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Outside Approaches to Criminal Justice Reform (with transcript)

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University of Pennsylvania Law School

Case in Point: *Outside approaches to criminal justice reform*

March 17, 2015

John Hollway and David Angel look at efforts to reduce as well as prevent errors, and sometimes tragic outcomes, in the U.S. criminal justice system.

EXPERTS

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HOST

Steven Barnes

Host, Editor-in-Chief, Case in Point

Steve Barnes: Welcome to Case in Point, produced by the University of Pennsylvania Law School. I am your host, Steve Barnes.

In this episode, we will be looking at some promising approaches and responses that will help address how to reduce as well as prevent errors in our criminal justice system. Recent scientific advances, including DNA testing, as well as the growth of the Innocence Project, have helped increase the public's awareness about errors in the system, calling into question its fairness and accuracy. So, today, we will examine how to prevent unintended, and sometimes tragic, outcomes. And importantly, by engaging some of the key actors in the criminal justice system including prosecutors, defense attorneys, judges, law enforcement, media, and importantly, the public. We are fortunate to have with us today two experts who can help us examine some of these issues.

First, is John Hollway. He is the Executive Director of The Quattrone Center for the Fair Administration of Justice here at Penn Law. And he is also the author of the book, “Killing Time: An 18-Year Odyssey from Death Row to Freedom”.

Also joining us is David Angel. He is an Assistant District Attorney in Santa Clara, California. And he is also the Director of the county’s Convictions Integrity Unit.

Thank you both for joining us today. All right, so David, first to you. In Santa Clara, you had one of the first Convictions Integrity Units in the country. Could you take us through why that was created, how does it work, and what are the benefits of it?

David Angel: Sure. Well, it was created like a lot of things; a little bit by accident and some degree of randomness. But essentially what happened was, prior to the creation of the unit, my wife was a state public defender at the time and she directed me to some research concerning ways that lineups could be improved for eyewitness identification. And she asked whether out county, you know, the county I was working at was using those protocols. And, so, of course, you know, I said, yes, of course, we are using it. If those are the best protocols, I am sure we are doing it. And, then, as is probably not uncommon in marriages, then I quickly went to look to find out we were doing it. Found out we weren’t. Found out virtually nobody was at that time. This was – now it’s become much more common using double blind and sequential lineups.

I ended up doing quite a bit of research on it and thinking that this seemed like a much more reliable way of doing identifications. Brought that to the attention of my supervisor and to the district attorney, at that time, George Kennedy. This is quite a – I want to say about 14 years ago now, and ended up meeting with all the chiefs of police and we ended up adapting it as a county. That went pretty well and the district attorney, George Kennedy thought, you know, I’d like to find out if there are other things like this that we could be doing that could improve our system. And, so, started to task me to do that more and more. Once, and at some point, he then formalized it. So, instead of this being an assignment I was doing in addition to my normal duties as a line prosecutor, for something to do full time.

What we found, I think, is what a lot of DA's offices who create conviction integrity units find, is when you first do it, especially, there is going to be a pent-up demand of inmates, family members, public defenders, defense attorneys who say hey, wait, I have this case that I want you to look at,. And, so, that is what I started spending more of my time doing.

So, that is kind of the story of how it was created. And it has now been – it started off kind of as a boutique project, where it was really just me working on the sidelines with an investigator – I mean within the office. And then with our new district and our current district attorney, Jeff Rosen, it was really one of the centerpieces of his campaign to become a district attorney was that he believes that the integrity of the process is as important as the results that we get. And is inextricably tied to those results.

And, so, it has now shifted to a kind of a new version, a more robust version so that it is now, instead of being a boutique side project, it is a central part of the organization. I am part of the executive management of the office, and one of the five assistants in the office. And, so, it has taken a more central role.

So, that is kind of the story of its creation and its current setup.

Steve Barnes: So, just as a follow on, so, how and why do you take cases and how do you investigate them, briefly?

David Angel: Okay, well, so there is two parts to what we do. What I consider proactive and retroactive. The proactive, which in some ways I find the most exciting, is trying to look of how can we – what can we do for our cases going forward in the future to try to reduce the risk wrongful conviction in the first place. Or, I should say, you know, wrongful acquittal. In other words, are there things that we should have done and could have done better to remove doubts from a case for someone who actually committed the crime? So, we try to look to improve practices going forward.

However, we also look retroactively. When somebody says, hey, you know, I was convicted, and I shouldn't have been. And essentially what happens there is we will get a letter, sometimes from an individual, sometimes from a lawyer. And you know, we look at every one of these requests that we get. However, our criteria is going to be different than say an Innocence Project that is, you know, on the outside. For us, you know, we really need to see some allegation or some sense that there is new evidence that was not already considered by the jury. It is very important to me that we not be perceived at, nor do we start acting like some thirteenth juror who can just hover over any case and decide, you know, what was wrong or what was right. And, instead to try to only look at cases where there is some sort of allegation of new evidence. Or else, some feeling that the process itself was so flawed that it's given us hesitancy about feeling confident in the verdict.

Steve Barnes: So, John, if you could please talk a little bit about what the mission and the approach is of The Quattrone Center and what you are working on.

John Hollway: Sure. The Quattrone Center was created about a year and a half ago to address some of the more proactive approaches that David discussed. As he'd said, the, over the course of the past probably 25 years, and certainly in the last 15 years, there have been a number of cases of people being exonerated and found innocent of crimes for which they were convicted. That's led to a great deal of awareness of problems in the system.

