

THE COURT ADMINISTRATOR'S PERSPECTIVE: PERFORMANCE MEASUREMENT—A SUCCESS STORY IN NEW JERSEY*

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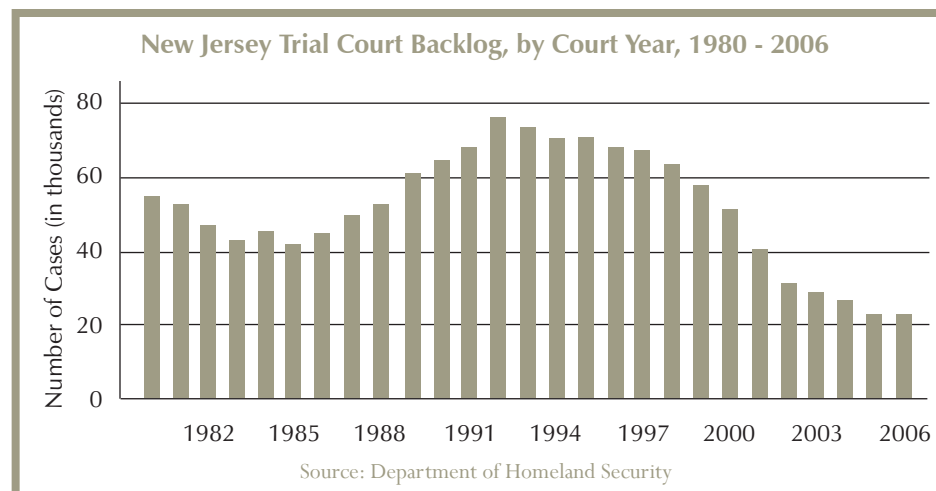
Performance measurement is an important tool for reducing case backlogs and improving service to the public. States can learn much from the experience of New Jersey and its successful use of statewide data to improve court performance.

The late Jack Palance, playing a grizzled old ranch foreman in the movie *City Slickers* about a trio of New Yorkers on a western cattle-drive adventure, told Billy Crystal's character that the secret to success in life was "one thing." Unfortunately, Curly died before he ever told us what that "one thing" was. New Jersey seems to have discovered the answer, at least insofar as it applies to the use of performance measurement to improve trial court performance statewide.

As interest in performance measurement in the courts grows,¹ it is instructive to look to the experience of the state with the longest history of using court data to improve the performance of the courts in serving the public. That state is New Jersey, and its history of collecting and using statewide statistical data goes back to the amendment of the state constitution to create a unified judicial branch of government in 1947.² Over that long period of almost 60 years, the state has collected data on a wide range of measures.

New Jersey has had remarkable success since 1999 in focusing the attention of judges and court administrators on a single measure—the number of cases in backlog status, defined in New Jersey as the number of cases older than the applicable time-to-disposition standard. The number of backlog cases has fallen almost every year during the past 14 years—from 76,002 cases in 1992 to 22,765 cases in 2006—a reduction of over 50,000 cases and 70 percent of the backlog. However, the most dramatic reduction took place from 1999 to 2002—immediately after the Judicial Council adopted backlog as its primary performance measure. Over that three-year period, the case backlog in New Jersey dropped by

26,439 cases, or 46 percent of the backlog. Although it is clear that there will be some irreducible number of backlogged cases, backlog statistics have continued to fall each year since then.



The figure on the following page shows the extent of backlog reduction by each case type over the past ten years.

What has New Jersey done to create and maintain this multiyear record of continuous improvement? How has the state's use of performance measures changed over the past 60 years? What are the lessons for the rest of us from New Jersey's experience? Can other states and courts hope to match its success? What is the "one thing" responsible for its success?

New Jersey has a centralized court structure. There are general-jurisdiction trial courts in 21 counties, organized for administrative purposes into 15 "vicinages." There are also 500+ limited-jurisdiction municipal courts. All of the state's courts are supervised by the New Jersey Supreme Court and its Administrative Director of the Courts located in the state capital in Trenton. To a greater extent than in most other states, New Jersey's trial courts have always worked as part of a statewide system rather than as separate local entities.

