1 GARY G. MOWAD 2 V. DEPARTMENT OF THE INTERIOR DA-1221-13-0262-W-4 3 August 18, 2014 4 JUDGE GARVEY: Good morning. 5 Wе are now on the record. Today's date is 6 August 18th, 2014. The Merit Systems 7 8 Protection Board has before it the appeal of 9 Gary G. Mowad, MSPB Docket Number DA-1221-13-10 0262-W-4. The Appellant has alleged that the 11 Agency retaliated against him for engaging in 12 whistleblowing. I have been designated as 13 the Administrative Judge to adjudicate this 14 matter. My name is Mary Ann Garvey. 15 Agency is represented by Jeff Mundy, Esquire 16 - the Appellant is represented by Jeff Mundy, 17 Esquire. And the Agency is represented by 18 Gregory C. Mehojah, Esquire. 19 The purpose of this hearing is to 20 provide the parties with an opportunity to 21 present evidence and witnesses, to cross-22 examine witnesses, and to make 23 representations in support of their 24 respective views. During a prehearing 25 conference in this matter we identified the

1	issues, and I approved witnesses. The
2	parties are informed that opening statements
3	will not be necessary, and we'll proceed
4	directly to the first witness.
5	Representatives, is there anything
6	you would like placed on the record before we
7	proceed with testimony this morning?
8	MR. MUNDY: Yes, Your Honor.
9	After conferring with opposing Counsel, I
10	will offer Appellant's exhibits with the
11	following exceptions. We withdraw at this
12	time Exhibit I, Exhibit BI, Bravo India, and
13	then Exhibit BY, Bravo Yankee, and Exhibit
14	Bravo Zulu will be redacted; they're strings
15	of emails that include some segments of
16	communication from Mr. Mehojah, and he today
17	is going to work out some arrangement to have
18	his comments redacted, and then we'll forward
19	those to you. But the - the remainder of the
20	email string will remain as offered. Is that
21	correct?
22	MR. MEHOJAH: That's correct.
23	MR. MUNDY: And then there's
24	certain exhibits that - let's see, BL, Bravo
25	Lima; BN, Bravo November; BO, BP, BQ, BR, BS,

1	BT, BU, BW, BX are dealing with the denial of
2	a second transfer. They are offered for a
3	limited purpose, they are not a cause of
4	action in of themselves today before you.
5	The complaint about the denial of that
6	transfer is not the cause of action today,
7	but they are offered for the limited purpose
8	of showing mindset and motive, and
9	circumstantial evidence of mindset and motive
10	about the - the initial detail and the
11	motives of the - the State actors in this
12	case. So they're offered for that limited
13	purpose.
14	MR. MEHOJAH: And, Judge, the
15	Agency objects to the introduction of those
16	specific exhibits into the record as not
17	relevant-
18	JUDGE GARVEY: All right, Mr.
19	Mundy, Mr. Mundy, explain again to me what
20	these exhibits - roughly how they relate to
21	the case that is before me, that I am
22	adjudicating.
23	MR. MUNDY: Certainly. Certainly.
24	It just - very short. Today he's claiming
25	that he was cooperating with the OIG and OSC.

He was assigned to a detail in retaliation for that cooperation.

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JUDGE GARVEY: Right.

MR. MUNDY: That's what you'll be That started in the Summer hearing today. and Fall of 2012. At the end of the year of 2012, and into January 2013, he tried to transfer out of the chain of command, from under the - one of the key witnesses, Mr. Tuggle, who's Regional Director for this region, to Mrs. Chavarria's chain of command. You'll be hearing from her as well. those series of exhibits deal with his attempts to transfer out from Tuggle's chain of command into Chavarria's chain of command, and that detail was denied, that transfer out was denied by Tuggle and Director Ashe. so they're offered to show their mindset and motive that, in fact, they were retaliating against him, and it's circumstantial evidence to show their subjective state of mind and their subjective motive.

JUDGE GARVEY: Okay, I'm going to allow them. Obviously, if I find they're not relevant to the issue I'm adjudicating, I'm

1	not going to consider them. So I'm going to
2	allow them.
3	I need an explanation from you,
4	Mr. Mehojah, or a date from you of when I am
5	going to get the redacted, I, BI, BY and B -
6	oh, no - yeah, and BZ. No.
7	MR. MEHOJAH: I can - I can
8	probably fax that from the hotel tonight.
9	JUDGE GARVEY: Okay.
10	MR. MEHOJAH: I don't know - I
11	don't know that I can - I can't
12	electronically file it.
13	JUDGE GARVEY: Right.
14	MR. MEHOJAH: Because I don't have
15	a scanner. But I could - if you wanted me to
16	electronically file it, I can do that by, um,
17	probably by Thursday when I'm back in the
18	office.
19	MR. MUNDY: And I will agree, for
20	purpose today, that we - I will avoid asking
21	any questions which would refer to the
22	segment about Mr. Mehojah's comments, and I'm
23	assuming he would do likewise.
24	JUDGE GARVEY: Okay, if you could—
25	MR. MEHOJAH: Yes.

1	JUDGE GARVEY: -fax them tonight,
2	it would be best. As long as they don't
3	contain anything that you're uncomfortable in
4	faxing from a hotel.
5	MR. MEHOJAH: Okay. Do you have a
6	fax number where I can send that, Judge?
7	JUDGE GARVEY: Yes. 214-767-0102.
8	MR. MEHOJAH: Thank you. And I
9	can't - I can't remember, we have withdrawn
10	BI, Bravo India, is withdrawn completely?
11	MR. MUNDY: Yes.
12	MR. MEHOJAH: Thank you.
13	JUDGE GARVEY: Okay. So the ones
14	that Mr. Mehojah will be redacting are I, BY
15	and BZ; is that correct?
16	MR. MUNDY: BY and BZ. I is my
17	resume, which is withdrawn for now because it
18	was in support of a fee claim, and you found
19	that you're going to defer that depending on
20	the outcome of this matter-
21	JUDGE GARVEY: Right.
22	MR. MUNDY: -so I is just
23	withdrawn. It's not relevant at this stage.
24	JUDGE GARVEY: So what - well, you
25	just said they were withdrawn, you gave me

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1	four of them and you said you'll - they'll be
2	redacted. So are we redacting BY and BZ?
3	Just explain to me what you're not
4	withdrawing and what is going to be coming
5	in, minus Mr. Mehojah's comments?
6	MR. MUNDY: BY and BZ.
7	JUDGE GARVEY: Okay. All right.
8	And I and BY are withdrawn.
9	MR. MUNDY: I is withdrawn. BY is
10	the redacted copy, and BZ is redacted.
11	MR. MEHOJAH: BI is withdrawn.
12	MR. MUNDY: Oh, yes, BI is
13	withdrawn, correct.
14	JUDGE GARVEY: I and BI are
15	withdrawn. BY and BZ are withdrawn subject
16	to the Agency faxing redacted copies of
17	these, correct?
18	MR. MUNDY: Correct, the redacted
19	copy is offered, yes, Judge.
20	JUDGE GARVEY: All right. Okay.
21	Good enough.
22	Anything else before we call our
23	first witness?
24	MR. MUNDY: He hasn't offered, but
25	I have no objection to the Agency's exhibits,

1	Your Honor.
2	MR. MEHOJAH: Yeah, and the Agency
3	offers its exhibits in total.
4	MR. MUNDY: And we have no
5	objection, Your Honor.
6	JUDGE GARVEY: Okay. So the
7	Agency's are admitted without objection. And
8	the Appellant's are all admitted over the
9	Appellant's - over the Agency's objection to
10	some, starting at BL. The Agency objected on
11	the basis of relevance, and I indicated that
12	I will consider them, and obviously if
13	they're not relevant, will not consider them.
14	And the Appellant withdrew his proposed
15	Exhibit I and BI, as well as BY and BZ in
16	their present form, which the Agency will
17	resubmit in redacted measure without their
18	attorney's comments.
19	Okay. Anything else?
20	MR. MUNDY: Judge, may I confer
21	with opposing counsel off the record for just
22	one moment about two other matters,
23	housekeeping matters?
24	JUDGE GARVEY: Okay, go ahead.
25	[OFF THE RECORD]

1	[ON THE RECORD]
2	WITNESS: GARY GLEN MOWAD
3	JUDGE GARVEY: If you would remain
4	standing and raise your right hand, please.
5	THE WITNESS: Yes, Your Honor.
6	JUDGE GARVEY: Do you promise that
7	the testimony you're about to give will be
8	the truth, the whole truth, and nothing but
9	the truth, so help you God?
10	THE WITNESS: I do.
11	JUDGE GARVEY: Okay. Please be
12	seated and state your full name for the
13	record.
14	THE WITNESS: My name is Gary Glen
15	Mowad, M-o-w-a-d.
16	JUDGE GARVEY: All right. Thank
17	you.
18	You may proceed, Mr. Mundy.
19	MR. MUNDY: Thank you, Your Honor.
20	DIRECT EXAMINATION
21	BY MR. MUNDY:
22	Q. Mr. Mowad, let's start off with a
23	little bit of background about who you are,
24	your history, and then how you ended up in
25	the Austin Office and your duties there.

1	A. Yes. I started my Federal career
2	with the Department of Agriculture. After
3	approximately two years with the Department
4	of Agriculture, I was hired as a Special
5	Agent with the U.S. Fish and Wildlife
6	Service. I served as a Special Agent with
7	the Fish and Wildlife Service for 22 years.
8	During that time I rose through the ranks of
9	Special Agent in Alaska, Chicago, Denver.
10	Then became a Senior Special Agent in
11	Washington, D.C. in Headquarters. I then
12	promoted to a supervisory position, I was the
13	Assistant Special Agent in Charge of the Fish
14	and Wildlife Service Region 2, and then
15	promoted into the Special Agent in Charge, I
16	was the SAIC, the Special Agent in Charge, of
17	the Rocky Mountain Region in Denver, Colorado
18	for five years, and then I promoted into the
19	Deputy Chief position where I was the Deputy
20	Chief for the entire Fish and Wildlife
21	Service law enforcement program from coast to
22	coast in Washington, D.C. after that.
23	Q. Are those sworn law enforcement
24	positions?
25	A. They are.

Q. Okay. And then please continue, and then lay out the timeline how you came to work in the Austin Office of the Fish and Wildlife Service.

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Yes, sir. While working as the Α. Deputy Chief in Washington, D.C., I received a call one day from Joy Nicholopoulos, she had been promoted to the Deputy Regional Director position in Albuquerque. said that since she had been promoted out of the Texas State Administrator position and was now the Deputy Regional Director of this region, Region 2, she thought I would be a good fit for her old job in Texas. I was from Texas, knew the Texas way, knew how Texas politics played, and that I would be a good fit for that job. And I was offered the position in Texas as the Texas State Administrator for the Ecological Services Program.

And after some consideration with my family, I decided to go ahead and accept that position, even though by accepting that position it was approximately a \$20,000.00 a year pay cut. But I took the enormous pay

1 cut, leaving the law enforcement series to 2 take this job as the Texas State 3 Administrator, because the law enforcement program has a mandatory retirement age for 4 Special Agents, and at age 57 I would have 5 had to retire as - from Federal service, and 6 7 I have a - I had a daughter late in life, and 8 I accepted the position, even with the 9 \$20,000.00 a year pay cut, so that I could 10 move into a job series that did not have a 11 mandatory retirement date so that I could 12 keep working. And I intended to keep working 13 to build up her college fund and get her 14 setup and into college before I retired. 15 All right. And if you would 16 explain to the Judge in, you know, just 17 Reader's Digest version here, the structure 18 of the Fish and Wildlife Service, how the 19 Austin position you took, where it is in the 20 hierarchy and chain of command and how that 21 relates to the chain of command in the 22 Regional Office in Albuquerque that we'll be talking about, and, I guess, then who's above 23 24 that. 25 Α. Yes. As the Texas State

1	Administrator of - essentially, I was the
2	head Federal Biologist for the State of Texas
3	for the Fish and Wildlife Service. I had
4	four main Ecological Services within Texas
5	that I supervised, and each of those had what
6	is referred to as a project leader. And
7	those positions were GS-14s, and I was a GS-
8	15 with the - and again, as the Texas State
9	Administrator I supervised the four field
10	offices here in Texas.
11	Now, I then was directly
12	supervised by Michelle Shaughnessy, who is
13	the Assistant Regional Director for
14	Ecological Services in Albuquerque. So my
15	direct - I was the direct report for the ARD
16	for Ecological Services in Albuquerque.
17	Michelle Shaughnessy reports to Joy
18	Nicholopoulos, who's the Deputy Regional
19	Director, who reports to Ben Tuggle, who's
20	the Regional Director. That's the chain of
21	command.
22	Q. And then where does the chain of
23	command go above the Region?
24	A. Well, from - from the Regional
25	Director, in this case Benjamin Tuggle,

Benjamin Tuggle would answer to the Deputy
Director in Washington, D.C., Roland Gould,
who would answer to the Director, Dan Ashe.

Q. Okay. Now, just to kind of help fill in some blanks on the framework that we'll be talking about today, we're going to hear from some witnesses, Mr. Tom Cloud, Allen Strand, and Justin Wedel. Explain, just, you know, where they fit in the chain of command in Texas and their - you know, just how - the context of where they were back in the relevant period of 2012.

A. Yes. In 2012, Allen Strand was the project leader or the GS-14, the head Biologist for the Corpus Christi Ecological Services Office, and Tom Cloud was the Project Leader or the GS-14 in charge of the Arlington, Texas Office. So they were both senior supervisors over their part of the state. Justin Wedel was not within the Fish and Wildlife Service. He was an employee, he was the equivalent of the CFO, the Chief Financial Officer, for the USGS service, and the USGS has a office in Austin, to which that's where my office was located. So I was

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1	physically located in the USGS building, and
2	Justin Wedel had an office two doors down
3	from me.
4	JUDGE GARVEY: What is USGS-
5	A. He's not with Fish and Wildlife-
6	JUDGE GARVEY: What is USGS?
7	MR. MUNDY: I'm sorry, excuse me,
8	Your Honor. United States Geological Survey.
9	JUDGE GARVEY: I'm sorry.
10	Continue.
11	A. That was just an office-sharing
12	arrangement.
13	MR. MUNDY: I'm sorry, Your Honor.
14	JUDGE GARVEY: No, continue, I'm
15	sorry. But if you use an acronym, please
16	tell us what it means. Thanks.
17	THE WITNESS: Yes, Your Honor.
18	Q. [BY MR. MUNDY:] And so Mr. Wedel,
19	it's just happenstance of office sharing in
20	the same physical space, he's with a
21	different agency, though?
22	A. That is correct.
23	Q. Okay. Let's see, couple other
24	people that we will hear from, explain their
25	context of what the Judge is hearing today,

and that's Mr. Coleman and Ms. Chavarria.

Who are they, and then how do they fit into
the context of - of the facts of this issue?

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Yes. I'll start with Gabriela Α. Gabriela Chavarria's position Chavarria. within the Fish and Wildlife Service, she was the Assistant Director for the Office of the Science Advisor. We use an acronym AD, but it's the Assistant Director for the Office of the Science Advisor. She was physically located in Washington, D.C. with the Director of the Fish and Wildlife Service Dan Ashe. And her position was created relative recently, within the last five years, in response to a requirement from the Department of Interior to - for the Fish and Wildlife Service to establish an office that dealt with scientific integrity complaints and investigations. And Ms. Gabriela Chavarria, she will explain her background, but she is a Ph.D. from Harvard to head that division within the Fish and Wildlife Service. And then her first investigator that was hired to do scientific integrity investigations for the Fish and Wildlife Service was Rick

1 Coleman. Rick Coleman, I believe his title was Senior Science Advisor or Senior 2 3 Scientific Integrity Officer; I've seen several versions. But he essentially was her 4 - her lead - and I believe possibly her only 5 - Investigator who would conduct 6 7 investigations into scientific misconduct. 8 And then his findings would be reported to 9 her, and then back up to - to the Director. Would it be fair to liken this to 10 Ο. 11 an Internal Affairs Department in a police 12 agency? 13 Α. It would be - it would be 14 comparable, but it would deal with instead of 15 wrongdoing of, you know, criminal matters, it 16 would be science, science and policy 17 infractions. 18 Ο. Okay. If you would, explain to 19 the Judge, we've heard a couple of times 20 about the Ecological Services Division, and 21 explain how those personnel in Texas, where 22 they fall in the chain of command with the Refuge personnel, as far as they relate to 23 24 you and your supervision, just so we have a 25 clear understanding.

1 Within the U.S. Fish and Wildlife Α. 2 Service there are different divisions that 3 have very different missions. And as you alluded to, you would have a law enforcement 4 program, you would have a Refuge program who 5 6 their job would be to maintain refuges for 7 visiting guests and visitors and hunters, and 8 then you have within the Ecological Services 9 Program that is the division within the Fish 10 and Wildlife Service that deals with 11 endangered species listing, endangered 12 species recovery, the Partners Program is in there and that's a program which we work with 13 14 private land owners to do habitat improvement 15 projects that essentially benefit Fish and 16 Wildlife trust species. So that's kind of the hierarchy of how - or the different 17 18 divisions that we would see within and Fish 19 and Wildlife. 20 And so you were the head of all Ο. 21 these state operations for the Fish and 22 Wildlife employees in the State of Texas that are in the Ecological Services Division? 23 24 That is correct. Α. 25 Ο. Approximately, back when you were

1	in charge, what was the rough headcount that
2	were under your chain of command?
3	A. Approximately - I seem to remember
4	about 65.
5	Q. Another name we will hear through
6	the course of this proceeding is Ms. Allison
7	Arnold. Explain what her job duties were
8	back in this period in 2012 when you were the
9	head of the State Service.
10	A. Allison Arnold was a field level
11	Biologist within the Austin Field Office.
12	She had a satellite office down by San
13	Antonio, but she was assigned to the Austin
14	Field Office. Again, a field level
15	Biologist. I'm not sure of her grade, but I
16	think it was a GS-11, possibly 12, but I
17	think it was an 11. She reported to a first-
18	line supervisor named Tanya Summer, who
19	reported to the Project Leader for the Austin
20	Field Office, that would have been Adam
21	Zoreiner, who then reported to me.
22	Q. Okay. She's under your direct
23	chain of command?
24	A. Yes. She was at that time.
25	Q. At that time, at the relevant time

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1	period.
2	A. Yes.
3	Q. Okay. Now, when did you move to
4	Texas to take this job?
5	A. I moved to Texas and took the
6	position of Texas State Administrator in
7	August 2010-
8	Q. Let me stop you.
9	MR. MUNDY: Judge, we're getting a
10	lot of feedback. I don't know if there's -
11	one of the mics having an issue. It sounds
12	like papers or something at one of the remote
13	locations?
14	MR. MEHOJAH: I think the Judge
15	was moving her notepad.
16	MR. MUNDY: Oh. Okay. That's
17	fine, I just…
18	Q. [BY MR. MUNDY:] Let me start
19	over. I forgot where I was
20	A. I moved to - I accepted the
21	position and moved to Austin in August 2010.
22	Q. Okay. And brought your family
23	with you from Washington, D.C.?
24	A. They actually moved before I did.
25	I stayed back and then joined them.

Q. All right. And when you came here in August of 2010, what were — over the following year, getting into 2011, what were the type of typical job duties that you were carrying out, and then explain to the Judge what issues and irregularities you started encountering and becoming concerned with.

A. Well, as I supervised the
Biological - the Biologists and the
Biological staff within the Ecological
Services Program, that program regulated the
endangered species program within Fish and
Wildlife, including listing packages to
determine whether or not species warranted
listing; recovering of species; we certainly
had a permit function where permits would be
issued to allow incidental takes of
endangered species either through Federal
projects or in the private sector.

One of the newer and up and coming responsibilities that we had was the establishment of conservation banks within the State of Texas, and conservation banks were essentially a mechanism by which developers or highway projects that needed

1 mitigations for the habitat destruction that 2 their projects would cause, they could obtain 3 that mitigation by simply buying credits through a - through a bank. 4 Okay. And this was gonna be-5 Ο. 6 MR. MUNDY: Your Honor, this is 7 going to be a core of his complaints about 8 the - the wrongdoing that he was reporting, so I'm gonna ask him to expand just a little 9 10 bit and explain the legal framework to you so 11 that you will understand the impropriety of 12 what he reported. 13 Ο. [BY MR. MUNDY:] So if you would 14 explain just - just give us the - the five-15 minute version of Endangered Species Act take 16 and then how somebody can mitigate for that 17 and get permission to do an incidental take, 18 and then what private business owners do and 19 how money changes hands to buy this 20 mitigation credits, and then what ultimately 21 led to what you started reporting to the OIG, 22 Okay? your concerns. 23 Your Honor, under the Α. Yes. 24 Endangered Species Act, if - if you have a 25 project that is going to impact endangered

species habitat or endangered species, there are two permit avenues available to you, depending on which category you fall in to obtain these - these permits.

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Section 7 of the Endangered Species Act deals with only those projects that have a Federal nexus; there's some kind of Federal money, Federal permit, but there's some kind of Federal nexus to this particular project. And if your project has a Federal nexus, you can go through what's referred to as a Section 7 consultation process with a U.S. Fish and Wildlife Service. You, as the project developer, produce a biological assessment that is given to the Biologists that I supervised. Those Biologists write what's referred to as a biological opinion. And in that biological opinion, if they believe that some take of habitat or the species can occur, they will write an incidental take statement into that biological opinion allowing you to take, for instance, you know, so many acres of habitat, so many of the species, divert so much water, you know, whatever the project might be, but

you have to mitigate that take. And you mitigate that take either through purchasing property elsewhere to make up for what you - you destroyed or buying credits for somebody else who has already put habitat aside that - that will be set aside for that particular species.

- Q. Let me stop you right there. The key concept for mitigation is, so, the person can destroy, go ahead and get Federal permission to destroy endangered species habitat, but then the off they have to go out, and as a counterbalance, protect other comparable habitat or pay somebody else to do that?
- A. That is correct. Now, if you don't have a Federal nexus, you're just a private citizen, for instance, you know, you want to put a Home Depot on a corner and that's gonna be quite a bit of property, you can either develop or or join what's called a Habitat Conservation Plan, it's an HCP, a Habitat Conservation Plan, and that would be under Section 10 of the Act.

So Section 7 for those projects

with Federal nexus. Section 10 is for the rest of the world that don't have a Federal nexus to their project.

And after developing a Habitat

Conservation Plan and showing how you're
going to - to mitigate for what case is going
to occur, you are given an incidental take
permit that allows you to take endangered
species or their habitat incidental to
otherwise lawful activity, but the same
caveat, but you're gonna have to mitigate for
that take by either buying projects - I mean,
properties that will offset what you're
taking or buying conservation credits from
what's called a conservation bank for other
people who have already set habitat aside.

So, those - those are the two major avenues available to folks to make sure your project can keep moving forward while still ensuring that the Endangered Species Act is complied with.

Q. And explain to the Judge how people set up actual business models, they go out and buy up land and then have it available to sell to developers as these

mitigation credits, how that works.

A. Well, that's the establi

A. Well, that's the establishment of a conservation bank, for the most part. And citizens who own ranches or properties that have habitat that is beneficial to a listed endangered species, that habitat can go through a process by which it's evaluated, its value is determined; credits are assigned to that habitat, and that's done both by the private landowner and the U.S. Fish and Wildlife Service. And once the bank is approved and established, that bank will be given so many credits that are available to be sold, should somebody need credits for that particular species.

- Q. Okay. And then explain what your role, as the head person in the State of Texas Ecological Service Division, what your duties were in relation to this mitigation and incidental take permitting process.
- A. Well, my role was to to supervise the process, and as always, to make sure that there's a level playing field.

 That all partners who who are are essentially trying to establish a

conservation bank are treated equally and to
ensure that mitigation is appropriately
purchased, appropriately sold. But most
importantly what I saw and what I was
concerned with was just the level playing
field to ensure that if you weren't connected
to a certain group or politician in Texas
that you got preferential treatment with your
bank establishment or - or essentially on - I
mean, I cautioned my people on - my
Biologists, on numerous occasions to make
sure that somebody or a company or a utility,
whoever it might be, if they needed
mitigation, it was their responsibility to go
find that mitigation on their own and to
purchase that mitigation without undue
influence from the Fish and Wildlife Service.
In other words, it's like a vendor. It's
inappropriate for a Government employee to
push somebody needing to purchase something
from one vendor to another, over another,
let's say. And in this case I make sure and
was cautioning my folks to make sure that
anyone who needed mitigation, that was up to
them. They find it, they negotiate, they

buy, and that had to be a free enterprise system, separate and apart from the Fish and Wildlife Service.

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- Q. All right. Now, explain explain what you started noticing as you were carrying out your duties in 2011 and then into 2012.
- Α. Well, it became intuitively obvious to me, and to my senior staff and to the private sector, that there - there was a small group of folks in Texas that surrounding the State Comptroller, the State Comptroller at that time, and still is, was Susan Combs. Susan Combs had a small group of individuals that she associated with, and that small group was profiting off of decisions that the Fish and Wildlife Service was - was making. They were obtaining grant money to do research, grant money to, you know, establish HCPs, they were establishing - they were receiving money, actually, from Susan Combs to work on Section 7 biological assessments. And it became very clear that this small group that surrounded the State Comptroller's office was - was, in my

1 opinion, receiving preferential treatment in 2 the - the - getting their paperwork through, 3 getting decisions from the Fish and Wildlife Service, and that was very, very concerning 4 to me in that, you know, the Federal 5 Government should be a level playing field 6 7 for everyone. And it was very clear to all 8 my senior staff and myself that if you were 9 associated with the State Comptroller's 10 Office, you - you, in my opinion, were going 11 to receive preferential treatment. 12 And it - does it include people Ο. 13 outside of the State Government, you know, 14 people that are benefitting privately? 15 just private citizens in business? 16 That is correct. 17 Okay. And you say receiving Ο. 18 preferential treatment-19 MR. MUNDY: And we're now getting 20 in to the real crux of the detail here, Your 21 Honor. 22 [BY MR. MUNDY:] But from whom on Ο. 23 the Government's side were they receiving 24 preferential treatment, from what you 25 observed?

A. This small group - and I'm gonna
use two names so that we can be specific now
- two individuals that gave me a great deal
of concern were Steve Manning and Neil
Wilkins. Steve Manning was a private
individual. I'm not sure he has any
biological training at all. We often
referred to him as the State Comptroller's
hatchet man. I don't - I can't say for sure
if he is on the State Comptroller's staff,
but I don't believe so, I believe he's just
an individual that she contracts with to get
certain things done. But Steve Manning and
then Neil Wilkins were asking for, again,
preferential treatment on - on different
things that we were doing. And I would
inform them that everybody gets treated
equal, you know, within the Federal
Government, there - there isn't preferential
treatment, there isn't unrestricted access to
the - to the Fish and Wildlife Service, to
the Regional Director, to the Deputy Regional
Director. Yet those two expected, and
expected, I think, for the State
Comptroller's Office to receive expedited

processing of their requests and preferential treatment for their requests as well.

And Steve Manning personally one time when I - when I pushed back and told him that - that everybody gets treated the same, told me specifically, Your Honor, he told me, he said, you know, you need to understand you work for us, you know, we in Texas got your position funded, that's why your position exists, and your job is to make sure we get what we want. Well, I took great pause with that kind of comment, and it concerned me greatly.

At a later date, Neil Wilkins was asking me to call my staff — and you're going to be talking with Tom Cloud, or he'll be testifying later today — but Neil Wilkins told me that I needed to call Tom Cloud and have his Biologists accept a model for warbler populations on a biological assessment that he was working on for Fort Hood. Now, Fort Hood had their own environmental staff, Fort Hood had actual numbers, they had actually counted birds, they didn't need a model, they had what we

refer to in the science community as the best available science. There's nothing better than actual on-the-ground counting of birds. So my staff was working with the Fort Hood staff, we were using the actual number of birds from actual surveys, yet Neil Wilkins wanted me to call Tom Cloud and say, you need to let us use this model that we developed over at Texas A&M.

And I explained to Neil that we can't use a model, that particular model in particular was very problematic in ground truthing, it over predicted the presence of birds by up to ten fold. And my staff actually showed where the model predicted warblers would be found in the parking lot, a paved parking lot, at Fort Hood. So I explained to Neil that I could not use that model under any circumstances. It would violate both policy and law, because we have to use best available science.

And Neil told me straight out, he said, Gary, why do you do this? You know I'm just going to call Joy Nicholopoulos, she's gonna flip you, we're gonna use the model,

and all you're gonna - all you end up doing is making yourself look bad. And at about this point it became very clear to me that this small group that surrounded the State Comptroller's Office were - they were too close. And I use the term with my staff on numerous occasions, they had an inappropriately close relationship with Joy Nicholopoulos who used to be in my position here in Texas, and now was the Deputy Regional Director. They were using their unrestricted and unbridled access to get what they wanted, and they were using their access to her to - to essentially overrule the sound science that my staff was - was using and that was I was using. And we were essentially trying to hold the ground on scientific integrity, but we - it was very frustrating for us because these folks did have unbridled access to Joy and Joy would give them what they wanted. All right. If you would, explain Ο.

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to the Judge what you observed with respect to - to the preferential treatment as it relates to getting these mitigation credits

offset and steering business to one particular individual.

- A. Well, with that as a backdrop,

 Your Honor, that that was the climate we

 were dealing in. And then it escalated when

 I discovered that that there was a Oncor

 Electric, which is the power distribution

 network that is up in North Texas, in Dallas.

 Oncor Electric is a good company, I have all

 good things to say about Oncor.
 - Q. And that's O-n-c-o-r, correct?
- A. Yes. O-n-c-o-r. Oncor Electric
 Company had over several years had developed
 a Habitat Conservation Plan, as I mentioned
 earlier. They didn't have a Federal nexus,
 but in order to get an incidental take
 permit, they had to develop a Habitat
 Conservation Plan. Over a couple of years,
 or more, they worked on it, they developed
 it, they they got a Habitat Conservation
 Plan approved. And then when it came time to
 issue the incidental take permit for that
 Habitat Conservation Plan, I found out
 through a direct conversation that I had with
 an individual named Marty Tuegel, Marty is

1	the Section 10 Coordinator in the Regional
2	Office in Albuquerque, so he's head of this
3	HCP program.
4	Q. Can you spell Mr. Tuegel's name
5	for her?
6	A. Marty is M-a-r-t-y. Oh, and he
7	spells his last name - I'm gonna say T-u-e-g-
8	e-1, but don't take that to the bank. I
9	remember I struggled with that spelling
10	several times.
11	Q. All right. And so what is a
12	Section 10 Coordinator?
13	A. He was the Section 10 Coordinator,
14	still is.
15	Q. What is that position; explain
16	what that is.
17	A. That is the person who oversees
18	the development of the Habitat Conservation
19	Plans. In other words, once they're
20	developed in the field, they go to his office
21	in Albuquerque. He reviews them for legal
22	sufficiency, and then reviews the permit that
23	then is issued to allow incidental takes of
24	endangered species. So if they want to build
25	their power lines and right of ways, they

1	have to get his - they have to get this
2	Section 10 permit before they can go forward
3	on that building?
4	A. If they're gonna take endangered
5	species habitat or endangered species, yes,
6	that's correct.
7	Q. Okay. And then what's Mr.
8	Tuegel's role?
9	A. Well, Marty reviews the HCPs and
10	the permits that are then issued thereof.
11	Q. And HCP one more-
12	A. Habitat Conservation Plans.
13	Q. And that's a formal, technical
14	term of art for endangered species—
15	A. Within the Endangered Species Act
16	you have to develop a Habitat Conservation
17	Plan to show how you're going to offset or
18	mitigate your impact to endangered species.
19	Q. And that requires expressed
20	Federal approval, to have that happen?
21	A. Yes.
22	Q. You have to have the plan
23	approved?
24	A. You have to have it approved and
25	the permit is actually issued from the

Federal Government, from the U.S. Fish and Wildlife Service.

Q. Okay.

A. Marty Tuegel expressed to me personally that Joy Nicholopoulos came into his office and asked him to add language to the incidental take permit that was going to allow Oncor to take habitat and species in conjunction with their HCP, she came into his office or called him, but they had a conversation and he was asked to put language in the - in the incidental take permit that would have allowed Oncor Electric to purchase temporary conservation credits to offset their impacts.

Now, I knew and Marty knew that the HCP, the Habitat Conservation Plan, that Oncor had worked on so diligently for all those years had no language in it whatsoever to allow the purchase of temporary credits or temporary credits to be used to set off, to mitigate, either permanent or temporary impacts. And so Marty was very concerned with putting that language in there and actually refused. He said, I'm not going to

do this. I'm - I'm not going to - to break
the law and I'm not gonna put this language
in this permit. But because of pressure that
he was receiving from Joy, he started to work
on wiggle room language that would
essentially give Oncor, if they wanted to
interpret it that way, the right to purchase
temporary credits to - to buy their
mitigation with. And that language was
eventually put into the permit.

And in a very short amount of time, I don't even think the ink was dry literally - figuratively speaking, Steve Manning called me and asked me to contact Oncor Electric and ask them or instruct them to purchase two and a half million dollars worth of temporary credits from his foundation, which is known at that time as the Texas Watershed Management Foundation. Steve Manning was holding temporary credits that were supposed to be used at Fort Hood, under a Section 7 context, not Section 10. This whole thing stunk. And at that point I thought this did not pass the smell test. I mean—

1	Q. Just stop. Mr. Manning is a
2	private citizen, this foundation is a
3	privately established, non-governmental—
4	A. Yes.
5	Qentity and was attempting to
6	steer two and a half million dollars worth of
7	business to that privately established
8	foundation which is under his control?
9	A. Absolutely.
10	Q. Okay.
11	A. And I told him I wouldn't do it.
12	I said, this is wrong, I'm not - it's
13	inappropriate for me to contact any private
14	citizen or corporation and direct that
15	corporation to buy credits from you. That's
16	inappropriate. And I told him I wouldn't do
17	it.
18	And on several more occasions I
19	was asked, and the rhetoric got turned up
20	each time to where from - at first it was a
21	request, and by the end of it he literally
22	was saying, You need to call Oncor Electric
23	and you need to tell them to buy these
24	credits, these temporary credits from my
25	foundation. And at - at that point, actually

1 before that point and at that point I had 2 reported this to my boss, Michelle 3 Shaughnessy. I said, I am being asked to do 4 something that I think is unethical. And in 5 fact, I think this is illegal, and I will not do it. And I cautioned Michelle that the 6 7 only way that this is being facilitated is 8 because the Deputy Regional Director got 9 Marty to put language in the incidental take 10 permit for HCP that, loosely construed, would 11 allow this. And I told Michelle that Marty 12 had refused to put in the actual language 13 that - that Joy wanted that would have made 14 it even clearer. 15 Let's use last names so the record Ο. 16 is very clear. 17 Α. Marty Tuegel. 18 Ο. Okay. And then you reported that 19 to Ms. Shaughnessy, who's Assistant Regional 20 Director? 21 Α. I reported it to Michelle 22 Shaughnessy, who is my direct supervisor. 23 She was the Assistant Regional Director for 24 Ecological Services. 25 Ο. And then the language was

1 expressly included. You had said Joy, that 2 is the Deputy Regional Director, Ms. 3 Nicholopoulos, is the one that had that 4 language inserted? 5 Α. Yes. 6 Ο. That would allow for the purchase 7 of credits from Mr. Manning? 8 Α. Yes. 9 Okay. And had you ever had any Ο. 10 experience where you saw preferential 11 treatment between Ms. Nicholopoulos and Mr. 12 Manning? Had you ever - is this a out-of-13 the-blue, or had there been prior 14 experiences? 15 No, there were prior experiences. 16 One in particular - you know, it takes a long 17 time to get a conservation bank approved, and 18 it's very expensive, these things are not 19 cheap. They're in the hundreds of thousands 20 of dollars to get them done. And I was at a 21 meeting in Albuquerque once, and I actually 22 witnessed where we had a number of 23 conservation banks in the queue being worked 24 in order, and I witnessed where one bank that 25 was represented by Manning, Steve Manning,

and another woman named Catherine Armstrong, was hired as their lobbyist to lobby the Fish and Wildlife Service on behalf of this bank, I am told. A phone call came in wanting to know what the status was of the approval of that bank. And I literally watched Joy Nicholopoulos perk up, jump, contact Michelle Shaughnessy, who was in the - the hallway with us, and said, you need to check on the status of this bank right away and get back with me. So it was very clear that while these banks should have been worked in order as they were delivered to the Fish and Wildlife Service for review, again, this group, this small group in Texas had direct access and what I used to refer to as unbridled access to the Deputy Regional Director. They were getting preferential treatment. So this was not uncommon. Being pushed to the front of the Ο. line and given preferential treatment in interpretation and application of the law and the permits-MR. MEHOJAH: Objection, that was not the witness's testimony.

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1 MR. MUNDY: That was a question. 2 You need to phrase JUDGE GARVEY: 3 it as a question. MR. MUNDY: Yes, Your Honor. 4 [BY MR. MUNDY:] So based on what 5 Ο. 6 you've observed and described to the Judge, 7 what you were describing, in summary, would 8 be Mr. Manning, his group, the private 9 citizen group, were receiving preferential 10 treatment from Ms. Nicholopoulos with 11 processing of their permits, insertion of 12 favorable language in the permits, and 13 steering business opportunity to that same 14 group, and being treated differently, you 15 know, and preferentially over other private 16 citizens and parties? 17 I will answer this - this way. Α. 18 Again, the Oncor permit was Oncor's and they 19 had done a stellar job and an ethical job 20 with developing that. But the HCP, the 21 actual permit, yes, that language, I believe, 22 Joy Nicholopoulos asked that to be inserted at the 12th hour, at the very last minute, for 23 24 the purpose of providing preferential 25 treatment to Steve Manning's foundation.

