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GARY G. MOWAD

V. DEPARTMENT OF THE INTERIOR

DA-1221-13-0262-W-4

August 19, 2014

WITNESS: JOY NICHOLOPOULOS

JUDGE GARVEY: Please stand,
ma'am, so I can swear you in. And raise your
right hand.

THE WITNESS: Good morning.

JUDGE GARVEY: Do you promise that
the testimony you're about to give will be
the truth, the whole truth, and nothing but
the truth, so help you God?

THE WITNESS: Yes, I do.

JUDGE GARVEY: Okay. Please be
seated, and state your full name for the
record.

THE WITNESS: Good morning. Joy
Elaine Nicholopoulos.

DIRECT EXAMINATION

BY MR. MUNDY:

Q. And for the sake of the court
reporter, would you spell-

A. Spell it?

Q. -Nicholopoulos?

1 A. You betcha. It's N-i-c-h-o-l-o-p-
2 o-u-l-o-s.

3 Q. All right, good morning, Ms.
4 Nicholopoulos. We've met before--

5 A. Yes, good morning.

6 Q. --we've -- we had a chance to speak
7 in May, took your deposition back then, and
8 so--

9 A. Okay.

10 Q. --we're going to go over the same
11 topics--

12 A. Okay.

13 Q. --we talked about back then, okay?

14 A. Okay.

15 Q. And I will tell you we've already
16 heard from Dr. Tuggle, so we're going to try
17 not to repeat a lot of things, but today you
18 -- we'll hopscotch and fill in a few remaining
19 holes, and then you're going to have to
20 explain some Government acronyms and
21 abbreviations--

22 A. You bet. I'll do my best.

23 Q. --from some of these exhibits for
24 us.

25 A. Okay.

1 Q. All right. Let's do first a
2 little bit of background to help orient you
3 in context with the story-

4 A. Sure.

5 Q. -all right?

6 A. Sure.

7 Q. As - in 2012, what was your
8 position with the U.S. Fish and Wildlife
9 Service?

10 A. The same position I hold today,
11 it's Deputy Regional Director for the
12 Southwest Region.

13 Q. Okay. And that - your - your
14 office is in the Albuquerque Regional
15 Director's office?

16 A. That's correct, Albuquerque, New
17 Mexico.

18 Q. And the - in the chain of command
19 with the organizational chart, Dr. Tuggle is
20 above you, correct?

21 A. That's correct.

22 Q. And then above that it goes to the
23 D.C. National Headquarters Office, correct?

24 A. Correct, above Benjamin is
25 Headquarters, yes.

1 Q. And prior to you assuming your
2 current position as Deputy Regional Director,
3 and I should say we see a lot of memos and
4 emails where it says DRD.

5 A. That's an acronym for Deputy
6 Regional Director.

7 Q. That's the abbreviation for your
8 job position?

9 A. That's correct.

10 Q. Okay. And then we see RD, that's
11 Regional Director, which would be Tuggle?

12 A. Correct. And sometimes I'm Acting
13 RD in Benjamin's absence.

14 Q. Okay.

15 A. So sometimes you'll see RD slash
16 DRD.

17 Q. Got it. Okay. And that would be
18 you in the acting capacity?

19 A. That's correct.

20 Q. Got it.

21 A. Uh-huh.

22 Q. Before this, you - your prior
23 position was as the Texas State
24 Administrator?

25 A. That's correct.

1 Q. And that is, when you promoted
2 from Texas State Administrator to your
3 current position, Mr. Mowad then was brought
4 in and filled the slot that you had just
5 vacated-

6 A. That's correct.

7 Q. -correct?

8 A. Yes.

9 Q. And then he came from the D.C.
10 National Headquarters Office?

11 A. Yes. We were actually in training
12 together just prior to him taking that, that
13 job.

14 Q. Okay. But just to keep our
15 organizational chart correct, you moved up
16 one level to the Regional Office, and then he
17 came in behind you and took your prior spot?

18 A. That's correct, yes.

19 Q. Okay. And then on the
20 organizational chart, from him your - we
21 should say you're kinda - I think you've
22 described to me in your own terminology,
23 you're like the Chief Operating Officer for
24 the Region. Would that be a-

25 A. Correct, the Deputy takes care of

1 all the day-to-day tasks, the administrative
2 stuff, all of that kind of-

3 Q. Kinda like the-

4 A. -the boring stuff.

5 Q. Kind of like the business manager?

6 A. The business kinda stuff, yes.

7 Q. Okay.

8 A. That's a good description.

9 Q. And then Dr. Tuggle is more policy
10 and politics and things like that?

11 A. And he's - he's kind of the
12 external face. He - he does all the
13 negotiations, he does all the external
14 meetings.

15 Q. Okay.

16 A. I take care of the support staff
17 within the Regional Office.

18 Q. All right. And then between you
19 and Mr. Mowad's position is Ms. Michelle
20 Shaughnessy, who we'll hear from next.

21 A. That's correct.

22 Q. But she's more like a day-to-day
23 supervisor specifically dealing with the
24 issues that Mr. Mowad may have on a detail
25 type of basis, you know, small daily tasks?

1 A. Yes, she's his - was his direct
2 supervisor.

3 Q. Okay.

4 A. And then I'm her direct
5 supervisor.

6 Q. Correct. So it goes Mowad,
7 Shaughnessy, to you, to Tuggle?

8 A. That's correct.

9 Q. Okay. And then every other
10 employee in the Ecological Services Office in
11 Texas is below him?

12 A. That's correct, yes.

13 Q. You've held your position since
14 July of 2010?

15 A. The Deputy position, yes.

16 Q. Okay. All right. Like I said,
17 we've heard a whole lot from Mr. Tuggle, so
18 I'm - or Dr. Tuggle, so I'm jumping over a
19 whole lot of background, you're getting to
20 kind of the nub of the-

21 A. Okay.

22 Q. -issue. You remember there were
23 two phone calls in late September of 2012,
24 one was on the 26th and one was on the 28th; is
25 that correct?

1 A. I believe so.

2 Q. Okay. And I'll represent—

3 A. It sounds correct to me, yes.

4 Q. Okay. And I'll represent to you
5 that both of them are in the record and the
6 Judge has a copy of the audio file as well as
7 a written transcript.

8 In that phone call, I believe it
9 was, in your memory, the second phone call
10 with him where it was you, Tuggle, and Mowad
11 were the only people on the call, that you
12 first learned that he was cooperating with
13 the OIG on an investigation.

14 A. Actually, my memory of it was the
15 third phone call we had.

16 Q. Okay.

17 A. Which then spilled over into
18 October.

19 Q. Okay.

20 A. So we had an initial phone call,
21 the September 26th call. A follow up on the
22 28th, if those dates are correct. And then we
23 had a third phone call that was actually in
24 October, and that's when Mr. Mowad—

25 MR. MUNDY: Let's hold on just a

1 second. We're starting to get feedback here,
2 I don't know if something changed? We're
3 getting that echo. Whoops.

4 MR. MEHOJAH: Yeah, we're getting
5 a little bit of feedback, Judge.

6 JUDGE GARVEY: It's not-

7 MR. MUNDY: Did something come on
8 or something happen - it-

9 JUDGE GARVEY: It's not from here
10 and we put ourselves on mute. I'll leave us
11 on mute, so that you don't get anything from
12 this end, okay? And then I'll click in if I
13 need to talk.

14 Q. [BY MR. MUNDY:] Okay. Well, if
15 it starts echoing like that, we can just stop
16 and-

17 A. Okay.

18 Q. -sort it out, because I know it's
19 distracting to you and me, trying to
20 communicate with-

21 A. I can focus on you.

22 Q. Okay. It's important we make sure
23 the Judge is hearing us.

24 JUDGE GARVEY: I don't hear the
25 echo.

1 COURT REPORTER: We're on mute.

2 JUDGE GARVEY: I don't hear the
3 echo.

4 Q. [BY MR. MUNDY:] On the phone
5 call-

6 JUDGE GARVEY: Excuse me. I don't
7 hear the echo or whatever. I'm hearing very
8 clearly, so it's only if it interrupts you-

9 MR. MUNDY: Okay.

10 JUDGE GARVEY: -folks. Don't
11 worry about me. I can hear loud and clear.
12 Thanks.

13 MR. MUNDY: Thank you, Your Honor.

14 Q. [BY MR. MUNDY:] Let's see... So
15 you remember the first time you learned that
16 he was cooperating with the OIG was one of
17 these initial phone calls?

18 A. Right. And to my memory it was
19 the third phone call.

20 Q. Okay.

21 A. Where Mr. Mowad said he had made
22 protected disclosures.

23 Q. All right.

24 A. Excuse me.

25 Q. I was just looking, jumping over a

1 whole lot of things we'd covered with Dr.
2 Tuggle-

3 A. Okay.

4 Q. -so I'm doing some editing-

5 A. Okay.

6 Q. -on the fly.

7 A. It will give me a chance to drink
8 some Dr Pepper.

9 Q. Certainly. The - your - your
10 impression from hearing the conversation was
11 that it was your personal subjective
12 understanding that you were involved or the
13 subject of what he was talking about - he,
14 Mr. Mowad? That was your personal sense of
15 it?

16 A. I'm sorry, I don't understand.

17 Q. When - when the discussion came up
18 about cooperating, and Mr. Mowad cooperating
19 with the OIG, you had an understanding, your
20 subjective understanding was that you were at
21 least in part subject of that?

22 A. Oh, that I was a subject?

23 Q. Yes.

24 A. Yes. I think he said that.

25 Q. Yes.

1 A. I think Mr. Mowad said-

2 Q. Okay.

3 A. -that-

4 Q. But your-

5 A. -he'd made complaints about me.

6 Q. Yeah, your - your personal
7 awareness from the phone call was your
8 perception was you were the subject, at least
9 in part, of that OIG cooperation-

10 A. Correct, yes.

11 Q. Okay.

12 A. That was my understanding.

13 Q. And then from that point on, your
14 understanding was Tuggle said he was going to
15 take charge of the situation and be the
16 direct point of contact with Mr. Mowad?

17 A. Yes. He said it was best if I not
18 have direct contact with Mr. Mowad. And he
19 said he would - Mr. Mowad would report to
20 Benjamin, Benjamin would direct his work.

21 Q. And - and-

22 A. Previously it would have been both
23 of us-

24 Q. Right.

25 A. -directing his work.

1 Q. But-

2 A. But most of that would have fallen
3 on me naturally.

4 Q. But I'm saying, so the point is,
5 though, that after you got that - heard that
6 on that call, whether it was second or third
7 call, after you heard that, had your
8 understanding, from that point on, Tuggle
9 said he would take charge of Mowad, all
10 communication was to be directed from Mr.
11 Mowad to Dr. Tuggle-

12 A. That's correct.

13 Q. -not to include you?

14 A. That's correct.

15 Q. And is it fair to say from that
16 point on, essentially you kept an arm's
17 length distance from - from Mr. Mowad - Mr.
18 Mowad, and did not have ongoing job related
19 activities, interactions, so forth with him,
20 correct?

21 A. That's correct.

22 Q. You might have seen him in the
23 hallway and said hello or good morning, but
24 it was just like a incidental-

25 A. We did have RDT meetings where I

1 would go around the room, and I would ask
2 Gary if he had anything to share, if he had
3 any updates. That was pretty much the extent
4 of it, saying hello and going around the room
5 at RDT meetings.

6 Q. Any sort of work - any sort of
7 work discussion, assignment, duties, feedback
8 on his work product, that would have been
9 between Tuggle and Mowad, you were never-

10 A. That's correct.

11 Q. -you were never, ever, from that
12 point on involved in giving him work
13 assignments, job duties, looking over his
14 work?

15 A. You're correct, yes.

16 Q. Okay. Understanding that no one
17 likes to be the subject of complaints and
18 controversy like this, but apart from this
19 controversy, you had never had any reason to
20 question his honesty or integrity, he Mr.
21 Mowad, correct?

22 A. Absolutely not. I recommended
23 Gary Mowad for the position and I helped him
24 qualify for the position.

25 Q. Okay.

1 A. I actually rewrote his quals so
2 that he would get the position.

3 Q. Held him in very high esteem, fair
4 to say?

5 A. Yes.

6 Q. Okay. Now, once this controversy
7 started and it was disclosed and you heard
8 this, this planning process for the surrogate
9 species workshop was underway and then you
10 remember Mr. Mowad put in for family leave,
11 and then so there was a period of several
12 weeks up to the point of the workshop,
13 correct?

14 A. I don't know how many weeks, but
15 there was some period where Mr. Mowad took
16 Family Friendly Leave.

17 Q. And that—

18 A. I wouldn't have seen that, that
19 would have been his supervisor, but I knew he
20 wasn't there.

21 Q. Well, the point - I'm trying to
22 just give you a foundation for the next few
23 questions. But the gap was filled by Mr.
24 Steve Chambers, correct?

25 A. Steve Chambers and others. So,

1 um, I assigned Steve Chambers full time,
2 whereas previously he had just been on the
3 training team and it was a kinda part time
4 thing. And I assigned two other people, one
5 from Refuges, our Refuges Program, her name
6 was Monica Kimbro, and another from
7 Ecological Services Regional Office, her name
8 was Katy Lata. And I also had Benjamin's
9 secretary (indiscernible), excuse me, working
10 on it as well because we were pretty far
11 behind.

12 Q. And they all did a good job,
13 didn't they?

14 A. They did. The only thing that we
15 were lacking from Mr. Chambers was that Field
16 perspective. Steve Chambers was a Regional
17 Office guy and didn't really bring that Field
18 perspective that we were looking for - for
19 Gary to bring.

20 Q. And you didn't ask any other Field
21 employee to fill that slot, did you?

22 A. For the training team, no, because
23 we didn't think we could get them there in
24 time to the Regional Office. It was
25 imperative that they were there working with

1 that training team. The whole training team
2 was in the Regional Office, and they had to
3 interact together.

4 Q. My question was, you did not ask
5 anybody—

6 A. No. No, we did not. Not before -
7 you're asking about before, in preparation
8 for the surrogate species workshop. Yes,
9 that's correct.

10 Q. Okay. We don't need a - if you
11 need to make reference to the exhibit, I'll
12 let you look at it. But I'm going to show
13 you Exhibit 13, Defendant's Exhibit 13, just
14 so you can see what my questions are going to
15 look like. Take just a moment to look that
16 over.

17 A. (Witness peruses document.) So
18 the next page is the—

19 Q. The attachment—

20 A. -attachment, okay.

21 Q. Yes, ma'am.

22 A. Okay.

23 Q. Of all those - this is an exhibit
24 of people that were involved in the workshop
25 and had been getting the thing up and going,

1 correct?

2 A. Sure, um, the - it's divided up
3 into specific teams.

4 Q. Okay.

5 A. The team that was involved most
6 closely with getting the workshop - putting
7 the workshop on was this Regional training
8 team.

9 Q. And the questions - the reason I
10 was asking you to review that, after the
11 workshop was over, not one employee on that
12 list was required to remain in Albuquerque
13 after the workshop was over, except for
14 people who otherwise lived in Albuquerque;
15 would that be correct?

16 A. Um, yes, it would be correct.
17 There's only two people on here that are not
18 from Albuquerque. That would be Cathy Grenio
19 and Jeff Humphrey. And Cathy Grenio's
20 actually in the commuting area, she's a
21 refuge within the commuting area.

22 Q. So no one was - that was detailed
23 from out of town to come to the work (sic),
24 help, and required to stay afterwards;
25 everybody's from Albuquerque area, with one

1 exception?

2 A. Right. And then after the
3 holidays we brought in a Refuge manager from
4 Arizona to help with the continued
5 coordination and taking the lead with these
6 other times that you see, the Desert LCC, the
7 Great Plains, and the Gulf Coast Prairie, so
8 he was on detail to work with those teams.
9 After.

10 Q. Let's take a deep breath for a
11 second. You said holidays, would that be
12 Christmas holidays?

13 A. Yes, I'm sorry. I'm sorry. The -
14 the Thanksgiving and Christmas holidays.

15 Q. And then so the person that came
16 in after that, was Mr. Radikey?

17 A. Mr. Bill Radikey.

18 Q. Okay. And he - what was his
19 position, GS-13, 14?

20 A. GS-14 Project Leader at San
21 Bernardino, Leslie Canyon National Wildlife
22 Refuge in Arizona.

23 Q. And he came in and he did a - a
24 very fine job, didn't he?

25 A. He did. He did a very fine job.

1 He really brought that Field perspective, and
2 he worked with each of these geographic teams
3 to help them get started on getting their
4 surrogate species lists together at the start
5 of that.

6 Q. When Mr. Mowad was saying he was
7 having problems getting there physically or
8 remaining there physically because of family
9 obligations, you did not reach out to Mr.
10 Radikey at that time to try and fill the
11 slot, did you?

12 A. No.

13 Q. It's fair to say that everybody
14 that's come from Mr. Radikey and on
15 afterwards was either a GS-14 or a GS-13,
16 correct?

17 A. That's correct.

18 Q. And there have been times when the
19 slot had vacancy, there was no one in there
20 for periods of weeks or even months
21 sometimes, correct?

22 A. That's correct.

23 Q. But everybody—

24 A. That's the position we're in right
25 now, we're trying to get someone in, and it's

1 gonna end up being after the holidays, the
2 Thanksgiving and Christmas holidays again.

3 Q. For everybody that came
4 afterwards, it was a voluntary detail, it was
5 not compulsory for anybody else against their
6 will, was it?

7 A. Um, that's an interesting word,
8 voluntary, because they were asked to do it.
9 So they didn't volunteer, say, hey, I want to
10 do this. They were asked by their supervisor
11 to come.

12 Q. But it was not compulsory; no one
13 was required to do that detail against their
14 will, correct?

15 A. No one expressed it was against
16 their will. So that part is correct.

17 Q. And everybody's done a fine and
18 satisfactory job?

19 A. As well as can be expected, yes.

20 Q. It is correct that when Mr. Mowad
21 was detailed as a direct report to Dr. Tuggle
22 that there was no change over of the
23 personnel records, the computer coding to
24 show Dr. Tuggle as his direct supervisor,
25 correct?

1 A. I don't think so. I know there
2 was an SF-50 placing Mr. Mowad on detail, but
3 I don't think that includes supervisory - a
4 change in supervisory duties. So, um, even
5 though Mr.-

6 Q. I think you've answered the
7 question.

8 A. Okay.

9 Q. Let's talk about the timing of
10 when he arrived in Albuquerque-

11 A. Sure.

12 Q. -best you can remember.

13 A. Okay.

14 Q. And if you need to look at a
15 document, we can, but I think-

16 A. Sure. You want this back, then?

17 Q. Sure, you can close that. If you
18 need these for reference, say so.

19 A. Okay.

20 Q. We have everything here. Your
21 memory is that the October 29th was a travel
22 day for Mr. Mowad, and then the first day he
23 actually was there reporting for duty, you
24 know, was the day he showed up and
25 participated as an attendee at the workshop,

1 correct?

2 A. That's the first day of the
3 workshop, that's correct.

4 Q. Okay. And to the best of your
5 knowledge, he did not do anything to be
6 involved in the - or was not part of being
7 involved in the preparation of the actual
8 presentation of the workshop, correct? No
9 papers, no presentations? As far as you know
10 he didn't do any of that, correct?

11 A. As far as I know, because it was a
12 surprise that he showed up on that day. I
13 don't think very many people thought he was
14 actually going to show up.

15 Q. Okay.

16 A. Because originally he was supposed
17 to show up October 8th or 9th. So when the
18 workshop started, at least to me and several
19 members of the RDT, it was a surprise that
20 Mr. Mowad was there.

21 Q. He - but the key point is he was
22 there, he came on the first day of the
23 workshop-

24 A. Correct.

25 Q. -and to your knowledge he didn't

1 give any papers, he didn't have anything to
2 do with preparation of the substance of the
3 papers, he had no substantive role in the
4 presentation or programming, correct?

5 A. That's correct. The training team
6 had already gotten all of that, the details
7 worked out, and the agenda was set and they'd
8 already spoken to all the speakers and
9 reviewed all of their presentations. So that
10 was one of Mr. Mowad's duties had he showed
11 up on the 9th, but Steve Chambers took on that
12 - that duty. He reviewed all the
13 presentations, he made sure the agenda
14 worked, he arranged for the note takers, note
15 takers that were capable of understanding the
16 science part of surrogate species.

17 MR. MUNDY: I'm going to object to
18 responsiveness.

19 Q. [BY MR. MUNDY:] And I'm trying to
20 keep this moving along-

21 A. Oh, I'm sorry.

22 Q. -because we've heard a lot of
23 this-

24 A. Okay.

25 Q. -already. Let me-

1 A. Okay.

2 Q. -ask you to assume, so I'm trying
3 to fill in some specific points-

4 A. Okay.

5 Q. -here, okay?

6 You memory of that, those first
7 two or three phone calls was Mr. Mowad had
8 made very plain that he could not be
9 physically present for extended 60 days or
10 beyond, correct?

11 A. Um, not in the first phone call.
12 First phone call he said he wanted to help,
13 he had to talk it over with his family and
14 that we would be back in touch. He actually
15 sounded like he was excited about doing the
16 detail in the first call.

17 Q. The Judge will have - she has
18 those calls, she'll review.

19 Would you agree, and it's true,
20 that Dr. Tuggle asked Mr. Mowad to keep the
21 detail open-ended and did not give him an end
22 date and told him he couldn't provide an end
23 date?

24 A. Um, something like that. He said
25 at least 60 days, I need you here at least 60

1 days. He needed to get here and then we'll
2 talk about the details and that kind of
3 thing.

4 Q. But it's correct, and if it'll
5 help refresh your memory, let me show you Mr.
6 Mowad's Exhibit AC.

7 JUDGE GARVEY: A what? Alpha
8 what? A what?

9 MR. MUNDY: Charlie. Alpha -
10 Alpha Charlie, Your Honor.

11 JUDGE GARVEY: Thank you.

12 Q. [BY MR. MUNDY:] Give you a moment
13 to review that and refresh your memory.
14 Alpha Charlie, AC, is a email from you,
15 correct?

16 A. Yes. I haven't finished reading
17 it-

18 Q. Oh, okay, go ahead, please finish.

19 A. Okay.

20 Q. Okay. Just for context, this is a
21 email from you, correct?

22 A. Yes.

23 Q. Dated Friday, September 28th?

24 A. That's correct.

25 Q. And it's to Mr. David Mendias; who

1 is he?

2 A. David Mendias is the Assistant
3 Regional Director for Budget Administration.
4 And David is the person that I charged to
5 take care of all the details, no pun
6 intended, the details for the detail for Mr.
7 Mowad.

8 Q. Okay.

9 A. So.

10 Q. With a copy to Ms. Shaughnessy,
11 correct?

12 A. Right.

13 Q. Let's fill in an acronym. It
14 says, actions prepare for Mowad detail to RO.
15 Just for clarity, what is RO?

16 A. Regional Office.

17 Q. Okay. If we come down, two,
18 three, four five, it's in the middle, the
19 first line where it says, the paragraph
20 starts off, Benjamin; do you see that?

21 A. Yes.

22 Q. It - in your own words, the email
23 you've written, it says, quote, Benjamin
24 asked Gary to keep the date - detail open-
25 ended and did not provide an end date. That

1 was your own words, correct?

2 A. That's correct. And the next
3 paragraph I said at least two months. That's
4 the other reference to time.

5 Q. Now, it is true that the - in your
6 words, the detail would be at least 60 days,
7 correct?

8 A. That's correct.

9 Q. And that you had told Mr. Mowad
10 that, you know, in early October when he was
11 asking, you had told him that he would be
12 allowed to return home once after the first
13 30-day period and once after the second 30-
14 day period, and then after that y'all would
15 work out the details for his return trips
16 home after the initial 60-day period. Let me
17 direct you-

18 A. That's here?

19 Q. Let me direct you, to help refresh
20 your memory, go to Exhibit AF.

21 MR. MUNDY: Alpha Foxtrot, Your
22 Honor.

23 Q. [BY MR. MUNDY:] I'll give you a
24 moment to review this email.

25 A. (Witness peruses document.)

- 1 Q. If you go to that middle
2 paragraph, it's that.
- 3 A. Okay.
- 4 Q. Yes, ma'am.
- 5 A. (Witness peruses document.) Okay.
- 6 Q. Okay. Just let me repeat my
7 question for you, and you have the email
8 before you, just again for context. This is
9 an email from you, correct?
- 10 A. Correct.
- 11 Q. Dated October 2, correct?
- 12 A. Correct.
- 13 Q. To Mr. Mowad?
- 14 A. Yes.
- 15 Q. Copies to Mr. Mendias, Tuggle,
16 Shaughnessy, correct?
- 17 A. Correct.
- 18 Q. And let me repeat my questions,
19 and you can reference the exhibit to refresh
20 your memory. You told Mr. Mowad verbatim,
21 quote, As Benjamin mentioned to you on the
22 phone, your detail will be at least 60 days
23 in length. And your exact words were "at
24 least", correct?
- 25 A. Uh-huh. That's correct.

1 Q. And then you say: We will pay for
2 your - for you to return home once after -
3 excuse me - during the first 30-day period
4 and once during the second 30-day period. Is
5 that accurate?

6 A. Yes.

7 Q. Those were your words, correct?

8 A. Correct.

9 Q. And then you next told Mr. Mowad
10 that you will, quote, work out the details
11 for return trips home after the initial 60
12 day period of your assignment, correct?

13 A. Correct.

14 Q. At this point you understood
15 clearly, he was very vociferous and very
16 vocal about the problems with taking care of
17 his mother and arranging for care for his
18 mother; you understood that already by the
19 time of the second phone call, correct?

20 A. He did mention that on the second
21 phone call - actually, I think he mentioned
22 it in an email and then also on a second
23 phone call.

24 Q. Okay. And this memo is occurring
25 after the second phone call, correct?

1 A. That's correct.

2 Q. And yet here you're not allowing
3 any flexibility for him to go home, back and
4 forth, during the first 30-day period or the
5 second day 30-day period. You say you will
6 allow return travel once during the first 30
7 days and once during the second 30 days, and
8 then you'll work out details beyond that?

9 A. Right. And I was using what we
10 call the ALDP model, and that's the Advanced
11 Leadership Development Program model where
12 it-

13 Q. My first-

14 A. -gave-

15 Q. Well, stop. First-

16 A. Okay.

17 Q. -did you actually say that?

18 A. Yes.

19 Q. That was your words, right?

20 A. Yes, I wrote this email.

21 Q. Okay.

22 A. Correct.

23 Q. Okay.

24 A. So we were using that model, the
25 ALDP model. When someone's on a 60-day

1 detail for ALDP, they're allowed to go home
2 once during the first 30 days, that is
3 completely paid for by the Government, and
4 once after that second 60 days (sic), so,
5 that's paid for by the Government.

6 Q. What's - what was the acronym,
7 ALDP?

8 A. ALDP, it's Advanced Leadership
9 Development Program.

10 Q. And-

11 A. Mr. Mowad was a coach for ALDP
12 this particular year.

13 Q. You made zero effort to find an
14 alternative to fill the role at this point,
15 correct?

16 A. (Indiscernible)?

17 Q. Yes.

18 A. Yes, I didn't make any attempts to
19 fill the role.

20 Q. You also told him expressly that
21 you could not offer him a flex schedule or
22 telework opportunity, since he had to be
23 physically present, correct?

24 A. That's correct. That was
25 mentioned on the phone call.

1 Q. And that was mentioned in your
2 email expressly to him putting that in
3 writing, correct?

4 A. Correct.

5 Q. I'm just going over, skipping some
6 things here.

7 I'm going to give you this other
8 book back. Turn to Defendant's Exhibit 4 to
9 refresh your memory here.

10 A. This one is up, or did you want me
11 to...

12 Q. I'm - just so there's no
13 confusion, I'm going to let you just - before
14 I even ask the question, I'm going to let you
15 refresh your memory. Go to Defendant's
16 Exhibit 4 - or Agency Exhibit 4. I'll let
17 you review that.

18 A. That's the right one?

19 Q. Yes, ma'am.

20 A. (Witness peruses document.)

21 Q. This is yet another email from you
22 to the effect of that Tuggle had asked Mr.
23 Mowad to keep the detail open-ended, correct?

24 MR. MEHOJAH: I'm going to object,
25 this is the same email that was just

1 referenced by the witness—

2 MR. MUNDY: Is it?

3 MR. MEHOJAH: -it's a different
4 printout, but it's the same email.

5 MR. MUNDY: Okay. Fair enough. I
6 - it just looked different to my eye, so it's
7 just a different printing system from the
8 Government?

9 MR. MEHOJAH: I believe it's a -
10 it's a chain that included an email response
11 from David Mendias, who she sent it to.

12 MR. MUNDY: All right. Well, the
13 format just looked different, so it looked
14 like a different one.

15 MR. MEHOJAH: Yeah, it's the same
16 email.

17 MR. MUNDY: Okay. With that
18 stipulation, we'll just pass over it, then.

19 Q. [BY MR. MUNDY:] Keep that book in
20 front of you there, if you would. Would you
21 flip to Defendant's Exhibit 7, Tab 7? Give
22 you a moment to review that.

23 A. (Witness peruses document.) Okay.

24 Q. And the last - do you remember the
25 last email we just looked at, from October 2

1 and we were discussing, about the go home
2 once for the first 30-day period and once in
3 the 60 - second 60-day time; do you remember
4 that?

5 A. Yes.

6 Q. That was October 2nd, correct?

7 A. I believe so.

8 Q. Do you need to look back?

9 A. No, if you say it's the 2nd, we're
10 good.

11 Q. Okay. The Exhibit 7, Defendant
12 Exhibit 7, is October 2nd also, correct?

13 A. Yes, it is.

14 Q. And it is from you, again you're
15 the author of this email, correct?

16 A. That's correct.

17 Q. And just to identify the
18 recipients for context, it's to - it says
19 SW2RDT plus. What is that?

20 A. That's the Regional Directorate
21 Team, plus their Deputies, and a few Chiefs.

22 Q. Okay.

23 A. A few GS-14s.

24 Q. What is Directorate Team?

25 A. The Regional Directorate Team are

1 the ARDs, the Assistant Regional Directors -
2 man, we have a lot of acronyms--

3 Q. That's why we're--

4 A. Assistant Regional Directors.

5 Q. That's why we're explaining this.

6 A. The GS-15 Assistant Regional
7 Directors for each program, plus a GS-14
8 Chief for Mig (sic) Birds, and a GS-14 Chief
9 for the Wildlife and Sport Fish Restoration
10 program.

11 Q. So these are - these are the heads
12 of the programs outside of the Ecological
13 Services?

14 A. Of all the other programs, and
15 Ecological Service is part of this one.

16 Q. It is?

17 A. It is part of it. They're
18 included in that whole chain - that whole
19 team.

20 Q. But I'm saying it also includes
21 the heads of all the other programs, other
22 than--

23 A. Yes. That's correct.

24 Q. Okay. So it's all the senior
25 management for all programs in the Region?

1 A. And their Deputies, the plus
2 (indiscernible) is their Deputies-

3 Q. Plus their Deputies.

4 A. -and a few Chiefs.

5 Q. So this is a FYI to the most
6 senior management of the Region, all
7 programs?

8 A. Correct.

9 Q. And you advised the most senior
10 management of all Regions - or all programs
11 for your Region, that Mr. Mowad will be
12 supervised by RD slash DRD, correct?

13 A. Correct.

14 Q. And my - I have to say I'm a
15 little unclear after your earlier
16 explanation, is RD slash DRD, does that mean
17 you as an Acting person, or is that Tuggle
18 plus you?

19 A. In this case it's the Regional
20 Director Benjamin Tuggle, and it's myself-

21 Q. Okay.

22 A. -the Deputy Regional Director.

23 Q. Okay. So this-

24 A. Combined into us.

25 Q. In this context it's both of

1 y'all?

2 A. It's both of us.

3 Q. Will be his direct, immediate
4 supervisors?

5 A. That's correct.

6 Q. And that his office will be on the
7 eighth floor, correct?

8 A. Correct.

9 Q. And that's immediate physical
10 proximity to Mr. - or Dr. Tuggle's office?

11 A. Two doors down from Dr. Tuggle.

12 Q. Okay.

13 A. Or three - three doors down from
14 Dr. Tuggle.

15 Q. And then you advise the other most
16 senior management in the Region that Ms.
17 Shaughnessy will send out detailed
18 information about Gary, Mr. Mowad's,
19 supervisory and other duties in Texas while
20 he detailed to the Regional Office. So she -
21 you're explaining she will be responsible for
22 reassignment of all the other tasks that he
23 had in progress as the Texas State
24 Administrator, correct?

25 A. Correct, make sure all of these

1 continued to occur while he was in the
2 Regional Office.

3 Q. It would be accurate that you as
4 the Chief Operating Officer, if you will, of
5 the Region had no plan in place for the
6 transfer and relief of his duties at the time
7 you sent this email, correct?

8 A. Correct. That's up to his
9 supervisor, Michelle Shaughnessy, the
10 Assistant Regional Director.

11 Q. There had been no prior
12 determination about what even duties he had
13 in progress to see if - how it would disrupt
14 or interfere with the duties and projects he
15 had underway in Texas, correct?

16 A. I - I don't know if Michelle had
17 talked to Gary about that. I have - I have
18 no knowledge of that.

19 Q. You - you had made no attempts to
20 elicit that-

21 A. I had not-

22 Q. -information?

23 A. -correct.

24 Q. You had not asked Ms. Shaughnessy
25 if this would disrupt the operations in Texas

1 that he had underway, did you?

2 A. I don't believe so.

3 Q. And I'm going to ask you a few
4 questions, and I'm going to try and be polite
5 and diplomatic as I can about this. We've
6 had a chance to discuss your personal
7 relationship with Ms. Arnold, and, you know,
8 I'm trying to be as professional and polite,
9 you know, as I can about this—

10 A. Okay.

11 Q. —and be sensitive to the
12 situation. But the — it would be accurate to
13 say, in your own words, that your
14 relationship with Mrs. Arnold, Allison
15 Arnold, is not a professional relationship,
16 it is a personal relationship, those are your
17 own words describing it?

18 A. That's correct. I'm not in her
19 supervisory chain, so there is no
20 professional relationship there.

21 MR. MUNDY: Object to
22 responsiveness.

23 Q. [BY MR. MUNDY:] Your — you still
24 own a home at 407 Canna Lilly Circle in
25 Driftwood, Texas, here — that's a town nearby

1 here in Austin, correct?

2 A. Yes, I do.

3 Q. And Mrs. Arnold lives at that
4 address, correct?

5 MR. MEHOJAH: Objection,
6 relevance.

7 JUDGE GARVEY: Oh, I'm going to
8 allow it. We talked about that.

9 COURT REPORTER: I'm sorry.

10 MR. MUNDY: We're - we're not
11 hearing you, Judge.

12 JUDGE GARVEY: Okay. Sorry. I'll
13 allow it. Objection overruled.

14 Q. [BY MR. MUNDY:] Ms. Arnold lives
15 at that address, doesn't she?

16 A. That's correct.

17 Q. She does not pay rent, does she?

18 MR. MEHOJAH: Objection,
19 relevance.

20 JUDGE GARVEY: Overruled.

21 Q. [BY MR. MUNDY:] She has lived at
22 that address since—

23 JUDGE GARVEY: I'm sorry, I didn't
24 hear the answer about paying rent.

25 THE WITNESS: That's correct, she

1 does not pay rent.

2 Q. [BY MR. MUNDY:] You have no sort
3 of written agreement with her about living at
4 that house, do you?

5 A. No, I don't.

6 Q. You have no email documenting any
7 sort of agreement with her about living at
8 that house, do you?

9 A. No, I don't.

10 Q. It's true that you've told other
11 people that you have a personal relationship
12 with her, correct?

13 A. I'm sure I have, correct.

14 Q. Y'all have known each other since
15 your days in graduate school together,
16 correct?

17 A. That's correct, we went to
18 graduate school together.

19 Q. It's true y'all have gone on
20 vacations together?

21 A. Yes.

22 Q. When Ms. Arnold has come to
23 Albuquerque, she has stayed at your residence
24 in Albuquerque, correct?

25 A. Yes, she has.

1 MR. MUNDY: Pass the witness, Your
2 Honor.

3 JUDGE GARVEY: Mr. Mehojah.

4 **CROSS-EXAMINATION**

5 **BY MR. MEHOJAH:**

6 Q. When Mr. Mowad had originally been
7 communicated the detail to Albuquerque, you
8 were on those phone calls; is that correct?

9 A. That's correct.

10 Q. Okay. And I think it's your
11 testimony that you intended - you and Dr.
12 Tuggle both intended that he would report to
13 both you and Dr. Tuggle; is that correct?

14 A. Until the third phone call, when
15 we heard about the allegations against me.
16 And Benjamin said it would be best if I,
17 Benjamin, direct his work and take
18 responsibility for it so that you can stay
19 out of it.

