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**Instilling a Culture of Continuous Learning from Criminal Justice Systems Errors: A
Multi-Stakeholder Sentinel Event Review Process in Philadelphia**

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Introduction/Executive Summary

In January 2016, the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School was awarded grant 2015-R2-CX-K040 for a proposal entitled “In September 2014, the National Institute of Justice published a report entitled “Instilling a Culture of Continuous Learning from Criminal Justice System Errors: A Multi-Stakeholder Sentinel Events Review of Process in Philadelphia.” The work performed under the grant built upon a successful pilot program supported by NIJ, in which a group of criminal justice professionals in Philadelphia, PA conducted one of, if not the first multi-stakeholder sentinel event review of a criminal case in the United States. The Quattrone Center proposed to build upon the pilot project by implementing the Philadelphia Event Review Team (PERT) as a more permanent working group to identify cases of error in the Philadelphia criminal justice system and conduct sentinel event reviews (SERs) of those cases over the three-year period of performance for the grant.

Overall, the PERT achieved notable success, forming a group of dedicated criminal justice professionals across multiple agencies – the Philadelphia District Attorney’s Office, the Philadelphia Police Department, the Defender Association of Philadelphia, the 1st Circuit Court of Common Pleas of Pennsylvania, and others – who agreed to meet regularly and review cases where all of the participants felt an undesired outcome had occurred. The group continues as of this writing, having released a second report that describes the SER the group conducted on the inaccurate conviction of George Cortez. After discussing a number of other cases, the PERT has chosen a new case to review and has several more potential cases in its pipeline.

At the same time, the process for conducting the second SER was lengthy and circuitous, and was slowed by a number of factors: the churn of elected and appointed personnel in the

participating agencies, the overhang of potential impending litigation on cases being reviewed for possible selection, and in one instance, the inability to waive attorney/client privilege for a defendant whose treatment by the system was viewed as suboptimal by the PERT. Both the successes and the challenges of SERs in criminal justice as experienced by the PERT are set forth below.

The SERs conducted as part of this project followed the definition of SER set forth in the NIJ publication [*Mending Justice: Sentinel Event Reviews*](#). Sentinel events, which have a history of successful application in fields as diverse as aviation, healthcare, and military operations, are multi-stakeholder reviews of instances of error in complex human systems that seek to reveal and understand the root cause(s) of such “never events” as plane crashes, surgical errors, and other accidents. They involve a formal procedure to review errors in a non-blaming atmosphere and determine ways to avoid such errors in the future.

Applying the methodology of Sentinel Event Reviews (SER) to the criminal justice system involves reviewing a criminal investigation and prosecution that demonstrated some “error,” as defined by the participants of the SER. The PERT took the position that any wrongful conviction, cold case, officer-involved shooting, or death of an individual in the custody of the state was by definition a case of error; this definition is completely separate from an assessment of blame and simply held that any instance of these outcomes was per se unwanted, even if such an outcome may have resulted by good faith professionals acting within established training and protocols. The PERT attempted to conduct SERs of selected cases in the criminal justice system using principles of “just culture review,” defined as “a culture that recognizes that competent professionals make mistakes and acknowledges that even competent

professionals will develop unhealthy norms (shortcuts, "routine rule violations"), but has zero tolerance for reckless behavior.”¹

A substantial question regarding the application of SERs to criminal justice was whether the adversarial nature of the criminal justice system, which is different than the structure of the systems in which SERs were originally developed, would be a barrier to their successful application in criminal justice. The adversarial culture unique to the criminal justice process creates additional challenges, including the complexity of gaining consensus from cross-agency participants on the definition or occurrence of errors, the ability to define shared goals within a system, and the ability to implement reforms that require changes in agencies other than one’s own.

Within that context, the work performed under this grant provides additional information to help answer the questions posed by, and the methodology outlined in, *Mending Justice*—namely, (1) how might SERs be applied to the criminal justice system; (2) can they effectively reduce future errors; and (3) is this approach sustainable? We present final summary findings in an SER that reviews the inaccurate conviction and exoneration of George Cortez, and an outline of next steps for the PERT.