And convictions integrity units, like David's and others, have come up as mechanism for redressing – addressing and redressing some of those cases. One of the things that is great about the Santa Clara office, where David is, is that it also then tries to take those learnings and apply them proactively to improve the system upstream. And The Quattrone Center really exists to do that. To take principles, not only things we have learned from these cases, but principles from other industries that have complex systems, but have successfully reduced errors and created a more reliable system. Places like aviation and healthcare. And then we want to partner with agencies like the Santa Clara District Attorney's Office, or a public defender's office, or even a court, to implement and test potential changes.

So, things like the eyewitness identification protocol that David and his office looked at, tested, and implemented, which we can certainly assume have reduced the possibility of an unintended false conviction. And so, we are looking to implement those things and then help disseminate their broadened option.

Steve Barnes: So, could you – you mentioned examples from aviation and healthcare. Could you give one or two examples that might cast some light on how your approach works?

John Hollway: Sure. So, for example, if in an aviation context, the easiest example of a tragic unintended error is, obviously, a plane crash. In aviation, what might happen when a plane crashes is the National Transportation Safety Board comes to the scene with a number of subject matter experts across a variety of disciplines. They will interview, not just all of the people who were involved in anything having to do with the plane and that flight, from baggage handlers to air traffic controllers to the crew, the maintenance crew. They will also then connect that to various processes and procedures and systems that are known to be best practices in the industry. And from that, they will try to understand, not so much who is to blame – and not in a blame focused way, but entirely looking to improve safety. What happened that caused this plane to crash?

I think if you were to translate that into what we are trying to do in criminal justice. What we would do in a case where somebody in a prosecutor's office, or a public defender's office, were to say hey, we think we think something went wrong here. A result was reached that wasn't what they system intended, is we would convene a group, an interdisciplinary group, and it would probably consist of participants from the police, the prosecutor's office, the public defenders, the courts, perhaps the media. We would interview people who were involved in the case or the investigation. We would then take those interviews and sit down with experts in, for example, eyewitness identification or interrogation techniques or records management, to make sure that all evidence had been handled in an appropriate way. And then we would make recommendations about how an office might be able to change its procedures upstream, so that not only are we addressing the error that has happened in the past, but we are changing the circumstances and the environment to prevent that error from happening in the future.

Steve Barnes: That's great. So, David, to you know, as the Director of the CIU in Santa Clara, how important has it been to have the Convictions Integrity Unit? And with that, what kind of errors have you found? And as a follow-on, if I could, to what extent has it helped with community relations in terms of transparency and interactions with the public?

David Angel: Sure. Well, let me start by answering that by following up to what John just said. Because I really – I have really, over time, come to believe about one of the most important shifts that can be made is from a sort of black and white binary blame version of try and analyze the problem. And a more systemic, and I would cut and say risk management approach. And I think the example, the aviation, is a really good one. You know, normally when there is a problem in life – well, actually, let me rephrase it. Actually, normally, when there is a problem in life, my observation in our culture is we tend to try to find who is at fault and then blame them. And then say, okay, look, we have solved this problem because we found the bad apple here. And we see this over and over again. And I don't think that this is – you know, sometimes it is appropriate, after all, I am in a prosecutor's office, I mean, we do hold people responsible. There is a time and a place for it. But, frequently, if you are trying to solve a problem in your life, I think most people find that trying to find the one person to blame is not a really effective way of addressing the problem.

And I actually think that issues of errors in the criminal justice system really get – you have so much work to do before you can even face the problem because you will have two sides or three sides all pointing the finger, trying to, you know, leave one person kind of carrying the bag for every failure in society. And I think that is madness. That is not to say that nobody should ever be held responsible. Sometimes they need to be. But, really, that should not be our instinct, or our go-to for every time there is a problem that somebody must at fault and we are going to find out who they are and punish them.

And one of the reasons I think it's a bad idea is I remember, I served as a deputy on the California Commission for the Fair Administration of Justice. And it was a commission set up by the state to try to look systemically at these issues. And it did a lot of great work. But, I often

found that the actors who are representing agencies, who are the most resistant to change, were also the most adamant that if they ever found a prosecutor who did x, whatever it is, they'd fire him. If they ever found a police officer who did this, their career would be finished. They'd fire them. But, in fact, they never found anyone who did those things. Because the barrier to finding any error was placed so high, and you first had to decide this was a bad person, you know, before you could decide they made a mistake, that you never got on to looking at the problem. And that is kind of crazy. You know, we don't grade children's math homework by first deciding if they are foolish or good or bad; you just look at whether they made a mistake or not and try to address it.

Now, for us, especially – you know, it's very hard to say when you look at a case here is the one mistake that was made. In my experience, when things go wrong, it's, you know, the proverbial perfect storm. Like our system, actually, I think is really quite good at ferreting out one or things that would go wrong. You know, the defense attorney is going to figure it out, or the judge, or a supervisor. Or the, you know, more often than not, the prosecutor, before it ever gets to trial. The danger happens is where you have multiple errors creeping in. What's both – when I said I like doing proactive work in some ways more, is it is very positive. You feel like you are making a change in the future. But what is disheartening about it is, of course, you never hear about the plane that didn't crash, right? So you can make these improvements. And the sum total of the recognition that you are going to get is the absence of something bad happening. You know, you are not going to know about the person who is never charged with a crime he didn't commit. You are not going to know about the victim who is never harmed because the right person was picked up in the first place.

But look, the leading source of error are, at this point, no real mystery. Sincere but wrongful identification, I think, is the leading cause. Problems about false confessions or inaccurate statements where the prosecutor, the judge, the jury don't have an accurate record of what really happened. And then, of course, what's been called prosecutorial misconduct, but I have, you know, my crusade is to have it relabeled prosecutorial error, but some error made by the prosecutor usually involving discovery where there is a problem in getting all the discovery in a timely and accurate fashion to the defense. You know, these are really well known as the

leading causes. And they are all systemic problems that cannot be eliminated, but can be reduced. And we have tried to take steps to do that.

