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Improving Criminal Caseflow

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INTRODUCTION

Is there dissatisfaction in the criminal justice community, and indeed in the community as a whole, with the time it takes to dispose of cases? About repeated court appearances at which nothing significant happens? About failure of the prosecutor to provide timely discovery? About judges granting most continuance requests? About lawyers ignoring deadlines set by the court? About a lack of uniformity in case management policies and practices? About the absence of leadership to remedy these and other case management problems?

If your answer is “yes” to most of these questions, there is good news and bad news. The good news is that these sources of dissatisfaction can be addressed successfully. The bad news is that, as former New Jersey Chief Justice Arthur Vanderbilt said, doing so “is not a sport for the short-winded.” The necessary components are collective and individual commitment to change by judges and administrative staff, a solid understanding of the fundamentals of effective caseload management, the ability to communicate these principles throughout the criminal justice community, and a structured, collegial approach to analyzing and improving the current situation.

However, in the past, even courts that seemed to incorporate these requirements have fallen short in their efforts. Most often this has occurred because:

- The majority of the bench did not support the effort;
- The court undertook improvements without broad consultation with/ involvement of all the agencies that make up the criminal justice system;
- Solutions to problems were undertaken on a piecemeal basis; or
- Implementation was not accompanied by on-going system monitoring.

Approaching problems on a piecemeal basis has proven especially detrimental because caseload problems and their solutions almost always are interdependent. For example, a court cannot successfully adopt a strict continuance policy if the corollary problems of late receipt of discovery from law enforcement and late disposition offers by the prosecution are not addressed. Not only are these *issues* procedurally interdependent, but their resolution is a matter of organizational interdependence requiring cooperative problemsolving.

That is why success requires a comprehensive, collegial approach that involves all the criminal justice agencies in analysis, goal-setting, planning, and implementation. Under court leadership, such a collegial effort can yield amazing results, with “buy-in” by the key players who have a stake in the success or failure of the criminal case management system.

A collegial approach yields better solutions to problems, makes broad acceptance more likely, and facilitates change. The result will be a felony caseload management system that is more likely to allow all criminal justice agencies to provide exemplary service to the public.

This paper describes a four-step process for improving criminal caseload management and provides supporting principles and effective case management practices.

GETTING STARTED

The most common complaint about both civil and criminal justice systems is that they take too long to reach a disposition. Addressing delay is an integral part of improvement efforts because the chance of achieving a just result diminishes with the passage of time, evidence and witnesses often become unavailable, and memories fade.

Failure to recognize the nexus between timeliness and the ability to assure a just result sometimes produces accusations that caseload reform efforts simply seek speed for their own sake. Accordingly, those who undertake caseload improvement projects should continually reinforce the idea that the fundamental goal of effective caseload management

is to maximize the possibility of achieving a just result in each case.

Defining the acceptable limits of delay and finding and remedying sources of delay are essential, but only part of the four-step process described here.

The fundamental goal of effective caseload management is to maximize the possibility of achieving a just result in each case.

Steps to Addressing the Criminal Caseload Process

Step One: Acquire and Analyze Accurate Information

Recognizing that it is not possible to improve something one cannot accurately describe, courts should as a first step acquire and analyze accurate information about the current situation. Anecdotal evidence simply is not sufficient. It is essential to interview court, justice agency, and bar representatives to find out precisely what practices and policies they are (or think they are) following and why. At the same time, hard

data about the system operation, case volumes, time to disposition, sources of delay, frequency of continuances, and other measurable activities must be obtained.

The current case flow must be documented systematically, starting at the beginning of the process, since dysfunction and delay are cumulative. At a minimum, one should examine the:

- Timeliness and quality of police reports.
- Prosecutorial screening and charging process.
- Nature and timing of judicial involvement in case progress decisions.
- Timing of discovery.
- Nature and timing of offers, responses, and disposition discussions.
- Case scheduling practices.
- Use of lawyers' time.
- Enforcement of deadlines for hearings and other activities.
- Credibility and predictability of "pretrial" conference and trial date scheduling.
- Continuance policies and their enforcement.

