

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

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: TERESA C. CHAMBERS, :
: :
: Appellant, :
: :
: v. : Docket No.
: DC-0752-04-0642-I-1
DEPARTMENT OF THE INTERIOR : DC-1221-04-0616-W-1
: :
: Agency. :
: :
- - - - - x

Hearing Room 1
1600 Diagonal Rd., Suite 1205
Alexandria, VA 22314

Tuesday, September 14, 2004

THE HEARING in the above-entitled matter commenced at
9:15 a.m., pursuant to notice.

BEFORE:

ELIZABETH B. BOGLE, Administrative Judge

APPEARANCES:

On Behalf of the Appellant:

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MICK HARRISON, ESQ.
Public Employees for Environmental Responsibility
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C O N T E N T S

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
Steven Griles	5	16		

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1 P R O C E E D I N G S

2 JUDGE BOGLE: On the record.

3 Do you have an objection to taking an oath?

4 MR. GRILES: I do not.

5 JUDGE BOGLE: Would you stand, please, and raise
6 your right hand?

7 Whereupon,

8 JAMES STEVEN GRILES

9 was called as a witness and, having been first duly sworn,
10 was examined and testified as follows:

11 JUDGE BOGLE: Please be seated, and state your full
12 name and your title.

13 THE WITNESS: My name is James Steven Griles. I'm
14 deputy secretary of the United States Department of Interior.

15 JUDGE BOGLE: Okay.

16 Now, before we begin, you will recall that Mr.
17 Griles was called, I believe, by the appellant and not the
18 agency.

19 Isn't that right?

20 MR. HARRISON: That's correct, Your Honor.

21 JUDGE BOGLE: Okay. For his testimony concerning
22 charge number six, and I intend to limit you to testimony on
23 precisely that charge.

24 Mr. Harrison, will you do the direct?

25 MR. HARRISON: I will. Thank you.

1 JUDGE BOGLE: All right.

2 MR. HARRISON: And by the way, I apologize for
3 holding up the proceedings, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. HARRISON:

6 Q Good morning, Mr. Griles.

7 A Good morning.

8 Q Mr. Griles, have you had occasion to do any
9 preparation for your testimony today?

10 A Just in the sense of -- yes.

11 Q All right.

12 Have you spoken with anyone about your anticipated
13 testimony?

14 A I have spoken to -- to my counsel.

15 Q Apart from counsel.

16 A No.

17 Q And Mr. Griles, you gave some testimony in a prior
18 deposition in this matter regarding, among other things, the
19 issue of a detail or proposed detail of Ms. Pamela Blyth. Do
20 you recall that testimony?

21 A I -- yes.

22 Q All right. And do you have any reason to recant or
23 change that testimony today?

24 A No.

25 Q And sir, I believe you're the chief operating

1 officer for the Department of Interior?

2 A Yes.

3 Q And that would place you as the second in command,
4 as I understand it?

5 A Yes.

6 Q Do you recall receiving communication from a
7 gentleman by the name of Mr. Jeff Capps with the Fraternal
8 Order of Police at some time in August of 2003 in reference
9 to a need for you to call Ms. Chambers?

10 A Yes.

11 Q And do you know Ms. Teresa Chambers?

12 A Yes.

13 Q And you worked with her when she was the chief of
14 the U.S. Park Police?

15 A Yes.

16 Q And what did Mr. Capps say to you in August
17 regarding the need to speak with Ms. Chambers?

18 A That a matter that he considered an emergency had
19 arisen and asked me to call Ms. Chambers.

20 Q All right.

21 Did you call Ms. Chambers?

22 A I'm not sure if I called her or I asked the -- Mr.
23 Capps to have her call me, but --

24 Q Okay. I see. You did communicate with Ms.
25 Chambers one of those two ways.

1 A Yes.

2 Q All right. And what was the substance of the
3 conversation between you and Ms. Chambers at that time?

4 A My recollection was that she indicated that Ms.
5 Blyth, her special assistant, was to be detailed to a -- to
6 the budget office of the Park Service and that she was
7 concerned that that was going to affect her ability to
8 complete a task that had been assigned to her in a meeting
9 with myself, the assistant secretary, and others in the Park
10 Service.

11 Q Can you recall whether the intended destination of
12 that detail might have been the Office of Strategic Planning?

13 A I do not know the detailed specifics.

14 Q I see.

15 When Ms. Chambers approached you, or vice versa,
16 when you chatted with her, did you at any time express to her
17 an objection to her talking to you outside of a chain of
18 command?

19 A I did not.

20 Q All right. Had you spoken with Ms. Chambers in the
21 past in the absence of Deputy Director Murphy or Director
22 Mainella?

23 A I had --

24 Q All right.

25 A -- spoken to her in the past.

1 Q And have you spoken to other employees without
2 their immediate supervisors being present?

3 A I speak to most employees when I see them.

4 Q All right. And are you offended by employees
5 approaching you without having their immediate supervisor
6 present?

7 A No.

8 Q And I believe you indicated in your deposition that
9 sometimes that communication is valued by you; sometimes it's
10 helpful.

11 A I don't remember that characterization of the
12 testimony, but --

13 Q Okay.

14 You don't discourage it.

15 A I do not.

16 Q Did you reach some decision as to how to proceed
17 with Ms. Chambers' concern about the detail of Ms. Blyth
18 based on that telephone call?

19 A I indicated that I would check into the -- to the
20 issue.

21 Q All right. Did you do so?

22 A I did.

23 Q And what inquiry did you make?

24 A I called the director of Park Service and the
25 Assistant Secretary Fish, Wildlife & Parks and asked them to

1 meet with meet with me and the others in the chain of command
2 to discuss the assignment and the implementation of the
3 assignment.

4 Q All right.

5 Do you recall the time-frame you may have made
6 those communications?

7 A My recollection is that the call from or to the --
8 Teresa Chambers was on a Sunday, and I believe that the
9 meeting occurred within -- I believe the next day or the day
10 after.

11 Q All right. And the communications you reference
12 when you reference the director -- that would be Ms.
13 Mainella?

14 A Correct.

15 Q And the assistant secretary would be Mr. Manson?

16 A That is correct.

17 Q All right.

18 Did you come to learn, during the course of your
19 conversation with Ms. Chambers or with any of her superiors,
20 that Ms. Chambers had made an effort to contact Mr. Craig
21 Manson, the assistant secretary, prior to communicating with
22 you on this matter?

23 A I do not recall that.

24 Q You don't. Do you recall your deposition testimony
25 on that?

1 A I -- I don't recall.

2 Q Did you speak with Mr. Manson about this proposed
3 detail?

4 A My recollection is that I called Mr. Manson and
5 asked his advice and suggested we should get the entire chain
6 of command in a meeting to make sure that there was an
7 understanding of the assignment and how it was to be
8 implemented.

9 Q All right.

10 Now, do you know what decision was made by Mr.
11 Manson or any person regarding the immediate implementation
12 of that proposed detail on the following work day, Monday,
13 the 25th of August, I believe?

14 A I believe Judge Manson indicated that he would not
15 -- the detail would be -- would not be implemented pending
16 the meeting that was schedule.

17 Q All right. And did a meeting take place on or
18 about August 28th with yourself, Ms. Chambers, and members of
19 her chain of command present?

20 A A meeting did occur. I'm not sure of the date.

21 Q All right. Would it have been within a few days of
22 the proposed date of the detail?

23 A I believe it was in a day or two.

24 Q All right. And you called that meeting?

25 A I did.

1 Q All right. And who was present for it?

2 A My recollection is that the assistant secretary,
3 Judge Manson; the Assistant Secretary for Policy & Budget,
4 Lynn Scarlett; the Deputy Assistant Secretary for Law
5 Enforcement, Larry Parkinson; the director of the Park
6 Service, Fran Mainella; and the deputy director of the Park
7 Service, Don Murphy, and eventually, Teresa Chambers was --
8 was brought into the meeting.

9 Q All right.

10 How long would you say this meeting lasted?

11 A Several hours.

12 Q Is it fair to say that there was a lengthy and
13 substantial conversation about the matter?

14 A There was a lengthy meeting which a large number of
15 issues was discussed.

16 Q I see.

17 Is it fair to say that every member of Ms.
18 Chambers' chain of command, up to your level, was present?

19 MR. L'HEUREUX: Objection, leading.

20 JUDGE BOGLE: I'll permit it.

21 THE WITNESS: I believe that the people who were in
22 the chain of command were presenting.

23 BY MR. HARRISON:

24 Q All right. And then was one of your intents, was
25 it not?

1 A Yes.

2 Q And did you believe that, as a result of this
3 discussion in this meeting, with these parties present, and
4 eventually Ms. Chambers, that the matter or controversy
5 regarding the proposed detail of Ms. Blyth had been resolved,
6 at least to your satisfaction?

7 A I believed that a resolution had been reached that
8 satisfied the needs of the agency, as well as the needs of
9 Ms. Blyth in order to give her the training she needed.

10 Q All right. So, you felt a reasonable compromise
11 was achieved.

12 A Yes.

13 Q Now, I take it you had Ms. Chambers waiting outside
14 for a time during that meeting and eventually invited her in?

15 A That is correct.

16 Q All right. At any point during that meeting when
17 Ms. Chambers was present, did anyone tell her that she had
18 violated some agency rule in contacting you regarding the
19 detail of Ms. Blyth?

20 A No.

21 Q Did you propose any discipline of Ms. Chambers for
22 contacting you on that matter?

23 A No.

24 Q At the time that meeting was resolved and ended,
25 did you understand that Mr. Murphy intended to discipline Ms.

1 Chambers for approaching you regarding the detail of Ms.
2 Blyth?

3 A That was not part of the meeting or discussion.

4 Q As a result of the meeting and the discussion, is
5 it fair to say that the original detail of Ms. Blyth, as
6 proposed by Mr. Murphy, was canceled and this new compromise
7 plan was put into place?

8 A As a result of the meeting, a compromise solution
9 that allowed for accomplishing both objectives we believed
10 had been reached.

11 Q All right.

12 As a follow-up to this meeting and perhaps as part
13 of the plan, was it your expectation that Ms. Chambers'
14 superiors would meet with her on a periodic basis to discuss
15 the future implementation of this plan and perhaps other
16 program issues?

17 A As a result of the meeting, an agreement was
18 reached that the assistant secretary and the director of the
19 Park Service and, I believe, Mr. Murphy would meet weekly
20 with the chief to assure that there was clear lines of
21 communication and understanding of what the objectives were
22 and how to -- that they were being achieved.

23 Q All right.

24 Do you know how many of those meetings actually
25 transpired after your meeting?

1 A I do not.

2 Q And if some of those meetings did not occur, would
3 you know why not?

4 A I would not.

5 Q Is it fair to say that this meeting that you called
6 with Ms. Chambers' chain of command present was not about
7 evaluating or critiquing the performance of Ms. Chambers?

8 A It was not.

9 Q Do you recall being deposed by Mr. Paul Hoffman as
10 part of his inquiry as the final decision-maker on Ms.
11 Chambers' proposed discipline?

12 A I do.

13 Q And did you testify truthfully to Mr. Hoffman?

14 A I did.

15 Q Do you recall telling Mr. Hoffman and Mr. Murphy's
16 initial decision to detail Ms. Blyth was, in your view,
17 arbitrary?

18 A I do not.

19 Q You don't recall saying that?

20 A I remember the word "arbitrary." I do not remember
21 characterizing it that way.

22 Q Okay.

23 Do you recall -- I beg your pardon.

24 MR. HARRISON: Your Honor, I believe that Your
25 Honor's restriction, which I will honor, is to limits the

1 questions to charge six, and on your instructions, I will not
2 ask questions regarding, for example, the Washington Post
3 issue, but I'll just note my exception to your order.

4 JUDGE BOGLE: All right.

5 MR. HARRISON: And if I could have just a moment,
6 Your Honor.

7 BY MR. HARRISON:

8 Q I believe, Mr. Griles, that in your deposition in
9 which I asked you questions previously, you indicated that
10 there was no rule in the Department of Interior that
11 prohibited an employee from taking a concern to a second,
12 third, or even higher-level supervisor without going through
13 the lower steps in the chain of command.

14 Is that correct? Did you say that in your
15 deposition?

16 A I don't recall your question nor the exact way you
17 phrased it.

18 That seems different than how you -- how you're
19 characterizing it.

20 Q Would you stand by your testimony in your
21 deposition?

22 A I would.

23 Q Okay.

24 MR. HARRISON: Nothing further, Your Honor.

25 JUDGE BOGLE: Mr. L'Heureux?

1 CROSS EXAMINATION

2 BY MR. L'HEUREUX:

3 Q Mr. Griles, did you participate at all in a
4 decision to propose Ms. Chambers' removal?

5 A I did not.

6 Q Did you participate -- other than testifying for
7 Mr. Hoffman -- in Mr. Hoffman's decision to effect the
8 removal of Teresa Chambers?

9 A I only testified.

10 Q Did you do anything else?

11 A No, sir.

12 MR. L'HEUREUX: I have no further questions, Your
13 Honor.

14 JUDGE BOGLE: Well, before we dismiss the witness,
15 I would like him to address what the project was that Ms.
16 Chambers told you she needed Ms. Blyth to work on and that
17 was the reason she gave that Ms. Blyth could not be detailed.

18 THE WITNESS: Your Honor, as part of the -- I
19 believe it's the '04 budget preparation -- there were two
20 issues that were concerning the secretary and myself in
21 preparation for the budget.

22 One was a need and a directive that had been issued
23 to have a reassessment done of the duties and
24 responsibilities of the National Park Service on a day-to-day
25 basis.

1 Were they performing duties and functions that were
2 outside the scope that was necessary in order to perform its
3 essential function and mission, specifically as it relates to
4 the changing circumstances after 9/11 that had come -- as a
5 result that, a NAPA study was requested, and how that was to
6 be accomplished.

7 Secondly, as we were trying to address those duties
8 and functions, we had asked the Deputy Assistant Secretary
9 for Law Enforcement to work with the -- with Teresa Chambers,
10 as chief of police, to have that definition and all redone.

11 Secondly was to have the budget for the Park Police
12 to be sure that we understood the budget requirements and the
13 budget needs that Chief Chambers was discussing with us, and
14 we asked her over the next week, the next couple of weeks, to
15 provide that report to the chain of command, and it was that
16 report that she indicated that would -- she would not be able
17 to accomplish in the timely -- in the fashion -- in time
18 fashion that we'd asked for if Ms. Blyth was to be detailed
19 to, as I recall, the budget office of the Park Service.

20 So, it was that project, Your Honor, that she had
21 called me about, the time on the completion of that project.

22 JUDGE BOGLE: Now, did you have any independent way
23 of knowing whether the report could have been accomplished
24 without Ms. Blyth, or did you take Ms. Chambers at her word?

25 THE WITNESS: What I did, Your Honor, was call the

1 chain of command into a meeting and raised the issue and had
2 a full discussion with all the people that were involved --
3 the budget office, the Assistant Secretary for Budget, Mr.
4 Parkinson, the Assistant Secretary Manson, director the Park
5 Service, and Deputy Director Murphy, so that we all
6 understood that we needed this project to be completed, and
7 it was on that basis that the chain of command made a
8 decision to modify the delegation of the detail so that we
9 hopefully could get that project accomplished in a timely
10 fashion.

11 JUDGE BOGLE: Okay. Thank you.

12 Any further questions, Mr. Harrison?

13 MR. HARRISON: No, Your Honor. Thank you.

14 JUDGE BOGLE: All right.

15 Thank you. You're excused.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 JUDGE BOGLE: I believe we're ready, then, for
19 closing comments.

20 MR. HARRISON: Your Honor, I do have two other
21 matters to raise.

22 JUDGE BOGLE: What are those?

23 MR. HARRISON: One is that I have some exhibits
24 that were initially thought to be in this record as
25 attachments to Ms. Chambers' affidavit.

1 JUDGE BOGLE: Right.

2 MR. HARRISON: It turns out that, under Your
3 Honor's, I guess, definition of the contours of the records,
4 the affidavit may be in but perhaps not the exhibits at the
5 moment.

6 So, Your Honor had indicated I could offer selected
7 exhibits from that rather long list that were attached to Ms.
8 Chambers' affidavit as we felt were necessary for the case,
9 and we are prepared to do that.

