

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

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4 TERESA C. CHAMBERS :

5 Plaintiff :

6 vs. : Case 1:05CV

7 U.S. DEPARTMENT OF THE INTERIOR : 00380(JR)

8 Defendant :

9 -----+

10 Deposition of TERRIE FAJARDO

11 Volume II

12 Washington, D.C.

13 Wednesday, November 16, 2005

14 10:06 a.m.

15

16 Job No. 1-67682

17 Pages 97 - 211

18 Reported by: Leanne P. Dotson

19

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1                   Deposition of TERRIE FAJARDO, held at the  
2   offices of:

3

4

5                   L.A.D. Reporting Company

6                   1100 Connecticut Avenue, N.W.

7                   Suite 850

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11                   Pursuant to notice, before Leanne P. Dotson,  
12   Notary Public of the District of Columbia.

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1                   A P P E A R A N C E S

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19           ALSO PRESENT:

20                   TERESA C. CHAMBERS

21                   STEPHANIE YU

22                   U.S. Department of the Interior

## 1 C O N T E N T S

## 2 DEPOSITION OF TERRIE FAJARDO

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## 9 E X H I B I T S

10 (Attached to the transcript)

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

2 TERRIE FAJARDO

3 having been duly sworn, testified further as follows:

4 EXAMINATION BY COUNSEL FOR PLAINTIFF

5 BY MR. CONDIT:

6 Q. Good morning, Ms. Fajardo. This is the  
7 continuation of your deposition. Thank you for  
8 agreeing to this date and time and for coming by this  
9 morning. I will try to be brief in concluding the  
10 plaintiff's side of the deposition. I understand that  
11 counsel for the department will have some questions to  
12 ask you. Do you have any questions before I begin?

13 A. No, sir.

14 MR. CONDIT: Let me mark an exhibit as the  
15 next deposition exhibit, which is Fajardo Exhibit 6,  
16 please.

17 (Fajardo Exhibit 6 was marked for  
18 identification and attached to the transcript.)

19 BY MR. CONDIT:

20 Q. Ms. Fajardo, I'm going to show you what's  
21 been marked as Fajardo Exhibit 6. It is the defendant  
22 Department of the Interior's responses to plaintiff's

1 first request for the production of documents and  
2 things. It's not a document I expect you to be  
3 familiar with, but take a look at it and tell me if  
4 you've seen it before.

5 A. No.

6 Q. What I want to do is draw your attention to  
7 a couple of responses in this document.

8 (Discussion off the record.)

9 BY MR. CONDIT:

10 Q. Now, let me draw your attention, please, to  
11 page 4 of the document. And you'll see the last  
12 paragraph, which starts "In August 2005". Do you see  
13 that?

14 A. Uh-huh.

15 Q. And it mentions that you were invited to  
16 come to the department's offices. Do you see that?

17 A. Uh-huh.

18 Q. If you would read the balance of that  
19 paragraph, which goes from page 4 over to page 5, and  
20 just let me know when you've finished reading it.

21 MS. GOLDFLUSS: Do you happen to have an  
22 extra copy for Stephanie?

1 MR. CONDIT: I might. I do.

2 MS. YU: Thanks.

3 A. Okay.

4 BY MR. CONDIT:

5 Q. All right. And before I ask you any  
6 specific questions about that particular passage, had  
7 anyone consulted with you on the preparation of this  
8 response or this document, to your knowledge?

9 A. No.

10 Q. And have you had discussions with anyone  
11 about -- from the Department of the Interior about  
12 this case or this deposition since your last  
13 deposition?

14 A. No.

15 Q. Now, here's what I would like to draw your  
16 attention to. On page 5 it says -- the first full  
17 sentence, top of page 5 says, "Ms. Plumley produced  
18 the two boxes of diskettes that Ms. Fajardo had  
19 requested." Do you see that sentence?

20 A. Yes.

21 Q. First for the record please identify who Ms.  
22 Plumley is.

1           A.     Mary Plumley.  It's incorrect here.  Ms.  
2     Plumley was not directly the person who replaced me  
3     when I retired; it was my deputy, Ella Drummond, who  
4     was in the acting capacity.  Ms. Plumley came 6 or 7  
5     months later, I believe, and filled the job on a  
6     permanent basis, but she wasn't the one who filled my  
7     position when I retired.

8           Q.     All right.  Thank you for that  
9     clarification.  Now, with respect to the sentence I've  
10    drawn your attention to, which says, "Ms. Plumley  
11    produced the two boxes of diskettes that Ms. Fajardo  
12    had requested," is that correct?

13          A.     No, it's not.

14          Q.     What is incorrect about that?

15          A.     Well, Ms. Plumley produced it could have  
16    been two boxes of diskettes, but there was much more  
17    than two boxes of diskettes.  There was a whole tray  
18    of diskettes plus one or two small boxes, plus ones  
19    that I didn't have anything to put them in.  So there  
20    was a whole bunch of diskettes that were just left in  
21    a pile on my desk, a neat pile.

22          Q.     All right.  So you say there were some in a



1 tray?

2 A. Yes.

3 Q. And then in two boxes?

4 A. Uh-huh.

5 Q. And there was a pile that didn't have any  
6 container?

7 A. Container, yes. I worked in the office for  
8 -- I worked for the National Park Service for over 25  
9 years. There's a lot of material that you take from  
10 place to place with you. The majority of those  
11 diskettes were the last 8 years as I was chief of that  
12 office, so there was insufficient for the amount of  
13 time that I'd been there.

14 Q. All right. Now, let me ask you to read on  
15 the next section, the next couple of sentences, and in  
16 particular I need to ask you about the sentence that  
17 talks about you identifying the document. Do you see  
18 that?

19 A. Yes.

20 Q. Can you tell me if in reading through those  
21 next three sentences on page 5 of Fajardo Exhibit 6 if  
22 there are any inaccuracies or any clarifications that

1   you would make?

2           A.     There was a portion of the file that I had  
3   done Ms. Chambers' performance appraisal. Part of it  
4   was there and part of it wasn't. There was a document  
5   on a file, but all of it wasn't there.

6           Q.     Okay.

7           A.     There was a page that was missing. There  
8   was a page that was missing from that document.

9           Q.     Okay. And do you remember as you sit here  
10   today what document it was you were looking at on the  
11   screen when you pulled it up during your August 2005  
12   visit?

13          A.     It was the performance appraisal.

14          Q.     It was the appraisal itself?

15          A.     Yes. But the part that was supposed to have  
16   been marked where the comments were, where the  
17   comments that I made that I discussed with Murphy --  
18   they weren't there.

19          Q.     Now, do you remember when you originally  
20   prepared the document were those comments that you  
21   prepared through typing from a computer or was it  
22   handwritten? How was it done?

1       A.     You can't possibly read my writing, so I'm  
2 completely -- if there's no computer I'm illiterate,  
3 so I have to have a computer. It was done on a  
4 computer, and it was prepared based on the  
5 conversation I had with Mr. Murphy.

6       Q.     Now, coming back again to August of 2005  
7 when you visit the department, when you noticed that a  
8 part of the document was missing were you able to  
9 inquire or make any -- get any assistance in locating  
10 the rest of the document?

11      A.     They had no idea where anything was. They  
12 didn't know where it was.

13      Q.     Did you have an occasion at that time when  
14 you visited in August, 2005 to ask where the hard copy  
15 was, where was your hard copy file?

16      A.     I asked where the files were, because there  
17 were files having to do with the Chief Chambers, and  
18 they had no idea where any of those files were.

19      Q.     Did you get to speak to Ms. Plumley directly  
20 about any of this?

21      A.     Yes.

22      Q.     Did she relate to you any information about

1    how she maintained the files that you had left when  
2    she came on or anything of that nature?

3           A.     No.  No.  Her words were, "I don't know  
4    where they are.  I don't have them.  I don't know  
5    where they are."

6           Q.     Did you have occasion to speak with Ella  
7    Drummond when you visited in August, 2005?

8           A.     No.  She was not there.

9           Q.     Did you ask for her?

10          A.     Yes, if for no other reason than to say  
11   hello.

12          Q.     Did anyone at the department when you  
13   visited in August, 2005 provide any other indications  
14   to you about how they might locate these documents or  
15   what help they might give you in locating these  
16   documents?

17          A.     None, no.  But you have to remember, when  
18   you say the department, the department to me is at  
19   main Interior building.  The National Park Service are  
20   the offices that I visited.  We did not visit the  
21   Department of the Interior.

22          Q.     Okay.  Thank you.  When you were visiting in

1 August, 2005 did anyone make any suggestions about how  
2 to follow up or indicate to you that they would follow  
3 up in pursuing the location of these documents?

4 A. Mary Plumley indicated that she would look  
5 again, but that nothing was there.

6 Q. Did Ms. Plumley ever speak with you after  
7 that visit?

8 A. No, not at all.

9 Q. Let me draw your attention in this same  
10 exhibit, Fajardo Exhibit 6, to the next page, page 6;  
11 and in particular, Ms. Fajardo, I'd like for you to  
12 read number 2 and the response to number 2 and then  
13 I'll have a question or two for you.

14 A. Okay.

15 Q. All right. Now, request number 2, which is  
16 repeated in the document, sought basically anything to  
17 do with the performance appraisal for Chief Chambers.  
18 Do you see that?

19 A. Uh-huh.

20 Q. And do you see the response, "Defendant has  
21 undertaken a diligent inquiry into the existence of  
22 documents responsive to request 2 and has identified

1 no documents responsive to that request"?

2 A. Yes.

3 Q. All right. Now, as you sit here today, are  
4 you sure that you prepared an appraisal document for  
5 Chief Chambers?

6 A. Yes. I prepared an appraisal document for  
7 Teresa Chambers on the behest of deputy chief --  
8 deputy director Donald Murphy. It was my role as the  
9 chief of the office to prepare for senior level  
10 managers performance appraisals for their  
11 subordinates. I had prepared a whole ream of them for  
12 the people who worked within the director's office. I  
13 would not have left out Chief Chambers. That would  
14 not have been something I would have done.

15 Q. All right. But as you sit here today do you  
16 have a specific memory of preparing Chief Chambers'  
17 appraisal?

18 A. Yes. I prepared Chief Chambers' appraisal.

19 Q. Now -- and I'm sorry to bother you with that  
20 question. I just had to do it in light of the  
21 response.

22 A. Well, Mr. Murphy had indicated in his

1 deposition that you showed me the last time that I was  
2 here that it was prepared, that I knew that it was  
3 prepared, and that he had given it to me for approval.  
4 Well, he gave it to me for approval because I had  
5 written it.

6 Q. All right. I appreciate that clarification  
7 and supplementation. Let me just make sure that I  
8 understand correctly the places where this appraisal  
9 may have been. I understand first that there was a  
10 hard copy, is that correct?

11 A. Yes. Yes.

12 Q. And that was in a file?

13 A. Yes. It was my copy.

14 Q. And I believe your testimony last time was  
15 that you had put it in a blue folder or something to  
16 share it with Mr. Murphy?

17 A. It was in a blue envelope.

18 Q. Envelope.

19 A. And I handed it to Mr. Murphy.

20 Q. At the time that the appraisal was prepared  
21 was it your understanding that the appraisal was final  
22 except for sharing it with Chief Chambers?

1           A.     And his signature, yes.

2           Q.     And did you ever see, after you prepared it,  
3 a version with Mr. Murphy's signature on it?

4           A.     No.

5           Q.     Did he ever give it back to you with a  
6 signature?

7           A.     No.

8           Q.     Would it have been the normal course for him  
9 to have returned it to you with his signature?

10          A.     He would have returned a copy to me with his  
11 signature, but it would have also been -- he would  
12 have given Chief Chambers a copy with his signature  
13 and her signature, and he could have conceivably sent  
14 a copy over to the U.S. Park Police for their records.  
15 I know for a fact they didn't because we went there  
16 and looked in their files and they did not have it.

17          Q.     Okay.  What are you referencing when you say  
18 "we went and looked"?

19          A.     Ms. Hee and I went there.

20          Q.     When did you do that?

21          A.     On August 25th.

22          Q.     Okay.  And I'm sorry, you went to what



1 office?

2 A. The -- they don't call it human resources,  
3 they call it personnel services, something of that  
4 nature, for the U.S. Park Police at 1100 Ohio Drive,  
5 in that area. They are on the same campus as our  
6 regional office.

