

THE FIRST MONITOR'S REPORT

APD Forward's analysis of the Federal Monitor's first compliance report highlights a slow start to implementing reform with APD's policy formation process in disarray.

*Reporting Period:
February 1, 2015
through May 31,
2015*



Executive Summary

“Fostering the constitutional use of force is the primary goal of this entire effort . . .”

- James D. Ginger, Monitor’s First Report.

The court-approved settlement agreement between the U.S. Department of Justice and the Albuquerque Police Department (“APD”) resulted in a court-monitored reform effort to address APD’s pattern and practice of excessive use of force. The independent monitor assigned to oversee this effort, Dr. James D. Ginger, issued his *Monitor’s First Report* in November, 2015 analyzing APD’s efforts to comply with the settlement agreement during the period February 1 to May 31, 2015 (the “reporting period”). APD submitted a parallel *Progress/Status Summary*, or “self-report,” detailing its reform efforts for a more expansive time period from November, 2014 through November 2015. This report identifies highlights from the monitor’s report and makes key comparisons with APD’s self-report.

Perhaps the most pivotal element of the settlement agreement is the requirement that APD draft a coherent policy, informed by the latest case law, to direct its officers in the constitutional use of force. As of the writing of this report, APD still has not achieved this. As the monitor described in a December 3, 2015 status conference before U.S. District Judge Robert C. Brack, without this policy, APD cannot train officers on the use of force, nor can it discipline them for misusing force. The entire reform of APD is stalled.

Policy revision appears to be a systemic problem within APD. “In terms of the policies that APD has drafted so far,” the monitor found, “they have been difficult to understand, poorly organized, and apparently written piecemeal, without an overarching understanding of the function of policy in guiding officer conduct and forming the basis for APD’s training program.” For example, the monitor rejected APD’s draft policy regarding civilian complaints as in need of comprehensive revision, noting that this is a “common theme with APD.” The monitor identified the absence of a “clearinghouse” for policy development, dissemination, revision and assessment as “the most critical missing piece of the compliance puzzle at this time.”

APD reports that 394 of 416 patrol officers completed Crisis Intervention Training (CIT). But the monitor dismissed APD’s documentation of the training as inadequate. Most policies related to CIT compliance are not yet developed, raising concerns about the quality of the training that

the 394 officers received. Likewise, the monitor found APD's documentation "inadequate" to prove that it had trained tactical team members on the Critical Incident Team course.

The monitor recognized significant progress in meeting the terms of the agreement related to specialized units. APD has disposed of several military surplus vehicles that were not well-suited for civilian police operations. It has also initiated a new process for assessing and managing high-risk tactical situations. A review of 18 deployments of Specialized Tactical Units appeared to turn up no evidence of major problems.

Perhaps the most alarming finding from our comparison of the two reports was the disparity between the two assessments of APD's progress. In its self-report, APD described itself as "pleased" with its progress and asserted that by November 2015 it had "compiled information to document compliance of approximately 119 of the Settlement Agreement directives." The monitor's report offered a much more sobering assessment, crediting APD's full compliance with only 4 requirements.

Such wide disparity in views suggests that APD is underestimating the magnitude of the reform upon which it has embarked, and the effort that will be required. At APD's insistence, the reform timeline was set at 4 years in the settlement agreement. Few police departments have come into full compliance with a court-enforced agreement like Albuquerque's in anything less than 7 years. Los Angeles required 12 years and Detroit's has been ongoing since 2002.

APD Forward is concerned that APD is approaching this reform as something it needs to dispose of quickly and painlessly, rather than as an opportunity to become the exceptional police department that Albuquerque deserves. Given the lag in APD's progress and the difficulties the department has experienced in meeting the independent monitor's standards, it is hard to envision any scenario in which APD is not forced to negotiate a longer timeline for reform.

We hope that this first progress report serves as a wakeup call, and that APD will engage in the continuing reform effort with a renewed urgency and commitment to excellence. With the safety of Albuquerque citizens on the line, APD simply cannot afford to approach it any other way.