20 Q. Okay. After that decision was
21 made, did you have any supervisory
22 responsibility over Mr. Mowad during that
23 detail?

24 A. No, I did not. And it was awkward
25 because normally I would have.

1 Q. You would have normally supervised
2 somebody like—

3 A. I would have taken the ball.
4 Benjamin Tuggle doesn't do that sort of
5 thing. I supervise all the Assistant
6 Regional Directors, all the GS-15s, I
7 supervise them.

8 Q. So that he doesn't have to?

9 A. So that he doesn't have to.

10 Q. Okay. He's focusing on other
11 things, then?

12 A. A whole bunch of other things.

13 Q. Okay. And just to be clear, I
14 don't know whether it's ever been
15 established, Dr. Tuggle is - what - what is
16 his level of, I guess, grade level?

17 A. He's a Senior Executive Service,
18 so he's an Executive in the Agency, one of
19 the handful of high level executives in our
20 Agency. He's the highest level - the highest
21 ranking Executive in our Region.

22 Q. Okay. And how many offices is he
23 responsible for as Regional Director in
24 Region 2?

25 A. Oh my gosh, um, I don't even know

1 the number. He's responsible for every
2 single office in every single state.

3 Q. Okay.

4 A. That we have.

5 Q. All right.

6 A. So we have four states.

7 Q. Okay. Would - would it be fair to
8 say that Dr. Tuggle may not be the most adept
9 direct supervisor of somebody who needs
10 supervision?

11 A. Considering he supervises me,
12 that's absolutely correct. Because he is
13 very busy doing other things.

14 Q. And I think you testified that you
15 consider yourself kind of the Chief
16 Administrative Officer of the-

17 A. I call it Chief Operating Officer.

18 Q. Chief - Chief Operating Officer.
19 And so you - he relies on you to take care of
20 all of the-

21 A. I take care of all the business
22 stuff and all the support stuff at the
23 Regional Office, which then supports all the
24 Field Operations.

25 Q. Okay. And you took that role on,

1 even though you weren't supervising Mr.
2 Mowad, you took on that - that nuts and bolts
3 role on to make sure that the logistics of
4 Mr. Mowad's detail were covered?

5 A. Well, I took on most of those -
6 those roles and that duty before that third
7 phone call when I heard about it.

8 Q. All right.

9 A. So we were making arrangements for
10 Gary to show up in early October, so I
11 started sending out emails to David Mendias
12 saying, get his computer ready, get his
13 office ready, make sure the phone is turned
14 on it, make sure the computer is working,
15 make sure you contact for executive housing.
16 We already have a parking space for him in
17 the basement where the rest of the RDT parks.
18 So I had already started all that with David
19 Mendias, but then after the third phone call,
20 I had to back off.

21 Q. Okay. And then I think you
22 testified under - in response to questions
23 from Mr. Mundy that you had arm's length
24 dealings with him?

25 A. Yeah, I was very cautious.

1 Q. Okay. And did you - just to be
2 clear, you didn't have any substantive work
3 product that he was working on for you to
4 review?

5 A. That's correct, not for me.

6 Q. Okay. All right. Did you discuss
7 - did you have any meetings with him?

8 A. Just the two of us?

9 Q. Not just the two of you, attend
10 any meetings whatsoever?

11 A. Well, he was in the RDT plus
12 meetings when he was there on the Monday
13 morning for those meetings.

14 Q. Okay.

15 A. And he was there for one of the
16 after-action meetings, um, we had after
17 action meetings during the surrogate species
18 workshop, so the first day was a half a day,
19 and then we had an after-action meeting.
20 Second day was a full day, then we had an
21 after-action meeting. Then the third day was
22 a half a day, and then we had another after-
23 action meeting. And Mr. Mowad attended one
24 of those after-action meetings, so I was in
25 that meeting with him.

1 Q. Okay. All right. Let's see...
2 Would you personally call the IT Department
3 to have Mr. Mowad's computer activated, would
4 you?

5 A. No. I left that up to David
6 Mendias.

7 Q. Okay.

8 A. He's the Assistant Regional
9 Director for Budget and Administration, and
10 then the administration part he's over the
11 (indiscernible) folks.

12 Q. Okay.

13 A. So it was David's responsibility
14 to get all that stuff hooked up in advance of
15 Gary's detail.

16 Q. Okay. At some point, and Mr. -
17 Mr. Mundy asked some questions about your
18 relationship with Allison Arnold. Has there
19 ever been an investigation into allegation
20 that you have an improper relationship with
21 Allison Arnold?

22 A. Yes, it was investigated in 2009,
23 2010. My understanding from the person that
24 interviewed me, is there was an allegation to
25 the OIG and the OIG sent it back to the

1 Agency and said, Agency, do a management
2 inquiry. The Agency did a management
3 inquiry. I was contacted for an interview;
4 several people were contacted for an
5 interview. And at the end of that, I got a
6 piece of paper that said there was no finding
7 of any mismanagement, misconduct, or
8 inappropriate behavior.

9 Q. Okay. And there was no - you
10 never received a final written report?

11 A. All I got was a - an email that
12 said you have been found that - it has been
13 found there was no inappropriate
14 relationship, no mismanagement, no - I'm
15 paraphrasing. But basically you're in the
16 clear.

17 Q. Did - did you ever learn who made
18 that allegation?

19 A. No. I - when they interviewed me,
20 they said it was anonymous, but by their
21 questions it clearly involved Allen Glen.

22 Q. And who's Allen Glen?

23 A. Allen Glen is Mr. Mowad's
24 associate. They're working together now.

25 Q. Okay. Can you imagine why Mr.

1 Glen would make such an allegation to the
2 OIG?

3 A. I absolutely can. So he's in
4 environmental trade here in Austin, and he's
5 considered the ESA expert. And prior to my
6 coming here in Austin, when I was the Texas
7 State Administrator, the previous Texas State
8 Administrator before me was a guy named Ren
9 Lohofener, they were very close friends,
10 they worked very closely together.

11 Q. Allen Glen and?

12 A. And Ren Lohofener.

13 Q. Okay.

14 A. So Allen Glen was the go-to
15 attorney for everything ESA in this area of
16 Texas.

17 Q. Okay. And is that because of your
18 knowledge that they were very close, Allen
19 Glen and Ren Lohofener?

20 A. I'm sure that was part of it, but
21 Allen Glen was seen as the ESA expert.

22 Q. Okay. In the community?

23 A. In the community, in kind of the
24 environmental community.

25 Q. Okay.

1 A. And it didn't hurt that he was
2 very close to Ren Lohoefener.

3 Q. Okay. But Ren Lohoefener never -
4 there was never an allegation that Ren
5 Lohoefener was driving work toward - to Allen
6 Glen, was there?

7 A. Not officially, no.

8 Q. All right.

9 A. Not officially.

10 Q. Okay. And then so what - what do
11 you think happened that caused him to make
12 this allegation?

13 A. Allen Glen was involved in-

14 Q. If you know.

15 A. -a law enforcement case.

16 JUDGE GARVEY: Wait. Sir.

17 A. -a law enforcement case on a ESA-

18 JUDGE GARVEY: Mr. Mehojah. Mr.
19 Mehojah, excuse me. How is this relevant to
20 why we're here today?

21 MR. MEHOJAH: I was just fleshing
22 out the record, Judge.

23 JUDGE GARVEY: Right. Well, we
24 don't need it if it's not relevant, so why
25 don't you ask a relevant question to elicit

1 relevant information? Thanks.

2 MR. MEHOJAH: Thank you, Judge.

3 Q. [BY MR. MEHOJAH:] But you never
4 received - you were - you were interviewed
5 about your relationship with Allison Arnold?

6 A. Correct.

7 Q. Okay. During the management
8 inquiry?

9 A. During the management inquiry.

10 Q. Okay. And have there been any
11 other management inquiry about an allegedly
12 improper relationship with anybody, between
13 you and anybody else, in the service?

14 A. No. Not to my knowledge.

15 Q. And you do or do not supervise
16 Allison Arnold?

17 A. I do not.

18 Q. Okay.

19 A. I never have.

20 Q. Okay. Who supervises her?

21 A. Um, Marty Tuegel supervises her
22 right now. So Marty Tuegel works for Denise
23 Baker, and Denise Baker works for Michelle
24 Shaughnessy.

25 Q. Okay. Did Mr. Mowad ever come to

1 you and tell you that his computer wasn't
2 working?

3 A. No.

4 Q. Did he ever tell you that his
5 phone wasn't working?

6 A. No.

7 Q. Did he tell you when he was
8 arriving in Albuquerque for his detail?

9 A. No.

10 Q. He just showed up?

11 A. To my knowledge he just showed up.
12 I was surprised he showed up that first day
13 of the workshop.

14 Q. Okay. He didn't call you or-

15 A. He didn't call me.

16 Q. He didn't call you and say I'm
17 coming?

18 A. No.

19 Q. And I need a ride from the
20 airport?

21 A. No.

22 Q. And you had secured corporate
23 housing for him; is that what your testimony
24 is?

25 A. Yes.

1 Q. Okay.

2 A. We had contracted with an
3 executive housing where we send people on
4 details.

5 Q. Do you know whether Mr. Mowad ever
6 availed himself of that executive housing?

7 A. It's my understanding that he
8 didn't use that executive housing, that he
9 used a hotel in downtown Albuquerque.

10 Q. Do you know whether the Government
11 paid for that hotel?

12 A. Yes, we did.

13 Q. Okay. Are you familiar with a
14 project called Oncor Electric?

15 A. Yeah, that was a habitat
16 conservation plan project that actually
17 started when I was Texas State Administrator
18 and it was run by a lady named Lewella
19 Roberts, who used to be in the Austin Field
20 Office and moved to the Albuquerque Regional
21 Office.

22 Q. Okay.

23 A. And she kept those duties; I think
24 when she moved she kept lead for that
25 project.

1 Q. Okay. There was, um, we've
2 established and I won't go into it except to
3 say that there was a permit of some sort that
4 had to be reviewed by I believe it was Marty
5 Tuegel? Is that-

6 A. Right. There was a-

7 Q. -essentially the-

8 A. -section pay permit that needs to
9 be issued for Habitat Conservation Plans, so
10 Marty Tuegel would have been the right person
11 to review that - that permit.

12 Q. Did you ever talk to Marty Tuegel
13 about what language should be included in
14 that permit?

15 A. Absolutely not.

16 Q. Okay. Did you ever tell Marty
17 Tuegel that he should include language in a
18 permit that allowed for the purchase of
19 temporary conservation credits? Is that the
20 right term?

21 A. That's... sort of the right term.

22 Q. Okay.

23 A. Temporary credit.

24 Q. Temporary credits?

25 A. There's permanent credits and

1 there's temporary credits, and they're
2 supposed to match the impact.

3 Q. Okay.

4 A. If it's a permanent impact, you
5 need permanent credits; if it's a temporary
6 impact, you need temporary credits.

7 Q. Did you tell Marty Tuegel to
8 include language allowing for the purchase
9 temporary credits by Oncor Electric?

10 A. No. It's my understanding that
11 Michelle had negotiated the use of both
12 permanent and temporary credits for that HCP.

13 Q. Okay.

14 A. And when the permit was issued,
15 the temporary part was missing. So Michelle
16 then went back and said, hey, you guys missed
17 the temporary part, you need to add that back
18 in there. So they added in a line that said
19 something to the effect of - and I'm
20 paraphrasing - if there are going to be any
21 temporary credits to this, they need to be
22 run through the Austin Field Office.

23 Q. Okay. There was a period of time
24 when Mr. Mowad's duties were, um, transferred
25 to other employees in the office, Austin

1 Field Office, prior to his detail to
2 Albuquerque. Do you recall that?

3 A. Um, I recall that Benjamin and
4 Michelle had conversations about that, and I
5 believe they even traveled to Austin to meet
6 with the Texas Project Leaders,
7 (indiscernible) area supervisors.

8 Q. Were you involved in that at all?

9 A. I wasn't involved at all.

10 Q. Okay. Were you ever contacted by
11 Steve Manning with the purpose of forcing a
12 decision on the Austin Field Office?

13 A. No.

14 Q. Okay. How about Neil Wilkins?

15 A. No.

16 Q. How about... okay.

17 MR. MEHOJAH: I'm sorry, I'm
18 trying to cut through this - some of this a
19 little bit, Judge.

20 Q. [BY MR. MEHOJAH:] Prior to
21 October 5th, when Mr. Mowad disclosed to you,
22 and I believe Dr. Tuggle, on a telephone call
23 that he was cooperating with the Inspector
24 General, had anybody ever contacted you and
25 informed you that he was, in fact,

1 cooperating with the Inspector General?

2 A. No, I had no knowledge up until
3 that third phone call.

4 Q. Okay. And that was the first time
5 that, to your knowledge, Dr. Tuggle also
6 learned that; is that correct?

7 A. That's correct.

8 Q. Okay. Prior to October 5th, 2012,
9 were you contacted by the Director, Dan Ashe,
10 and asked to detail Gary Mowad to
11 Albuquerque?

12 A. No.

13 Q. Okay. Do you know whether he ever
14 contacted Dr. Tuggle prior to October 5th?

15 A. I - I don't know if he did, but if
16 he did, I'm sure Benjamin would have told me,
17 and Benjamin didn't tell me. I don't know
18 for sure that he did not.

19 Q. Okay. And, if you know, did
20 Deputy Director Rowan Gould ever contact you
21 prior to October 5th, 2012 and ask you to
22 organize a detail for Mr. Mowad to
23 Albuquerque?

24 A. No.

25 Q. Did anybody from the national -

1 the central office in D.C. contact you about
2 a detail for Gary Mowad prior to October 5th,
3 2012?

4 A. No one did.

5 Q. Okay. And to the - to the best of
6 your knowledge, no one did that with Dr.
7 Tuggle either?

8 A. To the best of my knowledge. If -
9 if they had, he probably would have mentioned
10 it to me, and he did not mention it to me.

11 Q. Did anybody ever contact you prior
12 to October 5th, 2012, and tell you that
13 somebody had made an allegation about the
14 listing of the dune sagebrush lizard?

15 A. No.

16 Q. Okay. You didn't hear from Rick
17 Coleman about that prior to October 5th,
18 2012?

19 A. Nope.

20 Q. How about Gabriela Chavarria?

21 A. No one.

22 Q. Okay. And prior to October 5th,
23 2012, you hadn't spoken to Gary Frazier about
24 that?

25 A. Nope.

1 Q. Okay.

2 A. And I don't think I would have
3 been because I was not involved with the dune
4 sagebrush lizard at all.

5 Q. Okay. Why is it that you believe
6 that Mr. Mowad could not have been offered a
7 flexible schedule at the beginning of the
8 detail?

9 A. Because we were in the planning
10 stages of a critically important surrogate
11 species workshop, which every Region was
12 required to put on at least one, and we were
13 way, way far behind. And unfortunately we
14 had a (indiscernible) who was the lead for
15 the project that was new to the Agency, she
16 didn't have the Agency's culture, she didn't
17 know the way things worked, and quite frankly
18 she's a very disorganized person, so our
19 surrogate species workshop was not shaping up
20 the way it should have been. We were way
21 behind.

22 Q. Okay. And so you were - I think
23 in your deposition testimony you stated you
24 were scrambling.

25 A. We were scrambling to put on that

1 workshop, and we needed all hands on deck at
2 the Regional Office, working with that
3 training team to put that - that workshop on.

4 Q. And you testified that you didn't
5 detail any other Field employees in to work
6 on this project; is that-

7 A. For the preparation for the
8 workshop, that's correct. We did afterwards.

9 Q. Okay. And why was it important,
10 in your mind, to detail Gary Mowad from the
11 Field to the Regional Office in preparation
12 for the workshop?

13 A. Because the Field is where that
14 surrogate species project or initiative needs
15 to - needs to be implemented. That's where
16 it needs to happen, so we wanted the Field
17 science. We didn't want it to just be
18 another Regional Office thing and forcing it
19 on Field Office employees. We wanted someone
20 from the Field to be involved, and we wanted
21 opinion leaders from the Field to be
22 involved, and that's why we asked Mr. Mowad
23 because he was an opinion leader. He
24 supervised all the Texas ES Field Offices,
25 and the Coastal program. And we wanted him

1 to come in and make sure that we were putting
2 that Field perspective into that workshop, so
3 it wouldn't just be another Regional Office
4 workshop. We wanted it to mean something.

5 Q. Um, and I believe you testified in
6 response to questions by Mr. Mundy today that
7 the Government would pay for travel back to
8 Austin for Mr. Mowad during the first 30 days
9 and during the second 30 days; is that
10 correct?

11 A. That's correct.

12 Q. Okay.

13 A. Again, using that ALDP model.

14 Q. Okay.

15 A. That's kinda what we based it off.

16 Q. And that's - did you know that
17 that was based on Government regulations or
18 something - some other directives?

19 A. I assumed since ALDP and our
20 National Conservation Training Center used
21 it, that it was tried and true and it was
22 based on regulations-

23 Q. Okay.

24 A. -travel regulations.

25 Q. Okay. Did you at any time direct

1 Mr. Mowad that he could not travel back to
2 Austin at his own expense?

3 A. Oh, absolutely not. That was -
4 that was just the trips that the Government
5 would pay for, is those two trips. But he
6 could travel back any time.

7 Q. At some point after Mr. Mowad
8 arrived in Albuquerque for this detail, did
9 you learn that he was on a flexible schedule?

10 A. It's my understanding that
11 Benjamin put him on a flexible schedule so
12 that he could travel back and forth on
13 Fridays and Mondays to take care of his
14 family.

15 Q. Okay. And Mr. Mundy used the term
16 compulsory in posing questions to you earlier
17 with regard to the detail. Did you at any
18 time anticipate or expect or view this detail
19 of Mr. Mowad as some sort of disciplinary
20 action?

21 A. No, not at all. In fact, I was
22 quite frankly surprised that Mr. Mowad didn't
23 say, no, I'm not doing this detail. I don't
24 know why he didn't say that. Say no, I can't
25 do it, I'm not doing it.

1 Q. Okay.

2 A. He never said that.

3 Q. And at some point you stopped
4 being involved in the discussions?

5 A. That's correct.

6 Q. Okay. Have you ever talked to an
7 individual named, I believe it's Bob Joseph?

8 A. Yes. Bob or Robert Joseph-

9 Q. Yeah.

10 A. -is a USGS head of the Water
11 Science Office here in Austin, Texas

12 Q. Okay. Had - did you ever talk to
13 him at any time after the decision was
14 communicated to Mr. Mowad that he would be on
15 this detail that there were, quote, problems
16 with Gary?

17 A. Um, I'm a little unclear of the
18 timing, because I would see Bob in airports,
19 and Bob would come to Albuquerque for various
20 other business, and we always talked. And he
21 always asked me about Gary, because Gary was
22 - was the Office at the USGS. That's where
23 my office was when I was the Texas State
24 Administrator, and he would always ask me,
25 what's up with Gary, where is Gary, why isn't

1 Gary ever in the office? I keep hearing
2 stuff about Gary. What's going on with Gary?

3 And I do recall one time in an
4 airport when we had a talk about Gary and I
5 told him, I said, he's having problems with a
6 supervisor; he's having difficulties with his
7 supervisory chain. And I don't know the
8 timing of when that was, but it was never in
9 relation to a - to this detail, it was more
10 in general, that Gary was having problems
11 with his supervisor.

12 Q. Okay. Are you, um... Are you aware
13 of any, quote, lack of a level playing field
14 with regard to conservation banks in Austin?

15 A. I'm not - I'm not quite sure what
16 that means.

17 Q. Do you believe that any
18 conservation banks received preferential
19 treatment from one office - or from one bank
20 to another as a result of, for example,
21 political influence?

22 A. Oh. No. They're reviewed at the
23 Field level, and then they go up to the
24 Regional Office and they're reviewed at that
25 Regional Office level.

1 Q. Who reviews them at the Regional
2 Office?

3 A. Um, I believe that's Marty
4 Tuegel's section.

5 Q. Okay.

6 A. He reviews all conservation banks.

7 Q. Okay. Are you aware of anybody
8 named Susan Combs contacting Marty Tuegel
9 about conservation banking?

10 A. I've never heard of Susan Combs
11 contacting Marty Tuegel about a bank, no.

12 Q. Okay. Did Susan Combs contact you
13 about conservation banks?

14 A. Never about conservation banks.

15 Q. Okay. Are you aware of any, um,
16 for lack of a better term, preferential
17 treatment that, quote, moves conservation
18 bank approval process, somebody staying to
19 that side of the line?

20 A. No.

21 Q. Okay.

22 A. In fact, the - the review of the
23 banks is at glacial speed, it takes forever
24 to get a conservation bank reviewed.

25 Q. Okay.

1 A. Just because of it goes from the
2 Field Office into the Regional Office, and
3 then the Regional Office and Field Office go
4 back and forth and ask questions and discuss
5 it and deliberate. It usually takes more
6 than a year.

7 Q. Okay. As we sit here today, are
8 you - do you know what Mr. Mowad's IG
9 allegations are?

10 A. I have no idea, except that it
11 somehow involves me and somehow involved
12 Allison Arnold and Susan Combs. That's all
13 I've ever heard.

14 Q. Right. And you said that, in
15 response to questions from Mr. Mowad (sic),
16 that you didn't detail any other GS-15s to do
17 this surrogate species workshop?

18 A. There - there were no other GS-15s
19 available. Gary Mowad was the only GS-15 in
20 the Field. All the GS-15s in the Albuquerque
21 Regional Office were already working on the
22 surrogate species workshop. All of the ARDs
23 had either speaking roles - for example,
24 Michelle Shaughnessy had a presentation, the
25 National Wildlife Refuge Chief had a

1 presentation, he ceded that to one of his
2 Science people, the ARD for Fisheries had a
3 presentation, but he ceded it to his Deputy,
4 the External Affairs ARD was head of
5 communications team, Dana Roth, who is the
6 Science ARD ran the entire thing, she had a
7 presentation. She also led two teams, the
8 Scientific Review Team and the Training Team.
9 David Mendias even had a role with all the
10 contracting and all the travel for the
11 surrogate species. And even our law
12 enforcement, who is completely separate from
13 the Regional Office, they participated in the
14 surrogate species workshop, too. So we
15 didn't have any other GS-15s.

16 What we started doing is we
17 started pulling GS-14s. We pulled Steve
18 Chambers, who's a GS-14. We had Cathy Grenio
19 on that training team, who's a GS-14. I
20 started pulling people from Refuges. A lady
21 named Monica Kimbro, put her on it full time.
22 A lady named Katy Lata from Ecological
23 Services, put her on it full time because we
24 were so far behind.

25 Q. Okay. And in - on September 26th,

1 2012, how many GS-15 employees did you have
2 located outside of the Region 2 Regional
3 Office?

4 A. We only had one, and that was Gary
5 Mowad, in the Field, at the Austin Field
6 Office - or in the Austin area, as the Texas
7 State Administrator.

8 Q. Is it a fair representation that
9 you were bringing all of the GS-15s there on
10 the surrogate species project?

11 A. Absolutely. This was the most
12 important thing our Region was doing. It was
13 our absolute highest priority, to get that
14 workshop pulled off, and then to start
15 planning the tribal workshop. Every single
16 Region was assigned; you had to have at least
17 one workshop in your Region. That was
18 assigned by the Director.

19 Q. Okay. Did Dr. Tuggle ever tell
20 you that he was - his intent was to
21 permanently transfer Gary Mowad to the
22 Regional Office?

23 A. No, he never said that, and I
24 don't believe that was his intent.

25 Q. Was that your expectation?

1 A. That certainly wasn't my
2 expectation. Having been a former Texas
3 State Administrator, I would have preferred
4 to see that position out in the field.

5 Q. Okay. And you testified that Bill
6 Radikey came in, a GS-14 Refuge?

7 A. Manager.

8 Q. Manager, came in after the
9 workshop ended to work on the surrogate
10 species workshop?

11 A. He was to work on the after-
12 actions of the surrogate species workshop.
13 He was actually the surrogate species
14 coordinator following the two workshops, to
15 keep that momentum going and to have the
16 geographic teams start to put together their
17 lists of surrogate species.

18 Q. Okay.

19 A. Because we had a due date.

20 Q. Okay. And so it was important to
21 have that - I don't think we've talked about
22 this - it's important - why was it important
23 to have that surrogate species workshop at
24 the end of October, and not, for example,
25 like, December?

1 A. It was actually supposed to happen
2 by the end of September, but we got a little
3 bit of an extension and got to have it after
4 that, which was very difficult because it was
5 in the new fiscal year, so it created all
6 kinds of logistical problems.

7 Q. Okay. So you were up against a
8 wall?

9 A. We were up against a deadline.

10 Q. Okay. And who is Mike Montaine?

11 A. Mike Montaine—

12 Q. No, no, I'm sorry. I'm sorry.

13 Who is Dan Collins?

14 A. Dan Collins is the migratory bird
15 expert in Migratory Birds Division in the
16 Albuquerque Regional Office. He's the non -
17 he's the game bird expert.

18 Q. What role, if any, did he play in
19 the surrogate species project?

20 A. He was the next surrogate species
21 coordinator after Bill Radikey, to continue
22 that momentum and help those teams to
23 continue get their surrogate species lists
24 going.

25 Q. Okay. And just to be clear, how

1 long was Bill Radikey detailed to the
2 Regional Office?

3 A. 60 days.

4 Q. Okay. And how long was Dan
5 Collins detailed to the Regional Office?

6 A. 60 days.

7 Q. Okay.

8 A. And Dan Collins was already in the
9 Regional Office—

10 Q. Oh, okay.

11 A. -he's a Regional Office employee.

12 Q. Okay. So he was just retasked?

13 A. Right.

14 Q. Okay. What about Mike Montaine,
15 who is he?

16 A. Mike Montaine is a Fisheries -
17 he's in an office called a Fish and Wildlife
18 Conservation Office here in San Marcos,
19 Texas. So he was an opinion leader for the
20 Fisheries program. So he came in and did a
21 60-day detail as well.

22 Q. Okay.

23 A. In the same position, Surrogate
24 Species Coordinator.

25 MR. MEHOJAH: I don't think I have

1 any further questions at this time, Judge.

2 JUDGE GARVEY: Thank you.

3 **REDIRECT EXAMINATION**

4 **BY MR. MUNDY:**

5 Q. Ms. Nicholopoulos, I'm going to
6 have to hopscotch a little bit here in
7 response to—

8 A. Okay.

9 Q. -some of the things y'all just
10 discussed.

11 The - you would agree that October
12 1st your department starts - or your Agency
13 starts with a whole fresh budget, that the
14 whole U.S. Government starts with a fresh
15 budget on October 1; it's a new fiscal year,
16 correct?

17 A. It's supposed to, but we're
18 usually on a continuing resolution, so—

19 Q. I will not (indiscernible) the
20 vagaries of Congress and their activities.
21 But strictly—

22 A. That's the theory.

23 Q. Strict - strictly speaking, the
24 Government's fiscal year starts fresh October
25 1.

1 A. Yes.

2 Q. Change subjects. You yourself do
3 not have and cannot point to a single piece
4 of work product done by Mr. Mowad while
5 detailed physically to the Albuquerque
6 Office, can you?

7 A. I don't understand the question.

8 Q. You can't show me any memo, any
9 pie chart, any conservation plan, any
10 workforce plan, any surrogate species papers
11 that Mr. Mowad wrote up while he was in the
12 Albuquerque Office, can you?

13 A. I don't have them with me, but I
14 did see an email from Mr. Mowad to Benjamin
15 Tuggle and it listed all of these tasks that
16 Mr. Mowad said I completed, we're all good.

17 Q. Are you referencing his December
18 15th exit memo? That ring a bell?

19 A. I'd have to see it. I'd have to
20 see it just to see if that's it.

21 Q. Let me suggest to you we've
22 already heard testimony yes, so I'm not going
23 to be-

24 A. Okay.

25 Q. -repeating that, we'll just keep

1 this ball movin'. I think-

2 A. And that's for the surrogate
3 species part. For the, um, workforce
4 planning part, I believe he did turn in work
5 to Michelle Shaughnessy.

6 Q. Okay. If Dr. Tuggle said he
7 couldn't - didn't have any copies of work
8 product for Mr. Mowad, you would not
9 contradict that, would you?

10 A. Hmm. That's an interesting
11 question.

12 Q. Can you-

13 A. No.

14 Q. -lay your hands and show us now
15 any sort of memo on workforce planning that
16 Mr. Mowad drafted?

17 A. I don't - can I ask my lawyer if
18 we could go through the record? I mean, I
19 don't have it with me, if that's what you're
20 asking. But I know there are emails from Mr.
21 Mowad to Benjamin Tuggle.

22 Q. Your-

23 A. But I don't know if you're
24 referencing that particular email.

25 Q. Your - is there - you're

1 referencing one that had the checklist of
2 things saying this is done, this is done,
3 this is done?

4 A. And they said something like we're
5 all good at the end?

6 Q. I will suggest to you Dr. Tuggle
7 discussed that yesterday.

8 A. Okay.

9 Q. So we - we will not delve into
10 that again.

11 A. Okay.

12 Q. You would agree that it was Dr.
13 Tuggle's decision to put Mr. Mowad on this
14 detail; it was not yours, it was not Ms.
15 Roth, no one else to your knowledge?

16 A. Who?

17 Q. Dr. Tuggle.

18 A. No, you said Ms. Roth?

19 Q. Roth, Dana Roth.

20 A. Oh, Roth, I'm sorry.

21 Q. I'm sorry, I'm getting a little
22 tired here.

23 A. No, it was Dr. Tuggle's decision.

24 Q. Okay. And as far as you know, no
25 one else, it would be Tuggle or higher level,

1 correct?

2 A. It would be Benjamin Tuggle, it
3 wouldn't be higher, yes.

4 Q. Well, you don't know what Tuggle
5 knew, correct? You - far as your knowledge
6 goes-

7 A. As far as my knowledge.

8 Q. As far as your knowledge-

9 A. As far as my knowledge, it was
10 Benjamin Tuggle.

11 Q. And nobody else?

12 A. That's correct.

13 Q. Okay. Certainly not your
14 decision?

15 A. Certainly not my decision.

16 Q. Certainly not Ms. Roth's decision?

17 A. No.

18 Q. Not Ms. Shaughnessy's decision?

19 A. No.

20 Q. And to your knowledge, there was
21 no prior consultation with Ms. Shaughnessy,
22 correct?

23 A. No, I wouldn't say that. I don't
24 know if there was, but I wouldn't say-

25 Q. Well, that's what you - no, the

1 question is what do you know?

2 A. Well, I - I don't know.

3 Q. That was my question. And as far
4 as you know, Mr. Mowad had no unique prior
5 training or experience about surrogate
6 species before this detail, correct?

7 A. Correct. Nobody did. This was a
8 brand new concept for the Agency.

9 Q. So he has nothing unique about
10 surrogate species that he's bringing to the
11 table?

12 A. Just like everybody else, correct.

13 Q. On that issue, everybody's on the
14 same flight, it's new to everyone?

15 A. Pretty much new to everybody, yes.

16 Q. Got it. The people that came
17 after Mr. Mowad, when the - the slot was
18 filled, all those people afterwards, none of
19 those men, or I don't know, there may be some
20 women, too-

21 A. There was one woman.

22 Q. -none of them were put on an open-
23 ended detail, correct?

24 A. Correct, they were all 60 days.

25 Q. But no one had an open-ended

1 detail, other than Mr. Mowad, correct?

2 A. To my knowledge, that's correct.

3 Q. Speaking to the pragmatics of
4 being in a workplace, you were saying some of
5 these people, you know, they were requested
6 and they didn't refuse. I've heard the term
7 from my military friends being voluntold.
8 You would agree—

9 A. That happens a lot.

10 Q. You're shakin' your head.

11 A. That happens a lot. Happens to
12 me, so, yes.

13 Q. Being voluntold.

14 A. I know what you're talking about.

15 Q. You've been volunteered—

16 A. I've been voluntold before.

17 Q. Yeah. But you would agree that an
18 express, outright refusal to follow an order
19 to a detail is, at a minimum, bad for future
20 career path, and depending on the situation,
21 can even be grounds for disciplinary action
22 up to and including disciplinary action?

23 A. It could be. It's a case by case—

24 Q. Yeah, depends on the nature of the
25 order?

1 A. Depends on the case, yeah.

2 Q. Okay. But it's certainly bad for
3 a future career path, an express objection?

4 A. It could be.

5 Q. Okay. If you get a order from the
6 Regional Director, that certainly isn't going
7 to go well for the future career path?

8 A. I've had a couple that I've said
9 no to. I don't know if it's hurt me. I
10 don't know.

11 Q. You agree that very early on Mr.
12 Mowad was vociferous about his complaints and
13 objections with problems reporting physically
14 for an open-ended detail to Albuquerque,
15 correct?

16 A. I would say after that first
17 initial conversation, following that. I
18 believe he sent an email that evening, and
19 from that point on he - he was pretty
20 vociferous that he had family duties to take
21 care of.

22 Q. And he expressed his problems and
23 complaints and objections both in emails and
24 on phone calls, correct?

25 A. Correct.

1 Q. Okay. The - let me ask you to
2 flip to Exhibit Alpha Golf, just to refresh
3 your memory.

4 A. How does this work?

5 Q. If you look down the tabs?

6 A. Oh, okay, right about there?

7 Q. Yes, ma'am.

8 JUDGE GARVEY: I'm sorry, what -
9 what is the exhibit?

10 MR. MUNDY: AG, Alpha Golf.

11 JUDGE GARVEY: Okay. Thank you.

12 MR. MUNDY: Yes, Your Honor.

13 Q. [BY MR. MUNDY:] Give you a moment
14 - minute to read that. And just to help you,
15 I'm going to direct you to the last
16 paragraph.

17 A. The last paragraph?

18 Q. Yes, ma'am.

19 A. (Witness peruses document.)

20 Q. Okay. For context, the - this is
21 an email in which you are one of the copied
22 recipients, correct?

23 A. It looks that way, yes.

24 Q. And this is dated October 4,
25 correct?

1 A. Yes.

2 Q. And this would be the day before
3 of what you're describing as the third phone
4 call, correct?

5 A. Yes, looks like it.

6 Q. Okay. And it's in - just dropping
7 down to the last paragraph, Mr. Mowad told
8 the group of recipients, you, Mr. - Dr.
9 Tuggle, Mr. Mendias, Ms. Shaughnessy, he -
10 his words to you on the day before that third
11 phone call was: To be completely
12 transparent, please be advised for the first
13 time in my 26 year career, I filed a
14 grievance to protect my interests and will
15 file a complaint with the OSC, or Office of
16 Special Counsel, tonight. Correct?

17 A. Yes. It runs from there.

18 Q. Okay. And so then the next day he
19 revealed to you that he was, in fact,
20 cooperating with the OIG on that phone call?

21 A. He revealed it on the phone call
22 with Dr. Tuggle.

23 Q. But it would certainly - you
24 already knew before that, you got on the
25 phone on that third phone call, you already

1 knew that there were problems and troubles
2 with your relationship with Mr. Mowad, to put
3 it politely?

4 A. So my knowledge of what he means
5 when he's saying he filed a grievance was
6 relative to the detail. That that's what the
7 grievance was about.

8 Q. And complaint to the OSC also,
9 correct?

10 A. And - and I assumed that was about
11 the detail.

12 Q. Yes, but I'm saying it's by -
13 going into that third phone call, you already
14 knew that he was taking official action,
15 correct?

16 A. To - to prohibit the detail.

17 Q. Well.

18 A. Yes.

19 Q. The point I'm trying to make, I'm
20 not trying to dance around the words with
21 you, before you got on the phone call that
22 third time, you already knew there were - he
23 was taking action and formal complaints with
24 outside agent - or, I don't know what the
25 correct terminology would be, but he was

1 going outside the chain of command, filing
2 official grievances and complaints, and so by
3 the time you got on that third phone call,
4 you went into that call knowing there was
5 trouble with him, in your relationship with
6 him, correct?

7 A. Right, trouble that he did not
8 want to attend the detail, yes. It wasn't
9 until that phone call that I knew he had
10 alleged something about me.

11 Q. The context of this, though, he
12 detailed in this email is in response to that
13 October 2 email that you and I previously
14 discussed about the refusal to let him go
15 home—

16 A. That's when he realized it.

17 Q. Right. About the, one, that he
18 could go home once for the first 30 days,
19 once the second.

20 A. Correct.

21 Q. Okay. That's the context to which
22 this is replying?

23 A. Right. He's replying to that
24 email that I sent out. He - he forwarded it
25 to Michelle, it looks like, and everybody

1 else.

