

# **Third Quarterly Report of 2011 of the Independent Monitor for the Virgin Islands Police Department**



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Independent Monitors**



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# Independent Monitoring Team

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## Executive Summary

This is the Third Quarterly Report of 2011 from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on September 30, 2011.<sup>1</sup>

During this quarter, among other things, the OIM conducted two separate week-long monitoring trips to the Virgin Islands.<sup>2</sup> The monitoring trips (and work done remotely over the quarter) allowed the OIM representatives to remain in close communication with the Chiefs, Deputy Chief, and Training Director charged with overseeing the Consent Decree working groups — Use of Force (Chief of the St. Croix District), Citizen Complaint Process (Chief of the St. Thomas District), Management & Supervision (Deputy Chief of St. Thomas), and Training (Training Director). The OIM representatives and working group leaders discussed the progress of the working groups, policy development, deficiencies with force investigation reviews, and solutions to technological and bureaucratic impediments. The OIM representatives also continued to work with other members of the Consent Decree working groups and other VIPD personnel, including the Director and Assistant Director of the Internal Affairs Bureau (“IAB”), the Acting

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<sup>1</sup> This Report references a limited number of events that occurred after September 30 to provide context and shed light on significant efforts that the VIPD made outside of the quarter to satisfy its Consent Decree obligations. The OIM had hoped to publish this Report on November 30. Under the Consent Decree, the Territory of the Virgin Islands (the “Territory” or the “Virgin Islands”), the VIPD, and the United States Department of Justice (the “DOJ”) (collectively, the “Parties”) have ten business days to comment on the OIM’s draft report. We provided a draft version of this Report to the Parties on November 14. The DOJ provided its comments on November 29. The VIPD and the Territory requested an extension because they were reviewing the OIM’s Substantial Compliance Thresholds Chart (which is discussed further below). The VIPD and the Territory provided their comments on December 19.

<sup>2</sup> The OIM planned two additional monitoring trips during the Third Quarter, but severe weather (including Hurricane Irene) interfered with those plans.

Director of Management and Information Systems (“MIS”), and the Compliance Coordinator.

The OIM continued to review arrest reports, general incident reports (Form 1-As), Response to Resistance Reporting Forms (“RRRs”) (formerly known as Use of Force Reports), and related investigatory files. The ongoing review of these files allows the OIM to track and analyze the adequacy of the Department’s use of force reporting and investigating practices.

As we previously reported, after Police Commissioner Novelle Francis retired from the VIPD on August 15, Governor de Jongh appointed Assistant Police Commissioner Raymond Hyndman as the Acting Police Commissioner. During the Fourth Quarter, on November 7, the Governor, subject to Senate confirmation, nominated Henry White Jr. to serve as the new Police Commissioner. Pending Senate confirmation, Mr. White will serve as the Acting Police Commissioner, effective November 7. At the press conference announcing his appointment, Mr. White publicly stated that he intends to make the mandates of the Consent Decree a top priority from the start of his tenure. The OIM looks forward to working with the new Police Commissioner as the VIPD continues its efforts to achieve substantial compliance with the Consent Decree.

During this interim period, Acting Police Commissioner Hyndman will serve as an assistant commissioner until a commissioner is confirmed.<sup>3</sup> Acting Police Commissioner Hyndman led the Department’s efforts to satisfy compliance with the Consent Decree over this quarter, and the OIM has been pleased with his leadership. For example, in September, the Acting Police Commissioner directed Department personnel to provide the OIM with greater access to documentation relating to the Department’s Consent Decree compliance efforts, including, but not limited to, working group committee minutes and

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<sup>3</sup> Unless otherwise noted, for purposes of this report, Acting Police Commissioner refers to Raymond Hyndman.

progress updates. The OIM previously expressed concern that the VIPD held back Consent Decree related materials before providing them to the OIM.<sup>4</sup> The OIM appreciates the Acting Police Commissioner's renewed commitment to transparency. The OIM relies, in part, on these materials to assess the steps that the VIPD takes to comply with the Consent Decree.

The Acting Commissioner also designated an audit unit to evaluate the effectiveness of internal controls across the Department. The audit unit will be composed of a cross-section of VIPD personnel, including the Assistant Director of IAB, Director of Human Resources, Payroll Supervisor, Compliance Coordinator and Compliance Manager. During this quarter, the OIM provided the Acting Commissioner with suggestions about how the audit team could begin to move forward. Such suggestions include designating a chairperson and developing a protocol to guide the audit team's activities. The new Commissioner should ensure that this unit starts the important work of developing its protocol during the Fourth Quarter.

The Acting Police Commissioner has also directed the Training Division to focus exclusively on Consent Decree related training going forward. The OIM waited during the Third Quarter for the Acting Police Commissioner, in conjunction with the Attorney General's Office, to intervene and resolve the current impasse between the Property and Procurement Division ("Property and Procurement") and the VIPD that prohibits vital training programs from proceeding. But the Training Division is concerned that the Department's relationship with potential vendors is damaged because the Training Division has repeatedly cancelled or postponed programs because it has been unable to secure contracts for several important vendors. The new Commissioner and Attorney General (and, if need be, the Governor) must develop a "fast track" approval process for Consent Decree related training programs, a process that was purportedly attempted with no success during this

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<sup>4</sup> See, e.g., OIM Second Quarterly Report of 2011 at IV.

quarter.<sup>5</sup> Moreover, a “fast track” approval process must be implemented expeditiously in order to keep VIPD on course for achieving substantial compliance with the Consent Decree.

At the end of the Third Quarter, ten VIPD Supervisors (in the ranks of Corporal, Sergeant, Lieutenant and Captain) retired. Under the Consent Decree, Supervisors play a critical role in investigating use of force events and, for several quarters, the OIM had already been concerned that the Department’s corps of Supervisors (from Corporals through Captains) was stretched too thin. The VIPD reports that it has received approval to start promoting personnel to supervisory positions, but that the main obstacles to beginning that process are budgetary restraints.<sup>6</sup> Nevertheless, the VIPD and the Territory (both of which are parties to the Consent Decree) must devote sufficient resources to satisfying their obligations under the Consent Decree, including the provision of an appropriate number of Supervisors.

Given the critical role that Supervisors play in various provisions in the Consent Decree, it is imperative that the Department promote personnel as soon as possible and provide them with all associated management and Consent Decree training that will enable them to perform their new responsibilities; simply promoting individuals to these positions without providing the required training will not suffice.<sup>7</sup> The

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<sup>5</sup> Paragraph 14 of the Consent Decree, requires the Territory of the Virgin Islands to “provid[e] necessary support and resources to the VIPD and Police Commissioner to enable each of them to fulfill their obligations under this Agreement.” The Consent Decree therefore requires that the Territory ensure a process for approving contracts, consistent with the Territory’s purchasing requirements, and procuring payment for training programs to respond to Consent Decree requirements.

<sup>6</sup> Specifically, near the start of the Fourth Quarter, the OIM learned that the VIPD expects to promote 12 personnel to supervisory positions in the St. Croix District (including 1 Captain, 4-5 Lieutenants, and 6-7 Sergeants) and 5 Lieutenants to supervisory positions in the St. Thomas/St. John District. The OIM anticipates providing further detail about these promotions in the next report.

<sup>7</sup> Pursuant to paragraph ¶ 81 of the Consent Decree, the VIPD must provide newly promoted Supervisors with training related to leadership and command accountability, including techniques designed to promote proper police practices,



promotion and training of these new Supervisors should be one of the highest priorities for the Department during the next quarter.

The OIM looks forward to an update in the next report about how many individuals the Department has promoted and to what ranks. During monitoring in the next quarter, the OIM also expects to review all training curricula/lesson plans that the Training Division has developed to prepare these newly promoted Supervisors for their responsibilities.

As in previous quarters, the OIM continued to call for the VIPD's executive leadership team (Assistant Police Commissioner, Chiefs, Deputy Chiefs, and Training Director) to fully commit to bringing the Department into compliance with the Consent Decree.<sup>8</sup> During the Third Quarter, the Chief of the St. Croix District, Director and Assistant Director of IAB, Training Director, and Compliance Coordinator (St. Thomas) continued to be actively engaged in the Consent Decree compliance process. The Acting Director of MIS also became an active participant and helped the Department to overcome some of the technological impediments that have hampered the Department's compliance efforts. Still, the OIM is disappointed that other members of the executive leadership team, specifically the Chief and Deputy Chief of the St. Thomas District, who lead the Complaint Process and Management and Supervision working groups respectively, have not increased their participation. In addition, the role that the Compliance Manager (St. Croix) plays in the Department's compliance efforts has become increasingly unclear to the OIM, though we are aware that he regularly participates in Committee meetings.<sup>9</sup> Hopefully, the

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within 90 days of being promoted. In addition to the annual training requirement for all VIPD personnel (including Supervisors), the VIPD must also provide Supervisors with training on appropriate burdens of proof and factors to consider when evaluating witness and complainant credibility.

<sup>8</sup> See, e.g., OIM First Quarterly Report of 2011 at VII and 2; OIM Second Quarterly Report of 2011 at III.

<sup>9</sup> The former Police Commissioner designated a lieutenant based on the St. Croix District as Compliance Manager on June 3, 2010. This position, unlike that of the

**Footnote continued**

Compliance Manager will take on more responsibilities as a member of the newly designated audit unit.

After the January Summit, the former Police Commissioner directed each working group leader to delegate discrete tasks to “point persons”—which, by the Third Quarter, has been accomplished. Now, among other things, working group leaders must continually reevaluate and communicate their working groups’ objectives in their action plans, regularly attend working group meetings, review key policies relating to their areas of responsibility, and interact with other working groups and VIPD personnel (e.g., the Training, Human Resources and Payroll Divisions). In addition, working group leaders are expected to provide the Acting Commissioner with weekly updates about the status of their groups. As we have repeatedly stated, the working group leaders (Chiefs, Deputy Chief, and Training Director) are ultimately accountable for the leadership and the success (or failure) of their respective working groups.

At the end of the Third Quarter, the OIM is discouraged with the current versions of the working group’s action plans. The OIM has encouraged each working group to develop a plan that identifies specific action steps necessary to reach compliance for each of the Consent Decree provisions related to their area of focus. While some working groups have made progress with their development, most action plans lack specific detail about each action being taken by a designated

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Compliance Coordinator, who is based on St. Thomas, is not mandated by the Consent Decree. According to the Commissioner’s June 3 memorandum, the Compliance Manager is responsible for “overseeing/insuring [sic] compliance and coordinating all efforts regarding the Consent Decree.” The Compliance Coordinator, on the other hand, is responsible, under ¶ 88 of the Consent Decree, for: (1) coordinating VIPD’s compliance with and implementation of Consent Decree provisions; (2) providing data and documents (e.g., VIPD’s quarterly status reports, working group action plans, meeting minutes, draft policies, etc.); (3) coordinating meetings between the OIM and VIPD personnel; (4) maintaining relevant documents and records relating to the Consent Decree; and (5) assisting the Police Commissioner and his designees in assigning compliance-related tasks to appropriate VIPD personnel.

working group member by a date certain to achieve substantial compliance with each provision relevant to their respective working group. These action plans should be continuously revised to reflect progress made on specific provisions and obstacles that are encountered. This analysis will impact whether short, mid and long-term deadlines can be met, and, if not, the action plan should identify proposed solutions. The plans' deficiencies are an unfortunate indicator of some of the working groups' overall slow progress. Since working groups purportedly meet weekly with the Acting Commissioner to provide him with status updates about their respective working groups, there is no excuse for these plans to be inadequate. Although the OIM has yet to see an action plan with this level of detail and forethought, as discussed *infra*, there are important exceptions to the overall lack of progress of the working groups (e.g., recent activity by the Use of Force Working group).

### **Use of Force Policy Development**

During the Third Quarter, the VIPD issued one additional force-related policy, the Field Training and Evaluation Program Policy, a critical component of training new Officers as part of the Department's Field Training Officer ("FTO") Program. In sum, the VIPD has issued a total of ten new force-related policies through the end of the Third Quarter.<sup>10</sup> The Policies and Procedures Committee ("Committee") continues to spearhead the Department's efforts to develop its policies, and the OIM once again commends them for their efforts. Since the Use

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10 In addition to the recently issued Field Training and Evaluation Program Policy, the VIPD had already issued the following policies: (i) Use of Force; (ii) Reportable Use of Force; (iii) Impact Weapons; (iv) Electronic Control Weapon; (v) O.C. Spray; (vi) Vehicle Pursuit; (vii) Spike Strip; (viii) Off-Duty Official Action; and (ix) Firearms. The Department also issued the RRR for VIPD personnel to document use of force events pursuant to the Reportable Use of Force Policy. OIM First Quarterly Report of 2011 at 5. While the VIPD previously issued the Canine Policy on May 3, it is now revising that policy and will have to resubmit it to the DOJ for approval. In addition, at the start of the Fourth Quarter, the OIM learned that the Department issued the Security Rings Directive on October 20. The OIM will report on the status and implementation of the Canine Policy and Security Directive in the next report.

of Force working group and the Training Division must help implement force-related policies, we acknowledge the role that they have taken over the past two quarters in developing force-related policies.

Specifically, through this quarter the Use of Force working group, in coordination with the Committee, has helped develop other force-related policies including an Investigation and Review of Use of Force Policy, Sniper Policy, SRT & Hostage Policy,<sup>11</sup> and Arrest Policy. The Investigation and Review of Use of Force Policy, as mentioned in the last report, is an important policy that will allow the VIPD to investigate use of force events in proportion to the type of force used.<sup>12</sup> Under this policy, more serious types of force, like firearms discharges, would be subject to more exhaustive investigative requirements than comparatively less serious types of force, like non-compliant handcuffing or damage to property. Such a policy would allow VIPD personnel to focus their efforts more efficiently. Before the policy can be issued, however, the VIPD, Territory and DOJ, must modify the Consent Decree so that not all reportable use of force incidents require the same level of investigation. The OIM is hopeful that the modification of the Consent Decree language and finalization of the policy will occur in the Fourth Quarter.

During the next quarter, the VIPD must finalize all force-related policies that it currently is developing as soon as practicable.<sup>13</sup> Once the policies are issued, the VIPD must then implement the policies by training VIPD personnel and ensuring that the policies are carried out in daily policing activities.

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<sup>11</sup> The DOJ approved the SRT & Hostage Policy during the Fourth Quarter.

<sup>12</sup> Currently, all types of force must be investigated using a “one size fits all” approach.

<sup>13</sup> For example, as discussed *infra*, the VIPD is also developing a Post Shooting Incident Procedures Policy, Officer Involved Shooting Investigation Procedures Policy, and Canine Policy.

### **Evaluation, Documentation, and Review of Uses of Force**

During the Third Quarter, the Use of Force working group revised its “checklist.” Supervisors use the “checklist” as a guide when conducting investigations, assessing the completeness of RRRs, determining whether further investigation is required, and ensuring that VIPD personnel are documenting use of force events and completing arrest and/or Form 1-As. Even though Supervisors on St. Croix are using the checklist, Supervisors on St. Thomas are not. During the Fourth Quarter, we expect to see these checklists in force investigation files in the Zones on the St. Thomas District, or to be provided with a reasonable explanation for why the Chief of the St. Thomas District has not required its use by his subordinates.

The Use of Force working group also conducted an audit of the use of force investigations at the Zone level on St. Thomas. The audit uncovered that VIPD personnel were documenting use of force incidents (albeit using outdated forms – not RRRs), but Supervisors were not in all cases fulfilling their obligation to conduct complete investigations and reviews.

On St. Croix, the Use of Force working group conducted an audit of the canine unit. The working group discovered that the dogs were not able to “stand off/recall” (return to handler during apprehension) or “revere” (circle and bark at a subject). The Chief of St. Croix has since ordered the K9 Special Operation Commander to train the dogs and suspend them from active duty until proficiency is achieved (likely during the next quarter).

The Use of Force working group was not, however, able to review the force reporting practices of IAB or the units overseen directly by the Police Commissioner’s Office, including those of the Insular Investigation Unit, Gang Task Force, HIDTA Task Force, and the ICE Office. The Use of Force working group continues to wait for a response from the Commissioner’s Office regarding its inquiry on July 1 about its role in reviewing the force investigations related to these units. A resolution of this issue is important since the working group is charged with actively

reviewing use of force investigations territory-wide. The OIM expects this issue to be fully resolved in the near future, and will inquire in the next quarter about whether the working group has received a response from the Acting Commissioner or new Commissioner.

