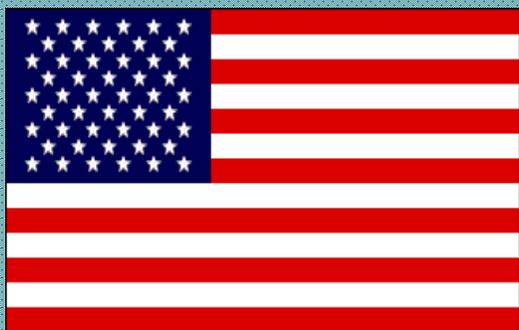
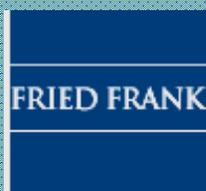


# **First Quarterly Report of 2012 of the Independent Monitor for the Virgin Islands Police Department**



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## Executive Summary

This is the First 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 March 31, 2012.<sup>1</sup>

During the quarter, the OIM conducted three week-long monitoring trips to the United States Virgin Islands (the “Territory”). In addition to those monitoring trips, OIM representatives spent a significant amount of time reviewing and commenting on Consent Decree related materials (use of force investigatory files and draft policies), and providing technical assistance to VIPD personnel. The assessments contained in this Report are primarily based on the OIM’s observations and the Department’s quarterly Status Report, dated April 6, 2012 (“Status Report”).

In the OIM’s Fourth Quarterly Report for 2011, we stated that the VIPD will not satisfy most of its obligations under the Consent Decree before the Consent Decree expires on March 23, 2014. Notwithstanding that statement, the OIM affirmed its belief that “with the right leadership and commitment, the department has the capacity to comply with the Consent Decree.” Unfortunately, the VIPD (with certain exceptions, including, among others, the Acting Chief of the St. Thomas District,<sup>2</sup> the Director and Assistant Director of the Internal Affairs Bureau (“IAB”), and the Compliance Coordinator) made little additional progress towards compliance during the First Quarter of 2012.

While the VIPD has made progress in certain areas, including policy development and creation of the citizen complaint process, its Status Report, as quoted below, highlights the significant amount of work that the VIPD must complete to achieve substantial compliance.

### Training

The Department has not trained on critical force related policies, including the Firearms Policy and Off-Duty Official Action Policy, which were issued more than one year ago. Additionally, the VIPD is just

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<sup>1</sup> This Report references a limited number of events that occurred after March 31, 2012 to provide context for significant developments or efforts that the VIPD made outside of the quarter to satisfy its Consent Decree obligations.

<sup>2</sup> The Police Commissioner appointed the Deputy Chief of St. John to serve as the Acting Chief of the St. Thomas District pending the retirement of Chief Rodney Querrard at the end of April 2012.

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starting to evaluate whether VIPD personnel are absorbing the information provided at Consent Decree related training.

- “Training on the [Off-Duty Official Action Policy] is being coordinated by the training Bureau.” (Status Report Paragraph 40)
- “. . . the Training Bureau plans to develop questions from various Force related policies to test Officers knowledge, skills and comprehension with regards to the force trainings conducted.” (Status Report Paragraph 74(g))

### Use of Force

The Department has made great strides issuing twelve force related policies, but VIPD personnel are not adequately complying with many of those policies.

- “. . . completed RRR Forms are not consistently being submitted to the Training Bureau for review as required. This was brought to the attention of the Police Chief and will be followed up to ensure that this requirement is consistently being complied with.” (Status Report Paragraph 41)

### Complaint Process

The Department has made progress implementing a public information campaign about the complaint process. The Department has also issued the Acceptance of Citizen Complaints Policy and Investigating Misconduct and Citizen Complaints Policy, but VIPD personnel are not adequately complying with those policies. As a result, the Department needs to provide additional training and should audit whether VIPD personnel are complying with the policies.

- “. . . ongoing reviews and or evaluations of complaint files and Supervisors knowledge with respect to their competence level in application of the preponderance of evidence standard have not occurred with the frequency necessary to adequately determine ‘knowledge Base Command’ of the standard.” (Status Report Paragraph 46)
- “The Citizen Complaint Process Working Group and the Audit Team will be conducting inspections and Audits respectively to assess the extent to which the [complaint process policies] are being complied with.” (Status Report Paragraph 48)

Management and Supervision

After extensive delays, the VIPD’s risk management system (“RMS”)—IAPro—is functional in both Districts. The RMS is not fully effective, however, because the VIPD has not finalized the RMS Protocol (which will dictate how the RMS functions). The Department also needs to finalize an important component of its disciplinary policy—the Disciplinary Matrix—which should make the Department’s disciplinary process more uniform.

- “The RMS policy submitted to USDOJ for review and approval was again returned with comments and without approval.” (Status Report Paragraph 63, 64, 66, 68)
- “. . . more meetings will be held until the [Disciplinary] Matrix has been satisfactorily revised and ready to be resubmitted to USDOJ for review/Approval.” (Status Report Paragraph 70)

Over the past several quarters, the Consent Decree working groups have assumed much of the responsibility for satisfying the Consent Decree. The OIM commends the working groups for increasing their level of activity and improving their communication with the OIM during the First Quarter. Nevertheless, there is still substantial room for improvement. For example, the OIM encourages the working group leaders to become more directly involved in their working groups. Each working group must also continue to update its action plan and provide detailed bi-weekly reports describing progress made towards substantial compliance. The OIM continues to encourage the Police Commissioner to hold the working group leaders accountable for the progress of their respective working groups.

One of the biggest challenges facing the Department is adequately training VIPD personnel on the Department’s policies. During the First Quarter, the Audit Team reported that 97% of the Department’s sworn personnel had received training on the Use of Force Policy and the Reportable Use of Force Policy. While this number appears impressive, the Audit Team did not address the extent to which sworn personnel understand the training and are proficient on those policies. In order to “implement” a policy under the Consent Decree (which is what the Consent Decree requires), the VIPD must: (1) provide adequate training (including follow-up Roll Call and Commanders Call training) to relevant personnel; (2) ensure that relevant personnel are proficient on each policy (immediately following the completion of training and on a periodic basis thereafter); and (3) monitor compliance with each policy. Until the

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VIPD undertakes these steps, it will not be in compliance with the Consent Decree.

The VIPD's limited internal training capacity also continues to impede its ability to provide adequate training because the Department relies on external vendors to provide training services. Because of fiscal restraints and the Territory's complex procurement procedures, the Department has little control over when training programs led by external vendors will take place. On the "Upcoming Training and Tentative Training" schedule (dated March 6, 2012), over half of the training programs scheduled through June of 2013 are listed as "tentative." Moreover, at the end of the First Quarter, four contracts with training vendors were either under review by the Department of Property and Procurement ("Property and Procurement") or at Government House (the executive branch of the Territory) awaiting approval.<sup>3</sup> 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.

The Department's dearth of Supervisors also continues to undermine its ability to comply with the Consent Decree. While the OIM is encouraged that the VIPD promoted sixteen Supervisors during the First Quarter, only four of those promotions represent new Supervisors. The other twelve promotions account for existing Supervisors elevated to a higher rank. As we have repeatedly emphasized, Supervisors play a key role under the Consent Decree. Without adequate supervisory oversight, uses of force continue to be underreported, and use of force investigations are completed long after the thirty calendar days permitted by the Reportable Use of Force Policy.

Although a tremendous amount of work remains to be done, the OIM continues to believe that the Department has the capacity to comply with the Consent Decree. We encourage the Police Commissioner to hold every member of the Department (particularly the executive leadership team, including the Chiefs and Deputy Chiefs) accountable for making progress on the Consent Decree. Finally, the Police Commissioner should take personal responsibility for the Department's compliance with any new deadlines that the Court sets. The failure of prior VIPD administrations to comply with the Court's deadlines sent the message

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<sup>3</sup> During the Second Quarter, the VIPD disclosed that all pending contracts had received approval. Accordingly, the latest training schedule that the OIM received from the VIPD, dated May 28, 2012, no longer listed these training programs as "tentative."

that the Consent Decree was not a high priority for the Department and its senior leadership.

**Deadlines for Substantial Compliance Under the Consent Decree**

*The substantial compliance deadlines refer to the dates established by the Consent Decree Timetable that the Virgin Islands, VIPD, and the Department of Justice (the “DOJ”) jointly submitted to the Court on November 24, 2010.*

*In order to be released from the Consent Decree, the VIPD must substantially comply with each of the Consent Decree’s provisions, and remain in compliance for **two** years before the Consent Decree expires on March 23, 2014.*

<b>CD</b>	<b>Description</b>	<b>Deadlines for Substantial Compliance Under the Consent Decree</b>	<b>Status of Compliance as of March 31, 2012</b>  <b>Noncompliance/ Substantial Compliance</b>
31	<p><b>Use of Force Policies:</b>                      Use of Force; Reportable Use of Force; Vehicle Pursuit; O.C. Spray; Impact Weapons; ECW; Firearms; Spike Strip; Canine; SRT/HNT; Sniper; FTO; Reporting, Investigation and Review of Use of Force; Use of Force Review Board; Post Shooting Incident Procedures; Officer Involved Shooting Investigation Procedures.</p>	<p>Within 30 days of DOJ final written approval</p>	<p>Noncompliance – The VIPD has issued many of the required force related policies, including the Use of Force Policy, Reportable Use of Force Policy, Firearms Policy, Vehicle Pursuit Policy, O.C. Spray Policy, Impact Weapons Policy, SRT/HNT Policy, Sniper Policy, and Spike Strip Policy, and the FTO Policy. The VIPD, however, has not implemented many policies because it has not trained on the Vehicle Pursuit Policy, Spike Strip Policy, SRT/HNT Policy, and Sniper Policy.<sup>4</sup> In addition, the VIPD has not issued the Reporting, Investigation and Review of Use of Force Policy, Use of Force Review Board Policy, Post Shooting Incident Procedures, and Officer Involved Shooting Investigation Procedures policies.</p>

<sup>4</sup> As defined in the Consent Decree, “implement” refers to the “development or putting into place of a policy or procedure, including the appropriate training of personnel.” CD ¶ 30.

