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Establishing Criminal Justice Safety Teams: Theoretical Foundations, Practical Implementation, and State Leadership

Boaz Sangero

Hagit Turjeman

Yosef Zohar

ESTABLISHING CRIMINAL JUSTICE SAFETY TEAMS: THEORETICAL FOUNDATIONS, PRACTICAL IMPLEMENTATION, AND STATE LEADERSHIP

Boaz Sangero[♠], *Hagit Turjeman*[♦], *Yosef Zohar*[♣♥]

In hazardous areas, the need for safety measures is self-evident and substantial efforts are dedicated to their implementation. In the criminal justice system, significant hazards exist, notably the wrongful conviction of innocent individuals, but the need for safety mechanisms has not been internalized. One explanation for this oversight is the mistaken belief that the criminal justice system is nearly error-free. Yet, research has consistently demonstrated that wrongful convictions are not uncommon, representing one of the most significant injustices a liberal state can impose on its citizens and residents. Therefore, it is the duty of the state to introduce robust safety measures in criminal law. Advanced safety methodologies must be adopted from other high-risk sectors, such as aviation, transportation, engineering, labor, and medicine. A key approach in these fields is the thorough analysis of accidents and incidents (near-accidents) to derive professional lessons from them. This article introduces the Criminal Justice Safety Team (CJST) model, developed and implemented in Israel, drawing inspiration from the American Sentinel Event Review (SER) model. The article outlines a theoretical framework that combines safety insights from aviation and engineering with research on the criminal justice system. It then presents and analyzes the CJST model, which includes a diverse membership of police investigators, forensic science experts, prosecutors, defense attorneys, academics, and retired judges. The team analyzes real-life incidents, particularly those on the brink of resulting in wrongful convictions. The objective is not to assign blame but to derive lessons and recommend strategies to enhance the safety of the

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♠ Prof. of Law at Western Galilee College and at Sapir Academic College, Head of the Institute for Safety in the Criminal Justice System.

♦ Chair of the Criminology and Sociology departments, Western Galilee College, Israel.

♣ Managing Director of the Institute for Safety in the Criminal Justice System, Western Galilee College.

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criminal justice system. Building on the legal safety theory introduced in the article and drawing on practical experience in both the US and Israel, the article proposes the establishment of a National Institute for Safety in the Criminal Justice System.

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INTRODUCTION

Usually, the need for safety against accidents in hazardous areas is self-evident, and substantial efforts are made to provide it. But in the criminal justice system (or: the criminal legal system[1]), where significant hazards also exist, the wrongful convictions of innocent people being the most prominent, awareness of the need to implement safety mechanisms is lacking. One explanation is the mistaken belief that the criminal justice system functions exceptionally well and is almost error-free. Yet, studies have shown that wrongful convictions are a common phenomenon.[2] This represents possibly the most significant injustice systematically imposed by a liberal state on its citizens; therefore it is the duty of the state to introduce safety measures in criminal law.

Because the idea of safety has not been yet fully recognized in criminal law, it is necessary to implement advanced safety methods developed in other fields, such as aviation, transportation, engineering, labor, and medicine. A key approach in these fields is to derive thorough professional lessons from accidents and incidents. This article introduces the Criminal Justice Safety Team (CJST) model, developed and implemented in Israel, inspired by the American Sentinel Event Review (SER) model.[3] The safety team, operating at

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[1] "It is most convenient for us to hold our criminal law system in high regard, to the point of calling it the 'criminal justice system.' It is convenient for us to think that everything runs as it should in this system. And even if certain doubts creep in at times, we tend to repress them and stand firm in our ignorance. The state can inflict no greater injustice on a citizen than to falsely convict him when he is innocent. In the past, it was possible to call into question the actual occurrence of false convictions and consider this, at most, a negligible phenomenon. However, today such skepticism has no place and likely derives mainly from ignorance" – *See* BOAZ SANGERO, SAFETY FROM FALSE CONVICTIONS, at xiv (2016). We use in this article the prevailing term "criminal justice system" for two reasons: one is practical and the other is the alliance with our new term "Criminal Justice Safety Teams."

[2] *Id*. at 2-14 and the many references cited therein (estimating 5% - 10% of convictions are wrongful).

[3] JAMES M. DOYLE, *MENDING JUSTICE: SENTINEL EVENT REVIEWS, LEARNING FROM ERROR IN THE CRIMINAL JUSTICE SYSTEM: SENTINEL EVENT REVIEWS"* 3 (National Institute of Justice, Special Report, 2014), https://www.ojp.gov/pdffiles1/nij/247141.pdf.

Western Galilee Academic College, has formulated safety recommendations for the criminal justice system, and it plays a significant role in fostering professional discourse and a culture of safety.[4]

The article presents a theoretical framework integrating safety insights from aviation, transportation, and engineering with research on the criminal justice system. Next, it examines the CJST model that comprises a diverse membership, including police investigators, forensic science experts, prosecutors, defense attorneys, academics, and retired judges. The primary role of the team is to analyze real-life incidents, particularly those proximate to wrongful convictions. Their objective is not to assign blame but rather to extract lessons and recommend how to enhance criminal justice system safety.

Building on the legal safety theory introduced in the first part and drawing on practical experience in both the US and Israel, the article proposes to establish a National Institute for Safety in the Criminal Justice System (NISCJS). If granted the required authority and resources, the NISCJS would operate regional safety teams, among other safety activities. Based on its accumulated insights and research, it would formulate legislative proposals to improve the criminal justice system. After enacting such legislation, the Institute would publish binding best practice guidelines for all agencies, including police and prosecution.

The article consists of the following sections. The first section introduces an advanced cross-disciplinary safety theory, developed in various fields, proposing its adoption and integration into the criminal justice system. The second section, the central theoretical part, proposes fundamental safety principles and methods for the criminal justice system. These include establishing the NISCJS; developing a sophisticated mechanism for reporting accidents and incidents; promoting continuous education, training, and a culture of safety; applying the identify-analyze-control safety process to the criminal justice system; fostering a perpetual

[4] WESTERN GALILEE ACADEMIC COLLEGE, INSTITUTE FOR SAFETY IN THE CRIMINAL JUSTICE SYSTEM – SUMMARY REPORT FOR THE YEARS 2020-2022 (2023), https://www.wgalil.ac.il/report_9-1-23/.

process of improvement; and striving for accuracy. The third section briefly describes the American Sentinel Event Review model that inspired the Israeli safety team. The fourth section details the activities of the Israeli safety team, including a discussion and analysis of eight safety incidents and the presentation of the team recommendations. The conclusion proposes a national model for criminal justice safety teams.

I. ADVANCED SAFETY

The criminal justice system should be categorized as a safety-critical system, which according to safety engineering, is a system where failures are expected to cause significant harm.[5] Wrongfully convicting innocent individuals, akin to a fighter plane crash, represents a systemic failure that results in extensive damage.

The traditional safety approach in aviation has followed a fly-fix-fly model, where aircraft operated until an accident occurred.[6] Following an accident, all planes of the same type were grounded for investigation, malfunction analysis, and necessary repairs. After the required fixes were implemented, the planes resumed flying and if another accident occurred, the process would be reinitiated.[7] As aircraft technology advanced, planes became considerably more expensive to make, and the fly-fix-fly method, which relied primarily on learning from past mistakes, became prohibitively costly. In the mid-20th century, the traditional safety approach was replaced by more advanced methods to prevent accidents before they occurred, often referred to as "first-time safe."[8] The new

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[5] Mordechai Halpert & Boaz Sangero, *From a Plane Crash to the Conviction of an Innocent Person: Why Forensic Science Evidence Should Be Inadmissible Unless It Has Been Developed as a Safety-Critical System*, 32 HAMLINE L. REV. 65, 70 (2009) ("A safety-critical system may be defined as 'one in which a malfunction could result in death, injury or illness, major economic loss, mission failure, environmental damage, or property damage.'").

[6] *See* HAROLD E. ROLAND & BRIAN MORIARTY, SYSTEM SAFETY ENGINEERING AND MANAGEMENT 8–9 (1990).

[7] *Id.*

[8] RICHARD A. STEPHANS, SYSTEM SAFETY FOR THE 21ST CENTURY 51 (2004).

approach followed the identify-analyze-control format, involving systematic hazard identification within the system, followed by in-depth analysis and evaluation of these hazards, and the establishment of mechanisms to control and mitigate risks.[9] Advanced safety methods, initially developed in the aviation industry, have since expanded into the fields of transportation and engineering fields, and somewhat more slowly, to areas like labor and medicine. Advanced safety principles are rooted in the understanding that ensuring the safety of individual components in a system is not sufficient and that the safety of the entire system is crucial. This approach places significant emphasis on fostering a culture of safety, safety education and training, continual risk analysis, and the establishment of ongoing improvement programs.[10]

To develop effective safety methods, it is imperative to inculcate a safety culture in the personnel of the organization, which requires the cooperation of both managers and junior employees and promoting two-way communication between them. Management should demonstrate leadership in safety and promote a culture of learning, best practices, and accountability rather than assigning blame to others.[11]

Advanced safety practices necessitate reporting not only accidents but also incidents, which are cases where accidents were prevented, often by luck. This practice is rooted in the understanding that conditions leading to near-accidents, if left unaddressed, might escalate into actual accidents.[12] Consequently, incident investigation is a critical component of safety, and in the activities of the Criminal Justice Safety Team, these safety insights play a pivotal role. In the future, when the criminal justice system mandates the reporting of accidents and incidents, it will enable investigations focused not on assigning blame or fault, but on

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[9] *See* U.S. AIR FORCE, SYSTEM SAFETY HANDBOOK (July 2000), https://www.acqnotes.com/Attachments/AF_System-Safety-HNDBK.pdf.
[10] *See* NANCY G. LEVESON, ENGINEERING A SAFER WORLD: SYSTEMS THINKING APPLIED TO SAFETY 7–14 (2011).
[11] *See* JAMES REASON, MANAGING THE RISKS OF ORGANIZATIONAL ACCIDENTS 195 (1997).
[12] *See* STEPHANS, *supra* note 8, at 23.

formulating recommendations to enhance the system's safety and effectiveness.[13]

Another essential safety method involves introducing redundancy into the system, which means having components that may seem unnecessary but serve as backups. This approach decreases the likelihood that the failure of one component will lead to a complete system failure.[14] In systems where safety is critical, it is common to duplicate critical components, such as using backup computers and assigning multiple personnel to perform safety checks.[15]

Finally, an important safety principle is the constant striving for improvement and the continuous, endless effort to improve system safety and reduce risks.[16] Thus, once a safety goal is achieved, a higher goal is immediately set in its place.

II. SAFETY IN THE CRIMINAL JUSTICE SYSTEM

1. GENERAL

There is no greater injustice that a liberal state systematically imposes on its citizens and residents than the wrongful conviction of innocents. While accidents have always occurred and will continue to do so, a high rate of accidents is not a decree of fate; rather, it often stems from negligence, when one is unaware of the elevated accident rate, or even from indifference, when one is aware but does not try to enhance and correct the situation. Today, in the wake of the American Innocence Project and subsequent studies, it

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[13] *See* James M. Doyle, *Learning from Error in American Criminal Justice*, 100 J. CRIM. L. & CRIMINOLOGY 109, 130 (2010) ("Accidents are caused not only by the active errors of people at the sharp end of the system--pilots, operators, and doctors; eyewitnesses, cops, lawyers, and jurors--but also by the mistakes of people far from the scene--managers, designers, accountants, legislators, policy-makers, funders, and appellate courts.")

[14] *See* LEVESON, *supra* note 10, page 91 ("The effects of physical component failure on system behavior may be eliminated or reduced by using redundancy.").

[15] *See* Nancy Leveson et al., *Effectively Addressing NASA's Organizational and Safety Culture: Insights from System Safety and Engineering Systems* 1 (unpublished manuscript, presented at MIT ESD Symposium) (Mar. 2004)), available at: http://sunnyday.mit.edu/papers.html

[16] *See* STEPHANS, *supra* note 8, at 51-52.

is no longer possible to deny the significant phenomenon of wrongful convictions.[17] As a safety doctrine has not yet been developed in the criminal justice system, it is imperative to adopt advanced safety methods that have been successfully applied in other fields. The misconception that safety is relevant only to technological systems is unfounded; there are universal safety methods applicable to systems predominantly driven by human decisions, such as hospitals. In recent decades, the principles of advanced safety have permeated areas like labor and medicine, whereas the criminal justice system has notably lagged.[18]

Several clarifications are needed. First, the primary equivalent of an accident, like a fighter jet crash, is mirrored in the criminal justice system as the conviction of an innocent person.[19] Although there are other types of accidents, such as unnecessary detention, aggressive interrogation, or humiliating searches, which also inflict harm, a false conviction is usually the most severe, particularly when resulting in imprisonment. Even without incarceration, the stigma that criminal law imposes on convicted individuals by declaring them felons adds to the gravity of the situation. In addition, a wrongful conviction often amounts to a de facto wrongful acquittal, leaving the real perpetrator free to find more victims. Second, when defining false convictions, this article has in view the broader scope of preventing all instances, including significant violations of the suspect's or defendant's right to due process. The primary focus, however, is on

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[17] *See* SANGERO, *supra* note 1, at 4.
[18] *See* Boaz Sangero, *Safe Convictions*, 30 CRIM. L.F. 375, 376 (2019) ("The article constitutes an attempt to set the groundwork for developing a modern theory of safety for the criminal justice system, by drawing on the modern safety methods in fields with more experience than the criminal justice system.").
[19] The comparison of convicting an innocent person to a plane crash has also been made by others. *See, e. g.*, Barry C. Scheck & Peter J. Neufeld, *Toward the Formation of "Innocence Commissions" in America*, 86 JUDICATURE 98, 98 (2002) ("The American criminal justice system . . . has no institutional mechanism to evaluate its equivalent of a catastrophic plane crash, the conviction of an innocent person.").

convictions of innocent people.[20] Third, although a false acquittal is undesirable, it is not categorized as an accident but as a failure to fulfill the mission of the criminal justice system. Fourth, in the context of the conviction of an innocent person, the term "accident" extends beyond common cases of error and includes instances of awareness or even intention on the part of a police investigator, prosecutor, witness, or expert. The criminal justice system has failed to prevent such occurrences; therefore they are categorized as accidents within the system.

