

REPORT OF THE PHILADELPHIA EVENT REVIEW TEAM

ON

THE LEX ST. MASSACRE

National Institute of Justice Sentinel Events Initiative Pilot Program

December 8, 2015

In the spring of 2014, the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School, along with the Philadelphia Police Department, the Philadelphia District Attorney's Office, the Philadelphia Court of Common Pleas, two private defense counsel, and a former reporter for the Philadelphia Daily News collaborated on a proposal to the National Institute of Justice (NIJ), the research division of the United States Department of Justice, in response to a call for proposals for Sentinel Event Reviews in criminal justice. The question posed by NIJ was whether a multi-stakeholder event review using "systems principles" of error reduction that had been proven effective in other environments (e.g., healthcare, aviation, nuclear power management) could be deployed effectively in criminal justice.

The stakeholders listed above decided to use the Lex St. Massacre, one of the most notorious crimes in Philadelphia's history, as the case for our review. Still the largest single mass murder in Philadelphia history, it is a case that was successfully closed, with four men (Shihean Black, Dawud Faruqi, Khalid Faruqi, and Bruce Veney) tried and convicted of seven murders and three attempted murders. At the same time, the four men ultimately convicted of these heinous and tragic crimes were not the first four men arrested, charged and incarcerated for them. Instead, through a combination of false confessions, mistaken eyewitness identifications, and other mistakes and occurrences within the Philadelphia criminal justice system, four other men (Jermel Lewis, Quiante Perrin, Hezekiah Thomas, and Sacon Youk) were arrested, charged and incarcerated for almost 18 months for crimes they did not commit.

The Philadelphia Sentinel Event Review Team dedicated itself to the thorough review of the Lex St. case using principles of root cause analysis (RCA) to conduct a "just culture event review." For purposes of this process, we defined a "just culture" as "a culture that recognizes that competent professionals make mistakes and acknowledges that even competent professionals will develop unhealthy norms (shortcuts, "routine rule violations"), but has zero tolerance for reckless behavior."<sup>1</sup> Thus, **our review was designed to understand what happened in the Lex St. investigation and prosecution, and to generate precise recommendations that will help to prevent the mistakes that occurred in that case from happening again. Our goal was not to punish or find blame with any individual or agency**, but solely to understand how our system could, for example, generate a false confession, believe that confession to be true, act on it in error, and not identify the actual perpetrators of the crime for almost a year and a half.

In one light, the Lex St. case should be seen as a great victory for Philadelphia's criminal justice professionals. A dedicated group of homicide investigators continued to pursue the investigation into the Lex St. murders even after four men were charged and incarcerated, generating a final result that all believe to be accurate and truthful. It is evidence of a need for improvement in our criminal justice system that without their efforts, the wrong men likely would have been convicted. It is equally positive evidence that our system can improve that their unceasing and unwavering dedication to finding the truth ultimately was responsible for identifying and addressing the erroneous incarceration of the first defendants and the successful and accurate closure of the case.

Our review made clear that each of the players and each of the agencies that participated in the investigation and adjudication of the Lex St. murders could have done things not just differently, but

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<sup>1</sup> Agency for Healthcare Research & Quality Glossary, available at [http://psnet.ahrq.gov/popup\\_glossary.aspx?name=justculture](http://psnet.ahrq.gov/popup_glossary.aspx?name=justculture).

more effectively, and that modifications in behavior, decision-making, supervision, information flow, and environment might have permitted the system to correctly identify the actual killers while avoiding the improper incarceration of four innocent men for 18 months for a crime they did not commit. And while some of the procedural, environmental, supervisory, and other challenges that combined to permit the mistaken arrests and prosecutions have been modified between the time of the Lex St. investigation and the start of our review (e.g., increased review from homicide supervisory staff in the DA's Office, increased videotaping of custodial interrogations by the Police Department), many of the issues that permitted the mistakes in Lex St. to occur remain in place almost fifteen years after the crimes were committed.

What follows is the effort of the Philadelphia Event Review Team to answer three key questions:

1. How, in one of the most public and closely scrutinized violent crime investigations in Philadelphia's history, did our city arrest, charge, and incarcerate the wrong defendants for almost 18 months?
2. What, if anything, could we have done to:
  - a. Prevent our mistakes; or
  - b. Accelerate the discovery of our mistakes, to ensure that the perpetrators of the Lex St. murders were more rapidly and accurately brought to justice?
3. What modifications do we recommend throughout the Philadelphia criminal justice system to ensure that similar errors do not occur in the future?

