TESTING A CONCEPT AND BEYOND: CAN THE CRIMINAL JUSTICE SYSTEM ADOPT A NONBLAMING PRACTICE?

BY **NANCY RITTER**

NIJ's Sentinel Events Initiative explores how a culture-changing review of errors could improve the criminal justice system.

Confidence in our nation's criminal justice system rests on several core beliefs. First, we believe that most justice work is fairly routine, following a predictable path that makes errors rare. Second, we believe that in the rare instances an error *does* occur, it is the result of simple negligence or individual misconduct, which "the system" can readily detect and fix. Finally, we believe that processes are in place to ensure that similar errors do not happen again.

The truth, however, is that these beliefs may be largely unfounded.

Since 2011, NIJ has been investigating the feasibility of using sentinel event reviews (SERs) in the criminal justice system. Put simply, the theory is that when a bad outcome occurs in a complex social system — like our justice system — it is rarely the result of one person's mistake. Rather, multiple small errors combine and are exacerbated by underlying weaknesses in the system.

One of the godfathers of this theory of human error and organizational processes is James T. Reason, a renowned British researcher whose work has been used to improve safety in medicine, nuclear power, financial services and aviation. Dr. Reason writes, "We cannot change the human condition, but we can change the conditions in which humans operate."

Indeed, it is this principle that lies at the core of NIJ's Sentinel Events Initiative (SEI). The goal of the Initiative is to change the conditions — or culture — in which criminal justice practitioners operate. Just as medicine

and aviation have used SERs to instill a "culture of safety," NIJ's Initiative explores a routine, culture-changing practice that would lead to greater system reliability and, hence, greater public confidence in the integrity of our criminal justice system.

Sentinel Event Reviews: The Basics

A "sentinel event" is a negative event or outcome that:

- Signals underlying weaknesses in a system or process.

- Is likely the result of compound errors.

- May, if properly understood, provide important keys to strengthening the system and preventing similar adverse outcomes in the future.

In criminal justice, a sentinel event could be the conviction of an innocent person, a police-citizen encounter that unexpectedly turns violent, the release from prison of a dangerous person, or even a "near miss" that could have led to a bad outcome had it not been caught in time. An SER brings together all of the system's stakeholders (law enforcement, crime laboratory personnel, prosecutors, defense lawyers, judges, corrections officials, victim advocates and others, depending on the event) to review the event and determine — through a deliberative, transparent, nonblaming process — how and why it happened and what can be done to prevent a similar outcome in the future.

From Then to Now

NIJ's work began with a research question posed by Visiting Fellow James Doyle, a criminal defense lawyer from Boston: Could SERs, which have successfully been institutionalized in fields such as medicine and aviation to improve outcomes, be adopted in the criminal justice system?

In his two-year fellowship at NIJ, Doyle performed what social scientists call "key informant interviews," talking with criminal justice practitioners and researchers from around the nation. Doyle's vision — and the positive reactions he received from boots-on-the-ground practitioners, top executives

and others throughout the federal, state and local justice systems — helped launch the SEI.

The SEI seeks to answer three empirical questions about using SERs in the justice system:

1. Can it be done?

2. Does it help decrease error, increase effectiveness and produce other public safety dividends?

3. Can it be incorporated into the routine activities of state and local justice processes and sustained over time?

To date, NIJ has reached a number of significant milestones in its work on the SEI. First, NIJ brought together criminal justice experts and potential early adopters to vet the concept. Second, the Institute published *Mending Justice: Sentinel Event Reviews* (NIJ.gov, keyword: 247141)*,* a special report that discusses Doyle's two-year "reconnaissance" and includes commentaries from former Attorney General Eric Holder and 16 highly respected criminal justice practitioners and researchers. In 2014, NIJ funded two research projects and followed that up with an NIJ-supported pilot, or beta, project in three jurisdictions to test the first empirical question: Can it be done? And in 2015, NIJ funded two additional research projects to dig deeper into the best ways to bring SERs into the justice system. (See sidebar, "A Glimpse at Ongoing Research Projects.")

Testing the Concept: The Beta Project

In 2014, NIJ asked jurisdictions from around the country to volunteer to perform an SER. Through a competitive process, it selected three sites: Milwaukee, Philadelphia and Baltimore. NIJ provided minor logistical support, but no funding, to the beta sites.

"It was very rewarding to see the courage and commitment that the beta teams in these three forward-leaning jurisdictions showed," said Katharine Browning, a social scientist who heads up NIJ's SEI. "They are true pioneers."