CD	Description	Deadlines for Substantial Compliance Under the Consent Decree	Status of Compliance as of March 31, 2012  Noncompliance/ Substantial Compliance
32-38	<b>Evaluation, Documentation, &amp; Review of Use of Force</b>  Reportable Use of Force Policy	May 31, 2011	Noncompliance – While the VIPD issued the Reportable Use of Force Policy on March 30, 2011, it has not implemented the policy. In addition, the VIPD has not satisfied the Consent Decree requirement that it evaluate, document, and review <i>all</i> uses of force.
39	<b>Evaluation, Documentation, &amp; Review of Use of Force</b>  Firearms Policy	May 31, 2011	Noncompliance – While the VIPD issued the Firearms Policy on May 3, 2011, it has not implemented the policy.
40	<b>Evaluation, Documentation, &amp; Review of Use of Force</b>  Off-Duty Official Action	May 31, 2011	Noncompliance – While the VIPD issued the Off-Duty Official Action Policy on March 30, 2011, it has not implemented the policy.
41	<b>Evaluation, Documentation, &amp; Review of Use of Force</b>  Intermediate Force Device(s)	May 31, 2011	Noncompliance – While the VIPD issued the ECW Policy on March 30, 2011, it has not implemented the policy.
42-45	<b>Citizen Complaint Process</b>  Public Information & Means of Filing and Tracking Complaints	May 31, 2011	Noncompliance – While the VIPD issued the Acceptance of Citizens Complaint Policy on August 2, 2011 and has made complaint forms and informational materials available at appropriate government properties, it has not demonstrated that VIPD personnel are proficient in the policy, assessed if Officers are informing citizens of their right to make complaints, and resolved each complaint in writing.
46-58	<b>Citizen Complaint</b>	May 31, 2011, except	Noncompliance – While the VIPD issued the Investigating

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<b>CD</b>	<b>Description</b>	<b>Deadlines for Substantial Compliance Under the Consent Decree</b>	<b>Status of Compliance as of March 31, 2012</b> <b>Noncompliance/ Substantial Compliance</b>
	<b>Process</b> Investigation of Complaints	September 15, 2011 for ¶ 49.	Misconduct and Citizen Complaint Policy, it has not implemented the policy.
59-68	<b>Management and Supervision</b> Risk Management System Blue Team Protocol Behavioral Health Services Policy; Psychological Fitness for Duty Evaluation Policy; Officer Peer Support Policy	September 15, 2011, except June 30, 2011 for ¶¶ 60-61 & May 31, 2011 for ¶ 62; also ¶¶ 67-68 have no date.	Noncompliance
69	<b>Management and Supervision</b> Oversight	September 15, 2011	Noncompliance
70-72	<b>Management and Supervision</b> Discipline	May 31, 2011	Noncompliance
73-77	<b>Training</b> Management Oversight	June 30, 2011	Noncompliance
78-81	<b>Training</b> Curriculum	June 30, 2011	Noncompliance

## Introduction

This is the First 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 March 31, 2012.<sup>5</sup>

The OIM was established in January 2010<sup>6</sup> to monitor compliance by the United States Virgin Islands 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 of the Virgin Islands’ compliance with and implementation of each substantive provision” of the Consent Decree.<sup>7</sup>

The Consent Decree reflects the agreement between the Virgin Islands, 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 Virgin Islands 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.”<sup>8</sup>

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

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<sup>5</sup> This Report references a limited number of events that occurred after March 31, 2012 to provide context for efforts made by the VIPD outside of the First Quarter to satisfy its Consent Decree obligations.

<sup>6</sup> After an initial procurement process, the Virgin Islands and the VIPD contracted for the services of a monitoring team led by Michael R. Bromwich, a partner in the Washington, D.C. office of Fried, Frank, Harris, Shriver & Jacobson LLP (“Fried Frank”). In June 2010, the Independent and Deputy Independent Monitors joined President Obama’s administration. After interviews and further review, the Parties appointed William F. Johnson and Steven M. Witzel, partners in Fried Frank’s New York City office and former Assistant United States Attorneys in the United States Attorney’s Office for the Southern District of New York, as the Independent Monitors, effective August 13, 2010. Messrs. Johnson and Witzel continue to work with the police practices experts that were hired as part of the original OIM team.

<sup>7</sup> Consent Decree (“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>.

<sup>8</sup> 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).

United States.”<sup>9</sup> 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 Court was concerned about the VIPD’s slow rate of progress and saw the timetable as a vehicle to help the Department move forward more quickly. The Parties subsequently filed a timetable on 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, at 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. At the end of the First Quarter, the VIPD has only complied with ¶¶ 82-86, 88, and 98 (a chart summarizing the VIPD’s progress toward substantial compliance is located on pp. 6-8). Through the First Quarter of 2012, the VIPD has not substantially complied with the remaining provisions.

In January 2011, to reinvigorate the VIPD’s Consent Decree compliance process and 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

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<sup>9</sup> CD ¶ 3.

“Summit”).<sup>10</sup> 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), Citizen Complaint Process (Chief of the St. Thomas District), 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.<sup>11</sup>

On March 15, 2012, Henry W. White Jr. was sworn-in as Police Commissioner. On March 18, 2012, the Police Commissioner appointed the Deputy Chief of St. John as the Acting Chief of the St. Thomas District following an announcement that the Chief of the St. Thomas District would retire at the end of April. The Acting Chief of the St. Thomas District will also assume responsibility for leading the Complaint Process working group. The OIM appreciates the former Chief’s dedication to the Consent Decree, and wishes him well. The OIM looks forward to working even more closely with the Acting Chief.

During the First Quarter, the Court ordered an evidentiary hearing to address many of these concerns and to determine whether the VIPD was in compliance with the terms of the Consent Decree. The hearing took place on April 23, 2012, and after nearly seven hours of testimony from several witnesses (including one of the OIM’s police practices experts), the Court met privately with the Parties and ordered them to propose a new deadline by which the VIPD must comply with the Consent Decree. The Court will consider the Parties’ proposals at a hearing on July 26, 2012. We will report on the VIPD’s and DOJ’s respective proposals and the outcome of the hearing in the next quarter.

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<sup>10</sup> 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.

<sup>11</sup> 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. Each of the OIM’s four Police Practices Experts is assigned to work with a particular working group leader.

## 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,<sup>12</sup> as well as the OIM’s monitoring activities 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.<sup>13</sup> As part of this discussion, we provide an update about the progress of each of the working groups leading these efforts. We also include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree’s requirements.<sup>14</sup> A chart summarizing the VIPD’s progress towards substantial compliance is included at the end of the Executive Summary.

### **I. Use of Force Policies (CD ¶ 31) & Specific Use of Force Policies (CD ¶¶ 39-41)**

#### **A. Status and Assessment**

As previously reported, the VIPD has received DOJ approval for many of its force-related policies. For example, the VIPD has issued a total of twelve force-related policies through the end of the First 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”), and during the First Quarter, (11) Special Operations – Special Response Team and Hostage Negotiations Team (“SRT/HNT”) Policy, and (12) Special Operations SRT – Sniper (“Sniper”) Policy. In addition, the Department has created and put into place the Response to Resistance and Reporting Form (“RRR”) (formerly known as the Use of Force Report) for VIPD personnel to document use of force events pursuant to the Reportable Use of Force Policy.

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<sup>12</sup> 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](http://www.justice.gov/crt/about/spl/documents/VIPD_CD_03-23-09.pdf).

<sup>13</sup> 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.

<sup>14</sup> CD ¶ 85.

The Use of Force working group and the Policy and Procedures Committee (the “Committee”) have also developed a Response to Resistance Investigation Checklist (the “Checklist”) that Supervisors will use when conducting use of force investigations.<sup>15</sup> The Department has delayed using the Checklist department-wide because it hopes to replace the existing Use of Force Policy and Reportable Use of Force Policy with the Reporting, Investigation and Review of Use of Force Policy. The Reporting, Investigation and Review 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. Under the new policy, the VIPD would be permitted to vary the degree 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. As the OIM reported last quarter, the DOJ conditionally approved the policy on November 3, 2011, but the Parties must first modify the Consent Decree (with Court approval) to permit a tiered approach to use of force investigations before the policy can be formally approved. In the process of reviewing proposed revisions to the Consent Decree, the DOJ discovered internal inconsistencies with the Reporting, Investigation and Review Use of Force Policy and revoked its conditional approval during the First Quarter. On June 20, 2012 the VIPD submitted a revised policy to the DOJ for review. Under the Consent Decree Timetable, the DOJ will have twenty-one days to provide any substantive comments.

As previously reported, Supervisors in the St. Croix District began using the Checklist during the Third Quarter of 2011. As the leader of the Use of Force working group, the Chief of the St. Croix District previously proposed that the Police Commissioner issue a directive to allow tiered force investigations pending final approval of the Reporting, Investigation and Review Use of Force Policy. At the beginning of the Second Quarter, the Chief of the St. Croix District stated that the Use of Force working group was drafting such a directive. Some VIPD personnel expressed concern with such a directive because it would permit practices that would conflict with the existing Use of Force Policy and

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<sup>15</sup> As we have previously reported, the Checklist is designed to help Supervisors (and Chiefs/Deputy Chiefs) determine whether RRRs are complete, and whether additional information and/or investigative steps are required. The Checklist directs Supervisors to ensure that VIPD personnel are, among other things, reporting use of force events with Central Dispatch, and completing arrest and/or Form 1As, as necessary.