Steve Barnes: John, did you want to add something to that?

John Hollway: Yeah, I mean, you know, David, I do not know I you've got a Ph.D. in organizational management, but you just rattled off sort of a treatise on how a non-blame approach works. And one of the challenges that I think we find – and David alluded to this – is the issue with immediately wanting to ascribe blame. I think that gets enhanced in criminal justice because we have an adversarial system, so that the checks and balances that we have established put people at odds by definition. And while that can be a very good way to evaluate something for its truth, it can also become a little bit of a barrier when you are trying to solve a problem that isn't caused by somebody's bad faith or being competitive.

So, part of what we try to do, as David said, is you know, when you have an error in criminal justice, invariably, you know, and let's take a sincere but unintended misidentification by an eyewitness. The police validate that eyewitness in a sense. The eyewitness ID is made; the police don't pick up that it is inaccurate, nor is there necessarily any reason why they should. That probably is also passed on by a supervisor. It gets presented to a prosecutor. The prosecutor takes from the police and moves it forward. But then the defense attorneys are unable to identify that it is false a lot of the time, nor is the judge. So, you have not only from a system perspective, not only has the law enforcement component failed to work accurately, and the prosecutorial component, but the checks and balances are also not up to the task.

Now, there is no way that you would believe that every single one of those people is quote-unquote, to blame. But the system hasn't worked right because both the individual error has occurred, and the protections that we have, have failed to work as intended. And I think when you begin to approach the problem that way, you begin to create a collaborative space where people can say, okay, we not only need to improve the detection piece within law enforcement, we need to improve that throughout the system and kind of bring people together in way to enhance things.

The other thing that I would say to David's point, he listed, I think, a lot of the errors as we know them. One of the big issues that we have is that one of our big checks and balances about whether somebody is factually innocent or guilty is the trial process and putting people in front of a judge, in front of a jury, to tell their stories. The fact of the matter is that in our system, ninety-seven percent or so of all cases are then managed by a plea bargain. And people are essentially making contractual arrangements about how to handle the adjudication of their criminal charges at that point. And we really don't know how many errors are happening in that process.

Steve Barnes: Right. So, we certainly want to get to ways in which we can detect some of the errors that you, David, and John, that you talked about as well as how to get at some of the best practices to prevent errors. But first, David, I am just curious, talking about the Convictions Integrity Unit you run. Talking about a blame-free environment, and it seems like you've established one. What has been the participation of, and the reaction of, some of the key constituents in this process? Defense attorneys, law enforcement, judges, the public? Just curious to get your thoughts on that.

David Angel: You know, honestly, it's been really uniformly positive. The – we, fortunately – look, relationships within a community, you can't build them overnight, and you don't tear them down overnight. You know, we are all very mindful of events in Ferguson, and other places, and I believe that you build these relationships up one action at a time, one day at a time. And, obviously, when something very tragic happens, like in Ferguson, which revealed just how bad those relationships had been over a long period of time.

I bring that up because when you are going to do something like conviction integrity, you know, the first people we went to was law enforcement. Remember when we were – when I was talking about eyewitness identification. And I recall those meetings. And I recall that the chiefs were all skeptical. They thought this was a pretty foolish idea and not necessary. But, we had a really good relationship with them. We met with the chiefs regularly. We had two-way communication. So, they were really willing to give it a shot. They said if you think it's a good

idea – I mean, not me, personally, but the DA, then that’s good enough for us to try it. And let’s report back in six months and see how it goes.

Similarly, to the other extreme, with the Northern California Innocence Project, which is, you know, in our back yard, and with our public defender, because we have had long-standing relationships with them, they are willing to trust us to try to set these sort of protocols in place, and they don’t immediately assume it’s just window dressing or we are just doing it to get some quick good press, but these are all things you have to earn over time. And what that means, for example, you know when I have talked to other DA’s offices, I said, look, set up regular meetings with these stakeholders. With the Innocence Projects in your area, or the advocacy groups, and most especially, the public defender and the defense bar.

But I have also followed it up and said, you know, meetings alone are not enough. You have to actually be open to hearing what they say, and collaborating when it is appropriate. It can’t just be a PR exercise. If it really is communication, then you are going to find you don’t have to agree all the time. Just like you don’t have to agree all the time in anything in life.

So, with that kind of setup, it’s gone really well. You know, the community where I am from, I think they really expect the district attorney’s office to be run in the most professional manner possible. And that they trust we make efforts to do it. And as John knows, we’ve had mistakes that we have made. But I think one of the reasons we have been able to retain trust of a lot of people, even when we make mistakes, is because we have been very transparent about it. We’ve said, here’s something, it’s our error. This is what we are doing to try to fix it. This is what we have discovered. And let me quickly reassure you, it is not like the public defenders, the press, just say that’s fine, we won’t look to. No, everyone does their job, but they don’t assume that we are lying. They don’t assume we are covering something up. And when I say we are going to look into it, people believe that we really are going to look into it and evaluate it that way.

So, I think a conviction integrity unit can be really central to that, and I think prosecutors will find that when mistakes happen, and they will, and when there is some crisis that happens, and it

will; if you have spent time building up these relationships, building up trust, that the community will, in fact, help you get through that crisis as opposed to seeing you as part of the problem.

Steve Barnes: So, John, so that is a very interesting model and unit that David has, but that is by no means a universal practice in every state or municipality. So, I am curious to hear about some of the stakeholders that The Quattrone Center has been convening to address some of these systemic questions in the justice system. What is your approach and what has the response been like?

