Witness Statements

MEMORANDUM

To: WA Senate Investigation File
From: Max Hensley
Date: February 21, 2016
Subject: Jay Ahn Interview

Monty Gray and I interviewed Jay Ahn of the Washington Department of Corrections (DOC) at the DOC headquarters in Tumwater, Washington 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.

Dr. Ahn is responsible for managing DOC's resources for designing, developing, and testing software; his current job title at DOC is Enterprise Business Solutions Manager. He holds a Ph.D in economics from the University of Washington with a specialization in public finance. However, during his work experience he fell in love with technology and its ability to instantly innovate and improve processes and productivity; he has spent 25 years as an IT professional. He thinks that others does not consider him as technology expert due to his academic background but believes that he has an advanced knowledge of IT issues as well as an advanced knowledge of economic issues at this point.

He began his career as a policy analyst in state government with the Department of Labor and Industries, focusing on managed care and health care costs including hospital payment systems. In this role, he designed reimbursement policies, which required substantial data analysis. He developed a computer program to automate health care data analyses on his own time (although he was later reimbursed for that work by L&I), and that was the beginning of his IT career. Ahn moved to DSHS as the state eligibility and self-sufficiency data manager, where he stayed until 1999. While in DSHS, he was invited to present his policy research at a national welfare policy conference in Washington, DC and received various technical certifications in IT. He became the information services architect at the state retirement system and managed the development of system's web-based information portal. He received an award from the governor for that project. He then became a chief technology architect at DOC in 2003, moved to the Department of Licensing as Deputy CIO in 2005. While in DOL, he managed the development of various online services such as Driver license renewal, car tab renewal, one-stop master business license system. He returned to DOC in 2011 in his current position. Thus, he has a good understanding of the DOC challenges and opportunities to improve.

Ahn views DOC as a quasi-military organization in that it has a very top-down hierarchical structure characterized by a lack of ground-up consensus building and engagement with staff. He sees a substantial contrast between the department's listed policies and its practices; he has seen managers try to change this culture but said those efforts eventually fade away.

Approximately 40 people work for Ahn, including contractors. They are responsible for designing, developing, and testing software, primarily in relation to the maintenance of OMNI. OMNI contains approximately 50 applications with more than 3.4 million lines of code and complex business rules under the same framework; he described it as a "system with complex interdepedencies." He stated that he repeatedly verbally expressed ideas similar to those expressed in his email (Bates Number JA_000001); he noted that his view is that ultimately the allocation of resources is management's call – they have the authority to do so and bear the accountability for them.

We asked about his knowledge of the *King* fix. He said that he did not have any knowledge until late November or early December of 2015, once it was scheduled for inclusion in release M-50. Ahn said that he has since looked back at the issue to determine what happened, and explained that all IT requests come through the business team, and the manager of that team determines their severity and places the requests into the release schedule based on their priority. He said that this fix was never requested as a priority or critical item.

Ahn stated that his developers and testers take requests from the business team and work on what they are requested; his view is that the business team failed to recognize the risks caused by this fix and that they should have escalated this item. Ahn believes that the root cause of this error is a lack of complete knowledge and understanding around the business requirements, and noted that there is no comprehensive updated document that sets for the entire set of rules in this area. Until that exists, spot fixes are remedying "symptoms"; he analogized it to moving a spotlight around a darkened street.

The outdated documentation is more likely a result of having inadequate resources for doing a proper maintenance due to other DOC priorities such as many new development projects. He believes that when he joined DOC there were approximately 900 outstanding OMNI defects, and that number is down to approximately couple hundred today. He said that business units would make requests to fix defects often without a complete understanding of business rules and that questions from IT would require the business units to seek input from the AG or others; he thinks that DOC should be given the expert resources to establish a complete and accurate understanding of all applicable business requirements, and unless that is done, it is possible that another similar issue will arise in the future.

We turned to Ahn's email, and he said that it was written in response to the executive management decisions to divert the maintenance resources for the new development projects. He said that he likes the principle of the Advance Corrections Initiative (ACI) but that DOC needed to fund it with new resources rather than diverting from maintenance resources. Ahn is not sure how the resource allocation decisions would have been made or documented, but that he knows that then-Secretary Bernie Warner viewed ACI as the department's top project. The directions came down to Ahn through layers of management and resulted in only minimal and

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critical maintenance work being completed. Ahn is not confident that Warner was aware of the impact of this shift. Ahn said that this type of shift occurred repeatedly, and could not identify a particular CIO under whom the pattern occurred. He stated that maintenance is important because issues that are ignored for a time can "explode" later on, as occurred in this case.

Ahn stated that many DOC executive staff in the DOC's executive team were aware of redirecting maintenance resources because he presented which maintenance resources would work on new projects such as Violator Improvement Process project and Advance Corrections Initiative projects. He received the approvals on redirecting the maintenance resources in an IT governance meeting attended by Pete Dawson, Dan Pacholke, and Brian Tinney. Even absent an explicit instruction to hold off maintenance work, there were clear instructions that the ACI projects (which did not come with new resources) were a higher priority. Ahn stated that IT generally has no voice or representation in the agency's executive decision making and believes that one reason for IT turnover is that the business units often overrule various CIO's preferences. He believes that IT could assist with departmental priorities, but that it was not adequately represented in the decision making process. Ahn said that the executive team would go so far as to impose an application development methodology based on information from consultants and vendors without personal knowledge or experience in the area; he said that business executives did not have full understanding and commitment to required resources to make those kinds of fundamental changes in culture, process, and capacity, and said that those kinds of changes required different or additional resources from both IT and business. Ahn stated that the complexity of DOC's business rules make some popular or Agile software practices impracticable. In addition, Ahn believes that DOC's business units did not provide enough information to define the features in the programming that they need from IT, thus requiring hundreds of clarifications during the design, develop, test phases.

Ahn said that former CIO David Switzer was a good person, but that his departure was a "symbol of the DOC's culture." He explained that Switzer came to work on his last day without knowing that he was about to be fired. Ahn said that the same kind of abrupt departure had happened to Pete Dawson and others. This impacts the line staff when they see superiors treated without "dignity." Ahn thinks that some of this may be attributed to the leadership's different management style. Ahn said that he could not judge Switzer's work as a manager. He said that the various CIOs that he worked for all had plusses and minuses, but that he had relatively short relationships with each one making comprehensive judgments difficult.

We asked whether Ahn had any additional comments that he wished to share with us. He said that he viewed the *King* issue as a management issue, in that management did not staff the experts who have full knowledge of the business rules and their priorities and who could make the correct calls. He said that the department has seen a lot of turmoil, but hopes that this is an opportunity to make DOC a better organization by scrutinizing the current management practices and policies and making better decisions moving forward. He hopes to see more of a voice for IT at the higher levels and a commitment of resources to make changes possible. He wants his opinions to be used to improve DOC management as part of his responsibility to the government and society. He requests that his statement not to be used against any individual in the organization since that is not his intention.

<p style="text-align:center">* * *</p>

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: _Ahnjn_

Name: _Jay Ahn_

Date: _2-25-2016_

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 12, 2016
Subject: Brian Alonzo Interview

Monty Gray and I conducted an interview with Mr. Brian Alonzo on February 11, 2016, at Department of Corrections ("DOC") headquarters. The following summarizes Mr. Alonzo's statements on the *King* fix and prisoner release problem, as well as other discussions about DOC and IT department operations:

We began the interview by introducing ourselves to Mr. Alonzo and explaining that we work for Davis Wright Tremaine and were retained by the Washington State Senate to assist in its investigation of the prisoner release problem. We noted that we were hired to determine what happened and why the problem was not identified and corrected earlier, but also to discuss what conditions at DOC contributed to the situation and what corrective action should be considered.

Mr. Alonzo's title is Quality Assurance Manager in the IT department at DOC. He became manager in the summer 2015 after his supervisor left. He manages a team of approximately five permanent employees and six or seven contractors (temporary workers) who test OMNI and DOC's other IT systems.

He has been at DOC for about 10 years and joined the QA team when it was first formed, which was shortly after he arrived. He worked with IBM when it first sought to develop the OMNI system; IBM worked on the project for a number of years before DOC shifted development from IBM to Sierra Systems, now Sierra-Cedar.

Mr. Alonzo said the former OBTS system still exists as a legacy system, but DOC has migrated 99 percent of the old OBTS functionality to OMNI.

Mr. Alonzo graduated in 1994 from Western Washington University with an English degree. He has a background as a technical writer and was originally hired at DOC to do technical writing as part of OMNI development. He transitioned into software testing and ultimately joined the QA team.

He works with Sierra-Cedar "quite a bit" and said half of OMNI development is performed by Sierra-Cedar and the other half by DOC employees. The quality of Sierra-Cedar's work is "very good" and he had "a very good impression" of the company. The relationship is far better than it was with IBM when DOC first began developing OMNI. A few Sierra contractors work at DOC headquarters; the rest are based in Victoria, British Columbia.

With respect to the history of the requested *King* fix, Mr. Alonzo said that DOC has maintained a "really consistent" cycle of releasing OMNI updates every eight weeks. Mr. Alonzo said he gets the scope of an upcoming release "a few weeks before" his team starts working on it. There are always "a number" of SSTA updates in each release. "SSTA" stands for "Sentencing Structure and Time Accounting." He said there are "always sentencing structure things in the pipeline."

He said he realized the significance of the *King* fix when his team went to perform testing on the update. Part of the testing included analyzing the effect when the update was run against the entire system population, all sentences that were "in some open state." The testing showed hundreds of offenders' release dates had changed. "People were really surprised at the amount of offenders affected and that's when everyone became aware." This was in December 2015.

Mr. Alonzo explained the difference between "defects" and "enhancements" to the OMNI system as DOC classifies them for updates. A "defect" occurs when the application is not running as it is documented or designed to do. An "enhancement" occurs when the business side requests a change in how the system operates or behaves. Modifications to reflect new legislation, for instance, is considered an "enhancement."

The business side typically requests a change that is translated into a high-level design, which the developers then translate into a detailed design and, eventually, code. The business side makes its requests for changes through the Easy Vista system, or its predecessor, the Service Desk Express system, by creating tickets. Not all of the tickets relate to OMNI; they may relate to other IT applications, or to hardware or other issues. The tickets are "triaged," but Mr. Alonzo *said that* he was not familiar with the triage process in any detail.

Those tickets that relate to OMNI are then entered into the ClearQuest system to implement the request and track development. The ClearQuest entries include fields for both priority of the request, which is used to identify the release for which the update is scheduled, and expected severity in terms of impact to the business.

Mr. Alonzo said decisions about what updates to include in a particular release were made by the "business group" within the IT department. He believed that David Dunnington as business unit manager at the time would have set the scope of each release.

Mr. Alonzo said every release is set to a scope that is expected to be fully developed and ready to test by a given date in the release cycle. He said the Dunnington group would decide whether to delay a planned update to a future release.

He did not know who decided whether an update would be developed in-house at DOC or by the Sierra team.

Mr. Alonzo said he believes the QA team follows best practices and uses standard tools and applications in performing its testing. He said he "think[s] we're doing it the right way," and the team has built up a body of experience with the application in the eight years since it formed.

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Mr. Alonzo reports to Jay Ahn, the IT Application Development Manager. Mr. Ahn reports to Ira Feuer as Chief Information Officer. Mr. Ahn has been Mr. Alonzo's boss for four years dating to when Mr. Alonzo became a QA supervisor. Mr. Alonzo said Mr. Ahn's other direct reports includeTrang Nguyen, who is the development lead, and Rob Baird, who is the technical analyst lead in charge of creating the high-level designs. He said Tanya Christian now runs the business side, succeeding Dave Dunnington, who is now temporary deputy CIO. Mr. Alonzo was unsure whether Mr. Ahn and Ms. Christian report directly to the CIO or to Mr. Dunnington, but he believed that it was one of the two.

Mr. Alonzo said he has seen software updates affect system-wide populations before: "It happens whenever there's a change in sentence structure." The surprise with the *King* fix was that the change was unexpected in affecting so many offenders. "I knew we were expecting something," he said. Mr. Alonzo said the business side was notified and that the calculations and code were immediately reviewed after testing showed such a significant impact on release dates.

He said his work would typically overlap between releases. For example, if the M45 release was upcoming, Mr. Alonzo might be working on M46 projects as well. But Mr. Alonzo would not be working on any updates set for the M49 or M50 updates until closer to those release dates.

Mr. Alonzo said he is not involved in setting priorities for updates and scheduling updates for release, adding "the decision to move anything is always a business decision."

We discussed the specific ClearQuest entry (CR00029410) for what became the *King* fix and originated from Wendy Stigall's request. Everything that is developed for OMNI, whether a defect fix or an enhancement, is tracked using ClearQuest. Mr. Alonzo said the audit trail for the entry shows the timing of every change that's been made to the item. "Migration" reflects that the developers have completed their work and the code is being transferred to DOC for testing and, ultimately, deployment into production.

David Gale is the primary tester for sentence structure updates. He has been with DOC longer than Mr. Alonzo—more than 10 years.

Mr. Alonzo said Mark Ardiel is the developer who worked on CR00029410. He said that if everything goes smoothly, the ClearQuest audit trail should show progressive status changes from "assigned" to "code complete" to "migration" to "testing approved."

The Change Request 6307 document [IF_000385] originated not in ClearQuest, but likely in Service Desk Express. At some point in the years since December 2012, it was transferred to Easy Vista, which is the system that the business side now uses.

We asked about the IT triage team and Mr. Alonzo believed that it included Luann Kuwata and possibly Mr. Dunnington, among others.

We discussed the December 16, 2015, email that Mr. Alonzo sent to Mr. Ahn and other recipients about the *King* fix [GOV_000192]. Mr. Alonzo noted in the email that the change extends release dates for "about 2,900 offenders." We asked about the reference to finding no

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"blocking issues" in the email. Mr. Alonzo said a blocking issue is a defect that would prevent full testing on the update. There were no such issues with the *King* fix update and it was fully tested.

Mr. Alonzo also talked about the VIP update ("Violator Improvement Plan") that is referenced in the email. VIP was a functionality added to OMNI relating plans for improvement by offenders on supervision. Mr. Alonzo described it as a large project that "consumed a lot of our time" around the time the *King* fix was also implemented.

Mr. Alonzo discussed the issue of building new functionalities and features into OMNI at the same time as performing regular maintenance to correct defects. He said there are always "resource challenges." Mr. Alonzo added that there are "a number of open CQ [ClearQuest] items that have SSTA functionality labels. We do have a lot of open issues with OMNI and we're creating new functionality all the time."

With respect to the 2,900 affected offenders, Mr. Alonzo said: "We didn't have any sense of the scope until that code was imported and we ran the calcs." Following discovery, Mr. Alonzo said it was "all hands on deck" to understand the implications, and the testing of the code "was unlike anything we've ever had before" in terms of thoroughness. The instructions were to "get it right and get it out." Mr. Alonzo believed the update was properly working now.

Mr. Alonzo had not seen the ASD Change Request Report before [WS_000057]. He did not know if it was something that could be created in Easy Vista or Service Desk Express. He also is not involved in monitoring Sierra's performance or administering the Sierra contract.

There has been "a lot of turnover" in the IT department in the last year, but Mr. Alonzo said it is "hard to say" why people leave and that reasons are varied. He said there was a "really solid" IT staff prior to the recent turnover, which has resulted in probably less morale now. He said most departing IT employees leave for another position in state government.

Mr. Alonzo said they are always looking for changes to OMNI that might affect a group or large group of offenders. He said some of the one-off catches reflected in documents that we have seen involving offenders might be attributed to the old OBTS system or if sentencing elements were incorrectly entered into OMNI. He said the QA team is always trying to analyze what was happening before a code change is implemented, here's what we expected to see afterward, and here's what we are actually seeing, and then "dig into the code" to identify any unexpected results.

In terms of possible areas for improvement, Mr. Alonzo suggested that there were systemic issues, as there's "no clear channel" for issues like a significant OMNI fix to be raised. There are pressures from the various subgroups on the business side to get different things done and "things [requests] come from everywhere." He discussed the possibility of a more "streamlined" process for OMNI updates.

Mr. Alonzo also said he would recommend stopping introducing new OMNI functionality and features until the backlog of defect fixes is cleared. "Let's stop introducing new functionality until we've got all the stuff in the pipeline taken care of." He added that there

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are between 300 and 500 open items at any given time. "It's easy for things to get lost when you have that volume of stuff to do."

Most of the new initiatives like the VIP update come from higher levels on the business side. Mr. Alonzo said IT is understaffed to a degree, given the volume of projects that are in the pipeline. He mentioned the Advance Corrections initiative as another large-scale project involving OMNI changes. He believed that the IT department was understaffed to handle the amount of work that came through.

We thanked Mr. Alonzo for meeting with us and told him that we would produce a memorandum of his interview for his review and approval. We also told Mr. Alonzo 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: _BRIAN S ALONZO_

Date: _2/17/16_

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

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

Monty Gray and I interviewed Mark Ardiel of Sierra-Cedar ("Sierra") at DWT's office in Seattle, Washington for approximately three hours beginning at 10:30 am on Monday, February 15, 2016. Ardiel was accompanied to the interview by his attorneys, Steven Ragland and Briggs Matheson of the law firm Keker & Van Nest. Ardiel and his counsel made themselves available on very short notice and traveled to Seattle to meet with us on the President's Day holiday. 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.

Ardiel is currently a Technology Principal at Sierra; this position is one level below "director ." He was promoted to this position from his prior role as a consultant approximately 4-5 years ago; in total, he has worked at Sierra since early 2007. He was originally hired to join the team that was building the OMNI application. It is Ardiel's recollection that the Sierra team had been working on the project for approximately 3-4 months before he joined Sierra. It took another 1.5 years before they launched OMNI, which went live in mid-2008.

Ardiel attended the University of Victoria in Victoria, British Columbia, Canada for two years, and pursued a degree in engineering but discontinued his studies for financial reasons. He was hired to do computer and database work for the Center for Educational Information in 1998, and was eventually hired full time by that agency. That agency was shut down by the provincial government, but Ardiel's role was maintained and shifted over to another agency. Ardiel joined Sierra from his position in the BC government.

Ardiel himself had no experience in the corrections area. He said that he believes Sierra may have had some experience with OBTS in Connecticut; OBTS was the legacy system used at the Washington DOC until OMNI was deployed. He did not know the details of Sierra's involvement (if any) with OBTS. Sierra has also worked on other applications for the justice

system in BC, including a tool named Cornet, which is used by the BC courts, and a tool named Justin, which is used by the BC police.

It is Ardiel's recollection that Sierra largely built OMNI from scratch. Ardiel understood that IBM was retained to build the system and worked on the project, but DOC brought in Sierra to replace IBM. Ardiel said that when he joined Sierra, the company had not substantially begun development, but was in the midst of design work and ramping up the development team. When asked about OMNI's design documents, Ardiel noted that the design documents and specs were developed and discussed "above [his] level" among management. He said that he believed there probably were a several design documents (the numbering system began with D-1 and Ardiel recalled seeing a document designated D-55); those documents set forth DOC's business requirements for OMNI, and were developed based on DOC's specifications. They would set forth each level of the design process, including high level design, detailed designs, and technical documentation. Ardiel said that Sierra may have a copy in its archives; he noted that he was not in management at Sierra at the time and was not personally involved in the design. He said that he thinks Sierra's contract with DOC probably set forth all of Sierra's deliverables, identified by D-number; but he believed that the design documents had not been updated since the initial implementation.

Ardiel said that the original versions of the OMNI system were numbered versions 3.1 and 3.2; 3.1 had very basic information such as the offender's name and location and the designated staff, while 3.2 began to implement other business functionalities. These functionalities include: prison movement, case management field movement, and two disciplinary sections (one each for prison and field issues). Each of those could feed into the the Sentence Structure Time Accounting functional area (SSTA) area, which is a module within OMNI. There are also many other functional areas that may not have direct links to SSTA.

We turned the discussion to SSTA. SSTA is not the largest part of the OMNI system in terms of length of code, but it is fairly large and among the most complicated, as a result of the business functions that required implementation of the sentence structures created under Washington law. Ardiel said that the SSTA area is large and overwhelming when taken as a whole, but it can be broken down: he explained that the base piece is the sentence structure imposed by the court, that complexity is introduced by variations in the types of sentences imposed at the cause, count, and confinement levels, further complexity is introduced by the relationship between consecutive and concurrent segments of a sentence, and that even more complexity is caused by the differing calculations governing the amount of good time that can be earned, the various sentence components that it can be applied to, and the distinction between good time and earned time, among other issues. These other issues include the application of discipline or sanctions, and calculations of community time as separate from time in the DOC's facilities.

In order to determine an offender's release date, OMNI calculates an earned release date for each confinement, which is then rolled up to the count level, then to the cause level, and finally to the offender level. This is further governed by what is known as the "Max-Ex" or maximum expiration date, or the date on which an offender would be released if he or she did not earn any good time, and the "Stat-Max," or the statutory maximum, which depends on the

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crime that an offender was sentenced for. The complexity in this area is largely driven by Washington's complex sentencing structures. This calculation involves many lines of code, but the program is drafted in a way that reduces the amount of code by recursively calling certain segments (which adds further complications). Ardiel described the process as "traversing an object tree," and said that for each element, it was necessary to reach the bottom of the tree before moving back up for the next element. Asked to rank the complexity of the SSTA area, Ardiel stated that it was a 10 on a 1-10 scale; prison movements were approximately a 5-6; and other areas were in the range of 2-3. This complexity is caused by the complexity of the business (i.e., DOC) requirements, which his team needed to actually understand rather than simply applying logical relationships.

Ardiel said that at the beginning of his time at Sierra, he was not specifically devoted to the SSTA area, but as the OMNI system moved into the maintenance phase, Ardiel was one of the developers who stayed with the company. He was for a time the development lead on the DOC contract, although he left that role when he went on personal leave in 2015. During that time, Ardiel's position was backfilled by another Sierra consultant, who assumed the leadership position on the DOC contract, and has retained that role since Ardiel's return in September 2015. Ardiel said that all members of the team work in all areas of the OMNI program, and that he is familiar with almost the entire system as a result of his longevity with the team. He said that he is certainly the most familiar with SSTA, as he is the only person who has worked on it consistently since 2007. However, Ardiel said that he is not the only one who can or does work on it. He believes that DOC probably prefers that he personally handle SSTA issues because of his experience, but that other team members certainly can do the work, and would do so if asked by the business.

We asked whether the *King* fix was intended to fix a programming error or a design error. Ardiel said that his understanding now (although he did not have understand this issue in 2012— or any time prior to December 2015—because it was never explained to him by the DOC) is that the original programming was based on a 2002 decision of some kind; whatever determinations were made at that time carried forward into the implementation of OMNI. OMNI was designed and implemented according to the specs that Sierra received from DOC; he now sees that those specs must have been in error, but the system was programmed properly according to the requirements DOC provided. Ardiel is not specifically aware where in the design documents that spec would be located, although he would expect to find it in a section relating to the business rules and be little more than a simple statement explaining how credits were to be applied.

We asked about the process of rolling out OMNI in 2008. Ardiel recalled that the system may have had some initial bugs that took a few months of work to resolve, although he could not recall specific functional issues at this time. He remembered that there were lots of tickets requesting alterations of one type or another, and substantial pre-implementation testing. One performance issue that arose shortly after implementation was that use by multiple users at the same time caused certain errors; another issue related to slow refresh times for certain more complicated pages.

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Ardiel said that he worked most closely with the business team at DOC, which was led by Dave Dunnington, although the members changed over time. Sue Schuler has been a member of that team for a substantial portion of the time that Ardiel has been involved. Ardiel did not work with DOC during the original design and implementation, so he could not say precisely who was there in 2008. He also worked with Steve Collins, who seemed to understand the technical aspects of the system, and testers David Gale (whom Ardiel believed had the longest tenure) and the current testing head Brian Alonzo. Ardiel did not know what DOC's procedure was for determining which staff Ardiel would work with; he felt that there was a lot of turnover among his contacts there.

We asked Ardiel to explain the process by which an OMNI change is requested and implemented. Ardiel said that he did not fully understand the DOC's internal processes, but believed that they maintained some kind of gatekeeper that would allow them to get an estimate for the work. He believed that DOC had a different process for fixing defects as opposed to making changes or enhancements that allowed fixes to move straight into the request queue. We asked whether he was aware of a 'triage group' at DOC, and Ardiel said that he was not. He said he was not involved in that process.

Ardiel stated that DOC held twice-weekly OMNI meetings (in which Ardiel would participate by phone from his office in Victoria, British Columbia). These meetings were used to review the current issues in the ClearQuest software, and were the primary points of contact between Sierra and the DOC's business team. Ardiel would generally be the only Sierra person at the meetings, but approximately 15 DOC employees would attend, generally including Dave Dunnington, Sue Schuler, Brian Alonzo, and technical staff. The twice-weekly meetings were not used to discuss whether certain items should be implemented or in what order (prioritization), but were primarily status updates on items set for the current release. Sierra's programmers would channel their issues and questions for DOC through Ardiel to be brought up at these meetings. Ardiel said that these meetings were informal, and did not believe that he had kept any notes or other records of the discussions.

Ardiel explained that shortly after OMNI was implemented, DOC developed a schedule to release updates every 8 weeks. In order to meet this schedule, Sierra's five programmers would typically code for approximately 1 month, complete two weeks of testing, and then send the updates to DOC for two weeks of further testing before the release. Ardiel recalled that at some point, Dunnington's business team began estimating how much could be done within that 8-week time period, and would come up with a list of projects for the next release. Ardiel understood that Dunnington developed this list by working with the business team. Ardiel's understanding as to how these lists were generated is as follows: After OMNI had been up and running for a time, DOC developed a sense of how many items a release could include. If there was room for 50 items, for instance, the representatives of each of the various business groups might be asked what their top five items were. Occasionally a release would be dedicated to a specific business area (for example, if that area had a large backlog of tickets) or to a specific OMNI functionality, such as a high-priority project, or new functional components brought in from other DOC systems. The decision whether to dedicate a release to a specific business area or functionality was solely DOC's. In addition, the number of items and which items to work on were determined by the DOC business unit. Ardiel noted that entries into the ClearQuest system

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have a field identifying the proposed release for the item; he is not sure whether those are entered by the IT staff or by others within the agency. Ardiel noted that he is not privy to that information.

Ardiel recalled that at some point, DOC maintained a tracking chart showing the number of outstanding requests broken out by which of OMNI's functional areas they impacted, and showing the number fixed in the most recent release and the number of additional requests received in that timeframe. Ardiel believes that these charts may have been developed by Cindy Chu at DOC, and Ardiel believes that Dunnington and Ira Feuer (DOC's CIO) should be aware of them. Ardiel remembered former CIO Doug Hoffer reviewing these charts, as well as DOC employee Mark Quimby; he said that CIO Kit Bail did not go over these to his knowledge during her tenure. Ardiel was not sure whether there were specific monthly meetings to discuss these charts or if they were simply on the agenda for the existing OMNI meetings. Either way, DOC stopped using them regularly approximately 5-6 years ago. The chart did not have any information as to the relative importance of the projects, but simply a numerical total of how many had been resolved, requested, and were pending. For example, DOC might have looked at a functional area and determined that there were 10 items and decided to focus on that area until there were zero items. Those 10 items could be just spelling errors, but the idea was to get the numbers down. There was no focus on the nature of the items, just the volume.

We asked Ardiel whether he had any basis to compare DOC's workflow management to best practices in the industry. He said that his only experience in this area was on the OMNI project, so he did not know how it compared to others. However, he felt that the lack of formal process was not ideal. Ardiel did not have much professional interaction with Hoffer, although he thought Hoffer was "a nice person." He never interacted with David Switzer. Ardiel thinks that Dunnington does a good job of knowing the business areas and getting input from them. Ardiel said he did not work closely with DOC employees, and did not have grounds to assess their strengths and weaknesses. He noted that he had seen a lot of turnover among the people with whom he was in contact.

Ardiel said that the OMNI meetings were run by various people over time; he is not sure who is formally in charge of them, although he believes that it would likely be Dunnington during the 2012-2015 period. When Dunnington is not present at the OMNI meetings, it is someone else from his team who takes over. Substantively, the OMNI meetings consisted of projecting the list of items on a screen and walking through them one by one.

We asked whether Ardiel was aware of a "governance group" or "governance team." He said that he was not familiar with such a group.

We asked Ardiel for more detail on the chart or spreadsheet showing the backlog of items in ClearQuest. To the best of his recollection, Ardiel stated that the list was generally fairly constant over time, although the sheet was difficult to interpret as DOC brought non-Sierra work into ClearQuest. Thus, the numbers would include tasks that Sierra was not responsible for. This may have been the reason DOC stopped using these charts in OMNI meetings. In addition, DOC had 2-3 internal developers who worked on OMNI issues. Ardiel did not remember the specific number of outstanding items at any particular time, but guessed that it remained stable at

approximately 700-800 pending items. He noted that that number included very minor items such as typos.

We explained to Ardiel that some DOC staff had expressed a concern to us about new projects taking up bandwidth that otherwise would have gone to OMNI maintenance. Ardiel agreed with that characterization, "for sure." As an example, Ardiel said that the Resource Program Manager (RPM) program was brought into OMNI, which required about 6 months of work by 2-3 programmers; those programmers were taken off of the maintenance team for that period of time. Ardiel's impression was that new projects got "airtime" while maintenance work did not. Ardiel has no input on or understanding of how or why non-maintenance work was performed under Sierra's maintenance contract; his general impression without reading the contract is that if DOC asked for it, Sierra was willing to do it. As he understood it, DOC's contract with Sierra required Sierra to provide five full-time developers in return for a flat monthly fee. How DOC chose to use those resources was up to DOC. He said at times, Sierra would receive new contracts from DOC that would compensate Sierra for bringing in additional programmers for particular projects. Whether items were described as "defects" or "enhancements" to the system, from Sierra's point of view, everything was a task to be performed. Ardiel remembered that at times he informed DOC that certain work was too substantial to be performed within the time allotted for a particular maintenance release. Ardiel said that the scope of the contract was outside of his responsibilities; thus, when asked how DOC decided whether a new project would be done as part of the existing contract or as part of a new one, Ardiel noted that he was not involved with such decisions. Sierra has an account manager who handled those types of issues.

Ardiel further said that he believed the Advance Corrections project may have had both a new contract component and a component that was handled under the maintenance project. He believed that for nearly all of 2015, almost his entire maintenance team was working on that issue. Another substantial project was the Persistent Prison Misbehavior issue, which was not a new item but a very substantial project that required lots of time. He also mentioned two new contracts that Sierra worked on: a health services contract and a needs and goals contract, which he described as a portion of the Advance Corrections project.

Ardiel said that he was not a party to the DOC's discussions about when certain fixes would be scheduled initially and whether fixes would be handled internally or by Sierra. DOC would inform him of the work that Sierra was expected to handle after DOC made its decisions. During the update process, work on a particular release needed to stop on what was known as the 'code freeze' date so that testing could begin. At that point, Ardiel and his team would turn to the items scheduled for the next release. If the code freeze date approached and an item was incomplete, the decision would be made by the DOC business team to either move an item to a future release, or to continue to work on an item if it was particularly important. Ardiel and the Sierra developers were not involved in this decision making process. Typically, Dunnington would ask the DOC business person responsible for the relevant functionality whether to move the item or to continue work on it past the code freeze date.

As the "code freeze" date approached, Ardiel and the DOC would consult regarding any outstanding issues that had not been completed, and DOC would provide a priority list of areas

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to focus on and complete. The code freeze date was generally immovable, but on occasion work could continue into the testing period (although that caused risks by shortening the time allotted for testing). When asked why DOC did not simply move the release dates, Ardiel stated that he did not know, but suspected that the release date was generally firm because updates to multiple systems (not just OMNI) may have been involved. Those dates were very rarely moved, although Ardiel noted that the January 2016 release date was pushed by 5 days to accommodate the *King* fix without further delay. In addition, it was possible to release a "hot fix" or an update outside of the scheduled release cycle. These were rare, but occurred when DOC's business side determined that an issue was too important to wait for the next cycle. Ardiel remembers those occurring 1-2 times per year; occasionally there are unplanned hot-fixes when a problem is discovered shortly after a release. Hot fixes are generally performance-based; Ardiel cannot remember any that were required based on a change in the law, as those changes are generally known in advance and can be planned for. He noted that hot fixes carry the risk of introducing new errors in the effort to correct old ones.

We asked Ardiel to explain ClearQuest's severity ranking, which listed every project on 1-4 scale. He said that ranking a project 1 meant that it needed to be done to avoid a system crash; these would be done off cycle due to their urgency, although they occasionally arose close enough to a release to allow them to be included in the general releases. A 4 ranking means that the issue could go permanently unfixed without causing any real issues. Ardiel estimated that around 60% of the items in ClearQuest were ranked 3, with approximately 20% ranked either 2 or 4. DOC set those rankings. They were not explicitly discussed in the OMNI meetings, although Ardiel speculated that they were used to determine which items were sent to him for work.

Ardiel explained that Sierra would sometimes get the list of items to work on for an upcoming release at the time that the previous release went into code freeze. However, it was up to the DOC to determine how far ahead to schedule items for maintenance releases. These decisions are beyond the scope of the Sierra developers. As an example, Ardiel noted that they are currently closing out release number M-50, and are awaiting the list of projects for M-51. He said that although the list would be set somewhat in advance, DOC would also add items to previously set lists that they believed to be important, which increased the workload for each M-release and made it less likely that the maintenance team could complete all of the tasks assigned. Items are also moved to later releases when issues arise in testing that prevents them from being released as scheduled. Overall, however, it remains up to Dunnington and the business team whether to continue working on an item or to move it to the next release. If an item is moved to a later release, Ardiel and the other Sierra developers would focus on the items remaining on the earlier release. DOC could also schedule a "mid-release" item if it deemed it necessary.

We turned to the specific work that Ardiel and Sierra did on the *King* fix. We described the time frame where Wendy Stigall identified the issue and sent it to Schuler in December of 2012, Schuler reported on her "consultation" in late March 2013, and the item was approved in early April and originally set for release in September of 2013. Ardiel said that timeline did not strike him as odd, and that items were routinely scheduled several releases into the future. He said that his focus is on the current release, and although he has access to the data showing what

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is scheduled for future items, he has no reason to look forward to those. He either does not have access or is not aware of having access to DOC's other tracking measures, including Easy Vista and the Service Desk Request system.

We asked whether Ardiel tracked his time and allotted it to particular items, and he said that he did not. All of his time is billed to DOC, and he therefore enters the amount that he works but does not record specific tasks. The same is true for the entire maintenance team. He has done a rough estimate of the developer time spent on the *King* fix since this issue arose in 2015. From November 2015 to release in January, Ardiel spent all of his working time on *King*, which he estimates totaled approximately 300 hours. Prior to that, he estimates that he spent approximately 80-100 hours between 2013 and 2014 on the fix.

We showed Ardiel a document prepared by Schuler with a time estimate of 20 hours for Sierra's work (Bates Number WS_000050). Ardiel said that he was the source of that estimate, but that it was a rough estimate quickly arrived at and based on a very superficial description of the problem provided by DOC that made it appear to involve a comparatively simple switching of the order in which credits were applied. Ardiel pointed out that Sierra provides five full-time-equivalents for a flat monthly fee; so he is unsure why the State even asked for cost estimates for individual items. He assumed that it had something to do with budgeting.

Ragland suggested that it might be helpful for Ardiel to provide some context to this estimate. Ardiel explained that a common problem with DOC requests is that they are either overly specific or overly vague; he rarely receives a global business document that captures for him the implementation of the change they are requesting in all scenarios. He thinks that although DOC employees have obtained certain skills through their work experience, they are not experts in project management or in managing software maintenance; they are more in the nature of subject-matter experts. His general practice is to send out examples of the kinds of issues that may arise while he is coding and to ask what the outcomes should be. This in turn occasionally requires DOC to turn to the AG or others for further advice. He generally identifies these problems by programming until he hits a fork in the road and needs to determine which path to go down; he cannot continue without direction from the business unit.

Ardiel was on parental leave from February to August 2015. Originally, he was scheduled to take four months of leave; but he later extended it to six months. Ardiel informed the DOC in December 2014 that he would be out on leave beginning in February 2015. Sierra assigned another developer with prior SSTA experience to join the team while Ardiel was on leave.