Background

On November 14, 2014, the United States Department of Justice (“DOJ”) entered into a settlement agreement with the City of Albuquerque regarding changes the Parties agreed to make in the management and operations of the Albuquerque Police Department (“APD”). The settlement agreement included 280 requirements which essentially cover nine different areas in which much needed change is required, including Use of Force, Specialized Units, Crisis Intervention, and Policies and Training. APD requested that the settlement agreement set forth a 4-year timeline for reform, requiring APD to reach substantial compliance with the 280 terms of the agreement, and then hold that compliance for another two years.

The agreement recognizes three different levels of compliance for each requirement:

Primary: APD must have operational policies and procedures in place to guide APD personnel. The policies must be reflective of the requirements of the settlement agreement.

Secondary: APD must have implemented supervisory, managerial and executive practices designed to carry out the policy as written.

Operational: Attained at the point that the adherence to policies is apparent in the day-to-day operation of the agency as a whole.

The court-approved settlement agreement requires the independent monitor to provide public reports on the City’s progress every four months for the first two years of the settlement agreement and then every six months for the subsequent two years. Due to delays in finalizing the contract and funding for the independent monitor, the monitor and his team were unable to begin monitoring efforts immediately and the original deadlines in the settlement agreement were modified. The *Monitor’s First Report* covers the period from February 1, 2015 through May 31, 2015 in which only the two- and three- month deadlines of the settlement agreement expired. As such, APD is currently “in compliance” with the original two- and three-month deadlines of the settlement agreement:

1. Paragraph 149, requiring all officers to be briefed on the settlement agreement.
2. Paragraph 141, requiring that APD develop a process for officers to review and comment on new or existing policies.
3. Paragraph 142 requiring the creation of a Policy and Procedures Review Board. This was completed and thus APD is “in compliance,” though APD hasn’t incorporated a functional assessment method for the PPRB, meaning that only Primary Compliance has been met.

APD also provided the monitor with documentation attesting to compliance in eight other areas of the settlement agreement which had six month deadlines, but the monitor reported that just over a quarter of those areas were actually in compliance. Since the deadline for these areas has not passed, APD is not yet in violation of the settlement agreement.

Those areas in some level of compliance are as follows:

- 1) Paragraph 151: Itemized training schedule (does not include 18 month requirement of completing all training): Operational compliance
- 2) Paragraph 164-168: Awareness Program by APD and CPOA (establishing civilian complaint forms, processes and awareness): Primary Compliance
- 3) Paragraph 196 : Anti-Retaliation Policy: Operational compliance

At a status conference before U.S. District Court Judge Robert Brack, on December 3, 2015, the independent monitor reported that APD was in primary compliance with 15 of 280 requirements and was in secondary and operational compliance with four out of 280 requirements as of May 31, 2015. These findings conflict with APD's *Progress/Status Summary*, which asserts that it has compiled information to document compliance with approximately 119 of 280 requirements. Note that APD's self-report covered a longer period of time, from November, 2014 to November, 2015.

Below, we extract what, in our opinion, are the most noteworthy findings from the *Monitor's First Report*. Some are observations about the current state of affairs inside APD, including systemic problems that APD has only begun to work on. In most cases, deadlines for resolving these issues have not yet arrived. So, even while the descriptions may seem alarming, they should not necessarily be taken as evidence that APD is lagging behind the reform schedule in these areas.

Highlights from the monitor's first report

Use of Force policy and investigation

Pursuant to the settlement agreement requirements, APD must create a new use of force policy that "complies with applicable law and comports with best practices." APD submitted a new use of force policy to the monitor in December 2014, only to have the draft returned for "major re-work, ranging from improved organization, greater clarity, elimination of redundancies, and full, clear explication of the more restrictive use of force standard required by the settlement agreement." APD submitted a second draft in September 2015 which had not been fully analyzed by the monitor but appeared to have made improvements.

The monitor also found that existing policy and the first draft of the new policy fail to provide the necessary foundation for training and supervision on use of force and is inconsistent with best practices in the field. He asserts that APD cannot train officers on the use of force without this crucial policy, nor can it discipline officers for failing to adhere to a policy which does not yet exist.

