

JOURNAL

PRISON SERVICE

March 2011 No 194



Interview: Aubrey Fox

*Aubrey Fox is Director of Special Projects for the New York Centre for Court Innovation and also Senior Project Developer for the Young Foundation, setting up the UK Centre for Justice Innovation. He is interviewed by **Jamie Bennett** who is Governor of HMP Morton Hall.*

The New York Centre for Court Innovation was established in 1996. It is an independent non-profit organisation that works closely with State court system. Its work is in three primary areas. The first is to develop innovative practices including designing and running demonstration projects. The second is that it carries out research and evaluation. The third is that it promotes good practice nationally and internationally.

Their demonstration projects include Midtown Community Court the first community court in the United States. The court combines punishment and help, holding quality-of-life offenders accountable and helping them avoid re-offending. Another notable project is the Red Hook Community Justice Centre, a multi-jurisdictional community court that brings criminal, family and housing cases before a single judge and provides on-site social services to help solve neighbourhood problems.

The Centres most ambitious project is Bronx Community Solutions, which was founded and led by Aubrey Fox. Bronx Community Solutions seeks to apply the community court model of combining punishment and help to all non-violent cases in a borough of nearly 1.5 million people. The aim is to provide 'problem-solving justice', in other words the idea that, rather than simply processing cases, the justice system should seek to change the behaviour of offenders, aid victims, and improve public safety. The project does this in four ways. The first is that it provides judges in the Bronx with expanded sentencing options, including drug treatment, job training, and mental health counselling. The second is that offenders are assigned to community service work in neighbourhoods throughout the Bronx that improve the local community. The third is that there is increased accountability by quickly assigning offenders to the services and then monitoring compliance. The final element is community engagement where local residents play a part in identifying projects and taking part in a neighbourhood advisory board.

The Centre has also carried out research and evaluation including a three year project looking at the effectiveness of drug courts in New York. Their consultancy and dissemination work has led to them hosting around 2000 visitors from 50 countries.

Aubrey Fox is now in the process of working with the Young Foundation in the UK in order to launch the

Centre for Justice Innovation, an independent agency that will work to improve how the criminal justice system functions in England and Wales. This will draw upon the experience of the New York Centre for Court Innovation.

As an author, Fox's publications include *Learning from Failure: Trial, Error and Criminal Justice Innovation* (Washington: Urban Institute Press 2010), produced with Greg Berman, Director of the Centre for Court Innovation. This book attempts to use case studies in order to draw lessons from projects that have been perceived as failures.

Further information on the Centre for Court Innovation is available at

<http://www.courtinnovation.org>

Further information on the Young Foundation is available at

<http://www.youngfoundation.org/>

JB: Can you start by describing the purpose and work of the New York Centre for Court Innovation?

AF: We are a non-profit making organisation that promotes new models of criminal justice. What makes us unique is that we have a close tie to the New York State court system, so we serve as their independent research and development arm. That means that we develop demonstration projects, most of which are court-based, that attempt to address chronic problems, whether that is low confidence in criminal justice, drug addiction, mental health, or high offending in low income neighbourhoods. With the co-operation of the court system, we run the projects and evaluate whether they work.

JB: How has the Centre been funded?

AF: We have a turnover of \$18 million a year. Two thirds comes from government and a third comes from private donations. On the government sides there is funding from all levels of government — federal, state and local. The private investment is typically from large philanthropic groups such as the Rockefeller Foundation. One of the advantages this gives us is that the court system is sometimes constrained in attracting funding from philanthropy, but we can do so on their behalf.

JB: How have professionals and policy makers responded to the Centre?

AF: Our reputation rests foremost with our relationship with the State court system. They are our top client. That reputation has been built over the 15 years we have been around and is based on the mutual benefit created. More generally we have been successful in surviving political transitions. We have been around through three different Presidents, three different Mayors and changes in the political parties. Although our ideas have evolved since we started, we are still plugging away at the same basic ideas from our inception and that consistency of values is important. In criminal justice just as in other fields, there is a tendency to go for the flavour of the month. As new ideas come in they become popular and there is a destructive tendency for other ideas to be thrown out in the wash and a whole new set of ideas be brought in. We have managed to stay consistent to a set of ideas over time.