John Hollway: Well, we are actually doing a survey right now. There are about 20 jurisdictions across the United States that have followed Santa Clara's lead and Dallas' lead and created convictions integrity units. And they have all created themselves somewhat ad hoc and a little bit differently. And so, some of them are more mature, more robust, than others in different processes. And, so, one of the things that we are doing is actually surveying the units in how they operate. And the next step in that research is then to go out and survey some of the external stakeholders in the communities where they operate to see what, actually, what structures are most likely to get the sort of positive responses and build the positive relationships throughout the jurisdiction that David has developed in Santa Clara.

I think that there are a number of challenges that a convictions integrity unit has, and David touched on many of them. First, is that you have to build those relationships, and that requires strong leadership; people who are really committed to it. And that's true, you know, when you make a change within – then the district attorney makes a change within the DA's office, you need strong leadership and a strong commitment to culture and ability to articulate that in a way that is palatable to all of the prosecutors in that office. So, that is step one.

But then, as David has said, you need to go farther. If it requires a change to your eyewitness identification practices, Jeff Rosen or David Angel don't actually have control over that. The Santa Clara police department has control over that. And, so, you then have to build that consensus and credibility to do something like that. And that gets even harder when you then

move to the public defenders, given the adversarial nature of the process. So, that requires not just strong leadership, but openness, transparency, and credibility over time.

What I think happens, though, is exactly what happened to the Santa Clara office. David referenced an error that they made. And that's actually, I think, taking too much responsibility for them. The error actually happened in their crime lab, or one of the ones that we could talk about, happened in a crime lab. You know, obviously, drug tests get assessed in a crime lab, and there are certain chemical reagents that you need to look for the presence of certain illegal substances. So, in this instance, a technician in the crime lab unwittingly grabbed the wrong reagent from a shelf. This is very analogous to an error that happens in healthcare where you might have two medicines next to each other with similar markings, and one is ten times the dose of another, and you can have a medication error without intending to.

So, that sort of thing happened in the crime lab. The question was, what was the extent of it? And what the Santa Clara office did was they held a press conference. They said this is the error that happened. We don't believe there is any bad faith here. We are going to investigate the extent of it and decide what cases have to be reopened and re-reviewed, and we will let you know how that happens as quickly as possible.

They then followed through on that pledge and that's the sort of thing that builds that accountability, that credibility, not just with your peers, but with the people that report to you, and with the community. And while David is correct that you don't see the plane crash that never happens. The fact of the matter is that thousands of people more every day fly because the safety record of the aviation industry has gotten better and better over time. And what I think you see is that prosecutors like David and Jeff in the Santa Clara office, people respond to that by going to the polls. Everybody had more confidence that they justice system is getting the right guy in the right way and that it is being open and honest about how it conducts its business. That's a better public official, and that is somebody that you are more likely to vote for.

David Angel: And if I can follow up—

Steve Barnes: Sure, sure, please.

David Angel: One of the reasons that we now – you know, when this unit was first found, I think I told you the original district attorney, George Kennedy, he called it his, you know, internal innocence project. And Jeff Rosen changed the name to conviction integrity. And among the reasons he did this was he said, hey, look, this is about both sides of the equation. It's about making sure we don't convict the wrong person, you know, that's a priority. But it is also integrity, we are also using it in the sense of structural integrity. The strength of the process. And to give an example of eyewitness identification, to my knowledge, we have not had a single case reversed due to a bad identification since we have adapted our new policy. We have had a plummeting use of defense experts in eyewitness cases. And, in general, we have had our juries much more likely to rely upon an eyewitness identification that we have because could, in good faith say, look, here are these protocols that we use. We are transparent about them. They are, as far as we can tell, a best practice. We have continued to tweak them. So, for example, a few years ago, we mandated that they are all videotaped so that people can look at them afterwards.

Well, this helps at both ends. It helps you, obviously, to prevent the wrong person being picked out in the first place. But it means when you are in trial that jurors, members of the public, they are just more likely to believe that this is accurate if they can see you have, in a deep way, made a commitment to try to do things accurately from the outset.

Steve Barnes: Great, thank you. So, John, as a follow-on to one of the earlier questions. Talk a little bit about unintended and sometimes tragic outcomes and with cases like this the stakes are very high, both for someone who may or may not been on a receiving end of an error, and someone who may have made the error. I am curious, being as we are here at Penn, do you find that it is easier, or not, in academia to address these questions versus, say, a prosecutor's office or a public defender's office?

John Hollway: We have done these sorts of reviews and partnered with participants in the criminal justice system to identify and learn from errors in a couple of different contexts. And it is interesting. Sometimes you will find just an individual agency that wants to do this, and have

it all be internal. And, obviously, there is some benefit to that. And the advantage to that is that it is much easier to implement the changes because it is all coming through a single, vertical change of command.

We are actually involved in a review exercise right now that is being sponsored, in part, by the National Institute of Justice, in which, here in Philadelphia, we are looking at a case in partnership with the Philadelphia Court of Common Pleas, the Philadelphia District Attorney's office, some defense counsel in the Philadelphia area, the Philadelphia Police Department, and the media. And what is interesting, in that case, is, as I said, it is obviously more complex with all of the other players. What we are learning to do is how to build that credibility that David is talking about where when we say actually, we think there may be something that could be improved in one agency, that agency doesn't view it as criticism from the other agency, but rather constructive assistance. And I think having a neutral partner in the center of that ring of agencies has been essential to that process.

