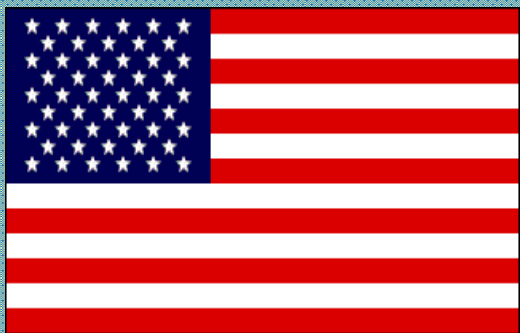


Second Quarterly Report of 2012 of the Independent Monitor for the Virgin Islands Police Department



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



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

October 10, 2012

Independent Monitoring Team

Independent Monitors

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

Fried Frank Monitoring Team

Elizabeth P. Kozlowski
Joshua D. Roth

Police Practices Coordinator

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

Police Practices Experts

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

Chief Dennis E. Nowicki
Charlotte-Mecklenburg (North Carolina) Police Department (retired)

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

Table of Contents

	Page
Executive Summary	1
Deadlines for Substantial Compliance Under the Consent Decree	1
Introduction.....	10
Compliance Assessment.....	14
I. Use of Force Policies (CD ¶ 31) & Specific Use of Force Policies (CD ¶¶ 39-41).....	14
A. Status and Assessment	14
B. Recommendations.....	17
II. Evaluation, Documentation, and Review of Uses of Force (CD ¶¶ 32-38).....	18
A. Status and Assessment	18
1. Policies and Directives	18
2. OIM Survey of Uses of Force.....	20
B. Recommendations.....	24
III. Citizen Complaint Process (CD ¶¶ 42-58).....	26
A. Public Information (CD ¶¶ 42-43) & Means of Filing and Tracking Complaints (CD ¶¶ 44-45)	26
1. Status and Assessment.....	26
2. Recommendations.....	28
B. Investigation of Complaints (CD ¶¶ 46-58).....	28
1. Status and Assessment.....	28
2. Recommendations.....	31

IV.	Management and Supervision (CD ¶¶ 59-72)	32
A.	Risk Management System (CD ¶¶ 59-68).....	32
1.	Status and Assessment	32
2.	Recommendations	35
B.	Oversight (CD ¶ 69).....	36
1.	Status, Assessment, and Recommendations	36
C.	Discipline (CD ¶¶ 70-72)	36
1.	Status, Assessment, and Recommendations	36
V.	Training (CD ¶¶ 73-81).....	37
A.	Management Oversight (CD ¶¶ 73-77) and Curriculum (CD ¶¶ 78-81)	37
1.	Status and Assessment	37
2.	Recommendations	41
VI.	Monitoring, Reporting, and Implementation (CD ¶¶ 82-102).....	42
1.	Status, Assessment, and Recommendations	42
2.	Status of Substantial Compliance.....	42
	Conclusion	44
	Appendix A Summary of Consent Decree Requirements	i

Executive Summary

This is the Second Quarterly Report of 2012 from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the United States Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on June 30, 2012.¹

As an initial matter, the OIM extends its thoughts and prayers to the family of Officer Colvin Georges who passed away on September 29, 2012 after sustaining gunshot wounds in the line of duty in May. Our thoughts and prayers are also with Chief Christopher Howell and Officers Aaron Hodge and Elsworth Jones who were also injured in the line of duty in May and August.

During the quarter, the OIM’s Police Practices Experts conducted four week-long monitoring trips to the United States Virgin Islands (the “Territory”). During these trips, the Police Practices Experts spent time meeting with and providing technical assistance to VIPD personnel, observing Consent Decree related training, and reviewing closed investigation files and other police records. The Police Practices Experts reviewed 17 completed use of force investigations and 4 completed citizen complaint investigations involving the use of force.² The assessments contained in this Report are primarily based on the Police Practices Experts’ observations and the Department’s quarterly Status Report, dated July 6, 2012 (“Status Report”).

The Police Practices Experts also reviewed a sample of Arrest Reports and Form 1As to determine whether VIPD personnel are consistently reporting force as required by the Use of Force Policy and the Reportable Use of Force Policy. Based on that review, it appears that VIPD personnel continue to underreport uses for force. For example, the Police Practices Experts identified 13 Arrest Reports (from both Districts)

¹ This Report references a limited number of events that occurred after June 30, 2012 to provide context for significant developments or efforts that the VIPD made outside of the quarter to satisfy its Consent Decree obligations.

² When reviewing completed investigation files for uses of force and citizen complaints involving the use of force, the OIM’s Police Practices Experts review the corresponding Form 1As, Arrest Reports, completed RRRs, video or audio statements from witnesses, photos of injuries and weapons, the Supervisor’s investigative report with analysis of the facts, evidence identified, and findings, evidence that the Department’s chain of command reviewed and approved the completed investigation file, and disposition letter.

2 | William F. Johnson and Steven M. Witzel

where it appeared likely that force was used. Of those 13 arrests, 31% (4 out of 13) did not have corresponding Response to Resistance Reporting Forms (“RRR”) (formerly known as Use of Force Reports) (which should be completed whenever force is used). The VIPD also continues to allow the timeframe for completing use of force investigations to expire long before the Department conducts the required investigations.³ For the first six months of 2012, only 28% (11 out of 39) of use of force investigations on St. Thomas, and 22% (8 out of 37) of use of force investigations on St. Croix were completed on time.⁴ The Police Practices Experts also discovered one instance on St. Croix where the VIPD not only allowed the time period for conducting the investigation to lapse, but also failed to conduct any investigation at all.

IAB continued to return incomplete/inadequate use of force investigations to the Zones on both Districts (4 in St. Croix and 3 in St. Thomas) for additional follow up during the Second Quarter. Based on the Police Practices Experts’ review of the Department’s files for these cases and discussions with IAB personnel, there was no evidence in certain instances that the Deputy Chiefs ever directed the investigating Supervisors to correct the deficient investigation files, or that corrected investigation files were then returned to IAB in corrected form. This lack of follow through is emblematic of broader issues within the Department that must be addressed.⁵

The Department also failed to complete many force related citizen complaint investigations within the timeframe prescribed in the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy. In addition, one of the Police Practices Experts learned during a monitoring trip that Supervisors had accepted citizen complaints and unilaterally closed (i.e., “resolving”) the

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

⁴ The total number of use of force investigations represents those investigations that were reported to the Internal Affairs Bureau (“IAB”) on St. Thomas and St. Croix.

⁵ For example, as discussed below, the VIPD: adopted several policies without providing the requested training; failed to provide the OIM with documentation relating to many of its alleged Consent Decree compliance efforts; and failed to impose disciplinary sanctions (or provide additional training) for Officers who violated Department policies.

cases without referring the complaints to IAB as Department policies require.

Training continues to be a hurdle for the Department to achieve substantial compliance with the Consent Decree. During the Second Quarter the VIPD began in-service training for all Officers and Supervisors.⁶ The Police Practices Experts observed several in-service training sessions during the Second Quarter and noted that some VIPD personnel arrived late, left early, or missed significant portions of the training. While the Director of Training announced during the Second Quarter that VIPD personnel who miss more than ninety minutes of training must repeat the class, the Department's attendance records do not allow the OIM to confirm that Officers fully attended each training.

By reviewing completed use of force investigations on St. Thomas and St. Croix, the Police Practices Experts noted how the Department's failure to train on the Off Duty Official Action Policy may have had consequences in the field. The Police Practices Experts reviewed two cases where Officers appeared to violate the Off Duty Official Action Policy during the Second Quarter. In one instance, the Firearms Policy was also violated because an off-duty Officer carried and fired a firearm after consuming alcohol. Despite these violations, the investigation file indicated that no discipline was imposed.

The VIPD's Status Report only claims to have satisfied one substantive paragraph (out of 50) in the Consent Decree. With respect to that one paragraph (§ 42), the VIPD is required to "develop and *implement* a program to inform persons that they may file complaints regarding the performance of any officer." (emphasis added). Although the VIPD has made significant progress promoting its citizen complaint process through posters, informational brochures, and public service announcements, VIPD personnel are not yet fully proficient with the citizen complaint policies.

While on St. Croix during the Second Quarter, a Police Practices Expert questioned Officers about their knowledge of the Acceptance of Citizen Complaints Policy and found that only 50% (3 out of 6) Officers

⁶ This report makes the distinction between "in-service" training and "Roll Call" or "Commanders Call" training. In-service training is typically more extensive and requires VIPD personnel to attend training in lieu of their usual duties. Roll Call or Commanders Call training generally focus on providing refresher training on topics already covered during in-service training and are held during regular shifts.

4 | William F. Johnson and Steven M. Witzel

responded correctly when asked to explain the process for filing a citizen complaint. The remaining responses omitted key aspects of the Acceptance of Citizen Complaints Policy, including: (1) how a citizen can file a complaint; (2) the Officer's obligations when a citizen wants to file a complaint; and (3) how citizens will be informed about the outcome of the complaint. Similarly, when the same Police Practices Expert asked Supervisors about their understanding of the preponderance of the evidence standard (which is used to investigate citizen complaints and uses of force), he discovered that only 50% (3 out of 6) of the Supervisors correctly explained that evidentiary standard or how it differs from the beyond a reasonable doubt standard. The VIPD has recognized the need for additional training on the citizen complaint process. Because of these deficiencies, the Department is not yet in compliance with ¶ 42.

We are also troubled by the fact that the Use of Force working group, which is responsible for ensuring the Department's compliance with the Consent Decree's force reporting and evaluating requirements, apparently failed to provide the Compliance Coordinator with a written report on progress made towards achieving substantial compliance with those requirements. Similarly, the Training working group failed to provide the OIM with lesson plans for training held during the Second Quarter despite our repeated requests.