1	Q. Good play. Clarification. You're
2	not suggesting impropriety by Oncor Electric-
3	A. Correct.
4	Qit is the insertion of this extra
5	language which would benefit Mr. Manning?
6	A. Correct.
7	Q. Got it.
8	A. And I will say that there's only
9	one entity in the State of Texas that had
10	those permits. I mean those, excuse me,
11	those credits to sell. This wasn't like
12	let's put this language in there and - and
13	Oncor would have a choice. The Manning
14	Foundation is the only foundation, the only
15	entity in the State of Texas that has
16	temporary conservation credits to sell. Joy
17	had to have known that; we all knew that.
18	And by inserting language in that permit, she
19	was essentially giving the green light for
20	Oncor to buy temporary conservation credits
21	from her friend Steve Manning.
22	Q. So the - the condition is written
23	in such a way that it benefits solely one
24	private party?
25	A. That is correct.

1 Otherwise, they would have had to 2 go out into the open market, obtain their 3 own, do their own field work, get their own mitigation property? 4 5 Α. Yes. If I could, when we start 6 Ο. Okav. 7 getting into the Spring of 2012, if you would 8 tell your - tell the Judge about a contact 9 you received from a private environmental 10 attorney, Mr. Allen Glen and his reporting 11 the complaints to you about what he was 12 experiencing in trying to deal with the Fish 13 and Wildlife Service. 14 Yes. Let me just get my dates Α. 15 here. In May - it was May 2012, I was 16 contacted by an environmental attorney in 17 Texas named Allen Glen. 18 Ο. And please look at the Judge, you 19 don't need to look at me. 20 And Allen Glen contacted me to let Α. 21 me know that he had filed a complaint with 22 the Department of the Interior's Office of 23 Inspector General. And he wanted to make 24 sure I knew about it so that I wouldn't be

blindsided. And he essentially said that he

complained about the inappropriate actions by
Joy Nicholopoulos and Benjamin Tuggle and he
told them that - he told me that - that Joy
Nicholopoulos has a domestic partner in Texas
and her name was Allison Arnold. And I had
heard from my own staff and from others that
Joy Nicholopoulos and Allison Arnold were
domestic partners. I can't say that I know
for sure. I never asked, but that is what
was reported to me is that they were domestic
partners. And attorney Allen Glen told me
that Allison Arnold and Joy Nicholopoulos
were directing clients away from his
environmental consulting and environmental
law practice. And that they were hurting his
business and that they were telling other
clients out there that if they used this
other consulting firm, that was - that had a
former Fish and Wildlife Service employee
working there, if they used this other
consulting firm, that they would have a much
better outcome. So Mr. Glen was concerned
that Allison Arnold and Joy Nicholopoulos's
actions were inappropriately negatively
impacting his business, and he wanted to make

sure I knew that he had filed a complaint
with the Office of Inspector General.

- Q. And then that was in your capacity as the State Administrator?
 - A. That is correct.

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- Q. And the with respect to Mrs.

 Arnold, if you would, tell the Judge what had been what you've learned about her engaging in private consulting concurrently with holding her position in the Fish and Wildlife Service.
- Well, as a result of this Α. Yes. complaint by attorney Allen Glen, there was an investigation of Allison Arnold and Joy Nicholopoulos. I'm not privy to all the outcomes of - of that investigation and what the remedies were, but I was told that they determined that Allison Arnold did have a private consulting firm going at the same time that she was a Government employee, and that the Federal Government, i.e., the OIG, made her close down her - her website and I'm assuming the practice. I was told they made her close her website down that was advertising this consulting practice.

1	Q. And what is your understanding
2	about whether or not a - a Fish and Wildlife
3	employee on the active service of the
4	Government in this capacity can run a private
5	consulting operating concurrently with their
6	public service? A private for-profit
7	consulting.
8	A. Well, all of us in the Federal
9	Government who have gone through the training
10	that you have to take, know that you can have
11	employment, but that outside employment has
12	to be approved by your supervisory chain and
13	that that outside employment can't augment or
14	compete or have the appearance of impropriety
15	with what your - your duties actually are
16	with the government.
17	Q. So private consulting doing
18	environmental consulting where you're in a
19	position to actually expressly approve the -
20	express approval process for these permits,
21	that would be a direct conflict, from what
22	you observed?
23	A. That's how I would interpret it.
24	MR. MUNDY: And, Your Honor, just
25	for convenience, Exhibit C, Charlie, has many

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1	of these dates and names for you for your
2	reference, which can help you with the
3	timeline here.
4	Q. [BY MR. MUNDY:] That was in May
5	of 2012 that you were contacted by Mr. Glen?
6	A. That is correct.
7	Q. Okay. And then, if you would, we
8	know from-
9	MR. MUNDY: I'm going from the
10	notes in Exhibit C, Your Honor.
11	Q. [BY MR. MUNDY:] On June 8 th , 2012,
12	you yourself spoke with a Department of the
13	Interior - and what is DOI and OIG? Explain
14	those briefly—
15	A. The.
16	Qreal fast.
17	A. The DOI acronym is the Department
18	of Interior, the OIG is the Office of
19	Inspector General. That is essentially the
20	internal affairs department of the Department
21	of Interior.
22	Q. Okay. And please explain what
23	you… what you contacted them about, what
24	happened there in June of 2012.
25	A. Well, after attorney Allen Glen

told me that he had filed a complaint with the OIG regarding the activities of Allison Arnold and Joy Nicholopoulos, I - I told him that, you know, I also have some ethics and policy and law issues with what's going on here in Texas that I think the OIG needs to see. And I felt compelled as a Government employee that it was my duty to - to report these. And so I asked attorney Allen Glen to have the Special Agent that he was working with contact me and I wanted to then go ahead and relay my concerns to the OIG as well and - and have them reviewed by the Office of Inspector General. Okay. And is that - is June 8th, Ο. from your memory, the first date that you started actively making a complaint to the OIG and then actively cooperating with them? That is correct. Α. And if you would, explain what -Ο. what they asked you to do and what cooperation and assistance you started providing Agent Futrowsky from the OIG? Α. I - in response to my asking Yes. Allen Glen to have the OIG contact me on June

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1 8th, I spoke by telephone to Department of 2 Interior Special Agent Steve Futrowsky. And 3 I explained to him the issues that I was the issue I was concerned with regarding the 4 Oncor Electric permit and the ability for 5 6 Oncor to purchase these temporary credits, as 7 I just explained to the Court. So I relayed 8 those - those facts to him. 9 I then also had a separate issue 10 that I believe certainly involved scientific 11 misconduct, violations of policy and possible 12 violation of law, and that was the failure of 13 the U.S. Fish and Wildlife Service to list 14 the dune sagebrush lizard as an endangered 15 That decision was made in this 16 region Fish and Wildlife Service Region 2. 17 had reason to believe that that decision was 18 not legally sufficient and was politically 19 motivated, and I relayed that complaint to 20 Agent Futrowsky as well.

Q. And did he - explain what assistance he asked from you to aide his investigation of these allegations.

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A. After - after relaying my complaint to - to Agent Futrowsky, he asked

me to provide witnesses and interview questions that would be helpful, because this involved science, scientific misconduct, involved policy, and — and he asked me, then, to provide that. So on July 13th and 14th, I — I provided him with a list of — of witnesses that he needed to interview, as well as questions that needed to be asked of each of these witnesses.

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Then he wanted to meet with me in person. Agent Futrowsky was stationed in Washington, D.C. at Headquarters. going to the National Conservation Training Center to attend some training in July, just a month or two later there - well, same month as the time I provided the questions. told him if he wanted to meet with me in person, I would be in West Virginia and could meet with him on July 26th. We agreed to meet in person on July 26th, 2012. And at that point, we sat down for quite a long time, probably two hours, is my - my guess, with Agent Futrowsky and another Special Agent. And I recanted (sic) all the complaints again involving the misuse of Joy Nicholopoulos

1 misusing her position for the financial and 2 political gain of this close group here in 3 Texas. And that - that interview was recorded. I don't have a copy of the 4 5 recording, but the IG recorded that, the interview. 6 7 Ο. What is IG? 8 Α. The Office of Inspector General. 9 Ο. Okay. Now-10 MR. MUNDY: And, Your Honor, just 11 for clarity of the record and to help you, 12 the Appellant's Exhibit C was originally 13 submitted as Exhibit No. 11 in response to 14 your Show Cause Order about jurisdiction. 15 Because of the numbering and lettering system 16 for the parties, it's in the record now as 17 Exhibit C, but the full body of it is 18 attached to the Show Cause Order Response as 19 Exhibit 11. It's not - the fact sheet only 20 has C on it, but the full text of that 21 affidavit from Mr. Mowad will be found as 22 Exhibit 11 to the Show Cause Order. 23 [BY MR. MUNDY:] And, Mr. Mowad, Ο. 24 if you can, I'll send you to page 2 of this 25 and explain some more endangered species

1 terminology that's in this affidavit. 2 Explain, with respect to Endangered Species 3 Act, you know, your understanding, based on your experience and job duties, the terms 4 warranted and not warranted, and then you're 5 6 using the term legally sufficient. So if you 7 would explain the terms of art, warranted/not 8 warranted, as it fits in the Endangered 9 Species Act context that we see on Exhibit C 10 here on page 2. 11 MR. MUNDY: This would be roughly 12 in lines 49 to 65 of that affidavit, Your 13 Honor. 14 Yes. The - the detail of my Α. 15 complaint as it relates to the Endangered 16 Species Act is this, when the Fish and 17 Wildlife Service does a scientific review, an 18 evaluation to determine whether or not a 19 species should be listed as an endangered or 20 threatened species, or not listed, there are 21 a number of parameters that - that must be 22 looked at, including, you know, threats to -23 to the species. 24 One of the tools in the toolbox, 25 as we say, in the Endangered Species Act that

1 can help a species avoid being listed is 2 something that is referred to as a Candidate 3 Conservation Agreement with Assurances. That's a CCAA for short. Candidate 4 5 Conservation Agreement with Assurances. 6 In theory, Your Honor, this is 7 what it amounts to is that if - if people in 8 an area where a proposed species is found, 9 want to keep that species from being listed, therefore avoid the restrictions that come 10 11 with having a listed endangered species in 12 their area, they can develop and implement 13 Candidate Conservation Agreements with 14 Assurances that essentially show how these 15 citizens or entities are going to conserve habitat, going to address the threats, you 16 17 know, they're going to - their conservation 18 plans to show how they're going to protect 19 the species somewhat voluntarily. And by 20 doing so, in theory, if everybody does what 21 they say they're gonna do, in their CCAA 22 agreements, the threats to the species should 23 be mitigated to the point that the animal or 24 plant doesn't have to be listed. 25 But one of the keys to this is

that these plans, these CCAAs, Your Honor, they have to be enforceable. There has to be a mechanism in place for the Fish and Wildlife to review and see and verify that the conservation measures that are supposed to be in a CCAA are actually being carried out.

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What was intuitively obvious to myself and the senior staff underneath me was that the CCAA, the Candidate Conservation Agreement with Assurances, for - for the dune sagebrush lizard involved what's referred to as the Texas Plan, for the - for the lizard. It was a plan that was developed by Susan Combs, as the State Comptroller for the State of Texas, it was written, I'm told, predominantly by Steve Manning again, and it was reviewed - actually reviewed and - and developed in concert, over my objections, by Allison Arnold for the Fish and Wildlife Service. And at the conclusion, the - we ended up with a Texas Plan for the conservation of the dune sagebrush lizard that in my opinion and the opinion of those who - who know this and do this work

1 everyday, this plan was not only not 2 enforceable, but it wasn't even verifiable. 3 We weren't allowed to know where the impacts to the species occurred or where the 4 mitigation to offset those impacts was. 5 And where is this lizard-6 Ο. 7 Α. This lizard is located out in the 8 Permian Basin of West Texas in the heart of 9 oil development country, so this was an 10 extremely controversial listing, very 11 sensitive. And I was under the opinion, as 12 are many others, that the failure to list 13 this lizard, the failure to come up with a 14 listing as warranted decision was politically 15 motivated to keep from listing a lizard in 16 oil country. 17 Ο. And did you ever hear reports of 18 comments that would support that from - that 19 were attributed to Mr. Tuggle or his staff? 20 I - I - I heard a number of Α. 21 comments. I was told that Justin Tate, who 22 is a Biologist - excuse me, who is an 23 attorney, who is a solicitor in the 24 Albuquerque Office, a wonderful person, a 25 great attorney; I have nothing but great

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1	things to say about this man, I've worked
2	with him on a number of issues over the
3	years, I was told he reviewed the Texas Plan
4	and determined it was not legally sufficient
5	and refused to sign it, and advised the
6	service of that.
7	Q. And so did you ever hear any
8	comments about - about the staff, the senior
9	- most senior staff saying we're not going to
10	have a listing in oil country?
11	A. Yes.
12	Q. If you would explain to the Judge
13	what those comments are and who made 'em and
14	the context?
15	A. Yes, Your Honor. Soon after the
16	dune sagebrush lizard was not listed,
17	essentially the Fish and Wildlife Service
18	came up with a not-warranted listing decision
19	- we're getting a lot of-
20	MR. MUNDY: We're getting some
21	feedback all of a sudden, Your Honor.
22	JUDGE GARVEY: When I flip the
23	pages on my legal pad.
24	THE WITNESS: No, you're good, it
25	was just feedback, but it's gone. Thank you

so much, Your Honor.

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A. So soon after the Federal

Government failed to list the dune sagebrush

lizard, we had a meeting that we were called

to in Albuquerque, New Mexico - excuse me, in

Austin, Texas.

- O. [BY MR. MUNDY:] We who?
- Α. Benjamin Tuggle and Michelle Shaughnessy came to Austin, Texas and asked the Austin Field Office to convene a staff meeting of all those that were present that day. We had a meeting in the Austin Field Office, and at that meeting Benjamin Tuggle said to the group, first he congratulated them for essentially getting this over the finish line without having to list the lizard, and he stated, there was not way we were going to list a lizard in the middle of oil country during an election year. And my jaw just about hit the ground, because that to me showed that that was a pre-decisional determination on his part, and they did not want to list that lizard and they were going to make sure that they found a way not to. And that is a violation of the Endangered

1 Species Act, in my opinion. 2 The decision is purely a science object science-driven one? Or is supposed to 3 4 be? 5 The Endangered Species Act is very Α. clear, it says whether or not to list or not 6 7 to list needs to be based on the - the best 8 available science, and it has to be 9 independent of financial concerns and 10 political concerns. I am of the opinion this 11 was a political decision. They used the 12 Texas Plan, which was not legally sufficient, 13 to base the failure to list the lizard on. 14 And I had great concerns with that, as did my 15 senior staff who were watching this from the 16 sideline. 17 And to - let me dot some I's and Ο. 18 cross some T's here for a minute. You, I'll 19 be clear, are not a lawyer, but it is within your job duties to receive training and 20 21 interpret and apply the Endangered Species 22 Act and have direct experience and training 23 in the - the law of the Endangered Species 24 Act and its application? 25 Α. Yes.

1	Q. Okay. If you would—
2	MR. MUNDY: Looking at lines 74 to
3	76 of Exhibit C, Your Honor.
4	Q. [BY MR. MUNDY:] If you would
5	explain to the Judge the involvement of
6	Deputy Regional Director Brian Milsap and his
7	comments about the listing of the dune
8	sagebrush lizard?
9	A. Well, as I had great concerns
10	about this, I was seeking out advice from
11	other sources, and one of those sources I - I
12	spoke with was former Deputy Regional
13	Director Brian Milsap. Again, a person who
14	has, I think, impeccable integrity and I
15	think the world of. And when I told him what
16	had occurred in Texas and what my concerns
17	were, he stated that when he had read the
18	proposed listing package for the dune
19	sagebrush lizard, that from where he was
20	sitting as the Deputy Regional Director at
21	the time, he said there was no way that a
22	listing could be have been legally avoided.
23	Those were his exact terms.
24	Q. And this was occurring during the
25	time you were actively cooperating and

1	providing evidence and information to the OIG
2	Agents?
3	A. (No immediate response.)
4	Q. Or you provided this type of
5	information to the OIG?
6	A. I provided this type of
7	information to the OIG Agents, yes.
8	MR. MUNDY: I'm looking at lines
9	78 to 80, Your Honor.
10	Q. [BY MR. MUNDY:] You say: On July
11	13 and 14, 2012, you supplied OIG Special
12	Agents - well, you - go ahead and explain to
13	the Judge what you mean by this, at line 78
14	to 80. Just elaborate and fill this out, if
15	you would.
16	A. Yeah, I'm reiterating what I had
17	mentioned earlier, and that is that on July
18	$13^{ m th}$ and $14^{ m th}$, after I had originally spoke to
19	the Department of Interior Office of
20	Inspector General Special Agents, letting
21	them know about my concerns, they had asked
22	me to assist them, and so I provided them
23	with the names of witnesses, like Marty
24	Tuegel, folks that need to be interviewed,
25	and what questions need to be asked because,

1 you know, I'm - coming from that law 2 enforcement background, a lot of these 3 Special Agents have criminal justice backgrounds, not science backgrounds, so I 4 wanted to help them with the science and the 5 6 policy, not just the law. 7 Okay. So it would be fair to say 8 that is was not just a one-time contact, you 9 made a report and that was the end of it; 10 there was obviously an ongoing investigation, 11 they continued to seek your involvement, your 12 guidance, your help during their 13 investigation? 14 That's correct. I spoke with them Α. telephonically on June 8^{th} , I supplied them 15 with written documents, witnesses and 16 questions on July 13th and 14th, I met with 17 them in person in a recorded interview on 18 July 26th in person in West Virginia. And 19 then on August 7th I agreed to serve as an 20 21 informant for the Office of Inspector General 22 and signed a consensual monitoring 23 authorization that allowed for the recording 24 of telephone calls. 25 Ο. Give me just a moment, I'll find

1 that. 2 So my involvement with the Office 3 of Inspector General was extensive. MR. MUNDY: Your Honor, I'm 4 5 looking for one exhibit that's in the record, 6 it's the consensual agreement, while we're on 7 the subject. Give me just a moment. 8 MS. RICO: CF. 9 MR. MUNDY: Ms. Rico tells me it's 10 CF, Charlie Foxtrot. 11 [BY MR. MUNDY:] If you could, Mr. Ο. 12 Mowad, let's flip over to that. Explain -13 you mentioned this. Explain to - to the 14 Judge what this is, how it came about, and I 15 believe we have some audio files that go with 16 this later. Explain what this is, to your 17 understanding. 18 Α. Well, Your Honor, this - this is a 19 form that the Office of Inspector General for 20 the Department of Interior uses. Theirs is 21 entitled Electronic Surveillance Monitoring 22 Consent Form. When I was a Special Agent 23 within the Fish and Wildlife Service, our 24 similar form was called Consensual Monitoring 25 Authorization. But it's essentially a form

1	that allows informants or agents to record
2	contacts, either directly by wearing a body
3	wire, to telephonically, as part of an
4	investigation.
5	Q. Okay, now, this copy has your
6	signature, but it does not have the-
7	JUDGE GARVEY: What page-
8	Qblanks for the Special Agent-
9	JUDGE GARVEY: What page are you
10	on, Mr. Mundy? What exhibit and what line?
11	MR. MUNDY: CF, Charlie Foxtrot.
12	JUDGE GARVEY: Okay. Go ahead.
13	Q. [BY MR. MUNDY:] There's not - the
14	line for the Special Agent from the OIG is
15	not signed here. Please explain why the copy
16	in the record today is not signed; what's
17	your understanding of that? Explain it to
18	the Judge.
19	A. Yes, Your Honor, when - when it
20	became clear that a settlement wasn't going
21	to be reached in this and we needed the best
22	original evidence that we could get, I
23	requested the signed copy of this document
24	from the Office of Inspector General. And
25	Agent Art Wilheit informed me that, yes, this

document was signed by the Office of Inspector General. He told me the name of the person who signed it, it was a supervisor, but I didn't write it down. I said, well, I need a copy of that, can you send me a copy for the record? He said, no, we have an open investigation, this investigation is still open and we can't provide, you know, a copy of a signed Consensual Monitoring Authorization to you because - and- and after he said that, the light bulb went off. If people could FOIA these or get these during an open investigation, it would be very clear that bad guys, in a hurry, would know who the informants were. Ο. And based on your training as a law enforcement for 30-some-odd years, explain to Her Honor what a one-party state is and a two-party state, as far as reporting calls with knowledge of the other party on the line, and your understanding what whether Texas and New Mexico are one- or twoparty states. Α. Oh, absolutely. Irregardless of

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this document, this is something that the Government uses by policy, but any private citizen can record phone calls if they are in what's called a single-party consent state. Texas is a single-part consent state and New Mexico's a single-party consent state. either state, or between the states, a single person is the only one that is necessary to record the call, consent from one person, one of the parties. And in this case when I recorded the calls with Benjamin Tuggle, I was in a single-party consent state, he was in a single-party consent state. I was the single party giving consent. That doesn't mean that you can record the conversations of somebody else. With two people that - that, like wiretapping, but if you're in a state that's single-party consent, that's all that's necessary, and clearly I gave the consent. Α. So if you're a participant in the call and know it's occurring, that is legally permissible in your understanding, based on your law enforcement training?

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Α.

That is correct.

1 And that's true for Texas and New Ο. 2 Mexico both? 3 Not just law enforcement training, Α. before I recorded the calls, I sought advice 4 from an attorney and had an attorney research 5 6 it, said that's perfectly legal. 7 Ο. Okay. Let's go back to Exhibit C. 8 If you would pull it back. I'm going to have 9 you continue to expound on this. I'm trying 10 to pick up where you left off. If you would 11 explain to Judge Garvey about the request from the Regional Office in Albuquerque to 12 13 have one of the Biologists nominated by your 14 office and what names y'all provided, and 15 then were rejected. Explain some of that 16 history to her, if you would. 17 Α. Yes. Your Honor, part of my 18 concern with the failure to list the dune 19 sagebrush lizard was how it was worked 20 internally within the Fish and Wildlife 21 Service. When the Fish and Wildlife Service 22 started working on the listing package to 23 determine whether or not listing was 24 warranted or not, my supervisor, Michelle 25 Shaughnessy, called down to the - to my

office in Austin and she said she needed one of my staff to work on this issue full time, and that person would be removed out from under my staff and would work directly for her. I said okay, we hate to lose somebody, but we understand, this is a - this is a priority to work on, so we will step up to the plate.

I asked my senior supervisors that were present to - to lets, essentially, evaluate who we've got available and who would be best. And my senior supervisors and I determined that Christina Williams was an experienced Biologist that would be perfect for this job. And so I called Michelle Shaughnessy back and said, we are going to give you Christina Williams and she'll do a great job for you.

- Q. And how was that received?
- A. Michele said, fine, that'll work, I appreciate it, and hung up. And about 20 or 30 minutes later, Michelle Shaughnessy calls me back and says, Joy doesn't want Christina.
 - O. That would be Nicholopoulos?

1	A. Joy Nicholopoulos does not want
2	Christina. I said, really? Okay. Then
3	we'll get you somebody else. So I convened
4	my senior staff again and we decided that the
5	next person that we would give for this work,
6	this job, would be Kevin Connelly. Now,
7	Kevin is an expert in HCPs, he's done a lot
8	of training, he goes back to the National
9	Training Center, which is the Service's
10	training area, gives training. Said, we'll -
11	we'll give you Kevin Connelly.
12	Q. Wait, you said he's an expert in
13	HCPs. What's that, again?
14	A. Habitat Conservation Plans. He
15	would have been very, very good at this.
16	Q. Exactly the issue that you're
17	dealing with? In general?
18	A. Generally. Certainly would be
19	able to determine whether or not the Texas
20	Conservation Plan would meet legal
21	sufficiency to warrant not listing.
22	So I called Michelle back and
23	said, okay, Michelle, we're going to give you
24	Kevin Connelly. And she said, okay, fine,
25	thanks, and hung up.

Once again, in 20 minutes she called me back and said Joy doesn't want

Kevin. And at this point I could see what

was going on. Again, I had been told from

multiple sources outside of the Fish and

Wildlife Service and inside the Fish and

Wildlife Service and in my own staff that Joy

had an inappropriately close relationship

with Allison Arnold, been told they were

domestic partners. Again, never confirmed

that, but.

I told Michelle, I said, Michelle, let me guess does Joy - I said, does Joy want Allison? And she said, yes, Joy wants Allison. And I said, well, I'm not - I'm not going to voluntarily give you Allison. I don't think she's the right person for the job, I don't think she has the right personality for the job. And I've got concerns with her relationship with Joy. And Michelle said, that, well, Joy wants Allison. And I said, well, then, you're going to have to order me to give you Allison because I'm not going to do it voluntarily. I don't want the record to show later on that I just

offered up Allison. And then Michelle said, okay, then, I'm ordering you to give me Allison. I said, all right, well, then, you got her, but I'm going on the record that's not what I would do. I had great concerns at that point because now Allison would work directly for Michelle, who worked directly for Joy Nicholopoulos. And if Joy and Allison indeed have a domestic partnership relationship, it's my understanding that that is a violence of MSPB policy and rules and is inappropriate.

- Q. And irrespective of whether it's a domestic partnership or just a close personal relationship, you've formerly been describing, I guess, continue to describe it, certainly showed evidence of preferential treatment internally and externally in that relationship?
- A. It does. But another concern at the time that was of great concern to me is that I felt at that point that Joy
 Nicholopoulos did not want Christina Williams or Kevin Connelly to be working on the dune sagebrush listing case because I felt they're

1 two Biologists who would not compromise their 2 integrity and give the State Comptroller or 3 Joy or Benjamin what they wanted. They would just do the science, let the science take 'em 4 where it takes 'em. And I had concerns that 5 if Joy and Allison indeed had a domestic 6 7 partnership relationship, that Joy - she's 8 got an undue influence on a scientist that's 9 supposed to be working impartially, and how 10 can you work impartially if you're living in 11 - in - in Joy Nicholopoulos's house? 12 it - it - to me it was just inappropriate. 13 Ο. Had the appearance of impropriety? 14 Yes. Α. 15 0. Lack of objectivity? 16 Α. Yes. 17 Okay. If you would, tell the Ο. 18 Judge what concerns you expressed to Special 19 Agent Futrowsky and the other agents from the 20 OIG what would happen to you if your 21 involvement was discovered. 22 When I met in person with the Α. 23 Department of Interior Inspector General 24 Agents in West Virginia, I told them that I 25 would be glad to help them, I know that

that's my duty and my responsibility; they've asked me to help and I'm going to help. I said, you need to know that if Benjamin Tuggle discovers that I'm helping you with this investigation, I said, I'm going to be transferred to someplace I don't want to go or put in the penalty box for - for this. And I said, I expect the Office of Inspector General to step up to the plate and help me if and when I get the call sending me on an involuntary detail or giving me an involuntary transfer that I don't want. And to their credit, later on as this progressed the Department of Interior OIG on two separate occasions did ask the Fish and Wildlife Service to stay this open-ended detail that I was sent on to Albuquerque, and on both occasions the Fish and Wildlife Service declined to do so. So, I guess, at that point the learning experience for me was I thought the OIG had the authority to - to stop one of these transfers, but all of the authority that they had, as it was explained to me, was

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to ask for a voluntary stay of the detail.

1 And the Fish and Wildlife Service refused to 2 do that. 3 If you would, now, explain when Ο. you reached out to Mr. Rick Coleman, and why 4 you reached out to him and in what capacity 5 6 these complaints were made? Yeah, as the investigation 8 continued into these improprieties by the 9 Office of the Inspector General, in my 10 discussions with the Agents, it became 11 obvious that we're dealing with scientific 12 misconduct. And the Fish and Wildlife 13 Service, as I mentioned earlier, has a 14 division that was newly established to 15 address just these issues, and that's the 16 Office of the Science Advisor, headed by 17 Assistant Director Gabriela Chavarria and her 18 Senior, and I think only, Investigator was 19 Scientific Investigator Rich Coleman. 20 And I reached out to Rick Coleman 21 on September 17th of that year, September 17th 22 of 2012 to - to - to brief Rick Coleman up on 23 where we were with the investigation. 24 Essentially, for the first time I - I 25 informed Rick Coleman that I had reached out

to the OIG, made protected disclosures, I made these complaints known, the IG was working these complaints, and now that I was - I was reaching out to Rick Coleman as the Scientific Integrity Investigator and I was bringing him into the loop and making these protected disclosures to him as well, and asking for his assistance because his job is actually to do investigations into scientific misconduct. And I think certainly there is a science misconduct element into what was going on in this region. So on September 17th, I had a call, an extended call with Rick Coleman in which I went through all of the points that I had previously reported to the Office of Inspector General. Ο. All right, and just to dot an I and cross a T here, Special Agent Futrowsky from the OIG and Mr. Coleman with the Office of Scientific Integrity, those are both outside of your chain of command, correct? They are. And I know that after I Α. briefed Rick Coleman, I know that Rick Coleman and the OIG spoke. Ο. Okay. Now, if you would, explain

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1 to us what kind of - just the nature of what 2 you conveyed to Mr. Coleman and what his 3 reaction and response was in hearing your complaints on September 17? 4 5 Α. Well, in essence I reported the 6 same concerns that I had to Agent Futrowsky. 7 I reported the inclusion of language in 8 Endangered Species Act Section 10, take -9 incidental take permit for the Oncor Electric So I laid out all those facts to Rick 10 case. 11 I also laid out all of my concerns Coleman. 12 with the failure to list the dune sagebrush 13 lizard as well. And... 14 And it would be the same actors, Ο. 15 directly implicating Regional Director 16 Benjamin Tuggle, Deputy Regional Director Joy 17 Nicholopoulos? 18 Α. Oh, absolutely, yes. And I also -19 and that included the facts of - of why I 20 thought that Allison Arnold was selected to 21 work on that project, so that Joy 22 Nicholopoulos could exert undue influence on 23 the outcome of the science. 24 Get the results she wanted? Ο. 25 Α. Get the results she wanted.

Q. And then did you have any followup communications with Mr. Coleman from the Office of Scientific Integrity?

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Yes, I had several conversations Α. with him after that, just giving him progress reports, briefing him on new developments. remember I made an additional call where I briefed him up on the concern I had with Neil Wilkins telling me that if I didn't allow the Texas A&M warbler model to be used in the biological assessment for Fort Hood, that he was just going to go around me and Joy would allow it. And I said, I told him, I said, that - that's inappropriate. We have to use the best available science, and the model that he wants to use, which over-predicts warbler's by ten-fold, is nowhere close to the actual, real surveys done by the Fort. And clearly that is right up Rick Coleman's alley, that is - that is what he should and did start to investigate.

Q. And do you have any understanding about whether or not he reached out and contacted the Fish and Wildlife senior - senior management about your allegations?

A. Yes, I do. I know that I made my
allegations known to Rick Coleman on
September 17^{th} , and I know sometime shortly
thereafter, I don't have the exact date, but
Rick will be available and hopefully he can
provide the Court with that exact date, but
very shortly after I notified Rick Coleman of
these allegations, I know that Rick Coleman
then thought they were very serious and
briefed his supervisor, the Assistant
Director for the Office of the Science
Advisor, Gabriela Chavarria. And I know that
then in response to that, Gabriela Chavarria
set up a conference call with Washington
Headquarters and the facts of my allegations
were relayed to the Assistant Director for
Endangered Species, an individual named Gary
Frazier. I don't know who else was on the
all or in the room, but clearly Rick Coleman
briefed his boss in Washington, D.C. And
also, then, his boss, Gabriela Chavarria, and
Rick Coleman briefed Gary Frazier, the
Assistant Director for Endangered Species.
So my complaints were now known to the
Washington Headquarters Office, which I have

1	to say, when I found that out, gave me great
2	concern because the climate in the region
3	that I work in, in Region 2, it's my opinion,
4	and that's shared by many folks, several
5	witnesses that will be here today, that
6	Benjamin Tuggle manages that region through a
7	management style that involves intimidation,
8	bullying, reprisal, and certainly
9	retaliation.
10	MR. MEHOJAH: Objection, assuming
11	facts not in the record.
12	A. And—
13	JUDGE GARVEY: Sustained. He can
14	testify.
15	A. I will give you, then, the-
16	Q. [BY MR. MUNDY:] Stick to your-
17	A. Okay.
18	Qwhat your-
19	A. Yes.
20	Qknowledge is.
21	A. And I base - I can continue, then?
22	I base that statement on the fact that I
23	discovered that the Inspector General for the
24	Department of Interior, so this is the
25	Inspector General for the Department of

Interior, sent an alert would and it's the first time in my 26 year career I ever saw an alert sent, the Inspector General for the Department of Interior sent an alert to the Secretary of Interior, a political appointee, informing the Secretary of Interior that the Fish and Wildlife Service and specifically this region and this cast of characters, named Benjamin Tuggle by name, had engaged in retaliation against two other Biologists, and the IG had requested that the supervisors who engaged in that retaliation be disciplined. The Region refused to. And this alert was letting the Secretary of Interior know there was a problem within the Fish and Wildlife Service Region 2 with retaliation against whistleblowers and the failure to take action. To me that spoke volumes. I will also say that in my discussions with Associate Inspector General Laurie Larson-Jackson, the Associate Inspector General for whistleblower protection within the OIG, she personally told me that when she spoke to Benjamin Tuggle in October about my retaliation

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1	allegation, she had three other retaliation
2	complaints against Benjamin Tuggle on that
3	day that she was talking to him. And I would
4	think the retaliation complaints would be
5	something that are somewhat, uh, uncommon
6	with the Federal Government. But to have
7	three separate allegations against Benjamin
8	Tuggle on the day that she's going to talk to
9	him about mine, that is where I draw my
10	conclusion there's a problem with reprisal
11	and retaliation in Region 2 of the Fish and
12	Wildlife Service. And, Your Honor, that's
13	what I base this on. It's not my opinion.
14	Q. If you would turn to Exhibit B in
15	the notebook.
16	A. B?
17	Q. B, Bravo. Is this the alert which
18	you were just testifying about?
19	A. Yes, it is.
20	MR. MUNDY: That's Exhibit B,
21	Bravo, Your Honor.
22	Your Honor, we've been going about
23	an hour and a half, would you care for a
24	break, or for us to continue?
25	JUDGE GARVEY: I'm fine, but if

1	won want a five-minute break we can have it
	you want a five-minute break, we can have it.
2	Do you want a five-minute break?
3	MR. MUNDY: Yes, Your Honor,
4	please.
5	JUDGE GARVEY: Okay.
6	MR. MUNDY: That would be
7	welcomed. Thank you.
8	JUDGE GARVEY: Okay. That's fine.
9	[OFF THE RECORD 10:52]
10	[ON THE RECORD 11:00]
11	JUDGE GARVEY: We're back on the
12	record.
13	MR. MUNDY: I'm trying to think,
14	where did we leave off? Oh. We were, Your
15	Honor, I believe right before the - thank you
16	for the break, by the way.
17	JUDGE GARVEY: That's okay.
18	MR. MUNDY: I appreciate it. We
19	were talking about the timing, and he had
20	reported to Mr. Coleman in the Scientific
21	Integrity Office on September 17th of 2012,
22	and we were just following up from there.
23	Q. [BY MR. MUNDY:] And so then you
24	said, what, a few days later, your
25	understanding-

1	JUDGE GARVEY: He talked - he
2	already talked about the alert at Exhibit B,
3	and that's where you left off.
4	MR. MUNDY: Right.
5	JUDGE GARVEY: So we don't need to
6	rehear something.
7	MR. MUNDY: Okay.
8	JUDGE GARVEY: I listen very
9	carefully and take copious notes. So let's
10	start something new.
11	MR. MUNDY: Okay.
12	THE WITNESS: Yes, Your Honor.
13	Q. [BY MR. MUNDY:] When - when -
14	when, is your understanding, that Mr. Coleman
15	reported it to the Headquarters, and then
16	what was the reaction as it related to you?
17	A. Mr. Coleman reported my
18	allegations to Headquarters sometime right
19	after my allegations were conveyed to him on
20	September 17 th .
21	Q. Like within days?
22	A. Within - my guess is 18, 19, 20,
23	21. We can ask him, but within - I believe
24	within that week or early the following week
25	after I made my allegations known to him, I'm

1	told he and Gabriela Chavarria had a
2	conference call-
3	JUDGE GARVEY: Again you have
4	testified to all this, so if you'd kind of
5	move along, Mr
6	MR. MUNDY: Yes, ma'am.
7	JUDGE GARVEY: -Mr. Mundy, and not
8	ask repetitive questions.
9	MR. MUNDY: Yes.
10	JUDGE GARVEY: We went on about,
11	you know, Laurie Jackson and Gabriela, and so
12	let's move along.
13	MR. MUNDY: Yes, Your Honor. The
14	next date is the critical date, because the
15	next - very next date is the date of the
16	detail he's assigned to, so because it is a
17	circumstantial evidence case, the timing of
18	his reporting and going to the Headquarters,
19	and then when he got the detail assignment.
20	Q. [BY MR. MUNDY:] And tell the
21	Judge what the date was after this you got
22	assigned to the detail that's the subject of
23	our action today.
24	A. Yes. Your Honor, I - I received a
25	call - well, I received a contact or a

1 message from my secretary asking me to 2 contact Benjamin Tuggle. He had - he or his 3 secretary had - I believe it was his secretary, called my secretary, said, 4 5 Benjamin Tuggle wants to talk to you. Ι received that on September 26th, and I found 6 7 that kind of unusual for my secretary to 8 receive a call from his secretary, or an 9 email, but I was told you need to call 10 Benjamin Tuggle. And at that point I thought 11 to myself, wow, this is it. Just literally 12 days after I reported these allegations to 13 Senior Scientific Advisory Rick Coleman, then 14 here comes a phone call for me to call 15 Benjamin Tuggle. I asked my secretary what 16 it's about; she said, they wouldn't say. 17 I started to suspect at this point that here 18 it comes, I'm gonna be either transferred to 19 put in the penalty box because they've found 20 out that I'm working, and have worked, as an 21 informant for the OIG. 22 So nine days after your report to Ο. 23 Coleman is when you get this call from 24 Tuggle? 25 Α. Yes.

