

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Max Hensley
Date: February 19, 2016
Subject: Ira Feuer Interview

Monty Gray and I interviewed Ira Feuer of the Washington Department of Corrections (DOC) at the DOC headquarters in Tumwater, Washington for approximately ninety minutes beginning at 10:00 am on Thursday, February 18, 2016. 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 him that we would draft this memo that set forth his comments for his signature. We explained that he would have the opportunity to edit or revise the memo to ensure that it correctly represented his statements, and further encouraged him upon reviewing this memo to add any additional statements or details that he wished to include, even if he had not mentioned them to us in person.

Feuer has a B.S. in chemistry from the University of Florida with a minor in physics, a B.S. in computer science from Florida International University, and an MBA from the University of Miami with an emphasis in informational technology. He has worked in public sector IT jobs for 34 years. He began his career as a systems analyst for Miami-Dade County, was promoted to division director for transit, and moved to division director for solid waste. He moved over to the Miami-Dade County Police Department, where his wife was a civilian employee. He eventually was promoted to a job as Bureau Commander for IT, and worked in that job for between 7 and 9 years. After his wife was promoted to a position within the police department that would have made her his supervisor, to prevent a conflict of interest he looked for a job elsewhere in the county and became the Chief Information Security Officer for the county. He was promoted to assistant director of the Enterprise Services Technology Department and served as the interim director of that agency. His final position within the Miami-Dade County system was as a special assistant to the mayor for IT policy and strategy.

Feuer moved to the northwest for personal and family reasons. He took a job as Vice President for Business Development with a startup called Stratus, which worked in the wireless space; the company was not headquartered in Washington but he was able to work remotely. The company closed in 2008 as a result of the recession. Feuer then worked at a telecom company called NACR from 2008 to 2009. He entered state government service in 2009 as the Director of IT/Chief Technology Officer for the Department of Social and Health Services. Feuer left DSHS to join IBM in Los Angeles from 2013 to 2015; this move was also motivated

by family-related reasons. Feuer quit his job at IBM because even though the work related to Medicaid and public assistance, he did not feel that the company cared about human outcomes but rather was focused on the bottom line and the expectations of Wall Street. Because of those pressures, his job was transferred from business development to sales, which he viewed as a breach of his agreement. Feuer applied for CIO openings at both DSHS and DOC, was hired at DOC, and began work in August of 2015. He was hired by a panel of then-DOC Secretary Bernie Warner, Dan Pacholke, and chief of staff Pete Dawson, and reports to Brian Tinney as the head of the Administrative Services Division.

We asked whether the *King* fix was on Feuer's radar at the time of hiring. Feuer responded that immediately after being hired, his first task was to speak with all approximately 170 employees under his supervision. He spoke individually with each member of the executive staff, then met with each team (as a group) without their managers, and then met with the assistants and other staff. He also met with representatives of the business side of DOC who worked with IT.

As a part of this process, on November 2, 2015, Feuer met with Wendy Stigall, who informed him that there had been a sentencing enhancement issue that had been outstanding for a substantial amount of time; Feuer remembered that Stigall was clearly annoyed by the delay and had it noted on the whiteboard in her office as something to keep aware of. He noted that she is not temperamentally inclined to "jump up and down" but that he could tell that she was bothered by the delay. Although Feuer had no previous corrections experience, he recognized based on his IT experience that this was potentially a major issue. As a result of this conversation, Feuer went to Dave Dunnington and asked about the progress of the enhancements fix. Dunnington informed Feuer that the fix was being worked on and had been scheduled for release in early January. Feuer was told that programmer Mark Ardiel (an employee of contractor Sierra Cedars) had begun work on the project that week.

We asked Feuer when the *King* fix became a crisis. Feuer said that the crisis arose after the work was mostly complete and in the course of testing the department ran a SQL query that showed that the fix would cause approximately 2900 changes to offender's release dates. Feuer decided that he and Dave Dunnington needed Stigall to explain the issue to DOC leadership because of her deep knowledge of the area.

We asked Feuer for his assessment of the cause of the crisis. Feuer said that his response was based only on his experience and opinion; he said as the Governor hired investigators, Secretary Pacholke instructed DOC staff not to investigate the issue individually in order not to interfere. Feuer's opinion, however, is that the issue was caused by several issues. First, he described it as a "systemic problem"; he explained that this means that the process for prioritization was fundamentally flawed in that IT made priority decisions (although they consulted with the business units), and said that the business side should be making that determination in the first instance. Second, he said that he felt that DOC had "very weak governance" and a "breakdown of communications across the board." He explained that he was referring to communication both between the IT department and the business units as well as between IT staff and IT leadership; he said that he had not found a culture where employees felt comfortable raising issues to their superiors or colleagues outside of formal reporting processes, and said that he was working to change that culture now (and feels that he has the power to

contact others, including Secretary Pacholke, whenever he may need to do so). Feuer noted that he believed that the people involved in the sentencing module are generally excellent. He said that Sue Schuler knows sentencing “backwards and forwards” and remembered a meeting with Schuler and an Assistant Attorney General where Schuler was more knowledgeable than the AAG on sentencing issues. Feuer said that Dunnington is also very impressive, and that the testing team is very diligent. He noted that the testers in fact found a final defect in the *King* fix on January 11, the day before the fix was released.