7 Q. Okay. And who did you interact with during  
8 that visit?

9 A. The personnel officer, Robin Brown.

10 Q. And what records were you able to review or  
11 files were you able to check?

12 A. She checked. There was no -- there were no  
13 records because it had not been sent by Don Murphy to  
14 that office.

15 Q. About how long were you there on the 25th?

16 A. About a half-hour, 45 minutes. We weren't  
17 there very long.

18 Q. Did Ms. Brown give you or did anyone else  
19 there give you any other substantive information about  
20 either the inquiry or the documents or anything of  
21 that nature?

22 A. No, nothing. No. She hadn't -- Ms. Brown

1    hadn't seen it.  It wasn't sent to her, so she really  
2    knew nothing about it.

3           Q.     Was any kind of file for Chief Chambers  
4    located during that search or during that inquiry on  
5    the 25th?

6           A.     The personal services branch there has a --  
7    and I'm going to use the term "dummy" meaning not  
8    official, because the official folder for all senior  
9    managers is kept in my offices at 1201 I Street.  
10   There was nothing in the file that she had.

11          Q.     But there was a dummy file on Chief  
12   Chambers?

13          A.     Yes.  Yes.

14          Q.     And what kind of information was in that  
15   file, do you recall?

16          A.     I did not see the inside of the file; but  
17   Robin Brown was one of my employees at one time, and  
18   she is one of my proteges.  She would not have told me  
19   something that was not true.  She didn't have the  
20   file, and I believe that she didn't.

21          Q.     Now, aside from the hard copy that you had  
22   of Chief Chambers' appraisal I believe you indicated

1 it was also on a computer diskette?

2 A. Yes.

3 Q. And again, I think we described it as one of  
4 those square diskettes, the 1.44?

5 A. Yes, whatever the small diskette was.

6 Q. Right. I think you indicated that you may  
7 have also had it on the hard drive of your computer.

8 A. Yes.

9 Q. Do you recall whether or not it was possible  
10 or likely that you'd e-mailed the document in any  
11 version at any time?

12 A. I don't recall e-mailing it. It wasn't  
13 something that he would read and then change, because  
14 it's not that long of a document. It's mostly a  
15 fill-in-the-form, and then with a summary.

16 Q. Okay.

17 A. So it wouldn't have been anything he  
18 changed. There was no need for him to -- it wouldn't  
19 have made any sense if I sent it to him like that.

20 Q. Do you recall ever receiving any e-mail from  
21 Mr. Murphy or anyone else regarding Chief Chambers'  
22 appraisal or any aspect of that process of creating

1 the appraisal?

2 A. No, not that I can recall.

3 Q. Bear with me just a moment, please. Let me  
4 show you what I'll mark as the next deposition  
5 exhibit. This will be Fajardo Exhibit 7.

6 (Fajardo Exhibit 7 was marked for  
7 identification and attached to the deposition.)

8 BY MR. CONDIT:

9 Q. One other question on the visit in August,  
10 2005 to National Park Service human resources. Would  
11 the missing part that you identified when you went to  
12 the office -- would that part have been on the same  
13 disk that you were looking at?

14 A. Oh, yes. Yes.

15 Q. Did anyone offer an explanation as to why it  
16 wasn't there?

17 A. No.

18 Q. All right. Let me show you what I'm marking  
19 as Fajardo Exhibit 7. This has a cover page labeled  
20 1E which corresponds to a production of documents  
21 response by the department, and in 1E what we see is  
22 an e-mail from you to Mr. Murphy, I believe, with an

1 attachment or what seems to be represented as an  
2 attachment to the e-mail.

3 I would like you to take a look at it,  
4 please, and tell me if you recall the document.

5 A. Oh, yeah. This isn't that.

6 Q. I'm sorry?

7 A. This is not the appraisal.

8 Q. All right. Well, let me first ask you what  
9 is --

10 A. Let me rephrase that. Don't have a stroke.

11 Q. Okay.

12 A. In order to appraise someone, you have to  
13 give them a measure to meet. You have to say, you  
14 have to be able to jump 20 feet, or something. I  
15 created standards for Chief Chambers because no one  
16 had ever created standards for the chief of the U.S.  
17 Park Police, considering them the same as an SES  
18 person.

19 Q. SES means?

20 A. Senior Executive Service. Chief Chambers  
21 was the first chief of the Park Police to be  
22 considered in the same light as our regional

1 directors. All of our regional directors are SES.  
2 Chief Chambers, as the senior manager of the United  
3 States Park Police, was considered in the same -- on  
4 the same line in the organizational chart with the  
5 same weight as the regional directors of the United  
6 States National Park Service.

7           So I had to create the standards for Chief  
8 Chambers that would become part of the appraisal.  
9 Those were the measuring tools that we would measure  
10 her performance by. And in order to do that, I took  
11 Larry Parkinson's from the department; Karen Taylor  
12 Goodrich as -- she was our law enforcement -- our head  
13 law enforcement officer, not a police person, she is a  
14 law enforcement ranger head of that group; and then  
15 the NPS regional directors.

16           Most of the performance appraisal elements  
17 would have been managerial, but because she is in law  
18 enforcement I had to take some that were law  
19 enforcement and put them into the performance  
20 standards. Karen Taylor Goodrich was the law  
21 enforcement person I took the elements from, and  
22 because she was in the same line as our regional

1 directors, I used theirs also.

2 Q. So if I'm understanding correctly, in order  
3 to create performance standards for Chief Chambers you  
4 had to look at a variety of positions that were at a  
5 similar level --

6 A. Yes.

7 Q. -- that had similar kinds of tasks?

8 A. Yes.

9 Q. And then you borrowed --

10 A. Yes, because Chief Chambers is not -- Chief  
11 Chambers is a law enforcement officer, and she has her  
12 badge and her gun and all of that jazz. But a lot of  
13 what she does was managerial, managing the troops, not  
14 shooting the place up. So in that vein you have to  
15 have a lot of managerial and some law enforcement.  
16 That's why these three were used.

17 Q. Okay.

18 A. That's what this is.

19 Q. All right. Now, that explains to me who the  
20 people are that you are mentioning in the first line  
21 of the e-mail.

22 A. Yes.

1           Q.     The second paragraph of the e-mail says,  
2     "There is an additional back page that will not  
3     transmit."

4           A.     Right.

5           Q.     What was that?

6           A.     That was part of the appraisal that I was  
7     making for her, so -- and it wouldn't transmit. It's  
8     the copy -- part of the form that says "Part 3, Rating  
9     official's recommendation," which for whatever reason  
10    on that particular day the computer decided to have a  
11    hiccup and it wouldn't transmit.

12                   And then I say, "I will provide you with  
13    Teresa's -- the final standards. And then I also go  
14    on to say that I will work on the drafts for Barry and  
15    Dwight. Barry and Dwight were the deputy chiefs.

16          Q.     And the drafts being what kind --

17          A.     The same standards -- similar standards as  
18    the ones that I did for Chief Chambers. I mean, this  
19    is proof that the standards were done --

20          Q.     I understand.

21          A.     -- and the appraisal was done.

22          Q.     I understand. Now, you notice the little



1 icon on the e-mail that references the 2003 SES  
2 performance plan --

3 A. Right.

4 Q. ChiefChambers.doc?

5 A. Right.

6 Q. Is that the document that you were  
7 transmitting?

8 A. Yes. Those were the standards, yes, the  
9 standards.

10 Q. Now turn to the next page after the e-mail  
11 and tell me if this is the document that you were  
12 transmitting at that time, if you know.

13 A. Yes. This is the first part. Yeah.

14 Q. So this would be the performance plan?

15 A. The performance standards plan, yes. Yes.  
16 But, you see, when -- the next one that I sent to him  
17 or the one that I handed to him had a little thing in  
18 here saying "please see attached," and it was written  
19 on another piece of paper, the last piece of paper,  
20 which is nothing.

21 Q. Okay. That's what I was going to ask you.  
22 I reproduced this exactly. It was provided to us.

1 There are three sheets and then a fourth sheet that's  
2 blank.

3 A. Right. Well, this was the original that was  
4 given to him so that he could talk to her, and then  
5 the second one that I did was all of this plus the  
6 back page that had the recommendation and the summary:  
7 she is a great girl, she is not a great girl, kind of  
8 thing.

9 Q. Okay. Now, I notice on this attachment,  
10 this performance plan document, that there's a  
11 reference in the upper right-hand corner to a -- it  
12 says "2/11/03 version." What is that?

13 A. No. That's the form.

14 Q. What does that mean?

15 A. That's this form that was created by someone  
16 in the department or someone in OPM or somebody,  
17 2/11/03 version.

18 Q. Okay. Now, in terms of what we see in this  
19 attachment to Fajardo Exhibit 7, this senior service  
20 performance plan, the words that are on this document  
21 that make up the plan -- whose words are those or who  
22 prepared that?

1           A.     I prepared that. I prepared all of this.

2           Q.     And these were -- this was the plan that you  
3 came up with based on your examination of Larry  
4 Parkinson's SES standards and Karen Goodrich Taylor's  
5 performance plan, et cetera?

6           A.     Right. Right.

7           Q.     Okay. All right. So help me out with some  
8 timing here. This e-mail is transmitted on September  
9 17th, 2003. About when after this was the appraisal  
10 finalized, as far as you know?

11           MS. GOLDFLUSS: Objection. It assumes facts  
12 not in evidence. There's nothing in the record that  
13 suggests that any appraisal was finalized.

14           THE WITNESS: I did finalize the appraisal.  
15 I finalized the appraisal. May we go off the record  
16 for a moment?

17           MS. GOLDFLUSS: No, no. No, we can stay on  
18 the record. If that's your testimony, that's your  
19 testimony.

20           THE WITNESS: That's it. I don't care how  
21 many times someone asks me this question, I finalized  
22 an appraisal. I put it in a blue envelope and I

1 handed it to Don Murphy. Don Murphy acknowledged that  
2 I did that in his testimony. We are not nuts.

3 MS. GOLDFLUSS: We can talk about it during  
4 my examination, so you can proceed.

5 BY MR. CONDIT:

6 Q. All right. So the question was, when about  
7 after this September 17th, 2003 e-mail involving the  
8 performance plan was the performance appraisal created  
9 and finalized, in your recollection?

10 A. I retired on March 3rd, 2004. It had to  
11 have been between November and early January, sometime  
12 between November and January, sometime in there.

13 Q. So this would be sometime in November of  
14 2003 to January of 2004?

15 A. Yes.

16 Q. Now, the performance appraisal that we're  
17 discussing and that you prepared, can you tell us what  
18 period of time that covered in terms of evaluating  
19 Chief Chambers?

20 A. It would have been to September 30th, 2003,  
21 October 1st, 2003 -- excuse me -- October 1st, 2002 to  
22 September -- now, wait a second. It ended with --

1    yeah, October 1st, 2002 to September 30th, 2003.

2           Q.     So that would have been the period --

3           A.     Yes.

4           Q.     -- in which Chief Chambers was being  
5   evaluated?

6           A.     Yes.

7           Q.     Okay.  Thank you.  All right.  Let me show  
8   you a couple of other documents that the department  
9   has given us.  Let me show you what I'll mark as  
10   Exhibit 8.

11                   (Fajardo Exhibit 8 was marked for  
12   identification and attached to the transcript.)

13   BY MR. CONDIT:

14           Q.     Ms. Fajardo, I'm going to show you what I've  
15   marked as Fajardo Exhibit 8.  This is an attachment 1A  
16   from the department's discovery response, and it is an  
17   e-mail from Mr. Murphy to Steve Krutz.  I want to show  
18   that to you.  First, tell me if you've ever seen that  
19   before.

20           A.     No.

21           Q.     Now, the e-mail from Mr. Murphy references  
22   the performance plan, and he says that the performance

1 plan was developed but never issued.

2 A. Uh-huh.

3 Q. Is that correct or not in your  
4 understanding?

5 A. I have no idea whether he ever gave it to  
6 her or not.

7 Q. But again, a plan is different from an  
8 appraisal?

9 A. Yes.

10 Q. What would be the normal procedure for an  
11 evaluation in terms of showing -- when you show the  
12 employee the plan, when you show them the appraisal,  
13 what's the normal procedure and timing at the time  
14 we're talking about, 2003, for these kinds of events?

15 A. If you want to talk about normal, I can tell  
16 you what normal is.

17 Q. Okay.

18 A. If you want to talk about what actually  
19 happens in life, I can tell you what that is.

20 Q. All right. Let's talk about normal, first.  
21 What's the procedure?

22 A. The procedure should have been -- should be

1   that at the beginning of the new appraisal period,  
2   which would be sometime within -- around the first 30  
3   days of October, you would have the performance  
4   standards for that year completed and you would give  
5   them to the employee.

