

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



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Independent Monitors**



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## Executive Summary

This is the First 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 March 31, 2011.<sup>1</sup>

During this quarter, among other things, the OIM conducted three separate, week-long monitoring trips to the Virgin Islands. Two of those trips focused on monitoring training programs intended to teach VIPD personnel about the Department’s revised force-related policies, including, but not limited to, the Use of Force Policy and the Reportable Use of Force Policy. Those policies (along with six other force-related policies) were approved by the U.S. Department of Justice (“DOJ”) and issued by the Police Commissioner on March 30. The finalization of these policies represents a long-overdue, but significant milestone for the VIPD.

Additionally, OIM representatives continued their practice of meeting with VIPD personnel in the St. Thomas, St. John, and Water Island District (the “St. Thomas District”) and the St. Croix District to monitor the VIPD’s on-going efforts to comply with the Consent Decree,<sup>2</sup> and to provide technical assistance as needed. For example, during each monitoring trip the OIM met (or made every effort to meet) the Chiefs, Deputy Chief, and Training Director charged with overseeing the Consent Decree working groups—Use of Force, Citizen Complaint Process, Management and Supervision, and Training—which were formed at the Consent Decree Summit (“Summit”) in January and described in detail in the previous quarterly report.<sup>3</sup> The OIM also spent a considerable amount of time meeting with other members of the VIPD about the

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<sup>1</sup> This Report references a limited number of events that occurred after March 31, notably training on force-related policies that took place in early April. The OIM’s next quarterly report will give a more extensive treatment of events that occurred after March 31.

<sup>2</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>3</sup> See the *Consent Decree Summit Addendum* at the end of this Report for details about the two-day gathering. Although the Summit occurred in the first week of this quarter, the OIM reported on it in the Fourth Quarterly Report of 2010 due to its importance to the Consent Decree. See, e.g., the OIM Fourth Quarterly Report of 2010 at I-II, 2 and 6.



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Consent Decree compliance process, including the Director and Assistant Director of the Internal Affairs Bureau (“IAB”), the Compliance Manager, and the Compliance Coordinator.

Finally, the OIM reviewed, among other things, 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 to gauge the extent to which use of force events are being properly reported and investigated.

The OIM commends the VIPD (particularly the Policies and Procedures Committee (“Committee”))<sup>4</sup> for finalizing eight force-related policies and beginning to train VIPD personnel on those policies during the first quarter of 2011. However, many of the VIPD’s other efforts to comply with the Consent Decree have stalled. For example, as discussed in greater detail below, the Use of Force, Training, and Complaint Process working groups have made minimal progress since being formed nearly five months ago. Moreover, without the active involvement of the OIM, it appears unlikely that those working groups would have made any progress whatsoever.

Overall, based on our observations and discussions with VIPD personnel, it has become clear that most of the VIPD’s efforts to comply with the Consent Decree take place in anticipation of the OIM’s monitoring trips. Unfortunately, those efforts appear to wane shortly after each monitoring trip.<sup>5</sup> This practice is unacceptable and cannot continue if the VIPD intends to comply with the Consent Decree and deadlines established by the Consent Decree Timetable. More than two years after the VIPD entered into the Consent Decree, the VIPD appears to be unable or unwilling to independently move towards compliance at an acceptable speed. Going forward, the VIPD’s executive leadership team (Police Commissioner, Assistant Police Commissioner, Chiefs, Deputy Chiefs, and Training Director) must fully commit themselves and the Department to complying with the Consent Decree. To that end, the

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<sup>4</sup> The Committee is charged with, among other things, developing, reviewing, and revising the Department’s policies, and has six members, including: a Deputy Chief (chairperson), the Director of IAB, a police Captain, a police Sergeant, the Training Supervisor for the St. Thomas District, and the Training Cadre for the St. Croix District. VIPD July 2010 Status Report at 3.

<sup>5</sup> Still, the OIM notes that certain VIPD personnel, particularly the Director and Assistant Director of IAB, the Compliance Manager and many members of the Committee, have demonstrated laudable commitment to the Consent Decree compliance process.

Police Commissioner should no longer tolerate any VIPD personnel who shortsightedly view the Consent Decree as a distraction.

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

The VIPD's most significant accomplishment during this quarter was the finalization of its revised force-related policies, which were issued on March 30. Those policies include: (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; and, (viii) Off-Duty Official Action. The Department also developed the RRR to document all use of force events pursuant to the Reportable Use of Force Policy.

The Committee deserves much of the credit for finalizing the policies and RRR referenced above. The Committee also appears to have developed a robust policy writing infrastructure, which was one of the Committee's objectives. For example, the Committee members appear to understand: (i) how meetings should function (e.g., circulating agendas in advance of meetings, taking minutes, designating individuals to follow-up on specific tasks); (ii) how a policy, protocol, form or other document takes shape (e.g., identifying a model policy, tailoring it to the VIPD, writing clear and consistent definitions and cross-referencing related policies); and, (iii) how the revision and review process functions (e.g., soliciting feedback from VIPD personnel and the DOJ, incorporating adopted suggestions, and communicating why other suggestions were rejected). The Committee should serve as an example for other VIPD personnel leading the Consent Decree compliance process, particularly the working groups, in terms of how to effectively operate.

In the next quarter, the OIM expects the VIPD to finalize and seek approval for several additional force-related policies, including Canine, Firearms, Sniper and the Special Operations Response Team.<sup>6</sup> In addition, the OIM expects to see the Committee become comfortable operating independently of the VIPD's Policy Consultant. While the Policy Consultant was instrumental in helping the Committee meet its early obligations under the Consent Decree Timetable, the time has come for the Committee to operate with less external involvement.

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<sup>6</sup> Prior to the publication of this Report, the OIM learned that the DOJ approved the Canine Policy and Firearms Policy on April 26. The OIM is hopeful that the Police Commissioner will issue these policies during the second quarter of 2011.

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

The VIPD has repeatedly excused the failure of its personnel to adequately report and investigate use of force events by pointing to the lack of definitive policy guidance. Now that the VIPD has issued eight force-related policies and provided corresponding training, that excuse is moot.

In particular, the VIPD must address a number of critical deficiencies that the OIM identified this quarter, including: (i) failing to complete an RRR when a Form 1-A or arrest report indicates that force may have been used; (ii) failing to interview and video record all Officers who were involved in a use of force event and any other witnesses; (iii) failing to collect and preserve physical evidence; (iv) permitting Officers who were involved in a use of force event to supervise the corresponding investigation; and, (v) supervisory investigations failing to document whether the force used was appropriate. As discussed in the body of this Report, the Chief of the St. Croix District noted many of these deficiencies in a memorandum that he sent to Commanders in the St. Croix District. In light of recent policy developments, the OIM expects to find far fewer deficiencies next quarter.

Finally, the OIM recently developed a standardized check sheet (based on the Consent Decree's requirements) to help VIPD personnel ensure that they are adequately reporting and investigating use of force events. The OIM will also use that check sheet (which has been shared with VIPD personnel) to measure the extent to which the VIPD is complying with the Consent Decree in the upcoming quarters.

**Public Information Regarding the Citizen Complaint Process**

The VIPD has not yet finalized the two policies that will govern the complaint process: (i) Acceptance of Citizen Complaint; and, (ii) Investigating Misconduct and Citizen Complaints, which concern the in-take and investigation of complaints (both citizen and command), respectively. While the Consent Decree does not require the VIPD to obtain DOJ approval for these policies, the VIPD has nonetheless voluntarily sought technical assistance from the DOJ. The OIM commends the VIPD for taking this additional helpful step. The OIM expects the VIPD to finalize the complaint process policies in the next quarter. These policies are particularly important because the related public information campaign has been underway since October 2010.



In the interim, the VIPD's complaint process continues to be governed by the Processing Citizen Complaints Directive, which was issued in October 2010 (#014-2010). The VIPD trained Officers and Supervisors about their respective obligations under the Directive in late March and early April. Once the VIPD finalizes its complaint process policies, the OIM expects the VIPD to retrain its personnel on those policies.

The VIPD also continues to promote the complaint process through the public information campaign that it began in October 2010. As part of that campaign, the Department is in the process of revising and reprinting several of its citizen complaint materials. In addition, the Department is continuing to air radio and television announcements informing the public about the complaint process.

