

Performance Audit Committee

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Planning Study

Court Reporter Issues

Pierce County Superior Court

Conducted for Pierce County Performance Audit Committee

by

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Executive Summary

This report is a planning study to develop basic information about court reporting in Pierce County Superior Court, analyze and formulate the issues, and recommend whether a performance audit should be conducted.

Superior Court employs 22 official (staff) court reporters, one for each judge. At an annual salary of \$61,443, plus benefits, labor costs for the court reporters come to over \$1.7 million per year. In addition, the court hires *pro tem* court reporters, with a budget of \$113,000 (or \$120,000 requested in the 2007 budget).

The report agrees with two basic points expressed in the presiding judge's "Feasibility Study" presented last March:

1. Transcripts created from a court reporter's "real time machine" are generally better than transcripts made from a digital audio or video recording.
2. It is essential to have two staff in the courtroom. The court reporter is now the second person. If electronic recording equipment is installed, it will be necessary to have a clerk in the room to run the equipment and create an index.

Any cost savings by eliminating court reporters would be partially offset by adding clerks. However, in our opinion, it would be unwise to approach the issues simply in terms of possible cost savings because of the generally higher quality of transcripts made by court reporters.

The report contains information on transcript rates (\$2.80 to \$6 per page) and on payments by the State of Washington to court reporters for transcripts in criminal appeals. The details appear in Attachment A (page 19).

Court reporters are the personal staff of the judge in a specific department. When that judge is not on the bench and on the record, the court reporter is supposed to fill in for other staff reporters who are on leave. We reviewed the records back to 2002 and found that staff court reporters provided a fairly small amount of the coverage. For example, this year the staff court reporters have filled in on 28% of the days when a replacement was needed, and *pro tem* court reporters were hired for the other coverage.

The report finds that three other superior courts (Spokane, King, and Snohomish) hire fewer *pro tem* court reporters and do a better job of leveraging internal resources to cover for absences by staff court reporters.

The report includes information on the number of court reporters per judge in the ten largest superior courts in Washington. See the chart on pp. 7-8. We obtained detailed information from three other courts – Spokane County Superior Court, King County Superior Court, and Snohomish County Superior Court – on their organization and

management of court reporters, utilization of pro tems, and the types of court proceedings in which they have a court reporter or electronic recording. The information from these courts adds another perspective to the issues.

Spokane County Superior Court is similar to Pierce County in that it has one court reporter per judge and similar policies on annual leave for court reporters. However, the two courts have somewhat different policies as to what proceedings must be covered by a court reporter and very different practices for managing court reporters.

King County Superior Court has 32 court reporters for 51 judges. The report shows how the reporters are assigned to various courtrooms and how staff absences are covered by a pool. King County uses electronic recording equipment in many types of proceedings for which Pierce County currently requires a court reporter. These include criminal arraignment, case setting, trial call, and pleas as well as Unified Family Court, juvenile dependency, and juvenile offender cases.

Snohomish County Superior Court has 12 court reporters for 14 judges. Proceedings at Juvenile Court are electronically recorded, and when there is a need for a court reporter, a reporter is moved there from Drug Court.

The report analyzes the utilization of *pro tem* court reporters in Pierce County and the three other superior courts. Two of the findings are:

- ❑ *Pro tem* court reporters are hired in Pierce County mainly to support the regular (elected) judges, even though each judge has a staff court reporter.
- ❑ All three of the other courts use fewer *pro tem* court reporters than Pierce County.

National experts are available to conduct a performance audit on court reporting issues, but this planning study finds that a performance audit is not necessary. The issues raised in this report are policy, management, and budget issues that can be handled by Superior Court, with the assistance of the County Executive and County Council as needed.

The report recommends that the County Council should schedule review of a Superior Court report due by April 30 next year on its plans on court reporters and electronic reporting. The topics are:

- a. How the court proposes to reorganize court reporting services to increase the utilization of staff court reporters and reduce the use of *pro tem* court reporters,
- b. Which specific types of proceedings should have a live court reporter,
- c. Which new courtrooms and which current courtrooms should be wired or outfitted with electronic recording equipment, and
- d. Any related topics the court wishes to address.

I. Introduction

A. Study Objectives and Criteria

The objectives of this study are:

1. Develop basic information about court reporting in Pierce County Superior Court, such as the number of staff, organization of work, budget data, and comparisons with other superior courts. Include basic information about electronic reporting as needed.
2. Formulate the issues and prepare a scope and objectives for a performance audit if needed.
3. Recommend whether a performance audit should be conducted.

Performance audit staff conducted this study in accord with “Yellow Book” standards relevant to planning work. The study uses the following criteria as the basis for recommending whether an audit should be conducted:

- Significant cost impact
- Improvement in public policies and operational practices
- Increased efficiency, effectiveness and performance of public services
- Enhanced accountability systems and transparency of operations
- Availability of qualified contractors with the required expertise to conduct an audit.

B. Background to the Study

The project grew out of County Council interest in Superior Court workload and management issues in connection with the court’s request for an additional judge and commissioner. After long discussions, the Council authorized the 22nd judge in September 2005, and it provided funding for the seventh commissioner in September 2006.