1	MR. MUNDY: And, Your Honor, I'll
2	ask for the Court's guidance on what you
3	prefer. We have the actual call reported.
4	It's the one we just supplemented the record
5	with. Would you prefer to hear that now, or
6	finish the narrative from Mr. Mowad and then
7	later hear the calls?
8	JUDGE GARVEY: I would prefer-
9	MR. MUNDY: We could do whatever-
10	JUDGE GARVEY: I would prefer that
11	I just have testimony. I didn't get - I have
12	a copy of what you have as Exhibit CJ1 (sic),
13	and I have a transcript. I don't have any
14	disk or anything.
15	MR. MUNDY: I think the disk was
16	sent by hardcopy. And I also right now can
17	put it on - I can play it for you right now,
18	if you wish to hear it. It'll take just a
19	moment to set up the computer-
20	JUDGE GARVEY: Well, let me ask
21	does - Mr. Mehojah, have you listened to it
22	and do you have any problem with the
23	transcript?
24	MR. MEHOJAH: Um, the only problem
25	that I have with the transcript, Judge, is

1	chain of custody of the recording itself and
2	the completeness of it. We don't have any
3	independent verification that the recording
4	that was provided to you as Exhibit CK1
5	(sic), both in hardcopy and transcript form,
6	is the fully (sic) and complete version of
7	that—
8	JUDGE GARVEY: Okay.
9	MR. MEHOJAH: -conversation that
10	took place on that day.
11	JUDGE GARVEY: But you're not
12	contesting that this is Mr. Tuggle speaking?
13	MR. MEHOJAH: I do not. I do not
14	contend that there are any problems with the
15	people that are speaking. I think - I
16	believe those people are identified properly.
17	JUDGE GARVEY: And the CD you
18	received, this is an accurate transcript of
19	it?
20	MR. MEHOJAH: That that is a
21	accurate transcript of the audio file that I
22	have received.
23	JUDGE GARVEY: All right.
24	MR. MUNDY: And just to-
25	Q. [BY MR. MUNDY:] Mr. Mowad, would

1	you tell the Judge whether or not that's the
2	complete call you forwarded to me, I
3	forwarded to Mr. Mehojah; if that's the
4	complete call?
5	A. That is the complete call, minus
6	maybe two seconds at the very beginning when
7	I pressed the record button, because no
8	longer being a Special Agent, I'm not set up
9	to record calls. So when I called in, I said
10	hi to Joy, and I pressed the button. So you
11	lost two seconds.
12	MR. MUNDY: Since we're on it,
13	Your Honor, if you will give me just a
14	moment, I'd like to go ahead and play it
15	right now. It's very short, and it would
16	help move the narrative along in sequence and
17	so we don't have to revisit it. Is that
18	okay, Your Honor?
19	JUDGE GARVEY: That's fine.
20	[PLAYING AUDIO RECORDING]
21	JUDGE GARVEY: I can't hear it.
22	[PLAYING AUDIO RECORDING]
23	JUDGE GARVEY: I have the
24	transcript, so, you know, the Agency has
25	stipulated that the transcript is an

1 accurate, you know, transcript of the things, 2 so why don't you continue, Mr. Mundy. 3 MR. MUNDY: Okav. [BY MR. MUNDY:] And just to 4 Ο. respond to Mr. Mehojah's questions, this -5 the file, audio file, as it's been forwarded 6 7 to him and offered to the Judge is the 8 complete, entirety of the transcript? 9 Yes, it is. Α. 10 Ο. And why did you feel the need to 11 record the call? 12 Because I felt the timing of this Α. 13 call from Mr. Tuggle and Joy Nicholopoulos 14 was very suspect. Again, just days after I 15 make the protected disclosures to Rick 16 Coleman, I - I thought to myself, in fact I 17 remember I looked at my watch and looked at 18 the date and said, well, that's just about 19 right, that's about how much time it would 20 take for Rick to brief up the chain of 21 command and for this to come back to Tuggle, 22 and now here it comes. So I - I was very 23 suspect, and coming from a law enforcement 24 background, I've watched people from many 25 different walks of life essentially lie

through their teeth in court, and I've
learned that the best evidence is just you
record it, and that way it's clear to
everybody what was really said. And I have
to tell ya, I'm very thankful that I did
record this call because I - I - the call
itself was very, very suspect to me in that
when I - when I - we started listening to
what Benjamin Tuggle was asking me to do, it
was very amorphic. I get this call - it was
difficult to understand what - what they
wanted. I clearly knew I was going to be
sent on a detail, but they were saying they
needed me to work on workforce planning and
all these deep issues; we don't know how deep
this hole is. And, you know, he just went on
and on, not really making any sense. In the
beginning he asked - he asked Joy, you know,
what else is he gonna be working on? Or
something to that effect. And, you know, the
answer was - and he can help Dana with the
surrogate species workshop and the surrogate
species effort. But that was like an
afterthought. Through the whole conversation
it's just we need you in Albuquerque to work

1 on these high-level things. And - and to me, 2 basically we don't know what these things 3 are, but we need you here to work on those. Any specific duties or goals that 4 Ο. were laid out for you on that call? 5 6 Α. None. Just workforce planning and 7 help us with where we're going and some 8 issues with field offices, but nothing - it was so amorphic. To me it was very, very 9 10 pretextual. 11 And what - explain to Her Honor Ο. 12 what workforce planning is, just real 13 general. 14 It's essentially just making sure Α. 15 you're staffed up appropriately and correctly for the budget that you have. And, you know, 16 17 talking with many senior managers, as well as 18 the OIG, people - none of them are ever 19 familiar with anyone ever being detailed to 20 work on workforce planning. In fact, the IG 21 used the term that that would be, you know, 22 misuse of taxpayer money to send somebody on 23 a detail to work on workforce planning; it's 24 just not done. 25 JUDGE GARVEY: All right, stop.

1	Can I interrupt here? There's a lot of
2	acronyms here that, again, I would like to
3	get you - what is a GET, G-E-T?
4	THE WITNESS: A GET?
5	JUDGE GARVEY: You being a GS-15
6	and going through this GET? We think would
7	be value added to the-
8	THE WITNESS: Oh, that should have
9	been CE - that should have been C-D-P I
10	think, Your Honor. That's the Candidate -
11	CDP is Candidate Development Program. I was
12	the only Special Agent to ever be selected
13	and attend and complete the Senior Executive
14	Service Candidate Development Program. And
15	he used the short version, CDP, meaning that
16	I've been certified as a SES Candidate for
17	the Federal Government.
18	JUDGE GARVEY: All right. And
19	then the next acronym?
20	MR. MUNDY: Your Honor, which - if
21	you can (indiscernible) me to the page-
22	JUDGE GARVEY: I'm on the very
23	first page of the transcript. And I'm trying
24	to get a sense. So the same paragraph, R-D-
25	T. What is RDT? I mean, just like you put

1	GET and it stands for nothing.
2	THE WITNESS: Yes, ma'am.
3	JUDGE GARVEY: I'd like to know if
4	these acronyms stand for anything. Or even
5	if they're the correct acronyms.
6	THE WITNESS: Yes, ma'am.
7	JUDGE GARVEY: Obviously GET
8	wasn't.
9	MR. MUNDY: Yes, Your Honor. He
10	meant to say CDP, I believe.
11	JUDGE GARVEY: I got that.
12	MR. MUNDY: And it's the Candidate
13	Development Program.
14	JUDGE GARVEY: Now I'm on RDT.
15	MR. MUNDY: The next one, RDT,
16	stands for Regional Directorate Team.
17	He now has the transcript in front
18	of him, Your Honor, if you could tell
19	specific lines, he could go straight to it
20	for you.
21	JUDGE GARVEY: Okay. Well,
22	obviously I'm just looking at the acronyms so
23	I can try and follow along.
24	THE WITNESS: Okay.
25	MR. MUNDY: Certainly.

1	JUDGE GARVEY: AOPD, page 10 of
2	18, AOPD? I think the AOPD kind of detail.
3	THE WITNESS: ALDP would have been
4	correct. That's A-L-D-P. That's Advanced
5	Leadership Development Program.
6	JUDGE GARVEY: That's why I'm
7	going over these acronyms, because they're
8	obviously not correct. Are there anymore in
9	here? Let me see. Okay, I think that's the
10	only one. You may continue, Mr. Mowad, I
11	just can't deal with acronyms that are not
12	explained.
13	MR. MUNDY: Yes, Your Honor.
14	Q. [BY MR. MUNDY:] And then at this
15	time, and this will become important when we
16	discuss a follow-up call a few days later,
17	explain what your personal life, what was
18	going on in your personal life and how this
19	detail relates and - and if you would? Well,
20	the plain term is a pressure point for you,
21	being put, physically detailed, to
22	Albuquerque.
23	A. Yes, Your Honor. So in - in this
24	first phone call, they laid out that they
25	want me to come to Albuquerque and work on

1 workforce planning and help with this 2 workshop that's gonna be taking place. 3 they ask me to check with my family, run it by my family, and then we would talk again 4 later. And we did speak again on Friday. 5 6 But in response to his asking me 7 to talk this over with my family, I spoke 8 with my wife and my family and sent him and 9 email that very night, the night of the 26th. 10 And in that email I spelled out that - that 11 certainly this was not a good time for me. 12 And I would point out to Your 13 Honor that over my career, I've probably been 14 on over 40 details, two of 'em six to seven 15 months in - in length. Anytime the 16 Government has asked me to step up to the 17 plate, you know, I've saluted and done it. 18 think I've gone above and beyond anytime I 19 was ever asked. 20 On this occasion, because the 21 request was so amorphic, and then they asked 22 me to coordinate with my family, I relayed to 23 Mr. Tuggle that at this point in my - my 24 life, my mother has dementia caused by

Alzheimer's, and it's - it's significant.

	1
	It's not early onset. She has lost the
,	ability for activities of daily living. I am
	her only caregiver. I'm her power of
	attorney. I'm the one who has to make sure
	that she eats, takes her medicine, doesn't
	wander off. And we were trying to juggle at
	that point between independent living and
	assisted living, because the price
1	differences is huge. And so I put in my
)	email that this is not a good time for us.
	I've got responsibilities to take care of my
,	mother, and in addition, I've got a 15 year
	old daughter who's starting high school.
	And, you know, I've always stepped
	up to the plate, but in this case, this is
	not a good time for me, but I'll do whatever
	you need me to do and I'll work this detail.
	I can work it from Austin. I can even travel
ı	to Albuquerque as necessary, you know,
)	whatever it might be, I forget the exact ring
	in my email, but I think two or three days a
,	week, I said, I can - I can be gone, I can
	get this done for you. I'm willing to do
	that.
	But to be gone from Austin for a

significant period of time, would create a great deal of hardship for my family, and quite honestly, create some — some major possible legal problems for me in abandoning my mother in that I was her sole caregiver. I have no other relatives living in Austin, and it was my responsibility to take care of my mother. And I brought her there and put her in a facility for the purpose of taking care of her.

- Q. And if you would, tell the Judge

 Garvey I'm about to go to a next transcript

 in just a moment but explain to her what
 what management training you had from the

 Government. I forget the terminology for the

 program you went through.
- A. Well, I was selected, and completed the Government's I think it's their highest level of management training, that's the SES, Senior Executive Service, training. And upon completion of that 18 month program you're certified to apply for Senior Executive Service jobs, which is, I think, the next step up from the GS scale.
 - O. All right. Based on your based

1 on your training and years of service and 2 experience, and from you have done in your 3 prior career up to this point, is workforce planning something you physically had to be 4 located, physically present in the office in 5 6 Albuquerque to do workforce planning for your 7 state? 8 Α. Absolutely not. In fact, when I 9 was a Special Agent in Charge of the Fish and 10 Wildlife Service Law Enforcement Program and 11 then again as the Deputy Chief, we had 12 significant workforce planning and strategic 13 planning challenges, and we accomplished 14 those by meetings, three or four times a year 15 we would meet for two or three days, and the 16 senior managers would work through budget and 17 needs. And so workforce planning is clearly 18 something that can be done with very limited 19 travel. 20 I would like you to please Ο. Okay. 21 turn to Exhibit CG-1 and -2, Charlie, Golf, 22 dash 1 and dash 2, which I believe, for 23 simple terms, we'll be referring to. 24 MR. MUNDY: And it's the second call, Your Honor. 25

1	Q. [BY MR. MUNDY:] When did this
2	call occur and who are the participants?
3	A. This call occurred on September
4	28 th , and it was Joy Nicholopoulos, Benjamin
5	Tuggle, and myself. And this was - the first
6	call was on the 26^{th} . They asked for my input
7	as far as my family needs; I gave them that.
8	And the second call occurred on the 28^{th} .
9	MR. MUNDY: Your Honor, he's
10	making reference - he's handwritten some
11	notes on an actual calendar that is an aide
12	to his testimony, and I can provide that to
13	you just as a demonstrative exhibit, what
14	he's referring to to help keep track of the
15	dates right now, and it may be an aide to
16	you, as well.
17	Q. [BY MR. MUNDY:] What - what was
18	the nature of this call, and what was
19	significant about it, to your mind, what you
20	were asking for, asking about, what their
21	reactions were.
22	A. Yes, well, the most significant
23	thing is in the first call they had asked me
24	to run this proposed detail by my family and
25	get back with 'em. I clearly indicated to

them that this is a bad time for my family, but knowing that we'll step and get it done as we can. What was very clear from the very onset is Benjamin Tuggle stated, yeah, I got your email and I read about, you know, the — the issues with your family, but — paraphrasing, but you're coming to Albuquerque. And I thought that was very calloused, very cold, very uncharacteristic of the Fish and Wildlife Service.

And, Your Honor, as I mentioned, I've probably been on 40 details, but more importantly, as a manager, I have sent Special Agents on numerous, numerous details, including a lot of folks don't know, but one third of the Agent staff of the Fish and Wildlife Service was deployed as Air Marshalls after the 9/11 attacks, and we deployed our Agents as Air Marshalls. I deployed Agents to oil spills. And we always have worked with the Agents, their family needs, what - you know, basically it's a compassionate workforce, and for them to see the state of affairs in my house with my mother and all that, and - and to then just

callously say, you're coming to Albuquerque and we need you, I thought that whole statement in the first call about tell us — you know, run this by your family and get back to us was pretextual. Because obviously they weren't concerned with any kind of family issues there. And therefore they essentially said you're coming to Albuquerque. And they gave a start date that was so soon, it would make finding a caregiver for my mom problematic, because it was literally, you know, like 10 days out. It was like you got — you got ten days to find a caregiver with weekends, and we want you here.

Q. And the transcripts refer in passing also to a term surrogate species — a surrogate species workshop. Can you explain, give us a little more background on Endangered Species Act and biological concepts here, because we're going to be hearing a lot about this for the remainder of the day. What is — what is the concept of surrogate species? Just explain that general program to Her Honor before we get into the

1 details of this, that and this workshop. 2 I can but only on an elementary 3 level, because I really don't know it. 4 Ο. Okay. The first - I had heard the term 5 Α. surrogate species, but I had no idea what it 6 7 meant, what it involved. And on the first 8 call after Benjamin Tuggle said I want you to 9 work on workforce planning and these other 10 amorphic things, Joy mentioned in passing, 11 and help with the surrogate species workshop. 12 And so upon arrival to the detail, 13 I attended the surrogate species workshop and learned more about it. And - and I guess the 14 15 best analogy that I can come up with, because 16 I'm not familiar with it, I've never worked 17 with it, is that instead of managing the 18 species that Congress has ordered the Agency 19 to work with - in other words, the Congress 20 gave the Fish and Wildlife Service statutory 21 authority over migratory birds, marine 22 mammals, endangered species; instead of 23 managing those species, we're gonna find 24 surrogates, as the name implies, other

species, that share that habitat and we're

1 gonna manage those species, instead of the 2 ones that Congress gave us legal authority to 3 manage, but by managing the surrogate species that's gonna do good things for the - our 4 5 Fish and Wildlife trust species, and that's 6 really the extent of my understanding of what 7 it means-8 Ο. So like saying that you're managing for golden cheek warblers, instead 9 10 of looking at them specifically, you mean 11 it's for the deer that live in the same 12 forest as the warbler? 13 Α. That's the best analogy that I can 14 come up with, yes. 15 Ο. Had you had any prior experience or training or involvement with surrogate 16 17 species programs or implementations prior to 18 these calls? 19 Zero. Had only heard the Α. None. 20 name and only heard it a few times. 21 Ο. Okay. Then we're gonna be hearing 22 about a workshop. All of a sudden there's 23 discussion about a surrogate species 24 workshop. What is that? 25 Α. It was a workshop that Benjamin

1	Tuggle and Joy Nicholopoulos put together to
2	introduce the concept of surrogate species to
3	Fish and Wildlife Service employees and our
4	partners.
5	Q. Now, once - once - did they tell
6	you on either one of these calls what your
7	responsibilities or expectations of you were
8	with respect in - to this detail, you know,
9	what you were supposed to be doing on
10	surrogate species or this workshop or the
11	workforce planning?
12	A. On either of these phone calls?
13	Q. Yes, sir.
14	A. No. Nothing.
15	Q. Did they send you any written
16	communication outlining what was expected of
17	you or specifics about your duties or
18	details?
19	A. Benjamin Tuggle or Joy
20	Nicholopoulos did not.
21	Q. Okay. Then, after this you became
22	- and in fact, when did you yourself first
23	mention directly to Mr. Tuggle and Ms.
24	Nicholopoulos that you were cooperating with
25	the OIG?

1 I documented it in writing on October 8th. I told them in writing that I 2 3 felt that this detail was pretextual, I felt like this detail was - and I - essentially 4 was something that I was being sent on 5 because I had cooperated with the Office of 6 7 Inspector General, and that - and I forget -8 we probably have that email, but I think I 9 told them that this, you know, if I'm sent on 10 this detail it's not voluntarily. And I told 11 'em in the email that I felt it was clearly a 12 violation of the Whistleblower Protection 13 Act. 14 And then what kind of leave did Ο. 15 you put in to - with respect to taking care of your mom? Explain that to the Judge, if 16 17 you would. 18 Α. When I was asked to be in Albuquerque on October 9th, there was no way I 19 20 could find a caregiver for my mother and feel 21 comfortable with leaving her in Austin, and I 22 took Family Friendly Leave to take care of my 23 mom and to attempt to find a caregiver. 24 Okay. And how long was that leave Ο. 25 that you requested?

1	A. I think it was ten - ten working
2	days.
3	Q. Okay.
4	A. Two weeks.
5	Q. And—
6	A. Ten working days.
7	Q. And was the management receptive
8	in approving that? Or what conditions did
9	they give or impose prior to approval of that
10	leave request?
11	A. Well, I was asked to provide
12	documentation that my mother indeed did have
13	dementia caused by Alzheimer's. So I went to
14	my mother's neurologist and I got a statement
15	from the neurologist and I provided that to
16	the Government.
17	Q. By a doctor's letter-
18	A. Yes.
19	Qconfirming that?
20	A. Correct.
21	Q. And that - that was an express
22	condition before they would approve your
23	leave request?
24	A. You know, I'm not sure, but they
25	asked for the documentation and I provided

1	it.
2	Q. Okay. And then they approved your
3	leave request for family leave?
4	A. Yes.
5	Q. Okay. And how much leave did you
6	put in for and how much was approved?
7	A. Um, I can…
8	Q. If you don't remember-
9	A. I don't remember. It's like two…
10	two weeks, and then I think I needed an
11	additional week. But I can't tell you for
12	certain. But I did report to the detail on
13	October 29 th , so that would be 20 days later
14	than what they had asked me to report.
15	Q. Now, is a GS-15 - as a GS-15, does
16	Tuggle have the authority to order you to
17	appear on a detail without any further
18	approval? Or on his sole orders can he
19	compel your appearance on a detail?
20	A. No. Within the Fish and Wildlife
21	Service, all GS-15 transfers and details have
22	to be approved by the Director's office.
23	Q. Okay. And… just a moment. Well,
24	I'll come back to it in a moment, I can't lay
25	my hands on it right at the moment. Well,

1	I'll come back to the exhibits in a moment.
2	But, anyway, what level of
3	approval was required to compel you to appear
4	for the detail, what level of authority was
5	required to sign off?
6	A. It would be from the Director's,
7	so it would either be the Director or one of
8	the Deputy Directors.
9	Q. Okay. That would be - who is the
10	Director?
11	A. Dan Ashe is the Director. Roland
12	Gould is a Deputy, and he had another Deputy
13	named Steve (indiscernible). So one of those
14	three would have had to sign off on the
15	transfer.
16	Q. All right. And just to kind of
17	connect some dots for some things coming
18	later, but what is your understanding of to
19	whom Ms. Chavarria and Mr. Coleman had
20	communicated in the Director's office?
21	A. I was told that Rick Coleman had
22	briefed Assistant Director Gabriela
23	Chavarria, and she had briefed Assistant
24	Director Gary Frazier.
25	Q. This would be at the-

1	A. The Directorate level.
2	Q. The Direct - the top Headquarters
3	in Washington, D.C.?
4	A. That is correct.
5	Q. And that's the same group that
6	would be expressly approving - or required to
7	give approval to your compulsory detail here?
8	A. That is correct.
9	Q. And once you received the direct
10	order to appear, did you in fact follow
11	orders and appear?
12	A. Yes.
13	Q. Okay. And once you appeared in
14	the Albuquerque Office, please tell Judge
15	Garvey what - what work was given to you,
16	what assignments were given to you, what
17	written requests for work product was given
18	to you?
19	A. And this was very troubling to me
20	and confirmed my suspicions that this was
21	definitely not a legitimate detail. I was
22	not given any written performance plan, I was
23	not given any deliverables. I had a oral
24	conversation with Benjamin Tuggle and he
25	essentially said help, uh, Dana Roth with the

surrogate species workshop. I wasn't even asked to do any workforce planning. And to me that was a huge red flag. They made this big deal out of coming to Albuquerque and working on workforce planning and working with other service managers to develop workforce planning and whatnot, and that's in the transcript and in the recording, and I get there and there's no mention of workforce planning at all, none. My only task is to help Dana Roth put together a workshop, help with the workshop.

And then Dana herself in a — in an email, which I've provided, she says, well, I don't really have anything, you know, substantive for you to do, paraphrasing, but—and most of what I do have to do is noncerebral. I'm thinking, okay, this—this is not good. And what I was eventually tasked with doing for this workshop was compiling the evaluation sheets at the end of the workshop. I'm a GS-15, I'm asked to compile the evaluation sheets at the end of the workshop, like, you know, the room's too cold, this speaker was good, that speaker was

1	bad, you know, I didn't like this kind of
2	cookie. I mean, it was - it was very
3	demeaning. And so I'm not working on
4	workforce planning, I have no performance
5	plan, I have no written deliverables, and
6	they ask me to compile the evaluation sheets
7	at the end of this workshop.
8	So I - I'm now, in my mind, am
9	sitting in the penalty box in Albuquerque,
10	and I'll point out that Deputy Regional
11	Director Joy Nicholopoulos did not stop by to
12	talk to me not one time, not once, and she's
13	on the same floor not far from my office.
14	Q. And were you in close proximity to
15	Mr. Tuggle as well?
16	A. I was.
17	Q. And who was your direct report,
18	who was your immediate supervisor report for
19	this particular detail?
20	A. In writing I was told I'd be
21	working for both Joy Nicholopoulos and
22	Benjamin Tuggle. But when I got there,
23	Benjamin Tuggle said I would just be working
24	directly for him.
25	Q. Okay. Explain, when you arrived

1 out there, did they make any - what 2 accommodations they had made for your 3 housing, travel plans, things like that? Yeah, I'd received an email that 4 Α. said they had arranged corporate housing for 5 6 me and that I'd be staying in corporate 7 housing. And as it turns out, when I got 8 there, nobody was there to pick me up at the 9 airport, I had to get my own way to the 10 office. And then-11 Ο. Had they made the housing 12 arrangements? 13 Α. They did not make the housing 14 arrangements. I went to the office, found 15 out where they thought they had housing arrangements, there were no housing 16 17 arrangements, and I just simply found my own 18 hotel, and I stayed in a hotel. 19 When you showed up in the office Ο. to which you were assigned, please tell the 20 21 Judge about the - the support equipment, 22 computers, phones, supportive type equipment 23 to carry out your work assignments; what were 24 you given? 25 Α. Well, it took - it took awhile to

1	get the phone running, and eventually I got a
2	laptop computer.
3	Q. When you say eventually, like
4	within the same day?
5	A. Oh, no.
6	Q. How many days?
7	A. You know, I don't remember, but I
8	- I don't remember. But it wasn't right
9	away.
10	Q. Okay. So when you show up there's
11	no housing, no phone, no computer, and then
12	you go to this workshop and what - what do
13	you do at the workshop, other than collecting
14	comment cards? Did you do anything else in
15	that workshop other than collecting the
16	comment cards?
17	A. Yes. I helped Benjamin Tuggle's
18	secretary put refreshments out during the
19	breaks.
20	Q. How long did the workshop last,
21	how many days?
22	A. Oh. I don't remember. I want to
23	say four days.
24	Q. Okay.
25	A. Maybe three or four, I don't

1 remember. 2 Okay. Once the workshop was Ο. 3 completed, what kind of - what was your daily work after the workshop was completed? 4 5 My only work assessment, against Α. 6 his was verbally, was to compile the 7 information in the evaluation sheets from the 8 workshop. 9 Okay. Did you have any - you Ο. 10 know, did you - did you meet with Mr. Tuggle 11 each day to say here's what you've asked me 12 to do, here's what I've done, here's my work 13 product, anything like that? 14 No. Because the only task I was Α. 15 given was compile the evaluation sheets, so 16 there was nothing for us to talk about. 17 so, no, not at all. 18 Ο. Now, I believe we have as an 19 exhibit, one side or the other, a program 20 presentation to the Tribal Council. Explain 21 what that was and why you did that and what 22 it involved. 23 Yes. Part of the outreach for Α. 24 this surrogate species program was to 25 outreach to our partners. And Dana Roth had

1 said that she was going to give a 2 presentation with Deputy Regional Director 3 Joy Nicholopoulos to some tribal government entities there in Albuquerque. And then 4 evidently Joyce - Joy couldn't make that, and 5 out of sheer boredom I volunteered to assist 6 7 with that and give a presentation, because, 8 you know, my mom raised me right and I'm just 9 sitting in the penalty box doing nothing and 10 honestly it was starting to get to me. 11 in the lab use that term, they all new that I 12 had crossed Tuggle and I was up there being 13 punished, and they wouldn't come by. 14 folks weren't stopping by my office other than Dana Roth, and, you know, I was - I was 15 16 a pariah. 17 Ο. Okay. And you're on the same 18 floor at Tuggle? 19 Yes. Α. 20 How close a proximity to him? Ο. 21 Α. Two or three doors. 22 Okay. How - how often would he 23 stop by your office to discuss your workload, 24 assignments, what you were doing, check on 25 your status of your work?

1 I don't think that ever happened. 2 He was cordial enough that in the mornings, 3 if he walked by, I'd get a good morning, but we did not sit down and discuss my work 4 assignment, any assignments or the status of 5 6 what was being done. Did he send you emails laying out 8 work assignments or requests for reports or 9 work product? 10 Α. Not that I recall. And it got to 11 the point where I called the Associate 12 Inspector General for Whistleblower 13 Protection, Laurie Larson-Jackson, and I told 14 her, Laurie, I'm sitting up here reading 15 magazines, just killing time. This isn't 16 appropriate, can you - can you help me? 17 - this is not good. 18 And I'm told she called Tuggle to 19 confront him with the fact that even though 20 they made this big deal in the transcripts 21 and on the recording about all this workforce 22 planning I'm going to be doing, I had yet to 23 even hear the word workforce planning. 24 Laurie called him and informed him that this 25 was - this didn't look good.

1 And that day, my old supervisor, 2 Michelle Shaughnessy stopped by my office to 3 say, you need to start working on workforce planning of the Texas Ecological Services 4 Office. I said, and that's it? You mean you 5 want me to work on workforce planning of my 6 7 old Texas offices? She said, yes. And I 8 clarified, so you don't me to work on 9 workforce planning on anything in Arizona? 10 No. New Mexico? No. Oklahoma? No. Any 11 other divisions? No. I said, so just to be 12 clear, you're telling me that Tuggle ordered 13 me to start working on workforce planning of 14 my old four offices in Texas? She said, yes. 15 And I - and I-Any reason why you had to be 16 Ο. 17 physically located in Albuquerque to do that 18 assignment? 19 Oh, absolutely not. Α. In fact, it 20 would hinder that assessment. 21 Would it be easier and have more Ο. 22 resources at your hands if it were in your 23 office in Austin? 24 Yes. Because a lot of workforce Α. 25 planning deals with budgets, you know, what's

1 your budget and how can you staff up based on 2 that budget. If I had my admin staff and my 3 budget staff with me in Austin, it would have made workforce planning in Texas much easier. 4 Files physically are located in 5 Ο. the Austin Office for that kind of stuff that 6 7 you would need to do that work? Α. Certainly. 9 Ο. And as you got towards into 10 December, we'll see in a while an exit memo 11 laying out assignments - well, I should stop 12 there. 13 When you left the Austin Office, 14 what duties did you have, you know, active 15 and ongoing and what was done with the duties 16 and responsibilities you had for performing 17 your Austin job when you were required to 18 physically leave and move to the Albuquerque 19 Office? 20 Let - yes, let me answer that this Α. 21 way. During these two - two telephone 22 conversations and subsequent conversations 23 when I was in Albuquerque, I repeatedly, 24 multiple times, asked Benjamin Tuggle for an 25 end date for this detail. I told him it was

important for me to find a caregiver for my mom if I had an end date, and it would - and I would like to know what the end of the detail is. And he refused to give an end I made it very clear that I would work - I could work a 60-day detail, 90, even a hundred and twenty days, I'll make it work, I've always stepped up to the plate, I'm going to step up to the plate now, I'll make it work, but you've gotta give me and end date. He refused. And then in the phone call I finally asked him, I said, is there any guarantee I'm ever even coming back to Austin at all? And he would not give me that quarantee. So at this point here's an openended detail to Albuquerque to literally not do any work of any importance, and-Ο. What had you been working on in Austin, what was your daily responsibility load at the time-Α. We were loaded with listing

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packages, conservation banks, permits, highway projects. They literally took me away from a ton of very important work, keeping things running in Texas to put me up

1 there in Albuquerque essentially in 2 isolation. 3 Now, to answer your direct question, I was asked to give 'em a list of 4 the stuff that I was working on, all the 5 6 boards I belonged to, the joint ventures, 7 where I represented the Federal Government at 8 different levels, and I provided that list of 9 duties to them. And - and - and you can 10 clearly see that this was important work. 11 Small detour here. You've Ο. Okay. 12 used the terminology a couple of times about 13 working with partners and joint ventures. 14 Explain what those programs are that you were 15 responsible for. 16 Conservation doesn't occur Α. 17 just through the Fish and Wildlife Service 18 alone. You need partners. And we refer to 19 our partners as the state governments, like 20 Texas Parks and Wildlife, Oklahoma Game and 21 Fish, those kind of things. Certainly Indian

Joint ventures are funded by

congress but they essentially involve NGO

deal with migratory bird conservation and

groups, state representatives, etcetera, to

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tribes.

1 habitat for migratory bird conservation. 2 I - I actually was on three joint venture 3 boards where I represented the Fish and Wildlife Service on those migratory bird 4 boards. 5 6 Ο. So that's you meeting with other 7 governmental representatives and working out 8 joint plans for-9 Α. Yes. And private sector. Who's 10 going to get grants for where, what habitat's 11 gonna get purchased. You know, those types 12 of things. 13 Ο. That would be your normal daily 14 activities before you were transferred to the 15 detail? 16 Yes. Now, in specific, the joint 17 ventures would only meet twice a year. 18 as far as - so I was on three of those, so 19 that's - excuse me. 20 So let's elaborate on that. Ο. The 21 joint ventures meet twice a year. When you 22 were put on the detail to go to Albuquerque, 23 explain to the Judge how the duties that you 24 would have at that point in time, how they 25 were reassigned to others in your state.

1	A. Yes. I - I - I heard about this
2	from my former staff, and it was very
3	concerning to me, Your Honor, that Benjamin
4	Tuggle had called a meeting in Austin, my
5	former duty station, called in my former
6	supervisors, I'm told they essentially took
7	the list of my former duties that I provided
8	to them, and my former duties were then
9	delegated out to my former supervisors,
10	including duties, as I mentioned, that you
11	only meet twice a year, yet if this is really
12	supposed to be a 60-day detail or a detail
13	not to exceed to 60-days as - as Tuggle is -
14	is professing, he's giving away
15	responsibilities that would be way out beyond
16	that.
17	And the other things that was very
18	concerning to me is standard practice, usual
19	and customary procedure within the Fish and
20	Wildlife Service, if you - if you go on a
21	detail, an acting is appointed behind you-
22	Q. Okay, what does that mean? You
23	say an acting is appointed; what is that?
24	A. And acting, well, if I, for
25	example, as the Texas State Administrator, if

I'm going to be gone for a week or two on on a vacation or to training, I would appoint
a person to act in my stead. They would be
given the authority of that position so that
things keep moving. There was no acting
appointed for me. Rather than appointing an
acting, my duties and responsibilities were
given away to my subordinates, including
duties that were way out beyond, you know,
six months.

You know, right now, you know, I

You know, right now, you know, I was a Special Agent, the bells and whistles are going off. This is a one-way ticket to the penalty box, I'm never coming back. And my staff was very, very concerned with that, as well.

Q. All right. Now, towards the middle of December, explain to the Judge what you felt your options were and what course of action you took in response to the sitting in the corner office just kinda staring at the walls. What - what was your mental process about where you're going and what your options were?

A. Well, by mid-December, you know,

it was very clear to me that I was gonna be on this detail until I was forced to retire. I mean, it was very clear that - I wasn't given any work product that I could work toward, there wasn't any - any deliverables that I could have ever achieved to complete the detail, and at that point I knew that this, again, was a one-way ticket, I was gonna sit in the penalty box until I was forced to retire.

And with my mom's condition being like it was, and I had some issues with her when I was gone, health issues, you know, she was leaving frozen food out, letting it thaw for days and then eating it, you know, missing meals, missing medications, I didn't get her medications renewed. All these pressures from home, yet I'm up there sitting in the penalty box doing nothing. I turned in my retirement paperwork on, you know, roughly around December 13th.

Q. Okay. And then we'll see a series of exhibits where you retract it and try and transfer out of Tuggle's chain of command.

Explain that to the Judge, what you were

1	doing and then who you tried to transfer to
2	and what reception you received.
3	MR. MEHOJAH: Judge, I'm going to
4	object. I think that this is an attempt to
5	elicit testimony by the witness for a matter
6	that is not within the jurisdiction of—
7	JUDGE GARVEY: I'm going to allow
8	it and again, as I said with the exhibits, if
9	it's not relevant, I'm not gonna deal with
10	it. So I'll allow it—
11	MR. MUNDY: Yes, Judge.
12	JUDGE GARVEY: -and see if it is
13	something relevant.
14	Q. [BY MR. MUNDY:] Okay. Go ahead
15	if you would and
16	A. Yes. I had had conversations with
17	Gabriela Chavarria, she's the Assistant
18	Director for the Office of the Science
19	Advisor. She was Rick Coleman's supervisor.
20	Again, a good lady, with a Ph.D. out of
21	Harvard. And I had - she knew about my - my
22	detail and she knew I was detailed to
23	Albuquerque. And I spoke with her in
24	Albuquerque, she was there for a - for a
25	meeting, and I told her, Gaby, I'm here and

this detail is retaliatory and it's not gonna ever end, I mean, this is it for me, I'm here until I'm forced to retire. And she said, I know, Gary, this is pure retaliation, Tuggle is making the whole Fish and Wildlife Service look bad. And we talked about me obtaining a position with her division, outside of Tuggle's chain of command. She said - her quote was: You can't let Tuggle force you out, you've got too much to offer. She said, I'm gonna see if I can get you on with the Office of the Science Advisor. She said, I need another Investigator bad, we've got lots of issues with scientific integrity. background, former background as law enforcement, you'd be a perfect fit for my So she said she was gonna talk to program. Dan Ashe about approving a transfer of me from Region 2 to her region, which is Region 9, to work for her. Ο. And at the time, contemporaneously, did you believe that, in fact, that transfer had permitted and allowed? Α. Yes. Gabriela told me that she

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had spoken with Director Ashe, and again, going back to what we talked about earlier, no transfer or - or detail can be approved for a GS-15 without Director Ashe's approval and Directorate approval. She told me she had spoken to Director Ashe and that Director Ashe had indeed approved my transfer. told her, I said, you know, I really appreciate that but, you know, I want to be up front with Director Ashe and I want to make sure he knows about this issue with Tuggle and I, I don't want any surprises later. I got Director Ashe's phone number from Gabriela. I called Director Ashe and left a message.