### **Risk Management**

Although the VIPD continues to face technological roadblocks with respect to IAPro (the VIPD's new risk management system) in the St. Croix District, the VIPD reports that IAPro is functional in the St. Thomas District. The Acting Administrator of Management and Information Systems ("MIS") spent much of the last quarter assessing the Department's technology capabilities and needs after assuming his position in January. In light of the experience that MIS gained installing IAPro in the St. Thomas District (and conducting related troubleshooting), we are hopeful that it will expeditiously bring IAPro online in the St. Croix District. In addition, the Acting Administrator also trained Officers and Supervisors on the use of webcams this quarter to facilitate the video recording of force and complaint-related interviews (which is required by the Consent Decree).

### **Training**

As noted above, the VIPD began training its personnel on the Use of Force Policy, the Reportable Use of Force Policy, the RRR, and the citizen complaint process at the end of the quarter. Given the importance of those training programs, the OIM devoted a significant amount of time to monitoring them in-person. Unfortunately, we observed substantial differences in the quality of instruction between the Districts. While the quality of instruction in the St. Croix District was generally good, the instructors in the St. Thomas District primarily read policies verbatim to the attendees without using visual aids, role-playing, or other commonly-used adult teaching techniques. Most of these

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pitfalls could have been avoided by conducting a “test run” of the training program. Although the OIM previously stressed the importance of vetting training programs,<sup>7</sup> the VIPD failed to heed those recommendations.

The OIM expects the VIPD to retrain the Officers who attended the training program in the St. Thomas District as soon as possible. In addition to conducting a “test run” for any such training programs, instructors from the St. Croix District should also participate to lend additional experience. Moreover, the distinction between the quality of instruction in the St. Thomas District and the St. Croix District is emblematic of larger challenges in the Training Division (and throughout the VIPD), including a lack of communication between Training Division staff in both Districts and the apparent lack of strong, centralized leadership. The Training Division must start operating more consistently across the Districts.

**Status of Substantial Compliance**

In order to be released from the Consent Decree, the VIPD must substantially comply with each of the Consent Decree’s requirements and remain in compliance for two years.<sup>8</sup> At the end of first quarter of 2011, the VIPD has substantially complied with the following Consent Decree requirements:

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

Because the VIPD issued eight force-related policies this quarter, it is close to achieving substantial compliance with its obligation to review and revise its force-related policies. Nevertheless, the OIM understands

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<sup>7</sup> OIM Fourth Quarterly Report of 2010 at 29.

<sup>8</sup> Consent Decree (“CD”) ¶ 103.

that the VIPD is still in the process of reviewing and/or revising several other force-related policies (e.g., Sniper and Special Operations Response Team). The VIPD must receive DOJ approval for any outstanding force-related policies before it can substantially comply with the Consent Decree.

In addition, although the VIPD has made progress implementing the public information campaign about the citizen complaint process, the Department must finalize and then implement the related policies in order to substantially comply with those aspects of the Consent Decree. The OIM is also hopeful that the VIPD's use of force reporting and investigation practices will come into substantial compliance over the next two quarters.

### **Conclusion**

The VIPD must immediately recommit itself to achieving compliance with the Consent Decree and dramatically pick up the pace of its compliance efforts. At the current rate, the VIPD will not be able to substantially comply with each of the Consent Decree's requirements (and remain in substantial compliance for two years) before the Consent Decree expires on March 23, 2014. With a few notable exceptions, the Department's lack of urgency and accountability with respect to the Consent Decree is unacceptable and must change immediately. As a first step, the VIPD's executive leadership team must make the Consent Decree process a top priority for the Department. Based on our observations, that has not been the case. In particular, the OIM expects the Consent Decree working group leaders to take a more active role in ensuring that their respective groups succeed. As of March 31, 2011, only three of the four working groups had selected their members and only one had developed an action plan. The Police Commissioner should hold the working group leaders accountable for the progress of their respective groups. Given that the Police Commissioner has advised that he will be retiring within the next few months, the OIM looks forward to working with him and his successor to ensure a successful transition.

The VIPD has spent the last two years developing the tools and infrastructure necessary, as well as receiving extensive guidance from the DOJ and OIM, to comply with the Consent Decree. The time has come for the VIPD to execute.



**Office of the Independent Monitor**

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## Introduction

This is the First 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 March 31, 2011.<sup>1</sup> The OIM was established in January 2010<sup>2</sup> to monitor compliance by the Territory of the Virgin Islands (the “Virgin Islands”) and the VIPD with the Consent Decree entered by the United States District Court for the Virgin Islands (“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 of the Virgin Islands, the VIPD, and the United States Department of Justice (the “DOJ”) (collectively, the “Parties”) to resolve a lawsuit brought by the United States alleging that the Virgin Islands and the VIPD violated 42 U.S.C. § 14141 by engaging “in a pattern or practice of excessive force by Officers of the Virgin Islands Police Department and by the failure to adequately train, supervise, investigate, and discipline Officers.”<sup>4</sup>

The Parties entered into the Consent Decree “to promote police integrity and prevent conduct that deprives persons of rights, privileges,

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<sup>1</sup> This Report references a limited number of events that occurred after March 31, notably training on force-related policies that took place in early April. The OIM’s next quarterly report will give a more extensive treatment of events that occurred after March 31.

<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, 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>.

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

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or immunities secured or protected by the Constitution or the laws of the United States.”<sup>5</sup> The 104 paragraphs of the Consent Decree contain a broad range of substantive requirements for reform in areas such as the revision of the VIPD’s force-related policies; the training of Officers to properly use force in accordance with constitutional requirements, VIPD policy, and existing best practices in policing; the reporting and investigation of use of force events; the receipt and investigation of complaints alleging misconduct by VIPD Officers; the development of systems for managing and supervising VIPD Officers; and, the discipline of Officers found to have engaged in misconduct.

The Compliance Assessment section of this Report, which follows, details the OIM’s findings and observations based on our monitoring activities during the quarter ending on March 31. In addition, the Compliance Assessment section also includes recommended next-steps relating to each provision in the Consent Decree.

This Report begins with a discussion of the Consent Decree Summit (“Summit”), which we first referenced in the Fourth Quarterly Report of 2010.<sup>6</sup> The Summit was held on January 3 and 4, 2011 to reinvigorate the VIPD’s Consent Decree compliance process. At the Summit, among other things, the Police Commissioner appointed specific Chiefs and Deputy Chiefs to lead and ultimately be held accountable for working groups focused on different components of the Consent Decree. The OIM left the Summit optimistic that the VIPD was finally on the right course. Unfortunately, the OIM’s sense of optimism was short-lived. For example, as of March 31, only three of the four working groups had selected their members and only one had developed an action plan. In addition, although the VIPD’s executive leadership team (the Police Commissioner, Assistance Police Commissioner, Chiefs, and Deputy Chiefs) appeared to be committed to satisfying the Consent Decree at the Summit, the VIPD’s slow progress demonstrates that the Consent Decree is not a top priority for the Department. That must change.

Nevertheless, one of the lasting achievements to come out of the Summit was the finalization of many of the VIPD’s force-related policies, including the Use of Force Policy and Reportable Use of Force Policy. While the Court’s Consent Decree Timetable (which requires the VIPD to meet various deadlines) provided the impetus to finalize these policies,

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<sup>5</sup> CD ¶ 3.

<sup>6</sup> See the *Consent Decree Summit Addendum* at the end of this Report for details about the two-day gathering.

the members of the Policies and Procedures Committee (“Committee”)<sup>7</sup> deserve recognition for their hard work. While the finalization of those policies is a significant milestone for the VIPD, the inconsistent quality of the corresponding training (which is discussed in detail below) highlights larger infrastructure problems that exist throughout the Department.

More than two years after entering into the Consent Decree, the VIPD (from the Police Commissioner to Patrol Officers) must recommit itself to the Consent Decree compliance process. Moreover, the Police Commissioner should swiftly correct any lingering perceptions within the Department that the Consent Decree will simply go away.

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<sup>7</sup> The Committee is charged with, among other things, developing, reviewing, and revising the Department’s policies, and has six members, including: a Deputy Chief (chairperson), the Director of IAB, a police Captain, a police Sergeant, the Training Supervisor for the St. Thomas District, and the Training Cadre for the St. Croix District. VIPD July 2010 Status Report at 3.

## Compliance Assessment

In this section of the Report, we describe the VIPD's compliance efforts with respect to each of the substantive provisions of the Consent Decree,<sup>8</sup> as well as the OIM's monitoring activities during this quarter. The organization of this section of the Report parallels the organization of the Consent Decree. 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>9</sup> Then, we include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree's requirements.<sup>10</sup>

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

#### A. Status and Assessment

At the Summit in early January, the Police Commissioner designated the former Deputy Chief, now Chief, of the St. Croix District to lead the Use of Force working group. Unfortunately, the Chief has made very little progress with his working group during this quarter. For example, the Chief has not yet designated a point person or any other members of his working group. Likewise, the Chief has not drafted an action plan detailing the objectives for his working group.