JB: Since the 1980s, there has been a movement away from expert power to populism in criminal justice. It sounds that you are saying that they has been a return to expert power and evidence based practice.

AF: It's an interesting point. There's a pendulum and in the US it has been swinging back towards the expert and professionals. That is due to a long period in which policy makers have had more confidence in the abilities of front line practitioners to solve problems in the US. We take some small credit in that process, but by no means all. It is also a slow process and is not a complete reversal, but generally there is more public confidence in the criminal justice system. The best illustration of that is that if you go back to the Presidential election of 2008, neither McCain nor Obama made this a major issue. Between them I think there was only one speech on the topic in a twenty month period. That is a healthy sign because when this becomes less hot it becomes less politicised and there is more freedom to try new things.

JB: You have been particularly involved in the Bronx Community Solutions project. Can you describe the context of the Bronx and the particular circumstances that this project responded to?

AF: In New York the courts are centralised, so each borough of the city has one central court. The Bronx court house deals with every arrest made in a borough of 1.5 million residents. Something like 90,000 criminal cases go through the court each year. Most of those are misdemeanours, which are crimes punishable by no more than one year in prison. It is widely acknowledged that the Bronx did not have a good way of dealing with this mass volume of low level crime. It was essentially a revolving door where people kept coming back again and again. There weren't a lot of options available for them and many ended up with very short jail sentences, sometimes for five or ten days. Nobody really thought they were useful. They were either getting these very short jail sentences or nothing more than a slap on the wrist. What we did as Bronx Community Solutions was to become a clearing house for alternative community-based sentences on a vast scale. Our programme now deals with about 15,000 misdemeanours a year and provides all of the community payback and social service sentences for those people. Part of our service is to meet that demand. The other aspect is that we have run what have been called community courts, which in contrast to the centralised court system provide local courts in local neighbourhoods like the Times Square neighbourhood of Manhattan and a neighbourhood in Brooklyn called Red Hook. They

In criminal justice just as in other fields, there is a tendency to go for the flavour of the month. As new ideas come in they become popular and there is a destructive tendency for other ideas to be thrown out in the wash and a whole new set of ideas be brought in.

pioneered new approaches there and the Bronx project was an attempt to take that learning we had developed at a localised level, for example a single courthouse with one judge, and try to apply that to the entirety of the Bronx. The question was whether we could do what we were successful at doing at a micro-level on a larger scale for the entire Bronx.

JB: What work was undertaken in this project? What practical innovations did it introduce?

AF: In New York when you are arrested on a misdemeanour and charged, you have to be seen by a judge within 24 hours. Our staff were present in the courtroom advising judges on that first appearance as to whether they were a good candidate for a Bronx Community Solutions sentence. If they were a good candidate, we would get them from the courtroom to

our office and would immediately assess and assign them to whatever their community based sentence was. We were testing whether we could integrate the services, so just as someone who goes to jail the sentence starts immediately and there is a seamless handover between court and jail, could we do that same process from courts to community sentences. We also wanted to see if we could make a community based penalty as serious and confidence-inspiring as an incarceration penalty and was that possible on a mass scale? Some of the ideas that we developed in Times Square and Red Hook were about immediacy, the idea that people would start their sentences quickly, and accountability, making sure there was a consequence if they failed to do what they were supposed to do, and then community benefit, that whatever they did as the penalty had a positive impact on the surrounding community. On all three of those ideas we were able to show considerable improvement.

JB: What were the elements of the punishment? What would they do?

