OVERSIGHT OF THE NATIONAL PARK SERVICE

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

JUNE 14, 2016

Serial No. 114–73

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PUBLISHING OFFICE

22–193 PDF WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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OVERSIGHT OF THE NATIONAL PARK SERVICE

Tuesday, June 14, 2016

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 10:03 a.m. In Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Mica, Duncan, Jordan, Walberg, Amash, Gosar, Massie, Meadows, Buck, Blum, Hice, Carter, Grothman, Hurd, Palmer, Cummings, Maloney, Norton, Lynch, Cooper, Connolly, Cartwright, Kelly, Lawrence, Watson Coleman, Plaskett, DeSaulnier, Welch, and Lujan Grisham.

Chairman CHAFFETZ. Good morning. The Committee on Oversight and Government Reform will come to order.

And without objection, the chair is authorized to declare a recess at any time.

We're going to have a hearing today about the oversight of the National Park Service. 2016 represents 100 years since the Park Service was founded. It should be a milestone for the Park Service, but we instead find an agency in crisis.

We have a lot of good, hard-working people who do a good service for this Nation. They serve. The public is attending the parks at record numbers, but we're still having problems. We should be working to increase the visitation and providing recreational opportunities to the American people.

The mission of the National Park Service is to, "preserve unimpaired the natural and cultural resources and values of the National Park Service—Park System for the enjoyment, education, and inspiration of this and future generations." But that does not work when you have so many multiple cases of serious, longstanding employee misconduct that is distracting the agency from its mission.

There is no doubt that when you hire tens of thousands of people to work at the Park Service, there are going to be some bad apples, and those bad apples are going to cause untold disruption and heartache to a lot of people. But if they're not dealt with in a swift manner, if they're not dealt with appropriately, the problem becomes worse. And that is the situation, at least from my vantage point, that I see.

During the last few months, the Department of the Interior's inspector general has issued numerous reports highlighting how the agency is failing. Those reports reveal the Park Service is failing

to protect its employees, in particular, from a rash of sexual harassment. Even worse, when the employees suffer harassment, they are discouraged by management from reporting it and sometimes even retaliated against.

Just yesterday, the inspector general released yet another report of sexual harassment showing a pattern of this behavior in yet another park, the Canaveral National Seashore. Across the country, sexual harassment at the Grand Canyon River District was so bad it took a letter from 13 victims—13 victims—directly to the Secretary of the Interior before any action was taken. Allegedly, this behavior had been going on for about a decade.

Unfortunately, it doesn't stop there. The superintendent of the Grand Canyon himself, David Uberuaga, had a history of inappropriate behavior. In 2008, the inspector general determined that Mr. Uberuaga unethically profited on the sale of land to a park concessionaire who he oversaw. He was also found to have made misleading statements related to the sale. At the time, his supervisor was then Superintendent Jarvis, who decided that a letter of reprimand was enough of a punishment, just a letter. Sold this home for three times the value to somebody who was doing business with the Park Service, and a letter was the reprimand.

When the facts came to light, once again, Director Jarvis was there to protect his friend. Instead of firing or doing some negative repercussions, he offered him a cushy job in a position in Washington, D.C.

The Service has also poorly managed its Equal Employment Opportunity program. For over a decade, the Service has failed to meet its EEOC requirements. Claims can take years to process, and the Service has consistently failed to maintain a functional EEO program. In the case of the Grand Canyon, it has taken more than 2 years to finalize claims of retaliation from whistleblowers who reported harassment, 2 years. Two years. We're seeing how a disregard for the EEO process leads to a culture that tolerates sexual harassment and retaliation. Those failures are multiplied by the Park Service's and, in particular, Director Jarvis' failure to hold management accountable for these transgressions.

The Service is also failing to adequately oversee its contracts and, hopefully, we'll get into that as well. But perhaps most troubling is the Service suffers from failures to maintain ethical standards at the highest levels. Director Jarvis, who's appearing before us today, was removed from overseeing the Service's ethics program due to his own ethical failures. Director Jarvis failed to get a book deal approved by the ethics office, lied to the Secretary of the Interior, and afterwards tried to cover up his tracks. When the person in charge isn't following the rules, we can't expect anybody at the agency as well.

Something needs to change and it needs to change fast. We can't keep continuing to turn a blind eye to misconduct or discourage employees from reporting misconduct. Employee misconduct erodes American's faith in the government. It destroys morale for the vast majority of employees who are hard working, they're dedicated, they abide by the rules, and they should not have to go to work in a hostile environment. And when they don't sense that the management has their back, that they're going to take care of them,

they're going to watch after them, and that they will hold the management responsible, it creates a culture that is hostile, and it should not be tolerated.

There are ethical problems. There are backlogs of projects. There's lack of plans to deal with these backlogs, inconsistency and enforcement of the laws and rules, and these are just some of the things that plague the Park Service, and that's why we're having the hearing today.

I appreciate the witnesses for being here. I yield back the balance of my time.

Chairman CHAFFETZ. I now recognize the ranking member, Mr. Cummings, for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Today's hearing involves a variety of allegations at the National Park Service, unfortunately, spanning several years. And I want to thank our witnesses for being here today, including the National Park director, Jonathan Jarvis, and the Deputy Inspector General Mary Kendall, whose office has issued many of the reports we will be discussing today. For example, the Inspector General's Office has identified an instance of contract steering at the Denver Service Center, the unauthorized purchase of automatic weapons at the Mojave National Preserve, and the improper use of government housing at Yellowstone National Park.

As a result of the inspector general's work, we also learned that Director Jarvis violated Federal ethics rules when he wrote and published a book without clearing it through the department's ethics office. Although he does not appear to have benefited financially, he showed contempt for the government's ethics rules when he told the Inspector General's Office that he probably would do the same thing again. That is amazing that he would do it again today because he has, "always pushed the envelope."

You know, the chairman talked about morale. He talked about the public's confidence in government. That kind of attitude is the very thing that leads to low morale. It leads to a lack of confidence by the public. And so as a result, he—the director has now been stripped of his authority over at the National Park Service and is undergoing mandatory ethics training himself right now.

Most troubling of all, however, are the reports from the Inspector General's Office that details, and I quote—and this is very upsetting—and "a long pattern of sexual harassment and hostile work environment." at the Grand Canyon River District. The Grand Canyon's former superintendent received a report in 2013 documenting multiple allegations of sexual harassment, but that report did not determine whether further investigations was warranted or whether disciplinary action should be pursued.

A year later, 13 current and former employees sent their allegations of abusive behavior to the Secretary of the Interior. The secretary referred these allegations to the inspector general for investigation, and the Inspector General's Office identified 22—22—other individuals who, "reported experiencing or witnessing sexual harassment and hostile work environments." The Inspector General's Office also found that previous reports of sexual harassment, "were not properly investigated or reported."

In addition, within the last few days, the Inspector General's Office issued a new report detailing, "a pattern of sexual harassment," against three female employees by a law enforcement supervisor at the Canaveral National Seashore.

These reports, obviously, raise very serious issues. Women have the right to work anywhere, including our national parks, without fear that they may be harassed by fellow employees or ignored or even retaliated against by managers when they report these abuses.

The Park Service's Equal Employment Opportunity program, the program directly responsible for handling complaints of harassment and retaliation, does not meet some of the most basic standards of a model program. These reports demonstrate how critical it is that the Senate pass my bill, the Federal Employee Antidiscrimination Act, which Chairman Chaffetz cosponsored and which passed the House by a vote of 403 to nothing.

Finally, I want to highlight one more issue that needs urgent attention, and that is the funding for the rehabilitation of the Arlington Memorial Bridge, which was built in 1932 across the Potomac River to connect the Lincoln Memorial and the Arlington National Cemetery. Unfortunately, an inspection in February found that the bridge has severely deteriorated. If a complete overhaul does not begin by 2019, the bridge is slated to be shut down within 5 years.

Rehabilitating the bridge is estimated to cost $250 million, while the National Park Service's entire transportation budget for 2016 is $268 million. This is an issue that Congress needs to address. And I hope our witnesses here today will be able to discuss this as well.

With that, Mr. Chairman, I anxiously look forward to the testimony, and I yield back.

Chairman CHAFFETZ. I thank the gentleman.

We'll hold the record open for 5 legislative days for any member who would like to submit a written statement.

We'll now recognize our witnesses, starting with Mr. Jon Jarvis, the director of the National Park Service at the United States Department of the Interior. We also have Ms. Mary Kendall. She's the deputy inspector general of the Office of the Inspector General at the United States Department of the Interior.

We welcome you both. Pursuant to committee rules, all witnesses are to be sworn before they testify. If you'll please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

Thank you. You may be seated.

Let the record reflect that each of the witnesses answered in the affirmative.

We have your written statements, but in order to allow time for vibrant discussion today, we'd appreciate it if you would limit your oral testimony to 5 minutes. And, again, your entire written statement will be made part of the record.

Director Jarvis, you're now recognized for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF THE HON. JONATHAN JARVIS

Mr. JARVIS. Thank you, Chairman Chaffetz, Ranking Member Cummings, and members of the committee. I'm here today to discuss oversight of the National Park Service. I'll summarize my written statements and ask that the complete statement be included in the record.

The National Park Service manages many of our Nation's most iconic and beloved landscapes, historic sites, and numerous programs and places that offer the American public access to open space and preserve our history and culture. We are seeing record-breaking visitation, more than 300 million last year, and the resulting economic activity created by the parks top 16 billion. We're accomplishing all of this on an annual budget that is less than the city of Austin, Texas.

This year, we are commemorating our 100th anniversary of the National Park Service, and we are asking more of our employees than ever before as we use this milestone to promote all the work we do to inspire new, younger, more diverse audiences.

The national parks are supported and loved by the American public because they are well managed, protected, interpreted, and maintained by a professional workforce, employees who take great pride in their work and hold themselves to high standards of conduct. But we are an organization of human beings. By our very nature, we make mistakes individually and collectively. We can't stop all wrongdoing, but when we see improper situations, we can respond thoughtfully to implement changes and keep it from happening again.

I would like to emphasize that the vast majority of the National Park Service's 22,000 employees conduct themselves with great integrity and passion for their work. This makes it all the more disappointing when we find mistakes and wrongdoing in our ranks, and sometimes those mistakes happen at the top.

Last year, I wrote a book to celebrate the National Park Service centennial. My goal was to inspire and engage more Americans in our national parks. I wrote this book in my personal capacity and directed that any book proceeds benefit the NPS through the nonprofit publisher of Eastern National and the congressionally established National Park Foundation. I donated the copyright to the NPF and received no personal benefit from the sales of the book. That was never my goal. However, I wrote that book without appropriate appreciation and regard for my responsibility to follow established processes, including consulting the department's ethics office.

As a result of my actions, I received formal reprimand and am actively participating in monthly ethics training. Additionally, my duties as the National Park Service ethics officer have been removed and transferred to the deputy assistant secretary for fish, wildlife, and parks. I was wrong to not seek ethics guidance. I am sorry that I failed initially to understand and even accept my mistake. I have apologized to all NPS employees through my memo distributed to the field, and I urged them all to learn from my mistake and to ask for ethics guidance when it is needed. I also offer

my apology to the American people who have entrusted me with leading the National Park Service and upholding the highest standards of public service.

I was held accountable for my mistake. Holding employees accountable is essential to the National Park Service to uphold the public trust it enjoys. When mistakes and inappropriate actions are identified, we must follow due process and determine appropriate response.

In some cases, the NPS identifies misconduct and refers the case to the Office of Inspector General to investigate. We do that to ensure an impartial review. For instance, the NPS referred a case involving the improper purchase of firearms and weapons at the Mojave National Preserve to the OIG. Together, they ensured that the situation was thoroughly investigated and those involved were held accountable.

In other cases, reports to the inspector general come from others. The National Park Service is committed to cooperating with the Office of the Inspector General and takes its reports very seriously. One example, of course, is the recent report on sexual harassment at the Grand Canyon River District. The National Park Service leadership is extremely disappointed in the situation here, and we are acting quickly and thoughtfully to change the conditions that allowed this to happen.

We have zero tolerance for sexual harassment. We are committed to fundamentally changing the culture that previously allowed such harassment to develop and occur.

Among leadership, we take a comprehensive servicewide approach to addressing sexual harassment. We'll identify and fix the conditions that allow harassment to take place, build work environments where everyone is treated with respect and dignity, and hold these individuals who engage in sexual harassment accountable, that includes senior leaders. The superintendent of Grand Canyon retired on June 1, and we'll be selecting a new superintendent soon.

With the advice and support of Members of Congress, including Congressman Niki Tsongas, the National Park Service is learning from other large organizations that reduce sexual harassment, including the Department of Defense and the National Oceanic and Atmospheric Administration. We will conduct a unanimous nationwide survey of employees to understand the prevalence of sexual harassment, and we'll use that information to inform our—at every level of the organizations.

We are committed to ensuring that every NPS employee can work in a safe and secure environment, and they are treated with respect.

Thank you, Mr. Chairman. That concludes my oral statement. And I'm happy to answer any questions.

[Prepared statement of Mr. Jarvis follows:]

STATEMENT OF JONATHAN B. JARVIS, DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, CONCERNING OVERSIGHT OF THE NATIONAL PARK SERVICE

June 14, 2016

Chairman Chaffetz, Ranking Member Cummings, and members of the committee, at your request, I appear before you today to discuss oversight of the National Park Service (NPS).

The NPS manages many of our nation's most iconic and beloved landscapes and historic sites. We are responsible for managing more than 400 individual parks with more than 84 million acres of land, stretching from Acadia National Park in the State of Maine to the National Park of American Samoa in the South Pacific. The NPS also manages numerous wild and scenic rivers and national trails; programs that recognize our nation's historic structures; and programs that help local governments and organizations provide recreational opportunities and protect open space. We are seeing record-breaking visitation – more than 300 million last year – and the resulting economic activity created by the parks topped $16 billion. We are accomplishing all of this on an annual budget that is less than the city of Austin, Texas.

This year, we are commemorating the 100th anniversary of the establishment of the National Park Service, and we are asking more of our 22,000 employees than ever before, as we use this milestone to promote the parks and all the work that the NPS does to connect with and inspire new, younger, more diverse audiences.

The national parks are supported and loved by the American public, not only because they are beautiful and historic, but also because they are well-managed, protected, interpreted and maintained by a professional workforce—employees who take great pride in their work and hold themselves to high standards of conduct. I've had the privilege of being part of that workforce for the last 40 years, and the honor of leading the organization as its director for the last seven years.

But we are an organization of human beings. By our very nature, we make mistakes, individually and collectively. On occasion, we uncover incidents involving errors in judgment and misconduct. We cannot stop all wrongdoing, but when we see situations that are improper, we can respond thoughtfully to implement changes and to ensure that the same conduct is not repeated. I would like to emphasize that the vast majority of the National Park Service's 22,000 employees conduct themselves with great integrity and passion for their work. This makes it all the more disappointing when we find mistakes and wrongdoing in our ranks.

And sometimes those mistakes happen at the top. Last year, I wrote a book to celebrate the NPS's Centennial, *Guidebook to the American Values and Our National Parks.* My goal in writing the book was to inspire and engage more Americans in our national parks and to share my love and admiration for these amazing places. I wrote this book in my personal capacity, and I directed that any book proceeds benefit the NPS though Eastern National, a nonprofit organization that operates stores and sells merchandise in numerous national parks, and through

the National Park Foundation, the congressionally chartered organization that raises private funds for the benefit of the national parks. I have not received any personal benefit from the sales of the book. That was never my goal. I have donated the copyright to the National Park Foundation.

However, I wrote the book without appropriate appreciation and regard for my responsibility to follow established processes, including consulting the Department's Ethics Office, before it was published. The Department of the Interior's Office of Inspector General (OIG) investigated the nature of the creation, publication, and terms related to this book. The report, released in February 2016, confirmed that I received no compensation for writing this book, but rightly criticized me for not seeking advice from the Department's Ethics Office.

As a result of my actions, which violated ethics standards, I received a formal reprimand and I am receiving, and actively participating in, monthly ethics training. This training serves as a valuable continuing reminder of my mistake and obligations going forward. Additionally, my duties as the National Park Service's ethics officer have been removed and transferred to the Deputy Assistant Secretary for Fish and Wildlife and Parks for the remainder of this administration. I was held accountable for my mistake.

I was wrong not to seek ethics guidance on the most appropriate path forward to publish this book. I am sorry that I failed initially to understand and accept my mistake. I have apologized to all NPS employees through a memo distributed in May. In my apology, I urged our employees to let my mistake serve as a reminder of the need and importance to seek ethics guidance. I reinforced that we are all responsible and accountable for upholding a high standard of ethical behavior.

I apologize to you as well. If I had the opportunity to push the re-start button and do this again, I would not do it the same way. I would seek the appropriate guidance and approvals before I began writing, and I would take a much harder look at my actions in the context of the example I want to set for NPS employees. I also offer my apology to the American people, who have entrusted me with the important task of leading the National Park Service and upholding the highest standards of public service.

As I said, I was held accountable for my mistake.

Holding employees accountable for their actions is essential for the National Park Service to uphold the public trust it enjoys. When mistakes and inappropriate actions are identified, we must follow due process and determine the appropriate response.

In some cases, the NPS identifies misconduct and refers the case to the OIG to investigate. We do that to ensure an impartial review. For instance, the NPS Investigative Service Branch of Law Enforcement, Security and Emergency Services referred a case involving the improper purchase of firearms and weapons in Mojave National Preserve to the OIG. Together they worked on ensuring that the actions of involved staff at that park were thoroughly investigated and then, following due process, the staff members were held accountable for their actions.

In other cases, employees, partners or visitors report possible misconduct to the OIG for investigation. The National Park Service is committed to cooperating with the Office of

Inspector General and takes the OIG's reports very seriously. One example of this is the recent OIG report on the sexual harassment in the Grand Canyon River District. I and the rest of the National Park Service leadership were extremely disappointed in the conditions outlined in the report, and we are acting both quickly and thoughtfully to change the conditions that women experienced in the River District.

We have zero tolerance for sexual harassment. We are committed to fundamentally changing the culture that previously allowed work environments that enabled sexual harassment to develop and fester.

At the NPS leadership level, we have committed to a comprehensive service-wide approach to addressing and preventing sexual harassment. Our senior leadership team has made a commitment to identifying and fixing the conditions that allow harassment to take place; to building work environments where all individuals are treated with respect and dignity; and to holding those individuals who engage in sexual harassment accountable for their behavior. We are holding senior leaders accountable. In the case of the Grand Canyon National Park, the superintendent retired on June 1, and we are working to select a new superintendent as soon as possible.

With the advice and support of Members of Congress, including Congresswoman Nikki Tsongas, the National Park Service is learning from other large organizations that have successfully reduced sexual harassment and hostile work environment conditions, including the Department of Defense and National Oceanic and Atmospheric Administration. Among the things we have learned from their experiences is the importance of:

- senior leadership engagement and attention to these issues;
- sustained attention and action over many years;
- assurance that victims are supported and safe, and have an agency representative to advocate on their behalf;
- accurate data to inform agency action;
- a strong investigatory capacity to pursue reported incidents and allegations; and
- visibility and transparency in the process.

There is no quick and easy way to end sexual harassment. We know it will take some time to complete a thoughtful, comprehensive program to end sexual harassment in the NPS, and we are actively developing and working on a program to meet that goal. Our leadership team has made a serious commitment to investing the time and resources needed to address this issue in a manner respectful of those who have suffered sexual harassment in the workplace. As one of the next steps, we will develop and conduct an anonymous nationwide survey of our employees to understand the prevalence of sexual harassment in the NPS. We will use the information from that survey to develop a baseline understanding of the problem and to inform our responses at every level of the organization.

In summary, we are committed to ensuring that every NPS employee can work in a safe and secure environment, where everyone is treated with respect.

Mr. Chairman, this completes my statement. I am happy to answer any questions you or the other members may have.

Chairman CHAFFETZ. Thank you.

Ms. Kendall, you're now recognized for 5 minutes.

STATEMENT OF MARY KENDALL

Ms. KENDALL. Mr. Chairman, Ranking Member Cummings, and members of the committee, thank you for the opportunity to testify today about a series of reports the Office of Inspector General has issued regarding misconduct and mismanagement in the National Park Service.

The Office of Inspector General serves the vital role as an independent, objective body to investigate matters that ultimately violate public trust. The OIG has a great deal of experience uncovering ethics and other conduct violations by interior employees, high-ranking officials, and others whose positions of trust make their misconduct particularly detrimental to the operations of the department, the morale of its employees, and the reputation of all Federal employees.

I remain convinced that as a whole, those who engage in wrongdoing are in the minority. Unfortunately, misconduct by those few receives notoriety and casts a shadow over the entire department. That shadow looms large, especially over NPS following our recent release of investigative reports, including those that substantiated sexual harassment at Grand Canyon and Canaveral National Seashore, ethics violations by Director Jarvis, and misuse of park housing by the chief ranger at Yellowstone.

Our investigative report on sexual harassment at the Grand Canyon provided a glaring example of NPS management failing to take proper action when employees reported wrongdoing.

Similarly, after receiving an investigative report on the chief ranger of Yellowstone National Park violating the rules on the use of park housing, the chief ranger was transferred to another park and named superintendent.

A recent media article raised concerns about the leadership at Cape Canaveral National Seashore. The OIG has issued four reports in 4 years on alleged misconduct and/or mismanagement at this park. Three of the four reports substantiated allegations against the park's chief ranger, including violation of Federal procurement rules, conduct unbecoming an NPS law enforcement officer, and sexual harassment.

Last week, we issued a report to NPS about sexual harassment by the same chief ranger who continues to serve in that position despite three substantiated allegations against him in less than 2 years.

NPS has not had time to respond to this most recent report, but with three other reports in 4 years, this is a profound example of the leadership problem that NPS has failed to address at multiple levels.

Finally, the same superintendent has been at Canaveral since 2010, was named as the subject in our 2012 report, and was found by the Merit Systems Protection Board to have committed reprisal against an NPS whistleblower for contacting the OIG. Yet we have no indication that NPS has taken disciplinary action against her.

The department does not do well in holding accountable those employees who engage in mismanagement or misconduct. We see

too few examples of senior leaders making the difficult decision to impose meaningful corrective action and hold their employees accountable. Often, management avoids discipline altogether and attempts to address misconduct by transferring or counseling offending employees, which is viewed by other employees as condoning this behavior.

NPS, in particular, has a real opportunity to address employee misconduct and mismanagement more meaningfully. A pattern and practice of accountability must begin at the top. Consistent messaging by senior leadership provides a clear message of what behavior is expected. We have encouraged leadership to demonstrate more support for those who serve in gatekeeper roles, such as contracting officers and human resource personnel. But many such gatekeepers feel undue pressure from managers to make things happen, regardless of rules and regulations, such as that recently detailed in our report concerning allegations that the now former director of the NPS Denver Service Center improperly directed a contract award.

Working with Interior's deputy secretary, chief of staff, and Office of the Solicitor, we have witnessed an increased effort to be more responsive and decisive in corrective actions regarding employee wrongdoing. We are encouraged by this at the department level, but we would like to see the same at the bureau level, taking prompt, appropriate disciplinary action in response to OIG reports of misconduct.

This concludes my prepared testimony. I would be happy to answer any questions that members of the subcommittee—of the committee would have.

