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They Shot More than a Messenger

Governor Rick Perry silenced Tony Fabelo. Now, hear what he has to say.

BY JAKE BERNSTEIN

In June 2003, at the end of the regular session of the 78th Legislature, Governor Rick Perry abolished an entire agency with a line-item veto. The agency had a biannual budget of only \$2.5 million, but Perry's action will likely end up costing the state much more than that. For an institution that was unique in the nation, the agency had a rather bland name—the Criminal Justice Policy Council. It had started in 1984 as a council of elected officials tasked with forcing agencies dealing with the criminal justice system to work together. One of its first employees was a freshly minted doctorate from the University of Texas named Tony Fabelo.

Over two decades Fabelo would transform the council into an unbiased source of data and planning for one of the largest prison systems in the world. The council studied everything from prison costs and upkeep to the effectiveness of drug treatment programs. Astoundingly, 1 out of every 20 Texans are under the control of the Texas Department of Criminal Justice either in prison, parole, or on probation. Fabelo created order from chaos. "We must have a criminal justice policy council," Senate Criminal Justice Committee Chairman John Whitmire (D-Houston) told The Houston Chronicle upon hearing of Perry's veto. "It's critical to the state's public safety net that we have experts like Dr. Fabelo around."



Why Perry removed Fabelo is a favorite guessing game of those who work on the advocacy side of the system. The official line from the governor's office was that the council, created to act "as an independent agency to assist with solutions to prison overcrowding" was superfluous, its demise a money saver. For those who don't swallow that line, there are at least three different conspiracy theories detailing which hidden interest did in the straight-talking civil servant. Many, aware that a few key players in the lobby run much of the Lege, believe it was Fabelo's appraisal of privatization—grounded in realism and not ideology. In this theory, it was a corporate deal and Mike Toomey's fingerprints are all over the axe. Toomey was a lobbyist whose clients included private-prison behemoth



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Corrections Corporation of America. He helped engineer the 2002-coordinated Republican campaign to seize the Legislature—currently under investigation by a Travis County grand jury. He then became Rick Perry's chief of staff. (Toomey is back in the lobby for the 79th Legislature: see, "Texas' First Post-Modern Lobbyist," TO, December 17, 2004.)

Theory number two had Fabelo done in by faith, so to speak. The council did a study comparing faith-based treatment programs to those offered by the state. It found that, while faith-based programs saved the state money, recidivism rates were about the same. Both approaches failed to keep prisoners engaged or successfully integrate them back into their communities. According to this theory, faith-based Republicans, a key bloc in any Perry primary victory, are responsible for killing the council.

Last but not least is the current prison crisis. The Legislative Budget Board, which subsumed many of the council's responsibilities, says the state prison system could be at capacity by March. Fabelo had predicted as much the session before. A crisis in the prison system is not something to trumpet when running for reelection. The next best thing to solving the problem is minimizing its importance.

None of this need concern Fabelo anymore. His value is clear to officials in five states where he is working as a consultant. He is also helping out in Puerto Rico, his boyhood home. Born in Cuba, Fabelo's parents spirited their young son off the island after the revolution. They were headed to Spain on a tourist visa, but when the boat stopped in Puerto Rico, his father asked for political asylum. Fabelo laughs as he tells the story from his South Austin home. Throughout the house are touches of the islands. It's clear in talking to the bearded and perpetually pensive Fabelo that he still cares deeply about Texas and the criminal justice system he spent almost 20 years trying to fine tune. What follows are excerpts from that conversation.

The Texas Observer: *There seems to be evidence that other states that didn't have Texas' prison building boom also had crime rates that went down. Are we safer or just poorer?*

Tony Fabelo: It is a combination of everything. We had such a crisis. We let the system get so out of control in the '80s. We neglected to have adequate capacity. We neglected to really pay attention to how the war on drugs was having an impact on sentences, or pay attention to the probation infrastructure and so forth. We had such a crisis that we had a gigantic backlog in the county jails. The counties sued the state and won, and we had to pay the counties half a billion dollars over a period of, I think, six years for holding the prisoners in their county jails and for penalties the court decided to impose on the county jails. So at that point, really, there was no choice but to build.

