Legal Optimism: Restoring Trust in the Criminal Justice System Through Procedural Justice, Positive Psychology and Just Culture Event Reviews

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Abstract

Like any complex, dynamic system, the American criminal justice system makes mistakes.
Unfortunately, criminal justice organizations lack a systematic process enabling them to learn
from cases of error. Ignoring or minimizing errors erodes organizational legitimacy and
contributes to a downward spiral of legal cynicism that increases violent crime. This paper
describes the application of positive psychology and procedural justice to restore legal optimism
– confidence and trust that the criminal justice system will respond in a just fashion to criminal
activity – through Just Culture Event Reviews (JCERs), non-blaming multi-stakeholder reviews
of cases where the system has erred. JCERs identify contributing factors to error and generate
corrective actions designed to prevent those errors in the future, while accurately allocating
systemic, organizational and individual accountability to protect communities and criminal
justice professionals. JCERs offer the potential to enhance the legitimacy of participating
organizations, generating increased engagement and affiliation with the criminal justice system
from community members and criminal justice professionals. Infusing JCERs with specific
positive psychological interventions designed to inspire trust, innovation and empathy can
optimize their outcomes, creating a newfound legal optimism that has the potential to reduce
crime over time.

Keywords: legal optimism, legal cynicism, procedural justice, criminal justice, psychological
safety, root cause analysis, just culture, systems approach

Acknowledgements

I.   Introduction

A. The Lex Street Massacre

On the night of December 28, 2000, four men with guns entered a small row house at 816 Lex Street in West Philadelphia. Two stayed downstairs, while the other two searched the rooms on the second floor of the house. The gunmen gathered the house's 10 occupants and brought them down to the first floor, forcing them to lie face down next to one another across the floor of the house's small living room. Then the gunmen opened fire, killing seven and severely wounding the other three. Victim George Porter received particular attention; one survivor told police that after the initial volley of shots, one of the gunmen said, "I got to give it to this mother****r" before shooting him an additional three times in the back.

The shootings, immediately dubbed the "Lex Street Massacre" by the media, shocked the City of Philadelphia to its core. The largest mass murder in Philadelphia history, it sparked community outrage, protests and speeches throughout the city from residents exhausted by living for years surrounded by drugs, guns, and violence. (The Lex Street victims constituted only seven of the 319 murders in Philadelphia in 2000.) Newspapers, radio and television provided extensive coverage of the murders, their impact on the community, and the investigation, putting immense pressure on the police department and city government to solve the crime and reassure the community that justice would be done.

In response, the city government and the Philadelphia Police Department sprang into action. Philadelphia Chief of Police John Timoney vowed that the killers would be brought swiftly to justice. Homicide detectives worked around the clock, directing the full resources of the police to comb through West Philly streets. Mayor John Street underscored the City's

commitment to solving the murders with a $50,000 reward for information leading to the capture and conviction of the murderers.

The police focused primarily on friends and known associates of three of the victims – George Porter, Malik Harris, and Tyrone Long – who were using the Lex Street house as a base for a small-scale drug dealing operation. It did not take long for their combined efforts to bear fruit. On January 11, 2001, Yvette Long, a survivor of the shootings, identified from a photo array a teenager named Sacon Youk as one of the shooters. That night, a friend of George Porter's, Jermel Lewis, confessed to participating in the shootings, which he stated were motivated by a dispute about drug dealing. With Lewis' assistance, police quickly located and arrested Youk and two other young men, Hezekiah Thomas and Quiante Perrin, for their roles in the murders. The four men were held without bail awaiting trial, the media reported the conclusion of the successful investigation, and the community resumed its normal routine, secure in the notion that justice was being done.

Unfortunately, they were wrong.

In July, 2002, a full 18 months after the confession of Jermel Lewis, the Philadelphia District Attorney's Office, under pressure from defense attorneys, the court, and a dogged newspaper reporter, dropped all charges against Lewis, Thomas, Youk, and Perrin on the eve of their trial for the murders. The DA's Office and the Police Department publicly acknowledged for the first time something that they had known was possible since the prior January: that Jermel Lewis' confession was false, and that they had mistakenly arrested and incarcerated the wrong men. While Lewis and the other suspects sat in jail awaiting trial, a small group of Philadelphia Homicide Detectives had continued to investigate the murders. Following the trail of the guns used at Lex Street, they identified four other men – Shihean Black, Bruce Veney, and

brothers Khalid and Dawud Faruqi – who detectives now believed were the actual murderers.

Police arrested and charged all four men the next day.

Ultimately, the police got it right the second time. Black and Veney confessed to their

roles in the murders, and testified against the Faruqi brothers, who were convicted of murder in

March 2004. As the true story of the Lex Street Massacre unfolded, however, it became clear

that virtually every part of the initial investigation had been wrong. Detectives had embraced the

narrative that the murders were fueled by a dispute over drug territory. (In fact, the dispute

stemmed from the sale of a car by George Porter to Shihean Black that turned out to be a lemon.)

This belief, combined with a well-intentioned but inaccurate eyewitness identification by Lex

Street survivor Yvette Long, led police to interrogate Jermel Lewis, which led to Lewis' false

confession and his identification of three accomplices who were not actually involved. More

troubling, police had first connected Shihean Black to the Lex Street murders in late January

2001, but the investigation into the second four defendants continued in secret, unknown to

defense attorneys, victims or the community, until the presiding judge forced its revelation on the

eve of the murder trials for the first four defendants.

In the aftermath of the Lex Street investigation, many people wrestled with how police

and DA investigators could have made such significant mistakes in one of the most horrific

crimes in Philadelphia history, an investigation that was perhaps more closely watched and

carefully supervised than any before. Community members railed against the rush to judgment

that led four innocent men to spend more than a year and a half in prison for crimes they did not

commit, during which time the actual perpetrators remained free and committed additional

violent crimes, causing direct and indirect damage to the struggling West Philadelphia

community. Demands were made to punish the police and prosecutors who had participated in

the investigation, and a civil lawsuit was filed to compensate the four wrongly incarcerated men for their wrongful imprisonment. Extensive media coverage reinforced both the horror of the Lex Street Massacre and the investigative errors, ensuring that the victims of Lex Street and their families would revisit their tragedy again and again.

The ultimate resolution of the Lex Street Massacre was the right one: the perpetrators of the crimes were accurately identified and held accountable for their actions. It is clear, however, that many errors were made along the way. The criminal justice system (in this case, police and prosecutors) made mistakes when they arrested, charged and incarcerated four innocent men for the crimes. In addition, the checks and balances (e.g., defense attorneys, courts) designed to identify and prevent such errors were unable to prevent the wrongful imprisonments of four innocent men, undermining the community's faith in the criminal justice system and leaving a haunting question behind: if our criminal justice system could make mistakes of this magnitude on one of the most serious, most scrutinized investigations in its history, how many other mistakes are being made that are completely escaping our view?

B. Errors in Criminal Justice – Definition and Impact

Errors, defined herein as acts or omissions that contribute to an unintended or undesirable outcome (Grober & Bohnen, 2005), pervade the administration of criminal justice.[1] This definition comes from the literature of organizational safety embraced by other industries, including such diverse industries as healthcare, aviation, manufacturing, and the military. Like criminal justice, our systems of healthcare and transportation are complex, multi-agency, interactive, dynamic, high-risk, high-stress environments in which highly trained professionals

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[1] "Error" has many synonyms in the safety literature of various industries, including words such as: mistake; accident; misconduct; malfeasance; adverse event; nonconformity; and others. The word "error" is used herein to include both intentional and unintentional acts, without assessments of blame or responsibility by any individual or of injuries that may have resulted from the acts in question.

make split-second decisions that have significant impact on the lives of others. For this reason, these systems and their search for quality improvement have much to offer the administration of justice.

The incarceration of innocent men, as seen in the Lex Street case, is an error. So too is an officer-involved shooting of another individual, even if the shooting is "clean" and the officer is not to blame for excessive use of force. This is because the shooting of a civilian by a police officer is an undesired outcome even if it is occasionally a necessary one; observers of the criminal justice system should seek to prevent and avoid such events even if their participants are blameless.

The death of an individual while in government custody is an error, as are the 2,252 exonerations of factually inaccurate convictions that have been identified across the United States as of this writing (National Registry of Exonerations, 2018). Errors include both sanctions imposed upon individuals who did not commit crimes, and the lack of sanctions imposed upon individuals who *did* commit crimes (e.g., unsolved or "cold" cases). Errors may be procedural as well as factual: the use of race as a pretext for striking an individual from a jury is an error, as is an overly long period of incarceration without judicial review, or a criminal trial in which the defendant is not given the opportunity to state his case for innocence. While a precise rate of error in criminal justice is unknown,[2] the opportunities for improvement are many and clear.

As in other systems, many of the errors that occur in criminal justice result not from blameworthy or malicious conduct, but from inevitable misperceptions, misunderstandings, and

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[2] Several studies have attempted to identify the rate error for cases resulted in a criminal conviction that was later completely overturned. Estimates of error for these inaccurate or "wrongful" convictions tend to converge around 2-5%, though some go higher (Gross, O'Brien, Hu, & Kennedy, 2014; Loeffler, Hyatt & Ridgeway, 2017; Risinger, 2007). An error rate of 1 in 1,000 on issues of guilt or innocence would yield 90,000 wrongly decided criminal cases per year nationwide.

miscommunications that occur in any complex human system despite the best intentions of all involved. Humans are fallible, and no system generates anticipated results with perfect accuracy. It is important to separate questions of intention and blame for the creation of error from an investigation into the circumstances that facilitated the error. It is easy to envision, for example, a situation in which a police officer acting deliberately, rationally, and in accordance with his training and department policy, shoots an individual who was posing an immediate threat to the officer's life or that of others. Such an event is at once intentional (from the point of view of the officer), foreseeable (included in his training), blameless (the officer followed his training and obeyed protocols), and tragic (a life has been lost). This is an "error" as it is an undesirable outcome, but it does not require us to heap blame on the police officer or to seek some additional form of accountability for his actions. In another example, the death of an individual while in custody, caused by an undiagnosed and invisible internal injury that occurred prior to the custody, can be an "error" without being blameworthy for the custodians. Such scenarios are challenging and complex, and reflect the difficulties inherent in responding to a never-ending progression of complex and unique incidents in ways that strengthen the relationship between criminal justice professionals and the communities they serve. And the stakes are high; lives are lost, trusts are violated, and the ability of our criminal justice agencies to fulfill their social contract to protect and serve our communities and reduce criminal behavior over time is threatened.

This paper asserts that our criminal justice system cannot function properly unless our criminal justice agencies acknowledge and respond thoughtfully to errors when they occur, including a clear and transparent effort that goes beyond compensation to the victims and seeks to prevent the recurrence of such errors in the future in ways that empower criminal justice

professionals and reassure and protect the community. The legitimacy of the criminal justice system and its authority to operate depends on the support of the community and the community's belief that the system is operating fairly and accurately (Tyler, Goff, & MacCoun, 2015). Errors in the administration of justice weaken that belief, with emotional and physical consequences for participants in and for observers of the error in the community and in criminal justice organizations. The failure to address errors contributes to a downward spiral of mistrust and withdrawal that separates criminal justice professionals from those they serve, ultimately contributing to a legal cynicism, or a directionless and chaotic legal anomie, characterized by widespread rejection of the system and ultimately providing justification for lawless behaviors, including violence and homicides (Kirk & Papachristos, 2015; Rosenfeld, 2016; Roth, 2012).

It doesn't have to be this way. Each error in criminal justice is a tragedy and a disappointment, a "never event" that will never be forgotten by the criminal justice professionals and community members who participated in it. Each error is also an opportunity to improve the quality of the system, a chance for our criminal justice professionals to improve their relationships with the individuals, communities, and employees they serve, conveying to our communities that their protection, their dignity and their support are the foundation of efforts to reduce crime and build flourishing communities that make life better for all.

To improve the criminal justice system's response to errors, I look outward, to the literature of organizational safety and quality improvement in other complex systems of human interaction. Researchers who have sought to prevent errors in such systems (e.g., aviation, healthcare, manufacturing, etc.) have advanced three models that evaluate the causes of error. The applicability of each to errors in criminal justice will be reviewed in turn.

1. **The personal model of error.** The dominant model of error espoused by criminal justice agencies and observers across the United States is the "personal model" of error, which focuses on the intentionally or recklessly unsafe acts and procedural violations of individuals as the main sources of error in a system. In this model, malfeasance and recklessness by criminal justice professionals are determined to be the cause of most of the errors in a system, and discipline, retraining, and "blaming and shaming" are the primary mechanisms for error remediation (Reasons, 2000, p. 768).

It is perhaps unsurprising that the personal model of error is our first response to errors in criminal justice. Unlike healthcare, where everyone wants the same clinical outcome, or aviation, where all participants seek a safe flight, the motivations of the actors in criminal justice may not always be aligned. We question the motives and incentives of the criminal justice professionals who participated in and presided over the Lex Street investigation much more than we question the motives of a surgeon or a pilot who presided over a tragedy.

Proponents of the personal model might assess the Lex Street case, for example, as one where the investigators and prosecutors had substantial incentives to obtain convictions at any cost, drawing conclusions about the willingness of those actors to cut corners (or worse) to achieve that goal quickly. Why did police rush to judgment on Jermel Lewis' confession, if his confession had clearly been inaccurate about the types of guns used in the crime? If the police really believed they had the right four suspects, why did they pursue the parallel investigation into the second four men, and if they believed the second four men were the perpetrators, why did they not release the first four? How could it possibly take 18 months from the first linkage of Shihean Black to the guns used in Lex Street to track down the ballistics information that led to the conviction of the second four suspects? With this background, why did prosecutors continue

to pursue their case against the first four suspects, and why did they not provide defense

attorneys with information about the second investigation well in advance of the scheduled trial?