In the process, attitudes and perceptions (so-called "subjective information") can be gathered as well. Together, objective and subjective information obtained in this first step will allow assessment of the existing system against well-established principles and effective practices that appear later in this paper. Usually, such an effort is spearheaded by the court administrator and

chief/presiding judge. The assistance of an experienced caseflow consultant may be helpful.

Step Two: Develop Findings, Conclusions, and Recommendations

The second step is to analyze the information obtained in Step One and compile it into a straightforward—yet comprehensive—report that contains key findings, conclusions, and recommendations for change and/or further action. These results should be presented to the court and, through the court, to the bar and other involved agencies that participated in Step One. Usually, the majority of suggestions will involve two pivotal caseflow concepts: court responsibility for managing the caseflow management system and early judicial involvement in cases. But issues arising from the practices of other criminal justice agencies will become evident as well.

Conclusions must be supported by the information obtained in Step One. It is not helpful or acceptable to simply state, “Judges grant too many continuances.” Present the supporting evidence using simple tables and graphs, where appropriate. In a recent report by a consultant to the client court, the following finding appeared: “...exchange of discovery is slow, meeting neither the requirements of the Supreme Court Rule nor the time limits in the [trial] Court’s Case Management Plan...” Here the assertion of slow discovery was supported by documentation and comparison to existing rules and standards.

Sometimes an important finding does concern perceptions rather than objective data. The court and others need to be aware of prevailing perceptions when a majority of interviewees (as opposed to just a few) express them consistently. Attitudes and perceptions, even if erroneous, significantly

affect system operation and the probability of implementing change successfully. They must be considered and addressed.

Here is an example from a recent project report: “The criminal justice community expects more leadership from the ...judges in ...

Attitudes and perceptions significantly affect system operation and the probability of implementing change successfully.

(a) assuring adherence to the policies and procedures of the Case Management Plan by both judges and attorneys and (b) active judicial intervention in decisions concerning case progress in individual cases, including controlling continuances and enforcing deadlines.” In this instance, recognition of the prevalence of this view among the lawyers led to a renewed commitment by the judges to enforce the Case Management Plan. The judges had previously assumed that lawyers opposed judicial supervision of case progress.

Step Three: Convene a Planning Meeting with All Participants

After the court fully considers the report and reaches a decision to proceed, a full-day meeting of representatives of the court, criminal justice agencies, and the bar is a helpful mechanism for discussing findings and recommendations, sharing perceptions, and beginning plans for needed changes. This is a major step in the improvement process. It is the springboard for both the immediate task of planning and for institutionalizing the capability to engage in collegial, organized analysis and ongoing improvement. So convened, the group may be designated a criminal caseflow task force in anticipation of ongoing responsibilities for planning and monitoring the system.

Three key activities should be included in this meeting. First, participants should receive a “Caseflow 101” review of the proven, necessary components of an effective criminal caseflow management system (see page 7). These of course should be linked to the findings and conclusions of the report prepared in Step Two.

Then, participants—working in function groups (i.e., prosecutors together, judges together, defenders together, clerk’s staff together, etc.)—should be asked to define the attributes of an effective criminal caseflow management system. For purposes of this activity, participants would be instructed to ignore for the moment the realities of the current process and to define the ideal system.

Experience has shown repeatedly that when the results of these function group discussions are reported and compared, there is very high consistency among them. Often this surprises participants, who have assumed that the interests and perceptions of judges, prosecutors, defenders, and others differ substantially. In fact, it turns out that most participants look beyond the immediate concerns of their own jobs when defining how an effective system should operate. After discussion and resolution of apparent disparities, the resulting shared perceptions then form the basis for agreement on necessary changes.

The third activity is creation of subcommittees composed of representatives of all agencies (as appropriate to the subject matter) to develop recommendations specific to policy and operational changes. Subcommittees might be organized by case-processing stages such as “initial appearance and arraignment” or “judicial case management conferences.” Sometimes they address specific subject matter such as

“development of a continuance policy” or “development of case management and tracking forms.” Individuals who have necessary perspectives or expertise but have not attended this initial meeting may be identified to join the subcommittees.

A timetable for completion of subcommittee activities is needed, as is a date for reconvening the full task force to consider their recommendations. Six months or more may be needed to complete this process.

Step Four: Plan Implementation, Reporting, and Monitoring

Step Four starts with task force receipt and discussion of subcommittee reports and development of the comprehensive integrated plan to put the recommendations in place.

