

Susan Mandiberg: Just wanted to ask if all of you have had the chance to look at the memo that I sent, along with the bylaws because the explanations in the memo should help us limit discussion a little bit. Has everybody been able to read that? I see some heads being nodded but not everybody. Okay, so let's go through it section by section. The first section that requires any discussion is Article One sub (3) sub (b). So, we...

Rob Harris: Excuse me, real quick. Is there a way to zoom that in a little bit more? It's a little hard for me to read. Is it possible?

Male: Mona, if you hold scroll. Oh, yeah, there you go.

Rob Harris: There.

Susan Mandiberg: That's great. Thank you so much, Mona. Oh, that's even better. All right. So, the red that's outlined is what we presented at the commission meeting, and the feedback was that we should use verbs to say what we're trying to achieve and not labels because verbs are easier to understand than labels. So, the three possible choices there, 1 and 2 are different, and 3 attempts to combine 1 and 2, and I think we need to choose one of those in the draft to submit to the commission at our April meeting. So, is there any discussion on those three options?

Rob Harris: I'm happy with any of the three.

Susan Mandiberg: Jennifer, Addie, do you have a preference? [Laughter] I can't see you very well because these things when we're sharing screens are very little, so you have to speak up.

Jennifer Parrish Taylor: No worries. I'm just looking just reading through real quick.

Addie Smith: I'm just looking at the state's DEI action plan.

Jennifer Parrish Taylor: Right?

Addie Smith: [Laughter]

Susan Mandiberg: Yeah, they sort of... I [Distortion 00:02:29] DEI action plan when I when I drafted these options, and it was specifically mentioned at the commission meeting that we should reference the DEI action plan.

[Crosstalk 00:02:46]

Jennifer Parrish Taylor: Yeah, I like option 3 because it's like a combination of, you know, going beyond just the plan.

Addie Smith: I agree.

Susan Mandiberg: All right, so option 3 is the one that we'll put in the final thing that I put together for the meeting. Thank you. If nobody has anything else in Article 1, everything else that's in there seemed to be fine at the commission meeting. So, the only things that are highlighted and changed are things that the commission had some issues with. I guess the only other thing in Article 1 is somebody wanted us to define oversight, and so subsection (4)(d) was my attempt to define oversight and I took it from dictionaries and thesauruses. It's pretty straightforward. If anybody wants to change or add or amend that.

Rob Harris: Can you scroll down to that, please?

Addie Smith: Thanks, Eric.

Rob Harris: Looks fine.

Addie Smith: Just a quick question on this, not to get us too lost in the weeds, but aren't we really exercising governance, supervision, direction, and guidance to the executive director, and then it's his, her, or their job to trickle that down to staff? Hasn't that been one of the concerns or am I misremembering?

Susan Mandiberg: Well, I think that's probably technically correct. There are times when we speak directly to staff, and I imagine that some of that may involve direction and guidance. So, I figured it should be in there, but I'm happy to take it out if that's what people think is better. Any reaction to that?

Rob Harris: Well, I mean, you could just take out actually the reference to the executive director [Distortion 00:05:12] oversight means exercising governance, supervision, direction, and guidance...

Addie Smith: I like that.

Rob Harris: ...to the Public Defense Commission pursuant to statute.

Susan Mandiberg: Okay, guidance to the Oregon Public Defense Commission pursuant to...

Rob Harris: Blah, blah, blah.

Susan Mandiberg: All right, I'll do that. Great. Thank you. Moving along. Article 2, the first thing that comes up in Article 2 is subsection (9). Originally it said ex parte contacts.

That doesn't mean much to some people and it was extraordinarily general. And what we really were trying to get at in this section is what communications were not subject to public meeting laws.

Rob Harris: Can we scroll to that, please?