We showed Ardiel the ClearQuest report for the *King* fix, which on page 287 reflects that the fix was scheduled for M-34, moved to M-35, then moved to M-36, and then back to M-35. Ardiel stated that he interpreted these changes as reflecting Dunnington's work process of clearing out a particular release (in this case, M-35) by moving all the items to the succeeding release before pulling back the items that he actually wanted to include in the earlier release.

We noted the direction on page 286 of this document to implement the *King* fix before another item; Ardiel explained that item was the Persistent Misbehavior issue he previously

mentioned. He thought that entry would have been based on a discussion in an OMNI meeting, and noted that in fact, the Persistent Misbehavior fix was completed first. He understood that Persistent Misbehavior was a high-priority item.

We noted the entry showing that the *King* fix was labeled "must-fix" for both M-37 and M-38. Ardiel explained that at one time DOC set priorities for the items in a release on an A-B-C scale; A items were 'must fix'; B items were those that had been bumped from a previous release; C items were any new additions. He explained that although the "must-fix" designation appears to disappear from the record, the report only shows items that are changed, so if the same status is maintained, it would not be shown on the report for later dates. At the same time, if an item comes up in the ClearQuest log as "must fix," that would mean it was not so designated previously. He said that DOC no longer uses the A-B-C scale.

We asked why, if the *King* fix was originally scheduled for release in September, the first record of Ardiel beginning work on the issue was in late September. He noted that it had already been moved from M-34 to M-35 before he started work on it. Ardiel noted that only two or three people from the DOC can set the field designating an item for a particular release.

We asked whether Ardiel had ever been informed that this was a priority or ASAP fix, and showed him Stigall's original request where she informed IT of that information. He said that he likely had access to that document, as it would have been attached to the ClearQuest records, but that he would not have gone searching for it. This note that this was a priority or ASAP fix was directed internally to DOC personnel. Ardiel said that he was never told that this fix was uniquely important; in his mind, this was just one more of the many items he dealt with. We asked whether he realized while programming the fix that it would have an effect on release dates. Ardiel stated that he was not cognizant of the impact. He explained that he typically views OMNI in technical terms as they pertain to coding errors, not in terms of offenders getting out of prison. As a developer, Ardiel often approaches the maintenance requests as scenarios to be worked out in the code. He did not realize the real-world implications of this coding error, and that this issue was a "big deal" until the controversy erupted in December of 2015; this includes when he was finalizing his work in November of 2015. At no point prior to December 2015 did anyone at the DOC explain to him the implications of the error—i.e., that offenders had been released early. He never made it a higher priority than any other item, because he was not instructed to do so by the DOC. He noted that the first sample run to test the calculations showed that approximately 3,000 records would be impacted by the change, and remembered thinking that was a large number; however, this test, which showed only the simple fact that a record is impacted, did not tell him the scope of the impact, whether the previous number was wrong, or, if it was wrong, in which direction (i.e., a calculation resulting in a release date that is too early versus too late).

We asked whether Ardiel generally had confidence in the release dates that OMNI now produced. He said that was a "tricky question" and stated that there were so many variations in sentences and applicable laws that he couldn't personally say whether the interpretations of those sentences and laws created the correct business requirements by DOC to input into OMNI, although he had to assume that they were. Outside of that factor, he said that there were some anomalies based on the way that particular sentences are set up in the system, and explained that

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there were known errors where sentences are modified and where a person is released and reoffends and then is required to serve two sentences at the same time. His confidence in the system is "pretty good" and he thinks OMNI does a "very good job of coming up with what is expected of it."

We asked about new defects related to the *King* fix, and he said that was possible. He is aware of some changes that have been made since it was released, but thought some had been caught in testing. He recalled that one was related to the application of credits to field-only sentence, and said that Schuler might have been unaware that the system was giving credits on those types of sentences; OMNI has now been altered so that it no longer does that. Ardiel was not sure whether to call that a defect or an update, as Schuler did not seem to be aware that the situation was even possible. Ardiel said that another related issue is the stoppage time question, and that a fix for that is scheduled for the next release. This problem arises when there are multiple confinements running concurrently where they have varying statutory maximums; he asked DOC to get advice from the AG on that issue. He noted that there may be other, smaller issues that are being worked on currently as well.

We asked whether Ardiel would characterize the OMNI code as fragile, and Ardiel said that he would not. He said that it is complex, as there are many rules and many exceptions to those rules; therefore, there is a high potential for mistakes if someone is not familiar with the code. He said that this was not based on the age of the system, but rather on the necessity of calculating sentences under Washington's complex set of laws. He said that understanding the code required business knowledge, and would be somewhat difficult for a new programmer to pick up quickly. However, it is "not rocket science" and other developers on the Sierra team for the DOC contract could definitely have done it although perhaps not as quickly as he could. He said that all members of Sierra's team worked on all areas of the OMNI application, but noted that, to his knowledge, none of the other developers were ever requested by DOC to work on this item.

We turned back to Ardiel's work on the *King* fix and noted that he had begun work in September of 2013, but stopped at some point. Ardiel said that he had questions about the business requirements for the item and didn't receive answers. Ardiel noted that he could not make up the answers, which could only come from the DOC, and thus could not proceed with programming the fix, so he moved to another item. Ardiel believes that the DOC at times was unable to answer his questions about the business requirements because they were unsure what the answers were, and needed to consult with others within the agency and at the Attorney General's office. He believes that one other major item that he turned to was the persistent misbehavior fix, which took several months. Ardiel believes that he worked this project to conclusion before turning back to the *King* fix. He turned back to the work in November of 2014, and does not remember what happened in the interim that caused him to return to this project. In 2014, he wrote an algorithm that served as the foundation for the fix. He explained that in order to apply this fix, he had to switch the order in which good time was applied to consecutive sentences from parent – child to child – parent. This caused a complication when there were multiple 'children' of different lengths. Ardiel believes that he stopped working on the problem in 2014 while waiting for additional business requirements from the DOC. He

believes that he would have been working on it in February of 2015 when he went out on leave, and he remembers that DOC elected to put the item aside until he returned from leave.

We asked whether other members of the maintenance team could have completed the project if DOC had wanted Sierra to continue working on the *King* fix during his leave, and he said that they absolutely could have, although it may have taken them longer to do the work. We explained that Schuler had told us that Ardiel was the only member of the team in whom she had confidence to work on the SSTA code. He said that it was possible that Schuler felt that way, but that others on his team were familiar with OMNI and the Java platform, and were capable of doing the work even though they were less familiar with SSTA in particular. Ardiel estimated that he handles approximately 80% of the SSTA programming personally. Ardiel said that DOC's internal developers appeared reluctant to touch the SSTA code.

Turning back to Ardiel's work, we asked whether he completed the Persistent Misbehavior project before returning to the *King* fix. He said that was likely. He remembers that it was sitting on the side of his desk for a substantial amount of time.

We asked how Ardiel communicated his questions to DOC, and he said that he would use email and would also raise issues in OMNI meetings, which are purely verbal and are not logged anywhere to his knowledge. We showed Ardiel his email conversation with Wendy Stigall in September 2013 [WS_000055] and he stated that her answer in this email was the information he had cut and pasted into ClearQuest. He said that this was the only answer to his questions that he remembered getting; he recalls that he had more questions regarding the business requirements for this item. Ardiel recalls that for this item he was presented with a limited number of scenarios regarding sentencing calculations. Ardiel was able to develop the code to address the sentencing calculation errors for these specific scenarios, but then would encounter new issues involving new scenarios, and lacked the business requirements to code a "global" fix for the millions of potential sentencing scenarios. Ardiel would ask the DOC what the business requirements were for the new scenarios. He explained that he moved off of the *King* issue because he didn't have all of the information he needed from the business and had plenty of other things that he could turn to and work on; he explained that DOC drives his workflow and that he picks up issues as they come to him.

We asked about the Sierra maintenance team, and Ardiel said that (prior to this issue arising) it consisted of 3 others in Victoria and two on-site in Olympia. His team members are: Avinash Kumar and Timothy Beirne in Olympia and Kevin Neufeld, Kyle Kayfish, and Ben Kunka in Victoria. Both Ardiel and one other team member are assigned part-time (50%) to the DOC contract, which converts the 6 programmers to 5 FTEs. A former team member, Kyle Wuolle, did most of the original implementation of the sentence calculations, but he left Sierra approximately 3 years ago. Because of the "Needs and Goals" project, Ardiel now has two new team members, who are based in Halifax, Nova Scotia, Canada. Ardiel does not know whether DOC has the power to approve reassignment of the members of the Sierra team, although he suggested that Sierra's account manager Mike Zanon might be aware of that information.

We asked whether Ardiel was familiar with Assessments.com. He said that he knew the name, and that they had developed an offender scoring and risk assessment program known as

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OSPS that interfaces with OMNI. OSPS feeds a risk level for offenders into OMNI that drives outcomes such as release plans and eligibility for early release. He said that there are occasional data exchange problems, but that those are handled externally. Ardiel is also aware of a "STRONG-R" project which was a similar offender scoring/assessment tool. Ardiel had heard rumors that the CEO or owner of Assessments.com may have been friends with someone high up in DOC, but was not aware of any details.

We asked whether Ardiel had any additional comments that might be helpful for us to know. He said that the *King* fix was never presented by the DOC as a priority for him to work on, even in November 2015 when he was completing the work. By the time it had become an emergency, Ardiel's job on the coding was largely completed. He explained that in the fall of 2015, when Ardiel came back from leave, he worked on a couple of projects before turning to the *King* fix. He further explained that it was not until December or January of 2015-2016 that he understood that the term "*King* fix" referred to the implementation of a Washington Supreme Court decision, and that he realized that fact through reading the press on this issue. He had no previous understanding that this dated all the way back to 2002; for him, it began with the 2013 request, which did not fully explain the nature of the error or its real-world implications. He did not learn of the Attorney General's advice on the issue until December 2015 when it was publicly posted on DOC's website, and noted that was the first time he had seen that side of the issue.
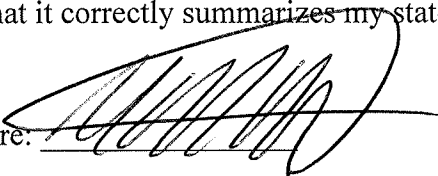
We asked how the process of updating OMNI had changed in the last several months, and Ardiel said that since mid-December 2015, DOC had been doing much more processing of change requests; he noted that he was not involved in any of that work. He understands that DOC is in the process of developing a scoring system that will assist in prioritization of items, and that the Secretary needs to be involved. He is not engaged in that process, but feels as though there is a microscope on him and his team. He also feels that it may be more difficult to get decisions from DOC, because people are reluctant to commit in the current political climate. DOC still operates on a cycle of predetermined release dates, and there are still other projects competing for resources with maintenance items.

We requested that Ardiel provide us with the design documents showing the original specs for the OMNI system that we had discussed earlier in the interview. Ragland noted that some documentation might be considered confidential by DOC, and emphasized that Sierra certainly wishes to cooperate with the investigation into this matter, but also is mindful of its obligations to its client. Therefore, Sierra would want to make sure that DOC authorized Sierra to provide project-related documents to us. Ragland stated that he suspected DOC consent would not be an issue and that Sierra would search for these documents right away.

* * *

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:

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Name: MARK ARDIEL

Date: 02/23/16

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 11, 2016
Subject: Anmarie Aylward Interview

Monty Gray and I conducted an interview with Ms. Anmarie Aylward today at Department of Corrections ("DOC") headquarters. The following summarizes Ms. Aylward's statements on the *King* fix and prisoner release problem, as well as other discussions about DOC operations:

We began the interview by introducing ourselves to Ms. Aylward and explaining that we work for Davis Wright Tremaine and were retained by the Washington State Senate to assist in its investigation of the prisoner release problem. We noted that we were hired to determine what happened and when the problem was identified, but also to discuss contributing problems at DOC and solicit input on possible reforms that could be implemented.

Ms. Aylward is an assistant secretary at DOC in the community corrections division and is part of the Department's executive team. She has worked at DOC for 28 years, starting as a research analyst and in Headquarters. She returned to headquarters to examine sex offender management statewide and was named assistant secretary in September 2009 by former secretary Eldon Vail and has held her position since.

Ms. Aylward said the OMNI system was better in some instances that what other jurisdictions are using and worse in some instances than what other jurisdictions are using with which she is familiar. She noted that some jurisdictions have a different sentencing structure from Washington's, and some corrections departments may have a system involving probation and parole, for instance.

We asked Ms. Aylward about the November 5, 2012, earned time audit that Kathy Smith's internal audit office performed. Ms. Aylward was listed as a recipient of the audit. She said she would have been included on all of the audits and would engage with Ms. Smith trying to understand the implications of her findings.

Ms. Aylward observed that "no one likes being audited," and stated that she felt the internal auditors sometimes focused on data and did not take into account the real-world effect of the problems they identified or their recommended solutions. However, she said that she tried always to remain open to any audit findings and recommendations.

She discussed having to make often difficult decisions on a daily basis in allocating finite resources for her division. DOC is not a well-funded department and some things must be prioritized over others by necessity.

She said people regularly ask her about morale at DOC and she said she is naturally a happy person who loves her job. She added that working at DOC is a difficult job and most people do it well, though there are pockets of problems like at any large employer. She acknowledged there has been turnover, but she said no one has ever indicated they left because of the administration or a particular decision.

There have been several reorganizations at DOC following each change in senior leadership. However, Ms. Aylward said she believes the "wobble" at headquarters doesn't affect people who are working in the field and handling inmates.

She described DOC Secretary Dan Pacholke's strengths as being his passion and his zeal for trying new things and taking risks, which she described as hard-to-find qualities in an administrator. Mr. Pacholke's weaknesses are his competitiveness, which can sometimes give off a bullying and rude quality. "He strives to be open, but he is so passionate about his ideas that he's not as open to new inputs." She rated Mr. Pacholke as average among the DOC secretaries for whom she has worked, noting the very short duration of his time as Secretary.

She thought DOC employees might have some concern about potential retaliation if they came forward in the investigation.

Ms. Aylward believed that DOC could benefit from an emphasis on competitive hiring for top administrative positions rather than appointments to those positions by leadership. She said there are so few such positions that "even if you have an eyeball on somebody, you should do a competitive process" because it helps everyone involved. She said that she did not believe Mr. Pacholke had broken any rules with regard to appointments "but I would say there's lots of room within those rules."

She does not remember the *King* decision being discussed when it was first issued in 2002. More recently, she does not remember any discussion about sentencing calculation problems potentially affecting hundreds of offenders until the early release problem came to light in December 2015.

Ms. Aylward described the situation at DOC as "all hands on deck" whenever it was learned that even a single inmate had been released early in the past. She said all attention was focused on returning the inmate to custody as quickly as possible. "No one wants a person under jurisdiction to serve too much or too little time," she said, adding that no one with integrity in the Department would want to release even one offender early. It was never considered that DOC could be releasing thousands of inmates too early.

She added that it was "offensive" for anyone to suggest, as occurred in one legislative hearing, that DOC saved money through the early release, or desired to save money. She said the scope of the prisoner release problem was "something nobody saw."

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We asked about the volume of requested OMNI fixes and whether the sentencing calculation request could get lost among all the others. Ms. Aylward noted that some of the requests were for things such as updating the address of a field office. Although that is important, she added it's "not the same" as a sentencing calculation fix.

Ms. Aylward said the administrative services division is a "good division" that performs essential "foundational" work for DOC in terms of records, classifications, budgeting, payroll and such.

Ms. Aylward believed she found out about the error on Tuesday, December 15, when Ms. Stigall was included on the agenda of an executive team meeting. She described the resulting response as "incredibly aggressive" in trying to identify offenders who should be returned to custody. She believes that although some of the process might have differed, any DOC administration would have had the same immediate and urgent response to the issue.

She has been married for 25 years to a DOC warden and said there are numerous relationships both marital and otherwise in the Department. She identified it was important for staff to have "good boundaries" and follow policy if they are in a relationship with another staffer.

Ms. Aylward said one weakness in the department is that there is no specific OMNI training for new hires. She said most employees learn to use the system through on-the-job training. This is an area DOC is looking to "shore up" with more formalized training.
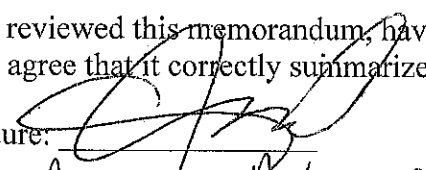
We asked Ms. Aylward about some of the documents that show DOC staffers performing audits and identifying individual offenders who were about to be released too early. She said she believed these were one-off situations and involved record work-arounds, and that these instances were all reported back to the records division.

Ms. Aylward said sentencing calculations have always been a "super complex" issue that change frequently due to new legislation and court rulings. In one recent instance, DOC tried to respond to a court ruling by pushing for legislation on *Bruch* decision. After that legislative push was unsuccessful, DOC worked to implement the court decision.

We thanked Ms. Aylward for meeting with us and told her that we would produce a memorandum of her interview for her review and approval. We also told Ms. Aylward that she could clarify any points in her review of the memorandum.

*   *   *

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: _Amanda Aylward_

Date: _2-16-16_

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DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 13, 2016
Subject: Kit Bail Interview

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Monty Gray and I conducted an interview with Ms. Kit Bail on February 12, 2016, at Department of Corrections ("DOC") headquarters. The following summarizes Ms. Bail's statements on the *King* fix and prisoner release problem, as well as other discussions about DOC and IT department operations:

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

Ms. Bail worked for almost 15 years as the chair of the state parole board. She came to work for DOC in approximately 1999. Her last job before joining the IT department came as an Acting assistant deputy secretary for community corrections.

Former DOC Secretary Harold Clarke asked Ms. Bail to become the business sponsor of the OMNI project. That led to Ms. Bail becoming the project director of OMNI and eventually the Chief Information Officer for DOC. Ms. Bail retired about four years ago, she believed in November 2011. She led a training effort for her last six months at DOC as a project for former Secretary Eldon Vail.

Ms. Bail subsequently came out of retirement and now works as a Project Director for the Department of Revenue.

Ms. Bail discussed the two phases of OMNI development. DOC originally contracted with IBM to develop the OMNI system. Ms. Bail said "IBM did little of actual value and got a lot of money for it," delivering what she described as "empty code." She believed DOC invested $25 million in OMNI development with IBM before dismissing IBM. Ms. Bail suggested she was surprised the AG and DOC did not sue IBM given the quality of work it performed.

The next phase of OMNI development involved Sierra Systems. The contract was not competitively procured, as a result of a decision made by the Director of Information Services, who was one of the two OMNI sponsors. Ms. Bail said Sierra was initially hired to conduct a

three-month assessment. (Based on Sierra's report-) this decision to terminate IBM was made before Sierra - did their assessment, DOC terminated IBM and awarded the contract to Sierra. She said Sierra, which originally believed it was going to repair IBM's work, had to develop the entire system. Sierra created a working system in 14 months at about half the cost of what DOC had paid IBM.

Ms. Bail said the former OBTS system that OMNI replaced was borrowed or bought from the Florida corrections system.

Ms. Bail said Sierra did a good job and "they were and still are a good company to work with."

Having retired from DOC in 2011, Ms. Bail acknowledged she was not around from 2012 to 2015 when the OMNI request for the *King* fix languished. She said she has "close ties within the Department" from her years at DOC and has heard much from former colleagues. She expressed that she was only representing her opinions and beliefs about what happened and the underlying causes as a long-time employee, given that she had left DOC during the relevant period.

Ms. Bail said we established a "pretty vigorous governance process" during her time as CIO to monitor big projects. This was the Project Review Board or "PRB." She said the IT department tracked decisions, kept documentation, and "we knew what was going on."

After Secretary Vail resigned and was replaced by Secretary Bernie Warner, "all of that went down the tubes," in Ms. Bail's appraisal. She said she believed that Mr. Warner did not understand the processes that normally go into big projects. Ms. Bail said many key employees left during Mr. Warner's tenure, including Denise Doty and former CIO Doug Hoffer. She added that Mr. Warner "didn't respect rules" and brought in personal friends to work in the Department.

Ms. Bail said Mr. Warner was not accountable and pushed the IT department, including Mr. Hoffer, to devote all its attention to his pet projects.

Ms. Bail said that the successor DOC Secretary Dan Pacholke "tries to get what he wants." She worked with Mr. Pacholke for years and went "head to head" with him at times. But she did not feel Mr. Pacholke ever was unethical or broke the rules. "Danny, in my opinion, inherited an effing mess from Bernie and had lots of repair work to do."

She did not fault Mr. Pacholke for using direct appointments to fill key roles, saying that things would have stalled otherwise. Ms. Bail said Mr. Pacholke "goes after what he wants and he's not always right," but she said he was a strong, direct leader.

Ms. Bail is friends with Ms. Doty and said Ms. Doty "feels strongly" that Mr. Pacholke threw her under the bus after the prisoner release problem came to light.

Ms. Bail said sentencing structure calculations in OMNI have always been "very complex" and that there are always "lots and lots" of SSTA changes given always changing

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sentencing calculation rules. During her time as CIO, Ms. Bail said the importance of a requested update "was not set by whoever was the strongest," adding that a sentencing change resulting from a legislative act or court ruling would always "go to the top of the heap."

Ms. Bail said the IT department would meet two to three times a week to identify defects to be fixed, discuss progress on the fixes, and schedule a release date for the fix. OMNI went live in August 2008, and Ms. Bail said that was the process followed for at least he first year after the launch.

There has been some debate about whether the business group is part of the IT department. Ms. Bail said the business group employees are not trained in coding, but they do translate requested changes to IT systems and coordinate how those changes will be configured and developed. She views the business group as part of the IT department, but NOT as IT staff. They are there to represent the needs of the business.

David Dunnington is the head of the business group. Ms. Bail said Mr. Dunnington is a "star, very committed, very dedicated." She believed new CIO Ira Feuer needed a strong business group representative as his deputy CIO, which, she believes, is why Mr. Dunnington was promoted to the role in early 2016.

Ms. Bail said Mr. Warner and Assistant Secretary Amy Seidlitz "leaned very hard on IT to do the work they wanted done as a priority." One of Mr. Warner's chief projects was the Advance Corrections initiative. Ms. Seidlitz was "very vocal" that DOC had to hire contractors for the project because the IT department did not have capacity. Ms. Bail described this as a "real big morale hit" within the IT department.

She faulted Mr. Warner for bringing in Sean Hosman and Assessments.com over Ms. Doty's and Mr. Hoffer's objections. Ms. Bail said of Mr. Hosman, "He's a crook and Bernie brought him back." She believed DOC engaged Mr. Hosman's company outside of competitive procurement rules.

Ms. Bail said it took at least a year for OMNI to get up to speed after launching, and it had some serious issues that required addressing, as well as an "ongoing" string of defects ranked as 3 and 4 severity levels (the lowest levels on a four-point scale). She was familiar with the ClearQuest system for tracking updates. She said, when she was there, every week the ClearQuest requests were triaged and evaluated. If there were 10 new updates and 20 old ones, her employees would review whether any of the requests overlapped or were repetitive, and worked to identify which ones deserved immediate attention. She said her IT team "met on a regular basis and made those decisions."

She believed there was a better documentation process then, including comments and an explanation, whenever an update was rescheduled for a later release. She recalled that there was an impact analysis for each requested fix that included a severity index. She believed now that staff were providing "very technical descriptions" of requested fixes but had lost a sense of the broader impact of a given fix.

The department sustained a "very big culture change" between Mr. Vail's and Mr. Warner's leadership. She believed Mr. Vail was a great director, who connected with people and maintained high standards. There was a sense of pride in working for the Department under Mr. Vail, she said.

Mr. Warner "added layer and layer and layer" between himself and Department staff. He was not respected by the executive team. She said Mr. Warner was dating the governor's chief of staff (Joby Shimomura) at the time. Mr. Warner had worked in the Department years before becoming Secretary but he returned after working in various out-of-state jobs.

Ms. Bail listed the several CIOs who followed her:

- Doug Hoffer was "fabulous" and a very effective CIO. He fought "tooth and nail with Mr. Warner" over the Assessments.com team and ultimately quit as a result.

- Peter Jekel was "very competent." His main focus was on IT security and his stint as CIO was short because "he wanted none of it."

- Jibu Jacobs was CIO for only a short period.

- David Switzer was inadequate, and had an Army background. He made people come to his office only to "blather" at them. Ms. Bail remembered Mr. Switzer visiting her but then talking entirely about himself. He remained as CIO for about nine months.

- Ira Feuer does not have a strong reputation in the IT community in state government. Ms. Bail has never met Mr. Feuer. Because Mr. Feuer discovered that the *King* fix had yet to be implemented, Ms. Bail believes DOC couldn't get rid of him now even if it wanted.

Ms. Bail said DOC had one of the strongest IT departments in state government when OMNI development was completed and the new system launched. She believed "tons and tons of qualified" people have left the department and that Mr. Warner "decimated" the department during his tenure.

We asked Ms. Bail if she considered the *King* fix a significant defect, as opposed to a minor fix that had significant implications. She said anything affecting sentencing structure and calculations would have risen to the top of the IT priority list in her time. She couldn't believe Ronda Larson's 2012 comments as reported in the media. She said even if a problem affects a prisoner's sentence length for just five days that raises both liberty concerns for the prisoner and public safety concerns if the prisoner is released too early or too late.

She said she couldn't understand why the update was repeatedly put off. She added that not all sentence calculation fixes directly result in a change to offenders' release dates.

Ms. Bail said a backlog of update requests have always existed going back to the OBTS days. She did not disagree that there were hundreds at times even while she was CIO. She did

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not remember ever reaching 300 backlogged updates, and she said the most important thing was evaluating the importance of requested updates.

Mark Ardiel with Sierra-Cedar is "extremely bright and a very good coder." She said there were two Sierra contractors onsite at DOC to work on projects. She did not believe Mr. Ardiel was the only person available who could work on sentencing structure updates. "They had other coders who worked in SSTA," she said, adding, "It's the CIO's responsibility to get somebody in here to do it."

She believed the Sierra-Cedar contract switched from a time and materials basis to a flat monthly fee because a time and materials structure is almost always more expensive for the State. She said DOC was able to monitor the performance of the onsite Sierra contractors because of their presence. They would monitor the off-site contractors based on the time it took to complete assignments.

Under DOC's original contract with Sierra Systems, Ms. Bail felt the Department got "more bang for the buck than less" because Sierra was "very strong." Sierra-Cedar operates differently, but Ms. Bail said it was still a strong and good company. The contractor's hourly rates for its developers were reasonable, and when DOC suffered severe budget cuts, Sierra-Cedar was willing to discount its rates.

Ms. Bail observed that she overlapped with Mr. Warner for only about a month while Mr. Warner was DOC Secretary and her comments and opinions about his leadership and treatment of the IT department are based on what she heard from her former colleagues. She emphasized that they were only her opinions, and were based on what she had been told, not what she had observed herself.

Ms. Bail said the Department hired some short-term, temporary programmers when it used the OBTS system, but most DOC developers were permanent employees.

She recalled the *King* decision when it came out, but not how it affected sentence calculations. "It's not a problem with the system," she added, "it's how the issues were interpreted." She does not know if documentation exists for how DOC originally interpreted the *King* decision and sentence calculations.

Mr. Warner and Ms. Seidlitz were "publicly dismissive" of IT in meetings and the IT department suffered a "significant morale hit" as a result. She added that not replacing technical analysts was a "big mistake" as they are essential to IT operations.

Ms. Bail said the targeting of Mr. Hoffer and Ms. Doty in connection with the prisoner release problem was "shameful." She described them as "very hardworking people" who were under "incredible pressure" from Mr. Warner. She said the issues that contributed to the lack of implementation of the *King* fix all "belong at Bernie's feet."

We thanked Ms. Bail for meeting with us and told her that we would produce a memorandum of her interview for her review and approval. We also told Ms. Bail that she could clarify any points in her 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: _____Kit Bail_____ ~~Kit Bail~~

Name: ___Kit Bail_____

Date: ____2/18/16_____

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 25, 2016
Subject: Peter Dawson Interview

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Mark Bartlett and I conducted a phone interview with former Department of Corrections ("DOC") Chief of Staff Peter Dawson on February 24, 2016. The following summarizes Mr. Dawson's statements on the *King* fix and sentencing calculation error, as well as other discussions about DOC operations:

We began the interview by introducing ourselves to Mr. Dawson 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 problem was not identified and corrected earlier, but also to discuss contributing conditions at DOC and to solicit input on possible corrective measures.

Mr. Dawson came to DOC after retiring from the Navy following a 30-year career in which he attained the rank of Captain. Mr. Dawson's final job with the Navy was as commanding officer of Naval Base Kitsap, a position he held for 2½ years before retiring in December 2013.

Having retired in his early 50s, Mr. Dawson grew interested in a second career. He explored working with government contractors, but he was "really interested in doing something more along the lines of government work with an important mission to the public."

He learned that DOC had posted a chief of staff position from his wife, who is a member of the family counsel at Washington Corrections Center for Women. She insisted that Mr. Dawson apply for the position. He had not thought about working in corrections, though the Navy did run a small brig at the Kitsap base.

Mr. Dawson learned that then-DOC Secretary Bernard Warner wanted to add a chief of staff to organize and streamline administrative operations. Mr. Dawson said he read up on books and policy documents about corrections and was offered the job after two rounds of interviews. He started at DOC in June 2014 and left in October 2015 after Dan Pacholke took over as Secretary.

"As Chief of Staff, I inserted myself in all of the processes at headquarters that I could," Mr. Dawson said. One emphasis was on making meetings and decision-making processes more

efficient and effective. Mr. Dawson required attendees, for example, to present a slide of key discussion points at senior leadership meetings.

Although Mr. Dawson oversaw DOC's support operations as chief of staff, the Department retained Brian Tinney as interim assistant secretary for administrative services. Mr. Dawson said the assistant secretary position was not open for competitive fill until September 2015 out of concern about potential state budget cuts. "I was very leery until that budget passed of expanding any staff," Mr. Dawson said.

Mr. Dawson organized the administrative and support divisions such that the "long-range strategic positions" reported directly to him, including the budget, legislative policy, and human resources groups. Mr. Tinney retained other direct reports, including the CIO, comptroller, records, public disclosure, and risk management units.

Mr. Dawson said Mr. Tinney did an OK job and was "very helpful in providing legacy information" about DOC since he was a long time employee at the agency. Mr. Dawson held weekly COS meetings with the directors of the various administrative and support units that reported to both him and Mr. Tinney. Mr. Tinney attended these meetings too.

Even though Mr. Warner hired him, Mr. Dawson said his effectiveness as chief of staff was hampered by the way Mr. Warner operated as Secretary. "As a leader, despite all my efforts, he was non-transparent and sometimes a reluctant communicator." Mr. Dawson pushed Mr. Warner to communicate more directly to staff, though all staff memos, town hall meetings, greater use of internal website, and other opportunities.

As one example of Mr. Warner's lack of transparency, Mr. Dawson noted that Mr. Warner refused to share his daily schedule with Mr. Dawson. Mr. Warner cited safety considerations, particularly the murder of the Colorado corrections director in 2013 by a former inmate, as explanation for not sharing his schedule. Mr. Dawson suggested that Mr. Warner share his schedule with just him and Mr. Pacholke, but Mr. Warner declined to do so.

Mr. Dawson additionally suggested Mr. Warner hold daily meetings with him and Mr. Pacholke to coordinate agency efforts. These meetings were less effective than they could have been because Mr. Warner often did not participate. Mr. Dawson said there was little similarity to the close ties he saw between leaders and their chiefs of staff in the military. Mr. Warner "held his cards very close—it sometimes wasn't clear what he was behind and what he wasn't."

Mr. Dawson said Mr. Pacholke and he got along personally but they often conflicted on policy issues and they had much different leadership styles. The DOC culture valued a person coming up through the ranks and paying his or her dues, which Mr. Dawson had not done arriving as an outsider. "I sensed that Dan resented me from the very beginning and fought a lot of my initiatives." This problem was compounded by the fact Mr. Warner frequently deferred to Mr. Pacholke.

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As chief of staff, Mr. Dawson took ownership of two of Mr. Warner's biggest initiatives. One was Results DOC, a new outcome-based management system seeking to make the agency more goal oriented and data driven. The Results DOC team set five key goals for the Department and 16 key outcomes then set meaningful performance measures to track progress toward reaching the goals. The hope was to increase staff engagement and improve efficiency and effectiveness of the Department.

Mr. Dawson said he was a big "proponent" of Results DOC, which achieved promising results at first. Mr. Dawson said Results DOC made high-level progress, but experienced difficulty in integrating the initiative at the field level. Mr. Dawson said he envisioned a third-shift corrections officer focusing on two or three of the Results DOC measures relevant to his job (such as reducing prison violence) as part of the officer's day-to-day work.

The second primary initiative was Advance Corrections (formerly called STRONG-R) project, which Mr. Warner believed would upgrade DOC's offender risk assessment tool to account for risk, needs, and dynamic factors as well as develop a comprehensive offender case plan system to schedule and track programming, counseling, interactions, etc. Mr. Dawson said DOC currently lacks consistent case management planning for offenders, creating separate, very basic plans for the offender's time in custody and for community supervision. Mr. Dawson said Mr. Warner's goal was to "build a comprehensive and effective" case management plan. Advanced Corrections provided opportunity for the agency to increase coordination and accountability, improve efficiency of allocation of scarce programming resources, and ultimately drive down recidivism.

In September 2014 Mr. Dawson was made the project sponsor for Advanced Corrections and Amy Seidlitz was designated as the project lead. Advance Corrections (STRONG-R) had been going on for a while before he came to DOC. Until that point, most work on Advance Corrections had been largely conceptual. At the heart of Advance Corrections is the new dynamic risk-needs assessment tool developed by Washington State University (WSU) that would be a significant upgrade over existing static risk tool currently in use at DOC.

Mr. Dawson understood that Asessments.com was working with Washington State University researchers to upgrade the risk assessment tool and had worked with DOC on initial concepts of the new comprehensive offender case plan system.

Mr. Dawson met Assessments.com founder Sean Hosman once or twice, and "wanted to keep him at arm's length because he was a [DOC] contractor." Mr. Dawson does not hold a strong opinion of Mr. Hosman one way or another. He believed Mr. Warner and Mr. Pacholke both had personal friendships with Mr. Hosman.

Assessments.com had developed the current program (OSPS) to interface with OMNI on risk assessment. Mr. Dawson said he heard from staffers in the field and in the IT Department that "[the Assessments.com] software was hard to work with, people in the field felt it was onerous and added little value." IT staff added that Assessments.com was a difficult organization to work with.

Mr. Dawson said that as of September 2014, none of the Advance Corrections software had been developed. The work to that point had been largely conceptual, as well as determining the best approach to developing the software. In August 2014 three alternatives for software development were considered: (1) develop software entirely in house using DOC IT assets, (2) do a competitive bid with a Request for Proposal (RFP), and (3) seek an interagency agreement with WSU to have them develop the software. The costs and benefits of each approach were presented to Mr. Warner.

Mr. Warner decided on the last alternative, in part because the last approach provided an opportunity for WSU to pursue a sole source contract with Assessments.com, which already had a history with DOC and experience in the STRONG-R project. The first option was rejected primarily because it was considered too big a project for DOC IT. Mr. Dawson said, "It was too big a project for our IT division," adding that building the tool in-house "would eat up all of our resources and [IT staff] would be overwhelmed." The RFP option was rejected because the process would take too long, especially if the resulting contract was contested, which was thought likely.

After initially expressing interest in the interagency agreement to develop the Advance Corrections software, WSU ending up rejecting the idea as they did not do that kind of software development. DOC and WSU did sign an intellectual property agreement regarding the joint work that had been done to develop the STRONG-R algorithms, which would allow WSU to license the tool in the future for software development.

A lot of work had been invested into STRONG-R to that point but Mr. Dawson said he sensed DOC was not quite ready to start software development. The case management planning system was still "pretty immature." In October and November 2014 Ms. Seidlitz, as the project lead, regularly invited staffers in from the field to offer their thoughts on what features the case management planning tool should include. The feedback resulted in many changes to concept and approach including the name change of the project from STRONG-R to Advanced Corrections. Software development did not actually began until early 2015.

Mr. Dawson said many field staffers expressed that OSPS was hard to work with and that they hoped DOC would build the case management planning tool within OMNI. Ultimately, DOC decided to split the Advance Corrections software development approach. One effort would develop the case management planning system within OMNI, which in addition to giving field staff what they recommended, had the benefit of permitting DOC IT to participate in Advance Corrections software development, building valuable in-house experience and drive down overall costs. It would also facilitate future upgrades of the tool as part of regular OMNI maintenance enhancements. The other effort would develop the dynamic risk assessment tool upgrade in OSPS.