As these matters were being discussed, the 2006 county budget required Superior Court to present a “Feasibility Plan” on court reporting and electronic recording of court proceedings. The presiding judge presented that report in March 2006.¹ In the summer of 2006, Performance Audit staff was directed to look into court reporting issues.

Research for this study was conducted in September and October 2006. We are grateful to Superior Court administration for providing a large amount of requested material.

¹ Feasibility Plan for implementation opportunities for the use of electronic/video reporting in courtrooms . . . presented to Pierce County Council by Pierce County Superior Court, March 14, 2006, prepared by Judge Stephanie Arend, Presiding Judge, Pierce County Superior Court.

We also appreciate the help of staff in three other superior courts who provided information on how court reporting is organized and managed in those jurisdictions. They also developed the data on *pro tem* judges and court reporters presented later in this report.

C. Budget for Court Reporters

Superior Court employs 22 official court reporters, one for each judge. In 2006, the salary of a court reporter is approximately \$61,443, or \$70,689 for the one Managing Court Reporter. The total annual payroll for the 22 court reporters, including benefits, is over \$1.7 million.

In addition, the 2006 budget includes \$113,000 for *pro tem* court reporters, and an increase to \$120,000 is requested in the 2007 preliminary budget. While that amount is relatively small compared with the \$1.7 million annual cost of the staff court reporters, the use of *pro tem* reporters may be an indicator of how efficiently the staff court reporters are utilized. These issues are considered later in this report.

D. Annual Leave and Other Leave

It is useful to set down here the basic facts about leave policy because the report later analyzes staff coverage when court reporters are on leave.

Superior Court judges in Pierce County have six weeks of vacation per year (30 work days). During that time, the department is in recess (judge, judicial assistant, and court reporter). Other Pierce County employees receive far less vacation.

Court reporters earn and accrue sick leave at the same rates as other Pierce County employees.

Under the county code (PCC 3.80.80), court reporters are allowed to take unpaid “court transcript leave” when necessary to complete transcripts and if approved by the Superior Court executive committee. Transcript leave is unpaid, but it is treated as compensated time for the purpose of maintaining the employee’s medical and dental benefits.

Court reporters also take other unpaid leave, without needing executive committee approval, and the hours are apparently greater than for transcript leave. Utilization rates for court reporter unpaid leave (combining transcript leave and other leave without pay) are high when compared with other county employees.

II. Pierce County Court Reporters

A. Basic Points

At the outset, it may be helpful to set out basic information about court reporters and electronic recording equipment in Pierce County Superior Court.

1. Superior Court employs 22 official court reporters, one for each judge. In addition, the court uses a significant number of *pro tem* court reporters.
2. Superior Court policy is to have a court reporter present at any time a judge is on the bench and working on the record. That includes elected judges and *pro tem* judges.
3. None of the courtrooms for judges in the County-City Building has audio or video recording equipment, because the court policy is to have a court reporter when a judge is on the record.
4. Courtrooms for commissioners in the County-City Building are outfitted with CourtSmart, a digital audio recording system that is operated by a clerk. (The commissioners had court reporters in the 1990s for a few years.)
5. Courtrooms in Juvenile Court at Remann Hall are also outfitted with CourtSmart. *Pro tem* judges at Remann Hall usually do not have a court reporter, as CourtSmart is used to make the record. However, court reporters are present and working when a regular judge is on the bench in juvenile cases.
6. Pierce County District Court uses CourtSmart in its courtrooms.

All superior courts in Washington State are required to make a record of court proceedings. The main reason for making a record is to be able to create a transcript of the proceedings when a decision is appealed to a higher court. Another reason is that the record may have to be reviewed while the case is being considered in the superior court. For example, a judge may want to check what someone said in testimony, or an attorney may want a transcript of a witness's testimony while trying a case.

The most common methods of making a record are to employ a court reporter or to have audio or audio-visual recording equipment operated by a clerk. The 22 court reporters in Pierce County Superior Court all use computer-aided transcription (CAT), which translates their stenographic notes into English and displays the text in "real time" on computer monitors in the courtroom. Many judges find the visual display very helpful during the proceedings.

As a way of cutting through many details, we wish to acknowledge and agree with two fundamental points made in the court's "Feasibility Study" (March 2006) referenced earlier:

1. Transcripts created from a court reporter's "real time machine" are generally better than transcripts made from a digital audio or video recording.

The basic reason is that court reporters with computer-aided transcription produce a written product instantly; later, when a transcript is requested, the text can be turned into a transcript with relative ease. If there is no court reporter and the record is a digital recording, a "transcriptionist" must be hired to listen to the entire recording and make a transcript. Digital recordings may have sound problems, although this greatly depends on the quality of the equipment and the skill of the transcriptionist.

The greatest problem is that transcripts made from digital recordings sometimes have a large number of "inaudible" lines, and thus may not be a good record of what occurred in court. A good court reporter, while working in court, will avoid the "inaudible" problem by letting the judge or the parties know when someone cannot be heard or when two people are talking at the same time.

2. It is essential to have two staff in the courtroom in many types of proceedings. The court reporter is now the second staff person in the courtroom, along with the judicial assistant. If electronic recording equipment is installed, it will be necessary to have a clerk to run and monitor the equipment and create an index.