Why did the judge, who was aware of the second investigation, not intervene? Could it be that

all of these professionals were content to move forward with a conviction they could secure in

the Lex Street case, even if it lacked certainty?

These questions are reasonable, and understandable, and a response to error that does not

account for the deliberate motivations and intentional acts of participants will be incomplete.

There is another question not asked by the personal model of error, however, that casts an

equally large shadow: even if we believe that every police officer, prosecutor, judge, etc. who

participated in the Lex Street Case was corrupt, do we believe that firing those people and

removing them from the system would ensure that the next case won't end up like Lex Street?

Do we think that the system's quality, and its ability to avoid investigational and adjudicatory

errors would be improved? The answer is plainly no. The environment in which the Lex Street

case was investigated, prosecuted, and adjudicated both enabled participants to think that the

actions they took, resulting in the wrongful incarceration of four men while dangerous criminals

roamed free, were the best actions for them to take at the time, and allowed these errors to go

unnoticed. Without environmental changes, there is nothing to prevent the criminal justice

professionals who replace those corrupt people from making the same assessments and

decisions. We must seek another path to improve the quality of criminal justice.

2.   **The systems model of error.** It is for this reason that the bulk of the scientific

literature of organizational safety and quality improvement has moved beyond the personal

model of error, promoting instead a "systems model" of error. Where the personal model asserts

that errors occur because of individual actions, the systems model suggests that errors occur

despite the best intentions of good faith participants in the system, and are caused instead by the complexity, environments, and organizational policies of a system.

By choosing to view the participants of the system and their motivations in their most favorable light, the systems approach turns away from what Seligman (2002) has called the "rotten to the core" doctrine of human nature that typically consumes critical assessments of both perpetrators of crime and criminal justice professionals in cases of error. It turns instead to a more positive psychological view of human behavior that emphasizes sincere motivations, good faith intentions to achieve the system's desired result, and reasoned decision-making that seeks to generate the "right" outcome at any given moment (Seligman, 2002). This view recognizes that sabotage is possible in any model, but that sabotage is a very unusual behavior motivation for human beings in virtually any environment (Misiurek, 2016).

The systems approach takes a much more limited view of the value of discipline and blame to reduce errors over time. Discipline can only deter intentional conduct; if one believes that unintentional errors occur, the rational response is to modify the system and the environment in which people are working, rather than to discipline the people involved. As James Reasons stated, "[w]e cannot change the human condition, but we can change the conditions under which humans work" (2000, p. 768).

Proponents of the systems model point out that it also works to deter malicious intentional conduct, since actions that prevent inadvertent errors will serve to reveal or otherwise complicate intentional malfeasance. In the Lex Street investigation, for example, two conflicting confessions to the murders were obtained by police, the first from Jermel Lewis and the second from Shihean Black. Unfortunately, police could not faithfully compare the two for credibility, as no video recording of either interrogation existed. Videotaping homicide interrogations (a

recommendation subsequently implemented by the Philadelphia Police Department) would have allowed officers to compare the facts provided, as well as evaluate the questions and techniques used, to see whether detectives unintentionally biased or tainted the interrogation; it would also help to prevent coercive or abusive interrogation tactics that might otherwise be pursued.

A systems approach to the errors in the Lex Street Case, assuming good faith behavior from all participants, would view the investigation quite differently. In this version, the Lex Street Massacre was investigated by dedicated police officers working overtime to protect a community from violent criminals. The officers seized upon a reasonable narrative and a well-intentioned eyewitness ID, leading them to a seemingly accurate confession that comported with the initial (hypothetical, but increasingly concrete) narrative such that the interrogators, their supervisors, and prosecutors all accepted the narrative and moved forward with arresting the first four defendants.

Noting that there was no evidence that the detectives investigating Lex Street wanted to arrest the wrong men, that there was no apparent incentive for Jermel Lewis to confess to seven murders he had not committed, and that there was no allegation of improper coercion by the police interrogators, the systems model would ask why Mr. Lewis gave a confession against his interest, and why the police officers and prosecutors investigating the case had believed it to be truthful and accurate? Similarly, while certainly Lex Street survivor Yvette Long had an incentive to identify the men who shot her, she had no apparent motive to misidentify Mr. Youk; what could police have done to improve her ability to make an accurate identification, or to reduce the likelihood that she would make an inaccurate identification?

Viewed in this light, the different responses that would be generated by the systems approach become easier to perceive, and the ability of our criminal justice agencies to construct

modifications to their environments that improve the accuracy of their judgments and lead to more predictable outcomes is increased. Error reviewers can: (a) propose modifications to the system that will combat confirmatory bias on the part of law enforcement; (b) enhance eyewitness identification procedures to reduce the likelihood that Yvette Long's identifications are inaccurate; (c) improve interrogation room environments to reduce the likelihood that a person provides a false confession; and (d) introduce new approaches to interrogation that could improve the ability of law enforcement, prosecutors, defense attorneys and judges to distinguish true confessions from false ones. In short, a myriad of new capabilities appear that can help us reduce errors in the criminal justice system.

Still, if our goal is a transparent and thorough response to errors in criminal justice, the systems approach may also be lacking. It provides many more tools and options for preventing error in the future, but fails to account for bad actors in the system or for misconduct that masquerades as unintended error. A third approach may be needed.

3. **The integrated model of error.** More recently, Tucker and Edmondson (2003) have articulated a third model of error in complex systems, an integration of the personal and system models that points to a confluence of organizational and cognitive effects as the source of errors, with individuals contributing to errors because of both cognitive biases or recklessness, and organizational and environmental deficiencies.

Reviewing errors in this integrated way would permit an understanding of how environmental circumstances and individual motivations combine in a complex web of incentives, influences and individual decisions that constitute a criminal investigation and prosecution. It could generate forward-looking modifications that improve future criminal justice outcomes as well as disciplinary actions to address and deter malfeasance.

Such a review might begin by using the systems approach to identify contributory factors to the error while assuming good faith participation in the system by all involved. Once recommendations are made for corrective actions designed to enhance the ability of all participants in the system – from police and prosecutors through defense attorneys, judges and jurors – to avoid, identify, and address errors in the administration of justice, the review would turn to an assessment of the individual motivations of the actors who participated in the events leading up to the error. It would assess their training and their intent and yield individual recommendations for individualized organizational responses to these individuals, counseling for punishment or discipline where conduct was intentional and malicious, but for education, support, and even solace where honest professionals were set up to fail by the system and their circumstances. In this way, the review would assist each of the participating criminal justice organizations support their employees, the communities, and the criminal justice system while improving the system's ability to deliver accurate and fair – that is, just – outcomes.

The application of an integrated model of error to criminal justice permits a thorough response to errors in criminal justice that builds upon prior scholarship on positive psychology and procedural justice to improve the well-being of victims of error, participants in error, and community and agency observers of error, improving engagement and belief in the system and replacing legal cynicism with what I am labeling describe as "legal optimism," an enhanced expectation of the system's ability to accurately and fairly reduce criminal behaviors over time. To support this, I describe "Just Culture Event Reviews" (JCERs): voluntary, holistic, multi-stakeholder, non-punitive reviews of cases of error that incorporate techniques of root cause analysis within Tucker and Edmondson's (2003) integrated model of system and personal error. JCERs blend well-known principles of root cause analysis (RCA) with the emerging concept of

organizational "just culture" (Dekker, 2016) so that procedural justice is provided to both community members and criminal justice professionals who may have participated in or are otherwise affected by the event. I posit that the implementation of JCERs is enhanced by the deployment of a number of empirically proven techniques from the literature of positive psychology, the science of helping individuals and organizations thrive, as described below.

JCERs seek to identify the various factors that contribute to errors in criminal justice and prevent their recurrence, improving the ability of criminal justice professionals to do their jobs safely and effectively in the future. They accept an organizational obligation of forward-looking accountability and continuous improvement (Dekker, 2016). They enhance engagement between and among criminal justice agencies and employees and the communities they serve that has not been achieved with our current responses to error (internal administrative investigations, community oversight boards, and civil or criminal litigation), which focus on the personal model of error and thus largely ignore the obligation for prospective system improvement (Hollway, Lee, & Smoot, 2017).

JCERs can be designed to maximize an atmosphere of psychological safety among the event reviewers and event participants. Psychological safety (Dutton, 2006), a feeling that one is operating in an environment of trust and mutual understanding, enables increased collaboration and innovation across agencies that may be "adversarial" in their regular professional contexts, allowing novel and integrated solutions to complex challenges and facilitating lasting and constructive changes to the practice of criminal justice.

By increasing not only the accuracy of the administration of criminal justice, but also its transparency and humility, criminal justice agencies participating in Just Culture Event Reviews have the potential to gradually increase their legitimacy, creating a virtuous cycle of "legal

optimism" that may increase compliance with the agency, and with the law (Tyler et al., 2015),

and therefore reduce crime and violence in our society over time.

II.   Responses to Error: The Positive Psychology of Procedural Justice

If we are to discuss "errors" in criminal justice as unintended outcomes – that is, results

unintended by those who designed the system, or by those who participate in it in good faith –

we must first discuss what outcomes the system does intend to generate.

At its core, justice is a social construct driven by perceptions of community fairness.

Communities devise rules that facilitate group well-being, including sanctions for individuals

who violate those rules. Criminal justice organizations, from police departments and prosecutors

through defense attorneys and judges and including corrections, probation and parole, are

obligated to administer justice "fairly," that is, within the rules of the social contract (Colquitt,

Conlon, Wesson, Porter, & Ng, 2001). What we describe as criminal justice is actually an

exercise in organizational fairness, constructed by communities that serve as the ultimate

evaluators of success.

The administration of justice operates across two dimensions: the outcome linked to a

specific case, also known as "distributive justice," and the process used to obtain that outcome,

known as "procedural justice" (Prilleltensky, 2016). Each of these faces of justice reflect

outwardly, to the community, and inwardly, to the employees of the relevant criminal justice

organizations.

A. Distributive Justice

Distributive justice, as the name implies, involves the allocation of justice to individuals

in specific cases (Cohen-Charash & Spector, 2001). Each arrest, and each adjudication of an

arrest, whether it results in a conviction or an acquittal, is an instance of distributive justice,

where the authority of the community to sanction (or bless) behavior is distributed to the individual charged with the offense. Each community's criminal code sets forth potential sanctions for specific and intentional conduct that the community defines as "criminal," and individuals who commit those crimes are then subject to those sanctions.   Errors of guilt or innocence are failures of distributive justice, in that we have reached the wrong result in distributing a sanction upon an innocent person; this failure forms the basis of our visceral negative reaction to the incarceration of the first four suspects in the Lex Street case.

B. Procedural Justice

Procedural justice, by contrast, involves the process used to arrive at distributive justice (Cohen-Charash & Spector, 2001; Tyler et al., 2015). Rather than focusing on the *outcome* of a particular interaction, procedural justice focuses on the *procedural fairness* of the interaction (Bobocel & Gosse, 2015). An organizational process is procedurally just when:

- People affected by the process are treated with dignity and respect;

- Decisions are made with consistency (that is, similarly situated individuals will be treated similarly) and accuracy;

- The decisions made are objective and neutral, free of personal biases for or against the individual in question;

- The individual affected by a policy has a voice in the process during both the creation of the policy and the application of the policy to the individual's actions;

- The rationale for the organization's decisions are explained to the individual; and

- The individual has the ability to appeal a decision that (s)he feels is wrongly decided

(Cohen-Charash & Spector, 2001; Trinkner, Tyler, & Goff, 2016; Tyler et al., 2015). Because it

is the community that confers legitimacy on all criminal justice agencies, it is the community,

and not the agencies themselves, who are the final arbiters of procedural justice (Cohen-Charash

& Spector, 2001).

Importantly, it is procedural justice more than distributive justice that drives individual

attitudes of trust towards criminal justice organizations (Cohen-Charash & Spector, 2001).

While an individual who is being sanctioned for criminal conduct obviously cares about the

result in his or her specific case, it is the *process* by which a case is conducted, more than the

specific *result*, that conveys the fair administration of justice to the individual and confers

legitimacy on the outcome from the community. Individuals sanctioned by the criminal justice

system who perceive that the process applied to them was procedurally just are more likely to

defer to the system's authority and obey its sanctions, even when the distributive justice outcome

is unfavorable to their specific situation (Tyler et al., 2015). Similarly, observers of the criminal

justice system are more likely to support the conclusions of, and participate actively in, a system

that is procedurally just than they are to support a system that displays inaccuracy, inconsistency,

bias, or a lack of respect for individuals. (Tyler et al., 2015).

Criminal justice organizations seeking to provide procedural justice must also recognize

that the audiences affected are both internal (employees) and external (community members).

Thus, community members have reflected a greater willingness to submit to a police stop when

they understand the rationale for the stop, and they feel that the stop is motivated by a desire to

protect the community and is not influenced by bias towards a particular group (Tyler et al.,

2015). At the same time, police officers asked to evaluate their departments for procedural

justice officers who feel that their organization is legitimate and provides them with the

resources they need to be successful indicated a higher likelihood of obeying department protocols and show a lower likelihood of resorting to force to resolve disputes (Trinkner et al., 2016).

C. Procedural Justice as Positive Psychology

Procedural justice is inherently a psychological concept, as it impacts emotional well-being based upon subjective assessments of fairness intended to promote constructive social engagement. Unlike traditional psychological studies of individual clinical pathologies (e.g., mental or emotional disorders that limit an individual's ability to engage optimally in society), procedural justice is an exercise in positive psychology, the study of helping individuals, groups, and communities improve their well-being (Seligman, 2012). Positive psychology is the study of "the conditions and processes that contribute to the flourishing or optimal functioning of people, groups, and institutions" (Gable & Haidt, 2005, p. 103). It seeks to identify those elements of the human condition that enable individuals and groups to flourish, and to promote their well-being through directed and empirically validated interventions.