Our review and recommendations follow.

One final note: Lex St. occurred almost 15 years ago. The delay between its events and our investigation created certain weaknesses (e.g., lost documents, unavailable interviewees, weakened memories) and certain advantages (e.g., less concern about political fallout, no concern about civil liability) to our review. In our final analysis, however, the age of this case did not prevent it from being a useful case for detailed review, nor did it prevent it from being a useful test of the hypothesis advanced by NIJ that a multi-stakeholder "just culture event review" could yield valuable and novel insights into criminal justice system improvements that have the potential to improve the system's quality – and thus, its legitimacy. The stakeholders who participated in the Philadelphia Event Review Team unanimously found the process useful and interesting, and plan to continue with other cases in the future, in a sustained effort to ensure a "just culture" systemwide, allowing all participants to learn from error in a multi-stakeholder format.

## PROBLEM STATEMENTS AND RECOMMENDATIONS

1. **Problem Statement 1.** The confession of Jermel Lewis, ultimately shown to be false,<sup>2</sup> led the PPD and the DA to arrest and charge the First Defendants.
2. **Problem Statement 2.** The PPD elicited a confession from Shihean Black on the Lex St. case in January 2001, and another in February 2001. These confessions were later found to be truthful or semi-truthful, but they did not accelerate the case against the Second Defendants or the release of the First Defendants.

The Philadelphia Police Department (PPD) and Philadelphia District Attorney's Office (DA) elicited, accepted, and used a confession of Jermel Lewis that was not improperly coerced but was nonetheless false when given. While Mr. Lewis attempted to recant his confession, neither his attorneys nor the Court of Common Pleas (CCP) were able to identify or address this error.

Less than three weeks after Mr. Lewis' false confession, PPD detectives elicited an incomplete but truthful confession to the Lex St. murders from Shihean Black. This confession was immediately recanted by Mr. Black. It was noted and discussed, but ultimately not believed or followed by the PPD. Four weeks after Mr. Black's initial confession, he confessed to the crime again, this time to different PPD officers. At this time, the PPD elected to conduct a more thorough review of Mr. Black's assertions.

Problem Statements 1 and 2 are flip sides of the same coin. There are four possible outcomes to an interrogation. True confessions (TC) or True Denials (TD) are the goal, while False Confessions (FC) and False Denials (FD) are to be avoided whenever possible (though FDs can be expected to occur far more frequently and unavoidably by perpetrators of crimes). Our recommendations seek to help the PPD, which generated the Jermel Lewis FC and only slowly came to believe the Shihean Black TC. We seek to increase TCs and decrease FCs. To be useful, the recommendations must address one of the following environmental or procedural requirements:

- (a) Preventing the unwitting generation and/or unknowing acceptance of a false confession;
- (b) Enabling the rapid corroboration or disproving of a false confession taken in error; and/or
- (c) Improving the ability of the PPD and DA to distinguish truth from falsehood in witness interviews and suspect interrogations.

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<sup>2</sup> Mr. Lewis' confession had none of the typical hallmarks of a false confession. His interview was voluntary, and not unduly lengthy. And while Mr. Lewis sought to retract his confession, at no time did he allege any improper behavior, use of force, or other coercive tactics on the part of the Philadelphia Police Department. Thus, our investigation was not able to reveal any specific fact or set of facts that should have alerted the detectives taking his confession that the confession was not accurate at the time, other than his inaccurate description of the caliber of the guns used at the scene, an inconsistency that our group believed would not have been enough for a reasonable detective to outweigh many other facts in the confession that did match the known elements of the crime.

