

TIME FOR CHANGE The Bureau of Justice Assistance is out to fix well known failures of the judicial process, says Domingo S. Herraiz.

IMPERFECT JUSTICE

Three years ago, the Justice Department embraced a grass-roots program to reform its approach to crime and punishment—and discovered that failure is necessary for success.

BY BRITTANY BALLESTEDT | PHOTOGRAPH BY JAMES KEGLEY

An important goal of the American criminal justice

system is rehabilitation. The system expects most—though not all—offenders to learn from their mistakes and become productive members of society. So why shouldn't government managers who administer criminal justice programs do the same—parlay past failure into future success.

That philosophy is at the heart of a three-year-old community-based

initiative launched by the Justice Department's Bureau of Justice Assistance to bring together law enforcement officials from across the country for candid assessments of what's working—and perhaps more important, what's not—in the criminal justice system. Under the leadership of Domingo S. Herraiz, the bureau is building on a decade-long partnership with a New York-based think tank to fix the well-known failures of the American judicial process, including sluggish courts, recidivism and a significant loss of public trust.

It was those failures that led BJA to launch its first grass-roots problem-solving criminal justice initiative in 2005. The enterprise funded 10 demonstration projects with a common goal: use coordinated, rather than piecemeal, crime-fighting techniques.

The program, which spans the three tiers of government, applies a multifaceted approach to punishment in nonviolent cases, notably in areas such as the Bronx, San Diego and Seattle. Judges have more sentencing options for offenses such as drug possession, prostitution and shoplifting. By combining punishment with social services, the goal is to reduce reliance on expensive and ineffective short-term jail sentences for nonviolent offenders and boost the public's confidence in the court system.

The pilot projects, while still in their infancy, already have shown success, says Kim Ball Norris, senior policy adviser at BJA's Adjudications Office of Justice Programs in Washington.

In San Diego, for example, in lieu of traditional court and paying a fine, offenders can choose to participate in a facilitated dialogue with residents, police and a registered nurse about the impact of low-level crime, and perform a day of community service in the neighborhood. According to BJA's research, only 1.1 percent—or four people out of 375 participants—committed offenses

again after completing the program in 2007. A comparison group that year who chose the traditional court system showed a 13.3 percent recidivism rate.

The participating court in the Bronx has decreased the use of jail time in misdemeanor arraignments from 24 percent to 16 percent since the pilot project began, and increased community-based mandates from 13 percent to 28 percent. Similarly, the city budget office in Seattle found that its problem-solving initiative saved \$192,000 in its first year, mostly through less use of jail beds and defense counsel.

The courts might have to invest more money in the beginning, Herraiz says, but with the average cost of housing an inmate at \$35,000 per year, the savings from fewer jail sentences and repeat offenders as a result of more integrated social services makes the investment well worth it. "It's like the old adage from Ben Franklin: 'An ounce of prevention is worth a pound of cure,'" he says.

Herraiz says his mission is to expand the reach of problem-solving to courts across the country, a goal that now appears within the agency's grasp. BJA's technical assistance provider for the projects—the Center for Court Innovation—hosts more than 500 visitors to the city's courts each year, including clerks, judges and others interested in implementing the program.

The next step for BJA is to work with the Center for Court Innovation to establish five mentor sites, Norris

says. They will be working examples where court representatives can visit, learn and then incorporate solutions in their own jurisdictions. "We're going to take what we know about problem-solving and create training vehicles for judges and clerks," says Greg Berman, director of the center. "That's really the next great frontier."

Fitting the Crime

The concept of problem-solving justice grew out of the notion that U.S. courts have long taken a one-size-fits-all approach to crime and punishment. Whether the crime is murder or a misdemeanor, courts tend to process cases the same way. That homogenous approach might prove effective for serious offenses, but it seldom provides meaningful lessons for low-level, non-violent offenders.

"The problem-solving idea was



HARD LESSONS Failure sometimes is an option, CCI's Greg Berman discovered.

built on the premise that courts and the justice system in general should be more thoughtful about its outcomes and more responsive to community problems,” Berman says. “The Justice Department saw the potential in these experiments and chose to make a significant investment.”

BJA’s investment in problem-solving initiatives dates back to 2000, when it gave CCI a grant to help launch the Red Hook Community Justice Center in Brooklyn. Like many of the projects in other cities, Red Hook expects offenders to take advantage of the social services offered and conveniently located in the courthouse, or face longer jail time than they might have in traditional court.

Red Hook Judge Alex Calabrese uses the example of shoplifting to explain the effectiveness of practical

solutions in his court. Offenders might be inclined to commit crimes like shoplifting for several reasons, he says, such as losing a job or feeding a drug habit. “The traditional court is going to look at the shoplifting and punish you for that,” he says. “The problem-solving court is going to look at why you’re shoplifting and require you to pay back with community service. It also will provide job training or drug treatment.”

BJA views Red Hook as the gold standard by which to judge other demonstration sites. According to the Center for Court Innovation, approximately 75 percent of defendants at Red Hook complete community service mandates each year, and the court contributes more than 700,000 hours of community service. In 2004 and 2005, Red Hook recorded no homicides for the

first time in 30 years, and in a recent survey, more than 85 percent of criminal defendants reported that the court handled their cases fairly.

