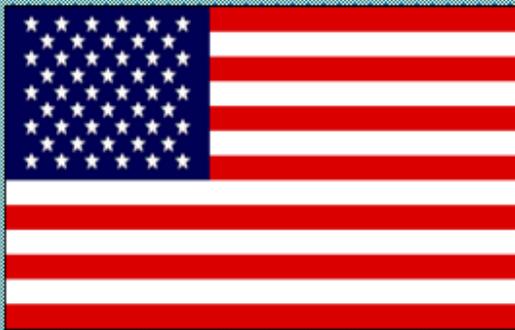
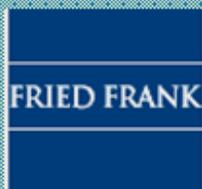


Third Quarterly Report of the Independent Monitor for the Virgin Islands Police Department



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Executive Summary

This is the third quarterly report of the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the Virgin Islands Police Department (the “VIPD”), covering the quarter ending on September 30, 2010.¹ During the third quarter, among other things, the OIM conducted three separate, week-long monitoring trips to the Virgin Islands. On those trips, the OIM (including the Monitors) continued to meet with VIPD personnel in the St. Thomas, St. John, and Water Island District (the “St. Thomas District”) and the St. Croix District. Monitoring trips provide the OIM with a wealth of real-time information about the VIPD’s on-going efforts to comply with the Consent Decree. In addition, as the OIM continues to spend time on the ground in the Virgin Islands, VIPD personnel have become more comfortable sharing their observations about the Department’s efforts to comply with the Consent Decree, and more willing to seek technical assistance from the OIM when necessary.

Thus, the OIM’s monitoring activities during this quarter built upon our previous work and specifically included, among other things: the provision of technical assistance to the VIPD, including the review of draft policies, protocols and directives; the observation of policy drafting sessions and training programs; the monitoring of a Commanders Call meeting focused on use of force reporting requirements; the review of incident and arrest reports to identify potential use of force events; the review of the adequacy of internal investigations conducted by the VIPD’s Internal Affairs Bureau (“IAB”) and Zone supervisors; the review of canine deployments; and, the monitoring of the status of the VIPD’s citizen complaint intake and tracking processes and related public information campaign.

Use of Force Policy Development

The VIPD’s most significant accomplishment relating to the Consent Decree this quarter was its finalization and submission of the revised Use of Force Policy to the United States Department of Justice

¹ This Report references a limited number of events that occurred after September 30, 2010 to provide the reader with additional context. The next quarterly report will provide a more extensive treatment of those events.

(the “DOJ”) for approval.² As discussed below, the OIM reviewed and provided the VIPD with extensive comments on multiple versions of the Use of Force Policy over the course of the past two quarters. On October 1, the first day of the fourth quarter, the VIPD submitted the finalized Use of Force Policy to the Police Commissioner for approval. Shortly after the Police Commissioner approved the finalized Use of Force Policy, the Department submitted it to the DOJ for approval on October 8. The DOJ provided detailed feedback to the VIPD (copying the OIM) on October 28.³ While the DOJ commended the VIPD’s progress on the finalized Use of Force Policy, it asked the VIPD to make additional revisions. The DOJ stated that it anticipated being able to grant final approval to the Use of Force Policy once the VIPD makes those revisions. As such, the VIPD should work expeditiously to address the DOJ’s concerns.

The VIPD’s Policies and Procedures Committee (the “Committee”) was instrumental in finalizing the Use of Force Policy during the third quarter. As detailed in the Second Quarterly Report of the Independent Monitor for the Virgin Islands Police Department, dated August 19, 2010 (the “OIM Second Quarterly Report”),⁴ the Police Commissioner charged the Committee with revising the Department’s policies relating to the use of force by VIPD officers. Near the end of the second quarter of 2010, in response to suggestions from the OIM, the VIPD reduced the size of the Committee from 14 to 6 members.

The OIM is pleased to note that the reorganization has had a positive impact on the Committee. The OIM attended Committee meetings on August 19 and September 16 and observed, among other things, that Committee members were knowledgeable about the policies being discussed and that discussions were limited to pre-announced, discrete topics. This is a significant improvement from what the OIM observed last quarter.⁵ In addition, the Director of IAB (a member of the Committee) has gone beyond the call of duty in identifying policies from other law enforcement agencies to serve as reference models. Nevertheless, there is still room for improvement. For example, the OIM

² Paragraph 31 of the Consent Decree provides, among other things, that “[o]nce the DOJ has reviewed and approved [use of force policies], the VIPD shall immediately implement any revisions.”

³ The DOJ initially commented on an earlier version of the Use of Force Policy on October 14, 2009. Since that time, the VIPD substantially reworked the Use of Force Policy.

⁴ OIM Second Quarterly Report at 6-7.

⁵ *Id.* at 7-8.

would like to see the District Chiefs and Deputy Chiefs and the Training Director regularly participate in Committee meetings.

After a lengthy delay, the OIM is also pleased to report that the VIPD engaged a well-respected policy consultant to assist the Committee.⁶ In addition to working with the Committee to revise the VIPD's use of force related policies, the OIM expects the policy consultant to help the VIPD develop a robust policy development infrastructure. Such an infrastructure is critical to the VIPD being able to independently draft and revise policies that are constitutional and consistent with generally accepted policing practices, particularly once the Department is released from the Consent Decree. The VIPD should work as quickly as possible to complete the engagement process.

Survey of Use of Force Events

The Department continues to falter with respect to documenting use of force events. On April 20, the Police Commissioner issued the Reporting Use of Force Directive (#005-2010), which, among other things, requires VIPD officers to complete a Use of Force Reporting Form (#USVIPD/UFF2009) after using force against a person. As detailed below, there is considerable uncertainty among VIPD officers about the Department's use of force reporting requirements. While the VIPD intends to issue a Reporting Use of Force Policy (based on a finalized Use of Force Policy) in the near future, the VIPD must, for the time being, enforce the Reporting Use of Force Directive. Additionally, the VIPD needs to provide officers with adequate training about their responsibilities under the Reporting Use of Force Directive. At this stage, there is no excuse for officer uncertainty about the Department's use of force reporting requirements.

In order to adequately investigate use of force events (assuming that they are being reported), the VIPD must develop a reliable tracking system for use of force events. Unfortunately, despite having entered into the Consent Decree more than a year-and-a-half ago, the VIPD has not yet developed such a system. Although the VIPD has invested significant resources implementing a computerized tracking system

⁶ While the OIM recognizes that the VIPD (like the DOJ) must follow government procurement rules, the OIM is of the view that the VIPD could have begun that process of engaging a policy consultant sooner. The OIM and the DOJ initially recommended that the VIPD engage a policy consultant in March, but the VIPD did not seek formal approval for engaging a policy consultant until late September.

("IAPro"), that system is not yet fully operational because of various technical roadblocks. It remains unclear precisely when IAPro will become fully operational. Until that time, the VIPD needs to implement a manual tracking system. To that end, the VIPD purchased log books to begin manually recording use of force events. The OIM suggests that the VIPD designate personnel in each Zone or District to log use of force events on a real-time basis. In addition, the VIPD should develop guidelines to ensure that designated personnel log use of force events uniformly across the Zones and Districts and that a VIPD unit serves as the ultimate repository for all use of force reports.

Because the VIPD does not yet have a reliable system for tracking use of force events, the OIM continued its historic review of general incident reports, which are referred to as Form 1-As, and arrest reports. Specifically, with respect to the St. Croix District, the OIM reviewed juvenile arrest reports for January – April 2010 and June – August 2010,⁷ and adult arrest reports for May – September 2010.⁸ The OIM also reviewed adult arrest reports from the St. Thomas District for May – July 2010.

As a result of that review, the OIM determined that VIPD officers continue to be greatly underreporting use of force events in violation of the Reporting Use of Force Directive. In several different cases, for example, Form 1-As and arrest reports state that subjects resisted arrest. Based on that information, as explained more fully below, the OIM concluded that officers plainly used force to gain control of the resisting or non-compliant subject in those cases. While officers are required to report any such use of force, the OIM was unable to locate corresponding Use of Force Reporting Forms in connection with the scenarios mentioned above.

In addition, the OIM also reviewed the adequacy of use of force investigations conducted by IAB and the Zones for both the St. Croix and St. Thomas Districts. With respect to those investigations, the OIM identified several recurring deficiencies, including, but not limited to, failing to interview all potential witnesses and failing to prepare sufficiently detailed investigative reports. Given that the OIM has identified both of those deficiencies for two consecutive quarters,⁹ the

⁷ The VIPD could not locate juvenile arrest reports from the St. Croix District for May 2010.

⁸ The VIPD could not locate adult arrest reports from the St. Croix District for January - April 2010.

⁹ See, e.g. OIM Second Quarterly Report at 16.

VIPD should devote significant attention to improving the quality of its use of force investigations. Finally, the OIM reviewed canine deployment records for the St. Croix District.

Specific Use of Force Policy Development

The VIPD has several specific use of force policies, including, but not limited to, the Use of Firearms Policy and the TASER Policy, that require revision. While much of the Committee's time over the past two quarters focused on finalizing the Use of Force Policy, the OIM expects the Committee to concentrate on finalizing the Reporting Use of Force Policy and other specific use of force policies during the next quarter. With respect to specific use of force policies, the Committee should prioritize revising the Use of Firearms Policy. As we noted in the last quarterly report, the OIM provided the VIPD with extensive comments on an earlier draft of the Use of Firearms Policy on August 3.¹⁰ Since that time, the VIPD reports that the Committee has revised the Use of Firearms Policy to incorporate the requirements specified in the Consent Decree.¹¹ The Committee expressed its intention to provide the OIM with a revised draft version of the Use of Firearms Policy in early October. However, as of November 1, the VIPD had not provided the OIM with a revised version of that policy.

The Consent Decree also requires the VIPD to provide its officers with an intermediate force device, such as a TASER. Notably, the OIM has not observed any meaningful progress by the VIPD to revise the TASER Policy, despite having had extensive discussions with the OIM regarding that policy in August.¹² Given the important role that TASERs can serve as less lethal weapons, the OIM strongly urges the Committee to revise the TASER Policy during the next quarter.

Further, the Consent Decree requires the VIPD to develop a policy regarding police action, including the use of force by off-duty officers. Because a significant number of use of force events involve off-duty officers, including one recent incident in which a death occurred,¹³ the

¹⁰ *Id.* at 20.

¹¹ Paragraphs 39-41 of the Consent Decree require the VIPD to develop a Use of Firearms Policy, revise its policies regarding off-duty officers, and provide an intermediate force device.

¹² OIM Second Quarterly Report at 22, n.43.

¹³ See Joy Blackburn, "Police Kill 1, Injure Another In 'Vicious Firefight,'" VIRGIN ISLAND DAILY NEWS (Oct. 12, 2010), <http://virginislandsdailynews.com/news/police-kill-1-injured-another-in-vicious-firefight-1.1047813>.

