

CASEFLOW MANAGEMENT AND BACKLOG REDUCTION: AN EXAMINATION OF VERMONT'S SUPERIOR COURT PROGRAM

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I. INTRODUCTION

Due to the steady increase in civil cases, many trial courts are unable to meet the growing demand for court time. When more cases are filed than are settled or decided in a year, a backlog results.¹ Unless the rate of dispositions is increased, the backlog prolongs the time period from filing to disposition as new cases join the queue behind the earlier cases.

Backlogs prevent courts from maintaining up-to-date dockets. Conflicts result as backlogged cases and newly filed cases compete for limited judge time. Courts traditionally hear backlogged cases first because litigants in those cases have waited longer. New cases receive the remaining judge time, which is usually insufficient to meet scheduling demands.

Concerned about delays of up to two years in its civil docket, the Vermont Superior Court² designed a program to reduce the time between filing and disposition to one year. This program was directed at reduction of both backlogged and newly filed cases. Increased judicial productivity through efficient trial scheduling was the key to reducing the backlog. The court increased the number of court days and the number of trials set, and enforced a strict

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1. Pending cases can be divided into "current pending" and "backlogged cases." "Current pending" are cases that have not closed out by settlement, motion, or trial because the time needed for trial preparation has not expired. This core of "current pending" cases is the irreducible minimum case inventory that a court must carry on its docket. "Backlogged cases" are all other pending cases on the docket which have passed the minimum elapsed time needed for trial preparation.

2. VT. STAT. ANN. tit. 4, §§ 113, 114, 437 (Supp. 1984). The Superior Court has exclusive jurisdiction in civil cases involving over \$5,000 and concurrent jurisdiction with the District Court in criminal cases. The Superior Court also has concurrent jurisdiction with the District Court in cases involving over \$200.00 up to \$5,000.00. *Id.*

continuance policy. Once the backlog had been reduced, the docket was kept current by implementing a caseload management system. Caseload management has a proven record of reducing delay.³

The one-judge superior court in Washington County was selected for the pilot project because it is located in the state capital and because it receives 10% of the superior courts' civil caseload, a size considered to be most favorable for the success of the new procedure.⁴ The project began in September 1981. One year later, the three-judge superior court in Chittenden County, with 34% of the superior courts' caseload, adopted a similar backlog reduction and caseload program.

The Vermont program of delay and backlog reduction attracted the interest of the American Bar Association's Action Commission to Reduce Court Costs and Delay. The Action Commission was examining an experimental program in Kentucky which was designed to reduce case delay and litigant costs through a combination of caseload management and procedural simplification.⁵ The Vermont trial court program provided an opportunity to confirm the delay reduction effects of caseload management and to examine the problems faced when these procedures are introduced in courts with sizable backlogs.

This report shows the results of the first year's operation of the Vermont Superior Court backlog reduction and caseload procedure. Section II describes the Vermont Superior Court, its operations, and the backlog reduction and caseload program. Section III looks at the impact of the backlog reduction and caseload program and reports attorneys' reactions to the new procedure. Section IV examines differences in the dynamics between the programs in Washington and Chittenden Counties. A concluding section describes the implementation and effectiveness of the two programs.

3. Friesen, *Cures for Court Congestion*, 23 JUDGES' J. 4 (1984); Connolly & Planet, *Controlling the Caseload - Kentucky Style*, 21 JUDGES J. 8 (1983).

4. S. Martin, *Principles For Caseload Management*, (1983) (unpublished report) (available in Vermont Law School Library).

5. Note, *Economical Litigation: Kentucky's Answer to High Costs and Delay in Civil Litigation*, 71 KY. L. J. 647 (1983); M. Planet, *Reducing Case Delay and the Cost of Civil Litigation: The Kentucky Economical Litigation Project* (1984) (unpublished report); ABA ACTION COMMISSION TO REDUCE COURT COSTS AND DELAY, *ATTACKING LITIGATION COSTS AND DELAY* (1984).

II. DESCRIPTION OF THE VERMONT SUPERIOR COURT AND ITS BACKLOG REDUCTION AND CASEFLOW PROGRAM

The superior court, Vermont's trial court of general jurisdiction, has ten judges who rotate every six months among fourteen court locations. The judges are assigned annually by the Administrative Judge. The assignment system is flexible; judges sitting in less populous counties are routinely assigned on a short-term basis to assist judges presiding in higher volume courts.