[Prepared statement of Ms. Kendall follows:]

TESTIMONY OF MARY L. KENDALL
DEPUTY INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
JUNE 14, 2016

Mr. Chairman and members of the committee, good morning. Thank you for the opportunity to testify today about a series of reports the Office of Inspector General has issued regarding misconduct and mismanagement in the National Park Service. This hearing highlights the importance of bringing into the public view the vital role of the Office of Inspector General (OIG) as an independent, objective body to investigate matters that ultimately violate public trust. Through our investigations, we lay bare misconduct on the part of Federal employees so they can be held accountable, advise those who are brave enough to bring misconduct to the attention of the OIG or other responsible officials, encourage others to do the same, make transparent the consequences of misconduct, and deter future misconduct.

As you know, the OIG has a great deal of experience uncovering ethics and other conduct violations by Interior employees and officials. For many years, we have had a specialized unit dedicated to investigating cases of ethical and other misconduct, particularly by high-ranking officials and others whose positions of trust make their misconduct particularly detrimental to the operations of the Department, the morale of its employees, and the reputation of all Federal Government employees.

When I testified recently before the House Committee on Natural Resources, Subcommittee on Investigations and Oversight, I explained that in my experience, the majority of Interior's 70,000 employees take the mission of the Department and their individual responsibilities very seriously. I remain convinced that, as a whole, those who engage in wrongdoing are in the minority.

Yet, I am continually surprised by the variations of misconduct brought to our attention. Unfortunately, misconduct by those few receives notoriety and casts a shadow over the entire Department.

That shadow looms large, especially over the National Park Service (NPS), following our recent release of OIG investigative reports, including those that substantiated sexual harassment at Grand Canyon National Park and Canaveral National Seashore; ethics violations by Director Jarvis in authoring a book without seeking approval or advice from the Department's Ethics Office; and misuse of Park housing by the Chief Ranger at Yellowstone National Park.

Our investigative report on the pattern and practice of sexual harassment at Grand Canyon National Park provided a glaring example of NPS management failing to take proper

action when employees reported wrongdoing. We continue to wait and see what action is taken against the managers who failed to act when notified of the harassment, and how NPS intends to address the issue of sexual harassment NPS-wide.

Similarly, after receiving an investigative report on the Chief Ranger of Yellowstone National Park violating the rules on the use of Park housing, the Chief Ranger was transferred to another park and named superintendent. Although I understand this was a "downgrade," the appearance of rewarding bad behavior is not the desired outcome – nor a proper deterrent.

A recent media article raised concerns about the leadership at Cape Canaveral National Seashore. The OIG has issued four reports in four years on alleged misconduct and/or mismanagement at this park. Three of the four reports substantiated allegations against the park's Chief Ranger, including violations of Federal procurement rules, conduct unbecoming an NPS law enforcement officer, and sexual harassment.

The Chief Ranger was disciplined for the procurement violation, but of particular concern was that in 2015, the Chief Ranger publicly disputed a media story about a former Canaveral park employee who had provided information to the OIG about allegations of improper hiring and procurement irregularities. We had substantiated those allegations and we reported our findings to Director Jarvis in 2012, but he has yet to respond to our office. To date, NPS has also taken no action to address the Chief Ranger's unbecoming conduct.

Last week, we issued a report to the National Park Service on a pattern and practice of sexual harassment by the same Chief Ranger, who continues to serve in that position despite three substantiated allegations against him in less than 2 years. NPS has not had time to respond to this most recent report, but with three other reports in 4 years, this is a profound example of a leadership problem that NPS has failed to address at multiple levels.

Finally, the same Superintendent has been at Canaveral since 2010 and was named as a subject in our 2012 report to Director Jarvis. The employee who reported the allegations of misconduct in our 2012 report made additional allegations of reprisal that were founded by the Merit Systems Protection Board (MSPB) and resulted in a settlement with NPS. MSPB noted that the Superintendent was aware of the employee's allegations of procurement misconduct, did nothing to address the issue, and then failed to process an administrative request made by the whistleblower as reprisal against her for contacting OIG.

Additionally, based on our report, MSPB noted that the Superintendent showed a "lack of candor" when responding to investigators and highlighted actions she took to obstruct the investigation. Yet, we have no indication that NPS has taken disciplinary action against her.

With fewer than 80 investigators, we work with constrained resources and can never detect all of the wrongdoing at Interior. We have addressed this in part by capitalizing on a culture at Interior that, for the most part, is one populated by individuals who are committed to the mission and doing the right thing. In fact, they are quick to report wrongdoing to the OIG. We were one of the first in the OIG community to create a Whistleblower Protection Program, one that is regularly referred to as a model by the Office of Special Counsel and other OIGs. Our Whistleblower Protection Program helps to advise, and thereby protect, those brave enough to shine a light on the wrongdoing they observe. In 2015 alone, the Whistleblower Protection Program has supported and protected well over 100 employees, contractors, or other individuals willing to come forward with allegations of fraud, waste, abuse, misconduct, or retaliation.

Unfortunately, not all leadership in DOI fully supports their employees contacting the OIG to report potential wrongdoing. There is a pervasive perception by many employees in some DOI bureaus that contacting the OIG to report wrongdoing places them in jeopardy of retaliation. We often learn that management makes more effort to identify the source of a complaint than to explore whether the complaint has merit. In some instances, efforts have been made to restrict the ability of employees to contact us. When we become aware of such incidents we have been able to successfully intervene; however, we seldom see corrective action taken against individuals who attempt to silence their employees or identify whistleblowers.

The Department does not do well in holding accountable those employees who engage in mismanagement and/or misconduct that violates laws, rules, and regulations. We see too few examples of senior leaders making the difficult decision to impose meaningful corrective action and hold their employees accountable. Often, management avoids discipline altogether and attempts to address misconduct by transferring the employee to other duties or to simply counsel the employee. The failure to take appropriate action is viewed by other employees as condoning misbehavior.

NPS, in particular, has a real opportunity to address employee misconduct and mismanagement more meaningfully. A pattern and practice of accountability must begin at the top. Consistent messaging by senior leadership provides a clear message of what behavior is expected. We have encouraged Department leadership to demonstrate more support for those who serve in gatekeeper roles, such as contracting officers and human resource personnel. We are aware, however, that many gatekeepers feel undue pressure from managers to "make things happen" regardless of rules and regulations. This pressure was recently detailed in our report concerning allegations that the now former Director of the NPS Denver Service Center improperly directed a contract award.

We have also encouraged the Department to consider requiring annual ethics training for all DOI employees, following the example of two of its bureaus: the Bureau of Land Management and U.S. Geological Survey. We do not make this suggestion naively. Ethics

training is not, in itself, a panacea for misconduct. But it is an action that can be taken easily, with little investment by and at little cost to the Department. Ethics awareness is the first step toward ethics compliance.

Inspectors General do not have authority to compel action within their agencies. To influence change, we rely mostly on our audits and investigations. To this end, the OIG recently implemented a policy of making public essentially all of our investigative reports, whether allegations are substantiated or not. A little more than a year ago, we were called out by the media on the relatively small number of investigations that we made public. In responding to that challenge, we realized that we were simply practicing what had been done in the past and following the practice of much of the IG community. Having nothing to hide, and, as it turns out, much to gain by making our investigative results more transparent, we reversed our policy and now publish all investigative results, unless there is a compelling reason not to do so.

To spur the Department into taking swifter and more effective action, we have also recently instituted a practice of posting the results of our administrative investigations on our website 30 days after providing the report to the Department for review and action. With a 30-day public release date, we hold the Department accountable for prompt action and provide Congress and the public with more timely notice of our investigative results.

These new practices appear to be having an impact. Working with Interior's Deputy Secretary, Chief of Staff, and Office of the Solicitor, we have witnessed an increased effort to be more responsive and decisive in their actions regarding employee wrongdoing.

We are encouraged by this at the Department level, but we would like to see the same at the bureau level—taking prompt, appropriate disciplinary action in response to OIG reports of misconduct.

I reiterate my thanks to the committee for holding this hearing, for giving these issues the attention they deserve, and for recognizing the need for transparency and accountability in this important arena.

This concludes my prepared testimony. I would be happy to answer any questions that members of the subcommittee may have.

Chairman CHAFFETZ. Thank you. Thank you, both.

I'll now recognize myself for 5 minutes.

Director Jarvis, I would agree with you that people do make mistakes, but I draw a distinction between mistakes and deception, which I view as a whole other category of problems.

On November—I'm sorry—June 11th of 2015, you wrote a handwritten note to Sally Jewell, the secretary of the Department of the Interior. It was four sentences long, barely two paragraphs. Do you stand by that? Was there anything wrong or deceptive about that handwritten note that you gave the secretary?

Mr. JARVIS. So I wrote the note to let her know that I had published this book, was, I think, her first awareness of the book. I said in that that there were no ethics issues because I had written it on my own time. I had asked Eastern National—or I said in the note that Eastern National had requested it of me, which is Eastern National does publish a lot of books for the National Park Service, and that all benefits are going to the National Park Foundation.

When I wrote that note, I thought I was following the ethics rules, with the exception that I had not asked permission to produce the book.

Chairman CHAFFETZ. Why didn't you ask permission?

Mr. JARVIS. I felt that the book would be subject to extensive review and probably would not get published in the centennial——

Chairman CHAFFETZ. So you made a conscious decision to not ask ethics because you thought that you wouldn't get the result that you ultimately wanted.

So did Eastern National request that you write the book or did you request of Eastern National that you write the book?

Mr. JARVIS. The facts of the case are that I asked Eastern National if they were interested in the book, and Eastern National responded to say, let me ask you to write the book.

Chairman CHAFFETZ. And they had a multimillion dollar contract with the Park Service, correct?

Mr. JARVIS. No, they have no contract with the National Park Service. They are a cooperating association, which means——

Chairman CHAFFETZ. The cooperation requires—results in millions of dollars of business.

Here's my problem with what you wrote. It was not true. It was deceptive and it was intended to make the appearance to the Secretary of the Interior that there was no ethical problem and that you were doing this at the request of Eastern National, neither of which were true, correct?

Mr. JARVIS. I think that it was incorrect.

Chairman CHAFFETZ. Why should the secretary trust you? Why should we trust you?

Mr. JARVIS. Because I have served as a public servant for 40 years, in leadership roles for 25 years with an impeccable record of service to the American people.

Chairman CHAFFETZ. I don't know that that—I don't know that I take—I take issue with the idea that it's impeccable when you give a handwritten note to the Secretary of the Interior deceiving her on two key points.

Mr. JARVIS. And I apologized profusely.

Chairman CHAFFETZ. No. What you said, actually, when you were confronted by the inspector general——

Ms. Kendall, I want you to weigh into this. With this report—you have this. Was it a transcription? Or what was this interview with the director? We asked Jarvis whether, looking back, he would have done anything differently, and he said—and then it's quoted here. Was that because it was transcribed or was that a recording?

Ms. KENDALL. I believe we transcribed that. We were recording.

Chairman CHAFFETZ. Mr. Jarvis, when you were asked about this by the inspector general, this is what you said. I'm going to quote, "Would I have done the same thing? Probably. I think I knew going into this there was a certain amount of risk. I've never been afraid of risk. I've gotten my ass in trouble many, many, many times by the Park Service. By not necessarily getting permission, I've always pushed the envelope." And then you go on from there.

That is your quote, correct?

Mr. JARVIS. That is my quote.

Chairman CHAFFETZ. And now you're apologizing because we're essentially having a public hearing.

Mr. JARVIS. No, I apologized a long time ago, long before this hearing. And I apologized directly to the secretary and to the leadership of the National Park Service. And that was a mistake and I fully own it.

Chairman CHAFFETZ. And you lied to her, you deceived her, and I think it's wholly inappropriate.

And now we look at the situation that's happening in Cape Canaveral—or the Canaveral National Seashore. This chief ranger—this is a fairly small park in the big scheme of things, right? Fifty or so employees. Is that about right?

Mr. JARVIS. It's a small park. I don't know what the staffing size is.

Chairman CHAFFETZ. So Ranger Correa? How do you pronounce his name?

Mr. JARVIS. Correa.

Chairman CHAFFETZ. Correa. Three documented cases of sexual harassment, procurement problems, conduct unbecoming. Three of the four IG reports have been highlighting this, and you, your office, the National Park Service, is handing him out awards, safety awards. How does somebody who's getting, on the one hand, reprimands and highlights in sexual harassment problems—again, there's only 50 people, and they've got three documented sexual harassment issues. You go to the superintendent, the superintendent had allegations of reprisal that were found by the Merit Systems Protection Board and resulted in a settlement. You had to go into a settlement with the National Park Service. Those were—and the person is still on the job.

Mr. JARVIS. His commission has been removed, but he is still in a—he's still a Federal employee, but his responsibilities have been removed.

Chairman CHAFFETZ. This becomes more than just an isolated incident where somebody makes a mistake.

Ms. Kendall, you've been looking at this. Give us a perspective first, if you would, on the note that was written by Director Jarvis to the secretary, and then I want to ask you about Canaveral.

Ms. KENDALL. I would say that the note was——

Chairman CHAFFETZ. Sorry. Move the microphone up a little tighter there.

Ms. KENDALL. Sure.

Chairman CHAFFETZ. Just pull it up. There you go.

Ms. KENDALL. I would say that the note was not accurate, and I agree with your characterization that it was deceptive.

Your other question was?

Chairman CHAFFETZ. How severe is the situation at Canaveral? How often do you have to go back and write three reports on the same topic?

Ms. KENDALL. I would hope we would never have to write another report on any of those topics that—at that park again.

Chairman CHAFFETZ. Has it been resolved?

Ms. KENDALL. Not to my knowledge.

Chairman CHAFFETZ. My time has expired.

Let me go to the ranking member, Mr. Cummings.

Mr. CUMMINGS. Thank you very much.

Ms. Kendall, you've identified, "evidence of a long-term pattern of sexual harassment and hostile work environment in the Grand Canyon River District."

In addition, you had issued a report, just a few days ago, finding that a law enforcement supervisor at the Canaveral National Seashore has, "shown a pattern of sexual harassment." against three employees at the seashore.

Do you believe that these are isolated incidents or are they indicative of more pervasive problems within the Park Service?

Ms. KENDALL. I cannot take these two examples——

Mr. CUMMINGS. Can you talk a little louder, please?

Ms. KENDALL. Certainly. I would not take these two examples and paint the entire Park Service with that same brush, but it does cause concern that there may be a more pervasive problem when you've got it at two different parks in this kind of level.

Mr. CUMMINGS. So what else is your office doing to try to answer this critical question? Because based on what you just said, it sounds like you have some questions yourself as to how pervasive it might be. And so what do you do to look beyond it? I assume that the IG would be interested in that.

In other words, if you keep seeing these things come up, the chairman has mentioned various things and I'm just curious, what do you do?

Ms. KENDALL. Well, by publishing our reports, we're hoping that there is some deterrent effect to that. I do know that the Park Service is making some effort to make a determination as to how pervasive——

Mr. CUMMINGS. Are they moving fast enough? I guess that's the question. There's no reason why a woman should—any woman should be—or man should come to work—there are people watching us right now and—from the Park Service, and they want to know that these issues are being resolved, and I know that you do too.

And so it seems like there is—it seems like there's a delay. And you used some words that were very interesting. You said they—they try to avoid discipline altogether, something like that. And that—what that says is that—it reminds me of an old-boy system, you know, where you say, okay, you know—or a wink, give you a wink and you can get away with it and we'll transfer you and you keep doing the same level as the supervisor. I mean, can you help us with—the question is, are they moving fast enough? Because it's not—it doesn't give anybody any relief to know that this stuff just goes on.

And Mr. Jarvis will tell us that he's doing things, but to be very frank with you, I don't think he's moving fast enough. But I want your opinion on what can be done better.

Ms. KENDALL. Quite frankly, I don't know the status of what the Park Service has done or is doing right now. I agree with you that the people should, in any environment, be able to come to work free of sexual harassment and would hope that the Park Service is taking the kind of action, with the survey that they're talking about, to understand the breadth of the problem and then to come up with some corrective action.

Mr. CUMMINGS. Mr. Jarvis, the same question. What steps is the Park Service taking to determine how pervasive sexual harassment is at its facilities?

Mr. JARVIS. So let's start with the Grand Canyon. There were 18 specific actions that the inspector general recommended. They had due dates of mostly by the 1st of May. Almost every one of those have been implemented. There's a second set that's coming forward, but they're—they range from personnel, to change in field operations, to training, to communication and, specifically, to disciplinary actions on individuals that were either committed or omitted activities related to the Canyon. So we are aggressively pursuing that at the Canyon.

Mr. CUMMINGS. Whoa, whoa, whoa, whoa. Let's rewind. Staff tells me that most of them have not been addressed.

Mr. JARVIS. Well——

Mr. CUMMINGS. I want—you know, the chairman has already made it clear that he has some concerns about you're being able to tell the truth. So I want to remind you, you are under oath. And would you answer that question again?

Mr. JARVIS. Yes, sir. So I have a summary of actions in response to the inspector general's report as of May 23rd, 2016, that were prepared by our intermountain regional director. I cannot go into the details of the disciplinary actions in this forum, but I can tell you that they are all underway.

We've launched—we've closed down the River District. All river trips are being done by a third-party provider—private river rafters——

Mr. CUMMINGS. Let me—I only have a limited amount of time. I want to help you answer my question, because I'm not trying to trip you up.

Director, how many of these action items have been fully completed as of today? You said there were 22, right?

Mr. JARVIS. 18.

Mr. CUMMINGS. 18.

Mr. JARVIS. There were 18——

Mr. CUMMINGS. And how many, Director, have been completed as of today?

Mr. JARVIS. I'd have to count up. Can I count?

Mr. CUMMINGS. Yeah.

Mr. JARVIS. Okay.

Mr. CUMMINGS. You probably would say on average seven. But go ahead.

Mr. JARVIS. There are seven——

Mr. CUMMINGS. Very good.

Mr. JARVIS. —of the 18 that are completed.

Mr. CUMMINGS. Well, you just said the majority of them were. Isn't that what you said? Did I miss something?

Mr. JARVIS. Well, seven are completed. There's one, two, three, four, five, six, seven that are actively underway but not finalized. Like the disciplinary actions take time to pursue, but they are actively underway.

Mr. CUMMINGS. Do you agree with that, Ms. Kendall? I know you don't—you said you don't know everything he's doing, but just based on what he just said, do you agree that—with regard to the things that should have been done, that they—that they should take all of this time? I guess that's what I'm getting at.

Ms. KENDALL. Because I don't know the details, sir, I can't opine on that. I do know that disciplinary action does take time. I'm happy that the National Park Service is actually taking disciplinary action. And my recollection is we only had three or four specific recommendations. So I'm not completely familiar with the 17 or 18 items that he's talking about.

Mr. CUMMINGS. Mr. Jarvis, my time has run out, but I want you to go ahead and tell me what you have done, I think for the benefit of the entire committee. Because I'm going to tell you, I'm not sure that you need to be in this position, but go ahead.

Mr. JARVIS. So, servicewide, I think the Grand Canyon is an indicator, as well as Cape Canaveral, that we may have a significant problem of sexual harassment in the Service in certain areas. I want to say it up front, the vast majority of the employees have a safe work environment.

However, in discussions with the Department of Defense Office of Sexual Assault Prevention and Response, we engaged their leadership with our leadership to talk about this for over 3 hours at our last national leadership council meeting. And General Nichols, who leads that office, indicated that if you have this level of pervasion in one place, it's an indicator you may have it in other parts——

Mr. CUMMINGS. And when was that meeting? When was that meeting?

Mr. JARVIS. It was in May. And so we have launched one team effort in my office specifically to focus on how we are going to address this servicewide.

The second is one of the general's recommendations was that we need to do a prevalence survey. That means to look entirely across the system anonymously to allow employees to report whether or not they have been or are currently being subjected to sexual harassment or a hostile work environment.

Mr. CUMMINGS. I yield to the chairman.

Chairman CHAFFETZ. Just to quickly follow up on that, the superintendent at Canaveral, has been there since 2010, was named in the subject of a report to Director Jarvis in 2012. The report of the allegations of misconduct in the 2012 report included allegations of reprisal that were found by the Merit Systems Protection Board to be accurate. They had to enter into a settlement.

What I think you're telling Mr. Cummings is not a candid response to this problem. It was not some report that showed up on your desk in the last 2 weeks. This happened years ago. It was last—this is, again, a small group. And what you're telling Mr. Cummings here is that the majority of this has been dealt with. But when it was brought to your attention, and there were reprisals for the whistleblowers, you didn't deal with it. You did not deal with it.

Mr. CUMMINGS. I—well, just one last thing.

You just said you had this meeting in May, but keep in mind that the inspector general report goes back to November 16, 2015. Why did it take so long?

Mr. JARVIS. This was the first—this was the first meeting of our national leadership council where we get all the senior leaders of the National Park Service to specifically address this.

Mr. CUMMINGS. Thank you.

Thank you very much, Mr. Chairman.

Chairman CHAFFETZ. I now recognize the gentleman from Tennessee, Mr. Duncan, for 5 minutes.

Mr. DUNCAN. Well, thank you, Mr. Chairman. And there are very few people for whom I have higher respect than I do for Ranking Member Cummings. He has a very difficult task at times in usually trying to defend administration witnesses, but it does send a message to Director Jarvis and throughout the Park Service that Mr. Cummings did not defend Mr. Jarvis today and instead pointed out several different types of problems that have occurred in the Park Service. And I'm—I think that's very significant.

I spent 22 years, up until about 6 years ago, on the Interior Committee, and now I serve on this committee and another committee. But I heard years ago that there was a $4 billion backlog, maintenance backlog and then I heard it was $6 billion and then I heard it was $9 billion, and now I get a material here that says the maintenance backlog is 12 billion.

I have great respect also for people—for education and people who get advanced degrees, but I think the Park Service needs to stop hiring so many Ph.D.s and master's degrees and historians and archivists and environmental activists and so forth and start hiring more laborers to chip away at this maintenance backlog if it's not being exaggerated. I think we have at the Park Service far too many chiefs and not nearly enough Indians.

But I also have been disturbed over the years by seeing that almost all or at least a great many of Federal contracts are awarded to companies that hire former, high-ranking Federal employees. We see that in the Defense Department. They hire all the retired admirals and generals. This seems to be throughout the Federal Government.

But I was disturbed, for instance, when I read from the staff that the Interior Department's Solicitor's Office had concerns when the Denver office of the Park Service originally attempted to—it says, quote, originally attempted to steer the award to—of this big contract to a construction firm, McDonough Bolyard Peck, even though their prize was much higher than other qualified bidders. The Denver Service office then canceled the solicitation for the position and later hired the same construction company under a new solicitation created with the requirements that only that particular contractor could meet.

Director Jarvis, do you have a system in place to question contracts when they're not awarded to the—when they're being awarded to the highest bidders instead of to the low bidders? Or do you have a system in place to question contracts that—or to prohibit contracts from being awarded to companies that hire former employees of the Park Service?

Mr. JARVIS. Thank you for that question, Congressman. We do have an audit program over our contracting officers, because they could lose their warrant for awarding contracts in some ways that you suggest.