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Director Ashe called me back. I said, Director Ashe, Gabriela has offered me a job with the Office of Science Advisor, I want to do it. I've got crossways with Tuggle out here, there are issues between he and I, and I want to make sure you know that as you approve this transfer. And he said, he knew Gabriela and trusted her, he knew me and trusted me, he said, if Gabriela wants you, I'm good with that. And then he went on

to say she's got a good budget this year, there's money for it; I'm good with that.

So based on the approval of this transfer from - from Gabriela, she - in other words, the Director gave Gabriela the approval, and then me personally the approval, I pulled my retirement paperwork on December 26th, the day right after Christmas because I was going to be transferred into Gabriela's Office of the Science Advisor and do productive work again. And I was - I was elated. I pulled my retirement paperwork and I actually went to work for Gabriela's division on January 4th, and I worked there for approximately three weeks, but the paperwork never came. The paperwork for my transfer never came.

And then I got a call from

Benjamin Tuggle one day that shocked me, and
he said, your transfer has not been approved,
the Director has, you know, I don't remember
what he said, rescinds his approval or has
not approved your - your transfer, you're
back in Region 2 and I want you back in
Albuquerque. So—

1	Q. Direct report to him again?
2	A. Yes. So not only did they cancel
3	my transfer, but they didn't even let me go
4	back to my old job. It was back to the
5	penalty box.
6	Q. Okay. So not allow you to return
7	to your State Administrator job in Austin?
8	A. That is correct.
9	Q. Again you're reassigned to the -
10	essentially a continuation of your prior
11	detail?
12	A. Yes.
13	Q. Direct report to him?
14	A. Yes. To which I'd already done 60
15	days. And again, with no deliverables, they
16	did not give me - it was impossible to get
17	deliverables to show that the detail's over.
18	You know, it was like nothing I'd ever seen
19	before. In fact, I will say it was
20	intuitively obvious to me, and I think any
21	reasonable person, that the objective here
22	was to - to isolate me and force me to
23	retire, and to show me who's boss.
24	Q. And then so once you got that call
25	from Mr. Tuggle, I mean, how did that make

1	you feel? What - what went through your mind
2	at that time?
3	A. Well, I knew I was out of options.
4	And so I told - I submitted my retirement
5	paperwork again, asked the Office of Special
6	Counsel and the OIG to intervene; this is
7	wrong. And the OSC and the OIG-
8	THE WITNESS: I believe you were
9	there as well, as part of this Greg.
10	Aasked the Agency for a stay of
11	this detail. And, you know, even long enough
12	for reasonable minds to - to come to some
13	resolution to this, and the Agency refused.
14	And with that, I knew that - that - that my
15	option was go back to Albuquerque and read
16	magazines in - in the office in complete
17	isolation or retire.
18	Q. [BY MR. MUNDY:] And that's, in
19	fact, when you did go ahead and make a
20	permanent decision?
21	A. Yes. I had no choice but to
22	retire.
23	Q. Okay.
24	MR. MUNDY: Your Honor, we're at
25	kind of a logical breaking point. Would you

1	like to break for lunch or continue? I'm
2	prepared to go either way.
3	JUDGE GARVEY: Continue.
4	Continue.
5	MR. MUNDY: Okay.
6	Q. [BY MR. MUNDY:] If you would, I
7	would like, next, Mr. Mowad, if you would
8	take - let's clear some of this paper out of
9	the way, and I would like you to take the
10	notebook with exhibits, and we're gonna go
11	through these exhibits and have you explain
12	each-
13	JUDGE GARVEY: Unless there's
14	something - Mr Mr. Mundy, unless there's
15	something I can't understand about the
16	exhibits or they need to be explained, you
17	know, the documents speak for themselves. So
18	if they don't speak for themselves, then you
19	can tell me about them. But if it's
20	something that I can read and understand,
21	they're already in evidence.
22	MR. MUNDY: Understood. He's
23	going to give you context about the - the
24	context in which these communications are
25	going back and forth. There's some email

1	traffic, and so he would be providing the
2	context. And then-
3	JUDGE GARVEY: Okay. But-
4	MR. MUNDY: -and his objective
5	perspective of-
6	JUDGE GARVEY: -if it's not
7	necessary, I don't need him reading any, you
8	know, exhibits to me. Okay, go ahead.
9	MR. MUNDY: Understood.
10	Q. [BY MR. MUNDY:] The… the - let's
11	go first to Exhibit J, and this - again,
12	we're talking - I don't - you don't have to
13	read the exhibit to the Judge, but, again,
14	context.
15	JUDGE GARVEY: All right, so
16	Exhibit-
17	Qas to why-
18	JUDGE GARVEY: Mr. Mundy. Let's
19	make it clear. Exhibit J, is that what we're
20	focusing on? J as in Jack?
21	MR. MUNDY: Yes, Your Honor.
22	JUDGE GARVEY: All right. J as in
23	Jack. Go ahead, Mr
24	MR. MUNDY: Yes, Your Honor.
25	JUDGE GARVEY: -Mowad, what do I

1	need to know about here?
2	Q. [BY MR. MUNDY:] This - this is
3	the announcement of you arriving with the new
4	appointment. If you would, explain what the
5	reception was, the public announcement, and
6	what - how you were announced to the region
7	about your qualification and expectations of
8	you as the new State Administrator, and
9	there's a-
10	JUDGE GARVEY: All right, Mr.
11	Mundy, Mr. Mundy. This is not relevant.
12	This is two years earlier.
13	MR. MUNDY: Okay.
14	JUDGE GARVEY: Let's move along.
15	Let's not waste time.
16	MR. MUNDY: Okay.
17	JUDGE GARVEY: We know what we're
18	here for. Okay?
19	MR. MUNDY: Understood.
20	Q. [BY MR. MUNDY:] You were - would
21	it be fair to say you were held in extremely
22	high regard and why you were requested to
23	come from Washington, D.C. to assume these
24	job duties in Texas?
25	A. Yes.

1	Q. And it was publically announced
2	about the high esteem and skills which you
3	were bringing to the Region in this new role?
4	A. Yes.
5	Q. And everything up to the point in
6	time before you started reporting these
7	irregularities had been highly, highly
8	positive and favorable about reviews and your
9	public perception and how you were portrayed
10	to the Region and the other personnel?
11	A. Absolutely.
12	Q. You did not start encountering any
13	problems with Tuggle and Nicholopoulos until
14	you started making these reports and
15	cooperating and pushing back on them?
16	A. I didn't receive any problems from
17	Joy or Benjamin until I started saying no to
18	what I felt were unethical requests from this
19	small group that surrounds the State
20	Comptroller down here. In other words, when
21	I started holding the line on integrity, then
22	I started to receive phone calls and I could
23	tell this group was used to getting their way
24	and they wanted the Federal Government to
25	help them. And they would get the same

1 consideration as everybody else, and when 2 they weren't getting preferential treatment, 3 I know they were complaining to Joy and then I started hearing about it. 4 Okay. The date that you were 5 Ο. assigned to the detail, the first call was 6 September 25th or 6th? 7 26th. 8 Α. 26th? And then the second call 9 Ο. 10 that you reported is two days later? 11 That's correct, 28th. Α. 28th. There's a term that you 12 Ο. 13 used, and I believe it was literally, have 14 you ever used the term Texas Mafia? 15 The term Texas Mafia was a term 16 that my staff used. I cautioned them that it wasn't very flattering, but nevertheless it 17 18 was used before I got here and after I'm 19 sure. And the Texas Mafia was the term that 20 my staff used for this group that surrounded 21 Susan Combs that was profiting off the 22 Endangered Species Act in decisions made by 23 the Fish and Wildlife Service. 24 All right. I would like you to Ο. 25 turn to Exhibit AD, Alpha Delta, please. And we're not going to read the whole email, but when you - in the second paragraph you refer to Ms. Combs and her group of profiteers, special favors, compromising your integrity, and just explain - and this is to Ms. Larson-Jackson, explain why - who you're referring to as profiteers here and the questions about integrity, this is in reference to what you've already done, explained to the Judge today?

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Yeah, well, in furtherance of Α. that, yes, this is an email that I sent to the OIG, and in this particular paragraph I state that, you know, because I will not grant Comptroller Susan Combs and her group of profiteers special favors or compromise my integrity to get their desired results, they complain loudly to Joy, who then gets them what they want. My entire staff can attest to this problem in Texas. And, again, so that - that's the environment we were dealing with. We had a group that expected preferential treatment, and when I wouldn't compromise my integrity to give it to 'em, I had problems.

1	Q. And this is you reporting, the day
2	after that second call, you're reporting it
3	to the OIG whom you'd already been in contact
4	with at this point?
5	A. Yes.
6	Q. This is September 29 th ?
7	A. Yes, it is.
8	Q. Exhibit, the next, AE, Alpha Echo,
9	Ms. Nicholopoulos on October 2 nd says you will
10	be working with Ms. Roth. Who is Ms. Roth?
11	A. Dana Roth is the Assistant
12	Regional Director in Albuquerque, and I - I
13	don't remember her exact title. She is like
14	a science person. I - I don't remember.
15	Q. All right, the - who are these
16	other people? Let's just, for context who
17	are the other people copied on Ms.
18	Nicholopoulos's email here? Who's Denise
19	Baker?
20	A. She's a supervisor up there. I
21	think she does mainly contaminants, but
22	Q. Albuquerque Office?
23	A. Albuquerque Office.
24	Q. Santiago Gonzalez, who is he?
25	A. I think he's a budget and admin

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1	person in Albuquerque.
2	Q. And then Stacey Baca?
3	A. She's secretary to Michelle
4	Shaughnessy.
5	Q. Okay. And says, in the middle of
6	this, that you are a direct report to the RD
7	slash DRD. What do those acronyms stand for?
8	A. That's where they put in writing
9	that I worked for the Regional Director and
10	the Deputy Regional Director, but, again,
11	when I got there, I think they wanted to
12	isolate Joy from me and Benjamin told me I
13	worked directly for him.
14	Q. RD is Tuggle and-
15	A. Yes.
16	Qand DRD is Nicholopoulos?
17	A. That is correct.
18	Q. Copies to these other senior
19	managers in the Albuquerque Office?
20	A. Right.
21	Q. Okay. Next page, helping the
22	Judge with some abbreviations here. AF,
23	Alpha Foxtrot? It says the entire RDT is
24	pleased to have you join us at the Regional
25	Office. Again, what is RDT?

1	A. Again, that's the Regional
2	Directorate Team, and that's essentially the
3	group of 15s, maybe a 14 or two, in the
4	Albuquerque Office.
5	Q. Okay. And they say here they'll
6	have a computer ready, but, in fact, it was
7	not, correct?
8	A. Correct.
9	Q. Next, Alpha Golf, AG, and this one
10	maybe you've perhaps misdirected to Mr.
11	Mehojah. This is an email that looks like
12	it's printed from Ms. Shaughnessy, but it's
13	directed to Benjamin, meaning Tuggle, appears
14	to be from you I think? Is that correct?
15	A. (No immediate response.)
16	Q. Are you the author of this? It's
17	40 - looks like 40 years of - it's kinda - I
18	need a clarification-
19	JUDGE GARVEY: Well, what - what
20	exhibit are you at?
21	MR. MUNDY: AG, Alpha Golf.
22	JUDGE GARVEY: Thank you. So the
23	question is, who is the author of-
24	MR. MUNDY: Mr. Mehojah, you might
25	be able to answer-

1	JUDGE GARVEY: -the email; is that
2	your question?
3	MR. MUNDY: Correct. The way it's
4	printed out-
5	JUDGE GARVEY: No, no, no, no.
6	I'm - and this gentleman can answer. You've
7	asked him a question.
8	MR. MUNDY: Yes.
9	JUDGE GARVEY: Mr. Mowad, who's
10	the author?
11	A. Me? Um I authored this. It's
12	not from Michelle, this is my email.
13	Q. [BY MR. MUNDY:] Okay. Just
14	apparently printed from her account?
15	A. I can't explain that.
16	Q. But you're the one that - this is
17	- the body of the text of this is your email?
18	A. Yes.
19	Q. Okay. Now, at the end here, and
20	this is important for the Judge's
21	jurisdictional questions that she's addressed
22	before, but we need to clarify this exhibit.
23	You also had noted you filed a grievance.
24	Please explain about filing the grievance and
25	then-

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1	JUDGE GARVEY: Mr
2	Qwhat the conclusion of that was.
3	JUDGE GARVEY: Mr. Mundy, Mr.
4	Mundy, we're here today because I found
5	jurisdiction. So let's not deal with an
6	issue that's already been found.
7	MR. MUNDY: Very good.
8	JUDGE GARVEY: That's why we're
9	here. Move along.
10	MR. MUNDY: Very good. Very well,
11	Your Honor, I was just trying to make sure
12	there was no confusion on that.
13	JUDGE GARVEY: You don't have a
14	hearing if you don't have jurisdiction.
15	MR. MUNDY: Understood, Your
16	Honor.
17	Q. [BY MR. MUNDY:] Again, explaining
18	context because it prints out funny, but AH,
19	Alpha Hotel, the body of this, the bottom two
20	thirds, who is the authority of this portion
21	of the email?
22	A. I wrote this.
23	Q. Okay. And then at the very top is
24	a reply from BNT?
25	A. Benjamin Tuggle, I don't know what

1 the N stands for. 2 Okay. And then below that, in the 3 same string, the prior email from Ms. 4 Nicholopoulos? 5 Α. Yes. 6 Ο. Looking at exhibit AI, Alpha 7 India, I want to go over this list of things 8 and ask if you were requested and tasked to 9 do these specific things on here, all right? 10 Closeout performance year of all direct 11 I would like to do this from reports. 12 Albuquerque. Did you do that? 13 Α. At first they would not allow me 14 to do the performance, the year end 15 performance reviews for my staff, until HR 16 informed that nobody else could do it if they 17 didn't work underneath them for 90 days, I 18 believe it was, so after initially not 19 allowing me to do it, I think they realized 20 they were backing into a corner and I was the 21 only one that could, and yes, I got to do 22 this. 23 Okay. And this appears Ο. 24 (indiscernible). Is this a listing of 25 essentially the work in progress of your

1	Texas job duties at the time you were
2	transferring over?
3	A. Well, again, I can't explain this.
4	This is my email. I wrote this. It says
5	it's from Michelle. So there's a problem
6	with their email system. This is my email.
7	Q. Okay. This is you listing your
8	pending Texas duties at the time you were
9	leaving the office of the Texas Office,
10	correct?
11	A. This is me providing them the list
12	of my duties as requested, that's correct.
13	Q. Okay. And we won't repeat, but
14	anyway, these - these were all the works in
15	progress you left behind and did not - you
16	did not continue and carry forward with these
17	responsibilities once you went to
18	Albuquerque?
19	A. Looking at this real briefly here,
20	I don't think I did any of these except the
21	year-end closeouts for my people because
22	nobody else could do it.
23	Q. Okay. That is a mandatory
24	requirement that you as the supervisor had
25	to-

1 I think so. Α. 2 All right. But then all these Ο. 3 other duties were left behind for ongoing 4 responsibility in Albuquerque? 5 After I moved on, I didn't do any 6 of these. Okay. Exhibit AJ, Alpha Juliette, 7 Ο. 8 if you would take a moment and look at that. 9 Go ahead. 10 Α. Again, this is my email. This 11 says it's from Michelle. This is not, this 12 is my email; I wrote this. 13 Ο. Okay. And explain why you're 14 making these comments. 15 This was an email that I wrote to 16 my staff. And it was after I had been 17 ordered on the detail. And it was after - by October 5th I pretty much knew this gig was up 18 19 and I was going to Albuquerque and not coming 20 back. And it had been reported to me from an 21 attorney in Texas that Susan Combs had 22 instructed Williamson County Commissioners 23 not to work with me or Adam or Tim or Susan 24 or Alissa, these are all employees of mine, 25 on any potential listing of the-

1	JUDGE GARVEY: Again, Mr. Mundy,
2	he's reading an email. Please. Please.
3	THE WITNESS: Yeah, it was my
4	email—
5	JUDGE GARVEY: It's in evidence.
6	I need - Mr. Mundy, you ask a question.
7	Okay? He's reading an email. I can read. I
8	get paid to read. So let's move it along.
9	And ask questions that will elicit relevant
10	information that he has not already testified
11	to or is not in the documentary evidence.
12	New. New evidence.
13	MR. MUNDY: Yes, Your Honor.
14	Q. [BY MR. MUNDY:] You were relieved
15	of your duty about a specific endangered
16	species program, correct?
17	A. (No immediate response.)
18	Q. Well, you know what, just skip it,
19	we'll go on.
20	MR. MUNDY: I'm editing heavily,
21	Your Honor, is the reason for the silence.
22	Q. [BY MR. MUNDY:] If you would,
23	turn to Exhibit BC, Bravo Charlie. What is
24	Exhibit BC an example of and how does that
25	relate to your complaints here today?

1	A. It's an example of what an
2	opportunity for a detail usually and
3	customarily looks like from the Fish and
4	Wildlife Service, where it's sent out to a
5	targeted group at a targeted grade, and it
6	offers an opportunity to work on a detail.
7	And it specifies the duration of the detail
8	and the duties that you'll be doing. And
9	again, it shows how much more definitive a
10	detail opportunity normally is presented to
11	Fish and Wildlife employees.
12	Q. And no comparable document for the
13	detail to which you were assigned here?
14	A. I received no written detail of
15	any kind.
16	Q. Not published to the group as a
17	whole ever?
18	A. No.
19	Q. Okay. Let's flip over to BD,
20	Bravo Delta. We need some help translating
21	acronyms here. It says: I've ensured all
22	EPAPs, E-P-A-P little s. What is an EPAP?
23	A. Employee performance appraisal
24	plan? Maybe y'all can help me with that.
25	It's your performance review.

1	Q. Okay.
2	
	A. Your performance plan. Employee
3	performance something plan.
4	Q. All right. You say: I've ensured
5	that all EPAPs for my direct reports are
6	ready for year end. They are secured at the
7	AUFO. What is AUFO?
8	A. Austin Field Office.
9	Q. BP, if you would please turn to
10	BP. This is a note from BNT, Benjamin Tuggle
11	presumably?
12	A. Yes.
13	Q. Okay. And we just need
14	clarification of a term here, says, Deputy
15	Director Gould was very clear with me, we
16	discussed the issue regarding your supposed
17	transfer to the science application. What is
18	science application?
19	A. That's a misprint, should have
20	been Science Advisor.
21	Q. Okay. This would be Ms.
22	Chavarria?
23	A. Correct.
24	Q. Group. But it's just a misnomer
25	in this email?

1 Α. Yes. 2 If you would turn to BW. Ο. Just to 3 clarify a couple of names in the text here. The - Art Wilheit, one of the addressees, Art 4 5 Wilheit is one of the Special Agents you'd referred to earlier? 6 That's correct. Art Wilheit is 7 Α. 8 the Resident Agent in Charge of the 9 Department of Interior OIG in Albuquerque, 10 New Mexico. 11 Okay. And then coming down to the Ο. 12 third paragraph, second sentence, it says: 13 Dan reportedly stated clearly to Gaby he 14 would not approve such transfer until the OSC 15 case is resolved. To whom - which Dan is 16 this, just for clarity of the record? 17 Clarity of the record it is Dan Α. 18 Ashe, the Director of the Fish and Wildlife 19 Service, and Gaby refers to Gabriela 20 Chavarria, Assistant Director for the Office 21 of Science Advisory. 22 Go to BY, please. Top line says: Ο. 23 Benjamin, did you folks discuss the next step 24 for Mowad at the directorate meeting last 25 week? What is the directorate, what is that

1 group? 2 Yeah, that's the upper management 3 of the Fish and Wildlife Service. It's made up of the Director, the Deputy Directors, and 4 then the Regional Directors. So that is the 5 6 highest level of management within the Fish 7 and Wildlife Service. And what gives me 8 great pause with this memo is - is Tuggle's 9 on the record saying he hasn't discussed my 10 situation with Director Ashe or that level, 11 yet here Michelle is asking him if he's 12 discussed my situation with the Director 13 while they're at a directorate meeting. 14 Okay. Exhibit CE, Charlie Echo. 15 What is this? It's not - it doesn't have a 16 title on it, it's self-evident, but just what 17 is this? 18 Α. This is a list of the awards that 19 I received over my career. In a nutshell, I 20 think it's 21 different performance awards, a 21 meritorious service award from the DOI. 22 But this is you? Ο. 23 That's me. Α. 24 It doesn't have your name on top's 25 the reason I ask.

1	
1	A. That's me.
2	Q. Okay.
3	A. Or my work. I had a great career
4	with the Fish and Wildlife Service.
5	MR. MUNDY: I have the editing
6	scissors going, Your Honor. I believe I'm
7	about to the end. I pass the witness at this
8	time, Your Honor.
9	JUDGE GARVEY: Okay. We'll take a
10	half hour break for lunch, and then we will
11	do cross-examination. Okay.
12	MR. MEHOJAH: Thank you.
13	JUDGE GARVEY: So we'll be back at
14	ten minutes to 1:00. Thank you.
15	[OFF THE RECORD 12:18]
16	[ON THE RECORD 12:50]
17	JUDGE GARVEY: Mr. Mehojah?
18	MR. MEHOJAH: Judge, Mr. Mundy
19	asked if he could ask one follow-up question
20	before he passes the witness?
21	MR. MUNDY: I noticed in my notes
22	one thing I had not asked, but I defer to
23	your discretion whether you would like me to
24	ask it now or on redirect?
25	JUDGE GARVEY: You can ask it on

1	redirect, but you already passed the witness,
2	so of course we follow with that.
3	MR. MUNDY: Yes.
4	JUDGE GARVEY: Go ahead, Mr.
5	Mehojah.
6	MR. MUNDY: Yes, Your Honor.
7	MR. MEHOJAH: Thank you, Judge.
8	CROSS-EXAMINATION
9	BY MR. MEHOJA:
10	Q. Mr. Mowad, you testified that you
11	were cooperating with the Inspector General
12	in around June of 2012; is that correct?
13	A. Correct.
14	Q. Okay. That's when you made your
15	allegations to the Inspector General about
16	the - what you believed were concerns with
17	the disclosure?
18	A. That was one of the items I passed
19	on.
20	Q. Okay. And what was the other
21	item?
22	A. I passed on the issue of the
23	language being added to the Oncor Electric
24	incidental take permit that would allow the
25	purchase of temporary credits, and I passed

on the issue of the relationship between
Allison and Joy Nicholopoulos.
Q. Okay. And you first contacted the
IG in June of 2012?
A. That's correct.
MR. MEHOJAH: Okay, and again,
Judge, for clarification, I-G I'm using to-
JUDGE GARVEY: I understand that.
MR. MEHOJAH: -refer to or
abbreviate for Inspector General.
JUDGE GARVEY: I understand that.
MR. MEHOJAH: Thank you, Judge.
MR. MUNDY: Keep voice up.
Q. [BY MR. MEHOJAH:] And you also
testified that you told Rick Coleman about
your allegations; is that correct?
A. That's correct.
Q. Okay. Were they the same
allegations that you also brought to the IG?
A. Yes.
Q. All three of those allegations you
brought to the IG you also presented to Mr.
Coleman?
A. Can I look at my notes to just
double check?

1	Q. Sure.
2	A. Okay. (Witness peruses
3	documents.)
4	JUDGE GARVEY: Mr. Mowad, if
5	you're not sure, just say I'm not sure. You
6	testified at length earlier.
7	A. Virtually the same-
8	JUDGE GARVEY: You said what you
9	said.
10	AI'm not certain of each-
11	THE WITNESS: Yes, Your Honor.
12	JUDGE GARVEY: No, there's no
13	question.
14	A. Definitely it-
15	JUDGE GARVEY: Unless you know
16	what you - do you know what you brought to
17	Mr. Coleman, and if so, what?
18	A. Yes, I know what I reported to Mr.
19	Coleman.
20	Q. [BY MR. MEHOJAH:] What was it
21	that you reported to Mr. Coleman?
22	A. I reported to Mr. Coleman that the
23	dune sagebrush lizard listing not warranted
24	decision was not based on legally sufficient
25	science. I reported to Mr. Coleman that the

1	biological opinion that was being formulated
2	for Fort Hood, that there was scientific -
3	there was interference with the scientific
4	process there, and that Susan Combs wanted us
5	to use the model that hadn't been approved
6	and wasn't the best available science. And
7	that's all I recall at this point. If I
8	recall more, I'll tell you.
9	Q. Okay. But that did not - you
10	didn't bring that second issue to the
11	Inspector General's attention, did you,
12	regarding the BEO, the biological opinion for
13	Fort Hood, I think that was the golden
14	cheeked warbler that you mentioned?
15	A. I'd have to check again.
16	Q. As you sit here today talking to
17	me, you don't remember?
18	A. Well, I - not without refreshing
19	my memory.
20	Q. Thank you. And Rick Coleman was a
21	Science and Integrity Officer?
22	A. That's the title I use for him,
23	yes.
24	Q. Okay. And it was his job to
25	receive these kinds of complaints, the

1	complaint similar to yours; is that correct?
2	A. That's correct.
3	Q. Okay. And in his job, is it his -
4	is it your understanding that he's requested
5	to maintain your anonymity with regard to
6	these complaints?
7	A. I don't know that.
8	Q. Is he charged with ensuring that
9	those complaints don't result in any kind of
10	retaliation against the employees who make
11	them?
12	A. I don't know that either.
13	Q. And Mr. Coleman, I believe you
14	said he was a man of high integrity?
15	A. Yes.
16	Q. Okay.
17	A. I hold him in high esteem.
18	Q. Okay. He was - he was a - a
19	responsible and ethical worker?
20	A. Yes.
21	Q. He discharged the duties of his
22	position and fulfilled the responsibilities
23	of that position; is that your-
24	A. Yes.
25	Qyour impression of him?

1 Α. Yes. 2 Okay. With regard to your contact Ο. with the IG about the issues that you 3 4 testified that you brought to them, the same 5 day you made that disclosure to the IG, you didn't also make that same disclosure to Dr. 6 7 Tuggle, did you? On June 8th? Α. 9 Yeah. Ο. 10 Α. No, I did not. 11 Okay. And you didn't make that Ο. 12 same disclosure to Joy Nicholopoulos; is that 13 correct? 14 That is correct. Α. 15 Ο. Okay. Now did you make that same 16 disclosure to Michelle Shaughnessy? Is that 17 correct? 18 Α. They were the subjects of the 19 investigation. For me to tell them would 20 interfere with the OIG's investigation. 21 absolutely not. They were the - they were 22 the subject of the investigation. I could 23 not have told them without violating their 24 policies and procedures and the integrity of 25 their investigation.

1	O Vous angues is no to that
1	Q. Your answer is no to that
2	question?
3	A. Answer is no. I was prohibited
4	from doing that.
5	Q. Okay. You mentioned that you
6	understood that Rick Coleman had a
7	conversation with Gabriela Chavarria about
8	your complaint; is that correct?
9	A. That's correct.
10	Q. That's about the complaint that
11	you made to him?
12	A. That is correct.
13	Q. And how do you understand that;
14	who told you that?
15	A. He told me that.
16	Q. He told you he had a conversation
17	with Gabriela Chavarria?
18	A. Personally he told me that.
19	Q. Okay. Do you remember what date
20	that conversation took place?
21	A. I don't remember which date, but
22	it was recently, within the last two months I
23	think.
24	Q. You mean 2014?
25	A. Yes.

1	Q. Okay. At the time that you made
2	the complaint to Mr. Coleman, was there any
3	other conversation that you had with him
4	around that date when you contacted him that
5	he told you that he met with Gabriela
6	Chavarria?
7	A. I had several discussions with
8	Rick Coleman. I didn't log each one. We
9	talked on a number of occasions. So to
10	answer your question did I have more
11	conversations with Rick Coleman, yes, I have.
12	Q. Did any of these conversations
13	reveal to you that he had told Gabriela
14	Chavarria about your contact with him?
15	A. I don't recall him saying that
16	during those early contacts.
17	Q. Did he ever tell you that he used
18	your name in reference to discussions with
19	Gabriela Chavarria about your contacts with
20	him regarding these complaints?
21	A. I don't recall him saying that.
22	Q. Did he ever say that he told Dr.
23	Benjamin Tuggle that you contacted him about
24	these complaints?
25	A. I don't think he ever said that

1 either. 2 Did he ever tell you that he spoke Ο. 3 with Joy Nicholopoulos about your contact with him regarding these complaints? 4 Did not say that. 5 Α. 6 Ο. How about Michelle Shaughnessy? 7 Α. I don't recall him saying that he 8 had discussions with Michelle. 9 How about Dan Ashe, the Director 10 of the Fish and Wildlife Service? 11 He told me that he had a Α. 12 conference call where Gabriela was on it and 13 Assistant Director Gary Frazier was on it, 14 and I don't know who else was on that call. 15 Ο. Okay. Do you know whether your 16 name was used specifically during that 17 conversation? 18 Α. Rick Coleman's exact quote to me 19 was: Gary, I tried to hide your identity, 20 but it wasn't hard to figure out. And 21 shortly after I made that call, the shit 22 storm started raining down on you, and I am really apologetic for that, I'm sorry. 23 24 wasn't hard for them to figure out who you 25 were.

1	Q. My question to you was whether he
2	disclosed your name specifically with regard
3	to those conversations.
4	A. And my answer again is he said, I
5	did not use your name specifically, but it
6	wasn't hard for them to figure out who you
7	were.
8	Q. You weren't on that phone call?
9	A. Oh, no.
10	Q. Somebody - Rick Coleman recounted
11	his phone call to you at a later date?
12	A. That is correct.
13	Q. Okay. You were contacted - I
14	believe you testified you were contacted by
15	telephone for the first time on September
16	26^{th} , 2012, by Dr. Tuggle about this detail to
17	Albuquerque; is that correct?
18	A. Not exactly. I - I - what
19	happened was Dr. Tuggle's secretary contacted
20	my secretary, and I don't know if that was
21	email or telephone. Then my secretary told
22	me Dr. Tuggle wants you to call him.
23	Q. Okay. And you spoke to him for
24	the first time about this detail on the
25	telephone on September 26^{th} , 2012 ; is that

ı	
1	correct?
2	A. That is correct.
3	Q. Okay. You were on that phone
4	call?
5	A. Yes, I was.
6	Q. Dr. Tuggle was on that phone call?
7	A. Yes.
8	Q. Joy Nicholopoulos was on that
9	phone call?
10	A. Yes.
11	Q. Okay. And that's the phone call
12	that's the subject of Exhibit, I believe it's
13	CI of the record, the transcript of the
14	conversation that you recorded on September
15	26 th ; is that correct?
16	A. I - I don't know the number, but
17	if that's the transcript, yes, I recorded the
18	call on the 26 th .
19	Q. Okay.
20	A. And that was provided.
21	MR. MUNDY: I think it's CJ, Mr.
22	Mehojah.
23	MR. MEHOJAH: CJ, sorry. Thank
24	you very much.
25	Q. [BY MR. MEHOJAH:] And during that

1	telephone call Dr. Tuggle informed you that
2	you would be doing certain things while you
3	were on your detail; is that correct?
4	A. It was very amorphic. I couldn't
5	tell you what I was going to be doing.
6	Q. Okay. And I believe that call was
7	around 5 o'clock in the evening?
8	A. That sounds correct.
9	Q. Yeah. Late in the day?
10	A. Yes.
11	Q. Maybe one of the last things that
12	Dr. Tuggle was doing before he left the
13	office; is that reasonable to
14	A. I couldn't make any assumption.
15	But I do recall it was around 5 o'clock.
16	Q. Okay. And he mentioned the
17	surrogate species to you?
18	A. I don't think he did. I'd have to
19	look at it again. I think he punted over to
20	Joy, and said, Joy, what else do we have for
21	him to do? And she said, help Dana with the
22	surrogate species program. But the entire
23	first part of the call, as I recall it,
24	involved workforce planning and other things.
25	Q. And you had engaged in workforce

1	planning in your prior career, hadn't you?
2	A. Yes, in law enforcement.
3	Q. Right. I thought that was your
4	testimony.
5	All right, so during that—
6	MR. MEHOJAH: I'm going to put
7	Exhibit CJ in front of the witness, Judge.
8	Q. [BY MR. MEHOJAH:] And I
9	apologize, let me just hand it to you.
10	MR. MUNDY: I have a spare copy,
11	if you want.
12	MR. MEHOJAH: Okay. That would be
13	great. Sure.
14	MR. MUNDY: Just give Mr. Mehojah
15	his copy back.
16	Q. [BY MR. MEHOJAH:] CJ, at the very
17	back here. Okay, if you could turn to page -
18	if you could turn to page 3 of Exhibit CJ,
19	Mr. Mowad. And if you can look at like 12.
20	That states: Did I forget anything? And
21	that's a statement by Dr. Tuggle?
22	A. That was what I meant when I said
23	he punted it over to Joy.
24	Q. Okay.
25	A. Right.

1	Q. And for purposes of clarification,
2	when the - this exhibit transcript speaks to
3	MS. SPEAKER, that's Joy Nicholopoulos, isn't
4	it?
5	A. It would have to. She was the
6	only female person on the phone.
7	Q. Okay. And so line 13 where it
8	states: MS. SPEAKER, that's Joy
9	Nicholopoulos?
10	A. Yes, sir.
11	Q. Okay. I just wanted to be clear
12	about that.
13	And she mentions working on the
14	surrogate species effort, right?
15	A. (No audible response.)
16	Q. And then Dr. Tuggle also says, on
17	line 17, So we would ask if you can help us
18	with the surrogate species effort, in
19	particular the surrogate species workshop
20	that's scheduled for the end of October?
21	A. Yes.
22	Q. That's what it says? Okay.
23	A. Uh-huh.
24	Q. All right. On line 13 where you
25	say Joy punted over to him on this surrogate

1 species issue, she doesn't mention the 2 workshop, right? He punt - he punted it to-3 Α. I understand. My question is, she 4 Ο. 5 doesn't mention the workshop in that response does she, beginning with line 13? 6 7 Α. No, she doesn't. 8 Ο. Okay. And then beginning line 20, 9 and we don't have to read it, but Dr. Tuggle 10 mentions that there is data associated with 11 this project and people on a team. And they 12 want you to contribute to that team. Is that 13 a fair representation? 14 This sort of data and we have Α. 15 people on a team... You know, that sentence 16 isn't a complete sentence. Starting off: 17 It's just sort of data and we have people on 18 a team. I don't know what that means. 19 Is it - does he say that he wants Ο. 20 you to contribute? 21 Α. The problem is is that it's just 22 data, and the data doesn't necessarily have 23 the resident field experience that you can 24 contribute. So I would deduce from that that 25 he was looking for field experience.

1	Q. Okay. And you were the - you were
2	a GS-15 at the time, right?
3	A. Yes.
4	Q. Okay. And you were in the Austin
5	Field Office?
6	A. Well, I was based in Austin, I
7	supervised the four Texas Offices, but I
8	wasn't physically in the Austin Field Office.
9	Q. Okay. Were you a - would you -
10	would you agree that you were in the field,
11	quote, unquote?
12	A. During my career I was in the
13	field.
14	Q. During the time that you were
15	Texas State Administrator-
16	A. Yes.
17	Qwould you agree that you were in
18	the field?
19	A. Yes. For the Fish and Wildlife
20	Service terminology it's Regional Office and
21	Fields. Of that, I would be classified as
22	Fields.
23	Q. Okay. And just to be clear, so
24	that we agree, you were not in the Regional
25	Office, you were not duty stationed in the

1	Regional Office?
2	A. I was not duty stationed in the
3	Regional Office.
4	Q. Okay.
5	A. Okay.
6	Q. All right. How many other GS-15s
7	were duty stationed outside of the Region 2
8	Regional Office at the time that you were
9	Texas State Administrator?
10	A. You know, I don't know that.
11	Q. Were you the only one?
12	A. In Texas I was the only one.
13	Q. Do you know if you were the only
14	one under Region 2?
15	A. I was the only - let me see, I
16	don't know, Arizona - to answer your
17	question, I don't know.
18	Q. Fair enough.
19	A. And you, um, so you agree that the
20	surrogate species workshop and the general
21	project was a legitimate directive for the
22	regions to work on, don't you?
23	MR. MUNDY: Objection,
24	argumentative and unclear.
25	MR. MEHOJAH: I don't think -

İ	
1	well-
2	JUDGE GARVEY: Why don't you just
3	start out: Do you believe? Do you believe
4	that it was a legitimate project?
5	Q. [BY MR. MEHOJAH:] Do you believe
6	that the surrogate species workshop was a
7	legitimate management directive?
8	A. Yes, management has that
9	prerogative.
10	Q. Okay. Do you know whether other
11	regions were required to engage in this
12	surrogate species project?
13	A. This - I don't know about this
14	project, but I think other regions were asked
15	to start looking at the surrogate species
16	issues.
17	Q. Okay. Do you know whether the
18	surrogate species - holding a surrogate
19	species workshop was required - was required
20	of other regions as well as Region 2?
21	A. No, I don't. I don't know that.
22	Q. Did you ever see any
23	communications from Fish and Wildlife Service
24	leadership about the importance of the
25	surrogate species project?

