The World Bank

PREMnotes

DECEMBER 1999

NUMBER 34

PUBLIC SECTOR

Reducing court delays: Five lessons from the United States

Long delays in processing cases are common in many judicial systems. Although every court system is unique, reformers can look to other countries to help identify problems, suggest new approaches, and highlight potential pitfalls.

How can countries ensure that justice is rendered swiftly?

For almost 50 years judges, lawyers, and policymakers in the United States have experimented with ways to speed the processing of civil and criminal cases. Several lessons have emerged from this effort. Perhaps the most surprising is that a well-conceived delay reduction program can improve the quality of the justice system even if it ultimately has little effect on case processing times.

Delays cannot be legislated away

In the early 1970s the U.S. Congress and several state legislatures enacted laws requiring that criminal cases be resolved quickly. These "speedy trial" acts typically set deadlines for the completion of each stage of the proceedings in a criminal case, from arrest to trial. If a deadline was not met, the case was usually dismissed. Exceptions were made to cover eventualities such as illness, and there was often a catchall exception permitting a deadline to slip "in the interests of justice." Judges were directed to construe these provisions narrowly, however, to ensure that the purpose of the law—adherence to strict time limits for processing cases—was not defeated.

Despite the clear, unambiguous mandates in these laws, few shortened disposition times. This was the case whether a law contained numerous exceptions to deadlines or a few tightly drawn ones. In the United States at least, simply ordering courts to process their caseloads faster proved to be a failure.

Commitment is essential

Why did the speedy trial acts fail to achieve their goal? One clue comes from the few jurisdictions where time limits actually reduced delays. In all these jurisdictions one or more judges were committed to reducing delays and willing to spearhead efforts to do so.

By contrast, in court systems where speedy trial acts failed, they were often enacted over the strong objections of judges, lawyers, and other judicial actors. When the targets of a speedy trial law oppose it, they can always find ways around the law—from liberal invocation of the exceptions permitting waiver of the time limits to creative ways of calculating the time limits that rob them of any impact.

The failure of speedy trial acts illustrates a larger lesson from the U.S. experience with delay reduction programs: no program can succeed without the active participation of those directly involved in administering justice. Courts are governed by a complex set of formal rules and informal practices. Judges, lawyers, and others who work in the court system know these norms far better than any outsider and can use this information advantage to defeat reforms with which they disagree. Bringing judicial insiders into the reform process is thus a cru-

cial step in designing a successful delay reduction program.

Incentives must be addressed

The first U.S. delay reduction programs, introduced after World War II, were premised on the belief that delays were the result of large caseloads thrust on mismanaged, inefficient courts. It was implicitly assumed that judges, lawyers, court clerks, and other judicial personnel were inert actors who would perform whatever tasks they were assigned. Thus solutions were sought in such structural reforms as the introduction of automated systems, changes in procedures, and an increase in the number of judges.

Many successful delay reduction programs have started with the incentives facing judges

But as it became clear that structural reforms were having little effect on disposition times, reformers began to reexamine this assumption. Empirical studies revealed that delays varied enormously across courts with almost identical structures, caseloads, and personnel levels. These studies established that delay was not an external phenomenon thrust on unwilling participants but a consequence of the behavior of judges, lawyers, litigants, and other participants in the judicial system.

Changing behavior requires changing incentives. In the United States many successful delay reduction programs have started with the incentives facing judges. Rewards have been given to judges willing to set firm dates for hearings and trials and otherwise assert control over the pace of litigation. These judges, in turn, have found ways to manipulate the incentives of the attorneys who appear before them—in many cases by fining lawyers who seek unjustified continuances or otherwise try to delay the resolution of a case.

