



County of Los Angeles

May 7, 2024

Dawyn R. Harrison
County Counsel

Board of Supervisors

Hilda L. Solis
Supervisor, First District

Holly Mitchell
Supervisor, Second District

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Supervisor, Third District

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Kathryn Barger
Supervisor, Fifth District

TO: JEFF LEVINSON
Interim Executive Officer
Board of Supervisors

Attention: Agenda Preparation

FROM: ADRIENNE M. BYERS
Litigation Cost Manager

RE: **Item for the Board of Supervisors' Agenda
County Claims Board Recommendation
John Klene, et al. v. Doral Riggs, et al.
United States District Court Case No. 2:22-cv-08318**



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 Plans to be made available to the public.

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

AMB:lzs

Attachments

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation: Authorize settlement of the matter entitled John Klene, et al. v. Doral Riggs, et al., United States District Court Case No. 2:22-cv-08318, in the amount of \$24,000,000, and instruct the Auditor-Controller to draw a warrant to implement this settlement from the District Attorney's Office and Sheriff's Department's budgets.

This federal civil rights lawsuit against the Sheriff's Department and District Attorney's Office arises from the alleged wrongful conviction that resulted in Plaintiffs' incarceration for over 23 years.

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	John Klene, et al. v. Doral Riggs, et al.
CASE NUMBER	2:22-CV-08318
COURT	United States District Court
DATE FILED	November 14, 2022
COUNTY DEPARTMENT	Sheriff's Department & District Attorney's Office
PROPOSED SETTLEMENT AMOUNT	\$ 24,000,000
ATTORNEY FOR PLAINTIFF	Nick Brustin & Deirdre O'Connor
COUNTY COUNSEL ATTORNEY	Minas Samuelian Senior Deputy County Counsel
NATURE OF CASE	<p>This is a recommendation to settle for \$24,000,000, inclusive of attorneys' fees and costs, a federal civil rights lawsuit filed by John Klene and Eduardo Dumbrique, arising out of their arrest and conviction for the murder of Antonio Alarcon on June 28, 1997, and for which they were incarcerated for over 23 years.</p> <p>Given the high risks and uncertainties of litigation, a reasonable settlement at this time will avoid further litigation costs. The full and final settlement of the case in the amount of \$24,000,000 is recommended.</p>
PAID ATTORNEY FEES, TO DATE	\$ 210,317
PAID COSTS, TO DATE	\$ 11,679



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:	June 28, 1997
Briefly provide a description of the incident/event:	<p style="text-align: center;">Summary Corrective Action Plan 2023-163</p> <p>Based on the multiple investigative reports, on Saturday, June 28, 1997, before 11:00 p.m., the Decedent went to a tire store. At approximately 11:00 p.m., the Decedent exited the tire store to use a payphone (in front of the store) when the occupants of a slow-moving vehicle (Teal vehicle) opened fire, and fatally wounded the Decedent.</p> <p>A 9-1-1 call was placed from the tire store. Los Angeles County Fire Rescue responded, and pronounced the Decedent, deceased at 11:15 p.m.</p> <p>Hawthorne PD Officers arrived at the scene. And interviewed the witnesses at the location.</p> <p>Hawthorne PD's Initial Interview with Witness One:</p> <p>On June 28, 1997, Witness One indicated, he and the Decedent were inside of the tire store having a conversation while he worked on a vehicle. The Decedent asked if he could use his business telephone. Witness One replied, "No, because I need to keep the business line open." The Decedent walked outside to use the payphone. The Decedent was outside for a few seconds when he heard [gunshots].</p> <p>Through the open door, he saw a vehicle drive slowly [past] the open door. As the vehicle continued northbound, he could see the right rear passenger. The right rear passenger started shooting what he [assumed] was a firearm in a Southern direction, towards the payphone. Witness One took cover behind the vehicle he was working on but was able to see the vehicle leave the location.</p> <p>Witness One gave a brief description of the rear passenger. Witness One additionally stated, there were a total of 5 individuals inside of the vehicle (Two individuals in the front seat, and three in the backseat). Witness One stated he was unable to get a good look at the individuals inside of the vehicle.</p> <p>Hawthorne PD's Initial Interview with Witness Two:</p> <p>On June 29, 1997, Witness Two indicated he was inside of the tire store working on a vehicle along with the Decedent. Witness Two stated, the Decedent walked outside of the garage to use the payphone. Witness Two then heard, "F**k You, F**k You, then he heard approximately 17 gunshots.</p>