2 Q. It was clear that y'all were very
3 much had a - a adverse relationship at this
4 point; it was not going well?

5 MR. MEHOJAH: Objection, asked and
6 answered.

7 MR. MUNDY: I'm not exactly sure
8 it has, but-

9 JUDGE GARVEY: Sustained.

10 Q. [BY MR. MUNDY:] Is that correct?

11 JUDGE GARVEY: No, sustained the
12 objection. Move along.

13 MR. MUNDY: Okay. Yes, Your
14 Honor.

15 Q. [BY MR. MUNDY:] You said Mr.
16 Allen Glen, the lawyer, is an associate - or
17 Mr. Mowad's an associate with Mr. Allen Glen.
18 Mr. Allen Glen's a lawyer at a private law
19 firm, correct?

20 A. Yes, I believe so, still.

21 Q. Mr. - Mr. Mowad is not an
22 associate at that law firm, is he?

23 A. Not that I know of.

24 Q. Okay. So that was just a misuse
25 of terminology, then?

1 A. Well, it's my understanding that
2 they're working together on various projects,
3 so that's what I meant by associate, that -
4 that Mr. Mowad is consulting with Allen Glen
5 through his consulting business.

6 Q. And we've heard that testimony.

7 A. Okay.

8 Q. But he's not a direct employee; he
9 doesn't work in the same company-

10 A. Not to my knowledge.

11 Q. Very good. There was a question
12 about the 2008 investigation and
13 determination. That, I will represent to
14 you, we've not seen a copy of the complaint
15 or the resolution, but it would be fair to
16 say you've not received any determination
17 from the OIG about Mr. Mowad's complaints
18 that relate and arise from this issue,
19 correct? You've not received a comparable
20 letter?

21 A. Correct. That was a separate
22 issue, and I haven't even been advised if
23 there's an investigation ongoing.

24 Q. My point is, you have not received
25 any letter from the OIG as we sit here today

1 on August 19 about a final determination?

2 A. I've never been contacted by the
3 OIG on that, correct.

4 Q. Well, but answer my question if
5 you would. You've not received such a
6 letter-

7 A. Correct.

8 Q. -from them about this?

9 A. Correct.

10 Q. Correct. Okay. Give me just a
11 moment here. If you would, I'm going to give
12 you a moment to review Defendant's Exhibit 1,
13 look that over.

14 A. This?

15 Q. Just give you some context of what
16 I'm asking you, is this a description of the
17 surrogate species program?

18 A. Let me just...

19 Q. Yeah.

20 A. Take a quick look.

21 Q. That's why I'm just asking you
22 advance, so you know - the reference of why
23 I'm asking.

24 A. (Witness peruses document.) Yes.

25 Q. This is discussing the role out of

1 the surrogate species program we've been
2 talking about, correct?

3 A. Correct.

4 Q. In looking at Defense Exhibit 1,
5 this is directed to the Service Directorate.
6 We - I keep hearing the term Directorate, but
7 the context kind of varies. Who is the
8 Service Directorate?

9 A. The Service Directorate is the
10 Fish and Wildlife Service Director, the
11 Deputy Director, the Assistant Director, and
12 all of the Regional Directors, so Benjamin
13 Tuggle as Regional Director is a member of
14 the Service Directorate.

15 Q. Okay. So Tuggle's level and
16 higher?

17 A. Correct. That's a good way to say
18 it.

19 Q. Okay. And this is dated September
20 20, 2012, correct?

21 A. That's correct.

22 Q. And this memo discussing, in
23 short, the roll out or the new concept as
24 you've described, or the new program,
25 surrogate species, this is asking for

1 feedback so they can get technical guidance,
2 comments and so forth, requesting the comment
3 from that highest level directorate group?

4 A. Correct.

5 Q. And then, in fact, it says at the
6 bottom of the subject line, in bold, comments
7 due no later than December 7, correct?

8 A. Right, it says comments on the
9 guidance, the draft technical guidance.

10 Q. So y'all then - if we flip to
11 Defendant Exhibit 2, give you a moment to
12 review that.

13 A. (Witness peruses document.) Okay.

14 Q. Then if you'll look at - I think
15 there's some attachments that are linked
16 behind it, they have some various addressees.

17 A. Right, those are all the State
18 Directors.

19 Q. Well, I was going to say, it
20 appears to be a form letter mailed out to the
21 State partner Fish and Wildlife Texas Parks
22 and Wildlife, comparable State folks, a form
23 letter the day after Exhibit 1, rolling out a
24 - a invitation to come to a workshop.

25 A. To come to our Regional workshop,

1 yeah, that's right.

2 Q. And this would be the workshop
3 we're now talking about at the end of
4 October, correct?

5 A. Correct.

6 Q. Okay. And yet there's not any
7 technical guidance feedbacks that are even
8 due until December 7th, as stated on Exhibit
9 1, correct?

10 A. They're kind of different things.

11 Q. Well, listen to the question
12 first.

13 A. Yes.

14 Q. Is that correct?

15 A. Yes.

16 Q. Okay. And the... at the time you're
17 holding the workshop then, you don't even
18 know what the final decisions on technical
19 guidance will be from the top tier of the
20 Agency about their technical guidelines; is
21 that accurate, at this point in time?

22 A. I'm not quite sure what you're
23 asking.

24 Q. Sure. If the comments aren't even
25 due back until December 7, they can't

1 finalize the formal policy position of Fish
2 and Wildlife until after they gather the
3 responses and comments back in December,
4 everybody goes on Christmas vacation, they
5 get together in January, roundtable it, and
6 then somebody makes the final announcement
7 about here's our official policy position on
8 these things. Would that be how that
9 normally - process would work?

10 A. Right. And it's a complicated
11 thing because there's this guidance-

12 Q. Well, let's listen to the timeline
13 first.

14 A. Yes, you're correct on the
15 guidance, the comments weren't due back until
16 whatever the date was.

17 Q. December 7th.

18 A. December 7th.

19 Q. And then let's finish that
20 timeline. They get 'em back, people are
21 going to presumably go out on Christmas
22 vacation for the last half of December,
23 somebody comes back in January, gathers the
24 comments up, and then that Senior
25 Directorate, Service Directorate circulates

1 comments and then amongst themselves have to
2 come to an agreement and finalize the - the
3 final document and policy position. Would
4 that be how that timeline would work out?

5 A. Not exactly. Because the guidance
6 still hasn't been finalized, because we send
7 it out for external peer review, so holding
8 the surrogate species workshops was the
9 initial step to select the species, and the
10 guidance is kind of on its own track. It's
11 an (indiscernible) thing.

12 Q. Okay. So that final guidance
13 would go in to the following year?

14 A. It's still open, because of the
15 peer review comments that we got. So
16 multiple spheres.

17 Q. Okay. So at the time you're
18 holding your workshop, you don't even know
19 why or what the comments will be from the
20 Senior Directorate?

21 A. They don't really matter-

22 Q. Service Directorate.

23 A. They don't really matter for the
24 workshop. The workshop was to introduce
25 everyone to a concept of surrogate species

1 and form these teams where surrogate species
2 would then be selected by those teams.

3 Q. And Mr. Mowad brought nothing, no
4 unique prior experience; you've already said
5 that.

6 A. Right, nobody did.

7 MR. MUNDY: I'm just checking my
8 notes, Your Honor, but I think I'm done.

9 Q. [BY MR. MUNDY:] Oh. You said on
10 the 2008 complaint that it was an anonymous
11 complaint, but you determined that it was Mr.
12 Allen Glen, correct?

13 A. That he had something to do with
14 it, correct.

15 Q. Okay. And that was just because
16 of the profile of the facts of the complaint?

17 A. The questions they were asking,
18 did he lose any business, did I direct any
19 business away from him, those kinds of
20 things.

21 Q. So—

22 A. It was very specific to him.

23 Q. So it is possible, even though
24 names are not disclosed, to determine
25 identity from profile of facts and questions

1 and allegations?

2 A. Guessing.

3 Q. You did it yourself?

4 A. Guessing. Yeah.

5 Q. Okay. Informed, educated
6 conclusion?

7 A. When the questions are that
8 specific, yeah.

9 Q. Okay.

10 MR. MUNDY: Pass the witness.

11 JUDGE GARVEY: Anything else?

12 **REXCROSS EXAMINATION**

13 **BY MR. MEHOJAH:**

14 Q. You were responding to questions
15 about the difference between technical
16 guidance - technical guidance and - or the
17 drafts, technical guidance and the surrogate
18 species workshop.

19 A. Yes.

20 Q. Those are two different things?

21 A. Two different things.

22 Q. Okay. You didn't have to have one
23 to do the other?

24 A. Absolutely not.

25 Q. Okay. They were on parallel

1 tracks or just different tracks?

2 A. Totally different tracks. As I
3 said, the technical guidance has been peer
4 reviewed by an external party, and the peer
5 review comments came back not so positive.
6 So that technical guidance has not been
7 finalized yet.

8 Q. Okay. On September 26th, 2012, did
9 you know that Mr. Mowad had a mother who
10 suffered from Alzheimer's?

11 A. No, I did not.

12 Q. Okay. You didn't know that he had
13 a mother who required any kind of specific
14 medical care?

15 A. I had no idea.

16 Q. Okay. You stated also that Mr.
17 Mowad, in addition to others on the surrogate
18 species project, lacked any specific training
19 regarding surrogate species. Why is that?

20 A. There's no training available on
21 surrogate species. Everyone was the same.
22 It was a new concept for all of us.

23 Q. This was a brand new idea?

24 A. Brand new way of doing business
25 for the Fish and Wildlife Service.

1 Q. Okay. I think you testified you
2 were bringing all the GS-15s to work on this?

3 A. GS-15s, GS-14s-

4 Q. Okay. Everybody?

5 A. Everybody I could grab.

6 Q. Okay. All hands on?

7 A. Pretty much.

8 Q. Okay. All right. And you would
9 agree the GS-15 level employees are expected
10 to have some sort of self-motivation or
11 initiative?

12 A. Oh, they're - absolutely, they're
13 - they don't require much supervision.
14 They're the level - they're the same level
15 I'm at, so I don't have to supervise the GS-
16 15s that are under my direct supervision.
17 They are self-directed, they do their work,
18 they're independent thinkers, independent
19 workers. I don't hold their hands at all.

20 Q. Okay.

21 MR. MEHOJAH: I don't think I have
22 any further questions, Judge.

23 MR. MUNDY: You - just quickly.

24 **FURTHER REDIRECT EXAMINATION**

25 **BY MR. MUNDY:**

1 Q. The - you were - how long were you
2 Texas State Administrator, roughly?

3 A. From...

4 Q. Few years?

5 A. Almost five years.

6 Q. Yeah.

7 A. Yeah.

8 Q. You would agree, based on that
9 experience, that is a very demanding
10 workload, lot of tasks going on; that's a
11 full, very full time job?

12 A. It is.

13 Q. Okay. And it - well, Mr. Mowad
14 seemed to be doing a good job running that
15 office, and he - he himself was not lazy, he
16 was very engaged and carrying a very full
17 workload in his performance of those duties,
18 correct?

19 A. To my knowledge he carried a very
20 full workload.

21 Q. Okay.

22 MR. MUNDY: That's all I have.

23 Thank you.

24 MR. MEHOJAH: No further questions
25 from the Agency, Judge.

1 JUDGE GARVEY: Thank you.

2 Who does Michelle Shaughnessy
3 report to?

4 THE WITNESS: That would be me,
5 Your Honor, I'm her direct supervisor.

6 JUDGE GARVEY: And Marty Tuegel
7 reports up through Michelle Shaughnessy,
8 correct? Through some—

9 THE WITNESS: There's someone in
10 between.

11 JUDGE GARVEY: Right. Right.

12 THE WITNESS: Right. There's a
13 lady named Denise Baker in between.

14 JUDGE GARVEY: Now, you indicated
15 that the Office of Inspector General has
16 never contacted you; is that correct?

17 THE WITNESS: That's correct.
18 There was a contact a few weeks ago following
19 my deposition and Benjamin Tuggle's
20 deposition, something to do with the length
21 of - of the detail and notification for Mr.
22 Mowad. They interviewed me for—

23 JUDGE GARVEY: It's okay.

24 THE WITNESS: -about 15 to 20
25 minutes.

1 JUDGE GARVEY: That's a different
2 - you can stop.

3 THE WITNESS: Right. Right.

4 JUDGE GARVEY: Did Dr. Tuggle tell
5 you that he had been contacted about - by the
6 Office of Inspector General prior to the
7 Appellant's arrival for the detail?

8 THE WITNESS: On - on this
9 particular case? No, ma'am.

10 JUDGE GARVEY: So Dr. Tuggle-

11 THE WITNESS: He - he did not.

12 JUDGE GARVEY: Did not share that
13 with you?

14 THE WITNESS: That's correct. I
15 do know that Dr. Tuggle-

16 JUDGE GARVEY: No, no, no, there's
17 no-

18 THE WITNESS: -was involved with
19 the Office of Inspector General-

20 JUDGE GARVEY: You don't need to -
21 no, no, no. Ma'am. Unless you're asked a
22 question, you don't just start talking.
23 Okay? Your job is to answer questions. So
24 thank you.

25 Was not contacted by... Okay, I

1 have no further questions. Any - any follow
2 up, Mr. Mehojah?

3 MR. MEHOJAH: No further follow
4 up, Judge.

5 JUDGE GARVEY: And Mr. Mundy?

6 MR. MUNDY: Briefly, just one
7 point.

8 **FURTHER REDIRECT EXAMINATION**

9 **BY MR. MUNDY:**

10 Q. The part of Mr. Mowad's job would
11 involve signing off on the credit, the plan
12 for the credit, as discussed about Mr.
13 Tuegel, he - that's part of Mr. Mowad's in
14 that loop of signing off-

15 A. I would say in the review.

16 Q. Yes.

17 A. And - and the sign off is at the
18 Regional Office, though.

19 Q. It is within his normal job
20 duties, if he has concerns to voice those
21 objections?

22 A. Up through the Regional Office and
23 his chain of command, you're correct.

24 MR. MUNDY: Nothing further, Your
25 Honor.

1 JUDGE GARVEY: Thank you very much
2 for your testimony today. You are excused.
3 You may not discuss your testimony with
4 anyone else until this entire matter's
5 brought to a close.

6 (Whereupon, the witness was excused.)

7 We'll take a five-minute break and
8 we'll go back on the record. Thank you.

9 MR. MUNDY: Yes, Your Honor, thank
10 you.

11 [OFF THE RECORD 10:50]

12 [ON THE RECORD 11:04]

13 JUDGE GARVEY: Back on the record.

14 **WITNESS: MICHELLE SHAUGHNESSY**

15 JUDGE GARVEY: If you would stand
16 so I can swear you in. And raise your right
17 hand, please. Do you promise that the
18 testimony you're about to give will be the
19 truth, the whole truth, and nothing but the
20 truth, so help you God?

21 THE WITNESS: Yes, I do.

22 JUDGE GARVEY: Mr. Mundy?

23 MR. MUNDY: Yes, Your Honor.

24 **DIRECT EXAMINATION**

25 **BY MR. MUNDY:**

1 Q. Ms. Shaughnessy, let's start with
2 a little bit of background and context before
3 we get to some specific questions, and I will
4 say, we've heard a lot already, so we're
5 going to try to get to some real pinpoint
6 items with you that need to be done, okay?

7 A. Sure.

8 Q. But for quick context, what is
9 your current position with Fish and Wildlife
10 Service?

11 A. I'm the Assistant Regional
12 Director for Ecological Services for the
13 Southwest Region.

14 Q. Okay. And this is in the
15 Albuquerque Regional Office?

16 A. It is.

17 Q. Okay. And just to kind of put you
18 in relationship to the other witnesses we're
19 talking about, Dr. Tuggle is the top of the
20 Regional Office, Ms. Nicholopoulos under him,
21 and then you're under that, and then from
22 there it goes to Mr. Mowad as Texas State
23 Director, correct?

24 A. State Administrator.

25 Q. State Administrator, excuse me.

1 A. Uh-huh.

2 Q. But that - that is the hierarchy
3 of that organizational structure, correct?

4 A. Yes, it is.

5 Q. And then we will have some
6 questions about a lady named Ms. Allison
7 Arnold, she, on that same continuation of
8 that charge, is down the chart below Mr.
9 Mowad on the chain of command, correct?

10 A. No. She's under the chain of - my
11 chain of command.

12 Q. Well, in 2012, let's talk about in
13 2012.

14 A. Okay.

15 Q. And-

16 A. I believe she was moved underneath
17 me in 2012.

18 Q. At the time, back in early 2012,
19 was she a direct report to you or direct
20 report in the chain of command to Mr. Mowad?

21 A. She was never a direct - she was
22 in 2011 ultimately a report underneath Mowad,
23 but I believe that in 2011 we moved her
24 underneath me early in the year.

25 Q. Okay.

1 A. Or maybe later in the year.

2 Q. She worked in the Texas offices,
3 but was moved out from under the chain of
4 command of Mr. Mowad?

5 A. Correct.

6 Q. To where she reported to you?

7 A. Yes.

8 Q. And then you report to Ms.
9 Nicholopoulos directly?

10 A. Yes.

11 Q. She's your immediate supervisor?

12 A. She is.

13 Q. The - you would agree, it is
14 correct, and you were Mr. Mowad's immediate
15 next up the ladder?

16 A. I supervised Mr. Mowad, yes.

17 Q. Okay. The - in 2011, the year
18 2011, Mr. Mowad was given an outstanding
19 rating on his performance review, correct?
20 In fact, received a performance award?

21 A. Uh, I don't remember. I'd have to
22 look at that paperwork.

23 Q. Does that sound correct or
24 incorrect to you?

25 A. Again, I don't remember. So I'd

1 have to look.

2 Q. Okay. And in the year 2012 - and
3 I'm asking this because it's in context of
4 some other comments, in the year 2012 he was
5 a direct report to you. You didn't have him
6 on any sort of negative employee formal
7 action plan, disciplinary plan, probation
8 plans or anything like that, did you?

9 A. I did not have him on any plan,
10 that's correct.

11 Q. Okay. Now, in the Regional
12 Office, you've been there, at least when we
13 talked in May, you'd been there a little over
14 three years, correct?

15 A. Yes.

16 Q. So if we roll that backwards to
17 2012, you'd been there roughly a year or so?

18 A. Yes.

19 Q. Okay. So relatively new arrival
20 in the Regional Headquarters?

21 A. Yes.

22 Q. Where had you been stationed
23 before that?

24 A. Prior to that, I was Field Project
25 Leader in Colorado for 18 months, and then

1 prior to that I was in our Headquarters
2 Office in D.C.

3 Q. Okay. So new to this Region?

4 A. Yes.

5 Q. And then were assigned directly to
6 the Regional Office under Ms. Nicholopoulos?
7 Correct?

8 A. Yes.

9 Q. I see you nodding your head, so-

10 A. I wouldn't say assigned, I - I
11 have a job underneath her, yes.

12 Q. That was the role you came in to
13 fill, the job that reports directly to Ms.
14 Nicholopoulos?

15 A. Yes.

16 Q. Okay. Now, in... Does it seem
17 right that you started in your position in
18 the Regional Office around March of 2011-

19 A. Yes.

20 Q. -approximately?

21 A. Right.

22 Q. Okay. And so in about - let's
23 jump forward about a year later into the
24 Spring of 2012, you attended a training
25 program called Speed of Trust Training,

1 correct?

2 A. Yes.

3 Q. And just real simple explanation,
4 what was that, just for context, what is the
5 Speed of Trust Training Program?

6 A. It's a training that... if I can get
7 it down to one - it's the training that is
8 for teams to learn about - it's self-
9 awareness training, essentially.

10 Q. Mr. Mowad attended that training
11 with you, correct?

12 A. Yes.

13 Q. And at some time, you know, during
14 the break or evenings or something, but y'all
15 had - had a conversation of which part
16 included Mr. Mowad expressing to you concerns
17 that he had about the relationship between
18 Mrs. Nicholopoulos and Ms. Arnold, among
19 other things, correct?

20 A. Uh, what I remember from that,
21 conversation was during class and he
22 expressed concerns about the relationship in
23 - just in general in Texas.

24 Q. Okay.

25 A. Between my managers and Susan

1 Combs.

2 Q. Let me ask you again, did he - did
3 that conversation include expressly his
4 comments and concerns specifically mentioning
5 Ms. Nicholopoulos?

6 A. Yes.

7 Q. Okay. And his perception that
8 there was - his perception, as he was
9 explaining to you, about perceived potential
10 improprieties of the activities of Ms.
11 Nicholopoulos?

12 A. I would say that he was - he said
13 that he, um, had concerns about past actions
14 and relationships they had, which were
15 unfounded.

16 Q. Did - excuse me? You made the
17 determination that you found it to be
18 unfounded?

19 A. I did not believe that - I didn't
20 see any sort of facts that pointed me to that
21 same conclusion.

22 Q. You did not make any investigation
23 yourself, did you?

24 A. I did not.

25 Q. That's just you had an opinion,

1 but you made zero investigation to determine
2 any sort of follow up to what he was
3 reporting to you, correct?

4 A. Correct.

5 Q. Okay. But he told you, and I
6 think your own words, and I'll share with
7 you, if you will, page 15 - you and I had a
8 chance to speak under oath, you were under
9 oath, in your deposition in May, correct?

10 A. Yes.

11 Q. Of this year. Let me give you a
12 moment to refresh your memory. Look at page
13 15, lines 20 through 24, if you would. This
14 is the only copy so I have to sorta have to
15 share this. My bifocals just don't reach
16 that far.

17 A. Wait. Lines-

18 Q. Right here.

19 A. -20 to 24? Okay. (Witness
20 peruses document.) Okay.

21 Q. Okay. You can - I just can't read
22 that far away, ma'am, my arms aren't-

23 A. Okay.

24 Q. -my glasses aren't that good. But
25 the exact words of your answer was as he

1 expressed it to you was, quote, concern of
2 improper influence. Those are your own
3 words, correct?

4 A. That's what I said, yes.

5 Q. Okay. And that was somewhere in
6 the timeframe of March 2012?

7 A. It would have been during the Seed
8 of Trust training, so. I don't remember
9 exactly when that was.

10 Q. It was that Spring of 2012.

11 A. Yes.

12 Q. Correct?

13 A. Yes.

14 Q. But you made no follow up
15 investigation of what he - his concerns he
16 had expressed to you, correct?

17 A. I did not.

18 Q. It is correct that you told Ms.
19 Nicholopoulos about it the next week,
20 correct?

21 A. (No immediate response.)

22 Q. Let me help refresh your memory,
23 if you want. Look at page 16, line 9.

24 A. Yes.

25 Q. And you were asked expressly: Did

1 you communicate those concerns to anybody
2 else other - outside yourself or Mr. Mowad,
3 at any point? And your answer was: I talked
4 to Joy about it. Correct?

5 A. I did. But I don't-

6 Q. Well, in fact that's correct, that
7 was your answer?

8 A. Yes, I did.

9 Q. Okay.

10 A. I did talk to Joy about it, but I
11 do not remember whether it was earlier that
12 year or after the Speed of Trust.

13 Q. Well, let me help refresh your
14 memory again, since it seems to be difficult
15 today. At line 16, line - page 16, line 13,
16 the very next question: And roughly in the
17 same time window, I mean, not necessarily the
18 next day - and you interrupt me and say:
19 Yeah, but within the next week.

20 A. Right.

21 Q. And I say: Okay. And you say:
22 Or something like that. Is that correct?

23 A. But I was talking about the call,
24 the previous year, not the Speed of Trust
25 Training.

1 Q. A call - so there had been a prior
2 call where he expressed similar concerns-

3 A. Yes.

4 Q. -to you? So that Speed of Trust
5 comment, that was the second time he's
6 expressed this to you, then?

7 A. Yes.

8 Q. Okay. Did you undertake any
9 investigation of that prior report by him?

10 A. The prior report I did speak to
11 Joy about.

12 Q. So she knew at that time that
13 Mowad was expressing his concerns to his
14 immediate supervisor?

15 A. Yes.

16 Q. About improper influence, concern
17 of improper influence, in your words,
18 correct?

19 A. I did not use improper influence-

20 Q. No.

21 A. -during the call.

22 Q. Mr. Mowad used that word?

23 A. Yes.

24 Q. But you made no other attempts to
25 investigate it beyond conveying that to Ms.

1 Nicholopoulos, correct?

2 A. Right.

3 Q. You didn't report it to Dr.
4 Tuggle?

5 A. I did not.

6 Q. Did not report it to the OIG?

7 A. I did not.

8 Q. Did not report it to the OSC?

9 A. I did not.

10 Q. Didn't report it to HR?

11 A. (No audible response.)

12 Q. No one outside of just talking to
13 Ms. Nicholopoulos?

14 A. Correct.

15 Q. It is correct that there's been
16 times when Mr. Mowad was requested to make
17 recommendations for personnel for a detail
18 only to have them rejected until Ms. Arnold
19 was the proposed candidate for the detail,
20 and then Ms. Arnold was then accepted; is
21 that correct?

22 A. No. I believe what happened was
23 that I was new to the Region. We had to get
24 this dune sagebrush lizard HCP done. I had
25 had a lot of - my background is working on

1 HCPs, that's what I'd done for 20 years. I
2 know what kind of skills and abilities—

3 MR. MUNDY: Your Honor, object to
4 responsiveness.

5 Q. [BY MR. MUNDY:] If you might stop
6 there. You denied that statement, correct?

7 A. Denied what statement?

8 Q. The one I just said, that there
9 had been times when Mr. Mowad requested, and
10 his team was requested, to make
11 recommendations of personnel for details, and
12 they were - recommended other candidates only
13 to have them rejected, until Ms. Arnold was
14 the proposed candidate for the detail; is
15 that correct?

16 A. That is true.

17 Q. Okay. And that in fact then Ms.
18 Arnold was accepted, after the prior persons
19 were declined?

20 A. Yes. Because she had the skills
21 and abilities.

22 Q. Well—

23 MR. MUNDY: Object to
24 responsiveness.

25 JUDGE GARVEY: Ma'am, let me

1 explain what your job here today is. You
2 answer the question. You don't volunteer any
3 information. If you need to be
4 rehabilitated, that's what Mr. Mehojah's here
5 for. If he thinks you need a follow up. But
6 if he asks you something-

7 THE WITNESS: Okay.

8 JUDGE GARVEY: -yes or no, and
9 you're - and you don't respond accordingly,
10 then it appears you're not being direct or
11 your being evasive, which isn't good. And
12 you don't volunteer anything. Your job is to
13 say yes, no, or answer the question. But you
14 don't volunteer. Okay?

15 THE WITNESS: Okay. All right.

16 Q. [BY MR. MUNDY:] It is correct
17 that you had nothing to do with who was
18 chosen to be part of the detail for the
19 workshop or presentations at the workshop,
20 correct?

21 A. Can you say that again, please?

22 Q. Yes. Did you have anything to do
23 with who was chosen to be part of the detail
24 for the workshop and its preparation?

25 A. What workshop?

1 Q. The surrogate species workshop.

2 A. Um, did I have any - no, I don't
3 believe I did.

4 Q. Joy Nicholopoulos asked you
5 whether Mr. Mowad was available to be
6 available for the workshop; is that-

7 A. Yes.

8 Q. And this is after you had
9 communicated to her his concerns about
10 impropriety of improper influence, or concern
11 of improper influence, using your word?

12 A. Yes. In time.

13 Q. You did not ask Mr. Mowad what his
14 availability was or seek his reaction or
15 prior input from him about whether he wanted
16 to participate in this detail, did you?

17 A. I did not.

18 Q. You are not made - you were not
19 involved with asking him to participate in
20 the detail, that was Mr. Tuggle and Ms.
21 Nicholopoulos, correct?

22 A. I believe so.

23 Q. You certainly yourself weren't
24 involved-

25 A. I was not involved.

1 Q. It certainly was very clear, and
2 Her Honor has many emails here, he was -
3 after he was asked to be on the detail, he
4 was very vociferous and included you in
5 emails repetitively about the hardships and
6 problems involved with him attending this
7 detail, physically being on extended detail
8 in Albuquerque, didn't he?

9 A. Yes.

10 Q. Very, very vocal, unambiguous
11 about that, correct?

12 A. Yes.

13 Q. Do you have a memory of Dr. Tuggle
14 having a meeting with Texas personnel in
15 which he - well, you know what, scratch that,
16 that's repetitive. We - we're trying not to
17 repeat other people's, what they've already
18 explained, so I'm gonna just skip it.

19 With respect to the detail in
20 Albuquerque, from your perspective, there is
21 no reason that he would be required to be
22 there physically for the weekends to do that
23 job, correct?

24 A. My understanding of the job is he
25 would not have to be there during the

1 weekends.

2 Q. And from your perspective, it
3 would have taken him maybe two weeks or maybe
4 even one week to do a work plan for the State
5 of Texas, correct?

6 A. Yes.

7 Q. And you were present at the
8 meeting at which his Texas State
9 Administrator responsibilities were handed
10 off to other Texas Office managers, correct?

11 A. Yes.

12 Q. And that occurred before the
13 surrogate species workshop, correct?

14 A. I believe so.

15 Q. Have you previously testified, in
16 fact, that was correct? I'll help refresh
17 your memory here, if you would please look at
18 page - oh, I'm gonna break my neck. Page 36,
19 line 18, you were asked: And that occurred
20 before the surrogate species workshop,
21 correct? And what was your answer?

22 A. Yes.

23 Q. Just a moment here. I'm gonna
24 take this large notebook, and you'll see the
25 letter tabs down the right side? We're -

1 we're filling in some blanks explaining
2 abbreviations, acronyms and - and providing
3 context for relationships of things to
4 clarify for the Judge.

5 A. Okay.

6 Q. Okay? Give me just a moment here.
7 If you would, please turn to Exhibit AQ.
8 Alpha Quebec. I'm sure our Canadian friends
9 would say it differently, but that's the
10 Texas version of it.

11 This is Mr. Mowad's Let me give
12 you a moment to look that over.

13 A. (Witness peruses document.)

14 Q. And what we're gonna do is have to
15 explain some of these abbreviations and
16 letters-

17 A. Okay.

18 Q. -and Government speak, if you
19 will.

20 A. Okay.

21 Q. Just for context of what we're
22 talking about here, this is a email from Mr.
23 Mowad to you, it says Michelle. That would
24 be you, correct?

25 A. Yes.

1 Q. So just - and the date is October
2 9, 2012, correct?

3 A. Yes.

4 Q. Subject: Violation of
5 Whistleblower Act, WPA, correct?

6 A. Yes.

7 Q. And for context let me - I'm going
8 to point to you, in the middle of the email,
9 does - the second paragraph says: He's
10 instructed the staff to stop working with the
11 Comptroller's Office, the entire Texas staff
12 do not consider this to be a healthy
13 relationship. It goes on, and it says, she
14 had exaggerated impacts of T&E listings.
15 What is T&E?

16 A. Threatened and endangered species.

17 Q. Okay. And then... In the - in the
18 bottom paragraph, it says: My order to
19 seize, it's a misspelling, but cease contact
20 with the task force has received a hundred
21 percent support from PLs and staff. What is
22 PL?

23 A. Project leaders.

24 Q. Okay. And what are Project
25 Leaders, just, you know, the Reader's Digest

1 version?

2 A. They're the supervisor of the - of
3 all of my Field Offices.

4 Q. Okay.

5 A. The head supervisor.

6 Q. And then he comments there:

7 Elated that someone stood up for them.

8 Correct? That's his very next sentence?

9 A. Yes.

10 Q. And no one ever - none of these
11 Project Leaders ever called you up and said,
12 Gary's got it all wrong; they didn't do that,
13 did they?

14 A. They did not.

15 Q. If you would turn to BD, Bravo
16 Delta. This has been probably the most
17 enigmatic of all of our abbreviations. No
18 one's been able to crack the code yet, so
19 we're see if you can do it. I'm going to ask
20 you about that one right there.

21 A. EPAP?

22 Q. EPAP. It says E-P-A-P. What is
23 an EPAP?

24 A. Employment - employee performance
25 - it's their performance plan. Employee

1 performance something.

2 Q. The short of - let me give you the
3 (indiscernible). The short of this is after
4 the detail, Mr. Mowad, this is right at the
5 physical year end of the - for the
6 Government, and he's saying he has to do the
7 year end reviews for his employees in the
8 Region - or in the State, correct?

9 A. Yes, they do the performance
10 review, yes.

11 Q. So that's just explaining that?

12 A. Yes.

13 Q. Okay. Even though he changed
14 details because he'd been their State
15 supervisor for the last year, he's just
16 saying I need to finish their year end
17 review?

18 A. Yes.

19 Q. Okay. You're the first person
20 that got the code on that one.

21 A. I didn't get it all right, though.

22 Q. Let's see, go to BL, Bravo Lima.
23 This is a stream of emails, but at the very
24 top line it's from Dr. Tuggle to you, and it
25 says: Why aren't they doing his T&A. What

1 is T&A?

2 A. Um...

3 Q. Okay, if you don't know, we sure
4 don't.

5 A. No, it's the - it's their - it's
6 their quick time, it's their, um, it's the -
7 gah, what is T&A?

8 JUDGE GARVEY: It most likely is
9 time and attendance.

10 THE WITNESS: Thank you.

11 A. Time and attendance.

12 JUDGE GARVEY: Is it time and
13 attendance?

14 THE WITNESS: Time and attendance.

15 Q. [BY MR. MUNDY:] Okay. All right,
16 we're - we're gonna jump over a whole lot of
17 facts, because we've already heard a lot of
18 other testimony at this point. I want to
19 jump forward to the - the tail end of the
20 2012 year, late December, and then Mr.
21 Mowad's career track or job track after that
22 until his ultimate retirement, okay?

23 A. Okay.

24 Q. In - in middle of December of
25 2012, he put in for retirement, correct?

1 A. I believe so, yes.

2 Q. And then a week or two later he
3 withdrew that paperwork and said he was
4 transferring to a job under Ms. Chavarria,
5 correct?

6 A. Yes.

7 Q. Okay. And then in January there
8 was dialogue about whether or not that - that
9 change of jobs under Ms. Chavarria was
10 allowed, and in short, he was put back under
11 Dr. Tuggle, back on the detail he'd been on
12 previously, correct?

13 A. Yes.

14 Q. Okay. And then he put in his
15 final permanent retirement paperwork in
16 February, correct?

17 A. That sounds right.

18 MR. MUNDY: Pass the witness.

19 MR. MEHOJAH: You can leave that,
20 if you want.

21 MR. MUNDY: Okay.

22 **CROSS-EXAMINATION**

23 **BY MR. MEHOJAH:**

24 Q. To the extent that you had any
25 involvement in the decision to detail Mr.

1 Mowad to Albuquerque from Austin in September
2 of 2012, um...

3 MR. MUNDY: Judge, I object to
4 this, it misstates her evidence, because
5 she's already testified she did not have
6 that.

7 MR. MEHOJAH: Well, and I'd like
8 to clarify the record, if I might, Judge?

9 JUDGE GARVEY: Okay. I'll allow
10 him leeway. Go ahead.

11 MR. MEHOJAH: Okay.

12 Q. [BY MR. MEHOJAH:] You said in
13 response-

14 MR. MEHOJAH: I'll rephrase it.

15 MR. MUNDY: Okay.

16 Q. [BY MR. MEHOJAH:] You said in
17 response to questions from Mr. Mundy that you
18 didn't inquire as to Mr. Mowad's workload
19 prior to Mr. Mowad leaving Austin for
20 Albuquerque.

21 A. Correct.

22 Q. Okay. And you've testified that
23 you, um, gave deposition testimony in May
24 2014, with Mr. Mundy present; is that
25 correct?

1 A. Yes.

2 Q. Okay. And I'd like to refer you
3 to page 25 of your deposition testimony, line
4 1. At the top there.

5 A. Uh-huh. Yes.

6 Q. Okay. You gave - you gave this
7 testimony under oath in a deposition?

8 A. I did.

9 Q. Okay. And that states, and
10 correct me if I'm wrong, it states: Answer,
11 they asked whether his workload would allow
12 for that, and I thought it would, and I
13 thought it would be a good opportunity for
14 him. Is that correct?

15 A. That is correct.

16 Q. Okay. So that revises your
17 testimony today, is that-

18 A. Right. I did not call him
19 beforehand and ask about his workload, but
20 since he was my staff member I do believe
21 that his workload would allow for something
22 like that.

23 Q. Okay. You have a general
24 understanding of what the workload is of
25 somebody in Mr. Mowad's position in that

1 office?

2 A. Yes.

3 Q. Okay. You don't know specifically
4 day-to-day ups and downs?

5 A. Correct.

6 Q. Okay. And at some point you did
7 go out to Austin when - or you were at least
8 present in the meeting in Austin when Mr.
9 Mowad's duties were transferred to other
10 managers in the office; is that correct?

11 A. Yes.

12 Q. And did he - he provided a
13 document?

14 A. He did.

15 Q. That - and that document - did
16 that document detail his work?

17 A. It gave a list of activities that
18 he had been working on.

19 Q. Okay.

20 A. That we needed to make sure other
21 folks covered.

22 Q. Okay. And I apologize, I've got a
23 few too many documents up here.

24 And you reviewed that, that list
25 of work that Mr. Mowad believed was under his

1 supervision?