Safety in criminal law can be defined as "the release from conditions that may cause the conviction of innocent people," which is similar to how the U.S. Air Force defines safety.[21] Alternatively, based on a more conservative definition endorsed by the International Civil Aviation Organization, safety in criminal law can be defined as the reduction of the risk of false conviction through a continuous process of identification and management of risks.[22] The latter entails maintaining the possibility of false conviction at or below an acceptable level.

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[20] For different definitions, see: Marvin Zalman, *An Integrated Justice Model of Wrongful Convictions*, 74 ALB. L. REV. 1465, 1470 (2010–2011) (Defining wrongful convictions as instances where the wrong person is convicted of a crime, where someone is convicted of a crime that did not occur, or a conviction marred by serious constitutional, procedural, or due process errors). *See also* LARRY LAUDAN, TRUTH, ERROR, AND CRIMINAL LAW 10 (Gerald Postema ed. 2006).

[21] Air Force Safety Center, Air Force System Safety Handbook vii(James E. LaMarca ed., 2000), https://www.acqnotes.com/Attachments/AF_System-Safety-HNDBK.pdf.
("Safety. Freedom from those conditions that can cause death, injury, occupational illness, or damage to or loss of equipment or property, or damage to the environment.").

[22] International Civil Aviation Organization, Safety Management Manual (SMM) 2-1 (3rd ed. 2013), https://www.icao.int/SAM/Documents/2017-SSP-GUY/Doc%209859%20SMM%20Third%20edition%20en.pdf.
("2.1.1 Within the context of aviation, safety is 'the state in which the possibility of harm to persons or of property damage is reduced to, and maintained at or below, an acceptable level through a continuing process of hazard identification and safety risk management.'").

In fields like aviation, transportation, and engineering, where the importance of safety has been recognized for over half a century, continuous efforts are made to elevate safety levels. This is achieved through feedback mechanisms that assess whether previous safety goals have been met, allowing for setting new objectives.[23] Yet, the criminal justice system lacks such feedback, primarily because of the hidden accident principle in criminal law.[24] Unlike other domains where accidents are overt, such as plane crashes, bridge collapses, and fatalities in healthcare or construction, false convictions in criminal law remain difficult to discern. There is currently no effective and reliable device for detecting false convictions; if such a device existed, it would be used during the initial stages of the trial, before a conviction. Thus, in criminal law, learning from most mistakes is challenging because of their hidden nature, which makes progress in the field of safety even more difficult. This can lead many to believe that the system is almost perfect and convicts only the guilty. Recent studies, however, disprove this belief.[25] The concealment of accidents also makes the application of the fly-fix-fly safety method impractical. A potential solution involves implementing an obligation to report incidents (proximity to an accident) and learning from them. Additionally, adopting safety methods from other fields, where accidents are visible and there is feedback to the system, could be beneficial.

2. ESTABLISHING A NATIONAL INSTITUTE FOR SAFETY IN THE CRIMINAL JUSTICE SYSTEM (NISCJS)

Implementing advanced safety in a system lacking a safety culture requires the establishment of a dedicated institution. This entails allocating the necessary resources and delegating the required authority. For example, in aviation, the Federal Aviation Administration (FAA) was established in the United States in 1958.[26] Similarly, the National

[23] Boaz Sangero & Mordechai Halpert, *A Safety Doctrine for the Criminal Justice System*, 2011 MICH. ST. L. REV. 1293, 1314–16.
[24] *Id.*
[25] *See supra* note 2.
[26] *See* Federal Aviation Administration (FAA), http://www.faa.gov/.

Transportation Safety Board (NTSB) was founded in 1967 to oversee transportation safety,[27] The Food and Drug Administration (FDA), operational since 1906, is globally recognized and influential in drug and food safety.[28] In the area of labor, the Occupational Safety and Health Administration (OSHA) was established in 1971.[29] In the health sector, entities such as the National Center for Patient Safety (NCPS)[30] and the Agency for Healthcare Research and Quality (AHRQ)[31] were established. In all these areas, the acknowledgment of the importance of safety and the imperative to enhance system performance has prompted a state-level focus on safety leadership, knowledge base development, and knowledge sharing. The necessary powers and resources have been allocated accordingly.

While it is theoretically possible for safety to develop organically within a system without the support of a central safety institution, such evolutionary development would take many years. During this period, the system may pay a heavy price owing to preventable accidents. Once the moral and economic rationale for implementing safety measures in a certain domain, such as the criminal justice system, is acknowledged, the failure to take decisive action to promote safety amounts to negligence. The potential

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[27] *See* National Transportation Safety Board (NTSB): https://www.ntsb.gov/Pages/home.aspx.
[28] *See* the website of the Food and Drug Administration (FDA), https://www.fda.gov/.
[29] *See* Occupational Safety and Health Administration (OSHA), https://www.osha.gov /.
[30] See National Center for Patient Safety (NCPS), https://www.patientsafety.va.gov / ("The NCPS program is based on a systems approach to problem solving that focuses on prevention, not punishment. NCPS uses human factors engineering methods and applies concepts from high-reliability organizations, such as aviation, to target and eliminate system vulnerabilities.").
[31] *See* About AHRQ, Agency for Healthcare Research and Quality, https://www.ahrq.gov/cpi/about/index.html ("The Agency for Healthcare Research and Quality's (AHRQ) mission is to produce evidence to make health care safer, higher quality, more accessible, equitable, and affordable, and to work within the U.S. Department of Health and Human Services and with other partners to make sure that the evidence is understood and used. ").

damages that can be averted far exceed the cost of the measures required for prevention.

The present article proposes to apply the lessons learned from the field of medicine to promoting safety in the criminal justice field for the following reasons. First, both areas represent critical safety systems where most accidents stem not from technological failures but from human error.[32] Second, there had been a lack of sufficient awareness of the need for advanced and systematic safety in the health sector until relatively late, around 2000. Consequently, in the health sector, central safety bodies were established only after this period. In the health area as well, a shift in perception was needed. In the US, the National Academy of Sciences played a proactive role in advocating for and assisting the health system in enhancing safety through its enlightening 2000 report, "To Err Is Human: Building a Safer Health System."[33] The report conducted a thorough analysis of the situation, revealing the extent to which the health system lacked safety. It provided detailed recommendations for the establishment of an institution tasked with promoting safety in medicine. In a chapter titled *Building Leadership and Knowledge for Patient Safety*, the report recommended: "Congress should Create a Center for Patient Safety with the Agency for Healthcare Research and Quality."[34]

Shortly after the publication of the National Academy of Sciences report, Congress embraced the recommendations, enacting legislation that allocated a substantial budget for the establishment of a Center for

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[32] Lucian L. Leape, *Foreword: Preventing Medical Accidents: Is "Systems Analysis" the Answer*?, 27 AM. J. L. & MEDICINE 145, 147 (2001) ("[C], care of sick patients is immensely more complicated than flying aircraft. However, the challenge of systems design is the same; how to design our work patterns so that it is difficult to make mistakes, or at least, difficult to make mistakes that hurt patients.").

[33] *See* COMM. ON QUALITY OF HEALTH CARE IN AM., INST. OF MED., NAT'L ACAD. OF SCI., TO ERR IS HUMAN: BUILDING A SAFER HEALTH SYSTEM 72 (Linda T. Kohn, Janet M. Corrigan & Molla S. Donaldson eds., 2000) (hereinafter: "NAS 2000 health system report").

[34] *Id*. at 69–85.

Patient Safety and Quality.[35] The creation of the Center marked a significant advancement in this field.[36]

The closest parallel in criminal justice to this progress in medicine is once again a report by the National Academy of Sciences, this time from 2009, titled "Strengthening Forensic Science in the United States: A Path Forward."[37] This pivotal report addresses the field of forensic science evidence, which is indeed in need of safety measures.[38] Similarly, in Israel, the Committee for the Correction and Prevention of False Convictions recently recommended the regulation of the forensic field.[39] Our proposal advocates for the establishment of a central institution for safety in criminal law. The role of this institution would be to ensure safety across all procedures and all evidence used in criminal law, including, but not only, forensic science evidence.

What roles will the National[40] Institute for Safety in the Criminal Justice System (NISCJS) play, once established? Deriving insights from the overarching objectives outlined in the Academy of Sciences report for the Institute for Safety in Medicine, it must initially delineate the objectives essential for ensuring safety in criminal law. Next, it should devise strategies to accomplish these objectives and regularly report progress to the legislature. Furthermore, it should advance knowledge and understanding of errors

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[35] Patient Safety and Quality Improvement Act, Pub. L. No. 109–41, 119 Stat. 424, -(July 29, 2005). *And see* Leape, *supra* note 32 at,146–147.

[36] *See generally* Roy Itan & Robert Fowler, *Brief History of Patient Safety Culture and Science*, 20 J. CRITICAL CARE 2 (2005); *See also* Lucian L. Leape, *Error in Medicine*, 23 JAMA 1851 (2009).

[37] NAT' ACAD. OF SCI., COMM. ON IDENTIFYING THE NEEDS OF THE FORENSIC SCIENCES COMMUNITY, STRENGTHENING FORENSIC SCIENCE IN THE U. S.: A PATH FORWARD (2009) (hereinafter: "NAS 2009 forensic report").

[38] *See generally* Boaz Sangero, *Safety from Flawed Forensic Sciences Evidence,* 34 GA. STATE U. L. REV. 1129 (2018); *see also* Boaz Sangero, *Safety in Forensic Science*, 82 OHIO STATE L. J. ONLINE (2021).

[39] Public Committee for the Prevention and Correction of False Convictions – Interim Report on Forensic Evidence 42-43 (2021).

[40] It is possible that in the United States some of the roles of the Institute for Safety in the Criminal Justice System should be done at the State level and not necessarily at the Federal level (SISCJS).

and failures in the criminal justice system by drafting a research agenda, funding research and excellence centers, formulating methods for identifying and preventing errors, and supporting activities for disseminating and implementing these findings to enhance safety. These are overarching goals. Several primary goals are proposed here for the NISCJS, based on the experience gained in other fields where advanced safety methods have been successfully employed, and informed by research and practical knowledge in the criminal justice system. These goals are not exhaustive; rather, they serve as an initial framework with the intention that additional goals will be incorporated over time.

The primary goal is the implementation of advanced safety measures in criminal law to prevent errors and decrease the instances of convicting innocent individuals. To propel this overarching goal, the NISCJS will establish sub-goals that target critical elements of the criminal justice system, including key evidence and procedures. These goals will be formulated by teams of experts spanning various fields.

A second goal is the establishment of a sophisticated mechanism for mandatory accident reporting and incident reporting ("near-misses"), having both mandatory and optional components. The mechanism should guarantee immunity for the persons reporting the cases.

The third goal involves the allocation of funds and the undertaking of advanced research in all areas relevant to safety in criminal justice, including aspects like eyewitness testimonies and lineups, confessions and interrogations, and forensic science. The fourth goal is to instill a culture of safety in all personnel in the criminal justice system, including police investigators, forensic lab experts, prosecutors, defense attorneys, and judges. Achieving this goal requires the dissemination of knowledge through research and publication, together with ongoing education, workshops, and training. Ideally, this should be seamlessly integrated into the fundamental professional training in the various fields and in law studies.

The fifth goal is the establishment of a comprehensive database in every relevant area of

criminal law, derived from empirical knowledge and reports obtained through the accident and incident reporting mechanism. This transparent and publicly accessible data should serve as a foundation for further research.

The sixth goal is the formulation of recommendations to enhance each subsystem of the criminal justice system, including the police, prosecution, forensic laboratories, advocacy, and courts. Additionally, a code of ethics should be drafted for each group. To achieve this goal, it is proposed to assemble a team of experts tasked with examining the structure of the criminal justice system and recommending structural changes. This may include measures like transferring control of forensic laboratories from law enforcement agencies to an independent body, ensuring both their independence and the scientific rigor of tests conducted. The proposal also recommends deploying teams of experts to address each key type of evidence used in criminal trials, such as confessions, eyewitness testimonies and lineups, forensic science evidence, DNA comparison, fingerprint comparison, and other pivotal evidence. Each team should develop a procedure for excellent and safe work ("best practices") and safety tools tailored to its field. Each team should include a safety expert qualified to propose the adoption of advanced safety methods developed in other fields such as aviation, transportation, and engineering.

The seventh goal is the publication of best practices and safety recommendations devised by the expert teams, disseminating them to relevant officials through training, education, and information programs. To realize this goal, it is proposed to make safety training an integral component of all professional training. Additionally, participation in periodic safety seminars and workshops should be a prerequisite for promotion in rank or position.

The eighth goal aims to advance the principle of continuous improvement, widely accepted in the field of safety. According to this principle, once a safety goal is achieved, a new, more ambitious goal must be set, perpetuating an endless process of effort for improvement. This should be accomplished through the annual publication of a comprehensive report, offering an overview of the progress made in the past year

toward enhancing safety in criminal justice and outlining goals for the forthcoming years.

Finally, it is proposed to allocate a budget to the Safety Institute that will not only support its activities but also facilitate research by other entities aimed at promoting safety in criminal law, including studies conducted in institutions of higher education. Given the significant rate of false convictions (estimated at 10%, and even in a conservative estimation being around 5%,[41] when even 1% is considered substantial), and considering the enormous damage a false conviction causes to the falsely convicted, their relatives, and society, there is strong economic justification for substantial investment in the development of safety in the criminal justice system.

3. A Duty to Report Accidents and Incidents (Near False Conviction)

The overarching goal of advanced safety theory is not only to assemble insights from past incidents and accidents but also to proactively stop potential defects and malfunctions before they escalate into accidents. Consequently, it places significant emphasis on reporting not only accidents but also near-misses, where an accident was coincidently prevented.[42] In advanced safety practices, there is a critical understanding that unaddressed incident conditions hold the potential to evolve into accidents,[43] attesting to the importance of investigating incidents as a fundamental component of safety.

