

Below (in red) are the responses from the Orange County District Attorney's Office on Jan. 27, 2020 to Voice of OC reporter Nick Gerda's questions about evidence booking misconduct at the OC Sheriff's Department:

It was not until November 15, 2019 that District Attorney Todd Spitzer was made aware that the Sheriff's Department had engaged in an audit of its personnel that revealed a systemic issue within the Sheriff's Department with regard to late and missing evidence. This notification came as a result of a call from the Orange County Register, not from the Sheriff's Department.

District Attorney Spitzer had been in office for 11 months without ever being made aware of this issue by the Sheriff's Department.

The district attorney immediately demanded a full briefing from Sheriff's personnel on the entirety of the issue and, on November 21, 2019, three days after that briefing sent a comprehensive letter laying out the District Attorney's legal discovery obligations and requesting an exhaustive list of items from the Sheriff's Department in order to fulfill those legal obligations.

From August 2017 to July 2019, the Sheriff's Department submitted piecemeal a series of seemingly unrelated cases involving Sheriff's personnel failing to properly book evidence on time or at all. The vast majority of these cases were submitted during the prior District Attorney administration. Only seven of the cases submitted by the Sheriff's Department even mentioned "an audit" and none of the cases revealed the systemic failures with regards to evidence booking that the Sheriff's Department uncovered.

1. How many cases are known at this point to be affected/impacted by the Sheriff's Department evidence booking problems? A total of 570 cases – both filed and non-filed - were reviewed involving the 17 cases submitted by OCSD to the District Attorney's Office involving deputies failing to properly book evidence according to Sheriff's policy.

Of those, 80 cases have been identified where there was a conviction and evidence was either never booked or booked after a defendant was convicted. Notifications have been provided to the defendants and/or defense counsel, including the Orange County Public Defender's Office, in those cases. An additional 11 cases have since been identified and defense counsel has been notified. There has not been a single request for a case dismissal, a reduction in charges or a request to withdraw a plea in any of those cases.

The Orange County District Attorney's Office is not satisfied with limiting our review to just the cases involving those 17 deputies.

The District Attorney's Office is doing our own top to bottom review of every pending and closed case to ensure that justice is carried out and that defendants' rights are being protected.

District Attorney Spitzer directed prosecutors to provide discovery on the 1,200 currently pending criminal cases involving Sheriff's Department personnel. This is being done in an abundance of caution.

The District Attorney's Office is reviewing an additional 4,000 cases where evidence was booked late to determine whether any of those cases resulted in a conviction, and if defense attorneys need to be notified.

District Attorney Spitzer has assigned two veteran prosecutors and a team of District Attorney Investigators to oversee a **hand-search of 22,000** Sheriff's Department cases filed between March 22, 2015 and March 22, 2018 to ensure that evidence that was reported to have been booked is physically inspected to ensure in fact it was booked.

This review is anticipated to take up to six months. In the event that additional instances are discovered where reports stated that evidence was booked when in fact it was never booked or it was booked late, the District Attorney will ensure that defense attorneys are properly notified and that justice is carried out.

We are and will continue to provide discovery on every case where there is a potential evidence booking issue in an abundance of caution.

2. How many cases did Deputy Simpson's 74 allegedly false reports involve? Does the DA's office know the minimum number of cases that involved those reports? If not, why hasn't that been determined weeks after this came to light? **Simpson involved 74 total cases (all involving evidence not booked). The majority of those 74 cases were not filed. Notice has been provided to the defense in 32 of those case.**

3. Given DA Spitzer's statements about the importance of prosecutors not ceding oversight to the Sheriff's Department, why did the DA's office rely only on the Sheriff's Department's investigations of its own staff to determine if criminal charges were warranted?

The Orange County Sheriff's Department conducted an individual internal criminal investigation on its personnel and submitted those findings to the District Attorney's Office.

The Sheriff's Department submitted these cases over the course of two years and never explained that these cases were part of a systemic issue with evidence booking that went far beyond a handful of deputies in individual deputy evidence practices.

The 17 cases were reviewed by three career prosecutors for criminal as well as Brady implications. Sixteen of the 17 Sheriff's personnel have had Brady investigatory files opened on

them, and a Brady review is ongoing on any additional personnel identified in connection with booking late or missing evidence. The criminal review is ongoing, and District Attorney Todd Spitzer is now personally reviewing each of the cases himself.

District Attorney Spitzer has assigned two veteran prosecutors and a team of District Attorney Investigators to oversee a **hand-search of 22,000** Sheriff's Department cases filed between March 22, 2015 and March 22, 2018 to ensure that evidence that was reported to have been booked is physically inspected to ensure in fact it was booked.

This review is anticipated to take up to six months, with up to 1,000 cases being reviewed each week. In the event that additional instances are discovered where reports stated that evidence was booked when in fact it was never booked or it was booked late, the District Attorney will ensure that defense attorneys are properly notified and that justice is carried out.

The scope of that review may be expanded at any time after this initial review is concluded.

4. Did the Sheriff's Department fail to notify the DA's office about the cases impacted by evidence disclosure problems for at least two years, until press coverage was imminent in November 2019? Did this prevent disclosures to defendants and their counsel about deputies lying about evidence & failing to book evidence in their cases?

The Sheriff's Department submitted cases on deputies with evidence-related issues from approximately August 2017 to July 2019. OCSD did not immediately notify us if there were cases impacted by booking issues or revealed to the District Attorney's Office that these cases were part of a systemic issue related to evidence booking. The Sheriff's Department did not provide notice of the fact that they completed the first or second audit related to rampant evidence booking issues.

It was during the review of these 17 piecemeal cases that the District Attorney's Office determined that evidence had never been booked. It appears that the Sheriff's Department waited to complete the individual investigations before OCDA was notified. To that extent, OCDA was limited in providing immediate disclosures to defendants.

However, as soon as the District Attorney's Office was made aware of the universe of cases impacted by that individual deputy, the District Attorney's Office immediately made notification to defendants and/or defense attorneys where there was a conviction and evidence was either never booked or booked after a defendant was convicted.

Upon learning of the existence of a systemic evidence booking issue within the Sheriff's Department, it is clear that District Attorney Spitzer's immediate reaction was to ensure defense attorneys were properly notified.

5. Has the DA's office disclosed any of the evidence issues to defendants? How many defendants have received disclosures at this point? To date, notifications have been made in 91 cases. Of the 570 cases involving these 17 deputies, a number of cases were never filed resulting in no need to notify the defense as there was no case. The review is ongoing and more are pending.