Although certain working groups (particularly the Complaint Process working group) are conducting audits relating to their areas of responsibility, the VIPD's Audit Team (which is responsible for auditing the Department's Consent Decree compliance efforts as a whole) is not yet functional. The VIPD also has not finalized its Risk Management System ("RMS") Protocol (which will dictate how the Department's RMS will function), nor has it completed training on all force related policies. Indeed, the VIPD is only beginning to assess whether VIPD personnel are proficient with the information provided during training on the Department's use of force and citizen complaint process policies.

Nevertheless, the OIM is hopeful that the proposed joint action plan that the Court ordered the VIPD and the Department of Justice (the "DOJ") (collectively, "the Parties") to submit will refocus the VIPD's Consent Decree compliance efforts. Under the Parties' proposed joint action plan (which is subject to the Court's review), the VIPD must

comply with each substantive provision in the Consent Decree by October 31, 2013 and then remain in compliance for two years. We believe that the VIPD can meet those mandates if it commits substantially more effort to complying with the Consent Decree. However, if the VIPD maintains the status quo, it will not achieve substantial compliance.

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

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

*In order to be released from the Consent Decree, the VIPD must substantially comply with each of the Consent Decree’s provisions, and remain in compliance for **two** years before the Consent Decree expires on March 23, 2014.⁷*

CD	Description	Deadlines for Substantial Compliance Under the Consent Decree	Status of Compliance as of March 31, 2012 Noncompliance/ Substantial Compliance
31	Use of Force Policies: Use of Force; Reportable Use of Force; Vehicle Pursuit; O.C. Spray; Impact Weapons; ECW; Firearms; Spike Strip; Canine; SRT/HNT; Sniper; FTO; Reporting, Investigation and Review of Use of Force; Use of Force Review Board; Post Shooting Incident Procedures; Officer Involved Shooting Investigation Procedures.	Within 30 days of DOJ final written approval	Noncompliance – The VIPD has issued many of the required force related policies, including the Use of Force Policy, Reportable Use of Force Policy, Firearms Policy, Vehicle Pursuit Policy, O.C. Spray Policy, Impact Weapons Policy, SRT/HNT Policy, Sniper Policy, and Spike Strip Policy, and the FTO Policy. The VIPD, however, has not implemented many policies because it has not trained on the Vehicle Pursuit Policy, Spike Strip Policy, SRT/HNT Policy, and Sniper Policy. ⁸ In addition, the VIPD has not issued the Reporting, Investigation and Review of Use of Force Policy, Use of Force Review Board Policy, Post Shooting Incident Procedures, and Officer

⁷ As discussed in the Executive summary and below, the March 23, 2014 termination date (along with certain interim dates) for the Consent Decree may change based on the Court’s decision on the Parties’ proposed joint action plan and the DOJ’s motion to eliminate the Consent Decree’s “bright line” termination date.

⁸ As defined in the Consent Decree, “implement” refers to the “development or putting into place of a policy or procedure, including the appropriate training of personnel.” CD ¶ 30.

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

8 | William F. Johnson and Steven M. Witzel

CD	Description	Deadlines for Substantial Compliance Under the Consent Decree	Status of Compliance as of March 31, 2012 Noncompliance/ Substantial Compliance
			each complaint in writing.
46-58	Citizen Complaint Process Investigation of Complaints	May 31, 2011, except September 15, 2011 for ¶ 49.	Noncompliance – While the VIPD issued the Investigating Misconduct and Citizen Complaint Policy, it has not implemented the policy.
59-68	Management and Supervision Risk Management System Blue Team Protocol Behavioral Health Services Policy; Psychological Fitness for Duty Evaluation Policy; Officer Peer Support Policy	September 15, 2011, except June 30, 2011 for ¶¶ 60-61 & May 31, 2011 for ¶ 62; also ¶¶ 67-68 have no date.	Noncompliance – The VIPD continues to make revisions to the RMS Protocol. During the Second Quarter, the VIPD submitted its ninth revised draft of the RMS Protocol to the DOJ for its review and approval. The Department’s RMS has also been hampered by ongoing technical problems.
69	Management and Supervision Oversight	September 15, 2011	Noncompliance – The Department’s Audit Team is not yet functional.
70-72	Management and Supervision Discipline	May 31, 2011	Noncompliance – Despite receiving DOJ approval for the Disciplinary Matrix during the Second Quarter of 2011, the VIPD subsequently decided to further revise it. The VIPD has not submitted a revised version of the disciplinary matrix to the VIPD for approval.
73-77	Training Management Oversight	June 30, 2011	Noncompliance – The Department has not demonstrated that VIPD personnel are proficient in VIPD policies.
78-81	Training Curriculum	June 30, 2011	Noncompliance – Despite repeated requests from the OIM, the Training working group failed to provide us

CD	Description	Deadlines for Substantial Compliance Under the Consent Decree	Status of Compliance as of March 31, 2012 Noncompliance/ Substantial Compliance
			with any training lesson plans during the Second Quarter. In addition, the OIM has not seen evidence that training materials are being subjected to quality control reviews by the VIPD's legal and subject matter experts.

Introduction

This is the Second Quarterly Report of 2012 from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the United States Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on June 30, 2012.⁹

The OIM was established in January 2010 to monitor compliance by the United States Virgin Islands and the VIPD with the Consent Decree entered by the United States District Court for the Virgin Islands (the “Court”) on March 23, 2009. The Monitors are required by the Consent Decree to “issue quarterly written, public reports detailing the Territory of the Virgin Islands’ compliance with and implementation of each substantive provision” of the Consent Decree.¹⁰

The Consent Decree reflects the agreement between the Virgin Islands, the VIPD, and the United States Department of Justice (the “DOJ”) (collectively, the “Parties”) to resolve a lawsuit brought by the United States alleging that the Virgin Islands and the VIPD violated 42 U.S.C. § 14141 by engaging “in a pattern or practice of excessive force by Officers of the Virgin Islands Police Department and by the failure to adequately train, supervise, investigate, and discipline Officers.”¹¹

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.”¹² 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

⁹ This Report references a limited number of events that occurred after June 30, 2012 to provide context for efforts made by the VIPD outside of the Second Quarter to satisfy its Consent Decree obligations.

¹⁰ Consent Decree (“CD”) ¶ 96. This Quarterly Report, along with the OIM’s prior reports, is available on the internet at <http://www.policemonitor.org/VI/VIindex.html>.

¹¹ 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).

¹² CD ¶ 3.

managing and supervising Officers; and (6) disciplining Officers found to have engaged in misconduct.

On October 1, 2010, the Court—charged with enforcing the VIPD’s obligations under the Consent Decree—ordered the Parties to jointly propose a timetable by which the VIPD would substantially comply with each substantive provision in the Consent Decree. The Court was concerned about the VIPD’s slow rate of progress and saw the timetable as a vehicle to help the Department move forward more quickly. The Parties subsequently filed a timetable on November 24, 2010 that set forth specific dates by which the VIPD would substantially comply with each substantive provision in the Consent Decree (the “Consent Decree Timetable”). The Consent Decree Timetable also created interim deadlines for the VIPD to submit force-related policies to the DOJ for approval. The VIPD successfully met nearly every policy submission deadline. However, at the end of the Third Quarter of 2011, the VIPD had missed all of the remaining deadlines for substantial compliance established by the Court-ordered Consent Decree Timetable (deadlines that the VIPD proposed and committed to meeting). For example, under the Consent Decree Timetable, the VIPD was required to substantially comply with Consent Decree ¶¶ 32-58, 70, and 72 by May 31, 2011, ¶¶ 60, 61, and 73-81 by June 30, 2011, and ¶¶ 49, 59, and 63-66 by September 15, 2011. To date, the VIPD has only complied with ¶¶ 82-86, 88, and 98 (a chart summarizing the VIPD’s progress toward substantial compliance is located on pp. 9-12).

In January 2011, to reinvigorate the VIPD’s Consent Decree compliance process and encourage compliance within the timeframe of the Consent Decree Timetable, the then-Police Commissioner convened a Consent Decree Summit on St. Thomas on January 3 and 4, 2011 (the “Summit”).¹³ At the Summit, the then-Police Commissioner appointed senior VIPD personnel to lead, and ultimately be held accountable for, different aspects of the Consent Decree—Use of Force (Chief of the St. Croix District), Citizen Complaint Process (Chief of the St. Thomas District),¹⁴ 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

¹³ The OIM discussed the Summit in the Fourth Quarterly Report of 2010 and the First Quarterly Report of 2011. For more information about the Summit, including objectives and participants, see the *Consent Decree Summit Addendum* at the end of those Reports.

¹⁴ The Citizen Complaint Process working group is now led by the Deputy Chief of St. John.

“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.¹⁵ As reported last quarter, the Police Commissioner issued a memorandum requiring all working group leaders to submit bi-weekly reports on the 15th and 30th of each month. Compliance with this requirement during the Second Quarter was inconsistent among all working groups. Reports were routinely submitted late, and for some months, not at all. As a result, the Compliance Coordinator reminded all working group leaders about their obligation to complete timely reports. The OIM urges the working groups to adhere to the Police Commissioner’s directive, and encourages the Police Commissioner to hold the working group leaders accountable.