The monitor reviewed information from 16 random supervisory force investigations between February 1, 2015 and May 31, 2015 from a total of 50 reported cases of use of force that required supervisory review (under current policies). Initially, the monitor requested information, including lapel videos, on all 16 incidents but APD only provided the requested information for two of the instances. After a second request from the monitor, APD provided further videos and information on the other 14 incidents, but it was still not everything that had been requested and was provided too late for the monitor to thoroughly review.

In two of the incidents, the monitor identified failures by the chain of command to recognize problems with the use of force. In one, the officer discharged an Electronic Control Weapon into the back of the subject's head—something expressly forbid by APD policy. In the second, the monitor notes that it “appeared” as if the officer placed his knee on the man's neck in such a way that it might have constituted a neck hold, which is categorized by the settlement agreement as lethal force. The investigation by APD did not consider whether lethal force was used and, if so, if it was warranted.

Among other issues, the monitor found that few supervisors used their lapel video to record witness statements, as required. Officers are still using standardized language to describe their uses of force (e.g. “I felt it necessary to deploy my lethal force in preparation...”), in violation of Paragraph 42 of the settlement agreement. Few supervisors analyzed incidents to identify specific behaviors that could be classified as attempts at de-escalation or assess whether the minimum amount of force necessary was used. Both are required by the settlement agreement and APD's draft use of force policy.

Specialized Units

APD's Special Operations Division consists of the required distinct units: SWAT, Canine, and Bomb Squad (the Repeat Offender Project was eliminated as required). APD has made some progress in meeting the requirements of the settlement agreement related to these units:

- It disposed of several military surplus vehicles that were not well suited for civilian police operations, has repainted the remaining, better-suited vehicles blue instead of military brown, and has signage on the vehicles indicating “rescue” to distinguish them from military vehicles.

- APD has initiated a search warrant matrix to be used to assess and manage high-risk tactical situations and to avoid having division members providing tactical responses to situations that would require SWAT activation.
- The monitor reviewed 18 deployments of the Specialized Tactical Units. All involved violent crimes and six were resolved directly by crisis-hostage negotiators. Only one involved a warrant and that was an arrest warrant for a “violent felon.” In one case, SWAT withdrew when the subject was exhibiting suicidal behavior to avoid unnecessary risk to the public.

However, there are still a number of issues which need to be dealt with:

- While APD reported that tactical team members completed the department’s 40-hour Critical Incident Team course, the monitor rejected the documentation behind the training as inadequate.
- Current policies for the three units are disjointed, originating at different organizational levels. None of the policies clearly explain how APD’s use of force policies apply to unit and division operations, a requirement the monitor deems “critically important.”
- Current policies governing the tracking of K-9 deployments and bite ratios are muddled—several drafts on the same subject, each with different dates, exist and it is unclear whether the most recent draft is the official working draft.
- Current policies are not clear on the required operational planning prior to deployment of specialized units.

Crisis Intervention

Records maintained by APD indicate that “394 of 416 patrol officers at APD have been trained and certified as CIT-capable.” The monitoring team reviewed the training documentation for the trained officers and noted that it consists only of a collection of PowerPoint documents that “falls far short of expected documentation.” The slides appear to depicting a lecture approach to training which, the monitor notes, is “simply inadequate ‘proof of life’ for a training process.”

The monitor states, “The monitoring team is concerned about the quantity and quality of training provided by APD pursuant to this task ... the quantity and quality of scenario-based training is minimal, at best, and during this time-period, APD was ‘retooling’ applicable policies, thus training ‘to policy’ was not possible.”

