



MANAGING CASE FLOW

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The most basic function of a criminal justice system is its capacity to manage the cases presented—in effect, to handle the case flow that it receives—in a reasonable manner. Indeed, management and oversight of case flow is a key factor in the proper functioning of such a system. If policies are not developed to enable the system to keep up with the workload, it will be hard pressed to meet minimum efficiency and quality standards. In this sense, the overload of criminal justice systems would seem to be the cause of the main operational problems they face (slowness, poor attention to victims and the general public, limited availability of staff, among others). In response to this, most criminal procedure reforms installed a series of mechanisms and institutions that allowed the Public Prosecutor's Office (henceforth PPO) to develop policies for managing the system's workload through early intervention procedures such as dismissals and shortened proceedings. The purpose of this change was to end inquisitorial systems' unqualified use of the principle of legality. However, only a few PPOs in the region have been able to make intensive use of these faculties, particularly those that allow for early dismissal of cases.

The limited use of the legal tools available for dismissing cases is a complex problem that involves a number of variables, including a lack of efficient systems for organizing work. Early dismissal of cases usually provides enormous gains in efficiency and productivity when it is handled by a single unit or centralized system that only distributes to prosecutors those cases that the system is in a position to handle. Concentrating this function allows for increased effectiveness and the development of expertise in identifying cases that can be solved while meeting the unit's goals and centralizing criminal policy. If each prosecutor is expected to dismiss some of the cases he or she receives, the results may be irregular and difficult to manage, which makes it harder to reach institutional goals and atomizes the application of this aspect of criminal policy. Experience has shown that granting this power to each prosecutor leads to low dismissal rates, backlogs and bottlenecks. The lack of a systematic approach to dismissals leads to inertia, with prosecutors tending to let cases that do not have a reasonable chance of success remain "dormant." This increases average

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processing times and decreases the office's overall case termination rates.

If the PPO's workload is to be effectively controlled, new cases must be processed in a systematic manner. This implies more than distributing cases to prosecutors; a mechanism must also be developed to enable the PPO to make use of the new legal powers established in reformed criminal procedure codes that allow the agency to dismiss a large number of cases early on. For example, a system that resolves seventy percent of its cases early in the process lowers case resolution times while increasing the annual case resolution rate. This also allows the system to focus on the remaining thirty percent of cases, thus improving its success rate.

A number of initiatives have focused on establishing structures that can be grouped under the term "Early Decision Units" (EDUs). The main purpose of EDUs is to allow a single team to handle all early dismissals using standardized procedures. These units have produced a significant increase in early dismissals. They operate as follows: once filed, cases are immediately presented to the EDU, which determines whether or not criminal prosecution should be pursued. If the case is chosen for early dismissal, the EDU handles the entire process of terminating the case.

The most appropriate EDU model for a given system will depend on factors such as the size of the PPO (number of prosecutors and support staff) and case flow (number of cases filed per day, week, month, year, etc.). As a result, it is possible to have different types of units within a single region and even in neighboring cities. The type of powers that the unit should have must also be considered. For example, EDUs may be empowered to facilitate mediation or negotiation where their staff deems that

alternatives such as reparatory agreements or conciliation should be applied.

The following section reviews the main elements that should be taken into account when designing the EDU, and provides some organizational models:²

1.- Organizational Modes

If prosecutorial discretion is to contribute to streamlining the use of resources, it must be exercised early in the criminal process. In fact, the screening process should begin as soon as the complaint is filed. The first step in creating an early dismissal system is therefore to ensure that the entity that receives the complaint or intakes a new case (the police, the courts, etc.) forwards it to the PPO. This agency should have a clear procedure for submitting the case to the EDU. One key step is therefore to create a rapid referral system. Once the case is received, the unit must evaluate it and make a decision that may involve both relatively simple approaches to distributing the work and more complex ones. A sampling is presented below:

- **Chief Prosecutor:** In smaller PPOs, a Chief Prosecutor may handle early case dismissals. This allows him or her to maintain control over this aspect of the process and facilitates the assignment of cases to the rest of the prosecutors. (The Chief Prosecutor may evaluate each case more carefully and propose the equitable distribution of caseload). However, this means that he or she must spend time on case dismissals that could otherwise

² To this end we will closely follow the model presented by Andrés Baytelman in *Claves para Organización del Trabajo de Desestimación*. This text was used for the e-learning module of JSCA's Inter-American Program for Training Trainers for Criminal Procedure Reform. (See www.cejacampus.org).



be dedicated to management and supervision. Of course, the smaller the PPO, the less supervisory work involved (some PPOs in our countries have just one prosecutor).

