

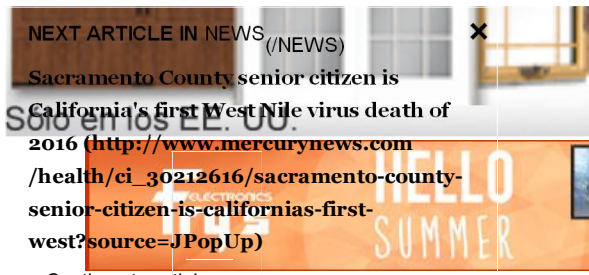
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By Tracey Kaplan, tkaplan@bayareadnews.com
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SAN JOSE -- A judge Friday found that San Jose officers unfairly targeted gay men by carrying out undercover lewd-conduct stings at a men's bathroom in Columbus Park, the first instance of such police tactics around the country.

Santa Clara County Superior Court Judge Jose S. Franco concluded that sting operations at the park during a 17-month period in 2014-15 constituted selective discriminatory enforcement in violation of the suspects' equal protection rights. Franco dismissed misdemeanor charges Friday against six men accused of loitering near a public restroom with intent to commit a lewd and lascivious or unlawful act.



Police had denied targeting gay men, contending that they used an undercover male officer to arrest suspects seeking sex in response to citizens complaints and their own observations of unlawful activity in the park on Taylor Street between Highway 87 and Coleman Avenue.

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File photo: A judge found that San Jose officers unfairly targeted gay men by carrying out undercover lewd-conduct stings at a men's bathroom in Columbus Park. (Josie Lepe/Bay Area News Group archives)

But Franco agreed with deputy public defender Carlie Ware, who argued for dismissal.

"The claim that this investigative focus was driven by complaints is minimally supported by the evidence presented, especially as it relates to the park," the judge ruled, adding that there was only one documented citizen's complaint during the time period in question. "Unpopular groups have too often been made to bear the brunt of discriminatory prosecution or selective enforcement."

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The judge's decision comes amid heightened concern about gay rights after Sunday's mass shooting of 49 people in Orlando at a gay bar. But the case predated the Orlando massacre and there is no evidence that the judge was influenced by it.

Such stings have drawn criticism elsewhere. Last month, a Los Angeles County judge threw out similar charges involving Long Beach police. Police in Mountain View, San

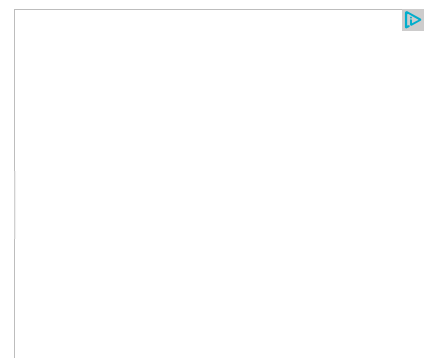
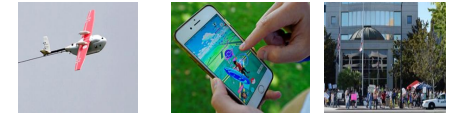
Leandro and Manhattan Beach have stopped conducting such stings in response to lawsuits over the tactic.

In San Jose, police suspended the sting operations in late 2015 at the request of prosecutors, pending the outcome of the six men's cases. Friday, a spokesman would not say whether the department would resume them under certain circumstances, including if they received a substantial number of complaints from the public.

Sgt. Enrique Garcia defended the practice, and prosecutor Judith B. Sklar noted that officers



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Our officers responded to complaints from citizens and took enforcement action," Garcia said. "It's an activity that's reported to us or that we observe." But the judge ruled that the male officer involved in most of the arrests was the person who

Confronted the suspects, asking such things as, "What are you looking for?" "Do you want to have some fun?" and "Do you want to have some fun?" Ware, who represented all six men, suggested that the department find a different way to

police the park, including by stationing a patrol car or uniformed officers there to deter illegal activity. The judge noted that the department had received complaints about prostitution, a man with a gun and narcotics. He also said most of the complaints were about activity during the day, yet most of the arrests occurred after 8 p.m.

The stings were staffed by officers in the Downtown Services unit, whose mission is to address quality of life issues. They launched them with the support of the District Attorney's Office, which designed a pilot "alternative resolution" diversion program, partly in the interest of public health. Under the program, defendants who completed the program would have the offense wiped off their record. The men were required to stay away from the park for six months, perform 40 hours of community service and be tested for HIV and sexually transmitted diseases. The test results were not shared with prosecutors or the court.

Altogether, 19 men were arrested; at least one case was dismissed for insufficient evidence; several other defendants completed the diversion program.

One of the six defendants who did not participate in the diversion program, Daniel Bufano, 55, said he is gay but went to the park just to use the bathroom. When the officer approached him, he said, he turned him down. Yet he was still arrested.

"I'm relieved with the outcome," Bufano said Friday.

But another defendant, John Ferguson, said the bathroom is widely known in the gay community as a spot to cruise for sex, particularly for married men who do not want to be seen at a gay bar. He said he went there to meet a sexual partner, though they may have gone elsewhere to have sex.

Contact Tracey Kaplan at 408-278-3482. Follow her at [Twitter.com/tkaplanreport](https://twitter.com/tkaplanreport) (<http://Twitter.com/tkaplanreport>).

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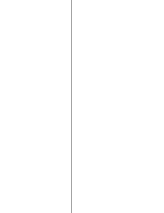
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While this makes no sense... If a police officer commits theft they are arrested, even while on duty. If a police officer is arrested during a drug case. So since it was the officers seeking and catching a public sex offender they should be arrested and added to the sex offender registry to protect the public? What if they were arresting people who were turning them down? Or trying to blackmail people like police notoriously do in India? How's that work?

Rock Lobster → Westernlowan • 2 months ago
That would be no.

Westernlowan → Rock Lobster • 2 months ago
Makes no sense. The police were engaged in illegal activity they claimed they were trying to arrest others for. There should be no distinction if everyone else is held to that standard.

Rock Lobster → Westernlowan • 2 months ago
No. They weren't. Nowhere in the article does it say anything about illegal. It says "unfair." While I'm sure it is a fantasy of yours to have police arrested, it's not going to happen here. Sorry they arrested your cohorts for getting your jollies in a public restroom, but the cops aren't going to jail.

Rock Lobster • 2 months ago
Why bother? Just tell the people complaining that gays want to have the right to have sex in the public restrooms at the parks their kids attend. Then tell them which public officials are backing this movement. Might be a PR nightmare but what the heck...gay dudes gotta do their thing in public.

JustCommenting • 2 months ago
I very much respect the police, but go after the gangs.

puckkanuck → JustCommenting • 2 months ago
I am a heterosexual male, but I have gay friends who very likely would not want to go to that park if this public sex thing gets out of control. I also know a lovely gay couple who have a small child. I am quite sure they would not take their child to this park. This kind of do-goodism is very misplaced.

Left Unsaid • 2 months ago
With all the online opportunities for gays to "poz it up", why are they still cruising public bathrooms?

puckkanuck • 2 months ago
Not sure I understand the basis for the dismissal. I am all in favor of gay rights, but this does not sound like selective enforcement to me. If a heterosexual couple has sex in public, I am guessing the cops would be unhappy with that as well.

Herman Miller → puckkanuck • 2 months ago
They didn't set up a special squad to solicit heterosexual men and women for sex.

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