Thus, the cost savings by eliminating court reporters (\$61,443 salary) would be partially offset by the addition of clerks (\$40,385 for clerks who now staff the commissioners' courtrooms). In our opinion, it would be unwise to approach the issues simply in terms of possible cost savings because of the generally higher quality of transcripts made by court reporters.

B. Transcripts

Besides receiving a salary from public funds, court reporters personally sell transcripts of the court proceedings they have transcribed. Court reporters own the computer equipment and software used in their work. Transcript rates in most cases appear to range from \$2.80 to \$6 per page for an original transcript and one certified copy, with lower rates for additional copies.

Attachment A has details on transcript rates and on state payments for transcripts in criminal appeals.

According to Pierce County Superior Court policy, court reporters are allowed to work on transcripts during the workday when their judge does not need reporting services and when coverage is not needed in other judicial departments. The current policy dates from 2003 and reads as follows:

“Reporters are allowed to work on transcripts when a department is not in need of reporting services as determined by the department judge. In exchange, Superior Court shall not be charged for the cost of a reasonable excerpt or portion of a transcript. Other judicial department coverage requests take precedence over work on transcripts during the court day.”

C. Court Reporter Management Issues

Court reporters in Pierce County Superior Court are the personal staff of a judge in a specific department. When the judge is not on the bench and on the record, the court reporter is supposed to call the Managing Court Reporter and indicate that she/he is available for work if needed in other courts. The idea is to provide staff coverage for court reporters who are sick or have taken another kind of leave.

The Managing Court Reporter keeps track and compiles a Quarterly Report. This document lists by date the court reporters who worked in another department, and it computes the savings (cost avoidance) by not having to hire a *pro tem* court reporter.

By reviewing the Quarterly Reports in detail, we found that the staff court reporters provide a small amount of coverage for other departments. They provided 12% of the coverage in 2002, 33% in 2004, and 28% in 2006 (January-September). *Pro tem* court reporters were hired for the other coverage.² This is a low level of performance compared with what occurs in other courts, as documented later in the report.

The policy/procedure is to require the court reporter to call when available to work in another court. In practice, this amounts to an honor system. There is no easy way for the Managing Court Reporter to find out when a reporter is available and has not called.

One reporter who has served as the Managing Court Reporter emphasized in an interview that she does not “supervise” the other reporters. If there is reason to believe that a court reporter is not complying with the requirement to call the Managing Court Reporter when available for other work, the procedure is for the Managing Court Reporter to write a formal letter to that court reporter’s judge and/or the court executive committee.

The Managing Court Reporter is selected each year by the other court reporters, subject to approval by the Superior Court executive committee. The Managing Court Reporter, according to the job description, reports to the executive committee, but there appears to be little such reporting apart from the preparation and distribution of the Quarterly Report. The term “managing” court reporter is a misnomer.

² The percentages are based on the days of service graphed in Exhibit 3 below (page 14).

III. Comparisons with Other Courts

A. State Law

RCW 2.32.180 contains two main points about court reporters:

- ⇒ Court reporters are officers of the court, and they hold office during the term of the judge appointing them.
- ⇒ Under RCW 2.32.180, Pierce County is required to have 15 court reporters. Until 1987, each judge in counties with populations over 35,000 was required to have a court reporter. The legislature then authorized new judges in several counties and added the proviso that new court reporters were not required from that time.

Another part of state law requires that court reporters must be certified by the state Department of Licensing. This involves passing an examination to demonstrate proficiency, or being certified by a national association, or being in practice prior to 1996.

B. Court Reporters in Other Counties

Exhibit 2, on the following pages, shows the number of staff court reporters in the ten largest superior courts in Washington State.

- Four of the ten courts have one court reporter for each judge
- Four other courts have less than a one-to-one ratio
- Two courts do not have court reporters and rely entirely on video and audio recordings.

Exhibit 1

Court Reporters in State of Washington: Superior Courts with 7 or More Judicial Officers

<i>Superior Court</i>	<i>Number of Judges and Commissioners</i>	<i>Number of Court Reporter Employees</i>	<i>Comments</i>
Courts with 1:1 ratio of judges and staff court reporters			
Pierce County	22 judges and 7 commissioners	22	22 judges, 22 court reporters. See "Feasibility Plan" (March 2006) for the court's view of court reporters and video/audio recording.
Kitsap County	8 judges and 1.1 commissioners	8	8 judges, 8 court reporters
Spokane County	12 judges and 6 commissioners	12	12 judges, 12 court reporters.
Benton-Franklin	6 judges + 3 com.	6	6 judges, 6 court reporters
Courts with staff court reporters but less than 1:1 ratio			
King County	51 judges, 10 commissioners	9 in Kent and 23 in downtown Seattle	32 reporters for 51 judges. Thus, up to 32 courtrooms will have a court reporter, and the others use an audio or video system if in session.
Snohomish County	14 judges, 5 commissioners	12	12 reporters for 14 judges. Two judges work at Juvenile Court, where proceedings are audio recorded, and reporters are not used.
Thurston County	8 judges and (?) comm'rs after Nov. election of 8 th judge	7	8 judges, 7 court reporters. The new judge will not have a judicial assistant or court reporter.
Yakima County	8 judges, 3 commissioners	1	One court reporter, 8 judges. Used to have 6 reporters for 8 judges, now just one reporter. Court administration is combined. They have 4 JAVS (audio and video) and 12 FTR (audio) systems to use in Superior, Juvenile, and District Court. FTR is used in the arraignment courts and in Juvenile Court.