1	A. I know they exist, but I don't
2	remember specifically reading one. But I
3	know that it was being rolled out by the
4	Washington Office and the regions were asked
5	to start looking at this new concept called
6	surrogate species. So I'd - I'd heard the
7	name, but I didn't have any knowledge of what
8	it entailed and what it involved.
9	Q. Okay. And I'm gonna point you to
10	the Agency prehearing Exhibit 1.
11	MR. MUNDY: I can get you a spare
12	copy.
13	MR. MEHOJAH: Okay. I'm good.
14	Q. [BY MR. MEHOJAH:] Do you
15	recognize that document, Mr. Mowad?
16	A. My attorney just had a copy and
17	showed it to me recently, yes.
18	Q. Okay. Is that the first time
19	you'd seen that document?
20	A. Actually, it is.
21	Q. Okay. Who authored that document?
22	A. That's from Gaby Chavarria.
23	Q. Okay. And that's the - I'll take
24	that back. That's the individual that you
25	were trying to transfer to at some point?

1	
1	A. Yes.
2	Q. In December or January of 2013?
3	A. Yes.
4	Q. 2012, 2013?
5	A. Yes.
6	Q. Okay. And that document that you
7	said you were provided by your attorney
8	speaks to the surrogate species project?
9	A. You know, I read it once - I mean,
10	it speaks to the surrogate species issue, but
11	I don't - if you'll give me a second to read
12	it, I can tell you, but.
13	JUDGE GARVEY: Well, the document
14	speaks for itself-
15	A. The title is definitely about-
16	JUDGE GARVEY: Mr. Mehojah—
17	MR. MEHOJAH: The document speaks
18	for itself, I'm just asking—
19	JUDGE GARVEY: Just so - move
20	along. The document speaks for itself. He
21	didn't-
22	MR. MEHOJAH: Okay. I'm just
23	asking - I just asked him whether he knew,
24	Judge.
25	Q. [BY MR. MEHOJAH:] You received

1 communications from Dana Roth after you spoke 2 with Dr. Tuggle about this detail, didn't 3 you? 4 Α. Yes. And those communications, which I 5 Ο. believe were emails, mentioned duties that 6 7 you were going to be focusing on while you 8 were on your detail; is that correct? 9 I'm remembering - yes. I clearly remember she - that's where she informed me 10 11 that she didn't have - what she had in store 12 for me as far as working with the surrogate 13 species workshop were non-cerebral. That was 14 the term she used, was non-cerebral. 15 Ο. And how did she communicate that 16 term here? I can't remember if it was - I 17 Α. 18 think it was in an email. I'm gonna say I 19 believe it was in an email. If not, it was 20 in a phone call that I then followed up with 21 an email to document that, because I felt 22 that was important to document that here is 23 the lady putting on the workshop, that the 24 work I would be involved with was for the 25 most part non-cerebral. I found that

1	contradicting what I'd been told by Dr.
2	Tuggle.
3	Q. Okay. And the - but you don't
4	have - you can't point to that document
5	today, can you?
6	A. Um, we might be able to dig it
7	out.
8	Q. You don't have it in front of you
9	right now?
10	A. No.
11	Q. And there, in fact, was a
12	surrogate species workshop held in
13	Albuquerque; is that correct?
14	A. Yes.
15	Q. Okay. And that's - I think that
16	was on October 29^{th} was the first day; is that
17	correct?
18	A. That sounds correct. Um yeah,
19	that was the - that's the first day I
20	reported to Albuquerque, so if that is indeed
21	the case, my first day there was to attend
22	the workshop.
23	Q. Okay. So you were initially
24	contacted on September 26 th , 2012 by Dr.
25	Tuggle and asked to help plan and present

1	this workshop; is that correct?
2	A. I was asked to assist Dana Roth
3	with the workshop.
4	Q. Okay. So you were gonna help
5	organize the workshop; is that a fair
6	representation?
7	A. I don't think so. He wanted me to
8	just assist her.
9	Q. You were - let me - let me
10	rephrase that. You were - the detail was
11	intended for you to work on the surrogate
12	species workshop; is that correct?
13	A. Yeah, I would say that's correct.
14	Q. Okay. And then you showed up the
15	day of the workshop to begin the detail in
16	Albuquerque; is that correct?
17	A. That is correct.
18	Q. Okay. And the reason that you
19	showed up the day of the workshop and not
20	when the detail was originally intended to
21	begin, is because you requested Family
22	Friendly Leave from Dr. Tuggle, correct?
23	A. That is correct.
24	Q. Okay. You requested two sets of
25	Family Friendly Leave; is that correct?

1	
1	A. That's what I remember.
2	Q. Okay. The first one was near the
3	beginning of when the detail was supposed to
4	begin, and that was for 80 hours; is that
5	correct?
6	A. You know, I - I remember it was
7	for two weeks, so that sounds correct.
8	Q. Okay. Two weeks - two work weeks
9	in the Government is 80 hours?
10	A. That's what I'm thinking, yes.
11	Q. Okay. And that was Family
12	Friendly Leave?
13	A. I don't know, it was - I don't
14	know the designation, but it was the leave
15	that you are allowed to take to care for a
16	family member.
17	Q. Okay. And so you requested that
18	leave and it was granted?
19	A. Yes.
20	Q. Okay. And during that time you
21	were expected to secure care for your mother;
22	is that correct?
23	A. I wasn't expected to care, I was -
24	I told them I needed that time to try to find
25	a caregiver for my mother at that time. But

	1
1	because he would not give me an end date to
2	the detail, it was very difficult for me to
3	find a caregiver without an end date. People
4	want to know, are you hiring me for 30 days,
5	are you hiring me for 60 days? I can't take
6	your job if it's only going to be 30 days.
7	So the fact that they refused to give me any
8	kind of end date made finding a caregiver for
9	my mother almost impossible.
10	Q. At the conclusion, or the
11	exhaustion let's say, of the 80 hours of
12	Family Friendly Leave, you made another
13	request for Family Friendly Leave, didn't
14	you?
15	A. I think so, uh-huh.
16	Q. Is that a yes or a no?
17	A. Yes.
18	Q. Okay. And that was granted?
19	A. I think it's non-discretionary,
20	they have to grant that.
21	Q. Okay. They did grant it?
22	A. They granted it.
23	Q. Okay. And they did ask you for
24	medical documentation?
25	A. Uh-huh.

i	
1	Q. Do you recall whether that was
2	before or after the - they granted the Family
3	Friendly Leave for you?
4	A. Oh, no, I don't recall.
5	Q. Okay. They did grant it, and you
6	did provide them some documentation; is that
7	correct?
8	A. That's correct. I provided them a
9	letter from my mother's neurologist.
10	Q. Okay. So you were on, what is
11	that, 160 hours of Family Friendly Leave from
12	the beginning of when the detail was to end
13	(sic) until you arrived in Albuquerque on the
14	29 th of October, 2012?
15	A. That sounds right. I had over
16	2000 hours of sick leave on the books,
17	because I would never take sick leave, I went
18	to work with—
19	Q. No, I'm not asking you about your
20	sick leave, I'm just asking about the amount
21	of leave, just to get the chronology correct?
22	A. Well, I just want to make sure
23	you're not - I am not a person who abuses
24	sick leave. I had over 2000 hours of sick
25	leave-

1	JUDGE GARVEY: I think the record
2	would show, Mr. Mehojah, that from October 9 th
3	to October 29 would not be - would be three
4	weeks. So why don't you move it along?
5	Which is 120 hours.
6	MR. MEHOJAH: Thank you, Judge.
7	JUDGE GARVEY: So let's move it.
8	MR. MEHOJAH: Okay. Thank you,
9	Judge.
10	Q. [BY MR. MEHOJAH:] At some point
11	you finally did disclose to Dr. Tuggle that
12	you were cooperating with the IG; that's
13	correct?
14	A. Yes.
15	Q. Okay. And do you recall that that
16	was on October 5 th (sic), 2012?
17	A. Let me look for you right here. I
18	sent him an email specifically telling him
19	that. Yes, it was, it was on October 8 th
20	(sic) I sent him and email expressing that I
21	believed this detail was retaliatory and in
22	violation of the Whistleblower Protection
23	Act.
24	Q. Okay. Does it say in that email
25	that you were cooperating with the IG?

1	
1	A. I don't remember. Do you have a
2	copy?
3	Q. I don't. I'm just curious whether
4	you - whether you recall whether you
5	disclosed that you were cooperating with the
6	IG in that communication with Dr. Tuggle, as
7	you sit here today?
8	A. As I sit here today, I think it
9	says something like that you know I have made
10	protected disclosures to the IG. I don't
11	think that I said that I was still collecting
12	information - I seem to recall my wording
13	was: You know I have made protected
14	disclosures to the IG.
15	Q. Okay. All right. So your
16	testimony today is that you did indicate to
17	Dr. Tuggle on October 8^{th} in an email that you
18	were cooperating with the IG?
19	A. That I had made protected
20	disclosures to the IG.
21	Q. Okay. Okay, fair enough. You
22	didn't disclose the substance of those
23	protected disclosures that you called into
24	the IG?
25	A. No.

	1
1	Q. You didn't tell him it was about
2	the dune sagebrush lizard listing?
3	A. I don't think so.
4	Q. You didn't tell him that it was
5	about Oncor Electric and permit issues?
6	A. I'd like to get a copy of it. But
7	from memory, I don't think so.
8	Q. Okay.
9	A. I think I just told him I made
10	protected disclosures.
11	Q. Okay. And you - did you tell him
12	about your allegations to the IG about
13	Allison Arnold and Joy Nicholopoulos in that
14	email?
15	A. Not in that email. In a prior
16	conversation with him I expressed concerns
17	about a relationship between Joy and Allison,
18	and he quickly snapped and cut me off and
19	said, Allison works for me. And that clearly
20	indicated to me that he knew about the
21	relationship between Joy and Allison and that
22	he was actually running interference for
23	them, because the truth is she did not work
24	for him. He was just trying to run
25	interference for Joy and Allison.

1	Q. And what date did you make that -
2	have that conversation with him?
3	A. I don't have that in front of me,
4	
	but I can get it for you. Okay, um
5	Q. Did Steve Futrowsky tell you that
6	you were not supposed to disclose or contact
7	anybody else about this information?
8	A. Steve Futrowsky, when I asked him
9	right after the meeting, I think, in July if
10	I could let Director Ashe know that Tuggle
11	and Joy were under investigation, he said,
12	no, his Agency would let them know at the
13	appropriate time, or something to that
14	effect.
15	Q. I'm placing in front of the
16	witness Appellant's Exhibit Y. Is this an
17	email, Mr. Mowad?
18	A. Yes. I say: I will assist any
19	way I can. Is this confidential, or can I
20	inform the Fish and Wildlife Service
21	Director?
22	Q. Right. And I don't need you to
23	read it, but can you look at the date for me?
24	A. That was June 8 th .
25	Q. Okay.

1	A. So that was right after we had
2	spoken on the phone then.
3	Q. Okay. Just to be clear, because
4	you testified a second ago that it was in
5	July?
6	A. Well, I thought it was after the
7	meeting in-person, but from this, as it
8	refreshes my memory, it was from the meeting
9	by telephone.
10	Q. Thank you. And just as a general
11	matter, Dr. Tuggle would have had to have
12	known about your disclosures in order to
13	retaliate against you, correct?
14	A. Yes.
15	Q. And at some point Dr. Tuggle
16	communicated to you that the detail was going
17	to be a minimum of 60 days?
18	A. On repeated, repeated, many times,
19	minimal 60 days. And when I pressed for an
20	end date, I asked is it 90, is it 120? He
21	refused on multiple, multiple occasions to
22	give me an end date.
23	Q. He never told you it was going to
24	be longer than 60 days, did he?
25	A. That's what that means.
	1

1	Q. Did he say it's going to be longer
2	than 60 days?
3	A. Now you're word-smithing. When
4	you said - when I said, well, can I count on
5	- is it 90, is it 120? He says, I don't
6	know, and then he wouldn't give an end date.
7	So the answer is he - he left it open-ended.
8	Q. He could have issued a 120 day
9	detail, couldn't he have?
10	A. I don't know the answer to that.
11	I'm going to say I believe so.
12	Q. If you know.
13	A. I don't know personnel rules that
14	well, but, um, I - I'm going to say, based on
15	my experience, I believe that they can.
16	Q. Okay. And let me just…
17	A. Which would have been preferred,
18	because then I would have had an end date.
19	Q. And I believe you've already
20	testified to this, so we're not going to go
21	over this in any detail. If you could turn
22	to-
23	MR. MEHOJAH: Mr. Mundy, are these
24	also the Government exhibits, or are these
25	just-

ı	
1	MR. MUNDY: I have a copy, if you
2	want me to put it front of him-
3	MR. MEHOJAH: I'll put it. I can
4	stand with him.
5	MR. MUNDY: Okay.
6	Q. [BY MR. MEHOJAH:] I apologize. I
7	know I have another copy, but I'm getting a
8	little disorganized here.
9	If you could turn to Government
10	Exhibit 5.
11	A. Yes.
12	Q. You testified about this document
13	before? In response to questions from your
14	attorney?
15	A. I don't think so.
16	Q. This is a memo to the Director of
17	the Fish and Wildlife Service from-
18	JUDGE GARVEY: What exhibit - what
19	- what - where are you in the record?
20	MR. MEHOJAH: Government Exhibit
21	5, Judge, page 1.
22	JUDGE GARVEY: Okay. Thank you.
23	Q. [BY MR. MEHOJAH:] So your
24	testimony is you've not seen this document
25	before?

1	A. I have seen this document before,
2	but I don't think today, I don't think I've
3	seen this today.
4	Q. Okay. It's dated October 1 st ,
5	2012; is that correct?
6	A. That's the date stamp on the top.
7	Q. Okay. And earlier you testified,
8	in response to questions from your attorney,
9	that in order to detail a GS-15, either the
10	Director or one of the two Deputy Directors
11	in the Fish and Wildlife Service have to sign
12	this?
13	A. Have to approve it.
14	Q. Have to approve it?
15	A. Yes.
16	Q. Okay. And this looks like they
17	request to detail you from Austin to
18	Albuquerque; is that correct?
19	A. Yes.
20	Q. Okay. And it's dated October 1 st ,
21	2012?
22	A. It's dated October 1 st , 2012.
23	Q. Okay. And if you'll turn to the
24	second page of Government Exhibit 5, please.
25	This is a Standard Form 50, I believe? It's

1	a 52; is that correct?
2	A. Yes.
3	Q. Okay. And the very first line
4	under Part A, at the top of the document, and
5	it's a little cut off, there's a hole punched
6	there, but I believe it says detail NTE 60
7	days; is that correct?
8	A. Yes.
9	Q. What does NTE stand for, do you
10	know?
11	A. I believe it stands for not to
12	exceed.
13	Q. Okay. So this says detail not to
14	exceed 60 days?
15	A. Yes.
16	Q. Okay. And it's signed by, it
17	appears, under Number 5, Joy Nicholopoulos on
18	September 28 th , 2012; is that correct?
19	A. Give me a second here. It… well,
20	I just noticed, the approval for the detail
21	was signed October 24 th —
22	Q. That's not the question I asked
23	you—
24	Aand this was signed October 7 th .
25	They signed this weeks before the approval

1	came in.
2	Q. So this was signed on September
3	28 th , 2012 by Joy Nicholopoulos; is that
4	correct?
5	A. On September 28 th , 2012.
6	Q. Okay. And the proposed effective
7	date is October 7 th , 2012; is that correct?
8	That's under Item No. 4 at the top right of
9	the document?
10	A. Yeah, some initials next to it.
11	Q. Okay. And if you'll turn to page
12	4 of - sorry, yeah, page 4 of Exhibit 5,
13	please.
14	A. Page 4?
15	Q. And at the bottom it's bates
16	stamped, it's page 29 of 115, just to make
17	sure we're on the same page. Is that
18	correct?
19	A. Okay.
20	Q. And this is, again, an SF-52 - or
21	your position description; is that correct?
22	A. Um, position description,
23	(indiscernible) location. Yes.
24	Q. Okay. And this is dated September
25	28 th , 2012 as signed by Joy Nicholopoulos; is

1	that correct?
2	A. Yeah, same day as the phone call
3	we had.
4	Q. Okay. And this is two days after
5	the first phone call that Dr. Tuggle had with
6	you regarding the detail; is that correct?
7	A. Two days after the first phone
8	call is correct.
9	Q. Thank you. So you arrived in
10	Albuquerque on October 29^{th} , 2012 , and that
11	was the first day of the workshop. What was
12	- what did you do on that day?
13	A. Let me refresh my memory. Don't
14	want to hold this up, but give me just a
15	second.
16	JUDGE GARVEY: If you don't
17	remember - that was the first day of the
18	workshop and you arrived-
19	THE WITNESS: Yeah.
20	JUDGE GARVEY: -that day.
21	Q. [BY MR. MEHOJAH:] It was the
22	first day of the workshop?
23	A. Yes.
24	Q. Did you - did you attend the
25	workshop on that day?

1	A. Let me help us all out here just a
2	little bit, I'm not sure that's the first day
3	of the workshop. I think the first day of
4	the workshop must have been the next day,
5	because I show October 29 th as a Monday. And
6	it says I drove to the airport, I flew to
7	Albuquerque, the Regional Office staff failed
8	to pick me up at the airport; I hitched a
9	ride to the Regional Office. I met with
10	David Mendias; I went to meet with Tuggle
11	twice but the door was closed, so I went to
12	Joy's office. I drove in a Government rig to
13	arrange housing. Lodging was not reserved.
14	I called the AO to get per diem rates so I
15	could figure out how much I needed to pay. I
16	found a hotel on my own and I secured it.
17	So, no, the 29^{th} couldn't have been the first
18	day of the workshop. I traveled up there.
19	The second day it says that I - well, I won't
20	- I don't want to hold this all up, but no,
21	the 29 th was not the first day of the
22	workshop, that's when I travelled to
23	Albuquerque to find out that nobody was
24	Q. Do you remember what you did the
25	first day that you reported for duty in

	1
1	Albuquerque?
2	A. I don't, but I can—
3	Q. That's fine; if you don't
4	remember, you don't remember.
5	A. But I have it right here if you
6	want it-
7	JUDGE GARVEY: No. No, Mr. Mowad,
8	you don't - put those papers down. If you
9	don't remember-
10	THE WITNESS: Okay.
11	JUDGE GARVEY: -you say I don't
12	remember. Thank you.
13	THE WITNESS: Yes, ma'am. Yes,
14	Your Honor.
15	Q. [BY MR. MEHOJAH:] You were tasked
16	with taking notes during the workshop itself;
17	is that correct?
18	A. No.
19	Q. You didn't take any notes at all?
20	A. I wasn't a note taker, no.
21	Q. No? Not at all?
22	A. No. My job was to, at the end of
23	the workshop, compile the evaluation sheets,
24	but, no, I was not a note taker, and I would
25	have - I would have complained vehemently if

1 I had been assigned that duty, because I 2 would be really bad at it. 3 Were you required or requested to Ο. 4 coordinate note taking for that workshop? 5 Dana Roth asked me to help them Α. 6 find note takers for the workshop. 7 found that assignment difficult as I was not 8 a Regional Office personnel, I didn't know 9 the Regional Office administrative staff, so 10 to help her find note takers, for me, was 11 very, very difficult, and I don't think I did 12 find her any note takers, I think they found 13 their own. 14 Okay. But she did ask you to Ο. 15 coordinate that effort? 16 She asked me to help find note 17 Not coordinate that effort. To find 18 note takers. 19 Will you please turn to the Ο. 20 Agency's prehearing Exhibit 6, please? This 21 is an email from Dana Roth to a number of 22 individuals, including Joy Nicholopoulos; is 23 that correct? 24 Α. Yes. 25 And this is dated October 1st,

1	
1	2012; is that correct?
2	A. That is correct.
3	Q. And it looks like at the bottom
4	there's a notation that shows that there was
5	an attachment to this email; is that correct?
6	A. Yes.
7	Q. Okay. And that is entitled
8	surrogate species timeline activity dot XLS?
9	A. That is correct.
10	Q. Okay. If you could turn to the
11	second page of this document. And let me
12	ask, have you ever seen this document prior
13	to today?
14	A. I think Jeff showed it to me.
15	Q. Okay. Your attorney has presented
16	it to you before?
17	A. I think so.
18	THE WITNESS: Jeff, is this the
19	same one?
20	MR. MUNDY: I'm
21	Q. [BY MR. MEHOJAH:] If you don't
22	know, you don't know.
23	MR. MUNDY: Just say you don't-
24	A. I don't know.
25	Q. [BY MR. MUNDY:] Okay. Your name

1	appears in here on a number of entries, and
2	it appears that it - you're referenced by
3	your first name; is that correct?
4	A. Yes.
5	Q. Okay. For example, the first line
6	that you appear to be noted in here is about
7	four lines down, it's entitled presentation
8	to partners dash tried. And under the title
9	who delivers under that column, it says Dana
10	and Gary.
11	A. Yes.
12	Q. And Dana is Dana Roth?
13	A. I would assume so.
14	Q. And Gary is you?
15	A. I would assume so, as well.
16	Q. You're also in the item two down
17	from that, entitled presentation to partners
18	states, and it says Gary in Texas December,
19	Dana in New Mexico, offer made, had Larry
20	Boyle, blah, blah. So you're - you're
21	mentioned there as well; is that correct?
22	A. It says: Okay Gary with a
23	question mark.
24	Q. Yeah.
25	A. Yes.

1	Q. Okay. Down at the very - near the
2	very bottom, there's a entry entitled develop
3	draft agenda; do you see that on the left
4	hand side? It's about five up from the
5	bottom.
6	A. Yes.
7	Q. And under who delivers, that says
8	RTT comma Gary; is that correct?
9	A. Yes.
10	Q. Okay. It also notes that you're
11	gonna do a practice run through the agenda
12	with the Regional TT, Gary and RDT; is that
13	correct?
14	A. Practice run through - yes.
15	Q. Okay. And we won't go through the
16	rest of them, except for at the very bottom
17	on the second page of this spreadsheet, which
18	is page 3 of Government Exhibit 6. That item
19	is entitled note taking; is that correct?
20	A. Yes.
21	Q. And under the third column from
22	the left, which just says October 2 at the
23	top, it says, by October 15 th , make list of
24	people and make schedule. And to the right
25	of that is Gary; is that correct?

1	A. That's correct.
2	Q. Okay. And again, this is dated
3	(indiscernible) and that one is dated October
4	1 st ; is that correct?
5	A. It is.
6	Q. And all of these tasks appear to
7	me to be associated with the surrogate
8	species workshop; is that correct?
9	A. Yes.
10	Q. You also created a SharePoint
11	intranet site with - where information from
12	the workshop was uploaded; is that correct?
13	A. No.
14	Q. You never did that?
15	A. I don't have that capability.
16	Q. Did you upload material to the
17	SharePoint intranet site for the surrogate
18	species workshop?
19	A. No, I don't remember doing that
20	either.
21	Q. Okay.
22	A. Computers aren't my forte, Your
23	Honor.
24	Q. Do you know whether any of the
25	material that you compiled as a result of

1	this surrogate species workshop was uploaded
2	to the SharePoint intranet site for that
3	workshop?
4	A. After I compiled the evaluation
5	sheets for what people thought of the
6	worksheet (sic), I - I - I compiled that and
7	I did forward that to someone, maybe Charna,
8	I don't remember her last name. I think
9	she's like the outreach public affairs
10	person. And so, again, the duty that I was
11	assigned was to compile evaluation sheets. I
12	did that and I turned it in to Charna. After
13	that, I don't know what happened to it.
14	Q. If you could turn to Government
15	Exhibit 16, please. Do you recognize this
16	email?
17	A. I don't recognize it, but it is an
18	email to me.
19	Q. And it's dated December 6 th , 2012;
20	is that correct?
21	A. Um, you on No. 16?
22	Q. I'm sorry, No. 16, page - I
23	apologize for that. 16, page 1, 2, 3, 4, 5.
24	A. What does yours look like? What?
25	Can you repeat that?

ĺ	1
1	Q. Government Exhibit 16, page 5.
2	A. What page?
3	Q. Have you seen this document
4	before? I believe you're on the same
5	document I'm looking at now.
6	A. Okay. Let me look at it.
7	(Witness peruses document.) Yeah, I don't
8	remember it, but it's addressed to me, so,
9	yeah, I
10	Q. And it's from Dana Roth?
11	A. Yes.
12	Q. Okay. And this is dealing with
13	the surrogate species project presentation,
14	and the message was sent December 6 th , 2012;
15	is that correct?
16	A. Yes.
17	Q. Okay. And the workshop that the
18	Region held ended like, I think, the first
19	week of November; is that correct?
20	A. That's about the right timeframe.
21	Q. Okay. If you could please turn to
22	Government Exhibit 17. Do you recognize this
23	document?
24	A. I do.
25	Q. Okay. This is an email from you

1	to Dr. Tuggle; is that correct?
2	A. That is correct.
3	Q. And it's entitled surrogate
4	species info you requested, R2 is looking
5	great; is that correct?
6	A. That is correct.
7	Q. Okay. And it's dated December
8	13 th , 2012?
9	A. That is correct.
10	Q. Okay. Does this document identify
11	the number of tasks that you completed; is
12	that correct?
13	A. That is not correct. On the same
14	date I notified Dr. Tuggle that I was
15	retiring. This is a summary of what other
16	people had been working on, so it was a
17	status report of what other people had
18	completed as far as the surrogate species
19	workshop was concerned, because I wanted -
20	basically it was a closeout. I was right in
21	the middle - this is what other folks have
22	been working on, this is where we're at with
23	this.
24	Q. Okay. Did you talk to these
25	people to obtain the information that was

1	necessary to generate this email?
2	A. I don't remember if I talked to
3	them or if it was passed on to me from Dana
4	or their assistants. I couldn't tell you
5	where all this-
6	Q. Somebody responsible for these
7	duties told you what the status of the tasks
8	were, and then you put that in this email; is
9	that correct?
10	A. Somebody had to have given me this
11	information, because I wasn't tracking this
12	progress.
13	Q. Okay. And if you'll stay on that
14	page for a second, please. At the bottom of
15	your email, there's an email by - authored by
16	Dr. Tuggle to you on that same day; is that
17	correct?
18	A. December 13, yes.
19	Q. And it's about 10 minutes after
20	you sent your email to him; is that correct?
21	A. Right.
22	Q. Okay. And in that email, that
23	short email to him, you said schedule some
24	time to talk with him and Michelle about next
25	steps in the ES workforce plan; isn't that

1 correct? 2 Α. Yes. 3 Okay. And ES is Ecological Ο. 4 Services? 5 That is correct. Α. 6 Thank you. And just for purposes Ο. 7 of clarification, Mr. Mowad, and I'm not 8 trying to be insensitive, but I don't 9 understand, your mother suffers from I 10 believe you said a form of Alzheimer's? 11 Dementia caused by Alzheimer's. Α. 12 Okay. And I'm not a doctor so I Ο. 13 don't know what that means, and I'm not going 14 to ask you about that. 15 But what I would like to know is 16 you testified that you placed her into a - I 17 believe the term you used was senior 18 apartment complex? 19 Independent living. I don't know Α. 20 what term I used, but at that point she was 21 right on the edge of needing assisted living 22 versus independent living, and the price, 23 Your Honor, the price difference is huge. 24 were trying to make independent living work 25 for her. And the only way we could make

1 independent living work for her, legally, was 2 for us to be heavily involved, to make sure 3 she would take her medications, make sure she was eating, monitoring her progress that way. 4 In fact, her doctor refused to prescribe the 5 medicine unless we promised we would assist 6 7 to ensure that she takes it everyday. 8 Okay. And so that the record is 9 clear, you also stated that you were her sole 10 caregiver. 11 Α. Sole caregiver. 12 You had no other family? Ο. 13 Α. Just my wife. And my daughter 14 wasn't driving, my daughter was 15 years old. 15 Ο. All right, your wife was providing 16 assistance or no? 17 Α. My wife was helping. 18 Ο. Okay. 19 But my wife is a - my wife's a PA, Α. a physician assistant, she was working at a 20 21 cardiovascular hospital in Austin, very 22 grueling, 6:30 a.m. to 6:00 or 7:00 p.m. 23 every day. Yet to make this work, my wife 24 stepped up to the plate and after a 12-hour 25 shift at the hospital would go check on my

mom and help my mom.
Q. And that was - that was - that was
only after you left for this detail to
Albuquerque that she did that?
A. No, my wife helps whenever-
Q. Oh, she did help.
AI can't get there. Yeah.
Q. Okay.
A. But I'm just saying we helped as a
pair.
Q. Okay.
A. And after I left, my wife was
responsible for - for my mother. And that's
why at my own expense I would fly home every
weekend to make sure that I had food in the
house. She's since stopped eating, so now we
have issues because her brain's not telling
her to eat anymore and we're seeing dramatic
weight loss. But at that point, if I kept
food in the house, she would eat.
Q. And I don't need to know that, I
don't want to-
A. Okay.
QI don't want to dredge all that
up for you. I don't - that's not important,

1	and I apologize for you having to say that.
2	But my - so my question is, you
3	weren't her sole caregiver because your wife
4	also helped?
5	A. Semantics. I have - I was the
6	legally responsible person, the person that
7	by law, because she's no longer able to do
8	what the law says, activities of daily
9	living. I signed the papers to be legally
10	responsible for her.
11	Q. Okay. And then you received a
12	doctor's note from her neurologist, I
13	believe?
14	A. At the request of Michelle.
15	Q. To support the request - the
16	second request for 80 hours of Family
17	Friendly Leave?
18	A. Yes.
19	Q. And in that note it states that
20	your mother requires 24/7 care?
21	A. Yes.
22	Q. Who's providing her the care when
23	you aren't?
24	A. I think that letter was written,
25	quite honestly, as things should have been,

1	Your Honor, we knew we were right on the edge
2	of independent care versus assisted living.
3	The doctor's opinion is - at that point, is
4	that she probably should have been in
5	assisted living, getting 24 hour care. But
6	because she wasn't wandering off, wasn't
7	getting lost, we - we were taking that-
8	JUDGE GARVEY: Mr. Mehojah—
9	Athat position-
10	JUDGE GARVEY: -where are you
11	going with this? How is this relevant to
12	this-
13	MR. MEHOJAH: I'm just clarifying
14	the record, Judge.
15	JUDGE GARVEY: Well, if it's not
16	relevant, you don't need to spend a lot of
17	time on it. So why don't you ask something
18	that will clarify something relevant? Okay?
19	Move it along.
20	MR. MEHOJAH: Thank you, Judge.
21	Q. [BY MR. MEHOJAH:] You mentioned
22	that an individual, I'm sorry, I don't
23	remember his name, I think his name was, uh,
24	Marty-
25	A. Tuegel

1	Q. Tuegel, who I believe was in
2	charge of reviewing the permit for Oncar
3	(sic) - or Oncor Electric, right?
4	A. Yes.
5	Q. Okay. And he - you testified that
6	he told you that Joy Nicholopoulos pressured
7	him into inserting language into that permit?
8	A. That's correct.
9	Q. That allowed for the purchase of
10	temporary conservation credits?
11	A. Correct.
12	Q. Okay. And he told you that on a
13	telephone call?
14	A. No. I was actually in the
15	Regional Office at the time, and I was in
16	Michelle Shaughnessy's office when somebody,
17	I don't remember who, brought the permit in
18	with the language that Joy wanted added to
19	it, and said Marty won't add this in there.
20	It's - you know, he just won't do it. And
21	then after that I went down and spoke to
22	Marty.
23	Q. Okay. Michelle said that to you?
24	A. No, somebody brought it in, and
25	whoever was explaining it to Michelle

1	explained that Marty won't put the language
2	in that Joy has requested.
3	Q. And then you went down and
4	personally talked to him about this?
5	A. Yes.
6	Q. Okay. And that's when he told you
7	specifically that it was Joy Nicholopoulos
8	who wanted that done?
9	A. I believe so.
10	Q. As we sit here today that's your
11	testimony?
12	A. (No audible response.)
13	Q. You also mentioned something
14	called the Texas Plan?
15	A. Texas Conservation Plan.
16	Q. Yeah, the Texas Conservation Plan.
17	And you testified that you were told that it
18	was written by Steve Manning, correct?
19	A. Well, not solely. It was a group
20	project, but he had a major hand in the
21	writing of that plan.
22	Q. Who told you that?
23	A. Um, members of my staff, I'm
24	trying to remember which ones, but members of
25	my staff told me that.

1	Q. Okay.
2	MR. MEHOJAH: And I'm almost done,
3	Judge, I'm moving it along here.
4	Q. [BY MR. MEHOJAH:] Allen Glen is
5	an attorney that you testified called you
6	about a complaint that he made to the IG?
7	A. Correct.
8	Q. Okay. How do you know Allen Glen?
9	A. When I was the Texas State
10	Administrator, he would represent clients
11	coming to us that were looking for, oh,
12	different types of permits or regulatory
13	issues that my staff would be involved with.
14	Q. Do you have an ongoing
15	relationship with Mr. Glen?
16	A. I do.
17	Q. In what capacity?
18	A. We're friends. And also since
19	I've retired I've opened a consulting
20	business to try to make up the difference
21	between what I used to make and what I make
22	now, and occasionally he'll call and
23	recommend clients or potential work for me.
24	Q. And just one last question. Mr.
25	Mowad, when you first spoke with Dr. Tuggle

1	on the 26^{th} , did he – about your detail, did
2	he know that your mother required the level
3	of care that she required?
4	A. A lot of folks knew that my mother
5	was in Texas because she had Alzheimer's and
6	I had brought her there to take care of her
7	because she could no longer take care of
8	herself. So I'm going to say that I believe
9	he knew that, but I don't - I don't know to
10	what degree he knew all the details. But I
11	will say that day that you just mentioned,
12	the 26^{th} , that's the day I sent him an email
13	spelling out my family needs for my mother.
14	Q. After the phone call?
15	A. After the phone call.
16	Q. Thank you.
17	MR. MEHOJAH: Pass the witness,
18	Judge.
19	JUDGE GARVEY: Thank you. Mr.
20	Mundy?
21	REDIRECT EXAMINATION
22	BY MR. MUNDY:
23	Q. Mr. Mowad, I'm gonna just
24	hopscotch around responding to a few specific
25	points raised by Mr. Mehojah. If you would

1	go to Exhibit - the call transcript, Exhibit
2	CG - oh, excuse me, CJ. This would be the
3	first call, the one of the 26^{th} , CJ. Back of
4	the book, CJ-
5	A. Oh.
6	Qthe very last thing.
7	A. Sorry. Okay.
8	Q. Page 3. Mr. Mehojah had asked you
9	whether or not in this first call there was
10	discussion about the workshop, suggesting
11	that it was not, you said, yes, that appeared
12	to be correct. I would like you to please
13	look carefully at line 17 through 19 and
14	reconsider whether you need to amend your
15	answer whether or not the workshop was
16	discussed on this first call.
17	A. The one that says MS. SPEAKER?
18	Q. Yes. Page 3, lines 17 through 19.
19	It expressly discusses the workshop, on line
20	19, doesn't it?
21	A. On line - it says, so, we'd ask if
22	you can help us with that surrogate species
23	effort, and in particular the workshop that's
24	scheduled for the end of October.
25	Q. So the prior answer needs

1	correction, the workshop was addressed as a
2	
	specific need for surrogate species on this
3	first call?
4	A. That is correct.
5	Q. One thing I forgot to ask, and the
6	Judge wants to know all these abbreviations
7	and acronyms. I believe some of the emails
8	will have capital D, capital S, capital L.
9	What does that stand for?
10	A. Can I-
11	Q. Would it be dune sagebrush lizard?
12	A. DSL is dune sagebrush lizard, that
13	is correct.
14	Q. When you spoke to Mr. Coleman on
15	September 17^{th} of 2012 and then you said
16	within a few days of that he had contact with
17	who?
18	A. He had contact with Gaby
19	Chavarria, his supervisor, and then they had
20	a conference call with Assistant Director
21	Gary Frazier.
22	Q. Okay. Now, explain where he is in
23	the corporate - not corporate, the
24	organizational structure of the Agency, where
25	is he physically located and where does he

1 fit into the organizational structure? 2 Yeah, what - what was 3 concerning to me is Assistant Director Gary Frazier is located in Washington, D.C., he's 4 an Assistant Director for Endangered Species, 5 6 he's physically located right on the corridor 7 with Dan Ashe, Roland Gould, and Steve 8 Gurten, so they're in very close proximity to 9 each other. 10 Ο. And that communication, your 11 understanding from Mr. Coleman, occurred 12 within a few days of your contact on the 17th? 13 Α. Correct. 14 Okay. Now, he had asked you Ο. 15 whether - the only way it's possible to be retaliated against by the Agency is if Mr. 16 17 Tuggle knew. It is also equally possible 18 that if the senior management knew and wished 19 to retaliate, they could issue instructions 20 to Mr. Tuggle without him knowing the reason 21 why, but they could issue a directive saying 22 detail him to this and not explain why it was 23 occurring, correct? 24 Α. Absolutely. Once the Agency knew 25 it was me who had made the complaint and

1 worked with the OIG, then Dan Ashe and Tuggle 2 could certainly devise a way to make me pay 3 for that. Okay. You started to try and 4 Ο. I would like you to go ahead and 5 explain. 6 expound on why you were trying to explain 7 that the profile, while you might not have 8 been mentioned by name, why you would be 9 easily identifiable profile of the nature of 10 the complaint. 11 As I - as I mentioned, Your Α. Yes. 12 Honor, Rick Coleman told me that while he 13 didn't use my name, he said it was easy to 14 figure out that it was you, and then he 15 actually apologized. And the reason for that 16 is because the degree of detail that I 17 provided in my complaint would certainly make 18 me the only person that had access to that, 19 that knowledge, and like he said, it was very 20 easy for anybody to figure out it was me. 21 If you would turn to Exhibit AF. Ο. 22 Well, that's - I I may be off, excuse me. 23 made an incorrect note, but... I'll just skip 24 it. 25 Let me ask you to look at Exhibit

1	AK. The first line - or excuse me, second
2	line is from Ms. Roth to you, says you're
3	going to be assigned some tasks - some more
4	intellectually challenging than others. Is
5	that what you were thinking of when your
6	testimony to Mr. Mehojah, in response to his
7	questions about the more cerebral, or is
8	there something else in this?
9	A. No, there's something other than
10	this.
11	Q. Okay.
12	A. In this one she says more
13	intellectually challenging than others. But
14	in another one she says this is non-cerebral.
15	Q. Okay. So, all right, good enough.
16	Please turn to Defendant's Exhibit
17	5, the other notebook. Excuse me, the
18	Agency's. Let's start at the back with the -
19	you were asked questions about the position
20	description, which is the third page of
21	Defendant's Exhibit 5.
22	MR. MUNDY: This is the approval
23	for detail form, Your Honor. And on the
24	bottom right corner it says page 28 of 115,
25	and then there's a couple more in sequence.
	1

1	Q. [BY MR. MUNDY:] What was the date
2	- if you look at this position approval form
3	and then the position attachment with job
4	duties, at page 30 of 115, attached to this,
5	what is the date that this position
6	description was actually approved, what year?
7	A. Says it was approved in 2007, and
8	it says inactive at the top.
9	Q. So more than five years before
10	your detail?
11	A. Yeah, they pulled it out of the
12	file and
13	Q. Were you actually looking at the
14	written attachment, the position description
15	that went with this position approval form,
16	were you ever even given a copy of this thing
17	attached to it?
18	A. No. For the record, I was never
19	given this nor was I given an SF-50 or an SF-
20	52. I got the copy of the SF-50 from the
21	OIG, who got it from the Region.
22	Q. And then the request for personnel
23	action you said was actually approved by the
24	D.C. Headquarters senior staff on what date?
25	A. October 24 th .