		Backlog Change From June 1996 - June 2006		
		June 1996	June 2006	% Change
Criminal Division	Criminal Post-Indictment	6,075	4,713	-22%
	Municipal Appeals	407	181	-56%
	Post-Conviction Relief	139	673	384%
Civil Division	General Equity	1,217	337	-72%
	Civil	41,769	14,215	-66%
	Special Civil	1,936	1,020	-47%
	Probate	217	121	-44%
Family Division	Dissolution	3,793	601	-84%
	Juvenile Delinquency	5,696	229	-96%
	Non-Dissolution	3,923	350	-91%
	Domestic Violence	1,362	41	-97%
	Abuse/Neglect	246	47	-81%
	Child Placement/Review		73	
	Juvenile/Family Crisis	139	2	-99%
	Kinship		10	
	Termination of Parental Rights	179	114	-36%
	Criminal/Quasi-Criminal	731	38	-95%
Total		67,829	22,765	-66%

New Jersey's performance-measurement process relies on three fundamental infrastructure components developed over a period of years—a statewide data-collection process, a highly differentiated set of time-to-disposition guidelines, and an ongoing archive of performance-measurement information.

Consistent Statewide Court Data

One example of New Jersey's centralized approach has been the development and implementation of docketing and case-management information systems. The state has eight different automated systems for different case types. But all of them have been developed by the state AOC and implemented in every trial court. Court data are maintained on central mainframe computers in Trenton. This has made the collection and reporting of data much easier in New Jersey than it is in many other states. However, before automation, New Jersey maintained statewide statistics through local court recordkeeping systems that used index cards. The lesson: statewide automated information systems facilitate consistent data collection, but they are neither a prerequisite

for good statewide data, nor are they sufficient to accomplish that purpose. Unless all courts use common automated systems in the same way—using the same data-entry codes for the same events—statewide data will not be consistent and comparable.

Even with its statewide automated applications, New Jersey has to pay continuing attention to how each court enters data into the statewide systems. Consistency in data has also been the product of uniform, statewide case-management procedures. In 1995 New Jersey Chief Justice Deborah T. Poritz began to develop “best practices” standards for each general case category. Judges, staff, and the bar engage in an ongoing dialogue about which practices and procedures work best to resolve cases fairly and efficiently. The results of those deliberations are set forth in “best practices” standards to which all courts are expected to conform.

The true prerequisite for consistent statewide data is the will to create and enforce uniform reporting processes statewide.

Time-to-Disposition Guidelines

The New Jersey judiciary has established time-to-disposition guidelines for 22 different case types (see figure below).

Backlog Guidelines - June 2006	
Criminal Pre-Indictment	2 months
Criminal Post-Indictment	4 months
Post Conviction Relief	3 months
Municipal Appeals	3 months
General Equity	12 months
Civil - Track 1	12 months
Civil - Track 2	18 months
Civil - Track 3	24 months
Civil - Track 4	24 months
Special Civil	2 months for small claims & tenancy and 4 months for all other cases
Probate	12 months
Dissolution (New)	12 months
Dissolution (reopened)	6 months
Juvenile Delinquency	3 months
Non-Dissolution	3 months
Domestic Violence	1 month
Abuse/Neglect	4 months to fact-finding for out-of-home placement and 6 months to fact-finding for in-home placement
Adoption *	no guideline
Child Placement Review	12 months to permanency hearings
Juvenile/Family Crisis	1 month
Termination of Parental Rights	6 months
Criminal/Quasi-Criminal/Other Matters	3 months
* New Adoption guidelines Pending Implementation Are:	
Adoption Agency	2 months
Stepparent	4 months
Private Placement	12 months

The state regularly revisits these case-disposition targets. Adoption time-to-disposition guidelines have recently been established but not yet implemented (see figure on previous page). A six-month time standard was adopted this year for kinship cases. The civil-case guidelines were modified a few years ago when four-track differentiated case management was adopted for civil cases. Before that date, the 12-month standard had been applied to all civil cases. The goal for resolving marriage-dissolution cases was modified to distinguish between pre- and post-judgment cases—setting a shorter goal for the latter than for the former.