We were in a tremendous bind. There were a lot of releases. The parole rate was 80 percent. When we release at 80 percent, you're not making good release decisions. So, we released [violent offenders] and they became the poster cases for this situation. So the parole board was shut down, and releases started declining, which aggravated the whole overcrowding. [It] was totally out of whack. So there was no choice given the situation but to build prisons and get the system stable. So in that regard we had to build prisons and we did have an impact on crime, because eventually we had a more stable system where the violent offenders were serving longer.

The other answer to your question is, if we continue to do this, are we just putting more money in this thing, and getting the same returns on the investment? We are getting to the point where we have the highest incarceration rate in the country, the third highest right now. We have about the same prison population as California, [which] has 13 million more people. And that gives you a sense of how high our incarceration rate

is. In terms of crime rates, there are other states that saw declines in crime, particularly New York, [which had a] tremendous decline in crime. They did a lot better in terms of crime rate decline even though their incarceration rates did not increase as much.

Right now with the highest incarceration rate in the country, with a projected shortfall in capacity of about 6,000 to 8,000 beds in the next five, six years, there is not enough capacity. If we build more prisons and build 8,000 prison beds, and that would cost a lot of money nowadays, probably over \$1 billion, are you going to get dramatic declines in crime? The answer is no. [We] won't.

TO: *What are the other parts of the system that we need to enhance?*

TF: The first one is probation. The probation system in Texas is not a very effective system. Half of the probationers that terminate probation terminate because of a revocation. We have about 30,000 absconders at any point in time, from probation. We don't even know where these guys are. These are felon probationers. The problem with the probation system is that we have very long supervision terms. We have the longest supervision terms in the country. These people stay there for a long time, so that's why we end up with 250,000 felonies on probation—more than California, and then another 150,000 or so in misdemeanor probation. The caseloads [for probation officers] are 100 to 116 for felony probations. Which means that the probation officer cannot do much with these people, except to figure out if they're reporting or not.

So we have a system that—if you're a probationer and you get in trouble, you don't get a lot of services, you don't get a lot of attention that can help you get out of trouble. In particular, attention with employment problems, substance abuse problems and so forth. On the other hand, if you're doing well on probation, you stay on probation forever because you're paying fees and they generate money for the system. Half of the funding of the system comes from fees paid by probationers. [For every \$1 the state invests, probation collects \$1.13 in offender fees for supervision, victim restitution, court costs, and fines.] So if you're doing well, stay on probation for a long time. Thanks for paying for the system! If you're not doing as well, we slap you in the face a couple of times, don't give you a lot of attention in terms of good programs and casework supervision, and then all of a sudden we revoke you.

TO: *What would the ideal caseload for probation officers look like?*

TF: It varies. Some people say seven. But look, we did this in the juvenile system when Bush was here and that was one of the proudest things I did when I was working there with Governor Bush. He came in and said we need to fix our juvenile system. And part of the fix was to increase time for the most violent juvenile offenders. But the other part of the fix was to strengthen probation. So they put more money into juvenile probation. They put in a system of progressive sanctions. [A] staircase system of how kids will move. If you don't do it good in step one, we're going to take you to step two. And put programs behind that; and the caseloads went down—right now I think it's 1 [probation officer] to 26. And they were way up before the reform: 1 to 70 and so forth. By every measure the numbers are now better, even recidivism, the numbers are better. Now, that's a smaller system. It's a system of very short terms. If you're in juvenile probation you don't stay on forever like adult probation. You stay on for a year, we try to do something with you to make you better, and in that year, we hope that you don't come back. And that is exactly what happened. So the same logic needs to apply to the adult system. It hasn't been applied because you will need funding to replace all these fees that you're not going to have when you cut the probation terms.

But the solution is very clear: First, you need to cut probation terms. We are talking non-violent offenders. We're not talking about sex offenders. Most of the probationers are non-violent offenders. So you cut the terms, have very strong supervision for the first year. Strong supervision means not only the guy knocking on your door but making sure you go to the counseling that you need and all that jazz. If you survive that first

year, we're going to put you in another year with lower supervision and see if you survive that second year. And if you do, you're off the hook. You've done good. Studies have shown—I'm doing some work in Virginia—79 percent of the violations that lead to revocation occur in the first eight months. So, most of the stuff happens that first year. And you can do another year just to make sure that now they can follow the rules. If you do that, you will cut the numbers of people on probation substantially.

