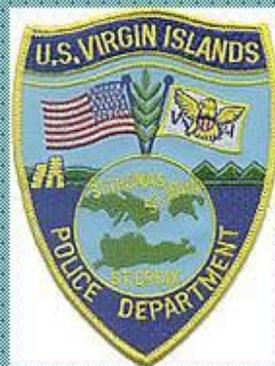
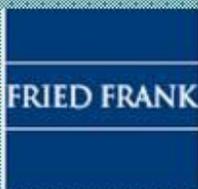


Fourth Quarterly Report of 2012 of the Independent Monitor for the Virgin Islands Police Department



**William F. Johnson and Steven M. Witzel
Independent Monitors**



Office of the Independent Monitor
Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, NY 10004
212.859.8000
<http://www.policemonitor.org>

April 9, 2013

Independent Monitoring Team

Independent Monitors

William F. Johnson and Steven M. Witzel
Fried, Frank, Harris, Shriver & Jacobson LLP

Fried Frank Monitoring Team

Elizabeth P. Kozlowski
Joshua D. Roth

Police Practices Coordinator

Chief Charles A. Gruber
Elgin (Illinois) Police Department (retired)

Police Practices Experts

Superintendent Ann Marie Doherty
Boston (Massachusetts) Police Department (retired)

Chief Robert L. Stewart
Ormond Beach (Florida) Police Department (retired)

Table of Contents

Executive Summary..... 4

Introduction..... 8

Compliance Assessment..... 11

Use of Force..... 11

Citizen Complaint Process..... 32

Management and Supervision..... 52

Training.....72

Conclusion.....84

Appendix A Summary of Consent Decree Requirements..... i

Executive Summary

This is the Fourth Quarterly Report of 2012 from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the United States Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on December 31, 2012.¹

In the Fourth Quarter, the OIM’s Police Practices Experts conducted two week-long monitoring trips to the United States Virgin Islands (the “Territory”). During these trips, the Police Practices Experts spent time meeting with and providing technical assistance to VIPD personnel, observing Consent Decree related training, and reviewing closed investigation files and other police records. The assessments contained in this Report are primarily based on the Police Practices Experts’ observations and the Department’s quarterly Status Report, dated January 3, 2013 (“VIPD Report”). In addition, there were further communications and updates, telephonically and electronically, between the VIPD and the Police Practices Experts during the Fourth Quarter, as well as periodic telephonic status conferences between the VIPD, the United States Department of Justice (the “DOJ”), the Police Practices Experts, and the Monitors.

The Police Practices Experts noted some improvements in the quality of the VIPD’s investigations during the Fourth Quarter, including the completeness of investigations. For example, 73% (8 out of 11) of the investigation files reviewed during the Fourth Quarter were complete.² In addition, individuals who witnessed uses of force were interviewed with more consistency, and Officers who were involved in the incident or were on the scene when it occurred were identified in most of the investigations.

Despite these improvements, it appears that VIPD personnel continue to underreport uses of force. To evaluate the Department’s use of force reporting practices, the Police Practices Experts reviewed a sample of 194 Arrest Reports and identified 13 Arrest Reports (7% of the total) in which the Officer’s narrative or the Arrest Report indicated that force was used. Of those 13 Arrest Reports, 54% (7 out of 13) did not have corresponding Response to Resistance Report forms (“RRR”) as required by the Reportable Use of Force

¹ This Report references a limited number of events that occurred after December 31, 2012 to provide context for efforts made by the VIPD outside of the Fourth Quarter to satisfy its Consent Decree obligations.

² Some statistics are calculated from a total number less than 11 because: (1) the Police Practices Experts were unable to draw certain conclusions based on the information included in the investigative files; or (2) a Consent Decree requirement was not applicable to all investigations, in which case we used the total number of applicable investigations (a number less than 11) as the denominator.

Policy. Force accountability, including fully reporting all uses of force, is a critical requirement of the Consent Decree. Without it, uses of force may never be identified and investigated, training deficiencies may never be identified and addressed, and the Department's use of force statistics (which fuel much of the VIPD's risk management program) will be incomplete.

The VIPD also continues to allow the timeframe for completing use of force investigations to expire before completing the required investigations.³ In 2012, the Office of the Deputy Chief of St. Thomas was required to review 47 use of force investigations. Less than half (49%) of these investigations were reviewed in 2012. In addition, the average number of days to complete a review of an investigation was more than triple (105 days) the amount of time allowed by Department policy (30 days). On St. Croix, the Office of the Deputy Chief was required to review 63 use of force investigations in 2012. Only 38% (24 out of 63) of these investigations were reviewed in 2012, and the average number of days to complete a review was 63 days.

With respect to the citizen complaint process, Officers showed improvement during the Fourth Quarter in their knowledge of the Acceptance of Citizen Complaints Policy. On St. Croix, 67% (8 out of 12) of the Officers questioned responded correctly when a Police Practices Expert asked them to explain the process for filing a complaint. The remaining Officers were not able to explain how a citizen is kept informed about the outcome of a complaint. Supervisors also continued to show improvement in their knowledge of the preponderance of the evidence standard. On St. Croix, we were pleased to see that 100% (8 out of 8) of the Supervisors correctly explained the preponderance of the evidence standard and how it differs from the beyond a reasonable doubt standard.⁴

Although the Complaint Process working group and the Use of Force working group have conducted audits relating to their respective areas of responsibility, other working groups have not yet undertaken similar audits. The VIPD should share the results of any audits with the OIM so that the Department can receive credit for any steps that it takes towards achieving substantial compliance with the Consent Decree. The OIM is hopeful that once the VIPD's Audit Team completes audit training, the Audit Team will be fully functional and able to assist the working groups with the Department's

³ The Reportable Use of Force Policy requires that use of force investigations be completed within thirty calendar days. The Reportable Use of Force Policy also provides that the investigating Supervisor must submit a completed investigation file to the Commander within ten calendar days, the Commander must submit findings and conclusions to the Deputy Chief/Chief within five working days after receiving the investigation file, and the Deputy Chief/Chief then has five working days to forward a copy of the investigation file and his/her findings to IAB.

⁴ The Police Practices Experts did not question Officers and Supervisors on the St. Thomas District during the Fourth Quarter, but will do so in future quarters.

6 | William F. Johnson and Steven M. Witzel

Consent Decree compliance efforts. The time frame for the Audit Team to complete training, however, is uncertain because the VIPD's contract with the training vendor has stalled at the Department of Property and Procurement ("Property and Procurement"). The reason for the delay appears to be that the vendor does not have a business license to operate in the Virgin Islands. The OIM respectfully suggests that the Governor's Office should work with the Department and Property and Procurement to expedite approval for that contract and, to the extent possible, develop a fast track process to avoid similar delays in the future.

After nearly two years of work, the DOJ approved the VIPD's Risk Management System ("RMS") Protocol on October 2, 2012. The RMS Protocol will dictate how the Department's RMS functions. The VIPD reports, however, that the policy will not be fully implemented until at least January 2013 because the Department is waiting for Property and Procurement to approve a contract to provide corresponding training. As of the First Quarter of 2013, the VIPD had not received approval for this contract and the RMS Protocol was not fully implemented as anticipated.

During the Fourth Quarter, the Department continued to work on the Reporting, Investigation and Review of Use of Force Policy, which will allow the VIPD to adjust the scope of its use of force investigations in proportion to the type of force used. To allow tiered use of force investigations (which would otherwise not be permitted under the Consent Decree), the Court approved revisions to the Consent Decree that were submitted by the VIPD and the DOJ (collectively, "the Parties"), and supported by the Monitors.

The Court also approved the Parties' Joint Action Plan extending the deadline for complying with the Consent Decree and setting interim deadlines by which the VIPD must accomplish certain tasks in order to achieve substantial compliance.⁵ As set forth more fully below, the VIPD was required to satisfy interim deadlines for 45 Consent Decree provisions during the Fourth Quarter. The OIM expects that the VIPD will strictly adhere to the deadlines agreed to by the Parties and approved by the Court, and that the VIPD will explain in detail any missed deadlines in future VIPD Reports following the missed deadline. Future VIPD Reports should also include specific reports from the Department on whether it has met a Joint Action Plan deadline, and the steps the Department has taken to meet those deadlines.

Moreover, the Court approved the DOJ's request to eliminate the Consent Decree's "bright line" termination date (which was March 23, 2014) during the Fourth Quarter. The Consent Decree will now terminate "two years after the VIPD and the Territory have achieved compliance with each of the

⁵ *United States v. The Territory of the Virgin Islands*, No. 3:08-CV-00158-CVG-GWB (D.V.I. 2008), Doc. No. 61, dated December 13, 2012.

provisions of [the Consent Decree], and have maintained substantial compliance for at least two years.”⁶ While the VIPD has improved the quality and consistency of its procedures and practices since entering into the Consent Decree in March 2009, the VIPD needs to dedicate even more resources to meeting the deadlines set forth in the Joint Action Plan and to satisfying its obligations under the Consent Decree.

Finally, during the Fourth Quarter, efforts were initiated to organize a “summit” among the VIPD, the United States Virgin Islands Attorney General’s Office (the “VIAG”), the DOJ, and the OIM to discuss ideas and initiatives surrounding the Consent Decree process in order to make it more effective and to help the VIPD achieve substantial compliance. A summit has now been scheduled to take place in Washington, D.C. on April 11 and 12, 2013, to be attended by the leadership of the VIPD, the VIAG, the DOJ, and the OIM.

⁶ Consent Decree (“CD”) ¶103.

Introduction

This is the Fourth Quarterly Report of 2012 from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the United States Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on December 31, 2012.

The OIM was established in January 2010 to monitor compliance by the United States Virgin Islands (the “Territory”) and the VIPD with the Consent Decree entered by the United States District Court for the Virgin Islands (the “Court”) on March 23, 2009. The Monitor is required by the Consent Decree to “issue quarterly written, public reports detailing the Territory’s compliance with and implementation of each substantive provision” of the Consent Decree.⁷

The Consent Decree reflects the agreement between the Territory, the VIPD, and the United States Department of Justice (the “DOJ”) (collectively, the “Parties”) to resolve a lawsuit brought by the United States alleging that the Territory and the VIPD violated 42 U.S.C. § 14141 by engaging “in a pattern or practice of excessive force by Officers of the Virgin Islands Police Department and by the failure to adequately train, supervise, investigate, and discipline Officers.”⁸

The Parties entered into the Consent Decree “to promote police integrity and prevent conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States.”⁹ The 104 paragraph Consent Decree contains a broad range of substantive requirements for reform in areas such as: (1) revising the VIPD’s force-related policies; (2) training Officers to properly use force in accordance with constitutional requirements, VIPD policy, and existing best practices in policing; (3) reporting and investigating use of force events; (4) documenting and investigating complaints alleging Officer misconduct; (5) developing systems for managing and supervising Officers; and (6) disciplining Officers found to have engaged in misconduct.

On October 1, 2010, the Court—charged with enforcing the VIPD’s obligations under the Consent Decree—ordered the Parties to jointly propose a timetable by which the VIPD would substantially comply with each substantive provision in the Consent Decree. The Parties subsequently filed a timetable on

⁷ CD ¶ 96. This Quarterly Report, along with the OIM’s prior reports, is available on the internet at <http://www.policemonitor.org/VI/VIindex.html>.

⁸ CD ¶ 6; *see also* Complaint, *United States v. The Territory of the Virgin Islands*, No. 3:08-CV-00158-CVG-GWB (D.V.I. 2008).

⁹ CD ¶ 3.

November 24, 2010 that set forth specific dates by which the VIPD would substantially comply with each substantive provision in the Consent Decree (the “Consent Decree Timetable”). The Consent Decree Timetable also created interim deadlines for the VIPD to submit force-related policies to the DOJ for approval. The VIPD successfully met nearly every policy submission deadline. However, by the end of the Third Quarter of 2011, the VIPD had missed all of the remaining deadlines for substantial compliance established by the Court-ordered Consent Decree Timetable (deadlines that the VIPD proposed and committed to meeting). For example, under the Consent Decree Timetable, the VIPD was required to substantially comply with Consent Decree ¶¶ 32-58, 70, and 72 by May 31, 2011, ¶¶ 60, 61, and 73-81 by June 30, 2011, and ¶¶ 49, 59, and 63-66 by September 15, 2011. To date, the VIPD has only complied with the following non-substantive provisions: ¶¶ 82-86, 88, and 98.

In January 2011, to encourage compliance within the timeframe of the Consent Decree Timetable, the then-Police Commissioner convened a Consent Decree Summit on St. Thomas on January 3 and 4, 2011 (the “Summit”).¹⁰ At the Summit, the then-Police Commissioner appointed senior VIPD personnel to lead, and ultimately be held accountable for, different aspects of the Consent Decree—Use of Force (Chief of the St. Croix District),¹¹ Citizen Complaint Process (Chief of the St. Thomas District),¹² Management and Supervision (Deputy Chief of St. Thomas), and Training (Director of Training). The Police Commissioner explained that each working group leader was responsible for: (1) designating a “point person” and recruiting other working group members; (2) drafting an action plan; (3) interacting with other VIPD personnel on interrelated Consent Decree issues; and (4) monitoring the working group’s progress by attending and participating in as many meetings as schedules permit, but no less than twice a month.¹³

The OIM is hopeful that the Joint Action Plan—proposed by the Parties and approved by the Court during the Fourth Quarter—will reinvigorate the

¹⁰ The OIM discussed the Summit in the Fourth Quarterly Report of 2010 and the First Quarterly Report of 2011. For more information about the Summit, including objectives and participants, see the *Consent Decree Summit Addendum* at the end of those Reports.

¹¹ Following on-duty injuries sustained by the Chief of the St. Croix District during the Third Quarter, the Deputy Chief of St. Croix assumed responsibility as Acting Chief of the St. Croix District and Acting Leader of the Use of Force working group. The Acting Chief appointed a Captain as his point person, and she has recruited new members and commenced regular meetings of the working group.

¹² The Citizen Complaint Process working group is now led by the Deputy Chief of St. John.

¹³ Memorandum from the Police Commissioner to various VIPD personnel, titled “Meeting Current Standards of Policing,” dated January 19, 2011. The OIM’s Police Practices Experts also provided the working group leaders with a memorandum outlining their respective responsibilities. During the Fourth Quarter, the Police Practices experts regularly exchanged emails and telephone calls with their counterparts and met in person during the quarter’s monitoring trips.

VIPD's Consent Decree compliance efforts. The Joint Action Plan extends the deadline for complying with the Consent Decree and sets interim deadlines by which the VIPD must accomplish certain tasks in order to achieve substantial compliance. As set forth more fully below, the VIPD was required during the Fourth Quarter to satisfy interim deadlines for 45 Consent Decree provisions. The OIM expects that the VIPD will strictly adhere to the deadlines agreed to by the Parties and approved by the Court, and that the VIPD will explain in detail any missed deadlines in future VIPD Reports following the missed deadline. Future VIPD Reports should also include specific reports from the Department on whether it has met a Joint Action Plan deadline, and the steps the Department has taken to meet those deadlines. We are mindful that the Parties jointly agreed on the prior timetable, and that the VIPD failed to satisfy many of the interim deadlines set forth in that document. In order for the new Joint Action Plan to succeed (where previous efforts have failed), the VIPD must commit substantially more resources and management effort to complying with the Consent Decree.

The Court also approved several revisions to the Consent Decree during the Fourth Quarter. First, the Court eliminated the Consent Decree's original "bright line" termination date. Instead of automatically terminating on March 23, 2014, the Consent Decree will now terminate once the VIPD achieves substantial compliance and remains in substantial compliance for two years.¹⁴ Second, the Court revised the Consent Decree to allow the Department to use a "tiered approach" to investigating uses of force where more serious uses of force are subject to more extensive investigations than relatively less serious uses of force.¹⁵ Third, the Court revised CD ¶¶ 32-38 and 43 to resolve certain ambiguities and to make these provisions clearer. The OIM believes that the Court-approved changes will reinvigorate and strengthen efforts to achieve substantial compliance with the Consent Decree.

Finally, as we reported in the Third Quarterly Report of 2012, Police Commissioner White resigned on January 14, 2013 and Rodney Querrard (the former Police Chief of the St. Thomas District) was appointed by the Governor as Acting Police Commissioner. The OIM congratulates Acting Police Commissioner Querrard on his new appointment. We welcome him back and look forward to working with him again.

¹⁴ CD ¶103.

¹⁵ CD ¶36.

Compliance Assessment

This section of the Report describes the VIPD’s compliance efforts with respect to each of the substantive provisions of the Consent Decree,¹⁶ as well as monitoring activities by the OIM’s Police Practices Experts during the quarter. The organization of this section of the Report parallels the organization of the Consent Decree. Specifically, we provide a *status and assessment* discussion that describes and analyzes the VIPD’s progress toward achieving substantial compliance with the Consent Decree’s requirements.¹⁷ We include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree’s requirements.¹⁸

Use of Force Policies

Joint Action Plan Requirements

During the Fourth Quarter, the VIPD was required under the Joint Action Plan to complete certain interim steps towards achieving substantial compliance with ¶¶ 31-41 of the Consent Decree. Specifically, the VIPD was required to implement a tracking system to ensure that VIPD personnel are trained on the Department’s Use of Force policies and to periodically test VIPD personnel for proficiency with these policies. The VIPD did not provide the OIM with documentation that the Department has developed such a tracking system.

The Department also agreed that the United States Virgin Islands Attorney General’s Office (the “VIAG”), the Use of Force working group and the Training working group would begin quarterly reviews of all Use of Force policies. The VIPD reported during the Third Quarter that it would begin an annual review of its use of force policies in consultation with the VIAG. To that end, the VIPD developed a review form entitled “Use of Force Policies/Training Review,” which provides a uniform format for seeking comments and recommendations. The Training Director (or his designee) must sign the form upon review. The VIPD has not yet provided the OIM with any completed forms relating to its review of use of force policies. The Use of Force working group provided the OIM with a document reflecting suggested revisions to the Firearms Policy. Those suggestions were forwarded to the Policy and Procedures Committee (the “Committee”) for its consideration.

¹⁶ A summary of the Consent Decree requirements is excerpted at Appendix A. A copy of the full text of the Consent Decree is available at: http://www.justice.gov/crt/about/spl/documents/VIPD_CD_03-23-09.pdf.

¹⁷ The Consent Decree provides that “[t]he Monitor shall issue quarterly written, public reports detailing the Territory of the Virgin Islands’ compliance with and implementation of each substantive provision of [the] Agreement.” CD ¶ 96.

¹⁸ CD ¶ 85.

12 | William F. Johnson and Steven M. Witzel

The Use of Force working group did not provide a further report on the status of its review of other use of force policies (e.g., Use of Force, Impact Weapons, ECW, O.C. Spray, Off-Duty Official Action, Vehicle Pursuit, Spike Strip, SRT, and Sniper Policies) during the Fourth Quarter. The OIM learned at the beginning of the First Quarter of 2013 that the Department's review is on-going.

In addition, the VIPD agreed to provide the DOJ with an action plan for achieving a sufficient number of Supervisors to implement the use of force policies and the Joint Action Plan by November 30, 2012. As we have previously reported, the VIPD has too few supervisors to satisfy the Consent Decree. While the VIPD promoted 16 supervisors during the First Quarter of 2012, only 4 of those promotions represented new supervisors; the other promotions accounted for existing supervisors being promoted to a higher rank. Without adequate supervisory oversight, Supervisors are unable to respond to the scene of uses of force and to conduct contemporaneous investigations. As a result, uses of force continue to be underinvestigated and underreported, and use of force investigations are completed well after the 30 calendar days permitted by the Reportable Use of Force Policy.