AF: The sentence would be composed of a social service element, such as drug treatment, mental health counselling, job training, or a community payback penalty. We were more creative with payback, so they might work at a local warehouse charity to ship supplies to teachers around the country or overseas, working with a non-profit making organisation in a local park to clean it up, cleaning up graffiti. The judges had the option of choosing either a social service element or payback, or blending the two. One thing that was different was that rather than it is in the UK where a judge is specific about what the order is, they pick off a menu, in the Bronx the only decision the judge made was the number of days of community payback and/or social service. The decision about how their time was specifically spent was made by the staff in our offices. The idea was to devolve the decision, wait for the moment when there was better information and to reduce the impact on the court room. So, some of it was practicality, if you are a judge in the Bronx and you have 125 cases a day, you are not going to make exhaustive decisions on each one. It did raise some interesting questions about how you might construct a criminal justice system where you devolved more

discretion to professionals who are in a better position to make decisions.

JB: Some of the movement in the UK has been to make community punishments appear more punitive and be more visible, for example distinctive clothing has been used. Was there an issue of public perception and a desire for punitiveness?

AF: All of our clients do wear vests so that they are identified as Bronx Community Solutions clients. Our commitment to seriousness was around showing that the work itself was serious. We have continued to have

clients working around the courthouse building, so that judges or attorneys walking into the courthouse see these people doing work. We therefore started with the people who work within the system who may not have previously thought these sentences were serious. The other issue we worked on was accountability. That meant that if someone did not do their mandate, there was a real penalty involved. In general in the US there has been a move to make community penalties more serious and substantial. We in the Bronx benefitted from that process because although we did make the penalty more serious, we were also able to make the work meaningful, so we had people doing work that was genuinely interesting. In the US there is a core concept that the punishment has to be serious but we are able to be creative about

Some of the ideas that we developed in Times Square and Red Hook were about immediacy, the idea that people would start their sentences quickly, and accountability, making sure there was a consequence if they failed to do what they were supposed to do . . .

the content of the work.

JB: You have talked about accountability where people don't follow their order. What were those consequences? Was it imprisonment?

AF: Not necessarily. There were several problems we saw before we started. The first was that there wasn't a good link between the court and the people who provided the punishments. People would go back to court and there was constant excuse-making and because the services weren't reliable, the judge was left guessing as to whether the person was telling the truth or not. There is nothing worse for a judge than sending someone to jail for not doing what they were supposed to do and then finding out that they had done it or that they had tried but the programme provider was at fault. The judges didn't believe or trust the reports given to them. The second issue was that the judge who

originally saw the defendant and sentenced them was not necessarily the one that heard it when it came back following a breach. As a result the penalties were inconsistent. We posted people in the courts who dealt with compliance matters and making reports that were more reliable and recommendations that were more consistent. Sometimes this meant enhancing the community penalty and sometimes meant jail, but the important issues were around trust and consistency.

JB: What success has it had?

AF: Some basic issues I would highlight. One is compliance, when we started compliance with community based penalties was around 50 per cent, not a recipe for confidence. We have raised this to 70 per cent. Even more directly, before we came around, judges didn't really know what the compliance rate was, nobody was collecting the information and reporting it back to court. We said publically we would be judged by that. Although there are other ways in which we can be measured, that is something tangible and visible. When we bring people on visits to the Bronx including judges, attorneys and court officers, they say 'we know Bronx Community Solutions works because it has increased compliance'. The other tangible benefit is community payback. Given that our offenders work in the Bronx, the labour value is around \$750,000 a year. That is the benefit in cleaning graffiti, tidying parks and so on. The court has also gotten more engaged with the community. The court was previously seen as a 'black box'. You wouldn't want to go in there, but who knows what happens when people do? Now the court is seen as a better Bronx citizen and there have been projects introduced that have brought value to the community. For example we have done work with the police around prostitution and we have a mental health project that is of interest to city policy makers across the country. In these ways the Bronx court has become a place of innovation where new things are being tried that are interesting and important.

