

Susan Mandiberg: Well, good morning, everyone, and welcome to the May 1st meeting of the Governance Subcommittee of OPDC. We only have one item on the agenda, and I'm hoping that we can get this taken care of today and be able to forward it to the full commission, hopefully at the next meeting. First of all, I want to apologize for some typos in the Considerations document that you were given. First of all, on footnote one, the statute should read, "The members of any public body which consists of two or more members with the authority to make decisions for or recommendations to a public body," those words got switched around. And second of all, on page two, sub C and sub D are just repeats of what was in B2. I'm sorry for those, I guess, typos. I just evidently didn't proofread clearly enough, and I apologize for that. I hate to make those kinds of mistakes.

Paul Lipscomb: If those were the biggest problems we had, we'd be doing very well.

Susan Mandiberg: [Laughter] Yeah. So, I know that we've been trying really hard to put this together so that the Audit Committee meetings are not public meetings. I know that's what the Audit Committee wants. The previous edition of the charter went to the DOJ, and they very firmly think that the Audit Committee is subject to the public meeting laws. And I have heard through both our previous OPDC director, Jessie, and our new OPDC interim director, Ken, that the Oregon Justice Department is probably going to come up with a rule that all audit committees are subject to public meeting laws because they believe that what audit committees do is important enough and detailed enough and enough connected to policy and behavior that the sunshine of public meeting laws needs to shine on what audit committees do. So, that's some of the context that we're dealing with here.

And as I looked really carefully at the statutes and regulations, which I outlined in that Considerations document, and I went, based on those considerations, I did what I suggested that you all should do, and that is go through the draft and see which Audit Committee duties arguably involve making decisions on policy or administration, and which arguably involve making recommendations on policy or administration, and tried to figure out what it would look like if we took all those out or amended them. I came to the conclusion that it wouldn't look like an audit committee then. [Laughter] I don't know what it would look like. So, I'm happy to go through the ones that I think look problematic, or even better, I'm happy to hear what the rest of you have to say about it. After we do that, I have a couple of questions about some of the changes that, Scott, were in your suggestions for how we amend this. So, to start out, has anyone else gone through that exercise of comparing the provisions to that outline of the statutes and regulations? No, Rob was on vacation. [Laughter] I think it's great that you took vacation. Scott or Paul, have you had a chance to do that? I know it's asking a lot. You're muted, Paul.

Paul Lipscomb: No.

Susan Mandiberg: No, okay. Let me go through what I saw then. I think that sounds like it would be the most efficient. So, if you have the charter in front of you, as indicated, the OJD input is in blue, Scott's input and cross-outs, the input is in red, some of the cross-outs are in black or blue or red. And where we seem to run into the problems with the statutes and regulations starts in section C. Subsection 3B, provide input to the chief audit executive. The chief audit executive stands in for the agency on risk assessments. I believe that the Justice Department would see this as making a recommendation on policy or administration, writing input on risk assessments. Subsection C, providing input on the creation or modification of the Internal Audit Plan. Again, my guess is the Justice Department would see this as a recommendation on policy or administration. Scott, sorry, you have your hand up.

Scott Martin: Yes, just a quick point of clarification. I heard you mention that the chief audit executive stands in for the agency. That gets to a key issue, I think, on the Audit Committee and who they report to, agency or commission. And I just wanted to get that sort of clarified because I don't believe the chief audit executive would represent the agency in that capacity.

Susan Mandiberg: Oh, talk more about that. What do you think the chief audit executive's role is?

Scott Martin: Well, so the chief audit executive is to provide an independent and objective assessment of the performance of the agency in a lot of different areas. They do performance audits, they do financial audits, but it's that independence. So, I would not assume that I represent the agency because I need to maintain independence from it.

Susan Mandiberg: So, I have another question. Agreeing that you have independence of a sort, [Laughter] even though your salary is paid by the agency.

Scott Martin: Yes, of course.

Susan Mandiberg: Do you then make recommendations to the agency?

Scott Martin: The audits that I perform are recommendations to make changes based on evidence and procedure and whatnot, yes, to the agency. But that's in my capacity as the chief audit executive to the agency and not the Audit Committee making a recommendation to the commission or agency. So, it's myself doing that and not the Audit Committee.

Susan Mandiberg: Got it, so I'm trying to, as we don't have a functioning general counsel, I'm trying to put myself in the headspace of someone in the Department of Justice lawyer capacity, and so I might say – so you tell me where this reasoning is wrong, okay? I might say your role on the Audit Committee and you and the Audit Committee come up with an analysis and based on that analysis, you come up with an audit or

whatever, I'm getting the terms wrong. And then based on that, you make a recommendation to the agency. It sounds like that chain basically involves the Audit Committee making a recommendation through you to the agency. Do I have that wrong?