6               In June or July something of the next year  
7   you would have your midseason appraisal period, and  
8   you would sit down with the employee and you would say  
9   to them, this is fine, this is not, you have to do  
10  this better, or you're doing great; and then you  
11  initial on the form in the spot that's allotted for  
12  that that there was a midseason appraisal. It's not  
13  here on this one.

14       Q.     And you're looking at which exhibit number,  
15  please?

16       A.     Seven.

17       Q.     Okay.

18       A.     There's a part of this missing. Oh, I'm  
19  sorry, here it is. It is the other part that's  
20  missing. Here is the progress review part 2. And it  
21  would be around 6 months after you give this to the  
22  person and you say, things are fine or things are not.

1 Then you would write that down, what you all talked  
2 about and agreed to, and then everybody puts their  
3 initials on the side. That's what that empty spot is  
4 for.

5 Q. All right.

6 A. And then at the end there is another section  
7 that isn't here, which is the part that I completed  
8 for him that is for the end of the time, which would  
9 be after September 30th of the following year and  
10 right before you give the new standards, that you have  
11 your yearly review with the person and you sit down  
12 and you say, This is how we did this year. And then  
13 they sign their name and get a copy and you get a  
14 copy, and a copy goes to the official personnel  
15 folder.

16 Q. Okay. Now, let me stop you there. Before  
17 we get to the what happens in reality part, let me  
18 just make sure I understand what's supposed to happen  
19 procedurally. I'm going to reference it in terms of  
20 the time frame we're talking about.

21 If the procedure had been followed, Chief  
22 Chambers would have received her performance plan as I



1 understand it sometime probably in October-November of  
2 2002.

3 A. Yes.

4 Q. Then she would have been evaluated midterm  
5 in July or so, 2003 --

6 A. Yes.

7 Q. -- and then she would have received her  
8 final evaluation for the year sometime after September  
9 30th, 2003?

10 A. Correct.

11 Q. Usually, according to procedure, about how  
12 far after the closing date of the review period should  
13 you go as a reviewer before you have your review with  
14 your employee, your annual review?

15 A. You can have it any time after the -- I mean  
16 it doesn't say, Wait 10 minutes. I mean it --

17 Q. Is there a cutoff, you're supposed to do it  
18 within 30 days?

19 A. You're supposed to do it within the cutoff  
20 period, yes.

21 Q. Do you recall what that period is?

22 A. It could be 30 days, it could be 45 days.

1           Q.     All right.  Is that a period that's  
2     specified by policy or regulation, do you recall?

3           A.     I think it's -- it isn't a regulation, so it  
4     would have to be a policy.

5           Q.     Now, you also said you would describe for me  
6     what happens in reality with these reviews, so what's  
7     your explanation there?

8           A.     Reality is that 70 percent of all managers  
9     -- and I can only speak for the National Park Service  
10    and the Washington office -- do not do the appraisal  
11    standards or they do not do the appraisal itself on  
12    time because of heat of battle, because of lack of  
13    staff, lack of resources.

14                   This is something that is not thought of as  
15    being as important as it turns out to be sometimes,  
16    especially if an employee is not doing what they're  
17    supposed to do.  Or the other thing that can happen is  
18    everything is done on time and it's just a checklist,  
19    here it is, they are satisfactory, and it's just  
20    thrown into a file.

21           Q.     Do you recall when the issue of a  
22    performance plan for Chief Chambers first came up,

1 timing wise?

2 A. It would have to be before the date of this,  
3 because that's -- it had to be in late August, early  
4 September.

5 Q. All right. Of 2003?

6 A. Yeah.

7 Q. And do you know who initiated that  
8 discussion?

9 A. Yeah. He did, Murphy.

10 Q. Mr. Murphy? So he inquired with you about a  
11 performance plan?

12 A. Yes.

13 Q. Did Mr. Murphy indicate to you what he  
14 wanted in the performance plan?

15 A. Surely you jest. No. No.

16 Q. No, he didn't? What did he ask you, as best  
17 you can recall, to prepare a performance plan?

18 A. I need performance plans for the chief and  
19 the deputy chiefs.

20 Q. Did he indicate to you what his intention  
21 was with respect to timing of the issuance of those  
22 plans to the employees, Chief Chambers?

1           A.     He wanted to do it quickly, which is why I  
2     always -- when he asks for something it's less than a  
3     week when I get it to him because, you know, they are  
4     the director.

5           Q.     Okay.  So your recollection is that he  
6     wanted it quickly, but you're not sure of the  
7     particular time frame at this point.

8           A.     No, I can't tell you the exact day or the  
9     exact moment.

10          Q.     I understand.  Now, did Mr. Murphy ever  
11     indicate to you a desire with respect to the timing of  
12     the completion of the appraisal for Chief Chambers?

13          A.     It was my belief that he wanted the  
14     standards because the appraisal was coming due and he  
15     needed to have everything in place to do it.

16          Q.     Now, prior to Chief Chambers -- that is,  
17     before she became chief, were you in your position at  
18     the National Park Service as the head of the human  
19     resources section?

20          A.     I was from 1997 until the day I retired.  
21     Prior to that I was the chief of staffing for the  
22     National Capital Region, which at that time had the

1 U.S. Park Police under it. When I went to the  
2 Washington office it was a decision to bring the U.S.  
3 Park Police into the Washington office. Instead of  
4 being under a region, it was elevated to the  
5 Washington office and became at that point like a  
6 region. It was considered in the same way the other  
7 regional directors were considered.

8 Q. I understand. So do you recall who the  
9 chief was prior to Chief Chambers?

10 A. Oh, yes, good old Bobby Langston.

11 Q. Okay. Was Chief Langston ever provided a  
12 performance plan or review, to the best of your  
13 knowledge?

14 A. It would have been done a long time before I  
15 went there, because he was in office for quite a  
16 while; so it would have been a paper exercise for  
17 that, yes.

18 Q. Do you recall participating in any way in an  
19 evaluation for Chief Langston?

20 A. No, because it was already -- he was already  
21 on board and it was already in place. They just used  
22 it from the previous chiefs.

1 (Discussion off the record.)

2 BY MR. CONDIT:

3 Q. Now, prior to the period of time that we're  
4 talking about, which is the evaluation period of  
5 October 1st, 2002 to September 30th, 2003, had you  
6 been involved with Mr. Murphy or anyone else in  
7 preparing a performance plan or appraisal, excuse me,  
8 for Chief Chambers?

9 A. I'm sorry, would you rephrase that? I  
10 didn't understand.

11 Q. Sure. Sure. What I am trying to determine  
12 is prior to -- let's do it this way: Prior to October  
13 1st, 2002 do you recall being involved in any way in  
14 the creation of a performance plan or appraisal for  
15 Chief Chambers?

16 A. No.

17 Q. And do you know why there was no performance  
18 plan prepared earlier for Chief Chambers, earlier than  
19 it happened in this instance?

20 A. At the time that the U.S. Park Police were  
21 elevated to the Washington office and she was coming  
22 on board everything was full steam ahead, let's --

1 we're going to get the U.S. Park Police to do this or  
2 that or something else. It was not an immediacy. It  
3 wasn't on the front burner. It wasn't something that  
4 had to get done right this minute.

5 Q. I understand.

6 A. And I wasn't asked to do it until that time.

7 Q. While you were the head of human resources  
8 at the National Park Service did you know of or become  
9 familiar with any policy, regulation, or statute that  
10 required the preservation of records like the type  
11 that we're talking about here today, the performance  
12 plan for Chief Chambers, the performance appraisal  
13 that you did, anything like that?

14 A. Of course.

15 Q. What's your recollection about that?

16 A. They become -- once they are signed, they  
17 become part of the official record and they are put  
18 into the performance folder, which is different from  
19 the official personnel folder for the employee, in  
20 this case Chief Chambers.

21 Q. Now, if Mr. Murphy didn't sign it, let's say  
22 it just sat on his desk or got lost or whatever, if he

1 didn't sign it --

2           A.     Right. Uh-huh.

3 Q. -- was there any reason to preserve, under  
4 policy or regulation or law, the file that you had on  
5 Chief Chambers with the appraisal in it?

6 MS. GOLDFLUSS: Objection, only to the  
7 extent that it leads to a legal conclusion.

8           A.       As the head of the office -- let me clarify  
9       that. I was the chief of human resource operations.  
10      At one time I was also the chief of policy, but those  
11      positions had been -- I couldn't do everything, so we  
12      had to split them out.

13                   As chief of operations it was my  
14   responsibility to maintain documents, the legal life  
15   of the employee, the personnel folder. It was also my  
16   position, because I was head of the Washington human  
17   resource office, personnel officer for the office,  
18   that I would handle things that are of a confidential  
19   nature having to do with EEO, grievances, union  
20   matters, all of that stuff. All of that would have  
21   been on my computer and my disks.

22 Because of the position that I held, the



1 documents that I had and the disks and the computer  
2 and everything that I had you would want to keep  
3 because you don't know what's going to happen in the  
4 future. If something came up about a grievance I had  
5 or a union matter that I had or something else, you  
6 would have to have all that material.

7 Your question was should -- does that piece  
8 of paper that I did, the draft plan or the plan for  
9 Chief Chambers, even the appraisal before it was  
10 signed -- if they wanted to use it for bird cage paper  
11 they certainly could, but it would not have been -- it  
12 would not have been something that they should have  
13 done.

14 BY MR. CONDIT:

15 Q. Okay.

16 A. But they did not break any law if they did  
17 it.

18 Q. All right. Now, when you say it would not  
19 have been something that they should have done, why do  
20 you say that? What's your rationale there?

21 MS. GOLDFLUSS: I'm just going to object  
22 insofar as the question appears to be seeking Ms.

1 Fajardo's opinion rather than the discovery of facts  
2 that are relevant to the claim. Ms. Fajardo is not  
3 coming here as an expert witness; she is coming here  
4 as someone to provide facts, and the question does  
5 seek her opinion. Insofar as it seeks legal  
6 conclusions, again, I object on that basis.

7 MR. CONDIT: Well, the witness is an expert  
8 and has testified to her credentials and  
9 qualifications. I believe it's an appropriate  
10 question to have her explain her opinion.

11 MS. GOLDFLUSS: There has been no rule  
12 26(a)1 disclosure or 26(a)2 expert witness report,  
13 which should have been received, under the Federal  
14 rules of civil procedure, prior to deposing the  
15 expert. So in that regard she is not an expert.

16 MR. CONDIT: Not if she is a lay expert.

17 MS. GOLDFLUSS: A lay expert is itself a  
18 legal conclusion, and we would have to clarify that  
19 before the judge. I object on the basis that you're  
20 asking her an opinion question. She is a fact  
21 witness. There has been no 26(a)2 report submitted.  
22 We have not had a chance to challenge that, so in that

1 regard she is not sitting here as an expert witness  
2 today.

3 MR. CONDIT: So are you instructing her not  
4 to answer the question?

5 MS. GOLDFLUSS: No. I'm objecting, just as  
6 I have with respect to everything else. I'm not  
7 instructing her not to answer the question.

8 MR. CONDIT: All right.

9 BY MR. CONDIT:

10 Q. You can answer the question.

11 A. I'm not sure I remember it.

12 Q. Okay. You stated in your testimony a moment  
13 ago that you did not think it would have been  
14 advisable for the National Park Service not to have  
15 preserved the appraisal and the performance plan for  
16 Chief Chambers.

17 A. Right.

18 Q. And I asked you why did you think it was not  
19 -- why would you think it was not advisable to have  
20 preserved those records.

21 MS. GOLDFLUSS: I just insert the same  
22 objections.

1 THE WITNESS: Can I answer this now?

2 MS. GOLDFLUSS: Sure.

3 A. Because it was the first time that a  
4 document like this was created for the chief of the  
5 U.S. Park Police, which is then on the same level as a  
6 regional director.

7 BY MR. CONDIT:

8 Q. Now, you testified a short time ago and  
9 probably in your previous deposition session that you  
10 retired March 3 of 2004. Is that correct?

11 A. Correct. Happiest day of my life.

12 Q. As far as you know, as of March 3, 2004 were  
13 the documents that you've been describing -- the  
14 performance plan, the appraisal -- were they intact in  
15 your office?