Continued on next page

<i>Superior Court</i>	<i>Number of Judges and Commissioners</i>	<i>Number of Court Reporter Employees</i>	<i>Comments</i>
Courts with no court reporters			
Clark County	9 judges and 2.5 commissioners	0	<p>No court reporters since 1987. They use JAVS (video and audio) operated by the judicial assistant, who also does the logging. This works pretty well, according to an administrator. “We are a very happy court” not to have the employee problems that go with court reporters.</p> <p>Comment: Some judges complain about the quality of Clark County transcripts made from JAVS. Response by Clark County: Until recently, the Court of Appeals had never complained, nor has the state Office of Public Defense.</p>
Cowlitz County	4 judges and 3 commissioners	0	<p>Court reporters were eliminated because of employee issues. Recently, the court has used JAVS (video and audio) and likes the system. A private transcriptionist paid by the state or the private parties makes the transcripts. According to court administration, there are no complaints about the quality of the transcripts. JAVS purchase price was \$60,000 for first courtroom, but prices then fell and other rooms cost \$45,000 each. Annual service contract was \$19,000 (total) for upkeep and repair of the system in all courtrooms. In 2006, they changed to a network-based FTR system maintained by the county IT department. The audio portion of FTR is fine, but the video has problems.</p>

Source: Pierce County Performance Audit Committee, based on conversations with sources in the superior courts.

We collected detailed information from three other superior courts – in Spokane County, King County, and Snohomish County – on their organization and management of court reporters, utilization of pro tems, and the types of court proceedings in which a court reporter or electronic recording equipment is used.

C. Spokane County Superior Court

By various measures, Spokane County Superior Court is roughly two-thirds the size of Pierce County Superior Court. The Spokane court has 12 judges and six commissioners, versus 22 judges and seven commissioners in Pierce County Superior Court. Felony filings in Spokane are about 70% of the Pierce County annual total, but the criminal workload (number of criminal filings per judge) is considerably higher in Spokane. Civil cases (all non-criminal cases) in Spokane are about 56% of the volume in Pierce County. Civil filings per judicial officer in Spokane are a little lower than in Pierce County.

The Spokane court, like Pierce County, has one court reporter for each judge. In both courts, the court reporter is the judge’s personal staff. The leave policy is similar in both courts. Judges have six weeks (30 work days) of vacation per year, and the entire department is in recess. That includes the judge, judicial assistant, and court reporter.

Despite the above similarities, the two courts have somewhat different policies as to what proceedings must have a court reporter and very different practices for managing court reporters. The key points are as follows.

1. The court policy in Spokane is that all criminal proceedings, from first appearance through sentencing, must have a court reporter.
2. In Spokane, one judge is at Juvenile Court, where proceedings are recorded digitally. That frees up one reporter to act as a “floater” to cover absences of other staff court reporters. Pierce County has no floaters.
3. Spokane has a small *pro tem* judge program. Unlike Pierce County, the pro tems are all retired judges. About 90% of the *pro tem* cases are civil or family law. Proceedings are recorded digitally in the *pro tem* judge’s court, and there is no live court reporter. A clerk operates the equipment. In Pierce County, the *pro tem* judges in the County-City Building have a court reporter when they are working on the record.
4. In Spokane, a court employee (assistant superior court administrator) manages the process of getting coverage for absent staff court reporters. In Pierce County, the process is coordinated by a managing court reporter.
5. The Spokane court hires very few *pro tem* court reporters to cover for sick leave or other kinds of leave by the staff court reporters, whereas Pierce County hires many *pro tem* court reporters for this purpose. (Numbers are discussed later.)

In Spokane, it is easy to cover one staff absence by simply moving the Juvenile Court court reporter. We asked what happens when there are two staff absences. The answer was:

- ❑ If a judge is in chambers or away at a meeting, that court reporter will cover.
- ❑ One courtroom has a video system. That judge can be asked to release his/her court reporter.
- ❑ Two judges are usually assigned to family law cases. In a pinch, they will be asked to give up a court reporter, and the proceedings are recorded electronically.

We were told that two court reporters were recently on maternity leave (one at a time), and the court was able to provide staff coverage by the methods listed above.

We were told that court reporters in Spokane work on transcripts on county time and that the practice is controversial.

D. King County Superior Court

King County has 51 Superior Court judges, compared with 22 in Pierce County. The criminal caseload is approximately 1.7 times as large as in Pierce County, although the number of criminal filings per judge is much lower than in Pierce County. The total number of civil cases each year is almost twice as high as in Pierce County, but the civil workload per judicial officer is less than in Pierce County.

King County Superior Court uses a mix of court reporters and electronic recording by the FTR (For the Record) system. FTR is used in Unified Family Court, juvenile dependency, juvenile offender, and Becca cases. The calendars for criminal arraignment, case setting, trial call, and pleas are all FTR recorded. In addition, several courtrooms are equipped with video systems.