And we appreciate the audit and investigation by the inspector general that has revealed this case. This is new to us, and it is something we are going to pursue actively in terms of both discipline and corrective action in terms of ensuring this can't—doesn't happen again.

Mr. DUNCAN. And on this book contract that you've been asked about, I understand that you said it was—that the proceeds were to be donated to charity. Can you tell us how much has been donated to charity at this point?

Mr. JARVIS. I do not know that, how much has been donated.

Mr. DUNCAN. The staff tells us that none has been donated to charity.

Mr. JARVIS. The book sales—let me clarify. The book is sold by Eastern National, which is a cooperating association of the National Park Service, and it is required under its agreement to return to the National Park Service 12 to 17 percent of its annual profit. So that funding, whatever profit they get from the book, that can come back to the Park Service directly for projects through the system. Any addition to that can go to the National Park Foundation, but none of it comes to me.

Mr. DUNCAN. All right. Let me—my time's up. Let me just mention one other thing. I represent about half the Great Smoky Mountains National Park. That park is being overrun by thousands, many thousands, of feral hogs, and I know that many people are antihunting or some in this administration are—don't like hunting, but we've got very serious problems that are going to lead to very serious disease problems if more—if many more thousands of these feral hogs are not gotten out of the Great Smoky Mountains.

Thank you, Mr. Chairman.

Chairman CHAFFETZ. I thank the gentleman.

I now recognize the gentleman from Pennsylvania, Mr. Cartwright, for 5 minutes.

Mr. CARTWRIGHT. Thank you, Mr. Chairman. I thank you for holding this hearing.

Ms. Kendall, I have some questions for you. And I'm going to ask you to pull that microphone really close to your mouth. You're a low talker, and we need to hear you.

I'm going to ask you about your office's investigation of the allegations arising from a February 2014 river trip that led to the discipline of two female Grand Canyon term employees, women who were accused of inappropriate dancing and the use of a novelty drinking straw. They received 14-day suspensions and their contracts for employment with the Park Service were not renewed after their terms expired. Both of them alleged retaliation. But your investigation concluded that, and I quote, "We found insufficient evidence to prove or disprove the allegation of retaliation," unquote.

Have I read that correctly?

Ms. KENDALL. Yes, I believe you read it correctly.

Mr. CARTWRIGHT. Well, let's go over some of the facts in your report. Is it true that one of the employees who complained about the two women was himself the subject of several prior complaints of sexual harassment?

Ms. KENDALL. That's correct.

Mr. CARTWRIGHT. Did your investigation find that former Grand Canyon Superintendent Uberuaga had any type of commonly known opinion about that person?

Ms. KENDALL. I don't know about opinion. I think he had some knowledge.

Mr. CARTWRIGHT. Okay. You want to share that with us?

Ms. KENDALL. Pardon me?

Mr. CARTWRIGHT. Would you share that with us?

Ms. KENDALL. Well, he launched an investigation himself internally about the conduct that was complained about earlier, sexual harassment kind of conduct. And that report never seemed to make its way to anyone who could actually do something.

Mr. CARTWRIGHT. All right. And your report also notes that the supervisor who conducted the internal investigation admitted that he did not feel responsible for determining whether the complaints against the two women employees were exaggerated or if the allegations against them were in retaliation for their sexual harassment claims. He felt it wasn't part of his job, and this supervisor did not even interview all of the people who were on that February 14 trip. But this supervisor's investigation was used as the basis of disciplinary action against the two women.

Ms. Kendall, your investigation found that several Grand Canyon employees and managers, including the superintendent, agreed that the internal investigation of the allegations against the two women employees were insufficient and incomplete. Am I correct on that?

Ms. KENDALL. I believe that's correct.

Mr. CARTWRIGHT. Did you find evidence that men who had been accused of sexual harassment received less severe disciplinary action than that recommended against these two women?

Ms. KENDALL. I believe we did.

Mr. CARTWRIGHT. Would you say that louder?

Ms. KENDALL. I believe we did.

Mr. CARTWRIGHT. Ms. Kendall, it's our understanding, from discussions with the Office of Personnel Management, that term employees have similar protections under the merit system as full-time employees. Would it be unreasonable for somebody looking at the fact pattern here involving discipline against these women to conclude that these women did indeed suffer retaliation for their claims of harassment?

Ms. KENDALL. Our office was unable to conclude that they did, but I think we were unable to go either way.

Mr. CARTWRIGHT. All right.

Well, Director Jarvis, I want to invite your attention to this matter. I understand that the two women filed EEO complaints against the Park Service. Are you aware of that?

Mr. JARVIS. Yes, I am aware that they have filed.

Mr. CARTWRIGHT. And what is the current status of those complaints that the women filed?

Mr. JARVIS. I'm not aware of those two specific. There were actually seven filings from women associated with the Grand Canyon and this incident. I believe several of them have been settled, but I'm not aware of the details.

Mr. CARTWRIGHT. My understanding is the National Park Service entered into settlement agreements with both of these women last week. Were you not aware of that, Director Jarvis?

Mr. JARVIS. No. This is being managed out of our intermountain regional office by our regional director and so I'm not directly involved.

Mr. CARTWRIGHT. Okay.

And, Ms. Kendall, were you aware of that settlement last week?

Ms. KENDALL. I was not.

Mr. CARTWRIGHT. Well, I'm happy to help.

I yield back, Mr. Chairman.

Mr. CUMMINGS. Would the gentleman yield? Would the gentleman yield?

Mr. CARTWRIGHT. Yield to Mr. Cummings.

Mr. CUMMINGS. Just one question. Wouldn't you want to know that? I mean, you've got—I mean, a settlement, something that's controversial as this? I'm just curious. What kind of management is that?

Mr. JARVIS. I do want to know——

Mr. CUMMINGS. But you don't know it today?

Mr. JARVIS. I don't know the specifics. I do not——

Mr. CUMMINGS. Do you know there was a settlement?

Mr. JARVIS. I knew the settlements were in negotiation, absolutely.

Mr. CUMMINGS. But you didn't know the settlement took place?

Mr. JARVIS. I did not hear that the settlements had been settled, no.

Mr. CUMMINGS. Thank you.

Chairman CHAFFETZ. I now recognize the gentleman from Michigan, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman.

And thanks to the panel.

Director Jarvis, in December of 2011, you issued an NPS memo establishing a ban on plastic water bottle sales in the national parks. Is it true that most, if not all, of the parks that have implemented the plastic bottled water ban still sell other plastic packaged beverages, soda, enhanced water, juice, et cetera? Is that still the case?

Mr. JARVIS. Yes, sir, they still do.

Mr. WALBERG. Do you feel it is safe and healthy to ban the sale of bottled water?

Mr. JARVIS. When the public are provided an ample opportunity to get that water from a variety of sources, which we've built in, that's a requirement of the policy, they have to have filling stations throughout the park in order for them to refill reusable bottles.

Mr. WALBERG. Can you say with absolute certainty that this ban on plastic water bottles has reduced garbage in the national parks?

Mr. JARVIS. Yes, with certainty, absolutely.

Mr. WALBERG. What analysis has been conducted?

Mr. JARVIS. We collect data on our solid waste management. I don't have that in front of me, but I'd be glad to get back to you specifically on the reduction of waste in the waste stream.

Mr. WALBERG. Well, I'd like to see that on reduced waste. I'd like to see it on decreased disposal costs, information on that. I'd like to see it on increased recycling since implementation. Those are issues I'd like to see. Because, frankly, the question still remains, we get rid of the water in bottles and the sales of those water bottles, but we don't get rid of the sale of pop in the same bottles, energy drinks in the same bottles, juices in the bottles as well.

My concern is that—I mean, we know that we need water. I've hiked enough of the national parks all across this Nation to know that that's important, and the fact of the costs of putting in water filling stations leaves me a concern that there are contractual issues that we ought to be concerned with as opposed to simply letting the sales take place to people who need the water.

And, again, I'm not certain at this time that the necessary studies have been done to show that we've had an impact, other than stopping the sale of water bottles, water in water bottles, in the State parks for whatever reason—the national parks, whatever reason that may be. I think there certainly ought to be questions that are raised about that subsequent to the needs of our visitors as well as contracting issues.

Let me go to another issue. An inspector general's report found that Yellowstone's chief ranger breached the terms of an occupancy agreement with NPS by failing to live full time, as agreed in the contract, full time in an apartment on Yellowstone's grounds.

Why is it important that the chief ranger of Yellowstone live in the park and not somewhere off the grounds?

Mr. JARVIS. So in many of our national parks, we have what's known as required occupancy. So a certain portion of park housing were constructed by the Federal Government and provided, though the employees pay rent, so that there can be quick response for emergency situations, fire, emergency medical, and the chief ranger leads that effort at Yellowstone.

Mr. WALBERG. So there's a potential of a loss of security, safety to park visitors as well as staff without the head ranger living on-site?

Mr. JARVIS. According to the superintendent, the chief ranger lived in a private quarters that still allowed him to have rapid response. It was right on the park boundary but outside the park.

Mr. WALBERG. I understand that he—that he didn't rent out, but he allowed outside visitors to live in that apartment instead of himself. Is that true?

Mr. JARVIS. That is correct.

Mr. WALBERG. Let me ask, what kind of discipline or reprimand did the ranger receive?

Mr. JARVIS. He did receive specific discipline. Again, I can't talk about individual discipline in a public forum, but I'd be glad to come to your office and talk to you specifically about it. But he was disciplined in this case.

Mr. WALBERG. Is he still in the same place?

Mr. JARVIS. He is not. He is a superintendent at Devils Tower, which was a demotion.

Mr. WALBERG. Okay. Thank you.

I yield back.

Chairman CHAFFETZ. Director Jarvis, you are not inhibited in your ability to give an answer about specific discipline on a case that's asked in this forum. So your holding back and not providing an answer to Mr. Walberg, there's no encumbrance here. If we ask you a question, we need you to answer it. So if you know the answer to that question, I need you to answer it.

Mr. JARVIS. Chairman, I've been told by my solicitors, and I would ask that they—that specific disciplinary actions are Privacy Act issues.

Chairman CHAFFETZ. We will follow up, for the record, with you on that to make sure, Mr. Walberg, that you get the answer to that question.

We'll now recognize Ms. Kelly of Illinois for 5 minutes.

Ms. KELLY. Director Jarvis, first and foremost, I just want to say thank you for all of your help with Pullman. I really, really appreciate it.

We've talked about 18 action items dealing with Grand Canyon. Why has the implementation of some of these action items been delayed?

Mr. JARVIS. I don't believe that any of these actions have been delayed. As—in the disciplinary aspect of taking specific discipline on employees, that is a slow process. There are laws established by the Congress that are specific to Federal employees. Title V, the Merit System Promotion Board, the Douglas Factors, all have to be applied in the disciplinary pieces, and so that's why they have not yet been totally executed but are absolutely in process. But they all have to be reviewed at a variety of levels before we can actually take the disciplinary action. All the others, there are no delays in the other actions.

Ms. KELLY. What about some of your self-imposed deadlines? Have you met those?

Mr. JARVIS. I believe we have, yes.

Ms. KELLY. Okay. While all of these action items are important, several are particularly critical to ensure that the perpetrators of sexual harassment are not able to harass anyone else at the national parks. One action item states, and I quote, The OIG report highlights that the majority of the incidents described by the complainants involve four employees of the River District at Grand Canyon. One of those four individuals remains an employee. In light of the OIG report, it is appropriate to take appropriate disciplinary or personnel action to remove this individual from specific work environment of the River District. What is the status of the fourth individual?

Mr. JARVIS. The fourth individual still is an employee of the National Park Service at the Grand Canyon but has no involvement whatsoever with the River District operations and is in no position to continue any harassment. He is just being held in a position with his rights as a Federal employee and will be subject to discipline.

Ms. KELLY. So that's why he's still there, because you're just following a process?

Mr. JARVIS. But he's been removed from any role that he might play on the Canyon.

Ms. KELLY. And besides being removed, has any disciplinary action been taken yet?

Mr. JARVIS. I'm sorry. Could you say that again?

Ms. KELLY. I know he was removed and put into another position, but has any disciplinary action been taken yet?

Mr. JARVIS. Not yet. No, we're still working on that.

Ms. KELLY. Okay. Director Jarvis, another action item involved contracting out for, "logistical support of nonpatrol river trips involving park staff." Has this item been completed?

Mr. JARVIS. Yes. So the regional director for the Intermountain Region has taken very specific actions at the park, one of which was essentially elimination of the River District, and commercial river rafters are now providing the river access for the kind of activities that the rangers were doing before.

Ms. KELLY. So how will contracting out the staff of river trips ensure that this won't happen again?

Mr. JARVIS. We are meeting and providing training to those commercial operators who've been providing services on the river. They are all under contract with the National Park Service to provide these services and we can hold them accountable through those contracts.

Ms. KELLY. And how can we be ensured that the employees that did perpetrate this not be hired again?

Mr. JARVIS. Well, I can assure you, they will not be hired again. This will be retained as a part of their record and the disciplinary actions will become part of their official files.

Ms. KELLY. Even if they come through contractors you can ensure that?

Mr. JARVIS. There actually has been discussion about that specifically, so we're talking specifically to the contractors that they cannot hire these individuals.

Ms. KELLY. Okay. The inspector general also found that the Grand Canyon engaged an individual as a volunteer who had pre-

viously worked at the park and resigned after being suspended for sexual misconduct on a river trip. What are you doing to ensure that boatmen who engage in harassment who have left the Park Service employment cannot be rehired by or volunteer in any national park?

Mr. JARVIS. Well, again, I think it's up—to float the river requires a permit from the National Park Service for any—whether they are volunteer, they're a contractor, other Federal agency. I think now that we are very, very aware of that the river trip creates the potential for this kind of harassment, we are actively engaged in training, oversight, regular communications, and post-trip evaluations so that folks that are coming off of these trips are interviewed within 7 days to determine whether or not there were any issues.

Ms. KELLY. Thank you.

And I'm out of time. I yield back.

Chairman CHAFFETZ. I thank the gentlelady.

I will now recognize the gentleman from Florida, Mr. Mica, for 5 minutes.

Mr. MICA. Thank you, Mr. Chairman.

And, Director Jarvis, you have 22,000 employees. Is that correct?

Mr. JARVIS. Yes, sir.

Mr. MICA. And I'm told you have over 400 sites that you manage, entrust for the American people. I don't have a national park in my district anymore. I did have St. Augustine. I have to tell the members and Mr. Jarvis that we have—well, at least my experience has been we have some incredibly dedicated, hardworking individuals with the Park Service who day in and day out and weekends, sometimes 24/7, do a wonderful job. And we appreciate their service, and they're doing it sometimes with limited resources and with a great crew of volunteers too.

So we have a list that's a pretty tough indictment of people who abused their responsibility, and I think you started to tell some of the problem. And I've sat through—today we have the National Park Service. We've had EPA. We had IRS. We've had Secret Service. We've had GSA. The list goes on and on. And we hear the same thing. You just said that you have a process that you must go through for discipline. It's almost impossible to fire a Federal employee. I don't know if you would agree with that, but it's very, very difficult, isn't it, Director Jarvis?

Mr. JARVIS. Yes, sir, I would agree with that very much so. I've done it a few times in my 40 years.

Mr. MICA. But it's very, very difficult.

Mr. JARVIS. It's very difficult.

Mr. MICA. I chaired civil service for 4 years. I found it almost impossible, and that's part of the problem we face. Civil service was set up as a protection against political manipulation or misuse of authority over legitimate working civil servants. And it's gone far beyond that in providing cover for people who don't do a good job and it puts barriers in the way.

You could probably go through these cases and cite all of the compliance that you had to do, the due diligence required by Title 5, by other regulations, by other laws that constrain you from taking immediate action. Is that correct?

Mr. JARVIS. Yes, sir, that is correct.

Mr. MICA. Okay. It's hard sometimes. We can't get agency directors to come forward, but do you have any suggestions for anything that might speed up or improve the process to get rid of these poor performance or malfeasance employees?

Mr. JARVIS. Specifically, no. But I would certainly appreciate the willingness of the committee to work with us on some reform in this area, because I do think it is a significant problem for us to be able to deal effectively. If we do not follow the rules throughout the process, there's a high likelihood that the individual can be reinstated.

Mr. MICA. But again, we hear this. You're not the only agency with these personnel problems.

Ms. Kendall, okay, you have management—do you see a lack of management or do you see a similar pattern that we described or both with what you have observed with some of these cases?

Ms. KENDALL. I would say both, sir. I perhaps disagree somewhat with you in terms of——

Mr. MICA. Go ahead.

Ms. KENDALL. —difficulty by which to remove employees. I think the failure comes in the unwillingness to take progressive discipline and document.

Mr. MICA. I like that, "progressive discipline." Maybe I could—I'll have a new liberal approach to getting rid of people who are poor performers. I actually gave a certificate in Transportation. I called for the firing of Metro incompetent personnel and then the new director came to the second meeting, he fired 20 people the day before. I presented him with a certificate of appreciation because I never hear of anybody firing poor performers. He did it.

But you say it's a lack of progressive——

Ms. KENDALL. Progressive discipline and documentation.

Mr. MICA. Okay. Maybe I could do a bill—act for progressive discipline and documentation. But you think that could be something that we could do to get a better handle on this?

Ms. KENDALL. I think it's something that good managers do do, if they've got both problem employees——

Mr. MICA. Maybe an executive order to that effect might help. Thank you.

I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I now recognize the gentlewoman from the Virgin Islands, Ms. Plaskett, for 5 minutes.

Ms. PLASKETT. Thank you, Mr. Chairman, and good morning everyone.

Thank you, first, Director Jarvis, for the work that the Park is doing. I had a meeting with you and some other members about the reports and books that you've been putting out regarding reconstruction, the underground railroad, and for the work that you have for opening the parks to young people, the fourth-grade initiative. That's very important, I think, in the communities that the Park is enlisted to be around.

One of the concerns that I have and I think that is an underlying issue with the Park is not just the misconduct of its employees, but the misconduct from the employee's perspective is really related to

a disregard, I think, for individuals that are not in senior management potentially or not even necessarily part of the Park Service itself. In the Virgin Islands, as you know, the Park plays an integral role in our community. It takes up large masses of land, particularly on the island of St. John, the entire Buck Island, the waterways surrounding the Virgin Islands abut—or are incorporated by the National Park Service. And so the relationship that we have with the Park is very, very important.

And one of the things that I hear continually from my constituents is a pervasive disregard and notable disconnect between the Park and its local employees, as well as the local government, and in fact, the people of the Virgin Islands. And I wanted to talk with you about that. I've had some very substantive conversations with the regional director, Stan Austin. I think that he's making headways in some of this regard, but I can't miss an opportunity with you being here to address some of these and maybe you can speak as well to this.

First of all, you know, the National Park receives funding for Youth Conservation Corps, YCC, which is a source of income for the children in those communities, it is an opportunity for young people to learn about the park, and potentially train them to be excited about careers that involve the National Park. And this would then create a relationship between the park and its local people. And another reason why this is so important is because of the enabling legislation here in Congress that created the Virgin Islands National Parks.

And one of the main components of that that I continually hear from my constituents is language that says that the secretary, meaning Secretary of the Interior, is authorized and directed to the maximum extent feasible, to employ and train residents of the Virgin Islands to develop, maintain, and administer the Virgin Islands National Parks.

I don't know if you're aware of this particular piece of language. Are you aware of it, Director Jarvis?

Mr. JARVIS. Yes, but not in any—not how it's been implemented, but I am aware of it.

Ms. PLASKETT. And reading that particular language, how do you, to the extent feasible, employ individuals and direct them to develop, maintain, and administer the Virgin IslandsNational Park if individuals that are from the Virgin Islands who are not part of the closed National Park system can't apply for employment within the national parks?

Mr. JARVIS. Well, fortunately, Congress has given us a couple of new hiring authorities most recently that give us a much greater ability to do direct hire at the local level and to permanent employment. For a long time, it has been very difficult for local hires to sort of break into Federal service. But recently, Office of Personnel Management, the Public Land Corps legislation has allowed us that young people working as seasonals for the National Park Service, which is a fairly easy bar to get in because we hire about 8,000 seasonals a year, or if you serve in a Youth Conservation Corps position like a Public Land Corps you can attain essentially career status, noncompetitive status.

Ms. PLASKETT. So that's an interesting point that you raise about the Youth Conservation Corps, because the Virgin Islands has used that in the past. And on the island of St. Croix it's an active engagement. But on St. John where the relationship with the Park is much more intrinsic and much more involved, there has not been an active Youth Conservation Corps. Although they have received the funding for it for a number of years, they have stopped, in fact, utilizing this for the local kids that are there on the island of St. John. What's the reason for that?

Mr. JARVIS. Well, I think it's a mistake. And I have talked to Regional Director Austin specifically about it. And you know, Congresswoman, it's an issue in San Juan, Puerto Rico. It's an issue, as you've mentioned, in the Virgin Islands. It's an issue in Alaska with native Alaskans, and it's also an issue in the West in working with young people. So I——

Ms. PLASKETT. You know, I—excuse me, if you would allow my indulgence, Mr. Chairman. I don't care that it's a mistake. It's a mistake that has had very severe consequences to the people of St. John.

On the island of St. Croix you're employing 18 to 20, sometimes more students a year. On St. John you have hired no one for a number of years on the island of St. John where this park is very important. That then affects the individuals who are at the park. The superintendent on St. John as well has had changes made to the National Park in terms of access to land, construction plans, closure of fishing boundaries without community input and proper notification of the people of St. John, or the local government as well.

Is this a mistake as well? And why are the people of the Virgin Islands being subjected to these continued mistakes by the park?

Mr. JARVIS. Well, it is something that we are addressing very specifically. And I apologize to you for that. It is not our intent to disregard in any way, shape, or form the people of St. John or any of the islands. We think that they know the islands better than we do. They know the resources. They know the history. They've lived it, and we need them to be a part of the National Park Service and this is something that we are addressing aggressively through the Southeast region.

Ms. PLASKETT. Mr. Chairman, just so you're aware, and I would love to hold the record open. When I talked about lack of access to private properties, since 1989, with Hurricane Hugo, from 1989 individuals living on the island of St. John have not had access to their own private property because that access is landlocked by the National Parks. And repeated requests by our local legislature, our government, and individuals have not afforded them the ability to even visit the land that they live on because they have not, the parks, the management of the park, the superintendent, have not thought it's a priority to allow them to have public access to that.

Chairman CHAFFETZ. You have a great deal of sympathy from me, and we have similar issues out West. And I thank the gentlewoman for her passion and perspective on this.

We'll now recognize the gentleman from Arizona, Mr. Gosar, for 5 minutes.

Mr. GOSAR. Thank you, Chairman.

Director Jarvis, my State of Arizona is no stranger to national parks. In fact, we're talking about one today. We're the home of 22 National Park units, including monuments, historical sites, parks, and more. As a result of the outsized impact national parks and monuments have on the land management, economy, and everyday lives of my constituents in Arizona, the seemingly careless nature of the National Park Service management of the deferred maintenance backlog really troubles me.

It is reported that the growing tally of backlog infrastructure needs within the Park Service, such as roads, bridges, visitor centers, and campgrounds, which need significant maintenance or repair has reached nearly $11.5 billion. Is that number correct?

Mr. JARVIS. Yes, sir, that is correct.