Satisfying one of its obligations under the Joint Action Plan, the VIPD provided the DOJ with an action plan for achieving a sufficient number of Supervisors on November 30, 2012. On December 31, 2012, the DOJ provided comments on the VIPD's action plan. One of the DOJ's comments recommended that the VIPD clarify what, if anything, it plans to do in the event that there is a lack of funding for new Supervisors. Recognizing the Department's fiscal constraints, the VIPD should address that possibility and plan accordingly.

31. The VIPD will review and revise its use of force policies as necessary to: a) define terms clearly; b) define force as that term is defined in this Agreement; c) incorporate a use of force model that teaches disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units as appropriate responses to a situation; d) advise that, whenever possible, individuals should be allowed to submit to arrest before force is used; e) reinforce that the use of excessive force will subject officers to discipline, possible criminal prosecution, and/or civil liability; f) ensure that sufficient less lethal alternatives are available to all patrol officers; and g) explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized. Once the DOJ has reviewed and approved these policies, the VIPD shall immediately implement any revisions.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 31 of the Consent Decree.

VIPD Report:

The VIPD reports that it continued to review the Department’s use of force policies and that the period for submitting comments (as established by a September 2012 Department memorandum) on those policies closed on November 23, 2012. The Committee plans to convene to review each policy and the comments received. Once the review process is complete, the Department reports that the revised policies will be submitted to the Police Commissioner for review and approval before being reissued Department-wide.¹⁹

OIM Report:

As previously reported, the VIPD has received DOJ approval for twelve force-related policies through the end of the Fourth Quarter: (1) Use of Force; (2) Reportable Use of Force; (3) Impact Weapons; (4) Electronic Control Weapon (“ECW”); (5) O.C. Spray; (6) Vehicle Pursuit; (7) Spike Strip; (8) Off-Duty Official Action; (9) Firearms; (10) Field Training Officer Program (“FTO”); (11) Special Operations – Special Response Team and Hostage Negotiations Team (“SRT/HNT”); and (12) Special Operations SRT – Sniper (“Sniper”). The VIPD adopted these policies in partial satisfaction of ¶¶ 31 to 41 of the Consent Decree. The Department’s Use of Force Policy incorporates all of the elements set forth in subparts a-g of ¶ 31. In addition, the Department has adopted the Response to Resistance Reporting Forms (“RRR”) (formerly known as Use of Force Reports) for VIPD personnel to document uses of force pursuant to the Reportable Use of Force Policy; RRRs should be completed whenever force is used. During the Fourth Quarter, however, the VIPD did not provide the OIM with documentation that VIPD personnel are proficient in the requirements of the Department’s use of force policies or that the Department has fully implemented those policies. The Consent Decree defines implementation as “the development or putting into place of a policy or procedure, including the appropriate training of personnel.”

The Department continued to work on the Reporting, Investigation and Review of Use of Force Policy in the Fourth Quarter. The Reporting, Investigation and Review of Use of Force Policy is intended to address concerns among some VIPD personnel that the existing Use of Force Policy and Reportable Use of Force Policy impose too great a burden on Supervisors by requiring “all inclusive” force reviews for comparatively “minor” force incidents.

¹⁹ The OIM notes that CD ¶31 requires the Department to submit any revised force related policies to the DOJ for approval before being issued.

Under the new policy, the VIPD would adjust its investigation in proportion to the type of force used, meaning that comparatively “minor” uses of force would typically require less exhaustive investigations than more severe uses of force. The DOJ conditionally approved the Reporting, Investigation and Review of Use of Force Policy on November 3, 2011, subject to agreeing on and receiving Court approval for corresponding revisions to the Consent Decree to permit “tiered” force investigations. In the process of reviewing the proposed revisions to the Consent Decree, however, the DOJ discovered internal inconsistencies with the Reporting, Investigation and Review of Use of Force Policy and revoked its conditional approval during the First Quarter. During the Fourth Quarter, the Court approved revisions to the Consent Decree to allow “tiered” investigations.

The VIPD first reported during the Third Quarter that it would start reviewing its use of force policies and related training on an annual basis in consultation with the VIAG. As part of that process, the VIPD developed a review form entitled “Use of Force Policies/Training Review” to collect comments and recommendations for each policy. The Training Director (or his designee) is required to sign the form to document his/her receipt and review. Despite repeated requests, the VIPD has not yet provided the OIM with any completed forms.

The Use of Force working group provided the OIM with its proposed revisions to the Firearms Policy, which the working group submitted to the Committee for consideration. The OIM learned at the beginning of the First Quarter of 2013 that the Department’s review of other force-related policies is on-going.

Recommendations:

The Use of Force working group should continue to work with the Training Division to ensure that training programs are held for all of the Department’s force-related policies on an on-going basis, and that all relevant VIPD personnel are attending those programs in their entirety. The Use of Force working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Use of Force working group and Director of Training should then schedule follow-up training (continuing in-service, Roll Call, or Commanders Call training) based on the results of those post-training examinations.

The VIPD should also attempt to determine why certain personnel are failing to comply with the requirements of the use of force policies. The VIPD should then actively address those issues at Roll and Commanders Call training, and with individual Officers as appropriate. Additionally, the VIPD should develop a process for identifying personnel who continually fail to

comply with Department policy. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the Internal Affairs Bureau (the “IAB”), and the Training Division to provide remedial training or other corrective action, including disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

In addition, the Department should finalize the Arrest Policy sent to the VIAG for review during the First Quarter of 2013 and implement the policy by providing training to VIPD personnel. As previously reported, until the Department finalizes and provides adequate training on the Arrest Policy, it will continue to underreport arrests and uses of force. The underreporting of arrests and uses of force has a negative impact on the Department’s Risk Management System (“RMS”). As a result, the VIPD will not be able to comply with important aspects of the Consent Decree relating to use of force and risk management until it rectifies this problem.

32. The VIPD will require all uses of force to be documented in writing. The use of force report form will indicate each and every type of force that was used, and require the evaluation of each type of force. Use of force reports will include a narrative description of the events preceding the use of force, written by a supervisor or by the designated investigative unit. Use of force reports also will include the officer(s)’ narrative description of events and the officer(s)’ statement. Except in cases of use of force involving the lowest level of force as defined in VIPD policy as approved by DOJ, the officer’s statement shall be audio- or videotaped.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 32 of the Consent Decree.

VIPD Report:

During the Fourth quarter, the Use of Force working group submitted a “Use of Force Working Group Audit Operation Request” to the Police Commissioner to identify and remediate investigatory practices on both Districts that do not comply with Department policy. The VIPD will report on that audit in the Department’s next Status Report.

During the Fourth Quarter, the Commissioner issued Directive 007-2012 mandating that all Supervisors and reviewers of use of force investigations use the Response to Resistance Investigation Checklist (the “Checklist”). According to the VIPD, the Checklist “identifies essential elements that are critical in the completion of a thorough and complete investigation and further serves as a guide at various levels of the review process . . . [t]he Checklist references levels

of resistance consistent with the [Reporting, Investigation and Review of Use of Force Policy] still under review by both the VIPD and USDOJ.”

The Department also reports that it issued Directive 006-2012 in the Fourth Quarter, which rescinded a previously issued directive that required Officers and Supervisors to complete a “Use/Non-Response to Resistance Acknowledgement form” (in addition to an RRR) whenever force is used.

OIM Report:

The VIPD has issued the Use of Force Policy and Reportable Use of Force Policy in response to the requirements of ¶ 32 of the consent decree. The Department modified the Reporting, Investigation and Review of Use of Force Policy, which is intended to address concerns among some VIPD personnel that the existing Use of Force Policy and Reportable Use of Force Policy impose too great a burden on Supervisors by requiring “all inclusive” force reviews for comparatively “minor” force incidents. Under the new policy, the VIPD would adjust the extent of its investigation of use of force events in proportion to the type of force used, meaning that comparatively “minor” force events would typically require less exhaustive investigations than more severe force events. The DOJ conditionally approved the Reporting, Investigation and Review of Use of Force Policy on November 3, 2011, subject to agreeing on and receiving court approval for corresponding revisions to the Consent Decree that would permit “tiered” force investigations. In the process of reviewing the proposed revisions to the Consent Decree, however, the DOJ discovered internal inconsistencies with the Reporting, Investigation and Review of Use of Force Policy and revoked its conditional approval during the First Quarter. The Parties continued to work on revising the policy during the Fourth Quarter.²⁰ To allow tiered use of force investigations, the Court approved revisions to Consent Decree ¶32 during the Fourth Quarter.

The VIPD provided the OIM with Directive 007-2012, which requires all investigating Supervisors to use the “Response to Resistance Investigation Checklist” during the Fourth Quarter. As the OIM has previously reported, Supervisors from the St. Croix District began using the Checklist during the Third Quarter of 2011, but the Department delayed using the Checklist Department-wide until finalizing the Reporting, Investigation and Review of Use of Force Policy.

The Department continued to underreport force during the Fourth Quarter. The OIM’s Police Practices Experts continued to review a sample of Arrest Reports to determine whether VIPD personnel are reporting force as required by the Use of Force Policy and Reportable Use of Force Policy. The Police Practices Experts reviewed a total of 194 Arrest Reports from the St.

²⁰ The DOJ approved the Reporting, Investigation and Review of Use of Force Policy during the First Quarter of 2013.

Thomas and St. Croix Districts, and identified that force was likely used in 7% (13 out of 194) of the arrests based on the Officer's narrative or because the report indicated that the subject resisted arrest.²¹ Fifty-four percent (7 out of 13) of those Arrest Reports did not have corresponding RRRs (documenting force was used) as required by the Reportable Use of Force Policy.²²

To further evaluate the Department's use of force reporting practices, the OIM reviewed a total of 11 completed use of force investigation files on the St. Thomas and St. Croix Districts during the Fourth Quarter. Throughout the Report, certain statistics may be calculated from a total number of less than 11 because: (1) the Police Practices Experts were unable to draw certain conclusions based on the information included in the investigative files; or (2) a Consent Decree requirement was not applicable to all investigations, in which case we used the total number of applicable investigations (a number less than 11) as the denominator.

The Police Practices Experts found that 73% (8 out of 11) of the investigation files reviewed during the Fourth Quarter were complete, which was a marked improvement from 50% (12 out of 24) in the Third Quarter. A "complete" investigation file generally consists of the following (to the extent applicable): Form 1A; Arrest Report; completed RRR; video or audio statements from witnesses; photos of injuries, weapons, etc.; the Supervisor's investigative report with an analysis of the facts, evidence identified, and findings; evidence that the Department's chain of command reviewed and approved the completed investigation file; and a disposition letter.

With respect to the other requirements of this provision, Supervisors described the events preceding the use of force and evaluated the appropriateness of each type of force used in 91% (10 out of 11) of the investigation files (an improvement from 71% (17 out of 24) in the Third Quarter for a description of the events preceding the use of force); 100% (11 out of 11) of the investigation files included the Officer's description of events (an improvement from 96% (24 out of 25) in the Third Quarter); the use of force report in 91% (10 out of 11) of the investigation files indicated the type of force used (a slight decline from 92% (23 out of 25) in the Third Quarter); audiotaped statements were taken in 60% (6 out of 10) of the investigations (an improvement from 46% (11 out of 24) in the Third Quarter); and 82% (9 out of 11) of the investigations were completed within the timeline required under the Reportable Use of Force Policy (a marked improvement from 50% (13 out of 26)

²¹ During the Third Quarter, the Police Practices Experts determined that force was likely used in 7% (18 out of 243) of the arrests.

²² During the Third Quarter, the Police Practices experts determined that 61% (11 out of 18) of Arrest Reports that indicate that force was used did not have corresponding RRRs.

in the Third Quarter).²³ The VIPD must conduct its own audit to ensure that it is complying with each of the requirements of Consent Decree ¶ 32.

The VIPD did not provide the OIM with documentation that the Department is in substantial compliance with this Consent Decree provision. According to ¶103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The full and timely reporting of force is a cornerstone requirement of the Consent Decree. To that end, the Use of Force working group should audit Arrest Reports to determine the extent to which force is being reported across the Districts. Based on those audits, the VIPD should attempt to determine why force is being underreported. The VIPD should then actively address those issues at Roll Call and Commanders Call training, and with individual Officers as appropriate. The VIPD should also develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training or other corrective action, including disciplinary sanctions, if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.²⁴

33. Officers shall notify their supervisors following any use of force [or]²⁵ upon the receipt of an allegation of excessive force. Except in uses of force involving the lowest level of force as defined in VIPD policy as approved by DOJ, supervisors will respond to the scene, examine the subject for injury, interview the subject for complaints of pain, and ensure that the subject received needed medical attention.

²³ The Reportable Use of Force Policy requires that use of force investigations be completed within thirty calendar days. The Reportable Use of Force Policy also provides that the investigating Supervisor must submit a completed investigation file to the Commander within ten calendar days, the Commander must submit findings and conclusions to the Deputy Chief/Chief within five working days after receiving the investigation file, and the Deputy Chief/Chief then has five working days to forward a copy of the investigation file and his/her findings to IAB.

²⁴ Based on the use of force investigations that the Police Practices Experts have reviewed, it appears that most use of force investigations do not involve a large number of witnesses or evidence. In these cases, the corresponding use of force investigations should be completed within the required 30 days. When circumstances arise that make it impossible to complete an investigation within this time period, the Department should include in the investigation file a statement explaining the delay and evidence that an extension has been requested and granted.

²⁵ During the First Quarter of 2013 the Parties jointly filed a motion to correct or amend the Court's Order, dated December 13, 2012, by inserting "or" into the first sentence of ¶ 33 of the Consent Decree.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 33 of the Consent Decree.

VIPD Report:

The VIPD reports that the requirements of ¶ 33 of the Consent Decree are incorporated into the Reportable Use of Force Policy, and that the Department will monitor for continued compliance with the policy.

The VIPD also reports that members of the Use of Force working group conducted Commanders Call training on reporting uses of force in the St. Thomas District during the Fourth Quarter. Squad Supervisors will conduct future Commanders Call training, and members of the Use of Force working group will observe those trainings to identify any Supervisors who may resist the Consent Decree process and its requirements. In addition, the Acting Chief of the St. Croix district conducted Commanders Call training on “Resisting Arrest/Non-Compliance and Use of Force.” A copy of the Joint Action Plan was distributed to all Supervisors who attended. The Department reports that it will also continue to hold Roll Call and Commanders Call training to address other aspects of the Consent Decree.

OIM Report:

As discussed in connection with Consent Decree ¶ 32, the Police Practices Experts reviewed 11 completed investigation files during the Fourth Quarter to evaluate the Department’s use of force reporting practices. Among other things, that review showed that Officers timely notified Supervisors following a use of force in 64% (7 out of 11) of the investigations (an improvement of 50% (12 out of 24) in the Third Quarter), and that Supervisors responded to the scene and conducted an investigation in 56% (5 out of 9) of the investigations (an improvement from 35% (8 out of 23) in the Third Quarter). The VIPD must conduct its own audit to ensure that it is complying with each of the requirements of Consent Decree ¶ 33.

Recommendations:

The Use of Force working group should audit whether Officers are notifying their Supervisors following any use of force or allegation of excessive use of force. The Use of Force working group should also audit whether Supervisors are responding to the scene of a use of force, examining the subject for injury, interviewing the subject for complaints of pain, and ensuring that the subject receives needed medical attention. All audits should be documented and shared with the Compliance Coordinator and the OIM.

34. Supervisors, or designated investigating officers or units, will review, evaluate, and document each use of force, and will complete the narrative description section of the use of force report. The narrative description will include a precise description of the facts and circumstances that either justify or fail to justify the officer's conduct. As part of this review, the supervisor or designated investigating officer/unit will evaluate the basis for the use of force, and determine whether the officer's actions were within VIPD policy. An officer who used force during the incident, whose conduct led to an injury, or who authorized conduct leading to the use of force or allegation of excessive force, or who was present during the incident, will not be eligible to review of investigate the incident.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 34 of the Consent Decree.

VIPD Report:

The VIPD reports that the requirements of ¶ 34 of the Consent Decree have “already been established department wide and internal monitoring of the processes in place . . . will be instrumental in gauging the degree of compliance of non-compliance.”

OIM Report:

As discussed above, the Police Practices Experts reviewed 11 complete investigation files during the Fourth Quarter to evaluate the Department's use of force reporting practices. In 82% (9 out of 11) of the completed use of force investigations reviewed, Supervisors included narratives describing the facts and circumstances that justified or failed to justify the Officer's conduct. In 100% (11 out of 11) of the completed use of force investigations (an improvement from 54% (13 out of 24) in the Third Quarter) Supervisors evaluated the basis for the use of force; in 82% (9 out of 11) of the investigations, Supervisors determined whether the Officer's actions were within VIPD policy (a decrease from 83% (20 out of 24) in the Third Quarter); and 91% (10 out of 11) of the investigations were conducted by Supervisors who were not directly involved in the use of force incident (an improvement from 67% (14 out of 21) in the Third Quarter). The VIPD must conduct its own audit to ensure that it is complying with each of the requirements of Consent Decree ¶ 34.

The VIPD did not provide the OIM with documentation that the Department is in compliance with this Consent Decree provision. This lack of documentation included, for example, the lack of audits of use of force

investigations. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Use of Force working group should audit whether Supervisors are conducting adequate use of force investigations. Based on those audits, the VIPD should attempt to determine why certain personnel are failing to comply with the requirements of ¶ 34. The VIPD should then actively address those issues at Roll and Commanders Call training, and with individual Officers as appropriate. The VIPD should also develop a process for identifying personnel who continually produce deficient investigations. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

35. The parties agree that it is improper interview procedure during use of force investigations to ask officers or other witnesses leading questions that improperly suggest legal justifications for the officer's conduct when such questions are contrary to appropriate law enforcement techniques. In each review/investigation, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. The VIPD will make all reasonable efforts to resolve material inconsistencies between witness statements. The VIPD will train all of its supervisor and officers assigned to conduct use of force investigations in conducting use of force investigations, including in the factors to consider when evaluating credibility.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 35 of the Consent Decree.

VIPD Report:

The VIPD reports that Supervisors on both Districts received training during the Third Quarter on investigating uses of force, and that additional training will be offered during future in service, Roll Call, and Commanders Call training. The Department also reports that policies “already implemented department wide establish the requirements” of ¶ 35.

OIM Report:

As discussed above, the Police Practices Experts reviewed 11 completed investigation files during the Fourth Quarter to evaluate the Department's use

of force reporting practices, the Police Practices. Among other things, that review showed that Supervisors did not use leading questions in 82% (9 out of 11) of the completed use of force investigations, which remained constant from the Third Quarter.

While monitoring on St. Thomas, a Police Practices Expert reviewed the examinations administered to Supervisors during the Third Quarter after attending training on investigating uses of force. The examination included 14 multiple choice and 16 true/false questions. Of the Supervisors who completed the examination, 24% (9 out of 37) answered more than 2 questions incorrectly. The Police Practices Expert also learned that the Deputy Chief of St. John asked the IAB to conduct Commanders Call training for Supervisors and Commanders on common deficiencies that the IAB identified in reviews of Zone investigations.

The VIPD did not provide the OIM with documentation that the Department is in compliance with this Consent Decree provision. This lack of documentation included, for example, the lack of audits of use of force investigations. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Use of Force working group should audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 35 of the Consent Decree. Based on these audits, the VIPD should attempt to determine why certain personnel are failing to comply with the requirements of ¶ 35. The VIPD should then actively address those issues at Roll and Commanders Call training, and with individual Officers as appropriate. The VIPD should also develop a process for identifying personnel who continually fail to comply with Department policy. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

36. Supervisors, or designated investigating officers or units, shall conduct an investigation of all uses of force or injury resulting from a use of force by any officer under their command. This requirement does not apply to uses of force involving the lowest level of force as defined in VIPD policy as approved by DOJ. In an investigation, supervisors or designated investigating officers or units, shall interview all witnesses to a use of force or an injury resulting from a use of force. Consistent with the requirements of the collective bargaining agreement or other applicable law, VIPD supervisors or designated investigating officers or units shall ensure that all officer witnesses provide a statement regarding

the incident. Supervisors, or designated investigating officers or units, shall ensure that all use of force reports for all levels of force identify all officers who were involved in the incident or were on the scene when it occurred. Supervisors, or designated investigating officers or units, shall ensure that all reports for all levels of force indicate whether an injury occurred, whether medical care was provided, and whether the subject refused medical treatment. Supervisors, or designated investigating officers or units, shall ensure that all reports include contemporaneous photographs or videotapes taken of all injuries at the earliest practicable opportunity, both before and after any treatment, including cleansing of wounds.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 36 of the Consent Decree.