OIM reiterates the need for the VIPD to develop a stand-alone policy for off-duty officers. While the VIPD reports that it incorporated an off-duty policy into its draft Use of Firearms Policy, the OIM believes that such an approach is inadequate given the breadth of issues that should be addressed in a comprehensive off-duty policy.¹⁴

Now that the VIPD has retained a policy consultant, the Committee should work expeditiously with that individual to revise the policies referenced above. To that end, the OIM welcomes the opportunity to participate in a multi-day policy summit with the policy consultant and Committee members to jumpstart work on the multiple policies related to the Use of Force Policy that must be revised and implemented.

Public Information Regarding the Citizen Complaint Process

The VIPD continued to make progress this quarter establishing a citizen complaint process. For example, the VIPD actively engaged in a public information campaign relating to the citizen complaint process, which culminated in a press conference on October 13. The OIM will discuss that press conference and the VIPD's other efforts in this area in greater detail in the next quarterly report.

While the OIM is pleased with the progress of the VIPD's public information campaign, the Department needs to focus on revising the Processing Citizens Complaint Policy (the "Complaint Policy"), which should provide Department personnel with guidance about how to respond to and investigate citizen complaints. On September 2, the VIPD sent the OIM a draft version of the Complaint Policy. After reviewing that policy, the OIM asked the Committee to make certain revisions to the policy and then resubmit it. As of November 1, the OIM had not received a revised version of the Complaint Policy. Given that the VIPD has already started to publicize the citizen complaint process, it is imperative that the Committee revise the Complaint Policy and resubmit it to the OIM as soon as possible.

¹⁴ For example, in addition to addressing the use of firearms by off-duty officers, any such policy should set forth, among other things, the circumstances under which VIPD officers are permitted to accept part-time employment and wear VIPD uniforms in the course of that part-time employment. In addition, any off-duty policy must address the Consent Decree requirement that officers submit to sobriety, breathalyzer, and/or blood tests under certain circumstances. CD ¶ 40(b).

Risk Management

The Department's efforts to implement a new risk management system (like its efforts to implement IAPro to track use of force events) continues to face technical problems. The VIPD needs to resolve these outstanding technical issues in an expedited fashion and should dedicate the necessary resources to do so. In addition, on September 8 and 15, the OIM received draft versions of the Risk Management System Protocol and Early Intervention Program Policy, which the OIM provided comments on during the previous quarter.¹⁵ The OIM expects the Committee to work with the policy consultant to further revise those policies and then to resubmit them to the OIM for comments.

Training

The OIM is disappointed by the lack of progress that the VIPD's Training Division made during this quarter. As noted above, there appears to be widespread uncertainty among VIPD officers about the Department's use of force reporting requirements. For example, the OIM observed that certain officers did not know that "low level" uses of force, such as non-compliant handcuffing, must be reported under the Directive. While the VIPD recently held a Commanders Call training to discuss the Reporting Use of Force Directive with senior VIPD personnel, that session only came about at the urging of the OIM. In addition, it is unacceptable that the Training Division has not yet developed training programs for those persons investigating use of force events, including those relating to, among other things, the preponderance of the evidence standard and evaluating the credibility of witnesses. Such training does not require the issuance of any policy to conduct. Without those trainings, VIPD personnel will have trouble conducting adequate investigations into use of force events and citizen complaints.

The Training Division has also made slow progress with establishing an adequate training infrastructure for the Department (e.g., identifying, training and evaluating instructors, developing and approving training curriculum and lesson plans, and maintaining attendance records for all training programs). Without an adequate training infrastructure, the VIPD will continue to have difficulty uniformly training its officers across the Zones and Districts. Because the Training Division has been making little progress, the OIM

¹⁵ OIM Second Quarterly at 37.

encourages the Police Commissioner to continue to hold the Training Division and its staff accountable.

Status of Substantial Compliance

In order to be released from the Consent Decree, the VIPD must substantially comply with each of the Consent Decree's requirements and remain in compliance for two years.¹⁶ At the end of this quarter, the VIPD has substantially complied with the following Consent Decree requirements:

- In January 2010, the Parties selected the Monitor (CD ¶¶ 82-86);
- In the Spring of 2010, the Police Commissioner appointed a Compliance Coordinator to serve as a liaison between the Parties 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).

Nevertheless, as discussed in detail below, the VIPD has not yet substantially complied with any of the other substantive provisions of the Consent Decree, most significantly those relating to use of force. The VIPD will not be able to make progress substantially complying with the Consent Decree until it addresses those foundational requirements.

Conclusion

This quarterly report demonstrates that the VIPD continues to have a substantial amount of work to do to meet its obligations under the Consent Decree. It is telling that more than a year-and-a-half after entering into the Consent Decree, the VIPD admits that it is "just starting the CD compliance" process.¹⁷ If the VIPD wants to achieve its stated goal of bringing about early termination of the Consent Decree,¹⁸ it must become considerably more proactive.¹⁹

¹⁶ CD ¶ 103.

¹⁷ VIPD October 2010 Status Report at 2.

¹⁸ The Consent Decree will terminate within five years of March 23, 2009, "if the [P]arties agree that the VIPD and the Territory are in substantial compliance with each of the provisions of [the] Agreement," and maintain "substantial compliance [with each of the provisions] for at

Despite the VIPD's slow progress to date, the OIM continues to believe that many members of the VIPD, including, but not limited to, the Police Commissioner, the Assistant Police Commissioner, the Director of IAB, the Assistant Director of IAB, the Compliance Manager for St. Croix, and the Compliance Coordinator, are genuinely committed to complying with the Consent Decree. Those individuals, and many others, have consistently exhibited strong leadership, drive, and seriousness of purpose in their efforts to fulfill the requirements of the Consent Decree. The OIM is hopeful that these personnel will continue to take an active role with respect to the Consent Decree. In addition, the OIM would like to see the District Chiefs and Deputy Chiefs become more actively involved with the Consent Decree.

The OIM is pleased that the VIPD recently finalized the Use of Force Policy and submitted it to the DOJ for approval, which in turn gave suggestions for additional revisions. The VIPD should work expeditiously to implement those revisions and resubmit the policy to the DOJ for final approval. The Department should also develop training programs to teach officers about the requirements of the new policy. That way, the VIPD will be in a position to implement the finalized Use of Force Policy as soon as it receives approval from the DOJ. In addition, the VIPD should also focus on finalizing a Reporting Use of Force Policy. Given the level of uncertainty surrounding the Department's current use of force reporting requirements, the VIPD should take special care to draft a policy that, among other things, requires VIPD personnel to report *all* use of force events to their Zone supervisors and to IAB. Once the VIPD finalizes the Use of Force Reporting Policy, it should turn immediately to finalizing the remaining specific use of force policies, which it currently should be drafting.

Finally, the VIPD should focus on the Training Division over the next two quarters. The Training Division's rate of progress since the Consent Decree went into force has been inadequate. The Police

Footnote continued from previous page

least two years. The burden [is] on the Territory and the VIPD to demonstrate [substantial] compliance." CD ¶ 103.

¹⁹ In response to a request from the DOJ, the United States District Court for the Virgin Islands held a hearing on October 1. During that hearing, the Court instructed the VIPD and the DOJ to file proposed timelines for the VIPD's compliance with the substantive provisions of the Consent Decree by October 15. Because the VIPD and the DOJ could not agree on an acceptable timeline, the Court scheduled another hearing for November 22. The OIM will provide more detail about those hearings in the next quarterly report.

Commissioner must continue to demand greater accountability from the Training Division and its Director.

While many challenges lay ahead, the OIM expects the VIPD to accelerate its efforts to bring the Department's operations into compliance with the Consent Decree in the quarters to come.

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Introduction

This is the third quarterly report of the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the Virgin Islands Police Department (the “VIPD”), covering the quarter ending September 30, 2010.¹ The OIM was established in January 2010 to monitor compliance by the Territory of the Virgin Islands (the “Virgin Islands”) and the Virgin Islands Police Department (the “VIPD” or the “Department”) with the Consent Decree entered by the United States District Court for the Virgin Islands on March 23, 2009. The Monitor is required by the Consent Decree to “issue quarterly written, public reports detailing the Territory of the Virgin Islands’ compliance with and implementation of each substantive provision” of the Consent Decree.²

The Consent Decree reflects the agreement of 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.”³

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.”⁴ The 104 paragraphs of the Consent Decree contain a broad range of substantive requirements for reform in areas such as the revision of the VIPD’s use of force-related policies; the training of officers to properly use force in accordance with constitutional requirements, VIPD policy and existing best practices in policing; the reporting and investigation of use of force events; the receipt and investigation of complaints alleging misconduct by VIPD officers; the development of

¹ This Report references a limited number of events that occurred after September 30, 2010 to provide the reader with additional context. The next quarterly report will provide a more extensive treatment of those events.

² 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>.

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

⁴ CD ¶ 3.

systems for managing and supervising VIPD officers; and, the discipline of officers found to have engaged in misconduct.

The OIM is responsible for monitoring and reporting on the VIPD's progress toward achieving compliance with all of the Consent Decree's requirements.⁵ The OIM was established in January 2010.⁶ Subsequently, the OIM undertook monitoring visits to the Virgin Islands and issued the First Quarterly Report on May 7 and the Second Quarterly Report on August 19.

The Compliance Assessment section of this report, which follows, details the OIM's findings and observations based on our monitoring activities during the quarter ending September 30, 2010. Overall, the OIM continues to believe that many members of the VIPD, including, but not limited to, the Police Commissioner, the Assistant Police Commissioner, the Director of IAB, the Assistant Director of IAB, the Compliance Manager for St. Croix and the Compliance Coordinator, are genuinely committed to complying with the Consent Decree. Moreover, the OIM is pleased to note that the VIPD recently finalized the Use of Force Policy and submitted it to the DOJ for approval, which in turn gave suggestions for additional revisions. The VIPD should work expeditiously to implement those revisions and resubmit the policy to the DOJ for approval. The OIM is also hopeful that the VIPD's newly-engaged policy consultant will provide the Department with the assistance that it needs to revise a number of its use of force related policies (including, but not limited to, the Use of Firearms Policy and TASER Policy), and assist the Policies and Procedures Committee (the "Committee") to build a robust policy development infrastructure.

⁵ CD ¶ 82.

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

Compliance Assessment

In this section of the report, we describe the status of the VIPD’s compliance efforts with respect to each of the substantive provisions of the Consent Decree, as well as the OIM’s monitoring activities during this quarter. The organization of this section of the report parallels the organization of the Consent Decree. First, we summarize the *requirements* imposed by each substantive section of the Consent Decree. Although these summaries of the substantive requirements add significantly to the length of this report, we believe that this information is necessary 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. Second, 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.⁷ Finally, we include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree’s requirements.⁸

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;⁹
- 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

⁷ 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.

⁸ See CD ¶ 85.

⁹ 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.

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.¹⁰

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.

