

March 19, 2009

FINAL REPORT

UPDATE ON COURT REPORTER ISSUES

Conducted for Pierce County Council and
Pierce County Performance Audit Committee

by

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Executive Summary

This study is an update on court reporter issues undertaken at the request of the County Council. The report includes new information collected from other jurisdictions on the utilization of court reporters or electronic recording in various types of judicial proceedings. The survey information comes from Pierce County Superior Court and the nine other largest superior courts in Washington State.

It was found that Pierce County Superior Court is the only one in which court reporters cover virtually all proceedings when a judge is working on the record. Pierce County is unique in having a court reporter cover all juvenile proceedings that are held before a judge. Pierce County is also unusual, but not unique, in having a court reporter work in drug court. The comparative data on these topics appear in exhibits 1, 2, and 3 (pp. 4-7).

Superior Court maintains it is essential to have two staff in the courtroom. Evidence collected from other courts supports that opinion, as shown in Exhibit 4 (p. 10). The court reporter is now the second staff person in the Pierce County courtroom. If the County Council wishes to reduce the number of court reporters, it is essential to provide funding for a clerk or other staff to operate electronic recording equipment and do other work. Thus the savings by reducing court reporter positions would be partially offset by the added staff. The cost differential is fairly small (\$30,000 to \$40,000 per year per position).

This final report was written in stages as part of a “dialogue” between the County Council and the Superior Court. New material was added at each stage (in attachments) while retaining the previous report structure. Attachment B is Superior Court’s original response (November 2008) to the preliminary report of October 30, 2008. Attachment C includes performance audit staff analysis mainly of utilization of staff and *pro tem* court reporters (preliminary report of December 11, 2008). Recommendations were made to improve the quality of information that is available on (1) the likelihood of appeal in certain case types, and (2) staffing levels in Pierce County Superior Court and other courts.

Transcripts are needed for most appeals, and it is recognized that court reporters make the best transcripts. To help determine which cases are most likely to be appealed, Recommendation 1 is that Superior Court should compare the number of appeals with the number of resolutions of certain case types, with a report to the Performance Audit Committee by September 1, 2009.

Based on ten-year-old data, it is often stated that the staffing level in Pierce County Superior Court is low compared with other courts. However, it is also apparent that Pierce County Superior Court has two personal staff per judge (court reporter and judicial assistant), which compares favorably with other courts. Other kinds of staff should also be considered. Recommendation 2 is that the court staff and the performance audit staff should work together to update the 2001 report.

Attachment D is the Superior Court’s response of March 2009. In summary, the court disagrees with each recommendation. Attachment E contains further comments by the performance audit staff. The study was conducted in accordance with *Government Auditing Standards* (the Yellow Book) published by the U.S. Government Accountability Office.

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Final Report: Update on Court Reporter Issues

This study was undertaken at the request of the County Council and has three objectives:

1. Examine the need for court reporters versus electronic recording in various types of judicial proceedings.
2. Develop data on courtroom use and staffing in Pierce County Superior Court.
3. Update data from other jurisdictions on court reporters and courtroom staffing.

In late August 2008, the County Council requested the Performance Audit Office, as a supplement to its regular work program, to analyze court reporter issues. After two weeks of project planning, we commenced the study on September 12 with a letter to the Superior Court presiding judge requesting data needed to start the project. There was no response for over a month (response received October 15). The court provided some of the requested data, some material was missing, and other requested information was not available because the court does not keep such records.

Two weeks after receiving the data, we issued a preliminary report (October 30, 2008) because the Council desired a report in October, so it could consider the topic in November when adopting the 2009 county budget. The preliminary report was complete on court reporters in other jurisdictions, but some work remained to be done on Pierce County topics. That work has now been completed, and the analysis is included in this report.

This report retains the same structure as the preliminary version, with very few changes in the text. The new material appears in two attachments. Attachment B is Superior Court's response to the preliminary report. Attachment C includes performance audit comments on the Superior Court's response, plus new material on:

1. Appeals and the need for transcripts
2. Staffing levels in Pierce County and other courts
3. Pro tem court reporters and "in-house" coverage when a court reporter is on leave.

The preliminary report had no recommendations. In this final report, based on the new material, two recommendations appear in Attachment C.

A. Background

Pierce County Superior Court employs 22 official court reporters, one for each judge. In 2008, the salary of a court reporter is approximately \$66,000, or \$76,000 for the Managing Court Reporter. The total annual payroll for all 22 reporters, including benefits, is almost \$2.1 million. These amounts do not include transcript fees earned by court reporters for producing transcripts of court proceedings that are needed for appeals.

In addition, Pierce County spends substantial amounts on *pro tem* court reporters, higher than any other superior court in Washington. By translating those expenditures into full-time-equivalent (FTE) terms, we estimate that the court in recent years has had an additional two to three FTE court reporters in terms of the hours of service.

Pierce County has recently built seven new courtrooms for Superior Court judges and another courtroom for a commissioner. The four new judges' courtrooms on the third and fourth floors were opened in summer 2007 and are equipped for electronic recording, but the equipment has not been "turned on" and court reporters continue to work at proceedings held there. The three new criminal division (CD) courts on the second floor, scheduled to open on November 10, are also equipped for electronic recording, and the court has announced it will use the equipment but continue for a time to use court reporters there. The cost of the new courtrooms and office space for Superior Court was approximately \$14.7 million.

This memo is the fourth report since 2006 on court reporter issues in Pierce County. The three prior reports were:

1. Superior Court's "Feasibility Plan" on court reporter and electronic recording issues, presented to the County Council in March 2006.¹
2. Performance audit report, November 2006.² The recommendation requested a report from Superior Court on three topics:
 - a. How the court proposes to reorganize court reporting services to increase utilization of staff court reporters and reduce the use of pro tem reporters;
 - b. Which specific types of proceedings should have a live court reporter; and
 - c. Which new courtrooms and current courtrooms should be wired or outfitted with electronic recording equipment.
3. Superior Court's response, April 2007, reprinted below in full as Attachment A. The court's response can be summarized as follows:
 - a. There is no need to reorganize the court reporters, but the court will work to improve efficiencies by increased oversight.

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 A. Arend, Presiding Judge, Pierce County Superior Court. This report included nine pages of text on court reporters and electronic recording, plus 26 appendices. It is available from Superior Court or the Performance Audit Office.

² Planning Study, Court Reporter Issues, Pierce County Superior Court, Conducted for the Pierce County Performance Audit Committee by Matt Temmel, Performance Audit Coordinator, November 2, 2006, available at www.piercecountywa.org/performance-audit.

- b. The court “reviewed each of the judicial assignments to see which, if any, would be suitable to electronic recording of proceedings,” including the CD courts, Juvenile Court, and Drug Court. The response indicated that the new CD courts will have electronic recording equipment.
- c. Apart from the new CD courts, the response did not suggest using electronic recording equipment in any other courtrooms or calendars.

The performance audit report of 2006, cited above, made some basic points that are still valid and can be repeated here. The report agreed with two fundamental points made in the court’s “Feasibility Study:”

- Transcripts created by a court reporter who uses “computer-aided transcription” to make the court’s record in “real time” are generally better than transcripts made later from a digital audio or video recording by a “transcriptionist” who was not present at the proceedings. A court reporter can let the judge or others know when someone cannot be heard or when people are talking at the same time. A clerk tending electronic recording equipment can also do that, but there are many examples when it is not done, and the resulting transcript can have many “inaudible” sections.
- It is essential to have two staff in the courtroom in many types of proceedings. In Pierce County 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 run the equipment. Thus any savings by eliminating court reporters would be partially offset by adding clerks.

The County Council requested this update because it wishes to know whether court reporters can be “pooled,” as occurs in other courts, or whether it is necessary to continue the current practice in Pierce County of funding one court reporter for each Superior Court judge and also funding a large number of contract (*pro tem*) court reporters.

B. Court Reporters in Other Courts

Exhibit 1, on the next pages, shows the number of judges and official (employee) court reporters in the ten largest superior courts in this 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.

The Comments in the right column show that arrangements are quite different in the various courts, even among those that have one court reporter for every judge.

Exhibit 1

Court Reporters in the Ten Largest Superior Courts in Washington State

<i>Superior Court</i>	<i>Number of Judges</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	22	A court reporter is working whenever a judge is on the record. Court reporter is the judge's employee. Compared with other courts that were studied, Pierce County has little "pooling" of court reporters to cover for absences and high utilization of <i>pro tem</i> court reporters.
Kitsap County	8	8 now, 7 in 2009	After a long planning process, the court has agreed to lose one court reporter in January 2009.
Spokane County	12	12	Like Pierce County, this court has 1 to 1 ratio, but court reporters are managed very differently in Spokane so that virtually no <i>pro tem</i> court reporters are hired. Juvenile Court uses electronic recording.
Benton-Franklin	6	6	A court reporter covers all criminal proceedings, all civil trials, most civil motions, but not all divorce cases (depending on assets and other factors). Electronic recording is used in juvenile cases, except for termination cases.
Courts with staff court reporters but less than 1:1 ratio			
King County	52	31 total (10 in Kent and 21 in downtown Seattle)	King County and Pierce County superior courts differ greatly as to when a court reporter is used.
Snohomish County	15	13	Two judges work at Juvenile Court, which has electronic recording, thus freeing up two court reporters to cover for absences of their colleagues.
Thurston County	8	6	Since 2007, this court had 7 court reporters for 8 judges, but a short time ago lost one court reporter and will operate with 6 in the future.

Continued on next page

<i>Superior Court</i>	<i>Number of Judges</i>	<i>Number of Court Reporter Employees</i>	<i>Comments</i>
Yakima County	8 judges, 3 commissioners	1	This court used to have 6 reporters for 8 judges, and now has just one reporter. Court administration is combined. For electronic recording, the court uses 4 JAVS (audio and video) and 12 FTR (audio) systems in Superior, Juvenile, and District Court.
Courts with no court reporters			
Clark County	9 judges	0	Court reporters were eliminated in 1987 because of employee issues. The court uses JAVS (video and audio) operated by the judicial assistant, who also does the logging.
Cowlitz County	4 judges	0	Court reporters were eliminated because of employee issues. Recently, the court has used JAVS (video and audio). Lawyers who want to review testimony (e.g., in preparation for cross examination) can watch or listen at a work station in the courthouse.