JB: Whilst the project is working to moderate and transform criminal justice responses to crime in the Bronx community, is it contributing towards finding solutions to the underlying social problems including poverty and racism?

AF: We are modest about our impact on these greater issues. It is incremental. We have done a lot of work around employment, trying to get offenders linked

to employment programmes and a lot of that is not through a mandate but is encouraging people to seek that voluntarily. From a race perspective, we felt that we were playing around with ideas of fairness. There is an idea going around, which I guess is common sense, that if people feel they are being treated fairly they are more likely to comply with whatever is being asked of them. Fairness has specific qualities, including that you know what has happened to you, you understand the court process, you have had an opportunity to share your side of the story, and you have some role in shaping what happens to you. We have been intent upon injecting

these values of fairness into what we do. There is something very basic around injecting a sense of fairness into a system where the majority of people involved are Hispanic or African-American.

JB: Yes, that is an argument about legitimacy. There is also a wider question about whether the focus of these reforms are to create a criminal justice system that is more effective, efficient, and perceived as legitimate, and whether that leaves untouched the broader social issues, for example people would argue that the criminal justice system is overused and is disproportionately used against particular groups, including the poor and minority ethnic groups, and

indeed that it is part of a system that perpetuates and maintains power and inequality. An example of that is that in New York it was identified that there were 35 'million dollar blocks', blocks were a million dollars were spent imprisoning people each year. Does the centre promote an organisational and managerial approach, exploring how things are done, rather than a social approach, asking about what is done and why?

AF: Culturally we are non-partisan and we tend to be incremental in our approach. As a result we tend to be cautious in taking on these really big social issues. That doesn't mean we don't have a take on them. The Bronx project is just one of the projects we run and I can point to several that have a direct impact on those issues. One is a resettlement programme in Harlem run through the Harlem Community Justice Centre. It is a parole re-entry project. That is absolutely about these issues and addressing this wildly disproportionate impact that imprisonment has on particular communities. We do take it on in various ways but we don't take on the really

. . . before we came around, judges didn't really know what the compliance rate was, nobody was collecting the information and reporting it back to court. We said publically we would be judged by that.

big, hot issues. We don't have a take on the death penalty for example.

JB: You have recently published a book which explores failures in criminal justice reform. Why did you want to explore this issue and what lessons do you think can be drawn from these failures?

AF: The reason we wrote the book was that we wanted to encourage a more honest conversation about criminal justice. We wanted to acknowledge that failure was a fact of life, even for well-meaning reformers. As a non-profit organisation, we live in a world where we have to market and promote ourselves and there is a natural tendency to suggest that everything you have done is the greatest thing since sliced bread. We wanted to fight against that and acknowledge that a lot of the things we have tried haven't worked out. That is an important corrective. It is hard to break through the clutter now. There are any number of books or public policy papers about the secrets to success but we thought taking a more counter-intuitive approach would help us to break through and win some credit for taking the risk.

JB: In the book you highlighted that a truly innovative culture can only thrive where ideas and tried and in some cases fail.

AF: That is certainly the case. We would like to see that more often in criminal justice and in a more thoughtful and mature way. One of the key lessons of the book is that failure is in the eye of the beholder. Often, the closer you get to projects that people consider to be 'failures' or 'successes', the more complex the picture becomes. Most people acknowledge that but it is not widely discussed. The book is organised around six case studies. Some of these are cases that are considered out-and-out failures but when we looked more closely we found some things that were good and conversely those that were perceived as successes we were able to see some problems. Those grey areas were interesting.

JB: You are now moving to the UK to set up a Centre for Criminal Justice Innovation. What will be the purpose and scale of this project?

