

February 26 2016

CONFIDENTIAL

Corey Falls, Sheriff
Jackson County
5179 Crater Lake Hwy
Central Point, Or 97502

Danny Jordan
County Administrator
Jackson County
10 S Oakdale Ave
Medford, Or 97501

This DRAFT report is not complete and remains a work in progress. We question whether fairness and accuracy require interviews and findings regarding the state of the Sheriff's Office when Sheriff Falls took Office and the accuracy of Budget Committee perceptions and criticisms of changes which they may have misunderstood. We have yet to pursue this avenue of documentation.

Re: Findings, Conclusions and Advice Relative to Stated Concerns
and Perceptions

Dear Sheriff Falls and Administrator Jordan:

I. INTRODUCTION

As described below, we have been asked to review the allegations and concerns stated by Jackson County Sheriff Corey Falls. Sheriff Falls submitted a memorandum to Jackson County Human Resources Director, Cleve Brooks dated December 9, 2015 in which Sheriff Falls alleged that he had received discriminatory, hostile and offensive treatment during a Jackson County Budget Committee meeting on December 1, 2015. He made additional observations and complaints to the authors on Monday December 28, 2015 when he was interviewed by us.¹ These are set forth in detail herein as the basis for our advice and recommendations.

¹ By the time we had concluded our analysis and were writing this report we were able to recognize that Sheriff Falls' allegations set out in his December 1st memorandum and conveyed to us during his interview of December 28th were directed at County Administrator Danny Jordan, Senior Deputy Administrator Harvey Bragg and Budget Committee Chairman Dick Rudisile. Sheriff Falls' interactions with Administrator Jordan and Deputy Administrator Bragg have been continuous starting with Sheriff Falls' election in November of 2014. Chairman Rudisile's first interactions with Sheriff Falls (in an email dated 11-16-2014 exchange and a personal visit to the Sheriff's Office on 1-13-2015) concerned the Sheriff's compensation. Subsequent interactions in April 2015 occurred in a meeting of the Compensation Committee on April 14, 2015, in email exchanges around April 29, 2015 relating to the audit of the Sheriff's Office Take-Home Vehicle policy applications requested at the April 16, 2015 meeting of the budget Committee, and at a Budget Committee meeting on December 1, 2015.

Sheriff Falls explained that the complaint memorandum he submitted to the Human Resources Director was intended to begin a conversation. He was welcomed and fully cooperated with our review.

In anticipation of further dialogue Sheriff Falls has withdrawn the formal complaint and favors positive, private communication and collaboration.

The authors encourage the readers to note that at various times in the course of Sheriff Falls' first year in Office, he found that his relations were adverse in one respect or another with the Compensation Committee and County Administration, the Budget Committee, the County Administrator, Deputy County Administrator, the Auditor and staff within the Human Resources Department. Within any organization, all involved in such a situation can tend to take cues from others. This often tends to produce a steam rolling effect supportive of a self-fulfilling prophesy. We reached this conclusion ONLY with opportunity to consider all the facts and reflect at length with over time. We are confident that the voters elected a capable Sheriff with tremendous potential. One might question how long he is willing to struggle with so many across the County organization. Our recommendations are calculated to provide strategies to change perceptions and achieve a "hard reset" and "do over."

In the course of this investigation, we received related allegations and observations about the working relationships of the elected and appointed officials of Jackson County from Jackson County Commissioner Doug Breidenthal.

Our specific scope of work was described as:

- Resolving the allegations stated by the Sheriff in an investigative report which sets forth findings, conclusions, and recommendations;
- Making determinations relating to whether the Sheriff has been paid appropriately and in accordance with County policy and law;

[Continued from previous page]

We are mindful that the County is a single entity and all concerned are integral to Jackson County and its success. Our role is to determine facts and advise and facilitate as described *infra*. We deem our work as an attorney-client work product and an advisory communication prepared for and in the interest of Jackson County as a whole.

- Determining whether the County, the Board of Commissioners, the Budget Committee, the County Administrator and/or others have violated law or policy in the budget process affecting the Sheriff's Office;
- Determining whether the Sheriff's Office budget proposals and requests were adequately documented and/or wrongly denied;
- Regarding the Sheriff's allegations and the implications thereof, providing an independent and objective evaluation of relationships and the effectiveness of County governance and management, including identifying barriers to desirable objectives;
- Ascertaining facts, if any, which may have a bearing on motive or credibility, and making such determinations as may be deemed appropriate; and
- Planning and conducting such conversations with the Sheriff and others as may be deemed constructive to promote the goals stated above.

Our primary focus has been directed to the matters referred to in, or with a nexus to, Sheriff Falls' statement in his memorandum, dated December 9, 2015, that he had been the subject of a "hostile work environment." **The scope of work states explicitly the desirability of promoting to the greatest extent possible coordination, cooperation, and effective collaboration among Jackson County leaders in governance and management.** Thus, we understand our charge to include, if appropriate in our judgment, an attempt to achieve such an outcome by contributing to common understandings through means and process rather than the mere issuance of a report setting out our findings, conclusions and recommendations. Our charge from the beginning was to create a framework which could lead to communication and effective working relationships, not a series of "right/wrong" determinations. We believe we should strive to facilitate conversations, effectuate mediation of differences, and promote understanding. Our advice is framed accordingly.

The scope of work established for us is specific and does not extend to include concerns significant to Commissioner Breidenthal. We are not unmindful of his concerns and views, and devoted considerable time to "hearing him out." Our focus in this undertaking, as specifically requested by the County, does not extend to the

circumstances and motives underlying the complaint filed with the Oregon Ethics Commission dated October 22, 2015. The County Administrator’s complicity in that complaint, if any, and other concerns which Commissioner Breidenthal has expressed about County Administrator Jordan, his personal situation, and impact on his current election campaign, are not addressed in this review and advice work product. However, we certainly have gained considerable background and information from Commissioner Breidenthal on these matters.

The scope of our work does not extend to an operational or “effectiveness review of the Sheriff’s Office. Certainly there are differences in perception and understandings, and with respect to some, it may be that interviews with those in the Sheriff’s Office command and administrative/fiscal managers might provide additional perspective. We decided that any benefit would not justify the delay, effort or expense in light of specifics learned from Sheriff Falls and included in this document.

PLEASE NOTE:

The reader will discover in this report considerable discourse as a primer for the reader of “Racial Diversity 101.” This is included by the authors because our belief is that regardless of experience and background of any reader, all should be able to understand the feelings and impressions which may have molded Sheriff Falls’ views of the events following his election in November of 2014. Our diversity discussion is intended to provide a common context upon which conversations and resolution may be based.

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A. Independence in Performance of Work

Careful steps have been taken to insure the independence and objectivity of our investigation. Jackson County Counsel Joel Benton, Jackson County Administrator Danny Jordan and the Jackson County Human Resources professional staff decided that in view of the totality of circumstances raised by Sheriff Falls, the interests of Jackson County could only be properly advanced by commissioning a neutral, objective and “unvarnished” review of the allegations, facts and circumstances.

County Counsel Benton contacted Akin Blitz of Bullard Law in early December of 2015. Initially, County Counsel Benton and Mr. Blitz engaged in a thorough legal analysis of ethical considerations of County Counsel Benton’s duties of loyalty and confidentiality by virtue of County Counsel Benton’s role as legal advisor for each County elected official, the department heads, the County Administrator and the County as a political sub-division. Upon advice of separately retained ethics counsel, County Counsel Benton and Mr. Blitz determined that County Counsel Benton and the other attorneys in his office were presented with a clear, actual conflict of interest such that those attorneys could not participate in, control or influence the scope of this investigation or any outcome of this investigation. Further, if County Counsel Benton and his attorneys undertook this investigation, it would have the potential of permanently affecting their ability to work with elected and appointed officials of Jackson County. Bullard Law therefore proposed comprehensive revisions to the

Jackson County Professional Services Contract template. The subsequent revisions were approved by independent ethics counsel and by Senior Assistant Jackson County Counsel Brett Baumann after the revisions had been approved. Assistant County Counsel Baumann approved and signed the Professional Services Contract on behalf of Jackson County.

County Counsel Benton recused himself from any and all involvement in the contract formation, definition of scope of work and control over any aspect thereof. Senior Assistant County Counsel Baumann's only involvement has been approved of the Professional Services Contract. No one on behalf of the County has influenced the content of this report.

We have consulted with former Jackson County Commissioner and Sheriff C. W. Smith for purposes of limited fact-checking and to confirm certain of Mr. Blitz' historical perspectives and understandings gleaned from Sheriff's Office bargaining in past years when the County and Sheriff relied on Mr. Blitz and Bullard Law. The authors presented Sheriff Falls with each of our professional resumes when we first met; while Mr. Blitz has represented the County in a limited capacity in the past, he also has represented the Oregon State Sheriffs' Association, other Sheriffs in their personal and official capacities, and counties throughout Oregon and Washington and has no conflict, pre-disposition or basis for favoritism in this matter.

B. Relationship of Sheriff Falls Primary Concerns Set out in his Memorandum Dated December 9, 2015 and the Concerns Sheriff Falls Subsequently Raised During his Interview on December 28, 2015 Consistent with Jackson County Commissioner Breidenthal's Allegations

Sheriff Falls described his experiences and concerns to us on December 28, 2015. He advised us that Commissioner Breidenthal was his liaison with the Jackson County Board of Commissioners. When he described what he perceived as Administrator Jordan's "random interventions" with him and his management of the Jackson County Sheriff's Office, he noted that Commissioner Breidenthal had advised him to "stay low in the weeds". Sheriff Falls told us that Commissioner Breidenthal had discussed with him the investigation of Commissioner Breidenthal and his actions in Alaska. Sheriff Falls told us that Commissioner Breidenthal has a need for allies and is "under a microscope." Sheriff Falls represented to us that Commissioner Breidenthal perceives Administrator Jordan as a micro-manager, and that Commissioner Breidenthal does not believe that he is treated by Administrator Jordan with deference due him as Administrator Jordan's "boss."

Sheriff Falls described to us several instances and matters that arose when he confided in Commissioner Breidenthal, and other instances and matters about which Commissioner Breidenthal had confided in him. Sheriff Falls stated, "And at this time I became a bit of a security blanket [for Commissioner Breidenthal]" referring to an investigation by the Oregon Department of Justice and a complaint pending before the Oregon Ethics Commission which was signed and filed by the Jackson County Auditor Eric Spivac on October 22, 2015.

C. Pertinent Practical and Legal Considerations Relating to Sheriff Falls' Perceptions

For the reasons we explain in this document, we cannot discount that Sheriff Falls' perceptions may be the product of his life experiences, and may be the direct and natural consequence of actions that were intended or were due to insensitivity by one or more of those identified in Sheriff Falls' memorandum dated December 9, 2015 and discussed during his interview on December 28, 2015. The Sheriff's perceptions stated in that memorandum defined our focus moving forward. The Sheriff's allegations discussed in turn below identify Jackson County Commissioners, executive management team employees, or members of the Jackson County Budget Committee and the Jackson County Compensation Committee. These two committees are composed of the same three (3) citizen volunteers.

Sheriff Falls did not identify any action or concern as race based. Sheriff Falls describes himself as an African American. He noted the difficulty in demonstrating or describing that one is a recipient of unlawful race discrimination based on objective discernment. We address, therefore, the implications of race as a factor in this constellation of circumstances and Sheriff Falls' beliefs concerning his treatment.²

(1) **Institutional Racism:** It is important to recognize that a lack of overtly racial statements does not evidence a lack of racial bias.³ WILLIAM Y. CHIN, *The Age of*

² The authors are aware of Sheriff Falls perceptions in 2006 which gave rise to race discrimination allegations against the Jackson County Sheriff's Office filed with the Bureau of Labor and Industries. We find that his complaint and its outcome have no bearing on this investigation.

³ The authors note for the readers that although we did not ask witnesses specifically, none of those interviewed during this investigation appeared to be a member of any racial or national origin protected class or minority.

Covert Racism in the Era of the Roberts Court During the Waning of Affirmative Action, 16 Rutgers Race & L. Rev. 1, 15-16 (2015). Discrimination, particularly on account of race, can be subtle, coded, and difficult to uncover. Of course, it is easier to recognize obvious, blatant racial bias than less-obvious, subtle bias. *Id.*; see also, *Johnson v. Dep 't of Soc. & Health Servs.*, 80 Wn. App. 212, 227, 907 P.2d 1223 (1996) (purpose of disparate treatment claims is to allow inference of discriminatory animus because direct evidence rarely available).

Pulitzer Prize *New York Times* journalist David Shipler explores how ordinary Americans encounter one another across racial lines engages in a searching, thoughtful book, *A Country of Strangers – Blacks and Whites in America* (Knopf 1997). He notes, “Today, when sensibilities have been tuned and blatant bigotry has grown unfashionable in most quarters, racist thoughts are given subtler expression, making the veil permeable and often difficult to discern. Sometimes its presence is perceived only as a flicker across a face, ...” *Id.* at 4. “When it comes to race, we do not know how to talk with one another. ‘We are a country of strangers, and we are having a great deal of difficulty with our differences,’ says actress Anna Deavere Smith, ‘because ultimately, we lack the ability to look at specific human beings.’” *Id.* at 18. The book traces roots and origins, dissects black and white stereotypes, and describes how power shapes our racial landscape. Most of us who are not African American are hard pressed to understand completely enough to discredit perceptions and conclusions such as those Sheriff Falls has expressed. The authors are not able to do so.

Sheriff Falls described to us his upbringing in Jackson County and the communities in which he has lived and worked. He was careful to emphasize in our interview (1) there are no objective indicia that he could identify linking his perceptions of treatment to his race, and he did not intend to so allege; and (2) when events and interactions have occurred with others he at times has been sensitive to subtleties reflective of a race-related reaction by another; and (3) he can’t rule out that with respect to his treatment by each of the citizen volunteers of the County Budget Committee and the Compensation Committee; and (4) he has not experienced or alleged that he has been the recipient of racial discrimination from any Jackson County elected official nor any manager or director with whom he has interacted since his election in November of 2014.

A passage in Shipler’s book is instructive as to the reason we will not discredit Sheriff Falls’ feelings and perceptions. “White privilege is like an invisible weightless knapsack of special provisions, assurances, tools, maps, guides, codebooks, passports, visas, clothes, compass, emergency gear, and blank checks.” Near the end

of his book, Shipler observed that in all his wandering and listening across the country as he researched the book, it had not occurred to him to focus on the limitations of understanding “as a white person who had grown up in privilege.” Id. at 560. “Without aid from blacks, however, few whites seem likely to reach the level of sophisticated sensitivity needed to foster racial harmony. By and large, white America has not tuned in to the subtleties of race that black America understands very well.” Id. at 562. “Failing to recognize the sophisticated symptoms of racial bias is the largest pitfall Americans face as they try to cure the affliction. If the disease is diagnosed, honest men and women can have honest disagreements about what treatment to apply. But the American debate increasingly separates those who see racism from those who do not.” Id. at 564.

Hidden biases of good people are addressed by Banaji & Greenwald in *Blindspot – Hidden Biases of Good People* (Delacorte Press 2013). Most current research describes bias and attitudes from a lifetime of exposure to cultural attitudes about age, gender, race, ethnicity, religion, social class, sexuality, disability status, and nationality. This body of knowledge and research is evolving. Yet, the book provides clear documentation. However, “Conclusion 6: Explicit bias is infrequent; implicit bias is pervasive.” ... and, “Conclusion 7: Implicit race attitudes (automatic race preferences) contribute significant and subtle discrimination against Black Americans.” Id. at 208.

Sheriff Falls’ description of his experiences is his reality. Research reminds us that African American experiences are framed by America’s past dating to the colonies and the framers’ debates about slavery and the nature of the black man.⁴ Thus,

⁴ The reader curious to learn greater details to which we refer here, and also described by Shipler less historically in his discussions of roots and origins, might refer, *inter alia*, to Jones, *A Dreadful Deceit – The MYTH of RACE from the COLONIAL ERA to OBAMA’S AMERICA*, Basic Books - Perseus Book Group (2013). The validity of Professor Jones’ contemporary teachings cannot be ignored:

“According to this myth, the first Europeans who laid eyes on Africans were struck foremost by their physical appearance – the color of their skin and the texture of their hair – and concluded that these beings constituted a lower order of humans, an inferior race destined for enslavement. During the American Revolution, patriots spoke eloquently of liberty and equality, and though their lofty rhetoric went unfulfilled, they inadvertently challenged basic forms of racial categorization. And, so white Northerners, deriving inspiration from the Revolution, emancipated their own slaves and ushered in a society free of the moral stain of race-based bondage. The Civil War destroyed the system of slavery nationwide, but new theories of scientific racism gave rise to new forms of racial oppression in the North and South. Not until the Civil Rights Acts of 1964 and 1965 did the federal government dismantle state-sponsored race-based segregation and thus pave the way for better race relations. ...

[Footnote continued on next page]

Sheriff Fall's perception of his treatment can only be understood fairly by acknowledgment of this past in the context of present conflicts and with the promise of the future. John Hope Franklin, noted African American historian, observed to this point, "To confront our past and see it for what it is." Some contemporary commentators now advocate that discerning and understanding require, *inter alia*, that we regard "The past 'is.' Not the past was. The past lives on. What would it mean to confront it and see it clearly?" Faust, *John Hope Franklin: Race and the Meaning of America*, The New York Review of Books (December 17, 2015, v. LXII, Number 20). Not surprisingly, others take a contrary view.⁵

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... This myth has served as a tool that one group can use to ratchet itself into a position of greater advantage in society, and a justification for the economic inequality and the imbalance in rights and privileges that result. ...

... The myth of race is, at its heart, about power relations, ... Race signifies neither a biological fact nor a primal prejudice, and it lacks the coherence of a robust political ideology; rather it is a collection of fluid, contingent mythologies borne of (among other imperatives) fighting a war, assembling a labor force, advancing the designs of demagogues, organizing a labor union, and preserving voting and public schooling as privileges reserved for some, rather than as rights shared by all." Id., Introduction ix – xi.

⁵ Thomas Chatterton Williams, writing for the *Los Angeles Times* opines, "Though I'm "a black man of 'mixed-race heritage' who has encountered plenty of racism, I do not consider myself a victim. My black father, born in segregated Texas raised my siblings and me to value education and self-reliance, and we hold graduate degrees, own businesses, and in my case write for a living – 'an incredible luxury.' Yet I've been told by activists that stories like mine or Barack Obama's are irrelevant oddities, and that 'continued systemic racism' is so oppressive that people of color have little chance of success. I find this pessimism to be frustrating, untrue, and highly damaging to black progress. By insisting that race is a defining characteristic than can never be transcended, leftist activists 'now share assumptions with the worst conservative and even white supremacist ideology.' And by portraying black people as inherently disadvantaged, 'we give white people too much credit and strengthen the status quo.' Yes, bigotry is a tenacious foe, but we should open our eyes to the reality that a growing number of black people are seizing 'the freedom to define ourselves' – not as victims, but as equals." Quote excerpted from *The Week*, "Best columns: The U.S." page 12, vol. 16, Issue 753 (January 15, 2016). See also, original text published by *The Los Angeles Times* (January 3, 2016), at <http://www.latimes.com/opinion/op-ed/la-oe-0103-williams-black-victim-self-definition-20160103-story.html>

He concludes his column writing: "Several years ago, I came across a Ralph Ellison quote that has stayed with me ever since: 'Said a young white professor of English to me after a lecture out in Northern Illinois, 'Mr. E., how does it feel to be able to go to places most black men can't go?' Said I to him, 'What you mean is, how does it feel to be able to go to places where most white men can't go.'

[Footnote continued on next page]

We include these background perspectives for the sake of the conversations concerning complexities the authors are incapable of resolving and which the readers at least must appreciate and may be able to discuss meaningfully because we believe it is important for all to understand the depth of the situation.

(2) Legal Considerations Relative to Perceptions of Disparate Treatment:

The reality of covert bias is precisely why the *McDonnell-Douglass* burden shifting test was adopted by the Supreme Court: to allow a plaintiff to present an indirect case of discrimination to a jury in the *absence* of direct proof of racial animus. *Hill*, 142 Wn.2d at 180. As some academics have noted: "One study revealed that judges evaluating workplace racial harassment claims tended to deem relevant only overtly racist behavior such as uttering racial slurs, but tend to disregard covert racist behavior such as exclusion from professional or work-related activities, social isolation, or other subtle stratagems." CHIN, 16 Rutgers Race & L. Rev. at 15.

Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 78 (1998) (quoting *Castaneda v. Partida*, 430 U.S. 482, 499 (1977) addressed sexual harassment. However, the Supreme Court opinion is instructive on a point pertinent here -- that "[h]ostile work environment claims based on racial harassment are reviewed under the same standard as those based on sexual harassment." *National Railroad*

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Ellison's way of thinking was honest and brave in 1970 and remains uncommon today. While prejudice and inequality have proven tenacious, if we take the expression "black lives matter" seriously, we must also accept when black autonomy, equality and even privilege exist. To do otherwise is like overprescribing antibiotics: a valuable defensive tool grows impotent through overuse. Our reflexive indignation fosters a laziness of thought that, paradoxically, can reinforce some of the very anti-black biases it hopes to wipe out."

For a perspective on the decline of white privilege in America, see, <http://www.latimes.com/opinion/op-ed/la-oe-1201-ehrenreich-excess-death-white-working-class-20151201-story.html>

See also, John McWhorter (professor, Columbia University), "*TO PROTECT TO SERVE – Bloody Gloves and Police Brutality*" (Op Ed, *New York Times* (February 4, 2016)) writing about manifestations of racism in the American black community in the context of celebration at the defense victory in the O. J. Simpson prosecution, "It was about the centrality of police brutality to the black Americans' very sense of self. I can't realize this when, disgusted with the verdict and the response to it, I began to investigate ... why so many of my fellow blacks' takes on racism seemed to me to be more fitting for 1935 than 1955. ... Racism is experienced in many ways ... Talk to most black people about racism and you need only count the seconds before the cops come up."

Passenger Corporation v. Morgan, 536 U.S. 101, 116 n.10, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002); McGinest v. GTE Serv. Corp., 360 F.3d 1103, 1133 n.10 (9th Cir. 2004).

With respect to what constitutes a hostile work environment as alleged by Sheriff Falls, the Supreme Court has clarified that the scope of the prohibition on employment discrimination "is not limited to 'economic' or 'tangible' discrimination." Harris v. Forklift Sys., Inc., 510 U.S. 17, 21, 114 S. Ct. 367, 370, 126 L. Ed. 2d 295 (1993). "Discrimination covers more than 'terms' and 'conditions' in the narrow contractual sense." Faragher v. Boca Raton, 524 U.S. 775, 786, 118 S. Ct. 2275, 141 L. Ed. 2d 662 (1998) (quoting Oncale, 523 U.S. at 78).

As the Supreme Court also stated in Harris, "[t]he phrase 'terms, conditions, or privileges of employment' [of 42 U.S.C. § 2000e-2(a)(1)] evinces a congressional intent 'to strike at the entire spectrum of disparate treatment of men and women' in employment, which includes requiring people to work in a discriminatorily hostile or abusive environment." Harris, 510 U.S. at 21. "Workplace conduct is not measured in isolation" Clark County School Dist. v. Breeden, 532 U.S. 268, 270, 121 S. Ct. 1508, 149 L. Ed. 2d 509 (2001) (*per curiam*). Thus, "[w]hen the workplace is permeated with 'discriminatory intimidation, ridicule, and insult,' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment,' Title VII is violated." Harris, 510 U.S. at 21.

The issue is *not* whether any single action by an employer created the hostile work environment; instead, it is the "entire constellation of surrounding circumstances." Oncale, 523 U.S. at 82. A thorough examination of the record is required because "the very term 'environment' indicates that allegedly discriminatory incidents should not be examined in isolation." O'Shea v. Yellow Technology Services, Inc., 185 F.3d 1093, 1097 (9th Cir. 1999). Under this interpretation, because conduct which is not [race] based may form a part of the context or environment in which the discriminatory conduct is alleged to have occurred, such conduct may be relevant to, and should be considered in, evaluating a hostile environment claim. *Id.* Evidence of a general work atmosphere therefore, as well as evidence of specific hostility directed towards the plaintiff, is an important factor in evaluating the claim. Hicks v. Gates Rubber Co., Inc., 833 F.2d 1406, 1415-1416 (10th Cir. 1987). Also, facially neutral acts can contribute to a hostile work environment: "Facially neutral abusive conduct can support a finding of [racial] animus sufficient to sustain a hostile work environment claim when that conduct is viewed in the context of other, overtly discriminatory conduct." O'Shea 185 F.3d at 1097.

Evidence of a hostile work environment must be viewed in its totality; isolating and minimizing particular incidents, or requiring a directly discriminatory statement to accompany each one, is inappropriate. *Loeffelholz v. Univ. of Washington*, 175 Wn.2d 264, 276, 285 P.3d 854, 859 (2012); *Valentin-Almeyda v. Municipality Of Aguadilla*, 447 F.3d 85, 94 (1st Cir. 2006); *Demoret v. Zegarelli*, 451 F.3d 140, 149 (2d Cir. 2006); *Caver v. City of Trenton*, 420 F.3d 243, 262, (3d Cir. 2005) ("a discrimination analysis must concentrate not on individual incidents, but on the overall scenario."); *Jennings v. University of North Carolina, at Chapel Hill*, 444 F.3d 255, 287 (4th Cir. 2006) (the severe or pervasive element of a hostile environment analysis "examines the totality of the circumstances"); *Cerros v. Steel Technologies, Inc.*, 398 F.3d 944, 950 (7th Cir. 2005) (number of circumstances of harassment is only one factor in the totality of the circumstances).

D. Protected Status Afforded Elected Officials

Sheriff Falls was elected in November 2014 to serve as Jackson County Sheriff. Oregon sheriffs are constitutional officers. See Or. Const., Art. VI, Sec. 6. The Office of Sheriff is governed by Oregon law, particularly the Fair Labor Standards Act and other laws relating to the Office. See ORS Chapter 206.

As an elected official, Sheriff Falls is not afforded the protections of most state and federal laws which confer employment rights and define unlawful employment practices. An elected official is not an employee for purposes of the FLSA, Title VII of the Civil Rights Act, and the Age Discrimination in Employment Act. See EEOC Compliance Manual Chapter 2.

The descriptions of offensive hostile work environment, discriminatory treatment, micro aggressions, bullying, demeaning treatment, humiliating actions, and disparate (different) treatment in contrast with other Jackson County elected officials and the other 2014 newly elected Oregon sheriffs do not fall within the protections afforded by federal and state employment laws. The coverage and applicability of these laws excludes elected officials.

Title VII of the Civil Rights Act of 1964, 400 USC § 2000e(f), provides that the term "employee" does not include a person elected to a public office of a state or political subdivision thereof. The Age Discrimination in Employment Act, 29 USC § 630(f), expressly excludes elected officials from the definition of "employee." Section 203(e) of the Fair Labor Standards Act states that "employee" does not include any individual who holds public elective office of the state or any subdivision thereof.