The time-to-disposition guidelines are a critically important component of New Jersey’s backlog-performance-measurement process. The guidelines define the

concept of “backlog.” Any case older than the applicable time-to-disposition guideline is considered to be “in backlog.” Cases that have not yet reached the guideline age are considered to be “in inventory.” The active pending caseload includes both “inventory” and “backlog” cases.

Performance Measures

While the clear focus in recent years has been on backlog rates, New Jersey has established, and reports monthly on, a large number of performance measures. Many of the measures are reported separately for each case type. Sixteen of the measures are described in the figure below.

New Jersey Performance Measures	
Measure	Description
Newly Added Cases	This is New Jersey’s measure of newly filed cases. It includes not only new filings, but also reopened and reactivated cases and cases transferred from other counties. New Jersey applies a very narrow standard to “inactive” cases. Unlike some other states that identify a large number of reasons for defining a case as “out of the court’s control,” New Jersey limits the inactive category to cases in which the court system no longer has the ability to effect their forward movement, either directly or indirectly. Circumstances that may lead to case inactivation include: 1) a necessary party is in the military; 2) civil or special civil-forfeiture actions cannot proceed because the defendant is a fugitive; 3) the defendant is a criminal or juvenile fugitive for more than 30 days; 4) the court finds a criminal or juvenile defendant lacks competence to stand trial; 5) the carrier providing insurance to a party in the litigation is in rehabilitation or liquidation; and 6) a party in a dissolution case is in bankruptcy.
Newly Disposed Cases	New, reopened, or reactivated cases that have been disposed within the past month. New Jersey considers a criminal case to be disposed when guilt or innocence is established, not when the sentence is imposed.
Clearance Rate	Newly disposed cases divided by newly added cases, expressed as a percentage.
Median Time to Disposition	The number of calendar days from filing to disposition for the fastest one half of the cases of a particular case type. New Jersey may be unique in measuring the time of filing for transferred cases as the date of filing in the original, rather than the transferee, court. New Jersey also measures the time of filing from the original filing date in civil cases dismissed without prejudice and refiled.
Median Time to Trial for Civil and Criminal Cases	The number of calendar days from filing to commencement of trial for the fastest one half of civil and criminal cases that are completed by trial.
Pending Case Inventory	Number of pending cases (including reopened and reactivated cases) that have not yet reached their time-disposition-guideline age.
Pending Case Backlog	Number of pending cases (including reopened and reactivated cases) that exceed their time-disposition-guideline age.
Pending Very Old Backlog	A subcategory of backlog cases that are typically two to three times as old as the applicable time-to-disposition guideline.
Active Pending Caseload	Total of inventory and backlog cases.
Backlog Percent	Number of backlog cases divided by total active pending caseload, expressed as a percentage.
Backlog Per 100 Filings	Number of backlog cases divided by the average number of newly added cases per month for the previous reporting year.
Very Old Backlog Percent	Number of very old backlog cases divided by total active pending caseload, expressed as a percentage.
Very Old Backlog Per 100 Filings	Number of very old backlog cases divided by the average number of newly added cases per month for the previous reporting year.
Trials Per Judge	Number of trials completed per judge per year.
Selected Dispositions Per Judge	Number of cases decided by trial, settlement, summary judgment, and other judge-driven resolutions per judge per year.
Total Dispositions Per Person	Number of newly disposed cases divided by the number of judges and staff members assigned to a major case type.

Tradeoffs Between and Among Performance Measures

These sixteen measures do not necessarily produce congruent results. That is, positive trends on one measure may not predict positive trends on a different measure. The most obvious example is reduction of very old backlog and median time to disposition. A court that is aggressively reducing its very old backlog will almost necessarily have a deteriorating trend in its median time to disposition. Because it will be disposing of more old cases, the median time to disposition will increase. Clearance rates can be improved in a way that reduces the median time to disposition but does not affect backlog—if the court’s case-management efforts focus on speedier disposition of simple cases, the former two measures will improve, but the backlog measure will probably deteriorate.

