



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

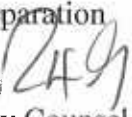
MARY C. WICKHAM
County Counsel

November 7, 2017

TELEPHONE
(213) 974-1609
FACSIMILE
(213) 626-2105
TDD
(213) 633-0901
E-MAIL
rgranbo@counsel.lacounty.gov

TO: LORI GLASGOW
Executive Officer
Board of Supervisors

Attention: Agenda Preparation

FROM: ROGER H. GRANBO 
Senior Assistant County Counsel
Executive Office

RE: **Item for the Board of Supervisors' Agenda**
County Claims Board Recommendation
Frank O'Connell, et al. v. County of Los Angeles, et al.
United States District Court Case No. CV 13-01905 MWF

Attached is the Agenda entry for the Los Angeles County Claims Board's recommendation regarding the above-referenced matter. Also attached are the Case Summary and Summary Corrective Action Plan to be made available to the public.

It is requested that this recommendation, the Case Summary, and the Summary Corrective Action Plan be placed on the Board of Supervisors' agenda.

RHG:ds

Attachments

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation: Authorize settlement of the matter entitled Frank O'Connell, et al. v. County of Los Angeles, et al., United States District Court Case No. CV 13-01905 MWF in the amount of \$15 million and instruct the Auditor-Controller to draw a warrant to implement this settlement from the Sheriff's Department's budget.

This lawsuit against the County of Los Angeles and the Sheriff's Department alleges federal civil rights violations for an arrest, conviction, and 27-year incarceration for a murder Plaintiff alleges he did not commit.

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Frank O'Connell, et al. v. County of Los Angeles, et al.
CASE NUMBER	CV 13-01905 MWF
COURT	United States District Court
DATE FILED	April 23, 2013
COUNTY DEPARTMENT	Sheriff's Department
PROPOSED SETTLEMENT AMOUNT	\$ 15 million
ATTORNEY FOR PLAINTIFF	Ronald O. Kaye, Esq. Kaye, McLane, Bednarski & Litt, LLP
COUNTY COUNSEL ATTORNEY	Jonathan McCaverty Principal Deputy County Counsel
NATURE OF CASE	<p>This is a recommendation to settle for \$15 million, to be paid over two fiscal years, inclusive of attorneys' fees and costs, a federal civil rights lawsuit filed by Frank O'Connell and his son, Nicholas O'Connell, arising out of Mr. O'Connell's arrest, conviction, and 27-year incarceration for a 1984 murder he alleges he did not commit.</p> <p>Given the risks and uncertainties of litigation, a reasonable settlement at this time will avoid further litigation costs. Therefore, a full and final settlement of the case in the amount of \$15 million is recommended.</p>
PAID ATTORNEY FEES, TO DATE	\$ 245,907
PAID COSTS, TO DATE	\$ 63,699

Case Name: Frank O'Connell v. County of Los Angeles, et al.



Summary Corrective Action Plan

The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

Date of incident/event:	January 5, 1984
Briefly provide a description of the incident/event:	<p><u>Frank O'Connell v. County of Los Angeles, et al.</u> Summary Corrective Action Plan 2017-021</p> <p><u>MURDER INVESTIGATION</u></p> <p>On January 5, 1984, a male (later referred to as victim) was murdered when he was shot two times while in the parking lot of his apartment complex in South Pasadena, California, where he resided with his wife. The victim was pronounced dead at the scene.</p> <p>The victim's wife informed detectives that the victim had been engaged in a long-standing disputed custody battle over a son he had in common with his ex-wife.</p> <p>Sheriff's Department homicide detectives located a sole witness to the parking lot murder who had an unobstructed view of the shooter from only 20 feet away. The witness told detectives that the shooter was a tall white male between 6'0" to 6'3", in his mid-30's with brown hair.</p> <p>The witness told detectives that after the victim was shot and the suspect had fled the scene, he heard the victim state that the shooter was the "guy in the yellow Pinto." The witness said the last words the victim stated before he died were, "[t]his had something to do with (ex-wife's first name, name omitted)."</p> <p>During the homicide investigation, the detectives also spoke with a security guard that lived across the street from the ex-wife and her new husband (who had no connection to the victim or plaintiff). The security guard informed the detectives that the plaintiff asked him to jump start a yellow Pinto on multiple occasions. The security guard further informed the detectives that he had seen the plaintiff romantically hug and kiss the ex-wife in her front yard during the daytime, when her new husband was at work.</p> <p>During the course of the investigation, the ex-wife was interviewed and the detectives learned that the plaintiff had moved in with her and had an affair with her during the prior summer. The detectives also learned that the ex-wife had told friends that she wanted the victim killed in order to gain custody of her son.</p> <p>When detectives presented the witness with a six-photo photographic array¹, including a picture of the plaintiff, the witness identified the plaintiff as the person that had shot and killed the victim.</p>

¹ A photographic array has also been known as a "photographic line-up" or a "6-pack line-up."