B. Status and Assessment

As we noted in the last quarterly report, the OIM provided the VIPD with extensive comments on a draft version of the Use of Force Policy on August 3.¹¹ Since that time, the OIM has worked with the Committee, which the Police Commissioner charged with, among other things, developing, reviewing, and revising the Department's policies, to finalize the Use of Force Policy. For the second straight quarter, the OIM has engaged in the process of reviewing and commenting on multiple versions of the Use of Force Policy.

On September 16, the OIM provided the Committee with a final round of comments on the Use of Force Policy. The VIPD reports that on October 1, the first day of the fourth quarter, the Committee finalized the Use of Force Policy and forwarded it to the Police Commissioner for his review and approval.¹² On October 8, the Department forwarded the finalized Use of Force Policy to the DOJ for approval. The DOJ subsequently provided detailed feedback to the VIPD (copying the OIM)

¹⁰ 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.

¹¹ OIM Second Quarterly Report at 8-9.

¹² VIPD October 2010 Status Report at 3.

on October 28.¹³ While the DOJ commended the VIPD's progress on the finalized Use of Force Policy, it asked the VIPD to make additional changes. The DOJ stated that it anticipates being able to grant final approval to the Use of Force Policy once the VIPD makes those changes. As such, the VIPD should work expeditiously to address the DOJ's concerns and resubmit the policy to the DOJ for final approval.

The OIM is pleased to report that the Committee was instrumental in finalizing the Use of Force Policy. Near the end of the second quarter of 2010, in response to suggestions from the OIM, the VIPD reduced the size of the Committee from 14 to 6 members.¹⁴ That reorganization appears to have had a positive impact on the Committee. The OIM attended Committee meetings on August 19 and September 16 and observed, among other things, that Committee members were knowledgeable about the policies being discussed and that discussions were limited to pre-announced, discrete topics. In order to "expedite the process of drafting and reviewing/revising policies," the Committee has also sought to regularly convene on the same day each week.¹⁵ This is a significant improvement from what the OIM observed last quarter.¹⁶

Further, the OIM is also encouraged that the Director of IAB (a member of the Committee) has undertaken independent research to identify policies from other law enforcement agencies that could serve as reference models for the Department's policies. At the September 16 Committee meeting, the Director of IAB referenced model policies located on the website of a leading law enforcement training organization. To help guide the Committee's research efforts, the OIM recommends that the Committee focus its attention on policies adopted by accredited law enforcement agencies. While the OIM commends the Committee for this initiative, the OIM cautions the VIPD that it must tailor those model policies to the unique characteristics of the VIPD.

Although the OIM is generally pleased with how the Committee is functioning, there is room for improvement. The OIM, for example, would like to see greater participation by senior VIPD personnel at Committee meetings. District Chiefs and Deputy Chiefs should make a

¹³ The DOJ initially commented on an earlier version of the Use of Force Policy on October 14, 2009. Since that time, the VIPD substantially reworked the Use of Force Policy.

¹⁴ OIM Second Quarterly Report at 7.

¹⁵ VIPD October 2010 Status Report at 4.

¹⁶ OIM Second Quarterly Report at 7-8.

concerted effort to attend Committee meetings as their schedules permit, particularly as policies are being finalized. In addition to lending the Committee a wealth of institutional experience, the District Chiefs and Deputy Chiefs could help underscore the authority of the Committee throughout the Department. In addition, the OIM strongly encourages the Training Director to regularly attend Committee meetings given the close relationship between policy development and training.¹⁷ The Training Director should not wait until a policy is finalized to start developing a corresponding training program. Rather, the Training Director should be familiar with the policies that are under development and should be prepared to roll-out corresponding training programs as soon as the policies are finalized.

The OIM also understands that the Police Commissioner previously directed the Assistant Police Commissioner to work with the Committee.¹⁸ The VIPD did not report on the role of the Assistant Police Commissioner in its October 2010 Status Report and the OIM has not seen that individual at the Committee meetings that we have attended. Still, the OIM remains hopeful that the Assistant Police Commissioner will become an active participant at Committee meetings. Moreover, the OIM appreciated its interactions with the Assistant Police Commissioner, for example, during the October Monthly Meeting. The OIM looks forward to working with the Assistant Police Commissioner in the future.

The OIM had repeatedly recommended that the VIPD engage a policy consultant to assist the Committee with drafting and/or revising a number of important policies, including, but not limited to, the Reporting Use of Force Policy, the Use of Firearms Policy, and the TASER Policy.¹⁹ In addition to helping the Committee draft and/or revise policies, the OIM expects the policy consultant to help build a robust policy development infrastructure. Such an infrastructure is critical to the VIPD being able to independently draft and revise high-quality policies once it is released from the Consent Decree. After a lengthy delay, the OIM is pleased to report that the VIPD has retained a well-respected policy consultant. We expect that the VIPD will expeditiously provide the policy consultant with background materials relating to the Consent

¹⁷ The Committee of six members includes: a Deputy Chief (chairperson), the Director of IAB, a police Captain, a police Sergeant, the Training Supervisor for the St. Thomas District, and the Training Cadre for the St. Croix District. *Id.* at 7. The Training Director was not present at the August or September Committee meetings at which the OIM participated.

¹⁸ *Id.* at 8.

¹⁹ *See, e.g., id.* at 10.

Decree, including the Consent Decree, the OIM's quarterly reports, the VIPD's quarterly status reports, and all relevant policies, protocols, directives and general orders, so that that individual can begin working with the VIPD immediately. Further, the OIM welcomes the opportunity to participate in a multi-day policy summit with the policy consultant and Committee members to jumpstart work on the many force related policies that must be revised.

During this quarter, the OIM received several additional draft policies and protocols from the VIPD concerning, among other things, citizen complaints, serious misconduct investigations, early intervention programs, and risk management. With respect to the VIPD's draft complaint and serious misconduct policies, the OIM asked the VIPD to make certain changes before the OIM would provide comments. With regard to the early intervention policy and the risk management protocol, the OIM expects the VIPD to work with the policy consultant to further revise the policy and protocol before resubmitting them to the OIM.

C. Recommendations

The VIPD's first priority should be addressing the outstanding issues raised by the DOJ with respect to the finalized Use of Force Policy. Once the DOJ approves the finalized Use of Force Policy, the VIPD must roll-out that policy as expeditiously as possible. To be clear, the Use of Force Policy is the cornerstone of the Consent Decree and requires department-wide commitment to effectively implement. In addition, the VIPD should focus on finalizing the Reporting Use of Force Policy. The Department must take special care to ensure that officers understand their obligations under that policy because there is confusion surrounding the VIPD's current use of force reporting requirements. On a related note, the Training Division should be prepared to train officers about the finalized Use of Force Policy and the Reporting Use of Force Policy as soon as those policies are issued. Ineffective or delayed training will undermine the Department's hard work in this respect.

The VIPD should also focus on revising its specific use of force policies, including, but not limited to, the Use of Firearms Policy and the TASER Policy. As part of that process, the OIM encourages the Department to seek input from officers at all levels. The OIM recommends that the Committee set deadlines by which officers (preferably those who will be directly impacted) must provide written feedback on relevant policies. In the event that an officer declines (for whatever reason) to provide comments with respect to a particular policy, he/she should be required to submit a signed form to the Committee

indicating as much. In addition to providing the Committee with a valuable source of feedback on proposed policies, soliciting comments from across the Department should generate a greater sense of ownership of those policies among the officers, which will hopefully lead to increased compliance.

In addition, the Committee should work with the policy consultant to develop and implement any other outstanding policies related to the use of force. On an ongoing basis, the policy consultant should also work with the Committee to ensure that new policies are being drafted in a consistent manner with existing (but already revised) policies. For example, VIPD policies (with few, if any, exceptions) should consistently define key terms and cross-reference related policies whenever possible.

With respect to the Committee, the OIM urges its members to continue their hard work and strongly suggests that senior VIPD personnel, including, but not limited to, the Assistant Police Commissioner, the District Chiefs and Deputy Chiefs, and the Training Director, take a more active role in the Committee's efforts. Finally, the OIM requests that the VIPD keep it informed, on an ongoing basis, about the status of the VIPD's various draft policies and any changes to the established Committee meeting time.

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 officers, of the events relating to the use of force; and, (3) audiotaped statements, as appropriate, from those officers.²⁰

²⁰ 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 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 the involved officers' conduct was justified.
- 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. 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.

VIPD also must investigate all critical firearm discharges.²¹ 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, VIPD is required to conduct, as appropriate, ballistic or crime scene analyses, including gunshot residue and bullet trajectory tests.

²¹ 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.

2. Status and Assessment

a. Policies and Directives

After finalizing the Use of Force Policy and forwarding it to the DOJ for approval, the VIPD reports that it is turning to the Reporting Use of Force Policy.²² At the OIM's suggestion, the VIPD finalized the Use of Force Policy before starting the Reporting Use of Force Policy given the overlap between the two policies. Although the OIM understands that the Committee recently revised the Reporting Use of Force Policy, the VIPD has not submitted a draft version of the policy to the OIM for review. The Department presently relies on the Reporting Use of Force Directive (#005-2010) "to provide guidance relative to reporting use of force within the guidelines as stipulated in the Consent Decree."²³

Among other things, the Reporting Use of Force Directive requires officers to report all use of force events to their superiors (and others) and explains how officers should use the Reporting Use of Force Form (USVIPD/UFF2009).²⁴ The Reporting Use of Force Form has a "section for the type of force used and requires the [s]upervisor to indicate whether he/she concurs with the involved [o]fficers['] action."²⁵ The form also requires the relevant officer and his/her supervisor to provide narrative descriptions of the circumstances that lead to the use of force event. In order to record the involved officers' statement and statements from other witnesses, the VIPD recently installed web-based cameras in all Zones. Installing cameras throughout the Zones should alleviate the congestion that IAB previously encountered when video/audio statements were recorded exclusively at IAB. While the OIM is pleased to see that the VIPD has made progress in this area, we note that VIPD supervisors still need to be trained on using the new web-based cameras. According to the VIPD, IAB personnel will provide the necessary training in the future.

The VIPD reports that it consistently emphasizes the Reporting Use of Force Directive's requirements during Commanders Call meetings and

²² VIPD October 2010 Status Report at 3.

²³ OIM Second Quarterly Report at 12-13.

²⁴ VIPD October 2010 Status Report at 4-5. The OIM has not taken a position on whether the Reporting Use of Force Form, as currently drafted, satisfies the requirements set forth in paragraph 32 of the Consent Decree. Nevertheless, the form will likely need to be revised once the VIPD issues its Use of Force Policy and Reporting Use of Force Policy.

