

CRIME & COURTS

5 years, 29 cases, just 1 conviction

City Desk review of cases involving officers, attorney in fed. investigation show high rate of dismissals



by **ELISE KAPLAN**
6 DAYS AGO



APD Chief Harold Medina. Photo Courtesy Elizabeth McCall

Since 2017, nearly every DWI case where Albuquerque Police Officer Honorio Alba made the arrest and Thomas Clear was the defense attorney ended up getting dismissed.

A *City Desk ABQ* review of court records in the 29 cases revealed that only one case resulted in a defendant being sentenced. Over and over the cases were dismissed because Alba did not appear for pre-trial interviews, was not available to testify, or the state did not provide records to the defense.

Alba, the 2023 Mothers Against Drunk Driving (MADD) officer of the year, is one of four officers whose cases were dismissed due to integrity issues as a federal investigation unfolded. The others are Joshua Montano, Harvey Johnson, and Nelson Ortiz.

Federal authorities have not yet released information detailing that investigation and no one has been charged, but it appears that the allegations center around DWI officers and a local defense attorney, Thomas Clear, coordinating to get cases dismissed. The Albuquerque Police Department has placed five officers on leave and it is conducting an internal investigation of its own.

Tracking their own

The episode calls into question what mechanisms are, or are not, in place to notify departments if their officers are not attending hearings or pre-trial interviews.

Nancy Laflin, a spokesperson for the DA's Office, said when an officer does not appear for a hearing or trial the office sends a form letter to their agency. In 2023, 21 of APD's DWI cases were dismissed for officers failing to appear.

But, Laflin said, historically prosecutors would not have sent that form if an officer did not show up to a pre-trial interview. (As of March 2022, officers with cases in the Bernalillo County Metropolitan Court are no longer required to attend pre-trial interviews with defense attorneys).

City Desk ABQ reviewed 85 DWI cases dating back to 2017 where Clear was the defense attorney and Alba, Montano, Johnson, or Ortiz was the arresting officer. Twelve—about 14%—ended with the defendant being convicted or taking a plea deal. This is much lower than the Metro Court average of 56% convictions in DWI cases over the same years. The vast majority of defendants were arrested by Alba or Montano.

Year	Total Cases	Disposition by Category			
		Total Convictions	Total Acquittals	Other Dispositions	Total Dismissals
1997	2,869	58.3%	1.9%	0.1%	39.7%
1998	5,119	67.0%	2.0%	0.0%	31.0%
1999	4,980	64.4%	2.6%	0.1%	33.0%
2000	4,899	69.5%	1.6%	0.0%	28.9%
2001	6,073	70.6%	1.4%	0.1%	28.0%
2002	6,144	66.1%	1.6%	0.0%	32.2%
2003	6,706	62.6%	1.8%	0.0%	35.7%
2004	6,407	60.0%	2.0%	0.0%	38.0%
2005	6,536	64.2%	2.0%	0.0%	33.7%
2006	5,940	69.1%	2.0%	0.0%	28.9%
2007	6,851	71.8%	1.3%	0.0%	26.8%
2008	7,135	69.4%	0.7%	0.0%	29.9%
2009	6,648	66.6%	0.7%	0.0%	32.7%
2010	5,497	65.4%	2.0%	0.0%	32.6%
2011	4,650	65.5%	1.6%	0.0%	32.9%
2012	4,732	67.9%	2.4%	0.0%	25.9%
2013	4,534	57.9%	3.5%	0.3%	38.4%
2014	3,853	47.5%	2.4%	0.2%	49.9%
2015	3,171	46.7%	2.7%	0.1%	50.7%
2016	2,678	44.9%	2.4%	0.3%	52.4%
2017	2,628	49.1%	2.1%	0.0%	48.9%
2018	2,821	56.8%	1.4%	0.0%	41.8%
2019	3,469	55.0%	1.9%	0.6%	42.5%
2020	3,676	55.3%	1.3%	0.0%	43.4%
2021	2,915	59.4%	1.3%	2.3%	37.0%
2022	2,611	62.0%	0.9%	0.0%	37.2%

DWI case in Metropolitan Court. The years 2020 through 2022 included cases that were dismissed because a defendant is deceased. (Source: [the New Mexico Judiciary Annual Statistical Report on DWI Court Dispositions](#) for 2022)

At least 18 cases were dismissed because officers failed to attend pre-trial interviews and in at least 22 cases they didn't attend hearings. In at least 16 cases, the state had not turned over evidence to the defense. The remaining cases either had court documents that could not be accessed or they did not specify what had happened to cause the case to be dismissed.

“That’s a high percentage, but any percentage is unacceptable,” said attorney John D’Amato, when told of the finding.

D’Amato, an attorney with the Albuquerque Police Officers’ Association, said if the union gets a request to represent the officers he will step in but he has not yet been called.

APD spokesperson Gilbert Gallegos did not respond to questions about whether these stats raised any red flags in the department.

Gallegos also did not answer questions about how the department is notified if an officer misses court or an interview and what action it takes when that happens. He said APD plans to hold a briefing later this week on the matter.

“We are verifying information and processes with other agencies to ensure we can provide accurate answers,” Gallegos wrote in an email. “It is also important to know that there have been changes in recent years that affect DWI cases.”

Gallegos said the remaining officers on the department’s DWI unit who are not on administrative leave and under investigation have been assigned to field units in various area commands.

