



Performance Audits

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May 29, 2008

To: Interested Readers

From: Matt Temmel, Performance Audit Coordinator

Re: Remarks on Superior Court “*Comment*” on JMI Report

On October 11, 2007, Justice Management Institute (JMI) presented to the Performance Audit Committee its follow-up report on felony case management in Pierce County Superior Court. The report is available at www.piercecountywa.org/performance-audit.

Twenty-eight weeks later, on April 25, 2008, the Executive Committee of Pierce County Superior Court issued its *Comment* on the JMI report and posted the material on the court’s website. The court did not send a copy to JMI, Prosecuting Attorney, Department of Assigned Counsel, or Corrections.

Alan Carlson of JMI has reviewed the court’s *Comment* and written his response. See *JMI Remarks, May 2008* – posted on the performance audit website at the above address. This response by performance audit staff is limited to two points: (1) the timing of the court’s *Comment*, and (2) the issue of how much time the court devotes to criminal matters.

1. Timing of the Court’s Comment

Near the end of the 23-page *Comment*, the court gives the following explanation of why it waited seven months to issue a response. “The Final Report was rushed to acceptance by the Committee’s Performance Audit Coordinator” (p. 22). The court states that it received a draft report in “late September” and the revised Final Report “just two days ahead of the hearing before the Committee.” Because of this, the court complains, it “did not have a fair opportunity to gather the information and formulate a *Comment*” for discussion at the Performance Audit Committee meeting when the Final Report was presented and accepted.

The facts are as follows.

- ❑ The Performance Audit Coordinator transmitted the draft report to Superior Court and the other criminal justice agencies on September 11, 2007, one month before the scheduled meeting of the Performance Audit Committee. The transmittal memo (see *Attachment 1* below) invited the court and the other agencies to review the draft report and discuss it in person with Alan Carlson on September 25 and 26, 2007. He made a special trip to Tacoma for this purpose.
- ❑ The memo also invited the reviewers to submit their comments in writing by sending an e-mail message to Alan Carlson, with a copy to the Performance Audit Coordinator. Superior Court did not submit written comments.
- ❑ After meeting at length on September 25 and 26 with four judges (“the JMI committee”), Superior Court administration, and representatives from the other criminal justice agencies, Carlson revised the draft report and turned it into the Final Report, which he presented to the Performance Audit Committee on October 11. Two days earlier, on October 9, the Final Report was distributed to the Performance Audit Committee, the Superior Court, and the other criminal justice agencies.

In response to the court’s complaint about lack of opportunity to respond, it must be noted that “Yellow Book” performance audit procedures call for technical review and comment on the draft report, and publication in the Final Report of any comments that are offered on the draft report. It is not reasonable for the court to:

- a. Publish a document complaining about the review procedures seven or eight months after the fact, and
- b. Claim that alleged problems in the review procedures somehow explain why the court took so long to respond.

Perhaps the court has become so accustomed to seven-month delays that it considers them reasonable.

2. Criminal versus Civil

On pages 8-10 of the *Comment*, the court presents new information on the amount of judicial time devoted to criminal and civil cases in 2005, 2006, and 2007. The new material claims to show that “*Superior Court devoted 62% of its trial time to criminal cases over the past three years*” (p. 8, italics in original).

Information on this important topic was requested in July 2007 while the JMI study was in progress. However, none of the information on page 9 of the *Comment*, in the tables on “Civil & Criminal Trial Days,” was available at that time, or at least none was provided.

In July 2007, performance audit staff, working closely with JMI, asked the Superior Court administrator for data on the amount of judicial time devoted to criminal cases. The documentary evidence that was provided is available in the project work papers (July 3 and 5, 2007). To summarize briefly, the court provided information on the number of judges assigned to the criminal panel each year since 2002. While the court had information on the number of criminal trials, it had no reports on how long each trial lasted or the total number of “trial days,” however that term might be defined. In a written message, the court administrator urged caution in relying on the existing figures because “judges while on civil panel may take criminal trials.”

Thus, while the audit work was being conducted in 2007, data problems prevented JMI from doing a full analysis of the judicial time devoted to criminal matters. The JMI Final Report, at pages 38 and 48, commented on the data deficiencies. Those remarks eventually led the County Council, when enacting the 2008 budget, to request the court to compile a Judicial Bench Activity report.

The *JMI Remarks* say that the data in the court’s *Comment* on criminal and civil trial days “must be viewed with considerable skepticism” (p. 3). We understand that concern because the figures on pp. 8-10 of the court’s *Comment* are new and unverified. But, before coming to a firm conclusion, we believe the data should be fully examined and analyzed, in order to verify the data and allow assessment of the new interpretation advanced by the court.

It is recommended that Superior Court make available to JMI and performance audit staff the detailed data on judicial time devoted to criminal and civil cases, including the source of the data, the definitions used in coding the data, and the methods used to calculate the statistics presented in the *Comment*.

Analysis of this topic will form a prominent part of the JMI follow-up work later this year under its 2008 contract. The topic is relevant to the felony backlog issues and to possible legislative action by the County Council to increase the number of judicial officers.

Attachment: Performance Audit Memo, September 11, 2007



Pierce County

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September 11, 2007

To: Judge Tom Larkin, Presiding Judge, Pierce County Superior Court
Gerry Horne, Pierce County Prosecuting Attorney
Michael Kawamura, Director, Department of Assigned Counsel
Kevin Stock, Superior Court Clerk
Paul Pastor, Sheriff

From: Matt Temmel, Performance Audit Coordinator 

Re: Draft Report on Felony Case Management

Enclosed is a confidential draft report for internal review only. The topic is the backlog of felony cases pending in Superior Court.

The purpose of the internal review is to identify any problems with the facts, conclusions, or recommendations presented in the draft report. Alan Carlson plans to visit Tacoma on September 25 and 26 to discuss the report with you and/or your key staff members. Meetings will be arranged as soon as possible.

Review procedures will be discussed on September 25 and 26. Besides discussing the draft report at a meeting, I am sure it would be useful to provide your comments in writing. Please send your comments by e-mail to Alan Carlson (alanc@jmijustice.org), with a copy to me (mtemmel@co.pierce.wa.us).

After considering your comments, JMI will make appropriate revisions to the draft report and prepare a report for public presentation to the Performance Audit Committee. The tentative meeting date is October 11, 1:30 or 3:30 p.m. (to be arranged). Please let me know if you have questions or comments. Thank you.

Enclosure

This is a confidential draft report for internal review only. Alan Carlson of JMI will visit Tacoma on September 25 and 26 to discuss the draft report with Superior Court, Prosecuting Attorney, DAC, Corrections, and others.

Follow-up Study of Felony Case Management in Pierce County Superior Court

Final Report and Recommendations

Submitted to:

Pierce County Performance Audit Committee

and

Pierce County Superior Court

September 2007 DRAFT

By

Alan Carlson



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