

County of Santa Clara

Office of the District Attorney

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Jeffrey F. Rosen
District Attorney

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The Office of the Public Defender
120 W. Mission St.
San Jose, CA 95110

Dear Sir or Madam,

As I am sure you know, in late June, a journalist reported the existence of a Facebook group including mainly retired law enforcement officers. While we understand that the Facebook group was largely concerned with mundane topics, some individuals posted virulently racist, sexist, anti-Muslim and bigoted comments. This is deeply troubling. The District Attorney asked me to initiate an investigation of the matter to determine what impact these officers could have had on prior cases. This presents a difficult problem as we need to balance the evidence of bigotry of the officer with the crime that was committed against an innocent individual. We don't want to rely upon the word of a bigot, but we don't want to compound the victimization of an individual by dismissing a valid case just because one of the officers who investigated her case was a bigot.

We do not have access to the Facebook group in question as it was immediately taken down and unavailable to the public including this office. Accordingly, in our evaluation of the cases where these officers were potential witnesses, we proceeded on the working assumption that all the comments quoted in the article were accurate and evidenced malignant bigotry. We further assumed that the intensity of their bigotry as evidenced by these quotes caused us to lose faith in their credibility. Finally, we decided since we had these sorts of doubts about their credibility, it did not matter to us at this point whether the defendant belonged to a group that was the target of their bigotry. In other words, whether the victim was Muslim or Christian, male or female, we were going to treat the officer's credibility with the same skepticism. Our working assumption was that anyone who harbored such bigotry was not to be trusted in general even if the defendant was not a member of a group targeted for the officer's bigotry.

Our next step was to make sure that if any of these officers are called to testify in future cases, we will be able to notify the prosecutor and defense attorney so appropriate steps can be taken. This was done immediately.

Next, we determined if these officers were associated with any pending cases, and we made similar disclosures. This has also been done.

Once we addressed pending and future cases, we turned our attention to past cases where anyone of these officers was subpoenaed to testify on any prior case. As I am sure you can appreciate, this was a much bigger undertaking. Let me first note that the way our data management system works, we can only detect cases where an officer was noticed to testify. While the individual did not necessarily *actually* testify (and in fact, usually they have not), we cannot search our system to find any case where an officer might have been in any way involved. We can only search our system for cases in which the officer was noticed as a potential witness. While this should capture most of the relevant cases, it might not capture all of them. In these cases, a defense attorney is probably in a better position to determine if the named officer was important to the case. In sum, we searched for all cases where one of these officers was deemed a witness whether or not he actually testified.

We will disclose all of these cases so you can make your own judgment. However, we also did research on our own.

Once we searched our system, we were able to compile a list of every case in which any one of the "Facebook" Group officers who made the bigoted posts was noticed as a witness in our system. We then assigned approximately twenty prosecutors to go through each of these cases to determine a number of issues. For example:

1. We wanted to know the role played by the officer in the case. For example, were they a percipient witness or the investigation officer or, by contrast, were they a fill officer who played no active role?
2. We wanted to know if the individual testified.
3. Even if they did not testify, we wanted to know if the officer's credibility played any role in the actual case.
4. If the officer's credibility did play a role in the case, then we wanted to know if the officer's evidence was independently corroborated by other evidence such as body worn camera footage.
5. We wanted to know if the soundness of the case rested on this officer's word, or if it rested on other evidence independent of the credibility of this officer.

Some examples might help illustrate the importance of these categories. For example, if a woman was beaten by a boyfriend, and one of the bigoted officers took her statement, then his credibility would have been very important to the case. However, if the statement was recorded, then his credibility would have been corroborated by another source. By contrast, if an individual was convicted of resisting arrest, and the only evidence to the events was the statement of the officer, then his credibility was both crucial and uncorroborated.

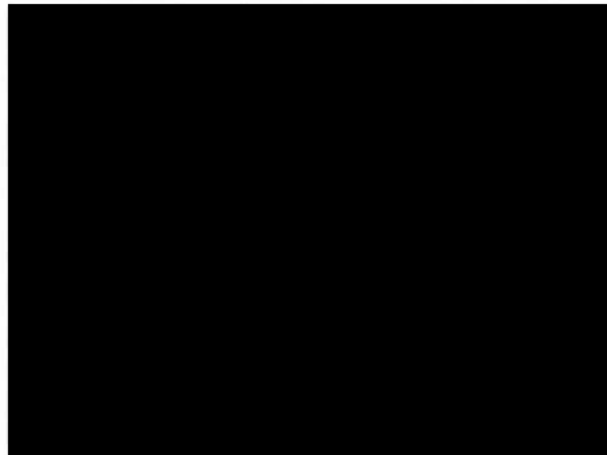
We decided to handle the cases differently depending on how those questions were answered.

The largest category are those cases where anyone of the officers identified as making a bigoted statement was subpoenaed as a witness. In other words, *this is the entire list unfiltered by any other category*. Our goal is to identify and notify every defense attorney if they had a client who was prosecuted by our office using anyone of these officers. This way the defense attorney can make their own judgement as to whether there is a legal cause of action or if the officer impacted the case.

The second category are those cases where both one of the officers was involved, and his credibility was of importance, but there was independent corroborating evidence that does not depend on the officer's credibility. A common example of this would be body-cam footage or the testimony of an independent witness such as the victim. In these cases, we would also notify the defense attorney, but because the relevant facts have been independently verified, we do not believe that any further action on this case is warranted at this time. Of course, the defense attorney is free to contact us if they believe we are in error or file any appropriate motions with the court.

Finally, there are those cases where we believe that the integrity of the case has been so compromised that we no longer stand by the conviction. These are cases where one of the officers was involved, their credibility was important and cannot be independently corroborated. In these cases, we would again notify the defense attorney but here our goal would be to work together to recall and dismiss the case.

Our research indicates that your office represented the following cases below and that these cases fall into the third category:



Accordingly, we believe that the evidence of the officer's bigotry had an impact on the integrity of the case. We believe that your client's conviction should be recalled and set aside in the interest of justice. Please contact me to consider next steps.

Sincerely,

David Angel

David Angel
Assistant District Attorney