16 A. Yes.

17 Q. At the time you retired on March 3, 2004 did  
18 you become aware of whether or not there was a  
19 personnel controversy between the National Park  
20 Service and Chief Chambers?

21 A. Yes.

22 Q. And just in general, without getting into

1 detail, what were you aware of?

2 MS. GOLDFLUSS: Objection. I don't see how  
3 this bears on the question of the location or the  
4 existence of the document.

5 MR. CONDIT: That's not -- we are not  
6 limited to that in terms of discovery.

7 MS. GOLDFLUSS: No, but what you're seeking  
8 is Ms. Fajardo's impressions about the circumstances  
9 surrounding Ms. Chambers' personnel matters, and that  
10 is irrelevant to any claim or defense in this case.

11 MR. CONDIT: No, it's not, because what I'm  
12 entitled to prove is that there is a willful violation  
13 of the privacy act. And our theory of the case, as  
14 you can probably surmise, is that the documents that  
15 Ms. Fajardo created have been intentionally destroyed  
16 or are being intentionally hidden, and we are entitled  
17 to explore information which would indicate the  
18 willfulness or intent and why people may have taken  
19 that action.

20 In addition, that information will support a  
21 claim for damages. So I believe the question is  
22 completely within the scope of discovery, certainly,

1 and is a question that this witness can answer. I've  
2 not asked her to recite the history of the personnel  
3 matter between Ms. Chambers and the department; I've  
4 asked her to simply say at the time she retired what  
5 was her understanding of that situation.

6 MS. GOLDFLUSS: Well, the scope of discovery  
7 that the court described in the governing order does  
8 not include a fishing expedition as to why certain  
9 people would have certain attitudes about certain  
10 things.

11 I won't instruct the witness not to answer,  
12 but I do object to any line of questioning going into  
13 Chief Chambers' personnel circumstances at the  
14 department, because then the scope of the discovery of  
15 this case is commensurate with the scope of discovery  
16 in the NSPB matter.

17 MR. CONDIT: Well, that's not correct.

18 BY MR. CONDIT:

19 Q. But in any case, Ms. Fajardo, if you  
20 remember the question -- if you don't, I'll be happy  
21 to give it to you again.

22 A. I think you'd better.

1           Q.     All right.  As of the time you retired,  
2     March 3, 2004, were you aware of a controversy that  
3     existed -- a personnel controversy that existed  
4     between Chief Chambers and the National Park Service?

5           A.     Yes.

6           Q.     My question was what in general, without  
7     getting into specifics, were you aware of at the time  
8     of your retirement March 3, 2004?

9           A.     That there were some concerns with regard to  
10    her performance and perhaps conduct, and I do not  
11    recall the exact dates, but she may have been placed  
12    on administrative leave by this time.

13          Q.     Now, in your experience as the head of the  
14    personnel office would you have allowed folks to  
15    destroy or otherwise remove documents such as the  
16    appraisal you performed under a circumstance where  
17    there was a personnel controversy?

18                 MS. GOLDFLUSS:  Objection to the word  
19    "controversy," "Personnel controversy."  That's vague  
20    and ambiguous.

21    BY MR. CONDIT:

22          Q.     Do you understand the question?  If not,

1 I'll be happy to rephrase it.

2 MS. GOLDFLUSS: You can answer the question.

3 A. Please ask me again.

4 BY MR. CONDIT:

5 Q. Sure. As of -- and we'll put this around  
6 March of 2004 when you retired. As of that time would  
7 you have advised the department to destroy or  
8 otherwise remove an appraisal document like the type  
9 you prepared for Chief Chambers if there was an active  
10 personnel controversy such as between the chief and  
11 the National Park Service?

12 A. At no time would I advise anyone to destroy  
13 any documents of any kind whatsoever, and I also have  
14 to say that I'm not sure that that was done in this  
15 case. I mean, I don't know where the documents were,  
16 but my staff -- they are good and decent people. I do  
17 not believe any of my people destroyed anything. I  
18 would have a hard time -- someone would have to really  
19 show me that that's what occurred here.

20 Q. Okay. I appreciate that. Bear with me one  
21 second, please. Now, based on your years of  
22 experience in the personnel office would the appraisal



1    you prepared at Mr. Murphy's direction have to be  
2    considered when the agency contemplated taking a  
3    performance-based personnel action against Chief  
4    Chambers?

5               MS. GOLDFLUSS:  Again, objection as far as  
6    it calls for a legal conclusion and also objection on  
7    the grounds that it calls for speculation.

8    BY MR. CONDIT:

9               Q.     You can answer.

10              A.     The concerns that were raised at the time  
11    that I was retiring were not performance issues.  At  
12    least the ones that were discussed with me were not  
13    performance issues, they were conduct issues.

14              Q.     Okay.

15              A.     The performance appraisal deals with  
16    performance.  It doesn't have anything to do with  
17    conduct issues, because how a person behaves or what a  
18    person does is not in that document.  Those are the  
19    duties that they are supposed to perform.

20                     Did I answer the question or -- you'd better  
21    ask me again.

22              Q.     Well, I appreciate that.  You've answered it

1 partially, and now I'll craft a more specific  
2 question.

3 I will represent to you that a number of the  
4 issues raised by the Park Service in the personnel  
5 action involving Chief Chambers were  
6 performance-focused, were in fact performance matters.

7 A. Okay. Then those were not the ones  
8 discussed with me.

9 Q. Okay. In the case where a performance  
10 matter was at issue with respect to Chief Chambers  
11 would the appraisal you prepared at Mr. Murphy's  
12 direction have to be considered when the agency  
13 contemplated taking a performance-based personnel  
14 action against Chief Chambers?

15 A. Yes.

16 MS. GOLDFLUSS: Objection on the grounds  
17 that it calls for speculation. It assumes facts not  
18 in evidence. It's abstract. The witness has already  
19 testified that she has no personal knowledge of that,  
20 so it's -- it's compound, and I urge you to reform the  
21 question because it's so objectionable in so many  
22 levels. She has just testified that she has no

1 personal knowledge of the basis of your question, and  
2 now you're asking her to form an opinion on it.

3 MR. CONDIT: I'm asking her if -- I asked  
4 her a completely appropriate question in light of the  
5 record, which demonstrates that performance was an  
6 issue raised by the department.

7 MS. GOLDFLUSS: Well, there's no record in  
8 this case that performance was an issue raised by the  
9 Department of the Interior.

10 MR. CONDIT: Would you like me to make a  
11 record on that issue?

12 MS. GOLDFLUSS: Well, I mean, you're not  
13 testifying so you can't. I mean, I'm sure that you  
14 can give your opinion.

15 MR. CONDIT: No. I can provide documents.  
16 I am trying not to do what you're not wanting me to  
17 do. I am trying not to put the entire personnel case  
18 in this case and I'm just trying to narrowly tailor my  
19 questioning to this witness to avoid putting more  
20 material into this case.

21 I can certainly produce records which will  
22 demonstrate to her and which she will agree means that

1 the agency took personnel action against Chief  
2 Chambers. If you would like me to do that, when we  
3 break for lunch I'll come back with a raft of  
4 documents and we'll do that.

5 MS. GOLDFLUSS: Well, what I object to is  
6 using this deposition as a back door to getting what  
7 is not even qualified expert witness testimony. And  
8 Terry, when I say qualified, I mean that in a legal  
9 form, not that you're not qualified. I don't know  
10 whether you are or not. But the bottom line is that  
11 you're using this as an opportunity to get opinions  
12 about the way that personnel matters are run or should  
13 run, and that's not what this deposition is for, and I  
14 don't think Judge Robertson would think this is a back  
15 door to that, or should be.

16 MR. CONDIT: There's no back door. I object  
17 to that comment. The front door is that my client has  
18 been denied a document which has adversely affected  
19 her ability to move forward and her ability to defend  
20 herself in a personnel action. That is evidence of  
21 damage, among others, that is relevant to this case.

22 This witness has particular knowledge with

1    respect to the institutional practices of that agency  
2    at the time at least through her retirement in March  
3    3rd of 2004.

4               MS. GOLDFLUSS:   Okay, but the question that  
5    was posed to her calls for speculation because she  
6    already stated that she did not have personal  
7    knowledge of what was being considered, of the  
8    specifics of what was being considered --

9               MR. CONDIT:   And I'm telling you --

10              MS. GOLDFLUSS:   Can I finish my objection?  
11    In the MSPB proceeding.   Now you're asking her to  
12    opine on what would have been considered based upon  
13    your representations.

14              I mean, I did not represent the agency in  
15    the MSPB proceedings, so I'm not here to object  
16    whether you're mischaracterizing it or not.   And we're  
17    compounding speculation upon conjecture upon, you  
18    know, one-sided representations made to a witness who  
19    hasn't even been qualified as an expert witness.

20              MR. CONDIT:   If you'd like, I'll produce the  
21    documents and have the witness review the documents  
22    and agree that there were personnel matters at issue.

1 That will take more time and that will put items in  
2 this deposition that you've said you don't want in  
3 this deposition. If you wish me to do that, that's  
4 what I will do in order to get this --

5 MS. GOLDFLUSS: Well, I mean, my own  
6 personal belief is that the witness should not be  
7 testifying to factual matters of which she has no  
8 personal knowledge, and that's -- and if you're going  
9 to sit and ask her to opine about the significance of  
10 documents in the MSPB proceeding --

11 MR. CONDIT: I can give her the official  
12 document of the agency which says what it was charging  
13 Chief Chambers with. She as an expert and a person  
14 who has done this many, many times will know by  
15 looking at it and by the descriptions of it that they  
16 were performance-based issues.

17 Now, if you want me to do that, like I said,  
18 I will be happy to do that. I am trying to respect  
19 what your concern is in trying to shortcut this a  
20 little bit by simply representing to the witness what  
21 is clear on its face in terms of the record that  
22 exists.

1 MS. GOLDFLUSS: Well, quite frankly, I would  
2 rather us go through each and every document rather  
3 than have you come here and testify about what you  
4 think the MSPB proceeding was.

5 If you want to put documents in front of  
6 her, as long as she can -- I mean, they have not been  
7 authenticated. I'm not in a position to authenticate  
8 them. Stephanie is not in a position to authenticate  
9 them. Ms. Fa --

10 THE WITNESS: Fajardo.

11 MS. GOLDFLUSS: Isn't in a position -- I  
12 stutter. I'm sorry.

13 THE WITNESS: I'm sorry.

14 MS. GOLDFLUSS: Ms. Fajardo is not in a  
15 position to authenticate them. So I object to this,  
16 and if you were going to haul out a bunch of documents  
17 on the MSPB proceeding, that is clearly something that  
18 we should have spoken about before.

19 MR. CONDIT: I wasn't going to do that. I'm  
20 only doing that because of your objection. So now --

21 MS. GOLDFLUSS: Well, the objection is  
22 totally legitimate in view of the fact that you're

1 asking her to opine about documents of which she has  
2 no knowledge, no authenticated versions of the  
3 documents in front of her. It's an extremely  
4 objectionable process.

5 MR. CONDIT: I don't think it is, but I  
6 understand your objection and we'll do it the long  
7 way. But let me move on with the questions that we  
8 can resolve.

9 BY MR. CONDIT:

10 Q. Ms. Fajardo, in your experience as the head  
11 personnel officer for the National Park Service do you  
12 know what is meant by Douglas factors?

13 A. Yes.

14 Q. What are Douglas factors, just generally?

15 MS. GOLDFLUSS: Okay, I really object to  
16 this because Ms. Fajardo's testimony about what  
17 Douglas factors are does not -- is not reasonably  
18 calculated to lead to the discovery of admissible  
19 evidence on the location and the existence of the  
20 document.

21 We are not doing damages right now in these  
22 depositions. Judge Robertson did not contemplate



1 this, and this has nothing to do with the location and  
2 the existence of this draft performance appraisal.

3 MR. CONDIT: So Counsel, let me get an  
4 understanding. What you seem to be describing is a  
5 two-phased discovery process, one that deals with all  
6 the information we can obtain with respect to the  
7 existence, location, and other specifics of document  
8 or documents. The other is that if such existence is  
9 reasonably established, then to proceed to damages.  
10 Is that what you're telling me?

11 MS. GOLDFLUSS: Yeah. I think there has to  
12 be first some sort of evidence that this document  
13 exists, and I think that that's what Judge Robertson  
14 contemplated when he agreed, over initial concerns  
15 about this, to have discovery.

16 MR. CONDIT: And would you say that the  
17 witness testimony that the document exists indicates  
18 that the document existed at one time?