Susan Mandiberg: And so I'm suggesting changing the title to reflect that that's really what this section is about. There's an addition to the section in subsection (iv). There was concern at the commission meeting that we should not be seen as getting in the way of whistleblowing communications by staff members. And then the other part of it was in subsection (b)(ii). We thought it was important, and I think this came up in the discussion, that we... It was in the draft that we presented to the commission that the ED should communicate authorization to talk to staff in writing, mostly to protect the staff from getting in trouble since it's hard to get us in trouble. And the concern was raised at the meeting that the executive director should be able to designate someone else to do that authorization in case the executive director's on vacation or sick or held up somehow. And then the writing should be shared with the staff member and the commission member, and the question that comes up is whether it should be shared with the whole commission, and that seems excessive to me, but it's certainly something that other people might want. I think it would be excessive for the entire commission to get written authorization every time a staff member is authorized to talk to a commission member, but it's certainly possible to do that. So, that's what's going on in subsection (9)(b). Any discussion? Any objections? Everybody's good. Excellent. All right.

Article 3, if we could scroll down to Article 3 (1)(a)(v). There we go. All right. The commission members... So, the issue that came up is that in 2025, next year, the Governor may remove any member of the commission at any time, and this is in the statute. It does not say for cause. So, it gives the Governor total discretion to remove any member of the commission. Beginning in 2027, the statute says the Governor may remove any member of the commission at any time for inefficiency, neglect of duty, or malfeasance in office. This year, the Chief Justice can remove any of us at any time for cause. And so the issue that came up was how to deal with lack of attendance at commission meetings, and whether the chair or the executive director, or the chair in particular, should have authority to communicate with the appointing authority about repeated absences. And it seemed to go both ways.

I mean, one scenario would be if a commission member is frequently absent, and that's causing a problem, there might be no way for the appointing authority to know about that absent a communication. But on the other hand, if there are good reasons for the commission member to be...meeting...meetings frequently, there's no way for the appointing authority to know that without the

chair explaining why it's not a bad thing. So, there seemed to be a desire to have some language in here that would authorize the chair to make those kinds of communications with whoever the appointing authority is in the particular year at issue. So, these were the three options for language that might accomplish that. And obviously, other language is also possible. These were just the three that came up.

Addie Smith: I like 3, just to kick off the conversation.

Susan Mandiberg: What do you like about it?

Addie Smith: Well, I just appreciate that there's going to be a record of the reasons and that's sort of detailed and then there's opportunity to communicate that information. I feel like it covers all of the concerns that we were trying to address.

Susan Mandiberg: One of the things I like about 3 is when there's a record, it protects everybody, and it protects the chair from accusations of being arbitrary and biased.

Rob Harris: Yeah, I like 3 too because it does memorialize the reason without saying whether it's excusable or non-excusable, where the chair would have to exercise some discretion, and then just give that information and pass it along to the appointing authority. So, I prefer 3 as well.

Susan Mandiberg: I like 3 also, I assume that in the course of that communication, the appointing authority might ask the chair for the chair's opinion about whether this was a problem or not. I mean, if there was a conversation, it would go as conversations go and take its own course. Is there a reason to mention that the chair may or may not be allowed to give opinions, or is that just sort of understood?

Rob Harris: I think it's understood. I don't think there's anything barring from the chair or any member of the board or agency from putting the information into context.

Susan Mandiberg: Yeah, I don't think so either. But I just wanted to make sure everybody's on board with that.

Eric Deitrick: Yeah...

[Crosstalk 00:13:28]

Susan Mandiberg: Go ahead.

Eric Deitrick: ...from the staff perspective, option 3 is in line with how we understand our role is going to exist in the executive branch, where we'll be required to provide the

Governor's office with notice after each commission meeting of who was there and who was not. So, I think that works for us as well.

Susan Mandiberg: All right. Just wanted to mention that in subsection (b), especially down in (b)(iii), if you could scroll down to that, please. This schedule was specifically authorized by the commission at our meeting, so I just made the changes that were required there. And it's important to remember that after this year, voting members don't choose the executive director. Starting in '25, the Governor, with the advice of the Senate, chooses the executive director. And starting in June of '27, it goes back to the voting members choosing the executive director. So, a year and a half where the Governor chooses the executive director and not the voting members. So, that's in the ORS 151.213.

All right, (1)(c), which is up there now... Let's see. I'm sorry, (1)(e). So, the feedback said that the bylaws should clarify when it's appropriate for members to communicate with the press and/or the public. And so this is what we drafted to reflect that. It requires... It says in the last sentence, an individual commission member may not act as spokesperson for the commission unless authorized to do so by the chair and executive director. And so the question that I have is whether that authorization needs to be in writing, again, to protect everybody involved.