Mr. GOSAR. So one of the most significant projects in that backlog is the Arlington Memorial Bridge, just a few steps away from the National Park Service headquarters right here in Washington, D.C. That bridge is in need of a $250 million overhaul. Is that correct?

Mr. JARVIS. That's correct.

Mr. GOSAR. Yet the National Park Service officials who knew how dire the bridge situation was dropped the ball and nearly lost out on significant Department of Transportation funding assistance because it couldn't get their application paperwork on time. That's flat embarrassing. Now, the National Park Service can't even manage what it has in its own front yard in Washington, D.C., yet it expects the American people to trust that it can manage hundreds of millions of acres spread across the furthest and farflung reaches of the American continent.

On top of this $11.5 billion heap of mismanagement and neglect, the administration continues to pile on millions of more acres of lands to the problem through the National Monument Declarations using the Antiquities Act.

Certain special interest groups have been pushing for the President to circumvent Congress and to move 1.7 million acres in Northern Arizona out of successful management agreements by other Federal, State and private entities and into the Park Service's service as the Grand Canyon Watershed National Monument. Their intentions are clear. They want this designation in order to prevent hunting, mining, timber harvesting, and grazing on this massive swath of land, even if it means heaping more acres onto the queue of mismanaged projects within the National Park Service.

Now, Director Jarvis, do you think it is wise to be adding millions of additional acres to the Park Service's already burdened management structure when such lands are currently successfully overseen by other State and Federal agencies?

Mr. JARVIS. I think that the Park Service in its history has always grown both by act of Congress and by the act of the President. I am a fiscal conservative and I do not like taking on new responsibilities to the National Park Service that impact our financial house.

Mr. GOSAR. Well, then, let's get specific then. So is the administration currently working on designating a new national monument in Arizona?

Mr. JARVIS. That is a power of the White House. That is not part of my responsibility.

Mr. GOSAR. Well, let's get down to the dirties here. So let's be more specific. Have you been approached in regards to the Grand Canyon Watershed National Monument by the administration?

Mr. JARVIS. Not by the administration. Advocates have approached me on it, yes.

Mr. GOSAR. Okay. Any other areas in Arizona?

Mr. JARVIS. No, not that I remember.

Mr. GOSAR. Okay. Let me be more specific. How about the Sonoran and Southeast and Western Arizona?

Mr. JARVIS. No.

Mr. GOSAR. How about Sedona?

Mr. JARVIS. No.

Mr. GOSAR. Okay.

Mr. JARVIS. No, sir.

Mr. GOSAR. My office currently has a FOIA request at the Department of Interior regarding this proposal and the coordination between land agencies and environmental groups. Will that request collaborate the information you shared here today?

Mr. JARVIS. It will for the National Park Service. I cannot speak for the rest of the department.

Mr. GOSAR. Okay. Director Jarvis, you and your agency mismanaged funding opportunities already right in front of you. You can't even maintain the infrastructure in your own backyard. The Arlington Memorial Bridge is only 2,000 feet long and it's falling apart. You should not be handed over millions of more acres via the Antiquities Act just to lock up in your agency's abysmal management. You may think that the National Park has the capacity to control even more public land, but I have a list of 11.5 billion reasons why you are wrong.

Now, you said you were a conservative in that regards. You know, going back to the gentlelady from the Virgin Islands, doesn't your appropriation process, doesn't it show a lack of leadership by making sure that the proper processes are appropriated and funded?

Mr. JARVIS. No, sir. We make a request every year for appropriations to meet our needs and we get about half of what's——

Mr. GOSAR. Oh, no, no, no. Let's go back. I mean, the gentlelady actually said the money actually went to those areas and they go to the West. Why aren't they being appropriated to the proper protocols and having the proper oversight?

Mr. JARVIS. Well, I'm not aware specifically. We're talking about YCC money versus maintenance backlog funding? Sir, we have an $11 billion backlog in maintenance because we only get about half annually what we need to keep up.

Mr. GOSAR. And you tell me that there's no inadequacies within your process of oversight in adjudication of those moneys?

Mr. JARVIS. We are putting every dollar we have as a priority into our maintenance backlog, including our roads and bridges, through the Federal transportation bill, but we did not receive adequate funding in the Federal transportation bill to address the backlogs of even one bridge, the Arlington Bridge.

Mr. GOSAR. I thank the gentleman.

Chairman CHAFFETZ. I thank the gentleman.

I will now recognize the gentlewoman from the District of Columbia, Ms. Norton, for 5 minutes.

Ms. NORTON. Thank you, Mr. Chairman. I do appreciate this hearing.

I do want to say, especially considering that I'm a former chair of the Equal Employment Opportunity Commission, it distresses me to hear that the Park Service has what appears to be a systemic problem of sexual harassment. It does seem to me it calls for action at the highest level, not simply to process complaints and make sure they are handled fairly. And I hope you will take that as your mission.

It's interesting that my colleague asks about the Arlington national bridge—I was certainly going to ask you about that—and then chastises you for not funding. I mean, how can Congress really do this? The Park Service—the bridge, the Arlington Memorial Bridge, that is used to go to Arlington Cemetery. It is also the gateway from the south. That bridge alone needs to be rebuilt. The cost will be $250 million. Everybody in this region is trying to get that money, $250 million, and yet the Park Service has appropriated by this Congress in the FAST act, the last bill, $268 million for 4,500 miles of unpaved roads, 1,400 bridges, and I haven't exhausted the list.

It is time that Congress stopped beating up on agencies when the Congress itself is at the root of the problem. You put $268 million in for the entire country and then you beat the Park Service about the head and shoulders for not keeping the Memorial Bridge up. My goodness, it takes a lot of nerve not to look at ourselves and see where the problem also is. The Arlington Memorial Bridge is not a case of mismanagement. It's a case of no funds to rebuild it.

Now, Mr. Jarvis, the Federal Highway Administration says it's going to close this bridge that leads to the Arlington Cemetery within 5 years if it's not rebuilt. Do you think it will last 5 years? It gives you 5 years to rebuild the bridge. You've already shut down some traffic on the bridge. How much longer does this bridge—is it one of the older of the busiest bridges in your inventory?

Mr. JARVIS. We have a lot of old bridges throughout our inventory, but this is the most expensive and most complicated and highest-use bridge in the National Park System, so it is our number one priority. It was our number one priority in the reauthorization to the transportation bill in terms of request for funds for these kinds of high-profile projects that are in serious condition.

Based on the Federal Highway Administration's engineering assessment, which was being done regularly, that the bridge is subject to imminent closure in 2021, but we did do some emergency stabilization on it with Federal Highway so it will last until 2021.

Ms. NORTON. Director Jarvis, with a lot of work with the Senators from this region, we were able to get an application in. Will that fully fund the bridge, and if not, where will the money come from?

Mr. JARVIS. So we are—thank you, it was the District of Columbia that cosigned our application. That was a requirement and that was really what all of the effort was, was to get either the Commonwealth of Virginia or the District of Columbia to cosign——

Ms. NORTON. And mind you, this is a Virginia bridge, but go ahead.

Mr. JARVIS. I'll let you debate that with the Virginia Congressman.

Ms. NORTON. And Senator Warner was very helpful.

Mr. JARVIS. And you're all very helpful. And ultimately, we did get an application in and we are currently discussing with the Federal Highway Administration a schedule for repair to this bridge that we'll——

Ms. NORTON. Where will the rest—how much funds—there's an application in to the Park Service. What will that fund and will that take care of it; and if not, where will the rest come from?

Mr. JARVIS. I do not know how much the Federal Highway is willing to put up for this bridge. There are various scenarios based on how much they can put up annually. There's a lot of applications out there for this money all across the country with a lot of bridges. As you know, the infrastructure in our Nation has a lot of challenges. So there's a lot of competition, but I do think we have a very strong commitment from the Federal Highway Administration to work with us to come up with a schedule that will repair the bridge and minimize the impact of traffic. But I don't have the hard numbers yet. They haven't made the decision.

Ms. NORTON. I wish you would get this committee, please, Mr. Jarvis, the latest numbers on the funds, where they will come from, and whether there will be any shortfall.

And thank you, Mr. Chairman.

Chairman CHAFFETZ. Thank you.

I now recognize the gentleman from Georgia, Mr. Hice, for 5 minutes.

Mr. HICE. Thank you, Mr. Chairman.

I think it's clear that the National Park Service, certainly under the direction and action of Director Jarvis, is desperately in need of some oversight. Being a member of the Natural Resources Subcommittee on Oversight and Investigations, we actually had a hearing last month on this very subject. And I want to thank Ms. Kendall for being a part of that and for being back here today.

Director Jarvis, in your testimony you stated that you were held accountable for the book deal where you wrote it without approval from the Ethics Office. And your punishment is, as I understand it, monthly ethics training for the remainder of your duration. Is that correct?

Mr. JARVIS. Yes, sir, that's one component.

Mr. HICE. Okay. I think that's—personally, I don't think that goes far enough, but that's not going to be the point of my questions here. You stated that you have been held accountable for the book debacle. But we also have seen, in the hearing today, other problems throughout the National Park Service in Yellowstone, in the Canaveral Seashore, in Grand Canyon River District, sexual harassment and other issues. And these individuals were allowed to retire or they were transferred.

You stated the need for people to be held accountable for their actions. Do you believe that these people have been held accountable for their actions?

Mr. JARVIS. I believe we are following the regulations related to Federal employees and we are applying appropriate discipline. If they are eligible to retire, then they can do that at their——

Mr. HICE. So you think it's appropriate discipline?

Mr. JARVIS. Yes, sir, I do.

Mr. HICE. Okay. Ms. Kendall, let me ask you, do you believe it's appropriate discipline?

Ms. KENDALL. It's hard to say whether it's appropriate. I think it's more the appearance. I would use as an example, the chief ranger who was then demoted, as I understand it, in terms of grade, but took the position of superintendent, which by appearances anyway, seems to look like it was more promotion than demotion.

Mr. HICE. All right. Yeah, I mean, we've got people who, I mean, egregious behavior, sexual harassment, for example. Would you say that this is a pattern in the National Park Service?

Ms. KENDALL. I don't have the data to say it's a pattern, but it's certainly a concern.

Mr. HICE. Back to you, Mr. Jarvis. When we hear that employees who engage in misconduct or mismanagement are not held accountable, and that is precisely what we hear, when we hear that, it sounds like leadership actually condones misbehavior at the Park Services. How do you think this affects morale?

Mr. JARVIS. Well, actually, I think the fact that I am being disciplined sends a message that no one is exempt in this agency. And I think that employees are being disciplined. Appropriate action, in accordance with the rules and regulations that govern Federal employees, are being applied appropriately throughout the system.

Mr. HICE. Discipline and punishment is one thing. Hand slapping is another. I would hardly call what's taking place as discipline.

Ms. Kendall, back to you. In recent cases of misconduct that you've investigated, how many people have been fired?

Ms. KENDALL. I'm not aware of—I'm not aware of any that have been fired, sir.

Mr. HICE. All right. So they are retired, perhaps, but not fired?

Ms. KENDALL. Perhaps.

Mr. HICE. Perhaps. But you're not aware of any who have been fired.

Director Jarvis, do you find this disturbing?

Mr. JARVIS. I find that it's—it is the system in which we live. Firing a Federal employee is very, very difficult.

Mr. HICE. That's not my question. That's not my question. Is it disturbing that people who are engaged in this type of misbehavior, is it disturbing to you that they're not being fired?

Mr. JARVIS. Their behavior is extraordinarily disturbing to me, but I am a Federal employee. And I understand the rules and regulations that apply to them and, frankly, I don't have the power, in most cases, to fire these employees.

Mr. HICE. All right. You still didn't answer my question. It's disturbing to us, too, the behavior, but it's also disturbing that they're not being fired.

Real quickly, is there—Ms. Kendall, are you aware of NPS employees who are afraid to report misconduct?

Ms. KENDALL. I'm not specifically aware of precise NPS employees that are afraid of reporting misconduct, but I do believe that across the Park Service and throughout the department there is some fear by employees to report misconduct.

Mr. HICE. Why would people be fearful, Director Jarvis? And I'll close with this.

Mr. JARVIS. Well, I think that it's—I don't believe it's fear. I believe that they don't think action will be taken. And I think that what you're seeing today with these reports—and I appreciate the reports from the Office of Inspector General—and the actions that we're going to take and are taking, we are going to see more reporting. Actually, I think we're going to get more people to be willing to step up because they're seeing management actually taking action.

Mr. HICE. Thank you, Mr. Chairman.

Chairman CHAFFETZ. Will the gentleman yield before he yields back with the indulgence here?

Mr. HICE. I'd be happy to yield.

Chairman CHAFFETZ. Mr. Uberuaga, what happened to him? Did you discipline him?

Mr. JARVIS. Mr. Uberuaga was going to be subject to discipline. We were preparing a disciplinary action for Mr. Uberuaga for his omission of action based on the reporting in 2013. In consultation with the regional director for the Intermountain Region, who is his line supervisor, and the deputy director for operations here in Washington, who's the line supervisor for the Intermountain Region, the three of us unanimously agreed the Grand Canyon needed new leadership immediately, that Mr. Uberuaga was incapable. Even though he has performed well on other issues, he was incapable of leading the change we needed in the Grand Canyon.

So as a senior executive, he is subject to being transferred, and I told him I was transferring him out of the Grand Canyon immediately and he chose to retire.

Chairman CHAFFETZ. So you did offer him a position, another position?

Mr. JARVIS. I did.

Chairman CHAFFETZ. Okay. The gentleman yields back. I will now recognize the gentlewoman from New Jersey, Mrs. Watson Coleman, for 5 minutes.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman. I really don't know where to begin here because the picture that seems to be painted from the discussion and from the questions and answers is that this is a dysfunctional organization with very little accountability and not very good leadership.

I want to ask you a couple of questions regarding the Park Service as an employer. What percentage of women and minorities do you have employed in the Park Service? You have 22,000 employees, I think you said? What percentage of them are minorities and what percentage of them are women?

Mr. JARVIS. I don't have that data in front of me. I'd be glad to get it to you. I would say in terms of women—I'm just roughing it here, I don't know specifically off the top of my head—but we're probably 55 percent male, 45 women. And I think in terms of representative minorities, we are significantly low. We do not rep-

resent the demographic of the Nation. And I will be glad to get you the hard statistics, though.

Mrs. WATSON COLEMAN. So you're the director. Is that your title? What is your title exactly?

Mr. JARVIS. Director.

Mrs. WATSON COLEMAN. Director. And under you are there a series of deputy directors or assistant directors?

Mr. JARVIS. There are two deputies. Both of them are women.

Mrs. WATSON COLEMAN. And under them?

Mr. JARVIS. There are seven regional directors that serve in the field and that—and then we have associate directors here in Washington for specific programs.

Mrs. WATSON COLEMAN. Are you familiar with the requirements of EEOC in terms of the development of a plan and the responsibility and accountability for the implementation of that plan?

Mr. JARVIS. Yes, ma'am. I am very familiar with both the recommendations of EEOC in terms of a model program and how to implement it.

Mrs. WATSON COLEMAN. Who in your organization is responsible for that?

Mr. JARVIS. Our associate director of human resources.

Mrs. WATSON COLEMAN. And to whom does that person report.

Mr. JARVIS. To the deputy director for operations.

Mrs. WATSON COLEMAN. So is that in violation of the guidance from EEOC? Is that not supposed to be a function that reports directly to the director?

Mr. JARVIS. The EEOC model program definitely recommends that the EEO office report directly to the director.

Mrs. WATSON COLEMAN. And so why is that not the case with you?

Mr. JARVIS. Well, when I came on in 2009, it was actually buried three levels below that. We moved it up to directly report. But I agree with you, that I think that it should be moved to report directly to the director of the National Park Service. And that's an action we're going to take.

Mrs. WATSON COLEMAN. What kind of training and management development do your—does your staff generally and routinely get? How do they get informed about the laws? How do they get informed about creating culture that would discourage sexual harassment or any other kind of discrimination? What is it that's done proactively, routinely, and sustainably that would help to create a better climate there?

Mr. JARVIS. So when I came on in 2009, I actually created the first program for relevancy, diversity, and inclusion in the history of the National Park Service. I specifically gathered individuals through the organization that represent the diversity of our Nation, creating the Allies for Inclusion. And they have been working directly with the leadership of the National Park Service to help us create an inclusive workforce, one that reflects the diversity of the Nation and has a work environment that is supportive of diversity, that being ethnic diversity, sexual orientation, women, young people, you know, the whole range. And so we use that information both to communicate. I've done a number of Web chats, specific videos out to the field on EEO, on inclusion, and diversity as well.

Mrs. WATSON COLEMAN. Thank you. Director Jarvis, the information that I have is that the EEOC function or functionary still reports three levels below you. So when did you actually—did you change that reporting level and when?

Mr. JARVIS. I moved it up. No, it does move—it has been moved up. But I agree with you, and this is an issue that I've discussed with our HR, that I believe that in order to really meet the standards expected of us in EEOC, and particularly in light of these new issues that have come out, that clearly there is the potential for sexual harassment to occur in other pockets in the National Park Service. I think EEOC—or the EEO office needs to report directly to me, and to meet the standards which are regular reporting to me and to the leadership, having advocates that represent the diversity of the Nation, and a regular understanding at the senior leadership about these issues. So I think there's change afoot.

Mrs. WATSON COLEMAN. All right. May I just bring something?

Chairman CHAFFETZ. Sure, go ahead.

Mrs. WATSON COLEMAN. The report that was submitted for 2015 indicates that the—each region has an EEO manager that reports to a regional director and that the EEO director is under the third-level reporting structure. So I think that maybe there's a lack of communication within your organization as to who reports where, which is sort of a red flag that we have some serious problems with accountability and responsibility there.

Thank you, Mr. Chairman. I yield back.

Chairman CHAFFETZ. I thank the gentlewoman.

I will now recognize the gentleman from Texas, Mr. Hurd, for 5 minutes.

Mr. HURD. Thank you, Mr. Chairman.

The national parks are awesome. I have the pleasure of representing seven. I get to represent Big Bend National Park, which is headed by an amazing superintendent and she really is a treasure for the Federal Government. You all have a hard task to make sure that these jewels of our Nation are around for future generations and that future generations continue to interact with them in the ways that past generations have.

It's been a real pleasure, over the last 17 months that I've been in Congress, when I crisscross the district and talk, you know, throughout the country about encouraging Americans to find their park or his or her park. This is an important resource for our country. It's unfortunate that we're here today talking about sexual harassment, poor culture of management. And my question, my first question to you, Director Jarvis, is—and it's to piggyback on what my friend and colleague from New Jersey has been talking about. What steps are being taken to ensure there's zero tolerance for sexual harassment within the National Park Service?

Mr. JARVIS. Well, clearly, zero tolerance was not the standard at the Grand Canyon or at Cape Canaveral—Canaveral National Seashore, and that's just unacceptable. We at the senior leadership, a discussion that I led in May, and this is the regional directors, the associate directors, and the senior superintendents of the organization, had a very open and emotional discussion about zero tolerance and why this agency has tolerated it.

Mr. HURD. So what are you doing? What are you doing right now? What steps, what concrete steps have been taken to ensure this culture changes?

Mr. JARVIS. So the first thing that we feel, as recommended by the Department of Defense, is a prevalent survey. And that is to get baseline understanding of whether or not or how much harassment is occurring in the workplace in the Service. So getting that survey done. We've committed to doing that by a third party as soon as possible. I can't give you a specific date because we have to go through a contracting process to get there. But that's the first step to—we have reinforced a message to the field on zero tolerance and I think we're making very public the actions we're taking at the Grand Canyon, in particular about disciplinary actions and expectations of behavior to meet the zero tolerance policy.

Mr. HURD. So, Director Jarvis, in your opinion—I know you're getting ready to do a survey—in your opinion, what allowed this kind of culture to seep in in these two parks that we've been talking about today?

Mr. JARVIS. I think one was the conditions of the particular activity create an environment that vulnerable individuals can be preyed upon, so this is an area that the Department of Defense has made some—within Defense, they have sort of a special unit. In the Park Service, we have what we would call special units: River Districts, fire crews, trail crews. These are places where individuals are thrown together in a tough environment and the potential is there.

So this is an area we're focusing on particularly right now. And we've made management aware across the system that these are areas that you need special attention. We have to create an ombudsman, an individual that—individuals that are subject to this harassment can call safely. I mean, if it's your supervisor that is harassing you, that's a bad reporting chain if you have to report this to the person that's actually harassing you.

So we've created the opportunity for, outside of that, to be able to report this issue so that we can get to—and if we find it, we're reporting it to the IG and saying, we need to go in and investigate.

Mr. HURD. Well, you mentioned the fire crews. I also represent Guadalupe Mountains National Park. I know that's a place where you served with over, at one point, over 14,000 acres on fire. And what those fire crews are doing is heroic work.

And, Ms. Kendall, my last 30 seconds to you, what types of steps should be taken by the National Park Service to address the poor culture of management and the lack of accountability and leadership?

Ms. KENDALL. Well, I think holding individuals accountable for misconduct. Mr. Jarvis is correct in that you cannot always make public how discipline is imposed, but doing that, doing it regularly—I mentioned progressive discipline, documentation. It's something that can be done and if it's done properly, it's very effective.

Mr. HURD. I yield back, Mr. Chairman.

Chairman CHAFFETZ. I thank the gentleman.

I will now go to the gentlewoman from Michigan, Mrs. Lawrence, for 5 minutes.

Mrs. LAWRENCE. Thank you, Mr. Chairman, and Ranking Member Cummings. The deputy—this question is to you, Director Jarvis. The Deputy Secretary of the Interior reviewed the IG's finding and issued a memo concluding, and I quote, "The Department has reviewed the report of investigation carefully and come to the conclusion that Director Jarvis did violate Federal employee ethics standards."

Do you agree with that statement?

Mr. JARVIS. Yes, ma'am, I do.

Mrs. LAWRENCE. When asked by the inspector general, "if," looking back, you, "would have done—would you have done anything differently?" You replied, "Would I have done the same thing? Probably. I think I knew going in that there was a certain amount of risk."

Why would you say that? That makes it look like you didn't care about the ethic rules.

Mr. JARVIS. Well, let me apologize for that. I was absolutely wrong in that statement.

Mrs. LAWRENCE. On May 27, you sent an email to all Park Service employees that said, and I quote, "I failed to initially understand and accept my mistake. That was wrong."

What part of the mistake did you initially fail to understand, and what happened between your interview with the IG when you said you would probably do the same thing again and then on May 27 in your email that you stated that you were caused to accept that you had made a mistake. Can you walk me through that? What changed?

Mr. JARVIS. Well, one of the requirements under my disciplinary action is that I receive ethics training. And I have been spending that time with the departmental ethics office. And I have to say that I've developed a much deeper understanding and respect for and appreciation for the work of the office of the department of ethics. And I think that has resulted in me reconsidering and rethinking my position on this and saying that I was completely wrong and in doing so, violated the ethics standards for the Department of Interior, and I apologize for that.

Mrs. LAWRENCE. Sir, how long have you been the director?

Mr. JARVIS. Since 2009.

Mrs. LAWRENCE. And are you saying on the record today that from 2009 until your ethics training, you were unaware of the requirements, the ethical requirements of your job?