During this quarter, the OIM saw improvement on force reporting and supervisory investigations at the Zone level on both Districts, but deficiencies remain. The OIM observed that Officers are not consistently notifying their Supervisors immediately after using force as required by the Reportable Use of Force Policy. Similarly, in some instances RRRs are completed only after a Zone Commander or IAB investigation discovers that they are missing from a file. Such delay results in lost opportunities to canvass for and interview witnesses. Further, Officers who are involved in force incidents are conducting investigations and reviews of the same.

In addition to these deficiencies, the OIM reviewed files that demonstrated the Department's need to train Supervisors on the preponderance of the evidence standard and evaluating witness credibility, among other topics. For example, in an allegation of excessive force against a Sergeant on the St. Croix District, a review of the file indicated that an Officer failed to notify his Supervisor that he used force (and therefore there was no supervisory investigation or witness canvass). More importantly, the Zone Commander appeared to disregard any witness interviews that were adverse to the Sergeant's own statement.<sup>14</sup> To the extent that more Supervisors need training on this important topic, the Department must make that a priority.

### **Public Information, Means of Filing and Tracking Complaints, & Investigation of Complaints**

During the Third Quarter, the Department issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct & Citizen

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<sup>14</sup> As discussed *infra*, the Department provided training on the preponderance of the evidence standard in previous quarters and also during the Fourth Quarter.

Complaints Policy, which deal with the intake and investigation of complaints (both citizen and command). Prior to issuing these policies, the Department trained VIPD personnel on the Processing Citizen Complaints Directive (#014-2010) (the “Directive”). The VIPD reports that it has provided in-service training on the Acceptance of Citizen Complaints Policy for Officers and Supervisors from August through October. The VIPD, however, has not provided any documentation related to this training, including lesson plans or attendance sheets. As we have repeatedly requested, the VIPD must provide documentation relating to all aspects of its Consent Decree compliance process, including training activities.

Under the recently issued policies and the Directive, VIPD vehicles (whether marked or unmarked) are required to carry specific complaint process materials and certain governmental properties must have complaint materials available to the public in English, Spanish and French and/or French Patois. During the Third Quarter, the Complaint Process working group and the OIM continued to evaluate compliance with these requirements by conducting random inspections of VIPD vehicles, District Zones and substations. The OIM is pleased to report that complaint materials were available (in English) in all inspected locations. The VIPD has identified an individual to provide the Spanish translations and, once the translation is done, will distribute these materials community-wide and post them on the Department’s website. The VIPD, however, has experienced difficulty identifying a French Patois translator.<sup>15</sup> The OIM is hopeful that these materials will be available in the required languages by the end of the next quarter.

The OIM has recommended that the Complaint Process working group regularly conduct audits to ensure that the complaint process is functioning properly and to further examine whether VIPD personnel: (1) are knowledgeable about the complaint process; (2) respond properly to

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<sup>15</sup> Because of an inconsistency, the VIPD and DOJ may also want to clarify the Consent Decree regarding whether the VIPD must provide materials in French and/or French Patois.

inquiries on how to lodge a complaint about police service; (3) log completed complaint forms and investigate them as required by policy; and (4) apprise complainants of the status of their complaints. The OIM is hopeful that the Complaint Process working group will audit personnel's proficiency of the complaint process going forward. The newly established audit team should also be helpful in documenting the successful operation of the citizen complaint process. The OIM will look to the working group and audit team's conclusions, as well as our own inspections, to determine whether Consent Decree provisions are satisfied in upcoming quarters.

### **Risk Management**

IAPro, the Department's new Risk Management System ("RMS"), is now available at the IAB in both Districts. The Department will use IAPro to track force-related incidents and identify patterns of potentially problematic behavior from VIPD personnel at an early (and hopefully remediable) stage. To do that, however, the VIPD must upload basic human resource data and RRRs to the system and provide Supervisors outside of IAB with access to IAPro so that they can begin to monitor their subordinates' actions.

During the Third Quarter, the VIPD also installed the Blue Team component of IAPro on almost all Supervisors' computers in both Districts. Blue Team allows VIPD personnel to enter force-related reports and complaints directly into IAPro. The OIM commends the Acting Director of MIS and his staff for making the programs available in both Districts during this quarter. Still, based on monitoring, the OIM learned that many Supervisors are unaware that Blue Team now exists because the Department has not trained most Supervisors on Blue Team.

The OIM commends the Director of IAB for his dedication to the Department's RMS. He has been the principal person to train Supervisors on IAPro and Blue Team, to analyze IAPro data and test its capabilities, or to draft RMS-related policies. These efforts, however, are not enough – the Department must ask others to help train Supervisors and otherwise implement the RMS.



Despite progress with IAPro, the Department still lacks a RMS Protocol that establishes various thresholds for supervisory review.<sup>16</sup> After receiving several rounds of comments from the DOJ, the Protocol remains under review by the Committee. VIPD's progress with its RMS will be limited until the VIPD obtains approval of its RMS Protocol. The VIPD should finalize the Protocol in the next quarter.

Finally, although the Department issued the Data Input Plan in March, the VIPD has yet to provide training on this Plan. The Data Input Plan identifies information about VIPD personnel (including, but not limited to, uses of force, disciplinary issues, motor vehicle accidents, and sick days) that the Department will enter into IAPro to facilitate its risk management function. Even though the Management & Supervision working group worked in previous quarters with VIPD personnel to develop an efficient process to enter information into IAPro, the OIM observed that this effort has stalled in the Third Quarter. This is apparent with IAPro at IAB, which is still missing human resource data about VIPD personnel (e.g., hiring and promotion dates). To the extent any delay in entering the information is due to staffing limitations, the OIM encourages the Commissioner to explore staffing solutions to ensure that IAPro can be used fully and effectively. Additionally, the OIM encourages the Management & Supervision working group to resolve any remaining challenges to collecting and identifying information and work with the Training Division to develop a training program relating to the Data Input Plan in the next quarter.

### **Training**

Despite increased activity during the Second Quarter, the Training Division's efforts halted during the Third Quarter. As mentioned above, the Training Division cancelled many scheduled training programs

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<sup>16</sup> For example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor to this potential issue; X and Y will be defined in the RMS Protocol based on Department norms and generally accepted police practices.

because the Department did not secure contracts for training vendors as a result of an impasse with the Property and Procurement Division. As a result, the Training Division's training schedule through February 2012 lists a number of important Consent Decree training programs as tentative. This impasse presents a severe impediment to the VIPD's compliance efforts. The VIPD cannot begin to implement any of the policies that it issues until it adequately trains its personnel on the policies.

Despite this impasse, during the Third Quarter, the Training Division held a limited number of training programs including mandatory in-service training for Officers and Supervisors on various topics like TASER, Expandable Baton Refresher and Policy Review, Defensive Tactics, O.C. Refresher and Policy Review, and Firearm Training on handguns and shotguns. The Training Director has provided written notice to the Police Commissioner's Office about the Officers and Supervisors in both Districts with unexcused absences from these and other Consent Decree related trainings conducted since April. The OIM is not aware that the Police Commissioner's Office has responded to this memorandum or disciplined any personnel who failed to attend remedial training programs.

Among other training programs, the VIPD urgently needs to train and certify Field Training Officers ("FTOs"). The OIM has learned that the Department is relying on Officers who serve as FTOs to serve in this capacity on both Districts, even though no substantive training has been provided to them. It is imperative that these FTOs receive substantive training on how to serve as an FTO as soon as possible.

The Acting Police Commissioner and the Attorney General, in coordination with Property and Procurement, attempted to develop a streamlined process for approving training related programs. However, they have not been successful in these efforts. The new Commissioner, and Attorney General (and, if need be, Governor's Office) must still find a

way to fast track this process, which has created serious impediments to the VIPD's efforts to comply with the Consent Decree.<sup>17</sup>

### **Status of Substantial Compliance**

Before the Consent Decree expires on March 23, 2014, the VIPD must substantially comply with each Consent Decree provision and remain in compliance for two-years.<sup>18</sup> Almost all of the dates by which the VIPD must substantially comply have already passed without VIPD achieving compliance. Under the Consent Decree Timetable, the VIPD should have substantially complied with ¶¶ 32-58, 70, and 72 by May 31, ¶¶ 60, 61, and 73-81 by June 30, and ¶¶ 49, 59, 63-66 by September 15. Instead, they have only complied with ¶¶ 82-86, 88 and 98. Simply put, the VIPD is in clear danger of failing to comply with the Consent Decree before it expires.

Specifically, at the end of the Third Quarter of 2011, the VIPD has only complied with the following Consent Decree provisions (a chart summarizing the VIPD's progress towards substantial compliance is at the end of this Executive Summary):

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

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<sup>17</sup> Moreover, as noted *supra* in footnote 5, the Territory has an obligation under ¶ 14 of the Consent Decree to ensure that the VIPD has the necessary resources to attain compliance.

<sup>18</sup> CD ¶ 103.

As mentioned above, although the VIPD has already issued ten force-related policies, it has not fully implemented them (which includes, among other things, training personnel and ensuring compliance) as required by the Consent Decree.<sup>19</sup> So, for example, while the VIPD has issued the Firearms Policy pursuant to ¶ 39, the VIPD has provided corresponding training to many, but not all, Officers. Also, with regard to ¶ 40, although the VIPD has issued the Off-Duty Official Action Policy, the VIPD, among other things, has not trained any Officers on that policy. In addition, we understand that the Department is still developing or close to finalizing several additional force-related policies.<sup>20</sup> As such, the Department has not yet complied with ¶¶ 31-41, which requires the VIPD to review, revise, and implement its force-related policies.

Similarly, the OIM has reported that the VIPD's citizen complaint process is well underway and the OIM has been pleased to find complaint-related materials at many District Zones and substations and in vehicles (potentially satisfying ¶ 43 in the near future). However, regarding ¶¶ 42-45, the Department has yet to adequately train Department personnel on the Acceptance of Citizen Complaints Policy and the Investigating Misconduct & Citizen Complaints Policy which the Department issued during the Third Quarter. As mentioned above, the VIPD must translate required complaint materials into appropriate languages (e.g., Spanish, French, French Patois). The Department must also demonstrate, which it has yet to do, that the complaint process is functioning properly (e.g., personnel provide potential complainants with the appropriate information, investigate the complaints and provide

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<sup>19</sup> As defined in the Consent Decree, "implement" refers to the "development or putting into place of a policy or procedure, including the appropriate training of personnel." CD ¶ 30.

<sup>20</sup> While the VIPD may develop additional force-related policies in the future (beyond those that are currently under development or required by the Consent Decree) after the OIM has determined that the VIPD has substantially complied with ¶ 31, the subsequent issuance of those policies will not restart the two-year substantial compliance period.

complainants with periodic updates and the disposition of their complaints) in order to substantially comply with ¶¶ 42-58.

With regard to the management and supervision provisions of the Consent Decree, ¶¶ 59-72, the VIPD has only recently brought its RMS on-line and is still working to resolve some technical difficulties. The VIPD also must issue and train on several RMS-related policies including the RMS Protocol, Blue Team Protocol and Data Input Plan and ensure, thereafter, that VIPD personnel are following these protocols and plans in practice in order to substantially comply with ¶¶ 59-72.

In a long overdue attempt to address the deadlines, on September 29, 2011, the VIPD sent a letter to the DOJ promising to provide “a detailed explanation with proposed completion dates.” In the VIPD’s subsequent letter dated October 14, it omitted any proposed completion dates, and represented that a significant number of Consent Decree provisions have been satisfied. To the contrary, as explained above, VIPD has not satisfied most – if not all – of the provisions it claims, because from the OIM’s perspective, the VIPD misguidedly focuses on the fact that it issued a number of policies and provided only some corresponding training (with varying levels of success) to many (but not all) VIPD personnel. But, as we have repeatedly stated, the Consent Decree requires that the VIPD do more. For example, the VIPD must: (1) provide adequate training for every issued policy; (2) ensure that personnel who are required to attend training programs do so and become proficient in the relevant policies; (3) enforce compliance with those policies (including disciplining offenders); and (4) regularly assess and rectify any deficiencies in order to substantially comply with the Consent Decree.

During the Third Quarter, the OIM drafted the Substantial Compliance Thresholds Chart (“Chart”) to identify the criteria that it will use to evaluate the VIPD’s compliance with the Consent Decree. In the next quarter, after receiving comment from the VIPD and DOJ, the OIM will finalize the Chart and begin to use it to evaluate the Department’s compliance. We expect that the VIPD will institute an audit function that

will use the Chart to conduct its own internal compliance audits during the life of the Consent Decree and beyond.

### **Conclusion**

As we previously reported, the Department is in clear danger of not achieving and maintaining substantial compliance for the required two-year period before the Consent Decree expires on March 23, 2014. While time is quickly passing, the OIM believes that it is still possible for the Department to satisfy most of its obligations under the Consent Decree within the prescribed time period. To do so, however, the Department (and its executive leadership team in particular) must devote even more energy, time, and resources to satisfying the Consent Decree. Despite entering into the Consent Decree more than two-and-a-half years ago, many within the VIPD (including some senior personnel) still view the Department's compliance efforts as being at odds with its "core" police functions. Such thinking has hampered the Department's Consent Decree compliance efforts for too long. Far from being an obstacle, the Consent Decree provides the VIPD with a roadmap for improving the VIPD's operations, including its capacity to provide first-rate police services. In addition, as the VIPD begins to comply with the Consent Decree and hold personnel accountable for misconduct, the Department's relationship with the community will improve, facilitating greater cooperation and better policing.

To satisfy the Consent Decree before its expiration, the VIPD's executive leadership team and the working group leaders must improve their level of communication. Unfortunately, over the last three quarters, it has become clear that many VIPD personnel are working on the Consent Decree in isolation. With few exceptions, the working groups have not been working collaboratively like they should. For example, the Training working group should take an active part in each of the other working groups to develop relevant training programs. Similarly, the Management and Supervision and Complaint Process working groups must work more closely with IAB. To that end, each working group leader should keep the other working group leaders (and other relevant personnel) apprised of the work of their respective working group.

The OIM commends the VIPD on issuing a significant number of force-related policies and having held adequate training programs on some of them, though many more policies require training. As mentioned above, the Training Division failed to organize a number of training programs relating to the Consent Decree this quarter because it relies on outside vendors to conduct these trainings and could not secure contracts for them. As a long-term goal, the VIPD must become less dependent on outside training vendors and develop an internal capacity to lead its own training programs. The VIPD can begin to do so by securing contracts for outside vendors to conduct train-the-trainer and other programs. In the short-term, the VIPD must find a way to work with Property and Procurement to contract with outside vendors.

During this significant period when policies are being developed and training programs have begun, the VIPD should develop a system to evaluate whether VIPD personnel are complying with these policies and carrying them out as part of their daily responsibilities. This is the real goal – to change policies and practices so that they are in-line with all applicable laws. And when VIPD personnel fail to comply, the Department must be ready to take corrective action, including retraining and, where necessary, disciplining personnel. The designated audit unit, created this quarter, can play a role in conducting internal compliance audits during the life of the Consent Decree, including ensuring that all policies, like the Disciplinary Policy and Matrix, are being applied appropriately and uniformly. Still, as discussed *infra*, this unit is primarily comprised of personnel who have other departmental duties. As we have previously recommended, the VIPD should seriously consider creating an audit division with the sole function of assessing the Department's compliance with the Consent Decree. The division should be staffed with at least two full-time employees (with the head of the division serving as a Director) on each District and report directly to the Police Commissioner.

Last, Supervisors are critical members of the Department and have significant responsibilities under the Consent Decree. In light of recent retirements and forthcoming promotions, the VIPD has a unique opportunity to elevate personnel to important positions and has the

simultaneous obligation to train them on their new responsibilities. The supervisory promotions, examinations, and training should occur during the Fourth Quarter (or as soon as practicable thereafter).