This utilization of electronic recording allows the court to function with 32 court reporters for 51 judges. Court reporters are employees of the court, not of an individual judicial department. In other words, the court is responsible for hiring, firing, and discipline. The method of assigning court reporters to judges is as follows.

- ❑ A number of judges have administrative duties, do not carry a regular caseload, and do not need a court reporter.
- ❑ In Seattle, the reporters may “bid” to fill a vacancy with a particular judge. The judge has the option to interview the bidders and select a reporter. The reporter will generally stay with that judge until he/she leaves the bench, transfers to Juvenile Court, or transfers to the Regional Justice Center in Kent.
- ❑ In Kent, the court has one reporter for each judge whose courtroom does not have electronic recording equipment.

- ❑ The reporters in Kent rotate on a monthly basis, so each judge may have a specific reporter only one month a year.
- ❑ In downtown Seattle and in Kent, unassigned court reporters are on “the list.” This is essentially a pool of reporters assigned on an as-needed basis, primarily to cover for sick leave or other leave of fellow staff court reporters. The list includes four reporters (out of 23) in downtown Seattle and one reporter (out of 9) in Kent.
- ❑ The court reporters are managed by a court operations manager in downtown Seattle and by a supervisor at the Regional Justice Center in Kent (in both cases as part of other duties).

Under the labor contract, court reporters get 25 days of vacation per year. They accrue 11 days of sick leave per year, and are ineligible to accrue sick leave if absent without pay for more than 21 hours in any month. Judges get 30 work days off per year (same as Pierce and Spokane). If a court reporter is assigned to a judge who is in recess, the reporter is expected to report for duty if needed in another court, which is typically the case.

We were told that court reporters are allowed leave without pay or vacation leave in order to produce transcripts, but they typically have time during the regular hours of work (35 hours per week) to produce them if they are not in court.

King County Superior Court has a large *pro tem* judge program, larger than in Pierce County, and the *pro tem* judges are assigned mainly to criminal pleas and juvenile offender cases. Since FTR equipment is used in those settings, most *pro tem* judges do not usually have court reporters. However, a few *pro tem* judges are assigned to civil trials (about 49 days this year through September), and they may have court reporters depending on the type of case.

As detailed later, King County Superior Court does hire *pro tem* court reporters, but the number is less than in Pierce County Superior Court.

E. Snohomish County Superior Court

Snohomish County Superior Court has 14 judges compared with 22 in Pierce County. The criminal caseload is less than half the number of filings in Pierce County, and the resulting criminal caseload per judge is much lower. However, the number of civil cases in Snohomish County is quite high, and the civil caseload per judicial officer is considerably higher than in Pierce County.

Of the 14 judges in this court, the 12 senior judges hire their own department staff (court reporter and law clerk); the judges do not have judicial assistants. Two judges are assigned to Juvenile Court, where the proceedings are digitally recorded. On occasion, usually on Friday afternoons, the Juvenile Court judges need a court reporter. Coverage is often provided by moving a reporter from Drug Court to Juvenile Court.

Court reporters in Snohomish County are classified as Management Exempt employees under the county code and receive the same amount of leave as other exempt staff. They receive 40 days of annual leave (vacation, sick leave, and other leave). This amounts to less leave than is available to Pierce County court reporters (30 days recess, two birthday holidays, plus accrued sick leave).

A Managing Court Reporter is responsible for setting vacation schedules and arranging coverage when staff is on leave.

Snohomish County Superior Court allows court reporters to work on transcripts on county time. The policy is written in one clear sentence:

“If not needed in an assigned courtroom or any other courtroom, Court Reporters may work on transcripts during their assigned workday.”

We were told *pro tem* court reporters are hired “very seldom” in Snohomish County. A court administrator could remember hiring *pro tem* reporters perhaps five times in recent years, mainly to cover for court reporters who had work-related injuries. We requested actual data on the use of *pro tem* court reporters, but no numbers have been obtained as of this writing. Nevertheless, it seems reasonable to conclude from the interview information that Snohomish County Superior Court, like its counterparts in Seattle and Spokane, is leveraging internal resources to cover for absences by staff court reporters.

F. Data on Pro Tem Court Issues

Previous parts of this report have discussed Pierce County’s use of *pro tem* court reporters and suggested that utilization of pro tems is high compared with what occurs in other courts. This section provides the documentation.

Pierce County Superior Court hires *pro tem* court reporters on two kinds of occasions:

- When a *pro tem* judge is on the bench in the County-City Building.
- When an elected judge’s official staff court reporter is on leave and a replacement is not available from the other staff court reporters.

The following discussion addresses three questions.

1. How often does Pierce County Superior Court use *pro tem* court reporters, and are they utilized mainly to serve *pro tem* judges or regular (elected) judges?
2. Who fills in when a regular judge’s court reporter is on leave and a court reporter is needed?
3. How does Pierce County utilization of *pro tem* judges and *pro tem* court reporters compare with other courts?

In addressing the first question, we found that Pierce County expenditures for *pro tem* court reporters to serve the elected judges are considerably higher than the costs of *pro tem* reporters for *pro tem* judges. We converted the expenditures into days of service, which are shown below.