Scott Martin: That's not quite right. So, the Audit Committee's purpose is to guide me, the chief audit executive, in the art or the practice, I should say, of internal auditing. So, their experience and insights are used to sort of guide me in this role to make sure that I am being objective. And of course, they work to ensure my independence. So, with that support, I then do the analysis. So, I'm not really doing analysis with the Audit Committee actively. They're saying, "Were your methods correct? Did you follow the standards?" If I can say, yes, I did that, then objectively I provide the analysis and the recommendations.

Susan Mandiberg: All right. So, we were just talking about 3C. That's a good clarification of how that dynamic works in your role. Assuming for the purposes of argument there's no problem with 3C, let's keep going. Anybody else have anything to say on 3C? All right, 3D. The Audit Committee will review and approve the audit plan. I believe it's possible that this notion of approving the audit plan would be seen as making a decision on administration. Any comments about that? Going on to E, inform the executive director of the agency...

Scott Martin: Real quick, if I can. Sorry to interrupt.

Susan Mandiberg: Yeah, for sure.

Scott Martin: Chairperson Mandiberg. The audit plan is an internal audit matter specific to the priority of audits, the scope of audits and their duration, but not an administrative matter for the agency. I mean, to the extent that there's resources applied to it, yes, I get that. But mainly that document is for the purpose of internal audit to plan their audit work.

Susan Mandiberg: An internal audit matter to plan the audit work. I'm taking notes. Internal to whom?

Scott Martin: It's for the internal auditor. It's for the planning of the internal auditor's work at the agency. It would require resources to be assigned or prepared for that work by the agency, but it's not an administrative function or policy change with the agency. It happens every year as a matter of the internal audit planning.

Susan Mandiberg: Okay, anybody else have any input on that? And Ken, I see you're here. You should obviously feel free to provide input. Okay, let's move on to 3E. Inform the executive director of any concerns regarding the job description of the internal auditor. Again, trying to think like someone in the Department of Justice, I would see that as making a recommendation on administration because the job description of the

auditor is part of the administration of the agency. I think that's how I would think about it. Any responses to that? Yeah, Scott?

Scott Martin: Here, the word "inform" was chosen to be more passive to convey information in a more benign way, not to make a recommendation.

Susan Mandiberg: So, inform in a benign way about the job description. So, that would mean just saying, "We think this job description is bad because..."?

Scott Martin: So, for the purpose of maintaining independence and objectivity, if the job description compromises either, they're pointing it out. They're saying the way this is structured could impede objectivity or independence.

Susan Mandiberg: Okay, going on to G. Advocate to the agency management for sufficient budget resources. Again, it seems to me that would implicate making recommendations on administration or policy. Any sense of that?

Scott Martin: If I can, I'll just add on that that it's part of the duties of the Audit Committee to ensure the resources are available for the function of the internal audit job and work, and the chief audit executive brings that to their attention.

Susan Mandiberg: So, bring to attention and advocate sound different to me.

Scott Martin: Okay.

Rob Harris: I agree with that, Susan. I think you could take the word advocate, maybe you use the word again, inform. As Scott said, it's more of a passive voice, but certainly the Audit Committee should be in a position where it should be able to convey information of these two types included in C and G. So, maybe advocate is not the correct word to use there.

Susan Mandiberg: Okay. Going down to I, inform. So, we have the word inform. If in the judgment of the committee, agency management is assuming an unreasonable level of risk. So, unreasonable to me implicates making a judgment, and it says in the judgment. So, if you're informing that in your judgment, something is unreasonable, is that a recommendation that you do it differently?

Scott Martin: That's a judgment call. Understood. I've accepted that as being the role of the Audit Committee to, based on the information from the chief audit executive on the risk that they see, a finding is made, let's say. And that finding has these different risks based on a criteria.

Susan Mandiberg: Right.