Rob Harris: I got a question before that, Susan.

Susan Mandiberg: Yeah.

Rob Harris: Why do they have to be authorized by both the chair and the executive director? What if those two disagree?

Susan Mandiberg: Okay, well, I don't know. Let's talk about it.

Addie Smith: Feels like governance-wise, it'd be more appropriate for the chair to offer that designation. And certainly I think we would all hope the chair would be in close conversation with the executive director when making that decision.

Susan Mandiberg: All right, so we'll take out executive director. I think that's good.

Addie Smith: I think "in writing" is fine because I think in today's sort of modern day and age, that writing is likely to be an email saying, "I see so-and-so has reached out, feel free to speak with them."

Susan Mandiberg: So, authorized to do so in writing.

Addie Smith: Yeah.

Susan Mandiberg: I agree.

Addie Smith: Just for the same reason we've been talking about, this is a lot of lawyers, and so COA is always helpful, to use a very technical term.

Susan Mandiberg: [Laughter] All right, great. Thank you. Anything else here in this article? Under executive director, under subsection (2), it's... I just referred to statute because of how it changes two times over the course of the next number of years. Moving down to article 4, section (2), the commission thought it was important to be able to have more meetings than once a month if we needed them. And that kind of came up in the context of this extremely ambitious strategic plan calendar that was presented to the commission during the meeting. So, I think that was required or requested at the meeting and shouldn't be any problem with that, I don't think. If we go down to... So, in general, in Article 4, feedback from the meeting was that there was need for more clarity regarding the different kinds of meetings. And so the original draft had tried to make things shorter by mashing procedural things together, but it seemed like clarity is more important than short length. So, what this draft does is it breaks everything down into three various different kinds of meetings. So, we have regular meetings in subsection (2), and there's not much change for the procedure there until you get down to (d)(ii). And so there we are, (d)(ii).

So, the problem that came up – because of the public meeting laws and the notion that there has to be a quorum in order for it to be an official meeting – but the issue came up of what happens if somebody needs to leave the meeting briefly, for example, to use the facilities or to take a phone call or whatever, comes up, and we shouldn't have to stop the whole meeting and stop all discussion if somebody is out for five minutes. So, that was the concern. And so looking at the public meeting laws, the sense of the body, I believe, and people can correct me if I misunderstood, was that we should make a distinction between making a decision, taking a vote, or deliberating toward making a decision, that the meeting should be able to continue to have a discussion if someone is out temporarily, but certainly not take a vote until there is a quorum. So, that's what we tried to reflect here. And I just got everything off of my... Huh. I did something that makes me not see the screen anymore. How can I change that? There we go. All right. That's what we were doing there. I think it's a little tricky. As we've discussed before, these public meeting laws are difficult to interpret, but nobody objected to taking this approach at the commission meeting. So, is there any discussion on this now? Or Eric, if you wanted to weigh in, that would be great.

Eric Deitrick: Yeah, Susan, I think what this means is if the commission is hearing a presentation from a public defense provider or agency staff and someone steps

out, that presentation can continue because it's information gathering. But if the commission's engaged in a discussion on a topic, we would have to temporarily take an adjournment until the person returned.

Susan Mandiberg: So, you're interpreting "deliberate" to include discussion?

Eric Deitrick: I would, yeah. I think that's the distinction I've gleaned from looking at how in the Legislature, the committees operate without a quorum, and the discussion in the public meetings manual from DOJ is anytime the group is in a discussion about a subject matter within its jurisdiction, we need that quorum. But if it's just gathering information from folks outside the commission, it could continue.

Susan Mandiberg: Okay, so I don't think this captures that. [Laughter] Jennifer and Rob, you were both at the meeting. I thought I understood people to be distinguishing "discussing" as different from "deliberating," but I think that's a pretty fine line.

Jennifer Parrish Taylor: I would say yes. I mean, I think deliberation comes in when you are planning to take a vote, and discussion is like you're just receiving information. And so I just think back to what Senator Prozanski was saying is that often they won't have...not often, sometimes they won't have quorum, and so they go to more of an informational hearing where they can continue to meet, but there's an expectation that they won't be voting on anything.