Despite receiving clear instructions from the Police Commissioner<sup>11</sup> and having regular contact with the OIM, the Chief has expressed uncertainty about his responsibilities as the Use of Force working group leader. In response, the OIM has repeatedly explained the scope of his responsibilities, including: (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,

<sup>8</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>9</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>10</sup> See CD ¶ 85.

<sup>11</sup> Memorandum from the Police Commissioner to various VIPD personnel, title “Meeting Current Standards of Policing,” dated January 19, 2011.



(iv) monitoring his working group's progress, by, for example, attending and participating in as many meetings as his schedule permits, but no less than twice a month. Based on our observations, it does not appear that the Chief accomplished any of those tasks during the first quarter of 2011.

In addition, the OIM understands that the Chief may feel somewhat overburdened by his primary responsibilities as Chief coupled with the additional responsibilities of being a working group leader. Part of the problem, however, is the Chief's reluctance to delegate tasks to his subordinates. As we have repeatedly communicated to the Chief, he must learn how to effectively delegate in order to succeed in his new role. The OIM also reiterates to the Chief (and all other personnel charged with bringing the Department into compliance) that by prioritizing his time and organizational goals to be consistent with the Consent Decree, he is bringing the Department in line with the nation's generally accepted police practices, an expressed departmental priority.

Notwithstanding the Chief's lack of progress advancing the Use of Force working group, the VIPD issued the following force-related policies on March 30: (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; and, (viii) Off-Duty Official Action. The Department also implemented the Resistance Report Form ("RRR") (formerly known as the Use of Force Report) for Officers to document use of force events pursuant to the Reportable Use of Force Policy.

The OIM commends the Committee and its Policy Consultant<sup>12</sup> for leading the Department to finalize these policies. Spurred on by the Consent Decree Timetable and the Summit, the Committee has also made significant progress towards developing a comprehensive policy writing infrastructure. For example, the Committee meets regularly, takes meeting minutes, researches model policies and practices from accredited departments, invites VIPD personnel with subject matter expertise relevant to a particular policy to attend Committee meetings,

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<sup>12</sup> The VIPD engaged a Policy Consultant – at the repeated suggestion of the OIM and the DOJ – in October 2010 to help the Department revise its force-related policies, specifically, and improve its policy writing infrastructure, generally. The OIM has stressed how critical it is for the Department to develop its internal capacity to independently draft and revise policies.

and seeks feedback in a systematic way on draft policies from VIPD personnel with varying ranks serving across the Department.<sup>13</sup>

The OIM observed a Committee meeting on April 7 which highlights how effectively the Committee is operating. In preparation for that meeting (which focused on the VIPD's Risk Management System ("RMS")), the Director of IAB and Committee members researched model protocols from accredited departments and created a draft protocol that was discussed at length at the meeting. The Committee also invited VIPD personnel from across the Department, including Payroll and Human Resources, as well as members of the Management and Supervision working group to attend the meeting. By the end of the meeting, the Committee had made substantial progress advancing the draft protocol.

## **B. Recommendations**

During the second quarter of 2011, the Chief must make substantial progress leading the Use of Force Working group. The Chief should start with the items that we listed previously, all of which we have repeatedly discussed with him. We also recommend that the Chief direct his designated point person (once he designates one) to submit a weekly report on the status of the Use of Force working group to him. The OIM would also appreciate the opportunity to review those reports and provide feedback as appropriate.

In relation to policy development, the Use of Force working group should work with the Committee to develop, finalize and/or issue the following force-related policies in the upcoming quarter: (i) Canine; (ii) Firearms; (iii) Sniper; and, (iv) the Special Operations Response Team.<sup>14</sup> Finally, the Use of Force working group should coordinate with the Training Director about the need to provide training on any revised force-related policies in the near future.

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<sup>13</sup> See, e.g., OIM Second Quarterly Report of 2010 at 7-9; OIM Third Quarterly Report of 2010 at 5-7; OIM Fourth Quarterly Report of 2010 at 6-8.

<sup>14</sup> Prior to the publication of this Report, the OIM learned that the DOJ approved the Canine Policy and Firearms Policy on April 26. The OIM expects the Police Commissioner to issue these policies during the second quarter of 2011.

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

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

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

As noted above, the Department issued the Reportable Use of Force Policy, which sets forth Officers' use of force reporting obligations, on March 30. The VIPD also implemented the RRR on which Officers will document all use of force events pursuant to the Reportable Use of Force Policy.

In order to assist VIPD personnel in understanding their use of force reporting obligations, the Committee developed a force flow chart detailing each step that an Officer must take after using force. The OIM provided the Committee with an example of such a flow chart as a starting point. While the flow chart is not required by the Consent Decree, the OIM believes that it could serve as a useful tool for the VIPD. Nonetheless, the Committee should not devote a disproportionate amount of time to the flow chart so long as more pressing matters are in need of attention.

In order to evaluate, document, and review use of force events, the VIPD has started entering force-related information into IAPro, the Department's new RMS. As discussed below, IAPro is only functional in the St. Thomas District; a broken server prevented IAPro from operating in the St. Croix District during the first quarter.<sup>15</sup> In the interim, the VIPD has implemented a manual tracking system in which all Zone Commanders have log books with sequentially numbered pages to record use of force events and citizen complaints.<sup>16</sup> Once IAPro is functional in both Districts, the VIPD should still maintain the logbooks as a back-up measure.

During this quarter, the OIM reviewed logbooks at both Zones in the St. Croix District and was pleased to find that they were complete. For example, one Zone noted pending investigations in pencil, and then replaced the notation with ink when investigations were closed. Given the log book's neatness and uniformity it appears that one person had

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<sup>15</sup> As previously reported, the Blue Team component of IAPro will enable Officers to enter use of force information directly into IAPro. See, e.g., OIM Fourth Quarterly Report of 2010 at 10.

<sup>16</sup> VIPD February 2011 Status Report at 6.

been assigned to keep it updated. In addition, the Police Commissioner's Reporting Use of Force Directive (#0005-2010), which provides guidance regarding the logbook, was pasted inside the front cover.

## **2. Survey of Use of Force Incidents**

For several quarters, certain VIPD personnel have excused the underreporting of use of force events by pointing to the lack of definitive policy guidance. Now that the VIPD has implemented the Use of Force Policy and Reportable Use of Force Policy and provided corresponding training on them, the OIM expects the VIPD's use of force reporting practices to improve substantially. In order to assist the VIPD in this regard, the OIM provided VIPD personnel with a check sheet detailing precisely what the Consent Decree requires with respect to use of force reporting. The OIM will also use that check sheet to evaluate the adequacy of the VIPD's use of force reporting practices in upcoming quarters. Given that the VIPD already has the check sheet and the Consent Decree, there should be no surprises.

Based on our discussions with VIPD personnel and review of several force investigations, the OIM also became concerned that the Department does not adequately document instances where individuals are arrested and then subsequently released without being charged. In those instances, VIPD personnel do not consistently complete arrest reports reflecting those arrests, raising the possibility that use of force events are going unreported.

After discussing this issue with the VIPD, our concerns have been assuaged to a certain extent. For example, according to a Commander in the St. Croix District, Officers are required to note that an individual is being released after being arrested in the Form 1-A or arrest report and to make a corresponding entry in the arrest blotter. Moreover, where an Officer has already obtained an arrest number from dispatch, a Supervisor must call dispatch, ask that the number be recalled and then document that process in the Form 1-A. The same Commander told the OIM that arrest reports are ordinarily prepared by the arresting Officer even when an individual is quickly turned over to a detective for questioning. The OIM plans to confirm these procedures in this and other Zones in upcoming quarters.

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

On March 30, the Chief of the St. Croix District sent a memorandum titled "Use of Force and Citizen Complaint Investigations"

to all St. Croix District Commanders to “provide some insight on the status of Use of Force Investigations and common problems which cause delays in closing these investigations in a timely manner.” In the memorandum, the Chief states that Command and Bureau staff have submitted thirty-five (35) citizen complaint investigations and thirty-four (34) use of force investigations to the St. Croix Office of the Chief since March 2009.

