TRIAL AND ERROR: FAILURE AND INNOVATION IN CRIMINAL JUSTICE REFORM

by

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Introduction

"Men are greedy to publish the successes of [their] efforts, but meanly shy as to publishing the failures of men. Men are ruined by this one sided practice of concealment of blunders and failures."

Abraham Lincoln

Criminal justice success stories — for example, the sustained reduction in crime in major U.S. cities during the past fifteen years — are poured over by officials from around the world in an effort to distill the lessons and replicate the accomplishments. Best practice manuals, providing protocols intended to guarantee success, are in abundant supply. At the same time, in the criminal justice world, failure is still a whispered word.

Following the burst of the dot.com bubble, failure has become a hot topic in corporate America. In fact, *Business Week* magazine devoted a recent cover story to the lessons of failure. The idea of confronting failure is not just the preserve of the private sector; from the U.S. Army to academic hospitals, other professions are learning from failure, as well. This paper seeks to extend this study into the realm of criminal justice reform.

Rather than focusing attention on well-known achievements in the field, therefore, this "red paper" — the product of semi-structured interviews with criminal justice experts, researchers and practitioners, as well as a review of the literature on failure — seeks instead to provoke debate as to why some criminal justice reforms work and some do not. This exploration is not about failures of incompetence or corruption — these kinds of failures tend to be well-documented by the media (and contribute to a generally risk-averse environment). Rather, this paper is about the kinds of failures in which well-intended efforts fall short of their objectives: the enforcement strategy that criminals ignore, the compliance monitoring scheme that doesn't reduce re-offending or the seemingly successful job training program for ex-offenders that suddenly closes up shop.

This examination is intended for anyone interested in criminal justice reform but, in particular, seeks to reach local policymakers — probation officials, court administrators, leaders of state and local criminal justice agencies. By discussing failure openly, this paper seeks to help foster an environment that promotes new thinking and the testing of new ideas. By identifying lessons that could inform criminal justice practice going forward, this paper seeks to ensure that, at the very least, tomorrow's innovators are less likely to make the same mistakes as today's. The bulk of this inquiry, therefore, looks at the causes that contribute to failure.

But there is a threshold question to ask about failure: is failure inherently good? Well, in one sense, it appears to be: Failure is a necessary by-product of innovation. The private sector, sciences and even the arts have long understood this fact; they tend to factor failure as a cost of doing business — consider the massive R&D funding by pharmaceuticals that includes substantial allowance for failure. In these fields, there is acceptance that not every innovation is going to succeed. In fact, each success is typically built on the backs of numerous failures. In a sense, failure is a partner of success — and is not a bad thing.

Unfortunately, the public sector seems to have little tolerance for failure. Perhaps, as Ellen Schall, Dean of New York University's Robert F. Wagner Graduate School of Public Service, has speculated, fear of failure is a by-product of the American tradition of skepticism about activist government. For whatever reason, few government agencies are known to tolerate risk; and tolerance for risk is a necessary building block for innovation.

While failure has its own merit, there are also benefits to trying to learn from it. To understand failure, it is important to analyze its causes. Two obvious causes of failure are failure of premise or concept (that is, a bad idea), and failure of implementation (that is, a poorly executed idea). While this paper does examine failures of design and implementation, it also looks at two other factors that often go unmentioned. The first is power dynamics (*e.g.*, political influences, fiscal realities, leadership changes), which bear so heavily on an initiative's success or failure that planners ignore or discount them at their own peril. The second factor is an institution's capacity for self-analysis. The effectiveness of an innovation can be undermined or even destroyed by an organization's inability to be self-critical and open to reflection.

These latter two sources of failure — power dynamics and lack of self-analysis — do not operate in isolation, but can be seen as opposing forces in constant tension or, perhaps, flipsides of the same coin. Each must be balanced with the other in mind. On the one hand, innovators must develop concerted strategies to inoculate reform from attack, criticism and political pressures. At the same time, and as a potential by-product of such effort, a well-planned campaign to manage the powers-that-be may foster a culture that discourages transparency, self-reflection and self-criticism. As such, although this paper will open with discussion of the most obvious contributors to failure — premise and implementation — it closes by grappling with the hazards of power and lack of self-reflection.

Failure of Design

The most obvious source of initiative failure is the bad idea, the incorrect hypothesis. Sometimes, planners just plain get it wrong, anticipating — and hoping — for an impact and finding none. Why do criminal justice innovators launch initiatives with poor initial designs?

