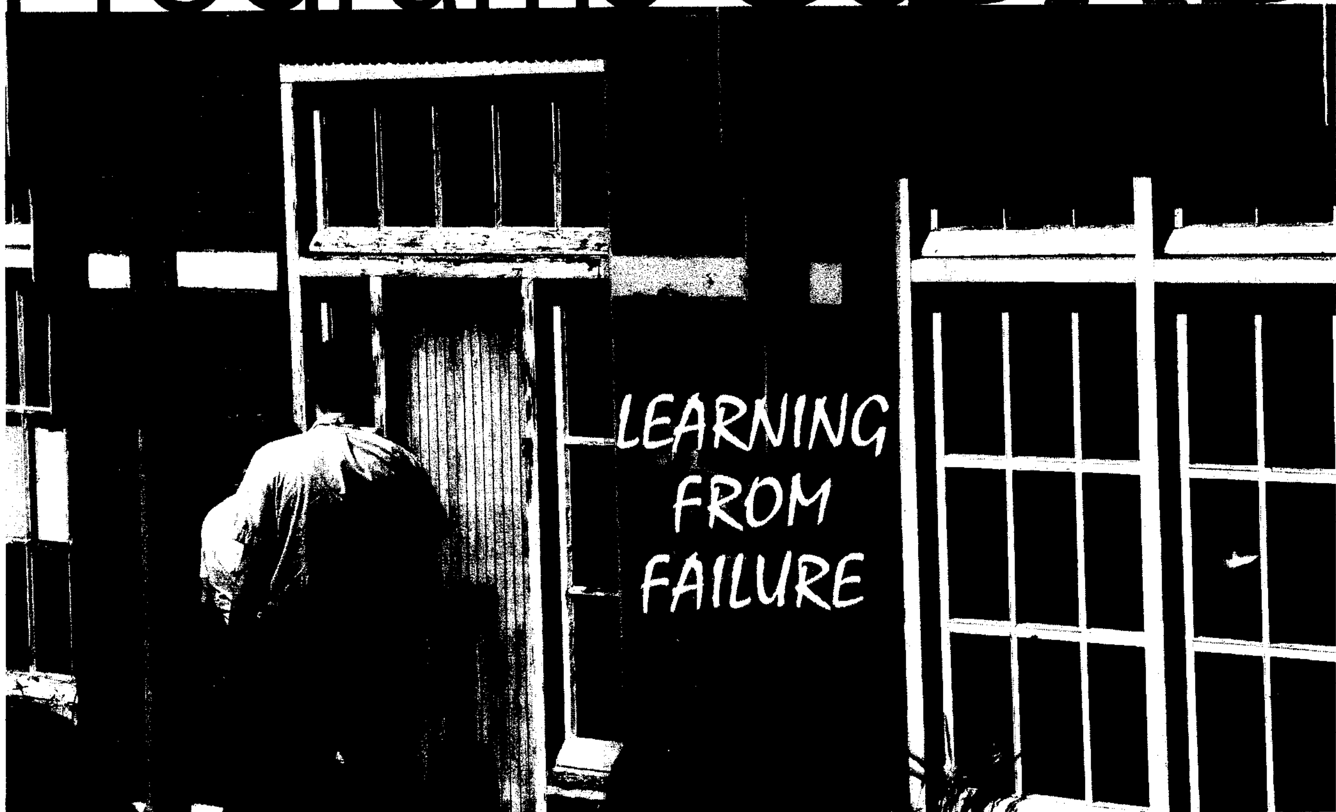
Why GOOD Programs Go BAD



BY GREG BERMAN AND AUBREY FOX

In criminal justice at the moment, a great deal of energy and attention is being devoted to identifying and spreading evidence-based programs. By and large this is positive development for a field that has often relied on anecdote and gut instincts in formulating policy.

But even as we search for programs that work, we must acknowledge a painful truth: In criminal justice—as in any area of public policy—programmatic failures are common. The reality is that many innovations are destined to fail, not because practitioners are corrupt or incompetent (although there is some of that), but because change is exceedingly difficult to achieve, particularly within an institution as sprawling and complex as the criminal justice system.

