

AVERY DOOLEY POST & AVERY, LLP

Attorneys at Law
90 Concord Avenue
Belmont, MA 02478

Telephone: (617) 489-5300

Fax: (617) 489-0085

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Paul Hoffman
Deputy Assistant Secretary
U.S. Department of the Interior
Fish and Wildlife and Parks
1849 C Street, NW, MS-3156
Washington, D.C. 20240

Re: Teresa C. Chambers

Dear Mr. Hoffman:

This constitutes the written reply to the notice of the proposed removal issued to our client, Chief Teresa Chambers. In a letter dated December 17, 2003, the Agency, through Donald Murphy, Deputy Director, National Park Service, U.S. Department of Interior, notified Chief Chambers of this proposed adverse action. The proposal letter charges Chief Chambers with (1) improper budget communications; (2) making public remarks regarding security on the federal mall, and in parks and on the parkways in the Washington, D.C., metropolitan area; (3) improper disclosure of budget deliberations; (4) improper lobbying; (5) failure to carry out a supervisor's instructions; and (6) failure to follow the chain of command.

This reply shall address these allegations. For the reasons set forth more fully below, Chief Chambers contends that the proposed penalty of removal is unwarranted and that no penalty is appropriate.

The facts contained herein are attested to as true to the best of Chief Chambers' knowledge and belief.

ARGUMENT OF LAW APPLICABLE TO EACH CHARGE:

The Whistleblower Protection Act protects employees who (reasonably) disclose, inter alia, "a substantial and specific danger to public health or safety." 5 U.S.C. 2302 (b)(8)(A)(ii). Assuming, *arguendo*, that Chief Chambers made the statements to the *Washington Post* reporter reflected in the instant charges, it is clear that insufficient funding and inadequate staffing with the attendant reduction in the ability to protect national icons and the increase in traffic accidents on the Baltimore-Washington Parkway fall squarely within the above-cited section. A number of the charges directly

relate to these disclosures, thus obviating the usual inquiry into the action-taking official's knowledge. Removal constitutes a "personnel action" as it is clearly within the ambit of 5 U.S.C. 2302 (a)(2)(A)(iii) covering Chapter 75 actions.

Disclosures to Congress and to the news media are protected. Horton v. Department of the Navy, 66 F.3d 282 (Fed. Cir. 1995); H.R. Rep. No. 100413, at 12-13 (1988). See also Special Counsel v. Lynn, 29 M.S.P.R. 666 (1986).

Here, Chief Chambers is proposed for removal precisely because she made protected disclosures. A more egregious and more transparent violation of the Whistleblower Protection Act is difficult to imagine.

Under 5 U.S.C. 2302 (b)(12), it is a prohibited personnel practice to take a personnel action that violates any law, rule or regulation implementing or directly concerning the merit systems principles contained in 5 U.S.C. 2301. One of these merit systems principles is that "all employees...should receive fair and equitable treatment in all aspects of personnel management...with proper regard for their constitutional rights." 5 U.S.C. 2301 (b)(2). Here, both a statutory and constitutional basis exist for asserting that the agency has taken an action contrary to the spirit and letter of the merit systems principles.

5 U.S.C. 7211 states: "The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied."

In addition, Pickering v. Board of Education, 391 U.S. 563, 2 L. Ed. 2d 811, 88 S. Ct. 1731 (1968) establishes firmly a public employee's right to freedom of speech under the First Amendment. Pursuant to 5 U.S.C. 2302 (b)(12) and 5 U.S.A. 2301 (b)(2), it is a prohibited personnel practice to take a personnel action in violation of an employee's right to freedom of speech under the First Amendment. Special Counsel and Hubbard v. Environmental Protection Agency, 79 M.S.P.R. 542 (1998). Here, Chief Chambers has engaged in protected speech which was, in turn, the motivating and/or substantial factor for the retaliation. The agency would manifestly not have taken the instant action inasmuch as several of the charges directly address the protected speech and the remaining ones are ludicrous, unprecedented, and used selectively against her. (Totally absent here are the institutional criticisms and ad hominem attacks that have undone some federal employees in spite of the legitimacy of the public interest nature of their speech. See, e.g., Oliver v. Department of Health and Human Services 34 M.S.P.R. 465 (1987), aff'd Fed. Cir. 1988 (non-precedential) No. 87-3527.) Thus, in addition to the charges being unsustainable on their "merits," the entire proposal is permeated with the stench of reprisal.

CHIEF CHAMBERS' RESPONSES TO EACH INDIVIDUAL CHARGE

CHARGE 1. Improper budget communications.

Specification for Charge 1. Part 112, Chapter 7, of the Departmental Manual states:

POB [Office of Budget] has primary staff responsibility for directing and coordinating the development, presentation, execution, and control of the Department's Budget. This includes formulation within the Department and the Office of Management and Budget and presentation to the Congress, press, interest groups, and the public, and budget execution and control. Among other things, POB is the liaison on all matters dealing with budget formulation and presentation with the Office of Management and Budget, the House and Senate Appropriations Committee, and other Federal agencies.

For fiscal year 2004, the Interior Appropriations Subcommittee directed the NPS to contract with the National Academy of Public Administration (NAPA) to review the cost growth within the U.S. Park Police for use in future planning. On November 3, 2003, I informed you that the NAPA review was required and instructed you to provide me with a U.S. Park Police cost account number to obtain the NAPA contract. You provided me with the cost account number. Subsequent to my November 3, 2003, instruction to you, however, you telephoned a senior staff member of the Interior Appropriations Subcommittee and told her that you believed that the review was not necessary and that the U.S. Park Police should not have to pay for the review. Your statements to the Interior Appropriations Subcommittee staff member constituted a direct communication with a Congressional staff member about the development and execution of a Department of the Interior budget matter. Your statements caused the Interior Appropriations Subcommittee staffer to question the veracity of the National Park Service Director's stated intent to carry out the direction from Congress and implied to committee members that the NPS did not intend to comply with Congress's direction. Accordingly, your statements constituted a violation of Part 112, Chapter 7, of the Departmental Manual.

Responses to Specification for Charge 1:

Chief Chambers denies that she engaged in any improper budget communications and asserts, therefore, that the charge must fail as a matter of law. Chief Chambers asserts that the cited regulation, Part 112 of Chapter 7 of the Departmental Manual, is inapplicable and does not support the proposed penalty or govern the alleged misconduct. Moreover, she asserts that the agency's charge cannot be sustained because, at all times relevant hereto, Chief Chambers acted in accordance with agency guidance and a reasoned understanding of procedures to be employed in dealing with Congressional staffers. Chief Chambers asserts that her communications with Ms. Deborah Weatherly were condoned, sanctioned, and encouraged by the proposing official and his supervisor, Director Fran Mainella. The agency never notified Chief Chambers that her actions in speaking to Ms. Weatherly, of which the agency was aware and approved and encouraged, were improper or would lead to disciplinary action. Finally, Chief Chambers asserts that the agency has demonstrated no harm from the alleged action and, accordingly, the agency has not met its burden of proof in demonstrating that the proposed discipline promotes the efficiency of the service.

The specification alleges that on November 3, 2003, Mr. Donald Murphy informed Chief Chambers that the NAPA review was required and instructed her to provide him with a U.S. Park Police cost account number to obtain the NAPA contract. Although in pertinent substance this allegation is accurate, technically, Janice Brooks, not Mr. Murphy, telephoned Chief Chambers and asked that the Chief provide her an account number to use for the payment of costs associated with this study. Chief Chambers told her she would get back with her by the end of the day. Chief Chambers

provided Ms. Brooks, not Mr. Murphy, with the information via e-mail by day's end.¹ Accordingly, Chief Chambers acted according to her instructions and received a copy of a document from Ms. Brooks which contained language from the Appropriations Bill regarding the NAPA study.²

The specification also alleges that subsequent to Mr. Murphy's November 3, 2003, instruction, Chief Chambers telephoned a senior staff member of the Interior Appropriations Subcommittee and told her that the Chief believed that the review was not necessary. The charge also alleges that Chief Chambers said the U.S. Park Police should not have to pay for the review. Chief Chambers categorically denies ever stating or intimating that the review was not necessary or that the U.S. Park Police should not have to pay for the review. The agency has provided no evidence to support this inaccurate assertion.

After receiving a phone call from Janice Brooks and having received no instruction from Mr. Murphy regarding the payment for the NAPA study or what to do with the account number, Chief Chambers telephoned Ms. Weatherly with the intent of asking for clarification regarding the source of payment for a study, such as this, that is mandated by Congress. Ms. Weatherly was unavailable, and, therefore, Chief Chambers left a message. Having never previously been required by Congress to conduct a study, Chief Chambers legitimately did not know the answer to the question of who would pay for the study.

Before Ms. Weatherly returned Chief Chambers' call, the Chief sent an e-mail to her budget officer, Ms. Shelly Thomas, and asked for an account number as requested by Janice Brooks. Later in the day and prior to Ms. Weatherly's returning the Chief's telephone call, Ms. Thomas provided the account number and confirmed for the Chief that, in fact, even when the U.S. Park Police does not request a study that is mandated by Congress, the U.S. Park Police has to pay for it.³

When Ms. Weatherly returned Chief Chambers' phone call later in the day on November 3, 2003, the Chief told her that she had already received the answer to her original question about the source of payment for the NAPA report. Chief Chambers did not complain about having to pay for the study in any manner. The Chief and Ms. Weatherly spoke briefly about the progress the U.S. Park Police had made with the original NAPA study, and the Chief expressed some disappointment at never having had the opportunity to talk with her or others about the progress of the U.S. Park Police regarding the NAPA recommendations. Ms. Weatherly suggested, and Chief Chambers agreed, that the NAPA follow-up study would be a good thing for the U.S. Park Police because the U.S. Park Police had never had the opportunity to demonstrate the corrective action it had taken. Contrary to the assertion that Chief Chambers said the review was not necessary, Chief Chambers specifically agreed that the NAPA Review could add to the U.S. Park Police's credibility by demonstrating that the U.S. Park Police made significant progress in meeting the NAPA study recommendations. At no time did Chief Chambers suggest that the U.S. Park Police should not have to pay for the review. Until the

¹ Two-page e-mail string that begins with an e-mail from Chambers to the Executive Command Staff (ECS) and others and in which she asks Shelly Thomas for an account number; follows with an e-mail from Thomas to Chambers with the account number; and concludes with Chambers' e-mail back to Janice Brooks with the account number as requested. All three e-mails are dated 11-3-03.

² The Appropriations Bill reads, "Conference managers are concerned that most of the August 2001 National Academy of Public Administration (NAPA) recommendations have not been implemented and that cost growth continues. The U.S. Park Police shall contract with NAPA to do a follow-up. The Secretary shall see that this is addressed in a timely manner."

³ Two page e-mail dated 11-3-03 referenced above.

receipt of the instant proposal, Chief Chambers believed that Ms. Weatherly agreed that the conversation was entirely productive and positive.⁴

The proposal also alleges that Chief Chambers' "statements to the Interior Appropriations Subcommittee staff member constituted a direct communication with a Congressional staff member about the development and execution of a Department of the Interior budget matter." The proposal also states, "Accordingly, your statements constituted a violation of Part 112, Chapter 7, of the Departmental Manual."

Chief Chambers denies any communication that violates the cited regulation because the cited paragraph only identifies responsibilities of the Department of Interior Office of Budget, and does not prohibit actions by other entities or specific employees. Part 112, Chapter 7, of the Department Manual identifies the Office of Budget's responsibility and states:

"POB [Office of Budget] *has primary staff responsibility* for directing and coordinating the development, presentation, execution, and control of the Department's Budget...." (emphasis added)

The regulation, in no manner, addresses or restricts the role of any entity or person, other than the Office of Budget. The cited regulation simply sets forth the idea that the primary responsibility rests with the Office of Budget. Nothing in the cited manual section limits, enhances, restricts, or addresses the communications of employees and entities that are not in the Office of Budget. Nothing in the regulation limits employees' abilities, rights, or responsibilities with respect to the departmental budget. Although the *primary* responsibility lies with the Office of Budget, secondary, tertiary or other responsibility or right is not defined or addressed. Moreover, nothing in the regulation proscribes contact by employees, including the Chief of the U.S. Park Police, with the entities listed, namely, "Congress, press, interest groups, and the public..." The cited regulation simply has no bearing on the Chief's actions as charged. Moreover, the agency has cited no other regulation or section of the manual that prohibits, or even addresses, the Chief's actions. Indeed, upon information and belief, no regulation exists that prohibits an employee from "communicati[ng] with a Congressional staff member about the development and execution of a Department of the Interior budget matter."

Moreover, the agency's prior instructions and actions toward the Chief have never intimated that her actions in calling the staffer were inappropriate or unwelcome. Chief Chambers did not blindly or arrogantly communicate with a Congressional staffer in the absence of the approval and encouragement of her superiors. Chief Chambers repeatedly received encouragement from her superiors who advised that efforts should be made to contact and ingratiate herself with the senior staffer, Deborah Weatherly. In fact, upon the Chief's hiring in February 2002, Mr. Murphy and Director Mainella encouraged the Chief to build a positive, open, and ongoing dialogue with Ms. Weatherly. At no time was she advised that prior approval was required for her to contact Ms. Weatherly. In following what she believed were specific and explicit instructions and guidance, the Chief engaged Ms. Weatherly in conversation on February 28, 2002.⁵ The Chief did not seek approval before meeting with Ms. Weatherly and was not counseled by Mr. Murphy or anyone else in the

⁴ Chambers' two-page typewritten memo "to file" written on November 6, 2003, and detailing her recollection of her conversation with Debbie Weatherly three days earlier.

⁵ Chief Chambers' handwritten notes prepared during the meeting with Weatherly on 2-28-02.

agency as a result of her meeting or talking with Ms. Weatherly. Although under the agency proposal's rationale, the Chief's meeting was a "direct communication with a Congressional staff member about the development and execution of a Department of the Interior budget matter," no admonishment or corrective action was taken as a result of that meeting.

Until the instant proposal, Chief Chambers believed that such communications with this staffer were expected, not censored. Indeed, on July 16, 2002, during a National Park Service Law Enforcement Task Force meeting in Yosemite National Park, Mr. Murphy, during an open meeting, commended the relationships that Chief Chambers had been forming with Debbie Weatherly and others "on the Hill" and suggested that she should continue that type of communication. In fact, Mr. Murphy talked about the influence Ms. Weatherly had with Congress and urged others at the table to follow the lead of the Chief and develop positive relationships with not only Ms. Weatherly but with Congress Members themselves. The proposal disregards the evidence that the Chief acted in conformity with the expectations conveyed to her by her superiors.

Moreover, Chief Chambers apprised Mr. Murphy of her efforts in meeting with Ms. Weatherly. For instance, on April 8, 2003, the Chief wrote an e-mail to Mr. Murphy after she met with Ms. Weatherly which stated:

"fyi only . . . I met with Debbie Weatherly yesterday at her request to review the current security status at the Statue of Liberty and to review the plans for the 4th of July events in Washington this year. At my request, I was joined by Acting Superintendent Garrett and Superintendent Goldstein, who was accompanied by Lance Hatton. There were no surprises and no unusual questions or comments by Debbie."⁶

Again, under the proposal's analysis, the conversation with Ms. Weatherly on April 8, 2003 was a "direct communication with a Congressional staff member about the development and execution of a Department of the Interior budget matter," i.e., funding security improvements at the Statue of Liberty and funding the added expenses related to the Fourth of July celebrations in Washington, D.C. Mr. Murphy took no action against the Chief for her actions in meeting with Ms. Weatherly or her failure to seek approval before meeting with Ms. Weatherly. Until after the events giving rise to this charge, the Chief was never counseled by Mr. Murphy or anyone else in the Department as a result of any meeting with Ms. Weatherly.

Other examples of Congressional contact demonstrate that the agency's proposal is arbitrary and capricious and more likely fueled by ulterior motivations. On May 21, 2003, the Chief attended a ceremony at Arlington National Cemetery (Women are Heroes Too). Congressman Jim Moran was also in attendance. Congressman Moran shared negative comments with the Chief regarding the large number of officers employed by the U.S. Capitol Police. Among other things, he asked the Chief some questions about the number of officers working in the Washington, D.C. area and asked that she provide staffing numbers to a member of his staff. Within a day or two of that encounter, Chief Chambers spoke with Mr. Murphy and asked him if, for questions involving basic information requested by a Congress Member or a member of his/her staff, the information had to be routed through the Office of Congressional Affairs or whether she had the authority to communicate directly

⁶ E-mail from Chambers to Don Murphy dated 4-8-03 with a subject line of "Deborah Weatherly" and copied to Karen Taylor-Goodrich.

with the elected official or his/her staff. The Chief specifically recalls that she provided Mr. Murphy with the example involving Congressman Moran. Mr. Murphy advised that, for basic information such as the example she provided or other simple inquiries, she should communicate directly with the Congress Member and/or his/her staff.⁷

As were the previous meetings with Ms. Weatherly, the conversation with Congressman Moran on May 21, 2003 was a “direct communication with a Congress . . . member about the development and execution of” what could later become “a Department of the Interior budget matter,” i.e., the staffing level of the U.S. Park Police force. Chief Chambers did not seek approval before answering Congressman Moran’s questions, and was not counseled by Mr. Murphy or anyone else in the Department of Interior as a result of answering those questions. At no time did Mr. Murphy suggest that her actions were inappropriate or in need of correction. To the contrary, his discussion conveyed approval of the Chief’s actions.

Moreover, during a NAPA team meeting on September 29, 2003, in preparation for their impending work, the Chairman, Mr. J. William Gadsby, Director, Management Studies Program, after hearing the Chief’s overview of the U.S. Park Police’s progress toward accomplishing the NAPA recommendations, commented to the Chief that he was pleased with the progress and encouraged the Chief to contact Debbie Weatherly to share this progress with her. These comments and suggestions were made in front of Mr. Murphy and Director Mainella.⁸ The conversation that Mr. Gatsby suggested the Chief have with Ms. Weatherly contemplated a “direct communication with a Congressional staff member about the development and execution of a Department of the Interior budget matter,” i.e., the second NAPA study of the U.S. Park Police. Neither Mr. Murphy nor Ms. Mainella cautioned the Chief to seek approval before meeting with Ms. Weatherly nor did they advise the Chief not to meet with or talk with her about the NAPA report and the U.S. Park Police’s progress toward implementing the recommendations. To the contrary, Chief Chambers believed that discussions with Ms. Weatherly were expected and encouraged.

Only after the Chief’s conversation with Ms. Weatherly on November 3, 2003 did Mr. Murphy express dissatisfaction and question the Chief’s discussions with Ms. Weatherly. On November 6, 2003, Mr. Murphy summoned Chief Chambers to his office and asked her if she had called Debbie Weatherly. The Chief acknowledged that she had. Mr. Murphy told the Chief that he found that call “highly inappropriate” and demanded to know the reason for and the content of the conversation. As the Chief concluded her explanation and recollection of the conversation, Mr. Murphy said he had to go to another meeting, and he abruptly left his office.⁹ Mr. Murphy provided no guidance, instruction, or admonishment about phone calls of this sort or about this particular call nor did he tell the Chief that this call in any way related to an “improper budget communication.” In fact, Mr. Murphy never provided any explanation as to why he originally stated that the phone call to Ms. Weatherly was “highly inappropriate.”¹⁰

⁷ Print-out of calendar for Wednesday, May 21, 2003.