Poor understanding of target population: Discussing a project piloted twenty years ago that provided direct social services to prostitutes, Tim Murray, currently executive director of Pre-trial Services Resource Center, says "Most of our clients, about 60 in all, disappeared within the first 30 days . . . because the premise was lousy." Describing the untested assumptions the project

made about client lifestyles, Murray believes that there were fatal mistakes in the project's design from the get-go.

Unrealistic expectations: Even when an initiative is working, it may still be damned by failing to meet expectations. The very qualities needed to build initial momentum and rally support from staff and outside stakeholders — optimism and drive — can actually lead planners to overestimate or over-promise the impact of reform. Management of expectations — whether those of agency decision-makers, stakeholders, the public or even program participants — can determine a program's success or hasten its failure. For example, Project Greenlight in New York City was a comprehensive prisoner reentry initiative that was cut short after arrest rates were found to be higher for participating prisoners than for those of two different control groups, including one that received no re-entry intervention whatsoever. In its review of the effort, the Vera Institute of Justice identified that the program had created unrealistic expectations about available social services, that participants' hopes were dashed when they accessed the services, which in turn affected their ability to successfully re-enter the community.

Unclear research guidance: Despite wide acceptance of the need for evidence-based decision-making, many areas of criminal justice remain under-researched. Even where research does exist, it may be so loaded with caveats (not to mention written in a highly technical vernacular) that it offers little guidance for policymakers. In environments demanding quick decisions, policymakers need succinct assessments and researchers willing to make the most out of the available evidence. Without clear evidence, planners must sometimes make use of educated guesses — and guesses sometimes prove wrong.

Failure to perform adequate research: Adelle Harrell, a researcher at the Urban Institute, noted that some projects will steam ahead without investing enough time delving into a problem. Sometimes in the rush to get things done, officials don't examine research and end up choosing strategies that have already been tested and rejected in other locations. Ellen Schall indicated that the criminal justice world often finds it difficult to look beyond its own arena, and ignores ideas from other fields that might be relevant.

All of these causes of poor initial design suggest that innovators need to take time with their pre-launch planning. And here is the first of several paradoxes of failure. On the one hand an innovation's premise should be well-conceived and evidence-based. At the same time, a would-be innovator can be paralyzed by the unknowable. Herb Sturz of the Open Society Institute urged innovators not to obsess about mastering all of the potential variables and instead to plow ahead — "do something."

Sometimes, an initiative can fail to meet expectations, but produce meaningful unintended or secondary benefits; the primary objective may not be met, but the achievement of other objectives may sufficiently justify the initiative. Jeremy Travis, President of John Jay College of Criminal Justice and former director of the National Institute of Justice, highlighted this latter possibility in discussing a project he led early in his career, the Victim/Witness Assistance Project. The goal was to increase victim participation in the criminal justice system, particularly the level of victim and witness attendance in court proceedings. The original hope was that providing these services would result in significant increases court participation by victims and witnesses. The project "failed" in terms of that measure – the level of attendance did not increase. According to Travis, "the services we provided — which were extensive, and of high quality — were not sufficient to convince victims and witnesses to increase their use of the . . . criminal justice system."

The story did not end there, however. The project was able to rebound and to continue its experiments with mediation and placing victim advocates in the courtroom. These services were determined to be valuable on their own terms, so were retained and expanded, leading to the creation of Victim Services Agency (now Safe Horizon), one of the nation's preeminent victim support agencies.

Questions

- How can innovation be sold to skeptical audiences without creating unrealistic expectations?
- How can rational, measured planning avoid the trap of over-analysis and paralysis?
- How can researchers get their messages through to policymakers?
- How can policymakers be better consumers of research?
- What are some of the other factors that can contribute to failure of design?
- What should innovators do in the absence of clear evidence?

Failure of Implementation

The ability of innovators to implement what are apparently sound hypotheses is fraught with potential pitfalls. An innovator can have a great idea but be unable to pull it off. Assuming that a new idea makes sense, why do some projects fail at the implementation stage?

Resources: Simple deficiencies in resources are a natural constraint on innovation, whether they be budgetary constraints, staff limitations (both in numbers or skills) or the lack of access to information or technology. There just may not be enough staff, time, money — one can fill in the blanks — to do what's needed to get a great idea up and running. Funders, whether governmental or private often have limited attention spans; sustaining new programs over the long haul is a constant challenge for would-be innovators.

