



APD Forward's Analysis of the Independent Monitor's Fifth Report

“In the opinion of the monitor, such deliberate resistance ... constitutes deliberate non-compliance on the part of APD and the City.”

- Fifth Report of the Independent Monitor

The Monitoring Team, in its fifth report, notes a “palpable shift” in the Albuquerque Police Department’s response to reform efforts, describing an attitude of “deliberate resistance” by supervisory and command staff. While it is important to note progress in some areas, it is disturbing to see an attitude of obstruction when it comes to critical issues such as use of force review, response to civilian oversight, and creating a culture of accountability within the Department. The Monitoring Team’s description of deliberate resistance in no way aligns with the Department’s recently touted vow to intensively collaborate with Albuquerque communities.

APD Forward believes that the reform process has hit a critical juncture where we will find out whether the Department’s command staff is committed to true culture change. For over two years, APD has worked on crafting operational policies that guide officers and supervisors and then training those officers and supervisors on effective, constitutional policing. That first stage took much longer than was expected but much of that work has finally been completed successfully. Unfortunately, the most difficult work still lies ahead. APD must now implement managerial practices that effectively put into practice the Department’s written policies. This is where a culture of accountability comes into play. According to the Monitoring Team, APD supervisors and managers are deliberately refusing to embrace the kind of culture shift necessary to truly transform the Department.

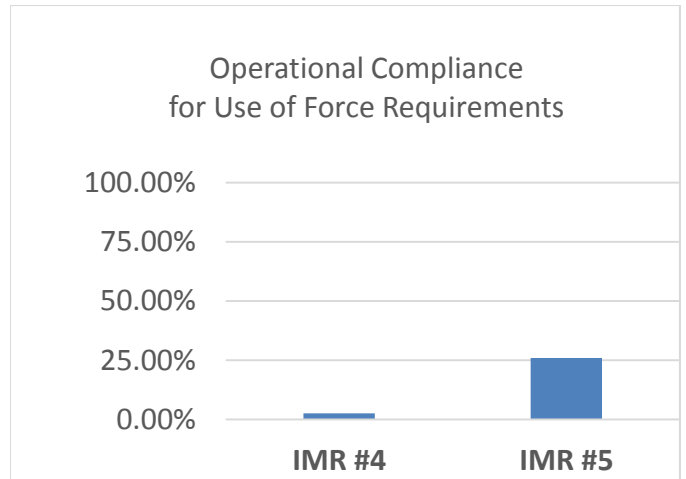
Major issues raised by the Monitoring Team’s fifth report are outlined in the remainder of this analysis.

Failures to Catch and Correct Improper Uses of Force

“While officers may be required to use force during the course of their duties, they must do so respecting constitutional guarantees against unreasonable searches and seizures. For too long, Albuquerque officers have faced little scrutiny from their superiors in carrying out this fundamental responsibility.” – Department of Justice Findings Letter, April 10, 2014

More than three years since the United States Department of Justice announced the findings of its investigation into the Albuquerque Police Department, it is important to remember why the Department of Justice came to our city in the first place: APD has a documented history of repeatedly using excessive force in violation of the Fourth Amendment to the U.S. Constitution. As the findings letter of April 10, 2014 pointed out, one of the main reasons for this pattern and practice of excessive use of force was because officers faced such little scrutiny from their superiors for their actions. Yet, incredibly, the Monitoring Team in the fifth report reviewed 16 reported and documented use of force cases and found **zero** of those cases had been effectively reviewed. This can only mean that managers are either incapable of identifying or unwilling to correct use of force incidents.

Figure 1



Refusal to Bar Prohibited Uses of Force

The settlement agreement clearly bars certain uses of force, such as neck holds and force against handcuffed prisoners. The agreement is clear and unambiguous on these points. However, APD continues to resist prohibiting these dangerous practices. In the case of neck holds, APD has attempted to allow this practice and still does not have a Monitor-approved policy on this type of use of force. In the case of force used against handcuffed prisoners, supervisors are so accustomed to seeing this type of prohibited force, they cannot or do not even identify it as a use of force in their reviews. Similarly, uses of force such as strikes, leg sweeps, pushes, shoves, etc. are labeled as “distraction strikes,” a disingenuous term designed to cover up the incidence of use of force within the Department. There seems to be a penchant by supervisors to avoid reviewing uses of force by never identifying them as uses of force in the first place.

Inadequate Responses to the Civilian Police Oversight Agency (CPOA)

Both the settlement agreement and City ordinance require that if the Chief of Police decides to impose discipline on an officer other than what is recommended by the CPOA, the Chief must provide a written report articulating why the recommendations of the agency were not followed. The Monitoring Team reviewed five instances where the Chief did not follow the recommendations of the agency (as is his prerogative) and in none of those cases did the Chief articulate the reasons for his decision. This is problematic for several reasons, but by ignoring this requirement the Chief effectively delegitimized civilian oversight of APD. The purpose of the CPOA is to provide outside accountability to APD, and the Chief's willful violation of the settlement agreement prohibits meaningful civilian oversight of the agency.