CRIMINAL TRIAL

The plaintiff was arrested and elected to have a bench trial, rather than a jury trial.

At both the preliminary hearing and bench trial, the witness testified that nothing obstructed his view of the murder and he positively identified the plaintiff as the shooter.

Neither the weapon used in the murder nor the vehicle were recovered. The critical element in the criminal trial was the positive identification of the plaintiff by witnesses.

On April 6, 1985, the plaintiff was convicted of the victim's murder and he was sentenced to 25 years to life in prison.

CENTURION MINISTRIES INVESTIGATION

While in prison, the plaintiff came in contact with representatives from Centurion Ministries, an investigative organization that considers cases of factual innocence. Centurion Ministries investigated the plaintiff's case and began their investigation into witness identification and testimony, the criminal investigation, criminal trial proceedings, and evidence that was not disclosed.

EXCULPATORY INFORMATION NOT DISCLOSED DURING TRIAL

Centurion Ministries identified the following issues in the murder investigation that were not disclosed² to the plaintiff's criminal defense counsel prior to or during the plaintiff's murder trial:

- An internal South Pasadena Police Department memorandum was not turned over to the plaintiff's criminal defense counsel during the murder trial. The memorandum addressed an anonymous phone call that was received in 1984. The phone call information was then forwarded from South Pasadena Police Department to a sergeant with the Altadena Sheriff's Station. A male who claimed that the victim's ex-wife had paid to have him killed after she learned that the victim had been awarded custody of their son. The caller indicated that the ex-wife had paid a male in Oregon \$7,000, who in turn paid a man (name omitted) \$5,000 to do the job (along with accomplices). The caller provided a Pasadena address for the possible suspect. Documents generated during the underlying murder investigation indicate that the lead was investigated and presumably determined to be a dead end.
- The detectives' notes indicating that the security guard was actually hesitant to identify the plaintiff as having driven a yellow Pinto.
- During the homicide investigation, the victim's wife advised the homicide detectives that the victim's ex-wife and another man had

² The plaintiff's counsel contended that withholding information regarding the victim's wife report of the prior attempt murder against the victim was a violation of *Brady* (*Brady v. Maryland* [1963] -- *Established that the prosecution must turn over all evidence that might exonerate the defendant to the defense. The failure to do so was determined to be contrary to the Due Process Clause of the 14th Amendment to the United States Constitution*).

made a prior attempt to kill the victim approximately five years earlier. The previous attempt murder occurred shortly after the victim had received full custody of the son they had in common.

During the previous attempted murder, the victim was riding home from work on his motorcycle when he was confronted on the road by a vehicle driven by a man, with his ex-wife being the passenger. The vehicle drove erratically and dangerously close to the victim and attempted to cause the victim to drive off the road and/or crash.

Notes in the detectives' files indicate that the known driver involved in the previous attempt murder on the victim could not be tied to the murder of the victim due to:

- The man was released from jail in Oregon state, the day before the murder.
- The man's description with a height of 5'9" with a full beard did not match the witness' description of the shooter of 6'0" - 6'3", with brown hair.

Note: When the homicide detectives showed the witness the photographic array including the plaintiff's photo, they did not include a picture of the man involved in the prior murder attempt.

Note: Although there was a claim that the homicide detectives did not provide exculpatory evidence to the plaintiff's criminal defense counsel, during civil deposition the plaintiff's criminal defense counsel admitted to having notes in his own handwriting with the name of the known driver involved in the previous attempt murder on the victim and knowledge of his status as being in custody in Oregon state. The plaintiff's criminal defense counsel also stated there was a request for an investigation into travel plans between Oregon and Los Angeles to see if travel was feasible. The outcome of the inquiry was solely to determine the possibility of travelling between Oregon and Los Angeles to commit the murder. It is unknown what outcome was reached by the investigation by the defense counsel.

HABEAS CORPUS PROCEEDINGS

Approximately 20 to 25 years after the criminal investigation, the witness was contacted by a civilian investigator from Centurion Ministries who had been investigating the validity of the plaintiff's conviction. Although the witness had stood firm about his identification of the plaintiff throughout the trial, after being contacted by Centurion Ministries in 2008, the witness recanted his testimony regarding identifying the plaintiff as the shooter.

Based on the results of the Centurion Ministries investigation, the plaintiff's attorneys filed a *writ of habeas corpus*.

During the *habeas corpus* proceedings in 2011, the witness advised the court that although the homicide detectives were professional "at all times," he felt pressured to make an identification when presented with the photographic array. The witness thought the detectives would not leave unless he picked someone out. The witness made no indication that the detectives engaged in any coercive or intimidating tactics to identify a specific photograph in the photographic array.