In 1931, Herbert William Heinrich introduced the concept now recognized as the Heinrich triangle.[44] According to this model, for every labor accident causing substantial harm, there are approximately 29 accidents resulting in minor damage and around 300 accidents with no damage:

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[41] *See* SANGERO, *supra* note 1, at 2 – 14.
[42] *See* INT'L CIVIL AVIATION ORGANIZATION, SAFETY MANAGEMENT MANUAL § 2.10 (2013), https://www.icao.int/SAM/Documents/2017-SSP-GUY/Doc%209859%20SMM%20Third%20edition%20en.pdf.
[43] *See* STEPHANS, *supra* note 8, at 23.
[44] *See* H.W. HEINRICH, INDUSTRIAL ACCIDENT PREVENTION (1931).

Figure 1. Heinrich's triangle regarding labor accidents

It is widely acknowledged in the field of safety that the risk factors contributing to severe and minor accidents are analogous to those in accidents without damage and in incidents. Therefore, a successful reduction in the number of incidents at the base of the pyramid is likely to lead to a decrease in the number of serious accidents at the top.[45] Erik Hollnagel proposed a more detailed pyramid of accidents and incidents:[46]

Figure 2. Hollnagel's failure types pyramid.

Hollnagel explained that, in practice, the figures may vary across different fields but what is common in all of

[45] *See* ERIK HOLLNAGEL, BARRIERS AND ACCIDENT PREVENTION 20–25 (2004).
[46] *See id*, at 24.

them is that whereas the number of serious accidents is well documented, the farther down the pyramid we go, the less information is available. This is attributed to the infrequent reporting of incidents and the failure to report dangerous actions.[47]

In the realm of criminal law, even the count of accidents remains unknown because of the hidden accidents principle. Thus, the key to enhancing safety appears to lie in augmenting incident reporting. For example, the US Food and Drug Administration established a system for reporting malfunctions and defects in medical equipment. This system enables the periodic issuance of warnings ("alarms") and, if necessary, the announcement of product removal from shelves ("recalls").[48] In safety practices, a distinction is made between the mandate to report accidents with substantial damage and the voluntary reporting of incidents. Immunity from liability encourages reporting.[49]

In 1975, the FAA established a confidential incident reporting system: pilots, air traffic controllers, and other aviation employees are exempt from liability if they report a dangerous situation.[50] This system significantly increased the rate of reporting and improved communication. As a result, about 5,000 reports are received annually, and their analyses are published in aviation journals and pilots' magazines.

When applying the reporting method to the criminal justice system, there should be initially an obligation to report accidents, such as false convictions. Each report should be followed by an independent and objective investigation of each case by an external entity. The main challenge is that the cases discovered represent only the tip of the iceberg of the phenomenon because false convictions are, in most cases, hidden accidents. Consequently, especially in the criminal justice system, it is of paramount importance to create

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[47] *See id*. at 24-25.
[48] FDA-supervised Medical Device Reporting (MDR). *See* U.S. Food & Drug Admin., *Medical Device Reporting (MDR): How to Report Medical Device Problems* https://did.li/mMECN (last updated March 27, 2025).
[49] NAS 2000 health system report, *supra* note 33, at 86 – 131. See also LEVESON, *supra* note 10, at 404 – 405.
[50] Leape, *supra* note 36, at 1855.

an elaborate mechanism for reporting incidents and drawing lessons from them. The NISCJS will be able to fulfill this role effectively.

Furthermore, mandatory reporting should extend beyond accidents (false convictions) to include certain incidents as well. Based on the reports received, a comprehensive database should be established, lessons derived, and safety recommendations proposed to be eventually incorporated into regulations. The Institute will specify the incidents that it is obligatory to report, such as perjury or falsification of evidence by a police investigator, forensic laboratory technician, or prosecutor.

Additionally, a system for voluntary reporting of incidents, not subject to obligatory reporting, should be established, complemented by immunity from liability to provide an incentive for reporting. This immunity is consistent with the safety principle, reflecting the value of a culture centered on learning lessons and enhancing the system over one focused on blame and individual accountability ("bad apples").

Which types of safety incidents warrant thorough investigation?[51] Initially, each instance of a court acquittal should undergo a comprehensive examination to identify potential systemic deficiencies that could have resulted in a false conviction. Subsequently, cases where the court acknowledged flaws within the law enforcement system but refused to acquit based on a determination of "harmless error" (i.e., the court maintains the belief in guilt despite the errors) should be investigated. It is not sufficient to scrutinize individual cases alone, but studies should be conducted to categorize similar cases and derive general conclusions, unveiling prevalent phenomena and systemic failures that require rectification. Finally, investigating and learning from cases where law enforcement agencies were initially confident in the guilt of the suspect or defendant until their innocence was established would be valuable. The factors that misled the authorities in these cases could recur in other instances as well.

[51] This question and its corresponding answer hold significance for the operations of the criminal justice safety team, a topic that will be explored further in subsequent sections of this article.

Incident investigation offers several advantages over accident investigation. In criminal law, accidents are typically concealed, but a reporting mechanism can bring incidents to light, providing learning opportunities. Moreover, as no harm has been inflicted and liability is not anticipated, resistance to incident investigation is likely to be considerably lower than to accident investigation. Finally, probing an incident shortly after its occurrence can be beneficial not only for deriving lessons but also for achieving justice in the case where the incident was identified, even before a potential wrongful conviction.

4. EDUCATION, PRACTICE, AND A CULTURE OF SAFETY

According to a prevailing past misconception, most accidents were the result of technological defects or human error. But in the area of advanced safety, it is now common to attribute most accidents to the absence of a safety culture within the organization.[52] A crucial factor for safety is the internalization of the significance of safety by employees at all organizational levels,[53] without which, managers and employees might merely adhere to procedures as a routine rather than a genuine commitment to safety.[54] Safety culture in an organization comprises management dedication to safety, two-way communication, feedback mechanisms, employee engagement, a learning culture (including the adoption of "best practices"), a reporting and accountability culture, and a safety climate.[55] Leadership from management is pivotal in fostering a safety culture that influences behavior.[56]

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[52] REASON, *supra* note 11, page 195.
[53] Mark E. Meaney, *Error Reduction, Patient Safety and Institutional Ethics Committees*, 32 J.L. MED. & ETHICS 358 (2004).
[54] LEVESON, *supra* note 10, pages 442-443.
[55] LEVESON, *supra* note 10, pages 421, 424, 426-433, 442; REASON, *supra* note 11, page 195; Meaney, *supra* note 53; Daniel R. Denison, *What Is the Difference between Organizational Culture and Organizational Climate? A Native's Point of View on a Decade of Paradigm Wars*, 21 ACAD. MGMT. REV. 619 (1996) ; James A. Squires, *Regulating Safety Culture in the Railroad Industry: The Time Has Come for Broader Horizons*, 27 TRANSP. L.J. 93, 97 - 105 (2000).
[56] *See* LEVESON, *supra* note 10, at 177, 416-43.

In critical safety systems like transportation and labor, there is a consensus about the significance of safety, and it is widely acknowledged that management plays a crucial role in maintaining a safety culture. By contrast, in the criminal justice system, where judges, district attorneys, and senior police investigators may be the key figures, the concept of safety is unfamiliar, and no safety culture exists. Indeed, even the initial step in developing such a culture—assigning blame and responsibility—does not occur because of the of hidden accidents principle governing criminal law.

A safety culture cannot be established spontaneously. Initiating the process requires legislative action from parliament to create a NISCJS. One of the roles of the Institute would be to advocate for the development of a safety culture and to be granted the authority to do so. The Institute will devise safety methods tailored to the criminal justice system and formulate best practices. It will then take the lead in providing training, ongoing education, and safety workshops for all involved in criminal law: police investigators, lab experts, prosecutors, defense attorneys, judges, and possibly even jury members. Safety training will be incorporated into law studies and position-specific training, followed by mandatory periodic seminars, serving as a prerequisite for promotion in rank or position. Safety training is not a one-time occurrence but a continuous process throughout an individual's tenure in an organization where safety is critical.[57]

5. IDENTIFY-ANALYZE-CONTROL IN THE CRIMINAL JUSTICE SYSTEM: THE STAMP SAFETY MODEL

Advanced safety methods go beyond the traditional trial-and-error approach, departing from the fly-fix-fly model and embracing the sophisticated identify-analyze-control model. The objective is to achieve a state of safety proactively, eliminating the reliance on accidents for learning (first-time safe). In the initial stage, the inherent hazards in the system's operation must be systematically identified. Subsequently, these hazards are subjected to thorough analysis and assessment. Finally, measures are

[57] *See id.* at 410-11.

implemented to control these risks. Given that accidents in criminal law (such as false convictions) are concealed (because of the hidden accidents principle), even the conventional fly-fix-fly method is absent. Without feedback, it is highly challenging to achieve safety. Therefore, it is imperative to derive insights from other fields like aviation, transportation, and engineering, and tailor an identify-analyze-control model to make it suit the unique requirements of criminal law.

The establishment of a National Safety in the Criminal Justice System Institute could pave the way for the development of advanced risk assessment methods, and the previously discussed incident reporting mechanism could be one such tool. Once hazards are identified, it becomes crucial to establish effective control measures. Our proposed approach is to implement the advanced System-Theoretic Accident Model and Processes (STAMP) safety model, known for its adaptability to systems based on both technological processes and human decisions, making it particularly well-suited for the complexities of the criminal justice system. The STAMP model has demonstrated its potential effectiveness in enhancing safety in different areas.[58]

STAMP is an advanced and prominent safety model developed by Prof. Nancy Leveson of M.I.T., who also serves as the safety advisor to the National Aeronautics and Space Administration (NASA).[59] The STAMP model is crafted for complex systems, redirecting the emphasis from the reliability of individual system components to the control of the whole system.[60] The initial step in applying the model to a particular system involves a comprehensive examination of the system, its components, and operations to identify the safety constraints necessary for accident-free operation. A simple example is that of

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[58] *See id*. at 101.
[59] *See id*. at 7-14.
[60] *See* Nancy Leveson ET AL., *Moving Beyond Normal Accidents and High Reliability Organizations: A Systems Approach to Safety in Complex Systems,* 30 ORG. STUD. 233–34 (2009), http://sunnyday.mit.edu/papers.html.

a subway system: one of the necessary constraints is that doors must be capable of opening only after the train has stopped and properly aligned with the platform unless there is an emergency.[61] The criminal justice system needs similar constraints to prevent the conviction of innocent people. Next, there is a need to create hierarchical control structures that would ensure the enforcement of the safety constraints.

Safety is a characteristic of the entire system. Accidents stem from a lack of supervision and control, and the failure to enforce safety constraints on the system. According to this model, the cause of an accident is not sought among the components of the system and its personnel, but it always originates in lack of sufficient supervision and control in imposing the constraints necessary for the safe operation of the system. The STAMP model aims to identify the necessary constraints for safety and incorporate them in the system design in such a way as to impose these constraints.[62]

As Leveson illustrates in her book, the more details you uncover about an accident, the more challenging it becomes to identify a single "bad apple" responsible for it. At the same time, it is easy to find ways to prevent possible accidents. Traditional safety methods[63] are ineffective when addressing a highly complex system, involving software errors, system design flaws, human errors, and managerial and organizational failures. The STAMP model serves both accident investigation and proactive safety engineering, which is similar to examining an accident before it happens.

In criminal law, most malfunctions result from human error rather than technological failure. As Leveson demonstrates in her book, the STAMP model is highly applicable to systems based on human decisions. Ensuring the safety of a hospital also involves system engineering.[64] In our evaluation, applying STAMP to the criminal justice system must begin by defeating the

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[61] *See* LEVESON, *supra* note 10, at 192.
[62] *See* Nancy Leveson, *A New Accident Model for Engineering Safer Systems*, 42 SAFETY SCI. 237 (2004).
[63] Such as "fault tree analysis."
[64] *See* LEVESON, *supra* note 10, at 176.

defense mechanisms of the personnel, who argue that the system is too complex for implementing a safety model. In recent years, several scientific papers have described possible applications of the STAMP model to various aspects of criminal law, including confessions during interrogations,[65] eyewitness identifications and lineups,[66] forensic science evidence,[67] and plea bargains.[68] All the different types of evidence and procedures used in criminal law must be subject to safety constraints.

6. AN ONGOING PROCESS OF IMPROVEMENT

A common process in other critical safety systems involves the following steps: (a) setting safety objectives; (b) systematically striving to achieve the objectives; (c) examining and evaluating the achievement of the objectives; (d) if the goals have not been achieved, returning to the second stage and making another attempt using different methods; (e) if the goals have been achieved, returning to step one to set higher safety goals.

The purpose of this ongoing process is to continually improve the safety of the system.[69] Such a process needs to be developed for the criminal justice system as well. The NISCJS, when established, will be able to lead this effort. The need for a continuous improvement process is another justification for establishing the Institute.

The anticipated challenge along the path to safety in criminal law is the concealment of false convictions. In contrast to other areas where accidents are visible, where improvement is based on the feedback provided, the criminal justice system operates under the hidden accidents principle. Most false

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[65] *See* Boaz Sangero, *Safety from False Confessions*, 54 CRIM. L. BULL. 25 (2018).
[66] *See* Boaz Sangero, *Applying the STAMP Safety Model to Prevent False Convictions Based on Eyewitness Misidentifications,* 83 ALB. L. REV. 931 (2020).
[67] *See* Boaz Sangero, *Safety in Forensic Science*, 82 OHIO STATE L. J. ONLINE 221 (2021).
[68] *See* Boaz Sangero, *Safety from Plea-Bargains' Hazards,* 38 PACE L. REV. 301. (2018).
[69] *See* STEPHANS, *supra* note 8, at 51.

convictions remain unknown and only a fraction come to light. This lack of feedback hinders planning for improvement, and some erroneously perceive the system as nearly flawless because of the limited knowledge about accidents.