A Glimpse at Ongoing Research Projects

As part of building the evidence base for bringing sentinel event reviews (SERs) into the justice system, NIJ is supporting four major research projects. Here's a glimpse of the ongoing work:

- **Texas State University** is using concept mapping and social-network analysis to look at investigative failures in wrongful convictions and unsolved cases. Failures in law enforcement investigation are sentinel events, which could signal underlying structural problems throughout the entire criminal justice system. The researchers, funded in 2014, are deconstructing wrongful convictions to determine the contributing causal factors — essentially, what went wrong and why. These causal factors will be classified as personnel issues (such as "tunnel vision" or inexperience), organizational problems (such as "groupthink" or insufficient agency resources), or situational features (such as poor community cooperation). The researchers will then build concept maps to graphically display the relationships and interactions between the causal factors. Based on these analyses, they will make recommendations for improvements in criminal justice policies and organizational procedures.

- The **Vera Institute of Justice** is working with the New York City Department of Correction and Department of Health and Mental Hygiene to develop, implement and evaluate a protocol for reviewing and responding to cases of serious self-harm in the New York City jail. Suicides and incidents of self-harm among people in jail are sentinel events that signal a breakdown in the corrections system's ability to ensure inmate health and safety. Most jails, however, do not have adequate processes for reviewing these incidents and taking corrective action based on those reviews. Funded in 2014, the researchers are using several data-gathering methods to create a protocol called SHARP (the Self-Harm Analysis and Review Protocol), including examining morbidity and mortality reviews, surveying correctional and mental health staff, and analyzing administrative data to determine the predictors of self-harm. They will then assess whether SHARP resulted in tangible changes to jail policies and practices. The overarching goal of the project is to create a nationally replicable SER model.

- In 2015, NIJ funded researchers from **Michigan State University** — who have teamed up with researchers from Indiana University and the director of the Milwaukee Homicide Review Commission — to delve deeper into gun homicide and nonfatal shooting review processes in Milwaukee, Detroit and Indianapolis. Multiagency teams will be established in each of these three cities to review approximately 12 sentinel events per city per year during the three-year project. The researchers will also investigate the use of SERs in medicine and aviation to help ensure that the criminal justice system benefits from lessons learned in these fields. For example, the researchers — all of whom have strong ties to public health — will explore the applicability to criminal justice of the "root cause analysis" questions that The Joint Commission developed for SER in the medical field.

- In 2015, NIJ funded the **University of Pennsylvania Law School's Quattrone Center for the Fair Administration of Justice,** which is working with the Philadelphia Police Department, District Attorney's Office, Defender Association and Court of Common Pleas, to evaluate the effectiveness of multidisciplinary SER teams. The goal of the three-year project is to implement a sustainable multistakeholder process for identifying, prioritizing and conducting SERs that improve the administration of justice and that can be replicated in other jurisdictions. The project will create a database of errors and near-misses similar to the Aviation Safety Reporting System, providing a mechanism for prioritizing negative outcomes or "cases of error" suitable for SER. The overarching goal is to develop rules and standards for constructing, managing and maintaining multistakeholder teams that help each stakeholder agency — and the criminal justice system as a whole — embrace SER as part of a culture of learning from error.

Each site designed and conducted its own review of an error (a sentinel event) that had occurred in its justice system. Earlier this year, the sites successfully completed their reviews, providing empirical evidence of the feasibility of adopting SERs in the justice system. A summary of the findings from the beta project — *Paving the Way: Lessons Learned in Sentinel Event Reviews* (NIJ.gov, keyword: 249097) — covers issues such as:

- How do you choose the right negative event, case or outcome to review?

- Who should be on the SER team?

- Who should lead — or serve as the facilitator of — the review?

- What does "nonblaming" *really* mean?

- How do you manage the need to share sensitive data and information with others?

- How do you measure impact and outcomes?

Katherine Darke Schmitt, a policy advisor to the Assistant Attorney General in the Office of Justice Programs who is working with the NIJ team, visited the three sites and interviewed members of the SER teams. Her assessment revealed three overarching themes when it came to the sites' choice of a negative event to review: mitigation of legal risk, the age of the event and the need to have broad system participation.

"Perhaps the single most important procedural question facing SERs in the criminal justice system is whether criminal or civil actions regarding the event have been resolved," Darke Schmitt said. "It doesn't mean an SER can't be done if such actions are still pending; it only means that the stakeholders may need to take actions to mitigate any existing or potential legal risks."

Leading an SER

The leader — or facilitator — of an SER in a jurisdiction operates a bit like a project manager. Whether the facilitator is an independent, neutral convener (such as a researcher from a local university) or someone from within a key criminal

justice agency, this leadership position requires significant time and energy.

In two of the beta sites, the facilitator was an outside researcher; in the third site, the facilitator came from a criminal justice agency. In all three sites, the facilitator was a fully engaged member of the review team.

