

# SAN FRANCISCO PUBLIC DEFENDER

JEFF ADACHI – PUBLIC DEFENDER  
MATT GONZALEZ – CHIEF ATTORNEY



April 4, 2016

California Attorney General Kamala Harris  
Office of the Attorney General  
455 Golden Gate, Suite 11000  
San Francisco, CA 94102-7004

## ***Re: Requesting investigation into racism in the San Francisco Police Department***

Dear California Attorney General Harris,

As the elected Public Defender for the City and County of San Francisco, I write to urge the state Attorney General's Office to open its own civil rights investigation into the San Francisco Police Department's practices.

Last week, San Francisco District Attorney George Gascón revealed that a group of officers was involved in racist and homophobic texts. Although the content of the messages has not been revealed, District Attorney Gascón has said that the texts involving four officers including a former police lieutenant, included "dozens of messages where the 'n-word' was repeatedly used" in reference to African Americans, and well as homophobic slurs toward the LGBT community. According to Gascón, the officers' texts also mocked the public outcry around an earlier texting scandal involving messages exchanged between 14 officers in 2011 and 2012.

The text messages in the earlier incident contained racist and antigay remarks, called African American people "monkeys," encouraged the killing of "half-breeds," invoked "White Power" rhetoric and used epithets toward gays, Mexicans, Filipinos and others. The texts were uncovered during a federal investigation that resulted in the convictions of five officers in federal court on corruption, violating of civil rights of citizens, and taking thousands of dollars during searches of drug dealers and their homes. The texts became public only when federal prosecutors filed court documents last year seeking to keep one of the officers in custody.

Because the San Francisco Police Department failed to investigate that matter within the one year statute of limitations provided by the Police Officers' Bill of Rights, a Superior Court judge ruled that no discipline could be imposed on any of the officers involved. In the most recent texting scandal, the District Attorney contends that although police officials were aware of the texts in September 2015, they failed to notify the District Attorney until last week. Chief Greg Suhr insists he did provide the District Attorney with the texts and took disciplinary action against the officers as soon as the texts were known to SFPD. Given the discrepancy between law enforcement agencies it is unclear whether the police department actually notified the District Attorney of the specific texts now in question. The District Attorney has not released the texts to either the Public Defender or the public.

This comes at a time when the San Francisco Police Department's practices concerning race and racism are under great scrutiny. In 2015, an independent study conducted by the Haywood Burns Institute concluded that African Americans are being arrested and convicted at disproportionately higher rates than whites. The report showed that while San Francisco's black population is less than 6%, they are 40% of those arrested, 44% of those booked into county jail and 40% of those convicted. It also showed that African Americans are seven times more likely than whites to be arrested, 11 times more likely to be booked into county jail, and 10 times more likely to be convicted of a crime in San Francisco.

---

The San Francisco Police Department's use of force policies in three cases - all involving young men of color --- are also under scrutiny. Mario Woods, a 26-year-old African American man, was shot at least 21 times by San Francisco police while appearing to walk away on December 2, 2015. On February 26, 2015, San Francisco police fatally shot Guatemalan immigrant Amilcar Perez-Lopez. The Perez-Lopez family has filed a federal lawsuit after a private autopsy showed he was shot in the back. On March 21, 2014, members of the SFPD shot at 27-year-old Alex Nieto 59 times at a public park, killing him.

In April 2015, federal public defenders filed papers in U.S. District Court alleging that a Tenderloin drug sting by San Francisco police and federal agents was racially biased. Operation Safe Schools resulted in 37 arrests, all of African Americans. Police video of the arrests shows officers declining opportunities to arrest non-black suspects.

These incidents reveal a pattern and practice within the police department that has allowed racism and disparate treatment of black and Latino people to fester and grow. As Attorney General, your agency is empowered and has the sole authority to conduct a formal investigation to determine whether the San Francisco Police Department has engaged in a pattern or practice of conduct that deprives persons of "Rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or Laws of California." California Civil Code §52.3.

On the heels of community outcry and at the request of Mayor Ed Lee and Police Chief Greg Suhr, the U.S. Justice Department's Community Oriented Policing Services (COPS) launched a review of the policies, procedures and training of the San Francisco Police Department. It is crucial to note that the federal review, while a step in the right direction, is voluntary and lacks teeth. Unlike the Justice Department's Civil Rights Division, the COPS program does not have the ability to enforce change. Similarly, a probe launched by District Attorney George Gascón, deemed the "Blue Ribbon Commission," in response to the earlier texting scandal, lacks any enforcement power over the police department. In fact, the San Francisco Police Officers Association and members of the SFPD have refused to cooperate with the volunteer three-judge panel that is taking testimony as part of its inquiry. While this commission may make recommendations, it has no ability to enforce them.

I believe strongly that the path to reform is through accountability and an independent investigation, similar to the investigation performed by your office of the Maywood Police Department in 2007. That investigation, conducted by Attorney General Edmund G. Brown under the authority of California Civil Code §52.3, involved an examination of use of force and

other alleged misconduct against the police department. The Attorney General reviewed more than 30,000 documents and conducted interviews with former and current sworn police department personnel, witnesses, residents, victims of alleged police misconduct, private civil rights attorneys who represented alleged victims of civil rights violations and issued a comprehensive report on the findings of the 16-month investigation.

As a result, the Attorney General found that the City Council had failed to monitor and provide oversight of the police department, and that the department had failed to screen out and disqualify officers who are not suited to police work; the Attorney General also determined that the department routinely used excessive force, did not obtain probable cause to justify arrests and searches, and did not maintain adequate written policies and procedures to ensure "that the police services it provides are delivered in a manner that is consistent with applicable laws and contemporary police practices." Further, the Attorney General determined that the culture of that department "is one permeated with sexual innuendo, harassment, vulgarity, discourtesy to members of the public as well as among officers, and a lack of cultural, racial and ethnic sensitivity and respect."<sup>1</sup> As a result of its investigation, Attorney General Brown sought and obtained a stipulated court order to secure adoption of reforms and oversight by his office.

Similarly, in 1999, after concluding that four officers involved in the shooting death of Tyisha Miller in Riverside should not be criminally charged, the Attorney General launched a civil investigation into the Riverside Police Department. Following a two-year civil rights investigation into the practices and policies of the department, the Attorney General obtained a consent decree against the police department to implement reforms in the area of training, supervision and accountability. The Attorney General's office supervised the conditions of the judgment for five years.

I am requesting that your office open a civil rights investigation because the Attorney General has the sole power and authority under California Civil Code §52.3 to oversee any reforms directed, a power both the Department of Justice COPS program and the District Attorney's committee lack. An investigation would help settle the pressing question of whether the racism evidenced in these incidents is endemic of a culture within the department which allows these type of incidents to occur. But most importantly, it would help restore the confidence of San Franciscans --- and those around the nation who are watching --- that the San Francisco Police Department is not engaging in racist practices and is instead is following the best practices called for by the President Barack Obama's Task Force on 21st Century policing.

Respectfully,



Jeff Adachi  
San Francisco Public Defender

---

<sup>1</sup> In the Matter of the Investigation of the City of Maywood Police Department, Attorney General's Final Report, March 2009, [https://oag.ca.gov/system/files/attachments/press\\_releases/n1722\\_maywoodreport.pdf](https://oag.ca.gov/system/files/attachments/press_releases/n1722_maywoodreport.pdf)