And so, just as an example, I mentioned the need to do interviews with the actual participants who took part in the case where something went wrong. The agencies involved decided that it was essential that they not interview each other because of the political ramifications that that would cause. And, so, we came up with a process where somebody from The Quattrone Center, and an external expert who served in the same role would interview. So, for example, if we were interviewing a homicide detective, it might be me and a homicide detective from another jurisdiction would interview that person. And the reason that we do that is because it is non-threatening, neither of us have any management or political clout over the individual. And, so, they feel more at ease. And, because we have an expert who does the same job as the person we are interviewing, there is somebody there who can sort of say, yeah, that makes sense. I understand why you would do that. Did you consider the following, you know, part of the scenario? And so, it is a more in-depth interview, but also a less threatening interview so that we can really get at – because when somebody makes a mistake, a good faith mistake happens because you have somebody trying to do something, and whatever the scenario they see at the moment in time, they are then making a decision based on that. So, you have to be careful not to Monday morning quarterback that. You have to make sure you are looking at the world through

their eyes so that you can avoid the scenario that they see where they then make the decision that goes in an unintended way.

So, there is a researcher named James Reason, who does organizational management work who has a great quote on this. He says we can't change the human condition, right. Humans make mistakes. We can't change the human condition, but we can change the conditions in which humans operate. And that's really what this is about. How do we create an environment for the decision that makes all the facts clear, so the decision that goes in the way the system wants it to go is what results? And I think having that neutral, academic participant in the center of that ring has really been essential to building that kind of collaboration.

Steve Barnes: Right, thank you, that's great. So, really for both of you, David, and John as well, so, you're running a conviction integrity unit that seems to be quite successful, David. John, you've got this multi-stakeholder project in which The Quattrone Center is a neutral academic convener and actor. Let's talk a little bit about best practices. So, CIUs are not universal across jurisdictions and states in America. How do we get at some of these best practices? Is it through the collection of data? Is it through the head or heads of one CIU talking with others? How do we improve the integrity of the criminal justice system while reducing chances that there could be systemic errors? David, to you first, please.

David Angel: Well, it's all of the above, right. I think that right now, relatively new, I know the Department of Justice is funding – I'm afraid I can't recall the name right now, but sort of the prosecutorial best practices group of which I am a participant, and my county is a member, run by a really brilliant woman who was, I think, was previously with the Manhattan DA's office. So, that is one part of the puzzle. That's not going to be whole part, for a variety of reasons. First of all, it's just prosecutors. And secondly, we don't always agree.

So, to take the example of eyewitness identification. Manhattan, quite famously, has a different view than we do on the best way to do it. Just because the data is there doesn't mean everyone is going to interpret the data the exact same way. But, I do think, even so, that that is a big improvement because you are at least looking, trying to look rationally and scientifically at the

data. I think it's fair enough for people to come to different conclusions. But there is often large areas of agreement. So, for example, to take the eyewitness identification example. You can – I have been to spectacularly heated arguments about whether sequential is better than simultaneous, and back and forth. But, what is interesting to me is when I first entered those debates, you know, 14 years ago, not only was that controversial, but people also thought it was controversial whether you needed it to be double blind. People also thought it was controversial whether you needed to take confidence statements. I mean, in other words, I could go down four or five different things that can improve eyewitness identification, and now, all but like one or two of them are accepted as what really is a best practice. Despite that acceptance, there is a huge number of agencies that just aren't doing it.

So, I think that having this sort of prosecutorial group with guidance from the DoJ is really helpful. But, like anything else, you know, you really need all of the above. I think you need outside advocacy groups to push because there is going to be a natural inertia in the system. And we all have different biases that are, you know when John was talking about the answer from before. Internal groups have the advantage of being able to kind of get things done. They are much more nimble; they can move more quickly. But, you know, it is sometimes hard for us to see faults when they are own faults.

On the other hand, I have been to outside groups, and I think sometimes they can fall prey to the first problem we talked about. Since they don't know any of the people, intellectually, it is always easier to say, ah, that person really messed up, and nobody punished them. And often their debate doesn't get farther than that.

So, I think by bringing these different groups and perspectives together, I think that can really help push get the word out there. And then recognize it's not one size fits all. I mean, a conviction integrity unit, for example, our county, a fairly large county, fairly large office, but dwarfed by the size of the of the Brooklyn DA's office, to the Manhattan DA's office. They are going to have unique issues. By contrast, I have gone and presented to district attorney's offices where there might be four prosecutors. Well, there is no way they are going to have a standalone

conviction integrity unit that eats up fifty percent of their workforce. So, you know you need to be flexible in that way as well.

Steve Barnes: John, ideas to share information of data or move forward some of these ideas for best practices?

John Hollway: Well, hopefully, that is something that an academic center, like The Quattrone Center, is well positioned and well skilled to do. I mean, I think if we are doing our job right, what we are really doing is working with bright spots, like the Santa Clara DA's office, like the San Francisco Public Defender's office, like the Philadelphia Court of Common Pleas. And we are working with all of those groups and synthesizing knowledge and then disseminating it out to a broader audience. Because, you know, change doesn't happen all at once. Change happens by a thought leader talking to another thought leader, and you know, that expanding over time. And so, the things that an academic institution is well equipped to do is to sort of gather that data in an objective way, analyze it rigorously, and publicize the results. And what The Quattrone Center then hopes to add on to that is the collaboration with these practitioners so that we are testing the proposed improvements and optimizations, and that becomes an iterative process for change. And I think over time that is going to happen. We will be able to differentiate the enhancements that are working well from those aren't having an effect.

And, hopefully, you know, one of the great things about partnering with different jurisdictions is you see exactly what David said. A large, urban environment is going to have different needs than a smaller, rural environment. And the challenge that you have is not just the acceptance of the idea and the philosophy, but the challenge of implementation. And, you know, a wonderful idea that is never implemented doesn't have the real-world impact that we are striving for. And so, I think as we grow and build those collaborations, we will get better also at synthesizing the implementation differences that you need to have to ensure that the uptake is actually effective because you really do – you know, if you are trying to improve the system, and looking at it as a system and not just individual cases, you want each part of that system to be operating to maximize the goals of the people within it. And you want to make sure that you are helping law enforcement identify the right people right off the bat. You want to make sure that you are

helping prosecutors vet their cases and prosecute the right people. You want to make sure that you are helping public defenders and courts protect everybody's constitutional freedoms and operate the whole process efficiently. And I think it is those collaborations and the implementation of the ideas that is the other part of it as well.