- Scott Martin: And if they agree with that, then they inform the executive director. Of course, that's done through the audit itself. So, it's a little bit redundant in that way, but I've always understood this to be the role of the Audit Committee. Prior to my getting here, I understood that's what it did. So, that's why it's still there as a function because they have that role to inform them.
- Susan Mandiberg: Right. So, I mean, I guess part of what I'm trying to get at is if we change these provisions to make it absolutely clear that no decisions or recommendations on policy or administration are involved at all, do we still have anything that can be called an audit committee? [Laughter]
- Scott Martin: We do to the extent that their function is to oversee the chief audit executive in the practice of internal auditing. So, their function then becomes very much about my performance, my evaluation, my guidance, and maintaining my objectivity. And from there, I'll make recommendations and communicate those to the agency and to the commission. So, I see their role as a mentor of sorts, as an advisory body to me, and just to me. That's my understanding of the relationship in a functional capacity, not an administrative capacity.
- Susan Mandiberg: Functional, but not administrative.
- Scott Martin: That's the dual reporting role of an internal auditor, reporting functionally to the Audit Committee for these kinds of matters, advice, guidance, oversight, and then administratively to the chief executive for administrative functions as far as payroll, time off, resources, availability, that kind of thing.
- Susan Mandiberg: Okay, so keeping on going with the ones that stood out to me, 3N, participate in the performance appraisal of the chief audit executive. So, what happens? Who makes the performance appraisal that they're participating in?
- Scott Martin: That's done by the executive director with information from the Audit Committee. The Audit Committee would speak to my performance and the guidance they've provided and where they feel I'm at. That would inform the appraisal provided by the director.
- Susan Mandiberg: What does that look like? I mean, is it in writing? Does somebody just talk to the executive director? How does that work?
- Scott Martin: It hasn't happened yet in my one and a half years here. I understand it to be a written document.
- Susan Mandiberg: So, if the Audit Committee's written document were to say, for example, which I can't imagine it would say with you as the chief audit executive, but if it were to say, "We think the chief audit executive is doing a terrible job," doesn't that sound like a

veiled recommendation that the chief audit executive be put on some kind of performance review?

Scott Martin: Well, the written document I was referring to was what the administrative side, the executive director would produce. So, that would be the performance appraisal. How that information from the Audit Committee is communicated, I don't know if it's a written document or a verbal discussion. But to your point, is it a recommendation? It's an assessment. It wouldn't be a recommendation on administration or policy. So, I've always assumed that to be purely a report on my performance.

Rob Harris: I think it's normal for someone to reach out to anyone if you're doing an employer review to talk to the people they've been working with, which would include the Audit Committee. And it just says participate. I think it's fine, personally.

Susan Mandiberg: Okay. So, again, when I went through this, my training as a lawyer is to try to figure out the worst-case scenario. In other words, how my opponent, not that I'm saying the Department of Justice is an opponent, but how my opponent in a case would see the law or see the facts, come up with their interpretation, and figure out if there's a way to meet that interpretation. So, that's how I approach this. And so, keeping on going, SO, provide input on any commission request for audits to be performed by the Secretary of State Audits Division, etc. Provide input. What does that mean?

Scott Martin: This would be a request from the Secretary of State to perform an audit, which I understand they'll be doing early next year, on the process from start to finish on our operations. And I think then the Audit Committee in that capacity would advise them in some way, providing input to them on matters that they may be aware of. I don't think they would shape or advise them on what to do or not to do. I think it would just be, "Here's your contact, here's what they're working on now." Maybe they can leverage some of that information themselves so they're not replicating work. I think it would be that kind of input.

Susan Mandiberg: So, facts and maybe predictions?

Scott Martin: Facts.

Susan Mandiberg: Predictions that this is going to be an issue, for example?

Scott Martin: Oh, perhaps, right, perhaps. And then also maybe risk assessment that we have. That's something that I want to keep more private. And it might be in that time the Audit Committee says you can share the risk assessment with the Secretary of State for the purpose of their planning of an audit.

Susan Mandiberg: Okay. Q, 3Q. Receive external peer review reports and direct applicable changes. Direct sounds to me like making a decision on administration.

Scott Martin: I agree with your interpretation – sorry to interrupt, Rob – that the word direct I would recommend be changed. This is when there's an external audit or peer review of the agency. That should be taken under consideration. And then I think myself planning, and then I would get guidance from the Audit Committee on whether that's complete and correct. But I don't agree with the direct word.

Susan Mandiberg: Change the word direct to what?

Scott Martin: Inform, I think. Just let me read it again. Okay. Consider?

Susan Mandiberg: Consider. Well, consider, but the Audit Committee can consider, and if it didn't get communicated to anybody, it would be irrelevant.

Scott Martin: Let's see. Structure?

Susan Mandiberg: Structure to whom?

Scott Martin: Okay.

Susan Mandiberg: I mean, who would make the applicable changes?

Scott Martin: It would depend on what's being recommended. If it's a peer review of my performance, which is required every five years, it would be to my approach and methodologies. If it's a recommendation on agency performance, then that would be something that would be discussed with myself, and then I could make the recommendation to management.

Susan Mandiberg: So, again, it would be to you, and then you would...

Scott Martin: Exactly.