Reportable Use of Force Policy. Although the VIPD will ultimately make its own decision about issuing such a directive, we have informed the Department that tiered use of force investigations will not comply with the Consent Decree until the Court approves the relevant revisions to the Consent Decree.

Although the Department has made substantial progress finalizing and issuing force related policies, the Department has identified the need for several additional force-related policies, including the: (1) Canine Policy;<sup>16</sup> (2) Use of Force Review Board Policy; (3) Arrest Policy; (4) Post Shooting Incident and Procedures Policy; and (5) Officer Involved Shooting Investigating Procedures.<sup>17</sup> The VIPD reported during the Fourth Quarter of 2011 that it submitted the Use of Force Review Board Policy—which would create a forum for senior VIPD personnel to review certain use of force events—to its Policy Consultant for review. When the OIM followed up on the status of the Use of Force Review Board Policy during the First Quarter, we were told that it was still under review by the Department’s Policy Consultant. The VIPD should follow-up with the Policy Consultant so the policy can be finalized and issued next quarter. The Committee continues to work on the Post Shooting Incident and Procedures Policy.

The OIM has encouraged the Use of Force working group to develop an Arrest Policy to address the concern that some Officers were arresting and subsequently releasing individuals without adequately documenting the arrest and/or whether any force was used.<sup>18</sup> During

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<sup>16</sup> The VIPD initially issued the Canine Policy on May 3, 2011. The OIM previously reported that the Use of Force working group was revising the Canine Policy to reflect the appropriate number of training hours that canines should receive. During the Second Quarter, the VIPD informed the OIM that the policy had been revised, but that the revisions related to the qualifications required of canine instructors (not the number of training hours for the canines).

<sup>17</sup> To the extent the VIPD develops additional force-related policies beyond those that are currently under development or required by the Consent Decree, the subsequent issuance and implementation of those policies will not restart the two-year substantial compliance period.

<sup>18</sup> OIM First Quarterly Report of 2011 at 8. At a minimum, the OIM suggested that the Arrest Policy: (i) delineate the differences between an investigative detention and an arrest; (ii) outline the steps that VIPD personnel must follow if they arrest an individual, but later determine that they do not have an adequate basis for the arrest; (iii) require that all Officers, including special unit Officers (e.g., canine and Special Operations), who assist in the arrest be identified in the arrest report and/or Form 1-A; (iv) emphasize the need for VIPD personnel to complete an RRR (in addition to a Form 1-A or arrest report) whenever force is used; and (v) ensure supervisory oversight over the decision to release an arrestee.

the First Quarter, the Committee stated that it was working to finalize the Arrest Policy. One of the road blocks that has prevented the Department from finalizing the Arrest Policy is the failure of the United States Virgin Islands Attorney General's Office ("VIAG") to respond to legal questions about the policy from the Department's Policy Consultant. We respectfully encourage the VIAG to work with the Policy Consultant to resolve any outstanding questions.

Until the Department finalizes and provides adequate training on the Arrest Policy, it will continue to underreport arrests and possible uses of force. The underreporting of arrests and uses of force has a negative impact on the Department's Risk Management System ("RMS") (see *infra* Section IV. Management and Supervision). 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.

At the end of the First Quarter, the VIPD is not in substantial compliance with ¶¶ 31 and 39-41 of the Consent Decree because it has not fully implemented its use of force policies. For certain policies, such as the Firearms Policy (issued in May 2011),<sup>19</sup> Vehicle Pursuit Policy (issued in March of 2011) and the Off-Duty Official Action Policy (issued in March 2011), the Department has not provided any training. Moreover, once the Department provides training on a particular policy, it must ensure that VIPD personnel understand their obligations and are consistently meeting them.

## **B. Recommendations**

During the First Quarter, the Use of Force working group provided the OIM with a revised version of its action plan. As we have previously explained, an action plan should: (1) identify all Consent Decree provisions for which the working group is responsible; (2) describe the tasks that must be completed to satisfy each Consent Decree provision; (3) assign tasks to specific individuals; and (4) set interim deadlines to achieve compliance. The OIM is pleased that the working group continues to revise its action plan, but the current version lacks the detail required to focus the Use of Force working group's efforts. For

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<sup>19</sup> At the beginning of the Second Quarter, the VIPD represented that it provided training on the Firearms Policy during the firearms requalification process. To confirm that representation, the OIM requested documentation, including attendance sheets, lesson plans, and any course materials relating to such training, but the VIPD has not responded.

example, the Use of Force working group's action plan does not assign specific tasks to individuals who will take responsibility for completing them, nor does it set deadlines by which each task should be completed. The OIM urges the Use of Force working group to further revise its action plan according to the recommendations herein.

The OIM also received a status report from the Use of Force working group during the First Quarter. Like its action plan, the status report did not detail the concrete steps that the VIPD has taken to comply with the relevant provisions of the Consent Decree. The OIM is encouraged that the Police Commissioner issued a memorandum, dated March 14, 2012, requiring all working group leaders to submit bi-weekly reports on the 15<sup>th</sup> and 30<sup>th</sup> of each month. The Police Commissioner's memorandum states that the leader of each working group will be held responsible for submitting reports on behalf of their working groups, and that non-compliance will not be tolerated. We urge the Commissioner to enforce compliance with this directive.

The Use of Force working group should also continue to work with the Committee to develop and/or finalize all outstanding force-related policies, including the: (1) Use of Force Review Board Policy; (2) Arrest Policy; (3) Post Shooting Incident and Procedures Policy; and (4) Officer Involved Shooting Investigating Procedures. While those policies are being finalized, the Use of Force working group should coordinate with the Director of Training to develop corresponding training programs so that training can begin on each policy immediately following the DOJ's approval.

Similarly, the Use of Force working group should work with the Training Division to ensure that training programs are being held for all of the Department's force-related policies. As discussed below (*see infra* Section V. Training), the Department has not provided any training on the Firearms Policy, Vehicle Pursuit Policy or Off-Duty Official Action Policy, which were issued over one year ago. In addition, the Use of Force working group should work with the Director of Training to schedule follow-up training (continuing in-service or Roll Call or Commanders Call training) after the initial training.

## **II. Evaluation, Documentation, and Review of Uses of Force (CD ¶¶ 32-38)**

### **A. Status and Assessment**

#### **1. Policies and Directives**

During the First Quarter, the Use of Force working group reports that it conducted an audit to monitor instances where Officers indicated that a subject resisted arrest on Form 1As, but then failed to complete the required RRR. Given that Officers will typically need to employ some degree of force to gain control of a subject who resists arrest, reviewing Form 1As in cases where a subject resisted arrest is one good way to identify uses of force that may not have been properly reported. The Use of Force working group reported that there were only a few instances where RRRs were not filed. The Use of Force working group, however, has not provided any documentation detailing where the audit took place, what time period the audit covered, or how many cases were reviewed during the audit. Although the OIM commends the Use of Force working group for its initiative, the OIM cannot verify whether the VIPD has complied with the Consent Decree unless the VIPD presents concrete evidence of its efforts, in this case, supporting documentation of the audit's method and scope. In addition to documenting these audits and sharing its findings with the OIM, the OIM encourages the Use of Force working group to review whether: (1) Supervisors are conducting adequate use of force investigations; (2) the Chief/Deputy Chiefs are reviewing investigations, correcting deficiencies, and forwarding closed cases to the IAB (for review and archiving); and (3) the Department is completing investigations within the time periods prescribed in the Reportable Use of Force Policy.

Through the end of the First Quarter, the Use of Force working group's audits were limited to units under the purview of the Chiefs. Certain VIPD personnel, however, were assigned to units under the purview of the Police Commissioner, including the Intelligence Unit and the Investigation Bureau. As such, the Use of Force working group's audits through the First Quarter have not evaluated the extent to which these units reported force according to Department policies. The Chief of the St. Croix District, as the leader of the Use of Force working group, sent a letter to then-Police Commissioner Nouvelle Francis on July 1, 2011 seeking permission to audit use of force practices by units under the Police Commissioner's purview, but the Chief never received a response. At the beginning of the Second Quarter, the OIM learned that the current Police Commissioner issued a directive, dated April 19, 2012,

transferring the Intelligence Unit and Investigation Bureau from the Office of the Police Commissioner to the Office of Police Chief in each District. The OIM expects that the Use of Force working group will extend its audits to those units. To that end, the OIM suggests that the Use of Force working group coordinate with the Audit Team when conducting any audits of these units.

With respect to use of force reporting, the VIPD confirms that RRRs are not consistently sent to the Training Division as required under the Reportable Use of Force Policy. Because the Training Division is charged with identifying areas for further training, it must have access to use of force information to assess current training practices, prioritize certain policies for further review and/or identify personnel for further training. Since the Department disseminated 200 TASERs last year, the Training Division has reviewed RRRs to monitor whether Officers are using TASERs correctly. This review, however, has been hampered by the Zones' failure to consistently submit completed RRRs to the Training Division. In March, the Deputy Chief of St. Thomas sent a memorandum to the Director of Training reporting that some Officers had accidentally discharged their TASERs. The Deputy Chief urged the Training Division to schedule further TASER training for all VIPD personnel.<sup>20</sup> These accidental discharges underscore the need for the Department to provide additional training on the ECW Policy to help prevent further misuse.

The OIM has also discovered that the VIPD routinely completes use of force investigations outside of the timeframe prescribed in the Reportable Use of Force Policy. For example, 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. Department records reflect that the Zones in both Districts have not submitted any completed investigations to IAB for nineteen RRRs (forwarded to IAB on St. Thomas), and for seventeen

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<sup>20</sup> The Chief of the St. Thomas District also sent a memorandum on January 26, 2012 to all Commanders, section/unit/bureau heads, and enforcement Supervisors reiterating that Supervisors must ensure that Officers carry the TASER while on-duty, and explained that civil liability could result if an Officer used a firearm when a "TASER could/should have been utilized."

