

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 24, 2016
Subject: Dan Pacholke Interview

Mark Bartlett and I conducted an interview with Department of Corrections Secretary Dan Pacholke today at his office at DOC headquarters in Tumwater. The following summarizes Mr. Pacholke's statements on the *King* fix and sentencing calculation error, as well as other discussions about DOC issues, operations, and possible reforms:

We began the interview by introducing ourselves to Mr. Pacholke and explaining that we work for Davis Wright Tremaine and were retained by the Washington State Senate to assist in its investigation of the sentencing calculation error. We noted that we were hired to determine what happened and why the error was not discovered earlier, but also to discuss contributing conditions at DOC and solicit input on possible corrective measures that could be considered.

Mr. Pacholke has worked for DOC for 33 years. He described DOC proudly as a "deeply tenured agency" and "very much a career agency," with numerous employees who have been with the Department for 25 years or more. He knows a handful of 30-year veterans like himself.

He became Secretary on October 16, 2015, replacing Bernard Warner. Mr. Pacholke served as Deputy Secretary to Mr. Warner for 18 months prior to becoming Secretary. As Deputy Secretary, Mr. Pacholke was responsible for running the corrections/operations side of DOC, with the prisons, community corrections, health services, reentry, and offender change divisions all reporting to him. The divisions under Mr. Pacholke as Deputy Secretary comprised some 7,700 employees. A chief of staff managed the administrative services side of DOC during Mr. Warner's tenure.

Before becoming Deputy Secretary, Mr. Pacholke served as Director of Prisons (12 prisons). He worked as Deputy Director of Prisons prior to that, with responsibilities for managing 6 DOC facilities. He also served as superintendent of three DOC prisons (Cedar Creek Corrections Center, Stafford Creek Corrections Center, and the Monroe Correctional Complex). Mr. Pacholke described superintendents as operating "fairly autonomous[ly]" within the DOC hierarchy. Mr. Pacholke additionally served as DOC's chief of emergency operations and worked at six different prisons in coming up through the Department. He graduated from Evergreen State College.

As Deputy Director of Prisons under former Secretary Eldon Vail, Mr. Pacholke ran half of DOC's facilities. One of his main initiatives was to reduce increasing rates of prison violence. Mr. Pacholke took a leading role in managing the initiative and worked with intelligence and gang units to curb violence at Washington State Penitentiary, Clallam Bay Corrections Center, and other facilities.

Mr. Pacholke described several "sentinel events" that marked his time as Deputy Director and Director of Prisons. During the Great Recession, DOC faced a 6.2 percent budget cut that led to mass layoffs and facility closures. DOC also carried out an execution in October 2010 and dealt with the fallout after corrections officer Jayme Biendl was murdered by an offender at the Monroe facility in January 2011.

Mr. Pacholke recalled that DOC closed its McNeil Island facility two months later. Then, in June 2011, DOC responded to an attempted hostage taking of a corrections officer at Clallam Bay. Between the increasing prison violence rates, budget cuts, facility closures, and other significant events, Mr. Pacholke said his early years in senior leadership were "really challenging."

Mr. Warner returned to DOC in October/November 2010 as Director of Prisons. Mr. Pacholke knew of Mr. Warner but the two had little familiarity and had never worked in the same department together. Mr. Vail then resigned as Secretary in July 2011, with Mr. Warner replacing him and Mr. Pacholke becoming acting Director of Prisons.

Mr. Pacholke described Mr. Vail as a "really skilled administrator," adding that Mr. Warner's promotion to Secretary occurred very quickly following Mr. Vail's abrupt resignation. For his part, Mr. Pacholke told us he never aspired to become DOC Secretary. "I always took one job at a time and enjoyed what I did."

Mr. Pacholke said Mr. Warner "showed me a fair amount of deference" as Director of Prisons. "I think he had some respect for how I could operate in prisons."

He described himself and Mr. Warner as "very different people in how we manage and operate. He would probably say I'm a little more action-oriented, a little quicker to make decisions, a little quicker to communicate directly with people." By contrast, Mr. Warner was a tedious decision-maker and not "overly communicative with staff," Mr. Pacholke said. He added that with Mr. Warner, "conversations didn't lead to closure. We talked all the time."

Mr. Pacholke said Mr. Warner's decision to hire a chief of staff to oversee DOC's administrative services side made some sense. However, Mr. Pacholke noted that his portfolio as Deputy Secretary in charge of corrections/operations was "so much larger," with responsibility for 7,700 employees compared to 500 for the chief of staff on the administrative side. It was difficult to consider the two positions as complementary as a result.