Leadership: The lack of an effective leader can often be the death knell of a new initiative. Analysis suggests that the first drug courts succeeded in part because a group of committed mavericks could, by "the sheer force of personality alone . . ., overcome bureaucratic inertia and skepticism" (Fox & Wolf, 2004). Tim Murray, who helped establish the first drug court in Florida, emphasized the important role that charismatic personalities play in driving success. An effective innovator also must be an effective project manager. Ironically, the success of an innovative leader can also contribute to subsequent failure of a model project, as innovators are promoted or seek new challenges.

Commitment: Short-term demands for accountability can terminate projects before they have had sufficient time to find their feet. While it is not unreasonable for funders and senior

leaders to demand to know what is going on, innovative projects need the space to try different approaches, to adapt and move forward.

Ineffective or inadequate documentation, research or evaluation: On top of the challenge of making an idea work in practice, it is critical to be able to document accomplishments. Gathering data from the outset of operations requires significant planning, staff support (many of whom may be uncomfortable with "numbers") and effective technology systems. Even if a research plan has been mapped out, ensuring its successful implementation may be the last thing an innovator worries about, especially in the chaos of start-up. But by not documenting impact, an initiative may be unable to justify continued funding. Jeremy Travis noted that the limitations of research create another dilemma for innovators. On the one hand, in order to document causal change the scope of the innovation must be limited and discrete. With larger and more ambitious initiatives, it may be difficult to confidently ascribe cause simply because there are so many working parts. Thus, more ambitious initiatives may be vulnerable to criticism precisely because they cannot demonstrate a direct causal impact. Does that mean that big plans are more likely to fail? They may find it harder to document success — whereas more limited efforts, with fewer variables at play, may find it harder to *achieve* success, even if they find it easier to document it.

The local landscape: Lisbeth Schorr, professor at Harvard University, said, "In my experience, the biggest mistake . . . is thinking that because a program is wonderful, the surroundings won't destroy it when they plunk it down in a new place. But . . . context is the most likely saboteur of the spread of good innovations" (Berman & Fox, 2002). Put simply, failing to adapt to the challenges of the local context is a common cause of failure. What might work in Los Angeles might not work in a small Louisiana parish or a Midwestern city with different cultural values. At the very least, model programs will need to be tailored to local customs and political realities.

Despite the wealth of project management literature that exists to instruct innovators on how to deliver programs, translating an idea into reality is not easy. Particularly important among these challenges is ensuring that the appropriate leadership is in place to implement the reform. Equally, there remains a central conundrum once a project has started: When do we decide if a reform is working and based on what criteria?

Questions

- How do we identify, nurture and sustain the commitment of charismatic leaders? How do we innovate in their absence?
- How do we build systems that are capable of outliving initial pioneers?
- How can innovators persuade funders to allow them the time and resources to experiment and adapt over the long term?
- How do we measure the success of ambitious, multi-faceted reforms?
- How can managers balance the need to give innovators time and space with the need to pull the plug on failing programs?

- What steps can innovators take to understand the local context and adapt their ideas accordingly? How do innovators make sure that in the process of adaptation they do not alter the "active ingredient" of a model?

Failure to Manage Power Dynamics

The need to manage power dynamics and political realities surrounding an innovation is perhaps the hardest factor to discuss. (For purposes of this inquiry, "politics" and "political realities" are defined as external forces, *i.e.*, those *not* related to the merits of a project, which can affect its ability to succeed.) Criminal justice reforms can be buffeted by democratically-elected or politically-appointed officials but also by budgetary changes and everyday dynamics within bureaucracies and between agencies. Michael Jacobson and Ellen Schall, both of whom have spent time in the public and non-profit sectors, observed that non-profits may have more space for their initiatives not to succeed, whereas governmental entities have too much at stake to allow projects to fail or be perceived as failing. How do power dynamics cause failure?

Political influences: Asked why she believes that reformers sometimes attempt to implement ideas already discarded by research, Adele Harrell contends that certain programs (like boot camps) are politically appealing even when the evidence suggests that they don't work. It is important to note, however, that political pressure is not always a bad thing. Politicians often reflect the democratic will of the citizenry. Moreover, sometimes political pressure is the only force capable of overcoming entrenched obstacles and interests.