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

*The substantial compliance deadlines refer to the dates established by the Consent Decree Timetable that the VIPD and DOJ jointly submitted to the U.S. District Court for the Virgin Islands on November 24, 2010.*

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

<b>CD</b>	<b>Description</b>	<b>Deadlines for Substantial Compliance Under the Consent Decree</b>	<b>Satisfied/Not Satisfied</b>
31	<p><b>Use of Force Policies:</b>            Use of Force; Vehicle Pursuit; OC Spray; Impact Weapons; Spike Strip; Canine; SRT &amp; Hostage Policy; Sniper; FTO; Security Rings; Investigation and Review of Use of Force; Use of Force Review Board; Post Shooting Incident Procedures; Officer Involved Shooting Investigation Procedures.</p>	within 30 days of DOJ final written approval	Not Satisfied – While the VIPD issued the Use of Force Policy, Vehicle Pursuit Policy, O.C. Spray, Impact Weapons and Spike Strip Policy on March 30, 2011, the Field Training and Evaluation Program Policy on September 21, and the Security Rings Directive on October 20, it has not implemented these policies. <sup>21</sup> In addition, the VIPD has not yet issued the SRT & Hostage Policy; Sniper; Investigation and Review of Use of Force; Use of Force Review Board; Post Shooting Incident Procedures; and

<sup>21</sup> As defined in the Consent Decree, “implement” refers to the “development or putting into place of a policy or procedure, including the appropriate training of personnel.” CD ¶ 30.

<b>CD</b>	<b>Description</b>	<b>Deadlines for Substantial Compliance Under the Consent Decree</b>	<b>Satisfied/Not Satisfied</b>
			Officer Involved Shooting Investigation Procedures policies. The VIPD is also revising the Canine Policy that it issued on May 3, 2011.
32-38	<b>Evaluation, Documentation, &amp; Review of Use of Force</b>  Reportable Use of Force Policy	May 31, 2011	Not Satisfied – While the VIPD issued the Reportable Use of Force Policy on March 30, 2011, it has not implemented the policy. In addition, the VIPD has not satisfied the Consent Decree requirement that it evaluate, document, and review <i>all</i> uses of force.
39	<b>Evaluation, Documentation, &amp; Review of Use of Force</b>  Firearms Policy	May 31, 2011	Not Satisfied – While the VIPD issued the Firearms Policy on May 3, 2011, it has not implemented the policy.
40	<b>Evaluation, Documentation, &amp; Review of Use of Force</b>  Off-Duty Official Action	May 31, 2011	Not Satisfied – While the VIPD issued the Off-Duty Official Action Policy on March 30, 2011, it has not implemented the policy.
41	<b>Evaluation, Documentation, &amp; Review of Use of Force</b>  Intermediate Force Device(s)	May 31, 2011	Not Satisfied – While the VIPD issued the ECW Policy on March 30, 2011, it has not implemented this policy.
42-45	<b>Citizen Complaint Process</b>	May 31, 2011	Not Satisfied – While the VIPD issued the Acceptance of Citizens Complaint Police

<b>CD</b>	<b>Description</b>	<b>Deadlines for Substantial Compliance Under the Consent Decree</b>	<b>Satisfied/Not Satisfied</b>
	Public Information & Means of Filing and Tracking Complaints		on August 2, 2011 and has made complaint forms and informational materials available at appropriate government properties, it has not, trained personnel on this policy or, for example, translated complaint materials in the appropriate languages (e.g., French, Spanish, Patois), assessed if Officers are informing citizens of their right to make complaints and resolved each complaint in writing.
46-58	<b>Citizen Complaint Process</b> Investigation of Complaints	May 31, 2011, except September 15 for ¶ 49	Not Satisfied – While the VIPD issued the Investigating Misconduct and Citizen Complaint Policy, it has not implemented this policy.
59-68	<b>Management and Supervision</b> Risk Management System Blue Team Protocol Behavioral Health Services Policy; Psychological Fitness for Duty Evaluation Policy; Officer Peer Support Policy	September 15, 2011, except June 30, 2011 for ¶¶ 60-61 & May 31, 2011 for ¶ 62; also ¶¶ 67-68 have no date.	Not Satisfied
69	<b>Management and Supervision</b> Oversight	September 15, 2011	Not Satisfied

<b>CD</b>	<b>Description</b>	<b>Deadlines for Substantial Compliance Under the Consent Decree</b>	<b>Satisfied/Not Satisfied</b>
70-72	<b>Management and Supervision</b> Discipline	May 31, 2011	Not Satisfied
73-77	<b>Training</b> Management Oversight	June 30, 2011	Not Satisfied
78-81	<b>Training</b> Curriculum	June 30, 2011	Not Satisfied

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## Introduction

This is the Third Quarterly Report of 2011 from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on September 30, 2011.<sup>1</sup>

The OIM was established in January 2010<sup>2</sup> to monitor compliance by the Territory and the VIPD with the Consent Decree entered by the United States District Court for the Virgin Islands (the “Court”) on March 23, 2009. The Monitor is required by the Consent Decree to “issue quarterly written, public reports detailing the Territory of the Virgin Islands’ compliance with and implementation of each substantive provision” of the Consent Decree.<sup>3</sup>

The Consent Decree reflects the agreement between the Virgin Islands, the VIPD, and the DOJ 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

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- <sup>1</sup> This Report references a limited number of events that occurred after September 30 to provide context and shed light on significant efforts that the VIPD made outside of the quarter to satisfy its Consent Decree obligations. The OIM had hoped to publish this Report on November 30. Under the Consent Decree, the Territory of the Virgin Islands (the “Territory” or the “Virgin Islands”), the VIPD, and the United States Department of Justice (the “DOJ”) (collectively, the “Parties”) have ten business days to comment on the OIM’s draft report. We provided a draft version of this Report to the Parties on November 14. The DOJ provided its comments on November 29. The VIPD and the Territory requested an extension because they were reviewing the OIM’s Substantial Compliance Thresholds Chart (which is discussed further below). The VIPD and the Territory provided their comments on December 19.
  - <sup>2</sup> After an initial procurement process, the Territory of the Virgin Islands and the VIPD contracted for the services of a monitoring team led by Michael R. Bromwich, a partner in the Washington, D.C. office of Fried, Frank, Harris, Shriver & Jacobson LLP (“Fried Frank”). In June 2010, the Independent and Deputy Independent Monitors joined President Obama’s administration. After interviews and further review, the Parties appointed William F. Johnson and Steven M. Witzel, partners in 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, 2010. Messrs. Johnson and Witzel continue to work with the police practices experts that were hired as part of the original OIM team.
  - <sup>3</sup> Consent Decree (“CD”) ¶ 96. This Quarterly Report, along with the OIM’s prior reports, is available on the internet at <http://www.policemonitor.org/VI/VIindex.html>.

Officers of the Virgin Islands Police Department and by the failure to adequately train, supervise, investigate, and discipline Officers.”<sup>4</sup>

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

On October 1, 2010, the Court – charged with enforcing the VIPD’s obligations under the Consent Decree – ordered the Parties to jointly propose a timetable by which the VIPD would substantially comply with each substantive provision in the Consent Decree. The Court was concerned about the VIPD’s slow rate of progress and saw the timetable as a vehicle to help the Department move forward more quickly. The Parties subsequently filed a timetable on November 24, 2010 which set forth specific dates by which the VIPD would substantially comply with each substantive provision in the Consent Decree (the “Consent Decree Timetable”). The Consent Decree Timetable also created shorter-term deadlines requiring, among other things, that the VIPD submit force-related policies to the DOJ for approval. At the end of the Third Quarter, the VIPD had missed the deadline for substantially complying with *every* paragraph identified in the Consent Decree Timetable.

In January 2011, to reinvigorate the VIPD’s Consent Decree compliance process and encourage compliance within the timeframe of the Consent Decree Timetable, the Police Commissioner convened a Consent Decree Summit on St. Thomas on January 3 and 4, 2011 (the “Summit”).<sup>6</sup> At the Summit, the Police Commissioner appointed senior

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

5 CD ¶ 3.

6 The OIM discussed the Summit in the Fourth Quarterly Report of 2010 and the First Quarterly Report of 2011. For more information about the Summit, including



VIPD personnel to lead, and ultimately be held accountable for, different aspects of the Consent Decree—Use of Force (Chief of the St. Croix District), Citizen Complaint Process (Chief of the St. Thomas District), Management & Supervision (Deputy Chief of St. Thomas), and Training (Training Director).<sup>7</sup> The Police Commissioner explained that each working group leader was responsible for: (i) designating a point person and recruiting other working group members; (ii) drafting an action plan; (iii) interacting with other VIPD personnel on interrelated Consent Decree issues; and, (iv) monitoring the working group’s progress by attending and participating in as many meetings as schedules permit, but no less than twice a month.<sup>8</sup>

As we previously reported, after Police Commissioner Novelle Francis retired from the VIPD on August 15, Governor de Jongh appointed Assistant Police Commissioner Raymond Hyndman as the Acting Police Commissioner. During the Fourth Quarter, on November 7, the Governor, subject to Senate confirmation, nominated Henry White Jr. to serve as the new Police Commissioner. Pending Senate confirmation, Mr. White will serve as the Acting Police Commissioner, effective November 7. At the press conference announcing his appointment, Mr. White publicly stated that he intends to make the mandates of the Consent Decree a top priority from the start of his tenure. The OIM looks forward to working with the new Police Commissioner as the VIPD continues its efforts to achieve substantial compliance with the Consent Decree.

During this interim period, Acting Police Commissioner Hyndman will serve as an assistant commissioner until a commissioner is confirmed.<sup>9</sup> Acting Police Commissioner Hyndman led the Department’s

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**Footnote continued from previous page**

objectives and participants, see the *Consent Decree Summit Addendum* at the end of those Reports.

7 The current Chief of the St. Croix District was the Deputy Chief for St. Croix when the Police Commissioner appointed him to lead the Use of Force working group. Similarly, the current Training Director was the Chief of the St. Croix District when he was appointed to lead the Training working group.

8 Memorandum from the Police Commissioner to various VIPD personnel, titled “Meeting Current Standards of Policing,” dated January 19, 2011. The OIM’s Police Practices Experts also provided the working group leaders with a memorandum outlining their respective responsibilities. Each of the OIM’s four Police Practices Experts is assigned to work with a particular working group leader.

9 Unless otherwise noted, for purposes of this report, Acting Police Commissioner refers to Raymond Hyndman.

efforts to satisfy compliance with the Consent Decree over this quarter, and the OIM has been pleased with his leadership. For example, Acting Police Commissioner Hyndman has directed Department personnel to promptly provide documents to the OIM and we are hopeful that there will be no additional impediments to our accessing information. On prior occasions, the OIM expressed concern that the VIPD held back Consent Decree related materials. For example, while working group action plans and meeting minutes, and documentation related to training "no shows" were readily available, they were not provided to the OIM on a timely basis. The OIM relies on these materials to assess the steps that the VIPD takes to comply with the Consent Decree. In addition, the OIM waited during the Third Quarter for the Acting Police Commissioner, in conjunction with the Attorney General's Office, to intervene and resolve the current impasse between Property and Procurement and the VIPD that prohibits vital training programs from proceeding. Consistent with ¶ 14 of the Consent Decree, the new Commissioner and Attorney General (and, if need be, the Governor) must develop a "fast track" approval process for Consent Decree related training programs, a process that was purportedly attempted and failed during this quarter.

The Compliance Assessment section of this Report details the OIM's findings and observations based on monitoring activities during the Third Quarter, ending on September 30. This section covers the five main sections of the Consent Decree: (1) Use of Force Policies & Specific Use of Force Policies; (2) Evaluation, Documentation, and Review of Uses of Force; (3) Citizen Complaint Process; (4) Management and Supervision; and (5) Training. In light of the vital role that the working groups play in the Department's compliance with the Consent Decree, the Compliance Assessment also provides a detailed update about the progress of each working group. Finally, the Compliance Assessment includes recommended next-steps relating to each provision in the Consent Decree.

## Compliance Assessment

This section of the Report describes the VIPD’s compliance efforts with respect to each of the substantive provisions of the Consent Decree,<sup>10</sup> as well as the OIM’s monitoring activities during the quarter. The organization of this section of the Report parallels the organization of the Consent Decree. Specifically, we provide a *status and assessment* discussion that describes and analyzes the VIPD’s progress toward achieving substantial compliance with the Consent Decree’s requirements.<sup>11</sup> As part of this discussion, we provide an update about the progress of each of the working groups leading these efforts. Then, we include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree’s requirements.<sup>12</sup> A chart summarizing the VIPD’s progress towards substantial compliance is included at the end of the Executive Summary.

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

#### A. Status and Assessment

The Chief of the St. Croix District leads the Use of Force working group, and has appointed Department personnel from both Districts to his working group. He has assigned certain tasks to a “point person” and has held working group meetings. While the Commissioner’s memorandum required the working groups to meet regularly, the OIM understands that this group does not meet regularly, as evidenced by limited meeting minutes since the group’s formation last quarter.

During the previous quarter, the Use of Force working group developed the first iteration of its action plan. This quarter the OIM expected to see, but did not, another iteration of the plan. The action plan is intended to: (1) identify all Consent Decree provisions that the working group is responsible for; (2) describe the tasks that must be completed to satisfy each provision; (3) assign tasks to specific

<sup>10</sup> A summary of the Consent Decree requirements is excerpted at Appendix A. A copy of the full text of the Consent Decree is available at: [http://www.justice.gov/crt/about/spl/documents/VIPD\\_CD\\_03-23-09.pdf](http://www.justice.gov/crt/about/spl/documents/VIPD_CD_03-23-09.pdf).

<sup>11</sup> The Consent Decree provides that “[t]he Monitor shall issue quarterly written, public reports detailing the Territory of the Virgin Islands’ compliance with and implementation of each substantive provision of [the] Agreement.” CD ¶ 96.

<sup>12</sup> CD ¶ 85.

individuals; and (4) set short, mid, and long-term deadlines for each provision that reflects the Consent Decree Timetable deadlines. More generally, the action plan should also consider the timeframe by which the entire Consent Decree must be fulfilled.

With regard to use of force policies, during the Third Quarter, the VIPD issued an additional force-related policy – the Field Training and Evaluation Program Policy – which is a critical component of training new Officers.<sup>13</sup> By the end of the Third Quarter, the VIPD issued a total of ten force-related policies: (i) Use of Force; (ii) Reportable Use of Force; (iii) Impact Weapons; (iv) Electronic Control Weapon (“ECW”);<sup>14</sup> (v) O.C. Spray; (vi) Vehicle Pursuit; (vii) Spike Strip; (viii) Off-Duty Official Action; and (ix) Firearms. In addition, the Department also previously implemented the Response to Resistance Reporting Form (“RRR”) (formerly known as the Use of Force Report) for VIPD personnel to document use of force events pursuant to the Reportable Use of Force Policy. Also during the quarter, the VIPD decided to revise the Canine Policy to better reflect the number of hours that canine dogs should receive in training per week.<sup>15</sup> Once it does so, the VIPD will have to resubmit the revised Canine Policy to the DOJ for review and approval.<sup>16</sup>

The contributions of the Policy and Procedures Committee (“Committee”) to policy development are commendable. The Committee continues to meet bi-weekly to discuss and revise policies.<sup>17</sup> The Committee, in coordination with the Use of Force working group, continued to revise the Investigation and Review of Use of Force Policy

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<sup>13</sup> The OIM provided the VIPD with extensive feedback on the Field Training and Evaluation Program Policy. The Consent Decree does not contain any specific requirement that the VIPD develop policies and practices concerning probationary Officers and their supervising FTOs. However, the VIPD recognizes that the development of an FTO program will help the Department comport with best police practices and otherwise fulfill the Consent Decree’s mandates.

<sup>14</sup> The TASER is one example of an ECW.

<sup>15</sup> The VIPD initially issued the Canine Policy on May 3.

<sup>16</sup> The OIM also learned that the Department issued a Security Ring Directive on October 20 during the Fourth Quarter. This Directive requires VIPD personnel to secure prisoners with security rings when a holding cell is not available or when there are multiple prisoners being held simultaneously in the same cell. The OIM will report on both the status and implementation of both the Canine Policy and Security Ring Directive in the next report.

