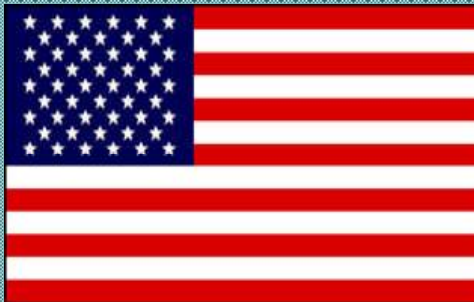
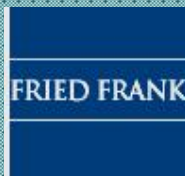


# **First Quarterly Report of 2013 of the Independent Monitor for the Virgin Islands Police Department**



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## Executive Summary

This is the First Quarterly Report of 2013 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, 2013.<sup>1</sup>

In the First Quarter, the OIM’s Police Practices Experts conducted two week-long monitoring trips to the United States Virgin Islands (the “Territory”). During these trips, the Police Practices Experts spent time meeting with and providing technical assistance to VIPD personnel, observing Consent Decree related training, and reviewing closed investigation files and other police records. In addition, there were further communications and updates, telephonically and electronically, between the VIPD and the Police Practices Experts, as well as periodic telephone conferences between the VIPD, the United States Department of Justice (the “DOJ”), the Police Practices Experts, and the Monitors to discuss the VIPD’s efforts towards substantial compliance with the Consent Decree. The assessments contained in this Report are primarily based on the Police Practices Experts’ observations and the Department’s quarterly Status Report, dated April 5, 2013 (“VIPD Report”). While the VIPD’s reports and audits aide the OIM in its assessment of the VIPD’s progress, substantial compliance determinations are based solely on the OIM’s independent assessment.

The VIPD continued to make progress during the First Quarter and for the first time achieved substantial compliance with ¶ 42. Despite that progress, significant additional work remains in key areas relating to the use, reporting, and investigation of force. The Department's use of force practices are at the heart of the Consent Decree and should be the focus of its compliance efforts. Additionally, just two days before the VIPD was required to comply with certain audit requirements in the Joint Action Plan, it filed a motion with the Court requesting an extension until October 31, 2013 to comply. According to the VIPD, it could not achieve the Joint Action Plan’s June 30, 2013 deadline because it failed to finalize the Disciplinary Matrix and to complete training for its Audit Team on a timely basis. In response, the DOJ asked the Court to require the VIPD to explain, among other things, how the extension would affect its ability to comply with the Consent Decree’s final substantial compliance deadline, which is also October 31, 2013.

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<sup>1</sup> This Report references a limited number of events that occurred after March 31, 2013 to provide context for efforts made by the VIPD outside of the First Quarter of 2013 to satisfy its Consent Decree obligations.

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One of the completed use of force investigation files that the OIM's Police Practices Experts reviewed during the First Quarter highlighted deficiencies relating to the Department's force practices. In that case, two Officers responded to an assisted living facility where they encountered a mentally disturbed individual in a wheelchair (the "Subject"). The Subject was reportedly holding a plastic bottle of soda and refused to put it down when the responding Officers ordered him to do so. The Subject did not pose a physical threat to the responding Officers or anyone else. Nevertheless, one of the responding Officers struck the subject with a baton. As discussed below, the responding Officers did not utilize de-escalation techniques; the use of force was excessive; the responding Officers did not report the use of force on a timely basis; and the VIPD did not conduct an appropriate investigation into the use of force. The VIPD will not be able to satisfy its Consent Decree obligations until it complies with these core requirements.

To that end, the VIPD needs to further reinforce the requirements of its revised use of force policies through continuing in-service, Roll Call and Commanders Call training. To the extent that VIPD personnel violate the Department's policies, the Police Commissioner should hold the offender (regardless of rank) and the entire chain of command accountable. The Police Commissioner has repeatedly expressed a strong commitment to accountability and constitutional policing. We applaud the Police Commissioner's words and look forward to doing whatever we can to help him lead the Department towards achieving substantial compliance with the Consent Decree.

As we previously reported, efforts were initiated during the Fourth Quarter of 2012 and First Quarter of 2013 to organize a "summit" among the VIPD, the United States Virgin Islands Attorney General's Office (the "VIAG"), the DOJ, and the OIM to discuss ideas and initiatives surrounding the Consent Decree process in order to make it more effective, and to help the VIPD achieve substantial compliance. At the beginning of the Second Quarter (April 11 and 12, 2013), the OIM met with the Parties in Washington, D.C. to discuss the VIPD's progress with Consent Decree compliance. The discussions were very encouraging, and we hope to build on the momentum generated from these discussions going forward.

## Introduction

This is the First Quarterly Report of 2013 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, 2013.

The OIM was established in January 2010 to monitor compliance by the United States Virgin Islands (the “Territory”) and the VIPD with the Consent Decree entered by the United States District Court for the Virgin Islands (the “Court”) on March 23, 2009. The Monitor is required by the Consent Decree to “issue quarterly written, public reports detailing the Territory’s compliance with and implementation of each substantive provision” of the Consent Decree.<sup>2</sup>

The Consent Decree reflects the agreement between the Territory, the VIPD, and the United States Department of Justice (the “DOJ”) (collectively, the “Parties”) to resolve a lawsuit brought by the United States alleging that the Territory and the VIPD violated 42 U.S.C. § 14141 by engaging “in a pattern or practice of excessive force by Officers of the Virgin Islands Police Department and by the failure to adequately train, supervise, investigate, and discipline Officers.”<sup>3</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 United States.”<sup>4</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 Parties subsequently filed a timetable on

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<sup>2</sup> 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>3</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).

<sup>4</sup> CD ¶ 3.

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November 24, 2010 that set forth specific dates by which the VIPD would substantially comply with each substantive provision in the Consent Decree (the “Consent Decree Timetable”). The Consent Decree Timetable also created interim deadlines for the VIPD to submit force-related policies to the DOJ for approval. The VIPD successfully met nearly every policy submission deadline. However, by the end of the Third Quarter of 2011, the VIPD had missed all of the remaining deadlines for substantial compliance established by the Court-ordered Consent Decree Timetable (deadlines that the VIPD proposed and committed to meeting). For example, under the Consent Decree Timetable, the VIPD was required to substantially comply with Consent Decree ¶¶ 32-58, 70, and 72 by May 31, 2011, ¶¶ 60, 61, and 73-81 by June 30, 2011, and ¶¶ 49, 59, and 63-66 by September 15, 2011. To date, the VIPD has complied with ¶42 and non-substantive provisions ¶¶ 82-86, 88, and 98.

In January 2011, to encourage compliance within the timeframe of the Consent Decree Timetable, the then-Police Commissioner convened a Consent Decree Summit on St. Thomas on January 3 and 4, 2011 (the “Summit”).<sup>5</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),<sup>6</sup> Citizen Complaint Process (Chief of the St. Thomas District),<sup>7</sup> 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>8</sup>

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

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<sup>5</sup> The OIM discussed the Summit in detail 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>6</sup> Following on-duty injuries sustained by the Chief of the St. Croix District during the Third Quarter of 2012, the Deputy Chief of St. Croix assumed responsibility as Acting Chief of the St. Croix District and Acting Leader of the Use of Force working group. The Acting Chief appointed a Captain as his point person, and she has recruited new members and commenced regular meetings of the working group.

<sup>7</sup> The Citizen Complaint Process working group is now led by the Deputy Chief of St. John.

<sup>8</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. During the First Quarter, the Police Practices experts regularly exchanged emails and telephone calls with their counterparts and met in person during the quarter’s monitoring trips.



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

At the beginning of the Second Quarter, the OIM met with the Parties in Washington, D.C. to discuss the VIPD's progress with Consent Decree compliance. The discussions were very encouraging, and we hope to build on the momentum generated from these discussions going forward. Beginning this quarter, and as discussed with the Parties in Washington, D.C., the OIM will assess the VIPD's compliance with the Consent Decree in 3-phases—Phase 1: Policy; Phase 2: Training/Execution; Phase 3: Consistent Application. Phase 1 will assess whether the VIPD has issued policies reflecting the Consent Decree requirements. Phase 2 will evaluate whether the VIPD has provided initial and ongoing training (e.g., annual in-service training, Roll and Commanders Call training) on these policies. And, Phase 3 will assess whether the VIPD demonstrates consistent application of the Department's policies in its everyday policing activities. Certain phases may not be applicable to all Consent Decree requirements. For example, the provisions relating to training (§§ 75-79) primarily concern the training process, rather than training on a particular policy. Therefore, Phase 1 will not be applicable to those provisions. Moreover, where Phase 1 is inapplicable because there is no required policy, Phase 2 will focus on steps towards execution, including training.

The VIPD will achieve substantial compliance with a Consent Decree provision only when it has complied with all three phases. The OIM and the Parties are hopeful that this approach will better account for incremental (but meaningful) progress made by the VIPD while continuing to strive for substantial compliance.

## Status of Substantial Compliance

<u>Consent Decree ¶</u>	<u>Phase 1: Policy</u>	<u>Phase 2: Training/Execution</u>	<u>Phase 3: Consistent Application</u>
31	Satisfied	Satisfied	Not Satisfied
32	Satisfied	Satisfied	Not Satisfied
33	Satisfied	Satisfied	Not Satisfied
34	Satisfied	Satisfied	Not Satisfied
35	Satisfied	Satisfied	Not Satisfied
36	Satisfied	Satisfied	Not Satisfied
37	Satisfied	Satisfied	Not Satisfied
38	Satisfied	Satisfied	Not Satisfied
39	Satisfied	Satisfied	Not Satisfied
40	Satisfied	Satisfied	Not Satisfied
41	Satisfied	Satisfied	Not Satisfied
42	Satisfied	Satisfied	Satisfied
43	Satisfied	Satisfied	Not Satisfied
44	Satisfied	Satisfied	Not Satisfied
45	Satisfied	Satisfied	Not Satisfied
46	Satisfied	Satisfied	Not Satisfied
47	Satisfied	Satisfied	Not Satisfied
48	Satisfied	Satisfied	Not Satisfied
49	Satisfied	Satisfied	Not Satisfied
50	Satisfied	Satisfied	Not Satisfied

<b><u>Consent Decree ¶</u></b>	<b><u>Phase 1: Policy</u></b>	<b><u>Phase 2: Training/Execution</u></b>	<b><u>Phase 3: Consistent Application</u></b>
<b>51</b>	Satisfied	Satisfied	Not Satisfied
<b>52</b>	Satisfied	Satisfied	Not Satisfied
<b>53</b>	Satisfied	Satisfied	Not Satisfied
<b>54</b>	Satisfied	Satisfied	Not Satisfied
<b>55</b>	Satisfied	Satisfied	Not Satisfied
<b>56</b>	Satisfied	Satisfied	Not Satisfied
<b>57</b>	Satisfied	Satisfied	Not Satisfied
<b>58</b>	Satisfied	Satisfied	Not Satisfied
<b>59</b>	Satisfied	Satisfied	Not Satisfied
<b>60</b>	Satisfied	Not Satisfied	Not Satisfied
<b>61</b>	Satisfied	Satisfied	Not Satisfied
<b>62</b>	Satisfied	Not Satisfied	Not Satisfied
<b>63</b>	Satisfied	Satisfied	Not Satisfied
<b>64</b>	Satisfied	Satisfied	Not Satisfied
<b>65</b>	Satisfied	Satisfied	Not Satisfied
<b>66</b>	Satisfied	Satisfied	Not Satisfied
<b>67</b>	N/A	N/A	N/A
<b>68</b>	N/A	N/A	N/A
<b>69</b>	Not Satisfied	Not Satisfied	Not Satisfied
<b>70</b>	Not Satisfied	Not Satisfied	Not Satisfied
<b>71</b>	Satisfied	Satisfied	Not Satisfied
<b>72</b>	Satisfied	Satisfied	Not Satisfied

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<b><u>Consent Decree ¶</u></b>	<b><u>Phase 1: Policy</u></b>	<b><u>Phase 2: Training/Execution</u></b>	<b><u>Phase 3: Consistent Application</u></b>
<b>73</b>	N/A	Not satisfied	Not Satisfied
<b>74</b>	N/A	Not Satisfied	Not Satisfied
<b>75</b>	N/A	Satisfied	Not Satisfied
<b>76</b>	N/A	Satisfied	Not Satisfied
<b>77</b>	N/A	Satisfied	Not Satisfied
<b>78</b>	N/A	Satisfied	Not Satisfied
<b>79</b>	N/A	Not Satisfied	Not Satisfied
<b>80</b>	Satisfied	Satisfied	Not Satisfied
<b>81</b>	Satisfied	Satisfied	Not Satisfied

## 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>9</sup> as well as monitoring activities by the OIM’s Police Practices Experts during the quarter. The organization of this section of the Report parallels the organization of the Consent Decree. Specifically, we provide a *status and assessment* discussion that describes and analyzes the VIPD’s progress toward achieving substantial compliance with the Consent Decree’s requirements.<sup>10</sup> We include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree’s requirements.<sup>11</sup>

### Use of Force Policies

#### Joint Action Plan Requirements

Joint Action Plan Requirements	Status
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system) and periodically test proficiency with the policies.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has a methodology for such a tracking system.
By <b>November 30, 2012</b> , ensure that the Virgin Islands’ Attorney General’s Office, the Training Working Group, and the Use of Force Working Group review all use of force policies.	<b>Not satisfied.</b> The Use of Force working group reported during the First Quarter of 2013 that it planned to review one use of force policy every two weeks. The working group repeatedly said it would provide the OIM with completed review forms, but the OIM never received any. Later in the quarter, the Department determined that a review protocol was required to establish a uniform procedure for reviewing policies before it could proceed further. The VIPD reports that it drafted a Standard Operating Procedure (“SOP”) to “facilitate a systematic review process

<sup>9</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>10</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>11</sup> CD ¶ 85.