RRRs (forwarded to IAB on St. Croix) during the First Quarter. The VIPD must complete investigations within the required time period in order to achieve substantial compliance. Moreover, because the Department has a relatively short fifty-day statute of limitations to charge VIPD personnel with misconduct, it is critical that the VIPD complete investigations within the required periods.

## **2. OIM Survey of Uses of Force**

During the First Quarter, the OIM continued to evaluate the Department's use of force reporting practices to determine, among other things, whether investigation files contained all of the documentation required by the Consent Decree. A "complete" investigation file generally consists of the following (to the extent applicable): Form 1-A; 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.

The OIM reviewed closed force investigations at the Zones and IAB; typically, more serious uses of force are investigated by IAB and comparatively less serious uses of force are investigated by the Zones. The OIM noted some improvements during the First Quarter, but also some recurring deficiencies. For example, the Director of IAB continued to return incomplete files/inadequate investigations to the Zones for follow-up. In one instance, IAB audited arrest data from the St. Croix District, and discovered that thirty-four Arrest Reports indicated that the suspect resisted arrest, but no RRR was completed. Moreover, the thirty-four Arrest Reports were missing the required Supervisor's signature. In response to these issues, the Chief of the St. Croix District issued a memorandum to all Commanders in his District directing that they submit a memorandum to him detailing the corrective measures that they have taken in their respective Zones to assure compliance with the Department's use of force reporting practices.

The OIM reviewed the underlying documentation for each of the thirty-four cases described above and determined that fourteen were not in compliance with the Use of Force Policy or Reportable Use of Force Policy because force was not documented in a RRR. Of the remaining twenty cases, fourteen were in compliance, and six require follow-up because the corresponding Form 1As were missing from the investigation files and/or vagaries in the Arrest Report made it difficult to definitively determine whether force was used. When reviewing these cases, the OIM also noted that VIPD personnel are not consistently reporting how

suspects resisted arrest or obstructed justice as they are required to do on the Arrest Report and RRR. The OIM encourages the Chief of the St. Croix District to review these cases to assess the full extent of policy violations. The Chief should then coordinate with the Director of IAB and the Director of Training to determine whether discipline and/or further training is warranted. The OIM requests that the VIPD report on any corrective measures taken in the next status report.

Although the audit described above was specific to the St. Croix District, similar deficiencies exist for the St. Thomas District. The OIM continues to find that VIPD personnel in both Districts often fail to complete RRRs. The OIM audited Arrest Reports filed in the St. Thomas and St. Croix Districts between January and March 2012 to monitor whether VIPD personnel are completing RRRs whenever force is used. Based on the Arrest Reports referenced above, the OIM identified cases in which the narrative indicated that force may have been used. To determine whether force was in fact used, the OIM then tracked each case by searching for the corresponding Form 1A. The OIM found the following:

<b>OIM Audit of Arrest Reports for the St. Thomas District</b>	
<b>Total Number of Arrest Reports identified for further follow-up</b>	<b>6</b>
• Number of cases where use of force was likely	6
• Number of cases with corresponding RRRs	0
• Number of cases for which the Arrest Report indicates that the suspect resisted arrest	5
• Number of cases identified for further follow-up to track whether force was in fact used and whether a use of force investigation has been completed	6

<b>OIM Audit of Arrest Reports for the St. Croix District</b>	
<b>Total Number of Arrest Reports identified for further follow-up</b>	<b>17</b>
• Number of cases where use of force was likely	12
• Number of cases with corresponding RRRs	1

<ul style="list-style-type: none"> <li>• Number of cases for which IAB initiated an administrative investigation for failure to report a use of force incident</li> </ul>	2
<ul style="list-style-type: none"> <li>• Number of cases identified for further follow-up to track whether force was in fact used and whether a use of force investigation has been completed</li> </ul>	9

## B. Recommendations

Although the Department has made progress by issuing and training on the Use of Force Policy and Reportable Use of Force Policy, it is not in substantial compliance with ¶¶ 32-38 of the Consent Decree because it is not adequately evaluating, documenting, and reviewing uses of force.

With respect to use of force reporting, the Use of Force working group should continue to audit Form 1As and begin to audit Arrest Reports to determine the extent to which force is being reported across the Districts. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to report uses of force. Once those individuals are identified, the working group should work in concert with the Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions if necessary.

The Use of Force working group should also review completed force investigation files to determine whether Supervisors are conducting adequate investigations. As we have repeatedly stressed, Supervisors play a critical role in investigating use of force events under the Consent Decree. The VIPD should continue to ensure that all Supervisors (including the four newly promoted Supervisors) have received training on investigating uses of force. In addition, the Use of Force working group should assess whether Supervisors in both Districts are forwarding copies of RRRs to the Chiefs, the IAB, and the Training Division.

Finally, as discussed above, the IAB routinely returns supposedly completed investigation files to the Chiefs in both Districts for additional investigation. Because IAB cannot order the Chiefs to comply with its requests, the OIM encourages the Police Commissioner to intervene. One option would be for the Police Commissioner to receive periodic reports from IAB identifying any investigations that have been returned to the

Chiefs and whether IAB has received any further information in response.

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

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

**1. Status and Assessment**

The Consent Decree requires VIPD vehicles to be equipped with English, Spanish, and French and/or French Patois language versions of the complaint process materials.<sup>21</sup> The VIPD completed translating the compliment/complaint brochures and forms into Spanish and French during the First Quarter. IAB staff in the St. Croix District and Commanders in the St. Thomas District delivered the newly translated materials to the Zones. The Complaint Process working group also distributed placards describing the complaint process and replenished compliment/complaint materials (complaint forms and compliment/complaint brochures) in all Zones and substations in the St. Thomas and St. Croix Districts.

During the First Quarter, the Complaint Process working group continued to periodically inspect VIPD vehicles and Zones across the Department to confirm that complaint process materials were available. The Complaint Process working group provided the OIM with the results of four inspections in the St. Thomas District during the First Quarter, and reported that complaint process materials were available in all locations. The Complaint Process working group also reported that the required complaint process materials were available on St. Croix. The OIM commends the Compliance Coordinator for creating a Periodic Inspection Report Form for the Complaint Process working group to document its inspections during the quarter. The OIM encourages the working group to continue to document these inspections going forward, and record the process used, documents reviewed, and areas searched. Zones in both Districts should also conduct periodic inspections to ensure that their supply of complaint/compliment materials remains adequately stocked.

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<sup>21</sup> With respect to the Patois translation, the OIM has previously reported that the Department has had difficulty identifying an individual to translate the brochure into Patois. This requirement, however, may be obviated because the Parties are negotiating revisions to the Consent Decree that would remove the requirement that the VIPD translate complaint process materials to Patois.

To improve compliance with the Acceptance of Citizen Complaints Policy, the VIPD reports that the Chiefs in both Districts issued directives requiring sworn personnel to adhere to the procedures for accepting citizen complaints. These procedures were also reinforced during Roll Call and Commanders Call training in the St. Thomas District. Both Districts should also coordinate further in-service training with the Director of Training since the Department has previously acknowledged the Acceptance of Citizen Complaints Policy requires greater reinforcement.

OIM audits also confirm that more training is needed on the Acceptance of Citizen Complaints Policy.<sup>22</sup> For example, only 67% of Officers in Zones A and C on St. Thomas, and Zone D on St. John responded correctly when asked to explain the process for filing a citizen complaint. The remaining responses omitted several key aspects of the Acceptance of Citizen Complaints Policy, including: (1) how a citizen can file a complaint; (2) the Officer's obligations when a citizen wants to file a complaint; and (3) how citizens will be informed about the outcome of the complaint. Because the OIM has reported on these same issues in the last two quarterly reports,<sup>23</sup> the OIM recommends that the Training Division schedule additional in-service training on the policy. The Department should also schedule additional Roll Call and Commanders Call training to further reinforce the policy and address specific deficiencies on an ongoing basis.

Finally, since October 2010 the Department has actively promoted the citizen complaint process through a public information campaign on radio and television stations, and in newspapers in both Districts.<sup>24</sup> The VIPD reports that a budget for Public Service Announcements ("PSAs") was approved during the First Quarter. The Department has recorded three PSAs, which will be broadcast on seven radio stations at various times of day in both Districts.

Although the VIPD has made significant progress with aspects of the citizen complaint process, it is not in substantial compliance with ¶¶ 42-45 of the Consent Decree. The OIM is pleased with the Department's progress with ¶ 43 of the Consent Decree, specifically

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<sup>22</sup> Training on the Acceptance of Citizen Complaints Policy was initially held in March and April of 2011. The VIPD plans to offer further in-service training beginning in June of 2012.

<sup>23</sup> OIM Third Quarterly Report of 2011 at 18, 21; OIM Fourth Quarterly Report of 2011 at 24-25.

<sup>24</sup> OIM Second Quarterly Report of 2011 at 19; *see also infra* § V (Training).

developing complaint forms, brochures, and posters, and making those materials available at various governmental properties and community centers. However, ¶ 43 also requires the VIPD to document that the complaint process is functioning properly (from intake of complaints to ultimate disposition), and to provide complaint materials in French Patois. To achieve compliance, the Department should, as the VIPD itself acknowledges, begin to audit whether the complaint process is working properly. Additionally, the Department must seek approval (along with the DOJ) from the Court to remove the French Patois requirement.

## **2. Recommendations**

The Complaint Process working group provided the OIM with a revised action plan during the First Quarter. The revised action plan is an improvement from the previous version because it identifies goals for the Complaint Process working group and assigns responsibility for those goals to specific individuals. The revised action plan, however, does not specify dates by which each goal should be achieved. We recommend that the Complaint Process working group add interim deadlines during the next quarter.