- **Rotations.** Another strategy, particularly for larger PPOs, involves designing a rotation system in which one or more prosecutors handle this task for a specific period of time (one year, six months, etc.). Certain prosecutors may be excluded from this duty. For example, early dismissals could be handled by newer members, leaving more experienced prosecutors to handle more complex, serious or lengthy cases without the distraction of dismissals. The virtue of this model is that responsibility is distributed throughout the agency, which is an advantage given that dismissal work is not very stimulating for prosecutors. However, care must be taken with this model to ensure continuity. Adequate training, clear policies and a system for renewing only part of the team at any time (a third of the prosecutors each period, for example) are key.
- **Permanent Team.** Here a set group is assigned the task of handling case dismissals. This model has the clear advantages of allowing the team to specialize in this area, unify criteria used to select cases and use incentives for good performance (bonuses for productivity, for example). The disadvantage has already been mentioned: prosecutors find this task fairly unattractive.

These decision-making modes can be used to organize the work of a single PPO or can be established through a centralized unit that carries out this function for a group of offices that nonetheless have a certain level of decentralization. The degree of

centralization in decision-making on dismissals will depend on the level of coordination among the respective PPOs, their flexibility in sharing jobs and/or services and, above all, assurances that this form of organization will not work against the aim of making speedy early decisions.

A key factor in choosing the most suitable organizational model is determining which will make it easiest for the dismissal team to handle only that function. Although it could eventually be assigned related matters –for example, informing victims of outcomes or receiving complaints- ideally the team will only receive, evaluate and decide on early dismissals. Prosecutors and team members should not be assigned to other cases so that they may develop a high level of specialization that leads to better results.

2.- Other Key Design Elements

Several other aspects also come into play in ensuring the unit's effective operation. The first is related to its composition and the tasks that will be assigned to the prosecutor. The alternatives presented above assume that at least one prosecutor will oversee this process. However, that prosecutor does not have to be the one to draft the decision, communicate it to the victim, deliver it to the court or handle administrative tasks. Some of these tasks, such as filling in forms with information on specific cases, are strictly secretarial duties. Others, such as informing victims of outcomes, could be carried out by other professionals, such as staff with special training in certain types of cases (typically sex crimes). The most appropriate scenario is for the prosecutor to make the decision and leave the rest of the work to the "assembly line." It is not cost-effective to assign prosecutors secretarial or administrative work. Indeed, this is why offices have secretaries, assistants, interns



and other human resources. It would seem advisable to have more support staff than prosecutors in these units.

Regardless of the team's structure, it should have a permanent, experienced leader who is responsible for the decisions that are made and the efficiency and operation of the unit. This person should be responsible for distributing the workload or monitoring those procedures and should issue direct orders to prosecutors and staff members. This relates to another key aspect of the organization: this team must be able to make final decisions. This does not mean that the unit chief or other PPO official cannot subsequently modify both formal (for example, in response to a complaint submitted by a victim) and informal (such as in response to prosecutors' questions or when errors are detected) decisions. It does mean that the work process should provide the opportunity –and, as a rule, a single opportunity- to choose the option of early dismissal. Each step away from this procedure duplicates the work and ultimately wastes the resources of the Office. (Examples include a work procedure wherein all dismissals are reviewed by the chief, or where cases that pass this initial screening process are later dismissed by prosecutors assigned to the case.)

3.- Producing Information

In order to function properly, these units must have the information that they need to make the best decision on the case at hand. Prosecutors frequently postpone decisions regarding dismissals because “they don't have all the information on the case.” However, to obtain all of the information they want they will usually have to expend resources that, given the availability of prosecutorial discretion, we do not want them to expend. If one has “all of the information” there is no reason not to proceed to trial. In order to really take

advantage of prosecutors' discretionary powers, early dismissal units must have prosecutors who are trained to make decisions based on limited information. How limited? The decision will always require a certain amount of data; it is a matter of identifying the minimum amount needed to make a certain decision. It is therefore indispensable for the PPO or dismissal unit to clearly identify the legal grounds upon which a case may be dismissed. Choosing to dismiss when the act does not constitute a crime is not the same as evaluating whether or not prosecution is likely to be successful. Similarly, deciding to dismiss a case of theft with no suspect is not the same as deciding to dismiss a homicide with no suspect. Each of these situations will require different levels of information. It is important to keep in mind, however, that the information will generally be limited and, from the prosecutor's perspective, less than ideal. Prosecutors in EDUs must be trained to make decisions under these circumstances.

However, a trained prosecutor will require a minimum amount of data to make such decisions. The institutional processes associated with this decision should ensure that such information is of high quality and is available to the prosecutor from the start. As this data comes from different sources, the PPO must coordinate work processes, report formats and case files with other agencies. The main sources of information will be the police, auxiliary justice services and criminal background data. Each of these will be reviewed in the following paragraphs.

The PPO must work with the police to design standardized reporting formats that include all of the information that is used to make decisions regarding dismissals. Often the problem is not a lack of information, as the police gather a fair amount of data during the initial stages of an investigation, but that the data is not



properly recorded in the documents that are sent to the PPO. Coordination of these procedures would allow those involved to identify which types of information should be recorded and to develop simple, effective formats for doing so. There is also a need to coordinate and implement interactive systems that make use of available technologies. This might include online submission of documents, which allows those involved to avoid duplicating work (for example, when a police officer writes a ticket in a form that cannot be forwarded electronically) and helps save time lost in transferring paperwork between offices.