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	<p>for the annual review of all department policies, and particularly use of force and other force related polices...” The SOP was submitted to the Policies and Procedures Committee (the “Committee”) during the First Quarter of 2013 for its review.</p>
<p>By <b>November 30, 2012</b>, conduct Use of Force reviews on a quarterly basis.</p>	<p><b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department is systematically conducting such reviews.</p>
<p>By <b>November 30, 2012</b>, VIPD will provide DOJ with an action plan for achieving sufficient numbers of supervisors or outlining how it intends to use existing supervisors to implement the polices and this action plan. The plan will include an implementation date subject to the agreement of the parties.</p>	<p><b>Satisfied, but additional work needed.</b> On December 31, 2012, the DOJ provided comments on the VIPD’s action plan. Among other things, the DOJ sought clarification on what, if anything, the VIPD plans to do if there is a lack of funding for new Supervisors. Recognizing the Department’s fiscal constraints, the VIPD should address that possibility and plan accordingly.</p>
<p>By <b>November 30, 2012</b>, conduct inspections of personnel with report on a quarterly basis.</p>	<p><b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department is conducting inspections. The Acting Police Chief in the St. Croix District issued a memorandum dated March 14, 2013 requiring all Supervisors, including Commanders and Lieutenants, to attend training on how to inspect Ammunition, TASER, OC and Firearms. The training took place for the St. Croix District on March 19<sup>th</sup> and 20<sup>th</sup>, 2013.</p>

<p>By <b>January 31, 2013</b>, competency-based training of officers and supervisors on remaining policies</p> <p>3.8 Off-Duty Policy</p> <p>3.9 Vehicle Pursuit Policy</p> <p>3.10 Spike Strip</p> <p>3.12 Tactical Operations</p> <p>3.13 Sniper Operations</p>	<p><b>Not satisfied.</b> The VIPD has provided training on the Off-Duty Policy and Sniper Operations and train-the-trainer training on the Vehicle Pursuit Policy and Spike Strip. The VIPD also plans to cover several of these policies during in-service training scheduled for the Summer of 2013. The VIPD has not provided the OIM with statistics about the number of Officers and Supervisors that have been trained on these policies.</p>
<p>Refresher training on policies ongoing, through documented, periodic in-service and Roll Call/Commanders Call training. By <b>January 31, 2013</b>, incorporate competency-based training on policies into Police Academy.</p>	<p><b>Not satisfied.</b> Although the VIPD has provided the OIM with attendance sheets and brief descriptions of Roll Call and Commanders Call training, the OIM needs more detailed information about the subject matter being covered. Likewise, the OIM cannot determine whether the VIPD has adequately incorporated competency-based training on policies into the Police Academy because the VIPD (as of the First Quarter of 2013) has not provided the OIM with a full set of lesson plans and related training materials.</p>
<p>By <b>January 31, 2013</b>, execute any contract(s) necessary to train supervisors or others responsible for conducting ballistic or crime scene analyses. By <b>March 31, 2013</b>, conduct the training.</p>	<p><b>Not satisfied.</b> The VIPD has a contract with an outside vendor to analyze ballistics, but there is currently a backlog. Additionally, the VIPD has not provided any documentation that it has trained VIPD personnel on ballistics or crime scene analysis. As of January 30, 2013 (the most recent information provided by the VIPD), ballistics information from three cases, including a police involved shooting from 2011, are outstanding.</p>

**31. The VIPD will review and revise its use of force policies as necessary to: a) define terms clearly; b) define force as that term is defined in this Agreement; c) incorporate a use of force model that teaches**

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 31 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 31 of the Consent Decree.

**VIPD Report:**

The VIPD reports that the Committee is in the process of finalizing several policies relating to Arrest/Limits of Authority, Audit, the Blue Team Protocol and Officer Involved/Post Shooting. Once the Committee completes its work on these policies, it plans to review the force policies that are currently in effect.

**OIM Report:**

As previously reported, the VIPD has received DOJ approval for twelve force-related policies: (1) Use of Force; (2) Reportable Use of Force; (3) Impact Weapons; (4) Electronic Control Weapon (“ECW”); (5) O.C. Spray; (6) Vehicle Pursuit; (7) Spike Strip; (8) Off-Duty Official Action; (9) Firearms; (10) Field Training Officer Program (“FTO”); (11) Special Operations – Special Response Team and Hostage Negotiations Team (“SRT/HNT”); and (12) Special Operations SRT – Sniper (“Sniper”). The VIPD adopted these policies in partial satisfaction of ¶¶ 31 to 41 of the Consent Decree. The Department’s Use of Force Policy incorporates all of the elements set forth in subparts a-g of ¶ 31. In addition, the Department has created and put into place the Response to Resistance Reporting Forms (“RRR”) (formerly known as Use of Force Reports) for VIPD personnel to document uses of force pursuant to the Reportable Use of Force Policy; RRRs should be completed whenever force is used. During the First Quarter of 2013, however, the VIPD did not provide the OIM with documentation that VIPD personnel are proficient in the requirements of the Department’s use of force policies or that the Department has fully implemented those policies. The Consent Decree defines implementation as



“the development or putting into place of a policy or procedure, including the appropriate training of personnel.” Although the Department has provided training on most of its use of force policies, we have not been provided with documentation showing that they are being sufficiently reinforced through ongoing training.

The VIPD’s failure to fully implement its Use of Force Policy is illustrated by the Department’s apparent use of excessive force against a mentally disturbed individual in September 2012; the OIM reviewed the completed use of force investigation file during the Fourth Quarter of 2012.<sup>12</sup> In that case, two Officers responded to an assisted living facility where they encountered a mentally disturbed individual in a wheelchair (the “Subject”). The Subject was reportedly holding a plastic bottle of soda and refused to put it down when the responding Officers ordered him to do so. Notably, the responding Officers’ RRRs (which, as discussed below, were filed late) did not articulate any threat to the Officers or anyone else and did not disclose the highly relevant fact that the Subject was in a wheelchair. Nevertheless, at least one of the responding Officers struck the subject with a baton. The Use of Force Policy states that VIPD Officers must “use only the minimum amount of force necessary and reasonable to control a situation” and “the degree of force should be in direct relationship to the amount of resistance exerted, or the immediate threat to the officers or others.” In this case, the use of a baton was likely excessive and in violation of the Use of Force Policy.

The Use of Force Policy also requires Officers to report uses of force “immediately following” the incident. In this case, the responding Officers did not file RRRs until September 10 (two days after the use of force) and September 24 (two weeks after the use of force), respectively. Moreover, based on the investigative file, it appears that the responding Officers only completed RRRs at all because their use of force against the Subject was discovered by other VIPD personnel. The IAB was notified about the use of force by a private citizen and initiated an investigation as a result. Failing to report force on a timely basis violates the Use of Force Policy and seriously undermines the Department’s risk management capacity. Other deficiencies associated with the Department’s investigation of this case will be discussed below in the Management and Supervision section.

The DOJ approved the Reporting, Investigation and Review of Use of Force Policy in the First Quarter of 2013 and the VIPD issued it during the Second Quarter of 2013. The Reporting, Investigation and Review of Use of Force Policy is intended to address concerns among some VIPD personnel that the existing Use of Force Policy and Reportable Use of Force Policy impose too great a burden on Supervisors by requiring “all inclusive” force reviews for comparatively “minor” force incidents. Under the new policy, the VIPD would

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<sup>12</sup> See UofX 2012-0046.

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adjust the scope of its investigation in proportion to the type of force used, meaning that comparatively “minor” uses of force would typically require less exhaustive investigations than more severe uses of force.

The VIPD first reported during the Third Quarter of 2012 that it would start reviewing its use of force policies and related training on an annual basis in consultation with the VIAG. As part of that process, the VIPD developed a review form entitled “Use of Force Policies/Training Review” to collect comments and recommendations for each policy. The Training Director (or his designee) was required to sign the form to document his/her receipt and review. Despite repeated requests, the VIPD has not provided the OIM with any completed forms. During the First Quarter of 2013, the Department determined that a review protocol was required to establish a uniform process for reviewing policies. The VIPD is in the process of finalizing such a process in the form of an SOP. Once the SOP is finalized, the VIPD reports that it will resume the policy review process.

Prior to drafting the SOP, the Use of Force working group provided the OIM with its proposed revisions to the Firearms Policy, which the working group submitted to the Committee for consideration. The VIPD has indicated that it may re-review the Firearms Policy once the SOP is complete.

With respect to the Department’s compliance with the specific requirements of ¶ 31:

a) The Use of Force Policy defines terms clearly and in compliance with the Consent Decree;

b) The Use of Force Policy defines “force” as that term is defined in the Consent Decree;

c) Although the Use of Force Policy includes a “use of force continuum” and discusses disengagement, area containment, surveillance, and other related techniques, we have not seen the Department fully incorporate those techniques or the use of force continuum into police operations. This is especially true when executing search and arrest warrants. For example, Officers’ RRRs typically do not describe their efforts, if any, to diffuse situations, disengage and summons supervisors to the scene prior to, or in conjunction with, the deployment of force. Nevertheless, we are encouraged by the work of several Sergeants who used a force incident to train Officers on de-escalation techniques and the importance of separating combatants. The VIPD needs to more broadly take action in this regard;

d) VIPD personnel are not documenting the steps taken to allow individuals, whenever practicable, to submit to arrest before force is used. The VIPD should consider requiring that Officers describe such steps in the RRR;

e) The VIPD has not provided the OIM with documentation showing its efforts to reinforce awareness that the use of excessive force will subject VIPD personnel to discipline, possible criminal prosecution, and/or civil liability;

f) The VIPD appears to have provided sufficient less lethal alternatives to all patrol officers. The VIPD has issued less lethal force tools, including O.C. Spray, batons, and TASERS, to Officers and provided corresponding training;

g) The Use of Force Policy explicitly prohibits the use of choke holds and similar carotid holds except where deadly force is authorized.

**Recommendations:**

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

In light of our concerns about the VIPD's limited use of de-escalation techniques, the Department should send as many Officers as possible to Crisis Intervention Training ("CIT"). CIT teaches officers how to respond appropriately in stressful situations that could rapidly escalate if handled poorly. Our understanding is that it has been some time since any VIPD members attended CIT. We recommend that this be made a priority. Recognizing the importance of CIT, some police departments have incorporated a 40-hour CIT program into recruit training at the police academy. The VIPD should consider doing so.

The Department should also finalize the Arrest Policy that was sent to the VIAG for review during the First Quarter of 2013. Once the Arrest Policy is finalized, the Department should move quickly to implement it by providing corresponding training to VIPD personnel. As previously reported, until the Department implements the Arrest Policy, it will continue to underreport arrests and possible uses of force.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 32 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 32 of the Consent Decree.

**VIPD Report:**

The VIPD reports that the Use of Force working group began to collect Arrest and Form 1As from both Districts during the First Quarter of 2013 to identify Officers who failed to report force, as well as Supervisors who failed to investigate force. To facilitate that effort, the Acting Police Commissioner, at the request of the Use of Force working group, issued a memorandum dated February 13, 2013 that required the VIPD's National Crime Information Center ("NCIC") unit to create a folder containing every arrest report generated by the Department, which will be collected by the members of the Use of Force working group on a weekly basis.

**OIM Report:**

The VIPD has issued the Use of Force Policy and Reportable Use of Force Policy in partial satisfaction of ¶ 32 of the Consent Decree.

To evaluate the Department's use of force reporting practices, the OIM's Police Practices Experts reviewed a total of 9 completed use of force investigation files from the St. Thomas and St. Croix Districts during the First Quarter of 2013. Throughout the Report, certain statistics may be calculated from a total number of less than 9 because: (1) the Police Practices Experts were unable to draw certain conclusions based on the information included in the investigative files; (2) a Consent Decree requirement was not applicable to all investigations, in which case we used the total number of applicable investigations; or (3) the particular requirement was not assessed during the First Quarter of 2013 by the Police Practices Experts.

Based on that review, the Police Practices Experts concluded that VIPD personnel reported uses of force in RRRs (though not always on a timely basis) in 100% (9 out of 9) of the closed investigations reviewed during the First Quarter of 2013;<sup>13</sup> Supervisors described the events preceding the use of force and evaluated the appropriateness of each type of force used in 89% (8 out of 9) of the investigation files (a slight decline from 91% (10 out of 11) in the Fourth Quarter of 2012 for a description of the events preceding the use of force)<sup>14</sup>; 89% (8 out of 9) of the investigation files included the Officer's description of events (a slight decline from 100% (11 out of 11) in the Fourth Quarter of 2012); the RRRs in 100% (9 out of 9) of the investigation files indicated the type of force used (an improvement from 91% (10 out of 11) in the Fourth Quarter of 2012); audiotaped statements were taken in 67% (6 out of 9) of the investigations (an improvement from 60% (6 out of 10) in the Fourth Quarter of 2012); and 56% (5 out of 9) of the investigations were completed within the timeline required under the Reportable Use of Force Policy (a significant decline from 82% (9 out of 11) in the Fourth Quarter of 2012).<sup>15</sup>

**Recommendations:**

The full and timely reporting of force is a cornerstone requirement of the Consent Decree. The Use of Force working group should continue to audit Arrest Reports and Form 1As to determine the extent to which force is being reported across the Districts. Based on those audits, the VIPD should develop a process for identifying personnel who continually fail to report the use of force. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training or other corrective action, including disciplinary sanctions, as necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM. We are especially eager to learn the results of the Department's on going force audit. According to a February 20, 2012 memorandum from the Consent Decree Manager to the Acting Police

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<sup>13</sup> 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. Based on the use of force investigations that the Police Practices Experts have reviewed, it appears that most use of force investigations do not involve a large number of witnesses or evidence. In these cases, the corresponding use of force investigations should be completed within the required 30 days. When circumstances arise that make it impossible to complete an investigation within this time period, the Department should include in the investigation file a statement explaining the delay and evidence that an extension has been requested and granted.

<sup>14</sup> Since samples sizes for each statistic assessed vary from quarter to quarter, references to results from the prior quarter are provided for comparison.

<sup>15</sup> See the discussion of UofX 2012-0046 *infra* at p. 16.

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Commissioner, the Department's audit was supposed to be completed in two to four weeks. Nearly six months later, the OIM has not yet received any documentation relating to that audit.

**33. Officers shall notify their supervisors following any use of force [or]<sup>16</sup> upon the receipt of an allegation of excessive force. Except in uses of force involving the lowest level of force as defined in VIPD policy as approved by DOJ, supervisors will respond to the scene, examine the subject for injury, interview the subject for complaints of pain, and ensure that the subject received needed medical attention.**

### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 33 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 33 of the Consent Decree.

### **VIPD Report:**

The VIPD reports that the execution of audits is the next step that the VIPD will take to ensure compliance with ¶ 33. According to the VIPD, efforts are ongoing to provide the Audit Group members, as well as other supervisory and managerial personnel, with audit training. Audits will be conducted on a regular basis to gauge areas of compliance and to make recommendation(s) for corrective action where necessary. The target date for completing audit training was March or April 2013, but issues with the vendor's contract delayed the training. As of the end of the First Quarter of 2013, the VIPD reported that it was working to resolve any outstanding contract issues and receive approval from the Department of Property and Procurement.

In order to improve awareness about the Department's revised use of force policies, the VIPD has developed and disseminated 4 different posters with helpful information, such as a reminder to include PDNs (Permanent Designator Numbers) on all reports, a flow chart explaining the citizen complaint process, and a poster that identifies the four levels of use of force investigations. These posters have been placed conspicuously throughout the Zones.

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<sup>16</sup> During the First Quarter of 2013 the Parties jointly filed a motion to correct or amend the Court's Order, dated December 13, 2012, by inserting "or" into the first sentence of ¶ 33 of the Consent Decree.

**OIM Report:**

The Police Practices Experts reviewed 9 completed use of force investigation files during the First Quarter of 2013 to evaluate the Department's use of force reporting practices. Among other things, that review showed that Officers timely notified Supervisors following a use of force in 63% (5 out of 8) of the investigations (representing essentially no change from 64% (7 out of 11) in the Fourth Quarter of 2012), and that Supervisors responded to the scene and conducted an investigation in 50% (4 out of 8) of the investigations (a slight decline from 56% (5 out of 9) in the Fourth Quarter of 2012).

Supervisors, with a few notable exceptions, are not adequately detailing the steps that they take after responding to a use of force incident. For example, did they canvas the area for witnesses, secure evidence, etc.? Additionally, in cases where follow up investigative work may be required, Supervisors do not appear to be taking steps to ensure that witnesses are identified for later contact or that photographs were taken of reported injuries.

**Recommendations:**

The Use of Force working group should audit whether Officers are notifying their Supervisors following any use of force or allegation of excessive use of force. The Use of Force working group should also audit whether Supervisors are responding to the scene of a use of force, examining the subject for injury, interviewing the subject for complaints of pain, and ensuring that the subject receives needed medical attention. All audits should be documented and shared with the Compliance Coordinator and the OIM. In our reviews, we also seldom see any documentation of when a Supervisor arrived on the scene to investigate a use of force and what he or she did. That information should be recorded in a report by the Supervisor, detailing the duties performed in the investigation of the use of force.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 34 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 34 of the Consent Decree.