AF: The idea is to bring the institutional model that we have created in the US and introduce it in the UK. This is the idea of an institution that is independent of government but connected to it in a meaningful way, and tries to promote a core set of ideas. Our thinking and focus has changed as we have got more involved

and recognised some of the challenges that the country faces. There is a widespread recognition that whilst a centralised approach to criminal justice reform has many virtues, there are downsides. One downside is that unlike the US where there is a cadre of local practitioners who have credibility with the public and are willing to take risks and be innovative, it is harder to find that in the UK. A lot of that is to do with the basic structure of government. One question for us is how we can develop that local innovation? The product we are selling is a healthier, mixed economy where lots of different people contribute to the pot rather than just central government debates and policy making.

JB: How will this be funded?

AF: Independence is an important asset for us to have in the US but if anything it feels more critical in the UK. Being perceived as independent is important for an organisation in the UK even more than it is in the US. There is concern about organisations being absorbed or overwhelmed by government. What that means in practice is that we will have to be able to attract significant private funding in order to win credibility. At the same time we have to be frank that in order to exist we have to get the relationship with government right. It is a tricky balance to get right. Like the US we will accept a mixture of public and private

funding, but it is not just about money it is about what is the right mix and what is the right support that will allow us to achieve what we want to accomplish.

JB: It sounds like you view that there is a critical issue about impact which requires the right relationship with the state as well as private investors.

AF: Yes, but the state is not a monolith. There is a lot of movement in central government — people change, ministers come and go, and civil servants get reassigned. Part of the challenge is how you keep renewing your relationships. There is no easy answer. Ultimately if we have a defining goal for what we are doing it is that through ourselves and the networks of like minded organisations, we could create competing centres of gravity to central government policy making. That is healthy, that lots of people are throwing together their ideas and innovations into the pot.

JB: There are a number of new policy initiatives being developed in the UK, in particular the current government have been talking about exploring

The reason we wrote the book was that we wanted to encourage a more honest conversation about criminal justice. We wanted to acknowledge that failure was a fact of life, even for well-meaning reformers.

alternative approaches to dealing with drug dependent offenders and those with mental health problems. What approaches have you seen developed in order to successfully respond to these two groups?

AF: Drug courts are an enormous movement in the US, there are more than 2000 in place around the country of all variety of sizes. The results are pretty good and from a social science perspective they have been roaring successes. In our world that means reductions in reoffending of 15 to 20 per cent. On the mental health side we have been involved in a lot of projects where we have been using the authority of the court to address mental health problems for people in the criminal justice system. In terms of the applicability to the UK, I am aware that the UK has attempted to take some parts of the drug courts and mental health court approach and rather than address them through a speciality court model where you have a lot of courts deal with the problem in a different way, there has been an attempt to introduce changes throughout the criminal justice system as whole; instead of drug courts there are drug treatment and testing orders. That has been a mixed process for the UK. What it gains in terms of consistency and system-wide application, you lose in terms of a distinct approach with a real constituency. With over 2000 drug courts in the US, there are thousands of people who can stand up and say 'I work in a drug court and I love what I do'. You don't get that with DTTOs. That is the basic strategic trade off.

JB: Have there been similar approaches for offenders with mental health problems?

AF: Yes, there are mental health courts around the country, including some felony mental health courts. It means that they are willing to take risks with mentally ill offenders. There is not the same volume as drug courts. In the Bronx we assess every single person assigned to our programme for mental health problems and refer them to voluntary services. That is being considered in the UK where there is a huge volume of people coming through the criminal justice system who are not likely to connect with health services on their own, so how do you use their engagement with the criminal justice system to get them connected?

JB: It sounds as if you are suggesting that there is an issue about building up capability

within the system, both in terms of the engagement with those who enter into the criminal justice system and skilling up workers generally, but also having some specialist courts with expertise who can make more individualised decisions.

AF: Yes, the other dimension is political. What is the approach that is most likely to build up a constituency for change over time? My general feeling is that in the UK there isn't always a lot of thought about that issue of building a constituency for change. Police and criminal justice commissioners interest me because it is a political approach to building these local commissioners who have public support and so can carry forward changes. Time will tell whether that is successful, but it is built on a solid hypothesis that you need to create more local drivers for change.