19 MS. GOLDFLUSS: I'm not going to  
20 characterize the witness's testimony in front of the  
21 witness. I don't think that that's appropriate. I  
22 mean, the evidence is what the evidence is, and right

1 now we have a question of whether or not the document  
2 exists. Judge Robertson gave plaintiff leave to do  
3 some discovery on this to see whether or not we could  
4 demonstrate the existence and location of the  
5 document, not to sit and develop Ms. Fajardo's  
6 opinions about what the Douglas factors are.

7 MR. CONDIT: All right. So just to be  
8 clear, and so that it's on the record, my opportunity  
9 to establish damages and to establish willfulness is  
10 going to come at a second phase, in your  
11 understanding, of discovery in this case, should we  
12 meet the first hurdle, which is to establish that a  
13 document did exist, which I believe we've done.

14 MS. GOLDFLUSS: I will not object to that.  
15 I will not object to that, and I think that that is  
16 what Judge Robertson contemplated.

17 MR. CONDIT: Let's take a break for 5  
18 minutes and I'll try to wrap up my side of this.

19 (Discussion off the record.)

20 MR. CONDIT: Let's go back on the record.

21 BY MR. CONDIT:

22 Q. In one of the exhibits I have shown you

1     there was a Steve Krutz mentioned.

2           A.     Yes.

3           Q.     Who is Mr. Krutz, to your knowledge?

4           A.     He's an employee relations specialist and  
5     works for David Davies, who is the chief of labor  
6     employee relations for the policy of the National Park  
7     Service.

8           Q.     Now, when you were preparing or working on  
9     the performance plan or appraisal for Chief Chambers  
10    were Mr. Krutz or Mr. Davies involved at all in that  
11    process?

12          A.     Not at all.  They wouldn't be because they  
13    were policy and I'm operations.

14          Q.     All right.  Thank you.  Now, in the  
15    discovery response we received from the agency they  
16    noted that they had -- the desktop computer that you  
17    had had been prepared for surplus and therefore the  
18    hard drive had been erased, and the laptop that you  
19    used had a change in operating systems and so the data  
20    on it had been erased.

21                 My question is, are you familiar with  
22    department policy with respect to surplusings or

1     handling of computer-based data?

2           A.     Yes.

3           Q.     What is your knowledge about that topic?

4           A.     It is my understanding that with certain  
5     computers of certain employees the material on it is  
6     downloaded to disk before it is wiped clean.

7           Q.     Okay.

8           A.     It bothers me that this has occurred in this  
9     case, especially in view of the laptop, since it was  
10    the only operating system we had for emergency at  
11    times like the 9-11 bombing, where we had to run  
12    payroll and employee benefits from my house. That's  
13    why I had the laptop. If they erased it, they have  
14    hurt themselves badly.

15          Q.     Okay. When you made your visit in August of  
16    2005 to the human resources office to investigate your  
17    files were you shown the computer, the desktop or  
18    laptop that you used?

19          A.     No.

20          Q.     Can you recall anything about the desktop  
21    computer that you used in terms of its characteristics  
22    or a number that was assigned to it or anything of

1     that nature, what kind of computer it was?

2           A.     It was a Dell.  I do not remember the  
3     number.  I had a special screen because of my eyes.  
4     It was a special cover that went over the monitor so  
5     that I could see the screen better.

6           Q.     All right.

7           MS. GOLDFLUSS:  Can we go off the record for  
8     a second?

9           (Discussion off the record.)

10          MR. CONDIT:  Back on the record.

11     BY MR. CONDIT:

12          Q.     So you were describing, Ms. Fajardo, your  
13     Dell desktop.  You said it had a special screen.  Do  
14     you remember anything about the central processing  
15     unit that would have the hard drive in it; in other  
16     words, the color of the container?

17          A.     It was black.  The container was black.

18          Q.     Okay.

19          A.     It was a tower model on the floor.

20          Q.     Anything else you can recall about it  
21     specifically?

22          A.     No.  I mean, there wasn't anything -- it was

1 the same as every other computer that my staff got at  
2 the same time. When we got all new computers I got a  
3 new one, too.

4 Q. Do you know about when the one that you were  
5 working on was acquired?

6 A. Well, it had to have been in 2001 since all  
7 the computers that we had when we moved into the new  
8 facility on G Street were given or were taken, let's  
9 say, by the executive office of the President because  
10 of 9-11. We had to leave everything there, so my  
11 computer was not -- didn't come with me. It wasn't  
12 small enough to put under my coat and take out.

13 Q. I appreciate that. Now, let me turn to the  
14 laptop. Can you remember anything specific about the  
15 laptop, what brand it was?

16 A. A Dell.

17 Q. It was also a Dell? Any particular  
18 characteristics, brand within Dell?

19 A. It may not have been Dell. It may have been  
20 -- it was either Dell or IBM.

21 Q. Okay.

22 A. No, because at the time we got it we had to

1 go with what the agency's contract was. We didn't  
2 have a choice of going to Staples and buying something  
3 nicer. We had to get whatever they sent to us. It  
4 had a leather case. It had a spare battery. It could  
5 plug into the wall also. That's all that I can  
6 remember.

7 Q. With respect to the desktop or the laptop  
8 that you used during the time that you were involved  
9 in preparing the performance plan or appraisal for  
10 Chief Chambers do you recall anything about, for  
11 example, their capacity or how fast they were or any  
12 other technical specifications of those?

13 A. The laptop was pretty fast, but I did not  
14 prepare anything for Chief Chambers on the laptop. It  
15 was only on the desk. It was only in the office.

16 Q. Now, when you were involved in the transfer  
17 of your office involuntarily in 2001, how was the data  
18 that was on your computer at that time -- how was that  
19 handled?

20 A. I have no idea. I don't know whether they  
21 -- what they swapped out or how they -- I don't know  
22 how they did it.

1 Q. But did you end up having your data  
2 preserved and transferred to your new computer?

3 A. Yes. It was in there. If it was the same  
4 computer. I have no idea that it was the same  
5 computer. It was there. But this was long before I  
6 did anything with Chief Chambers' stuff.

7 Q. I understand. Bear with me one moment,  
8 please. Ms. Fajardo, I don't have any other questions  
9 for you. I'll give an opportunity for agency counsel  
10 to ask you any questions she may have.

11 EXAMINATION BY COUNSEL FOR DEFENDANT

12 BY MS. GOLDFLUSS:

13 Q. Ms. Fajardo, did you have the authority to  
14 sign off on Ms. Chambers' performance appraisal?

15 A. What do you mean, sign off?

16 Q. Well, in other words, there's a signature  
17 for the supervisor. I mean, were you the reviewing  
18 official?

19 A. No, I was not.

20 Q. Were you the -- did you have any  
21 responsibilities in which Ms. Chambers was working for  
22 you?



1           A.     Working for me?  No.

2           Q.     Was she accountable to you for her  
3 performance?

4           A.     No.

5           Q.     Were you in any way her supervisor?

6           A.     No.  Not directly, no.

7           Q.     Is a performance appraisal finalized before  
8 the reviewing official signs it?

9           A.     No.

10          Q.     Or can it be revised at any time prior to --

11          A.     It can be revised, yes.

12          Q.     So when you say that there was a final  
13 performance appraisal, we have to be careful about the  
14 words that we're using, right?  I mean, "final" means  
15 that the reviewing official has signed off on it,  
16 isn't that right?

17          A.     No.  In this case "final" meant there was  
18 going to be no changes and what I had written was  
19 going to stand, and he was going to talk to her about  
20 it and have her sign it.

21          Q.     And do you know whether or not Mr. Murphy  
22 believed that the appraisal was final?

1           A.     Yes.  He indicated to me that, This is fine  
2     and I'll talk to her about it.

3           Q.     Did he say anything else about whether or  
4     not he was going to deem the appraisal final?

5           A.     Yes.  He said, This is fine.  It's final.

6           Q.     He said the words "It's final"?

7           A.     Yeah.  This is final.  It's fine.  There's  
8     nothing -- there are no changes going to be made.  I'm  
9     going to talk to her about it.

10          Q.     Do you know if he ever signed it?

11          A.     No, I do not know whether he ever signed it.

12          Q.     Now, this document that you say you created,  
13     this section that has an appraisal to it, is it your  
14     testimony that you produced that document sometime  
15     between November of 2003 and January of 2004?

16          A.     Produced the final document?

17          Q.     Well, what you're calling the appraisal  
18     portion of it.

19          A.     It was done before that.  It was done in  
20     late September.

21          Q.     It was done in September but it wasn't done  
22     in October, you're sure of that?

1       A.     I'm positive of that.

2       Q.     And who else besides yourself saw this  
3 document?

4       A.     Don Murphy.

5       Q.     Was there anybody else?

6       A.     If he showed it to someone else I have no  
7 knowledge of it.

8       Q.     Did you show it to anyone else?

9       A.     No. I have no need to.

10      Q.     Did you talk to anyone about the fact that  
11 you were preparing it?

12      A.     I don't recall. I could have.

13      Q.     Do you know if anybody else saw it?

14      A.     I have no idea if anybody else saw it.

15      Q.     Now, you say that you have a copy of it in  
16 your computer, right?

17      A.     Yes.

18      Q.     And a copy of it on a diskette?

19      A.     Yes.

20      Q.     And a copy of it in a folder?

21      A.     Yes.

22      Q.     And where was this folder?

1 A. In my office.

2 Q. Where in your office?

3 A. In a file drawer that was locked.

4 Q. And what did you keep in that file drawer?

5 A. Hot topic cases, cases that I was working on  
6 of the moment.

7 Q. And how did you arrange those files?

8 A. In alphabetical order.

9 Q. By what order?

10 A. Alphabetical order means A, B, C.

11 Q. But what words were being alphabetized?

12 A. Probably Chambers.

13 Q. Are you sure of that? I mean, you said  
14 "probably."

15 A. It would have been Teresa Chambers, it would  
16 have been Chief Chambers, something of that nature.

17 Q. What other file folders -- can you remember  
18 the names of other file folders in that file?

19 A. Sure. Teresa Robinson, Union grievances.  
20 There were some with people's names on them for EEO  
21 cases. Do you want me to name the people?

22 Q. No, but --

1           A.     There's a number of files in there that were  
2     of significance to cases that I was handling at the  
3     time.

4           Q.     Did anybody else have access to that file?

5           A.     File drawer?

6           Q.     File drawer?

7           A.     Yes.

8           Q.     Who?

9           A.     My deputy, Ella Drummond.  If one of the  
10    other chiefs asked to see a file they would have gone  
11    in and gotten it.  David Davies would have access to  
12    it.  Deborah Thompson would have had access to it, but  
13    I don't see why she would want it.

14          Q.     But again, you have no personal knowledge of  
15    any of these individuals actually --

16          A.     No, I don't.  The document was created.  It  
17    was done and it was handed to Mr. Murphy.

18          Q.     Did you ever see Mr. Murphy actually reading  
19    the document?

20          A.     Yes.

21          Q.     Did you see him reading the page that you  
22    state was the appraisal portion?

1           A.     Yes.

2           Q.     Do you believe that Mr. Murphy destroyed the  
3 document?

4           A.     I have no way of knowing whether he did or  
5 he didn't, but it would not be in his nature to do  
6 that. He would not do that.

7           Q.     To your knowledge has he ever done anything  
8 that was like that?

9           A.     No, not that I know of. He's an honorable  
10 man. He's a very good and decent man.

11          Q.     Did you ever have responsibility for  
12 administering document destruction procedures? Do you  
13 know what document destruction procedures are?

14          A.     Yes. Yes, we do, but it's only in 3-year  
15 intervals, and not everything is destroyed. Certainly  
16 none of my personal files were ever destroyed for the  
17 entire time that I was sitting in that chair. None of  
18 them were ever destroyed. You never know what you're  
19 going to need.

20          Q.     Did you ever have responsibility for --  
21 well, you mentioned in your testimony before that you  
22 would -- I don't want to mischaracterize your

1 testimony -- that you basically wouldn't destroy any  
2 documents?

3 A. I wouldn't, no, any documents that I created  
4 myself for cases that I was involved in, yes. I would  
5 not destroy them, no.

6 Q. Okay. Have you ever worked in the  
7 Department of the Interior's computer technology  
8 sections or network support divisions?

9 A. No. No.

10 Q. Do you have a personal working knowledge of  
11 the rules and regulations that govern those sections?

12 A. No, I do not.

13 Q. The schedules by which computer equipment  
14 would be -- well, the schedules by which computer  
15 equipment would be disposed of or the procedures used?