Not all failures are alike, of course. Failure is usually the product of a complicated chemistry involving a specific time, a specific place, and specific personalities. While every failure has its unique elements, in general, failures fall into four distinct groups. The first two are relatively straightforward: failure of concept (a bad idea) and failure of implementation (poor execution). Sometimes, reformers just get it wrong, fundamentally misunderstanding the nature of the problem they are trying to address or failing to pay the necessary attention to service delivery.

Two other kinds of failure are less obvious: failure of marketing and failure of self-reflection. These are essentially opposite sides of the same coin. On the one hand, innovators will not get very far if they do not manage

politics well or if they are incapable of winning the necessary resources to implement their ideas. On the other hand, some reformers become so intent on drumming up support that they fail to assess their own weaknesses or to respond quickly as facts on the ground change.

There is perhaps no better illustration of the four different kinds of failure than the Consent-to-Search program implemented by police in St. Louis, Missouri, in the 1990s. The subject of a remarkable evaluation by two criminologists from the University of St. Louis-Missouri, Richard Rosenfeld and Scott Decker, Consent-to-Search offers a vivid example of just how difficult it is to reform the criminal justice system. (For more, see SCOTT H. DECKER AND RICHARD ROSENFELD, REDUCING GUN VIOLENCE: THE ST. LOUIS CONSENT-TO-SEARCH PROGRAM (Nat'l Ins. of Just., 2004).)

A Crisis

The Consent-to-Search story begins, as many policy innovations do, with a crisis. In the early 1990s, the murder rate in St. Louis was close to 70 per 100,000 residents, one of the top five rates in the nation. The problem was particularly acute among young black men: The rate was 600 per 100,000 among black men ages 20–24.

While everyone involved with criminal justice in St. Louis was under enormous pressure to reduce gun violence, the burden fell most heavily on the police. The Mobile Reserve Unit was a crucial weapon in the fight. Housed in a nondescript warehouse miles from police headquarters, the Mobile Reserve Unit was given the freedom to respond to crime anywhere in the city as opposed to staying within the boundaries of a single precinct.

In 1993, the Mobile Reserve Unit devised a new way to get guns off the streets. At its core, the idea was a simple one: In exchange for permission to search houses suspected of containing illegal firearms, the police promised not to make any arrests if they found an illegal handgun, illegal drugs, or stolen goods. Sacrificing arrests to get guns off the streets was an unconventional strategy, but it seemed like a reasonable experiment in light of the scale of violence plaguing St. Louis.

The United States Supreme Court gives law enforcement officials wide latitude to search the property of juveniles with parental consent, but only if that consent is given freely. To help underscore the voluntary nature of the program, Sergeant Simon Risk developed a "consent to search and seize" form that would be carefully reviewed and signed by parents before the police went forward with a search. Just as important, the officers from the Mobile Reserve Unit developed a low-key approach in working with parents. As one officer told Decker and Rosenfeld, "We don't go in like storm troopers. We realize that this concept makes groups like the ACLU leery, so we want to avoid complaints. Using a soft approach is why this program has worked. We don't intimidate anyone."

Sacrificing arrests to get guns off the streets was an unconventional strategy, but it seemed like a reasonable experiment in light of the scale of violence plaguing St. Louis.

The Mobile Reserve Unit began by visiting the homes of young people previously arrested on firearm-possession charges. The officers would approach a house, knock on the door, explain that they were concerned about the toll guns were taking on the city, and ask an adult for permission to conduct a search. Almost immediately, the officers realized they were on to something. Not only were parents willing to let them search the house, they were often grateful that the police cared enough to try to help them. Many parents were terrified that their children were going to end up either in jail or dead. One woman who worked the night shift at a local hospital offered to give the police her key so that they could search the house any time they wanted. Another woman asked if she could sign a stack of pre-dated forms.

Before long, the majority of referrals for consent searches came from community members who had heard about the program, instead of from internal police referrals. This greatly increased the likelihood that a search would net an illegal firearm. During 1994, officers from the Mobile Reserve Unit made between five and 30 consent searches a

GREG BERMAN *is the director of the Center for Court Innovation in New York. The winner of the Peter F. Drucker Award for Nonprofit Innovation, the Center is a public-private partnership that works to reduce crime, aid victims, and enhance public trust in justice. Contact Berman at bermang@courtinnovation.org.* AUBREY FOX *is the director of special projects at the Center. Contact him at foxa@courtinnovation.org. This article is adapted from* Trial & Error in Criminal Justice Reform: Learning from Failure *by Greg Berman and Aubrey Fox, Urban Institute Press, 2010.*

night. Guns were found in about half of the searches, and nearly three guns per household were seized. All told, the tiny Consent-to-Search program was responsible for seizing 402 guns in 1994—about half of the total number of guns taken from juveniles by the entire St. Louis Police Department. Even more remarkable for a city with a history of bad blood between the police and members of the black community, fully 98 percent of those who were asked agreed to allow the police to enter their homes.