Rob Harris: So, would you put in there something like, maybe not consult, not direct either, inform or consult maybe with the chief auditor? So it's pretty clear who this information and recommendations are going to, it's not the commissioner, the agency itself.

Susan Mandiberg: All right, well, let's think about that.

Scott Martin: If I can add to that too, I think the role of the Audit Committee in this capacity is to facilitate communications. This is what I've read from other audit committee charters with other agencies, is that the audit committee facilitates communication

with external auditors. And so, I think their role might be, "Thank you for the input, we'll give it to our internal chief audit executive. They'll decide what to do." And as long as they're seeing that this method is being followed and the recommendations made for myself to management, I think we're good.

Susan Mandiberg: Okay. The last one I have here in subsection 3 is 3T. Be informed by agency management of the appointment or dismissal of the chief audit executive. Objections to the appointment or dismissal of the chief audit executive will be forwarded to agency management. That to me sounds like a recommendation.

Rob Harris: I mean, I guess if it's intended to change the agency management's decision, it would be, but if it's just to put on the record, "These are objections to your actions," I'm not sure. I guess that could in fact change the director's decision, I suppose, but that's up to the director, not to the Audit Committee.

Susan Mandiberg: Yeah, but any recommendation is up to the person who the recommendation goes to.

Rob Harris: Well, does it say recommendation though, or just be informed of it? Informed, yeah. Just an, "We're informing you of our objections should you go through with this, but it's your call."

Susan Mandiberg: So, you're saying that inform does not equal recommend.

Rob Harris: No, I think it's more of a we're putting a pin on this and that's what we're doing, but it's your call, Ken.

Susan Mandiberg: Okay, so if we then go down to 5A, every two years review and assess the adequacy of the committee charter. So, again, is that possibly a recommendation on administration, the charter being part of the administration?

Rob Harris: Well, I think that we have to keep in mind that the Audit Committee is independent and separate in many ways, and it has the necessity of making judgment calls and making assessments of its charter. And of course, there's also a section there about how the charter has to be approved both by the Audit Committee and the commission, right? But that's necessary to have these interactions. We're going to have interactions between the Audit Committee and the commission, the agency and various. Sort of like an inspector general, right? I mean, they're independent from the agency. They're getting paid by the agency. That's who's cutting their check, and there are some structures that need to be put in place and some interactions. But I think this is one of those interactions where it's just this is the job of the Audit Committee. And we need to include this standard in there. Maybe it's why the DOJ thinks all audit committees [Laughter] are public bodies, I don't know.

Susan Mandiberg: Yeah, I mean, again, playing devil's advocate, I understand that it's the job of the Audit Committee, but the question is whether a committee with that kind of job is subject [Laughter] to public meeting laws. Right?

Rob Harris: Yeah. Well, it's going to happen that the Audit Committee reports their concerns because as they go through the biannual process of reviewing and amending their charter, it is required ultimately to get approval from the commission.

Susan Mandiberg: Right.

Rob Harris: So, it becomes part of the process, I guess. Regardless whether you put it in here or not, it's part of the process.

Susan Mandiberg: So, I think there are two questions. You'll be happy to know that that's all of the stuff that I found. I have some questions about some other parts, but those are all the potential problems that I saw. And it seems to me there are two questions. One question is, do we make further amendments to sort of tone this down in the way that Scott was suggesting? And then accompany, because it has to go through Department of Justice review again, accompany anything with explanations. The other question is, as I'm sure you all know, when we ask for Department of Justice input, as opposed to them just doing the administrative task of checking things off, when we ask them to give us advice, which is what we did last time, OPDC gets charged for their time. It's not free. And given what we've heard about their rather firm position that audit committees need to be subject to public meeting laws, can we predict that no matter how much we fiddle with this, they're going to come to the same conclusion? Is it worth spending OPDC's limited budget on what would turn out to be a futile exercise? I think that our responsibility is to consider that second question just as much as the first question. Scott.

Scott Martin: To speak to that, I don't think it just needs to be our issue. This would have statewide implications and potentially if it's going to go that direction, I would ask that the Chief Audit Executive Council weigh in. That's a group of other chief audit executives throughout the state that have audit committees that are private for the most part, with a few exceptions. So, they can convey the impact it would have on their organizations to include discussions of risk assessment during these proceedings, which are a sensitive matter, as well as the impact it would have on candor generally in just discussing matters that are more sensitive.

Susan Mandiberg: I had no idea that there was such a thing as the Chief Audit Executive Council. That's great information. How often does that council meet? Is that an informal group? Tell us more about that.