During the Second Quarter, the Court held an evidentiary hearing on April 23, 2012 to address the VIPD’s failure to meet the deadlines set forth in the Consent Decree Timetable. After nearly seven hours of testimony from several witnesses (including one of the Police Practices Experts), the Court met privately with the Parties and ordered them to propose a new deadline by which the VIPD would comply with the Consent Decree. After initially failing to agree on a joint submission, each Party submitted individual proposals for the Court’s consideration. The DOJ initially proposed eliminating the Consent Decree’s “bright line” termination date of March 23, 2014, and requiring the VIPD to submit an action plan to the DOJ for approval. The VIPD objected to both aspects of the DOJ’s proposal. Instead, the VIPD proposed setting June 30, 2013 as the date by which the VIPD must achieve substantial compliance and extending the bright line termination date for the Consent Decree to June 30, 2015. Despite extensive negotiations, the Parties were unable to agree on a mutually acceptable action plan. The Court considered the Parties’ respective proposals at a July 26, 2012 hearing and subsequently ordered the Parties to submit a proposed joint action plan. On August 30, 2012, the Parties jointly filed a proposed action plan setting new interim deadlines by which the VIPD must achieve

¹⁵ Memorandum from the Police Commissioner to various VIPD personnel, titled “Meeting Current Standards of Policing,” dated January 19, 2011. The OIM’s Police Practices Experts also provided the working group leaders with a memorandum outlining their respective responsibilities. Each of the OIM’s four Police Practices Experts is assigned to work with a particular working group leader. During the Second Quarter, the Police Practices experts regularly exchanged emails and telephone calls with their counterparts and met in person during the quarter’s monitoring trips.

substantial compliance with each of the Consent Decree's substantive provisions. The proposed joint action plan also seeks to extend the substantial compliance deadline to October 31, 2013. Decisions by the Court on the proposed joint action plan and the DOJ's motion to eliminate the Consent Decree's bright line termination date are pending.

The VIPD also made a number of personnel changes during the Second Quarter. In April, the Acting Chief of St. Thomas was elevated to Chief. Later that month, the Director of Training (a member of the Virgin Islands National Guard) announced that he would be on a five-month military leave. The Police Commissioner appointed Sergeant Barrington Thomas to serve as Acting Director of the Training Division in the Director's absence, and Senior Cadre Gleston McIntosh to oversee daily training activities for the St. Croix District. In May, the VIPD appointed Lieutenant Maria Colon-Jones to serve as Deputy Chief of St. John. Deputy Chief Jones also assumed leadership of the Citizen Complaint Process working group. The Department also appointed Lieutenant Sandra Colbourne to the position of Consent Decree Manager. Finally, the VIPD appointed Retired Police Captain James Parris to serve as Deputy Chief of St. Croix. The OIM congratulates these individuals on their appointments, and looks forward to continuing to work with them.

Compliance Assessment

This section of the Report describes the VIPD’s compliance efforts with respect to each of the substantive provisions of the Consent Decree,¹⁶ as well as monitoring activities by the OIM’s Police Practices Experts during the quarter. The organization of this section of the Report parallels the organization of the Consent Decree. Specifically, we provide a *status and assessment* discussion that describes and analyzes the VIPD’s progress toward achieving substantial compliance with the Consent Decree’s requirements.¹⁷ As part of this discussion, we provide an update about the progress of each of the working groups leading these efforts. We also include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree’s requirements.¹⁸ A chart summarizing the VIPD’s progress towards substantial compliance is included at the end of the Executive Summary.

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

A. Status and Assessment

As previously reported, the VIPD has received DOJ approval for many of its force-related policies. For example, the VIPD has issued a total of twelve force-related policies through the end of the Second Quarter: (1) Use of Force; (2) Reportable Use of Force; (3) Impact Weapons; (4) Electronic Control Weapon (“ECW”); (5) O.C. Spray; (6) Vehicle Pursuit; (7) Spike Strip; (8) Off-Duty Official Action; (9) Firearms; (10) Field Training Officer Program (“FTO”); (11) Special Operations – Special Response Team and Hostage Negotiations Team (“SRT/HNT”) Policy, and (12) Special Operations SRT – Sniper (“Sniper”) Policy. The VIPD adopted these policies in partial satisfaction of ¶¶ 31 to 41 of the Consent Decree. In addition, the Department has created and

¹⁶ A summary of the Consent Decree requirements is excerpted at Appendix A. A copy of the full text of the Consent Decree is available at: http://www.justice.gov/crt/about/spl/documents/VIPD_CD_03-23-09.pdf. At the DOJ’s request, the OIM’s Third Quarterly Report of 2012 will follow a revised format. Among other things, it will evaluate the VIPD’s compliance with each Consent Decree paragraph individually.

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

¹⁸ CD ¶ 85.

put into place the RRR for VIPD personnel to document use of force events pursuant to the Reportable Use of Force Policy.

The Use of Force working group and the Policy and Procedures Committee (the “Committee”) have also developed a Response to Resistance Investigation Checklist (the “Checklist”) that Supervisors will use when conducting use of force investigations.¹⁹ The Department has delayed using the Checklist department-wide because it hopes to replace the existing Use of Force Policy and the Reportable Use of Force Policy with the Reporting, Investigation and Review of Use of Force Policy. 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 adjust the extent of its investigation of use of force events in proportion to the type of force used, meaning that comparatively “minor” force events would typically require less exhaustive investigations than more severe force events. The DOJ conditionally approved the policy on November 3, 2011, subject to agreeing on and receiving court approval for corresponding revisions to the Consent Decree that would permit “tiered” force investigations. In the process of reviewing the proposed revisions to the Consent Decree, however, the DOJ discovered internal inconsistencies with the Reporting, Investigation and Review of Use of Force Policy and revoked its conditional approval during the First Quarter. The Parties continued to work on revising the policy. The Parties also continued to negotiate revisions to the Consent Decree during the Second Quarter.

As previously reported, the Chief of the St. Croix District, in his role as the leader of the Use of Force working group, proposed that the Police Commissioner issue a directive to allow tiered use of force investigations pending final approval of the Reporting, Investigation and Review Use of Force Policy. The VIPD ultimately decided against such a directive because tiered use of force investigations would not comply with

¹⁹ As we have previously reported, the Checklist is designed to help Supervisors (and Chiefs/Deputy Chiefs) determine whether RRRs are complete, and whether additional information and/or investigative steps are required. The Checklist directs Supervisors to ensure that VIPD personnel are, among other things, reporting use of force events to Central Dispatch, and completing arrest and/or Form 1As, as necessary. As previously reported, Supervisors in the St. Croix District began using the Checklist during the Third Quarter of 2011.

the Consent Decree until the Court approves the relevant revisions to the Consent Decree.

Although the Department has made substantial progress finalizing and issuing force related policies, the Department has identified the need for several additional force-related policies, including the: (1) Use of Force Review Board Policy; (2) Arrest Policy; (3) Post Shooting Incident and Procedures Policy; and (4) Officer Involved Shooting Investigating Procedures.²⁰ The VIPD reported during the Fourth Quarter of 2011 that it submitted the Use of Force Review Board Policy—which would create a forum for VIPD personnel to review use of force events—to its Policy Consultant for review. When the OIM inquired about the status of the Use of Force Review Board Policy during the Second Quarter, the Department said that it is still under review by the Department’s Policy Consultant. The VIPD should follow-up with the Policy Consultant so the policy can be finalized and issued next quarter. The Department did not provide any updates on its Post Shooting Incident and Procedures Policy during the Second Quarter.

The OIM previously encouraged the Use of Force working group to develop an Arrest Policy to address the concern that some Officers were arresting and subsequently releasing individuals without adequately documenting the arrest and/or whether any force was used.²¹ During the Second Quarter, the Committee reported that it continues to work on the Arrest Policy, and that the United States Virgin Islands Attorney General’s Office (“VIAG”), the Police Commissioner, and the VIPD Policy Consultant have collaborated on the policy. The Department should resolve any outstanding issues and issue the Arrest Policy promptly.

As previously reported, until the Department finalizes and provides adequate training on the Arrest Policy, it will continue to underreport

²⁰ If one or more of those policies govern the use of force, the Consent Decree requires that the VIPD obtain DOJ approval before issuing any such policies. Moreover, to the extent that the VIPD develops additional force-related policies after achieving substantial compliance, the subsequent issuance and implementation of those policies will not restart the two-year substantial compliance period.

²¹ OIM First Quarterly Report of 2011 at 8. At a minimum, the OIM suggested that the Arrest Policy: (i) delineate the differences between an investigative detention and an arrest; (ii) outline the steps that VIPD personnel must follow if they arrest an individual, but later determine that they do not have an adequate basis for the arrest; (iii) require that all Officers, including special unit Officers (e.g., canine and Special Operations), who assist in the arrest be identified in the arrest report and/or Form 1-A; (iv) emphasize the need for VIPD personnel to complete an RRR (in addition to a Form 1-A or arrest report) whenever force is used; and (v) ensure supervisory oversight over the decision to release an arrestee.

arrests and possible uses of force. The underreporting of arrests and uses of force has a negative impact on the Department's Risk Management System ("RMS"). Without complete arrest and use of force information, the RMS (which, as discussed below, currently alerts Supervisors and Commanders when VIPD personnel surpass a specified number of uses of force within a particular period) will not effectively identify potential issues at an early and remedial stage. The VIPD will not be able to comply with important aspects of the Consent Decree relating to use of force and risk management until it rectifies this problem.

At the end of the Second Quarter, the VIPD is not in substantial compliance with ¶¶ 31 and 39-41 of the Consent Decree because it has not fully implemented its use of force policies. For certain policies, such as the Vehicle Pursuit Policy (issued in March of 2011) and the Spike Strip Policy (issued in March 2011), and the Off Duty Official Action Policy (issued in March 2011), the Department had not provided any training through the end of the Second Quarter.²² Moreover, once the Department provides training on a particular policy, it must ensure that VIPD personnel understand their obligations and are consistently meeting them.