We noted that Feuer was the first person in the IT department that we had interviewed who had an academic background in computer science. Feuer said that had struck him as well when he joined DOC. He said that in his past roles at Miami-Dade County, systems analysts (the equivalent to the business analysts at DOC) had college degrees but did not have any specific experience in the areas that they were working in. In contrast, at both DOC and DSHS, the departments took their business analysts from the business units in order to have policy and subject matter experts, even if they did not have IT experience or training. He recognized that both of these alternative strategies had strengths and weaknesses, and that he is beginning to see the value of the Washington departments’ practice even though he was initially surprised by it.

More specifically, he felt that Schuler has the capacity to write business rules, and that in addition to her capacities, he is now bringing on a software product known as a “Business Rules Engine” which translates business rules drafted in plain English into Java coding. He also agreed that despite Schuler’s capacity to write business rules, the system should not rely on her ability to make prioritization decisions. “IT should never be in the business of prioritization for the business; we are the strategic enabler.” He said that the business units need to dictate what gets done and what gets funded.

We noted that Ardiel took paternity leave, and that Schuler had instructed him not to give the *King* fix to other Sierra programmers. Feuer said that he had heard that, and believes that it may be a “trust issue”; he thinks that there are likely 1-2 others at Sierra who are truly capable of making that kind of changes. Since the *King* fix, Feuer has requested that Sierra reorganize Ardiel’s schedule so that he would be available to DOC full time; Ardiel had previously only been working for DOC 3 days per week.

We asked Feuer what else he had changed in response to the *King* issue. He said that his first task was to eliminate IT’s role in prioritization by creating a Tiger Team. This team is led by IT program manager Josh Phelps, but Phelps is not a member of the team; it is made up exclusively of subject matter experts from the business units. That team has set five criteria for prioritization of changes; it will morph into a permanent Technology Review Board on March 15 which will assume that prioritization task.

In addition, the Tiger Team is redoing the department’s governance. The revised plan is currently in draft form. This includes use of a software product called “Decision Lens,” which scores proposed software changes according to objective criteria. That draft is now before Pacholke, as well as his Deputy Secretary and the division director of the Administrative Operations Division; Feuer noted that Pacholke is very engaged with this process and personally walked through the list of items scheduled for release M-50 in a meeting with DOC staff. Feuer noted that in the past, a new project known as Advance Corrections had “blocked out the sun” in

terms of focus on other issues; Pacholke has ordered Feuer to reverse that priority list so that enhancements and defects in OMNI are fixed first, and the schedule for Advance Corrections can be pushed out if needed. Feuer noted that he has experience with new projects as a contributing factor to delays in other areas; he noted that during his time at DSHS, DSHS staff had been severely impacted by the passage and implementation of the Affordable Care Act.

Finally, Feuer said that the Tiger Team is also working on redoing the Easy Vista request procedures, which presently have no controls, but allow any employee to request any kind of product or software change.

We asked whether Feuer had statistics on the backlog of projects in the ClearQuest system and how it had changed over time. He said that he did not have that at his fingertips, but that his experience with ClearQuest (including at DSHS) is that it can create those kind of reports. We suggested that he speak with DOC employee Cindy Chu, who we had been told had developed reports or charts of this information in the past. Feuer agreed to find or create something along those lines and to share it with us.

We discussed the distinction between “enhancements” and “defects,” as DOC used those terms. Feuer stated that the *King* fix was labeled an ‘enhancement’ but agreed that it was more accurately labeled a ‘defect’ from a business point of view, in that it was fixing an error that derived from business decisions made in 2002. He noted that the semantic issue of labeling was not particularly important to actual prioritization decisions. We informed Feuer that at some point all ‘enhancements’ were downgraded from severity level 2 to severity level 3, and he said that he was not aware of that decision and could not justify it. He stated that the *King* fix was properly excluded from the severity level 1 category, as that was limited to errors that threatened the system’s functioning and a work stoppage.

Feuer noted that OMNI could have had an error detecting system which would have prevented it from calculating any earned release percentage above the 33% maximum (similar to its statutory maximum limiter), but that was never implemented, apparently because no one thought of it or was aware that it was possible.