Early in the 1980's, as the number of new filings continued to rise in Vermont, the superior court acquired a growing backlog of civil cases. In May, 1981, a team of Vermont judges, court administrators, and clerks attended a workshop on reducing court delay, sponsored by the Institute for Court Management and the National Center for State Courts. Led by Vermont Superior Court Judge Martin, the team developed a backlog reduction and caseflow management program. The specific purpose of the backlog reduction procedure was to dispose of those cases which had been pending for over one year. This reduction in backlog would be achieved through improvements in the use of court time. A current docket would then be maintained by the caseflow management system.

The program was first implemented in Washington County. Just prior to the start of the new procedure, Washington County had 526 civil filings, 466 case dispositions, and a backlog of 587 civil cases.⁶ One year later, the Chittenden County Superior Court implemented a similar program. Prior to the new procedure, that court had an increase in both recent civil filings and the number of pending cases. In 1981, civil filings reached 1,120; civil dispositions during the year were 1,157, and the backlog was 1,853.⁷

A. *Backlog Reduction: Achieving a Current Docket*

Reducing the number of backlogged cases requires increasing a court's capacity to dispose of cases. The Vermont Superior Court judges, reasoning that their productivity was closely linked to scheduling, sought ways to make more efficient use of their court time.

6. S. Martin, *supra* note 4.

7. F. Fee, *Getting on the Fast Track: A Look at Trial Delay Reduction (1984)* (unpublished report) (available in Vermont Law School Library).

First, prior to the introduction of the new procedures, judges scheduled cases for their own term; judges rotating into a court were responsible for scheduling their cases when they arrived. Under the new procedures, the presiding judges set the calendars for the incoming judges. Second, the court, rather than the attorneys, controlled the pace of cases, and the scheduling of trials, conferences and hearings.⁸ Before the new program, attorneys were able to dictate the pace of their own litigation.⁹ Cases were scheduled for trial largely on the motion of counsel. Third, to accommodate the expected increase in demand for judge time, the judges scheduled more matters on a daily basis and made more court days available. Fourth, continuances were granted only in the event of a conflict with another court date, an unexpected illness, or unavailability of a key witness, party or attorney of record.

The goals of the Washington County Superior Court program were to dispose of 80% of all civil cases filed before July, 1981 within one year and to dispose of 80% of all civil cases filed on or after July, 1981 within one year from the date of filing. Jury cases that were expected to take no more than one or two days to try were placed on a docket call in September when cases ready for trial were set for trial. Pretrial conferences were scheduled for more complex jury trials in order to set discovery completion dates and to place the cases on the trial calendar. At the call of the docket, all court cases over two years old were scheduled for hearing beginning in December, 1981. The Administrative Judge assigned a second judge when needed to handle matters that became backed-up on the schedule.

Chittenden County had no individual backlog reduction program; instead, the procedure used simultaneously disposed of backlogged cases and new filings, giving new filings priority. The goal of the Chittenden County Superior Court was to dispose of 80% of all civil cases filed before September, 1982, and 70% of all civil cases filed between September, 1982 and August, 1983, within one year of the start of the new procedure.

8. Ad. Ord. No. 22, VT. STAT. ANN. tit. 12, App. VIII A.O. 22 (1981). See Vr. R. Civ. P. 16.2 and reporter's notes.

9. Prior to 1981, "[t]he only authority for the Court to dismiss an action on its own motion is where the action has been pending two years." *Reynolds v. Clapper*, 132 Vt. 188, 189, 318 A.2d 173, 174 (1974). Now, see Vr. R. Civ. P. 41(b).

B. Caseflow Management: Maintaining a Current Docket

Caseflow management was viewed as critical to maintaining a current docket over an extended period of time because backlogs had partly originated from court rules and practices failing to take advantage of the court's full capacity to handle hearings, conferences, and trials.