B. Recommendations

The Use of Force working group should work with the Training Division to ensure that training programs are being held for all of the Department's force-related policies and that relevant VIPD personnel are attending those programs. The Use of Force working group should also work with the Director of Training to administer 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.

The Use of Force working group should continue to work with the Committee to develop and/or finalize all outstanding force-related policies, including the: (1) Use of Force Review Board Policy; (2) Arrest Policy; (3) Post Shooting Incident and Procedures Policy; and (4) Officer

²² The Department held instructor training on the Vehicle Pursuit Policy and Spike Strip Policy in September. The OIM will report on those trainings in the next quarter.

Involved Shooting Investigating Procedures. While those policies are being finalized, the Use of Force working group should coordinate with the Director of Training to develop corresponding training programs so that training can begin on each policy as soon as possible.

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

A. Status and Assessment

1. Policies and Directives

The VIPD issued four directives during the Second Quarter.

- 1) A Commissioner's Directive, dated April 17, 2012, provided that only VIPD sworn Officers who have met the requirements of the Peace Officers Standards and Training (P.O.S.T.) Council will arrest subjects, conduct searches and seizures, or execute arrest warrants.
- 2) Directive 003-2012 requires arresting Officers and Supervisors to certify that force was not used during arrests. The VIPD introduced this directive in response to an audit that the Use of Force working group conducted during the First Quarter to identify instances where Officers stated on Form 1As that a subject resisted arrest, but then failed to complete the required RRR. Because VIPD personnel may use force in the course of their duties to gain control of a subject who is resisting, reviewing the paperwork associated with such incidents is one way of monitoring compliance with the Department's force reporting requirements. Although the Use of Force working group did not provide any documentation of this audit (which has been a recurring problem), it reported that there were only a few instances where RRRs were not filed. In addition to the required certifications, Commanders in both districts were directed (in writing) to monitor compliance with the directive and the Use of Force Policy and the Reportable Use of Force Policy.
- 3) Directive 002-2012 reinforces the requirements of the Reportable Use of Force Policy as a means of improving the quality and completeness of use of force investigations. According to the Department, this directive is intended to help reduce the number of use of force investigation files that IAB returns to the Chiefs' Offices for follow-up. On St. Croix, IAB

returned four investigation files to the Chief's Office during the Second Quarter. After further review, two cases did not involve force, and the remaining two are under review by the Chief of the St. Croix District. IAB also returned three investigation files to the Deputy Chief of St. Thomas. With respect to the returned investigative files, IAB noted that Commanders failed to properly dispose of both cases by deeming the investigation "sustained" or "not sustained," failed to contact IAB and obtain use of force numbers, and failed to conduct a use of force review that evaluated whether the proper procedures were followed. The VIPD has not provided any documentation that these deficiencies have been corrected. The VIPD acknowledges that it must inspect completed use of force investigations to ensure that Supervisors are investigating uses of force in accordance with Consent Decree requirements, including evaluating the basis for the use of force, employing proper techniques for interviewing witnesses, and ensuring that investigation files contain RRRs, photographs, gunshot residue and bullet trajectory test results, and other items required under the Consent Decree.²³ The VIPD should document any such inspections and provide the written results to the OIM.

- 4) A Commissioner's Directive, dated April 19, 2012, transferred the Intelligence Unit and Investigation Bureau from the Office of the Police Commissioner to the Office of the Police Chief in each District. Prior to this reorganization, there was uncertainty about the Use of Force working group's authority to review uses of force by the Intelligence Unit and Investigation Bureau. The OIM suggests that the Use of Force working group extend its audits to those units in the next quarter.

At a meeting with the VIPD and DOJ, the OIM inquired whether the Use of Force working group had confirmed that VIPD personnel were complying with the directives described above. At that time, the VIPD had not yet assessed compliance. The VIPD subsequently appointed two Use of Force working group members (a Sergeant and a Lieutenant) to monitor compliance with these directives and the Department's use of force policies more generally. At the end of the Second Quarter, the

²³ See e.g., CD ¶¶ 34, 36-38.

Compliance Coordinator reports that he did not receive any documentation from the Use of Force working group about its efforts in those areas.

2. OIM Survey of Uses of Force

During the Second Quarter, the OIM's Police Practices Experts continued to evaluate the Department's use of force reporting practices to determine, among other things, whether investigation files contained all of the documentation required by the Consent Decree. A "complete" investigation file generally consists of the following (to the extent applicable): Form 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. The OIM's Police Practices Experts reviewed 17 supposedly complete use of force investigation files during the Second Quarter. Only 65% (11 out of 17) of the investigation files were actually complete.

The OIM's Police Practices Experts noted some improvements in the Department's force reporting practices during the Second Quarter, but also recurring deficiencies. The Police Practices Experts reviewed a sample of Arrest Reports and Form 1As to determine whether VIPD personnel are reporting force as required by the Use of Force Policy and Reportable Use of Force Policy. Based on that review, it appears that VIPD personnel continue to underreport the use of force. For example, with respect to Arrest Reports on both Districts indicating that force was likely used, 31% (4 out of 13) of Arrest Reports did not have corresponding RRRs.

OIM Audit of Arrest Reports for the St. Thomas District	
Total Number of Arrest Reports identified for further follow-up	10
• Number of cases where use of force was likely	10
• Number of cases with corresponding RRRs	7
• Number of cases for which the Arrest Report indicates that the suspect resisted arrest	10
• Number of cases identified for further follow-up to track whether a use of force investigation has been completed ²⁴	10

OIM Audit of Arrest Reports for the St. Croix District	
Total Number of Arrest Reports identified for further follow-up	3
• Number of cases where use of force was likely	3
• Number of cases with corresponding RRRs	2
• Number of cases identified for further follow-up to track whether a use of force investigation has been completed	2

Department records also indicate that Zones in both Districts have not completed investigations for a significant number of the uses of force reported to IAB (by forwarding RRRs to IAB) for the first six months of 2012. Only 28% (11 out of 39) of uses of force on St. Thomas, and 22% (8 out of 37) of uses of force on St. Croix have been appropriately

²⁴ Because use of force investigations are typically completed several weeks or months following the use of force, the Police Practices Experts will follow up with IAB during the coming quarters about the status of any investigations into these apparent uses of force. Once the investigations are complete, the Police Practices Experts will conduct a full review of the investigations.

investigated by a Supervisor and reviewed by a Deputy Chief or Chief. The remaining investigations are overdue.

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. In an effort to correct this deficiency, the Deputy Chief of St. Thomas circulated a memorandum requiring all Commanders to complete any delinquent use of force investigations by the end of May, and any Commanders who failed to comply would receive a letter of reprimand. Despite repeated attempts by the OIM to obtain a report on the outcome of this memorandum (e.g., number of investigations completed, number of investigations still outstanding, and number of Commanders who received letters of reprimand), the VIPD failed to provide the requested information by the end of the Second Quarter.

In a case reviewed by an OIM Police Practices Expert on St. Croix, the VIPD not only allowed the time period for conducting an investigation to lapse, but also failed to conduct any investigation at all. In that case, a Sergeant was approached by a complainant explaining that the complainant was robbed at gunpoint. The Sergeant called for back-up and transported the complainant to the scene to identify potential suspects. A Lieutenant and another Sergeant subsequently arrived on the scene and attempted to apprehend the suspects, and one resisted. When the apprehending Sergeant had the resisting suspect on the ground, the suspect punched the Sergeant in the face. With the help of other Officers, the suspect was taken into custody. In violation of Department policy, an uninvolved Supervisor did not conduct a review of the use of force or respond to the scene. Additionally, two of the assisting Officers failed to complete RRRs despite apparently using force.

Seven days before the timeframe for completing an investigation was set to expire, the Chief of the St. Croix District directed IAB to conduct an investigation because other available Supervisors were involved in the use of force. IAB eventually closed the case without conducting an investigation. As a result, no review of the force was ever conducted. The breakdown in VIPD procedures was also never addressed.

OIM Police Practices Experts also observed that the VIPD's failure to train on the Off Duty Official Action Policy may have had consequences in the field.²⁵ One of the OIM's Police Practices Experts reviewed a case on St. Croix in which an off duty Sergeant punched an inebriated subject in the face after the subject aggressively approached him and a retired Officer. The Sergeant reported the incident, but an on duty Supervisor never responded to the scene as required by the Reportable Use of Force Policy. Additionally, nothing in the completed investigation file indicates that the on duty Supervisor notified a Commander that an off duty Officer used force as required by the Off Duty Official Action Policy. The investigation that followed was equally flawed. For example, the RRR completed by the off duty Sergeant was not reviewed and approved by a Supervisor or Command officer. Consequently, the RRR fails to include a Supervisor's narrative evaluating each use of force or a description of the facts and circumstances that justify, or fail to justify, the Sergeant's conduct according to VIPD policy. Despite these deficiencies, no VIPD personnel were disciplined for failing to follow VIPD policies. At the very least, the Department should have ordered additional training for all involved personnel. It is particularly troubling that the non-compliant personnel were of supervisory rank given that Supervisors should be expected to serve as role models for more junior personnel.²⁶

Another OIM Police Practices Expert reviewed a use of force investigation on St. Thomas involving an off duty Officer who, when he stopped for some food, observed a subject threatening a restaurant worker after he refused to serve the subject more alcohol. The Officer intervened, and told the subject to leave the restaurant. In response, the subject assaulted the Officer and knocked him to the ground, attempted to take the Officer's weapon, and drew a razor knife from his pocket. After the Officer got to his feet, the subject came toward him. In response, the Officer fired several shots at the subject's lower body. When the subject continued to advance, the Officer fired at the subject's chest, inflicting non-life threatening injuries. The Officer's blood alcohol level, which was taken within hours of the shooting, indicated that he

²⁵ Despite receiving DOJ approval for the Off Duty Official Action Policy in March of 2011, the Department did not hold corresponding in-service training until the Third Quarter of 2012.

