

■ CRIMINAL JUSTICE REFORM

A key role for failure

By Greg Berman SPECIAL TO THE NATIONAL LAW JOURNAL

RECENT NEWSPAPER headlines about criminal justice make for depressing reading: A triple homicide in Newark, N.J. Crime on the rise in Baltimore and other midsize cities. The infrastructure in New Orleans stressed to the breaking point.

Unfortunately, this is par for the course: What little public discussion there is about criminal justice tends to focus on bad news. The old cliché “if it bleeds, it leads” is still an accurate description of the media’s obsession with violent calamities. While cases with tragic outcomes should be publicized (and, needless to say, avoided), they typically offer few meaningful lessons for policymakers. Far more helpful would be a probing examination of the kinds of failures in which decent, well-intentioned people attempted to achieve something noble and difficult—like reducing recidivism among mentally ill offenders or tackling drug crime in a public housing development—but fell short of their objectives.

It is human nature to shout about new ideas that have succeeded—while failure is discussed in hushed whispers, if at all. In truth, we know that it is impossible to have trial without error. Nearly every criminal justice agency has attempted projects that have fizzled or failed to meet expectations. If we want to encourage police, prosecutors, judges and others to test new ideas and challenge conventional wisdom, we need to create a climate in which failure is openly discussed.

Discussing failed projects

Recently, the Center for Court Innovation and the U.S. Department of Justice’s Bureau of Justice Assistance set out to jump-start just this kind of conversation, bringing together judges, probation officials, prosecutors, police chiefs and defense attorneys from across the country to discuss lessons they have learned from projects that did not succeed. These projects included efforts to change the behavior of prostitutes, promote drug treatment for addicts and strengthen the supervision of probationers. The goal of discussing these initiatives was to send the message that failure, while not desirable, is sometimes inevitable and even acceptable, provided that it is properly analyzed and used as a learning experience.

In the process, we have learned a few lessons, many of which are applicable to the world beyond criminal justice:

■ Context matters. The causes of any individual failure are too complex and idiosyncratic to yield easy generalizations. What works in one setting might prove disastrous in another—and vice versa.

■ The right people (but not too many) need to be at the table. Many failures result from agency leaders formulating decisions in a vacuum, without relevant input from staff or local residents (who, after all, are the intended beneficiaries of most criminal justice innovations). Over-inclusiveness can be crippling, however. The larger the group, the more difficult consensus is to achieve. Often the most direct way to accomplish real reform is to assemble a small platoon of driven, like-minded individuals. The trick is making sure that reformers wield enough authority to make change happen.

■ Many failed experiments can be traced back to an inability on the part of reformers to combine two seemingly contradictory qualities: self-examination and relentless determination. The first step toward change is often self-analysis. Unfortunately, there are a number of real-life obstacles that prevent criminal justice officials from engaging in self-reflection, including a cultural suspicion of anything “academic” and the need to achieve visible (and immediate) results in order to meet the demands of the public, the media and political officials. Yet in order to move large, public bureaucracies, innovators must often become cheerleaders for reform. It all adds up to a fine balancing act: Innovators must aggressively market their ideas and galvanize crucial allies without sacrificing introspection.

■ The definition of failure (and success) depends upon where one stands. One of the principal challenges to successful criminal justice reform efforts is the “win-lose” nature of much of what goes on within the system. Put simply, criminal justice agencies often have competing agendas. While all players might agree on broad goals like reducing crime or promoting fairness, once the conversation moves to concrete strategies for achieving these goals, the consensus quickly evaporates. For example, a police success (making more drug arrests)

might be viewed as a failure by prosecutors and judges, struggling to handle a massive influx of new cases.

But perhaps the most important lesson for would-be innovators is this: Don’t be afraid. No career can survive a steady diet of failure, of course, but it is possible to survive—and even thrive—in the face of failure. The only universal truth about failure is that everyone has experienced it. Oddly enough, this is good news that should be shared more broadly. ■

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