The witness testified at the *habeas corpus* proceedings that the only reason he testified that he was certain in his identification of the plaintiff during the murder trial was that during the showing of the photographic array to him, he pointed to the plaintiff's photo and asked the detectives "Is this him?" After which, the detectives told him that he picked "the right guy" and told him about a love affair the plaintiff had with the victim's ex-wife. The witness also testified that in his presence, one of the detectives called and advised another Department member that the witness picked "the right guy." If not for the detective's statements, the witness claims he was uncertain in his identification of the plaintiff in the photographic array.

On March 29, 2012, a state court granted the plaintiff's petition for writ of *habeas corpus*, holding: (a) suggestive identification procedures may have influenced the identifications; and (b) the previously undisclosed detectives' notes regarding the prior attempt on the victim's life rose to the level of constitutional violations.

After the Los Angeles County District Attorney's Office declined to re-prosecute the plaintiff, he was released after having spent over 27 years in prison.

1. Briefly describe the **root cause(s)** of the claim/lawsuit:

A **Department** root cause in this incident was that when the homicide detectives presented the witness with the photographic array they did not audio or video record the interaction.

A **Department** root cause in this incident was the absence of documentation to show that potentially exculpatory evidence (detectives' notes) had been disclosed to counsel by detectives.

An additional **Department** root cause in this incident was inadequate training and policies and procedures regarding suspect identification procedures and photographic arrays.

2. Briefly describe recommended corrective actions:
(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

Due to the fact that both involved homicide detectives are retired, with one of them being deceased, and they are no longer employees of the Department, the incident was not investigated by representatives of the Los Angeles County Sheriff's Department's Internal Affairs Bureau.

At the time of this incident, although suspect identification and photographic array practices and procedures had been developed and refined, they had not been written into policy.

On March 21, 2016, the Los Angeles County Sheriff's Department's Field Operations Support Services disseminated newly written Department policy related to suspect identifications, photographic arrays, and admonishment procedures. New Department policies were created to establish clear processes related to address:

- Suspect identification procedures.
- No undue influence on witnesses.
- Case notes or reports shall document the steps taken to uphold the integrity of the suspect identification procedures.

- Follow admonishment procedures.
- Audio or video recording of the witness admonishment process, as well as written documentation.
- Random suspect positioning within an array on cases with multiple witnesses.
- Not confirming or denying a witness' photographic selection.
- Encouraging witnesses not to discuss the photographic array process.
- Document a witness' response to photographic array.
- Showing photographic arrays to one witness at a time.

In addition, on April 11, 2016, the Los Angeles County Sheriff's Department's Field Operations Support Services sent notification to all Department supervisors who oversee investigative units, causing those who are already working in an investigative assignment to be made thoroughly aware of the policy and procedures for administering a photographic array.

Training Bureau currently teaches suspect identification procedures and photographic array procedures to all deputy sheriffs during academy training, as well as to detectives during Basic Investigations training.

On or before June 30, 2016, the Los Angeles County Sheriff's Department's Training Division, Advanced Officer Training, incorporated a training module to the Basic Investigator training course covering the new policies and procedures, as it relates to conducting photographic array identifications and admonishments.

On February 10, 2016, the Los Angeles County Sheriff's Department's Field Operations Support Services published and disseminated a Department Newsletter titled "Photographic Lineups." The Newsletter addresses photographic array procedures to maximize identification reliability to solve crimes, convict criminals, establish reliable evidence, and conform to current legal requirements.

Detective Division has developed a Discovery Check-Off form which detectives will utilize to list discoverable items that they turn over to counsel. The form will have a signature line for the handling deputy district attorney to acknowledge the items turned over in order to counter defense claims that potentially exculpatory evidence was not disclosed. The new form is in the final stages of approval by Department executives.

County of Los Angeles
Summary Corrective Action Plan

3. Are the corrective actions addressing Department-wide system issues?

- ☐ Yes – The corrective actions address Department-wide system issues.
☒ No – The corrective actions are only applicable to the affected parties.

Los Angeles County Sheriff's Department

Name: (Risk Management Coordinator)

Scott E. Johnson, Captain
Risk Management Bureau

Signature:

 155628

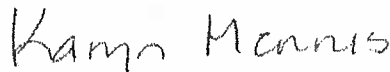
Date:

8-22-17

Name: (Department Head)

Karyn Mannis, Chief
Professional Standards and Training Division

Signature:



Date:

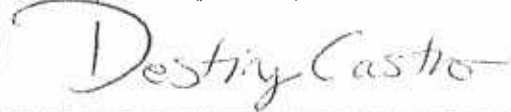
08-26-17

Chief Executive Office Risk Management Inspector General USE ONLY

Are the corrective actions applicable to other departments within the County?

- ☐ Yes, the corrective actions potentially have County-wide applicability.
☒ No, the corrective actions are applicable only to this Department.

Name: (Risk Management Inspector General)



Signature:



Date:

8/28/2017