The Complaint Process working group has also provided the OIM with reports detailing the working group's activities during the quarter. Those reports demonstrate that the working group is meeting again after a period of stagnant activity during the last two quarters of 2011. In an effort to reenergize the Complaint Process working group, the working group has recruited a Lieutenant and a Sergeant from the St. Croix District. The OIM encourages the Complaint Process working group to continue to meet regularly and to document the working group's activities.

The Complaint Process working group should work with the Training Division to provide further training on the Acceptance of Citizen Complaints Policy because OIM audits reveal that Officers have difficulty explaining important aspects of the complaint process. The Complaint Process working group, in conjunction with the Audit Team, should develop its own process for testing whether VIPD personnel adequately understand the complaint process. One way to accomplish this task is to work with the Training Division to develop a series of questions (similar to what the VIPD is planning to do for its use of force policies) for VIPD personnel to complete following in-service and/or Roll Call or Commanders Call training. The OIM requests that the working group document its efforts and share its results with the OIM. 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 also continue its practice of confirming whether government properties and VIPD vehicles are equipped with the required complaint process materials. Finally, the 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, and to hold their subordinates accountable for completing investigations in a timely manner.

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

**1. Status and Assessment**

The Investigating Misconduct and Citizen Complaints Policy governs how VIPD personnel investigate citizen complaints. Seven months after issuing the policy, the VIPD held in-service training on the policy for the first time on March 20, 2012 on St. Thomas. The same training was held on St. Croix at the beginning of the Second Quarter.<sup>25</sup> Following training on both Districts, the Complaint Process working group states that it will audit completed investigations to ensure that investigations comply with the Investigating Misconduct and Citizen Complaints Policy. As the OIM urges for all Department audits, the working group should develop a protocol for and document these audits.

The OIM previously reported that the Department provided training for Supervisors on the preponderance of the evidence standard (the evidentiary standard that the Department uses to investigate complaints) during the Fourth Quarter of 2011. While IAB on both Districts has used the preponderance of the evidence standard to evaluate complaints for some time, Supervisors throughout the rest of the Department have not. The Complaint Process working group conducted an audit of Supervisors who attended the training last quarter. The working group heard from certain Supervisors that they were more confused about the standard after training. The Complaint Process working group stated that it would discuss its findings with the Director of Training and the Director of IAB.

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<sup>25</sup> The OIM will report on the St. Croix training for Supervisors in the next quarterly report.

Following the working group's inspection concerning the preponderance of the evidence standard, the Department acknowledged the need to formalize a process for testing Supervisors on their knowledge of the Accepting Citizen Complaints Policy and Investigating Misconduct and Citizens Complaints Policy. As an initial step, the Department indicated that the working group and/or the Audit Team will review completed complaint investigations to monitor whether Supervisors are correctly applying the preponderance of the evidence standard when investigating complaints. Second, the Compliance Coordinator has asked the VIAG to prepare ten questions (with answers) to ask Supervisors in order to assess their understanding of the preponderance of the evidence standard. Based on the results of these audits, the OIM urges the Complaint Process working group leader, the Director of Training, the Director of IAB, and the VIAG to collaborate and provide follow-up in-service training on the preponderance of the evidence standard during the Second Quarter. Mastery of the preponderance of the evidence standard is essential for Supervisors to properly investigate and resolve citizen complaints.

The OIM conducted its own audit of Supervisors' understanding of the preponderance of the evidence standard during the First Quarter, and concluded that additional training is needed. For example, only 64% of Supervisors (9 out of 14) questioned from the St. Thomas District correctly explained the preponderance of the evidence standard or how it differs from the beyond a reasonable doubt standard, and understand that leading questions are improper when interviewing a witness. In an audit on St. Croix at the beginning of April, only 50% of the Supervisors (3 out of 6) responded correctly.

Finally, under ¶51 of the Consent Decree investigating Supervisors must interview all Officers who were present at the scene of an incident, and those interviews must be audio or video recorded. The Complaint Process working group reports that some interviews are not being recorded or videotaped. Additionally, the Consent Decree and Investigating Misconduct and Citizen Complaints Policy also require the VIPD to periodically inform complainants about the status of their complaints, including the final disposition. Based on our review of complaint investigation files, however, the VIPD does not appear to consistently apprise complainants of the status of their complaints. Similarly, according to the IAB, the Zones are not referring all allegations of Officer misconduct to IAB within five days as required in the Investigating Misconduct and Citizen Complaints Policy. Because of the Department's fifty-day statute of limitations for disciplining officers, the

Department cannot afford to let complaints of potential misconduct linger.

In sum, at the end of the First Quarter, the VIPD is not in substantial compliance with ¶¶ 46-58 of the Consent Decree concerning the investigation of complaints. Specifically, the VIPD has not adequately trained investigating Supervisors on the Investigating Misconduct and Citizen Complaints Policy. Additionally, the VIPD has failed to ensure that complaints are being adequately investigated or that complainants are being kept apprised about the status of their complaints. While the Department's public awareness campaign has increased the volume of complaints, the VIPD is still ill-equipped to handle them properly.

## **2. Recommendations**

Since the VIPD has provided initial in-service training on the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy, the VIPD must now provide additional training to address the shortcomings discussed above and then conduct and document periodic audits to ensure that VIPD personnel are complying with the policies.<sup>26</sup> The Complaint Process working group should also assess whether VIPD personnel properly follow the complaint process from intake, to investigation, to final disposition. Finally, the Complaint Process working group should 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 the audits, the Complaint Process working group should identify any trends or areas for improvement. Additionally, the VIPD and VIAG should finalize the questions that they are developing to assure that Supervisors understand and are comfortable applying the preponderance of the evidence standard.

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<sup>26</sup> The VIPD acknowledged the need to audit its citizen complaint process in its Status Report.

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

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

**1. Status and Assessment**

As previously reported, the VIPD has chosen the computer program IPro 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 IPro—to enter RRRs directly into IPro. Blue Team also allows Supervisors and Commanders to review and sign-off on use of force investigations, and to monitor use of force patterns.

Unfortunately, the Blue Team program continued to suffer from a number of technological impediments during the First Quarter. For example, the Management and Supervision working group reported that the Director of IAB discovered several issues with Blue Team in the Zones on St. Thomas, including issues in the School Security Unit, Bike Unit, and Red Hook Substation. The VIPD assures that even if Blue Team is temporarily disabled at a particular location, VIPD personnel can continue to enter data into IPro by using the computers in the training labs on each District. The OIM requests that the Management and Supervision working group conduct similar tests on the St. Croix District, and that the working group continue to conduct periodic tests to ensure that Blue Team is fully operational in all required locations on both Districts.

The OIM is pleased that the VIPD held Blue Team training for 155 Officers and Supervisors from the St. Thomas District during the First Quarter. Following that training, Officers and Supervisors completed a questionnaire to measure their ability to use Blue Team. While this training represents a positive first step, the Management and Supervision working group should coordinate with the Training Division to determine whether follow-up training is required. Additionally, the VIPD explained that the same training was not offered on St. Croix during the First Quarter because of technical issues with IPro. We encourage the Management and Supervision working group to resolve any technical issues and to coordinate with the Director of Training to prioritize this training for the next quarter.

The Management Information Systems Bureau (“MIS”) (the Department’s information technology group) reports that the hard drives it ordered to increase the Department’s electronic storage capacity for

IAPro and other databases have arrived in the Territory after a several-month manufacturing delay.<sup>27</sup> The OIM is hopeful that the VIPD will finally move past the technological roadblocks that have stymied the Department's ability to comply with the Consent Decree's risk management requirements.

The Department reports that it is working to create an arrest database on both Districts to track key information about arrests. An arrest database already exists on St. Croix, but technological issues have prevented the implementation of a similar database on St. Thomas. Moreover, the Department contends that MIS must modify the arrest database because, in its current form, it does not capture all of the fields required by the Consent Decree.

Progress on the VIPD's RMS Protocol has been slow. The comment and revision process began on April 15, 2011 when the VIPD submitted an initial draft of the RMS Protocol to the DOJ. During the Second Quarter, the VIPD submitted its ninth revised draft of the RMS Protocol to the DOJ. Under the Consent Decree Timetable, the DOJ will have twenty-one days to provide further substantive comments. Since the RMS Protocol has been in the revision process for a significant period of time and relatively few edits remain, the VIPD and DOJ should seek to finalize the protocol as quickly as possible.

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 VIPD must 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.<sup>28</sup> For now, IAPro will notify

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<sup>27</sup> Although the hard drives arrived in the United States Virgin Islands during the First Quarter, they did not clear customs until the Second Quarter.

<sup>28</sup> As previously reported, the VIPD contends that on-going limitations and incomplete arrest and force records would render ratios unreliable for the time being. With respect to the Department's arrest and force records, that information may be unreliable because: (1) there are instances where Officers make an arrest, use force,

an Officer's Supervisor when the Officer reaches two uses of force within a six-month period. The Early Intervention Program ("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.

The DOJ approved the VIPD's Data Input Plan on March 22, 2011, but the Department had not provided any training on the plan as of the end of the First Quarter. While there is no excuse for the VIPD's lack of progress in that regard, there are some early signs of progress. For example, the EIP Coordinator met with the Director of MIS, a Sergeant from the Planning and Research Bureau, the Director of Training, Lieutenants from the Traffic Bureau on both Districts, the Deputy Chief of St. Thomas, the Director of Human Resources, and an Officer on the Management and Supervision working group, to review the information that each of their divisions must maintain under the Data Input Plan. Specifically, 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.