New Jersey’s Backlog Measure

Richard J. Williams, appointed administrative director of the courts in 1999, had previously served for 15 years as assignment judge in Atlantic and Cape May counties. He was very aware of the tradeoffs among measures and the tendency of assignment judges to emphasize whatever measures were most positive for the counties they supervise. He proposed to the chief justice and the Judicial Council (composed of the chief justice, administrative director, deputy director, the state’s 15 assignment judges, and the chairs of the four presiding-judges conferences) to focus the state judiciary’s attention primarily on a single court-performance standard—backlog. As noted above, a case is in “backlog” in New Jersey if it is older than the time-to-disposition standard for that case type.

Judge Williams argued that backlog was the most critical measure of the court system’s service to the public. The public’s most consistent criticism of the courts is delay. The best measure of delay is the number of cases that are older than the court’s time-to-disposition goal for that case type. And, as noted above, New Jersey has a highly differentiated set of disposition-time guidelines that support a backlog measure defined in this way. (If a state’s time-to-disposition goals merely address “civil” and “criminal” cases, a New Jersey-style “backlog” measure will be much less useful, in that it will treat small-claims cases according to the same standard as products-liability class actions.)

Further, one can make the case that a court that minimizes its backlog will also, once its backlog is low, maximize its performance on the other measures. Once old cases are at a minimum number, a court will have a low median time to disposition. It will also have a clearance rate at or above 100 percent. Its time-to-trial, trial-per-judge, and selected disposition-per-judge data will also have to be positive. Viewed from this perspective, backlog reduction is an “elegant” measure—one that, if improved, will in turn lead to improvement in other measures.

The court has refined its backlog measure over time. The monthly management reports contain the numbers of backlogged cases, by case type, for each county. But the state has needed a way of comparing the courts with each other. The measure originally created for this purpose was backlog percent—the number of backlog cases as a percentage of total pending cases. That measure turned out not to be a fair and effective comparator for the 21 counties. The courts with the largest pending caseloads “looked better” than those with smaller pending caseloads. To address this problem, the AOC devised a more sophisticated measure—backlog-per-100 average monthly filings (based on filings for the last full reporting year). In effect, this measure relates the absolute number of cases in backlog to the volume of cases coming in, rather than to the number of cases pending.

One weakness of the backlog measure is that it ignores the age of really old cases. The only factor of importance to the measure is whether a case’s age is more or less than the time-to-disposition guidelines age. To address this issue, the Judicial Council developed the “very old backlog” measure. Although it too is relatively simplistic—setting a single measurement point to distinguish “very old” cases from “old” cases—it nonetheless provides a way to distinguish counties with and without “very old” cases (see figure on following page).

New Jersey’s Use of Its Backlog Measures

Merely calculating and reporting a backlog measure would not necessarily have produced the courts’ dramatic improvement. The New Jersey judiciary takes its backlog performance measure very seriously.

- The Judicial Council receives monthly court-management reports showing backlog measures for each case type for every county for the current month and comparisons to the prior month and year. Assignment judges and presiding-judge

Example of the Use of “Very Old Backlog” Measures

In January, County A had 250 dissolution cases between one year and two years old; it had no cases older than two years.

