



## APD Forward's Analysis of the Independent Monitor's Sixth Report

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***“The monitoring team feels strongly that these continued breakdowns are systemic and cultural in nature. We do not believe many in APD’s leadership team have ever embraced this idea of systemic and cultural non-compliance.”***

*- Sixth Report of the Independent Monitor*

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The Independent Monitoring Team, in its sixth report, describes a reform process at APD that has essentially stalled out. Operational compliance levels crept up from 47 percent in the fifth report to just 53 percent in the sixth report. In order to comply with the terms of the settlement agreement, APD must achieve 95 percent operational compliance and then maintain that level of compliance for a two-year period. Unfortunately for the residents of Albuquerque, ultimate compliance with the settlement agreement apparently will take far longer than the parties had anticipated and the community had hoped for.

After the fifth report, APD Forward wrote that the reforms had “hit a critical juncture where we will find out whether the Department’s command staff is committed to true culture change.” We now have our answer, and it is not the answer we had hoped for. Instead, the Monitoring Team describes cultural dynamics, including a “direct and deliberate resistance to change” among some, though not all, of APD’s command level personnel. Rather than accepting feedback from the Monitoring Team as an “objective assessment of their operational compliance,” APD instead focuses an “exorbitant amount of effort” debating the feedback they receive. Fortunately, the Monitoring Team does point out that there are some command level personnel that “simply ‘get it’ and want meaningful change for APD.” But marshalling the “positive forces and retraining or retiring the negative forces” will be a critical task for the Department.

As noted by the Monitoring Team, a “new leadership cadre may be incoming at APD after the October elections.” APD Forward believes it is past time for change in the upper management of the Department. We will push our next Mayor to take ownership of the reform process and to select a leadership team that will prioritize a cultural shift within the Department.

Major issues raised by the Monitor's sixth report include the following:

**Broken System: Supervisory Review of Use of Force**

*"Fostering the constitutional use of force is the primary goal of this entire effort, and every provision of the [settlement agreement] is aimed, directly or indirectly, at achieving that goal."* – Sixth Report of the Independent Monitor

The Monitoring Team has repeatedly pointed out serious failures in APD leadership's willingness and ability to identify out-of-policy force events and to take corrective action. During this last reporting period, the monitor discovered that 1) APD has not been accurately reporting the total number of use of force cases, and 2) there is a "more than significant" backlog of supervisory use of force investigations. This information came to light as the Monitoring Team reviewed a specific case that involved both the use of force and a serious use of force. According to the monitor, this case was mishandled from the initial event up to and including the Force Review Board review. Based on this new information and the problematic case reviewed, the Monitoring Team recommends that APD "step back and take stock of its entire use of force oversight system" because as it now stands, the use of force review, assessment and response functions are "ineffective and unworkable."

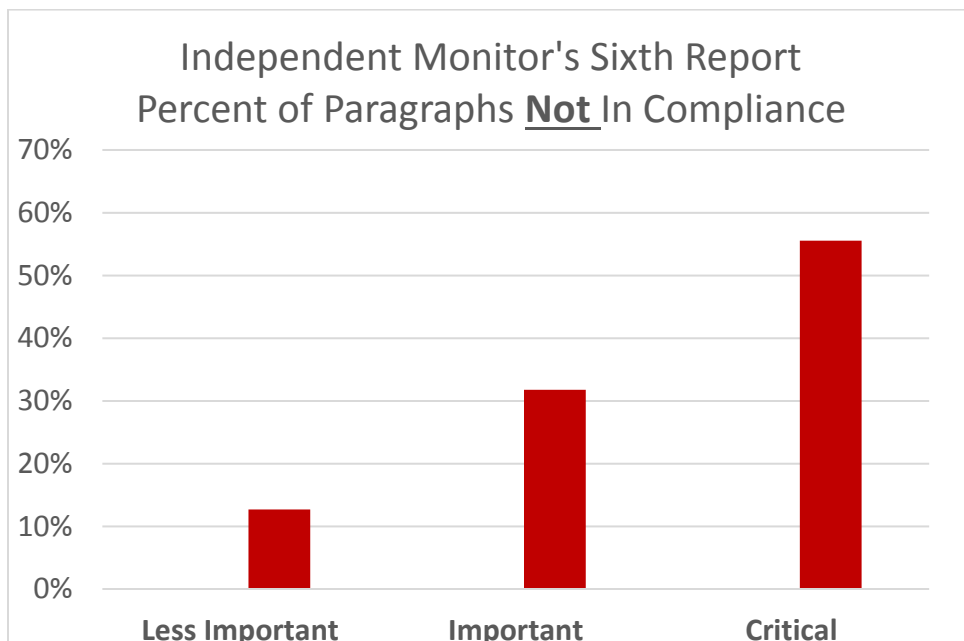
**Where is the Accountability?**

In the Monitoring Team's fourth and fifth reports, several "critical outstanding issues" were noted, including "creating a culture of accountability within APD." In fact, the Monitoring Team says that of these critical issues "scant progress" has been made during this last reporting period. While previous reports identified substantial failure at the supervisory, mid-management, and senior management levels, this report extends these concerns all the way to the "management and administrative levels of the agency." In the fifth report, we learned that the Monitoring Team had encountered an attitude of "deliberate resistance" from some supervisory and command level staff. In this sixth report, the Team describes encountering resistance throughout the report, including: "stiffened resistance," "new-found resistance," "carefully thought out resistance," "substantial resistance," "clear and convincing deliberate resistance," and "cultural resistance" to reform. Instead of swift and certain accountability for violations of policy, the Team describes APD's supervisory, command, and executive responses as tepid, timid and ineffective. In the context of use of force oversight, the Monitoring Team describes this behavior more bluntly: the attitudes of supervisors and commanders within that system "excuse behavior that contravenes and undermines compliance efforts." It is no wonder then, relying on his six decades of experience in law enforcement on the local and national level, the Independent Monitor believes "a culture of accountability is markedly absent at APD."