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 Permanent Designator Number ("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").<sup>29</sup> Officers are required to use their PDN (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 on both Districts have received PDNs, with the exception of the most recent graduating class from the Police Academy. The Planning

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and release the subject without completing an arrest report or documenting the release; (2) when arrests are documented, the arrest report may not identify all involved officers (particularly where a group of officers is involved in an arrest); and (3) Officers who physically make an arrest are not always identified in the arrest report. The VIPD seeks to overcome these issues by improving its arrest and force record keeping. The development of a comprehensive arrest database is one aspect of achieving this goal (see *supra* at p. 28).

<sup>29</sup> VITEMA is responsible for the Virgin Island's 911 system.

and Research Bureau is expected to assign the new Officers PDNs during the Second Quarter.

The VIPD reports that it reviewed randomly selected Form 1As from the St. Thomas District to determine whether personnel are using their PDNs. In the first inspection, three out of ten randomly selected Form 1As showed that personnel were not using their PDNs as required. The second audit demonstrated improvement with only one out of ten Form 1As showing that an Officer used a badge number rather than a PDN. A similar audit has not been conducted on St. Croix.

The OIM previously reported that IAB seeks to enter into IAPro historical information going back to 2009. Since IAPro identifies potentially problematic behavior based on past conduct, IAPro functions best when it has access to as much information as possible. The project remains incomplete because the Department has had trouble identifying personnel to input the data.<sup>30</sup> IAB reports, however, that it has entered citizen complaint, vehicle pursuit, firearm discharge, use of force, and administrative investigation data for VIPD personnel from 2010 to the present. Lastly, the VIPD continues to develop policies and protocols to support the RMS, including the Blue Team Protocol, the Behavioral Health Services Policy, the Officer Peer Support Policy, and the Psychological Fitness for Duty Evaluation Policy.<sup>31</sup>

In sum, while the VIPD has made progress implementing certain aspects of IAPro, the RMS Protocol needs to be finalized, the Data Input Plan needs to be fully implemented, and additional training on Blue Team is required. Therefore, at the end of the First Quarter, the Department has not substantially complied with ¶¶ 59-68 of the Consent Decree.

## **2. Recommendations**

During the First Quarter, the Management and Supervision working group provided the OIM with a revised action plan. The action plan, however, does not describe the tasks that the working group must complete to satisfy each Consent Decree provision, assign tasks to specific individuals, or set interim deadlines. While the OIM recognizes

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<sup>30</sup> The Department identified an individual to assist with the data entry on St. Thomas during the Second Quarter.

<sup>31</sup> At the beginning of the Second Quarter, the OIM learned that the Police Commissioner signed the Psychological Fitness for Duty Evaluation Policy, and that it would be issued shortly. The Department also reported that it is still drafting the Behavioral Health Services Policy and the Officer Peer Support Policy.

the working group's efforts on the revised action plan, a number of deficiencies remain. The working group should revise its action plan to address the areas described above.

The Management and Supervision working group should promptly finalize the Department's RMS Protocol, Blue Team Protocol, and Disciplinary Matrix, and train on the Data Input Plan. With respect to the RMS Protocol, the VIPD should work with the DOJ to finalize the policy expeditiously given the number of drafts that have been exchanged to date, and the limited number of changes left to make. Moreover, once the RMS Protocol is implemented, the Department must conduct 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 installing the Department's new servers.

The Management and Supervision working group must also conduct Blue Team training on St. Croix, and together with the Training Division, determine whether follow-up training for Blue Team on either District is needed. Since VIPD personnel will eventually enter RRRs directly into Blue Team, the Management and Supervision working group should ensure that VIPD personnel are proficient using Blue Team in order to avoid any instances where uses of force are unreported because an individual is not proficient on Blue Team.

The Management and Supervision working group should also consult with IAB to develop a plan to enter additional historical use of force information into IAPro. Finally, the Department should complete drafts of the Behavioral Health Services Policy and Officer Peer Support Policy. Once those policies are in "near final" form, the OIM would welcome the opportunity to provide comments.

## **B. Oversight (CD ¶ 69)**

### **1. Status, Assessment, and Recommendations**

The VIPD is not in substantial compliance with ¶ 69 of the Consent Decree because it has not finalized and implemented the Audit Protocol for the RMS. The VIPD will not be able to fully implement its RMS until it finalizes the Audit Protocol.

The OIM reported last quarter that the VIPD implemented an Audit Team to evaluate the effectiveness of the Department's internal controls.

On February 16, 2012, the Audit Team reported that it had conducted an audit of the number of sworn personnel trained on the Use of Force Policy and Reportable Use of Force Policy.<sup>32</sup> The Audit Team reported that 97% of the Department's sworn personnel had received training on the Use of Force Policy and Reportable Use of Force Policy. While that number appears impressive, the Audit Team did not explain its audit methodology or identify the documents that it reviewed. Going forward, the Audit Team should also seek to evaluate the adequacy of any training (e.g., the quality of instruction and extent to which personnel have absorbed the material). Without that information, it is impossible for the OIM to understand the scope of the Audit Team's work and confirm its findings. The fact that a certain number of VIPD personnel attended a particular training is not sufficient to satisfy the Consent Decree's training requirements. These considerations should be incorporated into the Audit Protocol that the VIPD provided to its Policy Consultant in October of 2011. We encourage the VIPD to follow up with the Policy Consultant on the Audit Protocol in order to finalize it as soon as possible.

The VIPD also reports that the Audit Team is working on an action plan to prioritize areas for auditing and set deadlines by which to complete the audits. Finally, the Audit Team continues to research appropriate training programs for the Audit Team to address their new responsibilities and, in particular, to train them on auditing procedures. The OIM encourages the Audit Team to prioritize attending training programs in the near future. We note that the Audit Team has discussed doing so for the past two quarters.

### **C. Discipline (CD ¶¶ 70-72)**

#### **1. Status, Assessment, and Recommendations**

As previously reported, the DOJ has approved the Disciplinary Policy and Matrix,<sup>33</sup> which provides disciplinary guidelines for different types of misconduct. The VIPD, however, decided to revise the "charge and penalty section" of the Disciplinary Matrix. The Management and Supervision working group continued to meet with the Committee during the First Quarter to revise the Disciplinary Matrix. The OIM attended

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<sup>32</sup> The Audit Team initially said that 97% of sworn person had also received training on the Acceptance of Citizen Complaints Policy, but the Police Commissioner later clarified that the Audit Team's memorandum was intended to cover the Use of Force Policy and Reportable Use of Force Policy only.

<sup>33</sup> OIM First Quarterly Report of 2011 at 19.

one of these meetings, and notes that a revised draft is under development. As the OIM has repeatedly stressed, the VIPD needs to finalize the Disciplinary Matrix as soon as possible. As previously reported, the OIM has observed first-hand (and heard about anecdotally) the Department's inconsistent and disparate application of disciplinary sanctions (for which there is no reasonable explanation).<sup>34</sup> The revised Matrix hopefully will help foster a more uniform and equitable application of disciplinary sanctions. As a reminder, once the Disciplinary Matrix is revised, the VIPD must resubmit the Matrix to the DOJ for approval.<sup>35</sup>

The need for the VIPD to impose discipline in a more uniform way is exemplified by a use of force investigation that the OIM reviewed during the First Quarter. In that case, two Officers engaged in a vehicular pursuit after the suspect fled from a traffic stop for a seatbelt violation. In light of the relatively minor nature of the alleged offense, the OIM is concerned that the Officers response may not have been justified. After a thorough IAB investigation, the IAB imposed a ten-day suspension for each Officer. Without any explanation (at least none that the OIM could find in the investigation file), the reviewing Supervisor overruled IAB and imposed "training" as the disciplinary action. The discipline imposed in this case is far below the generally accepted standard for this type of policy violation.

At the end of the First Quarter, the VIPD is not in substantial compliance with ¶¶ 70-72 of the Consent Decree because it has not finalized and implemented the Disciplinary Matrix.

## **V. Training (CD ¶¶ 73-81)**

### **A. Management Oversight (CD ¶¶ 73-77) and Curriculum (CD ¶¶ 78-81)**

#### **1. Status and Assessment**

The bureaucratic impasse between the Department and Property and Procurement continued to paralyze the Department's Consent Decree related training during the First Quarter. To the OIM's knowledge, no Consent Decree related training was offered by the

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<sup>34</sup> See, e.g., OIM Fourth Quarterly Report of 2010 at 24.

<sup>35</sup> Although the Consent Decree does not require DOJ approval for the Disciplinary Policy, the VIPD voluntarily submitted it to the DOJ for its review, and the DOJ agreed to provide technical assistance. The DOJ completed providing technical assistance to the VIPD on the Disciplinary Policy on April 26, 2011.

Department for the first two months of the quarter. As the VIPD has previously explained, Property and Procurement requires vendors to satisfy a number of requirements before permitting the Department to formally engage vendors, which has made it difficult to finalize important training programs. For example, vendors located outside of the Virgin Islands are often required to obtain a business license from the Department of Licensing and Consumer Affairs, a process that can take several weeks or more.

The impact of the impasse is exemplified by the “Upcoming Training and Tentative Training” schedule (dated March 6, 2012). Out of twenty-two training programs scheduled through June of 2013, over half are listed as “tentative.”<sup>36</sup> The VIPD reported, however, that four training contracts were under review by Property and Procurement or at Government House awaiting approval at the end of the First Quarter. These contracts will allow the Department to expand its internal training capacity by offering train-the-trainer training for several important Consent Decree policies, including Field Training Officer train-the-trainer,<sup>37</sup> Basic and Advanced SWAT Certification (which will include training on the VIPD’s recently issued SRT/HNT Policy and Sniper Policy), Pursuit Driving and Spike Strip train-the-trainer,<sup>38</sup> and TASER train-the-trainer. The VIPD also informs the OIM that it awaits approval of a contract with its Policy Consultant to provide training on Investigating Uses of Force, the Citizen Complaint Process, Off-Duty Conduct, Testifying in Court, Court Room Procedures, Law Enforcement Ethics, Police Administration Executive Training, Arrest Procedures, Search and Seizures, Fourth and Fifth Amendments, and Active Shooter.<sup>39</sup>

Because of the delays described above, the VIPD’s ability to build a more robust internal training capacity has become increasingly

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<sup>36</sup> See *supra* n.3.

