mentioned
8 in the caption hereof and thereafter transcribed by me;
9 that said deposition is a true record of the testimony
10 given by said witness; that I am neither counsel for,
11 related to, nor employed by any of the parties to the
12 action in which this testimony is taken; and further,
13 that I am not a relative of or employee of any attorney
14 counsel employed by the parties hereto, nor
15 financially or otherwise interested in the outcome of
16 this action.

17

18 _____

19 Notary Public in and for
20 the District of Columbia

21 My commission expires

22 March 31, 2006