Fiscal realities: Fiscal decisions and crisis management can alter the landscape of a reform at the drop of a hat. Today's priority can be tomorrow's victim of budget tightening. If an initiative appears non-essential — often the case when new programs are compared to the core business of making arrests and processing cases — it may be the first thing placed on the chopping block in a moment of crisis.

Inter-agency differences: Bureaucratic boundaries, erected by mission, staff attitudes, leadership, organizational vision and even incompatible technology systems, can produce a dynamic of its own that leads to suspicion, resentment or a lack of cooperation among agencies. These differences in agency culture could provide a serious barrier to mutual understanding and effective partnership. The Midtown Community Court's Street Outreach Services was an attempt to partner social workers with police officers to provide instant services to New York's homeless population. After some initial success, the project has encountered on-going challenges over time due to staff turnover at the court and the reassignment of police officers and local precinct commanders (including some not suited or committed to outreach work), leaving participating staff who were insufficiently trained in overcoming the cultural differences between the two agencies. (Street Outreach Services was also affected by the withdrawal of private foundation support — a frequent challenge that innovators must face given that very few foundations make long-term commitments.)

Leadership and management influences: Government leaders often demand a big splash or quick win with an innovation to satisfy short-term political realities. This pressure is often at odds with developing a successful long-term reform, which typically requires evaluation and evolution over time. In fact, Wagner School's Ellen Schall, said that some organizational leaders may order the implementation of an initiative, without implementing a process to allow the existing culture to adapt to the new policy or approach. As a result, short-term gains are sometimes achieved at the expense of more meaningful long-term reform.

With some agencies, the constant churn of senior management can prove a serious obstacle to sustaining reforms. Carol Roberts, the director of community corrections in Ramsey County, Minnesota, described outlasting eight separate corrections commissioners when she worked in New York City. And change in senior leadership can lead to the scrapping of reforms simply because they are identified as belonging to a predecessor. Gordon Wasserman, former Philadelphia Police Commissioner chief of staff, suggested that it was in police chiefs' interests to downplay their predecessors' achievements. After all, if they can convince others that everything had been lousy under their predecessor, success (or at least, the perception of success) is much easier to achieve.

Politics can be both a force for good and a cause of failure. And the impact of politics is hard to predict because it is shifting in nature, subject to changing administrations, leaders and fiscal fortunes. But one point is clear: even though it may be difficult to predict, politics cannot be ignored.

Managing political forces is not something that can be improvised — it requires deliberate planning. Innovators should resist the temptation to leave politics to fate. Mike Jacobson, for example, attributed the failure of one of his major initiatives as head of New York City's Department of Probation to the lack of forethought about insulating the effort from political change — his departure as commissioner and replacement by a new commissioner not wed to his effort. Similarly, Jeremy Travis spoke of inoculating reform efforts by strategically building a broad constituency of support and expanding the definitions of success.

Questions

- Is the public willing to allow criminal justice organizations to experiment and fail with taxpayer money? Are politicians? Is the media?
- How can innovators use political forces to their benefit?
- How can policymakers fuse the political imperative to deliver change with a commitment to sound evidence-based policy?
- How can innovators manage the effects of politics at an agency-to-agency level?

Failure to Engage in Self-Reflection

While an innovator must insulate reform from political pressures, such efforts can bring about another source of failure: the lack of self-scrutiny. The ability to remain objective about performance is vital to an innovation's long-term health. Without maintaining the ability to be transparent, self-reflective and self-critical, an organization — or an initiative — can eventually lose its focus. It is perfectly understandable for people to react strongly to negative evaluations and missed targets. However, in most cases, these evaluations can give a critical insight into a reform and provide the impetus to adapt programs, not end them.

A recent study by the Center for Court Innovation on the effects of batterer programs and judicial monitoring in domestic violence cases in the Bronx, which found that neither produced a reduction in re-arrests, is a case in point. Rather than flatly suggesting that monitoring doesn't work, the study pointed to flaws in the way that monitoring was implemented in the Bronx. The study recommended that monitoring would be more effective if based on a better application of "behavior modification" principles (e.g., involving consistent and certain responses to any infraction). In response, New York State's court system has recommended greater use of graduated sanctions for domestic violence offenders under court supervision and compliance scripts to better explain to offenders how the court will respond to noncompliance.