Project Design and Methods

This project evaluated the ability of a multi-stakeholder, cross-agency review team, the Philadelphia Event Review Team (PERT), to regularly prioritize and evaluate both Sentinel Events and more routinized errors in the administration of criminal justice. It evaluated the

¹ Agency for Healthcare Research & Quality Glossary, available at http://psnet.ahrq.gov/popup_glossary.aspx?name=justculture

impact of the PERT and its ability to implement modified policies, procedures, and practices to reduce and/or prevent those errors going forward.

A. Membership.

To facilitate the identification of cases of error, the Quattrone Center also worked with the Administrative Office of the Pennsylvania Courts (AOPC) to create the Case Review Database, or CARD, a unique data set of cases believed to have unintended outcomes that occurred in the regular administration of criminal justice, and which was designed to allow novel data analytics of errors and potential preventative steps. The PERT and AOPC designed a database of approximately 5000 criminal cases adjudicated by Philadelphia courts and having procedural outcomes that reflected potential undesired outcomes (e.g., cases that were dismissed by the District Attorney's Office after a jury was empaneled; convictions that were overturned on all charges and for which no subsequent criminal charges were pursued, etc.)

The members of the PERT were assembled by the Quattrone Center at Penn Law with assistance from the Philadelphia County Criminal Justice Advisory Board, a sitting organization that consists of a broad cross-section of criminal justice stakeholders in Philadelphia that was supportive of the goals of the PERT. Regular stakeholders included: Philadelphia Police Department (PPD); Philadelphia District Attorney's Office (DAO); Defender Association of Philadelphia; and First District Court of Common Pleas of Philadelphia (CCP). Representatives from the Quattrone Center briefed the CJAB on multiple occasions about the progress of the PERT, and sought out the CJAB for assistance on adding new members for specific cases that were being considered for review (e.g., the CJAB helped the Quattrone Center connect with the Philadelphia Department of Behavioral Health when a case dealing with defendants with behavioral health challenges was identified as potentially ripe for SER). Members also included

the Criminal Justice Coordinator for the City of Philadelphia and prominent advisors from the criminal defense bar who were not affiliated with the Defender Association.

B. Case selection.

The PERT proceeded with the discovery of cases to review in three ways. First, member agencies were asked to nominate cases that had affected their personnel and were believed to be cases of error and/or cases that had resulted in undesirable outcomes. Second, the Quattrone Center conducted a review of Philadelphia cases in the National Registry of Exonerations (<http://www.law.umich.edu/special/exoneration/Pages/about.aspx>) and a historical review of media reports on overturned Philadelphia criminal cases. Third, the Quattrone Center and the AOPC generated the CARD and the Quattrone Center began to conduct searches of the CARD to reflect areas of interest to the PERT participants.

C. Process.

The PERT held monthly meetings for two hours at a time to identify potential cases, prioritize potential cases for review, and conduct the reviews. Once individual cases were chosen, review teams specific to the events of the case led a root cause analysis to identify contributing factors that enabled or led to the errors in the case, and drafted recommendations for policy and process changes to prevent similar errors in the future.

Cases Reviewed

A. Pilot Program: Lex St. Massacre

In the pilot program that preceded this grant, stakeholders in Philadelphia including the DA's Office, the Police Department, and the Court of Common Pleas had conducted an SER of the Lex Street Massacre, one of the most notorious crimes in Philadelphia history. The Lex Street

case resulted in the inaccurate incarceration of four innocent men for more than eighteen months due to a combination of inaccurate confessions, mistaken eyewitness identifications, and other mistakes and occurrences within the Philadelphia criminal justice system. Participants in the SER used principles of root cause analysis (RCA) to conduct a “just culture event review” designed to understand what happened in the Lex Street investigation and prosecution. The process generated a [report](#) and a setting forth precise recommendations that would help to prevent the mistakes that occurred in the Lex Street investigation from reoccurring in the future. The lead investigator of the pilot project also co-authored a [peer-reviewed publication](#) on the SER process as conducted by the pilot program participants.