To the same conclusion, the Oregon Court of Appeals held in *Young, infra.*, that an elected official is not employed by a public entity and is exempt from Oregon's overtime law.

"The [county] does not itself "hire" an elected official, rather the employment relationship between an elected official and [county], to the extent one exists, is achieved through the intermediate event or instrumentality of the official's election to office by the voters. In addition, a particular elected official retains his or her elective office or position by means of the same instrumentality, namely, election or other action by the voters. The voters determine, within any applicable term limits, whether or not the official is reelected to his or her office; in addition, during the term of office, the voters may recall the elected official. Thus, a county does not itself have any power to "provide" the elected official with a job or position. Equally significant, the [county] itself has no power to terminate or fire the official from that position."

Young v. State, 177 Or. App. 295, 299-300, 33 P.3d 995, 997 (2001) (Elected officials are not entitled to overtime compensation under statute governing overtime for state employees, as they are not "directly employed" by the state within meaning of statute.)

It is important to recognize that although Jackson County is served by its Sheriff, the County as an entity does not itself initially obtain, or arrange to obtain, the Sheriff's services and therefore, a traditional employment relationship subject to employment related laws, policies and practices does not exist.

By way of illustration, we reviewed County Policy #5-47d (Board Apprv'd 12-5-2002) which relates to non-discrimination and non-harassment. The policy states explicitly that it was developed "to ensure that all of its employees can work in an environment free from harassment, discrimination and retaliation." It encourages, "Any **employee** who has any questions or concerns about this policy should contact Human Resources." (pg 4, emphasis added.) While the policy applies to vendors, the public, employees and elected officials, the nature of its applicability varies and must be differentiated contextually. By this, we mean:

1. The policy applies to elected officials to the extent that it prohibits improper conduct by them directed at employees,
2. The policy applies to vendors and to public whose hostile treatment directed at employees the County is obligated to remedy, and
3. The policy does not extend to elected officials rights and remedies or expectations of non-discrimination and non-harassment as though they were

employees because they are not. Elected officials stand in the shoes of appointed department heads as managers and members of the County's senior executive management team with responsibility to enforce law, ordinance and County policy and to adhere to established policy and procedures.

Without question, neither law nor Jackson County policy may be construed as affording Sheriff Falls protected status or legitimate basis for a legal discrimination claim, that is, a claim the County violated a particular law.

The scope of our work and direction from Administrator Jordan through County Counsel Benton initially and County Counsel Baumann is that we inquire and reach objective conclusions based on the facts. We therefore have proceeded to examine thoroughly those facts and make those determinations we deem warranted in order to resolve the factual allegations. We did so regardless of what the determinations may be – favorable or otherwise – as though Jackson County policy guarantees Sheriff Falls' working conditions free of perceptions of hostility, discrimination and offensiveness. **For that reason, Administrator Jordan and Brett Baumann were clear about their desire to address and correct any bases for perceptions such as those which gave rise to Sheriff Falls' memorandum of complaint. It is to Jackson County's credit in this difficult situation, which we hope proves to be to the Community's great benefit, that this effort was made with a commitment to healing and resolution.**

We cannot overstate our encouragement that Sheriff Falls and County Administrator Jordan acknowledge and appreciate one another, nor our commitment to the County and to them individually for every success moving forward. See, recommendations *infra*.

E. Course of This Investigation

In order to meet Jackson County's request that this investigation be expedited, we assembled the necessary documents into three ring binders which we both read and annotated. Thereafter, we interviewed Sheriff Falls in Bullard Law offices on Monday, December 28, 2015; Sheriff Falls had graciously offered to do so in Portland. The holiday season prevented busy witnesses from interviews during that same narrow window of time. The first opportunity for witness availability and the efficient pursuit of this investigation was the week of January 4, 2016.

After meeting with and hearing completely from Sheriff Falls, and after being provided with a three inches binder of materials which we requested from him, we interviewed Jackson County employees, elected officials and citizen volunteers who we believed had information pertinent to our investigation. The number of witnesses expanded with information provided during our initial interviews. The time needed to interview each witness also expanded as the subject areas and the information we received increased.

Those interviewed the week of January 4, 2016 were:

Rick Dyer, Chair, Board of Commissioner

Doug Breidenthal, Commissioner

Colleen Roberts, Commissioner

Dick Rudisile, Budget Committee Chair; Compensation Committee Chair

April Sevcik, Budget Committee and Compensation Committee member

Craig Morris, Budget Committee and Compensation Committee member

Chris Walker, Clerk

Scott Fein, Surveyor

Josh Gibson, former Assessor (Mr. Gibson resigned effective December 31, 2015)

Danny Jordan, County Administrator

Harvey Bragg, Senior Deputy County Administrator

Eric Spivac, Auditor

Sasha Grafenstein, Human Resources Senior Administrative Assistant

Claudia Bowdoin, Human Resources Management Analyst

Ashlei Richmond, Risk Management Coordinator

We were provided all documents requested from Jackson County administration, from Sheriff Falls, and from each witness who provided documentation. We received utmost cooperation. Everyone facilitated our efforts responsively before, during and

after the days we worked on site in Medford. We did not interview or rely in any way on County Counsel Benton except as described above as to the initial conversations about the Personal Services Contract and scope of work. Mr. Blitz did ask County Counsel Baumann to take steps initially to schedule interviews of some elected officials and Budget Committee members. This role was later undertaken by office assistants in the Board of County of Commissioners' and County Administrator's offices.

II. SHERIFF FALLS' ALLEGATION

A. Written Allegation Dated December 9, 2015

Following the Tuesday December 1, 2015 meeting of the Jackson County Budget Committee, Sheriff Falls submitted to the Jackson County Human Resources Director Cleve Brooks a memorandum dated December 9, 2015, describing his concerns about conduct toward him on that day and the conduct toward him that had evolved over the course of his first year in office. He wrote:

"This memo is to give written notice and inform the Jackson County Human Resources department of the hostile work environment that I have experienced during my first year as Sheriff. I have examples of unprofessional conversations, demeaning comments, undermining of my position, discriminatory treatment, and being micromanaged. I believe these micro aggressions are becoming a pattern and are an act to bully me.

The most recent example of this behavior took place during a budget meeting held on December 1, 2015. This meeting was with the budget committee, which includes the board of commissioners, Rick Dyer, Colleen Roberts, and Doug Breidenthal budget committee chair Dick Rudisile, April Sevcick, and Craig Morris, County Administrator Danny Jordan, assistant county administrator Harvey Bragg, an administrative secretary, an executive assistance, Judge Charter, Captain Tim Snaith, and Sue Watkins, the sheriff's office budget manager.

During the course of this meeting I was treated in a hostile, unprofessional demeaning manner by Dick Rudisile, April Sevcick, and Craig Morris. This is one of several incidents thus far this year where I have been treated in an unprofessional, demeaning or discriminatory manner. Other examples have included excessive meetings and phone

calls micro-managing my work and personnel matters, audits of the sheriff's office, discrimination, demeaning and humiliating actions and comments on how I was compensated. In addition, I was treated differently than all five of the other newly elected sheriff's sworn into office this year.

My purpose in bringing this to the attention of Jackson County Human Resources is that this treatment and negative behavior towards me discontinue immediately."

B. Sheriff Falls' Additional Allegations/Explanations Provided on December 28, 2015

When asked during our interview on December 28th, Sheriff Falls told us that he regards himself as an African American. Sheriff Falls' descriptions and allegations are clearly understood by many to implicate federal and Oregon civil rights law and related Jackson County employment policies.

Sheriff Falls urged that we could not reach a fair and complete understanding of his criticisms and concerns without talking in depth with Commissioner Breidenthal. Sheriff Falls informed us that Commissioner Breidenthal was represented by a Portland attorney.⁶

⁶ We both interviewed Commissioner Breidenthal initially at his request outside the Jackson County office building. Thereafter Mr. Bauman met with him on multiple subsequent occasions at Commissioner Breidenthal's initiation and at his request for follow-up. Mr. Bauman spoke by telephone with Commissioner Breidenthal's lawyer, David Griggs to affirm the attorney's and Commissioner Breidenthal's desire to be completely forthcoming, transparent and revealing to us of all that he had to present. A preponderance of Commissioner Breidenthal's concerns relates to matters beyond the scope of the investigation we were commissioned to undertake and appear to have little or no relevance to anything we were asked to examine.

Nevertheless, although we did not expect to form a different conclusion, in the interest of fulfilling the due diligence and thoroughness expectations of all concerned, we have requested the full investigative file of the Oregon Department of Justice relating to Commissioner Breidenthal and expect to attain full awareness of its content. The Oregon Department of Justice file is exempt from disclosure as an on-going criminal justice investigation and shall remain exempt disclosure under the criminal justice purposes exemption and any other exemption deemed applicable by the Attorney General of the state of Oregon are extinguished. If and when it is received, we will not provide criminal justice documents to anyone; they will be available, if at all, only from the records custodian charged with maintaining

[Footnote continued on next page]

Discussion topics Commissioner Breidenthal addressed which related to one or more of the considerations Sheriff Falls raised are addressed herein.

We met with Sheriff Falls for approximately eight hours on December 28th. During the course of that interview Sheriff Falls stated to us additional concerns beyond those set out in his December 9th memorandum. These concerns were:

1. Jackson County government is dysfunctional and he has lost trust in what it is doing; the Jackson County Board of Commissioners is dysfunctional and defers to Administrator Jordan; any communication Commissioner Breidenthal has with another Commissioner results in a conversation between that Commissioner and Administrator Jordan and a call to him from Administrator Jordan; meetings with the Board or the Budget Committee appears to be based on filtered information given to the decision makers beforehand and pre-ordained decisions. At one point during our interview, Sheriff Falls stated, "We don't have commissioners speaking to each other. Danny [Administrator Jordan] is running the County."
2. Sheriff Falls stated that he is uncertain in his ability to trust Administrator Jordan and finds him manipulative; several elected officials have been forced out of office and were managed, directed and interfered with by Administrator Jordan
3. The two new Jackson County Commissioners are reliant on Administrator Jordan for all their information⁷
4. Commissioner Breidenthal presents his own set of problems

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these public records for the Attorney General. Jackson County consented to this condition prior to our request to receive the records from the Oregon Department of Justice.

⁷ Certainly it is common for newly elected governing body members to be heavily reliant, even dependent, on the experience, knowledge and judgment of the executive. This is to be expected and certainly is the case in any strong manager/executive form of government. It also is commonplace for the managers to brief and be assured by the support of a majority of a governing body before bringing an action to them for decision in a public forum. The ability to count votes is essential in every political process.

5. Administrator Jordan and Jackson County administration impose themselves as a barrier to the changes Sheriff Falls believes his election mandates by the will of the voters
6. Sheriff Falls is not accorded the respect warranted by his elected office by the citizen volunteers of the Budget Committee, Administrator Jordan and Deputy Administrator Bragg
7. Sheriff Falls said that he is micro-managed and is the recipient of micro-aggressions; in particular, discussions and process related to Jackson County jail FTE and closure, the traffic team and traffic enforcement policies in relation to funding and revenue expectations and projections, personnel selection, hiring and promotion, investigation, audit and accountability related to take home vehicles, the handling of a patrol vehicle/pedestrian injury motor vehicle accident, and assignments within the Sheriff's Office including that of School Resource Officer; Sheriff Falls said Administrator Jordan interfered regarding Sheriff Falls' invitation to the Jackson County Commissioners to attend the County-wide law enforcement executive meeting where they could gain background and perspective which Sheriff Falls thought consistent with his transparency goals; Administrator Jordan interfered with his request to Commissioner Roberts that she read a proclamation for the Law Enforcement Memorial
8. Sheriff Falls' compensation and communications related thereto have been irregular, unfair, contrary to Jackson County policy and/or practice, contrary to the treatment of other newly elected sheriffs in Oregon and other Jackson County elected officials, and contrary to Oregon law

C. The Authors' Observations

It is important for the reader to recognize that none of the events under examination occurred in a vacuum. A person's perceptions generally stem from an accumulation of events during his or her lifetime. Commissioner Breidenthal expressed his beliefs concerning the "state of the County" some of which Sheriff Falls repeated and attributed to him; however Sheriff Falls did not adopt them or indicate that Commissioner Breidenthal influenced his views or actions significantly.

At the time Sheriff Falls entered the election process he believed, due to his own lack of research, that his compensation would be equal to if not greater than that of the then current Jackson County Sheriff, Mike Winters. Sheriff Falls explained his reliance on the salary amount "posted". Sheriff Falls' statement refers to the County

2014-2015 Budget which lists the Sheriff's salary then in effect. The amount budgeted for Sheriff Winters was \$132,000. Sheriff Falls later explained in an email to Human Resources Management Analyst, Claudia Bowdoin that the County's "only salary posted during the campaign was what the current Sheriff was making. There was no indication that there was any other salary. In the future I would recommend full disclosure ..." (email dated April 15, 2015) Sheriff Falls criticizes that the budget does not refer to the salary class and step plan or Board Order 73-14, or provide indication that a different Sheriff would be paid a lower salary. Sheriff Falls also believed at various times that his compensation was subject to negotiation and would be determined in some degree by his knowledge, skills, abilities, experiences, education, certifications and other considerations of merit – demonstrable qualification measures which he asserted Sheriff Winters lacked. These beliefs were incorrect.

By November 12, 2015 County Administrator Jordan responded by email following a meeting on November 10, 2015 with Sheriff Falls. He explained that the Salary Review Committee process, identified the Committee members and provided their contact email addresses and the relevant ORS citations. County Administrator Jordan researched and later that same day provided Sheriff-elect Falls detailed salary data. On November 14, 2014 Sheriff-elect Falls emailed the Salary Review Committee members and requested the opportunity to meet and discuss how his starting salary would be determined. Committee Chair Rudisile responded stating his agreement with County Administrator Jordan's explanations.

Sheriff Falls' expectations ran squarely against a 2008 Jackson County policy which governed compensation of newly elected Jackson County officials. This policy was developed by the Elected Officials Compensation Committee and subsequently approved and adopted by the Jackson County Board of Commissioners as a legislated order with the force of law. The authors note that no one had authority to meet the compensation expectations of Sheriff Falls without violating the law. This policy and Board Order was the product of untold hours of work by the Budget Committee. Two of committee's volunteer members serving during 2015 had served during and led the process and the deliberations that resulted in the current compensation policy and Board Order. Dick Rudisile had served on the Committee since 2001, Craig Morris since 2006 and April, Sevcik since 2011. These Budget Committee members wanted a "bright-line" rule for the compensation of newly elected Jackson County officials. The Step 1 rule is the product of that decision. It is understandable to us that the Compensation Committee may have been displeased and have had little patience for extended discussions on the subject or for revisiting the policy and propriety which led to the adoption of this policy. It is easy to assume

they viewed this policy as well settled, effective, proper and in the best interest of Jackson County.

Starting on November 12, 2014 Sheriff Falls began discussions concerning his salary. Then beginning in early January and through the Spring, 2015, Sheriff Falls raised the compensation issue repeatedly. During our interview of Administrator Jordan he told us that in one discussion with Sheriff Falls he described and explained to Sheriff Falls the mandate of ORS 204.112 and 204.116 which sets out the processes for fixing compensation. He particularly explained a partial solution, based on ORS 204.112(4) which states in its pertinent part:

“Notwithstanding subsections (1) to (3) of this section, the sheriff’s salary shall be fixed in an amount which is not less than that for any member of the sheriff’s department.”

During these discussions Administrator Jordan spontaneously commented that the law only allowed him the authority to fix Sheriff Falls’ salary at “one penny” more than the next highest paid member of the Jackson County Sheriff’s Office. Sheriff Falls found this comment as demeaning. Each of their views is understandable. Sheriff Falls interpreted Administrator Jordan’s statement to mean that Sheriff Falls’ service to Jackson County was worth only one penny more than his highest paid subordinate.⁸ When Administrator Jordan became aware of the offense taken by

⁸ Sheriff Mike Winters advanced through the six salary steps of the range in the Jackson County Pay Plan for non-union represented employees deemed equivalent for the Sheriff. This is the range appropriate for a Director III, the most highly paid Jackson County executive management classification. During 2014, Sheriff Winters’ last year in office, he was paid **\$132,683 (based on the 2012 non-represented salary schedule)**.

Consistent with policy, compensation orders and practice, Board Order 53-13 adopted April 11, 2013 which fixed Sheriff Winters salary at Step 6 also directed, “If a position is temporarily appointed or newly elected, the salary is set at Step 1 of the equivalent non-represented compensation plan, other than the Commissioner and District Attorney positions. For the Commissioner position that is temporarily appointed or newly elected, the salary is set at Step 2 ...”. Strictly and exclusively applied, Sheriff Falls’ entry salary would have been **\$103,958.00** according to County policy.

Administrator Jordan determined that Jackson County Sheriff’s Captain Larson earned **\$106,620.80**. He and Deputy Administrator Jackson County Bragg also took into account other taxable allowances paid to Captain Larson in determining the compensation amount which law requires that Sheriff Falls’ salary exceed. By this process, the amount was increased to **\$109,158.00**.

[Footnote continued on next page]

Sheriff Falls to his offhand remark, he apologized. He also acted. On January 10, 2015, Administrator Jordan emailed Deputy Administrator Bragg, and addressed a copy to Sheriff Falls. He wrote, in part:

Corey Falls' salary needs to be adjusted so he is the highest paid employee in his department according to ORS. ... we need to pay Corey at least one cent more than the next highest paid which is Capt. Larson ... Corey stated he wanted to be placed at step 2 since it is the next highest step but each of the Salary Review members did not agree to support such action. I only have authority to comply with law and anything more would be subjective on my part and not supported by legal basis. Thus **while I tend to agree with Corey that it is slightly offensive to pay him only one cent more, it is all I have authority to do** so can you please implement the necessary action to make sure the County complies with law. Any further adjustment would need to be at the direction of the Salary Review Committee and ultimately the Board of Commissioners." (Emphasis added.)⁹

During our interview of Administrator Jordan, he said what many of us have said or thought at one time or another – "I sure wish I had not said that. I can see how he [Sheriff Falls] took it. I assure you, that is not what I intended."

[Continued from previous page]

Step 2 of the range, the salary Sheriff Falls initially asked Administrator Jordan to authorize, was at that time fixed in the 2012 Compensation Plan as **\$109,158.00**. Thus, Administrator Jordan's legal authority fell short of the Sheriff's expectation by **\$5200.00 or approximately \$433.33 per month (salary numbers based on July 2012 salary schedule)**.

Administrator Jordan noted that this was short of Sheriff Falls' expectation at that time and he therefore invited Sheriff Falls to present his views, justifications and request to the Compensation Committee at their meeting on April 14, 2015. Sheriff Falls accepted this offer. Sheriff Falls took office at a salary of \$109,158.00. Ultimately, Sheriff Falls was paid at Step 2 from his first day in office. His salary was adjusted for COLA in July 2015 to **\$111,072.00**.

⁹ Sheriff Falls' requests to be placed at Step 2 and/or Step 3 of the salary range represents an increase to his starting salary and in Sheriff Falls view, was warranted by Captain Terry Larson's salary level as well as an inappropriate differential above the pay of his next highest subordinate. The adjustment determined to be within the County Administrator's executive authority (\$107,402.88) represents only 1.55% increase over the Step 1 salary. This was the amount "in dispute" at that time.

We believe that Sheriff Falls' disappointments and related beliefs festered. By the time of the Compensation Committee's meeting on April 14, 2015, Sheriff Falls had begun the reorganization of his Office and was contemplating the reassignments of his deputies and the service priorities of the Sheriff's Office, which certainly is within his discretion. We conclude that Sheriff Falls had not yet reconciled his duties, responsibilities and authority as Sheriff with the mandates of the Budget Committee and the Compensation Committee (which as we noted above is composed of the same three citizen volunteers members of the Budget Committee). While Sheriff Falls cannot be held to the expectations of the current or former Budget Committee and Boards of Commissioners, including agreements reached between them and former sheriffs, obviously his decisions affect organizational, community justice and political dimensions. Those relationships must inform his choices.

As set out in footnote 8, Administrator Jordan had invited Sheriff Falls to present his case for greater compensation to the Compensation Committee during the Committee's April 14th meeting. Sheriff Falls appeared and did so. He believed that he was free to talk with the Committee and present "his best case" for a higher starting salary. Statements to us by members of the Committee were uniform --- they did not understand Sheriff Falls' presentation as a justification for an increase in his compensation or for an exception to the Jackson County policy on the compensation of newly elected Jackson County officials. They agreed that, "He had no clear argument that justified his position." At the end of the Compensation Committee meeting on April 14th the Committee denied Sheriff Falls' request.

We believe that Sheriff Falls was making his case for increased compensation to two long serving Compensation Committee members who, based on their experience and knowledge, understandably held relatively inflexible views. They had developed and authored the policy through a well-considered process. Chairman Rudisile had volunteered fifteen years on the committees, Craig Morris ten and April Sevcik five. The pay policy for newly elected Jackson County officials had been in effect for seven years. It had been adhered to by the Board of Commissioners through the course of its enacting a series of Board Orders fixing salaries in conformity with that policy. In addition, these Committee members had witnessed others who, according to Sheriff Falls' views, would have been affected adversely and unfairly under the policy. It could be argued that Jackson County Clerk Chris Walker's compensation was reduced over \$10,000 upon her election in January, 2009. This is discussed more fully *infra*. The Budget Committee members explained to us that there has been no objection, challenge or complaint by any elected Jackson County Official, then or ever, until those raised by Sheriff Falls.

When we interviewed County Clerk Walker, she stated, "I understood why, and I knew that as a result of the steps for elected officials, my salary would increase year to year and top out at a much higher level." She expressed to us neither dissatisfaction nor complaint.

Under these facts and circumstances, it is understandable why, contrary to what Sheriff Falls thought was fair, reasonable and justified, the Compensation Committee rejected Sheriff Falls' requests and did not further adjust his 2015 compensation.

We recognize that dissatisfaction with one's pay and entitlements can give rise to dissatisfaction, animosities and deterioration of morale within any organization. Such feelings may be aggravated by perceptions of inequities, inequalities and discrimination. To be sure, effective leaders and managers appreciate the importance of insuring that pay administration is executed timely and accurately for these very reasons, among others. Documents demonstrate that Administrator Jordan responded to Sheriff Falls promptly and effectively within the limits of his authority. It appears to us that Sheriff Falls' perceptions and beliefs deteriorated because he nevertheless found this situation demoralizing, inequitable, inappropriate and simply unfair to be paid \$21,611.00 less than Sheriff Winters had been paid. Moreover, his choice as a career police commander to run for and assume the leadership role of Sheriff in Jackson County was based on the opportunity itself and his understanding of the compensation package. In addition, he expected to become Ashland's next Police Chief had he not been elected Sheriff. Without question, the consequence of his choice to serve in this role surprised him with a significant opportunity cost for him and his family, of which he remains mindful even as his salary increases incrementally.

III. FINDINGS, DISCUSSION AND CONCLUSIONS

Sheriff Falls addressed in his December 9th memorandum and in his December 28th interview the contentions which he has raised. He pointed out other concerns when we met with him. We address each in turn.

A. Hostile Work Environment

- 1. Unprofessional tone of conversations by Budget Committee and Compensation Committee members Dick Rudisile, April Sevcick, and Craig Morris during the budget meeting on December 1, 2015**

We interviewed each of the active participants in the meeting on December 1, 2015. We also listened to the audio record of that meeting. Each participant was questioned about his or her perceptions of the meeting and was asked to describe the tenor of the meeting and treatment of Sheriff Falls. Each participant interviewed was reminded that communications are not limited to verbalizations but that they also include voice intonations, body language, physical movements and presence.

No one we interviewed agreed with the statements made by Sheriff Falls in his December 9th memorandum in which he characterized his treatment and interactions with the participants as constituting or contributing to a hostile work environment. Others' characterizations of the December 1st meeting varied from "cordial" and "business like" to "tense at times." The person who described the meeting as "tense at times" also commented that he/she believed that the tension was primarily the product of Sheriff Falls not answering specific questions asked by those present and his nonverbal reaction to questions. Another witness stated that he/she believed that the body language of Sheriff Falls in leaning forward when answering certain questions was semi-aggressive and could have been viewed as prompting the response(s) which he perceived from others.

The tension was primarily generated by the budget ramification that could potentially result from two changes that Sheriff Falls had initiated in the operations of the Sheriff's Office. One of the witnesses credits Administrator Jordan for what he/she believed were his successful actions in deescalating the perceived tension. We did note comments, including those of one Committee member, in response to Sheriff Falls' description of his reasons for closing the jail pod and his statement that if given additional FTE he could re-open it. That Committee member described the Sheriff's condition of six (6) more FTE before he would open the jail pod as "a threat" and another Committee member stated, "I am feeling threatened that bad decisions were made in the past ... and without more staff authorized, you won't open [the jail] ..." During that meeting Sheriff Falls relied on "his philosophy" in support of his proposed actions without presenting the Committee with a detailed justification. One Committee member made clear to Sheriff Falls that budget increases would not have his/her support without data and a compelling rationale. **Certainly, for example, this meeting would have evolved very differently had the Sheriff presented a staffing study and the most recent OSSA compensation study as a basis for his requests.**

The authors believe that these interactions between the Budget Committee members and Sheriff Falls on December 1st were influenced by at least the following:

- a. The Committee Chair is a retired senior executive of Boise Cascade who has served on the Committee since September, 2001.
- b. The Committee Chair was at times terse in his responses to Sheriff Falls.
- c. The Committee members remark set out above were misconstrued by Sheriff Falls as accusing him of threatening the Committee and its process in establishing a budget for Jackson County.
- d. Sheriff Falls appears to have lacked the experience to recognize that elements of such a presentation were not being well received. He failed to adjust his presentation accordingly. Sheriff Falls did not respond to the Committee members repeated requests for data and specific rationale. This is contrasted to Administrator Jordan's awareness and his response by trying to diffuse the tension. Experience teaches the authors that successful presenters know and perceive audience, perceive their audience when speaking. They know to prepare and adjust a presentation to meet objectives. Such are the elements of persuasion, negotiation and leadership.

Witnesses who were present at the December 1st Budget Committee meeting commented that Administrator Jordan stated repeatedly that he would work with Sheriff Falls prior to the next Budget Committee meeting. He said they would work to develop budget targets that would likely meet the needs and desires of all stakeholders. We heard these kinds of statements by Administrator Jordan on the audio recording of the meeting which we regard as obviously intended by him to deescalate, bring to closure unproductive dialog and support Sheriff Falls.

We are unable to find any factual or objective support for the experiences, feelings and beliefs which Sheriff Falls described in the memorandum of December 9th or during his meeting with us on December 28th.