Based on his review of those investigations, the Chief identified recurring deficiencies that often result in investigation reports being returned to the relevant Commander for further investigation.<sup>17</sup> Among other things, the Chief stated that Commanders were failing to do the following: (i) ensure that interview questions directly relate to the force-related investigation; (ii) follow-up on any inconsistent statements through re-interviewing of suspects, witnesses or Officers; (iii) interview all witnesses; (iv) video record all interviews;<sup>18</sup> (v) monitor that RRRs are submitted when 1As suggest that force was used; (vi) ensure that Officers’ narratives describe the type of force(s) used and include a description of the events leading up to force being used; (vii) photograph all injuries and ensure that a suspect, Officer, and/or witness receives timely medical attention (and obtain records of any such medical treatment); (viii) ensure that the investigating Supervisor was not directly involved in the use of force event; (ix) include in a supervisory narrative, among other things, an evaluation of the appropriateness of each type of force, an assessment of whether the conduct of the Officer was justified, and an assessment of whether the force employed was permitted by VIPD policy; and, (x) complete investigations in a timely manner to avoid running afoul of the statute of limitations. The Chief’s review is exactly the type of audit that we have repeatedly encouraged the Chiefs and Deputy Chiefs to undertake.<sup>19</sup>

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<sup>17</sup> While the OIM commends the Chief for returning incomplete and inadequate supervisory investigations to the Zones, it is unclear how the Chief subsequently follows-up with the Zones. Going forward, the Chief should document when he returns an investigation to the Zones and what, if any, response he receives.

<sup>18</sup> VIPD personnel have questioned whether the Consent Decree permits some flexibility in how force investigations may be conducted based on the level of force used (so long as all investigations receive Command review). These discussions stem from Supervisors’ concern with the extent of investigation required (e.g., video recording all interviews) regardless of the level of force used and the burden on Officers’ time and Department resources to do such. The OIM suggests that the VIPD and DOJ have a conversation about this topic as soon as possible.

<sup>19</sup> See, e.g., OIM Fourth Quarterly Report of 2010 at 17.



The OIM's review of force-related documentation from the St. Croix District this quarter revealed many of the same deficiencies that the Chief noted in his March 30 memorandum. Based on our review, we also noted several other areas in need of attention. First, there is no coordination or consistency between Commands in terms of how use of force events are investigated, nor is the level of communication between the Zones and IAB adequate. Thus, for example, the OIM identified instances where each Zone conducted separate investigations of the same use of force event, wasting the VIPD's limited resources. Second, there appears to be little, if any, follow-up when use of force investigations are returned to the Zones for further investigation. This is particularly problematic given the truncated 50-day statute of limitations under the current collective bargaining agreement, during which investigations must be completed and any discipline meted out.

Additionally, the dearth of Supervisors continues to hinder the VIPD's ability to properly investigate use of force events in both Districts.<sup>20</sup> In response to our concerns (which we have raised on multiple occasions), the Chief of the St. Croix District assured the OIM that there would be a reallocation of Supervisors.<sup>21</sup> In the interim, however, one Zone Commander has devised a plan for managing use of force investigations. Specifically, the Commander will give each Supervisor responsibility for handling all investigations over a 30-day period and will rotate between designated Supervisors.

Finally, the VIPD notes that the Committee continues to research use of force review boards in order to evaluate the feasibility of implementing such a body in the Virgin Islands. The OIM expects to receive additional details about the review board (e.g., membership, goals) in the next quarter, including an action plan detailing next steps.

## **B. Recommendations**

In light of the recent force-related training programs, the OIM expects to see a significant uptick in the quality of the Department's use of force investigations. Beginning next quarter, the OIM plans to focus on reviewing completed use of force investigations using the check sheet

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<sup>20</sup> OIM Fourth Quarterly Report of 2010 at 15.

<sup>21</sup> Prior to publication of this Report, the OIM learned that there has been a reallocation of Supervisors between the Zones in St. Croix.

that we provided to many VIPD personnel. In order to do so, we expect to review a single investigatory file either at IAB or in the Zone. It is not the OIM's responsibility to piece together components of the investigatory record and we will not do so. In addition, the VIPD's failure to conduct proper use of force investigations will prevent it from achieving substantial compliance with the Consent Decree.

Officers must also continue to receive in-service training concerning their force-related reporting and investigating responsibilities. Because the VIPD recently implemented new force-related policies, VIPD personnel should be given the opportunity to seek further clarification about their obligations. Roll Call and Commanders Call sessions, for example, are an appropriate venue for further force-related training. Finally, the OIM looks forward to reviewing the next version of the use of force flow chart.

### **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 of the St. Thomas District leads the Complaint Process working group. The Chief has designated a point person and two other VIPD personnel as members of the working group. On March 16, the Chief and his point person met with the Deputy Chief for St. John, the Director of IAB, and the Compliance Coordinator to discuss the status of the Department's complaint process. We note, however, that at the end of this quarter, the Complaint Process working group had not yet developed an action plan.

While the Consent Decree does not require DOJ approval for complaint process-related policies, the VIPD has voluntarily sought technical assistance from the DOJ.<sup>22</sup> The OIM commends the Department for taking this additional step. While the OIM understands that the VIPD's recent focus has been on finalizing the Department's revised force-related policies, the VIPD must now refocus its attention on finalizing its complaint process-related policies.<sup>23</sup> It is particularly

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<sup>22</sup> See, e.g., OIM Fourth Quarterly Report of 2010 at 17-18.

<sup>23</sup> For example, the OIM understands that the DOJ provided the VIPD with comments on its draft complaint-related policies on April 8.

important for the VIPD to finalize these policies as quickly as possible given the ongoing public information campaign, which has increased the number of complaints that the VIPD is receiving, particularly at IAB. The VIPD must monitor the impact that this campaign has on the workload of its personnel and provide adequate staffing and training.

As discussed in greater detail in Section V (Training), the VIPD trained Officers in late March and early April on accepting citizen complaints pursuant to the Processing Citizen Complaints Directive (#014-2010), which was issued in October 2010. The Committee and Management and Information Systems (“MIS”) are also developing a complaint process flow chart as a reference tool for Officers and Supervisors.

Among other things, the Directive requires Officers to carry compliment/complaint brochures and complaint forms in their vehicles at all times while on-duty and prohibits Officers from discouraging anyone from filing a complaint. The VIPD reports that patrol vehicles in Zones A and C in St. Thomas, including the Red Hook substation, have been equipped with these forms and brochures. The VIPD also advises that it will conduct inspections to confirm that Officers are abiding by the Directive, including carrying the required complaint process materials in their police vehicles. The OIM commends the VIPD’s initiative in this regard and looks forward to reviewing documentation relating to those inspections.

During this quarter, the VIPD also revised the complaint form and English language brochure based on input from the OIM, the Public Information Officer, and the Compliance Coordinator. For example, the revised complaint form needed to include identifying information about the Supervisor taking the complaint. The VIPD is also in the process of revising the Spanish and French language brochures to reflect the changes that were made to the English brochure.<sup>24</sup> The VIPD plans to make its revised complaint materials available on its website.

With regard to the ongoing public information campaign, the VIPD reports that local radio stations will air thirteen announcements promoting the complaint process on a “soft rotation” through the end of December 2011. Television stations, including three local stations and three affiliates, will also air similar announcements 2-3 times per week

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<sup>24</sup> The VIPD also reports that it has identified two potential candidates to translate the brochure into Patois.

during that time period. The VIPD has distributed these announcements to local government access channels and two radio shows hosted by retired Officers.

Finally, in order to make it easier for individuals to file complaints at the Zones, the Compliance Coordinator procured bulletin boards with magnetic letters, which will be installed in the Zones in both Districts; to date, one board has been installed at Zone A. These boards, among other things, will specify the name of the on-duty Shift Supervisor and Zone Commander along with other pertinent information. Each Shift Supervisor will be responsible for updating the board with their name when they come on-duty. According to the VIPD, the Police Commissioner was supposed to issue a memorandum in early April to explain the purpose of the board and provide additional guidance; to date, the OIM is unaware of whether the Police Commissioner issued this memorandum and would like a copy of it once it is issued. Next quarter, the OIM will visit each Zone in both Districts to confirm that the boards have been installed and are being used.

## **2. Recommendations**

The OIM encourages the Committee to turn its attention to finalizing the Acceptance of Citizen Complaint Policy and Investigating Misconduct and Citizen Complaints Policy. The Chief leading the Complaint Process working group and his working group members should be actively involved in finalizing these policies. The Chief should also communicate regularly with the Director of IAB, for example, to assess the workload impact that these policies will have on IAB staff and jointly develop a staffing plan that ensures that there are adequate resources to satisfy IAB's obligation to investigate citizen complaints.