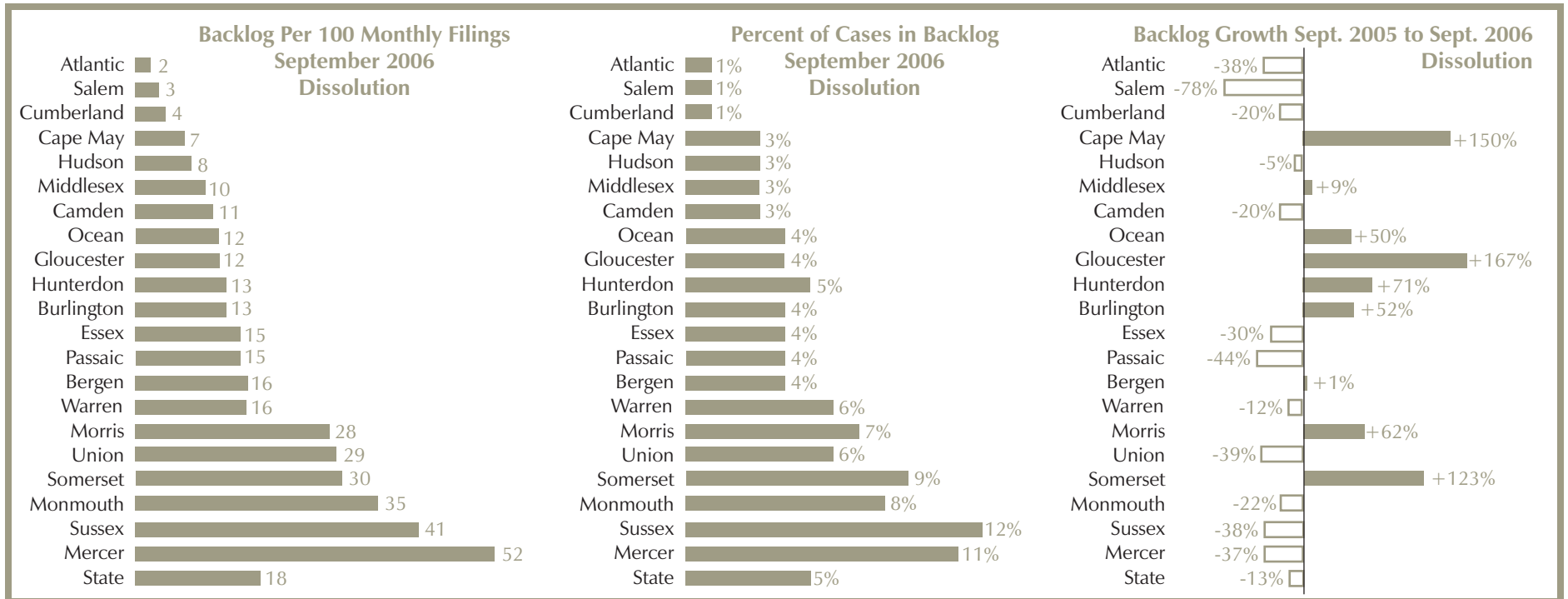
County B also had 250 dissolution cases older than one year; however, 125 of its cases were older than two years and 50 of them were older than four years.

Assuming that both counties had the same total pending caseload (1,000 cases) and annual filings (1,200 or 100 average filings per month), both the backlog percent (25%) and backlog-per-100 average monthly filings measures (250) are the same for County A and County B.

However, County A’s “very old backlog” measures are both 0, while County B has a very old backlog percentage of 12.5% and a very old backlog-per-100 average monthly filings of 125. County A’s performance is seen to be much better than County B’s performance. Note that County B’s very old backlog-per-100 average monthly filings would be the same if it had 0, 50, or 125 cases older than four years, because the only age that is relevant is whether a case is older or younger than two years.

conference chairs receive reports the week before their meeting and must discuss the performance of the courts for which they are responsible, because the chief justice places this matter at the top of the Judicial Council agenda.

- The Administrative Council consists of the trial court administrators for the fifteen vicinages and the six top managers of the AOC. This group receives the backlog data in a slightly different format—one of their own choosing. The Administrative Council, like the Judicial Council, goes over the current backlog data at each monthly meeting.
- The AOC publishes its monthly backlog data on the judicial branch Web site. It produces press releases of significant backlog changes. Backlog reduction has been a theme of every recent judicial branch annual report.