**VIPD Report:**

After receiving approval for and issuing the Use of Force Policy and other force related policies and providing corresponding training, the VIPD initiated an audit (which started in November 2012) to determine whether the department is complying with its revised policies. The final audit report is not yet completed, but will be shared with OIM once finalized. The audit is being done by the Use of Force working group and covers both Districts.

**OIM Report:**

Based on the Police Practices Experts' review of completed use of force investigations during the First Quarter of 2013, we concluded that Supervisors included narratives describing the facts and circumstances that justified or failed to justify the Officer's conduct in 89% (8 out of 9) (a slight increase from 82% (9 out of 11) during the Fourth Quarter of 2012). In 100% (9 out of 9) of the completed use of force investigations (also 100% (11 out of 11) in the Fourth Quarter of 2012) Supervisors evaluated the basis for the use of force; in 100% (9 out of 9) of the investigations, Supervisors determined whether the Officer's actions were within VIPD policy (an increase from 82% (9 out of 11) in the Fourth Quarter of 2012); and 63% (5 out of 8) of the investigations were conducted by Supervisors who were not directly involved in the use of force incident (down from 100% (11 out of 11) in the Fourth Quarter of 2012).

In the use of force investigation described in ¶ 31, one of the Officers who used force against the Subject signed off on his own RRR as the Supervisor, potentially circumventing an independent investigation. The VIPD's failure to fully comply with the Consent Decree's sensible requirement that an Officer who uses or authorizes force cannot investigate that same use of force is disappointing and unacceptable at this late point in the Consent Decree process. Such deficiencies underscore the importance of effective supervision and ongoing training on the Department's use of force policies.

**Recommendations:**

The Use of Force working group should audit whether Supervisors are conducting adequate use of force investigations. All audits should be documented and shared with the Compliance Coordinator and the OIM. The Use of Force working group should also audit Form 1As and 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, IAB and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions, as necessary. The Use of Force working group's audits should also include a review of investigations by Supervisors or Commanders whose force reviews have previously failed to meet the requirements of ¶ 34.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 35 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 35 of the Consent Decree.

**VIPD Report:**

The VIPD reports that its next step is to audit compliance with ¶ 35.

**OIM Report:**

Based on audio recordings of Officer and witness interviews, the Police Practices Experts noted that IAB agents avoid using leading questions and appear to make fair assessments and inferences of the available evidence. The same cannot be said of investigations that are conducted by the Zones. In some of those cases, Supervisors failed to consider evidence or did not document how each piece of evidence factored into their determinations. Each piece of evidence (witness statements, physical evidence, and all other collected evidence) must be analyzed and credibility determinations made. Based on that analysis, Supervisors should then determine whether force was properly used.

As discussed above, the Police Practices Experts reviewed 9 completed investigation files during the First Quarter of 2013 to evaluate the Department's use of force reporting practices. Among other things, that review showed that Supervisors did not use leading questions in 25% (2 out of 8) of use of force investigations.

**Recommendations:**

The VIPD should require Supervisors to identify the universe of relevant evidence and document what each piece means to the case under review. We also recommend that the VIPD provide refresher training to Supervisors on making credibility determinations and drawing inferences from those determinations.

The Use of Force working group should audit use of force investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 35 of the Consent Decree. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work in concert with the Chiefs, IAB and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions, as necessary.

**36. Supervisors, or designated investigating officers or units, shall conduct an investigation of all uses of force or injury resulting from a use of force by any officer under their command. This requirement does not apply to uses of force involving the lowest level of force as defined in VIPD policy as approved by DOJ. In an investigation, supervisors or designated investigating officers or units, shall interview all witnesses to a use of force or an injury resulting from a use of force. Consistent with the requirements of the collective bargaining agreement or other applicable law, VIPD supervisors or designated investigating officers or units shall ensure that all officer witnesses provide a statement regarding the incident. Supervisors, or designated investigating officers or units, shall ensure that all use of force reports for all levels of force identify all officers who were involved in the incident or were on the scene when it occurred. Supervisors, or designated investigating officers or units, shall ensure that all reports for all levels of force indicate whether an injury occurred, whether medical care was provided, and whether the subject refused medical treatment. Supervisors, or designated investigating officers or units, shall ensure that all reports include contemporaneous photographs or videotapes taken of all injuries at the earliest practicable opportunity, both before and after any treatment, including cleansing of wounds.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 36 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 36 of the Consent Decree.

**VIPD Report:**

The VIPD reports that its next step is to audit compliance with ¶ 36.

**OIM Report:**

The VIPD is making progress in this area, but further work remains. The Department is identifying witnesses, taking statements, describing and identifying injuries and ensuring that appropriate medical care is provided. Despite these improvements, we noted two cases in the First Quarter of 2013 that were deficient. In one case,<sup>17</sup> the reviewing Supervisor scheduled interviews with witnesses who failed to show up. The Supervisor failed to document what, if anything, he did to further the interview process. For example, did he attempt to reschedule? Visit their place of residence? Call again? Without these important statements, the Department went on and closed the case anyway. No independent witness statement was ever taken. Neither of the senior Commanders who reviewed the investigation caught the error and it went uncorrected.

In another case,<sup>18</sup> a citizen filed a complaint against an Officer for using excessive force. During the citizen's encounter with the Officer, the citizen called other VIPD personnel to report the encounter. The VIPD investigated the citizen's complaint, but never sought to interview the Officers who were on the phone with the citizen during the encounter about what they overheard or were told. That error also went uncorrected.

Based on the Police Practices Experts' review of completed use of force investigations during the First Quarter of 2013, we concluded that Officers who witnessed a use of force provided statements in 71% (5 out of 7) of completed use of force investigations, which is a decline from 100% (9 out of 9) in the Fourth Quarter of 2012. Officers who were involved in the incident or were on the scene when it occurred were identified in 100% (9 out of 9) of the investigations, which is an improvement from 90% (9 out of 10) in the Fourth Quarter of 2012. In all of the applicable investigations (5 out of 5) where injuries were sustained, the Supervisor described the injuries, which is an improvement from 80% (4 out of 5) in the Fourth Quarter of 2012. In addition,

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<sup>17</sup> UofX 2012-0040

<sup>18</sup> CCT 2012-0103

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in 60% (2 out of 5) of the investigations where an Officer or citizen was injured the investigation file contained photographs of the injuries.

### **Recommendations:**

The VIPD should review its current investigative procedures to respond more effectively to uses of force, particularly where officers or citizens are injured. The VIPD's failure to obtain critical evidence, such as photos of injuries, can hamper investigations and is a departure from generally accepted police practices.

The Use of Force working group should also audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 36. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work in concert with the Chiefs, Deputy Chiefs, IAB and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions, as necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

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

### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 37 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 37 of the Consent Decree.

### **VIPD Report:**

The VIPD reports that its next step is to audit compliance with ¶ 37.

**OIM Report:**

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

Unfortunately, the VIPD frequently misses these deadlines, which undermines the Department's ability to discipline Officers within the applicable 50-day statute of limitations. For example, corrective action was only taken against one Supervisor (out of 6) who failed to conduct a timely and thorough review (a decline from the 25% (1 out of 4) in the Fourth Quarter of 2012). Fifty-six percent (5 out of 9) of the use of force investigations reviewed during the First Quarter of 2013 were not completed within the required timeline. The VIPD is trying to remedy this problem by implementing a form to track and document the investigative process. This is a positive step forward and the OIM is anxious to see how the VIPD responds to this new initiative.

The Police Practices Experts found that 44% (4 out of 9) of the use of force investigation files reviewed during the First Quarter of 2013 were complete. This was a decline from 72% (8 out of 11) of the investigation files reviewed in the Fourth Quarter of 2012 being complete. A "complete" investigation file generally consists of the following (to the extent applicable): Form 1A; Arrest Report; completed RRR; video or audio statements from witnesses; photos of injuries, weapons, etc.; the Supervisor's investigative report with an analysis of the facts, evidence identified, and findings; evidence that the Department's chain of command reviewed and approved the completed investigation file; and a disposition letter.

Additionally, in all of the applicable use of force investigations reviewed (8 out of 8), a Zone or Unit Commander reviewed the Supervisor's completed investigation report and concurred with the Supervisor's findings. In 100% (8 out of 8) of the applicable investigations, a Deputy Chief reviewed the investigative report and supporting documents, and concurred with the investigative findings. The Deputy Chiefs identified deficiencies in one investigation out of five.

While the OIM has noted complete investigative reporting from certain Supervisors, the command review process is fraught with too many cases that are returned from the IAB because further investigative work is required. Investigations are often returned because of things that should have been

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caught and corrected when reviewed and signed by a command officer. This is especially disappointing because the Department's command staff set the tone for the entire organization. The failure of Commanders to properly review and correct investigations in a timely manner must be analyzed by VIPD for systemic causes or human errors and fixes quickly implemented.

### **Recommendations:**

The Chiefs and Deputy Chiefs need to hold Supervisors and Commanders strictly accountable for the quality and timelines of use of force investigations. The VIPD's efforts to implement a tracking form for Supervisors to follow the progress of the use of force investigations that are assigned to them is a step in the right direction. The VIPD should keep the OIM updated about its experience using the new tracking form. The VIPD should also determine whether the Department's limited number of available Supervisors is contributing to any deficiencies.

The Use of Force working group should audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 37. In particular, the Use of Force working group should audit whether Supervisors are conducting adequate use of force investigations, and whether the Chiefs/Deputy Chiefs are reviewing investigations, identifying deficiencies, and forwarding closed cases to the IAB and Training Division (for review and archiving). Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. 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, as necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

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

### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 38 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 38 of the Consent Decree.

**VIPD Report:**

The VIPD reports that IAB investigates and documents in IAPRO all critical firearms discharges. A list of critical firearms discharges for 2012 was submitted to the OIM on January 17, 2013 and other critical firearms discharges will be made available to OIM as they occur. The VIPD's Reportable Use of Force Policy defines critical firearms incidents as serious uses of force, which IAB investigates. According to the VIPD, a review of serious use of force cases in IAPRO provides evidence that IAB is investigating critical firearm discharges. The VIPD will allow the OIM to review these cases during the OIM's site visit or through any other arrangement that is convenient to the OIM.

Additionally, the IAB reports that it notifies the DOJ, the OIM and the Police Commissioner within twenty-four hours of all serious use of force incidents. To memorialize this notification process, the Director of the IAB disseminated a memorandum to IAB personnel that mandates notification and requires that such notifications be documented on the internal Investigative Planning Worksheet. Notification by the IAB to the Police Commissioner or his designee is also documented on the Investigative Planning Worksheet under the section "Administrative Matters" where date, time, contacted by and contacted via are captured.

**OIM Report:**

During the First Quarter of 2013, investigations into at least three critical firearms discharges, including a critical firearms discharge from an officer involved shooting that took place in 2011, were outstanding due to lack of ballistics analysis. According to the VIPD, there is a contract with an outside provider for such analysis. Unfortunately, there is a significant backlog that is preventing the Department from completing investigations of critical firearms discharges (a key component of the Consent Decree) on a timely basis.

**Recommendation:**

The VIPD must fully investigate all critical firearms discharges. This includes, as stated in the Consent Decree, "ballistic or crime analyses, including gunshot residue or bullet trajectory tests, as appropriate." The VIPD's current system of relying on a single outside vendor for ballistics analysis is not working. The VIPD should identify additional outside resources and consider bolstering its in-house capabilities.

Once the VIPD clears the current backlog of investigations, the VIPD should provide the OIM with documentation that it is investigating all critical firearms discharges as required by ¶ 38 of the Consent Decree.

**39. VIPD shall complete development of a Use of Firearms policy that complies with applicable law and current professional standards. The**

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 39 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 39 of the Consent Decree.

**VIPD Report:**

The VIPD reports that its next step is to audit compliance with ¶ 39.

According to the VIPD, the Use of Force working group will be working with the Training Division to provide training for Supervisors about how to conduct TASER, O.C. Spray and firearms/ammunition inspections.

The Acting Police Chief for the St. Croix District issued a memorandum dated March 14, 2013 requiring all Supervisors, including Commanders and Lieutenants, to attend training on how to inspect TASERs, O.C. Spray and firearms/ammunition. That training took place for the St. Croix District on March 19 and 20. The Training Division subsequently issued a memorandum dated March 21, 2013 that identified all the participants as well as the “no shows.” The VIPD reports that the Training Division is rescheduling the “no shows” for the training.

**OIM Report:**

The VIPD issued its Firearms Policy on May 3, 2011. The Firearms Policy addresses all of the requirements set forth in ¶ 39. The inspection training described above is an important part of ensuring compliance with the Firearms Policy. Among other things, the Firearms Policy requires Officers to use only Department authorized and/or issued firearms and ammunition. During the Second Quarter of 2013, the VIPD provided documentation of Supervisor inspections, which are required to assess substantial compliance. We will report on the results in the next report.



**Recommendations:**

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

The VIPD should complete inspections training territory-wide. The Department should then conduct routine inspections to confirm that VIPD personnel are carrying only Department authorized and/or issued firearms and ammunition, as required by the Firearms Policy. The results of these inspections and any resulting discipline should be documented and shared with the Compliance Coordinator and the OIM.

Finally, the Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of ¶ 39 and all documentation regarding weapons inspections.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 40 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 40 of the Consent Decree.

**VIPD Report:**

The VIPD reports that its next step is to audit compliance with ¶ 40.

**OIM Report:**

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

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

**Recommendations:**

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

The Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of ¶ 40 and that the Department has fully implemented the Off-Duty Official Action Policy.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 41 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 41 of the Consent Decree.

**VIPD Report:**

The VIPD reports that its next step is to audit compliance with ¶ 41.

**OIM Report:**

The VIPD issued the ECW Policy on March 30, 2011. That policy reflects the requirements in ¶ 41 of the Consent Decree. While this Consent Decree provision requires the VIPD to train “all officers on [the TASER’s] use on an annual basis,” the VIPD has previously conceded that only “select officers have been trained and issued a TASER.” If only a limited number of VIPD personnel are trained and authorized to carry TASERs, the VIPD will continue to rely on more lethal force tools (such as firearms) when a TASER (or some other less lethal alternative) may have been more appropriate under the use of force continuum.

**Recommendations:**

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

The Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. Additionally, the Use of Force working group should provide documentation to the OIM showing the extent to which VIPD personnel are trained to use and equipped with TASERs.