2 A. Yes.

3 Q. Okay. And I'm going to turn you
4 to Exhibit AI.

5 JUDGE GARVEY: I'm sorry, Mr.
6 Mehojah-

7 MR. MEHOJAH: Appellant's Exhibit
8 AI-

9 JUDGE GARVEY: Say - say it again?

10 MR. MEHOJAH: Appellant's -
11 Appellant's Exhibit AI.

12 JUDGE GARVEY: All right.

13 Q. [BY MR. MEHOJAH:] That is a
14 document that he sent to you?

15 A. Yes.

16 Q. Okay. And those, as you recall,
17 are the documents that he - or the items that
18 he was working on at the time that would need
19 to transferred; is that correct?

20 A. That is correct.

21 Q. Okay. And was it your
22 understanding that - what was your
23 understanding about the transfer of - or the
24 management of these duties to others at the
25 time?

1 A. We went to Austin to make sure
2 that these duties were covered by the Project
3 Leaders.

4 Q. Okay.

5 A. And as we went through that, most
6 of these activities had already been covered
7 by the Project Leaders.

8 Q. Most of these activities were
9 already being covered by Project Leaders?

10 A. Yes.

11 Q. And the project - just for
12 clarification, the Project Leaders were
13 people who this work was going to be
14 transferred to?

15 A. Yes.

16 Q. In the Austin Office?

17 A. Yes.

18 Q. Okay.

19 A. Well, in - in Texas.

20 Q. In Texas?

21 A. Right.

22 Q. Okay. What was your understanding
23 of the duration of the transfer of these
24 duties to the Project Leaders?

25 A. At least 60 days.

1 Q. Okay. At any time did Dr. Tuggle
2 tell you that the transfer of these duties
3 was permanent?

4 A. No.

5 Q. At any time did Dr. Tuggle tell
6 you that his transfer - there was a transfer
7 from his Austin Office to the Regional Office
8 that was permanent?

9 A. No.

10 Q. Okay. And you were his supervisor
11 at the time?

12 A. Yes.

13 Q. Would he have had to contact you -
14 contact you to let you know that he was
15 transferring someone permanently from your
16 office?

17 A. Yes.

18 Q. Okay. And I guess to be clear, he
19 didn't have to tell you, but he would have?

20 A. Yes. I would have had to do the
21 paperwork.

22 Q. Oh, you would have - okay, you
23 would have had to actually do the transfer
24 paperwork?

25 A. Yes.

1 Q. Okay. So you would have learned
2 of that at some point?

3 A. Yes.

4 Q. Did you ever do any transfer
5 paperwork for Mr. Mowad?

6 A. I did not.

7 Q. Okay. And you participated in the
8 surrogate species workshop?

9 A. I did.

10 Q. As a presenter?

11 A. Yes.

12 Q. Okay. What was your understanding
13 of the importance, if there was any, of the
14 surrogate species project?

15 A. It was the highest priority on
16 Dan, our Director's, list at the time.

17 Q. Okay. And Dan is?

18 A. The Director of the Fish and
19 Wildlife Service.

20 Q. Is that Dan Ashe?

21 A. Dan Ashe, yes.

22 Q. Okay. Was that a priority just
23 for the Region 2?

24 A. No. It was a priority for the
25 Fish and Wildlife Service.

1 Q. Okay. Nationally?

2 A. Nationally. Everyone was doing
3 surrogate species workshops.

4 Q. At any time did you ever have
5 reason to believe that that project was not
6 of that importance?

7 A. No.

8 Q. Okay. Nothing ever led you to
9 believe that?

10 A. Nothing.

11 Q. Okay. You had a conversation with
12 Joy Nicholopoulos about conveying a complaint
13 that Mr. Mowad relayed to you over the
14 telephone?

15 A. Yes.

16 Q. And I believe, correct me if I'm
17 wrong, that that was the first time he made
18 that comment to you?

19 A. Yes.

20 Q. Okay. In what context was that
21 comment made?

22 A. A general conversation about, um,
23 things that Gary was upset about.

24 Q. Were there things—

25 A. In general.

1 Q. In general?

2 A. Yes.

3 Q. Were there things other than Ms.
4 Nicholopoulos that he complained about during
5 that call?

6 A. Yes.

7 Q. Okay. What other things?

8 A. Um, he complained that he was not
9 involved in the lizard activities. Generally
10 complained about Susan Combs. So it was a
11 general discussion.

12 Q. At what point during that call did
13 he make this comment about Ms. Nicholopoulos?

14 A. I don't remember the entire call,
15 but I believe it was the latter part of that
16 conversation.

17 Q. Okay. What was the purpose of
18 this call initially?

19 A. We had check-in, so since I was
20 supervising him, I would make sure that I
21 talked to him.

22 Q. Okay. This was - you would
23 consider this a routine-

24 A. Yes.

25 Q. -call between a supervisor and a

1 subordinate?

2 A. Yes.

3 Q. Okay. And you brought that - I
4 think you've testified that you brought that
5 comment to the attention of Ms.
6 Nicholopoulos?

7 A. I did.

8 Q. Okay. And what reaction, if any,
9 did Ms. Nicholopoulos convey to you?

10 A. Um, she was surprised, and asked,
11 you know, did I think there was anything?
12 And I said, I have not seen anything, I did
13 not see any - there was no pressure from her
14 coming to me, and so it was dropped at that
15 point.

16 Q. And I believe the concern was
17 something about improper influence?

18 A. Yes.

19 Q. Was Mr. Mowad any more specific
20 about what that meant?

21 A. Um, he was not. He talked about,
22 um, how they would go and call Joy and have a
23 conversation with her.

24 Q. And when you say they-

25 A. And they would go over - they,

1 Susan Combs, Catherine Armstrong, Steve
2 Manning would call Joy and just skip both
3 Mowad and myself.

4 Q. Okay. Do you know if that ever
5 happened?

6 A. Yes.

7 Q. Do you know that - you knew that
8 they skipped?

9 A. They would call her.

10 Q. They would call her. When? Would
11 she do anything about that?

12 A. She would tell me what their
13 conversation was about.

14 Q. Would she direct you to take any
15 specific action that you believed was
16 improper influence?

17 A. She would not.

18 Q. Okay.

19 A. She would tell me to call them
20 back.

21 Q. Okay. Would she tell you to do
22 anything in particular when you called them
23 back?

24 A. No.

25 Q. Okay.

1 A. They have concerns, can you call
2 them back and see if you can address them.

3 Q. Okay. You can't just ignore
4 those?

5 A. No. I mean, it's a State agency
6 that is calling, or an applicant. In this
7 particular instance it was an applicant we
8 were working with on a permit, and so, you
9 know, we have a - a relationship with that
10 applicant as we're working through
11 negotiations on that document, and so making
12 sure that we're communicating with the
13 applicant is part of our ongoing business.

14 Q. Okay. And did Ms. Nicholopoulos
15 make any comments about whether she was going
16 to pursue this issue with Mr. Mowad or not?

17 A. She did not make any comments.

18 Q. Okay. Do you know that she's ever
19 pursued it?

20 A. I do not know that.

21 Q. Okay.

22 A. No.

23 Q. Did you ever see any evidence of
24 improper influence that benefitted Steve
25 Manning?

1 A. I did not.

2 Q. How about Susan Combs?

3 A. I did not.

4 Q. Catherine Armstrong?

5 A. No.

6 Q. Okay. To the best of your memory,
7 do you know whether Ms. Arnold was in a
8 position to give preferential treatment to
9 someone?

10 A. She was not in a position to do
11 that.

12 Q. Okay. Could - had - did you ever
13 see any evidence that she had, in fact,
14 provided preferential treatment to anyone?

15 A. I have never seen that.

16 Q. Okay. Do you recall that Mr. - do
17 you have a belief about whether Mr. Mowad's
18 detail to Albuquerque from Austin was
19 retaliation for any protected activity?

20 A. I don't believe it was.

21 Q. Okay. But you weren't involved in
22 the conversations?

23 A. I was not.

24 Q. And you are not - you were not
25 consulted beyond whether his workload was -

1 would - would manage or would allow for that?

2 A. Correct.

3 Q. Okay.

4 MR. MEHOJAH: No further
5 questions, Judge.

6 JUDGE GARVEY: Thank you.

7 **REDIRECT EXAMINATION**

8 **BY MR. MUNDY:**

9 Q. You said you were a presenter at
10 the workshop, correct?

11 A. Yes.

12 Q. Mr. Mowad, from your - what you
13 called your knowledge, Mr. Mowad's only
14 involvement in the workshop was, you know,
15 just like being a participant, sittin' in the
16 audience, correct?

17 A. Yes.

18 Q. Okay. Just - do you still have
19 that Exhibit AI in front of you?

20 A. No.

21 Q. Well, here, ma'am, we can just
22 (indiscernible). For that one - that's fine,
23 I have decided to use specifically - he's got
24 it right there.

25 A. Oh, okay.

1 Q. The date of Exhibit AI you were
2 discussing is - is October 5, correct?

3 A. Yes.

4 Q. At 5:12 p.m. in the evening,
5 correct?

6 A. Yes.

7 Q. All right. The Judge will
8 understand the timing sequence. That - I
9 just wanted to get that clear.

10 A. Okay.

11 Q. I'm just filling a couple of
12 specific points here. You said one of his
13 complaints to you on this earlier phone call
14 in 2012 was that he was not involved in the
15 dune sagebrush lizard work, correct?

16 A. Yes.

17 Q. Ms. Arnold was specifically
18 assigned that work, correct?

19 A. She was the staff person, yes.

20 Q. Previously Mr. Mowad, he and his
21 office staff, had first recommended Ms.
22 Christina Williams; is that accurate?

23 A. Yes.

24 Q. And she - that recommendation was
25 declined, correct?

1 A. Yes, she did not possess the
2 skills and abilities I needed.

3 Q. The second person, there was a
4 second person recommended by Mr. Mowad and
5 the Texas State staff, was Mr. Kevin
6 Connelly, correct?

7 A. Yes.

8 Q. And then, likewise, that was
9 rejected by the Albuquerque Office, correct?

10 A. Yes, for similar reasons.

11 Q. And then Mr. Mowad made some
12 comments to you to the effect, it's not the
13 precise language, but to the effect of if you
14 wanted Mrs. Arnold, to tell him so and order
15 him, and then they would send her to you; is
16 that accurate, something to that general
17 effect?

18 A. I believe so, yes.

19 Q. Okay.

20 MR. MUNDY: I have nothing
21 further, Your Honor.

22 JUDGE GARVEY: You indicated that
23 Ms. Nicholopoulos asked you to call back
24 Steve Manning. He was an applicant for a
25 permit; is that correct?

1 THE WITNESS: Yes.

2 JUDGE GARVEY: Okay. What-

3 THE WITNESS: He was a consultant
4 for the applicant, yes.

5 JUDGE GARVEY: Consultant, okay.
6 For the applicant, okay. And can you tell me
7 around that timeframe what other consultants
8 or applicants you talked to? In Texas, we'll
9 just limit it to that.

10 THE WITNESS: David P. Smith.

11 JUDGE GARVEY: And is he a
12 consultant or an applicant?

13 THE WITNESS: He's a lawyer for an
14 applicant.

15 JUDGE GARVEY: Okay.

16 THE WITNESS: Um, you know, I - it
17 was a couple of years ago, so I don't know
18 exactly what was going on, but I-

19 JUDGE GARVEY: Okay.

20 THE WITNESS: -frequently get, you
21 know-

22 JUDGE GARVEY: Right, and I just
23 want to-

24 THE WITNESS: -there's calls that
25 go up and need a response.

1 JUDGE GARVEY: Right. Okay. And
2 Ms. Arnold is in your chain of command,
3 correct, somewhere down the line?

4 THE WITNESS: Yes.

5 JUDGE GARVEY: And—

6 THE WITNESS: Yes.

7 JUDGE GARVEY: So then she's also
8 in Ms. Nicholopoulos's chain of command,
9 since you're in Ms. Nicholopoulos's—

10 THE WITNESS: Yes.

11 JUDGE GARVEY: All right. Now,
12 have you ever been contacted by the Inspector
13 General's Office?

14 THE WITNESS: I have not. No.

15 JUDGE GARVEY: All right, now, I
16 wasn't clear on your testimony. Did the
17 Appellant ever complain to you at any time
18 that he felt the relationship between Ms.
19 Arnold and Ms. Nicholopoulos was less than
20 professional or inappropriate or what have
21 you?

22 THE WITNESS: I don't remember any
23 conversation about Ms. Arnold and Ms.
24 Nicholopoulos being inprofessional (sic) -
25 unprofessional.

1 JUDGE GARVEY: So you don't
2 remember him raising that issue at all,
3 Arnold, Nicholopoulos, is it inappropriate or
4 is it - because they're in the chain of
5 command is Arnold getting preferential
6 treatment, etcetera, etcetera?

7 THE WITNESS: (No audible
8 response.)

9 JUDGE GARVEY: Did you answer
10 that?

11 THE WITNESS: No, I'm still trying
12 to recall. I mean, we had conversations
13 about Ms. Arnold.

14 JUDGE GARVEY: Uh-huh.

15 THE WITNESS: But I don't believe
16 that those conversations ever were about
17 Nicholopoulos.

18 JUDGE GARVEY: What were the
19 conversations about Arnold?

20 THE WITNESS: Um, they did not
21 believe that Ms. Arnold had the skills to do
22 what the - she had some of the skills
23 necessary, but, um, not all of the skills
24 necessary to do the - the permit
25 negotiations. And there was always an

1 ongoing discussion about Ms. Arnold because
2 she was working on the plan and Gary was not.

3 JUDGE GARVEY: And as the Texas
4 State Director, why wouldn't he have been
5 working on it?

6 THE WITNESS: We had to move very
7 quickly, and because I had the previous
8 background in doing these, I knew that I
9 needed to - just me and a staff person needed
10 to move this thing along very quickly.

11 JUDGE GARVEY: Okay, I want to go
12 back. I want - you said in 2011 the
13 Appellant had conversation with you, raised
14 concerns, in essence, about Susan Combs and
15 her staff getting special treatment from
16 Nicholopoulos or being too close to
17 Nicholopoulos or what have you. Is that -
18 was that - is that basically what he was
19 complaining about in 2011? In a telephone
20 call?

21 THE WITNESS: Yes. Yes.

22 JUDGE GARVEY: And you - you told
23 Ms. Nicholopoulos about that?

24 THE WITNESS: Yes.

25 JUDGE GARVEY: And you did not

1 look into it? Or did you?

2 THE WITNESS: I did not. I did
3 not.

4 JUDGE GARVEY: All right, so we
5 have that phone call in 2011, and then from
6 that time up until the time he was detailed
7 and taken out from under your supervision,
8 what other times, whether telephonically, by
9 email, or at this training you both attended,
10 did he raise any concerns to you about
11 anything? Especially involving Ms.
12 Nicholopoulos, that you forwarded on to Ms.
13 Nicholopoulos?

14 THE WITNESS: I did not forward
15 any other concerns on to Nicholopoulos. He
16 did raise them during the Speed of Trust.

17 JUDGE GARVEY: So he raised the
18 same concerns a year later?

19 THE WITNESS: Yes. Approximately.

20 JUDGE GARVEY: And you took no
21 action whatsoever?

22 THE WITNESS: No.

23 JUDGE GARVEY: Just check my
24 notes. Now, there was a discussion about an
25 email that Mr. Mowad sent on October 9th, that

1 I guess was sent to you and others, and
2 raising a violation of the Whistleblower
3 Protection Act, and that he had told his
4 staff to stop working with the State
5 Comptroller's Office. There was some mention
6 of that in the email; is that correct?

7 THE WITNESS: Yes.

8 JUDGE GARVEY: Okay. And once he
9 was detailed, did you continue to tell his
10 staff, the Project Leaders and everyone else,
11 not to work with the State Comptroller's
12 Office?

13 THE WITNESS: I did not.

14 JUDGE GARVEY: Did you tell them
15 that you could-

16 THE WITNESS: I rescinded that.

17 JUDGE GARVEY: You rescinded it.
18 Okay.

19 THE WITNESS: I sent - yes, I
20 rescinded it.

21 JUDGE GARVEY: Okay. So his
22 concerns about the State Comptroller's Office
23 and people close to them having undue
24 influence with the Agency, he had made clear
25 to you, and then he, because of these

1 concerns, told his staff to stop working with
2 the State Comptroller's Office, and you
3 rescinded that? Did you make-

4 THE WITNESS: Yes.

5 JUDGE GARVEY: -Ms. Nicholopoulos
6 aware, since you're in her chain of command,
7 that you were rescinding that?

8 THE WITNESS: Yes.

9 JUDGE GARVEY: Okay. So you told
10 Nicholopoulos... Okay, and I think you
11 indicated that when you talked to the Project
12 Leaders, they did not complain about anything
13 that Mr. Mowad had done during his tenure
14 regarding the State Comptroller's Office?
15 They were not complaining about that order,
16 or were they?

17 THE WITNESS: They - no.

18 JUDGE GARVEY: No. Okay.

19 THE WITNESS: There was no
20 discussion with the Project Leaders about
21 that order, other than they - that is a State
22 agency, we have an obligation as a Federal
23 Government Agency to make sure that we're
24 working with our State-

25 JUDGE GARVEY: Right.

1 THE WITNESS: -partners.

2 JUDGE GARVEY: Right. I - I
3 understand. Okay, I have no further
4 questions.

5 Any follow up from you, Mr.
6 Mehojah?

7 MR. MEHOJAH: One - one quick
8 follow up.

9 **FURTHER RECROSS EXAMINATION**

10 **BY MR. MEHOJAH:**

11 Q. That October 9th email where Mr.
12 Mowad indicated that he had directed his
13 staff to stop working with the State
14 Comptroller's Office, would - did he have the
15 authority to do that on his own?

16 A. He did not.

17 Q. Who did?

18 A. (No immediate response.)

19 Q. Anybody?

20 A. Dan? I don't - yeah, I don't know
21 who has the authority to tell us to stop
22 working with another State agency.

23 Q. Okay. You had mentioned to the
24 Judge in response to her questions that
25 you're obligated to work with your State

1 partners?

2 A. Yes.

3 Q. What - what does - I don't
4 understand what that means.

5 A. Well, we have - I mean, we're a
6 Federal Agency. We serve the public.
7 They're another State agency, just like any
8 of our other State agencies, we have an
9 obligation to work with any other agency
10 that's out there.

11 Q. And if there are concerns with a
12 State agency, you don't just shut the doors
13 and lock them out?

14 A. Right.

15 Q. You work with them?

16 A. We work with them.

17 Q. Okay. And you said, I think, that
18 there were not discussions with the Project
19 Leaders in Austin - or in Texas about the
20 decision to rescind that?

21 A. We had a discussion to rescind
22 that - just as I expressed, we have an
23 obligation as a public agency to work and so
24 I'm rescinding this.

25 Q. Okay.

1 A. There was no further discussion
2 after that.

3 Q. When did you rescind that, do you
4 know?

5 A. Uh...

6 Q. If you recall.

7 A. Shortly after that.

8 Q. Within a week?

9 A. A week, maybe two weeks.

10 Q. Okay. All right. Okay.

11 MR. MEHOJAH: I don't have any
12 further questions, Judge.

13 JUDGE GARVEY: Thank you. Mr.
14 Mundy, anything?

15 **FURTHER REDIRECT EXAMINATION**

16 **BY MR. MUNDY:**

17 Q. In your—

18 JUDGE GARVEY: Go ahead.

19 MR. MUNDY: Yes, Your Honor.

20 Q. [BY MR. MUNDY:] In - in the State
21 of Texas, the professional organization for
22 the State - excuse me - the State of Texas
23 that deals with wildlife professionally is
24 the Texas Parks and Wildlife Department,
25 correct?

1 A. There is an agency that's Texas
2 Parks and Wildlife, but the Comptroller's
3 Office—

4 Q. That's not my question. Please
5 answer my questions, okay?

6 A. Yes.

7 Q. They are the State agency that by
8 State directive and mission is - has
9 professional biologists and deals with
10 professional level wildlife management
11 issues, correct?

12 A. Yes.

13 Q. The Comptroller's Office is a
14 budget and accounting office, correct?

15 A. They also have a—

16 Q. Is that correct?

17 A. As far as I know, yes.

18 Q. Okay.

19 A. But they also have—

20 Q. Stop. Whoa. In any other state
21 in your Region, do you all deal with
22 endangered species permitting where the state
23 budgeting office is the primary point of
24 contact for wildlife permitting?

25 A. No.

1 Q. You would agree that a person in
2 the Federal Government has a mandatory legal
3 obligation not to cooperate with improper or
4 potentially illegal conduct; that is a
5 mandatory nondiscretionary rule?

6 A. Yes.

7 Q. You have also received reports
8 from Mr. Mowad about, from his perspective,
9 perceptions, that there was impropriety from
10 the dealings with Mr. Steve Manning,
11 specifically with respect to a permit for
12 Oncor energy or Electric, whatever the
13 correct name is, correct? Among the other
14 things he's reported, he's also reported to
15 you in prior times about concerns he had
16 about Mr. Manning?

17 A. Yes.

18 Q. Let's talk - changing gears here.
19 You said that Mrs. Arnold was assigned, after
20 you all rejected Ms. Williams, Mr. Conley,
21 that Mrs. Arnold was assigned to the dune
22 sagebrush lizard because y'all had to move
23 quickly, I think was your exact words,
24 correct?

25 A. Yes.

1 Q. To this very date, there's not
2 been any formal action by the Fish and
3 Wildlife Service on the dune sagebrush
4 listing, has there?

5 A. Yes, there has.

6 Q. When did that occur?

7 A. We decided that it should not be
8 listed in... 2013?

9 Q. There's a decision to not list?

10 A. Yes.

11 Q. Okay. And that was more than a
12 year, year and a half after the request for
13 her assignment?

14 A. (No immediate response.)

15 Q. She being Ms. Arnold.

16 A. Right.

17 Q. Ballpark timeframe.

18 A. It was 2012 that we had to make
19 that decision.

20 Q. I thought you just said it was
21 2013?

22 A. I'm trying to go through my-

23 Q. Okay.

24 A. -memory. Um... March, March. So it
25 would have been September or October of 2012

1 that we had to make that decision.

2 Q. So you made a quick decision to
3 not list?

4 A. We did not make a quick decision.

5 Q. I'm sorry, I thought you just said
6 y'all had to move quickly?

7 A. We had to move quickly to get a
8 permit done. Because we had to make a
9 decision at the end of 2012.

10 Q. From the Endangered Species Act
11 perspective, there is no permitting required
12 for a non-listed species, correct?

13 A. There's not one required.
14 However, we do have policies for ones that
15 are not listed yet.

16 Q. But I'm sayin', any - any people
17 out there engaged in business don't have to
18 do anything to protect species that are not
19 on the Federal list, correct?

20 A. Correct.

21 Q. And just to be very clear, because
22 I'm - I'm not getting confused, there's at
23 least two specific instances in which Mr.
24 Mowad reported directly to you that he - his
25 concerns about Ms. Nicholopoulos and concerns

1 about her - I forget your exact words -
2 concerns of impropriety or improper conduct,
3 whatever your prior words were, and that was
4 in the Speed of Trust training time,
5 somewhere in the Spring of 2012, and then you
6 said there was a call earlier before that,
7 presumably in 2011, correct?

8 A. Yes.

9 Q. Okay. Those are - there may be
10 others, but you remember those two
11 distinctly, correct?

12 A. Yes.

13 Q. Okay.

14 MR. MUNDY: Nothing further, Your
15 Honor.

16 MR. MEHOJAH: Just one - one quick
17 subject, Judge, if I might?

18 JUDGE GARVEY: Sure.

19 **FURTHER RECROSS EXAMINATION**

20 **BY MR. MEHOJAH:**

21 Q. Are you able to control which
22 State agencies contact your office regarding
23 endangered species?

24 A. We are not.

25 Q. Okay. It could be the State

1 Forest Service?

2 A. Yes.

3 Q. For example. Or any other State
4 agency could contact you?

5 A. Yes.

6 Q. And so you work with the State
7 agencies in various ways; is that correct?

8 A. That is correct.

9 Q. Okay. Thank you.

10 MR. MEHOJAH: No further
11 questions, Judge.

12 MR. MUNDY: Nothing further, Your
13 Honor.

14 JUDGE GARVEY: Thank you very much
15 for your testimony today. You are excused.
16 You may not discuss your testimony with
17 anyone else until this entire matter is
18 brought to a close.

19 (Whereupon, the witness was excused.)

20 Why don't we take a half hour
21 break for lunch, and then we'll come back at
22 12:30. Thank you.

23 [OFF THE RECORD 12:00]

24 [ON THE RECORD 12:30]

25 **WITNESS: RICHARD COLEMAN**

1 JUDGE GARVEY: Sir, if you would
2 please stand so I can swear you in.

3 Do you promise - please raise your
4 right hand. Do you promise that the
5 testimony you're about to give will be the
6 truth, the whole truth, and nothing but the
7 truth, so help you God?

8 THE WITNESS: Yes, I do, Your
9 Honor.

10 JUDGE GARVEY: Okay, please be
11 seated and state your full name for the
12 record, and spell your last name as well.

13 THE WITNESS: My name is Richard
14 Allen Coleman.

15 JUDGE GARVEY: All right, thank
16 you. Mr. Mundy, you may proceed. And I'm
17 going to turn my mic on mute until I need to
18 talk. Thanks.

19 MR. MUNDY: Yes, Your Honor.

20 **DIRECT EXAMINATION**

21 **BY MR. MUNDY:**

22 Q. Good afternoon, Mr. Coleman.

23 A. Hello, can you hear me?

24 Q. Oh, okay, well, I guess we've got
25 a little time lag here.

1 If you would, please, we're going
2 to focus on what your job duties were in 2012
3 ultimately is going to be the subject of our
4 discussion. But just, if you would, give us
5 a very short Reader's Digest version of your
6 career with the Federal Government, and then
7 what that led up to in 2012, what your job
8 duties were.

9 A. Yes, sir. I started working for
10 the National Parks Service in 1976 as a
11 temporary Biologist. I started as a
12 permanent employee in 1977 with the U.S. Fish
13 and Wildlife Service. I was a permanent
14 employee from 1977 until now. I transferred
15 from the Fish and Wildlife Service to the
16 U.S. Geological Survey in June of this year,
17 which means I worked for the Fish and
18 Wildlife Service for 37 years.

19 Q. And what was your job with the
20 Fish and Wildlife Service in 2012?

21 A. In 2012, I was the Senior Science
22 Advisor in the - for the Office of the
23 Science Advisor out of Headquarters. My
24 duties entailed being the Fish and Wildlife
25 Service Scientific Integrity Officer and the

1 Senior Science Advisor for Information
2 Quality Act complaints. And I also assisted
3 with peer review. I was also the contract
4 officer representative for Department Science
5 Services IDIQ contract.

6 Q. Explain that abbreviation, if you
7 would. What is that?

8 A. IDIQ stands for indefinite
9 quantities, indeterminist orders. It's a
10 broad blanket purchase agreement for Science
11 Services that the different bureaus in the
12 department utilized to perform science
13 activities.

14 Q. When did you begin as a Scientific
15 Integrity Officer?

16 A. I was assigned that by the
17 Director of the Fish and Wildlife Service on
18 or about February 2011 when the policy was
19 first enacted in the Department. It was a
20 collateral duty to my primary job as
21 Assistant Regional Director for Refuges and
22 the partners for Fish and Wildlife program in
23 the Rocky Mountain and Prairie Region of the
24 Fish and Wildlife Service.

25 Q. All right. So this was a

1 secondary assignment, just an add-on to your
2 other duties?

3 A. Yes, sir.

4 Q. Okay. Explain what your duties
5 were as a Scientific Integrity Officer?

6 A. My duties as Scientific Integrity
7 Officer were to follow and implement the
8 Department policy on scientific integrity.
9 That is 305DM3, the Department manual 305DM3,
10 which was enacted in February 2011. It
11 spelled out the duties of the Department - of
12 the Bureau Scientific Integrity Officer in
13 accordance with working with the Department
14 Scientific Integrity Officer.

15 Q. And what is your under-

16 A. My duties - my duties primarily
17 were to receive complaints or allegations
18 from employees or people outside the Fish and
19 Wildlife Service, or outside the Government,
20 and - that could be formal complaints or
21 informal complaints, and to perform inquiries
22 as necessary in accordance with the policy.

23 Q. Would it be fair to liken this to
24 being an internal affairs type of
25 investigator?

1 A. Yes, I - I have characterized it
2 that in the past that it's sort of like
3 internal affairs for Scientific activities.

4 Q. Okay. And how long did you hold
5 that job duty?

6 A. I was - I held it until June 20th,
7 of 2014, when I transferred to the U.S.
8 Geological Survey.

9 Q. So two and a half years,
10 approximately?

11 A. Yes, sir.

12 Q. Okay. And of the time that you
13 held that duty, in addition to your others
14 obviously, but - but we're focused on that
15 Scientific Integrity job, approximately how
16 many complaints did you receive and undertake
17 investigation on?

18 A. In that time period from 2011
19 until June of 2014, I received approximately
20 14 formal complaints. That is a complaint
21 that's filed with the Department's Office of
22 - Office of the Executive Secretariat, that
23 is the formal way that a complaint is filed
24 according to the policy. In addition to
25 those 14 formal complaints, I received

1 approximately 15 to 20 informal complaints by
2 email or phone call, where they did not file
3 an official complaint, they just reached out
4 to me to discuss a concern.

5 Q. Okay. And just help give us some
6 context here, explain where you are on the
7 organizational tree with respect to Mrs.
8 Gabriela Chavarria.

9 A. Gaby Chavarria was my supervisor
10 when I transferred to the Office of the
11 Science Advisor. That official transfer
12 occurred in 2012. Approximately March of
13 2012, I switched from the Region 6 Assistant
14 Regional Director for Refuges to a full time
15 job with the Office of the Science Advisor in
16 Fish and Wildlife Service, and Gaby was my
17 immediate supervisor from that point until
18 March of this year.

19 Q. Okay. And Ms. - did Ms. Chavarria
20 have other duties beyond the scientific
21 integrity issues?

22 A. Yes, sir, she did.

23 Q. Okay. What were her - we're going
24 to hear from her shortly, but just for
25 reference, real brief, what were her other

1 roles at that time?

2 A. Yeah, she has the whole science
3 portfolio for the Fish and Wildlife Service,
4 so she was in charge of climate change,
5 conservancy for the Fish and Wildlife
6 Service, developing other policies or agendas
7 or budget ideas for science application
8 throughout the Fish and Wildlife Service.

9 Q. Would you - yeah, we just need the
10 short version there.

11 Okay, now, walk us through real
12 brief, we need brief here, short-

13 A. Okay.

14 Q. Did you receive a complaint in,
15 just walk us through the Reader's Digest
16 version of what you did, how you passed that
17 information on, and where it went.

18 A. Are you asking about a formal
19 complaint or an informal complaint? They
20 were dealt with differently.

21 Q. Let me - what type of complaint
22 did you receive from Mr. Mowad? What would
23 you classify it as, formal or informal?

24 A. Informal.

25 Q. Okay. So let's deal with

1 specifically Mr. Mowad, let's just bypass
2 everything else.

3 You correct - it's correct that
4 you received a complaint from Mr. Mowad,
5 correct?

6 A. Yes, sir.

7 Q. When did you receive that
8 complaint?

9 A. I have to look at my note here.

10 Q. Does September 17th, 2012 seem
11 accurate?

12 A. I believe it was the 18th of
13 September.

14 Q. Okay. Of 2012?

15 A. Yes, sir.

16 Q. Okay. And did you know Mr. Mowad
17 before you got this complaint from him?

18 A. Yes, sir, I did.

19 Q. How did you know him before this?

20 A. In my previous job as Assistant
21 Regional Director in Region 6, in 2002 or
22 thereabouts, maybe after that, Gary Mowad was
23 a colleague of mine. He was responsible for
24 the law enforcement program in the same
25 region.

1 Q. And did you hold him in high
2 regard and - and take his - his complaints as
3 expressed to you, you know, as - as coming
4 from somebody you had respect and esteem for?

5 A. All informal complaints I take
6 seriously, regardless of the source. Gary-

7 Q. Yeah, did you, based on your prior
8 experience with him, did you perceive him to
9 be a - I understand you treated everybody as
10 a serious complaint, but knowing him from
11 your prior work experience together, did he
12 seem to have - be a credible source, a
13 credible person, from your prior dealings
14 with him?

15 A. I knew him to be a credible
16 person, yes.

17 Q. Okay. If you could, explain what
18 your memory is about how you received that
19 complaint on September 18 of 2012, was it
20 email or phone?

21 A. I believe it was a phone call. My
22 record of emails shows that he reached out to
23 me the day before wanting to, I think, have a
24 phone call. And then we had a phone call on
25 the 18th of September. The reason I know it's

1 the 18th, is that's what I recorded in my
2 personal Lotus Notes spreadsheet that I use
3 to track all formal and informal complaints.
4 I showed the date of the 18th as the day it
5 was received.

6 Q. Okay. So the 17th is he's just
7 reaching out saying he wanted to talk to you,
8 but the 18th is when the actual conversation
9 occurred?

10 A. That's - that's what my records
11 indicate.

12 Q. How long do you remember the phone
13 call being approximately?

14 A. I have no idea or remember that.

15 Q. I mean, can you say it's a one or
16 two minute call, a half an hour, and all day?
17 I mean, just any ballpark?

18 A. More than a couple minutes, but
19 that's... I don't know.

20 Q. All right. Did he provide pretty
21 specific allegations and complaints to you?

22 A. I can't recall the specifics of
23 the conversation. I did write down in my
24 notes on the same data sheet the type of
25 misconduct alleged and I wrote political

1 interference, decision moved from Field to
2 the Regional Office, R-O I wrote down, but
3 that's Regional Office, and no SLO (sic)
4 review of decision. SOL (sic) meant
5 Solicitors Office. By writing that note
6 down, I was trying to capture the essence of
7 the informal complaint.

8 Q. This is talking about the - an
9 endangered species listing process?

10 A. Yes, sir. Under allegation
11 subject I wrote down dune sagebrush lizard
12 ESA listing decision.

13 MR. MUNDY: Do you have a copy of
14 that?

15 MR. MEHOJAH: Yeah, I gave you one
16 yesterday, this is my last one.

17 MR. MUNDY: I will give it back to
18 you.

19 A. What I'm referring to is a three-
20 page Lotus Notes spreadsheet. This was
21 provided under Freedom of Information Act
22 request where I redacted all the other
23 entries as not responsive to the FOIA
24 request.

25 Q. [BY MR. MUNDY:] Okay. I'm

1 borrowing a copy from Mr. Mehojah right now,
2 so I'm looking at what you're looking at.
3 The... once that comes in to you, explain the
4 process of what you did with his complaint
5 next.

6 A. What I did with his complaint was
7 that I regularly talk - I told - I listen to
8 the conversation and I seek to resolve the
9 concern or identify the concern with - with
10 others involved within the Bureau without
11 disclosing the identity of the complainant.
12 I work very hard to maintain confidentiality
13 of the complainant and of the subject.

14 In this case, at some point after
15 that conversation, I was having a regular
16 conversation with my supervisor, Gaby
17 Chavarria, I mentioned that I had received an
18 informal complaint about the dune sagebrush
19 lizard. And my recollection, she said, oh,
20 that is a topic that's being discussed in the
21 Directorate meetings that she's attending,
22 and so it is a big topic among the
23 Directorate there in Washington, the
24 Directorate of Fish and Wildlife.

25 Q. Let's stop for just a moment. She

1 - her office is physically in the same
2 proximity as the Director's office, correct,
3 Director Ashe?

4 A. Same hallway, yes, sir.

5 Q. Okay. Please continue, I didn't
6 mean to stop you. Anyway, so you had
7 reported it to Ms. Chavarria?

8 A. Yes.

9 Q. What date-

10 A. Yeah, I don't know, probably -
11 probably within that week, I don't recall
12 exactly when.

13 Q. Okay.

14 A. Probably within that week. Gaby
15 and I talk frequently, every week, or almost
16 every week.

17 So she said that is an important
18 topic of the Directorate and she thought it
19 was imperative that I pass on this concern
20 directly to Gary Frazier, the Assistant
21 Director for Endangered Species.

22 Q. Okay. Real quick-

23 A. And she said - that she would set
24 up-

25 Q. Go ahead.

1 A. She said that she would set up a
2 conference call so I could pass that
3 information on so that it could be - so
4 they'd be aware of it.

5 Q. Mr. Frazier is in the same
6 physical area as the Director and Ms.
7 Chavarria, same offices?

8 A. Same hallway, yes, sir.

9 Q. Okay. And when you were talking
10 to Ms. Chavarria, did you tell her that the
11 call came from Mr. Mowad?

12 A. No, sir.

13 Q. Okay. You told - gave her a
14 description of the controversy that involved
15 what, again, about the dune sagebrush lizard?