“They will still conduct DWI investigations, but they will be part of a field squad and report to that squad’s sergeant,” he said. “Those assignments are temporary while the investigation is ongoing and the chief decides what changes may be needed for DWI investigations to ensure more accountability.”

New Mexico’s deluge of DWI’s

High rates of dismissals in DWI cases have plagued the state for decades.

In 2005, then-Gov. Bill Richardson convened a summit to address a “deluge” of DWI cases that were routinely dismissed statewide.

Two years later, a report by the National Center for State Courts examining scheduling practices in DWI cases recommended that Metro Court maintain and regularly publish a list of cases that are dismissed because a law enforcement officer failed to appear for a pre-trial interview or trial.

Spokesperson Camille Baca said the court ultimately decided to reject the recommendation “in order to maintain its role as the Court, and remain neutral and fair” and because it is not the court’s responsibility.

“The justice partner group in Bernalillo County at the time, instead, decided that that recommended practice should be the responsibility of the District Attorney’s Office,” Baca said.

However, in 2007 the court did open a kiosk for officers to check in as they enter the courthouse or online if it's a virtual hearing. This system allows judges, staff and attorneys to see if an officer has checked in and what courtroom they're in.

“Metro Court is one of only a handful of courts in the country with this technology,” Baca said. “The court currently does not use its Officer Check-In system for tracking purposes.”

Failure to appear

In 2014, an audit of DWI unit overtime found that “due to continuous turnover at the District Attorney’s office, FTA letters had not been consistently sent to APD.”

“Additionally, APD does not keep a central file of all FTA letters,” the audit found. “As a result, it is difficult for APD to consistently hold officers accountable for failures to appear in court.”

The audit found that APD is “unable to effectively analyze court attendance or ensure that officers are making court appearances.”

In response to a recommendation that APD independently track and manage officer attendance in court, the department said that the many different systems and agencies involved make it difficult to do so.

“When supervisors receive a proper FTA notification for an officer that is within a timely manner as dictated by the collective bargaining agreement, the Albuquerque Police Department does conduct an investigation and takes appropriate action when the FTA is not justified,” APD responded in the audit.

An investigation by *The Paper* published last year found the District Attorney’s data showed 324 cases that were dismissed because law enforcement (including APD, the Bernalillo County Sheriff’s Office and the New Mexico State Police) missed court-related appearances between May 2019 and August 2022.

At that time, Gallegos said in 2022 there had been 34 instances where investigators found policy violations regarding court appearances, 24 of which resulted in a reprimand. However, in just the first eight months of that year, the DA’s Office found officers missed court proceedings 81 times.

As for what’s next, **Chief Harold Medina told reporters** last week that “we just, in the last two weeks, finally got access to the court system where we can easily start looking up missed court notices ourselves and take more responsibility for that.”

Baca said last week the court was asked to develop a system to track whether officers are attending hearings, as a courtesy to local law enforcement.

The court's role

No more pre-trial interviews

In March 2022, the New Mexico Supreme Court temporarily suspended the requirement for officers to attend pre-trial interviews in Bernalillo County Metropolitan Court and in Santa Fe Magistrate Court. This was done to address a backlog of cases as a result of the pandemic.

Jonathan Ibarra, President-Elect of the New Mexico Criminal Defense Lawyers Association, said that pre-trial interviews are particularly important in DWI arrests since often the case hinges on the officer's testimony and defense attorneys have to be able to assess their credibility.

"It was always a not great thing that you just had to assume the police officers were telling the truth on DWI investigations," Ibarra told *City Desk ABQ*. "And I think most officers have and do. But that doesn't mean they all do—clearly—and now all of those are a lot more suspect."

He acknowledged that an officer missing a pre-trial interview is a common reason for a case to get dismissed, but said that doesn't diminish the importance of the process and the impact that has been felt now that it has been eliminated in Metro Court.

"I do think it is more important to us to make sure we actually have all the information in the case," Ibarra said.

Read more.

On Jan. 2, 2024 the US Attorney's Office notified the Bernalillo County prosecutors that it was actively investigating Albuquerque Police Department officers and that it had uncovered information that cast doubt on the trustworthiness of at least four officers.

It provided the names of the four officers saying the information "would implicate your office's responsibilities pursuant to *Giglio v. United States*," according to a letter sent

from the U.S. Attorney to the District Attorney on Jan. 25. ([read the letter here](#)).

The officers are Honorio Alba, Harvey Johnson, Joshua Montano and Nelson Ortiz. But it was another 16 days before the Second Judicial District Attorney's Office would dismiss more than 150 DWI cases. Thirteen of those arrests were made by one of the four officers after the District Attorney was notified of the federal investigation.

The majority of the 156 cases—four of which were felonies—were dismissed the same day that FBI agents searched the homes of the officers and the office of defense attorney Thomas Clear. News of the raids were disseminated online that morning. In response to questions about why there was a more than two week delay before the cases were dismissed, Nancy Laflin, a spokesperson for the District Attorney's Office, simply said: "It takes time to review each case."

Maggie Shepard, a spokesperson for the Law Offices of the Public Defender, said they were not notified that the officers would need Giglio disclosures, but they wouldn't expect to be.

As to whether the attorneys were concerned about the 13 cases that were filed after the DA's Office was notified of issues that could impeach the officers credibility, Shepard said "If we encounter any issues with client cases filed in this time or before, we are addressing them in court."

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