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MEMORANDUM

To: WA Senate Investigation File
From: Max Hensley
Date: February 16, 2016
Subject: Ronda Larson Interview

Mark Bartlett and I interviewed Ronda Larson of the Washington Attorney General's Office (AG) at the AG's offices in Tumwater, Washington for approximately two hours beginning at 9:30 am on Friday, February 12, 2016. Larson was accompanied to the interview by Deputy Attorney General Robert Costello and Senior Assistant Attorney General Shane Esquibel, the division chief for the AG's Labor and Personnel Division. The following memo summarizes our discussion.

We explained that we have been hired by the Washington State Senate to investigate the issues surrounding DOC's administration of the sentencing changes caused by the Washington Supreme Court's *King* decision, and told her that we would draft this memo that set forth her comments for her signature. We explained that she would have the opportunity to edit or revise the memo to ensure that it correctly represented her statements, and further encouraged her upon reviewing this memo to add any additional statements or details that she wished to include, even if she had not mentioned them to us in person.

Costello opened the conversation by explaining that the DOC has waived privilege as to Larson's advice on the *King* fix, but not as to her other work.

Larson obtained her undergraduate degrees in psychology and American ethnic studies from the University of Washington, and during her time there was advised to go to law school because of her interest in politics. She began law school in 1996, and received a J.D., a Masters of Urban Planning, and an LL.M. in tax law from the UW, graduating in 2001. During law school, she had been a summer associate at the Seattle law firm Lane Powell, and worked there after graduating. She left Lane Powell and worked as non-partisan staff to the Senate Committee on Government Operations and Elections in 2003, and moved from that position to the Corrections Division (then called the Criminal Justice Division) of the AG's office in May of 2003. She joined corrections because there was an opening there at that time.

During her time at the AG's office, she was never co-located with the DOC. She explained that there are several divisions that do work for DOC, including the torts division and the L&P division. Within the corrections division, there are approximately 15 AAGs and two units, including the habeas unit where she works. That unit had 6 employees for the majority of her tenure, although after she leaves it will be down to four. Paul Weisser has been the unit lead during her entire tenure. The unit's focus is responding to federal habeas corpus petitions and

state personal restraint petitions (PRPs), as well as giving advice to DOC on issues relating to the calculations of custodial and community time. The other unit in the division is the civil rights unit, and its focus is responding to civil rights lawsuits by offenders and givingadvice as to institutional issues such as conditions of confinement and public records requests.

Tasks are generally split by subject matter expertise; Larson's focus includes litigating federal habeas corpus cases (both death penalty and non-death penalty cases), and advising on and litigating issues involving the interstate compact for adult offender supervision (ICAOS),the Indeterminate Sentence Review Board, the DOC community custody violation hearings unit, sentencing errors by courts, and DOC sentence calculations. Larson said that her areas generally expanded over her time with the unit. However, despite spending 13 years in the unit, she is the second-most junior employee because of the longevity of employees in the unit; she credited that fact to Weisser's skill as a manager.

Larson said that her day-to-day work was highly variable; she believes that she handled more variety of types of issues than anyone else in the division. Her daily schedule was driven in part by case schedules in PRPs and post-sentence petitions. Post-sentence petitions are cases where the DOC acts as the petitioner in requesting appellate review of a sentence. In addition, Larson said that she received calls and emails requesting guidance from a range of people both inside of and outside of DOC, including prosecutors asking for input on sentencing issues in plea agreements.

On average, Larson would get between 0-3 requests per day from the DOC's records staff, and that those requests covered a wide range of substantive areas; her email inbox has folders for various subject matters including time credit calculations, ICAOS, ISRB, community custody violation hearings, and other areas. She didn't think that any one area was more common than another. However, she believed that most of the problems that she saw related to time credits which was a highly complicated area due to the complexity of the legislation and court decisions governing this body of law; she did not think that most people understood how hard this subject is. One substantial problem relates to the continued applicability of old rules based on the RCW's requirement that the law at the time of the offense be applied to any sentence; we briefly discussed the difference between that system and the federal practice.