Upon endorsement of the subcommittees’ recommendations by the task force, time will be needed for detailed implementation activities such as designing and printing new case-progress tracking forms or new standard orders, organizing a new case assignment system, or developing new statistical reports.

In a sense, Step Four never ends. Implementation must be followed by continuous monitoring. “Is the new system actually operating as designed?” “Is it producing the results for which it was designed?” In short: “Are we doing what we said we would do, and is it making any difference?” Too often changes are implemented without a way to measure whether they achieve the desired results.

Development of statistical measures that can demonstrate early system success or failure is necessary. The classic measurement of the age of cases at disposition, for example, is not very useful in the early days because the

disposition times will be skewed by the disposition of the old cases in the inventory. It can take 6 months or more to dispose of the backlog and begin applying the new practices only to newer cases. At that time the effect of the new system on case delay will be more directly measurable.

A permanent mechanism, such as a Criminal Justice Task Force that meets monthly, is needed to assure continuing attention to results and the ability to identify and analyze slippages. Continuing attention includes education for newcomers to the criminal justice system (e.g., judges, staff, and prosecutors) to assure that they understand not only how the system operates, but also the reasons for the policies and rules.

In short, it must be recognized that change is a *process* not an *event*. Failure to observe this axiom is one of the most frequent causes of gradual decay in a new, effective system.

Basis for Change

Undertaking the steps outlined above assumes there is a body of knowledge against which a criminal caseflow management system can be assessed. To that end, the next section provides a synopsis of what has been learned over the past 35 years. Systems that incorporate most of these principles and practices are most likely to resolve or avoid delay and backlog.

Steps to Addressing the Criminal Caseflow Process

- **Step One:** Acquire and analyze accurate information about the current situation.
- **Step Two:** Analyze the information obtained in Step One and compile it into a straightforward, yet comprehensive, report that contains key findings, conclusions, and recommendations for future action.
- **Step Three:** Convene a full-day meeting of representatives of the court, criminal justice agencies, and the bar to discuss findings, conclusions, and recommendations and engage in planning needed changes.
- **Step Four:** Discuss subcommittee reports and develop an implementation plan and timetable and a process for monitoring system performance—this is an ongoing process.

THE STATE-OF-THE-ART IN EFFECTIVE CASEFLOW MANAGEMENT

As is now generally accepted in the courts community, caseflow management connotes supervision or management of the time and events involved in the movement of a case through the court system from the point of initiation to disposition, regardless of the type of disposition.

Effective caseflow management emphasizes early case management to achieve early disposition in the great majority of cases that ultimately will reach a nontrial disposition. It seeks to create a system of expectations that encourages timely lawyer preparation and assures that events will occur as scheduled.¹ The objective is the fair and just disposition of each case. It is now widely acknowledged by experienced court administrators and judges and others in the field that a system that incorporates goals for timely disposition, early court involvement in each case, deadlines for completion of key case events, and credible hearing/trial dates will avoid the delays and backlogs that threaten a justice system's ability to achieve that just and timely disposition.²

A key element in achieving and maintaining an effective caseflow management system is a committed judiciary, with each judge willing to participate collegially in a courtwide caseflow management system and play an active role in assuring that cases proceed in a timely manner. This judicial role is grounded in the philosophy that

¹ Solomon and Somerlot, *Caseflow Management in the Trial Court: Now and for the Future*, (Chicago, IL: American Bar Association), 1987, 3.

² It is important to recognize that discussions of timely disposition do not contemplate speed for its own sake but, instead, recognize that timeliness of disposition is a key element of achieving a fair and just outcome.

ultimately the court is responsible for the management and disposition of all cases.

A rational, predictable process for disposing of cases must be created and managed so that lawyers understand and can depend on procedures and timetables. The court's philosophy and practices in this regard set the tone for system operation. If little appears to be required, the result is a system in which cases drift and dispositions take longer than cases actually require.

It is instructive to note the American Bar Association's position, which adopted the following general principle concerning caseflow management and delay reduction:

From commencement of litigation to its resolution, whether by trial or settlement, *any elapsed time other than reasonably required* [emphasis added] for pleadings, discovery and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.³

³ National Conference of State Trial Judges, *Standards Relating to Trial Courts*, (Chicago, IL: American Bar Association, 1985), Sec 2.50.