Mr. Tinney and the CIO (Mr. David Switzer) also thought that by splitting Advance Corrections development into the two separate and smaller components, Department of Enterprise Services would likely allow DOC to have Assessments.com upgrade the risk

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management tool through an amendment of the existing OSPS maintenance agreement, while developing the rest of the case management planning tool in OMNI using a combination of in-house IT and Sierra-Cedar contractors. Ultimately, DES approved this approach.

Mr. Warner was very involved with Advance Corrections. "I definitely ran with it," Mr. Dawson said, "but I was very conscious about keeping him in the loop." Mr. Dawson added that DOC often had to make "significant compromises" in terms of the scope and schedule of the project. Ms. Seidlitz gave numerous briefings to the Advance Corrections Executive Steering Committee (that included Mr. Dawson, Mr. Pacholke and all assistant secretaries) and to Mr. Warner personally. One of Mr. Warner's imperatives was to deliver something soon, in order that the project did not lose credibility with staff in the field. "From [Mr. Warner's] perspective, he'd been working on Advance Corrections for years."

Ms. Seidlitz wanted to incorporate "lots of ideas" from staffers about the case management planning tool. Mr. Dawson had to temper this with the reality that many of Ms. Seidlitz's ideas would have to be left out of the project scope and perhaps be achievable "down the road." Ms. Seidlitz divided Advance Corrections development into three phases, plus a "fourth phase" which was unplanned and had no timetable conceived for all the features deemed out of scope for the current project. Phase 1 was completed and successfully implemented in September 2015; Mr. Dawson noted that Phase 1 was "small potatoes" compared to the scope of Phases 2 and 3 but served as good test run and gave field staff a taste of the improvements that Advance Corrections promised.

When he left DOC in October 2015 Phase 2 was currently in progress and Phase 3 was about to start contingent on receiving funding from the Legislature. Both Phase 2 and Phase 3 were scheduled to deploy in October 2016.

Mr. Pacholke dismissed Ms. Seidlitz shortly after taking over as Secretary. Mr. Dawson described Mr. Pacholke as similarly "non-transparent" as Mr. Warner but much less tolerant of people who questioned him. "I think without [Ms. Seidlitz] there . . . the Advance Corrections piece is going to be significantly stunted without her and me there driving it."

Although Mr. Dawson tried to gain insight into why Mr. Warner left DOC, Mr. Warner never let him "inside his thinking loop." Mr. Dawson added that overall he had a good working relationship with Mr. Warner and respected him for his knowledge of corrections work.

Mr. Dawson said he was a little surprised Mr. Pacholke let him go with "no heads up," but acknowledged they "saw things very differently" in corrections philosophies and leadership styles. Mr. Dawson said the two "clashed frequently" despite being Mr. Warner's two top deputies.

We moved on to discuss the sentencing calculation error. Mr. Dawson said he was not aware of the problem until he heard a news story on the radio after leaving DOC. "It never came up in any meeting I attended," he said.

Mr. Dawson described the error as "egregious," a failure of a "fundamental obligation" of the Department, and an example of "colossal ineptitude." He added that it "speaks volumes of some of the culture at that agency, that there was no internal discovery or the error and the fact it took so long to fix the problem."

He praised DOC employees as "good people doing tough jobs," but said the "culture needs to improve significantly." Mr. Dawson said "there's too much fear and too much inertia" in the Department, with too many staffers interested in their individual tasks and not focused on the big picture.

During his time at DOC, Mr. Dawson said he learned a common phrase in the field is "8 and Gate"—blindly working an eight-hour shift and immediately hitting the prison gate to head home. That philosophy carried over into headquarters too. He also cited employee engagement surveys showing DOC staffers responses rank the agency "rock bottom of all state agencies."

Mr. Dawson noted that the sentencing calculation error potentially affected every single offender in every single year dating to 2002, and yet no superintendent, counselor, or record supervisor at any DOC facility or field office was ensuring sentence calculations were performed correctly despite DOC policy requirements to do periodic audits of Earned Release Time. In the absence of a questioning attitude and due diligence, the error was not discovered early.

He also noted the advice from Assistant Attorney General Ronda Larson to not begin hand-calculating sentences was extremely poor and "did no favors" to the records division. He said the culture at DOC cannot account for the sentencing calculation error, but it certainly played a part in not detecting it earlier and not fixing it quickly. Mr. Dawson added that he hoped DOC would implement a better QA system specifically for any changes to the Sentencing Structure Time Accounting (SSTA) module in OMNI.

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

*   *   *

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: _Peter M Dawson_

Name: Peter M Dawson

Date: 26 February 2016

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 16, 2016
Subject: Denise Doty Interview

Mark Bartlett and I conducted an interview with Ms. Denise Doty today at her office at the Insurance Commissioner building in Olympia. The following summarizes Ms. Doty's statements on the *King* fix and prisoner release problem, as well as other discussions about Department of Corrections ("DOC") operations:

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

Ms. Doty received a business degree from Washington State University. She worked in public accounting for a few years before coming to work for the state. She worked in the state auditors' office for eight to 10 years. In that role, she audited municipal corporations and state agencies, and worked as part of a three-person management team.

She went to work at DOC in 1992 and held three different jobs at the Department. Ms. Doty started as an accounting manager, and then became comptroller. As comptroller, Ms. Doty worked with DOC staffers at both state-wide institutions and headquarters, with responsibilities for general accounting, maintaining offender trust accounts, contracting, and warehousing.

In 2008, DOC Secretary Eldon Vail appointed Ms. Doty assistant secretary of the Administrative Services Division. Ms. Doty said it was a job she was offered by Mr. Vail, as opposed to one she targeted herself.

As assistant secretary, Ms. Doty was in charge of DOC administration. One focus was on improving relations ("restoring credibility," she said) with the Legislature and the Office of Financial Management on DOC budget-related issues. Ms. Doty said a perception existed at the Legislature that DOC was "hiding the ball with them" on the budget.

Ms. Doty praised Mr. Vail as a great leader and said he testified personally before the Legislature on budget issues, often bringing heads of the prisons and community corrections

divisions with him. Previous leadership had opted to send lower-level officials to these hearings. "It mattered," Ms. Doty said, "and we were totally honest with our numbers."

As Assistant Secretary, Ms. Doty hired a new budget director - Susan Lucas. Ms. Lucas went on to become an Assistant Secretary of the Health Services Division.

Ms. Doty said she confronted a host of issues during her time as Assistant Secretary, but the "huge thing that was the overarching issue that we dealt with the whole time was the recession." She said government typically enters a recession late and comes out late. She described "wave after wave of layoffs" at DOC and that these layoffs came in many forms: temporary layoffs, hiring freezes, across-the-board reductions, decreases in caseload and policy decisions. DOC closed three institutions during this time.

She believed the economy had begun to recover when Bernie Warner took over for Mr. Vail as DOC Secretary. Ms. Doty had limited familiarity with Mr. Warner before he assumed the job. She said Mr. Warner "couldn't be much more different" than Mr. Vail. She praised Mr. Vail as an effective leader in setting roadmaps of goals and direction for the Department.

Mr. Warner's approach differed, and Ms. Doty said he didn't seem to fully trust executive staff. She described a "tension" and a lack of trust and respect within the executive staff. "This was a very competitive environment," she said, adding that "alliances" came and went among executive staffers. She "didn't feel the vision" under Mr. Warner that existed under Mr. Vail.

She added: "I worked really hard so my direct reports didn't know how unpleasant working at the top was."

Mr. Warner is "really hard to read if you work for him." Ms. Doty said she would routinely ask Mr. Warner in their one-on-one meetings what she could do for him. She added that she believes the culture of an organization is set by its leader.

"One of the things that was hard about working for Bernie was even routine decisions were really hard to get," Ms. Doty said. "They could just languish." These routine decisions included hiring and communicating directives within the agency. Ms. Doty took a number of different approaches, to get decisions in a timely manner, but none of them seemed to work.

Ms. Doty believed Mr. Warner "didn't like" having seven assistant secretaries as subordinates. She explored the possibility of hiring a chief of staff for Mr. Warner to alleviate some of the day-to-day responsibilities. In Ms. Doty's opinion, Mr. Warner's heart was in the policy side of corrections, not the day-to-day management.

We discussed the Advance Corrections initiative that Mr. Warner pushed. "What he was doing made a lot of sense to me," she said. Ms. Doty described Advance Corrections as a tool to better assess risk factors for offenders throughout custody. Some of these risk factors included education, chemical dependency, etc. Advance Corrections attempted to use data to identify the

timing and frequency of the most effective treatments to apply to offenders individually. "It would allow you potentially to direct resources to maybe the highest risk people."

Ms. Doty said DOC had various forms of IT governance during her tenure. Under Mr. Vail, the IT governance group consisted of the Secretary and the Secretary's direct reports. This group would prioritize IT projects. She added that there was a process for smaller requests, but she was not involved in that process.

After Mr. Warner became Secretary, Ms. Doty said "it didn't happen overnight but our process became solely about the Advance Corrections. It became completely about this policy initiative." She believed Mr. Warner would become distracted when the governance team went through other initiatives.

Ms. Doty and CIO Doug Hoffer were responsible for getting the IT governance team to reach consensus on approach of Advance Corrections. She estimated it took a minimum of six months to bring Mr. Warner and the IT governance team to consensus "on what we were going to do."

We discussed the Assessments.com team and Sean Hosman. Ms. Doty remembered some conflict in trying to decide whether to use an outside research group (possibly from University of Cincinnati) instead of the Washington State Institution of Public Policy and Washington State University in providing research and data.

Ms. Doty said of the decision to engage Assessments.com: "The whole thing felt kind of risky and felt like it was pushed down on the subordinates." Ms. Doty believed that Mr. Warner and Mr. Hosman were friends, but she was not certain. She believed DOC had licensed Assessments.com systems in the past. She felt like "we were just on the right side of the ethical line" in contracting with Assessments.com.

Mr. Hosman's criminal record was discussed at an Advance Corrections meeting. Ms. Doty also remembered that Assessments.com suffered "some sort of breakup" where the developers or programmers split from the company. She did not know if Assessments.com delivered what was expected to DOC. "It was a painful process."

She did not know if DOC needed to have Sierra-Cedar contractors work on the Assessments.com project.

We asked Ms. Doty if the IT governance team typically would review projects expected to last several months as opposed to those where the estimated time to complete was a week, or less. "They tended to be bigger projects that would take a chunk of time," she said.

Ms. Doty said she could never "read" Mr. Warner. They were friendly during her time as assistant secretary, "but I don't feel like he trusted any of us completely." She added that "[t]here's some amazing people at the Department of Corrections. It's really hard work down on the front lines. That goes right up to the top, too. It's really hard work."

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Ms. Doty left DOC in January 2014 for her current position at the Office of Financial Management. It was not a position she originally sought. She holds two official titles: OneWashington Project Director and Assistant Director for Data and Technology. OneWashington is a state-wide initiative to transform business processes and replace core financial programs for government agencies, with a focus on someday transitioning from the state's aging accounting system.

Ms. Doty hired Wendy Stigall to her current records manager position. As Assistant Secretary, Ms. Doty had direct reports in several divisions: budget (Ms. Lucas), business office (Brian Tinney), capital programs (David Jansen and Kent Nugent), human resources (Donna Haley), IT (Kit Bail and Doug Hoffer), performance and accounting (Adam Aaseby), public disclosure (Denise Vaughan), records (Carrie Fleming and Ms. Stigall), and risk and safety (Kathy Gastreich).

She remembered Ms. Fleming as "passive" and that the records division was included within Administrative Services for a shorter period than other units. Ms. Stigall worked out well. Ms. Gastreich was good "as best as I know," with Ms. Doty praising Ms. Gastreich for taking on several difficult tasks like apologizing to victim's families and working through litigation settlements.

We focused on the December 2012 period as related to the *King* issue. After the early release issue resurfaced in December 2015, Ms. Doty said: "It took a call from the current Assistant Secretary at DOC and then a call to Wendy to finally figure out what was going on." She remembered "a series of sentencing issues that would come up over time" during her time as assistant secretary.

Ms. Doty said she does not have a "distinct memory" of any meetings, who said what, or the emails exchanged, related to the *King* issue. But she has a general "recollection" of the issue. "I have acknowledged that I knew something about the issue."

Ms. Doty read the December 2012 email from Ronda Larson to Ms. Stigall that was publicly released in response to the early release problem. "I couldn't tell you if that was something where we talked about it or I read it [in December 2012]. The advice was familiar to me. I can't tell you how it quite got there."

Ms. Doty said the recommended advice from Ms. Larson was "unusual" because the typical response would be to start hand-calculating sentences and submit the IT request.

"I think that's probably the one thing that puzzles me here. I have some nagging feeling like there was something else. I can't recall if it was something [hand-calculating] that maybe they didn't think they could do. I think there's a piece of this story for context that is with Wendy and I just don't recall. If I had done the work myself, I might."

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Ms. Doty did not remember if she had met with Ms. Stigall on December 10 or 11, 2012, as Ms. Stigall stated in her timeline of events [WS_000003]. She would have to refer to her former DOC calendar. Ms. Doty held one-on-one meetings with Ms. Stigall monthly. She said her schedule typically was "pretty heavily booked" otherwise and 50-hour weeks were the norm as an assistant secretary.

Ms. Doty added: "I know I knew about it. I can't give you like a specific she came in and said such and such." Ms. Doty added that anyone would want the chance to do things differently in hindsight. She felt like she tried to react to and resolve a "fire hose" of problems each day. "There's this advice that just made it sound like it could get fixed. What my experience had been with IT is that those things did get fixed."

She did not remember if she asked Ms. Stigall to talk to Ms. Gastreich in the December 11, 2012 email [WS_000011].

Her assumption was that fix would be completed once it was submitted to the IT Department and started along the "IT pipeline." Ms. Doty remembered sentencing calculation issues arising before with OMNI that were fixed.

She added that nothing would have prevented records staff from reconsidering performing hand-calculations at any point once the problem was identified. "[I]t wasn't like anything was being cast in stone."

The two things Ms. Doty primarily remembers from 2013 are dealing with the year's operating and capital budget in the first half of the year, and also dealing with Mr. Warner's Advance Corrections initiative.

Ms. Doty said she views three factors as contributing to or exacerbating the early release problem:

- The decision not to hand-calculate sentences after the *King* issue was raised. Ms. Doty said hand-calculating was the "norm" when sentence calculating concerns arose.

- The internal problems with the IT governance team and its processes, and the emphasis placed on the Advance Corrections initiative.

- The turnover in the IT Department. Ms. Doty described a "brain drain" where many of the IT Department's best people left. In her opinion, administrative employees stopped feeling valued. She noted that the administrative side is critical to the functioning of everything in the front lines and field.

Ms. Doty said she believed Mr. Warner placed greater value on people who came from outside DOC rather than those who rose from within. She also recalled hearing that he installed

a series of lower-level managers as CIO after Doug Hoffer left, effectively trying them out in the role for short periods.

She would not typically get into the details of what was being included in one release of OMNI updates. Ms. Doty sometimes would see the release notes of everything included after the release went out.

We asked about the January 2, 2013, email between Ms. Stigall and Clela Steelhammer where Ms. Stigall writes that she discussed the *King* update at a direct report meeting with Ms. Doty [WS_000042]. Ms. Doty said she has acknowledged meeting with Ms. Stigall and remembers knowing about the issue generally, but not much else. "I've thought about this and thought about this and thought about this," she said.

Ms. Doty acknowledged that the *King* update was discussed at the administrative services division meetings on January 2, 2013, and January 9, 2013 [WS_000048 & WS_000041]. She described the meetings as an opportunity for her to share what was happening at the executive level and division managers to share what was going on with them. These meetings had a problem-solving element as well, for issues that had come up.

Ms. Doty said she didn't know if the *King* issue was raised at an executive team meeting. Those meetings typically included the DOC Secretary, assistant secretaries, and the Department's Attorney General Division chief, plus Ms. Gastreich, the CIO, and an HR representative, among others. "It's a big table," Ms. Doty said.

She has never seen the minutes for these meetings from around this period [CP_000012] because she attended them. Ms. Doty said Tim Lang or another Attorney General's office representative typically would discuss significant court cases, legislation, and other sentencing impacts at these meetings and there would be a short discussion on approach. "That had been my experience." She was not sure if AG raised the *King* issue at any meetings in this late 2012/early 2013 period.

Ms. Doty has known DOC Secretary Dan Pacholke for a long time and described him as "mostly friendly," with a strong background in prisons. They occasionally butted heads on internal audit issues. Those issues involved the number of audits and providing the auditors with necessary access to DOC facilities. She did not believe there with issues with the subject matter of any audits.

We asked about a November 15, 2013, email that Ms. Stigall sent [Installment 2 0000964] discussing issues involving stoppage time, statutory maximum calculations, and consecutive/concurrent counts. Ms. Doty said she believed she was copied on this email as a way for Ms. Stigall to show the work she was doing.

We asked about the records staff meeting that Ms. Doty attended on August 15, 2013, where the *King* fix was discussed [Installment 1.14 000223]. Ms. Doty said she and Mr. Warner attended only the meet-and-greet portion of the day-long presentation. She added it was a "big

deal" to get approval for records staff from facilities across the state to travel and attend the meeting. "It's a group that doesn't get a lot of attention. They operate in the background." She and Mr. Warner "went in and recognized some of the work they did and left."

Ms. Doty said she did not know who was ultimately responsible for setting priorities for OMNI updates to be included in certain releases.

Although Ms. Stigall acknowledges receiving a spreadsheet from Geoff Nelson showing hundreds of potentially affected offenders on January 3, 2013 [WS_000004], Ms. Doty does not recall the magnitude of the problem ever being discussed in an administrative services division meeting. The meeting minutes certainly would have reflected such discussion.

Ms. Doty said one potential contributing factor was the change in administrative services division staffing from two executives to one. In the past there had been an assistant secretary and deputy assistant secretary. Now there is a chief of staff and an assistant secretary. For Ms. Doty and her predecessor there was no second position. She added "[y]ou have to know there's a problem to solve it." Ms. Stigall "worked her tail off," Ms. Doty noted we all have peaks and valleys in our work load.

We asked whether specific units within administrative services required more of Ms. Doty's time and attention as assistant secretary. She said it would be "situational." During the legislative session, the budget division required significant attention. "That is going to be a big draw." When the Department went through layoffs, Ms. Doty said HR demanded attention. "It depends on where the fire is," she said. "I spent a lot of time on IT during this period of time, but it didn't have anything to do with the [*King*] release." The IT focus was on Advance Corrections, Ms. Doty said.

She added that Advance Corrections "was certainly taking a lot of my time." She recalled meeting weekly on the initiative.

We thanked Ms. Doty for meeting with us and told her that we would produce a memorandum of her interview for her review and approval. We also told Ms. Doty that she could clarify any points in her review of the memorandum.

<p style="text-align:center">*　　*　　*</p>

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: _Denise Doty_

Name: _Denise Doty_____

Date: _February 18, 2016_____

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 12, 2016
Subject: David Dunnington Interview

Monty Gray and I conducted an interview with Mr. David Dunnington today at Department of Corrections ("DOC") headquarters. The following summarizes Mr. Dunnington's statements on the *King* fix and prisoner release problem, as well as other discussions about DOC and IT department operations:

We began the interview by introducing ourselves to Mr. Dunnington and explaining that we were lawyers with Davis Wright Tremaine, which has been retained by the Washington State Senate to assist in its investigation of the prisoner release problem. We noted that we were hired to determine what happened and why the problem was not identified and corrected earlier, but also to discuss what conditions at DOC contributed to the situation and what corrective action should be considered.

Mr. Dunnington has worked for DOC for nearly 25 years, beginning as a corrections officer. He has held the jobs of sergeant, correctional counselor, classification counselor, lieutenant, correctional unit supervisor, correctional program manager, and administrative segregation hearing officer at DOC facilities. He came to headquarters in late 2003 to work as a corrections specialist. He has worked in the IT department since 2004 or 2005 as the business unit manager. Mr. Dunnington was named temporary deputy chief information officer on January 4, 2016.

We discussed the typical process for an IT request concerning a system defect. Mr. Dunnington said it usually starts with a ticket turned into the help desk. If the help desk cannot resolve the issue, it forwards the ticket to the IT business unit. A business analyst examines the ticket request to determine whether it involves a system defect, data issue, user error, etc.

We then reviewed the Information Technology Service Request form that Wendy Stigall submitted on December 27, 2012. Mr. Dunnington clarified that this request would have been classified as an enhancement and gone through a slightly different process than a defect, though it still was considered part of the overall help system.

Mr. Dunnington said the next steps after receiving a service request form would be to analyze and size the scope of the requested enhancement and obtain approval. After receiving approval, the request would be entered in the ClearQuest system to track development.

Mr. Dunnington said the review and approval process was typically conducted by a member of the Technical Review Board or a supervisor. The request also would have been reviewed during an IT triage team meeting. Mr. Dunnington said members of the triage team included himself, Michael Pearson, Mark Quimby, Marshelle Casano, Luann Kuwata, Mary-Jane Arnold, Rob Baird, and a member of the IT security team.

He explained the triage team did not approve requests so much as ensure they were directed to the right place, such as determining whether it involved hardware, software, installation, etc.

There was a governance group in the past, but Mr. Dunnington did not participate in that group. He believed the governance group consisted of division executives or their designees.

The IT gatekeeper would take requests that typically arrived in paper or soft copy form and enter them into the help system. The gatekeeper would correspond with the submitter of a given request to bring the request together for development.

Mr. Dunnington clarified that the help system he described was the Service Desk Express system. DOC began using the Easy Vista system about a year ago as a replacement for Service Desk Express.

Mr. Dunnington was not familiar with an approval document [IF_000400] produced in Service Desk Express in response to Ms. Stigall's request. The document featured an approval number (Approval # 5737). He believed the Project Number (Change # 6307) was automatically generated when the ticket was first created.

Mr. Dunnington stated that the IT Consultation Form that Sue Schuler created on March 25, 2013, was the document created when the business analyst was estimating the sizing of the project and development/testing time. After submitting the IT Consultation Form, the request would return to the triage team, Mr. Dunnington recalled.

Not all requests were entered into the ClearQuest system because not all IT requests involved system development. Some requests involved obtaining a new laptop or installing specific software for an employee. But system changes were entered into ClearQuest with few exceptions.

Mr. Dunnington said there is usually a backlog of items in ClearQuest. He said it was "fair" to believe that the original sense of urgency for the *King* fix request eventually was lost over time for unknown reasons.

We asked Mr. Dunnington about how priorities are set for which updates will be included in a particular OMNI release. Mr. Dunnington said it was up to the business analyst to communicate with the submitter and advocate for the inclusion of a particular update. The business analyst was expected to take into account factors such as the number of staff or offenders affected, or any security threats, in determining the importance of a given update. He agreed this sounded like a bottom-up process rather than a top-down one in setting priorities for releases.

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Mr. Dunnington said it was a "collaborative" process to determine what updates were included in a release. He said there were some limitations as to maximum percentages of updates that could be related to a single area, such as sentencing/SSTA.

He explained that he would inform Ms. Schuler that an upcoming release, for example, could include 10 SSTA fixes. The decision of what 10 fixes to include would be left to Ms. Schuler to identify.

After the prisoner release problem was discovered, Mr. Dunnington said DOC created a Tiger Team to review all ClearQuest items and enhancements and set priorities based on a point system. The point system takes into account factors like the potential effect of a request on safety interests, liberty interests, protection of the vulnerable, etc. The Tiger Team is a group of approximately eight people who perform individual analyses of these factors to reach a consensus. Clela Steelhammer, Wendy Stigall, Diane Ashlock, and Josh Phelps are part of the Tiger Team.

Mr. Dunnington expected the Tiger Team would become a permanent review component.

With respect to the *King* fix, Mr. Dunnington said there was probably some awareness of the request in 2013 on his part, but he doesn't recall. He became very aware of the request once testing on the fix occurred in late 2015 and the population-wide ramifications were realized. He does not believe the magnitude of the fix was understood when the request was first made.

Mr. Dunnington said the request might have gotten lost in the volume of other requests to the IT department. "There were a number of other projects and priorities that demanded attention. Unfortunately, that's probably part of that. There was always something new and something that needed to be fixed or someone wanted their [project] done next. The work kept piling up."

Mr. Dunnington said the entries bearing his name in the ClearQuest audit trail in 2013 and 2014 likely were for moving the update to future releases. There is no documentation for those decisions to delay the update. Mr. Dunnington said documentation might be worse in some respects for the IT department now than six years ago, but it might be better in others.

Mr. Dunnington said: "I don't think IT ever said no to anybody. The faucet would just keep filling the bucket and we kept working and working to get the job done." The IT department has lost several key people in recent years. Mr. Dunnington said that resources are a struggle, whether in losing people, dealing with an increased workload, or both factors.

There is no trigger or notification that occurs when a request has been repeatedly rescheduled for future releases.

Mr. Dunnington had not worked with Ms. Stigall until recently when the prisoner release problem came to light. He said there was no pushback or follow up from the records department that he was aware of regarding the repeated delays, despite the fact that Ms. Stigall's original request said that the issue needed to be addressed ASAP.

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We asked about the length of time it took between when Ms. Stigall completed the IT service request (December 27, 2012) and Ms. Schuler completed the IT consultation report and gained ClearQuest approval (April 3, 2013). Mr. Dunnington said a number of factors could contribute to such a delay, including the complexity of the request and the availability of both the submitter and the business analyst to discuss. He did not remember the factors for this specific instance. "Obviously, in hindsight it should have been all hands on deck."

Mr. Dunnington said he did not know how many times Ms. Schuler met with Ms. Stigall to discuss the requested fix. He added that ideally the request should have been entered and approved in a couple of weeks.

We asked about Ms. Schuler's statement about scheduling the update for a September 2013 release even though it was entered in ClearQuest in April 2013. Mr. Dunnington said he didn't believe the initial requirements were complete from all parties in April. In addition, although the original estimates for development and testing were less than 40 hours, Mr. Dunnington said recent work on the *King* fix has revealed those estimates were far too low.

Mr. Dunnington said that often 300 updates (defects and enhancements) were included in a particular release, but with the knowledge that not all targeted would be completed. The remaining updates would then be rescheduled for a future release. He remembered there was a backlog of updates in 2013 but he did not recall exactly how many updates there were.

All enhancements, including the *King* fix, which originally was a severity level 2 when the ClearQuest entry was created, were downgraded to severity level 3 as the result of an architecture meeting decision. Mr. Dunnington said he conceived this change as a way to create a consistent severity level for enhancements and to separate severity definition on defects rather than enhancements.

We asked about the ASD Open Change Reports document. Mr. Dunnington was not familiar with the document. He believed the numbers were Service Desk Express numbers. There likely was some overlap between the open requests on the ASD report and open ClearQuest updates.

The must-fix category of updates in ClearQuest is used "to tell the developers we want this fixed in a release." Mr. Dunnington described it as a "message to the developers that we expect to get it done." He could not explain why the *King* fix remained unresolved even after it was classified as must fix in September 2013, according to the audit trail.

The IT department held OMNI meetings twice a week to monitor progress and discuss defects and enhancements set for the next release. Mr. Dunnington said it was an opportunity for developers to seek clarifications from the business analysts. The OMNI meetings only discussed updates set for the next release, not backlogged updates scheduled for future releases. The meetings lasted an hour and no records were kept.

Mr. Dunnington said the Sierra developers and DOC developers would typically decide themselves what updates would be developed in-house.

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Mr. Dunnington said Sierra does a "good job" compared with other contractors DOC has used. He said he has a good working relationship with Sierra and praised Mark Ardiel as "very good."

Mr. Ardiel only worked on updates that were scheduled for release, he did not attempt to address any backlogged updates. Mr. Dunnington said it was the Department's responsibility to set the order in which issues were worked, to monitor requested updates, and to ensure they were scheduled for release and completed. He believed the urgency of the *King* fix was not communicated to Mr. Ardiel until recently when the scope of the problem came to light.

Mr. Dunnington answered "yes and yes" to the question of whether large- or small-scale projects hampered the IT Department's ability to clear the backlog of updates. Even a small-scale project could be a diversion if it was requested to be completed immediately.

The IT Department was negatively affected in DOC Secretary Bernie Warner's tenure; "no doubt in my mind," according to Mr. Dunnington. He described having heard of a time when Mr. Warner requested a meeting in his office with an employee (not Mr. Dunnington) and proceeded to play with his cell phone throughout the meeting, without looking at the employee or acknowledging his presence. Mr. Dunnington said there were multiple inefficiencies in the decision-making process under Mr. Warner, and that sometimes he would not show up to meetings.

Mr. Warner hired a chief of staff, which left him an additional level removed from staff. He was "the secretary that no one heard from." He advocated for the Advance Corrections Initiative, but portrayed it as a never-ending project. He said that Mr. Warner said it might be "years" before the requirements for the initiative were fully developed. He suggested talking to Doug Hoffer, Peter Jekel, or Jibu Jacob for more information.

Current DOC Secretary Dan Pacholke is an improvement over Warner and was always a supporter of IT; he was "by no means a hindrance."

Mr. Dunnington said that he did not know who made the decision not to replace the technical analysts who left. He said that this decision occurred while Doug Hoffer was CIO.

Former CIO David Switzer moved Mr. Dunnington's business unit, as well as the project management office, out of the IT Department. Mr. Dunnington said this resulted in a lot of missed communications for the business unit. The business unit still was considered part of the administrative services division even during this period.

Mr. Dunnington is now deputy CIO and said he thinks the department is "going in the right direction now." That includes the business unit being "completely in the room" and with processes to ensure it is exposed to the full scope of changes to DOC's systems.

Mr. Dunnington said his initiatives with new CIO Ira Feuer are to create an IT business plan and roadmap. They are working to identify all critical systems and to better share defects and enhancements that affect those critical systems. That would include, for example, ensuring that "everybody gets a look" at a potential enhancement created as a result of a legislative change

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so everybody knows what issues have been raised. The Tiger Team is another important initiative.

Mr. Dunnington also described DOC's IT systems beyond OMNI. These include systems that coordinate medical care, roster management for staffing, time and accounting systems for payroll, and a host of others.

On an unrelated question, Mr. Dunnington said he believed the practice of restoring good time for offenders was being used more often now than it was 10 years ago.

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

<div align="center">*   *   *</div>

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: _David   Dunnington_

Date: _2/18/16_

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

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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 was 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

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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

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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.

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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 a open competetive 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

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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.

* * *

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_____

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Name: ___Ira Feuer_____

Date: ____2/22/16_____

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DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 17, 2016
Subject: Carrie Fleming Interview

Mark Bartlett and I conducted a phone interview on February 16, 2016, with Ms. Carrie Fleming, the retired former statewide records manager for the Department of Corrections ("DOC"). The following summarizes Ms. Fleming's statements on the *King* fix and prisoner release problem, as well as other discussions about DOC operations:

We began the interview by introducing ourselves to Ms. Fleming and explaining that we are attorneys with Davis Wright Tremaine and were retained by the Washington State Senate to assist in its investigation of the prisoner release problem. We noted that we were hired to determine what happened and why the problem was not identified and corrected earlier, but also to discuss contributing conditions at DOC and solicit input on possible corrective measures that could be considered.

Ms. Fleming attended "a little bit" of college before starting work at DOC in October 1976 as a clerk typist at the Shelton facility. She promoted in records field, working at various institutions and in community corrections as a records specialist and a records manager, and then was appointed statewide records manager, at DOC Headquarters on January 21, 2003, by former DOC Secretary Eldon Vail.

Ms. Fleming knew Mr. Vail from the time he worked at Cedar Creek Corrections Center. Ms. Fleming retired as statewide records manager on January 31, 2012, having held the position for nine years. Ms. Fleming left DOC on good terms; "I worked for 35 years and 3 months and was really happy with my career. I was ready to retire and move on to something different."

As statewide records manager, Ms. Fleming was responsible for direct supervision of the records staff at DOC headquarters, plus at satellite offices in Tacoma, Everett, Yakima, and Spokane. She also was responsible for providing direction to prison records staffers working at DOC facilities, though she did not directly supervise these staffers.

Ms. Fleming was responsible for ensuring DOC Records staff was complying with records policies and procedures. She also regularly interacted with the Washington State Patrol, state parole board, and other entities.

The OMNI system was launched in 2008. Ms. Fleming said sentence calculations in the system were one of the "obstacles" the records division faced. She added that specific

difficulties involved the correct tolling of community supervision end dates, calculating consecutive supervision end dates, and statutory maximum end dates. Once those rules and programming were entered, OMNI was able to accommodate the calculations.

She said "lots of problems" existed with OMNI and "we had to really watch things" with the system. Ms. Fleming said records staff continued for a period to use the OBTS system that OMNI was intended to replace, adding, "It was really a whole lot simpler in those [OBTS] days." Because OMNI computer issues were so huge, records staff struggled to even understand what its issues were. She described the transition to OMNI as a "major challenge" near the end of her career. She was "so much more comfortable" with OBTS.

We asked about the 2007 and 2008 emails that Ronda Larson sent Leaora McDonald concerning the application of good time to offenders with sentence enhancements [AG_000169 & AG_000238]. Ms. Fleming questioned whether the October 2007 email was complete and said Ms. Larson often retitled some emails received from the records staff. Ms. Fleming did not recall the email specifically, but said she would have asked whether a work request had been created if she ever received such an email. "If I got that, I hope to God I would never, ever ignore that because that's something I wouldn't do."

Ms. Fleming said Ms. McDonald sometimes filled in for her as records manager during absences and could have interacted with Ms. Larson in those situations.

Ms. Fleming noted she does not appear to have been copied on either email. She repeated that she hoped a work order had been created in response to the January 2008 email. "I was very conscientious and took pride in the work I did," Ms. Fleming said, adding that she really emphasized to records staffers in the prisons and the field to perform required sentencing audits whenever an offender was transferred to a different facility.

She did not remember any "major problems" with sentence calculations during her time as records manager. If there had been a major problem, "I would have addressed it." Records staff faced many changes in sentencing as changes in the sentencing laws occurred. Charts were created to provide internal guidance on various court decisions and new legislation as they impacted sentence calculations, to include enhancements and mandatories.

Ms. Fleming described "crazy times" during the OMNI conversion. "Eventually, things would get fixed, but it would sure take a while." Some changes took months to implement. Ms. Fleming also said records staff performing audits often would discover errors or computer problems themselves.

Ms. Fleming has not followed the *King* fix/early release issue in detail beyond what has been reported in the news. She worked with Ms. Stigall for "many years" before Ms. Stigall succeeded her as statewide records manager.

The records division dealt with issues with sentence calculations during her tenure, but Ms. Fleming said: "As soon as anything was reported, we made sure we would get it fixed and everyone would know about it."

Hand calculations would be done as needed as problems with sentence calculations were discovered.

Mr. Bartlett had sent Ms. Fleming the 2007 and 2008 emails ahead of the interview. Ms. Fleming said she had read the emails over "several times"; she believed Ms. Larson was concerned about applying jail or other good time credits to a flat-time enhancement. She acknowledged the issues in the two emails are "[i]n essence, the same thing," as the issues raised by Ms. Larson in December 2012.

Ms. Fleming was "shocked" that Ms. Larson's email to Ms. Stigall was publicly released after the early release problem surfaced. Ms. Fleming thought AG advice was confidential due to attorney/client issues.

She remembered the *King* decision in 2002 as being a change in the way DOC applied jail good time credits. She believed the original 2002 guidance might be included in the records guide that Ms. Stigall is responsible for maintaining.

Ms. Fleming kept files on all new court rulings affecting sentencing during her time as records manager. She also was required to "maintain history" on sentencing by keeping any correspondence or guidance the Attorney General's office sent on sentencing issues.

We thanked Ms. Fleming for speaking with us and told her that we would produce a memorandum of her interview for her review and approval. We also told Ms. Fleming that she could clarify any points in her review of the memorandum.

*   *   *

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: *Carrie Fleming*

Name: Carrie Fleming

Date: 2-18-2016

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 14, 2016
Subject: David Gale Interview

Monty Gray and I conducted an interview with Mr. David Gale on February 11, 2016, at Department of Corrections ("DOC") headquarters. The following summarizes Mr. Gale's statements on the *King* fix and prisoner release problem, as well as other discussions about DOC and IT department operations:

We began the interview by introducing ourselves to Mr. Gale and explaining that we work for Davis Wright Tremaine and were retained by the Washington State Senate to assist in its investigation of the prisoner release problem. We noted that we were hired to determine what happened and why the issue had not been identified and fixed earlier than it was, but also to identify contributing conditions at DOC and to solicit input on possible corrective actions that could be considered.