While many of its roots date back millennia to the ancient philosophical and religious teachings of the Greeks (e.g., Aristotle, Plato, etc.), East Asians (e.g., Confucius, Lao-Tse, Buddhism) and Near Asians (e.g., Christianity, Judaism, and Islam) (Dahlsgaard, Peterson, & Seligman, 2005), positive psychology was introduced as a specific field of scientific inquiry at the turn of the 21st century, when Seligman and Csikszentmihalyi edited a special issue of *American Psychologist* (2000) that argued for a new direction for psychology that would promote the aspects of life that make life worth living. Preceding decades had yielded substantial advances in the understanding of emotional pathologies (e.g., bipolar disorder, depression, anxiety, etc.) but fewer advances in the understanding of emotional well-being or

flourishing (Gable & Haidt, 2005). Since that initial issue, the field has grown rapidly; Google Scholar indicates that researchers generated only 613 citations including the specific search term "positive psychology" in 2000-2001, compared to more than 27,000 in 2016-2017.

A precise definition of well-being is elusive, but most definitions tend to include joy and other positive hedonic emotions while emphasizing a broader Aristotelian concept of eudaimonia, the fulfillment of one's human potential (Wiseman & Brasher, 2008). Eudaimonia is an individualized concept, since the achievement of one's human potential is dependent upon one's unique set of capabilities and desires; still, a number of scholars have advanced frameworks for cataloging and identifying those components of humanity that contribute to eudaimonia, in the hopes that individuals can consciously structure their lives in ways that help them grow closer to an optimal eudaimonic state.

Perhaps the most broadly discussed framework to measure and assess well-being is Martin Seligman's (2012) PERMA framework. Recognizing that eudaimonia is broader than the traditional definition of happiness as joy or elation, PERMA takes a multi-dimensional approach to defining individual well-being consisting of **P**ositive emotions, **E**ngagement, **R**elationships, **M**eaning, and **A**ccomplishment.

Positive emotions include the traditional hedonic definition of happiness; Engagement describes one's sense of connection to an activity, sometimes described as "flow," the feeling that one is immersed in the pursuit and that it commands one's attention (Csikszentmihalyi, 2000); Relationships include one's feelings of integration with others who care for, and are cared about by, the individual; Meaning refers to the individual's belief that his or her life has a purpose and that the individual is connected to something larger than him or herself; and

Accomplishment describes the individual's feelings of self-efficacy, directedness, and process

towards goals (Seligman, 2012).

The PERMA framework acknowledges that well-being is a blend of "feeling good and

functioning well" (Kern, Walters, Adler, & White, 2015), and allows for measurable assessments

of the complex and multidimensional concept of well-being by isolating individual contributors

to subjective well-being that can be separately measured and evaluated. While individual

definitions of eudaimonic well-being are likely to include widely varying amounts of each of the

pillars of PERMA, individuals who report higher levels of the pillars of PERMA typically report

higher levels of subjective well-being and lower amounts of "ill-being" factors such as

depression, anxiety, and other negative emotions (Kern et al., 2015).

While the individual will always be the smallest unit of well-being, well-being is more

than an individual metric. As the "R" in PERMA implies, individual well-being depends in part

upon our relationships with people around us and our surroundings. Our actions influence others

and our surroundings, and vice versa, leading to zones of "emotional contagion" that can

enhance positive well-being (clusters of happiness leading up to three degrees of separation

(Fowler & Christakis, 2008) or further erode negative well-being (suicide clusters among

adolescents (Gould, Jamieson, & Romer, 2003).

As such, social psychologists have identified a connection between the well-being of

individuals and the well-being of communities. The combination of "social, economic,

environmental, cultural, and political conditions identified by individuals and their communities

as essential" for both the individual and the community to flourish (Wiseman & Brasher, 2008).

Prilleltensky's I COPPE framework (2016) evaluates well-being across **I**nterpersonal,

Community, **O**ccupational, **P**hysical, **P**sychological, and **E**conomic dimensions to arrive at one's

definition of a life worth living at both an individual and a community level. Put differently, the learnings of positive psychology can be applied at scale, promoting the well-being of individuals, dyads, small groups, organizations small or large, communities, and even societies (Prilleltensky, 2016).

The interplay between individual and community well-being may be of particular utility in a criminal justice context, since criminal justice seeks to impose rules that limit individual freedoms to promote the well-being of the larger community. Accordingly, it is helpful to keep the frameworks of PERMA and I COPPE in mind when evaluating the design of our criminal justice system and the obligation of our criminal justice organizations to respond to error. For individuals, procedural justice in criminal justice demonstrates the organization's, and the community's respect for and deference to the individual. Procedural justice enhances PERMA, conferring Meaning on the individual as defined by Seligman (2012) as "meaning" and Prilleltensky (2016) as "mattering." Meaning, as used by Seligman, is a sense that one is making an impact on one's surroundings; acts taken in furtherance of procedural justice materially impact the lives of others and help actors in the system realize their stated ideals for a system of social improvements. Mattering, as used by Prilleltensky, describes the feeling that we have value and importance and that we are recognized; the conveyance of procedural justice upon individuals accused of crimes is a recognition of their existence and importance notwithstanding the allegations against them. Procedural justice improves the Relationships between the individual involved in the system and the individuals administering the system. Finally, procedural justice confers As Tyler et al. (2015) and others have shown, the result is a mutually reinforcing cycle of greater engagement on the part of both individual and administrator that improves the system and leads to greater individual and community well-being over time.

If the criminal justice system is to maximize its contributions to individual and community well-being, it must apply distributive and procedural justice in ways that are accepted by the communities it serves. For distributive justice, this means applying sanctions accurately and in ways tailored to reduce crime in the future. For procedural justice, it means creating processes that convey respect, dignity, thoughtfulness, inclusivity and humility (Tyler et al., 2015). Errors in the administration of justice disrupt perceptions of both distributive and procedural justice, weakening community confidence in the system and reducing individual and community well-being. By responding in a procedurally just fashion to an error, however, faith and trust in the participating agencies may be improved, and might lead to an increased optimism that the next case will be handled appropriately.

The proper responses to an error in criminal justice must account for the individuals who suffered from the error, the individuals who participated in the error, and the community whose well-being is tied to promoting distributive justice outcomes that ensure that all parties are treated fairly and in keeping with the community's rules. In short, responses to errors in criminal justice are exercises in community fairness – the C in Prilleltensky's I COPPE scale – that enhance individual well-being for victims and criminal justice professionals alike.

JCERs are designed to provide procedural justice to each of these constituencies, and in so doing, to restore their faith in the criminal justice system and promote legal optimism. As described in more detail below, JCERs can help criminal justice professionals and community members understand each other, enhancing their Interpersonal well-being. They also likely lead to improvements in the administration of justice that help criminal justice professionals do their job more efficiently, effectively, and accurately. Both by seeking to improve actual safety and by conveying organizational fairness and support, JCERs enhance the Occupational well-being

of the individuals who are tasked with the difficult job of administering justice and protecting

our communities, as well as their Psychological well-being; this helps them do their jobs less

intrusively and therefore enhances the well-being of the communities they serve.

D. Promoting Individual, Organizational, and Community Well-Being Through Procedural Justice

Procedural justice exists when organizations behave in ways that cause individuals to act

in accord with the collective good, even in situations where the acts may be suboptimal for the

individual. It is this reliance upon "relational models . . . outside of self-interest" (Tyler et al.,

2015, p. 99) that explains both the psychological power of procedural justice to promote

community well-being, and the corrosive nature of its absence. When people believe an

organization is just, they are more likely to affiliate with and support the organization; when they

believe it is not, they are more likely to avoid it.

The existence – or absence – of procedural justice has a substantial and often long-term

psychological impact on all involved. Perceptions of procedural justice impact individuals'

emotional reactions to organizations, and influence individual self-assessments and personal

levels of stress, as well as commitment to organizations, perceptions of support from

organizations, and support for and from organizational leadership. As employees' perceptions of

procedural justice in their workplace increase, so too does organizational citizenship, job

performance and rule compliance, cooperation, and forgiveness; negative workplace or social

behaviors such as revenge, retaliation, increased job turnover, and organizational sabotage are

diminished (Bobocel & Gosse, 2015).

An organization's acknowledgement of participation in a case of error is itself a display

of procedural justice. By acknowledging the error, the organization and its leadership are

placing the community's interest above the organization's immediate well-being. The

acknowledgement may subject the organization to criticism, liability and expense, and may

subject some of its employees to sanctions (e.g., firing, suspension, loss of licensure,

criminal/civil liability, etc.) By taking steps to address and improve the situation in ways that

support all internal and external participants affected by the error, the organization delivers a

clear message of the inclusivity and importance of both community and employee constituencies,

fueling a positive sense of identity and self-worth for all (Tyler et al., 2015). The resulting

perception that the organization is procedurally just increases organizational commitment,

engagement, self-efficacy (Maddux & Rogers, 1982) and a willingness to abide by the

conclusions of the organization. In a criminal justice context, this translates to enhanced

reporting of crimes, an increased number of witnesses, improved tools of community self-

policing, and a wealth of other actions that make it easier for criminal justice professionals to do

their jobs (Tyler et al., 2015), leading to a virtuous cycle that may reduce crime and enhance

community well-being over time.

E. Procedural Justice and Legitimacy – Upward and Downward Spirals

Perceptions of procedural justice do more to persuade individuals to cooperate with,

comply with or empower law enforcement than the individual risk or reward from distributive

justice (Sunshine & Tyler, 2003). The role of procedural justice in shaping public support for

criminal justice professionals has been demonstrated to be the strongest factor in social

compliance with authority behaviors, whether they are police officers (Sunshine & Tyler, 2003),

judges and courts (Denton, 2007), or corrections officers (Tyler et al., 2015). Criminal justice

organizations must realize that they will be judged by their internal and external constituencies

on their responses to error. They owe it to themselves, their employees, and their communities

to create thorough, thoughtful, and productive responses to cases of error that hew closely to principles of procedural justice.

1. **Legitimacy or legal cynicism: consequences of the failure to address cases of error in criminal justice.** Tyler et al. (2015) have described the psychologically damaging messages delivered by procedural injustice, such as a criminal justice agency that fails to properly respond to an error. The failure to respond to an error suggests either a lack of awareness on the part of the participating organization, or an indifference to the damage done. This in turn conveys to the community that the community members suffering from the error are unimportant (or, in Prilleltensky's I COPPE model, lack mattering) in the eyes of the organization. As a result, community members feel less empowerment and less self-efficacy, the ability to control their own surroundings and shape their own future (Maddux & Rogers, 1982). This weakens the individual's engagement with the agency, which confers a reduction in the organization's legitimacy – the congruence between the organization's acts and the community's expectations of justice that provide the fundamental authority for the organization in the first place (Dowling & Pfeffer, 1975). Will less engagement, the organization's ability to solve crimes is reduced; with less legitimacy, the organization is less able to convince community members to comply with its mandates.

As legitimacy decreases, legal cynicism from the community increases, and a downward spiral continues as enforcement of the law becomes more difficult, unsanctioned criminal behavior increases, and the community and its criminal justice organizations drift further and further apart (see Figure A below).
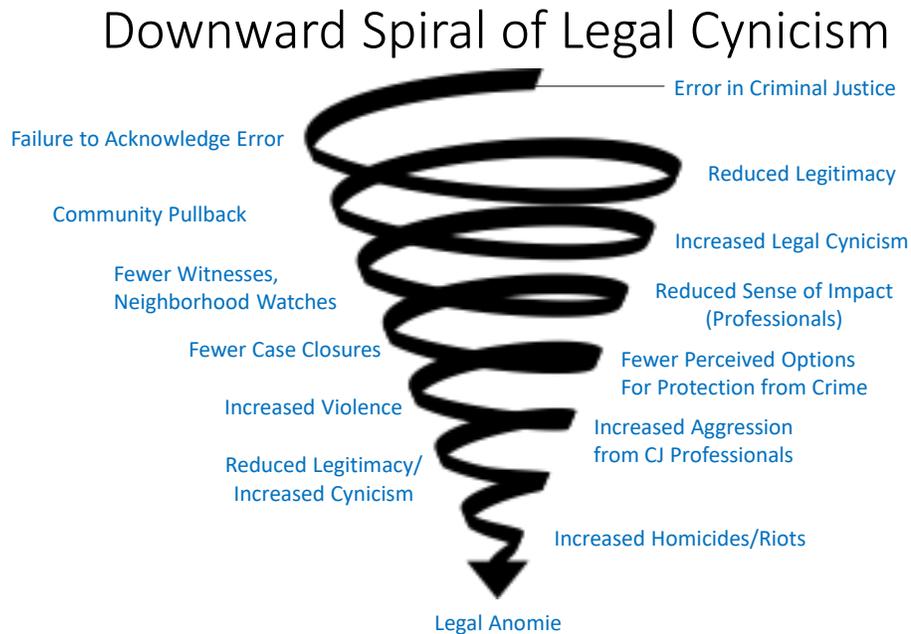
Downward Spiral of Legal Cynicism

Error in Criminal Justice

Failure to Acknowledge Error

Reduced Legitimacy

Community Pullback

Increased Legal Cynicism

Fewer Witnesses,
Neighborhood Watches

Reduced Sense of Impact
(Professionals)

Fewer Case Closures

Fewer Perceived Options
For Protection from Crime

Increased Violence

Increased Aggression
from CJ Professionals

Reduced Legitimacy/
Increased Cynicism

Increased Homicides/Riots

Legal Anomie

Figure A. Downward Spiral of Legal Cynicism.