Solid empirical analysis is crucial

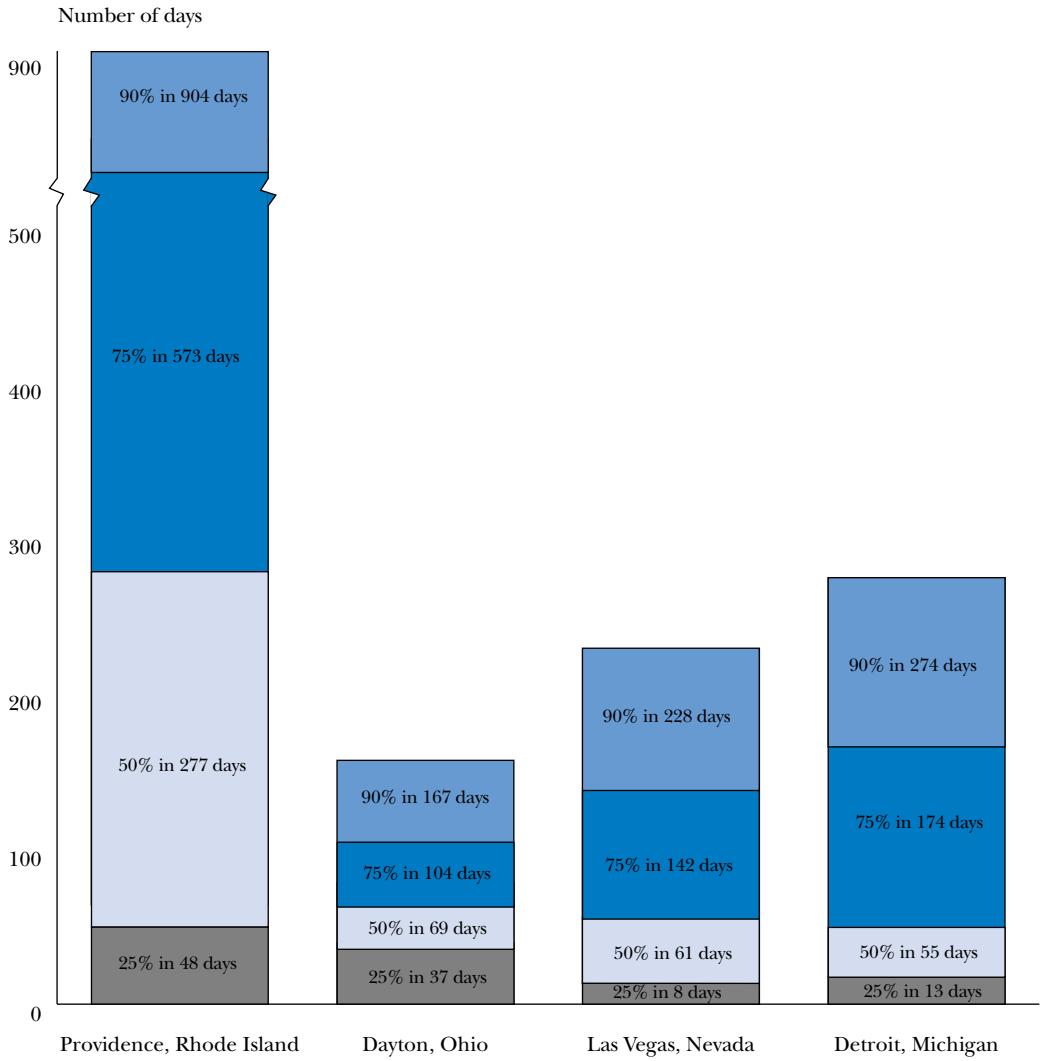
Some delay reduction programs have failed because they were based on faulty analysis. Consider a 1990 law directing the U.S. federal judiciary to reduce the delays and costs associated with bringing civil actions. The act required federal trial courts to invest enormous time and energy in devising strategies to reduce disposition times in civil suits. The law was based on the idea that civil suits in federal courts took years to process and cost the parties involved hundreds of thousands—if not millions—of dollars in legal fees. But five years later a careful evaluation of this effort disclosed that it had had little impact.

Why? The evaluation revealed that the typical civil lawsuit in federal court does not take years or cost a fortune to resolve. The average suit lasts nine months and costs the parties involved $50,000, figures widely viewed as reasonable given the complexity of the average federal case. The reforms had aimed at atypical cases—those that last for years, even decades, and where legal fees can run into the tens of millions of dollars. Whatever their effect on these few cases, the reforms had done little to shorten processing times for most of the civil suits handled by federal courts.

Such mistakes are avoidable. Figure 1 shows the time it took to resolve criminal cases filed in four U.S. cities. In Providence, Rhode Island, one-quarter of cases were disposed of in 48 days, one-half in 277 days, three-quarters in 573 days, and 90 percent in 904 days. Displaying data in this fashion ensures that reformers will not be misled by memories of unusual cases. It also helps them design effective delay reduction programs.

Not only did cases take longer to reach disposition in Providence than in the other three cities, but the range of case delays varied greatly compared with the other three. This finding suggests that the process is less routine in Providence than in the other three cities. There may be peculiar procedures that cause certain kinds of cases to suffer inordinate delays. Or it may be that among cases in the upper range, the defendants are jailed awaiting trial, and the delays are caused by poor coordination between jail authorities and the court. One of the first things reformers would want to do when the data on delays resemble the Providence data is to search for patterns among the cases in the different ranges.