Susan Mandiberg: So, an informational meeting, I understood him to include not just listening.

Jennifer Parrish Taylor: Correct. In an informational meeting, you can still ask questions, but the expectation is that even though you're having a conversation, you're not going to have a vote. And you're asking questions not to necessarily make a decision that leads to a vote, but you're soliciting information to come back to, to have a more fulsome discussion when you can have a vote.

Susan Mandiberg: So, let me put forth a scenario, right? We're at a meeting and somebody external to the commission is giving us information. And I ask a question and the person answers, and then can I discuss that answer with you briefly in the course of interacting with that person? Or does that become deliberation?

Eric Deitrick: Susan, my advice would be that the line you're talking about between deliberation and discussion is so fine, and when you look up the definition of deliberation, it includes the discussion. So, my advice would be anytime the commissioners are talking amongst themselves, you would need a quorum. You could ask questions of the presenter, whether it's staff or an external provider, but to refrain from discussion on the issue amongst the commission unless there was a quorum present.

- Susan Mandiberg: So, maybe what we should say is something like, I'm just thinking out loud, a quorum of the commission is required to decide an action item or to deliberate toward an action item, comma, to deliberate, whoops, to deliberate toward making a decision or to discuss information among commission members. A quorum is not required to receive information from staff or stakeholders. How about that?
- Rob Harris: It's a gray area. I mean, if you have someone testifying and you're taking information and a couple of commissioners, probably me, start engaging in debates or not debates, but like, "What is the meaning of this and how would this apply to policy?" I can see someone saying, "Gosh, you're taking information that will could lead to a deliberation because these..."
- Susan Mandiberg: But taking information wouldn't be prohibited. It would be discussing that information that would be prohibited.
- Rob Harris: I know. I'm saying when does my question of a person testifying get into sort of eliciting information that I think would be relevant towards a vote going into the future.
- Susan Mandiberg: But you're still just eliciting information. You're not discussing it with another commission member.
- Rob Harris: Sure. I mean, I'm probably okay with that. I was thinking maybe you say, "Should a meeting not have a quorum, the commission can go ahead and take information and have discussion, general discussion, but shall not engage in deliberation," or something.
- Susan Mandiberg: Well, Eric, general discussion. How does that resonate for you?
- Eric Deitrick: Shall not engage in general discussion?
- Susan Mandiberg: No, shall be allowed to have general discussion. You think that's deliberation?
- Eric Deitrick: I do, if it is on a topic that is likely to come before the commission as an action item. That's how generally my recollection of the DOJ manual is. They talk about issues that are not only before the commission, but likely to come before the commission. And so it's hard for me to imagine commissioners discussing something that probably isn't within their jurisdiction.
- Susan Mandiberg: So, any kind of discussion equals deliberation if it's a matter that's likely to come before the commission as an action item.
- Eric Deitrick: Yeah.



Susan Mandiberg: So, is that the language that we should incorporate into this section? "A quorum of the commission is required to decide an action item or to deliberate or discuss items that are likely to come before the commission as an action item. So, if we did that, then we would say a quorum is not required to receive information from staff or stakeholders. What do you all think about that? Should I put it in the chat? I don't know if I can do a chat at this point.

Eric Deitrick: I like that drafting, Susan. I think it's the safest language for the agency to ensure it complies with public meeting law.

Susan Mandiberg: Mm-hmm. Rob, Jennifer, Addie, what do y'all think?

Rob Harris: My only concern with that is that if someone testifies and I have a clarifying or follow up question, I want to be able to ask that question, and I think sometimes that can lead to a discussion. I get that. But sometimes it's important to ask a question of someone providing information to you for clarification purposes.

Susan Mandiberg: How about, a quorum is not required to receive information from staff or stakeholders or to question the...to receive information from and ask questions of staff or stakeholders. How's that?

Rob Harris: Relevant to the presentation maybe, so we don't get off base.

Susan Mandiberg: Relevant to the presentation. Okay? How does that work? Yeah.

Jennifer Parrish Taylor: That's fine.