We asked whether DOC proposed legislation, and she said that was a large part of the process. She described the legislation as an iterative process with court interpretations.

We asked what the hardest part of her job was, and she said that it was receiving questions that required her to quickly understand a wholly new area of law; many of the questions she received did not have a specific answer.

We asked about Larson's practice of CC'ing an email group on her advice. She explained that it was not a group, but rather an email in-box that allowed the assigned paralegal or other support staff person to enter the advice into the AG's Law Manager system, which then makes the advice accessible and searchable by anyone within the Corrections Division. Larson said that she was a very active user of that system, although she did not believe that everyone within her office was quite as diligent.

We turned to the conversations surrounding the *King* fix, and discussed the first email to Larson from Steve Eckstrom, head of DOC's Victim Services Program. Larson said that she had not previously had any dealings with Eckstrom, but did not find the request unusual as many records questions began based on assertions made by various offenders. She said that she would not have expected everything to have been funneled through Wendy Stigall because although most advice questions about sentence calculations came from Wendy, she periodically received emails from other DOC employees about sentence calculations. She said that she was not initially sure whether the sentence was calculated incorrectly, but she began her research by looking at OMNI and its calculations. She does not remember her exact work process, but she eventually figured out that the sentence was incorrectly calculated because OMNI was awarding certain inmates too much good time.

She said that she didn't have a precise memory of how long she worked on this issue. We showed her the time-stamps on the emails which showed that she received the question from Eckstrom at 10:30am and sent her response to Stigall at 2:30pm, and said that her general practice would be to dive into an issue and work on it until she had fully resolved it; she thought it would make sense for her to have worked through that 4-hour period. She would have spent at least part of that time working through various numbers and calculations. She said that she remembered working on a different issue related to *King* approximately 5 years earlier.

In general, Larson stated that difficult questions would take her an hour or more to handle. She said that her response to Stigall was more detailed than her typical responses, but not inordinately so; she would write 2-3 advice responses per month of approximately that length.

We asked whether Larson recognized the impact that her advice would have, and she said that she believed that it would be limited to inmates who had a very short base sentence (likely less than 6 months), which was not a large population; the only difficulty that arose was that *King* had been incorrectly applied for so many years between 2002 and 2012. She thought that the error was something of a "fluke" based on the application of the rules to a non-representative sentence.

Larson said that she had previously dealt with issues that required programming changes to OMNI. She would have spoken with Stigall about this over the phone, and that her entire understanding of OMNI was from conversations with Stigall. She believes that those conversations would have been the reason that she could have anticipated that a fix would be implemented within a few months, as she wrote in her email. She said that she had never experienced OMNI from DOC's perspective, and assumed that it worked similarly to the AG's IT department; she said that when the AG's IT staff says that something will be done, it gets completed, not tossed aside or delayed.

Larson said that she understood that DOC's prior interpretation was based on someone's mistaken analysis of the *King* decision, and that OMNI had been programmed to incorporate that mistake. However, she said that she was confident that her legal analysis was correct based on her history of advice in this area.

After sending her initial email, Larson received an email from Stigall setting forth three examples. Larson said that it was not unusual to have this type of back and forth when determining how to apply advice, and saw this exchange as Stigall (and DOC) doing what they needed to do to fix the problem. She believes that Stigall understood the issue. Later on in our conversation, we showed Larson a document drafted by Stigall for use by the records managers in the various facilities around the state which explained the *King* issue. Larson said that Stigall's document, which she had not previously seen, correctly explained the issue (although it used somewhat different terminology than Larson would have chosen).

. Larson said it was not uncommon for DOC to have follow-up questions after she provided advice. In the area of sentence calculations, specifically, Wendy periodically followed up with examples that showed problematic types of sentences. After this instance, Larson did not meet in person with Stigall. Over the years, DOC has periodically asked her to attend in-person meetings on more global issues regarding sentence calculations, but in this instance, she believes that DOC did not ask for her to attend an in-person meeting because this was a targeted fix.