The Bronx study offers one example of how evaluation and reflection can lead to mid-course adjustments that strengthen reforms. Unfortunately, many criminal justice stories don't have happy endings like this one. Why do many innovators fail to engage in self-reflection?

Admitting failure: People have a natural tendency to proclaim their successes and hide their failures. Funders like successful organizations with strong track records. This can result in organizations trumpeting (and recycling) their success stories. The incentives to learn from their failures are less obvious. It can also lead to organizations continuing with initiatives which have outlived their utility. Innovations can work in a particular time and place, with particular staff, but then their time is up — staff leave, populations change — and programs are no longer as effective.

Acting on failure: Failure to recognize disappointing performance can be compounded by failure to do something about it. Herb Sturz believes projects can fail when no one pulls the plug on inadequate performance, of both individuals and programs as a whole. This failure to maintain vigilance has particular relevance where management feels a sense of loyalty to people or the project. John Feinblatt, New York City's Criminal Justice Coordinator, believes that leaders need to have the courage of their convictions if they think a project is costing too much, not producing significant results or failing to meet expectations.

The conflict between performance and learning: The need for organizations to hold staff accountable for performance is often in conflict with the desire to allow staff to experiment. Staff are rewarded for meeting agreed-upon objectives with managers, so why experiment? In *Business Week*'s series on failure, one private sector consultant framed the dilemma this way: "The performance culture really is in deep conflict with the learning culture" (*Business Week*, 2006). Moreover, the kind of skills that might make someone an effective administrator — the ability to motivate, manage deadlines, juggle multiple tasks — may not be the same skill set that makes someone good at reflection.

Organizational conformity: Some agencies have internal cultures that reward conformity at the expense of experimentation. Jack

Welch, former CEO of General Electric, described GE's internal culture as 'superficial congeniality' where the contribution to the orderly and consensual conduct of business was valued more than externally measured achievements. "Facing reality was not one of the strong points . . . it . . . made candor extremely difficult to come by" (Welch & Byrne, 2001). John Feinblatt expressed the belief that it was leadership's responsibility to counter this tendency by continually asking why things were being done in the way they were.

Institutionalization leads to bureaucratization: Tim Murray believes that as soon as innovators decide to pay the 'fatal price' of concentrating on accessing funding and replicating themselves, a type of cheerleading culture is created where the job becomes *only* to have success. The creation of this type of culture leads to risk aversion and less tolerance of variation as the model is rolled out; the result is that experimentation and innovation can grind to a halt.

Adopting a self-critical stance may be central to successful long-term innovation, but the barriers to achieving this are considerable. There is a tension between accounting for performance and providing the freedom for staff and organizations to test out new ideas. There is an understandable fear that too much internal scrutiny may provide ammunition to an initiative's political foes. That said, those tensions can be creative; performance measurement can serve as a powerful motivation for leaders to change and improve.

Questions

- How do we make self-reflection a core organizational value within criminal justice agencies, as opposed to a luxury that can be easily tossed aside?
- Is the performance culture really in deep conflict with the learning culture? If so, how do we manage that conflict?
- Does innovation inevitably fail when it is institutionalized? Does institutionalizing an initiative change the definition of success and failure?
- Is it possible to protect innovators from the day-to-day pressures of managing large bureaucracies?

Conclusion

From the social problems that often underlie criminal behavior to the thousands of individual decisions that result in crimes, the criminal justice field is the product of failure itself. There is and always will be a continual need to innovate and find new ways of tackling both emerging and persistent public safety problems. This 'red paper' is merely a small step in opening discussion on the subject of failure within the criminal justice system.

The paper has identified four principal causes of failure:

- Failure of design
- Failure of implementation
- Failure to manage power dynamics
- Failure to engage in self-reflection

While the first two of these factors are self-evident, it is the interplay of the last two that is the most challenging to navigate. On the one hand, the realities of power and politics — interagency, budgetary or otherwise — are minefields that pose real threats to reform and must be addressed. On the other hand, the most effective tools to combat such dangers may bring about their own challenges — namely, an unwillingness to be self-reflective.

Although it may never become a desirable outcome, failure should not be seen as the behemoth in the corner that needs to be avoided at all costs — provided that it is properly analyzed and used as a learning experience. Only by regarding failure as a partner and precursor to success will organizations become comfortable with experimentation. Only if innovators believe that they will be given the freedom to experiment, and not be punished for well-intended missteps, can the criminal justice world continue to change, evolve and improve.

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