10 JUDGE BOGLE: Okay.

11 Have you shown them to Mr. L'Heureux so he knows
12 which ones you're offering?

13 MR. HARRISON: No, Your Honor. I attempted to
14 print out the list.

15 I think they have the documents now, but they just
16 received them this morning.

17 I'm sorry. They are just now receiving the
18 documents. I beg your pardon. And I had attempted to print
19 out a list, Your Honor, earlier this morning and ran into
20 technical difficulties and could not accomplish that, which
21 is one reason I was tardy.

22 JUDGE BOGLE: Okay. So, what -- what do you have
23 to offer this morning? Do you have a copy for me?

24 MR. HARRISON: Yes, we do, Your Honor. And we can
25 do them en masse or take them one at a time.

1 JUDGE BOGLE: Well, first of all, Mr. L'Heureux,
2 you have a copy now, right?

3 MR. L'HEUREUX: I do now, Your Honor.

4 JUDGE BOGLE: Okay. And can you look at a index or
5 something there and tell me whether you're likely to object?
6 These are documents you should have seen, because they were
7 attached to the affidavit that was filed with the stay
8 request.

9 MR. L'HEUREUX: There isn't an index. I can look
10 through these documents and -- I don't know exactly how many
11 there are.

12 JUDGE BOGLE: Okay. And where is my copy, Mr.
13 Harrison?

14 MR. HARRISON: Your Honor, we'll provide that.

15 I should note, Your Honor, there are -- I could
16 probably tell you exactly -- two or three documents in the
17 set that are remaining exhibits from Appellant's pre-trial
18 submission that have not been offered until now, and the rest
19 are from the affidavit.

20 So --

21 JUDGE BOGLE: Well, have you mixed them up?

22 MR. HARRISON: I don't know if -- I believe that --
23 see if I can be precise about this, Your Honor.

24 The documents from the pre-trial filing are
25 appellant's initially-labeled Exhibit FF, which is still

1 labeled FF; appellant's initially-labeled Exhibit LL, which
2 is still labeled LL, and appellant's initially-labeled
3 Exhibit N, which is still labeled N, as in Nancy, and
4 appellant's initially-labeled Exhibit O, which is still
5 labeled O; appellant's Exhibit P, which is still labeled P;
6 appellant's initially-labeled Exhibits Q, R, and S, which are
7 still so labeled; appellant's Exhibit T and U, which are
8 still labeled as such, and appellant's pre-trial Exhibit II,
9 which is still labeled as such.

10 Those exhibits are not attachments to Ms. Chambers'
11 affidavit but were offered as pre-trial exhibits, and we are
12 offering those now.

13 JUDGE BOGLE: And then you have another batch of
14 documents which were at one time attached to her affidavit,
15 and you're offering them separately?

16 MR. HARRISON: Yes, and they've been renumbered
17 according with Your Honor's trial submission requirements,
18 since we now understand they're being offered not as part of
19 the pre-existing record.

20 JUDGE BOGLE: Okay.

21 MR. HARRISON: So, they would now have double-digit
22 or triple-digit letter designations.

23 JUDGE BOGLE: Now, you mentioned there were two
24 matters.

25 What's the other matter going to be?

1 MR. HARRISON: The other matter, Your Honor, is
2 that, at least as I understand the progress of this case,
3 which involves an appeal -- two appeals -- one is an IRA
4 appeal and one is a Chapter 75 appeal -- there are two points
5 of testimony from Ms. Chambers that I would like to offer in
6 rebuttal on the IRA appeal only. It would take about 10
7 minutes.

8 JUDGE BOGLE: And what is the reason she was not
9 asked that when she was called before?

10 MR. HARRISON: The reason is, Your Honor, that it
11 responds to Mr. Schaefer's testimony and Mr. Myers'
12 testimony, which were the agency's rebuttal witnesses.

13 JUDGE BOGLE: Well, they were, but you knew long in
14 advance that they were going to be called as rebuttal
15 witnesses.

16 Frankly, I -- I generally do not allow a witness to
17 be recalled unless there's some reason you could not have
18 reasonably expected that the matter you want to take
19 testimony on would have come up --

20 MR. HARRISON: I think that's fair, Your Honor.

21 JUDGE BOGLE: -- and after working with this case
22 over the last many weeks, I can't imagine there's anything
23 that you could not have reasonably anticipated --

24 MR. HARRISON: Well, Your Honor --

25 JUDGE BOGLE: -- would come up.

1 MR. HARRISON: I reasonably anticipated quite a
2 bit, but there are two points I have in mind which I would
3 offer as precisely the points for Ms. Chambers' testimony.

4 One is Mr. Schaefer said something unanticipated,
5 which was that he could not remember of a \$12 million
6 shortfall for the U.S. Park Police for fiscal year '04. Ms.
7 Chambers can identify documents, which are part of our
8 offerings, which show that Mr. Schaefer was directly informed
9 and actually participated in preparing a response to that
10 shortfall, which shows his testimony was not correct, at
11 best.

12 The second point is that Mr. Myers testified that
13 he -- as I recall his testimony -- that he had never met with
14 Ms. Chambers regarding the Organization of American States
15 matter, and Ms. Chambers -- and that is incorrect and was not
16 anticipated.

17 He did meet at some point in time with Ms. Chambers
18 on that matter, and it was prior to Mr. Murphy raising the
19 charge against Ms. Chambers on that issue.

20 Those are two points that may take maybe five
21 minutes, but those are why I'm calling her.

22 JUDGE BOGLE: Well, with respect to the first one,
23 if there's a document that contradicts a witness' testimony,
24 I would expect you to point that out in your closing
25 comments.

1 MR. HARRISON: I can do that.

2 JUDGE BOGLE: And with respect to the meetings, I
3 think the record will -- will show what -- what occurred and
4 what did not occur, and I will assure you I will review all
5 of it, but I don't believe we need to recall Ms. Chambers to
6 go back over it.

7 MR. HARRISON: Your Honor, could I have just one
8 second to confer with my client as to whether the record
9 reflects her meeting with Mr. Myers that I was hoping to
10 offer her testimony for?

11 It may, but if it doesn't, I would like to take
12 exception to your ruling.

13 JUDGE BOGLE: All right. Go ahead.

14 MR. HARRISON: It appears, Your Honor, that Ms.
15 Chambers' affidavit does not address her meeting with Mr.
16 Myers, and it may not be elsewhere in the record. On that
17 one point, I would take exception to Your Honor's ruling. I
18 will live with your ruling on the -- the documents regarding
19 the shortfall, because I believe those documents do establish
20 it.

21 JUDGE BOGLE: Okay.

22 So, with that, except for the exhibits that you
23 have offered, we are ready for closing comments, are we not?

24 MR. HARRISON: I believe so.

25 JUDGE BOGLE: All right.

1 Would you like to take a few minutes off the
2 record, Mr. L'Heureux, so that you can go through those
3 documents and tell me, if you can, whether the agency
4 objects?

5 MR. L'HEUREUX: Yes, Your Honor.

6 JUDGE BOGLE: Okay.

7 Let's go off the record for -- how long do you
8 think it will take? Five minutes?

9 MR. L'HEUREUX: Another five minutes should do it.

10 JUDGE BOGLE: Let's try five minutes.

11 (A brief recess was taken.)

12 JUDGE BOGLE: Back on the record.

13 Mr. L'Heureux, you've had a chance to review these.
14 Does the agency object to any of them?

15 MR. L'HEUREUX: Yes, Your Honor.

16 As to Appellant's Exhibit P, no foundation has been
17 laid, and its relevance is dubious, and it also appears to
18 contain some detailed information about security posts and
19 things like that.

20 Appellant's Exhibit U is a report by the Inspector
21 General, it appears, or somebody, security inspection report
22 of -- of these posts.

23 Again, it appears to contain security information.
24 The relevance -- no foundation has been laid for it, and I -
25 - and I don't understand the relevance of it.

1 Exhibit O is an Inspector General's assessment of
2 security at the National Mall. I don't understand the
3 relevance of this.

4 I'm going to take it at face value for what it
5 appears to be.

6 Appellant's Exhibit N is a mystery to me. It
7 appears to be some kind of hot line or e-mail track or
8 something.

9 I can't -- I can't tell what it is. Again,
10 objection on the grounds of relevance.

11 Appellant's Exhibit FF -- objection on grounds of
12 relevance.

13 Appellant's Exhibit II -- again, objection on
14 grounds of relevance.

15 Appellant LL -- objection on grounds of relevance,
16 in addition to which it appears to be sensitive information
17 which would -- if Your Honor accepts this, we would like this
18 to be placed under seal, as well.

19 It discusses security arrangements for a -- an
20 event on July 4, 2003.

21 Presumably, some of that may apply to future
22 events, similar events.

23 Appellant's Exhibit SS appears to be news releases,
24 and the relevance of those, we object to.

25 Appellant's Exhibit TT -- objection on relevance.

1 Appellant's Exhibit UU -- objection on relevance.

2 Appellant's Exhibit VV -- objection, relevance.

3 Appellant's Exhibit WW -- same objection,
4 relevance.

5 Appellant's Exhibit XX -- objection, relevance.

6 Appellant's Exhibit YY -- objection, relevance.

7 Appellant's Exhibit ZZ -- objection, relevance.

8 Appellant's Exhibit AAA -- objection, relevance.

9 Appellant's Exhibit BBB -- objection, relevance.

10 Appellant's Exhibit CCC -- objection, relevance.

11 Appellant's Exhibit DDD -- objection, relevance.

12 JUDGE BOGLE: Are we going to go all the way
13 through to --

14 MR. L'HEUREUX: Your Honor --

15 JUDGE BOGLE: -- NNNN on this? You don't need to
16 state --

17 MR. L'HEUREUX: Well, I think I can wrap it up.

18 I object -- object to the relevance of -- of all of
19 these --

20 JUDGE BOGLE: Well, all of these were -- were at
21 one time attachments to her affidavit. You apparently do not
22 object to some that were offered as part of her pre-hearing
23 submission.

24 MR. L'HEUREUX: No, I do not.

25 JUDGE BOGLE: All right.

1 explanation. So, if Your Honor wishes me to do that, I'm
2 prepared to that document by document.

3 The other position I would take, which might save
4 us some time if Your Honor adopted it, is that in the
5 appellant's submission to the order to show cause, we
6 submitted Ms. Chambers affidavit, which references all these
7 documents.

8 I believe I had made a reference in that filing to
9 incorporating the exhibits that had been previously filed,
10 thinking they would be part of the record and could be
11 adopted by incorporation from another pleading. I'm not sure
12 that the board's rules prohibit a document by reference from
13 another pleading.

14 So, I would argue that, since the agency has had
15 the benefit of the board's procedure, which is pre-trial-
16 filed documents do not have to meet standard for admission
17 that documents offered at trial have to meet, and it's a
18 well-established practice in -- before the board, that both
19 parties file matters early on that stay in the record, even
20 though they might not meet -- might not meet the standards
21 for admission at trial.

22 Appellant believes she had the benefit of that
23 rule, which the agency certainly has had the benefit of, when
24 we filed the affidavit with its exhibits and then made
25 reference to them in the response to the order to show cause.

1 So, I would initially move, Your Honor, that these
2 documents be deemed to be in the record as incorporated by
3 reference in the affidavit filed in response to the order to
4 show cause.

5 JUDGE BOGLE: It's very tempting to take that
6 position, Mr. Harrison. However, it doesn't seem to me like
7 all of these documents are relevant either, and I'm not
8 interested in loading the file up with document that are not
9 relevant.

10 So, if you could please to group them in some
11 categories and tell me -- because we have -- we have a lot of
12 e-mails, we have a lot of internal documents that seem to
13 address staffing matters, for lack of a better description.
14 I believe you will have to go through them and tell me how
15 they are alleged to relevant, starting with FF.

16 MR. HARRISON: I can do -- well, P, probably, Your
17 Honor, maybe the first objection.

18 Actually, N -- I don't think we had our objections
19 in alphabetical order, so --

20 JUDGE BOGLE: Right.

21 MR. HARRISON: I'll start with N --

22 JUDGE BOGLE: All right.

23 MR. HARRISON: -- and work our way.

24 There are groups, Your Honor. There are -- for
25 example, there's a group of documents that are internal

1 agency documents, never been stamped or classified as
2 security-sensitive, law enforcement-sensitive, otherwise
3 classified, which contain the same categories of data and
4 more explicit data, as Mr. L'Heureux seems to point out in
5 his quick observation, but the agency has not seen fit to
6 attempt to protect them from disclosure.

7 And they are offered to show in rebuttal to the
8 agency's sole document that it relies on, which was Hearing
9 Exhibit number 4, offered under seal, that the fact that a
10 document is or is not classified sensitive says really
11 nothing about the agency's policy or rule for classifying
12 information as security-sensitive and that here we have
13 documents -- theirs, which has a stamp on it, and these,
14 which don't -- which contain the same information at issue.

15 And so, it goes to show, we believe, that the
16 document they offer and their decision-maker relied on was
17 classified as law enforcement-sensitive for some reason other
18 than the information which Ms. Chambers disclosed to The
19 Washington Post.

20 So, that's why these numerous documents are offered
21 that do, in fact, contain staffing information, police
22 locations at the icons, and related matters.

23 Those documents and that information has never been
24 classified.

25 JUDGE BOGLE: I understand that, but as I commented

1 earlier -- and you seemed quite surprised -- she was not
2 charged with releasing classified or even law -- law
3 enforcement-sensitive information. That word does not appear
4 in the proposal notice. She's just charged with releasing
5 information that, in the agency's judgement, should not have
6 been released.

7 So, yes, the agency did offer Exhibit 4 to
8 demonstrate, I guess, why it should not have been released,
9 but I don't think the reason why is because it was ever
10 deemed to be officially law enforcement-sensitive information
11 in a document.

12 So, I certainly don't need to take other documents
13 simply for the purpose of demonstrating that here's some
14 similar material that wasn't classified law enforcement-
15 sensitive. So, we can eliminate all of those. Which ones
16 are those?

17 MR. HARRISON: Well, Your Honor, I'll have to go
18 through them one by one and tell you, but let me note, if
19 you're going to deny their objection, let me note, they serve
20 to rebut whichever position the agency takes, and it's not
21 clear to me the agency has adopted Your Honor's position. I
22 believe the agency asserts that the information in question
23 was categorized as law enforcement-sensitive, and I believe
24 you'll see that phrase in Mr. Hoffman's final decision
25 document.

1 JUDGE BOGLE: Okay.

2 Well, I will take a look at that issue, but it
3 remains that that -- that term is not part of the proposal
4 notice.

5 Let's start with N, then. N is what?

6 MR. HARRISON: Yes, Your Honor. Let me look. This
7 is actually on a separate issue, as I recall.

8 Yes.

9 This is a summary of a letter submitted by the
10 Fraternal Order of Police.

11 This is actually not on the issue we were talking
12 about.

13 JUDGE BOGLE: And the letter is actually in the
14 record.

15 Isn't this some kind of a document that tracks the
16 letter that Mr. Capps wrote? And Mr. Capps' letter is in the
17 file.

18 So, I don't need the tracking document.

19 MR. HARRISON: I think his letter is in the file
20 only by way of this set of documents.

21 JUDGE BOGLE: Well, if we come to his letter, we
22 can talk about that, but I don't need the internal tracking
23 document, taking us to O. We're going to go through these
24 pretty quickly.

25 MR. HARRISON: Could I make a -- well, I don't

1 know, Your Honor. Can I make a proffer on why this document
2 is important?

3 JUDGE BOGLE: Try.

4 MR. HARRISON: Okay. I'll make it brief. This is
5 a document written by the agency rather than the Fraternal
6 Order of Police.

7 It has evidentiary value beyond the position of the
8 Fraternal Order of Police. It shows that the agency
9 perceived, at least, that its police officers union was
10 expressing a concern about a critical personnel and funding
11 shortage that would hinder protection of the national
12 monuments, which shows Ms. Chambers' position, protected
13 activity, was reasonable.

14 JUDGE BOGLE: As I just indicated, this is a
15 document that tracks the response to the letter that Mr.
16 Capps wrote.

17 The letter is in the record. I don't need this
18 internal tracking document.

19 MR. HARRISON: Well --

20 JUDGE BOGLE: Taking us to O.

21 MR. HARRISON: I note my objection.

22 JUDGE BOGLE: Inspector General's assessment of
23 security at the National Mall.

24 Does this fall into the category of documents we
25 were just talking about --

1 MR. HARRISON: It does --

2 JUDGE BOGLE: -- in regard as law enforcement-
3 sensitive without having the stamp?

4 MR. HARRISON: I'm sorry, Your Honor. What this
5 document shows is that the Inspector General agreed with the
6 complainant's view of the crisis and noted that there were
7 grave concerns for the security and public safety at the
8 icons because of the inadequacies perceived in staffing by
9 the U.S. Park Police.