## Citizen Complaint Process

### Joint Action Plan Requirements

Joint Action Plan Requirements	Status
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system) and periodically test proficiency with the policies.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system or periodically tests for proficiency with policies.
By <b>November 30, 2012</b> , offer competency-based training to Officers and Supervisors.	<b>Not satisfied.</b> The VIPD reports that it plans to begin annual in-service training in April. By the end of the First Quarter of 2013, however, the VIPD had not provided the OIM with any lesson plans or other materials for courses it intends to hold during upcoming annual in-service training.
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system) and periodically test Supervisors' knowledge of the preponderance of the evidence standard.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system or periodically tests Supervisors for proficiency with the preponderance of the evidence standard. The VIAG has provided the VIPD with sample test questions and answers, but the VIPD has not provided any results from administered examinations.
By <b>November 30, 2012</b> , offer competency-based training of all investigators.	<b>Not satisfied.</b> The VIPD reports that it plans to begin annual in-service training in April. By the end of the First Quarter of 2013, however, the VIPD had not provided the OIM with any lesson plans or other materials for courses it intends to hold during upcoming annual in-service training.
On <b>November 30, 2012</b> , commence quarterly review of files in IAU and Zones to ensure compliance.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has conducted these reviews.
By <b>November 30, 2012</b> , monthly review of files to determine whether complainants are being notified and implementation of timelines for	<b>Not satisfied.</b> The VIPD acknowledges in its Status Report that it must audit whether complaints are, among other things, filed correctly and

notification and sample notification letter.	resolved in writing.
By <b>December 31, 2012</b> , implement tracking system to document 5-day requirement.	<b>Not satisfied.</b> Although the VIPD has reported that complaints are referred to IAB within the required 5-day period because IAB retrieves complaints from drop-boxes located in each Zone, the VIPD has not provided any documentation demonstrating that the Department has such a tracking system.
By <b>December 31, 2012</b> , implement a tracking system for complaints referred to a Zone and a tracking system for notifying the Police Commissioner of complaints alleging excessive use of force.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system.
By <b>January 31, 2013</b> , offer refresher training on policies ongoing, through documented, periodic in-service and Roll Call/Commanders Call training. Incorporate competency-based training on policies into Police Academy.	<b>Not satisfied.</b> Although the VIPD has provided the OIM with attendance sheets and brief descriptions of Roll Call and Commanders Call training, the OIM needs more detailed information about the subject matter being covered. Likewise, the OIM cannot determine whether the VIPD has adequately incorporated competency-based training on policies into the Police Academy because the VIPD (as of the First Quarter of 2013) has not provided the OIM with a full set of lesson plans and related training materials.
By <b>January 31, 2013</b> , execute any contract(s) necessary to train Supervisors or others responsible for conducting ballistic or crime scene analyses.	<b>Not satisfied.</b> The VIPD has not reported that the Department has executed any contracts for such training.
By <b>January 31, 2013</b> , all statements will be recorded. After January 31, 2013, bi-monthly review to ensure statements are being recorded.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has implemented such a review.

**42. The VIPD will develop and implement a program to inform persons that they may file complaints regarding the performance of any officer.**

**This program will include distribution of complaint forms, fact sheets, informational posters, and public service announcements that describe the citizen complaint process.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies pertaining to the citizen complaint policies and provided related training. The Department has also achieved Phase 3 compliance because it implemented a program to inform citizens about the compliment/complaint process. Therefore, the Department is in substantial compliance with ¶ 42.

**VIPD Report:**

The VIPD continues to promote the Department's citizen complaint/compliment process through fact sheets, complaint/compliment forms and hotline, informational posters, and public service announcements. In addition, television and radio commercials continue to run while a new contract is under negotiation. New commercials are under development to foster better community relations.

The Department continues to provide the OIM with documentation of inspections at Zones and other locations to ensure that adequate supplies of the complaint process materials are available at locations required by the Consent Decree. At a Commanders Call during the First Quarter of 2013, the leader of the Citizen Complaint Process working group reviewed the responsibilities of Commanders with respect to the complaint process, including, among other things, ensuring that complaint process materials are available to the public.

During the First Quarter of 2013, the leader of the Citizen Complaint Process working group identified the working group's upcoming planned activities: (1) inspecting all Zones, Bureaus, and vehicles to ensure that complaint process materials are available to the public; (2) notifying Commanders and Supervisors of any deficiencies discovered during the inspections; (3) testing Officers and Supervisors' knowledge of the citizen complaint process; and (4) meeting with IAB Agents and Supervisors to review completed investigations.

**OIM Report:**

The VIPD issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaint Policy on August 2, 2012. Those policies reflect the requirements in ¶ 42 of the Consent Decree. Additionally, the VIPD has distributed complaint process materials territory-wide and continues to sponsor public service announcements regarding the citizen complaint process.

The OIM did not test Officers on their knowledge of the Acceptance of Citizen Complaints Process policy during the First Quarter of 2013. The OIM is consulting with the Citizen Complaint Process working group to redesign our testing methodology. The OIM, however, learned that the VIPD intends to conduct training on these policies during in-service training. Although the VIPD's training schedule, dated March 11, 2013, indicates that in-service training was "tentative" for an April start date, as of the end of the First Quarter of 2013, the VIPD had not provided the OIM with a full in-service training schedule, lesson plans, or related training materials. This in-service training was held during the Second Quarter of 2013. The OIM will report on this training in the next report.

**Recommendations:**

The VIPD has made significant progress issuing the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaint Policy, and developing and disseminating promotional material concerning the Department's citizen complaint process. To sustain substantial compliance with ¶ 42, the VIPD should continue to provide Officers with additional training on the complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The Citizen Complaint Process working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Citizen Complaint Process working group and Director of Training should then schedule follow-up training (continuing in-service, Roll Call or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy and provide remedial training or discipline as appropriate.

During subsequent quarters, the OIM will continue to assess whether VIPD maintains compliance with this section for the remainder of the Consent Decree.

**43. The VIPD will make complaint forms and informational materials available at government properties such as VIPD district stations,**

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies pertaining to the citizen complaint policies and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 43.

**VIPD Report:**

The VIPD continues to promote the Department's citizen complaint/compliment process by providing complaint process materials to the public in English, French, and Spanish. Inspections are periodically conducted by members of the Citizen Complaint Process working group to ensure that adequate supplies of the required complaint process materials are available to the public. In cases where complaint process materials are missing, Zone Commanders are notified and, in the case of other public buildings, supplies are replenished by working group members.

As previously reported, the VIPD revised the complaint form to make it easier for complainants to indicate whether they were informed of their right to make a complaint or discouraged from doing so. The VIPD is also evaluating whether to use the Department's public service announcements to inform citizens that they may contact the Department if an Officer refuses to take their complaint or discourages them from filing a complaint.

**OIM Report:**

The VIPD made additional progress towards compliance with ¶ 43. The VIPD provided the OIM with documentation showing that complaint forms and informational materials are available at VIPD offices and other government properties. During the First Quarter of 2013, the VIPD submitted 24 inspection forms from the St. Thomas and St. Croix Districts evaluating the availability of complaint process materials at stations, bureaus, and in police



vehicles. While the OIM commends the Citizen Complaint Process working group for continuing to make such inspections, the periodic inspection reports are often incomplete. For example, reports will indicate that “vehicles [were] inspected and documents [were] replaced in vehicles,” but do not detail what forms were available and what forms needed to be replaced.

Although the VIPD did not provide the OIM with documentation for the First Quarter of 2013 assessing whether Officers are informing citizens of their right to file a complaint or discouraging citizens from doing so, the OIM expects that the VIPD will conduct such an audit next quarter and provide the results to the OIM.

**Recommendations:**

The VIPD should continue the expanded scope of its audits to determine whether complaint forms and related informational materials are available at all required locations. The VIPD should also audit whether Officers are informing citizens of their right to file a complaint and that Officers are not discouraging citizens from doing so. The VIPD should then provide documentation of these audits to the Compliance Coordinator and the OIM. Through the Department’s information campaign, the VIPD should also inform citizens that they may contact the Department if an Officer refuses to take their complaint or discourages them from filing a complaint. The VIPD must also ensure that such complaints against officers are addressed appropriately.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies pertaining to the citizen complaint policies and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 44.

**VIPD Report:**

The VIPD reports that it must audit whether complaints are, among other things, filed correctly and resolved in writing. The VIPD will forward to the OIM copies of any audits.

During the First Quarter of 2013, the Director of the IAB submitted a memorandum to the Consent Decree Manager requesting an audit of citizen complaint and use of force investigations. The Police Commissioner granted the request.

**OIM Report:**

The DOJ approved the Acceptance of Citizen Complaint Policy on August 2, 2011. The policy reflects the requirements in ¶ 44 of the Consent Decree. During the First Quarter of 2013, the VIPD did not provide the OIM with documentation that complaints are resolved in writing or that complaint numbers are being provided to complainants. The OIM learned during the First Quarter of 2013 that Commanders are not always helping citizens complete the citizen complaint form. Senior VIPD personnel (like all Officers) are required under the Acceptance of Citizen Complaint Policy “to assist any person who wishes to file a citizen’s complaint.” According to the VIPD, Commanders are unclear about their responsibilities under the Acceptance of Citizen Complaint Policy and merely refer the complainant to the IAB.

**Recommendations:**

The VIPD should conduct audits to determine whether the required VIPD personnel are trained on the Department’s policies, whether all complaints are being resolved in writing, and whether complaint numbers are being provided to complainants. The VIPD should then provide documentation relating to those audits to the Compliance Coordinator and the OIM. The VIPD should offer Commanders Call training to all Commanders on the Acceptance of Citizen Complaint Policy, and document such training and provide the results of examinations administered after training to the OIM.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies pertaining to the citizen complaint policies and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 45.

**VIPD Report:**

The IAB continues to monitor whether complaints are referred to IAB within 5 days. To facilitate this process, IAB investigators are required to note on their investigative review forms whether the complaint was received from the Zone within the mandated time period. The VIPD reports, however, that it is also evaluating whether to use a separate form Department-wide so that the Zones, in addition to IAB, are monitoring compliance with this provision of the Consent Decree.

**OIM Report:**

The DOJ approved the Acceptance of Citizen Complaint Policy on August 2, 2011. The policy reflects the requirements in ¶ 44 of the Consent Decree. Although the VIPD has reported to the Police Practices Experts that complaints are referred to the IAB within the required 5-day period because IAB personnel retrieve complaints from drop-boxes located in each Zone, the VIPD has not provided any documentation demonstrating this process.

**Recommendations:**

VIPD needs to develop a process for auditing whether copies of all allegations of misconduct are referred to the IAB within 5 business days. This may include accessing information from the Virgin Islands Territorial Emergency Management Agency (“VITEMA”) to ensure all complaints are forwarded. The Department should then provide documentation relating to those audits to the OIM.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 46.

**VIPD Report:**

The VIPD reports that the Training Division is in the process of planning in-service training, which will include training on the preponderance of the evidence standard. Although the VIAG has provided the Training Division with sample examination questions and answers that will be used to test Supervisors knowledge of the preponderance of the evidence standard, the

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Training Division and Citizen Complaint Process working group have yet to agree on when to administer the exams.

##### **OIM Report:**

The VIPD has provided initial training on the preponderance of evidence standard. During the First Quarter of 2013, the OIM learned that the Deputy Chief of St. Thomas asked the IAB to provide Commanders Call training on the citizen complaint process policies. According to the VIPD, Supervisors were tested on their knowledge of the policies two weeks later. The OIM, however, was not provided with any documentation reflecting supervisory proficiency with the standard or any audits to reflect that the standard is being applied appropriately. The Police Practices Experts have informed the Compliance Manager that we will audit the test results next quarter.

##### **Recommendations:**

The VIPD should develop a mechanism to test supervisory proficiency with the preponderance of the evidence standard. Further, the VIPD must establish a mechanism to audit compliance with the standard.

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

##### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 47.

##### **VIPD Report:**

The Acceptance of Citizens Complaints Policy and the Investigating Misconduct and Citizen Complaint Policy incorporate the requirements of ¶ 47. According to the VIPA, training on these policies will be included in the annual in-service training that is currently scheduled, and is also reinforced throughout the year through Roll Call and Commanders Call training. The VIPD reports that it must audit the Department's compliance with the requirements of ¶ 47.

**OIM Report:**

VIPD policy prohibits any officer who used force during against a subject, whose conduct led to the injury of a person, or who authorized the conduct that led the use of force from investigating the use of force. The VIPD has not provided any documentation that it is auditing compliance with this requirement.

The Police Practices Experts reviewed a total of 9 completed use of force investigation files from the St. Thomas and St. Croix Districts during the First Quarter of 2013. In 63% (5 out of 8) of the completed use of force investigations, Supervisors who were involved in the use of force incident were not responsible for investigating that same incident.

**Recommendations:**

The Department should conduct and document periodic audits of investigation files to ensure that Officers who are directly involved with a use of force incident are not investigating such incidents. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate. The Complaint Process working group should provide documentation of its audits to the Compliance Coordinator and the OIM.

**48. The VIPD will investigate every citizen complaint. The VIPD will establish a clear policy and procedure regarding the intake of any complaint, including anonymous and confidential complaints, against a VIPD officer. This policy and these procedures will include instructions to an officer for taking a complaint and prompt delivery to a supervisor.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 48.

**VIPD Report:**

The Acceptance of Citizens Complaints Policy and the Investigating Misconduct and Citizen Complaint Policy reflect the requirements of ¶ 48. Training on these policies will be included in the annual in-service training that the Training Division is currently scheduling, and is also reinforced throughout the year through Roll Call and Commanders Call training. The VIPD reports that it must audit the Department's compliance with the requirements of ¶ 48.

**OIM Report:**

The VIPD issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy on August 2, 2011. During the First Quarter of 2013, the OIM learned that the Deputy Chief of St. Thomas asked the IAB to provide Commanders Call training on the citizen complaint policies. According to the VIPD, Supervisors were tested on their knowledge of the policies two weeks later. The OIM, however, was not provided with any documentation reflecting supervisory proficiency with the standard or any audits to reflect that the standard is being applied appropriately. The Police Practices Experts have informed the Compliance Manager that they will audit the test results next quarter, including similar follow-up that the VIPD said would occur on the St. Croix District.

The IAB conducted Roll Call and Commanders Call training addressing common mistakes made by Supervisors in citizen complaint investigations. This training is critical because the IAB returns a significant number of cases that were investigated by the Zones back to the Zones for corrections. Despite being returned to the Zones for corrections, Commanders frequently fail to ensure that the corrections are made or that the investigation is returned to the IAB in a timely manner. This training is also important because the Commanders in these cases initially missed those items that the IAB highlighted for correction. The Police Practices Experts will audit documentation of this training and assess the quality of investigations completed in the Zones during the next quarter.

**Recommendations:**

The VIPD should develop a process to audit whether complaints are being adequately investigated within the allotted time period. The Citizen Complaint Process working group is initiating a process to ensure that the Chiefs and Deputy Chiefs are adhering to these timeframes, and holding their subordinates accountable for completing investigations in a timely manner. All audits should be documented and shared with the Compliance Coordinator and the OIM. The OIM will monitor the progress of this process.

**49. The VIPD will institute a centralized numbering and tracking system for all complaints and each complaint will receive a tracking number as quickly as possible. The IAU will be designated as the primary and centralized agency to determine whether the investigation will be assigned to zone (one of the seven zones located throughout the Virgin Islands), retained by the IAU, or referred for possible criminal investigation. If the IAU refers a complaint to a zone, copies of all documents, findings, and recommendations should be immediately forwarded to the IAU for tracking and monitoring. For complaints alleging the excessive use of force or violation of a person's constitutional**

**rights, the Police Commissioner should be notified no less than twenty-four hours after receipt of a complaint.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 49.

**VIPD Report:**

The VIPD reports that it has implemented the requirements of ¶ 49, and will begin to provide audit training to members of the Audit Group and other necessary personnel to ensure compliance with the Consent Decree.

**OIM Report:**

The VIPD issued the Acceptance of Citizen Complaints Policy on August 2, 2011. That policy reflects the requirements of ¶ 49 of the Consent Decree. The VIPD currently relies on VITEMA to assign tracking numbers for each complaint. The VIPD should ensure that each complaint (once assigned a complaint number by VITEMA) is forwarded to the IAB for investigation or referral to the Zones. The VIPD recently created a form to document when the Police Commissioner is notified about complaints pertaining to excessive use of force or violations of constitutional rights. This documentation will be monitored by the OIM in coming quarters.

**Recommendations:**

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

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 50.

**VIPD Report:**

The VIPD has issued the Investigating Misconduct and Citizen Complaints Policy in partial satisfaction with ¶ 50 of the Consent Decree. VIPD personnel continue to receive training on the policy during annual in-service training, and Roll Call and Commanders Call training.

**OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaints Policy on August 2, 2011. That policy reflects the requirements of ¶ 50 of the Consent Decree. According to the VIPD, Supervisors on the St. Thomas District were tested on their knowledge of the preponderance of the evidence standard during the First Quarter of 2013, and similar testing will take place on the St. Croix District. The Police Practices Experts will audit the test results referenced above next quarter.

**Recommendations:**

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

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



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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 51.

**VIPD Report:**

The VIPD has issued the Acceptance of Citizens Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy. VIPD personnel continue to receive training on the policy during annual in-service training and Roll Call and Commanders Call training. For example, the leader of the Management and Supervision working group conducted a Commanders Call training during the First Quarter of 2013 that addressed the Investigating Misconduct and Citizen Complaints Policy. The VIPD reports that it must conduct audits to ensure the Department's compliance with the requirements of ¶ 51, but notes that the Audit Team must complete audit training before it will be fully capable of conducting such audits.

**OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements of ¶ 51 of the Consent Decree. The VIPD has provided initial training on the preponderance of evidence standard. During the First Quarter of 2013, the OIM learned that the Deputy Chief of St. Thomas asked the IAB to provide Commanders Call training on the citizen complaint policies. According to the VIPD, Supervisors were tested on their knowledge of the policies two weeks later. The OIM, however, was not provided with any documentation reflecting supervisory proficiency with the standard or any audits to reflect that the standard is being applied appropriately. The Police Practices Experts will audit the test results referenced above next quarter.

The OIM did not test Supervisors on their knowledge of the preponderance of the evidence standard during the First Quarter of 2013. The

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OIM is consulting with the Citizen Complaint Process working group to redesign our methodology for testing personnel on this topic.

### **Recommendations:**

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

The Citizen Complaint Process working group should also coordinate with the Training Division to offer training to Supervisors on the preponderance of the evidence standard on an ongoing basis. In addition, the Citizen Complaint Process working group should also evaluate whether investigators correctly: 1) evaluate complainant or witness credibility; 2) examine and interrogate accused Officers and other witnesses; and 3) identify misconduct. The audits should also evaluate whether VIPD investigators take statements from all Officers on the scene of an incident. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator and the OIM.

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

### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 52.

### **VIPD Report:**

The VIPD has issued the Acceptance of Citizens Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy. VIPD personnel

continue to receive training on the policy during annual in-service training and Roll Call and Commanders Call training.

The VIPD reports that it must conduct audits to ensure the Department's compliance with the requirements of ¶ 52, but notes that the Audit Team must complete audit training before it will be fully capable of conducting such audits.

**OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements of ¶ 52 of the Consent Decree. The Department has conducted initial training on this policy, but it has not provided documentation demonstrating that Supervisors are proficient in their knowledge of the policy. The VIPD intends to conduct training on this policy during in-service training. The VIPD's training schedule, dated March 11, 2013, indicates that in-service training was tentatively scheduled to begin in April, and as of the end of the First Quarter of 2013, the VIPD had not provided the OIM with a full in-service training schedule, lesson plans, or related training materials. This in-service training was held during the Second Quarter of 2013. The OIM will report on this training in the next report.

Based on the Police Practices Experts' review of closed use of force investigations during the First Quarter of 2013, Supervisor training should emphasize the importance of identifying whether different tactics "should or could have been employed" in investigations. (See Use Force, ¶ 31 and Management and Supervision, ¶ 70).

**Recommendations:**

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

The Citizen Complaint Process working group should coordinate with the Training Division to offer training to Supervisors on the preponderance of the evidence on an ongoing basis. The Citizen Complaint Process working group should also evaluate whether investigators correctly evaluate whether: 1) the police action was in compliance with policy, training and legal standards; 2) the incident involved misconduct by any officer; 3) the use of different tactics should or could have been employed; 4) the incident indicates a need for

additional training, counseling or other non-disciplinary corrective measures; and 5) the incident suggests that the VIPD should revise its policies, training, or tactics. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator and the OIM.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 53

**VIPD Report:**

The VIPD has issued the Acceptance of Citizens Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy. VIPD personnel continue to receive training on the policy during annual in-service training, and Roll Call and Commanders Call training.

The VIPD reports that it must conduct audits to ensure the Department's compliance with the requirements of ¶ 53, but notes that the Audit Team must complete audit training before it will be fully capable of conducting such audits.

**OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements of ¶ 53 of the Consent Decree. The Department has conducted initial training on this policy, but it has not provided documentation demonstrating that Supervisors are proficient in their knowledge of the policy. The VIPD intends to conduct training on this policy during in-service training. The VIPD's training schedule, dated March 11, 2013, indicates that in-service training was tentatively scheduled for April, but as of the end of the First Quarter of 2013, the VIPD has not provided the OIM with a full in-service training schedule, lesson plans, or related training materials. Based on the Police Practices Experts' review of

closed use of force cases during the First Quarter of 2013, the Department must reinforce the importance of and the circumstances under which criminal investigations should be conducted, or, separately, when a case should be referred to the VIAG for investigation (See Management and Supervision, ¶ 70).

**Recommendations:**

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

The VIPD and VIAG should also pay close attention to a number of cases that have already been referred to the VIAG from the VIPD for possible criminal prosecution. A number of these cases have been under review by the VIAG for a prolonged period. In future quarters, the OIM will continue to monitor the movement of these cases.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 54.

**VIPD Report:**

The VIPD has issued the Acceptance of Citizens Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy. The VIPD Reports that Department personnel continue to receive training on the policy during annual in-service training, and Roll Call and Commanders Call training.

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The VIPD's next step is to audit compliance with ¶ 54. As the Audit Team completes audit training and become more functional, the VIPD expects that audits will be conducted with greater frequency. In the interim, the working groups are charged with auditing their respective areas to provide related documentation to the Audit Group as well as the Compliance Coordinator.

### **OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements of ¶ 54 of the Consent Decree. The Department has conducted initial training on this policy, but it has not provided documentation demonstrating that Supervisors are proficient in their knowledge of the policy. The VIPD intends to conduct training on this policy during in-service training. The VIPD's training schedule, dated March 11, 2013, indicates that in-service training was "tentative" for an April start date, but as of the end of the First Quarter of 2013, the VIPD has not provided the OIM with a full in-service training schedule, lesson plans, or related training materials.

### **Recommendations:**

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

While the VIPD continues to move towards compliance, appropriate documentation needs to be provided to the Compliance Coordinator and the OIM.

**55. During an investigation, all relevant police activity, including each use of force (i.e., not just the type of force complained about) will continue to be investigated. The investigation will also evaluate any searches or seizures that occurred during the incident. The VIPD will not close an investigation simply because the complaint is withdrawn or the alleged victim is unwilling or unable to provide medical records or proof of injury or the complainant will not provide additional statements or written statements; rather, the investigating agency will continue its investigation as necessary to determine whether the original allegation(s) can be resolved based on the information, evidence, and investigatory**

**procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense will not be considered as evidence of whether a VIPD officer used or did not use a type of force, nor will it justify discontinuing the investigation.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 55.

**VIPD Report:**

The VIPD has issued the Acceptance of Citizens Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy. VIPD personnel continue to receive training on the policy during annual in-service training, and Roll Call and Commanders Call training. For example, the leader of the Management and Supervision working group conducted a Commanders Call training during the First Quarter of 2013 and reinforced the Investigating Misconduct and Citizen Complaints Policy. The VIPD reports that it must conduct audits to ensure the Department's compliance with the requirements of ¶ 55, but notes that the Audit Team must complete audit training before it will be fully capable of conducting such audits.

**OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements of ¶ 55 of the Consent Decree. The Department has conducted initial training on this policy, but it has not provided documentation demonstrating that Supervisors are proficient in their knowledge of the policy. The VIPD intends to conduct training on this policy during in-service training. The VIPD's training schedule, dated March 11, 2013, indicates that in-service training was "tentative" for an April start date, but as of the end of the First Quarter of 2013, the VIPD has not provided the OIM with a full in-service training schedule, lesson plans, or related training materials.

**Recommendations:**

The Citizen Complaint Process working group should develop a process for auditing whether VIPD personnel comply with ¶ 55 of the Consent Decree. The VIPD should also develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 56.

**VIPD Report:**

As previously reported in VIPD's last quarterly report for 2012, the Zones are considering adopting the Complaint Investigation Review Check Sheet used by the IAB to track whether complainants are periodically informed about the status of their complaint. The VIPD reports that it will report if the Zones adopt the check sheet.

**OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements contained in ¶ 56 of the Consent Decree. The Department has conducted initial training on this policy, but it has not provided documentation demonstrating that Supervisors are proficient in their knowledge of the policy. The VIPD intends to conduct training on this policy during in-service training. The VIPD's training schedule, dated March 11, 2013, indicates that in-service training was "tentative" for an April start date, but as of the end of the First Quarter of 2013, the VIPD has not provided the OIM with a full in-service training schedule, lesson plans, or related training materials.

**Recommendations:**

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



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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 57.

**VIPD Report:**

The VIPD has issued the Acceptance of Citizens Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy. VIPD personnel continue to receive training on the policy during annual in-service training, and Roll Call and Commanders Call training. For example, the leader of the Management and Supervision working group conducted a Commanders Call training during the First Quarter of 2013 and reinforced the Investigating Misconduct and Citizen Complaints Policy. The VIPD reports that it must conduct audits to ensure the Department's compliance with the requirements of ¶ 57, but notes that the Audit Team must complete audit training before it will be fully capable of conducting such audits.

**OIM Report:**

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. Among other things, that policy requires the Department to resolve all allegations with one of four findings: “unfounded;” “sustained;” “not sustained;” or “exonerated.” Through their review of investigations, the Police Practices Experts have observed that investigations are increasingly resolved with one of the four required findings. Nevertheless, in certain instances, Department personnel continue to use other labels (such as “not guilty”) when evaluating complaint allegations. As such, the

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requirements of this provision should be reinforced through on-going in-service and Commanders Call training.

### **Recommendations:**

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

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

### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 58.

### **VIPD Report:**

The VIPD reports that it must conduct audits to ensure the Department's compliance with the requirements of ¶ 58, but notes that the Audit Team must complete audit training before it will be fully capable of conducting such audits. The VIPD reports that the Department is currently working with Property and Procurement to receive contract approval for a vendor to provide Audit and Early Intervention Program ("EIP") training.

### **OIM Report:**

During the First Quarter of 2013, the Police Practices Experts reviewed 9 completed use of force investigations. Unit commanders identified underlying problems and training needs in 22% (2 out of 9) of the completed use of force investigations. There was no evidence in any of the completed investigation files that these problems or needs were relayed to the appropriate VIPD entity. There was evidence in one (11%) of the completed use of force investigation files that the recommended corrective action (counseling) was taken.

**Recommendations:**

The Department should comply with the substantive requirements of ¶ 58 by having unit commanders evaluate each investigation to identify underlying problems and training needs. The commander should then relay any problems or needs in the form of a recommendation to the appropriate VIPD entity. The VIPD should also develop a process for auditing whether VIPD personnel comply with ¶ 58. The VIPD should develop a process for identifying personnel who continually fail to comply with requirements and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM.

## Management and Supervision

### Joint Action Plan Requirements

Joint Action Plan Requirements	Status
Revisions to Disciplinary [Matrix] will be forwarded to DOJ <b>by November 1, 2012</b> .	<b>Satisfied.</b> The VIPD did not comply with the Joint Action Plan's November 1, 2012 deadline, but submitted a revised version of the Disciplinary Matrix to the DOJ on January 18, 2013.
<b>Beginning on November 30, 2012</b> , at least once per month, the Deputy Chief during Commanders Call, will address Decree compliance issues, including timely completion of use of force reports.	<b>Not Satisfied.</b> The VIPD did not provide the OIM with appropriate documentation demonstrating compliance with this requirement.
<b>Beginning on November 30, 2012</b> , working group members will conduct regular reviews, but no less frequently than weekly, to ensure that all Blue Team programs are installed on all Zone Command computers and are also fully functioning.	<b>Not Satisfied.</b> The VIPD did not provide the OIM with appropriate documentation demonstrating compliance with this requirement.
<b>By November 30, 2012</b> , VIPD will provide DOJ with an action plan for achieving sufficient numbers of staff to input current and historic data or outlining how it intends to use existing staff to accomplish this task. The plan will include an implementation date subject to the agreement of the parties.	<b>Satisfied, but additional work needed.</b> On November 30, 2012, the VIPD submitted to the DOJ a Management and Supervision Action Plan. On December 31, 2012, the DOJ provided comments and requested clarification on certain points. Discussions are ongoing.
Working group members will conduct bi-monthly reviews <b>commencing November 30, 2012</b> to ensure compliance with A through K [of Consent Decree ¶ 60].	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.
Quarterly review <b>commencing November 30, 2012</b> will be conducted to ensure compliance [with Consent Decree ¶ 65].	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.
Working group members will conduct bi-monthly reviews <b>commencing November 30, 2012</b> to ensure	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this

compliance with a through g [of Consent Decree ¶ 66].	requirement.
VIPD will maintain documentation of how it identified and addressed patterns of officer conduct based on existing databases and resources and provide this documentation on a quarterly basis to the Monitor, <b>starting in the 3rd quarter of 2012.</b>	<b>Not Applicable.</b> Because the Department appears to be relying solely on IAPro for risk management, this requirement is no longer applicable.
Finalize Audit Protocol and submit to DOJ <b>by November 30, 2012.</b>	<b>Satisfied.</b> The VIPD submitted a final Audit and Inspection Policy to the DOJ for review on November 30, 2012.
Blue Team technical issues will be resolved, training will be ongoing, and all districts will receive a round of training <b>by January 31, 2013.</b>	<b>Satisfied, but additional work needed.</b> The VIPD provided the OIM with documentation regarding Blue Team training on the St. Thomas District during the First Quarter of 2013, but did not provide similar documentation for the St. Croix District until the Second Quarter of 2013. In addition, a significant number of VIPD personnel missed scheduled Blue Team training during the First Quarter of 2013.
Competency-based training of all staff <b>by Feb. 15, 2013</b> and ongoing documented refresher training through in-services and Roll Call/Commanders Call.	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 59 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as

discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 59 of the Consent Decree.

**VIPD Report:**

The DOJ approved the Department's RMS Protocol during the Fourth Quarter of 2012, and the Department subsequently disseminated the protocol Department-wide. The VIPD reports that the EIP Manager lead training on the St. Thomas District on the RMS Protocol during the First Quarter of 2013. To facilitate that training, the Director of the IAB created a PowerPoint presentation. The VIPD is also working with Property and Procurement to provide additional training from an outside vendor on the Department's RMS Protocol and EIP more generally.

The VIPD also reports that the IAB has been providing the Chiefs and Deputy Chiefs with weekly, monthly and annual reports concerning the Department's uses of force. The Director of the IAB has offered to meet with the Chiefs and Deputy Chiefs to assist them in reviewing these reports. In addition, the Compliance Coordinator developed a form during the First Quarter of 2013 for the Chiefs, Deputy Chiefs, Managers and Directors to use to document their review of these reports.

**OIM Report:**

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

The Department has made substantial progress towards implementing IAPro. Unfortunately, IAPro continues to experience technological issues. While limited technological issues may be unavoidable, the Department should put measures in place to ensure continual access to Blue Team territory-wide. Moreover, to the extent that outages occur for IAPro or Blue Team, the VIPD should document the duration and steps taken to restore operations.

The Joint Action Plan requires members of the Management and Supervision working group to “conduct regular reviews . . . to ensure that all Blue Team programs are installed on all Zone Command computers and are also fully functioning.” The Chair of the Management and Supervision working group initiated a process during the First Quarter of 2013 for the Department's Management and Information Systems unit (“MIS”) and the Zones to submit biweekly reports documenting the required reviews. Unfortunately, the Department's documentation in this regard has been inconsistent.