VIPD Report:

The VIPD reports that under the leadership of the Acting Chief of the St. Croix District and his designated point person, the Use of Force working group has held weekly meetings to address issues of priority, including developing a Roll Call training to rectify misconceptions about the Consent Decree, reviewing use of force policies, developing a revised Use of Force working group action plan, and auditing use of force investigations.

The VIPD also reported that it is considering various methods to increase awareness throughout the Department about the Consent Decree and force reporting requirements. One of the options that the VIPD is considering involves the installation of electronic billboards highlighting key Consent Decree requirements in various Zones. The Department has received bids from vendors for the electronic billboards.

OIM Report:

As discussed in connection with Consent Decree ¶ 32, to evaluate the Department's use of force reporting practices, the Police Practices Experts reviewed 11 completed investigation files during the Fourth Quarter. Among other things, that review showed that all witnesses to a use of force or an injury resulting from a use of force were interviewed (9 out of 9) as part of the use of force investigation, which is an improvement from 67% (12 out of 18) in the Third Quarter. All Officers who were involved in the incident or were on the scene when it occurred were identified in 90% (9 out of 10) of the investigations, which is an improvement from 79% (19 out of 24) in the Third Quarter. In 80% (4 out of 5) of the investigations where injuries were sustained, the Supervisor described the injuries, which is an improvement from 55% (6 out of 11) in the Third Quarter. In addition, 40% (2 out of 5) of

the investigations where injuries were sustained included photographs of the injuries. The VIPD must conduct its own audit to ensure that it is complying with each of the requirements of Consent Decree ¶ 36.

The VIPD did not provide the OIM with documentation that the Department is in compliance with this Consent Decree provision. This lack of documentation included, for example, the lack of audits of use of force investigations. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Use of Force working group should audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 36. Based on those audits, the VIPD should attempt to determine why certain personnel are failing to comply with the requirements of ¶ 36. The VIPD should then actively address those issues at Roll Call and Commanders Call training, and with individual Officers as appropriate. The VIPD should also develop a process for identifying personnel who continually fail to comply with Department policy. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

37. All investigations into use of force shall be reviewed by the Officer's Commander and/or Director, or by a Commander and/or Director in the designated investigative unit, who shall identify any deficiencies in those reviews, and shall require supervisors, or designated investigative officers or units, to correct any and all deficiencies. Supervisors, and designated investigative officers or units, will be held accountable for the quality of their reviews. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor, or designated investigative officer or unit, fails to conduct a timely and thorough review, or neglects to recommend appropriate corrective action, or neglects to properly implement appropriate corrective action. As provided by VIPD policy and approved by DOJ, designated command staff shall further review the Commander and/or Director's reviews according to the level of force involved.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 37 of the Consent Decree.

VIPD Report:

The VIPD reports that the requirements of ¶ 37 have “already been established department wide.” The Department states that it will monitor conduct to ensure continued compliance with Department policy.

OIM Report:

For several quarters, the OIM has reported that the Reportable Use of Force Policy requires that use of force investigations be completed within 30 calendar days. The Reportable Use of Force Policy also provides that the investigating Supervisor must submit a completed investigation file to the Commander within ten calendar days, the Commander must submit findings and conclusions to the Deputy Chief/Chief within five working days after receiving the investigation file, and the Deputy Chief/Chief then has five working days to forward a copy of the investigation file and his/her findings to the IAB.

Department records indicate that both Districts have failed to complete investigations within the time periods required by Department policy for a significant number of uses of force. For example, in 2012 the Office of the Deputy Chief of St. Thomas was required to review 47 use of force investigations. Less than half (49%) of these investigations were reviewed in 2012. In addition, the average number of days to complete a review of an investigation was more than triple (105 days) the amount of time allowed by Department policy (30 days). Of these investigations that were reviewed: 61% (14 out of 23) of the uses of force were justified and within Department policy; 2 out of 23 (9%) of the uses of force were found to be justified but in violation of Department policy; 17% (4 out of 23) of the use of forces were found to be justified, but required remedial training; and 13% (3 out of 23) of the investigated uses of force were found to be not justified.

In St. Croix, the Office of the Deputy Chief was required to review 63 use of force investigations in 2012. Only 38% (24 out of 63) of the use of force investigations were reviewed, and the average number of days to complete a review was more than double (63 days) the amount of time allowed by Department policy. Of those investigations that were reviewed, 88% (21 out of 24) of the uses of force were found to be justified and within Department policy; 2 out of 24 (8 %) of the uses of force were found to be justified, but required remedial training; and 4% (1 out of 24) of the investigated uses of force were found to be not justified.

The VIPD did not provide the OIM with documentation that the Department is in compliance with this Consent Decree provision. This lack of documentation included, for example, the lack of audits of use of force investigations. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Use of Force working group should audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 37. In particular, the Use of Force working group should audit whether Supervisors conduct adequate use of force investigations, and whether the Chiefs/Deputy Chiefs are reviewing investigations, identifying deficiencies, and forwarding closed cases to the IAB and Training Division (for review and archiving). Based on those audits, the VIPD should attempt to determine why certain personnel are failing to comply with the requirements of ¶ 37. The VIPD should then actively address those issues at Roll Call and Commanders Call training, and with individual Officers as appropriate. The VIPD should also develop a process for identifying personnel who continually fail to comply with Department policy. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

38. The VIPD will investigate all critical firearm discharges. The VIPD will ensure that the investigation accounts for all shots and locations of all officers who discharged their firearms. The VIPD will conduct ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests, as appropriate.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 38 of the Consent Decree.

VIPD Report:

The VIPD reports that all critical firearms discharges continue to be investigated by the IAB.

OIM Report:

During the Fourth Quarter, the VIPD provided the OIM with a report of critical firearm discharges investigated by the IAB in 2012. In the St. Thomas

District, the IAB investigated a total of 4 critical firearms discharges—2 discharges involving animals, 1 accidental discharge, and 1 discharge in the line of duty, which appears to relate to the May 26, 2012 incident in which a VIPD Officer was shot in the line of duty. Two of the investigations are complete—the accidental discharge was “sustained” and one of the discharges involving an animal was determined to be “justified and within policy”. The investigation relating to the discharge in the line of duty is currently suspended pending completion of a ballistics report. The final investigation involving a discharge and an animal remained active (and overdue) at the end of the Fourth Quarter. In the St. Croix District, the IAB continues to investigate 2 in the line of duty discharges. Both investigations remained active (and overdue) at the end of the Fourth Quarter.

The VIPD did not provide the OIM with documentation that the Department is in compliance with this Consent Decree provision. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendation:

The OIM is concerned with the extended amount of time that it takes for the VIPD to complete ballistics tests for critical firearms discharges. The VIPD should assess ways to expedite this process. The VIPD will be unable to comply with the Consent Decree if it is unable to conduct timely use of force investigations. The VIPD should also continue to provide the OIM with documentation that the IAB is investigating critical firearms as required by ¶ 38 of the Consent Decree, and that the investigations are complete and receive a final disposition.

39. VIPD shall complete development of a Use of Firearms policy that complies with applicable law and current professional standards. The policy shall prohibit officers from possessing or using unauthorized firearms or ammunition and shall inform officers that any such use may subject them to disciplinary action. The policy shall establish a single, uniform reporting system for all firearms discharges. The policy shall prohibit officers from obtaining service ammunition from any source except through official VIPD channels, and shall specify the number of rounds VIPD authorizes its officers to carry. The policy will continue to require that all discharges of firearms by officers on- or off-duty, including unintentional discharges, be reported and investigated.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 39 of the Consent Decree.

VIPD Report:

The VIPD reports that the requirements of ¶ 39 have “already been established department wide.” The Department states that it will monitor conduct to ensure continued compliance.

OIM Report:

The VIPD issued its Firearms Policy on May 3, 2011. The Firearms Policy addresses all of the requirements set forth in ¶ 39. During the Fourth Quarter, however, the VIPD did not provide the OIM with documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy.

The VIPD did not provide the OIM with documentation that the Department is in compliance with this Consent Decree provision. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Use of Force working group should continue to work with the Training Division to ensure that training programs are held for the Firearms Policy on an on-going basis and that relevant VIPD personnel are attending those programs. The Use of Force working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Use of Force working group and Director of Training should then schedule follow-up training (continuing in-service, Roll Call, or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

The Department should also conduct routine inspections to determine that VIPD personnel are carrying only authorized ammunition, as required by the firearms Policy. Officers found to be carrying unauthorized ammunition should be disciplined. The results of these inspections and any resulting discipline should be documented and shared with the Compliance Coordinator and the OIM.

Finally, the Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of ¶ 39 and that the Department has fully implemented the Off-Duty Official Action policy.

40. The VIPD shall revise its policies regarding off-duty officers taking police action to: a) provide that off-duty officers shall notify on-duty VIPD or local law enforcement officers before taking police action, absent exigent circumstances, so that they may respond with appropriate personnel and resources to handle the problem; b) provide that, if it appears the officer has consumed alcohol or is otherwise impaired, the officer shall submit to field sobriety, breathalyzer, and/or blood tests.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 40 of the Consent Decree.

VIPD Report:

The VIPD reports that the requirements of ¶ 40 have “already been established department wide.” The Department states that it will monitor conduct to ensure continued compliance.

OIM Report:

The VIPD issued its Off-Duty Official Action Policy on March 20, 2011. The policy addresses all of the requirements set forth in subparts a-b of ¶ 40.

The VIPD did not provide the OIM with documentation that the Department is in compliance with this Consent Decree provision. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Use of Force working group should continue to work with the Training Division to ensure that training programs are held on the Off-Duty Official Action Policy on an on-going basis and that relevant VIPD personnel are attending those programs. The Use of Force working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Use of Force working group and Director of Training should then schedule follow-up training (continuing in-service, Roll Call or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy and provide remedial training or discipline as appropriate.

The Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of ¶ 40

and that the Department has fully implemented the Off-Duty Official Action Policy.

41. The VIPD shall continue to provide an intermediate force device, which is between chemical spray and firearms on the force continuum, that can be carried by officers at all times while on-duty. The VIPD shall continue its policy regarding the intermediate force device, incorporate the intermediate force device into the force continuum and train all officers in its use on an annual basis.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 41 of the Consent Decree.

VIPD Report:

The VIPD contends that it has complied with the requirements of ¶ 41 because its has implemented the ECW Policy, and that certain Officers have been trained to use and have been issued a TASER.

OIM Report:

The VIPD issued the ECW Policy on March 30, 2011. The policy addresses the requirements in ¶ 41 of the Consent Decree. While this Consent Decree provision requires the VIPD to train “all officers on [the TASER’s] use on an annual basis,” the VIPD concedes that only “select officers have been trained and issued a TASER.” If only a limited number of relevant VIPD personnel (e.g., patrol officers) are trained and authorized to carry TASERs, the VIPD will continue to rely on more lethal force tools (such as firearms) when a TASER (or some lower level use of force) may have been more appropriate under the use of force continuum. Moreover, the VIPD did not provide the OIM with documentation that the Department is in compliance with this Consent Decree provision during the Fourth Quarter. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Use of Force working group should continue to work with the Training Division to ensure that training programs are held on the ECW Policy on an on-going basis so that, at a minimum, all patrol Officers will ultimately be trained and authorized to use TASERs in lieu of more lethal force tools. The Use of Force working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Use of Force working group and Director of Training should then schedule

follow-up training (continuing in-service or Roll Call or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy and provide remedial training or discipline as appropriate.

The Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy.

Citizen Complaint Process

Joint Action Plan Requirements

During the Fourth Quarter, the VIPD was required under the Joint Action Plan to complete intermediate steps for ¶¶ 42-46, 49, and ¶¶ 50-58 in furtherance of its efforts to achieve substantial compliance with the Consent Decree. Specifically, the VIPD was required to offer competency-based training to all investigators on the Investigating Misconduct and Citizen Complaint Policy, implement a tracking system to ensure that the required VIPD personnel are trained on the Department's Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaint Policy, and periodically test for proficiency with these policies. The Department, however, did not provide the OIM with any documentation that these requirements were completed.

In addition, the Department was required to implement a tracking system to document that all allegations of misconduct are referred to IAB within 5 days, and to begin monthly reviews of complaint investigations to determine whether complainants have been periodically notified about their complaint and whether the notification is timely. The VIPD, however, did not provide the OIM with any documentation (1) that it has developed a tracking system to ensure that the required VIPD personnel are trained on the Department's policies, (2) that the 5 day requirement is met, or (3) that complainants are notified in a timely matter.

42. The VIPD will develop and implement a program to inform persons that they may file complaints regarding the performance of any officer. This program will include distribution of complaint forms, fact sheets, informational posters, and public service announcements that describe the citizen complaint process.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 42 of the Consent Decree.

VIPD Report:

The VIPD reports that its has substantially complied with the requirements of ¶ 42 of the Consent Decree because it has developed and implemented a program to educate the public on the VIPD's complaint and compliment process through Public Service Announcements, brochures, posters, and compliment/complaint forms in various languages as required, and by continuing "to provide training on an ongoing basis on the complaint process."

The VIPD also states that it is conducting and documenting inspections in the Zones, substations, and police vehicles to ensure that all compliment/complaint materials are available.

OIM Report:

The VIPD issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaint Policy on August 2, 2012 pursuant to ¶¶ 42-58 of the Consent Decree. Those policies reflect the requirements in ¶ 42 of the Consent Decree. Officers showed improvement during the Fourth Quarter in their knowledge of the Acceptance of Citizen Complaints Policy. For example, in St. Croix, 67% (8 out of 12) of the Officers responded correctly when asked to explain the process for filing a complaint which is an improvement from 36% (4 out of 11) in the Third Quarter. In addition, 33% of Officers in St. Croix (4 out of 12) responded incorrectly when asked how a citizen is kept informed about the outcome of their complaint.

During the Fourth Quarter, the VIPD did not provide the OIM with documentation that it conducted audits to assess the proficiency of VIPD personnel with the citizen complaint process. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The VIPD has made significant progress issuing the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaint Policy, and developing and disseminating promotional material concerning the Department's citizen complaint process. The VIPD should continue to provide Officers with additional training on the complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The Citizen Complaint Process working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Complaint Process working group and Director of Training should then schedule follow-up training (continuing in-service, Roll Call, or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy and provide remedial training or discipline as appropriate.

43. The VIPD will make complaint forms and informational materials available at government properties such as VIPD district stations, substations, mobile substations, libraries, the Internet, and, upon request, to community groups and community centers. At each VIPD district

station, substation, and mobile substation, the VIPD will permanently post a placard describing the complaint process and include the relevant phone numbers. These placards shall be displayed in both English and Spanish, and where deemed necessary, in French or French Patois, to account for diversity in the VI population. The VIPD will require all officers to carry informational brochures and complaint forms, in English and Spanish, and where deemed necessary, in French or French Patois, in their vehicles at all times while on duty. If a citizen objects to an officer's conduct, that officer will inform the citizen of his or her right to make a complaint. Officers will not discourage any person from making a complaint.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 43 of the Consent Decree.

VIPD Report:

The VIPD reports that it has complied with “most of the requirements” of ¶ 43 of the Consent Decree, “with the exception of being able to determine if Officers are informing citizens of their right to make a complaint and if Officers are discouraging citizens from filing a complaint.” To assess compliance with these requirements, the VIPD has included boxes at the top of the complaint form for complainants to complete.

OIM Report:

In past quarters, the VIPD has provided documentation showing that complaint forms and informational materials are available at VIPD offices, but the VIPD has not provided documentation showing that those materials are available at other government properties, such as libraries.²⁶ Additionally, as the VIPD recognizes, the VIPD did not have a mechanism in place until the Fourth Quarter to evaluate whether (1) Officers are informing citizens of their right to file a complaint, or (2) Officers are discouraging citizens from making complaints. The VIPD has not yet provided documentation showing compliance with those Consent Decree requirements. The VIPD has not provided documentation showing that Officers inform citizens of their right to file a complaint and that Officers do not discourage citizens from doing so.

²⁶ The Citizen Complaint Process working group provided the OIM with inspection forms for these facilities during the First Quarter of 2013. The OIM will report on these forms in the next Report.

Recommendations:

The VIPD should expand the scope of its ongoing audits to determine whether complaint forms and related informational materials are available at all required locations. The VIPD should also audit whether Officers are informing citizens of their right to file a complaint and that Officers are not discouraging citizens from doing so. The VIPD should then provide documentation of these audits to the Compliance Coordinator and the OIM. Through the Department's information campaign, the VIPD should also inform citizens that they may contact the Department if an Officer refuses to take their complaint or attempts to discourage them from filing a complaint.

44. Complaints may be filed in writing or verbally, in person or by mail, telephone (or TDD), facsimile or electronic mail. The duty officer at the front desk of each district station will be authorized to take complaints, including third-party complaints, which persons may file at any district station. Complaint intake officers may describe facts that bear upon a complainant's demeanor and physical condition but may not express opinions regarding his/her mental competency or veracity. Each complaint will be resolved in writing. Upon receipt, each complaint will be assigned a unique identifier, which will be provided to the complainant. Each complaint will be tracked according to the basis for the complaint (e.g., excessive force, discourtesy, improper search, etc.).

Compliance Assessment:

The VIPD has not substantially complied with ¶ 44 of the Consent Decree.

VIPD Report:

The VIPD reports that it has substantially complied with the requirements of ¶ 44 of the Consent Decree because it continues to accept citizen complaints at the various locations required by ¶ 44; has made complaint/compliment "drop boxes" available at the Zones and substations; and where possible, citizens are provided a copy of their complaint. In addition, all complaints are assigned a complaint number, and any complaints investigated by the IAB are resolved in writing. For complaints investigated in the Zones, the investigations are returned to the IAB upon completion or final review and the IAB then provides a final written disposition to the complainant.

OIM Report:

The DOJ approved the Acceptance of Citizen Complaint Policy on August 2, 2011. The policy addresses the requirements in ¶ 44 of the Consent Decree. During the Fourth Quarter, the VIPD provided the OIM with a breakdown of the citizen complaints that it received. For example, 12.5% of all complaints in

the St. Croix District were based on allegations of discourtesy by an Officer, and 8% of all complaints alleged an excessive use of force. For the St. Thomas District, 9% of all complaints were based on allegations of discourtesy by an Officer, and 6% of all complaints alleged excessive use of force.

During the Fourth Quarter, the VIPD did not provide the OIM with documentation that that complaints are resolved in writing, or that complaint numbers are being provided to complainants. It is the VIPD's responsibility to audit the Department's compliance with this provision and to provide documentation evidencing compliance to the OIM. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The VIPD should conduct audits to determine whether relevant personnel have been trained on the Department's policies, whether all complaints are being resolved in writing, and whether complaint numbers are being provided to complainants. The VIPD should then provide documentation relating to those audits to the Compliance Coordinator and the OIM.

45. Copies of all allegations of misconduct against the VIPD filed with the Zone Commands will be referred to Internal Affairs Unit ("IAU") within five business days.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 45 of the Consent Decree.