Source: Pierce County Performance Audit Office, based on interviews with sources in the superior courts, September-October 2008.

In the various courts, it may be asked: “In general, what types of proceedings have a court reporter?” Exhibit 2 shows the answers given by court administrators in interviews.

Exhibit 2

Court Reporter Utilization

<i>Superior Court</i>	<i>In general, what types of proceedings have a court reporter?</i>
Courts with 1:1 ratio of judges and staff court reporters	
Pierce	When any judge is working on the record.
Kitsap	When a judge is working on the record, but not in most juvenile cases starting in 2009. However, parental terminations will continue to have a court reporter.
Spokane	When a judge (excluding pro tems) is working on the record, with certain exceptions depending on court reporter availability, and not in Juvenile Court.
Benton-Franklin	A court reporter covers all criminal proceedings, all civil trials, most civil motions, but not all divorce cases (depending on assets and other factors). Juvenile cases are electronically recorded, except termination cases have a court reporter.
Courts with court reporters but less than 1:1 ratio	
King County	Criminal trials. Not in most civil motions and trials, and not in most family law and juvenile cases.
Snohomish County	When a judge is on the record, with exceptions depending on court reporter availability, and not in Juvenile Court.
Thurston County	When the judge is on the record, except for juvenile and family proceedings (but use court reporter for trials).
Yakima	The one court reporter works mostly on major felony cases.
Courts with no court reporters	
Clark	No court reporters
Cowlitz	No court reporters
<i>Source: Performance Audit staff interviews with sources in superior courts</i>	

As shown in the previous exhibit, Pierce County Superior Court is the only court among those studied that utilizes a court reporter for all proceedings, including those in Juvenile Court that are handled by a judge.

Pierce County is also somewhat unusual in continuing to use a court reporter in drug courts. Exhibit 3 summarizes what was found for the various drug courts.

Exhibit 3

Drug Courts

<i>Superior Court</i>	<i>Does drug court have a court reporter or electronic recording?</i>
Courts with 1:1 ratio of judges and staff court reporters	
Pierce	There are two drug courts (adult and family), and a court reporter is present and working for each calendar.
Kitsap	The two adult drug courts are now electronically recorded (ER). The two juvenile drug courts now have court reporters but will switch to ER in 2009.
Spokane	Drug court has a court reporter, who is borrowed when needed to provide coverage elsewhere, and the drug court switches to ER.
Benton-Franklin	Adult and juvenile drug courts have electronic recording.
Courts with court reporters but less than 1:1 ratio	
King County	Electronically recorded.
Snohomish County	Three drug courts (adult, juvenile offender, and at-risk youth) are electronically recorded. The family law drug court has a court reporter.
Thurston County	In January 2009, the court will stop using a court reporter in drug court and switch to electronic recording.
Yakima	Electronically recorded.
Courts with no court reporters	
Clark	No court reporters
Cowlitz	No court reporters
<i>Source: Performance Audit staff interviews with sources in superior courts</i>	

Pierce County Superior Court appears to be the only court among those studied that utilizes a court reporter when a judge is hearing a “RALJ” case (Rules of Appeal from Court of Limited Jurisdiction). A RALJ is an appeal to Superior Court of a decision made in the District Court or a Municipal Court; the Superior Court reviews a transcript of the lower court trial for errors of law and then makes a ruling affirming or reversing the lower court decision. A RALJ proceeding consists of a review of the verbatim record of the lower court, and it does not involve new evidence or testimony. Any further appeals to a higher court would use the trial transcript from the lower court and not a transcript of the Superior Court proceedings. Thus it appears superfluous to have a court reporter working at RALJ proceedings.³

C. Courtrooms and Court Reporters in Pierce County

Pierce County Superior Court, including Juvenile Court, has 22 judges and 25 courtrooms used by judges. One objective of this report, based directly on the Council’s request for information, is to develop data on courtroom use and staffing. The reason for the request is that all 22 judges are not on the bench each day that the courts are in session. The Council wants to know how often judges are on the bench and whether 22 court reporters are needed to cover those proceedings.

It is a good question – and hard to answer based on the available records.

We requested data on “daily courtroom use in Superior Court, January-August 31, 2008: by room, by judge, and by court reporter.” The court’s response, received a month later, indicated that available court records do not directly address the topic.

The court did provide “status lists,” that is, schedules for the 22 departments of cases to be heard each day. The status lists indicate nothing about the court reporter (such as the name, which would indicate whether it is the regular reporter or a *pro tem*) because the report was not designed for that purpose. It can be assumed that a court reporter was present and working whenever a judge was “on the record.” The status lists show the daily business for each judge, but they do not indicate how long the court was in session.

If the question is how many of the 22 judges, on average, are working at the courthouse, the answer can be estimated from what is known about judicial recesses, conferences, medical leave, and other kinds of leave. On average, we estimate that 17¾ of the 22

³ We recognize this is a minor matter because the number of RALJ proceedings in Pierce County is small – 75 in 2007 and less in previous years. *Source*: SCOMIS annual caseload reports.

judges are available to work in court.⁴ The number would be a little higher if *pro tem* judges were factored into the estimate.

The estimate does not indicate how much time the average judge actually spends holding trials or conducting other kinds of proceedings. Thus even if we know the average number of judges per day, the estimate is not very useful for determining how many court reporters are needed.

To provide coverage, the Superior Court has 22 court reporter employees, plus contract (*pro tem*) court reporters who add, in terms of hours of service, the equivalent of two to three more positions. Thus the ratio of court reporters to judges is actually more than one-to-one in Pierce County.

King County is the only other court, among those that were studied, that hires many *pro tem* judges. Most of those judges in King County hear cases or proceedings that are electronically recorded, and the court does not hire many *pro tem* court reporters. Comparing the Pierce and King County superior courts, days of service by *pro tem* court reporters have been much higher in Pierce County since at least 2004, even though King County has had more *pro tem* judges in some years.⁵ This illustrates that the number of *pro tem* court reporters is not necessarily dictated by the number of *pro tem* judges but is influenced more by local policy choices and practices.

The preliminary report (October 30, 2008) did not analyze the use of *pro tem* court reporters in Pierce County and the related issue of how much “in-house” coverage is provided by regular court reporters because of missing data. The court later provided the needed information, and the analysis appears below in Attachment C.⁶

⁴ The estimate was calculated as follows:

<i>Item</i>	<i>Days</i>	<i>Comments</i>
Judicial recess	30	Per statute
Personal holidays	2	Per Pierce County practice
Judicial conferences (spring and fall)	4.4	Based on 16 judges away at each conference for three days. $16 \times 6 = 96 / 22 = 4.4$
Other leave (medical, other conferences, public appearances, etc.)	12	Based on data from Jan. – Aug. 31, 2008, projected to full year.
TOTAL	48.4	
Court Days	250	251 in leap year, 250 most years
Estimated days off	-48.4	
Estimated days available in court per judge	201.6	
Average judges available per day	17.74	$201.6 / 250 = .8064 (22) = 17.74$

⁵ The data are available in the work papers of this project.

⁶ The main missing item was the Managing Court Reporter’s quarterly report for July-September 2008. The court provided the report five days after the preliminary report was presented. See Attachment C in this report for analysis of “in-house” coverage and the use of *pro tem* court reporters.

D. Number of Staff in the Courtroom

Superior Court maintains that it is essential to have two staff in the courtroom. Evidence collected from other courts supports that opinion. Exhibit 4 presents the courtroom staffing in the courts that were studied. (The material refers to adult cases. The situation is different for juvenile cases in the other courts.)

Exhibit 4

How many employees are in the courtroom to support the judge?

<i>Superior Court</i>	<i>Staff in Courtroom</i>	<i>Comments</i>
Pierce County	2	Judicial assistant and court reporter.
Benton-Franklin County	2 or 3	Three for trials (clerk, court reporter, and bailiff). Two for proceedings with electronic recording (clerk and bailiff).
Clark County	1 to 3	Clerk is always there. Bailiff is there for jury trials. JA is in judge's chambers operating the video electronic recording equipment, and can come into courtroom as needed.
Cowlitz County	1 or 2	For criminal docket, a clerk does the files and a court operations staff person runs the equipment. For a criminal trial, bailiff takes care of jury and clerk runs the electronic equipment and takes notes. For a civil bench trial, just a clerk is present.
King County	1 to 3	Clerk is always there. The judge's bailiff is there for trials, and usually at other times. Court reporter may or may not be there, depending on proceeding type.
Kitsap County	2 or 3	Normally a court reporter and clerk are in the courtroom, plus a bailiff for jury trials. (Bailiffs are extra-hire staff called to work for jury trials.)
Snohomish County	2 or 3	Clerk, court reporter, and sometimes a law clerk
Spokane County	Normally 2, one with <i>pro tem</i> judge	Court reporter and clerk are there in most cases. For a <i>pro tem</i> judge in a non-criminal case, just a clerk is there.
Thurston County	2 or 3	Court reporter and clerk, plus bailiff at jury trials. (Bailiff is temporary employee.)
<i>Note: The chart includes Superior Court or Clerk employees, and excludes correctional officers and attorneys.</i>		
<i>Source: Performance audit interviews with superior court staff, Sept-Oct 2008. Similar information was presented in Appendix N of the court's 2006 "Feasibility Study."</i>		

If the Council wishes to reduce the number of court reporters, it is essential to provide the court with funding to hire an appropriate number of other staff to operate the electronic recording equipment and do other work in the courtroom. Thus the savings by reducing reporter positions would be partially offset by the added staff.

The replacement position would probably be a Legal Assistant 2, which is the job classification for the position that staffs the commissioner courtrooms. The 2009 cost difference (salary and benefits) between one Court Reporter and one Legal Assistant 2, lowest step, is estimated at \$40,073.⁷

In our opinion, the cost differential is fairly small and perhaps not worthwhile in the short term, but the savings would be significant in the long run. In some possible scenarios, there would also be additional equipment costs.

It is unclear whether clerks would have to replace court reporters on a one-to-one basis, because Superior Court does not maintain good information on judicial bench activity. Clerks would be needed only when the judge is working in the courtroom. It may be possible to pool the clerks to some extent, just as it seems clear that more could be done to pool the court reporters.