²⁶ Likewise, the VIPD reported that an inspection on June 8, 2012 to determine whether Officers and Supervisors were using their assigned Permanent Designator Number ("PDNs") as required by VIPD policy showed that "Supervisors are not complying with the Commissioner's Directive of December 2011," which requires VIPD personnel to include their PDNs on all police records. Status Report at 23.

had consumed alcohol. The subsequent investigation was conducted by IAB and concluded that the shooting was justified, but that the Officer was in violation of Department policies because he fired warning shots, carried and used a firearm while under the influence of alcohol, and carried out official action while off duty. Remedial training and substance abuse counseling were recommended. This outcome, however, does not fully account for the severity of the violations. The Disciplinary Policy's penalty for such a violation would likely fall on the lower end of the applicable penalty range, yet no discipline was imposed.²⁷

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

B. Recommendations

In addition to documenting any audits and sharing its findings with the Compliance Coordinator and the OIM, the Use of Force working group should review whether: (1) Supervisors are conducting adequate use of force investigations; (2) the Chiefs/Deputy Chiefs are reviewing investigations, correcting deficiencies, and forwarding closed cases to the IAB and Training Division (for review and archiving); and (3) the Department is completing investigations within the time periods prescribed in the Reportable Use of Force Policy. Because the Department has a relatively short fifty-day statute of limitations to charge VIPD personnel with misconduct, it is critical that the VIPD complete investigations within the required periods. The Use of Force working group should assess whether Supervisors on both Districts are forwarding copies of RRRs to the Chiefs, IAB and the Training Division. Moreover, the OIM recommends that the VIPD implement a protocol for assigning use of force investigations when Supervisors are involved in the use of force.

During the Third Quarter the VIPD held in-service training on the Off Duty Official Action Policy. In light of the gravity of the apparent violations of the Off Duty Official Action Policy described above, the Department should reinforce the policy through further in-service, Roll

²⁷ The VIPD continues to revise its Disciplinary Matrix. See Section IV. Management and Supervision.

Call and Commanders Call training, and should test compliance with periodical audits.

The VIPD also held in-service training on the Off Duty Official Action Policy during the Third Quarter. Because of the seriousness of violations of this policy discovered by the Police Practices Experts during the Second Quarter and described above, the Department should continue to reinforce the police during further in-service, Roll Call and Commanders Call training, and periodical test VIPD personnel's proficiency with the policy.

With respect to use of force reporting, the Use of Force working group should 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 if necessary.

The Use of Force working group should also audit whether Supervisors are signing Form 1As as they are required to do. A Supervisor's signature is an indication that they have reviewed and approved the report. Prior to signing the Form 1A, the Supervisor should assess whether force was used and whether the Department's use of force reporting and investigating requirements were met. If subsequent reviews or audits by higher authority within the VIPD discover that a use of force report and investigation are not adequate, the Supervisor who signed the Form 1A and/or Arrest Report should be held accountable.

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

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

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

1. Status and Assessment

The VIPD has issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizens Complaint Policy pursuant to ¶¶ 42 to 58 of the Consent Decree. The Consent Decree requires that VIPD vehicles are equipped with English, Spanish, and French and/or French Patois language versions of the complaint process materials.²⁸ With input from the OIM, the Compliance Coordinator revised the Citizen Complaint Form during the Second Quarter to capture more complete information required by the Consent Decree. The Complaint Process working group continued to document inspections to monitor whether complaint process materials, including the Citizen Complaint Form, were available in the St. Thomas District. The working group reported that Citizen Complaint Forms were not readily available at Zone A, and that Complaint Forms in Zone C were not available in English. The working group has not conducted similar inspections in the St. Croix District, but reports that it plans to do so during the Third Quarter.

To help bring about greater compliance with the Acceptance of Citizen Complaints Policy, the leader of the Citizen Complaint Process working group sent a memorandum to all Commanders on both Districts reinforcing the policy's requirements. The memorandum requires Commanders to inspect their assigned Zones for the required complaint process materials and to record their results on Periodic Inspection Report forms. Commanders must provide completed forms to the Office of the Police Chief in both Districts on the 10th and 20th of each month. Additionally, the memorandum requires all Zones to hold Roll Call and Commanders Call training on the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy on a weekly basis. The OIM commends the VIPD's efforts to reinforce training on these policies. We encourage Commanders to coordinate any training with the Director of Training. The Citizen Complaint Process

²⁸ With respect to the Patois translation, the OIM has previously reported that the Department has had difficulty identifying an individual to translate the brochure into Patois. This requirement, however, may be obviated because the Parties are negotiating revisions to the Consent Decree that would remove the requirement that the VIPD translate complaint process materials to Patois.

working group should report on the Department's compliance with the memorandum next quarter. The OIM also encourages Commanders to ensure that complaint/compliment materials are "always available" (as required by the Acceptance of Citizen Complaints Policy) in the Zones, and the working group should continue to periodically inspect that the complaint/compliment materials are also available in police vehicles.

The VIPD reports that it conducted additional training on the Acceptance of Citizen Complaints Policy during Officer in-service training during the Second Quarter. The OIM has requested lesson plans for this training (and all in-service training), but the VIPD has not yet provided them. Nevertheless, the VIPD claims that the lesson plans are complete and have been reviewed by the Acting Director of Training and the VIPD's policy consultant.

To assess the proficiency of VIPD personnel on the citizen complaint process, the Complaint Process working group interviewed 4 VIPD personnel in the St. Thomas District at the end of June.²⁹ The working group focused its inquiry on the process for filing a complaint, and the Supervisor's role in receiving a citizen's complaint. As a result of these inspections, the VIPD concluded that the VIPD must provide more Roll Call training on the Acceptance of Citizen Complaints.

The OIM reached a similar conclusion while monitoring on St. Croix during the Second Quarter. There, a Police Practices Expert questioned Officers about their knowledge of the Acceptance of Citizen Complaints Policy and found that only 50% (3 out of 6) Officers responded correctly when asked to explain the process for filing a citizen complaint. The remaining responses omitted several key aspects of the Acceptance of Citizen Complaints Policy, including: (1) how a citizen can file a complaint; (2) the Officer's obligations when a citizen wants to file a complaint; and (3) how citizens will be informed about the outcome of the complaint.

Finally, the VIPD reports that Public Service Announcements ("PSAs") about the citizen complaint process continue to be broadcast on fourteen radio stations on both Districts. All PSAs are sixty second segments that run one to two times per day five days per week, and will continue to run until the current contract expires in February of 2013.

²⁹ The Complaint Process working group began conducting similar audits on St. Croix during the Third Quarter.

The OIM is pleased with the Department's progress, specifically developing complaint forms, brochures, and public service announcements, and making those materials available at various governmental properties and community centers, but the Department is not in substantial compliance with ¶¶ 42-45 of the Consent Decree because VIPD personnel (as the VIPD admits) are not yet proficient with the citizen complaint policies.

2. Recommendations

The Complaint Process working group, in conjunction with the Audit Team (once it is functioning), should continue to test whether VIPD personnel adequately understand and comply with the complaint process. The OIM requests that the working group document its efforts and share its results with the OIM. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training as appropriate.

The Complaint Process working group should work to transition responsibility for confirming whether government properties and VIPD vehicles are equipped with the required complaint process materials to Supervisors. This process needs to be indoctrinated into VIPD culture. Finally, the Complaint Process working group should also consider drafting a policy/directive for the Police Commissioner's signature that requires the Chiefs and Deputy Chiefs to monitor the progress and due dates for completing the complaint investigations that are assigned to their Districts by the IAB, and to hold their subordinates accountable for completing investigations in a timely manner.

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

1. Status and Assessment

The Investigating Misconduct and Citizen Complaints Policy governs the investigation of citizen complaints. During the First Quarter, the Department trained Supervisors on St. Thomas on that policy, and the same training was held on St. Croix during the Second Quarter. One of the OIM's Police Practices Experts observed this training (*see* Section V. Training). Following training on both Districts, the Department reports that it endeavored to audit Supervisors' knowledge of the preponderance of the evidence standard (the evidentiary standard that the Department uses to investigate citizen complaints and uses of force). To facilitate these efforts, the Compliance Coordinator asked the VIAG in March for help developing a series of questions and answers to administer to Supervisors after training to assess their understanding of

the preponderance of the evidence standard. The VIAG, however, has not responded to the Compliance Coordinator's request. The Department's capacity to properly investigate citizen complaints (and uses of force) was further stalled because the Training Division omitted (despite a request from the leader of the Complaint Process working group) preponderance of the evidence standard training from the Second Quarter's in-service training program. The VIPD reports that the Compliance Coordinator will speak with the Acting Director of Training to ensure that preponderance of the evidence training is included in future in-service training for Supervisors.

Additional training on the preponderance of the evidence standard is critical. As previously reported, while monitoring on St. Croix during the Second Quarter, one of the Police Practices Experts asked Supervisors about their understanding of the preponderance of evidence standard. Only 50% (3 out of 6) of the Supervisors correctly explained the preponderance of the evidence standard or how it differs from the beyond a reasonable doubt standard.