Here then was a program that met almost every possible definition of innovation. Fairly quickly, the program started to attract local and national attention. It was nominated by a national policing group for a prestigious innovation award. Several of the officers involved traveled to Washington, D.C., to testify about the program before Congress. The program even caught the attention of President Bill Clinton, who mentioned it in one of his weekly radio addresses.

The logical next step was to evaluate the program formally. In October 1995, Rosenfeld and Decker were hired by the United States Department of Justice to do the job. If Consent-to-Search was shown to be effective, there was a strong likelihood that the program would be adopted by police departments across the country grappling with similar issues of teen violence.

There was just one small problem. When Rosenfeld and Decker went to start their work, they discovered that the Consent-to-Search program had effectively been disbanded.

What happened? The short answer is politics with a small "p." The St. Louis police chief had resigned and was planning to run against the mayor in the next election. The new chief had little incentive to keep programs like Consent-to-Search up and running—anything associated with the previous police chief (however loose the association) was essentially radioactive. The new chief transferred Sergeant Risk and the other officers involved in the Consent-to-Search program to different parts of the police department and a new lieutenant was appointed to run the Mobile Reserve Unit.

The Consent-to-Search program might have been on the verge of becoming a national phenomenon, but very few people in the St. Louis Police Department knew anything about it. Somehow, news about the program had made its way to President Clinton's desk, but it hadn't traveled from one part of the St. Louis Police Department to another. Mobile Reserve was an isolated unit within the St. Louis Police Department and, on top of that, few officers within the unit participated in the program. Records were kept informally: Sergeant Risk stored completed consent-to-search forms in a cardboard box that he kept in his basement, which was later destroyed in a flood. Aside from the consent form, Risk and his colleagues had not created any training materials or guidelines that outlined how the program operated. Instead, they relied on their instincts to guide them. This may have been the right decision for getting things done on the street, but it meant that when they left the Mobile Reserve Unit, there was nothing to document that the program had actually existed. And just like that, a seemingly successful innovation disappeared.

A Second Chance

For most criminal justice innovations, this would have been the end of the road. But Consent-to-Search had a unique champion: an official at the National Institute of Justice, Lois Mock, who refused to give up on the program.

Mock had worked at the National Institute of Justice for many years and was passionate about preventing gun violence. When Rosenfeld and Decker informed her that there was no Consent-to-Search program for them to evaluate anymore, she told them that she would travel to St. Louis to try to get it started up again.

Together, they tracked down the new police chief at a community meeting. Rosenfeld recalls the unlikely scene of the five-foot-tall Mock striding up to the six-foot, seven-inch police chief and insisting that the program be resurrected. "She told him that the initial program was promising enough to receive funding from the Department of Justice and deserved a second chance," said Rosenfeld. The chief agreed to revive it, but, as Rosenfeld and Decker write, "only for the purposes of the evaluation, and to avoid embarrassment for the department."

Responsibility for implementing the revived program was given to the newly appointed lieutenant of the Mobile Reserve Unit. Unfortunately, he was clearly uninterested in the program from the beginning. "He called it 'social work,' and not in a good way," said Rosenfeld.

The program was eventually rolled out in a very different fashion than it was originally conceived. "It bore almost no resemblance to the original," said Rosenfeld. Its focus would no longer be on seizing guns; instead, it would seek to arrest offenders. The pledge not to make an arrest, arguably the key component of the initial model, was deleted from the consent form. The lieutenant summed up the philosophy of the reconstituted program by saying, "Why only get a gun with a consent search, when you can get a gun and a criminal with an arrest or search warrant?"