VIPD Report:

During the Fourth Quarter, the IAB implemented a "Complaint Investigation Review" form that requires IAB investigators to ensure that complaint investigations comply with Consent Decree provisions, including that all allegations of misconduct are referred to the IAB within 5 business days. The VIPD reports that a majority of complaints are filed at an IAB office or left in a drop box located at a Zone or substation. In addition, the VIPD contends that inspections by the Citizen Complaint Process working group and Supervisors will help ensure that the 5 day requirement is met.

OIM Report:

The VIPD did not provide the OIM with documentation that the 5 day requirement is being met. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Complaint Process working group should develop a process for auditing whether copies of all allegations of misconduct are referred to the IAB within 5 business days. The Department should then provide documentation relating to those audits to the OIM.

46. Complaints will be evaluated based on a preponderance of the evidence standard, for which the Territory will develop and implement appropriate training.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 46 of the Consent Decree.

VIPD Report:

During the Second Quarter, the Compliance Coordinator requested that the VIAG draft test questions on the preponderance of the evidence standard to be used during in-service and Roll Call trainings. The VIAG ultimately provided questions (and a corresponding answer key) to test Supervisors' knowledge of the preponderance of the evidence standard during the Fourth Quarter. The VIPD reports that the head of the Citizen Complaint Process working group and the Director of training will "determine the most effective means of administering the test to Supervisors."

During the Fourth Quarter, the head of the Citizen Complaint Process working group reviewed the results of the tests that were administered following in-service training on the citizen complaint process from the Third Quarter. According to the VIPD, all Supervisors from the St. Thomas District who completed the exam passed with at least a minimum score of 70%. The VIPD will conduct a similar review for the St. Croix District during the next quarter.

OIM Report:

While monitoring during the Fourth Quarter, the Police Practices Experts asked Supervisors about their understanding of the preponderance of the evidence standard. On St. Croix, Supervisors continued to show substantial improvement because 100% (8 out of 8) of Supervisors correctly explained the preponderance of the evidence standard and how it differs from the beyond a reasonable doubt standard. The VIPD must conduct its own audits to ensure that Supervisors understand the preponderance of the evidence standard and correctly apply it when conducting investigations.

During the Fourth Quarter, the VIPD did not provide the OIM with documentation that Supervisors are proficient in the preponderance of the evidence standard. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Citizen Complaint Process working group should coordinate with the Training Division to offer training to Supervisors on the preponderance of the evidence standard on an on-going basis and to ensure that relevant VIPD personnel are attending those programs. The Citizen Complaint Process working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which Supervisors understand the preponderance of the evidence standard and the lessons conveyed during training. The Citizen Complaint Process working group and Director of Training should then schedule follow-up training based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate. The Citizen Complaint Process working group should provide the OIM with any documentation that it conducted such audits during the Fourth Quarter. The OIM also requests that the VIPD provide the number of VIPD personnel who have received training, and the number of VIPD personnel who have yet to receive training.

47. The VIPD will explicitly prohibit from investigating an incident any officer who used force during the incident, whose conduct led to the injury to a person, or who authorized the conduct that led to these reportable incidents.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 47 of the Consent Decree.

VIPD Report:

During the Fourth Quarter, the Director of IAB issued a Directive requiring his staff to complete a newly created Complaint Investigation Review form to track the quality and completeness of citizen complaint investigations conducted by the Zones. The form also assesses other Consent Decree related requirements, including whether leading questions were avoided during interviews, and whether complainants are periodically updated about the status of their complaint. At the suggestion of the Compliance Coordinator, this form was forwarded to the Citizen Complaint Process working group with the intention that Commanders would also use the form when reviewing citizen complaints in the Zones.

The Director of IAB also stated during the Fourth Quarter that the IAB will audit investigations from 2011 and 2012 in which the disposition was sustained, but the investigation exceeded the 50 day statute of limitation even though no stay was requested. In those cases, the VIPD would have had difficulty disciplining offending Officers because of the 50 day statute of limitations.

OIM Report:

In 91% (10 out of 11) of the completed use of force investigations reviewed by the Police Practices Experts during the Fourth Quarter, Supervisors who were involved in the use of force incident were not responsible for investigating that same incident. With respect to the outlying investigation, the reviewing Police Practices Expert reported that the investigation was entered into IAPro without indicating, as required, whether the investigating Supervisor was also involved in the use of force incident. Additional documents relating to the case did not provide any information regarding whether the Supervisor was involved in the incident.

During the Fourth Quarter, the VIPD did not provide the OIM with documentation that the Department is in compliance with this Consent Decree provision. This lack of documentation included, for example, the lack of audits of use of force investigations. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Department should conduct and document periodic audits of investigation files to ensure that Officers who are directly involved with a use of force incident (including Supervisors who authorized such force) are not investigating such incidents. Based on those audits, the VIPD should attempt to determine why certain personnel are failing to comply with the requirements of ¶ 47. The VIPD should then actively address those issues at Roll Call and Commanders Call training, and with individual Officers as appropriate. The VIPD should also develop a process for identifying personnel who continually fail to comply with Department policy. Once those individuals are identified, the Citizen Complaint Process working group should work with the Chiefs, Deputy Chiefs, the IAB and the Training Division to provide remedial training or other corrective action, including disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

48. The VIPD will investigate every citizen complaint. The VIPD will establish a clear policy and procedure regarding the intake of any complaint, including anonymous and confidential complaints, against a

VIPD officer. This policy and these procedures will include instructions to an officer for taking a complaint and prompt delivery to a supervisor.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 48 of the Consent Decree.

VIPD Report:

Supervisors from IAB conducted Commanders Call training in the St. Thomas District during the Fourth Quarter to address reoccurring deficiencies in citizen complaint investigations conducted by the Zones. The VIPD is hopeful that noting deficiencies with Supervisors and Commanders will improve the quality and completeness of citizen complaint investigations.

OIM Report:

The VIPD issued the Acceptance of Citizen Complaints Policy on August 2, 2011. While monitoring during the Fourth Quarter, a Police Practices Expert noted that Officers showed improvement in their knowledge of the Acceptance of Citizen Complaints Policy. In St. Croix, 67% (8 out of 12) of the Officers responded correctly when a Police Practices Expert asked them to explain the process for filing a complaint, which is an improvement from 36% (4 out of 11) during the Third Quarter. The remaining Officers responded incorrectly when asked how a citizen is kept informed about the outcome of their complaint. Despite repeated training on the policy, the Department has not provided any documentation to the OIM demonstrating that Officers are proficient in the citizen complaint process. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The VIPD should develop a process to audit whether complaints are being adequately investigated within the allotted time period. The Citizen Complaint Process working group should also consider drafting a policy/directive for the Police Commissioner's signature that requires the Chiefs and Deputy Chiefs to monitor the progress and due dates for completing the complaint investigations that are assigned to their Districts by the IAB, and to hold their subordinates accountable when they do not complete investigations in a timely manner. All audits should be documented and shared with the Compliance Coordinator and the OIM.

49. The VIPD will institute a centralized numbering and tracking system for all complaints and each complaint will receive a tracking number as quickly as possible. The IAU will be designated as the primary and centralized agency to determine whether the investigation will be

assigned to zone (one of the seven zones located throughout the Virgin Islands), retained by the IAU, or referred for possible criminal investigation. If the IAU refers a complaint to a zone, copies of all documents, findings, and recommendations should be immediately forwarded to the IAU for tracking and monitoring. For complaints alleging the excessive use of force or violation of a person's constitutional rights, the Police Commissioner should be notified no less than twenty-four hours after receipt of a complaint.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 49 of the Consent Decree.

VIPD Report:

The VIPD reports that it continues to use a centralized numbering and tracking system for all complaints. The VIPD also reports that the IAB continues to notify the Police Commissioner about and document any citizen complaints alleging excessive use of force or a violation of a citizen's constitutional rights by VIPD personnel.

OIM Report:

The VIPD issued the Acceptance of Citizen Complaints Policy on August 2, 2011. That policy addresses the requirements of ¶ 49 of the Consent Decree. Though the OIM is aware of individual cases where the Police Commissioner was notified of such complaints, we have not routinely been provided with reports of all such notifications. The VIPD has not demonstrated that the Police Commissioner is being notified of all complaints regarding the excessive use of force or violations of constitutional rights within 24 hours. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Citizen Complaint Process working group should develop a process for auditing whether the Department has complied with the requirements of ¶ 49 of the Consent Decree. All audits should be documented and shared with the Compliance Coordinator and the OIM.

50. The VIPD will adopt a single policy concerning the investigation of misconduct complaints, regardless of whether the investigation is conducted by the IAU or a zone.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 50 of the Consent Decree.

VIPD Report:

The VIPD contends that it has complied with ¶ 50 of the Consent Decree because it developed and “implemented” the Investigating Misconduct and Citizen Complaint Policy, and that training is “being provided on an ongoing basis during in service and roll call training.”

OIM Report:

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy specifies a uniform process for investigating complaints, whether by the Zones or the IAB and addresses the requirements of ¶ 50 of the Consent Decree. During the Fourth Quarter, the VIPD did not provide the OIM with documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Citizen Complaint Process working group should continue to test whether VIPD personnel adequately understand and comply with the Investigating Misconduct and Citizen Complaint Policy. The VIPD must provide VIPD personnel with additional training on the citizen complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training as appropriate.

The Complaint Process working group should coordinate with the Training Division to offer training to Supervisors on the preponderance of the evidence on an ongoing basis. The Complaint Process working group should also evaluate whether: (1) Supervisors use proper interview techniques (i.e., they are not asking leading questions) during an investigation; (2) complainants are informed about the outcome of their complaint; (3) the preponderance of the evidence standard is properly applied; and (4) investigations are completed and returned to IAB within the timeframe specified in the policies. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement.

51. The VIPD will establish policies and procedures and train all of its investigators on the factors to consider when evaluating complainant or

witness credibility; examination and interrogation of accused officers and other witnesses; identifying misconduct even if it is not specifically named in the complaint; and using the preponderance of the evidence standard as the appropriate burden of proof. VIPD investigators will ensure that all officers on the scene of an incident provide a statement regarding the incident. The policy will require that all interviews be mechanically recorded using an audio or video tape.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 51 of the Consent Decree.

VIPD Report:

The VIPD reports that it has “implemented” the Investigating Misconduct and Citizen Complaint Policy, including disseminating and training on the policy and the preponderance of the evidence standard. The VIPD has also reportedly installed webcams at all Zones to record interviews and may purchase hand-held audio recorders. The VIPD acknowledges that ongoing inspections by the working group, Supervisors, and other VIPD personnel within the chain of command are “required to ensure continued department wide compliance.”

OIM Report:

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy addresses the requirements of ¶ 51 of the Consent Decree. While monitoring during the Fourth Quarter, the Police Practices Experts asked Supervisors about their understanding of the preponderance of the evidence standard. Supervisors continued to show improvement. On St. Croix, 100% (8 out of 8) of Supervisors correctly explained the preponderance of the evidence standard and how it differs from the beyond a reasonable doubt standard, which is a marked improvement from 60% (3 out of 5) in the Third Quarter.

Recommendations:

The Citizen Complaint Process working group should continue to test whether VIPD personnel adequately understand and comply with the complaint process. The VIPD must provide VIPD personnel with additional training on the citizen complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training as appropriate.

The Citizen Complaint Process working group should also coordinate with the Training Division to offer training to Supervisors on the preponderance of the evidence standard on an ongoing basis. In addition, the Citizen Complaint Process working group should also evaluate whether investigators correctly: evaluate complainant or witness credibility; examine and interrogate accused Officers and other witnesses; and identify misconduct. The audits should also evaluate whether VIPD investigators take statements from all Officers on the scene of an incident. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator and the OIM.

52. The policy will require that the investigative findings include whether: 1) the police action was in compliance with policy, training and legal standards, regardless of whether the complainant suffered harm; 2) the incident involved misconduct by any officer; 3) the use of different tactics should or could have been employed; 4) the incident indicates a need for additional training, counseling or other non-disciplinary corrective measures; and 5) the incident suggests that the VIPD should revise its policies, training, or tactics.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 52 of the Consent Decree.

VIPD Report:

The VIPD reports that it has “implemented” the Investigating Misconduct and Citizen Complaint Policy, but acknowledges that ongoing inspections by the working group, Supervisors, and other VIPD personnel within the chain of command are “required to ensure continued department wide compliance.”

OIM Report:

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy addresses the requirements of ¶ 52 of the Consent Decree. During the Fourth Quarter, the VIPD did not provide the OIM with documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Citizen Complaint Process working group should continue to test whether VIPD personnel adequately understand and comply with the

Investigating Misconduct and Citizen Complaint Policy. The VIPD must provide additional training on the citizen complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

The Citizen Complaint Process working group should coordinate with the Training Division to offer training to Supervisors on the preponderance of the evidence on an ongoing basis. The Citizen Complaint Process working group should also evaluate whether investigators correctly evaluate whether: 1) the police action was in compliance with policy, training and legal standards; 2) the incident involved misconduct by any officer; 3) the use of different tactics should or could have been employed; 4) the incident indicates a need for additional training, counseling or other non-disciplinary corrective measures; and 5) the incident suggests that the VIPD should revise its policies, training, or tactics. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator and the OIM.

53. The policy will provide clear guidance to all investigators regarding the procedures for handling criminal misconduct allegations, referring them to the Virgin Islands Attorney General's Office or other appropriate agency for possible criminal prosecution, and the entity or individual who should make the determination of whether the complaint should be investigated criminally. The policy shall continue to require the completion of an administrative investigation, irrespective of the initiation or outcome of criminal proceedings.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 53 of the Consent Decree.

VIPD Report:

The VIPD reports that it has “implemented” the Investigating Misconduct and Citizen Complaint Policy, but acknowledges that ongoing inspections by the working group, Supervisors, and other VIPD personnel within the chain of command are “required to ensure continued department wide compliance.”

OIM Report:

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy addresses the requirements of ¶ 53 of the Consent Decree. During the Fourth Quarter, the VIPD did not provide the OIM with documentation that VIPD personnel are proficient in the

requirements of the policy or that the Department has fully implemented the policy. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Citizen Complaint Process working group should develop a process to audit whether allegations of criminal misconduct are referred to the VIAG or other appropriate agency for possible criminal prosecution, and whether administrative investigations progress in a timely manner and are completed, irrespective of the initiation or outcome of criminal proceedings. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator and the OIM.

54. In each investigation, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will the VIPD completely disregard a witness' statement merely because the witness has some connection to the complainant. The VIPD will make efforts to resolve material inconsistencies between witness statements.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 54 of the Consent Decree.

VIPD Report:

The VIPD reports that it has “implemented” the Investigating Misconduct and Citizen Complaint Policy, but acknowledges that ongoing inspections by the working group, Supervisors, and other VIPD personnel within the chain of command are “required to ensure continued department wide compliance.”

OIM Report:

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy addresses the requirements of ¶ 54 of the Consent Decree. During the Fourth Quarter, the VIPD did not provide the OIM with documentation that VIPD personnel are proficient in the requirements of the policy. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Citizen Complaint Process working group should develop a process to audit whether VIPD personnel consider all relevant evidence, including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible, in all investigations. Audits should also evaluate whether preference is given to an Officer's statement over a non-Officer's, and whether the VIPD makes efforts to resolve material inconsistencies between witness statements. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the OIM.

55. During an investigation, all relevant police activity, including each use of force (i.e., not just the type of force complained about) will continue to be investigated. The investigation will also evaluate any searches or seizures that occurred during the incident. The VIPD will not close an investigation simply because the complaint is withdrawn or the alleged victim is unwilling or unable to provide medical records or proof of injury or the complainant will not provide additional statements or written statements; rather, the investigating agency will continue its investigation as necessary to determine whether the original allegation(s) can be resolved based on the information, evidence, and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense will not be considered as evidence of whether a VIPD officer used or did not use a type of force, nor will it justify discontinuing the investigation.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 55 of the Consent Decree.

VIPD Report:

The VIPD reports that it has “implemented” the Investigating Misconduct and Citizen Complaint Policy, but acknowledges that ongoing inspections by the working group, Supervisors, and other VIPD personnel within the chain of command are “required to ensure continued department wide compliance.”

OIM Report:

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy addresses the requirements of ¶ 55 of the Consent Decree. During the Fourth Quarter, the VIPD did not provide the OIM with documentation that VIPD personnel are proficient in the requirements of the policy. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Citizen Complaint Process working group should develop a process for auditing whether VIPD personnel comply with ¶ 55 of the Consent Decree. Based on those audits, the VIPD should attempt to determine why Officers are failing to comply with the requirements of ¶ 55. The VIPD should then actively address those issues at Roll Call and Commanders Call training, and with individual Officers as appropriate. The VIPD should also develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

56. The complainant will be periodically kept informed regarding the status of the investigation. Upon completion of the investigation, the complainant will be notified of its outcome, including an appropriate statement regarding whether any non-disciplinary corrective action or disciplinary action was taken.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 56 of the Consent Decree.

VIPD Report:

The VIPD reports that the IAB notifies complainants about the outcome of their complaints, including whether any non-disciplinary corrective action or disciplinary action was taken against the involved Officer(s). For complaints investigated in the Zones, there is no evidence that complainants are being kept informed about the status of their complaints. The Compliance Coordinator suggested that the Zones adopt the “Complaint Investigation Review” form used by the IAB to track this information.

OIM Report:

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy addresses the requirements contained in ¶ 56 of the Consent Decree. During the Fourth Quarter, the VIPD did not provide the OIM with documentation that VIPD personnel are proficient in the requirements of the policy. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Citizen Complaint Process working group should continue to audit whether VIPD personnel adequately understand and comply with the complaint process. The Citizen Complaint Process working group should evaluate whether complainants are kept informed about the status of their complaints and notified about its outcome. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement, and develop a process for identifying personnel who continually fail to comply with these requirements, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM.

57. Each allegation in an investigation will be resolved by making one of the following dispositions: a) “Unfounded,” where the investigation determines, by a preponderance of the evidence, that no facts to support that the incident complained of actually occurred; b) “Sustained,” where the investigation determines, by a preponderance of the evidence, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper; c) “Not Sustained,” where the investigation determines, by a preponderance of the evidence, that there are insufficient facts to decide whether the alleged misconduct occurred; and d) “Exonerated,” where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate VIPD policies, procedures, or training.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 57 of the Consent Decree.

VIPD Report:

The VIPD reports that it is in compliance with ¶ 57 of the Consent Decree because complaint investigations completed by the Zones are returned to the IAB for review. The IAB then reviews the investigation, for, among other things, whether the investigation includes a disposition and the appropriateness of that disposition. The IAB will reportedly return the investigation to the Zone if correction is required.

OIM Report:

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. Among other things, that policy requires the Department to resolve all allegations with one of four findings: “unfounded;” “sustained;” “not sustained;” or “exonerated.” With respect to the specific

requirements of ¶ 57, the Offices of the Deputy Chiefs on both Districts were required to review use of force investigations and provide final dispositions.

The VIPD reports that it received 13 citizen complaints relating to excessive use of force Department-wide for 2012. In the St. Thomas/St. John Districts, 9 complaints were received—2 of the complaints were sustained, 1 complaint was not sustained, 1 complaint was unfounded, and 5 investigations were still active at the end of the Fourth Quarter. On St. Croix, there were 4 complaints relating to excessive use of force—1 complaint was sustained, 1 complaint not sustained, and 2 complaints remained active.

Recommendations:

The Department should develop a process for auditing whether VIPD personnel comply with ¶ 57. The VIPD should develop a process for identifying personnel who continually fail to comply with these requirements, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM. The VIPD should also provide further training to reinforce the meaning of and differences between the four disposition findings.

58. Unit commanders will evaluate each investigation of an incident under their command to identify underlying problems and training needs. Any such problems or needs will be relayed in the form of a recommendation to the appropriate VIPD entity.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 58 of the Consent Decree.