A dramatic real-world example of a deteriorating relationship between criminal justice professionals and the community they serve found the national spotlight in Baltimore in 2015, when police arrested Freddie Gray for possession of an illegal knife and transported him to jail. Mr. Gray never made it to jail, instead dying from injuries suffered in police custody, riding in the back of a police van. Community protests were staged immediately upon learning of Mr. Gray's death, fueled by a long history of perceived procedural injustice by the Baltimore Police Department; these protests grew in number and stridency until after Mr. Gray's funeral, when they erupted into violence. Twenty police officers were injured, 250 people arrested, and hundreds of businesses were damaged and looted in the riots that ensued (Wenger, 2015).

Mr. Gray's case is an apt description of the bottom of the downward spiral to legal cynicism. Agents of the system (in this case, the Baltimore Police) commit an error (the death of an individual in police custody). Community trust, already low due to a long history of

perceptions of bias, misuse of power, and failure to acknowledge prior errors, is further eroded, as individuals perceive that the organization as less legitimate and disengage even further from the organization. Police investigating crimes receive less information from fewer and fewer witnesses; neighborhoods engage in fewer self-policing initiatives (e.g., neighborhood watches); fewer crimes are reported to the police;[3] and reassurances of security in the community decrease. The administration of justice is made more difficult, as fewer crimes are reported and fewer reported crimes are closed; as a result, public trust in the agencies continue to drop, as does organizational legitimacy (Carr, Napolitano, & Keating, 2007; Kirk & Papachristos, 2011; Tyler et al., 2015).

This downward spiral from legitimacy to legal cynicism has severe and tragic consequences for community well-being. As legal cynicism increases, so too do homicides. If the system cannot be trusted to address criminal behavior or resolve disputes, community members feel the need to do so themselves, which leads to an increase in criminal behavior, and specifically in violent criminal behavior. (Kirk & Papachristos, 2011; Rosenfeld, 2016; Roth, 2015). This association between cynicism and homicide appears to be worse in youthful neighborhoods (Kirk & Papachristos, 2011), though it is unclear whether this means that the youth in question are more cynical than adults, or that youth see fewer options to protect themselves in an environment where the system does not protect them, and are thus more prone to resort to violence.

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[3] In one study of errors in a hospital network, increases in procedural justice actually led to a smaller percentage of problems being resolved. Upon further review, researchers noted that the number of problems reported had increased, suggesting greater engagement with the system rather than a reduced ability to address the problems of the organization (Tucker, 2003). Given how few crimes are currently reported to the police - less than half (47%) of violent crimes and roughly one-third (35%) of property crimes (Truman & Morgan (2015), a similar short-term evolution might occur in criminal justice as procedural justice in JCERs leads to an increase in engagement, and thus in reported crimes.

Legal cynicism can result in community violence in more obvious and direct ways, as well. The riots that followed the deaths of Freddie Gray (Baltimore, Maryland, 2015), Michael Brown (Ferguson, Missouri, 2014), or Tamir Rice (Cleveland, Ohio, 2014) were not isolated reactions to those individual tragic events. Rather, they were releases of repressed community energy that had been awaiting a triggering event of procedural injustice. The events – police shootings of Michael Brown and Tamir Rice, and Mr. Gray's death while in police custody – catalyzed the riots in an explosion of frustration and desperation at the extreme end of a downward spiral of eroding legitimacy. Rioting reflects "legal anomie" – a state of normlessness in which the rules of the legal system have no power to bind the community (Sampson & Bartusch, 1998), which turns to violence only when no other option for self-preservation can be perceived (Kirk & Papachristos, 2011).

2. **Consequences for criminal justice professionals of failures to respond to errors in criminal justice.** As grim as the downward spiral of legal cynicism is, the psychological damage that results from an organization's failure to respond adequately to errors is not limited to external constituencies. The individual well-being of employees of the criminal justice agencies suffers as well.

Unintended outcomes in criminal justice affect criminal justice professionals in multiple ways. Often lost in the outrage that follows a wrongful conviction or an officer-involved shooting is the psychological impact of the event on the participating criminal justice professionals and their peers. For those who participated in the error, their role in a wrongful arrest, incarceration, or conviction, or a life-changing event like a shooting or a death in custody, is often significantly traumatic, resulting in depression, anxiety, post-traumatic stress disorder,

and other pathologies (Klinger, 2006). It is not for nothing that these individuals have been

described as "second victims" of unintended outcomes (Dekker, 2013).

In addition, the employees of criminal justice agencies are also members of the

community and can be expected to react to these events in both capacities. Errors are instances

where the organization has fallen short of its obligation to administer justice and protect the

community; as a result, they create conflict between the employee's affiliation with the

organization, and with the community. This disconnect between the job they are expected to do,

and the job they are able to do, can have a negative impact on their physical and mental well-

being (Tyler et al., 2015).

It is easy to connect the dots between legal cynicism, with its attendant increase in

violence, and stress on criminal justice professionals, who then are prone to resort to more

aggressive means to resolve conflicts (Tyler et al., 2015). But the stress of potential violence

comes with the territory and is an expected and accepted part of life for criminal justice

professionals. What is less expected, and therefore causes *more* stress, is when organizations

themselves follow procedurally unjust organizational structures or actions (Shane, 2010), or do

not support their employees who are participants in an error. This stress and reduced

engagement impacts the behavior of criminal justice professionals as much as external

procedural justice (Tyler et al., 2015). Accordingly, organizations perceived as being

procedurally unjust suffer from increased absenteeism, and unwanted and unhealthy employee

behaviors including increased drug usage, marital problems, and poor employee health, including

suicide (Tyler et al., 2015). (In fact, 140 police officers across the United States committed

suicide in 2017, compared to only 46 who were shot in the line of duty (Heyman, Dill, &

Douglas, 2018)).

An organization's failure to adequately understand and address the behavior of the employees who participated in the error leaves both those employees and their peers feeling misunderstood, mistreated and unsupported by the organization. This reduces their sense of self-efficacy, empowerment and perceived discretion to address situations that arise as they are performing their duties, and it reduces the sense of duty that they feel to conduct themselves within organizational policies and protocols. If the organization puts its well-being ahead of that of its employees, the best individual outcome for an employee may well result from deviations from organizational policy, are more distrustful of the public, and respond with more hostility, use of force and coercion when challenged (Trinkner et al., 2016)

       3.   **A better way: productive responses to errors in criminal justice.** While the negative consequences from failing to respond to errors in a procedurally just fashion are substantial, there are conversely positive consequences when an organization meets its obligations of procedural justice to the community and to its employees. The acknowledgement of error and a good faith, transparent engagement to address the harm caused by the error and prevent the error's recurrence can strengthen the relationships between organization and community, as well as the relationship between organization and the employees who participated in the error (Trinkner et al., 2016)An appropriate response to error enhances a community's engagement with the system, improving the collective willingness of the community to intervene with the system for the common good (Tyler et al., 2015). It also inspires employees to engage with the organization, improving their sense of self and their perceptions of legitimacy in their actions. Criminal justice professionals who believe in the legitimacy of their organizations are more likely to follow organizational procedures and protocols, report higher levels of trust with

the community, and are more likely to deploy de-escalation initiatives and less likely to resort to

force as a tool to resolve disputes in the field (See Figure B below).

Upward Spiral of Legal Optimism

Legal Optimism

Increased Willingness to
Obey Sanctions

Increased compliance with
departmental policies

Fair Assessment of Accountability
For Event Participants

Improved Organizational
Affiliation

Increased Respect,
Community Engagement

More Reporting of Crimes
More Participation from Witnesses,

Just Culture Event Review –
Procedural Justice

Increased Legitimacy

Distributive Justice for Victims of Error

Acknowledgement of Error

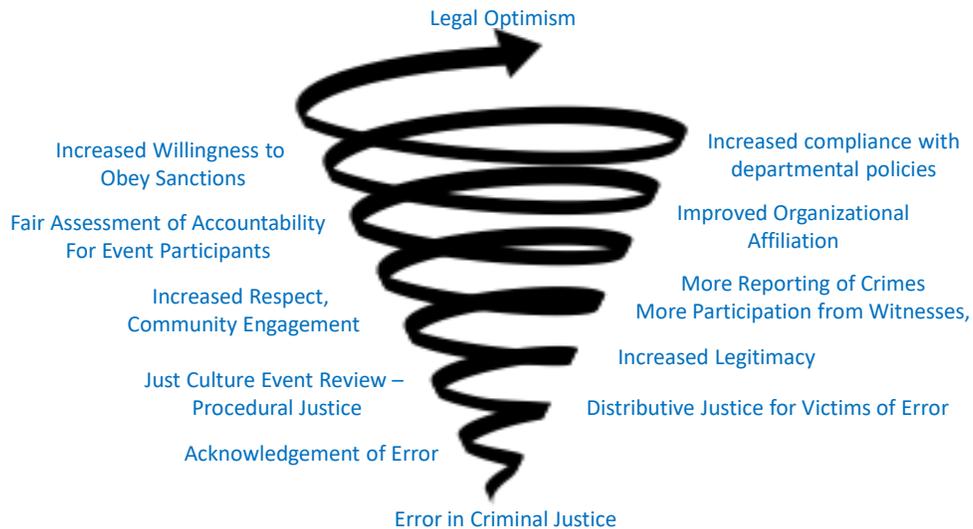Error in Criminal Justice

Figure B. Upward Spiral of Legal Optimism

This increasing positive psychological spiral towards legal optimism operates as the

reverse of the downward spiral of legal cynicism, creating an increased perception that the

system is meeting the obligations of its social contract and enhancing the likelihood, as well as

the perception that the system will reach just results in assessing and addressing criminal

behaviors.

One example of an exercise in procedural justice in response to error and its potential to

generate legal optimism might be the response to the mistaken 2009 arrest of Harvard professor

Henry Louis Gates at his home in Cambridge, MA. Professor Gates had returned home from a

business trip to find the door to his home jammed shut. A neighbor who observed the Professor

trying to pry the door open and gain access to his home misinterpreted the situation, and reported

a burglary in progress to the police. Professor Gates was arrested by the responding police

officer, causing a national outcry.

Within days after the incident (and with assistance and encouragement from President

Obama), the Cambridge Police Department and Professor Gates participated in a meeting at the

Rose Garden to discuss the event. Dubbed the "Beer Summit," the meeting and a subsequent

review of the incident gave both Professor Gates and the reporting officer a chance to discuss the

incident and hear each other's perceptions and views. It yielded a public and mutual declaration

of understanding of the contributions that each man had made to the escalating tensions in the

moment, pointing out the importance of mutual displays of respect and courtesy in police/civilian

interactions. The Department acknowledged the importance of the community and its citizens,

as well as the importance of supporting its officers, who must often make split-second decisions

under life-threatening circumstances. Professor Gates had the opportunity to share his

perspective of the event, to explain where the officer had fallen short of his obligations, and to

hear and learn from the officer's perspective (Sherwell, 2009). In the end, a respected authority

(President Obama) reassured the community that the concerns of both sides had been heard, that

the challenges confronted by each side were better understood by the other, and that better

outcomes would be easier to obtain in the future.

Just as one error in criminal justice does not lead to the Baltimore riots, it would be

unreasonable to assume that one "Beer Summit" or one Just Culture Event Review will create

full community or employee faith in our criminal justice agencies. In fact, many in our diverse,

pluralistic community felt that the Beer Summit was not a successful exercise of procedural

justice, and for a variety of different reasons. As an exercise in transparent moderation of

diverse community/police viewpoints, however, it aptly conveys the ability of procedural justice

mechanisms to convey individual and community well-being when distributive justice is an ineffective remedy.

III.   The Structure and Process of Just Culture Event Reviews

Just Culture Event Reviews (JCERs) are investigations into the systems and individual factors that combine to enable an error in the administration of justice. JCERs are designed to identify, assess, and respond to the underlying acts, omissions, or environmental factors (i.e., root causes) that contribute to the unintended outcome, and to generate implementable corrective actions for organizational quality improvement, and minimizing errors in the future (Carroll, Rudolph, & Hatakenaka, 2002; Doyle, 2014; Doyle, 2018). JCERs also provide procedural and distributive justice guidance concerning the treatment of individuals who participated in the events leading to the error; in this way they help managers create and sustain a "just culture" in their organizations that has widespread psychological benefits within and outside the organization (Dekker, 2016).

In their focus on system-wide and forward-looking organizational accountability and safety (as opposed to retrospective assessments of individual blame), JCERs provide a type of procedural justice that is materially different from other forms of post-event administrative reviews of errors in criminal justice (e.g., internal affairs investigations, civilian oversight boards, civil or criminal liability investigations, disciplinary review boards) (Hollway et al., 2017; McCall & Pruchnicki, 2017).

JCERs are typically multi-stakeholder, involving all criminal justice organizations that participated in a specific case in which an unintended outcome has been identified, be it a wrongful conviction or incarceration, an officer-involved shooting, a death or injury of an

individual in custody, or some other error.[4] In the case of Lex Street, for example, a JCER

brought together representatives from the police department, prosecutor's office, defender's

office, and courts, and also involved members of the community or the media who had real-time

knowledge of the events in question.

    While JCERs have been successfully deployed in other industries, including aviation,

healthcare, manufacturing, and elsewhere (Frankel, Leonard, & Denham, 2006; Gill & Shergill,

2004), their broad adoption should not suggest that they are easy to perform. JCERs embody

considerable psychological, reputational, and economic risk for participating agencies, and they

are psychologically demanding for participants of the review and for participants in the acts that

led to the error. They typically occur in highly politicized and emotional climates where

acceptance of responsibility can subject jurisdictions and agencies to substantial liability. In

addition, the people conducting the review (herein called Reviewers, as differentiated from

Participants, individuals who participated in the events under review) are then asked to return to

their respective organizations with proposed corrective actions, which may or may not be

embraced or implemented by the organization or its leaders and which may subject Reviewers to

criticism from within their own organizations. Accordingly, participation in the review and the

corrective actions it yields may improve the long-term quality of the justice system, but often

appear in the moment to be counterproductive and negative for the JCER participants as

individuals or as agencies.