The Complaint Process working group also reports, as it did during the First Quarter, that it will audit completed citizen complaint investigations to ensure that Supervisors are properly applying the preponderance of the evidence standard to investigations and that Supervisors comply with the Investigating Misconduct and Citizen Complaints Policy. The Complaint Process working group reports that the working group leader reviewed completed investigation files in the Office of the Police Chief and at Zones in the St. Thomas District to ensure that supervisors applied the preponderance of evidence standard when reviewing investigation files, and that all witnesses and complainants were interviewed. The working group, however, did not record the results of its inspections or share its audit methodology with the OIM. Accordingly, the OIM renews its request that the working group develop a protocol for and document these audits, and urges the Complaint Process working group leader, the Director of Training, the Director of IAB, and the VIAG to collaborate and provide follow-up in-service training on the preponderance of the evidence standard if necessary. The OIM also encourages the working group to conduct a similar audit on the St. Croix District during the Third Quarter.

Finally, under ¶ 51 of the Consent Decree, investigating Supervisors must interview all Officers who were present at the scene of an incident, and those interviews must be audio or video recorded. The Complaint Process working group continues to report during the Second Quarter that some interviews are not being recorded or videotaped

because compact discs are not available in the St. Thomas/St. John District. To resolve this issue, the Compliance Coordinator ordered 400 compact discs, and in the interim has made compact discs available at IAB.

The Consent Decree and Investigating Misconduct and Citizen Complaints Policy also require the VIPD to periodically inform complainants about the status of their complaints, including the final disposition. The VIPD's Status Report states "there is no evidence that the Zones in either District [are] meeting this requirement." The VIPD acknowledges that the Citizen Complaint Process working group and the Audit Team (when it is fully functional) must implement periodic inspections to identify and resolve any deficiencies.³⁰ Similarly, the VIPD acknowledges that the Citizen Complaint Process working group and the Audit Team must conduct further inspections to determine whether completed citizen complaint investigations are being resolved with one of the required dispositions ("unfounded," "sustained," "not sustained," or "exonerated").³¹

During the First Quarter, the OIM reported that the Zones are not referring all allegations of Officer misconduct to IAB within five days as required in the Investigating Misconduct and Citizen Complaints Policy. The Complaint Process working group leader met with the Director of IAB during the Second Quarter and reported that Zones on both Districts are mostly compliant with this requirement.³² The working group, however, has not provided any documentation supporting that conclusion. The Complaint Process Working Group should document these audits and share the results with the OIM.

Similarly, the VIPD also reports that Commanders are not completing their investigations within the time period allotted under the policy. In an effort to correct this deficiency, the Deputy Chief of St. Thomas sent a memorandum requiring all Commanders to complete any delinquent citizen complaint investigations by the end of May. Any Commanders who failed to comply would receive a letter of reprimand. Despite repeated attempts by the OIM to learn the outcome of this demand (e.g., number of investigations completed, number of investigations still outstanding, and number of Commanders who received letters of reprimand), the VIPD failed to provide the requested

³⁰ Status Report at 16.

³¹ Status Report at 20.

³² Complaint Process working group Bi-Weekly Report for June 15-30.

information during the second quarter. The OIM encourages the Deputy Chief of St. Croix to take a similar inventory of any delinquent investigations and to hold Commanders responsible for completing investigations. As the OIM has previously cautioned, the Department cannot afford to let complaints of potential misconduct linger considering the Department has a 50 day statute of limitations for disciplining officers.

In sum, at the end of the Second Quarter, the VIPD is not in substantial compliance with ¶¶ 46-58 of the Consent Decree concerning the investigation of complaints. Specifically, the VIPD has not demonstrated that it has adequately trained investigating Supervisors on the Investigating Misconduct and Citizen Complaints Policy. Additionally, the VIPD has failed to ensure that complaints are being adequately investigated within the allotted time period, or that complainants are being kept apprised about the status of their complaints.

2. Recommendations

The OIM's recommendations have not changed since the First Quarter because the VIPD has not made significant progress in key areas. The VIPD must provide Officers 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.³³ The Complaint Process working group should also assess whether VIPD personnel properly follow the complaint process from intake, to investigation, to final disposition. Finally, the Complaint Process working group should evaluate whether: (1) Supervisors use proper interview techniques (i.e., they are not asking leading questions) during an investigation; (2) complainants are informed about the outcome of their complaint; (3) the preponderance of the evidence standard is properly applied; and (4) investigations are completed and returned to IAB within the timeframe specified in the policies. Based on its audits, the Complaint Process working group should identify any trends or areas for improvement. Additionally, the VIPD and VIAG should finalize the questions that they are developing to assure that Supervisors understand and are comfortable applying the preponderance of the evidence standard.

³³ The VIPD acknowledged the need to audit its citizen complaint process in its Status Report.

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

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

1. Status and Assessment

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

The VIPD reports that following Blue Team training on St. Thomas during the First Quarter, VIPD personnel now enter RRRs and citizen complaints into Blue Team, but some confusion resulted because Officers mistakenly thought that entering the information into Blue Team negated the need to complete a hardcopy RRR. The Department said that additional training is required to clarify any misunderstandings. The Department must still schedule Blue Team training on St. Croix. The Management and Supervision working group reports that the Training Academy on the St. Croix District is unavailable because of Officer Recruit training. Attempts to reserve alternative space outside the Department have failed, but the working group reported during the Third Quarter that the Police Commissioner's conference room will accommodate the training.

The OIM received conflicting reports on the functionality of Blue Team. Although the VIPD's Status Report indicates that "the Blue Team software also is operational in both Districts," one of the OIM's Police Practices Experts received conflicting information from VIPD personnel while monitoring during the Third Quarter. The OIM requests that the Management and Supervision working group conduct periodic tests on both Districts to ensure that Blue Team is fully operational in all required locations on both Districts.

The large capacity servers that the Management Information Systems Bureau ("MIS") (the Department's information technology group) ordered to increase the Department's electronic storage capacity for IPro and other databases finally arrived during the First Quarter. The servers, however, were not installed during the Second Quarter because the VIPD must first resolve several maintenance issues (i.e., install an air conditioner and electrical outlets) at the Training Academy in the St.

Thomas District. It is unclear why these maintenance issues were not resolved while the VIPD waited for the servers to arrive during a several-month manufacturing delay. Unfortunately, this lack of foresight impedes the Department's ability to resolve persistent technological limitations.

The Department reports that it is working to finalize an arrest database on both Districts to track key information about arrests. With input from the IAB, the Records Bureau, MIS, and the Planning and Research Bureau on both Districts, the Compliance Coordinator led efforts during the Second Quarter to modify the arrest form to include additional data fields required by the Consent Decree. The VIPD submitted the revised arrest form to the Planning and Research Bureau for review. The VIPD intends to provide an update on final approval by the Police Commissioner during the Third Quarter.

The VIPD continued to make revisions to the RMS Protocol pursuant to ¶ 64 of the Consent Decree during the Second Quarter. The comment and revision process for the RMS Protocol began on April 15, 2011 when the VIPD submitted an initial draft of the RMS Protocol to the DOJ. During the Second Quarter, the VIPD submitted its ninth revised draft of the RMS Protocol to the DOJ. During the Third Quarter, on October 2, 2012, the DOJ approved the RMS Protocol.

As previously reported, the RMS Protocol provides various thresholds that trigger supervisory review. For example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor (and other appropriate personnel) to the potential issue and need for review. When reporting arrest and use of force data, DOJ requires that the VIPD use ratios based on the conduct of VIPD personnel (the total number of arrests where force was used divided by the total number of arrests) to identify potentially problematic behavior. The VIPD, however, currently uses numerical thresholds based on historic norms (X number of uses of force within a twelve month period). The DOJ and VIPD have agreed that, for the time being, the VIPD may continue to use thresholds rather than ratios until such time when the VIPD can rely on its arrest and force records.³⁴ For

³⁴ As previously reported, the VIPD contends that ongoing technical limitations and incomplete arrest and force records would render ratios unreliable for the time being. With respect to the Department's arrest and force records, that information may be unreliable because: (1) there are instances where Officers make an arrest, use force, and release the subject without completing an arrest report or documenting the release; (2) when arrests are documented, the arrest report may not identify all involved officers (particularly where a group of officers is involved in

now, IAPro will notify an Officer's Supervisor when the Officer reaches two uses of force within a six-month period. The Early Intervention Program ("EIP") Coordinator will then conduct a review and determine if further action is required. The Parties agree that the Department will not be in compliance with the Consent Decree until it implements a ratio-based RMS Protocol.

The DOJ approved the VIPD's Data Input Plan on March 22, 2011, but the Department had not provided any training on the plan as of the end of the Second Quarter. Specifically, the Data Input Plan identifies information about VIPD personnel (including, but not limited to, uses of force, disciplinary issues, motor vehicle accidents, and sick days) that the Department is required to enter into IAPro to facilitate its risk management function. The VIPD reports that during the Second Quarter the Training Division disseminated copies of all approved policies, including the Data Input Plan, to VIPD personnel. Once dissemination is complete, the VIPD states that the IAB will provide training on the Data Input Plan.

To help track VIPD personnel (who may change job functions, names, etc.) the Police Commissioner issued a directive during the Fourth Quarter of 2011 ordering that a PDN be assigned to all sworn personnel, including designated civilian personnel with assignments as agents, auxiliaries, and forensic technicians. The PDN is a four digit number assigned by the Virgin Islands Territorial Emergency Management Agency ("VITEMA").³⁵ Officers are required to use their PDN (which personnel will have for their entire career) on all police reports, rather than their badge numbers as was the previous practice. According to the Department, all VIPD personnel on both Districts have received PDNs.

The Compliance Coordinator continued to review Form 1As from the St. Thomas District to determine whether personnel are using their PDNs. The inspection revealed that 20 out of 60 Form 1As did not include the Officer's PDN, and none of the reports included the Supervisor's PDN. Although the Police Commissioner instructed the Chief of the St. Croix District (or his designee) to conduct a similar audit,

Footnote continued from previous page

an arrest); and (3) Officers who physically make an arrest are not always identified in the arrest report. The VIPD seeks to overcome these issues by improving its arrest and force record keeping. The development of a comprehensive arrest database is one aspect of achieving this goal (see *supra* at p. 28).