VIPD Report:

Supervisors from IAB conducted Commanders Call training in the St. Thomas District during the Fourth Quarter to address reoccurring deficiencies in citizen complaint investigations received from the Zones. The VIPD is hopeful that noting deficiencies with Supervisors and Commanders will improve the quality and completeness of citizen complaint investigations.

OIM Report:

During the Fourth Quarter, the Police Practices Experts reviewed 11 completed use of force investigations. Unit commanders identified underlying problems and training needs in 30% (3 out of 10) of the completed use of force investigations reviewed by the Police Practices Experts. There was evidence that these problems or needs were relayed to the appropriate VIPD entity in 33% (1 out of 3) of the investigations. Evidence in 67% (2 out of 3) of the

completed use of force investigations indicated that the recommended corrective action was taken.

According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Department should develop a process for auditing whether VIPD personnel comply with ¶ 58. Based on those audits, the VIPD should attempt to determine why Officers are failing to comply with the requirements of ¶ 58. The VIPD should then actively address those issues at Roll Call and Commanders Call training, and with individual Officers as appropriate. The VIPD should also develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training or other corrective action, including disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

Management and Supervision

Joint Action Plan Requirements

During the Fourth Quarter, the VIPD was required under the Joint Action Plan to complete intermediate steps for ¶¶ 59-61, 63-67, 69, and 70-72 in furtherance of its efforts to achieve substantial compliance with the Consent Decree. Specifically, the VIPD was required to begin monthly Commanders Call training pertaining to Consent Decree compliance. The Management and Supervision working group was also required to begin conducting weekly inspections to ensure that Blue Team is fully functional in all Zones. The VIPD further agreed to submit to the DOJ an action plan for achieving a sufficient number of staff to input current and historic data, and to separately submit revisions to the Disciplinary Matrix.

On November 30, 2012, the VIPD submitted to the DOJ a Management and Supervision Action Plan, which, in part, designates the division within the VIPD responsible for hiring qualified personnel to input current and historic data, and sets a June 30, 2013 hiring deadline. On December 31, 2012, the DOJ provided comments and requested that the VIPD clarify how a June 30, 2013 deadline will allow the Department to meet other deadlines that require the Department to have adequate staff prior to that date (i.e., the Joint Action Plan requires the VIPD to implement audits to ensure that applicable personnel are complying with Department policies by June 30, 2013. To assess compliance and meet this deadline, the VIPD must have sufficient personnel to input data prior to this date). The DOJ also requested that the VIPD clarify the remaining historical data that must be entered into IAPro, and that the Department amend the “Problem Statement” in the Management and Supervision Action Plan to reflect that the purpose is to input (not analyze) data.

In addition, the VIPD is required to maintain documentation of how the Department identified and addressed patterns of Officer conduct based on prior databases and resources, and to provide this documentation on a quarterly basis to the OIM beginning in the Fourth Quarter. The VIPD, however, did not provide the OIM with any documentation that the Department is in full compliance with this Consent Decree provision, nor has it explained the extent to which it relied on existing resources while the Department fully implemented the new RMS.

As required by the Joint Action Plan, the VIPD submitted a final Audit and Inspection Policy to the DOJ for review on November 30, 2012. As of the First Quarter of 2013, the VIPD has not completed training on the Audit and Inspection Policy. Finally, the VIPD and the DOJ have engaged in numerous exchanges of comments and drafts of the Disciplinary Matrix. An exchange of drafts and comments has continued into the First Quarter of 2013.

59. The VIPD will develop and implement a risk management system to include a new computerized relational database or paper system for maintaining, integrating, and retrieving information necessary for supervision and management of the VIPD. Priority will be given to the VIPD obtaining any established program and system. The VIPD will regularly use this data to promote civil rights and best police practices; to manage risk and liability; and to evaluate the performance of VIPD officers across all ranks, units and shifts.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 59 of the Consent Decree.

VIPD Report:

During the Fourth Quarter, the DOJ approved the Department's Risk Management System ("RMS") Protocol. The protocol, which addresses the requirements of ¶ 59 of the Consent Decree, was submitted to the Planning and Research Bureau and the Police Commissioner for his approval prior to being disseminated Department-wide. The VIPD reports that the protocol will not go into effect until January of 2013 to afford the Department more time to obtain approval from Property and Procurement for a training contract. The contract—which includes training related to the Early Intervention Program and the Audit team—was submitted to Property and Procurement for final review and approval prior to the end of the Fourth Quarter. While the contract is pending, the Director of IAB is coordinating with the Director of Training to familiarize VIPD personnel with the RMS Protocol and EIP Policy prior to training.

The IAB also provided IAPro-generated use of force and citizen complaint reports to the Department's leadership during the Fourth Quarter. These reports are a critical component of the VIPD's risk management program. According to the VIPD, these efforts, in combination with training Supervisors and Deputy Chiefs in both Districts on the EIP Policy and Data Input Plan, will help the Department promote best police practices by identifying areas for further training.

OIM Report:

As previously reported, the VIPD has chosen the computer program IAPro as its RMS. The RMS will help the Department track incidents and identify patterns relating to potentially problematic behavior by VIPD personnel. VIPD personnel use Blue Team—a companion computer program to IAPro—to enter force data, including RRRs, directly into IAPro. Blue Team also allows Supervisors and Commanders to review and sign-off on use of force investigations, and to monitor use of force patterns.

During the First Quarter of 2013, the OIM learned that Property and Procurement has not approved the EIP training contract because of business licensing issues. As a result, the Department cannot schedule EIP training. The OIM also learned that technical difficulties on St. Croix prevented the VIPD from providing Blue Team in that District during the Fourth Quarter.

The VIPD has not provided the OIM with documentation that the Department is in compliance with this Consent Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, issuing the RMS protocol and conducting the required beta test (i.e., an initial full scale test) of the RMS. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for personnel in the St. Croix District.

60. The new risk management system will collect and record the following information: a) all uses of force; b) canine bite ratios; c) the number of canisters of chemical spray used by officers; d) all injuries to prisoners; e) all instances in which force is used and a subject is charged with “resisting arrest,” “assault on a police officer,” “disorderly conduct,” or “obstruction of official business;” f) all critical firearm discharges, both on-duty and off-duty; g) all complaints (and their dispositions); h) all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the Territory and its officers, or agents, resulting from VIPD operations or the actions of VIPD personnel; i) all vehicle pursuits; j) all incidents involving the pointing of a firearm (if any such reporting is required); and k) all disciplinary action taken against officers.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 60 of the Consent Decree.

VIPD Report:

The VIPD reports that it continues to enter uses of force into IAPro through Blue Team, including the items required by ¶ 60 of the Consent Decree. According to the VIPD, reports entered into Blue Team are immediately accessible through IAPro to the IAB and other authorized personnel. In addition, in compliance with Joint Action Plan jointly submitted by the Parties and approved by the Court during the Fourth Quarter, the

Department will conduct bi-monthly reviews of the Department's compliance with subparts a through k. The VIPD will report on the results of these reviews in future Status Reports.

OIM Report:

The Management and Supervision working group reported at the end of the Fourth Quarter that it was creating forms, drafting procedures, and developing a system to verify the accuracy of the data collected under subparagraphs a through k. One way the VIPD intends to ensure that accurate data is entered into IAPro is to emphasize the importance of completing use of force forms in their entirety.

60 (a) In 2012, the Office of the Deputy Chief of St. Thomas was required to review 47 use of force investigations. Forty-nine percent (23 out of 47) of these investigations were reviewed in 2012. In addition, the average number of days to review a completed investigation was more than triple (105 days) the amount of time allowed by Department policy (30 days). Of those investigations reviewed, 61% (14 out of 23) of the uses of force were found to be justified and within Department policy; 9% (2 out of 23) were found to be justified but in violation of Department policy; 17% (4 out of 23) were found to be justified, but required remedial training; and 13% (3 out of 23) were found to be not justified.

On St. Croix, the Office of the Deputy Chief was required to review 63 use of force investigations in 2012. Thirty-eight percent (24 out of 63) of the use of force investigations were reviewed in 2012, and the average number of days to review a completed investigation was more than double (63 days) the amount of time allowed by Department policy. Of those investigations reviewed, 88% (21 out of 24) of the uses of force were found to be justified and within Department policy; 8% (2 out of 24) were found to be justified, but required remedial training; and 4% (1 out of 24) were found to be not justified.

60 (b) According to the VIPD's Annual Use of Force Analysis ("Use of Force Analysis"), the St. Croix District reported 2 K-9 deployments and 1 canine bite for 2012. The St. Thomas District reported 19 K-9 deployments and 0 canine bites for 2012. IAPro, however, only indicated that there was 1 deployment. The importance of accurate data under ¶ 60 is demonstrated in the VIPD's Annual Use of Force Analysis Report 2012 (the "Use of Force Analysis"). That discrepancy is unacceptable and demonstrates a breakdown in the Department's efforts to effectively monitor uses of force (which include canine deployments and bites) using IAPro. In order to remedy this discrepancy, the IAB has recommended amending the Canine Policy to include a definition for "deployment," and to require that Officers enter all K-9 deployments into IAPro as a use of force regardless of whether the subject is injured.

60 (f) The VIPD also provided a report of critical firearm discharges investigated by the IAB in 2012. In the St. Thomas District, the IAB investigated 4 critical firearms discharges—2 discharges involving animals, 1 accidental discharge, and 1 discharge in the line of duty. Two of the investigations are complete—the accidental discharge was sustained and a discharge involving an animal was determined to be justified and within policy. The investigation relating to the firearm discharged in the line of duty is currently suspended pending ballistics reports. The final investigation remained active (and overdue) at the end of the Fourth Quarter. In the St. Croix District, the IAB continues to investigate 2 in the line of duty discharges. Both investigations remained active (and overdue) at the end of the Fourth Quarter.

60 (g) The VIPD provided the OIM with “Quarterly Pattern and Trending Data” for citizen complaints filed in both Districts during the Fourth Quarter. In the St. Thomas District, 2 citizen complaints were investigated and sustained, 2 complaints were exonerated, 5 complaints were unfounded, and 33 complaints were not investigated to a final disposition by the end of the Fourth Quarter. In the St. Croix District, 3 citizen complaints were investigated and unfounded, 1 complaint was not sustained, and 14 complaints were not investigated to a final disposition by the end of the Fourth Quarter.

60 (j) In the Department’s Use of Force Analysis, the VIPD reports 6 instances where an Officer pointed a firearm at a human being in the St. Thomas District, and 14 instances in the St. Croix District in 2012.

The VIPD has not provided any update on the remaining provisions of ¶ 60 or any documentation that the Department is in compliance with this Consent Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, providing training and conducting the required beta test (i.e., an initial full scale test) of the RMS to ensure that the data required by ¶ 60 is entered. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for the St. Croix District.

61. The new risk management system will include, for the incidents included in the database, appropriate identifying information for each involved officer (e.g., name, badge number, shift and supervisor) and civilian (e.g., race, ethnicity or national origin, if available).

Compliance Assessment:

The VIPD has not substantially complied with ¶ 61 of the Consent Decree.

VIPD Report:

The VIPD reports that there has been improvement during the Third Quarter with VIPD personnel in the St. Thomas District using their Personal Designator Number (“PDN”) on police reports. The VIPD reports that the Department has received the 400 new badges ordered with PDNs imprinted on them.²⁷ The IAB has also reportedly begun entering PDNs into IAPro.

OIM Report:

To help track VIPD personnel (who may change job functions, names, etc.) the Police Commissioner issued a directive during the Fourth Quarter of 2011 ordering that a PDN be assigned to all sworn personnel, including designated civilian personnel with assignments as agents, auxiliaries, and forensic technicians. The PDN is a four digit number assigned by the Virgin Islands Territorial Emergency Management Agency (“VITEMA”). Officers are required to use their PDNs (which personnel will have for their entire career) on all police reports, rather than their badge numbers as was the previous practice. According to the Department, all VIPD personnel in both Districts have received PDNs.

The VIPD did not provide the OIM with documentation that the Department is in full compliance with this Consent Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, conducting the required beta test (i.e., an initial full scale test) of the RMS. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for St. Croix. The Department should also audit whether Officers are using their PDNs on all police reports, rather than their badge numbers as was the previous practice. These audits should be documented and shared with the Compliance Coordinator and the OIM. Supervisors should not approve reports unless

²⁷ Given that VIPD personnel typically receive new badges (signifying their new rank) each time they are promoted, the Department should clarify whether it plans to buy new badges every time an officer is promoted.

PDNs are affixed. If, during an audit, the Department finds that a PDN was not included on a report, the Supervisor should be held accountable.

62. Within 120 days of the implementation of the new risk management system, or later with the agreement of DOJ, the VIPD will prepare, for the review and approval of DOJ, a plan for including appropriate fields and values of new and historical data into the risk management system (the "Data Input Plan"). The Data Input Plan will identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting the data, and the responsibility for the input of the data. The Data Input Plan will include historical data that is up-to-date and complete in the risk management system. The VIPD and DOJ will together seek to ensure that the protocol receives final review and approval within 30 days after it is presented for approval.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 62 of the Consent Decree.

VIPD Report:

During the Fourth Quarter, the Early Intervention Program ("EIP") Coordinator held a meeting for all divisions responsible for submitting reports to the EIP Coordinator (i.e., Human Resources Bureau, Payroll Bureau, Traffic Bureau, Management and Information Services ("MIS"), Behavioral Services, Legal Counsel, and Training) and reemphasized the importance of receiving timely reports.

The VIPD also reports that the Arrest Database is operational on both Districts, and that the Records Bureau in the St. Thomas/St. John District received training on the Arrest Database during the Fourth Quarter.

OIM Report:

The DOJ approved the VIPD's Data Input Plan on March 22, 2011, but the Department had not provided training on the plan as of the end of the Fourth Quarter. The Data Input Plan identifies information about VIPD personnel (including, but not limited to, uses of force, disciplinary issues, motor vehicle accidents, and sick days) that the Department is required to enter into IAPro to facilitate its risk management function.

The VIPD has made progress implementing certain aspects of IAPro, but the Data Input Plan still needs to be fully implemented. Once training is held on the Data Input Plan and EIP Protocol, the VIPD reports that divisions

responsible for providing data to the EIP Coordinator will better understand the purpose of and need for timely reports. For example, during an EIP meeting in the Fourth Quarter, the VIPD reports that there was some uncertainty about the information that the Training Division is required to provide. The EIP Coordinator explained that the Training Division is responsible for providing training certificates for Officers and requested that the Training Division provide that information going forward because it had previously failed to do so.

The VIPD has not provided the OIM with documentation that the Department is in compliance with this Consent Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Consistent with the Data Input Plan, the EIP coordinator should outline the reporting requirements for each responsible reporting division, including all required fields, and then provide VIPD management and the OIM with a monthly report detailing the completeness and timelines of the data that was received for that month. The VIPD should also provide the OIM with documentation that the Data Input Plan is fully implemented and that the specific fields of information and other data required by the Plan are entered into IAPro.

63. The VIPD will, within 120 days, prepare for the review and approval of DOJ, and thereafter implement, a protocol for using the risk management system. The VIPD will submit for the review and approval of DOJ all proposed modifications to the protocol prior to implementing such modifications.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 63 of the Consent Decree.

VIPD Report:

During the Fourth Quarter, the DOJ approved the Department's RMS Protocol. The VIPD reports that the protocol will not go into effect until January of 2013, allowing the Department time to seek approval from Property and Procurement for a training vendor contract. Assuming that the contract is approved, the VIPD intends to hold training in March or April of 2013.

OIM Report:

After several years of work, the DOJ approved the Department's RMS Protocol on October 2, 2012. As previously reported, the RMS Protocol provides various thresholds that trigger supervisory review. For example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor (and other appropriate personnel) to the potential issue and need for review. When reporting arrest and use of force data, the Consent Decree requires that the VIPD use ratios based on the conduct of VIPD personnel (the total number of arrests where force was used divided by the total number of arrests) to identify potentially problematic behavior. The VIPD, however, currently uses numerical thresholds based on historic norms (X number of uses of force within a twelve month period). The DOJ and VIPD have agreed that, for the time being, the VIPD may continue to use thresholds rather than ratios until such time when the VIPD can rely on its arrest and force records. For now, IAPro will notify an Officer's Supervisor when the Officer reaches two uses of force within a six-month period. The EIP Coordinator will then conduct a review and determine if further supervisory interaction or analysis is required. The Parties agree that the Department will not be in compliance with the Consent Decree until it implements a ratio-based RMS Protocol.

During the First Quarter of 2013, the OIM learned that Property and Procurement has not approved a contract to provide training on the RMS Protocol because the vendor does not have a Virgin Islands business license as is required. As a result, the Department is unable to schedule training and fully implement the protocol. Considering the amount of time that has already passed since the VIPD began working on the RMS Protocol, the Department should seek to have the contract approved and the policy implemented expeditiously.

The VIPD has not provided the OIM with documentation that the Department is in compliance with this Consent Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, providing training and conducting the required beta test (i.e., an initial full scale test) of the RMS. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for St. Croix. Once the Department can rely on its arrest and force records, the VIPD must begin to use ratios, rather than numerical thresholds, as triggers for supervisory review of Officers' conduct.

64. The protocol for using the risk management system will include the following provisions and elements: a) The protocol is comprised of the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation and audit; b) The protocol will require the automated system to analyze the data according to the following criteria: (i) number of incidents for each data category by individual officer and by all officers in a unit; (ii) average level of activity for each data category by individual officer and by all officers in a unit; and (iii) identification of patterns of activity for each data category by individual officer and by all officers in a unit; c) The protocol will require the system to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns; d) The protocol will require that VIPD deputy chiefs, managers, and supervisors will review, on a regular basis but not less than quarterly, system reports, and will evaluate individual officer, supervisor, and unit activity; e) The protocol will require that VIM deputy chiefs, managers, and supervisors initiate intervention for individual officers, supervisors and for units based on appropriate activity and pattern assessment of the information contained in the risk management system; f) The protocol will require that intervention options include discussion by deputy chiefs, managers, supervisors, and officers; counseling; training; and supervised, monitored, and documented action plans and strategies designed to modify activity. All interventions will be documented in writing and entered into the automated system (appropriate intervention options will be employed based on the evaluation described in subsection (e) above); g) The protocol will specify that actions taken as a result of information from the risk management system be based on all relevant and appropriate information, including the nature of the officer's assignment, crime trends and crime problems, and not solely on the number or percentages of incidents in any category of information recorded in the risk management system; h) The protocol will require that VIPD deputy chiefs, managers, and supervisors will promptly review the risk management system records of all officers recently transferred to their sections and units; i) The protocol will require that VIPD deputy chiefs, managers, and supervisors be evaluated on their ability to use the risk management system to enhance effectiveness and reduce risk; (j) The protocol will require that the system be managed and administered by the Internal Affairs Unit of the VIPD. The IAU of the VIPD will conduct quarterly audits of the system to ensure action is taken according to the process described above; k) The protocol will require regular reviews, at no less than quarterly intervals, by appropriate managers of all relevant risk management system information to evaluate officer performance territory-wide, and to evaluate and make appropriate comparisons regarding the performance of all VIPD units in order to identify any significant patterns or series of incidents.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 64 of the Consent Decree.

VIPD Report:

During the Fourth Quarter, the DOJ approved the Department's RMS Protocol. The VIPD reports that the policy will not go into effect until January of 2013, allowing the Department time to seek approval from Property and Procurement for a training vendor contract. Assuming the contract is approved, the VIPD intends to hold training in March or April of 2013.