1	Q. And that was after the time of the
2	communications between Ms. Chavarria, Mr.
3	Coleman, and Mr. Frazier?
4	A. Absolutely.
5	MR. MUNDY: Pass the witness, Your
6	Honor.
7	JUDGE GARVEY: Anything else, Mr.
8	Mehojah?
9	MR. MEHOJAH: No additional
10	questions, Judge.
11	JUDGE GARVEY: All right. Thank
12	you very much for your testimony today. You
13	are excused as a witness. Obviously you will
14	remain in the room for the remainder of the
15	hearing.
16	(Whereupon, the witness was excused.)
17	We'll take a five-minute break and
18	then you'll call your next witness, Mr.
19	Mundy. Thank you.
20	[OFF THE RECORD 2:00]
21	[ON THE RECORD 2:08]
22	WINTESS: BENJAMIN TUGGLE
23	JUDGE GARVEY: Do you promise that
24	the testimony you are about to give will be
25	the truth, the whole truth, and nothing but

ı	
1	the truth, so help you God?
2	THE WITNESS: I do.
3	JUDGE GARVEY: Okay. Please be
4	seated and state your full name for the
5	record, and spell your last name, as well.
6	THE WITNESS: My name is Benjamin
7	Tuggle, T-u-g-g-l-e.
8	JUDGE GARVEY: Mr. Mundy.
9	MR. MUNDY: Yes, Your Honor.
10	We're getting the echo again, can you fix
11	that volume?
12	MR. MEHOJAH: Okay.
13	MR. MUNDY: Your Honor, just for
14	clarification he's being called as an adverse
15	witness, he's identified as a Government
16	witness and being adversely, and so I will go
17	ahead and request leave to you for leading
18	questions, and I believe Mr. Mehojah will
19	then do his direct (indiscernible).
20	JUDGE GARVEY: Well, again Mr.
21	Mehojah may decide not to ask him any
22	questions, and then you - he would just leave
23	the room. So you decide what you want to ask
24	him.
25	MR. MUNDY: Certainly. Right.

1	
1	Very well, Your Honor.
2	DIRECT EXAMINATION
3	BY MR. MUNDY:
4	Q. Good afternoon, Dr. Tuggle. How
5	are you today?
6	A. Fine. How are you?
7	Q. Thank you. And we've had a chance
8	to meet and I took your deposition back in
9	May of 2014?
10	A. Yes.
11	MR. MUNDY: Judge, we're getting a
12	- quite a bit of feedback all of a sudden. I
13	don't know what changed in our arrangements
14	here.
15	JUDGE GARVEY: We'll put ourselves
16	on mute so you don't hear us. Is that
17	better?
18	COURT REPORTER: They can't hear
19	you.
20	MR. MUNDY: Thank you, Your Honor.
21	Judge, it may not be you, it may be one of
22	the other sources.
23	Q. [BY MR. MUNDY:] You and I have
24	had a chance to speak previously on May the
25	8 th when I took your deposition, correct?

1	A. Yes.
2	Q. Otherwise you and I have never met
3	before now, have we?
4	A. No.
5	Q. Okay. And when you and I spoke,
6	you testified it's what we call a 30B6
7	witness, prepared on behalf of the Agency to
8	testify on behalf of the Agency, correct?
9	A. Yes.
10	Q. The Fish and Wildlife. And to do
11	so you reviewed the Agency's prehearing
12	packet, the exhibits, and then the ones that
13	I submitted on Mr. Mowad's behalf, correct?
14	A. I think so. Yes.
15	Q. You did not go through the
16	entirety of all 13,000 pages of documents
17	produced by the Agency in its document
18	production to Mr. Mowad, did you?
19	A. I don't think so, no.
20	Q. Okay. You did not look through
21	any emails other than the ones that were
22	listed as exhibits, did you?
23	A. I don't think so.
24	Q. And did not go through any
25	personal diaries in - or anything other than

1	what was listed as exhibits by either side,
2	
	correct?
3	A. That's correct.
4	Q. And then beyond that, you looked
5	at a summation prepared by Mr. Mehojah to
6	prepare you for your testimony, correct?
7	A. Yes.
8	Q. And those were not your own notes,
9	those were expressly prepared by him, you had
10	no input into the factual preparation of that
11	summary, correct?
12	A. I don't think so.
13	Q. Okay. Getting into just some
14	general structure of the organization, there
15	are eight Regions in the U.S. Fish and
16	Wildlife Service, and you're the head of
17	Region Number 2; is that correct?
18	A. That's correct.
19	Q. That includes the State of Texas,
20	Oklahoma, New Mexico, and Arizona, correct?
21	A. Correct.
22	Q. Fair to say that due to just sheer
23	geographic size of Texas alone, as well as
24	diversity of habitats, it generates more work
25	than any of the other individual states,

1	volume-wise of work, correct?
2	A. I would imagine, yes.
3	Q. Okay. And because of that, you
4	have a - the position Mr. Mowad held back in
5	2012, what's known as the Texas State
6	Administrator. But there's not a corollary
7	position, say, in Oklahoma or New Mexico or
8	Arizona, correct?
9	A. Not at this time.
10	Q. Okay. Well, let's focus on the
11	time of 2012, is what I'm talking about
12	today.
13	A. That'll be great.
14	Q. Okay. It was just one extra layer
15	to kind of help in the management. And the
16	Texas State Administrator's job is
17	essentially a managerial position, they're
18	not out - normally out doing bird
19	(indiscernible) or getting their boots muddy,
20	that's not their day-to-day job, it's more of
21	a managerial position?
22	A. That would be true, yes.
23	Q. Now, with respect to you, you're
24	the highest ranking official in Region 2,
25	correct?

	1
1	A. That would be correct.
2	Q. And going up the organizational
3	pyramid from you, the next tier up is moving
4	to the D.C. Headquarters level, where you
5	have Deputy Directors and then the Director
6	himself, Mr. Ashe, correct?
7	A. That would be correct.
8	Q. It would be fair to say that
9	you're in one of the top 20 or so personnel
10	of the whole Fish and Wildlife Service,
11	correct?
12	A. That would be correct.
13	Q. Mr. Gould is - well, what was his
14	title in 2012?
15	A. Deputy Director.
16	Q. That's at the national
17	headquarters?
18	A. Yes.
19	Q. And then above him is Director
20	Ashe?
21	A. Yes.
22	Q. And then Mr. Frazier, do you know
23	Mr. Gary Frazier?
24	A. Yes.
25	Q. He is also at that most senior

1	level at the D.C. Headquarters?
2	A. Yes. He's Assistant Director.
3	Q. Okay. Tasked with endangered
4	species?
5	A. Yes. Mostly, yes.
6	Q. Okay. Your level - and this is in
7	no way negative, I assure you. Your level is
8	not a political level appointment, you're in
9	the regular civil service, the SES?
10	A. Yes.
11	Q. The people at the D.C. top tier,
12	like the Director, those are political level
13	appointments?
14	A. Director is a political appointee,
15	yes.
16	Q. Mr. Mowad was a - in 2012 Mr.
17	Mowad was a GS-15, correct?
18	A. Yes.
19	Q. Okay. And in that administrator
20	job, again we've already said, there's no
21	other corollary position in your other
22	states, correct?
23	A. Correct.
24	Q. So it's not necessarily indicative
25	to say there's no other GS-15 in those other

1	states filling a managerial role, just
2	because there's not such a position in
3	existence, or was not at that time?
4	A. That's correct.
5	Q. It is correct that Mr. Mowad was
6	in charge of all the Field Offices that you
7	had in the State of Texas, correct?
8	A. That is correct.
9	Q. For Ecological Services, correct?
10	A. For Ecological Services.
11	Q. Your - this chain of command does
12	not include the National Wildlife Refuge
13	System, that's a separate program, separate
14	chain of command than the Ecological Services
15	that he ran, correct?
16	A. As well as our Hatchery Operations
17	and our Migratory Bird (indiscernible).
18	Q. Those are independent chain of
19	command in their own-
20	A. Yes.
21	Q. He had under him the Ecological
22	Services - do you call it program or
23	division?
24	A. It's a program.
25	Q. Program. And that is the - the

1	program that is tasked with endangered
2	species listings, enforcement, regulation,
3	things like that, for the State of Texas,
4	correct?
5	A. Among other things, yes.
6	Q. Among - very good point. They
7	have a whole lot on their desks?
8	A. They do.
9	Q. Okay. It would be fair to say
10	that Mr. Mowad was the most senior person
11	stationed in Texas for the Fish and Wildlife
12	Service, correct?
13	A. Absolutely.
14	Q. Would it be accurate that for
15	Ecological Services tasks that first and
16	foremost on the list of their duties is
17	dealing with endangered species issues?
18	A. I would say the predominance of
19	the work is endangered species. They do a
20	lot with landowners as well, and they have
21	other activities that at times can be
22	equivalent to endangered species. But I
23	would say that the headline issues are
24	endangered species issues.
25	Q. Okay. And an example of other

1 things, they deal with oil spill issues, 2 natural resource damage? 3 Assessments, yes. But also Α. 4 working with private landowners for conservation benefits. 5 And I premise this question based 6 Ο. 7 on what we discussed in May, but at that time 8 at least, you did - you yourself did not know 9 how many species were on the endangered or 10 threatened list in the State of Texas; is 11 that correct? 12 Α. Yes. 13 Ο. It would be correct to say that 14 endangered species permitting issues are not 15 in your day-to-day job duties, not your 16 typical day? 17 Α. I wouldn't say that. I would say 18 that from time to time they can dominate my 19 entire schedule. But as it relates to making 20 field decisions, no, not really. 21 Ο. All right. So then you do 22 basically agree with that statement? 23 I'll represent to you that I'm taking these 24 statements from what we had discussed 25 previously, but. So you agree with that

1 basic premise then that that is not your 2 normal day-to-day job assignment? 3 Α. No, yeah, I would agree. depends on the day, however. 4 It is correct that with respect to 5 Ο. 6 how - we're focusing now on endangered 7 species discussion, my next question, okay? Α. Okay. 9 Is that recommendations come up Ο. 10 from the field level, you in the Regional 11 Office where you are, you examine the logic, 12 the scientific analysis, the methodology and 13 policy compliance, that's kind of the 14 distinction between what they're doing, 15 they're out counting the birds or counting 16 the fish, y'all are looking at methodology, 17 analysis, and whether this was in policy 18 compliance. Would that be a general 19 description of the differences that 20 Biologists in the field versus the 21 Headquarter - Regional - Regional Office? 22 Generally. I would hope that in 23 the construction of whatever decision that 24 they're making, that they're also doing the 25 analysis of the data that they're collecting

1	and they're looking at policy implications,
2	and they're making recommendations that are
3	aligned so that, you know, we're not at odds
4	when it gets to a Regional examination.
5	Q. But that, what we just described,
6	that is within their purview?
7	A. Absolutely.
8	Q. Okay. It is correct that - well
9	In Mr. Mowad's role as the State
10	Administrator, he would pull together the
11	information from the Biologists, assemble it,
12	put it together, send it to the Regional
13	Office, and then y'all look at that to make
14	an assessment to make sure that his analysis
15	is correct. Is that accurate?
16	A. In general, yes.
17	Q. And then the same thing is true,
18	when y'all pass it on to the National
19	Headquarters, they do the same type of thing
20	there. They're not going out recounting
21	stuff, but they look at analysis,
22	methodology, for soundness, for liability, so
23	forth?
24	A. That would be true. With perhaps,
25	sometimes, the degree of political

1	sensitivity.
2	Q. Now, moving on to kind of start
3	laying down a little bit of the structure and
4	the duties in the Regional Office, Ms.
5	Shaughnessy, Michelle Shaughnessy, in 2012
6	was the Assistant Regional Director to whom
7	Gary Mowad would directly report, correct?
8	A. Yes.
9	Q. That would be like his day-to-day
10	direct-report supervisor?
11	A. Yes.
12	Q. Next step up the organization
13	chain would be Joy Nicholopoulos, and her
14	title is Deputy Regional Director, correct?
15	A. Yes.
16	Q. And would it be fair to describe
17	her, I think her own terminology is, like,
18	chief operating officer?
19	A. Very much so.
20	Q. Okay. And then the next up the
21	organization chart would be you in the
22	Regional Director role, correct?
23	A. Yes.
24	Q. And then you - I understand
25	there's exceptions to everything, but the

1	general rule, one of your things is - roles
2	is to be the interface between the State, the
3	Region and then the interface with the
4	National Level Office, as a general rule?
5	A. In a general rule, yes, that would
6	be right.
7	Q. It would be accurate that when we
8	spoke in May you did not have a number - feel
9	for the number of employees under Mr. Mowad
10	in his Texas chain of command, correct?
11	A. That would be correct.
12	Q. Before this controversy began, it
13	would be fair to say you held him in very
14	high esteem and high regard?
15	A. Yes.
16	Q. You specifically sought him out
17	and sought his transfer to take that role in
18	Summer of 2010 to move from Washington, D.C.
19	to the Austin Office to be the State
20	Administrator, correct?
21	A. Yes.
22	Q. Let me ask you to assume - we've
23	heard quite a bit of discussion already today
24	and testimony today about Ms. Combs and her
25	involvement, so I'm going to skip over some

1 background we've already heard, try not to be 2 repetitive. But from your perspective, would 3 it be accurate that Ms. Combs appears to be the political tip of the spear on behalf of 4 the State as far as interfacing with the 5 6 Federal Government on proposed listings under 7 the Endangered Species Act in the State of 8 Texas? 9 I think it depends on the issue. 10 I don't - I've had issues brought up by Texas 11 Parks and Wildlife, the Governor's office. 12 have had different interactions. It depends 13 on what you mean by the tip of the spear. 14 mean, certainly we work a lot with her 15 office. 16 Let me read to you - I only have 17 one copy, and I apologize, I have bifocals so 18 I'm gonna have to stretch a little bit here. 19 Let me ask you to look at page 69 20 to refresh your memory. 21 Α. Uh-huh. 22 We had this exact discussion and Ο. you at that time said yes, from time to time. 23 24 And then I said okay. And you said, not 25 always.

1	1
1	A. Yes.
2	Q. Is that accurate?
3	A. Yes. I mean, that's - that's just
4	what I just said.
5	Q. But as a general rule, that is a
6	true proposition, then?
7	A. Yes.
8	Q. When you say not always, but yes?
9	A. Absolutely. I'm not trying to be
10	difficult; I'm just trying to be clear.
11	Q. Understood. And looking at Mr.
12	Mowad's role that - again, not his sole
13	duties by any means, but part of his role as
14	the Texas State Administrator is dealing with
15	Texas state political appointees in handling
16	misuse in the State of Texas, correct?
17	A. Absolutely. Yes.
18	Q. As a general rule, you wouldn't
19	want a low-level Biologist interacting with
20	politicians for all manner of reasons,
21	correct?
22	A. This is true, yes.
23	Q. By the same token, you don't -
24	hope to not have them calling your desk all
25	day every day, that's why he's there, to

1	handle that.
2	A. Agreed. Yes.
3	Q. Now, I'm just skipping over some
4	things, so we don't duplicate here, sir.
5	Q. Do you have any knowledge of Mr.
6	Mowad having any prior training or experience
7	with surrogate species methodology or policy
8	before being assigned to this detail?
9	A. I don't think anybody did.
10	Q. So no one in your whole region had
11	any prior experience or training with
12	surrogate species?
13	A. That was the purpose of the
14	workshops, that was the purpose of trying to
15	make sure that this was, um, um, as it was a
16	priority with our Director, was to pull
17	together the units of the organization to
18	hold the workshop with our state partners,
19	bring any field perspective, and start to
20	talk about how it is that we would implement
21	the Director's priority.
22	Q. So he brought no unique prior
23	experience or unique prior training about
24	surrogate species to the table at that—
25	A. His unique-

1	Qpoint in time?
2	A. His unique experience was the fact
3	that he was the highest ranking - rated
4	person that we had in the field at a GS-15,
5	and he was the only link that we - the
6	closest link that we had, from a management
7	perspective, at that level with the field.
8	Q. But the answer to my question,
9	sir, no, he had no prior experience, as far
10	as you know, in surrogate species; is that
11	correct?
12	A. That would be true. Yes, I guess
13	so.
14	Q. The workshop was to occur at the
15	end of October, the first of November, like
16	the 28 th , 29 th , through November 1?
17	A. I think so, yes.
18	Q. And that this was a program to
19	which you were inviting Biologists from your
20	own organization, as well as some of the
21	partner organizations, like, say, Texas Parks
22	and Wildlife or - or, um, I don't know who
23	else might be there, but it's not just solely
24	U.S. Fish and Wildlife attendees, it's open
25	to other groups by invitation?

1	A. Yes. Including other Federal
2	resource agencies.
3	Q. Like, maybe BLM, the Bureau of
4	Land Management, or anybody that might—
5	A. Forest Service, yes.
6	Q. Other - other agencies that are
7	dealing with endangered species?
8	A. Not specifically endangered
9	species, but landscape management.
10	Q. Okay. So would you say that this
11	surrogate species workshop was a thing
12	specific to endangered species, or it was
13	more general than that?
14	A. It was not specific to endangered
15	species, but it did include endangered
16	species. It was much more from a landscape
17	perspective. It included species, as well as
18	their habitats.
19	Q. And attendance at this program was
20	purely voluntarily, correct?
21	A. Yes. We sent out invitations.
22	Q. Okay. It was not compulsory
23	attendance for any of your other agencies or
24	compulsory for even other people than Fish
25	and Wildlife, other than people directly

1	ordered on a detail?
2	A. No, it was - it was expected that
3	people would attend the workshop and
4	participate as asked. I mean, I - I'm not
5	sure I'm clear about what you're asking.
6	Q. Well, I believe you've told me
7	previously that attendance at this was
8	voluntary.
9	A. From the standpoint of who we
10	invited. If the Forest Service wanted to
11	come, they participated. But the people
12	within the Fish and Wildlife Service, it was
13	expected that they would participate.
14	Q. There were approximately 50 to 60
15	total attendees, not including presenters,
16	correct?
17	A. I think so.
18	Q. There - as far as your memory
19	goes, you don't believe there were any
20	political type attendees?
21	A. I don't think so, no.
22	Q. You had a couple of your field
23	people from Texas there, correct?
24	A. Um yes. Um at least two or
25	three.

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1	Q. A handful?
2	A. Right.
3	Q. The whole staff didn't turn out-
4	A. Right.
5	Qby any means?
6	A. No.
7	Q. We've heard the name Donna (sic)
8	Roth, she was the person in charge of,
9	basically, organizing and setting the actual
10	program up; is that correct, the workshop?
11	MR. MOWAD: Dana.
12	A. Oh, okay.
13	Q. [BY MR. MUNDY:] My fault, excuse
14	me. My fault. Let me restate that. Dana
15	Roth, I'm sorry, I'm getting a little tired,
16	sir.
17	A. That's okay.
18	Q. Dana Roth was the one that was in
19	charge of organizing the workshop?
20	A. Yes. For all intents and
21	purposes, yes.
22	Q. You yourself didn't attempt to
23	organize this?
24	A. No.
25	Q. Okay. Ms. Roth did not

1	specifically request Mr. Mowad to be part of
2	her time, prior to you putting him on the
3	team, correct, or asking he be on the team?
4	A. What Ms. Ross - Roth did request
5	was some additional resources and a different
6	perspective from the field.
7	Q. But to answer my question, she
8	never specifically requested Mr. Mowad by
9	name, did she?
10	A. No. I don't think so, no.
11	Q. And it was not Ms. Nicholopoulos's
12	job duties to organize the workshop and
13	specific details in it, it was solely Ms.
14	Roth, correct?
15	A. It was Ms. Nicholopoulos's -
16	Nicholopoulos's responsibility to keep us on
17	time and to make sure that the workshop was
18	hitting the benchmarks it was - that was
19	necessary, but she did not organize.
20	Q. Okay.
21	A. She was reasonable for overseeing
22	Ms. Roth's - Dr. Roth's participation.
23	Q. To your knowledge, Ms.
24	Nicholopoulos did not have any involvement
25	with who should be a presenter at the

1	program, did she?
2	A. I don't think so. I'm not sure I
3	can really answer that question, because she
4	participated in some early discussions. But
5	I don't think that she was the one that made
6	the decision for presenters to present. I
7	just want to make sure I'm answering the
8	question correctly.
9	Q. And let me just say, I'm just
10	pulling from what we've discussed previously.
11	A. That's fine.
12	Q. Let me just show you where I'm
13	taking this from. Page 86, line 13. I asked
14	you: Did Ms. Nicholopoulos have any
15	involvement with who would be a presenter?
16	And your answer was: No, not to my
17	knowledge, no. Correct?
18	A. Right.
19	Q. Okay.
20	A. But that doesn't mean that she
21	didn't participate in the discussions.
22	That's
23	Q. We're only asking what you know,
24	and that's what I'm stickin' to.
25	A. Okay. That's fine.

1	Q. To your knowledge, after the
2	workshop concluded, no one was required to
3	remain in Albuquerque, other than Mr. Mowad,
4	correct?
5	A. That would be correct.
6	Q. To your memory, Mr. Mowad did not
7	arrive and report for duty until the day
8	before the workshop, because of a Family
9	Friendly request he had put in place
10	previously, correct?
11	A. I think that's correct, yes.
12	Q. It would be reasonable to conclude
13	that Mr. Mowad did not have any substantive
14	input into the presentation?
15	A. That would be true, yes.
16	Q. You would agree, I'm sure
17	strongly, that Mr. Mowad repeated over days
18	and weeks repetitively to request an end date
19	to this detail, but no specific end date was
20	ever given to him; is that correct?
21	A. That's correct.
22	Q. Likewise, he repetitively asked
23	you and communicated to you that he was upset
24	because he was trying to take care of his
25	mother, and communicated very clearly and

1	
1	emphatically that he needed an end date to
2	give - obtain a caregiver to take care of his
3	mother who was suffering from dementia and
4	Alzheimer's, correct?
5	A. He did indicate that, yes.
6	Q. Put that both in email and told
7	you that over the phone, correct?
8	A. Yes, that is correct.
9	Q. On many occasions?
10	A. Several.
11	Q. And he certainly continued to be
12	very vocal about that for weeks after that
13	initial call?
14	A. Up until the time that he arrived,
15	yes.
16	Q. It is true - well, you know what,
17	the record will speak for itself about the
18	detail for the first call.
19	Have you listened to the actual
20	audio file of the first call?
21	A. Only one.
22	Q. Okay.
23	A. Now, only - only one audio file.
24	Q. All right. The Judge has the
25	transcripts and the actual recordings, we'll

1	just bypass any discussion, and they will
2	speak for themselves.
3	A. Okay. That'll be fine.
4	Q. Now, when Mr. Mowad did not - he
5	put in for leave and did not report right
6	after the 20 - September $28^{ ext{th}}$ when he did not
7	report for duty, in that interim, roughly a
8	month, y'all went out - somebody assigned
9	Steve Chambers, another - another Fish and
10	Wildlife employee named Steve Chambers to
11	help organize, help Ms. Roth out, correct?
12	A. Yes.
13	Q. And from everything you know, Mr.
14	Chambers did a satisfactory job in filling
15	that role, didn't he?
16	A. Fairly well, I would imagine, yes.
17	Q. Okay. Have you previously said it
18	was a satisfactory job when I asked you that
19	exact question?
20	A. I think that's what I just said.
21	Q. Okay. With respect to workforce
22	planning, Mr. Mowad asked if he could do that
23	from Austin from his office there, didn't he?
24	A. I think he asked to do the entire
25	detail from his office.

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1	Q. Okay. And once the workshop's
2	over, the only thing that remained for him
3	was workforce planning-
4	A. No, there were other activities
5	that were left to be completed after the
6	workshop.
7	Q. We'll talk a little bit more in a
8	minute about some of these other things.
9	He did - well I want to skip
10	some so we're not repeating ourselves.
11	You yourself cannot verify and do
12	not have knowledge if Mr. Mowad made any
13	presentations at the tribal partners,
14	correct?
15	A. No, I wasn't there.
16	Q. Okay. You have no knowledge of
17	that, correct?
18	A. Um, can you ask me the question
19	again?
20	Q. Certainly. And if you would like,
21	I'll just show you so we're not chasin' each
22	other in circles here.
23	A. I just-
24	Q. Right.
25	Adon't understand-

1	Q. You—
2	
	Athe question.
3	Q. Sure. You have no knowledge about
4	whether or not Mr. Mowad made a presentation
5	to the tribal partners a couple of weeks
6	after the workshop, do you?
7	A. That would be true, yes.
8	Q. Okay. You don't know if he did
9	anything about developing the presentation
10	for that tribal presentation, do you?
11	A. I do not.
12	Q. You don't know if he made any
13	presentations to the State partners about
14	that surrogate species program, do you?
15	A. I do not.
16	Q. With respect to the workshop, and
17	let me just put this in context for you,
18	we've seen a - a planning worksheet from Mrs.
19	Roth about, you know, kinda who's gonna do
20	what, you know, in an early draft form, a
21	month before the workshop. Let me ask you if
22	you have any knowledge of Mr. Mowad doing any
23	of these following activities that are
24	suggested on Ms. Roth's worksheet. You don't
25	know if he helped develop the draft agenda or

1	final agenda, correct?
2	A. He did not.
3	Q. You have no knowledge of him
4	working to make security arrangements for the
5	workshop?
6	A. I don't think so, no.
7	Q. And this is something we've
8	discussed, I'm not trying to be petty here,
9	I'm just going from our prior discussion in
10	the worksheet. He certainly, to your
11	knowledge, as a GS-15, it would not be the
12	type of assignment to put him in charge of
13	refreshments, cookies and sodas for the
14	group?
15	A. That is very true.
16	Q. That would not be a normal
17	expectation?
18	A. That certainly would not.
19	Q. Certainly would not require his
20	level of experience and training?
21	A. Agreed.
22	Q. He did not need to be physically
23	present in Albuquerque to make room
24	arrangements or setup, did he? That wouldn't
25	be what you expect him to do-

1	7) NTO
	A. No.
2	Qas a GS-15, correct?
3	A. That would be correct.
4	Q. Let me ask you to assume that he
5	has testified that he - his sole activity at
6	the workshop was gathering up the comment
7	cards and tabulating them, kind of collating
8	them in some fashion. Did you actually
9	assign him that task, or do you know why that
10	was done?
11	A. Are you saying that was his sole
12	activity?
13	Q. Let me ask you to assume that's
14	what he did at the-
15	A. Well, that wasn't his sole
16	activity. There were a number of things we
17	articulated to him that we wanted him to do.
18	Q. Did he make any presentations at
19	the workshop?
20	A. He did not, no.
21	Q. Okay. He didn't make any
22	arrangements for any substantive input, you
23	know, provide information in the
24	presentations, we've already went over that.
25	A. Right, he couldn't because he

1	arrived the day of the workshop.
2	Q. Right. Okay. So let me ask you
3	to assume that his involvement was limited
4	to, you know, sitting in the audience, and at
5	the end of the day assembling the comment
6	cards and gathering them up, collating them?
7	A. I can't agree with that, because
8	we had asked him on a number of - on a number
9	of discussions that there were other things
10	that he was supposed to do.
11	Q. What else do you remember him
12	specifically doing at the workshop?
13	A. Specifically?
14	Q. Yes.
- '	
15	A. He attended one of the - the
	A. He attended one of the - the after-workshop meetings, at which we
15	
15 16	after-workshop meetings, at which we
15 16 17	after-workshop meetings, at which we assembled all of the work team to go over
15 16 17 18	after-workshop meetings, at which we assembled all of the work team to go over those day's activities and to look at what it
15 16 17 18 19	after-workshop meetings, at which we assembled all of the work team to go over those day's activities and to look at what it was that was beneficial, was not, have a
15 16 17 18 19 20	after-workshop meetings, at which we assembled all of the work team to go over those day's activities and to look at what it was that was beneficial, was not, have a discussion about how we might proceed the
15 16 17 18 19 20 21	after-workshop meetings, at which we assembled all of the work team to go over those day's activities and to look at what it was that was beneficial, was not, have a discussion about how we might proceed the next day. Mr. Mowad only went to one of
15 16 17 18 19 20 21 22	after-workshop meetings, at which we assembled all of the work team to go over those day's activities and to look at what it was that was beneficial, was not, have a discussion about how we might proceed the next day. Mr. Mowad only went to one of those, and as we expected him to be at all of
15 16 17 18 19 20 21 22 23	after-workshop meetings, at which we assembled all of the work team to go over those day's activities and to look at what it was that was beneficial, was not, have a discussion about how we might proceed the next day. Mr. Mowad only went to one of those, and as we expected him to be at all of those to participate in those discussions.

1 that he was not given a written document of 2 the assignments and duties expected of him? 3 I would agree with that, primarily Α. because he arrived and the workshop started, 4 and there was very little opportunity to talk 5 to him about the expectation of those duties, 6 7 except when we had a break, and then the 8 expectation was that we would go over those 9 at the end of the day. 10 Ο. Well, I'm going further than that. 11 It would be accurate to say that you don't 12 have anywhere any sort of written 13 instructions or expectations or performance 14 goals or plans or anything for the workshop 15 or this detail; is that correct? 16 No, that's not correct. 17 Ο. Well, when we took your 18 deposition, did I ask you that same thing and 19 ask you to bring with you any sort of plans 20 and documents, and you told me there were 21 none? 22 Well, there weren't any that I had 23 in my possession at that time. But there 24 were several things that I know that I wrote 25 down, because I had some discussion about

1	them when I was talking to Gary.
2	Q. Let me - let's look over this
3	together.
4	MR. MUNDY: Page 94, Counsel, line
5	15.
6	Q. [BY MR. MUNDY:] You were asked
7	the question: But you don't have anywhere
8	any sort of written instructions or
9	expectations or performance goals or plans or
10	anything for this workshop or this detail; is
11	that accurate? And your answer was: Yeah, I
12	think that's pretty accurate, other than the
13	ones articulated in the paperwork that
14	facilitated the detail.
15	A. That would be correct—
16	Q. Was that your answer?
17	A. Yes, that is correct, but—
18	Q. And that - just a moment. The -
19	the - that would be what's been marked as
20	Defendant's Exhibit No. 5, that's the
21	workplace approving the detail, the transfer
22	to the detail, correct?
23	A. Yes.
24	Q. Okay. You would agree that there
25	is no written document that you can point to

1	that shows his assignment, expectations, job
2	duties or performance goals or plan for this
3	detail; is that accurate, that you can
4	specifically point to?
5	A. That were written and given to
6	him? I mean, I'm trying to make sure that
7	you under - I understand the question.
8	Q. Okay.
9	A. That were written and given to
10	him?
11	Q. Let's read the question together,
12	sir, maybe this will refresh your memory. I
13	asked you specifically at line - at page 96,
14	line 2: So one more time, though, the bottom
15	line is there's no written document that you
16	can point to that shows his assignment,
17	expectations, job duties, or performance
18	goals planned for this detail; is that
19	accurate? And your exact answer was, quote,
20	Answer: I can't point to it, no. Was that
21	your exact answer?
22	A. That would be correct.
23	Q. Thank you, sir. With respect to
24	Defendant's Exhibit No. 5, the paperwork -
25	well, let me give you a copy I'll put in

1 front of you. I've got it somewhere - here 2 This is the Defendant's exhibits. 3 Turn to Tab 5, please, sir. 4 Α. Okay. 5 I'll give you a moment to just Ο. 6 flip through the pages. We're gonna talk 7 about a series of questions about that. 8 Okay? And this is the, Exhibit 5 is the SF-9 50 form that approved the (indiscernible) of 10 further detail for Mr. Mowad, correct? 11 Α. Yes. 12 It is correct that you don't know Ο. 13 when exactly that paperwork was actually 14 filled out, because you actually did not sign 15 it; is that your testimony previously? 16 Um... That looks like my signature. 17 Sir, let me hand you, we'll look Ο. 18 together at page, up in the corner here, page 19 99 of your deposition. I'll give you a 20 moment to review that. 21 Α. Okay. 22 Ο. I asked that exact same question 23 going over that exact same form, and in fact 24 your testimony in May was that you did not 25 actually sign that form. Is that what your

1	testimony was in your deposition?
2	A. That could be true.
3	
	Q. We're gonna take this in two
4	steps. I'm going to let you answer what you
5	want to say, but I'm asking you first, in
6	May, did you tell me under oath, that that
7	form, you did not sign it?
8	A. This particular form?
9	Q. The only question now is, did that
10	- was that your testimony from May? It look
11	like it reads different for the Judge.
12	A. Well, it says that - I said I
13	didn't sign it. But I guess that's
14	incorrect.
15	Q. I'm going to let you have your say
16	now. You're saying that is your signature on
17	there?
18	A. This looks to be my signature.
19	Q. Okay. So today your testimony's
20	different than what your testimony in May
21	was. You don't know why you answered it then
22	versus today, but there's a difference
23	between what you said in May versus what
24	you're saying right now, correct?
25	A. For this particular item, I'm -

1	I'm afraid so. If the question was, did I
2	know when this was prepared? The answer
3	would be no. If you're asking me if I signed
4	this, it looks like my signature.
5	Q. Well, in May, we looked at that
6	exact form and you said for the specific
7	detail itself? And I said, yes, the SF-50
8	form? You said yes. And I asked you a
9	question at page 99, line 17, quote: When
10	that was actually filled out that said not
11	less - excuse me - not to exceed 60 days,
12	when you actually had that form filled out
13	with that language, and your answer was: I
14	don't know. I don't know because I didn't
15	sign it. That was your sworn testimony in
16	May, wasn't it?
17	A. That was my sworn testimony.
18	Q. Okay.
19	A. And
20	Q. And we'll move along.
21	A. Okay. We'll move on.
22	Q. It is accurate you do not have -
23	other than that, you have no list or document
24	that would show his job duties or
25	expectations, other than that form, correct?

i	ı
1	A. In a formal form, that would be
2	correct. I'm agreeing with you.
3	Q. Okay. It's not just in a formal
4	form, you don't have an email typed up with—
5	A. No. That is true. That is true.
6	Q. There's nothing in writing
7	anywhere you can point to, other than that
8	form, that showed his expectations or job
9	duties, correct?
10	A. That would be correct.
11	Q. It is your testimony that - at
12	least when we spoke in May of 2014, couple
13	months ago, as of the date we spoke, under
14	oath in May of this year, you had not had any
15	dialogue with personnel from the OIG
16	referencing investigation about allegations
17	made by Mr. Mowad; is that correct?
18	A. That would be true, yes.
19	Q. And you're not aware of whether or
20	not the OIG has ever made findings of
21	retaliation by you, Mr. Ashe, or Mr. Gould
22	related to whistleblower type activities,
23	correct?
24	A. Ask me that again?
25	Q. Yes, sir, and I'll - let me get -

1	make sure I'm not missing anything here.
2	A. I mean, I just didn't understand
3	the question.
4	Q. Sure.
5	A. Okay.
6	Q. Let me double check myself and
7	make sure I didn't misspeak.
8	To your knowledge, has the Office
9	of Inspector General ever made any findings
10	of retaliation by you, Mr. Ashe, or Mr. Gould
11	related to whistleblower type activities?
12	And your answer is: No, not that I'm aware
13	of. Is that correct?
14	A. That would be true, yes.
15	Q. If you would, I'll refer you to
16	Plaintiff's Exhibit B, Bravo, dated - I've
17	got my copy here. What's the date of that
18	exhibit, sir?
19	A. July 11 th , 2013.
20	Q. I, in fact, showed you that at
21	your deposition, correct?
22	A. I'm not sure you did. After my
23	deposition?
24	Q. Well, let me suggest to you,
25	refresh your memory here, when we started

1 today we talked about you said you had seen, 2 in preparation for your deposition testimony 3 on behalf of the organization, you had gone through all the plaintiff's exhibits and all 4 the defense exhibits. Do you remember that 5 6 testimony? 7 Α. Well, maybe I misunderstood. Are 8 you asking me if I've seen this as 9 Complaint's exhibits? 10 Ο. Have you ever - let's take a step 11 back. When you gave your deposition 12 testimony, is it correct that you, in 13 preparation for that testimony, went through 14 these exhibits on behalf of Mr. Mowad, as 15 well as the exhibits on behalf of the Fish and Wildlife Agency? 16 17 Α. No, I - I hate to be in a 18 recanting situation, but I'm not sure that I 19 ever saw Mr. Mowad's, um... exhibits. I'm not 20 sure that I did. I mean, if I said that I 21 did, I'm - I was assuming that I was looking 22 at something else from the standpoint of the 23 - the complaint that he filed or something of 24 that nature. I'm not sure I saw this entire 25 exhibit.