**Data Analysis**

The goal of the settlement agreement is to ensure that APD develops policies and implements practices which lay the groundwork necessary to establish and maintain a constitutionally viable police department for generations to come. As the Monitoring Team has noted in each report, "every provision of the settlement agreement is aimed, directly or indirectly, at achieving this goal." APD Forward recognizes that

each of the paragraphs in the settlement agreement is important to the overall reform process. However, some paragraphs are more important than others<sup>1</sup>. Further, some paragraphs are simpler to implement than others. The fact that not all of the settlement agreement paragraphs are equal is reflected in the Monitoring Team’s admonitions to APD in their fifth and sixth reports where they state: “The easy work is done. Much remains to be accomplished, and it is some of the most difficult work in policing.”



While the Independent Monitor’s reports are critical for tracking APD’s progress in complying with individual components of the settlement agreement, we have struggled to understand how APD is doing with regard to the most essential elements of reform. To aid our understanding, APD Forward developed a scheme for weighting each of the settlement agreement’s paragraphs according to its overall importance in addressing the Department’s “pattern and practice” of excessive use of force. We assigned a value of “1” to the “Less Important” paragraphs (18% of total settlement agreement paragraphs), a value of “2” to the “Important” paragraphs (35% of paragraphs), and a value of “3” to those paragraphs deemed “Critical” to the reform process (47% of paragraphs). Using the compliance scores assigned by the Monitoring Team in its sixth report, we are able to assess APD’s progress on the elements of reform that matter the most.

### **Early Intervention Isn’t Working**

The Early Intervention and Recording System (EIRS) is a tool that is required by the settlement agreement. It is designed to notify supervisors of an officer’s potentially problematic as well as commendable behavior. EIRS collects data on officer uses of force, injuries and deaths, failures to record incidents using on-body recording devices (OBRD), traffic collisions, etc. When an officer reaches a certain threshold of

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<sup>1</sup>For example, Paragraph 32 simply requires officers to keep Electronic Control Weapons in their weak-side holster while Paragraph 14 requires APD to abide by a set of nine detailed Use of Force Principles, each of which has far-reaching implications for policy development, training and officer supervision.

critical events, EIRS is supposed to trigger a full review of officer performance. On at least one previous occasion, APD shut down EIRS because it was generating “too many alerts.” During its fourth site visit, the Monitoring Team discovered that APD had removed all the “thresholds” from EIRS, a direct violation of paragraph 210 of the settlement agreement. The Team reviewed all EIRS triggers during this last reporting period and found that at least six officers had 10 or more triggers, but only a limited number of reviews had been completed. Supervisors were therefore “unable or incapable of making any determinations of patterns, training issues or policy violations.” This means that a critical system designed to flag problematic officers or flawed training is fundamentally inoperable.

### **The Case of the Special Order**

The monitor’s fifth report detailed an unauthorized Special Order that unilaterally changed the required review rate of OBRD from two per month per officer, to two per month per squad. This type of order is unauthorized because Paragraph 221 of the settlement agreement requires APD to submit all OBRD policies and procedures to the Monitor and DOJ for review and approval. APD originally contended that the special order did not exist, but then issued a subsequent Special Order rescinding the first special order. During the June 2017 site visit, the monitor asked for documentation of the latest month’s video reviews and two supervisors provided proof that they had correctly reviewed two videos per officer in their unit. But then three other supervisors demonstrated that they had only conducted two video reviews per unit and pointed to a Special Order directing this review signed by the Chief in November 2016. As pointed out by the Independent Monitor, this sort of gamesmanship “challenges the monitor’s ability to execute his described duties, as well as the Court’s oversight role.”

### **Conclusion**

APD has made significant progress in certain areas of the reform process. Overall, the Department has achieved 97 percent primary compliance which relates mostly to development and implementation of acceptable policies. Notably, the use of force policy suite has now been approved by the monitor. Specialized units continue to shine and are now at or nearing full compliance for each one of APD’s specialized units. APD’s recruiting process is performing strongly and the recruit training process has led to excellent results. Officer assistance and support is another strong point with “focused, dedicated and professional responses to the requirements of the settlement agreement.”

That said, the Independent Monitor’s sixth report is damning. The breakdowns are “systemic and cultural.” Use of force review is “ineffective and unworkable.” Accountability is “markedly absent.” Responses to clear and convincing policy violations, and even potential criminal activity are “timid and ineffectual.” We are hopeful that a new mayoral administration, as well as new leadership at APD, will finally persuade this department to truly embrace reform. As the Independent Monitor has said, the “easy work is done” and the “most difficult work” still remains. This is also the most essential work.