NOTE: Attachment C (below) has further comments and a recommendation on staffing issues.

E. How Good is CourtSmart?

According to the court's "Feasibility Study" of 2006 (see above, page 2), CourtSmart was tried in Juvenile Court in 2003, and then abandoned after experiencing operational problems and receiving many complaints about the poor quality of transcripts. As a result of that experience, and occasional problems with CourtSmart operations in Pierce County District Court, some local lawyers appear to be convinced that electronic recording in general is "bad news" to be resisted by all means possible. That opinion tends to reinforce the Superior Court's belief that every judge should employ a court reporter.

Little can be reported here about the quality of CourtSmart operations because more research is needed. We would be most interested to obtain consumer reviews of CourtSmart, which may be available by contacting the National Center for State Courts and by discussing the system with the Superior Court commissioners and the District Court judges who use CourtSmart on a daily basis. It is possible that the local complaints that have been leveled against CourtSmart could reflect problems with the equipment, installation, microphones, staff, or improper training rather than deficiencies in the system itself.

⁷ At 2009 rates, the court reporter's salary is \$69,481. With benefits, the total labor cost will be \$94,813. For a Legal Assistant 2, step 1, the 2009 salary will be \$35,042. Adding benefits will bring the total to \$54,740, which is \$40,073 lower than a court reporter. For a Legal Assistant 2, step 10, the total labor cost will be \$64,795, or \$30,018 less than a court reporter.

Two points can be made here. First, Pierce County is the only superior court in the state of Washington to have CourtSmart. (Pierce County District Court and Gig Harbor Municipal Court have CourtSmart.) The most common other systems in the state are For the Record (FTR) and Jefferson Audio Visual System (JAVS).

Second, if CourtSmart is not a good system, it is unclear why Pierce County Superior Court installed CourtSmart in the three new CD courts that are scheduled to open in November. According to Facilities Management, the cost of the equipment and installation came to \$120,000. We assume the court must be satisfied with the quality of CourtSmart to have authorized such an expenditure.

Another \$120,000 was spent on CourtSmart in the four new courtrooms for judges that opened in 2007, but the equipment has not been used. It is hard to understand why the court authorized the expenditures if it does not intend to use the equipment.

NOTE: Attachments B and C have further discussion of CourtSmart.

F. Appeals

Appeals to a higher court are the main reason why a transcript is needed, and most parties agree that transcripts are better when done by a court reporter. Exhibit 5 (next page) shows the number of appeals by case type from Pierce County Superior Court to either the Court of Appeals or the state Supreme Court since 2004.

Criminal cases are the majority of the appeals. However, the main issue is the likelihood that a case will be appealed. The figures on the number of appeals, by themselves, do not answer that question. If, for example, the number of criminal case appeals is a high percentage of the criminal jury trials that year, it would be reasonable to conclude that criminal jury trials should have a court reporter. If, on the other hand, appeals of a certain case type are a low percentage of the cases of that type, a court might decide to use electronic recording in such cases.

In reviewing a sample of civil cases that are appealed, we noticed that approximately 40% of the appeals did not have a transcript. This may be explained by the fact that the appealing party in a civil case pays for the transcript, whereas the state pays for the transcript in a criminal appeal when the defendant is indigent. This finding raises the issue of whether it is essential to provide a court reporter in all civil cases.

Further analysis is needed on likelihood of appeals, and some comments appear below in Attachments B and C. However, the analysis is more properly the business of the Superior Court. That was the reason we recommended in the 2006 report that the court should review the types of proceedings at which it is essential to have a court reporter. The court's response (Attachment A below) did not discuss any of the specifics.

NOTE: Attachments B and C have further discussion of appeals, and Attachment C has a recommendation.

Exhibit 5

Appeals by Case Type since 2004

Case Type	2004	2005	2006	2007	2008 (to Sept 16)	Total
1 Criminal	211	207	252	200	178	1,048
2 Civil	145	139	139	128	88	639
3 Domestic	21	24	33	27	21	126
4 Probate/Guardianship	5	6	4	10	4	29
5 Paternity/Adoption	4	3	4	4	4	19
6 Western State	4	4	3	4	2	17
7 Juvenile Civil (note a)	24	12	15	30	12	93
8 Juvenile Criminal	5	3	16	12	5	41
Grand Total	419	398	466	415	314	2,012

(a) Juvenile civil cases are parental terminations and dependencies. According to Juvenile Court, of the the 57 appeals from 2006 to Sept 2008, 30 were parental terminations and 27 were dependencies.

Source: Pierce County Clerk of Superior Court and Juvenile Court

G. Conclusions

(This section is reprinted from the October 30 preliminary report. Further conclusions or comments appear below in Attachment C.)

Based on information collected from the ten largest superior courts in the State of Washington, it appears that Pierce County Superior Court is the only one in which court reporters cover all proceedings when a judge is working on the record. Among the ten courts, Pierce County Superior Court is unique in having a court reporter cover all juvenile proceedings before a judge. The court is also unusual but not unique in utilizing court reporters in drug court.

Under state law (RCW 2.32.180), Pierce County Superior Court is required to have a minimum of 15 court reporters. No recommendations are made here about how many court reporters are needed for effective and efficient court operations.

If the County Council wishes to pursue changes in the court’s current staffing, we believe it is essential to discuss the issues in advance with the court, ideally in open meetings and with good information at hand. We also believe it would be essential to provide funding for clerks if there is any reduction in court reporter positions. Alternatively, the court could be provided with funding for bailiffs to serve as the second person in the courtroom. At this time, it is unknown whether “one for one” replacement is needed, because the court has not provided information on how often judges are on the bench. However, it is clear

that any new clerks or bailiffs should be placed under the court administration, so the new staff can be pooled rather than serve as the personal employee of a judge.

Finally, we would like to mention a judicial bench activity report. In a companion measure to the 2008 Pierce County budget, the County Council requested such a report from the Superior Court,⁸ but the court declined to implement the provision. In our opinion, a judicial bench activity report is essential to documenting and understanding two things:

- Judicial workload, to provide a basis for knowing when another judge should be authorized and/or when funding for *pro tem* judges should be provided.
- The amount of judicial staff support that is needed, including court reporters and other staff.

Without the baseline information that can be gained from a judicial bench activity report, little can be known about judicial workload, judicial accountability, and judicial staff support.

Attachments

⁸ Ordinance No. 2007-104s, section 18. A similar but less detailed provision appears in a companion measure to the 2009 budget, Ordinance No. 2008-84s2, section 11: “The Superior Court is further requested to report to the Performance Audit Committee by April 1, 2009, and present a specific plan to prepare an ongoing report on Judicial Bench Activity by Judicial Department that will provide verifiable data on how much time each judge spends in court each day with a breakdown of time spent on criminal and civil trials and other major activities as defined by the court.”

Attachment A: Superior Court Response, April 2007

Response to issues raised by the Performance Audit
Committee in the November 2006 report on court reporters

The court's response of April 2007 appears on the following pages. Background information appears above on pages 2-3.

**SUPERIOR COURT
OF THE
STATE OF WASHINGTON
FOR PIERCE COUNTY**

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TACOMA, WA 98402-2108

Councilmember Dick Muri
Chair, Pierce County Performance Audit Committee
930 Tacoma Avenue South, Room 1046
Tacoma, WA 98406

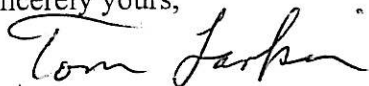
Dear Councilmember Muri:

Enclosed is the Superior Court's response to the issues raised by the Performance Audit Committee as required in the 2006 budget proviso.

I have also enclosed a copy of the Feasibility Plan that was submitted in March of 2006 for your convenience. I have referred to the Feasibility Plan in our response.

On behalf of the Superior Court, I want to thank you for your support in the past. I look forward to working with you in the future in order that we may provide efficient, effective and excellent service to the citizens of Pierce County.

Sincerely yours,



Tom Larkin, Presiding Judge

**SUPERIOR COURT
OF THE
STATE OF WASHINGTON
FOR PIERCE COUNTY**

THOMAS P. LARKIN, PRESIDING JUDGE
Julie Ratley, *Judicial Assistant*
DEPARTMENT 3
(253) 798-7576

534 COUNTY-CITY BUILDING
930 TACOMA AVENUE SOUTH
TACOMA, WA 98402-2108

April 30, 2007

MEMO

**SUPERIOR COURT'S RESPONSE TO ISSUES RAISED BY THE
PERFORMANCE AUDIT COMMITTEE CONCERNING COURT REPORTERS**

Background

A proviso in the 2006 budget requested a Feasibility Plan from the Superior Court concerning the use of Court Reporters. The Plan, dated March 14, 2006, was prepared by the Presiding Judge Stephanie Arend. The Plan included a careful and detailed history and analysis of court reporter related matters. Subsequent to the Plan being presented to the Pierce County Council, the Performance Audit Committee prepared a Planning Study in which the Superior Court was asked to respond to four questions. The Court agreed to consider the request and report back by April 30, 2007.

Context

The Court applauds and joins in the Council's continuing quest to be good stewards of the public's money. The Court's 22 independently elected officials also recognize their need to be good managers and employers. The Court commits to continuing to be diligent in managing their Court Reporters, as well as their other staff. Finally, the Court recognizes the separate branches of government, while independent of each other, must still work cooperatively. To that end, over the years the Court has made a major concession and taken a major step to advance these goals.

First, as pointed out in the Feasibility Plan in 1981, with great reluctance, each judge agreed to reduce their staff from three employees to two. This has provided a continuing and increasing challenge as the Judges' workload and administrative duties have increased greatly over the last few years. The Judges are unanimous that less than two full-time employees would severely hamper each Judge in carrying out his or her duties and the administration of justice.

Secondly, the Court created the position of Managing Court Reporter. This has increased efficiency and provided a way to achieve cost savings. The Court's Executive Committee and the Presiding Judge exercise continuing oversight with regard to the Managing Court Reporter.

In preparation of this response to the Performance Audit Committee, all of the Judges and Court Reporters were able to give input. We reviewed each of the Judicial assignments to see which, if any, would be suitable to electronic recording of proceedings. This included the CD courts, Remann Hall and Drug Court. We also reviewed which of our proceedings were most likely to be appealed and those in which the attorneys most often request transcripts. After a complete review of the work we perform and a thorough discussion, we concluded that the Feasibility Plan explains in depth many of the considerations as well as challenges surrounding the issue of Court Reporters. We strongly encourage a thorough reading of the Plan.