Scott Martin: So, it's a formal group. It meets once a month. It's led by the Oregon Military Department's Chief Audit Executive and participants throughout the state and

members of the Institute of Internal Auditor Chapters in Portland and Salem join it. So, we have a lot of experienced internal auditors there that can articulate better than myself all the impacts that this would have broadly.

Susan Mandiberg: And you say that their charters, that they operate privately.

Scott Martin: They do. I've reached out to them to gain that perspective, and for the most part, with few exceptions, they are private audit committees.

Susan Mandiberg: Do you know if the Department of Justice has ever weighed in on their charters?

Scott Martin: I don't believe they have. I don't believe they have, no.

Susan Mandiberg: Uh-huh. It would be interesting to see one of their charters. Can you obtain some for us?

Scott Martin: I would have to ask those agencies. I do have them, but I have to ask for permission to release them to anyone.

Susan Mandiberg: Well, I think it would be nice to not be operating in the blind. If they're confident that their charters would withstand scrutiny from the Oregon Justice Department or Department of Justice, I always get it wrong, I think it would be prudent for us to take a look at their charters and see how they compare to what we're doing here. We've operated without a charter for this long. I think we can go another month [Laughter] without having a charter. Especially if you could bring this before that commission and come back to us with a report on what they think about this, as well as giving us some samples of their charters.

Scott Martin: I'll have to, of course, get permission for that, but I'll just share that I did that exercise in the comments I provided on this Audit Committee charter. I checked the wording. I called and talked with several of the chief audit executives and found many of them to be disciplined in how they put together the wording so as not to recommend on administrative or policy matters specifically. They worded them differently across the different charters, but that was the discipline I saw used as justification for it not being a public meeting.

Susan Mandiberg: Well, I think it's great to have that input. I think it would be useful to this committee for the rest of us to be able to see those charters. I think a group effort usually produces a better result than an independent one-person effort. And if there's a way to get that commission to get Oregon Department of Justice input that we don't have to pay for, [Laughter] I think that would be a great move forward.

Scott Martin: If I can correct that, it's the Chief Audit Executive Council. So, it's not a commission, it's a council. But what I understand you to be saying is that if they could collectively

then reach out to the DOJ as a group, like a class action kind of effort, and maybe each contribute a little bit, I'm not sure how that would look, but if they could do it, that would be preferred is what I'm understanding.

Susan Mandiberg: Our budget isn't big enough to spend money we don't need to spend on Justice Department opinions.

Scott Martin: Understood.

Susan Mandiberg: Yeah.

Rob Harris: Excuse me, Susan. So much of this that I'm reading in our charter is not really specific to this agency. It's really specific to audit committees, not this agency in particular. It seems like, and maybe there's not a bandwidth for this, but maybe that Chief Audit Executive Council could have a template audit charter adoption with terms in it that establish a non-public charter committee, or audit committee, excuse me. Have they ever considered that, Scott? I mean, do we got like 20 different charters floating around this state, or why do we not have a template?

Scott Martin: In full disclosure, I think that nobody's done it because you don't want to go where we are now.

Susan Mandiberg: [Laughter] Well, the problem is that when we, and I've heard some feedback on this as well, when we send this to the Department of Justice, we are then opening the can of worms.

Scott Martin: Yes.

Susan Mandiberg: And evidently, Jessie got some feedback that we already have [Laughter] opened the can of worms by sending them the one we sent before. So, it's in the mix. I mean, my understanding, which is hearsay, but nevertheless, is that the Oregon Department of Justice is looking at this and going to come up with some guideline. And I think that if the council has strong feelings about this, it's time for them to weigh in because obviously, a group of chief executives speaking with one voice is more powerful than just one agency weighing in.

Scott Martin: And that's why I'm recommending it because I think I've done my best on this front, but I think if we're going to go in a direction where it's a statewide impact, that those voices need to be heard.

Susan Mandiberg: So, what I'm hearing is that we table a final decision on this until we hopefully can get some sample audit committee charters and get some feedback from you on what this council wants to do, if anything.

Scott Martin: Okay, thank you.

Susan Mandiberg: And that's just what I'm hearing. Rob and Paul, how do you feel about all this? You're muted, Paul.

Paul Lipscomb: Honestly, I have a hard time dealing with this degree of minutia when we have big problems confronting us. And so, I would go with whatever Scott thinks is regular and appropriate and leave it at that.

Susan Mandiberg: I'm not understanding you. You would go with whatever Scott thinks is regular and appropriate in the draft of the Audit Committee Charter and then send it to the Department of Justice for their response?

Paul Lipscomb: Yes.

Susan Mandiberg: Uh-huh, okay.