Although it remains an open question who is in the best position to lead an SER in the justice system, Maureen McGough, a policy advisor at NIJ and member of the SEI team, said the beta project suggests a variety of workable alternatives.

"That said," McGough added, "some key traits emerged for the role of facilitator: She or he must be intellectually curious and well-informed about the philosophy of SER, possess strong facilitation skills, and be both trusted by the other team members and able to hold them accountable for their participation."

The "Blame Game"

One of the key components of SERs is a systemwide process that is less concerned with fixing blame on one person or agency and more focused on getting to the root(s) of a bad outcome. In her commentary in NIJ's special report, *Mending Justice,* Jennifer Thompson addressed this issue head-on.

Thompson, a sexual assault survivor who lobbies for nonblaming learning-from-error reform in the criminal justice system, titled her piece "The Blame Game." She writes, "[B]lame and fault have *never* answered the big questions, such as, 'How did this [error] happen in the first place?'"

Of course, determining blame and fault is central to what the justice system does. By its very nature, the system is adversarial, which may make the core "nonblaming" component of an SER a particular challenge. Some members of the beta SER teams noted that they were natural adversaries in their day jobs and had to work hard to overcome a reflexive defensiveness.

But, as NIJ Deputy Director Howard Spivak points out, systems such as aviation and medicine have

Successful Models for Change and Challenges for the Criminal Justice System

The successful implementation of sentinel event reviews (SERs) in medicine and aviation offers promising evidence for those who believe SERs could improve justice outcomes. It is important to keep in mind, however, that the criminal justice system presents unique challenges.

Both medicine and aviation have national-level bodies charged with ensuring that all-stakeholder, nonblaming reviews are performed after a negative event. No similar nationwide — or even state-level — facility exists within the highly fragmented criminal justice system. Therefore, NIJ continues to explore ways to identify and test effective strategies to convene, support and lead SERs.

Another challenge in implementing SERs in the justice system is the reality in which many officials operate. Police chiefs, sheriffs, prosecutors and corrections leaders do their jobs within an inherently political context.

"Although an SER process that identifies and corrects system failures may improve public safety and enhance justice, it also carries the risk of public scrutiny and criticism," said Mallory O'Brien, who led the Milwaukee team in the NIJ beta project.

Other findings from the NIJ beta project about the challenges of instituting SERs in the criminal justice system include the following:

- Ensuring that members of the SER team understand each other's agencies and how they operate.

- Policy or practice recommendations may be beyond the scope of agency leadership to effect, and some changes may require legislative action.

- Because laws drive the criminal justice system, it is often resistant to using the scientific method.

"It is important to remember, however, that when *any* system is introduced to a new idea, there will be challenges to its successful implementation," said Jessica Shaw, a current NIJ Fellow. "Even when the new idea has shown success in other venues — such as in medicine and aviation, in this case — the stakeholders in the new system may *perceive* it to be incompatible or too complex to work."

Shaw notes that organizational-change research also shows that even when a new idea seems rather straightforward in its logic or conceptual process — for example, shifting from "blaming and shaming" to a system improvement perspective — stakeholders can be resistant.

Although both real and perceived challenges demand explicit attention and realistic expectations, NIJ's beta project showed promising results. A number of SER team members in the three beta sites said that the review was personally and professionally gratifying, offering them a chance to learn from other people in the criminal and juvenile justice bureaucracy.

As one beta team member put it, "These types of case studies are where the organizational learning takes place."

been able to overcome their similar tendency toward assigning blame. Spivak, a physician who was involved in bringing SERs into medicine following child deaths, noted that NIJ's SEI is grounded in the same principles that led to "culture of safety" reforms in other high-risk fields.

In aviation, for example, the National Transportation Safety Board uses an SER approach to analyze airplane crashes and near-misses and publishes the results online.[1] A summary of these reports also appears in magazines, such as *Flying*.

"The result," said Doyle in *Mending Justice,* "is an aviation community — including manufacturers, aviators, airlines and regulators — that is informed about the current lessons of recent errors."

In medicine, the accrediting body for hospitals, The Joint Commission, requires the reporting of sentinel events, defined as "unexpected occurrences involving death or serious physical or psychological injury, or the risk thereof."[2] Hospitals also are required to conduct a "root cause analysis" of each event. The Joint Commission compiles these analyses and periodically — and publicly — issues "Sentinel Event Alerts." In addition, the Institute of Medicine and other medical communities use SER to learn from errors.[3]

"At their core," said Doyle, "the safety reform movements in medicine and aviation depended on laying aside a tradition of 'blaming and shaming' and moving toward a sentinel events approach for reviewing and learning from errors and near misses." (See sidebar, "Successful Models for Change and Challenges for the Criminal Justice System.")