The authors have specifically noted and repeat here for emphasis that neither we nor other participants in the December 1st Budget Committee meeting share the same life experiences as Sheriff Falls. Care therefore

should be taken by all concerned to insure that in the future, “perception does not become reality.”¹⁰

Sheriff Falls did not present and we presume the Budget Committee was unaware of challenges Sheriff Falls confronted when he assumed Office, and accomplishments which had been achieved, some of which are discussed *infra*.

2. Alleged demeaning comments by Budget Committee and Compensation Committee members Dick Rudisile, April Sevcick, and Craig Morris during December 1, 2015 budget meeting

Authors believe that what Sheriff Falls perceived as hostility from the Budget Committee members toward him personally was in fact a reflection of the Committee members’ reaction to Sheriff Falls’ failure to recognize his presentation and approach was frustrating for them. The committee member perceived that Sheriff Falls was failing to answer their specific questions or provide them with his rationale for his proposed actions based on data. No comments by any member of the committee were more than a legitimate reaction to the shortcomings they found in his presentation.

We find no evidence of demeaning tone or content other than the facts and observation set forth in section “a” above.

It appears to us that Sheriff Falls has not given due regard to the primary charge of the Budget Committee – that is, to insure expenditures do not exceed revenue and that the overall budget is consistent with the service priorities of the Board of Commissioners and the citizens of Jackson County. In his presentation to the Budget Committee Sheriff Falls explicitly stated that “we will work within the resources you give me.” At the same time the Sheriff linked additional funding for the FTE in order to preserve the services he had discontinued (traffic team and jail pod). Both were of longstanding import to the Budget Committee and the Board of Commissioners. Understandably, Sheriff Falls’ view that the County should increase FTE in order to re-open the jail pods were “a hard sell” under these circumstances. The committee easily

¹⁰ Please refer to the discussion relating to and under the heading, PERTINENT PRACTICAL AND LEGAL CONSIDERATIONS RELATING TO SHERIFF FALL’S PERCEPTIONS, *supra* at page 6.

could have viewed Sheriff Falls as asking them to take Jackson County funds from other budgeted funds or service areas and allocating them to the Sheriff's Office budget. In fact, County Administrator Jordan offered the option to balance the Sheriff's budget with other County resources in order to make up what he and the Sheriff's staff agreed was a *de minimus* anticipated shortfall at the next regular Budget Committee meeting. Because Sheriff Falls failed to appreciate the facts and history with which most of the others at the December 1st Budget Committee meeting were familiar, he misconstrued the Committee members' interactions with him.

3. Pattern of Micro-aggressions

Sheriff Falls mischaracterizes others' reasonable execution of responsibilities. Those are roles that require teamwork, interaction, collaboration and cooperation among others and himself, his staff and his Office. When we attempted to catalog micro-aggressions to which Sheriff Falls referred, we were unable to identify any. We find no evidence of "micro-aggression" directed at Sheriff Falls by other elected officials of Jackson County as the term "micro-aggression" is generally understood.¹¹

Others interpret Sheriff Falls' behaviors toward them critically. In the record and statements of others we noted anecdotal evidence that this characterization of certain of Sheriff Falls' actions toward others could also be described as micro-aggression. In particular, his responses to emails in April of 2015 regarding the audit of the Sheriff's Office Take-Home Vehicle Policy which are quite curt, and his use of formal address when annoyed (instead of Eric, Cleve or Danny, County Administrator Jordan, Human Resources Director Brook, County Auditor Spivak) were regarded similarly. While Sheriff Falls' custom was to use first name addressed, but when the text of the email indicated he was annoyed, he addressed people by their full name and title. Some witnesses mentioned, simply as an inquiry and not a criticism, that Sheriff Falls' use of the term "discrimination" in regard to the County's pay

¹¹ It may be that we don't understand the term as Sheriff Falls used it. Perhaps we should have inquired further. The term initially was generally understood to describe insults and dismissals non-blacks direct to African Americans, and now extends to encompass the casual degradation of any socially marginalized group including women, poor and disabled by those who are dominant in the culture. See, generally, "Microaggression Theory" in Wikipedia.

plan could be interpreted as a *micro-aggression* simply because his use of the term cannot be divorced from his being an African American.

Addressing everyone's considerations should include clearing the air and identifying more effective interpersonal communication strategies.

4. Bullying

The authors understand Sheriff Falls' frustration. While he has used this term, we find this characterization unexplainable in this context. He is, after all, the elected Sheriff of his County with all the power of his position. We believe that Sheriff Falls has misperceived the County form of government. It is possible that he does not understand: relative roles, responsibilities and authority he enjoys in his Office, the Board of Commissioners as the legislative, quasi-judicial governing body, and the County Administrator as chief executive and administrative officer of Jackson County. As noted in our discussion of *micro aggressions* in the preceding discussion, Sheriff Falls has mischaracterized the reasonable execution by others of their responsibilities when the roles of others require teamwork, interaction, collaboration and cooperation between others and himself, his staff and his Office. We find no evidence of "bullying" of Sheriff Falls by other elected officials of Jackson County as the term "bullying" is generally understood.

B. Undermining the Position of Sheriff

1. Micromanagement of Work

a. Excessive phone calls

In his memorandum dated December 9, 2105, Sheriff Falls lists "excessive phone calls" as an example of incidents that demonstrated that he was treated "...in an unprofessional, demeaning, or discriminatory manner." By its very nature, the allegation of "excessive phone calls" is difficult to quantify. A telephone link analysis would only provide the date, time, length and number of calls from each designated phone number. Such a study is an expensive and time consuming process. Since we have no knowledge that any phone calls were recorded, we do not know the content of the calls. The authors are therefore unable to assess Sheriff Falls' perception that he was subjected to excessive phone calls. Further, what one party may view as excessive, another might view as merely trying to communicate, facilitate and collaborate. Our witness interviews did not identify or confirm a basis for Sheriff Falls'

allegation and perception of excessive phone calls. The allegation of being subjected to excessive phone calls also carries an assumption that the phone calls were not welcomed nor solicited. At least in the recent interactions of Sheriff Falls with Commissioner Breidenthal and Assessor Gibson (fall of 2015), those calls were initiated by or welcomed by Sheriff Falls. Chair Rudisile commented during his interview that since the late spring 2015 he had no contact with Sheriff Falls outside his of appearance before the Committee. He did not intend to initiate future contact with Sheriff Falls.

Sheriff Falls' allegation that he was subjected to excessive phone calls is not susceptible to resolution except on the basis of "the eye of the beholder". Based on the evidence before us, we cannot substantiate or refute this allegation.

b. Excessive meetings

In his memorandum dated December 9, 2105 Sheriff Falls lists "excessive meetings" as an example of incidents that demonstrate that he was treated in an "unprofessional, demeaning or discriminatory" manner. Administrator Jordan advised us that he meets with all elected officials on a regular basis, particularly when the elected official is new to his or her office. Administrator Jordan is easily and consistently available to the County Commissioners and most of the other elected officials because of their physical proximity in Jackson County offices. However, Sheriff Falls' office is located outside the immediate Medford downtown.

Administrator Jordan explained that in early 2015 when Sheriff Falls began as the Jackson County Sheriff, he met with him on a pre-scheduled and regular basis. During the late winter and early spring he increased the frequency of these scheduled meetings with Sheriff Falls. He told us he believed that such interactions would help Sheriff Falls as he gained experience in his new role in county government, and mentioned that he had followed similar meeting practices with other new department heads, both elected and appointed. Administrator Jordan defined for us his leadership responsibility to include facilitating and assisting to insure success in all departments of the County. He stated that his intention was for meetings to be helpful mentoring and communication opportunities for both him and Sheriff Falls.

Administrator Jordan told us that after being in office a while, Sheriff Falls began to cancel these meetings without explanation, and did so frequently. Administrator Jordan instructed his staff to reschedule. An illustration of this

is an email to Sheriff Falls from Linda Strickland, Administrator Jordan's assistant, in which she sets out a schedule of meetings extending through to the end of December 2015. In an email dated August 17, 2015, Sheriff Falls replies to Ms. Strickland, "I will not be able to make this meeting this week as I will be out of the office". It eventually became clear to Administrator Jordan that Sheriff Falls did not want the regularly pre-scheduled meetings to continue. On October 14, 2015, Mr. Strickland emailed Sheriff Falls stating, "Corey- Danny has asked me to cancel the remainder of the Sheriff update appointments that I had scheduled for the two of you, beginning with October 29th meeting. Please let Danny know at any time if or when you would like to meet with him going forward. Tomorrow [10/15/15] is still on both of your calendars because Danny understands that you want to talk with him about the traffic team budget. He will see you at the depot at 3:30pm!"

Clearly Administrator Jordan became aware of Sheriff Falls' opinion that meetings were excessive and ended that procedure. If Sheriff Falls found his meetings with Administrator Jordan excessive, this irritation ended by October of 2015. At our interview of Sheriff Falls on December 28th, he did not identify anyone else with whom he thought he had been expected to meet excessively. Administrator Jordan obviously "got the message" and ended his meetings with Sheriff Falls.

The authors do not find that these meetings justified Sheriff Falls' assertion in his December 9th memorandum that he was subjected to excessive meetings. The authors note that in none of the email traffic between Administrator Jordan and Sheriff Falls did Sheriff Falls ever tell Administrator Jordan that he felt that the face-to-face meetings were excessive and that they should cease. Administrator Jordan told us that his practice was to arrange to meet Sheriff Falls at his office; thus it should be clear that the meetings should not be regarded as an exercise of power, dominance or imposition upon Sheriff Falls, and that Administrator Jordan's intentions were to be of service and helpful to Sheriff Falls.

As is clearly established in law, one who regards him/herself as the recipient of offensive discriminatory treatment must provide notice and request that the offensive, discriminatory treatment stop. As soon as Administrator Jordan understood that his outreach was not appreciated by Sheriff Falls, further attempts to schedule stopped and the pre-scheduled meetings were cancelled.

The authors believe that it would have been wise for Sheriff Falls to continue to participate in meetings with Administrator Jordan and to cultivate cooperative relationships with others, including Auditor Spivak and Deputy Administrator Bragg. Sheriff Falls now holds a political office. While the Sheriff's interpretation of the one-on-one meetings with Administrator Jordan is understandable, it appears to us that he ignored the bigger picture. Certainly Administrator Jordan is central to County developments, good and bad from the Sheriff's perspectives. It is apparent to us that Sheriff Falls' personal interests and the best interest of the Sheriff's Office can only be advanced through his willingness to meet regularly, listen and share views in the fostering of strong and essential relationships. For any politician these skills and the willingness to use them are "essential job functions."

c. Audits of the Sheriff's Office

While we do not believe the take-home vehicle audit was retaliatory, we understand how Sheriff Falls could reasonably question the motivation for the audit request. The timing is suspect. The Sheriff appeared before the Compensation Committee on April 14, 2014. The Budget Committee requested the audit on April 16th. The Sheriff was informed of the audit on April 20th.

In his memorandum dated December 9, 2105 and during his interview on December 28, 2015, Sheriff Falls listed and asserted "audits of his office" as an example of incidents that demonstrated that he was treated in in an "...unprofessional, demeaning or discriminatory..." manner. On December 28th when Sheriff Falls was asked what audit he was referring to in his December 9th memorandum, he said it was the audit on the Sheriff's Office policy about take home vehicles by employees of the Jackson County Sheriff's Office. It appears to us that this policy had been in place for a number of years prior to Sheriff Falls' election in November of 2014. Sheriff Falls told us on December 28th, that soon after his appearance before the Compensation Committee on April 14th he was advised that the Sheriff's Office policy of allowing employees to take home vehicles was being audited.¹² According to

¹² As we describe in other sections herein, at this meeting Sheriff Falls presented his request to the Compensation Committee that his salary be increased. The Compensation Committee did not recommend to the County Commissioner that Sheriff Falls' compensation be increased and Sheriff Falls' compensation was not increased.

Sheriff Falls, Administrator Jordan called him and informed him that the Sheriff's Office Take-Home Vehicle Policy would be audited. Administrator Jordan advised Sheriff Falls of the audit in an email dated April 20, 2015. We noted an email from Administrator Jordan to Sheriff Falls dated April 28, 2015 in which Administrator Jordan advised Sheriff Falls how the subject of the audit of the Sheriff's Office Take Home Vehicle Policy came up at the Budget Committee meeting. Sheriff Falls made two observations to us regarding this event. First, Sheriff Falls stated that he did not know why the subject of auditing the Sheriff's Office Take-Home Vehicle Policy was not discussed with him when he met with the Compensation Committee on April 14th, and second, that the decision to audit this policy had the patina of retaliation for his request to have his compensation increased. We found in Sheriff Falls' response to Administrator Jordan's email of April 28, 2015 that the Sheriff raised the issue of his lack of input into the Budget Committee's request that an audit of take home vehicles be undertaken. Sheriff Falls wrote, in part, "Is there any reason why they did not ask me about this during my budget presentation instead of going behind my back and going straight to an audit?"

Certainly the circumstantial evidence might lead a person to that conclusion; however as will be discussed herein, Sheriff Falls' conclusion was not warranted based on direct evidence of the way a decision to audit the Jackson County Sheriff Office Take-Home Vehicle Policy occurred. Circumstantial evidence must be rejected when there is direct evidence of a fact. We find this to be the case.

The decision to audit the Sheriff's Office Take Home Vehicle Policy did not occur on Tuesday April 14th immediately after Sheriff Falls made his presentation to the Budget Committee. That decision in fact was made on Thursday April 16th. In an email from Administrator Jordan to Sheriff Falls dated April 15, 2015 Administrator Jordan advised Sheriff Falls that after he left the meeting, the Compensation Committee had "...voted to continue with their current salary methodology for all elected officials..." Administrator Jordan said nothing in his email about an audit of the Sheriff's Office Take Home Vehicle Policy because the request had not yet been made by the Budget Committee. The minutes of the Jackson County Budget Committee on April 16, 2015, page 7 under "Deliberation" the following appears:

"Ms. Sevick made a motion to approve Order Number 45-15 in the matter of approving the 2015-2016 fiscal year Elected

Officials possessive salaries for Jackson County, Oregon as recommended by the Elected Officials Salary Committee...Motion passed. A discussion was held regarding utilization of the Sheriff's Office motor pool. The Committee agreed that it would be good to evaluate the program and asked Mr. Jordan to do some research. Criteria was [sic] briefly discussed and Mr. Jordan stated that he will speak to the Sheriff. He [Administrator Jordan] noted that the internal audit could perform the review to evaluate and determine the effectiveness of the program. Further discussion was held regarding the audit program."

Clearly, the decision to audit the Sheriff's Office Take-Home Vehicle Policy was made in a Public Meetings Law two days removed from Sheriff Falls' presentation to the Compensation Committee on April 14th. Administrator Jordan was asked by the Committee to advise Sheriff Falls of their decision to audit the Take-Home Vehicle Policy of the Jackson County Sheriff's Office. Since the April meeting was a public meeting, Sheriff Falls could have attended. Had he done so, he would have heard the discussion and decision of the Committee and certainly would have been heard had he requested the opportunity.

We noted that the take home vehicle inquiries gave rise to troubling emails among Sheriff Falls and others, including an email from Budget Committee Chair Rudisile to Sheriff Falls dated April 29, 2015 in which he copied "cc'd" the County Commissioners, the Budget Committee members and Administrator Jordan. The opening line of the email reads, "I am very disappointed in your 4/28/15 e-mail to Danny Jordan and the Commissioners. He is only carrying out the directions of the Budget Committee." Sheriff Falls' email response to Budget Committee Chair Rudisile is dated May 1, 2015 and is "cc'd" to the others in the email chain. The last lines written to Sheriff Falls state, "If you want to alleviate emailing back and forth let's all sit down and meet face to face about this. If the venue is public, so be it. I'm sorry you were disappointed by the email. I am sorry also. Please explain what you mean by this? Keep in mind other appointed and elected members would also like your cooperation and support in fulfilling their responsibilities."

Auditor Spivak sent Sheriff Falls a memorandum dated May 29, 2015 advising the Sheriff that he was starting the audit and thanking Sheriff Falls in advance for his and his Offices' cooperation.

As for the audit itself, we note that the effects of this audit are relatively remote in time. The decision to audit the Sheriff's Office Take-Home Vehicle Policy was made on April 16th. The new budget was to become effective in two and one half months on July 1st, 2015 and would be effective until June 30th, 2016. The audit would have no bearing until the beginning of a new budget cycle, if then, for FY 2016-2017 beginning on July 1, 2016.

Following the April 16th 2015 directive of the Budget Committee, Auditor Spivak performed the audit of the Jackson County Sheriff's Office Take-Home Vehicle Policy and related practices. A draft of the report was completed in October of 2015. On October 14, 2015 Auditor Spivak forwarded a copy of the audit to Sheriff Falls. In an email dated Friday, October 23, 2015 Sheriff Falls responded to Auditor Spivak as follows:

"Mr. Spivak, sorry for the delay in this response. I was disappointed to see the Take-Home Vehicle Report as it seemed to discount or disregard information that had been discussed in a variety of meetings. I was also extremely disappointed to see the cost increase to three or four times the amount that you had anticipated about a month ago. I am not sure if your methodology is within industry standards for an audit like this. This whole situation has been very troubling and we will have no further input in this process."

A literal reading of Sheriff Falls' email leads the authors to the conclusions that Sheriff Falls was quite troubled by the audit process and conveyed other than a cooperative or collaborative mindset toward multiple fiscal policy makers. The authors are unable to discern evidence that the audit of the Sheriff Office's Take-Home Vehicle Policy and practices was excessive, unreasonable or retaliatory. We believe it represents no more than the Budget Committee request to accumulate information consistent with a goal of greater fiscal discernment in their process and performance of duty.

In the authors' opinion, there was good cause for inquiry in view of the fact that five deputies commuted at County expense to homes outside Jackson County and because fleet maintenance and mileage expenses associated with

take-home police cars are a non-taxable benefit about which public question is best addressed by the very sort of thoughtful analysis the audit provided. Moreover, the audit served as an effective way to document the positives and justifications for take-home, assigned vehicles. And, the audit was, in fact, supportive of the take-home vehicle practices. In any event, the audit was well done and in provided a good deal of useful information to the Sheriff, Board and Budget Committee.¹³ In particular, Auditor Spivak stated to us,

“I have not found Danny to be overly controlling of County operations. During my first year here, I implemented a new practice of how the audit function conducts the annual risk assessment. Danny expressed concern over my change but commented that he hired me to do a job and he would let me do that job as I see fit. I found him to be consistent in this approach.”

¹³ In view of the nature of Sheriff Falls’ criticisms reinforced by those voiced by Commissioner Breidenthal, we explored the County Auditor function at length with Auditor Spivak when meeting with him. He explained to us,

“County governments are different than cities in that counties’ elected officials oversee departments (e.g., the Sheriff, Clerk, Assessor, and Surveyor) but cities only elect city council members. It presents unique challenges and issues and results in the blurring of the lines regarding responsibility and authority.

In serving the public, elected officials strive to live up to their campaign promises and provide the best service they can to the citizens. Per ordinance, the County Administrator is “To adopt and enforce policies related to the administration and management of the County,” and “To establish a personnel program which provides for the employment of appropriate personnel to effectively meet the needs of the County”

County government is governed by state statute and county ordinance. They form the ‘rules of the game.’ A certain level of tension is to be expected when one individual is attempting to achieve goals and objectives and another is attempting to ensure statutory/policy compliance and ensure the fiscal wellbeing of the County. This tension is normal and necessary and provides appropriate checks and balances.

To end, I recall a lesson learned in my first semester as a graduate student in the field of public administration. The word “bureaucracy” is often associated with a negative connotation. However, in its truest meaning the word refers to a system of fixed rules developed to ensure all individuals are treated equally. Bureaucracy can be frustrating but it is also necessary.”

While the authors have found that the decision to audit the Sheriff's Office Take Home Vehicle practices was not retaliatory nor motivated by any purpose other than to obtain information for budget purposes, we find the email exchanges and the proximity in time of the communications and decisions on the subject could rouse suspicion of any reasonable person. And, we became aware of Sheriff Falls' view that he and his staff worked collaboratively with the Auditor and were surprised when the audit report issued disregarded his views as expressed during audit meetings (changes in briefing practices, eliminating commute time, patrol subject to call from time of departure from residence, and impact of such change on validity of treating home to office travel as a mileage cost of the Take-Home Vehicle Policy). Sheriff Falls objected to the Auditor's estimate of cost impacts three times (\$100,000) the level previously discussed and found the report inaccurate and unfair because important information was disregarded and omitted by the auditors.

The authors recognize that the audit decision may have been well-motivated, and certainly focused on useful information related to costs and benefits. It is inescapable that a detached observer can recognize in the totality of circumstances the appearances of a "power play."

d. Budget process related to jail full time employees or equivalent (FTE) and closure, the traffic team and traffic enforcement policies in relation to funding and revenue expectations and projections.¹⁴

We noted that Sheriff Falls may be justifiably proud of his education, training, and record of continuous self-improvement as a professional through his career. We would not expect and do not find indication that he has any particular expertise in municipal finance, budget law. Nor does he have familiarity with considerations common to any governmental governing body's duty and efforts to allocate limited resources to competing priorities for services, except to the extent he gained such knowledge in the City of Ashland budget process during the two years he served as Deputy Chief.

It is imperative that appropriated dollars may only be spent within applicable restrictions. He certainly stated clearly to the Budget Committee that he

¹⁴ We most assuredly are aware that former Sheriff Mike Winters came to the Office of Sheriff with little experience beyond that of a traffic officer and Oregon State Police Trooper. Thus, traffic enforcement was Sheriff Winters "bread and butter" which we understand may have been to the exclusion of most everything in the realm of administration. Indeed, his office was his emergency vehicle; the physical desk and office space were "staged" by his staff, but he rarely if ever worked there. He enjoyed and was comfortable on patrol, thus responding to calls, patrolling and in uniform was where he spent the majority of his time. It is therefore understandable that Sheriff Falls might find a good deal to criticize. However, we also are aware of the steep learning curve for all newly elected Sheriffs. The Office is professionally complicated, multi-disciplinary, and larger in size and budget than most other local law enforcement agencies, and in addition is fundamentally political. Sheriff Falls would do well to consider that Sheriff Winters did vest authority and responsibility in many capable and seasoned subject matter experts including: Undersheriff Rod Countryman, Captain Monte Holloway, Captain Terry Larson, Lieutenants Robert Stark, and Jail Commander, Dan Penland. These managers consistently attended to the details of office management. When first elected, Sheriff Winters persuaded C. W. Smith to return as his Undersheriff, and wisely gained the benefits of his decades of experience upon which he relied upon until Sheriff Smith was elected to the Board of Commissioners.

Sheriff Falls recognizes the value of senior staff and states that he has attempted to recruit an Undersheriff but has not identified a qualified candidate. Certainly Sheriff Falls needs someone to fill the role of a strong second-in-command with complimentary executive, managerial and administrative skills, as well as the right blend of understandings and experience. In the meantime, if the search for such a candidate remains elusive, Sheriff Falls should recognize the value and assistance that the County Administrator can provide and come to see him as a valued ally if Sheriff Falls can do so.

would do his best in the delivery of Sheriff's Office services with the resources he is given by the Budget Committee and the Board of Commissioners.¹⁵

We considered the interviews and the volumes of Jackson County documents and the record. (After review the authors sought to identify the determinative and causative factors for Sheriff Falls' perceptions and beliefs.) Sheriff Falls' allegations appear to have resulted from some combination of the following, some of which have been affected by or are the product of the Sheriff's Office staff past disengagement from County staff meetings due to Sheriff Winters' preference that he attend personally and, for the most part, exclusively, or not at all:

1. Unfamiliarity with Jackson County fiscal challenges and accomplishments;
2. Inexperience in County government;
3. Law enforcement career experiences predominantly in patrol and supervisory capacities, and less executive management. Sheriff Falls experience includes service in Ashland as Deputy Chief with budget responsibilities, Lieutenant, sergeant, in addition to service as a deputy sheriff in Snohomish County near Seattle. *See*, finding #11 *infra* in connection with other findings related to compensation for a contrast of Sheriff Falls' and Sheriff Winters professional qualifications;
4. Failure to appreciate, appropriately consider and address the policy and fiscal considerations both for the Jackson County Sheriff's Office, the community and the County Budget as a whole at the time the traffic team was formed and funding was initially approved (although, as noted elsewhere, the Sheriff is not bound by agreements and understandings of prior sheriffs and County officials;
5. Failure to appreciate, consider and address the considerations relating to the construction of the podular addition to the jail facilities and its

¹⁵ See discussion and legal authorities in section III(G) *infra* related to the independence of county elected officials, pages 77 – 78.

opening. The Sheriff decided unilaterally to close it precipitously. He considered only the staffing alternatives he described;

6. Lack of preparation and specificity of data analysis when presenting to the Budget Committee on December 1st, which we heard when we listened to the audio record;
7. Offering insufficient and no more than statements of his personal philosophy as justification to the Budget Committee;
8. Sheriff Falls' unpersuasive contention, in this context¹⁶, that coupling traffic fine revenue to traffic team FTE funding was improper (It is unpersuasive because those involved at the time the traffic team employees were approved and throughout the successes of the traffic team, including Jackson County administrators and the citizen members of the Budget Committee, know well the important and predominant considerations involved.).¹⁷ We certainly understand

¹⁶ Sheriff Falls cites the United States Department of Justice report concerning Ferguson and the negative and discriminatory impacts of robust traffic enforcement as a basis of his philosophy and objection to traffic team priorities, FTE and productivity. While his point is beyond dispute in appropriate contexts and situations, we believe it is misapplied in this Jackson County situation. We are mindful, for example, of the ACLU finding that African Americans were nearly four times as likely as whites to be arrested for possession of marijuana, and that local police departments have sought to boost statistics by targeting poor or minority communities thereby making African Americans victims of law enforcement's attempt "to meet numerical arrest goals instead of public safety goals." ACLU, *The War on Marijuana in Black and White*, <http://www.aclu.org/criminal-law-reform/war-marijuana-black-and-white-report> (2013). See also, *A Dreadful Deceit* at pg. 293.

We recognize that the more pertinent report and most persuasive support for Sheriff Falls' concerns is *Final Report of the President's Task Force on 21st Century Policing*, (US DOJ Office of Community Oriented Policing Services, May 2015). In particular, Recommendation 2.9 is that "Law enforcement agencies and municipalities should refrain from practices requiring officers to issue a predetermined number of tickets, citations, arrests, of summonses, or to initiate investigative contacts with citizens for reasons not directly related to improving public safety, **such as generating revenue.**" (Emphasis added.)