- The Management and Operations Committee of the Judicial Council asks counties ranking in the worst third of the state on backlog measures for particular case types to prepare an annual Vicinage Improvement Plan. The plan shows the history of the backlogged calendar, detailed plans for improvement, and a discussion of the steps to be taken to implement the plan.
- Each year, “visitation teams” focused on specific case types visit counties and assess the extent to which they are following the best practices adopted by the Judicial Council for that case type. Backlog status is a focus of each visitation team, along with the particular procedures for each case type that the Judicial Council has approved as “best practices.”
- Judgeship needs and staffing models and recommendations do not include a backlog factor. The judicial leadership does not want the existence of backlog to have any positive consequences—such as increased staffing—for any particular court. Staffing allocations are based on filings data rather than backlogs.
- The AOC’s leadership encourages judges and court managers to use caseload data themselves—to feel a sense of ownership and responsibility for it. For example, a variety of reports can be found on the judiciary’s intranet, along with the basic data updated every month. A set of Excel “pivot” tables encourages judges and court managers to array the data in whatever way they want, to drill down to an individual court or case type or month. Every trial court can also access a list of its own backlogged cases, again compiled in a variety of formats. Finally, every county can create its own exception reports—listing cases by recent event, next scheduled event, attorneys, or reasons for adjournments.
- New Jersey has also been creative in developing graphs displaying backlog data in a variety of formats. The graphs on page 97 show not only the current backlog figures, but also the improvement or deterioration over the past year. The administrators can see not only which courts are in the worst shape but whether those courts are getting better or worse. One report uses diamonds to show whether a court is within to top, middle, or lower third of the courts of the state on a particular measure (see figure on page 99).

Lessons Learned

What can the rest of us learn from this New Jersey example? What seem to be the critical components in New Jersey’s success in using performance measurement to accomplish 14 years of consistent statewide reduction in the number of older pending cases? These are the factors that jump out to an outsider:

1. The state’s focus on one performance measure. The focus on backlog has proved to be wise and effective—in its ability to motivate the courts to improve on that measure, in its positive impact on other performance measures, and in the simplicity and clarity of its message to the media and the rest of state government.
2. The state’s continuing refinement of its backlog measure. The discussion above shows the increasing sophistication of New Jersey’s backlog measure—in refining the time-to-disposition guidelines, in moving from the backlog percent measure to the backlog-per-100 average monthly filings measure, and in adding a “very old backlog” measure.
3. The sustained attention given to backlog by the chief justice, the Judicial Council, and the Administrative Council. In this age of chronically short attention spans, when the press and politicians, as well as technology entrepreneurs, are continually looking for the “next great idea,” it is refreshing to see a counterexample in which a state’s judicial leadership has demonstrated the tenacity to remain focused on one key performance indicator since 1999. Judge Philip S. Carchman was named acting administrative director in 2004 and has continued to focus the courts on the importance of backlog reduction and prevention.
4. The availability and consistency of statewide case-management data to produce credible statistics month after month and year after year.
5. The ownership and responsibility that the statewide leaders encourage local judges and managers to take for case-backlog data.
6. New Jersey’s centralized administrative structure. This has undoubtedly contributed to the success of the backlog measure. The New Jersey judicial branch is used to doing things statewide.

Example of Diamond Report Used for Vicinage Improvement Plans
County Profile - Diamond Report
Export
July 2004 - June 2005 and July 2005 - June 2006