Mr. Warner hired Peter Dawson as chief of staff; Mr. Pacholke described Mr. Dawson as a "nice man and thoughtful." But he believed "there was quite a bit of dysfunction" in administrative services. Mr. Pacholke spoke with several long-time employees about their

frustrations as they left the Department. "People were relatively dismayed," he said. "They were more and more disconnected and felt less and less empowered to do the job they had."

Mr. Pacholke said Brian Tinney's departure as assistant secretary for administrative services was a tipping point. The administrative services division lost several long-time employees in short succession in Denise Doty, Peter Jekel, Doug Hoffer, Jibu Jacobs, and Mr. Tinney. "When they all start bailing, that's not what this agency does," Mr. Pacholke said. To him, it was a tell-tale warning about DOC dysfunction and what he believed was displeasure with Mr. Warner and Mr. Dawson.

In his first week after becoming Secretary, Mr. Pacholke ended Mr. Dawson's appointment as chief of staff. He installed Jody Becker-Green as a true second-in-command Deputy Secretary. Mr. Pacholke said he also sought to narrow the span of control and better align functions on the administrative services side. He described Ms. Becker-Green as the "Deputy of the People," in relating well to staff. He also brought in Julie Martin as assistant secretary for administrative services. Ms. Martin is highly engaged in her work. Mr. Pacholke said he believed the senior leadership team was "moving in the right direction" soon after he became Secretary.

However, the discovery of the sentencing calculation error and delayed fix changed the course of everything at DOC. Mr. Pacholke described it as a "bomb" going off, with reverberations still felt daily.

Even before Mr. Warner resigned as Secretary, Mr. Pacholke said he announced his retirement in August or September 2015. He had not contemplated retirement until recently, but began exploring the possibility after a long-time colleague retired. Mr. Pacholke, who is 55, said he was experiencing some frustration as Deputy Secretary, but he "can't credit it to any one person." He described it as "harder to maneuver as Deputy [Secretary]," especially compared to the prisons division where he felt he had "quite a bit of latitude."

At the time, Mr. Pacholke gave three months' notice of his retirement. Then, Mr. Warner resigned three weeks later, leaving for a private-sector prisons firm. Mr. Pacholke described Mr. Warner's departure as "very abrupt." Mr. Warner did not provide Mr. Pacholke any advance notice of his intentions, even when Mr. Pacholke was contemplating retirement. "He's a very private guy, so that conversation never occurred." Mr. Warner gave three weeks' notice and "was gone pretty quickly" after returning from out of state and conducting a brief tour of DOC prisons.

"He's about a five-year guy," Mr. Pacholke said of Mr. Warner's typical tenure in a job, adding, "I'm surprised I didn't see it coming."

Mr. Warner's departure left Mr. Pacholke to reconsider his retirement. He expressed openness to serving as Secretary in an interim or acting role for a year, which he believed would not burden either himself or the Governor "in making a long-term commitment." Having come up through the DOC ranks, Mr. Pacholke added, "you want the right person to land here [as DOC Secretary] in the right way."

We discussed Mr. Warner's initiatives that Mr. Pacholke worked on as Deputy Secretary. One involved maximum custody reforms, which Mr. Pacholke said he pushed forward "fairly aggressively." He also led an effort to centralize and improve the offender change division, which saw "improved outcomes overnight." With his background in the prisons division, Mr. Pacholke felt it was his responsibility to implement these initiatives at the ground level.

Mr. Pacholke said he never took over the Advance Corrections initiative. Beginning in fall 2011, Mr. Warner began talking to the senior leadership team about DOC creating a "fourth-generation risk assessment tool." The tool would better incorporate traditional risk factors and dynamic factors to create individualized case management plans for offenders. Mr. Warner discussed his interest in this area for two years with senior leadership. DOC assigned teams of people to the initiative, with Amy Seidlitz heading the effort for a time.

The emphasis on creating a fourth-generation risk assessment tool went on throughout Mr. Warner's time as Secretary. Mr. Pacholke said early years were focused on discussion about risk assessment and researching different tools. "He had talked about that for at least a couple of years before much action happened on it."

Mr. Pacholke said "real action" began on developing the tool in spring 2014. Mr. Dawson took over as the project's executive sponsor as chief of staff.

Ms. Seidlitz returned to DOC as one of Mr. Warner's first hires after becoming Secretary; Ms. Seidlitz had previously worked with Mr. Warner in Arizona. Ms. Seidlitz is "brilliant in understanding risk assessment tools," but "was exceptionally unskilled" in implementing those tools. She was difficult to work with and "created trouble almost everywhere she went."

Mr. Pacholke said he "spent a lot of time trying to make her successful" and did everything he could in that regard. But Ms. Seidlitz struggled with implementation of programs and tools at the field level. Mr. Pacholke said she "had very rigid ideas about how to move forward," and could not grasp that the "gold standard" might not be attainable at first implementation.