*RECOMMENDATION 1: Implement policies that will promote information gathering, rather than confessions, as the goal of both witness interviews and suspect interrogations. (Responsible stakeholder: PPD)*

*RECOMMENDATION 1a: Train all PPD and DA interviewers in interview techniques (e.g., the PEACE technique, the cognitive interview method) designed to reduce the unintentional acquisition of false or misleading information. Promote interview techniques that stress the gathering of information rather than the generation of a confession. (Responsible stakeholder: PPD, DA)*

*RECOMMENDATION 1b: Implement policies in accordance with current scientific research regarding the physical environment of the interview/interrogation room, and the number of investigators who may be present, to reduce the likelihood that a false confession might be unintentionally generated. (Responsible stakeholder: PPD)*

*RECOMMENDATION 1c: Provide training for judges and defense counsel on interview techniques and the potential for coercive techniques to generate false confessions, to enable them to better evaluate witness interviews or suspect interrogations. (Responsible stakeholder: CCP, defense attorneys)*

*RECOMMENDATION 2: The PPD should implement a policy of videotaping all interviews with suspects or witnesses, including subsequent interviews and interviews or discussions that occur after arrest or charging or that precede preliminary hearings. If videotape is not available, ensure that all interviews are recorded in the most efficient and verifiable medium available at the time. The DA should request any and all such recordings from the PPD as they assemble their file of the case, and ensure the file remains up to date. (Responsible stakeholder: PPD, DA)  
Note: Between Lex St. and today, the PPD has adopted a policy of videotaping all custodial interrogations in homicide cases. That policy is in the process of being implemented and will undergo evaluation and modification as appropriate in the future.*

*RECOMMENDATION 2a: Ensure that the definition of “interview” makes clear that memorialization should start immediately upon the interaction between the individual and the interviewer, and that there are no gaps in the recording that might allow for unrecorded interactions. (Responsible stakeholder: PPD) Note: The current policy recently implemented by the PPD contains provisions for this in custodial interrogations in homicide cases.*

*RECOMMENDATION 2b: Create and implement a policy that each confession in a felony case is reviewed by a member of the PPD who is not directly involved in the investigation in question (Responsible Stakeholder: PPD), and that the confession is independently reviewed by the DA’s Office prior to charging (Responsible stakeholder: DA’s Office), in each instance evaluating the confession and interview/interrogation for its accuracy and to identify any unintended bias or corruption that may have been introduced during the course of the interview/interrogation. Provide training to the reviewer(s) on implicit and cognitive biases, interrogation techniques and environments or conditions that might lead to inaccuracies or other weaknesses of the testimony.*

3. **Problem Statement 3.** The PPD and DA relied upon various statements of Yvette Long, later shown to be inaccurate, to misidentify three of the First Defendants.
4. **Problem Statement 4.** The PPD and DA relied upon the statements of Nate Staves, later shown to be inaccurate, to misidentify Sacon Youk in an unrelated shooting involving one of the Lex St. guns.

*RECOMMENDATION 3. Provide training to police officers and DAs that minimizes the repeated interviews of witnesses or suspects wherever possible. (Responsible stakeholder: DA, PPD)*

*RECOMMENDATION 3a. Videotape subsequent interviews with witness or suspects to permit transparency around conflicting or potentially conflicting statements. (Responsible stakeholder: DA, PPD)*

*RECOMMENDATION 3b. When repeated witness interviews are conducted, prepare documents that compare and contrast the statements made by the witness to highlight potentially conflicting statements. (Responsible stakeholder: DA, PPD)*

*RECOMMENDATION 3c. Ensure DA review of all witness statements given to Assistant DAs during witness preparation activities to confirm that the witness' expected testimony does not conflict with prior statements made by the witness. Provide any conflicting statements to defense counsel in a timely fashion. (Responsible stakeholder: DA, PPD, CCP)*

*RECOMMENDATION 4. Provide training to judges, police officers, investigators, and attorneys on the biases that can result from multiple interviews of the same eyewitness and techniques to mitigate those biases so that they can be educated evaluators of eyewitness testimony. Permit expert testimony and/or jury instructions on these and similar points for eyewitness testimony. (Responsible stakeholder: CCP) Note: In mid-2014, the Supreme Court of Pennsylvania issued an opinion permitting expert testimony on eyewitness identification issues.*

*RECOMMENDATION 5: Advise key witnesses to avoid contact with other potential witnesses during the pendency of a case, and to minimize discussion about or related to the case when such contact occurs. Counsel them to avoid reading media accounts or other external sources of information that might modify their perceptions of the event. (Responsible stakeholder: PPD, DA, defense counsel, CCP) Note: The CCP has conducted periodic training sessions for responsible reporting. These sessions have been conducted by different individuals and the reception of their presentations have been varied. Each stakeholder could create incentives to expand participation in such sessions, emphasizing those approaches and speakers who have been more favorably reviewed by the CCP in the past. Examples include: providing CLE credit; requiring such participation as part of ongoing training within the DA's Office or Defender Association; and/or having the CCP make periodic refreshers an obligation to be included in the eligible pool for certain types of cases as court-appointed counsel, etc.).*