Mr. JARVIS. No, ma'am. I served as the National Park Service ethics officer and I was well aware, but not at the level of detail that I have now.

Mrs. LAWRENCE. That's a very hard pill to swallow. If you're training others and you're not aware of what your ethical responsibilities were, how could you train others and be responsible for it and not be personally aware?

Mr. JARVIS. So in the execution of the book, I thought I was following all of the ethical standards that are required of me. I was using a source that the Park Service normally uses. I was not personally benefiting. I was doing it on my own time. All of those were the ethics requirements. What I did not do was seek the advice of

the ethics office, which would have clarified my mistakes right up front. And that was the ethics issue.

And I think that that—the discipline that I have received is appropriate to the action. And I think I've been open about my mistakes to everyone that has been involved.

Mrs. LAWRENCE. We all are human and make mistakes, but we are also hired to do a job that requires us, especially in leadership positions, to set an example. I'm disappointed that your understanding, especially based on your previous requirements in this Federal agency, did not allow you the depth of understanding and your failure to meet the ethical requirements.

I yield back my time.

Chairman CHAFFETZ. Before the gentlewoman yields back, would she yield to me for a second?

Mrs. LAWRENCE. Yes, sir.

Chairman CHAFFETZ. Director Jarvis, the problem I have with the answer that you think you were dealing with the highest of ethics in this particular—with the book deal, is the documentation shows the opposite. You sent a letter or an email to the person that would be the publisher. There's a followup email asking for the conversation because, essentially, you knew that you had to have them ask you to do it as opposed to what really happened was you told them that you wanted to publish the book. And you compounded the problem ethically by writing a handwritten note to the secretary assuring her that it was of the highest ethical standards by saying it was reviewed by ethics and that they had asked you to do it, which was a lie.

This wasn't an innocent mistake. It was a pattern. It was deceptive, and I think you knew that you were creating an ethical problem. And as you said, I think candidly to the IG, I'm willing to take that risk. I many, many, many times have had these types of problems. I believe you when you write that. But the pattern, the documentation that Ms. Lawrence is talking about is clear. You asked them to do this. They sell millions of dollars worth of stuff through the parks. They need you. You had a telephone conversation and then they sent you a letter saying, oh, yes, this is what we need from you. That's a pattern and it's unethical.

I yield back.

I now recognize the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. I thank the chair. Well, forgive me if I have a dissenting voice here. I'm not quite sure what the tempest is in the teapot with respect to the book.

Ms. Kendall, so Director Jarvis wanted to surreptitiously publish a book and benefit from it. Is that correct?

Ms. KENDALL. That's my understanding, yes, sir.

Mr. CONNOLLY. Surreptitiously benefit?

Ms. KENDALL. Oh, I'm sorry.

Mr. CONNOLLY. Please speak up. We can't hear you.

Ms. KENDALL. I'm sorry. What was your question?

Mr. CONNOLLY. My question was, your finding is Director Jarvis deliberately and surreptitiously engineered the publication of a book that he surreptitiously wrote in order to benefit surreptitiously personally.

Ms. KENDALL. I don't believe that we concluded that he would benefit personally.

Mr. CONNOLLY. No, you didn't. He benefited not at all.

Ms. KENDALL. That's correct.

Mr. CONNOLLY. His motivation was to help the Park Service on its centennial. Is that correct?

Ms. KENDALL. I believe so.

Mr. CONNOLLY. Well, what a crime. What a terrible thing for the head of the Park Service to want to promote the Park Service on its 100th anniversary. And ethically, we are going to what? Burn him at the stake and destroy his reputation? Because, all right, some rules were put aside. They were put aside, if I understand it correctly, because there was a deadline we were approaching and he had some legitimate concern about that deadline, that if we didn't kind of expedite it, it wasn't going to happen, because no one else was doing it. Fair enough?

Ms. KENDALL. It was a self-imposed deadline, if it was a deadline.

Mr. CONNOLLY. Well, the centennial is not a self-imposed deadline. What's a centennial?

Ms. KENDALL. You're right.

Mr. CONNOLLY. Right. That's what was on his mind. He wasn't going to benefit from this. The proceeds, he dedicated to the Park Foundation. You know, I must say to my colleagues, it's—we might walk a little humbly in the face of the Lord when we're a body that's been accused individually of sexual harassment. We've had charges brought against members, including of this committee. We've had people involved in book deals. Brought down two Speakers. Doesn't make it right. Of course, everyone should follow the strict letter of the law.

But I will say, my own experience in this body dealing with an Ethics Committee is rules can be very arbitrary. And there are two approaches to life. One is a commonsense kind of work-it-through approach, and the other is a very juridical, law-driven, rule-driven approach to life and religion and politics. The latter may be a comfortable fit for some, but it's not really a practical approach to life.

Sexual harassment's a different matter. But I have to say with respect to the book thing, shame on everybody for making it such a big issue. I don't think it is.

And, Director Jarvis, I'm sorry you have to even put up with that, frankly. Maybe you made some mistakes, maybe you cut some corners, but the motivation, to me, was to try to help the Park Service. And I don't share my colleagues' outrage or faux outrage about it.

Now, sexual harassment's a different matter. And I've got to ask you, Director Jarvis, when did you become aware of the fact there was a problem with sexual harassment at Canaveral and at Grand Canyon?

Mr. JARVIS. So in the Canyon case, I became aware upon the letter that was sent to the Secretary of the Interior that initiated the——

Mr. CONNOLLY. You were unaware of any problem prior to that?

Mr. JARVIS. Absolutely unaware.

Mr. CONNOLLY. And when was that? Give me just a date. Quickly.

Mr. JARVIS. I forget the exact. It was 2014.

Mr. CONNOLLY. Okay, 2014. Was that before or after Superintendent David Uberuaga was appointed the superintendent of the Grand Canyon?

Mr. JARVIS. It was after. He'd been there for about 4 years.

Mr. CONNOLLY. All right. So that was the sequence. You confirmed that, Ms. Kendall?

Ms. KENDALL. Yes, sir.

Mr. CONNOLLY. And, Ms. Kendall, when it was brought to Director Jarvis' attention there was a problem, did he take action? Did he ignore it? Did he punish whistleblowers? Did he punish alleged victims?

Ms. KENDALL. We received a request directly from the secretary in response to those letters and we undertook the investigation at the secretary's request.

Mr. CONNOLLY. But was there any—I'm asking a different question. Was there any evidence that Director Jarvis covered up, was complicit, turned a blind eye, ignored these allegations?

Ms. KENDALL. No, sir.

Mr. CONNOLLY. None. I thank you. My time is up.

Chairman CHAFFETZ. We'll go to the second round. I'm now going to recognize myself for 5 minutes.

Director Jarvis, you write in your testimony and you've said that you have zero tolerance for sexual harassment. What does that mean, "zero tolerance"?

Mr. JARVIS. It means that when sexual harassment is identified within the organization at any level, that there is an immediate response not only to the perpetrators, but also to the victims of it; that we—that zero means zero.

Chairman CHAFFETZ. Does it mean you recommend that people be fired?

Mr. JARVIS. Again, Chairman, these are Federal employees, and jumping to firing is not an option that I have under the current laws of civil service.

Chairman CHAFFETZ. You can make the recommendation. You can push for it. You can—can you not?

Mr. JARVIS. I'm subject to those same laws just like any other manager. I can't say "fire that employee," because that violates the whole Title 5 rights. There's a process we have to go through.

Chairman CHAFFETZ. I understand they need to go through a process, but your recommendation does have some weight, does it not?

Mr. JARVIS. It definitely has weight in terms of that we have zero tolerance and that disciplinary action——

Chairman CHAFFETZ. So what does that mean, zero tolerance? It doesn't sound like it means anything. We're not going to tolerate that. Just don't keep doing it.

So when you have an allegation of multiple sexual harassment issues happening, I want to know what you're doing about it.

Mr. JARVIS. We are aggressively pursuing appropriate disciplinary action.

Chairman CHAFFETZ. I want to know what you think appropriate disciplinary action is for sexual harassment.

Mr. JARVIS. I think removal is one of those very much possible options, and it is definitely on the plate.

Chairman CHAFFETZ. So when did you make those recommendations, either in the case of the Grand Canyon or in the Canaveral situation? Did you make any of those recommendations?

Mr. JARVIS. I have not made those recommendations as yet. I have not been——

Chairman CHAFFETZ. How many women does it take? I mean, we've got dozens. So at what point do you make a recommendation that somebody be fired? How many times does somebody have to be sexually harassed for it to get on your radar screen to say, you know, enough is enough. Now we're going to recommend firing?

Mr. JARVIS. When the line supervisor for these employees brings to me the details of their proposed disciplinary action, I will at that time make my recommendation on what should be done.

Chairman CHAFFETZ. In none of the cases regarding sexual harassment in these two scenarios did you ever recommend somebody be fired?

Mr. JARVIS. The process for their discipline is incomplete at this point, so I have not made a recommendation that anyone be fired.

Chairman CHAFFETZ. And that's the heart of the problem. That's the heart of the problem.

Let me go back to this. I want to read this. This is from the testimony from Ms. Kendall, okay, the inspector general. We're talking about the Canaveral National Seashore.

"The chief ranger was disciplined for the procurement violation, but of particular concern was that in 2015, the chief ranger publicly disputed the media story about a former Canaveral Park employee who had provided information to the OIG about allegations of improper hiring and procurement irregularities. We had substantiated those allegations and we reported our findings to Director Jarvis in 2012, but he is yet to respond to our office. To date, National Park Service has also taken no action to address the chief ranger's unbecoming conduct."

Chairman CHAFFETZ. Is that true or false?

Mr. JARVIS. You're asking me?

Chairman CHAFFETZ. Yeah, to you. You're the director, yes.

Mr. JARVIS. Sorry. I thought you were asking——

Chairman CHAFFETZ. No. She wrote. I mean, I'm reading what she wrote, is that they provided you the findings in 2012 and has yet to respond to her office.

Mr. JARVIS. These local park issues are referred to the regional director.

Chairman CHAFFETZ. So when you get an OIG report and you're referring it down to the person who created the problem, the chief ranger and the superintendent, right?

Mr. JARVIS. No. To the regional director, not to the park superintendent.

Chairman CHAFFETZ. Okay. So you give it to the regional director, kind of wash your hands of it, but there's no response. Doesn't that get on your radar? Isn't that something you're worried about that?

Mr. JARVIS. I'm worried about that. I don't know why there was no response.

Chairman CHAFFETZ. But they got no response.

Did you get a response, Ms. Kendall?

Ms. KENDALL. To my knowledge, no.

Chairman CHAFFETZ. So you don't even respond to it.

Let me go on. Last week, again, we, being Ms. Kendall, issued a report to the National Park Service on a pattern and practice of sexual harassment by the same chief ranger who continues to serve in that position despite three substantiated allegations against him in less than 2 years.

She says: The National Park Service has not had time to respond to this most recent report, but with three other reports in 4 years, this is a profound example of leadership problem that the National Park Service has failed to address at multiple levels.

What would you disagree with in her assessment there?

Mr. JARVIS. We have taken action on the individual at Cape Canaveral. His commission has been removed and he's been removed from the position of chief ranger.

Chairman CHAFFETZ. When did that happen?

Mr. JARVIS. I do not know the exact date.

Chairman CHAFFETZ. I mean, has it been in the last couple of weeks?

Mr. JARVIS. No. I don't know, honestly. I can get back to you, but I do not have that——

Chairman CHAFFETZ. We're having a hearing about this. I mean, it's in her written testimony. You don't know the disposition of this person?

Mr. JARVIS. I know that his commission's been removed. That's all I know.

Chairman CHAFFETZ. When his commission's removed, does he still work there?

Mr. JARVIS. He is still employed.

Chairman CHAFFETZ. Where?

Mr. JARVIS. At Canaveral.

Chairman CHAFFETZ. So there's—how many sexual harassments does it take to fire a Federal worker or even at—get to your point where you can recommend somebody being fired?

This is a group of 50 people. There's three substantiated allegations and he still works there. The guy should be arrested. He should probably be in jail. He should at least be fired and you should at least try to fire him, but you don't do any of that.

What does that say to the women there? How would you look them in the eye? Hey, I got two daughters about to enter the workforce. I got a daughter and a daughter-in-law entering the workforce, and I don't want them to go and deal with the scum that is in your department and your agency, because that sexual harassment as a percentage of the workforce is so detrimental. And I put it on your shoulders to hold those people accountable and at least try, at least go down fighting. At least let them know, you know what, I've got your back. Because sexual harassment, it ain't going to stand in my department and my agency. But I don't see any of it. Like, I don't know. I have no idea. And you've had dozens of situations and you've made no recommendations to try to do that. So

don't complain that the system is failing you. You're failing the system. Your leadership is lacking.

My time's expired.

I recognize the gentleman from Maryland, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

You know, I want to just go back for a moment to my friend, Mr. Connolly's comments. And I want—I don't want you to misunderstand—and I was hoping that he would stay around for minute. I know he has another hearing.

The problem is not so much the book. You know, my pastor has a saying. He says: It's not what you do, it's what you do says about you. And it seems to me that you really had an utter disregard for the ethics rules. It's not so—you know, I can understand you're trying to get the book out, but when you talk about, you know, you don't mind taking the risk, and that's how you—I mean, I think you kind of laid it out very nicely. This is how you operate. You say you take a risk, you—and you'd do it again.

And what—and I know you've come in and apologized this morning, and you apologized to your employees over and over again. But what do you think that says to employees? And there probably is a link when they see the top person in the agency, the very person who is supposed to be making sure they do the right things, and when they see you not doing the right thing, I mean, that has to affect morale. Would you agree?

Mr. JARVIS. Well, let's—I think my employees know who I am and have emailed me hundreds of emails of support, because they look at me as a human being that makes mistakes, that I have owned up to my mistake. I've openly apologized and admitted that I was wrong. And I'm being disciplined openly, no hiding of that discipline to anyone, and that is being applied appropriately. So I think that it may affect some people from a morale standpoint, but I think that this is—I'm doing what I need to do as the director of the National Park Service to own up to my mistakes and apologize for them.

Mr. CUMMINGS. You know, in my other life before I became a congressman, one of the things that I did was I counseled and I worked with lawyers in disciplinary—when they had disciplinary problems. And we had lawyers who had stellar careers, stellar, and did one thing and got disbarred, never to practice law forever.

So when you talk about employees knowing you and what a great guy you are, you know, but when you say things like, I think I knew going into this there was a certain amount of risk, I've never been afraid of the risk. I've gotten my ass in trouble many, many, many—you got three manys—times in the Park Service by necessarily—by necessarily getting—by not—listen to what you said, by not necessarily getting permission.

I mean, it's like—it's—and I'm trying—I'm really, really, really bending over backwards trying to, you know, give you the benefit of the doubt. But when somebody says, it's, basically, screw you. This is how I—this is how I operate. And then it makes me wonder, these people doing the sexual harassing—you said something else that really got the guy next to me, you said: It's not that the women are afraid. Their concern is that something will not be done about the harassment. Is that what you said?

Mr. JARVIS. That's part of it, yes. I do believe——

Mr. CUMMINGS. Well, if a young lady is sitting there watching this right now, and she's thinking about coming into the Park Service, and she knows that what—this pattern, she knows that the top guy takes an attitude of, it's rules, what the hell, and doesn't see much happening, and she sees that happening over and over and over and over again, I mean, what does that say to them? I mean, if it was your daughter, I'm just curious, would you feel comfortable sending her to the Park Service?

Mr. JARVIS. I think that—I do have a daughter who works on public health for women in Africa, and she is a very strong individual and probably watching this as we speak. And I think she would say that she would work for the Park Service because we are aggressively addressing this issue. This issue has come out, and it's incredibly disturbing to me that we have tolerated sexual harassment within our—within our organization.

But I'll tell you this, the senior leadership, the senior women of our organization, are committed to rooting this out. It's not going to be easy and it's not going to be overnight. And, frankly, as we take this on aggressively, you're going to see more, more are going to come out. That's exactly what the Department of Defense told us, is that you're going to—as we aggressively pursue it, and women that have been harassed who have not been willing to speak out in the past will suddenly speak out and probably we'll be back in here saying, how come you've got now six cases or eight cases of harassment in the organization, and that's because we are aggressively pursuing it and individuals are finally feeling empowered and protected and willing to speak.

And that's a commitment that I'm making and the senior part of my organization is also making, backing me up on this, that we are going to root this out of the National Park Service.

Mr. CUMMINGS. Ms. Kendall—and this is my last question—he just said that we're going to probably hear more cases because women are going to feel more empowered. Can you tell us, to your knowledge, whether you have confidence, based on what you know, that that would likely be the case?

Ms. KENDALL. I don't really have any basis to say yes or no, sir.

Mr. CUMMINGS. And your recommendations are what right now?

Ms. KENDALL. We did not make specific recommendations. We usually don't with our reports of investigation, except for two things that we did provide to the secretary and to Mr. Jarvis. One was to be careful about backgrounds of people that they hire, because they did hire back—or allowed back one of the perpetrators as a volunteer. The other was to handle internal sexual harassment investigations properly, which was part of the problem in the Grand Canyon cases. The initial investigation that they conducted internally did not—it did not proceed properly, and it was also handled improperly because it was allowed to be distributed to more individuals than needed to know about it.

Mr. CUMMINGS. Mr. Jarvis, you know, assuming you stay in the position, what can we do to hold your feet to the fire? What would you suggest? Because we've got a problem here. We've got—we have women who want to be treated properly. I don't want the norm to be you come in and you get harassed. That shouldn't be

the norm. It seems like we're moving towards that, if we're not already there, from what you've described to me. You said there are more cases probably coming up.

Well, how would you hold your feet to the fire? Because I think, you know, we have a duty too to our constituents to protect them. And, I mean, you're a nice guy but, you know, if people are coming into the workplace feeling threatened, I don't see how they can do their job properly if they're sitting there feeling afraid that somebody's going to say something improper to them or force them into a position that they don't want to be in.

Mr. JARVIS. Sir——

Mr. CUMMINGS. So how do we hold your feet to the fire?

Mr. JARVIS. Sir, I think that you hold my feet to the fire by requiring me to come back up here and meet with any individuals or group of individuals from this committee or any of the other committees that have jurisdiction and report to you specific actions that we are taking, both a timeline, individual actions and response through the rest of this year and the coming years.

I mean, we have been getting, I think, excellent advice from the Department of Defense and the National Oceanic and Atmospheric Administration——

Mr. CUMMINGS. Have you been taking it?

Mr. JARVIS. Yes, absolutely we have been taking it. We are actively engaged with them on this process. And I think you need to hold me accountable. You need to hold the agency accountable that—and we owe it to the women and the men of the organization that we create an inclusive workforce, a respectful and supportive and safe workplace for all of our employees. And we are absolutely committed to that and you should hold me accountable.

Mr. CUMMINGS. Do you have a plan? You have a plan, right?

Mr. JARVIS. Yes, we do have a plan.

Mr. CUMMINGS. Thank you.

Chairman CHAFFETZ. Mr. Jarvis, Director, the IG, dealing with the chief ranger at Canaveral, sent you a report in 2012. I guess I just fundamentally don't understand why you can just dismiss that, send that off to your regional person to deal with. There's a reason why we have the inspectors general give them directly to either directors or cabinet secretaries so it could be on their radar screen, so they can take care of it.

Let me read to you another thing that Ms. Kendall wrote in her testimony: Finally—this is, again, talking about Canaveral—the same superintendent, not the chief ranger but this time the superintendent, has been at Canaveral since 2010 and was named a subject in our 2012 report to Director Jarvis.

Are you familiar with that report?

Mr. JARVIS. Yes, I am.

Chairman CHAFFETZ. Did you read it when you got it in 2012?

Mr. JARVIS. I don't remember.

Chairman CHAFFETZ. Your employee that reported the allegations of misconduct, in her 2012 report, made additional allegations of reprisal that were founded by the Merit Systems Protection Board and resulted in a settlement with the National Park Service. The Merit Systems Protection Board noted that the superintendent was aware of the employee's allegations of procurement and mis-

conduct, did nothing to address the issue and then failed to process an administrative request made by the whistleblower as a reprisal against her for contacting the inspector general.

Additionally, based on our report, the Merit Systems Protection Board noted that the superintendent showed, quote, "a lack of candor," when responding to investigators and the highlighted action she took to obstruct the investigation. Yet we have no indication that National Park Service has taken any disciplinary action against her.

Did you take any disciplinary action against her?

Mr. JARVIS. I don't know.

Chairman CHAFFETZ. How do you not know that? You know, Mr. Cummings is asking if you get it, if you're responding, if you're paying attention, if you're learning, if you're—you've got an outside inspector general who comes in and says, there's a problem here. There's a reprisal. And I tell you what, whistleblowers who step up and do the difficult thing of saying, hey, there's a problem here, we'll go to the mat for those people. And you know what, that happened in this case. And she's telling you that they had a lack of candor. They weren't candid about this, so much so that it cost the American taxpayers—I don't know how much we had to pay this person to get them right and whole, but that person still works there. Correct?

Mr. JARVIS. Yes, sir.

Chairman CHAFFETZ. And you didn't do anything about it. So why do we believe that you will actually do something in the future? We have multiple reports going to you. Years—those are years old. You purposefully, intentionally mislead the secretary. You've got IG reports that you don't respond to. You have more than a dozen—2 dozen sexual harassment cases. You say there's zero tolerance, but not one time did you recommend that somebody actually be fired. And guess what, nobody was fired.

If you are going to—you've done a lot of good things in your service, I'm sure. But if you want a new direction, if you want there to be the type of Park Service that you claim that you want, it's going to require new leadership, and it isn't going to happen with you. You've had more than 7 years to get this right, and it's getting worse, not better.

Only later do we actually see all these things percolate up to the top. But I've got to tell you, if we're going to do right by Federal employees, we're gonna have to have a different change, and we're gonna have to have a change. You say in your written testimony, the thing you gave us last night, you've got zero tolerance, and then you just told Mr. Cummings a few minutes ago, it's unbelievable to me that we've tolerated this for so long. It does no tolerance. Recommend these people be fired. Talk to the prosecutors so that there can be action. That's the kind of government that I want to see. That's what I think the employees of the Park Service, of which I've got two parks in my district, that's what they want to see. Because you know what, management is treated a whole lot different than that rank-and-file person, and that cannot stand. I think it's been deception. I don't think it's been a mistake.

I yield back, and I recognize the ranking member, Mr. Cummings.

Mr. CUMMINGS. Just one last thing.

There were some ladies that were dancing, and they got 14 days suspension. Is that right?

Mr. JARVIS. That's correct.

Mr. CUMMINGS. Can you tell us about that a little bit?

Mr. JARVIS. So the situation at the Grand Canyon, once the information about harassment on the River District was made aware to the management at the park level, this would be Superintendent Uberuaga and his deputy, they instituted some specific policies about behavior. They eliminated alcohol use on the river trips and they met with the river rangers and the staff as they went down the—before they went down the river and said, this kind of suggestive behavior, harassment, will not be tolerated. And then there was an incident on the river that involved a number of individuals, including the two women.

So that's when the management at the park imposed a disciplinary action on the women. And, frankly, I think this was an enormous mistake. It was wrong.

Mr. CUMMINGS. And why do you say that?