1	Q. All right.
2	A. All right, I mean, I—
3	Q. Well, looking at that exhibit,
4	it's true now you see, in fact, evidence of
5	such a finding as I just described, correct?
6	A. Yes.
7	Q. Looking at page 18, line 13, sir,
8	if we'll look here together, from your
9	deposition. I asked you: Did you review Mr.
10	Mowad's prehearing submission packet, and
11	your answer was what, sir?
12	A. I did. And it was a
13	misunderstanding on my part. So I - I have
14	to apologize. But I've never seen this.
15	Perhaps it was a misunderstanding
16	about my answering the question.
17	Q. Okay. Have you ever seen that
18	document before today?
19	A. I have seen this document, yes.
20	Q. And just to be very clear here, so
21	we - I want to backup because we seem to have
22	a little trouble communicating. Very
23	clearly, as of May 2014, it is your sworn
24	testimony that no one from the OIG or OSC,
25	Office of Special Counsel, ever spoke to you

1	about any of the allegations made by Mr.
2	Mowad?
3	A. That is clear.
4	Q. Okay.
5	A. Absolutely.
6	Q. Just want to make sure.
7	A. That's clear.
8	Q. Let's talk about workforce
9	planning for a bit.
10	A. Okay.
11	Q. We can clear these things out of
12	the way.
13	A. Okay.
14	Q. Workforce planning is a managerial
15	type activity, doing business plans,
16	personnel assignment, workload, budget, and
17	things like that, correct?
18	A. In essence, and predicting what
19	the organization needs with the budget that
20	it has. Looking at efficiencies.
21	Q. In your - in your view, that was
22	the other component of the detail for which
23	he was assigned to the Albuquerque Office?
24	A. Yes.
25	Q. And it is your testimony that you

1 asked him to start with the State of Texas as 2 his first part of workforce planning, 3 correct? That is true. 4 Α. He could have done that assignment 5 Ο. 6 sitting in his office in Austin, Texas, 7 correct? 8 Α. Technically, maybe. I don't know. 9 Well, sir, if you - if you don't Ο. 10 know, why would you assign him to physically 11 sit down the hall from you in the Albuquerque 12 Office? 13 Α. Because the predominance of that 14 was - was not only his workforce planning, a 15 lot of that was the surrogate species 16 assignment. 17 And - well, we've already talked Ο. 18 about that, so I'm not going to replow that 19 ground. But as far as workforce planning, he 20 could have done those assignments about the 21 State of Texas sitting in his office in 22 Texas, couldn't he? Technically, yes, I guess he 23 Α. 24 could. Certainly that part of the workforce 25 planning.

1	
1	Q. Would you expect him to be able to
2	do workforce planning type work without a
3	computer?
4	A. Um Uh, that's a good question.
5	I would say no.
6	Q. Okay.
7	A. Certainly you would need to talk
8	to people, and you would have to have access
9	to the latest budget.
10	Q. He would - he would need a
11	computer to do - I don't know if y'all use
12	Excel worksheets or whatever kind of programs
13	y'all use, but-
14	A. I would imagine, yes.
15	Qin this day an age, you would
16	expect it to be done on a computer, not
17	typing up on a Selectric and turning in his
18	homework, correct?
19	A. That would be true.
20	Q. Do you know how long it took for
21	him to actually receive a computer when he
22	was assigned to Albuquerque?
23	A. I do not.
24	Q. It is accurate that when he was
25	physically in Albuquerque, you did not meet

1	with him every day, correct?
2	A. That is true.
3	Q. It is correct you didn't even meet
4	with him once a week about workforce
5	planning, correct?
6	A. That is correct.
7	Q. It is also correct that you cannot
8	name one single person he met with in the
9	Albuquerque Office about workforce planning;
10	is that correct?
11	A. I can't name anybody, no. But
12	that wasn't my assignment; that was his.
13	Q. He was a direct report to you
14	while on detail while in Albuquerque, though,
15	correct?
16	A. That was correct, yes.
17	Q. He was not to be reporting and
18	communicating with Ms. Nicholopoulos,
19	correct?
20	A. He did not report to Ms.
21	Nicholopoulos, no.
22	Q. He was supposed to be a direct
23	report to you, no one in between y'all?
24	A. That is true.
25	Q. Okay. Did he - it is also

1	correct, he did not turn in paperwork on
2	workforce planning assignments for the State
3	of Texas employees to you?
4	A. That is true.
5	Q. You have no knowledge of him
6	turning it in to anyone else that you can
7	say?
8	A. Not that I know of, no.
9	Q. Okay. You're not aware of any
10	such document anywhere?
11	A. Not that I know of.
12	Q. You familiar with what an exit
13	memo is?
14	A. I would imagine it's a memo that
15	you send when you're exiting.
16	Q. Kind of a wind up document,
17	explain where I'm leaving things?
18	A. Okay.
19	Q. You know, what? He's already
20	testified; I'll just pass over that, I don't
21	want to waste time.
22	It would be correct that when Mr.
23	Mowad left Albuquerque, that detail position
24	remained vacant for a while, correct?
25	A. I think maybe a month.

1	Q. And then he was replaced by a
2	person who was not even from Ecological
3	Services, correct?
4	A. That is true.
5	Q. And it was also an employee from a
6	lower level, correct?
7	A. One grade level below him, because
8	we didn't have anymore GS-15s in the field.
9	Q. And when Mr. Mowad was physically
10	transferred from the Austin duty post to
11	Albuquerque, his work that he was doing in
12	the State of Texas, his State Administrator
13	tasks, were reassigned out to other Field
14	supervisors in the State of Texas?
15	A. They were not reassigned. What we
16	wanted to do was to make sure that the
17	activities that he had going on were covered
18	by the other individuals. They weren't
19	reassigned those - those works.
20	Q. Did you appoint a - you've heard
21	the term Acting, to fill in for him? Kinda
22	like a substitute to-
23	A. We did not.
24	Qbe the - so no Acting State
25	Administrator appointed, correct?

İ	
1	A. True.
2	Q. It's correct you've not seen the
3	affidavit of Mr. Justin Wedel, correct? Or
4	at least as of May you had not?
5	A. No.
6	Q. Or Mr. Allen Strand?
7	A. No.
8	Q. Same for Mr. Cloud, you hadn't
9	seen his, correct?
10	A. No.
11	Q. Okay. You would agree that your
12	opinion on a professional level, you believe
13	Mr. Tom Cloud to be an honest man?
14	A. Yes.
15	Q. No reason to question his
16	integrity whatsoever, correct?
17	A. Not that I'm aware of.
18	Q. Same would be true for those other
19	gentlemen, Mr. Strand and Mr. Wedel?
20	A. I would imagine. I don't know
21	Mr
22	Q. Wedel?
23	A. Wedel, I don't know him.
24	Q. Okay. We'll set him aside. Mr.
25	Strand, you have no reason to question his

1	honesty, do you?
2	A. No.
3	Q. Okay. In fact, your testimony is
4	that you believe Allen Strand to be an honest
5	man, correct?
6	A. I think I just said that.
7	Q. I'm just trying not to duplicate
8	some things, so I'm jumping over some notes
9	here, sir.
10	Of the people that came to - were
11	assigned to the Albuquerque detail after Mr.
12	Mowad, none of them were given a detail
13	beyond 60 days, were they?
14	A. I don't think so. I don't think
15	so. I'm not… I don't think so.
16	Q. You know, Mr. Radikey, he was one
17	of the people that came afterwards, correct?
18	A. Yes.
19	Q. And - and we've talked previously
20	and you told me that as far as he went,
21	assignment to the detail and his
22	participation was voluntary, correct?
23	A. Yes.
24	Q. Okay. For Gary Mowad, it was not
25	voluntary, he did not have the right to

1 decline, correct? 2 That was not a topic of Α. 3 discussion. You would agree, you've already Ο. 4 5 said, he attempted repeatedly, and he objected vociferously, repeatedly, to you for 6 weeks about-7 Α. He said he had complications 9 getting care of his mother, and we 10 accommodated that. 11 But you continued to insist on him Ο. 12 reporting physically to the Albuquerque 13 Office, didn't you? 14 Well. Yes, I thought that it Α. 15 would very beneficial for what we needed him 16 for, yes. 17 Ο. But you mandated that he 18 physically be in Albuquerque? 19 I did not mandate that. I mean, Α. 20 the detail was there. I remember very 21 clearly saying that, when he asked me about 22 the length of the detail, I said very 23 clearly, get here, let's get some work done, 24 and we'll figure out where this detail needs 25 to go.

1	Q. In looking at Defendant's Exhibit
2	5, I'll give you a moment to look that over
3	again. The assignment, the compulsory
4	appearance on the detail, required the - yes,
5	sir - it required the express approval of the
6	National Headquarters in Washington, D.C.
7	because he was a G S-15, correct?
8	A. Yes.
9	Q. You couldn't just sign off on that
10	order, you had to get the D.C. Headquarters
11	approval?
12	A. Yes.
13	Q. And that approval was made on
14	October 24 th of 2012, correct?
15	A. Where would the approval be?
16	Q. I'm going from your prior
17	testimony, you're more expert than I am about
18	any forms.
19	A. I - I mean, would it be here? I
20	mean, I - because if that's the case, this
21	says it's October 25 th . This-
22	Q. October 25 th ?
23	A. Okay.
24	Q. Okay. I don't mean to quarrel,
25	24 th or 25 th you say?

1	A. Yeah. I'm just trying to - what
2	you're asking.
3	Q. Well, the question is, what date
4	was he actually - what date did the
5	Washington, D.C. National Headquarters
6	expressly approve it?
7	A. The 25 th .
8	Q. And I'll ask - let me suggest to
9	you, turn back one prior page, the cover
10	page, and at the bottom it's signed by Mr.
11	Rowan Gould, dated October 24 th .
12	A. 24 th , okay.
13	Q. Okay?
14	A. Approved. Yes.
15	Q. But the actual approval for the
16	assignment only becomes effective the date
17	Mr. Gould puts his signature on there signing
18	off, correct?
19	A. Yeah, pretty much. Yes, I would
20	say so.
21	Q. Okay. Changing subjects. Ms.
22	Allison Arnold, she - if we follow your
23	organizational chain of command, she is down
24	the chain of command below Ms. Nicholopoulos,
25	correct?

1	
1	A. Yes.
2	Q. She was underneath Mr. Mowad,
3	correct?
4	A. Yes.
5	Q. It is your testimony that to your
6	knowledge they had nothing to do with each
7	other than a pure work in the same agency; is
8	that correct?
9	A. That would be correct.
10	Q. And you absolutely have not made
11	any inquiries to determine if Mr. Mowad's
12	allegations about a relationship between Mrs.
13	Arnold and Mrs. Nicholopoulos was, in fact,
14	accurate, have you?
15	A. I've not what?
16	Q. I'm using your terms. Let me make
17	sure I get 'em accurately here.
18	A. No, I just need you to repeat the
19	question.
20	Q. That's what I'm-
21	A. Okay.
22	Q. I don't want to force words, I
23	want to try and use your own. Here, so we
24	don't dance around each other, give me a
25	moment. I'm going to ask you these

1	
1	highlighted questions, sir.
2	A. Okay.
3	Q. Okay?
4	A. Did I do any inquiries to
5	determine if the allegation is true or false?
6	Q. And your answer was what, sir?
7	A. Absolutely not.
8	Q. Okay. It's true that the Agency
9	has ruled against anti-nepotism and
10	fraternization between people in the chain of
11	command, correct, sir?
12	A. I would imagine. I think so. I
13	mean, rules, as in certainly within the
14	organizational structure.
15	Q. Yes. So that's accurate?
16	A. Yes, I would say so, yes.
17	Q. Okay.
18	MR. MUNDY: Judge, I'm just trying
19	not to be repetitive, so I'm editing things
20	out at this point.
21	Q. [BY MR. MUNDY:] With respect -
22	Mr. Mowad has, let me ask you to assume,
23	given testimony about issues at Fort Hood
24	dealing with the regulation of the golden
25	cheek warbler. Okay? The golden cheek

1	
1	warbler's a Federally listed endangered
2	species, correct?
3	JUDGE GARVEY: I believe that was
4	not part of the-
5	A. Yes.
6	Q. And—
7	JUDGE GARVEY: I'm sorry - sorry,
8	Mr. Mundy. Mr. Mundy, back up. Is that part
9	of his complaint to the Office of Special
10	Counsel, is that included in there as a
11	disclosure? In his Office of Special Counsel
12	complaint?
13	MR. MUNDY: It deals with - yes,
14	Your Honor, about Ms. Combs and Ms.
15	Nicholopoulos, and the relationship-
16	JUDGE GARVEY: No, no, no, I
17	understand the big picture. I'm looking at
18	the little picture of what he put in his
19	complaint to the Office of Special Counsel.
20	And did it include the warblers?
21	MR. MUNDY: I don't believe that
22	exact specific detail was in the-
23	JUDGE GARVEY: Right, so we won't
24	go on any farther with that. We're looking,
25	again, we're truly limited—

1	MR. MUNDY: Okay.
2	JUDGE GARVEY: -to what went to
3	the Office of Special Counsel. Let's all
4	focus here.
5	MR. MUNDY: All right. Okay.
6	Q. [BY MR. MUNDY:] It is within his
7	job duty to deal with the interface of the
8	State of Texas for Fish and Wildlife with the
9	other Federal agency as opposed - and Ms.
10	Nicholopoulos, in his view, is interfering
11	with that job duty and enforcement and
12	regulation, that he would have a compulsory
13	duty to report that, correct?
14	A. I - I-
15	Q. Let me make a simpler question.
16	A. Please.
17	Q. Sure.
18	A. Because I'm not sure what you just
19	asked me. I'm not - I'm not trying to be
20	difficult, it's just that you—
21	Q. Let me make a simpler question.
22	A. Okay.
23	Q. That got very long. I'm trying to
24	be mindful of the Judge's admonition here.
25	It is correct that if a man in Mr.

1	Mowad's position believes, rightly or
2	wrongly, that if people believe there is
3	preferential treatment being given that
4	circumvents the normal enforcement of the
5	Endangered Species Act, he should be
6	reporting that as misconduct for
7	investigation by the OSC or OIG, correct?
8	A. Oh, absolutely, yes.
9	Q. Okay.
10	A. As any other staffer would be
11	expected to do so.
12	Q. It's correct that you have no
13	writing or anything else, email, from Mr.
14	Gould indicating his approval of Mr. Mowad's
15	assignment to the detail before October 24,
16	2012; is that accurate?
17	A. That would be accurate, yes.
18	Q. And abbreviation on that Exhibit
19	5, NTE60, that means not to exceed 60 days,
20	correct?
21	A. Yes.
22	Q. If on the audio files and
23	transcripts that accompany them it has you
24	saying the detail will be a minimum of 60
25	days, that is different than not to exceed 60

1	days, correct, those are different terms?
2	A. Yes.
3	Q. It is your memory that Mr. Mowad
4	first disclosed to you that he made some sort
5	of whistleblowing allegation, on a phone call
6	that took place on Friday, September 28 th ,
7	correct?
8	A. I think so, yes. I think so.
9	Q. Okay. Well, all right, let me
10	just to look right at the tail end of page
11	205 and beginning of page 206. I'll give you
12	just a moment if that helps you.
13	A. Here?
14	Q. Yes, sir, it starts up here. Just
15	to give you some context for it.
16	A. Okay.
17	Q. This is not a memory quiz.
18	A. Well, it's a good thing.
19	Q. Okay. So let me back up and
20	repeat that one more time just to be clear so
21	that you can be less than equivocal, okay?
22	A. Okay.
23	Q. It is your memory and your sworn
24	testimony that Mr. Mowad first disclosed to
25	you that he made whistleblowing allegation on

	1
1	a phone call that took place on Friday,
2	September 28 th , 2012; is that correct, sir?
3	A. I think so. I know it was a
4	Friday.
5	Q. Okay. That date is what you gave
6	me in your deposition.
7	A. That probably is the date that I
8	thought it was.
9	Q. Okay.
10	A. As long as it's a Friday.
11	Q. Okay. And that is the exact same
12	date Ms. Nicholopoulos has signed this detail
13	request for personnel action is 9/28/12;
14	isn't it, sir?
15	A. Yes, it is.
16	Q. It's Defendant's Exhibit 5.
17	A. Yes. But it could have been the
18	next - it could have been the Friday It was
19	a Friday. And, I mean, I'm not trying to be
20	difficult. I know I said the 28 th . But it
21	was a Friday, I don't-
22	Q. Your testimony in May was-
23	A. It was the 28 th , yes, that was my
24	testimony.
25	Q. Okay.

1	A. It was a Friday when I - I
2	remember my testimony, I was very emphatic it
3	was a Friday, and then we talked about dates.
4	So I said the 28th.
5	MR. MUNDY: Pass the witness, Your
6	Honor.
7	JUDGE GARVEY: Thank you. Mr.
8	Mehojah.
9	MR. MEHOJAH: Judge, can we go off
10	the record for just one second? I have a
11	question I'd like to ask you.
12	JUDGE GARVEY: Okay. Off the
13	record.
14	[OFF THE RECORD 3:11]
15	[ON THE RECORD 3:13]
16	JUDGE GARVEY: Back on the record.
17	MR. MEHOJAH: Thank you.
18	CROSS-EXAMINATION
18 19	-
	CROSS-EXAMINATION
19	CROSS-EXAMINATION BY MR. MEHOJAH:
19 20	CROSS-EXAMINATION BY MR. MEHOJAH: Q. Dr. Tuggle, I just want to quickly
19 20 21	CROSS-EXAMINATION BY MR. MEHOJAH: Q. Dr. Tuggle, I just want to quickly have you respond to - or clarify your
19 20 21 22	CROSS-EXAMINATION BY MR. MEHOJAH: Q. Dr. Tuggle, I just want to quickly have you respond to - or clarify your testimony today. You had your deposition
19 20 21 22 23	CROSS-EXAMINATION BY MR. MEHOJAH: Q. Dr. Tuggle, I just want to quickly have you respond to - or clarify your testimony today. You had your deposition taken by Mr. Mundy - Mundy in May?

1	A. Yes.
2	Q. And that deposition was recorded?
3	A. Yes.
4	Q. And there were a number of
5	questions that were asked you about dates
6	during that deposition?
7	A. Yes.
8	Q. Okay. Specifically dates
9	associated with when certain communications
10	occurred between you and Mr. Mowad about the
11	detail from Austin to Albuquerque; is that
12	correct?
13	A. That is true.
14	Q. Okay. I'm going to place the
15	deposition in front of you, and again we're
16	looking at pages - the bottom of 205,
17	beginning of 206, when you were just
18	testifying. During the deposition you
19	testified that Mr. Mowad first disclosed to
20	you that he made whistleblower allegations on
21	September 28 th ?
22	A. Yes.
23	Q. And then if you'll look here, yes,
24	on line 6 of page 206 you clarified.
25	A. I did.

1	
1	Q. Your deposition testimony; is that
2	correct?
3	A. That is true.
4	Q. And that was in May at the same
5	time that this deposition was occurring?
6	A. That is true.
7	Q. So is it accurate to say that the
8	- you were mistaken during your deposition
9	testimony and you corrected yourself?
10	A. That is true. And I - I tried to
11	- to clarify it at that time, because there
12	was some confusion about the dates.
13	Q. Okay. Do you recall how many
14	telephone conversations you had with Mr.
15	Mowad about this detail from Austin to
16	Albuquerque?
17	A. Three or four.
18	Q. Okay. You had one on the 26 th of
19	September-
20	A. Initially.
21	Q2012, that was the first time you
22	communicated the detail-
23	A. Yes.
24	Qis that correct? You had another
25	call with him on the 28 th ; is that

	1
1	A. Yes.
2	Q. Okay.
3	A. I think so.
4	Q. Okay. And it appears from your
5	deposition testimony you also had a call with
6	him on October 5 th ; is that correct?
7	A. Yes.
8	Q. Okay. And what, if any, of those
9	dates do you recall Mr as you sit here
10	today, Mr. Mowad disclosing to you that he
11	was making whistleblower allegations?
12	A. He said that he had talked to the
13	IG, it was that - that last series of phone
14	calls, so I think it was October 5 th , it was
15	on that Friday.
16	Q. Okay.
17	A. Not - not in the first part of
18	those discussions.
19	Q. Okay. All right. And in response
20	to some questions by Mr. Mundy, you said Ms.
21	Dana Roth didn't request Mr. Mowad by name to
22	assist at the surrogate species workshop; is
23	that correct?
24	A. That's true.
25	Q. What did she request from you?

1	A. She requested a great deal of help
2	primarily because she was behind on the
3	schedule. There were aspects of the
4	scheduling that when she put together she was
5	not aware that we needed in the context of
6	the workshop. The way the workshop came down
7	was the Director directed that we would have
8	workshops, all the Regions would have
9	workshop, on surrogate species. But what was
10	key to this whole discussion was the
11	involvement of all the GS-15s - I'm sorry.
12	Q. Go ahead.
13	A. The GS-15s, as well as the
14	coordination of the Regional Office and the
15	Field Office, because it's the Field where
16	the surrogate species-
17	JUDGE GARVEY: I'm sorry, you-
18	Awas actually going to be
19	implemented.
20	JUDGE GARVEY: I just wanted to
21	make sure Mr. Mundy was still in the room, I
22	didn't see him. Sorry. Go ahead.
23	MR. MUNDY: I was just getting a
24	different color Marks-a-Lot, Your Honor.
25	JUDGE GARVEY: Go ahead. Can you

1 repeat that, sir. 2 Α. Okay. So-3 JUDGE GARVEY: Your answer. All the Regions had workshops, and go from there. 4 5 All the Regions had workshops. Α. 6 was a directed requirement that all the 7 Regions had workshops from the - from the 8 Director himself. And so there were aspects 9 of the workshops that included all of our 10 State partners and all of our major Federal 11 partners, but not only from the standpoint of 12 the Regional Offices, we had to incorporate a 13 lot of the - the implementation and the - and 14 the education of surrogate species to the 15 Field. 16 [BY MR. MEHOJAH:] Okay. 17 was your, um, belief that Mr. Mowad could 18 bring that Field perspective to the surrogate 19 species program? 20 Absolutely. He was the only GS-15 Α. 21 we had in the Field, and all of the other GS-22 15s that we had involved in the process, and 23 we had all of our GS-15s, were in the 24 Regional Office, so their perspective was 25 more from the programmatic, reviewing what

comes out of the Field, versus the individual that's in the field closest to our field personnel and — and being that liaison to the Field in terms of what surrogate species implementation meant.

O. And it was your expectation when

- Q. And it was your expectation when you communicated the detail to Mr. Mowad on September 26th, 2012, that he would come to Albuquerque and help with the surrogate species workshop?
- A. Yes, that is true. And at that particular time, we were going through a series of budget cuts that also required us to take a good hard look at our efficiencies, our Field structure, and that was the other part of why we needed him to come in, as a GS-15, to look at workforce planning. He was previously the Deputy Law Enforcement Chief in Washington, D.C., and certainly, you know, that would be something as as Deputies of the Chief Operating Officers would have some experience with, we thought.
- Q. Okay. Let me focus you back on your understanding of the surrogate species project. You testified in response to Mr.

1 Mundy's questions that, um, nobody had 2 training in surrogate species. 3 Α. That would be true. Why is that? 4 Ο. 5 Well, the whole concept of Α. surrogate species is one that the Director 6 7 decided that we would focus on in terms of 8 how we utilize our resources in the Field. 9 And so if you think about it from the 10 standpoint of - of an - of a ecosystem with 11 animals in that ecosystem, the Director has 12 said time and time again that we don't have enough resources to spend on individual 13 14 So what he decided was that we species. 15 would identify those indicator species and 16 try to focus on those to give us an idea 17 about how those habitats work. And so that 18 coordination, in terms of choosing those 19 surrogate species or those indicator species, 20 we had to work with our partners to be able 21 to do that. So the training was not only to 22 get people familiar with the concept, but 23 also to get them familiar with the 24 implementation. 25 Ο. Okay. And you were trying to

1	figure out how to run this workshop when it
2	was the beginning of - end of September,
3	beginning of October 2012?
4	A. It was a new fiscal year, yes.
5	Q. Okay. You didn't have a manual
6	that said this is how you will present a
7	surrogate species workshop?
8	A. No. There was no manual.
9	Q. Okay. Is it fair and accurate to
10	say that you had a concept and you were
11	trying to task a team to bring that to
12	fruition?
13	A. Very true. And introduce those
14	concepts to people that were learning about
15	it for the first time or being introduced to
16	it for the first time.
17	Q. Okay. Did you have GS-15s, other
18	than Mr. Mowad, tasked with - with-
19	A. Yes.
20	Qworking on that project?
21	A. Yes.
22	Q. Okay. How many, about?
23	A. All of our Assistant Regional
24	Directors, as well as the Deputy, um, what
25	seven, I think.

Q. Okay. Seven other GS-15s?
A. Yes. Um, I think it's seven. I
think it's seven.
Q. Okay. And Mr. Mowad was the only
GS-15 in the Field in Region 2 at the time?
A. Yes.
Q. Okay. He's a senior level
manager?
A. Yes.
Q. Okay. You counted on him to come
and help out with this project?
A. Yes. Particularly from the Field
perspective.
Q. At some point after you
communicated to Mr. Mowad that you wanted him
to come out to Albuquerque on this detail,
did - was it your primary responsibility to
get him an office and get him a computer, get
him a phone?
A. No.
Q. Who's was that - who - who did you
expect to - to coordinate that?
A. That would probably be the Human
Resources folks, the IT people. Certainly we
had some discussion about where the office he

1	would be sat, two or three offices down from
2	me, on the same wing. I mean, that's not the
3	kind of thing I do.
4	Q. Were you aware that - that he's
5	made an allegation that he didn't have a
6	computer that was functional at the time that
7	he arrived?
8	A. Well, I was not aware, primarily
9	because he had a laptop.
10	Q. Okay.
11	A. And when I would go in to stick my
12	head in or we would have some conversations,
13	he had a laptop computer and it was plugged
14	into the network.
15	Q. Okay. You didn't actively try to
16	prevent him from having access to a computer
17	system?
18	A. No.
19	Q. Okay. You expected that he would
20	have what he needed when he got here?
21	A. Absolutely.
22	Q. Okay. And you tasked other people
23	to do that?
24	A. That is true.
25	Q. Whose decision was it to detail

1	Mr. Mowad to Albuquerque?
2	A. That was my decision.
3	Q. Okay. It wasn't Dan Ashe's
4	decision?
5	A. No. Did Dan Ashe ever call you
6	and ask you to detail Gary Mowad to
7	Albuquerque?
8	A. No.
9	Q. Did Rowan Gould ever ask you to do
10	that?
11	A. No.
12	Q. Okay. It was your decision?
13	A. It was my decision.
14	Q. Okay. Okay. And when you had
15	that conversation with him on September 26 th ,
16	2012 where you communicated that decision to
17	detail him to Albuquerque from Austin, he
18	didn't disclose to you on that date that he'd
19	made - he'd begun cooperating with the
20	Inspector General, did he?
21	A. No, he did not.
22	Q. Prior to your decision to
23	communicate that detail to Mr. Mowad, let's
24	just say on the date September 26 th , 2012,
25	were you aware that Mr. Mowad's mother

1	required special care because she had
2	Alzheimer's?
3	A. I was not aware of that.
4	Q. Okay. He never told you that
5	prior to that call?
6	A. No.
7	Q. Okay. Were you trying to create a
8	hardship for him by putting him on this
9	detail?
10	A. Absolutely not.
11	Q. Okay. And the detail, which is
12	variously communicated in paper as not to
13	exceed 60 days, and then there's a phone call
14	conversation where it was communicated that
15	it would be a minimum of 60 days, it could
16	have been shorter than 60 days, correct?
17	A. It could have been. And I - I did
18	not want to restrict my options primarily
19	because I didn't know how long the task was
20	going to take. I remember on the phone
21	saying very vividly, Gary, get here, let's
22	figure it out and - and then we'll go from
23	there.
24	Q. Okay. You never told him it was
25	going to be a permanent transfer?

1	A. No.
2	Q. Okay.
3	A. Because it wasn't, it was a
4	detail.
5	Q. Okay. And you never, um, you
6	never told him it would a 120 day detail?
7	A. No.
8	Q. Okay.
9	A. No.
10	Q. And when you went out to, um,
11	Austin to review the matters that Mr. Mowad
12	had under his supervision as the State -
13	Texas State Administrator, was it your
14	expectation that the transfer responsibility
15	of those duties was permanent?
16	A. No. The State of Texas is a very
17	volatile, potentially, situation, and our -
18	our - the only reason we went out was to make
19	sure that all the tasks that he had
20	identified were covered by the other
21	staffers. There was no idea that we would
22	permanently assign. In fact, we did not
23	permanently assign anything. Our - our
24	conversation very much was do we have this
25	covered.

1	Q. Okay. It's not reasonable, is it,
2	to just expect it to be that a senior level
3	manager to go unsupervised for two months?
4	A. Not in Texas.
5	Q. Okay.
6	A. No.
7	Q. I'd like for you to look again
8	there at Exhibit 5 of the Government's
9	prehearing exhibits.
10	A. Yes.
11	Q. Okay. There's a - a date on the
12	top of this document; is there not?
13	A. Yes.
14	Q. And what is that date?
15	A. October 1 st , 2012.
16	Q. Okay. And then there - this is a
17	memo to the Director from yourself, right?
18	A. Yes.
19	Q. Okay. And is that your signature
20	next to your name?
21	A. That is my signature.
22	Q. Okay. And as - as has been
23	established in testimony, GS-15s require the
24	approval of somebody in the - either the
25	Director or one of the two Deputy Directors

1	in D.C. to approve it; is that correct?
2	A. That is true.
3	Q. Okay. So this appears to have
4	been sent on October 1 st , 2012?
5	A. Yes.
6	Q. Okay. And, again, you testified
7	that Mr. Mowad first disclosed to you that he
8	was cooperating with the IG on October 5 th ,
9	2012?
10	A. Yes.
11	Q. Okay.
12	A. Yes.
13	Q. And if you'll turn to the next
14	page, again, and we won't belabor this, Ms.
15	Nicholopoulos appears to have signed this
16	document?
17	A. Yes.
18	Q. Okay. And this is the SF-52
19	request for personnel action?
20	A. Yes.
21	Q. And that date-
22	MR. MUNDY: Your Honor, I object
23	to him leading his own witness at this point.
24	JUDGE GARVEY: The document speaks
25	for itself. I mean, what - the signature's

1	on it or not.
2	MR. MEHOJAH: I just want to
3	clarify - I'm getting there. I'll just jump
4	to the next question.
5	Q. [BY MR. MEHOJAH:] If you'll flip
6	back to the first page again, Dr. Tuggle?
7	A. Yes.
8	Q. It appears that Rowan Gould didn't
9	sign this until October 24^{th} , 2012.
10	A. Yes.
11	Q. Is that unusual for it to take
12	this long for something like this to get
13	approved?
14	A. No, it isn't.
15	Q. Okay. All right.
16	A. It has to go through Human
17	Resources and get through the AD for Human
18	Resources, Denise Sheehan, and then it gets
19	on the train - the bus and goes to Main
20	Interior. I mean, no, it's not unusual.
21	Q. Okay. And at some point, Mr.
22	Mowad requested Family Friendly Leave; is
23	that correct?
24	A. That is true.
25	Q. Okay. And was that around the

1	time that you first communicated the detail
2	to him?
3	A. Yes, it was.
4	Q. And did you approve that?
5	A. I did.
6	Q. Okay. And after he - do you
7	recall why he requested Family Friendly
8	Leave?
9	A. I think it was to get care for his
10	mother and - I think it was mainly to get
11	care for his mother.
12	Q. Okay. At the conclusion of that
13	first 80 hours, did he request additional
14	Family Friendly Leave?
15	A. Yes.
16	Q. Okay. Did you approve that?
17	A. Yes, we did.
18	Q. Did you ever speak with a Mr. Rick
19	Coleman about Mr. Mowad's complaints to the
20	IG?
21	A. No.
22	Q. Did Mr. Coleman ever contact you
23	about any complaints Mr. Mowad made to him?
24	A. No.
25	Q. How about Gabriela Chavarria?

1	
1	A. No.
2	Q. How about a Mr. Frazier? In D.C.?
3	A. No.
4	Q. How about Dan Ashe?
5	A. No.
6	Q. How about Rowan Gould?
7	A. No.
8	Q. Did the IG ever contact you after
9	September 26 th , 2012 about Mr. Mowad's
10	allegations?
11	A. No.
12	Q. Do you recall a statement that you
13	made to the effect of, quote, I'm not going
14	to list the dune sagebrush lizard in the
15	middle of oil country in the middle election,
16	or something to that effect?
17	A. I do remember saying that. But
18	the caveat was, without a sufficient
19	conservation plan.
20	Q. Okay.
21	A. And—
22	Q. That's the whole thing?
23	A. That is the whole sentence. I
24	mean, I - we started a conversation tongue in
25	cheek, like we're gonna list, you know, a

1	sand dune (sic) lizard in the middle of the
2	Permian Basin, the largest producing - oil
3	producing field in the United States in an
4	election year without a conservation plan.
5	Q. Okay.
6	A. So the rest of that sentence was
7	very much without a substantive reason.
8	Q. Okay.
9	A. So I think that I - you know, when
10	you're talking to staff, it's very easy to
11	sort of just, you know, say something
12	flippant like that, but the context was,
13	without a sufficient conservation plan.
14	Q. Was this at a Fish and Wildlife
15	Service meeting?
16	A. It was - I - it was at a meeting
17	in Austin, I think.
18	Q. Okay.
19	A. I think at the Austin Field
20	Office.
21	Q. All right. Were you addressing,
22	primarily, Fish and Wildlife Service
23	employees?
24	A. Yes.
25	Q. Okay.

1 Yes, it was. Α. 2 You were having an internal Ο. 3 conversation? 4 Α. Yes. 5 Okay. Why, if you know, if you Ο. can tell me today, why is it that you 6 7 believed that it was important for Mr. Mowad 8 to engage in workforce planning in 9 Albuquerque and not in Austin? 10 Α. Well, in 2012, as I said before, 11 we were going through a serious budget cut, 12 and our Ecological Service program was not 13 only in the red, but for the projected year, 14 I think we were - we were taking a 15 significant cut. And to have a workforce 16 planning process, you need to talk to the 17 people in Washington - the Regional Office as 18 it relates to how those pieces play across 19 the landscape. It would be the Regional 20 Office that would be looking at the 21 priorities setting. It would be the Regional 22 Office that would be looking at how it is 23 that we have a full picture of - of the 24 other, um, personnel in the - in the Field 25 Offices throughout the Region. It would have

1 been a much more productive conversation. 2 Now, that's not to say that once that took 3 place, certainly you'd go back to whatever station you were and start to work on those 4 things. But it was key to have those initial 5 conversations with the people that were 6 7 primarily responsible for the overarching 8 budget process and the efficiencies of the 9 Region. 10 Ο. Was it your expectation that Mr. 11 Mowad would only work on, um, workforce 12 planning for the State of Texas? 13 Α. No. No, it was not. I - I asked 14 him to start with Texas. We were going to 15 look at Oklahoma and New Mexico and Arizona, 16 as well. 17 Ο. And you anticipated that he would 18 do that? 19 Anticipated that he would do that. Α. 20 Ο. Okay. And let me just backup real 21 Since Mr. Mowad didn't report to duty 22 in Albuquerque until about the day of the 23 surrogate species workshop, was there anyone 24 else you had to detail in? I believe you 25 said it was Steve Chambers?