Two potential solutions are proposed. The first involves drawing lessons from safety-critical systems where accidents are visible but rare, thanks to advanced safety measures. In aviation, for example, safety has shifted from relying on accidents (fly-fix-fly) to an incident (proximity to an accident) reporting mechanism, allowing the implementation of the identify-analyze-control safety model. A similar incident reporting mechanism should be implemented in the criminal justice system, including both mandatory and voluntary reporting, with immunity from liability, as described above. This approach would promote safety through a different kind of feedback system.

Another possible solution to the problem of hidden false convictions is to address each central cause individually. By improving each procedure and each type of evidence through the work of expert teams, particular aspects of the criminal justice system can be enhanced. For example, since there are many errors in lineup identification, improvements are needed to the way they are conducted.[70] This targeted approach can help increase the overall safety of the criminal justice system.

7. PURSUING THE ULTIMATE GOAL OF ACCURATE EVIDENCE

An essential aspect of the ongoing improvement process should be a continuous effort to enhance the accuracy of evidence. A historical look at evidence law reveals that what was considered flawless in the past is prone to errors. Just as every scientific test has a false positive, every kind of evidence carries a substantial error rate. Formerly, the confession of guilt was thought to be the "queen of evidence," but today, it is proposed

[70] *See* Sangero, *supra* note 66.

to view it as the "empress of wrongful convictions."[71] Eyewitness identification, once regarded as highly accurate unless the witness was intentionally lying, is now acknowledged to be prone to mistakes.[72] Even in the realm of forensic science evidence, deemed the most precise, the National Academy of Sciences report demonstrated that only DNA comparison has a scientific foundation of the types of evidence used in forensic science to prove the individualization of the suspect, and it too is subject to errors in laboratory tests.[73]

The fundamental safety guideline derived from this understanding is that a conviction based entirely on one key piece of evidence should be rejected. Only a combination of pieces of substantial evidence can establish guilt beyond a reasonable doubt, approaching certainty. Moreover, robust measures must be implemented to enhance the accuracy of each piece of evidence, which will contribute to reducing wrongful convictions and help apprehend the true perpetrators—a win-win outcome. As proposed, the NISCJS, upon establishment, will deploy expert teams for each key piece of evidence. It will compile studies, initiate additional research, establish reporting obligations and a voluntary reporting mechanism, coordinate and analyze reports, and based on all these, formulate best practices for each key piece of evidence. These procedures will be legally binding through regulation. Subsequently, training and seminars will be conducted to instruct all involved parties in the secure methods of handling such evidence. Safety necessitates professionalism, and preventing wrongful convictions requires a commitment to safety.

8. INTERIM SUMMARY

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[71] *See* Boaz Sangero, *Miranda Is Not Enough: A New Justification for Demanding "Strong Corroboration" To A Confession*", 28 CARDOZO L. REV. 2791, 2800 (2007).
[72] *See* COMM. ON SCI. APPROACHES TO UNDERSTANDING & MAXIMIZING THE VALIDITY & RELIABILITY OF EYEWITNESS IDENTIFICATION IN L. ENF'T & IN CT.'S ET AL., NAT'L ACAD. OF SCI'S., IDENTIFYING THE CULPRIT: ASSESSING EYEWITNESSES IDENTIFICATION (2014), https://did.li/4Pnrl.
[73] NAS 2009 forensic report, *supra* note 37.

The safety methods outlined above, including the establishment of the NISCJS, mandatory reporting of accidents and incidents, safety education, training, applying the identify-analyze-control approach to the criminal justice system, implementing the STAMP safety model, an ongoing process of improvement, and the continual pursuit of accuracy in evidence are not exhaustive of the measures that can and should be undertaken to transition the criminal justice system from a state of safety deficiency to one where safety is actively promoted, akin to other critical safety systems. The adoption and refinement of these methods, together with additional strategies not explicitly covered in this paper, could be advanced by the NISCJS upon its establishment.

The implementation in the criminal justice system of safety methods developed and embraced by other safety-critical systems, such as aviation, transportation, and engineering is currently a vision proposed in academic writing.[74] This approach has not been officially adopted by authorities in Israel, the US, or other countries. The cultural shift toward a safety-oriented mindset is still lacking in the criminal justice system worldwide.

Below we describe a specific safety method referred to as the Criminal Justice Safety Team. Initially, we provide a brief overview of the American model that served as inspiration: Sentinel Event Review. Next, we examine the activities of the Israeli safety team, offering a comprehensive analysis of the team's recommendations. The adoption of this safety method could mark a positive shift in the safety of the criminal justice system, laying groundwork for the development of a safety culture and facilitating the adoption of more advanced safety methods.

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[74] *See* SANGERO, *supra* note 1; *see also* Halpert & Sangero, *supra* note 5; Sangero, *supra* note 18; Sangero & Halpert, *supra* note 23; Sangero, *supra* note 38; Sangero, *supra* note 65; Sangero, *supra* note 66; Sangero, *supra* note 67; Sangero, *supra* note 68; Boaz Sangero, *Safety in Post-Conviction Proceedings*, 51 J. MARSHALL L. REV. 773 (2019).

III. SENTINEL EVENT REVIEW: THE AMERICAN MODEL

A "sentinel event" is defined as "a high-profile error – an undesired outcome that results in significant damage to the system and its credibility."[75] In simpler terms, it is a severe accident, such as the wrongful conviction of an innocent person, or police violence such as unnecessary shootings. The Sentinel Event Review (SER) is a voluntary examination of a significant event involving the participation of various relevant officials. Its purpose is to identify the multiple causes of the incident not to assign blame and punishment. The goal is to develop solutions to minimize similar errors in the future.[76] Although the SER process can be applied to both accidents and incidents (near-misses),[77] in the US, it appears to be used primarily in accident research. The process, initiated by Adv. James Doyle and supported by the National Institute of Justice, is gaining popularity with officials and extending its reach from province to county and state to state[78]. Doyle established a "round table" where all relevant officials participate, including police investigators, prosecutors, defense attorneys, judges, academics, and safety experts.[79] Typically, the discussion revolves around three main questions: "What happened? Why did it happen? And what can be done to prevent it from happening again?"[80]

The discussion acknowledges that accidents typically result from a combination of factors such as

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[75] John Hollway & Ben Grunwald, *Applying Sentinel Event Reviews to Policing*, 18 CRIMINOLOGY & PUB. POL'Y 705, 706 (2019).
[76] *Id.*; *see also* Doyle, *supra* note 3; ; James M. Doyle, *An Etiology of Wrongful Convictions: Error, Safety, and Forward-Looking Accountability in Criminal Justice*, in M. Zalman & J. Carrano (Eds.), WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE 56 (2013); James M. Doyle, *Essay: A 'Safety Model' Perspective Can Aid Diagnosis, Prevention, and Restoration after Criminal Justice Harms,* 59 SANTA CLARA L. REV. 107 (2019).
[77] Doyle, *supra* note 3, at 14.
[78] *Id.* at 11; see also James Doyle, Innocence and Prevention: Could We Build Justice Safety Centers? 1:2 WRONGFUL CONVICTION LAW REVIEW 253 (2020).
[79] Doyle, *supra* note 3, at 11.
[80] Hollway & Grunwald, *supra* note 75, at 5.

poor communication, environmental conditions, equipment and machinery, process-related factors, specific actions and omissions by individuals or teams, management and supervision practices, organizational culture, and leadership.[81] After identifying all the relevant factors contributing to the accident, the SER process aims to develop systemic solutions to reduce the rate of errors in the future. The assumption is that the main cause of system failures is not the misconduct of one person but a weakness in the system that led to not overcoming individual behavior.[82] This approach to a system accident suggests that the answer to the question "Who is responsible?" is usually: "Everyone involved, to some degree or other," whether by making a mistake or failing to prevent another person from making one.[83] The intention is not to absolve everyone of responsibility but to establish joint accountability, learn essential lessons, and formulate ways to improve.[84] The general ambition is to achieve several goals: formulate reforms to reduce the error rate, create best practices, and foster public trust in the various elements of the criminal justice system.[85]

Today, SER processes are underway in many counties in various states in the US. Counties interested in participating in the process receive guidance from the Quattrone Center at the University of Pennsylvania, led by Prof. John Hollway.[86] The Quattrone Center publishes its investigations, including cases involving civilian deaths caused by police officers.[87] The Israeli Criminal Justice Safety

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[81] *Id.*
[82] *Id.*
[83] Doyle, *supra* note 3, at 4 – 5.
[84] *Id.* at 9.
[85] Hollway and Grunwald, *supra* note 75 at 1-2.
[86] *See* Quattrone Center, https://www.law.upenn.edu/institutes/quattronecenter/ (last visited Aug 27, 2025).
[87] *See*, for example, a report on the handling of the protests that erupted following the murder of George Floyd by the Madison Police Department: QUATTRONE CENTER FOR THE FAIR ADMINISTRATION OF JUSTICE, MADISON POLICE DEPARTMENT SENTINEL EVENT REVIEW (SER) OF THE DEPARTMENT'S RESPONSE TO THE 2020 PROTESTS OF POLICE (2021), https://www.cityofmadison.com/police/documents/SentinelReport20211116.pdf.

Team, established in 2020, draws inspiration from the American model pioneered by James Doyle and operates in line with the original model's principles.

IV. CRIMINAL JUSTICE SAFETY TEAM: THE ISRAELI MODEL

1. THE PROCESS

In the 2020/2021 academic year, the Western Galilee Academic College established the Institute for Safety in the Criminal Justice System.[88] Shortly after its establishment, a Criminal Justice Safety Team was formed and began its operations. The activity of the team is based on the general theory of safety and, more specifically, safety in criminal law, as outlined in the initial sections of this article. Additionally, it draws inspiration from the American model of Sentinel Event Review. The primary distinction lies in the fact that whereas the American teams focus on discussing accidents that have occurred, such as wrongful convictions or unjustifiable fatal shootings by police officers, the Israeli team concentrates on incidents — events in close proximity to accidents. This is particularly relevant in cases where there is a near-occurrence of a wrongful conviction. Discussing incidents rather than accidents has several advantages: they are easier to identify, more numerous and accessible, and the review meets with less resistance, as they typically involve no significant harm, allowing to avoid the attribution of blame and imposition of responsibility.

The events discussed during team meetings, which take place approximately once every six weeks, are based on the team members' regular practice. On each occasion, a different team member offers an intriguing case, and after the Institute validates that it is appropriate for discussion, relevant reading materials (investigative documents, court rulings, etc.) are distributed to team members for pre-meeting study. As these are incidents, by definition, they have not

[88] The founders of the Institute are the authors of this article. For the website of the Institute, see https://wgalil.ac.il/research/research_centers/safety/ (last visited June 13, 2025).

escalated to the point of causing damage. Consistent with safety doctrine, we are not satisfied with praising those who exercised wisdom and discernment to prevent the accident but analyze the incident and think together about how to improve the system to prevent in the future the tangible danger of conviction of an innocent person in a situation similar to the current incident. Moreover, we do not limit our focus to a single factor but strive to identify all the weak points in the system revealed by the event at hand. For instance, we do not only consider those who acted recklessly but also examine factors that failed to avert the tangible danger. The discussion aims to address, among others, the three key questions: What happened? Why did it happen? How can similar incidents be prevented in the future?

Before the team could be established, an extensive process took place to address the concerns of law-enforcement agencies and to persuade them to participate in the discussions. The primary apprehension of the State Prosecutor's Office and the police had to do with the possible publication of cases, which could lead to attempts to impose tort liability on various officials of these bodies. Given that the objective of the team was not to assign blame and liability, the following solution was devised: team members could present cases at the sessions anonymously, without disclosing the names of those involved in the incident—neither those of the individuals connected to the criminal matter or presumed to be involved in criminal activities, nor of the police and prosecution officials handling the case. Members also received the assurance that the public recommendations of the team would not include any names and would provide only a "thin" description of the facts of the case, making identification difficult if not impossible. The crucial element in publicizing the work of the team lies in its recommendations, and the factual description serves merely to provide context and validation. Eventually, the State Prosecutor, the Head of Police Prosecution, and the National Public Defender approved the involvement of their staff in the team.

The team included the following members: two district public prosecutors, two district public defenders, two heads of police prosecution district

departments[89], and two chief investigative officers—all from the northern districts; four academics; two private defense attorneys; and the head of the National Institute of Forensic Medicine. Having two team members for each role was intended to advance a robust discussion with a comprehensive perspective, even if one of the team members was unable to attend a meeting.[90]

The preference for senior officials was grounded in the anticipation that long before the team recommendations materialize into future legislation, the District Public Prosecutor, Head of Police Prosecution District department, District Public Defender, and Head of the Investigations Division of the police district[91] would use their authority to implement the safety insights of the team into their daily operations and that of their staffs. Moreover, active participation in the discussions of the safety team equips participants with skills expected to facilitate the cultivation of a safety culture in their organizations. The selection of the northern districts of the State Prosecutor's Office, Police Prosecution, and Police Investigations Division was motivated both by geographic proximity to the Western Galilee Academic College, which hosts the team, and the advantage of officials knowing each other and having worked together, which fosters comfortable collaboration between them. Team membership was intended to be

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[89] In Israel, indictments for less serious offenses are not handled by the District Prosecutor's Office but by prosecution departments located in the various districts of the police.

[90] This format is consistent with safety strategies (not elaborated on in this article because of space constraints) that achieve *redundancy* by duplicating technological components (e.g., backup computers) and personnel (appointing two employees for separate safety checks). In a system with high redundancy, a failure in a technological component or human error does not lead to a complete system crash. In the criminal justice system, redundancy is low, and often the failure of one factor triggers the failure of others, in a domino effect. *See* Sangero, *Safe Convictions, supra* note 18, at 418–21 (discussing the importance of redundancy in critical safety systems and its absence from the criminal justice system).

[91] The investigative officers on the team were not the heads of the investigation divisions of the police districts but experienced investigators.

permanent, with the expectation that team members would not be replaced by other individuals from the same organizations. This approach makes possible the in-depth study of safety, progress in this area, the development of familiarity and trust between team members, and continuity in discussions.