While the Department has begun to train Officers on the Directive, the Training Division will need to retrain Officers once the new policies are finalized. In order to facilitate those training programs, the Chief should be in regular contact with the Training Director about the status of those policies. The Chief and his working group must also develop an action plan for the Police Commissioner and OIM's review during the next quarter.

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

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

The VIPD's investigation of citizen and command complaints will ultimately be governed by the Investigating Misconduct and Citizen

Complaints Policy. As discussed above, the VIPD should incorporate any comments that it received from DOJ and submit a revised version for additional feedback. The OIM would also welcome the opportunity to review the next version of that Policy.

During this quarter, the OIM also suggested that the VIPD develop a policy to guide Supervisors and IAB agents in closing appropriate cases based on a preliminary investigation. Other police departments refer to this type of policy as a citizen complaint resolution process or supervisors' resolution process. In order 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 Officers who have repeatedly violated Department policies are ineligible for such 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 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. The OIM encourages the Chief and Committee to discuss the feasibility of such a policy. Among other things, it would allow VIPD personnel to focus more of their attention on credible complaints.

In addition to finalizing the complaint process-related policies referenced above, the VIPD must train its Supervisors to, among other things, apply the preponderance of the evidence standard (which the VIPD uses when investigating complaints) and to evaluate the credibility of witnesses. Neither of those training programs depends on the finalization of the complaint process-related policies. During this quarter, the VIPD trained Supervisors in both Districts on the preponderance of the evidence standard. Unfortunately, the OIM found the trainings in both Districts inadequate largely because the instructors did not have the legal background necessary to teach the subject matter. As a result of feedback from the OIM, the Director of IAB, members of the Complaint Process working group, and the Compliance Coordinator recommended that the Chief contact the Attorney General's Office for further assistance training Supervisors on the preponderance of the evidence standard. The Attorney General's Office ultimately directed an Assistant Attorney General to provide the preponderance of the evidence training (which the OIM attended and which was very well done).



The Consent Decree also 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>25</sup> To the extent that the preponderance of the evidence standard training did not cover evaluating witness credibility, the Chief should work with the Training Division and the Attorney General's Office to provide that training as soon as possible. We note that the Training Division first received an intra-departmental request to hold such a training program on March 12, 2010.<sup>26</sup>

Furthermore, the Consent Decree requires the VIPD to video record interviews relating to use of force and complaint investigations. To that end, the VIPD reports that web-based cameras have been installed in all Zones in both Districts. The Acting Administrator of MIS also ordered speakers during the first quarter to allow Officers to more readily playback interview segments. During this quarter, Supervisors (who will be responsible for conducting use of force and complaint interviews) received training on how to operate the web-based cameras on March 3 and 17; the lack of prior training led to some interviews not being video recorded. Given that some Supervisors missed the web-based camera trainings, the OIM will follow-up about whether those Supervisors subsequently made-up that training.

Finally, the Consent Decree also requires the VIPD to institute a centralized numbering and tracking system for all complaints. However, technical roadblocks have prevented the Department from feasibly implementing such a system. Recognizing its technical limitations, the VIPD has created separate databases for the St. Croix District and the St. Thomas District as an alternative numbering and tracking system. Although the databases are separate, they can both be accessed from either District.

## **2. Recommendations**

The VIPD must finalize the Investigating Misconduct and Citizen Complaints Policy this quarter. The Chief and his working group should also work with the Training Director to plan corresponding training programs.

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<sup>25</sup> CD ¶ 51.

<sup>26</sup> OIM Second Quarterly Report of 2010 at 18.

The Committee should explore developing a policy that would permit Supervisors and IAB agents to close certain complaints based on a preliminary investigation. While any such policy should be carefully constructed, it could help the VIPD allocate its limited personnel more efficiently. The Chief and his working group will need to work closely with the Committee to develop any such policy. Finally, it is imperative that VIPD personnel receive additional training on the preponderance of the evidence standard and evaluating witness credibility. The Chief and Training Division, with assistance from the Attorney General's Office, need to coordinate this training and schedule a training program as soon as possible.

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

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

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

The Deputy Chief for St. Thomas leads the Management and Supervision working group. While this working group is just getting started, we note that it has made more progress than any of the other working groups in terms of laying the basic groundwork that is required. For example, the Deputy Chief has designated a point person and other VIPD personnel as members of the Management and Supervision working group. The working group also held four meetings during the first quarter.<sup>27</sup> To date, the Management and Supervision working group is the only working group to submit an action plan to the OIM. That action plan identifies each relevant Consent Decree provision and describes the tasks that must be accomplished to satisfy them. The action plan will ultimately assign specific individuals responsibility for those tasks and set forth short, mid-, and long term deadlines by which certain tasks must be completed. It should be noted that this working group has largely built upon the work that the Director of IAB has initiated over many months.

The Consent Decree requires the VIPD to implement a RMS to identify potentially problematic behavior from VIPD personnel at an early

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<sup>27</sup> On January 27, the working group met to discuss the Early Intervention Program and how various VIPD units should be involved in implementing that program. On March 23, the working group met with the OIM to identify objectives for the working group. On March 29 and 30, the working group met to complete its work on a draft action plan, which it submitted to the OIM on March 31.

(and hopefully remediable) stage. As we have previously reported, the VIPD chose to use IAPro as its RMS. During the first quarter, IAPro was functional in the St. Thomas District, but not in the St. Croix District. According to the Acting Administrator of MIS, a damaged server prevented IAPro from functioning in the St. Croix District.<sup>28</sup>

Given that IAPro is functional in the St. Thomas District, MIS intends to hold a Blue Team train-the-trainer program in the St. Thomas District during the second quarter of 2011 and then rely on that experience to conduct a separate training program in the St. Croix District at a later date. Based on our discussions with the Director of IAB, we understand that IAPro representatives plan to visit the Virgin Islands in July to help the VIPD correlate the data (force statistics, number of arrests, crime statistics, etc.) that IAPro will utilize. The IAPro representatives will also teach VIPD personnel about IAPro's functionality. The OIM intends to participate in these meetings to better understand how the VIPD will use IAPro.

On March 22, the DOJ approved the VIPD's data input plan, which identifies the data that will be entered into IAPro. According to the VIPD, personnel in both Districts are currently entering data from as early as 2009 into IAPro (the greater the amount of data, the more helpful IAPro will be in identifying potentially problematic behavior). Given the amount of data that needs to be entered, the Director of IAB has requested additional personnel to assist in this undertaking. The OIM will report on the Department's response to the Director of IAB, if any, next quarter.

Pursuant to the Consent Decree Timetable, the VIPD's RMS Protocol was due on April 15.<sup>29</sup> The Committee and members of the Management and Supervision working group sought input from various VIPD units, as well as the OIM, on the RMS Protocol. The OIM commends the Director of IAB for taking the lead in developing the Protocol. The OIM is also aware of discussions that the Director of IAB has had with the DOJ and others about specific aspects of the Protocol,

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<sup>28</sup> The VIPD recently reported that MIS resolved the server issues on St. Croix. Therefore, the OIM expects IAPro to be functional in the St. Croix District during the second quarter of 2011.

<sup>29</sup> Since submitting that draft version of the Protocol to the DOJ on April 15, the VIPD resubmitted another iteration to the DOJ on May 24. The OIM will report on the status of that Protocol in the next quarterly report.

including the type of thresholds that the VIPD should use to determine intervention thresholds. The OIM supports the VIPD's efforts to comply with the Consent Decree, and also to implement solutions that are feasible for the Department.

## **2. Recommendations**

The OIM expects the Management and Supervision working group to continue to meet regularly and further revise its action plan. In addition, the working group must take an active role in the implementation of IAPro. The working group should continue to revise the RMS Protocol to reflect the DOJ's comments and then resubmit it to the DOJ. The working group should also work with the Training Division on developing training programs related to IAPro.

The OIM looks forward to monitoring the VIPD's meetings with representatives from IAPro in July. These meetings will hopefully resolve any outstanding questions and technical issues relating to IAPro.

### **B. Oversight (CD ¶ 69)**

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

The VIPD continues to report that it has not yet prepared an audit protocol for the RMS.<sup>30</sup> Given that IAPro is functioning in the St. Thomas District (and should be functional in the St. Croix District next quarter), the VIPD should begin working on a draft audit plan.

The VIPD also reports that it is considering creating an audit unit with responsibilities beyond IAPro. According to the VIPD, the unit would consist of a territory-wide commanding Officer in one District, and a team Supervisor (of the rank Sergeant or above) in the other District. Each District would also have three audit Officers charged with auditing their respective Districts. The OIM looks forward to learning about the proposed unit's objectives in the upcoming quarter.