Larson did not have any specific memory of discussing this issue with Weisser besides cc'ing him on the emails, but she said it is her standard practice to tell him about issues that arise if they appear to be unusual or if she is struggling to answer an advice request and would like his input.

Larson did not have any further contact with Stigall or DOC on this issue. She said that she was not usually aware of how her advice was used, and that it would be "absolutely impossible" for her to keep up with the application of any particular piece of advice given the volume of incoming questions that she faced. Her assumption always was that her advice was followed, and in her experience, it was; she viewed DOC's not doing so here as a highly unusual situation. Larson explained that she would occasionally give advice and then independently see some change in policy and would know that it was based on her work, but that she would never get any concrete confirmation. One exception to this rule would be where she was required to revisit advice because it became an issue in a piece of litigation that she was handling. She also explained that occasionally, one-off exceptions that are input into the OMNI system could be reversed during transfer audits if the reasons for the exception are not clearly communicated to DOC staff in the facilities, and that this would at times require revisiting a prior area.

We showed Larson an email chain between herself and Stigall from February of 2013. She explained that this email chain referred to a completely different issue, even though it applies to some of the same people as those who were affected by the *King* fix. In this email, she said that she was explaining the application of the statutes governing the rate of accumulation of good time in prisons as opposed to jails. The RCW governing jails permits accumulation of 15% good time, while the DOC is only authorized to grant 10% good time (Larson said that she believes that this distinction is likely the result of a legislative oversight). This creates confusion because DOC must incorporate jail good time, even though inmates may have more good time under the statute that applies to jails than they would be permitted to accumulate under the statute that applies to the DOC.

In this email chain, we showed her Stigall's comments referring to the *King* fix and noting that Stigall had run spreadsheets analyzing the error; we asked whether she and Stigall discussed the scope of the change at that time. Larson said that she did not, and that she would not have been focused on that portion of the email. She said that Stigall did not share those spreadsheets or discuss them with her. Larson said that after this, she did not have any discussions relating to the *King* fix until the issue arose again in December of 2015.

On a broader level, Larson stated that what is hard for people outside of this system to understand is how many issues come up. She said that DOC fixes sentences in lots of ways and that she has daily experience in advising them how to do that work. This issue did not stand out to her at the time, but hindsight makes it more prominent than it was. Larson said that the other major error was that there was no timely recognition that this error would affect lots of people; her belief was that it only applied to inmates with a short base sentence. This was exacerbated by her understanding that the time needed to fix it would be relatively short and her knowledge that the Washington Supreme Court's *Roach* decision made most past errors in release dates moot.

We then showed her the 2007 email from Larson to Leaora McDonald. She said that "everyone thinks this is a big deal because it is directly on point" in the context of the investigation into the *King* fix but that in fact it relates to a somewhat different topic. The issue in this email arose when Larson was working on a post-sentence petition where an offender had received a Drug Offender Sentencing Alternative (DOSA) sentence in which the court had split a deadly weapon or firearm enhancement in half and applied one half to the DOSA confinement time and the other half to the DOSA community custody time.. In working on that case, Larson noticed that OMNI runs enhancement time starting at the jail booking date instead of starting at the DOC time start (when the inmate arrives at DOC after sentencing). She noticed that the DOC was preserving the jail good time, since that was required by *King*, and that this set up an apparent conflict with RCW 9.94A.533, which states that inmates cannot earn good time during enhancements. At that time, she was aware that the inmates were serving the full enhancement period, so there was not a problem in that respect—the enhancements were not being shortened by good time, which would have been a clear error. But she felt that there might be an argument that RCW 9.94A.533 was violated because of the fact that jail good time was preserved, on one hand, while on the other hand, the jail time served was credited toward a period that is required to be flat time. However, because it had never been decided by a court what RCW 9.94A.533 would have required in this regard, Larson was not sure at that time, and still is not sure, that DOC's calculation method truly violated RCW 9.94A.533. But she felt that it was worth raising the issue with DOC. The distinction between this issue and the 2012 issue is that this is limited to the application of good time to certain enhancements, while the 2012 issue involves the total amount of good time an offender can receive, which is limited to 33%. The 2007 issue was caused by running the enhancement time first. Because *King* requires DOC to credit inmates with good time earned in jail and no good time can be applied to certain enhancements, this apparent problem could have been eliminated by moving the start date of the enhancement from the jail booking date to the DOC time start date (when the inmate arrives at DOC from jail). Larson explained that when the 2012 issue arose, her understanding is that offenders were (correctly) serving their entire enhancements but were receiving too much good time off of their base sentence, and that OMNI would reflect that the entire enhancement was being served.