In 2023 the Institute for Safety in the Criminal Justice System released a comprehensive report summarizing its activities in 2020-2022. A key section of the report focuses on the safety team's endeavors, providing an overview of the eight safety incidents discussed that were closely related to potential accidents, often coming close to convicting an innocent person, and presents the recommendations of the team.[92]

As noted in the report, not all recommendations found unanimous acceptance among team members.[93] Furthermore, the recommendations are not binding on either team members or the respective organizations they represent. They have no legal or regulatory authority, and they do not serve as internal procedures for any of the organizations represented. Nevertheless, we have an optimistic expectation that the recommendations will be adopted by the Israeli parliament ("the Knesset") and senior officials in various organizations to help enhance safety in the criminal justice system.

Finally, to better understand why all eight incidents discussed below are close to a false conviction, it is important to note that in each case, after all the checks by the police and the prosecution, indictments were filed against innocent people. Given that the acquittal rate in Israel is very low——less than 1%——every indictment filed against an innocent person represents the hazard of a false conviction.[94]

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[92] Western Galilee Academic College, Institute for Safety in the Criminal Justice System, summary report for 2020-2022, viewable: https://www.wgalil.ac.il/report_9-1-23/ (last visited Aug 28, 2025) (Hebrew).

[93] *Id*. at 15.

[94] Only 0.4% of defendants are acquitted in magistrate courts and only 0.3% of defendants are acquitted in district courts. *See* OREN GAZAL-AYAL ET AL., CONVICTION AND ACQUITTAL RATES IN ISRAEL 11, 16 (2012).

2. INCIDENTS AND RECOMMENDATIONS

(a) Summary of the discussion of the first event[95]

(1) What happened?

A soldier was assaulted with a hammer and his weapon was forcibly taken from him in a robbery.[96] Subsequently, a suspect who was not the attacker was arrested and wrongfully charged. It was only by chance, several months later, that the true perpetrators of the crime were identified and found in possession of the stolen weapon. During these months, the wrongfully accused individual was held in custody as police investigators and prosecutors mistakenly believed that they had apprehended the correct suspect, and an indictment was filed against the innocent person.[97]

(2) Why did it happen?

The wrong suspicion originated with a police officer's report, claiming familiarity with an individual who matched the description given by the victim. The color of the suspect's car coincided with an eyewitness testimony. Additionally, there was a partial resemblance between the victim's description of the attacker's clothing and the clothes discovered in the suspect's residence. Investigators also considered the location data from the suspect's phone, indicating the suspect's presence in a certain area. The suspect's denial of visiting that area led investigators to speculate that he intended to sell the stolen weapon. An inconclusive outcome of a polygraph test added to the suspicions. Last, the victim incorrectly identified the suspect in a live lineup as the attacker.

(3) HOW CAN SIMILAR INCIDENTS BE PREVENTED IN THE FUTURE?

(i) A combination of flawed pieces of evidence

According to a safety analysis presented during the Safety Team's discussion, when multiple pieces of evidence are involved, even if each one of them shows a problem, there is a tendency to make light of the problem considering the other evidence.[98]

[95] Report of the Institute for Safety in Criminal Justice System 2020 -2022, *supra* note 92, at 16-17.
[96] *Id.*
[97] *Id.*
[98] *Id.*

Consequently, a combination of flawed pieces of evidence might be mistakenly perceived as robust. This has the potential to reinforce an erroneous conception of the suspect's guilt, making it difficult to dispel. A suggested remedy is to critically evaluate each piece of evidence independently, even in the presence of other supporting evidence.[99]

(ii) Reliance on a single piece of evidence

According to another safety analysis of the case, only one piece of evidence held significant weight: the victim's identification of the suspect in a lineup as the attacker.[100] The other factors mentioned earlier did not amount to substantial evidence but were rather "embellishments," demonstrating the risk associated with convicting based on a sole piece of evidence. A proposed solution was to establish an evidentiary rule that would prevent a conviction relying on a single piece of evidence. Until such legislation is enacted, police and prosecution should not rely exclusively on one piece of evidence. Rather, the police should continue the investigation to uncover additional evidence, and the prosecution should refrain from filing an indictment in the absence of additional significant evidence[101].

(iii) Danger of creating wrongful and misleading evidence

Until the lineup, there was no substantial evidence against the suspect.[102] Studies indicate a real possibility of mistaken identification in lineups, with approximately 30% of lineups resulting in the eyewitness pointing to one of the fillers rather than the actual suspect.[103] Therefore, the decision to conduct an identification lineup and designate a person with no substantial evidence linking them to the crime as a suspect is a critical one. If the identification is incorrect, significant evidence is effectively manufactured, leading to a case that is falsely perceived as strong. This

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[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] In 30% of the lineups conducted in the United States, witnesses mistakenly selected one of the fillers who was not the suspect in the case. *See* BRANDON L. GARRETT, CONVICTING THE INNOCENT – WHERE CRIMINAL PROSECUTIONS GO WRONG 50 (2011).

was the scenario in the current case, which gained perceived strength after the erroneous identification.[104]

As a result, a safety guideline was proposed: exposing an individual to the risk of mistaken identification, which could lead to a wrongful conviction, should occur only when there is substantial evidence indicating the person's involvement in the offense. Mere suspicion is not sufficient.[105] Another safety guideline was suggested, directed at defense attorneys, stating that in the absence of substantial evidence against the suspect and considering the real possibility of a misidentification, a lineup should not be requested by the defense because it may jeopardize the suspect. This safety guideline may also apply to other evidence prone to high error rates. Although the previous recommendation was not unanimously supported, there was agreement that the defense should make the suspect aware of the potential for error in the lineup or other testing methods, and of the potential strength of the evidence that may be built against the suspect.[106] This is because, under current law, identification by an eyewitness alone might be sufficient for a conviction.[107]

(b) Summary of the discussion of the second event[108]

(1) What happened?

The police set up an ambush for a burglar at the location of a break-in, where the burglar was expected to return to collect the hidden loot.[109] The burglar appeared but managed to escape. Later, a suspect was arrested and charged with assaulting a police officer during the arrest and with the original burglary. The key prosecution witness, a detective, testified that he

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[104] Report of the Institute for Safety in Criminal Justice System 2020-2022, *supra* note 92, at 16-17.
[105] *Id.*
[106] *Id.*
[107] *See e.g.* Crim A 34788 Demjanjuk v. the State of Israel 47(4) PD 221 (1993) (Isr.). *see also* Asher F. Landau, *The Demjanjuk Appeal Summary,* MINISTRY OF FOREIGN AFFAIRS https://www.gov.il/en/pages/the-demjanjuk-appeal-summary (last visited July 8, 2025).
[108] Report of the Institute for Safety in Criminal Justice System 2020 -2022, *supra* note 92, at 18-19.
[109] *Id.*

identified the defendant during the nighttime ambush. The detective also claimed that the defendant assaulted and injured him during a body search at the police station. The defendant was acquitted of the burglary charge after the defense attorney had proved that the detective could not have identified the defendant as the burglar.[110]

The defendant argued that it was the officer who attacked him in anger, mistakenly identifying him as the burglar who had escaped during the night ambush.[111] The magistrate judge sided with the policeman, leading to the defendant's conviction for assaulting a police officer. On appeal, the District Court determined that the search was unlawful: the officer took the defendant to a separate room and conducted a search without proper authority or consent. The majority of judges convicted the defendant of simple assault rather than the original charge of assaulting a police officer. The dissenting judge, however, maintained that the defendant should be acquitted of ordinary assault as well.[112] In retrospect, it seems that both accusations – of burglary and of assault – were highly doubtful, therefore he should have been acquitted on both counts.

(2) Why did it happen?

The public defender's office presented three expert opinions: one on identification testimonies showing difficulties in identification, another from the meteorological service showing that it was a cloudy night, and a third from the Israel Mapping Center specifying the time of the moonrise on the night of the ambush.[113] A cross-examination of the policeman and a visit to the ambush site by the judge enabled the defense to successfully demonstrate that the officer could not have identified the defendant. The prevailing conditions, including darkness, the absence of streetlights, cloud cover, and the absence of the moonlight made identification impossible. Moreover, the angle and distance were such that identification

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[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*

was not feasible, and the officer did not know the defendant beforehand.[114]

A search of databases conducted by several members of the safety team uncovered a prior conviction of the same policeman for aggravated assault of another civilian in the same year.[115] Witnesses in that case testified that they observed the policeman retrieve an iron rod from his car, pursue the civilian, and strike him with it. After assaulting the civilian, the policeman falsely stated that the civilian had attacked him. It raises reasonable suspicion that the same policeman might have similarly assaulted the present defendant while falsely claiming that the defendant initiated the attack.[116]

(3) How can similar incidents be prevented in the future?

(i) Deciding between conflicting versions

The concern was raised that when the court is tasked with choosing between two conflicting narratives, one presented by a defendant and the other by a witness, often a police officer, and lacking a foolproof method for deciding, a conviction based on trusting the witness's testimony and mistrusting the defendant's account creates a risk of wrongful conviction.[117] Research indicates that individuals, including police investigators, prosecutors, judges, and jurors cannot correctly differentiate between truthful and false testimony.[118] In the current case, the judge's examination of the assault charge leading to the defendant's conviction was limited, especially compared

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[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] *See* Saul M. Kassin, *Human Judges of Truth, Deception, and Credibility: Confident but Erroneous*, 23 CARDOZO L. REV. 809, 812 (2002); *see also* Saul M. Kassin, Christian A. Meissner & Rebecca J. Norwick, *"I'd Know a False Confession if I Saw One": A Comparative Study of College Students and Police Investigators*, 29 LAW & HUM. BEHAV. 211 (2005); *see also* Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 76, 76 - 77 (2010); *see also* Danny Ciracò, *Reverse Engineering*, 11 WINSDOR REV. LEGAL & SOC. ISSUES 41, 51–52 (2001).

to the thorough analysis of the burglary charge, of which the defendant was acquitted[119].

(ii) Expert opinion

It was acknowledged that the defense attorney's handling of the case was professional, but it was noted that defense counsel may not always have adequate resources to provide such thorough representation, involving three expert opinions. This raised safety concerns.[120]

(iii) Defendants' lies

The issue was raised that when a judge perceives that the defendant is lying, there is a tendency to convict the defendant of the alleged offense despite the high likelihood of an innocent person lying (for example, to minimize the risk of being wrongfully convicted).[121]

(iv) Effect of pretrial detention until the end of proceedings

The issue of defendants refraining from asserting their innocence because of the deterrent effect of pretrial detention was raised.[122] In the present case, the defendant, who maintained his innocence, was acquitted of the main charge of burglary but was detained for seven months (matching the severity of the sentence imposed for the assault conviction). A proposed legal amendment suggests restricting the duration of pretrial detention to match the anticipated imprisonment period in the event of a conviction.[123]

(v) Publication

It was suggested to publish such cases for investigators, prosecutors, defense attorneys, and judges, together with recommendations for improvement.[124]

(vi) Multi-factor

In advanced safety theory, it is widely acknowledged that an accident is not attributed to a single cause but involves multiple factors, including those that were supposed to prevent the system from failing. Merely pointing out the individual responsible

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[119] Report of the Institute for Safety in Criminal Justice System 2020-2022, *supra* note 92, at 18-19.
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*

for the failure is insufficient; rather, safety lessons must be derived at all levels of the system.[125]

(c) Summary of the discussion of the third event[126]

(1) What happened?

A stabbing death occurred when the victim and his friend visited a residence.[127] The victim entered the kitchen where he encountered the first attacker, leading to a struggle over the knife. During the fight, the victim was struck and fell. Subsequently, the first attacker left the kitchen and the victim's friend, the eyewitness, walked in and discovered the victim lying on the floor with a fatal stomach wound. Later on, the eyewitness testified to observing the victim's intestines already spilled out of his body. The second attacker then entered the scene, striking the victim with a knife in the shoulder while he lay on the floor. The second attacker, the defendant, argued that he had only struck the victim in the shoulder with the knife but did not injure him because the victim was wearing a thick coat that the knife did not penetrate. At the end of the investigation, and despite the evidence pointing to the first attacker's responsibility, an indictment was filed only against the second attacker, charging him with the murder committed by the first attacker, conspiracy with the first attacker to harm the victim, and possession of a weapon. No charges were brought against the first attacker[128].

(2) Why did it happen?

The first attacker, who had a conflict with the victim and conspired with his cousin, the second attacker, to harm the victim, testified that he was intoxicated and had no recollection of the events, suggesting that he might have killed the victim.[129]

It was only during his court testimony that the eyewitness clarified that he had observed the victim's intestines having been spilled after his encounter with the first attacker and that this was before the second attacker (accused of murder) came and hit the victim on

[125] LEVESON, *supra* note 10, at 100.
[126] Report of the Institute for Safety in the Criminal Justice System 2020-2022, *supra* note 92, at 20-21.
[127] *Id.*
[128] *Id.*
[129] *Id.*

the shoulder with a knife.[130] The eyewitness stated that the victim was lying motionless after the confrontation with the first attacker. An examination of the victim's coat revealed that the knife did not penetrate the coat but caused only a small tear. Following the clarification of the witness's testimony, a plea bargain was reached, amending the indictment from murder to the charge of "attempting to harm a person with a knife with the intent to cause serious injury." The defendant (the second attacker) was sentenced to ten months in prison[131].

(3) How can similar incidents be prevented in the future?