Mr. JARVIS. Well, zero tolerance is zero tolerance. It's not to be reinterpreted by the park superintendent in a way of setting new standards for behavior. It's—he did not take action on, when he was made aware, that this was going on in the park. He instituted a new set of policies to try to prevent it and it didn't prevent, and then he took action on the two women. They have filed EEO complaints with the National Park Service, which are being adjudicated——

Mr. CUMMINGS. You know, as I listen to you, you know, it comes back to some of the things the chairman has been saying. You know, I'm sitting here and I'm listening to you, and you told untrue statements to those above you and those looking into this, but yet, still, you're sitting there and you're talking all of this strong talk. But when it comes to you, it's a whole different thing. Why is that? Why should that be?

Mr. JARVIS. I think I have been appropriately disciplined myself, and I have apologized for that.

Mr. CUMMINGS. Say that again.

Mr. JARVIS. I said that in the—if I understand your question about holding myself accountable—is that the question?

Mr. CUMMINGS. Yeah. Yeah.

Mr. JARVIS. I believe that for the ethics violation that I did in production of the book, I have been held accountable by the Department of the Interior, by my superiors. I have been——

Mr. CUMMINGS. Basically, you got a reprimand and told that you had to have some ethics training.

Mr. JARVIS. That's correct.

Mr. CUMMINGS. And then the interesting thing was that you were an ethics officer, you told us, but you had to go back and get the ethics training.

Mr. JARVIS. That's correct.

Mr. CUMMINGS. Last thing. Let me tell you something, one of the most important—and, Mr. Chairman, I think this is part of the problem. One of the most important things, one of them—you said many, Ms. Kendall, and it goes back to what you asked, Mr. Chair-

man. You said, Ms. Kendall, that the leadership tries to avoid, avoid, taking disciplinary actions altogether. That's—I'm paraphrasing what you said. So are you capable of doing what the chairman asked, yeah, of taking appropriate disciplinary actions?

Mr. JARVIS. Yes, I am.

Mr. CUMMINGS. All right. Thank you. I'm finished.

Chairman CHAFFETZ. The committee stands adjourned.

[Whereupon, at 12:26 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

TAKE PRIDE IN AMERICA

SEP 12 2016

SEP 12 2016

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Chaffetz:

Enclosed are responses to follow-up questions from the oversight hearing on June 14, 2016, before the House Committee on Oversight and Government Reform.

Thank you for giving us the opportunity to respond to you on these matters.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Enclosure

Committee on Oversight and Government Reform
2154 Rayburn House Office Building

Tuesday, June 14, 2016
10:00 A.M.

Hearing on:

"Oversight of the National Park Service"

Questions from Chairman Jason Chaffetz for Director Jarvis:

1. **How many Department of the Interior Office of the Inspector General (DOI OIG) reports of investigation, memos, and advisories does the National Park Service (NPS) Director's Office receive? What percentage of these DOI OIG reports referred to the National Park Service does the Director personally read?**

   Response: The Department of the Interior Office of the Inspector General (OIG) does not send all its reports of investigation, memos, and advisories to the NPS director personally. The OIG routes these documents to many other NPS offices, as it deems appropriate. The receiving NPS office is then responsible for tasking the OIG documents to the appropriate officials to review, take action, and implement any recommendations. The director personally reads reports of investigation, memos, and advisories which the OIG sends directly to him.

2. **Director Jarvis, during your oral testimony before the Committee, you testified that the NPS has information showing the impact of the ban on sales of plastic water bottles in national parks.**

   [A] Please provide all data or other information concerning the reduction of waste due to the ban on plastic bottled water sales in national parks. Specifically, please include all data regarding reduced waste, disposal costs, and recycling.

   Response: The NPS has implemented a voluntary plastic water bottle reduction program in 23 parks using a rigorous process to determine the appropriateness of this policy. The NPS makes available unlimited drinking water at these locations as a condition of the policy and visitors can bring any plastic water bottles to the park. We encourage refilling these containers.

   Due to the complexity of the NPS solid waste stream, the bureau cannot easily measure the reduction in the waste stream associated with the disposable plastic water bottle sales eliminations. However, there are other environmental benefits that can be achieved via this policy. These benefits include introducing visitors to environmentally responsible purchasing, eliminating greenhouse gas pollution at all phases of disposable plastic water

bottle production and transport, and free access to drinking water for our visitors (requiring only a refillable container).

Going forward, the NPS will evaluate the effectiveness of the policy by calculating how many water bottle sales were eliminated (a process that requires obtaining available historic data from park concessioners), seeking to quantify the usage of filling stations, and by collecting visitor feedback regarding implementation of the policy.

One key to evaluating the effectiveness of this policy is to better quantify the impact of filling stations. For instance, in 2014, one NPS unit installed a filling station with a digital use counter which has since recorded over 49,000 uses. The NPS estimates that each recorded use prevented one water bottle from entering the waste stream. In the coming months, the NPS plans to determine how many filling stations in participating parks are metered to enable us to gather statistics for reporting and analysis. For those water bottle filling stations that are unmetered, the NPS plans to evaluate the efficacy of installing meters.

Below is a summary table that displays the parks' estimated benefits associated with sales elimination policies. Unless otherwise noted, the figures identified represent the estimates made by parks in their sales elimination applications to their regional director. Additionally, unless individually noted, these estimates were pre-implementation figures generated by park-defined processes. Therefore, the NPS does not wish to convey that these figures accurately account for all effects associated with implementing the sales eliminations.

No.	Park Name	Type of Concessions	Reported Reductions in Trash or Recycling Amounts: *reported amounts based upon historic sales eliminations *estimates are from analysis submitted prior to implementation of policy
1	Antietam National Battlefield	No concession food service, Cooperating Association allowed to sell bottled water.	Estimate submitted in Analysis: The park anticipates a reduction in the amount of plastic bottles in the trash of 5-10% of current levels initially, increasing in the future as alternatives are promoted by the park and adopted by park visitors.
2	Arches National Park	No concession food service. Cooperating Association allowed to sell bottled water in vending machines.	Estimate submitted prior to implementation of policy: Analysis prediction of 15% volume reduction of trash and 25% volume reduction of recycling.
3	Biscayne National Park	Concessioner retail sales aboard boat tours, no current contract; Cooperating Association	Estimate submitted prior to implementation of policy: analysis estimates some reduction in waste and recycling plastic bottle quantities.
4	Bryce Canyon National Park	Concessioner lodging, food service and gift store; Cooperating Association	Reported amounts based on historic sales eliminations: Several hundred pounds of empty water bottles waste eliminated from sales at General Store and Lodge Gift Shop (concessioner) and Visitor center (natural history assoc.).
5	Canyonlands National Park	No concession food service. Cooperating Association allowed to sell bottled water in vending machines.	Estimate submitted prior to implementation of policy: Analysis prediction of 15% volume reduction of trash and 25% volume reduction of recycling.
6	Cape Hatteras National Seashore	2 concessioner contracts, 1 not active; Cooperating Association	Reported amounts based on historic sales eliminations: based on concessioner sales records, estimate a reduction of 10,400 plastic bottles per year.
7	Colorado National Monument	No concession food service. Cooperating Association allowed to sell bottled water.	Estimate submitted prior to implementation of policy: Analysis prediction of 10% volume reduction of recycled quantities.
8	Fort Laramie National Historic Site	No concession food service. Cooperating Association allowed to sell bottled water.	Estimate submitted prior to implementation of policy: Analysis prediction of significant reduction in volume of trash and 30% volume reduction of recycled quantities and trips to distant recycling centers.
9	Fort Raleigh National Historic Site	No concession food service, Cooperating Association, never sold bottled water	Estimate submitted prior to implementation of policy: analysis estimates some reduction in waste and recycling plastic bottle quantities.
10	Fort Sumter National Monument	1 concessioner contract; Cooperating Association	Reported amounts based on historic sales eliminations: based on concessioner sales records, estimate a reduction of 4,600 plastic bottles per year.
11	Grand Canyon National Park	3 concessioner contracts, Multiple concessioner lodging, food service and gift store; Cooperating Association	Estimate submitted prior to implementation of policy: Analysis estimated disposable plastic water bottles comprising 20% of the park's overall waste stream and 30% of the park's recyclables.
12	Mammoth Cave National Park	1 concessioner contract; Cooperating Association	Reported amounts based on historic sales eliminations: based on concessioner sales records, estimate a reduction of 2,904 plastic bottles per year. Plastic water bottles estimated to account for 5.7% of total recycled materials by weight.
13	Mount Rainier National Park	Concessioner with food service	This is a new park to implement the Policy, request for approval submitted to Regional Director 6.16.2016 Estimate submitted in Analysis: based on concessioner sales records, In 2015, bottled water sales amounted to 26,232 units.
14	Mount Rushmore National Park	Concessioner food service and gift store; Cooperating Association	Estimate submitted in Analysis: estimated a reduction of 30,000 plastic water bottles from waste stream per year.

No.	Park Name	Type of Concessions	Reported Reductions in Trash or Recycling Amounts: *reported amounts based upon historic sales eliminations *estimates are from analysis submitted prior to implementation of policy
15	Pecos National Historical Park	No concession food service. Cooperating Association allowed to sell bottled water.	Estimate submitted prior to implementation of policy: Analysis estimated disposable plastic water bottles comprising 25% of the park's overall waste stream and significant reduction potential.
16	Petrified Forest National Park	Concessioner food service and gift store; Cooperating Association	Reported amounts based on historic sales eliminations: a reduction of 9,000 plastic water bottles from waste stream per year.
17	San Antonio Missions National Historical Park	No concession food service. Cooperating Association allowed to sell bottled water.	Estimate submitted prior to implementation of policy: Analysis prediction of 10% volume reduction of trash and 25% volume reduction of recycling.
18	Saguaro National Park	No concession food service. No Cooperating Association allowed to sell bottled water. No CUA. Only non-profit informal agreement with Pepsi Co. to operate 4 vending machines at 40/60 split of revenues.	Estimate submitted prior to implementation of policy: Analysis prediction of 15% volume reduction of trash and 40% volume reduction of recycling.
19	Salinas Pueblo Missions National Monument	No concession food service. Cooperating Association allowed to sell bottled water. No CUA. Only employee association operates 3 vending machines.	Estimate submitted prior to implementation of policy: Analysis prediction of 10% volume reduction of trash and 15% volume reduction of recycling.
20	Timpanogos Cave National Monument	Concessioner food service and gift store; Cooperating Association	Estimate submitted prior to implementation of policy: Analysis noted that trash and recycling containers have a high percentage of disposable water bottles and anticipate significant reduction in quantity and cost of management.
21	Wind Cave National Monument	No concession food service. No Cooperating Association allowed to sell bottled water. A CUA leaseholder is allowed to operate 1 vending machine dispensing snacks, sandwiches and beverages.	Estimate submitted in Analysis: Analysis estimates a modest reduction in waste and recycling plastic bottle quantities.
22	Wright Brothers National Memorial	No concession food service, Cooperating Association, never sold bottled water	Estimate submitted prior to implementation of policy: analysis estimates some reduction in waste and recycling plastic bottle quantities.
23	Zion National Park	Concessioner lodging, food service and gift store; Cooperating Association	Estimate submitted in Analysis: estimated 14,000 pounds per year reduction in recycled quantities and 11,000 pounds per year reduction in waste quantities, based on a waste composition study and assuming 100% elimination of plastic bottles water bottles from recycling and landfill.
Summary statements		10 parks with concessions contracts, total of 13 individual contracts	* Note that as per the Policy the analysis is required to be submitted to Regional Director for approval prior to implementation, so the analysis document can only include estimates of potential waste reduction. In some cases concessioner historic sales records in # bottled water units sold is provided, which provides partial data indicating amount of waste reduction.

3. **In advance of the National Park Service Centennial celebration, the specialty outdoor retailer, REI, was selected as the official outdoor retailer for the celebration.**

   [A] Please provide to the Committee copies of any contract or memorandum of understanding between REI and NPS, as well as any criteria and reasoning used to evaluate and select REI for such contracts or memorandum.

   Response: The National Park Service and its congressionally-chartered charitable partner, the National Park Foundation, created the "Find Your Park" campaign to celebrate the agency's 100th anniversary and increase public awareness of all national park sites and programs. The campaign is funded by private donations to the National Park Foundation and is not supported by federal appropriations. REI and five other corporate sponsors participate in the campaign at the premier level. The National Park Foundation is responsible for securing private sector support and maintaining all agreements with these partners.

4. **During your testimony you stated that you could not discuss individual discipline in a public forum on advice from the Office of the Solicitor. Please provide to the Committee this specific advice and provide the reasoning for withholding this information from Congress, including any laws, regulation, and rules that prevent you from doing so.**

   Response: The agency is willing to discuss individual employee discipline with the Committee in a private forum, however, the Office of the Solicitor has advised that providing such information in a public forum may raise issues under the Privacy Act. Information about employee disciplinary actions is maintained in Privacy Act systems of records that are covered by the OPM-1 System of Records Notice (SORN), and use of this information is governed by the Privacy Act and the OPM-1 SORN. The Privacy Act provides that no agency shall disclose any record which is covered in a system of records by any means of communication to any person, or to any agency, without the written permission of the person to whom the information pertains. There are twelve exceptions to this general rule protecting Privacy Act-protected information. None of these exceptions authorize the sharing of employee disciplinary actions to agency employees generally or to the general public. It is unclear whether Exception 9, which authorizes the release of Privacy Act-protected information to Congress itself and its committees with oversight jurisdiction, permits disclosure of protected information in an open public hearing. Violations of the Privacy Act may be subject to civil and/or criminal penalties.

5. **The Table of Penalties used at the Department of the Interior (attached) includes three types of offenses. Page 23 of Appendix B of 370 DM 752 lists "General Misconduct" penalties, page 30 lists "Statutorily Mandated Penalties", and page 31 lists "Violations of Statue." What is the difference between the three types of offenses?**

Response: The Departmental Manual Chapter, Discipline and Adverse Actions (370 DM 752) dated December 22, 2006, is attached. This Chapter includes the current Table of Offenses and Penalties in use at the Department of the Interior, and differs from the January 18, 2006 version in two locations: (1) the section titled "Statutorily Mandated Penalties" has been correctly titled "Supervisory Misconduct", and (2) #20 has been clarified to note that more severe discipline may be warranted for a first or second offense. The range of penalties described in the Table is intended to serve as a guide to discipline, not a rigid standard, and the Chapter describes in greater detail appropriate use of the Table.

The Table of Offenses and Penalties is divided into three main sections: General Misconduct, Supervisory Misconduct, and Violations of Statute. The first section, "General Misconduct," applies to all Department of the Interior employees covered by 370 DM 752. The second section, "Supervisory Misconduct," applies to employees in supervisory positions. The third section, "Violations of Statute," identifies misconduct specifically prohibited by sections of the United States Code.

6. **Several penalties are listed twice within the broader Table of Penalties. Sexual misconduct is originally penalized at bullet 9 on page 26. The recommended penalty for first offense ranges from a written reprimand to removal. Sexual misconduct is subsequently penalized again at bullet 5 on page 30. The recommended penalty for first offense ranges from a 5-day suspension to removal. Why is sexual misconduct in the Table of Penalties twice, and why are there two different recommended penalties for a first offense?**

   Response: The Table of Offenses and Penalties lists misconduct of a sexual nature in two locations to address misconduct by non-supervisory employees (#9 on page 24) and by supervisory employees (#5 on page 28). The recommended penalty for supervisory employees for a first offense is higher than that for non-supervisory employees because supervisors are generally held to a higher standard of conduct than their subordinates due to the responsibilities of their positions.

7. **Several penalties are listed twice within the broader Table of Penalties. Discrimination based on race, color, gender, age, religion, national origin, marital status, political affiliation, sexual orientation, or handicapping condition is originally penalized at bullet 10 on page 26. The recommended penalty for first offense ranges from a written reprimand to removal. Discrimination is subsequently penalized again at bullet 1 on page 30. The recommended penalty for first offense ranges from a 5-day suspension to removal. Why is discrimination in the Table of Penalties twice, and why are there two different recommended penalties for a first offense?**

   Response: The Table of Offenses and Penalties lists discriminatory behavior in two locations to address misconduct by non-supervisory employees (#10 on page 24) and by supervisory employees (#1 on page 28). The recommended penalty for supervisory

employees for a first offense is higher than that for non-supervisory employees because supervisors are generally held to a higher standard of conduct than their subordinates due to the responsibilities of their positions.

8. **Several penalties are listed twice within the broader Table of Penalties. Violating the Department's Code of Scientific Conduct (or other professional code of conduct that applies to employees required to maintain a professional license or membership) is originally penalized at bullet 30 on page 29. The recommended penalty for first offense ranges from a written reprimand to 30-day suspension. Violating a Department's Code of Scientific Conduct is subsequently penalized again at bullet 7 on page 30. The recommended penalty for first offense ranges from a 5-day suspension to removal. Why is violation of a code of conduct in the Table of Penalties twice, and why are there two different recommended penalties for a first offense?**

   Response: The Table of Offenses and Penalties lists discriminatory behavior in two locations to address misconduct by non-supervisory employees (#30 on page 28) and by supervisory employees (#7 on page 29). The recommended penalty for supervisory employees for a first offense is higher than that for non-supervisory employees because supervisors are generally held to a higher standard of conduct than their subordinates due to the responsibilities of their positions.

9. **Do the penalties contained within the Table of Penalties (TOP) apply to all employees at the Department of Interior, or are there some employees for which the TOP does not apply?**

   Response: The Departmental Manual Chapter, Discipline and Adverse Actions (370 DM 752) dated December 22, 2006, applies to all bureaus and offices of the Department. Section 1.3 of the Chapter, attached, describes the extent of the coverage of the Chapter, including the Table of Offenses and Penalties.

Department of the Interior
Departmental Manual

Effective Date: 12/22/06
Series: Personnel Management
Part 370: Departmental Personnel Program
Chapter 752: Discipline and Adverse Actions

Originating Office: Office of Human Resources

370 DM 752

1.1 **Purpose.** This chapter establishes the policy, procedures and authority/responsibility for administering employee discipline within the Department of the Interior (Department), and for taking appropriate corrective action for disciplinary or certain non-disciplinary reasons, when it is determined that such actions will promote the efficiency of the service. Requirements stated in this chapter are consistent with law, regulations and other Department policy applicable at the time of its issuance. Actions taken through the application of this chapter must comply with the requirements of pertinent laws, rules and regulations, as well as the lawful provisions of applicable negotiated agreements for employees in exclusive bargaining units.

1.2 **Authority.** Chapter 75 of Title 5, United States Code and Part 752 of Title 5, Code of Federal Regulations.

1.3 **Coverage.**

A. This chapter applies to all bureaus and offices of the Department. Bureaus/offices will not issue supplemental disciplinary policy, except where otherwise prescribed in this chapter. Employees covered by a collective bargaining agreement may be subject to additional procedures which may supersede/supplement those described in this chapter. Bureaus/offices may issue supplemental implementing guidance as needed.

B. The disciplinary/adverse action procedures described in this chapter do not apply to an Administrative Law Judge (ALJ), whose discipline is governed by separate statutory requirements. Additionally, only the adverse action procedures described in 1.7C of this chapter are applicable to Department appointees in the Senior Executive Service (SES), although SES employees (and ALJs) may be counseled/reprimanded for engaging in misconduct. Management must consult with the servicing Human Resources Office for guidance regarding employee/action coverage.

C. Employees

(1) The following employees are covered by the provisions of this chapter:

(a) An employee in the competitive service who has completed a probationary or trial period, or who is serving in an appointment that requires no probationary or trial period and who has completed one year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less;

(b) A preference eligible employee in the excepted service who has completed one year of current continuous employment in the same or similar positions;

(c) A non-preference eligible employee in the excepted service who has completed two years of current continuous employment in the same or similar positions under other than a temporary appointment limited to two years or less;

(d) An employee with competitive status who occupies a Schedule B position; and

(e) An employee who was in the competitive service at the time his/her position was first listed as part of the excepted service and still occupies that position.

(2) The following employees are excluded from coverage:

(a) An individual appointed by the President;

(b) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the President, the agency head, or the Office of Personnel Management (such that the position is excepted from the competitive service – "Schedule C");

(c) A reemployed annuitant;

(d) An employee whose appointment is made with the advice and consent of the Senate;

(e) A non-preference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service;

(f) Administrative Law Judges;

(g) An employee in the competitive service serving a probationary or trial period; and

(h) Individuals who are otherwise excluded by the statutory provisions of Title 5, United States Code.

D. Actions

(1) The following actions are covered by this chapter when taken with respect to a covered employee:

(a) Written Reprimands;

(b) Suspensions;

(c) Removals;

(d) Reductions in grade;

(e) Reductions in pay; and

(f) Furloughs without pay for 30 days or less.

(2) The following actions are not covered by this chapter:

(a) A reduction-in-force action;

(b) A suspension or removal in the interest of national security;

(c) An action taken against an Administrative Law Judge;

(d) The reduction in grade of a supervisor or manager who fails to successfully complete a new probationary period as a supervisor or manager, if such reduction is to the grade held immediately before becoming a supervisor or manager;

(e) An action which entitles an employee to grade retention, and an action to terminate this entitlement;

(f) A voluntary action initiated by the employee;

(g) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(h) An action which terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the Department informed the employee that it was to be of limited duration;

(i) Cancellation of a promotion to a position not classified prior to the promotion;

(j) Reduction of an employee's rate of pay from a rate which is contrary to a rate allowed or permitted by law or regulation;

(k) Placement of an employee serving on an intermittent or seasonal basis in a temporary non-duty, non-pay status in accordance with conditions established at the time of appointment;

(l) An action imposed by the Merit Systems Protection Board;

(m) A reduction in grade or removal based solely on unacceptable performance and taken under 5 U.S.C. 4303; and

(n) An action taken or directed by the Office of Personnel Management based on a suitability determination.

(o) An action otherwise not covered by the statutory provisions of Title 5, United States Code, and the regulatory provisions of Title 5, Code of Federal Regulations.

1.4 **Definitions.**

A. Administrative Leave. An excused absence from duty without charge to leave or loss of pay.

B. Adverse Action. For purposes of this chapter, a personnel action taken by management, appealable to the Merit Systems Protection Board (MSPB), to effect an employee's removal, suspension for more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay.

C. Day. A calendar day (except where otherwise specified).

D. Deciding Official. A Department supervisor or manager who makes a decision on a proposed adverse action or disciplinary action.

E. Disciplinary Action. For purposes of this chapter, an action taken by management, not appealable to the MSPB (i.e., written reprimand; suspension for 14 days or less) to address employee misconduct.

F. Furlough. The placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

G. Grade. A level of classification under a position classification system.

H. Indefinite Suspension. The placement of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

I. Pay. The rate of basic pay fixed by law or administrative action for the position held by an employee.

J. Preponderance of the Evidence. That degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as sufficient to find that a contested fact is more likely to be true than untrue.

K. Proposing Official. A Department supervisor or manager who proposes an adverse or disciplinary action.

L. Removal. The involuntary separation of an employee from employment with the Department and Federal service, except when effected due to a reduction-in-force or the expiration of an appointment.

M. Suspension. The involuntary placement of an employee in a temporary non-duty, non-pay status for disciplinary reasons.