Specific Responses to The Performance Audit Committee's Questions

Question #1: 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?

Answer: The Court does not plan to reorganize its current format. Reorganization would inevitably result in a reduction of the Judge's staff below the necessary two full-time employees. Further, proper Judicial supervision and responsibility for a Court Reporter would be diminished if the Judge and Reporter were separated. This would decrease efficiency rather than enhance it. That said, we believe that more efficiencies and savings can be realized by increased oversight of both individual Reporters by their Judge and increased oversight of the Managing Court Reporter by the Executive Committee and the Presiding Judge. The Performance Audit Committee has been helpful in stressing the need to reduce the pro tem reporter budget. The Court will make every effort to do so.

Question #2: Which specific types of proceedings should have a live Court Reporter?

Answer: Those proceedings where the record will be reviewed by the Court of Appeals or the Supreme Court. Judges are responsible for what goes on in the court and what is reported to reviewing courts. Indeed, Judges are often evaluated by the results of appeals. For this reason, the Judges agreed that the work of Court Commissioners can be recorded electronically. This is because Court Commissioners' orders are temporary orders and these orders can be reviewed by a Superior Court Judge. The Court installed Court Smart for this purpose. We recognize that at times emergencies may arise and there may not be enough Reporters to handle every matter being heard. At those times, the Court would use electronic recording, if available, in the setting where the matter is least likely to require review by a higher court.

Question #3: Which new courtrooms and which current courtroom should be wired or outfitted with electronic recording equipment?

Answer: Any courtroom occupied by a Court Commissioner. Beyond that, the matter becomes one of cost/benefit. Currently, the plan is for the CD courtrooms to be wired.

Question #4: Are there any related topics the court wishes to address:

Answer: None, other than to say the Court appreciates the Council's continued willingness to partnership with the Court in many areas. For example, the Court and the Performance Audit Committee are currently involved in a joint, comprehensive review of our criminal management system. The Justice Management Institute (JMI) has been hired to lend their expertise to the process. We know that mutual respect and cooperation between the branches of government is expected by the public and currently practiced in Pierce County.

Sincerely,



Thomas P. Larkin, Presiding Judge
Pierce County Superior Court

Attachment B: Superior Court Response, November 2008
to Preliminary Report of October 30, 2008

**SUPERIOR COURT
OF THE
STATE OF WASHINGTON
FOR PIERCE COUNTY**

THOMAS P. LARKIN, JUDGE
Julie Ratley, *Judicial Assistant*
DEPARTMENT 3
(253) 798-7576

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930 TACOMA AVENUE SOUTH
TACOMA, WA 98402-2108

November 10, 2008

Dick Muri, Committee Chair
Performance Audit Committee

RE: Preliminary Response to Preliminary Report: Update on Court Reporter Issues

Dear Mr. Muri and Committee Members:

What follows is Superior Court's response to Mr. Temmel's Preliminary Report – Update on Court Reporter Issues.

In Section A, the statement: "By translating those expenditures into full time equivalent (FTE) terms, we estimate that the court in recent years has had an additional two to three FTE court reporters in terms of the hours of service" was made. It is our belief that both pro tem court reporters who cover for staff reporters plus pro tem reporters who work for the pro tem judge program were included in this estimate. By adding the two groups together, a false impression is created. In fact, our records indicate that January through September 2008, \$42,923 was spent in pro tem reporters fees to cover for staff reporters. This does not equate to one (1) full time court reporter at salary only. The pro tem judge program pro tem reporters January through September 2008 totaled \$50,041, again not equal to one (1) full time reporter at salary only. Further, if a staff reporter is on transcript leave, they are on unpaid leave so the cost of a pro tem reporter, if needed, is a wash as to salary.

In Section C, there is much made of the lack of a judicial activity report to determine when judges on are the bench hearing what types of matters. It would be a management nightmare to determine when 22 reporters may be free in each court to work in another. Breaks may be taken in trials or between other proceedings but it would be inefficient if a reporter were sent to a different courtroom for a "short" matter which turned into a long hearing and the original courtroom was left waiting until the reporter returned. It would require a full time FTE to keep track of and manage such movement.

Section D discusses number of staff in the Courtroom. Exhibit 4 is missing information on other personnel that work for the judge e.g. law clerks or other administrative support staff. As I said in my comments before the Committee, court reporters often aid the judge with administrative matters and because they work closely are more effective in that work. Sending in different people would lose the efficiency created by someone who is familiar with how the judge works and knows what he/she wants.

Later in that section, while acknowledging the need for a person to replace the reporter, the figure of \$40,073 is used as the difference between a reporter and Legal Assistant 2. The figure is between \$30,000-\$20,000. Reporters are paid a flat rate and only receive COLAs whereas LA2s receive step increases and COLAs annually. This is a relatively small amount for a less than optimal result.

Section E discusses CourtSmart. Superior Court originally determined that CourtSmart was a superior system when it was installed. There are other less expensive systems (e.g. FTR) but they do not afford the same degree of protection in redundancy of recording that CourtSmart does. The Court decided the redundancy was worth the added cost. The bulk of the issues surrounding CourtSmart are not equipment related; rather, they result from having clerks handle creating the record in addition to all the other duties they are required to perform while in court. When someone is overtaxed, errors are bound to occur and safeguards are sometimes neglected.

Regardless of CourtSmart's technical ability, the Court has long maintained and Mr. Temmel acknowledges court reporters make the best record. The cost to wire all courtrooms with what the court believes is the preferred audio system but still inferior to court reporters would be a very large expense. The "savings" referred to above coupled with the initial outlay and continuing maintenance costs do not justify the change.

Additionally, the cost of creating an audio transcript is more expensive because the audio reporter usually transcribes it to their reporter language and then to English. Therefore the cost of the transcripts would increase including those requested by the Prosecutor and DAC.

Section F says "In reviewing a sample of civil cases that are appealed, we noticed that approximately 40% of the appeals did not have a transcript." The Court questions this statement's veracity.

The judges are united in the belief that no one case is more or less important than another. All cases are important to the people involved and deserve the best court record and Pierce County judges believe that means court reporters.

Yours truly,

Thomas P. Larkin
Presiding Judge

Cc: All Judges
Matt Temmel

**Attachment C: Performance Audit Staff Analysis,
December 2008**

Attachment C

Analysis by Performance Audit Staff

Perhaps the most significant point about the Superior Court's response is that it does not question the accuracy of any of the comparative information on court reporters in other courts that is presented in the report.

This attachment, besides commenting on points in the Superior Court's response, includes some new information. Recommendations are made to improve the quality of information on two topics: (1) the likelihood that certain types of cases will be appealed, and (2) staffing levels in Pierce County Superior Court compared with other courts.

1. Management Issues

On the first page of its response (page 21 above), bottom paragraph, the court writes:

“It would be a management nightmare to determine when 22 reporters may be free in each court to work in another.”

The presiding judge used the same phrase when testifying to the Performance Audit Committee on October 30. It would be “a management nightmare,” the judge said, to reduce the number of court reporters (now one for each judge) and thus force the court to pool the court reporters and move them around as needed. We respectfully disagree. We believe it would simply be “management” to determine when a staff court reporter is free and available to work in another courtroom. The other courts that were studied do this as a matter of course.

The court's response further exaggerates by commenting: “It would require a full time FTE to keep track of and manage such movement.” That remark ignores the work of the managing court reporter. As a supplement to her regular duties, she keeps track of who is available to work in another courtroom and who actually does so, and the information is routinely reported in a quarterly report. This is hardly a “nightmare.”

2. Salary and Benefits Differences: Court Reporters and Clerks

On the second page of its response (page 22 above), the court takes issue with the details of our analysis of the cost difference between a court reporter and a Legal Assistant 2. On page 11, in response, we have left the text as it appeared in the preliminary report, but we have modified footnote 7 to include the precise figures. In summary, at 2009 pay rates, a Legal Assistant 2 at step 1 costs \$40,000 per year less than a court reporter, and Legal Assistant 2 at the top step costs \$30,000 less than a court reporter.

3. CourtSmart

The court's response makes miscellaneous comments about the CourtSmart electronic recording system, without touching a key issue. The issue is "Why does Superior Court spend public money on electronic recording equipment and then not use it?"

- As reported in this report, page 2, second paragraph, CourtSmart equipment is installed in the four new courtrooms for judges on the third and fourth floors that were opened in July 2007, but the equipment has not been "turned on" and the judges continue to use court reporters in those rooms. According to Facilities Management, the cost of that equipment in the four courtrooms used by judges was approximately \$120,000 in payments to CourtSmart, plus significant other design and construction costs.
- CourtSmart has also been installed in the three new CD (Criminal Division) courts that opened on November 10, 2008. Court reporters are still working there, and the electronic equipment is also running, until the court decides in 2009 what it will do. The cost of the equipment in these three rooms was \$120,000 in payments to CourtSmart, plus significant other costs.

Thus the new courtrooms have \$240,000 worth of CourtSmart electronic recording equipment, not counting design and wiring costs, and it appears the court does not intend to make full use of the equipment.

Why can't at least one of the new courtrooms on the third and fourth floors be designated as the venue for a *pro tem* judge, with the court record made by electronic recording? That would eliminate the need for a *pro tem* court reporter.

4. Appeals and the Need for Transcripts

The report, at page 12, states: "In reviewing a sample of civil cases that were appealed, we noticed that approximately 40% of the appeals did not have a transcript. . . . This finding raises the issue of whether it is essential to provide a court reporter in all civil cases."

The presiding judge writes in response: "The Court questions this statement's veracity."

We have checked our work in detail. The review procedure was as follows.

- Exhibit 5 in the report (page 13) shows the number of appeals by case type since 2004. At our request, the Superior Court Clerk provided identifying information on each criminal and civil (type 2) case appealed since January 2006.

- We reviewed the criminal and civil cases appealed between January 8 and July 5, 2007. There were 73 civil appeals. The research was done on the “LINX web,” which contains all of the public case documents filed with the Superior Court Clerk. The main question was whether the appeal documents included a transcript of any portion of the Superior Court proceedings.