Soon after succeeding Mr. Warner as Secretary, Mr. Pacholke ended Ms. Seidlitz's appointment.

We moved on to ask about DOC's work with Assessments.com. Mr. Pacholke said he did not know the historical "backstory" of DOC's relationship with Assessments.com prior to becoming part of senior leadership. He said he thinks highly of Assessments.com founder Sean Hosman given Mr. Hosman's personal story about failure, recovery, and now his work to help others. "I appreciate Sean, I like Sean, I think he's a smart man."

Mr. Pacholke believed a high degree of resentment existed at DOC for attempting to use Assessments.com on development of the Advance Corrections initiative. Mr. Pacholke was not "in the loop" about the contracting process with Assessments.com. He believed the "exodus"

from the administrative services division and IT Department resulted from pressure to develop the Advance Corrections/STRONG-R initiative.

Mr. Pacholke “was completely aware of the departures in IT.” He added that he suggested to Mr. Warner “at multiple times” that the turnover of CIOs was a problem, particularly in losing long-time employees familiar with DOC’s IT systems. He recalled two IT employees who started at DOC as part of a high school internship program. They left after 15 or 16 years with the Department, telling Mr. Pacholke that they loved the agency but couldn’t work there any longer. “I would have those conversations because some of those people I met when they were young in their careers,” Mr. Pacholke said.

Mr. Warner’s attitude toward the departures exhibited a “lack of awareness at just the totality of it.” Mr. Warner also expressed to Mr. Pacholke that DOC could perhaps use new IT talent. Mr. Pacholke said he “certainly briefed” Mr. Warner on the IT departures. “I suggested different actions to take.”

We changed topics and Mr. Pacholke diagrammed on a whiteboard in his office differences he views between employees on the operations (corrections) side of DOC and employees on the administrative side.

- Operations: Mr. Pacholke noted the Director of Prisons typically is a 25-year DOC veteran, and both Deputy Directors are also longstanding veterans. It is likely that two of the three senior leaders started as corrections officers. The operations side is also highly codified in responding to significant events. Mr. Pacholke said even as Secretary, he receives calls to report multi-offender fights at DOC facilities, suicides, serious community corrections issues, etc. The process for responding to these events and reporting them up the hierarchy is ingrained. “There’s a whole list of things that people are going to call me on and I’m going to get immediate electronic notification,” he said. He described a “strong acuity around what inmates do and problems that happen” on the operations side.
- Administrative: By contrast, employees on the administrative side do not need corrections experience and may have subject-matter experience instead. Mr. Pacholke said the “response orientation doesn’t exist” on the administrative side. He noted that the original discovery of the sentence calculation error in December 2012 did not lead anyone to knock on the Secretary’s door and express concern. The response and reporting process is not codified on the administrative side and the “acuity around functions is not the same. We have a strong acuity around inmates.”

We asked whether long-tenured employment within DOC is a good thing for the agency. Mr. Pacholke noted that the current superintendent of the Washington Corrections Center for Women spent 26 years working in Colorado. One of the Deputy Directors of Prisons worked for 16 years in juvenile corrections. Ms. Becker-Green came to DOC from DSHS, while Ms. Martin worked in the private sector.

We also discussed the response to past instances where even single offenders were mistakenly released early. Mr. Pacholke said DOC typically would employ teams to obtain warrants and rearrest the released offender. That response was missing when the sentencing calculation error was first discovered in December 2012. Mr. Pacholke said he felt DOC “was a little bit siloed” then, with all assistant secretaries reporting directly to Mr. Warner.

“I’m pretty amazed myself that senior level staff were at least briefed [on the sentencing calculation error], but it wasn’t brought forward,” Mr. Pacholke said. He added that discovery of the error in December 2012 never reached the operations side or senior leadership team. “I don’t believe I was ever in a meeting where it was brought up in any way.”

Mr. Pacholke characterized the sentencing calculation error and delayed fix as a “system failure.” After DOC realized the magnitude of the error in December 2015, Mr. Pacholke met with senior leadership and emailed every employee at headquarters, urging them to report any issue that they potentially viewed as a public safety threat to their supervisor, assistant secretary, or even to him as Secretary.

The IT Department suffered a “breakdown in acuity” in developing the requested OMNI fix to the calculation error. Mr. Pacholke said some of that breakdown could be attributed to turnover, but some of it has no explanation. He said there was no prioritization of projects, or recognition that some projects were more important than others, in the IT Department. There also was no attempt to accelerate the processing of the OMNI fix even though it affected offender sentences and release dates.