16 A. No. But in all of the years that I was in  
17 any -- in all of the human resource offices throughout  
18 the Department of the Interior or when I worked at OPM  
19 or when I worked in the Internal Revenue Service no  
20 computers were ever destroyed, no hard drives were  
21 ever destroyed of any people that worked in any of the  
22 offices, none of my staff, none of my clerks ever,

1 never.

2 Q. Did you --

3 A. If I might just say --

4 Q. No. I didn't ask you a question, so I'm  
5 just going to go on with this. If a performance plan  
6 is not issued then can there be a performance  
7 appraisal?

8 A. If the performance appraisal isn't signed  
9 and given to the employee it isn't official until it  
10 is, but that does not mean it was not done.

11 Q. My question is very, very narrow. That is,  
12 if a performance plan has not been issued --

13 A. Well --

14 Q. -- then can there be a performance  
15 appraisal?

16 A. If the plan has not been issued, no, there  
17 cannot be a performance appraisal. But there was --  
18 no. The answer to that question is no, it can't be.  
19 If it's not issued to the person, they would have no  
20 way of knowing what their -- what is expected of them.

21 Q. Okay.

22 A. So it's hard to do something wrong if you



1 don't know what's expected of you.

2 Q. You mentioned that page 4 of defendant's  
3 responses to plaintiff's first request for production  
4 of documents and things --

5 A. What exhibit is that, please?

6 Q. I think this is Exhibit 7.

7 MS. GOLDFLUSS: Is that right, Richard?

8 MR. CONDIT: This is Fajardo Exhibit 6.

9 BY MS. GOLDFLUSS:

10 Q. You mentioned that the agency's response to  
11 the request to produce things for inspection and  
12 copying number 2, which is on page 3 -- the request is  
13 on page 3. The part that you were referring to I  
14 believe is on page 4, where it says "Mary Plumley was  
15 Ms. Fajardo's successor."

16 A. Not direct successor but the successor after  
17 that, yes.

18 Q. You had mentioned that you thought that  
19 there was something incorrect in this response, and I  
20 just want to make sure that I understand from you what  
21 you believe was incorrect about characterizing Ms.  
22 Plumley as Ms. Fajardo's successor.

1           A.     Well, for the purpose of this inquiry, what  
2     we're doing here today, there was a person that was  
3     between me and Mary Plumley, and the custody line of  
4     the documents in the office and everything else went  
5     through Ella Drummond before it got to Mary Plumley.

6           Q.     Okay.

7           A.     Ella Drummond was in my office and sat in my  
8     desk.

9           Q.     In fact, you asked her about these  
10    documents?

11          A.     Not on this day. She wasn't there.

12          Q.     Okay. Have you ever called her to ask her  
13    about them?

14          A.     No. No.

15          Q.     But back to the issue about whether or not  
16    there's an error, isn't it true that Mary Plumley is  
17    in fact your successor? She may not have been your  
18    direct successor, but she was your successor? She is  
19    in the position that you were?

20          A.     She is in the position that I was in. She  
21    is in now in the position that I was in.

22          Q.     Right. And that would make her your

1 successor, not direct successor?

2 A. A successor, yes. There can be a long line  
3 of successors.

4 Q. Okay. Because I don't believe that this  
5 represents that Mary Plumley was the direct successor.  
6 I just wanted to clarify your characterization of this  
7 as being erroneous.

8 A. It's not erroneous, it's just that there was  
9 other people between she and I.

10 Q. There was one person?

11 A. One person in the custody line. I want to  
12 make sure that -- you know, Mary Plumley is a  
13 relatively recent hire.

14 Q. Do you believe that Ella Drummond would have  
15 destroyed the document?

16 A. Absolutely not.

17 Q. Do you believe that Mary Plumley would have  
18 destroyed the document?

19 A. I have no idea. I don't know Mary Plumley  
20 very well. I believe she's an honorable person. I  
21 believe everyone is honorable until they show that  
22 they are not. Mary Plumley -- unless someone told

1 her, hey, just throw this out, she wouldn't have any  
2 idea what the significance of it is.

3 Q. When you came to the Department of the  
4 Interior was that upon invitation by the Department of  
5 the Interior?

6 A. When I came over --

7 Q. In August of 2005? Let me restate the  
8 question again. On August 25th, 2005 you came down to  
9 the National Park Service building, is that correct?

10 A. Yes, because Ms. Yu asked me to meet her  
11 there.

12 Q. Okay. And for the record, Stephanie Yu was  
13 the agent of --

14 A. I apologize, Ms. Yu.

15 Q. So you came down at the agency's invitation,  
16 is that correct?

17 A. Yes.

18 Q. And what were you told about why you were  
19 being asked to come?

20 A. To see if I could find the document.

21 Q. And did you identify all of the locations  
22 where you thought the document might be?

1           A.     Yes.

2           Q.     Were you given access to all of the  
3     locations where you think the document might have  
4     been?

5           A.     No, I was not.   I was not.

6           Q.     Okay.   What locations did you identify as  
7     being a location in which the document reasonably  
8     could be were you denied access to?

9           A.     My old office.

10          Q.     Was your old office -- did you ask to go to  
11     your old office?

12          A.     I don't recall whether -- I was shown -- the  
13     boxes met me in the hall, I think, the disk boxes, and  
14     they found me an empty computer to look through the  
15     disk boxes.   I did not look through my old office.   I  
16     did not look through my files, because Mary Plumley  
17     said that there weren't any files.   They weren't  
18     there.

19          Q.     Who was in your old office?

20          A.     Mary Plumley.

21          Q.     So it was her office now?

22          A.     Yes.

1           Q.     Do you have any -- did you ask to go into  
2     her office and look around?

3           A.     She said it wasn't there. I wasn't going to  
4     challenge her.

5           Q.     Okay. So is that a no?

6           A.     No, I didn't.

7           Q.     Were you denied access to your old office?

8           A.     I think that it was -- I think she didn't  
9     want me to go in there. This is my -- like, it's my  
10    office now. I'll find you a computer. It wasn't that  
11    I said, Can I use your office and she said, No. It  
12    was, Here, let's go this way.

13          Q.     But no one said that you couldn't go in  
14    there upon your request to go in there, isn't that  
15    correct?

16          A.     No, no one said I couldn't go in. But she  
17    made it clear that there weren't any files in there,  
18    so there was no point in me looking.

19          Q.     Do you have any reason to doubt her on that?

20          A.     I have no idea.

21          Q.     Was the furniture arranged the same way?

22          A.     I don't know. I haven't been there. It was

1 the last time I was there. Well, I guess it has to be  
2 because the room isn't that large that you could move  
3 it all around in different locations. It has to be --  
4 it is either this way or no way, I guess, because it's  
5 all furniture that's hooked together. It's modular.

6 Q. Is there any other location where -- that  
7 you identified as being a location where the documents  
8 reasonably could be found that you asked to see?

9 A. There were no files that were brought to me,  
10 no paper files, no file folders of any kind. As Ms.  
11 Yu can attest, the only thing that were brought to me  
12 were the documents -- the file boxes.

13 Q. But did you ask to go to any particular set  
14 of files --

15 A. I asked --

16 Q. Let me just finish the question for the  
17 record. Did you ask to go through any particular set  
18 of files in any particular location?

19 A. I asked -- yes. I asked where are the other  
20 files, and I was told there were no other files, this  
21 is all that they could find. And that was difficult  
22 for me to believe because there was a box by the door

1 completely of U.S. Park Police material plus the place  
2 behind my desk in the locked file drawer where there  
3 were other files in the U.S. Park Police, as well as  
4 this file having to do with Chief Chambers.

5 Q. Do you have any idea where that box could  
6 be?

7 A. No.

8 Q. Okay. I'm just going to ask you for  
9 clarification again, was there any particular location  
10 that you asked to get access to for purposes of  
11 finding the document that you were denied access to?

12 A. I did not specifically ask the question, May  
13 I go into your office and look? I asked the question,  
14 where are the other files? I was told there were no  
15 other files, there were just these boxes of -- this  
16 material of disks, and all of the disks weren't there.  
17 As I said to Ms. Yu and to the other people that were  
18 sitting there, these are not all.

19 I was not denied access. I didn't ask to go  
20 into an office and they said, No, you can't go in, but  
21 I was led to believe this is all there is.

22 Q. So when you left the Department of the



1 Interior --

2 A. I left the National Park Service offices.  
3 The Department of the Interior is at main interior  
4 building.

5 Q. When you left the National Park Service  
6 offices you left a box in your office of material  
7 dealing with Ms. Chambers?

8 A. Yes, I did.

9 Q. And was the draft performance appraisal that  
10 you recall drafting -- was that in a box?

11 A. The box and material that was -- as you  
12 entered my office door, there was a box of material on  
13 the floor. That contained all of the hiring files,  
14 the vacancy announcements, all of the materials that  
15 were having to do with the chief, the deputy chiefs,  
16 and her principal assistant when they were hired. And  
17 there was some concern about that material at one  
18 time, and they were all in that box right there.

19 In my office behind my desk in a drawer that  
20 was locked was this particular file that contained my  
21 copy of Chief Chambers appraisal and standards as well  
22 as other cases in that file cabinet in that drawer

1     that I was working on that were of a sensitive nature.

2     That's why they were locked.

3           Q.     So you don't recall that the document -- the  
4     draft performance appraisal -- was ever in a box?

5           A.     It was not in a box; it was in the file  
6     cabinet in a folder.

7           Q.     Did you ask to go into that drawer when you  
8     came to the Department of the Interior to look for  
9     this document?

10          A.     When I went to the National Park Service  
11     with Ms. Yu to look for the document I asked, Where  
12     are the other files? I was told that there were no  
13     other files, that they could not find them.

14          Q.     When you said "the other files," is that how  
15     you phrased it, "Where are the other files?"

16          A.     Yes.

17          Q.     You were no more specific than that?

18          A.     There were -- I told them that there were  
19     files in my file cabinet. There was a whole box of  
20     material. Where was any of that? And they said that  
21     there were none.

22          Q.     So they were denying they ever existed or

1 they were saying they just couldn't find any?

2 A. They couldn't find it.

3 Q. Did anyone at the Park Service stop you from  
4 going through the disks?

5 MR. CONDIT: I'm going to object to this  
6 line of questioning about the thoroughness of Ms.  
7 Fajardo's review in that it suggests that she had some  
8 obligation to thoroughly search for these records when  
9 the obligation stands with the Department of the  
10 Interior and the National Park Service, and I want to  
11 note my objection on this whole line of questioning  
12 about Ms. Fajardo's review on that basis. You may  
13 answer if you can.

14 THE WITNESS: I'm sorry. Could you repeat  
15 the question?

16 (Record read, last preceding question.)

17 A. No. Since the disks weren't all there --  
18 they brought me part of the disks that I had. The  
19 rest of the disks weren't there. I went through what  
20 they gave me.

21 BY MS. GOLDFLUSS:

22 Q. Now, do you know where these disks could be?

1           A.     I have no idea.  When I retired I took  
2     nothing with me that wasn't golf-related.

3           Q.     So your successor was Ella Drummond,  
4     correct?

5           A.     She was my deputy and had been for 20 years.

6           Q.     And when you left that office and she  
7     assumed the responsibilities that you had do you know  
8     whether she moved into the physical office?

9           A.     She did.

10          Q.     You said that you prepared appraisals for  
11     different people.

12          A.     Yes.

13          Q.     Not just Ms. Chambers?

14          A.     Right.

15          Q.     Who else did you prepare appraisals for?

16          A.     Don Murphy's secretary, some of the special  
17     assistants to the director; mainly those.  There are  
18     several of them.

19          Q.     Can you name them?

20          A.     Janice Brooks is his secretary, and there  
21     was -- if I had a listing of them I could pick the  
22     people out.

1           Q.     When you did draft performance appraisals  
2     you would do the performance appraisal and then you  
3     would give them to Mr. Murphy and he would sign off on  
4     them?

5           A.     Yes.  Uh-huh.

6           Q.     Did you ever retain copies of the draft  
7     appraisals?

8           A.     Of course, all of them.

9           Q.     And where did you put those draft proposals?

10          A.     In the folder behind my desk with the  
11     person's names on it in the cabinet.

12          Q.     Was that the same --

13          A.     Cabinet that I put hers in?  Yes.

14          Q.     Was it the same file drawer?

15          A.     Yes.  It was built-in.  It's a built-in file  
16     drawer that's behind -- I had a horseshoe-shaped desk,  
17     and in the file drawer -- there were two file drawers.  
18     The top one was of the things that were of most  
19     importance, including these kinds of things.  They  
20     were in there with the person's name on them.