<sup>17</sup> The VIPD renewed its contract with the Policy Consultant during the Third Quarter. The OIM is hopeful that with additional support from the Policy Consultant, the VIPD will finalize additional policies shortly. However, we encourage the VIPD to further develop its own capacity to independently develop and revise policies.

and a related checklist for Supervisors conducting these investigations (discussed below). The policy will permit the VIPD to investigate use of force events in proportion to the type of force used. The policy creates four separate use of force levels (measured on a scale from 1 to 4, with 1 being the most severe), and dictates what Supervisors must do to investigate use of force events at each level. The policy is intended to address the concern among many VIPD personnel that the existing Use of Force Policy imposes too great a burden on Supervisors by requiring “all inclusive” force reviews for comparatively “minor” force incidents. VIPD personnel were particularly vocal about the unnecessary burden associated with audio or videotaped statements from witnesses for lower-level uses of force, such as non-compliant handcuffing. The OIM is hopeful that the policy will alleviate many of these concerns and lead to greater compliance. But before the policy can be issued, the VIPD, Territory and DOJ must modify the Consent Decree so that not all reportable use of force incidents require the same level of investigation. The OIM is hopeful that the modification of the Consent Decree language and finalization of the policy occur in the Fourth Quarter.<sup>18</sup>

Given the significance of the policy and the amount of time it is taking to finalize, the Chief of the Use of Force working group has attempted to issue the substance of the Investigation and Review of Use of Force Policy as a directive, amending the Reportable Use of Force Policy issued on May 3 until such time when the DOJ approves the policy.<sup>19</sup> The Chief of St. Croix sent a memorandum to the former Police Commissioner, copying the Acting Police Commissioner and OIM, requesting an interim Directive to “ensure prompt compliance in the St. Thomas [D]istrict [and] decrease the use of force workload currently being absorbed within the St. Croix District.” To the OIM’s knowledge, the Chief never received a response. The OIM, therefore, encourages the new Commissioner to promptly respond to the Chief’s memorandum because early resolution will help prevent improper practices and procedures from becoming ingrained in daily policing activities.

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<sup>18</sup> The DOJ approved the Reportable Use of Force policy on March 22, and the Use of Force Investigation and Review Policy on November 3. The VIPD submitted proposed language to the Territory and DOJ on October 28 to modify the Consent Decree to allow for a tiered investigation policy. The OIM will report on the status of the Territory and DOJ’s responses in our next report.

<sup>19</sup> The VIPD has written several iterations of this policy. One issue that the Committee is resolving is how to reconcile the overlap between the Investigation and Review of Use of Force Policy with the Reportable Use of Force.

The Department has also identified a need for additional force-related policies that the Committee is currently drafting including: (i) SRT & Hostage Policy;<sup>20</sup> (ii) Sniper Policy; (iii) Investigation and Review of Use of Force Board Policy; (iv) Arrest Policy; (v) Post Shooting Incident and Procedures Policy; (vi) Officer Involved Shooting Investigation Procedures; and (vii) Canine Policy. While the VIPD may develop additional force-related policies in the future (beyond those that are currently under development or required by the Consent Decree) after the OIM has determined that the VIPD has substantially complied with ¶ 31, the subsequent issuance of those policies will not restart the two-year substantial compliance period.

The Committee is drafting an Arrest Policy in response to the OIM's concern that some Officers are arresting and subsequently releasing individuals without adequately documenting the arrest and/or whether any force was used.<sup>21</sup> The impetus for this policy was an Arrest Directive disseminated by the Chief of St. Croix during the Second Quarter. The OIM has suggested to the VIPD that the Arrest Policy, like the Directive: (1) delineate the differences between an investigative detention and an arrest; (2) outline the steps that VIPD personnel must follow if they arrest an individual, but later determine that they do not have an adequate basis for the arrest; (3) require that all Officers, including special unit Officers (e.g., canine and SOD), who assist in the arrest be identified in the arrest report and/or 1-A; (4) emphasize the need for VIPD personnel to complete an RRR (in addition to a Form 1-A or arrest report) whenever force is used; and (5) ensure supervisory oversight over the decision to release an arrestee. Given how critical it is that the VIPD document and analyze all arrests and any force used during an arrest, the OIM suggests that the VIPD finalize this policy and train on it as soon as possible.

At the end of the Third Quarter, the VIPD is not in substantial compliance with the following Consent Decree provisions pertaining to force-related policies: ¶¶ 31 and 39-41. To achieve substantial compliance, the VIPD must finalize and implement its outstanding force-related policies. As previously reported, the VIPD has begun to train on a number of important force-related policies, including the Use of Force and Reportable Use of Force policies. The VIPD will not comply with these provisions until its personnel demonstrate proficiency with each policy.

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<sup>20</sup> The DOJ approved the SRT & Hostage Policy during the Fourth Quarter,.

<sup>21</sup> OIM First Quarterly Report of 2011 at 8.

## B. Recommendations

The Use of Force working group should regularly meet, memorialize its meetings in writing and continue to refine its action plan. Even if the working group meets informally or meets only to delegate discrete tasks, like revising the checklists or conducting audits, the Chief leading the Use of Force working group must document the activities and record the activities in its action plan.

The Use of Force working group should continue to work with the Committee to develop and/or finalize all outstanding force-related policies, including the: (i) Sniper Policy; (ii) SRT & Hostage Policy; (iii) Investigation and Review of Use of Force Policy; (iv) Investigation and Review of Use of Force Board Policy; (v) Arrest Policy; (vi) Post Shooting Incident and Procedures Policy; (vii) Officer Involved Shooting Investigation Procedures; and (viii) Canine Policy. Since the Department has issued ten force related policies, and other protocols and plans, the Use of Force working group must continue to ensure that the Department is developing a consolidated and user-friendly manual to serve as a reference tool for VIPD personnel.<sup>22</sup>

The Use of Force working group and Training Division must also regularly communicate to ensure that VIPD personnel are trained on the Department's issued force-related policies. As discussed below (*see infra* Section V, Training), the Department has yet to train VIPD personnel on the Vehicle Pursuit and Off-Duty Official Action, or train all VIPD sworn personnel on the Firearms Policy. The Use of Force working group should also coordinate with the Training Director to develop training programs for force-related policies still under development in order to be able to implement those policies as soon as the DOJ approves them.

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<sup>22</sup> As previously reported, the Department's policies and procedures were formerly documented in several different sources, including various manuals, field directives, and training bulletins, and many of those sources contain policies that conflict with each other and are out-of-date.

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

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

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

The Department has issued and trained (almost all) VIPD personnel on the Reportable Use of Force Policy, which requires VIPD personnel to document uses of force events on the RRR.

In order to improve the quality and consistency of the Department's use of force investigations, the Use of Force working group has created a "checklist" to guide Supervisors in conducting investigations. The checklist is also designed to help Supervisors (and Chiefs/Deputy Chiefs) efficiently determine whether RRRs are complete, and whether additional information and/or investigative steps are required. In addition, the checklist directs Supervisors to ensure that VIPD personnel are, among other things, documenting use of force events in the Use of Force log books (which are maintained at each Zone) and completing arrest and/or Form 1-As, as necessary. During the Third Quarter, the Use of Force working group began revising this "checklist," in light of comments received from the Committee and the OIM, to reflect the varying levels of force investigations that will be a part of the Investigation and Review of Uses of Force Policy once it is finalized.

According to the Use of Force working group, Supervisors on the St. Croix District are beginning to use the checklist to ensure that they complete all required steps of a force review/investigation.<sup>23</sup> In our last report, we recommended that the Chief of the St. Thomas District disseminate the checklist to Commanders in his Zones.<sup>24</sup> As we have repeatedly stressed, the VIPD needs to bring greater uniformity to its use of force reporting and investigating practices across the Districts. Using these checklists in both Districts would be a positive step forward in that direction. During the Fourth Quarter, we expect to see these checklists in force investigation files in the Zones on the St. Thomas District. If the Chief of the St. Thomas District has not yet adopted these checklists, he should explain his rationale for not doing so. In the OIM's opinion, there

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<sup>23</sup> Based on OIM monitoring at the start of the Fourth Quarter, the OIM confirmed that some Supervisors at the Zone level on the St. Croix District are beginning to use the checklist during their review of completed force investigations.

<sup>24</sup> OIM Second Quarterly Report of 2011 at 9.



is no reasonable explanation for the Chief of the St. Thomas District to not adopt these checklists.

With regard to RRRs, the VIPD reports that some Officers on both Districts continue to use the old use of force reports rather than the RRRs. Furthermore, during the Third Quarter the OIM learned RRRs are not readily available to Officers. The Use of Force working group should ensure that adequate copies are available. In addition, the OIM has learned that the Training Division and IAB on St. Croix are not consistently receiving completed RRRs, even though the Chief of the St. Croix District issued a Directive on July 26 mandating that all VIPD personnel send completed RRRs to the Chief's Office, IAB, and the Training Division pursuant to the Reportable Use of Force Policy. Since a revised version of the checklist reflects that Supervisors should send a copy of the completed RRRs to these three offices, the OIM is hopeful that this will be a common practice on both Districts going forward.

In addition, on September 19, the Chief of the St. Thomas District disseminated a Directive (#2011-9) to all enforcement personnel on St. Thomas mandating that RRRs be completed anytime suspects resist arrest. The Chief of the St. Thomas District also requested that Supervisors and Commanders pay particular attention to these incidents because VIPD personnel typically need to use force to gain control of a resisting subject. The Chief further mandated that the Directive be read at all Roll Call sessions for five consecutive days and thereafter every so often.<sup>25</sup> Given that some Officers fail to complete RRRs, as mentioned above, Supervisors must ensure that Officers do so in accord with policy and the Consent Decree.

Finally, during the Third Quarter, the Use of Force working group requested clarification from the Commissioner on July 1 about whether they should review critical firearm discharges (rather than IAB).<sup>26</sup> To the

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<sup>25</sup> This memorandum was prompted by a copy of correspondence from September 13 between the Acting Police Commissioner and Director of IAB identifying numerous cases where the arrest reports indicated that an individual "resisted arrest" and related RRRs were not completed. The Director of IAB conducted a similar analysis for the St. Croix District and sent correspondence to the Acting Commissioner on September 13 indicating the same.

<sup>26</sup> At this time, the OIM believes that IAB is best positioned to review critical firearm discharges since it has both the capacity and independence to conduct these reviews.

OIM's knowledge, the Acting Commissioner has not responded. The OIM encourages the new Commissioner to respond promptly.

## 2. Survey of Use of Force Incidents

During the Third Quarter, the OIM continued to evaluate the Department's use of force reporting practices to determine whether investigation files contain all of the documentation required by the Consent Decree. A "complete" investigation file generally consists of the following: Form 1-A; arrest report; (signed) RRR; video or audio statement and photos; supervisor's investigative report with an analysis of the facts, evidence identified, and findings; documentation that all relevant individuals in the Department's chain of command reviewed and approved the completed investigation file; and disposition letter.

The OIM visited Zones and IAB to review closed force investigations and noted several recurring deficiencies. For example, the OIM found that Officers on both Districts still fail to notify their Supervisors immediately after using force and fail to complete RRRs as required by the Reportable Use of Force Policy. For example, in an investigation conducted at the Zone level on the St. Thomas District, the Officers used force to subdue a mentally ill subject, but did not arrest her, and the subject did not claim injury. The Officers transported the subject to the hospital, where she was treated for her mental illness. When the Zone Commander reviewed the Officers' Form 1-A, she discovered that the Officers failed to notify their Supervisor. Although the Zone Commander subsequently directed the Officers to prepare RRRs and counseled them on reporting requirements, the delay in notifying the Supervisor resulted in a lost opportunity to interview witnesses and capture evidence of the lack of injury.<sup>27</sup>

In another case from the St. Thomas District, school monitors detained and handcuffed a high school student for fighting on school grounds. While handcuffed, the student fled from the school monitors. A VIPD School Security Officer then intervened and exercised force to escort the student back to the school monitors. The Officer did not arrest the student, prepare any contemporaneous documentation, or notify his Supervisor. Five days later, the student, who was the son of

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<sup>27</sup> During OIM monitoring, we have often heard VIPD personnel express their desire for a policy that will guide their actions and responsibilities when working with purported mentally ill subjects. The VIPD should assess whether they need such a policy as soon as possible.

another VIPD Officer, lodged a complaint against the Officer complaining of injury to his wrist. The investigation was assigned to the VIPD School Security Bureau. Five months after the incident, the IAB completed its review of the School Security Bureau's investigation and directed the Officer to complete a RRR. Upon OIM review, the investigative file contained no report explaining the cause for the delay in capturing the use of force on a RRR.<sup>28</sup>

The OIM also found that the VIPD must address issues with serious uses of force and discipline. The OIM reviewed a Zone level investigation conducted on the St. Croix District involving an allegation of excessive force against a Sergeant. The Sergeant is accused of pushing a woman down stairs, and pushing another subject to the ground while two other Officers were escorting the subject. Following an investigation of the incident by the Zone Commander, the Sergeant was not disciplined. Rather, the Department disciplined an Officer who provided a statement that was critical of the Sergeant's conduct. The investigating Zone Commander concluded that the Officer's statement appeared "to be a falsehood" and his "attention was misplaced, that instead of focusing on officer safety and scene awareness" he "was more critical of" the Sergeant.

Based on the OIM's review, the investigation is laden with other deficiencies. Like the deficiencies described above, a review of this file indicated that: the Sergeant failed to notify his Supervisor that he used force; a Supervisor failed to conduct an investigation and a witness canvass following the incident. In addition, when the Zone Commander later reviewed witness interviews, he disregarded without justification any interviews that were adverse to the Sergeant's statement. Two VIPD firefighters, who witnessed the Sergeant push the subject to the ground, provided nearly identical statements that supported the Officer's critical statements about the Sergeant's conduct. The recorded statements were included in the file, but the investigator's report only briefly mentioned them. Given the outcome of the investigation – the Department exonerated the Sergeant and disciplined the Officer who provided the critical statements – the investigating Zone Commander did not give

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<sup>28</sup> Similarly, on the St. Croix District, the OIM reviewed at least two cases where a Supervisor did not seek a force number until more than a week after the force incident. In both cases, a complainant filed a complaint days before the force number was assigned.

those statements adequate weight.<sup>29</sup> These deficiencies deviate from generally accepted police practices, and demonstrate a lack of accountability within the VIPD and to the community. Consequently, it is vital that the VIPD provide Supervisors with training on the preponderance of the evidence standard and evaluating witness credibility, among other topics. As discussed *infra* (Sections III & V, Citizen Complaint Process and Training), various VIPD personnel and the OIM have requested this training for many months.

Finally, consistent with the Reportable Use of Force Policy, the OIM reiterates that Officers involved in a use of force incident can not participate in the investigation of that incident. The OIM reviewed a case on the St. Croix District in which a Supervisor that directed a tactical operation and used force also oversaw the force investigation and review. Pursuant to policy, however, force investigations and reviews must be conducted by uninvolved personnel that, unless otherwise instructed by the Commissioner or Chief, are higher ranked than the involved Officer who used force.

### **3. Supervisor Review of Uses of Force**

During the Third Quarter, the Use of Force working group conducted another audit of use of force investigations conducted at the Zone level on St. Thomas. In a memorandum dated July 25 to the Chief of St. Thomas, the Chief of the St. Croix District leading the Use of Force Working noted that while Officers were documenting use of force incidents (sometimes, as noted above, using the old form), Supervisors were not conducting investigations and reviews in all instances. The Chief of St. Croix requested that the Chief of St. Thomas “take part in ensuring [that] Commanders and Supervisors under [his] purview complete thorough investigations in-line with [policy].” The Chief of St. Croix also requested that the Chief of St. Thomas track and review investigations, correct deficiencies, and forward closed cases to IAB for archival.<sup>30</sup> While the OIM understands that the District Chiefs operate

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<sup>29</sup> While this incident occurred in 2010, the OIM only discovered it during the Third Quarter in the files of the Deputy Chief of St. Croix (now Chief of St. Croix). Included in the file is a report from the Deputy Chief to the investigating Zone Commander, who has since retired, detailing deficiencies in the investigation and directing the Commander to address the deficiencies. There is no evidence in the file that the Commander ever complied.