Mr. Pacholke additionally believes DOC does not handle Attorney General’s office advice and opinions in consistent fashion. He described a “lack of discipline to make sure those [opinions] were vetted or staffed at a more senior level.” Lower-level managers often regard AG advice as “more than just AG advice,” with a perceived need to comply with that advice. By contrast, Mr. Pacholke said senior managers appreciate that AG advice is a recommendation that needs to be considered along with DOC’s policies, practices, and general understanding of corrections. Mr. Pacholke said DOC needs to change “the routine around AG advice,” adding, “We need someone at a more senior level to weigh AG advice and decide if we agree or not, and maybe in some cases to depart from that advice.”

Mr. Pacholke also noted that there was never discussion at senior levels that the IT Department’s “exceptional” turnover could pose a threat to DOC functions, similar to a threat to operations prompted by a significant event at a prison.

The IT Department suffered “lots of turnover and lots of angst,” Mr. Pacholke said, speculating that the Advance Corrections initiative was much of the cause. The leadership changes at the CIO level were difficult for the IT Department, as was the emphasis on performing Advance Corrections work “when there were other things [to do] here.”

Mr. Pacholke resigned as Secretary on February 6, 2016, and told us he felt DOC “needed a new face leading corrections” going forward. He will depart as Secretary no later than

March 10. He said he could not remember how many front-page newspaper stories and interviews he has given since the sentencing calculation error news broke.

He regretted not being able to provide the public a definitive list of offenders who were released early as soon as the error became known. DOC attempted to identify the broadest possible number of potentially affected offenders, but the Department could only refine such a list by hand-calculating sentences. That work has been performed by three independent teams. Mr. Pacholke also said a lack of legal clarity existed on some issues relating to rearresting and returning offenders to DOC custody per the *Roach* decision.

He believed the public “felt like we were hiding the list.” However, the application of the *Roach* decision “took some legal judgment,” as did developing an arrest protocol. Additionally, Mr. Pacholke said he received calls from victims groups and clergy groups offering their input on the sentencing calculation error.

Mr. Pacholke noted that release dates for offenders are effectively unchanged from the pre-*King* days to the present, now that the *King* fix has been implemented. Offenders are still required to serve flat-time enhancements in full and can receive a statutory maximum of potential good time. Mr. Pacholke said the *King* decision primarily provided “transparency” as to how jail good time and prison earned time credits were applied.

DOC is “always looking at sentencing issues overall,” and Mr. Pacholke said the Department is “pretty confident” OMNI is correctly processing the many iterations of flat-time enhancement sentences. He expects DOC will add five staffers to the records group, including some who will perform quality assurance assessments and audits to ensure the system is functioning correctly. He also believes DOC will add a “higher level administrator” to handle issues related to the impact of court rulings and legislative changes on sentencing calculations.

Mr. Pacholke also expressed hope that the sentencing guidelines commission would restore the full-time executive director position that was lost to state budget cuts. He characterized the position as “a cornerstone of the criminal justice system in the state,” with the sentencing guidelines commission capable of consulting with lawmakers on sentencing issues and working on these issues even off-session.

DOC probably will examine both employee numbers and compensation within the records group, as well as within the IT Department.

After the sentencing calculation error surfaced in December 2015, Mr. Pacholke said he held several discussions regarding IT governance and how projects are screened and prioritized. Under the previous system, Mr. Pacholke noted that a project could potentially be ranked as the No. 1 IT priority out of 500 competing projects if the request was submitted to IT on a given day. DOC is now communicating from the CIO and senior leadership team that “all projects are not created equal” and trying to improve recognition of potential public safety and other risks.

Although Mr. Pacholke views the sentencing calculation issue as a “system error,” he said “that doesn’t mean people shouldn’t be held accountable” at the senior level. He noted he

has apologized to the Governor and the public, and even called the mothers of the two victims killed by offenders who were mistakenly released early.

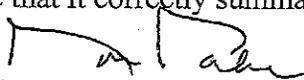
“This agency will do better coming out of this because this agency internalizes sentinel events,” Mr. Pacholke said. He added that the “unforgivable” part of the error came with DOC identifying the problem internally in 2012 but failing to respond appropriately. He expressed hope that recommendations from the two government investigations would lead to enhancements in DOC’s processes, ensuring that more overlap, redundancies, and checks are built into the Department’s system. He said the greater issue was fixing a “much more systematic error,” than necessarily firing people.

We concluded the interview by informing Mr. Pacholke that the State Senate would likely request that he testify before the Law and Justice Committee next week. Mr. Pacholke said he expected all along he would be asked to do so.

We thanked Mr. Pacholke for meeting with us and told him that we would produce a memorandum of his interview for his review and approval. We also told Ms. Pacholke that he could clarify any points in his review of the memorandum.

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I have reviewed this memorandum, have been given the opportunity to revise it for accuracy, and agree that it correctly summarizes my statements to investigators.

Signature: 

Name: Dan Pacholke

Date: 2.25.16