<sup>37</sup> The OIM has repeatedly stated that the FTO program is critical. Once instructors are certified, the VIPD should provide training to the FTOs as soon as practicable thereafter since the current FTOs were never adequately trained. The rudimentary training that they received focused on how to fill out basic paperwork relating to their trainees.

<sup>38</sup> The OIM has reported that SWAT and Spike Strip train-the-trainer programs were scheduled to take place during the Fourth Quarter of 2011 but were postponed. The OIM learned at the beginning of the Second Quarter of 2012 that the Governor approved the SWAT training contract. Once instructors are certified, the Department should promptly provide training to sworn personnel.

<sup>39</sup> This contract was subsequently approved early in the Second Quarter.

important during the First Quarter. The Department can avoid the delays associated with the procurement process by building its internal training infrastructure. On an ongoing basis, the Training Division should identify instructor candidates and provide them with the required instructor certifications. We commend the Department for tentatively scheduling an instructor development train-the-trainer course for the Third Quarter. The OIM recommends that the VIPD remain in contact with Property and Procurement and Government House to avoid having to cancel that training or any other training that is listed as “tentative.”

While instructor training is a positive step in lessening the VIPD’s dependence on outside training vendors, the VIPD also needs to schedule training on the underlying policies for VIPD personnel. For example, at the end of the First Quarter the VIPD has not reported on its plans to train on the Firearms Policy,<sup>40</sup> Spike Strip Policy, Vehicle Pursuit Policy, or the FTO Policy.<sup>41</sup> Similarly, the VIPD had not scheduled any training for VIPD personnel on the Data Input Plan or the Off-Duty Official Action Policy.

The only Consent Decree related training held during the First Quarter included: “Investigating Use of Force for Supervisors”, “Investigating Citizens Complaint Process for Supervisors”, and “Leadership Training for Supervisors on St. Thomas.”<sup>42</sup> Training for Supervisors on St. Croix is scheduled for the beginning of the Second Quarter. The OIM is pleased that the VIPD provided some supervisory training following the Department’s announcement that it made supervisory promotions. Additional supervisory training, however, is needed. Notably, the four Officers who were promoted to Sergeant did not attend the Department’s initial supervisory training. Paragraph 81 of the Consent Decree requires newly promoted Supervisors to be trained on the appropriate burdens of proof, factors to consider when evaluating complainant or witness credibility, and leadership and command

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<sup>40</sup> At the beginning of the Second Quarter, the VIPD represented that training on the Firearms Policy was conducted during firearms requalification programs. The OIM requested verifying documentation, including attendance sheets, lesson plans, and any course materials, and will report next quarter on whether the VIPD has met its training requirement on the Firearms Policy.

<sup>41</sup> Following an inquiry from the OIM at the beginning of the Second Quarter, the VIPD said that training for VIPD personnel on these policies will be conducted during in-service training scheduled for the Second and Third Quarters.

<sup>42</sup> The Training Division conducted other non-Consent Decree related training for VIPD personnel in both Districts during the First Quarter, including Firearms Re-Qualification for Government House Agents and Security Officers, WMD Tactical Training – VITEMA, and Advanced Cell Phone Training.

accountability training. The Consent Decree further requires that such training must be provided to Supervisors within ninety days of assuming supervisory responsibility and continued as part of annual in-service training. As of the date of this Report, the ninety-day period had expired.

The OIM had an opportunity to observe the “Investigating Use of Force for Supervisors” and “Leadership Training for Supervisors” training held during the First Quarter.<sup>43</sup> The OIM is pleased that the Department had two VIPD Sergeants teach the Investigating Use of Force for Supervisors training (rather than using external vendors), and commends the instructors on the quality of the training class. The training focused on properly documenting, reporting, and investigating uses of force, and emphasized the important role that Supervisors play in ensuring that each step is carried out according to Department policy. It was evident during OIM monitoring that knowledge of the Use of Force Policy, Reportable Use of Force Policy, and Investigating Misconduct and Citizen Complaints Policy varied significantly among personnel. Indeed, many Supervisors attending the training expressed reservations about their knowledge of these policies.

Nevertheless, the OIM is encouraged that the training used adult learning techniques by incorporating scenario-based video demonstrations, and practical exercises that required all Supervisors to write, evaluate, and review use of force reports, and to write the corresponding supervisory reviews. The training, however, provided limited instruction on the steps Supervisors must take to investigate a use of force event, including collecting evidence, canvassing for witnesses, and taking witness statements.

Forty-seven Supervisors were scheduled to attend the Investigating Use of Force for Supervisors training during the First Quarter, but four failed to attend. The OIM recommends that the Director of Training provide the names of the Supervisors who were absent without explanation to the Acting Chief, copying the Police Commissioner and the IAB, and request that those Supervisors explain why they failed to attend the training. The Acting Chief should report his findings to the Police Commissioner, the IAB, and the Director of Training. Further, the Director of Training should reschedule training for all Supervisors who missed the training.

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<sup>43</sup> The OIM observed the “Investigating Citizens Complaint Process for Supervisors” training on St. Croix at the beginning of the Second Quarter and will report on the training in the next quarterly report.

The “Leadership Training for Supervisors” program was a basic supervision and management course conducted by an instructor from the Territory’s Office of Collective Bargaining. The training was well done. Unfortunately, some Supervisors left the training for prolonged periods of time. While this may be understandable because many of the participants were on-duty, the Training Division should determine whether those Supervisors should receive credit for attending or be required to attend another full or partial session. The Department should also consider providing more frequent and smaller classes in order to stagger the number of Supervisors who are pulled from the field at any given time to attend training. Future supervisory training should also emphasize the Consent Decree requirements and the role Supervisors play in achieving substantial compliance, in addition to relevant developments in civil and criminal law, and proper procedures for handling evidence.

The Department must also review all use of force training and use of force policies on a regular basis to ensure compliance with applicable laws and VIPD policy. To meet this requirement, the VIPD has discussed entering into a memorandum of understanding with the VIAG to review policies and training. The Training Division also plans to develop a series of questions based on the Department’s use of force policies to test Officers’ proficiency with those policies.

With respect to Roll Call training, the Chief of the St. Thomas District issued a directive during the First Quarter ordering Commanders and Supervisors to document any such training. Later in the First Quarter, the VIPD issued a Roll Call Training Policy and corresponding Roll Call Training Form to formalize instruction and collect information about the Department’s Roll Call training.<sup>44</sup> The OIM was disappointed to learn during a meeting with the Parties that the Director of Training was unaware that the Department had issued the Roll Call Policy. This is particularly disturbing given the important role that the Training Division plays under the Roll Call Policy. For example, the Training Division is supposed to coordinate with the Chiefs and Deputy Chiefs to ensure that Department policies are reinforced during Roll Call and Commanders Call training, and that all training is uniformly recorded on the Roll Call Training Form, which should be sent to the Training Division. This breakdown in communication is emblematic of a larger problem in the Department—a lack of communication throughout the

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<sup>44</sup> The OIM provided comments on a draft version of the Roll Call Training Form at the beginning of the First Quarter.

Department's leadership. The Police Commissioner should prioritize improving the lines of communication among the working group leaders and the rest of his executive leadership team. With respect to policies, the Committee and the Training working group should develop procedures for efficiently disseminating policies throughout the Department and ensuring that key stakeholders are aware of new policies and understand their responsibilities.

Roll Call and Commanders Call training is an important tool for reinforcing the Department's policies following in-service training (particularly to reinforce policies with which VIPD personnel have had difficulty demonstrating proficiency). The Training Bureau shared Roll Call training forms with the OIM during a monitoring trip to the St. Thomas District. Eleven Consent Decree related Roll Call training sessions were conducted in March on St. Thomas covering the following topics: Off-Duty Official Action; Use of Force Policy; completing RRRs; Blue Team; Accepting Citizen Complaints Policy; completing Form 1As; unlawful firearm discharges; ECW Policy (TASERs); Special Response Team; and investigating citizen complaints. Zone A also held Roll Call training on the Consent Decree generally.

The OIM encourages the Department to document Roll Call training uniformly by using the Roll Call Training Form as required by the Roll Call Policy. Under the Roll Call Training Policy, the Zones are required to forward completed Roll Call Training Forms to the Training Division to ensure that the Training Division collects the information for its training records.<sup>45</sup> Currently, topics for Roll Call and Commanders Call training are chosen by Supervisors. The OIM encourages the Chiefs and the Director of Training to prioritize key areas that could benefit from Roll Call and Commanders Call training. The Department should also include a procedure for auditing Roll Call and Commanders Call training in the Audit Protocol that is under development.

The VIPD reports that the Training Bureau continues to maintain course evaluation forms (that the Director of Training subsequently reviews), lesson plans, and training records for each Officer. The Department, however, has not finalized a training database for training materials. As a result, hard copy documents are maintained on both Districts according to the following categories: firearms; soft hand; defensive spray; expandable baton; and TASER. The OIM notes that the

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<sup>45</sup> As of April 24, 2012, the Training Bureau in the St. Thomas District had not received any Roll Call Training Forms for training held on St. Thomas during April.

Department has offered Consent Decree related training beyond these limited categories, for which the VIPD must also maintain records.