FIGURE 1 TRIAL PROCESSING TIMES BEFORE DELAY REDUCTION PROGRAMS IN FOUR U.S. COURTS



Source: Neubauer and others 1981.

Successful programs may not reduce delays

In 1988 the District of Columbia instituted a program to reduce delays in civil cases. Caseloads were carefully evaluated. Judges, lawyers, and court personnel were involved in the design of the program. And the other lessons recounted above were incorporated into the effort. While praised as a model delay reduction program, the effort did not initially achieve reformers' objectives. What happened instead was that the increased efficiency in case processing produced by the reforms led to a 20 percent increase in case filings.

Likewise, in Chicago, Illinois, reforms introduced between 1959 and 1979 had almost no effect on the time required to resolve civil disputes. The main impact was on the percentage of cases going to trial. After the reforms took effect, the number of cases where the parties opted to try their disputes—rather than settle them—rose dramatically.

Litigation economics points to two factors that, at least in the U.S. context, offset the effect of delay reduction programs. One is the effect these programs have on those who have already brought suit. When an injured party in the United States cal-

culates whether it is better to settle a lawsuit or go to trial, one consideration is the length of time until a trial can be had. The longer one has to wait for a case to be heard, the more likely one is, all other things being equal, to accept a settlement offer. Hence, as the amount of time one has to wait shrinks, more litigants decline to settle and instead go to trial. These additional trials add to the queue and so increase disposition times.

As times to trial shorten, more litigants decline to settle

Delay reduction programs also affect those who have been harmed but have yet to file a lawsuit. Some of those suffering a cognizable legal injury, be it a breach of contract or minor property damage from another's negligence, will decide against bringing a lawsuit if they know they will have to wait years for their case to be heard. But as disposition times are shortened, some portion of this group will decide to bring suit after all. This effect also increases the queue and so lengthens the average disposition time.

Not all delay reduction programs in the United States have ended in failure. Many courts have reduced delays in criminal courts, and some courts have sped up the processing of civil cases as well. Moreover, even though the programs in Chicago and the District of Columbia did not reduce civil delays, court resources are being used much more efficiently than they were before. The result has been that, without expending more resources, more citizens have been able to bring their disputes to court—a worthy objective in itself.

Further reading

Church, Thomas W. 1982. "The 'Old and the New' Conventional Wisdom of Court Delay." *The Justice System Journal* 7(3): 395–418.

Feeley, Malcolm M. 1983. "Speedy Trial Rules and the Problems of Delay." In *Court Reform on Trial: Why Simple Solutions Fail.* New York: Basic Books.

Kakalik, James S., and others. 1996. *Just, Speedy, and Inexpensive? An Evaluation of Judicial Case Management under the Civil Justice Reform Act.* Santa Monica, Calif.: Rand Corporation.

National Center for State Courts. 1999. *Selective Bibliography on Caseflow Management and Delay Reduction.* Available at http://www.ncsc.dni.us/is/clrhouse/cfbib99.htm.

Neubauer, David W., Marcia J. Lipetz, Mary Lee Luskin, and John P. Ryan. 1981. *Managing the Pace of Justice: An Evaluation of LEAA's Court Delay-Reduction Program.* Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Ostrom, Brian J., and Roger A. Hanson. 1999. *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts.* Williamsburg, Va.: National Center for State Courts.

Posner, Richard A. 1998. "Court Delay and the Caseload Crisis." In *Economic Analysis of Law.* 5th ed. New York: Aspen Law and Business.

Priest, George L. 1989. "Private Litigants and the Court Congestion Problem." *Boston University Law Review* 69(2): 527–59.

This note was written by Richard Messick, Senior Public Sector Specialist, PREM Network, with assistance from Nan Shuker, Associate Judge, Superior Court of the District of Columbia; Nicholas Pace, Senior Associate, Rand Institute for Civil Justice; and Brian Ostrom, Research Director, National Center for State Courts.

If you are interested in similar topics, consider joining the Legal Institutions Thematic Group. Contact Geoffrey Sheperd, x87942, or click on Thematic Groups on PREMnet.

PREM network
Poverty Reduction and Economic Management

This note series is intended to summarize good practice and key policy findings on PREM-related topics. The views expressed in these notes are those of the authors and do not necessarily reflect the views of the World Bank. PREMnotes are distributed widely to Bank staff and are also available on the PREM website (http://prem). If you are interested in writing a PREMnote, email your idea to Sarah Nedolast. For additional copies of this PREMnote please contact the PREM Advisory Service at x87736.

Prepared for World Bank staff