For the 73 civil cases, the findings were:

	Number	Percentage
Transcript	42	58%
No transcript	31	42%
Total appeal cases	73	100%

This finding certainly does raise the issue of whether a court reporter is needed in all civil cases. As discussed briefly on page 12 of the report, the issue is “the likelihood of appeals.” The report was very brief on that matter, and a fuller explanation can be given here.

To determine whether an appeal is likely, it seems possible to compare the number of appeals of a certain type (such as Administrative Law Review, Commercial, or Personal Injury) during a given period with the number of Superior Court resolutions of the same case type during the same period. It would then be known what approximate percentages of those case types were appealed, and the court would thereby have quantitative data on “the likelihood of appeals.” That would be useful in helping to decide for which cases a court reporter is needed.

The November 2006 performance audit report on court reporters recommended that Superior Court should review the type of proceedings at which it is essential to have a court reporter. The court’s response of April 2007 (Attachment A in this report) managed to avoid getting into specifics. The question was: “Which specific types of proceedings should have a live Court Reporter?” The court’s answer was: “Those proceedings where the record will be reviewed by the Court of Appeals or the Supreme Court.”

Yes, of course. We request that Superior Court do an analysis that is based on hard data and cites specifics about which types of proceedings should have a court reporter based on “the likelihood of appeals.”

The need is for relevant data on the issue of whether it is necessary to continue having a court reporter in every civil case, every domestic case, every juvenile criminal case, and every drug court proceeding when a judge is on the record. What is “the likelihood of appeal” in those cases? The records could also be reviewed using a similar approach to determine the appeal rate for cases handled by *pro tem* judges.

Recommendation 1

To help determine to what extent court reporters are needed in certain proceedings, it is recommended that Superior Court study the likelihood of appeals by comparing the number of appeals with the number of resolutions of certain case types, and conducting other analysis as needed, with a report to the Performance Audit Committee by September 1, 2009.

5. Staffing Levels in Pierce County Superior Court and Other Courts

The court's response in Attachment B says:

“Section D [pp. 10-11 of the report] discusses number of staff in the Courtroom. Exhibit 4 is missing information on other personnel that work for the judge, e.g., law clerks or other administrative support staff.”

Exhibit 4 in the report (p. 10) is good information on how many employees work in the courtroom in the various courts. The information was collected because Superior Court had raised that issue. We agree fully that it would also be useful to have good information on other types of staff, such as law clerks and administrative support staff, in other jurisdictions.

It is time to face up to a long-standing problem. In the dialogue between Superior Court and the County Council, the quality of information on staffing issues is not what it ought to be. There is a tendency in Superior Court, we believe, as part of its advocacy for higher staffing, to exaggerate the number and types of staff in other courts. For instance, it is often stated by judges that some other courts have law clerks, while exaggerating the number of law clerks and without also stating that those courts that have law clerks do not have judicial assistants.⁹ In our opinion, better information is needed to provide a basis for good decision-making. Two questions of interest are:

- How do the various courts compare in terms of administrative staff per judge or per judicial officer?
- How do the various courts compare in terms of employees who are personal staff of the judge? Exhibit 6 answers this question.

⁹ Kitsap County Superior Court has law clerks, a total of 2.5 law clerks to serve eight judges, and does not have judicial assistants. Snohomish County Superior Court has law clerks, one for each of the 15 judges, but the salary is less than \$40,000, and Snohomish does not have judicial assistants.

Another example is that a Pierce County judge recently stated in conversation that judges in King County Superior Court have law clerks in addition to bailiffs. Inquiries to the King County court revealed that each judge has one personal staff, a bailiff, and some judges choose to fill the position with an attorney.

Exhibit 6

How many employees are personal staff of the judge?

<i>Superior Court</i>	<i>Personal Staff per Judge</i>	<i>Who are the Personal Staff?</i>
Pierce County	2	Judicial assistant and court reporter (one for each judge)
Benton-Franklin County	1	Court reporter (one for each judge). Bailiffs work for court administration (five full-time and three on-call employees).
Clark County	1	Judicial assistant (one for each judge)
Cowlitz County	0	Judges have no personal staff. The only employees are the court administrator and two people who work for her.
King County	1	Each judge has one bailiff. Some judges hire bailiffs who are lawyers, and they function as law clerks.
Kitsap County	1	Court reporter (7 for 8 judges in 2009). The court has 2.5 law clerks for the 8 judges (salary \$48 K, two-year term).
Snohomish County	2	One court reporter (13 for 15 judges) and one law clerk (for each judge). Law clerks are usually recent law school graduates, have a one-year appointment, and are paid \$39,911 per year.
Spokane County	1	Court reporter (one for each judge)
Thurston County	1	Court reporter (6 for 8 judges). The court also has one staff attorney who assists mainly with the civil motion calendar and sometimes sits as a <i>pro tem</i> commissioner.
<i>Source: Performance audit interviews with superior court staff, September-November 2008</i>		

Thus, compared with other courts, Pierce County Superior Court does well in terms of personal staff per judge. However, personal staffing does not tell the whole story. It would be more useful to learn the total number of employees in each court, understand their functions, and see how they support the work of the court.

Old data are available on this issue in a 2001 report written by a staff member of the Office of the Administrator for the Courts (now AOC). The report compared Pierce County Superior Court and six other courts in terms of workload, performance, and staffing level.¹⁰ Based on 1999 data, the report concluded that Pierce County Superior Court had “the third lowest total staff per judicial officer” (out of the seven courts) and “the lowest ratio of courtroom/personal staff per judicial officer.”¹¹

¹⁰ *Organizational Assessment of the Pierce County Superior Court*, February 15, 2001, by Yvonne Pettus, Manager, Office of the Administrator for the Courts, Olympia, WA. The report is available on the Pierce County web site at www.piercecountywa.org/performance-audit.

¹¹ *Ibid.*, pp. 1 and 24. The relevant text is on pp. 24-28.

Judges often make similar points when testifying to the Pierce County Council or one of its committees. The AOC information can be assumed to be accurate as of 1999. It is hoped that the Superior Court will want to update the information by working cooperatively with performance audit staff to survey the various courts.

Recommendation 2

To provide current information on comparative staffing levels, Superior Court and the Performance Audit Committee should work cooperatively to update the staffing information in the 2001 AOC report, with a report to the Performance Audit Committee by May 1, 2009.

6. Pro Tem Court Reporters and “In-House” Coverage

Because of missing data, the preliminary report (October 30, 2008) did not analyze the use of *pro tem* court reporters in Pierce County and the related issue of how much “in-house” coverage is provided by regular court reporters. The court later provided the needed information. Our analysis is as follows.

Exhibit 7 shows the basic figures on *pro tem* court reporters, in terms of expenditures and days of service. These reporters are hired at a fixed daily rate, which is the same as the salary of a staff court reporter, with no benefits. Expenditures are made in two categories: (1) work for *pro tem* judges (program PT 31), and (2) work for regular (elected) judges (program 0000). It might be expected that *pro tem* reporters serve mainly *pro tem* judges, but that is not the case. As shown by Exhibit 7, *pro tem* court reporters are utilized mainly to support the regular judges.

Compared with other courts, this is most unusual. In 2008, to October 21, Pierce County hired *pro tem* court reporters for 386 days. In King County, the comparable figure (to September 22) was 65.5 days. In Kitsap County, it was 39.5 days. Thurston County, as of late September, had hired *pro tem* court reporters for half a day in 2008. Snohomish and Spokane superior courts, we were told, hire *pro tem* court reporters “hardly ever.” Thus Pierce County Superior Court stands out in terms of its utilization of *pro tem* court reporters.

Exhibit 7

Pro Tem Court Reporters: Expenditures and Days of Service

EXPENDITURES			
	Pro tem court reporters for pro tem judges (program PT 31)	Pro tem court reporters for regular judges (program 0000)	Total
2000	\$30,439	\$80,301	\$110,740
2001	29,015	77,634	106,649
2002	16,864	110,202	127,066
2003	28,404	82,762	111,166
2004	26,828	63,546	90,374
2005	44,560	112,466	157,026
2006	49,427	62,092	111,519
2007	40,827	70,368	111,195
2008 to October 21	53,519	43,935	97,454
2009 budget request	55,000	59,000	114,000
DAYS OF SERVICE			
	For Pro Tem Judges	For Regular Judges	Total
2000	151	398	549
2001	139	371	510
2002	78	510	588
2003	129	377	506
2004	119	282	402
2005	193	488	681
2006	209	263	472
2007	166	287	453
2008 to October 21	212	174	385
2009 budget request	207	222	428

Sources: accounting data and daily pay rates

A key question is: “Who fills in when a staff court reporter is on leave?” In the other courts that were studied, other staff court reporters do the vast majority of the filling in, as indicated by the relatively low utilization of *pro tem* court reporters.

Pierce County is different. Exhibit 8 shows that historically *pro tem* reporters have provided the bulk of the fill-in coverage. Some improvement has taken place in 2008, as the staff court reporters are now providing 45% of the fill-in days of service. While this is a clear improvement on past practice, the figure is still much lower than in other courts.

The data in Exhibit 8 were calculated from two sources: expenditure data for *pro tem* court reporters (expenditures divided by the daily pay rate) and information on the staff court reporters compiled by the Managing Court Reporter and presented in quarterly reports.

We reviewed the quarterly reports in detail back to 2004. The surprising finding was that the staff court reporters, according to that source, are often available to work in other courtrooms, but they actually do so on a limited basis, as graphed in Exhibit 9.

It is difficult to reconcile that finding with the information in Exhibit 8 showing that *pro tems* do most of the filling in. It would certainly seem that management practices could be improved to increase the amount of in-house coverage.

In November 2008, the County Council discussed the preliminary report on court reporters and took budget action. An amendment was offered to the 2009 county budget cutting \$100,000 for *pro tem* court reporters, out of \$114,000 for *pro tem* court reporters in the preliminary budget. The amendment passed on a 7-0 vote.

Exhibit 8

Who fills in when a staff court reporter is on leave?