Finally, for more than one year the OIM has encouraged the VIPD to create a reference source for all of its force-related policies. During the First Quarter, the Training Division distributed binders containing many of the Department's policies to Supervisors in the St. Thomas District who attended supervisory training; the policy binders were also distributed to Supervisors on St. Croix during the Second Quarter. The Police Commissioner subsequently ordered that policy binders be distributed to Officers. As the Department updates and/or adds additional policies, the Training Division should ensure that these binders are promptly updated.

## **2. Recommendations**

The Training working group is the only working group that did not provide the OIM with an action plan or a report detailing the working group's activity during the First Quarter. The OIM has also repeatedly asked the Training Division to provide the OIM with updated training schedules on a regular basis, which the Training Division only did after the OIM asked repeatedly. The Director of Training needs to keep the OIM informed of scheduled training programs so that we can stay apprised of the Training Division's activity and monitor training as our schedule permits. In addition, the Training working group needs to demonstrate that it meets regularly (by providing agenda, minutes, etc.), and should develop an action plan.

Resolving the current impasse with Property and Procurement regarding training should continue to be a high priority for the VIPD. The Department's inability to provide training on several of its issued force related policies has prevented the VIPD from making further progress toward compliance. The OIM also encourages the Department to continue to improve its internal training capacity to help reduce the Department's reliance on expensive outside training vendors. As we have emphasized in previous reports, the VIPD should develop lesson plans for all training programs in advance of the corresponding training (and in most cases while the policy is being finalized) so they can be vetted appropriately without delaying training. Additionally, once the lesson plans are developed the VIPD should conduct "dry runs" so that Training Division personnel can make any necessary adjustments before the training is actually delivered.

The OIM also encourages the Police Commissioner to hold the Chiefs and Deputy Chiefs accountable for their subordinates' compliance

with training requirements. To that end, the Training Division should also continue to keep the Chiefs and Deputy Chiefs apprised whenever VIPD personnel in their command miss a scheduled training.

Once instructor training is conducted for a VIPD policy and instructors obtain the proper certifications, the OIM recommends that the Training Division promptly provide training to VIPD personnel on the underlying policy. Specifically, as of the end of the First Quarter the Department needed to train VIPD personnel on the Vehicle Pursuit Policy, Spike Strip Policy, SRT/HNT Policy, Sniper Policy, Off-Duty Official Action Policy, and FTO Policy. Additionally, the Training Division must 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 the ECW Policy (discussed *supra* at p. 17), Accepting Citizen Complaints Policy (discussed *supra* at p. 22), and the preponderance of the evidence standard for Supervisors (discussed *supra* at pp. 24-25).

Despite making progress during the First Quarter, the VIPD has not substantially complied with ¶¶ 73-81 of the Consent Decree. In addition to holding training programs for a number of recently issued policies, the Training Division must work closely with the Use of Force, Complaint Process, and Management and Supervision working groups to prepare training programs for policies that are under development. Moreover, the Training Division must identify areas that require additional training, either through additional in-service training or Roll Call and Commanders Call training, to ensure that VIPD personnel adequately understand their obligations.

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

### **1. Status, Assessment, and Recommendations**

On January 13, 2012, the VIPD submitted its eleventh Status Report to the DOJ and the OIM. The eleventh Status Report is the most comprehensive description of the VIPD's Consent Decree compliance efforts that the OIM has received to date, and we commend the VIPD on that effort. We reiterate that it is in the VIPD's interest to share as much information with the OIM as possible so that we can accurately, fairly, and comprehensively report on all of the VIPD's efforts. To that end, we suggest that the Department append certain additional materials relating to the Consent Decree to its status reports, including, but not limited to, any policies, directives, or memoranda that were issued during the prior quarter, revised action plans and meeting minutes for each working

group, documentation of any internal audits, and training attendance sheets and lesson plans. Finally, the OIM encourages the VIPD to clearly state in its status report whether it believes that it has achieved substantial compliance with each substantive provision of the Consent Decree. We note that the VIPD did not claim to be in substantial compliance with any substantive provision during the First Quarter.

For several quarters, the OIM requested access to the administrative investigation files for two fatal police involved shootings that occurred on St. Thomas in September 2011 and on St. Croix in January 2012. The OIM's position (vigorously supported by the DOJ) has always been that ¶ 95 of the Consent Decree grants the OIM access to those files (along with certain other materials, such as arrest reports, arrest warrants, and warrant application).<sup>46</sup> Nevertheless, the VIPD steadfastly refused to grant the OIM access to those files because it was concerned that doing so could compromise ongoing parallel criminal investigations. After extensive discussions between the OIM, VIPD/VIAG, and the DOJ, the VIPD agreed to share the administrative investigation files with the OIM. As a result, the OIM was finally given access to the requested administrative investigation files during the Second Quarter. We will discuss our findings in the next quarterly report. The OIM expects the VIPD to provide administrative investigation files for any future cases without undue delay.

## 2. Status of Substantial Compliance

Before the Consent Decree expires on March 23, 2014, the VIPD must substantially comply with each Consent Decree provision and remain in compliance for two years.<sup>47</sup> Under the Consent Decree Timetable, the VIPD should have substantially complied with ¶¶ 32-58, 70, and 72 by May 31, 2011, ¶¶ 60, 61, and 73-81 by June 30, 2011, and ¶¶ 49, 59, 63-66 by September 15, 2011. Instead, they have only complied with ¶¶ 82-86, 88 and 98.

Specifically, as the OIM has previously reported, the VIPD has only complied with the following Consent Decree provisions (a chart summarizing the VIPD's progress toward substantial compliance is at the end of the Executive Summary):

- In January 2010, the Parties to the Consent Decree selected the Monitor (CD ¶¶ 82-86);

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<sup>46</sup> CD ¶ 95.

<sup>47</sup> CD ¶ 103.

- Effective June 2009, the Police Commissioner appointed a Compliance Coordinator to serve as a liaison between the Parties to the Consent Decree and the Monitor (CD ¶ 88); and
- Beginning in June 2009, the VIPD began issuing quarterly status reports delineating the steps taken by the VIPD to comply with the Consent Decree (CD ¶ 98).

The OIM provided a draft Substantial Compliance Thresholds Chart (“Chart”) to the Department on November 1, 2011. The Chart is intended to guide the VIPD toward substantial compliance by identifying the criteria that the OIM will use to evaluate the VIPD’s compliance with the Consent Decree. After receiving general comments from the VIAG during the Fourth Quarter of 2011, the OIM sent a letter on December 1, 2011 to the VIPD’s legal counsel requesting a conference call to discuss the VIPD’s comments. In an effort to move forward with finalizing the Chart, the OIM also requested that the Parties provide concrete proposals for modifying the Chart. After lengthy delays by the VIAG, the OIM and the VIAG had a substantive conversation on April 3, 2012 during which the VIAG agreed to provide the OIM with specific draft language to amend any metrics that the VIAG considered objectionable by May 3, 2012. As of June 5, 2012, the VIAG had not responded as promised. There is no excuse for this delay, particularly since the VIAG advises the Territory, which is a party to the Consent Decree. We encourage the Police Commissioner to follow up with the VIAG about the OIM’s outstanding request for their proposed revisions.

Despite these delays, the OIM remains hopeful that the Chart will be finalized and that the OIM will be able to use the Chart to evaluate the Department’s compliance by the Fourth quarter of 2012. Once the Chart is implemented, the Audit Team should utilize it to conduct its own internal audits during the life of the Consent Decree and beyond.

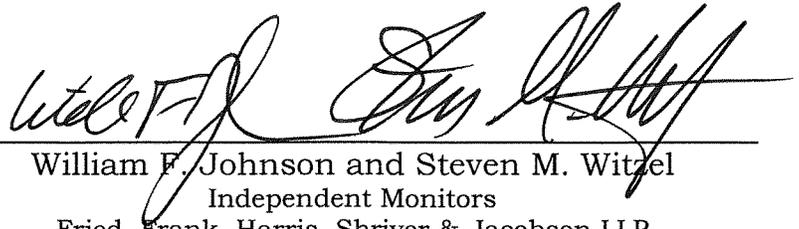
## Conclusion

The VIPD has made significant progress in certain areas, including policy development and the creation of the citizen complaint process. The VIPD, however, appears to recognize that a tremendous amount of work remains. For example, the VIPD's Status Report does not assert that the Department is in full compliance with a single substantive provision of the Consent Decree.

In order to move toward substantial compliance, the working groups must increase their level of collaboration and set more aggressive goals for satisfying their respective objectives. Part of this process includes working in concert with the Training Division and IAB to ensure that issued policies are implemented, and that personnel understand and comply with Department policies.

In addition, the Training Division must continue to build its internal training capacity to allow Consent Decree related training to occur with greater frequency, and to obviate its current reliance on outside training vendors. The VIPD must also develop a process for assuring that the goals of training are achieved and that VIPD personnel can apply training in daily policing activities. Finally, as we have repeatedly stated, the Department's Supervisors are critical to the VIPD's compliance with the Consent Decree. Without proper supervisory oversight, substantial compliance will be a near impossibility.

Despite the challenging road ahead, the OIM continues to believe that the Department has the capacity to comply with the Consent Decree. To that end, we encourage the Police Commissioner to hold every member of the Department accountable for making progress on the Consent Decree.



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## **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;<sup>1</sup>
- 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.<sup>2</sup>

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<sup>1</sup> 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.<sup>3</sup>

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.

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**Footnote continued from previous page**

<sup>2</sup> 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.

<sup>3</sup> 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.<sup>4</sup> 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;

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<sup>4</sup> 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 Patois<sup>5</sup> 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

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<sup>5</sup> 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.”<sup>6</sup>
  - 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

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<sup>6</sup> 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.

investigation as necessary to determine whether the allegations 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;<sup>7</sup>
- 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

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<sup>7</sup> 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.<sup>8</sup>

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,

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<sup>8</sup> 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.

**VI. 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.