²⁵ *Id.* at 4.

during in-service trainings in both Districts.²⁶ Nevertheless, based on our observations (including our discussions with VIPD officers at all levels), there appears to be widespread uncertainty about what is required under the Reporting Use of Force Directive. At the OIM's suggestion, the VIPD agreed to hold a special Commanders Call meeting to discuss reporting use of force events.²⁷ The OIM subsequently participated by telephone in that Commanders Call meeting on September 30. While participation was relatively high, the OIM was disappointed by the conspicuous absence of the District Chiefs and all but one of the Deputy Chiefs. It is clear to the OIM that District Chiefs and Deputy Chiefs need to take a more active role in issues relating to the Consent Decree.²⁸

During the September 30 Commanders Call meeting, the Compliance Coordinator reiterated two general points about use of force reporting requirements. First, he reminded the meeting participants that all officers must comply with the Reporting Use of Force Directive even though that directive is temporary in nature. Second, he explained that all officers must complete the Reporting Use of Force Form before the end of their shift following any use of force event, and that copies should immediately be sent to Zone commanders and IAB. Notably, a significant portion of the call was spent discussing whether the Reporting Use of Force Directive requires supervisors to conduct a "full fledged" investigation for "low level" use of force events (such as non-compliant handcuffing). Some supervisors expressed concern that interviewing officers and witnesses on audio and/or videotape in connection with "low level" use of force events was excessive. Specifically, the one Deputy Chief in attendance questioned whether a "one size fits all" approach made sense, and suggested that officers might avoid making arrests as a result, to avoid the "burden" associated with reporting use of force events. In response, the Compliance Coordinator and the Director of IAB correctly restated that any use of force beyond compliant handcuffing must be reported under the Reporting Use of Force Directive (which reflects the terms of the Consent Decree) and that supervisors must fully

²⁶ VIPD July 2010 Status Report at 4-5.

²⁷ The OIM asked the VIPD to organize a Commanders Call to address these issues at the September Monthly Meeting, but received no response from the VIPD for several weeks. In the future, we ask that the VIPD respond more quickly to inquiries from the OIM.

²⁸ During discussions in early October, the District Chiefs and Deputy Chiefs committed to implementing an audit function to monitor officer compliance with the Department's use of force reporting requirements. The OIM will report on any related progress in the next quarterly report.

investigate (i.e. interview officers, witnesses, and victims and video/audio tape those interviews) all use of force events.²⁹

The OIM is very concerned by the significant degree of resistance that multiple officers expressed towards the Reporting Use of Force Directive during the Commanders Call. In addition, certain officers appeared to be surprised that the Reporting Use of Force Directive applied to “low level” use of force events. In light of what the OIM heard during the Commanders Call, we are not surprised by the widespread uncertainty in the Department about use of force reporting requirements. During the Commanders Call meeting, officers also expressed confusion with respect to completing the Reporting Use of Force Form. Additionally, in separate discussions, IAB agents told the OIM that they regularly receive calls from officers asking for guidance about reporting use of force events 1 day to 2 weeks after the event took place. IAB agents also mentioned that officers are confused about where on the Reporting Use of Force Form (on the form itself or on an addendum) they are supposed to include their narrative account.³⁰ Specifically, officers should be instructed to write their narrative account on the form itself, or, if they choose to use an addendum, to state on the form that they have attached an addendum.

As such, it is imperative that the VIPD immediately hold additional training sessions (at the patrol and command levels) on the Department’s use of force reporting requirements. Given the importance of these sessions, the OIM encourages senior VIPD personnel, including, but not limited to, the District Chiefs and Deputy Chiefs, to take an active role. While we understand that those individuals have very busy schedules, their participation is critical, particularly to impress upon their subordinates the seriousness of the reporting obligation. Even though the Reporting Use of Force Directive is temporary, its requirements are currently in effect and the Department should not tolerate a chain of command that fails to comply with its requirements.

²⁹ The OIM notes that the Consent Decree requires that “all uses of force . . . be documented in writing.” CD ¶ 32. Moreover, given the past practices of excessive force by VIPD officers that led to the Consent Decree, this reporting requirement is appropriate and necessary.

³⁰ Because IAB returns incomplete use of force reports to the responsible officer to be completed before investigating the relevant use of force event, agents often have far less than the ordinary 50 day period to investigate any such events. As such, the statute of limitations often expires before IAB has had enough time to conduct an adequate investigation.

With regard to tracking reported use of force events, the OIM has repeatedly stressed to the VIPD the need for a centralized repository to collect Reporting Use of Force Forms, as well as a mechanism to analyze use of force related information. Although the VIPD has invested significant resources to implement a computerized tracking system (“IAPro”), that system is not yet fully operational. Unfortunately, it remains unclear precisely when IAPro will become operational. Until that time, the VIPD needs to implement a manual tracking system.

The OIM is pleased that the VIPD is beginning to lay the ground work for a manual tracking system by ordering log books with sequentially numbered pages to document use of force events.³¹ The VIPD anticipated receiving those log books by October 8 and immediately implementing a manual tracking system. In addition, the VIPD reports that the Police Commissioner will issue a new directive explaining the purpose of the log books and setting forth procedures for logging use of force events. Under that directive, for example, the VIPD will hold Zone Commanders responsible for properly maintaining the log book assigned to their Zone. Even after IAPro is fully functional, the VIPD reports that it will maintain a manual system as a backup for IAPro.

Finally, the VIPD reports that it intends to revise an investigation and disposition check sheet previously provided by the OIM to assist supervisors with investigating use of force events.³² The VIPD scheduled a meeting for October 8, coordinated by the Director of the Planning and Research Bureau, for this purpose. The OIM will follow-up with the VIPD during the next quarter for an update on that initiative.

b. Survey of Historic Use of Force Events

Because the VIPD is still in the process of implementing a use of force reporting program, the Department cannot yet generate reliable statistics concerning use of force events. Therefore, in order to ascertain information about prior use of force events and determine whether the VIPD is making progress adhering to its reporting obligations, the OIM continued its historic review of general incident reports, which are referred to as Form 1-As, and arrest reports.

As part of that review, the OIM looked for information that suggested the use of force by one or more officers. Such evidence

³¹ VIPD October 2010 Status Report at 5.

³² *Id.*

includes: (1) statements in the narrative of the incident or arrest report explicitly stating that force was used; (2) information indicating that a suspect fled from, resisted arrest, or otherwise likely had to be subdued with some level of force by the involved officer; and (3) information indicating that the suspect or an officer was injured during the incident. The OIM then classified the type of force that appeared to have been used under one of the following seven categories: (1) hand controls or forcible handcuffing, (2) take down or hand strikes, (3) oleoresin capsicum (“OC”) spray, (4) baton or ASP, (5) TASER, (6) pointing of a firearm, and (7) discharge of a firearm.³³

With respect to the St. Croix District, the OIM reviewed juvenile arrest reports for January – April 2010 and June – August 2010,³⁴ and adult arrest reports for May – September 2010.³⁵ The OIM also reviewed adult arrest reports from the St. Thomas District for May – July 2010. Whenever an arrest report indicated that a use of force report should have been prepared (including when an arrest report indicated that a subject resisted arrest), the OIM cross-referenced the corresponding Form 1-A for more information. If there remained a question as to whether force was used, the OIM gave the VIPD “the benefit of the doubt” and the incident was not identified as requiring completion of a use of force form. While a more labor-intensive review of all Form 1-As may have exposed additional instances of unreported use of force events, the OIM adopted this approach to determine whether there was any measurable improvement to the reporting requirements during this quarter.

Of the eleven (11) St. Croix District Form 1-A and arrest reports clearly requiring the completion of a use of force form, only one (1) use of force form could be located. Of the twelve (12) St. Thomas District Form 1-A and arrest reports identified as necessitating use of force forms, the OIM could locate only one (1) form.

Discussions with St. Thomas command personnel (commanders or acting commanders for Zones A and C and the Special Operations Bureau) reinforced our observations (which were discussed at length above) that there is widespread uncertainty among VIPD officers about the Department’s reporting use of force requirements. For example, one

³³ The OIM classified use of force according to the minimum level of force that was consistent with the report’s information regarding the facts and circumstances of the underlying events.

³⁴ The VIPD could not locate juvenile arrest reports from St. Croix for May 2010.

³⁵ The VIPD could not locate adult arrest reports from St. Croix for January - April 2010.

commander did not believe that any force had been used by officers within the command for the last several months. Another acting commander could not locate any completed use of force forms, but believed that there may have been a use of force event “a few months ago.” A third commander was not even familiar with the Department’s reporting use of force requirements. Surprisingly, none of these commanders could correctly define the threshold level of force that triggers an officer’s obligation to complete a Reporting Use of Force Form. Additionally, none of the command personnel that the OIM met with were familiar with the requirement to forward copies of the Form 1-A to the Zone Commander or District Deputy Chief and to IAB. At this stage of the Consent Decree, these failures are inexcusable.

During this quarter, the OIM also examined use of force investigations conducted by IAB and the Zones from April 2010 – July, 2010. We noted ongoing problems with the quality of many (but not all) IAB and Zone investigations. In order to conduct a proper use of force investigation, investigating officers must, among other things, interview the involved officers and witnesses. We reviewed a number of investigation files, however, that did not contain any evidence that interviews had been conducted; rather than detailed interview notes or video or audio recordings, we found brief investigative summaries that wholly failed to detail the scope of the investigations. Zone investigations, in particular, were typically completed within one or two days (much too short of a time period to conduct a full investigation) or after the 50 day statutory limit had expired (restricting the Department’s ability to discipline offending officers). Finally, many of the investigations that we reviewed did not contain findings (e.g., sustained, not sustained, exonerated, etc.) as required by the Consent Decree, or contained unsupported findings.³⁶ Thus, it is clear that IAB and Zone investigations require improvement. Although IAB has developed an investigation planning form and checklist, the OIM found that these forms were not always used; the VIPD has not yet distributed the planning form and checklist to the Zones.

Because the Consent Decree requires the VIPD to record *all* use of force events, including events involving canine units, and to calculate canine bite ratios,³⁷ the OIM also reviewed use of force records from the St. Croix Canine Unit during this quarter.

³⁶ See CD ¶ 57.

³⁷ CD ¶¶ 32, 60.

As reported in the Second Quarterly Report, the St. Thomas Canine Unit designed a canine deployment form that captures detailed information about each call that a canine unit responds to, including calls in which a canine is not deployed.³⁸ During the second quarter, the OIM found no such records at the St. Croix Canine Unit. In earlier meetings with St. Croix based canine supervisors, the OIM learned that that unit ceased reporting canine deployments several years earlier. At the OIM's suggestion, the St. Croix Canine Unit adopted the same deployment form as the St. Thomas Canine Unit, beginning in mid-June 2010.

During this quarter, the OIM reviewed canine deployment reports for St. Croix prepared through August 19. The OIM found seven (7) deployment reports. Two (2) were vehicle searches for weapons; two (2) were searches for drugs; one (1) was a search in response to a foul odor that resulted in the discovery of a dead horse; and two (2) were searches for suspects — one of a building leading to an apprehension and the other for an open field search that was negative. There were no canine bites during the period of our review. In short, the OIM was impressed by the St. Croix Canine Unit's progress during the third quarter.