¹⁷ The traffic team was created at a time when Jackson County led the State of Oregon in numbers of drunk driving related accidents and its traffic death rate. In 2005-2006 \$660,058 was added to the Sheriff's budget in response to the Sheriff's proposal to add traffic officers. The County added a Southern County Justice Court. Administrator Jordan correctly forecast that over the course of a several year implementation, traffic fine revenue would be sufficient to cover the costs of the traffic

[Footnote continued on next page]

Sheriff Falls' point that tying revenues to operations in this way can lead to a public perception that the police are using traffic enforcement solely to fund policing. We find that this is not and never was the case. However, Sheriff Falls errs when jumping to this conclusion based on situations which have arisen with other police agencies. He does not give due regard to the choices made in collaboration and cooperation with the Board of Commissioners and the Budget Committee in response to serious highway safety problems; nor did Sheriff Falls give due consideration to the data and metrics which demonstrate success of the approach he decided to abolish. Sheriff Falls is not opposed to traffic enforcement and asserts positions based on funding. In Daniel Newberry's "Traffic School" article which appeared in the *Mail Tribune* (June 13, 2011) we found a sound explanation of why the traffic team decisions were puzzling to the Budget Committee members.¹⁸

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officers and the court. The Sheriff explained that the traffic officers always would be available in any emergency to respond to critical calls for service and would therefore serve to increase the Sheriff's Office patrol force and response capabilities.

By 2007-2008, the traffic team and Justice Court had successfully reduced traffic deaths in the unincorporated county. By 2008-2009, the traffic team and court were at the point of being self-funded – that is, a significant additional service of the Sheriff's Office which was provided at no additional cost to the taxpayers in the General Fund. Its efforts were so successful that the Sheriff's Office was then authorized an additional records clerk to deal with the associated record management and data entry demands. Then, in 2009-2010 and due to the traffic team's successes in reducing deaths, another deputy was authorized and added to the team.

Although unrelated to the traffic team, we noted that for 2014-2015, the County granted Sheriff Winters request and budgeted an increase in patrol deputies of 2 FTE, and for 2015-2016 under the Sheriff Falls' administration approved a 0.45 FTE increase in connection with Sheriff Falls' reorganization elections as of the time the budget was adopted.

We are aware that traffic deaths and related metrics are up in the most recent data available and trust that Jackson County's share of the statewide increases is proportional. The issue is ancillary to our scope; if indeed highway safety in the County has deteriorated in more recent years on the same basis as the rest of the state and nationwide trends, it may be due more to distracted driving than the factors that contributed to the data during Sheriff Winters terms in office.

¹⁸ As noted in the previous footnotes, self-funding units are subject to criticism. This is not the case where the focus of the traffic team has been and continues to be on changing behavior. We believe abundant evidence establishes that this was the case in the formation and management of the Sheriff's Office Traffic Team, as demonstrated in the Newberry *Traffic School* story. We are unaware that

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Newberry wrote about the impact of traffic enforcement and the approximately 8,450 attendees at traffic school: “In 2004, we reached a high of 45 traffic fatalities in Jackson County,’ Downing says. ‘Last year [in 2010] it was down to 16, and only one of those was a DUI.’ The drop in fatalities, Downing believes, is the result of an initiative begun in response to the 2004 fatalities that combines education and enforcement. ‘We have seven deputies now whose job is to respond to crashes, patrolling streets, traffic-enforcement duties,’ Downing says. More enforcement leads to more tickets. More tickets have led to more voluntary attendance in traffic school. Enforcement acts as a deterrent not only for those who get caught, but for the witnesses, as well. ‘We’ll target areas where there is poor compliance,’ Downing explains. ‘People see the cones, the cruisers, the flashing lights. The next time they drive through there, whether or not there’s an enforcement operation, they think, ‘Oh, there’s a big crosswalk here,’ and slow down.’”

9. Insensitivity to the culture of Jackson County executives who have done more with less by working in collaboration with cooperation and creativity as an executive management and leadership team, at least since 2005;¹⁹

[Continued from previous page]

there are traffic citation quotas or anything other than the expectation that deputies assigned to the team will engage in legitimate, targeted enforcement. Such work along with safety and education initiatives are common to all traffic enforcing specialty units.

Sheriff Falls points to other related issues he is addressing (a choice to target DWI apprehensions (Sgt. Turk); citing criminal traffic crimes to Justice Court; disproportionate citations of Hispanics).

¹⁹ Steve Duin wrote for *The Oregonian* (Sunday, April 5, 2009), a newspaper known to be almost uniformly critical of government. Duin explained and justified his conclusion, which was that “a heap of applause for the county’s willingness to make tough decisions”, and for providing a model for what happens when government is viewed as a service provider with leaders, not special interests, at the reins. He wrote in pertinent part:

“When we last checked in on Jackson County, the libraries were shuttered the timber money was toast, and the budget was submerged in \$23 million of red ink. Given the on-going recession, it’s hard to imagine the current status of that county’s economic meltdown.

“You can say that again.

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10. Inability to capitalize on the value to his future success as Jackson County Sheriff and as the elected official, and to the goals of the Sheriff's Office of partnerships and alliances with others on the County executive team; and/or
11. Apparent adoption of an isolating "us/they" and "siege mentality" view of others who are in fact partners essential to the Sheriff's success, which seems based on an erroneous application of concepts related to the independence of the Sheriff as an elected official, discussed later in this report. (This may not be the case regarding other agencies, though

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"The libraries have reopened, in a public private partnership. The county is so flush with cash that it is directing the reauthorized timber payments into a rainy day fund that stands at \$70 million. Administrator Jordan, the county administrator, estimates budget reductions and staffing cuts will generate \$62 million in savings over a five-year period.

"And Commissioner C.W. Smith wants to know why other counties and the Legislature aren't inspired to follow Jackson County's lead. ...

"In the summer of 2006, Jackson County decided it had no more time to waste and unleashed Jordan, who'd previously run the community corrections programs in Umatilla and Clatsop counties. His mandate: cut \$23 million in spending, a 36% reduction in Jackson's general fund.

"Jordan went to work. He generated annual savings of \$4 million in the library system by handing its operation over to a Maryland-based management company.

"He reduced the number of county employees from 1,536 to 1,144 (an 18 percent reduction in FTEs), including cutting loose two-thirds of the county's planning department.

"He cut almost \$4 million from the sheriff's annual budget by eliminating the county's practice of renting 100 jail beds, then opening a second jail as part of a transitional program in which inmates work during the day and pay the county \$35 a night for a pillow and a blanket.

"When I asked Sheriff Mike Winters whether the good citizens of Jackson County had noticed the change in the quality of service, he said, "They sure do. It's increased."

"And how can that be? 'We ended up with a management team in which everyone has a small-business background,' Winters said. 'We run the county like a business and take the politics out of it. We don't involve ourselves in turf wars. We work for the common good.'"

it seemed to us that the Sheriff's Office was regarded as isolated by those we met with. We did not inquire concerning the extent to which this perception may relate in part to choices Sheriff Winters made and acted upon.)

On the other hand, information we did obtain from Sheriff Falls tends to demonstrate that others at Jackson County, outside the Sheriff's Office may not fully appreciate Sheriff Falls' decisions and actions since taking Office.

As we note in the following paragraphs, the County is exceptional in all it has accomplished with limited resources.

The same can be said for the Sheriff's Office which has at all times operated within its budget—notably in 2015 and 2016.

Patrol and Traffic Deputy strength was 31 in 2006-2008, 35 in 2009-2010, 32 in 2011, 31 in 2012, 26 in 2013, 22 in 2014 and 24 in 2015.

During the same period as the Sheriff's FTE decreased for various reasons, calls for service increased 125.8% and calls for service handled by each patrol deputy increased 162.5% (2127.5 calls per deputy in 2015).

In 2015, the Sheriff's Office experienced an increase of 20.94% in priority calls over the prior year, and was able to decrease incrementally average response time which for Priority 1 calls was 14.34 minutes.

Sheriff Falls also emphasized in our meetings with him the following, which it appears to us were not well understood by the Budget Committee, and seemed to have determined the manner the Committee received him and his proposals:

- The population in Jackson County has increased over the past decade. Staffing levels have decreased.
- The National Institute of Justice 2004-2006 jail study recommended doubling the size of the jail.
- Sheriff Winters ordered the jail to be open during re-election campaign contrary to his command staff assessment that it was not feasible to do so. Sheriff Winters threatened the jobs of command dissenters.

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- Pending jail law suits were a consequence of staffing and jail related decisions of Sheriff Winters made.
- The jail could not be staffed without forced overtime.
- During the three years prior to opening the basement jail (2011, 2012, 2013) only 33% of corrections deputies were able to schedule 40 hours of mandatory training this was noted in a November 3, 2015 memo to the Budget Committee.
- Background checks were compromised by Sheriff Winters' administration to open the basement of the jail with staffing by applicants who were not suitable for hire and should have been rejected. DPSST noted discrepancies which were certification disqualifying.
- Traffic Deputies were instructed not to enforce DUII because this charge did not generate as much revenue.
- Criminal traffic citations were cited into Justice Court to generate revenue.
- Public perception of JCSO traffic enforcement on I5 and in the City of Medford had grown in hostility.
- Sheriff Winters did not attend Department Head meetings and as a result he and his staff, did not stay abreast of county expectations, particularly in the Human Resources and Administration areas of Sheriff's Office management.
- Prior to closing the jail, Sheriff Falls states he in fact met with all stakeholders involved. Apparently, County Administrator, Deputy Administrator, Board of Commissioners, and Budget Committee were not fully or meaningfully engaged.
- Sheriff Falls is seeking to identify other beneficial uses for the basement pod facility.
- The Sheriff's command staff has reached out to the lay members of the budget committee to build relationships. Only one responded and declined the offer to meet.
- Almost 80% of the voters wanted a new Sheriff because changes needed to be made as illustrated by the foregoing examples. Sheriff Falls believes he has initiated changes dictated by civil liability risk management and public perception considerations, as well as law enforcement best practices. All changes the Sheriff adopted have been within budget.

Our review of Jackson County budget messages for the period 2005 – 2016 reveals that the County is exceptionally well managed, that the fiscal

policies and accomplishments are extraordinary. Because of this, Jackson County has maintained and even enhanced criminal justice services and is unique among other counties in its ability to maintain budget support of criminal justice programs.

Contrary to Commissioner Breidenthal's characterizations which were critical of County effectiveness, the record speaks volumes about how well they are running Jackson County.

In spite of the following challenges that have all but bankrupted some Southern Oregon counties, Jackson County has been able to accomplish stunning financial successes; timber revenue shortfalls, federal policies including the spotted owl controversy which brought timber harvests to a standstill, Ballot Measures 5 and 50 which capped the property tax rate at \$10/\$1000 and set a permanent tax rate limit the effect of which has been to drive declines in property tax rates due to the maximum assessed value,²⁰ the downturns in the economy 2008 to present²¹ and PERS unfunded liabilities.²²

²⁰ The impact of these measures on Jackson County, and similarly situation O & C counties has been much more severe than counties not reliant on or sharing in federal timber receipt revenues. This is due to the formula by which property taxes had been computed since statehood in 1859 – that is, expenditures minus all other revenues = the property tax. The effect upon Jackson County was that its permanent tax rate resulting from the ballot measures is much lower than those counties without offsetting timber revenues.

²¹ We are struck by the contrast of the low annual changes over the prior year in the United States Bureau of Labor Statistics Consumer Price Index and the annual, average cost of doing business which the County estimates at 7.2% per year on average.

In contrast, the average annual change in the All US CPI-W for the period 2009 to date is 1.6875 %:

Year	Annual
2008	3.8
2009	-0.4
2010	1.6
2011	3.2
2012	2.1
2013	1.5
2014	1.6
2015	0.1
Average	1.6875

²² PERS contribution requirements increased an additional 4.68% at a total cost accrues all funds of \$3.6 million (half of that in the General Fund) in FY 2013 – 2014.

The structure of the County's fiscal affairs being what it is, the Sheriff's Office owes much of its resources and staff level to the manner in which the County is fiscally managed. We digress to insure that all readers are on the same page in this regard.

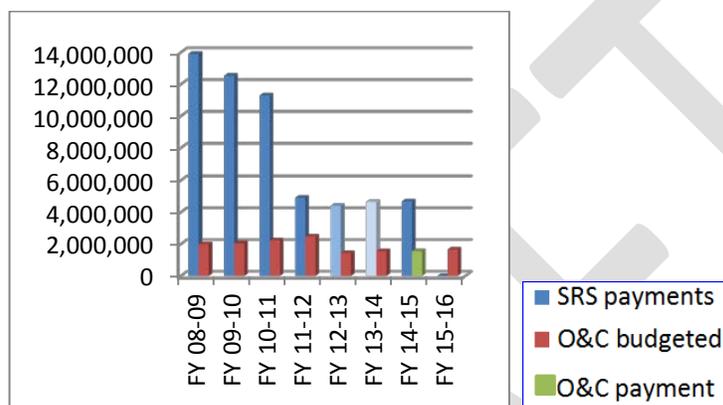
Without Jackson County's creative initiatives, fiscal challenges such as those that have plagued Josephine County would have had profound impacts on the Jackson County Sheriff's Office. This cannot be overstated. It is clear to us that the Sheriff is critical of those to whom the Sheriff's Office owes a great deal of credit for the level of service and success the Office is able to achieve.

First, we observed that the County established a "rainy day fund" at the Budget Committee's direction in FY 2003-2004 to hedge against unreliable revenue sources. The County dedicated funds made available through careful department expenditures and fiscal discipline. By 2006-2007 the fund to protect the County in the event of discontinued federal funding had grown to nearly \$24 million. By the end of FY 2012 – 2013 the Rainy Day Fund was down to approximately \$19.8 million in addition to \$10 million for cash flow and \$2 million in general fund reserves reflected in the budget that year.²³ These dollars were used to balance the budget when confronted with revenue shortfalls, provide capital improvements and infrastructure (at no cost to the taxpayer in terms of reduced services or tax increases), and to preserve essential service levels. As federal O & C timber receipt expectations teeter-tottered, and while the County confronted ever diminishing guarantees and uncertain and unpredictable extensions by the Congress, the Budget Committee and the senior executive leadership team decided not to spend revenues in the years received. Instead, the County put the difference between what it would have received (based on the actual cut and the federal guarantee amount) into the Rainy Day Reserve. For FY 2015 – 2016 the budget

²³ By FY 2013 – 2014, the Budget Committee was able to note that the Rainy Day Fund had gone according to plan in the sense that much had been accomplished at no increased cost to the taxpayers, as delineated in this section of our report. However, without further federal O & C timber revenue guarantees, the Rainy Day Reserves would be depleted in FY 2015 – 2016.

reflects a General Fund Balance including reserves and contingencies of approximately \$47 million.²⁴

Overall, it appears to us that the County's fiscal discipline in this regard is commendable and every bit as remarkable as Steve Duin's description in *The Oregonian*. The following shows Jackson County's annual deferrals to reserve and contingency accounts:



Second, we note that the County managed staff based on critical needs. When it was most critical during the period FY 2004 – 2005 through FY 2009 – 2010 FTE were reduced from 1089.07 to 893.29 or nearly 18%. Few if any of these positions were lost from the Sheriff's Office which gained positions during the same period.²⁵

Third, Sheriff Falls' chief complaints about the Budget Committee related to the Budget Committee's concerns with the revenue impact of Sheriff Falls' decision to cut half of the Traffic Team and reallocate those FTE to

²⁴ The Budget Committee has ceased to refer to these reserves as the Rainy Day Fund, the *innuendo* of which was that it existed to be spent for unanticipated contingencies. The goal, as we understand it, now is for the Budget Committee's to grow the Reserves and Contingencies in the General Fund to \$100 million. Investment earnings would then be applied to reduce the amount of property tax levied.

²⁵ Approximately 78 FTE were laid off due to library closures. Operating levies for the libraries twice failed at the polls to win voter support, failing by 58%+/- in 2006 and 2007.

patrol, civil and the schools. In fact, the Sheriff reduced the size of the Traffic Team from 8 FTE to 4 FTE, which reduced the projected revenue from \$1.2 million to \$600,000. The cost of these FTE was made possible in the lean years to address highway safety and create the Traffic Team and added patrol FTE at zero cost to the taxpayers and the General Fund based on the offsetting traffic fine revenue assumptions.

The effect of this was to move (for financial accounting purposes) the expense from what was paid for with dedicated Justice Court revenue and tracked for accounting purposes (associated with the Traffic Team). These dollars became a General Fund cost. The impact was projected to reduce from \$1.2 million to \$600,000 the offsetting traffic court revenues.

County Administrator Jordan has proposed budget targets for FY 2016 – 2017, a reduction of \$500,000 in the Sheriff's budget. However, this revenue shortfall is targeted to be more than offset by an increase in to FY 2016 – 2017 target of \$828,009 in new money in the Sheriff Office budget.

Consequently, there is a zero sum change based on the traffic team's reduced productivity and related justice court revenues. The Sheriff's overall budget is projected to increase over the prior year by \$328,009.

Fourth, it is apparent in budget notes that in FY 2011 – 2012, closure of half the capacity of the Transition Center and closure of one pod of juvenile detention was averted. These cuts did not occur because decisions were made to reduce the transfer of State Community Corrections Act funding from Community Justice. This decision allowed for preservation of these services. Strong collaboration and cooperation permitted Jackson County to sustain its strong public safety system in ways unlike neighboring counties.

Similar cooperation has occurred in the budget process since that time, thereby averting closure of the Talent Transition Center.

For 2014 – 2015, the County added two patrol deputies to the Sheriff's Office FTE without offsetting savings elsewhere in the Sheriff's budget.

Fifth, pertinent to Commissioner Breidenthal's criticisms, repeated though not adopted by Sheriff Falls, we noted how much the County had

accomplished at no cost to the taxpayers and without general obligations bonds or increase to the tax base:

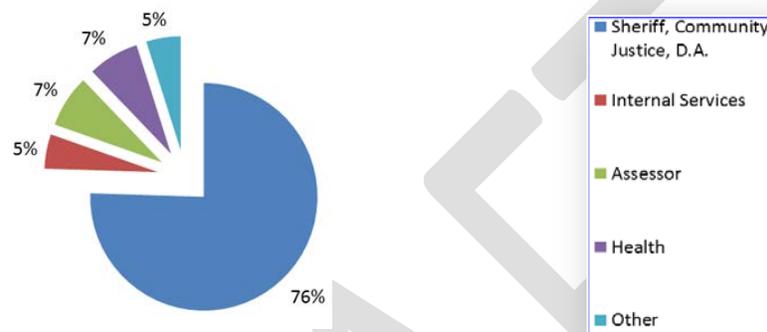
▪ Courthouse remodel	\$7 million
▪ ESCO/SORC 911 Facilities	\$7.085 million
▪ SO Jail Booking expansion	\$1.495 million
▪ Sheriff Depot	\$7.058 million
▪ Jail Basement Remodel	\$2.782 million
▪ Health & Human Services	\$28.071 million
▪ DA and Justice Court facilities	\$9.603 million
▪ Airport projects	\$64.027 million
▪ Bridge construction and replacement with 10-20% County-fund matches for 21 bridges, and a \$38 million grant to replace 16 bridges	

In addition, we observed the following initiatives:

- Re-funding of library bonds to save \$2 million over the 15-year life of the indebtedness
- Elimination of road construction and maintenance not funded with federal dollars or dedicated road revenues, together with a reduction in FTE in the Roads and Parks Department of 32 FTE²⁶
- Contracting out methadone services with an annual savings of \$125,000
- Pre-paid unfunded PERS liabilities in a pooled fund and created a PERS side account the effect of which was a reduction on 1.3% in the County's PERS rate on payroll dollars, or a savings of \$1 million per year for 20 years
- Innovation and implementation with labor union cooperation a health insurance self-insured program with a County health clinic as a cost savings component

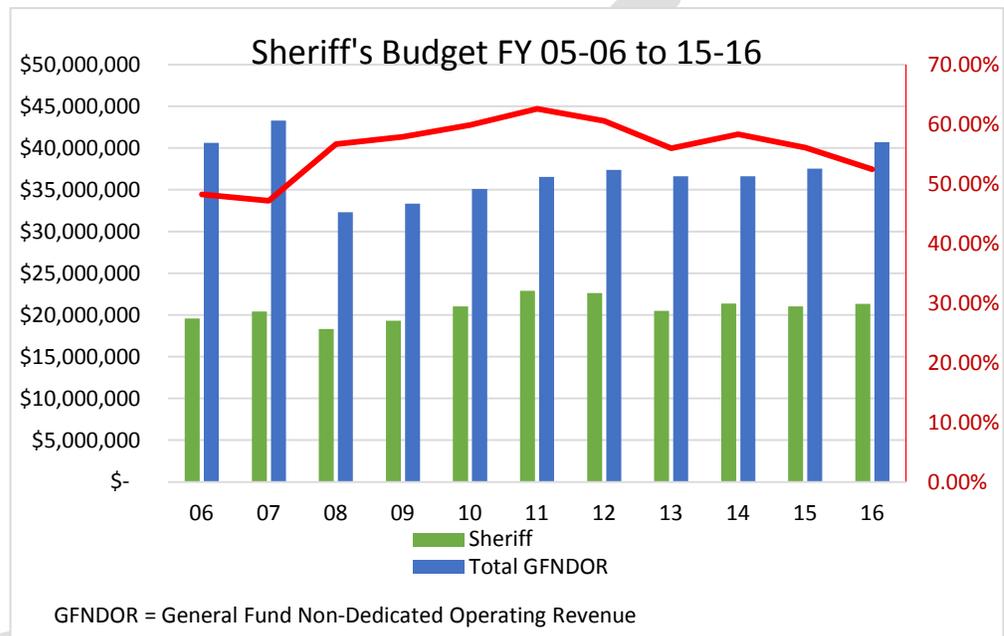
²⁶ At the same time, the Sheriff's traffic team which had been added in 2005 was almost to the point of being self-funded. There were no operational cuts in the Sheriff's budget.

Criminal Justice is funded with 76% of the County's non-dedicated operating revenues (\$39,627,538) in the adopted FY 2015 – 2016 budget. At times the General Fund has operated at a deficit, and was supplemented with other monies including reserves and Rainy Day Fund dollars. In 2010 – 2011, for example, operating expenditures in this fund exceeded revenues by \$5.7 million, 76% of which would have impacted Criminal Justice directly.²⁷



²⁷ We understand that not all of the 76% goes to the Sheriff's Office. However, the triumvirate of Sheriff's enforcement, the District Attorney, the Jail and corrections and Community Justice are in an inter-dependent, symbiotic relationship. Increases and reductions in resources to one will impact each. The allocation of 76% of the general fund to law enforcement, prosecution, corrections and detention and the preservation of dollars to this function, and the preservation of this funding level while cutting other County services, demonstrates the County's high commitment to the Sheriff and District Attorney, and to prioritizing public safety.

Throughout recent years due to the County's stewardship efforts, the criminal justice triad has retained funding and service levels, including the Sheriff's Office, as demonstrated by the following chart. The red line represents its percentage of non-dedicated general fund resources available for the criminal justice triad that share in these funds in order to operate:



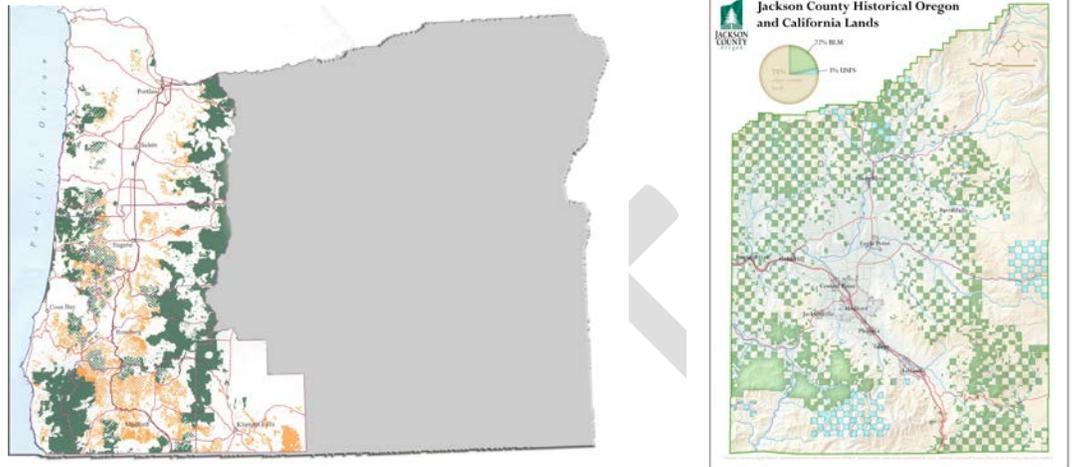
This triad and the triumvirate of criminal justice functions and finance must be regarded holistically. Therefore, it is inappropriate to conclude, as Sheriff Falls has argued, that the budget and funding inappropriately tie deputies' FTE to the traffic team, and that he bolstered patrol by drawing FTE from the traffic team to fill patrol vacancies. Sheriff Falls states that when patrol strength is restored, he can add back FTE assigned to the traffic team. Building a budget necessarily involves the fiscal consequences of activities and priorities. We also noted that the impact of reduced revenues from O & C railroad land grant timber is considerable. This is a high percentage of federal lands within the County. This fact has been emphasized repeatedly in County budget presentations which illustrate the

significant portion of federal O & C lands granted to the railroads in consideration of and BLM lands in Jackson County in relation to the rest of Oregon.²⁸ In FY 2007–2008 the Government’s intended and projected repudiation of the O & C funding would have resulted in loss of 36% of the non-dedicated operating revenue of Jackson County, or slightly more than \$15.3 million. *See*, discussion above at footnote 13.²⁹

For FY 2010–2012, payments from the last extension for authorization of federal forest revenue sharing under Public Law 110-343 fell from approximately \$11.3 million in the first fiscal year to under \$7 million in the second.

²⁸ Reauthorization of federal funding under Public Law 106-393 has been tenuous since 2000. The O & C lands granted to the railroads were later returned to the Government when the companies preferred to avoid state and local taxes associated with them. The Oregon and California Land Act of 1937 established that timber revenues from federal lands would be shared with the counties. In recent years the United States has hoped to shed the in lieu of tax payments to Oregon counties, the lost revenue impacts of which are considerable. Unlike the views espoused by one eastern Oregon Sheriff and the Bundy Clan of occupying protesters, these lands began and always have been federal lands other when granted to the railroads. The federal land grants for the Oregon & California railroad were integral to the opening of the American West, the importance of which began to become evident with the publication by Robert Greenhow (Translator and Librarian to the Department of State of the United States and author of “A History of Oregon and California), *The Geography of Oregon and California and the Other Territories on the North-West Coast of North America* (1845). In addition to inspiring Congress to incentivize transcontinental railroads with land grants to the railroads, Greenhow envisioned, “a canal is practicable across the Isthmus of Panama ...”