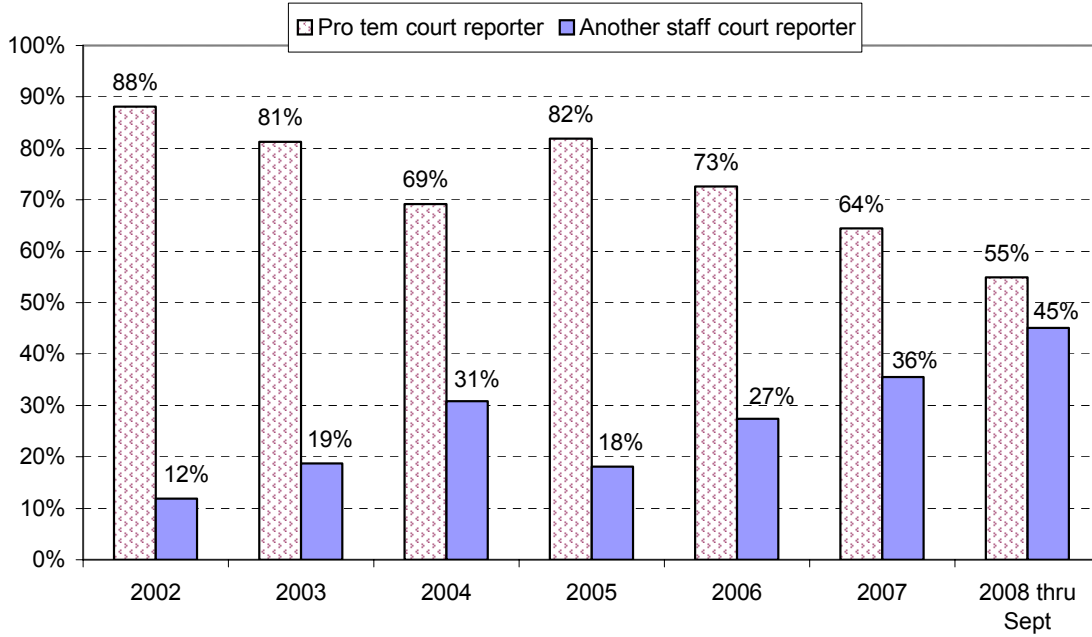
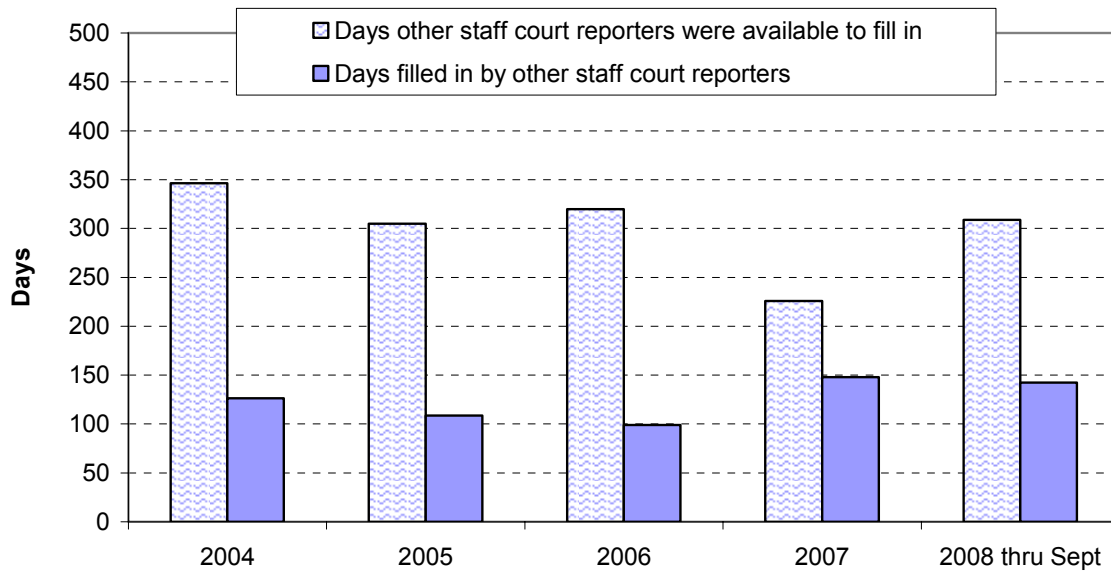


Exhibit 9

In-House Coverage When a Court Reporter is on Leave



Attachment D: Superior Court Response, March 2009

The material in the previous attachment was discussed at the Performance Audit Committee meeting on December 11, 2008, and the report was tabled until January 29 to allow Superior Court an opportunity to provide a written response. However, the court did not submit a written response by that time, and the topic was set over until the March meeting. The court's response was received a week prior to the meeting and appears below.

**SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY**

BRYAN CHUSHCOFF, Judge
Susan Winnie, Judicial Assistant
Department 4
(253) 798-7574

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TACOMA, WA 98402

March 12, 2009

Matt Temmel
Performance Audit Coordinator
955 Tacoma Avenue South, Suite 302A
Tacoma, WA 98402

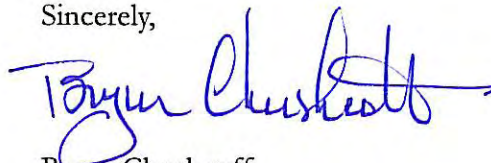
Re: Request for Comment: Update on Court Reporters

Dear Mr. Temmel:

Enclosed find the court's Response to "Proposed Final Report: Update on Court Reporter Issues." The court is glad for the opportunity to reply to your proposed Final Report. I hope that you will post our Response along with the Final Report on the Performance Audit website. I believe it an important contribution to the conversation on this issue and that it provides context to many of the assertions, inferences and conclusions of the Final Report.

Please feel free to contact me if you have any questions or concerns regarding this matter. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Bryan Chushcoff". The signature is stylized with a large initial 'B' and a long horizontal stroke at the end.

Bryan Chushcoff
Presiding Judge

Enclosure

Response to “Proposed Final Report: Update on Court Reporter Issues”

I. INTRODUCTION

Former Presiding Judge Thomas Larkin responded on November 10, 2008 to the Preliminary Report on Court Reporter Issues of October 30 2008 (“Preliminary Report”). This response from Superior Court proceeds with that knowledge and will not restate it.

Most of the new information contained in the “Proposed Final Report Update on Court Reporter Issues” (“Final Report”) is set forth in Attachment C. Accordingly, much of this response will address those materials.

II. COMMENTS

1. Background

The Final Report notes that it is only the latest in a series of papers and conversations over the past several years considering the issue of the court’s use of court reporters. Indeed, the Final Report is the fourth report since 2006 on court reporter issues in Pierce County. *Final Report*, p. 2. The court’s fellow branches of government in Pierce County evidently believed that the court’s use of court reporters as a way of keeping the record of its proceedings was antiquated. Accordingly, both the county’s executive department and the county’s legislative department have questioned the use of humans to maintain the record.¹

¹ This judge was present at a meeting a few years ago with then Executive John Ladenburg when he indicated that the record of proceedings in court could be collected electronically and the record reproduced in writing (as required by appellate courts to expedite their review) using voice recognition software. There are a number of problems with electronic recordings that this footnote will not enumerate. Suffice to say, to my knowledge there is no software vendor – then or now – who claims a product able to accurately prepare a transcript of court proceedings. It is

So it is gratifying that the Final Report reiterates two important conclusions that it first drew in a November 2006 performance audit report, vindicating the court's long-held position about the employment of court reporters, to-wit: 1) *Qualitatively*: “[t]ranscripts created by a court reporter . . . are generally better than transcripts made later from a digital audio or video recording . . .”; 2) *Efficiency and security*: “[i]t is essential to have two staff in the courtroom in many types of proceedings. . . . If electronic recording equipment is installed, it will be necessary to have a clerk run the equipment. Thus any savings by eliminating court reporters would be partially offset by adding clerks.” *Id.*, p. 3. Despite these findings by the performance audit committee in 2006 and reaffirmed in the Final Report, it appears that the significance of these points may have been lost. This will be part of the discussion that follows.

2. Comparative Data

Final Report Attachment C begins “[p]erhaps the most significant point about the Superior Court’s response is that it does not question the accuracy of any of the comparative information on court reporters . . .” While true, that should not be interpreted as agreement with the data. The court does not possess independent information to agree or disagree with the comparative data contained in the report.

Even if factual data in the Final Report are accurate, pertinent information for valid comparison of court models is omitted. The Final Report does not investigate or analyze the different manner by which various courts conduct business. It is not merely whether the questions that were asked and the answers thereto were accurately recorded. It is known that there is great variation in the manner in which different county courts carry out their business. Comparisons of such courts will lead to misleading or erroneous conclusions if this is not understood and accounted for. If systems analysis is to have significance, conditions or circumstances have to be capable of comparison.

frustrating for the court to have to respond seriously to such notions. I believe that this stems from a superficial understanding of what is required to properly and accurately record and reproduce the speech of many people, some with accents, speaking simultaneously, rapidly and, often inaudibly, from a recording. One of the gratifying results of the Performance Audit studies is that the court’s claims in this regard have been confirmed. Unfortunately, it has come at the expense of acrimony between the branches of government that we hope will now fade.

Judges in some counties conduct business without a reporter on regular dockets that would not require a court reporter to be present in Pierce County either. But the difference is that in Pierce County the work is not done during trial hours but is accomplished at other times. Hence, a comparison of judges/counties with such dockets is not meaningful. Let me explain further.

For instance, settlement conferences are conducted without a court reporter (although it is sometimes useful when one is handy to document an agreement). Judges in some counties conduct settlement conferences on formal dockets set during court hours when judges in Pierce County would be hearing a trial. Pierce County judges maximize that portion of their day devoted to trial by conducting settlement conferences early in the morning prior to the scheduled start of the trial calendar or in the late afternoon when the trial calendar concludes. This writer begins settlement conferences at 4 p.m. I frequently conclude them well after hours – in some cases as late as 8 or 9 p.m.

Another instance of this is the court that has judges who are devoted to handling summary judgment motions and these judges, therefore, do not have a trial calendar. This work is done in Pierce County Superior Court by all judges dividing this work among them and it is heard on civil dockets on Friday mornings along with all of the court's other civil motions. The time for preparing for such motions is done by Pierce County judges at breaks, noon periods, before and after trial dockets and after hours. In other words, Superior Court judges in Pierce County do such work in addition to a trial docket.