<sup>30</sup> Notably, the OIM observed that the Chief of St. Croix also initially did not forward completed investigations to IAB for archival. After discussions with OIM, the Chief corrected this deficiency.

separately from one another, they should work more closely and learn from their common experiences in the coming quarters. To the extent that this relationship does not develop organically, the new Commissioner should intervene and direct the Chiefs to accept guidance from each other and, when it is rejected, provide a reasonable basis for doing so.

The Use of Force working group also addressed the canine unit on St. Croix during the Third Quarter. In a September 20 memorandum, the Chief of the Use of Force working group noted that he has been working to rebuild the canine facility for a number of months, but that a lack of funding has been an impediment.<sup>31</sup> The Chief has asked Property & Procurement for assistance removing cars from the impound lot in and around the Canine Unit. The Chief also requested funding for 3 dogs (2 replacements and 1 new). The OIM will request a status update during the next quarter on what, if any, response the Chief receives to this memorandum.

On September 27, the Chief of the Use of Force working group requested an audit of all St. Croix canine unit Officers and dogs. A retired VIPD Captain, working with a canine consultant, conducted the audit and discovered two issues with the dogs: (1) they do not “stand off/recall” (return to handler during apprehension) and (2) “revere” (circle and bark at a subject). The Chief of the St. Croix District has subsequently directed the K9 Special Operations Commander to train the dogs in these two areas and prohibit their deployment until the dogs receive certification that they are capable of these skills. According to the VIPD, the dogs are expected to be proficient during the Fourth Quarter. A similar audit will take place on St. Thomas during the Fourth Quarter. As with all audits, the OIM would like to receive any corresponding documentation from the working group in order to credit the VIPD for implementing the relevant policies. The OIM is hopeful that the use of Force working group will coordinate with the Training Division, since the audit is germane to force-related training.

As discussed *infra* (Section IV, Management and Supervision), the Department continues to enter force-related information into IAPro to

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<sup>31</sup> According to ¶ 14 of the Consent Decree, the “Territory of the Virgin Islands is responsible for providing necessary support and resources to the VIPD and Police Commissioner to enable each of them to fulfill their obligations under this Agreement.” The Consent Decree, therefore, requires the Territory to provide sufficient funding to enable the VIPD to attain compliance.

facilitate the collection, review, and evaluation of use of force events. IAPro is now functional at IAB on both Districts and in all Zones except for two specific locations. In light of prior technical impediments, the VIPD implemented a manual tracking system in which all Zone Commanders received log books with sequentially numbered pages to record use of force events and citizen complaints.<sup>32</sup> The OIM has recommended that the VIPD retain the log books as a back-up measure until IAPro is fully functional and reliable.

## **B. Recommendations**

Under the Consent Decree, Supervisors play a critical role in investigating use of force events. As mentioned above, the recent retirement of a number of Supervisors is a challenge to the Department's compliance efforts. Even prior to these retirements, the OIM was concerned that the Department's first-line Supervisors (Corporals and Sergeants) were stretched too thin. Nevertheless, the OIM is pleased that the VIPD intends to promote a number of individuals to supervisory ranks in the near future.

During the Third Quarter, after repeated requests, the VIPD provided the OIM with its organizational chart, active-duty roster, and current list of assignments for both Districts so that the OIM can begin to evaluate the VIPD's supervisory capacity. The VIPD also must assess its supervisory needs; while the OIM can provide assistance, the VIPD is in the best position to evaluate and identify the appropriate number of Supervisors that it requires to efficiently deliver police services and reach substantial compliance with the Consent Decree. We also encourage the VIPD to use a selection process tailored to the particular job to identify capable Officers for supervisory promotions, to set a schedule for promotional exams, and to provide training for these Supervisors during the Fourth Quarter (or as soon as possible thereafter).

Because the Use of Force Policy and Reportable Use of Force Policy are critical components of the Department's Consent Decree compliance, the VIPD should continue to reinforce the requirements of both policies through regular in-service training programs.<sup>33</sup> In addition to providing periodic "refreshers," in-service training should be utilized to address common problems/deficiencies that Supervisors identify in the course of reviewing RRRs and interacting with Officers. The Chiefs and Deputy

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<sup>32</sup> VIPD February 2011 Status Report at 6.

<sup>33</sup> The requirements can be reinforced through Roll Calls and Commanders' Calls.

Chiefs should also monitor that their subordinates are completing RRRs when required and that Supervisors are conducting complete investigations consistent with policy and using the checklists. To that end, the Chiefs and Deputy Chiefs should review 1-As and arrest reports to ensure that their subordinates are completing RRRs whenever force is used. Since RRRs often trigger use of force investigations, it is critical that VIPD personnel document *all* reportable uses of force.

We also encourage the Use of Force working group and Director of IAB (or his designee) to continue auditing use of force files (and misconduct allegations) in both Districts in order to identify and remedy any issues.<sup>34</sup> These audits should document, for example, whether Supervisors are using the checklists as they complete their review of force files.

The Use of Force working group should ensure that: (1) personnel are completing RRRs whenever reportable force is used based on the working group's review of 1-As and arrest reports; (2) the Department provides a sufficient supply of RRRs to Officers until all Zones are equipped to enable Officers to enter RRRs on computers; (3) Supervisors forward copies of RRRs to the Chiefs' Offices, IAB and the Training Division on both Districts; (4) Officers involved in force incidents are not investigating and reviewing those incidents; (5) personnel are trained on the preponderance of the evidence standard and evaluating witness credibility; and (6) the Committee finalizes the Disciplinary Matrix and related Policy as soon as possible. The working group should document these efforts.

Although the Department has made progress by issuing and training many VIPD personnel on the Use of Force Policy and Reportable Use of Policy, it is not yet in substantial compliance with ¶¶ 32-38 of the Consent Decree. Among other requirements, these paragraphs require the VIPD to evaluate, document, and review reportable uses of force. The VIPD has not yet satisfied those requirements because it has not implemented its Use of Force Policies, Officers are not consistently notifying their Supervisors when employing force, and Deputy Chiefs and

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<sup>34</sup> To the extent that IAB lacks the capacity to periodically conduct these audits because of other responsibilities, the VIPD should consider allocating a sufficient number of staff to IAB to conduct this review. The Department must ensure that all force and misconduct investigations are complete and sufficient and, if not, identify the need for Command intervention and supervisory training.

Supervisors are not yet conducting use of force and performance reviews according to the requirements of the Consent Decree.

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

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

**1. Status and Assessment**

The Chief's working group members, particularly the designated "point person," have been active and met regularly over past quarters, but the group's efforts waned during the Third Quarter since the point person is on leave. In delegating authority to his point person, the Chief of the St. Thomas District has not remained as involved in guiding his working group as required. As previously stated, while the OIM encouraged the working group leaders to delegate certain tasks, the leaders remain responsible for the direction and success (or failure) of their groups. Among other things, the working group leaders must personally attend working group meetings, meet with working group members, and provide overall leadership. The working group leaders cannot abdicate their responsibilities to others. Still, the OIM remains hopeful that the Chief's level of engagement will increase. Furthermore, even though the working group has developed several iterations of its action plan, the plan does not identify specific individuals who are working on each provision or contain short, mid, or long-term deadlines for satisfying each paragraph relevant to the complaint process.

On August 2, the Department issued the Acceptance of Citizen Complaints Policy and Investigating Misconduct and Citizen Complaints Policy. The VIPD reports that it has provided in-service training on the Acceptance of Citizen Complaints Policy for Officers and Supervisors from August through October. The OIM, however, has not yet received any documentation related to this training, including lesson plans and attendance sheets. Once VIPD personnel is trained on both policies (*see infra*, Section V, Training), they should be fully equipped to receive and investigate citizen complaints. Since October 2010 the Department has actively promoted the citizen complaint process through a public information campaign on radio and television stations in both Districts.<sup>35</sup>

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35 OIM Second Quarterly Report of 2011 at 19; *see also infra* § V (Training).



The VIPD has yet to report on its plans to run PSAs in 2012, but should be thinking ahead to how it will continue this aspect of the campaign.<sup>36</sup>

Prior to recently issuing the above referenced complaint-related policies, the complaint process was governed by the Processing Citizen Complaints Directive (#014-2010) (the “Directive”), which was issued in October 2010. Under the Directive and the newly issued Acceptance of Citizen Complaints Policy, VIPD personnel are required to carry complaint/compliment brochures and forms in their vehicles while on-duty, and are prohibited from discouraging anyone from filing a complaint. To help facilitate compliance, the VIPD has provided various personnel with zip envelope packets containing citizen compliment and complaint forms and brochures. The OIM has recommended that the Complaint Process working group randomly question VIPD personnel to ensure that they understand the complaint process and do not engage in behavior that would discourage anyone from filing a complaint. The working group did not provide an update or any documentation that it had conducted such a “test” during this quarter.

The Complaint Process working group continued to conduct random inspections of Zones, substations and police vehicles to confirm that they have the required complaint process materials. Since last quarter, the OIM has requested documentation relating to these inspections but has yet to receive it. The Consent Decree specifically requires VIPD vehicles to be equipped with English, Spanish, and French and/or French Patois language versions of the required complaint process materials.<sup>37</sup> During the last quarter, VIPD vehicles were only equipped with English language materials. While the VIPD has identified an individual to translate the revised English version of the complaint/compliment brochure into Spanish, the translation was pending during this quarter; the OIM is hopeful that Spanish

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<sup>36</sup> In setting forth the required components of the public information campaign, ¶ 42 of the Consent Decree states that “[t]his program will include distribution of complaint forms, fact sheets, informational posters, and *public service announcements* that describe the citizen complaint process” (emphasis added).

<sup>37</sup> As previously reported, the fourth sentence of ¶ 43 of the Consent Decree does not expressly require VIPD officers to carry French *and* French Patois language complaint forms and informational brochures. However, the third sentence of ¶ 43 requires French *or* French Patois language placards describing the complaint process. The OIM believes that this is an inconsistency. The OIM understands that the VIPD and DOJ intend to clarify the language in this paragraph concerning French and French Patois and the OIM will report on this when the Parties make this clarification.

translations will be complete in the next quarter. The VIPD also continues to have difficulty identifying an individual to translate the brochure into Patois. As soon as these translations are complete, the VIPD will print and distribute these materials throughout the Department, in the community and presumably post on the Department's website.

The OIM continued to conduct its own inspections of VIPD vehicles and facilities to inspect whether the required complaint process materials were available. The OIM is pleased to report that when the OIM conducted inspections of vehicles on St. John, and governmental properties on the St. Thomas District (Zones A and C), all vehicles and facilities had the required versions of the brochures and complaint forms.<sup>38</sup>

Finally, in order to make it easier for individuals to file complaints at the Zones, each Zone prominently displays bulletin boards in both Districts that identify the Commander and on-duty Shift Supervisor. Shift Supervisors are responsible for updating the board with their name when their shift begins. While the VIPD installed these boards in most Zones, the on-duty Shift Supervisor's name has not always been posted to the board. The VIPD previously reported that it planned to issue additional guidance regarding the bulletin boards, but the OIM never received any such documentation.

Although the VIPD has made significant progress with aspects of the citizen complaint process, it is not yet in substantial compliance with ¶¶ 42-45 of the Consent Decree. For example, the OIM is pleased with the Department's progress with ¶ 43 of the Consent Decree, specifically developing complaint forms, brochures, and posters, and making those materials available at various governmental properties and community centers. However, ¶ 43 also requires the VIPD to document that the complaint process is functioning properly, from the intake of complaints to their ultimate disposition. To that end, the OIM (and hopefully the working group) will continue to inspect: (1) how Officers inform citizens about making complaints, and (2) that officers do not discourage citizens from doing so. In addition, the VIPD must provide training (and related documentation, including lesson plans and attendance sheets) on the Acceptance of Citizen Complaints Policy and Investigating Misconduct

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<sup>38</sup> The only exceptions were two ATVs, which the OIM learned are used infrequently. At the start of the Fourth Quarter, the OIM also found the required complaint materials in a Zone and substation on St. Croix.

and Citizen Complaints Policy, which were both finalized during this quarter.

## 2. Recommendations

The Complaint Process working group should continue to update its action plan to account for accomplishments and all of the specific steps that must be taken to complete outstanding tasks. Future iterations of the action plan should be revised to reflect new deadlines and the person(s) responsible for meeting those deadlines.

Since the VIPD issued the Acceptance of Citizen Complaints Policy and Investigating Misconduct and Citizen Complaints Policy months ago on August 2, the VIPD must train VIPD personnel on the policies during the next quarter. The VIPD reports that it has provided in-service training on the Acceptance of Citizen Complaints Policy for Officers and Supervisors in August, September and October. The OIM, however, has not yet received any documentation related to this training, including lesson plans and attendance sheets. Any training that was provided on the Directive is no longer sufficient in light of these policies. As discussed *infra* (Section V, Training), the Training Division has selected an instructor for the Investigating Misconduct and Citizen Complaints Policy, but has not set a date for training. The Complaint Process working group's action plan acknowledges the need for training on the new policies, and stated that the working group would vet the training programs before the Department offered them to VIPD personnel. The Complaint Process working group, in conjunction with the Training working group, therefore, should ensure that the programs are vetted. In addition, up to and after training on the Acceptance of Citizen Complaints Policy and Investigating Misconduct and Citizen Complaints Policy have been completed, the Complaint Process working group should continue to periodically test whether VIPD personnel understand the complaint process and are responsive and courteous to individuals seeking to file complaints. As we have previously emphasized, any such inspections should be well-documented (e.g., when and where did the inspection take place, what were the results, etc.).

The Complaint Process working group should also continue to confirm and document whether governmental properties and VIPD vehicles have the required complaint process materials and that the Zones are properly using the bulletin boards (e.g., keeping them up to date in identifying the on-duty Supervisor). Similarly, the public information campaign about the complaint process has been underway

for nearly a year and the VIPD should evaluate how it will continue the campaign in 2012.

Finally, the OIM understands that the Director of IAB periodically compiles statistics relating to the complaint process, specifically tracking the investigations of complaints that have taken longer than the statute of limitations permits. The OIM encourages the Complaint Process working group to periodically review that information.<sup>39</sup> This review will provide a good overview of the Department's complaint process, help the Department identify emerging trends, and identify any deficiencies that exist. As a result, the Department will be able to reinforce what is working, and correct any problems (which may include revamping its public information campaign and providing additional training programs).

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

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

As discussed above, the Investigating Misconduct and Citizen Complaints Policy will now govern how VIPD personnel investigate citizen and command complaints. The VIPD issued this policy on August 2 and has yet to train personnel on it, but must do so in the next quarter.

Both in previous reports and during monitoring, the OIM has encouraged the Department to consider a citizen complaint resolution process/supervisors resolution process policy that would permit Supervisors and IAB Agents to resolve certain comparatively less serious complaints based on a preliminary investigation.<sup>40</sup> Such a policy would

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<sup>39</sup> The Complaint Process working group should also consider drafting a policy/directive for the Commissioner's signature that requires the Chiefs and Deputy Chief to monitor the progress and due dates for completing complaint investigations assigned to units within their respective Commands. The policy/directive should also require the Chiefs and Deputy Chief to take timely steps to ensure that due dates are met and, if not, take corrective action against the investigating Supervisors responsible for these delinquencies.

<sup>40</sup> The OIM first reported on this suggestion in the First Quarterly Report of 2011 at 13-14. To appropriately limit the scope of such a policy, the OIM suggested the following limitations and guidelines: (i) restrictions on the type of allegations that can be closed by Supervisors after a preliminary investigation; (ii) tiered levels of investigation such that complaints against VIPD personnel who have repeatedly violated Department policies are ineligible for this process; (iii) procedures to ensure oversight by the Chief, Deputy Chief, and the IAB, empowering each to overrule the Supervisor; (iv) procedures to inform complainants about this alternative process, including their ability to accept/decline it, and the actions taken by the VIPD during

allow VIPD personnel to focus their attention on complaints of a more serious nature. In our last report, the OIM suggested that the Department implement such a policy, in advance of providing training on the Investigating Misconduct and Citizen Complaints Policy, so that the Department could train on both policies at the same time. Nonetheless, the Committee and Complaint Process working group have not taken any action to draft this policy.