### **C. Discipline (CD ¶¶ 70-72)**

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

During this quarter, the VIPD continued to make revisions to its Disciplinary Policy and Disciplinary Matrix. While the VIPD is required

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<sup>30</sup> VIPD February 2011 Status Report at 25; VIPD April 2011 Status Report at 22.

under the Consent Decree to submit its Disciplinary Matrix to the DOJ for approval, the VIPD has voluntarily chosen to seek feedback from the DOJ on its Disciplinary Policy (which the DOJ agreed to provide as part of its ongoing technical assistance). On April 5, at the start of the next quarter, the DOJ approved the Disciplinary Matrix and, on April 26, the DOJ provided comments on the Disciplinary Policy. As such, the OIM expects the VIPD to implement and train on the Matrix and Policy in the upcoming quarters. The OIM anticipates that those policies will increase the even-handed application of disciplinary sanctions. As previously reported, the OIM observed first-hand (and heard about anecdotally) the Department's inconsistent and disparate application of disciplinary sanctions (for which there is no reasonable explanation).<sup>31</sup>

## **V. Training (CD ¶¶ 73-81)**

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

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

The newly appointed Training Director leads the Training working group.<sup>32</sup> While the new Training Director has verbally provided the OIM with the names of his point person and working group members, the Director has not provided the OIM with written documentation of such. It is also unclear whether the working group has held any meetings because the Director has not provided the OIM with any meeting minutes. In addition, as far as the OIM is aware, the working group had not developed an action plan during the first quarter of 2011.

The Training Division held a series of important training programs at the end of March and beginning of April in both Districts. The first aspect of the training, which was led by the Policy Consultant (who is an attorney), focused on legal aspects of the use of force. Supervisors from various VIPD units attended the first two days of this week-long training program and learned about, among other things, liability for failing to adequately supervise subordinates. Officers from various VIPD units attended the remainder of the week-long training program and learned about, among other things, the Constitutional standards governing the

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<sup>31</sup> See, e.g., OIM Fourth of Quarterly Report of 2010 at 24.

<sup>32</sup> The Police Commissioner appointed the former Chief of the St. Croix District as the new Training Director in early 2011. Thus, the former Training Director is now the Assistant Training Director.

use of force, civil rights laws, managing and diffusing confrontations, and drafting use of force reports. The Policy Consultant also provided the Supervisors and Officers with a reference guide, titled Use of Force Report Writing Guide, to help VIPD Officers and Supervisors effectively describe and evaluate use of force events. The OIM recommends that VIPD personnel become well-acquainted with this Guide and that it be incorporated (with the author's permission) into the future force-related training programs.

The second aspect of the training focused on the recently issued Use of Force Policy, Reportable Use of Force Policy, and the RRR. In addition, the training discussed the citizen complaint process. Again, Supervisors attended the first two days of this week-long training and Officers attended the remaining three days.<sup>33</sup>

For several months, the Training Division, under the leadership of the current Assistant Director of Training, previously reported that its lesson plans for the Use of Force Policy and other force-related policies were ready to be implemented once the underlying policies were approved by the DOJ. Nevertheless, the OIM strongly recommended that the Training Division conduct "test runs" for each lesson plan to gauge the effectiveness (and level of preparation) of the assigned instructors. Conducting "test runs" would also help instructors anticipate questions that they might be asked at the actual training.<sup>34</sup> With respect to those "test runs," the OIM encouraged senior VIPD personnel, including the Chiefs and Deputy Chiefs, to attend and provide feedback. The OIM also recommended that the Training Division consult the Attorney General's Office on the legal sufficiency of its proposed lesson plans.<sup>35</sup> Finally, we

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<sup>33</sup> The Training Division invited sworn personnel from various Virgin Islands agencies to participate in the training. For example, personnel from the Transportation Services Agency, Port Authority, and Virgin Islands court system attended. Additionally, Recruits attended the training sessions with Officers on St. Croix.

<sup>34</sup> The VIPD also reports that the Commissioner sought a list of all instructors and a copy of their current bona fides and training certifications pursuant to a memorandum, dated February 7, to the Director of IAB, the former Director of Training (now Assistant Director of Training), and the Acting Administrator of MIS.

<sup>35</sup> In the last report, the OIM reported that the former Training Director (now Assistant Director of Training) sent a letter on December 9 to the Police Commissioner asking that an attorney be appointed to "review all legal training updates, training bulletins and decisions." OIM Fourth Quarterly Report of 2010 at 27.



cautioned the Training Division that it should not rely on physical skills (martial arts, fire arms, etc.) instructors to be primarily responsible for teaching the legal dimensions of policies.

Unfortunately, the VIPD did not heed our recommendations.<sup>36</sup> As a result, the policy-related training overseen by the current Assistant Director of Training that took place in the St. Thomas District during the week of March 21 was inadequate.<sup>37</sup> Far from engaging the training participants, the instructors spent most of the training reading the policies out-loud. The instructors did not provide the participants with the opportunity to apply the policies or RRR to real-life, scenario-based situations. Similarly, the instructors failed to employ any table-top or role-playing exercises. The OIM provided the Training Division with extensive feedback on the St. Thomas District training. Although the St. Thomas based Training Division personnel, particularly the former Training Director (now Assistant Director of Training) did not appear to grasp our concerns (or agree with them), the new Training Director agreed that significant changes needed to be made before the St. Croix District training commenced.

The OIM is pleased to report that the St. Croix policy-related training, overseen by the current Director of Training, which took place during the week of April 4, was generally very good and a marked improvement from the prior training. For example, each instructor prepared a PowerPoint presentation that highlighted the objectives of the lesson plan and key provisions from relevant policies and directives. In addition to utilizing videos to discuss different scenarios, many instructors led their students through exercises in how to, for example, prepare a citizen complaint or RRR. Throughout the training, instructors also solicited feedback and encouraged group discussions. Finally, each instructor concluded their lessons with key takeaways from the training. As good as the instruction was on St. Croix, there is still room for improvement. The OIM gave specific feedback to each individual instructor at the end of each training day. We also subsequently provided feedback to the new Training Director and Police Commissioner.

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<sup>36</sup> While Committee members discussed the Use of Force Policy, Reportable Use of Force Policy, and RRR with the training instructors in advance of the St. Thomas District training, these discussions did not provide adequate preparation for the instructors.

<sup>37</sup> Because the Use of Force Policy, Reportable Use of Force Policy, and RRR were not issued by the Police Commission until March 30, instructors passed them out during the training, but then collected them.



During the training programs described above, the OIM reviewed attendance sheets and training program evaluation forms. The attendance sheets required participants to sign-in and out next to their typed name, resolving our previous concern about not being able to identify attendees' signatures.<sup>38</sup> The Training Division for the first time also required participants to fill out evaluations for each instructor. The OIM was pleased with this record-keeping and evaluation process. With respect to the evaluation forms, the Training Division should seek to address any concerns (and build on any positive comments) in the future. The OIM looks forward to reviewing those evaluation forms in the next quarter.

For those Officers who missed these training programs, the new Training Director told the OIM that the Training Division would notify the relevant Chief by letter. The Training Director's expectation is that the Chief would then direct the Officer to make up the training (or review the video) or, depending on the circumstances, impose a disciplinary sanction. During the next quarter, the OIM will review training attendance records and examine how the Chiefs have responded to the Training Division's deficiency letters (i.e., whether they have directed Officers to make up the training or have otherwise taken corrective action). The OIM also encourages the Training Director to proactively follow-up with the Chiefs on this issue and document those efforts.

The OIM was pleased to learn that the Training Director recently created an internal committee to help evaluate the efficacy of existing training programs (as the OIM previously suggested).<sup>39</sup> This is a particularly important initiative in light of the inadequate training in the St. Thomas District described above. Thus far, the committee is composed of the following: the Training Director; the Training Manager; a Lieutenant; an IAB Agent; and, a (retired) Captain. The OIM will monitor the work of this committee in upcoming quarters. The OIM has also repeatedly recommended that the Training Division evaluate the

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<sup>38</sup> OIM Third Quarterly Report of 2010 at 47. It also is notable that during the St. Croix District training, a Training Division Cadre observed that at least one Supervisor left training early, failed to return, and another Supervisor signed out for him, as well for his materials. The OIM commends the Cadre for his attentiveness. The OIM intends to monitor in the next quarter whether the VIPD took corrective action with regard to those Supervisors.

