



## APD Forward's Analysis and Summary of the Independent Monitor's Special Report

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***“[The Albuquerque Police Department]has almost no appetite for correcting behavior that violates existing policy.”***

*- James D. Ginger in his Special Report on Systemic Deficiencies in Use of Force Investigations*

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In his third Independent Monitor Report, covering the period of December 1, 2015 through March 31, 2016, Dr. Ginger warned that specific cases illustrating APD's systemic failure to properly monitor use of force warranted a “special report” to be issued near July 2016. Upon receiving a draft of this special report, APD asked both Dr. Ginger and the Court overseeing the reform process to “remove the portions of the report that draw conclusions regarding the City's current level of compliance with the Settlement Agreement.”<sup>1</sup> APD argued, as it has done several times in the past, that the problems identified in the report were out of date and that APD has since trained its officers and supervisors on how to properly investigate use of force incidents.<sup>2</sup>

Dr. Ginger explained to the Court that the report was current up to the date it was filed, August 17, 2016, and that it evaluated hundreds of documents that would also be addressed in the upcoming regular fourth report. He stated that there were at least 12 issues with the use of force and force investigation training that had been completed in May and described the trainings as “absolutely ineffective” and said that they “can't be allowed to stand.” Contradicting the City's contention that things have improved, Dr. Ginger said that things are “changing more slowly than any project I've been familiar with,” and that APD was “conflating activity with success.” The Court rejected APD's request to modify the special report. Based upon a review of the transcripts of the recent Court status conference and Dr. Ginger's “special report,” it is abundantly clear that APD's system to recognize, investigate, evaluate, and resolve incidents involving the use of force is *currently* dysfunctional. Or, as Dr. Ginger put it: “The

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<sup>1</sup>See letter to Dr. Ginger, dated September 2, 2016. See also Court transcripts of September 8, 2016 telephonic status conference where the City asked Dr. Ginger “not to include conclusions that try to describe current status,” and to “remove ... all references to any conclusion about the current state at APD.”

<sup>2</sup> Use of Force investigation training for supervisors was completed in May 2016.

system's present state *cannot* generate reliable, high quality use of force oversight and accountability.”

The Special Report examines three<sup>3</sup> distinct use of force investigations involving the same two officers within the span of just a few weeks. The majority of the report addressed an October 2015 incident in which an officer delivered a knee strike to a suspect's head after the suspect fled from an attempt to steal an APD “bait” car. KOAT-TV released a video of the incident that is available at: <http://www.koat.com/news/police-report-and-video-dont-match-up/41145716>. Although the knee strike resulted in obvious bleeding and potential unconsciousness of the suspect, the incident went unreported as a use of force.

A week went by before the case was investigated as a possible use of force, but each level of review, from sergeant to lieutenant to commander, found the use of force was justified and reasonable. An unnamed commander who reviewed the incident found the force reasonable without even bothering to review any of the body camera footage. Other policy violations went unnoticed or unreported.

### **Systemic Problems in Unwritten Policies**

The initial failure to report the use of force was rationalized by supervisors because they viewed a knee strike to the head as a “distraction technique,” although Dr. Ginger made it clear that any reasonable person would view being kned in the head as a serious use of force, potentially even deadly force when used on a defenseless suspect. Contrary to current APD policy and requirements of the settlement agreement between the U.S. Department of Justice and City of Albuquerque, it appears that APD has incorporated the mistaken belief that “distraction techniques” are only reportable uses of force if the suspect complains of injury. Dr. Ginger asked an APD use of force instructor about this “policy” and the instructor made it clear that a distraction strike is a reportable use of force. How officers came to believe anything different is unclear, but supervisors have apparently accepted and reinforced the unofficial and unwritten practice.

Dr. Ginger also finds that the department is not adequately tracking and addressing officers' failure to use On Body Recording Devices and their inappropriate use of profanity. Supervisors too often rationalize the policy violations under accepted practice, despite clear written policies.

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<sup>3</sup> In addition to the knee strike incident, Dr. Ginger examined a case where attempting to handcuff an individual resulted in the suspect having a broken arm, and a case where tackling a suspect resulted in his broken collarbone. The monitor reviewed these three cases and found insufficient follow-up investigations into the use of force in each but also notes that several other cases raised similar concerns regarding use of force investigations (including a case previously reported on in IMR 2 and 3 involving a neck hold and the application of multiple taser cycles).

## **Unresolved Issues**

Almost six months after the knee strike incident, the same two officers (PO-1 and PO-2) were involved in eight additional use of force incidents, registering nine “hits” on the department’s Early Intervention System (EIS). Despite notifications from EIS, nearly three months passed before anyone at APD recognized a problem with these officers’ use of force. The failure of the EIS system to work, as designed, to prevent future misconduct remains a serious issue.

To date, numerous issues remain outstanding with the knee strike investigation, including:

1. Only the actions of officers referred to in the report as PO-1 and PO-2 were ever reviewed, while the actions of the other two officers were never examined.
2. The credibility of the officers involved is questionable in light of inconsistencies between written reports and video footage.
3. Recommendations from an Internal Affairs Section (AIS) investigation seem to have never been addressed.
4. The case was never referred to the District Attorney’s Office despite obvious reasons to do so.
5. Deficient chain of command investigations by at least two supervisors appear to still be unaddressed.

Deficiencies in the Internal Affairs investigation will be addressed further in the Monitor’s Fourth Report.

## **Conclusion**

APD contends the cases in the monitor’s special report are outdated and do not reflect the current state of affairs at APD. However, it is difficult to see how unresolved issues from an investigation beginning in 2015 and through the present, with specific feedback from the monitor in previous reports, indicate anything other than an ongoing systemic failure to recognize and address use of force issues. As the monitor suggests, the solution is as simple as having a supervisor say to an errant officer: “I know what you did, and, frankly, it is not acceptable. What we need to do is . . .!” The persistent failures of supervisors and command staff to take such actions implicate, in Dr. Ginger’s words, “a culture of low accountability and represent serious erosions of original policy intent.” Fortunately, Dr. Ginger has provided very specific recommendations to fix the system of use of force investigations and create a culture of accountability. “Without a culture that fosters high levels of oversight and accountability at all levels,” Dr. Ginger concludes, “the Department will fail to meet its professional obligations

and continue to underserve both its workforce and the citizens of Albuquerque.” APD must make every effort to consider and implement these recommendations as soon as possible.