Rob Harris: Yeah, I think I wish we had general counsel for the last six months to advise us on this. That's what I think. But we can't. That's not where we're at. So, because of that, we've been using DOJ as general counsel. That's why we sent it there. That's why we're here at this point. But again, can't undo that. So, it seems to me the options are this. We approve this and don't send it to DOJ. That's number one option. That's an option. I'm not saying it's my number one option. It's an option. Number two, we approve the verbiage maybe after we do some of these fine tunings that we've been discussing here, send it to DOJ. That may be suboptimal process-wise. Number three, we tentatively say, "This is our final draft," send it to the chief audit counsel, say, "What do you think? Do you have any interest in getting involved in this process?" or whatever. And if they say, "Nope, not interested," then we go back to one or two, whether or not we adopt it without DOJ final review, and let the commission take a position on this. Or again, run it through DOJ.

From what I'm hearing from Scott, the chief audit counsel may, if they have an interest in helping – I guess advising us is apparently a word we're not using anymore – if they have an interest in offering input, maybe we should give them that opportunity if this has statewide implications. But you did say something, Susan, earlier about how you understand the DOJ, or somebody make a generalized rule that all audit committees are public bodies. So, that sort of makes this whole process moot, so maybe I'd want to know more about that. But I guess I'm of the opinion generally, as I'm thinking out loud here a little bit, I'm sorry, is to at least give this chief audit counsel an opportunity to offer some input before we make a decision and to take any action they may want to take. But again, what can you tell me about the DOJ's possible decision to make a general rule that all audit committees are public bodies?

Susan Mandiberg: It's just what I heard through Jessie, and she heard it from... I'm not sure who she heard it from. Maybe from the person who was mentoring her. Ken, do you have any insight on that?

Ken Sanchagrin: No specific insight on that item. Sorry. I do have access to some of Jessie's files, but that's not something I've had the time to delve into.

Susan Mandiberg: Yeah, for sure. As Paul mentioned, this is sort of a small matter within the bigger picture of all the things that we have to deal with, and I share Paul's frustration with having to deal with this. I suppose one option is option A that Rob set out. I mean, we don't have to send it to the Justice Department, although I suppose that at some point, they will look at it. But we could just approve this with some changes and just adopt it. And then down the road, if they adopt a rule or if they decide independently to look at what we've done and tell us it's wrong, we can deal with it then. One problem with doing it that way, given that they've already told us that they think that the Audit Committee is subject to public meeting laws, a violation of the public meeting laws results in an up to \$2,000 fine for each commissioner independently. And since we would be the ones adopting this charter, I believe that the violation would fall on us. And so, taking that approach, I believe, puts each one of us commissioners in jeopardy of an up to \$2,000 fine. I'm not very comfortable with that. I'm comfortably retired, but every \$2,000 counts. I just want to add that to the mix.

Rob Harris: Do we know when we're getting general counsel on board?

Susan Mandiberg: [Laughter] No.

Rob Harris: Well, then I want to run it through DOJ.

Susan Mandiberg: And that brings us up to the problem of spending the money to do that. Or just saying, "Okay, the Audit Committee is subject to public meeting laws." I mean, I think that's the mind that we're in. Yeah, Scott.

Scott Martin: So, I like the idea Rob suggested of running it by the CAEC, the council, to get their perspective and whether they want to weigh in and collectively have a presence and ask the DOJ to make a decision that is then a part of the statewide decision. It's recognized as being statewide. Going there first to get their input, advising us then on what we want to do next. It may be that they say, "We don't want to really go there right now. You're on your own." And then we submit it, and the DOJ disagrees with it, and we become a public meeting. But at least we've tried. They may also say, "Right, we want to protect our audit committees. We feel that the candor is important and the protection of our risk assessment, again, is important statewide. We don't want that necessarily getting out while we try to solve issues." And so,

then they may push back on the DOJ and possibly get a different outcome once the DOJ understands that's the impact of such a decision.

Susan Mandiberg: Other responses to that, either Rob or Paul or Ken?

Rob Harris: I'm okay taking that process of punting it, maybe informing the council at our next subcommittee meeting. The intent is probably...

Susan Mandiberg: [Distortion 00:47:27] get back to us, yeah.

Rob Harris: Sorry, the intent would be to prove, yeah, at the next subcommittee, our intent would be to approve this as edited and see if they want to weigh in. I don't think, like you said, Susan, earlier, 30 days is going to make much of a difference at this point. When's our next Audit Committee meeting, Scott?

Scott Martin: June 9th.

Susan Mandiberg: Oh, yipes, okay.