<sup>39</sup> See, e.g., OIM Fourth Quarterly Report of 2010 at 27.

strengths and weaknesses of its training programs; this committee would be an appropriate body to conduct evaluations.<sup>40</sup>

Additionally, the VIPD reports that the Training Division organized other training programs during this quarter including: Uniform Crime Reporting (“UCR”) on January 19-20 for 14 Officers in the St. Thomas District;<sup>41</sup> Law Enforcement Officer Flying Armed for 4 Officers in the St. Croix District on February 10 and for 12 Officers in the St. Thomas District on February 16; and, Asset Forfeiture for 43 Officers (on a non-reported date) in the St. Thomas District and for 36 Officers on February 16 in the St. Croix District.<sup>42</sup>

The OIM is also aware that the Training Division intends to hold other training programs in the upcoming months, including: SWAT, TASER, O.C., ASP Baton, Defensive Tactics, Tactical Operations, and Train-the-Trainer. The new Training Director informed the OIM that the Training Division aspires to hold training programs at least twice a month going forward. The OIM expects to be given advanced notice of these trainings. We note that the Training Manager for the St. Thomas District regularly updated the OIM about scheduled trainings during this quarter.

Finally, beginning this quarter, the Director of Training began working with MIS to develop a database for training records. The OIM looks forward to getting an update on this project in the next quarter.

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<sup>40</sup> OIM Third Quarterly Report of 2010 at 46; OIM Fourth Quarterly Report of 2010 at 26-27.

<sup>41</sup> This two day training by an instructor from Law Enforcement Online and sponsored by the FBI provided an overview of the UCR program reporting system, the historical background of the UCR program, the hierarchy rule with offense definitions, and the importance of accurately reporting statistical data. More generally, the VIPD reported that this training instructed VIPD personnel on how to capture specific details about reported offenses to enhance the analytical value of reporting information to the FBI.

<sup>42</sup> The VIPD also reported various training programs that it intends to hold. These include: M4 Shotgun & CX Storm Armors; Cell-phone Technology; Forensic Data Recovery Certification; Domestic Violence; CPR; Tactical Marine; Glock Armors; .223 Amorer; Noise & Tint Meter; Intelligence Training; Expandable Baton; Citizen Complaint Review; and, Investigating Use of Force. The OIM will report on these trainings in upcoming quarterly reports.

## **2. Recommendations**

The Training Director must exert greater control over the Training Division as a whole and should ensure that the quality of training is equal in both Districts. Among other things, the Training Division should explore the feasibility of having St. Croix based instructors spend time on St. Thomas and vice-versa.

The Training Division must also retrain the St. Thomas District Officers and Supervisors on the Use of Force Policy, Reportable Use of Force Policy, the RRR, and citizen complaint process. Given the importance of this training, the Division should conduct another in-service program and should not solely rely on Roll Call and Commanders Call sessions. Moreover, in light of the quality of the St. Croix District training, one or more St. Croix based instructors should participate in the St. Thomas District retraining. At a minimum, the St. Thomas based instructors should review the video tape of the St. Croix District training in advance of the retraining program.

Without exception, all future lesson plans 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. In addition, all lesson plans with law-related content should be reviewed by legal counsel. The Training Division should receive from counsel documentation that lessons plan have been reviewed and deemed sufficient and maintain records of this review.

The OIM has asked the Training Division for the following documentation, on more than one occasion, for both Districts: (i) roster of staff and assignments; (ii) copies of sign-in sheets from all training sessions that began on March 14, including the constitutional training; (iii) all PowerPoints, lessons plans, and/or table-top exercises for the in-service trainings on March 21-25 and April 4-8; (iv) participant evaluations for each instructor for all sessions that began on March 14; (v) deficiency letters for those Officers who did not attend training and subsequent follow-up/documentation; and, (vi) Training Division evaluations for each instructor for all sessions that began on March 14.

With regard to the Training working group, the OIM has requested and will expect to receive as soon as possible: (i) list of working group members with their respective responsibilities; (ii) minutes from working group meetings held to date; and, (iii) a detailed action plan. The

Training Division should provide all of the requested material (or explain why it cannot do so) as soon as possible.

Last, the OIM expects the Training Division to maintain and strengthen its developing relationship with the Peace Officer Standards and Training Council (“POST”). This is particularly important as the POST begins to formulate policy so that the Training Division can appropriately respond and tailor Department policies and programs to those policies. For example, the POST and Training Division must work together to develop policies and programs relating to the Department’s Field Training Officer (“FTO”) program. In past reports, the OIM has identified deficiencies with the FTO program, including that the VIPD has assigned probationary Officers to FTOs who were not certified because the Department lacks a sufficient number of certified FTOs and failed to train probationary officers on their responsibilities with regard to FTOs.<sup>43</sup> It is imperative that the Department cure these deficiencies with the FTO program as soon as possible and coordination between the POST and Training Division will be necessary to accomplish this aim.

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

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

The VIPD has named a Compliance Coordinator and the Police Commissioner also designated a Compliance Manager for St. Croix in compliance with the Consent Decree.<sup>44</sup>

On April 7, the VIPD timely submitted its Eighth Quarterly Status Report to the DOJ and the OIM. In the last quarterly report, the OIM suggested that the Compliance Manager and the Compliance Coordinator intensify and document their efforts to receive updates from other VIPD personnel responsible for areas of Consent Decree compliance in order to include that information in the VIPD’s quarterly status reports and provide a fuller picture of the Department’s progress. In response, we noted that the Compliance Coordinator sent multiple emails to a significant number of VIPD personnel (copying the Police Commissioner, Assistant Police Commissioner, Counsel for the VIPD, Counsel for the

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<sup>43</sup> See, e.g., OIM Third Quarterly Report of 2010 at 46-47; OIM Fourth Quarterly Report of 2010 at 28.

<sup>44</sup> OIM First Quarterly Report of 2010 at 49; OIM Second Quarterly Report of 2010 at 45.

Attorney General, and the Compliance Coordinator). In one such email, the Compliance Coordinator stated that he sent out two notices previously requesting information relevant to specific areas of the Consent Decree, but that he did not receive any responses.

The OIM finds it extremely disconcerting that no one responded to the Compliance Coordinator's prior emails. We are also troubled that neither the Police Commissioner, nor the Assistant Police Commissioner intervened. The Police Commissioner and Assistant Police Commissioner should not stand on the side-lines while senior members of the VIPD ignore requests from the Compliance Coordinator.

While the VIPD submitted the Eighth Quarterly Status Report on time and made some of the modifications that we previously suggested, more information could have been provided. For example, a number of sections within the VIPD's quarterly status report were effectively left blank, ("[n]o report was submitted this quarter by the Training Bureau specific to paragraph[s] 74-78, 81"), or restated language from past quarters. Going forward, the VIPD should provide detailed information about the status of its compliance efforts with respect to each and every Consent Decree requirement.

### **Status of Substantial Compliance**

In order to be released from the Consent Decree, the VIPD must substantially comply with each of the Consent Decree's requirements and remain in compliance for two years.<sup>45</sup> As of March 31, 2011, the VIPD has substantially complied only with the following Consent Decree requirements:

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

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<sup>45</sup> CD ¶ 103.

Because the VIPD issued eight force-related policies this quarter, it is close to achieving substantial compliance with its obligation to review and revise its force-related policies. Nevertheless, the OIM understands that the VIPD is still in the process of reviewing and/or revising several other force-related policies (e.g., Sniper and Special Operations Response Team). The VIPD must receive DOJ approval for any outstanding force-related policies before it can substantially comply with the Consent Decree.

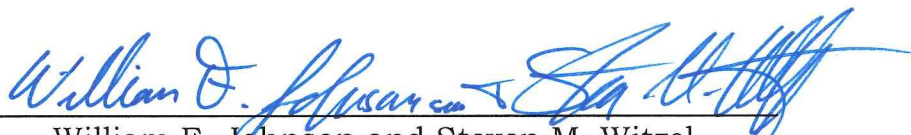
In addition, although the VIPD has made progress implementing the public information campaign about the citizen complaint process, the Department must finalize and then implement the related policies in order to substantially comply with those aspects of the Consent Decree. The OIM is also hopeful that the VIPD's use of force reporting and investigation practices will come into substantial compliance over the next two quarters.