Mr. Gale has worked at DOC since 1997 and has been an OMNI tester since 2005. His official title is an ITS 5 software tester. OMNI originally was being developed by IBM before DOC left IBM to complete OMNI development with Sierra Systems. Mr. Gale was not sure whether Sierra started from the ground up or used IBM's old code.

Mr. Gale said some defects and change requests to OMNI begin with a high-level design, while many do not. For example, a new project such as the Health Services Medical Encounters project, would begin with requirements gathering and development of a high-level design. If a high-level design was required, it typically would occur three to four months before Mr. Gale would be delivered the update to start testing.

With respect to the *King* fix, Mr. Gale said he talked with Wendy Stigall and Sue Schuler in January 2013 about the update. He said he was "brought into the picture [that] this is coming up and it's going to be a big project." He recalled telling his boss through one of their regular update emails (the 10-minute updates) that he was going to be involved in the project.

Around the same time, Mr. Gale also was involved in a significant Health Services project, and also was preparing for testing an update involving an offender screening project. Another project concerned a persistent misbehavior update to the prison disciplinary program in OMNI. This was approximately March and April 2013. The persistent misbehavior update was delayed before being successfully implemented in fall/winter 2013.

Mr. Gale said he also was working on a stoppage time program related to statutory maximum *sentences* and was writing test cases for that program. With respect to the *King* fix, Mr. Gale said his testing priorities were on assignments for the upcoming release, and the *King* fix was not included in any upcoming release.

Mr. Gale added that he knew "it was coming," but after the fix was moved to later releases a couple of times, "I didn't really pay attention to it."

He is the primary tester for sentencing/SSTA related updates. Mr. Gale said he would have been invited to meetings where any such update was discussed. "I have to write my test cases and I need to know the requirements so I can get test cases ready."

Mr. Gale said he uses 31 sentence scenarios in testing. These scenarios relate to an approximate number of "end-to-end" sentence-type tests that are run several times during a release cycle. These are instrumental in "catching" calculation value changes in an offender sentence. Although he has the computer code, he always tries to do the sentencing calculations himself in an Excel spreadsheet to understand the update and to see whether the new code produces the same results that he obtains manually. The spreadsheets also are good test-tools to assist in verifying the new code is correctly implemented.

Mr. Gale said Sierra employees are available by phone or email. Sierra developers, OMNI business representatives, and Mr. Gale may have conversations by phone or email clarifying information needed and provided in a given ClearQuest request. Sierra is "very, very cooperative" and Mark Ardiel is "the man" for sentence structure updates. "He understands our business." Mr. Gale added that he is "very confident" in Mr. Ardiel's abilities. Mr. Ardiel has worked closely with DOC's "subject matter experts" for many years and Mr. Gale feels he understands the business. He added that Mr. Ardiel's and Sierra's work has been up to DOC standards.

Mr. Gale said he never expected "the numbers we saw" when the *King* fix was completed and tested against system-wide populations. He knew the fix was a priority when the change order was submitted, but the "priority for me had shifted to a different area—I have to get Health Services out the door."

Deepak Sadanandan was the person responsible for setting test team project assignment priorities. Mr. Gale does not know who was responsible for setting project priorities overall for the Department. Mr. Gale believed Mr. Sadanandan felt he could count on him, therefore Mr. Gale was assigned and willingly took on many new projects for the test team.

Mr. Gale didn't know if there was a loss of urgency for the *King* fix because "I knew we had some big changes coming from SSTA. I didn't see from my counterparts where there wasn't a sense of urgency."

Mr. Gale was not involved in the process of moving the release date for the *King* fix back. He believed it must have been the product of someone believing a higher priority existed. Those decisions would have made at defects meetings or management meetings.

When the *King* fix was tested, it came back affecting the release dates of 3,204 offenders. Mr. Gale said he sent the information to Ms. Stigall to make sure it was consistent with expectations and that the calculations were being applied accurately. "This is bigger than what they thought it would be," he remembered.

Mr. Gale added that although the average change in release dates was about two months, for prisoners "at each end of the curve" the change was much larger or much smaller.

Mr. Gale said the IT testing team has lost two full-time employees, with those positions replaced by project contractors, in recent years. He added that contractors come and go and don't learn the business as well as employees. When Mr. Gale was promoted from an ITS 3 to ITS 4, the ITS 3 position was lost, as was the ITS 4 position when he was promoted to ITS 5.

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"These things make continuity on a team tough," Mr. Gale said. He described a contractor who shows up engaged on Day 1, but who sometimes can't handle the work by Day 30 and ends up leaving.

Mr. Gale expected the IT Department to regain its stability with Ira Feuer coming on as CIO. He stated that "IT needs stability at the top." He noted that when a CIO leaves, that departure is compounded because the departing CIO often takes some of DOC's IT people with them. The turnover in the IT Department has hurt morale.

Mr. Gale said Kit Bail was a "motivator" and the IT Department had strong leadership when she was CIO. "People once upon a time wanted to be at DOC for the OMNI project."

There is sometimes a perception that if a high number of SSTA changes are being included in a release, other projects like Health Services aren't receiving comparable attention and are being shortchanged. As a result, a push often follows to include more fixes in other areas as a response.

Mr. Gale believed SSTA fixes "have been slower" than others because sentence structure calculations are so complicated and are often prompted by changes in legislative acts or court rulings. But an update with a high severity rating typically was fixed quickly, he added.

For the *King* fix, Mr. Gale ran the sentence structure calculation updates against 71 test cases. One of those test cases was run around 300 times using various offender sentences. He said he was confident in the testing process and that the testing team was doing things correctly. He also believes that OMNI calculates sentences as it is designed to do, although he noted that there are some open defects.

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

*   *   *

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

Signature: _____

Name: DAVID C GALE

Date: 2\19\2016

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 18, 2016
Subject: Kathy Gastreich Interview

Mark Bartlett and I conducted a phone interview today with Kathy Gastreich. The following summarizes Ms. Gastreich's statements on the *King* fix and sentencing calculation problem, as well as other discussions about Department of Corrections ("DOC") operations:

We began the interview by introducing ourselves to Ms. Gastreich 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 problem. We noted that we were hired to determine what happened and why the problem was not identified and corrected earlier, but also to discuss contributing conditions at DOC and solicit input on possible corrective measures that could be considered.

Ms. Gastreich served in the U.S. Army for eight years after enlisting when she was 18. She worked in commercial insurance following the Army and was introduced to risk management assessment there. Ms. Gastreich earned an associate degree while she was in the military and has taken some additional college classes over the years. Ms. Gastreich is a Certified Public Manager (CPM) and Associate of Risk Management (ARM).

Beginning in about 1988, Ms. Gastreich began working at the state risk management office. She started as a temporary employee before being hired to a permanent job. She stayed at the state office for about nine years before going to work for DOC as a risk manager. She has been in risk management for DOC since and is currently risk management director.

Ms. Gastreich did not work for a specific agency while in the state risk management office. The job involved what she described as "many discrete functions"—Ms. Gastreich worked on the state's commercial insurance portfolio, investigated tort claims, and served as a loss prevention manager, all for a time.

The risk management group at DOC includes two risk mitigation managers who report to Ms. Gastreich. Both manager positions, however, are currently vacant.

As risk management director, Ms. Gastreich has reported to the DOC Secretary and assistant secretaries at various times. She currently reports to assistant secretary for administrative services Julie Martin, who reports to deputy secretary Jody Becker-Green, second in command to DOC Secretary Dan Pacholke.

When asked about the role of risk management in the Department of Corrections, Ms. Gastreich said she has "voiced my concern about the impact of making changes to where the risk management position reports in the agency." The further removed risk management is from DOC Secretary, the less effective Ms. Gastreich believes it can be. She added: "I believe that it diminishes the role of risk management, isolates the department and doesn't allow free flow of information, and doesn't give appropriate authority to the function, when it's not the right position."

Ms. Gastreich reported directly to Harold Clarke during Mr. Clarke's time as DOC Secretary. Former Secretary Eldon Vail had risk management report to an assistant secretary. Vail's successor, Bernie Warner, had risk management report to an assistant secretary beneath the Chief of Staff who reported to the secretary. "I expressed my concern about pushing risk management down in the organization," Ms. Gastreich said, adding that such a move affects "how people perceive the importance of the office."

The majority of her time as risk management director is spent reviewing and monitoring tort claims and other lawsuits, many of which involve DOC. She typically focuses on four or five key cases at a time, but "others still need discussion and conversation and follow-up" on a regular basis.

Ms. Gastreich consults with the state risk management office and the Attorney General's office in developing strategies and measuring risk on significant issues for DOC.

With respect to the two open manager positions in her group, Ms. Gastreich said one has been vacant for approximately a year. The other position has been open since December. Hiring managers with a risk management background is "very, very difficult," she added. She typically must train new hires on risk management assessment, only to have those individuals leave for positions in other state agencies that can offer better pay or have promotional opportunities. "That's happened to me a couple of times, and here I find myself again during a period of vacancies," she said.

We discussed a December 11, 2012, email that Wendy Stigall sent to Ms. Gastreich seeking input on reprogramming OMNI after discovery that an offender's release date was miscalculated [WS_000011]. Ms. Gastreich said she has no recollection of receiving the email and no recollection of seeing the attached advice from Assistant Attorney General Ronda Larson. Any answer about what she did after receiving the email, or might have done, is pure speculation because she has no recollection.

"I can say that from my traditional level of work and what people can expect of me is to be responsible for my inbox and to respond to [email] if I get it," she said.

Ms. Gastreich does not typically receive many emails from Ms. Stigall. She said the issue of OMNI changes and sentence calculations is not her area of expertise or responsibility. "That's not something I give advice on or have been asked to routinely give advice to the Department on."

"I would like to think that it would have mattered to me and would have jumped out to me, but that's speculation," Ms. Gastreich added. "I don't recall having seen it, so I don't know.

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I feel awful that I don't have better recall about it." She described herself as "devastated" by the sentence calculation issue having occurred.

We also discussed the January 9, 2013, administrative services division meeting that Ms. Gastreich attended where Ms. Stigall appears to have discussed the sentence calculation issue [WS_000048].

Denise Doty also attended the meeting as assistant secretary, according to the meeting minutes. Ms. Gastreich said she reported to Ms. Doty "for a long time" and was "very saddened by the fact that she resigned" in the wake of the sentence calculation issue. Ms. Gastreich "think[s] very highly" of Ms. Doty and called her a dedicated public servant.

Ms. Gastreich does not remember attending the meeting. She did not attend meetings on a regular schedule as she often had other demands on her schedule, such as attending a mediation, trial, or meeting with Assistant Attorney Generals instead. She added that the meetings typically featured updates from around the room, with each manager reporting on what was happening in her unit. "It seldom was a conversation where we roll up our sleeves and dig into a matter or topic," as opposed to informational updates.

The meeting minutes report that Ms. Gastreich discussed the death of a staffer at the January 9, 2013, meeting. Ms. Gastreich said the staffer worked in the risk management group, and she was consumed by helping his family in those weeks. She was asked to deliver a eulogy at the service and had to coordinate the appropriate Department of Corrections honorary along with the fire department and military department. "I was very involved with that event in this time frame that we're talking about," she said.

Ms. Gastreich was asked if the discovery of the sentence calculation issue and the review of these emails and meeting minutes brought back any memories of the issue. "There's just no recollection," she said.

We asked about Assistant Attorney General Daniel Judge's statement that Ms. Gastreich called him on December 7, 2012, to discuss the sentence calculation issue and decision to delay hand-calculating sentences with an OMNI fix in the works. Ms. Gastreich said she had no recollection of the call.

She said she has spoken with AAG Judge about "a lot of things" in consulting on risk management issues over the, years. When advised that AAG Judge stated he spoke with Ms. Gastreich on December 7th which is several days before Ms. Stigall' s email of December 11th, Ms. Gastreich asked how she was supposed to have learned about the situation prior to the date of AAG Larson's advice. She was advised that AAG Judge speculated that she must have had a conversation with AAG Larson prior to the advice being issued. Ms. Gastreich responded, "That may be his recall and speculation, but it absolutely is not my recall."

Ms. Gastreich also stated she does not remember having any conversation with AAG Larson on the issue.

She reported having a conversation with AAG Judge in the past 18 months or so on an "unrelated but similar topic." Ms. Gastreich did not want to discuss the specifics, citing

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attorney-client privilege concerns. She did discuss the matter in general by saying she asked AAG Judge and AAG Larson to reconcile what may have been divergent opinions from the corrections and torts sides on the issue. The advice did not pertain to a particular case, but to what appeared to be inconsistencies in statute and potential liability for supervision.

Ms. Gastreich gets along with AAG Judge and "highly respect[s]" him. She believed AAG Judge might have confused the topic on which they spoke. She has "very specific recollection about the more recent issue," having spoken with AAG Judge, AAG Larson, and AAG Tim Lang about it, while also exchanging "emails about the topic." She wasn't exactly sure but thought this issue sometime between December 2014 and spring 2015.

Ms. Gastreich added that she began working closely with AAG Larson in September 2014 when the department hearings unit was put under her program. AAG Larson advised Ms. Gastreich on hearings-related issues. Ms. Gastreich remembered asking AAG Larson about a specific interpretation and approaching AAG Lang to obtain a more detailed analysis. This led to additional conversations, and AAG Judge and AAG Larson ended up working together to provide written advice. They drafted advice for Ms. Gastreich; she was not sure if the advice ever was finalized because the department hearings unit was moved to report elsewhere. Because of attorney/client concerns, Ms. Gastreich did not believe she could discuss the specifics of the case or the legal advice at this time.

Ms. Gastreich described herself as a hard-working and dedicated public employee and is "very proud of the work I have provided to the state." She said she admires and respects everyone who has been caught up in the early release issue. "I hope their history is taken into account here, and not just what happened in this matter."

When asked if she or her unit has changed since this matter came to light, Ms. Gastreich said she is much more vigilant and fearful that anything she does now will be incorrect and revisited many years later.

When asked if she wanted to add anything Ms. Gastreich explained that the rate of change in DOC is the fastest she has ever seen, which concerns her from a risk management perspective. She explained that over the years she and other managers had talked with executives about the pace of change and Ms. Gastreich spoke of what she believes is their responsibility to measure the capacity of the organization to accept change. She said she and others have cautioned that the rate of change sometimes can cause a system to break.

She also said this issue has prompted her to be "much more vocal and insistent" and increasingly raise concerns, including copying more recipients on emails "so people who need to know are informed."

She added that DOC has suffered from repeated budget cuts and a focus on doing more with less. "This is a highly risky job in a highly risky business. "People can't understand the magnitude of the work this organization does."

We thanked Ms. Gastreich for speaking with us and told her that we would produce a memorandum of her interview for her review and approval. We also told Ms. Gastreich that she could clarify any points in her 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: *Kathy Gastreich*

Name: Kathy Gastreich

Date: February 22, 2016

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DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 26, 2016
Subject: Zachary Hamilton Interview

Mark Bartlett and I conducted a phone interview today with Zachary Hamilton, an assistant professor of criminal justice and criminology at Washington State University ("WSU") in Spokane. Mr. Hamilton also is director of the Washington State Institute for Criminal Justice ("WSICJ"). The following summarizes Mr. Hamilton's statements on the STRONG-R/Advance Corrections initiative, as well as his dealings with the Department of Corrections ("DOC"):

We began the interview by introducing ourselves to Mr. Hamilton 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

Mr. Hamilton earned his bachelor's degree from the University of Iowa, and his master's degree and Ph.D in criminal justice from Rutgers University. After completing his Ph.D, he accepted a position at WSU. Mr. Hamilton received notification of tenure last week. His work focuses on quantitative analysis in the field of corrections.

Mr. Hamilton has worked with corrections departments in multiple states. His dissertation examined the effectiveness of halfway houses for substance-abuse offenders in the state of New Jersey. As part of his Ph.D work, Mr. Hamilton analyzed the effectiveness of specialized therapeutic courts (such as drug courts) in the state of New York.

One of Mr. Hamilton's first projects at WSU involved analyzing the effectiveness of the state's housing voucher program. Mr. Hamilton said WSICJ takes on a "myriad of projects, and a lot of them come from Washington DOC." The institute has received funding from the Legislature for its work, as well as funding from counties and municipalities.

WSICJ is a collection of WSU faculty researchers who work on criminal justice issues. Mr. Hamilton said WSU formed the institute to help create a collective identity for the faculty researchers and to better market their work. WSICJ comprises six faculty members and seven to eight graduate students at a time, at WSU campuses in both Spokane and Pullman.

We discussed STRONG-R/Advance Corrections and WSICJ's role in the initiative. Mr. Hamilton believed his involvement began in late 2011 or early 2012. DOC wanted to create a fourth-generation risk assessment tool and was considering tools created by corrections

departments and groups from outside Washington State. Mr. Hamilton recalled that one risk assessment tool under consideration came from the Ohio corrections department.

DOC had been using the Static Risk Assessment ("SRA") tool that the Washington State Institute of Public Policy ("WSIPP") developed. The SRA predicted risk based on static factors, such as an offender's previous criminal history. It was developed five or six years before Mr. Hamilton arrived at WSU, and its creator had retired during those years.

Mr. Hamilton described DOC's goal with the risk assessment tool: "The thought at the time was they would use this SRA but they would collect additional information through an offender interview, and at a later date, combine the two and create a fourth-generation tool."

Mr. Hamilton worked with the SRA creator, Robert Barnoski, and approached DOC about having WSICJ develop the risk assessment tool. Mr. Hamilton and Mr. Barnoski emphasized to DOC that WSIPP had collected significant amounts of valuable offender data over the years with the SRA, and WSICJ could incorporate that data into the new tool.

The two made a successful presentation to DOC Secretary Bernard Warner and his executive team, which led DOC to hire WSICJ to develop the new risk assessment tool.

It took six months for DOC to officially finalize a contract with WSU for the work. Mr. Barnoski and WSIPP were not part of the contract. Mr. Hamilton believed the original contract was for about $68,000. The project has expanded from its initial risk assessments involving recidivism to incorporate predictions for offender needs while in prison and potential for prison infractions.

We asked Mr. Hamilton about Assessments.com's work on the project. He distinguished that Assessments.com is a software provider. The company does not create the risk assessment tool, it only incorporates that tool into software.

While Mr. Hamilton and WSICJ worked to develop risk assessment models, DOC contracted separately with Assessments.com to be involved in the software development and implementation of the tool. Mr. Hamilton said DOC maintained separate contracts with WSU and Assessments.com for their respective work. He did not know when DOC finalized the Assessments.com contract, but he believed the initial contract was a development agreement for Assessments.com to determine how implementation of the tool would affect the Department.

Mr. Hamilton believed DOC and Assessments.com had recently completed another contract for Assessments.com to develop the software for the risk assessment tool.

His point of contact at DOC for the project originally was Mark Kucza. After a year or two, Amy Seidlitz took over the risk assessment project. Mr. Hamilton participated in weekly calls with Ms. Seidlitz. He described her as "knowledgeable" and said she succeeded in moving forward the project.

He said the project appeared to be a big deal to Mr. Warner and DOC, at least based on his involvement.

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Mr. Hamilton said he "didn't really deal with" Assessments.com. "It wasn't as though Assessments.com and I were on weekly phone calls or collectively on calls together." He worked with Ms. Seidlitz or Mr. Kucza, adding DOC was "pretty adamant" about keeping separate the WSU and Assessments.com contracts.

Mr. Hamilton said it was "not accurate" that DOC ever intended for WSU to develop the software for the risk management tool. He remembered assistant secretary for administrative services Brian Tinney asking "at one point" if WSU had the capability to develop the software, therefore allowing DOC to have one contract with WSU encompassing the entire project. But Mr. Hamilton told Mr. Tinney that WSU did not have this capability.

We also asked if WSU ever entered into a licensing agreement with DOC concerning the risk management tool. Mr. Hamilton said "there were discussions about trying to incorporate WSU and Assessments.com as one large contract, to where WSU would have the intellectual property rights and Assessments.com would be a subcontractor, but that didn't go forward because it didn't work for WSU." The proposed arrangement was not blessed by WSU's contract-review team.

Mr. Hamilton said progress on development and implementation of the risk management tool has gone "a little bit slower than expected" because DOC has experienced organizational changes, including turnover at the Secretary level from Mr. Warner to Dan Pacholke, in the IT Department, and in administrative services.

The risk management tool has been developed, and WSICJ is running a pilot of the tool involving data collected from 300 offenders. Mr. Hamilton said he received the pilot data only a couple of days ago and had not yet analyzed it to determine if the tool was working.

We asked about the four-phase timeframe for development of the Advance Corrections initiative that has been described by others. Mr. Hamilton said he did not know how DOC had structured development, and WSU's contract is focused only on the scheduling of deliverables and preliminary models.

Mr. Hamilton and WSICJ are not involved in the case management planning component of Advance Corrections. He believed DOC was using its internal case managers and software developers on this component.

The pilot assessments with offenders were conducted with pen and pencil forms; Mr. Hamilton did not know if the risk management tool had been developed into software or whether that software was OMNI-based.

Mr. Hamilton said the first six to nine months after he first presented to Mr. Warner and the senior leadership team was a conceptualization period for the risk assessment tool. He then spent three to four months on research and development, taking WSIPP and DOC data and creating models of what had been conceptualized. There were regular discussions concerning implementation work for the instrument with Assessments.com, Ms. Seidlitz, and Mr. Kucza, among others.

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Mr. Hamilton said, "[a]s much as I know, Assessments.com has been good as far as their deliveries." He said the training and implementation process has moved forward "pretty quickly." And he noted that both WSU and Assessments.com faced tight timelines on the project from DOC and both met those deadlines. "They've always been very competent in my mind," he added.

The contracting process between DOC, WSU, and Assessments.com was one where Mr. Hamilton said, "we kind of learned about this whole process as we did it." The three parties considered several options, including contracts where Assessments.com operated as a subcontractor to WSU, and vice versa where WSU operated as a subcontractor to Assessments.com . They also explored obtaining a patent for their work. Mr. Hamilton said: "The idea was to try to see if we could create fewer complications so that the work needing to get done could get done."

As two state government entities, DOC could hire WSU to perform the work without undergoing a competitive bidding process. This led DOC to explore a partnership between WSU and Assessments.com, where Assessments.com would have been paid by WSU as a subcontractor on the project. Mr. Hamilton said all three parties rejected this idea after briefly exploring the concept. "These contract procedures were complicated and I do not think anyone involved had experience marrying the work of a DOC, a university, and a private vendor," Mr. Hamilton said.

He added that he did not think the work could have been completed any other way, given that WSU had created the statistical algorithm for the risk management tool and Assessments.com supported DOC's software. Mr. Hamilton said utilizing different partners would have made the situation more, not less, complicated. "In my opinion, the solution arrived at by the DOC's contracts department to make two contracts with both [entities] was smart, retained transparency, and met everyone's goals for the project."

Mr. Hamilton believed DOC subsequently submitted a sole-source contract with Assessments.com for approval based on the fact Assessments.com already was providing software for the existing SRA instrument.

Mr. Hamilton said he felt no pushback from DOC's IT Department concerning the Advance Corrections project. "It was a lot of work," he said, but he believed people were "excited and still excited" by the prospect of developing a more sophisticated risk assessment tool. Although development has been slower than expected, Mr. Hamilton said that is perhaps understandable in working with state government. "If anything, people wanted it to move faster, but nobody was saying they didn't want it."

Mr. Hamilton asked about the connection between Advance Corrections and his work, and the sentencing calculation error. Mr. Bartlett explained that the Senate wanted to understand the scope of the initiative and its emphasis at DOC.

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

<center>*   *   *</center>

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: _[signature]_

Name: _Zachary Hamilton_

Date: _2016-02-26_

MEMORANDUM

To: WA Senate Investigation File
From: Monty Gray
Date: February 16, 2016
Subject: Interview with Doug Hoffer

I conducted an interview with Mr. Doug Hoffer today by telephone, as he is leaving tomorrow on a brief family vacation, returning on February 23. The following summarizes Mr. Hoffer's statements in the interview:

I told Mr. Hoffer that I work for Davis Wright Tremaine, which has been engaged by the Washington State Senate to assist in its investigation of the prisoner release problem. I explained that we had been hired to determine what happened and why the problem was not identified or fixed earlier than it was, but also to seek information on contributing conditions at DOC and on possible corrective measures that might be considered.

Mr. Hoffer is a graduate of Central Washington University, where he studied accounting. He began his career with the State Auditor's office, where he worked for seven years, then moved to DOC in the budget office. He moved into the IT department in the early 2000s, with a budgetary focus. He began working on the OMNI project in 2006, and became more involved in the IT side of things, although he was never a coder. He became deputy CIO under Kit Bail starting in 2008, and CIO when Ms. Bail left. He continued as CIO until 2014, when he left to work for what was then Consolidated Technical Services. He is now Assistant Director for Telecommunications Services. At one time he was a certified public accountant, but he has allowed his license to lapse.

When asked why he left DOC, Mr. Hoffer said that over the last year to 18 months of his tenure, he was very much focused on what was clearly Secretary Warner's main priority, then known as STRONG-R, which focused on reducing recidivism and related issues. (When asked whether this was the same project later known as "Advance Corrections," Mr. Hoffer said that he thought so but wasn't sure.) Mr. Hoffer said he found the initiative extremely difficult and frustrating. He said, "It was clear that the initiative wasn't going to be successful. It was time for me to leave." In addition, Mr. Hoffer clarified after the interview, he had been at DOC for a long time, and it was time for a change. It was mostly the STRONG-R initiative, but there was more to the story than just that.

. Mr. Hoffer began looking at other options during the last year or so of his tenure at DOC, and eventually chose what became WaTech. A lot of other people left the DOC IT department during this period; some of them followed him to CTS.

Secretary Warner assigned Mr. Hoffer to facilitate the STRONG-R initiative within the Department. This effort was primarily focused outside the IT department, although not exclusively so because any solution would ultimately result in an automated IT solution. Mr. Hoffer noted that there are a lot of different theories about how to reduce recidivism by offenders. The Department issued a Request for Information, and Mr. Hoffer and other IT staff participated in a lot of meetings to evaluate responses, and otherwise to move the STRONG-R initiative forward.

The STRONG-R effort consumed a lot of resources, and Mr. Hoffer brought in other people from IT to assist him. This reduced the resources available for the ordinary business of the department, but it did not greatly affect the developers and testers. Mr. Hoffer believes that Secretary Warner chose him for the role because the IT department had a strong project-management discipline and a track record of successful projects.

I asked Mr. Hoffer about Assessments.com. He said that at the same time that OMNI deployed in 2008, a separate application called OSPS was deployed with it. This did risk assessments of offenders, and the output of OSPS fed into OMNI, requiring interfaces between the two pieces of software. OSPS was developed by Assessments.com, which had a maintenance contract to support it.

The owner and CEO of Assessments.com, Sean Hosman, developed a drug and alcohol problem, and his company appeared to go into difficult fiscal times, not meeting payroll, etc. When maintenance work was needed, oftentimes "they were nowhere to be found."

During the STRONG-R project, DOC issued Requests for Information with many players in the industry for a new product to replace OSPS. At some point, Sean Hosman reappeared, said that he had cleaned up, and wanted to resurrect his company and resume supporting the code. Assessments.com became involved in the STRONG-R project generally, not just in the IT aspect. "A lot of it was related to the business side of corrections."

Mr. Hoffer felt that DOC could build the STRONG-R processes into its existing OMNI system. He was concerned that using separate applications would require new interfaces, and interfaces are a frequent source of problems and failure of IT systems. Secretary Warner did not agree that building the functionality into OMNI was the correct approach. The rationale for the Secretary's decision was never explained. "I felt I wasn't being listened to." "It was a tough time; it was difficult to facilitate decisions and conversations regarding this initiative."

I asked Mr. Hoffer about the process for prioritizing changes to OMNI while he was at DOC. He said that at DOC they had talked a lot about how to get the business side involved. He said that there were "two levels of governance," one for bigger changes such as major new functionality or other projects, and one for smaller items, such as routine day-to-day maintenance. Even on the larger projects, however, it was difficult to get business decisions.

For smaller items, such as routine defects and enhancements, Mr. Hoffer said that they tried various ways to set priorities. They created a "Technology Review Board," but found it very difficult to get the right people at the table to make decisions. He noted that there were

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typically 1000 defects and enhancements in the database, affecting many different aspects of the various IT systems, and that no one person could go through and identify the implications of each one. They tried to identify the business owners of the functionality; but they found that it was not easy to get engagement in all areas. Prior to the deployment of the OMNI software, the Department created the "Business Unit" within IT; these people came from the business of corrections, to be the interface between IT and the various business components.

The prisons side of the business unit was led by Dave Dunnington. I asked Mr. Hoffer for his assessment of Mr. Dunnington's abilities. He said that he was logical and disciplined, and a good communicator who could bridge the gap between the IT people and the business people.

Mr. Hoffer said that larger projects were supposed to go through the "Project Review Board," or PRB. He thought that this was what his predecessor had referred to as the "governance team," or "governance committee" in our interview with her. This was designed to get upper-level executives to look at competing proposals and decide which should go forward and in which order. Toward the end of Mr. Hoffer's tenure, however, Secretary Warner became "very focused" on the STRONG-R effort, and PRB meetings became much more about STRONG-R than about what other initiatives the IT department should be working on. It was difficult to get the senior management in the department to focus on these projects.

Mr. Hoffer noted that some of the larger projects did draw resources away from routine maintenance. He stated that whenever possible they tried to get money from the project sponsors to support the needed resources, such as another developer, because IT didn't have the money in its budget. This wasn't easy, but IT tried to do the best they could to meet the varied needs of the Department. He observed that DOC was a very demanding place, with limited resources, and that it was a lot easier for people to get excited about new things rather than to focus on existing stuff. He noted that the Department as a whole is resource-starved. It is in competition with many other agencies for dollars from the General Fund. He said it was a good place to work, but a difficult place to work.

Mr. Hoffer agreed that in hindsight, the "severity" codes in ClearQuest did not fully work as a prioritizing device. He noted that any prioritizing system needs to be based on objective criteria. He has heard that the department is looking at new scoring software, and he applauds that effort.

I asked Mr. Hoffer about the technical analysts, such as Steve Collins. He said that during the early implementation of OMNI, they had people like Collins who had grown up in the OBTS world but also were part of the development of OMNI. They helped with transition, and thereafter. They had years and years of knowledge and background that was very difficult, if not impossible, to replace when time came for them to retire. He said that the loss of the technical analysts was mostly a function of retirement.

Mr. Hoffer was asked about keeping the design documentation for OMNI updated with the various changes that were made. He said that the IT Department had debates about this topic, and that there is disagreement within the IT community generally as to whether the

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benefits of doing so justify the cost and effort involved. He believes that they did update the design documentation for a period of time, and then, after some discussion and debate, decided to discontinue the effort. He believed that the ClearQuest software would enable one to identify to a degree what changes had been made to a particular module.

Mr. Hoffer was asked what changes he would make, or at least explore, if he were the current CIO. He said that he had thought a lot about the issue since the news hit in December.

He applauds the recent Governor's directive to make sure that there is clear business ownership for IT systems (including SSTA), with a specific person identified as responsible that offenders serve the right amount of time. He noted that this could be set out either in a policy statement or in a job description.

He thought that there ought to be some process requiring the owner of SSTA to certify that the computer calculations comply with applicable law and regulations. If the owner is unable to make such a certification, for instance because of known defects, then there should be a requirement that sentences be manually calculated. He observed that from the time a defect in calculations is identified, you know that you're not keeping offenders for the right period of time unless manual calculations occur.

It doesn't surprise Mr. Hoffer that the work to develop specifications and requirements and implement a fix in this case took a while; but 3 years is "obviously not acceptable." Given that set of circumstances, however, there should be some process for certifying that the system works, except for identified items, which will be hand-calculated. One benefit of this, Mr. Hoffer thought, was that hand calculations would take time and consume resources, highlighting the degree to which the fix would create efficiencies and reduce costs.

Mr. Hoffer has some concerns about "hot fixes" in this situation. He noted that the SSTA code is "very, very, very complicated," and he is concerned that speeding up development would create additional defects. He said that the IT department had longer release cycles by design, in order to allow for seven full days of regression testing. He observed that there is currently a movement toward "agile" processes, which shorten up the time for development and fixes. He views this as part of the ebbs and flows of management theory, and would be concerned about adopting it for something as complicated as SSTA.

Mr. Hoffer said that when OMNI was first put into production, IT sometimes had various problems, and hot fixes were unavoidable. However, he said, before agreeing to implementing a hot fix outside of a scheduled release, the IT department would ask whether there was an acceptable manual workaround. After the initial bugs were worked out, the IT department used "hot fixes" much less often, although they normally would do a hot-fix if a release broke something.

Mr. Hoffer said that if he were CIO, he would be interested in learning how other organizations (perhaps big companies such as Amazon or Google) handle some of these issues, such as prioritization of changes.

I explained to Mr. Hoffer that I would be preparing a memorandum of our interview for his review and correction or signature. I also alerted him to the fact that the Senate was likely to hold hearings on this matter beginning as early as next week, and that I would be recommend that he be a witness at these hearings. I told him that as far as I knew, the schedule had not yet been firmly set, nor did I know exactly what the format would be.

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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: _Doug Hoffer_

Name: _DOUG HOFFER_

Date: _2-22-16_

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Max Hensley
Date: February 21, 2016
Subject: Peter Jekel Interview

Monty Gray and I interviewed Peter Jekel, former employee of the Washington Department of Corrections (DOC) at the DOC headquarters in Tumwater, Washington 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.

Jekel stated that during his tenure at DOC, he was unaware of the *King* fix. He explained that for most of his career at DOC he was the Chief Information Security Officer, a position he held for 9 years. This involved data handling issues, such as classification, storage, encryption, and transportation of data, and meeting regulatory requirements. Jekel did not have any role in making changes to OMNI or prioritizing that workflow; his only interface with that area was ensuring that the group and the contractors were using sound practices from a security perspective. Before his promotion to Chief Information Security Officer, Jekel spent 5 years as a security analyst at DOC.

Jekel was promoted to acting CIO after previous CIO Doug Hoffer left the DOC. His understanding was that management intended to rotate the position between three qualified internal candidates: himself, Jibu Jacob, and Jeanette Sevedge-App. He initially agreed to serve for only four weeks. Two weeks into his acting CIO role, he accepted a position at DOR. DOC Secretary Bernie Warner contacted his new bosses at DOR and convinced them to allow him to stay on as acting CIO for an additional two weeks. During his time as acting CIO, Jekel attended 5-6 executive meetings with the Secretary and other top leaders, and he does not remember the *King* issue ever coming up. Similarly, he did not get any reports from his staff about this issue. He noted that at that time, his staff was generally fatigued and under pressure because of new work that had come down from Warner.

Jekel described the new work as related to Warner's priority. Jekel believed that an inordinate amount of resources were moved to that area, which focused on risk assessments for

offenders and was used to determine the DOC's rehabilitative approach and offenders' eligibility for certain programming, and also controlled the way in which they were monitored in the community. Jekel believed that this work was essential to the DOC's mission and impacted everything that they did, down to the assignment of offenders to certain cell blocks. We asked whether this priority area was related to the "Advance Corrections initiative," and Jekel was not familiar with that term. He said that the priority area was known as both "STRONG-R" and "STAR" (Substance Tracking and Reporting), but the STRONG-R term was specific to a particular vendor, a company known as Assessments.com.

We asked Jekel if he was familiar with a company called Assessments.com. Jekel stated that during his tenure as acting CIO, there was an RFP in process that became a sole-source contract for Assessments.com; he said that the sole-source nature of the contract was under challenge through the Department of Enterprise Services procurement process at the time Jekel left DOC in April of 2014. Jekel said that he was not aware of any relationship between Assessments.com CEO Sean Hosman and Warner, but that Jekel was not in favor of continuing a working relationship with Hosman. He was aware of Hosman's past substance abuse problems, but those were not the reason for Jekel's objection to working with him. Rather, Jekel said that Assessments.com had repeated quality issues and provided software fixes that did not work. Jekel said he was told by staff that in one instance, although the contract required Assessments.com to maintain the software, a DOC employee had to show an Assessments.com employee how to perform the work. Jekel said that he wondered why they were being considered for future work; he doesn't have any particular knowledge why they were considered, but "It didn't smell right. If you were in a fish market, you wouldn't buy that fish."