Rob Harris: So, I mean, if we could get it done before then, or at least maybe if the council weighed in and said, "Hey, hold on a second, we want to work with you on this." Or if someone knows a legislator, they can do a gut and stuff and put some exception to the public meeting laws for audit committees.

Susan Mandiberg: All right. Any objections to taking that approach? Here's what I'm going to do then. I am going to suggest that this draft of the charter that we're using today for today's meeting that was attached to the agenda be the one that we're working with. Do you want to send this to the council before the Audit Committee meeting, or do you want the Audit Committee to take another go at a charter before you send it to the council?

Scott Martin: I would want to make the changes we've discussed or highlight them as changes. There are some changes we haven't discussed for things that I think need to be removed because they cause some confusion. But once those are done, then it would go to the council. Council says, "We like what you have, we see no changes," or "Here's some changes to make for that that we would support." So, then if I have a version that the CAEC supports, and I take that then to be presented, I think we'll be in a good position, if we can do that before the next Audit Committee meeting. The Audit Committee has seen this now numerous times. Are you asking that after I've got a version from the CAEC that they approve of that I need to go through the Audit Committee and gain their approval of what we're now putting forth before it goes further?

Susan Mandiberg: I don't know, I'm trying to figure out the procedure we're going to follow.

Scott Martin: Okay.

Susan Mandiberg: So, first question, what do we send to the council?

Rob Harris: I would say this version with the changes that we sort of discussed today, and there's some red and blue changes, I guess, going down here. I think, Scott, you had the last edit on this and you're the red and the strikethroughs, is that correct?

Scott Martin: That's correct, and I've got a few things after I've looked at that that I'd like to have changed or removed.

Susan Mandiberg: Okay, shall we go through those now?

Scott Martin: Yes, I think the first one was in paragraph one of page one, agency or commission. I think it's important to say commission because there's confusion about who the Audit Committee reports to.

Susan Mandiberg: Okay, so the charter defines, and I've got up in front of me, I'm going to make these changes that we're talking about, and I'm going to make them in purple. [Laughter] And then I'll send it to you all. So, the charter, which line are you on that you want to make this change?

Scott Martin: It's the first sentence of the first paragraph on page one.

Susan Mandiberg: A special committee of the Oregon Public Defense Commission.

Scott Martin: Right, which since we're named the same has caused a lot of confusion. When one says commission, is it the agency commission or is it the governing body commission? And so, I would propose that it say commission and even better, the governance commission, or make a distinction because OPDC is also known as the commission and I would say that is the agency commission.

Susan Mandiberg: So, you're wanting this to that the Audit Committee is a structure of a special committee of the volunteer commission. So, if we put...

Scott Martin: Okay, I see what you're doing. Of the...

Susan Mandiberg: Of the volunteer Oregon Public Defense Commission. If we put that in, that takes out the agency.

Scott Martin: Any distinction that shows it's not the agency and is the commission would satisfy my request, yes.

Susan Mandiberg: Okay. I think that does that.

Scott Martin: The second item is the second paragraph that implies that the information in that particular piece of rule, it's at cite number two, which is 125.700.135 paragraph three, that actually applies to the internal audit charter, which is a separate document and has a separate purpose. So, I would remove that paragraph.

Susan Mandiberg: Okay. We're removing that paragraph because it has a separate purpose. Okay. We'll remove that.

Scott Martin: Right. And the third, I think you mentioned this earlier, is a repeat of wording above, and I think that can be removed because it's a duplicate. Plus, it has the wrong citation of the rule.

Susan Mandiberg: So, paragraph three.

Scott Martin: Yeah, right.

Susan Mandiberg: Take it out, okay.

Scott Martin: I think that's essentially it. Let me just do a quick check. Oh, the last one is on page five, under section five. Yeah, under section 5E or E?

Susan Mandiberg: Under section five.

Scott Martin: Section E, page six.

Susan Mandiberg: Yeah.

Scott Martin: First paragraph, "Candidate for the committee may be nominated by any current voting member." I would remove voting to allow myself to nominate potential candidates.

Susan Mandiberg: I like that.

Scott Martin: And that's all I have.

Susan Mandiberg: All right, so then when we went through my issues, there were also some changes that you wanted to make, and I took notes on that, and I can go through and just try to make those before I send it to you.

Scott Martin: Okay.

Susan Mandiberg: Which I'll do as soon as we've finished with the meeting and it's clear in my mind. I also had a couple of questions. So, before we end, so on 3B2... Or on B2, sorry. On B2, it says confirm annually that all responsibilities outlined in this charter have been carried out. And my question was confirmed to whom? Confirmed to itself, confirmed to...?

Scott Martin: I think as a matter of record, it would go into the notes for the meeting minutes that the Audit Committee has determined that those responsibilities have been carried out.