JB: The Government are also seeking to develop innovation and attract non-state funding into the criminal justice system through social impact bonds where investors will establish schemes to rehabilitate offenders and will gain a return on their investment based upon their success in achieving this aim. Has this type of payment by results been successfully implemented elsewhere as far as you are aware and how

do you view this approach?

AF: It is very much a UK innovation and it is attracting interest from the US and elsewhere. There are contract based programmes that we participate in where we are paid by outputs but the social impact bond approach is more fundamental in its ambition. It is an interesting approach. I have all the same questions that a thoughtful person would have about it. Does it only tend to support outcomes that are easily measured? Is reduced reoffending the only outcome that the criminal justice system is seeking to accomplish? Do other important outcomes fall by the wayside? Overall it is healthy because it communicates a sense of innovation and experimentation in criminal justice. That is certainly good.

JB: Is there a market for these social impact bonds and is this a market that will tolerate the failures that you have suggested are necessary for a truly innovative culture?

Drug courts are an enormous movement in the US, there are more than 2000 in place around the country of all variety of sizes. The results are pretty good and from a social science perspective they have been roaring successes.

AF: That is interesting. The sine qua non of the social impact bond is one number so it won't take account of all the impacts and effects of a programme because it is based on this one outcome. That is a tough question. We will see but my sense is that the first social impact bond it is important that they deliver on their promises. I am familiar with the Peterborough project and the St Giles Trust work, and I feel confident that they will be able to deliver what they promise and that is good.

JB: The Coalition government have been discussing what they describe as the 'Big Society'. For some critics this is an attempt to legitimise a reduction in state funding, but for supporters it has been argued that getting local people involved in solving local problems is a more effective approach. What would be your observations on these arguments and similar initiatives elsewhere?

AF: What we do in New York and the US falls full square into the 'Big Society' approach. Certainly in the community court projects we run, that is the 'Big Society' approach in action, although we didn't call it that. It is healthy and there is something fundamentally important about the approach. Like anything in life the devil is in the detail. It is incumbent upon local people and local projects to fill in the details but it is a healthy conversation.

JB: What do you hope to see in the coming few years for the UK Centre for Criminal Justice Innovation and in the criminal justice system generally?

AF: Our hope is that we will be established as a credible voice within policy making debates and that we will be involved, as we are in the US, where we combine action and reflection. I hope we will be able to keep that mix as we go forward in the UK. We don't want to be a talking shop, we want to run projects on the ground. For the UK it is interesting how much media coverage there is of the criminal justice system. In a way I like it because in some cases it is sophisticated and the level of discourse is good but in a way I hope there will be less coverage of criminal justice and people will be free to get on with things. My observation is that having gone through the Green Paper process, there is a 'wait and see' attitude that people have. Everyone I talk to, and I am as guilty as anyone else, says we want to do X, Y and Z but we are waiting for the Green Paper to come out. I am hopeful that in a few years the culture of 'lets wait for the policy makers to find the agenda' will be replaced by or at least mixed with a 'let's get on with it' culture. That is my fondest wish is that there will be a feeling that practitioners in the field feel empowered to get on with it and experiment and do things on our own without waiting for permission to go forward.



PRISON SERVICE JOURNAL

PUBLICATIONS



The Prison Governor: Theory and Practice by Shane Bryans and David Wilson

Describes in one closely argued book, the history of imprisonment, the management of prison staff, the understanding of prisoners, the developing role of the Governor and some well governed prisons.

Order Form (Please photocopy this page)

The Prison Governor

£4 for prison staff

£5 for non Prison Service staff

Include £3.00 p+p per book

Copies

Total

.....

Cheque Value

.....

Enclose a cheque made out to 'HM Prison Service' and send to:
Prison Service Journal, c/o Print Shop Manager, HMP Leyhill, Wotton-under-Edge,
Gloucestershire, GL12 8BT. Tel: 01454 264007

Name..... Address

.....
..... Signature