Not surprisingly, consent referrals from the community dried up. During 1997, the Mobile Reserve Unit conducted only 27 consent searches and recovered 31 guns. None of the searches involved young people under the age of 18. "The program had fully subverted its primary goal of reducing the risk of juvenile firearm violence through consent searches," Decker and Rosenfeld wrote in their follow-up report. After nine months, the program was discontinued.

A Third Strike

Remarkably, the Consent-to-Search program had not run out of lives just yet. It would reemerge one final time in late-1998 at the insistence of the US attorney of the Eastern District of Missouri, Ed Dowd.

By this time, a third police chief had been appointed in St. Louis, and, at Dowd's urging, he agreed to revive the program. Dowd secured funding for the program from the US Department of Justice, and, to make sure it was closely supervised, the chief gave it to his Intelligence Unit, located in police headquarters. Sergeant Risk and another officer involved since the program's inception, Sergeant Bob Heimberger, were reassigned to lead the project.

It looked like all the stars were in alignment for the Consent-to-Search program. The strong support of the US attorney, along with grant funding, gave it a kind of credibility and legitimacy that it had not enjoyed in the past. And it was being run by two talented officers who had been involved in the project's successful first stage.

Risk and Heimberger quickly set out to correct what they saw as the project's flaws. Officers who agreed to participate received extensive training. Records were kept religiously. Risk and Heimberger also restored the promise not to prosecute if an illegal firearm was found.

Finally, the officers sought to add a social service component to the project as a means of helping both young people and their often terrified parents. For Decker, the most wrenching part of Consent-to-Search was seeing the desperation of the parents they encountered. "I did not expect the level of gratitude the mothers had for what the police were doing," said Decker, who rode along on a number of consent searches. "These mothers had lost control of their kids and needed help." Seizing illegal guns from juveniles was still the primary goal of the project, but the officers were not naïve enough to assume that this alone would be enough to alter the trajectories of the families they encountered. Their hope was that more lasting change could be accomplished by linking troubled young people and their parents to social services.

Risk and Heimberger selected a local clergy group as a partner. The idea was that officers performing consent searches could refer young people and parents to the group for guidance, support, and links to job training and drug treatment programs.

The revived program ran four nights a week, from 6 p.m. to 10 p.m. This time, most of the addresses were generated by police intelligence rather than by referrals from community residents. Risk and Heimberger believed that relying on internal police tips would make the program more effective and reduce the chances of wasted trips. Every morning, they would pore over computerized crime reports, looking for houses to search. At first, clergy members were invited to ride along with the officers, but that practice was quickly abandoned. Heimberger said that officers were uncomfortable in the clergy's presence. "They acted like they didn't trust us," he said. Instead, a referral form was developed that explained the available social services. The police kept a copy for themselves, and mailed another copy to the clergy group, with the expectation that its members would follow up with the family.

Before long, however, the police realized that the clergy group was not meeting its end of the bargain. This lack of follow-up was demoralizing to officers like Heimberger, who, to this day, can remember people he encountered on consent searches. "I had one woman tell me, in tears, that she was sure her son was going to be killed," he said. "I don't like that we didn't help her."

The program in its third iteration suffered from other implementation problems as well. By relying on information generated internally, the police hoped they would be able to better target their resources, yet that decision had the effect of reducing the number of searches performed as well as the chances that parents would consent to a search. From December 1998 to August 1999, a total of 201 consent searches were performed, about half the number conducted in 1994. Strikingly, adults consented to the search in only 42 percent of cases, compared to 98 percent in the project's first stage. "It is not surprising that when parents request the police to come to their residence, they are more likely to grant the police entry," noted Rosenfeld and Decker dryly. A total of 29 firearms were recovered during this period, a fraction of the 402 guns netted in the program's first phase.

These less-than-inspiring statistics, when combined with the lack of follow-up from the clergy group, ultimately crippled the project. The program was terminated when the grant funding expired, and this time for good.

The Four Types of Failure

As the tortured history of the Consent-to-Search program shows, there is no perfect, risk-free way to run a project. It is impossible to say if a different set of decisions could have saved the program. But eliminating failure is an unrealistic goal: The only way to eliminate failure is not to try anything at all.