Exhibit 2

**Days of Service by Pro Tem Court Reporters
in Pierce County Superior Court ³**

	2004	2005	Jan-Sept 2006
For <i>pro tem</i> judges	119 days	193 days	167 days
For regular judges	255 days	386 days	190 days
TOTAL	374 days	579 days	357 days

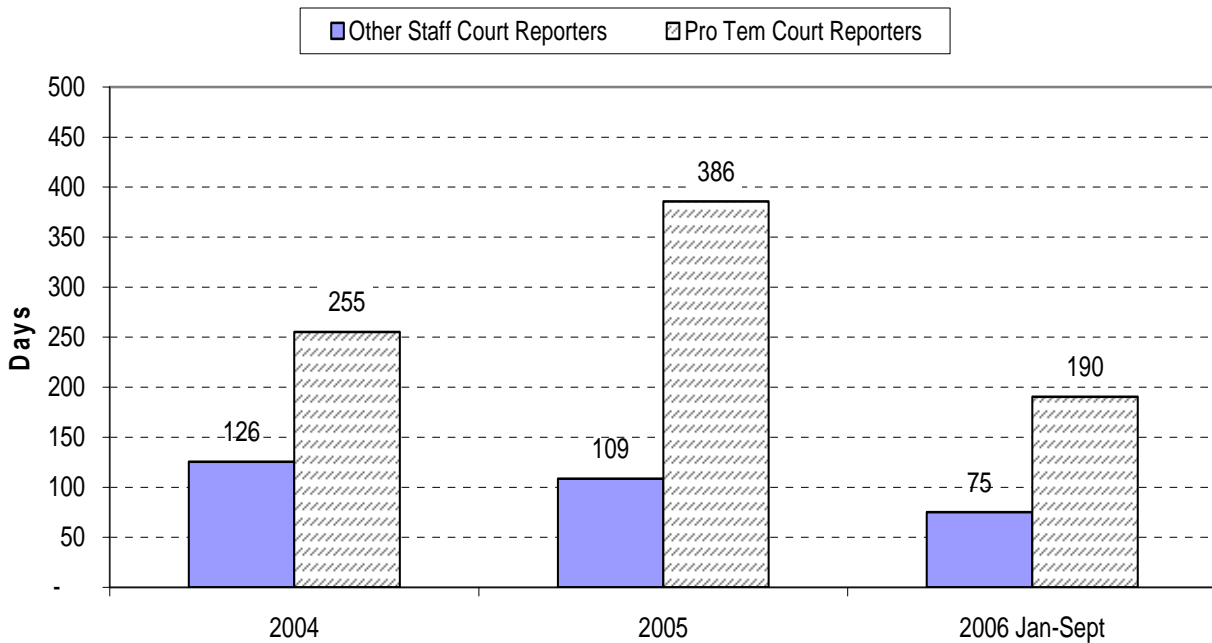
Pro tem court reporters are hired in Pierce County mainly to support the elected judges. This finding is problematic because each judge has a staff court reporter.

The second question is who fills in when a staff court reporter is on leave and the judge in that department needs a court reporter. The “Quarterly Report” prepared by the Managing Court Reporter indicates the days that are covered by other staff court reporters. At other times, the court hires *pro tem* court reporters to support a regular judge, and expenditures are recorded in a separate accounting category. By combining these two sources, and converting the expenditures into days of service, we can see who fills in when a regular judge’s court reporter is on leave. See Exhibit 3 on the next page.

³ At the request of Superior Court, the figures have been adjusted to exclude *pro tem* court reporters working for three judges (one in 2004, one in 2005, and one in 2006) who did not have a staff court reporter at the time. Exhibits 3 and 4 have the same adjustment.

Exhibit 3: Pierce County Superior Court

Who fills in when a judge's court reporter is on leave?



As previously discussed, the high use of *pro tem* court reporters to support regular (elected) judges suggests there are sometimes problems in getting other staff reporters to fill in when one of their colleagues is on leave. It is possible that no staff court reporters are available. It is also possible that reporters are available but may not be calling the Managing Court Reporter to report their availability for work in the other departments. Whatever the reasons, the data are clear on two points:

1. When a staff court reporter is on leave and that judge needs a court reporter, substitute coverage is provided mainly by *pro tem* reporters rather than other staff reporters.
2. When a *pro tem* judge is sitting, with rare exceptions, the court reporter is also a *pro tem*. There are very few instances, according to the Quarterly Reports, when staff court reporters work in a courtroom with a *pro tem* judge.

The third question involves comparing Pierce County with other counties to see if Pierce County's utilization of *pro tem* court reporters is the norm or the exception.

Since *pro tem* reporters may support either *pro tem* judges or regular judges, it is important first to establish how often the various courts use *pro tem* judges. Exhibit 4 on the next page shows the days of service by *pro tem* judges in Pierce and two other courts.

Exhibit 4

Days of Service by Pro Tem Judges

<i>Superior Court</i>	<i>2004</i>	<i>2005</i>	<i>2006 (thru Sept.)</i>
Pierce	333	355	311
King	534	703	522
Spokane	73	114	74
Snohomish	No data	No data	No data

The next exhibit shows the days of service by *pro tem* court reporters.