²⁹ It became evident to the Budget Committee that it needed to plan for the loss of federal dollars. In FY 2007-2008 FTE were reduced by a net total of 172.43 or 13.25% of the County’s workforce. 15 libraries were closed and later re-opened with contract employees at significant savings to the County. Cuts and savings in road maintenance, elimination of 100 rented jail beds, elimination of misdemeanor supervision for non-dangerous offenders and cutting funds to non-profits contributed offsets to the looming revenue losses.



The authors want to emphasize the following points concerning Sheriff Falls' perception that he has been micro-managed and that overall, his experience during his first year in office has been unsatisfactory. We have full awareness that Sheriff Falls experienced valleys of demoralization. He has also stated to us and to others that he has applied for other employment and intends not to stay on as Sheriff of Jackson County if afforded another opportunity. With this knowledge, the authors want to emphasize the following four points:

1. From our professional and life experiences, we are very aware that when one ascends to the top and for the first time stands alone as "the boss" or "number 1" the experience is one of leadership isolation. The frame of reference for decision making is so limited that even with the best of intentions, the chance of errors is great.
2. The view expressed by Commissioner Breidenthal and echoed by Sheriff Falls that the form of government is dysfunctional or otherwise problematic is not helpful to anyone. As part of the human condition, all of us bring to every situation our strengths and potential for learning and growth. Sheriff Falls is blessed with many personal traits, experiences and accomplishments which are predictive of success. Administrator Jordan wants to move forward, and he wants to achieve trust, cooperation, collaboration and teamwork critical to individual and collective success. We are satisfied from our interviews with each of the elected officials who serve as the head of an Office in Jackson

County that Sheriff Falls is seen as standing alone among them due to the Sheriff's own choices.

3. Sheriff Falls' past choices and everyone's actions to date are "done and in the past." Dwelling on the past will accomplish little once a common understanding occurs. If Sheriff Falls is willing and able to take fresh stock of the situation as we believe it to be and have described here, recalibrate and move forward, we are confident that he can fulfill his aspirations and contribute meaningfully to Jackson County. As a newly elected Sheriff he is no different than any other who has gone before – and his path will become easier when he realizes that he must rely on others, including those with extensive Jackson County experience and institutional knowledge. It will be in the public interest for those of whom the Sheriff has been most critical and dismissive to be welcoming and receptive to changes he makes should he choose to do so.
4. Integral to the dispute concerning the relationship of Justice Court, traffic fines, traffic enforcement, FTE allocated to traffic, other patrol functions, the jail, and whether the podular jail facility would close or be reopened, was a shared understanding of County Commissioners, Budget Committee members and County administrators. This shared understanding certainly included a decade of revenue adversity ushered in by the uncertainty of O&C payments and the great recession of 2009. Yet through fiscal conservancy and creative solutions, the County's accomplishments were recognized in national media and in the account provided by Steve Duin. Moreover, the commissioners and citizen budget committee members were acutely aware of the few programs funded with the General Fund dollars available for those programs and for the Sheriff's Office, the percentages consistently allocated to the Sheriff, and the impact on other programs. They were aware that reductions dollar-for-dollar were required from other services if greater dollars are redirected from those programs to the Sheriff's Office. Sheriff Falls' proposal in order to cut traffic enforcement, re-open the podular jail with 6 additional corrections officers, and maintain patrol FTE strength would require funds allocated to other services. Finally, the funding relationships must be viewed holistically within the criminal justice triumvirate of programs and functions.

e. Personnel matters (personnel selection, hiring and promotion) ³⁰

In his memorandum dated December 9, 2015 and during his interview on December 28, 2015, Sheriff Falls listed and asserted “personnel matters” as another example that demonstrated that he was treated in an “... unprofessional, demeaning, or discriminatory ...” manner. Sheriff Falls explained to the authors an instance where he asserted that Administrator Jordan interfered with his personnel decisions concerning to filling vacancies.

The authors are mindful that since the days of Tammany Hall and the advent of merit hiring and promotion policies through civil service, governmental bodies in order to rectify both the fact and the perception of favoritism in government hiring, established procedures to assure that hiring and promotions would be open and competitive so that opportunities would be afforded to the “best and the brightest”. Jackson County does not permit internal-only hiring and by policy requires open recruitments and competitive processes for all hiring vacancies, where applications of both current employees and outside applicants. Sheriff Falls requested that only interested and currently employed patrol deputies be permitted to apply by submitting a memorandum to him directly. The process was not administered through County Human Resources. The process Sheriff Falls intended to follow did not meet County personnel requirements and not dot meet the requirements of Oregon law regarding Veteran preference points. Sheriff Falls states he relied on his staff and that because Sheriff Winters did not attend department head meetings and did not send a delegate, no one in the Sheriff’s Office knew about changes in personnel policy and practices, such as the internal/external recruiting or announcement requirements. Sheriff Falls states that one of the

³⁰ We reviewed the County’s personnel policies and the Sheriff’s Office collective bargaining agreement. It is understandable that Sheriff Falls’ reacted as he did when told that he needed to change the promotion/hiring and selection process within his Office as he had outlined it. While the County ordinances and policies are as they were explained to him, Jackson County’s approach is unusual. The County may have had good reason for adopting the rules as they exist; Sheriff Falls may not have researched or sought explanation and understanding. Certainly, we expect that he would have experienced throughout his career in Ashland and Snohomish County the prevailing view and rules permitting, if not requiring, in-house promotion process whenever the applicant pool is deemed sufficiently deep to insure selection of well qualified applicants. Merit principles are certainly advanced by an open and competitive process, if the pool is sufficient. If the internal pool is not sufficient, the employer will typically broaden their pool.

difficulties he confronted as Sheriff was a staff ill-prepared and unfamiliar because Sheriff Winters did not include them in meetings concerning, for example, the budget. Rather, he merely issued a directive or instruction based on understandings he reached with County Administration. Certainly staff reports to Sheriff Falls revealed deficits which impacted his subsequent management of his Office. The authors believe the management style of Sheriff Winters deprived staff of the ability to understand policy and what was required of the County.

Although the County Administrator may make an exception, Administrator Jordan was not asked by Sheriff Falls to do so in this case until after the Sheriff's Office process was well under way. In this case, Administrator Jordan was able to condone an exception as long as each applicant submitted a proper paper application and with Sheriff Falls' assurance to Administrator Jordan that he would interview each applicant who had applied. Sheriff Falls believes that, in the end, his staff adhered to County policy.

Sheriff Falls on December 28th elaborated on this allegation and told us that during a hiring process which began soon after he took office in 2015, Administrator Jordan interfered. Administrator Jordan explained to us that he had merely told Sheriff Falls how he was required by County personnel policy and ordinance to conduct the hiring process. We have determined that Administrator Jordan did not attempt to control Sheriff Falls' hiring process within his Sheriff's Office and that he did act to insure that the Sheriff followed the rules and complied with County policy. We agree that Administrator Jordan's duties include informing elected officials of the law, rules and regulations regarding and insuring consistent compliance throughout the departments and offices of the County.

Sheriff Falls also discussed a meeting with Deputy Administrator Bragg when he served as interim Human Resources Director. See, discussion at section III (G) related to Sheriff Falls' taking offense at the way he was treated in a meeting with Deputy Administrator Bragg.

f. Interference in an Internal Affairs/internal discipline matter; response and documentation of a patrol vehicle/pedestrian injury motor vehicle accident; other improper influence

A Jackson County deputy sheriff, due to oversight, failed to remove his wife from County health insurance enrollment following entry of a judgment

dissolving his marriage. When discovered, the County through Human Resources sought to rectify the matter and, according to Sheriff Falls sought to influence the investigation and discipline process within the Sheriff's Office. Sheriff Falls disposed of the matter by issuing his deputy a written reprimand. The County's Human Resources objected because human resources professionals viewed the discipline imposed as severe enough and not as severe as the discipline imposed on a different employee in another department for the same violation on a previous occasion. Sheriff Falls explained that in the case of his deputy, there had been merely a simple oversight without intention to defraud the County. Certainly, there is validity to the Sheriff's view that it fell to him alone to determine the appropriate level of discipline to impose in every case; indeed, Administrator Jordan agrees citing *inter alia* the terms of the Sheriff collective bargaining agreement.

We did not probe more deeply within the County human resources staff and presume that whatever may have been said derives from a concern that the principles of *just cause* incorporated in each of the County's collective bargaining agreements include the element that discipline be imposed with consistency. In this case, there may have been similarity which warranted greater discipline in the view of a Human Resources/labor specialist; and, there may have been differentiating factors as Sheriff Falls contends. We determined that only through effective dialog could the Sheriff, his staff and the County's Human Resources staff determine the appropriate range of discipline alternatives. Effective consultations did not occur. We concluded that the criticism appears not well stated and that incomplete communications between Human Resources and the Sheriff's Office may have led to defensiveness which became a barrier to necessary County-wide cooperation and teamwork. We reach these conclusions fully mindful that while the Human Resources professionals may recommend, and the Sheriff's supervisors and commanders are wise to consult, collaborate and cooperate with them, in the end, discipline decisions within the Sheriff's Office are for the Sheriff to determine subject to law, policy and the collective bargaining agreement.

There was an event brought to our attention by Sheriff Falls where a pedestrian was struck by a patrol vehicle. The paperwork had not been completed when County offices expected to receive it early the following Monday morning. In our meeting with Sheriff Falls, he criticized the calls, questions and requests from Administrator Jordan and the County's Risk Management Coordinator as interfering and micromanaging a matter on

which his staff was fully engaged at a time when the 72-hour report and document window had not yet passed. We reviewed the County's risk management file concerning this potential claim and spoke with the County's Risk Management Coordinator, Ashlei Richmond. Ms. Richmond informed us that by the Monday morning in question, television news had reported the accident and a number of telephone exchanges ensued, included calls from the pedestrian's wife demanding claims information for the hospital where the pedestrian was being treated. Ms. Richmond inquired of a Sheriff's Office administrative assistant, Tanalyn Pfeil to ascertain facts. Risk Analyst in the Human Resources Department, Sasha Grafenstein called a Sheriff's supervisors to request the report documents. County Administrator Jordan also received inquiries inquired. Our review demonstrates that the deputy travelling on Interstate 5 in attempt to locate a person who had fled the scene of a domestic call struck that person while responding. That person was at the time a pedestrian on I-5; the deputy reported the accident occurred at 22:08 on Saturday June 6, 2015. On June 8th, Ms. Richmond sent email to Jackson County Sheriff's Captain Sickler asking that he "please provide me with an incident report regarding the pedestrian ... who struck/was struck by our Deputy's patrol vehicle ... on June 6 ..." The deputy's incident report is dated Tuesday, June 9th. The accident was investigated by the Oregon State Police. It was not until June 25th that Ms. Pfeil informed Ms. Richmond that Captain Sickler had requested a copy of the OSP investigation which she would forward to Ms. Richmond once received. We did not pursue this matter further as we are unable to understand the basis for Sheriff Falls' criticisms. Sheriff Falls believes his staff provided the information as it became available and that there was no reluctance to cooperate.

The County is self-insured; those inquiring had at least as great if not a greater interest than Sheriff Falls in learning the details of the accident, both for risk management, tort claim administration and defense considerations as well as managing what at least initially was a matter of high media interest. It is reasonable to believe, without greater inquiry, that Administrator Jordan has no less interest in learning the facts than Sheriff Falls. Both of them might reasonably anticipate questions from those to whom they are accountable and their job is to anticipate, be prepared and know what public officials and employees are doing on-the-job.

We recognize that the Oregon State Police was the investigative agency. We believe that the Sheriff should have provided whatever information he had, cooperated fully with the Risk Management Coordinator, and facilitated

acquiring from OSP whatever additional information would have been helpful to the County. We conclude that Sheriff Falls' characterizations are misplaced.

Also brought to our attention by Sheriff Falls was when a Barter Fair event which was held on rural farm land. According to Sheriff Falls, when the County discovered that the sponsor had failed to obtain the proper permit for "porta-potties" for the event, the event permit was denied (or perhaps revoked) even though the permitting process was otherwise complete, the sponsor was otherwise in compliance and the event had begun. Sheriff Falls refused the County's request that he enforce the code violation by closing the event and "evicting" those already in attendance. He explained to us that in his opinion, at that point, if he tried to shut it down the County would cause greater public safety issues.

We understood Sheriff Falls' objection was to the County's demanding that he take enforcement action when, in his opinion, to do so was ill-advised. We cannot interpret the request or suggestion as a dictate or as interference; rather, in this case it appears to us that the County was in the same position as any other complainant or victim bringing a crime or violation to the attention of the Sheriff. Sheriff Falls retained the power to enforce or not, and he declined to do so based on his judgement. We conclude that the Sheriff's determination and decision was reasonable and probably appropriate. We believe that most sheriffs in the same or similar circumstance would find that the failures and inadequacies, and the responsibility, rested with the Department of Development Services which issued the permit without adequate safeguards to assure that the sanitation concerns would be properly addressed. We think other sheriffs would reach the same decision Sheriff Falls reached, a decision which others at the County did not like but accepted.

g. Assignments within the Sheriff's Office including that of School Resource Officer (SRO)

The assignment by Sheriff Falls of his personnel called into question the Sheriff's reallocation of Traffic Team members to perform duties in assignments of SRO, civil deputy, patrol and corrections deputy. We are unaware that any Jackson County Commissioner, Administrator Jordan or Deputy County Administrator Bragg or any other Jackson County employee challenged Sheriff Falls' authority to make changes or interfered with his authority to assign his personnel as he viewed best. Citizen members of the

Budget Committee questioned some of these changes and the audio record demonstrates that when they did so, as we report in other sections, Sheriff Falls' reaction was less than diplomatic. To his credit, Administrator Jordan deescalated the discussion and supported the Sheriff in the budget targets that he and Deputy County Administrator Bragg recommended. Therefore we are unable to find support for this allegation.

A related manifestation of Sheriff Falls' perceptions of micro-management and interference was brought to our attention before we left Medford on January 7, 2016. It serves to illustrate that Sheriff Falls' concern and characterization is unfounded. The Sheriff's Office issued a press release describing the implementation of a School Safety Program and some of the selection criteria for the deputy to be assigned to that program. When Administrator Jordan received a copy of the media release along with the Commissioners, he forwarded it to County Counsel Benton. Administrator Jordan asked whether County Counsel Benton or Assistant County Counsel Devin Huseby had been involved in the press release. He wrote, "I'm just wanting to make sure that aren't any bargaining issues." Administrator Jordan's call led to a call to Sheriff Falls, which in turn caused him to call Administrator Jordan directly to ask, "Do you have a problem with my school resources program?" and "Why didn't you call me directly?" and "Well, you are micro-managing me." Administrator Jordan told us that he told Sheriff Falls at that time that he had called counsel with his specific concern and about counsel's involvement in the new program assignment and any bargaining issues, and that as far as he had been able to determine Sheriff Falls had done a good job.³¹

³¹ Some might ask whether the questions raised were legitimate, and Sheriff Falls may have wondered as well. It is understandable to one who spends a great deal of time dealing with public safety unions to imagine that the Association could find opportunity to demand to bargain over a host of issues due to this *change in working conditions* for the SRO so assigned. However, the Sheriff certainly had every right to make the decision and to assign any deputy to perform the work. Nonetheless, the Association might have chosen to demand to bargain concerning impacts of the change which are mandatory subjects of bargaining. The Association might argue mandatory impacts included selection process and criteria, whether seniority consideration and a bid process should apply, a wage differential or incentive pay, when and how overtime would be scheduled, how the SRO schedule would be affected by school holidays and other times the schools are not in session, plain clothes and clothing allowance, whether the SRO would be required to assist the schools with discipline matters and requirements to flex work hours to facilitate attendance at sports and other school events outside the normal work day without overtime, to name a few.

h. Interference with Sheriff Falls' invitation to the Commissioners to attend the County-wide law enforcement executive meeting for background and transparency goals Sheriff Falls was trying to advance

In March of 2015, Sheriff Falls extended an invitation to the County Commissioners to attend a regular, recurring meeting of the region's Law Enforcement Agency Heads (LEAH). Administrator Jordan learned of the invitation and expressed his concerns in an email dated April 20, 2015 to Sheriff Falls. These concerns related to Oregon's Public Meetings Law and whether two or more Commissioners present at such a meeting might constitute a quorum. Administrator Jordan advised Sheriff Falls that if this were the case, the meeting would require notice to the press and public and must comply with other Public Meetings requirements. Administrator Jordan speculated to Sheriff Falls at the time that, as a former regular participant while formerly serving as Jackson County's Director of Community Justice, he was not confident that other chief law enforcement officers would want this meeting open to the public and media because sensitive and confidential topics related to protecting the community and to police interdiction were often discussed at this forum.

Sheriff Falls agreed that the meeting would be held in compliance with the Oregon Public Meetings Law.³² We believe that Administrator Jordan was

³² Administrator Jordan's email to Sheriff Falls, "cc'd" to the County Commissioners dated April 20, 2015 reads:

"I have some concerns with this invitation and Commissioners attending. If you all (or a majority of the Board) attend, it will likely constitute a public meeting and will need to be noticed as a public meeting and open to the public." These meetings typically are not open to the public. I have not seen the agenda but at these meetings, items could be and/or are discussed that contain points of information that you will or may use towards a deliberation by the Board as [sic] some point.

I would suggest that if you are intending to attend as invited, that the LEAH members all be aware that this opens the meeting to the public. I would assume they would not welcome this, unless the agenda is benign, but maybe I am wrong. I know when I attend these meetings in the past, there were things discussed that were sensitive in nature, and that would not be items typically disclosed to the public. It might be better if the liaison to Public Safety (Doug

[Footnote continued on next page]

merely carrying out his duties by informing Sheriff Falls of the law governing the initiative he desired, and by identifying a risk to the Commissioners who might attend so that they would not inadvertently act in a way which the Oregon Ethics Commission would find failed to comply with the law.

i. Interference with Sheriff Falls' request of Commissioner Roberts to read a proclamation for the Law Enforcement Memorial

In late April of 2015, Sheriff Falls wanted to invite a County Commissioner to read a proclamation on Wednesday May 11, 2015, at the "August Singlar Memorial" located between the Courthouse and the Jackson County Jail, in conjunction with National Law Enforcement Memorial week. Newly elected Jackson County Commissioner Collen Roberts agreed to do so. When Administrator Jordan learned of Sheriff Falls' plans he inquired of Sheriff Falls whether the proclamation had been approved by the Board of Commissioners at one of its meetings. The proclamation had not been approved and therefore reading such a proclamation would not conform to Jackson County policy until it had been approved by the Board of Commissioners. Sheriff Falls noted that his staff had never been asked to adopt a Board proclamation before and was unaware that any procedure existed to accomplish this. Through cooperation of Sheriff Falls and Administrator Jordan, the proclamation was adopted by the Board of Commissioners and subsequently read by Commissioner Roberts. The gravamen of this allegation relates to requirements Sheriff Falls felt were imposed on him by Administrator Jordan which interfered with the course of action he had undertaken independently.

We conclude that Administrator Jordan was merely carrying out his obligations to inform Sheriff Falls of the requirements and pitfalls of his

[Continued from previous page]

Breidenthal) attend rather than the entire Board, and thus avoids the issues I believe would be a concern."

Sheriff Falls email response also copying the County Commissioners, reads in part:

"I will be notifying the LEAH group that the County Commissioners are attending and subject to public meeting. That is why I coordinating this over a month out. I do not mind if the public knows about this or if it is open to the public."

proposed course of conduct in order to facilitate compliance with law and avoidance of inadvertent errors and oversights. Administrator Jordan's actions in this regard are not fairly susceptible to the characterization of micro-management.

We also find that Sheriff Falls should have known that a Board of Commissioners Proclamation cannot be presented unilaterally and independently by one member of the Board of Commissioners without action of the full Board at a meeting.

D. Discriminatory Treatment in that Sheriff Falls has been compensated differently than the five other newly-elected Sheriff's sworn into office in 2015, and compensated differently than other Jackson County elected officials

We have thoroughly examined these contentions. They are unwarranted and we believe they are based on inadequate information.

There is no reason to compare the manner in which Jackson County fixes the compensation of its employees and elected officials to the policies and practices of other counties. The County is a Home Rule County. Jackson County is governed by Oregon law, its Charter and County ordinances, rules and policies.

ORS 204.112(4) compels that the County compensate the Sheriff at a salary which "shall be fixed in an amount which is not less than that for any member of the sheriff's department." ORS 204.112 requires that counties establish a compensation board which shall annually recommend a compensation schedule for county elective officers. ORS 204.112(3) provides illustrative guidance by setting out the factors the county boards may take into consideration in doing so. The only mandate is that the boards approve by majority vote and recommend a compensation schedule to the governing body. Jackson County records demonstrate its compliance with ORS 204.112. Administrator Jordan's decisions and statements, referenced above and found offensive by the Sheriff, were intended to explain to Sheriff Falls that the County had to comply with the mandate of ORS 204.112(4), not to demean him in any respect.

It may be helpful to understand the law's genesis. In 1989 The Oregon State Sheriffs' Association ("OSSA"), at the request of Multnomah County Sheriff Fred Pearce commissioned a study, *Senate Bills 1029/1055 OSSA Study of Elected County Official Compensation* which consisted of data and research and a report dated April 17, 1989 addressed to OSSA President Tarno and members of the OSSA Legislative

Committee authored by C. Akin Blitz then of the law firm of Spears, Lubersky, Bledsoe, Anderson, Young & Hilliard. The anomalies to be rectified included that there was no consistent pattern of establishing the Sheriffs' salaries in relation to other elected and appointed officials. The study pointed out the variations internally and externally in elected officials' salary relationships to other elected and appointed officials and to subordinates. It enumerated factors appropriate for consideration in fixing the salaries of those affected by the proposed legislation. Thirty-two counties participated and twenty four salary relationships were compared and contrasted.

Mr. Blitz, as Legal Counsel for OSSA, submitted to Legislative Counsel a draft Bill with an emergency clause which provided, "The Sheriff's compensation shall be fixed in an amount which exceeds the amount fixed for any member of the Sheriff's Department. The compensation of the Sheriff shall be increased each year by a percentage which is not less than the total percentage increase received by any member of the Sheriff's Department for any portion of that fiscal year."

Association of Oregon Counties Executive Director Jerry Orrick and others first opposed and then supported the Bill once it was amended to apply to all counties and to all elected officials. In an editorial opinion published on May 12, 1989, *The Oregonian* noted first that the Legislature "ought to keep their noses out of the paychecks of elected county officials" and explained that "The rationale behind the measure advanced by Sen. Jim Bunn ... at the behest of the Oregon State Sheriffs' Association, is that elected county officials are sorely underpaid." However, the Editorial Board also explained that six Oregon counties paid the undersheriff more than they do the sheriff and that one county paid its patrol deputies only 5 percent less than the sheriff," ... and if formal benefits are figured into salary, eight undersheriffs get more than their bosses."

At or about the same time, on March 30, 1989, the *Wall Street Journal* editorial board described *Skewed Compensation* and the recommendations of Paul Volker's Commission on the Public Service: "It came up with a series of recommendations in its report yesterday; addressing regional pay disparities for example; ... an immediate 25% pay raise for Congress, executive branch officials and federal judges. ... The commission's pay proposals seem a small price to pay to ensure that the government can attract and keep the people it needs. Chief Justice Rehnquist points out that more than 40 federal judges have resigned since 1980, many over inadequate pay. ... the commission did not address the other side of the ledger, the bloated federal pension program. ...civil servants also get low salaries but qualify for one of the most generous pension systems in the world. ... The commission is silent

on all this, even though civil service retirement costs have grown by almost 1,000% in the past two decades, a time when GNP growth was only 370%. ...”

See also, Governing The States and Localities, which published “Are Our Governments Paying What it Takes To Keep The Best And The Brightest – Salaries for State and Local Officials Aren’t Keeping Pace with the Private Sector” (Congressional Quarterly Inc. December 1988) (written by Elder Witt based on research of the Council of State Governments, National Conference of State Legislatures and the National League of Cities).

Lane county Sheriff Dave Burks, chair of the OSSA Legislative Committee testified at the legislative hearing:

“This bill is intended to focus consideration on factors traditionally deemed relevant to compensation determinations when counties set the wage of elected officials. When the Association of Oregon Counties Legislative Committee recently met and decided to oppose this Bill, I explained the elected officials’ reason for developing the concept of this Bill. I described a number of anomalies which relate directly to the compensation of Sheriffs, clerks, treasurers and other elected County officials. The Commissioner’s response was to the effect that, “You knew what the job paid and we can get someone else who is willing to work for that salary. ...” Many Boards of Commissioners have been reluctant to make compensation decisions out of fear they might impact labor negotiations. For political reasons, some governing bodies have been unwilling to grant themselves a wage increase, and consider it appropriate to treat all elected officials similarly. As a result, salary of department heads who happen to be elected are frozen. They are treated less favorably than those who are appointed.

Recently, an Oregon County commissioned a compensation study which concluded that adjustments in compensation needed to be made. When the recommendations were presented to the budget committee, the Commissioners indicated they would not participate in the discussion because each of them was affected. One Commissioner did not appear at the meeting, another Commissioner left the room, and the third Commissioner remained silent. The citizen- chairman of the budget committee, after hearing a compelling presentation stated,

‘It is obvious that significant adjustments need to be made if we are to attract and retain qualified officials. However, these people knew

what was being paid when they ran for the job. It is not up to us change it.'

Qualified sheriffs have actually resigned from office rather than to continue to work for a salary less than their subordinates. One example is Jim France, Sheriff of Deschutes County, who resigned when he could not attain a salary ahead of his Sergeants. Sheriff France was paid a good deal less than his Undersheriff. The current Deschutes County Sheriff, Darrell Davidson, declined the Commissioner's offer to appoint him until the Commissioners finally increased the compensation and benefits to an acceptable level.

In Multnomah County where the Home Rule Charter controls, the Sheriff earns \$46,000. Bob Skipper has filed to succeed Fred Pearce, now Director of the Department of Corrections. The day he assumes office, his wage will be reduced by \$7,000 a year. That gap will increase by \$1,500 per year, since other department heads in Multnomah County receive a cost of living adjustment. Sheriff Skipper's problem will be compounded by the fact that he will no longer earn sick leave or vacation benefits. ...

The study does not capture total compensation. Sick leave, vacation, overtime, compensatory time, shift differentials, premiums and incentives all increase the compensation of Sheriff's subordinates. These are not reflected ... Let me expand on the value of benefits. Marion County's elected officials have a benefit package which costs 11%. The benefits package of appointed department heads costs 52%, and benefits of other employees range from 38 to 52%. In Marion County, the Jail Commander, a subordinate of the Sheriff, earns base wages of about \$900 per month more than Sheriff Prinslow. Captains within the Sheriff's Department earn non-wage benefits which exceed considerably those of the Sheriff. The Undersheriff already earns wages of 3% more than the Sheriff, not taking into account the 52% value of the benefits package. As you can see, the differential between Sheriff Prinslow's total compensation and many of his subordinates is more than made up for, even though this is not shown in the data. ...