	<p>Witness Two walked outside to investigate the gunshots, when he observed the Decedent lying on the sidewalk. Witness Two observed 5 individuals in a black, 4-door vehicle speeding northbound away from the Decedent.</p> <p>Witness Two [got into his vehicle] and followed the fleeing vehicle, but lost sight of the vehicle due to unsafe speeds and maneuvers. Witness Two indicated he would be able to identify the vehicle, but not the occupants of the vehicle.</p> <p>Hawthorne PD's Initial Interview with Witness Three:</p> <p>On June 29, 1997, Witness Three stated, while inside of her residence, she heard approximately 10-12 gunshots. Witness Three believed the gunshots she heard came from within her neighborhood.</p> <p>Witness Three looked out of her kitchen window, she saw a black Honda Accord speed away from the east curb and drove northbound. Witness Three was unable to see the driver and did not have any details pertaining to the vehicle.</p> <p>Hawthorne PD's Initial Interview with Witness Four:</p> <p>On June 29, 1997, Witness Four stated while she was inside of her apartment, she heard four to five gunshots. Witness Four looked out of her window, she observed a dark colored vehicle parked. Witness Four said, the driver of the vehicle started the vehicle's engine and sped off northbound. Although Witness Four saw the vehicle, she would not be able to identify the vehicle nor the other occupants inside of the vehicle.</p> <p>Los Angeles County Sheriff's Homicide Investigator's Interview with the Informant:</p> <p>On July 01, 1997, the informant was arrested by Torrance Police Department on an unrelated matter. While the Informant was detained, he told Torrance Police Officers he had information related to the murder of the Decedent. Sergeant One responded to the Torrance Police Station to interview the Informant.</p> <p>Sergeant One conducted a recorded interview with the Informant. The Informant indicated he overheard gang members discussing looking for the Decedent.</p> <p>The Informant then saw both Plaintiff's One, Two and another fellow gang member get into a fellow gang member's dark green vehicle. The Informant indicated he observed Plaintiff's One and Two, throughout the day driving around together.</p> <p>The Informant stated, Sunday after the shooting he overheard Plaintiff One say he shot someone on Saturday. The Informant additionally stated, before he was arrested, he heard the Decedent was murdered Saturday night. The informant deduced his fellow gang members committed the murder.</p> <p>The Informant indicated the motive behind the Decedent's murder was, due to a previous drive-by shooting of his close friend which occurred in</p>
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	<p>Lawndale a day prior to the Decedent's murder. The Informant additionally stated, it is alleged, the shooter in the drive-by shooting was in a vehicle belonging to the Decedent.</p> <p>Los Angeles County Sheriff's Department Homicide Bureau's Detectives Interview with Witness Five:</p> <p>On July 02, 1997, Homicide Detectives interviewed Witness Five who indicated he was at home watching the Tyson and Holyfield fight with a couple of friends. He additionally stated, his friends left his residence approximately 10 to 15 minutes after the fight concluded.</p> <p>Witness Five stated, the next day, he heard rumors his wife may have been on the telephone with the Decedent at the time of the shooting.</p> <p>Witness Five additionally stated, the street gangs in the past have a history of having issues with each other.</p> <p>The Homicide Detectives inquired of his whereabouts on the night of the Decedent's murder, and he replied he went to pick up some "homies" whose vehicle had overheated.</p> <p>Witness Five denied having any knowledge and/or involvement in the Decedent's murder.</p> <p>Los Angeles County Sheriff's Department Homicide Bureau's Investigation:</p> <p>On July 08, 1997, Plaintiff Two was arrested along with another "Lawndale 13" gang member for an unrelated incident. At the time of his arrest, Plaintiff Two was a passenger in a vehicle. The vehicle was searched, and a pair of gloves were located. Additionally, gunshot residue was found on the right rear passenger windowsill.</p> <p>On July 10, 1997, Sergeant One and Three went to the tire store to conduct a "six-pack" photographic lineup and photographs of the vehicle. Upon review, Witness One identified the vehicle used in the Decedent's murder. Additionally, Witness One identified Plaintiff One as the individual sitting in the front passenger seat of the vehicle and Plaintiff Two as the rear passenger of the vehicle who shot the Decedent.</p> <p>Witness One signed and dated the witness admonishment form he received from Sergeant One.</p> <p>Homicide Detectives also interviewed Witness Two at the tire store. Witness Two was shown the photographs of the vehicle used in the Decedent's homicide. Witness Two positively identified the vehicle. However, was unable to identify Plaintiff's One and Two. Witness Two additionally stated he does remember the individuals in the vehicle yelling the Decedent's gang, and gang name.</p> <p>On July 14, 1997, Sergeant One presented the facts pertaining to this incident to the Los Angeles County District Attorney's Office (Inglewood Branch) for filing consideration. A warrant of arrest was issued for Plaintiff One.</p>