Steve Barnes: Great.

David Angel: You know, I think another thing – to build off what John said that I think his organization is so well suited for is that over time, if, you know, both defense attorneys and prosecutors can have experts in different areas that you grow to have faith and trust in. Then, as problems come up, they can be the people you can consult, to at least get you started in getting at the right answer. All too often, in my experience, you know, we tend to use experts, but in this totally artificial and adversarial way. So, you know, if it is about abusive head trauma or eyewitness identification of false convictions, all that happens is everyone finds some academic or expert who is going to say whatever it is that needs to be said to advance their side of the case. And that, you know, that's fine for that individual case, but it doesn't really help you design the best system over time.

What, over time, when you develop these relationships with an expert you can rely upon, well, that means when there is some new issue, you can call them up to get an actual expert opinion as opposed to calling them up to say, you know, here's what we do – tell me – or, here is what their expert said was bad. And this is where I think The Quattrone Center and John's group, especially by working over time with public defenders and district attorneys and different community members, as that trust builds up, well, that means every time there is a new study on, for example, eyewitness identification, we don't have to start from scratch. We can say, hey, who are the experts that we really relied on before? What do they think about it? And that can allow you to build to new and better practices.

Steve Barnes: Great. So, if we could, let's talk a little bit about some of the thornier and high profile issues that have been covered in the news lately in New York, in Ferguson, in Cleveland.

How do we even begin to address some of the issues here? How could some of the work that you are doing now potentially be applied in some of these cases and instances?

John Hollway: The interesting thing about some of these principles of, I don't know, safety or reliability, or quality in large complex systems is that what's been clear is that the principles themselves are pretty universal. So, anytime you've got principles that work in aviation, healthcare, manufacturing, nuclear power, you know, those are clearly some pretty universal principles because they're operating in a lot of very different environments.

Criminal justice shares the necessary complexity, the necessary fragmentation, the necessary number of well-intended participants, and the high-risk, zero tolerance for error thing with all of these other systems. And so it makes sense that these principles should be applied.

I think if you were to look at a tragedy, like what happened in Ferguson or a tragedy like the Garner case in New York, the question is, our emotions get so charged with the need to blame. And perhaps there is a need for punishment in those situations. But it is important to step back for a second and say, okay, clearly it is an unintended outcome. Right? I don't think there is a police office in the world that thinks that any civilian death is a desirable outcome. And so, once we realize that we have an unintended outcome, then we can use these same principles to go back and figure out how did we get into this situation?

And, for example, I know a lot of research is happening right now on police engagement. So, the moment at which a police officer engaged with a citizen, how is that being done? And are there thing – specific techniques that we can test and teach that will reduce the level of tension or emotion in that initial outreach that will do that? I mean, I think in the Ferguson case, for example, if there had been Tasers in the car or options for non-lethal force, if there had been two people in that car, two police officers in that car, that might have ratcheted the tension down. If there had been better relationships with the community, certainly, I think that would have ratcheted that down. And a just culture, sort of a blame-free event review as opposed to a litigation process, is simply going to uncover different facts. That's not to say that you don't still need an appropriate prosecution, perhaps, for some of those circumstances. But when you are

looking just for the safety of the system, you end up looking for different things in different ways.

And, so, I, for one, think that if you were to conduct the sort of investigation we have discussed here or the kind of thing that the Santa Clara Convictions Integrity Unit might do for a case where innocence is an issue, if you were to sit down and go through all those grand jury documents, for example, with experts, you might go back and propose procedural changes to the way the police department goes about things, and to the way community activists talk to their communities about how to engage with the police. You would probably also have recommendations for the prosecutor's office. Those are going to be simply different recommendations than whatever the Ferguson Grand Jury is going to come back with on what should happen to that police officer.

And so, I think that's the potential value add is, it can be a separate parallel investigation that is designed to prevent the next mistake. Whereas the grand jury investigation is really just designed to hold somebody accountable.

Steve Barnes: David, any thoughts?

David Angel: Yeah, I certainly agree with that. And I would augment it by saying, you know, I think the events in Ferguson happened well before that fatal encounter. And, you know, the problem there is you were presented two very different versions of it. You know, the police officer version, you know, is that he was utterly justified because he was defending himself against, really, a madman. And then the witnesses who disagree with him, saying really the exact opposite, which is that, you know, with very little provocation and certainly no threat to his safety, he essentially executed someone in the street for having a bad attitude. It's very hard to get to the bottom of which one of those is true. And yet a lot of witnesses, each pointing both ways. I have my opinions about it after having read a lot of the grand jury transcript, which probably are not relevant.

But I think Ferguson happened well before that moment. Meaning that you had allowed a denigration in community relations and training that pre-dates that moment. There is a reason why the community in Ferguson immediately believed the worst. And maybe they believed the worst because the worst is actually true. But there is a reason why they had no trust in any of the authorities involved.

I am not saying, I am not trying to imply by that that that means the authorities were wrong in everything they did before or since. But I am just saying that you had let a situation devolve so badly over time, and I don't think you can fix that at that moment. One of the reasons is, as John points out, at that point the only relevant question is what happened exactly that, you know, I think midafternoon or not.

Where I think conviction integrity units can help is in some ways the way they reflect an ideology or a fundamental principle of a prosecutor's office, of a governmental entity, which is that I think the communication has to be ongoing. That an ability to recognize that risk – that you know, error, mistake, and risk of it, is ever present. That we should be affirmatively looking at ways of reducing it.