Rather than commend the court for such parsimonious use of courtroom hours, the Final Report suggests that Superior Court could emulate other courts. In our view, it is the other courts that should emulate Pierce County Superior Court and adopt schedules that maximize trial hours and accomplish at other times (rather than on a regular docket) the work that does not require court reporters.

Superior Court might have been able to shed additional light on these issues had the court's data analyst position ever been filled. As is well known, the court long sought such a staff person in order to assist it in gathering and evaluating the large volume of management data created by the LINX information system. Such a position for the court was highly recommended to the county by the Justice Management Institute ("JMI") in

2000, 2001 and again in 2007 and 2008 in reports to the Council's Performance Audit Committee. A data analyst position was finally approved in 2007 to be filled in 2008. However, before a hire could be made, the Executive requested the court not do so because of the county's financial condition. Though disappointed, Superior Court accommodated the Executive's request. Nor has that reduction in the court's budget in 2008 been credited as the county seeks additional reductions in the court's budget for 2009.

3. Management Issues

The Final Report view of the management problems entailed by the pooling of court reporters is superficial. It fails to indentify much less consider or analyze the difficult management issues involved. It confidently assumes that the current managing reporter could perform such tasks as if it did not entail any increase in duties. This is demonstrably error.

Judicial Departments may be handling different matters during the day, motion hearings, trials, settlement conferences, review hearings and the like. Moving court reporters in and out based upon which one "merits" reporting by a court reporter or an electronic system would be highly inefficient. Court reporters now learn what their judge needs/wants because they are present for whatever comes the way of the judge. While most court proceedings are scheduled, many would be surprised to learn how frequently matters are set with short or no notice. Handling such matters would be complicated and frequently delayed by having to contact some other location or person in the court to see if and when a court reporter could be made available from some other part of the building. One judge could have several different reporters in one day for various hearings. Keeping track of exactly what is going on in each courtroom and whether a reporter would be needed, would be a management nightmare. Adding to such duties would be the need to assure that court reporters were fairly sharing the load. There is nothing efficient about this; it seems chaotic and complicated.²

² This point seems so obvious that it suggests that at the heart of the proposal to pool reporters is the assumption that court reporters are really not necessary and can be replaced by electronic systems. Proposals such as this cause the court to wonder if the lessons learned that human court reporters produce a superior product and that it is more efficient and secure to have

The current job of the managing court reporter consists largely in arranging coverage for reporters who take ill or are otherwise unavailable for work. The assigned judge provides the immediate day-to-day management of their assigned court reporter. Because of this, the managing reporter is able to work as a full time court reporter; this obviates the need for additional staff.

The managing reporter could not take on the additional work required of a pooling system and continue to work as a full time reporter. This is because under a pooling arrangement the need for reporters could change during the day. If so, the managing court reporter might not be available to coordinate it. Remember, the managing court reporter is working in court away from a phone or email and could not stop her work without consequence to the matter she is reporting.

Additional staff would be needed to track the needs of 22 judicial departments far-flung around the County-City Building and at Remann Hall, as well as to track the availability and location of however many court reporters (and electronic recording clerks) there might be. Superior Court believes that electronic reporting would necessitate the employment, in addition to in-court electronic recording clerks, of a manager to coordinate the attendant management problems posed by a pooling system. The current system is simple and effective. It has the virtue of avoiding these problems and should be retained.

Pierce County Superior Court is nimble enough to be able to assign judicial tasks to every department with a minimum of delay. Most judicial departments maintain criminal and civil assignments for certain months of the year but regardless of what panel a department is assigned, that court may hear any type of legal matter. We have a method of collecting information about department availability and try to assign a case to available departments as soon as practicable. In this way, departments keep busy. In order to maximize the utilization of judicial departments as we have, it is necessary that each department have at its disposal the tools for any job. This includes the employment of court reporters for each department.

a regular reporter in the courtroom have really been taken to heart. It seems that old, albeit discredited assumptions persist.

4. Salary and Benefits Differences: Court Reporters and Clerks

As noted above, performance audit reports support the need for two staff in the courtroom. The Court agrees that at least two staff in the courtroom is necessary. However, a court reporter brings not only the benefit of providing the record but is a member of a judicial team and provides other important services to the court, litigants, lawyers and witnesses, as Presiding Judge Larkin noted during his appearance before the Performance Audit Committee in December, 2008.

Replacement of court reporters with Legal Assistant 2s as electronic recording clerks could increase costs to the Court. As we have noted, the management of court reporter and electronic recording clerk pools would add a need for management that is not now required and that could not be met with current staff. This will necessitate the addition of another FTE at a time when the county is loath to add staff. It would also go far to eliminate any costs savings thought possible by replacing a certain number of court reporters with clerks.

Another benefit to the current system is that court reporters provide hearing transcripts (in whole or in part) to a judge upon request and without cost to the court. However, that would no longer be available if clerks were operating CourtSmart. Moreover, it would take far longer to turn-around a transcript if it had to be created by an outside contractor. It would also be a cost to the court that does not exist now. This would delay the court's decision. For time sensitive decisions, as are commonly made amid a trial, it would make it effectively not possible for the court to have that information in making its decision. For the sake of quality decision making, this is a resource we are reluctant to lose.

5. CourtSmart

Attachment C #3 poses the question: "Why does Superior Court spend public money on electronic recording equipment and then not use it?" *Id.* p. 25. Superior Court did not request the electronic recording equipment in any of the new courtrooms. The decision to include recording equipment was made by the prior County Executive who insisted that the courtrooms be built with the recording equipment. The Court believes

the decision was based in part on the belief that it would be less expensive to install as the courtrooms were constructed than to add it later.

Attachment C indicates none of the new courtrooms utilize CourtSmart. Actually Courtroom 407 is a Commissioner courtroom that does use CourtSmart daily. There was some delay in getting CourtSmart connected in the CD courts after those courts were otherwise open for business. The Court is conducting a comparison of court reporter and CourtSmart performance in the three CD courts this month.

6. Appeals and the Need for Transcripts

The Final Report statement “[t]his finding [42% of a sample of civil cases was appealed without ordering a transcript] certainly does raise the issue of whether a court reporter is needed in all civil cases” shows a clear lack of understanding of the court’s work. *Id.*, p. 26. The inference is that 42% of the court’s time is devoted to matters that do not require a transcript on appeal. That is far from true and it comes from looking purely at numbers without comprehension for what the numbers mean or how they came about. The matters that constitute this 42% are substantially comprised of cases resolved by summary judgment proceedings that terminate the case; or are an interlocutory or discretionary appeal from a preliminary court ruling (usually on a motion) that does not terminate the case. These are decisions made without a trial. These motions are usually heard, along with other motions, on Friday mornings. This is, at most, 10% of the court’s time and nearly all of that is concentrated during one-half of one day per week. Time spent other days of the week and Friday afternoons are usually comprised of matters that require the presence of court reporters.

Finally, while some proceeding types are less likely to be appealed than others, there is no way to predict which cases will be appealed. The time and effort to attempt this prophecy is misguided; the court faces more pressing issues.

7. Staffing Levels

The Administrative Office of the Courts (“AOC”) should conduct any study of current court staffing levels. AOC is the state agency that is most knowledgeable on

distinctions in court staffing. What its workload is and whether it can assume this project is unknown.

The Final Report claims that Superior Court exaggerates how many employees work in the courtroom in other courts. Yet the Final Report also says “it would also be useful to have good information on other types of staff, such as law clerks and administrative support staff in other jurisdictions.” *Id.*, p. 27. If you do not really know, how can you say we are wrong? Counting the number of staff “personal” to the judge is misleading. That only informs one of who hires and fires. It says nothing of how many people are actually in court; of how many people are needed to accomplish the job. The only study of this issue was done a few years ago. It found that Pierce County Superior Court is a lean operation. The “Final Report. Organizational Assessment of the Pierce County Superior Court” prepared by the Office of the Administrator for the Courts dated February 15, 2001, found that Pierce County Superior Court had the fewest number of total staff persons per judicial officer and the fewest number of courtroom staff per judicial officer of the eight counties studied.³ I have no reason to think that this number would have changed since then. The Court has added few staff members since the 2001 study. Courtroom staffing is unchanged. Unlike other counties, Pierce County Superior Court judges do not have personal research assistants, secretaries, bailiffs or additional clerks. The study shows:

1999 Courtroom Staff per Judicial Officer

PIERCE	RANK	AVERAGE	KING	RANK
1.88	1	2.33	2.55	5

1999 Total Staff per Judicial Officer

PIERCE	RANK	AVERAGE	KING	RANK
2.58	1T	3.1	3.84	7

Pierce County Superior Court had 20% less courtroom staff per judicial officer and 16.8% less total staff per judicial officer than the average of the eight counties in the study.

³ Counties studied: Clark, Kitsap, King, Pierce, Spokane, Snohomish, Thurston and Yakima.

When one considers that Pierce County Superior Court has a uniquely heavy criminal and civil caseload mix than many of the other Washington counties studied, it is compelling evidence that the court's present functioning is highly efficient.

The court has not had the time or the staff resources to check the information presented in Section B "Court Reporters in Other Courts" and Exhibits 1, 2 and 3 of the Final Report. However, the 2006 Feasibility Plan, Tab N included a report by Andra Motyka of the Audio/Video recordings in use in Washington.

8. Pro Tem Reporters and In House Coverage

Attachment C includes the statement: "It might be expected that *pro tem* reporters serve mainly *pro tem* judges, but that is not the case." *Id.* p. 29. The entire discussion confuses different budget line items of the court. One line item is for the cost of the pro tem judge program and its associated staff. The other line item is to provide coverage for 22 judicial departments, working full time all year (except for recess/conferences). The pro tem program requires less money for pro tem reporters because there are far fewer days the program operates compared to the total days 22 departments operate. Moreover should a reporter take an extended leave for sickness or maternity, pro tem coverage for an in-house reporter could be required for an extended period. Obviously, this would never be a problem for the pro tem judge program.

Finally, if the court reporter takes leave to work on transcripts for the appellate courts, the reporter is not paid for that time and a pro tem reporter replaces the reporter. Leave for such a purpose results in no net cost to the county but it shows up as an increase to the pro tem reporter line item. The Final Report does not note the corresponding reduction that is made in the court reporter salary line item.