Both the Washington and Chittenden County Superior Courts adopted caseflow management procedures premised on the following principles:

- (1) *Early and Continuous Control*. The court takes control of the progress of the case upon its filing and maintains control of the pace of the case through every procedural phase until its disposition.
- (2) *Short Scheduling*. Matters are scheduled in a manner that requires counsel to review the file every two weeks.
- (3) *Reasonable Accommodation*. The court makes every effort to reasonably accommodate the schedules of attorneys as long as doing so does not unduly delay the case.
- (4) *Calendar Integrity*. The court schedules an event expecting that it will happen on time. When a court does not purposely overschedule in the extreme, attorneys begin to share this expectation and become prepared to proceed (or settle) when scheduled.¹⁰

These principles were achieved in the following ways. Pleadings deadlines were monitored by the clerk's office which exerted pressure on counsel to perfect service and file timely answers or defensive motions. After all pleadings were filed in an action, the judge initially held a mandatory early conference and set a date or dates for the filing of pretrial motions and the completion of discovery. If possible a trial date was set. An action could be continued only by order of the court, on the court's motion or on a motion of a party, and a showing of good cause. A discretionary final pretrial conference might be scheduled when discovery was completed.

Although based on the same management principles, several

10. Friesen, *Cures for Court Congestion*, 23 JUDGE'S J. 7 (1984).

differences existed between the caseload programs in the two counties:

(1) Washington County scheduled the early conference right after joinder of issue; in Chittenden County, sixty days after filing, an individual case was reviewed and scheduled for an early conference if joinder had been reached. If there was no joinder, cases were flagged and counsel encouraged to file for default.

(2) Jury and court trials were scheduled for alternate months in Washington County; in Chittenden County three judges scheduled court, jury trials, and motions each month.

(3) At the early conference in Washington County, only court trials were placed on a trailing calendar; Chittenden County scheduled all trials for a date certain.

(4) Washington County scheduled one to four back-up trials for each day on which a court trial was scheduled; Chittenden County did not use the back-up calendar; instead the clerk overscheduled trials.

III. IMPACT OF THE BACKLOG REDUCTION AND CASEFLOW PROGRAM

A. *Backlog Reduction Procedures*

As part of the new procedures the courts maintained steady pressure on attorneys to prepare their cases for trial. As Table I shows, the scheduling changes in Washington County produced a 58% increase in the total number of court proceedings held by the assigned judge. The most significant increases were in conferences (163%), the case management device used to move cases along to trial, and in court and jury trials (212 and 70% respectively).

Table I

Comparison of Total Number of Court Matters* per Year Held in Washington County Superior Court in 1980-81 and 1982-83

<u>Court Events</u>	<u>Pre-Backlog Reduction</u>	<u>Post-Backlog Reduction</u>
Jury Trials	40	68
Court Trials	49	153
Domestic Relations Trials	256	225
Jury Drawings	27	64
Conferences	202	531
Hearings on Motions	513	677
Totals	1,087	1,718

* The proceedings held during the spring terms of each of the two years were added together for years' totals.

This increased productivity was largely due to scheduling more court days per year. Table II depicts the ratio of court and no-court days for the spring terms before and after the backlog reduction program. Total court days for the presiding judge increased by 16% with a corresponding decrease in no-court days. Assistance from visiting judges did not change from the previous two years.

Table II

Comparison of Court and No-Court Days* per Washington County Term for Spring 1980-81 and 1982-83**

	<u>Pre-Backlog Reduction</u>		<u>Backlog Reduction</u>	
	<u>Court Held</u>	<u>No-Court Held</u>	<u>Court Held</u>	<u>No-Court Held</u>
Presiding Judge	135 (60%)	91 (40%)	185 (76%)	60 (24%)
Visiting Judge	27	—	28	—
Totals	162	91	213	60

* Not counted were weekends and state or national holidays. Half-day court sessions were consolidated and added to full court days. Differences in totals were due to the way the weekends fell.

** The spring term starts on the first Monday of March and ends on the last Friday of the last week in August.

Matters set per day (14.5 in 1980-81 versus 15.2 in 1982-83) and the ratio of short matters (hearings and conferences) to trial matters increased slightly (66% versus 70%). At the same time the

continuance rate declined sharply in all but the court trials which were scheduled behind jury and some court trials. Thus, while the court set about the same number and kind of matters per court day, the risk of wasted court time due to continuances was substantially reduced and the court day was filled with more proceedings.