During the Third Quarter, the VIPD did not hold training programs for Supervisors (1) on the preponderance of the evidence standard (which the VIPD uses when investigating complaints) or (2) on evaluating the credibility of witnesses. The OIM learned that the VIPD will hold training programs conducted by attorneys from the Attorney General's Office on these subjects on both Districts during the next quarter. The OIM has observed one of the sessions and will report on our findings in our next report. The OIM previously reported that the VIPD's October 2010 training program on these topics was insufficient because the instructors lacked the necessary legal background.<sup>41</sup> The Consent Decree requires Officers to evaluate witness credibility using a non-exhaustive list of factors (which are set forth in the Consent Decree) when investigating complaints and use of force events.<sup>42</sup> The Training Division first received an intra-departmental request to hold such a training program on March 12, 2010.<sup>43</sup> As recently as August 18, the Chief of St. Thomas sent a memorandum to the Director of Training requesting preponderance of the evidence training for all Corporals and Supervisors (up to the Commissioner level). It should be noted that neither of those training programs require policies to be final.

Subsequently, in early 2011, the Attorney General's Office provided a preponderance of the evidence training which the OIM attended and found was well done. Still, for many quarters, the OIM has urged the VIPD to provide more training programs on these topics to address deficiencies in how Supervisors conduct witness and complainant interviews that the OIM has observed during their review of complaint investigations (see *infra*, Section II, Evaluation, Documentation & Review

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**Footnote continued from previous page**

this process, including disposition of complaints; and, (v) guidance on when IAB should re-open or continue any case "resolved" (i.e., closed) by a Supervisor.

<sup>41</sup> OIM First Quarterly Report of 2011 at 14-15.

<sup>42</sup> CD ¶ 51.

<sup>43</sup> OIM Second Quarterly Report of 2010 at 18.

of Uses of Force). Because the VIPD has had difficulties finding an attorney to teach the programs, it has been slow to respond to requests for these trainings. As discussed *infra* (Training, Section V), the VIPD and Attorney General's Office must work together more regularly to, among other things, review the legal sufficiency of policies and training programs.

In addition, the Consent Decree requires the VIPD to institute a centralized numbering and tracking system for all complaints. For many months, technical difficulties prevented the Department from implementing a single system across both Districts. To resolve this, the VIPD created separate IAPro databases (each with a distinct numbering system to track complaints) and servers for the St. Croix and St. Thomas Districts. Although the databases are separate, the DOJ approved this approach during the Third Quarter because the requirements of ¶49 are met.<sup>44</sup> Nonetheless, as discussed *infra* (Section IV, Management), MIS must still enable IAB on St. Thomas to remote into IAB on St. Croix and vice versa.

Finally, the Consent Decree also requires the VIPD to periodically inform complainants of the status of investigations and dispositions. The Investigating Misconduct and Citizens Complaint Police requires periodic and final disposition notices to complainants. During our review of complaint investigations, the OIM has found evidence of these notifications in some, but not all files. In addition to our continued review of whether these requirements are met, the VIPD should provide documentation showing its compliance (or steps towards compliance) with this requirement in its next quarterly status report.

In sum, at the end of the Third Quarter, the VIPD is not in substantial compliance with ¶¶ 46-58 of the Consent Decree concerning the investigation of complaints. Specifically, the VIPD has not trained investigating Supervisors on: the Investigating Misconduct and Citizens Complaint Policy; the preponderance of the evidence standard; or

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<sup>44</sup> Specifically, both databases can be accessed from either District; IAB agents in each District can access their respective database; the Director and Assistant Director of IAB and EIP Coordinator can access both databases; each complaint will receive a unique tracking number with an STT extension for the St. Thomas/St. John District and an STX extension for the St. Croix District so that no two complaints will have the same number within or between the two databases; information in each of the databases will be organized by District and sorted by Officer; and, if an Officer transfers from one District to another, the VIPD will transfer his/her information to the new District's database.

techniques to use when evaluating witness and complainant credibility. Additionally, the VIPD has failed to ensure that complaints are completely investigated. While the public service announcements have increased the volume of complaints, the VIPD is still ill-equipped to handle them properly. Unless the VIPD completes the outstanding training promptly, the VIPD may lose credibility in the eyes of the community for mishandling complaints.

## **2. Recommendations**

The VIPD must provide training programs (and related documentation, including lesson plans and attendance sheets) concerning the following policies/standards during the Fourth Quarter: (1) Acceptance of Citizen Complaints Policy; (2) Investigating Misconduct and Citizen Complaints Policy; (3) preponderance of the evidence standard; and (4) evaluating the credibility of witnesses. The OIM is hopeful that these programs will also include training pertaining to the examination and interrogation of accused officers and other witnesses, as well as identifying misconduct. The VIPD is obliged to provide training on these topics to Supervisors within 90 days of being promoted to supervisory rank (CD ¶ 81). As we have repeatedly emphasized, the Department will not be able to achieve substantial compliance until its personnel receive adequate training on each of these policies. Accordingly, Roll and Commanders' Calls should reinforce the training programs.

As we have repeatedly recommended, the VIPD should determine whether it is interested in developing a policy that would permit Supervisors and IAB Agents to close certain complaints based on a preliminary investigation. Such a policy, with appropriate management controls and oversight, could help ease the administrative burdens associated with comprehensively investigating comparatively less serious complaints. As such, the OIM does not understand why the VIPD has not been more receptive to developing such a policy. If the Department decides to develop this policy, the Complaint Process working group should work in tandem with the Committee to develop it.

Finally, in the next two quarters the VIPD should assess the staffing needs of the IAB to: (1) ensure that there are sufficient personnel to conduct timely investigations into serious allegations of misconduct that IAB retains for investigation; and (2) provide quality control over the investigations IAB assigns to Zones/units for investigation. The current IAB staffing levels are insufficient to allow IAB to monitor the quality,

completeness and timeliness of investigations, and alert managers of discovered deficiencies before statute of limitations are exceeded.

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

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

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

The Management and Supervision working group, led by the Deputy Chief for St. Thomas, has also developed several iterations of its action plan and continued to meet during the Third Quarter.<sup>45</sup>

The Consent Decree requires the VIPD to implement a RMS to track incidents and identify patterns of and potentially problematic behavior from VIPD personnel at an early (and hopefully remediable) stage. The VIPD chose IAPro as its RMS. After lengthy delays, IAPro is now functional in the IAB offices in both Districts. Nonetheless, based upon monitoring conducted at the start of the Fourth Quarter, IAPro is not yet being fully utilized. For example, IAPro at IAB on both Districts lacks human resources information for VIPD personnel (e.g., personnel hiring and promotion dates) and the VIPD has not yet uploaded RRRs into IAPro.<sup>46</sup> In addition, as mentioned above, IAB personnel in one District are unable to access IAPro information from the other District, making it more difficult to uniformly manage risk across the Territory.

The VIPD also reports that the Acting Director of MIS and his team have installed the Blue Team component of IAPro at both IAB and, with exceptions, on all Supervisors' computers in the Zones on both Districts.<sup>47</sup> Blue Team gives VIPD personnel the ability to enter a time

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<sup>45</sup> The former "point person" for the working group retired at the end of the Third Quarter. However, the Deputy Chief of the Management and Supervision working group promptly designated another "point person" and the OIM commends him for doing such.

<sup>46</sup> The OIM is aware that the Director of Payroll has been working to update this identifying information for each involved Officer and Civilian, particularly tracking Officers' overtime. The OIM would like a status update about where the Director is with this process. To the extent that the Director of Payroll requires assistance to speed up this process, the OIM implores the new Commissioner to intervene and provide the Director with additional manpower.

<sup>47</sup> Based on monitoring at the beginning of the Fourth Quarter, the OIM learned that there are two locations, one on each District, where the Acting Director of MIS and his team have yet to install Blue Team. The OIM will provide an update on the installation in these locations in our next report. The OIM also confirmed that patrol Officers cannot access Blue Team from the laptops in their patrol vehicles



and date-stamped force-report, as well as a complaint, directly into IAPro. Once that information is uploaded into IAPro, it will be accessible to Supervisors and IAB personnel to review. Nonetheless, the OIM also learned at the start of the Fourth Quarter that very few Supervisors were aware that Blue Team had been installed and that many had not been trained on it. For example, in one Zone, an otherwise knowledgeable Supervisor did not appear to be familiar with Blue Team when he spoke with the OIM. The OIM learned also that Supervisors in the Zones in both Districts do not have access to IAPro because the Acting Director of MIS and his team were not aware that every Supervisor, outside of IAB, needed access.

The Director of IAB has trained 31 personnel, including IA officers and members of the MIS staff, on IAPro, who in turn will train VIPD Officers and other Supervisors. An OIM representative attended a train-the-trainer program on Blue Team in July on St. Thomas.<sup>48</sup> Since the Director of IAB is the primary trainer on IAPro, conducting these initial trainings, in addition to his other responsibilities, is a demand on his time. And once Supervisors have been initially trained on IAPro and Blue Team, they also require additional instruction as they become more familiar with the databases. The Management & Supervision working group must support the Director and Assistant Director of IAB; it is not the Director and Assistant Director's responsibility alone to train VIPD personnel on Blue Team. The Compliance Coordinator has also requested that a MIS staff member attend these training programs to help overcome technical difficulties with the programs that surface.

During the last quarter, the OIM learned that the Department needed to increase the storage capacity of its servers to accommodate IAPro, particularly the uploading of video content from VIPD personnel conducting interviews as part of force and complaint investigations. MIS reports that it has ordered a storage server for each District, but the Acting Director of MIS awaits a purchase order from Property and Procurement to purchase the servers.

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because VIPD equipment does not have this functionality. Further, the OIM learned during the Fourth Quarter that on the St. Thomas District, MIS is working to address other technological issues (e.g., intranet and internet access). All of these issues are obstacles that the VIPD must overcome to fully implement its risk management system.

<sup>48</sup> A similar training was conducted on St. Croix.

Because of technical impediments with IAPro and Blue Team during previous quarters and that continue to exist, the VIPD implemented a manual tracking system. Under this system, all Zone Commanders received log books with sequentially numbered pages to record use of force events and citizen complaints.<sup>49</sup> The OIM has recommended that the VIPD retain the log books as a back-up measure until IAPro is fully functional and reliable.

Although the DOJ approved the VIPD's Data Input Plan on March 22, the Department has not yet disseminated the Plan to the entire Department nor provided an explanation for why they have failed to do so. The Data Input Plan identifies information about VIPD personnel (including uses of force, disciplinary issues, motor vehicle accidents, and sick days) that the Department will enter into IAPro to facilitate its risk management function. The Management & Supervision working group contacted the individuals (some of whom work outside the Department) who are ordinarily responsible for maintaining that information and worked with them to develop an efficient process to enter that information into IAPro. The OIM also learned during the Third Quarter that the Department will use unique employee numbers to link VIPD personnel with certain documentation in order to perform reliable IAPro analyses. Previously, the OIM had been concerned that the Department lacked a reliable and unique identifying number to track personnel. The OIM will begin to track whether the Department is implementing this number during the Fourth Quarter.

As previously reported, IAB would like to enter information into IAPro dating back to 2009. IAB reports that it has thus far entered data from 2010 to present. Unfortunately, IAB has not been able to meet this goal because it does not have enough personnel to assist with data entry.<sup>50</sup> The Director and Assistant Director of IAB previously hired an intern to assist with entering historic information, but this program has ended.<sup>51</sup> Because IAPro seeks to identify potentially problematic conduct based on established norms, IAPro functions best when it has a wealth of

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<sup>49</sup> VIPD February 2011 Status Report at 6.

<sup>50</sup> The OIM has also learned that the Assistant Director of IAB has been slow to assist with data entry into IAPro. Prior to IAPro coming on-line, the Assistant Director and her staff built a database to capture force incidents and citizen complaints. As IAPro is being implemented, the Assistant Director must work to make it more functional, in spite of her considerable efforts in developing the other database.

<sup>51</sup> Admittedly, this program was not without issues. For example, on occasion the IAB Director had to redo work performed by intern(s).

information to analyze. The new Commissioner and Management and Supervision working group should assist the IAB to identify personnel to help with data entry.

The VIPD's slow progress on its RMS Protocol has impeded the VIPD from fully implementing its RMS. The RMS Protocol sets forth various thresholds for supervisory review. For example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor (and other appropriate personnel) to the potential issue and need for review. The DOJ provided the Department with several rounds of comments on draft versions of the RMS Protocol, including during the Fourth Quarter.

One issue that has prevented the VIPD from finalizing the RMS Protocol is that the VIPD and DOJ continue to discuss the most appropriate mechanism to identify potentially problematic conduct. The DOJ favors using ratios based on VIPD Officers' conduct (i.e., the total number of arrests where force was used divided by the total number of arrests) to identify potentially problematic behavior, while the VIPD favors using numerical thresholds based on historic norms (i.e., X number of uses of force within a 12 month period). The OIM agrees with the DOJ that the VIPD may use its current proposed thresholds as a temporary measure, but that the VIPD will eventually need to use ratios to achieve substantial compliance.

First, there are instances where Officers take a subject into custody, use force, and release the subject without documenting the arrest and release. Second, when arrests are documented, all involved Officers are not always documented. Third, actual arresting Officers are not documented as the arresting Officers in all instances. Fourth, because the VIPD defines force broadly (anything beyond compliant handcuffing), the majority of Officers would likely exceed departmental ratios. Finally, because the VIPD's arrest and force records are still being implemented and refined, the Department is not yet consistently collecting enough information to develop reliable ratios (e.g., unique identifiers for all personnel, names of all VIPD personnel involved in an arrest, units involved). In addition, the VIPD began to discuss the development of an arrest database to address the lack of reliable data mentioned above. This database would capture all of the information necessary for IAPro analyses (including fields to capture the names of all involved Officers and other necessary data related to arrests).

Lastly, the VIPD is developing certain policies and protocol to support the RMS. These include: (i) Blue Team Protocol; (ii) Behavioral

Health Services Policy; (iii) Psychological Fitness for Duty Evaluation Policy; and (4) Officer Peer Support Policy. The OIM will report on the status of this protocol and policies in the next report.

While IAPro is now functional at the IAB on both Districts, there are still issues with access from the Zones, data input at IAB, and training for Supervisors related to IAPro that the Department must resolve. In addition, the Department must finalize the RMS Protocol and other RMS-related policies, as well as implement them and the Data Input Plan, among other things. Therefore, at the end of the Third Quarter, the Department has not yet substantially complied with ¶¶ 59-68 of the Consent Decree.

## **2. Recommendations**

As mentioned in the last quarterly report, the Management and Supervision working group must spearhead all efforts related to the Department's implementation of its RMS. While the Director and Assistant Director of IAB and the Acting Director of MIS have important roles to play in these efforts and have contributed greatly, the Deputy Chief of the St. Thomas District, as leader of the Management and Supervision working group, has the primary responsibility and must assume those responsibilities immediately. Among other things, the Deputy Chief and his Management and Supervision working group must: (1) ensure that human resource data is entered into IAPro by coordinating with the Department's Human Resources, Payroll and MIS Divisions; (2) ensure that a unique employee identifier number is being used consistently throughout the Department;<sup>52</sup> (3) work with the Director and Assistant Director of IAB and the Training Division to identify Supervisors who can train other Supervisors and Officers on IAPro and Blue Team; (4) identify individuals to assist with entering historic information into IAPro; (5) work with the Training Director to develop training programs relating to the Data Input Plan, RMS and Blue Team protocols; (6) finalize the Department's RMS Protocol, Blue Team Protocol, Behavioral Health Services Policy, Psychological Fitness for Duty Evaluation Policy, and Officer Peer Support Policy; (7) regularly visit all Zones and observe Supervisors access Blue Team and enter data; and

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<sup>52</sup> The Management and Supervision working group should also determine whether the Department will have to revise certain documents to account for this information (i.e., revise the RRR, arrest report and 1-A Form to provide a place to enter the employee number).

(8) follow up on whether the VIPD needs an arrest database separate from IAPro.