Jekel had a limited role in procurement, and only had that role during his 6 weeks as acting CIO. During that time, he expressed his belief that the Assessments.com contract did not qualify for award on a sole-source basis, but had been told that Warner wanted it submitted as a sole-source contract. Jekel did not provide sole-source contract justification language. Jekel is not sure of the size of the contract and does not know how the challenge turned out.

We asked why former CIO Doug Hoffer left DOC. Jekel said that Hoffer was "one of the finest people I ever worked for" and "an exemplary CIO," but that he was very stressed at the end of his tenure. "Doug had burned his candle to the end." Jekel believes that under Hoffer, IT governance was very good and among the best of all state agencies. He stated that DOC had a team that determined priorities by working with business units, the team put those priorities into a system called ClearQuest which contained good tracking documentation, and the department had an organized release plan, known as the M-release schedule. Jekel views this as a rigorous process that was built to industry standards. His question is why the *King* fix didn't go into the proper release, and thinks that it is possible that there was pressure from above that forced employees to do certain tasks instead of necessary maintenance items; he noted that pressure would not necessarily be documented. Jekel was "shocked" when he saw news reports on this issue.

Jekel stated that he was aware that the IT department had a "landslide of work"; he said that he believed the ClearQuest queue went out as much as 18 months and contained mostly OMNI issues. His knowledge, however, is mostly hearsay. He noted that even if DOC had the

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most basic prioritization process, first-in-first-out, that would not explain why it took 3 years to fix the issue. Jekel believes that someone must have made a decision to put this project off. He thinks that employees who had been dedicated to OMNI work were shifted to priorities other than the ClearQuest queue during his time as acting CIO. He noted that if someone with sufficient political capital had a pet project, or was in a position to say "this is what Bernie wants," it's possible that project might obtain priority when push came to shove.

We noted that Hoffer had had issues with the DOC's business units providing him with sufficient and consistent prioritization information. Jekel said that could be true, but believed that another problem was that people with political pull were able to get their priorities done while pushing other work out. He said that while he was not here during the entire *King* process, that type of activity happened during his brief tenure: "when push came to shove, what Bernie wanted, Bernie got."

We asked why Jekel left DOC. He said that he had accepted the job at DOR in January of 2014, but that Hoffer talked him out of leaving on the grounds that Hoffer was planning to leave, which would open up the CIO position. Jekel stayed at DOC, but DOR remained in contact through this period. Prior to accepting the acting CIO position, Jekel had informed DOC that he wanted a salary increase in the Chief Information Security Officer position, and DOC did not agree; in fact, its HR department informed Jekel that he was overpaid for his position. In contrast, DOR was able to offer a reasonable salary increase.

In addition, once Jekel got into the acting CIO position, it was "among the worst professional experiences I ever had." He characterized Warner's involvement in the IT department as "indifferent neglect; benign neglect is too nice." As an example, Jekel said that he had a key group of employees who did web development. He had a brief conversation with Warner regarding moving that group to DOC's communications division, and advised Warner against making that move, because he did not believe the communications group had the technical knowledge to supervise this work. Ten days later, Jekel found out from a junior member of that team that the move had been made without informing either Jekel or the team leader. Jekel was required to do a substantial amount of work to work with that team leader (who was a valued employee that had just lost his team), as well as to re-do position descriptions and duties for other areas that had previously interacted with the web group.

As another example, Jekel stated that the decision to make the Assessments.com contract a sole-source contract was done above him (although Jekel did not remember precisely who gave the instruction); Jekel did not feel that the contract was permissibly sole-source, and as a result gave only technical assistance while others wrote the RFP. These conflicts with Warner lead Jekel to realize that the writing was on the wall, and within two weeks of assuming the acting CIO position he informed DOR that he was interested in accepting their offer.

We asked Jekel about the professional credentials of employees working at DOC and noted that some of the staff did not appear to have professional qualifications or appeared to be unsophisticated specifically in the area of I.T. business requirements. Jekel noted that many DOC employees rose up through the DOC ranks. He said that many are excellent leaders and have professional credentials, including former Secretary Eldon Vail, Anmarie Aylward, and

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many of the superintendents. However, many people in the department have only worked at DOC and lack academic credentials. Many of them are excellent at what they do, but are limited in the scope of their duties within IT.

We asked about Jekel's background, and he said that he moved to IT as mid-career change. He originally obtained a BA in philosophy and languages from Evergreen State College, and later got a bachelor of science degree in computer science from Evergreen.

We asked about the transitional period after Hoffer left and asked him whether he thought it was a lengthy transition. Jekel said he thought it was a lengthy transition, and that spoke to Warner's indifference to the IT group. We asked what Warner would say about the IT group, and Jekel predicted that he would characterize it as poor. Jekel thinks that Warner saw Assessments.com as the "A" team, and saw DOC employees as the "B" team. Assessments.com wanted DOC to make radical shifts in workstyle to accommodate them. Jekel described DOC as using a "hybrid agile-waterfall" methodology, which is an interactive process during business requirements and design combined with a structured process in coding. Assessments.com, in contrast, uses a strict "agile" methodology which allows them to move much faster but does not allow for the same amount of quality control. Jekel said that this was a conflict in drafting their contract, as they informed DOC that they did not want business requirements included in the contract, but DOC insisted on them so that DOC could keep tabs on what they were paying for. Jekel added that he believed that Warner may have thought more highly of him as a security officer than as a CIO.

We asked whether Jekel had any view on other departures from DOC's IT staff at approximately the same time. Jekel said that he saw "heavy migration" out of DOC during the 6-8 month period around the time he left, and thought it may have been attributed that to the turmoil and pressure in the department due to the lack of leadership because of the lack of a permanent CIO.

We asked whether Jekel had a view as to the desirability of implementing a charge-back system to improve visibility into the limited resources of the IT department and the need to prioritize the use of those resources. Jekel said that it would be feasible, but does not believe that it was needed, or that it would necessarily be effective. He thinks that "it comes down to good management"; he described the team of Secretary Vail and CIOs Kit Bail and Doug Hoffer as highly effective.
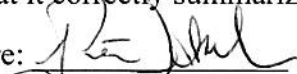
We asked whether Jekel had met his replacement Doug Switzer; Jekel said that he had only met him once. After being hired, Switzer had wanted to speak with both Jekel and Bail as former CIOs, and Jekel met with him at that point. He did not make a favorable impression.

We closed by asking whether Jekel had any further comments that he wanted to share with us. Jekel said that he was "completely floored" when this came out, and that his initial reaction (which he now believes to be at least partly mistaken) was that it had to have been caused by someone outside of IT based on his very high opinion of that group. He also added some context to his relationship with Warner, noting that he had had a good working relationship with Warner when Warner was director of prisons for DOC, and that Warner had apologized for

the incident with the web group and had personally come down to wish Jekel well when Jekel was preparing to leave DOC for the Department of Revenue.

<p style="text-align:center">* * *</p>

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: _PETER JEKEL_____

Date: _2-22-16_____

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 16, 2016
Subject: Daniel Judge Interview

_____

        Mark Bartlett and I conducted a phone interview with Mr. Daniel Judge of the Attorney General's office today. The following summarizes Mr. Judge's statements on the *King* fix and prisoner release problem, as well as other discussions about Department of Corrections ("DOC") operations and advice that Mr. Judge provided to DOC staff:

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

        Mr. Judge will have worked for the AG's office for 30 years in May, counting his time as a law clerk. He primarily has handled corrections and torts issues for the AG. He worked on a torts team from 1999-2005, corrections team from 2005-10, and then returned to torts, where he has remained since the beginning of January 2011. Mr. Judge currently supervises three other attorneys plus a paralegal.

        Mr. Judge works mainly on tort cases related to corrections, such as those involving negligent supervision issues. Much of his work involves DOC, but Mr. Judge also has had recent cases involving the Department of Resources, and Department of Fish and Wildlife, and he has been consulted on a Department of Ecology matter. He estimated two-thirds of his cases involve DOC.

        Mr. Judge was a team leader for the AG Corrections Division from 2005 -10, and Paul Weisser was the other team leader in the AG Corrections Division. Mr. Weisser's team typically deals with issues involving the fact of or duration of a sentence.

        Mr. Judge described his current job as being a "player/coach" role. He is responsible for handling cases himself, including trial, motions practice and discovery, and he also supervises three attorneys on his litigation team (Team 2) and their caseloads.

        We asked specifically when Mr. Judge became aware of the *King* issue. Mr. Judge said he received a phone call from DOC risk management director Kathy Gastreich on December 7,

2012. He remembered it was a Friday afternoon and Ms. Gastreich called around 1 p.m. Ms. Gastreich "let me know there was a computer gaffe or problem having to do with offenders and offenders' release dates."

Mr. Judge remembered Ms. Gastreich told him the problem had been ongoing for a decade and that DOC staff was consulting with Assistant Attorney General Ronda Larson on the issue.

Mr. Gastreich was "weighing verbal advice" about whether to allow the issue to continue "before a new fix went into effect in the next month or two." Mr. Judge added: "I remember the issue of a computer glitch, I remember the word 'decade,' and that it would be another month or two [to fix] because it had gone on for a decade."

Mr. Judge said he advised Ms. Gastreich DOC needs to fix the problem, and that if an offender reoffended after being released, "the Department essentially is on the hook. I said it that way. Kathy had handled enough negligent supervision cases. I wasn't telling her anything she didn't already know." Ms. Gastreich responded by referring to the total number of offenders being supervised in the community who could also re-offend, also something she had to think about. She indicated that's true of everyone we supervise, or words to that effect.

Mr. Judge believed Ms. Gastreich was "calling me to say, 'What are the risks?'" His call with Ms. Gastreich lasted five to 10 minutes. Mr. Judge has pinpointed the December 7 date after reviewing publicly released emails from Ms. Larson to Wendy Stigall after the early release problem surfaced, and based on the limited nature of information that Ms. Gastreich had at the time of their phone call, and her mention that Ms. Larson was preparing advice. It was his impression that their phone call followed phone calls Ms. Gastreich had with other DOC staff.

There was no follow-up email with Ms. Gastreich, nor any email between Mr. Judge and Ms. Stigall.

Mr. Judge remembered that Ms. Gastreich was "very sketchy and very limited" in her explanation of the situation in the December 7 call. He had not seen Ms. Larson's email to Ms. Stigall from December 7, 2012, until it was publicly released. "Things like the *King* decision or 'related to OMNI' or offender details like that were not part of the phone conversation."

It was a "bit of a strange conversation" because Ms. Gastreich was not providing much information and Ms. Gastreich had familiarity with the risks of releasing offenders. This was not really a question for the Torts Division, but for the Corrections Division, their program attorneys. Mr. Judge added that Washington's negligent supervision law creates potential liability for the state (part of a landscape of risk) that other states don't share.

Mr. Judge has known Ms. Gastreich for "a number of years." Ms. Gastreich is not an attorney. Mr. Judge also offered one example of a typical torts case involving DOC; an offender allegedly fails to receive the required standard of care associated with a medical exam.

Mr. Judge said he didn't have any idea the number of offenders affected and how many were released based on his conversation with Ms. Gastreich. The focus was "what are we doing

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for the next month and a half with the computer." Mr. Judge added he was concerned about accounting for the released offenders. "Kathy didn't really speak to it."

There was no protocol within the Attorney General's office to involve Mr. Judge (or a torts team attorney) in providing risk related advice. Mr. Judge said he was sometimes brought in to such discussions, but not always.

Mr. Judge described Ms. Larson's comments in her December 7, 2012, email as "surprising," particularly in light of the concerns he raised. He believed her comments were consistent with the belief that the OMNI fix would be made in a month or two months, as opposed to delayed for three years. There was some "short-sightedness" in failing to account for released offenders.

Mr. Judge added that Ms. Larson writes in the same voice as she talks, and her statement in the email that "a few more months is not going to make that much difference in light of this," is consistent with the discussion he had with Ms. Gastreich and the recommendations he believes Ms. Gastreich was weighing.

Mr. Judge said he limited his advice to telling Ms. Gastreich, "If they reoffend, you're on the hook." He added: "I don't think those words persuaded her away from the advice she had been given."

Ms. Gastreich has sat in on a trial where a $22 million verdict was returned in a negligent supervision case, Mr. Judge noted. He was concerned at the time that Ms. Larson was the only one dealing with the issue, based on his conversation with Ms. Gastreich, and that there was no discussion about dealing with released offenders.

The same day as his conversation with Ms. Gastreich, Mr. Judge said he called AG Division Chief Tim Lang and left a voicemail. The two spoke toward the end of the day, around 4 p.m.

Mr. Judge recalled that he told Mr. Lang that he did not know all of the "ins and outs" of it, but that DOC was dealing with an issue surrounding a computer problem relating to the release of offenders going back a decade and that Ms. Larson was advising. He suggested to Mr. Lang to "consult with Ronda" because Ms. Larson either had written advice or was about to send written advice on the issue.

Mr. Judge would call or email with Mr. Lang approximately once or twice a month, for things that include a proposed bill to review, an amicus brief being discussed, and sometimes to get the help of a Corrections Division AAG to provide assistance on a torts case.

After the call with Mr. Lang, Mr. Judge said he believes he sent a short email to Mr. Lang on the same subject. "It was real quick, it was like two or three lines, indicating we had a conversation about this." Mr. Judge said he did not save the email. Mr. Judge believes Mr. Lang requested Mr. Judge send the email as a reminder. Mr. Judge said the intent of his phone call and any follow-up e-mail was to have Mr. Lang talk to Ms. Larson to understand better the nature of the problem, "you'll see what she's doing and you'll find out what you need to know."

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Mr. Judge recalled meeting with Ms. Gastreich three times in her office in the second half of 2015 on unrelated issues. Ms. Larson was present for two of the meetings, which Mr. Judge said occurred in Ms. Gastreich's office on October 16 and November 10.

Mr. Judge said a comment at one of those meetings "triggered" him to ask whatever happened with the issue Ms. Gastreich called him about back in 2012. "Her answer was, 'Well, it's not fixed.'" Mr. Judge said he didn't follow up and Ms. Gastreich made just that single comment.

Mr. Judge and Ms. Gastreich have exchanged limited and general comments since the early release issue surfaced. Prior to Christmas, he asked her how many offenders were going to be rearrested. Ms. Gastreich said she did not want to discuss it given the likelihood she was going to be interviewed.

After New Year's, Ms. Gastreich and Mr. Judge discussed staffing of any claims arising from the early release issue. Ms. Gastreich became "emotional and tearful" and told Mr. Judge that she wasn't involved in the decision to release the emails between Ms. Larson and Ms. Stigall. Again, she stated she did not want to discuss the early release issue because she would be interviewed. The earlier communications described above were not discussed with Ms. Gastreich and have not been since.

Mr. Judge did not remember Ms. Larson being part of any discussion relating to the release issue at either the October 16 or November 10 meeting. Mr. Judge said he did not know what "It's not fixed" meant because DOC staff had the ability to conduct audits and work around any computer issues to ensure sentences are properly calculated even when computer fixes are pending.

He agreed the complexity of sentencing was a "fair issue" and that sentencing calculations change each year, depending on new legislation and court rulings. Mr. Judge recounted a recent case he had handled, indicating, based on the facts of that case, that, due to rulings, DOC "must be ready to kick a guy out the door the next day." Also, new law comes out and potentially changes some aspect of sentencing.

We discussed the *Dress* case and Mr. Judge characterized the holding as preventing DOC from writing things into a judgment and sentence based on an interpretation of the sentence. Even if the judgment and sentence contain an error—such as describing counts as running consecutively or concurrently contrary to the judge's oral ruling—DOC still must follow the judgment and sentence.

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

* * *

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.

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Signature: _____

Name: _Daniel J. Ridge_

Date: _2-23-16._

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 25, 2016
Subject: Tim Lang Interview

Mark Bartlett and I conducted an interview with Senior Assistant Attorney General Tim Lang on February 24, 2016, at the AG's offices in Tumwater. Mr. Lang was accompanied at the interview by Deputy Attorney General Robert Costello and Senior Assistant Attorney General Shane Esquibel, division chief for the AG's Labor and Personnel Division. The following summarizes Mr. Lang's statements on the *King* fix and sentencing calculation issue:

We began the interview by introducing ourselves to Mr. Lang 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 issue.

Mr. Lang worked for Gordon Thomas Honeywell for five years beginning in 1991, mainly in that firm's Seattle office. He then went to work as a staff trial attorney for Farmers Insurance Group's in-house counsel firm for another five years. In 2002, Mr. Lang moved to Olympia, after accepting a job with the AG's office.

Mr. Lang started at the AG's office in February 2002, in the Social and Health Services Division. His initial work involved defending a class-action involving DSHS and Eastern State Hospital. Mr. Lang also served as general counsel to the DSHS Special Commitment Center, the state's sexual violent predator civil commitment program, for five years. He then spent a year in the AG's three-person Complex Litigation Division from 2007 to 2008, before becoming the Corrections Division chief in April 2008, the position he currently holds.

The Corrections Division encompasses two units: the Habeas Corpus and Sentencing Unit (headed by Paul Weisser) and the Civil Rights Unit. There are 10 attorneys in the Civil Rights Unit and five attorneys in the Habeas Unit. Mr. Lang still does some selected case work in addition to overseeing the division. Also, since March of 2012, Mr. Lang has had oversight responsibility for the AGO's Medicaid Fraud Control Unit. The Director of that unit reports to Mr. Lang.

We asked what types of issues generally reach his level as division chief. Mr. Lang said typically significant, problematic, and/or high-profile issues are brought to his attention. Mr. Lang reports to a Deputy Attorney General. He regularly works with the Department of Corrections' senior leadership team and attends the Secretary's weekly Executive Staff meeting.

That weekly Executive Staff meeting includes some high-level staffers in addition to the assistant secretaries and Deputy Secretary. DOC's risk manager, budget manager, and communications director all typically attend the meeting, in addition to others.

Mr. Lang said he first learned about the sentencing calculation error on December 16, 2015. The day before, he received a message from DOC Deputy Secretary Jody Becker-Green requesting that they get together to discuss an issue.

Mr. Lang spent the afternoon of December 16 at DOC headquarters meeting with an expert witness and others concerning a class-action lawsuit. Mr. Lang said he spoke with Ms. Becker-Green between meetings. He believed DOC communications director Jeremy Barclay may have joined them as well. "I think they expressed that this (the sentence calculation matter) was a big problem," Mr. Lang recalled.

He spoke with Governor Inslee's general counsel Nick Brown the morning of December 17, and tracked down the December 2012 emails between AAG Ronda Larson and DOC records director Wendy Stigall. He also met with Mr. Weisser and Ms. Larson the same day. When asked about his level of involvement in the sentencing calculation matter since discovery of the error, Mr. Lang said "Obviously, it's taken up a lot of time since then."

We asked about the December 2012 advice Ms. Larson provided and Mr. Lang's reaction to it. "Obviously, I keyed in on the paragraphs that were problematic," Mr. Lang said, declining to elaborate. Mr. Lang left on December 18 and drove to Colorado for a family Christmas vacation. Mr. Lang said he spent a significant amount of time during the vacation dealing with the sentencing calculation matter by telephone and email.

Mr. Lang said Ms. Larson's December 2012 advice "should have been vetted when the issue came up," adding that the AG's office "could have done better." He also added that it is "important" to keep the AG's role in perspective, namely that the AG's office provides legal advice while DOC is responsible for keeping offenders in custody.

Mr. Weisser was copied on Ms. Larson's early emails. Mr. Lang said Ms. Larson copies Mr. Weisser "on a lot of different information." At the time, the Corrections Division had an email mailbox designated as a temporary repository for advice that support staff would then enter into the office's case management system. Mr. Lang explained that Ms. Larson, more so than other attorneys in the division, was very good about using the advice mailbox and seemed to copy her supervisor (Paul Weisser) on all advice she sent to that mailbox.

We moved on to discuss AAG Daniel Judge's statement to us that he spoke with and emailed Mr. Lang regarding the sentencing calculation issue in December 2012. When asked about Mr. Judge, Mr. Lang said he has supervised Mr. Judge in the past and "he's a great attorney. I have high regard for Dan."

But with respect to the conversation Mr. Judge has said took place on December 7, 2012, Mr. Lang said: "All I can tell you is I think he's mistaken. I do not recall any conversation with him on December 7 or any other time, frankly, about this issue."

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Mr. Lang searched his email trying to retrieve correspondence between himself and Mr. Judge from December 7, 2012. He found nothing of relevance. The AG's office believes one response that Mr. Judge said he sent to Mr. Lang was deleted and not retained, assuming the response existed. Further, both Mr. Judge's and Mr. Lang's computers from 2012 have been replaced and those old hard drives have been erased as part of the normal IT surplus process.

Mr. Lang has not spoken with Mr. Judge about his recollection of their conversation and felt it probably would not be appropriate to do so now. He said of the email Mr. Judge said he sent: "I don't have that email. I don't remember getting any such email."

Had Mr. Lang spoken with or emailed with Mr. Judge about this matter, he believes he would remember it because he would have done something about it. "I am not a sentencing law expert and if [Mr. Judge] had told me there was a problem and it involved a hundred or hundreds of offenders being released early, that would have been something I would have talked to the sentencing experts about to learn more. That's part of my role – to keep track of the big picture."

Mr. Lang said he is not faulting Mr. Judge for claiming they had a conversation and exchanged emails, but he believes Mr. Judge is wrong.

Mr. Bartlett informed Mr. Lang and the other AGs that Mr. Judge's signed statement was provided to the Senate. Mr. Lang said he did not find out about Mr. Judge's recollection of a call and email until sometime in January 2016. Mr. Esquibel said Mr. Judge went to his division chief, Pam Anderson, and let her know he remembered something.

Mr. Lang said he did not remember the sentencing calculation error being discussed in DOC executive staff meetings.

With respect to former DOC Secretary Bernard Warner, Mr. Lang said he personally thought Mr. Warner was an effective Secretary, though he noted that he does not work for the Department and therefore has somewhat of a limited perspective. Mr. Lang "had a good relationship with Mr. Warner, I think he valued our advice." "It was a productive attorney-client relationship," Mr. Lang added.

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

* * *

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: _Tim Lang_

Name: _Tim Lang_

Date: _2-26-2016_

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DAVIS WRIGHT TREMAINE LLP

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 giving advice 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.

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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.

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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.

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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.

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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

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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.

* * *

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 J. Larson*

Name: *Ronda D. Larson*

Date: *2/19/2016*

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 16, 2016
Subject: Leaora McDonald Interview

Mark Bartlett and I conducted an interview with Ms. Leaora McDonald today at her home in Tenino. The following summarizes Ms. McDonald's statements on the *King* fix and prisoner release problem, as well as other discussions about Department of Corrections ("DOC") operations:

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

Ms. McDonald graduated from high school in Olympia and worked for DOC for 21 or 22 years before retiring in 2013. She started part-time with DSHS in 1980 and went to work part-time for DOC in the grievance program. After two years, she became a full-time records employee at a field office.

Ms. McDonald's responsibilities included managing offender files, particularly disclosures to the offender or family members. She moved to headquarters when the Warrants Unit was established and worked under Janice McMann. The Warrants Unit was responsible for handling warrants of offenders who violated community supervision or who had escaped.

The Warrants Unit grew from two shifts to 24/7 work. Ms. McDonald also began supporting records director Carrie Fleming. She described having dual responsibilities in both supervising the Warrants Unit and supporting Ms. Fleming. Ms. McDonald also had responsibilities for responding to some records requests addressed to Ms. Fleming and also communicating with the Attorney General.

Ms. McDonald dealt primarily with Ronda Larson from the AG's office, but also worked with Paul Weisser and Donna Mullen. Ms. McDonald said Ms. Larson was always very helpful. "I trusted her, I really did. I knew if she didn't know something, I always felt comfortable she would try to find the answer from her supervisor."

Three years before she retired, Ms. McDonald moved into the IT Business Unit, where she reported to Luann Kuwata. Ms. McDonald did work on some sentencing/SSTA related OMNI updates, but those were primarily related to community supervision (field) issues. David Dunnington was responsible for OMNI updates related to SSTA prison issues.

We asked about Ms. Larson's October 12, 2007, email to Ms. McDonald [AG_000238]. Ms. McDonald said she remembered the subject. "This whole stuff was so convoluted," she said, adding records staffers were concerned about applying and subtracting jail time credits.

"I remember jail time/earned time credits were always an issue." She wasn't sure if she had posed a question to Ms. Larson to prompt the email. Ms. McDonald said records supervisors at DOC facilities often would raise questions if an offender had a question about sentencing calculations, or if the records staff had a question themselves after performing hand-calculations on a sentence. "They would do a lot of hand-calculating," she said.

Ms. McDonald said she avoided participating in any hand-calculating due to its complexity. She said she "vaguely remember[ed]" the *King* decision and said the OMNI screens discussed in the email by Ms. Larson were difficult to understand.

Ms. McDonald added that she "would think" the Department reprogrammed the OBTS system in response to Ms. Larson's 2007 email. Ms. McDonald said she would not have written the change order for such a reprogramming; Ms. Fleming would have. She said she would have gone to Ms. Fleming after receiving such an email from Ms. Larson: "This is the response and this is what we need to do."

Ms. McDonald speculated that the request for Ms. Larson's advice likely came in through DOC's "records mailbox" and probably resulted from a records supervisor raising a question, or an offender raising a question to a records supervisor, about the offender's sentence calculations.

"I do think they always questioned it," Ms. McDonald said of the records staff's confidence in the OMNI sentencing calculations.

We asked about the January 18, 2008, email from Ms. Larson to Ms. McDonald [AG_000169]. The email concerned the requirement that firearm and deadly weapon enhancements run as flat time. "We dealt with this forever," Ms. McDonald said. "I hate to say that, but it was an ongoing question up until I left there."

She believed she would have forwarded this email to Ms. Fleming as well. Ms. Fleming was the records director at the time. "I would've sent it to her or we would've had a discussion."

Ms. McDonald was unsure why she was the contact for Ms. Larson's email, as opposed to Ms. Fleming directly. She said Ms. Larson dealt with Ms. Fleming "a lot" as well.

Ms. McDonald said she wasn't surprised the early release problem occurred. She was close to several people in the IT business unit and "I would hear the frustration sometimes," as far as system fixes they thought would happen being delayed.

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Ms. McDonald said Sue Schuler seemed frustrated with things. "I know she knew something was going to happen." Ms. McDonald later clarified Ms. Schuler was speaking about experiencing significant programming problems, not necessarily the early release of hundreds of offenders.

The IT department has experienced huge turnover in losing programmers and developers, and Ms. McDonald said she was glad to have left when she did. She believed Doug Hoffer did a good job of managing the IT department. She described the IT department as being "in turmoil for a little while" and said morale was "just bad."

There was a "constant flux of change" in the department, she added.

Ms. McDonald said workloads were "feast or famine" in the IT business unit, with everybody working long hours during the legislative session and then moving on to other projects once the session ended. She did not have an opinion on whether the department was understaffed.

She said the most frequently occurring reasons why updates were delayed was because some change was required following a legislative action, or because a DOC executive had something "bigger or better that needed to get done."

Ms. McDonald retired in 2013 because she "just said, 'OK, this is enough,'" and not because she was discontented or disillusioned. She said she didn't really have much to do with Bernie Warner as DOC Secretary. She said Eldon Vail was "great" as Secretary.

We thanked Ms. McDonald for meeting with us and told her that we would produce a memorandum of her interview for her review and approval. We also told Ms. McDonald that she could clarify any points in her 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: _Leann McDonald_

Name: _Leann McDonald_

Date: _February 18, 2016_

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DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 25, 2016
Subject: Sandy Mullins Interview

Mark Bartlett and I interviewed Sandy Mullins on February 24, 2016, in Ms. Mullins office in the Insurance Building in Olympia. The following summarizes Ms. Mullins' statements on the *King* fix and sentencing calculation error, as well as other discussions about Department of Corrections ("DOC") operations:

We began the interview by introducing ourselves to Ms. Mullins 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 problem was not identified and corrected earlier, but also to discuss contributing conditions at DOC and to solicit input on possible corrective measures.

Ms. Mullins earned undergrad and law degrees from the University of Colorado. After completing law school, she worked for a non-profit community resource center before consulting for multiple non-profits for a few years. She worked for the Rocky Mountain Immigrant Advocacy Network before moving on to run the Colorado Criminal Defense Bar, advocating for issues related to defendants. In that role, Ms. Mullins did a significant amount of policy work with the Colorado legislature on juvenile and adult justice issues.

Ms. Mullins described her career as focused on policy; she has never practiced criminal defense. She came to Washington in 2010 to run the state Sentencing Guidelines Commission. That agency became a casualty of state government budget cuts; Ms. Mullins said she spent her one year at the commission primarily shutting down a 30-year-old agency and salvaging several of its vital functions. The commission itself and the Sex Offender Policy Board, which had been housed in the agency, became part of the Office of Financial Management's forecasting division. Since the implementation of the Sentencing Reform Act, the agency had maintained databases containing the sentencing information on every felony sentence and felony juvenile adjudication in the state. Responsibility for maintaining these databases was transferred to the Caseload Forecast Council.

The loss of the commission as an independent agency is a "huge deficit," in Ms. Mullins' words. Although the commission itself continues and its database information has migrated to CFC, Ms. Mullins said, "What we don't have is more aggressive oversight of sentencing issues,"

and a group to advise state government on these issues, particularly in light of the sentencing calculation error.

There was some sense that the commission had become less useful to legislators by the time Ms. Mullins arrived. She notes sometimes "you don't appreciate what you have until it's gone," and an independent agency could be an important tool today.

After closure of her agency, Ms. Mullins came to work at DOC at the invitation of former Secretary Eldon Vail, who served as DOC representative to the commission. Ms. Mullins said that at the time, she had not envisioned herself working in corrections, but Mr. Vail presented a vision of DOC as "forward-thinking" that she found compelling. "That was a different experience than I had in Colorado, their vision of their role."

Her first day at DOC in July 2011 was Mr. Vail's last day as he abruptly resigned. Ms. Mullins was brought in to advance research-based initiatives, but those efforts were delayed initially as DOC addressed the leadership transition. Ms. Mullins said she spent her time reviewing research on corrections and looking at what was happening in other states, trying to identify ways DOC could proactively adopt more effective practices. In particular, she studied community corrections violations, which DOC was spending millions to address.

Bernard Warner replaced Mr. Vail as DOC Secretary; Mr. Warner "took a while to figure out what he wanted to do with the agency structure," Ms. Mullins said. As she had no official title initially, she decided she needed to learn about corrections from the inside. She said this period at DOC was marked by "a lot of trauma," as corrections officer Jayme Biendl had been murdered by an offender earlier that year, DOC responded to a hostage-taking situation at Clallam Bay in June, and Mr. Vail suddenly resigned. This was in the midst of several years of deep budget cuts and the closing of multiple prison facilities, which resulted in staff lay-offs and forced transfers throughout the state.

Mr. Warner installed Dan Pacholke as Director of Prisons. He also twice reconfigured the administrative services division, shuffling units such as records, risk management, budget, and data analysis in and out of the division. "There were a lot of moving pieces," Ms. Mullins said. She eventually became Director of Executive Policy in the Office of the Secretary, reporting to Mr. Warner.

Ms. Mullins left DOC in December 2013 to become a senior policy advisor on government operations and public safety to Governor Inslee. She said the position fit her background of having worked in criminal justice, immigration, corrections, marijuana policy and juvenile justice.

We discussed Mr. Warner's tenure as Secretary and leadership style. Ms. Mullins said she responded better than others because she had no expectations as a newcomer to DOC. It was "more difficult for people who worked for Eldon to work for Bernie." Mr. Warner sometimes struggled to make decisions, requiring more time than Mr. Vail, from what she understood. Ms.

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Mullins said a sense existed that it was harder to work for Mr. Warner the closer you were in reporting to him.

Ms. Mullins said she experienced fewer issues because she was more accustomed to working independently and self-directing based on her previous positions. She noted that the Department in Mr. Vail's tenure needed to come together to weather massive layoffs, budget cuts, and prison closures. "People just mourned Eldon because they had access to him, he was decisive, and he was very much part of the [DOC] culture."

Ms. Mullins worked most extensively with Mr. Warner on a community corrections initiative. She described Mr. Warner as having a "pull-push" style, in which he would encourage one group to complete a project, only to then move the project to another group to implement or move work units back and forth between different divisions. This created conflict within the senior leadership team. Ms. Mullins also noted that Mr. Warner's initial decision to remove the budget and data analysis groups out of administrative services was a source of tension for Denise Doty, then the assistant secretary for administrative services. These units were later moved back under administrative services.

Ms. Mullins and Ms. Doty were not close. Ms. Doty had worked for two decades at DOC; Ms. Mullins noted, "Sometimes people who have been with an organization for a long time are less receptive to colleagues who are new." Ms. Mullins recognized that this was not helped by the fact that they had very different work styles and she acknowledged that she was likely perceived as overly assertive and brash. There might have also been bad feelings about how Mr. Warner initially restructured the administrative services division, "I didn't have a very strong relationship with her as a colleague," Ms. Mullins said.

Ms. Mullins also worked with Mr. Pacholke when Mr. Pacholke served as prisons director. "He is a very different person [than Mr. Warner]," Ms. Mullins said. "He's aggressive in his pursuit of better performance." Mr. Pacholke believes that a person earning an above-average salary at the Department needs to perform at a commensurate level. Mr. Pacholke was a strong advocate for DOC staffers but could be "unrelenting" with senior leaders that he perceived to be mediocre. "If you can [make] an argument, he'll respect that, but he does not suffer a fool." Ms. Mullins said she worked with Mr. Pacholke on some initiatives in prisons and appreciated his directness and ability to get things done.

Ms. Mullins said the senior leadership team under Mr. Warner "was a team with a lot of tension," adding she wasn't sure the group should be described as a "team" sometimes given its struggle to work together and vastly different communication styles. She notes that they did pull together in times of difficulty.

We discussed the sentencing calculation error and when Ms. Mullins first learned of the problem. She heard about it from Mr. Pacholke on December 16, 2015. Mr. Pacholke described it as a "FUBAR" situation to Ms. Mullins. She later spoke with Deputy Secretary Jody Becker-Green as DOC worked to assess the impact.

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Ms. Mullins said that when Mr. Pacholke told her that this issue first came to the attention of the department in 2012 when a victim's family contacted the department because they thought an offender's sentence had been miscalculated "the first thing I think is, 'This story sounds familiar'". "It still makes me cold thinking about it," she added. She remembered hearing about an issue where a victim discovered DOC was incorrectly calculating an offender's sentence during her time at the Department. Ms. Mullins believes she heard legislative policy director Clela Steelhammer discussing the issue at the time either before or during an executive leadership meeting.

Ms. Mullins has since learned the particulars of the discovery of the sentencing calculation error in December 2012. But she remembers Ms. Steelhammer telling her: "This really weird thing happened," adding, "It was described to me as a one-off situation, an offender with a short base sentence, with a single count, and an enhancement. They consulted with the AGs and it was fixed."

Ms. Mullins attended executive leadership meetings, along with other key administrative services personnel, including CIO Doug Hoffer, risk management director Kathy Gastreich, Assistant Attorney General Tim Lang, and Ms. Steelhammer. Those meetings typically involved everyone in the room providing updates. Ms. Mullins does not remember if Ms. Steelhammer discussed the sentencing calculation issue during that meeting or before the meeting. Ms. Mullins said, "I'm sure I've never heard it from Denise or anyone else."

The assessment of the sentencing calculation error "just got more horrible," as DOC learned in December 2015 the error was not confined to a small group of offenders with relatively short base sentences, but instead potentially impacted thousands of offenders.

We discussed big-picture causes for the error from Ms. Mullins' perspective as a relative outsider to DOC. She said it was "all about acuity" for DOC staff in recognizing potentially significant problems. The awareness about critical incidents impacting staff and public safety existed primarily in the operating divisions.

In hindsight, one of the fatal flaws, Ms. Mullins believes, was the decision to move the records unit out of administrative services. "It became one of many back office operations," Ms. Mullins said. Even though the records unit is responsible for fundamental processes and systems for DOC, she felt that moving the unit into the administrative services division may have marginalized its function.