(i) Multi-factor

According to modern safety theory, accidents do not have a single cause; rather, various factors contribute, including those individuals who should have prevented the incident. The team sought to unravel why the second attacker was charged with murder, considering he entered the room only after the victim's intestines were already spilled outside his body.[132]

(ii) Information provided to experts before testing

The question concerned whether it was appropriate to furnish experts, particularly pathologists, with background data and witness statements before they conducted their tests.[133] One viewpoint argued that pathologists should receive all findings and versions to understand the events and tailor their examinations accordingly. By contrast, a safety recommendation suggested refraining from exposing experts to facts that might induce cognitive biases. The ultimate recommendation, following the deliberation, was to refrain from providing experts with background data and witness versions in the initial phase, allowing them to submit a preliminary report based strictly on scientific tests to avoid cognitive biases. In the next stage, experts could be presented with various versions, to obtain their opinions. The two stages must be documented.[134]

(iii) Translation and transcription

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[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*

Given that all individuals involved in the incident communicated in a foreign language not commonly spoken in Israel, an extensive discussion took place regarding the translation of the witnesses' statements into Hebrew and of the questions directed at them from Hebrew into their native language.[135] This applied to both police investigations and courtroom testimonies. Until a late stage in the proceedings, the criminal justice system personnel failed to understand the sequence of events described by the eyewitness, specifically that the victim's injuries occurred already during the confrontation with the first attacker. Several recommendations were proposed in this regard. When witnesses do not speak Hebrew, it is important to take precautions to mitigate translation errors and cultural biases by using highly skilled interpreters. Furthermore, it is essential to instruct the transcriber not only to capture information but also to promptly notify authorities if there is a potential risk of translation errors. In the case of severe offenses, like murder, additional safety measures should be adopted, including a translation by a second translator or, at a minimum, a second translator reviewing the initial translation, including at least a sample accuracy check. As a safety guideline for defense attorneys, it is advisable to consider employing an independent transcriber rather than relying entirely on the police transcript.[136]

(d) Summary of the discussion of the fourth event[137]

(1) What happened?

The defendant and his friend (also a relative) were caught with a bag containing several hundred cigarette boxes in the defendant's vehicle, believed to have been stolen during a burglary at a gas station store the previous night.[138] According to the initial account provided by the accused, his friend requested to accompany him on a trip to a certain village to sell the merchandise. The friend brought the bag of cigarettes and attempted to sell them during the drive, engaging

[135] *Id.*
[136] *Id.*
[137] *Id.* at 22–23.
[138] *Id.*

in phone conversations with shopkeepers and later negotiating with a shop owner in the village. Witnesses corroborated the friend's negotiations for cigarette sales. Conversely, the friend denied any association with the cigarettes, stating that the defendant had brought them.[139]

A few days later, during an interrogation ruse organized by the investigators, the two suspects met in a room covered by recording devices, but their conversation could not be heard because the friend turned on the tap in the bathroom.[140] Following the conversation, the defendant confessed to finding the bag of cigarettes under a bridge. During the trial, he explained that his friend, using his experience with property crimes, advised him to claim that he had found the cigarettes so that both would be released. Subsequently, the defendant recanted his confession of finding the cigarettes and consistently maintained his initial version throughout the trial, asserting that his friend brought the cigarettes, and the defendant, unaware that the property was suspected to have been stolen, drove him to the village.[141]

The defendant, without any prior convictions, was charged with "theft by finding," and his friend, with a history of many property crime convictions, was not charged.[142] The friend's criminal history was revealed belatedly because the police prosecution objected to presenting his convictions sheet. The prosecution initially relied on the defendant's confession. But later, at the stage of summing up the case, the prosecution requested that if the court decided not to convict in theft, it should convict for "possession of suspected stolen property." The Magistrate's Court acquitted the defendant of "theft by finding" but convicted him of "possession of suspected stolen property," a charge not initially included in the indictment. The argument of the defense about the lack of a reasonable opportunity to defend against this charge was dismissed. But during the appeal before the district court, the judges recommended that the prosecution drop the indictment, and the prosecution agreed. It should have been clear

[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*

from the outset that the confession of theft was false and that the indictment was a mistake.[143]

(2) Why did it happen?

The police prosecution, despite recognizing the lack of credibility in the defendant's confession of "theft by finding," chose to adopt the confession and charge him, and chose not to charge the friend, although there were grounds for holding him accountable.[144]

(3) How can similar incidents be prevented in the future?

(i) Conviction based on a confession: Requirement of "strong corroboration"

The case underscores the significant risk associated with relying exclusively on the defendant's confession as the primary evidence for a conviction.[145] The confession to "theft by finding" was likely to be false. In this instance, the stolen cigarettes were discovered in the defendant's car, therefore the requirement of a slight corroboration (called in Israeli Supreme Court rulings "something in addition") was satisfied. Although the court rejected the defendant's claim of finding the cigarettes, suggesting the friend's involvement, this case raises genuine concerns that when the narrative is unclear, the combination of a false confession and "something in addition" may result in a false conviction. Therefore, the following safety rule was proposed: a confession alone is insufficient for conviction, and additional independent evidence, supporting the proposition that the accused performed the offense ("strong corroboration") is imperative.[146]

(ii) Charges of a similar offense

Another safety rule was proposed: individuals should not face charges for an offense they did not commit, even if the prosecution is certain about their involvement in another related offense, as in the current case, where the defendant confessed to theft by finding and may have been involved in the offense of possessing suspected stolen property.[147]

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[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.*

(iii) Written vs. oral summaries

The safety aspect of written vs. oral summaries was also under consideration.[148] The oral summary protocol is deemed unclear and, therefore, less persuasive. By contrast, written summaries are regarded to be much clearer and more detailed. A safety rule recommending a preference for written summaries was proposed. Alternatively, if oral summaries have advantages, such as the potential to persuade judges, a suggestion was made to follow oral summaries by written ones (as was done in the present case). This safety rule is aimed both at the prosecution and the defense, urging them to provide written summaries. It is also aimed at judges, stating the importance of allowing written summaries or, alternatively, calling for legislative changes. This rule achieved the unanimous support of all team members.[149]

(iv) Documentation of all interrogations by video recording

All team members unanimously agreed that, from a safety standpoint, it is highly desirable to record all interrogations of suspects in any offense punishable by imprisonment. This recommendation extends beyond current Israeli law, which mandates video recording only for offenses punishable by ten years of imprisonment or more. Furthermore, the team proposed that all investigations, even those conducted outside police facilities, be documented by video recording.[150]

(e) Summary of the discussion of the fifth event[151]

(1) What happened?

An elderly couple was robbed in their apartment.[152] An adult and two minors faced charges. The minors initially confessed under interrogation and to their defense attorneys, and the adult denied involvement. During the adult's trial, the minors testified, revealing their lack of knowledge about crucial details of the robbery. When questioned about the contradictions between their confessions and the actual

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[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] *Id.* at 24-25.
[152] *Id.*

events, both minors retracted their confessions, claiming coercion by interrogators. They could not provide any concealed details from the crime scene and their confessions contradicted the evidence at the robbery scene and security camera footage. Furthermore, disparities arose between the recorded video statements of the interrogees and the written record of the interrogations.[153] Consequently, the State Prosecutor's Office decided to withdraw the indictments against both the minors and the adult. To understand how close the two innocent minors were to false convictions, note that it is extremely rare for a confession during an interrogation not to result in a conviction. Furthermore, had the minors agreed to a plea bargain, they would have been convicted.[154]

(2) Why did it happen?

The charges against the minors and the adult stemmed from the aggressive interrogation techniques used, particularly the pressure applied to the minors. Additionally, the police and prosecution accepted these confessions without raising concerns. The issue went unnoticed by the defense attorneys representing the minors, in contrast to the defense attorney representing the adult.[155]

(3) Lessons learned by the public defender's office

(i) The importance of watching interrogation recordings

Defense attorneys should be strongly encouraged to recognize the significant importance of watching interrogation recordings.[156]

(ii) A common language for defense attorney and defendant

The defense attorney should be proficient in the language used during the detainee's interrogation.[157]

(iii) False confessions of minors

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[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] *Id.*

A dedicated seminar focused on false confessions by minors was conducted for the public defender's lawyers.[158]

(iv) Exposure to research

Defense attorneys should be provided with studies demonstrating the prevalence of false confessions. This ensures that they do not erroneously consider the defendant's confession as conclusive evidence, even if the defendant admits guilt during their interactions.[159]

(v) Supervision of the quality of representation

When a minor and an adult face charges for the same offense, having a supervisor overseeing both cases may provide a better view and enhance the quality of representation. Therefore, the traditional separation within the public defender's office between supervisors for juvenile and adult cases should be reevaluated. Additionally and generally, abolishing the division between supervisors who oversee different defense attorneys representing defendants in the same case could lead to valuable insights by cross-referencing the information that reaches the supervisors.[160]

(4) How can similar incidents be prevented in the future?

(i) Professionalism

The defense attorney representing the adult demonstrated professional competence. But in the cases of the two defense attorneys representing the minors, a meticulous comparison of the interrogation recordings with their confessions should have raised concerns about the authenticity of these confessions, or at the very least, identified them as highly problematic. A safety recommendation was that defense attorneys should thoroughly review recordings of defendants' interrogations by the police, even when the defendant confesses to guilt. This is particularly important in the case of minors.[161]

(ii) Requirement of "strong corroboration" to a confession

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[158] *Id.*
[159] *Id.*
[160] *Id.*
[161] *Id.*

The case demonstrates the drawback of relying exclusively on a confession for conviction. The following safety rule was proposed: a confession alone should not be sufficient for conviction; additional independent evidence at the level of "strong corroboration" is required, and "something additional" is insufficient.[162]

(iii) Documenting the statements of the interrogee

Documentation of the interrogee's statements must include not only the content but also the process leading to the statement, such as details provided by the interrogator and the exact questions asked. Members of the safety team expressed a shared concern about addressing these gaps.[163]

To prevent such discrepancies, it was suggested that when recordings exist, the investigator's written record should not be admissible as evidence, and only the full transcript of the interrogation should be considered. Regarding confessions in particular, it was proposed, for safety reasons, to discontinue the practice of having the interrogee's confession conveyed in writing by the interrogator. Instead, the interrogee should write or record the confession independently.[164]

A safety recommendation for the prosecution was to conduct a thorough comparison between the interrogation transcript and the recording, or at least a sample comparison to assess the reliability of the current procedure. Some team members proposed a reexamination of the issue of discrepancies between interrogees' statements and their records to collaboratively explore potential solutions.[165]

(iv) Lessons for police investigators

The following safety recommendations were made for the police: Every investigator should recognize that a discrepancy between the interrogee's statements and the investigator's written record is not just "a problem of the defense attorney" but a collective concern. Training programs and courses for investigators can be instrumental in addressing this issue.[166]

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[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] *Id.*

(v) The importance of the suspect's unawareness of concealed details

Significant emphasis should be placed on a suspect's lack of knowledge of concealed details from the crime scene ("inside information"). Knowing a concealed detail does not prove that a confession is true; it merely strengthens the current hypothesis. By contrast, if the interrogee is unaware of any concealed details, it shows that the confession is not authentic. It is a mistake to think that only a suspect's awareness of concealed details is significant, whereas unawareness is not. This safety insight should be conveyed to interrogators by training and periodic seminars to enhance their understanding of the investigative process.[167]

(vi) Police assistance to the suspect to recover an alibi

It was revealed that the adult defendant had an alibi, but could not establish it until he became aware of the security camera footage, with the exact time of the robbery. To uncover the truth, the police should assist the suspects in proving their alibi.[168]

(vii) Transition from the Reid interrogation method to the PEACE interrogation method

It was suggested to stop the use of the traditional and coercive American Reid interrogation approach, aimed primarily at eliciting a confession from a suspect presumed to be guilty.[169] This method involves applying pressure on the interrogee, deceiving them about the presence of substantial evidence, and restricting their ability to deny the alleged offense. The proposal is to adopt the English PEACE method of interrogation whose primary objective is to openly listen to the suspects' complete version, without pressuring them to confess. Subsequently, individuals are confronted with prosecution evidence and asked to explain it, without coercion or deception.[170] The suggestion was to revisit

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[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] DAN SIMON, IN DOUBT: THE PSYCHOLOGY OF THE CRIMINAL JUSTICE PROCESS (Boston, Harvard University Press: 2012) 137, 141, 207.

and extensively discuss this matter in upcoming meetings.[171]

(viii) Adapting the interrogation method to minors

Especially when dealing with minor suspects, the aggressive Reid interrogation method is highly inappropriate. The moderate PEACE interrogation method should be an integral component of the training of juvenile investigators.[172]

(f) Summary of the discussion of the sixth event[173]

(1) What happened?

An indictment was filed against the defendant, accusing him of rape.[174] The complainant's account was supported by statements from the defendant's relatives, who testified that the complainant disclosed to them that the defendant had raped her, by details about the complainant's mental state shortly after the incident, and by bloodstains at the scene of the offense, that were pictured by the complainant, who alleged that the defendant injured himself with scissors. A reconstruction was conducted, during which the complainant reiterated her version. The defendant contended that, at the time of the alleged rape, he engaged in consensual sexual activity with the complainant, as part of a longstanding relationship that included consensual sexual contact. The defendant stated that the complainant had sent him intimate pictures and that there was a history of sexual correspondence between them.[175]

During a documented confrontation, the complainant maintained her version, insisting on its accuracy. Simultaneously, the defendant steadfastly adhered to his account, consistently contending that they had an ongoing consensual sexual relationship, until and including the day of the incident. The defendant noted that his statements were supported by Facebook correspondence and recounted an incident involving a mistaken pregnancy scare.[176] Throughout the confrontation, the complainant accused the

[171] Report of the Institute for Safety in the Criminal Justice System 2020-2022, *supra* note 92, at 24 – 25.
[172] *Id.*
[173] *Id.* at 26-27.
[174] *Id.*
[175] *Id.*
[176] *Id.*

defendant of dishonesty and displayed emotional distress. According to the complainant, their relationship was purely friendly, focused on Hebrew lessons that he gave her, and they corresponded strictly for that purpose until she terminated the relationship because of the defendant's alleged harassment.[177]

Both parties stated that they had deleted their correspondence, and no exchanged photos or any form of communication were discovered on their phones. When confronted with this absence of evidence, both the complainant and the defendant contended that they had changed phones. The complainant was requested to provide her old phone for inspection, but no relevant data were found on it. She maintained that she had deleted all correspondence between them. The defendant claimed that the screen on his old phone was broken.[178]

During the trial, at her primary interrogation, the complainant repeated her version. Two months later, however, a dramatic revelation unfolded during her cross-examination, documented in the hearing transcript. It came to light that there was correspondence on Facebook and an exchange of photos indicating a romantic relationship, directly contradicting her previous testimony. As noted below, the police and prosecution failed to restore it because of technical difficulties, but during the trial, the defense attorney found an expert who succeeded. The defense confronted the complainant with this evidence, revealing that she had lied in her statements to the police, during the confrontation with the accused, and in her court testimony.[179]

As the court observed, prior consensual sexual intercourse could still be consistent with the possibility of later rape, but it was undeniable that the complainant's testimony, which was the prosecution's primary evidence, contained significant falsehoods. The court directed the complainant to provide all the correspondence, to which she initially agreed but later stated that she had deleted the correspondence and

[177] *Id.*
[178] *Id.*
[179] *Id.*

could not retrieve it. Subsequently, the prosecution withdrew the charge.[180]

If the defendant was innocent and no rape occurred, the police failed to secure strong evidence (the Facebook correspondence) supporting his innocence. If, however, a rape did occur, the police failure to obtain the Facebook correspondence made it possible for the complainant to lie, ultimately undermining her testimony.[181]

(2) Why did it happen?