    To optimize the utility of JCERs, it is essential that: (a) they be conducted with

discipline, compassion and care; (b) their results be communicated to internal and external

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[4] JCERs need not arise solely from negative incidents. For example, a jurisdiction could conduct a JCER after the successful resolution of a cold case. In that instance, the positive event of solving the crime would prompt the JCER, which would seek to understand the persistence of the unintended outcome of an unsolved crime, and would ask what resources might have helped investigators solve the crime sooner.

agency constituencies; and (c) the corrective actions they recommend be implemented and

evaluated over time. The remainder of this paper will describe a process that has been utilized in

an effort to overcome these challenges and conduct successful JCERs; done properly, the

commitment to procedural justice shown by criminal justice organizations participating in JCERs

should enhance the well-being of both individual and organizational participants in the event as

well as the victims of the event and the community at large, transforming the loss of institutional

legitimacy resulting from the error into a positive learning event that restores legal optimism.

To address and support the myriad constituencies impacted by errors in criminal justice,

and to help organizations live up to their procedural justice obligations across multiple

constituencies, JCERs combine the organizational safety principles of root cause analyses

(RCAs) with management tools incorporating a "just culture," one that appropriately allocates

organizational and personal accountability in the wake of an error (Dekker, 2016).

Understanding each of these concepts in turn will aid in understanding the impact of the JCER.

A. Summary of Root Cause Analysis

Root Cause Analysis (RCA) is a tool for understanding not only *what* error occurred and

how it occurred, but also *why* it occurred (Rooney & Heuvel, 2004). "The ultimate purpose of an

RCA is to identify hazards and systems vulnerabilities so that actions can be taken that improve .

. . safety by preventing future harm." (National Patient Safety Foundation, 2016, p. 2). A useful

RCA process will: (a) identify hazards and vulnerabilities that impact safety; (b) identify

systems-based actions that will address the specific hazards and vulnerabilities identified; (c)

ensure that the actions are implemented; and (d) evaluate the effectiveness of the corrective

actions (National Patient Safety Foundation, 2016).

Root causes are specific and identifiable underlying causes of error within the control of management to fix, and for which effective recommendations for prevention can be generated (Rooney & Heuvel, 2004). These underlying causes may originate from factors involving communications (language or terminology differences, availability of information, etc.), environmental factors (noise, lighting, weather conditions, etc.), equipment or device challenges, task or process factors, specific actions or omissions by individuals or teams, management or supervision factors, or factors involving organizational culture or leadership, among other areas (Joint Commission, 2017) (See Appendix). Importantly, root causes are more specific than such classifications as "operator error," "equipment failure" or "external factor," which lack the specificity necessary to enable RCA participants to design effective modifications. Rather, they explain the reasons behind the operator error or equipment failure, allowing more precise modifications to be designed (Rooney & Heuvel, 2004).

B. Just Culture Evaluations

To deliver procedural justice in the eyes of Participants and community members, JCERs must convey a strong understanding of both organizational and personal accountability for the acts leading to an error (Dekker, 2016). The lines between organizational and personal accountability can be challenging to draw. Our society is increasingly prone to criminalize participation in system accidents, even after providing fair compensation for the victims, suggesting a lack of community agreement on where the line should be drawn between a good faith professional mistake (for which the organization should be accountable) and an intentional crime deserving of incarceration or other sanctions (for which the individual actor should be punished, and for which the organization may also share some accountability) (McCall & Pruchnicki, 2017).

It can be particularly challenging to strike this balance in criminal justice, where the adversarial nature of the relationships between criminal justice professionals and the community, or sometimes between criminal justice professionals (e.g., prosecutors and defense attorneys) can create suspicions of ill will and ulterior motives where in reality only good faith mistakes may reside. Many observers of the Lex Street investigation, for example, found it challenging to believe that an experienced police homicide detective unintentionally accepted the false confession of Jermel Lewis. A cynic might question the motives or techniques of the detective who interrogated Mr. Lewis, and suggest that firing the detective would solve the problem of false confessions going forward by deterring coercive conduct.

While sanctioning the detective would undoubtedly prevent him from coercing false confessions in that jurisdiction in the future, it would not help other detectives secure fewer false confessions, nor would it address the circumstances that led a professional policeman to believe either (a) that a false confession was true or (b) that his best option was to accept a confession he believed to be false. It would not provide guidance on cognitive interview techniques that might enhance witness memory of events, or education about implicit or confirmatory biases, internalized confessions or psychological adaptation – all important psychological concepts that would have been of great use to detectives seeking to compare and assess the credibility of two conflicting confessions to the crimes. This shift from punishment to constructive environmental change is at the crux of the psychological benefits conveyed by a JCER.

Still, it is important not to be naïve. "Rather than assume there are no bad actors, or people with ill will, we accept that they too must operate within these accountability relationship boundaries." (McCall & Pruchnicki, 2017, p. 144). Thus, the "just culture" portion of the JCER is one that recognizes that even well-trained and competent professionals make mistakes, and

that not all deviations from protocols or training should be punished. A just culture differentiates between good faith, well-intended mistakes and reckless, negligent, or intentionally inappropriate behavior to reach a procedurally and distributively just result (Dekker, 2012).

As Figure C below illustrates, a just culture assessment of individual behavior consists of three parts. The first question is whether the individual actor departed from established training, protocol or required practice. If no, and the error still occurred, Reviewers should respond to a system error conveying organizational accountability more than a personal error or misconduct conveying personal accountability.
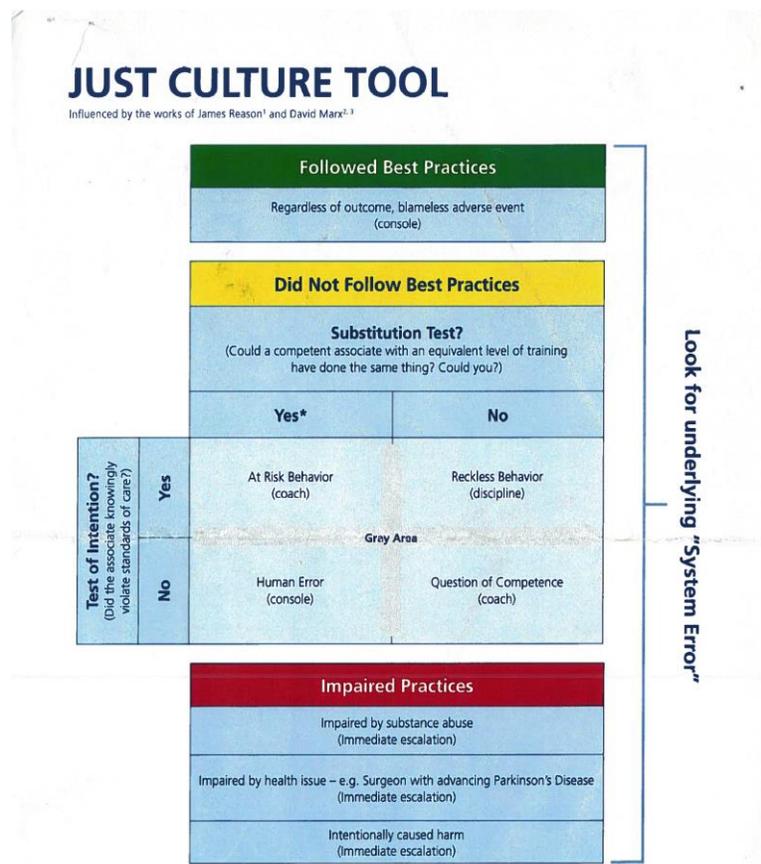
JUST CULTURE TOOL
Influenced by the works of James Reason[1] and David Marx[2,3]

Followed Best Practices
Regardless of outcome, blameless adverse event (console)

Did Not Follow Best Practices

Substitution Test?
(Could a competent associate with an equivalent level of training have done the same thing? Could you?)

	Yes*	No
Yes	At Risk Behavior (coach)	Reckless Behavior (discipline)
	Gray Area	
No	Human Error (console)	Question of Competence (coach)

Test of Intention? (Did the associate knowingly violate standards of care?)

Look for underlying "System Error"

Impaired Practices
Impaired by substance abuse (Immediate escalation)
Impaired by health issue – e.g. Surgeon with advancing Parkinson's Disease (Immediate escalation)
Intentionally caused harm (Immediate escalation)

Figure C. Just Culture Assessment Tool (Source: Misericordia Hospital, Bronx NY).

The second question is an intentionality test – was the Participant's departure from protocol an intentional one? The third question is a substitution test – if Reviewers substitute

themselves for the Participant, giving themselves the Participant's skills and training and

considering Participant's reactions, can they see themselves responding to the situation as the

Participant did?

The intentionality/substitution tests create four possible organizational responses (shown

in Figure C above), each conveying different allocations of organizational and personal

responsibility. Based on the individual's intentionality and the reasonableness of his actions

measured against the training provided by the organization and the situation, the organization

may provide additional training or coaching to an employee, or it might provide consolation or

counseling services to a colleague who, when confronted with a challenging situation, lacked the

ability to obtain a more desirable outcome. If the Participant violated professional standards in

an egregious way, however, discipline or some official sanction may be appropriate.

In a situation where an individual has acted intentionally acted wrongful, administering

discipline has utility both as distributive justice (a wrongdoer is being punished) and as

procedural justice, since by disciplining intentional misconduct, we can deter future intentional

misconduct. Even here, the RCA component of the JCER should be conducted in parallel to the

administration of discipline, as a question that remains for the organization is "how did a

situation arise in which a Participant was able to act in an intentionally wrongful way without

detection?" (Dekker, 2012).

By training or consoling participants in the other scenarios, the organization conveys

respect and support for the employee, enhancing feelings of organizational engagement and

commitment from the participant and his peers. Finally, while the just culture assessment

evaluates the individual's contributions to the error, it does so without avoiding or minimizing

the organizational contributions to the error. This provides additional credibility to the

organization's responses, and allows the RCA components of the event review to provide meaningful corrective actions and their related benefits to the system and to the psychology of the community.

C. Using Positive Psychology to Optimize Just Culture Event Reviews

An organization's decision to conduct a JCER is an investment in procedural justice, and makes a positive psychological contribution to the community. The very existence of a JCER, of taking time to review and extract something positive from an error in criminal justice, conveys a sense of dedication to community fairness and the prioritization of the long-term well-being of the community over the short-term impact of the error to the organization's reputation.

The existence of procedural justice is in the eye of the beholder (Cohen-Charash & Spector, 2001), however, and so Reviewers in a JCER must ensure that Participants and observers perceive that the JCER process satisfies the requirements of procedural justice. The positive psychological impact of JCERs will be limited if the community is not aware of and engaged in the JCER process, or believes that the JCER process is a cynical "whitewash" not truly committed to designing and implementing constructive corrective actions in response to the error.

To satisfy the tenets of procedural justice, the JCER must:

- Provide all stakeholders with a voice in the process;

- Seek to understand the actions, motivations and reasoning of each Participant;

- Treat all Participants with dignity, respect, and a caring benevolence;

- Approach the error in a fair and neutral fashion, without personal biases; and

- Provide a clear rationale for the corrective actions recommended, giving Participants and the community a voice in evaluating the proposed corrective actions and their utility

(Tyler et al., 2015).

While procedural justice is necessary for a successful JCER, it is not sufficient. As noted above, event reviews conducted after errors in criminal justice – many of which have life or death consequences and virtually all of which are wrought with emotion and allegations of misconduct, corruption or malfeasance – create psychologically taxing and politically challenging atmospheres for Reviewers that must be addressed. To succeed, JCERs should be conducted by objective moderators who create an environment of collective efficacy and empowerment (Walumbwa, Wang, Lawler, & Shi, 2004) in which all Reviewers are working together, often against the perceived short-term interests of their organizations, towards the larger long-term common good of improving the complex criminal justice system.

Depending on a particular jurisdiction's location on the legal cynicism spiral, it may be more challenging in some jurisdictions for Participants and observers to believe that these high-minded goals are sincere, and that information gathered in the JCER under the guise of a "blame-free systems review" will not be used against the Participant or against other organizations in an effort to avoid or shift accountability.

To combat this cynicism, Moderators and Reviewers can deploy specific positive psychological techniques that may help convince cynical Participants and observers of the JCER's sincerity and its benefits. This requires a consistent, demonstrated commitment to a process that promotes holistic engagement and candor, factual accuracy, shared accountability, opportunities for amendment and corrections, and above all a conformance to the fundamental

moral and ethical views of the communities affected by the error and the employees of the

participating organizations (Cohen-Charash & Spector, 2001). It is inevitable that organizations

and the communities they serve may sometimes disagree about the moral or ethical views of an

event. In such instances, the challenging work of the JCER is to identify those differences,

acknowledge and explain them, and convey how the proposed reforms will bring the parties

closer rather than farther apart.

To succeed against this challenging backdrop, the Reviewers should be thought of as

their own group, outside of their respective organizational affiliations and tasked with educating

those organizations about their specific contributions to the error, and the corrective actions they

can take to prevent the error in the future. The task of the JCER Moderator is to improve the

positive psychological capital of the individuals in the group, imbuing the participants with a

sense of psychological capital, consisting of hope, optimism, resilience, and both individual and

group efficacy about their ability to change the criminal justice system for the better (Luthans, et

al., 2004).