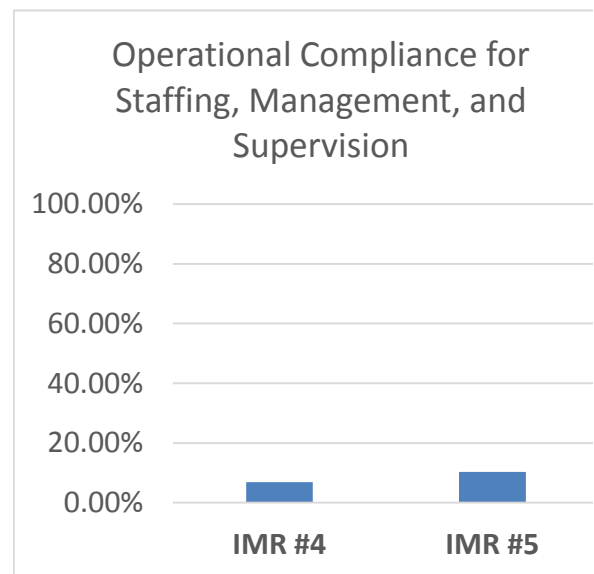
Critical Policies Delayed

The Monitoring Team notes a troubling pattern of several high-impact policies up for review that have been delayed and are backlogged at the Department. This includes the Early Intervention and Recording System, On Body Recording Devices (OBRD), and use of force policies. During the process of reviewing Office of Policy Analysis meeting minutes, the Monitoring Team unearthed a previously unknown Special Order relating to OBRD review. This Special Order apparently changed APD policy related to OBRD review in direct violation of the settlement agreement and without the proper procedures for changing policy. The Monitoring Team again notes deliberate non-compliance with the settlement agreement, as well as the fact that no notice was given to the Monitoring Team or to the parties. It is implausible three years into this process that APD and the City did not understand that this unannounced change in policy violated the settlement agreement.

Substandard Supervision

Although the Monitoring Team noted significant improvement in supervisor staffing ratios, it identified other supervisory issues as "remarkably sub-standard." In fact, APD is out of compliance with most of the settlement agreement's requirements dealing with supervision. For instance, despite all sergeants receiving the required supervisor training, the Monitoring Team notes that the training was not effective, particularly related to use of force issues. APD Forward has been concerned there may be an element of willful resistance to change occurring within the ranks of supervisors and command staff. That concern seems to be explicitly reflected in the Monitoring Team's fifth report.

Figure 2

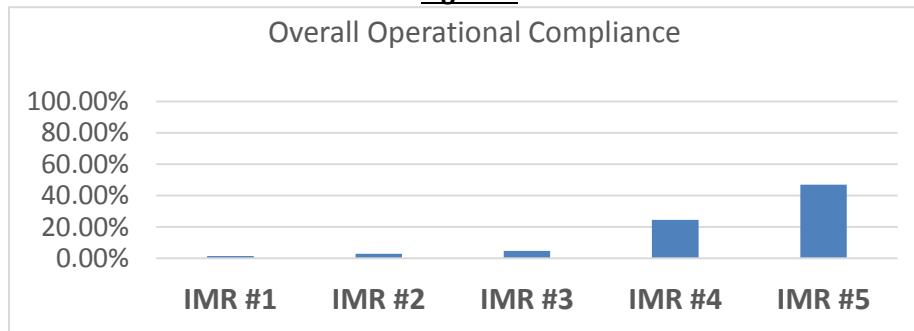


Data Analysis

The terms used by the Monitoring Team to measure compliance are somewhat confusing. However, the important thing to note at this point in the reform process is the only compliance measure that matters is what the Monitoring Team refers to as 'operational compliance,' which simply means APD has fully complied with a specific requirement in the settlement agreement. According to the Monitoring Team's fifth report, APD is now in 47 percent operational compliance with the requirements of the agreement. This shows significant improvement from the fourth report, but as the Monitoring Team notes, APD is still out of compliance with most of the truly difficult and critical requirements of the agreement. The true heart of the reform process still has yet to be accomplished.

APD Forward is conducting data analysis so the coalition can better understand how the Monitoring Team is tracking compliance. The figures in this report show APD's operational compliance rate for Use of Force (Fig. 1), operational compliance with Staffing, Management, and Supervision (Fig. 2), and overall operational compliance (Fig. 3).

Figure 3



Conclusion

It is important to recognize and acknowledge progress made by the Department. For instance: 1) the policies, training, and supervision of Electronic Control Weapons (i.e. Tasers) have improved significantly; 2) specialized units, such as SWAT, Canine, and Bomb Squad, have strong oversight systems in place and these could serve as a model for the rest of APD; and 3) the CPOA continues to achieve its mission in full compliance with the CASA.

Yet it is deeply disturbing to have the Monitoring Team point out example after example of deliberate resistance to the reform process. A culture lacking in accountability is one of the root causes that led to a pattern and practice of unconstitutional use of force at APD in the first place. Without accountability, we cannot expect the culture of the Department to change on its own. Without accountability, supervisors will continue to turn a blind eye to use of force incidents no matter how many trainings they sit through. Without accountability at the command level, APD will continue to deliberately resist reform. We are grateful that the number of shootings of Albuquerque residents by APD has declined. Yet supervisory systems must be implemented and integrated into the fabric of the Department to ensure that progress made up to this point endures long after federal oversight of the Department has come to an end. That has yet to be accomplished.