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	<p>Sergeant One allegedly authored a report indicating each of the witnesses made a positive identification of the vehicle which was used in the Decedent's murder.</p> <p>On August 14, 1997, Plaintiff One was arrested for the Decedent's murder.</p> <p>On October 30, 1997, Plaintiff's One's attorney filed a motion requesting a live lineup. While being housed in the Los Angeles County Jail, Plaintiff One was involved in a live lineup. Sergeant One organized the live lineup with Witness One.</p> <p>During his interview, Witness One stated he did not give the police a description of Plaintiff's One and Two, because he did not see them. Witness One also indicated Sergeant One suggested he should select Plaintiff's One and Two.</p> <p>In July 1998, Witness One was contacted on two separate occasions at his residence and interviewed by an investigator working for Plaintiff One's law firm. When the investigator returned to Witness One's residence, they sat inside of her vehicle, and drafted his affidavit.</p> <p>Witness One's affidavit was given to the prosecutors. Upon receipt of the affidavit, Lieutenant One chose Sergeant Two to conduct a follow-up interview with Witness One. The District Attorney's (DA) Office decided instead of dismissing the case, the DA's Office would to send two district attorneys, including the prosecutor on the case, to observe Sergeant Two's follow-up interview.</p> <p>Sergeant Two's supplemental report observed Witness One's nervousness. When Witness One was shown his affidavit, he indicated the language in the affidavit was from the defense investigator and he did not really read it carefully before signing it. The witness also indicated he did not want to get involved, largely because of fear of retaliation from Plaintiff's One and Two who were members of a gang. At Witness One's deposition, he denied making his previous statement.</p> <p>Although Witness One's affidavit alleged possible misconduct from Sergeant One, he went with Sergeant Two to conduct a follow-up with Witness One. Sergeant One stayed in the vehicle (one car length away) and listened to the follow-up interview.</p> <p>On October 05, 1998, A draft supplemental report was authored by Sergeant Two. The draft supplemental report that was forwarded to the DA's Office by Sergeant One for the deputy district attorney to review and make changes if necessary.</p> <p>In 1998, both Plaintiff's One and Two went to trial for the murder of the Decedent.</p> <p>In August 1998, Plaintiff One's attorney moved to dismiss the prosecution's case against him, alleging Sergeant One's suggestive tactics used to identify Plaintiff One were so outrageous it violated his due process rights and warranted dismissal of his case.</p> <p>On November 10, 1998, the court heard the defense's motion to suppress evidence of Witness One's identifications based on the identification was obtained through improper tactics by Sergeant One.</p>
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	<p>On November 10, 1998, the court heard the defense's motion to suppress evidence of Witness One's identifications based on the identification was obtained through improper tactics by Sergeant One. The court heard Witness One's testimony describing how Sergeant One coerced him into identifying Plaintiff's One and Two. Additionally, the court heard Witness One's taped interview with Sergeant One in the early morning after the shooting. The criminal court found Witness One's testimony not credible and was "not convinced that there was any police misconduct."</p> <p>During the trial, the jury heard testimony from Witness One. Witness One repeated his statements from his affidavit alleging Sergeant One's "improper suggestion" and testified he could not identify Plaintiff's One and Two. However, Witness One stated although he was not pressured, the reason why he was able to select Plaintiff One during the physical live line-up because he had already seen Plaintiff One's photograph in the six-pack photographic lineup.</p> <p>The jury also heard testimony from defense witnesses who testified Plaintiff's One and Two were at Plaintiff One's residence watching the Holyfield – Tyson II boxing match at the time the Decedent was shot.</p> <p>The jury found both Plaintiff's One and Two guilty of murder. Plaintiff One was sentenced to life with parole. Plaintiff Two was sentenced to 29 years to life without parole.</p> <p>Plaintiff's One and Two's attorney filed several petitions. The Plaintiffs were able to provide evidence which indicated their fellow gang member killed the Decedent.</p> <p>In 2012 and 2013, the alleged individual, who killed the Decedent was terminally ill and confessed to the Decedent's murder. It is alleged he was willing to confess at the Plaintiff's criminal trial but was unable to make said confession because he stabbed an inmate in a holding cell. The gang member passed away shortly after his confession.</p> <p>The gang member also confessed to another murder which occurred three weeks after the Decedent's murder. The unrelated murder was investigated by an officer from the Los Angeles Police Department and ultimately led to the conviction of a female adult suspect. The female adult (suspect), who is being represented by the Plaintiff's current attorney, was later exonerated using the killer's confession.</p> <p>During the post-conviction investigation by the Plaintiff's current attorney, the informant admitted to being involved in the unrelated murder which the killer confessed to committing.</p> <p>The same prosecutor tried both the unrelated murder case and the Plaintiff's case.</p> <p>The prosecutor was aware the informant was identified as a possible suspect in the unrelated murder case, but Los Angeles Police Department investigators were never able to find any corroborating evidence other than an anonymous tip to bring charges against the informant.</p>
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	In 2020, the District Attorney's (DA) office investigated the evidence which was available at post-trial and trial. In 2021, the DA's office moved to dismiss Plaintiff's One and Two convictions based on the cumulative effect of alleged errors which created unreliable convictions.
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1. Briefly describe the **root cause(s)** of the claim/lawsuit:

<p>A Department root cause was Sergeant One's lack of follow-up with the plaintiff's close friend, who was shot the night before the Decedent was murdered.</p> <p>A Department root cause was the lack of any audio or video recording of any of the administration of "six packs," by Sergeant One.</p> <p>A Department root cause was Sergeant Two's lack of obtaining any audio or video recording of the follow-up interview with the witness, as well as the lack of any notes taken by Segreant Two of the same interview.</p> <p>A Department root cause was Sergeant Two's long delay between the follow-up interview with the witness and the authoring of the supplemental report memorializing that interview, without having a recording or notes of the interview.</p> <p>A Department root cause in this incident was Sergeant One was present during the follow-up interview with Witness One.</p> <p>A non-Department root cause was the recanting of reported statements and identifications by Witness One.</p> <p>A non-Department root cause was the admission to the Decedent's murder by another member of the "Lawndale 13" gang who alleged to be the true killer, was terminally ill, and passed away shortly thereafter.</p>
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2. Briefly describe recommended corrective actions:
(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

<p>Suspect Identification Procedures</p> <p>Fair and reliable suspect identification procedures are crucial to solving crimes, convicting criminals, and ensuring the innocent are not prosecuted. The Department recognizes there are various methods to conduct fair and reliable suspect identification procedures/photo arrays. The following guidelines are intended to ensure the reliability, fairness, and consistency of suspect identification procedures.</p> <p>Absent extraordinary circumstances, photo arrays should be displayed to witnesses by deputy personnel (e.g., detectives, detective supervisors, etc.) who have received Department-approved training in proper procedures and law. Deputies should use techniques that do not influence a witness in their identification of a suspect.</p> <p>Regardless of the method used, the deputy is required to uphold the integrity of the suspect identification procedures, and shall document the steps taken in each case in notes or reports.</p> <p>Suspect Lineup Procedures</p>
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All lineups conducted by the Department or in Department facilities shall be conducted by members of the Men's Central Jail Lineup Detail.

Investigators desiring a lineup should notify the Men's Central Jail Lineup Detail as far in advance as possible and be prepared to furnish a complete description of the suspect.

Men's Central Jail Lineup Detail shall prepare and maintain for distribution to concerned persons and agencies a printed booklet entitled "Guide to the Conduct of Lineups." This booklet shall be revised and reprinted as necessary to reflect changes in the law and Department procedures regarding lineups. Revisions to this booklet shall be made only after obtaining the approval of the Divisions affected by the proposed change.

Recording Admonishment to Witness and Arrays

Witness admonishments regarding the photo array process, as well as the actual witness viewing and making comments about the array, shall be audio and video recorded unless it is not practical to do so.

Whenever an admonishment or procedure is only audio recorded, the deputy shall document the reason(s) why video recording was not used. Whenever an admonishment or procedure is not recorded at all, the deputy shall advise their supervisor of the reason(s) for not doing so and document in writing the reason(s) and the name of the supervisor who was advised.