**B. Oversight (CD ¶ 69)**

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

The VIPD is not in substantial compliance with ¶ 69 of the Consent Decree because it has yet to finalize and implement the audit protocol for the RMS. The VIPD finalized the Data Input Plan, but as mentioned above is still revising the RMS Protocol. The Plan and Protocol are the foundations of the audit protocol.

The Acting Commissioner has created an audit unit, which will evaluate the effectiveness of internal controls across the Department. During the Third Quarter, the Acting Commissioner disseminated a memorandum on September 21 designating certain personnel to serve on the audit team including: the Assistant Director of IAB; the Director of Human Resources; the Payroll Supervisor; the Compliance Coordinator; the Compliance Manager; and two alternates. The OIM expressed concern to the Acting Commissioner about his designation of the Compliance Coordinator to this team because it may divert the Compliance Coordinator's attention from "serv[ing] as a full-time VIPD Compliance Coordinator," pursuant to paragraph 88. The OIM is hopeful that this will not be the case.

The Acting Commissioner's memorandum also outlined the team's functions. The OIM provided feedback to the Acting Commissioner and suggested that he: (1) direct the team to audit all Consent Decree related issues (not just citizen complaints); (2) designate a chairperson of the team; (3) direct the group to develop a protocol to guide its activities; (4) establish deadlines for deliverables for this group; and (5) set due dates by which the team must submit reports to him. The OIM looks forward to receiving an update from the new Commissioner during the next quarter about whether he has acted upon any of the OIM's recommendations and if the group has met and what priorities they have set.

Still, as explained above, this unit is primarily comprised of personnel who have other departmental duties. As we have previously recommended, the VIPD should seriously consider creating an audit division with the sole function of assessing the Department's compliance

with the Consent Decree.<sup>53</sup> The division should be staffed with at least two full time employees (with the head of the department serving as a Director) on each District who report directly to the Police Commissioner. The OIM is willing to discuss the merits and components of having such an independent, full-time body with the new Police Commissioner in the next quarter.

### **C. Discipline (CD ¶¶ 70-72)**

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

Although the DOJ has approved the Disciplinary Matrix, which provides disciplinary guidelines for different types of misconduct, the VIPD reports that it is reworking the disciplinary penalties of this policy.<sup>54</sup> Once the Matrix is revised, the VIPD will have to resubmit it to the DOJ. The Disciplinary Policy will also have to be revised in light of any changes that the Department makes to the Matrix.<sup>55</sup>

It is important that the VIPD finalize the Disciplinary Matrix and Policy as soon as possible. This will help foster a more uniform application of disciplinary sanctions and provide a foundation from which the VIPD can implement its other policies.<sup>56</sup> For example, those personnel who do not have good cause for missing Consent Decree related training programs must be disciplined if they fail to take the remedial training, and fail to exhibit proficiency. While training personnel should be the priority, the Department can also use the disciplining of these personnel to serve notice to other members that they cannot squander these training opportunities. As discussed below, the Training Director provided written notice to the Police Commissioner's Office about the Officers and Supervisors in both Districts with unexcused absences from the training programs held since March. As

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<sup>53</sup> For example, this division should assess the Department's level of compliance with the use of force investigations requirements, the manner in which Officers respond to citizen inquiries about how to lodge a complaint against an Officer, training attendance records and secondary employment restrictions.

<sup>54</sup> OIM First Quarterly Report of 2011 at 19.

<sup>55</sup> While the Consent Decree does not require DOJ approval for the Disciplinary Policy, the VIPD voluntarily submitted it to the DOJ for its review, and the DOJ agreed to provide technical assistance. The DOJ completed providing technical assistance to the VIPD on the Disciplinary Policy on April 26.

<sup>56</sup> As previously reported, the OIM has observed first-hand (and heard about anecdotally) the Department's inconsistent and disparate application of disciplinary sanctions (for which there is no reasonable explanation). See, e.g., OIM Fourth of Quarterly Report of 2010 at 24.

far as the OIM is aware, none of these Officers have been disciplined for their insubordination. The OIM will review additional documentation about departmental response to these “no shows” in the next quarter.

The VIPD previously reported that the Committee intended to hold a meeting with the Chiefs and Deputy Chiefs, as well as the Police Benevolent Association and Law Enforcement Supervisors’ Union, in both Districts to discuss the Disciplinary Policy and Matrix in upcoming quarters. The OIM did not receive an update on whether any meetings have occurred. When they are scheduled, the OIM would like to be given advance notice the meetings so that we can monitor them.

At the end of the Third Quarter, the VIPD is not in substantial compliance with ¶¶ 70-72 of the Consent Decree because they have yet to finalize and implement the Disciplinary Matrix.

## **V. Training (CD ¶¶ 73-81)**

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

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

The Training Director leads the Training working group. Nearly eight months after the Police Commissioner established the working groups and gave them a roadmap describing how to organize their groups, the Training working group still has not provided the OIM with a detailed action plan or given the OIM any indication through written documentation that the group regularly meets. This is unacceptable and it is imperative that in the next quarter this working group develop an action plan that tracks *all* Consent Decree requirements related to training. In addition, the Training working group must start to meet regularly.

The OIM has encouraged the working group to regularly meet to review student evaluations of instructors and discuss any remedial training that instructors may need. At these meetings the group should review RRRs and determine whether additional training is required Department-wide and/or should be targeted to specific units who exhibit common deficiencies.<sup>57</sup> Also, in accordance with ¶ 73 of the Consent

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<sup>57</sup> The Training Director does not consistently receive RRRs from the Zones as required by the Reportable Use of Force Policy. The newly developed supervisory checklist indicates that RRRs should be sent to the Chiefs’ Offices, Training Division, as well

Decree, the working group should meet to develop a process to review semi-annually all use of force policies and training to ensure quality, consistency and compliance with all applicable law and VIPD policy.

For a short period of time during the two previous quarters, the Training Division kept the OIM apprised about upcoming training programs. During the Third Quarter, however, the OIM had to repeatedly request a schedule from the Training Division. The OIM has previously communicated to the Division that it is imperative that we receive updated training schedules so that the OIM can plan to be present to monitor these programs. Many of these programs have been in the works for months but have been cancelled or postponed because the Department failed to secure contract approvals from the Property and Procurement Division.<sup>58</sup> The Training Division is concerned that the VIPD has harmed its relationship with some potential vendors because the Training Division has had to repeatedly cancel or postpone these programs.

Given this difficulty with securing contracts, the Acting Commissioner issued a memorandum on September 6 directing the Training Division to explore federal funding opportunities to conduct Consent Decree-related training. In the same memorandum, the Acting Commissioner directed the Training Division to focus exclusively on Consent Decree related training, though, for the reasons described herein, very few have been held. The VIPD also reports that it has worked with the Attorney General's Office and Property and Procurement in an unsuccessful attempt to streamline the process for approving training-related contracts. To date, the OIM has not seen any documentation relating to this plan. Even still, the Territory has an

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as IAB. The OIM is hopeful that with further implementation of the checklist, all three offices, including the Training Division, will begin to regularly receive copies of the RRRs.

<sup>58</sup> The impasse between the Department and the Property and Procurement Divisions has stalled training on six issued policies, including the: (i) Data Input Plan; (ii) Off-Duty Official Action Policy; (iii) Acceptance of Citizen Complaints Policy; (iv) Investigating Misconduct and Citizens Complaints Policy; (v) Vehicle Pursuit Policy; and (vi) Field Training Officer and Evaluation Program. On August 18, the Chief of St. Thomas and working group leader sent a memorandum to the Training Director requesting that trainings on the complaint-related policies occur as soon as possible. While the VIPD has identified the Policy Consultant to instruct the training on the Investigating Misconduct and Citizen Complaints, the Training Division has yet to set a date.



obligation under ¶ 14 of the Consent Decree to ensure that the VIPD has adequate resources to enable it to attain compliance. Since the VIPD does not have the internal capacity to conduct these Consent Decree related training programs, some resolution must occur immediately so that the VIPD can secure these outside vendors and provide the training required by the Consent Decree. The VIPD must ultimately assemble a core group of VIPD personnel who can provide adequate training and in turn lessen the VIPD's reliance on outside vendors.

These delays demonstrate that the Training Division and Attorney General's Office need to build a stronger working relationship. The OIM has repeatedly recommended that the Training Division have an attorney liaison at the Attorney General's Office because many training materials have law-related content that should be reviewed and approved by a qualified attorney. Furthermore, the Department must ensure that *all* law-related training is delivered by an attorney. During the last quarter, the VIPD reported that the Training Director began meeting with an attorney in the Attorney General's Office in St. Croix. The Training Director must continue to do so and establish a similar working relationship with an attorney in the Attorney General's Office in St. Thomas.

As we have repeatedly stressed, the Training Division should develop training programs for policies in advance of the Department issuing the policies. To facilitate that process, the Training Division should maintain regular contact with the Committee and working groups. To the extent that it has not already done so, the Training Division should also share issued policies with the outside vendors that it is intending to contract with prior to the training program so the vendor can tailor the programs accordingly.

Nevertheless, the Training Division did conduct some training programs for VIPD personnel on both Districts during the Third Quarter. For example, the Training Division held mandatory in-service training for Officers and Supervisors on specified dates from July 12 through September 1. This program included instruction on: Report Writing; Domestic Violence; Constitutional Law updates; TASER Refresher and Policy Review; Expandable Baton Refresher and Policy Review; Police Rules and Procedures; Defensive Tactics; O.C. Refresher and Policy Review; Stress Management for Law Enforcement; Drug Free Workplace and Sexual Harassment; and Firearm Training on handguns and shotguns. The OIM was pleased to review a July 14 memorandum from the Chief of the St. Thomas District highlighting that this training was mandatory.

Additionally, the Training Division recently disseminated a training schedule through February 2012. Upcoming tentative training programs include: Basic & Advanced Tactical; Tactical Marine; Defensive Tactics train-the-trainer certification; FTO train-the-trainer certification; in-service FTO; basic and advanced SWAT; expandable baton train-the-train certification; O.C. Spray train-the-trainer certification; Spike Strip train-the-trainer certification; Acceptance of Citizen Complaints; and Investigating Misconduct and Citizen Complaints. Notably, that schedule does not include training programs relating to a number of recently issued policies, including, as mentioned above, the Data Input Plan; Off-Duty Official Action Policy; and Vehicle Pursuit Policy.<sup>59</sup>

The train-the-trainer instructor programs concerning the Spike Strip Policy, O.C. Spray and Expandable Baton programs are crucial because the VIPD must develop a cadre of VIPD personnel who can provide adequate training rather than the VIPD having to continually rely upon outside vendors (given the expense and procurement issues). In addition, the OIM views the train-the-trainer FTO program as critical. Based on OIM monitoring, the current FTOs lack adequate training beyond how to fill out basic paperwork relating to their trainees. The Chief of St. Thomas has also requested that the Training Division promptly hold a training program for officers selected as potential FTOs.

With respect to the Field Training Officer (“FTO”) Program, this quarter the VIPD finalized the Field Training and Evaluation Program Policy. The OIM received a list of proposed Officers to participate in the 2011 FTO program (with their IAB historical allegation and disciplinary action records) for both Districts. The OIM is concerned the VIPD has proposed some Officers with questionable discipline histories. For example, one of the proposed FTOs had 9 sustained charges out of the 27 complaints filed against him; another proposed FTO, an Officer with less than 4 years experience, had 2 sustained charges of the 4 complaints filed against him. Also, while the VIPD has identified potential FTOs based upon Commander recommendations, these Officers have yet to receive the in-service training to be certified as FTOs.<sup>60</sup> Due

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<sup>59</sup> The schedule includes training related to the Investigating and Review of Use of Force Policy by the Policy Consultant. The VIPD cannot hold this training until it finalizes the policy. The VIPD must also make preparations to train on the Canine Policy once it revised and receives DOJ approval.

<sup>60</sup> The Training Division has only briefed them during the last quarter on June 2 about the FTO program and the various forms FTOs must complete.

to a lack of adequate certified FTOs, the OIM understands that these Officers are nonetheless being used as FTOs on both Districts.<sup>61</sup>

As requested in the last quarterly report, the OIM also received a list of the Officers on both Districts that have completed the FTO in-service training in 2008. The OIM understands that due to reassignment, among other reasons, the Department is not currently using all of these Officers as FTOs. To that end, the OIM seeks more general information about how FTOs are selected, including the minimum qualifications that FTOs must have (e.g., years of service, above average performance evaluations) and what actions will disqualify them from serving (e.g., sick roll abuse, citizen allegations, traffic accidents). We also seek additional information about how FTOs are trained and reiterate our requests for copies of any lesson plans or other materials that were used to train the current FTOs.

The Training Director has provided written notice to the Police Commissioner's Office and Chiefs' Offices about the Officers and Supervisors in both Districts with unexcused absences from the force-related and complaint process trainings conducted in March, April and June. The Training Director also rescheduled these "no shows" for retraining. Similarly, the Training Director has forwarded to the Police Commissioner's Office and Chiefs' Offices the names of the Officers and Supervisors in both Districts who had unexcused absences from the in-service training programs held in August and early September.<sup>62</sup> Given

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<sup>61</sup> In a memorandum dated August 3 from a Commander on St. Thomas via the Deputy Chief of St. Thomas to the Chief of St. Thomas, the Commander expressed, among other things, the concern that Officers had not been certified, but nonetheless had been delegated the responsibility for evaluating probationary Officers. Subsequently, on August 26, the Chief of St. Thomas sent a memorandum to the Director of Training requesting training as soon as possible. On September 12, the Director of Training wrote to the Acting Commissioner identifying the train-the-trainer FTO program to be one of those pending due to contract approval.

<sup>62</sup> The OIM learned that the Training Division, consistent with the recently issued Firearms Policy, relieved two sworn personnel in the St. Croix District and one sworn personnel in the St. Thomas/St. John District of their assigned firearms because they failed to qualify during the in-service training. The Division provides personnel with three attempts at qualifying. The OIM also learned that other VIPD personnel did not support the Training Director for taking this remedial action. The OIM is alarmed that anyone in the Department would deem it acceptable to allow personnel who failed to qualify to carry a firearm to remain with a firearm. The Training Director's actions are in-line with policy and demonstrate leadership. Since relieving these personnel of their weapons, the Training Division has returned them to the personnel after their successful completion of remedial firearms training and their qualification with their assigned firearm.

the number of Supervisors and Officers who failed to attend this in-service training, the Training Director tentatively scheduled an additional two weeks of training during the Fourth Quarter. The OIM is interested in receiving additional documentation about these “no shows,” including any communications from the Chiefs and Deputies to these Officers and/or their Supervisors, and any potential disciplinary actions meted out to them by the Department for their noncompliance. The OIM also would like documentation about the retraining held in the Fourth Quarter, including any “no shows” for that program.

The Training Division has made substantial strides documenting various aspects of its training program in recent quarters. During the last quarter, the VIPD reported that the Director of Training began working with MIS and an outside vendor to develop a database of training records; IAPro does not have a training component. While the database is being developed, the Training Division continues to update its color-coded file system in both Districts. Specifically, the Training Division has continued to update the training file of each Officer and Supervisor after each has completed in-service training. In upcoming quarters, the OIM will closely inspect these files to ensure that the Training Divisions does indeed maintain individual training records for each VIPD personnel indicating each training program that they have attended. The OIM will also review whether the curricula/lesson plans associated with all training programs that the Division has conducted have signatures indicating their approval by the Training Director and, where appropriate, an attorney.

Last, during the quarter, the OIM reviewed written documentation from the Training Division concerning its efforts to disseminate to VIPD sworn personnel, as well as civilian personnel (e.g., Property & Procurement) the Department’s issued policies. The VIPD is working to institute a more cost-effective and efficient method to disseminate policies going forward.

## **2. Recommendations**

The VIPD must obtain approval for all outstanding contracts with training vendors expeditiously. The new Commissioner, Attorney General and/or Governor’s Office must resolve any issues that prevent the Training Division from finalizing contracts with the vendors that it has identified. Until these training programs are held, the Department will be unable to continue to work towards meeting its mandate to implement policies by, among other things, training VIPD personnel on them.