³⁵ VITEMA is responsible for the Virgin Island's 911 system.

the Management and Supervision working group has not reported that any inspections have occurred on St. Croix. Moreover, the VIPD acknowledges that some Officers in the St. Croix District are not using their PDN. The OIM encourages the Management and Supervision working group to continue to monitor whether VIPD personnel are using their PDNs as required.

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

2. Recommendations

The Management and Supervision working group should promptly finalize the Department's RMS Protocol, Blue Team Protocol, and Disciplinary Matrix, and train on the Data Input Plan. With respect to the RMS Protocol, the VIPD should work with the DOJ to finalize the policy expeditiously given the number of drafts that have been exchanged to date, and the limited number of changes left to make. Moreover, once the RMS Protocol is implemented, the Department must conduct the required beta test (i.e., an initial full scale test) of the RMS. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including installing the Department's new servers.

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

Finally, the Department should complete drafts of the Behavioral Health Services Policy and Officer Peer Support Policy. Once those policies are in "near final" form, the OIM would welcome the opportunity to provide comments.

B. Oversight (CD ¶ 69)

1. Status, Assessment, and Recommendations

The VIPD is not in substantial compliance with ¶ 69 of the Consent Decree because it has not finalized and implemented an Audit Protocol for the RMS and other areas of the Consent Decree (e.g., use of force citizen complaints). The VIPD will not be able to ensure that it has substantially complied with the Consent Decree's substantive provisions until it finalizes the Audit Protocol. The VIPD has reported for several quarters that its Policy Consultant is working on a draft Audit Protocol, but has not provided a timeline by which he intends to complete the policy. In developing such a policy, the VIPD should consider specifying the audit methodology that will be used when conducting audits and identifying the documents or other materials it will use to make its determinations. Because it is the VIPD's responsibility to complete and implement the policy, the OIM encourages the VIPD to follow up with the Policy Consultant on the Audit Protocol in order to finalize it during the Third Quarter of 2012.

During the Fourth Quarter of 2011, the VIPD formed an Audit Team to evaluate the effectiveness of the Department's internal controls. Despite some activity during the First Quarter of 2012, the VIPD reports during the Second Quarter that the Audit Team "is not yet a functional entity"³⁶ because the Department has not finalized the Audit Protocol and the Audit Team has not received any training on auditing procedures. The VIPD reports that the Audit Team has identified training in Phoenix, Arizona, and that Audit Team members will attend in September or October of 2012. Additionally, the VIPD has reported previously that the Audit Team is working on an action plan to prioritize areas for auditing and to set deadlines by which to complete the audits. The VIPD, however, did not provide the OIM with an update on the action plan during the Second Quarter.

C. Discipline (CD ¶¶ 70-72)

1. Status, Assessment, and Recommendations

As previously reported in April, the DOJ approved the Disciplinary Policy and Matrix,³⁷ which provides disciplinary guidelines for different types of misconduct. Nevertheless, the VIPD subsequently decided to

³⁶ Status Report at 21.

³⁷ OIM First Quarterly Report of 2011 at 19.

further revise the “charge and penalty section” of the Disciplinary Matrix; any such revisions will require DOJ approval. The Management and Supervision working group, however, reports that the VIPD made no progress revising the Disciplinary Matrix during the Second Quarter. The Chief of the St. Thomas District, as the leader of the Committee, has tasked the Management and Supervision working group with revising the Disciplinary Matrix. A meeting was scheduled during the Second Quarter to discuss the Disciplinary Matrix, but was cancelled and not rescheduled. Because the OIM has observed first-hand that the Department inconsistently applies disciplinary sanctions, stalled progress is detrimental to the Department’s efforts to comply with the Consent Decree.³⁸

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

V. Training (CD ¶¶ 73-81)

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

1. Status and Assessment

For the first time since the working groups were formed in January 2011, the Training working group has submitted an Action Plan to the OIM. For many quarters, the OIM has provided feedback on action plans submitted by other working groups and provided specific recommendations for improvement. The Training working group, however, squandered the opportunity to benefit from these comments and submitted an action plan with the same deficiencies that the OIM has raised previously with other working groups. For example, the action plan fails to provide any dates by which the Department will comply with provisions of the Consent Decree, and does not provide a roadmap for achieving substantial compliance. Additionally, efforts toward achieving substantial compliance are not provided for all provisions. One of the Police Practices Expert discussed these deficiencies with the Training working group and encouraged the working group to revise its action plan accordingly and to submit a new version to the OIM during the Third Quarter.

³⁸ See, e.g., OIM First Quarterly Report of 2012 at 33.

As the VIPD has previously reported, a bureaucratic impasse between the Department and Property and Procurement had prevented the VIPD from offering many Consent Decree related training programs/courses in prior quarters.³⁹ During the Second Quarter, however, the VIPD reported that all pending contracts had received approval, allowing the Department to proceed with instructor training for several Consent Decree policies, including Field Training Officer train-the-trainer,⁴⁰ Basic and Advanced SWAT Certification (which will include training on the VIPD's recently issued SRT/HNT Policy and Sniper Policy), Pursuit Driving and Spike Strip train-the-trainer, and TASER train-the-trainer. These trainings are scheduled for the Third and Fourth Quarters of 2012. The VIPD also received approval of a contract with its Policy Consultant to provide Consent Decree related training, such as Investigating Uses of Force, the Citizen Complaint Process, and Off-Duty Conduct.

During the Second Quarter, the VIPD provided Consent Decree training on the St. Croix District entitled "Investigating Use of Force for Supervisors," "Investigating Citizens Complaint Process for Supervisors," and "Leadership Training for Supervisors."⁴¹ The same training was held on the St. Thomas District during the First Quarter.

The Department also held train-the-trainer training on the Department's firearms simulators. Although instructors have been certified, Officers have not been trained because the Department is developing a standard operating procedure ("SOP") to address how the simulators should be used during training. Once drafting is complete, the Training Division will submit the SOP to the Committee for approval. The Training working group also reports that the IAB has provided the Training Division with several use of force investigation files to use for

³⁹ Property and Procurement requires vendors located outside of the Virgin Islands to obtain a business license from the Department of Licensing and Consumer Affairs, a process that can take several weeks or more.

⁴⁰ The OIM has repeatedly stated that the FTO program is critical. Once instructors are certified, the VIPD should provide training to the FTO candidates as soon as practicable thereafter because the current FTOs were never adequately trained. The rudimentary training that they received focused on how to fill out basic paperwork relating to their trainees.

⁴¹ The Training Division conducted other non-Consent Decree related training for VIPD personnel in both Districts during the Second Quarter, including "Tint and Noise Meter Train-the-Trainer" and train-the-trainer training on the Department's firearms simulators.

scenario based training to demonstrate proper use of force decision making.

One of the OIM's Police Practices Experts observed the "Investigating Citizens Complaint Process for Supervisors" training.⁴² The OIM learned that materials such as audiocassettes or compact discs were not readily available in the Department to allow Supervisors and IAB agents to record complainant interviews and witness statements as required by the Misconduct and Citizens Complaints Policy. The OIM's Police Practices Experts also learned that Supervisors were receiving citizen complaints and closing the cases without referring the complaints to IAB or completing an investigation according to the Acceptance of Citizen Complaints Policy and Investigating Misconduct and Citizen Complaints Policy. As the OIM has previously reported, some Supervisors arrived late or left the training for prolonged periods of time. The Director of Training, however, addressed the class and stated that a Supervisor who misses more than ninety minutes of instruction for a particular training will not receive credit for attending that training and will be required to repeat the entire training. While this is a positive development toward enforcing attendance, the OIM encourages the VIPD (to the extent it has not done so already) to formalize this policy throughout the Department.

During the Second Quarter the VIPD also began in-service training (which will continue during the Third Quarter) for Supervisors on both Districts. In-service training for Officers will be held and reported on during the Third Quarter.⁴³ According to the schedule provided by the VIPD, Supervisors attended in-service training on many important Consent Decree related policies, including the Use of Force Policy, Reportable Use of Force Policy, Firearms Policy, Impact Weapons Policy, Electronic Control Weapons Policy, O.C. Spray Policy, Firearms Policy, Canine Policy, Off-Duty Official Action Policy, Psychological Fitness for Duty Policy, Acceptance of Citizen Complaints Policy, Investigating Misconduct and Acceptance of Citizen Complaints Policy. The VIPD reports that instructors submitted lesson plans for in-service training to the Training Division for approval, and that the lesson plans were reviewed by the VIPD's Policy Consultant. Despite repeatedly asking the

⁴² The OIM observed the "Investigating Use of Force for Supervisors" and "Leadership Training for Supervisors" training held on the St. Thomas District during the First Quarter and reported on the trainings in the last quarterly report.

⁴³ During the April 23, 2012 hearing, the VIPD told the Court that they expect to complete all Consent Decree related training by December 21, 2012.

Department to provide those lesson plans, the OIM had not received them by the end of the Second Quarter.

Nevertheless, the VIPD reports that records of lesson plans and other training materials are maintained on both Districts. For now, files are maintained manually in alphabetical order and electronically filed and stored according to the date the training record was entered into the database. During the Second Quarter, Police Practices Experts inspected training records on both Districts. The Training Division demonstrated the capabilities of its training database on St. Thomas, and provided a binder of organized lesson plans for inspection. The binder, however, did not contain all lesson plans because when the Police Practice Expert asked to see a lesson plan for training on the ECW Policy (and TASERs in particular), the Training Division could not locate a copy. Files on St. Croix appeared to be less organized. Hardcopy lesson plans were stacked in files on a desk, and an Excel spreadsheet that allows for little flexibility (e.g., queries must be entered exactly and can only include two data points). MIS, however, has plans for a new system. Once the previously referenced large capacity servers are installed on both Districts, the VIPD intends to maintain previously referenced records electronically in a uniform database.

