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**From:**   
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**Subj:** Remarks on Superior Court  
Executive Committee Comment  
on JMI Follow-Up Report

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In late April of 2008, the Executive Committee of the Pierce County Superior Court posted on the Court's web site a "Comment Re: Judicial (*sic*) Management Institute's Follow-up Study of Felony Case Management in Pierce County Superior Court" (referred to here as "Comment"). Several statements in the Comment, which are either misleading, lack context, or incomplete, are addressed below.

The Follow-up Study was the third report since 2001 submitted by The Justice Management Institute (JMI) regarding felony case management in Pierce County. The report was a "follow-up" study, building on the observations and recommendations of the first two reports. The reports should be read together, and doing so clearly demonstrates the system-wide approach to the analysis of felony case management and the system-wide recommendations made.

Each time JMI has studied felony case management in Pierce County, it has talked with managers and representatives in every entity involved in the process, not just the Superior Court. The recommendations made involved all entities, not just the Superior Court. For example, as part of the 2002 study, protocols were developed and approved describing what should occur at each stage of the proceedings (see Appendix B of the 2002 report). The protocols were organized around hearings and events and contained a list of what each agency or the Court should do before, during, or after each common hearing or event. Of the 18 activities related to the First Appearance event, nine involved Court actions. Of the 18 associated with the Pretrial Conference and Omnibus hearings, only four involved Court actions. Contrary to the assertion of the Comment, JMI has not failed to look at, or recommend, actions by entities other than the Court.

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Comment: “The greatest failing of the Final Report is that it makes little effort to identify, and does not analyze, the management practices of” the criminal justice entities other than the Court. (Comment, page 1.)

- Significantly, the Court’s insistence on looking at other agencies and away from the Court suggests the Court continues to think it has no role in managing cases. This defies almost 30 years of empirical studies involving courts across the country. Court management of cases is best practice, period. The Superior Court recognizes this with respect to how it handles civil cases. It is also simple common sense that a court, which, by design, is the neutral arbiter in the system, must manage its cases so as to avoid backlogs and the opprobrium based on the concept that ”justice delayed is justice denied.”
- It does little good to promote changes in the practices of the prosecutor or defense counsel if the Court’s management of hearings and cases prevents lawyers from doing their work in a timely and productive manner. When the Court stops scheduling meaningless hearings, stops oversetting lawyers for trial, and provides firm trial dates, it will be time for the lawyers to exercise their professional responsibilities or be held accountable for not doing so, either by their employer or Court’s procedures and practices.

Comment: “JMI’s top-down approach to case management from the court is of limited utility.” (Comment, pages 3 and 15.)

The Court says it “has no authority to directly manage lawyers who are the employees of the executive branch of government or privately employed” (Comment, page 3). That is not the point; it is a distraction from the main problem and a straw-man argument. JMI’s Follow-Up Study did not say the Court has failed to do this, nor did it say this is what the Court must now do. JMI’s Follow-Up Study states the Court must acknowledge and exercise its legal duty to manage cases in an impartial manner (JMI Follow-Up Study, p. 19, text associated with footnotes 26 and 27, and Recommendation 9). This is not “top down;” it is the Court’s legal role. The Court is not impartial, in actuality or perception, when a criminal trial is continued either because the prosecutor is not ready, or the defense is not ready, when the lawyer had previously said they would be ready, and the Court does nothing about it except shrug its shoulders.

Comment: The Superior Court does not show preference to civil cases. (Comment, pages 3, 8, 10, and 17.)

- The data supplied by the Court in the Comment provides further proof of the deference to civil cases. If, in fact, the Court has for years spent over 60% of available trial days on criminal cases (Comment, tables on page 9), then the assignment of half of the trial judges to civil panels and half to criminal panels demonstrates a clear bias in favor of civil cases. It is also

interesting that the Court can suddenly generate data about trial days spent on criminal, but declines to do the analysis to rebut the other reported perceptions, for example, that civil cases are also preferred at the point of transition between criminal and civil assignments (JMI Follow-Up Study, p. 33).

- The Comment's discussion of "trial days" provides no definition of the term, does not indicate the source of the data, and does not explain how the numbers are calculated. For example, how does the Court count days when a trial begins or ends midday? The JMI Follow-Up Study made a point of the lack of data about how long trials take for various case types (JMI Follow-Up Study, Recommendation 19, p. 48), and noted problems in the way LINX keeps track of departments during a trial (JMI Follow-Up Study, p. 38). Thus the Comment's data on trial days must be viewed with considerable skepticism.
- The manner in which the Superior Court manages its civil cases not only demonstrates the efficacy of case management by the Court, but also provides additional proof of the Court's preference for civil cases.

Comment: Data issues. (Comment, pages 15-16.)

- If the Superior Court were serious about the value of data analysis to help manage the criminal caseload, it would have already found a way to internally reallocate budget dollars to do the analysis. The Court knows the value of this type of analysis from work done in the juvenile court. Hiding behind the alleged lack of funding from the Council is no excuse for not managing the caseload.
- It is also interesting to note that the Court is able to suddenly produce data to bolster the points it attempts to make in its Comment, yet does not generate any data to rebut statements in the JMI Follow-Up Study it alleges are not true.

Comment: Overbooking and Trial Setting Levels. (Comment, page 14.)

- Astonishingly, the Superior Court Comment blames lawyers for oversetting themselves, stating: "*Most of the useless hearings are set by the lawyers and not by the court . . . They do this using the computer terminals provided to counsel to automate scheduling or by contacting court administration personnel, known as DCM staff.*" (Comment, page 14, *italics* in original). It is the Court that allows the lawyers to do this, the terminals are supplied by the Court, and the Court controls the "rules" embedded in the software used by the lawyers to set hearing dates. This

part of the Comment is simply an abdication of the Court's responsibility to manage cases, while blaming it on the technology.

- The Comment attempts to argue that because every case gets a trial date, it is impossible not to overset trial dates. This ignores the fact that most cases have multiple trial dates, and that during the first six months of 2007, 59% of the trial dates were continued (JMI Follow-Up Study, p. 31). Moreover, although the number of felony filings has not grown, the number of trial dates set has grown by 57% from 2002 to 2006 (JMI Follow-Up Study, p. 31).

Comment: The Reality of Perceptions. (Comment, pages 16-19.)

The Comment criticizes the use of 'perceptions' to support observations and recommendations in the JMI Follow-Up Study, alleging that the perceptions are wrong or are not based on facts. The Superior Court apparently believes that if judges do not think something is the case, then no one else should either. The fact that observations and perceptions were reported to JMI does not necessarily mean they are true, but they must be dealt with. Part of the problem is that the Superior Court does not listen very well to those it works with and, by failing to hear, fails to address perceptions, whether generally true, based on anecdotes, or erroneous, that affect its ability to manage cases, acquire resources, or fulfill its legal role.

### Old Cases

The pressing need to review and address the oldest pending cases was a specific recommendation made in the JMI Follow-Up Study (Recommendation 7, p. 45). The Comment makes no mention of this critical, yet simple, step to begin regaining control of the pending caseload. Cases pending too long in the system not only cost the taxpayers money, they feed the perception that justice is being denied. It is yet another example either of the Court's denial of its legal obligation, or the Court's unwillingness to actively manage cases.

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