Page 31 of the final report acknowledges some improvement in 2008 using in-house reporters to cover. It is true the Court used more in-house coverage in 2008 and will continue to use in-house coverage to the extent possible without sacrificing effectiveness or efficiency.

9. Final Comments

a. Real time reporting. The report says little about the importance of “real time” reporting – where the judicial officer is able to see an immediate, albeit unedited, transcript on a computer monitor. Real time reporting allows a judge to immediately see what was said using their computer monitor and can be annotated by the judge for later review. Only court reporters can provide this service to judges but it can be a genuine aid to the judge’s job and increases the effectiveness of the judicial officer. It is also an aid for a judge whose hearing may be limited.

b. Budget confusion. Final Report concludes “[a]n amendment was offered to the 2009 county budget cutting \$100,000 for *pro tem* court reporters, out of \$114,000 for *pro tem* court reporters in the preliminary budget.”⁴ This illustrates the problem created by conflating these two budget line items: a) *pro tem* court reporters for the 22 judicial departments; and, b) court reporters for the *pro tem* judge program. The Executive aggregated the two amounts in the 2009 preliminary budget. Then the Council’s recommendation to reduce \$100,000 from the program effectively eliminated all the court reporter staffing for both. I doubt that this was the intention of the Council. But it means that the court received something of an arbitrary budget reduction; one greater than was likely intended if the goal was to reduce of the use of *pro tem* reporters for the court’s staff reporters. The court’s budget problem is exacerbated now by calls for increased budget austerity from a baseline that should not have been so significantly reduced in the first instance. This puts the court in a far more difficult budget circumstance than one would expect just from the proposed reduction as it comes from an already too low base.

III. CONCLUSION

“Significantly, the Legislature has declared that each official reporter is a ‘necessary part of the judicial system of the state of Washington.’”⁵ In pertinent part,

⁴ The actual language in the amendment (per memo from Michael Transue to Council dated December 2, 2008) is not technically a mandate but a recommendation. It says: “. . . (Superior Court), decrease the appropriation by \$100,000 (recommended reduction in *Pro Tem* Judge Reporter costs) . . .”

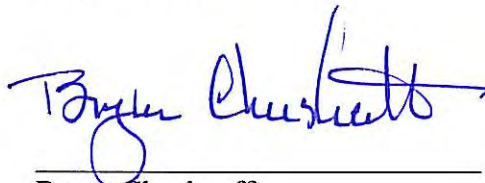
⁵ RCW 2.32.180; Feasibility Plan submitted to the County Council dated March 14, 2006 prepared by then Presiding Judge Stephanie Arend.

Civil Rule 80(b) **Electronic Recording** says: “In all matters the use of such devices shall rest within the sole discretion of the court.” The result of the four reports on this issue since 2006 sustains Superior Court’s long-held position about the employment of court reporters: for quality, efficiency and security the court’s use of court reporters is superior to electronic recording equipment at a cost that is comparable.

The court finds its resources stretched to their limit. The Court’s primary job is to actively manage the business of the Court so as to provide for fair, prompt, and efficient resolution of disputes; to provide due process and individual justice in each case; and to maintain independence and parity as an equal branch of government for the citizens of Pierce County. The more time spent on administrative work, the less time the court has for our core responsibility – resolving cases. Thus, we must prioritize our administrative duties. The Court previously responded to the court reporter issue with a detailed and lengthy report on March 14, 2006. The points raised in that report remain true. We have responded again to the three reports of the performance auditor. We note that performance audits of Superior Court are to be conducted by AOC (RCW 2.56; General Rule 32). For these reasons, we will not respond further.

The Court will continue to be good stewards of the public’s money and will, of course, work collaboratively with both the Pierce County Council and Pierce County Executive on all matters of mutual interest.

Respectfully submitted,



Bryan Chushcoff
Presiding Judge

Cc: All judges

**Attachment E: Performance Audit Staff Comments, March
2009**

Attachment E

Performance Audit Staff Comments, March 2009

The response from Superior Court was received on March 12, three months after the Performance Audit Committee discussed the topic at its meeting on December 11. The response is mostly a re-statement of the court's previous position.

Conduct of Judicial Business

The response states (pages 2 and 3 of 11) that this final report on court reporters is missing important information in that it does not investigate how the other courts conduct business. Three examples are given to show that Pierce County Superior Court makes better use of its time than other superior courts.

- Judges on the Pierce County Superior Court conduct settlement conferences early in the morning or late in the afternoon, sometimes going as late as 8 or 9 p.m.
- Pierce County Superior Court hears summary judgment motions and civil motions on Friday mornings, and judges do such work in addition to having a trial docket.
- According to the response, the court should be commended for its "parsimonious use of courtroom hours" (page 3 of 11).

Such statements are most interesting and have an indirect connection with court reporter issues, but they are undocumented. The lack of documentation is why the County Council, when passing the 2008 and 2009 budgets, requested a "judicial bench activity report" by department.¹ Without such documentation, the court's claims cannot be evaluated.

Management Issues

The response (page 4 of 11) repeats the court's previous assertion that pooling of court reporters would be a "management nightmare." Other large courts in Washington routinely pool their court reporters to some extent. The coordinating work is done by either a managing court reporter (as in Pierce County) or by court administration.

The court's response characterizes pooling of court reporters as follows: "There is nothing efficient about this; it seems chaotic and complicated" (bottom of page 4 of 11). A

¹ The request for 2009 appears in Ordinance No. 2008-84s2, and the language is as follows: "The Superior Court is further requested to report to the Performance Audit Committee by April 1, 2009, and present a specific plan to prepare an ongoing report on Judicial Bench Activity by Judicial Department that will provide verifiable data on how much time each judge spends in court each day with a breakdown of time spent on criminal and civil trials and other major activities as defined by the court."

footnote suggests that the proponents of pooling really wish to eliminate court reporters: “This point seems so obvious that it suggests that at the heart of the proposal to pool reporters is the assumption that court reporters are really not necessary and can be replaced by electronic systems” (page 4 of 11, note 2).

The court is entitled to its opinions. We think it is unfair for the court to attribute such assumptions or motives to the proponents of pooling.

Appeals and the Need for Transcripts

Recommendation 1 in the report (page 27) is that Superior Court should compare the number of appeals by case type with the number of resolutions of the same case type, as a basis for determining the likelihood of appeals. The thinking is that case types known to have a high probability of appeal would be assigned a court reporter as a matter of court policy, while other cases could be considered for electronic recording.

The court dismisses the recommendation: “The time and effort to attempt this prophecy is misguided; the court faces more pressing challenges” (page 7 of 11).

The report found that 42% of a sample of civil appeals (case type 2) in 2007 did not have a transcript. The court reviewed our sample and does not contradict the 42% figure. But it misconstrues the finding by trying to relate the 42% figure to the court’s time. In our view, the finding that 42% of civil appeals did not have a transcript simply means that the number of civil appeals that require a transcript is significantly smaller than the total number of civil appeals shown on page 13.

As shown in this report, none of the other courts that were studied uses a court reporter in juvenile criminal proceedings held before a judge, and most of other courts (but not all) do not have a court reporter working in drug court. What is known about appeals of these kinds of Pierce County cases?

In drug court, each client has stipulated in writing to the charges and will be sent to jail or prison if terminated from the program. No data are available on the incidence of appeals, but it is thought that appeals are unknown or exceedingly rare.

In Juvenile Court criminal cases, 31 appeals of Pierce County cases were filed with the Court of Appeals or the Supreme Court over the last three years (2006 – 2008). Of the 31 appeals, 17 cases had a bench trial and 14 did not. The total number of bench trials in those years is unknown. (The data are in LINX, but we do not have access.) Anecdotal information indicates that “not many” bench trials take place. Until the actual number of bench trials is known, little can be said about the likelihood of appeals of a juvenile criminal case with a bench trial. Of the 14 appealed cases that did not have a bench trial, they are a tiny percentage (0.003%) of the approximately 4,500 sentences over three years.

Staffing Levels

Recommendation 2 (at page 29) is that Superior Court and the Performance Audit Committee should work together to update the staffing information in the 2001 report by the Administrative Office of the Courts (AOC). The data were 1999 figures. The court opposes the recommendation and says that any updating should be done by AOC. We think it would be much simpler simply to update the data as stated in the recommendation.

It is known that Pierce County Superior Court ranked very low in the 1999 data in terms of staff per judicial officer and courtroom/personal staff per judicial officer.² It is remarkable that the court continues to cite the old data and shows no interest in an update. The presiding judge writes that he has “no reason to think that this number would have changed since then.” In fact, large staff cuts have been made recently in the superior courts in King County and Thurston County. It is likely that the current staffing ratios in Pierce County Superior Court would rank higher than they did in the 2001 study.

Conclusions

The court’s conclusion (page 10 of 11) starts with a quotation from state statute that official court reporters are a “necessary part of the judicial system of the state of Washington” (RCW 2.32.180). The court does not mention that the rest of the same section of state statute limits the quoted statement to the number of judges and official court reporters that existed in 1987. That means Pierce County Superior Court is required to have 15 court reporters.

The court’s conclusion also states (page 11 of 11) that performance audits of Superior Court are to be conducted by the Administrative Office of the Courts (Chapter 2.56 RCW) and that therefore “we will not respond further.” It should be added that this report and also the November 2006 report on court reporters were conducted at the specific request of the County Council rather than under the authority of any county law about performance audits.

One important matter is not addressed in the court’s response. The three new “CD” (Criminal Division) courtrooms were opened on November 10, 2008. Since that time, court reporters have been at work in each of the three courts, and the proceedings are also being electronically recorded, as a test of the equipment. When the new CD courtrooms opened, the Council was told that the test would last for about two months. Four months have now elapsed, and there is still no word of the court’s plan.

² The court’s response over-states the situation. At page 8 of 11, with underlining for emphasis, the response states that “Pierce County Superior Court had the fewest number of total staff persons per judicial officer and the fewest number of courtroom staff per judicial officer of the eight counties studied.” In fact, to quote from the 2001 report, Pierce County had “the third lowest total staff per judicial officer” and “the lowest ratio of courtroom/personal staff per judicial officer” out of seven courts studied (not eight). Quotations are from page 1 and page 24 of the AOC 2001 report, cited above at page 28, note 10.