During the First Quarter of 2013, the VIPD provided the OIM with records for the Blue Team and EIP training that took place on the St. Thomas District; the VIPD intends to hold similar training on the St. Croix District during the Second Quarter of 2013. Those records contained, for the first time, a breakdown of the personnel who attended the training and those who did not. The OIM has been asking for that information for several quarters. The VIPD also provided the OIM with a list of Officers who failed to attend an earlier round of Blue Team training in March 2012. Based on a memorandum from the Deputy Chief of Police for St. Thomas to all Commanders, Supervisors and Bureau Heads in the St. Thomas District, we understand that 39 Officers failed to attend that training. Given the size of the VIPD, that rate of absenteeism is inexcusable.

The OIM's Police Practices Experts reviewed the PowerPoint presentation referenced above and concluded that it was a good introduction to the concepts of the Department's EIP. Nevertheless, the VIPD should proceed with a more comprehensive EIP training as soon as possible. Finally, under the Joint Action Plan, members of the Management and Supervision working group are required to observe Roll Call training relating to various facets of Blue Team. The OIM expects to review documentation relating to the Department's Roll Call training in future quarters.

**Recommendations:**

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, providing further training on the Department's EIP and conducting the required beta test (i.e., an initial full scale test) of the RMS. The Department also needs to finalize a process to ensure that Blue Team is continuously accessible territory-wide. The VIPD should also use the Blue Team and EIP training records described above as a model for how to present training records to the OIM going forward.

The VIPD should also provide the OIM with more information about the 39 Officers who failed to attend Blue Team training in March 2012. For example, we would like to know why each Officer failed to attend the training and what, if any, corrective action and/or discipline the Department imposed in response (aside from scheduling follow up training during the First Quarter of 2013).

**60. The new risk management system will collect and record the following information: a) all uses of force; b) canine bite ratios; c) the number of canisters of chemical spray used by officers; d) all injuries to prisoners; e) all instances in which force is used and a subject is charged with "resisting arrest," "assault on a police officer," "disorderly conduct," or "obstruction of official business;" f) all critical firearm discharges, both**

**on-duty and off-duty; g) all complaints (and their dispositions); h) all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the Territory and its officers, or agents, resulting from VIPD operations or the actions of VIPD personnel; i) all vehicle pursuits; j) all incidents involving the pointing of a firearm (if any such reporting is required); and k) all disciplinary action taken against officers.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued policies in compliance with ¶ 60 of the Consent Decree, but it has not achieved Phase 2 or Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 60 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it continued to collect the data set forth in subparagraphs a-k, and that the Management and Supervision working group is developing a form (with assistance from the Director of the IAB) to document that process. The VIPD also reports that it continued to input arrest data into the Department's arrest database during the First Quarter of 2013, while exploring other software options that would be better suits to the needs of the Department.

The Chairperson for the Management and Supervision working group also lead Commanders Call training on March 7 and March 21, 2013. Finally, the Management and Supervision working group held meetings on February 11 and March 18, 2013.

**OIM Report:**

The Management and Supervision working group reported at the end of the Fourth Quarter of 2012 that it was creating forms, drafting procedures, and developing a system to verify the accuracy of the data collected under subparagraphs a through k. One way the VIPD intends to ensure that accurate data is entered into IAPro is to emphasize the importance of completing use of force forms in their entirety.

During the First Quarter of 2013, the OIM learned that the VIPD is continuing to have problems accessing information from outside of the VIPD. For example, the VIPD appears to have limited access to information from the VIAG regarding civil litigation. The VIPD's Data Input Plan requires, among other data, the VIPD to collect certain information about civil litigation involving VIPD personnel.



Finally, the OIM learned during the Second Quarter of 2013 that a Department audit of the RMS revealed that some of the required data is not being captured in IAPro. We will provide more information about this issue in the next quarterly report.

**Recommendations:**

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, providing training and conducting the required beta test (i.e., an initial full scale test) of the RMS. The Department must also remedy any outstanding issues regarding access to required information outside of the VIPD. To the extent that the VIAG has access to any of the required information, it should establish a protocol to share that information.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 61 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 61 of the Consent Decree.

**VIPD Report:**

The VIPD reports that IAPro includes appropriate identifying information for Officers and civilians who are involved in use of force or complaint investigations. During the First Quarter of 2013, the Chairperson for the Management and Supervision working group acknowledged receiving a list of PDNs (Permanent Designator Numbers) for all sworn personnel from the Planning and Research Bureau. According to the VIPD, documented inspections are ongoing to ensure that Officers are using their four digit PDN on all police reports.

**OIM Report:**

To help track VIPD personnel (who may change job functions, names, etc.), the Police Commissioner issued a directive during the Fourth Quarter of 2011 ordering that a PDN be assigned to all sworn personnel, including designated civilian personnel with assignments as agents, auxiliaries, and forensic technicians. The PDN is a four digit number assigned by the VITEMA. Officers are required to use their PDNs (which they keep for their entire career)

on all police reports, rather than their badge numbers as was the previous practice.

During 2012, new badges reflecting the PDNs were received by the VIPD. The VIPD had started to distribute these badges during the Fourth Quarter.

**Recommendations:**

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented. The Department should also audit whether Officers have been issued new badges reflecting their PDN and are using the PDNs on all police reports. These audits should be documented and shared with the Compliance Coordinator and the OIM.

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

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued policies in compliance with ¶ 62 of the Consent Decree, but it has not achieved Phase 2 or Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 62 of the Consent Decree.

**VIPD Report:**

The VIPD reports that the Data Input Plan has been approved and that training on the Data Input Plan is being coordinated by the Training Division. The VIPD will provide more information about training on the Data Input Plan once the vendor is finalized.

**OIM Report:**

The DOJ approved the VIPD's Data Input Plan on March 22, 2011, but the Department had not provided training on the plan as of the end of the First Quarter of 2013. 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.

While the VIPD has made progress implementing certain aspects of IAPro, the Data Input Plan still needs to be fully implemented, including entering and analyzing the required historical data. Once training is held on the Data Input Plan and the RMS Protocol, the VIPD reports that units within the VIPD that are responsible for providing data to the EIP Coordinator will better understand the purpose of and need for timely reports.

**Recommendations:**

The VIPD should identify personnel to assess historical data and input same. Because important information may be contained in various reports without expressly being identified as a required data element, the VIPD should carefully select the personnel who will be responsible for entering historical data into IAPro. Additionally, the VIPD should ensure that information is available from outside sources, such as the VIAG. The VIPD should also move forward with comprehensive EIP training, which should include information about the Data Input Plan. Finally, the VIPD should provide the OIM with documentation that the Data Input Plan is fully implemented and that the specific fields of information and other data required by the plan are being consistently entered into IAPro.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 63 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 63 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it provided an introductory EIP training to Supervisors on the St. Thomas District during the First Quarter of 2013. That training was intended to be a precursor to a more comprehensive training by an outside vendor, which was originally scheduled to take place in March or April 2013. Unfortunately, because the VIPD's preferred vendor does not have a Virgin Islands business license (a requirement for obtaining government

contract), its proposed contract with the VIPD has not yet been approved by Property and Procurement. In response to this delay, the Training Division obtained a proposal from a different vendor that already has a Virgin Islands business license. According to the VIPD, Property and Procurement will ultimately decide how to proceed.

**OIM Report:**

After several years of work, the DOJ approved the Department's RMS Protocol on October 2, 2012. As previously reported, the RMS Protocol provides various thresholds that trigger supervisory review. For example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor (and other appropriate personnel) to the potential issue and need for review. When reporting arrest and use of force data, the Consent Decree requires that the VIPD use ratios based on the conduct of VIPD personnel (the total number of arrests where force was used divided by the total number of arrests) to identify potentially problematic behavior. The VIPD is not capable of providing these ratios. The Parties agree that the Department will not be in compliance with the Consent Decree until it implements a ratio-based RMS Protocol.

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

**Recommendations:**

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

**64. The protocol for using the risk management system will include the following provisions and elements: a) The protocol is comprised of the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation and audit; b) The protocol will require the automated system to analyze the data according to the following criteria: (i) number of incidents for each data category by individual officer and by all officers in a unit; (ii) average level of activity for each data category by**

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 64 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 64 of the Consent Decree.

**VIPD Report:**

In order to provide greater access to IAPro, the Director of IAB instructed the Director of MIS to provide the Police Commissioner, Chiefs, Deputy Chiefs, Managers and Supervisors with access from their respective locations. Once MIS grants access to those individuals, the IAB plans to stop disseminating hard copies of IAPro generated reports to them. The Human Resources Bureau on both Districts will also have access to IAPro so that it can upload required data.

The VIPD also reports that the “RMS Data Review” form (once approved) will be used to document reviews by Deputy Chiefs, Managers and Supervisors of IAPRO generated reports.

**OIM Report:**

On October 2, 2012, the DOJ approved the RMS Protocol. The Parties agree that the Department will not be in compliance with the Consent Decree until it implements a ratio-based RMS Protocol.

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

**Recommendations:**

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

Additionally, to the extent that Deputy Chiefs, Manager and Supervisors review IAPro generated reports online (rather than printing out hard copies), the VIPD should examine the possibility of automatically documenting such reviews in IAPro rather than relying on the RMS Data Review form. Regardless of how the VIPD decides to capture that information, the IAB should provide weekly reports to the Police Commissioner about any Deputy Chiefs, Managers and Supervisors who are delinquent. The Police Commissioner should hold anyone who fails to comply with his or her supervisory responsibilities (regardless of rank) accountable.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 65 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 65 of the Consent Decree.

**VIPD Report:**

The IAB continued to enter data into the RMS during the First Quarter of 2013. According to the VIPD, access to confidential information in IAPro is limited to IAB personnel (and presumably the Police Commissioner, Chiefs, Deputy Chiefs and others discussed in ¶ 64) and related materials are stored on secure servers or in locked cabinets at the IAB's offices. The VIPD reports that its compliance with ¶ 65 will be evident once audits are conducted.

The VIPD also reports that it continued its efforts during the First Quarter of 2013 to identify and hire one analyst per District to help oversee the Department's RMS. For example, the Director of the IAB interviewed a current civilian employee and determined that he/she would be a suitable candidate for the position on the St. Thomas District. Similar efforts are reportedly ongoing for the St. Croix District. The Acting Police Commissioner also submitted a request in the Department's proposed 2014 budget for one additional analyst per District, which would enable the Department to have two Analysts per District.

During the First Quarter of 2013, the Compliance Coordinator also forwarded a document summarizing the operational status of Blue Team for the St. Thomas District to the OIM. The document identifies all of the locations where Blue Team is installed and the operational status of each location. The Compliance Coordinator received two reports (one from each District) regarding the operational status of Blue Team during the First Quarter of 2013.

The VIPD provided the OIM with comprehensive records relating to the Blue Team training that took place during the First Quarter of 2013, including a list of the Officers who completed the training, the percentage of Officers (out of the total number of applicable Officers) who completed the training, the revised (2013) lesson plan, and test questions that were administered to Officers after the training to evaluate competence with respect to the material covered during the training. With respect to the Officers who failed to attend Blue Team training during the First Quarter of 2013, the Acting Police Chief in the St. Croix District issued a directive, dated March 14, 2013, to all Commanders identifying the offending Officers and directing that they be trained by March 31, 2013. As of the end of the First Quarter of 2013, the VIPD estimates that approximately 95% of the Department has received Blue Team training.

**OIM Report:**

On October 2, 2012, the DOJ approved the RMS Protocol. The Parties agree that the Department will not be in compliance with the Consent Decree until it implements a ratio-based RMS Protocol.

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

**Recommendations:**

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol (approved by the DOJ on October 2, 2012), and the Data Input Plan need to be fully implemented. The Department should enter information into IAPro in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.

**66. The new risk management system will be purchased off the shelf and customized by VIPD. Alternatively, the new risk management system may be developed and implemented according to the following schedule:**



a) Within 150 days of the effective date of this Agreement, subject to the review and approval of DOJ, the VIPD will issue a Request for Proposal (RFP); b) Within 270 days of the issuance of the RFP, or later with the agreement of DOJ, the VIPD will select the contractor to create the risk management system; c) Within 150 days of the effective date of this Agreement, the VIPD will submit the protocol for using the risk management system to DOJ for review and approval. The VIPD will share drafts of this document with DOJ and the Monitor (a position described in Section VII) to allow DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. The VIPD and DOJ will together seek to ensure that the protocol receives final approval within 30 days after it is presented for review and approval; d) Within 14 months of selecting the contractor, the VIPD will have ready for testing a beta version of the risk management system consisting of (i) server hardware and operating systems installed, configured and integrated with the VIPD's existing automated systems; (ii) necessary data base software installed and configured; (iii) data structures created, including interfaces to source data; and (iv) the use of force information system completed, including historic data. DOJ and the Monitor will have the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the risk management system; e) The risk management system computer program and computer hardware will be operational and fully implemented within 20 months of the selection of the risk management system contractor.

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 66 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 66 of the Consent Decree.

**VIPD Report:**

During the Fourth Quarter of 2013, the Compliance Coordinator requested that MIS assess whether the Department is ready to conduct the required Beta test of the RMS. The VIPD will provide an update regarding that assessment in future status reports.

**OIM Report:**

As previously reported, the VIPD has chosen the computer program IAPro as its RMS. The RMS will help the Department to track incidents and identify patterns relating to potentially problematic behavior by VIPD personnel. VIPD personnel use Blue Team—a companion computer program to

IAPro—to enter force data, including RRRs, directly into IAPro. Blue Team also allows Supervisors and Commanders to review and sign off on use of force investigations, and to monitor use of force patterns. As explained in the preceding paragraphs, the VIPD is not in compliance for numerous reasons.

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

**Recommendations:**

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, conducting the required beta test (i.e., an initial full scale test) of the RMS. Training in this area is of critical importance.

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

**Compliance Assessment:**

Because the Department appears to rely on IAPro for risk management, this requirement is no longer applicable.

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

**Compliance Assessment:**

Because the Department has not yet fully implemented its RMS, this requirement is not yet applicable.

**69. The VIPD will develop a protocol for conducting audits. The protocol will be used by each officer or supervisor charged with conducting audits. The protocol will establish a regular and fixed schedule**

**to ensure that such audits occur with sufficient frequency, and cover all VIPD zones.**

**Compliance Assessment:**

The Department has not achieved Phase 1, 2 or 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 69 of the Consent Decree.

**VIPD Report:**

The VIPD reports that the Audit Team met on February 22, 2013 and reviewed comments from the DOJ's policy consultant on the Department's draft Audit Policy.<sup>19</sup> The Audit Team subsequently revised the draft policy based on those comments. The Committee will then review the revised Audit Policy before it is resubmitted to DOJ.

The Audit Team also received an audit request from the Director of the IAB during the First Quarter of 2013 to audit completed citizen complaint and use of force investigation. The VIPD reports that the Audit Team is working to address that request.

**OIM Report:**

As required by the Joint Action Plan, the VIPD submitted a final Audit and Inspection Policy to the DOJ for review on November 30, 2012.<sup>20</sup> During the First Quarter of 2013, the OIM learned that Property and Procurement had not approved the training contract for the Department's Audit and Inspection Policy because of business licensing issues. As a result, the Department is unable to schedule training. The VIPD will be unable to ensure that it has substantially complied with the Consent Decree's substantive provisions until it fully implements an audit policy.