10 This actually was one of the bases which caused Ms.
11 Chambers to make her protected statements, because she was
12 attempting to solve the problem perceived by the Inspector
13 General.

14 JUDGE BOGLE: Okay.

15 Well, she does not have to prove that other people
16 agreed with her assessment.

17 MR. HARRISON: She has to prove her concern was
18 reasonable.

19 JUDGE BOGLE: She has to prove that a disinterested
20 person with the knowledge that she had would have reasonably
21 believed that she made a protected disclosure.

22 MR. HARRISON: This is relevant material to that
23 finding, Your Honor.

24 JUDGE BOGLE: No. Take us to P.

25 MR. HARRISON: I note my exception.

1 JUDGE BOGLE: Utilization of contract guard forces
2 on the mall.

3 I don't see how that's relevant.

4 MR. HARRISON: This is one of the documents we were
5 talking about, I believe, Your Honor, which shows non-
6 classified information of the same type that Ms. Chambers was
7 charged with releasing.

8 JUDGE BOGLE: Okay. I note your argument, but
9 again, law enforcement-sensitive does not appear in the
10 proposal notice.

11 Then we have Q, R, and S, which appear to be --

12 MR. HARRISON: I believe these are in that same
13 category, Your Honor.

14 They show similar information that Ms. Chambers was
15 criticized for releasing.

16 JUDGE BOGLE: Okay.

17 MR. HARRISON: Not classified.

18 JUDGE BOGLE: All right.

19 MR. HARRISON: Could I have a standing exception to
20 Your Honor's rulings?

21 JUDGE BOGLE: Yes, you may. And what is T? This
22 is the actual staffing document, is it?

23 MR. HARRISON: Let's see, Your Honor. An
24 inspection sheet.

25 It is not -- like all these other documents, was

1 given to us by the agency in discovery. It's not classified,
2 stamped sensitive, was not --

3 JUDGE BOGLE: I understand, but you know, you can't
4 just load me up with documents here.

5 I can't make heads or tails out of T. It's some
6 sort of staffing document.

7 You can't -- you can't just load me up with these
8 documents and expect that they're going to be helpful in any
9 way.

10 MR. HARRISON: This one may be one of the few that
11 is not self-explanatory, Your Honor.

12 JUDGE BOGLE: Okay. U is another document talking
13 about security on the mall? Yes?

14 MR. HARRISON: If I could have a moment to find the
15 description of it, Your Honor.

16 This is an inspection from the Assistant Secretary
17 for Law Enforcement, Mr. Parkinson.

18 It includes the detailed information regarding the
19 staffing and guarding of the icons. The agency released this
20 document in response to our request without any marking of
21 law enforcement-sensitive.

22 JUDGE BOGLE: I would just add to the discussion
23 we've already had along this line, though, that these are
24 internal documents.

25 MR. HARRISON: Well, Your Honor, the idea of

1 stamping them is to avoid someone within the agency from
2 mistakenly releasing them.

3 JUDGE BOGLE: I understand that, but this is not --
4 not a public release of this information if it's an internal
5 document.

6 MR. HARRISON: Well, it was released to the
7 parties, and there was no effort to put it under seal or
8 restrict its --

9 JUDGE BOGLE: I understand.

10 MR. HARRISON: -- dissemination.

11 JUDGE BOGLE: I understand.

12 Now, we have -- FF is an e-mail.

13 What is this?

14 MR. HARRISON: All right. If I could have a
15 moment, Your Honor, to find my description.

16 JUDGE BOGLE: I've seen this one --

17 MR. HARRISON: This is a different matter entirely.

18 JUDGE BOGLE: This is in the record.

19 MR. HARRISON: I don't know. I didn't think it
20 was, Your Honor, or I wouldn't be offering it. I would think
21 it was in the record from the affidavit, but that was no
22 longer the case --

23 JUDGE BOGLE: I'm certain that this is already in
24 the record.

25 MR. HARRISON: Well, Your Honor, can I then offer

1 it on the contingency that it's not?

2 JUDGE BOGLE: Yes.

3 MR. HARRISON: Thank you.

4 JUDGE BOGLE: Okay. II?

5 MR. HARRISON: Yes, Your Honor. Just need a
6 moment.

7 JUDGE BOGLE: Are you following along with us, Mr.
8 L'Heureux --

9 MR. L'HEUREUX: I am, Your Honor.

10 JUDGE BOGLE: -- so that you can tell us whether
11 this is in the record?

12 This concerns the psychological examination of Mr.
13 Beam.

14 MR. L'HEUREUX: Yes, Your Honor.

15 JUDGE BOGLE: There is documentation in the record
16 concerning that.

17 Does it not include --

18 MR. HARRISON: This is information, to my
19 knowledge, Your Honor -- the last, in particular, shows the
20 timing of events that is significant for the resolution of
21 this particular charge.

22 The last page, for example, shows a memo to Mr.
23 Murphy's secretary, Ms. Brooks, from an attorney in the
24 solicitor's office.

25 It is talking about the charge or the -- the issue

1 of the psychological exams. It talks about options of a
2 waiver and having the officers take the exams as of June the
3 6th.

4 It mentions Ms. Chambers has essentially recused
5 herself -- recused herself from that matter because of her
6 prior involvement, and I believe the rest of the document
7 show the sequence of events, that Mr. Murphy then issued an
8 order within 10 days of this memorandum directing the
9 deputies to take those exams, and I believe there is
10 information here that shows acts to come into compliance
11 shortly thereafter.

12 JUDGE BOGLE: Okay.

13 Mr. L'Heureux, you said this was not relevant. It
14 seems relevant to me.

15 Do you have any other objection?

16 MR. L'HEUREUX: I do not, Your Honor.

17 JUDGE BOGLE: All right. So, I'll accept II.

18 MR. HARRISON: Thank you, Your Honor.

19 (Exhibit II was received in
20 evidence.)

21 MR. HARRISON: I think LL might be next.

22 JUDGE BOGLE: Security proposal. This is stamped
23 law enforcement-sensitive, but it isn't going to help me
24 decide this case, is it?

25 MR. HARRISON: And Your Honor, if I could just note

1 for the record, there is something unique about this
2 document, as to why we offered it, for -- at least as a
3 proffer.

4 This document makes the point, which may be well-
5 known by Your Honor, that a document stamped "sensitive" or
6 "confidential" may nonetheless contain releasable information
7 that is made available through a process called redaction.

8 This document has clearly information contained in
9 it, including on the back page, which no one would assert,
10 including Mr. Murphy, in his deposition, is sensitive or
11 confidential.

12 JUDGE BOGLE: Okay. But I don't need the document.
13 Take us, then, to the documents that were attached to her
14 affidavit, beginning with SS?

15 MR. HARRISON: Yes.

16 JUDGE BOGLE: This is a release about her --

17 MR. HARRISON: Yes, Your Honor.

18 This was going to establish Ms. Chambers'
19 background and qualifications as the agency perceived her
20 when they hired her.

21 JUDGE BOGLE: Okay. Well, she testified about
22 that.

23 MR. HARRISON: I don't know --

24 JUDGE BOGLE: TT?

25 MR. HARRISON: -- if we did that fully, in

1 anticipation of this being in the record, Your Honor.

2 JUDGE BOGLE: I think she did.

3 MR. HARRISON: Well, I note my exception to that.

4 JUDGE BOGLE: Don't forget, there's her affidavit,
5 as well, which is quite thorough.

6 MR. HARRISON: And I appreciate that.

7 JUDGE BOGLE: TT is what?

8 MR. HARRISON: Yes, Your Honor. This is regarding
9 the safety issue on the parkway. It's not the icons and not
10 the security information but about Ms. Chambers raising a
11 concern that was specific and substantial in regard to danger
12 to the public, because in order to staff the icons, with the
13 budget limitations, officers had to be pulled off the
14 parkways.

15 This shows that there, in fact, was a study of
16 parkway safety and that there had, in fact, been fatalities
17 and that the matter was communicated to officials, including
18 Mr. Murphy and Ms. Mainella, by Ms. Chambers, so there was
19 some history of the protected activity internally before the
20 public disclosure, and it gives substance and shows
21 reasonableness.

22 JUDGE BOGLE: Well, of course -- I don't think it -
23 - I don't think it adds anything to what's already in the
24 record.

25 MR. HARRISON: Well --

1 JUDGE BOGLE: I will not take TT.

2 MR. HARRISON: Your Honor, I completely do not
3 comprehend that ruling and note my objection.

4 JUDGE BOGLE: Taking us to UU.

5 MR. HARRISON: Yes. This is a staffing study with
6 the cover memo from Ms. Chambers showing that her concerns
7 had a basis in fact in terms of the staffing limitations and
8 what was needed to staff the monuments and the parkways, and
9 so, her public disclosures and internal disclosures were
10 reasonable, and a reasonable person, including an objective
11 person, with information that the appellant had would have
12 felt there was, in fact, a danger to the public.

13 JUDGE BOGLE: Okay.

14 MR. HARRISON: And this was part of the information
15 she had.

16 JUDGE BOGLE: The problem is -- I guess I'm not
17 making myself very clear on what she has to prove. She
18 doesn't have to prove the fact of this stuff. She just has
19 to prove that it meets the definition of the kind of
20 disclosure she said she made.

21 So, more information about the facts isn't really
22 going to do that.

23 So, I will not accept UU.

24 VV is what?

25 MR. HARRISON: This is a communication between Ms.

1 Chambers and Mr. Schaefer regarding the budget needs, and let
2 me have a moment, Your Honor.

3 JUDGE BOGLE: It seems to be talking about '03.

4 MR. HARRISON: It shows, Your Honor, that Ms.
5 Chambers was requesting amounts consistent with her
6 statements in The Washington Post internally, including the
7 \$7 million for the helicopter, amounts that go beyond the
8 alleged budget document submitted up to OMB that may be
9 considered, or may not, part of the presidential documents
10 protected by their policy on disclosure.

11 JUDGE BOGLE: Okay.

12 We have a lot of budget material in the record. I
13 don't see that this adds anything.

14 MR. HARRISON: Thank you.

15 JUDGE BOGLE: WW?

16 MR. HARRISON: This is -- I guess goes to Mr.
17 Schaefer's credibility and to Ms. Chambers' in regard to the
18 history of budget communications between Ms. Chambers and Mr.
19 Schaefer, and I don't know the extent to which Your Honor
20 perceives that whole line as relevant, but the agency has, to
21 some extent, put it at issue and has called Mr. Schaefer as a
22 witness. This shows that Mr. Murphy himself agreed with Ms.
23 Chambers at a point in time about the frustration in dealing
24 with Mr. Schaefer.

25 JUDGE BOGLE: Okay. But this particular

1 frustration concerns radio money, correct? So, it's not --

2 MR. HARRISON: That's not entirely clear, Your
3 Honor.

4 This -- it's a history of communication with Mr.
5 Schaefer that has been discussed.

6 JUDGE BOGLE: Okay. It appears to concern the
7 radio project. So, I will not accept that. Take us to XX.

8 MR. HARRISON: This has to do with Captain Hayes'
9 study of safety on the parkway and Ms. Chambers' reasonable
10 concern about public safety in light of the staffing
11 limitations imposed upon her.

12 JUDGE BOGLE: I think this study is already in the
13 record, isn't it?

14 MR. HARRISON: I would be hard pressed to tell you
15 where, Your Honor.

16 JUDGE BOGLE: I think it is.

17 MR. L'HEUREUX: It's in agency tab 4-M. It's one
18 of the attachments. That's -- that's her written response
19 and all the attachments.

20 JUDGE BOGLE: Okay. Thank you. Taking us to YY.

21 MR. HARRISON: Thank you, Your Honor.

22 JUDGE BOGLE: Another budget document.

23 MR. HARRISON: Yes, Your Honor, and this one shows
24 proposed cuts by Ms. Chambers of a type which her supervisors
25 asserted she was unwilling to make and which others

1 criticized her for not implementing NAPA's recommendations in
2 regard to; for example, cutting Wolftrap and other activities
3 considered to be beyond the immediate mission of the Park
4 Police; also shows Ms. Chambers was forced to cut counter-
5 terrorism efforts by a half-million dollars.

6 JUDGE BOGLE: This concerns the '04 budget.

7 MR. HARRISON: Well, that's an issue in this case,
8 Your Honor.

9 The budget shortfall in '04 was carried over in the
10 sense that those same expenses would carry over into '05, and
11 it's why Ms. Chambers said she needed \$27 million instead of
12 8 or 3 million dollars for the next year.

13 JUDGE BOGLE: But I don't need the history of why.
14 I mean the comments that she allegedly made concerned the
15 '05 budget. Taking us to ZZ.

16 MR. HARRISON: Your Honor, if I could just note for
17 the record, Mr. Schaefer testified that he knew nothing about
18 a shortfall in '04, and this speaks to that.

19 JUDGE BOGLE: Okay. I don't know that a shortfall
20 in '04 is relevant, though. So --

21 MR. HARRISON: Well, it is to his credibility.

22 JUDGE BOGLE: Taking --

23 MR. HARRISON: I would offer it for impeachment.

24 JUDGE BOGLE: Okay. Taking us to ZZ.

25 MR. HARRISON: I just need a moment, Your Honor.

1 JUDGE BOGLE: See, the problem is you've offered a
2 lot of budget documents, but they all seem to come from a
3 different point in time, and so, the figures change, and all
4 they do is confuse the issue in my mind --

5 MR. HARRISON: Well, Your Honor --

6 JUDGE BOGLE: -- and this is some sort of --

7 MR. HARRISON: This one is not confusing.

8 This one is a document that shows that Mr. Murphy
9 was given an explanation of the budget shortfall that he
10 claims he had no knowledge of -- pardon me -- Mr. Schaefer,
11 not Mr. Murphy, and the last page, which is a document co-
12 authored by Mr. Schaefer and Mr. Murphy, in the middle,
13 reflects \$11.5 million as the budget shortfall for 2004 and a
14 plan for making cuts to deal with it.

15 This shows that Mr. Schaefer was not testifying
16 credibly in this proceeding, and I note, Your Honor, that my
17 client reminds me that her communications with The Washington
18 Post included communications about what was happening in
19 2004, not just 2005.

20 JUDGE BOGLE: Once again, all of these documents
21 are part of budget discussions that took place over many,
22 many months, and they're just not helpful in looking at these
23 charges.

24 MR. HARRISON: Well, if I may make one specific
25 proffer on this regarding Mr. Schaefer, Mr. Schaefer was

1 called as a rebuttal witness over our objection on matters he
2 should have been called in the agency's case in chief. He
3 testified to two points, really.

4 One was he said he had seen a document with an 8-
5 point-something-million-dollar figure in it that the agency
6 is going to assert supports their position that Ms. Chambers
7 disclosed something she shouldn't have.

8 He didn't produce the document. His credibility is
9 at issue on that matter.

10 He then testified, in response to my question, that
11 he had no knowledge of a \$12 million shortfall. This
12 document shows just the opposite and shows that he is not to
13 be believed.

14 That is a significant point of impeachment which
15 we're allowed to make a record on.

16 JUDGE BOGLE: Thank you. Your comments are noted.
17 Let's go to AAA.

18 MR. HARRISON: So, Your Honor is refusing that
19 document in the record?

20 JUDGE BOGLE: I'm refusing the document.

21 MR. HARRISON: And I respectfully note my exception
22 to that.

23 JUDGE BOGLE: I have no idea what it is. AAA.
24 Again with the budget shortfall.

25 MR. HARRISON: Now this is, again, regarding Mr.

1 Schaefer being informed about the budget shortfall by
2 financial officers for the U.S. Park Police, so he couldn't
3 have really been ignorant of the matter, as he testified in
4 this proceeding.

5 JUDGE BOGLE: Okay. I will not accept that
6 document. BBB.

7 MR. HARRISON: Same exception on that.

8 JUDGE BOGLE: Just the documentation that she met
9 with Mr. Manson --

10 MR. HARRISON: Now, this, Your Honor, is critically
11 important, and I'll tell you why.

12 There is Agency Hearing Exhibit number 3, I believe
13 it is, that is a two-page document Mr. Murphy testified about
14 at some length in this proceeding. It's dated the very same
15 date as this memo, September 3rd. It's a document in which
16 Mr. Murphy claimed he was talking to himself and sending
17 documents to himself.