What makes the St. Louis Consent-to-Search program particularly useful is that over the course of its brief and eventful existence, it managed to highlight the most common causes of failure in criminal justice reform. In general, there are four types of failure:

- failure of concept (a bad idea);
- failure of implementation (poor execution);
- failure of marketing and politics (an inability to attract the necessary money or manpower); and

failure of self-reflection (reformers becoming so intent on drumming up support for their programs that they fail to assess their own weaknesses or respond as facts on the ground change).

The first, most promising phase of the Consent-to-Search program is an example of how politics can lead to failure. Given the messy politics of St. Louis, the program's association with the departing chief (and rival to the mayor) was enough to put the initiative on the fast track to oblivion despite its encouraging early track record. Moreover, the isolation of the officers on the Mobile Reserve Unit meant that they had few internal allies that they could rely upon back at headquarters to save the program.

However, lest we fall into the knee-jerk position that all politics is bad, it is worth highlighting that political forces also brought the Consent-to-Search program back from the dead. It was, after all, the intervention of an official at the US Department of Justice and later the US attorney that helped resuscitate the program. Navigating local politics is one of the hardest and most important skills that reformers need to master in order to implement a new program successfully.

A failure to manage local politics is only part of the Consent-to-Search story, however. Sometimes, as in the second phase of the Consent-to-Search program, reforms are killed by bad ideas. Clearly, abandoning the pledge to forgo arrests if illegal contraband was found was not a good idea. It is difficult to imagine even the most talented and dedicated officers making the project work within those constraints. Thus, the second phase of the Consent-to-Search program ended in failure, just as the first one had, albeit for very different reasons—this time it was a failure not of politics but of concept.

In its third and final stage, the Consent-to-Search program had the active support of the US attorney and a dedicated source of grant funding. The political winds seemed to be blowing in the program's direction. The officers involved also had a wealth of good ideas and relevant experiences to draw upon in designing the project. Yet the Consent-to-Search program failed once more, this time because of implementation problems—most notably, the decision to rely on a flawed clergy group as a partner.

In addition to politics, concept, and implementation, there is another source of failure in criminal justice innovation that perhaps is the most important and the least discussed: the failure to engage in reflection and to build knowledge about what works and what doesn't. Here again, the story of the Consent-to-Search program provides a good example, demonstrating how difficult it is for those in the field of criminal justice to learn from mistakes.

The Consent-to-Search program illustrates the failure of self-reflection in criminal justice because it is such a rarity—a program that yielded a well-written, qualitative analysis of failure. The fact that the report exists in the first place is the product of unique circumstances. Hired to write an evaluation of the Consent-to-Search program, Rosenfeld and Decker found that the program had been disbanded. According to Rosenfeld, "We had no choice but to write about failure."

Conclusion

The harsh truth is that, despite important advances in knowledge and practice during the last 20 years, criminal justice agencies are still struggling to understand how to tackle problems like gun violence. According to Michael Scott, a professor at the University of Wisconsin and a former police chief, "In police agencies, we have not developed rigorous standards for defining and measuring success or failure. In their absence, we resort to very personalized and ad-hoc measures. . . . Unfortunately, it's fairly easy to abandon a good idea in policing."

To some observers, the contrast between criminal justice and other fields like medicine, where innovations are tested thoroughly before being marketed to the public, is particularly stark. To be sure, measuring the effects of a complex criminal justice experiment like Consent-to-Search is much more complicated than measuring results in medical research, which is more amenable to the so-called "gold" standard of evaluation research, in which individuals are randomly assigned to experimental and control groups and then carefully tracked.

In recent years, an intense debate has broken out among researchers and practitioners about the role that research should play in informing criminal justice practice, with some advocating that only projects that have already proven their effectiveness (i.e., "evidence-based" programs) should be supported, while others worrying that, if taken too far, the "what works" movement can crowd out innovation and the adoption of new ideas.

Strange as it may sound, we need more programs like Consent-to-Search, not fewer. The world is constantly changing. New public safety problems are always emerging. If we want a criminal justice system that lives up to its highest ideals—both in terms of fairness and effectiveness—we must continue to innovate. This means encouraging judges, probation officials, prosecutors, police officers, and others to test new ideas. But this won't happen unless we send a message to the field about the importance of the trial and error process. For all its foibles, Consent-to-Search has made an enormous contribution to the field of criminal justice—it offers would-be reformers a real-life example of trial and error in action that they can study and learn from for years to come. ■