OIM Report:

On October 2, 2012, the DOJ approved the RMS Protocol. As previously reported, the RMS Protocol provides various thresholds that trigger supervisory review. For example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor (and other appropriate personnel) to the potential issue and need for review. When reporting arrest and use of force data, Consent Decree requires that the VIPD use ratios based on the conduct of VIPD personnel (the total number of arrests where force was used divided by the total number of arrests) to identify potentially problematic behavior. The VIPD, however, currently uses numerical thresholds based on historic norms (X number of uses of force within a twelve month period). The DOJ and VIPD have agreed that, for the time being, the VIPD may continue to use thresholds rather than ratios until such time when the VIPD can rely on its arrest and force records. For now, IAPro will notify an Officer's Supervisor when the Officer reaches two uses of force within a six-month period. The EIP Coordinator will then conduct a review and determine if further action is required. The Parties agree that the Department will not be in compliance with the Consent Decree until it implements a ratio-based RMS Protocol. During the First Quarter of 2013, the OIM learned that Property and Procurement has not approved the RMS Protocol training contract because the vendor does not have a business license as required by the Territory. As a result, the Department is unable to schedule training and fully implement the protocol. Considering the amount of time that has already passed since the VIPD began working on the RMS Protocol, the Department should seek to have the contract approved and the policy implemented expeditiously.

During the Fourth Quarter, the VIPD did not provide the OIM with documentation that the Department is in compliance with this Consent Decree provision. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by among other things, conducting training and the required beta test (i.e., an initial full scale test) of the RMS. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for St. Croix. Once the Department can rely on its arrest and force records, the VIPD must begin to use ratios, rather than numerical thresholds, as triggers for supervisory review of Officers' conduct.

65. The VIPD will maintain all personally identifiable information about an officer included in the risk management system during the officer's employment with the VIPD for at least five years. Information necessary for aggregate statistical analysis will be maintained indefinitely in the risk management system. On an ongoing basis, the VIPD will enter information into the risk management system in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 65 of the Consent Decree.

VIPD Report:

The VIPD reports that the EIP Coordinator is responsible for overseeing that data is collected from across the Department, entered into Blue Team, and made accessible through IAPro. The EIP Manager helps the EIP Coordinator analyze the data, but the Department reports that it requires 4 (2 per District) additional analysts in order to conduct "more meaningful data analysis." The Department has created a job description for these positions, but salaries and a timeline for hiring have not been decided.

With respect to the requirement that the Department "enter information into the risk management system in a timely, accurate, and complete manner," IAB agents reportedly enter reports into IAPro as soon as they are received. To maintain data in a secure and confidential manner, IAPro provides varying levels of access, but only the IAB has access to all levels beyond a "read only" mode. In addition, any information not maintained electronically is maintained in locked cabinets accessible to IAB personnel only.

OIM Report:

Officers are required to use their PDNs on all police reports, rather than their badge numbers as was the previous practice. According to the

Department, all VIPD personnel on both Districts have received PDNs. The VIPD reports that the Department has received 400 new badges ordered with Officers' PDNs, and that dissemination is underway. In addition, the VIPD notes that the IAB began entering PDNs into IAPro, and that the transition to using PDNs on all police forms continues.

During the Fourth Quarter, the VIPD did not provide the OIM with documentation that the Department is in compliance with this Consent Decree provision or any documentation that it began quarterly reviews to ensure compliance with ¶ 65. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol (approved by the DOJ on October 2, 2012), and the Data Input Plan needs to be fully implemented. The Department should demonstrate for the Police Practices Experts during an upcoming monitoring trip that the Department maintains personally identifiable information about an Officer for at least five years in IAPro, and that information necessary for aggregate statistical analysis is maintained indefinitely. The Department should enter information into IAPro in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.

66. The new risk management system will be purchased off the shelf and customized by VIPD. Alternatively, the new risk management system may be developed and implemented according to the following schedule: a) Within 150 days of the effective date of this Agreement, subject to the review and approval of DOJ, the VIPD will issue a Request for Proposal (RFP); b) Within 270 days of the issuance of the RFP, or later with the agreement of DOJ, the VIPD will select the contractor to create the risk management system; c) Within 150 days of the effective date of this Agreement, the VIPD will submit the protocol for using the risk management system to DOJ for review and approval. The VIPD will share drafts of this document with DOJ and the Monitor (a position described in Section VII) to allow DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. The VIPD and DOJ will together seek to ensure that the protocol receives final approval within 30 days after it is presented for review and approval; d) Within 14 months of selecting the contractor, the VIPD will have ready for testing a beta version of the risk management system consisting of (i) server hardware and operating systems installed, configured and integrated with the VIPD's existing automated systems; (ii) necessary data base software installed and configured; (iii) data structures created, including interfaces to source data; and (iv) the use of force information system completed, including historic data. DOJ and the Monitor will have

the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the risk management system; e) The risk management system computer program and computer hardware will be operational and fully implemented within 20 months of the selection of the risk management system contractor.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 66 of the Consent Decree.

VIPD Report:

During the Fourth Quarter, the Compliance Coordinator received information from the MIS Director for the St. Croix District identifying all locations where Blue Team is operational. Similar information for the St. Thomas District was not provided to the OIM during the Fourth Quarter.

OIM Report:

As previously reported, the VIPD has chosen the computer program IAPro as its RMS. The RMS will help the Department to track incidents and identify patterns relating to potentially problematic behavior by VIPD personnel. VIPD personnel use Blue Team—a companion computer program to IAPro—to enter force data, including RRRs, directly into IAPro. Blue Team also allows Supervisors and Commanders to review and sign off on use of force investigations, and to monitor use of force patterns. Although the Department held Blue Team training on St. Thomas during the First Quarter, by the end of the Fourth Quarter Blue Team training was not yet offered on St. Croix.

During the Fourth Quarter, the VIPD did not provide the OIM with documentation that the Department is in full compliance with this Consent Decree provision. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, conducting the required beta test (i.e., an initial full scale test) of the RMS. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for St. Croix. Once the Department can rely on its arrest and force records, the VIPD must begin to use ratios, rather than numerical thresholds, as triggers for supervisory review of Officers' conduct.

67. Prior to implementation of the new risk management system, the VIPD will continue to use existing databases and resources to the fullest extent possible, to identify patterns of conduct by VIPD officers or groups of officers.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 67 of the Consent Decree.

VIPD Report:

The VIPD reports that it has completed entering historical data into IAPro and that it continues to enter new data on an ongoing basis. The IAB has used IAPro to run various performance reports.

OIM Report:

As previously reported by the OIM, after prior technical issues with IAPro, the Department implemented a manual tracking system in which all Zone Commanders received log books with sequentially numbered pages to record use of force events and citizen complaints. It is unclear whether these log books would allow the VIPD to identify patterns of conduct required by ¶ 67 of the Consent Decree. The VIPD, however, did not provide the OIM with documentation that the Department is in full compliance with this Consent Decree provision, nor has it explained the extent to which it relied on existing resources while the Department fully implementing the new RMS. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The OIM requests that the VIPD provide information regarding the system, if any, that existed prior to IAPro, and to what extent that system is still operational.

68. Following the initial implementation of the risk management system, and as experience and the availability of new technology may warrant, the VIPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. The VIPD will submit all such proposals for review and approval by DOJ before implementation.

Compliance Assessment: N/A

VIPD Report:

During the Fourth Quarter, the DOJ approved the Department's RMS Protocol. The VIPD reports that the policy will become effective in January of 2013, in order to give the Department more time to obtain approval for a training contract from Property and Procurement. Assuming the contract is approved, the VIPD intends to hold training in March or April of 2013.

OIM Report:

Because the VIPD's RMS Protocol was only approved by the DOJ at the beginning of the Fourth Quarter, this provision is not yet applicable.

Recommendations:

Once the RMS Protocol is fully implemented, the VIPD should submit to the DOJ for approval any proposals to add, subtract, or modify data tables and fields, standardized reports and queries, or the list of documents scanned or electronically attached.

69. The VIPD will develop a protocol for conducting audits. The protocol will be used by each officer or supervisor charged with conducting audits. The protocol will establish a regular and fixed schedule to ensure that such audits occur with sufficient frequency, and cover all VIPD zones.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 69 of the Consent Decree.

VIPD Report:

During the Fourth Quarter, the VIPD submitted its Audit and Inspection Policy to the DOJ for approval. The VIPD also submitted a contract for approval to Property and Procurement that would allow an outside vendor to conduct training on the policy.

OIM Report:

As required by the Joint Action Plan, the VIPD submitted a final Audit and Inspection Policy to the DOJ for review on November 30, 2012.²⁸ The DOJ provided technical assistance on the policy on January 10, 2013. During the

²⁸ The Consent Decree does not require the DOJ to approve the Department's Audit and Inspection Policy.

First Quarter of 2013, the OIM learned that Property and Procurement had not approved the training contract for the Department's Audit and Inspection Policy because of business licensing issues. As a result, the Department is unable to schedule training. The VIPD will be unable to ensure that it has substantially complied with the Consent Decree's substantive provisions until it fully implements an audit policy.

Recommendations:

The VIPD should implement its Audit and Inspection Policy so that the Audit Team has the tools to become fully functional and to monitor the Department's compliance with the Consent Decree. Documentation of VIPD audits is the best way for the Department to demonstrate compliance with each Consent Decree paragraph. In addition, the Department should also provide additional audit-related training (parts two and three of the three-part series referenced above, or some other similarly comprehensive training) to relevant personnel.

70. The VIPD will continue to utilize a disciplinary matrix to take into account an officer's violations of different rules, rather than just repeated violations of the same rule. The VIPD will further revise this matrix to increase the penalties for uses of excessive force, improper searches and seizures, discrimination, or dishonesty, to reflect the seriousness of those infractions. The revised disciplinary matrix will provide the VIPD with the discretion to impose any appropriate punishment when the VIPD believes the officer's misconduct exhibits a lack of fitness for duty. This revised matrix will be subject to the review and approval of DOJ.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 70 of the Consent Decree.

VIPD Report:

The VIPD reports that it continues to work on the Disciplinary Matrix, and that it submitted a revised draft to the DOJ in November for approval. The DOJ provided additional comments during the Fourth Quarter, and the VIPD submitted a further revised version of the Disciplinary Matrix to the DOJ during the First Quarter of 2013.

The VIPD also reports that the head of the Use of Force working group and the Director of the IAB have begun tracking Officers who fail to submit RRRs. According to the Department, this will allow the Department to identify and discipline Officers who fail to submit RRRs for use of force incidents.

OIM Report:

As previously reported, the DOJ approved the Disciplinary Matrix in the Second Quarter of 2011. The Disciplinary Matrix provides guidelines for the different sanctions depending on, among other things, the misconduct. The VIPD subsequently decided to further revise the “charge and penalty section” of the Disciplinary Matrix, which will require another round of DOJ approval. The Management and Supervision working group reports that the VIPD continues to work on the Disciplinary Matrix. Because the OIM has observed first-hand that the Department inconsistently applies disciplinary sanctions, the absence of a finalized Disciplinary Matrix is negatively impacting the Department’s efforts to comply with the Consent Decree. Since the beginning of the First Quarter of 2013, the DOJ and the VIPD have engaged in numerous exchanges of comments and drafts of the Disciplinary Matrix. DOJ provided its most recent comments on the matrix on March 18, 2013; VIPD’s revisions are due on April 8, 2013.

Recommendations:

The VIPD has received substantial technical assistance on the development of the Disciplinary Matrix from both the DOJ and the OIM. The VIPD must exhibit leadership and move this issue forward. The constant delays are inhibiting the Department from successfully implementing consistent and fair discipline. The Management and Supervision working group should promptly finalize any revisions to the Disciplinary Matrix and submit it to the DOJ for final approval.

71. VIPD policy will continue to identify clear time periods by which the various steps of a complaint adjudication process should be completed, from complaint receipt to the imposition of discipline, if any. Absent exigent circumstances, extensions will not be granted without the Police Commissioner's written approval and notice to the complainant. In the limited circumstances when an extension is necessary, appropriate tolling provisions will be outlined in the policy.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 71 of the Consent Decree.

VIPD Report:

The VIPD reports that the 50-day statute of limitations set by the Police Union’s Collective Bargaining Agreement continues to be in effect. Despite VIPD efforts to extend the time, the Union continues to oppose these efforts.

OIM Report:

As an initial matter and as the OIM previously reported, the VIPD appears to be confusing the time period in which the Department can initiate administrative charges against an Officer with the timelines set forth in the Investigating Misconduct and Citizen Complaint Policy. The Union's reported refusal to extend the 50 day statute of limitations has no bearing on the Department's ability to comply with internal investigative deadlines.

The VIPD provided the OIM with the Quarterly Pattern and Trending Data for citizen complaints filed in both Districts during the Fourth Quarter. In the St. Thomas/St. John District, 2 citizen complaints were investigated and sustained, 2 complaints were exonerated, 5 complaints were unfounded, and 33 complaints were not investigated to a final disposition by the end of the Fourth Quarter. In the St. Croix District, 3 citizen complaints were investigated and unfounded, 1 complaint was not sustained, and 14 complaints were not investigated to a final disposition by the end of the Fourth Quarter.

During the Fourth Quarter, the VIPD did not provide the OIM with documentation that the Department is in full compliance with this Consent Decree provision. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Management and Supervision working group, together with the Citizen Complaint Process working group and IAB, should audit and document the Department's compliance with the 50 day statute of limitations. As the OIM has previously cautioned, the Department cannot afford to let complaints of potential misconduct linger in light of this statute of limitations.

72. Absent exceptional circumstances, the VIPD will not take only non-disciplinary corrective action in cases in which the disciplinary matrix indicates the imposition of discipline. In a case where discipline has been imposed on an officer, the VIPD must also consider whether non-disciplinary corrective action is required.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 72 of the Consent Decree.

VIPD Report:

The VIPD did not provide a separate report for ¶ 72 of the Consent Decree and instead referred to its report on ¶ 70 of the Consent Decree.

OIM Report:

In the absence of a final Disciplinary Matrix, the Police Practices Experts continue to observe that the Department inconsistently applies disciplinary sanctions. While monitoring on St. Croix during the Fourth Quarter, a Police Practices Expert learned that internal politics has impeded some Supervisors' ability to properly counsel or discipline Officers because the Officers are believed to be politically connected and the Supervisors fear retaliation. The IAB provided the Police Commissioner with a memorandum of suggested steps to address this issue. The VIPD told the Police Practices Expert that it would provide the OIM with a copy of this memorandum, but the OIM had not received the memorandum as of the date of publication. The VIPD should finalize its Disciplinary Matrix and encourages the IAB and the Training Division to agree on the appropriate resolution of these investigations. To the extent that Officers are receiving preferential treatment based on political connection (or any other factor), the Department needs to address this issue immediately and impose discipline as necessary. Avoiding disciplining Officers violates the Consent Decree and undermines public confidence in the entire Department.

During the Fourth Quarter, the VIPD did not provide the OIM with documentation that the Department is in full compliance with this Consent Decree provision. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Because the VIPD cannot impose discipline once the statute of limitations expires, the IAB should use IAPro to notify the Director of IAB when investigation due dates are approaching. The Director, or his designee, could then follow up as appropriate. In the event that a due date is missed, the Director should report that fact to the Police Commissioner on a monthly basis. In those instances, the Department should also consider appropriate corrective action, including discipline, for offending Supervisors. The Management and Supervision working group should also finalize any revisions to the Disciplinary Matrix and submit it to the DOJ for final approval.

Training

Joint Action Plan Requirements

During the Fourth Quarter, the VIPD was required under the Joint Action Plan to complete certain interim steps towards achieving substantial compliance with ¶¶ 73-79 and 80-81 of the Consent Decree. As required by the Joint Action Plan, the VIPD submitted a final Audit and Inspection Policy to the DOJ for review on November 30, 2012. The DOJ provided technical assistance on the policy on January 10, 2013. During the First Quarter of 2013, the OIM learned that the vendor contract for training on the Department's Audit and Inspection Policy had not been approved by Property and Procurement because the vendor does not have a business license as required by the Territory. As a result, the Department is unable to schedule training. The VIPD will not be able to ensure that it has substantially complied with the Consent Decree's substantive provisions until it fully implements an audit policy. Consequently, during the Fourth Quarter, the VIPD did not provide the OIM with any documentation that the Department has finalized and implemented its Audit and Inspection Policy in compliance with ¶ 69 of the Consent Decree.

In addition, the Director of Training was required to develop and implement a tracking system to track training attendance and begin periodically testing VIPD personnel's proficiency with Department policies. The VIPD further agreed to implement a tracking system to ensure that all required personnel are trained on the Department's policies. While monitoring in the St. Croix District during the Fourth Quarter, a Police Practices Expert observed that the Department is unable to electronically track VIPD personnel who have attended training. The Department did not provide the OIM with any documentation during the Fourth Quarter that the Department is in compliance with this Consent Decree provision.

The Joint Action Plan also requires the VIPD to provide the Police Practices Experts with training curricula and schedules at least 15 days in advance of training. In November, the VIPD issued a revised training schedule, but did not provide it to the OIM until the First Quarter of 2013.²⁹ As the OIM has previously requested, and as is now required by the Joint Action Plan, the VIPD must provide the OIM with training schedules, lesson plans, and curricula without prompting from the OIM.

As required by the Joint Action Plan, the VIPD reported that since November 31, 2012 the Department has used the firearms simulator training

²⁹ The schedule does include any definitive dates for Consent Decree related training.

lab to train Officers in critical decision making scenarios. So far, the SRT team in St. Thomas has completed training on the firearms simulator.

73. The VIPD will continue to coordinate and review all use of force policy and training to ensure quality, consistency, and compliance with applicable law and VIPD policy. The VIPD will conduct regular subsequent reviews, at least semi-annually.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 73 of the Consent Decree.

VIPD Report:

The VIPD reports that its Compliance Coordinator developed a form to document reviews of the Department's Use of Force policies and corresponding training. Once approved, the form will be the Department's mechanism for documenting these reviews.

OIM Report:

The VIPD first reported during the Third Quarter that it would periodically review its use of force policies in consultation with the VIAG; the Department has not announced a similar review for its use of force training. To formalize the review of use of force policies (and corresponding training), the VIPD developed the "Use of Force Policies/Training Review" form. The form requires that the reviewer include any comments, recommendations, and/or corrective action and the Training Director (or his designee) must sign the form upon review. At the beginning of the First Quarter of 2013, the VIPD reported that it reviews one use of force policy every two weeks and said that it would provide the OIM with the completed review forms, but it has not yet done so.

Recommendations:

The Department should develop a process for reviewing all use of force training (as it has done for the use of force policies) to ensure quality, consistency, and compliance with applicable law and VIPD policy. This process should include consultation with the VIAG to the extent necessary. The VIPD should also conduct at least semi-annual reviews going forward. These reviews should be documented, become part of the training records file for that lesson plan, and be shared with the Compliance Coordinator and the OIM.

74. The Director of Training, either directly or through his/her designee(s), consistent with applicable law and VIPD policy will: a) ensure the quality of all use of force training; b) develop and implement use of force training curricula; c) select and train VIPD officer trainers; d)

develop, implement, approve, and oversee all in-service training; e) in conjunction with the Chiefs, develop, implement, approve, and oversee a patrol division roll call protocol designed to effectively inform officers of relevant changes in policies and procedures; f) establish procedures for evaluating all training curricula and procedures; and g) conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 74 of the Consent Decree.

VIPD Report:

74 (a) The VIPD reports that the Director of Training continues to review student evaluations completed after Officers attend use of force training.

74 (b) The VIPD contends that a training curricula has been implemented within the Department since March of 2011.

74 (c) During the Fourth Quarter, the VIPD held an instructor development training for 20 Officers in each District.

74 (d) The VIPD's Director of Training continues to develop, implement, and approve all in-service training.

74 (e) The VIPD has not fully implemented the Roll Call Policy because the Department has not selected Training Coordinators in the Zones (who are responsible for overseeing all Roll Call training in a particular Zone). However, the Training Bureau updated its records to reflect recent Roll Call training on both Districts.