TO: *How do we prepare people for re-entry? Is there a good way? Is it something that the state should invest in more?*

TF: We sure don't prepare them by just opening the door and giving them fifty bucks [laughs] "Okay people, take the bus and good luck!"

I mean, we sure don't. And this is a national initiative [to deal with this problem]. In Connecticut for example, we identify through mapping studies the higher-risk neighborhoods in New Haven and Hartford. We're working with the Council of State Governments there, which is a national organization that is also looking at criminal justice issues. And we identify million-dollar neighborhoods. These are neighborhoods where you superimpose the criminal justice supervision costs with welfare costs and employment assistance costs and all that. They're receiving all the state money, okay? But it is being received by different pots [sic] of people that are not well coordinated.

So part of the initiative that just got adopted is to go back to those neighborhoods, working with all the agencies, not only the criminal justice agencies but their mental health, substance abuse agency, and probation agency, and the Department of Corrections, to try to see how to coordinate these services better. Identify the people going to those communities early on. Start the re-entry process in the prison system. Transition them to those communities [where] they [can] get an array of services that might be paid for by different [public and private groups]. But it's an array of services oriented at trying to make these people succeed in the community. We call it "justice reinvestment."

So we're trying that in Connecticut. We're going to try it in Arizona. We're going to try it in Kansas. Those are our three sites that we selected for this year. The people there are all gung-ho about it. And they're very different states. Connecticut is, let's say, more liberal, although they have a Republican governor. Kansas is conservative. Arizona is very conservative. But they're looking at this picture and saying, this makes sense. How can we get out of [having] to build prisons and more prisons? In Connecticut I think it was 60, 70 percent of the people coming back to prison were coming back from [the same] neighborhoods, in New Haven and Hartford. So if you do something there, and you're better at delivering the resources, you can cut criminal justice costs; and, ironically, reinvest the money that would be freed up—in theory—back in those communities to continue to enhance that.

TO: *Do you think the nation, or maybe even Texas, is getting close to a prison tipping point where across the ideological spectrum there is an acknowledgement that it's not working and something has to be done?*

TF: Yes. We have reached that in Texas. We have reached that tipping point, I think. Nationwide, you have that conversation where you have Senator Brownback from Kansas, for example, conservative Republican, talking about the need to improve re-entry, and actually being very involved in this issue nationwide along with what you might call more liberal elected officials. President Bush raised the issue of improving re-entry and dealing with this population in the State of the Union address and that has generated lot of interest. Faith-based communities are behind this and, you know, they are very conservative but they're behind this. They were behind the adoption of the prison rape bill that was just passed in Congress to prevent rapes in prison. There's a second part to that bill to enhance community capacity to deal with these populations going back.

I think you have an ideological consensus that violent offenders should be locked up for a long time. But I also think you're getting a development of an ideological consensus about what we do in these communities with these drug offenders that are substance abusers. I don't think the consensus is clear yet there. There is a lot of debate around mandatory sentences and so forth. But I think there's a consensus developing. Now you can have that consensus and nothing gets done. So, you need the leadership to forge that consensus into something that gets done—and that is the key.

TO: *Is privatization the magic bullet that some people think it is? And if not, why not?*

TF: I think privatization has a role in all this, and Texas has led the way on privatization. So it has a role. It depends where, how, and at what cost? So I don't think it's a magic bullet. If some people think we can privatize the whole prison system—that is pretty hard to do. It might cost less now but it's going to cost you a lot more later. My feelings with privatization is that you have to figure out where it fits and how it fits, for what populations, what performance you expect from them, and work that into the contract arrangement. And if it reduces costs, it's okay. But it has its limits.

There is no magic bullet in any of this. The magic bullet is to have a long-term commitment to improve your probation infrastructure in such a way that you cut terms, improve programs and services, and try to work with judges to make them feel very comfortable that when they put somebody in probation they are more likely to do good and they will have more alternatives to revocation.