Auxiliary justice services – particularly expert ones- provide information that can be important for dismissal decisions, most notably the results of breathalyzer tests, toxicology screens and medical reports. The PPO must coordinate with various institutions in order to ensure that preliminary information is available during the initial case review. Medical services, for example, should provide the victim with a diagnosis when he or she seeks medical care, even if the formal medical report will be issued later. Similarly, police officers should administer breathalyzer tests (which provide immediate results) in addition to taking blood samples. The goal is to ensure that the prosecutor has the information –even if it is preliminary-required to make a decision, notwithstanding the time it may take to incorporate official reports later on. There is therefore a need to develop protocols for submitting preliminary reports and improving inter-agency communication. The introduction of technology tends to save a great deal of time and, in the long run, the system’s resources.

Lastly, the defendant’s prior contact with the criminal justice system may be taken into account when deciding whether to dismiss a case. In some systems policies

on recidivism preclude the application of discretionary measures in these cases; the law may require that repeat offenders be prosecuted. The PPO should coordinate with the respective agency to ensure quick access to defendants’ files. Again, technology is invaluable here. In some systems there is a civil registry office near the holding cells where one can have an official request the file via phone, fax or email. Other systems have advanced even further, giving prosecutors online access to the civil registry system, which enables them to obtain background information immediately.

4.- Evaluation, Goals and Management Indicators

Like the rest of the tasks carried out by the PPO, the exercise of prosecutorial discretion must be continually monitored, evaluated and adjusted on the basis of management indicators designed by authorities in view of technical (what is possible) and political (what can be required of the institution and each of its employees and units) goals.

Given the sensitive nature of the work of case dismissal, follow-up must be ongoing. This means that its frequency – weekly, monthly, quarterly- should be intense enough to allow it to be used as a day to day management tool that will ensure good response capacity, early detection of problems and specific and speedy management interventions. In addition, this process should be carried out at the local (the chief of each PPO) and higher levels (PPO authorities at the regional, provincial and national levels). The leader at each level should be responsible for promoting this follow-up and using it to adjust the organization of offices under his or her jurisdiction (with some policy decisions remaining centralized) and organizing the technical team that supports this work.



Various tools can be used for monitoring performance. The first and most obvious are statistics on the performance of each office, which should be combined with periodic follow-up meetings with prosecutors and other officials; meetings with other institutions; observation of the work of prosecutors and other officials; surveys of PPO clients, and others. Numerous instruments are available, depending on the resources on hand. The important thing to keep in mind is that follow-up mechanisms should be designed when the EDU unit is created.

A second aspect is the construction of quantitative and qualitative management indicators that allow for the evaluation of the EDU's work. Some may be obvious, but obtaining a true idea of the performance of this unit will often require creativity, trial and error and a multi-pronged approach. This process is not an abstract one. Specific analyses ("this work process is taking too long" or "this attribute is underutilized") and management responses can be developed on the basis of the goals set for the use of discretionary faculties. These should address qualitative aspects ("filing x percent of all cases entering the system") and qualitative ones ("victims feel that decisions are made in a transparent and professional manner"). Specific goals also should be established for both technical and political aspects of case management.

Technical aspects may involve such questions as: How long should this take, given that this particular measure requires victim notification and judicial oversight? How much time does a prosecutor need to make this decision? The political part relates to the institutional pressure that the PPO exerts in order to achieve certain goals, and may involve questions such as: How much can I ask staff to work? (This could include

night shifts, weekend shifts, and/or a PPO office open 24-hours every day of the year.) Another question is: How much are we willing to invest in victim assistance? (Prosecutors may be assigned to personally assist victims of serious crimes, but not those of lesser ones, etc.).

5.- Recordkeeping System

The final issue is how the PPO is going to record its decisions and actions, including those pertaining to early dismissal. All of the aspects described in this paper look to increase the speed and agility of early dismissal processes. And nothing can threaten this more than a recordkeeping system that eats up the time that may be saved during the decision-making process.

Formalities with no specific purpose and a negative cost-benefit ratio must be abandoned. Decisions can be issued using forms that are shorter than the lengthy official "resolution," which is too formal and stylized. Furthermore, documents can simply be collected in a file folder rather than being "attached," foliated, numbered, sewn in or treated in a similar manner. If computers are available, digital recordkeeping systems (with the appropriate back-up systems) more useful than paper ones, as they can be used for other functions (facilitating prosecutors' work, allowing public defenders access to data, sending background information to the court). Audio and video recordings and other forms of recordkeeping are equally appropriate and also can be used for the purposes cited above. In short: the main objective of prosecutorial discretion is to streamline the use of resources, and this should extend to the recording of how such resources are used.