74 (g) The VIPD reports that it continues to maintain training folders for Officers, which includes questionnaires that Officers complete after attending training to assess their understanding of the material presented.³⁰

OIM Report:

The Department did not provide the OIM with documentation during the Fourth Quarter that the Department is in compliance with this Consent Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

³⁰ The VIPD did not provide a report on ¶ 74 (f).

Recommendations:

The VIPD should develop a procedure to ensure that the Director of Training, in consultation with the VIAG if necessary, is a) ensuring the quality of all use of force training; b) developing and implementing use of force training curricula; c) selecting and training VIPD officer trainers; d) developing, implementing, approving, and overseeing all in-service training; e) in conjunction with the Chiefs, developing, implementing, approving, and overseeing a patrol division Roll Call protocol designed to effectively inform officers of relevant changes in policies and procedures; f) establishing procedures for evaluating all training curricula and procedures; and g) conducting regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained. Such reviews should be documented and shared with the Compliance Coordinator and the OIM. The VIPD should also fully implement its Roll Call Policy by selecting Training Coordinators in the Zones. Additionally, the Training working group (which has historically not included members from outside the Training Division) should expand its membership to include VIPD personnel from other parts of the VIPD given the vital role that training plays throughout the VIPD.

75. The VIPD will continue to provide training consistent with VIPD policy, law, and proper police practices, and will ensure that only mandated objectives and approved lesson plans are taught by instructors. The VIPD will make best efforts to train each work shift as a team in their use of force training.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 75 of the Consent Decree.

VIPD Report:

The VIPD reports that the Training Director reviews and approves training lesson plans, and that lesson plans conform to “the established and approved lesson plan format.”

OIM Report:

With respect to the Audit and Inspection Policy, the VIPD submitted a final policy to the DOJ for review on November 30, 2012. During the First Quarter of 2013, the OIM learned that the contract submitted to Property and Procurement to allow an instructor from outside the Territory to conduct training on the Department’s Audit and Inspection Policy was not approved because of business licensing issues. As a result, the Department is unable to schedule training. Without this training on the Department’s Audit and

Inspection Policy, the VIPD will be unable to conduct thorough audits and satisfy the requirements of ¶ 75.

A Police Practices Expert observed the Field Training Officer (“FTO”) instructor training conducted during the Fourth Quarter on St. Thomas. Even though the Consent Decree does not specifically require the VIPD to develop an FTO program, the VIPD has recognized that such a program will help the Department comply with the Consent Decree by providing more comprehensive training to new officers. The instructor engaged the class and was effective in demonstrating the importance of an FTO program. The instructor referred to the VIPD’s policy, and also suggested a number of amendments.³¹ In addition, the training was designed for a three month FTO program, while the VIPD’s program is six months long.

A Police Practices Expert also observed a Commanders Call training conducted on St. Thomas during the Fourth Quarter. The training focused on preparing the Commanders to train their Supervisors on the requirements for reporting uses of force, the importance of completing RRRs, and the consequences of not completing RRRs when required.

The Department did not provide the OIM with documentation during the Fourth Quarter that the Department is in compliance with this Consent Decree provisions. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

As we have emphasized in previous reports, the VIPD should continue to develop lesson plans for all training programs in advance of the corresponding training so they can be vetted appropriately, including review of all lesson plans by the Director of Training and the VIAG, if necessary, without delaying training. The Training Division should work closely with the Chiefs and Deputy Chiefs to arrange further training (in-service, Roll Call, and Commanders Call) on certain policies for which compliance has been problematic, including among others, the Use of Force Policy, Acceptance of Citizen Complaints Policy, and Investigating Misconduct and Citizen Complaint Policy. The Training Division also should work closely with the Use of Force, Citizen Complaint Process, and Management and Supervision working groups to identify areas that require additional training, either through additional in-service, Roll Call, and Commanders Call training, to ensure that VIPD personnel adequately understand their obligations. Moreover, the VIPD should obtain sample lesson plans from other well-respected law enforcement agencies (the Police Practices Experts have previously provided recommendations), and

³¹ It is unclear whether the VIPD is considering these amendments.

should develop a standardized format for instructors and lesson plan developers to follow.

Also, the VIPD's limited internal training capacity continues to impede its ability to provide adequate training because the Department relies on external vendors to provide training services. Because of the Territory's complex procurement procedures, the Department has little control over when training programs led by external vendors will take place. The Department would save money and have much greater flexibility (in terms of scheduling and content) by improving and relying on internal training resources to a greater extent.

76. The VIPD shall continue to keep adequate records of lesson plans and other training materials, such that the most current training documents are maintained in a central, commonly accessible file, and are clearly dated.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 76 of the Consent Decree.

VIPD Report:

As the VIPD reported last quarter, the Training Division in both Districts maintains records of all training, lesson plans, instructor certifications, and other training related information. That information is maintained in paper form in both Districts.

OIM Report:

Although the Department maintains lesson plans and other training materials, that information is not maintained in a central file for the entire Department. As a result, if personnel are transferred from one District to the other, their hard copy training file would need to be sent to the new District. While the Department previously reported that it was working to create a central database for its training materials, the VIPD did not provide an update on that project in the Status Report.

Recommendations:

The VIPD should move forward with developing a unified training database. Once that database is operation, the VIPD should demonstrate its functionality to the Police Practices Experts during future monitoring trips.

77. The VIPD shall continue to maintain training records regarding every VIPD officer that reliably indicate the training each officer has

received. The training records shall, at a minimum, include the course description and duration, curriculum, and instructor for each officer.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 77 of the Consent Decree.

VIPD Report:

The VIPD again reports that the Training Bureau in both Districts continues to maintain an electronic database of training records.

OIM Report:

During the Fourth Quarter, the VIPD did not provide the OIM with documentation that it is in substantial compliance with the requirements of ¶ 77. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

VIPD should demonstrate to the Police Practices Experts during future monitoring trips that the Department maintains records for every Officer detailing the training received, including a course description and duration, curriculum, and course instructor for each training.

78. The Training Director will review all use of force training and use of force policies on a regular basis to ensure compliance with applicable laws and Virgin Islands Police Department policy. The Training Director will consult with the Attorney General's Office on any additions, changes and/or modifications regarding use of force training or policies to ensure compliance with applicable laws.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 78 of the Consent Decree.

VIPD Report:

The VIPD reports that its Compliance Coordinator developed a form to document reviews of the Department's Use of Force policies and corresponding training. Once approved, the form will be the Department's mechanism for documenting these reviews.

OIM Report:

The VIPD first reported during the Third Quarter that it would periodically review its use of force policies in consultation with the VIAG; the Department has not announced a similar review for its use of force training. To formalize the review of use of force policies (and corresponding training), the VIPD developed the “Use of Force Policies/Training Review” form. The form requires that the reviewer include any comments, recommendations, and/or corrective action and the Training Director (or his designee) must sign the form upon review. At the beginning of the First Quarter of 2013, the VIPD reported that it reviews one use of force policy every two weeks and said that it would provide the OIM with the completed review forms, but it has not yet done so.

Recommendations:

The Department should develop a process for reviewing all use of force training (as it has done for the use of force policies) to ensure quality, consistency, and compliance with applicable law and VIPD policy. This process should include consultation with the VIAG to the extent necessary. The VIPD should also conduct at least semi-annual reviews going forward. These reviews should be documented, become part of the training records file for that lesson plan, and be shared with the Compliance Coordinator and the OIM.

79. The VIPD will continue to provide all recruits, officers, supervisors, and managers with annual training on use of force. Such training will include and address the following topics: a) the VIPD’s use of force model, as described in this Agreement; b) proper use of force decision making; c) the VIPD’s use of force reporting requirements; d) the Fourth Amendment and other constitutional requirements; e) examples of scenarios faced by VIPD officers that illustrate proper use of force decision-making; f) interactive exercises that emphasize proper use of force decision-making; g) de-escalation techniques that encourage officers to make arrests without using force, and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest maybe the appropriate response to a situation even when the use of force would be legally justified; h) threat assessment; i) appropriate training on conflict management.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 79 of the Consent Decree.

VIPD Report:

During the Fourth Quarter five instructors who received certification on the firearms simulator participated in a two day workshop to develop a standard operating procedure (“SOP”) for the simulator. The Director of Training approved the SOP, which includes training modules for defensive spray, expandable baton, and defensive tactics. The Department also intends to use closed use of force investigations (reviewed during the Fourth Quarter by IAB) for scenario based training. Following approval of the SOP, Officers in the Special Operations Bureau in the St. Thomas District were able to use the firearms simulator.

OIM Report:

While the OIM welcomes the Department’s finalization of the SOP for the firearms simulator, the Status Report does not explain how the SOP satisfies each of the requirements of ¶ 79 of the Consent Decree.

Recommendations:

The Training Division should work closely with the Chiefs and Deputy Chiefs to arrange further training (in-service, Roll Call, and Commanders Call) on certain policies for which compliance has been problematic based on the results of post-training examinations, Department audits, and OIM audits. The Training Division also should work closely with the Use of Force, Citizen Complaint Process, and Management and Supervision working groups to identify areas that require additional training, either through additional in-service training, Roll Call, and Commanders Call training, to ensure that VIPD personnel adequately understand their obligations. In light of the Department’s limited financial resources, every Officer who attends instructor certification training should intend to serve as an instructor. The Department should also ensure that all instructor candidates have exemplary disciplinary records and performance evaluations. Finally, the OIM recommends that the VIPD develop formal criteria for selecting instructor candidates, including reviewing an Officer’s disciplinary background and performance evaluations to ensure that appropriate candidates are selected.

80. The VIPD will continue to provide training to all its officers on the VIPD citizen complaint process. The VIPD will develop a protocol for all its officers on appropriate conduct and responses in handling citizens' complaints and will train officers in the protocol.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 80 of the Consent Decree.

VIPD Report:

The VIPD reports that it has issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaint Policy, and that it continues to provide corresponding in-service, Roll Call, and Commanders Call training.

OIM Report:

The VIPD has issued the Acceptance of Citizen Complaints Policy pursuant to ¶ 42 of the Consent Decree. Officers showed improvement during the Fourth Quarter in their knowledge of the Acceptance of Citizen Complaints Policy. On St. Croix, 67% (8 out of 12) of the Officers questioned responded correctly when a Police Practices Expert asked them to explain the process for filing a complaint, which was an improvement from 40% (4 out of 10) during the Third Quarter. The remaining Officers responded incorrectly when asked how citizens are kept informed about the outcome of their complaint.

Recommendations:

The VIPD has made significant progress issuing the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaint Policy. The VIPD should continue to provide Officers with additional training on the complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

81. The VIPD will provide training on appropriate burdens of proof to all supervisors, as well as the factors to consider when evaluating complainant or witness credibility (to ensure that their recommendations regarding dispositions are unbiased, uniform, and legally appropriate). The VIPD will also continue to provide training to supervisors on leadership and command accountability, including techniques designed to promote proper police practices. This training will be provided to all officers promoted to supervisory rank within 90 days of assuming

supervisory responsibilities, and will be made part of annual in-service training.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 81 of the Consent Decree.

VIPD Report:

The VIAG provided the Compliance Coordinator with the requested test questions on the preponderance of the evidence standard to be used during in-service and Roll Call training. The Compliance Coordinator forwarded the questions to the Citizen Complaint Process working group, the IAB, and the OIM.

OIM Report:

While monitoring during the Fourth Quarter, the Police Practices Experts asked Supervisors about their understanding of the preponderance of the evidence standard. On St. Croix, 100% (8 out of 8) of Supervisors correctly explained the preponderance of the evidence standard and how it differs from the beyond a reasonable doubt standard which was an improvement from 60% (3 out of 5) during the Third Quarter. The Complaint Process working group, however, did not provide the OIM with documentation that it conducted similar audits to assess the proficiency of Supervisors with the preponderance of the evidence standard.

During the Fourth Quarter, the VIPD did not provide the OIM with documentation that it is in substantial compliance with the requirements of ¶ 81. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Training Division should offer training to Supervisors on the preponderance of the evidence and other responsibilities within 90 days of Supervisors assuming supervisory responsibilities (and on an ongoing basis thereafter). The Director of Training should evaluate post-training examinations to help assess the degree to which Supervisors understand the preponderance of the evidence standard and the lessons conveyed during training. The Director of Training should then schedule follow-up training based on the results of those post-training examinations.

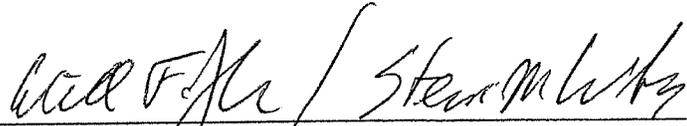
The VIPD should also attempt to determine why some Supervisors and investigators are failing to comply with the requirements of ¶ 81. The VIPD should then actively address those issues at Roll Call and Commanders Call

training, and with individual Officers as appropriate. Additionally, the VIPD should develop a process for identifying personnel who continually fail to comply with Department policy. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training or other corrective action, including disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

Conclusion

In order to achieve substantial compliance (and demonstrate substantial compliance to the OIM), the Department must (among other things) put in place a rigorous audit process to determine whether VIPD personnel are complying with the Department's policies, and to memorialize the VIPD's progress towards substantial compliance. This will require the Audit Team to be fully functional and to work with the Training Division, the IAB, and the working groups. As we have previously reported, a robust auditing function is essential to the Department's ability to ensure that policies are implemented, that personnel understand and comply with Department policies, and that remedial training or other required action is taken to ensure that VIPD personnel are equipped to carry out Department policies and procedures in their daily policing activities.

While the VIPD continues to make progress in certain areas, a tremendous amount of work remains. The OIM is hopeful that the Joint Action Plan approved by the Court during the Fourth Quarter will reinvigorate the VIPD's Consent Decree compliance efforts. For the Joint Action Plan to succeed, the VIPD must strictly adhere to the deadlines agreed to by the Parties and approved by the Court, and the VIPD must demonstrate the steps the Department has taken to meet those deadlines. In addition, consistently reporting uses of force is essential and an issue of paramount importance under the Consent Decree. Completing timely and adequate use of force and complaint investigations is essential for the Department to assess whether VIPD personnel are following Department policies, and for the Department to evaluate the need for further training or other corrective measures.



William F. Johnson and Steven M. Witzel
Independent Monitors
Fried, Frank, Harris, Shriver & Jacobson LLP

April 9, 2013

Principal Contributors

Ann Marie Doherty, Esq.
Charles A. Gruber
Elizabeth P. Kozlowski, Esq.
Joshua D. Roth, Esq.
Robert L. Stewart

Appendix A

Summary of Consent Decree Requirements

Below is a summary of the requirements imposed by each substantive section of the Consent Decree. Because these summaries of the substantive requirements significantly lengthen our reports, we include them in this Appendix to provide the reader with context concerning the VIPD's progress in implementing the broad range of reforms required under each section of the Consent Decree.

I. Use of Force Policies (CD ¶ 31)

A. Requirements

Under paragraph 31 of the Consent Decree, the VIPD is required to review and revise its use of force policies as necessary to:

- Define terms clearly, including establishing a definition of force that is consistent with the definition of force under the Consent Decree;¹
- Incorporate a use of force model that teaches officers to use, as appropriate, strategies such as disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, or calling in specialized units to assist with a situation;
- Advise VIPD officers that, whenever possible, individuals should be allowed to submit voluntarily to arrest before force is used;
- Reinforce that the use of excessive force will subject officers to discipline, possible criminal prosecution, and potential civil liability;
- Ensure that sufficient less lethal force alternatives are available to all VIPD officers; and
- Explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.²

¹ Under the Consent Decree, “[t]he term ‘force’ means any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include ordinary, unresisted handcuffing. The term shall include the use of chemical irritant and the deployment of a canine and/or pointing a firearm at or in the direction of a human being.” CD ¶ 21.

This provision requires that the VIPD implement its revised use of force policies immediately after the DOJ has reviewed and approved finalized versions of the policies.

II. Evaluation, Documentation, and Review of Uses of Force (CD ¶¶ 32-41)

A. General Use of Force Events (CD ¶¶ 32-38)

1. Requirements

The Consent Decree requires that the VIPD document in writing all uses of force and develop a use of force reporting form on which officers are required to record each and every type of force used in an incident. The use of force reports must include: (1) a narrative description, prepared by a supervisor, of the events preceding the use of force; (2) a narrative description, prepared by the involved officer, of the event relating to the use of force incident; and, (3) audiotaped statements, as appropriate, from those officers.³

The Consent Decree requires officers to notify their supervisors following any use of force or allegation of excessive force. The supervisor must respond to the scene, examine the person who was subjected to the use of force for injury, interview him or her to determine the extent of any injuries, and ensure that the person receives medical attention, if necessary.

A supervisor must conduct a review and evaluation of each use of force by a VIPD officer. The Consent Decree contains the following requirements relating to these evaluations of uses of force:

- The supervisor must prepare a detailed narrative description of the incident that includes all of the facts and circumstances relevant to determining whether or not the involved officers' conduct was justified.

² The Consent Decree defines “deadly force” as “any use of force likely to cause death or serious physical injury, including, but not limited to, the discharge of a firearm.” CD ¶ 20.

³ The Consent Decree defines “supervisor” as a “sworn VIPD employee at the rank of corporal or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for other officers.” CD ¶ 27.

- The supervisor must evaluate the grounds for the use of force and determine whether the involved officers' actions were consistent with VIPD policy.
- To filter out potential bias, reviews of use of force incidents may not be conducted by any officer who used force during the incident, whose conduct led to an injury, or who authorized action that led to a use of force or allegation of excessive force.
- Supervisors are required to interview all witnesses of a use of force, as well as all witnesses of any incident in which an injury results from a use of force. Supervisors must ensure that all officer witnesses provide a statement regarding the incident, subject to any limitations imposed by any applicable provision of collective bargaining agreements or law.
- Supervisors are not permitted to ask officers or other witnesses leading questions that might, for example, suggest legal justifications for the officers' conduct.
- Supervisors must consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate. Supervisors are required to make reasonable efforts to resolve material inconsistencies between statements provided by witnesses and make determinations with respect to the credibility of witnesses when feasible. The VIPD is required to train all of its supervisors on methods and factors for evaluating the credibility of a witness.
- Supervisors are responsible for ensuring that use of force reports identify every officer who was involved in a use of force incident or was on the scene when the incident occurred. Supervisors must ensure that use of force reports reflect whether an injury occurred, whether medical care was provided to an injured person, and, if not, whether the person refused medical treatment. Supervisors also must ensure that use of force reports include contemporaneous photographs or video of all injuries resulting from the underlying incident. These images must be taken both before and after any treatment of the injuries, including the cleansing of wounds.
- Supervisors are required to evaluate the performance of all officers under their command who use force or were involved in

an incident that resulted in a subject being injured due to a use of force by an officer.

- Finally, the Consent Decree requires a Deputy Chief to review and evaluate every use of force performance review prepared by a VIPD supervisor. The Deputy Chief's review must include the identification of any deficiencies in the supervisors' reviews and must require supervisors to correct any such deficiencies. The Consent Decree requires the Department to hold supervisors accountable for the quality of their use of force reviews, including subjecting a supervisor to appropriate corrective or disciplinary action in cases where the supervisor failed to conduct a timely and thorough review, or failed to recommend or implement appropriate corrective action with respect to a subject officer.

The VIPD also must investigate all critical firearm discharges.⁴ These reviews must account for all shots fired and the locations of all officers who discharged their weapons. In connection with the investigation of all critical firearm discharges, the VIPD is required to conduct, as appropriate, ballistic or crime scene analyses, including gunshot residue and bullet trajectory tests.