Larson explained that she forwarded the email she had sent to McDonald to the email in-box for advice. In that forwarded email, she wrote that the "requestor" for the advice was McDonald, when this is actually not true. The reason she wrote that is that it is necessary for purposes of inputing the advice into the AG's Law Manager. When advice is sent to the in-box for Law Manager, it must reflect who at DOC the advice is associated with. That is the "requestor" field. So whether or not the DOC requested the advice, Larson would designate the name of the person at DOC who received the advice as the "requestor." This allows for easier searches of Law Manager in the future. She said that it was not unusual for her to initiate an advice email to someone at DOC who had not requested advice, after she has come across an issue that she feels it is important to tell DOC about. This type of situation occurred typically because an issue had become apparent from working on personal restraint petitions or other pieces of litigation.

We showed Larson her January 1, 2008 email exchange. Larson said that this email relates to a third issue that has nothing to do with the 2007 or 2012 issues. She explained that this email relates to whether DOC was correctly following the statute that requires that only certain enhancements be served as flat time while other enhancements required inmates to be able to earn and apply good time.

We told Larson that we had previously shown Stigall a copy of the 2007 exchange, which Stigall had not previously seen, and that Stigall had told us that she believed that the 2007 exchange was on the same issue as Stigall's *King* request in 2012. Larson disagreed with Stigall's interpretation, and said that Stigall was not understanding Larson's advice. Larson stated that she did not blame Stigall for misunderstanding as this is a very complex area. Larson admitted that, when this issue arose in 2015, she had searched her email and found the 2007 exchange and initially also believed that the 2007 email was on the same topic, but on a closer read realized the distinction.

We asked her if she knew the name of the litigation she was working on in 2007 that led to her question, and she said that she didn't know. She thought that she could potentially run a report to see what she had filed around the date of that email, and agreed to do so and provide us with that information. She followed up with us and indicated that the name of the post-sentence petition was In re Post-Sentence Review of Omar Garza, Washington Court of Appeals Case No. 26776-8-III. That case involved, as discussed above, a situation in which the sentencing court split the enhancement time in half and attached the first half to the DOSA confinement period and attached the second half to the DOSA community custody period.

Larson noted that her 2007 email suggested the same fix for the 2007 issue that she suggested in 2012 for the *King* issue. She explained that *King* permits DOC to take the route that they chose (moving the start date of the enhancement to the start of DOC confinement), but that *King* could also be satisfied by starting the enhancement on the jail booking date, so long as DOC subtracted not only the jail good time earned but also the total time served in jail from the offender's sentence, so that the total ratio of good time never exceeds 1/3. She said that, in her mind, the 2007 issue is somewhat debatable in that it could be argued that offenders serving enhancements that are required to be served as flat time should not even earn good time during that enhancement, even though the good time could only be applied to reduce their base

sentence. She explained that current DOC policy is more favorable to offenders, so it has not been challenged in a PRP or interpreted by the courts. Her intention was always to derive a solution that is permitted by law.

We asked whether Larson had any closing comments, and she said that she thinks that Stigall and Kathy Gastreich of DOC are invaluable employees and that she hopes they are retained. She said that she thinks that DOC Secretary Dan Pacholke was a great leader; although she didn't have any specific complaints about former Secretary Bernie Warner, she thinks that Pacholke's focus on re-entry issues and big-picture analysis would have been a benefit to DOC had he been able to stay on.

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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: Ronda D. Larson

Name: Ronda D. Larson

Date: 2/19/2016