⁸ Print-out of calendar for Monday, September 29, 2003 and print-out of back-up sheet from calendar for the NAPA meeting. Witness: Mr. Gadsby and other members of the NAPA team.

⁹ Previously-described two-page typewritten memo “to file” written by Chambers on November 6, 2003, detailing her recollection of her conversation with Debbie Weatherly three days earlier and her conversation with Murphy on November 6, 2003.

¹⁰ See two-page typewritten memo “to file” written by Chambers on November 6, 2003, detailing her recollection of her conversation with Debbie Weatherly three days earlier and her conversation with Murphy on November 6, 2003 .

The proposal asserts that the Chief's statements caused the Interior Appropriations Subcommittee staffer to question the veracity of the National Park Service Director's stated intent to carry out the direction from Congress and implied to committee members that the NPS did not intend to comply with Congress's direction." Other than the uncorroborated statement in the proposal, no evidence exists that any statement the Chief made "caused" a staffer to "question the veracity of the National Park Service Director's stated intent . . ." or, if Ms. Weatherly did question it, whether the staffer's concerns were well-founded or reasonable.

Here, the proposed removal, charge, and specification must fail because of lack of notice due to the ambiguity of the charge. In essence, the charge claims Chief Chambers' comments created an implication to committee members that NPS did not intend to comply with Congress's direction and caused the Interior Appropriations Subcommittee staffer to question the veracity of the National Park Service Director's stated intent to carry out the direction from Congress. However, the agency fails to provide any underlying facts as to the basis for its conclusion. The agency has presented no evidence as to who interpreted the Chief's remarks and determined they contained an implication. Further, it is not known who communicated this implication, to whom it was communicated, the effect the communication had on the listeners, why it was believed the Chief's comments detracted from the veracity of the NPS Director's intent, when this communication took place or in what context. Finally, there has been no adverse action cited by the agency resulting from the Chief's remarks, nor has the agency demonstrated a causal link between remarks attributed to Chief Chambers and the Interior Appropriations Subcommittee Staffer's opinion of the veracity of the National Park Service Director's and Committee Members' opinions of her intentions. No evidence exists to support the agency's bald assertion contained in the charge. Absent citation to any such evidence, it is impossible for Chief Chambers to respond to these accusations. Accordingly, this charge must fail as a matter of law.

Indeed, it appears that unless actual questions were asked to the NPS Director by a staffer, this statement is pure supposition. In fact, a recollection of the Chief's conversation with Ms. Weatherly suggest that Mr. Murphy, Director Mainella, or others provided information from which Ms. Weatherly could have derived adverse information about the intent of the Director. In the Chief's conversation with Ms. Weatherly, Ms. Weatherly asked, "What is going on over there? You were supposed to be the one to straighten that place out!" In response to Chief Chambers asking, "Who says I'm not doing that?" Ms. Weatherly then stated that Ms. Mainella, Mr. Murphy, Deputy Assistant Secretary (DAS) Parkinson, and Assistant Secretary Lynn Scarlett had been sharing those sentiments. The Chief's only response to the comment was to ask when she would get her chance to be heard. It is possible, indeed likely, that any comments made by Ms. Mainella, Mr. Murphy, DAS Parkinson, and Assistant Secretary Scarlett "implied to committee members that the NPS did not intend to comply with Congress's direction."

Likewise, it is supposition and not evidence that the Chief's statements "implied to committee members that the NPS did not intend to comply with Congress's direction." It is difficult to discern how the Chief's asking a staff member for clarity regarding who would be asked to pay for the NAPA report or her providing an update of the progress toward implementing the NAPA recommendations could be construed in the proposal to cause "the Interior Appropriations Subcommittee staffer to question the veracity of the National Park Service Director's stated intent to carry out the direction

from Congress and implied to committee members that the NPS did not intend to comply with Congress' direction.

It is difficult to discern how Chief Chambers could imply an intent not to comply with Congress' direction when one considers that, at the time of the conversation, the U.S. Park Police had completed 14 of the 20 recommendations from the NAPA study.

Finally, to the extent that the Department Manual conflicts with 5 U.S.C. 7211, discussed above, the provisions in the Manual are, of course, invalid.

Accordingly, the charge must fail.

CHARGE 2. Making public remarks regarding security on the Federal Mall, and in parks and on the Parkways in the Washington, D.C., metropolitan area.

Specification for Charge 2. On or about December 1, 2003, while you were on duty and acting in your official capacity as Chief, U.S. Park Police, a reporter from the *Washington Post* interviewed you. Your statements to the reporter were the subject of a December 2, 2003, *Washington Post* newspaper article entitled "Park Police Duties Exceed Staffing," which among other things states the following:

'Chambers said traffic accidents have increased on the Baltimore-Washington Parkway, which now often had two officers on patrol instead of the recommended four'

'It is fair to say where it's green, it belongs to us in Washington, D.C.' Chambers said of her department. 'Well, there's not enough of us to go around to protect those green spaces anymore.'

'The Park Police's new force of 20 unarmed security guards will begin serving around the monuments in the next few weeks, Chambers said. She said she eventually hopes to have a combination of two guards and two officers at the monuments.'

You made the aforementioned remarks while on duty and acting in your official capacity as Chief, U.S. Park Police. Your public remarks about whether and how many armed and unarmed U.S. Park Police officers are patrolling the Washington, D.C., metropolitan area Federal malls, parks, and Parkways constitute public remarks about the scope of security present and contemplated for these areas under your jurisdiction."

Responses to Specification for Charge 2:

The specification as charged constitutes a direct challenge to a sacrosanct principle of government embodied in the First Amendment of the United States Constitution, freedom of speech. As addressed earlier in this reply, this charge is not sustainable because it violates the U.S. Constitution and the Whistleblower Protection Act.

Moreover, the interview cited in the proposal is but one of literally dozens Chief Chambers has given to the media in the regular course of her duties during her tenure. It is a fact that Chief Chambers spoke to the press regularly regarding various issues relative to the U.S. Park Police, as she did in the instant case. As demonstrated more fully below, neither the fact that she was interviewed nor the comments she made were unique. Moreover, at no time was she ever counseled or reprimanded regarding her comments made to the press. In fact, she received positive feedback for her performance in this collateral function of her job.

However, in this case, the agency has proposed that Chief Chambers be removed from her position because of what she said. Upon examination, no evidence exists to demonstrate that the statements attributed to Chief Chambers interfered with either the performance of her duties or with agency operations in any material way. In fact, the agency has failed to show any adverse consequence from the statements attributed to Chief Chambers. Accordingly, the agency has failed to show that Chief Chambers' removal promotes the efficiency of the service. This removal action cannot be sustained.

The specification alleges that on or about December 1, 2003, while Ms. Chambers was on duty and acting in her official capacity as Chief, U.S. Park Police, a reporter from the *Washington Post* interviewed her. On its face, this portion of the specification is incorrect. The *Washington Post* interviewed Ms. Chambers on November 20, 2003, not December 1, 2003. This error in the most basic fact contained in the specification underscores two realities. First, this error demonstrates the agency's lack of an investigation as to "facts" they claim support removal. Second, this error exposes the fact that Chief Chambers was not afforded an opportunity to explain that the agency's recitation of the chronology and context of events are fundamentally flawed.

Moreover, the proposal omits the fact that, immediately following the interview, Chief Chambers telephoned her supervisor, Mr. Murphy, and, at his request, notified DAS Larry Parkinson and copied people in her chain of command (Mr. Murphy, Ms. Mainella, and DAS Paul Hoffman) via e-mail dated November 20, 2003, that she had been interviewed. Chief Chambers reiterated that the interview had taken place at the request of the *Washington Post*, after the *Post* had been contacted by the Fraternal Order of Police regarding funding issues. Within this e-mail, Chief Chambers notified her chain of command of the topics covered by the interview and the context in which they were discussed.¹¹

In light of the above, the agency's assertion that Chief Chambers' interview occurred the day before publication constitutes an error of material fact. The Chief was interviewed on November 20, 2003 and provided her chain of command with a contemporaneous e-mail detailing the nature and substance of the interview. Ultimately, the subject article was not published until December 2, 2003, twelve days later. Accordingly, the agency's attempt to foster an adverse inference against Chief Chambers by implying she acted with the intent to deny her superiors notice of her actions, by granting an interview on the eve of publication, must fail.

The facts in evidence show the proposing official failed to consider that the interview was scheduled weeks in advance of publication; and that Chief Chambers provided a contemporaneous e-

¹¹ E-mail from Chief Chambers to DAS Larry Parkinson dated November 20, 2003.

mail detailing the topics discussed with the reporter to her chain of command, including the proposing official, twelve days prior to publication. Sometime after this e-mail and prior to publication of the article in the *Washington Post*, the DOI Press Officer contacted Chief Chambers to discuss the interview. During this interview, in which he communicated no surprise or caution regarding what was discussed, the DOI Press Officer asked Chief Chambers to remain the single point of contact on this matter should the *Washington Post* have additional questions or if other media interest was generated as a result of the *Washington Post* story. In fact, the *Washington Post* story of December 2 says, "An Interior spokesman deferred all questions to the Park Police." At no point in this process did any agency official question the fact that the interview had taken place or that Chief Chambers responded to questions regarding funding. At no point in this process did any agency official indicate that Chief Chambers had engaged in conduct antithetical to the mission of the agency.

No evidence exists to show that, as a consequence of these facts, any adverse consequences were visited upon the agency. Accordingly, the agency has failed to show that Chief Chamber's removal promotes the efficiency of the service. The proposed removal must fail.

The specification alleges that Chief Chambers' statements to the reporter were the subject of a December 2, 2003, *Washington Post* newspaper article entitled "Park Police Duties Exceed Staffing," (emphasis added). This highlighted portion of the specification is overly broad. Chief Chambers' statements were not the "subject" of the December 2, 2003 article. Rather, the article published in the December 2, 2003, *Washington Post* followed detailed interviews during the previous month with the Chairman of the Fraternal Order of Police Labor Committee, Officer Jeff Capps. Those interviews took place after Officer Capps delivered a letter to Secretary Norton expressing his concern relative to icon and other staffing issues.¹² Chief Chambers' statements to the *Post* merely supplemented the information previously provided by Officer Capps.

With respect to the particular statements attributed to Chief Chambers, the following demonstrates that no evidence exists to support the proposition that any of these statements negatively impacted either the agency's mission or the agency's employees:

"Chambers said traffic accidents have increased on the Baltimore-Washington Parkway, which now often had two officers on patrol instead of the recommended four."

Chief Chambers' recollection is that she did not volunteer information to the reporter during the interview. Rather, the *Post* reporter asked questions regarding particular topics. One of these topics was traffic accidents and fatalities on the Baltimore-Washington (BW) Parkway. Chief Chambers did not impart this knowledge to the reporter. Chief Chambers does have a specific recollection of responding to questions regarding the death of Officer Hakim Farthing as a result of a motor vehicle accident on the Parkway in August of 2002. At the time of the interview, the reporter conveyed his awareness that safety issues on the Parkway were a matter of public knowledge and concern. The Chief also knew that the topics had been addressed previously by members of the Fraternal Order of Police, Director Mainella, Mr. Murphy and others outside of the agency. Accordingly, Chief Chambers did not provide any new information when she responded to questions posed by the reporter regarding these safety issues and U.S. Park Police staffing on the Parkway.

¹² See e-mail dated 10-29-2003 from Chambers to Mainella regarding Capps' Letter.

Chief Chambers was not the source of information relative to the article's discussion of the BW Parkway. Statistically, it is a matter of public record that traffic accidents have increased on the BW Parkway over the past several years. Moreover, it is a simple matter of public observation that units of two, rather than four Park Police Officers currently patrol the parkway on a tour of duty.

The agency has failed to identify how the Chief's responses to the *Post*'s questions caused specific and identifiable harm either to the agency's mission or to their employees. Accordingly, no evidence has been presented relative to this issue to support Chief Chambers' removal.

Collateral agency and public sources regarding traffic on the BW Parkway are numerous. The breadth and availability of this information serves to underscore the impossibility that Chief Chambers was the sole source of the information reported in the *Post* and that her comments had any negative impact on the agency.

For example, in the summer of 2002, Captain Kevin Hay of the U.S. Park Police produced a five-year study of accidents on the BW Parkway. An overview of the study, complete with slides, was presented by Captain Hay to Regional Director Terry Carlstrom, his staff, and to members of the U.S. Park Police Executive Team. In March of 2003, Captain Hay spoke with Director Mainella during the U.S. Park Police Leadership Conference about the safety study, and Director Mainella expressed interest in learning more. Accordingly, in June and July of 2003, Chief Chambers attempted to schedule briefings on the topic for the Director with Captain Hay.¹³ In August of 2003, Chief Chambers again sent an e-mail to Mr. Murphy and Director Mainella to schedule a briefing. This e-mail included Captain Hay's BW Parkway safety study slide presentation.¹⁴

At no time has information regarding the safety of the BW Parkway been closely held within the agency. Nor was this an issue of first impression in the *Post* article. These issues have been addressed in numerous open meetings, published in Federal Highway Administration reports, and published in other reports produced by the U.S. Park Police. Moreover, on December 1, 2003, Chief Chambers informed Director Mainella that two more deaths had occurred in a single traffic accident on the BW Parkway.

In light of the above, issues regarding the BW Parkway were clearly a matter of public concern before and after the *Post* interviewed Chief Chambers. No evidence exists to show that Chief Chambers' comments were unique or that the specific comments attributed to her caused any identifiable harm to the agency's mission. The agency has failed to demonstrate Chief Chambers' removal supports the efficiency of the service and, accordingly, this removal cannot be sustained.

The Specification also attributes the following comments to Chief Chambers:

“It is fair to say where it's green, it belongs to us in Washington, D.C.’ Chambers said of her department. ‘Well, there's not enough of us to go around to protect those green spaces anymore.’”

¹³ See e-mail from Chief Chambers to Mr. Murphy, cc. to Ms. Mainella dated June 13, 2003 regarding conversation with Hay and request for briefing; see also e-mail from Chief Chambers to Ms. Mainella cc: to Mr. Murphy dated July 19, 2003.

¹⁴ See e-mail from Chief Chambers to Mr. Murphy, cc to Ms. Mainella dated August 3, 2003 requesting to schedule a briefing.

“The Park Police’s new force of 20 unarmed security guards will begin serving around the monuments in the next few weeks, Chambers said. She said she eventually hopes to have a combination of two guards and two officers at the monuments.”

With respect to these alleged quotations, the agency charges that Ms. Chambers’ public remarks about whether and how many armed and unarmed U.S. Park Police officers are patrolling the Washington, D.C., metropolitan area Federal malls, parks, and Parkways “constitute public remarks about the scope of security present and contemplated for these areas under her jurisdiction.”

At no time during this interview did Chief Chambers volunteer specific information. Rather she responded to topics raised and questions posed by the reporter. With respect to the first statement attributed to Chief Chambers, in general, “green” areas in Washington, D.C., do fall under the jurisdiction of the U.S. Park Police. With respect to her comment about fewer officers on patrol, Chief Chambers did nothing more than respond to allegations initially raised with the *Post* by the Fraternal Order of Police. In truth, there were fewer officers on patrol. The reporter’s specific inquiry into this area demonstrates that the issue of staff reduction was a matter within his knowledge. No evidence exists to show that this statement attributed to Chief Chambers breached any confidential security matter.

The second statement alleges Chief Chambers specifically stated that twenty unarmed security guards would begin serving around the monuments and that eventually she hoped to team two guards with two officers. At the outset, the quotation attributed to Chief Chambers is incorrect. Chief Chambers does recall discussing that the U.S. Park Police had sixteen recruits in training. However, at no time did Chief Chambers identify the number of guards who “will begin serving around the monuments.” At no time did Chief Chambers state with specificity how many guards and officers would work at the monuments. At no time did Chief Chambers state that “20” unarmed security guards would be hired to guard the monuments. Moreover, assuming the intent of the specification is to imply Chief Chambers divulged confidential information, that implication must fail because the facts as stated are erroneous. In truth, the projected number of security guards to be hired for this assignment was not 20. Chief Chambers has no knowledge as to why the reporter chose to use the number 20.

Again, Chief Chambers did not volunteer specific information to the *Post*. Chief Chambers did not discuss the specific deployment of either armed officers or unarmed guards. However, the number of uniformed guards and police officers at the monuments and memorials is not privileged information. Each officer and guard is required to be in plain sight and in full uniform so that he or she will be clearly visible to passers-by. Quite simply, the reporter came to the interview with knowledge of the number of employees typically stationed at different locations.

Moreover, during his interview with Chief Chambers, the *Post* reporter’s questions demonstrated knowledge of the projected numbers of guards and officers to be deployed at the above locations in the D.C. area. Again, Chief Chambers did not volunteer any information regarding either the number of armed and unarmed U.S. Park Police officers assigned to these locations or as to the scope of security present and contemplated. She responded to the questions asked. The information discussed was neither confidential nor solely in the possession of the Chief.

Further, documents approved for general distribution to officers by DAS Parkinson included maps indicating where officers were directed to be posted and a checklist for members of Parkinson's office and the U.S. Park Police who were conducting inspections. Accordingly, no evidence exists to show Chief Chambers was either the exclusive source of this information or that this information in any way caused harm to the agency or its employees. This specification cannot sustain removal. It is common knowledge that many reporters' sources are confidential and their existence, let alone their identity, cannot be discerned from the articles.

Assuming, *arguendo*, that the statements attributed to Chief Chambers are taken as true, they do not warrant disciplinary action, let alone removal. The comments attributed to Chief Chambers are no different than comments attributed to any number of National Park Service (NPS) employees. For example, Chief Chambers' immediate supervisor, Mr. Murphy, is credited in a WTOP news report, as stating:

"The situation is 'going to get resolved' and most of the officers currently at the monuments are being replaced by contracted security guards. Instead of having three Park Police officers at the Washington, Lincoln, or Jefferson memorials, there soon will be only one officer and two contracted guards."¹⁵

Mr. Murphy's comments specifically relate to current and proposed security measures. He cites specific locations and divulges the number and makeup of units guarding each named monument. No adverse action has been proposed against Mr. Murphy.

Interaction with the press and general discussions regarding security are commonplace within the NPS. With respect to the dozens of interviews Chief Chambers has given, she would inform Mr. Murphy, Director Mainella, NPS Press Officer Barna, and the DOI Communications Director about these upcoming high-visibility events. None of these individuals have ever provided advice or guidance to Chief Chambers prior to her appearances. None of these individuals have ever reacted negatively to her interviews. On the contrary, her appearances have garnered only praise from the agency.

On numerous prior occasions, such as the Fourth of July and the NFL Kick-off Celebration held on the Mall, Chief Chambers has provided live and taped interviews with media outlets, which have included general terms "about the scope of security present and contemplated." Included in a July 2002 interview with WTOP, is the following:

"Chambers said 2,000 police officers from 16 agencies will be on hand to help with the festivities. Officers with dogs will sweep the Mall before the crowds arrive. People will be funneled through 24 checkpoints where officers will search coolers and bags. Some visitors will be scanned with metal-detecting wands."¹⁶

At no time was Chief Chambers informed that comments such as this constituted misconduct. General comments regarding security have repeatedly been condoned by the agency as they address matters of

¹⁵ News Story of 12-4-03, 6:55 P.M. entitled "Park Police Patrols Likely Change Downtown" from WTOP's website.

¹⁶ WTOP July 2002 interview of Chief Chambers.

public concern. Chief Chambers was encouraged by her superiors to speak to the press and her efforts were applauded.