## Conclusion

The VIPD must immediately recommit itself to achieving compliance with the Consent Decree and dramatically pick up the pace of its compliance efforts. At the current rate, the VIPD will not be able to substantially comply with each of the Consent Decree's requirements (and remain in substantial compliance for two years) before the Consent Decree expires on March 23, 2014. With a few notable exceptions, the Department's lack of urgency and accountability with respect to the Consent Decree must change immediately. As a first step, the VIPD's executive leadership team must make the Consent Decree process a top priority for the Department. Based on our observations, that has not been the case. In particular, the OIM expects the Consent Decree working group leaders to take a more active role by ensuring that their respective groups succeed. As of March 31, 2011, only three of the four working groups had selected their members and only one had developed an action plan. The Police Commissioner should hold the working group leaders accountable for the progress of their respective groups.

The VIPD has spent the last two years developing the tools and infrastructure necessary, as well as receiving extensive guidance from the DOJ and OIM, to comply with the Consent Decree. The time has come for the VIPD to execute.

  
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June 8, 2011

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## **Consent Decree Summit Addendum**

In an effort to reinvigorate the VIPD's commitment to the Consent Decree compliance process, the Police Commissioner convened a Consent Decree Summit on St. Thomas on January 3-4, 2011.

The OIM and the VIPD spent a significant amount of time during the last two weeks of December discussing mutual goals for the Summit and coordinating logistics. The Commissioner ultimately decided that the Summit would focus on the following goals: (1) ensuring that all participants understood their leadership roles in achieving substantial compliance with the Consent Decree; (2) assigning Chiefs, Deputy Chiefs, and other senior VIPD personnel responsibility for key provisions of the Consent Decree (e.g., Use of Force and Evaluation, Documentation, and Review of Uses of Force; Citizen Complaint Process; Management and Supervision; and Training); (3) requiring these assigned Chiefs, Deputy Chiefs, and senior VIPD personnel to lead working groups focused on these key Consent Decree provisions beyond the Summit; (4) requiring these assigned Chiefs, Deputy Chiefs, and other senior VIPD personnel to work with their respective working groups to establish detailed plans of actions (setting interim timelines, meeting schedules, and quarterly objectives, etc.) to achieve substantial compliance with their assigned provisions; (5) advancing the status of the force-related draft policies that were submitted to the DOJ beginning on December 17; and, (6) generally defining a path to compliance. The Commissioner circulated a detailed agenda to the invited participants shortly before the Summit commenced.

In addition to representatives from the OIM, the following VIPD personnel (representing a cross-section of the Department, including its executive leadership team) attended the Summit: the Police Commissioner; the Assistant Police Commissioner; Counsel for the VIPD; Chief of St. Croix; Chief of St. Thomas/St. John; Deputy Chief of St. Thomas; Deputy Chief of St. John; the Compliance Coordinator; the Territorial Compliance Manager; the Director and Assistant Director of the IAB, as well as an IAB agent; the Director of Training, the Training Manager, and a Training Cadre; two police Captains; two Lieutenants; the Police Benevolent Association President; the new Director of Management Information Systems;

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and the Director of the Planning and Research Bureau. In addition, the VIPD's Policy Consultant attended the Summit.

In line with one of the Police Commissioner's chief goals for the Summit, he appointed specific Chiefs and Deputy Chiefs to oversee four working groups that correlate to the four substantive areas of the Consent Decree — (1) Use of Force Policies & Evaluation, Documentation, and Review of Uses of Force (St. Croix District Chief); (2) Citizen Complaint Process – (St. Thomas District Chief); (3) Management and Supervision (St. Thomas District Deputy Chief); and, (4) Training (St. Croix Former Chief).<sup>1</sup> While the Police Commissioner recognized that those individuals could (and should) prudently delegate certain tasks to others, he stated that he would hold each of them ultimately responsible for the success of their respective working groups. In addition, the Police Commissioner stressed that their oversight responsibilities would continue until their working groups achieved substantial compliance. The Police Commissioner then divided the other participants into working groups.<sup>2</sup>

Each working group reflected a broad cross-section of the Summit participants and included representatives from the IAB, the Training Division, the Policies and Procedures Committee, and the OIM, as well as a number of Zone Commanders. The Policy Consultant moved between each group to observe their progress and offer technical assistance with regard to policies. For approximately a day-and-a-half, these working groups (1) developed detailed plans of action for achieving substantial compliance with their Consent Decree provisions and (2) revised policies relevant to their working group topic.

The Use of Force working group focused on force-related policies. Among other things, that working group reviewed many of the force-related policies that the VIPD submitted to the DOJ on

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<sup>1</sup> The Police Commissioner appointed the former Chief of the St. Croix District as the new Training Director in early 2011. All references to the "Chiefs and Deputy Chiefs" in this section include the former Chief of the St. Croix District.

<sup>2</sup> While the Police Commissioner designated Chiefs and Deputy Chiefs to lead four working groups that correlate to the four substantive provisions of the Consent Decree, for Summit related purposes, the Police Commissioner collapsed the four working groups into two groups, Use of Force and Citizen Complaint, with personnel from Training and MIS dispersed between these two groups.

December 17. In addition, the working group also reviewed and incorporated the DOJ's comments on each policy. The discussions that took place at the Summit were reflected in the force-related policies that the VIPD resubmitted to the DOJ later in January.

The Complaint Process working group spent a substantial amount of time reworking the VIPD's complaint policy. The working group ultimately decided to break the complaint policy into two pieces, one relating to how the VIPD accepts complaints and the other relating to how the VIPD investigates complaints. Those comments were reflected in the complaint process policies that the VIPD subsequently submitted to the DOJ.

Each working group also set interim deadlines related to, among other things, upcoming training. That training is contingent on receiving final approval of the relevant policies from the DOJ. Given that both working groups discussed training extensively, the Training Director and his staff spent time working with both groups.

Another important outcome of the Summit involved the consolidation of the VIPD's policies into a single, user-friendly manual. Currently, the VIPD has a policies manual, procedures manual and general orders manual, as well as field manuals, field directives, and training bulletins. As a result, Officers often have difficulty locating particular policies. In addition, Officers are often confronted with contradictory policies in different sources. The development of a single policy manual represents a significant step forward for the VIPD.

Finally, the Summit provided an invaluable opportunity for the VIPD personnel to work side-by-side with the Policy Consultant, and representatives from the OIM. Moreover, VIPD personnel from the St. Thomas District and the St. Croix District had the opportunity to interact and learn from each others' experiences.

Following the Summit, the Police Commissioner disseminated a memorandum, titled "Meeting Current Standards of Policing," that memorialized the Chiefs and Deputy Chiefs' appointments and provided recommendations for specific actions that each group should take in the short and long-term to achieve substantial compliance with the Consent Decree. Along similar

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lines, the OIM's Police Practices Experts provided the Chiefs and Deputy Chiefs with a memorandum outlining their respective responsibilities and a road map for how to lead their working groups. Each of the OIM's four Police Practices Experts has a direct working relationship with a particular Chief or Deputy Chief.

In the upcoming quarter, the Police Practices Experts will be in regular contact with their respective Chiefs and Deputy Chiefs. In order to ensure that the Summit's goals are realized, the OIM will monitor each working group closely.

Overall, the VIPD recognizes that extensive reform is needed department-wide and the level of activity generated by the Summit demonstrates that VIPD personnel are genuinely committed to the hard work that it will take to achieve institutional reform. The Department recognizes that Officers have a right to be trained on how to use force to protect themselves and others. Likewise, citizens have a right to be treated fairly and to expect the Department to review use of force events and take corrective actions when Officers improperly use force. Compliance with the Consent Decree is a means to afford Officers and citizens these rights, as well as for the VIPD to become a model for other departments in the Caribbean.

## **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.

#### **VII. 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

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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.

- Explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.<sup>2</sup>

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.

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

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

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

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

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

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

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

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

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

- The supervisor must evaluate the grounds for the use of force and determine whether the involved officers' actions were consistent with VIPD policy.
- To filter out potential bias, reviews of use of force incidents may not be conducted by any officer who used force during the incident, whose conduct led to an injury, or who authorized action that led to a use of force or allegation of excessive force.
- Supervisors are required to interview all witnesses of a use of force, as well as all witnesses of any incident in which an injury results from a use of force. Supervisors must ensure that all officer witnesses provide a statement regarding the incident, subject to any limitations imposed by any applicable provision of collective bargaining agreements or law.
- Supervisors are not permitted to ask officers or other witnesses leading questions that might, for example, suggest legal justifications for the officers' conduct.
- Supervisors must consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate. Supervisors are required to make reasonable efforts to resolve material inconsistencies between statements provided by witnesses and make determinations with respect to the credibility of witnesses when feasible. 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.

## **IX. 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

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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.



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

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

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

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

**X. 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.

## **XI. 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.

## **XII. 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.