The problem is underscored by the fact that only a few County department heads supervise more people or administer a larger budget. This fact is not reflected in the wage paid to Sheriffs. Nor is the high degree of public trust

and reliance, the complexity of the Sheriff's role, and the nature of competent corrections administration.

The data suggests that low salary could discourage qualified candidates. The public interest is not served by perpetuating a broken system—one which has failed to eliminate a powerful disincentive which has discouraged and prevented the most qualified from seeking public office. We do not mean to suggest that only Sheriffs are affected. I need not dwell on the public interest served by a network of capable assessors. The most highly qualified assessors are likely to be from the ranks of a county's appraisers. ...

SB 1029 does not establish fixed criteria; rather, it commits doing so to each county. SB 1029 does not require the payment of a particular wage and the budget committee and governing body are not bound to the compensation board's recommendation.

The Bill does not require any more than a reasoned analysis of wages and wage relationships. It expresses the principle that managers should earn more than those they manage and supervise. The Bill commits the compensation level to the discretion of the governing body, and requires that the governing body extend to the elected officials the same across the board percentage increase applied to non-represented county employees.

These concepts are not novel. They are fundamental to good organizational management. They are in the public interest."

(Testimony of Sheriff Dave Burks on SB 1029, Intergovernmental Affairs Committee, Oregon State Senate, June 1, 1989.)

Based on the foregoing, and one of the author's direct involvement in the drafting, lobbying and testimony in support of SB 1029, the authors are well aware that Jackson County has complied with the letter as well as the spirit of the law and that there can be neither question nor dispute in this regard.

Sheriff Falls believes that the 2008 policy of Jackson County is flawed and that the failure of the Compensation Committee in April 14, 2015 to increase his salary was wrong in that he was required to start in office at a salary which is less than his predecessor's earnings after serving multiple terms in office. We understand his feelings and are empathetic. However, we disagree for all the reasons we express in detail both *infra* and *supra* as to legal claims or violations of laws or policy; we agree with Sheriff Falls as a matter of fairness, equity or right compensation theory.

We offer these observations:

1. The compensation paid to Sheriff Winters when he left office is not a factor in ORS 204.112, nor was it a factor mentioned in the OSSA SB 1029/1055 study nor in any of the research and supporting materials and commentary. The higher salary amount Sheriff Winters earned was reflected in the budget; however, the budget is not the sort of document typically footnoted to explain the information Sheriff Falls expected or that a “savings” could be anticipated if Sheriff Winters was not re-elected.
2. The compensation any elected official earns in prior employment is of no consequence to the compensation merited upon assuming elected office in any branch or at any level of government.
3. Rarely is compensation a factor that motivates an elected official to seek the opportunity for service, elected responsibility, the opportunity to make a difference, and the prestige of holding elected office.
4. Sheriff Falls’ April 15, 2015 memo to the Compensation/Budget Committee members may have been ill-considered. Obviously, Sheriff Falls was unaware that the Compensation Committee had already made its decision on April 14th. Sheriff Falls apparently did not consider his actual and potential audience. It appears that he adopted the perspective of a career civil servant contemplating career options in appointed service based on merit, not elected office. There are significant differences that render the statements in his memo largely inappropriate and irrelevant. For example, when he researched in advance of his decision to stand for election to the Office of Sheriff, he states that his focus was whether “it would be a beneficial career move based on where I was at in my career and the opportunities I had ahead of me.” Seeking a position without any expectation of continued employment considered beyond the term of the office is rarely a “career opportunity” in the context of progressive or long term career opportunity consideration.
5. Sheriff Falls objects that the philosophy of the County’s compensation plan is inequitable and that his salary should not be based on that of other elected and appointed County officials. *See*, footnotes 8 and 9 and the accompanying text in Section II (C) *supra* at pages 21-22. However, in 1988, 20 of 32 counties paid their sheriff more in relation to patrol deputies than Jackson County, and 16 more in relation to sergeants; 10 of 32 counties paid their sheriffs more relative to the undersheriff than did Jackson County; and at that time a Commissioner was paid 95% of the Sheriff’s salary, the Clerk 84%, the

Treasurer 85%, the District Attorney 136% including stipend, the County Executive 132%, the Road Department head 125%, the Planning Director 118%. Certainly, as a result of the Compensation Committee's policies and decisions, the Jackson County Sheriff has benefited greatly relative to others who serve Jackson County in elected and appointed executive capacities.

6. Prior to the work of the Compensation Committee in formulating the current elected officials' compensation plan of ranges and steps keyed to equivalent non-represented positions, the County compared its elected officials to the average of salaries paid to those in office in Clackamas, Deschutes, Lane, Linn and Marion counties, considered CPI and for a number of years contracted these comparisons to be performed by HR Answers, a Portland human resources consulting firm. This changed in 2008 when the Compensation Committee adopted a recommendation to approve the philosophy that elected officials should receive compensation that is on parity with appointed officials based on a "comparable worth" or "pay equity" compensation analysis. As a result, the County considered appropriate compensation factors (discussed *infra*) and implemented the change by providing a 4.22% immediate increase plus 1/3 of the difference in the first year, 1/3 of the difference in the second, and then 1/3 of the difference in the third year. The cost impact of this change was considerable,³³ and the Board of Commissioners and Budget Committee committed to fund the costs. As adopted, all elected officials would be paid at Step 1 (or adjusted based on Step 1 (with those, if any, paid in excess of Step 1

³³ County officials earned the following in 2007, 2011, and 2016 (Percentage increases reflect difference above 2007):

	<u>FY 2007</u>	<u>FY 2011</u>	<u>FY 2016</u>
Assessor	\$ 79,622	\$ 98,799	\$ 104,665
Clerk	\$ 72,654	\$ 77,875	\$ 92,622
Commissioner 1	\$ 67,080	\$ 90,168	\$ 94,952
Commissioner 2	\$ 67,080	\$ 90,168	\$ 94,952
Commissioner 3	\$ 67,080	\$ 99,403	\$ 99,673
District Attorney Stipend	\$ 18,324	\$ 25,376	\$ 24,460
Justice of the Peace	\$ 38,896	\$ 64,064	\$ 80,766
Sheriff	\$ 86,694	\$ 120,827 (39.4%)	\$ 116,604 (35%)
Surveyor	\$ 64,313	\$ 77,875	\$ 83,990
Total	\$ 561,743	\$744,555 (32.5%)	\$676,080 (20.3%)

From the foregoing, we conclude that each elected official is very much more equitably compensated than before adaptation of the current Jackson County Pay Policy, and none more than the Sheriff.

frozen until the scale caught up). In 2009, the Compensation Committee reaffirmed the compensation plan and clarified that “Elected officials newly elected go back to step 1. Elected officials who leave the County and then get re-elected go back to step 1. Elected officials who are re-elected are to continue to the next step.”

Under this Plan the Sheriff became the highest paid elected official; and in 2010 the Compensation Committee was told that the elected officials regarded the compensation plan tying to levels of directors as fair. In this instance, it occurs to us that Sheriff Falls must accept “the bitter with the sweet.” See, *Arnett v. Kennedy*, 416 US 134, 94 SCH 633, 40 L Ed 2d 15 (1974) (explaining that where the grant of a substantive right is inextricable intertwined with limitations in determining that right, a person in the position of Sheriff Falls, must take the bitter with the sweet.) He may not expect to retain the benefits of the County’s 2008 compensation policy changes and simultaneously criticize them seeking even more. But for the policies, the Sheriff’s salary would currently be much lower.³⁴

7. Sheriff Falls compared his qualifications to those of his predecessor and argued he is more qualified and therefore greater compensation is warranted. We believe that when compensation is established for any elected office, the qualifications of one’s predecessor are irrelevant. However, it is clear that the County’s basis for the Step 1 rule is a presumption that everyone elected to a public office is fundamentally unqualified and inexperienced to such a degree as to preclude a higher rate of pay because there are no requirements that guarantee otherwise. There is no basis for exception in the Board Order or County policy. This seems to us unfortunate and contrary to the County’s compensation philosophy. It is inconsistent with the authority inherent to make exceptions and place new hires in the management service at an appropriate step on the range based on qualification and experience as

³⁴ One of the greatest benefits of SB 1029 for elected officials was the removal of the “political question” and great potential for criticism and public controversy as a consequence of any increase in elected official’s salaries. It had been common to change compensation for each office only at the time of election or reelection; the view often expressed was that each official knew and accepted the salary at the time he/she ran for office. One need only consider the current compensation of Oregon’s Governor, Attorney General, Secretary of State, Treasurer, legislators, and judges in contrast with those which are market based, including university presidents and PAC 12 coaches, and officials in other states.

deemed warranted and appropriate (or negotiated) by the appointing authority.

8. Sheriff Falls has argued that considerations of merit and qualification apply and should govern his salary. He proposed and understood that he could negotiate with the Compensation Committee concerning the salary he would earn. First, there is no process or basis to negotiate. Second, the qualification argument is unpersuasive. We note that the only qualifications to become an Oregon sheriff are codified in ORS 204.016 and ORS 206.015. The qualification requirements are scant – 21 years of age or older, at least four years of full-time law enforcement experience or two years of full-time law enforcement experience with two years of post-high school education, and no conviction of a disqualifying crime. There are DPSST certification requirements, or in the case of one who does not hold current Oregon certification as a police officer, DPSST's certification of eligibility.

In contrast to these requirements, we observed that every appointed, County managerial director-level position is described in a position description which includes significantly more substantial qualifications (including thorough knowledge of ... and ability to ... describing core functions of the jobs) and education and minimum experience requirements that consistently include, for example, a Bachelor's degree in a related field and 7 years of relevant executive, professional level experience. Some require even greater qualifying accomplishments; the Planning Director must hold a Master's Degree in planning, public administration or a related field, the Finance Director/Treasurer must hold a Master's Degree with CPFO designation and/or CPA preferred, the Health and Human Services Director must hold a Master's degree in public health, health administration or public administration or enumerated behavioral and health sciences, and several other positions strongly prefer advanced or specific degrees related to essential job functions.

9. Sheriff Falls has argued that the County has not applied its compensation policy consistently. He was supported, and perhaps encouraged, by Commissioner Breidenthal in this belief. And, County Administrator Jordan supported him with his invitation to make his case to the Compensation Committee. We have analyzed the information and data made available to us and are satisfied that both Sheriff Falls and Commissioner Breidenthal are incorrect in their beliefs. The County policy is and has been to start Commissioners at Step 2. Thus, Commissioner Breidenthal's citing his "start"

at Step 2 as evidence of inconsistency is simply mistaken; his comments to Sheriff Falls in this regard were misleading.

10. Administrator Jordan took appropriate steps to insure that Sheriff Falls' compensation was fixed in excess of the Compensation Committee's policy direction that Sheriff Falls salary be fixed at Step I of the Director III salary range. Administrator Jordan directed that from his taking office, Sheriff Falls would be paid an amount that exceeds the wage + incentives + allowances "total compensation" paid to the Sheriff's highest paid subordinate at that time, as required by Oregon law.

E. Sheriff Falls' Contentions that County Government is Dysfunctional; that the Board or the Budget Committee's Decisions are Pre-Ordained and Information is Filtered and Fed to the Decision Makers; and Commissioner Breidenthal's Statement that Two of the Commissioners are Reliant on Administrator Jordan for all Their Information

We will not address as beyond the scope of our work the relationships of the County's three elected Commissioners, the unexpected action they took to make a change in the Commissioner they designated to serve and Chair of the Board of Commissioners, on December 1, 2015 or the impacts if any on their communications and relationships which could be attributed to the unrelated pending investigations of the Oregon Department of Justice Criminal Justice Division and the Oregon Ethics Commission each of which are examining allegations against Commissioner Breidenthal.

Any city or county executive in a strong-manager form of government performs as does Administrator Jordan and his senior executive management team. City councilors and County commissioners are reliant on staff for necessary information which is the product of staff-work. Moreover, policy makers, including budget committees of most public bodies, are equally reliant on the staff work, analysis and fiscal projections and recommendations of the chief executive and chief financial officer and/or budget director. Finally, the crux of Sheriff Falls' criticisms is a product of Oregon's Public Meetings Law and the fact that Jackson County has three Commissioners.

The reality is that there is no escaping that every discussion concerning a current or potential County matter between any two of the County Commissioners constitutes a quorum of the Board. Therefore it may not occur except in an Public Meetings Law with notice. Therefore, in order to be prepared in discussions in productive meetings of the Board of Commissioners, each member of the Board must seek information

primarily from executive management and staff. We find that the Sheriff's attribution to this necessary result of Oregon law as mal-intentioned or dysfunctional is without validity.

As we noted above, it is entirely understandable that two new Commissioners would rely on the County Administrator and the senior managers and department heads. This is common.

We found the contention that the County was "dysfunctional" and the direction of criticisms and statements of mistrust directed at County Administrator Jordon and Auditor Spivak by Sheriff Falls and Commissioner Breidenthal to be of dubious origin and doubtful credibility. Determining more is beyond our scope of work and seems to bear some relationship to the Auditor's complaint filing with the Oregon Government Ethics Commission and the departure from office of the former Assessor.

These concerns are incompatible with the accomplishments the County's senior executive leadership team including department heads and elected officials, the Board of Commissioners, Budget Committee and contributing staff have accomplished. We took note that these accomplishments drew accolades from then-serving Board Chair Breidenthal and the County's independent auditor, Moss Adams LLP and CPA James Lanzarotta. We found the presentation to the Board of Commissioners on the County's web site to be impressive, to say the least. See, <http://jacksoncountyor.org.tempdomain.com/Whats-New/News/ArtMID/4653/ArticleID/242116/Jackson-County-Financial-Audit-Results>.

The County's CPA lauded the County to an extraordinary extent for the sum of initiatives and good work over the long term. We found this entirely inconsistent with Commissioner Breidenthal's views, repeated to us by the Sheriff when he raised concerns.

F. Several Elected Officials have been Managed, Directed and Interfered with by Administrator Jordan, and Forced out of Office

During the interview on December 28th Sheriff Falls raised his belief that elected officials were being forced out of Office. Sheriff Falls said that Jackson County Assessor Josh Gibson had been pressured to resign and did so effective December 31st. Sheriff Falls made clear to us that the source of this speculation was Commissioner Breidenthal so we addressed the issue with him. Commissioner Breidenthal told us he believed that Administrator Jordan forced Assessor Gibson

out of Office. The implication made clear to us was that Administrator Jordan did so for some nefarious purpose.

We confirmed that now former Assessor Gibson's resignation was not motivated by any action or suggestion from Administrator Jordan. In our interview of former Assessor Gibson, we determined that issues regarding former Assessor Gibson's personal and professional conduct came to the attention of Budget Committee Chairman Dick Rudisile in the Fall of 2015. Former Assessor Gibson provided a calendar that documents his meeting with Chairman Rudisile occurred in his office at 10:50 AM on September 28, 2015. The calendar also reflects a meeting at 1:00 PM that day with Commissioner Dyer and a 4:00 PM meeting with Administrator Jordan. On that calendar document former Assessor Gibson wrote that in the course of his meeting with Chair Rudisile he "requested I should resign or the Budget Committee would bring the letter from the commissioners' public and affect my pay. Also, met with Mr. Jordan [as Chair Rudisile suggested that he do] that day, he suggested I think hard on the request to resign." Former Assessor Gibson provided several additional emails that reflect in addition to other issues of concern, that he had withheld records and cooperation from the County Administrator essential to budget forecasting on the basis his office data was preliminary. Clearly his responses were not cooperative and at least disingenuous and misleading, and arguably untrue based on Administrator Jordan's past requests and past cooperation from the Assessor's Office.

Chairman Rudisile met with former Assessor Gibson and had a "father-son like" discussion.³⁵ They discussed problems that former Assessor Gibson was having relating to fulfilling expectations of others for the Assessor including personal appearance, attending to the responsibilities of his Office and his hours at work and other personal issues. In the course of their personal conversation, Chairman Rudisile offered that "maybe it would be better if you just resigned." Former Assessor Gibson told Chairman Rudisile that this would cause him financial hardship.

³⁵ It is unlikely that Sheriff Falls was aware of all the facts, and in fairness to him, he questioned what he was told by Commissioner Breidenthal. While we noted the appearance of unusual influence wielded by Budget Committee Chair Rudisile who serves as a volunteer, we also understand that Assessor Gibson was particularly receptive. We regard Chairman Rudisile's initiative not as the exercise of power or the forcing from office, but rather as the fatherly and helpful gesture. We think he acted as a wise father figure with considerable experience, and did so in the public interest and as he believed was in the best interests of the County and County employees.

Chairman Rudisile suggested that if former Assessor Gibson was considering resigning perhaps a conversation with Administrator Jordan under the unique circumstances, might result in an agreement on severance terms that would permit him to leave Office. Subsequent discussions between former Assessor Gibson and Administrator Jordan led their meeting with County Counsel and the Board of Commissioners. The Board decided that a severance package could be offered to former Assessor Gibson along with a full release contract acceptable to the Board and former Assessor Gibson. An agreement was reached. According to former Assessor Gibson, his resignation, effective on December 31, 2015, was voluntary and welcomed by him. Former Assessor Gibson affirmed to us that Commissioner Breidenthal's speculation to the contrary simply is untrue.

Although this allegation was brought to our attention by Sheriff Falls, it has no relation to his allegations and what we have been asked to investigate except to the extent that we were to find it germane to the questions concerning dysfunctionality of Jackson County as a political subdivision of the State.

We reviewed with the County's Human Resources professionals some of the history within the Assessor's Office and learned of issues that had arisen there and were largely resolved when former Assessor Dan Ross was in office. We spoke with other elected officials to gauge Sheriff Falls' and Commissioner Breidenthal's criticisms. We found no support for their views, criticisms and allegations.

Scott Fein was elected Surveyor in 2012 after serving under his predecessor in office. We asked him directly whether the County executives subverted or undermined or interfered with elected officials, or were in any way overbearing or controlling of department heads or elected officials. He stated, "My experience in the Surveyor's Office is that is a very far cry from the truth." He described problems in his Office under his predecessor whom he referred to Deputy County Administrator Bragg and the Auditor whose examination was desirable. He stated, "At no time did I ever feel Danny [Administrator Jordan] supervised, managed, or directed or controlled him [his predecessor]. There were issues then. At no time did I ever see that Terry [Bradshaw] was influenced or controlled by Danny Jordan as an elected official." Mr. Fein described that he prepares and presents his budget as an elected official, and confers with Administrator Jordan and Deputy Administrator Bragg on whom he relies in staffing and budget matters because even his "employees work for the County, and I work for all the citizens using County employees in my office. I have statutory duties and no one dabbles with or influences me. But, regarding the union and my employees, budget, grievances and County resources, I must work within the County administrative structure and policy ... Despite my consultations with Danny

and staff, never once have I felt Danny Jordan gave me an ultimatum or clearly defined direction to X or else. He is an intelligent sounding board to whom I can bring issues or problems in need of solution. At times he has referred me to a Commissioner. ... I have never felt I had to talk with him first before going to a Commissioner." Surveyor Fein described the County as an "awesome place" to work and described that the "County has become very much better financially and operationally under Danny Jordan, and I think morale is much better. My impression is that he doesn't put up with anything contrary to law, policy or not good for citizens and taxpayers. And he really understands fiduciary responsibility for public resources. And Harvey does as well. Both demonstrate exceptional ethics and both are very bright people. They are very good at their jobs. No one will get away with anything."

We also inquired of Clerk Chris Walker when interviewing her about her opinion about the management of Jackson County. She disagreed with the Sheriff's and Commissioner Breidenthal's criticisms. She stated that she is not "managed" or "micro-managed" or otherwise directed or controlled by anyone. Clerk Walker regards and described the elected officials and department heads as the County's "executive management group" and told us that elected officials may or may not attend the department head meetings. Clerk Walker said, "Elected officials are invited, not required to attend these meetings."

Eric Spivak is appointed and theoretically works for the County Administrator. When we interviewed him, we inquired specifically about his role and the degree of independence afforded him by Administrator Jordan. He conveyed his views, including:

"Having the auditor report to the chief administrator decreases independence which results in the highest risk of underreporting the significance of findings [of the alternative models for a government audit function]. However, I consider this model to be the most likely to result in the auditors' work being used to effectuate change. In my opinion because of the closer working relationship, it is more likely that the auditor will audit topics/departments that are of priority to the administrator and that the results will then be used to effectuate change in the organization.

I have not had any concerns about my level of independence while Jackson County Auditor. Danny has given me the freedom to do my job and he has not attempted to influence my reporting of audit findings ... "

We asked specifically whether he had an opinion as an auditor regarding the level of centralized control in Jackson County. Auditor Spivak told us,

“I have not found Danny to be overly controlling of county operations. During my first year here, I implemented a new practice of how the audit function conducts the annual risk assessment. **Danny expressed concern over my change but commented that he hired me to do a job and he would let me do that job as I see fit. I found him to be consistent in this approach.”** (Emphasis added.)

Finally, we are mindful that Sheriff Falls criticized Auditor Spivak’s role in regard to the complaint filed with the Oregon Government Ethics Commission. Commissioner Breidenthal contended and Sheriff Falls surmised that County Administrator Jordan in fact directed the filing of the Complaint. Auditor Spivak reported to us that was untrue and stated:

“I was not influenced into making the decision to file the ethics complaint, as others may have suggested. I believed and still believe it was the right thing to do. Prior to the filing, I discussed the question of whether the situation warranted filing a complaint with only the County Administrator and County Counsel. No one else knew my opinion on the matter and therefore anyone suggesting I was influenced is engaging in pure speculation without the benefit of any facts as to my opinion or the discussions that lead to the filing.

“I took the filing of the complaint very seriously and with grave consideration as to how the mere filing of a complaint (regardless of the outcome) could affect a person’s reputation and impact his/her family.

“ I expressed the belief that a complaint should be filed before Danny offered an opinion on the topic. After meeting with Commissioner Breidenthal, the County Counsel Joel Benton, Danny, and I sat down to discuss the matter. My recollection is as follows: County Counsel gave his opinion as the potential negatives consequences to the County that could result from filing the complaint. Danny, taking that into consideration, asked Joel if we were required to file the complaint. I interjected that we shouldn’t be asking whether we were required to file – we should be asking whether we are prohibited from filing. I then explained why I believed the complaint should be filed. My rationale for believing that filing the complaint was the appropriate action is documented in my memorandum dated October 22, 2015.

“Oregon law allows any individual (including private citizens) to file an ethics complaint. Nothing would have prevented the County Administrator from filing the complaint himself. He did not need me to file the complaint. Strategically, it would have made more sense for Danny to file the complaint himself than to pressure me to file the complaint and run the risk of me later stating I was pressured.”

“I would like to point out that there is a lack of logical consistency to assertions made by Commissioner Breidenthal regarding the filing of the complaint. It has been asserted by the Commissioner that the filing of the complaint was retribution by Danny against the Commissioner over a policy disagreement. It has also been asserted by the Commissioner that he (the Commissioner) believes Danny tried to coerce the Commissioner into self-reporting the issue to the Ethics Commission.

“In the Commission’s process, the only procedural difference that results from self-reporting is that the Commission imposes a lighter penalty than if the complaint had been filed by an outside person. Self-reporting is not an admission of guilt. It doesn’t impact what evidence is considered or the resulting decision as to whether a violation occurred. Therefore, it is not logical that a person seeking retribution would suggest the course of action that would result in the lightest penalty (if a violation were found to have occurred.)”

Sheriff Falls believes that the Government Ethics Commission complaint was properly filed and the Commission is the proper forum to decide the issues presented. He supports the Auditor’s decision to do so.

G. Administrator Jordan and County Administration Have Imposed as a Barrier to the Changes Sheriff Falls Believes his Election Mandates by Will of the Voters

We believe that the process of our inquiry and related communications, in and of themselves, have served to elevate Sheriff Falls’ awareness. We are encouraged by his responsiveness and clarity of his statements to us of his desire to work with County officials generally. He is principled in his views and states that when there is a need to oppose what he regards as wrong, he does not want to be seen as a barrier and wants to be embraced as a “team player” acting for the greater good when he does so.

As discussed in detail above, what Sheriff Falls perceives as barriers to carrying out his electoral mandate is simply a matter of Administrator Jordan and other County management and staff advising Sheriff Falls of requirements imposed on all by Oregon law, and County policy requirements.

We respectfully suggest that Sheriff Falls review Chapter 216 of the Jackson County Code which describes the general responsibilities and specific duties of the County Administrator, in particular, those relating to the budget and overall County fiscal and personnel administration. Every other elected official with whom we spoke referred to themselves and the appointed department heads with some variation of a consistent theme: they are the senior executive service of County government. As such, they manage and direct their Offices and have complete independence in the exercise of discretion in the execution of their Constitutional and statutory duties and responsibilities. At the same time, as has been made abundantly clear by the Oregon courts and Oregon's Employment Relations Board ("ERB") in litigation with other Oregon sheriffs and electeds, elected officials:

- are joint employers of their subordinates with full authority to direct the work in the exercise of the duties and discretion of the elected official,
- must employ subordinates in compliance with labor contracts and the terms and conditions of employment established by the County insofar as these relate to costs, compensation and the relative rights of employees, unions and the County as an employer,
- have no independent and exclusive right to bargain with a union concerning anything to do with a fiscal impact on the County as a joint employer or deviation from County policy and law enacted by ordinance, and
- are subject to the fiscal determinations of the County.

The status of officials, including the Sheriff as an elected constitutional officer of the State of Oregon is well established. See, e.g.: State v. Walton, 53 Or 557, 561 (1909). OSEA v. Lincoln County and Sheriff Everett Hockema, 3 PECBR 1650 (1977), aff'd, 34 Or App 527, 529 (1978) held that an elected sheriff is a "public employer" and his deputies are "public employees" as defined by the PECBA, and accordingly, the Sheriff was bound to the terms of the County's collective bargaining agreement and obligated to comply with the decisions of a labor arbitrator concerning the Sheriff's decision to dismiss deputies in violation of the labor agreement. In Walter E. Schmidt v. Jackson County Juvenile Department, 4 PECBR 2507 (1979), aff'd, 49 Or App 349 (1980), where ERB held that an elected circuit court judge is a "public

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employer” within the meaning of the Public Employees Collective Bargaining Act (“PECBA”) and for purposes of it. *See also, OPEU v. Marion County Juvenile Dept., Judge Albin Norblad, et al.*, 6 PECBR 5140, 5149 (1982), where ERB found Family Court Judge Norblad was a “public employer” under the PECBA, and he had violated the Act by refusing to bargain in good faith with the union concerning the employment relations of the Family Court employees appointed by the judge. *See also, AFSCME Local 502-A v. Hon. Richard L. Barron, et al.*, 6 PECBR 5051, 5061-62 (1982) *aff d.*, 61 Or App 311 (1983) *aff d.*, 259 Or 542 (1983), the Oregon Employment Relations Board (“ERB”) which held that Juvenile Judge Barron was a “public employer” within the meaning of the PECBA, and therefore ERB had jurisdiction over the parties. In that case, ERB reasoned that if a juvenile judge is not himself a political subdivision of the State of Oregon, then “he must reasonably be regarded as an individual designated by the State of Oregon to act in its interests in dealing with juvenile counselors.” The *Barron* case involved an elected juvenile judge in Coos County and his authority over the juvenile counselors paid by the County to work under his supervision. *See also, Coos County Board of Commissioners and AFSCME Local 2936 v. Coos County District Attorney*, Case No. UP 32-01, 20 PECBR 87 (Or ERB Case No. UP 32-01, 2002) (District Attorney contended erroneously that he was not obligated to adhere to the grievance decision of the Board of County Commissioners which granted the Union grievance and ordered reinstatement of a discharged employee; *see also*, ERB Order at 2004 WL 5573499, 20 PECBR 650 (2004), (Or ERB Case No. UP 32-01, 2004) (awarding representation costs to the County of \$4250 and to the Union of \$3500.)