21          Q.     Was Janice Brooks someone about whom there  
22     was a hot topic?  You had mentioned a file drawer --

1           A.     They wanted the performance appraisal for  
2     that person done right away, as the ones done for the  
3     rest of the office.  If I had a listing of the names  
4     of the employees there I could tell you which ones I  
5     prepared.

6           Q.     Right.  But you had mentioned that the draft  
7     appraisal was in a file drawer that was specifically  
8     devoted to what you called hot topics?

9           A.     Right.

10          Q.     Correct?

11          A.     Yes.

12          Q.     Was Janice Brooks' draft appraisal in that  
13     file drawer?

14          A.     Yes, along with everyone else's that I had  
15     done.

16          Q.     So if you do a draft performance appraisal  
17     of someone it goes into the hot topics?

18          A.     Yes, because it's in the director's office,  
19     and they can be asking about it at any time.  And when  
20     it's completed I like to know about it.

21          Q.     Did you have occasion -- were there  
22     occasions on which you socialized with Ms. Chambers

1 after hours?

2 A. No. I may have gone to the Christmas party  
3 at NCR. I don't recall if she was there. But because  
4 I worked at NCR, I usually was invited to their  
5 Christmas party; but I'm not sure -- I don't know  
6 whether she was there.

7 Q. Okay.

8 A. If you call that social, yes, then that was  
9 -- but I've never been anywhere with Teresa Chambers  
10 or her family or anybody else.

11 Q. We had spoken about a September 17th, 2003  
12 e-mail, and that is -- is that Fajardo Exhibit 7?

13 MR. CONDIT: Yes.

14 BY MS. GOLDFLUSS:

15 Q. Can you just explain what was the purpose of  
16 the e-mail?

17 A. I had drafted -- the first paragraph says I  
18 was telling him that I prepared the standards. I took  
19 parts from Larry Parkinson and Karen Taylor Goodrich  
20 and the regional directors to make -- to create it.  
21 "There's an additional page that will not transmit and  
22 it's the copy of the form part 3, Rating officials'

1 recommendation, which I will provide to you so you can  
2 give it to Teresa with the final standards. While you  
3 review these I'll work on the drafts of Barry and  
4 Dwight." And then I said "Take care from the storm."  
5 I guess there was going to be a storm that day.

6 Q. Okay. Is this document that is set forth in  
7 Exhibit 7 -- is this document to the best of your  
8 knowledge a true and correct document of the document  
9 that you e-mailed to Mr. Murphy on that day?

10 A. It was the standards only, yes, the  
11 standards.

12 Q. Right, because you were e-mailing him just  
13 the standards?

14 A. As much that would e-mail, yes.

15 Q. Okay. So your memory is that in other words  
16 there's nothing false about this document? It is what  
17 it purports to be, is that correct? In other words,  
18 it doesn't -- it's a true and complete copy of the  
19 e-mail that you sent?

20 A. This, yes; but it's only the standards, it's  
21 not the appraisal that I handed to him.

22 Q. Okay.



1           A.     The back page is missing.

2           Q.     Well, "missing" in the sense that there were  
3 later things that were attached to this document,  
4 correct?

5           A.     Missing because, as I say in this document,  
6 it wouldn't transmit. The last page would not  
7 transmit.

8           Q.     Okay. So it's not missing because someone  
9 destroyed it?

10          A.     It's missing because it wouldn't transmit.

11          Q.     But that document that wouldn't transmit,  
12 was that itself an appraisal or was that simply part  
13 of the form?

14          A.     It was the back page of the form.

15          Q.     So --

16          A.     But the standards that I sent to him are  
17 complete and they are right here.

18          Q.     Okay. The back page of the form, was the  
19 back page of the form the appraisal portion?

20          A.     Yes. Part of it is here. Part of it is  
21 here. The bottom part of it isn't here. There's a  
22 part 3, as it says in the memo, part 3, Rating

1 official's recommendation, which I will provide to you  
2 to give to Teresa with the final standards. This page  
3 did not transmit.

4 Q. Okay. So I'm confused. Is it that Ms.  
5 Chambers had not received -- as of September 17th,  
6 2003 Ms. Chambers had not received any performance  
7 standards, is that correct?

8 A. That's correct.

9 Q. Do you recall what happened next after you  
10 sent this e-mail to Mr. Murphy with respect to any  
11 response?

12 A. I finalized the document, including the  
13 section that was to be the recommendation, the  
14 appraisal: how you did.

15 Q. Okay. So at the time of the September 17th,  
16 2003 e-mail you had not yet drafted what you call the  
17 appraisal section of the document, is that correct?

18 A. Right. Yes, that's true.

19 Q. All right. And did you hear back from Mr.  
20 -- when did you -- did you ever hear back from  
21 Mr. Murphy regarding this e-mail?

22 A. Yes.

1 Q. Okay. And when was that?

2 A. It had to be within a week -- within the  
3 week, because it was only within about a week that I  
4 gave him the final with the appraisal attachment to  
5 it.

6 Q. Do you recall what the response was?

7 A. This is fine.

8 Q. Did he e-mail back to you?

9 A. I don't know whether he e-mailed me or he  
10 called me.

11 Q. Okay. So were you waiting to hear from him  
12 before you proceeded on with the appraisal portion?

13 A. Of course.

14 Q. So you recall that he either e-mailed you or  
15 phoned you to tell you that it was -- that the  
16 standards were okay by him?

17 A. He could have seen me in person. He either  
18 e-mailed me, he called me, or I saw him in person.

19 Q. And he somehow approved the standards?

20 A. Yes.

21 Q. And then you drafted the appraisal portion?

22 A. Yes.

1 Q. And you did that within the week?

2 A. Uh-huh.

3 Q. Now, you mentioned that the appraisal was  
4 for the period from October 1st to September 30th,  
5 correct?

6 A. I can't remember the day that she was hired.  
7 I don't recall what day of the week that was; I mean,  
8 what day of the month, whenever it was. She'd never  
9 had standards ever.

10 Q. But the question that I'm asking you is the  
11 period of the performance appraisal I believe you  
12 testified before --

13 A. Would have been October 1st, 2002 to  
14 September 30th, 2003.

15 Q. Right. But how can you evaluate Ms.  
16 Chambers on the work that she performed on September  
17 28th if you're drafting the appraisal by September  
18 23rd?

19 A. We're talking about a few days here. Unless  
20 she did something so horrendous within a few days,  
21 that doesn't even make sense. You have to be  
22 appraised on the entire period of time.

1           Q.     Well -- but is it the practice of the  
2     Department of the Interior to issue a performance  
3     appraisal prior to the expiration of the period for  
4     which the appraisal is supposed to cover?

5           A.     He wanted it to be done at this particular  
6     time, and that's when I did it, a few days before the  
7     end of the rating period.

8           Q.     And when did he tell you that?

9           A.     During the week -- after September 17th to  
10    the time that I gave him the final appraisal.

11          Q.     Do you recall receiving an e-mail from  
12    Mr. Murphy asking for the actual performance  
13    appraisal?

14          A.     An e-mail? No.

15          Q.     Do you remember whether it was a  
16    communication by phone asking for a draft appraisal?

17          A.     It was probably in talking to him -- in  
18    fact, it was talking to him, I'm sure, about something  
19    else that we had, whether he says something like,  
20    Well, we have to finalize that. Do you think you can  
21    finalize this in the next couple of days?

22          Q.     But do you know what that was or -- was he

1 more specific than that?

2 A. Yeah. He said -- I asked him how was her  
3 performance. He said her performance was fine. So I  
4 based my recommendation, my appraisal of her, on his  
5 "She was fine." So then I put together a paragraph or  
6 so that said that she was doing her job in an  
7 excellent manner.

8 Q. Did you in fact have any personal knowledge  
9 of Ms. Chambers' performance at the time that you  
10 drafted the appraisal?

11 A. Yes.

12 Q. And how is that?

13 A. Because of the good things that she had done  
14 up until that time working with the President's detail  
15 and working on the Fourth of July and -- you know, you  
16 hear things.

17 Q. You hear things, okay.

18 A. I asked him how she did and he said she did  
19 fine.

20 MR. CONDIT: Excuse me. Do you mind if we  
21 go off the record for a minute?

22 (Discussion off the record.)

1 MS. GOLDFLUSS: On the record.

2 BY MS. GOLDFLUSS:

3 Q. Ms. Fajardo, if you were -- is there  
4 anything to your knowledge that the Department of the  
5 Interior can do to locate this document at this time?

6 MR. CONDIT: Objection, no foundation.

7 BY MS. GOLDFLUSS:

8 Q. You can answer the question.

9 A. I have no idea.

10 Q. All right. I have no further questions.

11 EXAMINATION BY COUNSEL FOR PLAINTIFF

12 BY MR. CONDIT:

13 Q. Ms. Fajardo, a few follow-up questions. You  
14 mentioned in response to a question by agency counsel  
15 that you were not directly Ms. Chambers' supervisor.  
16 What did you mean by that?

17 A. No. Well, since the National Park Service  
18 -- the headquarters office was taking over the U.S.  
19 Park Police, I was supervising the establishment of  
20 their own personnel office. So I was reviewing  
21 everything that they were doing personnel-wise and  
22 signing off on promotions for them at certain levels,

1 and making sure that they were doing everything  
2 according to guidelines with regard to human resource  
3 matters.

4 Q. And during what period of time were you  
5 performing that reviewing and signing off function?

6 A. From the time that Chief Chambers was hired  
7 and the organization brought into the Washington  
8 office until I retired.

9 Q. So then were you involved in signing off on  
10 anything to do with the personnel action taken against  
11 Chief Chambers?

12 A. No.

13 Q. You mentioned in your testimony in response  
14 to counsel's question about other persons who had  
15 access to your locked file drawer --

16 A. Uh-huh.

17 Q. -- you mentioned that there were other  
18 chiefs who might have access.

19 A. Uh-huh.

20 Q. Who are those people?

21 A. David Davies and Deborah Thompson. I have  
22 no idea why -- Deborah Thompson probably wouldn't. I



1 mean, she has the access but she wouldn't have had the  
2 reason. David Davies would.

3 Q. Now, would they have access because they  
4 would be able to access the key or they would have a  
5 copy of the key to the locked --

6 A. No, they don't have a copy. They would have  
7 asked either me or my deputy for the key, or just say  
8 for the file, give me what you have on this.

9 Q. Where was Mr. Davies in the chain of command  
10 as opposed to you? Was he parallel?

11 A. He was parallel.

12 Q. Who did he work for specifically? What  
13 chain was he in?

14 A. He worked for -- we both worked for the  
15 assistant director of human resources, Jay Lynn Smith.

16 Q. Who did Mr. Smith report to?

17 A. He did not report to Mr. Murphy. Randy --  
18 deputy director Randy -- what was his last name? He's  
19 not there right now. He has cancer. He was  
20 transferred to his home in Colorado. Randy -- I  
21 cannot think of his last name at the moment. Give me  
22 a minute or two. Go ahead.

1 Q. And would -- do you know who Paul Hoffman  
2 is?

3 A. Yes.

4 Q. Who is he?

5 A. He was an attorney with the department.

6 Q. An attorney?

7 A. I thought he was an attorney. Maybe he was  
8 -- he was on the staff of the secretary.

9 Q. Okay. Would Mr. Davies have had a reason to  
10 access your files, just in general?

11 MS. GOLDFLUSS: Objection, calls for  
12 speculation.

13 BY MR. CONDIT:

14 Q. That's all right. You may answer.

15 MS. GOLDFLUSS: Over what time period?  
16 Vague as to time period.

17 A. From time to time he would have an inquiry  
18 into some of the things that were happening in my  
19 area, yes, because he dealt with employee and labor  
20 relations policy.

21 BY MR. CONDIT:

22 Q. Do you know if Mr. Davies was involved in

1 the personnel actions or action that was taken against  
2 Chief Chambers at the end of 2003?

3 A. Yes.

4 Q. Do you know what role Mr. Davies played in  
5 that action?

6 A. Yes, I do know what role he played.

7 Q. What was that?

8 A. The case against Chief Chambers was given to  
9 David Davies because I wouldn't take the action.

10 Q. So what officially was his role with respect  
11 to that kind of action? Is there a term of art for  
12 it, or like a deciding official?