18 Now, our position is that what he was doing when he
19 said, "You might want to know this when you meet with Ms.
20 Chambers" -- the "you" he was talking about was not himself
21 but was Craig Manson, who met with Ms. Chambers on the very
22 same day that that memo was taken.

23 That memo was prepared to communicate with Mr.
24 Manson, and Mr. Manson and Mr. Murphy were contemplating
25 action against Ms. Chambers outside the chain of command,

1 excluding Ms. Mainella, which is exactly what Mr. Murphy
2 doesn't want to admit to in this proceeding, because he is
3 saying that Ms. Chambers should be fired for going outside
4 the chain of command.

5 JUDGE BOGLE: That's a very convoluted argument
6 based on, apparently, an e-mail that says "Thank you for
7 meeting with me."

8 I do not need that e-mail.

9 MR. HARRISON: Your Honor, I just can't express my
10 dissatisfaction on that ruling, because this is the key
11 witness, Mr. Murphy, in this proceeding, as proposing
12 official.

13 His credibility was significantly put in issue by
14 his even characterizing his own document as talking to
15 himself when he used the third person at least 15 times, and
16 this document explains why he is being dishonest about that.

17 I think we're entitled --

18 JUDGE BOGLE: This document does not even mention
19 Mr. Murphy.

20 It's an e-mail from the appellant to Mr. Manson.

21 MR. HARRISON: That's precisely my point, Your
22 Honor.

23 JUDGE BOGLE: No, we're not -- I'm not taking the
24 document, doesn't mean anything to me --

25 MR. HARRISON: Well, I'm sorry to hear that, Your

1 Honor, and I note my exception.

2 JUDGE BOGLE: -- which is why, you know, these
3 documents should have been offered through your witnesses.
4 I'm giving you this opportunity because you apparently did
5 not realize that the attachments to the affidavit were not
6 already in the record, but you didn't --

7 MR. HARRISON: That's right.

8 JUDGE BOGLE: If you thought they were in the
9 record, you would -- and that they were relevant to your --
10 your witness testimony, you obviously would have referred to
11 them during their testimony.

12 You did not do that.

13 MR. HARRISON: Your Honor --

14 JUDGE BOGLE: So, we'll go through these, but --

15 MR. HARRISON: I beg your pardon. I did not know
16 that Mr. Murphy was going to say on the stand that he was
17 talking to himself --

18 JUDGE BOGLE: Okay.

19 MR. HARRISON: -- when this memo was clearly
20 written to a third person.

21 JUDGE BOGLE: Well, this is not an opportunity to
22 rebut everything you heard in the witness testimony with
23 documents. That's not what this is about.

24 MR. HARRISON: Your Honor --

25 JUDGE BOGLE: This is only an opportunity because

1 you apparently did not realize the stay and its attachments
2 were not in this regard.

3 MR. HARRISON: Well, I did not.

4 JUDGE BOGLE: Taking us to CCC, another e-mail.

5 MR. HARRISON: Your Honor, I do not comprehend your
6 ruling, and I note my exception.

7 JUDGE BOGLE: Noted.

8 What does -- how is CCC relevant?

9 MR. HARRISON: CCC. Let me have a moment to
10 refresh my memory, Your Honor.

11 JUDGE BOGLE: CCC seems to have something to do
12 with the '04 budget, which is not --

13 MR. HARRISON: I just need a moment to refresh my
14 own memory, Your Honor.

15 JUDGE BOGLE: Well, we need to go a little bit
16 faster through these. DDD, again, talks about --

17 MR. HARRISON: Your Honor, could I have a chance to
18 respond on CCC?

19 JUDGE BOGLE: Well, we're not going to take that
20 much longer with these. They appear to be not -- to me, to
21 be not relevant.

22 MR. HARRISON: I beg your pardon, Your Honor.

23 JUDGE BOGLE: DDD is an e-mail concerning highway
24 accidents.

25 MR. HARRISON: Are we on DDD?

1 JUDGE BOGLE: Yes, we are, and it does not appear
2 to be relevant.

3 EEE --

4 MR. HARRISON: This is about highway accidents, and
5 I don't understand how parkway safety, being one of the
6 protected disclosures Ms. Chambers allegedly made, is not
7 relevant to this proceeding.

8 JUDGE BOGLE: EEE, code yellow staffing, not
9 relevant.

10 MR. HARRISON: Your Honor --

11 JUDGE BOGLE: FFF --

12 MR. HARRISON: Could I note a proffer? The
13 document reflects that Ms. Chambers was obliged to staff at
14 mandatory levels for code yellow for the icons, for
15 protecting the monuments, which forced her to make other cuts
16 which put the public in danger in other areas. It also shows
17 -- if you tie it to the other budget documents which Your
18 Honor has not allowed into this record -- that her
19 supervisors were cutting code yellow funding notwithstanding
20 the mandate, which is part of the motive for her protected
21 activity and shows why it was reasonable and why it was a
22 specific and substantial danger.

23 JUDGE BOGLE: All right. FFF is also a staffing
24 document, staffing e-mail, e-mail about staffing. GGG --

25 MR. HARRISON: You're going faster than I'm going,

1 Your Honor.

2 JUDGE BOGLE: Well, we have to pick up the speed
3 here.

4 MR. HARRISON: I don't understand our rush, Your
5 Honor.

6 JUDGE BOGLE: You're attempting to enter a lot of
7 e-mails into this record that no witness has ever addressed
8 and a lot of budget documents that I can't make heads or
9 tails out of.

10 They're not final documents; they're just working
11 documents.

12 It will just complicate the record in a way that --
13 that can't be straightened out.

14 MR. HARRISON: Well, Your Honor, I apologize,
15 because I did not understand that there was any procedure in
16 the Merit Systems Protection Board for having a witness talk
17 about every document offered, because the agency certainly
18 hasn't done that with the documents in its record, and both
19 parties should have the same opportunity.

20 JUDGE BOGLE: If the document is clearly
21 comprehensible, a witness doesn't have to address it, but
22 you're -- you're loading up the record with e-mails and
23 staffing documents and budget documents that I can't
24 understand, that don't make any sense --

25 MR. HARRISON: Well --

1 JUDGE BOGLE: -- outside -- without a witness to
2 explain them.

3 MR. HARRISON: Well, FFF is not one of those, for
4 example.

5 JUDGE BOGLE: Well, we're past that. I'm on GGG,
6 and it's --

7 MR. HARRISON: Well, Your Honor --

8 JUDGE BOGLE: -- a budget document, e-mails about
9 budget.

10 MR. HARRISON: I'd like to make a proffer on FFF.
11 May I?

12 JUDGE BOGLE: You know, all of this -- maybe this
13 will help.

14 All of this will be retained for the record.

15 MR. HARRISON: That is helpful.

16 JUDGE BOGLE: If you're unhappy with the outcome of
17 this case, you can argue that I erred in failing to accept
18 these into evidence.

19 MR. HARRISON: I appreciate that.

20 I was thinking Your Honor might actually reconsider
21 on FFF.

22 JUDGE BOGLE: No.

23 HHH concerns an NFL event, staffing for that event.

24 MR. HARRISON: Yes, Your Honor. This was one of
25 the compliments Ms. Chambers received, as I recall. Let me

1 check here.

2 Oh, this is Mr. Murphy responding with a simple
3 thanks in response to Ms. Chambers essentially saying I am
4 willing to work with you on a flexible assignment of Ms.
5 Blyth, or a flexible detail, and rather than telling her, he
6 decided to make the detail inflexible, which he then
7 proceeded to do.

8 JUDGE BOGLE: All right.

9 MR. HARRISON: He just said thanks.

10 JUDGE BOGLE: III is an e-mail.

11 MR. HARRISON: Did Your Honor deny GGG?

12 JUDGE BOGLE: Yes, I did. III is another e-mail,
13 not relevant. JJJ is another e-mail, not relevant. KKK,
14 another e-mail.

15 MR. HARRISON: I just object to not being able to
16 make a proffer, Your Honor.

17 JUDGE BOGLE: Well, we're taking more time than
18 should be necessary with this.

19 MR. HARRISON: Your Honor, this was a totally
20 unanticipated demand that I believe was due to error of Your
21 Honor in not considering these part of the record in the
22 first place.

23 I don't believe I'm properly criticized for taking
24 two minutes per document.

25 JUDGE BOGLE: Did you ever file these in connection

1 with either one of these cases that I'm hearing today? You
2 did not.

3 MR. HARRISON: Yes. I did in the order to show
4 cause.

5 JUDGE BOGLE: You made an assumption that the stay
6 file was part of this file. That was a bad assumption.
7 There was no basis for making it.

8 MR. HARRISON: Pardon me, Your Honor. I --

9 JUDGE BOGLE: I'm attempting to let you remedy
10 that.

11 MR. HARRISON: I don't see that, Your Honor,
12 actually, the way this is playing out. I see it as just the
13 opposite.

14 JUDGE BOGLE: Okay. I don't -- you know, unless
15 you can pick -- some of this that's left -- we've got a lot
16 of like two-line e-mails here.

17 Here's the -- I'm up to NNN.

18 MR. HARRISON: Well, if I can begin in a moment,
19 I'll try to respond to you.

20 JUDGE BOGLE: This is -- this is all -- this is in
21 the record somewhere.

22 This is Ms. Norton's response to the --

23 MR. HARRISON: Which one is Your Honor --

24 JUDGE BOGLE: -- letter that Capps wrote.

25 MR. HARRISON: Which document is Your Honor on at

1 the moment?

2 JUDGE BOGLE: It is NNN, and it's already in the
3 record somewhere.

4 OOO is back to an e-mail.

5 MR. HARRISON: Your Honor, I --

6 JUDGE BOGLE: PPP, another e-mail.

7 MR. HARRISON: I need to make a proffer on LLL.

8 JUDGE BOGLE: All right. Go ahead.

9 MR. HARRISON: It isn't one of the categories we've
10 been discussing.

11 JUDGE BOGLE: Go ahead.

12 MR. HARRISON: This is Ms. Chambers'
13 contemporaneous note regarding her conversation with Ms.
14 Weatherly, which is the only contemporaneous record of that
15 conversation.

16 That is totally central in this matter. It's
17 central to credibility of the witnesses on what was said and
18 wasn't said to Ms. Weatherly. I would offer LLL for that
19 reason.

20 JUDGE BOGLE: Mr. L'Heureux, do you want to weigh
21 in on any of this? How about LLL? What is this?

22 MR. L'HEUREUX: Well, it appears to be a memorandum
23 to the file written by Ms. Chambers, but it hasn't been
24 testified to or verified in any particular way.

25 MR. HARRISON: It's referenced in her affidavit,

1 Your Honor, under oath.

2 MR. L'HEUREUX: I won't object if you want to take
3 this in, Your Honor.

4 JUDGE BOGLE: But it doesn't concern any of the
5 matters in issue, does it, Mr. Harrison?

6 MR. HARRISON: Well, it's the protected activity of
7 November 3rd.

8 It's the substance of it.

9 It recounts that she, in fact, was responding to
10 Ms. Weatherly's questions and, therefore, was engaging in
11 protected conduct under the lawful let and other Federal
12 statutes.

13 She was not initiating an unwelcome communication
14 to Congress.

15 I think it's central to that charge, which is
16 number -- charge number one.

17 JUDGE BOGLE: It doesn't concern anything that's at
18 issue in this case.

19 It concerns -- they're talking about the NAPA
20 study.

21 It's not relevant.

22 MR. HARRISON: She's reflecting the sequence of
23 events in that congressional communication for which she is
24 charged.

25 JUDGE BOGLE: Taking us to SSS --

1 MR. HARRISON: Your Honor --

2 JUDGE BOGLE: -- titled "Comments on F5 OMB pass-
3 back."

4 MR. HARRISON: SSS, Your Honor?

5 JUDGE BOGLE: Yes.

6 MR. HARRISON: I'll see if I can find that.

7 JUDGE BOGLE: Which could possibly be relevant.
8 We're talking --

9 MR. HARRISON: We've skipped over a number here
10 that I don't --

11 JUDGE BOGLE: We appear to be talking about the
12 right budget year here, and the amount of money involved in
13 the pass-back appears to be what the agency claimed she
14 should not have disclosed.

15 I don't see any figures in here, but is that what
16 you represent this is relevant to, the allegation that she
17 should not have disclosed that information?

18 MR. HARRISON: This is a protected disclosure,
19 number 28, that's referenced in her filing as one of her key
20 protected activities, which discloses the crisis and may
21 result in loss of life or destruction of one of the nation's
22 most valued symbols of freedom and democracy, on page two, to
23 the director, Mainella.

24 JUDGE BOGLE: Mr. L'Heureux?

25 MR. L'HEUREUX: I'd note, Your Honor, that is

1 probably is relevant, because in the very last paragraph, it
2 references the request for an increase of at least the \$8
3 million initially passed back by the department.

4 JUDGE BOGLE: All right. I will take SSS.

5 (Appellant's Exhibit SSS was
6 received in evidence.)

7 JUDGE BOGLE: And TTT --

8 MR. HARRISON: That simply proves knowledge by the
9 director, Ms. Mainella, of the same --

10 JUDGE BOGLE: Oh, this is the transmission sheet
11 for the --

12 MR. HARRISON: It is.

13 JUDGE BOGLE: All right. I will receive TTT.

14 MR. HARRISON: Thank you.

15 (Appellant's Exhibit TTT was
16 received in evidence.)

17 JUDGE BOGLE: And UUU is more budget --

18 MR. HARRISON: It is --

19 JUDGE BOGLE: -- discussion. There are no figures
20 here.

21 MR. HARRISON: It shows, Your Honor, that the
22 impact, on the second page, of having to make the cuts, which
23 were the motivation and the substance of Ms. Chambers'
24 protected activities.

25 It's dated December 1st, just before the action

1 started against her.

2 JUDGE BOGLE: You know, again, it's -- it's talking
3 about the budget, but there are lots of these documents. VVV
4 is another one. What is -- VVV is the '04 budget, not
5 relevant.

6 WWW is -- you offered this earlier.

7 I've seen this document just in the material that
8 we're going through.

9 MR. HARRISON: I believe it has different numbers
10 in a different version.

11 There was one very similar that shows the budget
12 shortfall.

13 I don't believe Your Honor received it, but I would
14 like it for Mr. Schaefer's credibility.

15 JUDGE BOGLE: This is exactly why I didn't receive
16 it.

17 I think one of these witnesses gave us the best
18 explanation we could get about this.

19 This is ongoing information on the computer. I am
20 sure changes are made as -- made as discussions go along, but
21 to --

22 MR. HARRISON: Your Honor, that witness --

23 JUDGE BOGLE: -- pick up something and offer it --
24 I don't know how I can --

25 MR. HARRISON: That witness was dishonest on the

1 stand, and we have a right to prove it.

2 JUDGE BOGLE: All right.

3 Tell me what XXX is.

4 MR. HARRISON: This is a complaint regarding Mr.
5 Murphy and Mr. Krutz, both of whom were critical in the
6 decision made against Ms. Chambers.

7 It was filed on December 2nd, the same day as the
8 actions began against her, and shows one of her exercises, in
9 our view, of a B-9 protected right.

10 It also is a protected activity, perhaps, in -- in
11 substance beyond the complaint against Murphy and Krutz, but
12 it certainly shows the B-9 argument that the complainant
13 wishes -- Appellant wishes to preserve.

14 It also shows a bias by the decision-makers.

15 JUDGE BOGLE: I'm completely at a loss as to what
16 this is.

17 MR. HARRISON: This is --

18 JUDGE BOGLE: This is a different complaint than
19 the complaint that we have previously addressed?

20 MR. HARRISON: This is it, I believe. This is the
21 complaint delivered on December 2nd by Lieutenant Beck for
22 Ms. Chambers to Director Mainella complaining to Mr. Murphy
23 and Mr. Krutz, both of whom were decision-makers or advisors
24 in the decision-making process.

25 JUDGE BOGLE: So, this is the same complaint, and

1 this is certainly in the record, then, if it's the same
2 complaint.