As we have repeatedly stressed, the OIM strongly believes that officers are significantly underreporting use of force events. Accordingly, our review of historic use of force events provides, at best, limited insight into the VIPD's historical practices. In addition to holding non-compliant personnel and their supervisors accountable, the VIPD must focus on providing officers with additional instruction relating to use of force reporting requirements. While Roll Call and Commanders Call training sessions are helpful and should be continued, the OIM recommends that the Training Division design a more comprehensive, mandatory in-service training program without delay.

c. Supervisor Review of Uses of Force

The VIPD reports that it has incorporated the Consent Decree's requirements relating to supervisor review and evaluation of use of force events into its finalized Use of Force Policy. Once the OIM receives a draft version of the Reporting Use of Force Policy from the VIPD, we will review it to determine whether (in combination with the finalized Use of Force Policy) it provides supervisors with adequate guidance relating to the review and evaluation of use of force events. In the interim, however, the

³⁸ OIM Second Quarterly Report at 16-17.

Reporting Use of Force Directive discussed above requires supervisory review of use of force events.

The OIM is disappointed that, for the third straight quarter, the VIPD has not yet developed a training program to teach supervisors how to conduct use of force investigations. In addition, the VIPD reports that it has not yet trained supervisors in several key areas that are critical to undertaking meaningful use of force investigations, including the factors to consider when evaluating the credibility of witnesses or on the preponderance of the evidence standard. Although a thoughtful training session concerning the preponderance of the evidence standard was held with selected commanders on October 12, there is no plan in place for training all use of force and complaint investigators. The Training Division's failure to provide those specific training programs is especially inexcusable given that the Director of the Training Division received a written, intra-departmental request about those programs more than six (6) months ago, on March 12.³⁹

With regard to paragraph 37 of the Decree, which requires, among other things, that a District Deputy Chief evaluate each use of force investigation conducted by supervisors, the VIPD reports that the Reporting Use of Force Directive meets that requirement.⁴⁰ Nonetheless, the VIPD acknowledges, yet again, that it needs to train District Chiefs and Deputy Chiefs, supervisors, and commanders in use of force investigations. Without the necessary training, those individuals will not be able to adequately review use of force investigations.

Finally, with respect to paragraph 38 of the Consent Decree, which requires the VIPD to investigate all "critical firearm discharges," the Department reports that it "routinely investigate[s] all firearm discharges."⁴¹ Specifically, the VIPD reports that such investigations often include ballistic, crime scene, gunshot residue, and bullet trajectory tests and analyses. Because VIPD policy requires officers to file Form 1-As and Reporting Use of Force Forms whenever they use their firearm, the Department concludes that it is aware of all critical firearms discharges. However, as discussed above, the OIM lacks confidence that all officers are fully reporting *all* use of force events (including critical firearms discharges).

³⁹ *Id.* at 18; *see also, infra*, § V. Training.

⁴⁰ VIPD October 2010 Status Report at 8.

⁴¹ *Id.*

3. Recommendations

As noted above, the VIPD cannot finalize the Reporting Use of Force Policy until the DOJ approves the finalized Use of Force Policy. The OIM recommends that the VIPD respond to the DOJ's recent comments on the Use of Force Policy so that it can resubmit the policy to the DOJ as quickly as possible. The OIM also recommends that the VIPD promptly implement a manual system for collecting, tracking, reviewing and analyzing Reporting Use of Force Forms. At the same time, the VIPD should strive to resolve any remaining technical problems relating to IAPro. Until the VIPD develops a reliable system to collect, track, review and analyze Reporting Use of Force Forms, it will be impossible for the OIM to gauge whether the VIPD is moving towards substantially complying with the Consent Decree's reporting use of force requirements. As stated above, unless the Department provides officers with further training on use of force reporting requirements, the manual system described above will be useless.

Additionally, the VIPD must hold officers (at all levels) accountable for not reporting use of force events. Therefore, the OIM reiterates its recommendation that the VIPD revise the relevant general orders to provide supervisors with the authority to discipline non-cooperating officers. Even if supervisors have inherent authority to discipline non-cooperating officers through verbal or written reprimand or referral of disciplinary matters to Zone Commanders, as the VIPD has reported,⁴² the OIM suggests that the VIPD revise the relevant general orders to make that authority explicit, and refer to that disciplinary authority during training.

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;

⁴² OIM Second Quarterly Report at 18.

- Establish a single, uniform system for reporting all firearm discharges;
- Prohibit officers from obtaining service ammunition from any source other than official VIPD channels;
- 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 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.

2. Status and Assessment

As noted in the previous quarterly report, the OIM provided comments to the VIPD on the draft Use of Firearms Policy on August 3.⁴³ Since that time, the VIPD reports that it further revised the Use of Firearms Policy, incorporating the requirements of paragraph 39 of the Consent Decree.⁴⁴ In addition, the VIPD reports that it intended to provide the OIM with a draft version of that policy during the first week

⁴³ *Id.* at 20.

⁴⁴ VIPD October 2010 Status Report at 8-9.

of the fourth quarter. As of November 1, well into the fourth quarter, we have not received it.

The Consent Decree also requires the VIPD to develop a policy regarding police action, including the use of force, by off-duty officers.⁴⁵ Based on our monitoring, many officers appear to be uncertain about the circumstances under which they are authorized to take police action while off-duty. Moreover, because a significant number of use of force events involve off-duty officers, the OIM reiterates the need for the VIPD to develop a stand-alone policy for off-duty officers. While the VIPD reports that it incorporated an off-duty policy into its draft Use of Firearms Policy, the OIM believes that such an approach is inadequate given the breadth of issues that should be addressed in a comprehensive off-duty policy.⁴⁶ For example, in addition to addressing the use of firearms by off-duty officers, any such policy should set forth, among other things, the circumstances under which VIPD officers are permitted to accept part-time employment and wear VIPD uniforms in the course of that part-time employment. The Consent Decree also requires any off-duty policy to state that VIPD officers may be required to submit to sobriety, breathalyzer, and/or blood tests.⁴⁷ During the September and October Monthly Meetings, the VIPD stated that it is currently drafting a stand-alone policy. The OIM requests that the VIPD work with the policy consultant to finalize that policy and submit it to the OIM for comment.

The OIM previously reported that the Police Commissioner, at the request of the DOJ, suspended the use of TASERS as an intermediate force device by VIPD personnel.⁴⁸ OIM police practices experts met with Committee members during the week of August 2 to discuss the development of a revised TASER Policy. During those discussions, the VIPD raised the possibility of incorporating the TASER Policy into the finalized Use of Force Policy. In response, the police practices experts explained the OIM's belief that the Department's TASER Policy should be separate from the finalized Use of Force Policy because of the need for the TASER Policy to address, among other things, what officers must do, with respect to first aid assistance after using a TASER on a subject and supervisory obligations to review TASER use, including downloading electronic data from any involved TASER units. The OIM reiterated that

⁴⁵ CD ¶ 40.

⁴⁶ VIPD October 2010 Status Report at 9.

⁴⁷ CD ¶ 40(b).

⁴⁸ See, e.g., OIM Second Quarterly Report at 21-22.

position at the September 13 Committee meeting. As of November 1, the VIPD has not yet provided the OIM with a revised draft of the TASER Policy. Until the VIPD finalizes the revised TASER Policy, officers are not permitted to carry or use TASERs. As such, finalizing the TASER Policy should be a high priority for the Committee given the important role that TASERs can serve as a less lethal force tool.

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

A. Public Information (CD ¶¶ 42-43) & Means of Filing & 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:

- VIPD must develop and distribute complaint forms, fact sheets, informational posters, and public service announcements that describe its citizen complaint process.
- 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 Patois⁴⁹ versions of complaint forms and

⁴⁹ 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

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:

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

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information, the OIM suggests that the VIPD create versions in English, Spanish, French, and French Patois to satisfy the intent of the Consent Decree.

2. Status and Assessment

The VIPD is handling the complaint process in two phases.⁵⁰ The initial phase includes, among other things, completing the Processing Citizen Complaint Policy (the “Complaint Policy”), printing posters, brochures, and compliment/complaint forms, installing compliment/complaint drop boxes throughout the Districts, and holding a press conference to inform the public about the complaint process. The second phase of the complaint process consists of on-going roll call/in-service training regarding the Complaint Policy.

On September 2, the Committee submitted draft versions of the Complaint Policy and Serious Misconduct Investigations Policy (the “Serious Misconduct Policy”) to the OIM. After reviewing those policies, the OIM asked the Committee to make comprehensive revisions and then to resubmit them to the OIM. Given that the Committee must eventually function independently, the Committee should substantially finalize policies before submitting them to the OIM for review. Of course, to the extent that the Committee has questions about a policy that is under development, the OIM remains available to assist.

With respect to the Complaint Policy, the OIM specifically suggested that the Committee, among other things, better organize the policy by breaking down certain sections into sub-headings and grouping related paragraphs together. For the Serious Misconduct Policy, the OIM expressed concern that the policy appeared to address two related, but different issues: (1) serious misconduct and (2) serious use of force (whether or not misconduct is involved). In order to avoid confusion, the OIM recommends that the VIPD limit the scope of the Serious Misconduct Policy to issues relating to alleged misconduct by VIPD personnel.⁵¹ Although allegations of misconduct may be based on serious or excessive use of force, we believe that it would be clearer to have a separate policy relating to serious use of force events.

In an effort to improve the Complaint Policy and Serious Misconduct Policy, the VIPD has been actively soliciting feedback from officers. During the September 30 Commanders Call (in which the OIM participated), for example, the Director of IAB and the Compliance Coordinator asked the participants to review both policies and to provide

⁵⁰ VIPD July 2010 Status Report at 11.

⁵¹ The OIM remains unclear about whether this policy is distinct from the Investigation of Employee Misconduct Policy referred to in the VIPD’s October 2010 Status Report at 18.

them with comments.⁵² The OIM commends this action and encourages the Committee to continue to reach out to officers as a regular part of the policy development process. Going forward, the OIM recommends that the Committee set a deadline by which selected officers are required to provide written feedback on policies. In the event that an officer declines to comment (for whatever reason), he/she should be required to submit a signed form stating as much.

Once the Committee receives feedback on the Complaint Policy and the Serious Misconduct Policy from officers, it should share that feedback with the OIM and revise those policies accordingly. Once those policies are finalized by the Committee, they will be submitted to the Police Commissioner for approval and then disseminated department-wide for immediate implementation. As we have repeatedly stressed, in order for any policy to be successful, officers must be adequately trained.

With regard to the compliment/complaint brochures, the VIPD reports that it has developed these to “inform [c]itizens of the complaint procedure, their right to make a complaint and the procedure for complimenting an [o]fficer’s performance.”⁵³ According to the VIPD, the finalized Complaint Policy will require all officers to have the brochures in their vehicles at all times while on-duty. The VIPD has already posted its compliment/complaint brochure to its website, www.vipd.gov.vi, and community groups and centers can request copies of the brochure. To that end, the VIPD has already printed 4,000 copies of its brochure in English and Spanish, and 3,000 in French. In addition, the VIPD installed clear plastic displays to hold brochures and compliment/complaint forms next to all drop boxes at all Zones; according to the VIPD, the brochures are “conspicuously located with hassle free accessibility for the general public.”⁵⁴ The VIPD also received permission from the public libraries in both Districts to display posters and brochures at various library locations. Likewise, the Public Housing Authority agreed to allow the VIPD to display posters and brochures at each of their community centers in both Districts.