When it comes to race, you know, obviously, you have to recognize that biases that are part of every prosecutor, every cop, every judge, every public defender, you know, every member of the community – those have to be factored into how you run your business. Like how are you going to factor those in to try to make it more fair?

So, for example, we have trained directly on this issue of implied bias. It was actually one of the first moves of our district attorney to take all of his senior management to the Tolerance Museum, I think it's called, in Los Angeles, which has trainings just on this issue, along with command staff from San Jose P.D, and others.

So, I don't think you can solve some of these really upsetting things that we see in the paper that moment by like one particular fix. But I think as John said, if you are engaging in a process over time, then I think you're going to be building up trust and I think you are going to be more likely

to avoid these errors at that moment if you have laid the groundwork for it. But they are just too complicated and too deep to think that you are going to solve it at that moment if you haven't already started the hard work.

John Hollway: The other thing that is true, just to build on David's point, is there are a myriad of different types of errors that happen and it would be naïve to think that one investigation is going to uncover them all. What you really want to do is implement a culture of self-improvement, a continuous self-improvement, so that, you know, what will happen a lot in aviation is near misses will outnumber actual incidents by a hundred, two hundred to one. And so, you will get people self-reporting now in the aviation industry. They report about 60,000 incidents a month where something didn't go wrong, but it could have except for, you know, something – and these are from very, very small consequences to potentially more substantial. But it is that culture of continuous self-improvement.

And once the convictions integrity unit is set up, making sure that it is a part of the regular operating of the office and doing that in various environments throughout the criminal justice system is what will ultimately lead to the blanket reduction in errors across the board because the errors that led to a Ferguson, you know, we can deal with those. But then, it's a little bit of whack-a-mole because there will be another error that comes up, and we will need to be aware of that. And then we will get rid of that and see where the next one is. And it is that cyclical process that we really need to strive for.

Steve Barnes: So, talk a little bit, please, about what other actors in the criminal justice system can do, particularly the public, many of whom – many members of the public of whom are, you know, very upset and concerned and it seems like one of the most viable ways to voice that concern and engage is through protest. So, we have talked about blame-free environments to investigate where and how unintended outcomes occurred. How they can be mitigated or prevented. We have talked a little bit about a just culture. But what can members of the public do to actually help this process along? Whether through the assistance or in allegiance with watch dogs with the media and so on? John, to you.

John Hollway: Sure, I mean I think there's two things that I think would really help. The first thing is when you've got a public official who is willing to be transparent, be accountable, be communicative and clear about how he or she is trying to address problems. And when you have a public office who is brave enough to step up and acknowledge how they are going to address an error as opposed to trying to hide the error, you should vote for that person. Because that is the person that you want in that public office. Because at some point, maybe you are brought into the criminal justice system, and at that point you want to know that your case is going to be handled in that way.

The other thing that I think that we, as citizens, can do, and the general public can do, is to engage with the media in a slightly different way. I think one of the challenges with a 24-hour news cycle is there is a natural gravitation to sensationalism. And so, when a politician does admit that an error has happened, and then they take steps to correct the error, it is far too common for the media to continue harping on the error and not to also talk about the steps that have been taken to address the error and the public courage that that takes. I think we should actually hold the media up to a higher standard as well to be sort of objective in what they are reporting, and not just report the sensationalist aspects. Raising that, and making sure that we don't just talk about the errors, but we talk about the bright spots and things that people do to make our system better, because there are far more of them than are often publicized. I think that's the other thing the public can and should do is to make sure that we are also talking about the positive. That is going to inspire more people to build the kind of office that exists in Santa Clara.

Steve Barnes: David.

David Angel: Yeah, I agree with all of those. I mean, I guess I want to make sure I clarify at the beginning, in the question you said, you know, the importance of a blame-free environment. And I mean I do want to make clear I don't mean that nobody should ever be held responsible. I mean sometimes people do, and they need to be. I just meant that you know, if your paper is delivered late, most people don't assume, wow, that delivery guy, he must be a real criminal. I mean they just assume something must have went wrong and how can we fix the problem. I

think that's how we should start with assuming that that the problem is not necessarily willful, but you know, a systemic one. But that doesn't mean, you know, if you discover that there were misconduct of some sort, people should be held accountable appropriately.

And as for the public, I think by remaining educated – I mean, there is a time and place where protest is essential for any change. But I mean it is nice if it goes beyond that. And I also think that, as John said, recognizing when you have leaders who are, you know, doing the right thing, to vote and to be supportive of that. And I would also say for our police officers, and others, like I don't think it's consistent – you know, I have often seen circumstances where, you know, some members of the public just don't really seem to care if those police officers, their salaries are cut, they don't have good equipment, and they are just treated very poorly. And then turn around being scandalized if they don't have the best officers they can have.

You know, I think to recognize that while these tragedies happened, and there are bad apples, you know, overwhelmingly, as we saw in New York with those two police officers who were essentially assassinated by what seems like a very mentally ill, angry man, and this outpouring of community support of what a great job they did every day. I mean, you know, we have officers, when, as I say, you know, I have a difficult job, everyone has a difficult job, but if I hear gunshots, you know, I run the other way. They all run towards it. So, I am not saying that they get a blank slate. Of course, I am not saying that. But what I am saying is, hey, recognize that these people deserve your support too for doing a very difficult job.

And you know, it goes both ways, as I said, because I feel like our office, because we have been out there and proactive, and try to meet with people before problems happen, and address them, I think it's given us credibility and it's given us leverage with them. And it goes the other way around. I think if you feel like, from within the system, if you are dealing with outside groups, whether citizen groups or others, who really want to work with you to improve things, it is going to be a very different dynamic. Now, that can't necessarily be created in the heat of a tragedy. But it can be created over time.