13 A. Oh, no, he was by no means the deciding  
14 official. He was the staff person who would prepare  
15 the case, or his staff would.

16 Q. Did Mr. Davies supervise Mr. Krutz?

17 A. Yes.

18 Q. To your knowledge was Mr. Krutz involved in  
19 the issues involving Chief Chambers?

20 A. Yes.

21 Q. And both Mr. Davies and Mr. Krutz would have  
22 access to your files?

1           A.     Yes.

2           Q.     You mentioned when you were discussing at  
3     counsel's request the setup of the file that you kept,  
4     the locked file cabinet that you kept behind your  
5     desk, you mentioned that -- when asked, that Teresa  
6     Robinson's file was in there, union grievances were in  
7     there, some of the EEO cases. Are there any other  
8     specific names you can mention of persons who were in  
9     that file along with Chief Chambers?

10          A.     I can tell you the cases. I know this is  
11     going to sound ridiculous, but I can't at the moment  
12     think of any of the names of the people who are in  
13     there.

14          Q.     No, that's not ridiculous at all, given the  
15     stretch of time. I have no problem --

16          A.     I can tell you the kinds of cases that they  
17     were. I can tell you where they were located.

18          Q.     Well, other than union grievances and EEO  
19     cases what other kinds of cases if any were in that --

20          A.     Performance appraisal cases of the people  
21     that I was doing for the director's office, any of the  
22     special assistants. The director's principal

1 assistant, she was in there. There were a number of  
2 special assistants.

3 Q. And these would have been special assistants  
4 to whom?

5 A. To the director.

6 Q. To the director, Fran Menella?

7 A. Yes.

8 Q. Now, you said in your testimony in response  
9 to agency counsel's questions that Mr. Murphy read the  
10 appraisal that you prepared for Chief Chambers.

11 A. Yes.

12 Q. Is that correct?

13 A. Uh-huh.

14 Q. Do you remember where in the sequence that  
15 reading took place? I think you identified this was  
16 between sort of middle to end of --

17 A. September.

18 Q. September of 2003?

19 A. Yes.

20 Q. Do you know how close to the end of  
21 September it was, or do you recall anything like that?

22 A. No.

1 Q. That's okay.

2 A. If I knew then what I know now I would have  
3 dated and timed everything.

4 Q. I understand. Now, you also testified in  
5 response to agency counsel's questions that you knew  
6 Mr. Murphy to be an honorable and decent fellow.

7 A. Yes.

8 Q. What is your basis for that opinion?

9 A. I've talked to Don on several subjects for  
10 the time that I'd known him, and he was always upbeat  
11 and kindly and generous in his praise of things that  
12 happened, grateful for things that you do for him,  
13 whereas some of them are not always. He was a golfer,  
14 and we talked about golf a lot.

15 Q. In terms of things that you and Mr. Murphy  
16 talked about did you have occasion after this -- the  
17 appraisal was prepared to talk about Chief Chambers or  
18 the situation involving Chief Chambers?

19 A. Yes.

20 Q. Can you recall the earliest time you had  
21 that kind of conversation?

22 A. No. I don't remember the times or the

1    dates, but I was at main Interior and it was just a  
2    happenstance meeting. And in the course of  
3    conversation about a variety of things he asked me, Do  
4    you know what's happening with Teresa? I said, Yes.  
5    He said, What do you think? And I said, I don't think  
6    that there's a case here. And I also said that I  
7    think that, you know, we ought to consider, you know  
8    -- consider everything before any action is taken. He  
9    said he would, and that was that.

10       Q.     Okay. Any other conversations about that  
11    type of subject that you can recall with Mr. Murphy?

12       A.     No.

13       Q.     Now, you mentioned that it was your I guess  
14    personal standard that you would consider someone  
15    honorable unless they prove themselves otherwise?

16       A.     Yes, that's true.

17       Q.     Now, if you learned that Mr. Murphy lied or  
18    misled people about the situation with Ms. Chambers  
19    would that change your opinion of him?

20               MS. GOLDFLUSS: Calls for speculation,  
21    hypothetical. Objection.

22       A.     I don't know.

1 BY MR. CONDIT:

2 Q. Have you been able to reconcile in your  
3 mind, given your knowledge of Mr. Murphy, why  
4 Mr. Murphy testified at one time about the existence  
5 of the appraisal and then produced an affidavit later  
6 that said it never existed?

7 MS. GOLDFLUSS: Objection. Calls for  
8 speculation. Assumes facts not in evidence.

9 A. I don't know.

10 BY MR. CONDIT:

11 Q. Let me make sure I understand the  
12 circumstances that brought you to the National Park  
13 Service office in August of 2005. I think I  
14 understand your testimony to be -- and please correct  
15 me if I'm wrong -- that Ms. Yu contacted you to come  
16 to the office and look for the document, the appraisal  
17 document.

18 A. Yes.

19 Q. Now, when you came to the office were you  
20 given any kind of authority? In other words, did  
21 either Ms. Yu or someone else at the agency say, We  
22 want to find this. Go wherever you need to go; you



1 know, ask whoever you need to ask.

2 A. No.

3 Q. Any open authority of that nature?

4 A. No. No one gave me any open authority, but  
5 as she made it clear to the people who were there --  
6 Ms. Yu did -- that, you know, we're there for a  
7 purpose and we're looking for a document, and please  
8 give us what you have.

9 Q. Okay. Just one other thing I would like to  
10 clarify on the record. You were asked a number of  
11 questions by agency counsel concerning Fajardo Exhibit  
12 7, the e-mail with the attached performance plan. Do  
13 you recall that line of questioning?

14 A. Yes.

15 Q. Now, it's my understanding that that  
16 document, the performance plan, is a very distinct  
17 document from the actual appraisal document. Is that  
18 correct?

19 A. I'm not sure, when you say "distinct" -- it  
20 is -- the performance standards -- this document,  
21 Fajardo Exhibit 7, are the performance standards. It  
22 is also when the back page, which is not here, which

1 is completed and becomes part of this -- the  
2 appraisal. It's the standards and the appraisal.  
3 It's both. What I prepared initially were the  
4 standards. What I prepared secondly was part 3, which  
5 is not here, which was an additional section and an  
6 attachment page.

7 Q. Okay.

8 A. But one becomes the other.

9 Q. All right. And this is what I need  
10 clarification on. When you previously testified at  
11 deposition, we -- you and I went over for some length  
12 of time the form for appraisals at the time. I want  
13 to show you it again. It was marked deposition  
14 Exhibit 1 in the deposition previously. I just want  
15 to you to take a look at that.

16 I want to understand the difference between  
17 the two documents, the document in Fajardo Exhibit 7  
18 and the document which we've now marked as Exhibit 1.

19 A. Okay. This is a performance plan and an  
20 appraisal also. This is for a regular employee. Yes,  
21 this is for a regular employee. See the --

22 Q. So now you're referring to Exhibit 1?

1       A.     Yes.  This summary of rating, this is what's  
2     -- from this part down isn't on here.  This is for an  
3     SES person.  This is for a human.  This is for another  
4     person.

5       Q.     Okay, so --

6       A.     Sometimes we're not sure SESs are really  
7     alive.

8       Q.     Exhibit 1 is for a more common worker, shall  
9     we say, in the department?

10      A.     Yes.

11      Q.     Fajardo Exhibit 7 is for a Senior Executive  
12     Service level or high management person?

13      A.     Yes.  Yes.

14      Q.     So when I went over with you how you  
15     recalled filling out these various sections for Chief  
16     Chambers or dealing with these various issues in  
17     Exhibit 1, you were not saying that this was the  
18     document that they were filling out --

19      A.     No.  You asked me a question about the form.  
20     I was telling you that when I filled this out for my  
21     employees I filled out all of this, and then I would  
22     check or circle which ones applied, and this is their

1 performance standards and appraisal.

2 Q. Okay.

3 A. This is the same kind of document but it is  
4 for the Senior Executive Service. There's more to it  
5 because this is what a senior manager has to have, an  
6 SES person.

7 Q. But there would be -- I assume in the piece  
8 that's missing from Fajardo Exhibit 7, which we're  
9 calling the appraisal, there would be similarities  
10 with respect to the --

11 A. Not this. The only similar part to it would  
12 be this.

13 Q. So you're now --

14 A. The summary rating, level 3.

15 Q. And you're referring again to the last page  
16 of Exhibit 1?

17 A. Yes, this thing and this.

18 Q. Okay. And the sign-off portion?

19 A. Yeah.

20 Q. And the summary rating would contain what  
21 kind of information?

22 A. How did they do, how did the person do?

1 That's where I put "Please see attached."

2 Q. Okay. And what was attached?

3 A. A piece of bond paper that had the summary  
4 rating -- the summary of her performance on it.

5 Q. Okay. And what do you recall that summary  
6 saying?

7 A. That she did fine, because he said she did  
8 fine. I said she performed -- I picked out some of  
9 the things that were on here and I said that she did  
10 these things in an excellent manner.

11 Q. Okay. When you say you picked out some of  
12 these things that are on here, what are you referring  
13 to?

14 A. The elements that were in her performance  
15 plan, especially those dealing with her law  
16 enforcement duties and the managing of her  
17 organization.

18 Q. And that's in Fajardo Exhibit 7?

19 A. Yes.

20 Q. Thank you. I appreciate that clarification.  
21 I needed to sort that out. So when we look at Fajardo  
22 Exhibit 7 and we're thinking about the appraisal piece

1 that's supposed to go on with it, how many pieces of  
2 paper are we really talking about that we don't have?

3 A. You don't have the last half of this, it's  
4 part 3, and what may be part 4; or it may just say  
5 "certification." I don't recall what it said.

6 Q. So maybe two pieces of paper, or if they  
7 were both on one sheet it --

8 A. Well, it would have to be more than that.  
9 It would be this and the bond paper that I had the --  
10 exactly the appraisal on.

11 Q. Okay. So it was at least two sheets of  
12 paper?

13 A. At least two sheets of paper.

14 Q. You were asked by agency counsel whether you  
15 had personal knowledge of Chief Chambers' performance,  
16 and you mentioned that you had heard things about the  
17 President's detail, the Fourth of July. What things  
18 did you have personal knowledge with respect to Chief  
19 Chambers' performance in that period of 2003?

20 A. That there were some things that -- in the  
21 White House detail when the officers were going and  
22 how hard they worked and all of that, and how well

1 July 4th went. I think I saw her on television, and I  
2 think Mr. Bush had said something complimentary about  
3 how the Fourth of July went.

4 Q. Okay. So at the time you were discussing  
5 with Mr. Murphy completing Chief Chambers' performance  
6 appraisal you were given no indication of any negative  
7 performance or conduct, is that correct?

8 A. No. I said, How did she do, so that I could  
9 say something. And he said, She did fine.

10 I have no other questions. Thank you.

11 MS. GOLDFLUSS: We are done.

12 (Signature having not been waived, the  
13 deposition of Terrie Fajardo was concluded at 12:58  
14 p.m.)

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## 1                   ACKNOWLEDGEMENT OF DEPONENT

2           I, Terrie Fajardo, do hereby acknowledge  
3   that I have read and examined the foregoing testimony,  
4   and the same is a true, correct, and complete  
5   transcription of the testimony given by me, and any  
6   corrections appear on the attached Errata sheet signed  
7   by me.

8

9

10           \_\_\_\_\_  
              (DATE)\_\_\_\_\_  
(SIGNATURE)

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## 1 CERTIFICATE OF NOTARY PUBLIC

2 I, Leanne P. Dotson, the officer before whom the  
3 foregoing deposition was taken, do hereby certify that  
4 the witness whose testimony appears in the foregoing  
5 deposition was duly sworn by me; that the testimony of  
6 said witness was taken by me in shorthand and  
7 thereafter reduced to computerized transcription by  
8 me; that said deposition is a true record of the  
9 testimony given by said witness; that I am neither  
10 counsel for, related to, nor employed by any of the  
11 parties to the action in which this deposition was  
12 taken; and further, that I am not a relative nor  
13 employee of any attorney or counsel employed by the  
14 parties hereto, nor financially or otherwise  
15 interested in the outcome of the action.

16 \_\_\_\_\_  
17 Notary Public in and for  
18 the District of Columbia

19

20

21 My commission expires:

22 May 31, 2008

IN RE: Chambers vs. U.S. Department of the  
Interior

[illegible]

( SIGNATURE )

3 Interior

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