An indictment charging the defendant with rape was filed even though the police failed to locate the Facebook messages exchanged between the accused and the complainant. Despite the defendant consistently claiming the existence of correspondence that would prove a consensual romantic and sexual relationship, the police were unable to secure this evidence. Checking the phones was insufficient. The police should have been able to obtain the correspondence in the same way the defense attorney did later on.[182]

(3) How can similar incidents be prevented in the future?

(i) Police investigation to establish a defense claim

The initial concern raised during the hearing was whether the failure of the police to obtain the Facebook correspondence was due not only to technical difficulties but also to a potential bias against the defense claim made by the accused. Prosecutors on the team disagreed and argued that the police use to investigate defense claims with equal determination.[183]

The following safety recommendation was made: In cases involving crucial evidence, whether incriminating or exonerating, reliance on the technological capabilities of the local investigative body may be insufficient. Seeking assistance from the investigative unit with the highest technological knowledge and expertise is advisable.[184]

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[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.*
[184] *Id.*

(ii) Reliance on a single piece of evidence

Until it was exposed during her cross-examination at court that the complainant had lied, both the police and the prosecution accepted her complete testimony, including her denial of the consensual intimate relationship.[185] Numerous studies have shown that police investigators, prosecutors, and judges lack reliable tools to distinguish between truth and falsehood.[186]

A safety rule was suggested that convictions should not be based exclusively on any single piece of evidence, given the potential for false positives in all types of evidence. This proposal remains contentious, however, particularly in cases of sexual assault where the central issue revolves around the question of the victim's consent.[187]

(iii) Translation

Serious problems with translation and understanding of the witness's statements arose during the cross-examination of the complainant, pointing to a recurring issue. It is imperative to explore potential solutions to address this problem.[188]

(g) Summary of the discussion of the seventh event[189]

(1) What happened?

A woman approached the police with a complaint against her friend's husband, the "accused," alleging violence against her friend, the "alleged victim". The investigators interviewed the alleged victim, who initially testified that her husband did not physically harm her. Despite her consistent denial, interrogators persisted with repeated questioning, both at her residence and various police stations, exerting pressure and even resorting to threats. During one of the testimonies, the alleged victim claimed spousal violence, only to later revert to her original statement. The accused was subsequently charged with assault

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[185] *Id*.
[186] *See* sources cited *supra* note 118.
[187] Report of the Institute for Safety in the Criminal Justice System 2020-2022, *supra* note 92, at 26 – 27.
[188] *Id*.
[189] *Id*., at 28-29.

causing injury and multiple offenses of spousal assault.[190]

During the trial, it was revealed that the testimony of the alleged victim's friend was problematic. The testimony of the alleged victim herself was highly unreliable. She was ultimately identified as a chronic liar. Her history included false claims of severe violence by her father, a non-existent abortion, and even the forgery of a medical document. Subsequently, it was discovered that she had experienced postpartum depression. As a result of these revelations, the court acquitted the accused.[191]

(2) Why did it happen?

The discussion addressed common challenges in cases of spousal violence, where the phenomenon of a battered woman retracting her testimony is common, and false complaints between spouses also occur. It was alleged that the interrogators pressured the alleged victim to testify against her husband and used threats. In response to inquiries from the defense counsel, one of the investigators acknowledged saying to the alleged victim: "I must impress upon you the seriousness of withholding information. Based on the investigation material in my possession, you have bruises that were not caused by a fall. There are consequences to withholding information".[192]

The alleged victim, as supported by the defendant's defense attorney, attempted to retract her testimony against her husband but the investigators and prosecutor were unresponsive. According to the defendant and defense attorney, the investigators failed to pursue paths that could prove innocence and misled the defendant, ultimately leading to the indictment.[193]

(3) How can similar incidents be prevented in the future?

(i) Police investigator's pressure on witnesses to testify

The discussion addressed the mistaken belief held by some police investigators that pressuring a wife

[190] *Id.*
[191] *Id.*
[192] *Id.*
[193] *Id.*

to testify against her husband is justified in cases of spousal violence complaints, including resorting to serious threats. According to the alleged victim, threats included the possibility of arrest and losing custody of her child. The testimony of one investigator also shows that this pressure tactic has been used systematically: "One should not ignore the testimony of Investigator X, who testified that sometimes a wife who complains of domestic violence must be persuaded to testify against the husband".[194]

The following safety recommendation was made: Avoid pressuring individuals who are alleged victims of a crime to testify; in particular, police investigators should refrain from using threats.[195]

(ii) Training police investigators

A comparison was made with another case where a mother of young children was detained for four days, under various pretexts, only to make sure that on the fourth day she would be in court to testify against her husband. It was suggested that police investigators should be taught that not all means are justified in an interrogation. If the attempt to protect a woman from her husband requires threats, or even arrest, a more balanced and less paternalistic approach should be adopted to avoid harming the victim in the process.[196]

(iii) Changing the version of a witness in the police investigation

When the alleged victim attempted to retract her sole testimony of violence, the investigator and prosecutor were inattentive, as she later indicated. It was noted that, according to Israeli case law, a defense attorney should be notified if there is a significant change in the testimony of a witness before a prosecutor.[197]

(iv) Police should investigate defense claims

The defense attorney and even the judge were under the impression that the police did not thoroughly investigate defense claims. It was suggested to instruct police investigators that they should investigate

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[194] *Id.*
[195] *Id.*
[196] *Id.*
[197] *Id.*

defense claims with the same diligence they use to investigate prosecution claims. The objective is to seek the truth, even if it results in an acquittal. The police should support suspects and openly explore investigative paths that could demonstrate innocence.[198]

(v) Avoiding deceptive tactics in interrogations; Reid vs. PEACE

It was recommended that interrogators avoid lying to suspects.[199] There was a suggestion to abandon the aggressive Reid interrogation method, favoring instead the PEACE method of interrogation.[200]

(h) Summary of the discussion of the eighth event[201]

(1) What happened?

A police officer was dispatched to a home where a man attempted suicide after a dispute with his wife. The woman stated that the previous evening her husband had assaulted and strangled her, leading to an investigation against him. Two friends of the couple testified that they witnessed the husband's assault on the wife. All four were intoxicated during the incident. The woman had sought medical assistance at a hospital, but the medical report revealed no significant findings. Notably, she did not complain on the evening of the alleged attack, only did so after her husband's suicide attempt and the police officer's call.[202]

The husband was arrested and faced charges of assault and false imprisonment for briefly blocking the exit from the house. He claimed that his actions were driven by fear that the woman might leave and not return, and he wanted to persuade her to stay at home.[203]

During the investigation, attempts were made to obtain security camera footage from the municipality, who responded that the cameras in the area were not directed toward the incident area. The prosecutor was

[198] *Id.*
[199] *Id.*
[200] *See supra* note 170 and accompanying text.
[201] Report of the Institute for Safety in the Criminal Justice System 2020-2022, *supra* note 92 at 30-31.
[202] *Id.*
[203] *Id.*

dissatisfied with this response. He knew the location and suggested checking cameras from nearby businesses. Eventually, footage from a kiosk near the scene revealed that the husband didn't assault his wife; instead, he was heavily intoxicated and the woman had violently attacked him while they were standing near her car. Consequently, the husband was released, and charges were brought against the wife for assault and perjury. She pleaded guilty as part of a plea bargain and was convicted.[204]

It is plausible to assume that if the security camera footage had not been found, the husband might have been falsely convicted either through a plea bargain or after presenting the misleading evidence in court.[205]

(2) Why did it happen?

The husband's arrest and the preparation of an indictment accusing him of assault and false imprisonment may have been influenced by the interpretation of his statement during interrogation. When he mentioned that he did not remember the events because he was drunk, the interrogators perceived it as a lie. The husband denied the accusation of strangling his wife, stating, "There can be no such thing." The interrogator challenged him, asking, "How do you know there can't be such a thing if you don't remember anything?" The husband insisted, "I'm not that kind of person." While the interrogators viewed this as deception, alternative explanations, such as a desire to protect his wife or shame for being assaulted by her, could be considered.[206]

The woman's complaint and the testimonies of the two witnesses were riddled with falsehoods. Under Israeli law, these testimonies alone could have led to the husband's false conviction.[207]

(3) How can similar incidents be prevented in the future?

(i) Releasing investigators from the conception of the suspect's guilt

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[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.*

Investigators should beware of adopting the conception of the suspect's guilt, often referred to as "tunnel vision." This mindset assumes the suspect's guilt and focuses on finding evidence to support this assumption. In this case, the police investigators eventually moved away from this concept, but it occurred late in the process. It is essential to remain vigilant against tunnel vision because there are instances where this shift in perspective may not occur.[208]

(ii) Investigator challenging the primary line of inquiry

A proposal was suggested to designate an investigator whose responsibility would be to try to refute the emerging investigative thesis and consider alternative hypotheses.[209]

(iii) Reid vs. PEACE investigation

A suggestion was made to transition from the aggressive Reid interrogation method to the PEACE interrogation method.[210] (Not all team members endorsed this proposed shift).[211]

(iv) Witness interrogation techniques

The witnesses should have undergone more thorough questioning. Significant contradictions exist between their testimonies, such as the woman's claim that one of the witnesses had left the scene before the incident. It was a mistake to depend on these witnesses, especially considering their intoxicated state at the time of the event.[212]

The following safety recommendation was made: Regardless of whether witnesses align with the police hypothesis, it is important to conduct meticulous questioning and avoid hastily relying on their testimonies.[213]

(v) Reasonable effort to find additional evidence

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[208] *Id.*
[209] *Id.*
[210] *See supra* note 170 and accompanying text.
[211] Report of the Institute for Safety in the Criminal Justice System 2020-2022, *supra* note 92 at 30-31.
[212] *Id.*
[213] *Id.*

The following safety rule was suggested: Even when multiple pieces of evidence collectively appear adequate for conviction, it should not be deemed sufficient. Every reasonable effort must be exerted to uncover additional evidence, whether supportive of innocence or guilt.[214]

Research findings indicate that all evidence is prone to errors.[215] Legal standards mandate proof of guilt beyond a reasonable doubt, approaching a level of certainty. As known in the philosophy of science, if one seeks exclusively evidence that supports a non-scientific theory, it will inevitably be found.[216] Therefore, the theory must be subjected to attempts at refutation. Even when a hypothesis claims that the suspect committed an offense, merely having supporting evidence is insufficient to prove it. Efforts should be made to uncover additional evidence capable of challenging this hypothesis.[217]

In the present case, adherence to this safety rule (designated as rule V) seems to have played a key role in locating footage of the incident through a security camera, preventing a wrongful conviction. But this outcome appears more like a stroke of luck than the result of a systematic and organized safety approach. It is recommended to introduce such cases to police investigators and prosecutors.[218]

Some team members noted that they already implemented this in practice, but the essence of safety rules lies in formalizing and ensuring universal compliance, irrespective of individual practices.[219]

(vi) Professionality

The commendable actions of the prosecutor and investigator, which resulted in obtaining crucial video evidence of the incident, deserve recognition. The praise they received in the course of the investigation and police prosecution is significant from a safety

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[214] *Id*.
[215] *See* SANGERO, *supra* note 1, at 57 – 64.
[216] *See* KARL R. POPPER, CONJECTURES AND REFUTATIONS 33 (1969).
[217] *See* Report of the Institute for Safety in the Criminal Justice System 2020-2022, *supra* note 92 at 30-31.
[218] *Id*.
[219] *Id*.

perspective. It attests to the importance of cultivating in investigators an ethos of seeking the truth, even if it means establishing the innocence of the suspect. The safety rule designated as rule V aims to formalize and systematize such actions for consistent application.[220]

3. Discussion of the Safety Team Recommendations

During the first two years of activity, the team members proposed eight incidents for consideration. Because of the team's composition, these incidents varied in severity, ranging from serious crimes handled by the District Public Prosecution and falling under the jurisdiction of the District Court, such as murder and rape, to less severe offenses, handled by the District Police Prosecution Department, within the jurisdiction of the Magistrates' Courts. The primary offenses in each one of these incidents were (respectively): robbery, burglary (with a separate assault), murder, theft or possession of suspected stolen property, robbery, rape, assault of a spouse, and assault of a spouse with false imprisonment (later amended to assault of the other spouse and perjury). Despite their differences, all these cases shared a common characteristic: they represented situations close to convicting an innocent person, making them incidents (near-misses) from a safety perspective.

The primary and recurrent recommendation, observed in most cases, was to refrain from basing a conviction on a single pivotal piece of evidence. This issue surfaced in five out of the eight incidents,[221] with two cases involving dependence on the defendant's confession and two cases relying on eyewitness identification testimony. Recognizing the imperfection of all types of evidence and the inherent risk of false positives, it was suggested to introduce a safety rule into the rules of evidence, explicitly prohibiting convictions based on a single key piece of evidence.

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[220] *Id*.

[221] Incidents: 1, 2, 4, 5, 6. ("the first incident", "the second incident", "the fourth incident", "the fifth incident", and "the sixth incident").