All photo arrays, witness admonishments, and photo array procedure recordings shall be retained as a permanent part of the investigation and disclosed as required by law. The audio and/or video recording requirement does not apply to field show up or field identification procedures, although it is encouraged.

Responsibility for Documentation

In those incidents where a member is present at an event and the circumstances require the submission of a report, memorandum, or other documentation, it shall be the responsibility of the member to ensure that his/her observations and actions are fully and accurately recorded, or to take sufficiently detailed notes to enable the member to accurately relate his/her observations and actions of the incident at a later time.

Authoring Supplemental Report

Supplemental reports are to be utilized to augment an Incident Report for the following reasons:

- Serial Numbers, Owner-Applied Numbers and/or Initials, Special Identifying Marks
- Corrections
- Warrants Issued Subsequent to Submission of Incident Report
- Assignment - Additional or Reassignment
- Arrest Subsequent to Previously Reported Crime
- Change in Uniform Report Number Element
- Crime Analysis Supplemental Form
- Custody Services Division Crime Analysis Supplemental Form

Unit Order - Photographic and Live Lineup Procedures

Photographic and Live lineups with eyewitnesses by Bureau personnel in Homicide Investigations shall be in accordance with California Penal Code § 859.7 and shall comply with, at a minimum, the following requirements:


- Prior to conducting the identification procedure, and as close in time to the incident as possible, the eyewitness shall provide the description of the perpetrator of the offense.
- The investigator conducting the identification procedure shall use blind administration or blinded administration during the identification procedure.
- The investigator shall state in writing the reason that the presentation of the lineup was not conducted using blind administration, if applicable.
- An eyewitness shall be instructed of the following, prior to any identification procedure:
 - The perpetrator may or may not be among the persons in the identification procedure.
 - The eyewitness should not feel compelled to make an identification.
 - An identification or failure to make an identification will not end the investigation.
- An identification procedure shall be composed so that the fillers generally fit the eyewitness' description of the perpetrator. In the case of a photo lineup, the photograph of the person suspected as the perpetrator should, if practicable, resemble his or her appearance at the time of the offense and not unduly stand out.
- In a photo lineup, writings or information concerning any previous arrest of the person suspected as the perpetrator shall not be visible to the eyewitness.
- Only one suspected perpetrator shall be included in any identification procedure.
- All eyewitnesses shall be separated when viewing an identification procedure.
- Nothing shall be said to the eyewitness that might influence the eyewitness' identification of the person suspected as the perpetrator.
- If the eyewitness identifies a person he or she believes to be the perpetrator, all of the following shall apply:
 - The investigator shall immediately inquire as to the eyewitness' confidence level in the accuracy of the identification and record in writing, verbatim, what the eyewitness says.
 - Information concerning the identified person shall not be given to the eyewitness prior to obtaining the eyewitness' statement of confidence level and documenting the exact words of the eyewitness.
 - The officer shall not validate or invalidate the eyewitness' identification.
- An electronic recording shall be made that includes both audio and visual representations of the identification procedures. Whether it is feasible to make a recording with both audio and visual representations shall be determined on a case-by-case basis. When it is not feasible to make a recording with both audio and visual representations, audio recording may be used. When audio recording without video recording is used, the investigator shall state in writing the reason that video recording was not feasible.

In furtherance of providing an objective, credible, and transparent investigative product, if an allegation of misconduct by an investigator occurs during a photographic or live lineup with an eyewitness, that investigator shall be recused from participating in the investigation. Furthermore, the investigator involved in the allegation shall not conduct any further function in the case.

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) Julia M. Valdes, A/Captain Risk Management Bureau	
Signature: 	Date: 03/20/2024

Name: (Department Head) Holly Francisco, Assistant Sheriff Countywide Operations	
Signature: 	Date: 3/20/24

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: Daniela Prowizor-Lacayo (Risk Management Inspector General)	
Signature: 	Date: 3/21/2024



