What role do you think failure plays in criminal justice? The history of criminal justice interventions is lined with failure. The classic type of failure in criminal justice is anything with a criminogenic effect – in other words, an intervention that actually creates more crime. Incarceration is the classic example. Project Greenlight was another such example. It was a re-entry program in New York that seemed to increase recidivism. But despite the prevalence of failure, there are few examples in which failure has been appropriately analyzed and discussed. And when it is, the lessons often don’t go anywhere.

Your research has focused heavily on drug courts. When do drug courts fail? Drug courts fail when their interventions assume a one-size-fits-all approach will work. It seems obvious, but no one stops to think through which intervention would be appropriate for a certain kind of drug abuser and offender. There is also the reality that to truly contribute to public safety, drug courts must take on the high-risk population. There is an on-going debate as to when drug courts are effective and at what cost. You have to be able to show a fundamental impact on both public safety and state budgets. That means going beyond the “boutique” drug court that handles a small caseload. No matter how effective smaller courts seem to be, the benefit has to be worth the cost.

Are there broader failure traps that court interventions face? Yes. Court interventions in general face challenges of sustainability. After the initial infusion of funding, court programs must hustle to get picked up by a long-range funding source. This requires that the planners and implementers – namely overworked judges – need to be political and publicize what they do. Sustainability should be built into the court’s plan from the outset, but it’s usually not.

Does the definition of success play a role in evaluating failure? Absolutely. It is not uncommon for promoters of a policy or program to overpromise results, which is a tendency in any kind

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of reform. My definition of drug court success is about a 15 percent average reduction in crime and drug use. We need to teach policymakers that 15 percent is a credible finding. They need to recognize that claims of an 80 percent reduction are unlikely if not impossible, although individual programs may approach 30 to 35 percent improvement. The other requisite in defining failure and success of drug courts is having a nuanced view of the cost-benefit analysis. Prison is expensive, so even less expensive programs with bad outcomes will win the cost-benefit metric and can be viewed as a success. It’s not hard to beat prison. The question then is a policy question – how much increased crime are you willing to trade for increased cost savings?

Is there a particular example of drug court failure that you think is instructive?

I would argue that there aren’t many examples of failed drug courts. Like I suggested above, I suppose the most common failure is when courts simply can’t keep their doors open. New Jersey had a drug court that just couldn’t take off. But in general, drug courts are successful. Even Denver’s drug court, which is often cited as a failure, is in a phase of rebirth. Yes, it received some valid criticism, but it was the biggest drug court in the country and had incredible statewide support.

Are some jurisdictions better equipped than others to have successful drug courts?

Hennepin County in Minnesota is a good example of a jurisdiction that was ripe for action, if not success, because the state is so drug-court-friendly. They faced some challenges early on, but statewide support and strategic advising allowed them to make changes and persevere. At first, the court tried to process everyone in one court, but it simply couldn’t handle that volume. The court was on a trajectory towards failure. Fortunately, they realized that their approach wasn’t working and they adapted. They asked us to build them a web system that triages all drug and property defendants for risk and need. There is now a huge push by the judiciary to take the drug court model to scale. Support from the judiciary is key. Jurisdictions without that will find that even with a strong movement for drug courts from other players, they will be stopped in their tracks if there are philosophical objections from the bench.