Susan Mandiberg: All right. Tricky. These public meeting laws are tricky. All right. Going down to (d)(iii). No, we're good. Going down to (d)(vii), that was just something that came up at the meeting. Going down to subsection (3) Informational Meetings. So, the commission thought it was important to distinguish these from regular meetings. These are purely informational meetings. So, there's a couple of typos in subsection (3), if you look down at (c), it should be (2)(b) and not (3)(b). And if you look down at (d), it should be (2)(c) and not (3)(b). So, those are typos. And I'm sorry about that.

And the question here is whether the procedures for informational meetings should be the same as procedures for regular meetings. And in going through this again today in preparing for this meeting, I want to apologize. This was sort of put together quickly in order to get this material out to everybody in a timely fashion. There are two areas where I think the procedures for informational meetings need to be different from the procedures for regular meetings, and that is under Agendas. The regular meeting procedures call for public comment

to be sent in in writing and for people to need to sign up to speak at the meeting. I think people had in mind that these informational meetings would be more informal than that and that they would be meetings where people could come, and hands could be raised, and people could be called on. It's possible that we may need at the commission meeting to discuss more what people have in mind for these informational meetings.

What I was sort of thinking of was meetings where every once in a while, a quorum of the commission just meets with communities or stakeholders to discuss how things are going and ideas and so forth. The other part is in the meeting... So, that all goes down in the meeting conduct stuff down in subsection (e), which is the next one. The other part that I think needs to be different is regular meeting procedures include a section for voting and promotions, but these informational meetings don't have action items. So, there won't be any motions and there won't be any voting. So, those things need to not be part of the procedure for informational meetings. So, this is all kind of technical except for the part about dealing with public... I'm happy to amend this to take away parts about motions and voting, but I think we need to have a discussion about the public comment part. Because I don't have a sense of exactly what the commission has in mind for how these informational meetings should proceed. So, if any of you have insights in that, that would be great to hear.

Jennifer Parrish Taylor: I guess I just assume that they would be a form of listening session. So, if there's a specific topic and you're asking the community or providers like, "Hey, we want to hear from you. Here's your opportunity from this time to this time. Here's the specific action item." And it's like public comment where people just come in, say what they need to say, and then you just keep going from each person that signs up.

Susan Mandiberg: Right. And so do we want people to have to sign up ahead of time or can they just show up?

Jennifer Parrish Taylor: I think both. I think we could say we encourage folks to sign up, but if you just show up, that's also fine too. I think signing up at least lets the staff know that there will be someone there who intends to say something. I know it's helpful, at least when we do community events, we have folks register and then we use that as a follow-up tool. So, we know everyone who registered who either gave comments or not, or they registered, and they just didn't show up. We can then follow up to say, "Oh, I see you had interest in X, would love to talk to you about this further." So, strongly encourage registration. But if folks just show up, I think that's also fine.

Susan Mandiberg: And what do we want to do about written input? Yes? No? Possible? [Laughter]

- Eric Deitrick: I think possible, Susan. I really like the distinction the commission made at the March meeting about regular meetings, informational meetings because the whole language about special meetings was always elusive to me anyway. I'm kind of viewing the informational meetings as a way that commission can do just that, gather information. I can see there being more informal, as you and Jennifer are talking about, like kind of like listening sessions. But I also think as we move into the executive branch and we have the opportunity to adopt administrative rules, the public comment period that goes along with that, that may be a time where the commission holds a meeting to receive comment on proposed administrative rules. Or maybe you'd want to be more formal. So, I think that flexibility would be good.
- Susan Mandiberg: So, I can try to redraft this section here to reflect this discussion if you're willing to authorize me to do that. You, Jennifer and Rob and Addie. Is that something you'd like me to do?
- Rob Harris: Yep.
- Susan Mandiberg: Yep. And so the question is... I think it would be a good idea if I got your thumbs up or thumbs down or suggested changes prior to our commission meeting, but our commission meeting is coming right up. And so, Eric, is there a way for me to, if I were to draft that stuff today or tomorrow, depending on my time, and I sent it to you, for you to send to Jennifer and Rob and Addie. If they had comments, they could send them back to you in writing and you could get them to me. And I could just have them to discuss at the commission meeting. Is that a good way to proceed on this, people?
- Eric Deitrick: I think so.
- Susan Mandiberg: Addie, that work for you? Jennifer? Yeah. All right. I will do that. Let me just make a note to myself. I'll try to get that. I have other meetings today, but I'll try to get that today or at the latest sometime tomorrow. All right. Getting down to Emergency Meetings, this new material, I drafted it, again, because the commission wanted the three kinds of meetings to be distinguished. So, it seemed to me that these were the guidelines that worked for emergency meetings because by definition, emergency meetings come up too fast for regular meeting guidelines to apply. And the only, let's see, we're (6)(b)(iii). So, we're going down to (6)(b)(iii). The issue that came up at the meeting is that everybody was fine with having a cutoff time for getting written public comment before the meeting, a cutoff time that would allow us to have enough time to read it before the meeting. And then there's the question of public comment that comes in after that cutoff time would get sent to us at a later date.