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:	1997-2021
Briefly provide a description of the incident/event:	<p>Plaintiffs were convicted in 1998 for their purported involvement in the 1997 gang-related drive-by murder of the victim. The conviction was based, in large part, on information provided by an informant and eyewitness' identification of Plaintiffs during a "six-pack" photographic lineup. However, prior to the criminal trial, a witness submitted an affidavit denying he identified Plaintiffs and claimed the identifications were the result of suggestive tactics employed by a LASD detective. On July 1, 1997, a gang member was arrested by the Torrance Police Department on unrelated weapons and drug charges. The gang member told officers he had information relating to a murder. A detective came to the Torrance Police Department to interview the gang member. There, the gang member gave a recorded interview where he described that earlier in the day of the shooting, he overheard his fellow gang member talking about looking for members of a gang with other fellow gang members, the Plaintiffs. The gang member then saw a fellow gang member and the Plaintiffs, get into the fellow gang member's dark green car together and saw them driving around several times throughout the day.</p> <p>The gang member subsequently claimed he only provided the statement to try to get a deal on his weapons and drug charges and was high on methamphetamine when he gave the statement. The gang member was never charged criminally for the drugs and weapons charges and, although he was purportedly a suspect in another murder investigation being conducted by the Los Angeles Police Department ("LAPD"), he was never charged with the murder. While the detective has no recollection of ever having any communications with the LAPD officer who was in charge of the other murder investigation, the LAPD officer's notes indicate she did communicate with the detective shortly before the DA's Office declined to prosecute the gang member for the murder in the other matter. In this case the prosecutor does not appear to have</p>

	<p>disclosed the fact that a witness who initially told police officers that he had overheard the Plaintiffs admit to participating in this murder had himself been a suspect in a murder case which she was also prosecuting. The prosecutor handled the prosecution of the first murder victim and the LAPD murder case. It can be argued that there is a conflict of interest, however, when the prosecutor handled the prosecution of the LAPD murder case, the case against the "key witness" had been presented to the DA's office for filing and declined for prosecution due to insufficient evidence.</p> <p>On October 30, 1997, following a motion by Plaintiff 1's attorney requesting a live line-up, one was conducted at the Los Angeles County jail for Plaintiff 1. The Detective organized the lineup and also brought the witness. Before the lineup began, Plaintiff 1 was pulled aside by a deputy and asked if he had switched his wristband with another inmate because even his attorney did not recognize him in the lineup. Plaintiff 1 answered that his attorney should recognize him because he asked Plaintiff 1 to change his appearance for the lineup. During the lineup, despite Plaintiff 1's drastically changed appearance, the witness identified Plaintiff 1 as the passenger in the vehicle on the night of the shooting.</p> <p>In July 1998, Plaintiff 1's defense investigator, contacted the witness and interviewed him. According to the defense investigator's summary of this interview, the witness did not give police a description of the passengers in the vehicle because he did not see them and the Detective improperly suggested to him he should select Plaintiffs as they were involved in the shooting. Approximately a week and a half later, the defense investigator followed up with the witness and, while sitting together in the defense investigator's vehicle outside the witness' place of business, the defense investigator drafted the witness' affidavit in what the defense investigator claims was in the witness' own words. The witness' affidavit, and later deposition and court testimony, provided essentially the same information described in the defense investigator's interview summary. The witness' affidavit was provided to prosecutors and forwarded to LASD. After receiving a copy of the affidavit, LASD Detective, who was not previously involved in the murder investigation, conducted a follow-up interview with the witness. The DA's Office, rather than dismissing the case, decided to send the assigned prosecutor and another DDA (now deceased) to the follow-up interview</p>
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	<p>conducted by the detective that was not originally involved in the case. According to this detective's Supplemental Report ("Supplemental Report") regarding the follow-up interview, the witness appeared nervous and, when shown the affidavit, indicated the language in the affidavit was from the private investigator and he didn't really read it carefully before signing it. He also indicated he did not want to get involved, largely because of fear of retaliation from Plaintiffs, who were members of a gang. At his recent deposition in the civil case, however, the witness denied saying these things.</p> <p>Despite the allegations in the affidavit against the original detective, he accompanied the second detective and was present during the follow-up interview of the witness, listening at a vehicle length's distance. This follow-up interview was never recorded nor are there any notes regarding the interview anywhere in the investigation file. In addition, while the second detective was the detective who handled the follow-up interview of the witness and prepared the Supplemental Report, there is a red-lined draft of the Supplemental Report that was forwarded by the original detective to the assigned prosecutor to review and possibly make additional changes prior to the final version. This draft and correspondence between the original detective and the prosecutor were sent on October 5, 1998, two days after the date of the Supplemental Report, which was apparently not dated properly. The final of the supplemental report had an additional three paragraphs which was not in the draft. The addition of those paragraphs was consistent with the prosecutor's handwritten notes on the fax cover sheet. While the prosecutor and the other DDA accompanied the detectives at the interview, the prosecutor testified at her deposition that she does not recall being within earshot during the interview and, therefore, was unable to corroborate the second detective's Supplemental Report. However, when pressed about this during cross-examination (as to why exactly she was present at the re-interview if not to hear what the witness had to say firsthand), she backtracked and said she may have been within earshot but could not recall anything the witness said during the re-interview. Additionally, the fact that a red-lined draft of the Supplemental Report was forwarded by the original detective to the prosecutor to review and possibly make additional changes prior to the final version tends to show the prosecutor heard the witness during</p>
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the interview. Moreover, the date of the Supplemental Report was October 3, 1998, which was approximately eight weeks after the August 11, 1998, interview with the witness.