1.5 **Responsibilities.**

A. Heads of Bureaus and Offices are Responsible for:

(1) Implementing, supporting and providing oversight for the effective management of employee conduct and discipline;

(2) Communicating information to the workforce regarding conduct requirements and disciplinary parameters;

(3) Delegating appropriate authority, establishing roles/responsibilities for policy implementation within the bureau/office, and ensuring that applicable training is provided for supervisors to properly exercise their disciplinary responsibilities;

(4) Ensuring adherence to the policy and procedural requirements of this chapter, as well as the applicable provisions of established collective bargaining agreements; and

(5) Providing and implementing bureau/office-wide guidance and instructions other than those outlined in this chapter, as appropriate.

B. Director, Office of Human Resources is Responsible for:

(1) Developing and issuing Departmental policy and guidance regarding employee conduct and discipline;

(2) Monitoring and evaluating the administration of discipline throughout the Department, and revising the disciplinary policy and procedures as appropriate;

(3) Providing advice and assistance to bureaus/offices on the provisions of this chapter (as well as related laws, rules and regulations) and on managing employee conduct and discipline;

(4) Establishing and implementing reporting requirements for actions taken under this chapter, as well as complying with reporting requirements established by OPM; and

(5) Establishing overall parameters for Department-wide conduct/discipline training and coordinating the availability of related training opportunities.

C. Servicing Human Resources Offices (HRO) are Responsible for:

(1) Advising supervisors on employee conduct issues and disciplinary options (including procedural/regulatory parameters);

(2) Drafting or reviewing all disciplinary notices prior to issuance and applicable case files, to ensure reasonableness of penalty and statutory/regulatory compliance;

(3) Advising employees and supervisors of their procedural rights and responsibilities relative to this chapter (and applicable laws, regulations and negotiated agreements);

(4) Consulting for legal sufficiency with the Office of the Solicitor on adverse action proposals and decisions, and providing technical assistance to the Office of the Solicitor on actions taken under this chapter;

(5) Maintaining disciplinary and adverse action files and an information system for tracking and periodically reporting the actions effected; and

(6) Providing operational training support to ensure the workforce is sufficiently aware of the provisions of this chapter.

D. Office of the Solicitor is Responsible for:

(1) Providing reviews for legal sufficiency and overall appropriateness of adverse actions being considered, proposed, or taken under this chapter;

(2) Representing the Department during settlement negotiations, MSPB appeals, arbitrations and other activities related to the administrative and federal personnel litigation process; in accordance with established Departmental policy, coordinating settlements of actions taken under this chapter which impose a financial obligation on the Department; and

(3) Reviewing and providing input on conduct/discipline training and related instructional guidance for Department supervisors and employees.

E. Supervisors are Responsible for:

(1) Establishing and maintaining a safe, productive, supportive and well-ordered work environment;

(2) Providing a work environment free of illegal discrimination;

(3) Advising employees regarding assigned duties and conduct expectations and observing employee performance and conduct to ensure compliance with the standards of ethical conduct and other established work requirements;

(4) Promptly investigating and documenting circumstances related to incidents of employee misconduct;

(5) Consulting with the servicing HRO regarding employee misconduct and initiating appropriate, timely and relatively consistent corrective action as warranted; and

(6) Recognizing and complying with the requirements of this chapter and the applicable provisions of established collective bargaining agreements.

F. Employees are Responsible for:

(1) Having a familiarity with Federal and Departmental standards of ethical conduct, complying with all established conduct and performance requirements, and requesting clarification if necessary;

(2) Reporting incidents of waste, fraud, abuse, corruption and other misconduct to appropriate authorities; and

(3) Cooperating in official investigations and furnishing testimony.

1.6 **Policy.**

A. General. Employees of the Department are expected to demonstrate high standards of integrity, both on and off the job, abiding by the Department's conduct regulations (43 CFR Part 20) and other Federal and Departmental laws, rules and regulations. When established standards of conduct are violated, or the rules of the workplace are disregarded, corrective action is warranted to motivate employees to conform to acceptable behavioral standards and prevent prohibited and/or unsafe activities. Such corrective actions, when taken under this chapter, should comport with applicable laws and regulations, should be administered with relative consistency and should be taken for such cause as will promote the efficiency of the service.

B. Standard for Taking Action. Management must be able to show that the actions taken under this chapter promote the efficiency of the service. To demonstrate this, the written notices of proposal and decision must clearly specify the charge(s) or reason(s) upon which the action is based, be able to prove the specific basis for its action by a preponderance of the evidence, be able to show the connection ("nexus") between the charge(s) and promotion of the efficiency of the service, and be able to establish the reasonableness of the action taken under the

circumstances. In taking a corrective action against an appointee in the SES, management's options are limited to a written reprimand or an adverse action covered by this chapter (i.e., suspension for more than 14 days; removal from the Federal service); management may take an adverse action against an SES employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

C. Use and Choice of Discipline. Discipline should be imposed to correct improper employee conduct and to maintain order, morale and workplace safety throughout the workforce. After determining that misconduct occurred and that corrective action is warranted, discipline should be initiated as soon as practicable after the misconduct which prompted it and effected on a progressive and equitable basis as much as possible. Progressive discipline provides that in dealing with an instance of employee misconduct, the responsible management official (often the first-level supervisor) should select the minimum disciplinary/adverse action most likely to correct the specific behavioral problem, with penalties selected at an escalating level for subsequent (but not necessarily identical) offenses, when appropriate. Management officials must exercise reasonable judgment and consider all relevant factors, both mitigating and aggravating (as reflected in the guidance found at Appendix A), in determining the most appropriate corrective action for each situation. As a guide for considering disciplinary options, the Department's *Table of Offenses and Penalties* is included as Appendix B to this chapter. This *Table* does not mandate the use of specific penalties in most disciplinary situations. Supervisors/managers retain full authority, except in limited circumstances (i.e., discipline prescribed by statute or the MSPB), to set penalties as they deem appropriate, based on the particular circumstances and specifications of the offense. Consultation and close coordination with the servicing HRO should ensure that a particular penalty is proportional to the offense and employees who commit similar offenses are treated with relative consistency.

D. Delegations of Authority. Each bureau will determine the level of supervisory authority required for taking actions covered by this chapter. For actions that require the issuance of a proposal and a decision (e.g., suspensions; removals; reductions in grade/pay), ordinarily the same supervisory/management official should not serve as both the proposing and deciding official on the action. Generally, the decision on a proposed action should be made by a management official at a higher organizational level than the proposing official; if there is no higher-level official within the Bureau/Office or if it is not feasible to use the higher-level official, another management official within the Department may be delegated the decision-making authority (in such exceptional situations, determinations regarding the delegation of decision-making authority must be approved by the Bureau/Office head, with the concurrence of the Director, OHR). Bureau officials, managers and supervisors who are delegated authority for implementing the provisions of this chapter and managing the workforce are accountable for complying with and properly administering all controlling laws, rules, policies, regulations and negotiated agreements pertaining to employee conduct and discipline.

1.7 **Procedures.**

A. General. Taking a corrective action against an employee is appropriate only when the employee has engaged in identifiable misconduct adversely affecting the efficiency of the service. Before initiating such action, management should conduct a thorough inquiry into any

apparent offense (collecting information to the greatest extent practicable directly from the subject employee) to ensure the objective consideration of all relevant facts and aspects of the situation. Ordinarily, this inquiry will be conducted by the appropriate line supervisor, with guidance from the servicing HRO. However, certain situations (particularly those involving possible criminal activity) warrant an investigation by the Office of Inspector General and/or internal Bureau law enforcement/criminal investigation offices. Once it is established that an employee engaged in misconduct necessitating corrective action, a supervisor or other management official (using the guidance at Appendices A and B, and in consultation with the servicing HRO) must determine the action/penalty required to deter the recurrence of the unacceptable behavior.

Minor misconduct may be corrected if the supervisor informally counsels the employee about the problem promptly after the first instance. The supervisor also may rely on notices of warning/admonishment to convince the employee to change the undesirable behavior. These actions are less severe than the disciplinary and adverse actions described below, are less subject to review by third parties, and do not become part of the employee's permanent official employment record. Notices of warning/admonishment document the employee's misconduct, place the employee on notice regarding the behavior expected by management, and advise the employee that more serious corrective action (e.g., reprimand; suspension; removal) will result if the unacceptable behavior is not corrected. The use of such corrective actions does not constitute a "prior penalty" for disciplinary purposes, as alluded to in Appendix B, to enhance the severity of penalty for a subsequent offense; however, such corrective actions may be viewed as "prior notice" (in consideration of factor 9, Appendix A).

B. Disciplinary Action.

(1) Written Reprimand

(a) This is a written notice issued to an employee by an authorized management official (usually the immediate or higher-level supervisor) when the employee's conduct warrants a corrective action more serious than a counseling or warning but without involving a loss of pay. Unlike a notice of counseling, warning or admonishment, a written reprimand is a formal penalty for disciplinary purposes (under Appendix B).

(b) The servicing HRO will assist management in the preparation and issuance of the reprimand, which should specify: the reason(s) prompting the action; the period of time a copy of the reprimand will be maintained in the employee's Official Personnel Folder (OPF); for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to file a grievance in accordance with the applicable administrative/negotiated grievance procedures.

(c) A copy of the reprimand will be filed on the temporary side of the employee's OPF for a period not-to-exceed two years or where applicable, the time specified by an established negotiated agreement; the time period will be appropriately recorded and tracked by the servicing HRO. The employee's supervisor may elect to withdraw the reprimand from the

OPF earlier than the period specified, in which case the supervisor will inform the employee, after consulting with the servicing HRO.

(2) Suspension (14 days or less)

(a) A disciplinary suspension is a management directed absence from work for an employee (excluding all SES appointees), with forfeiture of pay for the time specified. Since suspensions result in a loss of productivity and represent a financial loss to employees, they should be imposed only after lesser corrective actions have proven ineffective in improving employee behavior or when an employee has engaged in serious misconduct.

(b) An employee against whom a suspension of 14 days or less is initiated is entitled to receive a written proposal stating the specific reason(s) for the proposed action (including aggravating/mitigating factors referenced in Appendix A) in sufficient detail to enable the employee to answer the charge(s). The notice of proposed suspension (issued by the immediate supervisor or other management official, with the advice and assistance of the servicing HRO), shall state the proposed length of the suspension, as well as the employee's entitlement to: review the material relied upon by management in proposing the suspension (upon request); 7 days to answer orally and/or in writing the proposal (and furnish affidavits and other documentary evidence) before a decision is made; representation by an attorney or other representative; and a written decision (explaining the specific reasons for that decision) at the earliest practicable date. The notice also shall identify the name of the deciding official (generally, a higher-level manager) and, if different, the name of the official designated to receive the oral and/or written answer (if such an official is designated, that individual may provide a recommendation to the deciding official regarding the disposition of the proposed action). After issuing the notice of proposed suspension, management can amend the proposal notice (or cancel and reissue it at a later date) to allow for the consideration of any additional misconduct which becomes known to management prior to the issuance of a decision.

(c) The employee's representative must be designated, in writing, to the deciding official prior to any oral and/or written answer. Employees serving in a legal capacity within the Department (e.g., attorneys with the Office of the Solicitor and Office of Hearings and Appeals) may not represent another Department employee with regard to actions taken under this chapter. Additionally, Department management may disallow, as an employee's representative, an individual whose activities as a representative could cause a conflict of interest or of position, or an employee of the Department whose release from his/her official position would result in unreasonable costs or whose priority work assignments preclude his/her release for representational duties.

(d) The employee's answer(s) to the proposed suspension should be provided to the deciding official (or designee) within 7 days following the date the employee receives the proposal notice. The employee is entitled to a reasonable amount of official time (normally a matter of hours, not days) to prepare and present an oral and/or written answer. If the employee wishes additional time to answer, the employee (or designated representative) must submit an extension request, in writing, to the deciding official (or designee) before the expiration of the answer period, stating the reason for the request and the amount of additional

time needed. The deciding official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

(e) The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted. Although oral replies are generally conducted in a face-to-face meeting, when this is impractical, audio or video conferencing may be used. When practicable, a representative from the servicing HRO should be present during the presentation of the oral answer, to assist and provide procedural guidance to the deciding official (or designee) and employee (or representative). If the employee makes an oral answer, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral answer is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made part of the record. The final summary of the oral answer and any comment made by the employee (or representative) regarding the summary shall become part of the official disciplinary case file maintained by the servicing HRO.

(f) The deciding official will obtain (from the servicing HRO) and review a copy of the entire case file, which should contain all the evidence relied upon by the proposing official (including the proposal notice and all supporting documents), before making a decision on the proposed suspension. Upon request, the employee also may review this file, which should contain only the material relied upon to support the action; information that cannot be disclosed to the employee shall not be used as a basis for taking any action.

(g) The deciding official shall issue a written decision at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the answer period. The notice of decision must be delivered to the employee (or representative) at or before the time any action is to be effected (or in accordance with applicable provisions of any negotiated agreement). The servicing HRO will assist the deciding official in making the appropriate decision and preparing and issuing the decision notice. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the disciplinary process, as well as the employee's answer(s), and use only the reasons which were included in the proposal notice to support the decision. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process; if considered, the deciding official should make such additional information available to the employee for comment prior to making a decision.

(h) The notice of decision should indicate: the specific action decided upon (and applicable effective dates); the charge(s) and specification(s) in the proposal notice which were/were not sustained; the consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors; for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to file a grievance in accordance with the applicable administrative/negotiated grievance procedures.

C. Adverse Action.

(1) Most adverse actions taken under this chapter (i.e., removal for cause; suspension for indefinite period/more than 14 days; reduction in grade or pay) are based on instances of egregious and/or repeated employee misconduct (exceptions include furlough for 30 days or less and removal for medical inability to perform the duties of the position). Employees are entitled to receive advance written notice of at least 30 days before an action covered by this chapter may be effected, except for the following situations:

(a) *Emergency furlough.* The requirements for both an advance written notice and an employee opportunity to answer are waived for furloughs due to unforeseeable circumstances, such as sudden breakdowns in equipment, a lapse of appropriations, acts of God, or sudden emergencies requiring immediate curtailment of activities. Circumstances must be truly unforeseen, and of such a nature that they do not reasonably allow for time to prepare a proposal to take action or to receive an employee's answer.

(b) *Crime provision.* Management may shorten the advance notice period when there is reasonable cause to believe an employee has committed a crime (either on or off the job) for which a sentence of imprisonment may be imposed. The shortened notice period must still be at least 7 days. When circumstances require that the employee be kept away from the worksite during this shortened notice period, management may place the employee in an administrative leave status for such time as is necessary to decide and effect the adverse action. Generally, evidence that meets the requirements for a shortened notice period also will support an adverse action to *indefinitely* suspend an employee pending resolution of the criminal charges or completion of a subsequent administrative action. An employee who has been arrested with or without a warrant and held for further legal action by a magistrate court or indicted by a grand jury for a serious crime should be indefinitely suspended without pay pending the outcome of the judicial process. The consideration of any adverse action prompted by an employee's alleged criminal conduct must be closely coordinated with the Office of the Solicitor.

(2) An employee against whom an adverse action is initiated is entitled to receive a written proposal (normally with 30-days advance notice), stating the specific action proposed and the reason(s) for the proposed action (including any aggravating and/or mitigating factors referenced in Appendix A) in sufficient detail to enable the employee to answer the charge(s). The notice of proposed adverse action (issued by the immediate supervisor or other management official, with the advice and assistance of the servicing HRO, and after a legal sufficiency review by the Office of the Solicitor), additionally shall reference that the employee may: review the material relied upon by management in proposing the suspension; have 14 days (and a reasonable amount of official time) to answer orally and/or in writing the proposal (and furnish affidavits and other documentary evidence) for consideration before a decision is made; be represented by an attorney or other representative; and receive a written decision (explaining the specific reasons for that decision) at the earliest practicable date. The notice also shall identify the name of the deciding official (generally, a higher-level manager) and, if different, the name of the official designated to receive the oral and/or written answer (if such an official is designated, that individual may provide a recommendation to the deciding official regarding the disposition of the proposed action). After issuing the notice of proposed adverse action, management can amend the proposal notice (or cancel and reissue it at a later date) to allow for

the consideration of any additional misconduct which becomes known to management prior to the issuance of a decision.

(a) When some but not all employees in a given competitive level are being furloughed, the notice of proposal shall state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(b) Ordinarily, the employee shall remain in an active duty status during the advance notice period, and the proposal notice should so state. However, in rare instances, the proposing official may determine that the employee's presence at the workplace may be injurious to the employee or to others, may result in loss of or damage to Government property, or may otherwise jeopardize legitimate Government interests. In such cases, management (in consultation with the servicing HRO and the Office of the Solicitor) may assign the employee to other duties, allow the employee to take leave (or place the employee in an appropriate leave status if the employee is absent from the workplace), curtail the notice period (using the crime provision), or place the employee in an administrative leave status for such time as is necessary to make a decision and effect an action. The placement of an employee on administrative leave does not constitute an adverse action, but should only be done in the most exceptional situations (i.e., cases involving proposed removals or indefinite suspensions), when all other options are considered imprudent. Only bureau/office heads, their deputies, or the Director, OHR, may authorize the placement of an employee on administrative leave for an extended period of time (i.e., beyond 45 days); this authority may not be re-delegated. Bureau/Office heads (or their deputies) must coordinate decisions regarding the placement/continuation of an employee in an administrative leave status for more than 45 days with the Director, OHR, who will review such decisions for the Department and may rescind them if considered inappropriate.

(c) Management must make a reasonable and diligent effort to ensure that the employee receives the notice of proposed adverse action in a timely basis. Personal delivery of the advance notice to the employee, allowing for the employee's signed acknowledgment of receipt, is the most desirable method of delivery. If the notice cannot be personally delivered to the employee, the servicing HRO will determine the appropriate alternative delivery method.

(3) The employee's representative must be designated, in writing, to the deciding official prior to any oral and/or written answer. Employees serving in a legal capacity within the Department (e.g., attorneys with the Office of the Solicitor and Office of Hearings and Appeals) may not represent another Department employee with regard to actions taken under this chapter. Additionally, Department management may disallow, as an employee's representative, an individual whose activities as a representative could cause a conflict of interest or of position, or an employee of the Department whose release from his/her official position would result in unreasonable costs or whose priority work assignments preclude his/her release.

(4) The employee's answer(s) to the proposed adverse action should be provided to the deciding official (or designee) within 14 days following the date the employee receives the proposal notice. An employee in an active duty status is entitled to a reasonable amount of official time (normally a matter of hours, not days) to review the material relied on to support the proposed action and to prepare and present an oral and/or written answer; the employee must

request and obtain supervisory approval for the use of official time, in advance. If the employee wishes additional time to answer, the employee (or designated representative) must submit an extension request, in writing, to the deciding official (or designee) before the expiration of the answer period, stating the reason for the request and the amount of additional time needed. The deciding official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

(5) The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted. Although oral replies are generally conducted in a face-to-face meeting, when this is impractical, audio or video conferencing may be used. When practicable, a representative from the servicing HRO should be present during the presentation of the oral answer, to assist and provide procedural guidance to the deciding official (or designee) and employee (or representative). If the employee makes an oral answer, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral answer meeting is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made part of the record. The final summary of the oral answer and any comment made by the employee (or representative) regarding the summary shall become part of the official adverse action case file maintained by the servicing HRO.

(6) The deciding official will obtain (from the servicing HRO) and review a copy of the entire case file, which should contain all the evidence relied upon by the proposing official (including the proposal notice and all supporting documents) before making a decision on the proposed adverse action. Upon request, the employee also may review this file, which should contain only the material relied upon to support the action; information that cannot be disclosed to the employee shall not be used as a basis for taking any action.

(7) The deciding official shall issue a written decision at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the 14-day answer period. The notice of decision must be delivered to the employee (or representative) at or before the time any action is to be effected (or in accordance with applicable provisions of any negotiated agreement). The servicing HRO will assist the deciding official in making the appropriate decision and preparing and issuing the decision notice. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the adverse action process, as well as the employee's answer(s), and use only the reasons which were included in the proposal notice to support the decision. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process.

(8) The notice of decision should indicate: the specific action decided upon (and applicable effective dates); the charge(s) and specification(s) in the proposal notice which were/were not sustained; the consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors; for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to either file an appeal to MSPB (include a copy of the Board's appeal form/regulations and the address of the

appropriate Board office) or file a grievance in accordance with any applicable negotiated agreement.

1.8 **Records.** The servicing HRO shall maintain confidential disciplinary/adverse action case files; each file shall contain copies of the notice of proposed action, any written answer, a summary of any oral answer, the notice of decision (including the reasons for it), any order effecting the action, and any supporting material (e.g., witness statements; affidavits; documents; investigative reports). Disciplinary/adverse action files must be provided to various parties (e.g., the MSPB; the affected employee and/or designated representative; a grievance examiner), but need only be furnished in response to a specific request.

APPENDIX A

PENALTY DETERMINATION

After establishing a sufficient basis for taking action (i.e., a preponderance of the evidence to support the charge(s); a nexus between the offense(s) and the employee's job or the agency's mission), the supervisor/manager, in consultation with the servicing HRO, must determine the appropriate penalty for the employee's misconduct. At this point, whether proposing or deciding an action, it is prudent to consider all remedies (disciplinary or non-disciplinary; formal or informal) that may effectively resolve the identified problem.

In selecting an appropriate penalty for a specific offense, responsible judgment must be exercised so that an employee will not be penalized out of proportion to the offense. Management should take into account all of the specific circumstances of the case and should ensure, to the extent possible, that employees who commit similar offenses are treated consistently. However, while equitable and uniform treatment of employees who commit similar offenses (under "like" circumstances) is preferable when possible, mechanistic consistency is not recommended or required. In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), the MSPB identified a number of factors -- generally referred to as the "*Douglas* Factors" -- which it specified were not exhaustive, but were generally recognized as relevant in determining the appropriateness of a penalty. A reasonable and conscientious application of these factors (listed below, with guidance based on MSPB case-law) could result in employees receiving different penalties, even though they may have committed similar offenses.

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

- Mitigating factors and the employee's potential for rehabilitation must be balanced against the seriousness of the offense and its effect on the duties of the position and the mission of the organization.
- Serious misconduct can outweigh an employee's length of service and overall good work record.

- If the misconduct is serious enough, removal might be an appropriate penalty for a first offense, and on appeal, a third party might overlook a questionable application of other *Douglas* factors (e.g. failure to properly notify the employee of consideration of past record; disparate penalties).

(2) *Employee's Job* – the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

- Persons in positions of trust can be held to higher standards; positions of trust include jobs with fiduciary, law enforcement and public safety or health responsibilities.
- Loss of confidence in an employee's ability to function as a supervisor supports removal from a supervisory position.
- If an employee has performed well in non-supervisory jobs, but fails as a supervisor, demotion is often viewed as more appropriate than removal from federal service.

(3) *Disciplinary Record* – the employee's past disciplinary record.