And the question came up of whether there should be a cutoff time after which we wouldn't have to deal with public comment about a meeting that was over. And so commission members recommended 48 hours, and that's fine. But the thing I wanted to discuss was whether that should say two business days instead of 48 hours because if there was a meeting on a Friday, 48 hours would mean that public comment had to come in by Sunday, and that doesn't seem fair. So, my suggestion would be to say instead of 48 hours, we say two business days.

Jennifer Parrish Taylor: That makes sense.

Susan Mandiberg: All right. I will change that. All right. Moving right along. Article 5, the big issue in Article 5 is the audit committees. Before we get to that, with subcommittees, in (1)(e), the changes there are procedural rules for subcommittees. The draft that we presented to the commission didn't have procedural rules for subcommittees. And so I think those are important. And they sort of track regular meetings, but subcommittee meetings are more ad hoc in terms of when they're scheduled, how often they're scheduled, and so forth. So, this is meant to allow more flexibility in all of that. So, any questions or comments on any of that?

If we get down to (1)(f), there is something to discuss. And so the issue of standing subcommittees, there was a lot of discussion about this at the commission meeting. People seem to agree that at least two committees should be standing committees, one being this one, the Governance Committee, and the other being a legislative committee. And Chair Kampfe went on at some length about why having a standing legislative committee is important for us to be able to meet the legislative deadlines for reports in the cadence of our regular commission meetings. So, the standing committee on legislation, of a legislative standing committee, wouldn't make decisions but would be able to review the reports and provide input to the commission meeting that would allow us to act more efficiently. Is that a fair evaluation, folks who were at the meeting? Does that seem correct?

So, the big issue that came up was whether those two standing committees should be absolutely identified in the bylaws, or whether the bylaws should merely authorize the chair to create standing committees, whether the bylaws should authorize the chair to create standing committees with the approval of a majority of the voting members. So, those are sort of the three options. Any discussion?

Addie Smith: [Distortion 00:46:35] just lean towards the option that provides more flexibility. I think there's nothing that would prevent us from having sort of those standing

committees that have just been discussed if we allowed for the chair to create them. Having them and then going through periods of time where they're less relevant or sort of defunct puts us in an awkward place if they're written into the bylaws. And I think we want to create bylaws that require the least amount of amendments and change as possible.

Susan Mandiberg: Absolutely. So, allow chair to create standing committees. Does it need to have the approval of a majority of voting members?

Rob Harris: I think that's a good idea.

Susan Mandiberg: Okay. To create or dissolve standing committees? Addie, does that work? Okay. All right, I will draft that. And so then we get down to the audit committee. So, the audit committee, [Laughter] the question, this came up early on as an issue of whether audit committee meetings are subject to the public meetings requirements. And the problem is that under the public meeting laws, a governing body is a public body that consists of two or more members with the authority to make decisions or recommendations to a public body. And as a commission, we're a public body. So, if the audit committee is making recommendations to the commission, then the audit committee is a governing body, and its meetings are subject to public meeting laws. And there seemed to be a sentiment toward not having the audit committee meetings be subject to public meeting laws. And so the issue was whether the audit committee actually makes recommendations to the commission or whether the audit committee actually only makes recommendations to the internal auditors in the agency. And if the audit committee only makes recommendations to the internal auditors, and the internal auditors make recommendations to the commission, then the audit committee is not a governing body. Have I explained that correctly, Eric?

Eric Deitrick: Yes, exactly.