“You need a judge who’s going to stay on these cases, work closely with the offender and link them with the services they need,” Herraiz says. “Problem-solving courts bring all of those services together—job counseling, mental health services, day care and drug treatment.”

Facing Failure

A year after BJA’s demonstration projects got off the ground, Herraiz sat with Berman and other key criminal justice figures at a restaurant in midtown Manhattan and discussed how the justice community puts little emphasis on the lessons learned from failed projects. The conversation began in jest, Berman says, but it didn’t take the group long to realize that they could be onto something.

Criminal justice literature is full of best practices, Herraiz says, but what’s often lost in the chatter about problems solved and money saved is a conversation about the challenges and frustrations of public sector innovation. “I’ve seen a lot of projects, and there’s a fear out in the grant world that if you fail, you don’t get any more grant money,” he says. “People talk about best practices; the reality is, in order for someone to say ‘this is what works,’ something once had to not work.”

That innocuous dinner conversation eventually led the Center for Court Innovation to approach BJA with a grant proposal, in the hopes of provoking debate among criminal justice groups over why some projects take off and others fall short. The innovative approach involves focusing on the right types of failure, Berman says, the kind in which well-intentioned people tried to achieve a goal but fell short. Too frequently, public discussion focuses on “corruption, gross incompetence or specific

The Next Frontiers

10 demonstration site grantees for the community-based problem-solving criminal justice initiative

GRANTEE	STATE	FISCAL 2005 GRANT
Pima County Juvenile Court Center	AZ	\$199,854
San Diego City Attorney’s Office	CA	200,000
City of Atlanta Community Court Division	GA	200,000
Sault Tribe of Chippewa Indians	MI	135,272*
NYS Unified Court System (Bronx Solutions)	NY	199,970
Athens County Municipal Court	OH	200,000
Clackamas County	OR	107,202
Fourth Circuit	SC	199,985
Office of the Commonwealth’s Attorney: Lynchburg	VA	148,054
City of Seattle	WA	186,774

*The Sault Tribe returned its grant to the federal government and currently is not participating in the program.

SOURCE: BUREAU OF JUSTICE ASSISTANCE

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—DOMINGO S. HERRAIZ, BJA

cases with tragic outcomes,” he says, all of which should be publicized, but seldom offer meaningful lessons.

To strengthen the effort, BJA and the center convened a daylong roundtable in New York in January 2007, bringing together judges, court administrators, probation officers, prosecutors, police chiefs and defense attorneys to discuss lessons learned from failed projects. “The goal of discussing these initiatives was to send the message that failure, while not desirable, is sometimes inevitable and even acceptable, provided it’s properly analyzed and used as a learning experience,” Berman says.

For Phil Messer, chief of police in Mansfield, Ohio, a critical lesson thus far is that success in one area of criminal justice often can mean failure for another. A notable success for police, for example, might be an increase in arrests, he says, but this also could be perceived as a failure for prosecutors and judges, who can’t keep their case dockets current. “When you define failure in criminal justice, it really depends on whose eyes you’re looking through,” Messer says. Until the roundtable in New York, talk of how different sectors of criminal justice affected one another often was awkward, he adds.

BJA has been instrumental in reforming broken criminal justice systems with-

in communities, Messer says, largely because the bureau has positioned itself to expect some failure from grantees, allowing them to use lessons learned to exceed expectations. “Finally, government is starting to think like private companies,” he says. “When you’re working on a production schedule, you can’t speed up the production line beyond the capacity at the end. You really have to work together.”

David Kennedy, a criminal justice professor at the City University of New York, believes the medical field is a good model for the integrated approach. Hospital physicians, for example, convene regularly to look at outcomes for patients and what might be improved, he says. “Ignoring failure in criminal justice does not create an environment where we’re going to be able to face facts and make things better,” Kennedy says.

Berman says the next phase of the “failures” discussion involves another roundtable with leaders who provide grant money for new experiments across the justice community. “We need to talk to funders about how they can be more understanding of grant-making and failure,” he says. “Most public policy initiatives fail; let’s acknowledge that and start from an honest place.”



Herraiz says he wants to use the initiative to change grant-making and policy decisions in the Justice Department and the justice community as a whole. “Unfortunately, the work has become more focused on process and not on product,” he says. “I want the community to have more of a focus on learning from what we’ve done, rather than simply putting money out and expecting grantees to dot the i’s and cross the t’s.”

The value in the fresh approach, Berman says, is that Justice is displaying professional courage and leadership by advancing strategies that were once foreign to the justice community.

A. Elizabeth Griffith, deputy director for planning at BJA, echoed that sentiment at a January 2006 bureau conference. “I don’t want to encourage you to fail,” she told members of the criminal justice community. “But I want to encourage you to take risks and not be afraid to say, ‘We tried this. And you know what? It didn’t work and here’s why. Here’s how we’re going to shift what we’re doing.’”