*RECOMMENDATION 6. Ensure appropriate independent review of the evidence leading up to a preliminary hearing, to ensure that all elements of each crime charged can be proved by appropriately gathered evidence and that appropriate attention is given to identifying and*

*minimizing confirmatory or other cognitive biases that may indicate a weakness in the case. (Responsible stakeholder: DA) Note: Since 2002, the DA's Office has had a policy that a Supervisor in the Homicide Department must review each case before filing charges.*

*RECOMMENDATION 7. For violent felonies, establish a formal evaluation process that is performed throughout the investigation, but at a minimum performed (a) by the PPD prior to the referral of a case to the DA by the PPD, and (b) by the DA prior to charging, including decisions made to add to, delete or modify existing charges. (Responsible stakeholders: PPD, DA) These evaluations should be conducted by a senior individual within the PPD, and by an appropriately experienced and independent prosecutor (or former prosecutor engaged by the DA's Office for the purpose). The goal of the evaluation is to establish what is known and unproved, and what consistencies or conflicts exist in the accumulated information. It serves as a test of the validity of the interpretations of the information and evidence. (Responsible stakeholders: PPD/DA) NOTE: The DA's Office has a policy that in certain violent felonies, prior to charging, the lead ADA on the case sends an email to: First Assistant DA, Head of the Trial Division, Head of the Pre-trial Division, Chief of the Charging Unit, and the Chief and Assistant Chief of the relevant unit within the Criminal Division requesting a review of the case.*

- 5. The case against First Defendants progressed to the jury selection phase in May and June of 2002, notwithstanding mounting physical evidence that implicated the Second Defendants as early as February 2001.**
- 6. Information regarding Shihean Black and Dawud Faruqi's possible involvement in Lex St. was shared by the PPD to the DA, and from the DA to the CCP, but was not shared promptly with counsel for First Defendants.**

*RECOMMENDATION 8. Modify discovery rules such that providing witness statements or any other Brady information to defense attorneys is conditioned upon the earlier of a specific number of days prior to trial, or upon a specific number of days after receipt of the relevant information, in whatever form, by the DA, whose obligation it is to provide such information to the defense.<sup>3</sup> Allow for limited in camera disclosure in instances where witness safety is an issue. (Responsible stakeholder: CCP)*

*RECOMMENDATION 10. Adopt open file discovery except to the extent reasonably needed to ensure witness safety. If there is a dispute, allow judge to determine whether information withheld from the file on this basis should be withheld. (Responsible stakeholders: CCP/DA/PPD/defense counsel)*

- 7. An order regarding discovery regarding physical evidence that might serve to exculpate the First Defendants and implicate the Second Defendants was (a) not properly communicated from the Calendar Judge and/or (b) not followed by the DA/enforced in the trial of the First Defendants.**

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<sup>3</sup> While the government's obligation to provide information under the Brady standard rests on the prosecutor, such information is often in the hands of the police or others in the criminal justice system. An efficient and effective process for transferring that information to the DA's Office is essential to meet the government's obligation.

*RECOMMENDATION 11. Judges should be active, not passive managers of discovery to ensure that information is transferred from law enforcement and prosecutors to defense counsel as rapidly and efficiently as possible. (Responsible Stakeholder: CCP)*

*RECOMMENDATION 12. Judges should permit appropriate limitations on discovery when necessary to support legitimate aims of government, including the protection of witness and interference with ongoing investigations. However, once those limitations have been set, judges should be aggressive monitors of exceptions to open file discovery, and should require regular status conferences with counsel for all parties to ensure that all necessary information, including potential Brady information, is being provided to Defendants as quickly and efficiently as possible. (Responsible Stakeholder: CCP)*

*RECOMMENDATION 13. Create a checklist of information to be provided by the calendar judge to the trial judge at the time of transfer. Include all orders made by the calendar judge, whether made orally from the bench or in writing. Include any and all outstanding discovery items. (Responsible Stakeholder: CCP)*