Overall, all participants in the SER pilot program deemed the project a success in that they felt that they had gained new insights into the workings of the criminal justice system in Philadelphia, a variety of factors contributing to the errors that plagued the Lex Street investigation, and a new tool in SER for the design and implementation of improvements to the criminal justice system. They also felt that trust had been built among the SER participants that would enable subsequent SERs to be conducted with a reduced fear of intra-group allocations of blame. These results allowed for creation of the PERT as an ongoing initiative and led to the selection and evaluation of the next case to be reviewed, Commonwealth v. George Cortez.

B. Commonwealth v. George Cortez

George Cortez was sentenced to life in prison for a murder that took place on April 13, 2011. Ultimately, after a successful Post Conviction Relief Act petition and subsequent investigation, George Cortez’s brother, Owen, confessed to perpetrating the murder and George Cortez was exonerated. Additional information on the crime is set forth in the [report generated by the PERT](#) on the SER in this case.

In the course of the PERT's review of the prosecution, conviction, vacation of charges and exoneration of George Cortez, the PERT identified 12 factors that contributed to the inaccurate conviction of George Cortez, three in the investigation phase and nine in the trial phase. Team members agreed on twenty recommendations for reforms of the criminal justice system that were designed to prevent those twelve best practices to prevent future similar errors from occurring. Based on the identified contributing factors, the PERT made several recommendations in the Cortez case set forth in more detail in the report (attached as Exhibit A to this document). It recommended that agencies follow current accepted investigative protocols and receive bias trainings on both their own biases and the biases of witnesses. The PERT also recommended improvements for the recordkeeping systems of the Philadelphia Police Department of Philadelphia District Attorney's Office, changes to discovery protocols in and out of the courtroom, and digital upgrades to courtrooms in the Pennsylvania First Judicial District Court of Common Pleas.

Project Findings

This project engaged in a new area of criminal justice research and improved the knowledge and understanding of criminal justice-related issues. The PERT provided objective, independent knowledge regarding the use of Sentinel Event Reviews (SER) in the context of the criminal justice system. By bringing together experienced practitioners in criminal justice and professionals from other fields to create innovative structures to implement reform, the PERT demonstrated the likelihood that its successful case reviews and template process for reform could be replicated and promulgated nationwide.

A. Personnel Issues

The PERT and SER process faced several obstacles throughout its tenure, particularly with regards to personnel changes for stakeholders and their agencies, and changes in the representatives for the PERT. At one point, moderator John Hollway of the Quattrone Center referred to personnel changes as the single largest problem in the SER process, and turnover within the agencies posed significant drawbacks as teams were forced to adjust and occasionally “reboot,” as one stakeholder representative noted. Between completion of the Lex Street SER and the initiation of the PERT, Philadelphia experienced the resignation of its District Attorney, the naming of an Interim District Attorney, and the election of a new District Attorney who brought in an entirely new senior staff, as well as five (5) First Assistant District Attorneys, each of whom started in their roles unfamiliar with SER. The City of Philadelphia elected a new Mayor who created the position of Criminal Justice Coordinator; while this individual was familiar with and supportive of SER, securing his participation in the PERT required lengthy administrative review and bureaucratic delays. The Chief of Police resigned and the new Mayor appointed a new Chief for the Philadelphia Police Department, requiring an education process to gain the new Chief’s support of the PPD’s continued participation in the PERT, and the assignment of two new PERT participants. The President Judge of the CCP ended her term as President Judge and a new President Judge was appointed, again requiring an education process to secure support for the PERT. Finally, the PERT had one representative from the Defender Association of Philadelphia (DAP) throughout the time period but added another from May – August 2018.

As one stakeholder noted, “I think not being a part of the initial process definitely puts you at a disadvantage. Having not read the [Lex Street] report [and...] you don’t know how documents were produced, about people’s attitudes to different facts coming out. [These things]

can kind of inform the way you approach different people in the room.” While these changes were not ultimately detrimental to the PERT and SER process, the time it took to appoint new personnel, educate them on the principles and the process, and bring them up to speed on the current case substantially slowed progress.