Proven Elements of Effective Caseflow Management

Certain broad elements are essential to achieving an effective caseflow management system:

- Early and continuous judicial supervision of case progress.
- Assurance of credible hearing/trial dates and control of continuances.
- Time standards and goals, both for the times between key case events and for disposition.
- Information system to support caseflow management.
- Continuing consultation with the bar and criminal justice agencies.

Early and Continuous Judicial Supervision of Case Progress

This element has been demonstrated widely to be the cornerstone of effective caseflow management and necessary for timely and just dispositions.⁴ The primary purpose of early judicial involvement is to focus everyone's efforts. The judge, in consultation with the lawyers in each case, plays an active role, *early on*, to encourage case evaluation by all parties and establishes a timetable for all further activities that lead to disposition. Thereafter, active supervision by the assigned judge and his or her staff is

⁴ However, the operable concept within this principle, "early," extends to the activities of *all* agencies. Early provision of arrest reports by law enforcement, early screening by the prosecutor, early attachment of defense counsel, and early involvement by the court in establishing a timetable for the disposition of the case are all necessary to achieve a just result at the earliest possible time.

important to assure that deadlines are met, negotiations regarding possible disposition occur, motions are filed and disposed of promptly, and scheduled hearing and trial dates are firm.

For example, judges who conduct a case management conference within about 21–28 days after superior court arraignment have concluded that they obtain earlier dispositions, with better overall use of their and the lawyers' time. Prosecution and defense lawyers agree.

Considering that in most courts only 5 percent or less of dispositions require a trial, it should be clear that *effective, early identification of cases least likely to require a trial can result in earlier disposition of most of the caseload*. As a result, both the court's and attorneys' time are freed for the remaining cases that require more time and attention for disposition.

Assurance of Credible Hearing/Trial Dates and Control of Continuances

Effective caseflow management systems are structured to create the "expectation of timeliness" by providing credible trial and hearing dates. In courts where trial and hearing dates are credible, decisions concerning initial scheduling and subsequent requests to reschedule are made by a judge based on information lawyers in the case provide. While there is reasonable accommodation of lawyers' scheduling problems, the court requires lawyers to advise the court of the reason for the continuance request, when the necessity for the request became known, and what efforts were made to avoid it. Stipulations are not considered adequate for granting a continuance.

Proven Elements of Effective Caseflow Management

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Routine granting of continuances, without requiring a showing of exceptional cause, signals a lack of judicial supervision of case progress and often results in case delays and backlogs. In courts where the widely held view is that dates are not credible and continuances are easily obtained, lawyers are less likely to meet deadlines.

In addition, continuances waste resources and may increase costs by creating extra paper work for the court's administrative staff and the parties. The time devoted to processing continuances and resets could be better spent on activities that help move a case to disposition.⁵ Continuances often cause victims, witnesses, attorneys, and defendants to make unnecessary trips to the courthouse. In sum, the routine granting of continuances creates disorganization and inconvenience and fosters a negative view of the court and its ability to perform a basic function: to *do justice* in every case and

⁵ A court clerk's office in one jurisdiction calculated that all the tasks associated with setting and resetting hearings and trials consumed nearly the equivalent of one full-time clerical position.

provide a process that gives the *appearance of justice*.

When attorney comments like the following are heard during Step One of the caseflow improvement project, they are evidence that trial date credibility and continuances must be addressed:

- "...[the] expectation is that cases can be reset."
- "Cases never go on the first date."
- "Lack of preparation by *everyone* [emphasis added] is what delays things."
- "...[the] judge may reset cases that will ultimately plead."
- "The key is the judges; they need to set the tone, set the expectations."

Time Standards and Goals

Research in the field of caseflow management during the past 35 years supports the need for time standards. One study concluded:

The development and adoption of time standards for the processing of cases by the Conference of Chief Justices, the American Bar Association, and a number of state court systems reflects a widespread feeling ... that there are outside limits on how long cases *should* take...Interviews with...judges and lawyers suggest that the standards are generally taken seriously, *even if there is no sanction imposed when a*

*case exceeds the time allowed by the standards [emphasis added].*⁶

Standards seem to be most helpful when they:

- Represent the consensus of what the entire criminal justice community wants to achieve;
- Guide case progress decisions in the management of *individual* cases; and
- Are used as a basis for measuring the performance of the caseload management system.