Additionally, on June 28, 2013—just two days before the VIPD was required to comply with certain audit requirements in the Joint Action Plan—the VIPD filed a motion with the Court requesting an extension until October 31, 2013 to comply. According to the VIPD, it could not meet the Joint Action Plan's June 30, 2013 deadline because it failed to finalize the Disciplinary Matrix and to complete training for its Audit Team on a timely basis.<sup>21</sup> In response, the DOJ asked the Court to require the VIPD to explain, among other things, how the extension will affect its ability to comply with the Consent

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<sup>19</sup> Prior to this meeting, the DOJ provided comments on the VIPD's Audit Policy on January 10, 2013.

<sup>20</sup> The Consent Decree does not require the DOJ to approve the Department's Audit and Inspection Policy.

<sup>21</sup> The DOJ approved a revised Disciplinary Matrix on July 18, 2013.

Decree's final substantial compliance deadline, which is also October 31, 2013. The Court's decision is pending.

**Recommendations:**

The VIPD should implement its Audit and Inspection Policy so that the Audit Team has the tools to become fully functional and to monitor the Department's compliance with the Consent Decree. Documentation of VIPD audits is the best way for the Department to demonstrate compliance with each Consent Decree paragraph. In addition, the Department should also provide additional audit-related training to relevant personnel.

While additional audit related training is important, the Audit Team should move ahead with conducting basic audits. Two members of the Audit Team have already received some audit training and various working groups have reportedly conducting audits relating to their areas of responsibility. Those individuals and working groups should serve as a resource for the rest of the Audit Team members. There is no reason for the VIPD to wait until all audit training is complete to begin its work. Moreover, the Department should describe in its next status report any steps taken to audit completed citizen complaint and use of force investigations as requested by the Director of the IAB.

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

**Compliance Assessment:**

The Department has not achieved Phase 1, 2 or 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 70 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it submitted a revised version of the Disciplinary Matrix to the DOJ on February 28, 2013, and the DOJ then provided comments to the VIPD on March 19, 2013. Based on the DOJ's comments, the VIPD reports that it will further revise the Disciplinary Matrix and resubmit a revised version to the DOJ by April 8, 2013.

In addition, the VIPD also reports that it is researching an outside vendor to conduct training on the Disciplinary Matrix. On March 18, 2013, the VIPD spoke with a potential vendor about providing such training to the VIPD.

**OIM Report:**

The DOJ approved the Disciplinary Matrix in the Second Quarter of 2011. The Disciplinary Matrix provides guidelines for the different sanctions depending on, among other things, the misconduct. The VIPD subsequently decided to further revise the “charge and penalty section” of the Disciplinary Matrix, which necessitates another round of DOJ approval. The Management and Supervision working group reports that the VIPD continues to work on the Disciplinary Matrix. Because the OIM has observed first-hand that the Department inconsistently applies disciplinary sanctions, the absence of a finalized Disciplinary Matrix is negatively impacting the Department’s efforts to comply with the Consent Decree.

As discussed above, the Police Practices Experts reviewed a use of force investigation during the First Quarter of 2013 that involved at least one Officer using what appears to be excessive force against a mentally disturbed individual.<sup>22</sup> In addition to the use of force issues discussed above, that investigation highlighted a number of problems with the Department’s disciplinary procedures and practices.

First, it appears that the Department should have referred the investigation to the VIAG for possible criminal prosecution. The investigation file contained a police report (from an uninvolved Officer) that identified the two Officers who were involved in the incident as suspects in a third degree assault. Despite that report, it does not appear that the Department referred the investigation to the VIAG or separately conducted a criminal investigation.

Second, in light of the alleged conduct, the disciplinary sanctions that the VIPD imposed were too lenient. For example, the IAB charged one of the involved Officers (the one who struck the Subject with a baton) with violating several Department policies. However, when that Officer was advised of the charges against him, he decided to retire and the Department took no further action. The Officer’s decision to retire, however, does not alleviate the VIPD’s obligation to pursue and adjudicate the charges against him. Consequently, upon retirement, the Officer’s record will presumably indicate that he retired in good standing (meaning, among other things, that he will be able to seek future employment as a peace officer in the Virgin Islands or elsewhere in the United States), even though officers who refuse to cooperate in departmental investigations typically must surrender their peace officer certifications.

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<sup>22</sup> UofX 2012-0046.

Third, there was no indication in the investigation file that the Police Commissioner ever reviewed the investigation. While Chiefs or Deputy Chiefs are typically the final reviewers for use of force investigations, the Police Commissioner should be involved in the review process based on the facts and circumstances of each use of force and that involvement should be documented. In this case, the Police Commissioner should have been involved.

Finally, the completed investigation failed to identify any underlying problems or training needs stemming from the use of force. At a minimum, the use of force underscores the need for greater training on de-escalation techniques. Had the involved Officers employed such techniques, they may not have resorted to using force.

**Recommendations:**

The Management and Supervision working group should finalize any revisions to the Disciplinary Matrix and submit it to the DOJ for final approval. The Department also needs to address the disciplinary deficiencies noted above.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 71 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 71 of the Consent Decree.

**VIPD Report:**

The VIPD reports that the requirement contained in the first sentence of ¶ 71 (“VIPD policy will continue to identify clear time periods by which the various steps of a complaint adjudication process should be completed, from complaint receipt to the imposition of discipline, if any.”) “is still an unresolved issue as it relates to the extension of statute of limitation for administering disciplinary actions.” With respect to the other requirements in ¶ 71, the VIPD reports that its next step is to audit compliance.

**OIM Report:**

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

**Recommendations:**

The Management and Supervision working group, together with the Citizen Complaint Process working group and IAB, should audit and document Department personnel's compliance with the relevant time periods. The VIPD should also hold Officers accountable for violating deadlines concerning the adjudication of investigations.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 72 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 72 of the Consent Decree.

**VIPD Report:**

As discussed above, the VIPD reports that it continues to work on the Disciplinary Matrix.

**OIM Report:**

In the absence of a final Disciplinary Matrix, the Police Practices Experts continue to observe that the Department inconsistently applies disciplinary sanctions.

**Recommendations:**

The Management and Supervision working group should finalize any revisions to the Disciplinary Matrix.



## Training

### Joint Action Plan Requirements

Joint Action Plan Requirements	Status
By <b>November 30, 2012</b> , finalize Audit Protocol and submit to DOJ and the Monitors' subject matter experts.	<b>Satisfied.</b> On November 30, 2012, the VIPD submitted a final Audit and Inspection Policy to the DOJ for review.
By <b>November 30, 2012</b> , the Director of Training will develop and implement a tracking system to track training attendance and shall periodically test for proficiency on the policies.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system or periodically tests for proficiency with policies.
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system).	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system.
By <b>November 30, 2012</b> , and on an ongoing basis, provide Monitors' subject matter experts with training curricula and schedules at least 15 days in advance of training, but preferably 30 days in advance.	<b>Not satisfied.</b> In November 2012, the VIPD issued a revised training schedule, but did not provide it to the OIM until the First Quarter of 2013. As the OIM has previously requested, and as is required by the Joint Action Plan, the VIPD must provide the OIM with training schedules, lesson plans, and curricula without prompting from the OIM.
By <b>November 30, 2012</b> , and on an ongoing basis, VIPD shall consult with VIAG to ensure that all use of force training and use of force policies are in compliance with applicable laws and VIPD policy.	<b>Not satisfied.</b> The VIPD reported during the First Quarter of 2013 that the Training and Use of Force working groups are developing a protocol for cooperation between the VIPD's Training Director and the VIAG.
By <b>January 31, 2013</b> , provide competency-based training of officers and supervisors on remaining policies.	<b>Not satisfied.</b> The VIPD reports that it plans to begin annual in-service training in April. By the end of the First Quarter of 2013, however, the VIPD had not provided the OIM with any lesson plans or other materials for courses it intends to hold during upcoming annual in-service training.
By <b>January 31, 2013</b> , provide ongoing refresher training on policies through documented, periodic in-	<b>Not satisfied.</b> Although the VIPD has provided the OIM with attendance sheets and brief descriptions of Roll

<p>service and Roll Call training. Incorporate competency-based training on policies into Police Academy.</p>	<p>Call and Commanders Call training, the OIM needs more detailed information about the subject matter being covered. Likewise, the OIM cannot determine whether the VIPD has adequately incorporated competency-based training on policies into the Police Academy because the VIPD (as of the First Quarter of 2013) has not provided the OIM with a full set of lesson plans and related training materials.</p>
<p>By <b>January 31, 2013</b>, provide competency-based training of supervisors on remaining policies (i.e. Investigating Misconduct and Citizen Complaints Policy).</p>	<p><b>Not satisfied.</b> The VIPD reports that it plans to begin annual in-service training in April. By the end of the First Quarter of 2013, however, the VIPD had not provided the OIM with any lesson plans or other materials for courses it intends to hold during upcoming in-service training.</p>

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

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has not achieved Phase 2 or Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 73 of the Consent Decree.

**VIPD Report:**

As reported during the Third and Fourth Quarters of 2012, the Committee, in conjunction with the Use of Force working group, announced that all use of force policies were under review, and solicited comments concerning the policies. The VIPD reports that only the Use of Force working group responded to the Committee’s request for comments. Until a draft of the policy review protocol is finalized, the Committee will adhere to the following procedure for reviewing policies: Step 1: Department-wide notification of the policies to be reviewed, including notice to the VIPD’s legal counsel and the VIAG; Step 2: the Committee will meet to schedule a review of each policy; Step 3: reissue any revised policies.

**OIM Report:**

The VIPD first reported during the Third Quarter of 2012 that it would periodically review its use of force policies in consultation with the VIAG. The Use of Force working group reported during the First Quarter of 2013 that it planned to review one use of force policy every two weeks. The working group repeatedly said it would provide the OIM with completed review forms, but the OIM never received any. Later in the quarter, the Department determined that a review protocol was required to establish a uniform procedure for reviewing policies before it could proceed further. The VIPD reports that it drafted a SOP to “facilitate a systematic review process for the annual review of all department policies, and particularly use of force and other force related policies . . . .” The SOP was submitted to the Committee during the First Quarter of 2013 for its review. The VIPD’s systematic review of policies should include a review of all policies by the VIPD’s counsel and the VIAG to incorporate any changes in law since a policy was first issued. This is a standard police practice and one that the OIM will hold the VIPD accountable for following.

**Recommendations:**

During the Second Quarter of 2013, the Department, the DOJ, and the OIM met to discuss the Department’s progress towards substantial compliance with the Consent Decree. During this meeting, the Police Practices Experts offered the VIPD several suggestions about how the VIPD can achieve substantial compliance with ¶ 73. For example, the Police Practices Experts suggested that the VIPD’s legal counsel and the VIAG develop a process for reviewing all use of force training to ensure quality, consistency, and compliance with applicable law and VIPD policy. While the VIPD has represented that a process is in place for reviewing policies, the OIM is unaware of a similar process for reviewing training. Such a process should be documented and provided to the OIM.

**74. The Director of Training, either directly or through his/her designee(s), consistent with applicable law and VIPD policy will: a) ensure the quality of all use of force training; b) develop and implement use of force training curricula; c) select and train VIPD officer trainers; d) develop, implement, approve, and oversee all in-service training; e) in conjunction with the Chiefs, develop, implement, approve, and oversee a patrol division roll call protocol designed to effectively inform officers of relevant changes in policies and procedures; f) establish procedures for evaluating all training curricula and procedures; and g) conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.**

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has not achieved Phase 2 or Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 74 of the Consent Decree.

**VIPD Report:**

During the First Quarter of 2013, in-service firearms training began in the St. Thomas /St. John District for Supervisors and Officers. The VIPD provided the OIM with the firearms lesson plan and training schedule, which included the names of Supervisors and Officers scheduled to attend.

The Department interviewed Officer candidates in the St. Thomas/St. John District in preparation for a new class at the Police Academy. The current police recruit class in the St. Croix District is scheduled to graduate during the Second Quarter of 2013.

The VIPD reports that it has implemented subparagraphs a-g of ¶ 74, and continues to work on implementing the remaining subparagraphs by, among other things, preparing to audit compliance. The Training and Use of Force working groups are working collaboratively to address compliance issues in their respective areas. The VIPD will report on those effects in future status reports.

**OIM Report:**

The Department has not made substantial progress in this area over the past year.

74 a) The VIPD previously reported that the Director of Training reviews evaluations completed by Supervisors and Officers at the conclusion of training. Ensuring the quality of use of force training, however, requires more than just reviewing student evaluations. The Director of Training must elicit feedback from instructors and the Training working group, aggregate and file all reviews and comments received, and implement any improvements prior to in-service and other training.

74 b) The VIPD reports that the Department developed use of force training curricula in March of 2011. That curricula must be reviewed for possible revisions in light of intervening legal developments or the Department's identification of particular deficiencies. The VIPD has not reported that it has undertaken this type of review. Under the Consent Decree, the Department must conduct the review at least semi-annually

74 c) During the Fourth Quarter of 2012, the VIPD conducted instructor development training for 20 Officers in both Districts. However, since offering this training, the VIPD has not provided a list of VIPD personnel who will serve as trainers or the courses they will instruct.

During the First Quarter of 2013, the OIM requested that the Training Division provide any materials related to the firearms qualification course held during the First Quarter of 2013.<sup>23</sup> The VIPD provided this information for the St. Thomas District, but not for the St. Croix District. The OIM learned that Supervisors also received training on how to conduct certain inspections during firearms qualification training on the St. Croix District. In a memorandum from the Chief of the St. Croix District, all Supervisors were directed to attend training on how to inspect ammunition, firearms, O.C. Spray, and Tasers. The directive warned that the failure to attend would result in disciplinary measures. The Department should provide the OIM with any lesson plans, curricula or other training materials, along with attendance information, including an explanation of the discipline imposed, if any, on any Supervisors who failed to attend.

74 d) The VIPD's Director of Training continues to develop, implement, and approve all in-service training. This has generally meant that the Director of Training has signed off on all in-service training. This is an important part of his job, but he should include the Training working group in the review process.

74 e) The Training Division has updated its records to reflect recent Roll Call training on both Districts. The OIM commends the Training Division for reinforcing Consent Decree related training, but systematic implementation of Roll Call training and the recording of these trainings is required to achieve substantial compliance.

74 f) The VIPD reported to the OIM that it has created a "Training Division Course Evaluation" form to evaluate all training. The Police Practices Experts will review completed forms and report on their findings in future quarters.

74 g) During the Fourth Quarter of 2012, the VIPD reported that it continues to maintain training folders for Officers, which include questionnaires that Officers complete after attending training to assess their understanding of the material presented. The VIPD, however, has not developed a process for reviewing this information. A proper review process must analyze this information, in concert with other training data, so that the VIPD (and the OIM) can determine where improvements in training are required.

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<sup>23</sup> The Department should use weapons qualifications training as an opportunity to reinforce proper uses of force under Department policy.

**Recommendations:**

Maintaining a viable Training working group is critical and long overdue. The Training working group has generally worked independently instead of collaborating with other working groups. That practice has inhibited the Department's progress with respect to training. The Training Division should also seek to go beyond mere delivery of lessons and pave the way toward the Department being a "learning institution" where VIPD personnel are kept informed about new developments in real time and key policies are regularly reinforced.

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

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance because it has provided training on Department policies, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 75 of the Consent Decree.

**VIPD Report:**

The VIPD reports that pursuant to the OIM's recommendations in the last quarterly report, the Training Division is currently reviewing lesson plans. In addition, the VIPD reports that all use of force and force related lesson plans will be forwarded to the VIAG by the VIPD's legal counsel for review. Copies of these documented reviews will be forwarded to OIM when they become available to the Compliance Coordinator.