The following are additional examples of recent public comments made by U.S. Park Police personnel that “speak to the scope of security present and contemplated.” None of these remarks resulted in any adverse action to the sources credited.

In a July 2, 2002, in an interview with the *Washington Times*, the following quote is attributed to Sergeant Scott Fear: “Two fences, spaced about 15 to 20 feet apart, are being erected around the Mall to prevent a terrorist outside the area from handing harmful materials to someone inside the inner fence . . .”¹⁷

In a July 2, 2000, *Washington Post* article, the following information is attributed to the former Chief Robert Langston:

“He said when the Washington Monument reopens, there will be three or four officers scanning for weapons, even though those officers will have to be redeployed from other areas.”¹⁸

Moreover, the National Park Service not only condones the release of general information regarding security issues, but even publishes security information on its own website. The National Park Service “Morning Report” is a report that is published daily on the Internet. On September 11, 2001, a “Supplemental Special Edition” was published and included the following specific and sensitive information regarding the Continuity of Operations for the National Park Service: “The Continuity of Operations plan has been enacted and personnel have been assigned in accordance with that plan. The Director and key staffers will be relocated to Harpers Ferry Center beginning tomorrow (September 12, 2001) and will join up with the Type I team.”¹⁹

The July 3, 2003 “Morning Report” included the following excerpt regarding Mount Rushmore:

“The fireworks launch zone has been set up in the shadow of George Washington’s head. Yellowstone’s helitack crew airlifted 7,500 pounds of explosives to the launch zone early Monday morning. More than 40,000 pounds of mortar tubes are secured in 16 tons of sand to launch the enormous fireworks display. Fireworks shells range from 3 inches to 12 inches in diameter. The largest shells weigh 36 pounds and can explode at 1,100 feet above the launch site.”²⁰

For additional comments made by National Park Service employees regarding law enforcement staffing and security information, see Appendix A attached hereto.

Accordingly, even if Chief Chambers had told the *Post* that twenty unarmed security officers would be joining the force to be paired with armed guards at different locations, such a statement is no

¹⁷ *Washington Times* July 2, 2002 article.

¹⁸ *Washington Posts* July 2, 2002 article.

¹⁹ “Morning Report” September 11, 2001 – “Supplemental Special Edition.”

²⁰ “Morning Report” July 3, 2003.

different in substance or scope than the examples cited herein. None of these examples resulted in similarly situated employees, notably a former Chief, being disciplined. Thus, even if taken as true, the facts presented by the agency do not warrant disciplinary action.

The agency's assertion that Chief Chambers "made public remarks about the scope of security present and contemplated for these areas under her jurisdiction" is intended to inflame the reader. The subject of terrorism stirs the passions and fears of all Americans. The agency's veiled allegation that Chief Chambers divulged security information is designed to capitalize on this visceral reaction to lend credence to this proposal to remove. As demonstrated more fully above, Chief Chambers provided no confidential information regarding security or any other matter to the *Post*. The agency's true concern lies with their perception that Chief Chambers publicly discussed its budget.

On December 2, 2003, at 1757 hours, following publication of the *Post* article, Mr. Murphy left the first of two voice mail messages on Chief Chambers' cell phone. His first message stated in part "you need to not do any more of these live shots or stand-up interviews until you get these interviews cleared with [him and the Director of the NPS] and the Department." Further, he stated, "The messages that you are sending out are not consistent with the Department's message and what we want to be saying on our budgeting for the U.S. Park Police." At 1758 hours, Mr. Murphy left a second voice mail that stated in part, "Just trying to . . . get the message to you about not doing any more of these interviews on our budgeting and the lack of funding for the U.S. Park Police that you have been portraying out in the media." Further, he stated, "You need to get those things cleared internally with the Department and with the agency."²¹

These calls were made contemporaneously with the publication of the *Post* article on December 2, 2003. The messages demonstrate that neither Mr. Murphy nor Ms. Mainella were concerned with remarks made "about whether and how many armed and unarmed U.S. Park Police officers are patrolling the Washington, D.C., metropolitan area Federal malls, parks, and Parkways." Neither were these individuals concerned with the Chief's alleged comments that "constitute[d] public remarks about the scope of security present and contemplated for these areas under [our] jurisdiction." As demonstrated by these messages, the agency's concern had nothing to do with the topic of security.

Moreover, on December 2, 2003, at 1820 hours, Mr. Murphy sent an e-mail message to Chief Chamber's NPS e-mail address. The message stated, "You are not to grant anymore interviews without clearing them with me or the Director. You may not reference the President's '05 budget under any circumstances." At approximately 2115 hours, Chief Chambers returned Mr. Murphy's calls. The Chief assured him she understood his order to grant no more interviews. Mr. Murphy stated that he and the Director were concerned because they believed the Chief had referenced the President's '05 budget. He asked the Chief to meet with the Director the following day, December 3, 2003 to discuss the matter. The December 3, 2003 meeting did not occur. Rather, on December 5, 2003 Chief Chambers was served with a one-page document placing her on administrative leave and suspending her police powers. At that time, no agency official had raised any allegation stating the Chief made remarks that "constitute[d] public remarks about the scope of security present and contemplated for these areas under [our] jurisdiction." The only topic raised with the Chief prior to being placed on administrative leave was her alleged discussion of the President's '05 budget.

²¹ See transcription of these two voice mail messages.

Common sense dictates that if Chief Chambers had divulged security information that placed either her officers or the public at risk, this would create a state of emergency requiring immediate action. However, not one of the several communications Mr. Murphy had with Chief Chambers on December 2, 2003, addressed security. The sole issue cited in these communications is the allegation that the Chief may have divulged portions of the President's '05 budget.

Accordingly, this specification cannot be sustained. However, even if each and every allegation as stated in specification two is taken as true, no evidence exists to demonstrate that any harm came to the agency or its employees as a result of the remarks attributed to Chief Chambers. The agency has failed to prove by this specification that Chief Chambers' removal is either warranted or necessary to promote the efficiency of the service. This charge must fail.

CHARGE 3. Improper disclosure of budget deliberations.

Specification for Charge 3: Section 22.1 of the office of Management and Budget's (OMB) Circular No. A-11 (2003) states, in pertinent part, the following:

The nature and amounts of the President's decisions and the underlying materials are confidential. Do not release the President's decisions outside of your agency until the budget is transmitted to Congress. Do not release any materials underlying those decisions, at any time, except in accordance with this section . . . Do not release any agency justification provided to OMB and any agency future plans or long-range estimates to anyone outside the executive branch, except in accordance with this section.

On or about December 1, 2003, while you were on duty and acting in your official capacity as Chief, U.S. Park Police, a reporter from *The Washington Post* interviewed you. Your statements to the reporter were the subject of a December 2, 2003, *Washington Post* newspaper article entitled "Park Police Duties Exceed Staffing" (page B-1) which, among other things, states the following: "She said she has to cover a \$12 million shortfall for this year and has asked for \$8 million more for next year."

As you are aware, the President has not transmitted the 2005 budget to Congress. By informing the reporter that you "asked for \$8 million more for next year," prior to the President transmitting the 2005 budget to Congress, you made an improper disclosure of 2005 Federal budget deliberations to the media, in violation of OMB Circular No. A-11, Section 22.1.

Reply to Specification for Charge 3

The agency's charge must fail as a matter of law because Chief Chambers did not improperly disclose information regarding budget deliberations. Moreover, Chief Chambers did not violate the cited OMB Circular that formulates the basis of the charge.

As a preliminary matter, until the proposed action, Chief Chambers has never seen, nor has she been provided with, this Circular. She has never received a memorandum quoting the language pulled from that Circular nor has anyone ever informed her verbally of the existence of that language. While the Chief is obviously aware that "ignorance of the law is no defense," the lack of knowledge of even the existence of the Circular demonstrates, at least, that the Chief's actions, if in error, were not

intentional violations. Moreover, the agency has proffered no evidence that the Chief's actions have resulted in any harm to the agency, its mission, the morale of its employees, or the safety of the public. The agency will fail in its burden of demonstrating that the proposed action promotes the efficiency of the service, the fundamental tenet of the federal personnel disciplinary system.

Analysis Of Circular:

An analysis of the cited Circular demonstrates that the mandates of the Circular are inapplicable and that the information contained in the subject *Washington Post* article did not violate its instructions. Even assuming, *arguendo*, that the article as written is wholly accurate, which it is not and which is addressed later, Circular A-11 does not proscribe the disclosure of the cited information. The Circular precludes, in part, the release of the President's decisions. (emphasis added) In no manner did the article suggest that Chief Chambers spoke of the "President's decisions." Nothing in the article itself speaks of such decisions. Moreover, the Chief knew nothing of the President's decisions or if, in fact, the President had made any decisions with respect to any budget matter at the time of her interview. Therefore, even if the information in the charge and in the article were true, this specific portion of the Circular was never violated.

Moreover, the Circular also proscribes release of "**materials**" "underlying [the President's] decisions." (emphasis added) At no time did Chief Chambers possess or release materials underlying the President's decisions. In fact, the proposal strictly complains of statements, not materials, disclosed by the Chief. Accordingly, Chief Chambers did not violate this section of the Circular.

Further, the Circular precludes release of "any agency justifications provided to OMB." (emphasis added) The Chief did not release any justification that was provided to OMB. Other than a bald assertion that the Chief violated this Circular, no specific analysis was ever rendered addressing how the Chief violated the Circular. In fact, nothing contained in the article constitutes a justification provided to OMB. Accordingly, the Chief did not violate this portion of the Circular.

Finally, at no time did the Chief release "any agency future plans or long-range estimates." No statement attributed to Chief Chambers violates the restrictions imposed by this section of the Circular. The Chief did not release, nor did she discuss, any future plans or long range estimates of the agency. Accordingly, the charge must fail.

What Chief Said As Opposed To What Is Alleged She Said:

The *Washington Post* interviewed Chief Chambers on November 20, 2003, not December 1, 2003. The article was published in the December 2, 2003, *Washington Post*, following detailed interviews during the previous month with the Chairman of the Fraternal Order of Police Labor Committee, Officer Jeff Capps. This followed Capps' delivery of a letter to Secretary Norton expressing his concerns regarding icon staffing and other staffing issues. Any statements the Chief

made to the reporter only supplemented detailed information the reporter had already been given by Capps.²²

The proposal alleges that the Chief stated that “she has to cover a \$12 million shortfall for this year and has asked for \$8 million more for next year.” While Chief Chambers does not recall the exact words spoken to the reporter, she does acknowledge that the reporter did ask her what the U.S. Park Police would need to “get by” in Fiscal Year ’04 and Fiscal Year ’05. The Chief denies that she ever disclosed specific budget information or told the reporter what she and the U.S. Park Police had “asked for” in budget deliberations. Insofar as misconduct is alleged and based on the suggestion that the Chief disclosed what the agency “asked” for, she specifically asserts that at no time did she divulge any information as to the deliberations or specific information pertaining to budget requests.

The proposal specifically conveys the misunderstanding that the Chief had let the reporter know what amount the U.S. Park Police had asked for. The charge states, “By informing the reporter that you “asked for \$8 million more for next year,” prior to the President transmitting the 2005 budget to Congress, you made an improper disclosure of 2005 Federal budget deliberations to the media, in violation of OMB Circular No. A-11, Section 22.1.” The proposal letter assumes that the Chief made the exact remarks as written in the article, an assumption that is not correct. Chief Chambers did not state what the U.S. Park Police had “asked” for. Moreover, she knew that the U.S. Park Police did not ask for \$8 Million for Fiscal Year 2005. To her knowledge, the U.S. Park Police submitted requests for \$42 Million because the budget in Fiscal Year 2004 provided for virtually no increase from the previous year. As the following series of facts will indicate, the **complete** answer Chief Chambers provided the reporter was that the U.S. Park Police needed \$15 Million for Fiscal Year 2005, a number that does not accurately disclose any ongoing “2005 Federal budget deliberations.”

Evidence from the reporter himself demonstrates that the Chief did not state what was “asked for.” Indeed, in a subsequent article by the same reporter, dated December 6, 2003, the reporter wrote, in regard to that same narrow issue, “In the *Post* story, Chambers also said that her department had a \$12 million shortfall this year and that \$8 million **was needed** for next year.” (emphasis added) The different terminologies utilized by the reporter, i.e., “asked” versus “what was needed,” connote different ideas that impact the viability of the instant charge. In the second article, the reporter changed the words “**asked** for \$8 million more for next year” to “\$8 million **was needed** for next year.” While the first article suggests that the Chief stated what the U.S. Park Police had asked for, the second article clearly does not indicate what the U.S. Park Police asked for.²³

²² Email from Chief Chambers to Fran Mainella and copied to Mr. Murphy, dated 10-29-03, alerted them to information she had just learned regarding the letter Capps delivered to the Office of Secretary Norton. “WASO Administrative Program Center” form faxed to the Chief’s office on October 30, 2003. This form asks the Chief to prepare a response to the letter Capps sent to Secretary Norton. Three-page letter from Officer Leon J. Capps, Chairman, Fraternal Order of Police United States Park Police Labor Committee. His letter details his concerns about the manner in which the icons are being protected and the negative impact this staffing was having on crime and traffic enforcement in other geographic areas of responsibility. Capps’ letter asks for a response from the Secretary by October 31, 2003. (Included on the copy of this letter are Chief Chambers’ handwritten notes in preparation of her preparing the written response for Director Mainella’s signature.) Two-page draft response to Mr. Capps for Ms. Mainella’s signature and transmittal e-mail with response on which Mr. Murphy and Ms. Mainella were copied.

²³ See *Washington Post* article, “Park Police Chief Placed on Leave After Remarks: Moran, Labor Union Criticize Action,” by David A. Fahrenthold, Saturday, December 6, 2003, Page B01.

Other evidence suggests that the information contained in the *Washington Post*, which is the focus of this charge, was not stated in the manner alleged. The U.S. Park Police submitted budget documents to the Comptroller of the National Park Service showing funding needs for Fiscal Year 2005 as an additional \$27,809,916 for recurring funding needs and \$14,051,000 for additional funding needs.²⁴ To the best of Chief Chambers' recollection, in response to the reporter's question as to what were the minimum dollar amounts the U.S. Park Police would need in Fiscal Year 2004 and Fiscal Year 2005, she told the reporter that the U.S. Park Police would need \$12 Million for Fiscal Year 2004 to make up for the shortfall and that, with the \$12 Million this year, the U.S. Park Police would need just \$8 Million in Fiscal Year 2005. Chief Chambers further stated that the U.S. Park Police also needed to replace one of its aging helicopters, which would require an additional \$7 Million in addition to the \$8 Million – a total of \$15 Million.

The reporter, in that same December 2, 2003 *Washington Post* article, documented the information the Chief told him by writing an additional sentence after the one singled out in the instant charge. Together, the story reads, "She said she has to cover a \$12 million shortfall for this year and has asked for \$8 million more for next year. She also would like \$7 million to replace the force's aging helicopter." Chief Chambers did not provide specific figures that were part of budget deliberations. Moreover, she provided figures that were speculative and purely based on unconfirmed and general estimations of what she believed was needed. Her comments did not connote or indicate in any manner that she was discussing, disclosing, or relaying information that constituted a justification or deliberation regarding budgeting for fiscal year 2005.²⁵

Additional evidence demonstrates that Chief Chambers did not release information of budget deliberations. In an e-mail from Chief Chambers to Mr. Murphy on December 2, 2003, acknowledging the Chief's receipt of his directive "not to grant any more interviews," and to "not reference the President's 05 budget under any circumstances," the Chief wrote:

"I can find no reference in any interview text or the *Washington Post* article regarding any reference made by me to the President's '05 budget."²⁶

Mr. Murphy responded to Chief Chambers' e-mail in writing the following morning, December 3, 2003. Mr. Murphy's e-mail states that the newspaper article indicated that Chief Chambers had "asked for \$8 Million more for next year." Mr. Murphy's e-mail went on to say:

"The 'next year' obviously refers to the 05 budget. Since we asked for this \$8 Million as part of the 05 budget and it was reduced in the pass back to \$3 Million, this kind of reference in an interview is not appropriate."²⁷

Mr. Murphy failed to recognize that, at the time of the Chief's interview with the reporter from the *Washington Post*, during which the reporter received information from Chief Chambers about the U.S. Park Police's funding needs, the pass back from OMB had not yet occurred. Again, Chief

²⁴ Six-page document entitled "*United States Park Police FY 2005 Funding Needs*," Revised 6-16-03

²⁵ *Washington Post* article, "Park Police Duties Exceed Staffing: Anti-Terror Demands Have Led Chief to Curtail Patrols Away from Mall," by David A. Fahrenthold, Tuesday, December 2, 2003, Page B01

²⁶ See Email from Chief Chambers to Mr. Murphy with a copy to Ms. Mainella dated 12-02-03 at 2344 hours.

²⁷ See e-mail from Murphy to Chief Chambers with a copy to Ms. Mainella dated 12-03-03 at 0940 hours.

Chambers' interview with the *Washington Post* reporter was on November 20, 2003. The pass back information where the U.S. Park Police '05 budget amount was reduced to \$3 Million did not get communicated to U.S. Park Police staff until November 26, 2003, after the Chief had spoken to the reporter. Accordingly, Chief Chambers would have had no way to know that it was about to be reduced to \$3 Million as Mr. Murphy referenced in his e-mail. The documentation regarding the date of the pass back is contained in the series of e-mails attached below.²⁸

Moreover, the numbers provided by Chief Chambers were not pulled from the budget deliberations. As is evidenced in his December 3, 2003 e-mail, Mr. Murphy failed to acknowledge that Chief Chambers had, in fact, told the reporter that the U.S. Park Police needed \$8 Million and an additional \$7 Million to replace a helicopter, a total of \$15 Million. This arbitrary figure was intended as a generalization and not as a specific reference to actual figures contained in the budget deliberations. The amount was intended to convey a generalized minimum amount needed **if** the U.S. Park Police received \$12 Million for Fiscal Year 2004 to cover a shortfall. In his e-mail and now in the proposal, Mr. Murphy isolated one sentence from the entire article and, because its dollar amount, \$8 million, matched what the NPS "asked for . . . as part of the '05 budget," he improperly concluded that Chief Chambers must have discussed specific figures from the President's '05 budget with the reporter. In fact, when read in its entirety, the Chief's complete statement to the reporter as recorded by him in two back-to-back sentences indicates that the U.S. Park Police needed \$15 Million in '05, not \$8 Million.