16 A. I discussed with her that was an
17 informal complaint, that the complaint
18 involved the Region 2's listing activity,
19 proposed listing for the dune sagebrush
20 lizard, and that the concern was about the -
21 the allegation that the Solicitor's Office
22 had not had the opportunity or did not review
23 the proposed listing decision from the Region
24 as it went to our Headquarters, and that that
25 normally is done. Also that-

1 Q. Let's stop right there. As part
2 of that process, the normal process is to get
3 a - a legal opinion about legal compliance on
4 the listing decision?

5 A. Sir, I don't know that, I'm just -
6 what I heard from the informal complaint was
7 that this was not normal. I had not
8 confirmed one way or another what the normal
9 procedure is.

10 Q. Okay. But then you said - you
11 told Ms. Chavarria, and she said we'll set up
12 a meeting with Mr. Frazier?

13 A. Yes.

14 Q. And what happened after that?

15 A. So she setup a conference call,
16 and based on my notes that said the date
17 closed is the 25th of September, 2012, I
18 believe that that was the date that we had
19 the conference call, Gaby Chavarria, myself,
20 and Gary Frazier.

21 Q. Okay. So at that point, you've
22 completed your duties and handed it off to
23 Ms. Chavarria and Mr. Frazier, and then what
24 happens from that point on is their - their
25 involvement?

1 A. Yes, sir. That's why I wrote it
2 down as a date closed.

3 Q. Yes.

4 A. From my perspective.

5 Q. Right. Your role is not to take
6 action or conduct further action or
7 investigations or disciplinary, you know,
8 anything that might come from it, your role
9 is to take the input, pass it on to the
10 appropriate person, and then that ends your
11 involvement in the matter; is that accurate?

12 A. Yes, sir. But I need to add
13 something, please.

14 Q. Okay, certainly.

15 A. First of all, this was an informal
16 complaint. So my role in an informal
17 complaint is a little different than my role
18 in a formal complaint. In the informal-

19 Q. Well, let's stick to Mr. Mowad,
20 let's just stick to Mr. Mowad.

21 A. Yes.

22 Q. Okay. Once you had sent it up
23 the-

24 A. Yes. I - there's one other thing.
25 Apparently in my conversation with Mr. Mowad,

1 I - I must surmise that he also indicated
2 that he was pursuing this Scientific
3 Integrity concern with the Office of
4 Inspector General. The reason I say that is
5 that I have a column under my database that
6 says OIG involved question mark, and I wrote
7 down yes. So that indicates that he must
8 have told me that he was pursuing a more
9 formal complaint through the Office of
10 Inspector General. And that is certainly an
11 option for anyone regarding scientific
12 integrity, they can pursue it through the
13 OIG's office or through the Scientific
14 Integrity Officer. And in this case it looks
15 like Mr. Mowad was pursuing it through OIG
16 and he told me that.

17 Q. Okay.

18 A. I do not - I do not recall if I
19 passed that information to Gaby Chavarria or
20 Gary Frazier; I do not recall.

21 Q. Okay. Were you involved in a call
22 between Mr. Mowad, Ms. Chavarria, and Mr.
23 Frazier?

24 A. I don't know.

25 Q. Where they - okay. Or Ms.-

1 A. I don't remember that.

2 Q. Do you remember any conversation
3 which you're involved with Mr. Frazier about
4 this matter?

5 A. Other than my conference call
6 initially with Gaby Chavarria, I don't recall
7 any subsequent call with him.

8 Q. Okay.

9 A. On this - on this matter.

10 Q. We're talking about just this
11 matter.

12 A. Yes, sir.

13 MR. MUNDY: Just a moment, Your
14 Honor.

15 Do you have your calendar?
16 September?

17 Q. [BY MR. MUNDY:] All right. I'm
18 looking at a desk calendar for 2012,
19 September 2012, showing the 18th was on a
20 Tuesday. And you said you spoke to Ms.
21 Chavarria that week. So that would put it at
22 no later than the 21st, by looking just-

23 MR. MUNDY: And, Your Honor, I'm
24 just going to ask you to take judicial
25 notice, you can verify that on a calendar.

1 A. Yeah, I don't know exactly when I
2 talked to her, but I talk to her frequently,
3 every week, when she's available.

4 Q. [BY MR. MUNDY:] Okay. Very good.
5 Do you have personal knowledge of whether or
6 not any of the complaints that you received
7 and - and passed on ever resulted in formal
8 disciplinary action against senior Fish and
9 Wildlife personnel?

10 A. With respect to this issue?

11 Q. Overall, sir.

12 MR. MEHOJAH: Objection,
13 relevance.

14 JUDGE GARVEY: Repeat the
15 question, Mr. Mundy.

16 MR. MUNDY: I think it's relevant
17 to their - I'm sorry, we're not hearing you,
18 Your Honor.

19 JUDGE GARVEY: Mr. Mundy, repeat
20 the question.

21 MR. MUNDY: Yes.

22 Q. [BY MR. MUNDY:] Mr. Coleman, with
23 respect - when you were in this role, of the
24 complaints that you received and then passed
25 on-

1 A. I guess—

2 Q. —to Ms. Chavarria and who else—

3 A. I'm getting feedback, it's hard to
4 understand you.

5 MR. MEHOJAH: Judge, I think you
6 might need to mute your line until you're
7 ready to rule.

8 Q. [BY MR. MUNDY:] Okay. Mr. — Mr.
9 Coleman? Of the complaints that you received
10 while you were there for the two and a half
11 years or so in the job duty, do you have
12 personal knowledge whether or not any of
13 those complaints that you received went on to
14 result in formal disciplinary action against
15 senior Fish and Wildlife management?

16 A. No, sir, I have no personal
17 knowledge of that.

18 Q. Okay. Had you had — do you
19 remember having a conversation with Mr. Mowad
20 at any point in time, and the date is not
21 important right now, so I don't want you
22 getting sidetracked on it, but have you ever
23 made a comment to him to the effect of that
24 you apologized for the, quote, shit storm
25 that came down on him because of this?

1 A. I recall that I had some
2 conversations with Gary Mowad especially the
3 following January when he started working on
4 a detail with us, with our Office of Science
5 Advisor. I don't recall saying that
6 specifically, but I don't recall any details
7 of any conversation.

8 Q. If - if he has given that
9 testimony, you're not disputing that you, in
10 fact, made a comment to that effect; is that
11 correct, sir?

12 A. I would question the use of the
13 word - or the phrase shit storm. I don't
14 know that I ever use that phrase, but... So I
15 would find that to be not something I would
16 use.

17 Q. Even in an informal off-the-record
18 comment as a friend to friend?

19 A. It's a phrase I don't use.

20 Q. But you would not expressly deny
21 such a comment, would you?

22 MR. MEHOJAH: Objection, asked and
23 answered.

24 JUDGE GARVEY: He - he - he has
25 said he does not use the term-

1 MR. MUNDY: I'll pass the witness,
2 Your Honor.

3 JUDGE GARVEY: -Mr. Mundy, move
4 on.

5 MR. MUNDY: I'll - I pass the
6 witness, Your Honor.

7 MR. MEHOJAH: I'm gonna - can I
8 have that spreadsheet, sir?

9 MR. MUNDY: Yes.

10 MR. MEHOJAH: Thank you.

11 MR. MUNDY: I didn't mark on it.

12 **CROSS-EXAMINATION**

13 **BY MR. MEHOJAH:**

14 Q. Mr. Coleman, I'm Greg Mehojah,
15 we've spoken before, I'm the attorney for the
16 Agency in this matter.

17 You referred to your spreadsheet,
18 I think you called it your Lotus Notes
19 spreadsheet, that you provided pursuant to a
20 Freedom of Information Act request?

21 A. Yes, sir.

22 Q. Okay. And the only entry on this
23 is that, uh, substantively is that September
24 18th, 2012 entry; is that correct?

25 A. Yes, sir.

1 Q. And it indicates that - and I'll
2 just go from left to right. Under the column
3 that says report format, you indicate no
4 report.

5 MR. MUNDY: Excuse me. Right now
6 I object to questioning about the contents of
7 the document unless it's offered into
8 evidence. I don't-

9 MR. MEHOJAH: Well, I can have him
10 refer to the document.

11 MR. MUNDY: Well, it's an exhibit
12 not in evidence at this point. So I don't
13 object to you offering, if you want to put it
14 in the record, but I would like it marked and
15 attached.

16 MR. MEHOJAH: Well, you - you just
17 had him testify about this particular
18 document.

19 JUDGE GARVEY: Mr. Mundy.

20 MR. MUNDY: I'm not sure - well-

21 JUDGE GARVEY: Mr. Mundy, I am
22 going to let him testify about this document.

23 MR. MUNDY: I'm just asking that
24 it be attached and offered as an exhibit into
25 the record, Your Honor.

1 JUDGE GARVEY: Well, you asked
2 questions about it and didn't ask for that,
3 so I'm going to allow him to ask questions
4 about it. You had your opportunity to have
5 it added as your exhibit and you chose not to
6 do so.

7 Go ahead, Mr. Mehojah.

8 MR. MEHOJAH: And you might need
9 to mute again, Judge. I apologize. Thank
10 you.

11 Q. [BY MR. MEHOJAH:] Mr. Coleman,
12 the - the column that indicates report
13 format, you cite as - you indicate as a no
14 report. What does that mean?

15 A. That means I did not write or
16 develop a report. Typically reports are done
17 with formal allegations.

18 Q. And to the right of that entry is
19 the entry informal. Do you see that?

20 A. Yes, sir.

21 Q. Okay. And this was an informal
22 complaint to you by Mr. Mowad; is that
23 correct?

24 A. Yes, sir.

25 Q. Did Mr. Mowad use that term with

1 you when he filed this complaint with you or
2 communicated it to you?

3 A. I have no recollection one way or
4 the other.

5 Q. Okay. And you indicated that
6 there was a difference between how you
7 process these complaints when they're formal
8 versus informal-

9 A. Yes, sir.

10 Q. -can you describe that? Can you
11 describe that difference, please?

12 A. A formal complaint I receive from
13 the Office of the Executive Secretariat in
14 the Department of Interior. It has a
15 tracking number and an assigned tracking
16 number from the Office of the Executive
17 Secretariat. I - then I review it to make
18 sure that it is adequate in the content, that
19 all of the required pieces of information for
20 a formal complaint are provided by the
21 complainant. If they're not, I contact the
22 complainant, give them an informal
23 opportunity to make sure that their complaint
24 is perfected. I also make a preliminary
25 review to see if the complaint reaches a

1 minimum level of - of addressing whether or
2 not it's scientific misconduct or a loss of
3 scientific integrity. In short, we call that
4 does the complaint have merit to proceed with
5 a further inquiry. If it does, then I
6 proceed with a further inquiry. If it does
7 not, I write a resolution letter or memo to
8 the complainant and the subject office
9 indicating that the complaint lacks merit and
10 is closed.

11 If it does have merit, I proceed
12 with a further inquiry, that either I perform
13 myself or I get other subject matter experts
14 as consultants to me, and in some cases I
15 convene a panel of subject matter experts,
16 that's called a Scientific Integrity Review
17 Panel, and I-

18 Q. Let me just stop you - let me stop
19 you there, Mr. Coleman. I apologize. I
20 think we - I didn't realize it was such an
21 in-depth process. So I don't think we need
22 to hear anymore about that, except to hear
23 from you that you did not engage in that line
24 of processing, because this was an informal
25 appeal, or informal complaint?

1 A. That's correct.

2 Q. Okay. And for an informal
3 complaint, briefly, if you could, please,
4 describe what that process is for processing
5 these complaints.

6 A. I try to pass along with the - by
7 protecting the confidentiality of the
8 conversation, I try my best to pass on the
9 concern to the parties that I think could
10 resolve the matter, could address the matter,
11 if they may have not understood or may have
12 overlooked a potential science misconduct or
13 loss of scientific integrity. I try to pass
14 that along to get resolved. In some
15 instances I've been on conference calls where
16 both parties are talking to each other,
17 trying to resolve something. It's very brief
18 and very informal.

19 Q. Okay. And that's the process you
20 took with - undertook with this complaint,
21 correct?

22 A. The process was I passed it on to
23 the person responsible for the listing
24 decision to make sure they were aware that
25 there was a concern.

1 Q. Okay. And that was to Ms.
2 Chavarria, correct?

3 A. No, sir, it was to Gary Frazier.

4 Q. Oh, Gary Frazier. But you also
5 told Ms. Chavarria that you received this
6 complaint?

7 A. Yes, but she's not in a line -
8 she's not responsible for resolving that
9 conflict - potential conflict.

10 Q. Okay. And just a couple more
11 entries on this - this spreadsheet and then I
12 will move on. Under allegation subject you
13 note dune sagebrush lizard ESA listing
14 decision; is that correct?

15 A. Yeah. That's basically the
16 subject or the nature of the complaint. What
17 is it - what is the complaint about. It's
18 not necessarily the subject of who did it.
19 Who was the-

20 Q. And you... Sorry. Sorry. You
21 would agree that that's the only entry under
22 that - that item entitled allegation's
23 subject; is that correct?

24 A. Yes.

25 Q. And that at the time, when you

1 created this document, had there been
2 additional allegations presented to you by
3 Mr. Mowad, you would have noted that in this
4 document; is that correct?

5 A. If there was a different, uh,
6 subject other than dune sagebrush lizard, I
7 would have noted it.

8 Q. Okay. And you would agree that
9 because there's no other allegation noted
10 here, that Mr. Mowad didn't bring one to your
11 attention?

12 MR. MUNDY: Objection, leading.

13 JUDGE GARVEY: I'm going to allow
14 it.

15 A. I have no information about
16 additional issues, because I'm relying my
17 memory on what I wrote down (sic).

18 Q. [BY MR. MEHOJAH:] And as you sit
19 here today, you do not recall any additional
20 allegations?

21 MR. MUNDY: Leading and misstating
22 his prior testimony.

23 JUDGE GARVEY: I'm going to allow
24 it.

25 A. Could you repeat the question,

1 please?

2 Q. [BY MR. MEHOJAH:] As you sit here
3 today, do you recall that Mr. Mowad made any
4 other allegations to you, other than the dune
5 sagebrush lizard ESA listing decision?

6 A. In other subsequent phone calls he
7 may have mentioned other issues, but I don't
8 - I didn't - I don't recall them specifically
9 nor did I record them as an informal
10 complaint. Or formal complaint.

11 Q. Thank you. You note in your
12 spreadsheet that the OIG is involved by
13 indicating yes in that column; is that
14 correct?

15 A. Yes, sir.

16 Q. Did you have any independent
17 verification that the OIG was, in fact,
18 involved?

19 A. Yes. Because I was subsequently
20 contacted by the OIG to assist them in an
21 inquiry on the dune sagebrush lizard as a
22 duty of being a Scientific Integrity Officer.

23 Q. Do you recall when you first
24 received contact from the OIG regarding the
25 dune sagebrush lizard?

1 A. I - I'd have to go back in my
2 record. I'm going to guess that it was in
3 2013.

4 Q. Okay.

5 A. It may have been in the Fall of
6 2013. I don't recall exactly.

7 Q. Thank you. And you closed this
8 matter from your office?

9 A. Which matter?

10 Q. The - this informal allegation.

11 A. Yeah, I considered it closed after
12 I passed on the information.

13 Q. Okay. And you did that after you
14 had a conversation with Gary Frazier; that's
15 your testimony today, correct?

16 A. Gary Frazier and Gaby Chavarria,
17 yes.

18 Q. Okay. During your conversation
19 with - and Gary Frazier and Gaby Chavarria
20 and you were all on that call?

21 A. Yes, sir.

22 Q. Okay. During that conversation,
23 did you disclose that the complaint had been
24 lodged by Mr. Mowad?

25 A. No, sir.

1 Q. Why not?

2 A. Because I protect the anonymity of
3 my complainants. There is - in the policy it
4 says that we should maintain confidentiality
5 throughout the inquiry process.

6 Q. Okay. Did you ever disclose to
7 anybody in the Fish and Wildlife Service that
8 Mr. Mowad lodged this complaint?

9 A. I did not.

10 Q. Okay. Do you know - you didn't
11 talk to the Director, Dan Ashe?

12 A. About this?

13 Q. This particular matter.

14 A. No, sir.

15 Q. Okay. You didn't disclose Mr.
16 Mowad's name to the Director?

17 A. No, sir.

18 Q. Okay. Did you disclose Mr.
19 Mowad's name, in connection with this
20 allegation, to the Deputy Director?

21 A. No, sir.

22 Q. Did you disclose Mr. Mowad's name,
23 in regards to this allegation, to Dr.
24 Benjamin Tuggle?

25 A. No, sir.

1 Q. Joy Nicholopoulos?

2 A. No, sir.

3 Q. Michelle Shaughnessy?

4 A. No, sir.

5 Q. And you - just to be clear, you
6 weren't involved in the decision to detail
7 Mr. Mowad from Austin to Albuquerque; that's
8 correct?

9 A. That is correct, I was not
10 involved.

11 Q. Okay. You weren't on those phone
12 calls where that was communicated to them?

13 A. No, sir.

14 MR. MEHOJAH: No further
15 questions, Judge. But in an effort to
16 address Mr. Mundy's concern that this be
17 introduced into evidence, I'm happy to do
18 that, if you're willing to accept it.

19 MR. MUNDY: No objection, Your
20 Honor.

21 JUDGE GARVEY: Okay. So what
22 exhibit-

23 MR. MUNDY: No objection.

24 JUDGE GARVEY: This is Agency
25 Exhibit what number?

1 MR. MEHOJAH: We'll call it Agency
2 Exhibit...

3 MR. MUNDY: 27. It would be your
4 number 27.

5 JUDGE GARVEY: Okay.

6 MR. MEHOJAH: It looks like it's
7 Agency Exhibit No. 27.

8 JUDGE GARVEY: Okay. It's
9 admitted without objection.

10 [AGENCY EXHIBIT NO. 27
11 ADMITTED INTO EVIDENCE]

12 JUDGE GARVEY: Mr. Mundy, do you
13 have any other questions for this witness?

14 MR. MUNDY: Yes. Briefly, Your
15 Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. MUNDY:**

18 Q. In 2012, the dune sagebrush lizard
19 issue was an issue specific to the State of
20 Texas, correct?

21 A. No, sir.

22 Q. Had any other state reported
23 complaints about it other than Texas to you
24 at that time?

25 A. No, not at that time. But you

1 asked me a broad question.

2 Q. Just focus at that time. At that
3 point in time Texas was the only state that
4 had reported that as an issue to you,
5 correct?

6 A. That is - that is correct. Gary
7 Mowad described it as a Texas issue.

8 Q. Okay. The - your spreadsheet does
9 not include the specific details of the call,
10 correct?

11 A. Correct.

12 Q. It's a general description?

13 A. Yes, sir.

14 Q. And you had no other interview
15 notes from that call, correct?

16 A. No, sir, I do not.

17 Q. And you do not, as we sit here
18 today, have a specific memory about specific
19 substance, you have just generalized
20 impressions, correct?

21 A. Correct, sir.

22 MR. MUNDY: That's all my
23 questions. Pass the witness, Your Honor.

24 JUDGE GARVEY: Mr. Mehojah?

25 MR. MEHOJAH: I have one, just one

1 question, Judge.

2 JUDGE GARVEY: Okay. Go ahead.

3 **REXCROSS EXAMINATION**

4 **BY MR. MEHOJAH:**

5 Q. Mr. Coleman, do you know how many
6 Fish and Wildlife Service employees are
7 stationed in the State of Texas?

8 A. I have no idea.

9 Q. Okay. Thank you.

10 MR. MEHOJAH: No further
11 questions, Judge.

12 MR. MUNDY: No further, Your
13 Honor.

14 JUDGE GARVEY: Okay. Sir, under
15 the column allegation from, you have FWS,
16 what does that stand for?

17 THE WITNESS: Fish and Wildlife
18 Service.

19 JUDGE GARVEY: Okay.

20 MR. MUNDY: We couldn't hear. We
21 could not hear on this end.

22 JUDGE GARVEY: Fish and Wildlife
23 Service.

24 MR. MUNDY: Thank you, Your Honor.

25 JUDGE GARVEY: You also indicated,

1 you were asked whether you ever made the
2 comment to Mr. Mowad apologizing for the,
3 quote, shit storm, and you indicated that
4 that's a term that you do not - you do not
5 use. You also indicated that in 2013 when he
6 came to Washington and was working in the
7 same division office as you, you had
8 conversations with him. Do you remember
9 apologizing in any manner for him getting
10 detailed and then winding up, you know,
11 working with you and getting detailed back?
12 Do you remember using the word I apologize
13 for whatever?

14 THE WITNESS: Your Honor, Gary and
15 I had several - could you mute your button?
16 Thank you.

17 Gary and I had several
18 conversations in late 2012, early 2013 when
19 he started working with me in the same
20 division. He - all I recall is general
21 impressions or general memories of those
22 conversations. He did describe to me being
23 detailed to Albuquerque. He described to me
24 that that was a hardship for him, apparently
25 his mother required his assistance back in

1 Texas. I remember that part.

2 I recall him talking extensively
3 about what a hardship it was, and I may have
4 indicated sympathy or (indiscernible) for
5 that. I do not recall actually saying
6 anything in particular, but I'm an empathetic
7 person, so absolutely I would have said I'm
8 sorry for this.

9 He may have implied - I'm
10 speculating now - he may have implied that
11 this was a direct result of something that I
12 was involved in, and I may have said
13 something like that.

14 JUDGE GARVEY: So you're
15 indicating you may have said I'm sorry. And
16 my question is, if you did say that, do you
17 think you were saying I'm sorry that you had
18 to go through this terrible time, or I'm
19 sorry that the complaint you made to me might
20 have resulted in this? Do you have any
21 memory, recollection of why you might have
22 said you're sorry?

23 THE WITNESS: No, I don't.

24 JUDGE GARVEY: Okay, I have no
25 further questions. Does anyone else have

1 another question? Mr. Mundy? Mr. Mehojah?

2 MR. MUNDY: I just need to ask Mr.
3 Mowad one thing, but I think probably no.

4 **FURTHER REDIRECT EXAMINATION**

5 **BY MR. MUNDY:**

6 Q. Mr. - excuse me. Mr. Coleman,
7 just as a general personal opinion, do you
8 believe Mr. Mowad to be an honest and
9 credible person, in your experience and
10 knowledge of him through the years?

11 A. Yes, sir.

12 Q. Okay.

13 MR. MUNDY: Nothing further, Your
14 Honor.

15 JUDGE GARVEY: All right, thank
16 you very much for your testimony today, sir.
17 You are excused. You may not discuss your
18 testimony with anyone else until this entire
19 matter's brought to a close. Thank you.

20 THE WITNESS: Thank you. May I
21 hang up now?

22 JUDGE GARVEY: Absolutely. Thank
23 you.

24 (Whereupon, the witness was excused.)

25 MR. MUNDY: Conferring with

1 opposing Counsel, Mr. Mehojah, and
2 logistically they think they're ready to do
3 Ms. Chavarria, they need to just do a text
4 check, I think.

5 MR. MEHOJAH: We're going to pull
6 her in right now. She should be at the
7 facility right now.

8 JUDGE GARVEY: That would be fine.

9 MR. MUNDY: May I be excused-

10 TRACY: This is Tracy.

11 MR. MUNDY: May I step out in the
12 hallway for just a-

13 JUDGE GARVEY: Wait a minute.

14 Tracy's-

15 MR. MUNDY: -brief comfort break
16 while they're-

17 JUDGE GARVEY: Yes, Tracy?

18 TRACY: I am wondering which -
19 which witness it is that I'm bringing in? I
20 have one in Ashland and one in D.C.

21 JUDGE GARVEY: We'll take a five
22 minute break and let's get Ms. Chavarria
23 ready to go. Okay? Thank you.

24 [OFF THE RECORD 1:21]

25 [ON THE RECORD 1:24]

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WITNESS: GABRIELA CHAVARRIA

JUDGE GARVEY: Have the witness please stand so I can swear her in. After I swear you in, I will then turn - make myself mute so that you don't get the (indiscernible).

All right, please raise your right hand. Do you promise that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I am (sic).

JUDGE GARVEY: Thank you. Can you please state your full name for the record and spell your last name.

THE WITNESS: Gabriela de Carmen Chavarria. Last name Chavarria, C-h-a-v-a-r-r-i-a.

JUDGE GARVEY: Thank you. Mr. Mundy?

MR. MUNDY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MUNDY:

Q. Ms. - good afternoon, Ms. Chavarria. Thank you for being here today.

1 If you would, give us just a
2 little bit of the - the short version,
3 Reader's Digest version of your career with
4 the - with the Federal Government, and then
5 leading up to your position today, just a
6 summary overview.

7 A. Yes. I joined the Federal
8 Government four years ago in August of 2010
9 as Science Advisor to the Director of the
10 U.S. Fish and Wildlife Service. And until
11 March 31st of 2014, I was a Science Advisor,
12 and then moved to the National - to the U.S.
13 Fish and Wildlife National Forensics
14 Laboratory in Ashland, Oregon, where I became
15 the Forensic Science Branch Chief, where I'm
16 currently at.

17 Q. Okay. And if you would, let's
18 just step a little bit back prior to 2010,
19 just a general overview of your prior career,
20 educational background that you brought to
21 that role in 2010 as Scientific Director
22 Advisor (sic).

23 A. I was - I have a Master's and
24 Ph.D. in biology from Harvard University, and
25 I spent 18 years working in Washington, D.C.

1 for a foundation, a non-profit organization -
2 and several non-profit organizations, always
3 as Science Director. Before coming to the
4 Government, I spent four years with the
5 Natural Resources Defense Council.

6 Q. Okay. And but so your career's
7 been in scientific technique, methodology,
8 application of science?

9 A. Correct. And including science
10 integrity and ethics.

11 Q. Okay. If you would, tell us what
12 your job duties entailed in 2012.

13 A. I was Science Advisor to the
14 Director overseeing all of the different
15 scientific activities within the U.S. Fish
16 and Wildlife Service, and that included
17 climate change, landscape conservation
18 cooperatives, a lot of renewable energy, the
19 science of renewable energy, and all of the
20 scientific integrity works that the Agency
21 was doing.

22 Q. Okay. What kind - describe just
23 in general terms, what scientific integrity
24 duties entailed.

25 A. It was to supervise a Science

1 Integrity Officer, Dr. Richard Coleman. It
2 entailed cases that were brought forward from
3 service employee or outside people that would
4 file a complaint through the Executive
5 Secretariat of the Department of Interior.

6 Q. Okay. And do you remember the
7 complaint that Mr. Mowad made to - we've just
8 heard from Mr. Coleman, but do you remember
9 those complaints of Mr. Mowad in 2012, as
10 they were passed on to you?

11 A. Well, they didn't come to me in
12 detail, but I knew of the cases. Just to
13 keep, you know, the confidentiality that Dr.
14 Coleman was maintaining as Science Integrity
15 Officer. So I was aware of all the cases,
16 but I didn't know all of the details of every
17 single case.

18 Q. Okay. I'm zeroing in now
19 specifically on Mr. Mowad. I'm not worrying
20 about all the other complaints, just Mr.
21 Mowad's, okay?

22 A. Yes.

23 Q. Do you remember - do you have a
24 memory of the complaint of Mr. Mowad, his -
25 not anybody else's, just the one he received

1 - I mean, Mr. Coleman received from Mr.-

2 A. Yes.

3 Q. -Mowad? Okay. And what is your
4 memory of - well, let me take this in two
5 parts.

6 Mr. Coleman has told us he got the
7 call from Mr. Mowad on September 18 of 2012,
8 and communicated to you sometime that week.
9 Would that be consistent with your memory on
10 the timing of when Mr. Coleman contacted you?

11 A. Yes.

12 Q. Okay. Do you have a memory of a
13 specific date that week that you received the
14 call?

15 A. No, I don't.

16 Q. Okay.

17 A. No, I don't.

18 Q. Okay. But certainly sometime that
19 week, within a matter of days of the call
20 from Mr. Mowad?

21 A. Yes.

22 Q. Okay. When you received that call
23 from Mr. Coleman, do you have a memory of
24 what you were told and the substance of the
25 nature of the allegations?

1 A. Not really. Just generalities
2 about the case.

3 Q. Okay.

4 A. But I do recall distinctly telling
5 Mr. Coleman that we needed to talk to the
6 Assistant Director for Ecological Services to
7 make him aware of the case.

8 Q. That would be Mr. Frazier?

9 A. Yes, that would be Mr. Gary
10 Frazier.

11 Q. Okay. And where was he physically
12 officing in relation to where you office?
13 The same building?

14 A. Yeah, in the same building, in the
15 same corridor, two doors down.

16 Q. Okay. And why did you think this
17 nature of allegation should be reported to
18 Mr. Frazier?

19 A. Well, the case we were talking
20 about was in regards to scientific integrity
21 of, you know, biological data, and since he
22 was the overseer of, you know, the Endangered
23 Species Program, ES, we always give - used to
24 give all of, you know, the Assistant
25 Directors, you know, the courtesy that, you

1 know, some cases were being investigating
2 (sic).

3 Q. Okay. And is this the same floor
4 that Director Ashe and Assistant - I can't
5 remember the exact title, Mr. Gould's, or
6 Deputy Director Gould on the same - are y'all
7 on the same-

8 A. Yeah.

9 Q. -corridor?

10 A. Yeah, we're all on the same
11 corridor.

12 Q. Okay. And then so you said we
13 need to notify Mr. Frazier. Did you go meet
14 with him face-to-face or call him on the
15 phone, or email, how did you make contact
16 with him?

17 A. We set up an appointment through
18 his assistant just to have a conversation, a
19 conference call. I was with Mr. Frazier in
20 his office when we called, when we talked to
21 him, as Dr. Coleman was on the phone. So and
22 then Mr. Coleman presented the case to Gary
23 Frazier.

24 Q. Do you have a - a memory about the
25 details of what was said on the call, or is

1 it just general impressions of what you-

2 A. Just general impressions, because,
3 you know, Rick - Dr. Coleman was not in a
4 position to, you know, provide details,
5 specific details to, you know, to Assistant
6 Director Gary Frazier, because it was not his
7 case. It was just a courtesy that we - we
8 did with all of the Directorate members.

9 Q. Okay. And so where was - other
10 than contacting - contact with Mr. Frazier,
11 what else did you do with this information
12 from Mr. Coleman?

13 A. Nothing. At that moment. Because
14 Rick was just starting the investigation, and
15 once he had more information, that's when we
16 eventually - he had a call meeting with
17 Director Ashe.

18 Q. Mr. Coleman did-

19 A. That I was not - well, he had a
20 conversation.

21 Q. Okay. Mr. Coleman had a - a
22 conversation with Director Ashe about this
23 matter, Mr. Mowad's matter?

24 A. Yes. After he conducted some of
25 the investigation.

1 Q. Okay. And do you know when that
2 conversation occurred?

3 A. It probably had to occur sometime
4 in October.

5 Q. Okay. And do you have any sort of
6 email traffic or notes about the call between
7 Coleman and Ashe?

8 A. No. I do not.

9 Q. Do you - were you on the
10 conference call?

11 A. I was not.

12 Q. Okay. Did - how did you know that
13 that conference call occurred?

14 A. Because Dr. Coleman reported to
15 me, I was his manager, so he would inform me
16 of all of the different activities he was
17 doing. Like, you know, contacting the
18 Director, if he was contacting anybody within
19 the department, or if he was investigating,
20 he always, you know, kept detailed notes and
21 kept me aware of all of his work.

22 Q. Okay. Did he send you any sort of
23 - he, Mr. Coleman, send you any sort of
24 notations confirming the conversation with
25 Mr. Ashe that would include specific details

1 of the conversation?

2 A. No. No.

3 Q. Okay.

4 A. Because as far as, you know, his
5 role as Science Integrity Officer, he kept,
6 you know, all of that information
7 confidential for the different cases he was
8 investigating. So I was not made aware of
9 specifics of the cases.

10 Q. All right. Did this communication
11 to you, this complaint, cause concern in you?

12 A. Absolutely.

13 Q. Okay. And why—

14 A. Absolutely.

15 Q. Explain why.

16 A. Because, you know, coming from
17 somebody like Mr. Mowad, it really raised the
18 alarm to me, you know, given his long history
19 in the Fish and Wildlife Service and, you
20 know, he's highly respected, so it really
21 caused concern to me that, you know, somebody
22 with his tenure was bringing forward such a
23 case.

24 MR. MEHOJAH: I'm going to object
25 to facts not in the record. I don't think

1 it's been established yet through testimony
2 of this witness that Mr. Mowad made that
3 complaint to Mr. Coleman.

4 MR. MUNDY: You just heard the
5 testimony of Mr. Coleman.

6 JUDGE GARVEY: Excuse me. I'm
7 going to allow her to testify on this issue.
8 Mr. Coleman testified undisputedly that Mr.
9 Mowad made a complaint to him. So let's -
10 you may continue, ma'am.

11 THE WITNESS: Thank you, Your
12 Honor.

13 Q. [BY MR. MUNDY:] I can't remember,
14 did you finish the last answer about why this
15 caused you concern coming from Mr. Mowad? Do
16 you need to explain that further?

17 A. No, I don't think so, I mean, it
18 just-

19 Q. Okay.

20 A. -you know, his tenure and, you
21 know, work in the Fish and Wildlife Service,
22 you know, spoke for him and that, you know,
23 brought awareness and alarm to me.

24 Q. Okay. When was the next time that
25 you personally took any actions or had any

1 activity about this complaint from Mr. Mowad
2 that you remember?

3 A. In regards to the complaint, I
4 didn't take any action or I didn't have any
5 conversations with Mr. Mowad. But during
6 this, you know, during the time of October
7 and November, that's when Mr. Mowad and I,
8 Dr. Coleman, started to discuss the
9 possibility of Mr. Mowad coming and joining
10 my team.

11 Q. Transferring out from the chain of
12 command to - from Tuggle to being under your
13 chain of command and working-

14 A. Correct.

15 Q. -directly for you?

16 A. Correct, because of the-

17 Q. Do you remember when you discussed
18 that?

19 A. Well, we started conversations in
20 October, and then we physically met in
21 November of 2012.

22 Q. Would it be fair to say that while
23 Mr. Coleman may not have disclosed Mr.
24 Mowad's identity to you directly, that by
25 October either Mr. Mowad had told you

1 directly or you figured it out just by the
2 profile of the facts of the allegations?

3 A. Well, when Gary and I met, you
4 know, he - he was very clear to me that he
5 was going through this allegation.

6 Q. Okay.

7 A. You know, he wanted to make me
8 aware because - but he didn't give me any
9 specifics or anything.

10 Q. Okay.

11 A. Because we were mainly talking
12 about his potential, you know, transfer of
13 duties to come and help my team.

14 Q. Okay. And did you view him as a
15 valuable asset and welcome him to your team?

16 A. Absolutely. And I did, in fact,
17 welcome him into my team, because I took for
18 granted, you know, he - he was coming.

19 Q. Okay. And since we're on the
20 subject, at the - at the end of 2012, he, in
21 fact, attempted to transfer formally on to
22 your team and be under your immediate direct
23 chain of command as his actual formal job
24 duty, correct?

25 A. That's correct. We started all

1 that different paperwork and he, in fact,
2 started to do some work working together with
3 my team.

4 Q. Okay. And we've already heard
5 testimony from a couple of sources. Now, the
6 GS-15 to transfer job duties required the
7 express approval of the Director or his
8 Deputies, and is it - is that your
9 understanding as well?

10 A. Yeah, that was my understanding,
11 is my understanding.

12 Q. And then sometime in early part of
13 2013, you said he was actually doing work for
14 you, you know-

15 A. Correct.

16 Q. -taking job assignments? Okay.

17 A. Correct.

18 Q. What kind of work - what kind of
19 work was he doing for you?

20 A. Well, what-

21 MR. MEHOJAH: Objection,
22 relevance.

23 JUDGE GARVEY: Sustained.

24 MR. MUNDY: Okay.

25 A. You know, when-

1 Q. [BY MR. MUNDY:] Wait, wait.

2 Wait, just a-

3 JUDGE GARVEY: Sustained. I
4 sustained the objection.

5 MR. MUNDY: Okay.

6 Q. [BY MR. MUNDY:] He - he - and
7 your understanding and impression was he was
8 working directly for you in early 2013,
9 correct?

10 A. Correct.

11 Q. Okay. And then sometime in
12 January of 2013, you received notice that, in
13 fact, the Director had not approved -
14 provided the express approval for him to
15 transfer formally his job duties to you,
16 correct?