The Training working group also reports that at the end of each training, VIPD personnel complete forms to evaluate the quality of instruction provided. The Training work group indicates that the evaluations are reviewed by the Director of Training or his designee, and subsequently stored in a binder in the Training Division. According to the VIPD, the Training Division has developed a series of 5 to 10 questions based on the Department's policies to test Officers' proficiency with policies following training. The OIM's requests to review these questionnaires, however, have gone unanswered.

With respect to Roll Call training, the VIPD reports that the policy is not fully implemented because all Zones have not appointed a Training Coordinator for Roll Call training. Despite this delay, the VIPD reports that completed Roll Call Training Forms (which Supervisors complete to record Roll Call or Commanders Call training in the Zones) are forwarded to the Training Division as required, and copies of the forms are kept in binders in the Chiefs' Offices on both Districts. The OIM requested copies of all Roll Call Training Forms for Consent Decree related trainings held during the Second Quarter, but the VIPD has not provided this documentation.

Finally, the Department must also review all use of force training and use of force policies on a regular basis to ensure compliance with

applicable laws and VIPD policy. To meet this requirement, the VIPD has discussed entering into a memorandum of understanding (“MOU”) with the VIAG to review policies and training. At the VIAG’s request, the Compliance Coordinator identified all Consent Decree provisions that the MOU will cover. At the end of the Second Quarter, the VIAG has not responded to the VIPD.⁴⁴

2. Recommendations

As we have emphasized in previous reports, the VIPD should develop lesson plans for all training programs in advance of the corresponding training (and in most cases while the policy is being finalized) so they can be vetted appropriately, including review of all lesson plans by the Director of Training and the VIAG, if necessary, without delaying training.

The OIM also encourages the Police Commissioner to hold the Chiefs and Deputy Chiefs accountable for their subordinates’ compliance with training requirements. To that end, the Training Division should continue to keep the Chiefs and Deputy Chiefs apprised whenever VIPD personnel in their command miss a scheduled training. Additionally, the Training Division should work closely with the Chiefs and Deputy Chiefs to arrange further training (in-service, Roll Call, and Commanders Call) on certain policies for which compliance has been problematic, including the ECW Policy, Accepting Citizen Complaints Policy, and the preponderance of the evidence standard for Supervisors.

The VIPD has not substantially complied with ¶¶ 73-81 of the Consent Decree. In addition to holding training programs for a number of recently issued policies, the Training Division should work closely with the Use of Force, Complaint Process, and Management and Supervision working groups to prepare training programs for policies that are under development. Moreover, the Training Division should 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.

⁴⁴ During the Third Quarter, the VIAG reported that it concluded that a MOU was unnecessary because the Consent Decree details VIAG’s responsibility for reviewing policies and training.

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

1. Status, Assessment, and Recommendations

On July 6, 2012, the VIPD submitted its twelfth Status Report to the DOJ and the OIM. We reiterate that it is in the VIPD's interest to share as much information with the OIM as possible so that we can accurately, fairly, and comprehensively report on all of the VIPD's efforts. To that end, we ask that the VIPD follow through once it has committed to providing the OIM with certain materials (e.g., lesson plans, training questionnaires), and that the VIPD do so without the OIM having to repeat its requests. Finally, the OIM encourages the VIPD to clearly state in its status report whether it believes that it has achieved substantial compliance with each substantive provision of the Consent Decree. We note that the VIPD incorrectly claimed to be in substantial compliance with only one provision (¶42) during the Second Quarter. For the reasons provided in Section III. Citizen Complaint Process, the VIPD has not yet achieved substantial compliance with paragraph 42.

After the OIM first requested access several quarters ago, the VIPD and VIAG finally granted the OIM access during the Second Quarter to the administrative investigation files for two fatal police involved shootings that occurred on St. Thomas in September 2011 and on St. Croix in January 2012. The VIPD and VIAG also agreed to grant access to certain other materials, such as arrest reports, arrest warrants, and warrant application regardless of whether these materials were included in open criminal investigation files.⁴⁵ The Police Practices Experts' review of those administrative investigation files cannot be completed, however, until the VIPD provides certain missing materials that the OIM has been requesting for months.

2. Status of Substantial Compliance

Before the Consent Decree expires on March 23, 2014, the VIPD must substantially comply with each Consent Decree provision and remain in compliance for two years.⁴⁶ Under the Consent Decree Timetable, the VIPD should have substantially complied with ¶¶ 32-58, 70, and 72 by May 31, 2011, ¶¶ 60, 61, and 73-81 by June 30, 2011,

⁴⁵ CD ¶ 95.

⁴⁶ CD ¶ 103.

and ¶¶ 49, 59, 63-66 by September 15, 2011. Instead, they have only complied with ¶¶ 82-86, 88, and 98.

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

- In January 2010, the Parties to the Consent Decree selected the Monitor (CD ¶¶ 82-86);
- Effective June 2009, the Police Commissioner appointed a Compliance Coordinator to serve as a liaison between the Parties to the Consent Decree and the Monitor (CD ¶ 88); and
- Beginning in June 2009, the VIPD began issuing quarterly status reports delineating the steps taken by the VIPD to comply with the Consent Decree (CD ¶ 98).

The OIM provided a draft Substantial Compliance Thresholds Chart ("Chart") to the Department on November 1, 2011. The Chart is intended to guide the VIPD toward substantial compliance by identifying the criteria that the OIM will use to evaluate the VIPD's compliance with the Consent Decree. After receiving general comments from the VIAG during the Fourth Quarter of 2011, the OIM sent a letter on December 1, 2011 to the VIPD's legal counsel requesting a conference call to discuss the VIPD's comments. After lengthy delays by the VIAG, the OIM and the VIAG had a substantive conversation on April 3, 2012 during which the VIAG agreed to provide the OIM with specific draft language by May 3, 2012 to amend any metrics that the VIAG considered objectionable. As of the end of the Second Quarter, the VIAG had not responded as promised. As we stated last quarter, there is no excuse for this delay. We encourage the Police Commissioner to follow up with the VIAG about the OIM's outstanding request for the VIAG's comments.

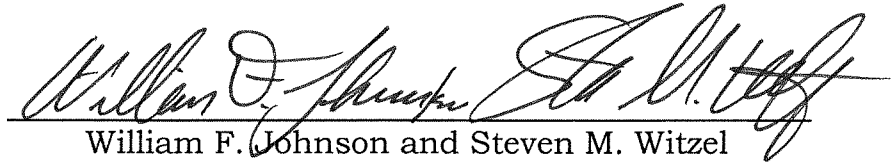
Despite these delays, the OIM remains hopeful that the Chart will be finalized and that the OIM will be able to use the Chart to evaluate the Department's compliance by the Fourth quarter of 2012. Once the Chart is finalized, the Audit Team should utilize it to conduct its own internal audits during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

Conclusion

While the VIPD continues to make progress in certain areas, particularly in connection with the citizen complaint process, a tremendous amount of work remains. Completing timely and adequate use of force and complaint investigations is paramount for the Department to assess whether VIPD personnel are following Department policies, and for the Department to evaluate the need for further training and, if necessary, discipline personnel who consistently fail to comply with Department policies.

In order to move toward substantial compliance, the Department must ensure that the Audit Team becomes a functioning entity capable of conducting audits and working in concert with the Training Division, IAB, and the working groups to conduct audits. 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.

The OIM is hopeful that the proposed joint action plan that the Court ordered the Parties to submit will refocus the VIPD's Consent Decree compliance efforts. Under the Parties' proposed joint action plan (which is subject to the Court's review), the VIPD must comply with each substantive provision in the Consent Decree by October 31, 2013 and then remain in compliance for two years. We believe that the VIPD can meet those mandates if it commits substantially more effort to complying with the Consent Decree. However, if the VIPD maintains the status quo, it will not achieve substantial compliance.



William F. Johnson and Steven M. Witzel
Independent Monitors

Fried, Frank, Harris, Shriver & Jacobson LLP

October 10, 2012

Principal Contributors

Ann Marie Doherty, Esq.

Charles A. Gruber

Elizabeth P. Kozlowski, Esq.

Dennis E. Nowicki

Joshua D. Roth, Esq.

Robert L. Stewart

Appendix A

Summary of Consent Decree Requirements

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

I. Use of Force Policies (CD ¶ 31)

A. Requirements

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

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

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

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

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

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

1. Requirements

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

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

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

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

Footnote continued from previous page

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

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

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

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

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

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

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

1. Requirements

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

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

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

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

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

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

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

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

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

1. Requirements

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

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

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

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

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

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

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

opinions regarding the complainant's mental competency or veracity.

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

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

1. Requirements

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

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

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

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

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

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

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

investigation as necessary to determine whether the allegations can be resolved based on available information, evidence, and investigative techniques.

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

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

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

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

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

1. Requirements

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

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

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

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

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

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

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

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

⁸ See CD ¶ 66.

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

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

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

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

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

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

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

B. Oversight (CD ¶ 69)

1. Requirements

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

C. Discipline (CD ¶¶ 70-72)

1. Requirements

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

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

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

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

V. Training (CD ¶¶ 73-81)

A. Management Oversight (CD ¶¶ 73-77)

1. Requirements

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

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

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

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

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

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

B. Curriculum (CD ¶¶ 78-81)

1. Requirements

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

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

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

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

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

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

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

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

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

1. Requirements

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

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

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

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