3 MR. HARRISON: Well, we had put it in in her
4 affidavit, and I don't recall that it is in the record
5 elsewhere.

6 JUDGE BOGLE: Mr. L'Heureux, do you know?

7 MR. L'HEUREUX: I'm not sure it's in the record
8 either, Your Honor. I think it probably ought to be admitted
9 provisionally, anyway.

10 JUDGE BOGLE: All right. If it's not in the record
11 -- if it's not in the record, it should be.

12 MR. HARRISON: Thank you.

13 (Appellant's Exhibit XXX was
14 received in evidence.)

15 JUDGE BOGLE: YYY.

16 MR. HARRISON: This is a protected disclosure to
17 Congress from Ms. Chambers.

18 JUDGE BOGLE: I know this is in the record. The
19 agency put it in, didn't you, Mr. L'Heureux?

20 MR. L'HEUREUX: Yes, Your Honor.

21 JUDGE BOGLE: This is in.

22 MR. HARRISON: Thank you, Your Honor.

23 JUDGE BOGLE: And ZZZ?

24 MR. HARRISON: This is the cover memo or the sealed
25 envelope delivering the complaint about Mr. Murphy and Mr.

1 Krutz.

2 JUDGE BOGLE: Okay. Well, I don't think we have
3 any dispute that it was received, right? She testified --

4 MR. HARRISON: If not, that's fine.

5 JUDGE BOGLE: Okay.

6 AAAA.

7 MR. HARRISON: Yes, Your Honor.

8 JUDGE BOGLE: A two-line e-mail.

9 MR. HARRISON: This is, again, on the same point,
10 confirming the delivery.

11 JUDGE BOGLE: I'm confident she testified that she
12 received the document.

13 MR. HARRISON: All right.

14 JUDGE BOGLE: BBBB?

15 MR. HARRISON: This is a protected activity and
16 evidence of retaliation in the form of a gag order reflected
17 in transcribed voice mails that were written
18 contemporaneously by Appellant Chambers, as she noted in her
19 affidavit.

20 JUDGE BOGLE: Is this not in the record somewhere?

21 MR. HARRISON: Well, Your Honor, we thought it was
22 in through the affidavit, and I couldn't tell you that it's
23 in.

24 JUDGE BOGLE: I mean he sent her an e-mail
25 basically saying the same thing, but you're saying this is a

1 transcription of a --

2 MR. HARRISON: -- the voice -- the voice mail, yes,
3 ma'am.

4 JUDGE BOGLE: All right.

5 You objected on relevance, Mr. L'Heureux?

6 MR. L'HEUREUX: I won't object to this, Your Honor.

7 JUDGE BOGLE: Okay.

8 MR. HARRISON: Thank you, Your Honor.

9 (Appellant Exhibit BBBB was
10 received in evidence.)

11 JUDGE BOGLE: And this is -- I know this must be in
12 the record.

13 MR. HARRISON: This is -- well, I was not sure that
14 it was beyond the affidavit, and this is a written expression
15 of what we call the gag order.

16 JUDGE BOGLE: Mr. L'Heureux, this is not in the
17 record somewhere?

18 MR. L'HEUREUX: I'm sorry. Is your question to me,
19 Your Honor?

20 JUDGE BOGLE: Yes. CCCC.

21 MR. L'HEUREUX: I don't think it is in the record.

22 JUDGE BOGLE: It's not in the record. All right.

23 MR. HARRISON: Thank you, Your Honor.

24

1 (Appellant's Exhibit CCCC was
2 received in evidence.)

3 JUDGE BOGLE: DDDD does not appear to be relevant.

4 MR. HARRISON: This is a request to clarify the gag
5 order, which, taken together with the responses, make it
6 clear what the breadth of that gag order was.

7 JUDGE BOGLE: Okay. Well, it's just a -- it's --
8 there's no response with it. It's just her --

9 MR. HARRISON: I believe the response to it is
10 elsewhere.

11 I believe it's EEEE that follows.

12 JUDGE BOGLE: Okay. Well, I'll take EEEE, then.

13 MR. HARRISON: Thank you. That should suffice.

14 (Exhibit EEEE was received in
15 evidence.)

16 MR. HARRISON: FFFF is the -- what we consider to
17 be disingenuous communication from Don Murphy to Ms. Chambers
18 after he was already planning disciplinary action against Ms.
19 Chambers.

20 JUDGE BOGLE: Okay. But it isn't -- doesn't need
21 to be in the record.

22 MR. HARRISON: Well, I believe it's irregular
23 procedure, Your Honor, and dishonesty with an employee about
24 planned actions is evidence of retaliatory motive. I would -
25 -

1 JUDGE BOGLE: Taking us to GGG.

2 MR. HARRISON: Note my exception.

3 JUDGE BOGLE: Is this the -- this is an article
4 that appeared subsequent to the article that's --

5 MR. HARRISON: It is, Your Honor, and it shows Mr.
6 Murphy being quoted or paraphrased as saying, three days
7 earlier, on December 3rd, that they were not -- they, the
8 agency, were not considering action against Ms. Chambers, but
9 as the depositions and the testimony at this trial have made
10 clear, that statement was false.

11 JUDGE BOGLE: Well, I don't know -- I don't know
12 that that matters.

13 MR. HARRISON: It's a credibility issue with Mr.
14 Murphy, at a minimum.

15 It also shows that Mr. Murphy, if he claims to have
16 been misquoted, should have been put on notice that Ms.
17 Chambers might have been misquoted and should have made more
18 of an effort to verify her comments.

19 JUDGE BOGLE: I understand the argument. I don't
20 need the document.

21 Taking us to --

22 MR. HARRISON: Could I note, Your Honor, there is a
23 case from the Merit Systems Protection Board -- I don't have
24 the citation at my fingertips -- it is on my computer -- that
25 states that before an agency can rely on press statements to

1 take discipline against an employee, there needs to be an
2 independent verification of those statements by the agency.

3 JUDGE BOGLE: Okay. If you want to provide the
4 cite, I'd be happy to look it up.

5 MR. HARRISON: I will do so.

6 JUDGE BOGLE: HHHH is e-mail communications about
7 something unrelated.

8 MR. HARRISON: This was the same sequence of
9 misleading communications about the meeting that turned out
10 to be a disciplinary meeting.

11 JUDGE BOGLE: Okay.

12 MR. HARRISON: Your Honor, what happened with IIII?

13 JUDGE BOGLE: They're just e-mail exchanges about
14 unrelated things.

15 MR. HARRISON: Well, if I could have a moment,
16 maybe they're not so unrelated.

17 Okay, Your Honor.

18 This is another in the series of misleading
19 communications where Ms. Chambers is not being told what was
20 clearly known was being planned against her.

21 JUDGE BOGLE: Okay. I'm all the way up to LLLL.

22 MR. HARRISON: Well, I'm at JJJJ. So, does Your
23 Honor wish me to skip making a proffer on the --

24 JUDGE BOGLE: Yeah. They're -- they're just e-
25 mails --

1 MR. HARRISON: And I note my objection for --

2 JUDGE BOGLE: -- about unrelated things.

3 MR. HARRISON: -- not being able to make a record.

4 JUDGE BOGLE: And LLLL was put out by the U.S. Park
5 Rangers Lodge, Fraternal Order of Police.

6 MR. HARRISON: Your Honor, there was testimony --
7 actually, there was testimony, and in the final decision
8 document of Mr. Hoffman in the penalty phase, there was a
9 discussion about Ms. Chambers' inability to work with and get
10 along with other police agencies. This is evidence to the
11 contrary.

12 JUDGE BOGLE: Okay. I don't need that document.

13 MMMM -- not relevant.

14 MR. HARRISON: Could I look at it? This is Ms.
15 Chambers making a point internally of the importance of
16 protecting the monuments against terrorist attacks and the
17 steps she was taking to take that risk seriously and shows
18 that her concerns were reasonable and that a person in her
19 position, with what she knew, would have stated a concern
20 reasonably.

21 JUDGE BOGLE: Okay.

22 NNNN is a letter to her former attorney talking
23 about --

24 MR. HARRISON: Your Honor, just for clarity of the
25 record, what happened with MMMM?

1 JUDGE BOGLE: Not relevant.

2 MR. HARRISON: Note my exception.

3 JUDGE BOGLE: NNNN is a letter to her attorney
4 concerning interviews. Is this not in the record at some
5 place?

6 MR. HARRISON: Not to my knowledge, Your Honor.

7 It shows that the gag order continued for perhaps
8 any congressional communication through at least June of
9 2004.

10 JUDGE BOGLE: All right. I'll accept the document.

11 MR. HARRISON: Thank you.

12 (Appellant's Exhibit NNNN was
13 received in evidence.)

14 JUDGE BOGLE: And finally, OOOO, another letter to
15 -- a letter from her attorney -- no, to her attorney, from
16 the Inspector General.

17 MR. HARRISON: This is regarding the Inspector
18 General's involvement, or lack thereof, in this matter,
19 apparently on the request, early on, of Mr. Murphy and Ms.
20 Mainella, which I don't believe that evidence is otherwise in
21 this record, that the director and deputy director went to
22 the Office of Inspector General. It also reflects Ms.
23 Chambers taking the same matters to the Inspector General and
24 being rebuffed.

25 JUDGE BOGLE: Do you have a specific objection, Mr.

1 L'Heureux?

2 MR. L'HEUREUX: No, I don't. General objection on
3 relevance.

4 JUDGE BOGLE: All right. I'll receive the
5 document.

6 MR. HARRISON: Thank you.

7 (Appellant's Exhibit 0000 was
8 received in evidence.)

9 JUDGE BOGLE: So, that should be that.

10 MR. HARRISON: Well, except, Your Honor, I have two
11 transcripts that we didn't have available until today to
12 offer, which are Mr. Davies and Mr. Krutz, the personnel
13 officers who were involved in advising the decision-makers.

14 They do offer evidence not otherwise in the record,
15 and I can explain what it is, including the timing of Mr.
16 Murphy's decisions, his bases, and I would offer them for the
17 record.

18 JUDGE BOGLE: Now, what, again, are these?

19 MR. HARRISON: These are the transcripts of the
20 depositions of the two human resource officers advising Mr.
21 Murphy and Mr. Hoffman on the decisions against Ms. Chambers,
22 Mr. Krutz and Mr. Davies.

23 JUDGE BOGLE: Were these offered before?

24 MR. HARRISON: We had raised in the pre-trial
25 hearing, Your Honor, that we had transcripts we had not yet

1 received, we intended to offer them, and these are just
2 physically available.

3 JUDGE BOGLE: I guess I don't recall those -- those
4 two.

5 Mr. L'Heureux, any agency objection?

6 MR. L'HEUREUX: I object on the grounds of
7 relevance, Your Honor.

8 These witnesses could have been called if they had
9 anything relevant to present.

10 MR. HARRISON: Your Honor, we were -- we were
11 prohibited from calling these witnesses. They were on our
12 list.

13 JUDGE BOGLE: Well, how is their deposition
14 testimony going to be relevant?

15 MR. HARRISON: I can help you with that. Mr. Krutz
16 testified that, on December the 2nd, before noon, he was
17 called to Mr. Murphy's office and was directed to write up a
18 disciplinary action regarding Ms. Chambers. Mr. Murphy had
19 the Washington Post article on his desk. He had concerns --
20 Mr. Murphy had concerns about statements in the Washington
21 Post article.

22 He gave Mr. Krutz a detailed list of his complaints
23 regarding Ms. Chambers.

24 Mr. Krutz then worked into the night on that
25 particular disciplinary document, which turns out to be not

1 an administrative leave document given to Ms. Chambers three
2 days later but a proposed removal which Ms. Chambers was
3 never told about until a couple weeks later.

4 Mr. Davies testified to different points, and I
5 have them written here, Your Honor, but I don't have them in
6 my memory, if I could have just a moment.

7 Mr. Davies indicates that removal of Ms. Chambers,
8 not her administrative leave, was discussed before December
9 the 5th.

10 Mr. Davies indicates that the decision to place Ms.
11 Chambers on administrative leave was because Mr. Murphy did
12 not believe that Ms. Chambers would heed his order to not
13 communicate with the media.

14 Mr. Davies' testimony shows an ongoing
15 investigation that continued past the time of Ms. Chambers
16 being placed on administrative leave, that Mr. Murphy
17 discussed with Mr. Davies disciplinary action prior to
18 December 2003 regarding Ms. Chambers, and that there was a
19 discussion between Mr. Davies and Mr. Murphy regarding
20 sending Ms. Chambers home in uniform unarmed, and they
21 decided to do it notwithstanding their concern.

22 So, we would offer those depositions for those
23 points.

24 JUDGE BOGLE: Okay. I don't find any of the things
25 you just stated to be relevant, and those two deposition

1 transcripts were not among those that you offered earlier and
2 that I agreed to take.

3 So, I will not accept them.

4 MR. HARRISON: I note my exception.

5 JUDGE BOGLE: Are we ready now for closing
6 comments?

7 Would you like to take a short break before we --

8 MR. HARRISON: Sure.

9 JUDGE BOGLE: -- proceed with them?

10 MR. L'HEUREUX: Yes, Your Honor.

11 JUDGE BOGLE: All right. Let's go -- let's take
12 about a five-minute break.

13 (A brief recess was taken.)

14 JUDGE BOGLE: We're ready for your closing
15 comments.

16 Now, you will recall last week we agreed upon a
17 maximum of a half-an-hour apiece. You should not think that
18 you need to fill up all of that time, if you can finish it in
19 less.

20 Mr. L'Heureux, you are first.

21 MR. L'HEUREUX: Thank you, Your Honor.

22 CLOSING STATEMENT BY COUNSEL ON BEHALF OF THE AGENCY

23 MR. L'HEUREUX: Teresa Chambers was the chief of
24 the U.S. Park Police, a high-level law enforcement official
25 who simply would not listen.

1 She wouldn't listen to the many warnings she
2 admitted she got not to disclose the numbers in budget
3 negotiations.

4 She would not listen to warnings she, herself,
5 wrote on documents or that were written under her
6 supervision, and wouldn't even listen to ordinary prudence
7 when she disclosed specific numbers of officers patrolling or
8 guarding the monuments on the National Mall.

9 Ms. Chambers would not listen to Congress and her
10 superiors when they told her that the Park Police would have
11 to pay for the NAPA review or to live within its means.

12 She would not listen to her supervisor, Mr. Murphy,
13 when he gave her specific instructions to follow.

14 She went so far as to persuade the deputy secretary
15 of the department to rescind an order Mr. Murphy gave
16 directly to one of her subordinates.

17 Having done that, she had the temerity to suggest
18 that the deputy secretary give her a different boss.

19 This is behavior that merits removal from the
20 Federal service.

21 It's not hard to see why Mr. Murphy proposed her
22 removal in the face of this behavior.

23 It's not hard to understand why Mr. Hoffman decided
24 that removal was the only appropriate penalty in the face of
25 this behavior by Ms. Chambers.

1 It should not be hard for the board to agree with
2 them.

3 In her defense, Ms. Chambers argues essentially
4 that it's all a misunderstanding and the real reason she's
5 being punished is that -- is because she dared to tell the
6 public that she needed more staff and money.

7 She isn't a whistle blower.

8 The allegedly protected utterances she made were no
9 part of the decision to remove her, and the evidence in this
10 case demonstrates that she did what she was charged with
11 doing.

12 Let's turn briefly to that evidence.

13 The first charge, charge number one, is improper
14 budget communications.

15 The essence of this charge is that Ms. Chambers
16 phoned Ms. Weatherly of the House Appropriations Subcommittee
17 for the Department of Interior and, in the course of that
18 conversation, said that the U.S. Park Police should not have
19 to pay for the follow-up NAPA study that Congress had
20 directed would occur.

21 Ms. Weatherly testified that Ms. Chambers did
22 exactly that -- in other words, said this -- causing Ms.
23 Weatherly to question whether the department intended to do
24 what Congress had required in its legislation.

25 Ms. Weatherly, subsequent to her telephone call

1 with Ms. Chambers, called several officials, including
2 Director of the Park Service Fran Mainella, to complain about
3 what Ms. Chambers had been saying to her. Ms. Mainella
4 clearly recalled Ms. Weatherly's call, she clearly recalled
5 Ms. Weatherly's concerns, and she clearly recalled her own
6 concerns about this communication.

7 Subsequently, Ms. Mainella told Mr. Murphy about
8 her concerns in this -- in this telephone call, and Mr.
9 Murphy communicated directly with Ms. Weatherly. During that
10 conversation, Ms. Weatherly repeated the same concerns that
11 she had said to Ms. Mainella.