She also believed that the complexity of sentence calculations was a factor, especially as calculated from the back end of the system because it involves the giving and taking of earned and good time. "It's following not only the law, but agency policies and internal directives," she said.

Ms. Mullins said that it was her impression that Ms. Gastreich was a good risk manager who "hears risk from a mile away." Ms. Gastreich was copied on an email in December 2012 discussing the sentencing calculation issue and the decision not to carry out hand-calculations of

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sentences, with DOC opting instead to wait for an OMNI fix to be completed. "I think if Kathy had actually read that email, there's no way she wouldn't have been through the roof," Ms. Mullins said.

AAG Ronda Larson's focus was primarily on "protecting against inmate litigation," as opposed to broader public safety or tort issues. Ms. Mullins said one reform was possibly to rotate people in the AG's corrections division so they do not become entrenched and lose sight of the big picture, but she acknowledges that she isn't the best person to speculate about potential reforms for that office.

Ms. Mullins described the administrative services division as probably getting "too big." She noted that records director Wendy Stigall in her December 2012 email identified the sentencing calculation issue, but perhaps didn't frame it as DOC potentially releasing offenders early. Because DOC does make changes to its policies on earned time, and sometimes finds errors in how good time is being removed or credited, staff might have believed the error was related to minor tweaks and not recognized the far greater problem. "Even in the way I remember Clela describing it, it was, 'This weird, one-off thing happened,'" Ms. Mullins added, "I don't think she recognized it as something that impacted other sentences".

Ms. Mullins said DOC staffers often rely on Ms. Steelhammer for advice as a sentencing law expert. Although Ms. Steelhammer is experienced and well versed in sentencing law, she might not see broader issues the same way a lawyer would. "There's an over-reliance on someone who shouldn't be giving legal advice," Ms. Mullins said.

The culture at DOC values rising through the Department ranks. Ms. Mullins said many employees stick with the department because they feel a sense of duty to their co-workers and their public safety mission and many become deeply committed to the goal of rehabilitating individuals. Ms. Mullins said she always felt like she had a different perspective coming to DOC as an outsider but gained a deep respect and admiration for correctional work.

She contrasted the difference between the IMRS (Incident Management Response System) that provides for electronic notification of significant events on the corrections/operations side. She suggested that a similar notification process could be created for critical administrative issues, or that these issues could be incorporated in the existing IMRS system. Ultimately, "records was not [considered] a core function [as compared to field operations]," Ms. Mullins said. "I think they might not have perceived risk the same way as it would have been perceived in the operating divisions."

We asked Ms. Mullins if she believed Mr. Warner's lack of engagement contributed to the sentencing calculation error. She said, "I don't know that it would have been any different under the environment [with Mr. Vail] where everybody got along. Would there have been a different alarm and intensity?" She believed Mr. Pacholke had reinforced the urgency in responding to significant problems. "He's OK with people being uncomfortable," Ms. Mullins said. Her impression was that under Mr. Vail, the culture in leadership was very collegial, having served together "through some really bad times in state government."

With Mr. Warner, "there was sometimes a lack of clear directives". The STRONG-R initiative, however, was important to Secretary Warner as the most recent research on risk assessment supported this type of "4th generation" dynamic assessment tool. The vendor Assessments.com had been doing work in Washington State for more than a decade and built the original static risk assessment tool with the algorithms developed by the Washington State Institute for Public Policy around 2008. Ms. Mullins noted that her understanding was that Assessments.com had suffered a "tumultuous break" when a group of its developers left the company and formed a competitor. "That was all the people [DOC] IT worked with [at Assessments.com] that they knew to know the system." This, in turn, raised questions about why DOC wanted to continue to work with Assessments.com

DOC "spent a lot of time" discussing Mr. Warner's desire to build a fourth-generation risk assessment tool that incorporated dynamic risk factors and case management plans. Use of this tool would have brought the agency into alignment with the latest research on what works best to reduce offender recidivism. Ms. Mullins believed multiple teams for the Department worked on the project at different times, all involving a "whole lot of planning." She acknowledged that she was not involved in much of this planning and that much of it occurred after she left the agency.

Assessments.com had developed the STRONG 2 program available to judges for pretrial risk assessment, though the use of that tool is optional. Ms. Mullins said the Washington State Institute for Public Policy endorsed STRONG R as a better predictive tool than other available risk assessment tools in a 2014 report. Ms. Mullins said she had heard that there was "tension" within the IT Department on Advance Corrections/STRONG R. She did not work on any contracting details of DOC's work with Assessments.com.

Ms. Doty and Mr. Hoffman initially coordinated the Advance Corrections/STRONG R initiative before Peter Dawson took over after becoming Mr. Warner's chief of staff.

Ms. Mullins said she could see the benefit in creating some sort of core group to perform regular sentencing audits, as well as building "greater awareness among staff that if they see something, say something." But she noted that it is incumbent upon management and leadership to make sure that when concerns are raised by staff, that they are appropriately addressed. Ms. Mullins believes that building a responsive culture in headquarters is more important than a singular focus on records calculations, because DOC likely has no idea what the next critical issue will look like until it arises.

Ms. Mullins was out in impacted counties during the state's response to wildfires the past two summers. From that experience she realized that "people want to believe [a situation] is not as bad as it is." Effective crisis response requires recognition that a situation "really is that bad." This requires improved responsiveness at all levels and leaders who can first recognize and then manage through crisis. "How do you create that throughout an agency?" she asked. "That's something to be studied. I think that's what this crisis lacked, someone who knew to say, 'Yeah, it's really that bad." Ms. Mullins believes that there are probably lessons that can be applied to

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headquarters from field operations and that the experience of this incidence has already increased its acuity to crisis.

DOC had a "scattershot approach" to handling Attorney General's office advice. Ms. Mullins she was surprised at how many people, including lower-level staffers, requested AG advice. DOC lacked systems for coordinating and reviewing this advice. "I think clearly there needs to be some management of who gets advice, who sees advice, what do they do with the advice."

"It's advice," Ms. Mullins added. "The Department doesn't treat that as advice, they tended to treat it as if we got permission from mom and dad. They tended to say, 'If the lawyer said it, that's what it is.'" This possibly was attributable to the limited number of DOC staff with backgrounds in law.

Ms. Mullins added that DOC didn't have a process for all divisions to understand practices and issues that were the subject of litigation. Though critical incident reviews with corrective actions were standard after significant events, there was no process, of which she was aware, to revisit these incidents subsequent to legal actions. As a result, DOC lacked a "lessons learned" understanding of what went wrong in a situation where the Department was found liable, and lacked the ability to strengthen its internal practices. "How do our practices in the field or in our follow-up actions align with how the case was resolved, and is there something else we need to be doing?" she asked.

Repeated budget cuts to the Department "took their toll," in Ms. Mullins' view. DOC was "very much in triage mode all the time." She said a lack of appreciation exists for how much time the Department spends on legislative proposals, requests for information and fiscal analysis, most of which is for ideas or bills that are never enacted. These proposals require input from staff and leadership throughout DOC followed by rapid implementation when legislation does pass. "I don't think [people] appreciate how much time is spent there and how many resources that takes away from other agency work," Ms. Mullins said.

We thanked Ms. Mullins for speaking with us and told her that we would produce a memorandum of her interview for her review and approval. We also told Ms. Mullins that she could clarify any points in her review of the memorandum.

*   *   *

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: _Smee_

Name: _Sandy Mullins_

Date: _2-27-16_

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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

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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"

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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

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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

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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_____

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 11, 2016
Subject: Sue Schuler Interview

Monty Gray and I conducted an interview with Ms. Sue Schuler today at Department of Corrections ("DOC") headquarters. The following summarizes Ms. Schuler's statements on the *King* fix and prisoner release problem, as well as other discussions about DOC and IT department operations:

We began the interview by introducing ourselves to Ms. Schuler and explaining that we work for Davis Wright Tremaine and were retained by the Washington State Senate to assist in its investigation of the prisoner release problem. We noted that we were hired to determine what happened and when the problem was identified, but also to discuss contributing problems at DOC and solicit input on possible reforms that could be implemented.

Ms. Schuler works as an IT specialist/business analyst for DOC. She described her job as coordinating requests from the business side of DOC for changes to the OMNI computer system. Ms. Schuler focuses on requests related to sentencing ("Sentencing Structure Time Accounting" or "SSTA"), grievances, the indeterminate sentence review board, OMNI notifications, the security threat group, and segregation management.

There are 12 individuals in the IT department with similar roles as Ms. Schuler who handle different components of OMNI. She described having to speak "both languages" as far as translating the business side's requests to the IT developers.

Ms. Schuler started in IT in 2006 just before OMNI went into effect. She has been with DOC since 1983 and worked in Walla Walla for almost 20 years. She attended some college and has taken some technical courses but does not have a college degree.

Ms. Schuler described the typical process for a request from the business side. First, the business owner would help create an IT service request. This request would then go to the IT Gatekeeper, who would enter the request into the Service Desk Express or now Easy Vista system. The request then would be assigned an identifying number.

She wasn't sure if the request went through a triage team or governance team first for review, but she said the request would be reviewed by both. Ms. Schuler said the governance team was responsible for prioritizing competing requests for OMNI updates.

Ms. Schuler said David Dunnington would communicate priorities to her. Mr. Dunnington was on the triage team, but Ms. Schuler is not sure if he was on the governance team. Ms. Schuler said "somehow my bosses found out" what the department's priorities were.

After entering the request in Service Desk Express, Ms. Schuler would create an IT consultation form to clarify the request, along with estimates for cost, development, and testing time. Ms. Schuler completed such a form on March 25, 2013, in connection with the OMNI request (Change No. 6307) that Wendy Stigall requested in late December 2012. Ms. Schuler noted that between January 2012 and April 2013, she closed 164 other requests.

Ms. Schuler discussed the departure of technical analyst Steve Collins from DOC around this time in 2013. Mr. Collins analyzed many of the OMNI sentencing calculations. Mr. Collins also was responsible at this time for a project called Consumable Inventory Services, which Ms. Schuler remembered as analyzing tax formulas for DOC purchases. She described Mr. Collins as "knee-deep" in that project around this time. She was not able to get much assistance with the request as a result, plus Mr. Collins soon retired.

After completing the consultation form, Ms. Schuler would email the form back to Mr. Dunnington. Mr. Dunnington would log the form and determine if it was acceptable. Ms. Schuler said the request would return to the IT Gatekeeper to log as complete, and then to the triage team to determine whether the request should go to developers (as opposed to a hardware request, for example), and if so, to which developers, Sierra or DOC's in-house developers.

Once the request was approved, Ms. Schuler said she would receive an email confirmation. She then would create a ClearQuest entry corresponding to the request. In the case of Ms. Stigall's request, the ClearQuest number assigned was CR00024910.

Ms. Schuler said she would "monitor" progress on the update. We discussed document SS_00001, the timeline of progress on CR00024910 that Ms. Schuler produced. Ms. Schuler said she created this document following discovery of the early release problem at the request of Mr. Dunnington as a "quick synopsis" of what had happened to the requested fix over time.

Ms. Schuler noted that even though she created the CR00024910 entry on April 3, 2013, she originally scheduled the fix to be included with the M34 release scheduled for September 2013. Even though two or three releases were likely scheduled in the interim, one was being coded and the next more than likely already had its scope set. Ms. Schuler felt that it would usually take that many releases to complete the request. The September 2013 release was the most realistic time frame.

The OMNI team met twice weekly to discuss change requests scheduled for the release being coded. These meetings were facilitated by Deepak Sadanandan, test lead. At the table were other staff including representatives from the business unit, of which Ms. Schuler was a part. Ms. Schuler described these meetings as "really informal" and offering the chance for her to check in quickly with developers.

The OMNI team might decide to delay particular change requests until a later release for a variety of reasons, including: not enough time to complete the coding; lack of resources for coding; not enough time to complete testing; and in some cases insufficiently clear business

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requirements. In addition, there were "code freeze" dates where the code for a particular release would need to be finalized to be deployed. If an update wasn't complete by that "code freeze" date, it would have to be delayed as a result. Ms. Schuler said generally there was no documentation why particular requests that had been scheduled were delayed to future releases.

We discussed the terminology in CR00024910 ClearQuest report to understand the progress of code development. An update typically would be classified as DevCode, then CodeComplete, then Migration, and then Testing Required. The testing would consist of running the code in one of four testing environments as the release moved forward to deployment.

The code developer for CR00024910 was Mark Ardiel from Sierra-Cedar. Mr. Ardiel was on parental leave from approximately February to November 2015. Ms. Schuler described Mr. Ardiel as essentially the exclusive developer on any OMNI fixes involving sentencing calculations. She worked "a little" with another Sierra contractor named Kyle Woulle. Ms. Schuler said no in-house DOC developer wanted to work on sentencing fixes because of the "significant" implications of a mistake affecting prison-wide populations.

We asked Ms. Schuler about the fact that Ms. Stigall's original IT service request from December 27, 2012, identified the request as time sensitive, adding that it needed to be completed "ASAP" as a Records/SSTA "priority." Ms. Schuler agreed that sense of urgency was somehow eventually lost. "It did," she said. "Other priorities came up," set by the department for new projects.

Ms. Schuler added that "no one knew it was going to be that many offenders affected." She believed when Ms. Stigall made the initial request that the update would only affect inmates whose jail credits and jail good time credits exceeded their base sentences, which she described as a "very small number of offenders" in the DOC population. Ms. Schuler said she believed the request had limited implications from talking with Ms. Stigall.

Ms. Schuler emphasized that the problem is not the result of a "computer glitch," as it has been described, but rather with the underlying sentencing calculations designed into the system as the business side outlined. In her words, "the system was doing exactly what it was designed to do." She believed that a "records guide" existed from around the time of the *King* decision which reflected how DOC understood the decision should be applied, and that the design of OMNI was consistent with that understanding. When OMNI was released in 2008 the system was calculating the jail credits as per requirements – day for day credit from the enhancement and the jail good time from the base sentence, if no enhancement the system deducted both the day for day and good time from the base sentence.

Ms. Schuler said Ms. Stigall's office was right down the hall from where the OMNI meetings were held, and she would update Ms. Stigall on the status of requests. Asked if Ms. Stigall ever pushed back on delays in implementing CR00024910, Ms. Schuler said: "If she had, everybody would have said she's getting pissed off, Dave and I would have said, 'Let's do this right now.' If Ms. Stigall or any upper management had stated that this CQ takes priority over any other enhancement request all other work would have stopped for this one to be completed. Same if anyone had indicated the number of affected offenders, thousands of them."

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We asked about the CR00024910 request, which notes a severity level. This level eventually was classified as 3-Moderate Impact for CR00024910. Ms. Schuler explained that severity ranges from 1 to 4, with 1 being the most severe such that OMNI is no longer functioning and essentially "everything stops." Ms. Shuler said that she had not seen a Sev-1 item in a long time.

Ms. Schuler initially classified CR00024910 as a Sev-2 item. This was changed to Sev-3 on February 4, 2014. Ms. Schuler said all requests concerning OMNI enhancements were changed to Sev-3 for reasons she did not know.

On September 30, 2013, CR00024910 was noted as "must fix" in the ClearQuest audit trail. Ms. Schuler explained that if a request is not moved out of DevCode after missing several releases, it becomes classified as "must fix" so that IT is better able to track these fixes "at a glance." But she added that CR00024910 still did not get fixed.

We changed subjects to discuss Mr. Ardiel's performance. Ms. Schuler said she was not told why Mr. Ardiel's parental leave continued through November 2015 when he originally expected to return to work July 1. Ms. Schuler said she was told only that it was extended.

Ms. Schuler praised Mr. Ardiel's work and said his absence "was a huge loss for the work I do." She would call Mr. Ardiel to discuss whether certain glitches were the product of an OMNI defect or a user error. Mr. Ardiel was "extremely efficient." In her words, "[s]omebody else could have mucked with the [sentencing] code but I had confidence Mark could do it. He knows if I do this, I might break that."

Ms. Schuler said the IT department additionally had lost a key analyst for sentencing calculation fixes in Mr. Collins. Mr. Collins was one of three technical analysts who were lost and not replaced. She also said DOC had gone through numerous CIOs in a short period. There has been a lot of staff turnover as well. IT's budget has been cut "to the bone." This increases the stress levels, and leads to a loss of continuity and institutional memory. David Switzer was a particularly poor CIO, in Ms. Schuler's opinion. Among other things, he pushed the business unit of which Ms. Schuler was a part, out of IT altogether. Ms. Schuler believes that Mr. Switzer was forced to resign.

Between the time Ms. Schuler began processing Ms. Stigall's request in approximately January 2013 until she entered CR00024910 in mid-April, Ms. Schuler said she closed 164 defects. Some of these were basic complaints that did not require software fixes. But she does not know why Ms. Stigall's request was so difficult to resolve compared to others.

With respect to OMNI, Ms. Schuler said: "It felt like we spent our first year dealing with the defects of OMNI as a new system. Once the Department figured out they can ask for changes, it felt like the floodgates opened."

Ms. Schuler said she cannot estimate how many defects exist in OMNI and must rely on users to bring them to her. At any one time, there are typically about 100 items pending for SSTA. She noted there was another fix in the works to give jail credits to juvenile inmates whose former life without parole sentences were ruled unconstitutional.

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We discussed a July 10, 2013, email [PRR.000210] in which Ms. Stigall sent Ms. Schuler a list of 10 defects that she requested to prioritize for a future release. Ms. Stigall included CR00024910 in the list. Ms. Schuler said she reached out to Ms. Stigall for this list after Mr. Dunnington indicated 10 SSTA defects could be included in an upcoming release. She felt it was proper to defer to Ms. Stigall and the business side to prioritize what defects to include, and noted that she had potentially "100 and something" defects and enhancements at the time she would have had to choose from.

Ms. Schuler added that with this email being sent in July 2013, the CR00024910 fix already had likely been delayed beyond the original September 2013 release that she targeted in her original ClearQuest entry in April 2013.

Ms. Schuler said she was "confident" that OMNI was properly functioning with respect the King decision so long as it was being correctly used. She added that she believed staffers had become overly reliant on the computer system and cannot identify what's wrong as easily. Ms. Schuler also hoped that DOC would work to develop staff who can assist with sentencing calculations on its own, rather than "rely on a vendor to tell us what the calculations should be."

She said that the IT department had lost some "continuity in processes" as a result of staff turnover and said a departed CIO had seen less value in the business unit than his predecessors, which Ms. Schuler said hurt her group's work.

Although Ms. Schuler described Mr. Ardiel as an "amazing" developer, she noted that there were three "single points of failure" with respect to OMNI's sentencing calculations in herself, Ms. Stigall, and Mr. Ardiel, none of whom have trained backups. She suggested that DOC work to increase shared SSTA knowledge to ensure that there are backup checks at all of these single failure points.

Ms. Schuler said that although IT is working on stoppage time fixes to OMNI, she does not believe there are "huge glitches" in the system. The *King* fix has created three derivative defects that IT is working to resolve.

We thanked Ms. Schuler for meeting with us and told her that we would produce a memorandum of her interview for her review and approval. We also told Ms. Schuler that she could clarify any points in her review of the memorandum.

<p style="text-align:center">*   *   *</p>

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: _Sue Schuler_

Name: _Sue Schuler_

Date: _2/16/16_

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DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Max Hensley
Date: February 15, 2016
Subject: Sarian Scott Interview

Mark Bartlett and I interviewed Ms. Sarian Scott, the Chief Financial Officer (CFO) for the Washington State Department of Corrections (DOC), at DOC headquarters in Tumwater, Washington for approximately 15 minutes beginning at 4:00 pm on Thursday, February 11, 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 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.

Ms. Scott stated that she began her career in the private sector. Her state government employment began with the Department of Social and Health Services. She then worked as the Budget Manager at the Attorney General's Office for approximately 5 years before joining DOC as Budget Director in June of 2012. The move to DOC was a promotional opportunity. Ms. Scott, upon her hire at DOC, was responsible solely for the Budget Office and reported directly to the Assistant Secretary of Administrative Services Division (ASD). In December 2015, after an organizational realignment, Ms. Scott reported directly to the Deputy Secretary as the CFO.

The current DOC 2015-17 biennial operating budget is $1.8 billion and includes an estimated 8,200 FTE positions. Ms. Scott's direct reports include Budget Managers, Comptroller, Facilities Manager and other key staff. She is responsible for 11 direct report employees, all located at DOC Headquarters in Tumwater. Her key tasks as CFO is to provide leadership in budget and financial management services to support the mission and vision of DOC to include, but not limited to, strategic budgeting leadership. Key stakeholders include, but are not limited to, the Secretary, Deputy Secretary, Senior Leadership, Extended Leadership, the Office of Financial Management, the Legislature, and other agencies). She noted that as of December 1, 2015, DOC had reorganized and that she was now responsible for DOC Financial Services Division, not just the Budget Office. The exception to that is capital programs, which reports through the Assistant Secretary of Administrative Operations Division.

We asked whether Ms. Scott took part in what we understood to be weekly meetings of DOC's senior leadership. Ms. Scott shared there are two weekly agencywide leadership meetings; a senior leadership team meeting and an executive staff meeting. Ms. Scott was a member of the executive staff meeting only, until recently.

We showed her a CY2012 email sent from Wendy Stigall (DOC Records Program Administrator) to Clela Steelhammer (DOC's legislative policy manager) [WS_000042], and asked what meeting that email referenced. Ms. Scott reviewed the email exhibit briefly and explained that it appeared to be in reference to a divisional meeting (ASD only) of all of then-Assistant Secretary Denise Doty's direct reports (or their delegates), which also took place weekly.

Ms. Scott was unable to speculate about the meeting or discussion in CY2012, which was based on a meeting held within only a few months of Ms. Scott starting work at DOC. Ms. Scott shared that sentencing changes/impacts and cascading complexities were not part of her daily functions in her prior roles. She thinks that the reason that she would have suggested to Ms. Stigall that she speak with Ms. Steelhammer is that she often times works to connect people with others who may be more knowledgeable or might look at an issue from other. We asked whether the sentencing enhancement issue appeared so important that Ms. Scott believed that it needed to be brought specifically to the attention of the DOC's legislative group. Ms. Scott could not speculate. She thought it likely that Ms. Steelhammer had a deep understanding of sentencing law given her extensive DOC sentencing, legislative and policy experience and based on her prior employment with the state's Sentencing Guidelines Commission. Ms. Scott said she could not speculate to a specific memory of the conversation Stigall referenced in the email.

We asked whether the *King* fix was on Ms. Scott's radar prior to it becoming a public issue in late 2015. She said that other than the email reference to a conversation at the ASD direct reports meeting, she could not speculate as to it being further discussed. She did share that she attended a discussion at a Senior Leadership Team meeting on Tuesday, December 15, 2015, where the information was shared by Ms. Stigall as an agenda item. Ms. Scott left the country on Thursday, December 17, 2015 for a long-planned family vacation overseas, and she did not return to work until January 4, 2016.

We asked Ms. Scott if she was aware of a Sierra Cedar contract for IT support, and Ms. Scott shared she was, and that Sierra Cedar is one of many IT contracts. She knows that Sierra Cedar is under contract for maintenance and support as well as another project known as Advance Corrections. She didn't want to speculate as to contract specifics and shared that the contract managers for IT contracts are within the IT group. She shared that the Sierra Cedar maintenance contract is a long-standing contract and provides for the equivalent of 5 FTEs of effort each month. Ms. Scott agreed to share a high level summary or IT contracts with us.

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: ____*Sarian Scott*_ Name: __Sarian Scott__ Date: __02-18-2016_____

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 14, 2016
Subject: Kathy Smith and Lydia Hoffman Interview

Monty Gray and I conducted an interview with Ms. Kathy Smith and Ms. Lydia Hoffman on February 11, 2016, at Department of Corrections ("DOC") headquarters. We primarily discussed a November 5, 2012, earned time audit that DOC's audit division performed, as well as the audit division's May 2014 audit plan for the upcoming year. The following summarizes Ms. Smith's and Ms. Hoffman's statements:

We began the interview by introducing ourselves to Ms. Hoffman and explaining that we work for Davis Wright Tremaine and were retained by the Washington State Senate to assist in its investigation of the prisoner release problem. We noted that we were hired to determine what happened and why the issue was not identified and corrected earlier than it was, but also to discuss contributing conditions at DOC and solicit input on possible corrective actions that could be considered. We repeated this introduction when Ms. Smith joined the interview approximately 30 minutes in, having had a schedule conflict that prevented her from meeting with us earlier.

Ms. Hoffman worked at DOC as an internal auditor for five years and now is an internal auditor for the Department of Health. She said Ms. Smith is an audit director with the Washington Health Care Authority. Ms. Hoffman received a bachelor's degree in liberal arts and sciences from Evergreen State College and an associate's degree from South Puget Sound Community College.

Ms. Hoffman started on DOC's clerical staff and moved into the internal auditor position. She described receiving on-the-job training and having earned her degree while at DOC. She worked with Ms. Smith on internal audits and also attended classes offered by the Institute of Internal Auditors. She was certified as a Certified Government Auditing Professional (CGAP) after joining the Department of Health.

The internal audit division at DOC has always consisted of no more than three individuals. The staff formerly included an IT auditor (Bill Owen) who was primarily focused on IT security issues, such as what IT systems offenders could access. The IT auditor left in 2009 and the vacancy was abolished as part of budget cuts.

We asked Ms. Hoffman generally about audits performed on the OMNI system. She said that some audits had touched on facets of OMNI. For instance, they had performed an audit on data concerning how many offenders were in prison or on community custody and how those calculations were performed. While working on the earned time audit, they documented the offender's earned time information disappears once an offender is released and the case closes.

The audit division has also examined the timeliness of offender classification reviews and how OMNI was calculating those review dates. She said generally what the audit division tested depended on high-risk areas that were identified. She said that errors in sentencing calculations "were not on our radar screen. We would not have tested them because we did not have the knowledge and experience to test that area."

She said the audit division created electronic work papers in Microsoft Word in which they would embed all information relevant to an audit. This would include relevant laws, policies, procedures, and internal materials. If a sampling of particular offenders was part of the audit, information about each offender's individual circumstances would also be included. "We would see exactly the inmates who were tested and usually would insert comments."

With respect to the November 5, 2012, earned time audit, Ms. Hoffman said the audit division specifically examined offenders on segregation status and whether they were properly being credited with earned time. Although an offender in segregation typically cannot accrue earned time, an offender in segregation as a form of protective custody can accrue earned time.

Ms. Hoffman explained that earned time must be taken away monthly. OMNI automatically credits earned time to an offender each month. She described offenders as having to earn the right to keep earned time for the month, but that it must be taken away manually.

Ms. Hoffman said earned time must be updated every time an offender is transferred between facilities. DOC policy additionally required earned time to be reviewed yearly as part of an offender's annual classification review.

The November 5, 2012, earned time audit found errors in 52 percent of offenders tested who were in segregation status (96 tested, 50 errors) and in 38 percent of the time for offenders who were transferred (84 tested, 32 errors).

The audit division expected to follow up on those findings from the earned time audit as described in the May 2014 audit plan. That audit was expected to start in August 2014, but Ms. Hoffman left for Department of Health before the follow-up began.

Ms. Hoffman said she conducted three to four audits per year. It was not uncommon for an audit to require three or four months to complete. She said Ms. Smith was occupied with other functions of the auditor's office, such as responding to whistleblower complaints, and did not conduct audits herself.

The annual audit plan starts with the audit division creating an "audit universe" of potential subjects. That includes routine processes and procedures, contracts, newsworthy subjects, subjects of lawsuits, potential tort claims, etc. Ms. Hoffman said this can typically

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grow to include 450 topics. The audit division then would sit down with various groups within DOC (community corrections, prisons, etc.) and identify the 15 topics most important department-wide.

The audit division tried to complete an audit plan every year. Some years topics were provided by executive management.

We asked about the potential risk chart on page 3 of the May 2014 audit plan. The potential risk of OMNI data not being accurate is scored as an 8 likelihood (1-10 scale) and a 5 consequence (1-9 scale). The risk of classification procedures not complying with policy requirements is scored as a 9 likelihood and 7 consequence.

The likelihood factor was evaluated on the probability of likely occurrence. Ms. Hoffman said points were given for factors such as whether there was high staff turnover in the responsible division, allowable margins for error, etc. There were 10 such factors and the scores were calculated by adding the points. The consequence factor was evaluated based on possible impact to DOC. This also involved evaluating nine factors and adding the points. Ms. Hoffman said complete information would be available in the electronic work papers.

The issue with OMNI data that the audit division expected to explore in the upcoming year did not concern sentence calculations, but rather whether offender data was accurate. This included such things as whether the offender's home address, Social Security Number, and phone number were correct. This was primarily a concern from a community supervision perspective.

The reference to OMNI Chrono Codes in the audit plan relates to contacts between community supervision officers and released offenders being entered in OMNI. There is a comments field related to these contacts. This emphasis also was driven by the community supervision side in response to public safety concerns that offenders were living where they said they were.

The concern over classification procedures outlined in the audit plan focused on the practice of overriding the classification status for certain offenders who were being held at a facility for a specific reason, such as a job or program reason. The offender might be classified as medium security, but that classification could be overridden to minimum. The auditors said the concern was whether DOC staff was following proper procedures for overrides.

The May 2014 audit plan listing these planned audit subjects was not approved by DOC Secretary Bernie Warner until August 2014. The auditors said the override review started prior to approval of the plan.

Ms. Smith joined the interview at about this point. She told us that she left DOC in May 2014 for the Washington Health Care Authority. She worked for DOC for 17 years, with seven years in the budget office and 10 years as the internal audit manager. Ms. Smith has a bachelor's degree in business and is a CPA.

Ms. Smith said the audit division was not involved in the committee or process that reviewed change requests for OMNI.

Ms. Hoffman recalled one classification issue concerning an offender who was effectively serving a life without parole ("LWOP") sentence given his sentence length lasting past the time the offender would expect to live. But because the offender was not officially sentenced as LWOP, the offender's security classification could be overridden. This concern was identified, brought to the IT Department's attention, and resolved immediately.

The auditors did not get the chance to review anything associated with the *King* fix and never got into auditing the IT Department's performance.

Ms. Hoffman said the audit division liked to call their audits "mythbusters" because the data often showed a different reality than what was believed on the ground. For the classification audit, she toured facilities around the state and as a result of the audit, the Classification Unit conducted trainings at each facility to discuss issues the audit raised. She left DOC before any follow-up auditing could occur.

The audit division also handled whistleblower complaints made to the state auditor's office. The audit division would conduct investigations, compile documents, and arrange interviews with the state auditor's office related to these complaints, but many of the allegations were not substantiated. Ms. Hoffman said there were some complaints of a nature that an employee was taking too many cigarette breaks.

Ms. Smith said in the year before she left, the audit division was three levels removed from Secretary Bernie Warner, reporting to Adam Aaseby, who reported to assistant secretary Denise Doty in administrative services. The reporting structure through Mr. Aaseby was "not ideal" in eliminating any possibility of being included in executive meetings.

Both auditors felt that an audit division should report directly to the DOC Secretary for maximum effectiveness.

Ms. Smith said the audit division was viewed as an "intrusion" at times. "They just didn't like being audited," she said. Ms. Hoffman said views depended on who was being audited and the audit subject matter. One regular concern was whether the audit division had the experience to perform the audit.

The auditors said they did not audit the IT contract for OMNI, including the contractor's performance.

Ms. Smith said when Eldon Vail was Secretary, she reported to Scott Blonien, Assistant Secretary for Government, Community Relations, and Regulatory Compliance. Mr. Blonien reported directly to Mr. Vail. Previously, the audit division reported directly to Ms. Doty as assistant secretary in the administrative services division. These reporting structures were "not perfect but reasonable."

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The auditors said that their 2012 earned time audit did not find any offender who was released early. They verified that all the offenders included in the audit were still in prison or released on the correct date. They also noted that the audit was not a statistical sampling, but rather a survey to identify the beginning of a problem, if one existed. "It certainly raises the likelihood that [early release] could happen because we already know there is some likelihood."

We asked why there was no follow-up even on the issues associated with accruing good time in segregation status. "There are two of us," Ms. Hoffman said. The audit division helps in drawing conclusions from data, but specific divisions have responsibility for deciding whether to do any corrective work.

We asked about the February 10, 2014, draft audit plan. The main difference with the finalized May 2014 audit plan is that some original objectives changed, to provide greater specificity. One change was from identifying whether field/collateral contacts were occurring as often as required to the emphasis on the OMNI Chrono Codes.

After an audit plan was drafted, the auditors would interview directors and assistant secretaries and present a final written plan to the executive team for approval. The audit plan would be signed off by all assistant secretaries.

There was never any policy that an offender's release date should be calculated as part of an earned time audit. The auditors did examine whether the records staff's audits were happening when they were supposed to under policy. There were differences among the records staff in understanding those requirements. Ms. Hoffman recalled one records staffer who deleted an offender's entire month-by-month earned time history, then manually credited it all back to the offender in one consolidated entry, in violation of policy.

Ms. Smith said DOC employees "believe passionately in what they do." Ms. Hoffman said there are always individuals who don't give 110 percent, but people who were in corrections generally love what they do and do it for the community's safety.

Ms. Smith said DOC was "siloed" in terms of its various divisions. In particular, the prisons division often did not ask for input or share information with the other divisions, and often acted independently of the other divisions. The auditors never audited Dan Pacholke's performance. Ms. Smith said Mr. Pacholke "definitely ran the show" and "this was definitely his agency." Mr. Pacholke ran DOC even when Mr. Warner was DOC Secretary. Ms. Hoffman said Mr. Pacholke grew up in and knew the business of corrections.

Ms. Hoffman said she left for Department of Health because of the opportunity to learn under a new supervisor. DOH also does work with grants that appealed to Ms. Hoffman. She wanted to gain more experience with the move.

Ms. Smith said she questioned whether she could be effective as audit director if she did not report directly to the secretary or an assistant secretary. She was able to build the internal audit department of Health Care Authority from the beginning as a new agency. That opportunity was "too good not to go after."

Ms. Hoffman said there was a lot of instability in the Department in her later years at DOC. At one point, all of the supervisors in her chain of command were gone—her direct supervisor, the Audit Manager; their supervisor, Adam Aaseby; and their supervisor, the Assistant Secretary. Because of this, the auditors reported directly to the acting Assistant Secretary at that time. She also said there were 26 open positions in the IT Department when she left in 2014. Most of the departing employees found they could make more money and do less work at a different state agency. DOC has had some "pretty serious budget cuts," she added.

The auditors said their work papers would still be held by Vicki DeBoer, including their audit on classification reviews.

Ms. Hoffman suggested that the Department create a specialized sentencing group to handle earned time, sentencing calculations, and other sentencing issues, which are "so complicated." Ms. Hoffman said only members of the group should perform sentencing work "and no one else can touch it."

One issue she identified was that every records Manager can review an offender's sentencing calculations and make changes, and some are more up to date on changes to the law than others. This can result in miscalculations because any records Manager can sign off on a change. The Department should have "core people who do nothing but sentencing and are the only ones who can do it. We really shouldn't have anybody be able to go in."

The auditors recommended speaking with Arrel Dayton, who is a records Manager at Shelton and is responsible for entering sentences when male offenders first arrive at DOC.

Ms. Hoffman remembered some records staffers keeping their own Excel spreadsheets to make sure sentence calculations were done correctly because they didn't trust OMNI.

We thanked Ms. Hoffman and Ms. Smith for meeting with us and told them that we would produce a memorandum of their interview for their review and approval. We also told Ms. Hoffman and Ms. Smith that they could clarify any points in their review of the memorandum.

* * *

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: _Kathy E. Smith_

Name: _Kathy E. Smith_

Date: _2-18-2016_

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.