As we mentioned in our previous report, the OIM is concerned that many of the materials relating to the Complaint Policy place too much emphasis on warning complainants about the consequences of making

⁵² *Id.* at 6.

⁵³ *Id.* at 10-12.

⁵⁴ *Id.* at 10.

false reports.⁵⁵ The OIM strongly believes that the value of any such warning is heavily outweighed by the risk that potential complainants, especially those that are already wary of interacting with police officials, will be discouraged from reporting improper conduct by the police. With respect to any future printings of any materials with these warnings, the OIM understands that the VIPD will reduce the size and prominence of these “warnings.”

The VIPD also reports that it has printed 6,000 copies of a complaint form (#2010 CCF-1) in English.⁵⁶ In addition, the VIPD developed an accompanying poster, which it printed 200 copies of in English, French and Spanish, to be permanently posted at all Zones, substations, mobile substations, and other authorized government agencies.⁵⁷ The finalized Complaint Policy will require that all officers, among other things, carry complaint forms in their vehicles at all times while on-duty, inform citizens of their right to make a complaint, and not discourage any person from making a complaint. The VIPD’s website, www.vipd.gov.vi, also will be updated to reflect this information. Citizens can deposit completed complaint forms in locked drop box to be collected by IAB agents. The VIPD reports that IAB is the “sole entity with keys to these lock boxes,” and that IAB agents will check the boxes for completed forms on a daily basis.⁵⁸ Citizens also have the option of making complaints in-person at any police station or IAB office, or by mail, fax, or telephone.⁵⁹ As we noted in our previous report, the VIPD recently activated a complaint hotline (1.877.391.7376).⁶⁰ Citizens also can make complaints by calling 911.⁶¹ Further, IAB established a temporary email

⁵⁵ OIM Second Quarterly Report at 24 and fn.54. Specifically, the “WARNING” states: “IT IS AGAINST VIRGIN ISLANDS LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER OR A CIVILIAN STAFF MEMBER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED FOR MAKING FALSE STATEMENTS UNDER THE PROVISIONS OF TITLE 14 V.I.C. § 843 FRAUDULENT CLAIMS UPON THE GOVERNMENT.” The brochure is available at <http://www.vipd.gov.vi/pdf/VIPD-KnowYourRightsBrochureEnglish.pdf>.

⁵⁶ The OIM requests that the VIPD explain in its next status report why it has not printed the complaint forms in French, French Patois and Spanish.

⁵⁷ VIPD October 2010 Status Report at 11-12.

⁵⁸ *Id.* at 11.

⁵⁹ *Id.* at 14. Based on its monitoring activities, the OIM has learned that the Assistant Director of IAB has created an internal database for recording, tracking, and organizing citizen and administrative complaints.

⁶⁰ OIM Second Quarterly Report at 24.

address, iabstt@live.com, to receive complaints. At the DOJ's request, the VIPD reported that it anticipated transitioning to a different email address, internal.affairs@vipd.gov.vi, in early October. As of November 1, the OIM has not received notification from the VIPD stating that that email address is operational.

In cases where a complaint is dropped into a locked complaint drop box, the VIPD also reports that the IAB has a protocol to ensure that each complainant receives a copy of their complaint, a complaint control number, and written notification of the disposition of their complaint.⁶² Moreover, the VIPD reports that it issued a directive requiring IAB agents to notify complainants regularly about the status of their respective cases. Another directive requires IAB Supervisors to conduct case file reviews monthly.

On the same day as the October Monthly Meeting, the VIPD held a press conference to publicize the complaint process.⁶³ In addition, senior VIPD personnel, including the Police Commissioner, Assistant Police Commissioner, and District Chiefs and Deputy Chiefs, recorded public service announcements (PSAs) for radio and television broadcast. The VIPD reports that there will be a total of six radio advertisements with varying messages, as well as one television advertisement. According to the VIPD, the PSAs began airing after the October 13 press conference and will run through January 15, 2011. The VIPD will evaluate the effectiveness of the PSAs in early 2011. The OIM will provide further detail about the public information campaign in the Fourth Quarterly Report.

3. Recommendations

Overall, the OIM is pleased with the VIPD's efforts to develop a citizen complaint process. Nevertheless, the Department must finalize

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⁶¹ When officers receive a citizen complaint, they are required to notify the Virgin Islands Territorial Emergency Management Agency ("VITEMA"), which then assigns the complaint a tracking number. VIPD October 2010 Status Report at 13-14. During the third quarter, the OIM toured VITEMA's facilities, met with its Director of Operations, and reviewed the protocols that VITEMA operators follow when they receive citizen complaints. Overall, we were extremely impressed by the staff's level of knowledge about the complaint process and the technical sophistication of VITEMA's systems.

⁶² *Id.*

⁶³ *Id.* at 10-11. While the OIM appreciates the VIPD's desire to inform the public about the complaint process, we question whether it would have been more prudent to wait until the Department issued its Complaint Policy.

the Complaint Policy and Serious Misconduct Policy as soon as possible. Although the Consent Decree does not expressly require DOJ review and approval of those policies, the OIM encourages the VIPD to include the DOJ in the development of these policies.

Once those policies have been issued, the VIPD must provide corresponding training. While the VIPD states that training “must be done in such a manner that it limits the negative impact on the manpower required for regular police patrols,” the Department must commit the necessary resources to adequately train its officers.⁶⁴ Concerns about the potential impact of training schedules will not excuse the Department’s lack of attention to training.

During the next two quarters, the VIPD should develop metrics to ensure that VIPD personnel are held accountable for resolving complaints as quickly as possible. In addition, pursuant to Consent Decree paragraph 49, the VIPD must develop a centralized system to track the progress of complaints from receipt to resolution. During the next quarter, the OIM intends to review the status of pending complaints and will review all relevant files as part of that examination.

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.
- 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.

⁶⁴ *Id.*

- VIPD must investigate every citizen complaint, and the resolution of each complaint shall be documented in writing.
- 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 Commissioner must be notified of all complaints alleging excessive force or violation of a person's Constitutional rights within twenty-four hours of 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 evidence standard. 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 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.”⁶⁵
 - 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 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.

⁶⁵ 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. CD ¶ 57.

- Require that investigations evaluate any searches or seizures that occurred during the underlying incident.
- Prohibit investigators from closing an investigation solely because a complaint is withdrawn, the alleged victim is unwilling or unable to provide medical records or proof of an injury, or the complainant will not provide additional statements or written statements. The policy shall require that, under such circumstances, investigators must continue the investigation as necessary to determine whether the allegations 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 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.

2. Status and Assessment

As discussed repeatedly above, the VIPD has not yet finalized the Complaint Policy or Serious Misconduct Policy. Finalizing those policies is an important prerequisite to developing additional guidance for officers relating to the citizen complaint process.

The VIPD reports that its draft Complaint Policy, pursuant to Consent Decree paragraph 49, designates IAB as the primary and central entity to determine whether investigations will be assigned to the Zones, retained by IAB, or referred for possible criminal investigation to the

Virgin Islands Attorney General's Office.⁶⁶ The draft Complaint Policy also requires Zone investigators to forward copies of their investigative files to IAB for review. Further, the draft Complaint Policy requires supervising officers to refer allegations of excessive force or the violation of a person's constitutional rights to the Police Commissioner within twenty-four (24) hours after receipt of the complaint. In addition, the VIPD reports that IAB recently developed a standard operating procedure relating to investigating officer misconduct and officer related shootings. Although the VIPD has not yet finalized the Complaint Policy, the VIPD reports that IAB's "standard practice" is to investigate every citizen complaint.⁶⁷

Unfortunately, the VIPD has made very little progress developing and implementing training programs in this area. The OIM is particularly disappointed by the Training Division's failure to provide training programs regarding the preponderance of the evidence standard and evaluating the credibility of witnesses to *all* officers. Unlike many other training programs, neither of those programs requires as a prerequisite the implementation of specific policies. As such, it is inexcusable that the Training Director received a written, intra-departmental request for those programs in March but has yet to fully comply.⁶⁸

As a result of intervention by the OIM, the Training Director contacted an Attorney in the Virgin Islands Attorney General's Office about conducting a preponderance of the evidence standard training.⁶⁹ At the beginning of the fourth quarter, on October 12, the OIM observed a Virgin Islands Assistant Attorney General give an overview presentation on the preponderance of the evidence standard to command level personnel. While attendance at that meeting was high, the OIM observed that a number of key senior officers did not attend, including the District Chiefs and Deputy Chiefs. The OIM observed that the Assistant Attorney General's presentation was well done and encourages the Training

⁶⁶ VIPD October 2010 Status Report at 15-17.

⁶⁷ *Id.*

⁶⁸ OIM Second Quarterly Report at 31.

⁶⁹ VIPD October 2010 Status Report at 14.

Division to use that session as a foundation for the development of a force-wide training program on the subject.⁷⁰

As discussed above, IAB reports that it has obtained electronic devices to audio and video record all complaint related interviews.⁷¹ In addition, the VIPD reports that it recently installed web-based cameras to record officer interviews in the Supervising Officer's office in each Zone; the VIPD also plans to purchase tape recorders as a backup measure. The VIPD previously reported that it installed computers throughout most of the Zones to facilitate the storage and retrieval of interviews and any other materials relating to complaint investigations. The VIPD reports that since 2008, IAB agents have attended courses about interview and interrogation techniques, internal affairs, and other courses related to citizen complaint investigations provided by the Institute of Policy Technology and Management and will continue to do so contingent upon funding and approval. Additionally, the VIPD reports that IAB agents have received training in investigating officer involved shootings, shooting reconstruction, and IAPro.

3. Recommendations

To reiterate, the VIPD must finalize the Complaint Policy, Serious Misconduct Policy and any other associated policies as expeditiously as possible. In addition, the VIPD will not be able to conduct adequate internal investigations of complaints until the Training Division implements several of the core training programs discussed above. Given that some of the training programs were requested in March, the OIM expects the Training Division to offer those programs before the end of 2010. If the Training Division is unable to do so, the VIPD should continue to hold the Training Director accountable.

Finally, to the extent that the VIPD is not using customized templates and checklists in its investigations, the OIM strongly recommends that it do so. In the last quarterly report, the OIM recommended that the VIPD promptly customize the model investigation templates and checklists that the OIM previously provided.⁷² The OIM

⁷⁰ The VIPD reports that IAB agents already use the preponderance of the evidence standard in IAB investigations. It is not clear to the OIM who, if anyone, trained the IAB agents on the preponderance of the evidence standard. *See id.*

⁷¹ *See supra* § II. Evaluation, Documentation, and Review of Uses of Force; *see also* VIPD October 2010 Status Report at 16-17. In fact, during this past quarter, the OIM reviewed several video interviews that were taken in connection with a use of force investigation.