During trial, the jury heard testimony from the witness, who repeated his statements from his affidavit regarding the original detective's improper suggestion and testified that he could not identify Plaintiffs, was not pressured, and he was able to select Plaintiff 1 during the physical lineup because he had already seen his photograph in the six-pack photographic lineup. The jury also heard testimony from a litany of witnesses who testified that Plaintiffs were at Plaintiff 1's home to watch the Holyfield – Tyson II boxing match at the time the shooting occurred. The jury ultimately found Plaintiffs guilty of murder. Plaintiff 1 was sentenced to life in prison without the possibility of parole. Plaintiff 2 was sentenced to 25 years to life.

In several habeas petitions, Plaintiffs provided evidence alleging the true killer in the murder was a fellow Lawndale 13 gang member. This fellow gang member, who was terminally ill at the time, confessed to the murder of the victim in 2012 and again, under oath, during conditional examination testimony in 2013, also testifying that neither Plaintiff 1 or Plaintiff 2 were involved in the murder. This fellow gang member passed away soon thereafter. The fellow gang member was allegedly willing to confess to the murder at the time of Plaintiffs' underlying criminal trial, but was unable to meet with Plaintiffs' defense attorneys after stabbing an inmate in a holding cell. The defense never attempted to call the fellow gang member again as a witness.

A conditional examination of the fellow gang member was conducted approximately in 2013 in the Torrance Courthouse in front of a Judge, pursuant to a habeas petition filed by Plaintiff 1. After that examination, defense counsel indicated to the Court and our Habeas Corpus Litigation Team (HABLIT) that she planned to file a supplemental petition on behalf of Plaintiff 1 and the matter was taken off calendar. Between 2013 and June 2020, Plaintiff 1's counsel never filed a supplemental petition on behalf of Plaintiff 1. However, between approximately 2016/2017 through 2018, HABLIT DDAs were assigned to the case and

	<p>engaged in post-conviction discovery with Plaintiff 1's counsel. Per HABLIT's knowledge, Plaintiff 1's counsel then requested review of the case by the Conviction Review Unit (CRU now the Conviction Integrity Unit) [During that time, the Office policy was that a petitioner could not have simultaneous review of cases by the CRU and HABLIT.]</p> <p>To HABLIT's knowledge, CRU investigated the case but rejected the claim. Current policy does not prohibit concurrent reviews. In June 2020, Plaintiff 1's counsel filed the supplemental habeas petition and the claims were investigated and reviewed by HABLIT, which led to the concession on habeas for Plaintiff 1.</p> <p>To HABLIT's knowledge, there was never a petition for writ of habeas corpus filed by Plaintiff 2 until he filed a motion to join Plaintiff 1's supplemental habeas corpus petition in November 2020. That matter was also litigated by HABLIT and led to the concession on habeas for Plaintiff</p> <p>Thereafter, HABLIT conceded on the motions for findings of factual innocence per PC section 1485.55 for Plaintiffs 1 & 2, respectively (but the Court ultimately denied those motions and the findings of factual innocence were never made).</p> <p>In 2020, the DA's Office investigated the evidence available at trial and post-trial. In 2021, the Court overturned Plaintiffs' convictions following the submission of Plaintiffs' supplemental/amended habeas petition in 2020 and concession letters submitted by the DA's Office indicating it could no longer maintain confidence in the convictions "as a result of the cumulative impact of several errors that occurred before and during" trial. Further, the DA's Office elected not to retry the case.</p>
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1. Briefly describe the **root cause(s)** of the claim/lawsuit:

A) The Los Angeles County District Attorney's Office (LADA) submitted concession letters submitted indicating it could no longer maintain confidence in the convictions "as a result of the cumulative impact of several errors that occurred before and during" trial.