B. Case Selection Challenges.

Case selection also proved to be challenging for the stakeholders. Moderator John Hollway stated his surprise at how few cases were nominated by stakeholders at the meetings. Even with the creation of the CARD, a database covering five years with approximately 5000 cases from the AOPC, few cases were nominated and identified. While ultimately the CARD has not yet yielded applicable cases to the PERT for review, a refreshed data set presented to the group in early 2019 has generated enthusiasm from the current PERT participants and a “bullpen” of potential cases to review going forward.

1. *The Eugene Gilyard case.*

The initial case selected by the PERT for review was identified by the Quattrone Center’s search of the National Registry of Exonerations. Eugene Gilyard was an individual who had been convicted of murder, only to have his conviction overturned years later and all charges against him dropped. The PERT was interested in reviewing his case and exoneration using SER. Unfortunately, the group decided it was unable to proceed due to a pending civil suit filed against the City of Philadelphia by Mr. Gilyard, and the concern that interviews conducted in the SER process might lead to information that was discoverable in the litigation.

The PERT investigated the possibility that the parties to the litigation could agree to allow the PERT’s sentinel event review to continue in parallel with the civil litigation, but plaintiff’s counsel refused to agree not to seek any and all interviews conducted by the PERT in

his discovery requests. As a result, the group unanimously agreed to table the SER into Mr. Gilyard's case.

2. The George Cortez Case.

After putting Mr. Gilyard's case on hiatus, John Hollway identified George Cortez as a possible case from newspaper articles regarding Mr. Cortez's exoneration. The case was viewed particularly favorably by the stakeholders after the Gilyard case because Mr. Cortez was deceased and therefore civil litigation following the exoneration was unlikely. A legislative safe harbor is an important and necessary provision to allow SER to continue to generate reports regarding errors in the criminal justice system.

Even after George Cortez's exoneration was selected as the next case for review, the PERT faced problems in accepting certain errors as fact. There was some pushback within the group on what facets of the Cortez case would be defined as "error," including whether an original eyewitness identification of Mr. Cortez was actually inaccurate. The group accordingly was forced to review whether the vacation of charges by the District Attorney's Office, accepted by the Court of Common Pleas, was an "error" even if individuals outside of that process believed that Mr. Cortez was actually the perpetrator of the crime. Ultimately, the group agreed to follow the judgment of the case participants and define the entry of an initial conviction that was subsequently not supported by the DA's Office or the Court as could not stand, and agreed that the conviction and subsequent reversal of a murder conviction an administrative decision by the courts was the error deserving of SER. This disagreement highlights the challenges inherent in error identification as well as difficulties that can arise when new stakeholders join the group after an error has been chosen.

3. Subsequent cases for review.

After the issuance of the Cortez SER Report, the PERT assessed a variety of additional cases for the next case to review. The group first proposed reviewing cases in which individuals with behavioral health challenges were subject to the criminal justice system, and identified a case involving an individual charged with assaulting police officers who then spent multiple years in the criminal behavioral health system without adjudication of his criminal case due to an inability to show his competence to stand trial. Ultimately, the PERT decided it could not proceed with the SER, however, because no information about the individual could be shared by his defense attorneys or by the Philadelphia Department of Behavioral Health without the individual's consent and/or waiver of attorney/client privilege and health information, and the individual could not be located.

After a number of other cases were proposed, the PERT ultimately has agreed to review an officer-involved shooting; document collection in this case is ongoing and a formal review is expected to begin in the next few weeks.