Judges are concerned that overscheduling will leave them with insufficient chamber time to work on findings and opinions. The two judges in the backlog reduction program, however, did not report any problems in this regard. Cases settled prior to the scheduled court date freed the Washington County judge from court work for the equivalent of one full day per week.¹¹ Moreover, the number of no-court days used for judicial conferences, administrative meetings, and bar and bench committees is still significant (twenty-five) under the backlog reduction; these days usually contain some free time for chambers work.

Supplying more judge time to the court calendar decreased the backlog of civil cases in Washington County. The backlog went from 587 civil cases prior to the introduction of the new procedures to 389 cases one year after the program's implementation, a 34% reduction.¹²

Chittenden County dramatically decreased its backlog from a high of 1,853 cases in 1981 to 736 in 1984.¹³ This represents a reduction of 60%. Effective scheduling was a key to productivity, as the definite discovery completion and trial dates led to an increase in settlements.¹⁴

B. *Caseflow Procedures in Washington and Chittenden Counties*

To assess the impact of the caseflow program on delay reduction, data from cases disposed prior to the new procedure and cases after the new procedure were compared, measuring the time

11. Time study by J. Romano (Washington County Superior Court Clerk). The presiding judge was scheduled for full court days over a one month period. Court chambers time was measured and the results showed that over 20% of the court time originally scheduled was freed up by settlement or withdrawal.

12. S. Martin, *supra* note 4.

13. F. Fee, *supra* note 7.

14. Morgan, *Delay Reduction Program Enhanced by Computer Technology*, 8 *Jur. Sys. J.* 370 (1983).

between major events, the volume of procedural activity, and trial calendar events.¹⁵ This examination reveals that more efficient scheduling and a shorter time between pleadings, discovery, and trial reduced overall case processing time.

1. Delay Reduction

Cases were disposed of, on the average, over ten months sooner under the new procedure (five and one-half months versus fifteen), and the percentage of cases pending over one year dropped from 49% to 12%. Moreover, as shown in Table III, reductions occurred at each major phase of litigation. In cases subject to the new procedures, the pleadings phase (the average time from filing of the complaint to first answer) was shortened by one month. The discovery phase (the average time between the filing of the first and last discovery event) was shortened by over five months. As a result of this procedure, the time between the completion of discovery and settlement or the start of trial was reduced by four and one-half months.

Table III

Comparison of Elapsed Time of Old and New Dockets at Major Intervals
Washington and Chittenden Counties Combined
(Average in Days)

	<u>Old Program</u>	<u>New Program</u>
Pleadings	76.8	45.8
Discovery	267.1	104.6
Pretrial*	295.9	160.0
Average Total		
Case Life**	458.7	164.4

* The pretrial phase includes the elapsed time from last discovery to disposition for cases that were not tried and the elapsed time from the last discovery date to trial for cases which were disposed of after the first witness was called.

15. The analysis of procedural activity was based on data collected from case files and docket sheets. A total of 203 cases, subject to the caseflow procedures, were examined (98 cases from Chittenden County and 105 cases from Washington County). In addition, a retrospective sample of 162 old program cases filed in 1977 were selected to determine the impact of the new procedure. Both samples were drawn from cases filed in September, October, and November of either 1977 or 1982. The old program sample was made up of 88 Chittenden County cases and 74 cases from Washington County.

** At each stage of the process, cases dropped from the court docket. Thus, the duration listed under the categories of pleadings, discovery, pretrial, and trial represent the average length of time for cases to go through that particular stage. As a result, the figures on both sides will not add up to the total average case time.

2. Procedural Activity

The effect of caseflow management on the volume of procedural activity in civil cases was an important concern. Cases subject to the new procedure did not exhibit a decrease in procedural activity; in fact, procedural activity increased slightly. Old program cases averaged 0.79 discovery filings per case, while caseflow management cases averaged 1.29 discovery filings per case. This increase may have been the result of the greater percentage of caseflow management cases which survived discovery in comparison with old program cases.¹⁶ Both old program and new program cases which survived to the pretrial stage exhibited an increase in discovery filings. The early conference, which is the primary judicial control mechanism of the new program, resulted in an average of over 50% more conferences per case in comparison to old program cases. The number of hearings on motions per case was approximately the same in both groups.