Policies and Training

Some of the monitor’s strongest criticisms addressed policy development:

- “In terms of the policies that APD has drafted so far, they have been difficult to understand, poorly organized, and apparently written piecemeal, without an overarching understanding of the function of policy in guiding officer conduct and forming the basis for APD’s training program.”
- The monitor gave “failing marks to critical policy elements on their initial reviews, finding fatal flaws in the APD’s use of force, internal affairs, supervision, and other policies that made effective training virtually impossible.”
- “Major problems with organization, content, and draftsmanship plague the review and approval process.”
- The monitor observed a meeting of the Policy and Procedures Review Board (PPRB) and “[f]ound sparse evidence that the group screens for conformance to established pattern and practice in the field, or that it screens for compliance with the settlement agreement.”
- “There appears to be no clearing house for policy development, dissemination, revision, and assessment . . . the most critical missing piece of the compliance puzzle at this time.”
- The monitor found the existence of multiple and inconsistent versions of policy dealing with the same subject matter (for example, the use of canines for crowd control). The monitor reports that APD’s current policy development process “is in general disarray.

The monitor found that APD’s current training system is not based on any clear form of needs assessment that would drive what should be trained and how. “Thus the first two critical pieces of any training development, clear and careful needs assessment and effective, clear, well-written policy were missing from the APD’s existing training rubric.” Current training on use of force is still lacking and requires more emphasis on de-escalation skills, APD’s higher standard governing the use of force, enhanced use of force reporting and investigation, the management of encounters with those in crisis, and incident management principles.

Internal Affairs and Citizen Complaints

The monitoring team could not approve the current Internal Affairs policy as it was “not responsive to the requirements established by the settlement agreement” and is “difficult to read, understand, and by extension, difficult to train.” Likewise, the APD draft policy regarding civilian complaints against APD officers was returned as insufficient and requiring a comprehensive rewrite and edit. The monitor notes this is a “common theme with APD.”

The APD website “can be construed as discouraging civilians from submitting complaints and should be revised.” APD reports 95% (approximately) of its officers have been trained in

handling civilian complaint intake. However, the monitor found insufficient test data demonstrating employee mastery of the training.

Paragraph 191 of the settlement agreement requires all administrative investigations by the Internal Affairs Bureau (“IAB”) or the Civilian Police Oversight Agency (“CPOA”) to be completed within 90 days of initiation. The review team reviewed two CPOA cases where discipline could not be imposed because of the failure to comply with time requirements. “The monitoring team is concerned regarding the ability of the CPOA to make recommendations of discipline to the Chief within the time periods allowed for imposition of discipline.” The monitors

IAB is understaffed with at least four Sergeant vacancies and two Detective vacancies. The monitoring team views this as “a most serious deficiency in APD’s staffing and personnel distribution system.” The monitor reported that in the four-month review period there were 24 investigations completed by the Internal Affairs Bureau and the Civilian Police Oversight Agency. That’s at least one investigation of officer misconduct per week.

Conclusion

We must note two points. One, the monitor’s report covers a period that ended on May 31, 2015, nearly 8 months before the drafting of this report. Whether APD has made significant progress since that time, and how much, will be the focus of the next status conference with U.S. District Court Judge Brack in early March, 2016. Even if APD has made major changes, however, it’s hard to imagine that they will be anywhere near as extensive as the optimistic appraisal that APD gave itself in its self-report.

Two, many of the monitor’s observations that we’ve highlighted are not a comment on APD’s efforts to reform its policies and practices, but rather reflect a state of affairs that has yet to be corrected, and that is responsible for the pattern and practice of excessive use of force which originally prompted the DOJ’s intervention. Nonetheless, the monitor’s report makes clear that APD is facing huge challenges in carrying out the reform, especially within the 4-year time frame which it requested as part of the settlement agreement. The monitor’s first report clearly indicates that APD does not yet have an effective system for drafting and revising key policies, such as the use of force policy, causing the monitor to reject many of their efforts at policy development. The policies often lack clarity and fail to live up to nationally accepted best practices.

What’s more striking is the glowing assessment that APD gave its own reform efforts prior to the monitor’s review. That the monitor’s assessment was so much less approving suggests that APD has underestimated the challenges involved in reform. While it has made noteworthy improvement in a few areas, APD must adopt a heightened sense of urgency and commitment to excellence if it is to complete the reform process in a reasonable time period.