⁷² OIM Second Quarterly Report at 31-32.

previously explained that the use of templates and checklists can dramatically improve the quality and consistency of internal investigations by providing investigators with easy-to-follow guidance regarding the specific investigative procedures that they must follow and the documentation that they must develop during their investigations. In the next quarter, the OIM expects an update from the VIPD with respect to the progress that it has made customizing and/or utilizing templates and checklists for investigations.

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;⁷³
- 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;

⁷³ 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.

- 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 implement the RMS pursuant to a contracting schedule set forth in the Consent Decree.⁷⁴

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:

⁷⁴ See CD ¶ 66.

- 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 VIPD have the following intervention options available:
 - Discussions among Deputy Chiefs, managers, supervisors, and officers;
 - Counseling;
 - Training; and,
 - 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, 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.

2. Status, Assessment, and Recommendations

The VIPD previously reported purchasing IAPro, an electronic risk management database, from CI Technologies.⁷⁵ IAPro will ultimately form the backbone of the VIPD's risk management system. To allow officers in the field to enter information directly into IAPro, avoiding the inefficient practice of taking handwritten notes in the field and then transferring that information to a computer at the police station, the VIPD also purchased an additional IAPro component, referred to as "Blue Team."

The VIPD reports that it has scheduled the implementation of the Blue Team component of IAPro for December.⁷⁶ Unfortunately, the VIPD continues to encounter technical problems with IAPro. The Department is currently waiting for IAPro technicians to transfer IAPro from a temporary (and over-taxed) server to new servers in both Districts. IAPro technicians had been scheduled to visit the Virgin Islands during the first week in October to complete that transfer; however, that visit did not ultimately take place.⁷⁷ The VIPD will not be able to implement Blue Team until IAPro is fully operational. As such, the VIPD must resolve any outstanding technical issues before December to stay on track. The VIPD also reports that the implementation of Blue Team will coincide with a scheduled train-the-trainer course for Blue Team in December, as well as the department-wide use of Blue Team to enter use of force, vehicle pursuit, and other events.

Although IAPro is not yet fully operational, the VIPD previously reported that it provided IAPro training to IAB agents, including instruction on the basic operation of the program, as well as on how to enter complaints, in March.⁷⁸ Even prior to 2010, the VIPD reports that

⁷⁵ OIM Second Quarterly Report at 36.

⁷⁶ VIPD October 2010 Status Report at 20-21.

⁷⁷ The VIPD did not explain why that visit failed to take place.

⁷⁸ OIM Second Quarterly Report at 37.

IAB agents tracked certain officers who received multiple complaints.⁷⁹ The OIM requests additional information from the VIPD about how it tracked any such officers.

As we previously reported, the OIM sent the VIPD feedback on draft versions of the RMS Protocol and the Early Intervention Program (“EIP”) Policy on August 3. Subsequently, on September 8 and 15, the VIPD resubmitted revised versions of the RMS Protocol and the EIP to the OIM. However, at a Committee meeting on September 16, the Committee asked the OIM to hold off on reviewing the RMS Protocol and the EIP until the VIPD finalized several related policies, including the Use of Firearms Policy, Vehicle Pursuit Policy, Mental Health Policy, and Improved Performance Measure Policy.⁸⁰ In connection with the RMS Protocol, the VIPD reports that it designated a senior IAB agent as the RMS Coordinator. The VIPD reports that it plans to submit a revised version of the RMS Protocol to the DOJ in October. Given that we have not seen the RMS Protocol since mid-September, we request that the VIPD first give us an opportunity to review and comment on the protocol before submitting it to the DOJ.

The VIPD also reports that it will submit a draft of its Data Input Plan to the DOJ during the fourth quarter.⁸¹ The Data Input Plan must, among other things, identify the data that the VIPD will enter into the RMS and set forth a time line for inputting that data.⁸² Before providing the Data Input Plan to the DOJ, we recommend and request that the VIPD provide us with an opportunity to review and comment.

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.

⁷⁹ VIPD October 2010 Status Report at 20.

⁸⁰ *Id.*

⁸¹ *Id.* at 21.

⁸² CD ¶ 62.

2. Status, Assessment, and Recommendations

The VIPD reports that it has not yet prepared an audit protocol for the RMS.⁸³ Once the VIPD finalizes the RMS Protocol, we encourage it to begin working on an audit protocol.

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 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.

2. Status, Assessment, and Recommendations

The VIPD reports that while it has not yet developed a revised disciplinary matrix, as required by paragraph 70 of the Consent Decree,

⁸³ VIPD October 2010 Status Report at 24.

it will form a subcommittee to address this requirement.⁸⁴ Additionally, at the September 16 Committee meeting and the October Monthly Meeting, VIPD personnel expressed a lack of understanding about the DOJ's concerns with the Department's existing matrix. At the October Monthly Meeting, the Compliance Coordinator stated that he would share the Department's existing matrix with attorneys for the DOJ, who in turn agreed to review the matrix and provide guidance to the VIPD about what, if any, concerns it continues to have. We expect that the VIPD will promptly provide the DOJ with a copy of the existing matrix and that once the DOJ reviews the matrix, the DOJ will share any remaining concerns relating to the matrix with the VIPD and the OIM during the next quarter. The OIM also requests clarification about what, if anything (i.e. discussions, revisions), the VIPD subcommittee has done with respect to the existing matrix.

The collective bargaining agreement between the VIPD and the Law Enforcement Supervisor's Union (the "LESU") sets forth a statute of limitations of 50 days for instituting disciplinary action against officers. Because 50 days is a short period of time to conduct a thorough investigation and institute disciplinary proceedings, the VIPD, at the request of the DOJ, has sought to extend the 50 day period to 90 days. The OIM has independently observed that the 50 day statute of limitations is too short, especially because use of force and other similar reports are not always prepared and disseminated on a timely basis. Unfortunately, according to the VIPD, the LESU rejected the VIPD's proposal. The VIPD will have the opportunity to negotiate a longer statute of limitations in three years when the VIPD's current collective bargaining agreement with the LESU expires. In the interim, the VIPD must strive to complete all use of force investigations within the existing 50 day statute of limitations. In order for the VIPD to meet that goal, officers must, for example, report all use of force events before the end of their shift and send copies of the use of force report to Zone Commanders and IAB.

⁸⁴ *Id.* at 24-25.

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:

- 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 use of force-related policies and training programs, VIPD must conduct regular reviews of its use of force training program at least semi-annually.
- VIPD must ensure that only mandated objectives and approved lesson plans are taught by training instructors; and,
- VIPD must make best efforts to train each work shift as a team in its use of force training.

Under the Consent Decree, 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 its use 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.

2. Status and Assessment

While the VIPD has shown modest improvement in many areas this quarter, the Training Division continues to lag behind the rest of the Department. During the past quarter, for example, the OIM was extremely disappointed to learn that there is widespread uncertainty among officers (at all levels) about the Department's use of force reporting requirements. Unfortunately, this is not an isolated issue. Rather, it is emblematic of a systemic failure by the Training Division to fully execute its core mission – to train officers in departmental policies.

The VIPD's response to Paragraph 73 of the Consent Decree, which requires the VIPD to, among other things, "review all use of force . . . training," is telling. Rather than explaining what, if anything, the Training Division did to review its training programs during the past quarter, the VIPD responded that it could not conduct such a review because the Department does not currently have an approved use of force policy.⁸⁵ Simply put, that is not an adequate excuse. Had the VIPD reviewed its training programs, it would have discovered, at a minimum, that many officers are uncertain about the Department's use of force reporting requirements. Until the VIPD implements new use of force policies, the current policies, directives, and protocols remain in effect and cannot simply be ignored. In addition, the lack of an approved use of force policy has absolutely no impact on a number of still-outstanding training programs relating to, among other things, the preponderance of the evidence standard and evaluating the credibility of witnesses.

⁸⁵ *Id.* at 26.

Moreover, despite assertions by the VIPD in its October Status Report that the Training Division has taken concrete steps towards complying with the Consent Decree, the OIM has not seen sufficient evidence substantiating many of those assertions. For example, the VIPD claims that it maintains training attendance records for every VIPD officer. However, the OIM specifically advised the Training Director that the Division's existing system for capturing and verifying training attendance is insufficient. The OIM's review of the Training Division's attendance sheets completed during previous quarters demonstrated that they rarely accounted for all of the scheduled attendees, typically did not require attendees to sign in and out of trainings, and failed to identify the relevant instructors.⁸⁶

In an early discussion with the Training Director, the OIM was told that the Training Director requested the Director of Management Information Services' ("MIS") assistance in creating a system to capture training attendance records. The OIM subsequently received a copy of a memo from the Training Director to the Director of MIS, dated August 25, memorializing that request. The OIM is pleased to report that the Training Director drafted new attendance sheets, incorporating the OIM's suggestions, during the beginning of the fourth quarter in October.

Further, several of the VIPD's assertions relating to the Training Division's progress with the Consent Decree requirements also are so vague that it is impossible to determine what, if anything, the Training Division did during the last quarter. In response to paragraph 74 of the Consent Decree, for example, the VIPD stated that the Training Director was "work[ing]" on a number of areas and planning to meet with the District Chiefs "soon."⁸⁷ The VIPD did not explain the type of work that the Training Director was undertaking, nor did it specifically state when he intends to meet with the District Chiefs. These types of responses are unhelpful.

The VIPD reports that it conducted several training programs during the third quarter. For example, between July 1 and September 30 in St. Croix, the VIPD conducted the following training programs: managing multiple projects; objectives and deadlines; motorcycle training; train-the-trainer instructor development course; and, an in-

⁸⁶ With respect to any trainings/qualifications that require a test to pass (e.g., firearms, O.C. Spray), the OIM recommends that the relevant VIPD attendance records indicate whether the individual passed and his/her score.

⁸⁷ VIPD October 2010 Status Report at 27.

service Supervisor training.⁸⁸ Between July 1 and September 30 in St. Thomas, the VIPD reports that it provided the following training programs: in-service trainings; interview/interrogation training; and, a train-the-trainer instructor development course. Among other things, the in-service training programs included: stress management; constitutional law; domestic violence; crime scene preservation; drug free work force; domestic violence sensitivity; Virgin Island Code review; child abuse; and, firearms training and qualification.

During the week of September 13, the OIM monitored one of those programs, a train-the-trainer program in St. Croix. The program focused on basic teaching skills, including lesson plan development, strategies for teaching adult students, preparing sign-in sheets, using power point presentations, and more. Officers from various Zones participated in the training. In speaking with a number of the participating officers (none of whom had previously participated in an instructor development program), the OIM learned that many of them already taught specialized courses on topics such as firearms. In many jurisdictions (but apparently not the Virgin Islands), all instructors must participate in a train-the-trainer program and be certified. Even without such a requirement, the VIPD should generally require officers to participate in train-the-trainer programs before permitting them to serve as specialized instructors. The OIM also notes that the course offered 40 hours of instruction, though the course instructor typically provides 64 hours of instruction when he teaches the same course in Florida because of minimum state requirements. A significant portion of the 24 hours of instruction not provided to the VIPD focused on lesson plan development. Therefore, the OIM suggests that future train-the-trainer courses or in-service training programs provide more in-depth instruction on lesson plan development.