**OIM Report:**

The VIPD has made progress reinforcing initial training on Department policies through Roll Call and Commanders Call Training. The Training Division, however, has no oversight over the process and record keeping is not yet systematic.

**Recommendations:**

The Training Division should work in concert with the Chiefs and Deputy Chiefs to arrange further training (in-service, Roll Call, and Commanders Call) on certain policies where compliance has been problematic, including among others, the Use of Force Policy, Acceptance of Citizen Complaint Policy, and

Investigating Misconduct and Citizen Complaints Police. The Training Division also should work closely with the Use of Force, Complaint Process, and Management and Supervision working groups to 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. Lesson plans for all training programs should be vetted and approved by Department management and the VIAG in advance of training. Moreover, the VIPD should obtain sample lesson plans from other well-respected law enforcement agencies or from their Police Practices Expert to use a helpful precedent.

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

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance because the VIPD currently maintains training records, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 76 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it maintains all training records in an electronic data base in both Districts. The Department has also identified a software vendor that will help the VIPD maintain its records, including training schedules. The VIPD said that the software will cost approximately \$60,000 annually, and although the department has budgeted for it this year, it will need funding on an annual basis to maintain the software. The Department also purchased disaster recovery software that is critical for backing-up IAPRO, the Department's RMS software.

**OIM Report:**

The Police Practices Experts have observed that paper copies of most lesson plans, training records and instructor certifications are stored in folders on both Districts. From a practical perspective, automated training files would allow the Department to more easily produce reports and maintain the records in a "central, commonly accessible file" as required by the Consent Decree. The OIM has shared its reservations about the Department's capabilities for producing reliable training data from its current database.

For example, when the OIM has requested attendance records from Department training, the VIPD has only been able to provide sign-in

attendance sheets. Sign in sheets, however, do not account for personnel who did not attend training, nor does it explain why personnel designated to attend were “no-shows.” The Police Practices Experts repeatedly asked whether the VIPD’s current database was capable of generating such information and were told that the database could not. However, during a Police Practices Experts monitoring trip in March, the Interim Training Director demonstrated that it was possible to produce an automated attendance list. The Police Practices Expert asked for a report of personnel in the St. Thomas District who attended and completed Blue Team training and passed any post-training examinations. The Police Practices Expert also requested a list of VIPD personnel who failed to attend training and the reason they did not attend. The Training Division produced a report meeting substantially all of the requested criteria. The Training Division was unable to provide an update about what action, if any, was taken against the “no shows” because that information was maintained elsewhere.

The OIM recognizes that producing this report was labor intensive because only attendance records are available through the VIPD’s current database. The remaining information required manual compilation. To resolve this issue, the VIPD should follow through on its plans to purchase the software referenced above.

On March 19, the VIPD provided the OIM with a training schedule of upcoming training through September 2013. All Consent Decree related training was listed as “tentative.” In addition, the training schedule states that in-service training for Supervisors is “tentatively” scheduled to begin on April 1. The VIPD, however, has not provided the OIM with any training curricula or schedules. Under the Joint Action Plan, the VIPD is required to provide “training curricula and schedules at least 15 days in advance of training, but preferably 30 days in advance.” The VIPD has failed to comply with this requirement.

**Recommendations:**

The VIPD must finalize plans to purchase a new database to maintain training records. A manual record keeping system does not allow the Training Division to manage training records in an efficient and effective manner that enables the VIPD to generate reports sufficient to assess the VIPD’s compliance with the Consent Decree’s training requirements. This capability is fundamental to modern policing.

**77. The VIPD shall continue to maintain training records regarding every VIPD officer that reliably indicate the training each officer has received. The training records shall, at a minimum, include the course description and duration, curriculum, and instructor for each officer.**



**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance since the VIPD reports that it maintains training records, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 77 of the Consent Decree.

**VIPD Report:**

The VIPD reports that it maintains all training records in an electronic data base in both Districts. The records include course descriptions, instructor information, and course curriculum. During a monitoring trip to the St. Thomas District in the First Quarter of 2013, Training Division personnel demonstrated the VIPD's current database to a Police Practices Expert.

**OIM Report:**

The Police Practices Experts have observed that paper copies of most training records are stored in folders on both Districts. From a practical perspective, automated training files would allow the Department to more easily produce reports and maintain the records in a "central, commonly accessible file" as required by the Consent Decree. The OIM has shared its reservations about the Department's capabilities for producing reliable training data from its current database.

Because neither the VIPD's current database or manual collection of data allows the Department to efficiently and reliably produce statistics compiling the information required under ¶ 77, the VIPD has only partially complied with this Consent Decree provision. Although it may be possible for the VIPD to produce statistics using its current methods, it will require a tremendous amount of VIPD personnel time to manually cull the information from multiple sources.

**Recommendations:**

The VIPD should finalize plans to purchase a new database to maintain training records. A manual record keeping system does not allow the Training Division to fully manage training records efficiently or generate reports sufficient to assess the VIPD's compliance with the Consent Decree's training requirements. This capability is fundamental to modern policing.

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

**and/or modifications regarding use of force training or policies to ensure compliance with applicable laws.**

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance since the VIPD reports that the Training Director reviews all training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 78 of the Consent Decree.

**VIPD Report:**

Last quarter, the VIPD reported that its Compliance Coordinator developed a form to document reviews of the Department's Use of Force policies and corresponding training. During the First Quarter of 2013, the form was submitted to the Committee. The VIPD anticipates that the form will be finalized and approved by the Police Commissioner shortly. Additionally, the Training and Use of Force working groups are developing a protocol for cooperation between the VIPD's Training Director and the VIAG.

**OIM Report:**

The VIPD first reported during the Third Quarter of 2012 that it would periodically review its use of force policies in consultation with the VIAG. The Use of Force working group reported during the First Quarter of 2013 that it planned to review one use of force policy every two weeks. The working group repeatedly said it would provide the OIM with completed review forms, but the OIM never received any. Later in the quarter, the Department determined that a review protocol was required to establish a uniform procedure for reviewing policies before it could proceed further. The VIPD reports that it drafted a SOP to facilitate a systematic review process for the annual review of all department policies. The SOP was submitted to the Committee during the First Quarter of 2013 for its review. The VIPD's systematic review of policies should include a review of all policies by the VIPD's counsel and the VIAG to incorporate any changes in law since the policy was first issued. This is a standard police practice and one that the OIM will hold the VIPD accountable for following.

**Recommendations:**

Maintaining a viable Training working group is critical and long overdue. The Training working group should help develop a process for cooperation between the VIPD and VIAG for reviewing all use of force training to ensure quality, consistency, and compliance with applicable law and VIPD policy. The Training Director must work with Department management in order for the Department's training capacity to grow. Up to this point, the Training working group has functioned independently but should work cooperatively with other

working groups when appropriate to achieve substantial compliance with the Consent Decree.

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

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has not achieved Phase 2 or Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 79 of the Consent Decree.

**VIPD Report:**

The VIPD reports that annual in-service training is scheduled for April or May 2013. The VIPD anticipates training on the VIPD's use of force model, use of force reporting requirements, the Fourth Amendment and other constitutional requirements.

The VIPD anticipates that it will use its training lab during annual in-service training. The training lab was last used in November 2012, and simulates exercises that allow Officers to respond to reality-based scenarios. To help improve use of force decision making, the Training Division will simulate a number of the Department's closed use of force cases. The program will also include training on de-escalation techniques such as verbal judo, and training in conflict management.

**OIM Report:**

As of the end of the First Quarter of 2013, the VIPD has not provided the OIM with any lesson plans or other materials for upcoming annual in-service training. Based on discussions with the VIPD, however, the OIM has learned that the Training Division would like to require Officers to complete 80 hours of

in-service training. This is a massive undertaking. To achieve such a goal, training requires greater organization throughout the Territory. While Training personnel are able to deliver training and manage the training schedule, the Department lacks a formal process for planning, coordinating, and reviewing training. The Police Practices Experts have observed that training is often ad hoc and scheduled when instructors or vendors become available. By comparison, Training programs in comparable police departments are scheduled almost a year in advance. The Police Practices Experts have recommended that the VIPD contact other comparably sized law enforcement agencies to obtain sample lesson plans, curricula and training materials.

a) The VIPD has developed a use of force model as required under the Consent Decree. However, the VIPD has not provided the OIM with any lesson plans demonstrating how the use of force model will be reinforced during in-service training.

b) The VIPD has not provided the OIM with any lesson plans relating to training on proper use of force decision making. In addition, the OIM has not received any lesson plans addressing how the training lab will be used during in-service training. *See also 79 f) supra.*

c) The VIPD has improved in its use of force reporting since the inception of the Consent Decree. The VIPD conducted its own audit and discovered issues with uniform reporting and accountability, which the Department is in the process of addressing.

d) Although topics including the Fourth Amendment and other constitutional requirements have been addressed in previous training provided by the Department, the OIM cannot not assess the adequacy of the material to be covered during this year's in-service training since it did not receive lesson plans or other materials in the First Quarter of 2013.

e) The Police Practices Experts have observed that the VIPD has started to incorporate scenario-based training. This is a positive development since much of the training previously observed by the Police Practices Experts was merely a recitation of the policy.

f) The OIM is surprised that the Department has not utilized the training lab with greater frequency. Since the Department purchased the training lab, the OIM expected to see a plan integrating simulators into recruit and in-service training. The VIPD has reported to the OIM that the training lab was used in November and that the SRT team on the St. Thomas District received introductory training. The Department, however, has not provided the OIM with documentation of that training.

g) As of the First Quarter of 2013, the OIM was not aware of any specific training on de-escalation techniques, including encouraging officers to make

arrests without using force, or instructing on disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest. The OIM expects that these topics will be covered extensively during in-service training, but has yet to see any lesson plans from the VIPD.

h) The VIPD has not provided the OIM with a training schedule or lesson plans for threat assessment training.

i) The VIPD has not provided the OIM with a training schedule or lesson plans that focus on conflict management. This is significant since the OIM's Police Practices Experts have reviewed several cases where Supervisors have recommended this kind of training for subordinates.

**Recommendations:**

We previously recommended that the Training Division work closely with the Chiefs and Deputy Chiefs to arrange further training (in-service, Roll Call, and Commanders Call) on certain policies for which compliance has been problematic based on the results of post-training examinations, Department audits, and OIM audits. The Training Division also should work closely with the Use of Force, Complaint Process, and Management and Supervision working groups to 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.

For the Training Division to fulfill its mission, it must liaise with each division of the Department so that it can adequately meet the needs of every unit and employee. The Training working group should help with these efforts.

The OIM believes that it is critical for the VIPD to conduct training in area containment, surveillance, and waiting out a subject. Since violations of Department policy in these areas increase the likelihood that Officers will use force, the VIPD should ensure that its actions are in line with the latest law enforcement practices.

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

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies consistent with the citizen complaint process requirements of the Consent Decree and has provided related training, but it has not achieved

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Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 80 of the Consent Decree.

### **VIPD Report:**

In-service training is scheduled to commence in April or May 2013, and will include training on the complaint process. The leader of the Citizen Complaint Process working group intends to meet with the Training Division to share observations in an effort to improve training on the citizen complaint process.

### **OIM Report:**

The VIPD has made progress towards achieving substantial compliance with ¶ 80 of the Consent Decree. The Citizen Complaint Process working group conducts inspections to ensure that complaint and compliment materials are available. The VIPD also sponsors public service announcements on local radio and television stations to promote the Citizen Complaint Process.

The Department has increased the number of Roll Call and Commanders Call trainings dedicated to the citizen complaint process. Records for Roll Call and Commanders Call training, like all Department training, should document which Officers attended training, which Officers did not attend, and what efforts the Department has undertaken to train any “no shows.”

The OIM did not test Officers on their knowledge of the Acceptance of Citizen Complaints Process policy during this reporting period. The OIM is consulting with the Citizen Complaint working group to redesign our methodology for testing personnel.

### **Recommendations:**

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

**81. The VIPD will provide training on appropriate burdens of proof to all supervisors, as well as the factors to consider when evaluating complainant or witness credibility (to ensure that their recommendations regarding dispositions are unbiased, uniform, and legally appropriate). The VIPD will also continue to provide training to supervisors on**

**leadership and command accountability, including techniques designed to promote proper police practices. This training will be provided to all officers promoted to supervisory rank within 90 days of assuming supervisory responsibilities, and will be made part of annual in-service training.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies consistent the requirements of ¶ 81 and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 81 of the Consent Decree.

**VIPD Report:**

As reported previously, test questions and an answer key provided by the VIAG were forwarded to the Citizen Complaint Process working group, IAB and the OIM. The VIPD reports that the leader of the Citizen Complaint Process working group will be meeting with the Training Division to decide when to administer the tests to Supervisors in both Districts. In-service training is scheduled to start in April or May 2013.

**OIM Report:**

While the VIPD has devoted time and energy to improving Supervisors' knowledge of the preponderance of the evidence standard and proper investigative techniques, more work must be done. For example, the IAB continues to return "completed" investigations to Commanders for correction. To help resolve this issue, the IAB has conducted Commanders Call training to address common errors discovered in investigations. The Police Practices Experts will review any documentation of this training and assess the quality of completed Zone investigations in the coming quarter.

The OIM did not test Supervisors' knowledge of the preponderance of evidence standard during the First Quarter of 2013, nor did we examine the elements of assessing the credibility of witnesses. The OIM is consulting with the Citizen Complaint working group to redesign our methodology for testing personnel on this topic. In addition, the Police Practices Experts have previously assessed application of the preponderance of the evidence standard and proper investigative techniques through their review of completed use of force and citizen complaint investigations. However, the Police Practices Experts are currently exploring other ways, including a review of test results following in-service training, to assess compliance with ¶ 81 of the Consent Decree.

**Recommendations:**

Maintaining a viable Training working group will help the Training Division achieve compliance with the requirements of ¶ 81. The Training Division should work with the Commanders to conduct Commanders Call training on the preponderance of the evidence standard, document such training and attendance by Supervisors, and record the results of any examinations administered following training. Additionally, the VIPD should develop a process for identifying personnel who continually fail to comply with Department policy. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, IAB, and the Training Division to provide remedial training or other corrective action. All audits should be documented and shared with the Compliance Coordinator and the OIM.




## Conclusion

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

While the VIPD continues to make progress in certain areas, work remains, particularly with respect to the Department's use, reporting, and investigation of force. The Department should conduct further training to emphasize the requirements of its revised use of force policies, which lie at the heart of the Consent Decree.

Finally, the OIM is hopeful that the Joint Action Plan approved by the Court during the Fourth Quarter of 2012 will focus the VIPD's Consent Decree compliance efforts. The VIPD must adhere to the deadlines agreed to by the Parties and ordered by the Court. The VIPD must demonstrate to the OIM (through its Quarterly Status Reports and other documentation) the steps the Department has taken to meet those deadlines.



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August 7, 2013

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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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<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 investigation as necessary to determine whether the allegations

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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.

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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See CD ¶ 66.

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

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

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

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

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

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

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

## **B. Oversight (CD ¶ 69)**

### **1. Requirements**

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

## **C. Discipline (CD ¶¶ 70-72)**

### **1. Requirements**

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



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

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

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

## **V. Training (CD ¶¶ 73-81)**

### **A. Management Oversight (CD ¶¶ 73-77)**

#### **1. Requirements**

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

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

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

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

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

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

## **B. Curriculum (CD ¶¶ 78-81)**

### **1. Requirements**

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

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

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

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

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

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

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

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

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

**1. Requirements**

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

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

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

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