17 A. That's correct.

18 Q. And that he was then put back on
19 the detail under direct supervision of Dr.
20 Tuggle, correct?

21 A. Correct.

22 Q. And is it your understanding that
23 that's the time he turned in his formal file
24 retirement paperwork?

25 A. Yeah, that's correct.

1 Q. Had - had your understanding been
2 that Director Ashe had initially approved the
3 transfer of Mr. Mowad to working for you?

4 MR. MEHOJAH: I'm going to object
5 to relevance, and outside of the jurisdiction
6 of this hearing.

7 JUDGE GARVEY: I'm going to allow
8 it.

9 MR. MEHOJAH: Okay.

10 A. Yes. I was of the under - the
11 understanding that he had approved the, you
12 know, the - the - Gary working in my team.

13 Q. [BY MR. MUNDY:] Okay.

14 MS. RICO: Does she have the
15 exhibits there?

16 MR. MUNDY: No. All right, I
17 won't be asking.

18 I'm just reorganizing a little
19 bit, Your Honor, just a moment.

20 You know, I'll go ahead and pass
21 the witness, because it's my understanding
22 she doesn't have exhibits, so I'm going to
23 kind of reorganize my thoughts a little bit,
24 so I'll go ahead and pass the witness at this
25 time, while I'm kind of reorienting my

1 thoughts for just a moment. Okay?

2 **CROSS-EXAMINATION**

3 **BY MR. MEHOJAH:**

4 Q. Ms. Chavarria, I'm Greg Mehojah,
5 I'm the attorney for the Department in this
6 matter. You and I've spoken before?

7 A. Yes, sir.

8 Q. So I just want to get the
9 chronology correct. Around September 18th,
10 2012, your testimony is that Mr. Coleman
11 approached you about a complaint dealing with
12 the dune sagebrush lizard; is that correct?

13 A. Correct.

14 Q. Okay.

15 A. That's correct.

16 Q. And then within, I don't know,
17 some time, you attended a conference call
18 with Mr. Coleman and Mr. Gary Frazier; is
19 that correct?

20 A. That's correct.

21 Q. Okay. Do you remember how much
22 time passed between the time that Mr. Coleman
23 contacted you initially about this, and the
24 time that you had this, um, conversation?

25 A. It probably was almost immediate.

1 A week at the most.

2 Q. Okay. Is that a week from
3 September 18th?

4 A. Probably.

5 Q. Okay. I was just trying to make
6 clear. At that time that Mr. Coleman
7 contacted you about this allegation regarding
8 the dune sagebrush lizard, did he mention Mr.
9 Mowad's name?

10 A. No, he did not.

11 Q. Okay. And you had the
12 conversation with Mr. Coleman and Mr.
13 Frazier, did Mr. Coleman mention Mr. Mowad's
14 name?

15 A. No, he did not.

16 Q. Okay. And you learned about that
17 later, right, that Mr. Mowad had made this
18 allegation?

19 A. Yes, that's correct.

20 Q. Okay. Okay. Um, and I believe
21 you said that there was a conversation that
22 Mr. Coleman had with Director Director Ashe;
23 is that your testimony?

24 A. Yes.

25 Q. Okay. Do you know when that

1 occurred?

2 A. That probably happened after, you
3 know, sometime in October, when Dr. Coleman
4 had time to investigate more the case.

5 Q. Okay. And that's October of 2012?

6 A. Correct.

7 Q. Okay. Were you - were you
8 involved in that conversation?

9 A. No, I was not.

10 Q. Okay. You didn't see any notes
11 resulting from that conversation?

12 A. No, I did not.

13 Q. Okay. And it was just Mr. Coleman
14 relaying that he had this conversation with
15 Director Ashe?

16 A. Yes. Yes. I was his direct
17 supervisor.

18 Q. Okay. Thank you. I believe that
19 in September, like probably a couple of days
20 after this contact by Mr. Coleman, I think it
21 was September 20th, 2012, you sent a letter to
22 the Regional leadership regarding the
23 surrogate species project. Do you recall
24 that letter?

25 A. No, sir.

1 Q. You don't recall sending any
2 letters about the surrogate species project?

3 A. No-

4 Q. That may be too broad.

5 A. We sent - we used to send so many
6 letters on that project, they still do send a
7 lot of letters on that project. So no.

8 Q. Would you agree that - would you
9 agree that the surrogate species project was
10 a priority for the Fish and Wildlife Service?

11 A. Yes. It still is.

12 Q. It still is today?

13 A. Yes.

14 Q. Okay. And that that - are - do
15 you - if you know, did that surrogate species
16 project, for the Director in regard of that
17 project (sic), require that each of the
18 Regions hold a surrogate species workshop?

19 A. Yes.

20 Q. Okay. You were not involved in
21 the decision to detail Mr. Mowad to
22 Albuquerque, were you?

23 A. No, I was not.

24 Q. Okay. Dr. Tuggle didn't contact
25 you about that?

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A. No.

Q. Okay.

A. He did not.

Q. Joy Nicholopoulos didn't contact you about that?

A. No, he (sic) did not.

Q. Okay. Did you ever tell Dr. Tuggle that Mr. Mowad had contacted Mr. Coleman?

A. No.

Q. Did you at some point learn that Mr. Mowad was cooperating with the IG?

A. Late - much later. Much, much later.

Q. Much later than September, October 2012?

A. Yes. I learned of that in 2013.

Q. Okay.

MR. MEHOJAH: I don't have any further questions for this witness, Judge.

MR. MUNDY: Just a few - oh. Your Honor, do you prefer to go next, or may I? Do you want me to go next? Okay.

REDIRECT EXAMINATION

BY MR. MUNDY:

1 Q. Just a couple of things, Ms.
2 Chavarria. Appreciate your time here today.
3 If - let me ask you to assume, we just heard
4 from Mr. Coleman and he had a spreadsheet
5 showing that he received the call from Mr.
6 Mowad on September 18 of 2012, and that he
7 concluded his involvement with this matter on
8 Tuesday, September 25 of 2012, okay?

9 A. Okay.

10 Q. Would it be reasonable for us to
11 conclude, based on that, from your knowledge
12 of being a supervisor, that the call with
13 Director Ashe would have occurred on
14 September 25 or prior to that time he wrote
15 closed on his spreadsheet?

16 A. Yeah, it will have to be - yes, as
17 soon as that, depending on the availability
18 of the Director.

19 Q. Okay. So the spreadsheet, his
20 worksheet showed closed, his involvement
21 closed on September 25 of 2012, the call to
22 Director Ashe, reasonably we can conclude was
23 September 25 or earlier; that's a fair
24 conclusion?

25 A. Or later, depending on the avail -

1 of Director Ashe's availability.

2 Q. But he would not - he would not
3 mark it on his worksheet as closed if he was
4 still continuing to talk with the Director
5 afterwards, would he?

6 A. Well, sometimes he closes an
7 investigation and it will take, you know,
8 time to find time in the schedule of Director
9 Ashe to talk to him.

10 Q. Okay. Based on what you know of
11 the facts of this matter, in your opinion, do
12 you believe the assignment of Mr. Mowad to
13 the detail was retaliatory?

14 A. Personally yes.

15 Q. Okay.

16 MR. MUNDY: Nothing further, Your
17 Honor.

18 JUDGE GARVEY: Ma'am, when Mr.
19 Coleman first told you about the complaint
20 involving the dune sagebrush listing, and
21 that the complaint involved, you know, the
22 decision having been removed from the Field
23 to the Regional Office, did you suspect at
24 that time or assume at that time, even though
25 he didn't mention Mr. Mowad's name, that the

1 complaint may have come from Mr. Mowad?

2 THE WITNESS: No, I did not.

3 JUDGE GARVEY: So you did not
4 think of Mowad's identity or - as being the
5 complainant until you met with him in
6 November?

7 THE WITNESS: That's correct.

8 JUDGE GARVEY: Okay. Thank you, I
9 have no further questions. Any - any follow
10 up questions, gentlemen?

11 MR. MUNDY: No, Your Honor.

12 MR. MEHOJAH: No, Judge.

13 JUDGE GARVEY: Thank you very much
14 for your testimony, ma'am, you are excused.
15 You may not discuss your testimony with
16 anyone until this entire hearing's brought to
17 a close. You can now hang up the connection,
18 okay? Thank you.

19 THE WITNESS: Yes. Yes, Your
20 Honor, thank you.

21 (Whereupon, the witness was excused.)

22 MR. MUNDY: Judge, can we go off
23 the record for just a moment?

24 JUDGE GARVEY: Sure. For how long
25 are you talking?

1 MR. MUNDY: I just need to ask you
2 a question about housekeeping matters.

3 JUDGE GARVEY: Okay. Off - off
4 the record.

5 [OFF THE RECORD 1:52]

6 [ON THE RECORD 1:54]

7 **WITNESS: JUSTIN WEDEL**

8 JUDGE GARVEY: Would you please
9 stand, sir, and raise your right hand?

10 Do you promise that the testimony
11 you're about to give will be the truth, the
12 whole truth, and nothing but the truth, so
13 help you God?

14 THE WITNESS: Yes, ma'am, I do.

15 JUDGE GARVEY: Okay. Please be
16 seated and state your full name for the
17 record.

18 THE WITNESS: Good afternoon. My
19 name is Justin Wedel.

20 **DIRECT EXAMINATION**

21 **BY MR. MUNDY:**

22 Q. Please spell your last name, sir.

23 A. W-e-d-e-l.

24 JUDGE GARVEY: Thank you. Mr.
25 Mundy?

1 THE WITNESS: Yes, ma'am.

2 MR. MUNDY: Yes, Your Honor, and
3 just for your note for reference, he's on a
4 very narrow point that is referenced on an
5 affidavit of Plaintiff's Exhibit G, Golf.

6 Q. [BY MR. MUNDY:] And if you would,
7 please tell us specifically, in 2012, sir, in
8 September, October timeframe of 2012, how you
9 were employed, who you worked for.

10 A. Through November of 2012, I was
11 the Administrative and Finance Officer with
12 the U.S. Geological Survey Texas Water
13 Science Center, in Austin, Texas.

14 Q. All right. And just to kind of
15 help move this along, you were not in exact -
16 you were not in the same agency working with
17 Mr. Mowad, but you all physically shared the
18 same office work spaces?

19 A. That is correct. We were co-
20 located in the same office building in
21 Austin, Texas.

22 Q. Okay. And how long have you been
23 in the same physical work space as Mr. Mowad
24 at that point in time?

25 A. Well, since Mr. Mowad came to

1 Austin - I'll be honest, I don't recall the
2 exact time.

3 Q. A year or two?

4 A. Probably a year or two.

5 Q. Okay.

6 A. Yes.

7 Q. And from your time with Mr. Mowad,
8 what was your impression of him overall, just
9 as a professionally (sic)?

10 A. Honest, professional, upstanding
11 man, based on our - our basic interaction
12 within the office space.

13 Q. Okay.

14 A. I'd see him from time to time.

15 Q. Never noticed him to cause any
16 problems or controversies around your office-

17 A. No.

18 Q. -space?

19 A. None whatsoever.

20 Q. Okay. Now, we're calling you on a
21 very specific point. On about October 5 you
22 had a conversation with a gentleman named
23 Robert Joseph. Who's Robert Joseph?

24 A. Robert, otherwise known as Bob
25 Joseph, is the Center Director for the U.S.

1 Geological Survey Texas Water Science Center.

2 Q. Okay. So he - he is in the same
3 work group as you?

4 A. Yes. He was my direct supervisor.

5 Q. Okay. And did he work in the same
6 office as you?

7 A. Yes, he did.

8 Q. Okay. And if you would, please
9 tell the Judge what the conversation was, the
10 comment about - from Mr. Joseph, that he had
11 received from Ms. Nicholopoulos about Mr.
12 Mowad?

13 A. Okay. Ma'am, as I has stated in
14 my affidavit, on or about October 5th, 2012,
15 Mr. Joseph, my direct supervisor, came into
16 my office late one business day. I had
17 happened to notice that Mr. Mowad had started
18 to gather some of his belongings from his
19 office just a few doors down from me.

20 Q. Like personal effects, photos and
21 doodads?

22 A. That is - that is correct,
23 personal effects, photos, cleaning out the
24 desk, etcetera. And I'd asked Mr. Joseph why
25 Mr. Mowad was - was gathering his things.

1 And Mr. - Mr. Joseph reported to me that he
2 had called Ms. Joy Nicholopoulos to inquire
3 about that, and that Ms. Nicholopoulos had
4 replied that Gary - there had been problems
5 with Gary.

6 Q. Okay. And do you remember any
7 other conversation with Mr. Joseph about
8 that?

9 A. No. I - I left it at that. I
10 figured that was really none of my business.
11 I was the Administrative Officer, I was
12 looking at it from a space and facilities
13 management standpoint.

14 Q. Okay.

15 A. That there was a staff member that
16 was departing, and I left it at that.

17 Q. Wasn't your working agency, so
18 just stay out of it?

19 A. That's correct. We offered Mr.
20 Mowad co-location space within our Federal
21 facility.

22 Q. All right.

23 A. That's the extent of it.

24 MR. MUNDY: Pass the witness.

25 THE WITNESS: Okay.

CROSS-EXAMINATION

BY MR. MEHOJAH:

1
2
3 Q. Mr. Wedel, I'm the attorney for
4 the Agency. I just want to talk to you about
5 your affidavit.

6 A. Yes, sir.

7 Q. You state that you had a
8 conversation with Mr. Robert Joseph on
9 October 5th, 2012?

10 A. On or about.

11 Q. On or about, so it's not certain
12 what date that was?

13 A. Correct.

14 Q. Could have been earlier, could
15 have been later?

16 A. Correct.

17 Q. Okay. Where did the conversation
18 take place?

19 A. It took place in my office at the
20 USGS office on Ferguson Lane in Austin.

21 Q. Okay. Did - you were not a party
22 to the conversation between Robert Joseph and
23 Joy Nicholopoulos?

24 A. That is correct, I was not a party
25 to that conversation.

1 Q. Okay. And you were not told what,
2 quote, problems there were with Gary, end
3 quote?

4 A. That is correct, I was not told of
5 any problems, nor did I ask any specifics to
6 that extent.

7 Q. Okay. You don't know what she
8 meant by that?

9 A. I do not know.

10 Q. Okay. If, in fact, that took
11 place, that conversation between Joy
12 Nicholopoulos and Robert Joseph?

13 A. Well, based upon my earlier
14 statements, I would have no reason to doubt
15 Mr. Joseph in which he made his statement to
16 me stating that he had spoken to Joy
17 inquiring about why Mr. Mowad was packing up
18 his belongings in the office.

19 Q. Okay. And - and you know - all
20 you know is what Mr. Joseph told you about
21 that conversation?

22 A. That is correct.

23 Q. Okay. You can't verify
24 independently that he made that statement to
25 Joy Nicholopoulos - that Joy Nicholopoulos

1 made that statement to him?

2 A. I cannot. I was not physically
3 involved in that conversation. I just heard
4 from Mr. Joseph that he had put in a call to
5 Ms. Nicholopoulos, in which she stated that
6 there were problems with Gary.

7 Q. Okay. And you didn't ask about
8 it?

9 A. That is correct, I did not ask any
10 further about it.

11 Q. Mr. Joseph didn't expand on it?

12 A. That is correct, he did not offer
13 any further explanation.

14 Q. Okay. And you're with the USGS?

15 A. I was with the USGS—

16 Q. At the time you were with the—

17 A. -at the time I was employed as the
18 Administrative and Finance Officer with the
19 U.S. Geological Survey, that is correct.

20 Q. Okay. You were not within the
21 Fish and Wildlife Service chain of command?

22 A. Correct. I was outside that chain
23 of command.

24 Q. Okay.

25 MR. MEHOJAH: I have no further

1 questions.

2 **REDIRECT EXAMINATION**

3 **BY MR. MUNDY:**

4 Q. Mr. Joseph would have no motive to
5 make this comment, there's no...

6 A. No, I don't see any reason why he
7 would say something like that if it wasn't
8 the truth. Mr. Joseph was a very straight
9 shooter.

10 Q. It's just explaining the physical
11 explanation to you as the office physical
12 space manager just why he was moving out of
13 his office?

14 A. That is correct.

15 Q. Okay.

16 MR. MUNDY: Nothing further, Your
17 Honor.

18 JUDGE GARVEY: Thank you very much
19 for your testimony today, sir, you are
20 excused. You may not discuss your testimony
21 with anyone else until this entire matter's
22 brought to a close. Thank you.

23 THE WITNESS: Yes, ma'am, I
24 understand. Thank you for your time.

25 Thank you everyone.

1 (Whereupon, the witness was excused.)

2 MR. MUNDY: I'm stepping out to
3 get our next witness, Your Honor.

4 (Pause to retrieve next witness.)

5 MR. MUNDY: You're going to sit
6 right here.

7 **WITNESS: THOMAS J. CLOUD**

8 JUDGE GARVEY: Remain standing and
9 raise your right hand. Do you promise that
10 the testimony you're about to give will be
11 the truth, the whole truth, and nothing but
12 the truth, so help you God?

13 THE WITNESS: Yes, I do.

14 JUDGE GARVEY: Okay. Please be
15 seated and state your full name for the
16 record, and spell you last name, as well.

17 THE WITNESS: Okay. I'm Thomas J.
18 Cloud, C-l-o-u-d, Junior.

19 JUDGE GARVEY: Thank you. Mr.
20 Mundy?

21 MR. MUNDY: Yes, Your Honor. And
22 for your reference for your note, he - he has
23 an affidavit at Appellant Exhibit F, Foxtrot.

24 **DIRECT EXAMINATION**

25 **BY MR. MUNDY:**

1 Q. Mr. Cloud, good afternoon. Thank
2 you for being here. We're going to be
3 zeroing in on some real narrow points here.
4 If you would, just give the Judge a Reader's
5 Digest summary of your career with the
6 Federal Government, the short version, okay?

7 A. Short version, okay.

8 Q. Just generally what you did over
9 your career.

10 A. Okay. Well, I came to work at the
11 Fish and Wildlife Service in 1974. I stayed
12 basically in the Fort Worth area my whole
13 career. In 1999, I was selected as the Field
14 Supervisor of the Arlington Field Office, and
15 I served in that position until I retired the
16 end of 2012.

17 Q. All right. And we've heard a
18 little bit about the explanation about
19 there's the Ecological Services and - and
20 Refuge or whatever, but you're in the
21 Ecological Service part of the organization?

22 A. Yeah, Ecological Services
23 Division.

24 Q. Okay.

25 A. Of the Fish and Wildlife Service.

1 Q. And you were in charge of the
2 satellite office in the Fort Worth area?

3 A. Well, we were actually a full
4 Field Office.

5 Q. Okay.

6 A. We have four Field Offices in
7 Texas. I was supervisor of the Arlington
8 Field Office.

9 Q. Okay. And when were you put in
10 that position?

11 A. 1999.

12 Q. And was it—

13 A. Yeah, 1999. Sorry.

14 Q. What position did you hold in
15 2012?

16 A. Same position, Field Supervisor.

17 Q. Okay. And how many other Field
18 Supervisors were in Ecological Services in
19 Texas in 2012?

20 A. Four.

21 Q. Okay. And do you remember the
22 names of the other gentlemen?

23 A. Yes. Allen Strand, in Corpus, I
24 think; you'll hear from him. Adam Zerrenner
25 in Austin. And Edith Erthling was the

1 supervisor in Houston.

2 Q. Okay. And with respect to 2012,
3 you reported directly to Mr. Mowad on the
4 organizational chart, correct?

5 A. That's correct.

6 Q. Okay. I want to zero in
7 specifically to a meeting in early October of
8 2012, which Mr. Tuggle and Ms. Shaughnessy
9 came to Texas. Do you remember that meeting?

10 A. Yes, I do.

11 Q. Okay. Where did that meeting
12 occur?

13 A. It was in the Austin Field Office
14 conference room.

15 Q. And who was present at that
16 meeting?

17 A. Besides Dr. Tuggle, it was
18 Michelle Shaughnessy representing the
19 Regional Office, all the four Texas Field
20 Supervisors, there were, I think, two key
21 Austin staff, and that's about it.

22 Q. Okay. Was Mr. Mowad there?

23 A. No.

24 Q. What was your understanding about
25 why you were being called down to the Austin

1 Office to meet with Dr. Tuggle and Ms.
2 Shaughnessy?

3 A. Well, we were told in advance that
4 the meeting was to discuss farming out his
5 duties and responsibilities to the other
6 supervisors while he was on temporary duty in
7 the Albuquerque Office.

8 Q. Okay. And when he was detailed to
9 the Albuquerque Office, was there a Acting
10 put in place of him while he was off on this
11 detail in Albuquerque?

12 A. No. In fact, we were specifically
13 told to - that the supervisors, from that
14 point forward, would report to the
15 Albuquerque Office, Regional Office.

16 Q. So the-

17 A. Michelle Shaughnessy.

18 Q. So then you were reassigned to be
19 a direct report to Ms. Shaughnessy?

20 A. Yes.

21 Q. No one in between the two of
22 y'all?

23 A. No.

24 Q. That would be true for all the
25 Field Supervisors?

1 A. Yes.

2 Q. And what was your sense of that,
3 did that seem okay, routine, abnormal,
4 unusual? What was your personal reaction?

5 A. Not - you know, as I pointed out
6 in my deposition, I've been working for the
7 Fish and Wildlife Service over 38 years and
8 I've - I've seen a lot of people have tour of
9 duties and - and different things,
10 reassigned, but I've never - I've never seen
11 somebody that was supposedly on a temporary
12 duty have his duties, you know, totally
13 reassigned to - to other supervisors.

14 Q. Okay, well, explain - I don't
15 think we've talked about that, so explain to
16 the Judge what you're talking about, what
17 occurred at that meeting?

18 MR. MUNDY: Judge, we're getting a
19 lot of feedback all of a sudden. I don't
20 know what's happened. Thank you.

21 Q. [BY MR. MUNDY:] If you would,
22 explain to the Judge-

23 A. Okay.

24 Q. -what happened at that meeting.

25 A. Well, we basically - Dr. Tuggle

1 and Ms. Shaughnessy had a list of duties, I
2 think they'd requested that Gary provide 'em
3 a list of his responsibilities and duties as
4 State Administrator. And we went around the
5 table talking about each one of those
6 responsibilities and how or what supervisor
7 may take that responsibility over. And that
8 was discussed. Each of his duties were
9 basically given to a different supervisor, as
10 far as, you know, various meetings, his
11 representation on different committees or
12 groups.

13 I know there was a lot of
14 discussion on joint ventures that he
15 represented. I was asked to maybe represent
16 the Fish and Wildlife Service at a joint
17 venture meeting that our office had lead
18 responsibility over, but I told 'em I would
19 do it, but I was retiring myself in a couple
20 of months, so they opted to give that to
21 somebody in the Region.

22 Q. If Mr. Mowad was supposed to only
23 be gone on a 60-day detail, would it be odd
24 to reassign a joint venture responsibility?

25 A. Yeah, I mean...

1 Q. Why?

2 A. Well, joint venture's a long-term
3 effort. And normally the meetings were only
4 once or twice a year. And those are things
5 that you generally, when somebody goes on a
6 TDY, we always had a Acting. In Texas in the
7 past, when some of our supervisors went on
8 temporary details, they were appointed
9 Acting. I even served as Acting State
10 Administrator on a different occasion. I
11 know Mr. Strand had served as Acting. So
12 normally when somebody goes on a 30, 60-day
13 detail, they're - they're - they assign an
14 Acting person in their behalf.

15 Q. Okay. To fill in as the
16 substitute teacher while they're gone?

17 A. Yeah. Basically as substitute
18 until that person returns to their duty
19 station.

20 Q. Okay. What did the -the lack of
21 the appointment of an Acting, the
22 reassignment of your chain of command
23 directly to Ms. Shaughnessy, and then the
24 handing out of his responsibilities,
25 including joint ventures, what did that cause

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BY MR. MEHOJAH:

Q. Mr. Cloud, I'm Greg Mehojah, I'm the attorney for the Department on this matter. I just have a few questions to ask you.

During the meeting when Mr. Mowad's duties were assigned to other individuals to handle, did - I think you stated that it was Michelle and Dr. Tuggle were in the room?

A. Right.

Q. Okay. And at that time did either Michelle Shaughnessy or Dr. Tuggle tell anybody in that room that these were permanent transfers of Mr. Mowad's duties?

A. At one time, my recollection is that Michelle made a comment to the effect that she didn't think Gary was coming back, these would be permanent. And I think Dr. Tuggle was quick to try to correct her to that statement.

Q. Okay.

A. But she did allude to that fact.

Q. She alluded to it or she did say it?

1 A. Well, she kind of - well, I don't
2 know if you'd say she alluded or implied it.
3 She seemed to say, you know, as I recall,
4 that's two years ago.

5 Q. You prepared an affidavit, which I
6 believe is sitting before you?

7 A. Right.

8 Q. Okay.

9 MR. MEHOJAH: And that's Exhibit
10 F, as in Frank, Judge.

11 Q. [BY MR. MEHOJAH:] And you signed
12 this affidavit?

13 A. That's correct.

14 Q. Okay. But in this affidavit you
15 don't state the Michelle Shaughnessy said
16 during that meeting that these were permanent
17 transfers of his work to other individuals,
18 do you?

19 A. No, not in this affidavit.

20 Q. Okay. And you prepared this on
21 July 29th, 2013?

22 A. Right.

23 Q. That was a little over a year ago?

24 A. (No audible response.)

25 Q. Okay. And that was a little bit

1 closer to the time that this meeting took
2 place than it is today-

3 A. Right.

4 Q. -correct?

5 A. Right.

6 Q. Okay. Did Dr. Tuggle or Michelle
7 Shaughnessy ever state that Mr. Mowad was
8 being permanently transferred from Austin to
9 Albuquerque during that meeting?

10 A. Not specifically.

11 Q. Okay. They did not use those
12 words?

13 A. Not permanently.

14 Q. Okay.

15 A. They said that he was on a
16 temporary assignment.

17 Q. Okay. And you mentioned something
18 about joint ventures, and I don't know much
19 about them, except they're (indiscernible)
20 projects and there's a couple of meetings a
21 year; is that correct?

22 A. Yes. Yes.

23 Q. Okay. Is it possible that there
24 are inquiries that are associated with those
25 long term projects at any given time

1 throughout the year between those two
2 meetings, or whenever those meetings occur?

3 A. Oh, yeah. Yes.

4 Q. Okay. And somebody would need to
5 be able to respond to those?

6 A. Right. Right. There's normally
7 materials that are sent out or things that
8 have to be reviewed as far as work plans and
9 budgets.

10 Q. Okay.

11 A. I'll stop there.

12 Q. And you would agree that at least
13 some work or some tasks or some duties of an
14 individual needed to be addressed in their
15 absence, whether it was 30 days or 60 days;
16 is that correct?

17 A. Oh, absolutely. State
18 Administrator was a busy position. With four
19 Texas Field Stations.

20 Q. Sure. And you had stated in your
21 testimony that you'd never seen a transfer of
22 duties like this in 38 years of your Federal
23 service?

24 A. Not on a temporary detail.

25 Q. Okay. And where you were

1 stationed is in Arlington?

2 A. Arlington, Texas.

3 Q. Okay. For how many years?

4 A. I was essentially there my whole
5 career, 38 years.

6 Q. You never worked in any of the
7 other Regional Offices?

8 A. No.

9 Q. Okay.

10 A. No.

11 Q. You would agree that it's possible
12 that a transfer of duties like this in the
13 absence of the individual because of the
14 detail had happened elsewhere?

15 MR. MUNDY: It calls for
16 speculation and beyond the scope of his
17 knowledge.

18 JUDGE GARVEY: Sustained.

19 Q. [BY MR. MEHOJAH:] And you stated
20 that in your affidavit, Exhibit F, that you
21 had never seen a Regional Director come to a
22 meeting and reassign the responsibilities of
23 a supervisor sent on a temporary detail; is
24 that correct?

25 A. That is correct.

1 Q. And do you know whether Dr. Tuggle
2 had other meetings that he had scheduled
3 during that time?

4 A. I'm not aware of any.

5 Q. You don't know that he - he may
6 have had other meetings, you don't know?

7 A. I don't know.

8 Q. Okay. You don't know whether he
9 was there just for this meeting?

10 A. It's my understanding he was there
11 specifically for that meeting.

12 Q. Okay. Did he tell you that?

13 A. No.

14 Q. Okay.

15 MR. MEHOJAH: Pass the witness,
16 Judge.

17 **REDIRECT EXAMINATION**

18 **BY MR. MUNDY:**

19 Q. If you'd back up, looking at your
20 prior affidavit. At the time of this
21 meeting, you knew that Mr. Mowad was
22 cooperating with the OIG?

23 A. Yes.

24 Q. Okay. And the - he asked you:
25 This didn't include the statement about what

1 Ms. Shaughnessy had said? That's not because
2 it was intentionally omitted, it just wasn't
3 asked, or - to be included?

4 A. Right. Right. That was the case.

5 Q. It's not something you just made
6 up today to tell the Judge, is it?

7 A. No.

8 Q. You undertake your duty here as a
9 witness, you've taken a solemn oath an - very
10 seriously?

11 A. Oh, absolutely.

12 Q. I meant to ask you, Oncor
13 Electric, are they in the geographic zone of
14 your Field Office?

15 A. Partially.

16 Q. Okay. Partially.

17 A. Partially they're in, they
18 overlap, they're such a large group that
19 they-

20 Q. Do you know who Marty Tuegel or
21 Tuggle-

22 A. Yes.

23 Q. Tuegel? Who is Marty Tuegel?

24 A. He was the person in the Regional
25 Office, the Staff Biologist in the Regional

1 Office responsible for HCPs, as I recall.

2 Q. And do you have any knowledge or
3 involvement with a issue about a Oncor
4 Electric permit application and language
5 being requested to be included in that permit
6 application? That sound familiar to you or
7 do you know anything about that?

8 A. No, we didn't - our office only
9 reviewed certain aspects of the lines, their
10 lines in our area, but we didn't really - at
11 least I personally didn't deal directly with
12 permit language. Maybe one of my Staff
13 Biologists did.

14 Q. Okay. Do you know anything about
15 any involvement of Mr. Tuegel - or request of
16 Mr. Tuegel to put language in an Oncor
17 permit? Is that not within your-

18 A. I don't know, sir.

19 Q. -what you were doing?

20 A. That was not with anything I was
21 involved. I'd only heard hearsay about some
22 of the stuff that...

23 Q. Now, do you have any question in
24 your mind about Tuggle's com - or excuse me,
25 Ms. Shaughnessy's comment, what she was

1 implying, and then what did you say Tuggle
2 had done in response to Ms. Shaughnessy's
3 comment? Where you said she started to say -
4 let me backup. You had mentioned about Ms.
5 Shaughnessy saying that this was a permanent
6 reassignment or implying that, and then Dr.
7 Tuggle either stopped her or corrected her,
8 or something like that?

9 A. No, he-

10 Q. Explain - repeat - repeat that so
11 we can get clear in our mind what your memory
12 is.

13 A. Well, it's been two years, so it's
14 hard to remember, but as I recall, she had
15 made some comment about - we were talking
16 about responsibilities, there was some
17 discussion between some of the other
18 supervisors and her about responsibilities,
19 and she made a comment that this would need
20 to be done on the long term, which to me
21 meant permanent, you know, that it's likely
22 that Gary would not resume those
23 responsibilities.

24 Q. Okay. Being in that Field Office
25 for 38 years, have you personally had issues

1 with the relationship of Ms. Nicholopoulos'
2 involvement in the State of Texas and where
3 it caused you personal concern, and also
4 and/or including issues about Ms. Arnold?

5 A. Yes. She was my supervisor prior
6 to Gary becoming the State Administrator, Joy
7 was the Texas State Administrator.

8 MR. MEHOJAH: Judge, I'm going to
9 object, this is outside the scope for which
10 this witness was authorized to provide
11 testimony.

12 MR. MUNDY: Fine, Judge, I'll go
13 ahead and pass the witness back.

14 MR. MEHOJAH: I have no further
15 questions, Judge.

16 JUDGE GARVEY: All right. Sir,
17 the meeting with Ms. Shaughnessy and Mr.
18 Tuggle, they did not indicate how long this
19 TDY was going to be or that he was coming
20 back; I mean, you were concerned because you
21 were leaving the end of December, which was
22 almost three months forward from the date of
23 the meeting, that you didn't want to do the
24 joint venture, so were they indicating it was
25 going to - it was going to be longer than 60

1 days or 90 days, or they - they just
2 indicated a long time?

3 THE WITNESS: Well, it was
4 understood these joint ventures are long -
5 long-time activities, and I just made the
6 comment, when they were talking about could I
7 represent the Service at this joint venture
8 meeting, which was coming up I think within a
9 month or two, I said I'd be happy to
10 represent the joint venture, but I couldn't
11 do it - it would be a one time shot because I
12 was going to be retiring at the end of 2012,
13 so. You know, and when I told them that,
14 they said, okay, well, we'll find somebody
15 else to do it. It was understood that, you
16 know, I understood that they were looking for
17 somebody to be a permanent representative to
18 that joint venture.

19 JUDGE GARVEY: Okay. When you got
20 your performance evaluations from first Ms.
21 Nicholopoulos and then later from Mr. Mowad,
22 did you receive these telephonically, or how
23 was your annual performance evaluation done?
24 Was it in person?

25 THE WITNESS: They were all

1 conducted personally, yes. We had a - we had
2 a meeting personally where we sat down and
3 discussed performance plan and my scores.

4 JUDGE GARVEY: Both by Ms.
5 Nicholopoulos and Mr. Mowad?

6 THE WITNESS: Yes, ma'am.

7 JUDGE GARVEY: What about the
8 performance evaluation you received for the
9 fiscal year ending September 30th 2012, once
10 Mr. Mowad was out in Albuquerque, did he come
11 back to Austin and have a meeting with you,
12 or did - was that done by fax or telephone,
13 or how was that performance evaluation given
14 to you?

15 THE WITNESS: As I recall, I never
16 received a performance evaluation for 2012,
17 because once - once Mr. Mowad was relieved of
18 that responsibility and I went to the
19 Regional Office, I retired about three months
20 later, and since I wasn't under a performance
21 plan with a new supervisor for 90 days, they
22 never gave me a performance plan for that
23 entire year.

24 JUDGE GARVEY: So for the year
25 that ended - the year October 1, 2011, until

1 September 30th, 2012, is that the fiscal year
2 you followed for your performance, or do you
3 follow calendar year?

4 THE WITNESS: No, it's October to
5 - October 1 to September 30th, right.

6 JUDGE GARVEY: Right. So after
7 September 30th, you never got a performance
8 evaluation or a bonus or anything for your
9 work the year prior to your retirement?

10 THE WITNESS: Uh, I don't think I
11 did.

12 JUDGE GARVEY: Okay.

13 THE WITNESS: You know, again,
14 it's 2000-

15 JUDGE GARVEY: Right, I
16 understand. All right, thank you very much
17 for your testimony today. You are excused.
18 You may not discuss your testimony with
19 anyone else until this entire matter's
20 brought to a close. Thank you.

21 THE WITNESS: Thank you.

22 (Whereupon, the witness was excused.)

23 MR. MUNDY: I'm going to step out
24 and get the next witness, Your Honor.

25 (Pause to retrieve witness.)

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WITNESS: ALLEN STRAND

MR. MUNDY: Remain standing and the Judge will swear you in.

JUDGE GARVEY: Raise your right hand, please, sir. Do you promise that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

JUDGE GARVEY: Okay. Please be seated, and state your full name for the record, and spell your last name as well.

THE WITNESS: My name is Allen Mark Strand. My last name is spelled S-t-r-a-n-d.

JUDGE GARVEY: Thank you. Mr. Mundy.

MR. MUNDY: Yes, Your Honor.

DIRECT EXAMINATION

BY MR. MUNDY:

Q. If you would, Mr. Strand, please tell the Judge sort of a overview summary about your career with the Federal Government, sir?

A. With the Federal Government, I've

1 spent a little over eight years in the
2 military. I served in Europe and Vietnam
3 both. And I came back and went to college;
4 went to work for a corporation, and
5 eventually ended up as the CEO of a
6 corporation. And in the financial
7 difficulties in the mid-1980s we put that
8 corporation through bankruptcy. I went back
9 to work for the Government, for the Federal
10 Government, and ended up in Corpus Christi,
11 Texas as the Field Supervisor, and I've
12 basically served 22 years with the Fish and
13 Wildlife Service.

14 Q. All right. With - what was your
15 job title in the Corpus Office?

16 A. Field Supervisor.

17 Q. Okay.

18 A. Some people call it Project
19 Leaders, but Field Supervisor is a little
20 more narrowly defined. You're the head of an
21 ES Office.