During meetings with the Training Director this quarter, the OIM repeatedly asked to receive, on a regular basis (but no less frequently than monthly), a schedule of all upcoming trainings. We also emphasized that the Training Division must notify the OIM of changes to those schedules within 48 hours. In response, the Training Director provided the OIM with a draft schedule of in-service training programs set to begin after January 1, 2011. However, as currently composed, that schedule is little more than an empty shell, without specific dates or instructor names entered for each course. The OIM advised the Training

⁸⁸ *Id.*

Director that he should, at a minimum, identify the instructors who will teach each component of the program and work with them to develop lesson plans.

Because proper lesson plans are foundational for every training program, the OIM discussed lesson plan development at length with the Training Director this quarter. During one such discussion, the Training Director gave the OIM a copy of a Training Division memorandum, dated October 7, stating that all lesson plans must be approved in writing by the Training Director.⁸⁹ Moreover, if a lesson plan touches on any legal issues, the memorandum requires approval from the Office of the Virgin Islands Attorney General. The memorandum also requires instructors to submit their lesson plans to the Training Director for approval by December 3 for training that are scheduled to begin in January 2011.⁹⁰ According to the Director of Training, one of his chief objectives is to have instructors teaching from the same lesson plan in both Districts. The OIM has observed that the Training Division appears to function as two separate units, one for the St. Croix District and another for the St. Thomas District, so we are encouraged by the Training Director's intention to create greater uniformity.

In order to ensure that instructors are teaching based on approved lesson plans, the Training Director stated that he, or one of his staff, frequently attend training programs to observe, among other things, what is being taught and the quality of instruction. Going forward, the Training Division must make a record of any such observations. Another way to improve instructor quality is to solicit feedback from training participants at the conclusion of a program. While the Director of Training provided the OIM with a memorandum, dated August 10, requiring his staff to direct the training participants to evaluate their instructors at the end of each program, based on OIM monitoring, no such evaluations have commenced.

In light of reports from officers that there are too few field training officers ("FTOs"), the OIM encourages the Training Division to provide an FTO train-the-trainer certification course before the end of 2010.⁹¹ The

⁸⁹ The OIM also has advised that lesson plans should be dated and any updates or corrections also should be noted.

⁹⁰ During the upcoming quarter, the OIM will review all lesson plans related to Consent Decree requirements.

⁹¹ The VIPD reports that it cannot provide an FTO train-the-trainer certification course before the end of the first quarter of 2011 because of a scheduling conflict with the proposed

OIM is hopeful that holding such a training course will help remedy that problem. In addition, the OIM will also review the Department's documentation (including daily observation sheets and weekly summaries) relating to its FTO program during the next quarter. The OIM notes that such documentation was lacking in all but one Zone during the past quarter.

3. Recommendations

As stated repeatedly throughout this report, the Training Division must immediately provide officers with additional training regarding the Department's use of force reporting requirements through Roll Call and Commanders Call meetings and mandatory in-service training programs. It is unacceptable that the Training Division was unaware of the widespread uncertainty among officers about the Department's use of force reporting requirements. The Police Commissioner should continue to hold the Training Director responsible for the successful and timely execution of those training programs.

Although the Department does not yet have an approved use of force policy, the Training Division should develop a training program that can be immediately implemented once that policy is approved. As part of that process, the Training Division should, among other things, identify potential instructors and draft the relevant lesson plans. Once the VIPD implements a training program, it must continually evaluate its effectiveness. The Training Division should also strive to maintain an open line of communication with officers regarding training needs.

The Training Division must also dramatically improve its record keeping. For example, officers should be required to sign in and out at all training sessions. In addition, officers should be held accountable for failing to attend required trainings. As stated above, the Training Director showed the OIM newly created attendance sheets that he intends to use immediately. The OIM will monitor the Department's use of those attendance sheets during the next quarter. Finally, it is imperative that the VIPD provide the OIM, copying the DOJ, with a schedule of all upcoming trainings on a regular basis.

Footnote continued from previous page

training entities. Because that is nearly five months away, the OIM reiterates its recommendation that the VIPD hold such a course before the end of 2010 (or as soon thereafter as possible). To do so, it will be necessary to identify and engage an alternate training entity as soon as possible.

B. Curriculum (CD ¶¶ 78-81)

1. Requirements

The Consent Decree requires the VIPD's Training Director 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 Training Director 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:

- VIPD's use of force model;
- Proper use of force decision-making;
- 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. 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. VIPD must train officers regarding this protocol.

- 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.

2. Status, Assessment, and Recommendations

Many of the requirements specified in paragraphs 78-81 of the Consent Decree, overlap with areas already discussed at length throughout this report. For example, under these Consent Decree provisions, the VIPD is required, among other things, to conduct a review of its use of force policies. In response, the VIPD once again reports that it has not undertaken any such review because the Department does not have an approved use of force policy. As discussed above, the lack of an approved use of force policy is no excuse for the Training Division's failure to monitor the effectiveness of its training programs. Moreover, paragraphs 78-81 require the VIPD to provide training programs on the preponderance of the evidence standard and evaluating witness credibility. Earlier in this report, the OIM expressed disappointment with the VIPD for failing to provide training programs in those areas. In short, despite factually bereft assertions to the contrary, the Training Division has not made adequate progress with regard to developing curriculum in almost any area required by the Consent Decree. The VIPD must begin to rectify this immediately. On a positive note, the OIM is encouraged that the Director of IAB and the Training Director are beginning to work collaboratively to address unmet training needs.

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

A. 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 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 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.

B. Status, Assessment, and Recommendations

As discussed in our First and Second Quarterly Reports, the VIPD previously named a Compliance Coordinator.⁹² During the second quarter, the Police Commissioner also designated a Compliance Manager for St. Croix.⁹³ Thus, the VIPD has fulfilled its obligations with regard to these specific obligations of the Consent Decree.

During the third quarter, the OIM continued to work with the Compliance Manager for St. Croix and the Compliance Coordinator, both of whom have exhibited genuine commitment to and provided tangible assistance with fulfilling the Consent Decree requirements. In addition to taking an active role at Committee meetings and Monthly Meetings, they act as vital intermediaries between the VIPD and the OIM.

⁹² OIM First Quarterly Report, May 7, 2010, at 49; OIM Second Quarterly Report at 45.

⁹³ OIM Second Quarterly Report at 45.

The VIPD submitted its sixth Status Report to the DOJ, the Attorney General's Office, and the OIM on October 6.⁹⁴

VII. Status of Substantial Compliance

In order to be released from the Consent Decree, the VIPD must substantially comply with each of the Consent Decree's requirements and remain in compliance for two years.⁹⁵ At the end of this quarter, the VIPD has substantially complied with the following Consent Decree requirements:

- In January 2010, the Parties selected the Monitor (CD ¶¶ 82-86);
- In the Spring of 2010, the Police Commissioner appointed a Compliance Coordinator to serve as a liaison between the Parties 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 VIPD has not, however, substantially complied with the Consent Decree's other requirements, including, but not limited to: finalizing various specific use of force policies; documenting, investigating, and analyzing use of force events and complaints; and, adequately training VIPD personnel. Nevertheless, because the VIPD's revised Use of Force Policy is nearing final DOJ approval, the OIM expects the VIPD to substantially comply with this foundational requirement during the next quarter (CD ¶ 31). Likewise, the VIPD also should be able to substantially comply with certain aspects of the citizen complaint process in the near future (CD ¶¶ 42-44).

⁹⁴ Paragraph 98 of the Consent Decree requires the VIPD to submit status reports every 90 days from the effective date of the Consent Decree. At our request, the Parties agreed during the March 2010 Monthly Meeting to modify the timing for the submission of the status reports so that they are now due by the seventh of the month following the end of a quarter.

⁹⁵ CD ¶ 103.

Conclusion

This quarterly report demonstrates that the VIPD continues to have a substantial amount of work to do to meet its obligations under the Consent Decree. It is telling that more than a year-and-a-half after entering into the Consent Decree, the VIPD admits that it is “just starting the CD compliance” process.⁹⁶ If the VIPD wants to achieve its stated goal of bringing about early termination of the Consent Decree, it must become considerably more proactive.⁹⁷

Despite the VIPD’s slow progress to date, the OIM continues to believe that many members of the VIPD, including, but not limited to, the Police Commissioner, the Assistant Police Commissioner, the Director of IAB, the Assistant Director of IAB, the Compliance Manager for St. Croix, and the Compliance Coordinator, are genuinely committed to complying with the Consent Decree. Those individuals, and many others, have consistently exhibited strong leadership, drive, and seriousness of purpose in their efforts to fulfill the requirements of the Consent Decree. The OIM is hopeful that these personnel will continue to take an active role with respect to the Consent Decree. In addition, the OIM would like to see the District Chiefs and Deputy Chiefs become more actively involved with the Consent Decree.

The OIM is pleased that the VIPD recently finalized the Use of Force Policy and submitted it to the DOJ for approval, which in turn gave suggestions for additional revisions. The VIPD should work expeditiously to implement those revisions and resubmit the policy to the DOJ for final approval. The Department should also develop training programs to teach officers about the requirements of the new policy. That way, the VIPD will be in a position to implement the finalized Use of Force Policy as soon as it receives approval from the DOJ. In addition, the VIPD should also focus on finalizing a Reporting Use of Force Policy. Given the level of uncertainty surrounding the Department’s current use of force reporting requirements, the VIPD should take special care to draft a

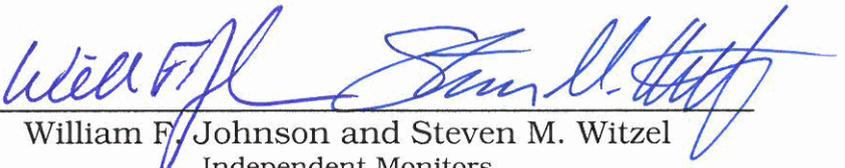
⁹⁶ VIPD October 2010 Status Report at 2.

⁹⁷ In response to a request from the DOJ, the United States District Court for the Virgin Islands held a hearing on October 1. During that hearing, the Court instructed the VIPD and the DOJ to file proposed timelines for the VIPD’s compliance with the substantive provisions of the Consent Decree by October 15. Because the VIPD and the DOJ could not agree on an acceptable timeline, the Court scheduled another hearing for November 22. The OIM will provide more detail about those hearings in the next quarterly report.

policy that, among other things, requires VIPD personnel to report *all* use of force events to their supervisors and to IAB. Once the VIPD finalizes the Use of Force Reporting Policy, it should turn immediately to finalizing the remaining specific use of force policies.

Finally, the VIPD should focus on the Training Division over the next two quarters. The Training Division's rate of progress since the Consent Decree went into force has been inadequate. The Police Commissioner must continue to demand greater accountability from the Training Division and its Director.

While many challenges lay ahead, the OIM expects the VIPD to accelerate its efforts to bring the Department's operations into compliance with the Consent Decree in the quarters to come.



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November 22, 2010

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