- B) The prosecutor must have known about the defendant's involvement in both cases and should have disclosed the fact. Additionally, the prosecutor should have disclosed the fact that the investigators on both cases had been in communication.
- C) The prosecutor's handwritten notes and the subsequent amended supplemental report show her involvement was greater than what she stated in her deposition.
- D) Plaintiffs allege the LADA delayed its review of plaintiff's habeas petition

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

A) A critical part of the LADA mission is to ensure the integrity of criminal convictions. To that end, the LADA has a comprehensive post-conviction review policy and commits significant resources to reviewing criminal convictions. The LADA's Office has three units devoted to the review and handling of criminal convictions. The units include the Post-Conviction Review Unit, Writs and Appeals Division and HABLIT. The mission of the office is to ensure the integrity of convictions and to review the cases ensuring that the defendant had a fair trial.

In 2020, the LADA investigated the evidence available at trial and post-trial. In 2021, LADA submitted concession letters indicating it could no longer maintain confidence in the convictions "as a result of the cumulative impact of several errors that occurred before and during" trial

The actions of the LADA were all in furtherance of justice and to ensure the Plaintiff's fair treatment. The LADA's mission and the prosecutor's ethical obligations require this thorough and extensive process to safeguard the rights of the accused and the integrity of criminal convictions. Further, the DA's Office elected not to retry the case.

B) Since 1963, the US Supreme Court has required prosecutors to turn over Brady material. A few years later, the US Supreme Court clarified that Brady evidence included impeachment evidence. Moreover, California law, when the case was tried, as well as now has required prosecutors to turn over information to the defense which might lead to admissible exculpatory or impeachment evidence. While LADA policies have evolved over time, DDAs are encouraged and trained to always err on the side of disclosure. We conduct Brady training with every new class we hire. There have been numerous special directives issued since the DA assumed office on December 7, 2020 discussing our Brady obligations.

B) Adopting a policy that if a suspect or defendant in one of our cases is a witness in another one of our cases, the DDA should not handle both.

C) The department will review all materials to make a determination as to whether or not there will be further investigation.

D) A conditional examination of the fellow gang member was conducted approximately in 2013 in the Torrance Courthouse in front of a Judge , pursuant to a habeas petition filed by Plaintiff

1. After that examination, defense counsel indicated to the Court and our Habeas Corpus Litigation Team (HABLIT) that she planned to file a supplemental petition on behalf of Plaintiff 1 and the matter was taken off calendar. Between 2013 and June 2020, Plaintiff 1's counsel never filed a supplemental petition on behalf of Plaintiff 1. However, between approximately 2016/2017 through 2018, HABLIT DDAs were assigned to the case and engaged in post-conviction discovery with Plaintiff 1's counsel. Per HABLIT's knowledge, Plaintiff 1's counsel then requested review of the case by the Conviction Review Unit (CRU now the Conviction Integrity Unit) [During that time, the Office policy was that a petitioner could not have simultaneous review of cases by the CRU and HABLIT.] To HABLIT's knowledge, CRU investigated the case but rejected the claim. Current policy does not prohibit concurrent reviews. In June 2020, Plaintiff 1's counsel filed the supplemental habeas petition and the claims were investigated and reviewed by HABLIT, which led to the concession on habeas for Plaintiff 1. To HABLIT's knowledge, there was never a petition for writ of habeas corpus filed by Plaintiff 2 until he filed a motion to join Plaintiff 1's supplemental habeas corpus petition in November 2020. That matter was also litigated by HABLIT and led to the concession on habeas for Plaintiff 2. Thereafter, HABLIT conceded on the motions for findings of factual innocence per PC section 1485.55 for Plaintiffs 1 & 2, respectively (but the Court ultimately denied those motions and the findings of factual innocence were never made).

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.

Name: (Risk Management Coordinator) <i>Priscilla Musso, Director</i>	
Signature: <i>Priscilla Musso</i>	Date: <i>3/11/24</i>

Name: (Department Head) Joseph F. Iniguez, Chief Deputy District Attorney	
Signature: <i>JF Iniguez</i>	Date: <i>03-08-24</i>

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)

Daniela Prowizor

Signature:

Daniela Prowizor

Daniela Prowizor

Digitally signed by Daniela
Prowizor
Date: 2024.03.11 11:37:19 -07'00'

Date:

3/11/2024