Accordingly, in addition to an overall disposition time standard, or “speedy trial” rule, the court’s caseload management system should incorporate (a) intermediate time goals governing the elapsed time between major case events and (b) system management standards concerning such areas as continuances and case scheduling accuracy. These types of goals are much more helpful in the practical aspects of managing case progress.

Information System to Support Caseload Management

Effective information systems have capabilities beyond maintaining a register of actions, generating notices, producing daily/weekly court calendars, and providing gross statistics. Courts need a case management information system that facilitates tracking individual case progress, provides up-to-date information on the condition of each judge’s caseload and calendars, and allows measurement of system performance against standards and goals. Without timely information on the

⁶ Barry Mahoney, et al., *Changing Times in Trial Courts*, (Williamsburg, VA: National Center for State Courts, 1988).

status and age of each case and the total caseload, it is extremely difficult to sustain an effective caseload management program.

Without timely information on the status and age of each case and the total caseload, it is difficult to sustain an effective caseload management program.

Continuing Consultation with the Bar and Criminal Justice Agencies

The importance of this element has been emphasized in Steps Three and Four under the section, “Steps to Addressing the Criminal Caseload Process.” It is a vital element both in planning for improvement and in sustaining improvement.

Specific Practices

Specific caseload management practices have been developed to apply the elements discussed above. Where such practices are adopted and consistently applied, backlogs and delay are avoided. Implementation of these practices requires the consultative model advocated above. Leadership must come from the court, but the participation of all key criminal justice agencies is vital to success.

The following practices are employed by effective criminal justice systems and have proven to be most effective in avoiding or reducing delay and backlogs:

Early availability of the arrest report. The law enforcement agency assures rapid transmission of the arrest report to the prosecutor, possibly requiring that the report be submitted by the conclusion of the officer’s shift.

Realistic charging. Experienced prosecutors screen cases and charge only what they are confident can be proved should the case go to trial.

Early attachment of counsel and prompt client interviews. Defense counsel are notified of case assignment promptly and interview their clients prior to court appearance.

Early exchange of information between prosecution and defense. Basic information, including the arrest report and available discovery, is exchanged early, preferably at arraignment. Decisions about case disposition can be made only when the decisionmakers have the necessary information.

Negotiated dispositions are based on an early, realistic offer that is unlikely to improve substantially with the passage of time. Timely disposition requires the prosecutor to conduct early and accurate case evaluation and serious negotiations regarding disposition. In some courts, a major disincentive for early disposition existed: the defense knew that the prosecutor's offer would improve significantly as time passed. This gamesmanship disappears with case-event time standards that include early discovery.

Every proceeding is used as a meaningful opportunity to dispose of the case or move it toward disposition. It is a systemwide expectation that the purpose for which the hearing was scheduled will be accomplished. Conferences or status hearings solely for the purpose of assessing counsel's progress or setting a future date for the next conference are avoided. When all the major players are present, their time is well used in activities that can lead to disposition. In some courts a significant

number of dispositions occur at or before arraignment.

Case management screening by the prosecution, defense, and judge.

Beginning with the initial charging decision and continuing through the early stages of the case, the prosecutor's, defense counsel's, and judge's experience is used to assess case complexity, and the most likely outcome of the case is based on the charge, the evidence, and other case characteristics. This requires a judicial conference within a few weeks of arraignment. Early case differentiation will assist in the identification of those cases that can be disposed of early. At the same time, the court will be able to flag more complicated cases for special attention.

Cases always have a future date certain assigned for a specific purpose. Realistic, enforceable deadlines are needed to create the essential expectation of timeliness that stimulates timely preparation and disposition. If a case is not terminated at the initial appearance or hearing, a future action date for a purpose certain, such as a case management conference, is assigned before the parties leave. Such deadlines are created in consultation with the prosecution and defense to assure compliance. When this practice is followed, timely attorney preparation is much more likely because what is to be accomplished at the next appearance has been specified.

Trial dates are scheduled only if needed.