B. Specific Force Policies (CD ¶¶ 39-41)

1. Requirements

The Consent Decree requires the VIPD to develop a Use of Firearms Policy that is consistent with applicable law and current professional standards. This policy must:

- Prohibit officers from possessing or using unauthorized firearms or ammunition and inform officers that any such use may subject them to disciplinary action;
- Establish a single, uniform system for reporting all firearm discharges;
- Prohibit officers from obtaining service ammunition from any source other than official VIPD channels;

⁴ The Consent Decree defines the term "critical firearm discharge" as "each discharge of a firearm by a VIPD officer with the exception of range and training discharges and discharges at animals." CD ¶ 22.

- Specify the number of rounds VIPD officers are authorized to carry; and,
- Require that all discharges of firearms by officers, including unintentional discharges, whether on duty or off-duty at the time of the discharge, are reported and investigated.

The VIPD also must develop a revised policy regarding officers' off-duty conduct that:

- Provides that, absent exigent circumstances, off-duty officers must notify the VIPD or the relevant local law enforcement agency before taking police action; and
- Requires that an officer who responds to an incident while off-duty must submit to field sobriety, breathalyzer, and/or blood tests if it appears that the officer had consumed alcohol or was otherwise impaired at the time of the incident.

Finally, the VIPD is required to implement a policy that provides for an intermediate force device that falls between the use of chemical spray and the use of a firearm on the use of force continuum. This intermediate force device must be one that can be carried by officers at all times while on-duty. The VIPD must incorporate the use of this intermediate force device into its use of force continuum and train officers in the device's use on an annual basis.

III. Citizen Complaint Process (CD ¶¶ 42-58)

A. Public Information (CD ¶¶ 42-43) & Means of Filing and Tracking Complaints (CD ¶¶ 44-45)

1. Requirements

The Consent Decree requires the VIPD to develop and implement a program to inform members of the public that they may file complaints regarding the performance of any VIPD officer. The Consent Decree contains the following requirements with respect to this public information program:

- The VIPD must develop and distribute complaint forms, fact sheets, informational posters, and public service announcements that describe its citizen complaint process.
- The VIPD must make complaint forms and informational materials available at government facilities, including VIPD

stations, substations, mobile substations, and libraries. These forms and materials also must be available on the Internet and, upon request, with community groups and at community centers.

- Each VIPD station, substation, and mobile substation must permanently post a placard that describes the complaint process and includes relevant contact information, including telephone numbers. These placards must be displayed in English, Spanish, and, where necessary in light of the local community, in French or French Patois.
- VIPD officers are required to carry English, Spanish, French, and French Patois⁵ versions of complaint forms and informational brochures in their vehicles at all times while on duty.
- If a citizen objects to an officer's conduct, the officer is required to inform the citizen of his or her right to make a complaint.
- Officers are prohibited from discouraging any person from making a complaint concerning an officer's conduct.

The Consent Decree imposes the following requirements relating to the availability of means by which members of the public may lodge complaints against VIPD officers and the tracking of such complaints:

- The VIPD must be able to receive complaints filed in writing or orally, in person or by mail, and by telephone (or TDD), facsimile, or electronic mail.
- The duty officer at the front desk of each District station shall be authorized to take complaints, including third-party complaints. At the intake stage, an officer taking a complaint is permitted to describe facts that relate to a complainant's demeanor and physical conditions but may not express

⁵ The OIM notes that paragraph 43 of the Consent Decree does not expressly require VIPD officers to carry French language complaint forms and informational brochures in addition to French Patois. However, in light of the third sentence in paragraph 43 (which requires French language placards describing the complaint process), the OIM believes that this was an inadvertent omission. For future printings of brochures and other similar promotional information, the OIM suggests that the VIPD create versions in English, Spanish, French, and French Patois to satisfy the intent of the Consent Decree.

opinions regarding the complainant's mental competency or veracity.

- Upon receipt, the VIPD is required to assign each complaint a unique identifier number, which must be provided to the complainant.
- The VIPD must track each complaint according to the type of misconduct alleged in the complaint (e.g., excessive force, discourtesy, and improper search).
- Copies of all allegations of misconduct against a VIPD officer that are filed with the Zone Commands shall be referred to the IAB within five business days.

B. Investigation of Complaints (CD ¶¶ 46-58)

1. Requirements

The Consent Decree establishes numerous specific requirements relating to the investigation of complaints against VIPD officers, including the following:

- Complaints must be evaluated based on a preponderance of the evidence standard. The VIPD is required to develop and implement appropriate training regarding application of the preponderance of the evidence standard in internal investigations of allegations of officer misconduct.
- The VIPD must explicitly prohibit an officer from being involved in the investigation of a complaint or incident if the officer used force during the underlying incident, was involved in conduct that led to the injury of a person during the incident, or authorized the conduct that led to the reported incident.
- The VIPD must investigate every citizen complaint and the resolution of each complaint shall be documented in writing.
- The VIPD must develop a clear policy and procedure regarding the intake of complaints, including anonymous and confidential complaints, against VIPD officers.
- The Department must implement a centralized system for numbering and tracking all complaints.

- IAB is responsible for determining whether each individual investigation of a complaint will be assigned to a Zone, retained by IAB, or referred for possible criminal investigation.
- If IAB refers a complaint to one of the Zones for investigation, the Zone must immediately forward to IAB copies of all documents, findings, and recommendations so that IAB is able to track and monitor the investigation.
- The Police Commissioner must be notified of all complaints alleging excessive force or violation of a person's Constitutional rights within twenty-four hours of the VIPD's receipt of the complaint.

The VIPD also is required to develop a single policy governing the investigation of misconduct complaints, regardless of whether the investigation of such complaints is conducted by IAB or a Zone command. This policy must:

- Provide guidance concerning factors for investigators to consider in evaluating the credibility of the complainant and other witnesses, examining and interrogating accused officers and other witnesses, identifying potential misconduct that is not specifically referred to in the complaint, and applying the preponderance of the evidence standard. The VIPD also must train all officers who perform internal investigations on these issues.
- Require that VIPD investigators ensure that all officers present at the scene of the underlying incident provide a statement and that all interviews be recorded, as appropriate, on audio or video.
- Require that investigation findings include conclusions regarding whether:
 - The police action was in compliance with policy, training, and legal standards, regardless of whether the complainant suffered harm;
 - The incident involved misconduct by any officer;
 - The use of different tactics could have, or should have, been employed;

- The underlying incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures; and
 - The incident suggests that the VIPD should revise its policy, training, or tactics.
- Establish that each allegation investigated must be resolved by a finding of either “unfounded,” “sustained,” “not sustained,” or “exonerated.”⁶
 - Provide guidance to all investigators regarding procedures for handling allegations of potential criminal misconduct, including the referral of such allegations to the Virgin Islands Attorney General’s Office or other appropriate agency for possible criminal prosecution. The policy must establish the entity or individual responsible for making the determination as to whether a matter should be investigated criminally. The policy also must require the completion of the VIPD’s administrative investigations of potentially criminal misconduct, regardless of the initiation or outcome of any criminal proceedings.
 - Require that all relevant police activity, including each use of force, be investigated, even if the activity or force was not specifically complained about.
 - Require that investigations evaluate any searches or seizures that occurred during the underlying incident.
 - Prohibit investigators from closing an investigation solely because a complaint is withdrawn, the alleged victim is unwilling or unable to provide medical records or proof of an injury, or the complainant will not provide additional statements or written statements. The policy shall require that, under such circumstances, investigators must continue the investigation as necessary to determine whether the allegations

⁶ Under the Consent Decree, a finding of “unfounded” means that there are insufficient facts establishing that the alleged incident actually occurred. A finding of “sustained” means that there is sufficient evidence to determine that the alleged incident occurred and that the officer’s actions were improper. A finding of “not sustained” means that there is insufficient evidence that the alleged misconduct occurred. Finally, a finding of “exonerated” means that the alleged conduct occurred but that the conduct did not violate VIPD policies, procedures, or training. Each of these findings must be based on a preponderance of the evidence standard. CD ¶ 57.

can be resolved based on available information, evidence, and investigative techniques.

- Prohibit investigators from considering the fact that a complainant pleaded guilty to, or was found guilty of, an offense as evidence of whether or not an officer used a type of force or as a justification for the investigator to close the investigation.

The VIPD must keep complainants periodically informed of the status of the investigation of their complaints. Upon the completion of each investigation, the VIPD must notify the complainant of the outcome of the investigation, including an appropriate statement regarding whether any disciplinary action or non-disciplinary corrective action was taken against any officer.

Finally, the Consent Decree requires that unit commanders evaluate each investigation of an incident under their command in order to identify potential problems or training needs. Unit commanders must report any such issues to the appropriate VIPD entity in the form of a recommendation that appropriate action in response to the identified issues be taken.

IV. Management and Supervision (CD ¶¶ 59-72)

A. Risk Management System (CD ¶¶ 59-68)

1. Requirements

The Consent Decree requires the VIPD to develop and implement a Risk Management System (“RMS”) that includes a computerized relational database or a paper system for maintaining, integrating, and retrieving information necessary for the supervision and management of VIPD personnel. The VIPD is required to use this data regularly to promote respect for civil rights and the employment of best police practices, manage risks, and potential liability for the Department, and evaluate the performance of VIPD officers and personnel across all ranks, units, and shifts.

The Consent Decree specifically requires the VIPD to collect and record the following information in its new RMS:

- All uses of force;
- Canine bite ratios;⁷
- The number of canisters of chemical spray used by officers;
- All injuries to prisoners;
- All instances in which a VIPD officer used force and the subject was charged with resisting arrest, assault on a police officer, disorderly conduct, or obstruction of official or police business;
- All critical firearm discharges, whether they took place on duty or off-duty;
- All complaints against officers and the dispositions of those complaints;
- All criminal proceedings, civil or administrative claims, and civil lawsuits resulting from VIPD operations or the actions of VIPD personnel;
- All vehicle pursuits;
- All incidents involving the pointing of a firearm;
- All disciplinary action taken against VIPD officers; and
- For incidents included in the database, appropriate identifying information for each involved officer (e.g., the officer's name, badge number, shift, and supervisor) and member of the public (including race and ethnicity or national origin, if such information is available).

The VIPD has the option either to purchase the RMS “off the shelf” and customize the system to VIPD’s requirements or to develop and

⁷ A canine bite ratio relates to apprehensions in which a canine unit participated. It is the ratio of incidents that involved the canine biting or otherwise coming into physical contact with the suspect compared to the overall number of such apprehensions in which a canine unit participated.

implement the RMS pursuant to a contracting schedule set forth in the Consent Decree.⁸

Within 120 days of the effective date of the Consent Decree, the VIPD is required to prepare a protocol for the use of the RMS, which must be submitted to DOJ for review and approval. Any proposed modifications to the RMS protocol also must be submitted to DOJ for review and approval prior to the implementation of the proposed modifications. The RMS protocol must contain:

- Provisions regarding data storage, data retrieval, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit;
- Requirements that the automated system be able to analyze data according to the following criteria:
 - The number of incidents for each data category by individual officer and by all officers in a unit;
 - The average level of activity for each data category by individual officer and by all officers in a unit; and
 - The identification of patterns of activity for each data category by individual officer and by all officers in a unit.
- Requirements relating to the generation of reports on a monthly basis that describe data contained in the RMS and identify patterns of conduct by individual officers and units;
- Requirements that VIPD Deputy Chiefs, managers, and supervisors initiate appropriate interventions with individual officers, supervisors, and units based on activity and pattern assessments derived from the information contained in the RMS and that the VIPD has the following intervention options available:
 - Discussions among Deputy Chiefs, managers, supervisors, and officers;
 - Counseling;
 - Training; and,

⁸ See CD ¶ 66.

- Documented action plans and strategies designed to modify officer conduct and activity.
- A requirement that all interventions be documented in writing and entered into the RMS;
- A provision that actions taken as a result of information derived from the RMS be based on all relevant and appropriate information—including the nature of the officer’s assignment, crime trends, and crime problems—and not solely on the number or percentage of incidents in any category of information recorded in the RMS;
- A requirement that VIPD Deputy Chiefs, managers, and supervisors promptly review the RMS records of all officers who transfer into their sections or units;
- A requirement that VIPD Deputy Chiefs, managers, and supervisors be evaluated based on their ability to use RMS to enhance the effectiveness of their units and to reduce risks associated with officer conduct;
- Provisions that IAB shall manage and administer the RMS and that IAB shall conduct quarterly audits of RMS to ensure compliance with the RMS protocol; and
- A requirement that appropriate managers conduct regular reviews, at least quarterly, of relevant RMS information to evaluate officer performance across the Virgin Islands. The purpose of such reviews is to evaluate and make appropriate comparisons regarding the performance of all VIPD units in order to identify significant patterns or series of incidents.

Within 120 days of the implementation of the RMS (or later with the agreement of DOJ), the VIPD must prepare, for the DOJ’s review and approval, a Data Input Plan for including appropriate fields and values for new and historical data entered into the RMS.

- The Data Input Plan must identify the data to be included in the RMS and the means for inputting the data, the specific fields of information to be included in the RMS, the historical time periods for which information will be inputted into the system, deadlines for inputting data, and the persons responsible for the input of data.

- The Data Input Plan must provide for the input of historical data that is up to date and complete into the RMS.
- Once the RMS is operational, the VIPD is required to enter information into the RMS in a timely, accurate, and complete manner and to maintain the RMS data in a secure and confidential manner.

The VIPD must maintain all personally identifiable information about individual officers that is contained in RMS for at least five years. The VIPD shall maintain information necessary for aggregate statistical analysis in the RMS indefinitely.

The Consent Decree requires the VIPD, even prior to the implementation of the RMS, to use existing databases and resources to the fullest extent possible to identify patterns of conduct by individual VIPD officers or groups of officers.

Following the initial implementation of the RMS, the VIPD may propose to add, subtract, or modify data tables and fields in the system, modify the types of documents entered into the RMS, or modify the standardized reports generated by the RMS. The VIPD is required to submit all such proposals to the DOJ for review and approval prior to implementing the proposed changes.

B. Oversight (CD ¶ 69)

1. Requirements

The Consent Decree requires the VIPD to develop a protocol for conducting audits within the RMS, which must be followed by the VIPD personnel responsible for conducting audits. The protocol must establish a regular and fixed audit schedule to ensure that such audits occur with sufficient frequency and cover all VIPD Zones.

C. Discipline (CD ¶¶ 70-72)

1. Requirements

The VIPD is required to use a disciplinary matrix to take into account a subject officer's violations of various rules, as opposed to considering only repeated violations of the same rule. The VIPD must revise its disciplinary matrix to increase penalties for uses of excessive force, improper searches and seizures, discrimination, and dishonesty. The revised disciplinary matrix, which must be reviewed and approved by DOJ, is required to provide the VIPD with the discretion to impose any

appropriate punishment when the VIPD believes an officer's misconduct reflects a lack of fitness for duty.

- Absent exceptional circumstances, the VIPD is not permitted to take mere non-disciplinary corrective action against an officer in cases in which the revised disciplinary matrix indicates that the imposition of discipline is appropriate.
- In cases in which disciplinary action is imposed on an officer, the VIPD is required to also consider whether non-disciplinary corrective action is necessary.

The VIPD's policy must identify clear time periods by which each step—from the receipt of a complaint through the imposition of discipline, if any—of the complaint adjudication process should be completed. Absent exigent circumstances, extensions of these deadlines must not be granted without the Police Commissioner's written approval and notice to the complainant. The policy must outline appropriate tolling provisions in the limited circumstances when an extension of these deadlines is necessary.

V. Training (CD ¶¶ 73-81)

A. Management Oversight (CD ¶¶ 73-77)

1. Requirements

The Consent Decree requires the VIPD to provide training to its officers that is consistent with VIPD policy, the law, and proper police practices. Accordingly, the Consent Decree requires that:

- The VIPD review all use of force policies and training to ensure quality, consistency, and compliance with applicable law and VIPD policy;
 - After completing its initial review of its force-related policies and training programs, the VIPD must conduct regular reviews of its use of force training program at least semi-annually.
- The VIPD must ensure that only mandated objectives and approved lesson plans are taught by training instructors; and,
- The VIPD must make best efforts to train each work shift as a team in its use of force training.

Under the Consent Decree, the VIPD's Director of Training, either directly or through his or her designees, is responsible for:

- Ensuring the quality of all use of force training;
- Developing and implementing use of force training curricula;
- Selecting and training VIPD officer instructors;
- Developing, implementing, approving, and overseeing all in-service training;
- In conjunction with the District Chiefs, developing, implementing, approving, and overseeing a protocol for patrol division roll calls that is designed to effectively inform officers of relevant changes in law, policies, and procedures;
- Establishing procedures for evaluating all training curricula and procedures; and
- Conducting regular training needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.

The VIPD must keep complete and accurate records of force-related lesson plans and other training materials. These lesson plans must be maintained in a central, commonly accessible file and must be clearly dated.

The VIPD also must maintain training records for every VIPD officer. These records must reliably reflect the training that each officer has received. These records must include, at a minimum, the course description, duration, curriculum, and instructor for each training program in which each individual officer participated.

B. Curriculum (CD ¶¶ 78-81)

1. Requirements

The Consent Decree requires the VIPD's Director of Training to review all use of force training and use of force policies on a regular basis to ensure that the training program complies with applicable laws and VIPD policy. Moreover, the Director of Training must consult with the Virgin Island Attorney General's Office concerning any additions, changes, or modifications regarding use of force training or policies to ensure compliance with applicable laws.

The VIPD must provide all recruits, officers, supervisors, and managers with annual training on the use of force. This use of force training must address the following topics:

- The VIPD's use of force model;
- Proper use of force decision-making;
- The VIPD's use of force reporting requirements;
- The Fourth Amendment and other Constitutional requirements;
- Examples of scenarios faced by VIPD officers that illustrate proper use of force decision-making;
- De-escalation techniques that encourage officers to make arrests without using force;
- Instruction that disengagement, area containment, surveillance, waiting out a suspect, summoning reinforcements, calling in specialized units, or delaying an arrest may be appropriate responses to a situation even when the use of force would be legally justified;
- Threat assessment; and
- Appropriate training regarding conflict management.

The VIPD also is required to provide training to all officers regarding the citizen complaint process. The VIPD must develop a protocol, to be used by all VIPD officers, that sets forth an appropriate process for handling and responding to complaints by members of the public. The VIPD must train officers regarding this protocol.

- The VIPD also is required to train all supervisors with respect to appropriate burdens of proof in conducting misconduct investigations. This training also must include a discussion of the factors investigators should consider in evaluating complainant or witness credibility.

Finally, the VIPD must provide training to all supervisors regarding leadership and command accountability, including techniques designed to promote proper police practices.

- This training must be provided to all officers promoted to supervisory rank within 90 days of the officer's assumption of

supervisory responsibilities. This training also must be made a part of the annual in-service training of supervisors.

**IV. Monitoring, Reporting, and Implementation
(CD ¶¶ 82-102)**

1. Requirements

The Consent Decree requires the VIPD to appoint a full-time Compliance Coordinator to serve as a liaison among the Virgin Islands Attorney General’s Office, VIPD, the OIM, and DOJ. The Compliance Coordinator’s responsibilities include:

- Coordinating the VIPD’s compliance and implementation activity relating to the Consent Decree;
- Facilitating the provision of data and documents and access to VIPD employees and materials to the Monitor and DOJ as needed;
- Ensuring the proper maintenance of relevant documents and records relating to the Consent Decree; and
- Assisting the Police Commissioner and his designees in assigning compliance-related tasks to appropriate VIPD personnel.

In addition to fulfilling these functions, the VIPD must file with the Monitor and the Virgin Islands Attorney General’s Office, with a copy to DOJ, quarterly status reports describing the steps taken during the reporting period to comply with each provision of the Consent Decree.

Finally, the Virgin Islands and the VIPD are required to implement the provisions of the Consent Decree “as soon as reasonably practicable” and, in any event, no later than 150 days after the March 23, 2009 effective date of the Consent Decree.