12 Now, during these conversations with Ms. Weatherly,
13 Ms. Chambers was speaking officially, on duty. This
14 contributed to the concern that Ms. Weatherly had about what
15 was the official department policy or activity going to be
16 with respect to these issues.

17 As a result of this confusion, Ms. Chambers'
18 actions threatened to impair relations with a key
19 congressional appropriations subcommittee staff person. Ms.
20 Chambers admits that she made some remark to -- to Ms.
21 Weatherly to the effect that she wished there were a magic
22 pot of money to pay for the follow-up study. It's worth
23 recalling that Ms. Chambers reported a vastly different
24 version of her conversation with Weatherly to her superiors,
25 describing the conversation as amicable. Ms. Chambers

1 herself now admits she used the occasion of this call to tell
2 Ms. Weatherly that she needed more money, causing Ms.
3 Weatherly even more consternation. Please note that Ms.
4 Chambers left this out of any report to her superiors,
5 clearly knowing that she was not authorized to make such a
6 request as a department official; that is, speaking for the
7 department.

8 Ms. Chambers would just not listen to Congress,
9 would not listen to NAPA or the department about the U.S.
10 Park Police getting its budget and mission house in order and
11 living within its means.

12 This all happened in early November 2003, weeks
13 before Ms. Chambers spoke to The Washington Post.

14 Charge two, making public remarks regarding
15 security on the Federal Mall and in parks and on parkways in
16 the Washington, D.C., metropolitan area. Ms. Chambers has
17 admitted saying to The Washington Post that there were now
18 only two officers patrolling on the Baltimore-Washington
19 Parkway instead of four and that there were two officers or
20 would be two officers and two guards at each of the
21 monuments.

22 She denies saying that there were 20 guards in
23 training.

24 Ms. Chambers admits that she was speaking
25 officially -- that is, on duty -- to The Washington Post when

1 she made her remarks.

2 Ms. Chambers wrote the September 20, 2003, letter
3 to Mr. Parkinson, which enclosed, as we've seen, an appendix
4 submitted under seal here which labeled this information as
5 law enforcement-sensitive.

6 Mr. Murphy and Mr. Hoffman both testified that they
7 recognized this information as sensitive, whether or not it
8 had been so labeled in any document. Ms. Chambers, however,
9 denies that the information was sensitive, saying it was a
10 matter of simple observation. This is not true, as Mr.
11 Murphy testified.

12 You can't -- one can't see conveniently from a --
13 from outside the monuments how many guards, armed or unarmed,
14 there are.

15 As Mr. Murphy testified, a reconnaissance, what he
16 called casing, would have to be done by someone on foot day
17 and night to observe at what times and places the officers,
18 armed and unarmed, were present or would be present, but once
19 this information was reported publicly in The Washington
20 Post, America's enemies in the world and, indeed, common
21 criminals would have this information at their fingertips on
22 the internet.

23 No prudent security official would disclose to the
24 public how many guards are -- are resident at a local bank or
25 guarding an important witness or even guarding a jail.

1 Telling the public that only two officers are patrolling the
2 parkway shows -- demonstrates a similar lack of good
3 judgement.

4 As Mr. Murphy explained and Mr. Hoffman explained,
5 as well, this information would clearly indicate to those who
6 are disposed to break the traffic laws, knowing there are
7 only two officers patrolling, need only count those two
8 officers and then feel free on that parkway to do whatever --
9 whatever they chose to do, knowing that the likelihood that
10 any other officer would be patrolling is remote.

11 Ms. Chambers exhibited extremely poor judgement in
12 disclosing or even confirming this information, and this is
13 not the only time she exhibited poor judgement in the facts
14 of this case, but her actions do show her not listening to
15 the sensitive nature of this information, to the sensitive
16 label that was on a document that she -- that she transmitted
17 or even to simple prudence.

18 Charge three, improper disclosure of budget
19 deliberations.

20 The essence of this charge is that Ms. Chambers
21 knew she should not disclose budget numbers in negotiation
22 with OMB before the President's budget is formally released.

23 Mr. Murphy, Mr. Schaefer, and Ms. Mainella all testified
24 that Chambers had been present when warnings about this were
25 given on numerous occasions over two different budget cycles.

1 The warning, of course, was based on the cautions contained
2 in OMB Circular No. A-11, which is referenced in the charge
3 itself, the specification itself.

4 Ms. Chambers admitted in her deposition that she
5 had been so warned.

6 Mr. Murphy and Ms. Mainella testified that Ms.
7 Chambers knew on November 20, 2003, that the department was
8 going to request an increase in the U.S. Park Police budget
9 of \$8 million for 2005. Mr. Schaefer testified that this was
10 the amount that was going to be requested of OMB by the
11 department.

12 Ms. Chambers' November 28th letter to Ms. Mainella,
13 which was just accepted into evidence, contains yet another
14 admission that she knew that the figure was or had been \$8
15 million, at least on November 28th.

16 Mr. Murphy, Ms. Mainella, and Mr. Hoffman all
17 instantly recognize the amount of \$8 million to be what the
18 department was asking for when they saw the article on
19 December 2nd.

20 Once again, on this occasion, speaking to The
21 Washington Post, Ms. Chambers was speaking officially for the
22 department -- that is, was an official spokesperson. She
23 admitted that she was on duty at the time.

24 Now, Ms. Chambers admitted that she said at least
25 that she needed, her word, \$8 million for 2005 to The

1 Washington Post. She denied that she said what was reported
2 in The Washington Post, was that she had asked for \$8
3 million, but as we've seen, the Washington Post reporter
4 stood by his story when questioned by Mr. Wright from the
5 agency's press office, and Ms. Chambers should have known
6 better than to give this amount, no matter her quibble about
7 whether she said she needed or asked for \$8 million.

8 Mr. Murphy testified about the many difficulties
9 that such a prohibited disclosure of budget negotiations can
10 cause during the back-and-forth of the negotiations. Ms.
11 Chambers did not listen to the many warnings that she
12 received, that she admitted that she received about not
13 disclosing this information.

14 Charge four, improper lobbying.

15 The department's standards of conduct require
16 employees who are acting in their official capacity to
17 refrain from promoting or opposing legislation relating to
18 programs of the department without the official sanction of
19 the proper department authority.

20 Ms. Chambers was charged with making statements to
21 The Washington Post, printed on December 2, 2003, that her
22 department needed a major expansion, more than double its
23 strength, and that the U.S. Park Police needed more money to
24 hire recruits and pay for overtime. This was not the
25 department's policy, as Chambers well knew.

1 Chambers admitted she was speaking in her official
2 capacity to The Washington Post when she said this.

3 Ms. Chambers received ethics training which
4 specifically warned her not to engage in lobbying. Ms.
5 Chambers admitted that she did not have authorization to --
6 from the department to say that she needed a major expansion
7 or more funding.

8 Mr. Murphy, Ms. Mainella, and Ms. Weatherly all
9 testified that the 2004 appropriate legislation specifically
10 directed and previous legislation directed the Park Police
11 revisit its core mission and not expand.

12 Ms. Chambers had been told about this policy since
13 her first days as chief.

14 The necessity for her to find a way for the Park
15 Police to live within its means and go back to its core
16 mission had been impressed upon her by all her superiors,
17 including Mr. Griles.

18 It's obvious that Ms. Chambers was trying to
19 overcome this congressional and departmental reluctance to
20 expand the Park Police beyond the large amounts that Congress
21 had already authorized, a 32-percent increase since 9/11, as
22 Ms. Mainella testified.

23 Please recall that Ms. Chambers tried to persuade
24 Ms. Weatherly that she needed more money, again without
25 authorization, a few weeks before she spoke to The Washington

1 Post. Ms. Weatherly wrote Mr. Murphy that she was upset
2 about this, by this, because she knew Congress had given the
3 Park Police a lot of additional funding already.

4 Ms. Chambers did not listen to the ethics training,
5 she didn't pay any attention to the standards of conduct, and
6 she tried to bring public pressure on Congress, having failed
7 with Weatherly to bring pressure on Congress directly, about
8 the congressional appropriation that was pending at that
9 time.

10 Charge five is failure to carry out a supervisor's
11 instructions.

12 The first specification under charge five is that
13 Mr. Murphy twice instructed Ms. Chambers to detail her
14 subordinate, Pamela Blyth, to another office to become
15 familiar with Federal Government procedures, including budget
16 procedures.

17 Ms. Chambers did not follow this instruction,
18 ultimately causing Mr. Murphy directly to order Ms. Blyth to
19 report for the detail.

20 Mr. Murphy testified that he gave Ms. Chambers
21 specific instructions to effect the detail of Blyth in
22 exactly the manner as she had detailed other of her
23 subordinates in the past. Mr. Mainella testified that she,
24 too, wanted this detail to happen, and told Ms. Chambers so
25 in a long conversation that they had.

1 Ms. Chambers denies that Mr. Murphy gave her a
2 specific instruction. She asserts that they were merely
3 having a vigorous discussion about this detail without
4 conclusion.

5 Ms. Chambers' actions speak louder than her words
6 here.

7 Mr. Murphy was compelled to order the detail
8 himself.

9 It's plain that he wouldn't -- from his testimony -
10 - that he would not have done so had Ms. Chambers followed
11 his instruction, and furthermore, Ms. Chambers, as we will
12 see, went to great lengths in order to have Mr. Murphy's
13 direct order rescinded by Mr. Griles.

14 It's clear that Ms. Chambers intended for this
15 detail not to happen, and it's clear from Mr. Murphy's
16 testimony that the main reason she didn't want it to happen
17 was because Ms. Chambers thought it would satisfy her critics
18 inside the Park Police, those she described as internal
19 terrorists and snipers.

20 It's obviously, however, from Mr. Schaefer's
21 testimony that Blyth, new to the Federal Government, could
22 have used some specific information about the Federal budget
23 process, which this detail was supposed to provide her. Mr.
24 Murphy's actions in directly ordering a detail are consistent
25 with his testimony.

1 Ms. Chambers' actions in not affecting the detail
2 herself and in obstructing it contradict her own testimony.

3 Specification two concerns instructions Mr. Murphy
4 testified he gave Ms. Chambers on two different occasions to
5 order two of her subordinates, Deputy Chiefs Beam and
6 Pettiford, to undergo psychological and medical evaluations
7 based on advice he received from the Office of Special
8 Counsel and the department's lawyers. Once again, Ms.
9 Chambers admits that she did not give her subordinates this
10 order until after Mr. Murphy had given them the order
11 directly in writing.

12 Ms. Chambers denies, once again, however, that Mr.
13 Murphy gave her specific instructions that she was to give
14 these orders herself.

15 Once again, she says that she and Mr. Murphy were
16 merely discussing this issue and that Mr. Murphy ultimately
17 gave no such order. Mr. Murphy's actions in giving the order
18 directly to these two officers, however, supports his
19 testimony that Ms. Chambers would not carry out his
20 instructions.

21 Specification three concerns a different
22 instruction.

23 This is the instruction that Mr. Murphy testified
24 he directed Ms. Chambers to cooperate with attorneys in the
25 solicitor's office in regard to any information or assistance

1 they needed regarding the tractor man incident under review
2 by the department.

3 You've heard Mr. Murphy testify about all the
4 inquiries that were coming into the department about this
5 incident.

6 The interest inside the department was high-level
7 and urgent.

8 Mr. Murphy testified that the inquiry by Mr. Myers
9 of the solicitor's office had potential very serious
10 implications, including the involvement and possible
11 violation of international treaties. Mr. Myers testified to
12 this, as well.

13 Ms. Chambers did not respond to direct requests for
14 information from Mr. Myers of the solicitor's office,
15 including two letters he sent her.

16 And finally, Mr. Myers sent a letter to Ms.
17 Chambers indicating that, since she wouldn't cooperate, he
18 was just going to drop the whole matter as being unable to
19 complete his inquiry.

20 Mr. Murphy testified about Mr. Myers complaining to
21 him about this.

22 Mr. Myers said that he copied Mr. Murphy on one of
23 his letters to Ms. Chambers.

24 Ms. Chambers, however, says it's all a
25 misunderstanding again.

1 First, she testified that Mr. Murphy did not give
2 her any order to cooperate.

3 Second, she testified that it was Lieutenant Beck,
4 her assistant's job to set up the meeting. Lieutenant Beck
5 told her -- Ms. Chambers says Lieutenant Beck told her Mr.
6 Myers canceled the meeting and another one could not be
7 arranged.

8 In deposition, Beck did not recall any details
9 about arranging a meeting.

10 Mr. Myers testified here, however, that he did not
11 cancel any appointment.

12 Regardless of any confusion involved in here, it
13 was Ms. Chambers' responsibility to contact Mr. Myers,
14 especially once he wrote her indicating that he really needed
15 to.

16 Ms. Chambers admitted that she did not call Mr.
17 Myers in response to either of the two letters he sent her.
18 Here we have Ms. Chambers not listening to Mr. Murphy and not
19 listening to Mr. Myers either.

20 Charge five, failure to follow the chain of
21 command.

22 Ms. Chambers is accused of persuading Deputy
23 Secretary Griles to countermand Mr. Murphy's direct order to
24 Ms. Blyth that Ms. Blyth was to report for a detail on
25 Monday, August 25th.

1 Ms. Chambers admits that she did call Mr. Griles
2 with the intention of having him countermand Mr. Murphy's
3 order.

4 Mr. Murphy testified that he had made it plain to
5 Ms. Chambers that Ms. Blyth was to report to a Mr. Brown for
6 a detail as early as August 8th.

7 On August 21st, he told Ms. Chambers and Ms. Blyth
8 once again that Ms. Blyth would be detailed to Mr. Brown's
9 office.

10 Mr. Murphy told Ms. Chambers on both occasions but
11 absolutely on August 21st that he would be flexible in making
12 Ms. Blyth available to help with projects at the U.S. Park
13 Police.

14 Mr. Murphy testified that both Ms. Chambers and Ms.
15 Blyth knew at least by August 21st that the detail would
16 happen on August 25th.

17 He also testified that he had promised Ms. Chambers
18 that Ms. Blyth would be available to help projects, and Ms.
19 Chambers acknowledged this promise in an e-mail to Mr. Murphy
20 on August 21st.

21 Ms. Chambers simply obstructed Mr. Murphy and Ms.
22 Mainella by misleading Mr. Griles about the urgency of this
23 matter.

24 She even thought it appropriate to involve the
25 union in this obstruction by having them informed that one of

1 her staff members was to be detailed. This, by itself, was
2 inappropriate.

3 The circumstances also strongly suggest that Ms.
4 Chambers began this effort on Saturday, August 23rd, when she
5 was aware that Mr. Murphy and Ms. Mainella, who had ordered
6 the detail, were not available. Ms. Chambers did place a
7 call to Mr. Manson, the third-level supervisor, who could not
8 be reached.

9 Ms. Chambers waited only about one hour, after
10 calling Mr. Manson, before calling the deputy secretary to
11 have Mr. Murphy's order rescinded.

12 Ms. Chambers did not bother, in her haste to reach
13 Mr. Griles, to check back with either Mr. Murphy or Ms.
14 Mainella to see if Mr. Murphy's promise to her, made as late
15 as August 21st, to make Ms. Blyth available was not going to
16 be honored.

17 Ms. Chambers chose to presume, based on information
18 she had received from Ms. Blyth, that Mr. Murphy would not
19 honor his promise.

20 The urgency of stopping the detail on Monday
21 morning, August 25th, was contrived by Ms. Chambers. What
22 she wanted was to have it stopped totally, regardless of the
23 instructions and promises of her supervisors.

24 Following the chain of command is essential in law
25 enforcement operations.

1 Mr. Hoffman testified that it was essential in his
2 decision.

3 Moreover, that is why Mr. Griles called the meeting
4 after he rescinded the order, with the entire chain of
5 command present, in order to reintroduce Ms. Chambers to the
6 chain of command and have decisions made within that process
7 rather than by appeal to him.

8 After Ms. Chambers went to such lengths to
9 circumvent a direct order he gave, Mr. Murphy could have no
10 confidence that Ms. Chambers would carry out any of his
11 instructions.

12 Let's turn now to the consideration of penalty.

13 The penalty was decided -- the penalty of removal
14 was decided by Deputy Assistant Secretary Paul Hoffman. He
15 testified as to the factors he considered in his decision
16 letter.