This environment can be achieved in a myriad of ways. Moderators can create an

environment of psychological safety and trust that encourages Participants to speak openly and

candidly, confident in the mutual respect they will receive from Reviewers. This trust fuels a

greater willingness to speak openly and truthfully about challenging topics. Moderators can take

specific actions that will improve Reviewer-Reviewer and Reviewer-Participant interactions,

creating high-quality connections (Dutton, 2006) that increase trust, improve data gathering and

enhance the group's understanding of what, how, and above all *why* each Participant contributed

to the error.

Positive psychology can be used to ensure that Representatives and Participants remain in the JCER process; the science of resilience and resilience protective factors (Reivich & Shatté, 2002) can be used to help Participants traumatized by the tragedy and help Representatives remember that the JCER is not a politicized blame exercise, but rather a contribution to organizational quality and enhanced organization-community relations. Challenges and defensiveness can be reframed in real-time to help Representatives and Participants perceive errors and their contributing factors more objectively and compassionately, and to empathize with the decisions made by Participants in keeping with the non-blaming spirit of the JCER. These and other techniques for helping people with conflicting motivations work together to better understand one another, designing reasonable responses to a tragic and undesired event, are exercises in positive psychology that help individual Reviewers arrive at group recommendations for corrective actions that will satisfy (and perhaps even impress) skeptical community and organizational observers, leading to enthusiastically supported corrective actions.

D. Specific Positive Psychological Interventions in Just Culture Event Review

In the spring of 2014, the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School, along with the Philadelphia Police Department, the Philadelphia District Attorney's Office, the Philadelphia Court of Common Pleas, two private defense counsel, and a former reporter for the Philadelphia Daily News (the Stakeholders) collaborated on a proposal to the National Institute of Justice (NIJ), the research division of the United States Department of Justice, to conduct a multi-stakeholder event review using "systems principles" of error reduction that had been proven effective in other environments (e.g.,

healthcare, aviation, nuclear power management). NIJ hoped these principles could be deployed effectively in criminal justice (Browning et al., 2015; Doyle, 2014)

The Stakeholders selected the Lex Street Massacre as a suitable case for a JCER. Their stated goal was to understand what happened in the Lex Street investigation and prosecution, and to generate precise corrective actions that would prevent the recurrence of the myriad errors that occurred in that case. They emphasized a jurisdiction-wide, blame-free goal: to understand how a well-intentioned investigation into one of the most notorious crimes in Philadelphia history nonetheless resulted in the wrongful incarceration of four innocent men for more than a year and a half.

The high-level process agreed upon by the Quattrone Center as the Moderator and the Stakeholders as Reviewers is set forth in Figure D, and areas in which positive psychology techniques were consciously deployed are described in more detail below.
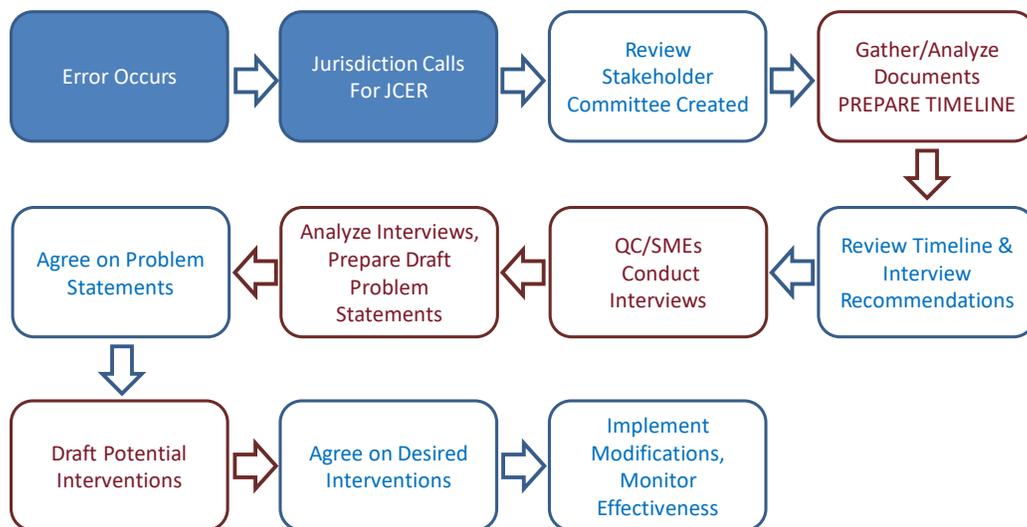
Just Culture Event Review Process

Error Occurs → Jurisdiction Calls For JCER → Review Stakeholder Committee Created → Gather/Analyze Documents PREPARE TIMELINE →

Agree on Problem Statements ← Analyze Interviews, Prepare Draft Problem Statements ← QC/SMEs Conduct Interviews ← Review Timeline & Interview Recommendations

Draft Potential Interventions → Agree on Desired Interventions → Implement Modifications, Monitor Effectiveness

Figure D. Just Culture Review Process.

E. Assemble the Reviewers

It would be ironic if an event review dedicated to principles of procedural justice was not, itself, procedurally just. Reviewers were chosen to provide a holistic and comprehensive understanding of the event from the perspective of each participant in the event or its build-up (Dekker, 2016). This was done to minimize concerns of bias, favoritism, or political manipulation, and therefore to promote objectivity and procedural justice.

Participation in the JCER was voluntary. Participants included the Philadelphia Police Department and District Attorney's Office, and the First Judicial Court of Pennsylvania, the trial court with jurisdiction over the case. Additional Reviewers included defense attorneys who had represented a subset of the first four (innocent) defendants and the second four (ultimately convicted) defendants. (Because each of the first four and second four suspects in the case had retained private counsel, the Philadelphia Defender Association was not invited to participate.) A reporter who had covered the case from the initial crimes through to the ultimate convictions also participated, in an attempt to understand the influence of media coverage on the Participants.

Once the representative organizations had agreed to participate, each organization designated its Reviewers. Reviewers were selected along three axes. First, organizations assigned individuals who had an appropriate awareness of the technical aspects of a homicide investigation and prosecution, to allow for fair assessments of Participant behavior and accountability. "If you are held accountable by someone who really does not understand the first thing about what it means to be a professional in a particular setting, then you will likely see their calls for accountability as unfair . . ., as uninformed, and as unjust" (Dekker, 2016, p. 109).

Second, Stakeholders sought to ensure that at least one Reviewer from each participating organization was of sufficient seniority that the corrective actions recommended had a likelihood of being implemented by the participating organizations.

Third, Stakeholders sought to select Reviewers who were known to be "bridgers," people more prone to building social connections with people of other groups in diverse social situations (Putnam, 2001).

F. Creating Trust and Psychological Safety Within the Review Team

Once the review team was in place, with Reviewers representing each of the participating agencies, the Moderator worked with the group to establish a positive mindset towards the Participants in the Lex Street case. The Moderator sought to change the Reviewers' view of error from something negative (i.e., bad faith misconduct or personal incompetence) to something positive (i.e., an opportunity for learning and improvement throughout the criminal justice system). Such a desire is key to the procedural justice goals of the review (Davis, Nolen-Hoeksema, & Larson, 1998).

Beginning the review with the assumption that each organization's Participants had operated in good faith ensured that the group's focus was on the system's role in creating the circumstances for error, rather than on displaying the incompetence of individual Participants. Viewing error as incompetence makes it easy for organizations to deny responsibility for error and "systematically support mistakes" (Edmondson, 2004, p. 70) rather than the more challenging design of corrective actions that will change the environments in which Participants make decisions.

Acknowledging that the errors in the Lex Street Case occurred despite the best efforts of police officers, prosecutors, defense attorneys, judges, and others had an additional, and more

subtle psychological benefit to the Reviewers. The group acknowledgement of error, coupled

with a mutual dedication to compassion and support for the Participants, contributed to an

atmosphere of trust and psychological safety among the Reviewers. Psychological safety is a

shared belief among members of a group that the group is a safe place to honestly express views

and ideas (Edmondson, 1999). Individuals who feel psychologically safe in a group are more

prone to share information, seek feedback, ask for help, discuss errors, and experiment with

possible solutions, thereby improving the collective understanding of the situations examined by

the group (Edmondson, 1999).

Trust is an important component of psychological safety (Dutton, 2006). Trust is an

individual's belief in another's integrity (consistency between the other's behaviors and his

thoughts), dependability (the other's honesty and reliability), and benevolence (the degree to

which the other cares about the individual) (Dutton, 2006). The Moderator sought to enhance

perceptions of trust by using Dutton's techniques for fostering high -quality connections (2006)

including the use of inclusive language (e.g., "we" statements as opposed to "I" statements), and

each Reviewer would generate trust from the other Reviewers when they would (a) reveal

vulnerability (e.g., by agreeing to their organization's contributions to the error in some fashion)

or (b) respond with compassion or understanding to the revelation of vulnerability by another

Reviewer or Participant.

Given the depth of experience of many of the Reviewers, it was sometimes difficult to

prevent Reviewers from jumping to conclusions that certain Participants from their organizations

or other organizations had acted in bad faith. The act of jumping to conclusions undermines a

sense of trust, making the creation of team psychological safety much more challenging (Dutton,

2006). By contrast, Reviewers who displayed a commitment to assume the best in each

Participant displayed trust and respect in the other Reviewers and their organizations, adding to psychological safety (and contributing to the group's ability to build trust with Participants, as will be discussed below). The Moderator sought to minimize the impact of jumping to conclusions by reminding all Reviewers at various times to embrace the good-faith mindset towards the Participants, and to await the results of all Participant interviews before advancing theories of accountability or malfeasance.

G. Creation of a Group Engagement Model

In addition to an environment of psychological safety and trust, the JCER needed a strong sense of group engagement to succeed. If some Reviewers appeared to be going through the motions, it would undermine the sense of trust and psychological safety, increasing the likelihood that contributing factors (and thus, accountability) would not be balanced across all participating organizations. The Moderator sought to create a mutual awareness among the Reviewers that they were all working together to solve a system-wide error, such that the Reviewers were motivated to improve the collective system and not just a specific organization (Blader & Tyler, 2009). In part, this required the Moderator to recognize the professional identity assumed by each Reviewer, understanding that each Reviewer, and each Participant was evaluating whether the group would help him or her maintain (or restore) a positive professional identity (Blader & Tyler, 2009). To achieve this, the Moderator sought to consistently reinforce the higher-order goals of the group and the desire for the group to positively affect the community while protecting the employees of each participating organization, helping them avoid error and restoring legal optimism so that each of them was empowered to be the criminal justice professional they hoped to be when first accepting the role and its responsibilities. The Moderator also reminded the group from time to time that the adversarial roles of various

Stakeholder agencies (e.g., prosecutor vs. defense attorney) was designed for the system-wide

good of establishing accurate identifications of criminal acts, and that a robust adversarial

engagement (e.g., a strong prosecutorial role coupled with a strong defense capability) provided

the highest likelihood of achieving the group's goals of accuracy in the administration of justice.

From this baseline, Reviewers were reminded of the task at hand, and of the

confidentiality agreement among the Reviewers. They were warned that they would be engaging

in a series of challenging conversations in which each Stakeholder and its Participants and

Reviewers would reveal vulnerability and imperfection in order that the system as a whole could

be improved. The Lex Street case would be understood as a blend of contributing factors from

each Participant and Stakeholder, where the Participants were motivated by a complex web of

direct and indirect influences, including supervisory, organizational, and environmental factors –

and influences from other participating Stakeholders. For example, actions of police officers are

influenced by the policies of prosecutors that establish the amount and types of evidence

necessary for an arrest to progress to legal adjudication. Prosecutors are themselves influenced

by the actions of defense attorneys and judges, who serve as checks and balances to prosecutorial

authority. As a result, the Reviewers could anticipate that actions by Participants in their

agencies had upstream and downstream consequences that influenced the ultimate case outcome.

This was a necessary precursor to the creation of constructive corrective actions that would

implicate all participating Stakeholders (Stone, Patton, & Heen, 2010).

In short, the initial meetings of the JCER engaged the Reviewers in a mutual

acknowledgement of error, a focus on the system's responsibility for that error rather than the

incompetence of individual participants, a shared acknowledgement of each Stakeholder's

contributions to that error, and a commitment to mutual support and compassion for the

Participants, in order to create an atmosphere of psychological safety that would enhance the

group's ability to generate new and productive learnings from the error (Luthans, et al., 2004).

Such an environment is easy to describe, but requires constant vigilance to be sustained, as it can

be easy for individuals to fall back into defensiveness or accusatory behaviors that would disrupt

the psychologically safe environment over the course of the JCER. Regular reminders of the

overarching philosophy and attention to detail in vocabulary and presentation of information

remained important throughout the JCER.

H. Conducting Interviews of Participants

Procedural justice requires that each Participant have a voice in explaining the event

(Tyler et al., 2015). This helps to dispel concerns of bias or predetermination on the part of the

reviewers, and underscores the JCER's focus on organizational safety as opposed to individual

ineptitude. The Lex Street JCER involved two-person interviews of each Participant who

consented to be interviewed. Each interview was conducted by both a Moderator (in this case,

not a Reviewer from one of the Stakeholders, but an individual from the Quattrone Center) and a

subject-matter expert (SME), an interviewer from outside the jurisdiction who had firsthand

experience in the role of the person being interviewed. This two-person structure conveys many

benefits. First, having interviewers who were not from the participating organizations, and had

no disciplinary authority over the Participant being interviewed, provided assurances of

objectivity and fairness to the Participant and to observers of the process. Second, it provided

assurances of impartiality to the participating organizations, each of whom was content to have

the Moderator conduct interviews, but none of whom was willing to submit to being interviewed

by representatives of the other participating organizations. Third, it provided two separate and

distinct viewpoints when gathering data from the interviews, providing a hedge against

perceptive biases that one or the other interviewer might have brought to the analysis (Schmeer, 1999).