Exhibit 5

Days of Service by Pro Tem Court Reporters

<i>Superior Court</i>	<i>2004</i>	<i>2005</i>	<i>2006 (thru Sept.)</i>
Pierce ⁴	374	379	357
King ⁵	264	284	274
Spokane	0	5.5	16.5
Snohomish	No data	No data	No data

Overall, the quantitative evidence indicates high utilization of *pro tem* court reporters in Pierce County Superior Court, mainly to support the elected judges whose court reporters are sick or on other kind of leave. This occurs in Pierce County at a far higher rate than in the other courts that were studied.

⁴ Figures are adjusted to exclude *pro tem* reporters working for a regular (elected) judge who did not have a staff court reporter at the time. Figures include pro tems filling in for staff court reporters who take leave without pay, as do the figures from King County. The number of such days in Pierce County is not clear from the available records, but anecdotal evidence suggests a figure of around 100 days per year.

⁵ King County figures include approximately 200 days for *pro tem* reporters who fill in for two half-time staff court reporters. In effect, these are job shares. The situation is similar to staff reporters in Pierce County who take leave without pay one day a week and are replaced by a *pro tem* court reporter.

IV. Conclusions and Recommendations

A. Performance Audit Issues

National experts on court reporting and electronic recording issues are available and would likely submit a proposal if a decision is made to go forward and conduct a performance audit. However, we have not prepared a Scope and Objectives for a performance audit because we believe outside assistance is not needed. The issues raised in this study are policy, management, and budget issues that can be handled by the court, with the assistance of the County Executive and County Council as needed.

B. Concluding Comments

The system of court reporting as currently operated in Pierce County Superior Court involves multiple payments to court reporters from public funds. Court practice appears to allow a staff court reporter to prepare transcripts on county time while the court hires *pro tem* court reporters to serve *pro tem* judges and to fill in for staff court reporters on leave. This means the taxpayer is paying three times. The payments are for:

1. The court reporter's salary while she/he is doing private work,
2. The *pro tem* court reporter's fee while she/he is assisting a *pro tem* judge or, more often, a regular judge, and
3. The transcript fee, which in criminal appeals is paid out of public funding at the rate of \$2.80 per page.

Transcript charges are a difficult topic. It is most unusual for a public employee to draw a salary and also have a private business that provides additional income as a result of the public employment. Superior Court cannot change that situation. But it is within the court's power to make sure that *pro tem* court reporters are not utilized when staff court reporters could be providing the needed coverage.

The evidence from King, Snohomish, and Spokane superior courts indicates that staff absences there are covered largely by other staff court reporters. That does not occur now in Pierce County Superior Court. It could occur if the court is willing to operate court reporting services more as a pool and less as the personal staff of each judge. Improved coordination of court coverage could, in our opinion, avoid some of the \$113,000 that is budgeted for *pro tem* court reporters in 2006 and the \$120,000 proposed for 2007.

It is probably not realistic to prohibit court reporters from working on transcripts on county time. But the issue would not be so prominent if court reporters were managed as a pool and utilized to cover for staff absences and to provide services to *pro tem* judges when needed. In other words, more effective use of the current staff resources would leave less

time for court reporters to work on transcripts on county time. It would also provide better value for the taxpayers.

There are many ways to reorganize the staff court reporters and ensure that they provide the maximum amount of coverage for all judges, both elected and *pro tem*. We think the court should come up with the specifics on how best to do this. A report to the Performance Audit Committee and the County Council can provide the information needed to determine the appropriate funding.

Other major issues that Superior Court can address in that report are (a) the current policy of using a court reporter to cover all proceedings when a judge is on the record, and (b) the possibility of adopting electronic recording for some proceedings. The fact that no judge's courtroom in the County-City Building now contains equipment to record court proceedings greatly limits the court's flexibility in the present courtrooms.

The court's "Feasibility Plan" (March 2006) contains comments (on pp. 12-13 of the plan) on opportunities for installing electronic recording equipment in Superior Court courtrooms, viz., in the new Criminal Divisions courtrooms planned for the second floor and five new courtrooms on the third and fourth floors. It would be helpful if Superior Court can clarify those comments and indicate which specific types of proceedings under their proposal will have a live court reporter after the phase 1 and phase 2 construction and which will not.

We understand the plan is to wire the new Criminal Division courtrooms and not have a live court reporter for arraignments and perhaps for some other proceedings in those rooms. Other questions have been raised in the course of this study. For example,

- Why is a court reporter needed in Drug Court?
- Is one always needed in Juvenile Court when a judge is on the record?
- Should *pro tem* judges always have a court reporter, or would it better to have audio equipment operated by a clerk?

In general, for Superior and Juvenile Court proceedings, the task is to consider whether there are some proceedings currently covered by a court reporter where it would be more cost effective to have electronic recording.

We agree with the court that two staff persons are normally needed in a judge's courtroom. If there is no court reporter, we agree that another staff person should be there to operate and monitor the equipment and assist with courtroom business. We hope Superior Court will objectively address the issue of where it is and is not cost effective to have a court reporter rather than adhere to the current policy that a court reporter is always needed simply because she/he is the second staff person in the courtroom.

We also agree with the court that the chances of an appeal should be the major factor in making decisions on the use of a live court reporter versus electronic recording.

Attachment B is a list of the types of cases appealed since 2004. This may be useful information in helping to decide the best mix of court reporters and electronic recording.