Susan Mandiberg: Okay. Okay. And so, we could say, "Confirm annually in notes to meeting minutes," and that makes it clear that you're not recommending to anybody that that be true. All right. The next one I had was in C3D. Oh, maybe that wasn't the right one. Sorry about that. G1E.

Rob Harris: What page is that? Can you tell me?

Susan Mandiberg: It's on what I have on page seven...on page eight. Maybe it's on... I'm taking notes on my own thing. The OJD removed here, "Committee action requires the affirmative vote of committee members present and voting." The OJD took out "of a meeting at which a quorum is present." I don't know why they took that out. It says in D, "A quorum is necessary to hold any meeting or conduct any business." But I think it's prudent to keep it in the provision that talks about voting. I don't have a strong feeling about that, but that just popped out at me.

Rob Harris: I thought that maybe Scott did a strikethrough and added the red verbiage in there to restate it.

Susan Mandiberg: Yeah. So, why take out "which a quorum is present"? I think you're right. Scott took that out. It's a cross-out.

Rob Harris: I think because he put in the red words like present and voting, which I guess assumes you have a quorum at that affirmative... Well, maybe...

Susan Mandiberg: Yeah, I think that the quorum part has to be back in there.

Rob Harris: I think it's probably more clear if you put quorum in there.

Scott Martin: I'll just say I don't recall striking that out.

Susan Mandiberg: [Laughter]

Scott Martin: I think there was some input from John on this particular piece that I'd like him to see.

Susan Mandiberg: I'm going to put the quorum part back in. If he doesn't like that, you can tell me why.

Scott Martin: Okay.

Susan Mandiberg: Which was the other one? Hold on, I have one more. Oh. On B2. No, we did that already. Oh yeah, C3D, review and approve the audit plan, and you talked about that before. The plan is an internal audit matter. So, if the Audit Committee reviews and approves the internal audit plan and it's to plan your work, what if you disagree with their conclusion?

Scott Martin: That would be a discussion. Ultimately, the audit plan is constructed from the risk assessment. Input is taken from management as far as the validity of those risks, any additional risks, the priorities with those risks. That information goes to the Audit Committee with my planning on what the priorities should be, and they approve it as a proposal. I think where I'm struggling right now is ultimately the audit plan is ratified by the commission. So, they review it and recommend it to the commission for approval or for ratification.

Susan Mandiberg: If they're recommending it for approval...

Scott Martin: I don't want to use "recommend." It's basically...

Susan Mandiberg: No, you don't because...

Scott Martin: Right.

Susan Mandiberg: Yeah.

Scott Martin: They have vetted it. They have approved of it in its state and its planning function, and they're saying, "We agree with it. We think it's sufficient." So, they're attesting to...

[Crosstalk 00:59:47]

Susan Mandiberg: ...information that they agree.

Scott Martin: Right, I think they're attesting to the sufficiency of the document as complete and thorough and appropriate, however you want to word that would probably be a better wording than approve because it's not them. The Audit Committee doesn't approve it. They review it just like they do my work generally.

Susan Mandiberg: So, if instead of review, review and...

Scott Martin: Attest to the validity of the audit plan.

Susan Mandiberg: Attest to the validity, yeah.

Scott Martin: Or completeness of the audit plan.

Susan Mandiberg: Completeness of the audit plan. All right, I'll put together a clean version. It won't have the blue and the red because I'll accept all the stuff that's been crossed out and I'll accept all those changes. And I will put in those changes, and I'll give you a list of what I did.

Scott Martin: Very good, thank you.

Susan Mandiberg: Okay, does that work for everybody? Okie dokie.

Scott Martin: Excellent.

Susan Mandiberg: Thank you all.

Scott Martin: Thank you.

Susan Mandiberg: Anything else that we need to cover in this meeting?

Scott Martin: Thank you as well.

Rob Harris: I want to welcome Ken to the Governance Subcommittee.

Scott Martin: There we go.

Ken Sanchagrin: Thank you all. Yeah, thank you. [Laughter]

Susan Mandiberg: Appreciate you taking the time to join us, for sure.

Ken Sanchagrin: No, no, it's been great listening and yeah, I had great discussions with you yesterday and with Scott. So, yeah, I think we're getting closer to a complete document.

Susan Mandiberg: I think so too. I absolutely agree that it's frustrating to spend time on minutiae like this when we've got these enormously huge problems that we have to address, but unfortunately, we have to do both. So, there it is. See you all.

Paul Lipscomb: Bye. And thank you.

Scott Martin: Thank you.

Susan Mandiberg: Bye-bye.