The new program also altered the disposition dynamics of litigation because new program cases settled at a later stage in the litigation process than old program cases. Table IV shows that over 40% of the cases in the caseflow program survived discovery as opposed to only 10% under the old procedures. It appears that the faster schedule resulted in attorneys completing all discovery before considering settlement.¹⁷

16. The increase in discovery may be the result of a higher percentage of tort cases in the sample of caseflow cases. Tort cases exhibited more discovery than contract cases. The analysis of data in this report is based on comparisons between the new procedure and old program cases. The comparison of case types in the two groups shows more tort than contract cases in new procedure cases, 45% tort and 37% contract. Old program cases consist of 47% contract cases and 30% tort cases. The mean amount in controversy in old program cases was \$33,294 and \$27,235 for new procedure cases. Both the old program and new procedure cases averaged two pleadings per case.

17. Although attorneys offered no explanation for their tendency to complete discovery prior to disposition in new program cases, one explanation may be that attorneys view their time investment as irreducible. Cases subject to the new procedure require the same preparation time as old program cases. The result of the abbreviated time from filing to disposition is that cases settle at a later procedural stage.

Finally, there was an increase in the trial rate. Nine percent of the cases in the new program were tried as compared to 3% under the old procedures. This link between an increasing trial rate and shorter case life has been noted in other jurisdictions.¹⁸ This slight increase in trial rate suggests that litigants, when not faced with lengthy trial delays, are less inclined to settle. Claimants in financial straits may be more likely to settle early in a case (at a bargain to the defendant) when the trial date is some time away.¹⁹

Table IV

Comparison of Survival Characteristics for New and Old Program Cases*
Washington and Chittenden Counties Combined
(Percent)

Docket	All Cases Filed	Percent Starting Not Sur- viving	Percent Starting Not Sur- viving	Percent Starting Not Sur- viving Pre-	Percent Tried(d)
		<u>Pleading(a)</u>	<u>Discovery(b)</u>	<u>trial(c)</u>	
New Program	100%	49.2	10.3	31.4	9.2
Old Program	100%	46.3	43.2	7.4	3.1

* Open, stayed and transferred cases not included.

(a) Cases starting not surviving pleadings—no answer filed.

(b) Cases starting not surviving discovery—in old program cases no trial date set; in new cases, conference without discovery completion dates or settled prior to discovery completion dates.

(c) Cases starting not surviving pretrial—trial date set, no first trial date; after discovery cut off date, before trial.

(d) After first witness called.

C. Attorney Reaction to the Caseflow Program

Ninety attorneys who handled cases subject to the new procedure in both counties answered questions concerning the time and

18. See L. SIPES, *MANAGING TO REDUCE DELAY* (Williamsburg, Va.: Nat'l Ctr. for State Courts 1980); P. CONNOLLY, *JUDICIAL CONTROLS AND THE CIVIL LITIGATION PROCESS: DISCOVERY* (Washington, D.C.: Federal Judicial Ctr. 1978).

19. Connolly & Smith, *The Litigant's Perspective on Delay: Waiting for the Dough*, 8 JUST. SYS. J. 271 (1983). This article explores the consequences of the pace of litigation in the context of the delay reduction program undertaken in the Vermont Superior Court.

cost implications of the procedures.²⁰

1. Case Preparation

According to most of the attorneys interviewed, the new procedure had no negative impact on their ability to investigate, answer, discover, or prepare their cases for trial. It was anticipated that plaintiffs' attorneys might delay the filing of cases to avoid strict discovery deadlines. This was not the case; 90% of the plaintiffs' attorneys responded that their filing date was unaffected by the new procedure. Ninety-one percent of the defense attorneys believed that even with the abbreviated time schedule, the time to answer the complaint was sufficient. In addition, there were few other changes in attorney practice during the prefiling stage. For example, parties did not contact or negotiate with one another any earlier.

According to over half the attorneys, the early conference was useful in identifying discovery issues and potential problems. Of the attorneys who remarked on the usefulness of the early conference, 68% said that it enabled them to limit superfluous discussion and to better focus on the issues of the case. Discovery time limits set at the early conference did not alter the content or composition of discovery, according to 84% of the attorneys. In both counties, attorneys continued to follow their usual informal procedure of exchanging discovery material.

Almost 90% of the attorneys reported that the new procedure did not affect their ability to prepare cases for trial. Of the attorneys who believed the procedure did affect their case preparation, half said they had to rush to complete their work and that the preparation time was insufficient. The remainder remarked that the time constraints caused them to become better prepared, and that, as a result of the early conference, their preparation for trial was easier and more efficient.

