



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

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To the People of the State of Washington:

When I became Attorney General in 2013, we adopted a new mission statement for the agency:

“The Office of the Attorney General will provide excellent, independent, and ethical legal services to the State of Washington and protect the rights of its people.”

To emphasize our duty to the people of this state, we also adopted a new core value to guide our work:

“We will deliver high quality legal services and remember that we serve the people of Washington.” (Emphasis added.)

I added the focus on “the people of Washington” to our mission and values because our duty as legal counsel for the state of Washington is ultimately to the residents of our great state – to ensure their rights are protected, their safety ensured, their tax dollars safeguarded, and that government serves their collective interests.

Recent events highlight the importance of these principles and our duty to live up to them.

In December 2015, I became aware of legal advice provided in 2012 to the state Department of Corrections (DOC) in conjunction with a software programming error that led to the early release of offenders over a period of many years. I directed my team to do three things:

1. Fully cooperate with the independent investigators appointed by the Governor, and the subsequent investigation commissioned by the State Senate, to broadly review DOC’s early release of offenders.
2. Conduct our own focused investigation of the Attorney General’s Office’s (AGO) role in providing legal advice that contributed to this failure of state government.

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3. Examine how the AGO provides advice to our clients and make recommendations to systemically strengthen the quality and provision of that advice.

As attorneys for the state and people of Washington, it is imperative that we understand the full extent of the role that the AGO played in this grave error. We must also strengthen internal policies and practices to ensure that we do not repeat this mistake, and that we transparently report our findings to the public that we serve.

The attached report provides the findings of our investigation. We interviewed 19 current and former AGO and DOC employees, reviewed more than 20,000 emails, and analyzed 13 years of records and legal advice stored in our case management system.

The investigation found that the AGO's first contact with this particular issue was in 2002, immediately following the state Supreme Court decision in *In re King*. At that time, the AGO correctly advised DOC that the changes to sentence calculations required by the *King* decision would likely require computer reprogramming and that sentences should be manually calculated in the interim. Unfortunately, when it was brought to DOC's attention in 2012 that its computer system was miscalculating those required sentence changes, the advice provided by this office was deeply flawed.

At that time, an Assistant Attorney General (AAG) failed to recognize the significant public safety and other implications of the problem when she advised that it would be "reasonable" for DOC "not to manually fix" the numerous incorrectly calculated sentences affected by the problem. Rather, the AAG advised that DOC should "wait for the reprogramming to occur." In giving this advice, the AAG wrote that she was aware that "[a]lthough this will result in offenders being released earlier than the law allows for the time being, until OMNI gets fixed, the DOC has been releasing them earlier for a decade (since the *In re King* decision) and a few more months is not going to make that much difference in light of this...".

This legal advice failed the people of Washington and our client, DOC.

By advising the client that it was "reasonable" to not immediately correct this violation of the law, the advice jeopardized public safety and potentially increased liability for the state.

The Governor's investigation found that DOC had a broader "systemic failure of process and management." It is clear, however, from the Governor's investigation and our own, that DOC relied upon the AAG's advice and this contributed to the delay in fixing the problem.

Our investigation found that the legal advice provided in 2012 was isolated. No one in senior agency leadership, including then Attorney General Rob McKenna, was aware of the problem or the provision of the advice. In fact, despite clear expectations that all legal issues involving significant implications for the state should be elevated to the

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division chief, the AAG did not identify the sentencing calculation error as an issue that needed to be raised.

The AGO provides high quality legal advice to hundreds of clients each day on a myriad of complex issues. Client surveys show that this office is respected by our clients and that our attorneys and professional staff are especially valued for our ethical standards, professional skills, and quality of service.

But even in a culture of excellence, serious mistakes can happen.

As Attorney General, I speak frequently with my senior management team about the importance of honestly and objectively examining one's mistakes so we can learn from them and continuously improve as an organization. A former chess coach taught me that while it is important to celebrate wins, one must examine "losses first" as a necessary step to improvement.

This approach is not the easy path. It is tempting to minimize mistakes and our role in them. It is difficult to critically examine ourselves and to be accountable for the things that we should have done better. But I firmly believe it is the necessary path to improvement.

To that end, I directed my team to undertake a critical evaluation of how we provide client advice and train our attorneys and professional staff to ensure we are living up to our mission, vision, and values.

As a result of this examination, we are developing a best practices guide for providing client advice. The contents of the guide were discussed at length at our recent AGO Leadership Team meeting. It is an expectation that all managers throughout the agency follow these best practices and consistently reinforce them with their team members.

Additionally, we will enhance our formal training on client advice for both current and future AGO employees. We are developing a training program as part of our orientation for all new attorneys. Attorneys already on staff will attend a class on this topic, and we will increase ongoing course offerings in this area.

We have reviewed the recommendations of the investigative report commissioned by the Governor as they pertain to the AGO, and we agree with the recommendation that "the Attorney General's Office institute a policy requiring that advice given by an Assistant Attorney General to DOC relating to release dates and other significant issues, must be subject to supervisory review and approval." Although this is consistent with our general practice, I have directed my team to implement revised protocols to formalize these practices designed to ensure appropriate supervisory review of significant client advice.

In the coming weeks, I will be inviting all AGO staff to attend one of a series of meetings that will be held in our offices around the state. At these meetings, I will talk directly with my team about our collective values, what we can learn from this experience, and

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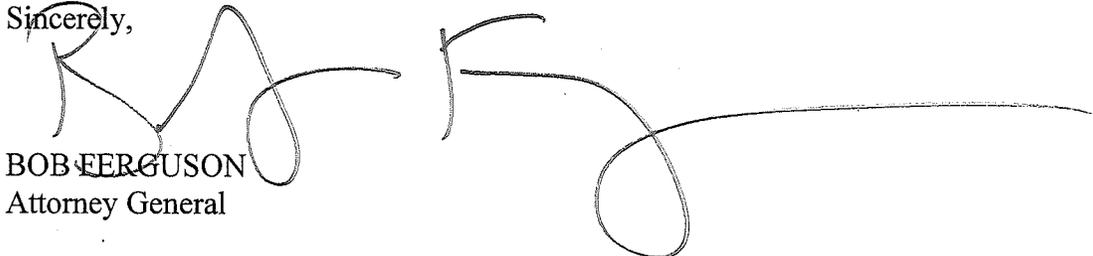
our path forward to ensure that we continue to provide the best possible client advice and legal services.

In all of these efforts, we are rededicating ourselves to our mission of providing excellent, ethical, and independent legal advice. We are reinforcing that our role as legal advisors is to provide options-based advice to our clients so that state agencies can make informed policy and operational decisions. We are reemphasizing that we refrain from making policy or operational decisions for our clients. We are doubling down on the message that we are an independently-elected office. As such, the people of our state expect us to advise our clients in pursuit of the general public welfare and the interests of the people and state of Washington.

These values are already practiced throughout the agency, but this experience is an opportunity to reinforce the importance of these principles and the trust that is placed upon us by the people of Washington.

In closing, the Attorney General's Office employs a team of excellent attorneys and professional staff who are dedicated to public service and who carry out our mission, vision, and values every day in the work that we do. You have my commitment that we will learn from this mistake and move forward as an even stronger organization that will always remember that we serve the people of Washington.

Sincerely,



BOB FERGUSON
Attorney General

RWF/jlg

Attachment