17 Mr. Hoffman concluded that removal was the
18 appropriate penalty and that he would select that penalty
19 even if all of the charges were not sustained.

20 Mr. Hoffman considered most serious Ms. Chambers'
21 disclosure of law enforcement-sensitive information -- that
22 is, sensitive law enforcement information -- endangering,
23 among other things, the public, Park Police officers and
24 guards at the monuments, and our national icons. Second, her
25 disclosure of confidential budget information, and third, her

1 demonstrated pattern of disregard for instructions and
2 regulations.

3 As made clear in Mr. Hoffman's testimony and final
4 decision, the agency had lost trust and confidence in
5 Chambers.

6 As the U.S. Park Police's top law enforcement
7 official, she occupied a position of extreme trust and
8 confidence.

9 It's very easy to put yourself in Mr. Murphy's
10 position and wonder how, with any confidence at all, he could
11 give an assignment or instruction to Chambers in the future.

12 He could not rest assured that the assignment or instruction
13 would be carried out.

14 He would have to wonder if Ms. Chambers would do an
15 end run on him on virtually any assignment or instruction
16 that she didn't want to comply with.

17 He would have to wonder if she would run his order
18 up to the secretary or the deputy secretary or to Congress
19 or to some other place. It's virtually impossible to manage
20 under circumstances like that.

21 As evidenced at every charge, Ms. Chambers showed
22 that she could not be trusted to follow instructions or to
23 exercise sound judgement. She gave repeated indications in
24 the charge of misconduct that she would not follow the
25 specific instructions of her supervisor.

1 Mr. Hoffman testified that he came in his
2 deliberations to the conclusion that no penalty less than
3 removal would protect adequately the agency, the government,
4 the taxpayers.

5 Ms. Chambers' supervisors could no longer -- could
6 no longer trust her to operate, as a chief of police must,
7 with little direct supervision given her repeated
8 demonstrations of poor judgement.

9 Board case law holds supervisors, especially law
10 enforcement supervisors, to a high level of conduct. Ms.
11 Chambers was the highest official, the chief in the U.S. Park
12 Police.

13 She simply could not be trusted to follow specific
14 instructions or exercise sound judgement.

15 The penalty of removal falls comfortably within the
16 limits of reasonableness given the facts of this case. The
17 efficiency of the government requires that Ms. Chambers be
18 removed because she has lost the confidence and trust of her
19 supervisors after engaging in serious misconduct. Ms.
20 Chambers could never again, having engaged in this
21 misconduct, be the role model to her officers that a chief of
22 police must be.

23 Let's turn now to consideration of the affirmative
24 defenses that Ms. Chambers has -- has asserted. We have
25 briefed those extensively both in the agency response and in

1 the -- the pre-hearing submission, and so, I'll just pass
2 over them lightly here.

3 Overall, however, it must be remembered that Ms.
4 Chambers was speaking in her official capacity to The
5 Washington Post, to Ms. Weatherly and to Ms. Mainella. She
6 was an official spokesperson representing the department when
7 she did so.

8 She misused her status.

9 First is reprisal for whistle blowing. No new
10 information or evidence has been brought forth in this
11 hearing that was not available concerning the substance or
12 the details of Ms. Chambers' alleged whistle blowing since
13 Your Honor ruled on it in the stay application. Her
14 utterances are simply not disclosures protected by the
15 Whistle Blower Protection Act.

16 They fail to allege any of the detail that is --
17 that is required by those acts.

18 They are nothing more than a broad policy argument
19 why Ms. Chambers needs more staffing and more police
20 officers.

21 They may be a very good argument, they may not be a
22 very good argument, but they are not a disclosure, a
23 reasonably believed disclosure of substantial and specific
24 dangers to public health and safety, violations of law rules,
25 regulations, gross mismanagement, gross waste of funds,

1 etcetera, down the laundry list of things required to have
2 been disclosed by the Whistle Blower Protection Act. She is
3 making a policy argument.

4 Policy arguments are not included within the ambit
5 of the Whistle Blower Protection Act according to the White
6 vs. Air Force case.

7 She has also asserted that her conduct was --
8 particularly her discussions with The Washington Post and
9 with Ms. -- with Ms. Weatherly were protected by the First
10 Amendment and/or 5 USC 7211, the statute which permits
11 communications with Congress.

12 As you can see from quickly reading the -- the
13 charges, Ms. Chambers was charged for specific misconduct.

14 She was authorized to speak to The Washington Post.

15 She was not authorized to disclose sensitive law enforcement
16 information or confidential budget information to The
17 Washington Post when she made this disclosure.

18 She was not authorized as an official spokesperson
19 to lobby against the requirement that the Park Police live
20 within its budget.

21 She disrupted the operations of the Department of
22 Interior when she engaged in her First Amendment speech,
23 thereby tipping the Pickering balancing test, as provided for
24 by the Supreme Court, in favor of the agency as to whether
25 this is protected.

1 And finally, I want to discuss her (b)(9) defense.

2 You heard Ms. Mainella testify that she neither perceived
3 nor reacted to the letter that she received on December 2nd
4 from Ms. Chambers as if it were a grievance.

5 She did not interpret it to be a grievance. She
6 interpreted it to be a letter objecting to some behavior by
7 Mr. Murphy and some others, and it's our assertion, Your
8 Honor, that that letter did not qualify under 5 USC
9 2302(b)(9) as a grievance, appeal, or complaint established
10 by law, rule, or regulation.

11 In short, Ms. Chambers has repeatedly exercised
12 poor judgement and unwillingness to follow instructions and
13 could not be left in such a critical position. The agency
14 reacted to -- to her exercises in poor judgement in not
15 following instructions by immediately placing her on
16 administrative leave and, shortly thereafter, proposing her
17 removal.

18 Ms. Chambers has repeatedly demonstrated that she's
19 deaf to any instructions from her supervisors. The
20 efficiency of the service demands that her removal from that
21 service be sustained.

22 JUDGE BOGLE: Thank you, Mr. L'Heureux.

23 Mr. Harrison, your comments for the appellant.

24 MR. HARRISON: Yes, Your Honor. Thank you.

25

1 CLOSING STATEMENT BY COUNSEL ON BEHALF OF THE APPELLANT

2 MR. HARRISON: On December 17, 2003, the Department
3 of Interior filed six charges against the United States Park
4 Police chief, Teresa Chambers, and they proposed her
5 termination based on those six charges.

6 Seven months later, the agency finally issued its
7 final decision to uphold those charges and the termination
8 but withheld, in the process, the actual reasons relied on
9 for those findings, the explicit findings of fact made by Mr.
10 Hoffman in his decision, and those -- those reasons are being
11 withheld even as we speak.

12 An examination of the facts in the record, in the
13 complete record, make clear that the agency cannot show by a
14 preponderance of the evidence that any one of those six
15 charges should, in fact, have been sustained, and clearly,
16 the penalty of removal was excessively harsh regardless of
17 how one views this record.

18 The first charge had to do with improper budget
19 communications.

20 The charge doesn't really state on its face grounds
21 for misconduct.

22 Ms. Chambers had a conversation with Ms. Weatherly.
23 Ms. Weatherly testified about it here in this room.
24 Contrary to the agency charge, Ms. Chambers did not impose
25 herself on Ms. Weatherly, did not initiate an unwelcome

1 communication. Ms. Weatherly had no objection to
2 communications from Ms. Chambers or other agency officials.
3 She said they were quite common.

4 She didn't find that Ms. Chambers was unwilling to
5 accept the fact that Ms. Chambers' agency had to pay for the
6 NAPA study.

7 Ms. Chambers acknowledged that.

8 In fact, she had acknowledged it before Ms.
9 Weatherly called he back, and had Ms. Weatherly not insisted
10 on continuing that conversation, there would have been no
11 conversation for which the agency could have based its charge
12 one.

13 That was due strictly to Ms. Weatherly being
14 curious, and perhaps properly so, about why she was getting
15 information from Director Mainella and Deputy Director Murphy
16 regarding the status of implementation of recommendations
17 that the NAPA study committee had made, why that information
18 she was getting was different than what she was hearing from
19 Ms. Chambers.

20 She was getting, as Ms. Weatherly said, disparate
21 information, she was getting a disconnect, and she was trying
22 to understand how can high-level officials from the same
23 organization be giving me two different stories about the
24 same fact?

25 Well, Congress is entitled to inquire into those

1 matters, and when they do, agency officials are obligated to
2 answer their questions and to answer truthfully. Agency
3 officials are protected, by law, in communications with
4 Congress. Congress has seen to that. Ms. Chambers might
5 have been disciplined for refusing to answer Ms. Weatherly's
6 questions, but she did answer Ms. Weatherly's questions, and
7 now she's being punished for doing so, and that is against
8 Federal law.

9 There was nothing improper in what Ms. Chambers
10 said.

11 In fact, the conversation as cordial and amicable
12 with Ms. Weatherly.

13 Ms. Weatherly's only concern, as she has testified,
14 which did cause you to be perhaps irritated, was she was
15 getting two different stories on the same question and she
16 didn't know why.

17 She didn't blame Ms. Chambers, necessarily, anymore
18 than she blamed Director Mainella or Deputy Director Murphy.

19 She was just trying to get to the bottom of inconsistent
20 information, something she's entitled to do, not a basis for
21 disciplining an employee.

22 There was no identified policy that Ms. Chambers
23 had been given that said thou shalt not talk to Congress.
24 Any such policy would have been illegal. Ms. Chambers was,
25 in fact, encouraged by her superiors to get to know Ms.

1 Weatherly and the congressional staff, which to some extent
2 she did, and Ms. Weatherly even observed on occasion that she
3 was surprised there hadn't been more communication from Chief
4 Chambers with her office.

5 I pressed Ms. Weatherly in this hearing room, after
6 this Court asked questions of Ms. Weatherly, regarding
7 whether or not, as the charge states, in the proposed
8 removal, whether or not Ms. Weatherly actually had been
9 caused to question the veracity of Park Service Director
10 Mainella's intentions to implement the NAPA study by the
11 communications she received from Chief Chambers, and although
12 it took a while and several questions from a number of
13 parties, the final answer to that question was no, she did
14 not question Director Mainella's commitment to implement the
15 NAPA study based on Ms. Chambers' communications, contrary to
16 the charge.

17 What she did question was why she was getting
18 inconsistent information from different sources, not the same
19 matter alleged in the charge.

20 Ms. Chambers made a contemporaneous record of that
21 conversation. It's in evidence in this proceeding. It is
22 consistent with her testimony. It is contrary to the
23 assertions in the charge.

24 The agency has not established, by a preponderance
25 of the evidence, their version of the story of that

1 communication between Ms. Chambers and Ms. Weatherly. Ms.
2 Chambers has established by well more than a preponderance
3 what exactly happened in that communication. It was very
4 simply Ms. Chambers called to ask a fact question, do we have
5 to pay for this study.

6 Before she had a chance to talk to the
7 congressional staffer, she got the answer. The congressional
8 staffer called her back. Ms. Chambers said I've gotten the
9 answer.

10 A conversation ensued at the direction and
11 insistence of the congressional staffer, which was entirely
12 proper for Ms. Chambers to participate in.

13 If there was a policy from OMB or the Department of
14 Interior that in some way attempted to interfere with,
15 prohibit, or restrict Ms. Chambers' communications with
16 Congress, it would have to give way to the superior authority
17 of the Federal statutes which guarantee the right of
18 communication.

19 To my knowledge, there is no such policy that would
20 prohibit Ms. Chambers answering Ms. Weatherly's questions, as
21 this record reflects that she did.

22 Charge two talks about disclosing, quote,
23 "security," unquote, information in public. The agency, to
24 sustain this charge, has to show that Ms. Chambers did
25 something wrong, something clearly wrong, and to sustain its

1 penalty, has to show that Ms. Chambers was somehow put on
2 notice that she would be doing something wrong in talking
3 about the limited facts that were at least attributed to her
4 in the Washington Post article regarding numbers of officers
5 at certain monuments.

6 Now, Ms. Chambers, if anyone, is in a position to
7 determine what is sensitive information regarding security or
8 police matters.

9 She may have inherent authority to make that
10 determination.

11 There is no clear record that anyone else would
12 have such inherent authority, certainly not the deputy
13 director of the Park Service, who is not a law enforcement
14 official.

15 Now, if Mr. Murphy had some authority to designate
16 or classify documents, that would have been delegated by his
17 superiors, it would be in writing, and he could identify it.

18 He was asked in his deposition to identify what authority he
19 might have been delegated, and he made very clear that he was
20 not delegated, from the Secretary of Interior or anyone else,
21 any authority to classify documents. He thought he had
22 inherent power to do so.

23 The agency did not establish any rule that said
24 thou shalt not talk about the facts that Ms. Chambers talked
25 about to The Washington Post or that she was alleged to have

1 talked about in the Washington Post article. No such rule
2 has been established in this record.

3 There was no order, no written order that the
4 agency could point to saying, Ms. Chambers, you've been put
5 on notice, you shall not talk about these matters that were
6 talked about in the Post.

7 No such order exists.

8 What the agency did rely on, apparently, was a
9 single document, their Exhibit 4 in their pre-trial
10 submission, which is not an order, not a rule that governs
11 Ms. Chambers' conduct.

12 It is actually a document Ms. Chambers wrote but
13 she did not classify as law enforcement-sensitive. Someone
14 else did that, Lieutenant Beck, for reasons of his own, and
15 it was not classified as law enforcement-sensitive based on
16 any direction from Ms. Chambers.

17 Now, that document might or might contain
18 individual facts that might be law enforcement-sensitive by
19 somebody's definition, and if someone were to take that
20 document and put it, per se, in the newspaper, it might be a
21 violation of something, perhaps.

22 Ms. Chambers didn't do that. She didn't release
23 that document.

24 She talked about certain facts which were not
25 classified as sensitive and were not the basis for that

1 document being marked as law enforcement-sensitive. The
2 agency has shown nothing to the contrary.

3 It is a well-known fact to this Court and others
4 that have to deal with requests for documents that documents
5 are often sanitized or redacted when they are to be released,
6 because they frequently contain both sensitive and non-
7 sensitive information.

8 For the agency to sustain its charge, it has to
9 show more than a document somewhere might have overlapped
10 with the information talked about in the Post. It has to
11 show that the particular information disclosed had been
12 classified, per se, as sensitive and was prohibited from
13 release.

14 The agency has come nowhere close to showing that
15 in this record.

16 Ms. Chambers answered the Washington Post questions
17 from the reporter honestly, to the best of her ability,
18 following disclosures to the Post by another party, the
19 Fraternal Order of Police.

20 Ms. Chambers had a duty under department policy to
21 speak honestly with the press when asked a question. That is
22 the department's policy regarding communicating with the
23 press, as it should be.

24 Now, Your Honor, if you look at Mr. Wright's
25 deposition, the press official who was tasked during Mr.

1 Hoffman's inquiry to find out what did Ms. Chambers actually
2 say to The Washington Post, I note for the record that the
3 first time the agency made an inquiry with The Washington
4 Post was Mr. Wright's inquiry.

5 Mr. Murphy, I believe, said that he made some
6 initial effort but didn't get to talk to the reporter. So,
7 he -- Mr. Murphy never knew, when he made his charges, what
8 Ms. Chambers had said and hadn't said. He did know, of
9 course, that he felt he had been misquoted by the Post, but
10 he made his charges nonetheless.

11 Some months later, Mr. Hoffman or someone advising
12 him decided, well, maybe we should actually check, well after
13 the proposed removal, did Ms. Chambers actually make these
14 statements to the Post, and so, Mr. Wright, the press
15 officer, called up Mr. Farenthold and said to Mr. Farenthold
16 did Ms. Chambers make this statement and did she make that
17 statement. He got a list of a number of questions to ask.
18 He got down maybe, I don't know, a third, a fourth of the way
19 down his list, and Mr. Farenthold said I'm not going to
20 answer anymore questions, and so, Mr. Wright testified he
21 never really got to finish his list of questions for the Post
22 and never got to the bottom of exactly what Ms. Chambers had
23 said and hadn't said and didn't even inquire as to what the
24 Fraternal Order of Police might have said that was wrongfully
25 attributed to Ms. Chambers.

1 Nowhere in Mr. Wright's affidavit that Mr. Hoffman
2 relied upon will you see any note or disclosure that his
3 inquiry with the Post was incomplete, that it had been
4 frustrated by the Post's unwillingness to finish the
5 conversation.