Chief Chambers Advised Agency Officials That She Was Interviewed, Described The Topics Discussed And Told Officials When The Story Would Run;

As noted in response to Charge Two, immediately following the interview, Chief Chambers notified her chain of command (Mr. Murphy, Ms. Mainella, and DAS Paul Hoffman and DAS Larry Parkinson) via e-mail dated November 20, 2003, that she had been interviewed. Chief Chambers reiterated that the interview had taken place at the request of the *Washington Post*, after the *Post* had been contacted by the Fraternal Order of Police regarding funding issues. The Chief provided her chain of command with a contemporaneous e-mail detailing the nature and substance of the interview. At no point in this process did any agency official question the fact that the interview took place or that

²⁸ See e-mail dated 11-20-03 where Chief Chambers notified various people of the interview with the *Washington Post* reporter; Email from Ben Holmes to Chief Chambers dated 11-27-03 regarding the conference call the previous day during which he represented the Chief. Email from the Chief to Holmes dated 11-27-03 at 1526 hours asking him whether Mr. Murphy knew Chief Chambers was not on the conference call "yesterday," November 26, 2003, (only documentation available as to the date this call occurred) and Holmes' e-mail answer to Chief Chambers dated 11-27-03 at 2134 stating that he (Holmes) introduced himself on the call as "Ben Holmes, representing Chief Chambers." See Email from Murphy to Chief Chambers with a copy to Ms. Mainella dated 12-03-03 at 0940 hours. Email from Chief Chambers to Scott Fear dated 11-20-03 documenting that the Chief had notified Mr. Murphy and the substance of her conversation with him. Email also documents Mr. Murphy's commitment to notify Ms. Ms. Mainella. Email from Chief Chambers to DAS Larry Parkinson dated 11-20-03 notifying him of the *Washington Post* interview as directed by Mr. Murphy. The e-mail copied the chain of command: Mr. Murphy, Ms. Mainella, and DAS Paul Hoffman and includes a description of the interview topics and context. The e-mail also makes it clear that the interview was conducted at the request of the *Washington Post* after the *Post* had been contacted by the FOP regarding funding issues. Email from Parkinson to Chief Chambers dated 11-20-03 telling the Chief that he had received a call from a reporter several days earlier and that he referred the reporter to DOI Press Officer John Wright, who, after talking to the reporter, would recommend whether or not Parkinson should talk with him.

Chief Chambers responded to questions regarding funding. At no point in this process did any agency official indicate the Chief's discussion constituted action contrary to the agency's mission.²⁹

The Content Of The Article Is Similar To That Derived From Other Sources, Including The Proposing Official

No evidence exists to show that as a result of the Chief's actions, any adverse consequences were visited upon the agency. In fact, to the contrary, overwhelming evidence exists that the agency has historically condoned the very actions that it now condemns. As the following examples show, having repeatedly engaged in the very acts for which it now proposes the Chief's removal, the agency cannot show that Chief Chambers' removal promotes the efficiency of the service:

- a. In an article entitled "Perilous Parks: Understaffing tolerated – until disaster strikes," dated September 8, 2002, the following statement is attributed to Mr. Murphy:

"Park Service Deputy Director Murphy said he's pushing Congress to spend \$4 million to \$7 million to install 32 miles of the barrier at Organ Pipe."³⁰

- b. In an article entitled "Liberty, a Lady in Waiting, Gets Money for Reopening," dated November 26, 2003, the following statement is attributed to Cynthia Garrett, the National Park Service Superintendent, who oversees the Statue of Liberty:

"Ms. Garrett said that Congress has increased annual operating funds for the Statue of Liberty and Ellis Island by about \$1 million to \$11 million and is expected to increase it again next year."³¹

- c. According to remarks of "Director Fran P. Mainella" posted on the Internet, Ms. Mainella stated in part on February 28, 2003, while speaking to the National Association of County Park and Recreation Officials in Washington, D.C.:

"We're a bit disappointed that Congress did not meet the President's LWCF funding request for the current fiscal year, but we're hopeful for a better result next year, since the Administration has asked for more money then."³²

²⁹ Email from Chief Chambers dated 12-1-03 to Mr. Murphy, Ms. Mainella, and Mr. Parkinson with copies to Hoffman and NPS Press Officer David Barna notifying them that the *Post* article would appear the following day.

³⁰ See Eight-page story from the web site, <http://www.azstarnet.com/border/20908PERILOUS-FEDSKNEWD.html>, Page 7 of 8.

³¹ See "Liberty, a Lady in Waiting, Gets Money for Reopening," Winnie Hu, New York Times, November 26, 2003.

³² See Email with web address, www.doi.gov/news/NACPRO%202003.doc, and excerpt from applicable speech. See also single page, double-spaced of the 13-page document found at the web site.

Moreover, according to “Remarks of Fran Mainella” posted on the Internet, Ms. Mainella stated in part on April 1, 2003, while speaking to the New York State Recreation and Park Society Conference in Long Island, New York.

“We’re a bit disappointed that Congress did not meet the President’s LWCF funding request for the current fiscal year. The program has been cut about 30% across the board, but we’re hopeful for a better result next year, since the Bush Administration has asked for more money then.”³³

Further, according to “Remarks of Fran P. Mainella” posted on the Internet, Ms. Mainella stated in part on September 3, 2003, while speaking to the National Association of State Park Directors in Petoskey, Michigan:

“We are hopeful that next year’s budget for these important partnership activities will be funded well. We have asked Congress for a \$1.5 million increase for RTCA and \$300,000 for FLP.”³⁴

- d. In an article entitled “Seventh Most Dangerous” by Wendy Pagonis in the *Daily News-Record* on July 29, 2003, the following statement appears:

“Park Superintendent Douglas Morris is trying to get the money to pay for a new communications system. Estimates place the cost at more than \$1 million. If the money comes through, SNP should have a new system within two years, Jordan says. But money is always an issue.”³⁵

- e. In a July 2, 2000, *Washington Post* article, former U.S. Park Police Chief Robert Langston is attributed as having provided the following quote:

“Every year, our budget goes into this mysterious area. It never actually goes to Congress, where they can look at it and see that it’s the U.S. Park Police budget. It’s all mixed into a budget that’s for visitor protection for the National Park Service. It’s like it goes into this big, black hole, and we can never see what Congress has approved for us. They give us what they feel we need, and it’s never enough.”³⁶

In that same article, Chief Langston is attributed to having provided the following information:

³³ See Email with web address, www.doi.gov/news/NY%20Rec%20&%20Park.doc, and excerpt from applicable speech.

³⁴ See Email with web address, www.doi.gov/news/NASPD%20Petoskey.3.doc and excerpt from applicable speech. See also Single page, double-spaced, of the 15-page document found at the web site.

³⁵ See Two-page story found at <http://www.dnronline.com/archives2003/7-29-03/local-story1.html> , where this statement appears.

³⁶ See “Monuments Are Found Vulnerable to Attack; Security at Memorials Needs Upgrading, Says Park Service Report,” Arthur Santana, the *Washington Post*, July 2, 2000, Page 4 of 4.

“Langston said Park Police officers also might receive pay raises, with Congressional approval, from an average starting salary of \$31,600 to about \$33,000, with greater increases over the years.”³⁷

For additional comments made by National Park Service employees regarding budget and lobbying, see Appendix B attached hereto.

When the Board considers the defense of "like penalties for like offenses," they have held that "[i]n the absence of evidence that the Agency has retained employees [whose behavior is similar to] the appellant's, the record will not support a finding that [the agency treated the appellant differently]." See Nesson v. Dept. of Treasury, 4 MSPR 255, 256 (1980); See Rasmussen v. Department of Agriculture, 44 MSPR 185 (1990). It, therefore, follows that when evidence exists indicating that the agency has not punished employees for the same behavior for which the appellant is being punished, the Board will find that the agency treated the Appellant differently without legal justification. See Nesson, 4 M.S.P.R at 256. In such a situation, the charge against the appellant cannot be sustained. See id.

Here, several agency employees and officials have clearly engaged in the same alleged misconduct charged against Chief Chambers. The analysis of quotations in the press from employees and officials similarly situated to the Chief has just begun. In the brief time allotted to respond to this appeal, the evidence has already shown that within the U.S. Park Police, several current and former employees, including those who filled the Chief's position and those who now propose her removal, engaged with impunity in the very acts with which she is charged. Although a monumental task awaits the Chief at the time of discovery, it is already clear that she will show that hundreds, if not thousands of employees, have engaged in the same conduct as she. Upon information and belief, no other agency employee has been a recipient of proposed discipline based on the conduct cited. Most egregiously, the very person proposing to end the Chief's career has engaged in the very same acts himself. These facts demonstrate different treatment was intentionally afforded to other employees who engaged in similar instances of alleged misconduct. None of these similarly situated employees were subjected to the discipline in any way similar to that proposed against Chief Chambers. These inconsistencies constitute disparate treatment and evidence that the agency has engaged in unlawful conduct. The agency's charge against the Chief cannot be sustained because the agency is intentionally treating her differently from similarly situated employees absent a legitimate, lawful purpose for doing so. See id.

CHARGE 4. Improper lobbying.

Specification for Charge 4. 43 C.F.R. §20.506(b), pertaining to conduct of Department of the Interior employees, states the following:

³⁷ See "Monuments Are Found Vulnerable to Attack; Security at Memorials Needs Upgrading, Says Park Service Report," Arthur Santana, *The Washington Post*, July 2, 2000, Page 4 of 4.

When acting in their official capacity, employees are required to refrain from promoting or opposing legislation relating to programs of the Department without the official sanctions of the property [sic] Departmental authority.

On or about December 1, 2003, while you were on duty and acting in your official capacity as Chief, U.S. Park Police, a reporter from The *Washington Post* interviewed you. Your statements to the reporter were the subject of a December 2, 2003, *Washington Post* newspaper article entitled "Park Police Duties Exceed Staffing," which, among other things, states the following:

In the long run, Chambers said, her 620-member department needs a major expansion, perhaps to about 1,400 officers.

...

She said a more pressing need is an infusion of federal money to hire recruits and pay for officers' overtime.

Prior to making the aforementioned statements to the reporter, you did not obtain my (or any other) official sanction to make the statements. Accordingly, your statements cited in The *Washington Post* on December 2, 2003, in which you express the need for additional manpower and resources, constitute improper lobbying, in violation of 43 C.F.R. §20.506(b).

Response to Specification for Charge 4

The comments attributed to Chief Chambers do not constitute improper lobbying in violation of 43 C.F.R. §20.506(b). The regulation is not applicable to the facts presented. Accordingly, this charge must fail as a matter of law.

43 C.F.R Part 20 is entitled "Employee Responsibilities and Conduct." §20.506(b) reads as follows:

"When acting in their official capacity, employees are required to refrain from promoting or opposing legislation relating to programs of the Department without the official sanctions of the property [sic] Departmental authority."

The condition precedent that must be satisfied prior to an employee being found in violation of 43 C.F.R. §20.506(b) is that the employee must either promote or oppose legislation relating to the programs of the Department. When the *Post* interviewed Chief Chambers on November 20, 2003, there was no such legislation, or even proposed legislation, in existence. Chief Chambers could not have influenced non-existent legislation.

Chief Chambers' conduct does not satisfy the condition precedent contained in the cited regulation. Thus, as a matter of law, Chief Chambers' conduct did not violate 43 C.F.R. §20.506(b). As the charge relies upon this false assertion, it too must fail as a matter of law.

Although the charge of improper lobbying cannot be sustained, the gravity of the penalty proposed compels Chief Chambers to respond to the factual allegations contained herein.

Chief Chambers has established the basic facts surrounding her interview earlier in this reply. Chief Chambers has described how she was interviewed and the format of the interview; she listed the names of her superiors whom she contacted immediately following the interview, and she has described the post-interview briefing she provided to them.

Again, the format of the interview consisted of the *Post* reporter asking the Chief specific questions relative to specific topics. Chief Chambers did not volunteer specific information. The charge attributes the following statement to Chief Chambers.

“In the long run, Chambers said, her 620-member department needs a major expansion, perhaps to about 1,400 officers.”

This statement appears in the *Post* article; however, it is not a direct quote of the Chief. Chief Chambers surmises the article’s assertion that the department needed to expand to 1,400 officers was derived from a staffing plan conducted by the U.S. Park Police Executive Team. This staffing plan was recommended by the NAPA Report and was required by the Secretary of the Interior in her Directives on Law Enforcement Reforms. The study was discussed during the interview. To the best of Chief Chambers’ recollection as of the date of her interview, the number cited in the staffing plan was for a size of approximately 1,400 sworn officers.

At the time of Chief Chambers’ interview, there was no pending legislation relative to expanding the U.S. Park Police force to 1,400 officers. Staffing issues were not before any deliberative body. Accordingly, the issue of increasing, maintaining, or decreasing staffing was not subject to influence. The conclusion that the U.S. Park Police staffing level should be 1,400 Officers had already been addressed and recorded in a staffing plan. The formulation of a staffing plan was recommended by NAPA, and the Secretary of the Interior’s Directives on Law Enforcement Reforms required the implementation of the NAPA plan. This statement does not reflect Ms. Chambers’ opinion as Chief regarding staffing levels, nor does it imply that staffing was the subject of debate. Chief Chambers’ statement is a simple statement of fact.³⁸

“She said a more pressing need is an infusion of federal money to hire recruits and pay for officers’ overtime.”

Again, this sentence appears in the article as a descriptive narrative. It is not a direct quote. To the best of the Chief’s recollection, the reporter asked what were the most pressing and immediate needs of the U.S. Park Police. The Chief replied that the department needed money for new hires and money to pay overtime to existing officers, until new hires could be trained and deployed. Chief Chambers answered the question posed, truthfully. As of November 20, 2003, these were the most pressing needs of the department. Chief Chambers’ superiors knew that the purpose of the *Post*’s interview was to inquire about funding issues raised by the Fraternal Order of Police. Not surprisingly, when asked what her department’s most pressing needs were, Chief Chambers cited “funding issues.”

In light of the facts presented, Chief Chambers’ conduct does not rise to the level of “lobbying” any legislative body for or against any proposition. In essence, the comments attributed to the Chief

³⁸See Copy of Draft Staffing Study, July 2003, 7 pages.

consist of a citation to a staffing study, and her response to the question “What does the department need.” No reasonable person can believe that the essence of the Chief’s response when asked what was her department’s most pressing need, “more funding,” was either unique, unexpected, or deserving of particular scrutiny by her superiors.

Similarly situated employees have made the same type of remarks in the public forum countless times. Never have their comments resulted in adverse action. For example:

In a July 2, 2000, interview with CNN, the following quote is attributed to Lieutenant John Kmetz:

“Our communications system . . . is 20 to 25 years old. As far as our staffing, we are short 150 officers in the D.C. area, and as far as our operational budget, we do not have at this time an equipment fund.” The following statement is attributed by CNN to information Lieutenant Kmetz supplied: “Park Police officers said they need \$80 million over the next seven years to fix those problems.”³⁹

Lieutenant Kmetz’s comments appeared in a national forum. He was not accused of improper lobbying, nor was any adverse action taken against him. On the contrary, he was promoted to captain shortly thereafter and resigned at that rank to accept a position in the DOI’s Office of Law Enforcement and Security now headed by DAS Larry Parkinson.

The following statement is attributed to Mr. Murphy, Chief Chamber’s direct supervisor:

“Park Service Deputy Director Murphy said he’s pushing Congress to spend \$4 million to \$7 million to install 32 miles of the barrier at Organ Pipe.”⁴⁰

In contrast to the statements attributed to the Chief, Mr. Murphy’s comments literally comport to 43 C.F.R. §20.506 (b). In this single line, Murphy “promotes legislation” related to the “programs of the department.”

For additional comments made by National Park Service employees regarding manpower and resources, see Appendix C attached hereto.

To charge Chief Chambers with improper lobbying based on the evidence presented requires interpretation, exaggeration, and extrapolation of the facts presented. In context, a plain reading of the remarks attributed to Chief Chambers, reveals that in response to questions posed, she cited an existing study on staffing and identified the department’s most pressing need as funding. The statements attributed to Chief Chambers do not contain an appeal to any legislative body. Moreover, as demonstrated herein, similarly situated employees have made similar remarks in public with no adverse consequences. Mr. Murphy has gone so far as to make public statements that violate the letter of 43 C.R.F. §20.506(b). No adverse consequences followed. Accordingly, the agency’s

³⁹ See two-page CNN.com report, “Washington’s monuments may be easy targets for terrorists,” July 2, 2000.

⁴⁰ See eight-page story from the web site, <http://www.azstarnet.com/border/20908PERILOUS-FEDSKNEWD.html>, Page 7 of 8. See this to distinguish the comments attributed to Chief Chambers from comments that arguable constitute improper lobbying.

mischaracterization of the facts to manufacture a violation of 43 C.R.F. §20.506(b) is disingenuous. The agency's proposal to remove Chief Chambers when contrasted to the fate of similarly situated employees is unconscionable.

Finally, rather than respond to the agency's tortuous interpretation of the facts, the most expedient way to dispose of this charge is to acknowledge that, legally, it cannot be sustained. The sole citation proffered by the agency in support of this charge is 43 C.R.F. §20.506(b). As stated more fully above, the regulation does not apply. There was no legislation pending relative to staffing or funding for the department when Chief Chambers' made her comments. Accordingly, the comments attributed to her were incapable of supporting or opposing legislation. No applicable legislation or even proposed legislation was in existence. The charge must fail as a matter of law.

CHARGE 5. Failure to carry out a supervisor's instructions.

Specification 1 for Charge 5. On or about August 18, 2003, I instructed you to detail Pamela Blyth to the Office of Strategic Planning for 120 days. You stated that you were unwilling to allow Ms. Blyth to go on a detail because she was too valuable to you, and that placing Ms. Blyth on a detail would send a message to your "detractors" at the U.S. Park Police that they had been successful in getting rid of Ms. Blyth.

After your continued objection about my instructions, I informed you that I was giving you a specific order to detail Ms. Blyth. You continued to express your unwillingness to detail Ms. Blyth. I advised you that my decision to detail Ms. Blyth was final. As a compromise, however, I offered to break Ms. Blyth's detail into increments of time acceptable to you. Notwithstanding my offer, you failed to detail Ms. Blyth to the Office of Strategic Planning as I instructed you to do.

Response to Specification 1 for Charge 5

The agency's charge cannot be sustained because the Chief did not fail to carry out a supervisor's instructions as alleged. The proposal charges that the Chief failed to carry out an instruction to detail an employee. The charge cannot be sustained because the Chief never received and never refused to carry out an instruction to detail Ms. Blyth. While Chief Chambers did not express agreement with the decision, and in fact voiced opposition to the decision, she did not refuse to follow an instruction. Moreover, she did not fail to follow an instruction. The proposing official's own statements, as explained further herein, demonstrate that the Chief never received an order to detail Ms. Blyth. The "instruction" given was that the proposing official, himself, would detail the employee. Chief Chambers never received an order to detail the employee and never understood that she received an order to effectuate a detail herself. The Charge simply fails because it is based on erroneous information and the Chief never failed to carry out an order.

The specification for this charge alleges that "On or about August 18, 2003, I instructed you to detail Pamela Blyth to the Office of Strategic Planning for 120 days." Mr. Murphy first informed the Chief on August 8, 2003, of his intent to "detail" Ms. Blyth. Mr. Murphy never provided the Chief with a starting date for the detail and, in fact, said he would speak further with Ms. Blyth to work out

the specifics. He described this as a training and mentoring opportunity for Ms. Blyth. The Chief shared this information about the opportunity with Ms. Blyth later that same day.

The specification alleges that the Chief stated that she was “unwilling to allow Ms. Blyth to go on a detail because she was too valuable.” The choice of words in this specification is intentionally misleading to suggest an intent not to follow orders. The Chief conveyed her disagreement with the decision to detail Ms. Blyth. She never said she was “unwilling” to allow it to happen as if to suggest she had the authority or intent to refuse a direct order. The Chief expressed to Mr. Murphy that, if he wanted to see the U.S. Park Police and the Chief fail, then moving Ms. Blyth was a good way to do so. Any conversation that Mr. Murphy and the Chief had on this topic was healthy, professional disagreement and debate, not unlike other conversations the two had had on a variety of topics. Never in the past had the Chief been counseled, reprimanded, or disciplined in any way for this type of interaction with Mr. Murphy.