- The MSPB may review independently prior disciplinary actions pending in grievance proceedings when reviewing termination and other serious disciplinary actions.
- An employee's record of past discipline is used to enhance the penalty; it may not be used as proof of the current misconduct.
- Any past offense may form the basis for proposing a penalty from the next higher range of penalties for a subsequent offense; the offenses need not be identical or similar.
- Prior disciplinary actions may be cited even if they involved offenses unrelated to the current charges, although past discipline that occurred years before the current action and that involved unrelated offenses likely will be discounted on appeal.
- Management may not cite disciplinary actions that have expired in accordance with agency regulations or a collective bargaining agreement.
- An employee may not challenge the merits of prior disciplinary actions if the employee was informed of the actions in writing, the actions are a matter of record, and the employee had an opportunity to dispute the actions before a higher authority (if such actions were reviewed by a higher authority, they must have been upheld).
- Management's intent to consider the past disciplinary record must be stated in the proposal notice.

(4) *Work Record* – the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

- When the offense involves supervisory misconduct, the length of service as a supervisor is more important than total service with the agency.
- When official records concerning an employee's performance (e.g. written performance appraisals) are contradicted by a manager's statements in the notice of decision or in testimony, the official records will be judged more reliable.
- Disciplinary actions or additional misconduct occurring after the issuance of the adverse action proposal may not be cited as a past disciplinary record, but may be used to show an overall poor work record.

- Positive actions by management after learning of an employee's misconduct (e.g. promoting the employee; allowing the employee to perform his/her duties for an extended period of time) may indicate that the employee's overall work record outweighs or diminishes the seriousness of the offense.

(5) *Effect on Future Performance* – the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties.

- Loss of trust in the employee's ability to perform assigned duties in the future may be used to enhance the penalty.
- Offenses directly related to an employee's duties (e.g., falsification of the same documents the employee has responsibility to review) raise legitimate concerns about his/her ability to continue to perform those duties.
- Offenses inconsistent with an employee's supervisory responsibilities call into question his ability to function as a supervisor in the future.

(6) *Consistency with Other Penalties* – consistency of the penalty with those imposed upon other employees for the same or similar offenses.

- Management may not knowingly treat similarly situated employees differently when setting disciplinary penalties; to be similarly situated, the comparison employees must work in the same unit for the same supervisor. When an employee identifies a difference in penalties for the same offense, management may need to present evidence supporting the difference.
- There is no requirement for management to be absolutely consistent in its penalty determinations. The prior disciplinary and work records of the comparison employees may justify a difference, and the underlying facts in each case might warrant different penalties.
- When management has an established policy or practice to impose a particular penalty for an offense, it cannot begin to use a harsher penalty without giving prior notice to employees.

(7) *Consistency with Table of Penalties* – consistency of the penalty with any applicable agency table of penalties.

- Management's departure from the agency table of penalties may be permissible; it should not apply the table of penalties so rigidly as to ignore other *Douglas* factors.
- Management may take a more severe action than suggested in the table of penalties for a first offense if the employee has a record of prior, unrelated offenses.

(8) *Notoriety and Impact* – the notoriety of the offense or its impact upon the reputation of the Agency.

- Publicity or even the possibility of publicity that could have a negative impact on the reputation of the agency is a factor that may be considered to enhance a penalty.

(9) *Clarity of Notice* – the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

- While lack of notice of the rules to be followed can be a mitigating factor, management is under no obligation to warn employees about behavior the employees should know is improper.
- Supervisors' ignoring or condoning certain behavior can indicate lack of notice.
- Training on agency policies constitutes notice of expected behavior.
- Prior misconduct for which the employee was counseled, even though the employee was not formally disciplined (or was formally reprimanded, but the reprimand is no longer in effect), can be cited to show an employee was on notice of the rules to be followed.

(10) *Potential for Rehabilitation* – potential for the employee's rehabilitation.

- An employee who admits misconduct and shows remorse displays potential for rehabilitation, while an employee who rationalizes his/her wrongdoing, fails to take responsibility or doesn't show an understanding of why his/her behavior was wrong is not a good candidate for rehabilitation.
- Lying during an investigation may be viewed as a lack of potential for rehabilitation.
- An employee who ceases misconduct after being warned may show potential for rehabilitation; however, an employee who shows improvement after receiving a notice of proposed adverse action is not particularly convincing.
- Attending meetings with an EAP counselor to discuss personal problems may indicate potential for rehabilitation.

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

- Emotional problems and stress may be mitigating factors, but there must be some evidence showing the problems contributed to the misconduct.
- Stress generally should not be viewed as a mitigating factor when the misconduct involves illegal drug use.
- Job tension, although not a medical problem, can be a mitigating factor.
- Bad faith on the part of agency management (e.g., evidence that management set out to "get rid of" the employee) can be a factor used to reduce the penalty.
- Evidence that the deciding official was predisposed against the employee is viewed as a mitigating factor by a third party.

(12) *Availability of Alternative Sanctions* – the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

- Prior warnings and reprimands indicate that a penalty less than removal will not deter the employee from similar misconduct in the future.
- A penalty designed primarily for its value as an example or warning to other employees likely will not be upheld upon review, as third parties generally do not accept this as a

valid basis for penalty selection. A penalty can be used to deter future misconduct by other employees, but this objective does not warrant overlooking other relevant *Douglas* factors.

- Management does not have to prove that the penalty was the least sanction necessary to promote the efficiency of the service or that it considered alternative penalties. However, such a showing provides essential evidence that the deciding official considered the relevant *Douglas* factors and that the penalty is reasonable.

Not all of these factors will be pertinent in every case. Frequently, some of the pertinent factors will weigh in the employee's favor while others may not (or even constitute aggravating factors). Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the specific case, and in reviewing penalty selection, a third party will determine whether management considered all the relevant factors and exercised its discretion within tolerable limits of reasonableness.

Management need not demonstrate that it considered all potential mitigating or aggravating factors before selecting a penalty, nor is it required to specifically show how each *Douglas* factor applies to each case. Even though there is no absolute requirement to do so, it is advisable for management to specifically state in proposal/decision notices what factors it considered in setting the penalty, to avoid concerns that relevant issues were not addressed. Therefore, both proposing and deciding officials should address the *Douglas* factors, as well as any mitigating factors, in terms of their particular relevance to penalty selection.

As a general rule, aggravating factors used by management in its penalty determination (e.g., an employee's poor work record), should be included in the proposal notice so that the employee has a chance to respond to them in the oral and/or written replies. In the notice of decision, the deciding official should reference his/her consideration of the proposing official's *Douglas* factor analysis and the employee's related response(s), before explaining his/her judgment regarding how the relevant factors serve to support or mitigate the proposed penalty.

APPENDIX B

TABLE OF OFFENSES AND PENALTIES

This Table provides a list of common infractions, along with a suggested range of penalties for each; it does not presume to cover all possible offenses, nor does it mandate the use of specific penalties in most disciplinary situations. The range of penalties described in the Table is intended to serve as a guide to discipline, not a rigid standard, and deviations are allowable for a variety of reasons. Greater or lesser penalties than suggested may be imposed as circumstances warrant, and based on a consideration of mitigating and aggravating factors. Management officials must exercise reasonable judgment and consider all relevant factors (as reflected in the guidance found at Appendix A) in determining the most appropriate corrective action for each situation. Any penalty determination outside the suggested range should be based upon a

reasonable consideration of the factors described in Appendix A, and the rationale documented in the decision notice.

The use of this Table as a guide will help to ensure appropriateness of penalty in relation to the charge(s), as well as relative consistency in discipline throughout the Department. The fact that a particular offense is not listed in the Table does not mean that the employee cannot be charged with that offense. In such instances, a reasonable penalty can be determined (with the assistance of the servicing HRO) by a comparison to those offenses listed in the Table.

The Table lists only disciplinary and adverse actions which become a matter of record in the employee's Official Personnel Folder; it does not mention oral warnings, counseling notices, and other corrective actions which may be more appropriate for correcting minor offenses. The *First Offense* column, therefore, refers to the first offense for which a disciplinary/adverse action is taken, although it may not be the first time the employee engaged in misconduct.

Progressively stronger corrective actions should be taken if an employee repeatedly engages in misconduct. When an employee receives corrective action for an offense which falls under one range of penalties, and later commits a different offense under the same or another category of offense, the latter is considered a second offense for progressive disciplinary purposes. For example, if an employee is charged with absence without leave (AWOL) and is issued an official reprimand (first offense), then is later charged with insubordination for subsequent misconduct, the appropriate penalty range for the insubordination charge is a 30-day suspension to removal (as a second offense).

In addition to a management-initiated corrective action, a Department employee also may be subject to criminal prosecution when there is evidence of a possible statutory violation; such evidence should be provided to the Office of Inspector General, which then may refer the matter to the Department of Justice for further consideration and possible prosecution. If the Department of Justice declines to prosecute, the employee involved in the alleged wrongdoing will then be subject to an appropriate administrative action consistent with the penalties contained in this Table. An employee who has been arrested and held for further legal action by a magistrate court, or indicted by a grand jury for an imprisonable offense, should be indefinitely suspended without pay pending the outcome of the judicial process so as not to prejudice the employee's right to due process in the criminal case. If the employee pleads guilty or is convicted, the Department may then proceed with a removal or other appropriate action; in the absence of a conviction, the indefinite suspension should end, although other administrative action may be taken.

The servicing HRO must be consulted regarding the procedural requirements to follow when taking corrective action. This consultation requirement includes securing advice on the merits of the charge(s) and the appropriateness and Departmental-consistency of the penalty being proposed. In situations involving possible violations of the Department's Standards of Ethical Conduct, supervisors/managers should also consult with a bureau Ethics Counselor and/or an ethics official from the Office of the Solicitor, Office of Ethics.

Nature of Offense (General Misconduct)	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense	Remarks
1. Attendance-related offenses.				Refer to 370 DM 630 for leave requirements and guidance. Penalty depends primarily on length and frequency of unacceptable absences. Removal may be appropriate for a first or second offense if the absence is prolonged, the failure to adhere to leave procedures is flagrant, or the circumstances are otherwise particularly burdensome.
a. Absence without leave (AWOL). This includes tardiness and unauthorized delay in returning from lunch and break periods, or in returning after leaving work station on official business; unauthorized departure or absence from duty station.	Written Reprimand to 5-day suspension	5- to 30-day suspension	30-day suspension to removal	
b. Failure to follow established leave procedures; failure to provide administratively acceptable documentation to support absence(s).	Written Reprimand to 5-day suspension	5- to 30-day suspension	30-day suspension to removal	
c. Excessive unauthorized absences (e.g., more than 5 consecutive workdays).	5-day suspension to removal	14-day suspension to removal	Removal	
2. Improper or unauthorized release of sensitive and administratively-controlled information or employee records; failure to safeguard classified material.				Refer to 5 USC 552a and 43 CFR 2.52 for Privacy Act provisions regarding the misuse of personal information; also refer to 18 USC 798 and 18 USC 1905. Deliberate disclosures of Privacy Act information must be referred to OIG.
a. Information is not compromised and release is unintentional.	Written Reprimand to 5-day suspension	5- to 30-day suspension	30-day suspension to removal	
b. Information is compromised and release is unintentional.	Written Reprimand to 30-day suspension	30-day suspension to removal	Removal	
c. Release of restricted information is deliberate.	30-day suspension to removal	Removal		
3. Offenses related to substance abuse.				Refer to 43 CFR 20.505, 370 DM 792, Drug-Free Workplace (Zero Tolerance) Policy, DOI Handbook on the Department of Transportation
a. Alcohol-related				
(1) Reporting to or being on duty while "under the influence" of alcohol.	Written Reprimand to 5-day	5- to 30-day suspension	30-day suspension to removal	

	suspension			Alcohol and Drug Testing Program, and DOI Federal Railroad Administration Supplement for specific guidance.
(2) Unauthorized use and/or possession of alcoholic beverages while on Government premises (or vehicle).	Written Reprimand to 30-day suspension	30-day suspension to removal	Removal	
(3) Operating a Government vehicle/aircraft while "under the influence" of alcohol.	30-day suspension to removal	Removal		Actions involving these offenses must assure that counseling or rehabilitative assistance is offered; however, referral to an employee assistance program (EAP) does not preclude the initiation of corrective action.
b. Drug-related				
(1) Administratively confirmed positive finding under the testing portion of the Drug-Free Workplace Program.	Written Reprimand to removal	Removal		
(2) Unlawful use, being under the influence or unauthorized possession of drugs, drug paraphernalia or controlled substance while on Government premises or in a duty status.	Written Reprimand to removal	30-day suspension to removal	Removal	The illegal drugs currently tested for (as defined in 370 DM 792, Subchapters 9 & 10) include: marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). However, the Department is authorized to test for any illegal drugs as deemed necessary. When there is possession of illegal drugs - call law enforcement and notify OIG. When the substance is prescribed by an appropriate medical authority and used accordingly, it would not be an offense. 370 DM 792, 10.12 requires mandatory initiation of removal from service for a second offense of failing to refrain from illegal drug use.
(3) Sale or transfer of an illegal drug or controlled substance while on Government premises (or vehicle).	Removal			
(4) Refusal or failure to provide a required specimen for drug-testing; tampering with a drug-test specimen; refusal to obtain counseling or rehabilitation (after finding of illegal drug use).	14-day suspension to removal	30-day suspension to removal	Removal	
4. Discourteous conduct (e.g., rude, insolent, disgraceful acts or remarks)	Written Reprimand to	5- to 30-day suspension	30-day suspension	5 USC 7503(a) permits suspension of

toward supervisors, co-workers, or the public.	5-day suspension		to removal	14 days or less of any employee with four documented instances of discourteous conduct toward the public within a one-year period as confirmed by an immediate supervisor, or any other pattern of discourteous conduct.
5. Boisterous or disruptive/disorderly conduct; use of insulting, intimidating, abusive or offensive language to or about another employee or supervisor.	Written Reprimand to 5-day suspension	5- to 30-day suspension	30-day suspension to removal	
6. Deliberately making known false, malicious, or unfounded statements against co-workers, supervisors, subordinates, or Government officials which could undermine the authority or damage the reputation of those concerned.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Refer to 5 USC 2302(b)(8) and (9), prohibiting actions against employees for engaging in protected activities.
7. Threatening statements or behavior (of a physical nature).	14-day suspension to removal	Removal		Charge involving "threat" must consider the listener's reactions, the listener's apprehension of harm, the speaker's intent, any conditional nature of the statements, and the attendant circumstances – refer to Metz v. Dept. of Treasury, 780 F.2d 1001 (Fed. Cir. 1986).
8. Fighting and offenses related to fighting.				Penalty depends on such factors as provocation, extent of injuries, and whether actions were defensive or offensive in nature.
a. Engaging in potentially dangerous "horseplay."	Written Reprimand to 14-day suspension	14-day suspension to removal	30-day suspension to removal	
b. Hitting, pushing, or other acts against another without causing injury.	5- to 30-day suspension	30-day suspension to removal	Removal	
c. Hitting, pushing, or other acts against another causing injury.	30-day suspension to removal	Removal		

9. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching.	Written Reprimand to removal	14- day suspension to removal	Removal	Refer to the Department's Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.
10. Failure to provide equal opportunity regardless of race, color, religion, gender, national origin, age, marital status, political affiliation, sexual orientation or handicapping condition.	Written Reprimand to removal	14-day suspension to removal	Removal	Refer to 5 CFR 2635.101(13).
11. Unauthorized possession/sale (actual or attempted) of Government property or property of others; improper acceptance of Government funds/reimbursement.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Referral to OIG may be appropriate.
12. Loss, misuse of, damage to or failure to safeguard Government property, records, or information (e.g., willful or negligent damage to Government resources; carelessness in performance of duty resulting in waste of public funds).	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	Refer to 5 CFR 2635.101(9). For misuse of Government vehicles, see item 5 under Violations of Statute. Referral to OIG may be appropriate.
13. Failure to comply with safety regulations, instructions or prescribed safe practices; failure to use proper safety equipment; failure to report accident or injury.	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	
14. Sleeping or loafing while on duty; inattention to duty; willful idleness while on duty.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Seriousness of offense is greater if persons/property endangered.
15. Failure or delay in carrying out instructions; failure or carelessness in performing assigned work; failure to take/complete officially-directed training.	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	Refer to 370 DM 430 to deal with unacceptable performance and performance-based actions.
16. Insubordination; disregard of directive; refusal to comply with a proper order.	5-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.502. An "insubordination" charge requires a showing that the

				employee deliberately disregarded supervisory directives. In some instances (e.g., refusal to report for an ordered reassignment) removal may be appropriate.
17. Falsification/misrepresentation of official Government records or documents including, but not limited to, time and attendance records, travel vouchers, job applications, performance appraisals, claims for benefits, and other employment-related documents.	Written Reprimand to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510. Referral to OIG may be appropriate.
18. Misrepresentation, falsification, exaggeration, concealment or withholding of material fact in connection with an official Government investigation, inquiry or other administrative proceeding.	14-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510. Referral to OIG may be appropriate.
19. Refusal to testify or cooperate in connection with any administrative investigation, inquiry, or other proper proceeding (when criminal charges are not anticipated).	5-day suspension to removal	14-day suspension to removal	30-day suspension to removal	
20. Prohibited/improper use of Government property (e.g., office equipment; supplies; facilities; credentials; records; communication resources; cellular phones; official time); misuse of the Internet/electronic mail; using the Internet/electronic mail for unauthorized purposes.	Written Reprimand to 14-day suspension More severe discipline (including removal) may be appropriate for first/second offense if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including	14- to 30-day suspension More severe discipline (including removal) may be appropriate for first/second offense if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including gambling, accessing/send	30-day suspension to removal	Refer to 5 CFR 2635.704 and 705(a); 410 DM 2 (Limited Personal Use of Government Personal Property). Consider issue of employee notice regarding agency policy.

	gambling, accessing/sending prohibited sexually-related material, or other egregious acts of misuse.	ing prohibited sexually-related material, or other egregious acts of misuse.		
21. Offenses related to gambling.				Refer to 5 CFR 735.201.
a. Participating in a gambling activity while on Government premises or in a duty status (e.g., office pools).	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	
b. Operating, assisting, or promoting a gambling activity while on Government premises or in a duty status or while others involved are in a duty status.	5- to 30-day suspension	30-day suspension to removal	Removal	
22. Indebtedness; failure to meet financial obligations in a proper and timely manner.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Refer to 5 CFR 2635.809. Actionable if there is a nexus between the failure to pay and the efficiency of the service. Since a suspension may reduce an employee's ability to pay overdue financial obligations, a reprimand may be more appropriate for a first offense (more severe discipline may be appropriate for subsequent offenses). Special care is called for in dealing with this type of offense, as it may involve mitigating circumstances.
23. Offenses related to Government travel charge card and/or purchase card.				Refer to Financial Administration Memorandum (FAM) 2000-010 for further information and instructions on
a. Misuse of travel card (i.e., personal/unauthorized purchases) or	Written Reprimand to	5-day suspension to	30-day suspension	

delinquent in payment.	30-day suspension	removal	to removal	Resolving Delinquencies on Individually-billed Travel Card Accounts, and the Department's Integrated Charge Card Program Guide (revised 4/2004).
b. Misuse of travel card (i.e., personal/unauthorized purchases) and delinquent in payment.	5- to 30-day suspension	14-day suspension to removal	Removal	
c. Unauthorized use of or failure to appropriately monitor use of Government purchase card; "micro-purchasing" violations.	Written Reprimand to 30-day suspension	14-day suspension to removal	Removal	
24. Carrying a firearm or other weapon on Government property (or in Government vehicle) unless specifically authorized/required in the performance of duties.	30-day suspension to removal	Removal		Refer to 43 CFR 20.511.
25. Using public office for private gain.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.702.
26. Engaging in unauthorized/prohibited selling, soliciting or fundraising activities.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Refer to 5 CFR 2635.808.
27. Engaging in prohibited outside employment or private business activities.	Written Reprimand to removal	Removal		Refer to 5 CFR 3501.105.
28. Participating in particular matters while having a conflicting financial interest.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.401. Consult Ethics Office and may require referral to OIG. See 18 USC 208.
29. Participating in matters affecting financial interests of an entity where employment is being sought.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.601. Consult Ethics Office and may require referral to OIG. See 18 USC 208.
30. Violating the Department's Code of Scientific Conduct (or other professional code of conduct that applies to employees required to maintain a professional license or membership).	Written Reprimand to 30-day suspension	30-day suspension to removal	Removal	Refer to 305 DM 3.

31. Violating the Standards of Ethical Conduct not covered elsewhere in this Table.	Written Reprimand to removal	14-day suspension to removal	Removal	Refer to 5 CFR 2635.
32. Unauthorized use of nonpublic information.	Written Reprimand to removal	Removal		Refer to 5 CFR 2635.703.
33. Engaging (on-duty or off-duty) in criminal, infamous, dishonest, or notoriously disgraceful conduct prejudicial to the Government.	5-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.501.

Nature of Offense (Supervisory Misconduct)	**Penalty for First Offense**	**Penalty for Second Offense**	**Penalty for Third Offense**	**Remarks**
1. Taking, directing others to take, recommending or approving any action which may be considered a "prohibited personnel practice" (e.g., reprisal against an employee for engaging in protected activities; discrimination based on race, color, gender, age, religion, national origin, marital status, political affiliation, sexual orientation or handicapping condition).	5-day suspension to removal	14-day suspension to removal	Removal	Refer to 5 USC 2302, 5 CFR 2635.101(13), and related Department policies. Action may be taken regardless of whether there was an official "finding" of discrimination (or other prohibited personnel practice).
2. Taking reprisal action against an employee for exercising rights provided by the Federal Service Labor-Management Relations Statute.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC, Chapter 71.
3. Neglecting to recommend/take corrective action upon receipt of information regarding the job-related misconduct of a subordinate employee.	Written Reprimand to 30-day suspension	14-day suspension to removal	Removal	
4. Failure to appropriately monitor employee use of Government purchase/travel charge card.	Written Reprimand to 14-day suspension	14-day suspension to removal	Removal	
5. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching.	5-day suspension to removal	14-day suspension to removal	Removal	Refer to the Department's Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.

6. Influencing or attempting to influence the DOI employment of a relative.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC 3110.
7. Violating, or inducing a subordinate to violate, the Department's Code of Scientific Conduct (or other profession's Code of Ethical Conduct).	5-day suspension to removal	Removal	Removal	Refer to 305 DM 3.
8. Using Government employees in duty status for other than official purposes.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Refer to 5 CFR 2635.705(b).
Nature of Offense (Violations of Statute)	**Penalty for First Offense**	**Penalty for Second Offense**	**Penalty for Third Offense**	**Remarks**
1. Engaging in prohibited partisan political activity (e.g., partisan campaigning; soliciting/receiving political contributions).	30-day suspension to removal	Removal		Refer to 5 USC, Sections 7321-7326.
2. Participating in a strike, work stoppage, work slowdown, sick-out, or other similar job action.	30-day suspension to removal	Removal		Refer to 5 USC 7311.
3. Misappropriating/misapplying Government funds; directing, expecting, or rendering services not covered by appropriations.	1- to 30-day suspension	30-day suspension to removal	Removal	Refer to 31 USC 1301, 1341 and 1349.
4. Willfully mutilating or destroying a public record.	Removal			Refer to 18 USC 2071.
5. Willfully using or authorizing the use of a Government vehicle/aircraft for other than official purposes.	30-day suspension to removal	Removal		Refer to 31 USC 1344 and 1349.
6. Engaging in actions against national security.	30-day suspension to removal	Removal		Refer to 5 USC 7532.