Susan Mandiberg: All right. So, the question is whether that's accurate. I looked at the audit committee charter, which was sent to you all as an appendix, and it says that the charter was something that was put together by the former commission. I assume we can amend the charter, but in any case, this is what it says now. The audit committee sets the priorities of the internal audit function and goes on to some of those things. The commission delegates authority to the audit committee for establishing or accomplishing duties that are set out. One of the duties is ensuring the integrity and effectiveness of the internal audit function. And then it says the internal audit function reports functionally to the committee. So, that has the internal auditor reporting to the committee. A little bit farther down, it says that the audit committee advises management and the chief audit executive and/or the commission as appropriate. So, it doesn't

require the audit committee to advise the commission, but then it says that the audit committee reports at least annually to the commission on committee activities. I don't know whether reporting on the committee activities is the same thing as making recommendations to a public body. So, there's that linguistic issue again. The sort of fine line sort of issues again.

Farther on, it says that the audit committee shall monitor and recommend actions to improve the quality of the internal audit function. But it doesn't say to whom the audit committee recommends those actions. I assume recommends those actions to the internal auditors. Farther on, it says the audit committee will provide input on the commission's requests for audits to be performed by the Secretary of State Audits Division. Again, is input the same thing as a recommendation? Farther on, it says that the audit committee will advocate for adequate budget resources, but it doesn't say to whom the audit committee advocates. And it has them reviewing and considering. There's nothing that requires the audit committee to recommend anything to the commission. So, that's kind of the lay of the land as I understand it.

And so what Eric and I decided to do in this draft that you're considering is put what you see here. The OPDC may approve an audit charter and advisory audit committee to advise OPDC internal auditors in making their reports to the commission. And then farther up, we have something that has the executive director having the internal auditor make recommendations to the commission. So, if we go that way, I think that we are in compliance with both the statute and the existing audit committee charter. And it has the audit committee not making direct recommendations to the commission, and we can certainly add that here. But we recommended it this way for discussion, so I'd love to have some discussion.

Rob Harris: What does the budget note that established the audit committee...what does that say?

Susan Mandiberg: I believe that the budget note gives the commission permission to establish an audit committee reporting to the commission. It does not require the commission to do so. It very specifically allows the commission to do that. It also mentions that OPDC's internal audit staff should report to the commission. This is what it says. I'll quote it, and it's in the memo I sent you. "The Public Defense Services Commission is directed to report to the Joint committee on Legislative Audits during the legislative session in 2022 on the establishment of the commission's internal audit function. The report is to include the internal audit staff reporting structure to the commission." And then there's a couple other sentences. Then it says, "The commission may consider the establishment of an audit committee comprised of a subset of commission members with quarterly reporting to the full commission." It says "may consider." And again, in the audit

committee charter, it says what I said before, I'm trying to find it. It says "and/or report to the commission." So, there's nothing in any of that that requires the audit committee to make recommendations to the commission.

Rob Harris: All right. So, if the audit committee were to make recommendations to the internal auditors, and then in their required annual or semi-annual reports to the commission, they told us what those recommendations were, so we were very well-aware of it. And then we could ask whether or not those recommendations were followed or accepted or not, for whatever reason. Would that accomplish sort of the goal that we have now, rather than having them make their recommendations directly to the commission? But at least we were aware of what those recommendations were and the outcomes of those recommendations.

Susan Mandiberg: We could certainly require the internal auditor to report to the commission any recommendations they received from the audit committee. That would be even clearer. I mean, we could do both, it seems to me. Eric, what do you think?

Eric Deitrick: No, I think that's right. That's the structure that I see contemplated here, Rob, is that the auditors would send that information along to the commission. The commission could set that expectation for the auditors that they'd like to hear everything that the committee discussed and put forward.

Susan Mandiberg: And then also in the report, it could be in the report about here's what we said to the internal auditors, right?

Rob Harris: And did you say there was a requirement in the current charter that the audit committee does a report, just a report, to the commission regularly?

Susan Mandiberg: Yeah. A report, yeah.

Rob Harris: Okay.

Susan Mandiberg: Let me see what it says here. At least annually report to the commission on committee activities.

Rob Harris: Okay.