We asked Feuer to describe the Tiger Team’s prioritization work. He said that the team had developed a list of five criteria and explanations for how to apply them, and agreed to share that list with us. Developing that list was a 2-3 week process, which was made more difficult by the previous lack of guidelines. Feuer explained that the criteria were weighted through a pair matching process, and that those weights are used to algorithmically prioritize all project requests. Although those weights are being used for current prioritization, Feuer is planning to re-score them in the near future now that the *King* crisis has passed in order to avoid undue focus on short-term concerns. He noted that DSHS had a similar lack of prioritization when he began his work there, stating that the policy was that each unit was allotted an equal number of fixes that they could deploy however they preferred, and that he had changed that policy during his DSHS tenure in a similar manner to the process he is overseeing now. The intent of these changes is to “take IT out of the prioritization business.” This change process should avoid future problems where important issues are lost in a “deluge” of other work. While departmental leaders have the power to add new work, this process requires them to show the new resources that they are providing or to specifically remove a previously prioritized project. Feuer stated

that the Technology Review Board will be staffed by the smartest people at DOC, all of whom are directly approved by Pacholke. He is personally dedicated to ensuring that it remains a priority as long as he is the CIO.

We noted that previous CIOs, including Doug Hoffer, had made similar statements, but that they found it difficult to maintain the necessary focus from the business units. Feuer stated that Governor Inslee's Directive 16-01, which was issued in the wake of the *King* crisis, requires that all critical systems be personally attested to by either the Secretary or the agency head. The definition of critical system is set by the State CIO, and includes all systems that impact public safety or state finances, and thus includes OMNI. Requiring a Secretary to personally attest to something means that he or she will ensure that staff take it seriously; Feuer believes that Governor Inslee's directive will enable continued focus on proper prioritization efforts.

We asked for Feuer's opinion of the people he worked with, starting with Secretary Dan Pacholke. Feuer described Pacholke as very supportive of Feuer's efforts. He said that he did not have substantial interactions with previous DOC Secretary Bernie Warner, with whom he overlapped for only a month. He has heard from his staff that Warner was uninterested in the IT department, but did not personally witness that. We asked about Feuer's predecessor, David Switzer, and Feuer said that he did not know much other than that Switzer left abruptly. Feuer preferred not to focus on gossip about the past. He was aware that Switzer did not get along with others at DOC, and that as a result, the project managers and business unit were moved to a different area outside of IT, which caused a major workflow problem. Feuer said that one of his first requests as CIO was to move those groups back into his IT team; while it took some work, that move has been completed.

We noted that DOC had approximately 6 CIOs or acting CIOs in the short period prior to Feuer joining the department. Feuer said that it is a tough job which requires handling lots of responsibilities with limited funding. He explained that many agencies are self-funded or utilize federal funds, while DOC relies on state general funds which are more difficult to obtain. Feuer believes that DOC is currently somewhat understaffed and substantially underfunded, particular with respect to contractual services. He noted that the cost of a contractor is approximately the cost of 2 FTEs, but that contractors allow for higher level or more particularized work and skills. However, contractors have higher turnover than state employees, leading to a loss of knowledge and institutional memory. Feuer also stated that upon beginning work at DOC he felt that IT had a lack of credibility and respect within the department, and that he is working to change that.

We asked Feuer about certain DOC employees who report to him. He said that he initially tried to keep Switzer's Deputy CIO Lee Baublitz on as his deputy in order to provide continuity for the department, but that did not work out. Feuer gave Lee a 30-day performance improvement plan, and when that was unsuccessful, let him go. Feuer promoted Dave Dunnington into the Deputy CIO role after considering all of the managerial employees in his department. He noted that most do not have college degrees, with the exception of Jay Ahn, who has a Ph.D. in economic forecasting. Feuer chose Dunnington because of his own lack of tenure in the department and the lack of personal relationships and experience that caused. Dunnington has been with DOC for a substantial amount of time. Feuer is aware that Ahn was interested in the role, but stated that he did not feel that Ahn's leadership style was appropriate for the position, and that he did not have anyone who was capable of backfilling Ahn's current position.