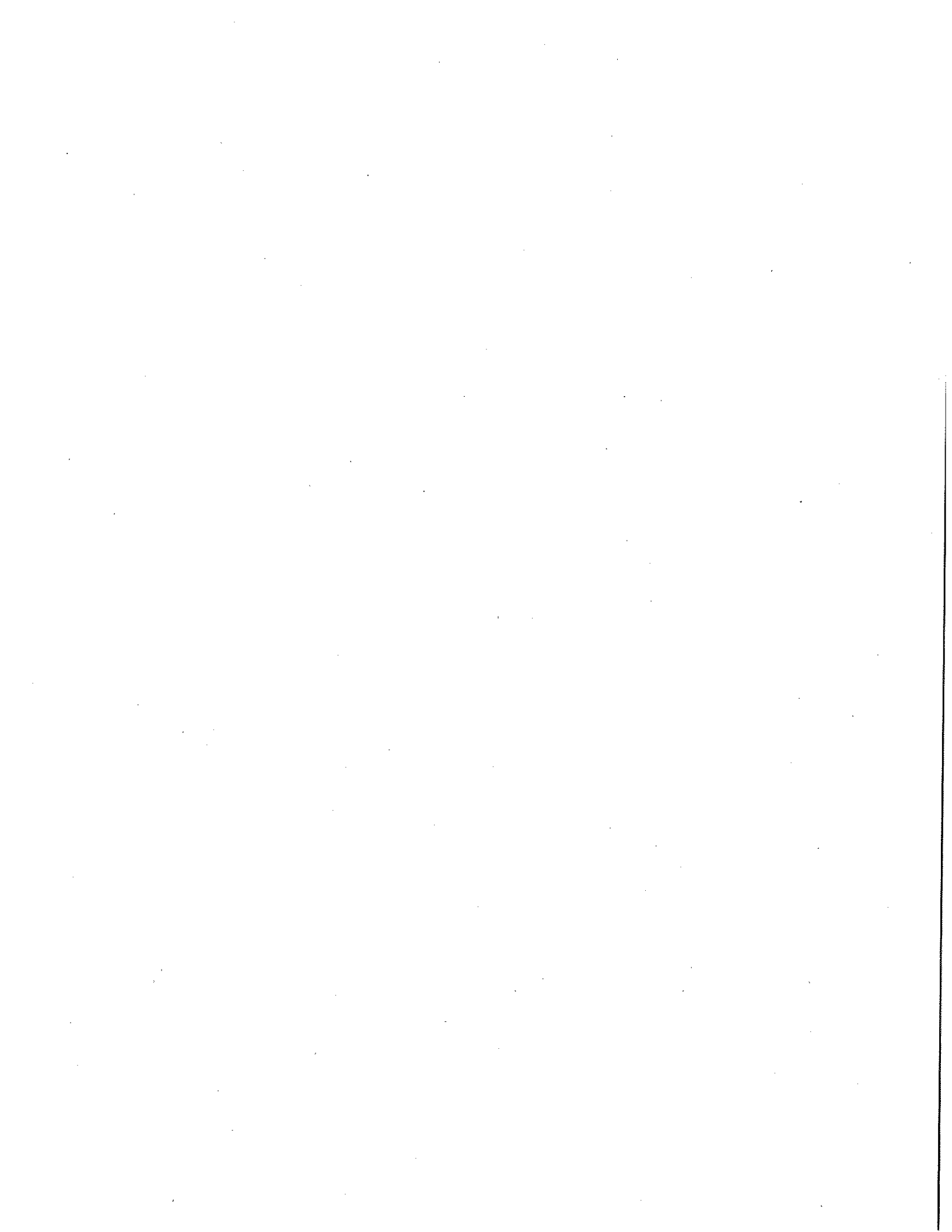Signature: _Lydia Hoffman_

Name: _Lydia Hoffman_

Date: _2/18/16_

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: _____

Date: _____

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 16, 2016
Subject: Clela Steelhammer Interview

Mark Bartlett and I conducted an interview with Ms. Clela Steelhammer today at Department of Corrections ("DOC") headquarters. The following summarizes Ms. Steelhammer's statements on the *King* fix and prisoner release problem, as well as other discussions about DOC operations:

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

Ms. Steelhammer received a two-year degree from Centralia Community College and started work at DOC in January 2002 as an assistant budget manager in the administrative services division. She previously worked for the sentencing guideline commission. Ms. Steelhammer also worked briefly for DSHS at Washington Management Service.

She described doing "everything" at the sentencing guideline commission, where she worked with the executive director. Ms. Steelhammer supervised the data entry staff and handled "problem" judgments and sentences, some of which needed missing information. In certain instances, she would talk with the prosecutor and defense attorney if she felt a sentence "was out of line."

Because she started with the sentencing guideline commission in March 1988, Ms. Steelhammer gained familiarity with the Sentencing Reform Act and the evolution of sentencing laws in the following years. That familiarity led to her position at DOC.

After one year as an assistant budget manager in administrative services, Ms. Steelhammer became assistant budget manager for community corrections. She then became budget manager for community corrections and remained in that role for four years. She was close to leaving DOC but then was hired to a legislative liaison position in the Department.

She described her job (her official title is legislative policy manager) as a "hard to define position" in which she has worked for several different bosses. She coordinates legislative reports and reviews daily all new bills introduced during the legislative session to identify ones that potentially affect DOC.

She also reviews every fiscal note that DOC produces and works on drafting bills and coordinating bill sponsors. When the legislature is not in session, Ms. Steelhammer regularly coordinates tours of DOC institutions for legislators. "It's just a variety of a lot of little things," she said of her typical day.

Ms. Steelhammer reports to Alex MacBain, and she supervises staffers in DOC's policy office. She has a temporary assistant during the Legislature's long sessions.

When the *King* issue was raised in December 2012, Ms. Steelhammer would have been the legislative policy manager. She believes she reported to Adam Aaseby in the administrative services division. She only attended weekly administrative services meetings in Mr. Aaesby's absence. She now reports directly to the DOC Executive Policy Director.

After news broke in December 2015 about the early release problem, Ms. Steelhammer thought she had never previously heard anything about it. She went through old email, though, and found a January 2, 2013, email that Wendy Stigall had sent her containing Ronda Larson's and Ms. Stigall's email exchange on the *King* issue from December 2012 [WS_000042].

Ms. Steelhammer said the email was sent a week before the legislative session started. She believes she read the email, but she doesn't remember doing so. She recalled meeting with Ms. Stigall at some point and discussing a sentencing calculation issue, but she believed it concerned a Clark County case and earned time and "wasn't associated with the enhancement portion, [it was] more about the jail credit time."

It was not usual to receive an email like the one from Ms. Stigall on January 2, 2013. Ms. Steelhammer said they often tried to estimate the impact of proposed changes. Ms. Stigall appears to have sent the email at the suggestion of Sarian Scott. Ms. Steelhammer said "Sarian is a big sharer, she loops people in on a lot of different things."

She does not remember talking to Ms. Stigall specifically about the email and issues it raised. She recalled "talking about going through a math equation," presumably concerning sentencing, but thought it had to do with something else. Ms. Steelhammer said of Ms. Larson's recommendation to not begin hand-calculating sentences: "I would not have agreed with that." She added: "If we knew the impact was people were getting out early, that part doesn't make sense to me."

We asked if sentence calculation difficulties ever came up in other meetings. Ms. Steelhammer said: "I've been in conversations about how complicated our sentencing laws are." She noted that even in trying to simplify sentencing going forward, DOC still must apply the law for particular individual offender as it was in effect at the time of the crime, which only adds to confusion.

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The seemingly simple question of how many offenders are in DOC custody for violent offenses is "not an easy question," because the definition of a violent offense changes over time.

Ms. Steelhammer did not remember anything else about December 2012 and the *King* issue.

She said she was "pretty excited" when OMNI launched because she never really learned the OBTS system. OMNI facilitates looking up individual offenders. She said she did not work closely with the IT Department.

The decision to have the legislative unit report to the DOC Secretary "seemed like a logical change" to Ms. Steelhammer. She commented that the public disclosure unit and records unit seemed to be two of the "most worked" units in the Department and may need additional staffing resources.

We discussed the Bruch case and its effect on how DOC calculates community supervision time. Ms. Larson notified DOC of the change in law after the decision was issued. The legislative unit began trying to add responsive legislation to an existing bill near the end of the session. After the legislative attempt failed, DOC moved quickly to change supervision requirements in OMNI. Ms. Steelhammer said she thought the "computer was able to do it really quickly."

Ms. Steelhammer attended executive staff meetings under DOC Secretary Bernie Warner, even though she wasn't technically on the executive staff. This practice started under Secretary Eldon Vail. Ms. Steelhammer also attended sentencing guideline commission meetings on Mr. Vail's behalf.

She was generally familiar with the Advance Corrections initiative, though she was not specifically involved with it. She said she believed the program analyzes an offender's risk to reoffend and also looks at the offender's needs. The current risk tool, she said, is always accumulating points—the risk level never drops even if an offender or DOC addresses an offender's deficits. Advance Corrections sought to create "more of a dynamic tool" based on needs and risk.

Ms. Steelhammer was not familiar with Assessments.com or any issues surrounding that project.

We asked about a January 28, 2013, email on which Ms. Steelhammer was included [ID 0001054]. Ms. Steelhammer did not remember the specific case discussed in the email, but she would often deal with constituent issues raised by legislators. Most of those issues involved offender placement and health care treatment, she added.

She believed the email in question might be attributed to the underlying sentencing documents in the particular case being wrong.

In individual cases that came to her attention, Ms. Steelhammer said the issue most often was incorrect record entry. She would not do hand-calculations of any sentences and would not have known that OMNI was off on any calculations. She requested one OMNI change related to better identifying persistent offenders. Ms. Steelhammer worked with Ms. Stigall on records issues, but not OMNI issues.

Ms. Steelhammer has offered a "Sentencing 101" presentation for legislative staff so they understand the myriad sentence calculation issues. "It's an extremely complicated thing and I'd hate to be person trying to program that into the system and trying to catch everything it's supposed to do," she said. Ms. Steelhammer noted the legislature has changed sentencing laws in some respect in every year since 1986.

She believed Mr. Warner was "responsive and forward-thinking" as Secretary and "looked at programming instead of just [having] a lock-'em-up mentality." She was not in Mr. Warner's inner circle and did not have close interactions with him.
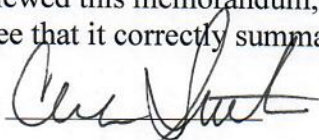
She thought Mr. Warner was well liked by legislators and believed in transparency. DOC shared more information with the legislature and legislative staff under Mr. Warner than previous secretaries. The biggest complaint about Mr. Warner was that he took too long to make decisions, but Ms. Steelhammer added, "I don't know if that's a bad thing." She said there was always good information-sharing in the Department.

We thanked Ms. Steelhammer for meeting with us and told her that we would produce a memorandum of her interview for her review and approval. We also told Ms. Steelhammer that she could clarify any points in her review of the memorandum.

*   *   *

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: _Cula Steelhammer_

Date: _2/17/2016_

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DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Max Hensley
Date: February 13, 2016
Subject: Wendy Stigall Interview

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Mark Bartlett and I interviewed Wendy Stigall, the Records Program Administrator for the Washington State Department of Corrections (DOC), in her office at DOC headquarters in Tumwater, Washington for approximately 3 hours beginning at 9:00 am on Thursday, February 11, 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 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.

Stigall stated that she was born in Oklahoma, but moved to Washington at a young age; she graduated from high school in South Bend, WA in 1975. Her first jobs were secretarial positions at a doctor's office and a hospital. She joined the DOC in June of 1984 as a typist at the Washington Corrections Center (WCC) in Shelton. Her first position was typing fingerprint cards. Over her time there, she was promoted six times, including positions as Data Entry staff, Clerk/Typist, and Records Technician. All of these positions were within the WCC records department; she worked briefly in another department at WCC, but preferred the faster pace of work in Records and transferred back. In March of 2000, Stigall was promoted to Records Manager at WCC. In total, Stigall worked at WCC for 27.5 years. In February of 2012, she was promoted again into her current position at DOC headquarters.

In this role, she has directly supervised up to 7 staff, was the appointing authority for approximately 65 more staff, has the "dotted line" to prison records staff and continues to do hands-on records work and is responsible for agency records in addition to offender records. She described the key issues for her work as managing the flow of records work which includes managing and applying the changes in sentencing law caused by court decisions and legislation. She stated that some changes are applied prospectively, while others required review of everyone under DOC custody. She works to develop tools for her staff to understand these changes over time, and oversees the records managers who are responsible for inputting data and applying these rules. She described the state of the law in this area as in "constant flux"; she maintains a document setting forth changes over time, and agreed to send us a copy of that document.

To illustrate these complexities, Stigall explained that Washington law generally requires that sentences be based on the law in effect at the time of offense, which means that DOC must continue to understand and apply versions of various statutes and court decisions that may be many years old in some circumstances. Some of the more difficult issues are the application of rules regarding whether sentences are concurrent or consecutive, the accumulation of good time and the date of earned release, and the use of enhancements (which implicate both of the above issues). Further, she said that until 2013, different counties granted good time to prisoners in their custody at different rates. In 2013, the earned time statute changed to direct DOC to apply earned release credits to be consistent with the rate applicable to offenders in the department's facilities. This was applied retroactively which required reviewing the jail credits for all active prison offenders at the time.

We asked her general view of the computer system DOC uses to calculate sentences, known as OMNI. She explained that, in her view, this is one of the major misconceptions surrounding this issue. She stated that there was no computer 'glitch,' as the issue has been portrayed; rather, DOC believed that they were properly applying the *King* decision between 2002 and 2012. In 2012, she was informed of the existence of the error, but between 2002 and 2012 the problem was the interpretation of the law, not the programming. The computer had been properly programmed to meet DOC's understanding of the law which did in turn create the sequencing error. Stigall said that she had been asked if DOC did hand calculations prior to 2012 to check the results from OMNI, but stated that hand-calculations done prior to 2012 would have come out the same because DOC was intentionally applying their understanding of the law at the time. She stated that there are some glitches in the system, but as a whole, she generally trusts it and relies on it.

We asked who Stigall gets legal advice from, and she told us that she would email or call Ronda Larson in the Attorney General's office. She stated that she understood that Larson's last day at work would be March 1 as a result of this issue, and said that she was sad to see that; she believed that Larson had done many good things for DOC over the 12-13 years that she had been with the AG's office. She stated that they had a good working relationship, and would communicate frequently.

We asked Stigall to identify Leaora McDonald. Stigall stated that her immediate predecessor as Records Program Administrator had been Carrie Fleming, and that McDonald had worked for Fleming. McDonald retired from the DOC approximately 2-3 years ago. We showed Stigall an email from Larson to McDonald dated October 12, 2007 [Bates Number AG_000238]. Stigall read the email, and stated that she had never seen it before. She advised that we discuss the email with Larson, as Stigall did not think that it was consistent with the advice that Larson had given Stigall. She believed that this email addressed the same issue that Stigall raised with Larson in December of 2012, and was surprised that it had been raised previously. She said this was never flagged for her as an issue when Stigall was promoted to her current position.

We turned back to the complications of the sentencing process. Stigall stated that one significant issue is caused by sentencing judges, who regularly give sentences that are either unclear as to how they should be applied or are inconsistent with the law on consecutive/concurrent sentences, enhancements, or other areas.

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Another key issue is that impact of inmate's behavior in custody; Stigall said that what is known as earned release time is 1/3 based on programming and 2/3 on behavior. The good conduct time can be taken as the result of a disciplinary hearing but can then restored at the discretion of the superintendent. She stated that data shows that taking large amounts of good conduct time does not change behavior so as a policy matter, many superintendents are now restoring good conduct time when an offender meets outlined and agreed upon criteria. In regards to earned time credits and the prior earned time audit, she explained that the issue from her perspective was that counselors were not regularly entering inmates' lost good time into the system, a process which should be taking place monthly. However, she explained that the system contains a check as files are audited when an inmate is transferred between units, and that the amount of missed revoked time could be small (between 1-5 days per month). The average prisoner is transferred multiple times before release, including often to a work-release program before final release. She walked us through the audit checklist, explaining that each of the numerous categories had a hyperlink to a document explaining the law and policy rules for the application of that category. The audit checklist contains a further section that applies only upon release, and includes a category named "Earned Time Updated." This category requires viewing the Earned Time screen within OMNI to ensure earned time had been earned on a monthly basis if the offender lost earned time for the month or at semi-annual or annual reviews during the prisoner's confinement. Prior to an inmate's transfer/release, she would personally contact the inmate's counselor to ensure that the earned time screen had been completed when she worked at WCC. She said that this audit checklist was constantly being updated and expanded over time. She agreed to provide a copy of the current checklist as well as a copy of the checklist as it existed in October of 2012, prior to the *King* issue arising for her. She added that she had emphasized the need to have consistent data entry to her reports and done extensive work with classification counselors to resolve the data entry issue. Although she has not audited this area since completing that project, she believes that the data-entry issue has largely been resolved.

We asked her whether, given the advantages of hindsight, she thinks that the *King* error should have been discovered sooner. She said no; until 2012, DOC did not believe it was a mistake, but rather believed that they were correctly applying the rules. We asked about the scope of the impact; she said that the average change in sentence was approximately 50 days; many were between 1-10 days, and that the longest was over 600 days. That individual had a multiple consecutive enhancements and a large number of jail time and jail good time credits. Prior to the fix with the sequencing all of the jail credits were applied day for day to the enhancement and since these were separate causes the jail good time credits were applied to the base sentences. We asked her to provide that person's name, and she agreed to do so. We agreed not to release the name publicly unless DOC approved.

We asked about her involvement in audits. She stated that she had only done one, which was focused on the data-entry issue described above. We told her that we had been informed that DOC had conducted a 2010-2011 audit on the application of earned time, and she said she was not aware of that.

We asked about other court cases that impacted her work. She mentioned *Dress*, which altered the law to require that sanctions and DOSA revoke sentences run concurrently rather than consecutively with new sentences; that case required DOC to review over 900 sentences and change how the sentences were sequenced. She also mentioned *Roach*, and said that although

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she disagreed with it at the time, it turned out to be helpful in this case. As a result of the *King* error, DOC had to bring back approximately 100 people. She said that all but three of those were successfully returned, and believes that the other two may be deceased. She brought up a spreadsheet on her computer that lists numerous other court cases, and began summarizing some of those. She agreed to share a copy of that sheet with us. We asked how she would handle these changes, and she explained that she would put in a change request to alter OMNI; if multiple changes are required, they needed to be put in one at a time to ensure quality control. She said that there is usually 1 or more court decisions each year, and many legislative changes; they all touch records and all must be put into OMNI.

We turned back to the 2007 email between Larson and McDonald. Stigall said that if that email had come to her, there would have been more follow-up conversations, and that at the least McDonald should have talked to her supervisor Fleming. Stigall said that Larson did not mention the 2007 email to her.

We moved to Stigall's timeline, and walked through the timeline itself and the various documents that Stigall had attached to it. She explained that she spoke with Bob Westinghouse twice in person, and had additional phone conversations. She recreated her timeline from emails and other documents that she had viewed. The first contact on the timeline is an email from Larson to Stigall, but Stigall explained that the issue actually arose when Steve Eckstrom, DOC's Victim Services Program Manager, contacted Stigall. Eckstrom stated that a crime victim's family had told him that they believed that an offender was set to be released too early. Stigall assumed that the family presumed that the rules allowed only 1/3 off of a sentence for good time without understanding the various complexities in the system. She explained to Eckstrom that the DOC's calculation was correct. Eckstrom then went to Larson and asked the same question. We showed Stigall an email from Eckstrom to Larson dated December 7, 2012 where he asked that question [Bates Number AG_000179]. That led to Larson's email to Stigall where she informed Stigall that *King* was not being properly applied [Bates Number WS_000005].

Stigall explained that she spoke with Larson, and that Stigall explained that DOC had not erred, but had calculated the sentence in the way it had always been doing it. Stigall said that Larson informed her that the DOC would have to change. Stigall said that Larson's explanation made sense, even though it was a shift from past policy. Stigall was not present for or involved with the original decision on how to apply *King*, and was happy to change the calculations to comply with the new advice. Stigall knew that any fix to OMNI would take some time, and she and Larson discussed whether DOC needed to hand-calculate all affected sentences in the interim. She accepted the AG's advice that the hand-calculation was not needed. DOC did hand-calculate the sentence for the offender whose impending release had caused the initial contact with Eckstrom. In order to put that alteration into the system without an OMNI update, they were required to change the court sentence to achieve an answer that was correct under the new interpretation of *King*. At no time did Stigall consider it a possibility that there had been a substantial over-release of prisoners; to her mind, this was just one more in a long list of changes and fixes that affected sentencing.

The following Monday or Tuesday, Stigall met with her direct supervisor, Denise Doty. Doty had been in state employment for a substantial amount of time, but was relatively new to the Records department. Stigall likes and respects Doty, and noted that Doty had been the

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person who had interviewed and hired Stigall for her current position in 2012. She said that Doty had between 10-15 direct reports, but had an open door for her employees. Stigall said that she was confident that this meeting occurred because on Tuesday, December 11, she had emailed Kathy Gastreich [WS_000011]. Stigall believes that she did so on Doty's recommendation, and that she would certainly have at least informed Doty prior to doing so. She explained that she needed to email Gastreich because Gastreich was responsible for risk management and handled lawsuits and L&I claims against DOC and thus needed to be informed about release date issues. Stigall is not sure whether Gastreich is an attorney, and although she has a working relationship with her, they are not close. In this email, Stigall was looking for advice about the impact of the change. After sending this email, Stigall was out of the office for two weeks for surgery; she did not receive a response but did not follow up.

We turned back to a prior email, Stigall's email to Elaine Downey on December 7 [WS_000008]. Downey is the records manager at Cedar Creek, where the inmate in question was being held. She explained that the reference to "manually adjust[ing]" refers to the process described above; she said that she also instructed Downey not to let this inmate transfer as the transfer audit process would have resulted in changing the release date back.

The next email attached to Stigall's timeline is a response to Ronda Larson [WS_000015]. Stigall said that she sent this once she returned to the office after her surgery. She copied Paul Weisser on this email, and stated that she did not often do so on her conversations with Ronda. However, Ronda often copied him on her advice to DOC, in order to make sure that he is aware of the issues that are being raised. Stigall described the content of this email as being her attempt to find the best way to fix the problem that Larson had identified, while also minimizing the programming impacts of the change. She attached examples of the calculation proposals to show how her three applications of the change would work. She explained that she was not the only person at DOC who was able to do these calculations; others, including her replacement as Records Manager at WCC, could have done them as well.

Larson replied to that email the same day [WS_000026]. Stigall thought that Larson's response was a helpful analysis of Stigall's work, and that it explained that at least one proposal wasn't allowed by law. Stigall remembered that a future email from Larson suggested putting all earned time into the base sentence.

The following day, December 27, 2012, Stigall submitted a request to IT to implement the *King* fix [WS_000031]. Stigall explained that over the course of her career, she has submitted hundreds of requests to IT for changes to OMNI; these were not always fixes, but also covered improvements and updates. However, she requested this particular change to be done "ASAP" and said that this was the first time in her career she had ever made that request. The IT request process normally involved sending a request to the IT gatekeeper (Stigall did not remember who that person was in 2012), who would confirm receipt and send the work on to a tech person. Based on her experience with these changes, Stigall expected the process to take about 3-6 months from her initial request to the implementation of the changes; because she had added that this request be done "ASAP" she hoped that this particular project would be closer to 3 months to completion. Once she sent the request, she assumed that IT was working on it.

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Immediately afterward, Stigall sent a copy of the request to Sue Schuler in the IT department [WS_000034]. Stigall explained that she did not always follow up with Schuler, but had done so previously on other IT requests. She said that she did so this time because she viewed this change as important.

Later that morning, Stigall received an email confirmed her request had been received and stating that it would be reviewed in the IT department's triage meeting on 12/31/2012 [WS_000039]. Stigall said that she did not have a clear understanding of what happened in those meetings, but believed that the IT department would look at and prioritize the various requests that they were receiving. She explained that at the time she believed that DOC had some sort of oversight over the IT group's workflow that would focus on the potential future impact of the changes; she now understands that is not so.

The next attachment to Stigall's timeline is an agenda and minutes for the Administrative Services Division's Management Team Meeting on January 2, 2013 [WS_000040]. Stigall said that this was a weekly meeting, and explained that the minutes were generally minimal as they were not widely distributed. She confirmed that the reference to her update involved the *King* issue, but could not remember the exact conversation. She believes that she would have informed the team generally about what had happened, but can't remember the amount of detail that she would have gone into. She said that the same was true for the following weekly update, as she wouldn't have had any news to report until the programming was complete [WS_000047].

We asked Stigall about the reports she had pulled around this time which contained lists of the inmates potentially impacted by this issue. She said that she did not remember doing that until recently when she had pulled documents for this investigation. Those documents reminded her that she was attempting to get numbers of how many people would be impacted and for how long; she did not believe that it would involve thousands of inmates as she was looking only at those currently incarcerated, although she understood that there were a lot of inmates serving sentence enhancements. We asked her whether she viewed continuing to monitor this issue as a priority, and she said that she raised it in meetings but did not, in her words, "keep shouting about it."

The next document is a January 2, 2013, email from Stigall to Clela Steelhammer, the DOC's legislative liaison [WS_000042]. We asked why this email was sent, and Stigall explained that Sarian Scott, DOC's budget director (who is referenced in the email), suggested it during the weekly team meetings described above; Scott is involved in many areas of the DOC's work. Stigall was not surprised by Scott's request, and wouldn't have thought to include Steelhammer as Stigall was still relatively new to DOC headquarters at the time. Stigall noted that before joining DOC, Steelhammer had worked at the state's Sentencing Guidelines Commission. Stigall had not previously alerted Steelhammer to important issues in her work, but would discuss things when Steelhammer raised them. Stigall said that both Steelhammer and Scott were still at DOC today.

On March 25, 2013, IT developed and sent Stigall an "IT consultation form." [WS_000050]. Stigall said that this form was generated by IT without any new contact from Stigall. She said that these forms were used when IT did not understand a request or needed clarification on some issue; however, here the 'clarification' was simply cut-and-pasted by

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Schuler from Stigall's initial request, and she compared the text of this document to her original submission to IT (WS_000037). Stigall said that she had had conversations with IT over the three months since her request, and that they had always had some reason why the work was being pushed out. Stigall said that she had issues with the time they were taking to complete the job, and that she stated her concerns to IT.

Approximately a week later, Stigall received confirmation that work would begin [WS_000052]. We asked whether Doty had ever asked about the delays in implementing this change, and Stigall said that she didn't remember any questions along those lines; she said that Doty likely assumed that it was being handled. We asked whether Larson ever had any follow up, and Stigall said that she did not; she explained that Larson usually did not follow up on her past advice, and was more focused on new problems that may arise.

The final attachment to Stigall's timeline that we discussed was her September 26, 2013, email to programmer Mark Ardiel [WS_000053]. This conversation started with a message from DOC IT employee Sue Davis; Stigall noted that it would have generally expected such an email from Schuler, but that Davis' involvement was not unusual. At this point, based on this conversation Stigall believed that the final output would now be forthcoming.

Moving on from Stigall's timeline and its associated documents, we asked whether in the course of reviewing prisoner records during the 2012-2015 timeline Stigall ever considered that the records were wrong because of the delayed implementation of the *King* fix. Stigall said that she didn't think of it that way as she had never been directed by management to proceed differently; she was focused on a lot of tasks as the roles and responsibilities of the Statewide Records Program Administrator are many and varied, and was not always thinking about the application of this particular issue.

We asked Stigall about the Statewide Records Managers Meeting held August 15, 2013. Stigall stated that these records were generally scheduled annually, although they only took place when the budget allowed and that they had actually only occurred twice during her tenure. They are designed to update the records managers at the individual facilities around the state on legislative and court changes; and generally last for a full day. These meetings are supplemented by constant email and phone contact throughout the year, both on an individual basis and as a group. She stated that she had drafted the PowerPoint presentation [Senate Subpoena 000436]. The meeting took place at DOC headquarters. Although the agenda states that then-DOC Secretary Bernie Warner was present, Warner and Doty merely welcomed everyone to the meeting and then left. Stigall included a slide on the *King* fix [Senate Subpoena 000462] because, at the time, she believed that the fix was about to be completed and wanted to make the managers aware of it.

Stigall said that she had monthly one on one meetings with Doty, which generally lasted about 30 minutes. These were designed so that Stigall could give Doty a relatively quick update on issues Stigall was working on. We asked whether Doty ever followed up with Stigall on the *King* issue, and Stigall said that she did not. We asked whether Stigall raised the issue herself, and Stigall said that she did not. Stigall stated that her biggest mistake in this process was relying on IT; she believed that someone at IT or an IT governance committee was analyzing the

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various requests and had concluded that something else was a higher priority; she now understands that was not the case.

We showed Stigall an email that she had sent to Lori Leigh. Stigall said that Leigh was a records technician (an entry-level position) at Coyote Ridge. Stigall did not recall the specifics of their interaction, but stated that Leigh would not have been at the August manager's meeting.

We asked whether Stigall received any input on the *King* issue from anyone that Denise would have reported to. Stigall said that she did not. She explained that although she is one of about 70 employees in the extended departmental leadership (meaning employees with appointing authority), she is not in the leadership circle. She had no relationship with the former DOC secretary, as the general practice was for issues to follow the department's chain of command. Since this issue broke in December of 2015, she has had some contact with Secretary Dan Pacholke. She believes that he is a good person who did a very good job of managing this particular crisis and would have been a good leader for the department; she is sad to see him go. As for her direct supervisors, she told us that since Doty transferred to another agency, she initially reported to Brian Tinney, who just recently left the DOC, and now reports to Julie Martin.

We asked what Stigall recalled occurring after her emails with Ardiel. She said that she knew he was out on leave for four months, and that she had wanted to get someone else to do the work but believed that no one with the proper skills was available. She was aware that Ardiel had extended his leave to 8 months. Stigall understood that either DOC's IT department or its contractor, Sierra Cedar, was afraid to have anyone else working on OMNI sentence structure issues during the time that Ardiel was out. During this time, she was always aware that the issue existed, but did not do any further hand recalculations, nor did she re-consult with Larson.

We turned briefly back to the attachments to Stigall's timeline, and asked her to explain the report at Attachment 16 [WS_000057]. She said that these are commonly generated, and that she doesn't read them closely. She presumed that her requests were in progress.

We turned the conversation to more recent events, and asked how Stigall became aware that the fix was ready to be implemented. Stigall said that she was aware that people were working on the fix in November of 2015 because she had received questions about certain details. She also stated that she would have 2-3 conversations per day (generally by phone) with Schuler, and that this topic would have come up. Given the history of delays, she did not trust that it would actually be completed until it was very close to final. She did not have any conversations with Ardiel about when he actually started the work; he does not work on site, and she is not sure if OMNI fixes are his only job.

At some point in December, she understood that it was planned to roll out in January of 2016. Stigall wanted to inform the various prisons so that they could prepare their planned releases to comply with this fix. At that point, she met with Julie Martin, DOC's Assistant Secretary for the Administrative Services Division, Steve Sinclair, Rob Herzog and Scott Russell, of the Prisons division and informed them of the coming change. The group thought that the change was very important, and informed Secretary Pacholke.

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Stigall stated that she was somewhat surprised by that reaction; her initial view had been that the primary concern would be prisoner behavior problems caused by delaying release dates, and thought that this fix was more of a forward-looking issue rather than something that would require the DOC to pull people back into custody. A meeting was set with Pacholke and his executive team where she informed them of the issue, and Pacholke decided to halt all releases and hand-calculate the changes as required.

Shortly thereafter, on a Thursday, Jody Becker-Green, Ira Feuer (the current IT director), Jeremy Barclay (DOC's communications director), and Alex MacBain at DOC headquarters and Stigall met with some of Governor Inslee's staff members at the Governor's office. Stigall stated that Sandy Mullins of the Governor's office (previously an Assistant Secretary at DOC headquarters) was the only person in that group who remembered that this issue had been raised previously, and that Mullins thought she remembered hearing about it from Steelhammer. Stigall spoke with Nick Brown, Governor Inslee's general counsel, and explained the error and the fix. Two days later, on a Sunday, the Governor came to DOC to meet with the key people involved.

Stigall explained that the list of impacted prisoners contained approximately 3700 names, but stated that widely quoted number actually mischaracterizes the scope of the impact. She said that list included every potentially impacted prisoner since 2002, but that approximately ¼ of those names could not actually have been impacted, either because they had enhancements which were governed by pre-1995 law (which required a different set of calculations) or because they were not actually released based on their early release date. Her team actually hand-calculated all of the eligible inmates who had been released since January of 2012, which was approximately 1500-1700 names. The initial calculations required a group of 6-10 people who worked nights and weekends over Christmas and New Years'; a second group audited those results and a third group did quality assurance work. The first two reviews took a total of 4-6 weeks and were completed several weeks ago. The QA process is still ongoing today. In total, approximately 40-50 people worked on the entire process which included running criminal history checks, creating packets, printing Case Management screens and hand-calculations for those offenders who had already been released. The hand calculations were a time-consuming process because they require screening district and superior court records for subsequent misdemeanors and felonies, which impact the accumulation of good time, as well as a criminal history check and a case management check (to ensure compliance with field requirements). Stigall noted that they cannot rely on these hand-calculations on a forward looking basis because they are one-off changes to the system which would appear as errors in future transfer or release audits. She also stated that she was very impressed by the willingness of her team to give up their holidays to ensure that this could be done properly and in a timely manner.

The OMNI fix was released on January 12, 2016. Stigall stated that it was originally set for January 7, but there were some unintended consequences around the new application of credits that needed to have the details worked out so the release was pushed back by a few days. She noted that there were a few outstanding glitches, including one issue relating to juveniles who were convicted of aggravated murder who received mandatory minimum sentences and had an who had additional time added to their sentences by the Indeterminate Sentence Review Board, but that those were minor (the example she gave involved 2 inmates), and that the fix was generally working well.

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We showed Stigall a set of spreadsheets that she had run in January of 2013 (one dated January 7 and the second dated January 21). She explained that she had created those in an attempt to see how many people would be impacted by the *King* fix. Without more closely analyzing them, she could not tell us the difference between the two. She said that she regularly runs reports like those to analyze issues that arise; for example, she just finished looking at approximately 700+ cases involving the Special Sex Offender Sentencing Act (SSOSA) as a result of an error on the standard SSOSA Judgment and Sentence that is posted by the administrative office of the courts. This error allows the offenders to be sentenced to a shorter period of supervision than the SSOSA statute allows. OMNI entries needed to be updated and letters sent to the sentencing courts to make them aware of the error and request the Court correct the error.

We showed Stigall a series of documents and emails, but Stigall explained that they each had to do with issues related to but not identical to the *King* fix. This includes:

- An email dated 11/15/13 relating to a switch that permitted periods of supervision to run consecutively at the count level, which was enabled by OMNI and had not been permitted by its predecessor system OBTS;

- An email dated 6/21/13 to the records manager at Everett relating to human error in OMNI application; Stigall would regularly circulate these kind of issues broadly to alert other records managers of the kinds of issues that they needed to be careful with;

- An email exchange dated 2/7/13 with Larson relating to the application of jail good time credits. This is related to *King* but is caused by a different problem; the statutes governing jail good time and prison good time do not allow for the accumulation of time at the same rate. This is exacerbated by the fact that prior to 2013 each county would award good time at a different rate, and they were not always cooperative with DOC's efforts; in 2013 DOC was given the power to standardize that rate and did so;

- An email dated 1/28/13 relating to another human error that was caught by use of the audit checklist;

- An email dated 12/18/12 regarding the application of consecutive causes. This unique situation requires a manual override, which is done by the hearings unit, and that unit is aware of the universe of offenders to whom it could potentially be applied.

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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: _Wendy Stgall_

Name: _Wendy Stgall_

Date: _2/18/16_

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 25, 2016
Subject: Brian Tinney Interview

Mark Bartlett and I interviewed Brian Tinney on February 24, 2016, in Mr. Tinney's office in the Old Thurston County Courthouse building. The following summarizes Mr. Tinney's statements on the *King* fix and sentencing calculation issue, as well as other discussions about Department of Corrections ("DOC") operations:

We began the interview by introducing ourselves to Mr. Tinney 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 issue. We noted that we were hired to determine what happened and why the problem was not identified and corrected earlier, but also to discuss contributing conditions at DOC and to solicit input on possible corrective measures.

Mr. Tinney graduated from Washington State University with an economics degree in 1990. After attending a couple of years of graduate school at WSU, Mr. Tinney began working for state government in December 1993 with DSHS as an entry-level fiscal technician doing payroll work. He subsequently worked at Lakeland Village in a similar role handling payroll and accounts payable.

Mr. Tinney received a permanent staff position with DOC in June 1995, working as a fiscal technician at Coyote Ridge Corrections Center doing inmate banking work.. He then supervised the inmate accounting system at Airway Heights Corrections Center from 1996 to 1999. Mr. Tinney next worked at McNeil Island as an accountant managing consumable inventory for the facility for six months.