*RECOMMENDATION 14. Calendar judge should review and reassess outstanding discovery orders at the time of transfer to the trial judge. (Responsible Stakeholder: CCP)*

*RECOMMENDATION 15. Where orders allowing the temporary withholding of discovery material have been entered by the calendar judge, the calendar judge should, no later than the time of transfer of the case to the trial judge, issue a discovery order (or orders) to all parties and their counsel (a) revealing the existence of that protective order and its rationale and (b) ordering that notwithstanding the protective order, all discovery must be produced to defense counsel no later than 60 days prior to trial. (Responsible stakeholder: CCP)*

*RECOMMENDATION 16. In any case where (a) discovery information has been withheld from defense counsel, and (b) the Commonwealth subsequently requests that the trial date be extended, the Judge will require a hearing with all counsel present to discuss the request and ensure that all appropriate evidence that has been withheld will be disclosed to defense counsel. Absent extraordinary circumstances of which defense counsel has been made aware, the Judge shall not grant the extension without also ordering the disclosure of the withheld discovery information a reasonable time prior to the new trial date. (Responsible stakeholder: CCP)*

**8. Media coverage put artificial pressures on the participants in the Lex St. investigation and prosecution that affected their actions.**

The double-edged sword of media involvement in high-profile criminal cases is well known. On the one hand, many of the criminal justice professionals interviewed mentioned the pressure that the media puts on a criminal investigation. Satisfying a 24/7 news cycle, particularly in a devastating mass murder like the Lex St. case, requires providing constant updates to a restless public, with each disclosure being scrutinized and any change in facts viewed as misdirection or uncertainty on the part of the investigators – especially by those who are prone to mistrust police or prosecutors. The difficulty in allowing an investigation to unfold “organically” or to change direction as new facts emerge is complicated in high-profile cases, as more senior

officials within the Police Department, DA's Office, or even the Mayor's Office make statements that might require undesirable retraction.

Another challenge of detailed media coverage of Lex St. specifically is the possibility that media coverage could have biased the investigation. While Jermel Lewis was not interviewed in our investigation, his confession was quite similar to the interview given by survivor Yvette Long to a Daily News reporter, as published in the Daily News on January 5, 2001. It is possible, though certainly speculative, to conclude that the facts he gave that convinced the Police Department of his veracity were taken, in whole or in part, from reading that newspaper article.

Finally, the media provides an outlet for attorneys to preview their cases in public, or to leak information that is confidential in nature. Such often happened in this case as the Daily News and other news outlets provided information despite the gag order put in place by Judge Smith.

While the media creates challenges and complexities in high-profile criminal investigations and prosecutions, its important and unique ability to ensure the transparency of the criminal justice system provides a strong positive counterweight. Virtually everyone who commented on the case cited the persistent and continuous stories from the Philadelphia Daily News on the Lex St. case and its developments as one of the factors leading the DA's Office to drop the charges against the First Defendants, in part by advocating against the gag order and in part by publishing "leaks" contrary to that gag order about what was occurring among the various participants as additional information about the Second Defendants was emerging.

The Sentinel Events Review Team discussed all of these aspects of media involvement. In an ideal system ("ideal" as defined by the participants in the Sentinel Event Review Team at a meeting without our media representative), the media could be involved and informed throughout an investigation, and would coordinate with police media representatives and make good faith efforts to minimize reporting of "hold back" information during an open and active investigation, while releasing important information for public safety as needed. In the event that law enforcement, prosecutors, defense counsel, or judges were to engage in or permit either the release of sensitive information or the withholding of information that should be shared, the media could publicize that as part of its obligation to hold all parties accountable to their communities.

While such a system has the potential to address many of the incentives and influences of the media on criminal investigations that might lead to errors, careful attention would need to be paid to ensure that the positive impact on transparency would not be lost. Such a discussion is largely moot given the inability of any aspect of the criminal justice system to modify the behavior of the press.

*RECOMMENDATION 17. Officers participating in investigations should be insulated from the media, and law enforcement should limit the provision of case-specific information to what is needed to enhance public safety. Potential witnesses should be counseled not to communicate with the media during an ongoing investigation to avoid polluting the investigation. (Responsible stakeholder: PPD)*

*RECOMMENDATION 18: Preserve the confidentiality of the formal investigational chain of command in homicide cases and in “high profile” cases to ensure that the independent case review established in such a chain of command remains sound.*