The situation here is not unlike the circumstances giving rise to a Board appeal in Berube v. General Services Administration, 30 MSPR 581 (1986). In Berube, the Board ruled that:

“Responsible management requires that senior executives not be discouraged from voicing objections to policies they view as unwise. As long as senior executives perform their assigned responsibilities and do not engage in actionable misconduct, their disagreements with policy decisions may not form the basis for adverse actions...” See Berube, reversed and remanded, 820 F.2d 396 (Fed. Cir. 1987), removal reversed on remand, 37 MSPR 448 (1998).

Here, as in Berube, the Chief simply voiced disagreement with Mr. Murphy over a decision to detail a valued employee. The Chief articulated several reasons why she disagreed with the decision. As the Chief, it is her obligation not to simply agree with every decision made impacting her department. Although the Chief voiced legitimate concerns, she never failed to abide by an order. Accordingly, the agency’s action simply cannot stand.

As a specific acknowledgement that the Chief raised legitimate concerns over Mr. Murphy’s decision, the proposal states that the Chief asserted that “placing Ms. Blyth on a detail would send a message to [her] “detractors” at the U.S. Park Police that they had been successful in getting rid of Ms. Blyth.” Although the Chief does not agree that she failed to follow an instruction, she does agree that this topic regarding her detractors was discussed. Repeatedly throughout her tenure as Chief, the Chief had kept Mr. Murphy informed on a regular basis of “internal terrorists” or detractors who were committing petty acts against members of the executive team who had been hired from outside the agency, a group that included the Chief, Ms. Blyth, Mr. Beam, and Mr. Pettiford. The acts of the critics included breaking into the Chief’s office; sabotaging her computer by deleting over 400 future calendar entries, a finding corroborated by IT experts; theft of a personal item of property; placing nails under tires; placing used condoms on and around assigned vehicles; setting the temperature on personally-owned refrigerators to the highest setting to freeze and burst cans; and, most recently, pepper spraying an office door while the Deputy Chief was conducting business in the same office. The actions of the antagonists were not only upsetting to the Chief and to the other victims, but were, in the Chief’s opinion, intended to disrupt and upset the mission of the Chief and her staff so that the Chief would either fail or quit. In this context, the Chief had frequently expressed to Mr. Murphy and

Director Mainella her legitimate concern for the safety of those targeted and concern for the success of the mission.⁴¹

Mr. Murphy was also aware that the “snipers” had filed numerous bogus complaints with the Inspector General and had filed a complaint with the Office of Special Counsel regarding what they alleged was the illegal hiring of Ms. Blyth, Mr. Beam, and Mr. Pettiford. In the context of a concern that the detail of Ms. Blyth would send a message to the “detractors” that they prevailed or succeeded in forcing Ms. Blyth out, the Chief did indeed share her concerns with Mr. Murphy. Such concerns, whether Mr. Murphy agreed with them or not, were legitimate concerns that a reasonable person in the Chief’s position could experience. The Chief, as a senior executive, had not merely a right, but an obligation to convey her legitimate concerns about an intended managerial action.

The specification states, “After your continued objection about my instructions, I informed you that I was giving you a specific order to detail Ms. Blyth.” Mr. Murphy never gave the Chief an order for her to detail Ms. Blyth. Early in the discussion about the Chief’s concerns regarding losing Ms. Blyth for any period of time, Mr. Murphy stated that, if the Chief did not want to detail Ms. Blyth, he could order the Chief to do so. (emphasis added) The Chief calmly and politely acknowledged to Mr. Murphy that he **could** do that but reminded him that he and the Chief did not usually solve problems that way.

The specification alleges that the Chief continued to express her “unwillingness to detail Ms. Blyth. I advised you that my decision to detail Ms. Blyth was final.” The Chief did express unwillingness to voluntarily detail her on a fulltime basis, and she shared the reasoning with Mr. Murphy. In fact, Mr. Murphy acknowledged that he was unfamiliar with all that fell within Ms. Blyth’s area of responsibilities and said that, perhaps, he should look at her job description.

The specification also states that Mr. Murphy “advised you that my decision to detail Ms. Blyth was final.” This statement is true; however, at that point, Mr. Murphy had also agreed to work with Blyth and the Chief to develop a part-time schedule whereby Ms. Blyth could continue to fulfill her responsibilities with the U.S. Park Police while working several hours a week with Mr. Murphy. Again, at no time was the Chief advised that it was her responsibility to detail Ms. Blyth. Mr. Murphy’s representations were that he would make the detail himself and he himself would discuss the detail with Ms. Blyth. Indeed, Mr. Murphy did discuss the detail as evidenced by the fact that Ms. Blyth later told Mr. Murphy that she could commit as much as eight hours each week toward this assignment with him.

The specification also alleges that “As a compromise, however, I offered to break Ms. Blyth’s detail into increments of time acceptable to you.” This statement is true. The “increments,” were described by Mr. Murphy as being several hours each week devoted to this assignment in his office. By the time the final direction was given by Mr. Murphy to Ms. Blyth, Mr. Murphy had changed his incremental approach into a fulltime approach, at least for the first few months. At that point, Mr. Murphy also offered, at the Chief’s suggestion, to call Ms. Blyth himself to tell her what a “great

⁴¹ See Email from the Chief to Ms. Mainella and Mr. Murphy dated October 23, 2003, and a response back from Ms. Mainella dated 10-24-03. The Chief’s e-mail details the latest incident of intimidation and harassment toward a member of the Executive Command Staff. See also Case Incident Record, Incident Number 032056, dated 10-22-03 detailing the circumstances surrounding the pepper spraying of the outside of the door to Deputy Chief Pettiford’s office.

opportunity” he had for her. (emphasis added) Mr. Murphy agreed, stating he would work with Ms. Blyth regarding the exact schedule and start date for the detail. In fact, Mr. Murphy met with Ms. Blyth in his office on August 21, 2003, in the presence of Mr. Michael Brown. The Chief was not asked to attend and did not attend the meeting. During the August 21, 2003, meeting, Mr. Murphy assured Ms. Blyth that he would work with her to establish a part-time schedule so that she could fulfill her responsibilities with the U.S. Park Police. (emphasis added) Mr. Murphy told Ms. Blyth the detail would begin Monday, August 25, 2003.

Ms. Blyth returned to the U.S. Park Police Headquarters following the meeting on August 21, 2003 and informed the Chief of the substance of the meeting and her confusion over whether the detail would be full-time or part-time. According to Ms. Blyth, as soon as Mr. Murphy left his office after the August 21, 2003, meeting, Michael Brown made it clear to Ms. Blyth that she would be working for him and him alone and that there would be no opportunity to perform any work for the U.S. Park Police during this assignment. The Chief assured Ms. Blyth that Mr. Murphy had committed to the Chief that this detail would be part-time so that she could fulfill her commitments with the U.S. Park Police. The Chief asked Ms. Blyth when the detail would begin and learned, for the first time, that it would begin Monday, August 25, 2003.

Thereafter, the Chief wrote a lengthy e-mail to Mr. Murphy describing in detail the 20 major projects Ms. Blyth was working on or for which she had responsibility. The Chief thanked Mr. Murphy for his willingness to work in identifying a schedule for this detail that would allow Ms. Blyth to keep focused on these important tasks.⁴² Mr. Murphy responded to this lengthy e-mail with a one-word e-mail, “Thanks,” and then, in the next two sentences, gave the Chief an unrelated assignment.⁴³

Even though Mr. Murphy received the Chief’s e-mail, he did **not** provide the Chief with a date that he expected Ms. Blyth to start her assignment nor did he provide her with any other information concerning his meeting with her. Had the instruction been that the Chief was responsible for the detail, it is fair to assume that she would have known about the detail, its starting time, its duration, and scope. No such information was given to the Chief and the only rational conclusion is that the Chief simply was a third party in the decision to detail Ms. Blyth. She had no control over the detail, and it was clearly not her responsibility.

Other evidence demonstrates that the charge is incorrect in stating that the Chief was given, and failed to follow, an instruction to detail Ms. Blyth. Ms. Blyth left Mr. Murphy a voice mail on August 22, 2003 and asked for the opportunity to talk with him about some conflicting information she had received from Michael Brown in their meeting on August 20, 2003. Mr. Murphy e-mailed Ms. Blyth indicating that he would call her on August 23, 2003. Mr. Murphy called Ms. Blyth on August 23, 2003, and Ms. Blyth shared her concerns over Mr. Brown’s statements that she would be working for him full-time and that there would be no opportunity for her to continue working on U.S. Park Police projects. Mr. Murphy acknowledged that what Mr. Brown told Ms. Blyth was correct and that she was to report Monday, August 25, and that, at least for the first several months, the assignment would be

⁴² See two-page e-mail from the Chief to Mr. Murphy and copied to Ms. Mainella dated 8-21-03 entitled “Update.”

⁴³ See Email response from Mr. Murphy to the Chief and copied to Ms. Mainella dated 8-22-03 on top of the Chief’s three-page e-mail to him dated 8-21-03.

full-time. During this same conversation, Mr. Murphy told Ms. Blyth that Mr. Brown was now her “boss.”

The specification also asserts that “Notwithstanding my offer, you failed to detail Ms. Blyth to the Office of Strategic Planning as I instructed you to do.” As stated previously, Mr. Murphy never instructed the Chief to detail Ms. Blyth, and never even provided her with a date or location to “detail” Ms. Blyth. To the contrary, he himself circumvented the chain of command, ironically one of the charges in the proposal, and communicated directly with Ms. Blyth about the existence of the detail, its starting time, its scope and to whom she now reported. Mr. Murphy never told the Chief that Ms. Blyth’s “detail” was to be to the “Office of Strategic Planning.” Instead, he told the Chief that, whenever it occurred, it was to be an assignment in **his** office. (emphasis added)

Other evidence conclusively establishes that the Chief never received an order to detail Ms. Blyth. No paperwork effectuating the detail was prepared for the Chief or presented to the Chief or Ms. Blyth regarding her change in assignment. A document produced by the agency as supporting documentation for this charge against the Chief is a typewritten “Memorandum” to “Pamela Blythe” [sic] from “Deputy Director.” (emphasis added) Neither Ms. Blyth nor the Chief ever received a copy of this memorandum prior to the agency producing the document as material relied upon in support of the removal proposal. The agency’s own documentation establishes that the “Deputy Director,” not the Chief, was ordering the detail. The last line in the second paragraph reads, “I am detailing you for 120 days to the Office of Strategic Planning in the Washington Office effective _____.” There exists approximately a one-inch space between the word “effective” and the period. No date has been inserted. No indication exists of the Chief even being copied on this document, establishing that Mr. Murphy himself intended to communicate via this document around the chain of command directly with Ms. Blyth.⁴⁴ This memorandum conclusively establishes that the Deputy Director, not the Chief, was detailing Ms. Blyth.

Most importantly, perhaps, is the fact that the Chief was never made aware that Mr. Murphy believed that the Chief failed to carry out his instructions to detail Ms. Blyth until the time she received the proposal. Had the Chief ever been made aware that she was perceived as not following an instruction, she would have complied. At all times, she acted under the belief that the detail was being effectuated by Mr. Murphy himself. Mr. Murphy’s actions, in meeting with Ms. Blyth outside of the Chief’s presence and in preparing a memorandum from the “Deputy Director,” establish that Mr. Murphy, not the Chief was detailing Ms. Blyth. Any negative connotation ascribed to the Chief’s comments objecting to the detail is not evidence that supports the charge. To the contrary, it is evidence that the Chief exercised her prerogative and obligation as a senior executive to voice objections to the policies she viewed as unwise. No discipline can be imposed for such legitimate managerial action. See Id.

Specification 2 for Charge 5. On May 8, 2003, the U.S. Office of Special Counsel, (OSC) requested proof that Deputy Chief Barry Beam (Beam) had successfully passed a psychological evaluation associated with his appointment to his position within the U.S. Park Police, and that Deputy Chief Dwight Pettiford (Pettiford) had successfully passed a medical and psychological evaluation associated with his appointment to his position with the U.S. Park Police. These requests were part of an ongoing

⁴⁴See two-page typewritten memorandum from “Deputy Director” to “Pamela Blythe” [sic].

OSC investigation into alleged prohibited personnel practices in the hiring of Ms. Blyth, Messrs. Beam and Pettiford. On or about June 12, 2003, I instructed you to direct these two employees to undergo the required evaluations. In response, you protested that, for various reasons, Beam's and Pettiford's evaluations were not necessary. I explained to you that none of your reasons had merit, and that it was necessary that this organization comply with the request for proof from OSC. Thereafter, I instructed you, for a second time, to direct Beam and Pettiford to undergo the required evaluations. Although I gave you lawful and proper instructions, you failed to carry them out. Rather, you challenged the propriety of my instructions, and openly expressed your unwillingness to comply with them. After I personally instructed Beam and Pettiford to undergo the required evaluations, they complied with my instructions.

Response to Specification 2 for Charge 5

Chief Chambers cannot confirm or deny whether the Office of Special Counsel made a request of anyone on May 8, 2003. The Chief was not informed of OSC's request regarding evaluations of Mr. Beam and Mr. Pettiford until June 3, 2003, during a telephone conversation with a member of the National Park Service's Human Resource Office.⁴⁵ The Chief had additional conversations regarding the evaluations with a member of the Solicitor's Office on June 5, 2003.⁴⁶ The Chief had previously learned of OSC's investigation on December 3, 2002, and immediately notified Ms. Mainella and Mr. Murphy.⁴⁷ However, it was not until June 3, 2003 that she first learned of OSC's request for evaluations.

The specification alleges that, "On or about June 12, 2003, I instructed you to direct these two employees to undergo the required evaluations." To the contrary, on June 5, 2003, the Chief alerted Mr. Murphy as to the request from the Office of the Solicitor to have Mr. Beam and Mr. Pettiford take an entrance-level psychological test. Mr. Murphy expressed surprise by the Chief's notification and, in fact, openly recalled that he had waived that test in the case of the Chief's hiring since the test is only geared toward young applicants who have never before held police positions. Further, during this initial conversation with the Chief, Mr. Murphy said he would have "them" (NPS Personnel) waive it. Thereafter, the Chief thanked Mr. Murphy and ended the conversation.

On June 11, 2003 the Chief learned from the Office of the Solicitor that the tests had not been waived. During the evening of June 11, 2003, the Chief called Mr. Murphy on the telephone and asked for his assistance. He sounded disturbed that the tests had not been waived, and said he recalled specifically telling the Director of Human Resources, Lynn Smith, to waive the tests. The Chief recalled, in fact, that she believed that she had been present when Mr. Murphy had given that direction and that she recalled the request.

The Chief reminded Mr. Murphy that the vacancy announcement for these Deputy Chiefs included a sentence which reads, "Candidates must also complete the required psychological screening

⁴⁵ See Email from Terrie Fajardo of the Human Resource Office of NPS to Chief Chambers and A/C Holmes dated June 4, 2003, and referring to this matter and a teleconference that happened the previous day.

⁴⁶ See Fax cover sheet from the Department of the Interior Division of General Law with a handwritten note regarding this issue. The top of the fax sheet has been date stamped by the fax machine on June 5, 2003, at 1118 hours

⁴⁷ See Email from Major Pam Datcher to Chief Chambers dated 12-3-02; see also Two-page memorandum from Traci Taylor of the Office of Special Counsel dated 12-2-02 to Major Datcher.

as required by the Department Manual” (emphasis added) and that the “Department Manual” (Part 446) makes it clear that the “psychological screen” is required for “entry level applicants,” which would not apply to these two employees.⁴⁸ The Chief also reminded Mr. Murphy that these two employees had been with the organization for over one year.

Contrary to the insinuation that the Chief and Mr. Murphy were antagonists on this issue, Mr. Murphy told the Chief during this conversation that he would be meeting with someone from the Solicitor’s Office the following day and would have the evaluations cancelled.

Thereafter, the Chief contacted Mr. Murphy during the evening of June 12 and asked him if he was able to resolve the issue regarding the psychological tests for Mr. Beam and Mr. Pettiford. Mr. Murphy said that the Chief might not like his answer but that, after hearing all sides, he had changed his mind and thought it was best overall if these two employees took the tests. The Chief acknowledged, “Well, sir, the final decision is obviously yours” and asked him to simply consider the issues one last time. Mr. Murphy listened patiently and then said that what he thought he would do was to call in both Deputy Chiefs and explain to them in person what he had decided to do and why he changed his mind. The Chief told him she thought that was a good idea and that the Chief would tell the Deputy Chiefs to expect such a meeting.

Rather than having a meeting with Mr. Beam and Mr. Pettiford, Mr. Murphy had a memorandum prepared for each individual and had the letters placed in two separate sealed envelopes. While the Chief was at NPS Headquarters, on or about June 16, 2003, Mr. Murphy’s secretary, Janice Brooks, handed the Chief the two memoranda and a third envelope addressed to the Chief. The memoranda are dated June 16, 2003.⁴⁹ Ms. Brooks advised the Chief that Mr. Murphy had asked that the Chief ensure that the letters were given to Mr. Beam and Mr. Pettiford.

As requested, the Chief returned immediately to Headquarters and gave Mr. Beam his envelope. Mr. Pettiford was not in his office at the time, and the Chief provided the envelope addressed to Mr. Pettiford to Mr. Beam for delivery. Mr. Beam later confirmed that he had handed Mr. Pettiford his envelope. The memorandum directed each Deputy Chief to “make arrangements” to take the psychological test. Contrary to the assertion that the Chief did not follow orders, she ensured that each individual received his respective envelope. She, therefore, complied with the only order given to her on this issue. Moreover, she instructed Mr. Beam and Mr. Pettiford to comply with the instructions in Mr. Murphy’s letter.

As evidence that the Chief complied with the instructions, Mr. Beam sent an e-mail to the Chief and Assistant Chief Ben Holmes on June 29, 2003 acknowledging receipt of the directive from Mr. Murphy and stating that he had, as directed, scheduled the psychological examination. At the same

⁴⁸ See - One page from the Vacancy Announcement in which the last large paragraph on the page ends with the reference sentence; see also two pages of Department of the Interior Departmental Manual 446, Chapter 2, Paragraph C (2) indicating that the medical examination and the psychological screen are only for entry-level applicants.

⁴⁹ See two-page memo to Deputy Chief Dwight Pettiford from Deputy Director Murphy dated June 16, 2003, with a “cc” to Chief Chambers. The memo directs, among other things, that Pettiford make arrangements to take an entrance psychological test and those arrangements should be made “within the next two weeks.” A similarly written memo was addressed to Deputy Chief Beam; however, the Chief does not have a copy of that memo. **See also**, one-page memo to Deputy Chief Barry Beam from Deputy Murphy dated 16, 2003, with a “cc” to Chief Chambers. The memo directs that Beam make arrangements to take a psychological test.

time, Mr. Beam filed a formal grievance and EEO complaint in “reference to the directive and other work related issues.” Upon information and belief, this grievance was later denied and Mr. Beam dropped his EEO complaint.⁵⁰

In the charge’s specification, the proposing official states that the Chief “protested that, for various reasons, Mr. Beam’s and Mr. Pettiford’s evaluations were not necessary.” The Chief emphatically asserts that she did not “protest.” As is her right and duty, the Chief politely and professionally reminded Mr. Murphy that he had applied standards in the Chief’s hiring that resulted in his waiving the psychological testing component. Moreover, as stated previously, she explained her understanding of the details of the language of the rules governing evaluations as well as the requirements in DM446. Her demeanor was at all times proper. The substance of the conversation was well within the propriety of a high level official dealing with her first level supervisor. Under the law, discipline is simply not appropriate.

