

DAVIS WRIGHT TREMAINE LLP

MEMORANDUM

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

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 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

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 the 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

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: *K. Bail*
Name: *Kit Bail*
Date: *2/26/14*