C. Key Stakeholder Successes and Challenges

1. *Stakeholder collaboration.*

The stakeholders on the PERT noted successes and challenges encountered in completing SER and achieving intended outcomes, such as engaging in a non-blaming review and implementing the recommendations in their respective agencies. Stakeholders reported overall satisfaction with the SER process, noting that although raising errors in each other's respective agencies could engender some awkwardness, when stakeholders engaged in a non-blaming, forward-looking review, meetings were successful. A particular success was the respectful and collaborative environment when stakeholders were actively engaged, and the teamwork involved in effectively coming to decisions. Quattrone Center staff members noted that "everybody has

listened to everybody else's views, and we work to create an atmosphere where we can be questioned and inviting that criticism," while John Hollway referred to an instance where stakeholders worked together to calmly address one member's harshly-worded concerns, avoiding confrontation.

2. Stakeholder Engagement

Although the collaborative environment was a success, a main challenge was maintaining a consistent level of engagement among stakeholders. Quattrone Center staff reported difficulties in keeping attendance and engagement high among stakeholders, and stakeholders mentioned that meetings could be tedious. Engagement was high, however, during the recommendation process, particularly when recommendations involved a stakeholder's own agency, but maintaining that level of engagement was difficult during the contributing factor identification phase. Relatedly, Quattrone Center staff reported that low levels of engagement often led to Quattrone Center staff leading discussions, rather than a more fluid conversation driven by Stakeholder participants. One staff member acknowledged concerns over moderator biases and discussed the need for stakeholder engagement, arguing "that there needs to be sort of a check or balance on that process within our role as well."

3. Feasibility of Recommendations

Stakeholders noted other difficulties in the SER process, particularly the feasibility of actually implementing recommendations in their agencies, despite the theoretical importance of the recommendations. Although stakeholders overall were satisfied with the reported recommendations, with one stakeholder stating, "I think that what came out of this are some very good recommendations for things that we really should change," many cited cultural resistance to change and agency structures and chain of command as barriers to implementation at their

respective agencies. Stakeholders also expressed concern with the different burdens among the different agencies, with the greatest burdens appearing to be on the police and the District Attorney's Office.

Broader Implications for United States Criminal Justice Policy and Practice

The PERT ultimately engaged leadership and personnel from each of the stakeholder agencies, and as a result has gained insight into reviewer biases and how to overcome them. Using theories of social psychology, system change, and organizational psychology, the PERT learned techniques to overcome biases that might prevent a successful examination of sentinel events.

Through well-established principles of error reduction and quality from industries such as healthcare, aviation, organizational management, innovation diffusion, and other industries, the PERT was able to apply these principles to the criminal justice system. By learning from other industries, the PERT created evaluative tools within Root Cause Analysis to guide precise reforms in the criminal justice system. Through these reforms, the PERT generated information regarding organizational change that might help inform the criminal justice system as it seeks to change the system.

Already, this project has inspired other jurisdictions to reach out to the Quattrone Center and inquire about similar processes. The Center has completed an SER in Baltimore, and is nearing the completion of an SER in Austin, TX, each of which was enabled by the success of Lex Street and the Cortez case. Additional SERs have been begun as part of the BJA Sentinel Events Demonstration Project, where the Quattrone Center is a TTA provider.

The largest challenge to the conduct of SERs remains the chilling effect of existing or potential civil litigation. This overhang has been identified and addressed through legislation in healthcare (e.g., the Pennsylvania Peer Review Protection Act, preventing the use of healthcare sentinel event reviews in civil litigation; the legislation enabling the [Betsy Lehman center for Patient Safety](#)) and transportation (e.g., the enabling legislation for the National Transportation Safety Board, which holds that the NTSB's reports must be made public, as must its underlying investigative data, but that none of its conclusions are admissible as evidence in civil litigation cases); similar approaches in criminal justice cases may assist in reducing or removing this hurdle to the conduct of additional SERs.

The report from this project will be disseminated to communities of interest and will be published by each organization and by the Quattrone Center, including posting on social media, the internet, email to relevant listservs, and other mediums. Penn Law will also issue a press release that other participating stakeholders may join or augment with their own lists. This project has generated a real-world model for sustainable multi-stakeholder event reviews that create real improvements in the administration of justice, and this model is already being replicated or improved upon throughout the country.