20. Both plaintiff and defense attorneys were interviewed. From the caseflow procedure sample of 203 cases, 90 attorneys representing 63 cases were interviewed. These cases were chosen based on the level of procedural activity, and therefore, they represented the greatest exposure to the procedure. The attorney questionnaire contained open and closed-ended questions. Typically the question format was on a Likert scale with options ranging from agree strongly to disagree strongly. Attorneys were questioned both about a specific case or cases and the new procedures in general.

2. *Time Savings*

The caseflow program in Vermont did not result in a reduction in procedural activity. In fact, the program resulted in a slight increase in activity. This is confirmed by the two-thirds of the attorneys who reported no time savings as a result of the new program. Almost 80% of the attorneys reported no change in the amount of time spent on discovery or in the number of discovery requests filed.

About one-third of the attorneys reported that the new procedures resulted in time saving. Most reported saving time during discovery. According to these attorneys, the time saved was the result of fewer discovery filings and fewer deposition reschedulings. Other areas of time saving included settlement negotiations and trial preparation.

It was anticipated that the additional time attorneys spent preparing for and attending the mandatory early conference would be recovered through reductions in time spent in other areas of case preparation, such as discovery or settlement negotiations. The attorney response was divided. One-half believed the time they invested was recouped; the other half said the time they spent preparing for and attending the conference was not recovered.

3. *Cost Savings*

Of particular interest to the Action Commission was the relationship between attorney time and the cost of litigation. Because time savings were reported by only a minority of attorneys, significant cost savings were not expected. When asked if the total fee charged was any different from what it would have been if the case had been handled prior to the new procedure, 68% of the attorneys responded that there was no difference in their fee. Seventeen percent of the attorneys charged more and 15% charged less as a result of the procedure.

The type of fee arrangement affects the ability of attorneys to pass on cost savings to clients. An hourly fee arrangement, in contrast to a contingent fee arrangement, is the most conducive to passing the cost savings on to the client. In the cases sampled, 67% of all the attorneys charged on an hourly basis, while 18% charged on a contingent fee basis. The remaining attorneys worked on a salary, pro bono, or mixed fee arrangement.

4. Case Disposition

Another objective of the evaluation was to determine the impact of the abbreviated time frame on settlement. Did attorneys feel forced to settle or to accept a settlement less than the value of the case? The overwhelming response was "no." Virtually all of the attorneys believed that the new procedure had no effect on the method of disposition or on the settlement amount. The procedure did affect when settlement occurred, however, and most attorneys agreed that the procedure advanced the date of settlement by "speeding up" the entire litigation process.

5. Caseload Management

It was expected that attorneys might alter their litigation or business practices to meet the abbreviated time frames. This was not the case. Most attorneys reported their standard litigation and business practices were not changed. Those who did make adjustments said they were more "diligent" and "efficient" and apt to "stay on top" of cases. Some attorneys also reported that they screened cases more carefully, and that, in rare instances, they took fewer cases in order to keep up with the abbreviated time frame.

IV. INTERACTION BETWEEN BACKLOG REDUCTION AND CASEFLOW MANAGEMENT

The Vermont judiciary recognized the need to address the accumulation of civil cases pending in the trial court while maintaining a current docket. The Washington County Superior Court demonstrated this point when it instituted both a backlog reduction and a caseload program.

Priority conflicts arose in that court when new cases and backlogged cases were both ready for trial dates. The court believed that unless new cases were tried within a one year maximum, the attorneys would lose confidence in the court's ability to try ready cases. On the other hand, litigants in long pending cases had a more critical need for immediate resolution. The result was that the presiding Washington County judge suspended the new provisions until the backlog had been sufficiently reduced so that new cases could be tried within six months without displacing older cases.

The Chittenden County Superior Court took the opposite approach. Both backlog reduction and caseflow programs were instituted together, but the new cases received priority over backlogged cases when ready for trial. The Chittenden court reasoned that its backlog was so substantial that interest in the new program might diminish by the time the backlog had been erased. Moreover, the court reasoned that a "crash" program would transform attorney practices more rapidly than a transitional program, and the backlogged cases would derive further benefits from the stricter continuance and scheduling policies. Finally, the court estimated that due to its increased productivity it could handle all new cases and some of the backlog, thus ultimately eliminating the backlog.