The two-person interview team also served to build trust and reduce anxiety on the part of the Participants, and often generated additional useful information about the motivations and circumstances that surrounded the interviewee's participation in the error. Because the SME had firsthand experience in the Participant's job, the SME could credibly empathize with and verbalize the pressures, incentives, or challenges that motivated the Participant during the event, and could establish a rapport with the interviewee that had the potential to generate additional information and context (Dekker, 2016). The SME could also analyze and provide additional color to the interviewee's remarks. For example, in one interview of a homicide detective in the Lex Street case, conducted by a Moderator and an extra-jurisdictional homicide detective SME, the SME identified an environmental contributing factor that the Moderator would have missed. Because he had first-hand expertise, the SME explained both the environmental factor and its implications for the investigation. This would otherwise have escaped the notice of the Reviewers, but instead went on the form the basis of one of the JCER's corrective action recommendations.

Prior to conducting interviews, the Reviewers compiled an initial timeline of the events leading up to the error and its discovery, beginning with the crime itself and tracking media accounts and agency documents (police reports, court dockets, etc.) to create a list of Participants. The group them contacted Participants with a request that they agree to be interviewed as part of the JCER.

It was recognized that Participants might be cynical of the JCER's motives, and that there were several barriers to trust between a Participant and the review team, including a concern that

Participants would be blamed by their own or one of the other Stakeholder organizations, or that

a Participant's personal narrative would be co-opted, changed, or used against him/her (Dutton,

2006).

To build trust with individual Participants, the Moderator first contacted them through

intermediaries with whom the Participants had prior personal relationships. The intermediaries

were coached on the higher-order mission of the JCER and its blame-free focus, and the JCER

sought to leverage the existing trust between Participant and intermediary to encourage

participation and increased candor from the Participant throughout the process.

Interviews of Participants were wholly voluntary, and individuals conducting the

interviews used established psychological techniques to build high-quality connections (Dutton,

2006) among the Moderator, the SME and the Participant. Interviews were conducted face to

face wherever possible, since face to face interviews build more human connections and trust

(Dutton, 2006). Interviewers took active steps to convey respectful engagement in the

interviews, a display of the interviewee's importance and competence that contributes to the

atmosphere of trust and maximizes the free exchange of information. Interviews were conducted

at a neutral location free of distractions, and interviewees were reminded of their importance

both to the Lex Street case and to the JCER and its goal of improving the criminal justice system.

While a request was made to record the interview for archival purposes, the Participant's express

permission was a prerequisite, conveying at the outset that the Participant was in control of the

interview and thus was less likely to be subject to unwanted and negative consequences (Dutton,

2006).

Interviewers introduced the topics of the interviews carefully, using request language

("can you describe what happened when . . .") rather than demand language ("tell me about . . .")

Demands suggest a greater potential for punishments to follow, and thereby reduce trust from the interviewer (Dutton, 2006). Positive action language ("we want to enable a solution," as opposed to "we want to fix a problem," for example, or "we want to explore ways to help the next individual in your position") was used to win Participant confidence, and to convey that the JCER would be responsive to the valuable information provided by the Participant.

Interviewers were encouraged to ask simple, open-ended questions that allowed the Participant to tell his or her own story. They were also instructed to focus on respectful and engaged listening, rather than trying to control the interview. Interviewers were coached to seek out the Participant's perspective of events as they were unfolding, and the feelings or perceptions that led to decisions made in the moment. They were also instructed to express sympathy for the Participant's actions. Such acknowledgements help Participants feel understood and valued and therefore provide additional information in the interview (Dutton, 2006; Stone et al., 2010). To generate additional communication on specific points of interest, interviewers would engage in active listening, paraphrasing or summarizing the interviewee's statements and asking for clarification or feedback (Stone et al., 2010).

An important feature of interviews was to ask the Participant to describe the events in a first-person, chronological order, rather than working backwards from the error. It is essential to the construction of useful corrective actions that the Reviewers understand the decision-making of Participants *in the moment,* since actual Participant decisions are made without the knowledge that an error is going to occur. Hindsight is an inherently biased point of view (McCall & Pruchnicki, 2017) in which the existence of the looming error causes decisions that were made before the error to appear to be less reasonable than they seemed to participants at the time.

Imputing the negative impact of the error on the Participant's decisions biases the interviewer's efforts to understand the Participant's true motivations and perceptions (Dekker, 2012).

Instead, interviewers were coached to ask questions that slowed down the sequence of events as interviewees were describing their actions at key moments, trying to understand moment by moment what the individual knew (or did not know) and what factors influenced each decision they made as events unfolded.

An analogy to professional sports may be illustrative in explaining the type of interviews that were conducted. One might think of the Participant being interviewed as the quarterback in a professional football game. It cannot be seriously questioned that a professional quarterback is sublimely talented and well-trained, and his motivations and incentives are clear. What's more, each play is carefully scripted, providing the quarterback with several options and avenues to success. Notwithstanding these advantages, as a specific play unfolds, the quarterback must process enormous amounts of rapidly changing and often confusing or misleading information, and make split-second decisions on where to send the ball. Sometimes this decision leads to an interception – an error, or undesired outcome.

The interviews conducted by the JCER were intended to generate a dialogue much like the conversation that occurs the day after an interception, as the quarterback and his coach review the play on video. Rather than view the play through hindsight, the motivation of the interviewer/coach is to understand what the Participant/quarterback perceived and thought, second by second, as the play unfolded, so that the criminal justice system/offense can be repositioned more effectively, helping the next Participant in a similar situation to make a more productive decision that leads to a different outcome. To facilitate this goal, the interviewer/coach asks open ended questions ("what did you see?") and starts from the beginning

of the play, moving forward slowly and understanding the Participant/quarterback's views as each decision is made throughout the play.

It is important for interviewers, who may be experienced in standard operating procedures for criminal justice professionals, to follow precepts of active open-minded thinking, a pattern of developing reasoned thought that describes an openness to the consideration of alternative viewpoints, a willingness to engage actively with new evidence that may contradict the current hypothesis, and a resistance to dogma (Kam, 2006); in short, interviewers should strive consciously to avoid pattern recognition or confirmation bias caused by their own experience that may lead to an inaccurate conclusion regarding the causes of events. Given their experience, many Reviewers evaluated the acts of Participants with great speed and preordained the contributing factors to an error, saying things like "well, I can tell you what we're going to learn," or "it's obvious what went wrong here." To combat this bias, interviewers sought to find the actual perspective of each Participant, rather than the speculative perspective of a bystander. Interviewers were instructed to shift their perspective from one of certainty to one of curiosity (Stone, et al., 2016), creating creates additional engagement on the part of the interviewer and conveying importance and trust to the Participant (Dutton, 2006).

Finally, as the interview closed, Participants were asked specifically for their views on what would have helped them avoid the incident (Dekker, 2017). Participants were asked to describe any specific training, experience, knowledge, procedures, or cooperation with others that might have assisted them in making different decisions. They were also asked what parts of the event, if modified, might have signaled them to make different decisions or pursue a different outcome. These first-person assessments often provided useful ideas to Reviewers as they worked to design useful corrective actions.

I. Conversations Among Reviewers

Once the Participant interviews were completed and analyzed, the Reviewers came together to review the information gathered and identify the contributory factors that had accumulated to permit the system error(s). The Reviewers were a blend of Participant peers and individuals with greater seniority in their respective organizations, to ensure both a "street-level" view of corrective actions and the ability to implement those collective actions in the various participating organizations. To ensure trust and psychological safety in these discussions, the Moderator and Reviewers applied many of the same psychological safety and high-quality connection interventions that were used during the Participant interviews.

As with the Participant interviews, discussions among Reviewers benefitted from the presence of a neutral Moderator. The Moderator sought to start each meeting by building trust in the room; this was attempted in a variety of ways, including reminding the group of the philosophy and mission of the JCER at the outset. Organizational research suggests that alignment within groups is an important factor in generating increased positive outcomes (Powell, 1992); accordingly, ensuring that the heterogeneous group of Reviewers remained aligned with the purpose of the JCER was an important factor for its ultimate success in generating implementable corrective actions with each Reviewer's organization.

As discussions unfolded, the Moderator would periodically interject and "reframe" statements by Reviewers that were not in the spirit of open, objective observations of support championed by the JCER. In this way, Reviewers would see that the process was procedurally fair – unbiased and consistently positive, rather than politicized or preordained – and be more willing to continue to participate (Tyler, et al. 2015).

The "Third Story" technique described by Stone, et al. (2016, p. 150) is a reframing technique that can be useful in JCERs. What Stone calls the First and Second Stories are the versions of events from the differing perspectives of Participants engaged in a challenging conversation. The Third Story, by contrast, is the version of the same events that would be described by a mutually interested friend who understood and cared about the other participants. The Third Story is a more objective reframing of the narratives that contains elements of truth and compassion for both sides. As such, it is likely to move the First and Second Story perspectives towards a unified consensus and create the opportunity to move beyond disagreement to build new resources for change.

The Moderator also built trust by consistently seeking consensus and asking for objections or concerns. In this way, the Moderator placed control of the process and its outcomes in the hands of the Reviewers, conveying a sense of individual and group self-efficacy that engaged the Reviewers and enhanced their feelings of control, personal importance and collective mission. Stone et al. (2016, p. 120) describe the "three truths" of a group's assessment of error: (1) we will make mistakes; (2) our intentions are complex; and (3) we have all contributed to the problem. By asserting these three truths, the Moderator assumed shared responsibility with the Stakeholders, and therefore inspired trust from the Reviewers. The Moderator also spread the responsibility for both the event and for designing corrective actions across all Reviewers, allowing for conversations with less recrimination and more mutual acceptance of responsibility.

One of the areas in which the Reviewer assessments were different from the interviews was the seniority of some Reviewers. Individuals in higher positions of authority in an organization (a) tend to pay less attention to the views of more junior people in the organization,

and (b) tend to be less aware of their bias (Dutton, 2006). Thus, it would sometimes be helpful

for the Moderator to position the role of the Reviewers not as responding to employee

suggestions for reform, but as identifying and removing obstacles for their employees.

Another positive psychological attribute that can be deployed in the JCER setting is

resilience, the ability to respond constructively to a setback (Reivich & Shatté, 2002). By

definition, a JCER occurs after a setback – an error or "never event" in criminal justice. The

errors under review are often catastrophic, involving the loss of life or years of unjust

incarceration. Criminal justice professionals operate in a world in which such errors are at once

impossible to eradicate and impossible to tolerate; as a result, acknowledging any responsibility

for such an error can be traumatic for both the individual and the organization. Whether as a

Participant or a Reviewer, engaging in a JCER under such circumstances requires resiliency.

Resiliency is itself made up of several different factors that protect the ability of

individuals to function notwithstanding the trauma of acknowledging the error. JCERs help both

reviewers of and participants in the event develop protective factors that promote resilience and

help individuals cope with the event (Southwick, Vythilingam, & Charney, 2005). Promoting

resilience on the part of the Participants and Reviewers helps them separate their own identities

from the occurrence of error, proving a necessary psychological distance. More resilient

Participants or Reviewers would have greater ability to assess the error and its contributing

factors objectively and to identify potential corrective actions, and would have reduced potential

feelings of shame or guilt, emotions that can interfere with the environment of psychological

safety necessary for the JCER.

A sampling of resilience protective factors and their application in JCER interactions are

set forth in Table 1 below:

Resilience Protective Factor	Application in Just Culture Event Review (JCER)
Facing Fear	Addressing the fear of public outrage, civil/criminal liability, job loss, administrative punishment, etc.
Optimism	Instilling the belief that the error was unusual, and not entirely within anyone's control, and that modifications can be made to the system that learn from the error and will prevent its recurrence
Moral Compass	Inspiring participants to be "the best versions of themselves," and to serve the community by learning from error instead of avoiding it
Religion/spirituality	Acknowledging that events happen over which we have limited control
Social Support	Acknowledging the presence of other participants in the system, both during the error and now in the process of learning from the error
Role models	Setting the example that we must rise above our individual fears or political challenges to achieve an enlightened self-interest
Training; Cognitive/emotional flexibility; Meaning, purpose & growth	Designing new protocols or mechanisms to avoid the recurrence of error and empower our employees

Table 1. Resilience Protective Factors and Their Application to JCER.

One technique that Moderators and Reviewers would use to enhance their resilience or that of others was Active Constructive Responding (ACR) (Reivich & Shatté, 2002).

In the JCER environment of psychological safety, it was not uncommon for a Reviewer to advance a statement of honesty, self-awareness, and self-regulation. These moments allowed the moderator to utilize ACR to build a sense of camaraderie and mutual support among Reviewers. As the name implies, ACR involves actively responding to news shared by another in a way that is understanding, validating, and caring. An effective ACR acknowledges both the importance of the information itself, and the importance of the speaker's sharing it with the

audience. ACR assists in the creation of positive emotions for both speaker and audience, as well as a desire for reciprocal sharing from the audience to the speaker (Reivich & Shatté, 2002). The recognition of these bonds is another element in the expansion and extending of resilience (Masten, 2009) and the positive energy generated by this process can broaden and grow over time throughout all participants in the JCER (Fredrickson, 2004).

Notwithstanding the many tools of positive psychology that can be deployed to improve the environment of psychological safety that optimizes a JCER, old habits of behavior can be hard to break. Reviewers who believed in the higher purpose of a JCER would nonetheless return occasionally to blame-shifting, accusing, avoiding, or other strategies that tended to minimize accountability or distort awareness of the true contributing factors leading to an error. They would sometimes remain sensitive to real or perceived criticisms and respond in kind. In many of these instances, the Moderator sought to use reframing to defuse the tension and return the emphasis of the conversation back to more psychologically safe terrain (Reivich & Shatté, 2002).