22 Q. Okay.

23 A. Whereas a Project Leader could be
24 a head of something - something else.

25 Q. You're the head of the Ecological

1 Services Office in Corpus Christi?

2 A. Yes. In South Texas.

3 Q. One of - so you had the - that was
4 your geographic region, South Texas?

5 A. I had - I have responsibilities on
6 the Rio Grande River all the way to El Paso,
7 and back to Brownsville and back up to Corpus
8 Christi. And for oil and gas interests I had
9 responsibilities all the way past Houston.

10 Q. Okay. And when - when you were
11 with that office; how long were you with Fish
12 and Wildlife? When did you start; when was
13 your end date?

14 A. I started - you would ask me the
15 starting date.

16 Q. Oh, just-

17 A. 1991, I think. And I served 22
18 years with Fish and Wildlife Service.

19 MR. MUNDY: And, Judge, for
20 reference for your note, his affidavit is at
21 Exhibit H, as in Hotel.

22 A. And I just retired a little over a
23 year ago.

24 Q. [BY MR. MUNDY:] Sir, just in case
25 you need, I have a clear copy for you. And

1 either I or Mr. Mehojah may ask you questions
2 from that.

3 A. Uh-huh.

4 Q. We're - we've asked you here today
5 to talk about specifically events in 2012
6 relating to Mr. Mowad. And I believe you
7 attended a meeting called by Mr. Tuggle, Ms.
8 Shaughnessy, for the Austin Field?

9 A. Uh-huh.

10 Q. And all the supervisors?

11 A. Yes, that's correct.

12 Q. And who is your memory of
13 attending? There was Tuggle, Shaughnessy,
14 you, Mr. Cloud, the other Field Office?

15 A. Adam from - and I don't remember
16 Adam's last name, but he's the Field
17 Supervisor for Austin. He was there. Edith
18 Erthling from the Houston Office was there.
19 And several staff members from the Austin
20 office.

21 Q. Okay.

22 A. Was there.

23 Q. All right. And what was your
24 understanding of - where did the meeting
25 occur, sir?

1 A. In the Austin Field Office.

2 Q. What was your understanding about
3 why you were called to attend the meeting in
4 the Austin Field Office with Dr. Tuggle?

5 A. We really wasn't given any pre-
6 description of what the meeting was gonna be
7 about, but there was an assumption it would
8 be about Gary's position, because he had been
9 pulled out and we were wondering who was
10 going to be Acting and who was gonna take
11 some of the duties, and so on.

12 Q. All right. And had you had,
13 previously, meetings in Texas with Dr.
14 Tuggle-

15 A. Oh.

16 Q. -where you'd been called to report
17 to?

18 A. Sure.

19 Q. Okay.

20 A. Uh-huh.

21 Q. At this time you thought it was
22 because of Mr. Mowad being detailed to
23 Albuquerque?

24 A. Yeah. And Dr. Tuggle's meetings
25 were usually for other type of things. This

1 - this was kind of unusual and - to come in
2 and, you know, with the RD and the ARD
3 together. So we - we thought something was -
4 obviously something was up. And both, I
5 think both Tom and I were aware that - that
6 Gary had been working with the OIG. So there
7 were some - put it this way, there were some
8 suspicions that that might be what it was
9 about.

10 Q. Okay. Tell the Judge what your
11 memory of that meeting is, just why you had
12 been called there and what you were told and
13 what occurred.

14 A. Well, the - basically Michelle
15 briefed us on the fact that Gary was on a
16 assignment with no ending date, and that it's
17 going to be necessary to reassign his duties,
18 which we thought was unusual, too, because
19 that's not normally the way it's done. But,
20 anyway, the discussion was around reassigning
21 the duties, and they went to several of the
22 Project Leaders, the Field Supervisors,
23 asking, you know, what we were involved in
24 that Gary might have direct interest in and
25 so on.

1 Q. Okay. And, sir, I ask it purely
2 just so the Judge can - she's evaluating, you
3 know, people's demeanor and - and
4 responsiveness. You seem a little bit weak,
5 but just very brief, you've had, as I
6 understand it, multiple open heart surgeries?

7 A. Yeah, I've had - I had open heart
8 surgery in 1998, I had a triple bypass. And
9 then I had a heart attack-

10 Q. Let me - you don't have to explain
11 all of your-

12 A. Oh.

13 Q. -personal information to us, but
14 just in case there's a question about why you
15 seem a little bit weak or soft spoken, you've
16 had-

17 A. Yeah. I still - I'm a heart
18 patient.

19 Q. Okay.

20 A. So.

21 Q. Obviously, we're going to be very
22 brief, but if you have something you need to
23 - that's sort of an issue, speak up.

24 A. No, I'm fine.

25 Q. All right. But anyway, you were

1 explaining what occurred at the meeting. Go
2 ahead, please continue.

3 A. Yeah, Michelle kinda proceeded to
4 talk through the fact that Eric was on - Gary
5 was on this assignment. And I don't know
6 exactly what her words were, this was, you
7 know, quite awhile ago, but she-

8 Q. You said her. Ms. Shaughnessy?

9 A. Her. Yeah, Michelle Shaughnessy.
10 She kind of indicated that this was - that
11 Gary wouldn't be coming back, and I don't
12 remember exactly what words she used. And
13 she was cautioned by Dr. Tuggle, well, no,
14 we're not really totally sure about that yet,
15 because he was obviously a little concerned
16 that she had gone too far with what she was
17 saying.

18 Q. Okay. And was there an Acting
19 appointed?

20 A. No. That - that's what was
21 unusual because the - Gary's duties were
22 being farmed out to the different
23 supervisors, on what we were taking as a
24 permanent basis. And that's not the way
25 things were done in normal circumstances.

1 The way we've done it normally, somebody
2 would be provided to be named Acting for Gary
3 while he was gone. And if it was for an
4 extensive period of time, then we would use
5 rotating Actings. In other words, one
6 supervisor would act for 30 days, and then
7 another one, and so on down the line. And
8 that's not what happened.

9 Q. Who were you reassigned to the
10 chain of command after this action?

11 A. Michelle.

12 Q. So she would be your direct
13 report?

14 A. My direct - my direct supervisor,
15 yeah.

16 Q. Okay. Were you asked to take over
17 any joint venture obligations or long-term
18 type obligations?

19 A. I was not, because Gary wasn't
20 really involved in any joint ventures or
21 anything that we had down in the South area.

22 Q. And you-

23 A. But he - I do remember that they
24 asked Tom Cloud to be - take one over.

25 Q. All right.

1 A. And I think he declined because he
2 was getting ready to retire.

3 Q. All right. But there just weren't
4 any in your geographic-

5 A. No.

6 Q. -area?

7 A. No.

8 Q. Okay. And - just a moment, check
9 my notes here.

10 Did - did you have an opinion that
11 this was a retaliatory action against Mr.
12 Mowad?

13 A. Yeah. When Tom and I left the
14 meeting, we walked outside in the parking lot
15 and we kinda looked at each other, and, you
16 know, being around the service as long as
17 we've been, and been through as many meetings
18 and other issues, I mentioned to Tom, I said,
19 I think Gary's toast. I said it that way,
20 but that was the words, said, he's not coming
21 back.

22 Q. Had you ever personally had
23 personal interaction with Ms. Nicholopoulos
24 where she threatened you or intimidated you,
25 or attempted to, I should say?

1 A. Oh, I think the first meeting we
2 ever had she threatened me.

3 Q. Okay. And if you would tell the
4 Judge just about your personal impression of
5 her demeanor or attempts or attempts at
6 retaliation, what I'll refer to as close the
7 book.

8 MR. MEHOJAH: And I'm gonna - I'm
9 gonna object, again, Judge, this is outside
10 the scope for which this witness was
11 authorized to testify.

12 MR. MUNDY: I think it's squarely
13 within it; it explains his perceptions and
14 basis for his opinion that it-

15 JUDGE GARVEY: I'm going to allow
16 it.

17 MR. MUNDY: -is retaliatory.

18 A. Yeah. The first time she came
19 down to my office and met with me when she
20 took over as State Administrator, she did it
21 in a threatening way. Like, you know, the
22 way I supervise is, you know, you're gonna do
23 what I say, and if you don't, there's gonna
24 be a problem. And I kinda questioned her on
25 why she would open up our relationship with a

1 threat. And she says, well, I'm not really
2 threatening you, and I said, well, I'm taking
3 it as a threat because of the way you're
4 saying it to me.

5 Her and I had a history. I was
6 the Acting ARD in Albuquerque for, oh, I
7 don't know, two and a half months, and she
8 was the State Supervisor for New Mexico at
9 the time and she had a lot of personnel
10 issues during that period of time. And of
11 course, being the ARD they came through my
12 desk. So unfortunately I had kind of a
13 preconceived opinion as to how she did her
14 supervision.

15 Q. And please tell the Judge about
16 what Ms. Nicholopoulos called the book, or
17 your words for the book.

18 A. Yeah, she was reputed to have a
19 little book that she carried. And that
20 little book was supposed to have the names of
21 people that she was gonna go after and all
22 the negative things and so on.

23 Q. Did she ever threaten you with,
24 quote, the book?

25 A. When we did an evaluation, she

1 pulled out a book. I'm assuming it was the
2 book. And she - every little thing that we
3 had happen in my area during that previous
4 year, she had, you know, it down in the book,
5 so she just went down the list. And it was
6 nothing positive, just the negatives. So I
7 took it that that was her little book that
8 she kept everything in.

9 Q. Okay. From your perspective, your
10 reaction or impression was it was threatening
11 or an attempt to threaten you. I guess as a
12 former Vet, I'm not saying you were
13 threatened, but your perception it was an
14 attempt at intimidation?

15 A. Yeah. She had told Nancy Goldman,
16 who was an ARD at the time that - time that
17 she came down to Texas and - when Joy came
18 down to Texas, and she had told Nancy
19 Goldman, who was the ARD and was her boss,
20 that she didn't think she could supervise me
21 because my background and I was like a - like
22 a dinosaur, if you - if you want to mince
23 words, but, you know, an older male that had
24 been around the block many times, and she
25 didn't think she could supervise me.

1 JUDGE GARVEY: Mr. Mundy, I think
2 you need to move along-

3 A. And Nancy Goldman-

4 JUDGE GARVEY: Sir, wait a minute.
5 I think you need to move along,
6 Mr. Mundy.

7 Q. [BY MR. MUNDY:] That's fine,
8 we're going a little far afield. That's my
9 point.

10 MR. MUNDY: Let me just check my
11 notes. I'll pass the witness.

12 **CROSS-EXAMINATION**

13 **BY MR. MEHOJAH:**

14 Q. Mr. Cloud (sic), you signed an
15 affidavit on July 30th, 2013, correct?

16 A. Uh-huh.

17 Q. I'm sorry, you're Mr. Strand.

18 A. Strand.

19 Q. Strand. I'm sorry.

20 A. Yes, sir.

21 Q. This one looks a lot like the
22 other ones, I got confused. I'm sorry.

23 And that's in front of you, I
24 believe, right?

25 A. Yes.

1 MR. MEHOJAH: Okay. And I'm
2 referring to Exhibit H, Judge.

3 JUDGE GARVEY: Okay.

4 Q. [BY MR. MEHOJAH:] In this exhibit
5 you recount some of the things that you
6 testified about today.

7 A. Uh-huh.

8 Q. And you recount some things in
9 your testimony today that are not in this
10 affidavit; is that correct?

11 A. Uh-huh.

12 Q. Okay. For example, this issue
13 about this intimidation by Ms. Nicholopoulos.

14 A. Uh-huh.

15 Q. That's not in this affidavit?

16 A. No.

17 Q. Okay. And this idea about the
18 book, quote, is not in this?

19 A. No.

20 Q. Okay. You were not involved in
21 the decision to detail Mr. Mowad to
22 Albuquerque?

23 A. No, I was not.

24 Q. Dr. Tuggle didn't consult you?

25 A. No.

1 Q. Michelle Shaughnessy did not
2 consult you?

3 A. No.

4 Q. Joy Nicholopoulos didn't consult
5 you?

6 A. No.

7 Q. Okay. And at some you say that
8 you learned that Mr. Mowad had been
9 cooperating with the Inspector General; is
10 that correct?

11 A. Uh-huh.

12 Q. Okay. When did you learn that?

13 A. It was prior to the meeting, and I
14 don't remember exactly what the - what the
15 date was, but the Fish and Wildlife Service
16 is a very small Agency and it's fairly close-
17 knit and so those things come through the
18 grapevine real quick.

19 Q. Do you remember who told you?

20 A. Uh... Actually, I don't. No, I
21 don't remember who exactly told me. But I
22 just remember I was aware of it at the time,
23 and I don't remember who specifically told
24 me.

25 Q. Dr. Tuggle didn't tell you?

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A. No.

Q. Michelle Shaughnessy didn't tell
you?

A. No.

Q. Joy Nicholopoulos didn't tell you?

A. No.

Q. You just learned at some point
that—

A. Uh-huh.

Q. -he'd allegedly been cooperating
with the IG?

A. Right.

Q. Had - did - were you contacted by
the IG—

A. Not in that one, no.

Q. Okay.

A. Not in that incident.

Q. Not regarding Gary Mowad?

A. No.

Q. Okay. At the time that you
drafted this affidavit - did you draft this
affidavit?

Q. Who drafted this affidavit?

A. We got it through Gary and his
attorney.

1 Q. Okay. At the time that you
2 drafted this affidavit, did you recall
3 various facts associated with the, um, this -
4 this meeting that took place where the duties
5 were transferred?

6 A. Yeah.

7 Q. You read this affidavit?

8 A. Yeah.

9 Q. Okay.

10 A. Absolutely.

11 Q. Okay.

12 A. Uh-huh.

13 Q. And then you also testified today
14 that you - after this meeting took place, you
15 walked outside and had a conversation with
16 Mr. Tom Cloud?

17 A. Yes.

18 Q. In which you both agreed that...

19 A. Gary was toast.

20 Q. Gary was toast.

21 A. That was the words I used.

22 Q. That was the word you used. And
23 you agree that that fact is not in this
24 affidavit?

25 A. No, that's not in there.

1 Q. Okay. That - that seems like an
2 important fact that would be included in this
3 affidavit; don't you think?

4 A. Probably, yeah, but-

5 Q. Okay.

6 A. -I didn't draft it, so.

7 MR. MEHOJAH: Pass the witness.

8 MR. MUNDY: Nothing further.

9 Thank you for your time, Mr. Strand.

10 JUDGE GARVEY: Sir.

11 MR. MUNDY: Or the Judge may have
12 some questions for you.

13 JUDGE GARVEY: Excuse me, Mr.
14 Mundy.

15 Sir, you retired about a year ago,
16 you said? In 2013 sometime?

17 THE WITNESS: Yeah, little over a
18 year ago.

19 JUDGE GARVEY: Okay.

20 THE WITNESS: Yeah. Yes, ma'am.

21 JUDGE GARVEY: Did you get a
22 performance evaluation for the year that
23 ended September 30th, 2012? So it would have
24 been your-

25 THE WITNESS: Yes.

1 JUDGE GARVEY: Yes? And who gave
2 you-

3 THE WITNESS: Yes.

4 JUDGE GARVEY: -that evaluation?

5 THE WITNESS: Gary.

6 JUDGE GARVEY: For the period
7 ending September 30th, 2012. And how did he
8 give it to you?

9 THE WITNESS: (No immediate
10 response.)

11 JUDGE GARVEY: Did he meet with
12 you personally or-

13 THE WITNESS: Verbally.

14 JUDGE GARVEY: Verbally-

15 THE WITNESS: Yeah, we met - we
16 met and talked.

17 JUDGE GARVEY: So did you meet in
18 the Austin Office or - when did he give it to
19 you and - I mean, was he in Albuquerque and
20 he flew back to meet with you, or?

21 THE WITNESS: No, ma'am, it was in
22 Austin.

23 JUDGE GARVEY: Okay. So it was
24 after-

25 THE WITNESS: We met in Austin.

1 JUDGE GARVEY: And it was after he
2 was reassigned to Albuquerque?

3 THE WITNESS: Yes, I believe so.
4 I'm not sure about the dates, but - and the
5 timelines of when he was actually reassigned,
6 but.

7 JUDGE GARVEY: Well, you talked
8 about-

9 THE WITNESS: Because it was so
10 late in the year-

11 JUDGE GARVEY: The meeting was
12 October 5th, 2012, so right after the close of
13 the fiscal year. And your earlier testimony-

14 THE WITNESS: Yes.

15 JUDGE GARVEY: -indicated that it
16 was after Mr. Mowad moved to Albuquerque that
17 the Agency realized since he had been the
18 supervisor, in essence, for the fiscal year
19 that he would need to do the performance
20 evaluations. So he was already-

21 THE WITNESS: That's correct.

22 JUDGE GARVEY: -out in
23 Albuquerque, so.

24 THE WITNESS: Yes.

25 JUDGE GARVEY: But your memory is

1 that there was a trip and he came and met, he
2 had all of you come to Austin?

3 THE WITNESS: Well, he was - my
4 memory is that we met in Austin and he was in
5 Austin and I came to Austin.

6 JUDGE GARVEY: Okay.

7 THE WITNESS: That's my memory
8 anyway.

9 JUDGE GARVEY: Right.

10 THE WITNESS: We've had so many
11 meetings and stuff over the years, I'm
12 assuming that's what it was.

13 JUDGE GARVEY: Okay. And you
14 indicated you knew about the OIG complaint
15 prior to the October 5th, 2012 meeting. Do
16 you have any guesstimate of how far in
17 advance? I mean, did you know about it days
18 in advance, a week in advance, or two weeks
19 in advance, or?

20 THE WITNESS: It wasn't too far in
21 advance. I didn't know any of the details of
22 what was going on, I just knew that he had
23 been working with the OIG and I didn't know
24 exactly what it was all about.

25 JUDGE GARVEY: Okay. All right,

1 thank you very much for your testimony. You
2 are excused. You may not discuss your
3 testimony with anyone else until this entire
4 matter's brought to a close. Thank you.

5 THE WITNESS: Yes, ma'am.

6 (Whereupon, the witness was excused.)

7 JUDGE GARVEY: Next witness?

8 MR. MUNDY: The next - our last
9 witness will be Ms. Larson-Jackson, so we'll
10 have to do the logistical connection here.

11 MR. MEHOJAH: We'll get her pulled
12 in.

13 Tracy, are you there?

14 JUDGE GARVEY: Okay, why don't we
15 take a five-minute break.

16 [OFF THE RECORD 2:41]

17 [ON THE RECORD 2:43]

18 **WITNESS: LAURIE LARSON-JACKSON**

19 JUDGE GARVEY: Please stand so I
20 can swear you in. And raise your right
21 hand. Do you promise that the testimony
22 you're about to give will be the truth,
23 the whole truth, and nothing but the
24 truth, so help you God?

25 THE WITNESS: I do.

1 JUDGE GARVEY: Okay. Please be
2 seated and state your full name for the
3 record, please.

4 THE WITNESS: Laurie Larson-
5 Jackson.

6 JUDGE GARVEY: You may proceed,
7 Mr. Mundy. I'll turn my speaker on mute.
8 Thank you.

9 MR. MUNDY: Thank you, Your Honor.

10 **DIRECT EXAMINATION**

11 **BY MR. MUNDY:**

12 Q. Ms. Larson-Jackson, my name's Jeff
13 Mundy; I'm the attorney for Mr. Mowad. Is
14 the sound quality okay now?

15 A. It sounds fine now.

16 Q. Okay. If you would, we would like
17 to just have a - a summary of your
18 background, your career summary, work and job
19 duties and then what they were in 2012 and
20 what they are today. Kind of the short
21 version, if you will.

22 A. Okay. So I've worked with the
23 Federal Government for about 25 years and
24 with the Inspector General's Office from 1996
25 to present. And my initial job with the IG

1 would have been in the General Counsel's
2 office, and my current job since 1990 - I'm
3 sorry, since 2009 has been with the Associate
4 Inspector General for whistleblower
5 protection.

6 Q. And explain how that fits in the
7 IG's organization, where you are in respect
8 to near the top, if you will. I guess top
9 down, where do you fall?

10 A. Okay, so my office reports
11 directly to the Chief of Staff in the IG.
12 And we're an independent office, independent
13 of the Audit and Investigations Offices.

14 Q. Okay. And how long have you been
15 dealing with, as part of your job,
16 whistleblower allegations? Tell us a little
17 bit about your experience with whistleblower
18 allegations.

19 A. Well, when I was in the General
20 Counsel's Office, we provided legal counsel
21 to the IG, the OIG for Whistleblower
22 Protection during that time, so I had to have
23 somewhat of a subject matter expertise in
24 that area. And then within the past four and
25 a half years, I worked exclusively on

1 whistleblower protection issues. What our
2 office does is we intake complaints,
3 whistleblower reprisal complaints, we provide
4 education to former/current employees and
5 applicants for Federal employment, and we
6 make a decision about whether or not to fully
7 investigate complaints or to suggest other
8 avenues to employees, suggest the OSC or
9 alternative dispute resolution. And then we
10 try to get as much candid information to the
11 complainants and to the management who's the
12 subject of the complaint if we have approval
13 from the complainant to do so, with the hope
14 of early resolution or prevention of the
15 problem.

16 Q. And I actually don't know so I'm
17 asking, are you a lawyer?

18 A. I am a lawyer, but I don't
19 practice law in this position.

20 Q. Okay. But yet you are a - you
21 have a law degree and your prior background's
22 a lawyer?

23 A. Yes.

24 Q. Okay. I think given your
25 background and experience being so much more

1 vast, in light of this, I'm going to give you
2 kind of the simple question up front about
3 whether you believe this was retaliatory
4 against Mr. Mowad, and then ask you to
5 explain what you did investigation-wise and
6 why you have come to the conclusions you have
7 come to, okay?

8 A. Sure. Just to throw out, I can't
9 give you a legal conclusion on whether or not
10 reprisal occurred, because that's within the
11 domain of the (indiscernible) at OIC. But
12 based on my experience and based on the facts
13 in each case, I can make some assessments
14 about whether or not an employee has - has
15 established at least a credible claim, one
16 that we may refer to our Office of
17 Investigations or one that we think the OSC
18 might be another path for.

19 So just moving on to the facts in
20 this case, what I know from both Mr. Mowad
21 and from Dr. Tuggle, I first heard from Mr.
22 Mowad, I believe, either directly or through
23 one of our Law Enforcement Officers, and so
24 my first contact with Mr. Mowad was late
25 September of 2012. And during a conversation

1 with him he alleged that he had been reprimed
2 against when Dr. Tuggle and Joy Nicholopoulos
3 decided to detail him from Austin, Texas to
4 Albuquerque, New Mexico. And he believed
5 that the detail was in retaliation for -
6 basically for his disclosures of - or - or
7 complaints that Joy Nicholopoulos was using
8 her position to benefit friends both
9 financially and politically. And then he had
10 concerns, as well, as because of those
11 relationships, he had concern about
12 scientific integrity within the Region.

13 Q. Do you know if he'd been
14 cooperating with the OIG before you met with
15 him? Such as with Agent Futrowsky?

16 A. I know that he did speak to Agent
17 Futrowsky.

18 Q. Okay. And prior to your time that
19 you personally met with him?

20 A. Yes.

21 Q. Okay. And I'm sorry to interrupt.
22 If you would continue to tell us what your -
23 what you found when you started to look at
24 the facts, who you interviewed and what
25 investigation you did.

1 A. Yeah, well, I didn't do a formal
2 investigation, but what I did is first talk
3 to Mr. Mowad and then I spoke with Mr. - or
4 Dr. Tuggle. So in September, upon our first
5 call, and this is to the best of my
6 recollection, but Mr. Mowad was explaining
7 the detail, and so I had a lot of questions
8 about why he felt the detail was reprisal.
9 And then I spent a lot of time during that
10 call just providing education on what his
11 rights were, what management's
12 responsibilities were, the role of the OSC
13 versus the role of the IG's Office.

14 And what I recall is that Mr.
15 Mowad told me that he was being detailed
16 rather suddenly, because I think our call was
17 - I think it was September 28th of 2012, and
18 he was being required to report to duty in
19 Albuquerque on, I believe it was October 9th,
20 it was - I think it was Columbus Day weekend.
21 And he did not have - he had a general idea
22 of what his duties would be once he got to
23 the lab, he was to work on surrogate species
24 and on workforce planning, but he didn't have
25 any real details about what specifically he'd

1 be doing once he got to Albuquerque.

2 I also know that he was very
3 concerned about the detail because it, first,
4 presented a hardship for him because his
5 mother, he said, had - had dementia,
6 Alzheimer's, and that his daughter was at a
7 position in school where she was
8 transitioning to high school and she needed
9 more parent support. And he told me that he
10 had asked Dr. Tuggle for, basically what I
11 would consider an accommodation so that he
12 could find proper care for his mom while he
13 was - while he was in Albuquerque. He didn't
14 decline the detail, but he was asking for
15 some sort of just consideration for the kind
16 of things he'd have to put in place to have
17 his family supported while he was away.

18 He did - he definitely felt the
19 detail was retaliatory. I remember that. So
20 it was a retaliation complaint.

21 I asked him if I could contact Dr.
22 Tuggle directly to get his side of the story,
23 which Mr. Mowad gave his permission for me to
24 do that. In fact, I think he may have
25 requested that I do that, because I think

1 that communication between them was - was - I
2 think there was tension there because there
3 because there wasn't trust there.

4 And so I contacted - I'm not sure
5 if I contacted him before or after October
6 2nd, but when I think about this, October 2nd,
7 Joy Nicholopoulos sent an email to Mr. Mowad
8 and it basically welcomed him to Region 2 and
9 it outlined - basically it's kind of the
10 housekeeping, when he would arrive, how many
11 trips he would have home, where he would be
12 sitting, where he would be parking, and who
13 he would be reporting to when he came,
14 because Joy Nicholopoulos was going to be on
15 leave, I think, the first week that Mr. Mowad
16 was supposed to report.

17 But anyway, around that time I
18 spoke to Dr. Tuggle. Actually, in the
19 meantime I did listen to two tape recordings
20 that Mr. Mowad had - had - had done of his
21 conversations with Dr. Tuggle, so I had
22 listened to those before I spoke to - to Dr.
23 Tuggle.

24 But I spoke with Dr. Tuggle and
25 told him that we had the complaint from Gary

1 Mowad, that Gary was alleging that the detail
2 was in reprisal for his conveying on at least
3 two occasions to his supervisor, Michelle
4 Shaughnessy, that he felt that Joy
5 Nicholopoulos was misusing her Government
6 position to profit friends politically and
7 financially. I think the first time he spoke
8 to Michelle was in private, I believe. And
9 the second time it was early of 2002, he
10 spoke to Michelle, I think, in the presence
11 of several other people, just conveying that
12 he felt Headquarters - or Region 2 was
13 sidestepping the Field Offices in order to
14 avoid disagreement, frankly, from the Field
15 Office. I think that's an accurate portrayal
16 of what he was - what he was disclosing to
17 Michelle Shaughnessy.

18 And Dr. Tuggle denied that the
19 detail was retaliatory. He said that he -
20 that Gary was a Grade 15, that he was a
21 senior level employee and that the work that
22 they needed to do on this detail was at such
23 an important and high level that Gary was
24 about the only person who could do it.

25 And he said that - so I told him

1 that I understood the two assignments were
2 surrogate species and workforce planning.
3 And he said that they were two significant -
4 and I'm paraphrasing, but that these two
5 areas were significant areas for the Region.
6 The surrogate species issue being Dan Ashe's
7 priority, and the workforce planning being
8 Dr. Tuggle's priority.

9 And so then we talked about the
10 hardship on Mr. Mowad and the need for him to
11 have extra time, he needed to find care for
12 his mother or someone to take his place while
13 he was away.

14 And then I questioned him about
15 why Gary Mowad was the only person who could
16 do it, who could be detailed, wasn't there
17 someone else who could - how could be
18 detailed? And Dr. Tuggle said, no, there was
19 no one else, they needed someone who could
20 do, basically, the heavy lifting, someone who
21 had Gary's background. And then the way he
22 described it was because these were
23 priorities, there was a heavy wagon to pull
24 and they needed their strongest horse.

25 I asked him whether - why there

1 didn't appear to be any flexibility in terms
2 of his report date. And why - why they
3 couldn't give him an end date, because Gary
4 Mowad had told me that not having an end date
5 created more of a hardship in finding care
6 for his mother.

7 And I recalled him saying that,
8 you know, that they would give him some
9 flexibility, but they couldn't talk about
10 that until he - until he had his boots on the
11 ground in Albuquerque. And I said well, it
12 appeared that it had already been decided
13 because I had this email from Joy
14 Nicholopoulos which said very clearly that
15 the detail was, um, I think she said the
16 detail was at least 60 days, that Mr. Mowad
17 would get one trip a month home, so two trips
18 home during that two-month period, and that
19 at the end of the 60 days they would talk
20 about return trips home going forward. And
21 so Dr. Tuggle said he didn't realize that Joy
22 had sent that, that email, that there might
23 be a possibility for flexibility. Oh, the
24 email also said something about no - that
25 telework was denied and that any flex

1 schedule was denied because they needed Mr.
2 Mowad present, physical presence, full time.

3 So I remember Dr. Tuggle saying
4 that one of - once Mr. Mowad had boots on the
5 ground in Albuquerque, that they would talk
6 about flexibility and reasonable
7 accommodation.

8 I also asked about the lack of
9 specificity for the vagueness in the
10 assignment, since it was such a big priority,
11 it made me wonder why they couldn't give him
12 more detail about what specifically he was
13 doing and why specifically it was Gary Mowad
14 that was needed for the assignment. And,
15 again, I think I said this, but I - he didn't
16 have anything more specific that he could
17 give to me and said that he and Gary would
18 meet and they would work out the specifics
19 and the details once Gary got to Albuquerque.

20 Q. Did the lack of flexibility strike
21 you as odd or unusual?

22 A. Um, I definitely - I was curious
23 about it because, um, usually, in my
24 experience, all the details that I've seen,
25 there's been some effort to accommodate

1 people who have hardship or needs. I did
2 tell Dr. Tuggle I thought it was a bit
3 unreasonable not to be as flexible,
4 particularly where they were so eager to have
5 only Gary come for the detail, and because
6 they (indiscernible) his years of service and
7 his ability to get the job done. So, yes, I
8 - I guess I was not too satisfied with the
9 explanation that everything would be decided
10 when - when they got there. And I conveyed
11 that to Dr. Tuggle that it just - it wasn't
12 really adding up for me. So I do recall him
13 saying that they would - they would try to
14 work on something once he got there. Yes.

15 Q. Okay. Then what further fact
16 findings or dialogue did you engage in? I'm
17 just trying to kind of make this rapid, I
18 know you're under some time constraints with
19 the facility you're at, is my understanding,
20 so I'm trying to help make sure we conclude
21 on time for you.

22 But what - do you remember any
23 other dialogue** that you had?

24 A. Well, um, I'm thinking around -
25 around October - not around October 17th, but

1 just between October 2nd and October 17th, I
2 got an email or a call from Dr. Tuggle asking
3 me to meet with him in person when he was
4 visiting Washington, D.C. And so we met on
5 October 17th, and actually the purpose of that
6 meeting was to discuss three other
7 whistleblower complaints against that - that
8 Region; that was a completely different Field
9 Office, but. So we met in the IG conference
10 room on October 17th for about - I want to say
11 about an hour and a half to an hour and
12 forty, forty-five minutes. And the majority
13 of that conversation - the majority of that
14 time was a conversation on those other
15 complaints.

16 And I want to say about ten
17 minutes before he had to leave for another
18 meeting, we spoke briefly again about this -
19 the very same issues that I talked to him
20 about with Gary Mowad on - on - on or about
21 October 2nd.

22 Q. Just-

23 A. Relating to the...

24 Q. So this would be the second time
25 you've expressly talked to Tuggle expressly

1 about Mr. Mowad?

2 A. Yes. Because the first time was
3 right around the time that Joy
4 Nicholopoulos's email went out.

5 Q. Okay. And did you have further
6 calls from Mr. Mowad asking for help or
7 assistance, or further dialogue with Mr.
8 Mowad?

9 A. I reached out to Dr. Tuggle in,
10 um, I want to say early December of 2012. I
11 had contacted - I knew that Mr. Mowad had
12 filed an OSC complaint, but I also knew that
13 Mr. Mowad wanted to resolve his complaint
14 early, if possible, by having dialogue with
15 management about what his issues were. So I
16 reached out to Mr. Mowad on - it was about
17 mid-November to find out what exactly he was
18 working on on his detail, and frankly to find
19 out if he was getting reasonable, measurable,
20 achievable type work. And Mr. Mowad reported
21 that he was basically assigned GS-7 type
22 work, that he was not engaged at a GS-15
23 level and had so much time on his hands,
24 basically he had time to read a novel. And I
25 don't know if that was an illustration or

1 actual, but he was essentially being, what he
2 thought, I think, was ignored by Dr. Tuggle
3 and by Joy Nicholopoulos. And I don't
4 believe that Joy Nicholopoulos spoke to Mr.
5 Mowad from the time he started until the time
6 that I talked to him in mid - mid-November.
7 And Dr. Tuggle's interactions were maybe a
8 few times.

9 So I called Dr. Tuggle again, with
10 - with Mr. Mowad's permission, and just
11 conveyed to him what Mr. Mowad had told me.
12 And Dr. Tuggle's response was that Mr. Mowad
13 had failed to attend meetings and that he
14 felt as a Grade 15 it was incumbent on Gary
15 Mowad to basically come to him and find out
16 what his assignments were, find out what work
17 he should be doing, which I did challenge
18 because of the vague assignments of the
19 beginning. I said that if - if he was called
20 there for a detail, that presumably
21 management would assign him the work that was
22 necessary for the detail.

23 Q. Let me say this-

24 A. And-

25 Q. To put that politely, would that

1 be a profound inconsistency with the whole
2 fundamental assumption of being detailed to a
3 specific assignment?

4 A. Well, what I found odd, and I
5 discussed it pretty transparently with Dr.
6 Tuggle, is that if you're detailing someone
7 at a Grade 15, who you have to have present
8 immediately, present fully, there can't be
9 any telework, any alternative work schedule,
10 where you're assigning this person to two
11 projects that are the priority of a Region 2
12 Director and the Director of the Fish and
13 Wildlife Service, I would expect that
14 management would convey precisely to the
15 detailee why the project was important, what
16 needed to be done, and that that Grade 15
17 employee would be meaningfully engaged on the
18 detail.

19 But at that time - and I did
20 challenge Dr. Tuggle on that, and at that
21 time he says, well, you know, I have to tell
22 you we've had problems with Gary in the past.
23 And so I asked him what the problems were and
24 were they conduct or performance, and he
25 said, um, and this is going to be a bad

1 paraphrase, but I got the impression that it
2 was a little bit of both. So I asked were
3 those problems documented, and Dr. Tuggle
4 said that they were not. And then I pointed
5 out the inconsistency with his telling me
6 that Gary was his strongest horse, that he
7 was the person that he could trust to get
8 this job done with what he was now saying,
9 with his characterization now of Mr. Mowad
10 being - having some problems.

11 Q. And when challenged with this
12 juxtaposition or inconsistency of first
13 saying to you he was the strongest horse and
14 that's why you needed him, and you now have
15 challenged him with the explanation of you
16 saying he's a problem, what was Dr. Tuggle's
17 reaction or explanation for that
18 inconsistency?

19 A. He - he actually just went on to
20 say that he felt Gary had a responsibility to
21 come to - to Joy or to himself, I don't know
22 which one he was speaking to, but to seek out
23 opportunities, to seek out - to take
24 initiative, was - was - was - were the words
25 he used, to take initiative to, um, to do his

1 job. And so I didn't pursue that.

2 Q. Did Mr. Mowad, did you have any
3 interaction with Mr. Mowad after this
4 dialogue with Dr. Tuggle?

5 A. I believe I... I believe I talked to
6 him several times after that, but I think I
7 just conveyed that, you know, that was - that
8 was Dr. Tuggle's position. I spent most of
9 my time telling one or the other what the
10 other said. I believe that Mr. Mowad let me
11 know that he was - and the dates are foggy on
12 this, but I believe it was in late December,
13 maybe mid- to late-December, that he was
14 negotiating a detail from Region 2 to, I
15 believe, Headquarters working with Gaby
16 Chavarria. And I believe that that was going
17 in the direction of the detail to her, and
18 then at one point he advised that it was -
19 that it was stopped and that Dr. Tuggle had
20 ordered him back to his detail in
21 Albuquerque.

22 Q. Okay.

23 A. And - oh, go ahead.

24 Q. Did you have any communications
25 with Ms. Chavarria or Mr. Coleman?

1 A. I did talk to Gaby Chavarria about
2 the - about the detail, and I talked with Mr.
3 Coleman - I think we talked about the detail
4 as well. When I talked to - I think it's -
5 I'm not sure if we were talking about those
6 other three cases in addition to Mr. Mowad's
7 complaint, but I talked to Mr. Coleman about
8 several things. One of which was the detail.
9 I don't know how much information he had on
10 it, that it was spoken of. The second is
11 that as - as we were talking through the
12 detail, Gary's complaint, it - it occurred to
13 Mr. Coleman that a conversation that he had
14 had with Gary Frazier may have resulted in
15 Gary Mowad's detail.