	Backlog Per 100 Monthly Filings	Very Old Cases Per 100 Monthly Filings	Total Resolutions Per Person	Selected Resolutios Per FTE Judge	Completed Trials Per FTE Judge	Clearance Percentage	Median Time To Trial Completion								
Criminal															
Pre-Indictment Complaints															
July 2004 - June 2005 County	◆◆◆	39	◆◆◆	14		◆◆ 103.5%									
July 2005 - June 2006 County	◆◆◆	50	◆◆◆	25		◆◆◆ 104.3%									
July 2005 - June 2006 State		102		50		101.2%									
Post-Indictment/Municipal Appeals/P.C. Relief															
July 2004 - June 2005 County	◆◆	114	◆◆	20	◆◆◆	49	◆◆◆	692	◆	9.7	◆◆	100.8%	◆◆	(days)	453
July 2005 - June 2006 County	◆	124	◆	31	◆◆◆	47	◆◆◆	612	◆	8.8	◆	96.8%	◆	540	
July 2005 - June 2006 State		118		22		40		487		11.9		102.3%		445	
Civil															
Equity (Vicinage)															
July 2004 - June 2005 County	◆	99	◆◆◆	0	◆	64			◆◆◆	27.4	◆	101.1%			
July 2005 - June 2006 County	◆◆◆	54	◆◆	6	◆	58			◆◆◆	22.4	◆◆◆	101.1%			
July 2005 - June 2006 State		78		10		66				8.5		98.2%			
Civil															
July 2004 - June 2005 County	◆◆◆	107	◆◆◆	4	◆◆◆	142			◆◆◆	17.6	◆◆◆	159.5%	◆◆◆	(months)	24.11
July 2005 - June 2006 County	◆◆◆	100	◆◆◆	4	◆◆◆	103			◆◆◆	18.4	◆◆◆	108.8%	◆◆◆	23.56	
July 2005 - June 2006 State		164		23		101				17.1		95.6%		27.23	
Special Civil															
July 2004 - June 2005 County	◆◆◆	1	◆◆◆	0	◆◆◆	1,391			◆◆◆	525	◆◆◆	101.3%			
July 2005 - June 2006 County	◆◆◆	1	◆◆◆	0	◆◆◆	1,305			◆◆◆	517	◆◆◆	102.2%			
July 2005 - June 2006 State		2		1		1,213				496		101.1%			
Probate															
July 2004 - June 2005 County	◆◆	11									◆◆◆	106.2%			
July 2005 - June 2006 County	◆	28									◆	97.4%			
July 2005 - June 2006 State		14										99.4%			

◆◆◆ top third of state
◆◆ middle third of state
◆ bottom third of state

New Jersey's experience also suggests that the statewide determination to improve its backlog produced more positive results for the public than the infusion of more judicial resources. In 1992 the chief justice temporarily transferred more than 20 judges from civil to criminal calendars in response to ever-rising numbers of pending criminal cases. The New Jersey state bar reacted by lobbying the legislature to create 36 new judgeships so that the judiciary could maintain currency of its civil as well as criminal calendars. That infusion of resources gave the judicial branch an initial boost in its efforts to reduce the number of older pending cases and helps explain the backlog reduction from 1992 through 1999. Over the next seven years, backlog dropped by 18,293 cases, or 24 percent. However, the most dramatic backlog reductions came in 2000, 2001, and 2002, after the Judicial Council began to focus everyone's attention on the backlog measure. The backlog dropped by 26,439 cases, or 46 percent. Half of the 1992-2006 backlog reduction took place during those three years. The infusion of resources reduced backlog by 2,612 cases per year. The leadership focus on backlog reduction produced a drop of 8,812 cases per year during its first three years—over three times the annual impact of more resources alone.

So, Curly's "one thing" for statewide caseload-management improvement may well turn out to be the backlog-performance measure.

ENDNOTES

*This is an adapted version of "Court Administration: Backlog Performance Measurement—A Success Story in New Jersey," by John Greacen, which was originally published in *Judges' Journal* 46, no. 1 (2007): 42-48.

¹The Conference of State Court Administrators' 2001 white paper on "Effective Judicial Governance and Accountability" (<http://cosca.ncsc.dni.us/WhitePapers/judgovwhitepaper.pdf>) identified the relationship between judicial independence and judicial accountability—courts can best ensure that judges have the necessary independence in deciding individual cases by holding themselves visibly accountable to the public and to the other two branches of government in their overall conduct of the business of the judicial branch. The National Center for State Courts' CourTools project has defined ten core measures for trial courts to use in measuring their performance. A number of trial courts throughout the country are testing those measures. Go to http://www.ncsconline.org/D_Research/CourTools/tcmp_courttools.htm for information on the measures and their use.

²This article would not have been possible without the extensive help provided by Mark Davies of the Quantitative Research Unit of New Jersey's Administrative Office of the Courts and the willingness of the New Jersey state court leadership to have this story told.