The specification also alleges that Mr. Murphy “explained to you that none of your reasons had merit, and that it was necessary that this organization comply with the request for proof from OSC.” To the contrary, the Chief specifically recalls that Mr. Murphy expressed surprise that the psychological tests had not been waived and recalled that he had specifically given direction to the Director of NPS Personnel that, whatever was waived in her hiring, was to be waived in their hiring as well. Quite frankly, Mr. Murphy never stated to the Chief that “none of [her] reasons had merit.” (It appears that Mr. Murphy has fabricated this self-serving statement to curry favor with OSC in the upcoming complaint.)

The specification alleges that “Thereafter, I instructed you, for a second time, to direct Beam and Pettiford to undergo the required evaluations.” Chief Chambers was never instructed a first time to direct Mr. Beam and Mr. Pettiford to undergo a required evaluation. She was given the task of notifying them of such a requirement, which she completed immediately. Therefore, the specification is fundamentally flawed insofar as there was no opportunity to be instructed “a second time.” In reality, Mr. Murphy stated that he would meet with Mr. Beam and Mr. Pettiford and explain the circumstances and the rationale of his decision. That meeting did not take place as planned. Instead, the memoranda of June 16, 2003 were issued.

The Chief vehemently denies that Mr. Murphy gave her lawful and proper instructions that she failed to carry out. No instructions of **any** type were given up until June 16, 2003. To the contrary, prior to June 16, 2003, Mr. Murphy had himself opposed the testing and, after reversing himself, agreed that he would take responsibility for telling Mr. Beam and Mr. Pettiford of his decision that they undergo evaluations pursuant to OSC’s request. Thereafter, he reversed himself and instructed the Chief, through his secretary, to provide the officers with letters directing them to undergo the evaluations, tasks which the Chief immediately performed. The only instruction in this matter that Mr.

⁵⁰ See Email from Beam to Holmes and Chief Chambers dated 6-29-03 entitled “Grievance / EEO.” In the e-mail he states that he has complied with the directive to schedule a psychological examination but that he would also be filing a grievance and EEO complaint with the NPS Human Resource Office. See also Two-page letter from Barry S. Beam to Lynn Smith, Director, Human Resources, NPS.

Murphy gave was through his secretary, Janice Brooks, who provided the Chief with envelopes to deliver to Mr. Beam and Mr. Pettiford. The Chief complied with that instruction.

Other evidence supports the argument that the Chief, in fact, did comply with the only instruction given, that is that she provide the two officers with letters instructing them to undergo an evaluation. Sometime in July, Mr. Beam filed a grievance regarding Mr. Murphy's decision. In fact, on July 23, 2003, Mr. Beam received a typewritten letter from Mr. Murphy regarding his grievance asking what "personal relief" he was requesting.⁵¹ Nevertheless, the evidence demonstrates that Mr. Beam did receive the order to undergo the evaluation. He opposed the order and filed a grievance regarding the order. To suggest that the order was not given to the employees is an exaggerated effort to generate charges to support an ill-conceived and improperly motivated proposal.

Additionally, other evidence demonstrates the charge is based on erroneous information. On August 7, 2003, during a luncheon meeting, Ms. Mainella asked the Chief to brief her on the issue of psychological tests and the Deputy Chiefs. She told the Chief that she believed the tests had been waived in the same way the tests had been waived upon the Chief's hiring. The substance of the Chief's briefing to Ms. Mainella was similar to the information detailed herein. Director Mainella asked that the Chief supply her additional information and to fax it to her hotel room the following evening, August 8, since she would be on travel. She told the Chief that she was not aware that Mr. Murphy had reversed his original decision to waive the tests for the Deputy Chiefs and told the Chief that the Chief should have asked Ms. Mainella to intervene. She said she would review the information and see that the "right thing" was done.⁵²

The proposal states that "After I personally instructed Beam and Pettiford to undergo the required evaluations, they complied with my instructions." Insofar as this statement suggests that the Chief did something to direct Mr. Beam and Mr. Pettiford not to undergo the evaluation, this specification is categorically denied. As stated, the Chief complied with the only instruction she received, that is, to deliver the envelopes and letters dated June 16, 2003. Thereafter, the Chief monitored the situation, kept Mr. Murphy abreast of the scheduling of the examinations and participated in meetings regarding the topic. At no time did she say or do anything contrary to the order to cause the evaluations not to occur.⁵³

On August 30, 2003, the Chief learned and immediately notified Mr. Murphy that Mr. Beam was scheduled for an interview with the psychologist on September 3, 2003.⁵⁴ On September 17, 2003, Mr. Beam informed the Chief in writing that he had completed all tests and had the final

⁵¹ See two-page letter to Beam from Murphy dated July 23, 2003.

⁵² See Print-out of Chief Chambers' calendar for August 7, 2003, showing a meeting over lunch with Mainella; see also Fax cover sheet and nine additional pages of reference material for Fran Mainella, faxed to her hotel room, August 8, 2003, at approximately 10:30 p.m. See also Email from Chief Chambers to Mainella dated 8-9-03 alerting her to the package that the Chief faxed to her room the previous evening and thanking her for her willingness to get involved. That e-mail is covered by one from Mainella four minutes later acknowledging receipt of the fax and stating that she would read it "later."

⁵³ See Individual e-mails to Pettiford and Beam from Murphy dated 8-20-03 with a "bcc" to Chief Chambers. In the memo he thanks the Deputy Chiefs for agreeing to complete the "entry level psychological testing" and he directs them to "Keep Chief Chambers informed of your progress."

⁵⁴ See Email from Chief Chambers to Murphy with a copy to Mainella dated 8-30-03 providing the referenced update.

approval paperwork in his possession. The Chief, in turn, forwarded the e-mail to Mr. Murphy to apprise him that this assignment was completed.⁵⁵

Moreover, on November 9, 2003, the Chief wrote to Mr. Pettiford inquiring in writing of the status of his psychological and medical testing.⁵⁶ On November 10, 2003, Mr. Pettiford wrote to the Chief advising that he had “completed the test for everything” but that he had “not heard from anyone on the status.” The Chief, in turn, forwarded the e-mail to Mr. Murphy to advise him of the update.⁵⁷ On November 12, 2003, Mr. Murphy e-mailed the Chief with regard to Mr. Pettiford’s e-mail and said, “I will get you an update this week.” As of December 5, 2003, the Chief had received no update from Mr. Murphy.⁵⁸

Again, the suggestion that Chief Chambers did anything to thwart or delay the evaluations is simply erroneous and contrary to the Chief’s actions. Despite having never received instruction from Mr. Murphy to direct Mr. Beam and Mr. Pettiford to submit to the psychological tests, the Chief did, nonetheless, tell them to comply with Mr. Murphy’s written directive. Despite not being asked to keep Mr. Murphy informed of the progress of the tests for Mr. Beam and Mr. Pettiford, the Chief did, nonetheless, provide periodic written updates to both Mr. Murphy and Ms. Mainella.

The agency has attempted to suggest that a memorandum contained in the agency file of materials relied upon supports the instant charge. In particular, a memorandum produced by Mr. Murphy as supporting documentation for this charge against the Chief includes four typewritten paragraphs signed by Mr. Murphy and hand-dated 12-04-03.⁵⁹

The document itself is wholly unworthy of any evidentiary value as it is dated several months after the events described in the memorandum. Quite simply, the note is neither contemporaneous nor accurate. For instance, despite the proposal letter alleging that Mr. Murphy learned about OSC’s concern regarding the psychological tests on **May 8, 2003**, the supporting document says Mr. Murphy first learned about this issue on **June 1, 2003**. Moreover, Mr. Murphy’s supporting document states, “The job announcement required that a psychological test and physical exam be passed by the candidates selected before they could be hired.” This is not correct. The job announcements did not require these individuals to undergo these tests. The requirement for these tests, pursuant to written Departmental mandate, are for “entry level” employees entering law enforcement for the first time, not for seasoned, career employees.

The third paragraph of Mr. Murphy’s supporting document states, “I immediately informed the Chief of the U.S. Park Police, Teresa Chambers, that Beam and Pettiford must take the test.” As addressed more fully above, this statement is not correct. It was the Chief who informed Mr. Murphy on June 5, 2003 that an issue regarding the tests had arisen. In fact, Mr. Murphy expressed surprise

⁵⁵ See email from Beam to Chief Chambers dated 9-17-03 at 4:05 and Chief Chambers’ e-mail to Murphy on 9-17-03 at 10:51 p.m. providing him the referenced update.

⁵⁶ See Email from Chief Chambers to Pettiford with a copy to Holmes dated 11-09-03 and asking for an update.

⁵⁷ See Email from Pettiford to Chief Chambers dated 11-10-03 at 10:53 hours and Chief Chambers e-mail to Murphy with a copy to Mainella at 12:30 hours that same date advising of the update.

⁵⁸ See Email to Chief Chambers from Murphy dated 11-12-03 entitled “Update Please.”

⁵⁹ See One page typewritten document with no header other than the handwritten initials, “OSC.” The four paragraphs describe Murphy’s recollection of events surrounding the psychological tests of Beam and Pettiford. The document is signed “Donald W. Murphy” and the handwritten date of 12/04/03 is included under the signature.

that the issue had arisen because he had previously directed Human Resource personnel to waive the tests.

The third paragraph also states, “I gave her a direct order to have them complete the tests.” Again, as stated above, this assertion is not correct. Insofar as the deciding official should consider the Murphy memorandum as evidence, he must recognize that the memorandum has little value in purporting to be a timely recollection of events. While hearsay evidence is admissible in Board hearings, evidence that is unreliable and does not contemporaneously transcribe events is given little weight. In contrast to this specious evidence, the only direct order Mr. Murphy ever gave was for the Chief to deliver typed letters to both Deputy Chiefs.

The fourth paragraph of Mr. Murphy’s supporting document states, “She subsequently stalled the testing process by not following through on my direct order to have Beam and Pettiford take the tests.” Again, no evidence exists to show that the Chief in any manner stalled the process; this assertion is simply not correct. In fact, although not required to do so, the Chief asked for regular updates from the Deputy Chiefs and provided the updated information to both Mr. Murphy and Ms. Mainella. No evidence exists to show that the Chief stalled the process in any manner.

The Chief was unaware that Mr. Murphy believed that the Chief failed to carry out his instructions regarding any issue relating to this matter until the charge appeared in the proposal which was faxed to her by her attorneys on December 18, 2003. Mr. Murphy and the Chief have never discussed this matter outside of one meeting wherein the Chief advised Mr. Murphy that she had complied with the only order given on this matter, that is, to hand the Deputy Chiefs Mr. Murphy’s letters instructing them to go to the evaluations. The Chief was never counseled, reprimanded, or warned in any manner of any purported infraction. That six months has elapsed since the time this alleged violation occurred suggests that ulterior motives have caused this matter to resurface.

The agency’s action is simply not sustainable. The agency has failed in satisfying any degree of its burden of proof that the Chief failed to carry out an instruction. Moreover, the agency has not articulated any harm the Chief’s actions caused. Accordingly, the charge must be dismissed.

Specification 3 for Charge 5. In March 2003, after the Constitution Gardens “tractor man” incident, which paralyzed significant portions of the nation’s capitol, I instructed you to fully cooperate with and work with attorneys in the Solicitor’s Office in connection with any information and/or assistance they needed regarding the incident. On several occasions during July 2003 – September 2003, Randolph J. Myers, a Solicitor’s Office senior-level attorney, sought your specific assistance to meet with him and discuss a complaint that had been made to you by the Organization of American States (OAS). OAS alleged that during the “tractor man” incident, armed Park Police sharpshooters had deployed on the grounds of OAS Headquarters and, in doing so, had violated the treaty governing the building’s diplomatic status. Mr. Myers needed to meet with you so that he could assess whether the Park Police violated any applicable treaties, and whether the Park Police complied with its own General Orders that require contacting the U.S. Department of State. The OAS complaint against the Park Police also raised critical and sensitive legal issues with both inter-departmental and international implications. Contrary to my instructions to you, however, you did not respond to Mr. Myers’s request to meet with you regarding this serious matter.

Response to Specification 3 for Charge 5

Specification 3 for Charge 5 states in part, “In March 2003, after the Constitution Gardens “tractor man” incident, which paralyzed significant portions of the nation’s capitol, I instructed you to fully cooperate with and work with attorneys in the Solicitor’s Office in connection with any information and/or assistance they needed regarding the incident.” This allegation is false as no such instruction was ever given to Chief Chambers. In fact, Chief Chambers does not recall ever having a conversation with Mr. Murphy about the “tractor man” incident except to invite him to the after-action critique and then, later, in conversations with him about the written report as to the findings in that critique.

The specification also alleges that “On several occasions during July 2003 – September 2003, Randolph J. Myers, a Solicitor’s Office senior-level attorney, sought your specific assistance to meet with him and discuss a complaint that had been made to you by the Organization of American States (OAS).” Again, this allegation is false as no complaint was made or conveyed to Chief Chambers by the Organization of American States. The Assistant Secretary for Management for the Organization of American States wrote a letter to the Chief asking for the opportunity to meet about the “Shelter in Place” program.⁶⁰ Chief Chambers met with the Organization of American States (OAS) on July 10, 2003. During the meeting with OAS, the OAS representatives asked the Chief if she was familiar with their status being the same as that of embassies. Chief Chambers told them she was not. They made reference to a conversation they had with an officer during the “tractor man” issue, and they provided Chief Chambers with a copy of a document, which was perhaps a memorandum of understanding outlining OAS’ status and the U.S. Park Police’s role. Chief Chambers thanked the representatives of OAS, and the meeting was, in all respects, cordial. At no time did anyone “complain” about any incident, and no one asked for follow-up as a result of this conversation.

After the meeting, Chief Chambers handed the memorandum of understanding to Lt. Burks and asked her to see if the U.S. Park Police had a copy on file and to consider sending a reminder to the officers in the Weekly Bulletin. Ms. Chambers also asked Lt. Burks to provide a copy of the agreement to Randy Myers.

Sometime after July 10, Mr. Myers contacted the Chief’s Executive Officer, Lieutenant Phil Beck, and said he wanted to meet with Chief Chambers about the OAS. He did not indicate that he had received a complaint or that OAS had any unresolved issue. Mr. Myers was scheduled to meet with the Chief on July 30, 2003, but the Chief’s calendar entry shows that the meeting was “canceled.”⁶¹ The Chief does not recall the reason that the meeting was cancelled or who required the meeting be cancelled.

Contrary to the insinuation that the Chief intentionally avoided meeting with Mr. Meyers, Lt. Beck tried several more times, at the Chief’s request, to schedule a meeting between the Chief and Mr. Myers but was unsuccessful in finding a mutually available time. At no time did anyone convey an urgency to the Chief that she needed to meet with Mr. Myers immediately. At no time did she consider that she was not fulfilling an obligation or following an order.

⁶⁰ See two-page letter dated June 19, 2003, from Harding.

⁶¹ See Calendar print-out for July 30, 2003.

The specification alleges that “OAS alleged that during the ‘tractor man’ incident, armed Park Police sharpshooters had deployed on the grounds of OAS Headquarters and, in doing so, had violated the treaty governing the building’s diplomatic status.” No such allegation was ever made by OAS representatives to the Chief during their meeting with Chief Chambers on July 10, 2003. Moreover, no such “complaint” existed in OAS’ letter. Quite simply, the allegation is completely new for Chief Chambers. The Chief has been given no evidence and has no recollection that this complaint exists or, if it does exist, when the complaint surfaced or what it entailed. At no time did an OAS representative contact the Chief to raise this allegation. The timing of this allegation occurred several months after the tractor man incident and several months after the meeting between the Chief and the OAS representatives. The delay, coupled with the absence of any mention of the incident in the intervening months, is indicative of the frivolous nature of this charge. Had a treaty been violated, it is fair to assume the OAS would have mentioned the violation in person or in writing. Moreover, it is reasonable to assume that the OAS would have made inquiries if they expected the Chief to resolve the issue. Further, it is illogical to think that the Chief and the Solicitor’s Office would knowingly ignore a treaty violation. The charge does not pass the so-called smell test.

The specification alleges that “Mr. Myers needed to meet with you so that he could assess whether the Park Police violated any applicable treaties and whether the Park Police complied with its own General Orders that require contacting the U.S. Department of State.” Mr. Myers never notified the Chief of the purpose of the meeting request. The only reason Mr. Myers gave Lt. Beck for the meeting was to discuss the OAS. Chief Chambers agreed to meet with Mr. Myers, and Lt. Beck attempted to set up a meeting. However, Chief Chambers recalls that Mr. Myers eventually withdrew his request for a meeting. It is simply implausible to suggest that Mr. Myers would consider the Chief’s actions as insubordinate with regard to any instruction from Mr. Murphy without taking the time to make a simple phone call advising her of the need for a meeting and explaining why the meeting was necessary.

The specification also suggests that “the OAS complaint against the Park Police also raised critical and sensitive legal issues with both interdepartmental and international implications.” Again, the Chief has no recollection of having been advised of a “complaint against the Park Police” by OAS. She hosted an hour-long meeting with representatives of the organization who talked about the “tractor man” case but never made a complaint against her officers. They notified her that, based upon an officer alerting them to the possibility of building evacuations, they thought that Park Police officers might not be aware of the status of OAS. They were clear that this communication was not a complaint of any kind. They were pleased that the Chief was willing to remind officers of the existing agreement. It is reasonable to assume that, if OAS representatives had a complaint, they would have included it in their introductory letter to Chief Chambers when they asked for the opportunity to meet.

The specification makes the erroneous charge that “Contrary to my instructions to you, however, you did not respond to Mr. Myers’s request to meet with you regarding this serious matter.” This allegation is simply false and cannot be supported because the instruction was never given. Mr. Murphy and Chief Chambers never discussed her meeting with OAS. Mr. Murphy never instructed the Chief to meet with Mr. Myers. The charge of “Failure to carry out a supervisor’s instructions” simply did not occur because no instruction was given to Chief Chambers by Mr. Murphy or any other supervisor directing her to meet with Randy Myers or any other member of the Solicitor’s Office about the OAS.

Chief Chambers was never aware that Mr. Murphy believed that she failed to carry out his instructions regarding any issue relating to this matter until the charge appeared in the proposal for removal. Mr. Murphy and Chief Chambers have never discussed this matter at any time or in any fashion except as noted above. The agency's action has no merit and cannot be sustained.

CHARGE 6. Failure to follow the chain of command.

Specification for Charge 6. As noted in Specification 1 for Charge 4, above, on or about August 18, 2003, I instructed you to detail Pamela Blyth to the Office of Strategic Planning for 120 days. In response, you expressed your unwillingness to carry out my instructions. Thereafter, during my absence from work during the week of August 18, 2003, you appealed to Deputy Secretary Griles and convinced him to cancel my instructions that Ms. Blyth be detailed to the Office of Strategic Planning.

By appealing my instructions to you to Deputy Secretary Griles and convincing him to cancel my instructions to you about Ms. Blyth, rather than appealing the matter to your second-level supervisor, the Director of the NPS, you failed to follow the chain of command regarding lawful and proper instructions given to you by me, your immediate supervisor.

Response to Specification for Charge 6

The specification alleges that "Thereafter, during my absence from work during the week of August 18, 2003, you appealed to Deputy Secretary Griles and convinced him to cancel my instructions that Ms. Blyth be detailed to the Office of Strategic Planning."