16 Q. Please expound on that for the
17 Judge, what the dialogue that you had with
18 Mr. Coleman, his comments in that regard.

19 A. Well, what I recall is that as we
20 were talking through the detail, the
21 complaint, I think I did convey to him that
22 Gary Mowad had not been meaningfully engaged
23 in Albuquerque. It - I will say it - it
24 dawned on Mr. Coleman that maybe something
25 that he had said to Gary Frazier may have

1 resulted in Gary Mowad being detailed,
2 because he said something to the effect of,
3 um, he had had a conversation with Gary
4 Frazier and within 48 to 72 hours, within
5 days of that conversation, Gary Mowad was
6 detailed to this, um, um, this duty
7 assignment in Albuquerque. We also talked
8 about some science issues.

9 And I forgot the other part of
10 your question. I'm sorry.

11 Q. Well, it - we were - I'm just
12 going down the list and ask you if you've had
13 dialogue with Mr. Coleman or Ms. Chavarria,
14 and you were explaining that, so I was just
15 checking.

16 A. Okay.

17 Q. Is there anything else you
18 remember?

19 A. Well, when I talked with Dr.
20 Chavarria, I remember that the detail was on
21 track, but getting off track. And I can't
22 remember all the details of that, but I do
23 recall that Gary Mowad told me that he felt
24 the detail had been - and these are my words,
25 been derailed by Dr. Tuggle.

1 Q. Did you ever ask, or did the IG's
2 Office ever ask, for a stay of the detail for
3 Mr. Mowad?

4 A. Well, the IG's Office doesn't ask
5 for stays, but I did have a conversation with
6 the OSC attorney, John Santee, because Mr.
7 Mowad had asked, the OSC had asked for a stay
8 of the detail. I recall that Mr. Mowad felt
9 like if he didn't get a stay of the detail,
10 he would be forced to resign or retire. And
11 so John Santee, Mr. Mehojah and I spoke, I
12 think it was on February 8th or 14th, somewhere
13 along that timeframe in 2013. I remember it
14 was - or I believe it was a Friday afternoon.
15 And I was there just to provide facts to Mr.
16 Mehojah. And Mr. Santee was there on behalf
17 of the OSC to talk about a potential, like a
18 stay, or - I think Mr. Mowad was even
19 offering to take administrative leave so that
20 they could make a decision at the OSC on his
21 case. So - yeah, so I think he was asking
22 for a stay or to be placed on administrative
23 leave until his OSC case was decided.

24 Q. Were those requests - were those
25 requests granted, either for the stay or

1 administrative leave?

2 A. No. I remember Mr. Mehojah had
3 tried to reach Dr. Tuggle and he was
4 unavailable. And so I remember asking Mr.
5 Mehojah is there anybody else in the chain of
6 command that could give a stay until you can
7 reach Dr. Tuggle? And Mr. Mehojah told me
8 Dr. Tuggle was the only person who could make
9 that decision. And I remember Mr. Santee
10 asking as well, you know, in lieu of - in
11 lieu of Mr. Mowad retiring, is there any way
12 we can get some extra time? It was - I
13 believe it was a Friday. And Mr. Mehojah
14 said that Mr. - Dr. Tuggle was the only
15 person, and so there was nothing that they
16 could do. Yeah, so I think our call ended
17 shortly after that.

18 Q. With respect to these first couple
19 of meetings with Dr. Tuggle, I can't remember
20 what you said the dates were, but anyway, the
21 times that you met with him initially asking
22 for explanations, did the explanations and
23 the inconsistencies cause you to have an
24 opinion about whether or not this was
25 pretextual explanation from him?

1 A. I definitely - you know, I heard
2 Mr. Mowad's side of the story, I heard Dr.
3 Tuggle's side of the story. I definitely
4 found Dr. Tuggle's story wanting. I felt
5 that it - yeah, I felt that it sounded
6 pretextual. And the reason is it - it did
7 not make sense to me that there was a
8 decision to detail Gary Mowad, and Gary Mowad
9 only, that there was no one else who could do
10 this work, that the work was - I mean, there
11 was a - sort of a big-picture work to do,
12 there was the surrogate species and the
13 workforce planning, but there was no amount
14 of detail whatsoever as to what Gary Mowad
15 would be doing in those areas. The complete
16 lack of flexibility on the front end, knowing
17 that - and I don't know this to be true or
18 not - but knowing that - that Mr. Mowad had
19 an ill mother and a daughter who was
20 transitioning to school, I just - I felt like
21 that the lack of flexibility and the
22 unwillingness to really talk it out with Mr.
23 Mowad didn't really demonstrate good faith.
24 And so that's why we kept - that's why I kept
25 asking Dr. Tuggle the questions and that's

1 why we had very transparent conversations
2 about what Gary Mowad felt and about what Dr.
3 Tuggle's reasoning was. I did get the clear
4 - actually, Dr. Tuggle told me that he wasn't
5 aware of what was in Joy Nicholopoulos's
6 October 2nd email. I don't think he realized
7 it was as bright lined as it was in terms of
8 denying telework, denying flexible work
9 schedule, giving two trips home, and so I
10 know I discussed with Gary the path of an OSC
11 complaint, if that was what he opted for. I
12 wasn't sure. I knew our office wasn't going
13 to open an investigation if he went to the
14 OSC, and I think that's where he went almost
15 immediately.

16 Q. All right. Is there anything else
17 that I've not asked that you think's
18 important for context, before I pass-

19 MR. MEHOJAH: Objection. There's
20 no specific question.

21 MR. MUNDY: No. I'll go ahead and
22 pass the witness at this time, Your Honor.

23 JUDGE GARVEY: Thank you.

24 **CROSS-EXAMINATION**

25 **BY MR. MEHOJAH:**

1 Q. I'm curious - and I'm Greg
2 Mehojah, I'm the attorney with the
3 Solicitor's Office. I think I'm the person
4 you were referring to in your testimony. And
5 we spoke previously.

6 I'm curious, so Mr. Mowad was
7 allegedly cooperating with an IG Investigator
8 named Steve Futrowsky. Are you familiar with
9 him?

10 A. Well, Steve Futrowsky isn't an
11 agent in our office. And my testimony is
12 that I know Mr. Mowad spoke with him, but I
13 wouldn't - I'm unable to testify further on
14 that, other than he did speak with Mr.
15 Futrowksy.

16 Q. Okay, no, I'm only curious because
17 it would seem to me that Mr. Futrowsky would
18 be the person who would be working with Gary
19 Mowad about his allegations regarding this
20 detail, including contacting Dr. Tuggle. I'm
21 curious why you were-

22 A. Oh, yeah.

23 Q. -doing that and not him.

24 MR. MUNDY: I object to his
25 expressions of opinion about procedure, but a

1 question, the last part, I have no objection
2 to.

3 Q. [BY MR. MEHOJAH:] Why - why was -
4 why was Mr. Futrowsky not doing the things
5 that you were doing on Mr. Mowad's behalf?

6 A. Yeah, I understand. So there are
7 separate offices within the IG's Office, and
8 Mr. Futrowsky worked for the Office of
9 Investigations, and I work in the
10 Whistleblower Protection Office. And so
11 while we will work together, we'll coordinate
12 and share information, we have two separate
13 responsibilities. And so it was appropriate
14 for - for OI, Office of Investigations, to
15 refer a whistleblower matter to my office.

16 Q. Okay. And that's a routine
17 practice?

18 A. It is. It is.

19 Q. Okay. Okay. I just didn't
20 understand.

21 A. Yeah, it doesn't mean that we -
22 that my office won't coordinate with Audit or
23 Investigations, because sometimes there are
24 overlapping issues, sometimes we do work
25 cases jointly.

1 Q. You testified, I believe that you
2 were first contacted by Mr. Mowad about his
3 detail in late September, 2012; is that
4 correct?

5 A. That's right. Yes.

6 Q. Okay. Do you remember what day in
7 September?

8 A. Well, I think - I'm pretty sure it
9 was between September 26th and September 28th.

10 Q. It would have had to have been
11 after the detail was communicated to him,
12 correct?

13 A. Yes, that's correct.

14 Q. Okay.

15 A. That's when he contacted me.

16 Q. Correct. Do you know - well, you
17 - I believe you testified that the purpose of
18 the, as you understand it, the detail was for
19 him to work on the surrogate species project
20 and the work - a workforce planning project?

21 A. Yes.

22 Q. Okay. And who communicated that
23 to you first?

24 A. Well, let me think about that. I
25 know they both, both Dr. Tuggle and Gary

1 Mowad, communicated that to me. I believe it
2 was Dr. Tuggle.

3 Q. Okay.

4 A. But I - I honestly - I think they
5 both communicated that to me within a
6 relatively short period of time. One or the
7 other.

8 Q. And to be clear, you were not
9 privy to the conversations that Dr. Tuggle
10 had with Mr. Mowad when he communicated this
11 detail assignment to him on September 26th,
12 2012, correct?

13 A. Well, what I heard from Mr.
14 Mowad's tape recording-

15 Q. Let me - let me clarify, let me
16 stop you, let me clarify so it makes more
17 sense.

18 You were not-

19 A. Okay.

20 Q. -a participant in that
21 conversation?

22 A. That's correct.

23 Q. Okay. Though you've heard
24 conversations that were recorded?

25 A. I did.

1 Q. Okay. I just thought I would be
2 more clear about that.

3 Do you have any independent
4 firsthand knowledge as we sit here today
5 whether Mr. - whether Dr. Tuggle knew that
6 Mr. Mowad was cooperating with the IG prior
7 to communicating the assignment of the detail
8 to him?

9 A. I don't have any firsthand
10 knowledge about whether or not Dr. Tuggle
11 knew Mr. Mowad had contacted the IG prior -
12 prior to my contacting him.

13 Q. Okay.

14 A. I do not.

15 Q. And the same question with regard
16 to Joy Nicholopoulos.

17 A. I don't have any firsthand
18 knowledge there either. The only thing, to
19 be clear, I know that when Mr. Mowad first
20 contacted me, he felt that Dr. Tuggle and Joy
21 Nicholopoulos knew that he was going to make
22 an OIG complaint as early as 2011 when he
23 conveyed to his supervisor, Michelle
24 Shaughnessy, that he felt Joy Nicholopoulos
25 was abusing her Federal position.

1 Q. And-

2 A. So they may have had - yes.

3 Q. So do you - and do you - do you
4 know as we sit here today that Gary Mowad's
5 cooperation with the IG allegedly began in
6 June of 2012?

7 A. Can you define cooperation with
8 the IG?

9 Q. The - the cooperation with the IG
10 that he alleges resulted in his detail from
11 Austin to Albuquerque.

12 A. (No immediate response.)

13 Q. If you know. If you don't know,
14 you don't know.

15 A. I do know that - that Mr. Mowad
16 had conversations with the IG's Office before
17 he was detailed to Albuquerque.

18 Q. Okay. And do you know when those
19 took place?

20 A. I can't give you dates. I know it
21 was before he was detailed.

22 Q. And how do you know that?

23 A. Well, um, Mr. Mowad advised me of
24 that, and...

25 Q. Okay. Let me ask you another

1 question.

2 A. Okay.

3 Q. You testified in response to
4 questions from Mr. Mundy that you spoke with
5 Gary Coleman - or Gary Coleman - Rick
6 Coleman. I hope you didn't speak with Gary
7 Coleman about this.

8 A. I did not.

9 Q. I apologize for that misstatement.
10 You spoke with Rick Coleman who
11 told you that he had a conversation with Gary
12 Frazier about Mr. Mowad's allegations; is
13 that correct?

14 A. Yes. Now-

15 Q. You were not-

16 A. If I could - could I clarify that?
17 I don't - I don't - here's what I recall Mr.
18 Coleman telling me. I don't recall that he
19 told me that - I recall that he told Gary
20 Frazier about some science concerns, not
21 necessarily using Mr. Mowad's name, but it
22 could be basically traced back to Mr. Mowad.

23 Q. And he said that to you?

24 A. Well, here's the way Mr. Coleman
25 put it. He had told of his conversation with

1 Gary Frazier, and I am paraphrasing, but this
2 is an accurate portrayal, he was hoping that
3 his conversation with Gary Frazier was not
4 what led to Mr. Mowad's detail.

5 Q. Okay. Do you know whether he used
6 Mr. Mowad's name in conjunction with Mr.
7 Mowad's allegations when he spoke with Gary
8 Frazier?

9 A. I don't know firsthand.

10 Q. Okay. Do you know whether Gary -
11 sorry. Do you know whether Gary Frazier
12 spoke with Dr. Tuggle about Mr. Mowad's
13 allegations?

14 A. I don't know.

15 Q. Do you know whether Gary Frazier
16 talked to the Director of the Fish and
17 Wildlife Service about Mr. Mowad's
18 allegations?

19 A. I don't know.

20 Q. Do you know whether Gary Frazier
21 spoke with the Deputy Director, Rowan Gould,
22 about Mr. Mowad's allegations?

23 A. No, I don't.

24 Q. Okay. Do you know whether there's
25 ever been a report generated from the IG's

1 Office about Mr. Mowad's allegations?

2 A. His reprisal allegations?

3 Q. His - no, about his - about his
4 initial contacts with the OIG, I believe it
5 was Mr. Futrowsky.

6 A. I am not able to confirm or deny
7 that.

8 Q. As we sit here today you do not
9 know if the report has been generated?

10 A. If a report has been generated?

11 Q. (No audible response.)

12 A. My hesitation is only that, um...

13 Q. And I'm not trying to trick you,
14 I'm just asking whether or not - let's say -
15 let me ask it a different way. Do you know-

16 A. I don't think you're trying to
17 trick me.

18 Q. I'm not that sharp.

19 A. The issue is really whether or not
20 I'm able to testify on this, and - and so the
21 way that you have phrased your question-

22 Q. Let me - let me ask it a different
23 way.

24 MR. MUNDY: Wait. Judge, may I
25 interpose an objection right now and ask the

1 Court to inquire of the witness whether or
2 not she's dealing with protected information
3 that is not subject to disclosure at this
4 time, so we can put some boundary walls, if
5 that's what she's wrestling with?

6 JUDGE GARVEY: Can you explain
7 your hesitancy?

8 THE WITNESS: Sure. I am
9 wrestling with it.

10 What I am free to talk about are
11 the facts that Mr. Mowad brought to our
12 office on reprisal, and then the facts that I
13 obtained from Dr. Tuggle in my conversation
14 with him about Mr. Mowad's complaint.

15 And I'm only able to share as much
16 as I have so far on my conversations with Mr.
17 Coleman and Dr. Chavarria for that same
18 reason.

19 JUDGE GARVEY: And what is the
20 reason that you are prohibited from answering
21 their questions such as has a report been
22 generated? What is the reason you could not
23 answer that question?

24 THE WITNESS: Correct. Well, I'm
25 not able to confirm or deny that there was

1 (indiscernible) at all.

2 JUDGE GARVEY: I'm sorry, you're
3 toning out. You're not able to? Say that
4 statement again.

5 THE WITNESS: I'm not able - yeah,
6 I'm not able to answer whether or not a
7 report is being generated, was generated, was
8 - I'm not able to confirm or deny that
9 because, as Mr. Mundy was suggesting, it's
10 potentially protected information.

11 JUDGE GARVEY: I still want to
12 know the basis. We have the man that filed
13 the complaint, okay? And his (sic) attorney
14 is saying, has a report been generated
15 regarding the complaint this man made to your
16 office? And you're saying-

17 THE WITNESS: Okay, and if I-

18 JUDGE GARVEY: -can't answer that
19 question because of? Is there - is there a
20 draft report?

21 THE WITNESS: Well, I-

22 JUDGE GARVEY: I mean, there's a
23 difference between has a report been
24 generated as opposed to a report been issued,
25 correct?

1 THE WITNESS: Well, if - if you're
2 talking about generated, has - if it's in
3 draft form, is that what you're saying?

4 JUDGE GARVEY: I - I can't hear
5 you. You're toning out. Say that again.

6 MR. MEHOJAH: I think you have to
7 mute yours when she's talking, Judge.

8 JUDGE GARVEY: Okay.

9 A. All right. So, again, the
10 question was is there a report generated? Is
11 that correct, has there been a report
12 generated? And by generated do you mean
13 issued?

14 Q. [BY MR. MEHOJAH:] Has there been
15 a report published on this?

16 A. No. No.

17 Q. And let me ask this - let me just
18 ask a different question. If you know, and
19 if you can answer without disclosing
20 information that is prohibited or protected,
21 do you know whether the investigation into
22 the allegations that Mr. Mowad made to Steve
23 Futrowsky has been concluded?

24 A. Let me ask this, can you describe
25 the allegations that you're talking about,

1 the allegations that Mr. Mowad made to Mr.
2 Futrowsky?

3 Q. I'm not exactly sure what they
4 are, but they appear to involve, for example,
5 an issue with the dune sagebrush lizard
6 listing.

7 A. Okay. So - so then, with that,
8 thank you, your question is?

9 Q. Whether the investigation has been
10 concluded?

11 A. Uh... I believe that the report, a
12 report, is in draft. And I'm able to say
13 that based on - on information that you have.

14 Q. Do you know how long it has been
15 in draft form?

16 A. I - I do not.

17 Q. Okay. I'll move on.

18 Did you ever ask Dr. Tuggle
19 whether he knew about Mr. Mowad's alleged
20 cooperation with the Inspector General before
21 he issued him this detail assignment?

22 A. I didn't ask him directly. Our
23 conversations, they were very transparent, I
24 just conveyed to him that Mr. Mowad felt that
25 the detail was retaliatory, that he felt that

1 - that Mr. Mowad felt that his statements,
2 and I'll use the word against, Joy
3 Nicholopoulos, that she was using her
4 position for financial and political benefit
5 of her friends, could have a negative impact
6 on science integrity. And Dr. Tuggle very
7 clearly said that this detail was righteous,
8 that he - he didn't make any decisions that
9 weren't in the best interest of the Service.
10 I do remember mentioning to him that Mr.
11 Mowad felt that Susan Combs was having undue
12 influence in the Fish and Wildlife Service on
13 a political level. And I remember Dr. Tuggle
14 saying, I run Region 2, Susan Combs doesn't.
15 So that would be sort of the extent of what
16 he knew about any other filing other than the
17 reprisal complaint.

18 Q. Okay. So as we sit here today,
19 your testimony is that you don't know whether
20 Dr. Tuggle knew about Mr. Mowad's cooperation
21 with the IG when he issued him the detail
22 assignment?

23 A. That's correct.

24 Q. Okay. Or Joy Nicholopoulos?

25 A. That's correct, I don't know if

1 they knew for certain.

2 Q. Okay. Or Michelle Shaughnessy?

3 A. Correct.

4 Q. Okay. And you stated that you
5 thought that the - the start date for the
6 detail was - I think you said it was
7 inflexible; is that correct?

8 A. That's my memory. When I talked
9 with Dr. Tuggle, I asked why it had to be on
10 that particular day given Mr. Mowad's need to
11 find care of his mother, and he did explain
12 that the surrogate species workshop was
13 coming up and so time was of the essence.
14 And I don't recall on the workforce planning
15 that that was as immediate, but he made it
16 pretty clear that that date was pretty firm.
17 I think it was 10/9.

18 Q. And - and you agree that there are
19 sometimes projects that need to be
20 accomplished that have deadlines that require
21 people to come and work on them?

22 A. Yes, I agree with that. And I-

23 Q. You definitely need - so go ahead.

24 A. Yeah, and I do believe that there
25 sometimes has to be an immediate, um, um,

1 where there's an immediate need, there needs
2 to be people on it immediately. The thing I
3 wondered about was why some of that couldn't
4 be accomplished remotely, since a lot of the
5 Federal Government work is done via telework
6 or alternative schedules. That was--

7 Q. And - and do you - do you know
8 that Mr. Mowad was the only GS-15 in Region 2
9 who was located outside of the Regional
10 Office?

11 A. You know, I - when you say that,
12 it's - it's making me think that Dr. Tuggle
13 may have said that to me, but what I recall
14 mostly is that he felt Mr. Mowad - Dr. Tuggle
15 felt Mr. Mowad was really the only person who
16 could do the job, grade level, ability, yeah.

17 Q. And do you know, or did you later
18 learn, that Mr. Mowad requested Family
19 Friendly Leave to delay the start date of
20 that detail?

21 A. I think - I do believe I knew that
22 from Mr. Mowad.

23 Q. Okay. And do you know if that
24 leave request was granted by Dr. Tuggle?

25 A. I don't know.

1 Q. Okay.

2 A. I may have known, but I - I don't
3 recall that today.

4 Q. Okay. Do you know that Dr. - do
5 you know that Mr. Mowad requested additional
6 Family Friendly Leave when that first request
7 for time was exhausted?

8 A. I... I believe that he repeatedly
9 made effort to get an accommodation,
10 reasonable accommodation because he was
11 having trouble - and this is what Mr. Mowad
12 told me, he was having trouble finding health
13 care for his - health care assistance
14 providers for - for indefinite periods of
15 time, because they wanted, according to Mr.
16 Mowad, they wanted end dates. And he was
17 having a hard time finding someone to hire.
18 But I think - I wouldn't be surprised if he
19 was trying to extend it, given all the-

20 Q. And I guess my question is, do you
21 know whether he made that second request for
22 Family Friendly Leave?

23 A. I... I cannot recall exactly.

24 Q. Okay.

25 A. It would not surprise me, given

1 the situation that he said he was in.

2 Q. Do you know how much time Mr.
3 Mowad actually spent in Albuquerque,
4 physically in Albuquerque during this detail?

5 A. Not exactly, but I know when I
6 spoke to him in - I think it was mid-November
7 when I called to see what kind of work he was
8 doing, I remember him saying it was about
9 five weeks where he didn't have much of
10 anything to do. And beyond that, it may have
11 been - that would have been mid - mid-
12 November, and I believe he did work some
13 there in December as well, but I don't recall
14 the exact time.

15 MR. MUNDY: Break? For logistics,
16 he said they're cutting us off at-

17 MR. MEHOJAH: I know, I'm going to
18 try to move along. I'm sorry.

19 MR. MUNDY: Well, the Judge may
20 have some questions, too.

21 Q. Do you - I'm almost done. Do you
22 know-

23 A. Okay.

24 Q. Do you know when Mr. Mowad first
25 disclosed to Dr. Tuggle and Joy Nicholopoulos

1 that he was cooperating with the Inspector
2 General?

3 A. No. The only thing - let me make
4 sure I... The only thing that I know for sure
5 is that around March of 2012, Mr. Mowad told
6 - they were at a Speed of Trust training from
7 that Region, and he told his supervisor,
8 Michelle Shaughnessy, in the presence of
9 other people at Speed of Trust, that, again,
10 he felt Joy Nicholopoulos was using her
11 position, that he knew they were-

12 Q. And that's not my - let me stop
13 you because that's not my question, that's a
14 different - that's a different issue.

15 My question to you is, do you know
16 when Mr. Mowad disclosed to Dr. Tuggle or Joy
17 Nicholopoulos for the first time that he was
18 cooperating with the Inspector General's
19 Office?

20 A. I don't recall, and I don't know
21 that he ever has done that. I don't. He may
22 have conveyed that to the OSC, but I'm not
23 recalling.

24 Q. Okay. Thank you.

25 MR. MEHOJAH: I have no further

1 questions at this time.

2 MR. MUNDY: Very briefly, Your
3 Honor.

4 **REDIRECT EXAMINATION**

5 **BY MR. MUNDY:**

6 Q. The - did you ever have any
7 meetings or dialogue with Mr. Gould or Mr.
8 Ashe about Mr. Mowad?

9 A. I did; I think it was early
10 January 4th to 8th, sometime around there, of
11 2013. And at that point I was just conveying
12 what I had learned from Mr. Mowad and Dr.
13 Tuggle, and explained that Mr. Mowad was
14 concerned about having to - being forced to
15 retire because he had some problems with the
16 lack of flexibility on the detail, and then I
17 advised that Mr. Mowad was already - had a
18 vested complaint at the Office of Special
19 Counsel, and I recall that either at that
20 meeting or shortly after that, Director Ashe
21 had decided that the OSC case could take its
22 course, basically any conversations with our
23 office would - would, um, would end at that
24 time, that the OSC would have jurisdiction
25 over it, and they weren't going to look into

1 doing anything informal.

2 Q. One other thing. Just for clarity
3 sake about this conversation with Mr.
4 Coleman, what is very clear in your memory,
5 so it's unambiguous is that he told you he
6 had that, his dialogue, with Gary Frazier and
7 that within 48 to 72 hours Mowad was put onto
8 the detail; is that accurate?

9 A. Yeah, I think the 48 to 72 I think
10 is maybe mine. I think - or maybe mine is
11 within days, but I do recall that it was, at
12 least, within days of that conversation Mr.
13 Mowad was detailed.

14 MR. MUNDY: Okay. Nothing
15 further, Your Honor.

16 JUDGE GARVEY: Ma'am, in evidence
17 we have a memorandum dated July 11, 2013,
18 from Mary L. Kendall the Deputy Inspector
19 General to the Secretary of the U.S.
20 Department of the Interior, and it apparently
21 involves whistleblowing retaliation that was
22 taken by supervisors in the Oklahoma
23 Ecological Services Field Office who report
24 up to Regional Director Benjamin Tuggle.
25 I'll read you one paragraph here.

1 Over a year has passed since the
2 investigation was initiated, and over two
3 months have passed since the findings of
4 misconduct and loss of integrity were
5 determined. Months of pointed discussions
6 and stern warnings with Regional Director
7 Benjamin Tuggle, Deputy Director Rowan Gould,
8 and Director Ashe, by the AIGWBP have not
9 resulted in any formal and permanent action
10 against the offending supervisors. To date,
11 the whistleblowers have received no relief,
12 and in the public eye appear to have
13 committed wrongdoing. In fact, recent
14 actions taken by FWS management regarding the
15 offending supervisors appear to have elevated
16 their status and do not appear to be
17 disciplinary in nature.

18 I assume the reference to the
19 AIGWBP is to you; is that correct?

20 THE WITNESS: That is correct.

21 JUDGE GARVEY: And so your
22 conversations—

23 THE WITNESS: Yes.

24 JUDGE GARVEY: -with Mr. Tuggle,
25 when you also had some conversations with him

1 about Mr. Mowad in November of 2012,
2 involved, presumably, his failure to do
3 anything to show that the - in essence that
4 they were doing nothing regarding findings
5 that supervisors had retaliated against
6 whistleblowers; is that a fair statement from
7 what I've reading here?

8 THE WITNESS: Because they were
9 separate cases (indiscernible)-

10 MR. MEHOJAH: Judge, you might
11 want to mute again.

12 JUDGE GARVEY: All right. Start
13 over. Start over and then I'll - start over
14 and I'll mute.

15 THE WITNESS: Okay. Okay. So
16 because that memorandum related to three
17 separate whistleblower complaints, I was - I
18 was not, um, I hope I'm answering your
19 question here, but I'll go around this a
20 roundabout way.

21 That was not about Gary Mowad's
22 complaint. But - and I think this is
23 answering your question. We saw similar
24 behavior by Fish and Wildlife Service
25 management in Gary Mowad's case. A lack of

1 an action. But the cases were, you know,
2 they had separate and distinctive facts,
3 those three - those three cases, because
4 those three individuals were, um, um,
5 subjected to disciplinary action, different
6 disciplinary action. But because of
7 management's response in those particular
8 cases, we did - we did feel it was
9 appropriate to engage Dr. Tuggle with the
10 transparent conversations on - on Gary
11 Mowad's complaints. And - and as far as the
12 IG's concerned about Fish and Wildlife
13 Service's handling of some of these
14 complaints, is that it was grossly
15 inadequate. Main Personnel can speak for
16 itself. Does that answer your question?

17 JUDGE GARVEY: Well, it appears
18 that the history of the Fish and Wildlife,
19 and specifically Dr. Benjamin - or Regional
20 Director Benjamin Tuggle, Gould, and Ashe is
21 that whistleblowing retaliation is tolerated
22 or even condoned. Apparently someone got
23 promoted or something good happened to them
24 after they retaliated.

25 THE WITNESS: I think that's a

1 fair assessment of the IG (indiscernible).

2 JUDGE GARVEY: Do you know what,
3 if any, action the Secretary took in response
4 to this memo, which was obviously over a year
5 ago?

6 THE WITNESS: I understand as of
7 this past week that some of those
8 (indiscernible) are still open.

9 JUDGE GARVEY: I'm sorry, I'm
10 going to turn off my thing-

11 THE WITNESS: Okay.

12 JUDGE GARVEY: And I want you to
13 start answering, because once I ask the
14 question, if I don't turn it off, I don't
15 hear you. So please tell me what's happened
16 since July.

17 THE WITNESS: Okay. My
18 understanding is that at least one of those
19 cases is still languishing toward a possible
20 settlement. And then the other two cases we
21 have heard complaints, as well, about those
22 languishing. But they may - those may be
23 resolved. It took an awfully long time for
24 those cases to - to go through the process
25 once Fish and Wildlife Service had, one,

1 apologized for the behavior of that Region.
2 And then - and then, two, made a commitment
3 to end their retaliation. So - so the
4 Secretary's response-

5 JUDGE GARVEY: I'm sorry, I'm
6 sorry. I don't understand. You're saying
7 that - I mean, I'm talking about the ones out
8 of Region 2, Benjamin Tuggle. So did Mr.
9 Tuggle apologize and do something or take
10 action, or what - what did your last
11 statement mean? If you could say it again,
12 I'm going to turn off my mic.

13 THE WITNESS: Sure. So actually
14 Director Dan Ashe apologized to the three
15 whistleblowers who are mentioned in that
16 memorandum in a blog that he issued in August
17 of 2013 I believe, and he stated his
18 commitment to merit systems principles and
19 anti-retaliation. But, no, there's never -
20 there's actually pretty much been only denial
21 out of Dr. Tuggle's office, as far as any
22 responsibility for - for the actions that
23 were taken against these three - these three
24 whistleblowers. And in Mr. Mowad's case,
25 denial as well that the detail was

1 retaliatory.

2 JUDGE GARVEY: All right, so I
3 just want to get this straight. After the
4 Office of Inspector General made findings of
5 misconduct and loss of integrity on behalf of
6 supervisors who reported up through Dr.
7 Tuggle's chain of command, out of Oklahoma,
8 apparently, he just denied all that and
9 didn't - didn't take any steps to punish
10 those who were found to have committed
11 misconduct and had lost their integrity?

12 THE WITNESS: Okay, and I have to
13 be careful answering here, too, because that
14 is somewhat of an open case still, where they
15 haven't resolved the one case that's still
16 pending in the OSC. But I know that - I
17 think the answer to your question is
18 generally yes. One of the offending
19 managers, when there was a science integrity
20 misconduct finding, retired or resigned
21 rather promptly. The other alleged reprisings
22 official was detailed, and I will tell you
23 that in the minds of the three
24 whistleblowers, she was essentially promoted
25 by Dr. Tuggle and Joy Nicholopoulos without

1 any real ramification for the adverse actions
2 that she took against them. And so in - in
3 the eyes of a number of people in the Region
4 2 who have been watching that whistleblower
5 case, it does not appear that there was any
6 action, appropriate action, taken against the
7 offending manager, who's still employed by
8 Fish.

9 JUDGE GARVEY: And you mentioned
10 that Director Ashe, you know, did this blog
11 and he apologized. What actions has he taken
12 against Mr. Tuggle for, in essence,
13 condoning, promoting, tolerating actions that
14 violate the Whistleblower Protection Act?

15 MR. MEHOJAH: Judge, can you hit
16 your button? Thank you.

17 THE WITNESS: So I am not aware of
18 any actions that Director Ashe has taken
19 either favorably or unfavorably for Dr.
20 Tuggle or Joy Nicholopoulos. We - the IG, is
21 still waiting to hear back from the Secretary
22 on - on the finality of the case. And
23 perhaps we won't hear about that until these
24 are all settled, fully resolved, all of the
25 complaints are fully resolved.

1 JUDGE GARVEY: As the Regional
2 Director Benjamin Tuggle, Regional Director
3 in Region 2, is Mr. Tuggle's response to
4 OIG's findings about individuals in his chain
5 of command who have engaged in misconduct,
6 which is basically violating the
7 Whistleblower Protection Act and have lost
8 their integrity, is this unusual, or do all
9 of the Regional Directors in the Fish and
10 Wildlife condone and tolerate such illegal
11 actions?

12 THE WITNESS: Well... Your button.
13 I'll start speaking, but - okay, thank you.

14 We see different responses from
15 different Directors. We've had more
16 complaints out of the Region 2 Office than we
17 have any other office. But to give you a
18 good example of - of a Regional Director's
19 response, we - we had a case that was similar
20 to the allegation in the three that you just
21 read about in the MOU and to Mr. Mowad's out
22 of the U.S. Geological Survey. And in that
23 case, the IG presented the facts as they were
24 reported to the IG's Office to the Director
25 of USGS, and the Director promptly restored

1 the aggrieved employee to her position and
2 facilitated appropriate - in their view,
3 appropriate administrative action against the
4 offending manager. And that was also a
5 matter that I think was pending at the OSC.
6 But every case, you know, every case, the
7 facts are different.

8 And I can only say for certain
9 that this - this Region has had more
10 complaints out of it than others.

11 JUDGE GARVEY: Do they also fail
12 to do anything when there are findings such
13 as this more often than other Regions?

14 THE WITNESS: Well, because this
15 case isn't fully concluded, I can't say for
16 sure here, but they have certainly dragged
17 their feet and certainly not been responsive
18 to the MOU in a - in a timely fashion.

19 But having said that, I also
20 appreciate that managers have to work with
21 their counsels and they have to work, in this
22 case, they are working with OSC. And so, um,
23 I don't know if it's so much that they're not
24 going to do something, or just they're not
25 being forced to do it through this process.

1 But it has taken an awfully long time, and it
2 remains to be seen what - what they do with
3 this alleged offending manager.

4 JUDGE GARVEY: Thank you very
5 much. I have no further questions. Mr.
6 Mundy or Mr. Mehojah, do you have any other
7 questions of this witness?

8 MR. MUNDY: No, Your Honor.

9 MR. MEHOJAH: No, Judge.

10 JUDGE GARVEY: Thank you very much
11 for your testimony today. You are excused.
12 You are the last witness in this proceeding.
13 You may disconnect.

14 (Whereupon, the witness was excused.)

15 JUDGE GARVEY: I will allow a
16 short closing argument, or you may waive
17 argument, gentlemen.

18 THE WITNESS: Thank you.

19 MR. MUNDY: Thank you, Ms. Larson-
20 Jackson.

21 THE WITNESS: You're welcome.

22 MR. MUNDY: Can I speak with Mr.
23 Mehojah for just a moment, Your Honor?

24 JUDGE GARVEY: Sure.

25 MR. MUNDY: In response to

1 your question?

2 JUDGE GARVEY: Sure.

3 [OFF THE RECORD]

4 [ON THE RECORD]

5 JUDGE GARVEY: You're both waiving
6 closing argument?

7 MR. MUNDY: Yes, Your Honor.

8 MR. MEHOJAH: Yes, Your Honor.

9 JUDGE GARVEY: Okay. I don't see
10 any reason for a written closing brief. Is
11 there a reason you would need to do a written
12 closing brief? I don't see any need for one.

13 MR. MUNDY: No, Your Honor, not
14 unless you would request one for your own
15 purposes—

16 JUDGE GARVEY: No, normally we
17 just do a short closing.

18 MR. MUNDY: -but not from our end.

19 JUDGE GARVEY: As you can tell,
20 you know, I pay incredible attention and I
21 take copious notes, so I'm very enlightened
22 on what has happened in the last two days.
23 So the record in this matter is now closed.
24 I will be issuing a decision in this matter
25 in the next several months. And we are now

1 off the record.

2 I will talk to you about whether
3 you want to go on to mediation after we get
4 off the record. Thank you very much
5 everyone.

6 (End of proceedings.)

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CERTIFICATION

This is to certify that the attached proceedings before Administrative Judge, the HONORABLE MARY ANN GARVEY, of the Merit Systems Protection Board, in the matter of:

GARY G. MOWAD

V. DEPARTMENT OF THE INTERIOR

DA-1221-13-0262-W-4

Were held as herein appears, and that this is ORIGINAL transcript of the proceedings of August 19, 2014.

I hereby certify the statements that appear in this transcript were recorded on audio tape by me, and reduced to typewriting under my supervision. I also certify that this transcript is a true and accurate record of this proceeding.

Judy Farnsworth
Notary Public, State of Texas
My Commission expires 06-01-17

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In the Matter of:

GARY G. MOWAD

V.

DEPARTMENT OF THE INTERIOR

DA-1221-13-0262-W-4

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