He worked at the Monroe Correctional Complex as an accountant handling accounts payable for three prisons and related community corrections between 2000 and 2004. Mr. Tinney then moved to DOC headquarters as a financial coordinator in the accounting unit, monitoring agency-wide expenditures.

Mr. Tinney returned to Monroe in 2005 as a regional business manager, and by 2008 took over accounting responsibilities for five prisons and all community corrections from King County to the Canadian border, including all of the Olympic Peninsula, as DOC consolidated operations from five regions to three.

He returned to DOC headquarters in 2008 as comptroller when Denise Doty was promoted from comptroller to assistant secretary of administrative services. As comptroller, Mr. Tinney was responsible for all accounting, warehousing and contracting for the Department from 2008 to 2014. He became interim assistant secretary for administrative operations in 2014 after Ms. Haley left DOC and remained in that role until leaving DOC himself in September 2015.

Mr. Tinney described himself as "kind of the last man standing" in becoming assistant secretary in May 2014 after Ms. Haley left. The administrative services division had lost several long-time employees including Ms. Doty, Donna Haley, and Doug Hoffer. Former DOC Secretary Bernard Warner appointed Mr. Tinney to be interim assistant secretary. "By default, I became the manager," Mr. Tinney said.

During his 15 months as interim assistant secretary, Mr. Tinney said DOC experienced myriad problems with the IT Department, and particularly in attempting to win approval for a contract to develop the Advance Corrections/STRONG R initiative.

As comptroller, Mr. Tinney said he wasn't aware of the situation with Assessments.com and primarily was concerned with accounting duties. "Nobody even knew what STRONG R was outside of a small group." But he said he "got stuck in a middle of hurt" in working on the STRONG R initiative after becoming interim assistant secretary.

With respect to the sole-source contract with Assessments.com, Mr. Tinney said former CIO Peter Jekel made the request to him, but Mr. Tinney was unsure where Mr. Jekel's direction came from. He said the IT Department believed the sole-source contract was not appropriate because "they felt it was going to be all brand new work, not building on the original."

Mr. Tinney prepared the sole-source request, submitted it to the Washington State Department of Enterprise Services, and posted the request on line. A competing company (Noble) to Assessments.com submitted a bid for the project. DES then required DOC to submit the contract to a normal competitive procurement process. Mr. Tinney added that DES didn't say no to the sole-source request, but they refused to say yes. He believed the proposed project exceeded $1 million in estimated costs.

The proposed contract with Assessments.com included two components—a dynamic risk assessment tool and a case management tool. Mr. Tinney said Mr. Warner was unwilling to wait six to nine months for the contract to be competitively bid after DES denied the sole-source request.

Mr. Tinney also discussed Mr. Warner's desire to emphasize the "agile" methodology of systems development over the "waterfall" methodology with which DOC's IT Department was familiar and comfortable. "That was a big deal to change the way they were going to develop software because they didn't understand it much."

Although Mr. Tinney has met with Assessments.com founder Sean Hosman several different times, he did not meet Mr. Hosman for the first time until 2015, after DOC had made its sole-source request.

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We changed topics to discuss Mr. Warner's decision to appoint Peter Dawson as chief of staff for the administrative services side. Mr. Tinney said Mr. Dawson was good at following directions but "he didn't know how to work in state government, didn't understand state procurement, state agencies."

After DES rejected DOC's sole-source request, DOC sought to engage with Washington State University (which had created a predecessor risk assessment tool), whereby WSU would contract with Assessments.com. That would enable DOC to work directly with Assessments.com through intra-agency efforts within state government. WSU contracting department turned down the interagency agreement.

As part of the proposed deal, DOC reached an intellectual property agreement with Washington State, giving WSU the right to patent and license the risk assessment tools it developed. However, WSU and Assessments.com never agreed on licensing the risk assessment tools. "That was more time just being wasted," Mr. Tinney said.

Mr. Tinney met regularly with Mr. Dawson regarding Advance Corrections, even traveling together to Pullman to try to expedite things with Washington State University. They tried another approach in August 2014, opting to develop the risk management tool and case management plan within OMNI. Assessments.com was responsible for building the risk assessment tool, but DOC opted to have OMNI contractor Sierra-Cedar build the case management component.

"It was all about, 'Get the project done, get the project done,'" Mr. Tinney said, noting that the project probably would have been completed earlier if DOC had just waited out the competitive bidding process. This third approach for developing Advance Corrections additionally returned to a "waterfall" methodology in a legacy system (OMNI), which Mr. Tinney believed failed to general much enthusiasm at senior levels in DOC.

We moved on to discuss David Switzer's tenure as CIO. Mr. Switzer joined DOC in July 2014 and did not remain a full year. Mr. Tinney said he "left [Mr. Switzer] alone to run IT" because Mr. Switzer was "the new guy, and Bernie kind of wanted him to do it."

Mr. Tinney said he believed Mr. Switzer was doing well, "but he managed to alienate the old staff." Mr. Switzer did not care whether long-time IT staffers liked his plans or not. Mr. Tinney also believes Mr. Switzer was responsible for continuing IT turnover. "We lost a lot of people with historical knowledge [which] hurt us long term."

Mr. Switzer was a proponent of the "agile" methodology and also came from outside of DOC; Mr. Tinney believed Mr. Warner liked to bring in outsiders more than promoting from within.

Mr. Switzer did not get along with Amy Seidlitz, one of the leaders of Advance Corrections. Mr. Tinney did not believe Mr. Switzer was interested in software development and

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lost interest when DOC opted to use the "waterfall" methodology for developing the Advance Corrections tools. "The project started controlling everything else," he added.

Mr. Tinney said he worked on two things primarily with the IT Department during his 15 months as interim assistant secretary. The first was Advance Corrections and the second was the Violator Improvement Project. Mr. Tinney added that one of Mr. Warner's complaints was that DOC had 150-plus IT positions but when he wanted system improvements, IT continued to ask for more resources. Myself and Mr. Switzer tried to explain to him that only about 26 staff were devoted to development, while the other staffers provided support for phones, computer systems, etc.

Mr. Tinney said he did not like the assistant secretary position because "I didn't have authority." This was because Mr. Dawson, the chief of state, met with all of Mr. Tinney's direct reports individually. "I don't know what people actually told them to do," he said.

There was conflict between Mr. Dawson and Mr. Switzer, who "would get into nasty little arguments." Mr. Tinney recalled that Mr. Warner came down to speak with Mr. Switzer individually at times. "I know he and David had conversations," Mr. Tinney said, adding that those conversations could have been related to Mr. Warner's position on state CIO policy-setting boards.

Mr. Tinney left DOC to become assistant director for statewide accounting with the Office of Financial Management. He took a sizable monthly paycut in making the move. He described DOC as a "24/7 operation" that does not stop. He disliked having to carry a cellphone all the time, including vacations. "It's tough to actually be on all the time," he said, adding that he does not even have a state cellphone in his new job.

Although Wendy Stigall worked for Mr. Tinney in the administrative operations division, Mr. Tinney said he never heard about the sentencing calculation issue prior to leaving DOC. Mr. Tinney remembers his main discussions with Ms. Stigall focusing on transitioning to a different content management system and various staffing issues.

According to meeting minutes, Mr. Tinney attended a January 9, 2013, administrative services division meeting at which Ms. Stigall discussed enhanced sentences and mandatory time. Mr. Tinney had no recollection of this meeting until the governors' investigators presented him with the minutes. "I remember the conversation," he said. "I don't remember ever hearing the *King* decision, I just remember there was vague discussion."

He noted that DOC's senior management team typically discussed implications of Supreme Court cases in meetings with AAG Tim Lang from the corrections division. "Wendy just brought it up through the [administrative services]management team." He added that the meeting consisted of "around-the-table sharing of what's going on in your unit."

We discussed Mr. Switzer's departure. Mr. Switzer originally resigned and announced he was returning to federal government. Mr. Switzer then rescinded his resignation, only to

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suddenly resign for good with no notice. Mr. Tinney recalled Mr. Switzer's secretary presenting Mr. Tinney with a box of stuff and saying Mr. Switzer just walked out of the door.

Although Mr. Switzer never confided in Mr. Tinney why he left DOC, Mr. Tinney believed it was because of conflict with Ms. Seidlitz and stress related to Advance Corrections and the IT Department. Mr. Switzer only rescinded his resignation after Mr. Dawson effectively guilted him into staying, Mr. Tinney recalled.

Given the dysfunctional portrait of DOC that he painted, we asked Mr. Tinney if he was surprised the sentencing calculation error happened. He said, in fact, he was shocked. "I was shocked because I always thought [the IT Department] did everything right and they worked really hard to keep going," through OMNI failures and enormous workloads." Mr. Tinney said he had a "whole new respect for the demands placed on [IT]" after becoming interim assistant secretary, adding the unit "tried to do everything all the time." The backlog for IT help was so great that it sometimes took IT five weeks to give new hires access to the computer system.

Mr. Tinney said IT documentation suffered as a result of turnover. If somebody learns a process by experience, but then leaves DOC without documenting how the process is done, "the next person has no knowledge." But the IT Department also was not going to fully document processes when it was struggling just to get projects done, Mr. Tinney added.

Mr. Tinney said a project file on STRONG-R and Advance Corrections exists at DOC with documentation of change orders and review processes of the development work.

In leaving DOC, Mr. Tinney said he told Mr. Warner, who said congratulations and that was about it. Mr. Warner did meet with Mr. Tinney for an exit interview, but Mr. Tinney felt he did not want to know about any problems and was defensive about hearing complaints about chief of state Peter Dawson. Mr. Tinney did meet with then-Deputy Secretary Dan Pacholke before he left, Mr. Tinney felt Mr. Pacholke really wanted to know what the problems in agency where and what he could do to fix them. "I told him I didn't like Amy as a project manager and she didn't work well with anybody else." He feared that operations staffers would resent being asked to use the new risk assessment and case management tools because Ms. Seidlitz did not let them be involved in it development.

Mr. Tinney said the Assessments.com contracts followed all state procurement rules. He described Mr. Hosman as a "real good salesman." Mr. Hosman was especially capable at filling the void when Mr. Warner struggled to articulate his vision of Advance Corrections. "Sean was more than willing to be visionary and a salesman of that idea." But the IT Department was concerned about Assessments.com ability to delivery on that vision.

DOC did update the maintenance contract with Assessments.com before Mr. Tinney left the Department hoping for better service and quicker fixes to defects. "I have no idea if they got what they wanted out of it." Mr. Tinney also noted that DOC could not terminate its relationship with Assessments.com because DOC lacked a license to use Assessments.com's risk assessment tool. "They were kind of stuck with them."

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Mr. Tinney additionally discussed IT governance. He received direction on project prioritization from Mr. Dawson, but Mr. Tinney said this always involved high-level projects, such as Advance Corrections or VIP. They never looked at individual work tickets for requested OMNI fixes. "IT was pretty much left to decide what was important to themselves." And the governance that Mr. Switzer implemented typically concerned programs emphasized at the assistant secretary level.

Mr. Tinney believed a TRB board existed to set priorities for lower-level projects, but the TRB "never got off the ground."

Another issue Mr. Tinney identified was being unable to choose his CIO. He said the best-case scenario was to present two candidates to Mr. Warner. But when Mr. Tinney supported Jibu Jacobs as a replacement CIO for Doug Hoffer, Mr. Jacobs did not receive a second interview. "Bernie really only had one option in Mr. Switzer, but he was happy with him."

The new CIO Ira Feuer is perhaps not an ideal candidate, but CIOs are difficult to come by, Mr. Tinney said. Mr. Feuer was Mr. Warner's choice. Mr. Tinney supported hiring Mr. Feuer, he said, because acting CIO Lee Baublitz struggled mightily in three months on the job. Mr. Tinney said his focus was on getting Mr. Baublitz out of the job before he could do more damage. Mr. Baublitz failed to manage the TRB, could not set up basic processes, and was resented by staff because he was directly appointed deputy CIO by David Switzer. Mr. Tinney added that he permitted Mr. Switzer to select Mr. Baublitz as deputy CIO in the hopes it would convince Mr. Switzer to stay with DOC.

Mr. Tinney said he has received some congratulations for facilitating Mr. Feuer's hiring as CIO, as Mr. Feuer discovered that the *King* fix had yet to be implemented.

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

*   *   *

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: _Brian Tinney_

Name: _Brian Tinney_

Date: _2/26/16_

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DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

To: WA Senate Investigation File
From: Ross Siler
Date: February 19, 2016
Subject: Bernard Warner Interview

        Mark Bartlett, Monty Gray, Max Hensley, and I conducted a phone interview today with former Department of Corrections Secretary Bernard Warner. The following summarizes Mr. Warner's statements on the *King* fix and sentencing calculation problem, as well as other discussions about DOC operations and his tenure as Secretary:

        We began the interview by introducing ourselves to Mr. Warner 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 problem. We noted that we were hired to determine what happened and why the problem was not identified and corrected earlier, but also to discuss contributing conditions at DOC and solicit input on possible corrective measures that could be considered.

        Mr. Warner asked for background information about the investigation. Mr. Bartlett explained that Davis Wright Tremaine was engaged by the State Senate and has worked exclusively with the Law and Justice Committee so far. It has not been determined if the Senate or its investigators will author a report at the end of the investigation. Our assignment so far has been to assist the Senate in interviewing witnesses and carrying out the Senate's oversight responsibilities. Mr. Bartlett added that we are providing witnesses with copies of the interview summaries for their review in the hope that they feel part of the process.

        We began with Mr. Warner's education and work history. He earned a bachelor's degree in criminal justice from Southern Illinois University. He attended a management program at the University of Washington, as well as various seminars over the years, but he did not receive an advanced degree.

        Mr. Warner went to work for DOC in 1980 at the Washington State Penitentiary in Walla Walla. He later worked at Cedar Creek Corrections Center before moving into probation and parole work for DOC in Seattle. He left the Department and served as executive director of Second Chance, a private non-profit work-release program in Seattle, from 1984 to 1990.

        Mr. Warner returned to DOC to work for former Secretary Chase Riveland, serving as assistant secretary for executive policy for six years. As assistant secretary, Mr. Warner's responsibilities included identifying locations for new prisons. DOC built new facilities in Spokane, the Tri-Cities, and Aberdeen during Mr. Warner's time as assistant secretary.

He remained in the position until 1996, when he left to serve as former Governor Mike Lowry's criminal justice policy officer.

Mr. Warner focused on juvenile corrections after leaving the Lowry administration. He worked in juvenile community corrections in King County, as well as in Arizona and Florida. Mr. Warner became California's chief deputy secretary for juvenile justice in 2005, a position he described as the state's director of juvenile corrections, in effect.

After five years as chief deputy secretary in California, Mr. Warner returned to DOC as director of prisons. He took over as DOC Secretary 10 months later when Eldon Vail abruptly resigned in July 2011. Mr. Warner said Mr. Vail approached him about returning to Washington when Dick Morgan was nearing retirement. He chose to return to Washington because he always believed DOC was a strong agency, and he had known Mr. Vail for three decades. He noted the challenges he faced in the California system, including numerous class action lawsuits and a judicial consent decree. Returning to DOC was a "good opportunity."

Mr. Warner said returning to DOC after years in juvenile corrections was not a huge adjustment. The age of jurisdiction in California for juvenile criminals can extend to 24, he noted. "In terms of complexity, it wasn't like I was going from a group home to a big prison," he said. "It felt like there were opportunities to bring some things I learned in the juvenile system to adult corrections."

He described Mr. Vail's resignation as "very quick" and said his preference was to be appointed permanent Secretary, as opposed to acting or interim Secretary. "It's hard to be in an 'acting' role," he said. He knew then-Governor Christine Gregoire professionally from her time as Attorney General when he worked for Governor Lowry on criminal justice issues.

We asked Mr. Warner about his initiatives as DOC Secretary. He said: "[I]t is my belief that part of our mission statement is that in addition to running safe facilities, that the public expects that when you spend almost $2 billion in budget, people who leave prison are representing less of a threat than when they went in." Mr. Warner believed that the science of corrections was evolving, and that DOC's approach to corrections needed to consider the best available scientific information.

Mr. Warner implemented some changes to DOC's internal structure. He saw "a lot of fragmentation" in terms of different offender programs (drug treatment, sex offender treatment, education, etc.). Mr. Warner said these programs "seemed to be scattered around and not very effectively aligned to make sure they were being delivered with quality and getting the results we wanted." He also wanted to improve quality assurance and accountability.

At the executive level, Mr. Warner did not fill the vacant deputy secretary position he inherited from Mr. Vail's tenure. He said he wanted to have assistant secretaries reporting directly to him for a while in order to build a team and "not have silos" within the Department. He believed the personnel and structural changes that he instituted during his time as Secretary were less significant than the emphasis on "clarity in mission."

DOC's focus is always foremost on safety and security, but Mr. Warner said the Legislature "expressed concern that they were giving DOC $100 million for programs and wanted to [see] kind of the results they expected in terms of completed participation in programs and reductions in recidivism."

To that end, Mr. Warner emphasized data-driven initiatives to improve rehabilitation and lower recidivism. One of these was the Advance Corrections initiative, which sought to use offender information and risk assessment data to better target programs to specific offenders.

As background, Advance Corrections grew out of predictive risk assessment studies that the Washington State Institute for Public Policy developed in the early 2000s. These studies analyzed data—such as the age of first criminal offense, criminal history, etc.—and categorized offenders as high, moderate, or low risks to reoffend. The Legislature, in turn, wanted DOC to focus its resources on high risk offenders.

Mr. Warner explained the early predictive studies failed to account for dynamic factors, such as an offender's family support, association with antisocial peers, gang participation, etc. These, unlike static factors, are things that can be changed. Mr. Warner described predictive risk assessment in corrections as becoming similar to an actuarial analysis from the insurance world. The Advance Corrections initiative (originally called "STRONG R") analyzed and validated data from 44,000 offenders who took risk assessment analyses. The offender assessments were conducted by Washington State University researchers over a 10-year period through a grant with DOC.

Advance Corrections sought to identify the most appropriate program or programs for individual offenders based on the risk assessment data. Mr. Warner described it as a "more comprehensive strategy of assessing somebody, understanding what the right program would be, and delivering that program to them." This was intended to maximize effectiveness of DOC programming resources.

A team of DOC staffers worked on Advance Corrections in addition to their normal responsibilities. Mr. Warner said the team included a community corrections officer, a classification counselor, and "more than one" IT project manager assigned to the initiative, among others. Amy Seidlitz, who at one point was assigned to Offender Programs, was responsible for overseeing development of Advance Corrections.

Mr. Warner said former assistant secretary for administrative services Denise Doty was not specifically assigned to work on Advance Corrections, but she would have been "peripherally involved on the side." The same was true for former Chief Information Officer Doug Hoffer. Mr. Warner said Mr. Hoffer would not have been involved "directly," but only from the perspective of running the IT Department. Some of Mr. Hoffer's staff were involved in the Advance Corrections initiative.

Mr. Warner said Advance Corrections has produced some "tangible things," but it is a long-term project that he expects will require four or five years to reach completion. "There's not an end date to it," he said. "I think to some extent it remains a work in progress."

We asked about DOC's work with Assessments.com. Mr. Warner believed Assessments.com conducted the original risk assessment work with WSIPP, which predated his tenure as Secretary. He believed Assessments.com had a preexisting maintenance contract with DOC before he became Secretary.

Assessments.com proposed expanding its work with DOC after Mr. Warner became Secretary. There was some discussion whether the IT aspect of this work should be done within the OMNI program or through contract with Assessments.com. The Department consulted with the Washington Department of Enterprise Services, which concluded that any new work should be competitively procured. Mr. Warner could not recall if DOC entered into a new contract with Assessments.com and, if so, whether the contract was competitively procured. He said development of Advance Corrections "evolved into a combination of resources we had with Sierra [Systems] and DOC, but Assessments.com was not doing that work."

He added that Assessments.com's work would have involved developing business requirements for Advance Corrections. "There was not a contract to do any coding or actual programming for the change in work." He believes Assessment.com did either sign a new contract or contact amendment to improve the validation of the static risk tool used by DOC given new data from WSU. He did not define the scope of work, negotiate or provide the authorizing signature for this project.

We asked about Mr. Warner's relationship with Assessments.com CEO Sean Hosman. Mr. Warner replied that he had worked with Mr. Hosman during his years in Florida. He said Mr. Hosman is an "incredibly smart, talented guy."

With respect to Mr. Hosman's criminal record, Mr. Warner said: "I think he ran into a really bad period in time where he fell down pretty hard. And certainly any contact I had with him was severed during that time. But part of our work is that people can rehabilitate themselves." Mr. Warner said that he told the DOC leadership team about Mr. Hosman's personal issues. He added it was "very clear" to Mr. Hosman that DOC would terminate its contract with Assessments.com if performance concerns arose.

Although Mr. Warner worked with Mr. Hosman in the past, Mr. Warner said there was "clear direction on my part that any work [with Assessments.com] would be within appropriate procurement standards." He believed any subsequent contract with Assessments.com beyond the preexisting maintenance contract would have been an amendment to the preexisting contract, but said that it "might have been a new contract."

We asked if Mr. Warner considered Mr. Hosman a friend. "I guess I would say I've known him for a while, so I would say we are collegial and I was as disappointed as anyone when he went through a difficult period. I guess I would say there were boundaries in place in terms of my relationship with Sean, so I would not engage with him outside of work." "I'm pretty careful about boundaries."

We moved into discussion of the sentencing calculation error. Mr. Warner said he first learned of the issue when he received a call from Nick Brown, Governor Inslee's general

counsel, in mid-December. Mr. Warner said: "I was, I guess, very surprised to hear that under my watch, nothing had been done for three years to address that."

He added: "I had no knowledge of the IT issue, the calculation of time." He said that he was not sure about the procedures used by the IT department to prioritize work requests. He noted that OMNI frequently required modification, because of the complexity of Washington's sentence structures and the changes in the laws and court decisions governing them.

Mr. Warner said he left DOC on good terms and considers it a top-tier corrections department nationally, marked by innovation and discipline. "I think people really care about their work and I was surprised that if there was something identified of this magnitude that it wasn't addressed."

Although he has followed the fallout from the sentencing calculation issue in the news, Mr. Warner said he has refrained from speaking with anyone at DOC about the situation, and had "pretty much left it to" the ongoing investigations ordered by the Governor and State Senate.

Mr. Warner said he would have expected a sentencing calculation issue of such significance to have been brought to his attention at an early stage. He cited the example of the Washington Supreme Court's *Brusch* decision affecting earned time calculations. Following that decision, DOC requested an analysis of its impact from the Attorney General's office, created a plan for potential legislative action, and held a series of high-level meetings to resolve any issues. "It's an example of what you would expect that there would have been." He would have expected that there would have been more understanding of the impact of the issue and the proposed solution. He was surprised that there was no hand-calculation of sentences pending the fix; he would have thought it would have been done.

We asked about DOC's IT Department and its work quality. Mr. Warner said: "I think that they were a reasonably competent group. It's not one that I frankly dove into that much, given the complexity of other departments."

Mr. Warner spoke about the evolution of software development from a "waterfall" methodology to an "agile" methodology. He believed the IT Department was resistant to adopting the "agile" approach, which was recommended by the State CIO. "The culture was, 'We're familiar with 'waterfall,' it's more tested, ['agile'] takes more time." He called IT a "steady department," but added there was reluctance to adopting the "agile" methodology as a way to expedite IT processes.

Mr. Hoffer "was committed to his work in leading IT" but maintained a "business as usual" approach to the department. Because Mr. Hoffer originally worked as a DOC budget manager, he had less of an IT background and accordingly became somewhat dependent on other people to advance DOC's IT systems, "rather than being a leader to motivate to change."

We asked about Mr. Hoffer's statements that he was tasked with running the STRONG-R/Advance Corrections initiative. Mr. Warner said he believed Mr. Hoffer had some leadership responsibilities as CIO, but the Advance Corrections team had its own IT project manager. He

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did not recall Mr. Hoffer voicing frustration, adding the "burden of reform was not directly on his shoulders."

Mr. Warner said Ms. Doty was a "pretty steady" head of administrative services and highly experienced after years at DOC. "I think she was reliable and loyal to the agency and I think kind of in general got the job done."

However, Mr. Warner felt that he set a level of expectations of continuing to better the work. To do that, managers needed to engage outside of their normal routine. He said it was more difficult to push people toward new expectations the longer they had been with DOC. He said of Ms. Doty: "Not to be critical of Denise, but if you want some leadership that has somebody a little more involved in pushing that division forward, she's probably not going to be the strongest person to do that."

We asked about the six-month period it took DOC to hire a permanent CIO after Mr. Hoffer's departure. Mr. Warner said that he did not recall the details, but that recruiting a candidate to manage a large, complex IT Department was difficult given DOC's salary limitations. He said DOC did not receive "a great field of candidates" initially after Mr. Hoffer left. A senior IT staffer, Peter Jekel, took over initially, and Mr. Warner said it took six months to accumulate a sufficient candidate pool, despite advertising the opening

Mr. Warner described David Switzer, who eventually replaced Mr. Hoffer as permanent CIO, as a "well-intentioned, pretty energetic guy." Mr. Switzer did not have the complete package of IT skills that Mr. Warner ideally would have preferred. "I thought he initially came in a little naïve about the job, but he did OK." Mr. Warner believed Mr. Switzer left DOC for a salary increase and personal reasons. He was not sure how Mr. Switzer was perceived within the IT Department or within DOC generally

Mr. Jekel served as interim CIO for approximately six weeks. Mr. Warner said Mr. Jekel was "pretty solid" and very capable on IT security issues. He believed Mr. Jekel left DOC for a promotion in another agency and likely raise.

We asked about Jibu Jacob, another interim CIO. Mr. Warner was not sure how long Mr. Jacob served as interim CIO, but said "most people seemed to get along with Jibu." He was on the short list for the permanent position ultimately awarded to Mr. Switzer.

Mr. Warner said Mr. Switzer was recommended as permanent CIO by the selection team, and he supported that choice. He said he tries not to play "Monday morning quarterback" with a recommended candidate "unless there's a compelling reason." Chief of Staff Peter Dawson, assistant secretary Dan Pacholke, and Mr. Warner were involved in selecting Mr. Switzer.

When Ms. Doty left as assistant secretary, Mr. Warner opted to fill her position with a chief of staff. He said he wanted to have a different reporting structure than Mr. Vail employed through a deputy secretary. Mr. Pacholke was responsible for handling all corrections operations and the chief of staff was responsible for administrative functions.

Mr. Warner said until he became Secretary, he did not know Mr. Pacholke to "any great personal extent." He added that Mr. Pacholke was "really moving the institution forward and increasing safety." Even though Mr. Pacholke does not have the same policy background as Mr. Warner, the two "ended up on the same page most of the time." Mr. Pacholke rose through the ranks of DOC and he had a lot of operational experience, but he has known only the Washington system, which Mr. Warner said sometimes can be a limitation.

He did not believe that he had publicly disparaged the IT Department's work during his time as Secretary; he said that it was not his style to embarrass subordinates publicly. He appreciated the work that they did. He did not know how the IT Department's turnover compared to that of IT Departments in other state agencies. He felt that there is always a lot of mobility in that field.

Advance Corrections was a "priority initiative," but Mr. Warner said his commitment to IT was that it should never compromise its fundamental requirements to keep the OMNI system going. "If we are looking for new initiatives and new work, we should request resources to do it," he said.

He added that he had heard that "individuals would go to IT and say, 'This project is really important to me and can we squeeze it in?' and anecdotally [IT] wouldn't want to say no." That process "sometimes . . . takes on a life of its own." Mr. Warner was "pretty focused" on having a process for prioritizing projects "that would not compromise the routine work of the agency."

Mr. Warner was frustrated by the IT governance process he discovered when he became Secretary. He believed it was led by the systems consultant, Sierra Systems, rather than the Department. "That seemed to me not how it should be."

DOC sought $2 million in funding for Advance Corrections. Mr. Warner said DOC was allocated part of a broad lump sum the Legislature approved for all state agencies; "I don't know where that all landed," he said, "but [Advance Corrections funding] was in the mix of that."

When asked about Substance Tracking and Reporting, known as "STAR," Mr. Warner said that he remembered the acronym, but that was about all. He did not believe that it was another name for STRONG R or Advance Corrections.

We asked what prompted Mr. Warner to leave DOC in September 2015. Mr. Warner said he had been with DOC for five years and "thoroughly enjoyed it." He believed he was leaving DOC with a solid leadership foundation and "clearly defined focus of work." He added that he wanted to do something different. Mr. Warner did receive increased compensation in moving to the private sector.

Mr. Warner felt he had a good relationship with Governor Inslee, whom he described as "supportive." He generally met monthly with Governor Inslee at hour-long cabinet meetings involving agency heads. He might additionally meet with representatives from the Office of Financial Management on a budget request. He did not have regularly scheduled individual meetings with the Governor.

Mr. Warner confirmed he had a close personal relationship with a member of the governor's staff. He said "[t]hat was formally managed by me reporting to the deputy chief of staff." He declined to answer a question about a relationship of another senior official with a member of the governor's staff, believing that such questions should be directed to the individual concerned.

With respect to romantic relationships among DOC staff, Mr. Warner said the Department has specific policies concerning relationships in the chain of command. He noted these relationships are understandable in small communities where DOC facilities are a major employer. "That is unfortunately some of the challenge you have." Having worked in corrections systems in multiple states, Mr. Warner said he would not characterize such relationships as affecting day-to-day corrections operations.

We asked Mr. Warner about the number of DOC staffers from our interviews who did not hold a college degree. Mr. Warner questioned whether there was any data on the issue, adding that a college degree is required to be a superintendent at a DOC facility. There is a tradeoff, he noted, between employees with education and experience. DOC provides training opportunities for all employees regardless of their background.

Mr. Warner's current position is senior vice president for corrections for the Utah-based Management & Training Corporation. The corporation oversees private prisons across the United States, and also runs probation services in the United Kingdom and performs work in Australia.

We asked Mr. Warner whether he would be willing to come to Olympia to testify before the Senate Law and Justice Committee, should the Committee wish to hear from him. Mr. Warner said that he would consider it. We assured him that he did not need to make a decision during our telephone conversation.

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

<div align="center">*   *   *</div>

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: _Bev_____

Name: _BeRNARD WARNER_

Date: _2/24/16_

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<div align="center">DAVIS WRIGHT TREMAINE LLP</div>

<div align="center">MEMORANDUM</div>

To: WA Senate Investigation File
From: Max Hensley
Date: February 15, 2016
Subject: Paul Weisser Interview

Mark Bartlett and I interviewed Paul Weisser of the Washington Attorney General's Office (AG) at the AG's offices in Tumwater, Washington for approximately one hour beginning at 11:30 am on Friday, February 12, 2016. Weisser 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 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.

Weisser graduated from the University of North Dakota with a BA in 1982 and a JD in 1985. He served in the Army prior to his undergraduate studies, and in the National Guard during college and law school. After graduating law school, he joined the JAG Corps at Fort Lewis, Washington. He took and passed the Washington bar exam in 1988, and left his JAG position to join the AG's office in the corrections division. He was recruited to the AG's office by a contact who already worked there, and has remained there ever since.

His duties are primarily responding to federal habeas corpus petitions and their state equivalent, personal restraint petitions (PRPs) which challenge an offender's sentence. Other units handle PRPs which challenge the conditions of confinement or similar areas. In a given year, approximately 40-50 PRPs are filed, but a change in the law could cause that number to spike to over 100. He is not responsible for PRPs that go to challenges to an inmate's loss of good time; that process begins with an internal system of hearing officers and is at the discretion of the prison superintendents, and petitions related to those decisions go to the civil rights unit. His team also handles post sentence petitions (PSPs), which arise when a judgement contains a legal error and thus requires the DOC to confine a person in a way that DOC does not have the authority to do. In that situation, DOC has the ability to ask the state Court of Appeals to review the sentence independently of the parties' right to appeal; Weisser estimated that he sees approximately 10-30 PSPs per year.

Weisser has four direct reports: senior counsel John Samson (who has been in his unit 23 years), Ronda Larson (who joined in 2003), Alex Kostin (joined in 1999), and Mandy Rose (who has a long career in the AG's office but only came to Weisser's unit in 2013). In addition to his supervisory role, he maintains his own caseload of primarily federal habeas corpus petitions; he also advises the Governor's office on issues relating to extradition. His management practice is to have his team CC him on advisory emails, as well as CCing an electronic inbox that allows a secretary to input that advice into the AG's Law Manager system. He said that he does not read every email that he is CC'd on, but that he attempts to read at least the subject headers so that he is aware of what his reports are working on.

We asked about the December 2012 email exchange between Larson and Wendy Stigall, and he said that he saw those emails in December of 2015 when the issue surfaced but that he did not remember ever reading them prior to that date. He does not remember discussing the issue with Larson in 2012, although he said that it is very possible that he did so. Upon reading it in 2015, he said that he felt that the concluding two paragraphs go into policy rather than legal advice. He does not agree with that advice, and would say that the advice needs to be corrected. He explained that his general management style is not to countermand advice directly to an agency, but to work with his staff and allow them to revise the advice that they give. He said that he had done so in the past in other areas.

We asked whether Weisser would have advised that the sentences needed to be hand-calculated, and Weisser said that he would have. He remembered that he had done so in a 2002 email. At that time, he did not believe that OBTS (DOC's predecessor to OMNI) could accommodate the court's *King* decision, and that meant that a certain class of offenders (who had served pre-trial jail time and then received sentence enhancements) would require hand calculations. He said that he wrote that email on the day that *King* came out, and believes that it has been released publicly because he has seen it quoted in news articles. He remembered that the question came into him from Dick Van Wagenen, who was a criminal justice policy advisor to then-Governor Gary Locke (in a position comparable to that Sandy Mullins now holds), and that Van Wagenen asked for a quick interpretation of *King*. Weisser said that he is not sure of the precise impact his email had; his general policy is to give advice to an agency and presume that the agency is properly carrying out its duties. In that case, he knew that Van Wagenen had forwarded the email to then-DOC Secretary Joe Lehman, who had sent it on to the records and IT departments; that satisfied Weisser that the appropriate actions were being taken. He noted that he was not the counsel of record on *King*; Donna Mullen, who had handled that case, was likely out of the office that day. Mullen retired from the AG's office in 2011. Weisser is not sure whether there are any other emails from that time period involving this issue, but presumed that Mullen would have been working with DOC's records manager, who may have been Carrie Fleming or Janice McMahon at that time.

Weisser said that it was a big surprise when this issue surfaced in 2015, and that he did not have any memory of the discussions in 2012 and 2013. In hindsight, he wishes that it had come to his attention, as the input from a higher-ranking AG's office employee could potentially have caused DOC to recognize the importance of the change. However, at the time, Larson reasonably believed that they were following her advice.

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Weisser said that he does not have periodic scheduled meetings with DOC, but that he works with them on an "as-needed" basis. His division chief attends DOC's weekly executive staff meetings, which allows him to sense issues that are brewing within the agency and to update the agency on legal developments.

We showed Weisser the 2007 email between Larson and Leaora McDonald. He had not previously seen it. He said that he is not entirely sure from reviewing it what the context of the email was, and whether it was instigated by McDonald or Larson. He agreed with the statement that DOC did not appear to understand the strict rules that needed to be applied to enhancements.

We explained to Weisser that DOC had told us that the *King* issue – contrary to its public perception – was not a 'computer glitch' but rather that OMNI had been programmed consistent with DOC's understand ing of the law between 2002 and 2012. Weisser said that he understood that DOC thought that *King* had been addressed shortly after the case was released. Nevertheless, he firmly believes that Larson's legal advice (which he distinguished from her policy advice as described above) was correct and that DOC needed to alter its understanding and practice.

We asked Weisser whether he had done any research to determine what could have been communicated to DOC in 2002 to help them interpret the *King* decision. He said that at the time, the decision was not ground-shaking; in fact, he remembered being surprised that the Supreme Court had granted review on what he viewed as a relatively minor issue. He noted that current Supreme Court Justice Sheryl Gordon McCloud had represented the petitioner after being appointed by the Supreme Court, and explained that the inmate had begun the case *pro se*. Weisser said that in 2015, after the issue arose again, he had recovered the AG's work file on the *King* case (which had been moved to the state archives), but it only contained the briefing in the case. He was not sure what searches had been done to find correspondence relating to that advice. He agreed to provide the briefing and to look for any correspondence that related to the AG's advice to DOC in 2002 on this issue.

* * *

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: _(signature)_

Name: PAUL D. WEISSER

Date: 2/21/16