The Chief acknowledges that she did not appeal the decision to detail Ms. Blyth to her second level supervisor, Director Mainella. However, her reasons for raising this matter to Deputy Secretary Griles, as addressed fully below, establish that her action was justified; was neither unlawful nor against any regulation; was welcomed and condoned by Deputy Secretary Griles; and was consistent with the actions of others throughout the agency and the government, including the proposing official. Moreover, the agency has articulated no harm caused by the Chief's actions. To the contrary, the Deputy Secretary's action in reversing Mr. Murphy's decision demonstrates that at least one manager higher than Mr. Murphy believed his decision was in need of correction. The agency has, therefore, failed in its burden to demonstrate that the Chief's action caused any harm and that any adverse action is necessary to promote the efficiency of the service.

As addressed more fully in response to specification one of charge five above, the Chief held and expressed significant concerns regarding the decision to detail Ms. Blyth on a full-time basis. She had expressed concerns to both Mr. Murphy and Director Mainella that the detail would greatly and adversely impact the U.S. Park Police. Moreover, she expressed the concern that the decision would condone the underhanded tactics of those employees bent on removing the Chief and Ms. Blyth. When Chief Chambers learned, through Ms. Blyth, that Mr. Murphy did not intend to honor his commitment to compromise and allow Ms. Blyth to participate in this detail on a part-time basis, she desired to raise her concerns to a higher level.

While it is true that Director Mainella is the Chief's second level supervisor, with respect to the issue of Blyth detail, Director Mainella had advised the Chief that she would support whatever

decision Mr. Murphy rendered. Director Mainella had already told Chief Chambers on August 5, 2003, when she first alerted the Chief of her desire to “detail” Ms. Blyth, that she would defer to Mr. Murphy and would allow him to decide how to handle the scheduling and timing of this assignment. Director Mainella directed that Chief Chambers should take her concerns to Mr. Murphy and that he would be making the decisions regarding this matter. Therefore, in seeking to appeal Mr. Murphy’s decision regarding Ms. Blyth, she sought to raise the decision to a level above Director Mainella, because she had already indicated she would adhere to Mr. Murphy’s decision.

At the time of Mr. Murphy’s decision, Chief Chambers alerted Officer Jeff Capps that certain projects would not move forward as planned because many of the projects in which Ms. Blyth was engaged involved the FOP. Officer Capps, who had developed a positive working relationship with Deputy Secretary Griles, telephoned Mr. Griles on August 23, 2003, and left a voice mail advising him that things were awry within the U.S. Park Police regarding the relationship with the NPS and urging Mr. Griles to call the Chief. Officer Capps telephoned Chief Chambers on August 23, 2003, and alerted her that he had contacted Mr. Griles to have him call Chief Chambers regarding an urgent matter.

By late Sunday evening, August 24, 2003, Chief Chambers had not heard from Mr. Griles and had been unable to reach Assistant Secretary Manson. Aware and concerned that the detail of Ms. Blyth was due to start the following morning on August 25, 2003, Chief Chambers telephoned Mr. Griles. Officer Capps had previously alerted the Chief that Mr. Griles was on travel and would not be back until much later Sunday night.

Expecting to receive his voice mail, Chief Chambers was surprised to get Mr. Griles himself. He began the conversation by acknowledging that Officer Capps had left an urgent message for him to call the Chief. Chief Chambers thanked Mr. Griles for his time. She explained to him the circumstances surrounding Ms. Blyth’s “detail” and appealed to him to overturn it. The Chief alerted Deputy Secretary Griles to many embarrassing and potentially dangerous decisions that had been made with regard to staffing and protecting the icons. The Chief explained her concern that the decisions made would likely result in troubles in the future that would discredit the Administration and the entire Interior Department.

During the conversation, Chief Chambers informed Mr. Griles that she had appealed to Ms. Mainella early in conversations regarding Ms. Blyth’s “detail” and that Ms. Mainella had made it clear that she was leaving the decision on how to handle Ms. Blyth’s “detail” in Mr. Murphy’s hands. At no time did Mr. Griles suggest that the Chief’s call was inappropriate or impolitic. To the contrary, when the Chief expressed concerns of retaliation in the event that Mr. Murphy learned of the conversation, Deputy Secretary Griles assured the Chief that no such retaliation would ever occur. At no time did he direct the Chief back through her chain of command. He in fact told the Chief that she should not fear retribution.

Later that same evening, Mr. Griles called the Chief and reversed Ms. Blyth’s transfer. He assured her that Assistant Secretary Manson would get involved in working to resolve these issues of safety raised by the Chief. Mr. Griles directed Chief Chambers to notify Ms. Blyth that she was to report to U.S. Park Police Headquarters Monday, August 25, and not to the location Mr. Murphy had directed her to report.

Once back in cell phone range on August 26, 2003, Judge Manson called Chief Chambers and advised that Mr. Griles had left a voice mail for him, as had the Chief. He advised the Chief that he would be informing Mr. Murphy, who was out of town, that the Blyth detail had been rescinded. Chief Chambers alerted him to the e-mail Mr. Murphy had sent her criticizing her contacting the Deputy Secretary and classifying her actions as “nefarious.” In response, Judge Manson commented that, “I **told** him not to do that. I will take care of Mr. Murphy.”

The proposal states that “By appealing my instructions to you to Deputy Secretary Griles and convincing him to cancel my instructions to you about Ms. Blyth, rather than appealing the matter to your second-level supervisor, the Director of the NPS, you failed to follow the chain of command regarding lawful and proper instructions given to you by me, your immediate supervisor.” While the Chief’s actions obviously annoyed the proposing official, the agency has cited no rule, regulation or policy that prohibits an employee from appealing outside of her chain of command. To the contrary, the fundamental principles espoused by 5 USC 2302 mandate that employees are free to raise concerns to those not in one’s chain of command.

In Horton v. Department of the Navy, 66 F.3d 279 (1995), the Court of Appeals for the Federal Circuit observed that “[T]he purpose of the Whistleblower Protection Act is to encourage disclosure of wrongdoing to persons who may be in a position to act to remedy it... directly by management authority....” See also Murphy v. Department of the Treasury, 86 MSPR 131 (2000).

Indeed, out of the chain of command disclosures are not only protected, but also are viewed as fundamental to halting abuses of authority and other improper practices. That the agency would censure protected activity underscores the retaliatory nature of the proposal.

What occurred here is protected activity in an effort to reverse an inappropriate decision to place Ms. Blyth on a detail. The Chief disagreed with a decision and asked a higher official to intervene. The basis of her request was to raise concern that serious problems might arise as a result of a series of poor decisions by Mr. Murphy, of which the Blyth detail was the latest. Based on the reversal of Ms. Blyth’s detail, it is obvious that the Deputy Secretary also disagreed with Mr. Murphy’s decision. Any action taken against the Chief because she appealed Mr. Murphy’s decision is simply unlawful.

Moreover, the notion of speaking to Mr. Griles was not entirely novel or even remotely forbidden. On at least one occasion in the past, Mr. Murphy had urged Chief Chambers to speak directly with Mr. Griles, thus circumventing the chain of command, regarding the transfer of a new commander to the Horse Mounted Patrol Unit.⁶²

Additionally, as the following examples demonstrate, employees and managers of the National Park Service routinely circumvent the formal chain of command:

⁶² See Email from Chief Chambers to Mr. Murphy dated 6-18-03, which states, “I spoke briefly with Deputy Secretary Griles yesterday regarding the personnel change at the barn. It was well worth the time, and I thanked him for his interest. Thanks for opening that door for me.”

- a. On November 29, 2003, Mr. Murphy wrote an e-mail to DAS Parkinson regarding the U.S. Park Police Special Enforcement Team deployment. Mr. Murphy neither routed the memo through nor copied his supervisor, Director Mainella, nor the DAS in his chain of command, Paul Hoffman.⁶³
- b. A “Sample Format of Justification Memo” included on the NPS web site which “should be used for all NPS employees who are traveling internationally” shows the routing of the memorandum from the “Superintendent” to the “Deputy Director, NPS” and the “Chief, Office of International Affairs, NPS” to the “Assistant Secretary for Fish and Wildlife and Parks.” This sample memo has a signature block for the “Regional Director” but bypasses both the Director of the NPS (Ms. Mainella) and the DAS for Fish and Wildlife and Parks (Hoffman).⁶⁴
- c. A recent memorandum from Ms. Mainella to Assistant Secretary Lynn Scarlett is routed only through Assistant Secretary Manson. In doing so, Ms. Mainella has bypassed the DAS in her chain of command, Mr. Paul Hoffman.⁶⁵
- d. Another memorandum from Ms. Mainella earlier in the year is routed the same as described in the previous example, bypassing Mr. Hoffman.⁶⁶
- e. A memorandum from Assistant Secretary Manson to the Director of Fish and Wildlife neither copies nor goes through the DAS for Fish and Wildlife and Parks (Hoffman).⁶⁷
- f. A memorandum from Assistant Secretary Scarlett to the Directors of the National Park Service, Bureau of Land Management, Fish and Wildlife Service, U.S. Geological Survey, and Bureau of Reclamation, bypasses the Assistant Secretaries **and** the Deputy Assistant Secretaries in those chains of command.⁶⁸
- g. A memo from the Acting Superintendent of the National Capital Parks – Central, through the Regional Director of the National Capital Region, to the Director of the National Park Service bypasses the Deputy Director of the NPS in that chain of command.⁶⁹

Once again, the agency’s proposal in singling out the Chief underscores the retaliatory nature of the action. While the agency has censored the actions of the Chief in engaging in activity protected by the United States Constitution and 5 USC 2302, it has condoned the identical actions of officials throughout the agency. Indeed, exhaustive discovery will doubtlessly unearth hundreds, if not thousands, of instances wherein employees have engaged in the identical conduct as Chief Chambers. The action of the agency is unlawful, retaliatory on its face, and disparately applied. As such, this

⁶³ See Email from Mr. Murphy to Parkinson dated 10-29-03 and entitled “U.S. Park Police Set Team Deployment.”

⁶⁴ See “Sample Format of Justification Memo” for international travel.

⁶⁵ See Memorandum dated 11-7-03 from Ms. Mainella to Scarlett entitled “National Park Service Process for Future Competitive Reviews Prepared in Accordance with OMB Circular A-76 Revised 29 May, 2003”

⁶⁶ See Two-page undated memorandum from Ms. Mainella to Scarlett through Manson entitled “Revised Draft Competitive Sourcing Plan.”

⁶⁷ See Memorandum dated 10-29-03 from “ASFWP” (Manson) directly to the “Director, U.S. Fish and Wildlife Service.”

⁶⁸ See Two-page memo dated 2-25-03 from Scarlett to five DOI Bureau Directors.

⁶⁹ See Two-page undated memo from Acting Superintendent NCP – Central thru the Regional Director, NCR, to the Director NPS.

action must be reversed. If the Chief's actions were displeasing to Mr. Murphy, such action is not worthy of discipline, let alone the ultimate penalty. To date, Mr. Murphy has never taken the time to meet with the Chief to counsel or request the Chief's rationale for going outside the chain of command.⁷⁰ A simple meeting was all that was needed to avoid this embarrassing and humiliating experience for everyone.

Accordingly, Charge 6 must be dismissed.

I. THE PENALTY PROPOSED AGAINST MS. CHAMBERS IS OVERLY HARSH. THE DOUGLAS FACTORS WERE NOT PROPERLY CONSIDERED. UNDER THE FOLLOWING ANALYSIS USING THE DOUGLAS FACTORS, NO PENALTY IS APPROPRIATE.

The proposed penalty against Ms. Chambers is unsustainable in light of the *Douglas* Factors. In *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981), the Merit Systems Protection Board established the basic parameters of its authority to review the reasonableness of a penalty imposed by an agency. The *Douglas* decision cites twelve factors, which are considered in determining whether the penalty imposed by an agency may be found to be appropriate under the circumstances. *Douglas* mandates that selection of an appropriate penalty be undertaken through a responsible balancing of all the relevant factors present in an individual case.

Under *Douglas*, the following factors are generally recognized as relevant in assessing an appropriate penalty:

- 1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) the employee's job level and type of employment, including supervisory, or fiduciary role, contacts with the public, and prominence of the position;
- (3) the employee's past disciplinary record;
- (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
- (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (7) consistency of the penalty with any applicable agency table of penalties;

⁷⁰ Document: Email from Mr. Murphy to Chief Chambers, copied to Ms. Mainella, dated 8-25-03, and entitled "Detail of Pamela Blyth."

- (8) the notoriety of the offense or its impact upon the reputation of the agency;
- (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about conduct in question;
- (10) potential for the employee's rehabilitation;
- (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and,
- (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

1. *The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;*

Charge 1: Charge one, entitled "Improper Budget communications," attacks the Chief's communications with an Interior Appropriations Subcommittee staff member. The agency has neither articulated nor demonstrated any harm from the alleged misconduct. While the nature of the penalty suggests the proposing official certainly believes the conduct is absolutely taboo and most serious, this type of communication on the part of Chief Chambers had been actually encouraged in the past by her supervisors. Chief Chambers certainly did not intend harm to result from her communication. Despite its conclusory assertion of undermining the agency's image in the eyes of the staffer, the agency has shown no evidence that such harm inured to the agency. If such harm did occur, the Chief certainly did not intend such harm, nor was such harm a foreseeable consequence of her actions. Chief Chambers has never been cautioned, counseled, or reprimanded in any manner for the type of communication described in this charge. Further, in addressing this factor, it is significant to know that the Chief has never received any formal training as a federal employee regarding what constitutes proper and improper budget communications. As one who did not rise to her position from within the federal system, the Chief admittedly is inexpert on some non-law enforcement matters that are collateral to her primary function as Chief of the Park Police. Such naïveté underscores that the Chief possessed no intent to violate any rule, regulation, or law in this matter. The communication was not committed maliciously, and no personal gain benefited the Chief.

Charge 2: Charge two arises out of comments made by the Chief in response to questions from a reporter for the *Washington Post*. As demonstrated more fully above, the Chief's communication with the media about similar issues of public concern have regularly occurred since her employment with the National Park Service. In fact, the Chief's performance in these interviews has consistently been lauded by her supervisors and superiors throughout her tenure as Chief. The Chief intended no harm from her answers and provided information she believed was readily available to the public through its own observations. Moreover, as demonstrated above, the Chief's superiors and predecessor have repeatedly engaged in identical conduct with impunity. The Chief's acknowledgement of the

information possessed by the reporter and the public was neither committed maliciously or for personal gain. At no time did she believe that her actions violated a rule, regulation, or law. Her interests, since assuming the Chief position, have always been for the betterment of the U.S. Park Police and the National Park Service. In this instance, her actions were similarly motivated.

Charge 3: Charge three alleges the Chief's comments to the *Washington Post* constitute improper budget deliberations. The Chief has demonstrated more fully above that the cited OMB circular is inapplicable and not violated. Any actions by the Chief construed to be raising budget issues were not done intentionally or with ulterior motivation. In assessing the intentions of the Chief, the deciding official should consider that the Chief has never received any training regarding what is appropriately communicated during a budget process. Moreover, the circular to which the proposal refers was never provided to the Chief and was likely never transmitted to her level. The Chief's responses to the reporter regarding the current budget's shortfall and what would be needed for the next budget year were innocuous, innocent, generalized comments that had no bearing or relationship to actual budget documents. Further, comments identical in content and nature are made on a frequent, if not daily basis. As such, the Chief exhibited no intent to disclose budget discussions, negotiations, or justifications, and the comments were made without malice or for personal gain.

Charge 4: Charge four again raises the Chief's comments in the press. The response above demonstrates that the cited statute is inapplicable because no legislation existed which the Chief was promoting or opposing. Nevertheless, at no time did the Chief believe that she was lobbying Congress when she answered questions from the reporter. Although the Chief has never received formal training regarding the issue of lobbying, her actions were never intended to influence any member of Congress or even her own superiors. The Chief has received a one page informational sheet addressing this topic of lobbying which is supplied in the Department of the Interior's Ethics Guide. Even considering the information provided in the Ethics Guide, Chief Chambers did not view her statements about the need for additional staffing as violating any lobbying regulations. Again, there was (and is) no pending legislation before Congress regarding staffing for the U. S. Park Police. Additionally, numerous public documents and studies exist that speak to the need for increased staffing for the U. S. Park Police. Her statements were not committed with malice or made for personal gain.

Charge 5: Charge five consists of three separate specifications charging that the Chief failed to carry out a supervisor's instructions. The information above demonstrates that the Chief neither intended to nor failed to carry out her supervisor's instructions in any of the cited instances. While the Chief expressed her differences of opinion to Mr. Murphy regarding the first two specifications, she never acted beyond the bounds permitted by law. More importantly, she never defied her superior and never acted contrary to a lawful instruction. As such, her actions were neither intentional nor malicious, nor were they committed for gain. In law enforcement for over twenty-seven years, the Chief acknowledges and agrees that subordinates must abide by a supervisor's instructions. She has never deviated from that standard of protocol.

Charge 6: Charge six addresses the same conduct complained of in charge five, specification one, i.e., the Blyth detail. The Chief acted with intent to correct a decision that she opposed. Her intent was not to subvert the agency's chain of command, but rather to appeal a decision with which she disagreed. The Chief is not aware of, and the charge does not include a reference to, any rule, regulation, or law that prohibited her conduct. To the contrary, it is fundamental that employees may

raise concerns outside of the chain of command. The Chief's actions in exercising this right were not to embarrass her supervisor. Rather, her actions were to correct a perceived problem, a perception which the Deputy Secretary obviously shared.

2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of his position;

While it is true that the Chief's position in the National Park Service and the Department of the Interior is one of prominence and involves a high level of public contact, her actions themselves did not diminish the reputation of the position, the agency, or her relationship with her subordinates. Unfortunately for the agency, the press and the public have vehemently opposed the agency's treatment of the Chief via the instant proposal. Such reaction is not within the control of the Chief nor has it interfered with the prominence or performance of her position. The Chief readily accepts that she is held to a high standard of performance and is aware that the agency cannot tolerate misconduct. The Chief's responses to the agency's charges demonstrate she has not engaged in any actionable misconduct. As addressed in *Douglas* factor one, if any misconduct is found, such was neither intentional nor malicious. The Chief's efforts have been motivated entirely by the desire to improve the overall safety of the National Parks for which she and her officers are responsible.

The instant complaint against Chief Chambers did not impact her daily duties, her fiduciary responsibilities or her capacity as a supervisor. While Chief Chambers is aware her behavior on these occasions is alleged to be inappropriate, the agency has presented no evidence that her actions detracted in any way from her ability to perform her duties or that they detracted in anyway from the agency's mission. These events have not compromised the Chief's ability to perform her duties.

3. The employee's past disciplinary record;

The letter of reprimand to which the proposing official refers in the removal proposal is dated March 31, 2003. The discipline is in reference to incidents that occurred in mid 2002 involving Chief Chambers' use of a government vehicle and authorization Chief Chambers gave to another employee to use a government vehicle. In both cases, Chief Chambers' supervisor believed the use was improper. The letter dealt with matters completely distinct from the matters at hand. Moreover, in her twenty-seven years of service, she has never been investigated or subject to other discipline except for a minor departmental traffic accident in 1985. The instant proposal is the first instance that any one has ever questioned her conduct as a law enforcement officer.