We turned back to the *King* fix, and noted that Feuer had said that he became aware of the issue in November of 2015. Feuer confirmed that was correct, and said that his initial response was to monitor the progress of the fix; he did not report it to Pacholke until he had an understanding of the magnitude of the impact, because he knew that Pacholke would ask that question. Feuer said that no one ever raised the question of whether this change would impact 1, 100, or 1000 offenders until they ran the comparison query in December 2015. Feuer labeled that as “the oh shit moment.” After receiving those numbers, he was called over to a meeting at the Governor’s office. This meeting was held on December 17 and was run by Nick Brown; neither Governor Inslee nor Pacholke were present. There was a further meeting on the 18th that Pacholke attended, although Feuer was not at that meeting. At that point in time, IT was close to finalizing the *King* fix, although its implementation caused 19 other issues with OMNI. Feuer characterized those issues as routine testing. Feuer spoke with Pacholke around Christmas Day 2015 and informed him that it was unlikely that the fix would be ready for the planned January 7 release date. Pacholke said that was permissible so long as the team completed “rigorous testing”; he told Feuer to ensure that the next date Pacholke received was the actual release date. Feuer noted that his team worked long hours and many weekends, and that this past weekend was the first one since December 17 that he had not worked; DOC required Sierra to bring Ardiel down to Olympia from his Victoria base to focus on this fix. After meeting with Dunnington, Schuler, and testers David Gale and Brian Alonzo, Feuer determined that the fix would be ready by January 12, and he advised Pacholke of that date. The team met the date.

We asked whether Feuer is confident that OMNI is now correctly calculating release dates, and Feuer said that they hand-calculated every impacted individual multiple times without identifying any further issues. However, while he has a “pretty high degree of confidence that ERD is being calculated properly, there are no guarantees in this business because it is code written by humans.” He noted that this is an extremely complicated and constantly changing area.

Feuer has had no input on any public announcements regarding this subject.

Feuer noted that he spent 9 years with the Miami-Dade police, where they faced constant crisis situations, and thus understood how they should be handled and managed. He said that his view was that this was a “grade A 100% well-handled crisis management scenario.” Feuer said that he is not sure where Pacholke gained his experience in this area, but that Pacholke understood what to do from the minute that it became a crisis and handled every decision appropriately. The consistent message from Pacholke and the Governor’s office was to “get the fix right and get it out.” We asked who had made the decision to post information to the public on DOC’s website, and Feuer said that had been Pacholke’s call; Pacholke had a philosophy of putting all of the information out quickly in order to stay ahead of the curve as events developed.

We turned back to Feuer’s hiring process. He stated that it had been an open competitive process, and knew that there had been an additional finalist from another state agency. Upon being hired, then-Secretary Warner told Feuer that he was taking over a very well-run IT department; Warner had not yet announced that he himself was leaving the DOC. Feuer said that in his first week at DOC, the truth about the department became clear; he said that while it is a very productive group, it had substantial organizational problems. There were many vacancies, although he was not sure of the number, and believes that he has filled most of them now. Feuer

thinks that they were caused by a combination of leadership issues and the existence of better opportunities in other state agencies.

We asked Feuer to comment on the breakdown in communication between Schuler and Stigall as to the importance of resolving the *King* fix promptly, and whether he had a view about the decision not to hand-calculate sentences in the interim. Feuer said that in general, he did not like to use “workarounds” as they cause data problems down the road, and his preference is to implement the proper fixes in a timely manner. He noted that in addition to Schuler and Stigall, he was surprised that this issue never came up prior to 2012, either through the state auditor, the state CIO, or Kathy Gastreich in DOC’s risk management unit.

We asked about the complexity of Washington’s sentencing laws, and Feuer stated that they are complex but that he did not see them as more complex than other states, although he has limited experience in this area.

We asked Feuer where he would look to determine best practices for change management in the IT field, and he stated that a consultant named the Gartner Group is his primary source. He also referred to the Project Management Book of Knowledge, which he described as a widely accepted ‘gold standard’; Feuer has enrolled his staff in training based on the PMBOK in the next several weeks. He said that he does not have specific academic training in this and that there are no IEEE standards in this area. He noted that the key to managing a maintenance contract such as DOC’s OMNI contract with Sierra-Cedar is timely and accurate deliverables in a measurable format.

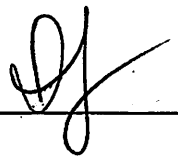
We asked Feuer about his knowledge of a company called Assessments.com. He said that they were a much smaller company than Sierra and not as good of a performer. He is likely to start serious documentation of their non-performance with the contract. Feuer met with the CEO personally and discussed the CEO’s personal history issues; Feuer had heard that he was a friend of former Secretary Warner, although Feuer did not know whether that was accurate. Feuer said that he did think that the CEO had direct access to Warner. He described Assessments.com as “not producing quality work at all.”

We asked whether Feuer had any additional comments for us. He said that this issue is very sad, and thinks that it is particularly sad that people lost their lives because of this mistake. He noted that he had seen governance improve during his years in Miami-Dade County, and that Pacholke and Feuer had sent a clear message to the department to improve their discipline and processes. He noted that the most recent release, M-50, has 350 defects, an increase over previous releases, and agreed to send a plain-language summary of that release that he had prepared for Pacholke. Feuer noted that had he been in the CIO position, he would have made a significant argument that the addition of new projects required additional funding rather than impacting maintenance work.

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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: /s/ Ira Feuer

Name: Ira Feuer 

Date: 2/22/16