Since only a small percentage of cases will be tried, the emphasis is on early disposition efforts. By setting and adhering firmly to hearing dates and other intermediate deadlines, the court achieves early negotiated dispositions and assigns trial dates only to those cases that are most likely to require a trial. For the balance, firm future

action dates unquestionably are important, but these need not be trial dates. Only the “next action” date is required.

Motions deadlines, case management conference dates, and other meaningful events satisfy the requirement for always setting a “future action date” deadline to work toward. This is far better than setting a trial date far in the future that is viewed as arbitrary or unlikely to occur. Then, by assuring that the sum of all action deadlines do not extend beyond the outside time limit for disposition (the disposition time standard), the court essentially indicates the outside limit for a trial date—should one be needed.

Emphasis on early disposition. An early disposition climate is created by requiring counsel to meet with the client as soon as possible, creating a structured opportunity for serious negotiations between the lawyers

directly responsible for the case and meaningful judicial participation in the process, where appropriate. When—as in most jurisdictions—about 99 percent of criminal cases will be disposed of by guilty plea or dismissal, it is unacceptable and unnecessary for a high percentage of dispositions to exceed the established dispositional time goals.

For example, in one jurisdiction with a 1 percent trial rate, more than 50 percent of dispositions exceeded the 90-day disposition time standard. This means that it took *more than* 90 days to reach a plea agreement in about half the guilty pleas. The practices listed above can create a so-called “early-disposition climate,” where the same just outcome is achieved at an early time. In some jurisdictions, dispositions of relatively simple cases occur within 30 days of arraignment.

Specific Caseflow Management Practices

The following practices are employed by effective criminal justice systems to avoid backlogs and delay:

- Early availability of the arrest report.
- Realistic charging.
- Early attachment of counsel and prompt client interviews.
- Early exchange of information between prosecution and defense.
- Negotiated dispositions are based on an early, realistic offer that is unlikely to improve substantially with the passage of time.
- Every proceeding is used as a meaningful opportunity to dispose of the case or move it toward disposition.
- Case management screening by prosecution, defense, and judge.
- Cases always have a future date certain assigned for a specific purpose.
- Trial dates are scheduled only if needed.
- Emphasis on early disposition.

CONCLUSION

At the beginning of this paper, former New Jersey Chief Justice Arthur Vanderbilt was quoted as saying that reform efforts are not a sport for the short-winded. Any court administrator or judge who has undertaken a caseflow management improvement project, surely would support that statement.

Initiating improvements to the felony caseflow management system is precisely what the term implies: the beginning. It takes energy and commitment. It requires the acquisition of accurate information about the current state of affairs. It requires conveying this information to the principals in a way that galvanizes them to act on it. It requires leadership of one or more judges with the vision to see that there is a “better way.” And it necessitates dedication to make changes that may mean foregoing individual preferences for the good of the system.

In particular, the early days of system implementation require enormous energy on the part of judges, who are working to identify and dispose of old cases while at the same time assuring incoming cases timely attention. Further, the process of re-educating lawyers to the requirements of a court-controlled caseflow system takes dedication and persistence. The caseflow management system should be on the agenda of every judge’s meeting and issues should be addressed directly—an activity that is not always comfortable.

After the implementation period, which may last 6–12 months, sustaining improvements requires even more energy and commitment because initial excitement fades. Sustaining improvements means continuous monitoring of performance against a comprehensive plan and system goals. In courts, as in other organizations where continuity of leadership is problematic, mechanisms for

institutionalizing changes are essential. Performance must continually be revisited. Newcomers to the caseflow management system must be educated to its purposes and practices.

It is logical to ask why judges, accustomed to a familiar caseflow system and work environment, would consider championing major system changes. Judges who have done it successfully cite several reasons, principally concerned with stress reduction and job satisfaction:

- The desire to work in a predictable, consistent, and well-managed operation where his or her time can be planned with confidence.
- The ability to assure that all cases receive the time and attention needed.
- Less time spent on review and management of old cases.
- More cooperation from lawyers who know what to expect and can depend on consistent policy and treatment.
- Confidence that timely disposition and access to the judicial process is equally available to all litigants.
- The satisfaction that accompanies meeting public expectations of the criminal justice system.