In assessing this factor, it is important to note that, during the discussion of this letter of reprimand with Mr. Murphy, the issuing official in that matter and Chambers' supervisor, Mr. Murphy, agreed that it was important for the Chief to be available 24 hours a day, 7 days a week, and that the use of the vehicle for errands and personal business was reasonable. In this case, though, he believed the distance traveled was outside the bounds of what he believed was reasonable, although he was unable to articulate what distance would be acceptable. Despite a few errors in the letter itself which Chief Chambers pointed out, Mr. Murphy encouraged the Chief to sign the letter of reprimand and assured her that he had the authority to and would retain the letter for only a few days to a few weeks and then would discard it. Mr. Murphy told her that he needed to "put something in [her] file"

to satisfy the Office of the Inspector General. With that assurance, Chief Chambers signed the letter and, based upon her belief of the good faith of her supervisor at that time, did not exercise any appeal rights she may have had. At the time, Chief Chambers had no reason to doubt that what Deputy Director Murphy was telling her was the truth.

The circumstances surrounding the issuance of the letter of reprimand in March 2003 are in no manner similar to the charges placed against Chief Chambers by the proposing official. Additionally, had Mr. Murphy honored his commitments to the Chief, the letter would not be available to be considered in this matter. As a result, the letter of reprimand should have no bearing on the instant case.

4. *The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers and dependability;*

Chief Chambers began her employment with the National Park Service on February 10, 2002. She has never received a job description nor has she received any performance evaluations. She has never been formally counseled about her work ethic or performance. In fact, she has had every reason to believe that her performance met with the approval of her superiors.

As recently as October 27, 2003, after alerting her supervisor, Mr. Murphy, to a significant change she had instituted regarding supervisory and leadership training in the United States Park Police, she received a complimentary e-mail from him stating:

Thanks, Teresa. This is an important step.

Three weeks later (November 18, 2003), from the Deputy Assistant Secretary for Law Enforcement and Security, Larry Parkinson, Chief Chambers received the following e-mail in response to a report she had sent to him via the chain of command regarding icon security inspections:

Thanks, Teresa. Excellent report that gives a straightforward assessment and candidly sets forth areas that need improvement (and the steps you're taking to address them). Because this is a good example of your weekly reports, I thought I might share it with Rossetti [Senior Counsel to the Secretary], Lynn Scarlett [Assistant Secretary for Policy, Management, and Budget], and Earl Devaney [DOI Inspector General] . . .

Ten days later (November 28, 2003) Larry Parkinson sent another e-mail:

Thanks, Teresa – excellent report.

In fact, on September 5, 2003, following the NFL Kick-off Events of the previous evening, Secretary Norton herself telephoned the Chief and complimented her for the outstanding job she did in coordinating the security for that event as well as the Chief's overall outstanding performance. There are other examples available upon request that echo these types of sentiments.

Absent formal evaluations, critiques, and performance appraisals by her supervisor, it is reasonable for Chief Chambers to conclude that her supervisor and superiors in the Department of the Interior had no concerns regarding her performance. In fact, no evidence to the contrary exists.

Chief Chambers has always maintained the highest integrity and character. Her conduct, honesty, and record have never been questioned. This factor mandates that the seriousness of the offense with which she has been charged be balanced against the length and success of her career in government service. In so doing, this factor mandates that no penalty is warranted and appropriate.

5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;

Under Board case law the analysis of this factor involves much more than a supervisor's statement that he/she has lost confidence in the employee. Specific evidence and testimony as to why an employee can no longer be trusted is critical. In other words, a supervisor cannot just say it, he/she has to prove it. See Jefferson v. U.S. Postal Service, 73 MSPR 376 (1997).

The proposing official's removal proposal fails to provide specific evidence or testimony as to why he has lost confidence in the Chief. The allegations leveled against Chief Chambers have no effect whatsoever on her ability to perform her assigned duties. As the Chief of the U.S. Park Police, Chief Chambers is responsible for the planning and execution of a broad range of law enforcement programs that involve over 700 employees, mostly police officers. The current allegations against Chief Chambers have nothing to do with her job performance or her ability to lead the U.S. Park Police into the future. The Chief is charged with the duty of defending important government property. The current allegations have nothing to do with her ability to perform her primary mission.

Chief Chambers continually received positive performance reinforcement during the time it is alleged she was committing the offenses with which she is now charged. In addition, prior to the initiation of the investigation that led to her proposed removal, the Chief had no indication that any superior was dissatisfied with her work. To date, no allegation exists which either indicates or implies that the Chief failed to perform her duties in a satisfactory manner. On the contrary, the evidence presented proves that she continued to perform her duties in an outstanding manner throughout the period of time she was allegedly running afoul of policies and procedures as interpreted by the proposing official.

Accordingly, the issues raised in the current notice of proposed removal in no way relate to the Chief's ability to perform her duties. Other than a bald, unsupported allegation, no indication exists that the personnel issues raised have caused any superior to lose confidence in her ability to perform as she has for the last twenty-seven years, i.e., in an exemplary fashion.

6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

Here, from what we already know, without the benefit of discovery, several senior officials have engaged in the very same alleged misconduct engaged in by Chief Chambers. The review of

newspaper articles has just begun. However, the immediate analysis demonstrates that the Chief has been singled out for activity that is commonplace. Clearly, hundreds of employees, if not more, have engaged in the exact same conduct as Chief Chambers. Upon information and belief, no other employee, including her predecessor and the proposing official himself, have been recipients of proposed discipline. There exists throughout the Department of the Interior and certainly within the National Park Service, specific documented examples of each of the “misdeeds” alleged to have been committed by Chief Chambers. However, in the instances we have discovered and have cataloged, none of these employees has been disciplined in any manner with regard to his or her actions.

More egregiously, upon information and belief, the very person charging the Chief with misconduct is “guilty” himself. The intentionally different treatment, motivated by reprisal, afforded other employees, without similarly disciplining all employees for similar alleged misconduct, therefore, constitutes disparate treatment.

7. Consistency of the penalty with any applicable agency table of penalties;

The only applicable provision in the agency’s table of penalties that appears to have any relevance here is No. 4 covering “refusal to comply with proper order.” Although the table is correctly described as a mere “guideline,” the preamble also states “that discipline be administered in a constructive and progressive way.” The selection of the maximum allowable penalty, especially in light of the fact that the Chief was never counseled or advised that her actions, heretofore condoned or even praised, were regarded as misconduct is draconian in the extreme and contrary to the most fundamental principle of civil service.

8. The notoriety of the offense or its impact upon the reputation of the agency;

Admittedly, the media attention to this matter has been ongoing and consistent. The notoriety has been extensive. The outcry and negative publicity is certain to further damage the reputation of the Department should the agency exact discipline of any kind for the matters put forward by the proposing official. This is not the result of the Chief’s desires. The matters reported in the press have not addressed the actions of Chief Chambers underlying the charges. Rather, the press has focused on the Agency’s handling of this disciplinary action. Unlike many other cases that may come before a deciding official, it is not the behavior of the Chief that has brought unwanted attention to the Department. The press has attacked the manner in which the agency has comported itself, whether it be real or perceived. For its issuance of a gag order, to placing the Chief on administrative leave, to imposing discipline without any investigation, the agency has been crucified in the press. However, at no time did the Chief intend her actions giving rise to this proposal to harm the reputation of the Agency.

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

Chief Chambers has never been warned that her conduct offended anyone or was inappropriate. To the contrary, her skills in dealing with the press were the frequent subject of praise in e-mails and personal comments. Chief Chambers never intended to harm anyone and no one interpreted her actions as inappropriate until information appeared in the *Washington Post*. Moreover, until Chief

Chambers was placed on administrative leave on December 5, 2003, she was never put on notice that her actions were the potential subject of discipline.

As previously mentioned, Chief Chambers began her employment with the National Park Service on February 10, 2002. She has never received a job description nor has she received any performance evaluations. She has never been formally counseled about her work ethic or performance. In fact, she had every reason to believe that her performance and conduct met with the approval of her superiors.

Chief Chambers has never, as a Federal employee, received any training regarding any of the issues described in the proposal, other than that training provided in the Ethics Manual and a one-hour course of instruction conducted by members of the Ethics Office of the National Park Service during her second year of employment.

In terms of clarity with which the Chief was placed on notice, Chief Chambers had no notice regarding her conduct as described by the proposing official. In fact, in some instances, she has received no corrective action or constructive criticism for acts which occurred several months prior to the proposal. The removal proposal, received on December 18, 2003, served as the first notice to the Chief that her conduct was in question or alleged to be worthy of removal.

10. Potential for the employee's rehabilitation;

Chief Chambers, throughout her more than 27 years in law enforcement service, has consistently approached challenges as opportunities and has always sought out "lessons learned" from every situation. Other than a letter of reprimand, she has never been the subject of discipline in her federal career. Moreover, she has always availed herself of the training necessary to improve. She is receptive to constructive criticism and assures the deciding official that she will endeavor to improve in any area deemed necessary or appropriate. Although the charges, as leveled, and the level of discipline proposed, suggest that the chief is incorrigible, the above response has, we believe, demonstrated that the charges are based on erroneous and unsupported conclusions. The Chief has admitted that she has entered press conferences and interviews without training or guidance. Until now, she has always been told that her performance in interviews has been appropriate. Prior to this proposal, she has never been counseled to correct her performance or advised how to improve. She will take whatever measures are necessary to ensure the continued confidence in her actions.

With respect to the charges regarding following supervisor's instructions, the Chief understands and agrees with the need for employees to obey their superiors. She has never once, to her knowledge, acted contrary to an order or instruction. While she has at times voiced disagreement with her supervisor's decisions, she did not believe she was asked to accept the responsibility of Chief simply to be Mr. Murphy's marionette. She will continue to voice her opinions in a professional and tactful manner, as she believes she has always comported herself. She acknowledges that Mr. Murphy is her supervisor and will work to overcome the hurt, anger, and distrust caused by the instant proposal. She remains willing to learn and grow as a productive member of the Department of the Interior's law enforcement team.

11. *Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter;*

The agency must recognize as a mitigating factor the obvious conflict that has arisen between the proposing official and Chief Chambers. This conflict has arisen as a result of the Chief's protected disclosures. Under the Whistleblower Protection Act, "any" disclosure, is protected so long as it is based upon a reasonable belief that the information evidenced either a violation of any law, rule, or regulation or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health, and safety and it involved information which was not required to be kept confidential. 5 USC § 2303(b)(8), 5 USC §2302 (b)(8), Garst v. Dept. of Army, 60 MSPR 514, 517-18 (1994), Geyer v. Dept. of Justice, 63 MSPR 13, 17 (1994). The information attributed to the Chief that appeared in the *Washington Post* evidenced substantial and specific danger to public health and safety, abuse of authority, violation of law, rule and regulation, gross mismanagement, and violation of agency rules and regulations. The agency has concluded that the Chief was the source of these disclosures. In direct retaliation for the disclosures attributed to her, the agency initiated this removal. The disclosures attributed to the Chief are not excluded from the protection of the Act because the disclosures in the article were neither confidential nor were they prohibited by law.

The determination of whether or not these disclosures were a contributing factor in the agency's decision to take the instant adverse personnel action against the Chief is straightforward. The agency's notice of removal reveals the removal is based primarily on the agency's conclusion that she made disclosures to the press. In fact, four of the six charges cited in support of this removal focus on the legally protected activity of the Chief. The remaining allegations are unsupported allegations obviously tacked on to attempt to insulate the removal proposal from abject and total failure. It is a virtual certainty that no trier of fact would find that these first instances of "wrongdoing," even if the charges are sustained, would warrant the Chief's removal.

Moreover, with respect to the existence and strength of any motive to retaliate on the part of agency officials involved in the decision to remove the appellant, Chief Chambers' history with Mr. Murphy is instructive. See Visconli v. Environmental Protection Agency, 78 M.S. P.R. 17, 24 (1998). In early 2003, Chief Chambers was involved in a series of meetings regarding the Secretary's mandated law enforcement reforms. As a result of these initiatives, the Chief often had the opportunity to bring forth suggestions to her supervisors, Mr. Murphy and Ms. Mainella. With these suggestions, the Chief frequently pointed out shortcomings that impacted negatively on officer safety and on the overall safety of visitors to the National Parks. Examples included a staffing study she presented to them for the U.S. Park Police and a proposal regarding a more refined and standardized integration of Park Police captains into the Regional Law Enforcement Specialist program throughout the National Park Service, which has been in existence in one form or another for decades. Neither Mr. Murphy nor Ms. Mainella acted upon these recommendations. In fact, in one instance, the Chief was admonished for having written the recommendation and was directed to change her memorandum and findings before resubmitting it.

In mid-summer 2003, Chief Chambers discovered and alerted Mr. Murphy and Ms. Mainella to concerns over monies allocated for a major radio conversion project as well as shortfalls that would greatly impact service delivery to those areas of the National Park Service for which U.S. Park Police

officers are responsible. Rather than addressing the problems, these two individuals chose to attempt to transfer (“detail”) to the Department of the Interior the key member of the Executive Command Staff, which is made up of the top five positions within the Park Police, who was responsible for the budgeting and finance functions within the U.S. Park Police. This individual is also responsible for overall organizational development within the U.S. Park Police and was described by Ms. Mainella as a “bad influence” on the Chief and as having influenced the U.S. Park Police recommendations regarding the Secretary’s law enforcement reform directives. When the move of this employee was reversed by the Deputy Secretary for the Department of the Interior, Mr. Murphy began an ever-increasing escalation of micromanagement and abusive and inappropriate behavior toward the Chief.

Finally, during a nationwide conference call on November 26, 2003, of which Chief Chambers was not a part, Mr. Murphy shared unwarranted criticism about the Chief in a manner one witness described as a “tirade.” After speaking about this matter with Director Mainella, who agreed with the Chief that Mr. Murphy’s comments were unprofessional and inappropriate, Chief Chambers documented her complaint in writing and forwarded the complaint to Director Mainella. This complaint was received by Director Mainella at approximately 3 p.m. on December 2, 2003, the same day the story in the *Washington Post* was published. Among the questions asked by the reporter during this interview were questions involving what additional resources, including dollars and staffing, were needed by the U.S. Park Police in order for them to provide adequate services in the parks for which U.S. Park Police officers are responsible. These statements to the reporter concerned a matter of public safety and are protected speech under the First Amendment and under the Whistleblower Protection Act.

On the day of the *Post* article and within three hours of Director Mainella receiving the written complaint against Mr. Murphy from Chief Chambers, the Chief received a blanket “gag order” from Mr. Murphy prohibiting her from engaging in any interview on any topic at any time with any person. His explanation to the Chief at that time was that he was concerned that her messages regarding the U.S. Park Police budget were not consistent with messages that he, the Director, and the Department wanted to get out.

Within three days of Director Mainella receiving the written complaint against Mr. Murphy from Chief Chambers, the Chief was placed on administrative leave and her police powers were suspended in an unprecedented manner of hostility and abuse of power. Both Mr. Murphy and the representative of the Solicitor’s Office present during that December 5, 2003 meeting acknowledged that they were aware of the written complaint Chief Chambers had submitted Tuesday, December 2, 2003, against Mr. Murphy.

Just a few days beyond two weeks of Director Mainella’s receiving the written complaint against Mr. Murphy, Chief Chambers was served with a proposed removal letter, citing charges about which she has never been asked to discuss, interviewed, or permitted to explain.

It is unquestionable that this series of events beginning on December 2, 2003 were a direct result of protected disclosures she has made during the past months, the most recent of which being the formal complaint lodged against Mr. Murphy on December 2, 2003.

12. *The adequacy and effectiveness of alternative sanctions to each of the Douglas Factors that applies;*

Given the precipitous nature of this proposal, the lack of any investigation, and the severe nature of the proposed penalty, it is hard to imagine that a lesser penalty was ever considered. “Efficiency of the service” and “just cause” are the standards to which Government agencies must adhere before taking disciplinary action. Agency managers and supervisors have the right and responsibility to use discipline to control the conduct of employees. However, discipline can only be imposed where sufficient and justified reasons exist for doing so. As demonstrated more fully above, no justification exists for taking any action.

Moreover, the law requires that the agency apply discipline in a fair and reasonable manner. Penalties must be reasonable and consistent with action taken in similar cases. The actions of management in this incident do not contribute to the “efficiency of the service,” are disproportionate to discipline imposed against others, and are excessive. Rather than a deliberate, fair, and careful reaction, Mr. Murphy recklessly decided from the outset what punishment he would impose to retaliate against a twenty-seven year veteran of government service.

CONCLUSION

The agency’s proposal rests upon speculation and facts derived from an unbalanced and ill-conceived investigation in which the accused, Chief Chambers, was not given an opportunity to be heard. The charges, upon which the proposal is based, focus in significant part on the Chief’s speaking to the *Washington Post*. Indeed, the majority of the charges and specifications did not result in criticism until after the *Post* printed its December 2, 2003 article.

The charges enumerated in the proposal are motivated by reprisal for making protected disclosures concerning danger to the public safety and abuse of authority in violation of the Whistleblower Protection Act. They also constitute a violation of Chief Chambers’ rights under the Free Speech Clause of the First Amendment. In addition, charge one stands as a violation of Chief Chambers’ right to communicate with Congress under 5 U.S.C. 7211.

A number of the charges center around the issue of the credibility of Chief Chambers vis-à-vis the credibility of Deputy Director Murphy. The evidence, even without the benefit of discovery, points to the fact that Mr. Murphy is unworthy of belief. His post hoc justifications, his illogical and strained reasoning, his unseemly attempt to convert acts of executive discretion into actionable misconduct, his puerile reaction to his decision about Ms. Blyth being overruled, and his failure to document, advise, counsel, correct or reprimand the Chief over a period of many months all point to a person who should never have been permitted to serve as the proposing official. In addition, that this action began to ferment within days of Chief Chambers’ surfacing matters concerning public safety points to an individual devoid of respect for the laws governing retaliation. The agency has proposed removal of the wrong person.

The charges were drafted with unseemly haste under the direction of a proposing official whose judgment, maturity and fitness for his position are open to serious doubt. All of the charges relate to the types of actions and communications that are commonplace, expected, and condoned at the highest

levels in the National Park Service and above. The hypocrisy of the proposing official is manifested most egregiously by the fact that he himself has committed many of the same “misdeeds” condemned in the proposal. Legitimate functions of a very senior executive have been transformed by legerdemain into acts of misconduct: routine comments to the press (blessed until now); communication with a key Congressional staffer (encouraged until now); expressing displeasure with and opposition to possible decisions by her superiors; and appealing a decision that she felt to the contrary to the best interests of the organization. All these acts suddenly become wrongful immediately on the heels of protected disclosures.

It is apparent that the proposing official, outraged by disclosures he found to be personally embarrassing and perhaps especially piqued by his having been overruled by the Deputy Secretary, caused the Department’s attorneys and personnelists to hunt through all of the Chief’s past actions to fabricate instances of wrongdoing. The December 2003 memorandum by the proposing official, documenting an event that occurred nine months earlier, is one striking example of this clumsy and ill-conceived proposal.

It is the Chief’s belief that many more incidents of the type of acts and communications that constitute the instant charges and that were committed by others will come to light should this matter proceed to the stage of discovery before an administrative judge of the Merit Systems Protection Board.

The charges are an awkward, obvious and malevolent manifestation of reprisal and are, as such, an embarrassment to the Department of the Interior and, more importantly, are illegal. The deciding official should reverse each and every charge and restore the Chief to duty.

Thank you for your consideration of this matter.

Very truly yours,

AVERY DOOLEY POST & AVERY, LLP

Peter H. Noone, Esq.

PHN/jpf