John Hollway: So, when we talk about a blame-free event review, we are not talking about an accountability-free performance evaluation. So, the term that gets used a lot in organizational management circles is a just culture. And what you want is a culture that understands that good faith people can make errors. And the case we talked about of the technician in the crime lab who just used the wrong reagent. That is an unintended and an error that could happen to anybody. That person should be trained, should be communicated with, should make sure they understand how they can prevent it from happening in the future. That person may not need to be fired.

You may also have a situation where you've got somebody who is creating tests that were never done, right. Doing something that is intentional or malicious or reckless. And there, it is important to hold that person accountable. It is important to take action to deal with that. What the history of reviews of this sort has shown us is that the bad apples are vastly outnumbered by the good faith actors. But, the good faith actors are watching too, to make sure that they see how you handle the bad actors. And so, part of this, as we are talking about implementing cultural change and a culture of continual self-improvement, is that idea of a just culture, which is appropriately balancing the blame-free event review to understand precisely what changes need to be made. But also looking at the actors and their motivators and holding them to an appropriate professional standard. And I think that is really important to stress. Because when we talk about blame free, we are not talking about accountability free.

David Angel: Yeah, I really couldn't agree with that more. And I think that term, a just culture, is a really good one. And just to augment that, you know, if you have an environment where nobody is ever held accountable, you know, we all know what will happen in that environment. It will be very negative.

On the other hand, if you have an environment where any error is going to be manufactured into a scandal for which one individual is going to, you know, expected to shoulder the weight of all the problems in the criminal justice system – or whatever you have, like one teacher is going to be the symbol for everything that is wrong with the public schools, and so on. Well, what are you going to create? You are going to create an environment where nobody ever wants to admit

to error. Where people try to hide errors when they have them or minimize them. And a leading source of error are the problems that you don't know about. And you don't know about it because people don't tell you about the near misses.

So, that is why I think this just culture that John alludes to, it's so important, not only just because it's fair, and it's right. But I think without it, you are going to end up in a situation where you are constantly, as you said, playing whack-a-mole because you are never going to see it until it pops out in some uncontrollable way. Whereas if you create an environment where people can readily admit to a mistake and know that they will be treated like a human being who made a mistake, it is really central to moving forward.

I guess what I would say about science is, I think it's really important. You know, we use science a lot in a courtroom. There, but science is not a static field. So, there are improvements that are constantly being made. You know, I think it is very important that the actors in a system – I mean prosecutors and others – are open to looking at old convictions if the signs upon which we relied upon then is no longer deemed accurate.

But, on the other hand, this is one of those trickery balancing acts, you don't want to create a system that every time there is some new study or some new, you know, incremental advance, because that will describe every piece of forensic, that suddenly the whole conviction is thrown out and you have to start all over again. Which really kind of brings me to the larger balancing, you know, and this is what I think actually John's group in The Quattrone Center is really striving to keep as well.

You know, somebody said they wanted me to design a system to prevent, you know, radically reduce automobile fatalities on the freeway. And I came back and said, oh, I've come with this great idea, I am going to drop the speed limit to four miles an hour. Right? Well, it would work. We would drop fatalities, but you know, our whole country would kind of grind to a standstill.

You know, it's similar in a criminal justice system. We have to have a fair system so that people who are victimized by crimes are protected, and people are brought to justice. So, we can't just

look to solutions that only look at one side. How can we prevent any mistake from ever happening? We have to balance that over the fact that we need a real-world system that is going to work with actual human beings and actual people while still, you know, staying open. That if there are new advances or new techniques or new knowledge, that we are open to those – to that knowledge.

Steve Barnes: John, did you want to add anything to that?

John Hollway: Well, I think, you know, the CSI effect is something that we have all talked about in the criminal justice field where there is so much new science that is happening that there is a hope or a belief that DNA, for example, or whatever the next big forensic advance will solve all of the challenges in criminal justice and help us. And I think what DNA has been great for is in certain cases, and when it is collected properly and used properly, in certain cases, it can provide objective information about an individual's presence or lack of presence on the scene. And, as people who are trying to get to the truth, we hunger for that objectivity.

But it is important to point out that these are not causes of error, they are tools that we use to try to discover what's really happened. And it is important that we understand the limitations of those tools.

So, I think with science in the criminal justice system, one of the challenges that we have is that sometimes the science isn't as advanced as we'd like it to be. Sometimes, we get too excited about the science's capabilities, and we later find out that it is not quite as good as we thought. And we are kind of doing that right now with hair follicle comparisons, for example, where for a while we thought that there was a wealth of very specific information you could get from a hair follicle comparison. And now, as the science has matured, we are finding out that that is less the case.

And so, there is really – this actually kind of underscores the need for checks and balanced in the system and the fact that no error occurs in a vacuum. Because you will have a situation where you have a well-intended scientific expert speaking as to the science at the time. The question

then is, are our defense attorneys, judges, and juries appropriately enough educated on that science to be appropriately skeptical consumers of that testimony? And in a lot of cases the answer is no, they are not. And so, you not only get somebody who over-testifies about what the science can do, but you get people who accept that view because, well, this guy speaking is the expert, and I am not.

And, so, I think one of the things that The Quattrone Center would like to do is help the system find a way to better strike that balance so that we are using the science that is appropriately validated and techniques that work. But also the checks and balances on the defense and court side are better educated about what that science can and can't prove so that they are making sure that experts, too, are being held accountable, and we are really getting to as much of the truth and the facts as we can.

Steve Barnes: So, we have had a chance to really go over some of the – some really promising approaches and responses to how to get to a just culture. How to create blame-free environments where we can find out the facts of what happened when unintended outcomes occur and hold people accountable where appropriate.

So, David Angel in Santa Clara, John Hollway, here at Penn, thank you very much for joining us. And thank you for joining us here at Case in Point.

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