I was in Kansas in November and if you get revoked from probation on a technical violation, you basically serve six months in prison, and you get out. You don't go back with your original sentence. In Texas you go back with your original sentence so you're going to serve whatever, 50 percent of that, probably now, 40 percent of whatever the sentence was.

[I'm working in] Virginia—a very conservative state. One big difference is they have sentencing guidelines that are administered by the judges. They are working on a risk assessment instrument for probation and community supervision revocation that lets the judges identify where these people fall in terms of risk of coming back again. And if they fall below a certain line, the recommendation is to leave them in the community with alternative programs.

They think they can divert like 40 percent of the people that are being revoked based on this risk assessment. The people that fall in this lower category, only 17 percent were re-arrested after a two-year period compared to 48 percent for the people that fall in the higher risk. So it's not that you have zero risk, you always have a risk. But you have to identify where these guys fall, in what group, and the judges use it and try to divert people that way.

TO: *Well, the governor, when asked about Texas' lack of capacity, says that we can just outsource to private facilities and county jails. But is that really a cost-effective solution for the state?*

TF: Well, it might be cost-effective in the sense that it might cost a little bit less than housing them in the prison system. It might reduce some of the prison construction cost. If some of the privates construct their own prisons, I guess, or the counties pay them for holding them there. But the operational cost will still be large. You still have to pay for housing those people. And at one point, the question becomes, "Where's the end of this thing? How large is this going to get?" We have 160,000 prisoners. Are we going to do this every four, five years? Buy 6,000 more prisoners? Somebody is going to have to really answer questions. And I have asked that question before. What it requires is a strong commitment to enhance other parts of this system that we have not enhanced very well.

TO: *What questions should legislators be asking of the folks at the Legislative Budget Board who are doing some of what you used to do? What information will be missing that legislators should know?*

TF: Let me tell you a part that was invisible. What we did a lot was serve as a neutral facilitator among the agencies to agree on what was the problem. Agree on some potential options for the problems. Agree on how we were going to approach this to provide the best information for the Legislature and the governor on what to do next. And then agree on accountability measures that the agencies will participate in to move the agenda forward. That was kind of invisible in the sense that what they tended to see were reports, projections, and so forth. But now that I'm traveling all over the country, ironically, I'm doing this role [in other states]. In this state you have all these agencies and the legislative board types and so forth, you need a mechanism for somebody that is perceived as neutral, coming in and facilitating all this work with the agencies to provide a consistent and cohesive view of what needs to get done and how you're going to hold everybody accountable for doing it and have everybody working together. I did a lot of that so, a question that you need to ask somebody is whether, that part, that function, has been done or somebody's doing it. I honestly do not know. I don't want to speculate because it sounds pretty self-serving.

TO: *In your final years there, did you ever feel—I'm not saying that you gave in to it—but did you ever feel pressured to reach any kind of conclusion?*

TF: No. I mean there were a lot of pressures during the last session. But everybody that knew me, knew that I would listen, try to figure out what was reasonable given the base of numbers, of information, and give them my best judgment, and that's what they always praised me for doing. And any attempts to put pressures that were blatantly political, [they know] I will not do it, and [instead] pay the consequences.

TO: *That's pretty much what happened!*

TF: I don't know, [laughs]. But, that was my job, that's what they paid me to be. They needed to have somebody that they saw not playing any games with the judgment calls. And many times, Republicans and Democrats—and believe me I have good friends on both sides, very good friends—[would] tell me, "maybe we don't like what you say sometimes, but we know it's your judgment call based on the best information that we have. And if we don't like it, we're going to tell you and then try to work on it. But that's what we like, because there's a lot of people who come here, and you know they have all kinds of agendas."

And so at a certain point they don't believe anything and this is the problem. It becomes a game of opportunity—using information to create opportunity as opposed to using information to create options that most people think are reasonable [to provide] alternatives to whatever problem they're facing. It's fascinating. The use of information in a power structure is something that fascinates me and I love to watch it.

TO: *One last question: Why do you think the agency was terminated?*

TF: [Laughs]. I just take it as a big compliment what [they] said. We did such a good job in helping the state get out of the crisis in the early '90s, that we were no longer needed! [Laughs]. So we worked ourselves out of a job! The only agency that has done that. And I appreciate the compliment.

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