Susan Mandiberg: So, any other discussion about this? Jennifer, Addie, is this okay with you? I think I saw a thumbs-up from Addie.

Jennifer Parrish Taylor: Sorry, I'm trying to come off mute. It's fine. I guess in this area, I tried to veer towards less engagement as they're supposed to be independent. So, I think the minimal thing that we have to do related to this and in terms of reporting, I

think the better. I think the intention is to have this be independent and they do what they need to do, and they let us know when there are issues and that we report on those issues as they come up.

Susan Mandiberg: And they let us know through the internal auditor. Yeah. All right. That works for me. And let me get rid of that. Where are we? Yeah. Article 6, there's nothing in it, that seemed to be okay with everybody?

Rob Harris: Mm-hmm.

Susan Mandiberg: Oh, Article, sorry, 5 (3)(b). That was just very straightforward. Again, rather than, this is true throughout, rather than listing, can we go all the way back, Mona, please, to Article 1 and Article 1 (3)(b). We adopted option C; the commission adopts the principles outlined in the action plan in all areas under its jurisdiction. So, rather than list out all or some of the areas under our jurisdiction, as was true in the red crossed-out stuff, which said criminal juvenile dependency and left some things off. We've adopted all of the language about areas under our jurisdiction. I went through and used that new language in all of the places where we had previously listed things out. So, that was what was going on down at the end. And that's it. So, questions, comments, suggestions, cries of agony?

Rob Harris: I think you did an excellent job reading through this. I didn't have a ton of questions because I think we've discussed most of these things before. I think this fine tuning that you did this round is really, really good, Susan. So, thank you very much.

Susan Mandiberg: You're welcome. You know, if you're a geek, it's kind of fun. What can I say? Anything else to discuss? Otherwise, we've had a very efficient meeting, and I will use the remaining hour to make these changes and get them to Eric to send out to the commission. Here's a question I have. I don't know if any of you actually had time to read through this memo that I included, but if you did, did you find it helpful? And should I create a memo like that to give to the whole commission?

Addie Smith: I would say it really depends on how much time it took you. It was helpful, but if it took you hours and hours and hours, I'm not sure that the track changes with the color coding aren't sufficient.

Susan Mandiberg: It took me some time, but mostly I did it for myself because there's a lot of moving parts in this, and I needed to have some kind of chart for myself to keep track of what I was doing. So, once I did it for myself, it wasn't very hard. And now that it exists, it wouldn't be very hard for me to go through and remove the



stuff that's unimportant and just include the stuff that might require some explanation, so it'd be shorter.

Rob Harris: I think that's a good idea. The way I used it as well is I scanned it. I went to the redline draft, and then if I had questions, I would go back to your chart. So, I treated it as sort of a bibliography, and maybe... I found it handy a couple of instances. It reminded me of the discussion, but perhaps put it after the redline version so people don't feel like they've got to go through eight or nine pages and get a little confused.

Susan Mandiberg: [Laughter] Okay, I'll do that.

Rob Harris: So, maybe treat it as a bibliography.

Susan Mandiberg: Okay, so what I'm going to do in the draft that I put together is I'm going to take out... I'll leave the red line things, I'll keep the new things in blue, and then I'll do a shortened memo afterwards. And I will include these appendices if I think they're important for people to have the information.

Rob Harris: Good, and I think that we talked through everything. When you put options, we decided here on what, we had a consensus, and then there's just one little area where we're asking you to redraft some of the language. I can't remember what that area was, but other than that, we got it 98% done, I think.

Susan Mandiberg: I think so too, and I'm not going to give all of the options. I'm just going to give the option that we adopted.

Rob Harris: Right.

Susan Mandiberg: And obviously keep the other ones in reserve in case there needs to be discussion. Does that work for everybody? Thank you all for your input, and when I send you that draft of that new section, if you could please get me or get Eric to get me comments, even if it's just a sentence saying, "This is great," or "This sucks," or whatever you want to say, it would be very useful to hear some feedback, okay, so I'm not laboring in the wilderness here. Okay. Thank you, everybody. Eric, I'll get this to you as soon as I can.

Eric Deitrick: Sounds great.

Susan Mandiberg: Thanks, everybody. Bye-bye.