6 He made a representation as if the questions that
7 he had asked had fully been answered.

8 Mr. Farenthold has not been called as a witness to
9 testify as to exactly what Ms. Chambers said and what she
10 didn't say.

11 The agency has not met its burden even to establish
12 the prerequisite for this charge, which is what did Ms.
13 Chambers actually say in this article?

14 In any case, there was nothing wrong with her
15 talking about the number of police officers present in the
16 manner she did in the Post. It was not sensitive, it was not
17 classified, and if anyone had the authority to determine
18 that, it was Chief Chambers.

19 Ms. Chambers' discussions with the Post are
20 protected by the First Amendment, in talking about matters of
21 public importance which involve the protection of the public
22 monuments, the protection of the public on the parkways and
23 in the public parks. The agency is also not allowed, by law,
24 to impose a gag order on its employees to keep them from
25 talking about matters of public concern.

1 Charge three talks about improper disclosure of
2 budget deliberations.

3 What you don't find in this record is a
4 prerequisite for this agency charge.

5 For this charge to be sustained, the agency has to
6 show that there was something specific that Ms. Chambers
7 talked about in the Washington Post article that was
8 prohibited and legally prohibited from being disclosed in an
9 existing law, regulation, or policy.

10 Now, they talked about warnings Ms. Chambers was
11 given in various budget meetings, but those warnings were
12 don't talk about what we talked about in this meeting, about
13 our private, very non-final budget discussions. The real
14 question here is not whether Ms. Chambers talked about
15 something said in a meeting, which she did not, but whether
16 she disclosed a specific budget number that is covered under
17 an existing policy or procedure about disclosing the
18 President's budget decisions or the underlying documents, and
19 Mr. Murphy, if you read his deposition, gave his own
20 understanding of what those documents entail that fall within
21 that prohibition.

22 Ms. Chambers did not disclose any numbers to be
23 found in any of those documents. If such a document existed,
24 it would have been shown to Mr. Schaefer on the stand in this
25 courtroom. Instead, the agency relies on Mr. Schaefer's

1 memory, which is obviously very poor, because he can't
2 remember a \$12 million budget deficit for an agency under his
3 control for the same budget year that he was in when he was
4 testifying, fiscal year '04, which I believe has not ended as
5 of today.

6 There is a law, Your Honor, Federal law, which says
7 when an agency has evidence under its control, documentary or
8 otherwise, and it's material to an issue to be decided by the
9 court and that information is not brought forward, there is
10 an adverse inference implied in law that that evidence, had
11 it been brought forward, would be against the agency, and we
12 ask Your Honor to take -- make that adverse inference in this
13 case, because the agency has not brought forward evidence
14 under its control on the material questions at issue, what
15 exactly in the President's budget documents matched or didn't
16 match Ms. Chambers' statements to The Washington Post, and
17 the inference is there was no match or that document would
18 have been brought forward.

19 Ms. Chambers did say something to the Post about
20 numbers and about money.

21 She said that she thought she needed, in response
22 to the Post reporter's question, about \$27 million to get by,
23 and that \$27 million had certain components, had about \$12
24 million for expenses she expected to carry over, again, in
25 fiscal year '05, that had created a shortfall in fiscal year

1 '04, she expected about \$7 million to be needed for a
2 helicopter, and about \$8 million, I think, for overtime, in
3 addition to the other expenses noted, for a total of about
4 \$27 million.

5 Those numbers for those purposes in that total are
6 nowhere to be found in the President's budget document
7 anywhere in this record or anywhere in the world.

8 Charge four talks about lobbying and cites that Ms.
9 Chambers said something to a newspaper reporter and that
10 somehow constitutes improper lobbying.

11 I asked the deputy secretary of the Department of
12 Interior, Mr. Griles, in his deposition -- he testified today
13 on other matters -- you know, would it be -- and Mr. Griles
14 is an experienced lobbyist himself, as I understand it. I
15 said would it be, in your understanding, prohibited lobbying
16 to say something to a newspaper reporter about the needs of
17 an agency that you perceived, you, an official, perceived,
18 and he said, without hesitation, no, talking to the press is
19 not prohibited lobbying.

20 Now, Ms. Chambers did receive an ethics training
21 document, and she signed that she had received it, but
22 there's nothing in that document that prohibits what Ms.
23 Chambers did, which was talking to a newspaper about her
24 perceived needs for the agency in protecting the public and
25 the national monuments, what she needed to do her job as the

1 chief of the United States Park Police. That training
2 document comes nowhere close to saying that.

3 It does talk about not about -- to Congress --
4 matters of public -- pardon me -- matters of private interest
5 on official time.

6 Ms. Chambers didn't do that.

7 It does not prohibit an official from saying what
8 they, in their official capacity, need to do their job that
9 may, in fact, invoke concerns about protecting the public or
10 national icons.

11 Charge five talks about failing to carry out three
12 alleged supervisor's instructions.

13 In order to carry their burden on that charge, to
14 begin, the agency has to first establish that instructions
15 were given that were, in fact, orders that were not followed.

16 Now, if you look at Mr. Murphy's deposition to Mr.
17 Hoffman, which is what Mr. Hoffman should have relied upon,
18 let's take as an example the alleged order to either meet
19 with Attorney Myers or to cooperate with Attorney Myers.

20 Mr. Hoffman, to his credit, asked Mr. Murphy, under
21 oath, did you give an order to Ms. Chambers to meet with Mr.
22 Myers, and Mr. Murphy said, well, I don't really remember,
23 sitting here today, if I did that, and then, perhaps with
24 some advice, Mr. Hoffman asked, well, did you give an order
25 to Ms. Chambers to cooperate with Mr. Myers, and even then,

1 Mr. Murphy said, well, I'm really not remembering, sitting
2 here today, whether I did or not, and Mr. Murphy invited Mr.
3 Hoffman -- pardon me -- Mr. Hoffman invited Mr. Murphy to
4 supply information, after his deposition was over, into the
5 record, if he could come up with an order or -- or testimony
6 that would establish an order was given.

7 I asked Mr. Hoffman, did you ever receive any
8 follow-up information from Mr. Murphy after his deposition
9 that you had invited him to provide on any of these issues
10 that he was not remembering, and you said, well, you know,
11 bring in something later, if you can find it, and Mr.
12 Hoffman's answer was a simple no, I never received any
13 additional information as follow-up to those depositions.
14 Notwithstanding, Mr. Hoffman sustained that charge without
15 any basis to do so.

16 The agency has not established in this record, any
17 better than they did before Mr. Hoffman, that there was any
18 order from Mr. Murphy to Ms. Chambers to cooperate with Mr.
19 Myers or to meet with Mr. Myers.

20 Now, one thing that the agency did not disclose and
21 Mr. Myers did not disclose when he testified was that Ms.
22 Chambers sat down with Mr. Myers and his superior, Attorney
23 Hugo Tuefel, and did discuss concerns about the Organization
24 of American States, the tractor man incident, and Mr. Myers
25 had every opportunity to state if he had some unresolved

1 concern at that time, prior to Mr. Murphy bringing the charge
2 against Ms. Chambers on that matter.

3 MR. L'HEUREUX: I'm going to object, Your Honor, to
4 arguing facts not in evidence.

5 MR. HARRISON: Well, Your Honor -- Your Honor
6 understood they were in evidence, and that's why you kept me
7 from putting Ms. Chambers on the stand to establish it, as I
8 recall.

9 JUDGE BOGLE: The objection is noted. However,
10 this is merely closing argument.

11 MR. HARRISON: I reserve my own objection to such
12 matters, in deference to Mr. L'Heureux.

13 Now, in terms of the detail of Ms. Blyth, what
14 exactly is the problem with the detail of Ms. Blyth and Ms.
15 Chambers' actions in opposing it to Deputy Secretary Griles?

16 Obviously, the deputy secretary did not object to Ms.
17 Chambers approaching him.

18 Obviously Ms. Chambers had talked to Ms. Mainella
19 about her position on the matter and talked with Mr. Murphy
20 about his position on the matter and tried to call Mr. Manson
21 about his position on the matter and eventually got Mr.
22 Griles, and Mr. Griles agreed with Ms. Chambers and reversed
23 the detail, modified it to make it perhaps flexible so that
24 time could be shared by Ms. Blyth. Now, the agency wants
25 Your Honor to believe that Mr. Murphy had proposed a flexible

1 detail from the beginning and never wavered, that it was
2 always a flexible detail and that Ms. Blyth would always have
3 time to work for Ms. Chambers in addition to doing her
4 detail, but according to Deputy Secretary Griles, the
5 flexibility came after Mr. Griles intervened and there was a
6 compromise reached in a meeting on or about August 28th with
7 the entire chain of command. At that point, it became a
8 flexible detail.

9 Now, an unanswered question in this record is, if
10 the detail was so important to Mr. Murphy, if he wasn't
11 really just trying to disrupt Ms. Chambers' ability to get at
12 the bottom of certain budget questions, why did Ms. Blyth
13 never get detailed under this flexible compromise that Mr.
14 Griles dictated?

15 It never happened, and that belies Mr. Murphy's
16 motive for doing it in the first place.

17 Ms. Chambers testified that she was never given an
18 order to detail Ms. Blyth. She never knew that Mr. Murphy
19 was intending to detail Ms. Blyth until she found it out from
20 Ms. Blyth, and once she realized it was going to be the next
21 work day, she proceeded to work through the chain of command
22 available. She did not attempt to go through chain of
23 command she had already gone through, because it would be
24 futile. Mr. Griles made very clear there is no rule in the
25 Department of Interior that was violated by Ms. Chambers

1 going to a second-level superior, third-level superior, or
2 higher-level superior without involving her immediate
3 supervisors.

4 The record reflects that Mr. Murphy has done that
5 on occasion.

6 Others have done that. There is no sanction for
7 it.

8 Often it is welcomed as part of an effective
9 communication system within the agency.

10 There is no rule that was violated here other than
11 Mr. Murphy was unhappy that Ms. Chambers disagreed with him,
12 and successfully so, in getting Mr. Griles to countermand his
13 direction to Ms. Blyth.

14 Now, in regard to the agency's (b)(9) argument,
15 while the agency correctly summarizes Ms. Mainella's
16 testimony about the complaint Ms. Chambers made about Mr.
17 Murphy, what the agency doesn't note is that Mr. Murphy
18 himself, in the proposed removal document itself, in this
19 record, explicitly refers to Ms. Chambers' efforts to talk to
20 Mr. Griles about the detail of Ms. Blyth as an "appeal," in
21 quotation marks, to Ms. Blyth, and a successful appeal, at
22 that.

23 Mr. Murphy clearly perceived what Ms. Chambers was
24 doing was appealing something that he had done. Now, what
25 she was doing, in fact, was appealing an order being given,

1 but it wasn't the order the agency asserts. It wasn't an
2 order given to her. She was appealing the order given to Ms.
3 Blyth, and she did so successfully.

4 If an employee goes to a superior and gets an order
5 countermanded by a lower-level official, there is no basis in
6 law for punishing that employee if the higher-level official
7 does not complain.

8 In this case, the higher-level official did not
9 complain.

10 In fact, he thought the matter was resolved and
11 would continue to be resolved by a series of meeting with Ms.
12 Chambers and her chain of command, and those meetings did not
13 happen, in large part because the chain of command simply
14 never held those meetings.

15 The issue of the order of the psychological
16 examinations -- if Your Honor looks at the exhibit put into
17 evidence today, you'll see an un-rebutted sequence of events.

18 Ms. Chambers told the agency counsel that she was concerned
19 that she might not be the proper person to make the decision
20 on the psychological exams which are subject of an OSC
21 inquiry because of her prior involvement, and so, she recused
22 herself, or sought to do so.

23 The agency counsel communicated that on the 6th of
24 June to Mr. Murphy's office. Within 10 days after that, Mr.
25 Murphy himself issued a directive to the deputies, which they

1 promptly complied with. There is nothing in that sequence of
2 events that shows any actionable, any disciplinable
3 misconduct by Ms. Chambers regarding not following an order
4 from Mr. Murphy.

5 The agency has simply not met its burden on that
6 matter.

7 Regarding count six, Mr. Murphy was asked in his
8 most recent deposition, volume two of his deposition, about
9 count six, and he said, well, that really was about not
10 following my instructions, which, of course, is what count
11 five is about, and count five already includes the issue of
12 not following a purported instruction regarding detail of Ms.
13 Blyth.

14 So, count six appears, from Mr. Murphy's own
15 admission, to be basically a rehashing of count five and not
16 a separate charge.

17 In any case, there is not, as we've noted, an
18 actionable going beyond the chain of command in this case,
19 because there is no rule prohibiting it, the higher-level
20 official approved of it, did not object to it.

21 Now, all of these issues could be taken to the
22 penalty analysis and the statement could be made that even if
23 one assumed that there was some policy or order lurking about
24 somewhere in the minds of the deciding officials, those
25 orders and those rules that the appellant asserts did not

1 exist at a minimum were not clearly communicated, and one of
2 the primary factors under the Douglas factors for the
3 severity of a penalty is whether the appellant was properly
4 put on notice of what was expected of her.

5 Ms. Chambers came from a long career in police
6 management.

7 She was a chief of police for many years in the
8 Washington area, was a chief of police for several years in
9 North Carolina, and was hired to become the first female
10 chief of the United States Park Police, and I think that's
11 something that the department was proud of. I think Ms.
12 Mainella was proud of that, as the first director -- female
13 director of the National Park Service, and the Secretary of
14 Interior the same, first female secretary of the Department
15 of Interior, and you can see in the early documents that
16 there was a very positive relationship among Ms. Chambers and
17 her superiors, and there were compliments and favorable
18 things said about her performance.

19 Ms. Chambers was very much someone who believes in
20 following orders and believes in following rules. Her
21 problem is, in order for her to do that, she needs to know
22 what they are, and Director Mainella said in her deposition
23 that if Ms. Chambers would agree to follow the rules, that
24 she would be willing to reinstate Ms. Chambers. Well, Ms.
25 Chambers would say the same thing, except the other side of

1 the coin. If she could be told what the rules are, she would
2 follow them and she would be -- be willing to be reinstated
3 and follow those rules, with the possible exception of
4 something that contravenes the Constitution.

5 So, there is no record here, Your Honor, for an
6 action as severe as a removal from service for someone as
7 dedicated and professional as Ms. Chambers. She really
8 wanted -- and this job was the pinnacle of her career. This
9 is the job she expected to finish her career at. She was
10 dedicated to doing it.

11 She was put on notice by the Inspector General that
12 she needed to improve in protecting the monuments, under very
13 difficult circumstances, a threat that everyone understands
14 is real.

15 No one has to repeat the details of September 11,
16 2001, to understand when someone makes reference to what is
17 involved and the danger that continues to this day.

18 Ms. Chambers took action to put her department in a
19 position to protect those monuments without compromising the
20 public and the parks and the parkways.

21 She was not finding a way to achieve that goal,
22 notwithstanding being -- how shall I say? -- properly
23 criticized by the Inspector General and she was motivated and
24 she was -- she was -- it got her attention when the Inspector
25 General told her that you have deficiencies that need to be

1 addressed, because there's a real threat to these monuments
2 and to the public from these staffing issues. She sought
3 about correcting that problem.

4 Correcting that problem cannot be done without
5 certain resources, staffing and funding. She took those
6 concerns to her superiors through the budget process. She
7 attempted to make certain cuts to solve the problem, and when
8 she got to the point where she was put in a public forum, not
9 necessarily of recusing, nonetheless, and she was asked a
10 direct question by The Washington Post, she felt an
11 obligation to tell the truth, which was I cannot tell you
12 that we're in a position to protect the public parks, to
13 protect the public monuments, and people who visit them, at
14 the moment, with the staffing and money we have available,
15 and she was asked what do you need, and she gave an honest
16 answer to that question, and there's nothing wrong in doing
17 that.

18 The agency talks about what a high-level official
19 such as Ms. Chambers should be expected to do, chief of the
20 United States Park Police, and I would assert, Your Honor,
21 that Ms. Chambers did exactly -- she did exactly what was
22 expected of her by the Congress, by the Constitution, and by
23 the American public.

24 Thank you.

25 JUDGE BOGLE: Thank you very much.

1 The hearing is closed at 11:45.

2 (Whereupon, at 11:45 .m., the hearing was

3 concluded.)

4