Since the OIM has received a schedule of the Training Division's upcoming programs through February 2012, the OIM is hopeful that the VIPD is making plans to vet programs before they are held to avoid the need to conduct retraining (because many upcoming programs will be led by outside vendors, the OIM expects the VIPD to identify a process for exercising oversight of these programs). The OIM continues to emphasize the importance of vetting training programs prior to their implementation. Without exception, every lesson plan should be vetted by Training Division personnel and a cross section (of ranks) of high performing VIPD personnel with relevant expertise. This vetting is part of the training infrastructure that the OIM has encouraged the VIPD to build.

The Training Division must involve the Complaint Process working group in the implementation of the training programs for the Acceptance of Citizen Complaints Policy and the Investigating Misconduct & Citizens Complaints Policy; the OIM is hopeful that the Training Division will schedule these training programs for the Fourth Quarter. Likewise, the Training Division must work more closely with the Use of Force working group to implement all outstanding force-related training programs, including but not limited to those concerning the Vehicle Pursuit Policy, Off-Duty Official Action Policy, Spike Strip Policy (instructor training), O.C. Spray Policy (instructor training) and Field Training Evaluation Program. The OIM has repeatedly implored the Training Division to remain in close contact with each of the working groups to develop training programs for policies/directives that are still under development or that the Department has recently issued (e.g., Investigating and Review of Use of Force).

With regard to Officers and Supervisors who have unexcused absences from the training programs, the OIM recommends that the Director send a letter to each Officer or Supervisors' Chief or Deputy Chief, copying the Police Commissioner and IAB, requesting that an investigation be conducted to determine why the Officer or Supervisor failed to attend the training. If the investigation determines that there is no reasonable cause for the Officer or Supervisor to have missed the training, the Chief or Deputy Chief should ensure that the Officer or Supervisor is disciplined. The Director should request that the Chief or Deputy Chief respond by a date certain. The Chief or Deputy Chief should also direct the Officer or Supervisor to contact the Training Division to schedule a make-up training session by a date certain. The Chief or Deputy Chief should be held accountable for the timeliness and completeness of the investigation and any subsequent failure of the Officer or Supervisor to attend the make-up training session.

With regard to future training programs, the OIM also recommends that the Training Director work with the Chiefs and Deputies to schedule “units” to attend training programs together to the extent that they are not already doing so. The OIM believes that this will promote team building and consistency of practice among units. Of course, all Commanders, Bureau, Unit and Section Heads will have to make the necessary adjustments to schedules to ensure sufficient coverage in their designated areas. Also, the Training Division must develop a Roll Call/Commanders call procedure for effectively informing Officers and Supervisors of relevant changes in policies and procedures.

Despite making significant progress during the Third Quarter, the VIPD has not yet substantially complied with ¶¶ 73-81 of the Consent Decree. In addition to holding training programs for a number of recently issued policies, the Training Division must work closely with the Use of Force, Complaint Process, and Management & Supervision working groups to advance policies that are in the pipeline and develop related training programs. Moreover, the Training Division must carefully vet training programs to avoid the need to conduct retraining.

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

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

On October 8, the VIPD submitted its Tenth Quarterly Status Report to the DOJ and OIM. The Tenth Quarterly Status Report reflects the most comprehensive description of the VIPD’s efforts to move towards substantial compliance that the OIM has reviewed to date. The OIM continues to be impressed by the efforts of the Compliance Coordinator to not only collect updates from VIPD personnel, who are responsible for areas of Consent Decree compliance, to include in the VIPD status reports, but also to disseminate information from the VIPD to the OIM regularly. We reiterate that it is in the VIPD’s interest to share as much information with the OIM as possible so that we can accurately, fairly and comprehensively report on all of the VIPD’s efforts in addition to those that we become aware of through our own monitoring.

## 2. Status of Substantial Compliance

Before the Consent Decree expires on March 23, 2014, the VIPD must substantially comply with each Consent Decree provision and remain in compliance for two-years.<sup>63</sup> Almost all of the dates by which the VIPD must substantially comply have already passed without VIPD achieving compliance. Under the Consent Decree Timetable, the VIPD should have substantially complied with ¶¶ 32-58, 70, and 72 by May 31, ¶¶ 60, 61, and 73-81 by June 30, and ¶¶ 49, 59, 63-66 by September 15. Instead, they have only complied with ¶¶ 82-86, 88 and 98. Simply put, the VIPD is in grave danger of failing to comply with the Consent Decree before it expires.

Specifically, at the end of the Third Quarter of 2011, the VIPD has only complied with the following Consent Decree provisions (a chart summarizing the VIPD's progress towards substantial compliance is at the end of this Executive Summary):

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

As mentioned above, although the VIPD has already issued ten force-related policies, it has not fully implemented them as required by the Consent Decree.<sup>64</sup> So, for example, while the VIPD has issued the Firearms Policy pursuant to ¶ 39, the VIPD has provided corresponding training to many, but not all, Officers. Also, with regard to ¶ 40, although the VIPD has issued the Off-Duty Official Action Policy, the VIPD, among other things, has not trained any Officers on that policy. In addition, we understand that the Department is still developing or close

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<sup>63</sup> CD ¶ 103.

<sup>64</sup> As defined in the Consent Decree, "implement" refers to the "development or putting into place of a policy or procedure, including the appropriate training of personnel." CD ¶ 30.

to finalizing several additional force-related policies.<sup>65</sup> As such, the Department has not yet complied with ¶¶ 31-41, which requires the VIPD to review, revise, and implement its force-related policies.

Similarly, the OIM has reported that the VIPD's citizen complaint process is well underway and the OIM has been pleased to find complaint-related materials at many District Zones and substations and in vehicles (potentially satisfying ¶ 43 in the near future). However, regarding ¶¶ 42-45, the Department has yet to adequately train Department personnel on the Acceptance of Citizen Complaints Policy and the Investigating Misconduct & Citizen Complaints Policy which the Department issued during the Third Quarter. As mentioned above, the VIPD must translate required complaint materials into appropriate languages (e.g., Spanish, French, French Patois). The Department must also demonstrate, which it has yet to do, that the complaint process is functioning properly (e.g., personnel provide potential complainants with the appropriate information, investigate the complaints and provide complainants with periodic updates and the disposition of their complaints) in order to substantially comply with ¶¶ 42-58.

With regard to the management and supervision provisions of the Consent Decree, ¶¶ 59-72, the VIPD has only recently brought its RMS on-line and is still working to resolve some technical difficulties. The VIPD also must issue and train on several RMS-related policies including the RMS Protocol, Blue Team Protocol and Data Input Plan and ensure, thereafter, that VIPD personnel are following these protocols and plans in practice in order to substantially comply with ¶¶ 59-72.

In a long overdue attempt to address the deadlines, on September 29, 2011, the VIPD sent a letter to the DOJ promising to provide "a detailed explanation with proposed completion dates." In the VIPD's subsequent letter dated October 14, it omitted any proposed completion dates, and represented that a significant number of Consent Decree provisions have been satisfied. To the contrary, as explained above, VIPD has not satisfied most – if not all – of the provisions it claims, because from the OIM's perspective, the VIPD misguidedly focuses on the fact that it issued a number of policies and provided only some

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<sup>65</sup> While the VIPD may develop additional force-related policies in the future (beyond those that are currently under development or required by the Consent Decree) after the OIM has determined that the VIPD has substantially complied with ¶ 31, the subsequent issuance of those policies will not restart the two-year substantial compliance period.



corresponding training (with varying levels of success) to many (but not all) VIPD personnel. But, as we have repeatedly stated, the Consent Decree requires that the VIPD do more. For example, the VIPD must: (1) provide adequate training for every issued policy; (2) ensure that personnel who are required to attend training programs do so and become proficient in the relevant policies; (3) enforce compliance with those policies (including disciplining offenders); and (4) regularly assess and rectify any deficiencies in order to substantially comply with the Consent Decree.

During the Third Quarter, the OIM drafted the Substantial Compliance Thresholds Chart (“Chart”) to identify the criteria that it will use to evaluate the VIPD’s compliance with the Consent Decree. In the next quarter, after receiving comment from the VIPD and DOJ, the OIM will finalize the Chart and begin to use it to evaluate the Department’s compliance. We expect that the VIPD will institute an audit division that will use the Chart to conduct its own internal compliance audits during the life of the Consent Decree and beyond.

## Conclusion

The Department is in clear danger of not achieving and maintaining substantial compliance for the required two-year time period before the Consent Decree expires on March 23, 2014. While time is quickly passing, the OIM believes that it is still possible for the Department to satisfy most of its obligations under the Consent Decree within the prescribed time period. To do so, however, the Department (and its executive leadership team in particular) must devote even more energy, time, and resources to satisfying the Consent Decree. Despite entering into the Consent Decree more than two-and-a-half years ago, many within the VIPD (including some senior personnel) still view the Department's compliance efforts as being at odds with its "core" police functions. Such thinking has hampered the Department's Consent Decree compliance efforts for too long. Far from being an obstacle, the Consent Decree provides the VIPD with a roadmap for improving the VIPD's operations, including its capacity to provide first-rate police services. In addition, as the VIPD begins to comply with the Consent Decree and hold personnel accountable for misconduct, the Department's relationship with the community will improve, facilitating greater cooperation and better policing.

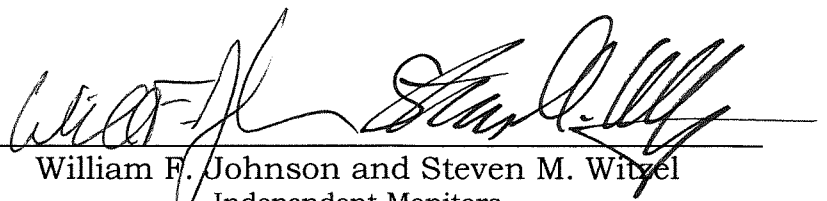
To satisfy the Consent Decree before its expiration, the VIPD's executive leadership team and the working group leaders must improve their level of communication. Unfortunately, over the last three quarters, it has become clear that many VIPD personnel are working on the Consent Decree in isolation. With few exceptions, the working groups have not been working collaboratively like they should. For example, the Training working group should take an active part in each of the other working groups to develop relevant training programs. Similarly, the Management and Supervision and Complaint Process working groups must work more closely with IAB. To that end, each working group leader should keep the other working group leaders (and other relevant personnel) apprised of the work of their respective working group.

The OIM commends the VIPD on issuing a significant number of force-related policies and having held adequate training programs on some of them, though many more policies require training. As mentioned above, the Training Division failed to organize a number of training programs relating to the Consent Decree this quarter because it relies on outside vendors to conduct these trainings and could not secure contracts for them. As a long-term goal, the VIPD must become less dependent on outside training vendors and develop an internal capacity

to lead its own training programs. The VIPD can begin to do so by securing contracts for outside vendors to conduct train-the-trainer and other programs. In the short-term, the VIPD must find a way to work with Property and Procurement to contract with outside vendors.

During this significant period when policies are being developed and training programs have begun, the VIPD should develop a system to evaluate whether VIPD personnel are complying with these policies and carrying them out as part of their daily responsibilities. This is the real goal – to change policies and practices so that they are in-line with all applicable laws. And when VIPD personnel fail to comply, the Department must be ready to take corrective action, including retraining and, where necessary, disciplining personnel. The designated audit unit, created this quarter, can play a role in conducting internal compliance audits during the life of the Consent Decree, including ensuring that all policies, like the Disciplinary Policy and Matrix, are being applied appropriately and uniformly. Still, as discussed *infra*, this unit is primarily comprised of personnel who have other departmental duties. As we have previously recommended, the VIPD should seriously consider creating an audit division with the sole function of assessing the Department's compliance with the Consent Decree. The division should be staffed with at least two full time employees (with the head of the division serving as a Director) on each District who report directly to the Police Commissioner.

Last, Supervisors are critical members of the Department and have significant responsibilities under the Consent Decree. In light of recent retirements and forthcoming promotions, the VIPD has a unique opportunity to elevate personnel to important positions and has the simultaneous obligation to train them on their new responsibilities. The supervisory promotions, examinations, and training should occur during the Fourth Quarter (or as soon as practicable thereafter).



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Independent Monitors

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## **Appendix A**

### **Summary of Consent Decree Requirements**

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

#### **I. Use of Force Policies (CD ¶ 31)**

##### **A. Requirements**

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

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

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

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

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

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

**1. Requirements**

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

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

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

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

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**Footnote continued from previous page**

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

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

- The supervisor must evaluate the grounds for the use of force and determine whether the involved officers' actions were consistent with VIPD policy.
- To filter out potential bias, reviews of use of force incidents may not be conducted by any officer who used force during the incident, whose conduct led to an injury, or who authorized action that led to a use of force or allegation of excessive force.
- Supervisors are required to interview all witnesses of a use of force, as well as all witnesses of any incident in which an injury results from a use of force. Supervisors must ensure that all officer witnesses provide a statement regarding the incident, subject to any limitations imposed by any applicable provision of collective bargaining agreements or law.
- Supervisors are not permitted to ask officers or other witnesses leading questions that might, for example, suggest legal justifications for the officers' conduct.
- Supervisors must consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate. Supervisors are required to make reasonable efforts to resolve material inconsistencies between statements provided by witnesses and make determinations with respect to the credibility of witnesses when feasible. 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.<sup>4</sup> These reviews must account for all shots fired and the locations of all officers who discharged their weapons. In connection with the investigation of all critical firearm discharges, VIPD is required to conduct, as appropriate, ballistic or crime scene analyses, including gunshot residue and bullet trajectory tests.

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

### **1. Requirements**

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

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

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



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

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

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

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

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

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

##### **1. Requirements**

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

- 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 Patois<sup>5</sup> versions of complaint forms and informational brochures in their vehicles at all times while on duty.
- If a citizen objects to an officer's conduct, the officer is required to inform the citizen of his or her right to make a complaint.
- Officers are prohibited from discouraging any person from making a complaint concerning an officer's conduct.

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

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

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

opinions regarding the complainant's mental competency or veracity.

- Upon receipt, 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, and improper search.
- Copies of all allegations of misconduct against a VIPD officer that are filed with the Zone Commands shall be referred to the IAB within five business days.

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

### **1. Requirements**

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

- Complaints must be evaluated based on a preponderance of the evidence standard. The VIPD is required to develop and implement appropriate training regarding application of the preponderance of the evidence standard in internal investigations of allegations of officer misconduct.
- 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.
- 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 Police 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 the 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.”<sup>6</sup>
  - Provide guidance to all investigators regarding procedures for handling allegations of potential criminal misconduct, including the referral of such allegations to the Virgin Islands Attorney General’s Office or other appropriate agency for possible criminal prosecution. The policy must establish the entity or individual responsible for making the determination as to whether a matter should be investigated criminally. The policy also must require the completion of VIPD’s administrative investigations of potentially criminal misconduct, regardless of the initiation or outcome of any criminal proceedings.
  - Require that all relevant police activity, including each use of force, be investigated, even if the activity or force was not specifically complained about.
  - Require that investigations evaluate any searches or seizures that occurred during the underlying incident.
  - Prohibit investigators from closing an investigation solely because a complaint is withdrawn, the alleged victim is unwilling or unable to provide medical records or proof of an injury, or the complainant will not provide additional statements or written statements. The policy shall require that, under such circumstances, investigators must continue the investigation as necessary to determine whether the allegations

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

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

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

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

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

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

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

###### **1. Requirements**

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

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

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

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

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

implement the RMS pursuant to a contracting schedule set forth in the Consent Decree.<sup>8</sup>

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

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

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<sup>8</sup> See CD ¶ 66.



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

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

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

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

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

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

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

## **B. Oversight (CD ¶ 69)**

### **1. Requirements**

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

## **C. Discipline (CD ¶¶ 70-72)**

### **1. Requirements**

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

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

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

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

## **V. Training (CD ¶¶ 73-81)**

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

#### **1. Requirements**

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

- VIPD review all use of force policies and training to ensure quality, consistency, and compliance with applicable law and VIPD policy;
  - After completing its initial review of its force-related policies and training programs, 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 force-related lesson plans and other training materials. These lesson plans must be maintained in a central, commonly accessible file and must be clearly dated.

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

## **B. Curriculum (CD ¶¶ 78-81)**

### **1. Requirements**

The Consent Decree requires the VIPD's 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.

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

**1. Requirements**

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

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

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

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