The County Council may wish to monitor the above issues and perhaps make appropriate budget changes. The following recommendation could be included as part of a budget proviso, or the court could simply agree voluntarily to provide the report early next year.

Recommendation 1

The Performance Audit Committee and the County Council should schedule review of a Superior Court report due by April 30, 2007 on its plans regarding court reporters and electronic reporting, including:

- a. How the court proposes to reorganize court reporting services to increase the utilization of staff court reporters and reduce the use of *pro tem* court reporters,
- b. Which specific types of proceedings should have a live court reporter,
- c. Which new courtrooms and which current courtrooms should be wired or outfitted with electronic recording equipment, and
- d. Any related topics the court wishes to address.

Attachment A

Transcripts

Court reporters own the computer equipment and software used in their work. This is the basis for their selling transcripts in addition to receiving a salary. Transcript rates in most cases appear to range from \$2.80 to \$6 per page for an original transcript and one certified copy, with lower rates for additional copies.

The following sections present information on charges for transcripts and on court reporter income from transcripts in criminal appeals.

Transcript Charges

In criminal appeals when the defendant is indigent, the state Office of Public Defense pays for transcripts at rates fixed by order of the state Supreme Court. Payments in those cases are \$2.80 per page and \$0.25 per page for a copy (e.g., when there are multiple defendants).

For all other transcripts, individual court reporters set their own rates. The following comments are a general impression based on what two court reporters told us in interviews.

When a criminal case is being tried in Superior Court, the prosecutor or defense counsel may request a transcript. Charges appear to run around \$5 per page for the transcript and one counsel copy, and \$2.00 per page for another copy. If the Prosecuting Attorney and the Department of Assigned Counsel order the same thing, the charge may be \$4.50 for the transcript and one copy plus \$1.50 for another copy. These charges, as with the charges for criminal appeals, are all paid out of public funding.

For transcripts in civil cases, both appeals and during the proceedings in Superior Court, private parties appear to pay rates of \$4 to \$6 per page.

Payments for Transcripts

Records of the state Office of Public Defense (OPD) include the payments made to individual court reporters for preparing transcripts in criminal appeal cases. We reviewed the records from 2003 to the present. A court reporter's earnings from this source depend on whether she or he was assigned to cover criminal cases during the year. There is high variation in payments to various court reporters. For example, the banner year was 2004, and payments to individual court reporters during the year ranged from approximately \$2,500 to over \$30,000.

Since 2003, the average annual income per court reporter from OPD payments was roughly \$6,000 to \$9,000. The following table presents summary data.

**Payments by Washington State Office of Public Defense
to Pierce County Superior Court Staff Court Reporters
for Transcripts in Pierce County Criminal Cases on Appeal**

	2003	2004	2005	2006 (to Oct. 18)
# of Court Reporters	21	22	22	23
Total Payments	\$169,861	\$202,144	\$138,222	\$135,928
Average	\$8,089	\$9,198	\$6,283	\$5,910
Median	\$6,426	\$8,305	\$5,216	\$5,043
High	\$24,296	\$30,543	\$17,013	\$14,114
Low	\$864	\$2,525	\$852	\$799

Source: Data from Office of Public Defense, October 18, 2006.

In criminal cases, the Prosecuting Attorney’s Office and the Department of Assigned Counsel (or private defense counsel) pay for transcripts of proceedings on occasion while a case is being heard in Superior Court. The Prosecuting Attorney’s Office estimates payments of \$21,000 in 2006 (Jan-October) for transcripts from court reporters.

In the Department of Assigned Counsel, the costs are higher, perhaps \$30,000 or \$35,000, but the amount is unclear because the accounting record totals are a mix of payments for transcripts to court reporters and payments to others for transcribing witness statements. To identify the precise costs of transcripts from court reporters in Superior Court proceedings, it would be necessary to go through vouchers.

As mentioned earlier, court reporters may produce transcripts for civil cases that are appealed to a higher court, or transcripts that are requested while the case is still in Superior Court. Those payments are private, and there is no central record of the amounts.

Attachment B

**Pierce County Appeals to Court of Appeals
or Supreme Court**

Case Type	2004	2005	2006 thru October 15	Three-Year Total
1 Criminal	211	206	212	629
2 Civil	145	133	125	403
3 Domestic	21	24	26	71
4 Probate/Guardianship	5	6	4	15
5 Paternity/Adoption	4	3	4	11
6 Western State	4	4	3	11
7 Juvenile Civil (note a)	24	12	15	51
8 Juvenile Criminal	5	3	16	24
Grand Total	419	391	405	1,215

Same data as percentages

Case Type	2004	2005	2006 thru October 15	Three-Year Total
1 Criminal	50%	53%	52%	52%
2 Civil	35%	34%	31%	33%
3 Domestic	5%	6%	6%	6%
4 Probate/Guardianship	1%	2%	1%	1%
5 Paternity/Adoption	1%	1%	1%	1%
6 Western State	1%	1%	1%	1%
7 Juvenile Civil (note a)	6%	3%	4%	4%
8 Juvenile Criminal	1%	1%	4%	2%
Grand Total	100%	100%	100%	100%

(a) Juvenile Civil appealed cases are mostly parental terminations, with a few dependencies.

Source: Pierce County Clerk of Superior Court and Juvenile Court, October 2006.