In this regard, *see also, Burks, Lane County Sheriff v. Lane County*, 72 Or App 257 (1985) (Declaratory judgment action brought by county residents and Sheriff challenging amount of appropriations for the Sheriff’s operations. The trial court entered judgment for county. On appeal by residents and sheriff the Court of Appeals held: (1) statute requiring county to provide funds for sheriff’s performance of his duties did not require county to appropriate funds in amount that sheriff believed was needed but, by failing to specify what level of funding county must provide, left that decision to county commissioners, and (2) under provision in the county charter requiring voters of county at regular or special county election to remove functions from sheriff’s department, voters did not remove functions of patrol and detective services from the sheriff by defeating levies which were dedicated to sheriff’s operations.); *see also, Graves v. Arnado*, 307 Or 358 (1989) (holding (1) by adopting personnel rules, county could impose conditions of due process or cause on sheriff’s statutory authority to appoint and/or terminate employment of deputy sheriffs, and (2) where sheriff retains full statutory authority to appoint or terminate employment of deputy sheriffs and is liable for deputy’s conduct, his statutory authority to

appoint and/or terminate employment of his deputies may not be limited by predecessor sheriff's actions.)

H. Sheriff Falls Believes He is not Accorded the Respect Warranted by His Elected Office from the Citizen Members of the Budget Committee, Administrator Jordan and Deputy Administrator Harvey Bragg

This is discussed in detail in the foregoing sections. Sheriff Falls' perceptions of his interactions with the Budget Committee on December 1, 2015 was no more than the Committee members reacting to him and their frustration with his ability to understand their duties and responsibility.

Sheriff Falls described in unflattering terms his meeting with Deputy Administrator Bragg on February 28, 2015. In sum, he described his intention for the meeting as "I am trying to get things going" and characterized the meeting as "the most unprofessional meeting with anyone" he had experienced. He referred to a disgusted look, no handshake³⁶, no hello, and expressions that made him uncomfortable. He reported to us, "I told him after 15 minutes, Mr. Bragg, I can tell you have no respect for the Sheriff's Office, and reported that Deputy Administrator Bragg responded, 'Well, I respect the position.' and I got up and left."

Certainly, by the Sheriff's own description, he and Deputy Administrator Bragg got off on the wrong foot. However, they describe the meeting very differently.

Deputy Administrator Bragg describes the meeting very differently. He thought that the meeting was to discuss personnel actions in the Sheriff's Office at a time when Deputy Administrator Bragg was serving as interim Human Resources Director. At the time Sheriff Falls came to see him, Deputy Administrator Bragg had agreed to assist the Sheriff by serving on a Sheriff's Office selection panel/committee in a hiring/promotion process. Deputy Administrator Bragg had offered to help frame questions, and told us the Sheriff declined this offer. He told us, "He comes to see me and starts talking ... He tells me how poorly the Sheriff's Office has been run in

³⁶ When we asked specifically about the unfriendliness Sheriff Falls described. Deputy Administrator Bragg told us, "I don't shake everyone's hand in my office. He came in. He didn't extend his hand." Our observation is that Deputy Administrator Bragg smiles, is soft spoken and unassuming, and projects himself as quiet, humble, thoughtful and considerate. Other elected officials with whom we spoke experience him similarly, as has Mr. Blitz in periodic interactions over more than two decades.

the past ... and conveys that having selection panels is to hire and promote based on merit, not politics as in the past ... he shows up bad mouthing the prior Administration.” According to Deputy Administrator Bragg, Sheriff Falls stated that things were not right and he needed to “right the ship.”³⁷ This was surprising to Deputy Administrator Bragg who referred in our discussions with him to Captain Monte Holloway, the former Administrative Captain, Dan Penland of the jail and Marty Clark as each well-regarded Sheriff’s Office commanders and managers. We were informed that under Sheriff Falls, these employees either retired or were demoted. Sheriff Falls states he promoted Penland, that Clark left during an Oregon Department of Justice investigation directed at his conduct and that Holloway opted to retire during the pendency of a DPSST investigation related to his licensure. Deputy Administrator Bragg told us he responded with words to the effect, “Great, as Sheriff you have that latitude.” Deputy Administrator Bragg told us that he supported in that conversation his understanding that Sheriff Falls is elected and he can do as he wishes in how he runs the Sheriff’s Office; that he is not supervised in his role; that the County had a sheriff on the road leading the charge writing traffic tickets and responding to calls; that the County had a sheriff who was an administrator, worked in the office and didn’t carry a gun (Sheriff Kennedy); and that the County had a sheriff who prioritized statewide leadership helping other Sheriffs, legislative involvement and statewide cooperation in various initiatives (C. W. Smith). He told us, “I explained to Corey that he could define his role.”

Deputy Administrator Bragg told us that Sheriff Falls described the hiring process and stated, “You’ll be impressed with it.” Bragg described the rest of the meeting: “His expression then changed and he said, ‘Or, maybe you won’t.’ and he got up and

³⁷ Deputy Administrator Bragg’s belief that Sheriff Winters was “leading” by writing traffic citations and responding to calls for service may reflect how Sheriff Winters spent his time. However, he was not leading or managing the Sheriff’s Office in doing so, and his continuation of what he did as an Oregon State Trooper without apparent change or personal growth was not in keeping with the needs of an agency of this size nor a community of the size and with needs of Jackson County. Sheriff Falls is not unmindful of what ultimately became common knowledge throughout much of the Oregon law enforcement community – that is, that Sheriff Winters neglected managerial and leadership issues core to his Office, and often promoted based on a “Good – Ole – Boy” network, the likes of Captain Joe Puckett which led to serious complications and legal consequences for the County. Sheriff Winters did not perform the functions deemed to be essential to the position he held – such as policy development, vision, budget preparation, management, operational leadership, managing personnel issues and overseeing others with subordinate responsibility, and interacting regularly and influentially as a leader and key chief executive manager. *But see*, discussion associated with footnote 13 *supra*, related to Sheriff Winters effective delegation to capable commanders.

walked out. I had no idea what he was upset about, and still don't." Deputy Administrator Bragg stated that the following morning he went to the Sheriff's Office at the appointed time for the interviews and discovered that he was not on any panel list. According to Deputy Administrator Bragg, Sheriff Falls told Deputy Administrator Bragg, "I won't need you. You offended me deeply yesterday." Deputy Administrator Bragg described his reaction: "He caught me completely off guard. I sincerely apologized and asked, 'What did I do to offend you.' He said, 'I don't have time to talk to you about it now.' I sent follow up emails and he never got back to me. He told Danny that I said he wasn't held to the same standard as a police captain and he should hire a professional administrator, that then he could go off and be a figure head." Deputy Administrator Bragg was at an utter loss to explain how Sheriff Falls could have interpreted any aspect of the meeting in that fashion. He explained in response to other inquiries that it was never clear to him why Sheriff Falls had come to see him, and that the Sheriff had asked for a 30 minute meeting, that the Sheriff defined the conversation, and that the Sheriff got up and left almost to the minute when he had been in Deputy Administrator Bragg's office for a half hour.

We are unable to lend credence to Sheriff Falls' description of the meeting. His description of Deputy Administrator Bragg is inconsistent with the experiences of others, including the writers' of Deputy Administrator Bragg's character and demeanor which has been consistent over decades, and appears to result from feelings and perceptions of Sheriff Falls which only he can understand and for which he is accountable, in the sense that only Sheriff Falls may be able to figure them out introspectively for himself.

IV. CONCLUSIONS

The authors have interviewed, reviewed, analyzed and written collaboratively. The findings of fact, conclusions and opinions stated herein have been reached, agreed upon and are shared by us.

It is worth noting that in the course of our work it became clear to us that Administrator Jordan has established a solid record of creativity, achievement and leadership in his role. Further, that Sheriff Falls possesses strengths, talents and potential which will serve him well, the Sheriff's Office and the County. We also are mindful that the contributing causes of the current estrangements between Sheriff Falls and Administrator Jordan will not dissipate until both men communicate fully and act collaboratively. They must recognize and accept each other's role, responsibility and authority.

The reader should know that while the authors based their conclusions on the information developed during this investigation, in reaching our conclusions we have, to some degree, relied on our decades of experience. Each of us has worked in or with governmental bodies large and small as well as local, state and federal law enforcement. Our resumes are available on request and have been provided to County Counsel.

This investigation was initiated as a result of a memorandum received by the Jackson County Human Resources Director Cleve Brooks. The memorandum was authored by Jackson County Sheriff Corey Falls and was dated December 9, 2015. In his memorandum Sheriff Falls alleged that he was working in a hostile work environment. We began our investigation by interviewing Sheriff Falls on December 28, 2015. Thereafter we conducted an in depth investigation focused on Sheriff Falls allegation. It was at once obvious that, as an elected Oregon official, Sheriff Falls is not within the definition of “employee” covered by the array of federal and state laws enacted for the protection of workers. Our investigation and this report might have ended with that finding and conclusion. We believe that to have done so would be a disservice to all concerned, most of all Sheriff Falls and the citizens of Jackson County. We consulted with County Counsel and confirmed that the County wanted us to proceed with this work for the reasons stated *infra*, Section I (D), related to *Course of this Investigation*.

This report details the events, actions and written/oral conversations that led to Sheriff Falls extraordinary step of submitting his written complaint, and creating a need for the neutral and detached investigation and analysis, findings and conclusions that the authors undertook.

We specifically find as follows:

1. We are mindful in our own experiences that sometimes what we notice determines what we miss. This is the nature of the human condition, not a criticism. Sheriff Falls, like many newly elected sheriffs, certainly was made aware by his Oregon colleagues of the nature of his Office³⁸, the traditions of the

³⁸ For example, see letter to SAMUEL KERCHEVAL from THOMAS JEFFERSON. MONTICELLO (July 12, 1816), “The justices of the inferior courts are self-chosen, are for life, and perpetuate their own body in succession forever, so that a faction once possessing themselves of the bench of a county, can never be broken up, but hold their county in chains, forever indissoluble. Yet these justices are the real executive as well as judiciary, in all our minor and most ordinary concerns. They tax us at will;

[Footnote continued on next page]

Office of Sheriff dating through the Oregon Constitution to the direct delegation of power in the name of the King of England, and the folkways regarding *preservation of the autonomy of the Office* by insuring that sheriffs are regarded not as department heads but rather as independent elected officials directly responsible to the electorate.

It may be that Sheriff Falls, new to his Office, *came in like a lion* responding more protectively and assertively than collaboratively necessary and not differentiating the nature of political relationships and alliances appropriately. However valid this approach may be when a new leader establishes standards and expectations for subordinates, it is wholly ineffective when establishing relationships among equals in governance.

Our scope of work did not include understanding the challenges and shortcomings Sheriff Falls found when he assumed office. Related perceptions affected views of a number of those involved and we are not able to assess related challenges, perceptions and accomplishments. However, appearances are that the Budget Committee's reception of Sheriff Falls, his ideas, concerns and initiatives was dismissive.

[Continued from previous page]

fill the office of sheriff, the most important of all the executive officers of the county; name nearly all our military leaders, which leaders, once named, are removable but by themselves."

See also, Op Ed of Steve Forrester, "A tale of two sheriffs – Sheriff Ward stood up for his community while Sheriff Palmer subverted his", *The Daily Astorian* (February 5, 2016). This well written editorial serves to explain the perspective of the Compensation Committee and some of the County's frustration with Sheriff Fall's unwillingness to accept the compensation rationale. "Sheriffs occupy a unique place in American law enforcement. While they must be certified by the Oregon Board of Police Standards and Training, they are not hired in the manner of a police chief or FBI agent. They are elected at the ballot box. That allows many of them to assume they have leeway that police chiefs do not. And it gives a sheriff the opportunity to make boneheaded moves, unchecked by a superior. ... Because they are elected by local people and thus particularly accountable to them, sheriffs and the deputies they employ are often the most well-liked law enforcement personnel. ... However, unlike a thousand years ago in Anglo-Saxon England when the role of neighborhood boss of "shire-reeve" originated, they have long since ceased to be the top elected officials in their counties. Boards of county commissioners – who themselves must follow state and federal laws – set local policy. ... This evolution in local government partly came in response to sheriffs who acted like powers unto themselves. At worst, they behaved like gangland bullies, choosing which laws to enforce and who to enforce them against (Think sheriffs in the Jim Crow South). ..."

On one hand, Committee members were unaware of challenges within the Sheriff's Office which apparently grew during Sheriff Winters' last several years in Office. And, the Budget Committee was not made aware of the challenges and accomplishments of Sheriff Falls and Sheriff's Office staff in 2015, as described *supra* at pages 43 and 44.

On the other hand, in our discussions, all must be mindful that Sheriff Falls' views, and indeed the views and experience of many African Americans in the same or similar circumstances, who we expect would reasonably inquire or criticize. There is little diversity in the offices and seats of power with which Sheriff Falls interacts, and during the Budget Committee dialogs in particular, he was confronted by oppositional and assertive questioning and advocacy for the *status quo*—a *status quo* which Committee Chairman Rudisile helped create and defended. Within County government, he is influential if not powerful, and unquestionably a Caucasian male of Anglo-European descent.

Neither the policies nor the position of the Committee reflected flexibility or room for variation (save based on a compelling case supported by data, which the Chairman did invite though not in a manner that was welcoming or conveyed receptivity). Even though County Administrator Jordan sought to temper the Committee's positions, the apprehensions by Sheriff Falls are understandable. For Sheriff Falls, and anyone with reasonable sensitivities we would expect, it follows that through the lens and from the perspective of a knowledgeable African American police executive, if not the Committee at least the Chairman might appear as one in whiteness confronting him in blackness, asserting white power to maintain priorities and decisions made and managed by an all-white Board, Budget Committee and management team.

For those of us unaccustomed to thinking in terms of a "knapsack of white privilege," the situation brought to mind an interesting aspect of and an ugly underbelly of our American heritage and world history. The roots of policing in America was seen by some as the need for power in a slave-owning, colonial and new nation where some founders condemned blackness and supported police actions as a matter of racial management to preserve and protect the capital of slave owners. The "slave patrol" and "slave catchers" were but a part; among slave owners and in society there grew to be "police power" executed against all

presumed to be a slave through deterrence, prerogative, sadism and reward by all white persons in order to secure racial order.³⁹

This context, when viewed from all perspectives, serves to demonstrate the wisdom of the observation that “whiteness must constantly police itself.” In the eyes of Black America, whiteness carries debt burdens of a history of racialization and a need to reconcile disparities with claims for justice and fairness in terms of subject positions and perceptions. See, Singh, “*The Whiteness of Police*”, 66 *Am Quarterly* (John Hopkins Univ. Press) no. 4 at 1091-1099 (December 2014).

The authors regard our white collective obligation “to constantly police ourselves” in the area of diversity and sensitivity as requiring willing participation is dialog, active listening and a desire to understand others’ points of view, experiences and perspectives.

2. In reaching our conclusions as neutral, detached investigators we have been mindful that Sheriff Falls, because of his racial identity and his own life’s experiences, may perceive events, actions and conversations from a different perspective than others and therefore reached logically different conclusions. Even so, we cannot find that a similarly situated individual could have reasonably attached the same meaning that Sheriff Falls attributed to the events, actions and conversations when he conclusion that he was working in a hostile environment.
3. Each event, action or conversation described by Sheriff Falls as contributing to the bases for his beliefs and his conclusion that he is working in a hostile environment arose in a circumstance delimited by what Sheriff Falls knew and did not know at the time. We are mindful that the Sheriff regarded as and believed to be fact much of the information he relied upon in reaching the conclusions he did. He was possibly unaware, had not been thoroughly briefed, or had not had sufficient time and experience at the County to become better informed regarding considerations which might have affected his conclusions. On the other hand, according to Sheriff Falls, his staff was not fully informed of County policy developments at the time he took Office due to choices made by Sheriff Winters who stopped attending County meetings and did not send a command staff delegate to these meetings in his place.

³⁹ See, Sally Hadden, “*Slave Patrols: Law and Violence in Virginia and the Carolinas*” (Harvard Univ. Press 2003) AT 85; see also, U.B. Phillips, *American Negro Slavery* (Appleton 1918) at 500.

Often, elected officials, citizen volunteers and appointed managers though they were trying to keep Sheriff Falls informed of Oregon law, Jackson County rules, regulations and customs or were offering to him well intentioned attempts to inform and educate a newly elected official. While some of Sheriff Falls interactions at various times with several of these individuals may have been less than cordial and sometimes less than professional on the part of all concerned, Sheriff Falls was an equal participant.

We do not believe Sheriff Falls was intentional or purposeful in withholding information from others or vice versa. In some cases, certainly Sheriff Falls and others have expressed reasonable concerns. Unfortunately, there have been failures of communication which have affected important relationships. We believe these can be mended, healed and nurtured in the County's and public interest. We also believe that Sheriff Falls submitted his memorandum to Human Resources as a vehicle by which he hoped to start a dialogue and create improvements.

4. Sheriff Falls is not working in a hostile work environment, and has not been subject to a hostile work place.
5. Sheriff Falls certainly understands that not all conflict is hostile but may be the natural conflict that can be part of the budgeting process, and positional advocacy is normal; also that this is not equivalent to harassment, retaliation or an offensive and hostile work environment.
6. Excessive phone calls and meetings do not connote harassment or micro-management. To the contrary, they are an opportunity for one-on-ones with County Administrator Jordan. Such one-on-one interactions are both advisable and in the best interests of Sheriff's Office operations. These were "opportunities" and should have been regarded as hugely beneficial by Sheriff Falls. Moreover, as a politician, such interactions are imperative. And, without minimizing or detracting from Sheriff Falls' qualifications, expertise and authority over his Office in any way, we cannot overlook County Administrator Jordan's decades of experience in Sheriff's Office, jail, parole and probation and criminal justice program management roles in Umatilla, Clatsop and Jackson Counties. Sheriff Falls would have been well-advised to at least welcome, if not seek and carefully consider County Administrator Jordan's counsel and to nurture a mutually supportive relationship.
7. Sheriff Falls' salary was fixed in accordance with policy and was fairly raised by the County Administrator in order to bring it into compliance with Oregon law.

This is not to say the result was fair, or objectively correct and appropriate based on compensation criteria. It was not. The County policy and Board Order are flawed and may be corrected easily without transformative change.

8. Regarding the Sheriff's and elected officials' compensation, Jackson County's Board of Commissioners, the Compensation Committee and the Budget Committee have complied with Oregon laws in fixing salaries. It may be that the Compensation Committee could be criticized for not giving due regard to factors which the Compensation Committee and the Board of Commissioners might find interesting and relevant. Certainly the County staff files of the Compensation Committee document that little data was overlooked. The factors we regard as important include:
 - a. In an Equal Pay Act discrimination context, or where applying a point factor to gauge pay equity or comparable worth, scope of responsibility is a pivotal factor. The highest points will be awarded to those who give managerial direction to a large number of professional or administrative employees working in diverse or highly complex and critical program areas.
 - b. In an Equal Pay Act discrimination context, or where applying a point factor to gauge pay equity or comparable worth, equally critical as responsibility exercised is the factor of "Direction Received" where the highest level for managers (that is, the greatest value description) is for those who receive long range managerial direction and are left to proceed independently in accordance with general plans. The key point here is that where the position is responsible to the electorate, substantial points are added for this factor alone.
 - c. Other factors include difficulty of work, knowledge requirements, personal relationships and work environment and personal effort.
 - d. In setting compensation for elected officials, compensation consultants will enumerate the following factors, and perhaps others:
 - Knowledge and skills required
 - Education and experience required
 - Amount of problem solving and decision making required of the position
 - The complexity of those problems and decisions
 - The extent of independent judgment required
 - The number of employees supervised (union, non-union, salaried, hourly)
 - Amount of supervision the position receives

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- The extent of money management required: operating expenses, assets, capital equipment, purchases, receipt of money and property in trust and the like (The more directly one manages and is responsible for money and valuable assets, the greater the accountability of the position)
 - Ability to pay
 - Where the County elects to position itself relative to other comparable organizations
 - What the position is currently paid relative to comparable positions in the market given comparable size, geography and the profession/industry; and other peers performing the same functions with the same education, experience and performance levels both in other organizations and internally at Jackson County
- e. It is clear that the County places greatest weight on internal pay equity. To do so is consistent with the Equal Pay Act and other civil rights/discrimination laws and concepts, as well as fundamental considerations of equity and pay administration. It would be wrong for anyone to attribute this policy to personal animus or unfairness. The County applies it even-handedly and consistently, and the record so demonstrates uncontrovertibly.
9. When Sheriff Falls first questioned his salary amount, he asked Compensation Committee Chair Rudisile to fix his pay at Step III. County Administrator Jordan and Chair Rudisile supported and the Board approved a deviation from policy to Step 2, retroactive to his first day in office, a salary of \$109,158. The Sheriff's FY 15-16 budget appropriation was \$21.2M.

Effective from January 1, 2016, Sheriff Falls is now paid at Step 3 at a salary of \$116,605. Based on the 2016 salary range for Director III (salary range 19), Sheriff Falls will earn \$122,450 effective January 1, 2017, which will increase to \$128,565 for 2018, and \$135,013 for 2019.

Sheriff Falls' pay history is:

Employee History Report				Page -
IC0001				
Employee	199348	Falls, Corbett L	Orig Employment	1/5/2015
Job	096	County Sheriff	Pay Starts	1/5/2015
FTE	1.00	Full-time Regular	Current Position	1/5/2015
Home BU	4101010000		Last Raise	
Hourly Rate	51.26	Union Code ELECT	Terminated	
CHANGE	1/5/2015	ALLENME New Hire		
Pay Grade/Step	C0096 1			
Employee	199348	Falls, Corbett L	Orig Employment	1/5/2015
Job	096	County Sheriff	Pay Starts	1/5/2015
FTE	1.00	Full-time Regular	Current Position	1/5/2015
Home BU	4101010000		Last Raise	1/5/2015
Hourly Rate	51.64	Union Code ELECT	Terminated	
CHANGE	1/5/2015	NILSENBJ Correction		
Pay Grade/Step	C0096 1			
Employee	199348	Falls, Corbett L	Orig Employment	1/5/2015
Job	096	County Sheriff	Pay Starts	1/5/2015
FTE	1.00	Full-time Regular	Current Position	1/5/2015
Home BU	4101010000		Last Raise	1/5/2015
Hourly Rate	52.48	Union Code ELECT	Terminated	
CHANGE	1/5/2015	GRAFENSK Correction		
Pay Grade/Step	C0096 1			
Employee	199348	Falls, Corbett L	Orig Employment	1/5/2015
Job	096	County Sheriff	Pay Starts	1/5/2015
FTE	1.00	Full-time Regular	Current Position	1/5/2015
Home BU	4101010000		Last Raise	7/13/2015
Hourly Rate	53.40	Union Code ELECT	Terminated	
CHANGE	7/13/2015	NILSENBJ Across the board increase		
Pay Grade/Step	C0096 2			
Employee	199348	Falls, Corbett L	Orig Employment	1/5/2015
Job	096	County Sheriff	Pay Starts	1/5/2015
FTE	1.00	Full-time Regular	Current Position	1/5/2015
Home BU	4101010000		Last Raise	1/11/2016
Hourly Rate	56.06	Union Code ELECT	Terminated	
CHANGE	1/11/2016	NILSENBJ Across the board increase		
Pay Grade/Step	C0096 3			

Sheriff Falls' 2016 salary range is:

Class Code	Class Step	Range	Rate	Step 1 (1 Year)	Step 2 (1 Year)	Step 3 (1 Year)	Step 4 (1 Year)	Step 5 (1 Year)	Step 6
01109		M0019	Hourly	50.85	53.40	56.06	58.87	61.81	64.91
			Monthly	8,814.00	9,256.00	9,717.07	10,204.13	10,713.73	11,251.07
			Annually	105,768.00	111,072.00	116,604.80	122,449.60	128,564.80	135,012.80

10. From a 2013 study comparing the compensation of Oregon's sheriffs, we learned that Jackson County's range and step system for elected officials is unique, and we understand that other counties establish a fixed salary rate (not steps and or range) for the elected officials. The following from that study may be of interest to the Jackson County Compensation Committee and Sheriff

Falls:⁴⁰ The sheriffs of other counties and the chiefs of Jackson County's three largest municipal police departments earned in 2014 – 2015:⁴¹

\$154, 158 in Clackamas with a \$95.8M budget
\$112,180 in Clatsop with a \$10.3M budget
\$147,079 in Deschutes with a \$41.8M budget
\$123,960 in Lane with a \$70.7M budget
\$129,521 in Marion with a \$57.4M budget
\$151,206 in Multnomah with a \$127.9M budget
\$109,056 in Lincoln with a \$10.7M budget
\$88,464 in Umatilla with a \$10.9M budget
\$110,000 at Ashland PD with a budget of \$6.7M
\$124,400 at Medford PD with a budget of \$2.1M

Sheriff Falls' salary was slightly less than that of Sheriff Bergin of Clatsop County in 2015. In that year it was surpassed by the salaries fixed for the Chiefs of Police for Medford and Ashland even though the size, complexity and budgets of those agencies are a fraction of Sheriff Falls' responsibilities.

As we became immersed in the compensation issues and documentation, we noted that in a crucible of analysis and free flowing exchanges, with respect to Sheriff Falls' 2015 pay rate and requirements of policy and law, the best achievable outcome might well be "agreement to disagree".⁴²

⁴⁰ Jackson, Klamath, Baker, Sherman, Wallowa and Yamhill counties did not submit information or participate in the salary survey and study.

⁴¹ We did not determine whether these sheriffs' salaries progress through a Step and COLA adjusted salary range, as is the case in Jackson County, or instead receive a salary amount set at a "top step" or "fixed amount" set by the Board.