The proposed rule is supported by extensive legal literature.[222] Studies reveal a notable rate of convictions of innocent, estimated to range between 5% and 10%.[223] Research also reveals a substantial incidence of false confessions[224] and inaccurate eyewitness identifications.[225] Assuming a conservative rate of only 10% for false identification evidence (a modest estimate considering studies indicating that approximately one-quarter of eyewitness identification lineups lead to mistaken identifications),[226] and similarly, a conservative 10% rate for false confessions (considering the pressures exerted during police investigations using the widely accepted Reid method in Israel and the US),[227] we can envision the following scenario: Imagine being a judge deciding a hundred cases where the accused has been identified by an eyewitness. The files are divided into two piles, where one contains the few files in which, aside from the eyewitness testimony, there is no other significant evidence, and the other pile contains many files where, in addition to the eyewitness testimony, there exists other substantial evidence like DNA matching or fingerprint matching. Assuming that ten of the hundred identification testimonies are erroneous (based on the conservative 10% assumption), the doubt should logically focus on the pile of files where only eyewitness testimony exists. This is because in the

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[222] *See, e.g.* Boaz Sangero & Mordechai Halpert, *Why a Conviction Should Not Be Based on a Single Piece of Evidence: A Proposal for Reform*, 48 JURIMETRICS J. 43 (2007).
[223] *See* BOAZ SANGERO, SAFETY FROM FALSE CONVICTIONS 2–14 (2016).
[224] *See* Richard A. Leo & Richard J. Ofshe, *Missing the Forest for the Trees: A Response to Paul Cassell's 'Balanced Approach' to the False Confession Problem* 74 DENV. U. L. REV. 1135 (1997); *see also* Rinat Kitai-Sangero, *Can Dostoyevsky's Crime and Punishment Help Us Distinguish Between True and False Confessions?* 9 OHIO ST. J. CRIM. L. 231 (2011); *see also* Saul M. Kassin et al., *"I'd Know a False Confession if I Saw One:" A Comparative Study of College Students and Police Investigators*, 29 L. & HUM. BEHAV. 211 (2005); *see also* Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051 (2010).
[225] COMM. ON SCI. APPROACHES TO UNDERSTANDING & MAXIMIZING THE VALIDITY & RELIABILITY OF EYEWITNESS IDENTIFICATION IN L. ENF'T & IN CTS. ET AL., IDENTIFYING THE CULPRIT: ASSESSING EYEWITNESSES IDENTIFICATION, https://did.li/4Pnrl (Nat'l Acad. of Scis. ed., 2014).
[226] *Id.*
[227] Sangero, *supra* note 65.

files in the second pile, the presence of significant additional evidence makes errors less likely. The pile of cases relying exclusively on eyewitness testimony is where most of the erroneous identifications are concentrated. Because this pile is small, yet it includes most of the erroneous identification cases, the likelihood of a false conviction is high, far above 10%. Consequently, a conviction based on a single key piece of evidence with a significant error rate could indeed result in a false conviction.

Applying the same reasoning, consider a hundred cases where the defendant's confession during police interrogation is the main evidence. The outcome and conclusion align with those derived from the analysis of eyewitness accounts. Another way to interpret this conclusion is a probabilistic one; it is of immense significance that despite concerted efforts by the police and the prosecution to uncover additional evidence, none was found. The likely reason for the absence of other significant evidence is probably the misidentification of the individual, given that the eyewitness testimony is erroneous (or the confession a false one). This perspective is supported by conventional mathematical calculations, using Bayes' theorem. These calculations underscore the importance of considering not only the primary evidence but also the presence or absence of additional evidence and the "base rate" in reaching a more accurate judgment.[228]

In conclusion, let us shift our perspective to the opposite direction: we have examined eight safety incidents chosen for discussion because of their proximity to an accident involving the conviction of innocent individuals, by various actors in the criminal justice system: police investigators, prosecutors, and defense attorneys. Although the apparent causes of hazard were different in the eight cases, a glaring statistical fact remains evident: in the majority of instances (five out of eight, 62.5%), there was only one substantial piece of evidence. This points to a serious hazard associated with convictions reliant on a single key piece of evidence and attests to the need to establish an evidentiary rule that would preclude such practices.

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[228] Sangero & Halpert, *supra* note 222.

This would constitute a momentous stride toward enhancing the safety of the criminal justice system.

A second prominent recommendation by members of the safety team, echoed in several of the discussed safety incidents, concerns the need to enhance the translation and documentation of statements made by individuals during police interrogations. Issues related to translation errors or inaccurate recording, which posed a serious risk of convicting innocent people, were identified in four of the eight cases examined.[229] The concrete suggestions included vigilance regarding translation errors and cultural biases in the case of non-Hebrew-speaking witnesses; reliance on proficient interpreters only; engagement of an interpreter on behalf of the defense attorney; video recording of all interrogations for offenses punishable by imprisonment; documentation of interrogations conducted outside police facilities; avoidance of reliance on the investigator's record, opting instead for the direct use of recording, a full transcript of the interrogation, or at the very least, conducting sample comparisons; and the encouragement of detainees to write their own confessions.

A third pivotal recommendation, also recurring in four of the eight safety incidents,[230] concerned the role of the police in aiding suspects and defendants in reconstructing alibis or obtaining other exculpatory evidence, such as security camera footage. In one instance, the court believed that the police had not thoroughly investigated a defense claim, a sentiment shared by some team members in other cases. It is crucial to instill in investigators the importance of seeking the truth and the commitment to obtaining all relevant evidence, whether incriminating or exonerating.

A fourth key recommendation, reiterated in three of the five incidents,[231] advocates the abandonment of the outdated American method of aggressive interrogation, Reid, in favor of the advanced English method, PEACE. The Reid method involves a brief

[229] Incidents 3, 4, 5, 6.
[230] Incidents 5, 6, 7, 8.
[231] Incidents 5, 7, 8.

interview phase where investigators form an opinion on the suspect's guilt having ostensibly identified deceptive signs in the suspect's behavior, followed by an interrogation stage that assumes the suspect's guilt. During this stage, aggressive tactics are used, such as attempting to extract a confession by shouting, preventing denial, false claims about the existence of evidence against the suspect, even forensic scientific evidence, and extended interrogations with multiple investigators. By contrast, the advanced PEACE interrogation method involves actively listening to the suspects' complete version before confronting them with the evidence in police possession, asking questions like "How do you explain this evidence?" This method avoids the use of deception about non-existent evidence. Research, real-world experiences, and logical considerations indicate that the Reid method is prone to eliciting numerous confessions, a substantial portion of which may be false. An increasing number of countries are transitioning to the PEACE method of interrogation.[232]

Two safety recommendations were reiterated on separate occasions. The first advises caution against the conception that the suspect is guilty and the ensuing effort to find evidence supporting this assumption ("tunnel vision"), and notes the importance of avoiding a biased investigation aiming to support a misconception.[233] The second concerns the significant challenge, bordering on impossibility, of determining truthfulness in statements and encourages seeking additional evidence to avoid relying only on one's inherently problematic judgment prone to errors.[234]

Finally, certain recommendations are highlighted in conjunction with specific incidents:

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[232] For a detailed comparison between these two methods of interrogation, see: SIMON, *supra* note 170; Boaz Sangero, *Police Investigation and False Convictions*, in Wrongful Convictions and the Criminalization of Innocence: International Perspectives on Contributing Factors, Models of Exoneration and Case Studies (Editors: Kathryn M. Campbell, Anat Horovitz, Irwin Cotler and Barak Ariel (forthcoming 2025, Hart Publishing – Routledge).
Not all team members endorsed this recommendation.
[233] Incidents number 1 and 8.
[234] Incidents number 2 and 5.

Exercise caution regarding a combination of flawed evidence, acknowledging that the flaws in each piece of evidence should not be dismissed lightly, even when other evidence is present;[235] Be vigilant to avoid generating erroneous evidence that could lead to a false conviction, such as conducting an identification lineup without significant evidence against the suspect;[236] Exercise caution in decisions regarding remand until the end of proceedings, ensuring that the duration does not exceed the expected prison sentence for the defendant, even if convicted;[237] Promote awareness of safety incidents among police investigators, prosecutors, defense attorneys, and judges for continuous learning;[238] Refrain from providing experts asked to perform scientific examinations with information from the investigation file that may introduce cognitive bias (Consider allowing such information only after the initial opinion has been given);[239] Do not forgo written summaries, as they are much clearer compared to the transcript recording oral summaries;[240] Attach great importance to the fact that the suspect confessing did not know hidden details from the crime scene ("inside information");[241] Discourage the practice of pressuring wives to testify against their husbands in domestic violence cases.[242]

In summary, for the convenience of the readers, a table is provided below summarizing the key recommendations, with references to the events on which the discussions are based.

Table of the Key Safety Recommendations of the Criminal Justice Safety Team:

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[235] Incident number 1.
[236] *Id.*
[237] Incident number 2.
[238] Among the objectives of the present article was to adopt to the criminal justice system this widely accepted safety recommendation – promoting awareness of safety incidents among all relevant stakeholders for continuous learning - as prevalent in various fields of advanced safety, like aviation, transportation, engineering, work environments, and medicine.
[239] Incident number 3.
[240] Incident number 4.
[241] Incident number 5.
[242] Incident number 7.

The Team's recommendation	**Number of events in which this recommendation recurred**	**The events and offenses**	**Additional characterization of the events**
Avoiding conviction based on a **single key piece of evidence**	5	1 (robbery) 2 (burglary and assault) 4 (theft or possession of suspected stolen property) 5 (robbery) 6 (rape)	Two cases of **confession** (4 and 5); and two cases of **eyewitness** testimony (1 and 2).
Improving the translation and documentation of statements made by suspects during police interrogations	4	3 (murder) 4 (theft or possession of suspected stolen property) 5 (robbery) 6 (rape)	
The police should assist suspects and	4	5 (robbery) 6 (rape) 7 (assault of a	

defendants in reconstructing alibis or obtaining other exculpatory evidence		partner) 8 (assault of a partner and false imprisonment)	
Abandoning the Reid interrogation technique and transitioning to the PEACE interrogation method	3	5 (robbery) 7 (assault of a partner) 8 (assault of a partner and false imprisonment)	

Conclusion

The state has a moral and potentially a legal obligation to allocate the necessary resources to protect its citizens from errors in criminal law, particularly the wrongful conviction of innocent people. Inflicting systematic injustice on its citizens is an unparalleled transgression by a liberal state. To effectively address this systematic injustice, it is necessary to implement comprehensive safety measures. As part of the social contract, citizens have consented to empower the state with the authority to convict and penalize those found guilty, with the understanding that innocent people would not face unwarranted convictions, especially when avoidable. This agreement gains greater significance considering the insufficient efforts made so far to prevent this grave phenomenon. Moreover, from an economic perspective, it is justifiable to invest resources in enhancing safety measures. The substantial costs associated with false convictions, including the serious harm inflicted on wrongfully convicted individuals, their families, and associates, as well as the extensive expenses incurred in unnecessary investigations, charges, trials, and incarcerations, demonstrate the importance of proactive investment in preventing such miscarriages of justice. Additionally, there are significant societal costs arising from the continued freedom of those truly guilty. Justice Learned Hand's renowned principle, considering negligence as the failure to prevent harm when the costs of prevention are lower than the resulting damage,[243] shows how important it is for the state to take resolute action to minimize the occurrence of wrongful convictions. This principle serves as a guiding force, compelling the state to prioritize measures that mitigate the risks of convicting innocent people, aligning with the fundamental principles of justice and fairness.

Hence, we advocate for the establishment of a National Institute for Safety in the Criminal Justice System (NISCJS), endowed with authority and resources for systematic and continuous efforts. Within

[243] United States v. Carroll Towing Co., 159 F.2d 169 (2d Cir. 1947) (L. Hand, J.); WILLIAM M. LANDES & RICHARD A. POSNER, THE ECONOMIC STRUCTURE OF TORT LAW 85–88 (1987).

the responsibilities of the Institute, we propose to deploy criminal justice safety teams across different districts of the country. The existing criminal justice safety team, currently functioning under the auspices of Western Galilee Academic College and reviewed in this article, is envisioned as a precursor of a more extensive initiative. Government-backed endeavors are anticipated to exert a far-reaching influence.

Initially, safety considerations should be seamlessly integrated into the operational framework of every law enforcement agency, moving beyond the current voluntary approach. *Second*, the highest-ranking officials in various districts, including the Prosecutor General, the Police Prosecutor's Office, the Public Defender's Office, and the Police Investigations Division should actively engage in safety initiatives. *Third*, departing from the current practice where sitting judges are not involved in safety endeavors, the establishment of a safety team within the official structure of the NISCJS may justify and mandate judges to participate in these efforts. *Fourth*, the systematic deployment of safety teams across all districts will yield numerous discussions on various safety incidents, resulting in many significant recommendations. These will result in the creation of a substantial database, facilitating research, legislative proposals for enhancing the existing framework, and the formulation of exemplary and secure operational procedures (best practices) to be adhered to by all stakeholders in the criminal justice process, particularly police investigators, forensic experts, prosecutors, and defense attorneys.

Fifth, the documented safety incidents, together with the recommendations provided by the various teams, especially those endorsed by the NISCJS following the comprehensive processing of data produced by these teams, will be disseminated and leveraged to foster a safety culture. This includes integrating safety instructions into the training curricula of relevant programs, starting with their initial training of officials for their roles and continuing with periodic safety training as a prerequisite for career advancement. *Sixth*, recognizing that a culture of safety is the result of a developmental process, the active engagement of safety teams, even before the

formulation of specific safety recommendations, is anticipated to instigate a climate and culture of safety. This was evident in the discussions of the current safety team: the collaborative engagement of professionals, typically in professional competition, around a common table to address the improvement of the safety of the criminal justice system has already significantly contributed to cultivating a safety culture.

The criminal justice system should adopt a similar approach to that of other domains, such as aviation, transportation, engineering, labor, and medicine, where the importance of safety is universally acknowledged and everyone is involved in its promotion. Preventing the conviction of an innocent person is a shared responsibility, analogous to preventing a fighter plane crash, a vehicle rollover, a bridge collapse, a fall of a worker from scaffolding, or an amputation of the wrong limb during surgery.