The goal of the conversations among Reviewers was to agree upon a list of factors that contributed to the occurrence of the error; once that list of contributing factors was created, the work of generating corrective actions that might have prevented the contributing factors, and therefore the errors, from recurring could begin.

J. Forward-Looking Accountability: Designing Effective Corrective Actions

Once a list of contributing factors was established, the JCER Reviewers used RCA principles to work backwards and identify the root cause(s) that led to the contributing factors. Multiple methods have been suggested in organization safety literature for identifying root causes, among them the "Five Whys" technique.

Originally developed for Toyota by Sakaichi Toyoda (Serrat, 2017), the Five Whys involves repeated "why" questions until a fundamental issue is identified that would have prevented the unintended outcome. It might best be understood by a reverse paraphrasing of George Herbert's famous poem, "For Want of a Nail:"

- Why did we lose the kingdom?
- We lost the battle. (Why did we lose the battle?)
- We had no cavalryman. (Why did we not have a cavalryman?)
- We had no horse. (Why did we have no horse?)
- The horse was not properly shod. (Why was the horse not properly shod?)
- We had no nails to put horseshoes on horses.

In this case, asking "Why?" five times yields a root cause that would have saved the kingdom: nails for horseshoes. It is worth noting how different this system response to error is from the personal model, which would have blamed the king, or perhaps have recommended training to the cavalryman about the importance of riding into battle, supplies be damned.

From a positive psychology point of view, the corrective action stage requires that Reviewers provide a joint and interactive contribution to the definition of root causes (Stone et al., 2016). This empowers and engages the group, providing them with self-efficacy and a sense of purpose and teamwork, as it makes the members of the group partners in solving the puzzle of designing useful corrective actions for each of the underlying causes.

The Moderator sought to facilitate this by asking open-ended questions, paying close attention to and posting answers on a diagram, acknowledging the contributions of group members, and being willing to be wrong and change direction as the conversation unfolds, thereby deferring to the group's wisdom (Stone et al., 2016).

It can be very easy to prescribe training as a response to a system error; typically, such a response is thought of as shallow and relatively ineffective, as it presupposes that personal decision making was the chief cause of the error, rather than system or environmental conditions

(Dekker, 2016; Edmondson, 2004). In most cases, the error has happened notwithstanding prior training, as when a nurse grabs medicine "A" and administers it to a patient when he was supposed to administer similarly named medicine "B." Instead, the Moderator sought to challenge the group to come up with environmental changes, sometimes called "forcing functions" or (in Japanese) "poka-yoke" (pronounced "POH-kah YOH-kay" (Fisher, 1999).

A forcing function, as the name implies, is a function that forces a person to a different path of action. For example, consider the challenge of people pulling up to a gas pump, opening the fuel tank, grabbing the gas nozzle, and inadvertently putting diesel fuel into a non-diesel car. This does not happen in real life, because the diesel fuel nozzle is a different shape than the regular fuel tank neck – a forcing function that prevents people from making the unintended error of putting the wrong kind of fuel in their car. Importantly, people have received training and instruction on selecting the right kind of fuel; such training is of limited utility, as despite the training, most of us have at one time or another been saved from ourselves by this corrective forcing function.

The challenge of identifying forcing functions or other environmental changes rather than simply prescribing additional training to employees has an additional benefit beyond group engagement and collective efficacy. To conceive of effective changes to the environment in which an error occurred, Reviewers are forced to put themselves in the position of the Participants to the error. This change in perspective from Reviewer to well-intended Participant generates empathy from the Reviewer toward the Participant (Davis, 1980), yielding a more compassionate perspective of the Participant's role in the event.

K. Communication of Process and Outcomes to the Community

Once the root causes were identified and corrective actions designed, the RCA was complete. Complete procedural justice, however, requires communication to the victims of the error, to the employees of the participating organization, and to the community at large about the recommendations for change (e.g., the corrective actions) and how they were designed. This interaction with community members conveys that the organizations believe that the members of the community are important (Trinkner, et al., 2016), which in turn makes the community members more responsive to the authority of the organizations, and more deferential, creating a more collaborative, efficient and productive criminal justice system.

Thus, the JCER published a report that sought to explain the error(s) and discuss the organizational context in which the error occurred (Dutton, 2006), including: the shared values of the participating organization; the relationships of the organizations to one another and to the communities they serve; the respect and dignity due to both the community members and the criminal justice professionals impacted by the error; and the obligation of the organizations to work diligently to reduce errors over time. While the report generated on the Lex Street case stopped at this, such communications could also identify the procedural justice elements included in the JCER (e.g., removal of bias; participation of external shareholders; inclusivity of all participants; sincere attempts at constructing useful corrective actions; providing the community and victims with an avenue for participation, evaluation and response) and could discuss the outcome of the JCER and its positive forward-looking impact (Dutton, 2006). Each of these communication features would help to create resilience, hope and optimism for the future, important parts of positive community psychological capital and community well-being (Luthans et al., 2004; Prilleltensky, 2016).

This public communication is an important part of restoring the legitimacy of criminal

justice agencies (Tyler et al., 2015). It provides the community with an opportunity for voice

and participation in policy design, and the transparency and lack of bias conveys that the tragic

error has been reviewed with respect and dignity for the victims, the criminal justice

professionals and the community.

IV.   Limitations to the Lex Street JCER

The Lex Street JCER strove to embody the procedural justice principles described above

and to strengthen the psychological safety and innovation of the review through the careful

deployment of multiple positive psychology initiatives. Like the system it served, however, the

Lex Street JCER was far from perfect. Most notably, the list of Participants did not include

community members from outside the participating organizations, either individuals victimized

by the investigatory errors of Lex Street (e.g., the first four wrongly incarcerated defendants or

their families or the three survivors of the Lex Street shootings). This was a conscious decision

of the group to avoid reopening the trauma of those days on the victims, but it occurred at the

expense of potential learnings from their different perspectives. Future JCERs may well reach

different conclusions about the utility of including community participants and victims; indeed, it

is hard to imagine a full view of how and why certain undesired outcomes occur without

engaging these viewpoints.

Second, the review was successful in identifying areas in which Reviewers felt that the

media had influenced the events of the Lex Street case. Many of these were positive and

contributed to the public acknowledgement that the first four men had been incorrectly arrested,

charged and incarcerated; some of these were negative and put pressure on investigators and

prosecutors to accelerate their investigation into the crimes. Because the JCER did not have any

senior management from any media organizations, however, the group did not issue any useful

corrective action recommendations that would impact media behavior going forward.

Third, the communication of the corrective actions was somewhat muted; while the

corrective actions were distributed to the participating organizations, there was no press release

or community meeting to announce the results.

One reason for this was the substantial length of time between the events of Lex Street

and the JCER, another limitation to the review. The Lex Street shootings occurred on December

28, 2000, with the erroneous incarceration of the first four suspects discovered publicly in July of

2002. The JCER could have, and from a purely procedural justice perspective should have

begun at that time. Instead, the JCER actually began in 2015, and results were published in

2016. This substantial delay was caused in part by a criminal justice system unfamiliar with the

concepts of organizational safety that are the foundation for a JCER, and in part by the lack of a

safe harbor from civil litigation.

V.   Benefits of A Safe Harbor

The psychological and procedural justice benefits that can accrue to individuals,

organizations, and communities through the open, honest, and thoughtful performance of JCERs

are substantial. In many instances, however, the direct and indirect damage that has resulted

from an error in criminal justice may also be substantial, and the fair compensation due to

victims of the error may be immense. This is equally true in healthcare, aviation, manufacturing,

etc. While procedural justice demands that organizations of all types voluntarily engage in

JCERs or other forms of error review, there is a disincentive for these organizations to act in

ways contrary to their short-term financial interest. To state it plainly, civil litigation is a

disincentive to the conduct of JCERs, because the conduct of a JCER is likely to generate

information that will be used against the organization in a lengthy, contentious, and expensive judicial process.

To minimize the negative impact of civil litigation while preserving the ability of victims to an error to receive fair compensation for their injuries, other industries have created "safe harbors" for the conduct of safety-driven errors reviews like JCERs. The enabling legislation for the National Transportation Safety Board, which investigates aviation, rail, trucking, and other transportation accidents across the United States, ensures that data about the accident is made public, thereby allowing victims to use the information in their cases; however, the agency's recommendations are not admissible as evidence, forcing the victims to conduct their own assessments and convince courts and juries of the correctness of any allocation of accountability or blame leading to civil liability (Disclosure, availability, and use of information, 49 U.S.C. § 1114(a), 2018; Discovery and use of cockpit and surface vehicle recordings and transcripts, 49 USC § 1154(b), 2018; Testimony of board employees, 49 C.F.R. § 835.2, 2018). Similarly, most states have physician peer-review laws, which provide that safety reviews conducted by hospitals or health organizations after an error may be withheld from discovery in civil litigation. Victims retain all rights to obtain this information independently through the civil discovery process, but the event review report and investigation are not available to be used to prove the liability of the health organization (Pennsylvania Peer Review Statute, 63 Pennsylvania Statutes §425, 2018).

To date, criminal justice lacks a similar "safe harbor" that could remove a disincentive for criminal justice organizations to participate in JCERs. While the benefits noted in this paper may nonetheless convince organizations to put the larger community benefits over the agency's short-term negative consequences, additional research would be useful to guide policymaking efforts to extend safe harbor legislation to this arena.

One potential approach would be the creation of a centralized organization to assist in these reviews (Doyle, 2018). The Massachusetts legislature enacted the Betsy Lehman Patient Safety Center, stating in MGL Ch 12C Sec 15(e) that "The information collected by the Lehman Center or reported to the Lehman Center shall not be a public record . . . shall be confidential and shall not be subject to a subpoena or discovery or introduced into evidence in any judicial or administrative proceeding, except as otherwise specifically provided by law." The potential for a single organization to standardize the procedural justice and positive psychology techniques that can be deployed in a successful JCER in criminal justice, while gathering information at scale on errors in criminal justice, free from the negative overhang of civil or criminal liability upon Participants in the JCER, is worthy of additional research and experimentation.

VI.   Conclusion

Errors in criminal justice have tragic consequences for victims, for others in the community, and often on the criminal justice professionals who participated in the error and the community at large. If not properly acknowledged or addressed by the organizations that we have empowered to protect us, these errors reduce the legitimacy of the criminal justice system, contributing to a downward spiral of legal cynicism that ultimately leads to increased crime and increased violence.

Small changes in the reaction of our criminal justice agencies, however, such as the conduct of Just Culture Event Reviews, can have measurable impacts on the perspective and psychological health of our communities (Dutton, 2006). The discovery of positive meaning in negative events helps people cope with tragedy and bounce back from setbacks (Davis et al., 1998). In addition, outlining the various contributions to an error helps criminal justice

professionals throughout the system modify behaviors to avoid errors in the future (Stone, et al., 2016).

Ultimately, JCERs and other non-blaming, systems approaches to error challenge our criminal justice organizations to change their identity, moving beyond their professional roles as assessors of individual blame and accountability for criminal acts and ascending to a social role as organizations of continuous quality improvement. This requires only the subscription to a simple belief: trying to change someone doesn't lead to change; engaging in difficult conversations with shared objectives leads to change (Stone, et al., 2016).

JCERs enable criminal justice organizations to align their organizational missions with the goals of the communities they serve, and contribute to a much-needed restoration of social roles and social identities for themselves, their employees, and their communities. By acknowledging both the unacceptability and the inevitability of errors, adopting forward-looking accountability towards minimizing error, and engaging openly and honestly in efforts to prevent errors in the future, the legitimacy of our criminal justice professionals is restored, giving them increased pride in and identification with their organizations, and causing them to embrace a more positive focus on providing valuable services to the community (Bradford, Quinton, Myhill, & Porter, 2014). Their self-worth will increase, as will a sense of belonging; and this in turn will lead to an improved ability to cope with stress and insecurity in their professional roles (Trinkner, et al., 2016). Better outcomes will result, leading to increased community engagement and participation in the system, and a greater willingness to accept the system's sanctions (Tyler, et al., 201). Perhaps JCERs will become the horseshoe nail that saves the kingdom of criminal justice.

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Appendix

A. Root Causes (Source: Joint Commission Connect extranet).

Root Cause Types	Causal Factors / Root Cause Details
Communication factors	• Communication breakdowns between and among teams, staff, and providers • Communication during handoff, transition of care • Language or literacy • Availability of information • Misinterpretation of information • Presentation of information
Environmental factors	• Noise, lighting, flooring condition, etc. • Space availability, design, locations, storage • Maintenance, housekeeping
Equipment/device/ supply/healthcare IT factors	• Equipment, device, or product supplies problems or availability • Health information technology issues such as display/interface issues (including display of information), system interoperability • Availability of information • Malfunction, incorrect selection, misconnection • Labeling instructions, missing • Alarms silenced, disabled, overridden
Task/process factors	• Lack of process redundancies, interruptions, or lack of decision support • Lack of error recovery • Workflow inefficient or complex
Staff performance factors	• Fatigue, inattention, distraction or workload • Staff knowledge deficit or competency • Criminal or intentionally unsafe act
Team factors	• Speaking up, disruptive behavior, lack of shared mental model • Lack of empowerment • Failure to engage patient
Management/ supervisory/ workforce factors	• Disruptive or intimidating behaviors • Staff training • Appropriate rules/policies/procedure or lack thereof • Failure to provide appropriate staffing or correct a known problem • Failure to provide necessary information
Organizational culture/leadership	• Organizational-level failure to correct a known problem and/or provide resource support including staffing • Workplace climate/institutional culture • Leadership commitment to patient safety