⁴² With respect to determining the "right" pay grade or fairness of Step 1, it is valid to consider:

1. Steps reward expertise gained in office;
2. Sheriff Falls exceptional qualifications, potential and promising future may not equate to "present value";

[Footnote continued on next page]

There is always room for positional “disagreement” and result-orientated arguments because compensation theory can be more of an art than a science governed by absolutes. This is what occurs when advocates bargain over wage compensation. The working papers of the Compensation Committee do demonstrate that the Committee’s consideration was extensive and that County staff prepared through analysis. The Compensation Committee considered two comparable county data sets. One measure was based on counties relied upon in union/labor negotiations; an arguably more favorable data set included a greater number of larger counties and sheriffs ‘with predictably higher salaries.

Data for Deschutes, Douglas and Linn counties produced a very different result than consideration limited to Clackamas, Lane and Marion:

Sheriff Compensation Survey (JCSEA Comparable Counties)				
Sheriff-Undersheriff Positions				
Sheriff			Undersheriff	
County	Sheriff Years of Service In Position	Salary Only	Top Step	Difference % (Top Step)
Deschutes	Since 2007	\$138,720	\$134,567	3.09%
Douglas	Since 2009	\$96,429	\$95,763	0.70%
Linn	Since 2014	\$104,604	\$85,872	21.81%
Average		\$113,251	\$105,401	7.45%

Jackson County Sheriff Comparison			
Jackson (2015)	Steps	Salary Only	Difference % (Top Step Average)
	Step 1	\$103,958	-1.37%
	Step 2	\$109,158	3.57%
	Step 3	\$114,608	8.74%
	Step 4	\$120,349	14.18%
	Step 5	\$126,360	19.89%
	Step 6	\$132,683	25.88%

Top Step Average		Difference % (Top Step Average)
\$105,401		-1.37%
		3.57%
		8.74%
		14.18%
		19.89%
		25.88%

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[Continued from previous page]

3. During 2015, Sheriff Falls did not, based on facts revealed and determined by us, have a particularly stellar year of exemplary performance as Sheriff and as a politician, for which he may or may not be 100% responsible; however, we believe that in the matters such as this, each and every person must be willing to examine their own choices and search with self-focus for different choices which might have led to better outcomes;
4. County policy and philosophy is that internal equity trumps other considerations in the Jackson County pay system; and
5. County Commissioners experience relative to one another might well argue some are more qualified and more deserving of higher pay than others.

Sheriff Compensation Survey (Elected Officials Comparable Counties) Sheriff-Undersheriff Positions				
Sheriff			Undersheriff	
County	Sheriff Years of Service in Position	Salary Only	Top Step	Difference % (Top Step)
Clackamas	Since 2005	\$161,616	\$157,662	2.51%
Deschutes	Since 2007	\$138,720	\$134,567	3.09%
Lane	Since 2011	\$123,489	\$118,248	4.43%
Linn	Since 2014	\$104,604	\$85,872	21.81%
Marion	Since 2009	\$129,522	\$120,349	7.62%
Average		\$131,590	\$123,340	6.69%
Jackson County Sheriff Comparison				
Jackson (2015)	Steps	Salary Only	Top Step Average \$123,340	Difference % (Top Step Average)
	Step 1	\$103,958		-15.71%
	Step 2	\$109,158		-11.50%
	Step 3	\$114,608		-7.08%
	Step 4	\$120,349		-2.42%
	Step 5	\$126,360		2.45%
	Step 6	\$132,683		7.58%

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The foregoing demonstrated to us that the Compensation Committee and the Human Resources professional staff were not “result-oriented” in their analysis and approach.

As we have been careful to note elsewhere, the Compensation Committee has been consistently mindful of elected officials’ experience in office. The record reflects that the Compensation Committee and the Board of Commissioners have repeatedly been concerned that statutory qualifications to run for office are not predictive of the officials’ value to the public which grows with experience in office, upon which salary should be based, at least in part. Also, they have maintained a predominate focus on internal consistency and internal pay relationships among other positions within Jackson County. We noted that these considerations held true in fixing the compensation of the County’s three commissioners. Each started at the entry commissioner step (which was fixed as Step 2), regardless of and notwithstanding disparities in experience and qualification. We noted in this regard:

1. Commissioner Breidenthal has served as a fire fighter and holds DPSST firefighting certification. If he possesses other relevant licenses, education or credentials we are unaware of them. His candidate filings and voters pamphlet statements claim college coursework but no degrees beyond high

school. His primary prior employment has been as an airport firefighter and shift officer in Klamath Falls. Internet qualification queries revealed information not credibility enhancing.

2. Commissioner Rick Dyer earned a B.A. in business and economics as well as a Juris Doctorate degree, and is licensed to practice law in California.
3. Commissioner Colleen Roberts earned her Bachelor of Science degree in Business and M.A. degree in Business Administration. She has devoted 23 years as an independent women-owned-business owner and entrepreneur.

Each has been compensated in an identical manner under the County's compensation policy even though significant differences in qualification are apparent.

Sheriff Compensation Survey (Elected Officials Comparable Counties) Sheriff Positions			
County	Sheriff Years of Service in Position	Salary Only	
Clackamas	Since 2005	\$161,616	
Deschutes	Since 2007	\$138,720	
Lane	Since 2011	\$123,489	
Linn	Since 2014	\$104,604	
Marion	Since 2009	\$129,522	
Average		\$131,590	
Jackson County Sheriff Comparison			
Jackson (2015)	Steps	Salary Only	Difference %
	Step 1	\$103,958	-21.00%
	Step 2	\$109,158	-17.05%
	Step 3	\$114,608	-12.91%
	Step 4	\$120,349	-8.54%
	Step 5	\$126,360	-3.97%
	Step 6	\$132,683	0.83%

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The materials and anecdotal information we received, and the statements of County Administrator Jordan and Compensation Committee Chair Rudisile repeatedly stressed the emphasis placed on internal equity. The following chart was prepared by staff and submitted to the Compensation Committee; and is illustrative of such analysis:

Jackson County Internal Comparison Sheriff Compensation Survey						
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Sheriff	\$103,958	\$109,158	\$114,608	\$120,349	\$126,360	\$132,683
Undersheriff	\$88,858	\$93,309	\$97,968	\$102,856	\$108,014	\$113,402
Diff %	16.99%	16.99%	16.99%	17.01%	16.98%	17.00%
Sheriff	\$103,958	\$109,158	\$114,608	\$120,349	\$126,360	\$132,683
Captain	\$83,533	\$87,714	\$92,102	\$96,699	\$101,525	\$106,621
Diff %	24.45%	24.45%	24.44%	24.46%	24.46%	24.44%
Sheriff	\$103,958	\$109,158	\$114,608	\$120,349	\$126,360	\$132,683
Lieutenant	\$74,922	\$78,666	\$82,597	\$86,736	\$91,062	\$95,618
Diff %	38.76%	38.76%	38.76%	38.75%	38.76%	38.76%
Sheriff	\$103,958	\$109,158	\$114,608	\$120,349	\$126,360	\$132,683
Sergeant II	\$65,915	\$69,202	\$72,675	\$76,315	\$80,122	\$84,136
Diff %	57.72%	57.74%	57.70%	57.70%	57.71%	57.70%
Sheriff	\$103,958	\$109,158	\$114,608	\$120,349	\$126,360	\$132,683
Sergeant I	\$64,480	\$67,704	\$71,094	\$74,651	\$78,374	\$82,285
Diff %	61.23%	61.23%	61.21%	61.21%	61.23%	61.25%

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We also discovered that the Compensation Committee obtained and considered the compensation paid to the chiefs of police of Ashland and Medford. We found this positive and commendable. The County did take into account salary paid to the chief law enforcement executives of the three largest municipalities in the County. However, in a considered and positional discussion, there may be agreement to disagree; the reader may discern when examining some of the percentage differentials in the last two charts shown below that when taking into account the populations served or agency size and budget of the Central Point Police Department that this employer in fact pulls down the average and is not a reasonable point of comparability if it is accorded the same weight as the other comparators.

**Jackson County
 Sheriff Compensation Survey Appointed Positions
 Bottom Step**

Chief			Deputy Chief		
City	Years in Position	Bottom Step	Steps in Salary Schedule	Bottom Step	Difference % (Bottom Step)
Ashland	2007	\$94,131	5	\$81,337	15.73%
Central Point	2012	\$85,800	Range	\$73,800	16.26%
Medford	2011	\$74,377	3	\$102,573	-27.49%
Average		\$84,769		\$85,903	-1.32%

Jackson County Sheriff			Bottom Step Average \$85,903	Difference % (Bottom Step Average)	
Jackson (2015)	Steps	Salary Only			
	Step 1	\$103,958			21.02%
	Step 2	\$109,158			27.07%
	Step 3	\$114,608			33.42%
	Step 4	\$120,349			40.10%
	Step 5	\$126,360			47.10%
	Step 6	\$132,683	54.46%		

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Sheriff Compensation Survey (Appointed Positions)

Ashland Police Chief (since 2007)		Jackson County Equivalent Non-Rep Position						
Min	Max	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	
Annual Salary	\$94,131	\$114,416	\$103,958	\$109,158	\$114,608	\$120,349	\$126,360	\$132,683
% Diff (Min Sal Only)			9.45%	13.77%	17.87%	21.79%	25.51%	29.06%
% Diff (Max Sal Only)			-10.06%	-4.82%	0.17%	4.93%	9.45%	13.77%

Central Point Police Chief (since 2012)		Jackson County Equivalent Non-Rep Position						
Min	Max	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	
Annual Salary	\$85,800	\$109,200	\$103,958	\$109,158	\$114,608	\$120,349	\$126,360	\$132,683
% Diff (Min Sal Only)			17.47%	21.40%	25.14%	28.71%	32.10%	35.33%
% Diff (Max Sal Only)			-5.04%	-0.04%	4.72%	9.26%	13.58%	17.70%

Medford Police Chief (since 2011)		Jackson County Equivalent Non-Rep Position						
Min	Max	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	
Annual Salary	\$74,377	\$130,050	\$103,958	\$109,158	\$114,608	\$120,349	\$126,360	\$132,683
% Diff (Min Sal Only)			28.46%	31.86%	35.10%	38.20%	41.14%	43.94%
% Diff (Max Sal Only)			-25.10%	-19.14%	-13.47%	-8.06%	-2.92%	1.98%

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- Were the Compensation Committee to consider the qualifications of Sheriff Falls in relation to those of Sheriff Winters and measure these against the minimum qualifications required in order to be eligible to run for office, which is an exceedingly "low bar" set statewide by the Legislature, the following would be apparent and demonstrates that while both men exceeded the state minimum

qualifications, Sheriff Falls assumed office with exceptionally high qualifications and relevant law enforcement experience (albeit not as a Sheriff):

<u>Sheriff Winters</u>⁴³	<u>Sheriff Falls</u>⁴⁴
<p><u>Education:</u></p> <ul style="list-style-type: none"> • None reported to DPSST <p><u>DPSST Certification:</u></p> <ul style="list-style-type: none"> • Basic <p><u>Experience:</u></p> <ul style="list-style-type: none"> • Sheriff: 12 years • OSP Senior Trooper: 6 years • OSP Trooper: 7 years • OSP Recruit: 1 year • Ashland PD Reserve 3+ years <p><u>Journey Police Training:</u></p> <ul style="list-style-type: none"> • 2122 Hours <p><u>Certified Instruction Taught:</u></p> <ul style="list-style-type: none"> • 22 Hours 	<p><u>Education:</u></p> <ul style="list-style-type: none"> • BS- Health Professional (2001) • Masters (2003) • Leadership Academy- 120 hours (2009) • FBI NA- 400 graduate hours (University of Virginia) (2010) <p><u>DPSST Certification:</u></p> <ul style="list-style-type: none"> • Basic (2008) • Intermediate(2008) • Supervisory (2008) • Advanced (2008) • Management (2010) • Executive (2013) <p><u>Experience:</u></p> <ul style="list-style-type: none"> • Sheriff: 1+ year • Ashland Deputy Chief: 4+ years • Ashland Lieutenant: 3 years • Ashland Sergeant: 2 years • Out of State Police Officer: 6+ years <p><u>Journey and Advanced Police Training:</u></p> <ul style="list-style-type: none"> • 3990 Hours <p><u>Certified Instruction Taught:</u></p> <ul style="list-style-type: none"> • 53 Hours

12. Sheriff Falls was incorrect to assume (1) his salary would equate to that of his predecessor, and (2) he would have the ability to negotiate would occur and that it was dependent on the salary level of his predecessor. Sheriff Falls expectation and his subsequent unhappiness were the product of his failure to do his “due diligence” to determine what his salary would be if he were elected Sheriff. Sheriff Falls was incorrect in placing reliance on the budget as a statement of anything except the cost of Sheriff Winters’ salary. Unfortunately this awareness came too late and at a cost of disappointment and a perception of unfairness. It was a simple, innocent and understandable lack of awareness of a complicated compensation structure governed by law, County policy, procedures and Board

⁴³ DPSST #15813 Employee Profile as of January 27, 2016 (State of Oregon DPSST)

⁴⁴ DPSST #44517 Employee Profile as of January 27, 2016 (State of Oregon DPSST)

orders not reinforced or easily discovered without detailed inquiry. Most would not think to inquire and investigate to such a degree; and to do so would be unnecessary in most Oregon counties which have a fixed salary.

13. We would not expect any police executive to be an expert in compensation and pay equity methodologies or to be able to present data and a persuasively valid argument to the Compensation Committee. The weight of data supports the reasonableness of his belief that the County treated him unfairly under these unique circumstances. We found that Jackson County has at all times sought to compensate its elected and appointed fairly and at market. If indeed this is correct, an appropriate application of compensation factors and methodology should have justified a reexamination by the Compensation Committee of the Step 1 Rule, and a considered approach to the question of whether that rule should be strictly applied in every case.⁴⁵
14. Sheriff Falls is discovering differences between a municipal police department and a Sheriff's Office, and between an appointed command chief officer and the Sheriff.

⁴⁵ The Step 1 Rule as explained at the time of adoption makes no sense to the authors. As explained in the Compensation Committee minutes, one who served 10 years in office, resigns for family emergency reasons or to serve in a non-protected military status and who later is re-elected to office for the next term, would be placed at Step 1. The authors would have urged an open-minded, re-evaluation of the question, extending to Sheriff Falls the benefit of understanding and empathy for the "rocky start" that occurred and relationships soured because, in large measure the proper request for information, data and sound rationale was misconstrued by Sheriff Falls, and also as a consequence of the understandable resistance of the Compensation Committee to arguments which clearly were erroneous. Under law and policy, the Compensation Committee has the authority to determine, recommend and modify the Step 1 starting requirement rule, and to allow for exception in circumstances of merit as determined by the Committee, case-by-case.

We observe that where, as was the case with the Clerk, the most senior subordinate to an elected official who has gained experience in the office or discipline and advanced based on merit, is appointed to the office and/or elected, that person should not be reduced in pay. Moreover, there is no rational basis for a presumption that such a public official lacks the qualifications or experience which merits compensation at a higher step. Certainly in the case of a top step Undersheriff, the County policy would discourage seeking the office and result in a cut in pay upon election.

The policy and Board Order, properly amended, could reflect a clearer and more transparently worded process and Committee options to deal with unique situations responsively and in the County's interest when they arise.

15. Sheriff Falls' future success and the interests of countywide law enforcement will hinge on improved relations with the County Administrator, Deputy County Administrator, Board of Commissioners and the Budget Committee. We are confident that all are committed to achieving the best and most positive outcomes.
16. The Sheriff has discretion in the management of his Office, including pod closures, staff assignment and movement, and prioritizing the work within the budget once it is set by the Board of Commissioners. That said, such changes can be made much easier with communication and explanation, and with due consideration of views expressed by the Sheriff's constituencies and strategic partners, including the Board of Commissioners and the County Administrator.
17. Sheriff's Office managers and supervisors of course realize that they must work within County personnel policy and in compliance with labor agreements. Indeed, nothing suggests that the Sheriff's Office ever has failed to do so. It is in the interest of all, including the public interest from a risk management perspective for the Sheriff to give due regard to the professional opinions and guidance of, and reasonably cooperate with, the County's human resources and risk management professionals. This requires communication, collaboration, coordination and, in light of Sheriff Falls' belief that breakdowns occurred in the last years of Sheriff Winters' service, meetings and trainings involving the Sheriff's administrative and supervisory staff and County Human Resources, risks and fiscal professionals may serve to foster desirable outcomes through enhanced awareness, and may "catch up" or overcome the effects of Sheriff Winters' choices. This said, the Sheriff retains discretion to manage his Office within the bounds of the law, as expressed in greater detail *supra*.
18. Sheriff Falls sees his mandate to change his Office from an "enforcement" focus to an agency more aligned with President Obama's *Task Force Report on 21st Century Policing* (cited *supra*, footnote 16 at page 38) which concludes that procedural justice and legitimacy must be addressed.
19. The motivation of Sheriff Falls is not relevant to our conclusions. However, we believe that our opinion on this subject might be helpful to the reader. Sheriff Falls came to his Office with the belief that he had received a mandate from the electorate. His experience in law enforcement did not include management of a Sheriff's Office, the facets of which are complex and unique in contrast to the experiences of a police officer, sergeant and even a senior commander in a municipal police agency the size of Ashland.

Sheriff Falls seems to have believed that others in the Jackson County organization would deferentially acquiesce and facilitate any and all changes Sheriff Falls wanted to initiate such as the jail and traffic issues. Perhaps he was naive about the necessity of working as a member of a governmental executive team and the “politics” of working at the political and senior leadership level of a County where the management team is as sophisticated and as well-developed as is Jackson County. **We emphasize that we have not investigated or inquired specifically about the extent of communication in advance of change, or of stakeholder involvement.**

It appears to us that the Sheriff is perceived by some as having given insufficient consideration to planning how to achieve his goals. Some think it will serve him and the Office well if as Sheriff he shows greater regard for the need to consult, collaborate and cooperate, especially in those matters over which he retains ultimate authority and the power to change.

We became aware of Sheriff Falls’ Office website post, dated January 29, 2016 related to “Closing the Basement of the Jail” which reports meetings with community justice and mental health officials regarding alternative uses for the closed facility, and the Sheriff’s announcement that “with proper design technology, I believe we could house twice as many inmates with current staffing levels.”

On February 3, 2016 Sheriff Falls sent an email to the Commissioners, Budget Committee members, Administrator Jordan and others. In that email he informed them, “I plan on starting some community discussions about our jail this spring. I want to hear from the community ... My thought process is that we need 6-9 deputies to open the basement jail to functionally run it. I believe we could probably build a new jail that doubled our capacity without adding any staff.” Sheriff Falls forewarned the County’s fiscal authority of his plans to make this request in the next budget cycle.⁴⁶

Sheriff Falls believes he communicated with law enforcement leaders, the courts and others prior to the announcement of the jail closure. We did not interview

⁴⁶ But see, *infra* at page 24 describing Sheriff Falls’ statements that six (6) deputies were needed to open the jail, not six (6) to nine (9).

others or these stakeholders. It may be that such communications occurred out of County Administrator Jordon's awareness.

20. All should keep in mind that it is not untypical for sheriffs to be in conflict with a Board of Commissioners based on financial issues. In Jackson County, however, the County has prioritized criminal justice services and avoided reductions in criminal justice dollars to such an extent that we find any conflict, lack of appreciation or withholding of teamwork difficult to understand.
21. It should be expected that the two newly elected Commissioners would be highly dependent on the County Administrator and his advice.
22. It is appropriate to make these critical additional observations:
 - a. There appears to be a festering lack of professional relationship in some quarters of the County's governance. The elected officials, citizen volunteers and appointed senior managers must interact with each other effectively in the public interest. For the key players in this inquiry, each has many years of potentially effective and valuable service to contribute. If the personal interactions do not become more professional and more cordial, there is the specter that the County's governance and personal performance will deteriorate and may loom large as people pass each other in the halls without acknowledging one another and increasingly find their work unpleasant and unrewarding. While this may be extreme, it is a logical extension of the *status quo*.
 - b. Sheriff Falls' interaction with the Budget Committee and the Compensation Committee and his choice to express the concerns he did in his memorandum to the Human Resources Director should not be viewed as a deteriorating interaction with elected officials, citizen volunteers and county managers. Beyond the temporal coincidence of Sheriff Falls' expressions of concern with the developing issues concerning Commissioner Breidenthal, we are unaware of any nexus or significant relationship between or involving them. While we gathered a great deal of information about Commissioner Breidenthal's concerns, they are not within the scope of this work and the authors have so informed Commissioner Breidenthal.
 - c. Citizens want to see their government officials working together, not in turmoil. Release of this report could undermine public trust and confidence and severely diminish any hope of successful attempts to build

relationships with the County's and the Sheriff's Office's strategic partners, including criminal justice agencies and municipalities throughout the region and within Jackson County. Citizen and voter support could be impacted. All concerned could find themselves dealing with difficulties and the commonality that all will be in positions of equivalent capacity to do harm to others, the County, the Sheriff's Office and the public interest.

We recommend that:

1. **This report should not be issued and should remain under consideration. Steps should be taken to avoid its becoming a public record subject to inspection and production.** If the Sheriff and others directly affected agree, the authors should be instructed to withhold making final determinations in the form of an "issued" and "delivered" final report until and unless later requested to do so. It may be that rejection of other recommendations may warrant issuance. Internal conflicts such as presented have occurred elsewhere and will likely occur again between a sheriff, county executive and/or board of commissioners. These should be resolved internally and remain away from public view.
2. This report can be finalized if necessary after an interactive process, first with Sheriff Falls, then with Administrator Jordan, and thereafter with others as Sheriff Falls and County Administrator Jordan determine. Sheriff Falls and County Administrator Jordan advised Mr. Blitz they are willing to engage in this process.
3. Sheriff Falls should be afforded the opportunity to withdraw his memorandum of complaint dated December 9, 2015 which he delivered to the Human Resources Director Brooks, thereby perhaps obviating the need for issuance of this report, presuming he were to do so while following other recommendations. We recognize that the records must be preserved by us in the County's file at Bullard Law where this report and our work papers will remain the property of the County and subject to County control.
4. All concerned should be able to move beyond the difficulties of the past and "start-over" building strategic partnerships in the public and County's interest. We encourage and are happy to assist in this outcome.
5. The County should request a follow-up review and evaluation concerning Jackson County compensation policy and methodologies. A presentation of recommendations to the Compensation Committee and Budget Committee could

include an explanation of the oversights in the County's compensation policy as it now exists which might be remedied if understood and acknowledged. *See* footnote 45 *supra*.

6. Sheriff Falls and County Administrator Jordan should collaborate to facilitate success for the County as a whole, through prioritizing their relationship and building trust and mutually supportive consultations. Both should recognize each other's expertise and potential value to the other.
7. All concerned should be encouraged to introspectively and honestly evaluate what choices each may have made for themselves, or what beliefs, attitudes or reactions may have been formed and evidenced explicitly or implicitly, overtly or with some subtlety, related to Sheriff Falls being a "new comer" at the County. They should consider what developments, including those of others, may have contributed to defensive, self and Office protective, and/or withdrawing actions consistent with Sheriff Falls feelings which gave rise to the complaint.
8. Sheriff Falls should focus on cultivating and maintaining relationships with the Board of Commissioners and others on the County executive leadership team, just as we assume he does within his Office, throughout the community, with other local government officials, service clubs and his constituents. This is the job of a politician. All others should welcome, facilitate and support him, and one another.
9. Sheriff Falls should be supported in executive level training and opportunities related to organizational development and leadership at County expense as a growth opportunity likely to promote greater success of the Sheriff's Office and the County for the Sheriff's Office executive leadership team. Should this course be followed, any contract for service could be facilitated through Bullard Law as a further layer of confidentiality and privilege protection. Among others, we can recommend, first and foremost, Baruti Artharee whose management consulting and leadership accomplishments in the public and private sectors, and whose experience and accomplishments in diversity programs have been recognized nationally. He could provide unique and valuable perspectives about this report, and Sheriff Falls' opportunities, effective organizational leadership and diversity.
10. Consideration should be given to whether it would be beneficial for those directly concerned to participate interactively with the authors or an executive coach.
11. Baruti Artharee could be a valuable resource should the County initiate cultural and racial diversity training to increase County workforce sensitivity and

interpersonal effectiveness both internally and throughout County services. We hope this report serves to help understand the complexities and some of the subtleties of a subject few of us understand as well as we perhaps should. Here we refer to “diversity” in its broadest sense, to include race, sex, religion, generation, age and retirees, and to foster embracing in ways that help everyone in their relationships.

At a minimum, a full vetting of points of view and identification of successful strategies and paths for the future based on the unique attributes of those involved needs to occur involving County Administrator Jordan, Sheriff Falls, Deputy Administrator Bragg and Board Chair Rick Dyer. Some feedback must flow to the other Commissioners and others who became aware of Sheriff Falls’ complaint and our work so that rumors are avoided and a foundation is provided for all concerned to work together collaboratively. The authors believe that the strategy to address this should be developed by Board Chair Dyer and Mr. Blitz assuming Sheriff Falls withdraws his complaint.

We do not suggest executive coaching as a reflection of inadequacy or wrong doing, in contrast with a growth opportunity. We believe this situation might have been avoided altogether. We imagine that the Budget Committee meeting could have been quite positive if Sheriff Falls had:

- provided complete historical background
- provided a recap of difficulties he inherited and the Office was correcting
- detailed the challenges and liabilities
- described solutions, objectives and goals, and the process of correction
- not supervised anyone to whom the Sheriff’s Office is accountable for support
- created buy-in and a base of support
- asked for agreement and support

As noted *supra*, Sheriff Falls may not have the benefit of a depth of experience working at the top of the organization in a role dependent on politics and support of others which requires allies, supporters and consensus building. And, it appears that Sheriff Falls may have run too fast and too far ahead of the pack, and/or made decisions and executed them too quickly. If so, some executive coaching may be of benefit to him and others on the Team.

We can also recommend Tammi Wheeler, dba People Sense LLC, if part of solutions were to include team development sessions for the Executive Team

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using individual Hogan Leadership® assessments to increase individual awareness. A compiled team assessment could help to better understand the leadership team's overall strengths and areas for development and could help integrate Sheriff Falls as the newest team member, enhance relationships and communication, and help to ensure that actions moving forward will contribute to most effective County governance.

We note that the Hogan Leadership Forecasting & Coaching Report® can provide insights of three rich reports regarding individual's key strengths, areas for improvement, motives, values and preferences. Such awareness will advance communication, interpersonal interactions and shared expectations essential to the cohesive organizational effectiveness and leadership which we believe all regard as desirable.

Thank you for this opportunity to be of service to Jackson County and all concerned. The authors will help the County and Sheriff Falls however the County may determine and request.

Respectfully submitted,

C. Akin Blitz
ablitz@bullardlaw.com

Kenneth C. Bauman, Esq.
Sub-contractor/Investigator

CAB/cab/bb

Cc: Brett Baumann, Assistant County Counsel

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