A significant difference in the case processing pace existed between the two counties. Table V demonstrates that cases moved remarkably evenly through pleadings and discovery, but Chittenden County cases were tried or settled two months sooner.

Table V

Comparison of Elapsed Times in Major Intervals of Washington and Chittenden Caseflow Procedure Dockets
(Average in Days)

	<u>Chittenden</u>	<u>Washington</u>
Pleadings	47.9	43.7
Discovery	109.9	99.2
Pretrial*	57.8	111.3
Average Total Case Life**	152.3	176.4

* The pretrial phase measures the elapsed time from last discovery to disposition for cases that were not tried and the elapsed time from the last discovery date to trial for cases which were disposed of after the first witness was called for trial.

** At each stage of the process, cases dropped from the court docket. Thus, the duration listed under the categories of pleadings, discovery, pretrial, and trial represent the average length of time for cases to go through that particular stage. As a result, the figures on both sides will not add up to the total average case time.

The Chittenden County Superior Court saved nearly two months time by its tight scheduling of trials and less tolerant attitude towards continuances. The court was able to schedule firm trial dates at the discovery conference when attorney conflicts would be rare because it did not give backlogged cases priority. On

the other hand, the judges assigned to Washington County gave backlogged cases priority over new filings competing for their time.

The evidence indicates that a court with a backlog can achieve a current docket more quickly by using the Chittenden County approach. First, because attorneys find it easier and more economical to treat all cases in the same way, they appear to handle backlogged cases under the new practice procedures as well, using tickler systems and motions to compel timely compliance as ways to move cases at a faster pace.²¹

Second, the new commitment to maintain a current docket may also have an impact on how judges deal with the backlogged cases. Under the new program, judges may be less tolerant of an attorney who fails to answer interrogatories in a timely fashion, or who seeks to set a trial date far into the future.

V. CONCLUSION

The concept of adopting a caseflow program originated with a multi-discipline team which worked together in designing the program that ultimately was implemented in Washington and Chittenden Counties. From its inception in Washington County as a pilot project the program was given broad support. To maintain continuity, the Administrative Judge helped by assigning Judge Martin and then Judge Morse to the Washington County docket for one year each, rather than the usual six month term. The Vermont Supreme Court supported the program and issued an administrative order to facilitate the improved scheduling control.²² The local bar cooperated by sponsoring a meeting at the end of the program's first year at which the court advised the bar on status and future plans. The court clerks designed the scheduling systems necessary to implement the program and the assistant judges cooperated by budgeting for additional clerical help, facilities, and equipment. In short, the backlog reduction and caseflow procedure succeeded as a result of a team effort.

As valuable as the Vermont experience has been, there remains room for improvement. Although the Vermont caseflow pro-

21. Some attorneys in Chittenden County (78% mostly representing plaintiffs) voiced concern about the newer filings taking priority over pending cases. It is these same attorneys, however, who often failed to press for a faster pace when their cases were first filed.

22. See *supra* note 8.

gram reduces the delay in case processing time, the procedures do not appear to affect litigation costs. The assumption that reducing delay would reduce the volume of activity is not supported by the results of the Commission's evaluation of the Vermont procedures. Reduction of costs might be accomplished by procedural simplifications. Case management combined with procedural simplification has been effective in other courts.²³

Another area for possible improvement is the early conference. The mandatory early conference in its present form may not be an efficient use of judge or attorney time. As previously mentioned, 40% of the attorneys felt that the time they spent preparing for and attending the conference was not recovered by later time savings. A more efficient use of the early conference could be to limit both the scope and the timing of pretrial preparation. More specifically, the court could use the early conference not only to set discovery and motion deadlines, but also to limit the exchange of discovery.

In an era of limited resources, courts cannot expect to add personnel to solve the problem of delay. Instead, individual courts must manage existing resources to make case processing as efficient as possible.²⁴ The Vermont Superior Court program has demonstrated that backlog and delay reduction can be achieved by increasing court efficiency and productivity. The new procedure warrants consideration by other trial courts interested in reducing civil case delay.

23. M. Planet, *supra* note 5.

24. Lawson & Gletne, *Cutback Management In the Judicial Branch: Controlling Costs Without Courting Disaster*, 7 JUST. SVS. J. 45 (1982).