1 Steve Chambers was the one that Α. 2 picked up those initial duties. But the 3 thing that Steve didn't have in his portfolio, is he was another Regional Office 4 person. He didn't have that field 5 6 perspective. He did not - he was not the 7 intermediary between the Regional Office and 8 the Fields. And that was the perspective 9 that we were trying to get in to this process 10 from the standpoint of how we thought Gary 11 could contribute to the overall surrogate 12 species effort. 13 Ο. Is it your - was it your expectation that he would act as an 14 15 ambassador to the Fields; is that what you're 16 saying? 17 Α. Certainly understanding where we 18 were trying to go, from a senior level 19 perspective, and ambassador's a good word. 20 Liaison is a very good word, because taking 21 those organizational understandings about 22 what surrogate species are, and then relating 23 them to the Field for implementation, they're 24 absolutely critical. 25 Ο. And there was a surrogate species

1	workshop?
2	A. Yes, there was.
3	Q. It did occur?
4	A. Yes.
5	Q. Okay. In your Regional Office?
6	A. Yes.
7	Q. Okay. And I believe we've already
8	established that there was a tribal version
9	of that workshop?
10	A. Yes. The tribal workshop, the
11	Fish and Wildlife Service has a
12	responsibility to consult with tribes,
13	government to government, separate nations.
14	So we could not invite the tribes in with our
15	other Federal and State partners. They
16	almost precipitously demand that they have
17	their own consultations. So as we were
18	working with our State and our Federal
19	partners, we need to have a compendium - a
20	companion workshop for our tribal partners to
21	- to orient them to this new concept in terms
22	of where we were going with landscape
23	conservation.
24	Q. And just to be clear, you weren't
25	involved in every minute detail of running

ı	
1	this-
2	A. I was not.
3	Qthese workshops? Okay.
4	A. No. I wasn't.
5	Q. You're kinda the - you're the head
6	of the - you're the head of the office,
7	right?
8	A. Of the Region.
9	Q. Yeah, and that - that Region has
10	quite a bit of other tasks to take your time?
11	A. Yes, it does.
12	Q. Okay. At some point, and we don't
13	need to go into it, but at some point, Gary
14	Mowad discontinued working in Region 2. Do
15	you remember that?
16	A. Yes.
17	Q. Okay.
18	A. I think I got an email from him
19	that said he was retiring.
20	Q. Okay.
21	A. I think.
22	Q. All right. Okay. And at that
23	point he was no longer doing Region 2 work;
24	is that correct?
25	A. Pretty sure.

1	Q. Okay. All right. Were there
2	still activities ongoing associated with the
3	surrogate species workshop?
4	A. Very much so, yes, there were.
5	Q. Okay. Beyond the date that Mr.
6	Mowad was going to discontinue working in the
7	- in the Region?
8	A. Yes.
9	Q. Okay. Did you bring anybody in to
10	work on those-
11	A. Yes.
12	Qprojects?
13	A. We did.
14	Q. Okay. And is the name Bill
15	Radikey familiar to you?
16	A. He is the first detailee that we
17	had come in.
18	Q. Okay. Do you know how long he was
19	detailed in?
20	A. I want to say 60 days. I think it
21	was a couple of months.
22	Q. Did you bring anybody in after Mr.
23	Radikey to continue working on the surrogate
24	species-
25	A. I think we had three or four

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1	additional people that we detailed in.
2	Q. Okay. And were any of those
3	people, to the best of your recollection, GS-
4	15s?
5	A. They were not.
6	Q. Why not?
7	A. Um, because we didn't have any
8	more GS-15s that were in the field. They
9	were 14s. I think Mike Montaine, it - is a
10	13. I think that Dan Collins, I don't know
11	what grade he is.
12	Q. Okay.
13	A. I think Ann Timmerman was a 14. I
14	don't know.
15	Q. Did you—
16	A. They were not 15s.
17	Q. Sorry. You - you continued to try
18	to detail people in for this project?
19	A. Yes. Primarily because it's still
20	a Director's priority and we're still trying
21	to get a leg up in terms of keeping up with
22	what the - the Washington Office is - is
23	demanding that we do. With these activities,
24	it's very difficult to do it as other duties
25	as assigned.

1	
1	Q. And what, if anything, do you
2	expect, generally, from a GS-15 that you
3	might not expect from a 13 or a 14?
4	A. Well, a bit of independence, you
5	know, self-direction, self-guidance. 15s are
6	equivalent levels of - they know the
7	organization, they would know who to seek for
8	information. They would know how to work
9	independently; demonstrate a degree of
10	leadership that perhaps a 13 might not. The
11	things that you require from an upper level
12	manager.
13	Q. Initiative?
14	A. Absolutely initiative.
15	Q. Okay. Okay.
16	MR. MEHOJAH: Pass the witness,
17	Judge.
18	JUDGE GARVEY: Thank you. Mr.
19	Mundy?
20	MR. MUNDY: Brief, Your Honor.
21	REDIRECT EXAMINATION
22	BY MR. MUNDY:
23	Q. Touch on a few points here, not to
24	repeat, but the Government did not provide
25	Mr. Mowad a laptop at any point for the - at

1	least on the day he arrived and for weeks
2	afterwards, as far as you know, did it?
3	A. I don't - I don't know. All I can
4	speak to is the fact that when he was in his
5	office, he had a laptop, and I - I assumed
6	that that was a laptop that was provided him.
7	I don't - I really don't know.
8	Q. You don't know if the Government
9	ever provided him a Government computer to do
10	his official work, do you?
11	A. That would be true. But then it's
12	not my responsibility to know such a thing.
13	Q. You were his direct immediate
14	supervisor, weren't you?
15	A. Yes.
16	Q. For the - by the time he
17	physically appeared in the office, two or
18	three doors down from you, you had subjective
19	knowledge that he was actively engaged and
20	had been to the OIG with whistleblowing
21	allegations, correct?
22	A. From the conversation that he
23	communicated to me on the phone.
24	Q. So the answer's yes, you had such
25	subjective knowledge?

	l e e e e e e e e e e e e e e e e e e e
1	A. Yes, that would be true.
2	Q. And at that point in time that he
3	reported for physical - physically present,
4	reporting for duty, you instructed Ms.
5	Nicholopoulos, basically, to steer clear of
6	him, he - you would be his sole point of
7	contact?
8	A. That's not true. That's not a
9	true statement. I never instructed her to
10	stay clear of him. My expectation was is
11	that Gary would have full access to talk to
12	whomever he needed to in the Regional Office
13	to be able to execute the duties that we had
14	- we had assigned him.
15	Q. Are you aware of any conversations
16	between him and Ms. Nicholopoulos other than
17	just a casual hello, passing in the hall or
18	elevator?
19	A. Uh, no.
20	Q. You never had 'em in your office
21	together to have a meeting about anything,
22	did you?
23	A. That would be true. As far as I
24	can recall.
25	Q. That's what we're going with. I

1	think I kind of When he came to Texas, he
2	moved his family from the Washington, D.C.
3	Headquarters where he - that was his duty
4	station was the Washington, D.C. National
5	Headquarters?
6	A. My understanding is his family was
7	already here.
8	Q. No, he had been living in D.C.,
9	correct?
10	A. Yes.
11	Q. He'd been stationed there; that
12	was his duty station?
13	A. Yes.
14	Q. Okay. In the National
15	Headquarters of Fish and Wildlife?
16	A. Yes.
17	Q. You never emailed Mr. Mowad while
18	he was physically present in Albuquerque
19	asking for a status check or progress reports
20	on his workforce planning, did you?
21	A. No, I didn't email him. My
22	expectation was is that when he completed the
23	task, he would - he would schedule something
24	to come by and talk to me.
25	Q. He - he reported for duty on or

1	about October 28 th , 27 th , 28 th , 29 th , somewhere
2	in that one or two day window, correct?
3	A. Yes.
4	Q. And remained on station in
5	Albuquerque until he turned in his retirement
6	papers on December 15 th , correct?
7	A. Yes.
8	Q. So-
9	A. Well, off and on. He went back
10	home.
11	Q. Well, on that one stretch. I'm
12	saying he - that was his physical reporting
13	duty station?
14	A. Yes. For that period of time,
15	yes, sir. I'm sorry.
16	Q. So from - you know, we're not
17	quibbling over any specific date here, but
18	roughly 28, 29 of October until about
19	December 15 th , so he - his physical duty
20	station in Albuquerque was somewhere between
21	six and seven weeks, correct?
22	A. I guess. Yeah. I'm not trying to
23	disagree, yeah.
24	Q. That's why I'm just giving
25	approximate, ballpark. It's somewhere in the

1	six to seven week range, that was his
2	physical report for duty station.
3	A. Okay.
4	Q. Does that seem accurate?
5	A. Yes.
6	Q. Okay. Had he not turned in his
7	retirement paperwork, he would have completed
8	a 60-day detail within one or two weeks.
9	A. I would imagine.
10	Q. I'm just doing the math. That
11	seem correct?
12	A. Okay. I'm not trying to be - I'm
13	not trying to disagree, but you're asking a
14	question that I I guess.
15	Q. I'm just doing simple math. From
16	the end of October 'til he turns in papers on
17	December 15, we're saying that's a six, seven
18	week window?
19	A. Okay.
20	Q. That - to complete a 60-day
21	detail, you're looking at eight weeks?
22	A. I-
23	Q. That leaves one or two weeks,
24	right?
25	A. If you say so.

	1
1	Q. Yeah. I'm just doing math, but
2	And then those last two weeks of December is
3	Christmas Holidays, correct?
4	A. Yes.
5	Q. It's clear he's - it's absolutely
6	clear to you he attempted to transfer out
7	from under your chain of command; once he
8	came back he wanted to go with Ms.
9	Chavarria's chain of command, correct?
10	A. It's clear that—
11	Q. He attempted to transfer out when
12	he-
13	A. During the detail?
14	Q. When he revoked - when you revoked
15	his retirement papers in December?
16	A. Yes, he said he had another job.
17	Q. He was trying to transfer out from
18	under your chain of command?
19	A. Yes.
20	Q. Ms. Chavarria's jobs—
21	A. In Applied Science.
22	Q. That's a different chain of
23	command?
24	A. Yes, it is.
25	Q. Totally separate from yours,

1	correct?
2	A. Yes.
3	Q. Okay. And then - we'll not get
4	into detail, but the papers are in the record
5	here for the Judge, but Director Ashe vetoed
6	that, ultimately, and then he was put back
7	under your chain of command in January,
8	correct?
9	A. No, I - I'm not aware of Dr of
10	Director Ashe vetoing anything.
11	Q. Okay.
12	A. You're asking me something that
13	I'm not-
14	Q. Okay.
15	AI'm not comfortable even
16	discussing, because it's not something that
17	I'm aware of.
18	Q. All right, we'll let the records
19	speak for themselves, then.
20	It is - it is correct that you
21	could have had Mr. Collins or Mr. Radikey
22	take that first detail assignment while Mr.
23	Mowad was trying to work out arrangements for
24	his mother, correct?
25	A. That is incorrect. I will say

1 again, Mr. Mowad was a GS-15, the highest 2 ranking official that we had in the Region. 3 His - his contribution was unique. Now, if we had to substitute someone as a 14, that's 4 what we would have had to do, but that 5 doesn't mean that Mr. Mowad's contribution to 6 7 this effort, from the standpoint of being a 8 GS-15, was not appropriate for what we asked 9 him to do. 10 Ο. Mr. Chambers filled in the gap, 11 and then others filled the role after him, 12 all successfully, correct? 13 Α. All of which were - Mr. Chambers, 14 in his particular case, was a Regional 15 perspective, was not, um, basically 16 qualified, if you - if you will, to give the 17 Field perspective, as someone in Mr. Mowad's 18 capacity. 19 And that - that detail slot has Ο. 20 been filled off and on, and there's been 21 periods of vacancy up to now? 22 Α. That's true. 23 And - but every single person 24 that's ever filled the job, other than Mr. 25 Mowad, has been a GS-14, correct?

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1	A. Or a 13.
2	Q. Or even a 13.
3	A. Yes.
4	Q. Fair enough.
5	A. But if you look at it from the
6	perspective of the initial workshop and what
7	we were trying to do in terms of making sure
8	that we had that - that compendium of
9	knowledge, particularly from the management
10	of the organization, the GS-15s and above,
11	and the transmission of that surrogate
12	species perspective to the Field, I - I would
13	argue that, you know, that's the unique
14	contribution that Mr. Mowad brought to the
15	table.
16	Q. All right.
17	MR. MUNDY: I object to responsive
18	(sic).
19	Q. [BY MR. MUNDY:] But the bottom
20	line is every other person who ever filled
21	that detail was a GS-13 or 14?
22	A. That's true.
23	Q. Okay.
24	MR. MUNDY: Nothing further, Your
25	Honor, pass the witness.

1	MR. MEHOJAH: No further
2	questions, Judge.
3	JUDGE GARVEY: Okay. Sir, are you
4	aware of any of the other Regions, do they
5	detail GS-15s from the Field for this
6	surrogate species and the workforce?
7	THE WITNESS: I'm not aware if
8	they - I'm sorry. I'm not aware if they did
9	that for the other Regions. I will tell you
10	that the-
11	JUDGE GARVEY: No, no, no, it's
12	okay—
13	THE WITNESS: -the Regional
14	Director-
15	JUDGE GARVEY: I'll ask the
16	question. I'll ask the question; you answer
17	the question.
18	THE WITNESS: Oh, I'm sorry.
19	JUDGE GARVEY: You don't need to
20	volunteer anything.
21	THE WITNESS: Okay.
22	JUDGE GARVEY: So you're not aware
23	of any other Regions detailing GS-15s from
24	the Field. Okay.
25	THE WITNESS: No, ma'am.

1	JUDGE GARVEY: Okay. I just want
2	to go over You mentioned that the
3	Appellant's contributions were unique because
4	he was a GS-15 in the Field. What - and he
5	was there for seven weeks in Albuquerque, can
6	you list the contributions that he made
7	during that seven week period?
8	_
	THE WITNESS: Offhand? I would -
9	I cannot. I'm sorry. I might have to go
10	back—
11	JUDGE GARVEY: That's okay, no,
12	no, no. All right, can't…
13	THE WITNESS: -and look at
14	something. I'm sorry.
15	JUDGE GARVEY: All right, so you
16	can't list any contributions for that seven
17	week period?
18	THE WITNESS: (No audible
19	response.)
20	JUDGE GARVEY: Okay. I believe I
21	heard you say that you didn't have any
22	scheduled meetings with him during that seven
23	week period; is that correct?
24	THE WITNESS: We had some
25	meetings, but I'm trying to - I'm not - I'm

1	not pushing back, I'm trying to understand-
2	JUDGE GARVEY: Did you have any
3	scheduled meetings - right, did you have any
4	scheduled meetings, you know, every Monday
5	morning we meet, we go over what you did last
6	week, your plan for this week; did you have
7	scheduled meetings with - with the Appellant
8	while - during the seven weeks he was there?
9	THE WITNESS: No, ma'am, I don't
10	think we had those scheduled meetings.
11	JUDGE GARVEY: And how many
12	unscheduled meetings did you have with Mr.
13	Mowad during those seven weeks? When - how
14	often did you call him in for an unscheduled
15	meeting?
16	THE WITNESS: Um, four or five
17	times maybe.
18	JUDGE GARVEY: Okay. So four or
19	five times. And what was the nature of those
20	meetings? What were the discussions about-
21	THE WITNESS: One was-
22	JUDGE GARVEY: -what was the
23	purpose of them?
24	THE WITNESS: One was on the heels
25	of an email that said that we were rockin'

1	and rollin' with the scheduled events for
2	the, um, for the surrogate species; we had
3	that meeting. We had a meeting on - on
4	workforce planning—
5	JUDGE GARVEY: All right, so
6	rocking and rolling for a meeting - no, no,
7	no. Rockin' and rollin' on the surrogate
8	species. So this is after the workshop?
9	THE WITNESS: Yes, ma'am.
10	JUDGE GARVEY: And this - this
11	email was from the Appellant?
12	THE WITNESS: Yes, ma'am.
13	JUDGE GARVEY: And was the meeting
14	just with the Appellant, or who else was in -
15	at the meeting?
16	THE WITNESS: I don't recall. I
17	don't know if it was with other people. I
18	don't recall.
19	JUDGE GARVEY: Okay. And so-
20	THE WITNESS: I - I-
21	JUDGE GARVEY: So what was that -
22	how long did the meeting last and what - what
23	was discussed at that meeting?
24	THE WITNESS: Normally the
25	meetings went 15, 30 minutes. I

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1	JUDGE GARVEY: So did you say
2	what's rockin' and rollin'?
3	THE WITNESS: Normally the
4	meetings went-
5	JUDGE GARVEY: I'm just trying to
6	get a sense of he sends an email to you, you
7	said we're rockin' and rollin'. And you -
8	you say come on in, I want to talk about this
9	rockin' and rollin' of the surrogate species.
10	So what did you talk about? What was rockin'
11	and rollin'?
12	THE WITNESS: We talked about - we
13	talked about the tribal workshop. We talked
14	about some other things that had happened on
15	the heels of the larger workshop with the
16	State and Federal partners. I recall a
17	meeting that - can I - can I talk about this
18	other meeting, or would you like me-
19	JUDGE GARVEY: Sure.
20	THE WITNESS: -to continue with
21	this one?
22	JUDGE GARVEY: No, that's fine.
23	This is - so the first meeting, the rockin'
24	rollin' one was about the tribal workshop and
25	other things about State partners, and it was

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1	about 15 or 30 minutes?
2	THE WITNESS: No, ma'am, that
3	wasn't our first meeting, that was - that was
4	a meeting.
5	JUDGE GARVEY: Right, the first
6	meeting, right. So the second-
7	THE WITNESS: That wasn't our
8	first meeting.
9	JUDGE GARVEY: So the second
10	meeting was about what? That you called?
11	THE WITNESS: We had a meeting
12	about some of the things that I needed him to
13	do in terms of the coordination for the
14	workshop. We had - we had a discussion
15	about-
16	JUDGE GARVEY: All right. So
17	coordination-
18	THE WITNESS: I'm sorry.
19	JUDGE GARVEY: -about the
20	workshop. The workshop was over, though,
21	right?
22	THE WITNESS: That's - that's what
23	I'm saying. That discussion happened before
24	the rocking and rolling, uh That - that
25	meeting happened before the rocking and

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1	rolling-
2	JUDGE GARVEY: Okay. So there was
3	a meeting-
4	THE WITNESS: -meeting.
5	JUDGE GARVEY: -before the
6	workshop. And what was that all about, what
7	- what were you coordinating with him about
8	the workshop? What was-
9	THE WITNESS: When he arrived, we
10	talked about why he was there, some of the
11	things that we expected him to do. We
12	expected him to, um, edit some of the
13	presentation material so that we could have a
14	PR package that we could put together; we
15	expected him to coordinate with the other
16	members on the team; we had after-meeting
17	discussions so that we could see how best to
18	- to proceed the next day. These were things
19	that we talked to him about in terms of our
20	expectations that - that, um, that we
21	expected him to do while he was there.
22	JUDGE GARVEY: Okay. Now, was -
23	that's the first day he was there?
24	THE WITNESS: That was the $-$ I $-$ I
25	think it was - I can say it was the first

1	meeting. I think it was the first day.
2	JUDGE GARVEY: Because the
3	Appellant-
4	THE WITNESS: I think it was.
5	JUDGE GARVEY: -indicated the
6	first day was finding a hotel and finding out
7	per diem, and I don't believe he had a
8	meeting with you. And then the next day the
9	workshop started. And presumably whatever
10	the presentation materials were were already
11	being given to the people that day, right?
12	So I'm trying to figure out when he would
13	have edited-
14	THE WITNESS: Yes, ma'am, just-
15	JUDGE GARVEY: So how could he
16	have edited something before he saw it and
17	the people already had it?
18	THE WITNESS: Mr. Mowad did not
19	contribute to any of the presentations.
20	JUDGE GARVEY: Okay. So he-
21	THE WITNESS: The expectation was
22	that he would-
23	JUDGE GARVEY: So he didn't edit
24	any of the presentations?
25	THE WITNESS: No, ma'am.

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1	JUDGE GARVEY: I'm just - I'm
2	following up because you said you had a
3	meeting before that and told him to edit the
4	present - so that - that was a miss - you
5	misspoke and you didn't ask him to edit them,
6	because he wasn't there.
7	THE WITNESS: Not the
8	presentations.
9	JUDGE GARVEY: Right.
10	THE WITNESS: What we asked him to
11	do-
12	JUDGE GARVEY: Right, I'm just
13	trying to follow along.
14	THE WITNESS: -at the end of the-
15	JUDGE GARVEY: So the first
16	meeting was, you know, we want you to come to
17	the workshop and we want you to come to
18	meetings after the workshop. The second one
19	is rockin' and rollin'. Okay. Any other
20	meetings?
21	THE WITNESS: We had a meeting
22	subsequent to that, that I can recall, that
23	we talked about the workforce planning
24	effort. And my expectations of him to review
25	- start with Texas and review Texas, and we

1	were gonna do the entire region. I think
2	that we had a meeting - we - I apologize,
3	ma'am, I can't remember the - all of the
4	meetings-
5	JUDGE GARVEY: Okay.
6	THE WITNESS: -but I know we had a
7	meeting when he - he did finish up what he
8	considered the initial review of the Texas
9	workforce planning effort. And that was
10	shortly after - right before he left.
11	JUDGE GARVEY: Did he send you
12	written status reports, weekly, daily,
13	monthly?
14	THE WITNESS: No, he did not.
15	JUDGE GARVEY: Okay. Let me just
16	go through my notes. I started from the back
17	and
18	You indicated when Headquarters is
19	looking at the analysis regarding whether a
20	species should be on the endangered species
21	list, they look at the analysis and they also
22	consider they have a sense of political
23	sensitivity. What does that mean?
24	THE WITNESS: Well, that - that
25	may mean if - let's suppose we're proposing

1	to list a species, what will the State think
2	of that? Um, what - what will the
3	politicians think of that? The - it's not a
4	matter of - of - of changing the scientific
5	assessment simply because of the politics.
6	That's not what that means. That just simply
7	means from a standpoint of how is the
8	community going to react to this decision?
9	JUDGE GARVEY: So in other words
10	you're saying it would certainly - if the
11	analysis is scientifically sound, then it
12	certainly wouldn't change the decision, it's
13	just how it would be presented to the public;
14	is that what you're saying? How it would be
15	marketed?
16	THE WITNESS: Yes, ma'am.
17	JUDGE GARVEY: Okay. So it would
18	effect it whatsoever-
19	THE WITNESS: Or - or how - how is
20	we're gonna have to deal with their reaction—
21	JUDGE GARVEY: Right.
22	THE WITNESS: -to our decision.
23	JUDGE GARVEY: Right. So no
24	affect-
25	THE WITNESS: Right.

1	JUDGE GARVEY: -on listing the
2	species. I'm just trying to
3	So Mr. Chambers worked with Dr.
4	Roth getting the workshop organized and what
5	have you?
6	THE WITNESS: Yes, ma'am.
7	JUDGE GARVEY: Okay. The
8	Appellant's Exhibit B, were any actions taken
9	against you regarding the contents of this
10	memorandum From the Deputy Inspector General?
11	THE WITNESS: No, ma'am.
12	JUDGE GARVEY: So nothing has
13	occurred?
14	THE WITNESS: No, ma'am.
15	JUDGE GARVEY: No disciplinary
16	action whatsoever?
17	THE WITNESS: No, ma'am.
18	JUDGE GARVEY: And is Mr. Ashe
19	still the Director?
20	THE WITNESS: Yes, ma'am.
21	JUDGE GARVEY: And Mr. Gould, is
22	he still in his position?
23	THE WITNESS: Yes, ma'am.
24	JUDGE GARVEY: Okay. Now, you
25	indicated when the Appellant raised his

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1	concerns to you regarding Ms. Nicholopoulos
2	and Ms. Arnold what he felt was an
3	inappropriate relationship or fraternization
4	or violating anti-nepotism, what have you,
5	given Ms. Nicholopoulos's position and Ms.
6	Arnold's, that they're in the chain of
7	command, when asked if you investigated it or
8	looked into it, you said: Absolutely not.
9	So I'm - and then you said of course we do
10	have an anti-nepotism and, you know, rules
11	against fraternization in the chain of
12	command. So I'm trying to reconcile why if
13	someone is coming, saying to you I think the
14	rules are being broken here, I think you as
15	the Director need to look into this, why you
16	- your answer was Absolutely not, that you
17	didn't look into it?
18	THE WITNESS: Well, I want to be
19	able to put it in context in terms of my
20	answer.
21	JUDGE GARVEY: Uh-huh.
22	THE WITNESS: The Absolutely not
23	part was from a standpoint of me personally
24	looking at this. If someone brought that kind
25	of allegation to our - our-

1	JUDGE GARVEY: Well, no, I'm just-
2	THE WITNESS: -attention-
3	JUDGE GARVEY: Wait, wait, wait.
4	THE WITNESS: -and had-
5	JUDGE GARVEY: The question was
6	did you make inquiries into these
7	allegations. I mean, this is what happened
8	today, I take copious notes. And then you
9	said, I quote, Absolutely not. So I'm saying
10	why?
11	THE WITNESS: But this was not
12	brought to my attention. This was simply
13	hearsay. This was not brought to my
14	attention. Nobody said to me that they had
15	an issue with Allison Arnold and Joy
16	Nicholopoulos. So there was no reason for
17	me-
18	JUDGE GARVEY: So Mr. Mowad did
19	not say I think this is of a concern, I think
20	you should be aware of this and look into it
21	as the Director?
22	THE WITNESS: He said that on a -
23	he said that, I think, on a phone call as we
24	were discussing the detail. But there was no
25	substantive nature to it.

1	JUDGE GARVEY: So if people report
2	inappropriate relationships in the
3	subordinate chain of command, you feel, as
4	the Director, it is not - you would
5	absolutely not look into any of that, whether
6	it's male and female, female and female, man
7	and man, it's irrelevant to you as the
8	Director? If they - they-
9	THE WITNESS: No, I cannot say
10	that.
11	JUDGE GARVEY: -if a high level
12	manager is saying we got some concerns here?
13	THE WITNESS: Then I certainly -
14	there are a number of people in between Ms.
15	Nicholopoulos and Allison Arnold. If - if -
16	when Mr. Mowad mentioned that as part of the
17	conversation on a telephone call, I had not
18	heard that from anybody else in the
19	organization. And so I didn't look at it
20	from the standpoint of here is a - a genuine
21	issue, here is evidence, I would like for you
22	to take a look at that. Even in that
23	conversation he never said to me, you know,
24	here's the evidence, go take a look at it.
25	And there was nothing else that, to me, would

1	indicate that there was an issue. So that's
2	why I said absolutely not, no, I didn't-
3	JUDGE GARVEY: Okay. I
4	understand.
5	THE WITNESS: -look at it.
6	JUDGE GARVEY: I understand you
7	didn't make any further inquiry. I'm just
8	trying to, you know, get all my facts right.
9	Okay. And it's your testimony
10	that at no time did the IG, Office of
11	Inspector General, or anyone from the Office
12	of Inspector General ever contact you in the
13	year 2012?
14	THE WITNESS: No, I didn't say
15	that.
16	JUDGE GARVEY: Well, I notice Mr.
17	Mehojah—
18	THE WITNESS: If I - if I said
19	that, I misspoke—
20	JUDGE GARVEY: Okay. Did - right,
21	because I note, and as I say, I take copious
22	notes, and Mr. Mehojah asked you if the IG
23	ever contacted you after September 26 th , which
24	of course raised me to ask, well, why - why
25	would you limit it to that? What about

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1	before September 26 th ? So let's go there.
2	THE WITNESS: After September 26 th
3	I received a call from Laurie Larson-Jackson
4	regarding why we were not accommodating Mr.
5	Mowad's request for the detail. Maybe I
6	didn't understand the question, but certainly
7	that - that was a call from Laurie Larson-
8	Jackson.
9	JUDGE GARVEY: And is she with the
10	IG?
11	THE WITNESS: Yes, ma'am.
12	JUDGE GARVEY: So you did receive
13	a call. I'm just trying to, you know, again,
14	apparently, you misspoke.
15	THE WITNESS: Yes.
16	JUDGE GARVEY: So you received a
17	call from Laurie Larson-Jackson asking why
18	you didn't accommodate the Appellant?
19	THE WITNESS: Yes. She questioned
20	the detail even. Of which I found fairly
21	odd.
22	JUDGE GARVEY: And when did this
23	conversation happen?
24	THE WITNESS: Um I think it was
25	sometime in October, ma'am. I - I cannot

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1	tell you the exact date. I apologize.
2	JUDGE GARVEY: Mr. Mehojah asked
3	you if they contacted you after September 26 th
4	and you said no, never. Never contacted you.
5	THE WITNESS: No, I-
6	JUDGE GARVEY: And now you're
7	saying it's in October.
8	THE WITNESS: I misspoke. I
9	misspoke. I apologize.
10	JUDGE GARVEY: Well, let's - let's
11	get here. It was before the Appellant came
12	to Albuquerque that she-
13	THE WITNESS: Yes, ma'am.
14	JUDGE GARVEY: Okay. So it was
15	prior to his arrival.
16	THE WITNESS: Yes, ma'am.
17	JUDGE GARVEY: So it's prior to
18	the time that obviously you could have
19	canceled, done whatever. So you knew by that
20	time the Appellant had gone to the Office of
21	Inspector General and had made what he were
22	(sic) telling you were protected
23	whistleblower disclosures to the Office of
24	Inspector General. And then the Office of
25	Inspector General-

1	THE WITNESS: No, no, ma'am. No,
2	ma'am. I apologize—
3	JUDGE GARVEY: I thought you said-
4	THE WITNESS: I apologize for not
5	being clear. The conversation I had with
6	Laurie Larson-Jackson never included any
7	whistleblower anything.
8	JUDGE GARVEY: No, no, no, no.
9	THE WITNESS: She was questioning-
10	JUDGE GARVEY: No, no, no. Sir.
11	I wasn't talking - I said I'm going through
12	the chronology, okay? So either on September
13	28^{th} or October 5^{th} the Appellant tells you I
14	have made - I have made what I feel are
15	protected whistleblower disclosures to the
16	Office of Inspector General and I feel this
17	is a retaliatory detail. Okay? So that -
18	that we know happened, it happened on a
19	Friday, the 28 th of October, okay?
20	And then sometime prior to his
21	arrival in Albuquerque, prior to the detail
22	becoming effective, the Inspector General's
23	Office calls you and questions the detail,
24	and asks you why you didn't accommodate them
25	- him. Correct?

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1	THE WITNESS: Yes, ma'am.
2	JUDGE GARVEY: So-
3	THE WITNESS: That's true, yes.
4	JUDGE GARVEY: So you were clearly
5	on notice that they were investigating and
6	following up and - on his-
7	THE WITNESS: As Mr. Mowad
8	indicated.
9	JUDGE GARVEY: Okay.
10	THE WITNESS: Yes.
11	JUDGE GARVEY: And what did you
12	tell them?
13	THE WITNESS: I told her that he
14	was one of my stars and I needed him to
15	participate in the surrogate species process.
16	And, um, I - I also reiterated the fact that,
17	you know, I know that he has some
18	complications, we would accommodate him as
19	best we could, but I needed him to be part of
20	this workshop and the details.
21	JUDGE GARVEY: Okay. Are all of
22	the meetings you have with your staff in the
23	four Regions, do you have them in person, do
24	you visit all the offices, do you do them by
25	video teleconferencing, do you do them

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1	telephonically when you deal with all these
2	people in these various Field Offices; how do
3	you do it?
4	THE WITNESS: It's a combination
5	of all those things.
6	JUDGE GARVEY: Okay, so you do
7	some video conferencing-
8	THE WITNESS: Sometimes we
9	actually go - I'm sorry.
10	JUDGE GARVEY: Do you do-
11	THE WITNESS: I didn't hear the
12	last part.
13	JUDGE GARVEY: -video conferencing
14	like we're doing today?
15	THE WITNESS: Uh, yes, we have
16	done that, yes.
17	JUDGE GARVEY: Okay. Okay, I have
18	no further questions. Is there - are there
19	any follow up questions from either
20	representative? Go ahead, Mr. Mundy.
21	MR. MUNDY: Judge, may I ask one
22	question?
23	JUDGE GARVEY: Sure.
24	REDIRECT EXAMINATION
25	BY MR. MUNDY:

	1
1	Q. Mr. Tuggle, I'd like to direct you
2	to your testimony of May the 8 th , 2014, your
3	deposition again.
4	A. Uh-huh.
5	Q. It is correct that at page 116,
6	line 14 you were asked: Had you had any
7	dialogue with personnel from the Office of
8	Inspector General about investigations and
9	allegations arising from complaints or
10	reports from Mr. Mowad? And your answer was:
11	No. Is that correct?
12	A. Yes, and I was—
13	Q. The answer is literally says, No.
14	And not anything else with it, it just says
15	the word No; doesn't it?
16	A. It says no, yes.
17	Q. And then the very next question at
18	line 19, page 116, line 19 says: Even to
19	this very day? And again your answer was:
20	No. With no explanation or qualification or
21	anything else; is that correct, sir?
22	A. No. I mean, yes, it is.
23	Q. That's what it says: Even to this
24	very day? And your answer was: No.
25	A. Yes.

1	Q. Let's say correct.
2	A. Correct.
3	Q. Okay. And the next question on
4	line 20: Never come to interview, talk to
5	you, ask you questions? Your answer again
6	was: No. Is that correct?
7	A. That is true.
8	MR. MUNDY: Nothing further, Your
9	Honor.
10	MR. MEHOJAH: May I briefly,
11	Judge?
12	JUDGE GARVEY: Go ahead.
13	CROSS-EXAMINATION
14	BY MR. MEHOJAH:
15	Q. Okay, would you like to clarify
16	your answer?
16 17	your answer? A. I would like to clarify. I was
17	A. I would like to clarify. I was
17 18	A. I would like to clarify. I was assuming, when he asked me that question, it
17 18 19	A. I would like to clarify. I was assuming, when he asked me that question, it was about the whistleblower status. And
17 18 19 20	A. I would like to clarify. I was assuming, when he asked me that question, it was about the whistleblower status. And that's why I was - I said no. I - and maybe
17 18 19 20 21	A. I would like to clarify. I was assuming, when he asked me that question, it was about the whistleblower status. And that's why I was - I said no. I - and maybe I misinterpreted the question, but it was
17 18 19 20 21 22	A. I would like to clarify. I was assuming, when he asked me that question, it was about the whistleblower status. And that's why I was - I said no. I - and maybe I misinterpreted the question, but it was about the whistleblower status. It was not
17 18 19 20 21 22 23	A. I would like to clarify. I was assuming, when he asked me that question, it was about the whistleblower status. And that's why I was - I said no. I - and maybe I misinterpreted the question, but it was about the whistleblower status. It was not to be deceptive, because Laurie Larson-

1	why I answered no in that regard.
2	Q. I'm asking some questions. So
3	there – to be clear, so that – because maybe
4	I asked this inarticulately, before September
5	26 th , 2012, you were not contacted by the IG
6	about allegations that Mr. Mowad was
7	cooperating with the IG?
8	A. That is correct.
9	Q. Okay. After September 26 th , you
10	were contacted by the IG through Laurie
11	Larson-Jackson; is that—
12	A. Yes, that is correct.
13	Q. Okay. But that didn't involve the
14	allegations that Mr. Mowad was cooperating
15	with the IG?
16	A. That is correct.
17	Q. Okay. All right.
18	REDIRECT EXAMINATION
19	BY MR. MUNDY:
20	Q. Clarification to make sure we have
21	no misunderstandings, sir. Other than Mr.
22	Mowad's complaints about the relationship
23	with - between Ms. Nicholopoulos and Ms.
24	Arnold, excluding him, there had been others
25	who made complaints about that relationship,

1 correct? 2 I... I think so, yes. Α. 3 MR. MUNDY: Nothing further, Your 4 Honor. Okay, and what -5 JUDGE GARVEY: 6 since you now apparently have several 7 complaints, what action did you take to 8 follow up on the complaints of inappropriate 9 - no, superiors to-10 THE WITNESS: There was an 11 investigation - there was an investigation, 12 um, that was done, uh, because there was an 13 allegation on the part of, um, I forgot who -14 I think it was Allen Glen or somebody, I 15 apologize that I don't know, but there was an 16 investigator - there was an allegation and 17 there was an investigation on the part of the 18 Agency that found that those charges had no 19 merit. But this was some time ago. 20 JUDGE GARVEY: Okay, I have no 21 further questions. Thank you very much for 22 your testimony today, you are excused. You 23 may not discuss your testimony with anyone 24 else until this entire matter's brought to a 25 close. Thank you.

1	THE WITNESS: Thank you.
2	(Whereupon, the witness was excused.)
3	MR. MEHOJAH: Five minutes, Judge?
4	And then are we going to do Gabriela or-
5	MR. MUNDY: Ms. Nicholopoulos
6	next.
7	MR. MEHOJAH: Well, okay, we have
8	- we can either do - we could do Gabriela and
9	get her out of the way.
10	MR. MUNDY: I'd like to do Ms.
11	Nicholopoulos next.
12	MR. MEHOJAH: All right.
13	JUDGE GARVEY: Okay, well, why
14	don't-
15	MR. MEHOJAH: Judge, just to be
16	clear-
17	JUDGE GARVEY: Wait, wait, sit
18	down. Let's go off the record.
19	(End of proceedings, 8-18-14)
20	
21	
22	
23	
24	
25	

1 2 CERTIFICATION 3 This is to certify that the attached proceedings before Administrative Judge, 4 the HONORABLE MARY ANN GARVEY, of the Merit 5 Systems Protection Board, in the matter of: 6 7 GARY G. MOWAD 8 V. DEPARTMENT OF THE INTERIOR 9 DA-1221-13-0262-W-4 10 Were held as herein appears, and that 11 this is ORIGINAL transcript of the 12 proceedings of August 18, 2014. 13 I hereby certify the statements that 14 appear in this transcript were recorded on 15 audio tape by me, and reduced to typewriting 16 under my supervision. I also certify that 17 this transcript is a true and accurate record 18 of this proceeding. 19 20 21 22 23 24 Judy Farnsworth 25 Notary Public, State of Texas 26 My Commission expires 06-01-17 27

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11	In the Matter of:
12	
13	GARY G. MOWAD
14	V.
15	DEPARTMENT OF THE INTERIOR
16	DA-1221-13-0262-W-4
17	
18	At: Dallas, Texas (video)
19	Date: 08/18/2014
20	
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