SER: Not Just Another Review

Members of the SER beta teams pointed out that we seem to be living in an era of organizational fatigue, which may make it more difficult to convince jurisdictions to institute SERs. Therefore, it is important to understand that an SER is different from other types of review processes that may already exist in state and local jurisdictions' criminal justice systems, such as after-action reports, task forces, independent monitors, commissions, inspector general reports,

internal affairs investigations and performance management systems like CompStat. As noted earlier, one of the most significant ways in which an SER is different: It is *not* about assigning blame.

John Hollway, associate dean at the University of Pennsylvania Law School and executive director of the Quattrone Center for the Fair Administration of Justice, facilitated the Philadelphia beta site's SER team. Hollway said that it cannot be emphasized enough that SERs are not performance evaluations.

"Their purpose is learning, not punishment," he said, adding that personnel and discipline issues are handled through separate processes, which is something that other fields — such as medicine and aviation — have worked out, including by making the results of a review inadmissible as evidence in litigation.

Measuring Impact and Outcomes

In an era of having to do more with less, the institutionalization and sustainability of the SER approach in the criminal justice system will require demonstrable results — not only in policy and practice but eventually in the workplace and systemwide culture. To succeed, SERs must come to be regarded as a good use of people's time and energy, which, of course, will require proof.

"Therefore," said Thomas Feucht, NIJ's senior science advisor and member of the SEI team, "our second research question is to determine whether the SER approach produces measurable outcomes. In other words, does the SER approach improve system functioning, help prevent errors or achieve other public safety dividends?"

No one maintains that measuring progress toward achieving outcomes will be easy, but proponents of bringing SERs into the criminal justice system note that the medical field has established metrics for patient safety, and the aviation field has done the same with respect to airplane crashes and near-misses — so there is confidence that similar metrics could be developed in the justice system.

Despite the challenges in measuring the success of an individual SER — let alone a learning-from-error cultural shift that may accrue over time — the beta project SER teams suggested these possible metrics:

- Were recommendations for policy or process changes produced?

- Were the recommendations presented to decision-makers?

- Did SER team participants value the process?

- Were similar potential sentinel events averted in the future?

As NIJ continues to explore the use of SERs in the criminal justice system, it will be important to work with early adopters and other champions of the process. Could multiagency commissions or coordinating councils, such as local criminal justice commissions, be supporters? Could risk managers play a crucial role? In the medical field, for example, insurance companies began to see the value of SERs in improving outcomes. If a city or county's risk managers are a logical counterpart to health insurance companies, could they serve as change agents if they believe that using an SER approach in the justice system could result in cost savings?

Conclusion

Recent events on the national stage have highlighted the need for a science-informed approach to making system improvements that go beyond placing blame and disciplining rule-breakers. In the wake of events in Ferguson, Missouri, President Barack Obama established the President's Task Force on 21st Century Policing, which recommended SERs as a way to improve public confidence in the legitimacy and accountability of law enforcement.

Millions of people work in individual criminal justice agencies across the U.S. — law enforcement, crime laboratories, the prosecution and defense bars, judges, corrections, victim advocates and service providers — and, as beta team members noted, they rarely have the opportunity to participate in this sort of review of error.

"It is very hard to step back and take a 30,000-foot view," said one beta team member. "But it is incredibly important that we do so."

About the Author

Nancy Ritter is a writer and editor at NIJ. She is a member of the SEI team.

For More Information

Learn more about implementing SERs in the criminal justice system in *Mending Justice: Sentinel Event Reviews* at NIJ.gov, keyword: 247141.

Learn more about NIJ's beta project in *Paving the Way: Lessons Learned in Sentinel Event Reviews* at NIJ.gov, keyword: 249097.

Stay tuned to NIJ.gov, keywords: sentinel events, for more about NIJ's SEI.

This article discusses the following grants:

- "Case Deconstruction of Criminal Investigative Failures," grant number 2014-IJ-CX-0037.

- "A Sentinel Events Approach to Addressing Suicide and Self-Harm in Jail," grant number 2014-IJ-CX-0030.

- "Instilling a Culture of Continuous Learning From Criminal Justice System Errors: A Multi-Stakeholder Sentinel Event Review of Process in Philadelphia," grant number 2015-R2-CX-K040.

- "Sentinel Events: A Sustainable Model for System Change," grant number 2015-R2-CX-K041.

Notes

1. See National Transportation Safety Board, "Aviation Accident Reports," at http://www.ntsb.gov/investigations/AccidentReports/Pages/aviation.aspx.

2. See The Joint Commission, "Patient Safety Systems Chapter, Sentinel Event Policy and RCA2," at http://www.jointcommission.org/sentinel_event.aspx.

3. See Institute of Medicine, *To Err Is Human: Building a Safer Health System,* Washington, D.C.: National Academies Press, 2000.

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